

2013 IL App (2d) 121355-U
No. 2-12-1355
Order filed September 24, 2013

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

HOMeward RESIDENTIAL, INC., f/k/a)	Appeal from the Circuit Court
American Home Mortgage Servicing, Inc.,)	of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 10-CH-4667
)	
DALE M. RIES and JANICE H. RIES,)	
)	
Defendants-Appellants)	
)	Honorable
(Unknown Owners and Nonrecord Claimants,)	Robert G. Gibson,
Defendants).)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices McLaren and Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held:* Defendants' notice of appeal was untimely: their proof of mailing, which did not mention the place of mailing, the address to which the notice was sent, and the payment of postage—or even mention explicitly that the notice was submitted by mail—was insufficient to satisfy Rules 12(b)(3) and 373.

¶ 2 Defendants, Dale M. Ries and Janice H. Ries, the property owners in a foreclosure action, appeal the court's denial of their motion for leave to amend their pleadings, the confirmation of the judicial sale of the property, and the denial of their motion to reconsider. Because defendants did

not timely file their notice of appeal, we dismiss the appeal. Specifically, the clerk received the notice outside the 30-day period for timely filing, and defendants did not provide proof of timely mailing sufficient to allow them to take advantage of the mailbox rule for notices of appeal under Illinois Supreme Court Rule 373 (eff. Dec. 29, 2009).

¶ 3

I. BACKGROUND

¶ 4 On August 18, 2010, plaintiff, Homeward Residential, Inc., filed a foreclosure complaint against defendants concerning the property at 4215 South Vernard Road, Downers Grove.

¶ 5 Defendants filed an answer and affirmative defenses. After the court struck the defenses, they moved for more time to file an amended answer and defenses. The court denied the motion. Plaintiff then moved for summary judgment. The court granted the motion and entered a “Judgment for Foreclosure and Sale.”

¶ 6 The sheriff’s sale took place on July 12, 2012, and plaintiff bought the property for the judgment indebtedness. On August 2, 2012, plaintiff filed a motion for confirmation of the judicial sale. The court approved the report of sale and distribution and confirmed the sale on September 21, 2012. On October 19, 2012, defendants moved for vacatur of the confirmation order, for disqualification of plaintiff’s counsel, and for issuance of a rule to show cause. On November 7, 2012, the court denied the motion.

¶ 7 Defendants filed a notice of appeal; the court stamped this “Filed” on December 10, 2012, which was a Monday and was 33 days after the court decided defendants’ motion to vacate the confirmation. Filed with the notice of appeal was a paper with the headings “Notice of Filing” and “Certificate of Service.” Beneath the caption, it read:

“NOTICE OF FILING

To: Codilis & Associates
15W030 N. Frontage Rd., Suite 100
Burr Ridge, Illinois 60527

PLEASE TAKE NOTICE that on this date, I submitted to be filed, via with *[sic]* the Clerk of the Circuit Court for DuPage County, Wheaton, Illinois, the attached Notice of Appeal.

Date: December 7, 2012

[signed]

Louis W. Brydges, Jr.

* * *

Certificate of Service

Under penalties of perjury as provided by law pursuant to Section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109), the undersigned certifies that a copy of this Notice was sent via U. S. mail to each person to whom this Notice is directed on December 7, 2012.

[signed]

Linda Leonard”

¶ 8

II. ANALYSIS

¶ 9 On appeal, defendants assert that the trial court erred in denying their motion for leave to amend their answer, in granting plaintiff’s motion for summary judgment, and in denying their postjudgment motion. Plaintiff has responded, addressing the merits of the matter.

¶ 10 We must dismiss the appeal for lack of jurisdiction. A “reviewing court must ascertain its jurisdiction before proceeding in a cause of action, regardless of whether either party has raised the issue.” *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213 (2009). Here, defendants’ notice of filing seems to suggest that counsel mailed the notice of appeal on the 30th day—the last day for timely filing. Thus, had defendants satisfied the requirements for application of the mailbox rule for notices of appeal, the notice would presumably have been timely. However, the “Notice of Filing” and “Certificate of Service” are insufficient to allow such application.

¶ 11 “The timely filing of a notice of appeal is both jurisdictional and mandatory.” *Secura Insurance*, 232 Ill. 2d at 213 (citing, *inter alia*, Ill. S. Ct. R. 301 (eff. Feb. 1, 1994)). The appellant must file the notice of appeal “within 30 days after the entry of the final judgment appealed from, or, if a timely posttrial motion directed against the judgment is filed, *** within 30 days after the entry of the order disposing of the last pending postjudgment motion directed against that judgment or order[.]” Ill. S. Ct. R. 303(a)(1) (eff. May 30, 2008). Under Illinois Supreme Court Rule 373 (eff. Dec. 29, 2009), if a notice of appeal is “received after the due date, [then] the time of mailing, or the time of delivery to a third-party commercial carrier for delivery to the clerk within three business days, shall be deemed the time of filing.” However, “[p]roof of mailing or delivery to a third-party commercial carrier shall be as provided in Rule 12(b)(3).” Ill. S. Ct. R. 373 (eff. Dec. 29, 2009). “[W]hile Rule 373 relaxes the requirement of timely filing where a party takes advantage of the convenience of mailing a document, a party can only take advantage of Rule 373 if it files proper proof of mailing as required by Rule 12(b)(3).” *Secura Insurance*, 232 Ill. 2d at 216.

¶ 12 The applicable version of Illinois Supreme Court Rule 12(b)(3) (eff. Dec. 29, 2009) provided:
“Service is proved:

* * *

(3) in case of service by mail or by delivery to a third-party commercial carrier, by certificate of the attorney, or affidavit of a person other than the attorney, who deposited the paper in the mail or delivered the paper to a third-party commercial carrier, stating the time and place of mailing or delivery, the complete address which appeared on the envelope or package, and the fact that proper postage or the delivery charge was prepaid[.]”

¶ 13 In *Ingrassia v. Ingrassia*, 156 Ill. App. 3d 483, 502 (1987), we held that “proof of proper service by mail must be made in substantial compliance with the requirements of Supreme Court Rule 12,” but “minor defects will be excused.” In *Ingrassia*, in which counsel had not filed any proof of service, we first held that that failure precluded application of the mailbox rule. More to the point here, we alternatively held:

“Assuming *arguendo* that a statement by an attorney in open court could ever substitute for the certificate he is required to file under Rule 12 [citations], the statement of [the] attorney *** would be insufficient for failure to contain substantially the information required in an attorney’s certificate. His statement included the time of mailing, albeit somewhat vaguely, and some nonspecific reference to where it had been sent. It did not state the place of mailing (beyond the reference to a mailbox) or ‘the complete address which appeared on the envelope, and the fact that proper postage was prepaid.’ [Citation.] Thus, there was no proper proof that plaintiff was served with a copy of the petition by mail ***.” *Ingrassia*, 156 Ill. App. 3d at 502.

In other words, form aside, when information on the place of mailing, the address to which the party mailed the document, and an indication of the payment of postage were all lacking, there was no substantial compliance with the rule.

¶ 14 By this standard, the proof of mailing here is insufficient to establish Rule 12 compliance. The clerk's address is absent, as is any statement of postage and of place of mailing. Indeed, the proof does not even say that counsel submitted the notice to the clerk by mail, as a word or phrase was evidently omitted.

¶ 15 With no Rule 12 compliance, the mailbox rule does not apply, and the notice of appeal was untimely. We therefore must dismiss the appeal.

¶ 16 III. CONCLUSION

¶ 17 For the reasons stated, we dismiss the appeal for lack of jurisdiction.

¶ 18 Appeal dismissed.