

2014 IL App (1st) 130253  
No. 1-13-0253  
Order Filed September 30, 2014

SIXTH DIVISION

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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ONEWEST BANK, FSB,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CH 20065
	)	
2305 W. HARRISON CONDOMINIUM	)	
ASSOCIATION, ONEWEST BANK, FBS	)	Honorable
Successor by Merger to IndyMac Federal	)	Anthony Kyriakopoulos,
Bank, FSB, CAPITAL ONE BANK (USA),	)	Judge Presiding.
N.A., Formerly Known as Capital One Bank,	)	
CITY OF CHICAGO, UNKNOWN OWNERS	)	
and NONRECORD CLAIMANTS,	)	
	)	
Defendants	)	
	)	
(Tiffany Webb,	)	
	)	
Defendant-Appellant).	)	

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JUSTICE HALL delivered the judgment of the court.  
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

**ORDER**

¶ 1           **Held:** The denial of the defendant's motion to quash service by publication was not error. The plaintiff's affidavits in support of such service sufficiently attested to the affiants' diligent attempts to locate and personally serve the defendant prior to publication.

¶ 2           The defendant, Tiffany Webb (Ms. Webb), appeals from a judgment of foreclosure and sale entered in favor of the plaintiff, OneWest Bank (OneWest). On appeal, Ms. Webb contends that the circuit court erred when it denied her motion to quash service by publication. We conclude that the denial of the motion to quash was not error and affirm the judgment of the circuit court.

¶ 3           On June 3, 2011, OneWest filed a mortgage foreclosure action against Ms. Webb and other defendants who are not parties to this appeal. The complaint sought to foreclose a mortgage executed by Ms. Webb on her residence located at 2305 West Harrison Street, Unit No. 1W, in Chicago, Illinois (the residence). After numerous unsuccessful attempts to serve Ms. Webb, on July 11, 2011, Joel P. Fonferko, one of OneWest's attorneys, filed affidavits to allow service by publication as to Ms. Webb and the unknown owners and nonrecord claimants pursuant to section 2-206 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-206 (West 2010))<sup>1</sup> and Cook County Circuit Court Rule 7.3 (Cook Co. Cir. R. 7.3 (eff. Oct. 1, 1996)).

¶ 4           In his Rule 7.3 affidavit, attorney Fonferko averred that

"1. Tiffany Webb resides or has gone out of this State, or on due inquiry cannot be found, or is concealed within this state, so that process cannot be served upon them.

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<sup>1</sup>Attorney Fonferko's section 2-206 affidavit was certified pursuant to section 1-109 of the Code (735 ILCS 5/1-109 (West 2010)).

Service upon Tiffany Webb has been attempted by United Processing, Inc., the Court Appointed Special Process Server (see exhibit B)

2. Diligent inquiry has been made as to the whereabouts of Tiffany Webb (see exhibit A).

3. That upon diligent inquiry, the place of residence of Tiffany Webb cannot be ascertained and/or their last known place of residence is: 2305 W. Harrison Street, Unit 1W Chicago, IL 60612"

¶ 5 Exhibit A contained affidavits in support of service by publication. The affidavit of Mark Skrzydlak , executed on July 5, 2011, provided in pertinent part as follows:

"Before me, the undersigned authority, this day, personally appeared, MARK SKRZYDLAK, who being first duly sworn, upon his/her oath, deposes and says:

A diligent search and inquiry to discover the name and residence of Tiffany Webb was performed by the following acts set forth, as particularly as is known to MARK SKRYZYDLAK [*sic*], below.

After diligent search and inquiry by affiant, the residence of the subject person is unknown to the affiant.

SUBJECT NAME: Tiffany Webb

LAST KNOWN ADDRESS: Address" (Emphasis omitted.)

¶ 6 Mr. Skrzydlak listed 32 databases he searched to locate Ms. Webb. Mr. Skrzydlak further averred that a private database "that utilizes thousands of different public records databases and other resources, provided the following results: 2951 Saganashkee, LN Naperville, IL 60564, 1620 S. Michigan Ave 1002 Chicago, IL 60616, and 8038 S. Prairie Ave Chicago, IL 60619." "AFFIANT" appears above the signature line. The signature

below "AFFIANT" is illegible, but the name "Mark Skrzydlak" appears underneath the signature.

¶ 7 Exhibit A also contained the affidavits of the employees or agents of United Processing, Inc., who attempted service on Ms. Webb. In his affidavit, La Rue E. Bey averred that he attempted to serve Ms. Webb at the residence on five occasions: 6:25 p.m. on June 8, 2011 (no answer); 12:30 p.m. on June 9, 2011 (no answer); 7:10 a.m. on June 10, 2011 (female voice answered via the intercom that Ms. Webb owns the unit but did not live there; 6:39 p.m. on June 10, 2011 (female voice answered via the intercom that Ms. Webb did not live there); and 2:57 p.m. on June 12, 2011 (female voice answered via the intercom that Ms. Webb lived in Indiana). In a separate affidavit, Mr. Bey averred that at 3:59 p.m. on June 8, 2011, he attempted to serve Ms. Webb at 1620 South Michigan Avenue, Chicago, but he was told by the property manager that Ms. Webb had sold the unit a year ago. In his affidavit, Robert B. Holst averred that at 8:56 p.m. on June 8, 2011, he attempted to serve Ms. Webb at 2951 Saganashkee Lane, in Naperville, Illinois, but the house appeared vacant and unoccupied. In his affidavit, William Tobias averred that he twice attempted to serve Ms. Webb at 8038 Prairie Avenue, in Chicago: at 8 a.m. on June 8, 2011 (told by Teresa Moore that no one by the name of Tiffany Webb lived there) and at 10:10 a.m. on June 10, 2011 (again told by Ms. Moore that Tiffany Webb did not live there).

¶ 8 On December 23, 2011, OneWest filed a motion for the entry of an order of default and a judgment of foreclosure and sale. According to the certificate of publication attached to the motion, Ms. Webb had been served by publication in the Chicago Daily Law Bulletin between July 20, 2011, and August 3, 2011. The motion stated that she had not filed an appearance or an answer to the foreclosure complaint. On February 6, 2012, the circuit court

entered an order of default against Ms. Webb and a judgment for foreclosure and sale. The redemption period expired on May 7, 2012.

¶ 9 On June 28, 2012, Ms. Webb appeared through counsel and filed a motion to quash service by publication. In the motion, Ms. Webb maintained that the affidavits were insufficient to permit service by publication and that she had resided at 2305 West Harrison Street during the time personal service was attempted. In her affidavit supporting the motion, she averred that on the "exercise of due inquiry" she could have been found at the residence. OneWest filed a response supported by the previously filed affidavits, evidencing the unsuccessful attempts to serve Ms. Webb at the residence and at other locations. In her reply, Ms. Webb argued that the Rule 7.3 affidavit was invalid because it was signed by the attorney. She attached to the reply a copy of a photograph of a mailbox displaying her name and the address of the residence, and copies of envelopes addressed to her at the residence.

¶ 10 On November 6, 2012, the circuit court entered an order striking the Rule 7.3 affidavit of attorney Fonferko but denying the motion to quash service. The court found that the remaining affidavits complied with this court's decision in *Deutsche Bank National Trust Co v. Brewer*, 2012 IL App (1st) 111213. On December 7, 2012, the court entered an order approving and confirming the sale and possession of the residence to OneWest.

¶ 11 This appeal followed.

¶ 12 ANALYSIS

¶ 13 The sole issue on appeal is whether the denial of Ms. Webb's motion to quash service by publication was error.

¶ 14 I. Standard of Review

¶ 15 The parties disagree as to the applicable standard of review. In *Brewer*, this court applied the manifest weight of the evidence standard to review the circuit court's findings of fact in denying the motion to quash service. *Brewer*, 2012 IL App (1st) 111213, ¶ 17. The circuit court's order of November 7, 2012, contains no findings of fact. Moreover, where the reviewing court is presented with documentary evidence only, our review is *de novo*. *Independent Trust Corp. v. Hurwick*, 351 Ill. App. 3d 941, 952 (2004). Therefore, the applicable standard of review in this case is *de novo*.

¶ 16 II. Discussion

¶ 17 Section 2-206 of the Code, as supplemented by Rule 7.3, provides for service by publication in actions affecting property. Such service is appropriate if the plaintiff files an affidavit showing that the defendant "on due inquiry cannot be found, or is concealed within this State, so that process cannot be served upon him or her, and stating the place of residence of the defendant, if known, or that upon diligent inquiry his or her place of residence cannot be ascertained." 735 ILCS 5/2-206 (a) (West 2010). In *Brewer*, this court noted that the Cook County circuit court had adopted a rule that elaborates on the requirement for the affidavit:

" Pursuant to 735 ILCS 5/2-206(a), due inquiry shall be made to find the defendant(s) prior to service of summons by publication. In mortgage foreclosure cases, all affidavits for service of summons by publication must be accompanied by a sworn affidavit by the individual(s) making such "due inquiry" setting forth with particularity the action taken to demonstrate an honest and well directed effort to ascertain the whereabouts of the defendant(s) by inquiry as full as circumstances

permit prior to placing any service of summons by publication.' " *Brewer*, 2012 IL App (1st) 111213, ¶ 19 (quoting Cook Co. Cir. Ct. R. 7.3 (eff. Oct. 1, 1996)).

¶ 18 Strict compliance with the statute governing service by publication is required. *Bank of New York v. Unknown Heirs & Legatees*, 369 Ill. App. 3d 472, 475-76 (2006). A diligent inquiry means that the efforts to ascertain the defendant's whereabouts were honest and well directed and as full as the circumstances of the case permitted. *Bank of New York*, 369 Ill. App. 3d at 476. Service by publication is not justified where the efforts to comply with the statutory provisions have been "casual, routine, or spiritless." *Bank of New York*, 369 Ill. App. 3d at 476.

¶ 19 Attorney Fonferko's stricken Rule 7.3 affidavit aside, the remaining affidavits submitted prior to service by publication were sufficient to comply with Rule 7.3. The affidavits of Messrs. Bey, Holst and Tobias set forth in detail the dates, times and places they attempted to serve Ms. Webb personally and the reasons each attempt at service was unsuccessful. The Skrzydlak affidavit stated that a diligent search and inquiry "was performed by the following acts set forth, as particularly as is known to MARK SKRYZYDLAK [*sic*]," followed by the statement "after diligent search and inquiry *by affiant*, the residence of the subject person is unknown *to the affiant*" (Emphasis added). There was no dispute that Mr. Skrzydlak was the affiant, and the wording of the affidavit is sufficient to show that he was the individual who performed the inquiry as to the whereabouts of Ms. Webb.

¶ 20 Ms. Webb's reliance on *Brewer* is misplaced. In contrast to the affidavits in the present case, in *Brewer*, the affidavits in support of service by publication failed to identify who attempted to serve Ms. Brewer or who conducted the due inquiry as to her whereabouts. The

affidavits merely averred that service was attempted and that searches of databases were made. *Brewer*, 2012 IL App (1st) 111213, ¶25.

¶ 21

CONCLUSION

¶ 22

We conclude that the affidavits supporting service by publication complied with the requirements of Rule 7.3. The circuit court did not err in denying Ms. Webb's motion to quash service by publication. The judgment of the circuit court is affirmed.

¶ 23

Affirmed.