

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).

2014 IL App (4th) 131066-U

NO. 4-13-1066

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
May 1, 2014
Carla Bender
4th District Appellate
Court, IL

HSBC BANK USA, N.A.,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Macon County
ANTHONY GRASON,)	No. 08CH121
Defendant-Appellant,)	
and)	
KARL MEURLLOT and C. DEADRICK)	
DEVELOPMENT, INC.,)	Honorable
Intervenors-Appellees.)	Albert G. Webber,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Appleton and Justice Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court did not abuse its discretion by appointing C. Deadrick Development, Inc., as receiver of property it purchased at a foreclosure sale later deemed void.

(2) The appellate court lacked jurisdiction to consider all other issues in this interlocutory appeal brought under Illinois Supreme Court Rule 307 (eff. Feb. 26, 2010).

¶ 2 This is an interlocutory appeal under Illinois Supreme Court Rule 307 (eff. Feb. 26, 2010), brought by defendant, Anthony Grason, from October 29, 2013, orders of the Macon County circuit court granting a petition to intervene by Karl Meurlot and C. Deadrick Development, Inc. (intervenors), and appointing C. Deadrick Development, Inc. (C. Deadrick), as receiver for the property at issue. We affirm.

¶ 3 I. BACKGROUND

¶ 4 This case has twice been before this court. On May 5, 2009, Cynthia Deadrick and Mark Wolfer, on behalf of Karl Meurlot, purchased the property at issue here at a judicial sale. In July 2009, a judicial deed to the property was issued to Meurlot's assignee, C. Deadrick. C. Deadrick has been in possession of the property since the judicial deed was issued and has made what it considers improvements to the property. The background facts and procedural history of this case through September 2012 are set out in detail in our prior decisions. See *HSBC Bank U.S.A., N.A. v. Grason*, No. 4-10-0090 (Apr. 11, 2011) (unpublished order under Supreme Court Rule 23) (hereinafter *HSBC I*); *HSBC Bank U.S.A., N.A. v. Grason*, 2012 IL App (4th) 110788-U (unpublished order under Supreme Court Rule 23) (hereinafter *HSBC II*). By way of overview, the underlying parcel is farm and pasture land, with several buildings and a house on the property. Grason had a mortgage on the land with HSBC Bank USA, N.A. (HSBC), which foreclosed. C. Deadrick is a corporation seeking to develop the property and, after purchase at the judicial sale, it removed trees and knocked down buildings toward that end.

¶ 5 In *HSBC I*, the primary issue was whether the judicial sale occurred prior to Grason filing his *pro se* bankruptcy petition, which this court found was filed at 8:37 a.m. on May 5, 2009. *HSBC I*, No. 4-10-0090, ¶ 9. On remand, the trial court failed to make a factual finding as to what time the judicial sale occurred as we directed, holding instead the automatic bankruptcy stay did not apply to the foreclosure sale because Grason was not an eligible debtor pursuant to section 109(g)(1) of the Bankruptcy Code (11 U.S.C. § 109(g)(1) (2006)). *HSBC II*, 2012 IL App (4th) 110788-U, ¶ 24.

¶ 6 On September 19, 2012, in *HSBC II*, we noted nothing in the record before us indicated Grason's previous bankruptcy petition was dismissed due to his willful failure to abide by a court order. *Id.* ¶ 30. We (1) reversed the trial court's ruling finding Grason's bankruptcy

filing did not affect the foreclosure sale regardless of the time it was filed; (2) vacated the confirmation and reconfirmation of the foreclosure sale; and (3) again remanded to the trial court to determine, by a preponderance of the evidence, whether the foreclosure sale occurred after Grason's 8:37 a.m. bankruptcy filing. *Id.* ¶ 47. We noted, "[i]f the court finds the sale occurred after 8:37 a.m., the automatic stay applied to the foreclosure sale and the sale is void unless HSBC or Meurlot can obtain relief from the automatic stay with regard to the foreclosure sale from the Bankruptcy Court." *Id.* Our mandate was issued on October 24, 2012.

¶ 7 On October 11, 2012, Meurlot filed a motion to reconsider dismissal and reopen the case in the bankruptcy court, which was allowed over Grason's objection. Meurlot argued (1) Grason's May 5, 2009, petition did not create an automatic stay because Grason was not eligible to be a debtor under section 109(g) of title 11 of the Bankruptcy Code (11 U.S.C. § 109(g) (West 2008)) because he failed to obtain credit counseling prior to filing his petition; and (2) even if the automatic stay went into effect at the time of the May 5, 2009, filing, the court should annul the stay. Grason responded (1) he was an eligible debtor and (2) Meurlot did not have standing because he had no legally cognizable interest in the subject property and was not a party in interest in the case.

¶ 8 In a February 2013 written opinion, the bankruptcy court denied Meurlot's motion for relief from stay, concluding Meurlot was, at best, a bystander to this case who "chose to make a significant investment in a property purchased at a sheriff's sale where the purchase was clouded from the inception by a pending bankruptcy, a questionable confirmation hearing, and an appeal. And, after the Appellate Court of Illinois reversed and remanded the foreclosure case, Mr. Meurlot chose to fight HSBC's

efforts to back up and start over. That choice resulted in another appeal and another reversal. Significant resources have been expended by all involved, but that is simply not a basis to ignore Mr. Meurlot's lack of standing." *In re Grason*, 486 B.R. 448, 461 (Bankr. C.D. Ill. 2013).

The court continued, "[t]he real parties in interest here are [Grason] and HSBC," neither of whom sought relief before the court. *Id.*

¶ 9 HSBC then filed a motion for relief from stay in the bankruptcy court. (The record does not contain the date of this petition.) HSBC argued Grason's May 5, 2009, filing of the bankruptcy petition did not create an automatic stay because he was not eligible to be a debtor. On July 18, 2013, following an April 2013 hearing on the petition, the bankruptcy court issued its written opinion, concluding (1) Grason was an eligible debtor at the time his petition was filed, (2) the automatic stay was binding on HSBC, and (3) the sheriff's sale was void and remained void because the court declined to grant relief to HSBC or to annul the stay. *In re Grason*, 2013 WL 3781766, 8 (Bankr. C.D. Ill. 2013).

¶ 10 On July 29, 2013, after no proceedings had commenced in the trial court following our second remand, Grason filed a motion requesting the trial court (1) vacate the sale, refund the sales proceeds, and vacate the order approving the report of sale and distribution; (2) order the "restoration of defendant to procession [*sic*]"; and (3) vacate the order for *in personam* deficiency. (We note, while Grason asks to be restored to "procession" throughout the record, the meat of his argument pertains to getting possession of his property back; thus, we refer to possession rather than procession.) It appears all parties have conceded the judicial sale occurred after 8:37 a.m. because, rather than seeking a determination in the trial court on this issue,

Meurlot, C. Deadrick, and HSBC proceeded in the bankruptcy court, asserting Grason was not an eligible debtor and, thus, the automatic stay did not apply.

¶ 11 On August 28, 2013, Karl Meurlot and C. Deadrick filed a petition in the trial court (1) to intervene as a matter of right pursuant to section 2-408 of the Code of Civil Procedure (735 ILCS 5/2-408 (West 2012)) and (2) for receivership pursuant to section 15-1704(a) of the Code of Civil Procedure (735 ILCS 5/15-1704(a) (West 2012)). The petition for receivership requested the trial court appoint C. Deadrick—the corporation which had been in possession of the property since July 2009, had "substantially improved the property," and had "sufficient means and interest to ensure the continuation of the *status quo* pending a final determination of this matter"—as receiver of the property. HSBC did not object.

¶ 12 On October 29, 2013, following arguments from all parties and over Grason's objections, the trial court (1) granted intervenors' petition to intervene, finding their interest in the property—as grantees of the judicial deed issued by the court for the property—was not adequately protected by HSBC or defendant and (2) appointed C. Deadrick as receiver of the property. The court allowed Grason's motions to (1) vacate the foreclosure sale, (2) refund the foreclosure proceeds, (3) vacate the order confirming the sale, and (4) vacate the order for *in personam* deficiency, as neither HSBC nor Meurlot objected. The court denied Grason's motion to restore him to possession.

¶ 13 On November 20, 2013, Grason filed a notice of interlocutory appeal as of right pursuant to Illinois Supreme Court Rule 307 (eff. Feb. 26, 2010).

¶ 14 II. ANALYSIS

¶ 15 In his notice of interlocutory appeal, Grason raised the following issues: whether the trial court erred in (1) allowing intervenors' motion to intervene; (2) appointing C. Deadrick

as receiver for the subject property; (3) denying Grason's motion for possession of the subject property; and (4) "granting the sheriff sale and confirmation" of the subject property.

¶ 16 A. Intervenors' Motion To Strike Grason's Reply Brief

¶ 17 Intervenors have filed a motion to strike Grason's reply brief, which we ordered taken with the case. Intervenors assert Grayson's entire reply brief, or sections therein, must be stricken because (1) the statements and documents included within it are *dehors* the record; (2) it raises matters wholly outside those issues raised in either (a) HSBC's or intervenors' responses, (b) Grayson's notice of appeal, and (c) the narrow scope of this interlocutory appeal; and (3) it presents new arguments and authority for previously unsupported assertions made in his initial brief.

¶ 18 "The scope of an appellate court's jurisdiction extends only to those matters raised in the notice of appeal." *In re Marriage of McCoy*, 253 Ill. App. 3d 958, 962, 625 N.E.2d 883, 885 (1993). Grayson's notice of interlocutory appeal includes the following issues: whether the trial court erred in (1) allowing Meurlot and C. Deadrick to intervene; (2) appointing C. Deadrick as receiver for the subject property; (3) denying Grason's motion for possession of the subject property; and (4) granting the "sheriff sale and confirmation" of the subject property. In his initial brief, Grason (1) combines the intervention and receivership issues, (2) argues his right-to-possession issue, (3) disposes of the issue concerning the sheriff's sale, and (4) adds the issue of whether HSBC has standing to continue the foreclosure action. In his reply brief, Grason raises additional issues included in neither his notice of interlocutory appeal nor his initial brief, including claimed errors pertaining to (1) an equitable lien placed on the property by intervenors; (2) the trial court's bias against Grason; (3) the denial of his emergency motion to stay the judicial sheriff's sale; and (4) the trial court's denial of his motion to vacate the judgment of sale.

¶ 19 We strike the portions of Grason's reply brief that do not pertain to the issues raised in his notice of appeal or the briefs of HSBC or intervenors. Specifically, we strike the portion of Grason's reply brief pertaining to (1) whether HSBC has standing; (2) the equitable lien; (3) the trial court's alleged bias; (4) the denials of Grason's motions to (a) stay the judicial sheriff's sale and (b) vacate the judgment of sale; and (5) the documents in the attached appendix that are *dehors* the record.

¶ 20 B. Issues Appealable as a Matter of Right

¶ 21 Next, we address HSBC and intervenors' contention only one of the issues raised in Grason's initial brief is appealable as a matter of right. This court's jurisdiction is limited to reviewing appeals from final judgments and certain interlocutory orders specified by the rules of the Illinois Supreme Court. *In re County Collector of Rock Island County v. Redco, Inc.*, 3 Ill. App. 3d 917, 919, 278 N.E.2d 811, 812 (1972). Rule 307 provides a list of nonfinal orders which may be appealed as of right, including orders:

- "(1) granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction;
- (2) appointing or refusing to appoint a receiver or sequestrator;
- (3) giving or refusing to give other or further powers or property to a receiver or sequestrator already appointed;
- (4) placing or refusing to place a mortgagee in possession of mortgaged premises;
- (5) appointing or refusing to appoint a receiver, liquidator, rehabilitator, or other similar officer for a bank, savings and loan

association, currency exchange, insurance company, or other financial institution, or granting or refusing to grant custody of the institution or requiring turnover of any of its assets;

(6) terminating parental rights or granting, denying or revoking temporary commitment in adoption proceedings commenced pursuant to section 5 of the Adoption Act (750 ILCS 50/5);

(7) determining issues raised in proceedings to exercise the right of eminent domain under section 20-5-10 of the Eminent Domain Act, but the procedure for appeal and stay shall be as provided in that section." Ill. S. Ct. R. 307 (eff. Feb. 26, 2010).

¶ 22 In his brief, Grason asserts the following issues for review: whether (1) Grason has the right to possession of his property pursuant to section 15-1701 of the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1701 (West 1012)); (2) C. Deadrick was entitled to be granted receivership of Grason's "residential property"; (3) HSBC and intervenors violated Grason's right to possession of his residential property; and (4) HSBC has standing to continue a foreclosure action (an issue we struck).

¶ 23 We agree with HSBC and intervenors the only issue raised in this appeal specifically provided for in Rule 307— upon which Grason relies—is Grason's second issue, *i.e.*, whether C. Deadrick was properly appointed as a receiver for the subject property. See S. Ct. R. 307 (eff. Feb. 26, 2010). Thus, this is the only issue we have jurisdiction to reach.

¶ 24 We note, although Grason's notice of interlocutory appeal asserts the trial court erred in permitting Meurlot and C. Deadrick to intervene—an issue that could directly impact

whether C. Deadrick could petition for receivership (see 735 ILCS 5/15-1704(a) (West 2012) ("upon request of any *party* and a showing of good cause, the court shall appoint a receiver for the mortgaged real estate") (emphasis added)), Grason's brief consists only of the following conclusory statement regarding this issue: "Mr. Meurlot and his company should not have been allowed to [i]ntervene in order to be granted Receiver (Receivership) to maintain possession of Defendant Grason's residential property." Because Grason fails to develop his argument or cite authority to support his conclusory statement, as required by Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013), we will assume the petition to intervene was rightfully granted and, therefore, intervenors could petition for receivership. See 735 ILCS 5/2-408(f) (West 2012) ("[a]n intervenor shall have all the rights of an original party" unless the court orders otherwise).

¶ 25 C. Appointment of Receiver

¶ 26 Grason argues the trial court erred in appointing C. Deadrick as receiver of the subject property because C. Deadrick (1) is not the mortgagee, that is, the purchase money mortgage holder, and (2) did not give bond to the adverse party and, thus, fails to meet the basic requirements to be appointed receiver. Intervenors assert Grason failed to raise this particular issue before the trial court and, as such, this court should consider it waived. See *Haudrich v. Howmedica, Inc.*, 169 Ill. 2d 525, 536, 662 N.E.2d 1248, 1253 (1996) ("issues not raised in the trial court are deemed waived"). While we would be justified in finding this issue waived, "the doctrine of waiver is an admonition upon the parties and not a restriction upon a reviewing court." *Sinclair v. Berlin*, 325 Ill. App. 3d 458, 468-69, 758 N.E.2d 442, 451 (2001). We choose to exercise our discretion and address this argument on the merits.

¶ 27 1. *Standard of Review*

¶ 28 Initially, we note Grason does not include the standard of review with citation to authority in his brief, in violation of Illinois Supreme Court Rule 341(h)(3) (eff. Feb. 6, 2013). Both HSBC and intervenors assert this court should apply an abuse of discretion standard. In his reply brief, Grason acknowledges an abuse of discretion standard applies to the issue of whether C. Deadrick was properly appointed as receiver.

¶ 29 Prior to the enactment of the Foreclosure Law, "[t]he appointing of a receiver [was] an exercise of equity jurisdiction and rest[ed] largely in the discretion of the appointing court." *People ex rel. Scott v. Pintozzi*, 50 Ill. 2d 115, 123, 277 N.E.2d 844, 849 (1971). The passage of the Foreclosure Law "severely circumscribe[d] the [appointing court's] exercise of that discretion, as it directs the court to appoint a receiver whenever "a mortgagee entitled to possession so requests"." (Emphasis added.) *Bank of America, N.A. v. 108 N. State Retail LLC*, 401 Ill. App. 3d 158, 165, 928 N.E.2d 42, 49 (2010) (quoting *Asset Guaranty Reinsurance Co. v. American National Bank & Trust Company of Chicago.*, 254 Ill. App. 3d 713, 719, 627 N.E. 2d 179, 183 (1993)). However, *Bank of America's* reasoning for applying *de novo* review is not applicable here, where the intervenors who petitioned for receivership are not the mortgagee (HSBC). Indeed, *Bank of America* noted, "it is foreseeable that in a case in which a trial court has held a full evidentiary hearing on a motion to appoint a receiver, this court could find that an abuse of discretion standard or a manifest weight of the evidence standard would be appropriate." *Bank of America, N.A.*, 401 Ill. App. 3d at 165, 928 N.E.2d at 50. Thus, we apply an abuse of discretion standard.

¶ 30 2. *Whether Intervenors Were Appropriate Parties To Petition for Receivership*

¶ 31 Grason's argument the trial court erred by appointing C. Deadrick as receiver rests on his contention only the mortgagee, HSBC, may petition for receivership. He cites sections

15-1504(a)(3)(R) and 1706(a) of the Code of Civil Procedure for the proposition only the mortgagee (HSBC) may ask the court to appoint a receiver. Section 15-1504(a)(3)(R) pertains to the form of a foreclosure complaint. 735 ILCS 5/15-1504(a)(3)(R) (West 2012). Section 15-1706(a) provides, "[a] request that the mortgagee be placed in possession or that a receiver be appointed may be made by motion, whether or not such request is included in the complaint or other pleading. Any such request shall be supported by affidavit or other sworn pleading." 735 ILCS 5/15-1706(a) (West 2012). Section 15-1706(a) does not limit who may bring a motion for receiver. In fact, section 15-1704(a) provides, "upon request of any party and a showing of good cause, the court shall appoint a receiver for the mortgaged real estate." 735 ILCS 5/15-1704(a) (West 2012). When intervenors' petition to intervene was granted, they became parties to the proceedings, with all the rights of an original party and, thus, could petition for receivership. We also note HSBC did not object to intervenors' petition for receivership and, in fact, opined, "a receiver is appropriate in this case" and intervenors could be supervised by the trial court if appointed as receiver.

¶ 32 3. *Whether Intervenors Were Required To Pay a Bond*

¶ 33 Next, Grason cites section 2-415 of the Code of Civil Procedure for the proposition, before a receiver may be appointed, "the party making the application shall give bond to the adverse party in such penalty as the court may order." 735 ILCS 5/2-415 (West 2012). Grason notes intervenors "made no attempt for such bond nor provided any know[n] property and casualty insurance for the real estate." However, our review of the record reveals the trial court did not order intervenors to give bond or obtain casualty insurance. The court was not required by statute to order bond or casualty insurance; and absent a court order, intervenors were not required to give bond or obtain insurance.

¶ 34 Upon their petition to intervene being granted, intervenors became parties in these proceedings, with all the rights belonging to an original party. Despite Grason's contention to the contrary, the Code of Civil Procedure does not limit the parties applying for receivership to mortgagee and mortgagor, nor does it require a bond to be paid or casualty insurance obtained, unless the trial court specifically orders it. Thus, we cannot say, based on the record before us, the trial court abused its discretion in appointing C. Deadrick as receiver. The court did order that no substantial physical alteration of the property be undertaken pending the sale, which is harmonious with the purpose of appointing a receiver.

¶ 35 Based on Grason's specific argument C. Deadrick is not a proper receiver because it (1) is not the mortgagee and (2) did not pay a bond, we find the trial court did not abuse its discretion in appointing C. Deadrick as receiver for the property.

¶ 36 In closing, we acknowledge Grason asserts his right to possession of his "residential property" was violated. While we find this issue is not appealable as a matter of right under Rule 307, and the documentation Grason attached in the appendix to his reply brief to support his contention has been stricken, we note the underlying judgment of foreclosure—which still stands—found the property was nonresidential property.

¶ 37 III. CONCLUSION

¶ 38 For the reasons stated, we affirm the trial court's order appointing C. Deadrick as receiver.

¶ 39 Affirmed.