

No. 1-15-0371

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
FIRST JUDICIAL DISTRICT

IN THE MATTER OF THE APPLICATION)	Appeal from the
OF THE COUNTY TREASURER AND)	Circuit Court of
EX-OFFICIO COUNTY COLLECTOR OF)	Cook County.
COOK COUNTY, ILLINOIS, FOR THE ORDER)	
OF JUDGMENT AND SALE AGAINST REAL)	
ESTATE RETURNED DELINQUENT FOR)	
THE NON-PAYMENT OF GENERAL TAXES)	
FOR THE YEAR 2007 AND PRIOR YEARS)	Case No. 2011COTD003683
)	
PETITION OF Z FINANCIAL ILLINOIS G)	
PROPERTIES, LLC FOR TAX DEED)	
)	
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BANK OF AMERICA, N.A.,)	Honorable
)	Robert W. Bertucci,
Petitioner,)	Judge Presiding.
)	
v.)	
)	
Z FINANCIAL ILLINOIS G PROPERTIES, LLC,)	
)	
Respondent.)	

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Gordon and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* (1) Respondent's timely notice of appeal properly vested jurisdiction in this court; (2) the trial court erred by declaring the order directing issuance of the tax deed void *ab initio* and by declaring the tax deed void; and (3) Respondent filed its petition for tax deed for the correct tax year.

¶ 2 This is an appeal brought under Illinois Supreme Court Rule 303 (eff. Jan. 1, 2015). Petitioner, Bank of America, N.A. (Bank), filed a petition pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401) (West 2014), to vacate the trial court's July 5, 2012, order directing issuance of tax deed and declaring the tax deed void. On September 30, 2014, the trial court declared the order void *ab initio* and voided the tax deed. In response, respondent Z Financial Illinois G Properties, LLC (ZFIP) filed a motion to reconsider pursuant to section 2-1203 of the Code (735 ILCS 5/2-1203) (West 2014) , which the trial court denied.

¶ 3 ZFIP now appeals, and the parties collectively raise the following issues: (1) whether ZFIP's notice of appeal was timely; (2) whether the trial court erred by ruling on the Bank's section 2-1401 petition without allowing ZFIP the opportunity to file a responsive pleading; (3) whether the Bank failed to satisfy the requirements of a section 2-1401 petition; (4) whether the Bank's appellee brief should be stricken for lack of standing; (5) whether ZFIP's appellant brief should be stricken for failing to comply with the supreme court rules; (6) whether ZFIP should be sanctioned for filing frivolous claims; (7) whether the trial court erred in voiding the tax deed and declaring the order granting its issuance void *ab initio*; and (8) whether ZFIP filed its petition for tax deed for the correct tax year. For the reasons that follow, we reverse the judgment of the trial court.

¶ 4 **BACKGROUND**

¶ 5 On June 14, 2002, Dean and Katherine Grossart (Grossarts) purchased the real property identified by property index numbers (PIN) 13-07-229-034-0000 and 13-07-229-038-0000 and

commonly known as 5233 North Normandy Ave, Chicago, Illinois 60656 (Property). The property spans two adjacent lots, numbered lot 27 and 28. On March 9, 2006, the Grossarts granted MERS/Guaranteed Rate, Inc. (MERS) two mortgage interests in the property. The first mortgage was for \$300,500.00 and was assigned document number 0609043058; the second mortgage was for \$27,500.00 and was assigned document number 0609043059. On July 20, 2009, the Cook County Collector sold a 2008 Special Assessment delinquent tax lien (tax lien) on the portion of the property identified by PIN 13-07-229-038-0000 to Z Financial, LLC for \$99.50 plus \$309.30 in interest, fees and costs. The tax lien listed the Grossarts as the taxpayers. On August 20, 2009, the Cook County Clerk issued certificate of purchase number 07-0011951 (Certificate of Purchase) to Z Financial, LLC.

¶ 6 On December 2, 2009, Z Financial, LLC filed a take notice form pursuant to section 22-5 of the Property Tax Code (35 ILCS 200/22-5) (West 2009) with the Cook County Clerk. On August 25, 2010, MERS assigned its mortgage interests to BAC Home Loans Servicing, LP. On September 1, 2010, the Bank, by and through its subsidiary BAC Home Loans Servicing, LP, filed a mortgage foreclosure complaint on the property, and on September 22, 2010, the Bank filed a notice of foreclosure on the property.

¶ 7 On March 3, 2011, the Grossarts filed their chapter 7 bankruptcy petition in federal bankruptcy court and included the property in their bankruptcy schedules. On June 21, 2011, the Grossarts were discharged by the bankruptcy court.

¶ 8 On October 28, 2011, Z Financial, LLC filed a petition for tax deed pursuant to section 22-30 of the Property Tax Code (35 ILCS 200/22-5) (West 2011) on lot 28 of the property identified by PIN 13-07-229-038-0000. The Grossarts redemption period expired on April 27, 2012, and on May 31, 2012, Z Financial, LLC filed an application for an order directing the

county clerk to issue a tax deed. On June 22, 2012, Z Financial LLC assigned its interest in the certificate of purchase to ZFIP, and on July 5, 2012, Z Financial, LLC filed a motion to substitute ZFIP in its place as both petitioner for tax deed and petitioner for application for tax deed. That same day, the circuit court entered an order granting the substitution and entered an order directing the county clerk to issue ZFIP a tax deed. ZFIP recorded its tax deed on July 5, 2012.

¶ 9 On August 23, 2012, the bankruptcy court granted the Bank's motion for relief from the automatic stay, and on August 28, 2012, the bankruptcy case closed.

¶ 10 On July 27, 2014, the Bank filed a section 2-1401 petition to vacate the July 5, 2012, order directing the issuance of ZFIP's tax deed. The Bank contended that the trial court lacked subject matter jurisdiction over the property because ZFIP violated the bankruptcy proceeding's automatic stay when it filed the petition for tax deed, application for tax deed, and obtained an order for tax deed. The Bank contended that the automatic stay from the bankruptcy proceedings rendered the order for tax deed void *ab initio*.

¶ 11 ZFIP subsequently filed motions to dismiss the Bank's petition. ZFIP argued that the Bank's petition should have been dismissed because the automatic stay was only in effect until the Grossarts were discharged, and the Bank had not demonstrated due diligence pursuant to section 2-1401 of the Code.

¶ 12 On September 30, 2014, the trial court denied ZFIP's motion to dismiss, declared the July 5, 2012 order for tax deed void *ab initio* and voided the tax deed. On October 24, 2014, ZFIP filed a section 2-1203 motion to reconsider. In its motion, ZFIP requested that the trial court reconsider its order and stay its ruling until after the bankruptcy court ruled on ZFIP's "motion to annul the automatic stay." ZFIP contended that it was not within the circuit court's purview to

rule on whether or not the automatic stay was in effect at the time the order for a tax deed was entered, particularly in a bankruptcy case that had been terminated.

¶ 13 On December 16, 2014, the trial court conducted a hearing on ZFIP's motion to reconsider. During the hearing, ZFIP claimed that the Bank lacked standing to file its section 2-1401 petition because the Bank had transferred its interest in the property to Fannie Mae. ZFIP explained that the transfer had been brought to its attention just before the hearing. The Bank contended that it did not lack standing because the July 5, 2012, order threatened the Bank with potential liability for breaching the terms of its loan servicing agreement.

¶ 14 On January 6, 2015, the trial court denied ZFIP's motion to reconsider. On February 3, 2015, ZFIP filed this appeal from the trial court's September 30, 2014, order.

¶ 15 ANALYSIS

¶ 16 I. Supreme Court Rules

¶ 17 The Bank contends that ZFIP's brief should be stricken for failure to comply with the supreme court rules. In addressing this claim, we note that both parties have committed multiple violations of our supreme court rules, particularly Supreme Court Rule 341. Supreme Court Rule 341 requires that the parties present a fully developed argument with adequate legal and factual support (*Housing Authority of Champaign County v. Lyles*, 395 Ill. App. 3d 1036, 1040 (2009)), cite to the record for all factual assertions made and cite to legal authority for the arguments advocated (*Soter v. Christoforacos*, 53 Ill. App. 2d 133, 137 (1964)). See generally Ill. S. Ct. Rule 341(h)(6), (7) (eff. Feb.6, 2013). Violations of our supreme court rules of appellate procedure may result in the dismissal of the appeal when the violation interferes with or precludes our review. *In re Detention of Powell*, 217 Ill. 2d 123, 132 (2005). In the case at bar,

the parties' briefs substantially comply with Rule 341, and they neither hinder nor preclude our review. *Id.*

¶ 18

II. Jurisdiction

¶ 19 The Bank raises the question of whether this court has jurisdiction over this appeal. We begin with the proposition that jurisdiction is conferred upon this court only through the timely filing of a notice of appeal. *Affordable Housing Preservation Foundation v. Williams*, 375 Ill. App. 3d 305, 307 (2007); *In re Marriage of Singel*, 373 Ill. App. 3d 554, 556 (2007). "Rule 303(a)(1) governs when a notice of appeal must be filed in a civil case." *Heiden v. DNA Diagnostics Center, Inc.*, 396 Ill. App. 3d 135, 138 (2009); Ill. S. Ct. Rule 303(a)(1) (eff. Jan. 1, 2015). Under Rule 303(a)(1), a party generally must file an appeal no more than 30 days after the entry of the final order. *Id.* Further, the Rule provides that the timely filing of a motion directed against the judgment defers the running of the 30 days, and a notice of appeal must be filed 30 days from the resolution of the last timely and proper postjudgment motion. See Ill. S. Ct. Rule 303(a)(1) (eff. Jan. 1, 2015); see also *In re Estate of Russell*, 372 Ill. App. 3d 591, 594 (2007).

¶ 20 The Bank contends that ZFIP's notice of appeal was untimely because their motion to reconsider did not toll the time limit for filing under Rule 303(a)(1). The Bank contends that ZFIP's motion to reconsider sought only to stay enforcement of the trial court's September 30, 2014, order until the bankruptcy court ruled on ZFIP's motion to retroactively annul the automatic stay, and therefore, the motion to reconsider did not qualify as relief directed against the judgment.

¶ 21 ZFIP filed its notice of appeal on February 3, 2015, more than four months after the entry of the September 30, 2014, order, so their appeal could be timely only if they filed it within 30 days of the resolution of a timely and proper motion directed against the final judgment. *Heiden*,

396 Ill. App. 3d at 138. ZFIP filed a section 2-1203 motion to reconsider the September 30, 2014, order on October 24, 2014. Reviewing courts have recognized that a valid section 2–1203 motion to reconsider is sufficient to toll the time limit for filing a notice of appeal. *Clark v. Han*, 272 Ill. App. 3d 981 (1995); see also *Yang v. Chen*, 283 Ill. App. 3d 80, 81 (1996). A valid postjudgment motion must request at least one of the forms of relief specified in section 2–1203, namely rehearing, retrial, modification, vacation, or other relief directed against the judgment. 735 ILCS 5/2–1203 (West 2014); *Heiden*, 396 Ill. App. 3d at 140–41. When ascertaining whether a postjudgment motion is properly directed at the judgment, the reviewing court bases its determination on the substance of the motion rather than by its caption. See *Heiden*, 396 Ill. App. 3d at 140; see also *Shutkas Electric, Inc. v. Ford Motor Co.*, 366 Ill. App. 3d 76, 81 (2006) (quoting *J.D. Marshall International, Inc. v. First National Bank of Chicago*, 272 Ill. App. 3d 883, 888 (1995)).

¶ 22 Here, the Bank argues that the substance of ZFIP's motion does not correspond with its caption because the motion fails to specify a form of relief enumerated within section 2-1203 of the Code. In *Kingsbrook, Inc. v. Pupurs*, 202 Ill. 2d 24 (2002), our supreme court addressed the issue of how much specificity is required in a movant's section 2-1203 motion. In that case, the plaintiff filed a section 2-1203 motion and titled it "Motion for Reconsideration." The plaintiff included the following statement in the body of its motion:

“N[ow comes] the plaintiff, K[ingbrook, Inc.], an Illinois corporation, by and through its attorneys, B[arrick], S[witzer], L[ong], B[alsley] & V[an Evera], and hereby moves the Court to reconsider its decision granting severing [*sic*] judgment in favor of the Defendants.”

Id. at 26–27. Upon examining the substance of the plaintiff's motion, the supreme court declined to hold that postjudgment motions, in non-jury cases, must contain some undefined degree of detail. *Id.* at 33. The supreme court reasoned that under a contrary ruling, the section 2-1203 filer

would risk the reviewing court holding that the motion was not a motion at all. *Id.* The court went on to state, "It is not clear that a nonspecific motion could not fulfill its role, and there is no reason to require the filer to guess how much detail is enough." *Id.*

¶ 23 In the instant case, ZFIP titled its motion "Motion to Reconsider Order Declaring Issuance of Tax Deed and Tax Deed Void and For Other Relief." In the body of its motion, ZFIP included the following statement:

"NOW COMES [ZFIP], by and through one of its attorneys, Amanda N. Hart, and moves this Court to reconsider its September 30, 2014 Order Declaring the Issuance of Tax Deed and Tax Deed Void pursuant to Section 2-1203 of the Illinois Code of Civil Procedure (735 ILCS 5/2-1203) and stay the ruling as to whether or not the order for deed was void pursuant to the automatic stay until such time as the bankruptcy court rules on [ZFIP's] pending motion to annul the automatic stay."

The caption and the substance of ZFIP's motion mirror those of the motion in *Kingsbrook*. Both motions are labeled as motions for reconsideration. Further, each motion asks the trial court to reconsider its previous ruling in the body of the motion. In *Kingsbrook*, the court held that the plaintiff's motion sufficiently requested relief directed at the judgment. *Id.* Here, we find no reason to reach an opposite conclusion where ZFIP's motion is virtually identical to the plaintiff's in *Kingsbrook*.

¶ 24 Accordingly, we conclude ZFIP's motion to reconsider met the requirements for postjudgment motions as set out by section 2-1203 of the Code, thus triggering the extension of time in which to file a notice of appeal. ZFIP's notice of appeal was timely, and this court has jurisdiction of this appeal.

¶ 25 III. Automatic Stay

¶ 26 ZFIP next argues that the trial court erred by declaring that the automatic stay was in effect at the time the trial court entered the July 5, 2012 order and by declaring the order directing issuance of the tax deed void *ab initio* and tax deed void. As this matter involves a

question of law, our standard of review is *de novo*. *Standard Federal Bank for Savings v. Hanno*, 323 Ill. App. 3d 521, 523 (2001); *Daley v. American Drug Stores, Inc.*, 294 Ill. App. 3d 1024 (1998).

¶ 27 Section 362(a) and (c) of the Bankruptcy Code state:

“(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate;

(2) the stay of any other act under subsection (a) of this section continues until the earlier of—

(A) the time the case is closed;

(B) the time the case is dismissed; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;"

11 U.S.C. § 362(a)-(c) (2011).

¶ 28 The stay issued pursuant to section 362(a) takes effect immediately upon the debtor filing his petition in bankruptcy, regardless of whether the other parties to the stay, including a state court, are aware of the filing. *Cohen v. Salata*, 303 Ill. App. 3d 1060, 1064 (1999). The stay lasts (1) with respect to acts against the property of the estate, until the property is no longer part of the estate, or (2) with respect to any other act, until the earliest of (a) the case being closed, (b) the case being dismissed, or (c) a discharge being granted or denied, unless a party requests relief from the stay from the bankruptcy court. *In re Application of City Collector for Judgment & Sale Against Lands & Lots*, 367 Ill. App. 3d 34, 38 (2006); 11 U.S.C. § 362(c) (2011). However, a petition for issuance of tax deed filed by a tax purchaser is not filed in violation of the automatic stay where the tax sale was conducted prior to commencement of bankruptcy proceeding. *Hood v. Hall*, 321 Ill. App. 3d 452, 456 (2001).

¶ 29 In *Hall*, the court held that the automatic stay provision of the Bankruptcy Code applies only to prohibit affirmative acts against the debtor or his estate. *Id.* at 455 (citing *In re Tabor Enterprises, Inc.*, 65 B.R. 42, 45 (N.D. Ohio 1986)). The court explained that the expiration of the debtor's redemption period automatically divests the property owner/debtor of his property,

and therefore, no affirmative act of the tax purchaser is required. *Id.* The expiration of the redemption period is not the type of affirmative act proscribed by the automatic stay provision. *Id.* Once the redemption period expires, the debtor has no interest in the property and his rights are not affected by the issuance of a tax deed to the property. *Id.* Thus, the automatic bankruptcy stay does not apply to render void the issuance of a tax deed. *Id.*

¶ 30 On July 20, 2009, the county collector sold the tax lien to ZFIP, and on August 20, 2009, ZFIP received its certificate of purchase. The Grossarts filed a voluntary petition for chapter 7 bankruptcy on March 3, 2011. Subsequently, they were discharged from the bankruptcy proceedings on June 21, 2011. ZFIP filed its petition for tax deed with the trial court on October 28, 2011. The trial court extended the Grossarts redemption period until April 27, 2012, but the property was never redeemed. On July 5, 2012, the trial court entered an order granting ZFIP's petition for tax deed.

¶ 31 In the instant case, the tax sale was conducted prior to the commencement of the bankruptcy proceeding. No further action was taken by the ZFIP to divest the Grossarts of the property, because that occurred automatically upon the expiration of the statutory period of redemption. *Hall*, 321 Ill. App. 3d 452 at 455. Once the redemption period expired, the Grossarts had no interest in the property, and their rights were not affected by the issuance of a tax deed to the property. *Id.*

¶ 32 Thus, the trial court erred by declaring the order directing issuance of the tax deed void *ab initio* and the tax deed void.

¶ 33 **III. Petition for Tax Deed**

¶ 34 Next, the Bank argues that the trial court never had jurisdiction to enter its July 5, 2012, order because ZFIP failed to file its petition for tax deed for the correct tax year. In Illinois,

current year real estate taxes are billed and payable in the following year. *Chicago Title Insurance Co. v. Aurora Loan Services, LLC*, 2013 IL App (1st) 123510, ¶ 33. ZFIP's petition for tax deed stated that the "[property] was sold for non-payment of general taxes and/or special assessments for the year 2007 and/or prior years." ZFIP was assigned a tax lien for the 2008 special assessment, i.e., the 2007 taxes that were assessed in 2008 and never paid.

¶ 35 Thus, the Bank's claim is without merit, and ZFIP filed its petition for the correct tax year. Deciding this case as we do, we need not address the remaining issues raised by the parties.

¶ 36 **CONCLUSION**

¶ 37 For the foregoing reasons, the judgment of the trial court is reversed.

Reversed.