

No. 1-15-1987

**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 JUDICIAL DISTRICT

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BAYVIEW LOAN SERVICING, LLC,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	
	)	
ROBERT SIMMONS and KAREN SIMMONS,	)	No. 14 M1 724347
	)	
Intervenors-Appellants,	)	
	)	
(and	)	
	)	Honorable
24 Hour Dentist; Unknown Tenants and Occupants,	)	Orville E. Hambright, Jr.,
	)	Judge Presiding.
Defendants).	)	

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JUSTICE HARRIS delivered the judgment of the court.  
Presiding Justice Cunningham and Justice Connors concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appeal is dismissed as moot where the appellants have no possessory interest in the property at issue in this forcible entry and detainer action.

¶ 2 Plaintiff Bayview Loan Servicing, LLC brought an action for possession of the property located at 6341-6345 South Western Avenue in Chicago, Illinois (the property) under the Forcible Entry and Detainer Act (Act) (735 ILCS 5/9-101 *et seq.* (West 2014)) against 24 Hour Dentist, and unknown tenants and occupants. After the circuit court entered an order for possession, appellants Robert Simmons and Karen Simmons (the Simmonses) filed a petition to intervene and a motion to vacate the order. The circuit court denied the Simmonses' petition and motion. On appeal, the Simmonses contend: (1) Bayview's demand for possession was invalid because it was filed prematurely; (2) the circuit court erred in denying the Simmonses' petition to intervene; and (3) the circuit court erred in denying the Simmonses' motion to vacate the order for possession. For the following reasons, we dismiss the appeal as moot.

¶ 3 **BACKGROUND**

¶ 4 For context, it is necessary to briefly review the procedural histories of both the present case and a related foreclosure case that also involved the property at issue.

¶ 5 **A. The Foreclosure Action**

¶ 6 On October 22, 2008, Bayview initiated foreclosure proceedings on the property against the Simmonses and other defendants—who are not parties to the present appeal—in case No. 08 CH 39559 (the foreclosure action). In response, the Simmonses brought their own claims against Bayview and other third party defendants. On August 15, 2013, the circuit court entered a judgment of foreclosure and sale, and the property was subsequently sold to Bayview at a judicial sale.

¶ 7 On July 1, 2014, the circuit court confirmed the sale of the property. Three months later, on October 1, 2014, the Simmonses filed a motion to reconsider the judgment of foreclosure and confirmation of sale. The circuit court denied the Simmonses' motion on April 9, 2015, and

"made a finding that there [was] no just reason for delaying either enforcement or appeal of [the] ruling on the Motion to Reconsider pursuant [to] Illinois Supreme Court Rule 304(a)." The Simmonses' other claims remained pending.

¶ 8 The Simmonses appealed from the judgment of foreclosure and the confirmation of sale. This court ultimately affirmed the circuit court's judgment in a Rule 23 order, finding, in pertinent part, that the circuit court did not abuse its discretion in denying the Simmonses' motion to vacate or in confirming the sale. See *Bayview Loan Servicing, LLC v. Simmons*, 2016 IL App (1st) 151669-U (*Simmons I*).<sup>1</sup>

¶ 9 B. The Forcible Entry and Detainer Action

¶ 10 On October 17, 2014, while the Simmonses' motion to reconsider was pending in the foreclosure action, Bayview filed its complaint in the present case for possession of the property against 24 Hour Dentist and unknown tenants and occupants (collectively, defendants), under Act (detainer action). Bayview alleged that it had purchased the property at a judicial foreclosure sale, had obtained title to the property "by virtue of a deed dated July 3, 2014 and recorded on August 7, 2014," and that it had "caused a demand for possession to be served" on defendants, who unlawfully withheld possession. Accordingly, Bayview requested possession of the property.

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<sup>1</sup> To the extent necessary to fully understand the present appeal, we have taken judicial notice of the record and procedural facts in this related foreclosure appeal. See *Wells Fargo Bank, N.A. v. Watson*, 2012 IL App (3d) 110930, ¶ 3 n.1 and citations therein (taking judicial notice of the record and procedural facts in related appeal "to the extent permissible under the law").

¶ 11 The circuit court entered an order for possession of the property on December 30, 2014, in favor of Bayview and against defendants. Enforcement of the judgment was stayed until January 6, 2015.

¶ 12 On January 12, 2015, the Simmonses filed a petition to intervene in the detainer action. They alleged that they were the owners of the property and were also the defendants "in an ongoing mortgage foreclosure action" related to the property. The Simmonses sought leave to intervene "for the purpose of vacating the December 30, 2014 order and defending this action as the parties who [had] the current right of possession." The same day, they also filed a motion to vacate the order for possession. Bayview objected to both the Simmonses' petition and motion.

¶ 13 On April 14, 2015, "after a hearing on the merits of the pending motions," the circuit court denied the Simmonses' motion to vacate on its merits, and also denied the petition to intervene.

¶ 14 The Simmonses timely appealed from the circuit court's order for possession and its order denying their petition to intervene and motion to vacate on May 15, 2015.

¶ 15 ANALYSIS

¶ 16 On appeal, the Simmonses contend that Bayview's demand for possession was invalid because it was filed prematurely, that the circuit court erred in denying the Simmonses' petition to intervene, and that the circuit court erred in denying the Simmonses' motion to vacate the order for possession.

¶ 17 In response, Bayview relies on sections 15-1404 and 15-1701(d) of the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1404, 15-1701(d) (West 2014)) to argue that the Simmonses lack standing to prosecute the instant appeal because they lost their possessory interest in the property when the circuit court confirmed the judicial sale in the foreclosure action. According to section 15-1404, the real estate interest held by a party to a

foreclosure "shall be terminated by the judicial sale of the real estate, pursuant to a judgment of foreclosure, provided that the sale is confirmed in accordance with" the Foreclosure Law. 735 ILCS 5/15-1404 (West 2014). Section 15-1701(d) further provides that the purchaser of property at a judicial sale "shall be entitled to possession of the mortgaged real estate, as of the date 30 days after the order confirming the sale is entered, against those parties to the foreclosure whose interests the court has ordered terminated." 735 ILCS 5/15-1701(d) (West 2014).

¶ 18 Without citation to relevant authority, the Simmonses reply that "throughout the foreclosure, [the Simmonses] continued to have a right of use and occupancy of the entire building," and that it is this right "that gives them standing to contest Bayview's [detainer] action." In addition, the Simmonses claim that, pursuant to subsections (a), (b), and (c) of section 15-1701 of the Foreclosure Law (735 ILCS 5/15-1701(a), (b), (c) (West 2014)), they were entitled to possession of the property "unless and until an enforceable order was entered otherwise" and that Bayview's rights pursuant to section 15-1701(d) of the Foreclosure Law "were not enforceable until the order approving sale became enforceable." The Simmonses further argue that "the order approving sale did not become enforceable before Bayview issued the demand for possession or filed the forcible entry action," and that, therefore, "at the time the forcible entry action was filed, [they] had a possessory interest in the property and standing."

¶ 19 The doctrine of standing requires " 'some injury in fact to a legally cognizable interest.' " *In re Estate of Henry*, 396 Ill. App. 3d 88, 93 (2009) (quoting *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 492 (1988)). "The purpose of the doctrine of standing is to ensure that courts resolve actual controversies between parties rather than abstract questions or moot issues." *Henry*, 396 Ill. App. 3d at 93. Importantly, "[t]he actual controversy requirement of

standing cannot be satisfied where the underlying issues of the case are moot or premature." *Sharma v. Zollar*, 265 Ill. App. 3d 1022, 1027 (1994).

¶ 20 Here, we need not consider whether the Simmonses had standing to intervene in the detainer action, because our prior decision in *Simmons I* precludes any argument that the Simmonses have a current possessory interest in the property. Accordingly, the issues in this appeal are now moot.

¶ 21 "An issue is considered moot where events occur which make it impossible for the court to grant effectual relief." *Sharma*, 265 Ill. App. 3d at 1027. "As a general rule, Illinois appellate courts will not review moot cases." *American Service Insurance Co. v. City of Chicago*, 404 Ill. App. 3d 769, 781 (2010) (citing *In re Barbara H.*, 183 Ill. 2d 482, 491 (1998)). "The goal of the rule is for courts to avoid hearing cases where the parties no longer have a personal stake in the outcome." (Internal quotation marks omitted.) *American Service*, 404 Ill. App. 3d at 781. "When it becomes apparent that an opinion cannot affect the results as to the parties or the controversy before it, the court should not resolve the question merely for the sake of setting a precedent or to govern potential future cases." *Sharma*, 265 Ill. App. 3d at 1027. If a court becomes aware of facts that render an appeal moot, the appeal must be dismissed. *Cosmopolitan National Bank of Chicago v. Nunez*, 265 Ill. App. 3d 1012, 1014-15 (1994).

¶ 22 "A forcible entry and detainer action \*\*\* is a limited and distinct proceeding that determines who is entitled to immediate possession of real property." *Wells Fargo Bank, N.A. v. Watson*, 2012 IL App (3d) 110930, ¶ 14. Therefore, detainer actions are summary in nature, and the only issues considered are "those that are closely connected with, and relevant to, the issue of possession[.]" *Id.* ¶¶ 14-15.

¶ 23 As Bayview notes in its brief, "in the context of [a detainer action], it logically follows that a nonparty must have a possessory interest in the property in order to have a 'substantial interest.'" Here, the Simmonses have no present interest in the property. There is no question that, during the pendency of the foreclosure action, Bayview purchased the property at a judicial sale, the purchase of the property was pursuant to a judgment of foreclosure, and the sale was confirmed. Furthermore, after Bayview filed its complaint for possession in the detainer action, the circuit court in the foreclosure action denied the Simmonses' motion to reconsider the judgment of foreclosure and confirmation of sale, a ruling that this court then affirmed on appeal. *Simmons I*, 2016 IL App (1st) 151669-U.

¶ 24 The Foreclosure Law specifically provides that the real estate interest held by a party to the foreclosure proceedings is terminated by the judicial sale, "pursuant to a judgment of foreclosure, provided the sale is confirmed in accordance with" the Foreclosure Law. 735 ILCS 5/15-1404 (West 2014). In the face of our disposition in *Simmons I*, affirming the confirmation of sale, the Simmonses cannot continue to assert they have a possessory interest in the property. Without an arguable possessory interest, it is impossible for this court to grant the Simmonses' requested relief and the underlying issues of this appeal are moot. Accordingly, we must dismiss the appeal. See *Nunez*, 265 Ill. App. 3d at 1014-15 (noting that if a court becomes aware of facts that render an appeal moot, the appeal must be dismissed).

¶ 25 CONCLUSION

¶ 26 For the foregoing reasons, the appeal is dismissed as moot.

¶ 27 Appeal dismissed.