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2016 IL App (3d) 150233-U

Order filed October 14, 2016

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2016

GREEN TREE SERVICING, LLC,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
Plaintiff-Appellee,	)	Henry County, Illinois.
	)	
v.	)	
	)	
RICHARD A. STUCKEY, a/k/a	)	
RICHARD STUCKEY,	)	
	)	
Defendant-Appellant,	)	Appeal No. 3-15-0233
	)	Circuit No. 13-CH-14
and	)	
	)	
PORTFOLIO RECOVERY	)	
ASSOCIATES, LLC; UNKNOWN	)	
OWNERS and NON-RECORD	)	
CLAIMANTS,	)	The Honorable
	)	John L. Bell and Terence M. Patton,
Defendants.	)	Judges, presiding.

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JUSTICE CARTER delivered the judgment of the court.  
Justices McDade and Schmidt concurred in the judgment.

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**ORDER**

¶ 1 *Held:* In a mortgage foreclosure case, the trial court correctly found that proper service by publication upon the defendant homeowner was sufficiently proven and denied

defendant's motion to quash service of process. The appellate court, therefore, affirmed the judgment of the trial court.

¶ 2 Plaintiff, Green Tree Servicing, LLC (Green Tree), brought an action against defendant, Richard A. Stuckey, and others to foreclose upon a mortgage held on certain real property in Henry County, Illinois. After the property was foreclosed upon and sold, Stuckey filed a limited appearance and a motion to quash service of process, claiming that service by publication was defective and that the trial court lacked personal jurisdiction over him to enter the foreclosure judgment. Following a hearing, the trial court denied the motion to quash service of process. Stuckey appeals. We affirm the trial court's judgment.

¶ 3 **FACTS**

¶ 4 In July, 2006, defendant Stuckey executed a note and mortgage in favor of Suntrust Mortgage, Inc. (Suntrust).<sup>1</sup> The mortgage was recorded against certain residential real property owned by Stuckey in Atkinson, Henry County, Illinois. Stuckey later allegedly defaulted on his obligations under the note and mortgage.

¶ 5 In January 2013, plaintiff Green Tree, who had been assigned the mortgage, filed the instant mortgage foreclosure action in Henry County against Stuckey and certain other defendants. Personal service of the foreclosure complaint was attempted on Stuckey at the subject property on February 2, 2013, at about 1 p.m., but was unsuccessful. At the time, the process server spoke to Stuckey's estranged wife, who was at the residence. The wife told the process server that Stuckey no longer lived at the residence, asked for the process server's phone number, and told the process server that she would pass the information along. A short time later, the wife sent the process server a text message stating that she had called Stuckey's mother

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<sup>1</sup> Mortgage Electronic Registration Systems, Inc. (MERS), the nominee for Suntrust, was listed in the mortgage as the mortgagee.

and had learned that Stuckey was out of town until February 23. The wife stated further in her text message that she gave the process server's name and number to Stuckey's mother and that Stuckey would contact the process server about a time to meet. An affidavit to that effect was filed in the court file. Inquiry was made into phone company records, credit records, motor vehicle records, voter registration records, post office records, and prison and jail records, but no employment information for Stuckey could be located and no residence address, other than the address of the subject property, could be found. An additional affidavit—setting forth the efforts that had been made and stating that upon diligent inquiry, Stuckey's place of residence could not be ascertained—was also filed in the court file.

¶ 6 A second attempt at personal service on Stuckey was made at the subject property on March 14, 2013, at about 10 a.m., but was unsuccessful. No one answered the door at the residence and there were no cars present, but there was a dog outside in a kennel, and the residence still appeared to be occupied. The process server called the phone number from which she had previously received the text message from Stuckey's estranged wife and left a voice mail message. A few minutes later, the process server received a text message back from the wife. The wife stated in the message that she was soon to be Stuckey's ex-wife and that her lawyer had told her not to sign anything because her name was not on the house. The wife stated further that she did not know where Stuckey was living at that time, that she did not have a current phone number for Stuckey, that she and Stuckey were communicating through a relative, and that she had relayed the process server's message to Stuckey. An affidavit to that effect was filed in the court file. As before, a check of phone company records, credit records, motor vehicle records, voter registration records, post office records, and prison and jail records, did not produce any other leads as to where Stuckey was employed, where he was living, how he could be contacted,

or where he could be located. An additional affidavit—setting forth the efforts that had been made and stating that upon diligent inquiry, Stuckey’s place of residence could not be ascertained—was again filed in the court file.

¶ 7 A proper notice of the foreclosure complaint was published in an appropriate newspaper on April 4, April 11, and April 18, 2013, and a certificate of publication to that effect was filed in the court file by the clerk of the newspaper. The certificate of publication, however, was signed by the clerk of the newspaper on April 4, 2013, and was filed on April 8, 2013, before the last two instances of publication had occurred. As required, the circuit clerk’s office filed a certificate of mailing in the court file indicating that the office had mailed a notice of publication to Stuckey at the subject property within 10 days of the first publication of the notice in the newspaper.

¶ 8 In July 2013, the case was brought before the trial court on Green Tree’s motion for entry of judgment of foreclosure and sale. Stuckey did not appear in court on that date or file an answer to the complaint, and an order of default was entered. The trial court found that due notice of the complaint had been given, that the court had jurisdiction over the parties and the subject matter, and that the complaint had been proven. The trial court, therefore, entered a judgment for foreclosure and sale in Green Tree’s favor. The property was later sold at a sheriff’s sale in September 2013 and purchased by Green Tree. An order was entered two months later approving the sheriff’s report and confirming the sale.

¶ 9 In December 2013, Stuckey sent the trial court or the circuit clerk’s office a letter asking if there was anything that he could file with the court to stop the foreclosure process. In the letter, Stuckey stated that he did not know that his home was in foreclosure, that he had never

been served with any legal papers, and that he had been making his payments to the mortgage company.

¶ 10 In March 2014, Stuckey filed a limited appearance in the instant case to challenge jurisdiction. Along with the appearance, Stuckey filed a motion to quash service and to invalidate the foreclosure and sale of the property, alleging that the trial court lacked personal jurisdiction to enter the judgment of foreclosure and sale because service by publication in this case was defective. Specifically, Stuckey alleged that the certificate of publication was improper because it had been signed before two of the instances of publication had actually occurred. Stuckey made no other allegations regarding any other possible defects in the publication of the foreclosure notice.

¶ 11 In April 2014, an amended certificate of publication was filed by the newspaper. In the amended certificate, the clerk of the newspaper attested that the foreclosure notice had been published in the newspaper on April 4, April 11, and April 18, 2013, the same dates that were previously listed. The amended certificate was signed by the clerk of the newspaper on April 2, 2014.

¶ 12 Green Tree filed a response opposing the motion to quash service, and Stuckey filed a reply. The matter proceeded to a non-evidentiary hearing before the trial court in July 2014. After listening to the arguments of the attorneys, the trial court took the case under advisement. The trial court later issued a written ruling denying Stuckey's motion to quash service of process. Stuckey filed a motion to reconsider, which the trial court denied. This appeal followed.

¶ 13 ANALYSIS

¶ 14 On appeal, Stuckey argues that the trial court erred in denying his motion to quash service of process. In support of that argument, Stuckey asserts first that service by publication

was not warranted in this case because Green Tree failed to make diligent efforts to personally serve Stuckey. According to Stuckey, the efforts at personal service in this case—two visits to the subject residence and a handful of phone calls—were not sufficient under the law to constitute a diligent attempt at personal service by the process server. In making that assertion, Stuckey points out that nothing in the record indicates that the process server talked to Stuckey’s neighbors, that she tried to find Stuckey’s place of employment, that she tried to speak to other family members, or that she diligently followed up on the leads she had been provided. Second, Stuckey asserts that even if service by publication was warranted in this case, it was not sufficient to establish personal jurisdiction over Stuckey because the service by publication was defective in that the initial certificate of publication was signed and sworn before all three publications of the foreclosure notice had occurred. Third and finally, Stuckey asserts that even if service by publication was warranted and effective in this case, personal jurisdiction over Stuckey did not attach until November 18, 2014, when the trial court ruled upon the motion to quash service and found that the amended certificate of publication was proper. Thus, Stuckey contends that any order entered prior to that time was entered without personal jurisdiction and was void. For all of the reasons stated, Stuckey asks that we reverse the trial court’s denial of his motion to quash service of process and that we remand this case for further proceedings.

¶ 15 Green Tree argues that the trial court’s ruling was proper and should be upheld. Green Tree assert first that Stuckey has forfeited any argument as to whether service by publication was warranted in this case (and the related argument as to whether diligent efforts at personal service were made) because Stuckey did not make that argument in the trial court as a basis for granting the motion to quash service of process. Thus, Green Tree contends that Stuckey cannot now make that argument on appeal. Second, Green Tree asserts that the trial court correctly found

that it had personal jurisdiction over Stuckey when the judgment of foreclosure and sale was entered. In making that assertion, Green Tree points out that Stuckey does not dispute that a proper foreclosure notice was successfully published in an appropriate newspaper three times, over three consecutive weeks, as required by statute. According to Green Tree, any flaw in the original certificate of publication was a matter for the trial court to consider in determining how much weight to give the certificate as evidence of proper publication but did not serve to deprive the trial court of personal jurisdiction over Stuckey. Third and finally, Green Tree contends that Stuckey's argument—that personal jurisdiction did not attach until the trial court's November, 18, 2014, order—erroneously conflates the trial court's finding of personal jurisdiction with the attachment of personal jurisdiction. Green Tree submits that personal jurisdiction attached in this case when publication of the foreclosure notice was successfully completed as required by statute, not when the trial court made a finding in November 2014 that it had personal jurisdiction over the parties. Thus, Green Tree contends, the trial court had personal jurisdiction over Stuckey when it entered the judgment of foreclosure and sale in this case. For that reason and for all of the other reasons stated, Green Tree asks that we affirm the trial court's judgment denying Stuckey's motion to quash service of process.

¶ 16 In response to Green Tree's claim of forfeiture, Stuckey replies that he sufficiently raised the issue of whether publication was warranted in the trial court to keep the issue from being forfeited on appeal. Stuckey asserts further that the issue cannot be forfeited because a judgment entered without personal jurisdiction is a void judgment, which may be attacked at any time in any court.

¶ 17 A trial court's ruling made without an evidentiary hearing on a motion to quash service of process is subject to *de novo* review on appeal. See *BAC Home Loans Servicing, LP v. Mitchell*,

2014 IL 116311, ¶ 17; *Abbingdon Trace Condominium Ass'n v. McKeller*, 2016 IL App (2d) 150913, ¶ 10; *Aurora Loan Services, LLC v. Kmiecik*, 2013 IL App (1st) 121700, ¶ 15. It is well settled that for a valid judgment to be entered, the trial court must have both jurisdiction over the subject matter of the litigation and jurisdiction over the parties (personal jurisdiction). *Mitchell*, 2014 IL 116311, ¶ 17. A judgment entered by the trial court without personal jurisdiction is void and may be challenged at any time, either directly or indirectly. *Id.* The attachment of personal jurisdiction is only prospective in nature and does not serve to retroactively validate orders that were entered prior to the date that personal jurisdiction attached. *Id.* ¶ 43. Thus, a judgment that was entered before personal jurisdiction attached is void, and it continues to remain void even if personal jurisdiction is later obtained. *Id.* ¶¶ 36, 43.

¶ 18 Personal jurisdiction may be acquired either by the service of process on a party in the manner prescribed by statute or by a party's voluntary submission to the court's jurisdiction. *Id.* ¶ 18. Under the Code of Civil Procedure, service of process may be made either by summons or by publication and mailing (referred to hereinafter as service by publication). 735 ILCS 5/2-203(a), 2-206(a) (West 2012); *State Bank of Lake Zurich v. Thill*, 113 Ill. 2d 294, 308 (1986). In this particular case, we are concerned only with service by publication.

¶ 19 In an action affecting property, service by publication may be made where the plaintiff files an affidavit showing that upon due inquiry, the defendant cannot be found and stating that upon diligent inquiry, the defendant's place of residence cannot be ascertained. See 735 ILCS 5/2-206(a) (West 2012); *American Chartered Bank v. USMDS, Inc.*, 2013 IL App (3d) 120397, ¶ 18. Some of the requirements that apply for service by publication to be valid include: the newspaper used must be published in the county where the action is pending (or in an adjoining county in this State with circulation in the relevant county, if no such newspaper is published in

the relevant county); the notice that is published regarding the pendency of the action must state the title of the court, the title of the case, the names of the first named plaintiff and the first named defendant, the number of the case, the names of the parties to be served by publication, and the date on or after which default may be entered against the parties; the notice must be published once a week for three successive weeks; and the circuit clerk must send a copy of the notice that was published to the defendant by mail within 10 days of the first publication of the notice. See 735 ILCS 5/2-206(a), 2-207 (West 2012). The certificate of publication is prima facie evidence that publication took place as was required. See 715 ILCS 5/1 (West 2012); *Village of Lansing v. Homesteaders Life Ass'n*, 367 Ill. 508, 512 (1937). As the statute on notice by publication provides, the certificate of the publisher or his duly authorized agent with a written or printed copy of the notice attached stating the number of times that the notice has been published and the dates of the first and last newspapers containing the notice shall be sufficient evidence of publication. See 715 ILCS 5/1 (West 2012).

¶ 20 In the present case, before we address the more substantive assertions of the parties, we must first address Green Tree's claim that Stuckey has forfeited the issue of whether service by publication was warranted in this case (and the related issue of whether diligent efforts at personal service were made) because Stuckey failed to raise that argument in the trial court. It is well established that arguments not raised in the trial court are generally forfeited and may not be raised on appeal. *U.S. Bank Trust, N.A. v. Colston*, 2015 IL App (5th) 140100, ¶ 20. Although Stuckey tries to refute Green Tree's claim of forfeiture, Stuckey's assertions against forfeiture in this case are without merit. Our review of the record plainly indicates that Stuckey did not raise this issue in the trial court. Accordingly, we find that Stuckey has forfeited the issue of whether

service by publication was warranted in this case. See *id.* Therefore, we will not address that issue further in this appeal and, instead, will turn to Stuckey's remaining assertions.

¶ 21 Having done so, we conclude that Stuckey has misconstrued the significance of the certificate of publication. As noted above, the certificate of publication is merely prima facie evidence that publication of the foreclosure notice took place as required. See 715 ILCS 5/1 (West 2012); *Village of Lansing*, 367 Ill. at 512. It is not, as Stuckey seems to suggest, the actual act of publication. In this particular case, the original and amended certificates of publication clearly show that a proper notice of the foreclosure complaint, which contained all of the statutory information required for such a notice, was published in an appropriate newspaper once a week for three successive weeks in full compliance with the statute. See 735 ILCS 5/2-206(a), 2-207 (West 2012). Stuckey does not dispute that fact. The publication that occurred in this case was sufficient to establish personal jurisdiction over Stuckey in the foreclosure action. See 735 ILCS 5/2-206(a), 2-207 (West 2012); *American Chartered Bank*, 2013 IL App (3d) 120397, ¶ 18. The initial and the amended certificates of publication, taken together, provided sufficient evidence for the trial court to conclude that service by publication was properly made, even if the original certificate contained a slight defect. The trial court, therefore, correctly denied Stuckey's motion to quash service of process.

¶ 22 CONCLUSION

¶ 23 For the foregoing reasons, we affirm the judgment of the circuit court of Henry County.

¶ 24 Affirmed.