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2016 IL App (3d) 150618-U

Order filed September 8, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2016

U.S. BANK NATIONAL ASSOCIATION,)	Appeal from the Circuit Court
As Trustee for LVS TITLE TRUST I,)	of the 12th Judicial Circuit,
)	Will County, Illinois.
Plaintiff-Appellee,)	
)	
v.)	
)	
LOUIS A. LOMAS a/k/a LOUIS LOMAS,)	Appeal No. 3-15-0618
FOXTRIDGE FARMS NEIGHBORHOOD)	Circuit No. 11-CH-1430
ASSOCIATION, UNKNOWN OWNERS)	
AND NON-RECORD CLAIMANTS,)	
)	
Defendants)	
)	
and)	
)	Honorable
LEONARD KAYIWA and GAIL KAYIWA,)	John C. Anderson,
)	Judge, Presiding.
Intervening Defendants-Appellants.)	

PRESIDING JUSTICE O'BRIEN delivered the judgment of the court.
Justices Holdridge and Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* An amended order confirming a sale and amending the order of possession in a foreclosure action was affirmed because the record showed that the intevenor

defendants, who claimed an interest in the property as unknown owners, were given sufficient notice of the hearing under the Supreme Court rules.

¶ 2 The intervenor defendants, Leonard and Gail Kayiwa, sought review of a circuit court order granting a motion by plaintiff U.S. Bank National Association (U.S. Bank) to amend the order confirming a judicial sale in foreclosure proceedings.

¶ 3 FACTS

¶ 4 U.S. Bank's predecessor in interest, Bayview Loan Servicing, LLC, filed a complaint to foreclose a mortgage on March 15, 2011, against the defendants, Louis Lomas, Foxridge Farms Neighborhood Association, and unknown owners and nonrecord claimants. Lomas, the sole borrower listed on the mortgage and the note dated May 22, 2006, was personally served in a Texas prison on May 13, 2011. Thereafter, on October 11, 2012, U.S. Bank filed a motion to dismiss the unknown owners and non-record claimants. Upon the representation that due notice had been given, the circuit court granted the motion. The circuit court also entered a judgment of default against the named defendants for their failure to appear or respond to the complaint and entered a judgment of foreclosure.

¶ 5 Pursuant to the judgment of foreclosure, U.S. Bank caused a sale of the property to be held by the sheriff of Will County on April 24, 2013. On April 29, 2013, Leonard and Gail Kayiwa filed an emergency motion to intervene in the foreclosure, to be named as defendants rather than as unknown owners, and to cancel the sale. The circuit court allowed the Kayiwas to intervene but denied the motion to vacate the sale. On May 9, 2013, the Kayiwas filed a motion to quash the service of process on Lomas. The circuit court denied that motion and entered an order confirming the judicial sale on May 30, 2013. On June 4, 2013, the Kayiwas filed a

motion to vacate the order confirming the judicial sale, which was denied on July 11, 2013. The Kayiwas filed a notice of appeal regarding that order (3-13-0555).

¶ 6 While that appeal was pending, U.S. Bank filed a motion to amend the May 30, 2013, order confirming the sale to include the Kayiwas in the order for possession. The circuit court stayed the motion pending the appeal. The appeal was dismissed by this court on October 22, 2014, based upon the Kayiwas failure to comply with Supreme Court Rule 341. The Kayiwas' request for a reconsideration of the dismissal of the appeal was also denied. Following the dismissal of the appeal, on November 14, 2013, U.S. Bank filed an amended motion to amend the order confirming the sale. At about the same time, on December 3, 2014, the Kayiwas filed a motion to reinstate their appeal. That motion was denied, as was the Kayiwas' request for leave to appeal to the Illinois Supreme Court. Then, on December 18, 2014, the Kayiwas filed a second notice of appeal from the same order (3-14-0979). That appeal was also dismissed.

¶ 7 On July 8, 2015, U.S. Bank filed a second amended motion to amend the May 30, 2013, order confirming the judicial sale. On July 10, 2015, the Kayiwas filed a motion for reconsideration of the May 30th order confirming the judicial sale. On July 23, 2015, the circuit judge entered an order setting a briefing schedule for both motions. However, on July 31, 2015, the Kayiwas filed a motion for substitution of judge as a matter of right, so the case was re-assigned on August 7, 2015. On August 13, 2015, U.S. Bank noticed up a motion to be heard on August 27, 2015, in front of the new judge, asking for a ruling on U.S. Bank's second amended motion and the Kayiwas' motion for reconsideration. The matter came before the court on that date, and the circuit court granted U.S. Bank's motion and denied the Kayiwas' motion. The Kayiwas appealed the August 27, 2015, amended order confirming the sale and the order of possession.

¶ 8

ANALYSIS

¶ 9

The Kayiwas argue that the circuit court erred by entering the amended order on August 27, 2015, instead of a later court date of September 17, 2015, that had been set upon the substitution of judges. The Kayiwas argue that there was a lack of due process and that notice was not proper. U.S. Bank argues that the record indicates that the Kayiwas were given notice.

¶ 10

Illinois Supreme Court Rule 11(b) (eff. Dec. 29, 2009) requires parties to give notice of pending hearings to other litigants at the respective addresses of record. The rule sets forth a number of ways to effectuate proper service. Relevant to this appeal, documents may be served “by depositing them in a United States post office or post office box, enclosed in an envelope, plainly addressed to the attorney at the attorney's business address, or to the party at the party's business address or residence, with postage fully prepaid.” Ill. S. Ct. R. 11(b)(3) (eff. Dec. 29, 2009). Illinois Supreme Court Rule 12 provides that service is proved:

“in case of service by mail or by delivery to a third-party commercial carrier, by certificate of the attorney, or affidavit of a person other than the attorney, who deposited the paper in the mail or delivered the paper to a third-party commercial carrier, stating the time and place of mailing or delivery, the complete address which appeared on the envelope or package, and the fact that proper postage or the delivery charge was prepaid.” Ill. S. Ct. R. 12(b)(3) (eff. Dec. 29, 2009).

¶ 11

The record supports U.S. Bank’s contention that the Kayiwas were given proper notice under the rules. The notice of motion contains a proof of service by mail, signed by one of U.S. Bank’s attorneys, indicating that the notice was deposited in the mail to four parties, including both Kayiwas, at the address that is the subject of foreclosure. *CitiMortgage Inc. v. Lewis*, 2014 IL App (1st) 131272, ¶¶ 38-39 (delivery is presumed if the notice is sent by regular mail directed

to a proper address). The Kayiwas indicated that same address in their own motions filed with the court.

¶ 12 In addition to the notice argument, the Kayiwas make two additional arguments in this appeal. First, the Kayiwas allege fraudulent conduct by U.S. Bank. However, they do not specify what acts constituted fraudulent conduct. Such bare contentions, in the absence of argument and citation to authority, do not merit consideration on appeal and are deemed waived. *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993). Second, to the extent that the Kayiwas make any arguments regarding the judgment of foreclosure, we find that has already been the subject of two appeals that have been dismissed by this court. Thus, we lack jurisdiction to consider the merits of the judgment of foreclosure. Since the record supports U.S. Bank's contention that the Kayiwas were given proper notice of the hearing, we affirm the amended order confirming sale and order of possession.

¶ 13 CONCLUSION

¶ 14 The judgment of the circuit court of Will County is affirmed.

¶ 15 Affirmed.