

2017 IL App (1st) 134028-U
No. 1-13-4028
Order filed November 16, 2017

Fourth Division

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 DISTRICT

CITIMORTGAGE, INC.,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 08 CH 12504
)	
NESER EM NEHEH ALI,)	
)	
Defendant-Appellant, and)	
)	
JOHN WADE III, UNKNOWN OWNERS, and NON-)	
RECORD CLAIMANTS)	Honorable
)	Michael T. Mullen,
Defendants.)	Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice Burke and Justice McBride concurred in the judgment.

ORDER

- ¶ 1 *Held:* Affirmed. Trial court correctly ruled that petitioner's section 2-1401 petition was time-barred.
- ¶ 2 This appeal concerns a 2008 mortgage foreclosure action by plaintiff CitiMortgage, Inc., (Citimortgage) against defendants Nesor Em Neheh Ali (Ali) and John Wade III (Wade). Ali

now appeals *pro se* from orders regarding Ali's successive 2012 petition for relief from the 2009 foreclosure judgment for Citimortgage. On appeal, Ali alleges that newly-discovered evidence supports his claim for relief from judgment. For the reasons stated below, we affirm.

¶ 3 In 2007, Chicago Bancorp, Inc. (Bancorp), loaned Wade \$245,000 secured by a mortgage on a piece of property located at 18602 Heather Court in Homewood, Illinois.

¶ 4 In April 2008, Citimortgage filed a complaint for mortgage foreclosure naming Ali and Wade as defendants and alleging that Wade owed \$11,159.95 (plus late charges, attorney fees, and court costs) on the mortgage loan. The complaint alleged that both Wade and Ali had possessory interests in the property. The complaint included a verifying affidavit by Citimortgage's counsel.

¶ 5 Citimortgage attached copies of the note and mortgage naming Wade as the sole borrower and mortgagor to the complaint. Citimortgage also attached a "transfer of service rights" notifying Wade that Bancorp had assigned Wade's mortgage to Citimortgage; the document bore a November 2007 date and Wade's apparent signature in acknowledgment.

¶ 6 A special process server was appointed to serve Wade and Ali. The process server filed returns indicating that he had personally served Ali at the property on April 4, 2008, while he was unsuccessful in serving Wade at the same time. Later that month, Citimortgage successfully applied to serve Wade and unknown owners by publication, which was done in April and May 2008.

¶ 7 Citimortgage moved for a default judgment of foreclosure in June 2008, alleging that at least 60 days had passed from service on Ali and Wade and that neither Ali nor Wade had filed an appearance or responsive pleading.

¶ 8 The court entered an order of default on June 30, 2008, finding both Ali and Wade in default and finding that the complaint “confessed against said defendants.” On the same day, the court entered a judgment of foreclosure finding that defendants had been duly served (Ali personally, and Wade and unknown owners by publication) but failed to appear, and entering a judgment of foreclosure against the property for \$261,717.18.

¶ 9 The court found that Wade was the owner of the property and his right of redemption would expire on December 1, 2008, after which the property would be sold in a public sale, with the purchaser entitled to possession of the property 30 days after court confirmation of the sale.

¶ 10 In September and October 2008, Ali filed various documents with the court and requested emergency hearings based on those documents. The court struck Ali’s motions on September 25, 2008, and October 9, 2008.

¶ 11 About one month later, Citimortgage filed a notice of sale, sent by mail to Ali and Wade at the property, to the effect that the property would be sold at an auction on December 2, 2008. Later that month, Ali filed a motion to vacate a void judgment and motion to transfer the case to federal court. The court took the motions under advisement on December 3, 2008. Ali then filed additional documents in support of his motions.

¶ 12 On December 15, 2008, the court issued a memorandum order describing the various documents filed by Ali, finding them to be “Extremist Legal Arguments” to the effect that “he is some sort of sovereign entity,” and citing various cases disposing of similar arguments. The court struck all such documents except a quitclaim deed by which Wade had transferred the property to Ali in December 2007. The court found that a “summary order of dismissal is all that Ali’s pleadings warrant, but this court believes it is important to memorialize its findings for the

benefit of the parties and for reference by other courts, agencies, and individuals involved in the same dispute.”

¶ 13 The court went on to find that Wade had mortgaged the property and soon thereafter conveyed them to Ali by the quitclaim deed. The court noted an affidavit that, when service of process was attempted at the property on April 4, 2008, Ali answered the door and told the server that Wade did not reside there. The court also noted that Ali was not claiming that he was not served and that nobody appeared for Ali at the June 30 proceeding where the judgment of foreclosure was entered. The court spread of record that, at the December 3 hearing, “Ali was evasive in his responses to the court’s questions” regarding “the whereabouts of Wade and how Ali came into ownership of the” property but “denied that he was the same person as Wade.” The court noted that “Ali and/or Wade” commenced two federal actions “regarding this dispute,” one in the Court of Federal Claims that had already been dismissed and a pending case in the District Court where the complaint “bears a striking resemblance to some of the filings in this case.”

¶ 14 The court found Ali’s arguments for vacatur “not compelling” and unsupported by “established Illinois or federal law.” Instead, the court found, Ali’s arguments were “made solely to delay the ultimate resolution of the case; to improperly cloud the title to the [property]; and to harass the court, the bank’s attorneys, the bank and others involved in this process.”

¶ 15 As to Ali’s request to transfer the case to federal court, the court found that Ali was not citing any authority supporting removal, that the time for removal had passed, that Illinois courts may hear claims and counterclaims based on federal law, and that there were no pending defenses or counterclaims in this case.

¶ 16 The court ordered that any further filings by Wade or Ali would be barred until he filed an appearance and paid the appearance fee, and that the judicial sale would proceed as previously

ordered. The memorandum order of December 15, 2008, ended with a warning that violation of the order could constitute contempt.

¶ 17 In April 2009, Citimortgage filed a notice of sale, sent by mail to Ali and Wade at the property, stating that the property would be sold on May 20, 2009.

¶ 18 In July 2009, Citimortgage filed a motion for approval of the sale, reporting that Citimortgage recorded the highest bid at the auction. The court approved the sale on August 5, 2009 and entered a deficiency judgment of \$61,611.25. The order provided that any right of redemption would expire in 30 days and directed the Sheriff to evict Wade and Ali from the property after 30 days.

¶ 19 Ali filed a notice of appeal on September 3, 2009, but the appeal was dismissed. *CitiMortgage, Inc. v. Wade*, No. 1-09-2397 (July 1, 2010).

¶ 20 In March 2010, Ali filed a special appearance and paid the appearance fee. In May 2010, he filed more documents of a similar nature to those stricken in the December 15, 2008, order.

¶ 21 On September 13, 2010, the Sheriff notified the court that, in attempting to enforce the order of possession, it found Shermaine Brown-Wade (Brown-Wade) in possession of the property. Brown-Wade claimed that Wade was her landlord, that she had no written lease, and that she had not been informed of the foreclosure action.

¶ 22 In December 2010, Ali filed a petition to vacate the judgment of foreclosure pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2014)). The substance of the petition was similar to his earlier filings. The court denied the petition on April 1, 2011, and found no reason to stay the August 2009 order of possession.

¶ 23 Later in April, Ali filed an amended petition for relief from judgment. On September 1, 2011, the court struck the amended petition for want of jurisdiction. Ali filed a notice of appeal

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on September 14, 2011, but the appeal was dismissed for lack of jurisdiction. *CitiMortgage, Inc. v. Wade*, No. 1-11-2611 (October 9, 2012).

¶ 24 In November 2012, Ali again filed a petition to vacate the foreclosure judgment as void under section 2-1401. He alleged that Wade and Bancorp entered into a loan secured by a mortgage on the property in November 2007 and, later that same month, Wade “assigned all interest” in the Bancorp mortgage loan to Ali. Ali further alleged that he “rejected the offers to contract” by Citimortgage in January 2008 and rejected Citimortgage’s assertion that it “ha[d] acquired any rights to the” mortgage loan. Ali also alleged that he “tendered payment in full made payable to” Citimortgage, that Citimortgage did not verify its 2008 complaint or attach an assignment of the mortgage loan from Bancorp to Citimortgage, and that Bancorp did not assign the mortgage loan to Citimortgage. Ali noted that Citimortgage entered into a consent judgment in federal court with the federal government and various state governments regarding lending practices and argued that he was free under that consent judgment to present counterclaims against Citimortgage.

¶ 25 In his affidavit supporting the petition, Ali claimed that he resided at the property, that Citimortgage did not verify the complaint herein, and that Citimortgage did not properly plead the assignment of the mortgage loan. Ali did not claim that he was not served, or improperly served, with process.

¶ 26 In an agreed order, the court on February 25, 2013, struck the petition and Ali “agree[d] to re-notice [his section 2-1401] petition with correct courtroom *** with notice to [Citimortgage] and courtesy copy to the court.” The order did not set a deadline for the renoticing.

¶ 27 In August 2013, Ali filed a motion for additional time to file an amended section 2-1401 petition and for leave to file a counterclaim. The court denied the motion on November 27, 2013, finding that it lacked jurisdiction. Ali filed the notice of appeal giving rise to this appeal on December 27, 2013, identifying the November 27 order as the judgment being appealed.

¶ 28 On appeal, Ali contends that he has newly-discovered evidence that Bancorp fully paid Citimortgage upon the mortgage loan and that Citimortgage fraudulently concealed violations of lending practices. Citimortgage, in turn, contends that this court lacks jurisdiction and that, in any event, the trial court's ruling was proper.

¶ 29 We will begin with the question of our own jurisdiction. Citimortgage argues that, though Ali purports to appeal the November 27, 2013 order, in fact his request for relief relates all the way back to the original orders of default judgment (June 30, 2008) and approval of the Report of Sale (August 5, 2009). Thus, because this appeal comes several years after those orders, and not within the requisite 30 days from entry of the order, we lack appellate jurisdiction.

¶ 30 We find, however, that we have appellate jurisdiction. Whatever relief Ali may have sought at the time the trial court denied his section 2-1401 petition, and whatever relief he now seeks before this court, there is little question that he appealed from a final judgment of the circuit court, and that he did so within 30 days of that order. See Ill. S. Ct. R. 303(a)(1) (eff. May 30, 2008). A final judgment is one that finally determines the litigation "so that, if affirmed, the only thing remaining is to proceed with the execution of the judgment." *In re Michael D.*, 2015 IL 119178, ¶ 13 (internal quotation marks omitted). Here, the November 27 order at issue denied plaintiff leave to file his amended section 2-1401 petition or his counterclaim because the court "found that it lacks jurisdiction." A trial court's dismissal for lack of jurisdiction is a final order that we routinely review. See, e.g., *Bradley v. City of Marion*, 2015 IL App (5th) 140267, ¶ 13;

Nestle USA, Inc. v. Dunlap, 365 Ill. App. 3d 727, 731 (2006); *People v. Walker*, 395 Ill. App. 3d 860, 869–70 (2009).

¶ 31 And Ali filed this appeal exactly 30 days after the November 27, 2013 order was entered. Because Ali appealed within 30 days of the final judgment, we have jurisdiction to consider this appeal. See Ill. S. Ct. R. 303(a)(1) (eff. May 30, 2008).

¶ 32 We now turn to the merits of the appeal. The trial court denied Ali’s attempt to file a successive 2-1401 petition on the basis that it lacked jurisdiction. Citimortgage claims that the trial court’s ruling was correct, as Ali’s successive 2-1401 petition was filed more than two years after the orders it challenged.

¶ 33 Typically, a section 2-1401 claim must be brought within two years after the entry of the order of judgment. See 735 ILCS 5/2-1401(c) (West 2012). A petitioner may seek relief beyond that two-year window only if he alleges and proves fraudulent concealment (*In re Marriage of Benjamin*, 2017 IL App (1st) 161862, ¶ 20) or that the foreclosure judgment is void for lack of personal or subject-matter jurisdiction. *Wells Fargo Bank, N.A. v. Sanders*, 2015 IL App (1st) 141272, ¶ 17. Here, Ali established neither of these bases for avoiding the two-year bar in section 2-1401(c).

¶ 34 To establish fraudulent concealment, the petitioner must prove, by clear and convincing evidence, “that the respondent intentionally misstated or concealed a material fact that the respondent had a duty to disclose and that the petitioner detrimentally relied on the respondent’s statement or conduct.” *Marriage of Benjamin*, 2017 IL App (1st) 161862, ¶ 20 (internal quotation marks omitted). Ali argues that he did, indeed, establish fraudulent concealment in his section 2-1401 petition, and thus the two-year bar does not defeat his claim. But we run into a significant problem in reviewing this claim, because the record on appeal does not include a

transcript or appropriate substitute (see Ill. S. Ct. R. 323 (eff. Dec. 13, 2005)) for the proceedings of November 27, 2013. We do not know if the trial court conducted any sort of hearing, whether it heard evidence, whether it simply ruled on the pleadings, or whether the trial court elaborated orally on the basis for its decision.

¶ 35 As the appellant, Ali is obligated to provide us a sufficiently complete record of the proceedings to support his claims of error, and any doubts arising from the incompleteness of the record will be resolved against him. *People v. Carter*, 2015 IL 117709, ¶ 19; *In re Marriage of Gulla*, 234 Ill. 2d 414, 422 (2009). In the absence of a sufficiently complete record, we must presume that the court's orders conformed to the law and had a sufficient factual basis. *Carter*, 2015 IL 117709, ¶ 19. An issue regarding the trial court's factual findings and the basis for its legal conclusions cannot be reviewed without a record of the proceedings. See *Marriage of Gulla*, 234 Ill. 2d at 422. Given the lack of any transcript or basic understanding of why the trial court ruled as it did, we must therefore conclude that the trial court's ruling conformed to the law and had a sufficient basis. We may affirm the trial court's judgment on that basis alone. *Carter*, 2015 IL 117709, ¶ 19.

¶ 36 But even if we proceeded further, we find no indication that Ali pleaded either fraudulent concealment or that the foreclosure judgment was void. Ali did not even attempt to plead, much less prove, fraudulent concealment. Having reviewed the lengthy petition that Ali filed in the circuit court, where he attacked virtually every step of the process that led to the foreclosure, and where he cited numerous sources in support—state and federal statutes, the Illinois Professional Rules of Conduct, multiple provisions of the U.S. Constitution, the Northwest Ordinance, even the United Nations Universal Declaration of Human Rights—we find no mention or hint of a claim of fraudulent concealment by Citimortgage.

¶ 37 Nor did Ali establish a basis for claiming that the foreclosure judgment was void. Whether a judgment is void “depends solely on whether the circuit court which entered the challenged judgment possessed jurisdiction over the parties and the subject matter.” *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 32. While Ali’s arguments are somewhat unclear, none allege that the circuit court lacked subject matter or personal jurisdiction when it entered the foreclosure judgment or confirmed the judicial sale. Ali did not claim that he was not served, or improperly served, with process; he did not challenge personal jurisdiction in any way. As for subject-matter jurisdiction, there is no question that the circuit court has jurisdiction over the subject matter of foreclosure cases, which is governed by the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 *et seq.* (West 2012).

¶ 38 As best we can tell, Ali claims that a settlement between Citimortgage and several state attorneys general shows that Citimortgage engaged in deceptive practices, that the loan had been satisfied, and that Citimortgage lacked standing to pursue the foreclosure. But even taking those allegations as true, they would not affect the subject-matter jurisdiction of the circuit court, nor would it change the fact that the court had personal jurisdiction over Ali.

¶ 39 Ali also argues that various fraudulent acts by Citimortgage rendered the judgment void. But the Illinois Supreme Court has “differentiated between fraud which gives the court only colorable jurisdiction and fraud which occurred after the court acquired jurisdiction, such as obtaining an order or decree by false testimony or concealment.” *Schwarz v. Schwarz*, 27 Ill. 2d 140, 144 (1963). “It is only fraud which gives a court colorable jurisdiction that renders a decree void.” *Id.* at 145. Fraud giving a court colorable jurisdiction, which is also known as “ ‘extrinsic fraud,’ ” occurs when a party “ ‘has been prevented from fully exhibiting his case by being kept away from the court or is kept from gaining knowledge of the suit.’ ” *City of Naperville v. Mann*,

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378 Ill. App. 3d 657, 661 (2008) (quoting *In re Adoption of E.L.*, 315 Ill. App. 3d 137, 154 (2000)).

¶ 40 None of Ali's allegations of fraud would constitute the type of extrinsic fraud that would have deprived the circuit court of jurisdiction. His allegations, even if true, would not render the judgments void.

¶ 41 So even though Ali failed to present this court with an adequate record to review his claims, and we could affirm on that basis alone, we further find that Ali failed to plead either fraudulent concealment or that the foreclosure judgment was void. As Ali cannot avoid the two-year time bar in section 2-1401(c), we affirm the trial court's ruling.

¶ 42 We affirm the judgment of the circuit court.

¶ 43 Affirmed.