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No. 15-2138

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

GREEN TREE SERVICING, LLC,)	Appeal from the Circuit Court of
)	Cook County
Plaintiff-Appellee,)	
)	
v.)	No. 13 CH 23422
)	
MILTON WILLIAMS,)	
)	
Defendant-Appellant.)	Honorable Michael Otto, Judge Presiding

JUSTICE SIMON delivered the judgment of the court.
Justices Harris and Mikva concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court had jurisdiction when it entered the order confirming the foreclosure sale, so that order is not void. Defendant's petition to vacate is not in the record on appeal and the record is insufficient for us to make a determination that the trial court erred when it denied defendant's petition to vacate.

¶ 2 This is a mortgage foreclosure case. The trial court granted summary judgment to the plaintiff and entered an order confirming the sale. Defendant subsequently filed a petition to vacate the order confirming the sale which the trial court denied. Defendant appeals the rejection of his motion to vacate, and we affirm.

¶ 3

BACKGROUND

¶ 4 On October 16, 2013, plaintiff Green Tree Servicing, LLC filed a complaint to foreclose a mortgage. Defendant Milton Williams, pro se, appeared in the case and removed it to the United States District Court in the Northern District of Illinois. The district court remanded the case to state court in June 2014.

¶ 5 Plaintiff filed a motion for summary judgment. Defendant did not respond and the trial court granted judgment in plaintiff's favor. Defendant filed a motion to reconsider. In that motion, defendant seemed to argue that he had tendered payment to plaintiff in full. The motion to reconsider was denied on December 23, 2014. The property was sold at a judicial sale on January 13, 2015.

¶ 6 Six weeks after the judicial sale, defendant filed a motion for substitution of judge. That motion was denied on March 26, 2015. On April 1, 2015, defendant filed a notice of appeal directed at the denial of his motion for substitution of judge. That appeal was dismissed on August 11, 2015.

¶ 7 On April 9, 2015, the trial court granted plaintiff's motion to confirm the sale of the foreclosed property. Defendant appealed that order on April 30, 2015. That appeal was dismissed on August 29, 2015.

¶ 8 On June 9, 2015, defendant filed what he titled a 2-1401 petition which was denied a month later. Defendant appealed that order and that is the appeal that is before us now. In his notice of appeal, defendant specified that he is appealing the order "denying Defendant's Section 5/2-1401(f) Petition to Reopen Vacate, also denying Defendant's Section 5/2-1305 Motion to Stay Enforcement of Order of Possession." Attached to the notice of appeal is the July 15, 2015 order

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denying his motion for a stay and his petition to vacate.

¶ 9 On appeal, defendant argues that the trial court's orders after April 1, 2015 are void because the trial court lacked jurisdiction after he filed his notice of interlocutory appeal that day. Defendant also argues that he is entitled to relief because he tendered full payment to plaintiff before summary judgment was entered and because, under the Judicial Foreclosure Law (735 ILCS 5/15-1508(b)(iv) (West 2012)), justice has not been done.

¶ 10 ANALYSIS

¶ 11 Defendant argues that the appeal he filed on April 1, 2015 divested the trial court of jurisdiction and, therefore, the order confirming the judicial sale entered April 9, 2015 is void. However, jurisdiction of the appellate court attaches when a proper notice of appeal is filed directed at an appealable order. *State ex rel. Beeler, Schad & Diamond, P.C. v. Target Corp.*, 367 Ill. App. 3d 860, 863 (2006). When a party appeals from an order that is not appealable, the filing of the notice of appeal "neither deprives the trial court of jurisdiction to proceed with the case nor vests the appellate court with jurisdiction to review." *Id.* And an order denying a motion for a substitution of judge is not immediately appealable. *In re Marriage of Nettleton*, 348 Ill. App. 3d 961, 969 (2004). Accordingly, the trial court did not lack jurisdiction to enter an order confirming the foreclosure sale on April 9, 2015 and the order is not void.

¶ 12 Defendant argues that he is entitled to relief because he tendered payment in full before summary judgment was entered. He also argues that the judgment below should be reversed because justice has not been done under the Judicial Foreclosure Law (735 ILCS 5/15-1508(b)(iv) (West 2012)). Defendant did not respond to the summary judgment motion and it appears that his arguments were formally raised for the first time in a motion to reconsider. But more importantly,

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defendant's notice of appeal is limited to the denial of his section 2-1401 petition and his request for a stay. *PNC Bank, National Association v. Krier*, 2015 IL App (3d) 140639, ¶ 42 ("Our jurisdiction is limited to the review of the specific orders identified in defendant's notice of appeal, and any orders that were part of the procedural progression leading to the orders challenged in the notice of appeal."). The section 2-1401 petition is not in the record on appeal. We do not even know whether defendant raised either of these arguments in the petition that was denied and from which he now appeals. Even after defendant was given leave to, and did, supplement the record on appeal, he still failed to include the section 2-1401 petition.

¶ 13 A section 2-1401 petitioner bears the burden to allege and prove facts sufficient to justify relief. *In re Marriage of Travlos*, 218 Ill. App. 3d 1030, 1035 (1991). A section 2-1401 petition was not intended as a procedure whereby a litigant may be relieved of the consequences of his own mistake or negligence, and the burden is on the petitioner to rebut the presumption that the verdict is correct and to demonstrate that there has been no lack of due diligence. *Malek by Malek v. Lederle Laboratories*, 152 Ill. App. 3d 493, 497 (1987). While section 2-1401 has been developed to provide trial courts with the equitable powers necessary to grant relief and prevent injustice, it was never intended to give a party a new opportunity to do that which should have been done at an earlier proceeding. *Id.*

¶ 14 The appellant is required to provide the reviewing court with a record sufficient to support his or her claims of error. *In re Marriage of Abu-Hashim*, 2014 IL App (1st) 122997, ¶ 15. So any doubts and deficiencies arising from an insufficient record are construed against the appellant. *Id.* Since the section 2-1401 petition is not in the record and defendant does not even explain its contents or the reason for its absence, we obviously cannot say that the trial court erred when it

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rejected defendant's petition.

¶ 15

CONCLUSION

¶ 16 Accordingly, we affirm.

¶ 17 Affirmed.