

2017 IL App (1st) 161836-U  
No. 1-16-1836  
Order filed June 30, 2017

FIFTH 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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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U.S. BANK, NATIONAL ASSOCIATION,	)	Appeal from the
	)	Circuit Court of
	)	Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	
	)	
	)	
DUANE M. JONES A/K/A DUANE JONES,	)	
FRANCES L. JONES, CITY OF CHICAGO, and	)	
MIDLAND FUNDING,	)	No. 10 CH 713
	)	
	)	
Defendants,	)	
	)	
	)	
(DUANE M. JONES,	)	Honorable
	)	Pamela McLean Meyerson
Defendant-Appellant).	)	Judge Presiding.

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JUSTICE HALL delivered the judgment of the court.  
Justice Lampkin and Justice Reyes concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant waived the contention that his answer to Plaintiff's complaint precluded the circuit court from entering a default judgment of foreclosure against him.

¶ 2 This is an appeal from the circuit court's order granting plaintiff's, U.S. Bank, National Association (US Bank), motion to approve the judicial sale of the property located at 3143 South Giles Avenue, Chicago, Illinois 60616.

¶ 3 **BACKGROUND**

¶ 4 The following facts are relevant to the resolution of this appeal. On January 6, 2010, DB Structured Products, Inc.<sup>1</sup> filed a mortgage foreclosure complaint against defendants Duane Jones, Frances Jones, City of Chicago, and Midland Funding. On February 4, 2010, Mr. Jones, *pro se*, filed his appearance and verified answer. In his answer, Mr. Jones included the statement "[w]e have legal defenses to vacate this foreclosure [sic] proceedings. I was entered into a loan modification which Green Tree now DB Structured have [sic] not honored." No certificate of service or notice of filing was included with Mr. Jones's answer.

¶ 5 On February 27, 2014, US Bank filed a motion for entry of default and judgment of foreclosure and sale. In its motion for default, US Bank alleged that the defendants had not filed an answer to the mortgage foreclosure complaint. The circuit court granted US Bank's motion for default and entered judgment for foreclosure and sale against the defendants on March 31, 2014.

¶ 6 Accordingly, US Bank filed a motion to approve the sale on July 9, 2014. Represented by counsel, Mr. Jones filed a motion to vacate the March 31, 2014, default judgment on July 24, 2014. The circuit court conducted a hearing on his motion to vacate the default judgment on October 3, 2014, and denied it that same day. On December 8, 2014, Mr. Jones filed an emergency motion to reconsider the circuit court's October 3, 2014, order denying his motion to

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<sup>1</sup> US Bank was later substituted as party plaintiff.

vacate the default judgment. The circuit court denied Mr. Jones's emergency motion to reconsider and granted US Bank's motion to approve the sale on April 10, 2015.

¶ 7 On May 11, 2015, Mr. Jones filed a motion to reconsider the circuit court's April 10, 2015, order, but their motion was denied on June 7, 2016. In response, Mr. Jones filed a notice of appeal on July 1, 2016.

¶ 8 ANALYSIS

¶ 9 On appeal Mr. Jones contends that the circuit court erred when it denied his motion to reconsider the circuit court's April 10, 2015, order which denied his motion to vacate the default judgment and granted US Bank's motion to approve the sale. Specifically, Mr. Jones contends that the circuit court erred in its previous application of existing law by finding he waived the argument that his answer precluded the court from entering a default judgment of foreclosure against him.

¶ 10 As a preliminary matter we address US Bank's contention that this Court lacks appellate jurisdiction to review this case. Specifically, US Bank contends that Mr. Jones's motion to reconsider was untimely and did not toll the 30 day time limit to file his notice of appeal because it contained the same arguments as his prior emergency motion for reconsideration.

¶ 11 It is well settled that a judgment ordering the foreclosure of mortgage is not final and appealable until the trial court enters an order approving the sale and directing the distribution of the proceeds. *EMC Mortgage Corporation v. Kemp*, 2012 IL 113419, ¶ 11. The reason such a judgment is not final and appealable is because it does not dispose of all issues between the parties and it does not terminate the litigation. *Id.* Accordingly, it would be the order confirming the sale, rather than the order denying Mr. Jones's motion to vacate, that would operate as the

final and appealable order in this foreclosure case. See *id.* That order was entered on May 11, 2015.

¶ 12 Mr. Jones's motion to reconsider was filed 30 days after the circuit court granted US Bank's motion to approve the sale. It was the only postjudgment motion directed against a final order. As a result, the time for Mr. Jones to file his notice of appeal was tolled until 30 days after the circuit court entered its June 7, 2016, order denying his motion for reconsideration. Because Mr. Jones timely filed his notice of appeal on July 1, 2016, appellate jurisdiction is properly vested in this court.

¶ 13 Next, we turn to Mr. Jones's contention that the circuit court erred in denying his motion to reconsider. Generally, a motion to reconsider is a matter addressed to the trial court's discretion, and we will not reverse its ruling on such a motion absent an abuse of discretion. *Duresa v. Commonwealth Edison Co.*, 348 Ill. App. 3d 90, 97 (2004). However, where a motion to reconsider raises a question of whether the circuit court erred in its previous application of existing law, we review *de novo* the circuit court's determinations of legal issues. *JP Morgan Chase Bank v. Fankhauser*, 383 Ill. App. 3d 254, 259 (2008)(citing *Duresa*, 348 Ill. App. 3d at 97).

¶ 14 The facts in this case demonstrate that Mr. Jones filed his motion to vacate the default judgment after US Bank filed its motion to approve the judicial sale. When a borrower seeks to set aside a default judgment of foreclosure, he or she may only do so by filing objections to the confirmation of the sale under the provisions of section 15-1508(b) of the Illinois Foreclosure Law (Foreclosure Law)(735 ILCS 5/15-1508(b)(West 2014)). *Wells Fargo Bank, N.A. v. McCluskey*, 2013 IL 115469, ¶ 27. To vacate both the sale and the underlying default judgment of foreclosure, the borrower must not only have a meritorious defense to the underlying

judgment, but must establish under section 15–1508(b)(iv) that justice was not otherwise done because either the lender, through fraud or misrepresentation, prevented the borrower from raising his meritorious defenses to the complaint at an earlier time in the proceedings, or the borrower has equitable defenses that reveal he was otherwise prevented from protecting his property interests. *Id.* at ¶ 26. After a motion to confirm the sale has been filed, it is not sufficient under section 15–1508(b)(iv) to merely raise a meritorious defense to the complaint. *Id.*

¶ 15 Mr. Jones contends that he has a meritorious defense to the underlying foreclosure action. He contends that his answer precluded the circuit court from entering a default judgment against him for failing to appear or plead. In response, US Bank contends that the circuit court should be affirmed because Mr. Jones waived his argument by not including it in his motion to vacate and waiting until his emergency motion to reconsider to raise it for the first time. We agree with US Bank.

¶ 16 The purpose of a motion to reconsider is to bring to a court's attention (1) newly discovered evidence, (2) changes in the law, or (3) errors in the court's previous application of existing law. *Jones v. Live Nation Entertainment, Inc.*, 2016 IL App (1st) 152923, ¶ 29. A reconsideration motion is not the place “to raise a new legal theory or factual argument.” *Id.* (quoting *North River Insurance Co. v. Grinnell Mutual Reinsurance Co.*, 369 Ill.App.3d 563 572 (2006). “ ‘Trial courts should not allow litigants to stand mute, lose a motion, and then frantically gather evidentiary material to show that the court erred in its ruling.’ [Citation.]” *North River*, 369 Ill. App. 3d at 572 (quoting *Landeros v. Equity Property & Development*, 321 Ill. App. 3d 57, 65 (2001)). As a result, legal theories and factual arguments not previously made are waived. *North River*, 369 Ill. App. 3d at 572–73.

¶ 17 Mr. Jones's motion to vacate contains no reference to the fact that he filed an answer to the foreclosure complaint. He contends that he verbally raised this fact at the October 3, 2014, hearing and that it should have precluded the circuit court entering a default judgment against him for failing to appear or plead. The record on appeal does not contain a transcript of the hearing, a report of the proceedings, or a bystander's report. An appellant has the burden to present a sufficiently complete record to support a claim of error on appeal. *Webster v. Hartman*, 195 Ill. 2d 426, 432 (2001); *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391–92 (1984). Where the issue on appeal relates to the conduct of a hearing or proceeding, this issue is not subject to review absent a report or record of the proceeding. *Webster*, 195 Ill. 2d at 432. Without such a record, it is presumed that the order entered by the trial court is in conformity with the law and has a sufficient factual basis. *Foutch*, 99 Ill. 2d at 392. “Any doubts which may arise from the incompleteness of the record will be resolved against the appellant.” *Foutch*, 99 Ill. 2d at 392.

¶ 18 Our review of the record demonstrates that Mr. Jones first argued in his emergency motion to reconsider that his answer should have precluded the circuit court from entering a default judgment against him. This was after he filed a motion to vacate the default judgment and after he filed a response to US Bank's motion to approve the judicial sale. Under these circumstances we find Mr. Jones waived the right to assert that his answer precluded the circuit court from entering a default judgment of foreclosure against him. See *North River*, 369 Ill. App. 3d at 572–73. As a result, Mr. Jones cannot present a meritorious defense to the underlying foreclosure action, and we therefore need not address whether he has demonstrated the necessary elements to prevail under section 15-1508(b)(iv) of the Foreclosure Law. See *Wells Fargo*, 2013 IL 115469, ¶ 27

¶ 19

CONCLUSION

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¶ 20 For the foregoing reasons, we affirm the judgment of the circuit court.

Affirmed.