

No. 1-17-0280

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 JUDICIAL DISTRICT

NEIGHBORHOOD LENDING SERVICES, INC.,)
) Appeal from the
) Circuit Court of
 Plaintiff-Appellee,) Cook County
)
 v.)
) No. 10 CH 51361
 VESTA HENDERSON & MICHAEL HENDERSON,)
)
 Defendants-Appellants.) Honorable
) Robert Senechalle, Jr.,
) Judge Presiding.

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* Affirming the judgment of the circuit court of Cook County where the judicial sale of the subject property was properly confirmed and did not violate section 15-1508(b) of the Foreclosure Law.

¶ 2 Defendants Michael and Vesta Henderson, *pro se*, appeal an order of the circuit court of Cook County approving the sale of certain property in favor of plaintiff Neighborhood Lending Services, Inc. (NLS). Defendants contend on appeal that: (1) the circuit court did not have

personal jurisdiction over Vesta where she was not initially named as a defendant in the foreclosure and had no interest in the property; and (2) the judicial sale of the property was conducted fraudulently and justice was otherwise not done in violation of sections 15-1508(b)(iii) and (iv) of the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1508(b)(iii), (iv) (West 2014)). For the reasons that follow, we affirm.

¶ 3 **BACKGROUND**

¶ 4 This appeal concerns the foreclosure of a construction loan obtained by defendant Michael Henderson (Michael) to rehabilitate a property located at 2949 W. Washington, Chicago, Illinois (the property).¹ On May 30, 2003, Michael and LaSalle Bank National Association, as trustee and trust number 10-34507-09 (LaSalle), a land trust, signed the adjustable rate, interest only note for \$350,726.00, which included a maturity date of June 1, 2004. The note was secured with a mortgage on the property. The mortgage was solely executed by LaSalle.

¶ 5 On the maturity date of June 1, 2004, Michael did not pay the remainder of the amount due under the note. Thereafter, on December 2, 2010, plaintiff filed a complaint in foreclosure against Michael, Bank of America as successor in interest to LaSalle², and unknown owners, alleging Michael was in default under the terms of the note.

¶ 6 Ultimately, summary judgment was entered in favor of plaintiff and a judgment of foreclosure was entered. The property was sold at a judicial sale in March 2012, with plaintiff as

¹ The facts of this case as they relate to the initial complaint were set forth in our prior order, *Neighborhood Lending Services, Inc. v. Henderson*, 2013 IL App (1st) 121374-U (unpublished under Supreme Court Rule 23) (*Henderson I*). To that end, we will only set forth those facts relevant to this appeal here.

²Bank of America as successor in interest to LaSalle Bank National Association will be referred to as LaSalle throughout this order.

the highest bidder. The sale was subsequently confirmed and Michael appealed.

¶ 7 On appeal in *Henderson I*, Michael argued *pro se* that plaintiff lacked standing and that its affidavit presented in support of summary judgment was insufficient under Illinois Supreme Court Rule 191(a) (eff. July 1, 2002). We concluded (1) plaintiff had standing to pursue the foreclosure action and (2) plaintiff's affidavits in support of the motion for summary judgment were insufficient. We thus reversed the circuit court's grant of summary judgment and vacated the order approving the sale, the judicial sale, and the judgment of foreclosure. The matter was then remanded to the circuit court for further proceedings.

¶ 8 After remand and with leave of court, plaintiff filed an amended complaint on May 22, 2014, adding Vesta Henderson (Vesta) and Chicago Title Land Trust Company as party defendants. In its motion, plaintiff indicated Vesta was named as a defendant due to her potential interest in the property as a lien holder. Plaintiff asserted Vesta had executed and recorded documents regarding the subject property in 2012 and 2013 while the matter was on appeal. These purported "first liens" were in the aggregate sum of three million dollars. Vesta was served personally with the amended complaint on August 12, 2014. While defendants filed numerous motions thereafter, neither of them ever filed an answer to the amended complaint.

¶ 9 Despite defendants' failure to answer the amended complaint, plaintiff moved for summary judgment. In response, defendants maintained that summary judgment could not be entered due to an error in the legal description in the mortgage. The circuit court granted summary judgment in favor of plaintiff, but entered and continued plaintiff's request for a judgment of foreclosure due to the error in the legal description. Plaintiff then moved to reform the mortgage to correct the legal description. In granting that motion, the circuit court concluded that the record was clear that the parties made a mutual mistake in preparation and execution of

the mortgage where the construction mortgage contained a typographical error in the legal description. The correct description included “West 20 feet of Lot 127” not “the West 120 feet of Lot 127,” as the circuit court concluded that Lot 127 is only 25 feet in total width. The circuit court then entered the judgment of foreclosure with the corrected legal description.

¶ 10 A judicial sale was held on December 21, 2016, with the property being sold to plaintiff as the highest bidder. The sale was confirmed on January 31, 2017, and an *in rem* deficiency judgment in the amount of \$496,199.69 was entered against the property. While defendants appeared in court on the day plaintiff presented its motion for confirmation of the judicial sale, upon inquiry from the circuit court, they declined to file a response to the motion. Defendants then indicated their agreement that the circuit court confirm the sale.² Defendants filed their notice of appeal the following day, February 1, 2017.

¶ 11 Although a notice of appeal had been filed, defendants filed a postjudgment motion in the circuit court. Only after receiving the postjudgment motion did the circuit court and plaintiff discover that defendants had filed a response to the motion to confirm the sale without leave of court only hours prior to the hearing on the motion. On February 28, 2017, the circuit court entered a lengthy written order denying the postjudgment motion and addressing defendants’ response to the motion to confirm the sale. Pertinent to this appeal, the circuit court stated the following:

“The court is also of the opinion that Michael and Vesta have both forfeited their right to object to confirmation of the foreclosure sale. At the time plaintiff presented its motion to confirm the sale on January 31, 2017, the court specifically offered both Michael and Vesta an opportunity to file a written response to the motion to confirm sale.

² We observe that the record does not include transcripts of any of the proceedings before the circuit court.

Michael and Vesta expressly declined the court's offer to respond to the motion and asked the court to 'go ahead and confirm the sale.' The court then expressly found that no 1508 factor (735 ILCS 5/15-1508(b)) had been presented to the court. With the Hendersons standing before the court and voicing no objection, the court stated that plaintiff's motion to confirm the sale was granted. Michael asked if the order contained a thirty-day stay of possession and the court answered that it did."

The circuit court also observed that it "was aware at the time it confirmed the sale, that the legal description in the notice of sale and in the sale publications contained the same scrivener's error that appeared in the mortgage," but found the mistake in the legal description "is an innocuous one." The circuit court noted the record reflects the multi-family building is situated on three city lots, none of which are 120 feet wide. Accordingly, the surveys and other evidence submitted to the court during the briefing for the motion for summary judgment indicated that the property covered the west 20 feet not the west 120 feet. The circuit court also found that the notice of sale met all of the requirements of section 15-1507(c) of the Foreclosure Law. The circuit court then observed that section 15-1507(c) "specifically provides that an immaterial error in the information contained in the notice of sale shall not invalidate the legal effect of the notice." The circuit court thus found that the common address and tax identification number were correct and that the scrivener's error in the legal description contained in the notices of publication and sale was an obvious one. The circuit court further observed that the notices referred the reader to the court file, which included the correct legal description. The circuit court ultimately ruled that the mistake in the legal description was "inconsequential and cannot be a basis to deny sale confirmation." This appeal follows.

¶ 12

ANALYSIS

¶ 13 Prior to addressing the merits of this appeal, we note that a majority of the brief filed by defendants is decidedly incoherent and the individual arguments are difficult to ascertain in violation of Illinois Supreme Court Rule 341 (eff. July 1, 2017). While defendants are appealing *pro se*, such litigants are “presumed to have full knowledge of applicable court rules and procedures and must comply with the same rules and procedures as would be required of litigants represented by attorneys.” *In re Estate of Pellico*, 394 Ill. App. 3d 1052, 1067 (2009). “An issue not clearly defined and sufficiently presented fails to satisfy the requirements of Supreme Court Rule 341(h)(7) and is, therefore, waived.” *In re Detention of Lieberman*, 379 Ill. App. 3d 585, 610 (2007). Thus, to the extent they are unsupported or undeveloped, defendants’ arguments will be forfeited.

¶ 14 Moreover, defendants have not provided this court with a record of proceedings, or acceptable substitute report of proceedings, pursuant to Illinois Supreme Court Rule 323 (eff. July 1, 2017). It is the duty of the appellant to present this court with a sufficiently complete record of the circuit court proceedings to support any claim of error. *Midstate Siding & Window Co. v. Rogers*, 204 Ill. 2d 314, 319 (2003). Therefore, when the issue on appeal relates to the conduct of a hearing or proceeding, the absence of a transcript or other record of that proceeding means this court must presume the order entered by the circuit court was in conformity with the law and had a sufficient factual basis. *Id.* We now turn to address defendants’ claims which are decipherable.

¶ 15

Personal Jurisdiction

¶ 16 Defendants first contend that the circuit court did not have personal jurisdiction over Vesta where she was not initially named as a defendant in the foreclosure and that plaintiff was

not duly diligent in naming Vesta as a defendant. According to defendants, plaintiff knew that Vesta was married to Michael and could have named her as a defendant but chose not to until three-and-a-half years later. Moreover, defendants assert that Vesta does not have an interest in the property and thus was improperly named as a defendant from the beginning.

¶ 17 We initially observe that the circuit court had personal jurisdiction over Vesta as she was personally served with the amended complaint and actively participated in the proceedings below. Absent the appearance of the defendant or waiver of process, the service of summons “in the manner directed by statute” is necessary to create personal jurisdiction over a defendant. *Kappel v. Errera*, 164 Ill. App. 3d 673, 677 (1987). “Service to be effective must be by personal service unless designated otherwise by law.” *Bell Federal Savings & Loan Ass’n v. Horton*, 59 Ill. App. 3d 923, 927 (1978). Section 2-203(a) of the Code of Civil Procedure in pertinent part states: “service of summons upon an individual defendant shall be made (1) by leaving a copy of the summons with the defendant personally, [or] (2) by leaving a copy at the defendant's usual place of abode, with some person of the family or a person residing there, of the age of 13 years or upwards, and informing that person of the contents of the summons, provided the officer or other person making service shall also send a copy of the summons in a sealed envelope with postage fully prepaid, addressed to the defendant at his or her usual place of abode.” 735 ILCS 5/2-203(a) (West 2014). The process server attested in an affidavit that service was made on Vesta personally on August 12, 2014. Furthermore, Vesta filed numerous motions with the circuit court and sought rulings on those motions, thus submitting herself to the jurisdiction of the court. See *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 19. Moreover, our courts have consistently held that a court will have personal jurisdiction over a party “because of either the person’s participation in the case or recognition of benefits from the

proceeding.” *In re Marriage of Verdung*, 126 Ill. 2d 542, 548 (1989).

¶ 18 Turning to defendants’ argument that Vesta was improperly joined as a party to the foreclosure action, defendants confuse the concept of “necessary parties” and “permissible parties.” Section 15-1501(a) of the Foreclosure Law (735 ILCS 5/15-1501(a) (West 2014)) identifies the parties which must be joined as defendants in a mortgage foreclosure proceeding by providing that “(i) the mortgagor and (ii) other persons (but not guarantors) who owe payment of indebtedness or the performance of other obligations secured by the mortgage and against whom personal liability is asserted shall be necessary parties.” In contrast, and pertinent to this appeal, a “permissible party” includes “[a]ll persons having a possessory interest in the mortgaged real estate” as well as “[a]ny other mortgagee or claimant.” 735 ILCS 5/15-1501(b)(1), (10) (West 2014). As Vesta executed and recorded numerous documents with the office of the recorder of deeds seeking to establish a lien on the property, she was properly joined as a permissible party by plaintiff, particularly where plaintiff amended its complaint to extinguish her interest in the subject property. Moreover, defendants’ claim that plaintiffs were not duly diligent in naming her as a party fails because Vesta was not added as a party to the foreclosure complaint until after she executed and recorded documents against the property in order to create a first lien in her favor. Accordingly, we conclude that the circuit court had jurisdiction over Vesta and she was properly added as a permissible party to the foreclosure action. See *id.*

¶ 19 Order Approving the Sale

¶ 20 Defendants generally maintain that the judicial sale of the property was conducted fraudulently and justice was otherwise not done in violation of sections 15-1508(b)(iii) and (iv) of the Foreclosure Law (735 ILCS 5/15-1508(b)(iii), (iv) (West 2014)). Regarding section 15-

1508(b)(iii), defendants' discernible argument is that the publication notice contained an incorrect legal description and thus was conducted fraudulently. As to section 15-1508(b)(iv), defendants assert that justice was not otherwise done where (1) the circuit court judge was biased against them and (2) plaintiff was not diligent in naming Vesta as a party to the foreclosure action.

¶ 21 In response, plaintiff contends that defendants have forfeited review of these issues where they failed to raise them before the trial court. We agree. The record demonstrates that defendants did not object to the motion to confirm the sale, request a briefing schedule, or otherwise file any documents prior to the circuit court's ruling on that motion that raised these specific arguments. Accordingly, we find these issues to be forfeited. See *Wells Fargo Bank, N.A. v. Maka*, 2017 IL App (1st) 153010, ¶ 24; *Standard Bank and Trust Co. v. Callaghan*, 215 Ill. App. 3d 76, 81 (1991). Despite this forfeiture, however, we will address defendant's decipherable arguments.

¶ 22 The standard of review of a circuit court's approval of a judicial sale is an abuse of discretion. *Household Bank, FSB v. Lewis*, 229 Ill. 2d 173, 178 (2008). "The circuit court abuses its discretion if it committed an error of law or where no reasonable person would take the view adopted by the court." *US Bank, National Ass'n v. Avdic*, 2014 IL App (1st) 121759, ¶ 18. The party opposing the foreclosure sale bears the burden of proving that sufficient grounds exist to disapprove the sale. *Bayview Loan Servicing, LLC v. 2010 Real Estate Foreclosure, LLC*, 2013 IL App (1st) 120711, ¶ 32.

¶ 23 Under the Foreclosure Law, the circuit court shall confirm the sale of the property unless it finds that one of four grounds exist to disapprove the sale: "(i) a notice required in accordance with subsection (c) of Section 15-1507 was not given, (ii) the terms of sale were unconscionable,

(iii) the sale was conducted fraudulently or (iv) justice was otherwise not done.” 735 ILCS 5/15-1508(b) (West 2014); *Mortgage Electronic Registration Systems, Inc. v. Barnes*, 406 Ill. App. 3d 1, 4 (2010). The Foreclosure Law expressly provides that when “shall” is used, it means that something is mandatory and not permissive. 735 ILCS 5/15-1105(b) (West 2014); *Lewis*, 229 Ill. 2d at 178 (holding the trial court must approve the judicial sale unless it finds that any of the four specified exceptions in section 15-1508(b) of the Foreclosure Law are present). Our supreme court has explained that a borrower seeking relief under section 15-1508(b)(iv) must demonstrate “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.” *Wells Fargo Bank, N.A. v. McCluskey*, 2013 IL 115469, ¶ 26.

¶ 24 Defendants maintain that the fact plaintiff published the notice of sale with an inaccurate legal description demonstrates the sale was fraudulently conducted in violation of section 15-1508(b)(iii) and therefore the circuit court abused its discretion when it granted the motion to confirm the sale.

¶ 25 A publication notice is required to include a legal description of the property sufficient to identify it with reasonable certainty. 735 ILCS 5/15-1507(c)(1)(C) (West 2014). The publication notice here contained an inaccurate legal description. In ruling on the motion to confirm the sale, the circuit court expressly addressed this issue and determined it did not amount to a significant error so as to prevent the confirmation of the sale.

¶ 26 We agree with the circuit court that the legal description in the publication notice was sufficient to identify the Property with reasonable certainty. In any event, defendants have provided no legal support for their proposition that a typographical error in the legal description

in a public notice is fatal to confirmation of the sale. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2017) (requiring “citation of the authorities *** relied on”); see also 735 ILCS 5/15-1508(d) (West 2014). As expressly stated in section 15-1507(c) of the Foreclosure Law, “an immaterial error in the information shall not invalidate the legal effect of the notice.” 735 ILCS 5/15-1507(c) (West 2014); *e.g.*, *Cragin Federal Bank for Savings v. American National Bank & Trust Co. of Chicago*, 262 Ill. App. 3d 115, 118 (1994) (defendants in foreclosure action conceded that the bank’s failure to include the case title, case number, and court in the public notice – as is required by section 15-1507 – constituted “immaterial errors which did not, in themselves, invalidate the sale”). Consequently, we cannot say that in this case an inaccurate legal description in the publication notice is sufficient to demonstrate the sale was fraudulently conducted in violation of section 15-1508(b)(iii). Thus, defendants have not met their burden that sufficient grounds exist to disprove the sale on this basis. See *Bayview Loan Servicing, LLC*, 2013 IL App (1st) 120711, ¶ 32.

¶ 27 Defendants also assert that justice was not otherwise done in violation of section 15-1508(b)(iv) of the Foreclosure Law because the circuit court judge was prejudiced against them when he denied their February 24, 2012, motion to change the legal description. We first observe that the propriety of the ruling on the motion to change the legal description could have been raised in the initial appeal and was not. See *Maka*, 2017 IL App (1st) 153010, ¶ 24; Accordingly, it must be forfeited on that basis alone. See *1010 Lake Shore Ass’n v. Deutsche Bank National Trust Co.*, 2015 IL 118372, ¶ 14 (declining to consider an argument that party failed to raise before the trial and appellate courts). Second, defendants fail to cite to any place in the record which supports their conclusory claims that the circuit court was biased in its ruling on the motion. As defendants fail to sufficiently present their claim by way of a complete record

and citations to relevant legal authority, we must presume the order entered by the circuit court was in conformity with the law and had a sufficient factual basis. See *Midstate Siding & Window Co.*, 204 Ill. 2d at 319; *Lieberman*, 379 Ill. App. 3d at 610; Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2017) (arguments raised on appeal shall be supported by citation to authority and the pages in the record relied upon by the appellant).

¶ 28 Defendants next contend that the circuit court abused its discretion when it allowed Vesta to be named as a defendant. Defendants maintain that because plaintiff knew of Vesta but did not name her in the initial complaint, justice was not otherwise done in accordance to section 15-1508(b)(iv) of the Foreclosure Law. We previously addressed this argument and have concluded it does not amount to error.

¶ 29 In sum, defendants have failed to meet their burden of proving that sufficient grounds exist to disapprove the sale. See *Bayview Loan Servicing, LLC*, 2013 IL App (1st) 120711, ¶ 32. We, therefore, cannot say the circuit court abused its discretion in confirming the sale. *Lewis*, 229 Ill. 2d at 178.

¶ 30 Remaining Arguments

¶ 31 To the extent that the brief filed by defendants purports to raise other issues, we find they are forfeited by their failure to clearly define them and support them with citations to relevant legal authority according to Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2017). See *Lieberman*, 379 Ill. App. 3d at 610. We will, however, address two remaining arguments. First, defendants challenge the propriety of the March 2012 sale of the property. This court vacated that sale in *Henderson I*. Consequently, any arguments raised by defendants in regards to the March 2012 sale fail. Second, defendants assert that a personal deficiency was entered against them. The record, however, reflects an *in rem* deficiency was entered. An action *in rem* is

considered to be “taken directly against property or one which is brought to enforce a right in the thing itself.” (Internal quotation marks omitted.) *Metrobank v. Cannatello*, 2012 IL App (1st) 110529, ¶ 16. Thus, no personal deficiency was entered against defendants.

¶ 32

CONCLUSION

¶ 33 For the reasons stated above, we affirm the judgment of the circuit court of Cook County.

¶ 34 Affirmed.