

No. 1-17-0386

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

BANK OF AMERICA, NA,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County
)	
v.)	No. 10 CH 47361
)	
JOSEF BOZEK; EVA BOZEK, a/k/a Ewa Bozek;)	
UNKNOWN OWNERS AND NONRECORD)	
CLAIMANTS; and CHICAGO TITLE LAND TRUST)	
CO., as Successor Trustee to First National Bank of)	
LaGrange Under the Trust Agreement dated May 17,)	
1991, a/k/a Trust No. 3003,)	
)	
Defendants,)	
)	Honorable
(Josef Bozek and Eva Bozek, a/k/a Ewa Bozek,)	Anna Loftus,
Defendants-Appellants).)	Judge, Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court lacked jurisdiction to enter any orders after July 31, 2015, the date the defendants filed a notice of removal to federal court pursuant to section 1441 of Title 28 of the United States Code (28 U.S.C. § 1441 *et seq.* (2012)).

¶ 2 The defendants, Josef Bozek and Eva Bozek, appeal *pro se* from various orders entered by the circuit court of Cook County in this mortgage foreclosure action filed by the plaintiff, Bank of America, N.A. (Bank of America). The defendants contend, *inter alia*, that the circuit court lacked jurisdiction to enter any orders after July 31, 2015, because, on that date, the case was removed to federal court pursuant to section 1441 of Title 28 of the United States Code (28 U.S.C. § 1441 *et seq.* (2012)). For the following reasons, we vacate and remand.

¶ 3 Bank of America initiated this action by filing a complaint under the Mortgage Foreclosure Law (735 ILCS 5/15-1101 *et seq.* (West 2010)), seeking to foreclose on residential property owned by the defendants. On February 4, 2011, Bank of America filed an amended complaint and the defendants, through counsel, filed an answer.

¶ 4 On February 17, 2015, Bank of America filed motions for summary judgment, reformation of deed, and entry of an order of default and judgment of foreclosure and sale. The circuit court set a briefing schedule giving the defendants until June 10, 2015, to file a response and Bank of America until July 1, 2015, to file a reply.

¶ 5 On July 31, 2015, more than four years after Bank of America filed its amended complaint, the defendants filed a notice of removal in the United States District Court for the Northern District of Illinois. See 28 U.S.C. § 1441 *et seq.* (2012). The certificate of service attached to the notice of removal states that copies were mailed that same day to Bank of America's attorneys and to the clerk of the circuit court. Also on July 31, 2015, a copy of the notice of removal was filed in the circuit court.

¶ 6 On August 25, 2015, the federal court entered an order dismissing the case without prejudice. That order stated, in pertinent part, as follows:

“On 7/31/15, Josef Bozek filed a notice of removal, attempting to remove to this Court Case No. 10 CH 47361, which he represents is pending in the circuit court of Cook County’s chancery division. He did not attach a copy of the complaint to the removal petition. However, given that the case was apparently initiated in 2010 (which we know because of the case number), it seems highly unlikely that the procedural requirements of the removal statute are met. See, e.g., 28 U.S.C. § 1446(b) (requiring the notice of removal to be filed within 30 days after receipt by the defendant of the initial pleading). Certainly, the notice of removal does not permit the Court to conclude that the requirements for removal are met. Accordingly, the case is dismissed without prejudice. Civil case terminated.”

The docket entries from the federal case show that Josef filed an exhibit on September 10, 2015, and a *pro se* appearance on October 26, 2015.

¶ 7 Two days later, on October 28, 2015, the circuit court entered separate orders granting Bank of America’s motions for summary judgment, reformation of deed, and a judgment of foreclosure and sale. The court also entered an order of default against JPMorgan Chase and Chicago Title Land Trust for failing to appear or plead, and an order dismissing the “unknown owners and non-record claimants” as defendants.

¶ 8 On November 30, 2015, the defendants moved to vacate the circuit court’s orders of October 28, 2015, raising a number of arguments, including their assertion that the court lacked jurisdiction to act in any manner after July 31, 2015, the date Josef “filed and perfected a Removal of the State Court action.” The defendants claimed that, because the federal court never remanded the matter back to State court, the circuit court never reacquired jurisdiction. The

circuit court construed the defendants' motion to vacate as a motion to reconsider and, on January 6, 2016, it denied that motion "with prejudice."

¶ 9 Thereafter, Bank of America filed a notice of sale, which was scheduled for August 11, 2016. On June 21, 2015, the defendants filed an emergency motion to stay the judicial sale, arguing, *inter alia*, that two cases were pending in federal court.

¶ 10 On August 11, 2016, the property was sold at a judicial sale to Bank of America as the highest bidder. Also on August 11, 2016, the circuit court denied the defendants' motion for an emergency stay on grounds that "[t]he sale *** may have already occurred" and the issue was moot. The court acknowledged, however, that:

"Case number 15-CV-06739 pended before Judge Blakey, *** in the Northern District. The case, which sought to remove the present Circuit Court action, was dismissed without prejudice on August 25, 2015. Prior to its dismissal, no orders were entered that would stay or otherwise affect these present proceedings."

¶ 11 On September 29, 2016, Bank of America presented a motion to approve the report of sale and distribution, to confirm the sale, enter an order of possession, and for a personal deficiency judgment. The defendants filed a response to the motion, raising many of the same issues they raised in their earlier pleadings, including their claim that the circuit court lacked jurisdiction as a result of the notice of removal.

¶ 12 On November 15, 2016, the circuit court entered an order approving the report of sale and distribution, confirming the sale of the property, granting Bank of America possession, and entering a personal deficiency judgment against the defendants. The court also denied the

defendants' jurisdictional challenge, noting its previous finding "that it does have subject matter jurisdiction."

¶ 13 On December 15, 2016, the defendants filed a "petition to vacate order granting summary judgment and order confirming sale" again arguing, *inter alia*, that the circuit court lacked jurisdiction as a result of the removal proceedings. The court construed the defendants' motion to vacate as a motion to reconsider and, on January 13, 2017, it entered a 17-page written order denying the motion. Regarding the defendants' claim that the court lacked jurisdiction, the court stated as follows:

"Defendants have repeatedly asserted that the foreclosure case was removed to federal court in 2015, and consequently that this Court lacked subject-matter jurisdiction to enter any Order thereafter. *** This is incorrect. Judge Blakey's minute order of August 25, 2016 in the federal removal case dismissed the case *without* perfecting the removal. Because the case was never removed, no remand was necessary, and this Court retained jurisdiction to enter orders.

* * *

This case was never removed. The Court had jurisdiction enter all Orders in this case." (Emphasis in original.)

This appeal followed.

¶ 14 We first address the defendants' contention that the circuit court lacked jurisdiction to enter any orders after July 31, 2015, the date the notice of removal to federal court was filed.

¶ 15 The procedure for removing a case from state court to federal court is governed by section 1446 of the United States Code (28 U.S.C. § 1446 (2012)). Section 1446(a) provides that a defendant must file a notice of removal in the district in which the state court action is pending

and it must be filed within 30 days after the defendant received the complaint in the state court action. 28 U.S.C. § 1446(a) (2012). Moreover, section 1446(d) states that:

“(d) Notice to adverse parties and State court. Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.” 28 U.S.C.A. § 1446(d) (West 2012).

When a notice of removal has been filed in federal district court and the requirements of section 1446(d) have been met, “the State court loses jurisdiction to proceed further *until the case is remanded.*” (Emphasis added.) *Eastern v. Canty*, 75 Ill. 2d 566, 571 (1979); see also *Hartlein v. Illinois Power Co.*, 151 Ill. 2d 142, 154 (1992). “Even if the basis of the district court’s remand is that the case was not removable, no action taken by the State court in the interim can stand.” *Eastern*, 75 Ill. 2d at 571. As a result, courts have consistently held that once a notice of removal has been filed, the state court is prohibited from proceeding any further unless there is an order of remand. See *id.* (citing cases). Proceedings that take place between removal and remand are void. *Illinois Licensed Beverage Ass’n, Inc. v. Advanta Leasing Services*, 333 Ill. App. 3d 927, 933 (2002).

¶ 16 In this case, the record discloses that the defendants filed a notice of removal in federal court and satisfied the procedural requirements of section 1446(d). In particular, the certificate of service attached to the defendants’ notice of removal states that it was sent via U.S. mail to Bank of America’s attorneys and also to the clerk of the circuit court on July 31, 2015. The record contains a “notice of filing” showing that the notice of removal was filed with the circuit court

that same day. We also note that Bank of America does not dispute that it received a copy of the notice or that it was filed with the circuit court. Since the procedural requirements of section 1146(d) had been fulfilled, the circuit court automatically lost jurisdiction on July 31, 2015, the date the defendants perfected removal to federal court.

¶ 17 Moreover, once the instant case was removed from the state court, only the federal court could restore jurisdiction to the circuit court by issuing a remand order. See 28 U.S.C. § 1447(c) (2012) (“A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.”) That was not done in the instant case. Instead, on August 25, 2015, the federal court merely stated that the case was “dismissed without prejudice.” Because a certified copy of a remand order was never “mailed by the clerk [of the federal district court] to the clerk of the State court” (see 28 U.S.C. 1447(c) (2012)), the circuit court did not reacquire jurisdiction and it erred when it took further action.

¶ 18 Nonetheless, Bank of America maintains that the circuit court retained jurisdiction because the defendants’ notice of removal was “untimely, deficient, and improper.” We disagree. This same contention was raised and rejected by the court in *People v. Martin-Trigona*, 28 Ill. App. 3d 605, 606 (1975).

¶ 19 In *Martin-Trigona*, the defendant filed a petition to remove the case to federal court and filed a copy of the petition with the circuit court. *Id.* at 605. With his removal petition pending in federal court, the defendant’s case went to trial and he was convicted of disorderly conduct. *Id.* On appeal, the court held that the circuit court lacked jurisdiction at the time of trial. In so holding, the court rejected the State’s argument that the defendant’s removal petition was patently frivolous and no remand was necessary. It reasoned that:

“the explicit language of the statute and its uniform construction preclude any other interpretation. The statute says, ‘The State court shall proceed no further unless and until the case is remanded.’ More specific and precise language would be hard to imagine. The State court had no jurisdiction to pursue this case once it had been removed to federal court. The proceedings in the circuit court were contrary to this express mandate and at a time when the court was without jurisdiction to proceed. It did not again acquire jurisdiction until the subsequent order of remandment from the federal court.” *Id.* at 606.

Because the judgment was entered at a time when the circuit court was without jurisdiction, the defendant’s conviction was reversed and the cause remanded for further proceedings. *Id.*

¶ 20 Similarly here, even if the defendants’ notice of removal was patently frivolous and had been “dismissed without prejudice,” the record contains no order remanding the case back to the circuit court. As such, even if it is true, as Bank of America contends, that the defendants’ removal petition was undeniably untimely, courts in Illinois and in other jurisdictions have concluded that no exceptions should be created to the general rule and thus have invalidated state court action taken after removal but before remand. See *Eastern*, 75 Ill. 2d at 571 (citing cases); *Martin-Trigona*, 28 Ill. App. 3d at 606 (citing cases); *Musa v. Wells Fargo of Delaware Trust Co.*, 181 So.3d 1275, 1283-84 (2015); *State ex rel. Morrison v. Price*, 285 Kan. 389, 394-96 (2007).¹ Since the defendants satisfied the procedural steps to perfect removal, the federal court

¹ We recognize that some courts have concluded that exceptions should be created to the general rule and have held that state courts retained jurisdiction following removal but before remand. See, e.g., *Astoria Federal Savings & Loan Ass’n/Fidelity New York FSB v. Lane*, 833 N.Y.S.2d 473, 476 (2009); *Booth v. Stenshoel*, 96 Wash. App. 1019, *2-4 (1999); *Ramsey v. A.I.U. Insurance Co.*, Case No. 84AP-317, 1985 WL 10329, *4-5 (1985). These cases are not binding on this court, and in any event, we decline to follow them in light of our supreme court’s decision *Eastern*, 75 Ill. 2d at 571 (stating that the appellate

had jurisdiction regardless of whether the case is removable or the notice frivolous. We conclude, therefore, that the circuit court lost jurisdiction on July 31, 2015, when the matter was removed to federal court and the orders entered by the circuit court on October 28, 2015, and November 15, 2016, from which the defendants now appeal, are void.

¶ 21 Finally, we note that, upon remand from federal court, the circuit court has the power to enforce all orders in effect prior to the filing of the removal petition. Section 1450 of the United States Code provides that all “injunctions, orders and other proceedings had in such action prior to its removal shall remain in full force and effect until dissolved or modified by the district court.” 28 U.S.C. § 1450 (2012). The language in section 1450 makes clear that if the district court remands the case and neither dissolves nor modifies the circuit court’s orders (entered prior to July 31, 2015), then such orders remain intact.

¶ 22 In light of our decision on this issue, we need not address the defendants’ other claims of error.

¶ 23 For the reasons stated, we vacate the circuit court’s orders of October 28, 2015, and November 15, 2016, and remand for further proceedings.

¶ 24 Vacated and remanded.

court in *Martin-Trigona* correctly held that the State court loses jurisdiction to proceed further until the case is remanded).