

No. 1-17-1081

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DEUTSCHE BANK NATIONAL TRUST COMPANY,)	Appeal from the
as Trustee for GSRPM Trust 2006-2 Mortgage, Pass-)	Circuit Court of
Through Certifications, Series 2006-2,)	Cook County.
)	
Plaintiff-Appellee,)	
)	No. 2015 CH 09071
v.)	
)	
ALLEN BURRELL,)	Honorable
)	William B. Sullivan,
Defendant-Appellant.)	Judge Presiding.

JUSTICE MIKVA delivered the judgment of the court.
Justices Harris and Griffin concurred.

ORDER

¶ 1 *Held:* Denial of defendant’s motion to quash service is reversed because plaintiff failed to show it conducted due inquiry into defendant’s whereabouts before obtaining service by publication and the trial court was therefore without personal jurisdiction over defendant.

¶ 2 The trial court in this mortgage foreclosure case permitted plaintiff, Deutsche Bank National Trust Company (Deutsche Bank), to serve defendant, Allen Burrell, by publication. Not surprisingly, Mr. Burrell never learned of that publication, and when Mr. Burrell did not appear or respond in this case, the trial court entered a default order against him and ordered a judicial

sale of his property, located at 8958 South Oglesby Avenue, Chicago, Illinois (Chicago property). After the judicial sale, Deutsche Bank moved for an order approving the sale and for an order of possession, which the trial court granted. Before the approval and possession could take effect, however, Mr. Burrell appeared and filed an emergency motion to quash service and to hold all orders entered after the service by publication void, arguing that the trial court lacked jurisdiction over him because Deutsche Bank failed to make the necessary showing to serve him by publication.

¶ 3 The trial court denied Mr. Burrell's motion the same day, without further briefing and without an evidentiary hearing. Mr. Burrell appealed. Because the affidavits filed by Deutsche Bank make clear that the bank came nowhere near the showing required for using publication rather than personal service to notify a defendant of a court proceeding, we reverse the orders of the trial court, vacate the order of foreclosure and order confirming the foreclosure sale, and remand for further proceedings consistent with this opinion.

¶ 4 I. BACKGROUND

¶ 5 The circuit court of Cook County entered a standing order appointing Firefly Legal, Inc. (Firefly Legal), as the special process server in all mortgage foreclosure cases filed by counsel for Deutsche Bank for the period of April 1, 2015, to June 30, 2015. On June 9, 2015, Deutsche Bank filed its initial complaint to foreclose mortgage on the Chicago property located, as the bank styled it, at "8958 South Ogleby." We note that this misspelling of *Oglesby*, a street in Chicago, occurs in the original complaint, the case captions in virtually all of Deutsche Bank's trial court filings, all of the search and inquiry affidavits it provided to support its eventual service by publication, and even in its brief on appeal.

¶ 6 The Chicago property secured a line of credit issued to Mr. Burrell, the total unpaid

balance of which was allegedly \$221,406.83 as of June 2, 2015. Deutsche Bank sought a judgment of foreclosure and sale and an order granting it possession of the property.

¶ 7 On December 16, 2015, Deutsche Bank filed an affidavit to allow service by publication pursuant to section 2-206 of the Code of Civil Procedure (Code) (735 ILCS 5/2-206 (West 2014)). The affidavit stated that (1) “defendants reside or have gone out of this State, or on due inquiry cannot be found, or are concealed within this state, so that process cannot be served upon them”; (2) “diligent inquiry has been made as to the whereabouts of all the aforesaid defendants”; (3) “upon diligent inquiry, the place of residence of the aforesaid defendants cannot be ascertained and/or [the] last known place of residence [for] Allen Burrell [and Unknown Owners and Non-Record Claimants is] 8958 South Ogleby [*sic*], Chicago, IL 60617”; and (4) “service upon the defendants has been attempted by the court appointed special process server (see attached exhibits).”

¶ 8 Deutsche Bank attached to its publication affidavit its previously-filed “diligent inquiry” affidavit, along with the affidavits of three process servers. All four affiants were employed by Firefly Legal. In his notarized “diligent inquiry” affidavit, dated August 28, 2015, Firefly Legal employee Kevin Pedersen detailed the database searches he performed on July 2, 2015. Mr. Pedersen stated that, based on his searches, he concluded that Mr. Burrell’s “last known address of residence” was 8958 South Ogleby [*sic*]” in Chicago. However, Mr. Pedersen conducted an inquiry of credit information based on Mr. Burrell’s social security number that revealed not only this address but two additional addresses for Mr. Burrell: (1) “2964 W. 74th Ln Merrillville IN 46410” (Merrillville property) and (2) “514 Butterfield Coach Rd Springdale AR 72764.” According to the affidavit, a driver’s license search revealed “no records of a current residence”; a motor vehicle search, voter registration search, and department of state (professional license)

search revealed “no alternative residence”; directory assistance stated there was “no land line listing a current alternative address for our subject in Cook County, Illinois”; a nationwide masterfile death search, department of corrections records (federal, state, and county) search, and employment search revealed no records found; and a property tax search revealed “no new mailing address or current residence found.”

¶ 9 Mr. Pedersen also summarized the various service attempts attested to by the three other Firefly Legal process servers—James Anderson, Jay Saime, and Aaron Hart—each of whom provided affidavits. In his notarized affidavit, dated July 1, 2015, Mr. Anderson stated that he attempted to serve Mr. Burrell at the Chicago property 14 times between June 10 and June 28, 2015, including attempts in the morning, afternoon, and evening. Mr. Anderson stated that, during his June 14, 2015, attempt, he spoke to an individual he described as “M/AA/40’s 5-10 220 Black hair Brown eyes,” who “stated the Defendant was not there but refused to give any other info.” In his service attempt on June 21, 2015, Mr. Anderson spoke to an individual he described as “M/AA/50’s 5-10 200 SP Hair brown eyes,” who “stated the defendant his sister [sic] was not home at this time” but “refused to give his name or accept the summons.” In nearly all of the attempts, Mr. Anderson “found the blinds closed and no lights *** on inside the home *** [with] [n]o answer at the front door of the home.” Affidavits from Mr. Anderson dated August 4, 2015, and August 6, 2015, were also attached but merely repeated the information contained in his July 1, 2015, affidavit.

¶ 10 There was only one attempt at the Merrillville property. Mr. Saime described in his affidavit, dated July 13, 2015, that he attempted to serve Mr. Burrell at the Merrillville property on July 7, 2015, at 7:50 a.m. He attested that “[p]er current resident, the defendant is unknown at this address,” and that he “[s]poke to an older black female getting into a Buick outside of the

home.” He “asked if Allen Burrell was home,” and she “replied she does not know this person.” No other attempts were made to serve Mr. Burrell at the Merrillville property.

¶ 11 In his notarized affidavit, dated July 14, 2015, Mr. Hart stated that he made one attempt to serve Mr. Burrell at the Springdale, Arkansas, address, on July 6, 2015, at 3:25 p.m. Mr. Hart stated of this attempt: “No building or apartment number provided to perfect service. Non-serve per the client. No information provided by apartment management.”

¶ 12 Finally, the bank’s publication affidavit included an additional notarized affidavit from Mr. Anderson, this one dated August 26, 2015, detailing 15 additional service attempts at the Chicago property between August 8 and August 25, 2015. In each attempt he “found the blinds closed and no lights *** on inside the home.” On two instances—August 17 and August 25, 2015—he recounted conversations with neighbors, first that an unidentified male neighbor “stated he ha[d] not seen anyone at the home in weeks” and later that an unidentified female neighbor “stated she ha[d] not seen anyone at the home in months.”

¶ 13 Based on these affidavits, the trial court allowed service by publication, and the clerk of the circuit court published the notice of proceedings in the Chicago Daily Law Bulletin on December 21 and December 28, 2015, and again on January 4, 2016. The clerk also mailed three copies of the notice of publication—one addressed to Mr. Burrell, one to “unknown owners,” and another to “non-record claimants”—all to the Chicago property. Deutsche Bank then moved for entry of a default order, an order reforming mortgage, a judgment of foreclosure, and an order appointing a selling officer, all of which the trial court granted on September 8, 2016.

¶ 14 On December 30, 2016, the bank filed a motion for an order approving the report of sale and distribution and confirming the sale. The report of sale and distribution, receipt of sale, and certificate of sale were filed on January 3, 2017. Deutsche Bank moved for an order approving

the selling officer's report and for an order of possession on January 4, 2017, and the trial court entered those orders on January 18, 2017, with the order of possession becoming effective after a 30-day stay.

¶ 15 On February 16, 2017, Mr. Burrell filed an appearance and jury demand, along with an emergency motion to quash service and hold all orders void. In his motion he argued, among other things, that “[a]t no time were reasonable attempts made to personally serve” him, that “the purported service by publication *** was improper” because of the lack of reasonable attempts at personal service, and that “at no time was there attempted service of summons on [him] at his residence in Indiana or at his place of employment in Indiana.” He further argued that the publication affidavit did not confer personal jurisdiction over him because “[t]here was no due diligence performed to insure that there could be personal service on [him] before service by publication” and because the affidavit was “deficient on its face.”

¶ 16 Mr. Burrell attached to his motion to quash a notarized affidavit dated February 16, 2017, in which he attested that he “discovered that there was an issue with the subject property because a neighbor to the property just informed [him] that there was a notice posted on the door of said property”; he was “employed by the B and W Cartage Company, 411 Blaine Street, in Gary, Indiana”; his current residence was “2964 West 74th Lane, Merrillville, Indiana,” and he had lived there “continuously for approximately fourteen (14) years”; “at no time did anyone come to either [his] place of employment or [his] house and attempt to serve [him]”; “the attempt allegedly made to serve [him] as set forth in the Affidavit of Service(s) filed in this matter [wa]s disingenuous”; and that it was his “desire to maintain ownership of the subject property since it ha[d] been in [his] family for years.” Mr. Burrell attached to his affidavit a February 2017 Comcast bill addressed to him, an image depicting his Indiana driver's license, and his January

2017 pay stub from B&W Cartage Company, all of which bore the Merrillville, Indiana address.

¶ 17 The trial court heard argument on Mr. Burrell’s motion on February 17, 2017, and denied it without an evidentiary hearing. In its handwritten order entered the same day, it found “that there was due diligence by the Plaintiff in service attempts upon Allen Burrell,” that it “ha[d] heard the arguments of both counsel,” and that it “determined that the service by publication was proper.”

¶ 18 **II. JURISDICTION**

¶ 19 Mr. Burrell filed his notice of appeal on February 24, 2017, challenging the trial court’s February 17, 2017, order denying his motion to quash service. Illinois Supreme Court Rule 303(a)(1) mandates that a notice of appeal “must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from, or, if a timely posttrial motion directed against the judgment is filed, *** within 30 days after the entry of the order disposing of the last pending postjudgment motion directed against that judgment or order.” Ill. S. Ct. R. 303(a)(1) (eff. Jan. 1, 2015).

¶ 20 The trial court’s January 18, 2017, order approving the sale and distribution was the final judgment for purposes of appeal (*EMC Mortgage Corp. v. Kemp*, 2012 IL 113419, ¶ 11), and Mr. Burrell timely challenged that judgment with his motion to quash. Upon denial of his postjudgment motion, Mr. Burrell timely appealed. We therefore have jurisdiction under Illinois Supreme Court Rules 301 and 303, governing appeals from final judgments entered by the circuit court in civil cases. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. Jan. 1, 2015).

¶ 21 **III. ANALYSIS**

¶ 22 Mr. Burrell argues on appeal that Deutsche Bank failed to employ due diligence in attempting to personally serve him before resorting to service by publication and that the trial

court prematurely denied his motion to quash with neither a response from the bank to his motion nor an evidentiary hearing on the diligence of the bank's efforts. Deutsche Bank acknowledges the trial court ruled without an evidentiary hearing. When the trial court rules on a motion to quash with no evidentiary hearing, relying only on the parties' written submissions and the arguments of counsel, we review that ruling *de novo*. *Bank of New York Mellon v. Karbowski*, 2014 IL App (1st) 130112, ¶ 10.

¶ 23 “It is essential to the validity of a judgment that the court have both jurisdiction of the subject matter of the litigation and jurisdiction over the parties.” *State Bank of Lake Zurich v. Thill*, 113 Ill. 2d 294, 308 (1986). “Absent a general appearance, personal jurisdiction can be acquired only by service of process in the manner directed by statute.” *Id.* Section 2-206 of the Code allows a plaintiff to serve process on a defendant by publication but limits such service to cases in which the plaintiff has “strictly complied” with the statutory requirements. *Deutsche Bank National Trust Co. v. Brewer*, 2012 IL App (1st) 111213, ¶ 18. Section 2-206 provides:

“Whenever, in any action affecting property or status within the jurisdiction of the court, *** plaintiff or his or her attorney shall file *** an affidavit showing that the defendant resides or has gone out of this State, or on due inquiry cannot be found, or is concealed within this State, so that process cannot be served upon him or her, and stating the place of residence of the defendant, if known, or that upon diligent inquiry his or her place of residence cannot be ascertained, the clerk shall cause publication to be made in some newspaper published in the county in which the action is pending.” 735 ILCS 5/2-206(a) (West 2014).

¶ 24 Rule 7.3 of the circuit court of Cook County elaborates on a plaintiff's burden to conduct a “due inquiry” as to a defendant's whereabouts before submitting an affidavit for service by

publication:

“Pursuant to 735 ILCS 5/2-206(a), due inquiry shall be made to find the defendant(s) prior to service of summons by publication. In mortgage foreclosure cases, all affidavits for service of summons by publication must be accompanied by a sworn affidavit by the individual(s) making such ‘due inquiry’ setting forth with particularity the action taken to demonstrate an honest and well directed effort to ascertain the whereabouts of the defendant(s) by inquiry as full as circumstances permit prior to placing any service of summons by publication.” Cook County Cir. Ct. R. 7.3 (Oct. 1, 1996).

¶ 25 “Although the Code contemplates service by publication, our court long ago recognized that such service is an extraordinary means of serving notice—one unknown at the common law and that, from the perspective of the person to be notified, it is the least satisfactory method of giving notice and often it is no notice at all.” (Internal quotation marks omitted.) *Karowski*, 2014 IL App (1st) 130112, ¶ 13. We have held that “these statutory prerequisites are not intended as *pro forma* or useless phrases,” and have cautioned plaintiffs that when their efforts to comply with these provisions are “casual, routine, or spiritless,” service by publication will be deemed invalid. *Bank of New York v. Unknown Heirs & Legatees*, 369 Ill. App. 3d 472, 476 (2006); see, e.g., *JPMorgan Chase Bank, National Ass’n v. Ivanov*, 2014 IL App (1st) 133553, ¶ 50 (finding the trial court lacked jurisdiction over the defendant because the plaintiff bank’s three prepublication attempts at service, conducted over four days at the same time of day and during a holiday weekend, were “ ‘casual, routine, [and] spiritless’ ”). Failure to effect service as required by law deprives a court of jurisdiction, and any default judgment or foreclosure judgment based on defective service is void. *Karowski*, 2014 IL App (1st) 130112, ¶ 12.

¶ 26 A plaintiff seeking to serve by publication must show that it conducted both “ ‘diligent inquiry’ ” in ascertaining the defendant’s residence and “ ‘due inquiry’ ” in ascertaining his whereabouts. *Citimortgage, Inc. v. Cotton*, 2012 IL App (1st) 102438, ¶ 18. We have recognized that a plaintiff may show it diligently inquired—through, for example, search databases, public records, or contacting neighbors and known counsel—to ascertain the last known address of a given defendant but nonetheless fail to “duly inquire” into the actual whereabouts of a defendant based on those search and service efforts. *Id.* ¶¶ 27-28.

¶ 27 Mr. Burrell argues the trial court erred in denying his motion to quash because Deutsche Bank “failed to conduct an honest and well-directed effort to personally serve [him].” He argues that “the service attempt at his residence in Merrillville “on only one occasion,” resulting in “an unknown, un-named individual, who claimed that she did not know him,” cannot be construed as a “due inquiry” into his whereabouts, as the statute requires. We agree.

¶ 28 If the phrase “honest and *well directed* effort to ascertain the whereabouts of the defendant(s)” (emphasis added) (Cook County Cir. Ct. R. 7.3 (Oct. 1, 1996)) means anything, it must mean that previous failed attempts at service ought to inform later service attempts, particularly when the initial “diligent inquiry” into the defendant’s place of residence revealed multiple addresses tied to the defendant. Here, Deutsche Bank may have made a “diligent inquiry” to ascertain Mr. Burrell’s possible residences, but it is clear to us that the bank failed to make any “due inquiry,” *i.e.*, an “honest and well directed effort” to ascertain his actual whereabouts. Although the bank made numerous attempts to serve Mr. Burrell at the Chicago address, those attempts revealed serious questions as to whether he actually resided there. In the mean time, the bank had another address at which credit card information suggested Mr. Burrell might reside. At that address, the bank made only one attempt and that attempt consisted only of

a conversation with some unnamed person in front of the house who said that she did not know Mr. Burrell. This was not “due inquiry.”

¶ 29 Deutsche Bank points to Mr. Anderson’s affidavit “chronicl[ing] his 14 attempts to obtain personal service at [Mr.] Burrell’s last known address”—at the Chicago property—in June 2015, efforts taken during different times of day and different days of the week. It likewise insists Mr. Pedersen’s “diligent inquiry” affidavit detailing searches of numerous databases showed it complied with section 2-206 of the Code. Furthermore, “the [service] affidavits indicate that Deutsche Bank attempted service on [Mr. Burrell] at multiple locations gleaned from [his] credit information.” But Deutsche Bank does not dispute that there was only one attempt to serve Mr. Burrell at the Merrillville property or that it consisted only of the one conversation with an unnamed female getting into a car in front of that address.

¶ 30 In support of its argument that service by publication was proper here, the bank relies heavily on our decision in *TFC National Bank v. Richards*, 2016 IL App (1st) 152083. In *Richards*, we affirmed the denial of a motion to quash service and found that a bank’s 14 attempts at service at various days of the week and times of day showed “compli[ance] with the statutory and local rule requirements for service by publication.” *Id.* ¶ 33.

¶ 31 But *Richards* is completely different from this case because the database searches conducted by the bank’s process servers in that case “revealed only one known address for [the] defendant.” *Id.* *Richards* thus provides no guidance as to what service attempts must be made when there are multiple addresses. Moreover, in *Richards*, some of the attempts at service showed the “lights were on inside the property and dogs were in the yard.” *Id.* Thus, there was good reason in *Richards* to believe that the bank had the right address. In contrast, while Mr. Anderson attempted to serve Mr. Burrell at the Chicago property 29 times, many of those

attempts revealed “blinds closed and no lights are on inside the home” and “[n]o answer at the front door.” This should have suggested that the Chicago property might not have been anyone’s residence. *Richards* does not help the bank here.

¶ 32 Deutsche Bank also relies on our decision in *BankUnited v. Velcich*, 2015 IL App (1st) 132070, which did involve a defendant for whom database searches revealed multiple addresses. *Velcich* is, however, also quite different than this case. There, we affirmed the denial of the defendant’s motion to quash because the affidavits revealed that the bank made multiple attempts at five different Chicago addresses, including multiple attempts at what turned out to be the defendant’s correct address. In the initial attempt at that correct address, the process server spoke to a family member who said that the defendant was not there and would not be back for several months. *Id.* ¶ 8. The bank then made seven further unsuccessful attempts at service at that same address the following year, on different days and at different times of day. *Id.* ¶ 14. The bank also made unsuccessful attempts at four other properties where the defendant either owned property or was believed to work as a landlord, each unsuccessful. *Id.* ¶¶ 9-12. This nearly year-long effort spanning five different Chicago properties shows efforts far above what Deutsche Bank attempted in this case.

¶ 33 Mr. Burrell asks us to send this case back for an evidentiary hearing. As we have stated: “If the defendant is able to present a significant issue with respect to the truthfulness” of the affidavit for service by publication, “then the trial court should hold an evidentiary hearing on the issue with the burden of proof being upon the plaintiff to establish that due inquiry was made to locate the defendant.” *Cotton*, 2012 IL App (1st) 102438, ¶ 18. Here, however, we have accepted everything in the process servers’ affidavits as true, and it is clear that those affidavits fail to establish “due inquiry” was undertaken to locate Mr. Burrell. The bank was aware of an

address in Indiana, where they knew that Mr. Burrell might reside and where he did, in fact, reside, and the entire attempt to serve him personally there consisted of a conversation with an unnamed female getting into a car in front of that address in which she said that she did not know Mr. Burrell. The trial court was therefore without jurisdiction and its orders entered pursuant to the service by publication are void; there is no need for an evidentiary hearing. *Karowski*, 2014 IL App (1st) 130112, ¶ 12.

¶ 34 Deutsche Bank suggests in footnote 6 in its appellate brief, that personal service is not required here because Mr. Burrell admitted in his motion to quash service that he is a resident of Indiana and not Illinois. Deutsche Bank says that the trial court could have rejected Mr. Burrell's argument that service by publication was improper because, "[a]s section 2-206 states, service by publication is appropriate when the plaintiff files 'an affidavit showing that the defendant resides or has gone out of this state ***.'" We need not address this argument. We have made it clear that "[s]ubstantive arguments may not be made in footnotes and responses made thereto are likewise improper." *Technology Solutions Co. v. Northrop Grumman Corp.*, 356 Ill. App. 3d 380, 382 (2005). Deutsche Bank also improperly offers this footnote assertion without citation to any authority. Supreme court rules make it clear that arguments shall contain "citation of authorities." Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). Arguments made with no elaboration or legal citation are deemed forfeited. *City of Elgin v. Arch Insurance Co.*, 2015 IL App (2d) 150013, ¶ 39.

¶ 35 However, even if we were to consider this argument, we would find that the bank's after-the-fact justification for publication based on Mr. Burrell's Indiana residence has no merit. Over a hundred years ago, in *Albrecht v. Hittle*, 248 Ill. 72, 73-74 (1910), our supreme court construed language similar to that in section 2-206 and drew a distinction between resident and nonresident

defendants. The court held in *Albrecht* that service by publication could be had on a defendant who resides or has gone out of state, without a showing that “process cannot be served upon him or her.” *Id.* In that case the court reviewed a will contest in which plaintiffs obtained jurisdiction over certain nonresident defendants through publication, but did not state in their affidavit for service by publication that process could not be served upon those out-of-state defendants. Our supreme court held that “[t]he provision of the statute [for service by publication] for stating that process cannot be served upon a defendant relates only to one who is concealed within the state or on due inquiry cannot be found.” *Id.*; see also *Trustees of Schools v. Steele*, 33 Ill. 2d 575, 578-79 (1965) (citing and distinguishing *Albrecht*).

¶ 36 Section 2-206 requires that publication be justified by an affidavit before the publication is allowed. 735 ILCS 5/2-206(a) (West 2014) (“[P]laintiff or his or her attorney shall file *** an affidavit showing [one of the four scenarios that justify publication.]”). In *Albrecht*, the affidavit the plaintiff presented in support of publication affirmatively “stated that [defendants] were not residents of this state, and that the affiant was informed and believed that they resided at certain places therein named, in other states.” *Albrecht*, 248 Ill. at 73. Deutsche Bank’s affidavit for service by publication makes no such showing. The affidavit begins with the general statement that “Defendants reside or have gone out of this State, or on due inquiry cannot be found, or are concealed within this State, so that process cannot be served upon them,” which is merely a verbatim recitation of the four scenarios contemplated by section 2-206. It then states, “upon diligent inquiry, the place of residence of the aforesaid Defendants cannot be ascertained and/or [the] last known place of residence [for] Allen Burrell [is] 8958 South Ogleby [*sic*], Chicago, IL 60617.” Deutsche Bank maintained in its affidavit that Mr. Burrell was an in-state resident, and only now seeks to justify its service by publication, long after the fact, based on his residence in

Indiana. As we have repeatedly held, the statutory requirements for publication must be “strictly complied” with. *Brewer*, 2012 IL App (1st) 111213, ¶ 18. Deutsche bank offers no support for a suggestion that out-of-state residency can serve as an after-the-fact justification and our own research has revealed no case that holds that.

¶ 37 We also question whether a distinction between nonresident and resident defendants is applicable here. Treating Illinois defendants differently than those who happen to live in other states raises due process concerns. The United States Supreme Court made clear long ago in *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), that due process means that all parties to a court proceeding, “resident or nonresident” must be given a “full opportunity to appear and be heard,” and that publication is not appropriate notice to out-of-state residents whose residence is ascertainable. *Id.* at 313, 319. Resident or not, “[p]roviding effective service is a means of protecting an individual’s right to due process by allowing for proper notification of interested individuals and an opportunity to be heard.” *In re Dar. C.*, 2011 IL 111083, ¶ 61 (citing *Mullane*, 339 U.S. 306). “This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest.” *Mullane*, 339 U.S. at 314.

¶ 38 The reasons for drawing a distinction between residents and nonresidents in foreclosure cases seem increasingly tenuous. Publication notice to nonresidents may be appropriate in a truly *in rem* proceeding. See *Davis v. Davis*, 9 Ill. App. 3d 922, 927 (1973) (finding service by publication could give the court *in rem* jurisdiction over the parties’ marital status). But our supreme court recently held that “a mortgage foreclosure proceeding must be deemed a *quasi in rem* action,” in that, unlike *in rem* actions where “the property itself is the defendant,” the defendant mortgagor “whose interest in the real estate is the subject of the mortgage” is a

necessary party defendant on whom personal service must be made. *ABN AMRO Mortgage Group, Inc. v. McGahan*, 237 Ill. 2d 526, 535-36 (2010). Also, the standing order appointing Firefly Legal as the special process server in all mortgage foreclosure cases filed by counsel for Deutsche Bank reflects the ease with which plaintiffs can now serve out-of-state defendants, particularly in foreclosure cases. In any event, even if this distinction remains valid, it is of no help to Deutsche Bank in this case.

¶ 39

IV. CONCLUSION

¶ 40 For these reasons, we reverse the trial court's denial of Mr. Burrell's motion to quash service by publication, vacate the judgment of foreclosure and order confirming the foreclosure sale, and remand this case to the trial court for further proceedings consistent with this opinion.

¶ 41 Reversed and remanded.