

No. 1-18-0042

**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 DISTRICT

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U.S. BANK TRUST NATIONAL ASSOCIATION, not )  
in its individual capacity but solely as Owner Trustee for )  
Newlands Asset Hold Trust, )

Plaintiff-Appellee, )

v. )

KEVIN AMMONS; MARSHA R. AMMONS; THE )  
CITY OF CHICAGO, an Illinois Municipal Corporation; )  
UNKNOWN OWNERS AND NON-RECORD )  
CLAIMANTS; and UNKNOWN OCCUPANTS, )

Defendants )

(Kevin Ammons, Defendant-Appellant). )

Appeal from the  
Circuit Court of  
Cook County

No. 14 CH 5551

The Honorable  
Michael F. Otto,  
Judge Presiding.

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JUSTICE PIERCE delivered the judgment of the court.  
Presiding Justice Mikva and Justice Griffin concurred in the judgment.

**ORDER**

¶ 1 *Held:* The judgment of the circuit court is affirmed. Defendant failed to demonstrate that the circuit court abused its discretion by denying his motion to vacate a default judgment, or that the circuit court abused its discretion by confirming the judicial sale.

¶ 2 Defendant Kevin Ammons appeals from the circuit court's order denying his motion to vacate a default judgment and a judgment of foreclosure and sale. He also appeals from the circuit court's order approving a judicial sale. We affirm the circuit court's judgment.

¶ 3 I. BACKGROUND

¶ 4 On January 12, 1989, Kevin and Marsha Ammons executed a promissory note in favor of Westamerica Mortgage Co. secured by a mortgage on their home. In April 2014, Bank of America, N.A. initiated this foreclosure action, alleging that the Ammons' were in default for failing to make their required monthly payments. Copies of the mortgage and note were attached to the complaint. The note reflected several indorsements, including an indorsement in blank. Bank of America made numerous unsuccessful attempts to personally serve Kevin with process, and Kevin was served by publication on October 8, 2015. In September 2016, Bank of America filed motions for the entry of an order of default, a judgment of foreclosure and sale, to appoint a selling officer, and to substitute U.S. Bank Trust, not in its individual capacity but solely as Owner Trustee for Newlands Asset Holding Trust as the proper party plaintiff, based on an assignment of the mortgage. The motions were scheduled to be presented on October 28, 2016.

¶ 5 On October 28, 2016, the circuit court entered an order entering and continuing all of the motions generally. The circuit court's order states that an attorney appeared on behalf of Kevin, and that the circuit court extended the time for Kevin file an appearance and to answer the complaint until November 18, 2016. Kevin did not file an appearance or answer within the time prescribed by the circuit court. On December 2, 2016, plaintiff re-noticed its motions for the entry of an order of default, a judgment of foreclosure and sale, to appoint a selling officer, and to substitute party plaintiff for January 10, 2017. The circuit court granted the motions on January 10, 2017.

¶ 6 On February 9, 2017, Kevin filed an appearance through counsel, along with a motion to vacate the default judgment pursuant to section 2-1301 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1301 (West 2016)). Kevin’s motion to vacate asserted that he was not present on January 10, 2017, due to an “interruption of his employment and a relapse of throat cancer (lymphoma).” He asserted that he had been undergoing chemotherapy and radiation, which affected his “financial wherewithal and capacity to participate in his defense \*\*\* including the payment of the fee for his [a]pppearance.” He further asserted that he had good faith defenses to plaintiff’s capacity to enforce the note and mortgage, as well as to plaintiff’s and its predecessor’s “rejection and inaction” in responding to Kevin’s attempts to secure a loan modification. The motion to vacate was not supported by any affidavits or exhibits. Plaintiff did not file a written response to the motion to vacate.

¶ 7 On March 8, 2017, the circuit court denied Kevin’s motion to vacate. The circuit court’s written order found “that the defendant was previously granted leave to appear and answer on October 28, 2016[,] but failed to do so.” The record on appeal does not contain a transcript of the March 8, 2017, hearing. The judicial sale was scheduled for and occurred on August 22, 2017, and plaintiff was the highest bidder. Plaintiff then moved for an order approving the report of sale and distribution, confirming the judicial sale, and for an order of possession.

¶ 8 Kevin objected to the confirmation of sale, asserting that the judicial sale was “conducted fraudulently (lack of chain of title of the mortgage and failure to act on [Kevin’s] loan modification application),” and that the sale was conducted in material violation of the federal Making Home Affordable Program. Attached to Kevin’s response was his attorney’s affidavit, which stated that he submitted a Uniform Borrower Assistance Form (UBAF) to plaintiff’s servicing agent on June 13, 2017, and submitted a second UBAF on August 22, 2017. Copies of

the UBAFs, along with various other documents, were attached to the affidavit in support of Kevin's response. In its reply, plaintiff asserted that Kevin's "chain of title" argument was untimely, as the judgment of foreclosure had already been entered. Furthermore, plaintiff argued that the Making Home Affordable Program expired on December 31, 2016, and that even if the program were still available, Kevin failed to demonstrate that he filed a complete application for assistance prior to the judicial sale.

¶ 9 On December 22, 2017, the circuit court held a hearing on plaintiff's motion and entered an order approving the report of sale and distribution and an order of possession in favor of plaintiff. The record on appeal does not contain a transcript of the December 22, 2017, hearing. Kevin filed a timely notice of appeal.

¶ 10

## II. ANALYSIS

¶ 11 Kevin first argues that the circuit court abused its discretion by denying his motion to vacate because it "gave no indication that it considered [d]efendant's employment interruption, cancer diagnosis and treatment, and attendant financial stresses in considering the [m]otion to [v]acate." We find no abuse of the circuit court's discretion.

¶ 12 Section 2-1301(e) of the Code provides, "[t]he court may in its discretion, before final order or judgment, set aside any default, and may on motion filed within 30 days after entry thereof set aside any final order or judgment upon any terms and conditions that shall be reasonable." 735 ILCS 5/2-1301(e) (West 2016). A party seeking relief under section 2-1301(e) of the Code from a default "need not necessarily show the existence of a meritorious defense and a reasonable excuse for not having timely asserted such defense." *In re Haley D.*, 2011 IL 110886, ¶ 57. "Rather, the overriding consideration is simply whether or not substantial justice is being done between the litigants and whether it is reasonable, under the circumstances, to compel

the other party to go to trial on the merits.” *Id.* In deciding a section 2-1301(e) motion, the circuit court should consider all of the events leading up to the judgment and the specific facts of the case. *Id.* ¶ 69. We review the circuit court’s decision on a section 2-1301(e) motion for an abuse of discretion. *Wells Fargo Bank, N.A. v. Hansen*, 2016 IL App (1st) 143720, ¶ 14. The circuit court abuses its discretion only if it acts arbitrarily without the employment of conscientious judgment, exceeds the bounds of reason and ignores recognized principles of law, or if no reasonable person would take the position adopted by the circuit court. *Schmitz v. Binette*, 368 Ill. App. 3d 447, 452 (2006).

¶ 13 As noted above, Kevin has not supplied this court with a transcript or any bystander’s report of the circuit court’s March 8, 2017, hearing at which it considered Kevin’s motion to vacate. As the appellant, it was Kevin’s burden to supply this court with a sufficiently complete record to support his claim of error. *Hansen*, 2016 IL App (1st) 143720, ¶ 15 (citing *Foutch v. O’Bryant*, 99 Ill. 2d 389, 391-92 (1984)). Because we are unable to discern whether the circuit court heard any evidence or oral argument on the motion, and are unable to determine what factors the circuit court considered in reaching its decision on the motion to vacate, we must presume that the circuit court acted within its authority and in accord with established legal principles. *Id.*

¶ 14 The circuit court’s March 8, 2017, written order states that Kevin “was previously granted leave to appear and answer on October 28, 2016[,] but failed to do so.” As of March 8, 2017, no answer had been filed. The circuit court’s finding is supported by the record, which reflects that on October 28, 2016, an attorney appeared in court on behalf of Kevin and that the circuit court extended the time for Kevin file an appearance and to answer the complaint until November 18, 2016. No appearance or answer was filed, and a default order was entered on

January 10, 2017. We therefore cannot say that the circuit court abused its discretion by denying Kevin’s motion to vacate where over three months elapsed between the time the circuit court extended the time in which to file an appearance and answer (October 28, 2016) and the date on which an attorney filed an appearance on behalf of Kevin (February 9, 2017). The lack of diligence shown could be a tactical delay, which the circuit court need not countenance. We therefore affirm the circuit court’s March 8, 2017, order denying Kevin’s motion to vacate.

¶ 15 Next, Kevin argues that the circuit court abused its discretion by confirming the judicial sale. He contends that he “had good faith, meritorious defenses to [p]laintiff’s claim as mortgagee,” and that he had applied for assistance under—and that the judicial sale was conducted in material violation of—the federal Making Home Affordable Program. We again find no abuse of the circuit court’s discretion.

¶ 16 We first reject Kevin’s argument that his “good faith, meritorious defenses” are an adequate basis to deny confirmation of a judicial sale. Section 15-1508(b)(iv) of the Illinois Mortgage Foreclosure Law provides that upon the filing of a motion to confirm a judicial sale, unless the circuit court finds that “justice was not otherwise done, then the court shall then enter an order confirming the sale.” 735 ILCS 5/15-1508(b)(iv) (West 2016). Our supreme court held in *Wells Fargo Bank N.A. v. McCluskey* that

“once a motion to confirm the sale under section 15-1508(b) has been filed, the court has discretion to see that justice has been done, but the balance of interests has shifted between the parties. At this stage of the proceedings, objections to the confirmation under section 15-1508(b)(iv) cannot be based simply on a meritorious pleading defense to the underlying foreclosure complaint.” 2013 IL 115469, ¶ 25

Instead, a defendant must establish 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.* ¶ 26.

¶ 17 Kevin did not argue in the circuit court, and does not argue on appeal, that plaintiff engaged in any fraud or made any misrepresentations, or that Kevin has other equitable defenses that plaintiff prevented him from raising. Therefore, Kevin’s argument that he had a meritorious defense to the foreclosure complaint is squarely precluded by *McCluskey*.

¶ 18 Next, Kevin argues that the property was sold in material violation of the Making Home Affordable Program. His appellate argument, however, is patently deficient. His argument consists of a single paragraph, devoid of any citations to the record or to authority to support his contention, in violation of Illinois Supreme Court Rule 341(h)(7) (eff. May 25, 2018). His failure to develop and advance any proper argument results in forfeiture. Ill. S. Ct. R. 341(h)(7) (“Points not argued are forfeited[.]”).

¶ 19

### III. CONCLUSION

¶ 20 For the foregoing reasons, the judgment of the circuit court is affirmed

¶ 21 Affirmed.