SIXTH DIVISION
May 17, 2019

No. 1-18-0414

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

V & T INVESTMENT CORPORATION	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 17 M1 721404
	)	
SHANE E. LUNDY,	)	Honorable
	)	Elizabeth A. Karkula,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court
Presiding Justice Delort and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 *Held*: Service was properly effectuated upon defendant pursuant to section 2-203.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-203.1 (West 2016)). Therefore, the trial court had personal jurisdiction to enter its orders against defendant.

¶ 2 Defendant, Shane E. Lundy, appeals the order of the circuit court denying his motion to quash service. On appeal, Lundy contends that the court improperly denied his affidavit to quash service where he was never served with the complaint for possession or forcible detainer. For the following reasons, we affirm.

¶ 3 I. JURISDICTION

¶ 4 The trial court entered an order denying Lundy's motion to quash on January 29, 2018. Lundy filed a notice of appeal on February 15, 2018. Accordingly, this court has jurisdiction pursuant to Illinois Supreme Court Rules 303 (eff. July 1, 2017), and 304(a) (eff. Mar. 8, 2016), governing appeals from final judgments entered below.

¶ 5 II. BACKGROUND

¶ 6 The foreclosure and possession proceedings underlying this appeal involve property located at 4239 S. Langley Avenue in Chicago, Illinois. Plaintiff purchased the property at a court-ordered foreclosure sale that was confirmed by the trial court on June 13, 2017. The confirmation order included an order of possession against Lundy and his wife, Yulonda D. Lundy,[1] with execution stayed until July 14, 2017. Robert, the son of Lundy and Yulonda, was identified as also living in the property. Lundy is the only party defendant on appeal.

¶ 7 On September 12, 2017, a 90-day notice to Lundy, Yulonda, and unknown occupants, along with a copy of the confirmation order, was posted on the property. The notice with confirmation order was also sent by certified mail to 4239 S. Langley Avenue in Chicago, Illinois. The record contains a copy of a receipt showing that the material was delivered, but there is no return receipt with signature in the record. A printout of the United States Postal Service (USPS) tracking information shows that the package arrived at a regional distribution center on September 13, 2017, and the next day was "[i]n transit to Destination." On October 25, 2017, the package was identified as "Unclaimed/Being Returned to Sender" with a note that it

[1] Documents in the record contain numerous spellings including "Yulanda" and "Yolanda." We use the spelling in the trial court's order denying the motion to quash and used in other court filings, "Yulonda," which is also the spelling used in Ms. Lundy's affidavit in the record.

"could not be delivered" and after being "held for the required number of days *** is being returned to the sender."

¶ 8 On December 21, 2017, plaintiff filed a complaint for possession and monetary damages pursuant to the Forcible Entry and Detainer Statute (Act) (735 ILCS 5/9-102(a), 201 (West 2016)). On January 8, 2018, plaintiff filed a motion for special service as authorized by section 2-203.1 of the Code. The motion identified Lundy and Yulonda as "former owners of the property that was sold at a foreclosure sale to the plaintiff." The motion stated that "[t]he property is surrounded by a locked fence and the sheriff could not make entry." Lundy and Yulonda "know that service has been directed to them and will not answer the door." The motion was accompanied by the affidavit of Tam Huynh, plaintiff's secretary. Huynh stated that on December 30, 2017, the sheriff attempted service of summons at 4239 S. Langley Avenue in Chicago, Illinois, but could not enter the property. Huynh also stated that he was told by Lundy that "they are avoiding service." The sheriff's affidavit was also attached to the motion. The affidavit stated that the sheriff attempted service at 4239 S. Langley Avenue in Chicago, Illinois, on December 30, 2017, but found the gate locked. The sheriff knocked on the gate with no response. Service was not effectuated because the sheriff had "no access."

¶ 9 The trial court entered an order, finding "that the fence around the property is locked and the occupants are avoiding service." The order provided that service may be made by the special process server in the following manner:

> "1. Posting on the front and rear doors to the house if access can be made.
>
> 2. If access to front/rear doors cannot be made then summons and complaint may be posted to the front gate and any rear gate.

3. Process server will also mail a copy of the summons and complaint by first class mail to the defendants."

¶ 10 On January 18, 2018, Kathy DiNunno filed separate affidavits of service with the trial court for Lundy, Yulonda, Robert and "Unknown Occupants." In her affidavits, DiNunno stated that she is an employee of Elite Process Serving and Investigations, and served each party at 4239 South Langley Avenue in Chicago, Illinois, by "securely affixing a copy of this process to the front door of the property." Anthony Roscoe, also an employee of Elite Process Serving and Investigations, filed separate affidavits of service for Lundy, Yulonda, Robert and "Unknown Occupants," stating that he served the parties at 4239 South Langley Avenue in Chicago, Illinois, by "sending a copy of the process via Regular Mail."

¶ 11 On January 19, 2018, Lundy, representing himself, filed an "Affidavit of Facts and Truth *** to Quash Service for Lack of Personal Jurisdiction." In the affidavit, Lundy stated that he "never submitted to this court [*sic*] jurisdiction nor [had he] waived personal jurisdiction." He stated that he "was never served by alleged plaintiff or any process server or sheriff on behalf of the alleged plaintiff, and that this court has never established personal jurisdiction over me." He further stated that he has "been home every day from year 2014 to this present day" and he has "never received nor sign [*sic*] for any court documents or complaints via mail service by the plaintiff." Lundy stated that he found the case "online and not from the plaintiff or any other agent working or acting on behalf of the plaintiff." Lundy demanded that the trial court "dismiss and quash all court documents and complaint filed by the plaintiff for lack of personal jurisdiction" and for "other and further relief as the court deems just and equitable in favor of the alleged defendant." The record also contains affidavits of Yulonda and Robert that make substantially the same statements.

¶ 12 The trial court continued the proceedings on plaintiff's complaint and held a hearing on Lundy's motion to quash service on January 22, 2018. A transcript of the hearing is not in the record on appeal. After the hearing, the trial court denied Lundy's motion to quash.

¶ 13 On February 15, 2018, the trial court entered an eviction order against Lundy (as well as Yulonda and Robert "by previous order"), pursuant to plaintiff's complaint for possession. The order also entered a judgment amount of $18,058 in favor of plaintiff as money owed in rent or assessments and court costs. The record indicates that Lundy, Yulonda, and Robert left the property. Lundy subsequently filed this appeal.[2]

¶ 14 III. ANALYSIS

¶ 15 On appeal, Lundy challenges the trial court's January 29, 2018, and February 15, 2018 orders, arguing that the court did not have personal jurisdiction over him when it entered them. A court may impose a judgment against a party only if it has personal jurisdiction over him. *In re Dar. C.*, 2011 IL 111083, ¶ 60. "[A] defendant may consent to the court's jurisdiction by his appearance or may have personal jurisdiction imposed upon him by the effective service of summons." *Sutton v. Ekong*, 2013 IL App (1st) 121975, ¶ 17. It follows that the inadequate service of summons divests the court of jurisdiction over a defendant. *In re Dar. C.*, 2011 IL 111083, ¶ 61. We review the question of whether the trial court had personal jurisdiction over Lundy *de novo*. *Id.* ¶ 60.

¶ 16 A forcible entry and detainer action is a special statutory proceeding that is in derogation of the common law and as such, a party requesting relief under the statute must strictly comply

[2] Lundy, who is representing himself, has filed the only brief in this appeal. This court, on its own motion, has taken the case on the record and on appellant's brief since the record is straight-forward and "the claimed errors are such that the court can easily decide them without the aid of an appellee's brief." *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

with its provisions. *Figueroa v. Deacon*, 404 Ill. App. 3d 48, 52 (2010). Section 9-102(a)(6) of the Act provides that a party receiving a property after a foreclosure sale may pursue a forcible entry and detainer action only after making a "demand in writing" for possession of the property. 735 ILCS 5/9-102(a)(6) (West 2016). Section 9-104 provides that service of such written demand "may be made by delivering a copy thereof to the tenant, or by leaving such a copy with some person of the age of 13 years or upwards, residing on, or being in charge of, the premises; or in case no one is in the actual possession of the premises, then by posting the same on the premises;" *Id*. § 9-104. Where a party fails to comply with the statute's jurisdictional requirements, "the trial court lacks jurisdiction over the dispute and is powerless to award possession." *Russell v. Howe*, 293 Ill. App. 3d 293, 297 (1997).

¶ 17 However, in situations where the required service upon a defendant is "impractical," the Act provides that "the plaintiff may move, without notice, that the court enter an order directing a comparable method of service." 735 ILCS 5/2-203.1 (West 2016). "The motion shall be accompanied with an affidavit stating the nature and extent of the investigation made to determine the whereabouts of the defendant *** including a specific statement showing that a diligent inquiry as to the location of the individual defendant was made and reasonable efforts to make service have been unsuccessful." *Id*. Upon such a showing, the court "may order service to be made in any manner consistent with due process." *Id*.

¶ 18 Here, there is evidence in the record that service as required by section 9-104 was impractical. Service was attempted upon Lundy at 4239 S. Langley Avenue in Chicago, Illinois, but he actively avoided service. Huynh's affidavit explicitly stated that Lundy informed him they were avoiding service. The service attempted by certified mail was unsuccessful because Lundy never claimed the package. The sheriff could not effectuate service because the gate to the

property was locked and he had no access to the property. This is not a case where a defendant could not be found. Plaintiff knew the location of Lundy, and Lundy readily acknowledged in his affidavit that he was located at 4239 South Langley Avenue "every day from year 2014 to this present day." As further support that Lundy was aware of the proceedings against him and was attempting to evade service, the record shows that the day after DiNunno and Roscoe filed their affidavits of service with the trial court, Lundy filed his affidavit to quash service. Although Lundy contends he accidentally found out about the case online, the evidence suggests otherwise and in denying Lundy's motion to quash, the trial court presumably found Lundy's contentions not credible. We caution that "[c]ourts do not favor those who seek to evade service of summons." *In re Marriage of Schmitt*, 321 Ill. App. 3d 360, 370 (2001).

¶ 19 Also, a transcript of the hearing on Lundy's motion is not part of the record on appeal. As a result, we do not know the arguments considered by the trial court or its reasoning in denying Lundy's motion to quash service. Lundy, as appellant, has the burden to present a sufficiently complete record so that a court of review can determine whether error occurred as claimed by the appellant. *In re Marriage of Gulla*, 234 Ill. 2d 414, 422 (2009). "Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). Without an adequate record on appeal, this court must presume that the trial court's order conforms with the law. *People v. Gaultney*, 174 Ill. 2d 410, 420 (1996).

¶ 20 Here, plaintiff filed a motion pursuant to section 2-203.1 of the Code for service by special order of the court, because Lundy was evading service. See 735 ILCS 5/2-203.1 (West 2016). The motion was accompanied by Huynh's affidavit and the sheriff's affidavit. Upon plaintiff's motion, the trial court ordered service by posting on the property and by mailing

through regular mail. Special process servers DiNunno and Roscoe subsequently filed affidavits stating that Lundy was served by posting and by regular mail. Lundy does not challenge the propriety of plaintiff's use of section 2-203.1 to obtain service, nor does he state in his affidavit that service could have been obtained by other means. We find that service on Lundy was effective pursuant to section 2-203.1 and as a result, the trial court had personal jurisdiction to enter its orders against him.

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

¶ 22 Affirmed.