2019 IL App (1st) 181192-U

SIXTH DIVISION
MAY 24, 2019

No. 1-18-1192

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

AMTRUST BANK, as assignee, Plaintiff-Appellee, v. RICKIE J. PENNINGTON; DEBORAH MASSARI; AURORA LOAN SERVICES, LLC; DOYLE, ALTSCHULER & TATE, LLC; BOSCH & COHEN HOLDINGS, INC.; CITY OF CHICAGO; UNKNOWN OWNERS AND NON-RECORD CLAIMANTS, Defendants (Rickie J. Pennington, Defendant-Appellant).	)	Appeal from the Circuit Court of Cook County. No. 09 CH 38414 Honorable Celia G. Gamrath, Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's order denying the defendant's motion to quash service is affirmed.

¶ 2 The plaintiff-appellee, Amtrust Bank (the Bank), initiated an action to quiet title in the circuit court of Cook County against the defendant-appellant, Rickie J. Pennington (Pennington).

The Bank's process server attested that Pennington was served with the complaint and an alias summons. Following a default judgment against Pennington due to his failure to appear in court, Pennington filed a motion to quash service. The circuit court denied his motion and Pennington now appeals. For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 3 BACKGROUND

¶ 4 On November 9, 2009, the Bank filed a complaint against Pennington to quiet title. The complaint sought to establish whether Pennington had legal ownership of a property located at 1810 South Drake, Chicago, Illinois.

¶ 5 The Bank learned that Pennington had moved to Arizona and sought to serve him there. The Bank subsequently submitted an affidavit from a certified Arizona process server (the process server) who attested that he served Pennington with the complaint and an alias summons on November 27, 2009, at 8369 W. Bell Road, Peoria, Arizona (the Bell Road address).

¶ 6 Pennington did not appear in the circuit court of Cook County or answer the complaint. On June 8, 2010, the trial court entered a default judgment against Pennington on the Bank's quiet title action.

¶ 7 Several years later, on September 21, 2016, Pennington filed a motion to quash service. His motion attached his own affidavit, in which he attested that he was not served on November 27, 2009. Pennington's affidavit stated that he resides at 5361 North 61 Drive, Glendale, Arizona. His affidavit further stated that he has never lived at the Bell Road address and that he does not know anyone at the Bell Road address. In his affidavit, he denied being at the Bell Road address on November 27, 2009. Pennington did not submit any other evidence before the trial court in support of his motion to quash service.

¶ 8 On May 10, 2017, the trial court denied Pennington's motion to quash service. The trial court's order stated:

> "The special process server['s] affidavit and return of service is *prima facie* evidence of service. It cannot be set aside based on an uncorroborated, conclusory affidavit, such as Mr. Pennington's. *** An evidentiary hearing is not mandated or warranted because Mr. Pennington has failed to come close to meeting his burden of overcoming the presumption that process was properly served."

Pennington then filed a notice of appeal.

¶ 9 After filing his notice of appeal, Pennington filed a motion in the trial court for leave to supplement the record on appeal. His motion sought to include several discovery documents in the appellate record, including interrogatories and deposition transcripts, that had not been previously filed in the trial court. The trial court denied Pennington's motion, stating:

> "The record on appeal consists of the common law record and the report of proceedings, of which there are none. The common law record includes all of the documents considered by the court during the case and *** through the denial of the motion to quash ***, which disposed of the case. Nothing can be included in the record which was not a part of the case in court. The discovery documents were not filed or submitted as evidence in connection with the motion to quash. Therefore the motion is denied."

¶ 10 ANALYSIS

¶ 11 We note that we have jurisdiction to review the denial of Pennington's motion to quash service, as Pennington filed a timely notice of appeal. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. July 1, 2017).

¶ 12 Pennington presents the following sole issue:[1] whether the trial court erred in denying his motion to quash service. The thrust of Pennington's argument is that the process server failed to comply with Illinois' statutory requirements for an affidavit of service. Pennington also argues that his affidavit proves that he was not served. In the alternative, Pennington claims that the trial court should at least have held an evidentiary hearing "to determine if service was in fact had."

¶ 13 Personal service upon an individual defendant is achieved by: (1) 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 a family member or person residing at that address who is age 13 or older, and also mailing a copy to the defendant at that location, which is known as abode service. 735 ILCS 5/2-203 (West 2016). In Illinois, the process server's affidavit is *prima facie* evidence of proper service, and the affidavit of service should not be set aside unless impeached by clear and convincing evidence. *Illinois Service Federal Savings & Loan Ass'n of Chicago v. Manley,* 2015 IL App (1st) 143089, ¶ 37. When a court denies a motion to quash service based solely on documentary evidence, we review the order denying the motion *de novo*. *U.S. Bank, N.A. v. Dzis*, 2011 IL App (1st) 102812, ¶ 13.

¶ 14 As an initial matter, we note that Pennington attempts to rely on materials not in the record on appeal, such as interrogatories and deposition transcripts. These are the same

[1] Pennington does not challenge the trial court's denial of his motion for leave to supplement the record on appeal. In any event, since the motion was filed after the notice of appeal and Pennington did not amend it, we would not have jurisdiction to review that ruling.

documents Pennington sought to include through his motion to supplement the record on appeal. The trial court denied his motion because these documents were never submitted in the trial court. Matters not before the trial court will not be considered on appeal. *Garvy v. Seyfarth Shaw LLP*, 2012 IL App (1st) 110115, ¶ 26. Consequently, any arguments in an appellate brief which rely on documents that are not properly part of the record will be disregarded by the reviewing court. *Id*. Although the documents at issue may have caused a different outcome in the trial court had they been submitted, the trial court was never given an opportunity to consider them in the proper procedural context. In turn, we cannot consider them. Accordingly, we disregard Pennington's brief to the extent that it relies upon documents not included in the record on appeal.

¶ 15 We also note that the thrust of Pennington's argument is that the process server's affidavit did not comply with Illinois' statutory requirements for an affidavit of service. However, Pennington did not raise that argument in the trial court. And it is well established that issues not raised in the trial court are forfeited and may not be raised for the first time on appeal. *Susman v. North Star Trust Co.*, 2015 IL App (1st) 142789, ¶ 41. Therefore, Pennington has forfeited this argument.

¶ 16 We now turn to Pennington's argument that his affidavit proves that he was not served. We are not persuaded by this argument. The process server's affidavit is *prima facie* proof of service, and an uncorroborated affidavit is insufficient to rebut that presumption. See *Paul v. Ware*, 258 Ill. App. 3d 614, 617 (1994) ("an uncorroborated defendant's affidavit merely stating that he had not been personally served with summons is insufficient to overcome the presumption favoring the affidavit of service"). Indeed, Pennington submitted only his self-serving affidavit attesting that he has never resided at the Bell Road address, does not know

anyone at the Bell Road address, and that he was not served on November 27, 2009. He did not submit *any other evidence* to substantiate his argument, let alone clear and convincing evidence by which to set aside the default judgment against him. Thus, the trial court did not err in denying Pennington's motion to quash service.

¶ 17 Finally, we also reject Pennington's alternative argument that the trial court should have held an evidentiary hearing to determine if there had been proper service. The purpose of an evidentiary hearing is for the court to make findings of fact that cannot be resolved based on the documentary evidence. *TCA International, Inc. v. B & B Custom Auto, Inc.*, 299 Ill. App. 3d 522, 530-31 (1998). When jurisdictional issues may be completely resolved from the face of the affidavits and pleadings, an evidentiary hearing is needless. *Id*. As discussed, the process server's affidavit was *prima facie* evidence that service was proper in this case, and Pennington's self-serving affidavit failed to rebut that presumption. There were no other issues of fact for the trial court to resolve. Therefore, an evidentiary hearing would have been pointless.

¶ 18 CONCLUSION

¶ 19 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 20 Affirmed.