

2019 IL App (1st) 182152-U
No. 1-18-2152

SECOND DIVISION
May 28, 2019

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 JUDICIAL DISTRICT

CIT BANK, N.A., formerly known as OneWest Bank, N.A.,)	Appeal from the Circuit Court of Cook County.
)	
Plaintiff-Appellee,)	No. 14 CH 004880
)	
v.)	
)	
TRAVIS T. JOHNSON a/k/a TRAVIS T. JOHNSON JR; UNITED STATES OF AMERICA—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; UNKNOWN HEIRS AND LEGATEES OF BERCEUSE H. JOHNSON; UNKNOWN OWNERS AND NONRECORD CLAIMANTS; WILLIAM P. BUTCHER, as Special Representative for Berceuse H. Johnson (deceased); LORENA J. SIMPSON a/k/a LORENA J. COX; RITA RENEE MOTON a/k/a RITA MOTEN; KIM DARLENE DAVIS; PRESTON A.T. JOHNSON JR.; STEPHEN IRVIN T. JOHNSON a/k/a STEVEN JOHNSON; PATRICE JOHNSON; DARNELL T. JOHNSON a/k/a DARNELL JOHNSON; LYONEL T. JOHNSON a/k/a LYONEL JOHNSON; BERTRAM JOHNSON; TERRENCE T. JOHNSON a/k/a TERRENCE JOHNSON; TRENT JOHNSON; TRACY JOHNSON a/k/a TRACIE TURNER,)	The Honorable Marian Emily Perkins, Judge Presiding.
)	
Defendants,)	
)	

(Travis T. Johnson a/k/a Travis T. Johnson Jr.,
Defendant-Appellant).)

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Lavin and Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* Where the defendant did not file timely notices of appeal from the order confirming the sale of the subject property or the order striking his second petition to vacate pursuant to section 2-1401 of the Illinois Code of Civil Procedure (735 ILCS 5/2-1401 (West 2016)), the appellate court lacked jurisdiction to review these orders. Where section 15-1509(c) (735 ILCS 5/15-1509(c) (West 2016)) of the Illinois Mortgage Foreclosure Law barred the defendant's claims in his third petition to vacate under section 2-1401 of the Illinois Code of Civil Procedure, the trial court did not err in striking it.

¶ 2 In this foreclosure action, defendant Travis T. Johnson a/k/a Travis T. Johnson Jr. appeals the trial court's grant of plaintiff, CIT Bank, N.A., formerly known as OneWest Bank, N.A.'s, motion to clarify the order confirming the sale of the subject property, and the trial court's denial of two petitions to vacate filed by defendant pursuant to section 2-1401 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2016)). For the reasons that follow, we affirm.

BACKGROUND

¶ 4 Plaintiff instituted this action against Johnson and the other defendants in March 2014. On April 27, 2017, the trial court entered an order granting summary judgment in favor of plaintiff and against Johnson and defendant William P. Butcher, as Special Representative for Berceuse H. Johnson (deceased). On the same date, the trial court also entered an order of default against all the other defendants and a judgment for foreclosure and sale.

¶ 5 In June 2017, plaintiff filed a “Motion to Clarify and Order Presentment of Tender,” in which it alleged that Johnson had attempted to satisfy the outstanding debt on the subject

property by tendering on two occasions a “Bill of Exchange” and a “Private Registered Bonded Promissory Note.” In both cases, plaintiff determined the documents to be “insufficient legal tender.” Plaintiff requested that the trial court enter an order clarifying that, by determining that the documents submitted by Johnson were insufficient legal tender and by returning said documents to Johnson, plaintiff was not refusing payment under section 15-1603(f)(2) of the Illinois Mortgage Foreclosure Law (IMFL) (735 ILCS 5/15-1603(f)(2) (West 2016)), which provides that if a mortgagee refuses a redemption payment, the owner may pay the redemption amount to the clerk of the court. The trial court granted plaintiff’s motion and entered an order stating that plaintiff had not refused to accept any payment under section 15-1603 of the IMFL.

¶ 6 On July 31, 2017, the subject property was sold at auction and on September 27, 2017, the trial court entered an order confirming the sale.

¶ 7 On November 16, 2017, Johnson filed a petition to vacate pursuant to section 2-1401 of the Code, seeking to vacate the order of default and to set aside the sale of the subject property. The trial court struck the petition when Johnson failed to appear at the scheduled hearing. On January 2, 2018, Johnson filed a second petition to vacate pursuant to section 2-1401, this time seeking to vacate the order granting summary judgment and to set aside the sale of the subject property. The trial court struck Johnson’s second petition to vacate because Johnson failed to properly serve plaintiff.

¶ 8 On July 3, 2018, Johnson filed a third petition to vacate pursuant to section 2-1401 of the Code, again seeking to vacate the order granting summary judgment and to set aside the sale of the subject property. In response, plaintiff filed a motion to strike Johnson’s third petition to vacate, arguing that section 15-1509(c) of the IMFL (735 ILCS 5/15-1509(c) (West 2016)) barred Johnson’s third section 2-1401 petition. On September 27, 2018, following a hearing on

the matter, the trial court granted plaintiff's motion to strike Johnson's third petition to vacate, finding that on October 11, 2017, a judicial sale deed was executed in favor of a third-party purchaser and, thus, section 15-1509(c) of the IMFL applied, not section 2-1401 of the Code.

¶ 9 On October 9, 2018, Johnson filed his notice of appeal.

ANALYSIS

¶ 11 On appeal, Johnson argues that the trial court erred in granting plaintiff's motion to clarify, entering an order confirming the sale of the subject property, and striking his second and third petitions to vacate. We conclude that we lack jurisdiction to review the orders granting the motion to clarify, confirming the sale of the subject property, and striking the second petition to vacate. Finally, we conclude that the trial court did not err in finding that section 15-1509(c) of the IMFL precluded Johnson's third petition to vacate.

¶ 12 Supreme Court Rule 301 (eff. Feb. 1, 1994) provides that an appeal from a final judgment is instituted by the filing of a notice of appeal. That notice of appeal must be filed “within 30 days after the entry of the final judgment appealed from” or within 30 days of the resolution of a timely filed posttrial motion directed against the judgment. S. Ct. R. 303(a)(1) (eff. July 1, 2017). “The timely filing of a notice of appeal is both jurisdictional and mandatory.” *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213 (2009).

¶ 13 Plaintiff argues that we lack jurisdiction to review Johnson's claims with respect to the orders granting the motion to clarify, confirming the sale of the subject property, and striking the second petition to vacate, because the notice of appeal was not timely filed with respect to these judgments. We agree. While we are sympathetic to the distress of families in foreclosure, we are bound by the rules and laws that govern these cases.

¶ 14 In a foreclosure action, the order confirming sale is the final and appealable order. *EMC Mortgage Corp. v. Kemp*, 2012 IL 113419, ¶ 11. A petition brought under section 2-1401 of the Code is not a continuation of the underlying action; rather, it is a new, separate and independent proceeding. See 735ILCS 5/2-1401(b) (West 2016) (“The petition must be filed in the same proceeding in which the order or judgment was entered but is not a continuation thereof.”); *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 102 (2002). Because of this, the trial court’s order resolving a section 2-1401 petition is considered a final order and may be immediately appealed pursuant to Supreme Court Rule 304(b)(3) (eff. Mar. 8, 2016). *Sarkissian*, 201 Ill. 2d at 102. Because a 2-1401 petition and the underlying action are two separate proceedings, the filing of a 2-1401 petition does not extend the time for filing an appeal from the underlying judgment. See *International Industrial Leasing, Ltd. V. H.J. Coleman & Co.*, 66 Ill. App. 3d 884, 888 (1977). An appellate court’s jurisdiction to review the judgment in the underlying action is analyzed separately from its jurisdiction to review the trial court’s decision on the 2-1401 petition. See, e.g., *Washington Mutual Bank, F.A. v. Archer Bank*, 385 Ill. App. 3d 427, 430-31 (finding that although the appeal from the dismissal of the 2-1401 petition was untimely, the appeal from the underlying foreclosure action was timely); *International Industrial*, 66 Ill. App. 3d at 888-89 (concluding that although the appeal from the summary judgment order was untimely, the appeal from the order denying the 2-1401 petition was timely).

¶ 15 Here, with respect to the underlying foreclosure action, the order confirming sale was entered on September 27, 2017. Thus, to institute a timely appeal from that order and the interlocutory order granting plaintiff’s motion to clarify, Johnson was required to file a notice of appeal no later than October 27, 2017. See Ill. S. Ct. R. 303(a)(1); see also *JPMorgan Chase Bank, N.A. v. East-West Logistics, L.L.C.*, 2014 IL App (1st) 121111, ¶ 25 (“An appeal from a

final judgment draws into issue all prior interlocutory orders which constituted a procedural step in the progression leading to the entry of the final judgment from which an appeal has been taken.”). Johnson did not file his notice of appeal until October 9, 2018, more than a year after the trial court entered the order confirming the sale of the judicial property. Accordingly, we lack jurisdiction to review the propriety of the orders granting plaintiff’s motion to clarify and confirming the sale of the subject property.

¶ 16 We note that on appeal, Johnson contends that the trial court lacked subject matter jurisdiction to resolve plaintiff’s motion to clarify. Although Johnson does not explicitly say so, the implication of this argument is that the order granting the motion to clarify is void. See *In re M.W.*, 232 Ill. 2d 408, 414 (2009) (“If a court lacks either subject matter jurisdiction over the matter or personal jurisdiction over the parties, any order entered in the matter is void *ab initio* and, thus, may be attacked at any time.”). This does not, however, alter our conclusion that we lack jurisdiction to afford Johnson any relief on his claims regarding the trial court’s grant of the motion to clarify. Even where a party claims that an order of the trial court is void, an appellate court lacks authority to act unless it has proper jurisdiction over the appeal. *Universal Underwriters Insurance Co. v. Judge & James, Ltd.*, 372 Ill. App. 3d 372, 383-84 (2007). “A void order does not cloak the appellate court with jurisdiction to consider the merits of an appeal” (*People v. Flowers*, 208 Ill. 2d 291, 307 (2003)), thus “[c]ompliance with the rules governing appeals is necessary before a reviewing court may properly consider an appeal from a judgment or order that is, or is asserted to be, void” (*Universal Underwriters*, 372 Ill. App. 3d at 383).

¶ 17 We also conclude that we lack jurisdiction to review the trial court’s decision on Johnson’s second section 2-1401 petition to vacate because Johnson also did not file a timely

notice of appeal with respect to that decision. The trial court entered its order striking Johnson's second petition to vacate on January 4, 2018, making any notice of appeal from that order due on February 5, 2018.¹ Again, Johnson did not file his notice of appeal until October 9, 2018, making any attempt to appeal from the striking of the second section 2-1401 petition to vacate more than eight months too late. The fact that Johnson subsequently filed a third section 2-1401 petition to vacate did not extend the time for filing a notice of appeal from the trial court's decision on the second one. *Holloway v. Kroger Co.*, 253 Ill. App. 3d 944, 947 (1993) ("Generally, the filing of a second section 2-1401 petition does not toll the 30 days provided for filing an appeal from denial of the first section 2-1401 petition."). In any case, even Johnson's third section 2-1401 petition was not filed until five months after his time for appeal from the striking of his second petition expired. Accordingly, because Johnson did not file a timely notice of appeal from the trial court's order striking his second section 2-1401 petition, we lack jurisdiction to review that decision.

¶ 18 Although we lack jurisdiction to review the orders granting the motion to clarify, confirming the sale of the subject property, and striking Johnson's second section 2-1401 petition to vacate, we do have jurisdiction to review the trial court's decision on Johnson's third section 2-1401 petition to vacate. The trial court issued its decision on the third section 2-1401 petition to vacate on September 27, 2018, and Johnson timely filed his notice of appeal on October 9, 2018. Accordingly, we turn to Johnson's contentions in this respect.

¹ The thirtieth day would have been February 3, 2018, but it fell on a Saturday, thereby making the notice of appeal due the following Monday, February 5, 2018. See 5 ILCS 70/1.11 (West 2018) ("The time within which any act provided by law is to be done shall be computed by excluding the first day and including the last, unless the last day is Saturday or Sunday or is a holiday as defined or fixed in any statute now or hereafter in force in this State, and then it shall also be excluded. If the day succeeding such Saturday, Sunday or holiday is also a holiday or a Saturday or Sunday then such succeeding day shall also be excluded.").

¶ 19 Johnson argues that the trial court erred in concluding that section 15-1509(c) of the IMFL barred his claim under section 2-1401 of the Code. Section 15-1509(c) provides in relevant part that in a foreclosure proceeding, “[a]ny vesting of title by *** deed or pursuant to subsection (b) of Section 15-1509, unless otherwise specified in the judgment of foreclosure, shall be an entire bar of (i) all claims of parties to the foreclosure ***.” This court has previously and explicitly held that section 15-1509(c) of the IMFL bars any claims brought by a foreclosure defendant in a section 2-1401 petition. See *U.S. Bank National Association v. Prabhakaran*, 2013 IL App (1st) 111224, ¶ 31 (“The clear and unambiguous language of section 15-1509(c) of the [IMFL] bars the defendant’s claims in her section 2-1401 petition and is dispositive.”); see also *Harris Bank, N.A. v. Harris*, 2015 IL App (1st) 133017, ¶¶ 47-48 (“[D]ue to the provision of the [IMFL], a section 2-1401 petition cannot be asserted in an effort to vacate the circuit court’s confirmation of a foreclosure sale” and “[W]e hold that section 15-1509(c) of the [IMFL] applies in this case to bar Emma’s section 2-1401 petition.”).

¶ 20 Here, the trial court specifically found that on October 11, 2017, a judicial sale deed was executed in favor of a third-party purchaser. Johnson does not dispute this finding. Accordingly, section 15-1509(c) clearly applies to bar any claims by Johnson in his third 2-1401 petition, and the trial court did not err in so holding. See *Prabhakaran*, 2013 IL App (1st) 111224, ¶ 31; *Harris*, 2015 IL App (1st) 133017, ¶¶ 47-48.

¶ 21 Johnson’s sole argument on appeal is that the trial court erred in reaching this conclusion, because his claim was a constitutionally protected, vested property right perfected by contract. According to Johnson, by striking his section 2-1401 petition based on section 15-1509(c) of the IMFL, the trial court denied Johnson’s “administrative remedy because of statutes. The contract is independent of statutes.” This is the entirety of Johnson’s argument with respect to the

striking of his third 2-1401 petition to vacate. Johnson does not explain or cite any authority indicating how the claim in his third section 2-1401 petition to vacate constituted a vested property right, much less a constitutionally protected one. He also does not identify the contract that allegedly “perfected” this right or the administrative remedy he claims to have been denied by the trial court’s striking of the third section 2-1401 petition to vacate. Most importantly, he does not explain what he means by his statement that “[t]he contract is independent of statutes” and how that translates into a conclusion that section 15-1509(c) of the IMFL does not apply to bar his third section 2-1401 petition to vacate. He certainly does not cite to any authority that suggests that there are exceptions to the application of section 15-1509(c) of the IMFL under the circumstances Johnson argues exist in this case.

¶ 22 For all these reasons, we must conclude that Johnson has waived his contention in this respect. See Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018) (requiring that the argument section of an appellant’s brief contain “the contentions of the appellant and the reasons therefor, with citations of the authorities and the pages of the record relied on.”); *First National Bank of LaGrange v. Lowrey*, 375 Ill. App. 3d 181, 208 (2007) (concluding that the appellant waived his contention by failing to cite pertinent authority in support as required by Rule 341(h)(7)); see also *Thrall Car Manufacturing Co. v. Lindquist*, 145 Ill. App. 3d 712, 719 (1986) (“A reviewing court is entitled to have the issues on appeal clearly defined with pertinent authority cited and a cohesive legal argument presented. The appellate court is not a depository in which the appellant may dump the burden of argument and research.”).

¶ 23 Because we conclude that the trial court did not err in striking Johnson’s third section 2-1401 petition to vacate and because Johnson has waived his only contention against that

conclusion, we affirm the trial court's decision in this respect. As previously discussed, we lack jurisdiction to review Johnson's other contentions on appeal.

¶ 24

CONCLUSION

¶ 25

For the foregoing reasons, the judgment of the Circuit Court of Cook County is affirmed.

¶ 26

Affirmed.