

No. 1-18-2188

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

NANCY CRIMS,)	Appeal from the
)	Circuit Court of
)	Cook County
Plaintiff-Appellant,)	
)	
v.)	No. 2012 CH 26856
)	
FEDERAL NATIONAL MORTGAGE)	
ASSOCIATION,)	Honorable
)	Gerald V. Cleary III,
Defendant-Appellee.)	Judge, presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

ORDER

¶ 1 *Held:* Fannie Mae filed a foreclosure action against plaintiff and unnamed beneficiaries of a land trust. After judgment was entered against plaintiff, and a default order was entered against the trust beneficiaries, the sale was conducted and approved. Plaintiff subsequently filed an amended section 2-1401 petition, identifying herself as one of the unnamed trust beneficiaries, challenging the service of process on her in that capacity, and arguing that the improper service prevented the court from acquiring jurisdiction over her person. The trial court denied plaintiff's amended section 2-1401 petition. We affirmed, holding that plaintiff's appellant's brief failed to conform with Rule 341(h)(7), that plaintiff had failed to provide a sufficient record for review, and that plaintiff had waived all objections to the trial court's jurisdiction by filing pleadings and motions prior to her filing

the amended section 2-1401 petition. Even in the absence of any waiver, the land trust beneficiaries were not necessary parties to the foreclosure action.

¶ 2 Plaintiff, Nancy Crims, and Edward McLendon, Jr., gave defendant, Federal National Mortgage Association (Fannie Mae), a mortgage on property at 15462 Sunset Drive in Dolton, Illinois in order to secure a \$165,000 loan. Both plaintiff and Mr. McLendon signed the mortgage, but only plaintiff signed the note, making her the sole party personally liable for any deficiency. The property was held in a land trust by Chicago Title Land Trust Company (Chicago Title). Fannie Mae subsequently filed a foreclosure action against plaintiff, Mr. McLendon and “unknown beneficiaries” of the trust. On November 17, 2016, the circuit court entered a foreclosure judgment against plaintiff and Mr. McLendon, and an order of default against the unknown beneficiaries of the trust. The property was sold, resulting in a \$173,752.07 deficiency. On August 9, 2017, the circuit court approved the sale and entered a deficiency judgment against plaintiff. Plaintiff did not appeal the August 9, 2017, judgment; instead the unknown beneficiaries filed a petition under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2016)) challenging the service of process on them. The circuit court struck the unknown beneficiaries’ section 2-1401 petition based on their failure to identify themselves, and plaintiff filed an amended section 2-1401 petition, identifying herself and Mr. McLendon as the unknown beneficiaries and repeating her arguments that the service of process was ineffectual. The circuit court denied the amended section 2-1401 petition, from which plaintiff has filed this *pro se* appeal. We affirm.¹

¶ 3 I. BACKGROUND

¹ In adherence with the requirements of Illinois Supreme Court Rule 352(a)(eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order stating with specificity why no substantial question is presented.

¶ 4 The special process server, Elite Process Serving, Inc. (Elite Process), personally served Chicago Title with the foreclosure complaint on July 18, 2012. Neither plaintiff nor Mr. McLendon was personally served. Brian Merfeld, counsel for Fannie Mae, filed an affidavit pursuant to section 2-206(a) of the Code of Civil Procedure (735 ILCS 5/2-206(a)(West 2016)) attesting that after due diligence, neither plaintiff, Mr. McLendon, nor the unknown beneficiaries of the land trust could be found and therefore that personal service on them was impossible. Mr. Merfeld requested that service upon them be effectuated by publication. Plaintiff, Mr. McLendon, and the unknown beneficiaries of the land trust were subsequently served by publication in the Chicago Daily Law Bulletin on August 17, 2012.

¶ 5 Plaintiff filed a *pro se* answer including affirmative defenses on September 24, 2012. Plaintiff later filed a *pro se* appearance on December 18, 2012. On January 24, 2013, attorney Erik Miles, of Erik Miles & Associates, filed an appearance for both plaintiff and Mr. McClendon and an answer on their behalf to the foreclosure complaint.

¶ 6 On July 11, 2014, the Consumer Legal Group, P.C. filed an additional appearance on behalf of plaintiff. Plaintiff, through the Consumer Legal Group, filed an amended answer and a two-count counterclaim on March 3, 2015. Plaintiff's counterclaims alleged violations of the Truth In Lending Act, 15 U.S.C. §1601, *et seq.*, and the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 (West 2016). The trial court dismissed the counterclaims on September 18, 2015.

¶ 7 On May 4, 2016, the Consumer Legal Group moved to withdraw as plaintiff's attorney. The trial court granted the motion on May 19, 2016.

¶ 8 On August 17, 2016, Fannie Mae filed a motion for summary judgment against plaintiff and Mr. McClendon on its foreclosure action, arguing that they had defaulted under the terms of

the note and mortgage by failing to make the monthly mortgage payments as they came due. Plaintiff and Mr. McLendon filed a *pro se* response to the summary judgment motion on September 23, 2016, arguing that no grace period notice was sent to them and that the affidavit supporting Fannie Mae's motion contained inadmissible hearsay.

¶ 9 On November 17, 2016, the trial court granted Fannie Mae's motion for summary judgment on its foreclosure action against plaintiff and Mr. McClendon. The court also entered a default order against the unknown beneficiaries of the land trust.

¶ 10 The sale was conducted on February 22, 2017, resulting in a \$173,752.07 deficiency. Fannie Mae moved to approve the sale on May 4, 2017. On July 5, 2017, plaintiff and Mr. McClendon filed a *pro se* response, asking the court to deny Fannie Mae's motion to approve the sale and to allow plaintiff to seek "certain loss mitigation options that should have been offered" to her in compliance with the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 (West 2016). The trial court entered an order approving the sale on August 9, 2017. The court's order included a personal deficiency judgment against plaintiff in the amount of \$173,752.07. Plaintiff did not file an appeal from the August 9, 2017 order.

¶ 11 On November 7, 2017, the unknown beneficiaries, through CMS Law LLC, filed a petition under section 2-1401 (735 ILCS 5/2-1401 (West 2016)) to quash the service by publication made on them because Fannie Mae failed to provide an affidavit as required by rule 7.3 of the circuit court of Cook County (Rule 7.3). Rule 7.3 states:

"Pursuant to [section 2-206(a) of the Code], due inquiry shall be made to find the defendant[s] prior to service of summons by publication. In mortgage foreclosure cases, all affidavits of 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 the circumstances permit prior to placing any service of summons by publication.” Cook Co. Cir. Ct. R. 7.3 (Oct. 1, 1996).

¶ 12 The section 2-1401 petition stated that Fannie Mae provided a Rule 7.3 affidavit for plaintiff and Mr. McClendon, but failed to provide one for the unknown beneficiaries. The petition further argued that Fannie Mae failed to comply with Rule 7.3 and section 2-206 by failing to conduct a diligent inquiry to ascertain the identity of the unknown beneficiaries, and that the affidavit of service by publication was otherwise deficient. As a result, the trial court did not acquire personal jurisdiction over the unknown beneficiaries and all orders entered against them are therefore void for lack of jurisdiction.

¶ 13 On November 9, 2017, Fannie Mae filed a motion to strike the unknown beneficiaries’ section 2-1401 petition. Fannie Mae argued that as the identity of the persons directing CMS Law LLC to file the section 2-1401 petition was concealed, the court should conclude that the petition was brought by a nonparty. Fannie Mae further argued that the section 2-1401 petition was a “nullity” because the nonparty was not granted leave to intervene. See *MidFirst Bank v. McNeal*, 2016 IL App (1st) 150465, ¶ 24 (nonparties may not file motions seeking relief from the court without first intervening in the proceeding).

¶ 14 On March 27, 2018, the trial court granted Fannie Mae’s motion to strike the section 2-1401 petition “based on [the] failure to name the beneficiaries of the trust.” On April 24, 2018, an amended section 2-1401 petition was filed by CMS Law LLC on behalf of plaintiff and Mr. McClendon as the unknown beneficiaries of the trust. With the exception of identifying plaintiff and Mr. McClendon as the unknown beneficiaries, the amended section 2-1401 petition was

identical to the original petition, arguing that the trial court did not acquire personal jurisdiction over the unknown beneficiaries due to the improper service by publication.

¶ 15 Fannie Mae moved to strike the amended section 2-1401 petition on July 26, 2018, arguing that both plaintiff and Mr. McClendon had submitted themselves to the jurisdiction of the court by filing an appearance and answer and responding to Fannie Mae's motions for summary judgment and to approve the report of sale, thereby waiving their objection to the court's jurisdiction over their person. Plaintiff and Mr. McClendon filed a response, arguing that they had participated in the case solely in their capacity as mortgagors, not in their capacity as trust beneficiaries, and therefore had never submitted themselves to the jurisdiction of the court in their capacity as trust beneficiaries.

¶ 16 The trial court denied the amended section 2-1401 petition on September 12, 2018. No transcript of the hearing is included in the record. Plaintiff filed this *pro se* appeal, contending that the trial court erred by denying her amended section 2-1401 petition which sought to quash service of process on the unknown beneficiaries and have all orders entered against them declared void for lack of personal jurisdiction. Mr. McClendon is not a party to this appeal.

¶ 17 II. ANALYSIS

¶ 18 Section 2-1401 of the Code allows a court to vacate a final judgment after more than 30 days. *U.S. Bank, National Association as Trustee for Credit Suisse Boston CSFB 2005-11 v. Laskowski*, 2019 IL App (1st) 181627, ¶ 15. Plaintiff bears the burden under section 2-1401 of establishing her right to relief. *Id.* When, as here, the section 2-1401 petition advances a purely legal challenge to a judgment by alleging that it is void for lack of jurisdiction, our review of the trial court's ruling on the petition is *de novo*. *Id.*

¶ 19 The threshold issue on appeal is whether plaintiff waived review of her challenge to the trial court’s personal jurisdiction in her amended section 2-1401 petition. Jurisdiction over both the subject matter and the parties is required to have a valid judgment. *In re Marriage of Yerdung*, 126 Ill. 2d 542, 547 (1989). Personal jurisdiction is established either by effective service of process or by the party’s voluntary submission to the court’s jurisdiction. *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 35. A judgment entered without jurisdiction over the parties is void. *Yerdung*, 126 Ill. 2d at 547. Our review of whether the trial court obtained personal jurisdiction over the parties is *de novo*. *Mitchell*, 2014 IL 116311, ¶ 17.

¶ 20 A party may object to the court’s jurisdiction over her person by filing a motion to quash service of process and arguing that she is not “amenable to process” of an Illinois court or that process was insufficient. 735 ILCS 5/2-301(a) (West 2016). However,

“A party filing any other pleading or motion prior to the filing of a motion objecting to the court’s jurisdiction over the party’s person *** waives all objections to the court’s jurisdiction over the party’s person prospectively, unless the initial motion filed is one of the following:

(1) A motion for an extension of time to answer or otherwise plead.

(2) A motion filed under Section 2-1301, 2-1401, or 2-1401.1.” 735 ILCS 5/2-301(a-6) (West 2018).

¶ 21 In the present case, plaintiff filed an amended section 2-1401 petition on April 24, 2018, following the judgment of foreclosure and sale, identifying herself and Mr. McLendon as the unknown beneficiaries of the trust, and arguing that the court lacked jurisdiction over them because the service by publication made on them failed to comply with Rule 7.3 and section

2-206. Plaintiff asked the court to quash the service by publication and vacate all orders entered against them as trust beneficiaries as void for lack of personal jurisdiction.

¶ 22 However, prior to filing the amended section 2-1401 petition on April 24, 2018, plaintiff had: filed a *pro se* answer including affirmative defenses on September 24, 2012; filed a *pro se* appearance on December 18, 2012; filed an answer through attorney Erik Miles on January 24, 2013; filed an amended answer and two-count counterclaim through the Consumer Legal Group on July 11, 2014; filed a *pro se* response to Fannie Mae's summary judgment motion on September 23, 2016; and filed a *pro se* response to Fannie Mae's motion to approve the sale on July 5, 2017.

¶ 23 By filing no fewer than five pleadings in the 5 ½ years *prior* to filing the amended section 2-1401 petition that sought to quash service by publication, plaintiff waived all objections to the trial court's jurisdiction over her person. *Id.*

¶ 24 Plaintiff argues, though, that all of her prior pleadings had been filed in her capacity as a mortgagor, not as a beneficiary of the trust, meaning that she only submitted to the jurisdiction of the court to consider Fannie Mae's foreclosure complaint against her in her capacity as mortgagor, not in her capacity as trust beneficiary. Plaintiff contends that she never waived her objections to the court's jurisdiction to consider Fannie Mae's foreclosure complaint against her in her capacity as trust beneficiary.

¶ 25 Plaintiff cites no authority in her appellant's brief in support of her contention that her prior appearance and pleadings submitted her to the jurisdiction of the court in her capacity as mortgagor but not in her capacity as trust beneficiary, and accordingly she has forfeited the argument. See Illinois Supreme Court Rule 341(h)(7) (eff. May 25, 2018). Plaintiff's appellant's brief also violated Rule 341(h)(3) and (h)(6), as it contained an argumentative statement of facts

and did not provide us with the standard of review. We recognize that plaintiff is a *pro se* appellant, however, the fact that a party appears *pro se* does not relieve her from complying with the Illinois Supreme Court Rules. See *Voris v. Voris*, 2011 IL App (1st) 103814, ¶ 8. Plaintiff also has failed to provide us with the transcript of the hearing on Fannie Mae's motion to strike her amended section 2-1401 petition. As the appellant, plaintiff bears the burden of presenting a sufficiently complete record to support her claims of error, and in the absence of such a record, we will presume that the trial court's order conformed with the law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

¶ 26 Aside from plaintiff's failure to comply with Rule 341(h) and her failure to supply us with a sufficiently complete record, we find plaintiff's contention of error to be unavailing. Section 2-301(a-6) provides that a party waives "all" objections to the court's jurisdiction over her person (subject to certain exceptions not applicable here) by filing "any" pleadings or motions prior to the filing of a motion objecting to the court's jurisdiction. 735 ILCS 5/2-301(a)(6)(West 2018). Section 2-301(a-6) makes no exception or allowance for a party who has appeared in court pursuant to service of process and who has filed pleadings in one "capacity" to subsequently raise objections to the court's jurisdiction over her in another capacity in the same case. Rather, once a party has appeared in court and filed pleadings or motions in a case, she has submitted to the court's jurisdiction in all "capacities."

¶ 27 Here, in the 5 ½ years between the service by publication and the filing of the amended section 2-1401 petition, plaintiff appeared in court (at times *pro se* and at times represented by counsel) and filed multiple pleadings contesting the foreclosure complaint and the motion to approve the sale. Plaintiff thereby submitted herself to the personal jurisdiction of the court and

waived “all” objections to the service by publication on her, whether in her capacity as mortgagor or in her capacity as trust beneficiary. 735 ILCS 5/2-301(a-6) (West 2016).

¶ 28 Further, we would affirm the trial court even if plaintiff had not waived her objections to the service of process on her in her capacity as trust beneficiary. A land trust beneficiary is not a necessary party to a foreclosure proceeding (*Deutsche Bank National Trust Co. v. Estate of Schoenberg*, 2018 IL App (1st) 160871, ¶ 18), and therefore any failure to serve plaintiff as a land trust beneficiary did not invalidate the foreclosure judgment. See *Hickey v. Union National Bank & Trust Co. of Joliet*, 190 Ill. App. 3d 186 (1989) (foreclosure judgment not vacated despite lack of service on a land trust beneficiary).

¶ 29 III. CONCLUSION

¶ 30 For all the foregoing reasons, we affirm the denial of plaintiff’s amended section 2-1401 petition.

¶ 31 Affirmed.