

No. 1-19-0501

**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 JUDICIAL DISTRICT

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|---|---|-------------------|
| MTGLQ INVESTORS, L.P.,                                | ) | Appeal from the   |
|   | ) | Circuit Court of  |
| Plaintiff-Appellee,                                   | ) | Cook County.      |
|   | ) |                   |
| v.  | ) | No. 16 CH 10852   |
|   | ) |                   |
| DRUCILLA W. HARGRETT, ANDREW JOSHUA                   | ) | Honorable         |
| HARGRETT, JR., DELIA ANDERSON FARMER,                 | ) | Cecilia A. Horan, |
| as co-guardian of the Estate of Drucilla W. Hargrett, | ) | Judge Presiding.  |
| BEVERLY YVONNE BROUGHTON, as                          | ) |                   |
| co-guardian of the Estate of Drucilla W. Hargrett,    | ) |                   |
| UNKNOWN OWNERS and NON-RECORD                         | ) |                   |
| CLAIMANTS,  | ) |                   |
|   | ) |                   |
| Defendants  | ) |                   |
|   | ) |                   |
| (Andrew Joshua Hargrett, Jr.,                         | ) |                   |
|   | ) |                   |
| Defendant-Appellant).                                 | ) |                   |

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PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.  
Justices and Hoffman and Hall concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* We affirmed the circuit court's order, which denied defendant's motion to vacate a default judgment of foreclosure and vacated a stay of judicial sale, as the circuit court had jurisdiction to enter the default judgment.
- ¶ 2 Plaintiff-appellee, MTGLQ Investors, L.P. (MTGLQ), obtained a default judgment of foreclosure and sale against the named defendants. Defendant-appellant, Andrew Joshua

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Hargrett, Jr., has appealed, *pro se* and pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. Nov. 1, 2017), from an interlocutory order of the circuit court which denied his motion to vacate the foreclosure judgment and vacated a stay of the judicial sale. Mr. Hargrett argues that his mother—the owner of the foreclosed property, defendant Drucilla Hargrett—had not been properly served, and therefore the circuit court erred by refusing to vacate the foreclosure judgment of foreclosure and vacating the stay of judicial sale. For the following reasons, we affirm.<sup>1</sup>

¶ 3

### I. BACKGROUND

¶ 4 On January 20, 2016, prior to the filing of this foreclosure action, Beverly Yvonne Broughton, by her attorney, Mr. Joseph W. Pieper, and under section 11a-3 of the Probate Act (755 ILCS 5/11a-3 (West 2016)), filed a petition in the probate division of the circuit court seeking the appointment of a guardian for Ms. Hargrett. See *In re Estate of Drucilla Hargrett*, a disabled person, No. 16-P-368 (Cir. Ct. Cook County). The petition alleged that Ms. Hargrett suffered from dementia and was residing in a care facility in Chicago. On April 21, 2016, the probate court found, by clear and convincing evidence, that Ms. Hargrett lacked sufficient understanding or capacity to make or communicate responsible decisions concerning the care of her person, and was totally unable to manage her estate or financial affairs. Pursuant to this finding, the probate court appointed Ms. Hargrett's daughters, Ms. Broughton and Delia Anderson Farmer, as plenary co-guardians of her person and her estate.

¶ 5 Thereafter, on August 17, 2016, Federal National Mortgage Association (Fannie Mae), filed the instant action against Ms. Hargrett, as the sole mortgagor and owner of the real estate

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<sup>1</sup> 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.

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located at 9438 South Prairie Avenue, Chicago, IL 60619 (the "Property"). Fannie Mae sought a judgment of foreclosure and a sale of the Property.

¶ 6 Fannie Mae unsuccessfully attempted to personally serve Ms. Hargrett at the Property. But in October 2016, Fannie Mae served Ms. Hargrett by publication and later "delivered process" to Ms. Hargrett in "c/o" of her co-guardians and their attorney in January and April 2017.

¶ 7 On August 3, 2017, the court entered a default judgment of foreclosure and sale against Ms. Hargrett. A judicial sale of the Property was scheduled for November 8, 2017.

¶ 8 In September 2017, Mr. Hargrett filed a motion to vacate the default judgment of foreclosure and stay the judicial sale. He made the requests as a resident of the Property and the son of Ms. Hargrett, who could not appear herself as she suffers from dementia. In a March 1, 2018 order, the circuit court construed his pleading as a combined petition to intervene and a motion to set aside the judgment. The court's order granted Mr. Hargrett leave to intervene as a permissive and interested party. The order also quashed the publication service on Ms. Hargrett, under *O'Halloran v. Luce*, 2013 IL App (1st) 113735, ¶ 35 (holding that service by publication on a person found to be incompetent violated due process), and vacated both the order of default and the foreclosure judgment. Fannie Mae was given additional time to serve Ms. Hargrett.

¶ 9 On June 11, 2018, Fannie Mae filed an amended complaint, which added Mr. Hargrett and the co-guardians as defendants. The amended complaint was served on the co-guardians through service on their attorney, Mr. Pieper, on or about June 20, 2018. Later in 2018, MTGLQ was substituted as plaintiff.

¶ 10 On August 28, 2018, the co-guardians filed a motion in the probate case to ratify the move of Ms. Hargrett to another state and for additional relief as to the Property. The co-

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guardians informed the probate court that Ms. Hargrett was now living in a memory care facility in Arkansas, and that she would no longer reside at the Property or receive any benefit from the Property. The co-guardians requested the probate court's authority to consent to the foreclosure of the Property, which is owned by the estate of Ms. Hargrett. They stated that the current balance owed on the mortgage was \$159,000, but the value of the Property was about \$167,000. The co-guardians believed it was in the best interests of Ms. Hargrett "to release the Real Property and acquiesce to the Foreclosure Action." The probate court granted this motion on August 31, 2018, and gave the co-guardians the "authority to consent to the Cook County Chancery Division Case Number 16 CH 10852 foreclosure action" and the "[a]uthority to release the real property located at 9438 S. Prairie, Chicago, Illinois."

¶ 11 On January 3, 2019, the circuit court in this case entered an order finding defendants in default for their failure to answer the amended complaint, and a judgment of foreclosure and sale ("foreclosure judgment"). The foreclosure judgment included a finding that the court had both personal and subject matter jurisdiction.

¶ 12 On January 15, 2019, Mr. Hargrett moved to vacate the foreclosure judgment, alleging that neither Ms. Hargrett nor her guardians were properly served. On January 24, 2019, the circuit court stayed the foreclosure sale and allowed MTGLQ to file a response to Mr. Hargrett's motion; in particular, to respond regarding the issue of service. In its response, MTGLQ stated that the probate court had authorized the co-guardians to consent to the foreclosure on behalf of Ms. Hargrett. MTGLQ further explained that the co-guardians had agreed that to accept service through service on their counsel, Mr. Pieper. In support of this contention, MTGLQ attached email correspondence between its counsel and Mr. Pieper relating to this agreement.

¶ 13 On February 28, 2019, the circuit court entered an order which denied Mr. Hargrett's motion to vacate the foreclosure judgment and lifted the stay of the sale of the Property. In denying the motion to vacate, the court found that MTGLQ had effectuated service on the co-guardians, and that the court had jurisdiction to enter the foreclosure judgment. The sale of the Property was scheduled for April 5, 2019.

¶ 14 On March 8, 2019, Mr. Hargrett filed a notice of interlocutory appeal under Supreme Court Rule 307(a)(1) (eff. Nov. 1, 2017) from the order entered on February 28, 2019. Mr. Hargrett seeks the reversal of the "order of jurisdiction for case by trial judge" and the vacation of the "orders on sale of the property and emergency stay of current sale." On April 5, 2019, this court granted Mr. Hargrett's amended emergency motion to stay the judicial sale until further order.

¶ 15

## II. ANALYSIS

¶ 16 On appeal, Mr. Hargrett argues that the circuit court erred in vacating the stay of foreclosure sale and denying his motion to vacate the foreclosure judgment.

¶ 17 As an initial matter, we note that, in its response to Mr. Hargrett's amended motion to stay the judicial sale, MTGLQ raised a question as to our jurisdiction to review this appeal absent a final judgment in the foreclosure action. See *EMC Corp. v. Kemp*, 2012 IL 113419, ¶ 11 (“It is well settled that a judgment ordering the foreclosure of mortgage is not final and appealable until the trial court enters an order approving the sale and directing the distribution.”). Thus, we will first consider whether appellate jurisdiction exists, as that question “must be decided prior to addressing the ‘merits’ of an appeal.” *In re Marriage of Nettleton*, 348 Ill. App. 3d 961, 967 (2004) (citing *In re Marriage of Blanchard*, 305 Ill. App. 3d 348, 351 (1999)).

¶ 18 We agree with MTGLQ that the February 28, 2019, order from which Mr. Hargrett appeals is interlocutory, as there has been no final judgment in this foreclosure suit. Except as specifically provided by Illinois Supreme Court Rules, this court only has jurisdiction to review final judgments, orders, and decrees. Il. S. Ct. R. 301 (eff. Nov. 1, 1994); *Almgren v. Rush-Presbyterian-St. Luke's Medical Center*, 162 Ill. 2d 205, 210 (1994). However, the notice of appeal was filed under Illinois Supreme Court Rule 307(a)(1) (eff. Nov. 1, 2017). Rule 307(a)(1) allows an appeal from an interlocutory order "granting, modifying, refusing, dissolving, or refusing to dissolve or modifying an injunction." *Id.* "A stay is considered injunctive in nature, and thus an order granting or denying a stay fits squarely within Rule 307(a)." *Rogers v. Tyson Foods, Inc.*, 385 Ill. App. 3d 287, 288 (2008). Therefore, we clearly have jurisdiction to consider that part of the circuit court's order of February 28, 2019, which vacated the stay of the foreclosure sale as an order dissolving an injunction.

¶ 19 However, Mr. Hargrett also argues on appeal that the circuit court erred when it denied his motion to vacate the foreclosure judgment, as his mother and her co-guardians had not been properly served. As to this claim of error, we must first determine whether the notice of appeal filed under Rule 307(a)(1) (pertaining to injunctive orders) includes the circuit court's denial of the motion to vacate the foreclosure judgment. A reviewing court has jurisdiction to consider only the judgments or orders which are specified in the notice of appeal. *J.P. Morgan Chase Bank, N.A. v. Bank of America, N.A.*, 2015 IL App (1st) 140428, ¶ 23. A notice of appeal confers jurisdiction, if the notice as a whole "fairly and adequately sets out the judgment complained of and the relief sought, thus advising the successful litigant of the nature of the appeal." *Id.* at ¶ 24 (quoting *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 176 (2011)).

¶ 20 In his notice of appeal, Mr. Hargrett stated that he was appealing from the order of February 28, 2019, which, as we have discussed, *both* denied his motion to vacate the foreclosure judgment *and* vacated the stay of the judicial sale. In the requested relief section of his notice of appeal, Mr. Hargrett asks that both the circuit court's finding of jurisdiction and the order of sale be vacated. We find that the notice of appeal, as a whole, gave MTGLQ notice that Mr. Hargrett was challenging both that portion of the February 28, 2019, order vacating the stay of the judicial sale and the denial of the motion to vacate the foreclosure judgment, based on the circuit court's finding it had jurisdiction. Any deficiency in the notice was one of form and not of substance. See *J.P. Morgan Chase*, 2015 IL App (1st) 140428, ¶ 24.

¶ 21 The remaining question is whether we may consider the denial of the motion to vacate the foreclosure judgment under Rule 307(a)(1). The foreclosure judgment is not injunctive in nature, as an injunction is a "judicial process operating *in personam* and requiring [a] person to whom it is directed to do or refrain from doing a particular thing."). (Internal quotation marks omitted.) *Skolrick v. Alzheimer & Gray*, 191 Ill. 2d 214, 221 (2000). Therefore, the circuit court's denial of the motion to vacate the foreclosure judgment does not fall within the explicit terms of Rule 307(a)(1). However, "the proper scope of the review under Rule 307 is to review any prior error that bears directly upon the question of whether the order on appeal was proper." *Sarah Bush Lincoln Health Center v. Berlin*, 268 Ill. App. 3d 184, 187 (1994).

¶ 22 The circuit court stayed the sale of the Property on the basis of Mr. Hargrett's motion to vacate the foreclosure judgment on jurisdictional grounds. After the motion was briefed, the circuit court concluded that it had jurisdiction and denied the motion to vacate on that basis. Then, because there was no longer a basis to delay the sale, the circuit court vacated its stay. The circuit court's decision to deny the motion to vacate the foreclosure judgment bears directly upon

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its decision to vacate the stay of judicial sale. We therefore conclude that appellate jurisdiction exists to review the denial of the motion to vacate the foreclosure judgment. We will review the issue under an abuse of discretion standard. See *Wells Fargo Bank N.A. v. Hansen*, 2016 IL App (1st) 143720, ¶ 14.

¶ 23 In a foreclosure action, “the mortgagor, the person whose interest in the real estate is the subject of the mortgage, is a necessary party defendant to the foreclosure proceedings.” *ABN AMRO Mortg. Group, Inc. v. McGahan*, 237 Ill. 2d 526, 5335-36 (2010) (citing 735 ILCS 5/15-1501(a)(i) (West 2004)). Thus, the mortgagor must be personally served. *ABN AMRO*, 237 Ill. 2d at 536.

¶ 24 In this case, the mortgagor, Ms. Hargrett, was found to be disabled and totally without capacity by clear and convincing evidence under section 11a-3 of the Probate Act. The probate court appointed Ms. Boughton and Ms. Farmer as plenary co-guardians of her person and estate. The co-guardians became responsible for not only the care of Ms. Hargrett, but also for making decisions as to the management of her estate and her financial affairs. Her estate includes the Property.

¶ 25 Pursuant to their appointment, the co-guardians possessed all of the powers set forth in section 5/11a-18(a-5) of the Probate Act. 755 ILCS 5/11a-18(a-5) (West 2016). That section provides that, upon application, the court “may authorize the guardian to exercise any or all powers over the estate and business affairs of the ward that the ward could exercise if present and not under disability.” *Id.* For example, the court may authorize a guardian to convey, release or disclaim the ward’s “contingent and expectant interests in the property.” 755 ILCS 5/11(a)-18(a-5)(2) (West 2016). Additionally, section 18(c) states that “[t]he guardian of the estate of a

ward shall appear for and represent the ward in all legal proceedings unless another person is appointed for that purpose as guardian or next friend.” 755 ILCS 5/11(a)-18(c) (West 2016).

¶ 26 As plenary co-guardians of her person and her estate, Ms Broughton and Ms. Farmer had the authority to appear for and represent Ms. Hargrett in the foreclosure action, both as to her person and as to her estate. Additionally, the probate court granted the co-guardians the authority to consent to the foreclosure of the Property and to the release of Ms. Hargrett’s interests in the Property. In their capacity as co-guardians of Ms. Hargrett’s person and estate, and having the authority granted by the Probate Act, they had the power to accept service of process of the amended complaint through their attorney. Mr. Hargrett does not dispute that Mr. Pieper was served with the amended complaint. We therefore find no error in the circuit court’s decision to find that it had personal and subject matter jurisdiction. The circuit court thus did not abuse its discretion by denying the motion to vacate the foreclosure judgment.

¶ 27 Next, we consider Mr. Hargrett’s challenge to the lifting of the stay of judicial sale. We review this claim of error under an abuse of discretion standard. *Hastings Mutual Ins. Co. v. Ultimate Backyard, LLC*, 2012 IL App (1st) 101751, ¶ 29. Under this standard, this court “determine[s] whether the circuit court acted arbitrarily without the employment of conscientious judgment or \*\*\* exceeded the bounds of reason and ignored recognized principles of law so substantial prejudice resulted.” (Internal quotation marks omitted.) *Id.*

¶ 28 A court possesses the inherent authority to issue a stay of proceedings. *Certain Underwriters at Lloyds, London v. Boeing Co.*, 385 Ill. App 3d 23, 36 (2008). “The moving party must prove by clear and convincing evidence that a stay of the proceedings outweighs the potential harm to the party against whom it is operative.” *Id.* (citing *Zurich Insurance Co. v. Raymark Industries, Inc.*, 213 Ill. App. 3d 591, 595 (1991)).

¶ 29 In his brief, Mr. Hargrett primarily argues that “the person of Drucilla Williams Hargrett must be served” for the circuit court to have jurisdiction to vacate the stay of the judicial sale. We have already rejected Mr. Hargrett’s challenge to the circuit court’s jurisdiction with respect to the denial of his motion to vacate the foreclosure judgment, and we also find this argument lacks merit with respect to his appeal from the court’s decision to vacate the stay of the judicial sale.

¶ 30 In seeking a stay of the judicial sale in this court, Mr. Hargrett argued that he will suffer irreparable harm in the absence of the stay. He asserted that he resides and works at the Property as a self-employed medical biller. Mr. Hargrett asserts that he stores equipment and documents relating to his business at the Property. Mr. Hargrett asserts that he is an "indigent senior," and cannot relocate from the Property anytime soon. Mr. Hargrett, however, does not argue that he has more than a possessory interest in the Property, or challenge the fact that Ms. Hargrett defaulted on the mortgage. He does not argue he would have the right to reside at the Property after transfer of title, when the foreclosure proceedings are completed. Upon this record, we cannot say that the circuit court abused its discretion in vacating the stay of the judicial sale.

¶ 31

### III. CONCLUSION

¶ 32 For the foregoing reasons, we affirm the circuit court’s denial of Mr. Hargrett’s motion to vacate the foreclosure judgment and its decision to vacate the stay of judicial sale. In a separate, contemporaneously-filed order, we also vacate our order of April 5, 2019, which stayed the judicial sale of the Property until further order.

¶ 33 Affirmed.