FOURTH DIVISION
August 7, 2014

1-13-1402

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

HSBC BANK USA, N.A.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CH 536
	)	
TONYA J. SLEDGE,	)	
	)	
Defendant-Appellant	)	
	)	
(MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., JP MORGAN CHASE BANK, N.A., THE ATRIUM LOFTS CONDOMINIUM ASSOCIATION, NON RECORD CLAIMANTS and UNKNOWN OWNERS,	)	Honorable
	)	Darryl B. Simko,
Defendants).	)	Judge Presiding.

PRESIDING JUSTICE HOWSE delivered the judgment of the court.
Justices Lavin and Epstein concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court of Cook County's order denying defendant's motion to quash service by publication is affirmed because plaintiff satisfied the requirements for

service by publication. The court's order dismissing defendant's motion to vacate the confirmation of the judicial sale of property on the basis the motion was untimely filed is reversed and the cause is remanded for the court to conduct a hearing on the timeliness of the motion and for further proceedings as appropriate.

¶ 2 Plaintiff, HSBC Bank USA, N.A., filed a foreclosure action against defendant, Tonya J. Sledge. Plaintiff served defendant by publication. The circuit court of Cook County entered a default judgment against defendant. The trial court denied defendant's motion to quash service and vacate default and approved the sale of the property subject to the mortgage. Defendant filed a document styled a motion to reconsider, which the trial court denied as untimely filed. For the following reasons, we affirm in part, reverse in part, and remand.

¶ 3 BACKGROUND

¶ 4 In January 2012 plaintiff filed a complaint to foreclose mortgage against defendant and others. The mortgage secured a loan made in June 2004 to defendant. On February 8, 2012, plaintiff filed multiple affidavits in support of a motion to allow service by publication. Plaintiff's counsel filed two affidavits to allow service by publication pursuant to section 2-206 of the Code of Civil Procedure (Code) (735 ILCS 5/2-206 (West 2012)) and circuit court of Cook County local rule 7.3. Plaintiff also filed an affidavit by Mark Skrzydlak. The Skrzydlak affidavit was notarized on February 6, 2012. The Skrzydlak affidavit states, in part, as follows:

"A diligent search and inquiry to discover the name and residence of Tonya J. Sledge was performed by the following acts set forth, as particularly as is known to affiant, below.

After diligent search and inquiry by affiant, the residence of the subject person is unknown to the affiant."

¶ 5 The Skrzydlak affidavit then lists defendant's last known address (the address of the property secured by the mortgage), a search of local and federal prisons, and searches utilizing clear.thomsonreuters.com (which is described as "a private database that utilizes thousands of different public records databases and other resources") in 36 categories of records. The Skrzydlak affidavit states that the result of all of those inquiries was the identification of an address for defendant in Chicago but "no recent viable new address outside of attempted addresses." Plaintiff also filed affidavits of attempted service at the address of the property subject to the mortgage and the address identified in the Skrzydlak affidavit.

¶ 6 Plaintiff served defendant by publication on February 14, 2012. On February 15, 2012, plaintiff filed affidavits by a special process server attesting to service on the remaining defendants. On June 11, 2012, plaintiff filed a motion for entry of an order of default and judgment of foreclosure and sale. On July 5, 2012, the circuit court of Cook County entered a default judgment of foreclosure and sale against defendant. On September 7, 2012, the subject property was sold at judicial sale.

¶ 7 On September 18, 2012, defendant filed a motion to quash service by publication or, in the alternative, to vacate default judgment. The motion to quash argued plaintiff's affidavits in support of its motion to allow service by publication failed to comply with circuit court of Cook County local rule 7.3. Defendant's motion to vacate argued the default judgment should be vacated because (1) defendant never received a copy of a summons or complaint, (2)

defendant sought counsel soon after the entry of the default judgment, and (3) defendant has not unduly prejudiced plaintiff by seeking to vacate the default judgment.

¶ 8 On September 21, 2012, plaintiff filed a motion for an order approving report of sale and distribution (approval motion) and scheduled the motion for October 9, 2012.

¶ 9 On October 4, 2012 defendant filed an appearance. That same day the trial court denied defendant's motion to quash. The court did not rule on the motion to vacate at that time but granted defendant leave to file a proposed pleading in response to plaintiff's complaint and continued the matter until October 19, 2012. Also on October 4, 2012, the court entered an order striking the October 9, 2012 court date for plaintiff's approval motion.

¶ 10 In response to the trial court's October 4, 2012 order, defendant filed a proposed answer and counterclaim to plaintiff's complaint to foreclose mortgage. Defendant's proposed answer denied plaintiff's allegations of default and her counterclaim sought damages for violation of the Truth in Lending Act (Lending Act).

¶ 11 On October 9, 2012, the court entered an order withdrawing plaintiff's approval motion.

¶ 12 On October 19, 2012, the trial court denied defendant's motion to vacate default judgment and ordered a briefing schedule on plaintiff's approval motion. Defendant did not file any pleadings in opposition to plaintiff's approval motion and, on December 4, 2012, the court granted the approval motion.

¶ 13 Defendant prepared a document styled a motion to reconsider the October 19 order denying defendant's motion to vacate default judgment and the December 4 order approving the sale. The notice of filing attached to defendant's motion states defendant's counsel caused

the motion to be filed with the clerk of the circuit court on January 3, 2013. Specifically, the certificate of mailing reads as follows:

> "I, Lloyd Brooks, an attorney certify that on January 3, 2013, I caused to be delivered to the parties listed below, a copy of this Notice and its attachments by placing them in a properly addressed postage prepaid envelope and depositing it in a U.S. Post Office Box located in Homewood, Illinois on or before 5:00 p.m."

¶ 14 The clerk of the circuit court received and file stamped the motion January 11, 2013. Defendant's motion argued the trial court should reconsider its order denying defendant's motion to vacate the default judgment because defendant could only bring her Lending Act claim as a defensive counterclaim and she would be denied that relief if the default stood, and because substantial justice requires the parties be allowed to resolve their dispute on the merits. Defendant's motion requested the trial court (1) reconsider vacating the default judgment or (2) vacate the order approving the sale pursuant to section 15-1508(d-5) of the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1508(d-5) (West 2012)) because "there is currently a loan modification application being considered by Plaintiff, which the [Foreclosure Law] provides that the sale of the property should have not been confirmed." Defendant averred that she submitted requests for a loan modification in October 2011 and March 2012, inquired about loan modification in July 2012, and filed again in September 2012.

¶ 15 On February 21, 2013, plaintiff filed a motion to dismiss directed at defendant's motion to reconsider. Plaintiff's motion to dismiss treated defendant's motion as being brought pursuant to section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2012)).

¶ 16 On March 19, 2013, at hearing on defendant's motion and plaintiff's motion to dismiss, defendant orally moved the court to order a briefing schedule on plaintiff's motion to dismiss, specifically on the issue of the timeliness of defendant's motion. The trial court denied defendant's motion for a briefing schedule, dismissed defendant's motion as untimely filed, and dismissed plaintiff's motion to dismiss as moot.

¶ 17 This appeal followed.

¶ 18 ANALYSIS

¶ 19 Defendant initially appealed the October 4, 2012 order denying defendant's motion to quash service by publication; the October 19, 2012 order denying defendant's motion to vacate default judgment; the December 4, 2012 order approving the sale of the subject property; and the March 19, 2013 order denying the motion to reconsider the order denying the motion to vacate default and to vacate the order approving the sale, as untimely. In her reply brief, defendant states that she has not appealed the trial court's order denying the motion to vacate default and "has only sought review of the trial court's denial of her motion to quash service, the entry of the order approving sale and, the denial of her motion to reconsider." Defendant also stated in her reply brief that she seeks "no review" of the order denying the motion to vacate default judgment. Accordingly, we will address only those matters for which defendant has sought review: the motion to quash service by publication and the orders concerning the confirmation of the sale of the subject property. First,

however, we must address plaintiff's argument this court lacks jurisdiction over defendant's appeal. "[I]t is necessary for us to consider this issue, because any decision rendered beyond a court's jurisdiction is void." *Cribbin v. City of Chicago*, 384 Ill. App. 3d 878, 884-85 (2008).

¶ 20 1. Appellate Jurisdiction

¶ 21 Plaintiff argues this court lacks jurisdiction over defendant's appeal because defendant failed to timely file her notice of appeal.

> "The timely filing of a notice of appeal is mandatory and jurisdictional. [Citation.] Pursuant to Illinois Supreme Court Rule 303(a)(1) (eff. June 4, 2008), a notice of appeal must be filed within 30 days after the entry of the final judgment appealed from, or, if a timely posttrial motion directed against judgment is filed, within 30 days after the entry of the order disposing of the last pending postjudgment motion directed against that judgment or order. *** Strict compliance with the supreme court rules governing the *time limits* for filing a notice of appeal is required, and neither a trial court nor an appellate court has the authority to excuse compliance with the filing requirements mandated by the supreme court rules." (Emphasis added.) *Won v. Grant Park 2, LLC*, 2013 IL App (1st) 122523, ¶ 20.

¶ 22 The trial court entered the order disposing of the last pending postjudgment motion on March 19, 2013. Plaintiff argues that defendant did not file a notice of appeal within 30 days of that date. In her proof of mailing of her notice of appeal defendant purported to have

mailed her notice of appeal on April 18, 2013. The clerk of the circuit court received defendant's mailing on April 26, 2013. When a notice of appeal is received by the clerk of the court after the due date, the time of mailing shall be deemed the time of filing. Ill. Sup. Ct. R. 373 (eff. Dec. 29, 2009). A proof of mailing in conformance with Rule 12(b)(3) (Ill. Sup. Ct. R. 12(b)(3) (eff. Jan. 4, 2013)) is required. *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 216 (2009) ("a party can only take advantage of Rule 373 if it files proper proof of mailing as required by Rule 12(b)(3).").

¶ 23 To prove mailing, a certificate of the attorney who deposited the document in the mail stating the time and place of mailing, the complete address which appeared on the envelope, and the fact that proper postage was prepaid is required. Ill. Sup. Ct. R. 12(b)(3) (eff. Jan. 4, 2013). A "slight defect in the *form* of the notice" such as "a typographical error, misspelling, or other inadvertent mistake" will not deprive the court of jurisdiction. (Emphasis in original.) *Secura Insurance Co.*, 232 Ill. 2d at 217 (citing *Curtis v. Pekin Insurance Co.*, 105 Ill. App. 3d 561, 566 (1982) ("very slight defects in the proof of service, which result in its nonconformity to Supreme Court Rule 12(b) [citation], seldom constitute reversible error.")). In *Secura Insurance Co.*, our supreme court distinguished *Curtis* because *Secura Insurance Co.* involved a complete failure to comply with Rule 12(b)(3) rather than a defect in the form of the notice. *Id.*

¶ 24 Plaintiff argues that defendant did not file a notice of appeal within 30 days of the final order because defendant's proof of mailing does not comply with Rule 12(b)(3) in that defendant's proof of mailing does not mention the place of mailing other than a city, or

payment of proper postage. Defendant's certificate of mailing her notice of appeal to the clerk of the circuit court of Cook County reads as follows:

> "I, Lloyd J. Brooks, an attorney, hereby certify that I caused a true and correct copy of this Notice to be served upon the parties listed below via mailing by placing the documents in a sealed properly addressed envelope with proper postage in a U.S. Mailbox located in Matteson, Illinois on or before 5:00 p.m. on April 18, 2013."

The certificate then lists the clerk of the circuit court and the proper address.

¶ 25 Defendant responds her certificate of mailing fully complies with Rule 12(b)(3) because the certificates are "signed by an attorney and state the time and place of mailing and the address that appeared on the envelope and state the proper postage for the mailing was prepaid." Defendant argues that Rule 12(b)(3) does not require the exact street address of the mailbox used to identify the place of mailing, the certificate identifies the addresses placed on the envelopes by indicating the recipients of the notice (those "listed below") in the certificate and listing their names and addresses, and the statement the envelopes were mailed with "proper postage" is sufficient certification that the postage was "prepaid" because the rule does not require any particular language. We agree.

¶ 26 Plaintiff does not dispute that the certificate of mailing defendant's notice of appeal is a certificate of an attorney. Rule 12(b)(3) only requires the certificate state "the time and place of mailing." The certificate states the place of mailing to be Matteson, Illinois. The text of Rule 12(b)(3) does not require more specificity. The attorney making the certificate need not

state each detail in the process by which he or she sent the notice. See *Bernier v. Schaefer*, 11 Ill. 2d 525, 529 (1957). Finally, the certificate states the complete address which appeared on the envelope that was mailed. The certificate states the document was placed in a "properly addressed envelope" to "the parties listed below." The certificate then lists the clerk of the circuit court and the proper address. The information Rule 12(b)(3) requires is easily discernible from the certificate of mailing, even if the certificate does not state "I placed the notice of appeal in an envelope addressed to the clerk of the court at 50 W. Washington Street, Chicago, Illinois 60602."

¶ 27 Moreover, even if the place of mailing and the address on the envelope had to be stated with more exactitude or with a specific phraseology, minor defects in the certificate of mailing will be excused if proof of proper service by mail is made in substantial compliance with the requirements of Rule 12. *Ingrassia v. Ingrassia*, 156 Ill. App. 3d 483, 502 (1987). The primary purpose of the proof of mailing is "to establish the date the document was timely mailed to confer jurisdiction on the appellate court." *Secura Insurance Co.*, 232 Ill. 2d at 216. We see no reason to impose the standards plaintiff suggests and hold that the notice of appeal complies with Rule 12(b)(3). Therefore, defendant timely filed her notice of appeal, and this court has jurisdiction.

¶ 28 2. Motion to Quash

¶ 29 Next, we address defendant's argument the trial court should have granted the motion to quash because plaintiff's service by publication was defective and, therefore, the trial court never obtained personal jurisdiction over defendant. Defendant argues that plaintiff's attempt

at service by publication was defective because plaintiff's affidavit of diligent inquiry does not comply with circuit court of Cook County local rule 7.3. Rule 7.3 reads as follows:

> "Pursuant to 735 ILCS 5/2-206(a), due inquiry shall be made to find the defendant(s) prior to service of summons by publication. In mortgage foreclosure cases, all affidavits for 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 circumstances permit prior to placing any service of summons by publication." Cook Co. Cir. Ct. R. 7.3 (Oct. 1, 1996).

¶ 30 Defendant admits she voluntarily appeared on October 4, 2012. Defendant disputes whether her appearance waives any jurisdictional defects; but argues that, in any event, her appearance would only grant the circuit court personal jurisdiction to enter orders against her thenceforward. *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 43 ("a party who submits to the court's jurisdiction does so only prospectively and the appearance does not retroactively validate orders entered prior to that date." [Citation.]") (Internal quotation marks omitted.). Defendant argues that because the trial court entered the default judgment and judgment of foreclosure when it lacked personal jurisdiction over her, those orders must be vacated and, consequently, the order approving sale must also be vacated because the order approving sale is not supported by a valid judgment of foreclosure. 735 ILCS 5/15-1507(a)

(West 2012) ("upon entry of a judgment of foreclosure, the real estate which is the subject of the judgment shall be sold at a judicial sale in accordance with this Section 15-1507.").

¶ 31 Defendant argues the Skrzydlak affidavit does not satisfy local rule 7.3 because it fails to provide information as to who made the efforts to locate her and therefore does not qualify as an affidavit "by the individual(s) making such 'due inquiry.' " Defendant asserts "the affiant only states that he has personal knowledge that certain inquiries were made" but "fails to state who actually did the searches." Defendant also argues the affidavit does not state the actions taken to ascertain her whereabouts with sufficient particularity. Specifically, defendant complains the affidavit does not state how the computerized database searches were performed and uses passive voice. [1]

¶ 32 In *Deutsche Bank National Trust Co. v. Brewer*, 2012 IL App (1st) 111213 ¶ 25, this court held that the plaintiff failed to present affidavits from any affiant who claimed to have attempted to serve the defendant at her home or to have searched for the defendant's address. In that case, the affidavit stated that "attempts were made" to serve the defendant at her home, and that "we" searched public databases. *Id.* at ¶¶ 21, 23. This court noted, with regard to the statement that "attempts were made" to serve the defendant, that the use of the passive voice fails to name the individual who did the acts indicated. *Id.* at ¶ 22. Similarly, this court held

[1] Although defendant suggests that plaintiff did not file the affidavit until after the publication, the file stamped copy to which defendant refers was filed contemporaneously with plaintiff's motion for entry of an order of default and judgment of foreclosure and sale and is not the first appearance of the affidavit in the record. More importantly, plaintiff's motion to quash service by publication or in the alternative vacate default admits that on or about February 6, 2012, "an Affidavit of Due Diligence was filed by Mark Skrzydlak."

that the affidavit failed to identify the persons who performed the searches of the public databases. *Id.* at ¶ 23.

¶ 33 In *Deutsche Bank National Trust Co.*, where the affidavit did not identify who performed the acts stated, the use of passive voice prevented identification of the affiant as the person who performed the acts stated because the use of passive voice implied that someone else performed those acts. *Id.* at ¶¶ 21, 22. In this case, the affidavit identifies the affiant as the person who made the inquiries and sets forth with particularity the actions he took to ascertain defendant's whereabouts. Defendant's argument that the affiant only states that he has personal knowledge that certain inquiries were made is based on only reading a portion of the affidavit and misrepresenting the meaning of that portion of the affidavit. The affidavit reads, in part, as follows: "A diligent search and inquiry to discover the name and residence of [defendant] was performed by the following acts set forth, as particularly as is known to affiant, below."

¶ 34 Defendant's argument requires construing "as particularly as is known to affiant" to modify "[a] diligent search and inquiry *** was performed" to result in the affiant possibly stating that he knows a diligent search and inquiry was performed. That is incorrect. The clause "as particularly as is known to affiant" modifies the immediately preceding clause "the following acts set forth." The meaning of the sentence thus becomes that the acts are set forth with as much particularity as is known by the affiant. There is no need to rely solely on interpreting the meaning of the above statement, because the affidavit then expressly states that the affiant performed the search and inquiry. The next line of the affidavit states: "After diligent search and inquiry *by affiant*, the residence of the subject person is unknown to the

affiant." (Emphasis added.) This unambiguous statement supports our construction of the opening clause. We disagree with defendant and find that the two sentences read together do clearly convey that the affiant performed the searches listed in the affidavit.

¶ 35 Moreover, in defendant's examples of the use of passive voice, the affiant is merely stating the results of the inquiries he avers he made. Given a fair reading, the affidavit states that "[a] diligent search and inquiry *** was performed" and that a "diligent search and inquiry by affiant" did not yield defendant's address. The affidavit also states with sufficient particularity the actions taken. The rule does not require the affiant to set forth every step in the process of searching a database.

> "[T]he law requires an honest and well-directed effort to ascertain the whereabouts of a defendant by an inquiry as full as circumstances can permit. [Citations.] Where a party's efforts to comply with the provisions have been casual, routine, or spiritless, service by publication is not justified." *American Chartered Bank v. USMDS, Inc.*, 2013 IL App (3d) 120397, ¶ 18.

¶ 36 Plaintiff's affidavit states "honest and well-directed" efforts to locate defendant, and she does not contend otherwise. Plaintiff searched 36 categories of records including vehicle records, utility services, criminal records, and driver's licenses. Plaintiff does not argue that the affiant's search of these records was perfunctory, casual, routine, or spiritless, only that the affiant did not describe how one searches a database.

¶ 37 We hold that the statement that the affiant searched databases and describing the content of those databases is sufficient to "demonstrate an honest and well directed effort to

ascertain the whereabouts of the defendant(s)." Cook Co. Cir. Ct. R. 7.3 (Oct. 1, 1996). See *First Federal Savings and Loan Ass'n of Chicago v. Brown*, 74 Ill. App. 3d 901, 907 (1979) ("A perfunctory inquiry does not comply with the provisions of the statute. *** Moreover, checking employment records and court records may be part of the 'due inquiry' required of a plaintiff relying on service by publication, depending on the circumstances.").

¶ 38 Plaintiff satisfied the requirements of circuit court of Cook County local rule 7.3. Plaintiff's request that we consider a supplemental affidavit pursuant to Illinois Supreme Court Rule 362 (Ill. Sup. Ct. R. 362 (eff. Feb. 1, 1994)) was denied but is moot. Defendant's argument that service by publication was defective and therefore the trial court lacked personal jurisdiction fails.

¶ 39 3. Timeliness of Defendant's Motion Attacking Order Confirming Sale

¶ 40 The trial court dismissed as untimely filed defendant's motion attacking the court's order confirming the sale of the property.[2] A motion attacking a judgment must be filed within 30 days after the challenged judgment is entered. *VC & M, Ltd. v. Andrews*, 2013 IL 114445, ¶ 43 (trial court loses jurisdiction to modify or vacate final order after the lapse of 30 days). Our review of the narrow issue of the timeliness of defendant's motion is *de novo*. *Baca v. Trejo*, 388 Ill. App. 3d 193, 194 (2009) (reviewing *de novo* question of whether the time

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[2] Although defendant's motion is styled, in its entirety, as a motion to reconsider, defendant actually sought, in pertinent part, to vacate the sale. Due to the misdesignation as a motion to reconsider, we do not know whether defendant sought that relief pursuant to section 1508(b) of the Foreclosure Law (see *Sewickley, LLC v. Chicago Title Land Trust Co.*, 2012 IL App (1st) 112977, ¶ 28) or pursuant to 735 ILCS 5/2-1203 (West 2012) (see *Bank of America, N.A. v. Luca*, 2013 IL App (3d) 120601, ¶ 12). We note that the distinction is irrelevant to our resolution of this appeal.

of consignment to a private carrier constitutes the time of filing where mailbox rule would apply to document had it been consigned to the United States mail). Defendant argues the trial court erred in dismissing her motion because she timely mailed the motion and the document should be considered filed on the date it was mailed under the "mailbox rule." Plaintiff responds defendant's motion was not timely because defendant failed to invoke the mailbox rule by not complying with Illinois Supreme Court Rule 12. Plaintiff argues defendant's certificate of mailing "does not mention the place of mailing, beyond the reference to [a] post office box in Homewood, Illinois" and "failed to identify the complete address which appeared on the envelope."

¶ 41 First, we note that the mailbox rule clearly applies to defendant's motion attacking the trial court's judgment confirming the sale. "The application of a mailbox rule to the filing of postjudgment motions is not the result of any statute or formal rule of court; courts have applied it by analogy to Supreme Court Rules 11 (145 Ill. 2d R. 11), 12 (145 Ill. 2d R. 12), and 373 (155 Ill. 2d R. 373) and section 1.25 of the Statute on Statutes (5 ILCS 70/1.25 (West 2006))." *Baca*, 388 Ill. App. 3d at 195. See *Gruszeczka v Illinois Workers' Compensation Comm'n*, 2013 IL 114212, ¶ 22. Although those provisions do not specifically govern the filing of a postjudgment motion, the courts have "deemed such a filing to be analogous to the filings covered by these provisions." *Baca*, 388 Ill. App. 3d at 195. "In other words, we held that a mailbox rule applies to such motions." *Id.* at 196. Thus, when a party deposits a posttrial motion in the mail within 30 days of the entry of a judgment, the time of mailing constitutes the time of filing. *Id.*

¶ 42 The court has found that Rule 12(b)(3) is violated where there is a complete failure to attempt to comply with the rule but not where a party has attempted to comply with the rule and the evidence is sufficient to permit a finding that the document was mailed by the date it was due. As we have said, minor defects in the certificate of mailing will be excused if there is substantial compliance with the requirements of Rule 12. *Ingrassia*, 156 Ill. App. 3d at 502. We have already held that stating the document was placed in a mailbox in a certain city is a sufficient statement of the place of mailing. We do not find that defendant completely failed to attempt to comply with the rule; but on this record we cannot accurately determine whether defendant complied with the jurisdictional 30-day requirement by mailing the document to the clerk of the court on the date stated in the certificate of mailing. *Secura Insurance Co.*, 232 Ill. 2d at 217. The proper remedy is to remand to the trial court for a hearing on the timeliness of defendant's motion.

¶ 43 In the case of an incomplete certificate of service or an incorrect certificate of service, "a trial court may consider both affidavits and testimony, together with the disputed [certificate] to resolve the factual issue of whether proper service was made." *Commonwealth Eastern Mortgage Co. v. Vaughn*, 179 Ill. App. 3d 129, 136 (1989) (citing *State Bank of Lake Zurich v. Thill*, 135 Ill. App. 3d 747, 757 (1985)). In *Thill*, the defendant attempted to rely upon an incomplete affidavit of service under section 13.2(1) of the Civil Practice Act (Ill. Rev. Stat. 1979, ch. 110, par. 13.2(1)) to avoid personal jurisdiction. *Thill*, 135 Ill. App. 3d at 757. The defendant filed a motion to vacate a judgment of foreclosure on the grounds the affidavit of service failed to establish service upon the defendant. *Id.* at 755. The *Thill* court found that the deficiencies in the affidavit of service had been met by the supplemental

affidavits of the process servers the plaintiff filed in response to the defendant's motion to vacate. *Id.* at 757. However, the trial court declined to permit the defendant to offer evidence relating to the substituted service the supplemental affidavits purported was done (which would have completed service upon the defendant). *Id.* at 757. The *Thill* court held the trial court erred in not allowing the defendant to present contradictory evidence "thus requiring reversal and remand for that purpose." *Id.*

¶ 44 In *Vaughn* the trial court granted the plaintiff's motion for summary judgment in a mortgage foreclosure action. *Vaughn*, 179 Ill. App. 3d at 131. The defendant filed a motion to vacate alleging that neither he or his attorney received notice of the motion for summary judgment. *Id.* The defendant also argued that the notice of motion was defective on its face because the notice "implies and indicates" the motion was improperly mailed (defendant argued the plaintiff mailed the notice to *defendant* at his *attorney's* address) and because the notice stated that it was mailed on the date of the hearing on the motion. *Id.* at 132. The plaintiff filed a response to the motion to vacate and attached an affidavit from "the scrivener of the notice of motion, a paralegal for plaintiff's attorneys." *Id.* The affiant stated that she mailed the notice of motion on the date that would have made service timely. *Id.* As to one of the alleged facial defects, the affiant stated that she inadvertently typed the wrong date as the date of mailing. *Id.* The affiant failed to address the alleged error as to the destination of the mailing. *Id.* at 134. The trial court found that the notice of motion was timely served based on the affidavits and the other documents. *Id.*

¶ 45 On appeal, the *Vaughn* court held that "the trial court properly relied on the affidavit of the scrivener of the notice of motion to deny [the] defendant's motion to vacate the

judgment." *Vaughn*, 179 Ill. App. 3d at 134. As to the issue of to whom the plaintiff mailed the notice, the *Vaughn* court found that the face of the notice of motion "violated Supreme Court Rule 11" because "service should have been made upon defendant's attorney" and the proof of service by mail indicated the motion was mailed to the defendant. *Id.* at 133. Nevertheless, the *Vaughn* court relied on the scrivener's affidavit and held that "in stating that the notice was mailed to defendant's attorney at his business address, the affidavit implicitly resolved the question as to whom the notice was mailed." *Id.* at 134. The court further held that in the absence of a counter-affidavit supporting the defendant's attorney's statement at the hearing that neither he or defendant received notice, "the trial court did not abuse its discretion in accepting the affidavit as establishing the date upon which the notice was mailed." *Id.* at 134-35.

¶ 46 Although *Vaughn* involves compliance with the requirements for service upon a party under Supreme Court Rules 11 and 12 (*Vaughn*, 179 Ill. App. 3d at 132), we believe its rationale applies equally to a dispute over a notice of filing with the circuit court seeking to invoke the mailbox rule. *Baca*, 388 Ill. App. 3d at 195-96 ("Neither [Rule 11 or 12 setting default requirements for service, or Rule 373 governing date of filing in the appellate court] governs the filing of a postjudgment motion, but we have deemed such a filing to be analogous to the filings covered by these provisions."); *Secura Insurance Co.*, 232 Ill. 2d at 216. The *Secura Insurance Co.* court stated the reason for requiring proof of mailing under Rule 12(b)(3) is so that the *record* establishes the date the document was timely mailed. (Emphasis added.) *Secura Insurance Co.*, 232 Ill. 2d at 216.

¶ 47 As we previously stated, the record before us is insufficient to make an accurate determination of the timeliness of defendant's motion. We have previously noted that, at the hearing on plaintiff's motion to dismiss, defendant orally moved the court to order a briefing schedule, specifically on the issue of the timeliness of defendant's motion. Accordingly, we remand for the trial court to conduct further proceedings on defendant's motion seeking to vacate the order confirming the sale of the property. Such further proceedings should afford defendant the opportunity to submit evidence, including affidavits, of the date of mailing the motion. The trial court should consider defendant's evidence together with the notice to determine whether defendant placed the motion in the United States mail within the jurisdictional time limitation.

¶ 48 4. Order Confirming Sale

¶ 49 We reject plaintiff's arguments asking this court to affirm the trial court's order dismissing defendant's motion attacking the order confirming the sale on alternate grounds. *West Suburban Bank v. Lattemann*, 285 Ill. App. 3d 313, 318 (1996) (reversing trial court's holding it need not consider an issue and remanding for consideration of that issue). If, after a full hearing with the ability to present evidence on the question of the timeliness of defendant's motion to vacate the order confirming the sale, the trial court determines the motion was timely, the court should give proper consideration to the arguments raised in defendant's motion. *In re Marriage of Findlay*, 296 Ill. App. 3d 656, 657 (1998) ("We decide only that the court erred in deciding as a matter of law that it lacked jurisdiction over the complaint. Therefore, we reverse the dismissal order and remand the cause ***."). The substantive issues raised by defendant in opposition to the trial court's order--including the

lack of a pending motion to confirm and the alleged 1508(d-5) defense, and plaintiff's procedural arguments addressed to those matters, should be determined first by the trial court. *Sewickley, LLC v. Chicago Title Land Trust Co.*, 2012 IL App (1st) 112977, ¶ 26 (the decision to confirm or reject a judicial sale is entrusted to the sound discretion of the trial court).

¶ 50 CONCLUSION

¶ 51 For the foregoing reasons, the circuit court of Cook County is affirmed in part, reversed in part, and the matter remanded for further proceedings consistent with this order.

¶ 52 Affirmed in part, reversed in part, and remanded.