

No. 1-13-1781

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 DISTRICT

GMAC MORTGAGE, LLC)	Appeal from the
Plaintiff-Appellee)	Circuit Court of
)	Cook County
v.)	
)	No. 10 CH 51992
WALTER H. OBY,)	
Defendant-Appellant)	
)	Honorable
(State of Illinois, Department of Healthcare and Family)	Alfred M. Swanson
Services; Capital One Bank (USA) N.A. f/k/a Capital)	Judge Presiding.
One Bank; United States of America-Secretary of Housing)	
and Urban Development; Midland Funding LLC;)	
Portfolio Recovery Associates, LLC; City of Chicago;)	
The Huntington National Bank as Trustee for Franklin)	
Mortgage Asset Trust 2009-A; Target National Bank;)	
Palisades Collection LLC; JDAD, Incorporated; Ford)	
Motor Credit Company LLC; United States of America;)	
Cavalry Portfolio Services LLC; Unknown Owners and)	
Nonrecord Claimants)	
Defendants.))	

JUSTICE SIMON delivered the judgment of the court.
Justices Pierce and Liu concurred in the judgment.

ORDER

¶ 1 *Held:* The court did not err by approving the sale of the subject property and finding that it had subject matter jurisdiction over the foreclosure action because plaintiff did not fail

to name a necessary party, as defendant does not claim that Mary Johnson or her estate was a mortgagor or that plaintiff asserted personal liability against Johnson or her estate.

¶ 2 Defendant, Walter Oby, appeals from orders of the circuit court of Cook County granting the motion of plaintiff, GMAC Mortgage, LLC, to reconsider the court's prior ruling dismissing plaintiff's foreclosure action for lack of subject matter jurisdiction and approving the sale of the subject property. On appeal, defendant contends that the court was required to dismiss plaintiff's action because plaintiff failed to name all necessary parties in its complaint. For the reasons that follow, we affirm.

¶ 3 **BACKGROUND**

¶ 4 On December 8, 2010, plaintiff, as the mortgagee on a mortgage executed on November 15, 2000, filed a complaint to foreclose mortgage against defendant, as the mortgagor, alleging that defendant had not made any monthly payments on the underlying note since July 1, 2010. Plaintiff attached the mortgage and the underlying note to its complaint, and the record shows that each document was signed by defendant and Mary Johnson, who died prior to the filing of the complaint, as borrowers. On December 7, 2011, the court found defendant to be in default for failing to appear or plead and entered a judgment of foreclosure and sale. On March 9, 2012, plaintiff purchased the subject property at a public auction.

¶ 5 On March 28, 2012, plaintiff filed a motion requesting orders approving the report of sale and distribution and granting possession in its favor. Defendant responded that the court lacked subject matter jurisdiction because Johnson was a necessary party to the foreclosure action and plaintiff failed to name her as a defendant. On October 1, 2012, the court denied plaintiff's motion to approve the sale, finding that Johnson's estate was a necessary party to the action and that plaintiff had failed to name Johnson's estate as a defendant. Plaintiff subsequently filed a motion to reconsider and, on April 3, 2013, the court granted the motion to reconsider and

vacated its prior order denying plaintiff's motion to approve the sale. On April 22, 2013, the court entered an order approving the sale of the property to plaintiff.

¶ 6 ANALYSIS

¶ 7 On appeal, defendant contends that the court erred by approving the sale because it did not have subject matter jurisdiction over the action due to plaintiff's failure to name Johnson's estate or a special representative for Johnson as a defendant. Plaintiff responds that it was not required to name Johnson's estate or a special representative because Johnson's estate was not a necessary party to the foreclosure action.

¶ 8 Section 15-501(a) of the Illinois Mortgage Foreclosure Law (Mortgage Foreclosure Law) (735 ILCS 5/15-1501(a) (West 2010)) identifies the parties which must be joined as defendants in a mortgage foreclosure proceeding by providing that "(i) the mortgagor and (ii) other persons (but not guarantors) who owe payment of indebtedness or the performance of other obligations secured by the mortgage and against whom personal liability is asserted shall be necessary parties." The primary objective in construing a statute is to ascertain and give effect to the intent of the legislature. *Ready v. United/Goeddecke Services, Inc.*, 232 Ill. 2d 369, 375 (2008). The first step in determining legislative intent is to examine the language of the statute and, when the language is clear and unambiguous, the statute must be given its plain meaning without resort to further aids of statutory construction. *Alvarez v. Pappas*, 229 Ill. 2d 217, 228 (2008). Issues of statutory construction are reviewed *de novo*. *JPMorgan Chase Bank, N.A. v. Earth Foods, Inc.*, 238 Ill. 2d 455, 461 (2010).

¶ 9 As an initial matter, we point out that defendant does not claim that Johnson or her estate

were mortgagors or that plaintiff has asserted personal liability against Johnson or her estate. Instead, defendant asserts that Johnson was a necessary party to the action under subsection (ii) of section 15-501(a) of the Mortgage Foreclosure Law because she owed payment on the note. However, the statute identifies as necessary parties only those "persons (but not guarantors) who owe payment of indebtedness *** secured by the mortgage *and* against whom personal liability is asserted." (Emphasis added). 735 ILCS 5/15-1501(a) (West 2010). As defendant does not claim that plaintiff has asserted any personal liability against Johnson or her estate, neither Johnson nor her estate meet the statutory definition of a necessary party. To the extent defendant asserts that section 15-501(a) should be interpreted to define all people who owe payments of indebtedness as necessary parties, doing so would violate the plain language of the statute. Thus, we conclude that plaintiff was not required to name Johnson or her estate as a party in the foreclosure action and that the court did not err by approving the sale of the property to plaintiff.

¶ 10 In doing so, we have considered *ABN AMRO Mortgage Group, Inc. v. McGahan*, 237 Ill. 2d 526 (2010), cited by defendant, and find it distinguishable from this case. In *McGahan*, the question before the court was "whether a mortgagee must name a personal representative for a deceased mortgagor in a mortgage foreclosure proceeding in order for the circuit court to acquire subject matter jurisdiction," and the court held that, because a mortgage foreclosure proceeding is a *quasi in rem* action, a personal representative for a deceased mortgagor must be named as a party in a mortgage foreclosure action. *Id.* at 528, 535. In this case, however, defendant does not claim that either Johnson or her estate was a mortgagor and, for the reasons stated above, neither Johnson nor her estate was a necessary party to the action.

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¶ 11

CONCLUSION

¶ 12 Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 13 Affirmed.