2016 IL App (1st) 150608-U

FIRST DIVISION
March 14, 2016

No. 1-15-0608

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SOUTH COMMONS CONDOMINIUM ASSOCIATION,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellee,	)	
v.	)	No. 12 M1 710224
JENNIFER J. HO,	)	Honorable Martin P. Moltz,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant's appeal is dismissed for lack of appellate jurisdiction as the circuit court lacked jurisdiction to consider the order, nor was the order appealed from a final order or judgment and thus, is still pending in the circuit court.

¶ 2 In this forcible entry action, defendant Jennifer Ho appeals *pro se* from the circuit court's order striking her motion to reconsider the court's earlier order striking her motion to quash

service of process for lack of jurisdiction. Defendant's motions were directed to an *ex parte* order of the circuit court granting plaintiff South Commons Phase I Condo Association (the "Association") recovery and possession of a condominium unit owned by defendant, located at 3001 South Michigan Avenue, for nonpayment of assessments. On appeal, defendant contends she "lost [her] condo because of misconduct" by the Association when it forcibly seized possession of the premises on February 5, 2013, by changing the locks. We dismiss for lack of jurisdiction.

¶ 3 Eviction proceedings were instituted against defendant by the Association on May 7, 2012, for nonpayment of assessments in the amount of $2,996.82.[1] Affidavits establish personal service was not perfected, despite multiple attempts, due to an inability to contact defendant. The court allowed "notice by posting," which was completed July 5, 2012, and required defendant's in-court appearance on July 18, 2012. On this date, the circuit court entered an *ex parte* order for possession against defendant, granting the Association recovery and possession of defendant's property, and recovery, "*in rem,"* of $5,708.73 in unpaid assessments, attorney's fees, and court costs.[2] The order stayed enforcement of the judgment until September 18, 2012. According to

[1] Under the Condominium Property Act (765 ILCS 605/1 *et seq.* (West 2012)) and the Forcible Entry and Detainer Act (735 ILCS 5/9-101 *et seq.* (West 2012)), if a condominium unit owner fails to make timely payment of common expenses (assessments), the board of managers of the condominium association may file a forcible entry and detainer action seeking possession. *Board of Directors of Warren Boulevard Condominium Ass'n v. Milton*, 399 Ill. App. 3d 922, 923-25 (2010) (citing *Knolls Condominium Ass'n v. Harms*, 202 Ill.2d 450, 456-58 (2002)). If the board is awarded possession, it may rent the condominium unit " 'to collect the rental funds therefrom until the amount owed by the unit owner is satisfied, with possession eventually returning to the unit owner.' " *Id.* at 925 (quoting *Knolls Condominium Ass'n*, 202 Ill.2d at 457).

[2] Section 9-107 of the Forcible Entry and Detainer Act allows for constructive service by posting and mailing or by publication and mailing upon the plaintiff's filing an affidavit stating that the defendant is not an Illinois resident or has left the state, or "on due inquiry cannot be found, or is concealed within" the state, such that process cannot be served. 735 ILCS 5/9–107 (West 2012). If such constructive service is

defendant, the Association forcibly took possession of the unit on February 5, 2013, by changing the locks.

¶ 4 Defendant subsequently filed a *pro se* motion to quash service on November 17, 2014, alleging she "was never served *** and therefore did not know about the court proceeding," and that she did not "get a 30 days or 5 days notices [*sic*]." The motion stated: "Possession is not an issue. Money claim is disputed." The circuit court struck defendant's motion for lack of jurisdiction on December 18, 2014, stating "[t]he order for possession entered on July 18, 2012[,] was an *in rem* judgment only; there is no personal money judgment against [d]efendant."

¶ 5 Defendant filed a motion to reconsider on December 30, 2014, alleging the Association forcibly took possession of her condominium on February 5, 2013, without notice by changing the locks. She further stated that she paid the mortgage and assessments for 11 years from 2000 to 2011, and asked the court to "reconsider all [her] money invested [in her] condo." The hearing on defendant's motion to reconsider was continued until January 30, 2015, to allow the court time to locate a Cantonese interpreter. On this date, the circuit court entered an order stating the motion to reconsider "is stricken from the call as the court has no jurisdiction over this matter."

¶ 6 Defendant filed her *pro se* notice of appeal on February 27, 2015. The Association has not filed a response brief. However, we can consider this appeal pursuant to *First Capital Mortgage Corp. v. Talandis Const. Corp.*, 63 Ill. 2d 128, 133 (1976), because the record is simple and the errors are such that we can easily decide them without the aid of an appellee's brief.

¶ 7 Initially, we note that defendant's brief is seriously deficient and fails to meet even the most basic requirements of Illinois Supreme Court Rule 341(h) (eff. Feb. 6, 2013). Among other

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made and the defendant unit owner does not appear, the plaintiff cannot obtain a money judgment against the defendant unit owner, only an *in rem* judgment, which is a judgment against the property. *Id.*

errors, it is entirely devoid of legal authority and fails to state a legal argument. The circuit court's stated basis for striking defendant's motion to reconsider is a lack of jurisdiction stemming from the court's lack of jurisdiction over defendant's original motion to quash service. Nowhere in defendant's two-page brief does she challenge the circuit court's rulings regarding its lack of jurisdiction. The entirety of defendant's brief can be summarized as follows: she paid her assessments for 11 years; the Association locked her out of her condominium without notice and treated her "awful;" she does "not want to lose [her] condo." Defendant's brief is essentially identical to her motion to reconsider and entirely inadequate for our review as she raises no issues whatsoever. As such, it is within our discretion to immediately dismiss defendant's appeal. See *Voris v. Voris*, 2011 IL App (1st) 103814, ¶ 8; *Rosestone Investments, LLC v. Garner*, 2013 IL App (1st) 123422, ¶ 18.

¶ 8 Further, defendant has failed to meet her obligation to provide this court with an adequate record on appeal to support her claim of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). The record provided does not include a transcript or appropriate substitute to enable this court to review the hearings or proceedings conducted in conjunction with this action. In the absence of a record, we must presume the court's orders conformed to the law and had a sufficient factual basis. *Id.* More importantly, however, we find we have no jurisdiction to consider defendant's appeal.

¶ 9 This court has a duty to consider our own jurisdiction *sua sponte* whether or not the parties have raised the issue. *People v. Lewis*, 234 Ill. 2d 32, 36-37 (2009).

¶ 10 Defendant filed her *pro se* motion to quash for lack of service more than 30 days after the court entered its *in rem* order and the stay expired. Her motion to quash is, in essence, a motion seeking relief from a final judgment under section 2-1401 of the Illinois Code of Civil Procedure.

735 ILCS 5/2-1401 (West 2012); *OneWest Bank, FSB v. Topor*, 2013 IL App (1st) 120010, ¶¶ 12-15; *Sarkissian v. Chicago Board Of Education,* 201 Ill. 2d 95, 104-05 (2002). Defendant's motion to quash was a pleading challenging the *in rem* judgment as void based on invalid service. As such, the motion to quash could be brought at any time and the general requirements for a valid section 2-1401 petition (two-year filing period, due diligence and meritorious defense) would not apply. *Sarkissian*, 201 Ill. 2d at 104; *OneWest Bank, FSB*, 2013 IL App (1st) 120010, ¶ 14.

¶ 11 However, relief under section 2-1401 is available only from final orders and judgments. *S.C. Vaughan Oil Co. v. Caldwell, Troutt & Alexander*, 181 Ill. 2d 489, 497 (1998). Defendant's motion to quash was not directed at a final judgment. In fact, it was not directed to any judgment entered by the court. In defendant's petition, she specifically asserted: "Possession is not an issue. Money claim is disputed." As the court noted in striking the petition for lack of jurisdiction, there was no money judgment entered against defendant.

¶ 12 If, as here, constructive service is had via notice by posting and the defendant unit owner does not appear, section 9-101 of the Forcible Entry and Detainer Act provides that the court "may rule only on the portion of the complaint which seeks judgment for possession, and *** shall not enter judgment as to any rent claim joined in the complaint or enter personal judgment for any amount owed by a unit owner." 735 ILCS 5/9-101 (West 2012). The plaintiff cannot obtain a money judgment against the defendant unit owner, only an *in rem* judgment, which is a judgment against the property. *Id.* We note that, where an action is *in rem*, the defendant is not entitled to personal service. *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 312 (1950).

¶ 13 The underlying order here was an *in rem* judgment. As such, it was directed against the property itself (the condominium), not against defendant personally. See *In re Comm'r of Banks & Real Estate*, 327 Ill. App. 3d 441, 463-64 (2001) (*in rem* jurisdiction exists when the action is related to the property subject to the jurisdiction of the court). There was no money judgment against defendant. Therefore, the order she sought to vacate as void for lack of personal jurisdiction, the alleged "money claim," does not exist. Accordingly, defendant's motion to quash for lack of service (her section 2-1401 petition), as written, stated no claim for relief that the court could grant. The court was correct in striking the petition for lack of jurisdiction as relief from the nonexistent order was not available under section 2-1401.

¶ 14 Instead of refiling the petition, defendant filed a motion to reconsider which the court properly struck for lack of jurisdiction as it too was directed to the nonexistent "money claim" against defendant. The circuit court lacked jurisdiction to grant defendant relief from a nonexistent judgment and so does this court. See *Kyles v. Maryville Academy*, 359 Ill. App. 3d 423, 431-32 (2005), citing *People v. Flowers*, 208 Ill. 2d 291, 307 (2003) ("Because the circuit court had no jurisdiction to consider [the] motion, the appellate court, in turn, had no authority to consider the merits of her appeal from the circuit court's judgment denying [the] motion.").

¶ 15 There is an additional basis for dismissing the appeal for lack of jurisdiction. Rather than denying or dismissing the motion to quash or motion to reconsider, the circuit court struck them. An order striking a motion or petition is not, without more, a final judgment. *Belluomini v. Lancome*, 207 Ill. App. 3d 583, 586 (1990). An order striking a motion is not a ruling on the merits. *Id.* Instead, the struck motion remains pending where the word "stricken" is used as opposed to "denied" or "dismissed" and, as here, the court fails to include the words "with prejudice." *Id.* Accordingly, the court's orders were not final judgments, and we have no

jurisdiction to consider defendant's appeal because the "jurisdiction of appellate courts is limited to reviewing appeals from final judgments." *In re Marriage of Verdung*, 126 Ill. 2d 542, 553 (1989). Accordingly, defendant's appeal is dismissed for lack of appellate jurisdiction.

¶ 16 For the foregoing reasons, we dismiss defendant's appeal.

¶ 17 Dismissed.