

STATE OF MICHIGAN
COURT OF APPEALS

DETROIT CLUB HOLDINGS, LLC,

Plaintiff-Appellee,

v

JAY EDWARD, also known as J. EDWARD
KLOIAN,

Defendant-Appellant,

and

CHARLES SOULE and JEREMY
LANGENDERFER,

Intervening Appellees,

and

BASIL T SIMON, COURT-APPOINTED
RECEIVER,

Appellee.

CHARLES SOULE and JEREMY
LANGENDERFER,

Plaintiffs-Appellees,

v

JAY EDWARD, also known as J. EDWARD
KLOIAN,

Defendant-Appellant,

UNPUBLISHED
December 16, 2021

No. 352766
Wayne Circuit Court
LC No. 16-015714-AV

No. 352795
Wayne Circuit Court
LC No. 17-0016769-CH

and

DETROIT CLUB HOLDINGS, LLC,

Defendant-Appellee,

and

BASIL T SIMON, COURT-APPOINTED
RECEIVER,

Appellee.

JAY EDWARD,

Plaintiff-Appellant,

v

DETROIT CLUB HOLDINGS, LLC, CHARLES
SOULE, and JEREMY LANGENDERFER,

Defendants-Appellees,

and

EMRE URALLI, KEITH A. SOTIROFF,
SOTIROFF AND BOBRIN, PC, BELLE POINTE
ESTATES CONDOMINIUM ASSOCIATION,
INC., and LUKE INVESTMENTS,

Defendants,

and

BASIL T SIMON, COURT-APPOINTED
RECEIVER,

Appellee.

Before: SAWYER, P.J., and RIORDAN and REDFORD, JJ.

PER CURIAM.

No. 352796
Wayne Circuit Court
LC No. 17-001757-CH

In these consolidated actions arising from a foreclosure and later sale of a condominium unit (the property), appellant, Jay Edward, also known as J. Edward Kloian (Kloian), appeals as of right¹ after the circuit court, on remand from this Court,² entered an order affirming the district court's order denying Kloian's motion for relief from judgment, and dismissing Kloian's third amended complaint in Docket No. 352796, which raised claims against appellees, Detroit Club Holdings, LLC (DCH), Charles Soule, and Jeremy Langenderfer.³ We affirm.

I. FACTUAL BACKGROUND

In the previous appeal before this Court, the Court provided the following summary of the factual background:

On April 27, 2010, [Kloian] purchased condominium unit 20 in the Belle Point Estates Condominium by covenant deed. The deed was recorded, and it showed [Kloian's] home address in Ann Arbor, Michigan. [Kloian] then sold the unit to non-party Aisha Crawford on land contract. Crawford failed to pay property taxes or condominium association dues, as required by the land contract. In October of 2014, the condominium association sent a notice to Kloian at his Ann Arbor address of a lien for unpaid condominium assessments. The association also recorded a notice of the lien, which also listed Kloian's Ann Arbor address.

¹ In their joint brief on appeal, appellees Detroit Club Holdings, LLC, Charles Soule, and Jeremy Langenderfer argue that this Court lacks jurisdiction over Kloian's appeal. They argue that Kloian failed to file an application for leave to appeal as required under MCR 7.203(A)(1)(a) because the order appealed was that of the circuit court sitting as an appellate tribunal reviewing the decisions of the district court. But the three consolidated cases before this Court were likewise consolidated in the circuit court. Both Case No. 17-0016769-CH and Case No. 17-001757-CH originated in the circuit court, not the district court, and there is no dispute that the order appealed resolved all claims in those cases, leaving Kloian with appeals by right. To the extent that Kloian should have filed an application for leave to appeal from Case No. 16-015714-AV because that case originated in the district court, we treat Kloian's claim of appeal as an application for leave and grant it, because the consolidated cases are so closely related that proper review of Kloian's claims necessarily implicates consideration of Case No. 16-015714-AV.

² *Detroit Club Holdings, LLC v Edward (On Reconsideration)*, unpublished per curiam opinion of the Court of Appeals, issued August 13, 2019 (Docket No. 340874).

³ For the sake of clarity, the parties are referred to by name rather than their respective status as plaintiffs, intervenors, or defendants, because of the consolidation of the three cases. This is mostly consistent with the designations used by this Court in the previous appeal in Docket No. 340874, where this Court referred to appellant as "Kloian," DCH as "DCH," and Soule and Langenderfer as "intervenors." *Detroit Club Holdings, LLC*, unpub op at 1-3. Following the consolidation, Soule and Langenderfer are no longer just intervenors, but also plaintiffs and defendants, and therefore referring to them by name provides greatest clarity. Additionally, the circuit court appointed Basil Simon receiver for purposes of selling the property and distributing the proceeds, and so we recognize him as an appellee despite not having filed an appearance in this Court.

Kloian received the notice, but took no action because he relied on Crawford's assurances that she would pay any outstanding dues. Crawford continued to evade payment. Kloian contends that on March 30, 2016, to avoid tax foreclosure, he paid \$8,200.31 on the 2014 delinquent real estate taxes to the Wayne County Register of Deeds. Kloian further contends that after pursuing foreclosure against Crawford, she agreed to vacate the condominium by May 1, 2016, and quit-claim her interest back to Kloian.

However, in the meantime, on March 16, 2016, the Association posted a Notice of a Foreclosure Sale on the condominium and published the notice in the Detroit Legal News. The notice stated an amount owed of \$4,950.00 and a Sheriff's sale date of April 21, 2016. No notice was sent to Kloian's Ann Arbor address. Unbeknownst to Kloian, the Sheriff's sale was held as scheduled, and DCH purchased the condominium unit for \$45,249.25. That same day, DCH posted a Notice to Inspect at the condominium unit and sent a copy of the notice by certified mail, addressed to the condominium unit. Although Kloian protests the failure to notify him of the sale, he does not challenge the legality of the foreclosure or the foreclosure sale in this action.

DCH contends that on April 27, 2016, it was unable to gain access to the condominium unit when its representative attempted to conduct an inspection. The inspector deemed the property vacant and in damaged condition—a broken window, a damaged garage door, and overgrown grass. Relying on MCL 600.3238(6), DCH then initiated summary proceedings for possession of the property, asserting that Kloian unreasonably refused to allow DCH access to the condominium unit for an inspection and that damage to the property had occurred. On April 28, 2016, DCH mailed a notice of an action for possession to defendant, addressed to him at the condominium unit's address. DCH was aware that the US Postmaster had posted a vacancy notice on the property at that time, indicating that the property was vacant. In May of 2016, DCH recorded a "Sheriff's Deed on Association Dues/Fees Sale" pertaining to the condominium with the Wayne County Register of Deeds, detailing the foreclosure sale of the condominium to plaintiff. DCH searched for Kloian's address on LexisNexis and found the address of the condominium to be Kloian's last known address. DCH did not make any other efforts to discover where Kloian might be found. DCH then mailed a notice to Kloian of Demand for Possession/Health Hazard, again only addressed to him at the condominium unit.

On May 20, 2016, DCH filed a complaint in district court against Kloian, alleging that Kloian remained in possession of the condominium, and asserting that DCH had a right to enter into possession of the condominium pursuant to MCL 600.3238 and MCL 600.5714(1)(d) because Kloian unreasonably refused an inspection by DCH and the property was in damaged condition. The district court addressed a summons to Kloian "and all other [o]ccupants" of the condominium, informing Kloian of DCH's complaint to evict him from the condominium. The summons and the complaint listed Kloian's address as that of the condominium unit. On June 9, 2016, the district court entered a default judgment of possession

against Kloian, ordering that DCH had a right to possession and that Kloian was to be evicted. DCH then recorded an “affidavit of termination of redemption rights” with the Wayne County Register of Deeds. On June [sic⁴] 22, 2016, DCH conveyed the property to [Soule and Langenderfer] for \$115,000.00.

Kloian contends that he first learned of the proceedings the next month, when he sent a locksmith to change the locks on the condominium unit. Kloian apparently sent the locksmith because he had a prospective buyer for the property, who had previously tried to view the property but had been unable to gain access. According to Kloian, the locksmith was ordered to leave the property by a person who claimed to have purchased the property. On July 28, 2016, Kloian sent a request to DCH for a calculation of the redemption amount for the property and expressing his intent to redeem the property. DCH did not respond to that request.

On September 1, 2016, Kloian filed a motion for relief from judgment pursuant to MCR 2.612(B), contending, in relevant part, that he had never received notice of any actions against the property, and DCH had constructive notice of his correct address in Ann Arbor because that address had been listed on the 2010 deed.

The district court denied Kloian’s motion for relief from judgment, finding that DCH provided adequate notice to Kloian. The district court also held that under MCR 2.612(B), personal jurisdiction over Kloian was unnecessary because this was an *in rem* proceeding. Furthermore, the district court stated that there were innocent third-party purchasers, and granting Kloian’s motion would be prejudicial to those purchasers. Kloian appealed to the circuit court.

The circuit court held a hearing at which it rendered a somewhat piecemeal bench ruling. The circuit court held that the notice requirements set forth in MCL 600.3238, which addresses the right to inspect property after a mortgage foreclosure sale by advertisement, were inapplicable because no mortgage was involved; however, the circuit court also opined that DCH failed to comply with the notice requirements in that statute. The circuit court noted that “everybody knew” that Kloian did not live at the condominium, yet DCH continued to mail notices to the vacant property and made no further efforts to discover Kloian’s whereabouts. The circuit court also found that Kloian had standing to appeal despite having failed to tender a redemption amount pursuant to MCL 559.208(2), which pertains to the foreclosure of condominium liens, because any such tender would have been futile. The circuit court ultimately concluded that MCL 600.3240 and MCL 559.208, when read in conjunction, indicated that Kloian’s period to exercise his right of redemption would have been “six months.” The circuit court declined to address

⁴ We note that DCH conveyed the property to Soule and Langenderfer by a properly notarized covenant deed on July 22, 2016, and that on July 24, 2016, the Wayne County Treasurer certified that the property had no delinquent property taxes. The Wayne County Register of Deeds recorded the deed on September 2, 2016.

whether [Soule and Langenderfer] were subsequent bona fide purchasers without notice. [*Detroit Club Holdings, LLC v Edward (On Reconsideration)*, unpublished per curiam opinion of the Court of Appeals, issued August 13, 2019 (Docket No. 340874), pp 1-3.]

In October 2017, the circuit court entered an order vacating the district court's default judgment, and the affidavit of termination of redemption rights, and permitting Kloian to redeem the property before January 5, 2018. On October 31, 2017, DCH, Soule, and Langenderfer filed an application for leave to appeal to this Court. On April 3, 2018, this Court granted the application. *Detroit Club Holdings, LLC v Edward*, unpublished order of the Court of Appeals, entered April 3, 2018 (Docket No. 340874).

Meanwhile, as the appeal in the circuit court was pending, in January 2017, in Case No. 17-001679-CH, Soule and Langenderfer filed a complaint against Kloian to quiet title and for slander of title as to the property. On the next day, in Case No. 17-001757-CH, Kloian, who was using the name "Jay Edward" at that time, filed a complaint against DCH, Luke Investments, LLC, also known as Luke Investment, Emre Uralli, who was alleged to be the principal of DCH, Belle Pointe Estates Condominium Association, Inc., Soule, Langenderfer, and Keith A. Sotiroff, alleging that these defendants conspired to prematurely terminate his right of redemption in connection with the foreclosure of the property. In January 2018, the circuit court consolidated Case No. 17-001679-CH and Case No. 17-001757-CH.

In the consolidated cases, the circuit court entered a stipulated order authorizing Soule and Langenderfer to sell the property. After a sale was apparently thwarted by Kloian's placing a lien against it, the circuit court appointed Basil Simon to serve as a receiver, and directed him to sell the property. The circuit court also permitted Kloian to file a third amended complaint. Kloian's third amended complaint set forth four counts: (1) quiet title as to Soule and Langenderfer; (2) wrongful ejectment and termination of property rights as to DCH, Uralli, Sotiroff, and Sotiroff & Bobrin, P.C.; (3) civil conspiracy against the latter defendants; and (4) abuse of process also against the latter defendants.⁵ DCH, Uralli, Sotiroff & Bobrin, P.C., and Sotiroff filed an amended motion for partial summary disposition under MCR 2.116(C)(8), asking the circuit court to dismiss Counts II through IV of Kloian's third amended complaint. In May 2018, the circuit court entered a stipulated order staying further consideration of that motion until this Court issued its decision in Docket No. 340874, while providing that the parties could otherwise proceed with the litigation involving Kloian's third amended complaint.

In June 2019, this Court issued its for publication opinion in Docket No. 340874, then two months later vacated that opinion and issued an unpublished one. *Detroit Club Holdings, LLC v Edward*, unpublished order of the Court of Appeals, entered August 13, 2019 (Docket No. 340874). In the unpublished opinion, this Court held that MCL 600.3201 *et seq.* applies to condominium foreclosures, and that the notice provisions in MCL 600.3238 require good-faith

⁵ Kloian's second amended complaint no longer identified Luke Investments or Belle Pointe Estates as defendants, and the third amended complaint conformed with the second amended complaint in that respect.

efforts to provide actual notice, even if those efforts do not succeed. *Detroit Club Holdings, LLC*, unpub op at 10. In addition, this Court could not discern the factual bases that the circuit court relied upon to support the circuit court’s conclusion that DCH failed to comply with MCL 600.3238, and it held that the circuit court erred by failing to determine whether Soule and Langenderfer were innocent third persons who would be prejudiced if the default judgment was set aside. *Id.* Thus, this Court affirmed in part, vacated the order setting aside the default judgment, and remanded to the circuit court for further proceedings. *Id.*

On remand, the circuit court entered an order “denying” Kloian’s appeal from the district court for reasons rendering moot the question of notice MCL 600.3238, and dismissing Kloian’s third amended complaint in Case No. 17-001757-CH. Kloian moved for reconsideration and renewed a motion for discovery, both of which the circuit court denied. This appeal followed.

Kloian argues that the circuit court erred by failing to properly follow this Court’s remand instructions. We disagree.

II. STANDARD OF REVIEW

“Whether the lower court properly followed an appellate court’s ruling on remand is a question of law that this Court reviews de novo.” *Pioneer State Mut Ins Co v Wright*, 331 Mich App 396, 406; 952 NW2d 586 (2020) (quotation marks and citation omitted). “Generally, this Court reviews de novo ‘[t]he interpretation of statutes and court rules.’ ” *Simcor Constr, Inc v Trupp*, 322 Mich App 508, 513; 912 NW2d 216 (2018), quoting *Estes v Titus*, 481 Mich 573, 578-579; 751 NW2d 493 (2008) (alteration in *Estes*).

This Court reviews a lower court’s decision to grant or deny a motion for relief from judgment for an abuse of discretion. *Yee v Shiawassee Co Bd of Comm’rs*, 251 Mich App 379, 404; 651 NW2d 756 (2002). This Court also reviews the grant or denial of a discovery motion for an abuse of discretion. *Augustine v Allstate Ins Co*, 292 Mich App 408, 419; 807 NW2d 77 (2011). Likewise, a lower court’s decision on whether to conduct an evidentiary hearing is reviewed for an abuse of discretion. *Brown v Loveman*, 260 Mich App 576, 599; 680 NW2d 432 (2004). “An abuse of discretion occurs when the trial court’s decision is outside the range of reasonable and principled outcomes.” *Souden v Souden*, 303 Mich App 406, 414; 844 NW2d 151 (2013) (quotation marks and citation omitted).

“[I]t is axiomatic that a court speaks through its orders.” *Luscombe v Shedd’s Food Prod Corp*, 212 Mich App 537, 540; 539 NW2d 210 (1995). “When this Court disposes of an appeal by opinion or order, the opinion or order is the judgment of the Court.” *Kasben v Hoffman*, 278 Mich App 466, 470; 751 NW2d 520 (2008).

“The power of the lower court on remand is to take such action as law and justice may require so long as it is not inconsistent with the judgment of the appellate court.” *Glenn v TPI Petroleum, Inc*, 305 Mich App 698, 703; 854 NW2d 509 (2014) (quotation marks and citation omitted). “When an appellate court gives clear instructions in its remand order, it is improper for a lower court to exceed the scope of the order,” and it “is the duty of the lower court or tribunal, on remand, to comply strictly with the mandate of the appellate court.” *Id.* (quotation marks and citation omitted).

III. COMPLIANCE WITH REMAND INSTRUCTIONS

MCR 2.612(B) provides as follows:

A defendant over whom personal jurisdiction was necessary and acquired, but who did not in fact have knowledge of the pendency of the action, may enter an appearance within 1 year after final judgment, and if the defendant shows reason justifying relief from the judgment and innocent third persons will not be prejudiced, the court may relieve the defendant from the judgment, order, or proceedings for which personal jurisdiction was necessary, on payment of costs or on conditions the court deems just.

Our Supreme Court has determined that relief under MCR 2.612(B) requires the following five elements:

(1) personal jurisdiction over defendants was necessary and acquired, (2) defendants in fact had no knowledge of the action pending against them, (3) defendants entered an appearance within one year after the final judgment, (4) defendants show a reason justifying relief from the judgment, and (5) granting defendants relief from the judgment will not prejudice innocent third persons. [*Lawrence M Clarke, Inc v Richco Constr, Inc*, 489 Mich 265, 273; 803 NW2d 151 (2011).]

In *Lawrence*, our Supreme Court held that no innocent third persons would be prejudiced if the default judgment was set aside because that case involved a “a contract dispute and all the parties to the contract were also parties to [the] action,” and there was no evidence that any third parties had an interest in the case. *Id.* at 285. The prohibition against setting aside a judgment where innocent third persons would be prejudiced comports with the “rule of equity jurisprudence that relief will not be granted when the rights of innocent third persons would be adversely affected thereby.” *Lake Gogebic Lumber Co v Burns*, 331 Mich 315, 321-322; 49 NW2d 310 (1951).

As noted previously, this Court’s opinion in the previous appeal contained remand instructions for the circuit court. *Detroit Club Holdings, LLC*, unpub op at 9. This Court was unable to discern the factual bases that the circuit court relied upon to support the conclusion that DCH failed to comply with the notice requirements of MCL 600.3238 by mailing notice to, and posting notice on, the property. *Id.* Thus, this Court vacated the circuit court’s appellate order granting Kloian’s motion for relief from the district court’s default judgment and remanded to the circuit court for further proceedings. *Id.* This Court further held that the circuit court erred by declining to address whether Soule and Langenderfer were innocent third persons who would be prejudiced if the default judgment were set aside pursuant to MCR 2.612(B). *Id.* at 9-10. Therefore, this Court required that “on remand, if the circuit court again determines that DCH failed to comply with the notice requirements in MCL 600.3238, it must determine whether [Soule and Langenderfer] are innocent third parties who will be prejudiced if the default judgment is set aside.” *Id.* at 10. Finally, this Court stated that “the circuit court may, in its discretion, further remand the matter to the district court, in whole or in part, if the circuit court deems the district court a more proper forum for any reason.” *Id.*

On remand, the circuit court elected to consolidate the remanded case, Case No. 16-015714-AV, with the interrelated and previously consolidated circuit court Case No. 17-001679-CH, which pertained to Soule and Langenderfer's complaint to quiet title, and Case No. 17-001757-CH, which pertained to Kloian's complaint against appellees and other defendants. Later, the circuit court entered an order directing DCH to schedule a hearing for its February 2018 motion for partial summary disposition of Kloian's third amended complaint in Case No. 17-001757-CH, and to file a motion asking the circuit court to determine whether DCH made a good-faith effort to provide Kloian with notice under MCL 600.3238. The circuit court further directed Soule and Langenderfer to file a motion asking it to determine if they were innocent third persons who would be prejudiced if the district court's judgment was set aside under MCR 2.612(B).

The parties filed their respective motions, and DCH scheduled a hearing for the motion for partial summary disposition. Kloian filed a motion for leave to permit limited discovery on the ground that this Court directed the circuit court to make findings of fact to support its previous rulings.

The circuit court held a hearing on DCH's and Soule and Langenderfer's motions, and it ultimately affirmed the district court's decision to deny Kloian's motion for relief from judgment on the ground that Soule and Langenderfer would be prejudiced if the district court's judgment were set aside. The circuit court further held that there was no need to remand the case to the district court for further fact-finding. The circuit court additionally opined that discovery was not properly part of proceedings on appeal from the district court, agreed that DCH's motion regarding notice was moot given the ruling that the default judgment should not be set aside for other reasons, and dismissed Kloian's third amended complaint with prejudice.

We find Kloian's argument that the circuit court failed to comply with this Court's remand instructions unpersuasive.

First, Kloian asserts that the circuit court disregarded a directive to make findings of fact concerning whether DCH had failed to comply with MCL 600.3238. Kloian contends that the circuit court was required to make findings of fact because it declined to remand the case to the district court for that purpose.

This Court did not direct the circuit court to make findings of fact. Rather, this Court simply stated that it could not discern what portion of the lower court record the circuit court relied upon to support its ruling that DCH failed to comply with the notice provision of MCL 600.3238. *Detroit Club Holdings, LLC*, unpub op at 9. Although this Court granted the circuit court the discretion to further remand to the district court, this Court did not require the circuit court to do so, or itself engage in any fact-finding. Moreover, Kloian does not show that the circuit court's determination that there was no need for a remand to the district court was erroneous on its merits.

Second, Kloian argues that this Court's remand instructions required the circuit court to determine whether DCH complied with MCL 600.3238 before deciding whether Soule and Langenderfer were innocent third persons who would be prejudiced under MCR 2.612(B). Kloian's supports his assertion by observing that this Court's remand instructions included the following conditional statement: "on remand, if the circuit court again determines that DCH failed to comply with the notice requirements in MCL 600.3238, it must determine whether [Soule and

Langenderfer] are innocent third parties who will be prejudiced if the default judgment is set aside.” *Detroit Club Holdings, LLC*, unpub op at 10.

However, the conditional nature of that instruction shows that the circuit court did not err. The mandatory portion of the instruction was conditional; *if* the circuit court ruled that DCH failed to comply with the notice requirements in MCL 600.3238, then the circuit court was bound to determine whether Soule and Langenderfer were innocent third persons who would be prejudiced if the district court default judgment was set aside. Thus, this Court’s instructions ensured that if the circuit court once again concluded that DCH failed to comply with the notice requirements, then the circuit court would address whether any innocent third persons would be prejudiced if the default judgment were set aside. This Court did not necessarily *require* the circuit court to consider DCH’s compliance with MCL 600.3238, and neither did it strictly condition consideration of Soule and Langenderfer’s status as innocent third parties on doing so. Kloian has thus not shown that the circuit court’s actions were inconsistent with this Court’s remand instructions.

Nonetheless, the circuit court eventually addressed whether DCH complied with the notice requirements in MCL 600.3238 by ruling that the issue was moot in light of the court’s ruling regarding Soule and Langenderfer’s status as innocent third persons. A controversy is moot if no judicial decision can have any practical legal effect on the matter. *Garrett v Washington*, 314 Mich App 436, 449; 886 NW2d 762 (2016). “As a general rule, an appellate court will not decide moot issues.” *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998). In the context of the circuit court’s appellate review of the district court’s denial of Kloian’s motion to set aside the default judgment, whether DCH complied with MCL 600.3238 was moot, given that Kloian’s request for relief was properly rebuffed because such action would prejudice Soule and Langenderfer as innocent third persons. Thus, Kloian has not shown that the circuit court erred by regarding the issue of compliance with MCL 600.3238 as moot.

Third, Kloian contends that the circuit court signaled that it improperly determined that Soule and Langenderfer were innocent third persons by stating that there was no indication that Soule and Langenderfer were not innocent third persons. We disagree with Kloian’s suggestion that the circuit court had no basis for its decision. The lower-court record showed that the entry of the June 6, 2016 default judgment terminated Kloian’s right of redemption, and that DCH conveyed the property to Soule and Langenderfer on July 22, 2016, which was after the entry of the June 6, 2016 default judgment that terminated Kloian’s right of redemption. There was no indication Soule and Langenderfer had any connection the entry of the default judgment, or with DCH beyond the purchase of the property. And Kloian neither identified any evidence in the proceedings below that established that Soule and Langenderfer were not innocent third persons, nor showed that further factual development might indicate otherwise.

At most, during the pertinent motion hearing, Kloian asked the circuit court for permission to conduct discovery so that he could obtain a copy of the title insurance documentation issued to Soule and Langenderfer relating to the property, on the ground that “the most important thing is whether or not there was lien that had been recorded,” given his belief that such a lien existed before DCH sold the property. Kloian also argued in support of his motion for reconsideration that discovery was necessary on the grounds that DCH initially asserted Soule and Langenderfer’s status as innocent third persons during the district court hearing on Kloian’s motion for relief from

judgment, and that there was “a lot of hanky-panky going on,” including that “the deed was not recorded for several weeks” and that it was possible to “backdate a deed.”

But the lower-court record provided no indication that Kloian placed a lien on the property before Soule and Langenderfer purchased it from DCH, or comported with Kloian’s speculation that the deed was improperly backdated. As discussed previously, the lower-court record showed that the district court entered the default judgment against Kloian on June 9, 2016, that DCH conveyed the property to Soule and Langenderfer by a properly notarized covenant deed on July 22, 2016, and that the Wayne County Treasurer certified that the property had no delinquent property taxes on July 24, 2016. Although the Wayne County Register of Deeds recorded the deed on September 2, 2016, there is no indication in the lower-court record that the deed was improperly backdated.

According to an August 30, 2016 affidavit, which was filed in the district court, Kloian admitted that in the “beginning of July, 2016” a person who was interested in purchasing the property informed him that the property’s locks had been changed. Kloian also admitted that in “late July, 2016” he sent a locksmith to the property who told Kloian that “when he arrived at the Property, he was confronted by an unknown person who ordered him to get off ‘his’ property and who claimed that he had just purchased the Property.” On July 28, 2016, Kloian’s attorney first contacted DCH regarding the foreclosure, the change of locks, and the computation of the redemption value of the property. Kloian eventually executed two lis pendens liens against the property, but those liens were not recorded until October 2016 and December 2016, respectively, which was well after DCH conveyed the property to Soule and Langenderfer.

In light of the foregoing, we agree with the circuit court that there was no evidence in the proceedings below showing that Soule and Langenderfer were not innocent third persons. Nor did anything in the record suggest that a remand to the district court for the purpose of expanding the record would have revealed otherwise. Instead, all indications in the lower-court record supported the conclusion that Soule and Langenderfer were innocent third persons. For these reasons, Kloian has not shown that the circuit court erred by affirming the district court’s decision to deny Kloian’s motion for relief from judgment.

Fourth, Kloian argues that the circuit court erred by denying his motion for discovery, and by failing to hold an evidentiary hearing on the notice issue. However, this Court’s remand order did not require the circuit court to hold an evidentiary hearing on the notice issue, and the circuit court properly determined that a remand to the district court was unnecessary. Additionally, the circuit court properly observed that, in the context of Case No. 16-015714-AV, discovery was inappropriate in proceedings on appeal from the district court. See MCR 7.109(A) (providing that appeals to the circuit court are heard on the original record).⁶

⁶ Soule and Langenderfer attached affidavits dated October 9, 2019, to their motion asking the circuit court to determine whether they were innocent third persons who would be prejudiced. The affidavits stated that Soule and Langenderfer bought the property after an arm’s-length negotiation with DCH and had no knowledge of Kloian’s interest in the property. Although the substance of

IV. SCOPE OF REMAND

Kloian contends that the circuit court erred by exceeding, or otherwise failing to comply with, the scope of this Court's remand instructions. We disagree.

With this issue, Kloian merely reframes his arguments that the circuit court was required to address whether DCH complied with the notice requirements of MCL 600.3238 before determining whether Soule and Langenderfer were innocent third persons under MCR 2.612(B), that the circuit court did not rely on evidence, and that the circuit court erred by denying his motion for discovery. Such reframing, however, occasions no deviation from our conclusions that the aforementioned arguments are unavailing for the reasons already stated.

Additionally, Kloian contends that the circuit court exceeded the scope of the remand by determining the distribution of proceeds of the sale of the property, and by dismissing Kloian's third amended complaint in Case No. 17-001757-CH. As discussed previously, on remand, the circuit court consolidated the three cases before it that concerned the subject property. After the circuit court consolidated Case Nos. 17-001679-CH and 17-001757-CH, the parties agreed to the sale of the property, and the circuit court eventually appointed a receiver to sell it.

As noted, in Case No. 17-001757-CH, Kloian's third amended complaint contained four counts: (1) quiet title as to Soule and Langenderfer, (2) wrongful ejectment and termination of property rights as to defendants DCH, Emre Uralli, Keith Sotiroff, and Sotiroff & Bobrin, P.C., (3) civil conspiracy against the latter defendants, and (4) abuse of process also against the latter defendants. In April 2018, Sotiroff filed an amended motion for partial summary disposition under MCR 2.116(C)(8) on behalf of himself, DCH, Uralli, and Sotiroff & Bobrin, P.C., asking the circuit court to dismiss Counts II through IV of Kloian's third amended complaint, and in May 2018 the circuit court entered a stipulated order staying further consideration of the amended motion for partial summary disposition until this Court issued its opinion in Docket No. 340874.

On remand, and following consolidation of the three lower court actions, the circuit court granted DCH's motion for summary disposition of Kloian's third amended complaint and dismissed the complaint with prejudice, and authorized the receiver to distribute the proceeds from the sale of the property in accordance with the terms of the order. Consolidation does not merge cases; instead, the cases retain their separate identities. See *Chen v Wayne State Univ*, 284 Mich App 172, 199; 771 NW2d 820 (2009). The circuit court thus addressed the remaining issues before it in recognition that the consolidated cases retained their separate identities. Accordingly, the circuit court did not exceed the scope of the remand by determining the distribution of the proceeds of the sale of the property, or by dismissing Kloian's third amended complaint.

Kloian does not otherwise challenge the circuit court's dismissal of his third amended complaint in Case No. 17-001757-CH. "Failure to brief a question on appeal is tantamount to

the affidavits was raised by Soule and Langenderfer's counsel during the hearing on motions following remand, there was no indication that the circuit court's ruling was informed by those affidavits.

abandoning it.” *Mitcham v City of Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Thus, Kloian has abandoned any other challenge to that dismissal.

V. CONCLUSION

The circuit court properly followed this Court’s remand instructions, and Kloian has not shown other error. We affirm.

/s/ David H. Sawyer

/s/ Michael J. Riordan

/s/ James Robert Redford