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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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AIS SERVICES, LLC (FORMERLY IDT CARMEL, Inc.)	)	Appeal from
	)	Circuit Court of
	)	Cook County, Illinois.
	)	
	)	
Plaintiff-Appellant,	)	
	)	No. 09 M2 001008
v.	)	
	)	
WILLIAM McALLISTER,	)	Honorable
	)	James N. Karahalios,
Defendant-Appellee	)	Judge Presiding.
	)	
	)	

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JUSTICE JOSEPH GORDON delivered the judgment of the court.

Justices Hoffman and Howse concurred in the judgment.

ORDER

*Held:* We must presume that the trial court correctly granted defendant’s petition for relief under section 2-1401 without an evidentiary hearing where plaintiff failed to provide a record showing that it objected to defects in defendant’s petition at the hearing on the petition or that it demanded an evidentiary hearing before the trial court entered its judgment granting defendant’s petition. In addition, we must presume that the trial court’s findings were correct where plaintiff failed to file a supporting record.

1-10-0873

Plaintiff AIS Services, LLC appeals from an order of the circuit court of Cook County granting defendant William McAllister's motion to quash service of process and vacate judgment. At the trial court, a default judgment was entered in favor of plaintiff, whose complaint was served via first class and certified mail after plaintiff alleged that he was unable to serve defendant personally. Defendant filed a motion to quash service of process and vacate judgment, which the trial court granted without holding an evidentiary hearing. Plaintiff now contends that the trial court erred in granting defendant relief because defendant's pleading was legally insufficient to state a basis for relief and the trial court should have characterized it as a petition for relief pursuant to section 2-1401 of the Illinois Code of Civil Procedure (735 ILCS 5/2-1401 (West 2009)). In addition, plaintiff contends that the trial court erred in granting defendant's motion because service of process was properly made upon defendant, and the trial court improperly applied an "equally liberal" standard to petition's motion for relief. Plaintiff also contends that it was denied its procedural rights when the trial court granted defendant's motion without an evidentiary hearing and without requiring him to amend his pleading.

### **BACKGROUND**

We have not been provided with a transcript of the proceedings at the trial level, and plaintiff has provided only a sparse common law record. Based on that common law record, a company named IDT Carmel, Inc. filed a complaint against defendant on March 31, 2009, for breach of contract and/or unjust enrichment. The complaint alleged that defendant used a Home Depot credit card to incur a debt, which IDT Carmel acquired as a final transferee. Although not articulated in the complaint, it appears from the record that defendant opened a credit card account with The Home Depot, and that IDT Carmel subsequently purchased that debt from Citibank, the entity that privately labels the Home Depot credit

1-10-0873

card. According to the complaint, defendant was in default of that account and refused to pay the balance due in the amount of \$2,898.95 plus \$562.30 in interest as of March 29, 2009. Attached to the complaint was the affidavit of Todd Anderson, which stated, in relevant part, that Mr. Anderson was an agent of IDT Carmel and that he was familiar with the facts surrounding the debt forming the basis for IDT Carmel's complaint. The affidavit stated that The Home Depot made an offer of credit to defendant in the form of a credit card, which defendant accepted and subsequently used the credit card to make purchases. It stated that as of August 28, 2008, there remained a balance due and owing on that account with a principal amount of \$2,898.95, plus interest in the amount of \$388.09. Also attached to the complaint was an agreement for The Home Depot credit card program, which did not contain any signatures.

The common law record discloses that a summons was issued on the date the complaint was filed, which listed defendant's address as 8216 S. Rhodes Ave., Chicago, Illinois, 60616-5006. On May 1, 2009, a sheriff's return was filed, indicating that a sheriff was unable to serve defendant at that address on two different occasions. On June 9, 2009, IDT Carmel filed a motion for an order to have service of process to be made on defendant by a company called Cadillac Investigations & Filing Service, and on June 19, 2009, it appears that an alias summons was filed to defendant, which also listed defendant's address at 8216 S. Rhodes Ave. On August 18, 2009, the trial court entered an order for defendant to be served by mailing an alias summons and complaint via U.S. First Class and certified mail, return receipt requested pursuant to section 2-203.1 of the Illinois Code of Civil procedure (735 ILCS 5/2-203.1), at 8216 S. Rhodes Ave., Chicago, Illinois, 60619. The caption of that order listed plaintiff as "AIS Services, LLC

1-10-0873

(formerly IDT Carmel).” The next day, August 19, 2009, an alias summons was issued for defendant, to be served at the 8216 S. Rhodes address.

On October 27, 2009, the trial court entered a default judgment in favor of plaintiff against defendant in the amount of \$4,084.50, and stated in its written order that defendant had not appeared, and that the total amount awarded to plaintiff included a principal balance of \$2,898.95, accrued interest in the amount of \$730.55, and \$455 in attorneys fees. Attached to that order was a certificate of service stating that defendant had been served with the summons and complaint by U.S. First Class and certified mail pursuant to the trial court’s previous order. On December 11, 2009, a "citation to discover assets to third party" was issued to the Department of Correction, which appears to be defendant’s employer, ordering it to inform the court of any property or wages due and owing to defendant.

On February 18, 2010, an answer to wage deduction proceedings was filed by the Department of Corrections. In that answer, Patti Landers, indicated that she was an agent of the Department of Corrections, and that defendant’s gross wages minus mandatory contributions to his pension plan was \$3,197.09, twice per month. The calculations described on that answer indicated that \$479.56 was to be applied to the judgment. On that same day, the court entered a wage deduction order, imposing a lien on defendant’s wages in the amount \$4,677.21.

Also on February 18, 2010, defendant filed an appearance as a *pro se* litigant, together with a "motion to quash service and vacate judgment," in which he alleged that he was not “properly notified by mail, nor through a sheriff, nor through an alias summons,” and that he did not live at the address on 8216 S. Rhodes alleged by plaintiff. Instead, defendant indicated that

1-10-0873

he lived at 9322 South Loomis, Chicago, Illinois, 60620. In addition, defendant alleges that he had not been given “a fair hearing,” or the opportunity to defend himself from plaintiff’s complaint.

The common law record does not disclose whether any response to defendant’s motion was filed by plaintiff. As shall be further discussed below, plaintiff claims that he was given insufficient time to respond to defendant’s motion, but there is no corroboration in the common law record that plaintiff requested the trial court to grant it additional time to respond.

On February 25, 2010, the trial court entered an order granting defendant’s motion to quash service of process and vacate the default judgment of October 27, 2009, and vacating the wage turnover order of February 18, 2010. The order also stated that defendant submitted to the jurisdiction of the court and set a status date for March 15, 2010. On March 4, 2010, an attorney named Vladimir Uman filed an appearance on behalf of defendant, and a motion to dismiss plaintiff’s complaint pursuant to sections 2-615 and 2-606 of the Code (735 ILCS 5/2-615, 2-606 (West 2010)). In that motion, defendant alleged that plaintiff failed to attach a written agreement signed by The Home Depot and defendant as required under 735 ILCS 5/2-606, or any evidence of an assignment of defendant’s account from The Home Depot to plaintiff. Defendant also alleged that plaintiff failed to state a cause of action for which relief may be granted because plaintiff did not state when and where defendant entered into a contract with The Home Depot, when and where defendant allegedly breached that contract, or “when, where and by whom demand on defendant was made.” Thus, according to defendant’s motion, plaintiff’s complaint was not supported by sufficient facts and should be dismissed pursuant to 735 ILCS 5/2-615.

1-10-0873

On March 5, 2010, plaintiff filed a motion for reconsideration of the trial court's order granting defendant's motion to quash service and vacate judgment. In that motion, plaintiff claimed that defendant's motion to quash service and vacate judgment was legally insufficient, and requested that the trial court require defendant to amend his motion, grant plaintiff time to file an answer and set a date for an evidentiary hearing. On that same day, plaintiff filed the affidavit of Richard Bodmer, in which Mr. Bodmer averred that he represented the original plaintiff in this case, and that he now represents the assignee of the debt forming the basis of the complaint. He also stated, in relevant part, that IDT Carmel, the original complainant, purchased defendant's debt from Citibank, the entity which privately labels The Home Depot credit card. In addition, Mr. Bodmer averred that in his application for the credit card in question, defendant indicated that his address was 8216 S. Rhodes Avenue, Chicago, Illinois. According to Mr. Bodmer, a professional "skip trace" service was used to check defendant's address and no discrepancies or issues associated with defendant's address until he called inquiring about the citation notice. In addition, Mr. Bodmer averred that although the U.S. post service generally returns letters sent to an incorrect address, none of the four letters sent to defendant were returned to Mr. Bodmer's office. The affidavit further stated that when a sheriff attempted to serve defendant on April 27, 2009, the sheriff's remark was "no contact," rather than "not listed," "moved" or "other." According to Mr. Bodmer, that remark indicated that the sheriff had reason to believe that defendant resided at that address. Further, Mr. Bodmer averred that after the default judgment was entered against defendant, a letter was sent to defendant notifying him of the judgment at the 8216 S. Rhodes Ave. address, which was never returned.

1-10-0873

On that day, March 5, 2010, plaintiff also filed the affidavit of an attorney named Jonathan Bailey, who averred that he was an attorney at the office which represented the original and current plaintiffs in this case. Mr. Bailey further stated that various skip tracing searches were conducted to provide updated information in connection to plaintiff's motion to reconsider. According to Mr. Bailey, a skip tracing search provided by a private company named Fast Data showed 8216 S. Rhodes Ave. Chicago, Illinois as a current mailing address for defendant, and that the same address was the mailing address for defendant's real estate located at 9322 S. Loomis. Additionally, Mr. Bailey averred that a search run on March 4, 2010 of the Cook County Treasurer's Office web page for property tax and payment information on the address at 9322 S. Loomis disclosed that defendant indicated to the county that his mailing address to receive property tax information on the address at 9322 S. Loomis was 8216 S. Rhodes Ave. Mr. Bailey further averred that a search of the same Cook County web page run on March 4, 2010 for the property at 8216 S. Rhodes indicated that the property tax information for that address should be sent to one Tonya Wilson at 9322 S. Loomis. In addition, Mr. Bailey averred that a search of the white pages yielded no results for the address at 9322 S. Loomis, but disclosed both defendant and Tonya Wilson at 8216 S. Rhodes Ave. In its brief, plaintiff appears to allege that Tonya Wilson is defendant's wife.

Attached to Mr. Bailey's affidavit was a printout, apparently from Fast Data, which indicated that defendant's address was 8216 S. Rhodes Avenue, that defendant owned the property at 9322 S. Loomis, but the mailing address in connection with that property was 8216 S. Rhodes. Also attached to the affidavit was what appears to be a printout of Cook County

1-10-0873

Property Tax and Payment Information website, which indicates that the “mailing information” connected to the property at 9322 S. Loomis indicated defendant’s name and the address at 8216 S. Rhodes. Another printout from the same web page indicated that the “mailing information” for the property at 8216 S. Rhodes was Tonya Wilson at 9322 S. Loomis. Also attached to that affidavit was what appears to be a printout from the white pages, indicating that the address at 8216 S. Rhodes was connected to both defendant and Tonya Wilson. A second printout from the white pages showed no results from a search of the address at 9322 S. Loomis.

Also present in the common law record is a letter dated February 18, 2010, from Mr. Bodmer to the postmaster requesting defendant’s updated current address. The letter is followed by what appears to be a request pursuant to the Freedom of Information Act (FOIA), completed by the postmaster on February 22, 2010, indicating that defendant’s address at 9322 S. Loomis was correct and current. In addition, a report dated August 2, 2009, from Cadillac Investigations, Inc. indicates that an investigator attempted to serve defendant on June 23, 2009 at 8216 S. Rhodes, and observed a camera which monitors the front entrance at the home. The report also indicates that the investigator observed and heard activity inside the home, and that even with repeated knocking on doors and windows, they would not respond. However, neither the letter, FOIA request, nor the report from Cadillac were file stamped, and it is unclear from the record whether they were attached to any documents filed with the trial court.

The common law record further indicates that on March 15, 2010, two property tax bills were filed. The first bill appears to be for the property at 9322 S. Loomis, and that it was mailed to defendant at 8216 S. Rhodes, Chicago, Illinois. The other bill appears to be for the property at

1-10-0873

8216 S. Rhodes, and was apparently mailed to Tonya Wilson at 9322 S. Loomis, Chicago, Illinois.

Also on March 15, 2010, the trial court entered an order denying plaintiff's motion to reconsider and granting defendant's motion to dismiss the complaint pursuant to section 2-606 of the Code. In that order, the trial court granted plaintiff leave to amend its complaint pursuant to section 2-606 of the Code by April 13, 2010.

### **ANALYSIS**

On appeal from that order, plaintiff now contends that the trial court's order should be reversed because the trial court erred in not requiring defendant to amend his "motion to quash service and vacate judgment." In support of that contention, plaintiff argues that defendant's pleading was legally insufficient to state a basis for relief because it does not comply with section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2008)), the only provision of the Illinois Code of Civil Procedure which allows a defendant to seek relief from a default judgment more than 30 days after it was entered. Plaintiff maintains that defendant failed to file supporting affidavits as to his assertion that he did not live at the address where plaintiff attempted to serve him as required under section 2-1401 (735 ILCS 5/2-1401 (West 2008)) because that was not a matter of record. Plaintiff further argues that while it did not have sufficient time to file a written answer to defendant's motion, the court improperly denied plaintiff's oral request that the court require defendant to amend his motion. For the reasons discussed below, we find that while the common law may lend support to certain of those contentions made by plaintiff, we conclude that plaintiff waived those contentions due to the fact that nothing in the record shows that he challenged the

1-10-0873

sufficiency of defendant's motion at the hearing.

We first note that we have no appellee's brief, and are therefore bound to apply the principles set forth by our supreme court in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976), in order to determine whether we may properly resolve the merits of this appeal with the record before us and based solely on the arguments raised by plaintiff. In that case, our supreme court held:

"We do not feel that a court of review should be compelled to serve as an advocate for the appellee or that it should be required to search the record for the purpose of sustaining the judgment of the trial court. It may, however, if justice requires, do so. Also, it seems that if the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief, the court of review should decide the merits of the appeal. In other cases, if the appellant's brief demonstrates *prima facie* reversible error and the contentions of the brief find support in the record the judgment of the trial court may be reversed."

*Talandis*, 63 Ill. 2d at 133.

Because the record in this case is essential to a resolution of the court's alleged error, for the reasons that follow, we find that plaintiff has not provided a sufficient record of the proceedings below to permit us to decide this appeal in its favor. See *Lill Coal Co. V. Bellario*, 30 Ill. App. 3d 384, 385 (1975); see also *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984).

As noted above, according to *Talandis*, we may decide the appeal in favor of

1-10-0873

plaintiff, without the benefit of appellee's brief, only if plaintiff presents a *prima facie* case that is supported by the record on appeal. See *Talandis*, 63 Ill. 2d at 133. By requiring that appellant's claim be supported by the record on appeal, our supreme court in *Talandis* made clear that it did not intend to change the well established principle that the appellant bears the burden to present this court with a sufficiently complete record of the lower court proceedings to support a claim of error on appeal (*Foutch*, 99 Ill. 2d at 392; *LaSalle National Bank v. City Suites, Inc.*, 325 Ill. App. 3d 780, 788 (2001); see also *Kim v. Evanston Hospital*, 240 Ill. App. 3d 881, 888 (1992) (“[a]ppellant has the duty to present a complete record to the reviewing court so that the court may be fully informed about the issues that it must resolve”). See *Talandis*, 63 Ill. 2d at 133; see also *Coleman v. Windy City Balloon Port, Ltd.*, 160 Ill. App. 3d 408, 419 (1987) (holding that even where appellee provides no brief on appeal, the appellant must nevertheless provide the reviewing court with a record sufficient to support his claims, and where he fails to do so, the reviewing court must presume that the missing portions of the record support the legal and factual findings of the circuit court, and affirm the judgment of that court). Therefore, although the supreme court's decision in *Talandis* permits us to decide this appeal without the benefit of appellee's brief, the burden nevertheless remains on plaintiff to provide us with a sufficient record to support his contentions. See *Talandis*, 63 Ill. 2d at 133.

In the absence of the transcripts of the proceeding at the lower court, it will be presumed that the order entered by the trial court was in conformity with the law and had a sufficient factual basis, and any doubts which may arise from incompleteness of the record

1-10-0873

will be resolved against the appellant. *Foutch*, 99 Ill. 2d at 392. In that case, since appellant did not provide a transcript, or bystander's report, of the hearing on a motion to vacate, there was no basis for holding that the trial court had committed an error in denying the motion. *Foutch*, 99 Ill. 2d at 392; see also *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005) (holding that absent an adequate record preserving the claimed error, any doubts arising from the incompleteness of the record will be resolved against the appellant, and the order of the circuit court will be affirmed); see also *Coleman*, 160 Ill. App. 3d at 419, citing *Mileke v. Condell Memorial Hospital*, 124 Ill. App. 3d 42, 48-49 (1984), *In re marriage of Hofstetter*, 102 Ill. App. 3d 392, 396 (1981) (“[i]t is not the obligation of the appellate court to search the record for evidence supporting reversal of the circuit court. \*\*\* When portions of the record are lacking, it will be presumed that the trial court acted properly in entry of the challenged order and that the order is supported by the part of the record not before the reviewing court”).

In this case, defendant has failed to provide us with any report of the proceedings below. See S. Ct. R. 323(a) (eff. Dec. 13, 2005) (the report of the proceedings, “may include evidence, oral rulings of the trial judge, a brief statement of the trial judge of the reasons for his decision, and any other proceedings that the party submitting it desires to have incorporated in the record on appeal”). Nor is there a bystander's report which is authorized under Illinois Supreme Court Rule 323(c) (See S. Ct. R. 323(c)) (eff. Dec. 13, 2005) (“[i]f no verbatim transcript of the evidence of proceedings is obtainable the appellant may prepare a proposed report of proceedings from the best available sources, including

1-10-0873

recollection”), nor any agreed statement of facts filed by the plaintiff which is authorized by Rule 323(d) (See S. Ct. R. 323(d) (eff. Dec. 13, 2005) (“[t]he parties by written stipulation may agree upon a statement of facts material to the controversy and file it without certification in lieu of and within the time for filing a report of proceedings”). All that appears before us is the common-law record, which includes the trial court’s order allowing service on defendant by mail at 8216 S. Rhodes Avenue, its order granting default judgment for plaintiff, defendant’s motion to quash service of process and vacate judgment, and the trial court’s order granting that motion.

We acknowledge that, notwithstanding *Foutch*, 99 Ill. 2d at 392, the transcripts of the proceedings at the lower court may be unnecessary when an appeal confronts solely a question of law, which we review *de novo*. *Gonella Baking Co. v. Clara’s Pasta di Casa, Ltd.*, 337 Ill. App. 3d 385, 388 (2003). In that case, the court found that when reviewing an issue *de novo*, the reviewing court is in the same position as the lower court and does not need to defer to the lower court’s reasoning. *Gonella Baking Co.*, 337 Ill. App. 3d at 388. We also note that our supreme court has held that “when a trial court enters a judgment on the pleadings or a dismissal in a section 2-1401 proceeding, that order will be reviewed, on appeal, *de novo*.” *People v. Vincent*, 226 Ill. 2d 1, 18 (2007). However, the principle set forth in *Gonella Baking Co.*, 337 Ill. App. 3d at 388, presumes that a court reviewing a question of law has access to the same data underlying the decision of the trial court. And, as noted above, in the absence of the record containing the alleged error, it will be presumed that the decision of the trial court was correct, and any doubts arising from that

1-10-0873

incompleteness will be resolved against the appellant. See *Foutch*, 99 Ill. 2d at 392; *Corral*, 217 Ill. 2d at 156; *Coleman*, 160 Ill. App. 3d at 419.

In this case, plaintiff contends that the trial court erred in granting defendant's "motion to quash service and vacate judgment" because that motion was legally insufficient and did not comply with the requirements of section 2-1401 of the Code. Although defendant's submission was captioned as a motion, it was filed more than 30 days after judgment was entered, and it shall, therefore, be treated as a petition pursuant to section 2-2401 of the Code.

Plaintiff correctly noted that section 2-1401 is the only provision of the Code which allows a party to seek relief from a final judgment more than 30 days after it was entered, and that a petition filed pursuant to that section "must be supported by affidavit or other appropriate showing as to matters not of record." 735 5/2-1401(b) (West 2007).

Nevertheless, our courts in Illinois have held that if a defect in a petition is less serious than a failure to state a cause of action, and "the sufficiency of the petition is not objected to by way of motion to strike, but instead is answered, the answering party waives the question of the sufficiency of the petition." *Selvaggio v. Kickert School Bus Line, Inc.*, 46 Ill. 2d 398, 406 (1964); see also *Meadows v. State Farm Mutual Auto Ins. Co.*, 237 Ill. App. 3d 240, 253-54 (1992) (holding that the legal insufficiency of a pleading was waived where the party opposing it raised it for the first time after entry of a final judgment by the trial court, and the defect could have been cured if raised in a timely manner); *Smith v. Pappas*, 112 Ill. App. 2d 129, 132 (1969) (noting that a petition to vacate a judgment is a new action, and

1-10-0873

that the question of the formal legal sufficiency of such an action is waived on appeal if it is not challenged at the trial court).

Although defendant's "motion to quash service and vacate judgment" in the common law record does not appear to be verified, and there are no affidavits attached to it, there is also no written answer by plaintiff challenging the sufficiency of defendant's petition. While plaintiff contends that he did not have sufficient time to file a written response to defendant's "motion," there is no transcript to verify that he requested the trial court for additional time to file an answer, or how the trial court would have responded to such request. In addition, while plaintiff contends that it orally objected to the sufficiency of defendant's "motion" at the hearing by requesting the trial court to require defendant to amend his "motion" and requested time to answer it on its merits, plaintiff did not provide any records of that proceeding in support of that contention. Thus, we must now resolve that question against plaintiff and presume that it did not object to the sufficiency of defendant's petition at the hearing, thereby waiving that question at that time. *Corral*, 217 Ill. 2d at 156; *Coleman*, 160 Ill. App. 3d at 419.

We next note that although plaintiff challenged the sufficiency of defendant's "motion to quash service and vacate judgment" in its motion to reconsider, that does not change our conclusion. While a trial court's order granting or dismissing a petition in a section 2-1401 proceeding on the pleadings is reviewed *de novo* (*Vincent*, 226 Ill. 2d at 18), the decision in *Vincent* did not appear to change the principle that a trial court's decision to deny or grant a motion to reconsider is within the sound discretion of the trial court. See e.g.

1-10-0873

*In re Marriage of King*, 336 Ill. App. 3d 83, 87 (2002). Thus, without the transcripts of the hearing on plaintiff's motion to reconsider, we can only speculate as to the reasons for the trial court to deny plaintiff's motion. Such speculation is not an adequate basis upon which we may conclude that the trial court abused its discretion in denying the plaintiff's motion for reconsideration. Accordingly, we must presume that the trial court's ruling had a sufficient factual basis and was in conformity with the law. See *Corral*, 217 Ill. 2d at 156; see also *Foutch*, 99 Ill. 2d at 392; *Coleman*, 160 Ill. App. 3d at 419.

Having concluded that the trial court did not err in not requiring defendant to amend his petition, we now turn to plaintiff's contention that even if defendant's petition was legally sufficient, the trial court erred in granting the petition without an evidentiary hearing to determine the accuracy and validity of defendant's allegations in that petition. Plaintiff maintains that the issue of whether defendant was properly served was a controverted issue, and the trial court erred in deciding it without an evidentiary hearing once plaintiff demanded such a hearing. According to plaintiff, it demanded an evidentiary hearing, which the trial court denied and granted defendant's motion based on defendant's contentions, his statement that he had not lived at 8216 S. Rhodes for two years, and photo ID documents from defendant and his wife.

Generally, an evidentiary hearing must be held when controverted issues are central to a petition for relief under section 2-1401. *Ostendorf v. International Harvester Co.*, 89 Ill. 2d 273, 286 (1982). The central facts are those which are sufficient to support an order vacating the judgment. *Smith v. Cole*, 256 Ill. App. 3d 806, 810 (1993). However, even

1-10-0873

where central facts are controverted, the right to such an evidentiary hearing is deemed waived where parties to a section 2-1401 proceeding participate in a hearing based solely upon the pleadings, affidavits and arguments of counsel without requesting an evidentiary hearing. *Smith*, 256 Ill. App. 3d at 810.

As previously discussed, a trial court's judgment on the pleadings in a section 2-1401 proceeding is reviewed *de novo*, and a reviewing court may determine the propriety of that decision without the benefit of the transcripts of the lower court. See *Vincent*, 226 Ill. 2d at 18; *Gonella Banking Co.*, 337 Ill. App. 3d at 388. Nevertheless, in the absence of such record on appeal, it will be presumed that the order entered by the trial court was in conformity with the law and had a sufficient factual basis, and any doubts which may arise from incompleteness of the record will be resolved against the appellant. *Foutch*, 99 Ill. 2d at 392; *Corral*, 217 Ill. 2d at 156; *Coleman*, 160 Ill. App. 3d at 419.

In this case, although plaintiff alleges in its brief that it demanded an evidentiary hearing on the merits of defendant's 1401 petition, when defendant's petition was heard, nothing in the common law record indicates whether that request was ever made before the disposition of defendant's petition, nor at any other time prior to plaintiff's motion to reconsider, well after the hearing on defendant's 1401 petition. Thus, we must now presume that the order entered by the trial court granting that motion without an evidentiary hearing was in conformity with the law, and that plaintiff failed to request such an evidentiary hearing, thereby waiving that right. Accordingly, we conclude that the trial court did not err in granting defendant's petition without an evidentiary hearing.

1-10-0873

Plaintiff nevertheless contends that the trial court erred in vacating the default judgment against defendant because service of process was properly made on defendant pursuant to section 2-203.1 of the Code (735 ILCS 5/2-203.1) (West 2010)). Plaintiff maintains that defendant's employer does not allow the general public to speak to defendant when he is at work, and does not provide information concerning his residence. In addition, plaintiff asserts that defendant placed security cameras at the home which is owned by his wife and which he holds himself to be in residence, which allows him to evade people who attempted to contact him at home. According to plaintiff, an affidavit attesting to those facts, combined with a FOIA request filed with the United States Postal service showing that defendant's address was 8216 S. Rhodes, where plaintiff attempted to serve him, properly formed the basis of the trial court's ruling when it allowed plaintiff to serve defendant by mail. Plaintiff further claims that records from the Cook County Treasurer's Office, found after the trial court granted defendant's petition, indicate that defendant and his wife own the properties at 8216 S. Rhodes and 9322 S. Loomis. According to plaintiff, in light of those facts, the trial court erred in believing defendant's statement that he had not lived at that address for two years.

Although plaintiff claims to have raised each of the foregoing contentions before the trial court, the common law record contains no response to defendant's petition and there is no transcript to establish that those contentions were, in fact, raised at the hearing on the motion. In addition, as noted above, while plaintiff claims that he did not respond to defendant's 1401 petition in writing because he had insufficient time to do so, there is no

1-10-0873

transcript to verify that he ever requested the trial court for additional time, or what response the trial court would have made. Nor is there a transcript to establish what defendant would have responded, or how the trial court would have responded to these contentions if they were, in fact, made. Although there is a bill in the common law record from an investigator who attests that defendant evaded service and his employer refused to disclose defendant's location, the only FOIA request in the record indicates that defendant's current address is 9233 S. Loomis, as defendant alleged. In fact, plaintiff admits that the FOIA request showing that defendant's address was 8216 S. Rhodes is not present in the record. Plaintiff also admits that it did not run a search of the Cook County Treasurer's office web page until after the trial court's judgment granting defendant's 1401 petition, which indicates that those search results were not presented to the trial court at the hearing on the motion.

Accordingly, in the absence of any written response to defendant's motion or a transcript of the proceedings at the trial court, we presume that those contentions were not raised at the hearing on the motion, and that the trial court had a sufficient basis for its factual findings and legal conclusions in ruling in granting defendant's petition. See *Corral*, 217 Ill. 2d at 156; *Foutch*, 99 Ill. 2d at 392.

As previously noted, even where the appellee does not file a brief, the appellant has the burden of providing the reviewing court with a sufficient record to support his claims, and if he fails to do so, the reviewing court must presume that missing portions of the record support both the legal and factual findings of the trial court, and affirm that court's judgment. *Coleman*, 160 Ill. App. 3d at 419.

1-10-0873

Although plaintiff raised in its motion for reconsideration the contention that defendant attempted to evade service of process, FOIA requests show that he resides at 8216 S. Rhodes, and that records from the Cook County Treasurer's Office indicates that he owns the property at that address, there is no transcript to establish the trial court's reasoning in denying that motion. As previously noted, the trial court's decision to deny or grant a motion to reconsider is within the sound discretion of the trial court. *King*, 336 Ill. App. 3d at 87. Thus, in the absence of a transcript, we can only speculate as to the trial court's reasons to deny the motion, and must presume that the trial court's ruling had a sufficient legal and factual basis. See *Corral*, 217 Ill. 2d at 156; *Foutch*, 99 Ill. 2d at 392.

Lastly, plaintiff contends that the trial court erred in applying an " 'equally liberal' standard" when granting relief to defendant, instead of following section 2-1401 of the Code (735 ILCS 5/2-1401) (West 2010)). Plaintiff maintains that the trial court failed to articulate the statutory provision under which it was granting defendant's motion for relief. According to plaintiff, the trial court simply stated that " 'he grants default judgments liberally but that when a defendant shows up in court, he grants relief for that defendant equally liberally \*\*\*.' " Plaintiff argues that the applicable standard governing the sufficiency of defendant's motion for relief is section 2-1401 of the Code, under which the court should have required defendant to amend his petition and held an evidentiary hearing before granting relief.

As noted above, while a reviewing court may determine the propriety of a trial court's judgment on the pleadings in a section 2-1401 proceeding without the transcripts of the lower court, in the absence of those transcripts, it will be presumed that the order entered by the trial

1-10-0873

court was correct, and any doubts arising from incompleteness of the record will be resolved against the appellant. See *Vincent*, 226 Ill. 2d at 18; *Gonella Banking Co.*, 337 Ill. App. 3d at 388; *Foutch*, 99 Ill. 2d at 392.

In this case, plaintiff challenges the appropriateness of the trial court's order granting defendant's motion based on the allegation that the trial court applied an "equally liberal standard," instead of articulating the provision under which relief was granted. Nothing in the common law record indicates whether the trial court made the statements alleged by plaintiff at the hearing on defendant's motion. Since we must resolve that question against defendant, we presume that the trial court applied the correct provision in ruling on defendant's motion, and find no error in the trial court's reasoning. *Foutch*, 99 Ill. 2d at 392.

For the foregoing reasons, we affirm the judgment entered by the circuit court of Cook County.

Affirmed.

HOFFMAN, J., and HOWSE, J., concur.