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2013 IL App (3d) 120619-U

Order filed July 2, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

REGINA MOY,) Appeal from the Circuit Court
) of the 12th Judicial Circuit,
Plaintiff-Appellee,) Will County, Illinois,
)
v.)
) Appeal No. 3-12-0619
) Circuit No. 09-LM-3051
RANDY CROSSON, CATHERINE)
CROSSON, and Unknown Occupants,) Honorable
) Thomas Carney,
Defendants-Appellants.) Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Lytton and McDade concurred in the judgment.

ORDER

¶ 1 *Held:* In a forcible entry and detainer action, the dismissal of defendants' section 2-1401 petition was affirmed because it was filed more than two years after the entry of judgment, the record refuted any allegations of lack of notice, and the conclusory allegations failed to state a claim of fraud.

¶ 2 The plaintiff, Regina Moy, filed a complaint in forcible entry and detainer against the defendants, Randy Crosson, Catherine Crosson, and unknown occupants, alleging rent due under

a residential lease. The trial court entered judgment in favor of Moy. Thereafter, the Crossons filed a petition pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2010)). The trial court denied the petition, and the Crossons appealed.

¶ 3

FACTS

¶ 4 Moy filed a complaint in forcible entry and detainer against the Crossons and unknown occupants, alleging that Moy was entitled to possession of a residential property in Plainfield, Illinois, and that the Crossons were indebted to Moy for the rent of said premises in the amount of \$32,300. A copy of the lease was attached to the complaint. The record indicates that the complaint and summons were personally served upon Catherine Crosson at the subject property by a special process server. The docket also indicates that Randy Crosson appeared and denied the allegations. The matter proceeded to trial, but there is no transcript of the trial in the record. The docket indicates that witnesses were sworn and heard, and that the statutory notice was presented and filed. The trial court entered judgment on November 4, 2009, in favor of Moy and against the Crossons in the amount of \$36,100, plus costs of \$389. The Crossons did not file a timely appeal from that order.

¶ 5 On July 5, 2012, the Crossons filed a petition pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2010)), arguing that the trial court lacked personal jurisdiction and that the judgment was fraudulent. The trial court denied the motion as untimely. The Crossons appealed.

¶ 6

ANALYSIS

¶ 7 The Crossons argue that the November 4, 2009, order was fraudulent or void because of lack of notice. They argue that Randy Crosson was never served with a summons or complaint

in this matter.

¶ 8 Moy did not file an appellee brief. It is not our role to serve as an advocate for the appellee or search the record for reasons to sustain the trial court's judgment. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128 (1976). However, if the record is simple and the claimed errors can be easily decided without the aid of an appellee's brief, the court of review should decide the merits of the appeal. *First Capitol Mortg. Corp.*, 63 Ill. 2d at 133.

¶ 9 Generally, a section 2-1401 petition must be filed within two years after the entry of judgment. 735 ILCS 5/2-1401(c) (West 2010). A petition filed more than two years after a judgment will be dismissed unless the person seeking relief was under a legal disability or duress, or the grounds for relief were fraudulently concealed. 735 ILCS 5/2-1401(c) (West 2010). Relief may also be sought after the two-year limitations period for judgments that are void. 735 ILCS 5/2-1401(f) (West 2010). A void judgment is one that was entered by a court which lacks jurisdiction over the parties or the subject matter, or which lacks the inherent power to make or enter the particular order involved. *People v. Lott*, 325 Ill. App. 3d 749 (2001). We review *de novo* a trial court's dismissal of a section 2-1401 petition. *People v. Vincent*, 226 Ill. 2d 1 (2007).

¶ 10 In this case, the docket clearly indicates that summons was served, and that Randy Crosson appeared and denied the allegations. It also indicates that Randy Crosson was present at the trial, and that he was personally served with the order of possession on December 8, 2009. Catherine Crosson was served with the order of possession when it was left with her husband, Randy, at the subject property. Thus, not only is the petition untimely, the allegations with

respect to service of process do not state a claim of fraud. See *In re Estate of Barth*, 339 Ill. App. 3d 651 (2003) (unsupported, conclusory allegations of fraud were inadequate to meet the requirements of section 2-1401 where defendant did not attach an affidavit or other supporting evidence to his motion and there was no evidence in the record to support his fraud allegations). In addition, although Randy Crosson alleges that he was declared mentally incompetent at the time of the judgment, he does not support that conclusory allegation and does not allege when his competency was restored. Thus, we affirm the dismissal of the section 2-1401 petition.

¶ 11

CONCLUSION

¶ 12 The judgment of the circuit court of Will County is affirmed.

¶ 13 Affirmed.