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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

JOSEPH C. OWENS and ETHEL P. OWENS,)	Appeal from the Circuit Court
)	of Du Page County.
Plaintiffs-Appellant,)	
)	
v.)	No. 12-CH-5888
)	
SHEILA G. ROCK, MARY McLAUGHLIN,)	
DOROTHY CASE, NANCY ROISUM,)	
KATHLEEN SNOW, and ROCK FUSCO and)	
CONNELLY, LLC, JOHN J. ROCK, SILVIA)	
MERCADO MASTERS, and ERIN N. BYBEE,)	
their Attorneys and Agents,)	Honorable
)	Terence M. Sheen,
Defendants-Appellees.)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices McLaren and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in granting defendants' 2-615 motion to dismiss plaintiffs' amended complaint for quieting title based on the alleged voidness of the judgment recorded, because the record from the underlying case, of which the trial court could take judicial notice, refuted plaintiffs' legal conclusion that the judgment was void.

¶ 2 Plaintiffs, Joseph C. Owens (Owens) and Ethel P. Owens, appeal from the trial court's grant of the motion to dismiss filed by defendants, Sheila G. Rock, Mary McLaughlin, Dorothy

Chase, Nancy Roisum, and Kathleen Snow, and their attorneys and agents, Rock Fusco and Connelly, LLC, John J. Rock, Silvia Mercado Masters, and Erin N. Bybee. We affirm.

¶ 3

I. BACKGROUND

¶ 4

A. Cook County Action (Underlying Action)

¶ 5 The facts governing this case are largely derived from an underlying case brought by several of the defendants against Owens, so we begin there. On April 26, 2010, Rock, McLaughlin, Chase, Roisum, and Snow (collectively beneficiaries) brought a complaint in the Cook County circuit court against Owens, as trustee of the Marion K. Moran Trust, dated November 21, 1987, and as amended November 22, 2004. The beneficiaries alleged as follows. They were beneficiaries of the trust, and the trust amendment appointed Owens as trustee. Moran died in November 2005. Owens made a few distributions to the beneficiaries in the years that followed, but he never complied with their repeated requests to provide statements of account for the trust. He also indicated that there was money remaining in the trust that he would be retaining as fees for his efforts to locate trust assets. Count I alleged breach of fiduciary duty for failing to provide the beneficiaries with a yearly account of the trust and for failing to diligently manage and locate trust assets. In conjunction with this count, the beneficiaries requested, among other things, that Owens be removed as trustee. Count II requested an accounting of the trust.

¶ 6

Owens moved to dismiss the action on the basis that the beneficiaries were not income beneficiaries and therefore lacked standing under the Trusts and Trustees Act. See 760 ILCS 5/11(a) (West 2010). The trial court denied the motion and ordered Owens to file an answer within 14 days. Owens instead filed a second motion to dismiss, this time arguing that the trial court lacked jurisdiction because the beneficiaries were not income beneficiaries. The trial court

denied the motion. Owens appealed the denials of his motions to dismiss, and pursuant to a motion by the beneficiaries, the appellate court dismissed the appeal for lack of jurisdiction.

¶ 7 The trial court subsequently ordered Owens to file an answer and respond to outstanding written discovery requests. Shortly after, Owens filed a petition for leave to appeal to the supreme court seeking review of the appellate court's dismissal of his appeal; the supreme court denied the petition. On August 15, 2011, Owens filed a third motion to dismiss, arguing that the beneficiaries had failed to plead that they were income beneficiaries. Around the same time, he filed a motion in the supreme court for a supervisory order and for sanctions, as well as a stay of trial court proceedings pending resolution of the motion; these motions were denied.

¶ 8 The trial court denied Owens's third motion to dismiss, stating that the arguments Owens had raised in all three of the dismissal motions were virtually identical. On October 7, 2011, Owens appealed this denial and again appealed the denial of his second motion to dismiss. The beneficiaries moved to dismiss the appeal and obtain sanctions. On November 16, 2011, the appellate court granted the beneficiaries' motion and awarded them attorney fees and costs associated with the appeal.

¶ 9 Meanwhile, based on Owens's refusals to answer their complaint, the beneficiaries filed a motion for default. On October 31, 2011, after Owens declined the opportunity to have additional time to answer the complaint, the trial court granted the motion as to count II. Owens subsequently filed a motion requesting the court to reconsider and vacate the default order. On November 17, 2011, after Owens again refused to answer the complaint, the trial court denied the motion to reconsider. It further ordered that, among other things, Owens provide a full accounting. On December 1, 2011, Owens filed a third notice of appeal challenging, based on a

lack of jurisdiction, the default order and the order denying the motion to reconsider and vacate the default.

¶ 10 Shortly afterwards, the beneficiaries filed a motion for default as to count I. They alleged that records from the bank where the trust money had been held showed that: Owens had paid himself \$42,100 from the trust, without any accounting showing that the fees were incurred in managing and preserving the trust; Owens had not properly distributed trust assets; and Owens removed the remaining money from the account in May 2011. The beneficiaries requested that the trial court find Owens in default on count I, order him to return the missing funds and his fees, and award the beneficiaries costs and fees as punitive damages.

¶ 11 On December 29, 2011, Owens filed a fourth notice of appeal in the case, challenging the trial court's November 17, 2011 order and a December 12, 2011 order in which the trial court had ordered Owens to respond to various pleadings. Owens maintained that the trial court lacked jurisdiction to enter the orders because Owens's prior notice of appeal gave the appellate court jurisdiction at those times.

¶ 12 On January 12, 2012, the trial court granted the beneficiaries' motion for default as to count I in its entirety, including attorney fees and costs. At the hearing, the court put Owens under oath and asked the name of the bank at which the trust money was currently being held. Owens declined to respond on the basis that the trial court lacked jurisdiction to conduct the hearing.

¶ 13 On January 18, 2012, the appellate court granted the beneficiaries' motion to dismiss Owens's fourth notice of appeal and granted their motion for sanctions. In January and February 2012, Owens filed two more notices of appeal, this time from the trial court's January 12, 2012, order, arguing lack of jurisdiction.

¶ 14 On February 22, 2012, the trial court entered a final judgment in the beneficiaries' favor, finding in relevant part as follows. On about May 25, 2011, Owens removed the remaining trust funds totaling \$82,559.91. He further paid himself \$42,100 from November 2005 to May 2011. The trial court had entered the January 12, 2012 default order as to count I based on Owens's failure to adhere to the trial court's orders and Owens's repeated notices of appeal, all of which had been dismissed, which demonstrated his "pattern of deliberate, contumacious and unwarranted disregard" for the trial court's authority. The January 12, 2012 order had awarded the beneficiaries \$124,659.91 (\$82,559.91 + \$42,100) and granted them punitive damages. The beneficiaries' counsel submitted a petition showing fees and expenses of \$79,450.09. Therefore, the trial court was now awarding the beneficiaries a total of \$204,110. The trial court's order was amended on March 1, 2012, to correct a scrivener's error.

¶ 15 Owens appealed the judgment, constituting his seventh appeal in the case. In August 2012, the appellate court granted the beneficiaries' motion to dismiss Owens's fourth through seventh appeals, and it also granted their motion for sanctions.¹

¶ 16 The same month, Owens filed a motion in the supreme court for an emergency supervisory order to vacate all orders that the trial court entered after Owens filed his July 2011 notice of appeal. He also filed a motion to stay proceedings in the trial court pending the disposition of his motion for a supervisory order. The supreme court denied Owens's motions and granted the beneficiaries' request for sanctions. In October 2012, Owens filed a motion in the supreme court to vacate the trial court's judgment and orders, and he later filed a motion to

¹ According to defendants, Owens failed to prosecute his fourth through seventh notices of appeal.

reconsider the supreme court's grant of sanctions. The supreme court denied these requests in November 2012.

¶ 17 B. Du Page County Action (Instant Action)

¶ 18 Plaintiffs filed a complaint to quiet title on January 13, 2013, in Du Page County, against the beneficiaries and their lawyers. Plaintiffs filed an amended complaint on January 28, 2013. Count I alleged that the beneficiaries had recorded the March 1, 2012, judgment against plaintiffs' Glen Ellyn residence, but the judgment was void because the appellate court had jurisdiction over the case on the date of the trial court's judgment. Count II alleged that the judgment was void because it was entered against Owens as an individual whereas the suit was brought against him in his representative capacity of trustee. Plaintiffs requested that the court declare the March 2012 judgment void and order that it be expunged from the title to their property.

¶ 19 On February 8, 2013, defendants filed a motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2012)). They argued that count I failed as a matter of law because the March 2012 judgment was not subject to collateral attack, and plaintiffs' argument about a lack of jurisdiction had been rejected by the appellate and supreme courts. They argued that count II should be dismissed because a judgment may not be collaterally attacked solely on the basis that it is erroneous.

¶ 20 The trial court granted defendants' motion and dismissed the complaint with prejudice on March 25, 2013. It issued a modified order on April 4, 2013, denying some outstanding motions relating to the motion to dismiss. Plaintiffs timely appealed.

¶ 21 II. ANALYSIS

¶ 22 At issue in this appeal is the trial court's grant of defendants' motion to dismiss under section 2-615. Such a motion attacks the legal sufficiency of the complaint. *DeHart v. DeHart*, 2013 IL 114147, ¶ 18. In ruling on a section 2-615 motion, a court must accept as true all well-pleaded facts in the complaint as well as all reasonable inferences. *Id.* The central inquiry is whether the allegations, when construed in the light most favorable to the plaintiff, sufficiently state a cause of action upon which relief can be granted. *Id.* In ruling on a section 2-615 motion, the trial court may consider only facts apparent from the face of the pleadings, matters subject to judicial notice, and judicial admissions. *K. Miller Construction Co. v. McGinnis*, 238 Ill. 2d 284, 291 (2010). We review *de novo* an order granting a section 2-615 motion to dismiss. *DeHart*, 2013 IL 114147, ¶ 18.

¶ 23 A. Judicial Notice

¶ 24 Plaintiffs first argue that under section 2-615, the trial court was required to consider only the amended complaint's allegations to determine whether they were legally sufficient to state a cause of action to quiet title. Plaintiffs argue that defendants pointed out no defects in the complaint, thereby admitting its legal sufficiency. According to plaintiffs, the trial court should not have considered allegations in the motion to dismiss relating to the underlying action because none of them attacked facial defects of the complaint.

¶ 25 As stated, in ruling on a section 2-615 motion, the trial court may consider matters subject to judicial notice. *K. Miller Construction Co.*, 238 Ill. 2d at 291; see also Ill. R. Evid. 201(f) (eff. Jan. 1, 2011) ("Judicial notice may be taken at any stage of the proceeding."). Illinois court may take judicial notice of other proceedings where a holding in one cause involving substantially the same parties is determinative of the pending cause. *Walsh v. Union Oil Co. of California*, 53 Ill. 2d 295, 299 (1973); see also *People v. Wright*, 2013 IL App (1st)

103232, ¶ 38 (Illinois courts may take judicial notice of federal court proceedings).² Therefore, contrary to plaintiffs' argument, the trial court could consider information from the record in the underlying case in ruling on the 2-615 motion. *Cf. Beacham v. Walker*, 231 Ill. 2d 51, 61 (2008) (affirming trial court's dismissal of complaint under section 2-615 because record showed that sentencing defect alleged by the plaintiff was insufficient to render his consecutive sentence void).

¶ 26 Further, we conclude that defendants properly brought their motion pursuant to section 2-615. Rather than conceding the complaint's legal sufficiency, defendants argued that the complaint failed to state a claim for quieting title because the record from the underlying case refuted plaintiffs' contention that the March 2012 judgment was void.

¶ 27 **B. Identity of Parties**

¶ 28 Plaintiffs next argue that the Cook County circuit court's March 1, 2012, judgment is void because it does not satisfy a basic requirement of a valid judgment, that being identifying the parties in whose favor and against whom the judgment was entered. Plaintiffs note that the

² In their reply brief, plaintiffs cite *People v. McKinley*, 367 Ill. 504, 507 (1937), for the proposition that courts can take judicial notice of the record in the case before it but not in respect to records of other proceedings, even where the facts are within the court's personal knowledge. While this may have been true in the first half of the twentieth century, our supreme court subsequently changed its stance on this issue to allow courts to take judicial notice of proceedings in other courts, at least where the proceedings involve the same parties and are determinative of the current case. *People v. Davis*, 65 Ill. 2d 157, 164 (1976); see also *In re Interest of McDonald*, 144 Ill. App. 3d 1082, 1083-84 (1986) (describing evolution of judicial notice doctrine).

judgment refers to the parties as “Plaintiffs” and “Defendant.” We take plaintiffs’ larger argument to be that the trial court erred in granting the motion to dismiss, because their complaint stated a cause of action for quieting title based on the March 2012 judgment being void for failing to properly identify the parties.

¶ 29 To be considered a final judgment, a judgment must designate the parties for and against whom it is entered. *Bank of Ravenswood v. Domino’s Pizza, Inc.*, 269 Ill. App. 3d 714, 722 (1995). “The trial court’s order must be interpreted in light of the motions, pleadings and issues presented to the court and appearing in the record.” *Id.*; see also *People v. Jamison*, 157 Ill. App. 546, 553 (1910) (parties’ name for whom and against whom the judgment is rendered “must be ascertainable from the record”). Here, the March 2012 judgment included a caption listing Sheila Rock “*et al.*” as plaintiffs and Owens as defendant. The judgment’s preamble also named Owens as defendant. Therefore the judgment, especially considered in light of the record, clearly indicated the name of the parties for whom and against whom the judgment was rendered.

¶ 30 C. Jurisdiction

¶ 31 Plaintiffs’ third argument is that the Cook County circuit court lacked jurisdiction to enter any order or judgment in the case after October 7, 2011, when Owens filed a notice of appeal from “That Order.” We again consider plaintiffs’ larger argument to be that their complaint stated a cause of action for quieting title based on the March 2012 judgment being void for a lack of jurisdiction arising from Owens filing the aforementioned notice of appeal.

¶ 32 Plaintiffs argue in their brief that “the filing of a Notice of Appeal from a *Final Judgment* by one of the litigants in a Circuit Court Case terminates the jurisdiction of that Court to enter any subsequent Order regarding substantive right [*sic*] of any of the parties to the case until the Appellate Court had decided the Appeal and had mandated the case back to the Trial Court ***.”

(Emphasis added.) Plaintiffs cite several cases and Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994), which states:

“Every *final judgment* of a circuit court in a civil case is appealable as of right. The appeal is initiated by filing a notice of appeal. No other step is jurisdictional. An appeal is a continuation of the proceeding.” (Emphasis added.)

¶ 33 We have no quarrel with plaintiffs’ position as it relates to final judgments, but Owens appealed from the trial court’s denial of his motion to dismiss, which is not a final judgment. See *Mund v. Brown*, 393 Ill. App. 3d 994, 996 (2009) (the denial of a motion to dismiss is an interlocutory, not a final and appealable order, and does not give the appellate court jurisdiction on appeal). While plaintiffs seem to contend that the mere filing of a notice of appeal transfers jurisdiction, a premature notice of appeal, such as the one Owens filed on October 7, 2011, is ineffective in conferring appellate jurisdiction. *Marsh v. Evangelical Covenant Church of Hinsdale*, 138 Ill. 2d 458, 468-69 (1990); *Stasko v. City of Chicago*, 2013 IL App (1st) 120265, ¶ 28. Correspondingly, the appellate court dismissed Owens’s appeal, without resolving it on the merits, and granted the beneficiaries’ motion for sanctions. In sum, Owens’s October 7, 2011, notice of appeal did not seek to appeal a final judgment, so it was insufficient to transfer jurisdiction to the appellate court, and jurisdiction remained with the trial court.

¶ 34 D. Personal Versus Representative Capacity

¶ 35 Plaintiffs’ remaining arguments on appeal all relate to count II and their contention that the March 2012 judgment is void because it was entered against Owens personally, whereas the summons and complaint named Owens solely in his representative capacity as trustee in this case. Plaintiffs argue that the Cook County court did not have jurisdiction of Owens personally because not only did the complaint lack allegations against him personally, there was also no

proof of any allegations made against him personally. Plaintiffs argue that as a result, the judgment recorded against him in the Du Page County recorder's office should be stricken from the record of title to plaintiffs' real property.

¶ 36 Defendants maintain that Owens did not previously assert his argument about the beneficiaries failing to name him in his personal capacity, "so he cannot be heard to complain now." Defendants are effectively arguing that plaintiffs forfeited this issue because Owens did not raise it in the Cook County action. There is authority supporting forfeiture under analogous circumstances. See 735 ILCS 5/2-612(c) (West 2012) ("All defects in pleadings, either in form or substance, not objected to in the trial court are waived."); *Novak v. Thies*, 89 Ill. App. 3d 991, 994 (1980) (alleged pleading defect, that the complaint did not allege that individual was the administrator of the estate, was forfeited because the defendants did not object at trial); see also *Department of Conservation v. Baltimore & Ohio R.R. Co.*, 103 Ill. App. 3d 417 (1982) (parties waived any defects in the caption of the notice of appeal to the circuit court from an administrative decision by not objecting to the caption and adopting it in their motions). However, as plaintiffs argue that the error renders the judgment void, we examine the issue further. See *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 103 (2002) (void judgment or order may be attacked at any time in any court).

¶ 37 Defendants also contend that a challenge to a judgment similar to plaintiffs' was rejected in *Schlosser v. Schlosser*, 218 Ill. App. 3d 943 (1991). There, the court stated that "the failure to name the defendant as a trustee in the caption is not material. The body of the complaint makes it clear that the action is brought against the defendant as a trustee." *Id.* at 946. Defendants argue that the opposite is true here because the judgment properly identified Owens as the one against whom it was rendered.

¶ 38 We agree with defendants that the fact that Owens was named in his capacity of trustee in the summons and the caption of the pleadings did not mean that the trial court could not render a judgment against him personally. The beneficiaries' complaint alleged that Owens breached his fiduciary duty as trustee. See *Carter v. Carter*, 2012 IL App (1st) 110855, ¶ 25 (a trustee owes a trust's beneficiaries a fiduciary duty and is obligated to carry out the trust according to its terms and to act with the highest degree of fidelity and utmost good faith). Damages are an essential element of a breach of fiduciary duty claim. *Bank of America, N.A. v. Carpenter*, 401 Ill. App. 3d 788, 801 (2010). Further, "[p]unitive damages are available as a matter of law for a breach of fiduciary duty" (*Tully v. McLean*, 409 Ill. App. 3d 659 (2011)), and attorney fees and costs are available as punitive damages (*In re Estate of Talty*, 376 Ill. App. 3d 1082, 1093 (2007); see also *In re Estate of Elias*, 408 Ill. App. 3d 301, 323 (2011) (trial court has broad discretionary powers in awarding attorney fees)). The beneficiaries did not explicitly request monetary damages in the initial complaint, but they did allege that Owens had not provided them with an accounting despite repeated requests, that Owens stated that he was keeping the remaining trust assets for his fees, and that he failed to locate assets of Moran being held by the State. The beneficiaries requested an accounting, which would be the first step in ascertaining any damages, and they also requested any further relief that the court deemed just and equitable.

¶ 39 Therefore, it was clear from the allegations that Owens was potentially subject to personal liability. "No pleading is bad in substance which contains such information as reasonably informs the opposite party of the nature of the claim or defense which he or she is called upon to meet." 735 ILCS 5/2-612(b) (West 2010). As such, although the captions in the summons and complaint in the underlying case did not directly state that Owens was also being sued individually, this did not prohibit the trial court from having jurisdiction over him

personally. *Cf. Schmidt v. Kellner*, 307 Ill. 331, 341-42 (1923) (designation of the defendants as trustees in the pleadings could be descriptive of either the person sued or the capacity in which he sued, and the interpretation of the term was to be determined from the declaration's allegations).

¶ 40 Regarding proof of allegations, after Owens refused to provide a court-ordered accounting, the beneficiaries moved for default, disgorgement, and punitive damages. Owens still refused to file responsive pleadings or respond to the trial court's inquiry of the location of the trust money in open court. Based on these considerations, and a finding that Owens "demonstrat[ed] a pattern of deliberate, contumacious and unwarranted disregard" of the trial court's authority, the trial court found Owens in default, which admits the facts in the complaint. *Direct Auto Insurance Co. v. Beltran*, 2013 IL App (1st) 121128, ¶ 66. The trial court also held prove-up hearings, at which Owens still refused to recognize the trial court's jurisdiction over the case. The trial court awarded the beneficiaries the attorney fees and costs reflected in their petition for compensation and reimbursement. Therefore, the beneficiaries established proof of their allegations against Owens based on all of the above.

¶ 41 The cases cited by plaintiffs are distinguishable, as: *Werner v. W. Ho. Shons Co.*, 341 Ill. 478, 480-81 (1930), involved service on a partnership; in *Gocheff v. Breeding*, 53, Ill. App. 3d 608 (1977), the summons was invalid because it was served by a party to the action; in *Home State Savings Ass'n v. Powell*, 73 Ill. App. 3d 915, 916 (1979), the homeowner alleged that the plaintiff did not make a good faith effort or exercise due diligence in serving him; and in *LaMotte v. Constantine*, 92 Ill. App. 3d 216, 217 (1980), the summons was left with the defendant's father at the father's residence, where the defendant did not live. Here, in contrast,

Owens was properly served and appeared in the Cook County action, and it was clear from the complaint's allegations that he was also potentially liable in a personal capacity.

¶ 42 Plaintiffs' amended complaint for quieting title was based on their allegations that the March 2012 judgment was void. We have determined that their arguments for asserting the judgment's voidness are without merit, so we affirm the trial court's grant of defendants' section 2-615 motion for failure to state a claim upon which relief can be granted.

¶ 43

III. CONCLUSION

¶ 44 For the reasons stated, we affirm the judgment of the Du Page County circuit court.

¶ 45 Affirmed.