

2015 IL App (2d) 140230-U  
No. 2-14-0230  
Order filed February 3, 2015

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

---

IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

---

MOMKUS MCCLUSKEY, LLC,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 12-AR-651
	)	
KHALID PADEN,	)	Honorable
	)	James D. Orel,
Defendant-Appellant.	)	Judge, Presiding.

---

PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court.  
Justices Zenoff and Birkett concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court properly dismissed defendant’s section 2-1401 petition to vacate a judgment as void for plaintiff’s failure to comply with section 2-403: despite the alleged statutory violation, plaintiff’s contract claim was a justiciable matter and thus the court had jurisdiction and its judgment was not void.

¶ 2 Defendant, Khalid Paden, appeals *pro se* from the dismissal of his petition filed pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2012)). Because the sole claim raised in the petition failed to set forth a valid basis for relief, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff, Momkus McCluskey, LLC (Momkus), filed a complaint in the circuit court of Du Page County against defendant, alleging claims for breach of contract, account stated, and *quantum meruit*. All claims were based on a written contract for legal services between defendant and his former attorney, Thomas A. Else, PC, the rights to which had been purchased by Momkus. Momkus sought \$14,190 in unpaid attorney fees under the contract.<sup>1</sup>

¶ 5 Defendant, *pro se*, filed a motion for change of venue, in which he asserted that Thomas Else was the actual plaintiff and was currently an associate judge in Du Page County and that, to avoid any appearance of impropriety, the venue should be changed to Cook County. Defendant also filed an answer to the complaint, in which he denied that he owed any attorney fees under the contract.

¶ 6 Defendant filed a cross-complaint against Momkus and Else, in which he alleged that Else had breached the contract and that, not only should Momkus's claim be denied, but he should be awarded \$46,230 for payments he had already made under the contract.

¶ 7 Momkus filed a response to defendant's motion to change venue, in which it asserted, among other things, that the contract contained a provision that established venue in Du Page County. Attached to the response was a copy of the contract, which provided, immediately above defendant's signature, that any litigation related to the contract, including legal fees, was to occur in Du Page County.

¶ 8 On August 31, 2012, defendant filed a motion to continue a September 26, 2012, hearing on his motion to change venue. Defendant set the motion to continue for September 21, 2012. When defendant did not appear on September 21, the trial court struck the motion to continue.

---

<sup>1</sup> The case was designated for mandatory arbitration pursuant to Illinois Supreme Court Rule 86 (eff. Jan. 1, 1994).

¶ 9 Defendant failed to appear for the September 26 hearing. The trial court denied the motion to change venue, because the contract set venue in Du Page County and defendant, who resided in Indiana, had no connection to Cook County.

¶ 10 On October 11, 2012, defendant filed a motion to reconsider the denial of his motion to change venue. He reiterated that Else had filed the contract action and that, because Else was now a judge, it was impossible for defendant to obtain an impartial judgment. On November 30, 2012, the trial court denied the motion to reconsider and set the breach-of-contract claims for arbitration on January 16, 2013.

¶ 11 On December 6, 2012, defendant filed a letter in which he refused to participate in the arbitration or to accept any arbitration decision.

¶ 12 On December 14, 2012, Momkus filed its Rule 222 disclosure. See Ill. S. Ct. R. 222 (eff. Jan. 1, 2011). The disclosure stated that defendant had retained the services of Thomas A. Else, PC, to represent him in a dissolution-of-marriage action in Du Page County and that defendant had failed to pay fees of \$14,190 under the contract. The disclosure further stated that Momkus had purchased the assets and accounts receivable of Thomas A. Else, PC, including the outstanding balance of \$14,190.

¶ 13 At the same time, Momkus answered defendant's amended cross-complaint. Included with the answer was a copy of the contract and the billing records showing the amounts billed, the amounts paid by defendant, and an amount due of \$14,190.

¶ 14 Defendant did not appear for the January 16, 2013, arbitration. The arbitrators awarded Momkus \$14,190 plus \$320 in costs. The award stated that defendant had been properly notified of, but failed to appear for or participate in, the proceeding.

¶ 15 On January 30, 2013, defendant filed a motion to vacate and dismiss the arbitration award. In that motion, defendant asserted that Momkus had refused to disclose the names and addresses of other defendants that it was pursuing on behalf of Else and that Momkus did not have personal knowledge of the amount due under the contract. Defendant also sought dismissal of the original complaint.

¶ 16 On February 8, 2013, the trial court set the matter for a hearing on April 9, 2013. On March 26, 2013, defendant filed a reply to Momkus's response to his motion to vacate and dismiss. In that reply, he essentially argued that he was not required to submit to arbitration. On April 9, 2013, the court denied defendant's motion to vacate and dismiss and entered judgment on the arbitration award.

¶ 17 On August 22, 2013, defendant filed a motion to dismiss a citation to discover assets, contending that he had tendered payment in full to Momkus. Momkus filed a response, in which it asserted that the documents tendered by defendant, a "bond of acceptance" and a "certificate of indebtedness," did not constitute proper payment. On October 28, 2013, defendant filed a motion to withdraw his motion to dismiss the citation to discover assets.

¶ 18 On November 4, 2013, defendant filed a petition for a satisfaction of judgment, in which he asserted that he had satisfied the judgment by tendering payment in full and that Momkus had refused to accept his payment. Defendant essentially contended that he had tendered a bond of acceptance, which, combined with a certificate of indebtedness, effectively constituted payment in full to Momkus.

¶ 19 On November 13, 2013, the trial court entered an order striking defendant's motion to withdraw his motion to dismiss. The court also denied defendant's petition for satisfaction of judgment.

¶ 20 On December 2, 2013, defendant filed a motion to reconsider and for clarification regarding the trial court's denial of his petition for satisfaction of judgment. On January 10, 2014, the court denied defendant's motion to reconsider and for clarification.

¶ 21 On January 15, 2014, defendant filed a petition pursuant to section 2-1401 of the Code (735 ILCS 5/2-1401 (2012)), which he amended on February 5, 2014. In his petition, defendant's sole contention was that, because Momkus never set forth the basis for its right to bring a subrogation claim, as required by section 2-403 of the Code (735 ILCS 5/2-403 (West 2012)), the trial court lacked "standing" and "all previous judgments in this case [must] be vacated."

¶ 22 On February 7, 2014, the trial court dismissed the section 2-1401 petition. On March 5, 2014, defendant filed a notice of appeal, in which he asked for review of the order of September 26, 2012, denying his motion for change of venue, the January 16, 2013, order entering judgment on the arbitration award, the November 13, 2013, order denying his petition for satisfaction of judgment, and the February 7, 2014, order dismissing his section 2-1401 petition.

¶ 23 On appeal, defendant raises several contentions. First, he contends that the trial judge was biased and prejudiced against him and should have recused himself. Second, he asserts that he should have received a change of venue to Cook County because he could not obtain a fair and impartial proceeding in Du Page County. Third, he argues that he was denied due process related to a wage garnishment order and that, alternatively, the court lacked jurisdiction to enter such an order. Fourth, he posits that the court lacked "standing" to enter judgment on the arbitration award because Momkus failed to properly establish how it became the subrogee of the contract claim. Finally, he contends that, because the court lacked "standing," the arbitration

order was void and therefore the court improperly relied on a lack of due diligence to dismiss his section 2-1401 petition.

¶ 24

## II. ANALYSIS

¶ 25 Generally, to be entitled to section 2-1401 relief, a petitioner must affirmatively set forth factual allegations supporting: (1) the existence of a meritorious defense or claim; (2) due diligence in presenting that defense or claim to the trial court in the original action; and (3) due diligence in filing the section 2-1401 petition. *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 220-21 (1986). To establish due diligence, a petitioner must show a reasonable excuse for his failure to act within the applicable time. *Airoom, Inc.*, 114 Ill. 2d at 222. Section 2-1401 does not provide a remedy for the consequences of a litigant's own mistakes or negligence. *Airoom, Inc.*, 114 Ill. 2d at 222. However, a petition to vacate a void judgment, brought under section 2-1401(f), is not subject to the due-diligence requirements. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104 (2002). If the court disposes of a section 2-1401 petition based on a claim of voidness, that decision is reviewed *de novo*. *Rockford Financial Systems, Inc. v. Borgetti*, 403 Ill. App. 3d 321, 326-27 (2010).

¶ 26 Here, we must decide initially whether defendant's section 2-1401 petition was based on a claim that the judgment was void. For if it was, then defendant did not need to establish due diligence and the trial court erred in disposing of the section 2-1401 petition on that basis.

¶ 27 We conclude that it was. The petition stated that the trial court lacked "standing" to decide the case. It also stated that a petition that seeks relief based on voidness "negates the need to allege \*\*\* due diligence." Although not artfully pleaded, the petition essentially contended that the judgment was void because the court lacked "standing" to decide the case. Therefore,

defendant was not required to establish due diligence. See *Sarkissian*, 201 Ill. 2d at 104. Thus, the court erred in dismissing the petition for a lack of due diligence.

¶ 28 Nonetheless, we may affirm on any basis in the record, regardless of whether the trial court relied upon that basis or whether its reasoning was correct. *Bjorkstam v. MPC Products Corp.*, 2014 IL App (1st) 133710, ¶ 23. As discussed, defendant's voidness claim was based on a purported lack of "standing." It is apparent that what defendant was arguing was that the court lacked jurisdiction to decide the case. A judgment is void when the court that entered it lacked jurisdiction over the parties or the subject matter, or lacked the inherent power to make or enter the judgment. *Government Employees Insurance Co. v. Hersey*, 397 Ill. App. 3d 551, 554 (2010).

¶ 29 A court's constitutionally-conferred subject matter jurisdiction extends to all justiciable matters. *Belleville Toyota, Inc. v. Toyota Motor Sales, USA, Inc.*, 199 Ill. 2d 325, 334-36 (2002). Indeed, once a court has obtained jurisdiction, an order will not be rendered void, nor will the court lose jurisdiction, merely because of an error or impropriety in the court's ruling on the facts or law. *Hersey*, 397 Ill. App. 3d at 554. Moreover, statutory procedural requirements are not jurisdictional. *Belleville Toyota, Inc.*, 199 Ill. 2d at 335-36.

¶ 30 In this case, the trial court unquestionably had jurisdiction over what was an ordinary breach-of-contract claim. Moreover, even assuming that Momkus failed to comply with section 2-403, that would not have deprived the court of its jurisdiction over the case. Therefore, the judgment was not void. Thus, there was no merit to defendant's section 2-1401 petition, and we affirm its dismissal on that basis.

¶ 31 Finally, we note that a section 2-1401 petition is merely a mechanism to belatedly challenge a trial court's final judgment. *MB Financial Bank, N.A. v. Ted & Paul, LLC*, 2013 IL

App (1st) 122077, ¶ 15. That is, it creates an exception to the general rule that a court cannot review its own judgment after 30 days. *Id.* It does not operate, however, to extend the time for filing a notice of appeal from the underlying judgment. *In re Charles S.*, 83 Ill. App. 3d 515, 517 (1980); *International Industrial Leasing, LTD v. H. J. Coleman & Co.*, 66 Ill. App. 3d 884, 888 (1978). Indeed, it is a new proceeding, and not a continuation of the old one, and therefore does not provide a party with a new 30-day clock to file a notice of appeal in the old one. *Mitchell v. Fiat-Allis, Inc.*, 158 Ill. 2d 143, 149 (1994).

¶ 32 Based on the foregoing, our jurisdiction is limited to a review of the dismissal of defendant's section 2-1401 petition. To the extent that he attempts to challenge other rulings on any basis outside the scope of that raised in the section 2-1401 petition, we lack jurisdiction to review those rulings.

¶ 33 III. CONCLUSION

¶ 34 For the reasons stated, we affirm the judgment of the circuit court of Du Page County dismissing defendant's section 2-1401 petition.

¶ 35 Affirmed.