2015 IL App (2d) 140606-U
No. 2-14-0606
Order filed May 27, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF GERALD C. NAVARRO,	)	Appeal from the Circuit Court of Du Page County.
Petitioner-Appellant,	)	
v.	)	No. 97-D-11
MARY ANNE MUNGO,	)	Honorable Neal W. Cerne,
Respondent-Appellee.	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Presiding Justice Schostok and Justice Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: Petitioner failed to demonstrate that the trial court erred in denying his section 2-1401 petition, which alleged that an "agreed order" was void: an agreed order substitutes for a pleading so as to give the trial court jurisdiction, and, although petitioner asserted that the order was not actually agreed, he did not provide an official record of the hearing on his petition, and thus we could not say that the trial court erred in rejecting that argument.

¶ 2 Gerald C. Navarro, the petitioner in a dissolution-of-marriage proceeding, appeals from the denial of a petition pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2012)) to vacate orders requiring him to obtain full-time employment that would enable him to meet his child-support obligations. We affirm.

¶ 3 In 1998, the circuit court of Du Page County entered a judgment dissolving Gerald's marriage to respondent, Mary Ann Mungo. The judgment originally required Gerald to pay $500 per month in child support for the parties' two minor children, but in September 2003 the trial court increased the amount to $1,500 per month, retroactive to October 2001, based on an imputed annual income of $116,000. Evidently, Gerald owned or held some interest in a limousine business. On several occasions, Gerald fell behind in his child-support payments, and in October 2005 he filed a petition to reduce child support to $500 per month on the ground that his income had decreased substantially since September 2003. Gerald alleged that he no longer owned the limousine business and had unsuccessfully attempted to operate a restaurant. The trial court denied the motion in March 2007 and ordered Gerald to conduct a "weekly job search." On May 7, 2007, the trial court entered an order requiring plaintiff to "obtain full-time hourly employment and pay child support from any earnings." On May 24, 2007, the trial court entered an agreed order providing in pertinent part that the May 7, 2007, order remained in full force and effect and that Gerald "shall conduct a job search, not in the restaurant related field." Nearly seven years later, in February 2014, Gerald filed the section 2-1401 petition giving rise to this appeal. He contended that the May 24, 2007, order prohibiting him from seeking employment in the "restaurant related field" was void. Gerald also sought to "reopen proofs" with respect to child support. On April 2, 2014, Mary Ann filed her response to Gerald's petition. On April 16, 2014, following a hearing, the trial court denied the petition. Gerald moved for reconsideration. After the trial court denied that motion, Gerald filed a timely notice of appeal.

¶ 4 We initially note that Mary Ann has not filed an appellee's brief, so our review is governed by *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976). In *Talandis*, our supreme court stated as follows:

> "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." *Id.*

As discussed below, Gerald has failed to demonstrate *prima facie* error in the denial of his section 2-1401 petition.

¶ 5 Section 2-1401 of the Code authorizes a litigant to seek relief from a judgment more than 30 days after it was entered. "As a general rule, petitions brought pursuant to section 2-1401, to be legally sufficient, must be filed within two years of the order or judgment, the petitioner must allege a meritorious defense to the original action, and the petitioner must show that the petition was brought with due diligence." *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 103 (2002). However, a petition seeking relief from a void judgment is not subject to the two-year limitations period. *Id.* at 104. Moreover, "the allegation that the judgment or order is void substitutes for and negates the need to allege a meritorious defense and due diligence." *Id.*

¶ 6 It is now well settled that a judgment or order is void only when the court that entered it lacked jurisdiction. *JPMorgan Chase Bank, N.A. v. Ontiveros*, 2015 IL App (2d) 140145, ¶ 20. Although the trial court might have exceeded its statutory authority in ordering Gerald to engage in a job search and barring him from seeking opportunities in the restaurant industry (see *In re Marriage of Page*, 162 Ill. App. 3d 515, 519 (1987)), it does not follow that the trial court

necessarily acted outside its jurisdiction. Generally speaking, the circuit court's subject matter jurisdiction extends to all justiciable matters. Ill. Const. 1970, art. VI, § 9. "A 'justiciable matter' is 'a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests.' " *Ontiveros*, 2015 IL App (2d) 140145, ¶ 21 (quoting *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 335 (2002)).

¶ 7 Gerald's argument that the May 24, 2007, order is void relies heavily on *In re Custody of Ayala*, 344 Ill. App. 3d 574, 584 (2003), which held that "[t]he court's authority to exercise its jurisdiction and resolve a justiciable question is invoked through the filing of a complaint or petition, pleadings that function to frame the issues for the trial court and circumscribe the relief the court is empowered to order." In *Ayala* the trial court awarded custody of a child to her father. *Id.* at 577. When the father was arrested for conspiracy to sell drugs, the mother petitioned for modification of custody. *Id.* The father was ultimately convicted and sentenced to a prison term. *Id.* at 578. Rather than awarding custody of the child to her mother, following a hearing on June 20, 2001, the trial court awarded custody to the father's wife and his parents. *Id.* at 579-80. The *Ayala* court concluded that custody order was void. The court so held because no pleading requested that custody be given to the father's wife and parents and because the mother, who was not present at the June 20, 2001, hearing, had no notice that the question of custody would be considered at that hearing. *Id.* at 584.

¶ 8 Gerald argues that jurisdiction was similarly lacking here because no pleading had requested entry of an order requiring him to seek work outside the restaurant industry. To evaluate that argument, we must consider what qualifies as a "pleading" for purposes of ascertaining the scope of the trial court's subject-matter jurisdiction in a given case. It has been

held that a stipulation serves as a pleading in this setting. *People ex rel. Gibbs v. Ketchum*, 284 Ill. App. 3d 70, 78 (1996). In *Ketchum*, the court upheld an order modifying custody of the parties' child by stipulation, noting that "[w]hile there was no pending petition or motion before the trial court in this case, that fact alone will not deprive the court of the authority to act where the parties agree in a stipulation concerning some matter which requires resolution by the court." *Id.* In this setting there is no meaningful difference between a stipulation and an agreed order, which is what the May 24, 2007, in this case purports to be.

¶ 9 Gerald contends, however, that he never agreed to the order. The record reflects that the parties appeared in court on May 23, 2007, at which time Mary Ann's attorney indicated that, consistent with what had transpired before the court, he would prepare an order specifying that Gerald's job search was "not to be restaurant related." It is true that Gerald did not express his assent to such a provision at the hearing. However, he might very well have done so before the written order was submitted to the trial court and entered the following day. At this point, it is helpful to remember that this appeal is before us for review of the denial, following a hearing, of Gerald's section 2-1401 petition. Presumably the parties had the opportunity to resolve any uncertainty about whether the May 24, 2007, order was an agreed order, as it purported to be. However, the record on appeal does not include a report of proceedings for the hearing on the section 2-1401 petition. Therefore, disposition of this appeal is governed by *Foutch v. O'Bryant*, 99 Ill. 2d 389 (1984), in which our supreme court held that "an appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis." *Id.* at 391-92. Under *Foutch*, "[a]ny doubts which may arise from the incompleteness of the record will be resolved

against the appellant." *Id.* at 392. Gerald failed to present a sufficiently complete record to support his claims of error, and thus he necessarily failed to make a *prima facie* case for reversal under the *Talandis* guidelines.

¶ 10 For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 11 Affirmed.