2015 IL App (2d) 150424-U
No. 2-15-0424
Order filed December 23, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

VISTA MEDICAL CENTER EAST, Plaintiff-Appellee, v. MATTHEW J. SCHUENEMAN, Defendant-Appellant (Rachel Schueneman, Defendant; Pasi-Vista, Third-Party Citation Petitioner-Appellee; The Department of Defense, Third-Party Citation Respondent).	)	Appeal from the Circuit Court of Lake County. No. 07-SC-6218 Honorable Theodore S. Potkonjak, Judge, Presiding.

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

ORDER

¶ 1 *Held*: (1) The trial court properly denied defendant's section 2-1401 petition to vacate a wage-deduction order: the record did not establish that the judgment to be collected was entered after a dismissal for want of prosecution, and the collection proceeding was properly commenced within the seven-year limitations period; (2) without an official account of the relevant hearing, we could not say that the trial court abused its discretion in imposing sanctions.

¶ 2 This appeal is taken from an order (1) denying relief that Matthew J. Schueneman sought in a petition under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West

2014)) and (2) awarding sanctions in favor of Vista Medical Center East (VMCE), the plaintiff in the original debt-collection action. (Matthew's codefendant in that action was Rachel Schueneman.) Matthew sought to vacate a wage-deduction order entered against his employer, the Department of Defense (DOD), and in favor of "Pasi-Vista," the name that appears as the petitioner in the caption of the affidavit for wage deduction and the wage-deduction order. (Counsel for "Pasi-Vista" was the same person as counsel for VMCE.) Matthew asserts that the court should have granted his petition because the original judgment was unenforceable for two reasons: it was entered after a dismissal for want of prosecution (DWP), and it was too old to enforce. He further asserts that the court erred in imposing sanctions. We hold that no DWP occurred and that the judgment was not too old. We further hold that the record is insufficient to support the claim that sanctions were improper. We therefore affirm both orders.

¶ 3 I. BACKGROUND

¶ 4 According to the appellate record, VMCE filed a small-claims complaint against Matthew and Rachel on August 29, 2007. VMCE alleged that the two owed it $1,022.68 for medical services rendered. It also sought $350 in attorney fees. The clerk of court issued a summons on August 29, 2007, and an alias summons on December 19, 2007.

¶ 5 On January 3, 2008, VMCE filed two affidavits of service, both bearing dates of January 2, 2008. According to the affidavits, the summons and complaint had been served on Rachel personally and on Matthew by substituted service on December 27, 2007.

¶ 6 The court entered an agreed judgment on February 5, 2008. The form order stated that "Defendant(s)" had appeared *pro se* and had agreed to pay a base amount of $1,022.68, $165 in costs, and $350 in attorney fees by February 18, 2008. A line for the defendant's signature had what is plausibly Matthew's signature. Certainly, the first name signed appears to be

"Matthew." The last name is difficult to discern, but appears to start with an "S" and be consistent with his signature on his affidavit attached to his Motion to Vacate Judgment and Wage Deduction Order.

¶ 7 After the judgment, nothing occurred until September 30, 2014, when an affidavit for wage deduction and a wage-deduction notice were filed by the attorney who had represented VMCE, but in the name of Pasi-Vista. These documents named the DOD as Matthew's employer. The DOD answered, stating Matthew's pay, and, on November 25, 2014, the court entered a wage-deduction order.

¶ 8 On February 6, 2015, Matthew filed through counsel a "Motion to Vacate Judgment and Wage Deduction Order," which was "brought pursuant to 735 ILCS 5/2-1401 [(West 2014)]." In other words, he filed a section 2-1401 petition for relief from judgment. Matthew alleged that he had not been served with the summons or complaint and was not aware of either until the wage-deduction order went into effect. He asserted that it was "uncontroverted that [he] was not served with the summons or complaint necessary to give rise to *** jurisdiction." Matthew also alleged that counsel had sought copies of the summons, complaint, and judgment "through the Lake County Circuit Clerk," but was told that "it [had] no such documents, ostensibly due to its document retention policy." Further, he "twice requested copies of the served summons, complaint and Judgment through Plaintiff's counsel," but received no response. Attached to the petition was Matthew's affidavit that he (1) had not been served with the complaint, (2) "was not aware of the filing or pendency of this matter until [he] discovered that funds were being deducted from [his] pay," and (3) "did not enter into any contract or agreement, whether written or oral, with the plaintiff identified in the Affidavit for Wage Garnishment [that is, Pasi-Vista]."

Further, he never "possessed any copies of any records identified in the Court's docket sheet prior to those dated September 30, 2014, and [has] made reasonable efforts to locate them."

¶ 9 The response to Matthew's petition came in the name of VMCE and in the form of a motion for sanctions. VMCE asserted that Matthew had personally appeared in court and agreed to pay the judgment by a specific date. It attached copies of the file-stamped affidavit of service and judgment. It also attached a "Court Case Details" printout, which, as Matthew later noted, contained an entry dated January 8, 2008, "Dismiss for want of prosecution." (No order from January 8, 2008, appears in the record.) We note that, in its motion, VMCE incorrectly paraphrased Matthew's filing, asserting that he had claimed that he had been unable to obtain the judgment and *wage-deduction order* from the circuit clerk.

¶ 10 Matthew responded to the motion for sanctions. He noted that VMCE's copies of the documents were not certified. He further pointed out the notation in the "Court Case Details" and asserted that the court had dismissed the original case for want of prosecution but not vacated the dismissal. He argued that this made the original judgment invalid.

¶ 11 On March 24, 2015, the court denied Matthew's "Motion" and granted VMCE's motion for sanctions, awarding $250. Matthew filed a timely notice of appeal that he served on the person who was counsel for VMCE and Pasi-Vista.

¶ 12 Matthew later filed a "bystander's report" for the court's approval. This document was largely a procedural history of the case, and not a substitute for a verbatim transcript of courtroom proceedings. The document stated that Matthew, through counsel, tried to get a copy of the judgment from the "file" in the circuit clerk's office, but was "informed that this portion of the file was destroyed." However, Matthew was able to attach "[t]rue and correct copies of the Lake County Circuit Clerk's online records showing the underlying Judgment, Court Events and

Documents Filed regarding this matter as they exist on June 16, 2015." The document stated that, at the combined hearing on Matthew's filing and the motion for sanctions, counsel for VMCE gave the court a copy of the complaint, which it shared with Matthew. Neither VMCE nor Pasi-Vista objected to the "bystander's report," and the court approved it in amended form.

II. ANALYSIS

¶ 13 Initially, we observe that the document Matthew has filed as a bystander's report is not a bystander's report in substance. The purpose of a bystander's report is to serve as a substitute for a verbatim transcript of court proceedings. See Ill S. Ct. R. 323(c) (eff. Dec. 13, 2005)). Matthew's "bystander's report" is instead a procedural history that incidentally mentions a few courtroom occurrences. It thus does not serve the same purpose as a verbatim transcript. In particular, it grants little insight into why the court ruled as it did. Although, given that the court approved the filing *as* a bystander's report, we will accept as true such statements that could properly be found in a bystander's report, we note that, as to the March 24, 2015, hearing, the results are all but the same as if no report existed.

¶ 14 We now turn to Matthew's claims on appeal. He states that he presents three issues for review:

> "1. Whether the trial court properly enforced a purported judgment entered after dismissal of plaintiff's case for want of prosecution when the dismissal order was never vacated;
>
> 2. Whether the payment arrangement upon which defendant allegedly agreed is enforceable more than three years after entry of the purported Judgment; and
>
> 3. Whether the trial court properly imposed sanctions against defendant."

¶ 15 No appellee has filed a brief in this case, so this court must decide this appeal under the principles of *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-33 (1976). Reviewing courts have read *Talandis* to give them three options when no appellee brief has been filed: (1) when justice requires, actively seek bases for sustaining the judgment of the trial court; (2) when the issues are simple, decide the case on the merits; and (3) reverse when the appellant's brief shows *prima facie* error. *Thomas v. Koe*, 395 Ill. App. 3d 570, 577 (2009). Of course, a reversal on the merits requires a stronger showing of error than does a *prima facie* error standard. Thus, an appellant must show *prima facie* error *at least* to prevail on appeal. Here, after discussing each of Matthew's claims in turn, we will conclude that he has failed to show even *prima facie* error as to any of his claims.

¶ 16 Matthew's first claim rests on the assertion that the court entered an order dismissing the complaint for want of prosecution. The record does not support that assertion. The sole suggestion in the record of a dismissal for want of prosecution is a "Court Case Details" printout with the entry, "Dismiss for want of prosecution" associated with a date of January 8, 2008. The printout is cryptically phrased, is not an order, and is inconsistent with the immediately prior filing of an affidavit of service and the later entry of the agreed judgment. The "Court Case Details" printout appears to be the product of a computerized schedule-management program. Nothing Matthew has given to us suggests any official significance to the printout entry.[1] Moreover, the judgment appears properly in the record, exactly as we would expect. No support

[1] The "Court Case Details" entry is in no way surprising. Comparing the record to the full "Court Case Details" printout, the most probable conclusion is that the court *sua sponte* placed the case on a "slaughter call" for DWP based on lack of service. VMCE responded by filing proof of service, and the court did not proceed with the motion.

exists in the record for Matthew's assertion that the court dismissed the action for want of prosecution.

¶ 17 Matthew strongly suggests that certain documents, notably the creditor's copy of the judgment, are inauthentic. However, he has presented no good evidence for that claim and has provided no legal basis for his challenge to the documents' authenticity.

¶ 18 Matthew next asserts that, because the judgment was more than three years old and based on a proposed extension of Illinois Supreme Court Rule 288 (eff. July 1, 1982), the judgment should be uncollectable. Rule 288 provides:

> "The court may order that the amount of a small claim judgment shall be paid to the prevailing party on a certain date or in specified installments, and may stay the enforcement of the judgment and other supplementary process during compliance with such order. The stay may be modified or vacated by the court, but the *installment payments of small claims judgments shall not extend over a period in excess of three years duration*." (Emphasis added.) Ill. S. Ct. R. 288 (July 1, 1982).

This rule has no application here where the only plan was for near-immediate repayment. Further, the Code creates a seven-year limitations period for the enforcement of (unrevived) judgments. 735 ILCS 5/12-108(a) (West 2014). The collection effort started within the seven years.

¶ 19 Finally, Matthew asserts that the court's imposition of sanctions was an abuse of discretion. The record is insufficient to support this claim of error; we affirm under the principles of *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Under *Foutch*, the "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." *Foutch*, 99 Ill. 2d at 391-92. "Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch*, 99 Ill. 2d at 392. Here, we lack a proper record of the hearing on the motion for sanctions. We thus must presume that, at that hearing, Matthew was unable to explain to the court how his claim to have been unaware of the proceeding against him could be reconciled with the appearance of his signature on the agreed judgment.

¶ 20 III. CONCLUSION

¶ 21 For the reasons stated, we affirm the order that denied the relief sought in Matthew's section 2-1401 petition and granted the sanctions sought by VMCE.

¶ 22 Affirmed.