

¶ 1 *Held:* The trial court did not err in denying petitioners' section 2-1401 petition, where petition failed to satisfy any of the requirements that would entitle petitioners to relief.

¶ 2 Petitioners, Inez St. Aubin, Della Ziller and William Dauphin, filed a petition for citation to recover assets against respondent, PNC Bank, National Association, as successor in interest to National City Bank (PNC), in the Kankakee County circuit court. The petition sought to recover certain sums held by the decedent, Leonard Dauphin, in a checking and a savings account at PNC, and further alleged that PNC disbursed those funds to David and Mary Regnier without authorization.

¶ 3 PNC moved for summary judgment, arguing that decedent and Mary Regnier held both the checking and savings accounts in joint tenancy and, therefore, PNC had no liability to the probate estate for Mary Regnier's withdrawal of funds from either account.

¶ 4 The trial court granted PNC's motion on March 1, 2011. On March 28, 2011, due to illness and the need for immediate open-heart surgery, petitioners' attorney filed a motion to continue. Petitioners noticed the motion for May 12, 2011, and the court heard argument on the motion on that date.

¶ 5 Pursuant to a Rule 308(a) appeal filed by PNC, this court ruled that the motion to continue did not toll the time for filing a postjudgment motion. *In re Estate of Dauphin*, 2012 IL App (3d) 120077-U. On May 12, 2011, the trial court, thus, lacked jurisdiction to rule on petitioners' motion to continue or any other postjudgment motion petitioners may have sought to file.

¶ 6 Petitioners subsequently filed a petition to vacate the summary judgment order pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2010)). The trial court denied the motion. Petitioners filed a motion to reconsider, which the trial court also denied.

¶ 7 Petitioners appeal, arguing that the trial court erred in denying their section 2-1401 petition where they set forth a meritorious claim; specifically, that the trial court misinterpreted *In re Estate of Regelbrugge*, 225 Ill. App. 3d 593 (1992), in granting PNC’s motion for summary judgment.

¶ 8 We affirm.

¶ 9 BACKGROUND

¶ 10 On June 28, 2007, Inez St. Aubin, Della Ziller and William Dauphin (petitioners) filed a petition for citation to recover assets against PNC in the Kankakee County circuit court. The petition sought to recover certain sums held by the decedent, Leonard Dauphin, in a checking and a savings account at PNC. The petition further made a claim sounding in breach of contract, alleging that PNC disbursed funds to David and Mary Regnier from those accounts without authorization.

¶ 11 Following a series of pleadings, PNC filed a motion for summary judgment, arguing that decedent and Mary Regnier held both the checking and savings accounts in joint tenancy, thus PNC was not liable to the probate estate for Mary Regnier’s withdrawal of funds from either account. In opposition to PNC’s motion for summary judgment, petitioners argued, *inter alia* that: (1) PNC was required to produce a signature card to prove the savings account had been held in joint tenancy; (2) the savings and checking accounts were convenience accounts not joint tenant accounts; and (3) decedent was unable to authorize the transactions. Petitioners filed no opposing affidavit or any other evidence to support their claim that the savings account was not held in joint tenancy. In its reply brief, PNC submitted the affidavits of Mary Regnier and Nina Ready-Boerst, a PNC representative, along with bank account statements to establish that the savings account was held in joint tenancy.

¶ 12 On March 1, 2011, the trial court granted PNC's motion for summary judgment and dismissed petitioners' citation to recover assets with prejudice. The court included a Rule 304(a) (Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010)) finding that there was no just reason to delay enforcement of the order, thereby making the judgment final.

¶ 13 On March 28, 2011, petitioners filed a document entitled "Motion to Continue." The motion sought an extension of time until May 30, 2011, to file their postjudgment motion for reconsideration attacking the judgment. Petitioners noticed the motion for hearing on May 12, 2011, 75 days after entry of the summary judgment order. PNC filed an objection to petitioners' motion to continue, arguing that filing a motion to continue after the entry of a final order did not extend the time for filing a postjudgment motion, therefore, the trial court lacked jurisdiction to rule on petitioners' motion to continue. The trial court granted petitioners' motion over PNC's objection, noting that due to petitioners' counsel's medical issues, it believed it had discretion to allow petitioners leave to file their motion to reconsider.

¶ 14 Shortly thereafter, PNC filed a motion pursuant to Rule 308(a) (Ill. S. Ct. R. 308(a) (eff. Feb. 26, 2010)) for certification of a question of law. The trial court certified the question submitted by PNC regarding its decision to grant petitioners leave to file their motion to reconsider.

¶ 15 After accepting PNC's application for a Rule 308 appeal, this court held that the filing of a motion to continue after entry of a final order did not stay the time for filing a postjudgment motion. *In re Estate of Dauphin*, 2012 IL App (3d) 120077-U. We note that a motion to continue is not a proper postjudgment motion under section 2-1203(a). Further, any motion seeking an extension to file a postjudgment motion would have to be granted within the initial 30-day period following the final judgment. *Id.* ¶ 21. The trial court did not rule on petitioners'

motion to continue until May 12, 2011, 75 days after the March 1, 2011, final judgment and well outside the 30-day period. It, thus, lost jurisdiction over the matter and could not grant petitioners' leave to file a motion to reconsider.

¶ 16 Approximately two months following our ruling in *Estate of Dauphin*, petitioners filed a petition to vacate judgment pursuant to section 2-1401. Petitioners advanced but a single argument as to having a meritorious claim: that PNC was required and failed to produce a signature card for the savings account showing the account was held in joint tenancy. PNC filed a response in opposition, arguing, *inter alia*, that: (1) the petition was posed for the improper purpose of relitigating issues already adjudicated; and (2) petitioners failed to show they had a meritorious defense as to PNC's motion for summary judgment.

¶ 17 Following a hearing, the trial court denied petitioners' section 2-1401 petition to vacate the summary judgment order. Petitioners filed a motion reconsider, which the trial court also denied.

¶ 18 ANALYSIS

¶ 19 Our determination of this appeal hinges upon whether or not a section 2-1401 petition can be utilized to relitigate the same issues with the same evidence, arguing only that the trial court made an error of law.

¶ 20 Illinois law is well established as to when a petitioner is entitled to relief under section 2-1401. "[T]he petitioner must affirmatively set forth specific factual allegations supporting each of the following elements: (1) the existence of a meritorious defense or claim; (2) due diligence in presenting this defense or claim to the circuit court in the original action; and (3) due diligence in filing the section 2-1401 petition for relief." *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 220-21 (1986); *Johnson v. Wal-Mart Stores, Inc.*, 324 Ill. App. 3d 543, 547 (2001). A section 2-1401

petition must be supported by affidavit or other showing of matters not contained in the record. 735 ILCS 5/2-1401(b) (West 2010); *Gonzalez v. Profile Sanding Equipment, Inc.*, 333 Ill. App. 3d 680, 686 (2002).

¶ 21 It is equally well established that a section 2-1401 petition is generally used to correct errors of fact unknown to the petitioner and the court when judgment was entered, which, if then known, would have precluded its entry. *People v. Haynes*, 192 Ill. 2d 437, 461 (2000); see also *In re Marriage of Frazier*, 203 Ill. App. 3d 847, 850-51 (1990) (a section 2-1401 petition is designed to bring to the trial court's attention to errors and mistakes of which the court is unaware). A section 2-1401 petition is “ ‘not designed to provide a general review of all trial errors nor to substitute for direct appeal.’ ” *Haynes*, 192 Ill. 2d at 461 (quoting *People v. Berland*, 74 Ill. 2d 286, 314 (1978)). “Issues which could have been raised in a motion for rehearing or on direct appeal are *res judicata* and may not be relitigated in the section 2-1401 proceeding, which is a separate action and not a continuation of the earlier action.” *In re Marriage of Baumgartner*, 226 Ill. App. 3d 790, 794-95 (1992); see also *Brockmeyer v. Duncan*, 18 Ill. 2d 502, 505 (1960) (noting that the “rule is well established that a person may not avail himself of [a 2-1401 petition for relief from judgment] unless he shows that through no fault or negligence of his own, the error of fact or the existence of a valid defense was not made to appear to the trial court”). The standard of review to be applied to a section 2-1401 determination following an evidentiary hearing is, per *Vincent*, the manifest-weight-of-the-evidence standard. *Domingo v. Guarino*, 402 Ill. App. 3d 690, 699 (2010) (citing *People v. Vincent*, 226 Ill. 2d 1, 15-17 (2007)).

¶ 22 Petitioners insist, once again, that the trial court misinterpreted *In re Estate of Regelbrugge*, 225 Ill. App. 3d 593 (1992), and that PNC was required and failed to produce a

signature card for the savings account showing the account was held in joint tenancy. As PNC correctly points out, this argument is identical to the argument petitioners advanced in the trial court, both in their amended petition for citation to recover assets and in their response to PNC's motion for summary judgment. Petitioners failed to allege any new facts that, had they been brought to the court's attention, would have precluded entry of summary judgment.

¶ 23 By way of example, in *Halleck v. Trumfio*, 85 Ill. App. 3d 1051 (1980), the First District reversed the trial court's vacatur of summary judgment pursuant to section 72 of the Civil Practice Act (section 2-1401 of the Code is the modern day equivalent of section 72 of the former Civil Practice Act. See *People v. Gosier*, 205 Ill. 2d 198 (2001); 735 ILCS 5/2-1401 (West 2010); Ill. Rev. Stat. 1979, ch. 110, par. 72). The court found that Halleck's petition failed to bring new facts to the court's attention, arguing only that it was error for the trial court to weigh the credibility of affidavits filed by the parties when ruling on a motion for summary judgment. *Halleck*, 85 Ill. App. 3d at 1054. Thus, the petition inappropriately attempted "to relitigate that which had already been validly adjudicated." *Id.* (quoting *Meudt v. Travelers Insurance Co.*, 57 Ill. App. 3d 286, 294 (1978)). The same is true here.

¶ 24 Accordingly, we find that the trial court did not err in denying petitioners' section 2-1401 petition.

¶ 25 CONCLUSION

¶ 26 For the foregoing reasons, the judgment of the circuit court of Kankakee County is affirmed.

¶ 27 Affirmed.