

No. 1-14-2153

**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).

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GALTO TRUCKING INC.,	)	Appeal from the
	)	Circuit Court of
Plaintiff/Counter-defendant-	)	Cook County
Appellant,	)	
	)	
v.	)	No. 11 L 8184
	)	
FRED MANDOLINE,	)	
	)	Honorable
Defendant/Counter-Plaintiff-	)	Eileen O'Neill Burke,
Appellee.	)	Judge Presiding.

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PRESIDING JUSTICE PIERCE delivered the judgment of the court.  
Justices Neville and Hyman concurred in the judgment.

**ORDER**

¶ 1 *Held:* Denial of motion to vacate judgment order affirmed.

¶ 2 In 2011, Galto Trucking Inc., represented by Michael Spinak, filed a complaint against Fred Mandoline for wrongful eviction. Mandoline answered the complaint and filed a counter-claim for breach of commercial lease. On the eve of trial, the parties entered into a settlement agreement. On October 11, 2012, pursuant to an agreed order, Galto's complaint was dismissed with prejudice and judgment in favor of Mandoline in the amount of \$51,527.79 plus costs was entered against Galto. The agreed order was signed by attorney Spinak on behalf of Galto.

¶ 3 Galto did not pay the money owed under the judgment and Mandoline initiated citation

proceedings in the circuit court of Cook County. Mandoline file a citation to discover assets on November 21, 2012.

¶ 4 During the course of the citation proceedings, numerous agreed orders were entered by the parties through and including July 16, 2013. On July 31, 2013, new counsel appeared for Galto and subsequently filed a motion to vacate all motions entered in the citation proceedings and the order entered on October 11, 2012 on the grounds that: (a) attorney Spinak did not have Galto's authority to enter into the October 11, 2012 settlement agreement with Mandoline and (b) Spinak did not have authority to represent Galto in the citation proceeding. Galto submitted an affidavit of Galto's president, Margaret Zurawik, in support of its motion, stating that Spinak was Galto's attorney, however, only Zurawik had authority to settle the lawsuit, Spinak did not have authority to enter into the settlement, that Spinak never advised Zurawik of the settlement on October 11, 2012 or subsequently and Zurawik did not agree to the judgment. Galto also argued that Spinak entered into a series of agreed orders in the citation proceedings without authority.

¶ 5 Mandoline responded to Galto's motion to vacate arguing that a petition for relief from judgment brought under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2012)) must allege, with specificity, a meritorious defense or due diligence in the original action or in filing the motion to vacate. Galto's motion failed to allege either requirement and should be denied on that basis.

¶ 6 Before ruling on Galto's motion, the circuit court held an evidentiary hearing to determine whether Spinak had the authority to enter into the Mandoline-Galto settlement agreement. Zurawik, her translator and Spinak testified at the hearing. After the hearing, on April 24, 2014, the circuit court denied Galto's motion for the "reasons stated on the record." Galto

filed a motion to reconsider, which the circuit court denied on June 12, 2014. This appeal was filed on July 11, 2014.

¶ 7 Before turning to the merits of the appeal, we address Mandoline's argument that this court lacks jurisdiction to consider Galto's appeal because it was not filed within 30-days from the circuit court's April 24, 2014 order denying Galto's motion to vacate. Mandoline asserts that although Galto filed a motion to reconsider, which would ordinarily toll the time for filing an appeal, the motion to reconsider was filed more than 30-days after the April 24, 2014 order, and therefore, it was untimely and cannot serve as a basis for extending the time to file this appeal.

¶ 8 Galto responds arguing that the motion to reconsider was timely filed because May 24 was a Saturday, and therefore, the motion was due the next business day thereafter. Because Monday, May 26 was Memorial Day, a court holiday, the motion to reconsider was filed on the next business day, Tuesday, May 27.

¶ 9 We agree with Galto. If the last day to file a motion or other pleading falls on a Saturday, Sunday, or court holiday, the due date will be extended to the following business day. 5 ILCS 70/1.11 (West 2012); *Shatku v. Wal-Mart Stores, Inc.*, v, 2013 IL App (2d) 120412, ¶ 9. Here, the 30-day deadline for Galto to file the motion was May 24, a Saturday. The next weekday, May 26, was a court holiday. Therefore, to be timely filed Galto's motion was due on or before Tuesday, May 27. Mandoline asserts that Galto's motion was not filed on May 27 but instead on May 28. However, we find that the supplemental record contains an "eFile" document from the Clerk of the Circuit Court's electronic filing system that shows Galto's motion to reconsider was electronically filed on May 27, 2014. Therefore, we find the motion to reconsider was timely filed on May 27, 2014, and this appeal, filed within 30-days of the denial of the motion to

reconsider, was timely filed.

¶ 10 On appeal, Galto argues: (1) the October 11, 2012 agreed order dismissing Galto's complaint and entering a judgment on Mandoline's counterclaim is void; and (2) the trial court erred in holding an evidentiary hearing where the factual allegations in the affidavit in support of the motion to vacate were not challenged in Mandoline's written response and were sufficient in and of itself to grant the motion to vacate. Galto requests we reverse the October 11, 2012 order, and all orders entered thereafter, and remand this matter to the trial court for a determination on the merits on Galto's complaint and Mandoline's counterclaim.

¶ 11 In the August 28, 2013 "motion to vacate orders entered on October 11, 2012," Galto challenged the validity of the October 11, 2012 agreed order through the Zurawik affidavit that refuted Spinak's authority to settle the lawsuit. In response to the motion, Mandoline did not file a counter affidavit and instead argued that the motion failed to address the pleading requirements for a section 2-1401 motion to vacate. Mandoline argued that: Zurawik's affidavit failed to comply with Supreme Court Rule 191, Zurawik was deposed during the supplemental proceedings and stated under oath that she understood it was a "citation examination"; Zurawik ratified the October 11, 2012 judgment by participating in the citation examination and by attempting to turn over Galto's trucks to reduce its liability under the October 2012 judgment order.

¶ 12 Galto contends that it was not required to plead due diligence and a meritorious defense because the motion sought to vacate a void judgment.

¶ 13 Galto is correct that a void judgment can be attacked at any time (*Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 103 (2002)) and the statutory requirement that a party

seeking relief from judgment plead a meritorious defense and due diligence does not apply to a motion to vacate a void judgment (*Tomm's Redemption, Inc. v. Park*, 333 Ill. App. 3d 1003, 1008 (2002)).

¶ 14 Galto's void judgment argument begins by claiming its attorney did not have authority to settle the underlying lawsuit. Because of this lack of authority to settle, the judgment was "procured through fraud because [Galto's] attorney did not inform [Galto] that a counterclaim was filed against it nor did he have authority to compromise and dismiss [Galto's] complaint and accept a judgment on [Galto's] behalf on defendant's counterclaim." Galto then argues that the law "differentiates between fraud which gives the court only colorable jurisdiction and fraud which occurred after the court acquired jurisdiction. It is only fraud which gives a court colorable jurisdiction that renders a decree void." *Schwarz v. Schwarz*, 27 Ill.2d 140 (1963). Concluding, Galto contends this is "extrinsic fraud": "the unsuccessful party has been prevented from exhibiting fully his case \* \* \* as by keeping him away from court \* \* \* or where the defendant never had knowledge of the suit." *Falcon v. Faulkner*, 209 Ill. App. 3d 1, 13, (1991).

¶ 15 Galto incorrectly characterizes his claim as being premised on "extrinsic fraud" because Spinak's alleged lack of authority deals with an agency relationship between Galto and its attorney, a relationship that Galto (in the Zurawik affidavit) admitted was of an attorney client relationship. *Dawson v. Duncan*, 144 Ill. App. 3d 532, 540 (1986) (the existence of an agency relationship goes to the amount of the judgment and not the existence of jurisdiction). Galto's president, Zurawik, admitted Spinak represented Galto in the lawsuit against Mandoline and there is no assertion that the circuit court did not have jurisdiction over subject matter of the lawsuit initiated by Galto. Clearly, the circuit court had both personal and subject matter

jurisdiction in the underlying lawsuit and nothing prevented Galto from "exhibiting its case."

¶ 16 A void order or judgment is, generally, one entered by a court without jurisdiction of the subject matter or the parties, or by a court that lacks the inherent power to make or enter the order involved." (Internal quotation marks omitted.) *Falcon v. Faulkner*, 209 Ill. App. 3d 1, 13, (1991). "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 determination of the facts or law." (Internal quotation marks omitted). *Id.*

¶ 17 The circuit court had subject matter jurisdiction over Galto's claim against Mandoline, it had subject matter jurisdiction over Mandoline's counter-claim against Galto and, therefore had subject matter jurisdiction when it entered the October 2012 judgment order.

¶ 18 Next, Galto argues that the October 2012 order is void because Galto's previous attorney, Spinak, did not have the authority to agree to the settlement and judgment order. We observe that in the argument section of Galto's appellate brief, where it addresses this issue, Galto fails to cite to the record in violation of Rule 341(h)(7) (eff. July 1, 2008). Rule 341 requires that the argument section of an appellate brief contain citations to legal authority and to the pages of the common law record relied on. *Id.* As we have repeatedly noted, Supreme Court rules are not suggestions, but rather, they are mandatory guidelines and rules that must be followed. *Voris v. Voris*, 2011 IL App (1st) 103814, ¶ 8; *Niewold v. Fry*, 306 Ill. App. 3d 735, 737 (1999).

Although appellant references the underlying judgment and factual matters involving the record, Galto's failure to include citations to the record to support its contention results in the forfeiture of this issue on appeal. *Collier v. Avis Rent A Car System, Inc.*, 248 Ill. App. 3d 1088, 1095 (1993); *Soter v. Christoforacos*, 53 Ill. App. 2d 133, 137 (1964) (we will not consider points

merely stated without argument and citations of support to the record).

¶ 19 Forfeiture aside, we find no error in the trial court's decision to hold an evidentiary hearing to determine the merits of Galto's contention that its former attorney did not have the authority to enter into the underlying settlement agreement and agreed judgment order. The trial court was well within its discretion to hear testimony and make credibility determinations on the basic claim that Galto did not authorize the settlement.

¶ 20 The standard of review of a trial court's decision on a motion to vacate can be unclear. See *Forest Preserve District of Cook County v. Chicago Title & Trust Co.*, 2015 IL App (1st) 131925, ¶¶ 43-46 (a motion to vacate can present either a factual or legal challenge and the nature of that challenge dictates the proper standard of review on appeal). Here, because this appeal involves a fact-dependent challenge concerning an agent's authority to bind his principal, we review the trial court's denial of Galto's motion to vacate under the manifest weight of the evidence standard. See *In re Marriage of Arjmand*, 2013 IL App (2d) 120639, ¶ 32. Under this standard, we affirm the trial court's judgment unless it is against the manifest weight of the evidence. *First Baptist Church of Lombard v. Toll Highway Authority*, 301 Ill. App. 3d 533, 703 (1998). "A judgment is against the manifest weight of the evidence only when an opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on evidence." *Judgment Services Corp. v. Sullivan*, 321 Ill. App. 3d 151, 154 (2001).

¶ 21 In this case, the circuit court heard the testimony of Zurawik, a translator employed by Zurawik during her citation deposition, and Spinak. Although Galto asserts that a determination on the merits of Galto's motion does not turn on the credibility of Zurawik, the circuit court disagreed. The circuit court found that "[u]nder either the theory posited by [Galto] that there

was fraud, malfeasance, or lack of authority on behalf of Mr. Spinak to enter into this agreement \*\*\* the initial question has to hinge on the credibility of Ms. Zurawik." We agree with the circuit court.

¶ 22 At the evidentiary hearing, Zurawik testified that she engaged Spinak to file a complaint on Galto's behalf against Mandoline. She did not know that Mandoline filed a counter-claim against Galto. She did not sign and was not asked to sign a statement agreeing to the settlement and judgment against Galto. Spinak did not advise her that he was going to settle Galto's claims and agree to the judgment. She learned about the judgment through the internet sometime "in October 2012 and was shocked to hear about it." She received "some papers," and the agreed order, in November 2012. When she sat for the citation examination in January 2013, she was aware of the judgment, although she did not know why she was being deposed. She did not specifically hire Spinak to represent her in the citation proceedings but she "thought that, you know, he's my lawyer; therefore, he's supposed to defend me."

¶ 23 Spinak testified that he did not send Zurawik anything in writing informing her that he intended to settle the case. Rather, he had a phone conversation with her about the settlement and advised her that the case was set for trial and in that conversation he was given the authority to sign the judgment order on behalf of Galto.

¶ 24 After taking testimony, the circuit court found that Zurawik's language was not "a barrier in any way, shape, or form. She understood all questions that were posited to her." In order to resolve Galto's motion, the court found it was required to consider Zurawik's credibility. The court determined that the "record is rife with evidence of acquiescence to the settlement and her knowledge of the judgment that was imposed against her. [Zurawik] testified she found out about

the judgment in October of 2012. The judgment was entered October 11, 2012, so there's a very short window when she could have found out about that judgment." Furthermore, "Ms. Zurawik testified that she got the agreed order in the mail in November of 2012, and she was upset about it at that time." The trial court concluded that "there is adequate evidence to establish that Ms. Zurawik did know exactly what happened on that day and did acquiesce to it. Only when she got a new lawyer did she decide to vacate that judgment."

¶ 25 As a general rule, we will not disturb a trial court's credibility determinations (*Eychaner v. Gross*, 202 Ill. 2d 228, 251 (2002)) because the trial judge is in a superior position to observe witnesses, judge their credibility, and determine the weight their testimony should receive. *Bazydlo v. Volant*, 164 Ill. 2d 207, 214 (1995). "In close cases, where findings of fact must necessarily be determined from the credibility of the witnesses, a reviewing court will defer to findings of the trial court unless they are against the manifest weight of the evidence." *Beeding v. Miller*, 167 Ill. App. 3d 128, 143-144 (1988).

¶ 26 Here, our review of the record on appeal and Galto's arguments do not establish that the circuit court's credibility determinations and findings were against the manifest weight of the evidence. Where the argument for vacation of the settlement agreement rests on the principal's claim that its agent did not have authority to bind the principal, credibility determinations must be made as to what version of the truth should be accepted. Here, the circuit court was in the best position to determine which version of the sworn testimony was more compelling. The court considered sworn testimony, which was superior to considering only the Zurawik affidavit, to deny the motion to vacate the October 11, 2012 judgment. Simply stated, had the circuit court been swayed by Zurawik's testimony it would have found that Spinak did not have authority to

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settle the lawsuit and the judgment would have been vacated. Unfortunately for Galto, the circuit court found otherwise. Because the court found that Spinak did have authority to settle the underlying lawsuit, there was no basis to grant the motion to vacate. Based on this record, we cannot find that an opposite conclusion is apparent or that the findings appear to be unreasonable, arbitrary, or not based on evidence.

¶ 27 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 28 Affirmed.