

NOTICE
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2016 IL App (5th) 150269-U

NO. 5-15-0269

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

ERNEST KAYSER,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Madison County.
)	
v.)	No. 13-AR-220
)	
VINCENT BONVICINO,)	Honorable
)	Duane L. Bailey,
Defendant-Appellee.)	Judge, presiding.

PRESIDING JUSTICE SCHWARM delivered the judgment of the court. Justices Chapman and Stewart concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not abuse its discretion in granting the defendant's motion to set aside orders that had been entered in violation of procedural due process.

¶ 2 **BACKGROUND**

¶ 3 In April 2013, in the circuit court of Madison County, the plaintiff filed a complaint seeking monetary damages against Sarah Perrigan, Robert Mueller, Scott Bonvicino, and the defendant, Vincent Bonvicino. In pertinent part, the plaintiff's complaint alleged that in November 2012, Robert, Scott, and the defendant had battered him on the premises of a bar owned by Sarah and that he had sustained severe personal injuries as a result.

¶ 4 In June 2013, attorney Morgan Scroggins entered his appearance on behalf of the defendant and Scott. The record indicates that in May 2014, the plaintiff accepted a \$5,000 settlement from Sarah and dismissed his claim against her. The record further indicates that Robert was never served with process and that the plaintiff's claim against him was ultimately abandoned.

¶ 5 On June 2, 2014, the plaintiff's cause proceeded to a jury trial with the defendant and Scott as the sole defendants. Determining that the defendant was 100% liable for the plaintiff's damages and that Scott was 0% liable, the jury ultimately returned a verdict for the plaintiff and against the defendant and against the plaintiff and for Scott. The jury further determined that the plaintiff was entitled to receive \$11,900 in compensatory damages. On June 3, 2014, the circuit court entered judgment on the jury's verdict.

¶ 6 On August 11, 2014, the plaintiff filed a citation to discover assets that erroneously named Scott as the judgment debtor liable for the \$11,900 jury award. The record indicates that a copy and notice of the citation was hand delivered to Scroggins' secretary, Sherri, at his office in Granite City. The citation ordered Scott to appear at a hearing set for August 27, 2014.

¶ 7 On August 27, 2014, the circuit court entered an order stating that Scroggins had appeared at the scheduled hearing and had advised plaintiff's counsel that no one else would be appearing and that "no check [was] available." The order further stated that after Scroggins left the courtroom, plaintiff's counsel had advised the court that Scroggins' office had previously accepted the citation "on behalf of [the] debtor." At the direction of the court, the plaintiff therefore filed a petition to show cause for the

defendant's failure to appear at the citation hearing, and defendant "Bonvicino" was ordered to appear and respond on September 17, 2014. The petition to show cause was apparently mailed to Scroggins' office.

¶ 8 On September 15, 2014, on Scott's behalf, Scroggins filed a motion to quash the contempt proceeding and vacate the order of August 27, 2014. Scott's motion alleged that when Scroggins appeared at the citation hearing, he had advised plaintiff's counsel that the citation was "improper in that no judgment was had against Scott." Suggesting that plaintiff's counsel had subsequently "misinformed" the circuit court "regarding the circumstances" of the situation, the motion further alleged that "[t]he proper resolution would be for [plaintiff's counsel] to issue and serve a proper [c]itation to [d]iscover [a]ssets[,] not a contempt hearing."

¶ 9 On September 17, 2014, indicating that it had reviewed the relevant pleadings and documents, the circuit court entered an order dismissing the plaintiff's petition to show cause. The record indicates that the plaintiff subsequently served the defendant with a citation to discover assets, and the defendant was ordered to appear on October 15, 2014.

¶ 10 On October 15, 2014, the defendant appeared and filed a motion for setoff, and the circuit court reset the citation hearing to November 5, 2014. In his motion for setoff, the defendant argued that the jury's \$11,900 award should be reduced by the \$5,000 that the plaintiff had previously received from Sarah.

¶ 11 On November 5, 2014, the defendant appeared and was examined, and the cause was reset for further hearing after 60 days. On January 7, 2015, the parties agreed to reset the cause for further hearing after 30 days. The record indicates that on January 8,

2015, the court set a hearing date of February 11, 2015, but failed to notify the defendant or Scroggins.

¶ 12 On February 11, 2015, the cause proceeded to the scheduled hearing with only plaintiff's counsel appearing. Under the caption "Kayser v. Robert Mueller," case number "13-AR-220," the circuit court subsequently entered an order stating that defendant "Robert Mueller" had failed to appear. The order further stated that plaintiff's counsel had reported that the case had been settled but that defendant "Robert Mueller ha[d] failed to make payments as agreed." The court therefore directed Robert to either pay the agreed settlement or file a document within seven days explaining why it had not been paid. The record indicates that the court also set a hearing date of March 4, 2015, but failed to notify the defendant or Scroggins.

¶ 13 On February 26, 2015, the plaintiff filed a motion for sanctions and attorney fees. The motion alleged that the defendant, "Vincent Bonvicino," had ignored the circuit court's order that he either pay the settlement or provide a written explanation for his failure to do so. The record indicates that on March 2, 2015, the court set the motion for a hearing on March 25, 2015, but again failed to notify the defendant or Scroggins.

¶ 14 On March 4, 2015, the cause proceeded to the previously-scheduled hearing on the *ex parte* order that had been entered against Robert on February 11, 2015, and again, only plaintiff's counsel appeared. Plaintiff's counsel advised the court that no payment had been received from the defendant and that the defendant had recently "taken at least one trip to California." The court further noted that the defendant had not filed a written explanation for his failure to pay the agreed settlement. The court thus entered an order

finding the defendant in indirect civil contempt for failing to comply with its pay-or-explain order. As a penalty, the court also denied the defendant's motion for setoff and awarded the plaintiff \$1,000 in attorney fees. The court's order stated that the defendant could purge his contempt by remitting "\$6,500.00, in total satisfaction of the judgment against him," to plaintiff's counsel within 10 days. The order further warned that if the defendant failed to satisfy the judgment by March 23, 2015, a weekly penalty of \$250 would be imposed. The order advised that if the defendant failed to purge his contempt, the penalties "would become final and permanent, without further order." The order lastly stated that there was no just reason to delay its enforcement or appeal pursuant to Illinois Supreme Court Rule 304 (eff. Feb. 26, 2010).

¶ 15 On March 16, 2015, the defendant filed a motion to set aside the circuit court's March 4, 2015, order finding him in indirect civil contempt. The motion alleged that Scroggins had not received notice of the hearings held on February 11, 2015, and March 4, 2015. The motion further alleged that although the plaintiff had agreed to settle the case for \$6,000, no releases or settlement documents had been prepared. The defendant asked the court to set aside its order of March 4, 2015, and set the cause for a hearing on his motion for setoff.

¶ 16 In the plaintiff's response to the defendant's motion to set aside the contempt order, which was also filed March 16, 2015, the plaintiff alleged that the defendant's claims that Scroggins had not received notice of the hearings held on February 11, 2015, and March 4, 2015, were false. The plaintiff suggested that because Scroggins knew on January 7, 2015, that the cause would be set for further hearing after 30 days, Scroggins had a duty

to "check the electronic docket," where both hearings had been noticed. The plaintiff thus requested that the circuit court deny the defendant's motion to set aside its order of March 4, 2015.

¶ 17 On March 17, 2015, the circuit court set the cause for a hearing on April 8, 2015. On March 25, 2015, however, at the previously-scheduled hearing on the plaintiff's motion for sanctions and attorney fees, the court entered an order denying the defendant's motion to set aside the contempt order. The court thus ruled that its "[o]rder of March 4, 2015, remain[ed] in full force and effect."

¶ 18 On April 7, 2015, the defendant filed a motion to set aside all orders entered by the court since January 7, 2015. The motion realleged that Scroggins had never received notice of the hearings held on February 11, 2015, and March 4, 2015, and further alleged that he had not received notice of the hearing held on March 25, 2015, either. The motion also asserted that at the February 11, 2015, hearing, plaintiff's counsel had falsely reported that a settlement had already been reached and had personally prepared the order erroneously naming "Robert Mueller" as the party liable for the judgment. Maintaining that "naming Robert Mueller as the non-paying party insured that [the defendant's] legal representatives would not receive notice of the upcoming hearings," the motion accused plaintiff's counsel of playing "dirty pool" and blatantly misrepresenting the facts of the case. The motion also indicated that the specifics of the parties' proposed settlement were still being negotiated.

¶ 19 On April 8, 2015, finding that the defendant was attempting satisfaction of the judgment, the circuit court entered an order continuing the cause for 30 days. On April 9,

2015, the court set a hearing date of May 13, 2015. On May 13, 2015, the hearing was continued to June 25, 2015.

¶ 20 On May 28, 2015, the plaintiff filed a motion to strike the defendant's motion to set aside all orders entered since January 7, 2015. The plaintiff argued that the circuit court did not have jurisdiction to hear the defendant's motion because more than 30 days had passed since the March 25, 2015, denial of the defendant's motion to set aside the March 4, 2015, contempt order. The plaintiff suggested that the defendant's motion to set aside all orders entered since January 7, 2015, was an improper successive postjudgment motion and was essentially a motion to reconsider the court's March 25, 2015, order. As such, the plaintiff maintained, the filing of the motion had not tolled or extended the time that the defendant had to file an appeal from the March 25, 2015, order, and as a result, the time to appeal the circuit court's prior rulings, "right or wrong," had "long past."

¶ 21 On June 25, 2015, the cause proceeded to a hearing on the defendant's motion to set aside all orders entered since January 7, 2015, and the plaintiff's motion to strike. Reiterating his claim that the circuit court had no jurisdiction to consider the defendant's second postjudgment motion, the plaintiff argued that on March 25, 2015, when the circuit court denied the defendant's motion to set aside the contempt order and ruled that its order of March 4, 2015, remained in full force and effect, the defendant's only options were to either file a timely notice of appeal or a petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2014)), and he had done neither.

¶ 22 In response, the defendant emphasized that the circuit court's March 25, 2015, order denying his motion to set aside the contempt order had been entered *ex parte* and prior to the date of the scheduled hearing on the motion. Again asserting that he had never received notice of the hearings held on February 11, 2015, March 4, 2015, or March 25, 2015, the defendant suggested that he had not received notice of the March hearings because on February 11, 2015, the plaintiff had "decided" to obtain an order improperly directed against Robert. The defendant argued that his motion to set aside all orders entered since January 7, 2015, should be granted because he had never been given the opportunity to argue his original motion to set aside the order finding him in indirect civil contempt.

¶ 23 At the conclusion of the hearing, the circuit court rejected the plaintiff's jurisdictional argument, granted the defendant's motion to set aside all orders entered since January 7, 2015, and set the cause for further proceedings. The court explained that after speaking with its clerks about the matter, it had "found out, in fact, [that] due to a clerk's error," neither Scroggins nor the defendant had received notice of the relevant hearings, as Scroggins had alleged. The court noted that the defendant had therefore been unable to defend the motions and orders that had been filed in February and March. On July 1, 2015, the plaintiff filed his notice of appeal.

¶ 24 DISCUSSION

¶ 25 The plaintiff argues that the circuit court erred in granting the defendant's motion to set aside all orders entered since January 7, 2015, because the court lacked jurisdiction to consider it. The defendant counters that the court's order granting the motion was not a

final and appealable order, so we have no jurisdiction to consider the plaintiff's appeal. The defendant further maintains that whether viewed as a motion filed pursuant to section 2-1301(e) of the Code of Civil Procedure (735 ILCS 5/2-1301(e) (West 2014)) or as a petition filed pursuant to section 2-1401, the circuit court's judgment was not an abuse its discretion. For the reasons that follow, we affirm.

¶ 26 Pursuant to section 2-1402 of the Code of Civil Procedure (735 ILCS 5/2-1402 (West 2014)), by serving the defendant with a citation to discover assets, the plaintiff commenced a supplemental collection proceeding to enforce satisfaction of the judgment entered on the jury's verdict. 735 ILCS 5/2-1402(a) (West 2014); Ill. S. Ct. R. 277 (eff. Jan. 4, 2013); *Village of Lake in the Hills v. Niklaus*, 2014 IL App (2d) 130654, ¶ 20; *Bloink v. Olson*, 265 Ill. App. 3d 711, 714 (1994). Pursuant to Rule 304(b)(4), a final judgment or order in a supplemental proceeding brought under section 2-1402 is immediately appealable with or without a finding that there is no just reason to delay its enforcement or appeal. Ill. S. Ct. R. 304(b)(4) (eff. Feb. 26, 2010); *Tobias v. Lake Forest Partners, LLC*, 402 Ill. App. 3d 484, 487 (2010); *D'Agostino v. Lynch*, 382 Ill. App. 3d 639, 642 (2008). "A judgment or order is final for purposes of appeal if it disposes of the rights of the parties, either on the entire case or on some definite and separate part of the controversy, and, if affirmed, the only task remaining for the trial court is to proceed with execution of the judgment." *Brentine v. DaimlerChrysler Corp.*, 356 Ill. App. 3d 760, 765 (2005). "An order in a section 2-1402 proceeding is said to be final when the citation petitioner is in a position to collect against the judgment debtor or a third party, or the

citation petitioner has been ultimately foreclosed from doing so." *D'Agostino*, 382 Ill. App. 3d at 642.

¶ 27 "It is well established that a trial court loses jurisdiction over a case and the authority to vacate or modify its judgment 30 days after the entry of judgment, unless a timely postjudgment motion is filed." *Longo v. Globe Auto Recycling, Inc.*, 318 Ill. App. 3d 1028, 1033 (2001). "A timely filed postjudgment motion not only extends the circuit court's jurisdiction, but also extends the appellate court's potential jurisdiction, the time within which a notice of appeal may be filed, until 30 days after the motion is decided." *Id.* Pursuant to Illinois Supreme Court Rules, these principles are applicable to final judgments entered in collections proceedings commenced pursuant to section 2-1402.

¶ 28 Pursuant to Illinois Supreme Court Rule 304(b), an appeal from a final order or judgment in a section 2-1402 proceeding is subject to the time-for-filing requirements set forth in Illinois Supreme Court Rule 303(a) (eff. Jan. 1, 2015). Ill. S. Ct. R. 304(b) (eff. Feb. 26, 2010). "Compliance with the deadlines for appeals set forth in Supreme Court Rule 303 is mandatory and jurisdictional." *Berg v. White*, 357 Ill. App. 3d 496, 499 (2005). Pursuant to Rule 303(a)(1), a party must file its notice of appeal within 30 days after the entry of the final judgment appealed from unless a timely postjudgment motion directed against the judgment is filed. Ill. S. Ct. R. 303(a)(1) (eff. Jan. 1, 2015); *Won v. Grant Park 2, L.L.C.*, 2013 IL App (1st) 122523, ¶ 20; *Dus v. Provena St. Mary's Hospital*, 2012 IL App (3d) 091064, ¶ 11. If a timely postjudgment motion directed against the judgment is filed, then the notice of appeal must be filed within 30 days after the entry of the order disposing of the motion. *Id.*; see also Ill. S. Ct. R. 274 (eff. Jan. 1,

2006). Additionally, "[a] party may make only one postjudgment motion directed at a judgment order that is otherwise final" (Ill. S. Ct. R. 274 (eff. Jan. 1, 2006)), and a motion to reconsider a ruling disposing of a timely postjudgment motion does not extend the time to file a notice of appeal (Ill. S. Ct. R. 303(a)(2) (eff. Jan. 1, 2015); *Dus*, 2012 IL App (3d) 091064, ¶ 11; *Wheeler v. Roselawn Memory Gardens*, 188 Ill. App. 3d 193, 199 (1989)). A trial court thus loses its jurisdiction over an action when 30 days pass from the time it disposes of a timely-filed postjudgment motion. *Won*, 2013 IL App (1st) 122523, ¶ 20; *Bell v. Hill*, 271 Ill. App. 3d 224, 228 (1995).

¶ 29 Here, although it was a default judgment that stemmed from an order directed against a nonparty, the order that the circuit court entered on March 4, 2015, constituted a final and appealable judgment for purposes of section 2-1402 and Rules 303 and 304. The order put the plaintiff in a position to collect from the defendant; disposed of the plaintiff's pending motion for sanctions and the defendant's pending motion for setoff; warned that the potential penalties for nonpayment "would become final and permanent, without further order"; and explicitly stated that there was no just reason to delay its enforcement or appeal. We thus view the defendant's March 16, 2015, motion to set aside the court's March 4, 2015, order as a timely-filed motion to vacate the court's final judgment pursuant to section 2-1301(e). See 735 ILCS 5/2-1301(e) (West 2014); *Kral v. Fredhill Press Co.*, 304 Ill. App. 3d 988, 994 (1999). As a result, as the plaintiff maintains, on March 25, 2015, when the circuit court denied the defendant's "initial" postjudgment motion, the 30-day time period for filing a notice of appeal began to run, and the plaintiff's April 7, 2015, motion to set aside all orders entered by the court since

January 7, 2015, did not toll or extend the time within which the notice needed to be filed. See *Dus*, 2012 IL App (3d) 091064, ¶ 16; *Benet Realty Corp. v. Lisle Savings & Loan Ass'n*, 175 Ill. App. 3d 227, 230-32 (1988). Moreover, as the plaintiff notes, the circuit court lost jurisdiction over the action 30 days after its denial of the plaintiff's first postjudgment motion. See *Won*, 2013 IL App (1st) 122523, ¶ 20; *Bell*, 271 Ill. App. 3d at 228. Nevertheless, we may affirm the circuit court's disposition of the defendant's motion to set aside all orders entered since January 7, 2015, on any ground substantiated by the record (*Jackson v. Hooker*, 397 Ill. App. 3d 614, 618 (2010)), and the record supports the conclusion that the court properly treated the defendant's motion as a timely-filed petition for relief from judgment brought pursuant to section 2-1401.

¶ 30 Section 2-1401 "authorizes a party to seek relief from a final judgment, such as a default judgment, when brought more than 30 days after judgment has been entered." *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 101 (2002). "Ordinarily, a petition seeking relief under section 2-1401 must be filed more than 30 days from entry of the final order but not more than 2 years after that entry." *People v. Thompson*, 2015 IL 118151, ¶ 28. "Although a section 2-1401 petition arises out of the same proceeding in which the order or judgment that it is directed to was entered, it is a collateral attack on the judgment" (*People v. Mathis*, 357 Ill. App. 3d 45, 49 (2005)), and "[t]he filing of a section 2-1401 petition is considered a new proceeding, not a continuation of the old one" (*Sarkissian*, 201 Ill. 2d at 102). As a result, a section 2-1401 petition is not a successive postjudgment motion over which the trial court would lack jurisdiction. *B-G Associates, Inc. v. Giron*, 194 Ill. App. 3d 52, 59 (1990); see also *People v. Mingo*, 403 Ill. App. 3d

968, 970-71 (2010) (noting that the trial court's loss of jurisdiction over the original action does not restrict its ability to address a collateral action commenced pursuant to section 2-1401). Moreover, "Illinois courts have repeatedly held that, because section 2-1401 is the only vehicle by which a civil litigant can attack a final judgment more than 30 days after its entry, trial and appellate courts must treat a filing that is too late to be a postjudgment motion as a section 2-1401 petition." *Hanson v. De Kalb County State's Attorney's Office*, 391 Ill. App. 3d 902, 906 (2009); see also *Northern Illinois Gas Co. v. Midwest Mole, Inc.*, 199 Ill. App. 3d 109, 115 (1990) ("Numerous courts have held that when a motion to vacate a judgment is brought more than 30 days after the entry of the original judgment, the motion must be construed as a petition for relief from a final judgment under section 2-1401 of the Code.").

¶ 31 "Relief under section 2-1401 is predicated upon proof, by a preponderance of evidence, of a defense or claim that would have precluded entry of the judgment in the original action and diligence in both discovering the defense or claim and presenting the petition." *People v. Vincent*, 226 Ill. 2d 1, 7-8 (2007). Generally speaking, a petitioner must therefore establish the existence of a meritorious claim or defense, due diligence in presenting the claim or defense, and due diligence in the filing of the petition. *Warren County Soil & Water Conservation District v. Walters*, 2015 IL 117783, ¶ 51; *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 220-21 (1986). "Due diligence requires the section 2-1401 petitioner to have a reasonable excuse for failing to act within the appropriate time." *Airoom*, 114 Ill. 2d at 222. "When assessing the reasonableness of the petitioner's excuse, the circuit court must consider all the surrounding circumstances, including the

conduct of the litigants and their attorneys." *Warren County Soil & Water Conservation District*, 2015 IL 117783, ¶ 38. Following a hearing, "[w]hether a section 2-1401 petition should be granted lies within the sound discretion of the circuit court, depending upon the facts and equities presented." *Airoom*, 114 Ill. 2d at 221. "As such, a court of review is justified in disturbing the judgment of the circuit court only if it finds that the court abused its discretion." *Id.*

¶ 32 Here, the defendant's failure to receive notice of the hearings held on February 11, 2015, and March 4, 2015, was clearly a defense or claim that would have precluded entry of the final judgment in the original action. "The essence of procedural due process is notice and an opportunity to be heard" (*Tate v. American General Life & Accident Insurance Co.*, 274 Ill. App. 3d 769, 773 (1995)), and as the circuit court observed, the defendant's lack of notice wholly deprived him of the opportunity to defend the motions and orders that had been filed. The default final judgment that was entered on March 4, 2015, was thus voidable as null on procedural due process grounds, as was the court's prior order directed at Robert. See *In re Haley D.*, 403 Ill. App. 3d 370, 376 (2010); *Savage v. Pho*, 312 Ill. App. 3d 553, 557 (2000); *In re Rehabilitation of American Mutual Reinsurance Co.*, 238 Ill. App. 3d 1, 11 (1992); *Coen-Berkson & Co. v. Gordon*, 283 Ill. App. 28, 30-31 (1935). Additionally, the defendant's failure to receive notice of the March 25, 2015, hearing that resulted in the denial of his initial postjudgment motion was a reasonable excuse for his inability to have the final judgment vacated in the original action. As previously indicated, the defendant's initial postjudgment motion was set for an April 8, 2015, hearing but was denied *ex parte* on March 25, 2015, at a hearing that

the defendant did not know had been set. The court's order denying the defendant's initial postjudgment motion was thus voidable as well. In any event, on April 7, 2015, when the defendant filed his motion to set aside all orders entered since January 7, 2015, more than 30 days had passed since the entry of the court's March 4, 2015, final judgment. The circuit court thus properly treated the successive postjudgment motion as a section 2-1401 petition that commenced a new proceeding. As a result, although the motion was granted more than 90 days after the court's denial of the defendant's initial postjudgment motion, the court rightfully determined that it did not lack jurisdiction to consider it.

¶ 33 To summarize, the defendant's initial postjudgment motion filed March 16, 2015, was a timely motion to vacate the circuit court's default final judgment pursuant to section 2-1301(e) and was the defendant's first attempt to bring the procedural irregularities of the case to the court's attention. When that motion was subsequently denied following a hearing that the defendant did not know had been set, the defendant promptly filed a successive postjudgment motion that the trial court properly construed as a timely-filed section 2-1401 petition. Thus, although the court later lost its jurisdiction to vacate its final judgment in the original action, it had the jurisdiction to do so in the new, collateral proceeding. See *In re Marriage of Harnack*, 2014 IL App (1st) 121424, ¶ 52 ("Once the court's jurisdiction to vacate a final judgment under section 2-1301(e) lapses, section 2-1401 provides a means to reopen the judgment."). We further conclude that the court properly granted the defendant's prayer for relief.

¶ 34 "The power to set aside a default and permit a defendant to have his day in court is based upon substantial principles of right and wrong." *Genesis & Sons, Ltd. v.*

Theodosopoulos, 223 Ill. App. 3d 276, 280 (1991). Accordingly, "[a] default judgment should be vacated pursuant to section 2-1401 when it is entered under unfair or unjust circumstances." *Skrypek v. Mazzocchi*, 227 Ill. App. 3d 1, 8 (1992). Here, the defendant demonstrated due diligence by promptly bringing the notice issues to the circuit court's attention, and under the circumstances, it would have been an abuse of discretion for the court to have denied the defendant's motion to set aside all orders entered since January 7, 2015. The lack-of-notice problems began on January 8, 2015, when the court set a hearing date of February 11, 2015, but failed to notify the defendant or Scroggins. "The trial court should have an opportunity to correct its own errors, if any have been committed" (*People v. Mattei*, 381 Ill. 21, 24 (1942)), and "[i]t is well-settled that *vacatur* of an order in due time leaves the pleadings the same as if the order had never been entered" (*Zanzig v. H.P.M. Corp.*, 134 Ill. App. 3d 617, 625 (1985)). Here, recognizing that the defendant's claims that he had not received notice of the relevant hearings were true, the circuit court rightfully returned the supplemental proceeding to its prior status quo.

¶ 35 Lastly, we reject the defendant's argument that we are without jurisdiction to consider the plaintiff's appeal. As previously stated, "[t]he filing of a section 2-1401 petition is considered a new proceeding, not a continuation of the old one." *Sarkissian*, 201 Ill. 2d at 102. "Thus, a circuit court's ruling on such a petition is deemed a final order[,] and provision has been made for immediate review of these orders in Supreme Court Rule 304(b)(3), which states that appeal may be taken from 'a judgment or order

granting or denying any of the relief prayed in a petition under section 2-1401 of the Code of Civil Procedure' (155 Ill. 2d R. 304(b)(3))." *Id.*

¶ 36

CONCLUSION

¶ 37 For the foregoing reasons, the circuit court's judgment granting the defendant's motion to set aside all orders entered since January 7, 2015, is hereby affirmed.

¶ 38 Affirmed.