

NOTICE
Decision filed 10/27/16. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2016 IL App (5th) 160005-U

NO. 5-16-0005

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).

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|---------------------------------------|---|-----------------------|
| SACOR FINANCIAL, INC., as Assignee of |) | Appeal from the |
| Columbia Credit Services, Inc., |) | Circuit Court of |
| |) | Jackson County. |
| Plaintiff-Appellant, |) | |
| |) | No. 06-SC-1268 |
| v. |) | |
| |) | |
| NANCY KNIGHT, |) | Honorable |
| |) | Christy W. Solverson, |
| Defendant-Appellee. |) | Judge, presiding. |

JUSTICE CATES delivered the judgment of the court.
Presiding Justice Schwarm and Justice Moore concurred in the judgment.

ORDER

¶ 1 *Held:* Plaintiff's appeal is dismissed for lack of jurisdiction.

¶ 2 Plaintiff, Sacor Financial, Inc. (Sacor), appeals from an order denying its motion to revive judgment, and the subsequent denial of its motion to reconsider. Sacor argues that the trial court abused its discretion in applying the law of revival of judgments, that defendant failed to plead or prove the affirmative defense of satisfaction of judgment, and that the trial court erred in denying its motion to reconsider. We dismiss for lack of jurisdiction.

¶ 3

BACKGROUND

¶ 4 On December 15, 2006, Columbia Credit Services, Inc. (Columbia), as the assignee of MBNA American Bank (MBNA), filed a complaint pursuant to the Uniform Arbitration Act (710 ILCS 5/1 *et seq.* (West 2006)) to confirm an arbitration award that had been entered against the defendant, Nancy Knight (Knight), in the amount of \$6,552.81. Additionally, Columbia requested that the court enter judgment on the amount of the award, and include attorney fees and interest. The complaint alleged that Knight had entered into a cardholder agreement for use of a credit card issued by MBNA, and that Knight incurred charges by using the credit card, but failed to pay the charges due.

¶ 5 The record indicates that on January 4, 2007, Knight was served with the complaint and a summons requiring her appearance in court on January 10, 2007. Knight failed to appear in court on January 10, 2007. Due to her failure to appear, the court entered a default judgment against Knight, and in favor of Columbia, in the amount of \$7,625.52. This amount included the arbitration award, attorney fees, interest and court costs.

¶ 6 Thereafter, on June 15, 2011, Columbia assigned all of its rights, title and interest to the judgment entered against Knight to Sacor. Approximately three years later, on February 18, 2014, Sacor filed a petition for revival of judgment. On March 6, 2015, Knight was served with the petition. Knight failed to answer or otherwise plead to the petition within 30 days of service.

¶ 7 On April 20, 2015, Sacor filed a motion for entry of an order to revive the judgment against Knight. Sacor mailed the documents to Knight. The documents contained a notice of hearing on the motion, which was scheduled to be heard on May 19, 2015, at 1 p.m. There is no transcript of the hearing, but the record sheet reflects that both parties were present, and that Knight informed the court that she had paid the amount owed, in full. The record sheet also reflects that the court directed the parties to check Knight's assertion, and then reset the matter for hearing on August 11, 2015, at 9:15 a.m.

¶ 8 Similar to the previous hearing, there is no transcript of what occurred during the August 11, 2015, hearing. The court's record sheet indicates that Sacor failed to appear, and that Knight appeared *pro se*. The record sheet further indicates that Knight represented to the court that she had paid the balance of the judgment. Inasmuch as no one appeared for the plaintiff to rebut Knight's representations, the court closed the case.

¶ 9 Subsequently, on September 28, 2015, more than 30 days after the court had entered judgment for Knight, Sacor filed a notice of motion, and motion for entry of order to revive judgment. This motion was scheduled for hearing on October 27, 2015, at 1 p.m. Again, there is no transcript of this hearing. Nevertheless, the court's record sheet represents that counsel appeared on behalf of Sacor, and that Knight appeared *pro se*. The record sheet also indicated that Sacor had failed to appear at the last hearing, that Knight had been to court four times, that Knight had provided proof that the balance of the judgment had been paid, and that the court had closed the case. Therefore, the court record indicated there was no issue before the court.

¶ 10 On November 19, 2015, Sacor filed a motion to reconsider the court's order of October 27, 2015, that found that the judgment had been paid in full, and that the case had been closed. The motion stated that on October 27, 2015, counsel failed to bring to the court's attention the following facts: (1) that Knight claimed the account was paid at an earlier date, but Sacor did not have a record of that payment, nor did Knight produce any evidence of such payment; (2) Sacor offered to settle the account for \$7,500 prior to August 11, 2015; (3) rather than sending \$7,500, Knight had tendered a check for \$4,469.32, dated August 20, 2015, and the check was returned to Knight by Sacor. On December 1, 2015, Sacor's motion was denied.

¶ 11 Sacor filed its notice of appeal on December 30, 2015, almost five months from the date the circuit court entered judgment on August 11, 2015. While the appeal was pending, on February 22, 2016, Sacor filed a notice of filing and proof of service of a proposed bystander's report regarding the hearings held on May 19, 2015, and October 27, 2015. There is no indication that Knight stipulated to the bystander's report, and the report has not been certified by the circuit court.

¶ 12 ANALYSIS

¶ 13 Before reaching the merits of the issues in this case, we first resolve the impact of the missing transcripts from the hearings that were held on May 19, 2015, August 11, 2015, and October 27, 2015. The appellant has the duty to present this court with a proper record on appeal, so that we have an adequate basis for reviewing the decision of the trial court. *Midwest Builder Distributing, Inc. v. Lord & Essex, Inc.*, 383 Ill. App. 3d 645, 655 (2007). Where there are no transcripts of proceedings at the trial court, the

appellant may prepare a bystander's report in accordance with Supreme Court Rule 323(c), but the report may not be included in the record unless it is certified by the trial court or unless the parties stipulate to it. See Ill. S. Ct. R. 323(c) (eff. Dec. 13, 2005); see also *Lord & Essex, Inc.*, 383 Ill. App. 3d at 655. In the absence of a report or record on appeal, we presume that the order entered by the trial court was in conformity with the law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). Furthermore, we resolve any doubts in the record against the appellant. *Lord & Essex, Inc.*, 383 Ill. App. 3d at 655.

¶ 14 In the instant case, Sacor's proposed bystander's report was not certified by the trial court as required by Rule 323(c), and there is no indication that Knight stipulated to what is in the report. Such a self-serving report lacks reliability and trustworthiness due to the party's stake in the outcome of the case. Rule 323(c) makes clear that absent stipulation, only the report of proceedings certified in accordance with the rule shall be included in the record on appeal. Ill. S. Ct. R. 323(c). We therefore find that Sacor's proposed bystander's report is not properly before this court. Accordingly, we will not consider Sacor's proposed bystander's report, and it is stricken from the record. As a result of this finding, we must presume that the trial court's entries on the record sheets regarding the May 19, 2015, August 11, 2015, and October 27, 2015, hearings were entered in conformity with the law, and that they had a sufficient factual basis. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). Any doubts in the record will be resolved against Sacor. *Lord & Essex, Inc.*, 383 Ill. App. 3d at 655.

¶ 15 We now turn to Sacor's arguments on appeal. Sacor argues that the trial court abused its discretion in applying the law to its revival of judgment petition. Sacor also argues that Knight failed to properly plead or prove the affirmative defense of satisfaction of judgment. In support of these two arguments, Sacor posits that the court entered its order without conducting an evidentiary hearing, or that Knight failed to produce any documentation or proof to support her assertion that she had paid the balance of the judgment. While Sacor acknowledges that the trial court's record sheet reflects that the judgment had been paid, it takes exception to the fact that Knight was not placed under oath, and did not provide any documentation to support her affirmative defense of satisfaction of judgment. Sacor's final argument on appeal is that the circuit court erred in failing to consider its motion to reconsider.

¶ 16 An action for revival of judgment is statutory in nature and serves to protect the interests of creditors. See 735 ILCS 5/2-1602 (West 2012); see also *In re Estate of Carlen*, 2015 IL App (5th) 130599, ¶ 24. A revival of judgment does not determine the obligation of the defendant to plaintiff as involved in the original controversy, which was disposed of by the former judgment; rather, it seeks a revival of the former judgment in order to have execution on it. *Bank of Edwardsville v. Raffaele*, 381 Ill. 486, 489 (1942). The only defenses permitted to revival of judgments are "that no judgment was rendered, or, if one was rendered, it has been satisfied or discharged." *Raffaele*, 381 Ill. at 489.

¶ 17 In the case at bar, the first two arguments set forth by Sacor hinge on the court's determination at the August 11, 2015, hearing. There is no transcript of this hearing. Despite the absence of a transcript, the trial court's record sheet reflects that Sacor failed

to appear, that Knight appeared *pro se*, that Knight paid the balance of the judgment, and that the case was closed. Sacor's argument that Knight was not placed under oath, and that she did not produce any evidence or documentation that she had satisfied the judgment lacks merit. Sacor was not present for the hearing, and therefore cannot know what testimony or documentary evidence was produced. Sacor had the burden of providing a sufficiently complete record on appeal to enable this court to review its contentions of error. Sacor has not met that burden. Accordingly, we must assume that the entry by the trial court on August 11, 2015, was in conformity with the law and had a sufficient factual basis. See *Foutch*, 99 Ill. 2d at 392. The record sheet makes it clear that the trial court determined that Knight had satisfied the judgment that Sacor sought to revive, and entered a final judgment closing the case. In light of the court's entry of a final judgment on August 11, 2015, we must now determine whether Sacor complied with the rules for filing a postjudgment motion or a notice of appeal.

¶ 18 After the final judgment had been entered on August 11, 2015, Sacor had two options. Sacor's first option was to timely file a postjudgment motion within 30 days of the entry of final judgment. See 735 ILCS 5/2-1203 (West 2012). Sacor's second option was to timely file a notice of appeal pursuant to Illinois Supreme Court Rule 303(a)(1) (Ill. S. Ct. R. 303(a)(1) (eff. Jan. 1, 2015)). Rule 303(a)(1) provides that a notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from or, if a timely postjudgment motion directed against the judgment is filed, then within 30 days after the entry of the order disposing of the last pending postjudgment motion. "A motion not filed within 30 days after the judgment (or

any extension allowed) is not 'timely' within the meaning of that word as used in Rule 303(a); and an untimely motion, or one not directed against the judgment, neither stays the judgment nor extends the time for appeal." *Sears v. Sears*, 85 Ill. 2d 253, 259 (1981).

¶ 19 In the present case, on August 11, 2015, the circuit court entered a final and appealable order finding that Knight had paid the judgment, and that the case was closed. Sacor did not seek an extension of time to file a postjudgment motion. On September 28, 2015, Sacor filed an untimely notice of motion, and a motion for entry of an order to revive judgment. This motion filed by Sacor did not stay the judgment, nor did it extend the time to file an appeal. See *Sears*, 85 Ill. 2d at 259. In our view, the trial court's entry recognized this fact when it found that there was no issue before the court, and that the case had been closed. Unsatisfied with this result, Sacor filed a successive postjudgment motion on November 19, 2015. The circuit court denied Sacor's second postjudgment motion on December 1, 2015, and Sacor filed a notice of appeal on December 30, 2015. The successive postjudgment motion was impermissible as it was filed more than 30 days after the court's entry of final judgment, and it did not extend the time for appeal. *Sears*, 85 Ill. 2d at 259.

¶ 20 Ostensibly, Sacor's motion for reconsideration may have been brought as a section 2-1401 petition (735 ILCS 5/2-1401 (West 2014)), which provides a procedure for relief from a final judgment after 30 days from the entry thereof. Such a motion is not considered a successive postjudgment motion from which the trial court would lack jurisdiction. See *B-G Associates, Inc. v. Giron*, 194 Ill. App. 3d 52, 59 (1990). Our supreme court, however, has noted that section 2-1401 "does not afford a litigant a

remedy whereby he may be relieved of the consequences of his own mistake or negligence." *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 222 (1986). Moreover, section 2-1401 cannot be used to shield a litigant from the consequences of his counsel's negligence. See *Hirsch v. Optima, Inc.*, 397 Ill. App. 3d 102, 110 (2009). Finally, section 2-1401 "was not intended to put in issue matters that previously could have been adjudicated." *Shapira v. Lutheran General Hospital*, 199 Ill. App. 3d 479, 483 (1990).

¶ 21 In the instant case, Sacor had the opportunity to adjudicate this case, but failed to appear at a critical hearing due to its counsel's mistakes. Not only did Sacor's counsel fail to appear at the August 11, 2015, hearing, but its counsel also failed to comply with the rules for filing a postjudgment motion or notice of appeal. As a result, we are not inclined to interpret Sacor's motion to reconsider as a section 2-1401 petition because the errors made in this case are a direct consequence of its own counsel's mistakes. Accordingly, this court lacks jurisdiction to consider Sacor's contentions on appeal. For this reason, we dismiss Sacor's appeal for lack of jurisdiction.

¶ 22 Appeal dismissed.