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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

HISHAM KHRAISAT,)	
)	
Plaintiff-Appellee,)	Appeal from the Circuit Court
)	of Cook County.
v.)	
)	No. 16 M1 709995
MARIA CASTRO,)	
)	The Honorable
Defendant-Appellant.)	Orville E. Hambright, Jr.,
)	Judge, presiding.

JUSTICE HYMAN delivered the judgment of the court.
Presiding Justice Mason and Justice Pucinski concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court erred in denying defendant's motion to quash service of process where the affidavit of the special process server was challenged by an affidavit denying substitute service, and no counter-affidavit was filed.
- ¶ 2 Maria Castro appeals from a trial court order denying her motion to quash service and vacate a default judgment entered in favor of her former landlord, Hisham Khraisat, on a complaint seeking possession of an apartment at 3635 W. Diversey Parkway, Chicago and rent in the amount of \$5,835. Castro contends the trial court did not have personal jurisdiction over her because the plaintiff did not make proper abode service under section 2-203(a) of the Code of

Civil Procedure (Code) (735 ILCS 5/2-203(a) (West 2014)) and did not file a counter-affidavit challenging her affidavit denying service. We agree and reverse the trial court's order denying the motion to vacate the default judgment and remand for further proceedings.

¶ 3 Background

¶ 4 In November 2014, Maria Castro signed a one-year lease for an apartment at 3635 W. Diversey Parkway, Chicago. Castro says she moved out of the Diversey Parkway apartment in April 2015 and has not resided there since. She claims that with Khraisat's consent, David Valladares began living in her apartment and paying the rent. She signed a lease for an apartment at 3126 W. Palmer, Chicago, which began on April 1, 2016.

¶ 5 On June 13, 2016, Khraisat filed a *pro se* complaint against Castro, Raoul Gonzales, and all unknown residents, seeking eviction and rent in the amount of \$5,835. An initial summons was returned on June 23, 2016 as "not served." On June 27, 2016, Khraisat moved for the appointment of a special process server. The special process server, Randy Marcus, filed an affidavit stating that on July 6, 2016, he served Castro by leaving a copy of the summons and complaint with Raoul Gonzales at the Diversey Parkway apartment. Marcus stated in his affidavit that this was Castro's "usual place of abode" and that he mailed a copy of the summons to her at her usual place of abode on July 7, 2016.

¶ 6 Castro did not appear, and the trial court entered an order of possession and a money judgment for \$5,835 against Castro and Gonzalez on July 13, 2016. (Gonzalez never appeared in the case and is not a party to this appeal.) On July 28, 2016, Castro filed an appearance by her counsel and a motion to vacate the July 13 order due to lack of personal jurisdiction. She contended she was never served with a summons or complaint, that she had not resided at the Diversey Parkway apartment since April 2015, and that "abode service" at a place where she did

not live was legally insufficient. She also filed an affidavit supporting her motion. The trial court scheduled a hearing on Castro's motion, which was stricken when her attorney did not appear.

¶ 7 Castro rescheduled her motion for a hearing. Khraisat did not appear, and the trial court entered an order granting Castro leave to file an amended affidavit to support her motion. Castro filed the amended affidavit and attached a copy of the lease for her Palmer Street apartment.

¶ 8 At the next court date, both parties appeared and the trial court granted Khraisat's request for a continuance to hire an attorney. When neither Castro nor her attorney appeared at the next court date, the trial court entered an order again striking the motion from the call.

¶ 9 On January 30, 2017, Castro filed a motion to quash service and a supporting affidavit. On February 21, 2017, with Castro present in court and Khraisat not present, the trial court entered an order denying the motion to vacate the default judgment. The reasons for the denial are not in the record.

¶ 10 Analysis

¶ 11 Castro contends the trial court erred in denying her motion to quash service as substitute service was insufficient where she filed an uncontroverted affidavit attesting she was not residing at the place of the purported service. She asserts that, in the absence of proper service, the trial court lacked jurisdiction to enter an order of possession and monetary judgment against her.

¶ 12 Before proceeding, we note the plaintiff has not filed an appellee brief; this is not a bar to our review. *In re Marriage of Earlywine*, 2013 IL 114779, ¶ 13. We also note that the record on appeal does not include a transcript or appropriate substitute (Ill. S. Ct. R. 323 (eff. Dec. 13, 2005)) for any of the hearings or proceedings. As appellant, Castro must provide a sufficiently complete record of the trial court proceedings to support her claim of error, so that we must presume in the absence of the complete record that the court's orders conformed to the law and

had a sufficient factual basis. *In re Marriage of Gulla and Kanaval*, 234 Ill. 2d 414, 422 (2009). Conversely, our review is not precluded by the absence of transcripts where the record contains that which is necessary to dispose of the issues raised under the applicable standard of review. *Midwest Builder Distributing, Inc. v. Lord & Essex, Inc.*, 383 Ill. App. 3d 645, 655 (2007).

¶ 13 A valid judgment requires that a court have subject matter jurisdiction and jurisdiction over the parties. *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 17. A judgment entered by a court without jurisdiction over a party is void *ab initio* and may be challenged at any time. *Id.* Because the question whether a court had personal jurisdiction is a question of law, our review is *de novo*. *White v. Ratcliffe*, 285 Ill. App. 3d 758, 763-64 (1996).

¶ 14 Personal service on an individual defendant is achieved by (i) leaving a copy of the summons with the defendant personally, or (ii) leaving a copy at the defendant's usual place of abode, with a family member or person residing at that address of at least 13 years, and informing that person of the contents of the summons. 735 ILCS 5/2-203(a)(2) (West 2014). The process server must also mail a copy of the summons to the defendant's usual place of abode. *Id.* Strict compliance with the statute is required and the process server must aver all of these requirements in his or her affidavit of service. Failure to do so renders the abode service defective. *Id.*

¶ 15 With personal service, return of summons is *prima facie* proof of proper service. *M.B. Financial, N.A. v. Ted & Paul, LLC*, 2013 IL App (1st) 122077, ¶ 24. But, abode service, referred to as substitute service, does not carry the same presumption of validity, as someone in the defendant's stead, rather than the defendant, is being served at his or her usual abode. *Id.* ¶ 26 (citing *State Bank of Lake Zurich v. Thill*, 113 Ill. 2d 294, 309 (1986)). Where a return of service states that the process server complied with the statutory requirements, the return may be

overcome by a contradictory affidavit. *Id.* at 312. If the return of abode service is challenged by affidavit of the person on whom service was purportedly made, and there is no counter-affidavit to address this challenge, the return of service itself is not enough evidence; instead the affidavit must be taken as true and the service of summons must be quashed. *Id.*; see also *Clinton Co. v. Eggleston*, 78 Ill. App. 3d 552, 555-57 (1979) (quashing substituted service where defendant's affidavit attacked service as improper and no counter-affidavit presented to dispute challenge).

¶ 16 Castro filed an affidavit denying she was served with process and directly challenging the affidavit of the special process server, which was not refuted by a counter-affidavit or other evidence. Specifically, Castro averred in her affidavit that she moved out of the Diversey Parkway apartment in April 2015 and never returned. She stated that she began living in the Palmer Street apartment in April 2016 and was residing there on July 8, 2016, when the process server purportedly served her by substitute service at the Diversey Parkway apartment. Thus, she contends, the process server did not serve the summons at her “usual place of abode.” In addition, neither the return of service affidavit nor anything in the record indicates that Raoul Gonzales, the man who the special process sever gave the summons, was a family member.

¶ 17 Castro’s affidavit and evidence challenging the special process server’s affidavit and plaintiff’s failure to file a counter-affidavit, coupled with the absence of strict compliance with the statute as shown on the face of the special process server's affidavit, was grounds for quashing service and vacating the order of possession and judgment. Accordingly, we reverse the trial court’s order and remand for further proceedings.

¶ 18 Reversed and remanded for further proceedings.