

**ILLINOIS OFFICIAL REPORTS**  
**Appellate Court**

***Parker v. Murdock, 2011 IL App (1st) 101645***

Appellate Court Caption                      ERIC PARKER AND LYNLEE MUEHRING, Plaintiffs-Appellants, v. MICHAEL MURDOCK, Defendant-Appellee.

District & No.                              First District, Second Division  
Docket No. 1-10-1645

Filed    October 18, 2011

Held    In an action arising from a landlord and tenant dispute in which a default judgment was entered October 13, 2004, against defendant landlord for violations of Chicago's Residential Landlords and Tenants Ordinance, defendant's petition under section 2-1401 of the Code of Civil Procedure filed October 13, 2006, was timely and the denial of plaintiffs' motion to vacate the order granting defendant's motion was affirmed, since section 1.11 of the Statute on Statutes applied to the two-year time limitation in section 2-1401.  
*(Note: This syllabus constitutes no part of the opinion of the court but has been prepared by the Reporter of Decisions for the convenience of the reader.)*

Decision Under Review                      Appeal from the Circuit Court of Cook County, No. 04-MI-115518; the Hon. Pamela Hill Veal, Judge, presiding.

Judgment                                        Affirmed.



plaintiffs filed a complaint against defendant alleging several violations of the Chicago Residential Landlords and Tenants Ordinance. Chicago Municipal Code § 5-12-010 *et seq.* (added Sept. 8, 1986). On October 13, 2004, plaintiffs obtained an *ex parte* default judgment against defendant in the amount of \$14,433.70.

¶ 6 On October 13, 2006, defendant filed a petition pursuant to section 2-1401 of the Code seeking relief from the October 13, 2004, judgment against him. In his petition, defendant alleged that his attorney did not inform him of the judgment. Defendant claimed he only learned of the judgment in late October 2004. Defendant alleged that when he learned of the judgment against him, he turned the case over to his attorney with the understanding that his attorney would move to vacate the judgment. Defendant's attorney failed to do so. Defendant claimed that he was seeking redress against his attorney for legal malpractice in a separate action. Defendant attached to his petition his own affidavit attesting to the facts he alleges in his petition, as well as a copy of the judgment entered on October 23, 2004.

¶ 7 On January 18, 2007, the circuit court granted defendant's section 2-1401 petition. The order indicated that only defendant was present in court that day.

¶ 8 On January 24, 2007, plaintiffs moved, pursuant to section 2-1301(e) of the Code, to vacate the January 18, 2007, order granting defendant's section 2-1401 petition. 735 ILCS 5/2-1301(e) (West 2008). In their motion, plaintiffs alleged that due to confusion regarding scheduling and a reassignment of the case, they were not present in court on January 18, 2007. Plaintiffs further alleged that they believed that they would be allowed time to respond to defendant's section 2-1401 petition and that they had "valid objections to Defendant's 2-1401 petition which should be heard by the Court."

¶ 9 On February 28, 2007, the circuit court denied plaintiffs' motion to vacate defendant's section 2-1401 petition. In its order, the circuit court indicated that it was also denying plaintiffs' request to file further pleadings in response to defendant's section 2-1401 petition. The circuit court allowed defendant 21 days to answer plaintiffs' complaint and file a counterclaim. The parties were given leave to initiate discovery.

¶ 10 On January 25, 2010, plaintiffs filed a motion to vacate the circuit court's order of January 18, 2007, granting defendant's section 2-1401 petition. Plaintiffs filed their motion pursuant to section 2-1401(f) of the Code, and alleged that the order of January 18, 2007, granting defendant's section 2-1401 petition, was void because defendant failed to file his section 2-1401 petition to vacate within two years of the default judgment. Plaintiffs alleged that the judgment vacated by defendant's section 2-1401 petition was entered on October 13, 2004. Defendant filed his section 2-1401 petition on October 13, 2006. Plaintiffs relied upon this court's decision in *Irving v. Irving*, 209 Ill. App. 318 (1918), to argue that in computing time by calender year "the calender should be examined and the day numerically corresponding to that day \*\*\* is determined and the calender year expires on that day, less one day." According to plaintiffs' computation, in order for defendant's section 2-1401 petition to be timely, it should have been filed on October 12, 2006, not October 13, 2006, when defendant filed it. Based on their computation, plaintiffs contended defendant's section 2-1401 petition was untimely and, thus, void. Plaintiffs requested that the court vacate its January 18, 2007, order and reinstate the judgment entered against defendant on October 13,

2004.

¶ 11 On May 12, 2010, the circuit court denied plaintiffs’ motion to vacate its order of January 18, 2007, which granted defendant’s section 2-1401 petition. Plaintiffs timely appealed on June 10, 2010.

¶ 12 ANALYSIS

¶ 13 Before this court, plaintiffs argue the circuit court did not have subject matter jurisdiction to grant defendant’s section 2-1401 petition because defendant’s petition was not timely and, thus, its order granting defendant’s petition on January 18, 2007, is void. Specifically, plaintiffs contend that defendant filed his petition two years and one day after the judgment was entered October 13, 2004, one day too late. Plaintiffs argue section 2-1401(c) of the Code requires parties to file their petitions within two years of the entry of the order or judgement they seek to vacate. 735 ILCS 5/2-1401(c) (West 2008). To compute two calender years, plaintiffs argue that this court should determine the corresponding calender day, less one day.

¶ 14 We note that defendant did not file a brief in this matter. On July 29, 2011, this court, on its own motion, found that defendant failed to file a brief within the time prescribed by Supreme Court Rule 343(a). Ill. S. Ct. R. 343(a) (eff. July 1, 2008). We ordered that the case be taken for consideration on the record and plaintiffs’ brief only.

¶ 15 Section 2-1401 of the Code provides litigants a means of obtaining relief from judgments older than 30 days. 735 ILCS 5/2-1401 (West 2008). Section 2-1401(c) limits the time in which a litigant may obtain relief, stating:

“Except as provided in Section 20b of the Adoption Act and Section 2-32 of the Juvenile Court Act of 1987 or in a petition based upon Section 116-3 of the Code of Criminal Procedure of 1963, *the petition must be filed not later than 2 years after the entry of the order or judgment.* Time during which the person seeking relief is under legal disability or duress or the ground for relief is fraudulently concealed shall be excluded in computing the period of 2 years.” (Emphasis added.) 735 ILCS 5/2-1401(c) (West 2008).

¶ 16 The purpose of section 2-1401 is to establish judgments that are stable and final. *Crowell v. Bilandic*, 81 Ill. 2d 422, 427-28 (1980). A petition brought under section 2-1401 is not a continuation of the old proceeding but, rather, a new one. *Sarkissian*, 201 Ill. 2d at 102. The “two-year period of limitations has been *strictly* construed by the courts, and we cannot, even if the circumstances were believed to warrant it, extend this limitation by judicial fiat.” (Emphasis added.) *Sidwell v. Sidwell*, 127 Ill. App. 3d 169, 173 (1984); see also *Crowell*, 81 Ill. 2d at 427 (“2-year limitation mandated by [section 2-1401] must be adhered to”); *Cruz v. Columbus-Cuneo-Cabrini Medical Center*, 264 Ill. App. 3d 633, 638 (1994) (the requirements of section 2-1401 are “stringent”). Further, “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).

¶ 17 Our supreme court has held that a void order may be challenged at any time because an “ ‘order or decree entered by a court which lacks jurisdiction of the parties or of the subject matter, or which lacks the inherent power to make or enter the particular order involved, is

void, and may be attacked at any time or in any court, either directly or collaterally.’ ” *Sarkissian*, 201 Ill. 2d at 103 (quoting *Barnard v. Michael*, 392 Ill. 130, 135 (1945)); see also *Wierzbicki v. Gleason*, 388 Ill. App. 3d 921, 931 (2009) (“This court has a duty to vacate void judgments \*\*\*.”).

¶ 18 Section 2-1401(f) allows a litigant to challenge a void order or judgment. 735 ILCS 5/2-1401(f) (West 2008); *Sarkissian*, 201 Ill. 2d at 105 (“petitions seeking relief from void judgments are section 2-1401 petitions”). Petitions alleging an order or judgment is void, brought under paragraph (f) of section 2-1401, do not have to be brought within two years of the void order or judgment. *Sarkissian*, 201 Ill. 2d at 104. Unlike typical section 2-1401 petitions, petitions brought in this manner do not need to allege a meritorious defense or due diligence. *Id.*

¶ 19 Section 1.11 of the Illinois Statute on Statutes addresses the computation of a unit of time and provides:

“The time within which any act provided by law is to be done shall be computed by excluding the first day and including the last, unless the last day is Saturday or Sunday or is a holiday as defined or fixed in any statute now or hereafter in force in this State, and then it shall also be excluded. If the day succeeding such Saturday, Sunday or holiday is also a holiday or a Saturday or Sunday then such succeeding day shall also be excluded.” 5 ILCS 70/1.11 (West 2008).

¶ 20 Based on the procedural posture of this case, our review is *de novo*. *People v. Vincent*, 226 Ill. 2d 1, 18 (2007) (“when a court enters either a judgment on the pleadings or a dismissal in a section 2-1401 proceeding, that order will be reviewed, on appeal, *de novo*”).

¶ 21 In this case, on October 13, 2006, defendant filed a section 2-1401 petition seeking relief from a October 13, 2004, default judgment entered against him. According to section 1.11 of the Statute on Statutes, we are to exclude the first day, October 13, 2004, but include the last day, October 13, 2006, in making our calculation. 5 ILCS 70/1.11 (West 2008). October 13, 2006, was a Friday and not a court holiday, so we do not have to exclude any more days in making our calculation. See 5 ILCS 70/1.11 (West 2008) (“The time within which any act provided by law is to be done shall be computed by excluding the first day and including the last, unless the last day is Saturday or Sunday or is a holiday \*\*\* and then it shall also be excluded.”). Defendant filed his section 2-1401 petition on October 13, 2006, and, therefore, his petition is timely. Accordingly, the circuit court did not err in denying plaintiffs’ section 2-1401(f) petition because the underlying order plaintiffs sought to attack is not void.

¶ 22 We note that this court has held that “in computing time by the calender year, days are not counted, but the calender is examined and the day numerically corresponding to that day in the following year is ascertained, and the calender year expires on that day, less one.” *Irving v. Irving*, 209 Ill. App. 318, 320 (1918). According to the method of calculation in *Irving*, defendant’s petition was late as it was filed on October 13, 2006. According to *Irving*, in order to be timely filed, defendant’s petition would have had to have been filed no later than October 12, 2006, which is the corresponding calender day two years later, minus one day. Plaintiffs rely on *Irving* to argue that defendant’s petition was untimely and, thus, the circuit court’s order granting defendant’s petition on January 18, 2007, was void. Plaintiffs’

argument is unpersuasive.

¶ 23 We note that decisions of the Illinois Appellate Court prior to 1935 are not binding or precedential. *Reichert v. Court of Claims*, 203 Ill. 2d 257, 262 n.1 (2003) (“appellate court decisions issued prior to 1935 are persuasive authority only”). We hold that the provisions of section 1.11 of the Statute on Statutes applies to the time limitation in section 2-1401(c) of the Code and we decline to follow *Irving*. Section 1.11 of the Statute on Statutes is clear that “The time within which *any act provided by law* is to be done shall be computed by excluding the first day and including the last \*\*\*.” (Emphasis added.) 5 ILCS 70/1.11 (West 2008). Plaintiffs have not shown how the time limitation in section 2-1401(c) is not an “act provided by law” according to section 1.11 of the Statute on Statutes or produced any authority that would lead us to disregard section 1.11 of the Statute on Statutes in favor of the reasoning found in *Irving*.

¶ 24

#### CONCLUSION

¶ 25

For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 26

Affirmed.