

No. 1-13-2431

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IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

ILLINOIS DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES ex rel. MONIQUE LAWRENCE,)	Appeal from the
)	Circuit Court of
)	Cook County
)	
Petitioner-Appellee,)	
)	No. 04 D 51239
v.)	
)	
DERRICK RICHMOND,)	Honorable
)	Mary S. Trew,
Respondent-Appellant.)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Justices McBride and Gordon concurred in the judgment.

ORDER

¶ 1 *Held:* Affirming the judgment of the circuit court of Cook County dismissing defendant's section 2-1401 petition where the court had jurisdiction over the matter and defendant's due process rights were not violated.

¶ 2 Respondent Derrick Richmond (Derrick) appeals from the circuit court of Cook County's July 1, 2013, order dismissing his petition to vacate brought pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2012)) and granting petitioner

Illinois Department of Healthcare and Family Services's (the Department) motion to dismiss the petition. On appeal, Derrick contends the circuit court erred in dismissing his petition because the child support order of September 14, 2004, was void. Specifically, Derrick asserts: (1) the circuit court lacked subject matter and personal jurisdiction; (2) his procedural and due process rights were violated because he had no notice of the child support hearing and was never informed of the nature of the proceedings against him; and (3) the voluntary acknowledgement of paternity he signed was obtained by fraud and the circuit court did not authenticate his signature on the document. For the following reasons, we affirm.

¶ 3

BACKGROUND

¶ 4 On December 29, 2003, Monique Lawrence (Monique) gave birth to a daughter, S.R. The following day, December 30, 2003, Derrick signed a voluntary acknowledgement of paternity (VAP) certifying he was the biological father of S.R. He further certified:

"I have read and understand the rights and responsibilities listed on the back of this form and I understand that by signing this Voluntary Acknowledgement of Paternity, I waive these rights. I accept the obligation to provide child support as determined under state law. I have been provided with an oral and written explanation of the implications of, alternatives to, legal consequences of, and the rights and responsibilities that arise from signing this Voluntary Acknowledgement of Paternity."

The VAP was also signed by Katrina Lawrence as a witness.

¶ 5 On March 31, 2004, the Department filed a petition for establishment of child support and medical insurance in the circuit court of Cook County on behalf of Monique. The petition alleged that more than 60 days had elapsed since Derrick signed the VAP and that it had not been rescinded.

¶ 6 On April 29, 2004, Derrick was served the petition for establishment of child support by substitute service on his mother at 3713 West Polk Street in Chicago.

¶ 7 On July 2, 2004, a notice of motion was mailed to Derrick at 3713 West Lexington Street in Chicago, indicating that on September 14, 2004, a hearing would take place on the petition for establishment of child support.

¶ 8 On September 14, 2004, the petition for establishment of child support was presented to the circuit court. No report of proceedings for this court date is found in the record on appeal; however, the order indicates that both Monique and Derrick were present in court along with the assistant State's Attorney. The circuit court ordered Derrick to pay current and retroactive child support for S.R. and reserved ruling on the issue of medical insurance. The order was signed by Monique and Derrick.

¶ 9 On December 12, 2011, the Department filed a petition for modification on Monique's behalf requesting a change in the amount of Derrick's child support obligation and that he provide medical insurance for S.R. A hearing was scheduled on the petition for January 19, 2012. On the date of the hearing, Derrick, along with Monique and the assistant State's Attorney, were present in court. Derrick filed an appearance in the matter. The circuit court continued the matter for Derrick to provide his current pay stubs and to "appear with or without attorney." Derrick subsequently obtained counsel.

¶ 10 On June 21, 2012, Derrick filed a section 2-1401 petition to vacate the September 14, 2004, child support order and a briefing schedule was set on the motion.¹ After the matter was fully briefed, Derrick voluntarily withdrew the motion and filed an amended motion on November 16, 2012; however, the Department asserted that proper notice of the petition was not

¹ No section 2-1401 petition is included in the record on appeal; however, the court's order of June 21, 2012, indicates this petition was filed the same day.

provided pursuant to Illinois Supreme Court Rule 105 (eff. Jan. 1, 1989), and Derrick was granted leave to amend the petition to properly notify the Department.

¶ 11 Derrick subsequently filed a second amended section 2-1401 petition on April 4, 2013, in which he sought to vacate the September 14, 2004, child support order, quash the summons issued in March 2004, and vacate the VAP. Derrick argued the petition for establishment of child support was signed by Monique less than 60 days after the VAP and, therefore, the September 14, 2004, order was void as it failed to confer subject matter jurisdiction on the circuit court. Derrick also asserted he did not reside at 3713 West Polk Street or 3713 West Lexington Street on the date of substitute service. Lastly, Derrick contended the VAP was void because he did not read the document nor did he recall signing the document in the presence of a witness.

¶ 12 Attached to the petition was an affidavit in which Derrick averred that while holding S.R. in the hospital the day after her birth he was handed papers and was told to sign them. He believed the papers were necessary to release the child from the hospital and signed them without reading them or "knowing anything about" them. He could not recall signing the VAP with any intent. He also did not observe anyone witness his signature and did not authorize anyone to sign as his witness. Defendant, however, acknowledged that Monique's mother may have been in the room at the time he signed the VAP. Defendant further averred he did not live at 3713 West Polk Street or 3713 West Lexington Street on April 29, 2004.

¶ 13 On April 29, 2013, the Department filed a motion to dismiss pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2012)) seeking a dismissal of Derrick's section 2-1401 petition. The Department asserted that after the VAP becomes a judgment it can only be challenged in the limited circumstances where fraud, duress, or material mistake of fact is alleged. Here, Derrick failed to affirmatively set forth factual allegations to support fraud,

duress, or material mistake of fact and, therefore, the petition should be dismissed. Moreover, Derrick waited seven years to file his petition, which is outside the two-year limitation of section 2-1401 of the Code and availed himself to the court's jurisdiction when he appeared in court and signed the order for child support.

¶ 14 On July 1, 2013, the circuit court granted the Department's motion and dismissed Derrick's section 2-1401 petition, finding it had subject matter jurisdiction. The court further found, "This court has personal jurisdiction over both parties as of 9-14-2004, because both parties availed themselves of this court's jurisdiction on that date." In addition, the court determined Derrick signed the VAP on December 30, 2003. Derrick timely filed his notice of appeal on July 29, 2013.

¶ 15 **II. ANALYSIS**

¶ 16 On appeal, Derrick contends the circuit court erred in dismissing his section 2-1401 petition because the order of September 14, 2004, was void (1) for lack subject matter jurisdiction and personal jurisdiction; (2) both his procedural and substantive due process rights were violated because he had no notice of the hearing and was never informed of the nature of the proceedings against him; and that (3) the VAP was obtained by fraud and his signature on the VAP was not authenticated by the circuit court.

¶ 17 In response, the Department asserts the circuit court did not err in dismissing Derrick's petition because: (1) the circuit court had personal and subject matter jurisdiction; and (2) Derrick did not file his petition to vacate within the time required by statute or allege any of the statutory grounds for vacating the VAP.

¶ 18 The Department further argues that two of Derrick's arguments are forfeited on appeal because they were not raised in the circuit court proceedings. Namely, his assertions (1)

regarding the failure of the circuit court to authenticate his signature on the VAP and (2) that the VAP was procured by fraud. We agree. Derrick did not assert these arguments in any pleading, memorandum, motion, or petition in the circuit court. It is well settled that issues not raised in the circuit court are deemed forfeited and may not be raised for the first time on appeal.

Martinez v. River Park Place, LLC, 2012 IL App (1st) 111478, ¶ 29. Therefore, Derrick has forfeited these arguments. We now turn to address the substance of Derrick's appeal.

¶ 19

A. Standard of Review

¶ 20 We review the dismissal of a section 2-1401 petition *de novo*. *People v. Vincent*, 226 Ill. 2d 1, 13 (2007). Section 2-1401 establishes a procedure for seeking relief from judgments more than 30 days after their entry. 735 ILCS 5/2-1401 (West 2012). Typically, to be entitled to relief pursuant to section 2-1401, the petitioner must set forth specific factual allegations supporting: (1) the existence of a meritorious defense or claim; (2) due diligence in presenting this defense or claim to the circuit court in the original action; and (3) due diligence in filing the section 2-1401 petition for relief. *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 220-21 (1986). The purpose of a section 2-1401 petition is to bring facts to the attention of the circuit court which, if known at the time of judgment, would have precluded its entry. *Paul v. Gerald Adelman & Associates, Ltd.*, 223 Ill. 2d 85, 94 (2006). The petitioner has the burden of establishing these elements by a preponderance of the evidence. *Id.* at 95.

¶ 21 In general, a section 2-1401 petition must be filed within two years of the entry of judgment. 735 ILCS 5/2-1401(c) (West 2012). The two-year limitation period, however, does not apply when the petitioner alleges the judgment is void. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 103 (2002). Moreover, where a judgment is challenged on voidness grounds there is no need for the petitioner to establish that it had acted with due diligence or to

allege that a meritorious defense existed. *Id.* at 105.

¶ 22 The filing of a section 2-1401 petition is considered a new proceeding, not a continuation of the old one. 735 ILCS 5/2-1401(b) (West 2012). Accordingly, it follows that the respondent may answer or move to dismiss the petition either under section 2-615 of the Code (735 ILCS 5/2-615 (West 2012)) for failure to state a claim or under section 2-619 of the Code (735 ILCS 5/2-619 (West 2012)) based on an affirmative defense. *Blazyk v. Daman Express, Inc.*, 406 Ill. App. 3d 203, 207 (2010). Under either section 2-615 or 2-619, our review is *de novo*. *Mauvais-Jarvis v. Wong*, 2013 IL App (1st) 120070, ¶ 64. *De novo* consideration means we perform the same analysis that a circuit court would perform. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011).

¶ 23

B. Jurisdiction

¶ 24

1. Subject Matter Jurisdiction

¶ 25 Derrick first contends that the circuit court lacked subject matter jurisdiction over the petition for establishment of child support because Monique falsely stated under oath that more than 60 days had elapsed since the signing of the VAP by both parties. Derrick asserts the 60 days is a jurisdictional requirement of section 45/5(b)(1) of the Illinois Parentage Act of 1984 (Parentage Act) (750 ILCS 45/5(b)(1) (West 2004)) and because only 49 days had passed since the VAP was signed when the petition for establishment of child support was filed, the circuit court's September 14, 2004, order was void for lack of subject matter jurisdiction.

¶ 26 Whether a circuit court has subject matter jurisdiction to entertain a claim presents a question of law which we review *de novo*. *McCormick v. Robertson*, 2015 IL 118230, ¶ 18.

¶ 27 Subject matter jurisdiction refers to jurisdiction over the general class of cases to which the proceeding in question belongs. *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*,

199 Ill. 2d 325, 335 (2002). With the exception of the circuit court's power to review an administrative action, which is conferred by statute, a circuit court's subject matter jurisdiction is conferred entirely by our state constitution. *Id.* Under section 9 of article VI, of our state constitution, the jurisdiction of circuit courts extends to all " 'justiciable matters except when the Supreme Court has original and exclusive jurisdiction relating to the redistricting of the General Assembly and to the ability of the Governor to serve or resume office.' " *McCormick*, 2015 IL 118230, ¶ 20 (quoting Ill. Const. 1970, art. VI, § 9). "So long as a matter brought before the circuit court is justiciable and does not fall within the original and exclusive jurisdiction of our [supreme] court, the circuit court has subject matter jurisdiction to consider it." *Id.*

¶ 28 Recently, our supreme court explained that the Illinois Constitution does not define the term "justiciable matters," but that whether a justiciable matter exists must be determined by the courts on a "case-by-case basis." *Id.* ¶ 21. According to our supreme court:

"The courts have held that the overarching purpose of the justiciability requirement is to reserve the exercise of judicial authority for situations where an actual controversy exists. [Citation.] Consistent with this view, a matter is considered justiciable when it presents 'a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of the parties having adverse legal interests.' " *Id.* (citing *Belleville Toyota*, 199 Ill. 2d at 335).

¶ 29 Our supreme court further noted that "[c]ompliance with statutory prerequisites involves an altogether different set of values *** however, the fact that the litigants or the court may have deviated from requirements established by the legislature does not operate to divest the court of jurisdiction." *Id.* ¶ 22. In that vein, as long as a claim meets the requirements for justiciability, "it will be sufficient to invoke the court's subject matter jurisdiction, even if the claim is

defectively stated." *Id.* ¶ 23. Thus, "[t]he *only* consideration is whether it falls within the general class of cases that the court has the inherent power to hear and determine. If it does, then subject matter jurisdiction is present." (Emphasis in original.) *Id.*

¶ 30 The jurisdictional challenge raised by Derrick here is premised on section 5 of the Parentage Act. That statute, entitled "Presumption of Paternity," provides:

"(a) A man is presumed to be the natural father of a child if:

(1) he and the child's natural mother are or have been married to each other, even though the marriage is or could have been declared invalid, and the child is born or conceived during such marriage;

(2) after the child's birth, he and the child's natural mother have married each other, even though the marriage is or could have been declared invalid, and he is named, with his written consent, as the child's father on the child's birth certificate;

(3) he and the child's natural mother have signed an acknowledgement of paternity in accordance with rules adopted by the Illinois Department of Public Aid under Section 10-17.7 of the Illinois Public Aid Code; or

(4) he and the child's natural mother have signed an acknowledgement of parentage or, if the natural father is someone other than the one presumed to be the father under this Section, an acknowledgement of parentage and denial of paternity in accordance with Section 12 of the Vital Records Act.

(b) A presumption under subdivision (a)(1) or (a)(2) of this Section may be rebutted only by clear and convincing evidence. A presumption under section (a)(3) or (a)(4) is conclusive, unless the acknowledgement of parentage is rescinded under the process provided in Section 12 of the Vital Records Act, upon the earlier of:

- (1) 60 days after the date of acknowledgement of parentage is signed, or
- (2) the date of an administrative or judicial proceeding relating to the child (including a proceeding to establish a support order) in which the signatory is a party; except that if a minor has signed the acknowledgement of paternity or acknowledgement of parentage and denial of paternity, the presumption becomes conclusive 6 months after the minor reaches majority or is otherwise emancipated." 750 ILCS 45/5 (West 2004).

The purpose of the Parentage Act is to "further the public policy of Illinois to 'recognize[] the right of every child to the physical, mental, emotional, and monetary support of his or her parents,' without regard to the parents' marital status." *In re the Parentage of John M.*, 212 Ill. 2d 253, 263 (2004) (quoting 750 ILCS 45/1.1, 3 (West 2002)).

¶ 31 In the instant matter, the circuit court had jurisdiction to hear and determine the petition for establishment of child support because it was among the general class of cases—those presenting a claim for child support under the Parentage Act, a justiciable matter—to which the court's constitutionally granted original jurisdiction extends. See *McCormick*, 2015 IL 118230, ¶ 28 (finding the circuit court had subject matter jurisdiction to determine " 'judgment of parentage, custody [and] related matters' " under the Parentage Act); *Ligon v. Williams*, 264 Ill. App. 3d 701, 708 (1994) (holding the only justiciable questions raised by the parentage petition were the establishment of a parent/child relationship between the child and the father and the father's obligation to support the child); cf. *In re Parentage of G.E.M.*, 382 Ill. App. 3d 1102, 1121 (2008) (finding the court lacked subject matter jurisdiction where paternity had been decided years earlier by the DuPage County court, thus, the Will County court "should have dismissed the cause of action against respondent because there was no justiciable matter remaining regarding the paternity of this child."). Moreover, even if the petition defectively

stated its claim under the Parentage Act, the circuit court would not have been deprived of subject matter jurisdiction. *McCormick*, 2015 IL 118230, ¶ 22. Accordingly, we conclude the circuit court had subject matter jurisdiction to enter the September 14, 2004, child support order.

¶ 32

2. Personal Jurisdiction

¶ 33 Derrick next asserts that the September 14, 2004, order was void because the circuit court lacked personal jurisdiction. Specifically, Derrick contends that he did not receive proper substitute service of summons as he was not residing at 3713 West Lexington Street at the time of service.

¶ 34 We review *de novo* whether the circuit court obtained personal jurisdiction. *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 17. *De novo* consideration means we perform the same analysis that a circuit court would perform. *JPMorgan Chase Bank, N.A. v. Ivanov*, 2014 IL App (1st) 133553, ¶ 45.

¶ 35 To enter a valid judgment, a court must have jurisdiction over the subject matter and jurisdiction over the parties. *In re Marriage of Verdung*, 126 Ill. 2d 542, 547 (1989). A judgment entered by a court without jurisdiction over the parties is void and may be challenged at any time, either directly or collaterally. *Id.* It is well settled that personal jurisdiction may be acquired over a party by his appearance or by effective service of summons. *In re M.W.*, 232 Ill. 2d 408, 426 (2009).

¶ 36 It is well established that any action on the part of a defendant which recognizes the case as being in court will be considered a general appearance, which subjects him or her to that court's jurisdiction, unless that action was for the sole purpose of contesting the court's jurisdiction. *Bickel v. Subway Development of Chicagoland, Inc.*, 354 Ill. App. 3d 1090, 1096 (2004); *Harris v. Wally's World of Fun, Ltd.*, 279 Ill. App. 3d 61, 64 (1996); *Pecoraro v. Kesner*,

217 Ill. App. 3d 1039, 1043-44 (1991). Further, "[a]ny action taken by a party that invokes the court's power to adjudicate an issue is deemed to be a submission to jurisdiction of the court."

Harris, 279 Ill. App. 3d at 64. The reason for this rule is that " 'a person cannot, by his voluntary action, invite the court to exercise its jurisdiction and at the same time deny that this jurisdiction exists.' " *Pecoraro*, 217 Ill. App. 3d at 1044 (quoting *Lord v. Hubert*, 12 Ill. 2d 83, 87 (1957)).

¶ 37 Here, Derrick appeared in court on September 14, 2004, the first hearing date on the petition for establishment of child support. No record of proceedings for this date is included in the record on appeal and the record fails to establish, nor does Derrick argue, that he contested the court's jurisdiction at that time. The record further demonstrates that Derrick did not object to the court's jurisdiction by filing a motion to dismiss the action or a motion to quash service of process prior to September 14, 2004. See 735 ILCS 5/2-301(a) (West 2012). On September 14, 2004, the circuit court entered an order setting child support. Further, the record reflects Derrick was present in court and signed the order. Accordingly, Derrick voluntarily submitted to the circuit court's jurisdiction at that time. See *Mitchell*, 2014 IL 116311, ¶ 18 (personal jurisdiction may be established by a party's voluntary submission to the court's jurisdiction); *Pecoraro*, 217 Ill. App. 3d at 1043 (defendant's actions, "taken in their totality, show that he invoked the court's jurisdiction").

¶ 38 C. Due Process

¶ 39 Lastly, Derrick contends that he was denied substantive and procedural due process because: (1) he did not have notice of the proceedings on September 14, 2004, as he was not served with summons; and (2) he did not have any knowledge of what the proceedings involved and was "pressured into signing" the order.

¶ 40 The fundamental requirement of due process is the opportunity to be heard, and that right

"has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); see *In re Dar. C.*, 2011 IL 111083, ¶ 61. The "[r]equirements of due process are met by conducting an orderly proceeding in which a party receives adequate notice and an opportunity to be heard." *Village of Vernon Hills v. Heelan*, 2014 IL App (2d) 130823, ¶ 32 (quoting *Reichert v. Court of Claims of State of Illinois*, 203 Ill. 2d 257, 261 (2003)). Providing effective service is a means of protecting an individual's right to due process. *In re Dar. C.*, 2011 IL 111083, ¶ 61; *Bank of New York Mellon v. Karbowski*, 2014 IL App (1st) 130112, ¶ 12. Both procedural and substantive due process claims present a legal question subject to *de novo* review. *People v. Hall*, 198 Ill. 2d 173, 177 (2001).

¶ 41 Here, as previously discussed, the record establishes that Derrick submitted to the jurisdiction of the circuit court. Although Derrick challenges the sufficiency of service of process, the record discloses he was served by substitute service on April 29, 2004. The record further discloses that on June 2, 2004, he was mailed a notice of motion, which indicated that a hearing on the petition for establishment of child support would take place on September 14, 2004. Derrick then appeared in court on September 14, 2004, and participated in the proceedings as acknowledged by his signature on the order. Derrick asserts he had no knowledge of what the proceedings entailed and that he was pressured to sign the order; however, he has failed to provide a transcript or a bystander's report of those proceedings for our review. The burden is on the appellant to provide a complete record on appeal to support his claims of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Where the record on appeal is incomplete, any doubts which may arise from the incompleteness of the record will be resolved against the appellant. *Id.* at 392. Accordingly, based on the record provided, we conclude Derrick's due process rights

were not violated and the circuit court did not err in dismissing the section 2-1401 petition.

¶ 42

CONCLUSION

¶ 43 For the reasons stated above, the judgment of the circuit court of Cook County is affirmed.

¶ 44 Affirmed.