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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

HULWAH MOHAMMAD,) Appeal from the Circuit Court of
) Cook County, Law Division
Plaintiff-Appellee,)
)
v.) No. 13 L 591
)
SAOUD DABBAH and DABBAH PROPERTIES,) Honorable James P. Flannery,
LLC,) Judge Presiding
)
Defendants-Appellants.)

JUSTICE SIMON delivered the judgment of the court.
Justices Harris and Mikva concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court committed reversible error when it vacated the second dismissal for want of prosecution. Plaintiff did not demonstrate that her myriad failures to adequately prosecute the case were excusable in any way.
- ¶ 2 Plaintiff's case was dismissed for want of prosecution. Twenty-two months later, plaintiff filed a petition to vacate the dismissal, asserting that she did not receive notices from the court because the wrong contact information was listed for plaintiff's counsel. The court (improperly) granted the motion. While a motion to reconsider was pending, the case was once again dismissed for want of prosecution. Almost three months later, plaintiff filed a second petition to

vacate the dismissal, again arguing that the same incorrect contact information caused her to not have notice of what was happening in the case. The trial court vacated the second dismissal and again reinstated the case. We reverse.

¶ 3

BACKGROUND

¶ 4 This is a personal injury case that was filed January 17, 2013. Plaintiff Hulwah Mohammad allegedly stepped on a liquid substance and slipped and fell inside defendant Saoud Dabbah's¹ chiropractic clinic in January 2011. Plaintiff attempted to serve defendant on February 6, 2013, but the sheriff's return indicates that service was not effectuated as a result of there being no contact with defendant.

¶ 5 On April 17, 2013, the case was dismissed for want of prosecution. While the case was dismissed, on October 31, 2014, plaintiff served defendant. On January 30, 2015, while the case remained dismissed and without leave of court, plaintiff filed an amended complaint. The putative amended complaint is basically the same as the original complaint for all relevant purposes, with some minor corrections. Almost two years after the dismissal, on February 11, 2015, plaintiff filed a section 2-1401 petition to vacate the dismissal and reinstate the case.

¶ 6 Plaintiff's 2-1401 petition was not supported by an affidavit. The apparent reason for plaintiff's failure to do anything in the case or anything about the dismissal was that, in the complaint, plaintiff listed attorney number 30113 whereas the correct attorney number was 30013. So, plaintiff maintains, she had no notice of the court dates or the dismissal for want of prosecution, surmising that the notices in the case were sent to another attorney with that similar attorney number. The trial court granted the motion to vacate over defendant's objections.

¶ 7 In a motion to reconsider, defendant pointed out that, among other things, the 2-1401

¹ There are really two defendants, Dabbah and Dabbah Properties, LLC, but the parties frequently refer to them collectively as "defendant." It is irrelevant to distinguish between them so we have also referred to them singularly.

petition was not supported by an affidavit and plaintiff had not made a sufficient showing of due diligence. Defendant also filed a motion to quash service on the basis that there was no pending case at the time of service because it was dismissed more than 18 months earlier.

¶ 8 On May 5, 2015, after the case had been moved to the black line call and set before another judge, the case was again dismissed for want of prosecution because plaintiff did not appear. Plaintiff had still not corrected the attorney contact information so all notices were sent to John Collins Groom, an attorney who was disbarred by consent in 1997.

¶ 9 Back before the other judge, plaintiff, apparently unaware that the case had been dismissed for want of prosecution a second time, filed a late response to defendant's motion to quash service. The trial court permitted the late response. Then, without ruling on defendant's motion to reconsider or the motion to quash service, the trial court struck the case from the case management call because of the dismissal for want of prosecution entered by the other judge.

¶ 10 Plaintiff filed another section 2-1401 petition seeking to vacate the second dismissal for want of prosecution. The petition was again unsupported by an affidavit. The trial court denied the petition, but gave plaintiff leave to amend. Plaintiff did so and, for the first time, submitted an affidavit. The reason plaintiff claimed entitlement to relief from the dismissal for want of prosecution was the same reason as the first time—that a clerical error resulted in notices being sent to the wrong attorney. Plaintiff's petition was later stricken for failure to appear in court. Plaintiff refiled the amended petition which the court apparently allowed because it entered a briefing schedule thereafter. The matter was fully briefed and, on March 15, 2015, after hearing oral argument from the parties, the trial court granted the motion to vacate and reinstated the case. Defendant appeals the order vacating the second dismissal for want of prosecution and reinstating the case.

¶ 11

ANALYSIS

¶ 12 Section 2-1401 of the Illinois Code of Civil Procedure authorizes a party to seek relief from a final judgment beyond the normal 30-day period for postjudgment motions. 735 ILCS 5/2-1401 (West 2012). The petition must be supported by an affidavit and there must be a showing that the petitioner has: (1) a meritorious claim or defense; (2) diligently presented the defense or claim to the trial court in the original action; and (3) diligently filed the section 2-1401 petition itself. *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 221 (1986). We will not disturb a trial court's ruling on whether to grant a section 2-1401 petition unless the trial court abuses its discretion. *Id.*

¶ 13 Plaintiff totally failed to prosecute her case in accordance with the Illinois Code of Civil Procedure, the Illinois Supreme Court Rules, and precedent. The trial court should have never vacated the first dismissal for want of prosecution. The petition was unsupported by an affidavit or any other evidence and that should have ended the matter. *Padilla v. Vazquez*, 223 Ill. App. 3d 1018, 1026 (1991).

¶ 14 Even more, the first petition failed to set out any possible basis on which diligence could be found to excuse plaintiff's myriad failings. The case was dismissed for want of prosecution on April 17, 2013. Plaintiff claims to have had no notice of the dismissal but she did not file a petition under section 2-1401 for 22 months. The only reason given for the belated request for relief from the judgment was that there was no actual notice from the court.

¶ 15 Litigants have a duty and obligation to follow the progress of their case and, generally, postjudgment relief is only available upon a showing of due diligence. *Manny Cab Co. v. McNeil Teaming Co.*, 28 Ill. App. 3d 1014, 1019 (1975). Plaintiff, even to this point, has failed to explain what happened between the April 2013 dismissal and her filing of the February 2015 petition to

vacate that would excuse her obligation to follow the case. Still the only explanation that we have is that certain notices may have been sent to the wrong attorney. It is unexplained what plaintiff believed might have been going on in her case for almost two years with no activity or progress. Service was not even attempted for 20 months after the initial attempt. No evidence was presented that plaintiff ever inquired about the case's status. Failing to discover that a case was dismissed for 22 months is essentially inexcusable, but especially so when the excuse is only that the litigant did not get any kind of affirmative notice from the court.

¶ 16 Even the excuse given—that the notices were sent to the wrong place—appears to have been caused by plaintiff's counsel's own negligence of putting the wrong attorney number on the complaint. 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*, 114 Ill. 2d at 222.

¶ 17 The second 2-1401 petition, the granting of which is actually before us on review, is also insufficient as a matter of law. First it was filed without an affidavit. Then, after the court allowed plaintiff to file an amended petition with an affidavit, the petition was stricken for failure to appear. The court later allowed the second petition and reached its merits. However, the petition fails to meet the most basic standards under which postjudgment relief under section 2-1401 is warranted.

¶ 18 The only reason plaintiff did not have notice of the second dismissal for want of prosecution was that she took no action to correct the problem that she blames for the first dismissal. Plaintiff's own submissions make clear that she knew that the contact information was wrong no later than February 2015 (and *should have known* years earlier). Three months after that, the information was still not corrected and the case was dismissed for want of prosecution for the second time with the same excuse. The record shows that notice of the second dismissal

for want of prosecution was sent to attorney John Collins Groom and not to plaintiff's counsel because plaintiff never corrected the incorrect contact information despite having knowledge of it. That is not diligence.

¶ 19 The only mention of any due diligence is plaintiff's self-serving, conclusory statement that it has been exercised, despite all proof to the contrary. Plaintiff even acknowledges learning about the second dismissal for want of prosecution at the June 3, 2015 case management conference—within 30 days of its May 5th entry. Yet, plaintiff still did not file a petition for relief from the judgment until more than 50 days after admittedly learning about it and 80 days after the dismissal. And even that petition was unsupported by an affidavit and was otherwise insufficient as a matter of law. The record makes clear that plaintiff was not entitled to relief from judgment under section 2-1401 and the trial court abused its discretion by granting that relief and reinstating the case.

¶ 20 In addition, plaintiff's brief on appeal is wholly inadequate. Its conciseness and brevity are to be commended, but this time those commendable characteristics come along with many shortcomings. There are zero citations to the record in the brief. The only citations to authority are to general propositions of law; they are not tailored to the facts of this case, nor is the case law that is included incorporated into an argument in any kind of way. The brief does not have the required certification of compliance. There is no certificate of service. The procedural history section of the brief contains argument. Plaintiff does not address or counter the points made by defendant on appeal, including that plaintiff does not explain how her claim is meritorious, how she was diligent, or why all of the delays and failures should be excused.

¶ 21

CONCLUSION

¶ 22 Accordingly, we reverse.

¶ 23 Reversed.