2015 IL App (2d) 141243-U
No. 2-14-1243
Order filed October 21, 2015

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).

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

CITIMORTGAGE, INC.,	)	Appeal from the Circuit Court
	)	of Lake County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 09-CH-1984
	)	
A AND J PARKVIEW PARTNERSHIP, LLC,	)	
	)	
	)	
Defendant-Appellant.	)	
	)	
(Mark Laskowski, Unknown Owners Owners and Non Record Claimants, defendants).	)	Honorable Mitchell L. Hoffman, Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices McLaren and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court erred in dismissing defendant's section 2-1401 petition to vacate a foreclosure judgment as void for lack of personal jurisdiction: defendant's evidence demonstrated that the person served was not defendant's agent or officer; although some of that evidence was submitted only with defendant's reply to plaintiff's response, defendant could not procedurally default an attack on a void judgment.

¶ 2 Defendant, A & J Parkview Partnership, LLC, appeals the dismissal of its "motion" to

quash service in an underlying foreclosure case by plaintiff, CitiMortgage, Inc. Defendant contends that the trial court erred in determining that defendant failed to present sufficient evidence when it filed an affidavit showing the defect in service as part of a reply instead of with its motion and later stated that it was seeking relief under section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2012)). We reverse and remand.

¶ 3 I. BACKGROUND

¶ 4 On June 5, 2009, plaintiff filed a complaint against defendant, seeking foreclosure of residential property. Summons was served on Dianne Piquette at the law offices of Craig C. Westfall. The return of service represented that Piquette was an agent of Westfall. It did not represent that she was an agent of defendant. Defendant did not appear, and an order of default was entered. On September 28, 2010, an order approving sale was entered.

¶ 5 On September 24, 2014, defendant filed a "motion" to quash service, alleging that service was improper because Piquette was not an officer of defendant or its registered agent. Defendant attached an exhibit from the Secretary of State's office showing that Westfall was the registered agent of "A&J Parkview Partners LLC." Plaintiff filed a response, arguing in part that defendant's motion could be brought only under section 2-1401 and that defendant failed to provide any evidence that Piquette was not its officer or registered agent. Defendant filed a reply stating that it agreed that relief should be found under section 2-1401. Defendant attached an affidavit from Piquette in which she averred that she was not its agent or officer and that she never represented that she was an agent or officer to the process server. The court ordered a hearing for December 5, 2014. There is no transcript or substitute for a transcript of that hearing in the record.

¶ 6 On December 5, 2014, the trial court dismissed the motion, stating that the motion did not contain sufficient evidence and that the affidavit attached to the reply was not properly presented to the court. Defendant appeals.

¶ 7 II. ANALYSIS

¶ 8 Defendant contends that its "motion" to quash service contained sufficient evidence to show that it was not properly served, resulting in a void order that can be attacked at any time under section 2-1401.

¶ 9 We note that defendant has not provided a report of proceedings or a substitute. "[A]n appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Notwithstanding *Foutch*, a record of the proceedings in the lower court might be unnecessary when an appeal raises solely a question of law, which we review *de novo*. *Gonella Baking Co. v. Clara's Pasta di Casa, Ltd.*, 337 Ill. App. 3d 385, 388 (2003). Here, the evidence presented to the trial court is apparent on the record. Therefore, we address the issue of its sufficiency.

¶ 10 Defendant raised the matter through a motion, but later agreed with plaintiff that it was actually a claim for relief under section 2-1401. An untimely postjudgment motion is typically viewed as a section 2-1401 petition when it is the only vehicle that a party may use to challenge the judgment. See *Protein Partners, LLP v. Lincoln Provision, Inc.*, 407 Ill. App. 3d 709, 715 (2010) (construing a motion to quash as a section 2-1401 petition). Accordingly, we construe defendant's motion to quash as a section 2-1401 petition.

¶ 11 "Section 2-1401 establishes a comprehensive, statutory procedure that allows for the vacatur of a final judgment older than 30 days." *People v. Vincent*, 226 Ill. 2d 1, 7 (2007). The purpose of a section 2-1401 petition is to bring to the attention of the trial court facts that, if known at the time of judgment, would have precluded its entry. *Paul v. Gerald Adelman & Associates, Ltd*., 223 Ill. 2d 85, 94 (2006).

¶ 12 Typically, to be entitled to relief under 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 the defense or claim to the circuit court in the original action; and (3) due diligence in filing the petition. *Smith v. Airoom, Inc*., 114 Ill. 2d 209, 220-21 (1986). 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 limitations period, however, does not apply when the petitioner alleges that the judgment is void. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 103 (2002). A judgment that is entered without personal jurisdiction over a party is void and can be attacked directly or collaterally at any time. *Citimortgage, Inc. v. Cotton*, 2012 IL App (1st) 102438, ¶ 13. Where a petitioner seeks to vacate a judgment as void, the allegation of voidness "substitutes for and negates the need to allege a meritorious defense and due diligence." *Sarkissian*, 201 Ill. 2d at 104.

¶ 13 "Personal jurisdiction may be established either by service of process in accordance with statutory requirements or by a party's voluntary submission to the court's jurisdiction." *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 18. Strict compliance with the statutes governing the service of process is required before a court will acquire personal jurisdiction over the person served. *Sarkissian*, 201 Ill. 2d at 109; *C.T.A.S.S.&U. Federal Credit Union v. Johnson*, 383 Ill. App. 3d 909, 912 (2008). "Where service of process is not obtained in

accordance with the requirements of the statute authorizing service of process, it is invalid, no personal jurisdiction is acquired, and any default judgment rendered against a defendant is void." *Schorsch v. Fireside Chrysler-Plymouth, Madza, Inc*., 172 Ill. App. 3d 993, 998 (1988). Accordingly, a foreclosure judgment entered without service of process is void. *Bank of New York Mellon v. Karbowski*, 2014 IL App (1st) 130112, ¶ 12.

¶ 14 Section 2-204 of the Code provides that a private corporation may be served by leaving a copy of the process with its registered agent or any officer or agent of the corporation found anywhere in the state or in any other manner permitted by law. 735 ILCS 5/2-204 (West 2012). Substitute service of a corporation may also be made by serving the Secretary of State. 805 ILCS 5/5.25(b) (West 2012). It is well settled that service on an employee of the corporation or an employee of its agent is insufficient. See *Dei v. Tumara Food Mart, Inc.*, 406 Ill. App. 3d 856, 862 (2010) (service on employee of the corporation was insufficient); *Knapp v. Bulun*, 392 Ill. App. 3d 1018, 1030-31 (2009) (service on paralegal and secretary to the registered agent of a corporation was insufficient when the paralegal was not designated as an agent of the corporation).

¶ 15 Here, defendant presented evidence that it was not properly served because Piquette was not an agent or officer of the corporation. Even without the affidavit, it was clear from the documentation from the Secretary of State's office that defendant's agent was Westfall, and it was clear from the return of service that**,** at best**,** Piquette was merely Westfall's agent. The affidavit, to the extent that it was even necessary, clarified that Piquette was not defendant's agent or officer. Thus, the record has sufficient evidence that the underlying foreclosure judgment is void for lack of personal jurisdiction.

¶ 16 Plaintiff contends that, because Piquette's affidavit was attached to defendant's reply, it was not properly before the court, making the court's dismissal of the "motion" appropriate. Plaintiff relies on the principle that matters raised for the first time in a reply brief are forfeited and contends that defendant should have filed an amended "motion." But even if we assume that the affidavit was necessary to establish improper service, plaintiff's argument ignores that a void judgment may be attacked at any time. Indeed, a party may attack it for the first time on appeal. *People v. Thompson*, 209 Ill. 2d 19, 27 (2004). An argument that a judgment is void is not subject to forfeiture. *Id*. Indeed, courts have an independent duty to vacate void orders and may *sua sponte* declare an order void. *Id*. Accordingly, even if the affidavit was not presented according to proper procedure, defendant was not precluded from bringing it before the court to challenge the judgment. Thus, because the record contains evidence that the foreclosure judgment is void, the court erred when it dismissed the "motion" for lack of sufficient evidence.[1]

¶ 17 III. CONCLUSION

¶ 18 The trial court erred when it dismissed defendant's "motion" to quash service. Accordingly, the circuit court's judgments of default, foreclosure, and sale are vacated and the cause is remanded for further proceedings.

[1] At oral argument, plaintiff also noted the length of time between the judgment of foreclosure and the "motion" to quash. Again, though, an attack on a void judgment does not require diligence. Further, plaintiff notes that defendant does not contend that it was not aware of the foreclosure action. However, while other states allow for substantial compliance with service-of-process requirements, the current law in Illinois requires strict compliance. See *West Suburban Bank v. Advantage Financial Partners, LLC*, 2014 IL App (2d) 131146, ¶¶ 33-39 (Birkett, J. specially concurring).

¶ 19 Reversed and remanded.