

NOTICE
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2013 IL App (4th) 121095-U

NO. 4-12-1095

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
September 5, 2013
Carla Bender
4th District Appellate
Court, IL

SARA DOMAN,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
AIMEE DOMAN, Co-Administrator of the)	No. 11D10
Estate of Mark Doman,)	
Defendant-Appellant.)	Honorable
)	Arnold F. Blockman,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Steigmann and Justice Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court's dismissal of defendant's section 2-1401 petition, concluding (1) defendant's request that the court interpret its docket entry was barred by collateral estoppel and (2) defendant failed to show due diligence in bringing her claims relating to the propriety of the court's docket entry.

¶ 2 In January 2011, plaintiff, Sara Doman, filed a petition for dissolution of marriage, seeking to dissolve her marriage to Mark Doman. In June 2011, the domestic relations division of the circuit court entered a judgment for dissolution of marriage on grounds only, reserving ruling on ancillary issues. In July 2011, before the court ruled on any ancillary issues, Mark died intestate. Thereafter, the court entered a July 5, 2011, docket entry stating "Cause is dismissed."

¶ 3 In September 2011, Sara filed a petition for probate and appointment of

administrator in the probate division of the circuit court. Mark's adopted daughter, defendant, Aimee Doman, filed a counterpetition, arguing Sara was no longer Mark's wife or an heir at law. The probate court found the domestic relations court's docket entry did not affect the grounds-only judgment of dissolution; accordingly, the court found Sara was no longer an heir to Mark's estate.

¶ 4 Sara appealed, and in October 2012, this court reversed the probate court's judgment, concluding Sara was Mark's surviving spouse under the Probate Act of 1975 (Probate Act) (755 ILCS 5/1-1 to 30-3 (West 2010)) because the domestic relations court's docket entry dismissed the entire dissolution of marriage proceedings. *In re Estate of Doman*, 2012 IL App (4th) 120123, 977 N.E.2d 337. After we issued our decision in *Doman*, Aimee filed in the domestic relations court a petition for clarification of judgment and/or relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-1401 (West 2012)). Aimee requested the court "render its clarifying Order as to whether or not the portion of the docket entry 'Cause is dismissed' was intended to vacate the written Order or only dismissed the ancillary matters and/or vacate that portion of the Order stating 'Cause is dismissed' and effectively reinstate the ancillary matters." Sara filed a motion to dismiss Aimee's petition pursuant to section 2-619 of the Procedure Code (735 ILCS 5/2-619 (West 2012)). Following a November 2012 hearing, the trial court granted Sara's motion and dismissed Aimee's petition with prejudice, finding it was precluded under collateral estoppel from considering Aimee's petition, as the petition was barred by a prior judgment or "affirmative matters not of record."

¶ 5 Aimee appeals, arguing the trial court erred by granting Sara's motion to dismiss Aimee's petition for clarification of judgment and/or relief from judgment. We affirm.

¶ 6

I. BACKGROUND

¶ 7

A. The Initial Divorce and Probate Proceedings

¶ 8

In April 1994, Mark and Sara married. During the parties' marriage, Mark adopted Sara's two children from a previous marriage, Aimee and Bethany Doman.

¶ 9

In January 2011, Sara filed a petition for dissolution of marriage. On June 10, 2011, the domestic relations division of the Champaign County circuit court entered a judgment for dissolution of marriage on grounds only, reserving ruling on all ancillary issues. Before the court ruled on any ancillary issues, Mark died intestate. On July 5, 2011, the court entered the following docket entry: "Phone call received from [Sara's counsel]. Suggestion of Death of the respondent. Cause set for 7/11/11 is vacated. Cause is dismissed."

¶ 10

In September 2011, Sara filed a petition in the probate division of the Champaign County circuit court, seeking to be appointed administrator of Mark's estate. According to Sara, the parties' divorce proceedings were dismissed on July 5, 2011, and she was Mark's surviving spouse. The following month, Aimee filed a response to Sara's petition and a counterpetition for probate and appointment of administrator of Mark's estate. Aimee asserted Sara was no longer Mark's wife or heir.

¶ 11

The probate court agreed with Aimee, finding the domestic relations court's reservation of ancillary issues did not undermine the validity of the judgment of dissolution on grounds only. Accordingly, the probate court found Sara was no longer an heir to Mark's estate.

¶ 12

B. This Court's Decision in *In re Estate of Doman*

¶ 13

Sara filed a notice of appeal, arguing the domestic relations court's July 5, 2011, docket entry dismissed the dissolution proceedings in their entirety and, therefore, Sara and Mark

were placed in the same position they would have been if the dissolution proceedings were never initiated. *In re Estate of Doman*, 2012 IL App (4th) 120123, ¶ 8, 977 N.E.2d 337. Aimee, on the other hand, argued the docket entry dismissed only the ancillary issues. *Id.*

¶ 14 In resolving the parties' competing positions, we noted neither Sara nor Aimee appealed the domestic relations court's dismissal order or filed in that court a motion to vacate, modify, clarify, or correct the dismissal order. *Doman*, 2012 IL App (4th) 120123, ¶ 9, 977 N.E.2d 337. Rather, the parties sought clarification of the dissolution order in probate court. *Id.* "Under these circumstances," we interpreted the domestic relations court's order as a dismissal of the divorce proceeding in its entirety, because to find otherwise "would lead to the unjust result of depriving petitioner of both her marital right to a division of property in divorce and her spousal right to property under the Probate Act of 1975 (Probate Act) (755 ILCS 5/1-1 to 30-3 (West 2010))." *Id.* Further, we noted a judgment for dissolution that reserves any issues for later determination is not final and appealable. *Doman*, 2012 IL App (4th) 120123, ¶ 10, 977 N.E.2d 337. Although we recognized section 401(b) of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/401(b) (West 2010)) provides that "[t]he death of a party subsequent to entry of a judgment for dissolution but before judgment on reserved issues shall not abate the proceedings," we pointed out that under section 2-1301(e) of the Procedure Code (735 ILCS 5/2-1301(e) (West 2010)), a trial court retains authority to set aside any final order or judgment within 30 days of judgment. *Doman*, 2012 IL App (4th) 120123, ¶ 11, 977 N.E.2d 337. Based on the foregoing, we concluded Sara was Mark's surviving spouse under the Probate Act and was entitled to a surviving spouse's share of his estate. *Doman*, 2012 IL App (4th) 120123, ¶ 12, 977 N.E.2d 337.

¶ 15

C. Subsequent Proceedings

¶ 16

Following the *Doman* decision, in October 2012, Aimee filed in the domestic relations court a petition for clarification of judgment and/or relief from judgment pursuant to section 2-1401 of the Procedure Code (735 ILCS 5/2-1401 (West 2012)). Aimee asserted she was "taking the action that the Appellate Court indicated that either of the parties should have taken, in other words, to seek to vacate, modify or correct or implicitly clarify" the trial court's intention when it entered a docket entry stating "Cause is dismissed." Aimee "believe[d] that the Court should state that the Court only intended to dismiss ancillary matters." In the alternative, Aimee posited if the court meant to vacate its dissolution order, the court could not have done so without a hearing and the hearing could not take place until a personal administrator for Mark had been substituted. Aimee's prayer for relief requested the court "render its clarifying Order as to whether or not the portion of the docket entry 'Cause is dismissed' was intended to vacate the written Order or only dismissed the ancillary matters and/or vacate that portion of the Order stating 'Cause is dismissed' and effectively reinstate the ancillary matters for determination by the Court."

¶ 17

Later that month, Sara filed a motion to dismiss Aimee's petition pursuant to section 2-619 of the Procedure Code, asserting (1) Aimee's claim was barred by *res judicata* based on this court's decision in *Doman* (735 ILCS 5/2-619(4) (West 2010)); (2) the trial court lacked jurisdiction and Aimee lacked legal capacity to sue (735 ILCS 5/2-619(1), (2) (West 2010)); (3) Aimee's petition lacked a factual basis entitling her to relief (735 ILCS 5/2-619(9) (West 2010)); and (4) the law of the case doctrine barred relitigation of Aimee's claims.

¶ 18

A hearing on Sara's motion to dismiss commenced in November 2012. The trial

court, noting this court's decision in *Doman*, found it was precluded under the doctrine of collateral estoppel from deciding whether it erred. The court also questioned whether Sara's motion was an appropriate section 2-1401 motion, as it was "really not a collateral attack" but a "direct attack." Accordingly, the court dismissed Aimee's petition with prejudice, finding the petition was barred by a prior judgment or "affirmative matters not of record."

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 On appeal, Aimee argues the trial court erred by granting Sara's motion to dismiss. We disagree.

¶ 22 Section 2-1401 of the Procedure Code allows a petitioner to obtain relief from final orders and judgments that are more than 30 days old. 735 ILCS 5/2-1401(a) (West 2012). "Section 2-1401 petitions are essentially complaints inviting responsive pleadings." *People v. Vincent*, 226 Ill. 2d at 1, 8, 871 N.E.2d 17, 23 (2007). The purpose of a section 2-1401 petition is to bring facts to the attention of the trial court which, if known at the time of judgment, would have precluded entry of the judgment. *People v. Haynes*, 192 Ill. 2d 437, 463, 737 N.E.2d 169, 183 (2000). A party seeking relief under section 2-1401(a) must show not only the existence of a meritorious claim in the original action, but also due diligence in pursuing the claim in the circuit court and due diligence in presenting the petition for relief. *In re Haley D.*, 2011 IL 110886, ¶ 58, 959 N.E.2d 1108.

¶ 23 Sara attacked Aimee's petition under section 2-619 of the Procedure Code (735 ILCS 5/2-619 (West 2010)). A motion to dismiss pursuant to section 2-619 of the Procedure Code admits the legal sufficiency of a complaint but asserts an affirmative matter defeats the

claim. *Jane Doe-3 v. McLean County Unit District No. 5 Board of Directors*, 2012 IL 112479, ¶ 15, 973 N.E.2d 880. "Essentially the defendant is saying in such a motion, 'Yes, the complaint was legally sufficient, but an affirmative matter exists that defeats the claim.' [Citations.] This is why a section 2-619(a) motion is sometimes referred to as a 'Yes, but' motion." *Winters v. Wangler*, 386 Ill. App. 3d 788, 792, 898 N.E.2d 776, 779 (2008). We review *de novo* a trial court's ruling on a section 2-619 motion to dismiss. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 595, 948 N.E.2d 132, 159 (2011). In addition, we review a trial court's entry of judgment on the pleadings or a dismissal of a section 2-1401 petition *de novo*. *Vincent*, 226 Ill. 2d at 18, 871 N.E.2d at 28. We may affirm the trial court's decision on any basis appearing in the record. *Jandeska v. Prairie International Trucks, Inc.*, 383 Ill. App. 3d 396, 398, 893 N.E.2d 673, 675 (2008).

¶ 24 Here, the trial court dismissed Aimee's petition after finding it was barred by collateral estoppel. The doctrine of collateral estoppel prevents parties from relitigating an issue resolved in an earlier cause of action. *American Family Mutual Insurance Co. v. Westfield Insurance Co.*, 2011 IL App (4th) 110088, ¶ 17, 962 N.E.2d 993. The following requirements must be met for collateral estoppel to apply: "(1) the issue decided in the prior adjudication is identical with the one presented in the suit in question, (2) there was a final judgment on the merits in the prior adjudication, and (3) the party against whom estoppel is asserted was a party or in privity with a party to the prior adjudication." *Id.* (quoting *Gumma v. White*, 216 Ill. 2d 23, 38, 833 N.E.2d 834, 843 (2005)).

¶ 25 We agree that collateral estoppel bars the portions of Aimee's section 2-1401 petition relating to the interpretation of the July 5, 2011, docket entry. In *Doman*, this court

concluded Sara was Mark's surviving spouse within the meaning of the Probate Act based on our interpretation of the domestic relations court's docket entry as dismissing the entire dissolution of marriage proceedings. *Doman*, 2012 IL App (4th) 120123, ¶ 12, 977 N.E.2d 337. Now in her section 2-1401 petition, Aimee's prayer for relief asks the domestic relations court to clarify the meaning of its July 5, 2011, docket entry "and/or vacate that portion of the Order" and reinstate the ancillary matters. In asking the court to clarify the meaning of its July 5, 2011, docket entry, Aimee is asking the court to decide an issue this court already resolved in *Doman*. Accordingly, collateral estoppel bars Aimee's request.

¶ 26 Aimee argues collateral estoppel does not apply because the *Doman* decision interpreted the July 5, 2011, docket entry but did not address the propriety of that docket entry. We note Aimee's petition does raise some issues the *Doman* court did not address, such as the circuit court's failure to hold a hearing prior to dismissing the dissolution action and dismissing the dissolution action prior to the appointment of an administrator for Mark's estate. However, dismissal of Aimee's petition was nonetheless appropriate because Aimee has not shown she acted diligently in presenting those claims. Aimee has offered no explanation as to why she could not have raised her claims regarding the propriety of the July 5, 2011, docket entry earlier. As Sara points out, instead of questioning the validity of the docket entry in the initial proceedings, Aimee instead sought to enforce that docket entry, arguing it dismissed only the reserved ancillary issues and thus Sara was no longer Mark's wife. See *Doman*, 2012 IL App (4th) 120123, ¶ 5, 8, 977 N.E.2d 337. The purpose of a section 2-1401 petition is not to allow a litigant to pursue a different strategy than the strategy she previously employed; rather, the purpose of a section 2-1401 petition is to bring facts to the trial court's attention that, if known,

would have precluded the court's judgment. *Haynes*, 192 Ill. 2d at 463, 737 N.E.2d at 183.

Accordingly, the trial court properly dismissed Aimee's section 2-1401 petition.

¶ 27

III. CONCLUSION

¶ 28

For the reasons stated, we affirm the trial court's judgment.

¶ 29

Affirmed.