2012 IL App (2d) 111011-U
No. 2-11-1011
Order filed May 31, 2012

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

CITIFINANCIAL SERVICES, INC.,	)	Appeal from the Circuit Court
	)	of Kane County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 11-L-84
	)	
JOSE S. VARELA,	)	
	)	
Defendant-Appellant	)	Honorable
	)	Robert B. Spence,
(Zerefina R. Cuautle, Defendant).	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices McLaren and Birkett concurred in the judgment.

ORDER

Held: (1) We had jurisdiction of defendant's appeal of the trial court's dismissal of defendant's section 2-1401 petition: the trial court had jurisdiction of the petition even though the petition was successive, and defendant timely appealed the dismissal; (2) in the underlying case, plaintiff's alleged failure to comply with statutory procedures did not divest the trial court of subject-matter jurisdiction and thus did not render its judgment void.

¶ 1 Defendant, Jose S. Varela, appeals the dismissal of his petition under section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2010)) in which he sought vacatur of a money judgment against him and his codefendant, Zerefina R. Cuautle, and in favor of plaintiff,

CitiFinancial Services, Inc.; the judgment was one on a note associated with a mortgage. He asserts that the money judgment was void because the court's failure to follow foreclosure procedure deprived the court of subject-matter jurisdiction, thus making the judgment void. We hold that Varela's petition did not make a valid voidness claim; we therefore affirm the dismissal of the section 2-1401 petition.

¶ 2 I. BACKGROUND

¶ 3 On February 14, 2011, plaintiff filed a complaint in which it sued defendants on a note associated with a second mortgage. It alleged that defendants had signed a note agreeing to pay it $83,158.10 and interest in monthly installments of $959.70, but had defaulted, so that they were behind by $80,894.58 in principal. Neither defendant appeared, and, on May 3, 2011, the court entered a default judgment for $87,396.42 against both.

¶ 4 On July 20, 2011, defendants filed a "Motion" to vacate the default judgment. They asserted that the judgment against them was improper because the debt was based on a mortgage and plaintiff did not proceed under the Code provisions on mortgage foreclosure (735 ILCS 5/art. 15 (West 2010)).

¶ 5 On July 26, 2011, the court entered a garnishment order against Cuautle's wages. The same day, defendants filed a "Motion to Vacate Void Judgment," this one explicitly brought under section 2-1401. In this filing, they asserted that the court lacked subject-matter jurisdiction because plaintiff and the court had not followed foreclosure procedures. They specifically relied on the asserted voidness of the judgment, noting that, when a judgment is void, a petitioner seeking vacatur of the judgment need allege neither a meritorious defense nor any kind of diligence. Plaintiff responded, asserting that it was free to sue on the note without following foreclosure procedures.

¶ 6 On August 2, 2011, the court denied the "motion to vacate the Judgment." This order appears to dispose of both of defendants' filings.

¶ 7 On September 14, 2011, Varela alone filed a "Motion to Oppose Wage Deduction Petition and Vacate Judgment." The argument was similar to that in defendants' July 26, 2011, filing. Varela asserted that, when one party contests subject-matter jurisdiction, the burden to show jurisdiction is on the party asserting that jurisdiction exists. The court dismissed Varela's "Motion" on September 20, 2011. It entered a garnishment order against Varela's wages the same day. Varela appealed within 30 days of those orders.

¶ 8 II. ANALYSIS

¶ 9 On appeal, Varela again asserts that the failure to follow foreclosure procedures deprived the trial court of subject-matter jurisdiction. He further asserts that the same supposed error made the judgment void as a due-process violation.

¶ 10 Plaintiff responds, initially noting that Varela did not timely appeal the denial of defendants' July 26, 2011, section 2-1401 petition. It further asserts that trial courts lack jurisdiction to consider successive section 2-1401 petitions. It therefore argues that the trial court here lacked jurisdiction to consider any petition after defendants' initial petition and that consequently this court lacks jurisdiction of the appeal. Before we address the merits of the appeal, we address our own jurisdiction.

¶ 11 This court rejects the rule that a trial court lack jurisdiction to consider successive petitions. Plaintiff relies on the rule set out most prominently in *Village of Glenview v. Buschelman*, 296 Ill. App. 3d 35, 39-40 (1998), in which a First District panel held that a court has jurisdiction to consider only one section 2-1401 petition to vacate a given judgment. In *People v. Walker*, 395 Ill. App. 3d

860, 867-68 (2009), we concluded that the rule in *Buschelman* was without justification. No jurisdictional bar exists to a party's filing of more than one section 2-1401 petition attacking a given judgment. Thus, here, the trial court had jurisdiction to consider the successive petition, and this court therefore has jurisdiction of Varela's timely appeal.

¶ 12 We now address the merits of the matter. We do this in spite of clear deficiencies in Varela's appellate brief. Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008) requires an appellant to support by argument and citation to relevant authority the points that he or she raises, or else those points are forfeited. Varela presents argument and citation, but only in support of his broader points, such as the noncontroversial rule that an order entered by a court lacking jurisdiction is void. On the critical specific point, that subject-matter jurisdiction of a suit on a mortgage-associated note depends on use of foreclosure procedures, Varela neither cites authority nor argues for an extension of existing authority. Nevertheless, "courts have an independent duty to vacate void orders"; they must vacate such an order even when no party challenges the order. *People v. Brown*, 225 Ill. 2d 188, 195 (2007). Because our duty to vacate a void order is not limited to appeals in which a party properly raises an issue of voidness, we explain briefly why the supposed error in procedure could not result in a void order.

¶ 13 The idea that a trial court can lose jurisdiction to enter a civil judgment as a result of a failure to follow a statutory mandate is based on an outdated understanding of jurisdiction. In three watershed cases, *People ex rel. Graf v. Village of Lake Bluff*, 206 Ill. 2d 541, 552-54 (2003), *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 337 (2002), and *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 529-30 (2001), our supreme court explained that, except for administrative review cases, the trial courts' subject-matter jurisdiction is constitutionally

granted and depends only on the existence of a justiciable issue. These cases expressly rejected the idea that the legislature could limit the courts' jurisdiction by creating procedural or substantive conditions precedent to the courts' exercise of authority. In other words, this rule precludes any claim that any procedural or substantive error deprived a trial court of the power to act. Here, the claim for money due on the note was a justiciable issue. That was sufficient for the court to have subject-matter jurisdiction.

¶ 14 Varela also asserts that the supposed failure to follow proper procedures violated his due-process rights and therefore resulted in a void judgment; he supports this assertion with a citation to a federal case, *Textile Banking Co. v. Rentschler*, 657 F.2d 844, 850 (7th Cir. 1981). Under Illinois law, a judgment that is the result of a due-process violation is not *ipso facto* a void order. *People v. Hubbard*, 2012 IL App (2d) 101158, ¶¶ 20-27. This is because federal "voidness" and Illinois "voidness" are not equivalents. *Hubbard*, 2012 IL App (2d) 101158, ¶¶ 20-27. A claim of a due-process violation is thus not a proper basis for a voidness-based section 2-1401 petition.

¶ 15 III. CONCLUSION

¶ 16 For the reasons stated, we affirm the trial court's dismissal of Varela's section 2-1401 petition.

¶ 17 Affirmed.