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2012 IL App. (3d) 110259-U

Order filed March 1, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT  
A.D., 2012

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CAPITAL ONE BANK, N.A.,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit
Plaintiff-Appellee,	)	Will County, Illinois,
	)	
v.	)	
	)	
JOSEPH CZEKALA	)	
	)	Appeal No. 3-11-0259
Defendant-Appellant,	)	Circuit No. 01 AR 745
	)	
and	)	
	)	
FRITO LAY AND AFFILATED	)	
COMPANIES,	)	
	)	The Honorable James Garrison,
Third Party Citation	)	Judge Presiding.
Respondent-Appellee.	)	

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JUSTICE McDADE delivered the judgment of the court.  
Justices Wright and Carter concurred in the judgment.

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**ORDER**

¶ 1 *Held:* Where a party fails to show due diligence and present a meritorious defense, relief pursuant to section 2-1401 of the Code of Civil Procedure will be denied.

¶ 2 The instant appeal presents us with the question of whether the trial court erred in finding it lacked jurisdiction under section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2010)) to consider defendant's petition for reconsideration. We affirm.

¶ 3 **FACTS**

¶ 4 Plaintiff, Capital One Bank (Capital One), filed a complaint against defendant, "Joseph Czekala DBA SEALAND FOODS" (Czekala). Upon Capital One's oral motion, a default judgment was entered against Czekala. Czekala appealed. On appeal, this court held that the default judgment was void for want of personal jurisdiction. *Capital One Bank v. Czekala*, 379 Ill. App. 3d 797, 747 (2008). We remanded the matter with directions to vacate the default judgment. *Czekala*, 379 Ill. App. 3d at 747.

¶ 5 On remand, the trial court vacated the default judgment against Czekala. Czekala subsequently filed a petition for sanctions pursuant to Supreme Court Rule 137. Czekala sought attorney fees incurred for his defense against the claim and the default judgment by attorney, Andrew A. Muchoney. Upon hearing evidence, the trial court awarded Czekala \$23,451.75 for time incurred by Muchoney during his tenure at the McKeown law firm. The trial court, however, denied Czekala's request for \$12,502.47 for time related to Muchoney's tenure at Coston & Rademacher law firm. A final order reflecting these findings was entered on September 30, 2010.

¶ 6 On November 3, 2010, Czekala filed a petition for reconsideration pursuant to section 2-1203 (735 ILCS 5/2-1203 (West 2010)) and, in the alternative, section 2-1401 (735 ILCS 5/2-1401) (West 2010)). The petition sought that the sanction amount awarded by the trial court be modified to include fees incurred during Muchoney's tenure with Coston & Rademacher. The

trial court denied this relief on the basis that it lacked jurisdiction. The court's order stated, in pertinent part:

“1. That Czekala's Petition for Reconsideration was filed on November 3, 2010, which is 34 days after the court order of September 30, 2010, and although the Defendant indicates that it took several days for the Clerk to mail copies of said order to the attorneys of record, there was absolutely no valid evidence or argument presented as to why said petition was not filed within 30 days of the entry of said order.

2. That Czekala's Petition basically alleges that the trial court abused its discretion in awarding Czekala's attorney fees in the amount of \$23,451.75, instead of \$12,502.00 more as requested by Czekala.

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4. \*\*\* After the expiration of that 30-day period, the trial court lacks the necessary jurisdiction to amend, modify or vacate its judgment.[] [Citation.] Consequently, Czekala's Petition for Reconsideration \*\*\* is hereby denied.

5. Czekala further argues that his Petition for Reconsideration is actually a petition filed under 735 ILCS 5/2-1401 \*\*\*.

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8. This Court finds that this petition was filed after 30 days, but not later than 2 years after the entry of the judgments, but that said petition was not supported by affidavit or other appropriate showing as to matters of record and that there is no showing of due diligence on the part of Czekala in filing this petition. This Court further finds that this petition does not seek to vacate or reverse the judgments of September 30, 2010, and September 15, 2010, but only seeks to modify said judgments, and therefore, this petition does not really demonstrate a meritorious defense to said judgments and that said relief sought by Czekala is not really appropriate in a 2-1401 petition.

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10. For all of the reasons cited herein, it is the order of this Court that Czekala's Petition for Reconsideration is denied."

¶ 7 On April 8, 2010, Czekala filed a notice of appeal. Capital One subsequently filed a motion to dismiss appeal. We entered an order denying Capital One's motion to dismiss.

Specifically, the order states:

"Motion of Appellee to Dismiss Appeal, response of Appellant noted, is DENIED. This Court notes that once the circuit court found it had no jurisdiction, it had no authority to consider the merits of Appellant's petition. Accordingly, Appellant is limited on appeal to the issue of whether the circuit

court correctly found it lacked jurisdiction under section 2-1401.”

¶ 8

#### ANALYSIS

¶ 9 The sole issue before us is whether the trial court erred in finding it lacked jurisdiction under section 2-1401 to consider Czekala’s petition for reconsideration.<sup>1</sup> In denying Czekala’s petition, the trial court made factual findings that Czekala did not make any showing that he acted with due diligence regarding his petition and claims for relief. The court also noted that the petition failed to present a meritorious defense because it seeks only to modify rather than to vacate or reverse the judgment at issue. Because the record does not refute these findings, we will not disturb the trial court’s judgment.

¶ 10 At the outset, Czekala contends our standard of review is *de novo*. Specifically, Czekala argues that *de novo* review is appropriate due to the fact that the petition was denied without an evidentiary hearing. This argument ignores the fact that the trial court’s *factual* findings were the basis for the denial of the petition. Thus, the trial court’s judgment will not be disturbed absent an abuse of discretion. *Engel v. Loyfman*, 383 Ill. App. 3d 191, 194 (2008).

¶ 11 Section 2-1401 outlines a procedure by which final orders and judgments may be vacated by the trial court more than 30 days following their entry, if the petition to vacate is not filed later than two years after entry of the judgment. 735 ILCS 5/2-1401 (West 2010). “Proceedings under section 2-1401 are separate actions, and the broad purpose of that provision is to allow the correction of errors which occurred during trial which were unknown to both the court and the parties and which would have changed the disposition of the case if known.” *Kellerman v.*

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<sup>1</sup> Czekala’s petition for reconsideration cannot be considered a proper section 2-1203 motion due to the fact that Czekala failed to file the motion within the 30-day statutory period.

*Crowe*, 119 Ill. 2d 111, 117 (1987). Thus, to be entitled to relief under section 2-1401, a petitioner must set forth allegations supporting: (1) the existence of a meritorious claim or defense; (2) due diligence in presenting the claim or defense to the circuit court in the original action; and (3) due diligence in filing the section 2-1401 petition for relief. *S. C. Vaughan Oil Co. v. Caldwell, Troutt & Alexander*, 181 Ill. 2d 489, 496 (1998).

¶ 12 Here, Czekala failed to adequately address the issue of diligence in the trial court. Instead, Czekala simply noted that the petition was filed within the two-year statutory period. Mere filing within the period, however, does not entitle a party to relief. *Kellerman*, 119 Ill. 2d at 117. Czekala also failed to adequately define any meritorious claim or defense. While Czekala generally contends on appeal that he was “effectively barred” from presenting evidence that would have refuted some of the conclusions made by the trial court regarding the scope of Muchoney’s representation, Czekala fails to specifically define: (1) what unknown errors occurred below, (2) what evidence he was “effectively barred” from presenting,<sup>2</sup> (3) how he was “effectively barred” from presenting that evidence, and (4) how that evidence would have changed the disposition of the case if known. Again, we stress that the purpose of section 2-1401 is to “allow the correction of errors which occurred during trial which were unknown to both the court and the parties and which would have changed the disposition of the case if known.” *Kellerman*, 119 Ill. 2d at 117.

¶ 13 “A section 2-1401 petition was not intended as a procedure whereby a litigant may be relieved of the consequences of his own mistake or negligence, and the burden is on the

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<sup>2</sup>Merely referencing “written orders” and “internal handwritten notes” does not specifically define Czekala’s alleged “evidence.”

petitioner to rebut the presumption that the verdict is correct and to demonstrate that there has been no lack of due diligence.” *Malek v. Lederle Laboratories*, 152 Ill. App. 3d 493, 497 (1987). Given the record before us, we cannot say that the trial court abused its discretion in holding that Czekala failed to meet this burden.

¶ 14 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 15 Affirmed.