

No. 1-15-0292

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
FIRST JUDICIAL DISTRICT

NATIONWIDE ACCEPTANCE CORP.,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 05 M1 119392
)	
RICHARD SMITH,)	Honorable
)	Daniel P. Duffy,
Defendant-Appellant.)	Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Justices Howse and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held:* Denial of petition to vacate judgment affirmed. Trial court denied petition after evidentiary hearing, but defendant failed to furnish transcript, bystander's report, or agreed statement of facts of evidence heard at hearing, which impedes review of trial court's judgment of trial court's finding that service was proper. Defendant's remaining claims barred by statute of limitations for petitions to vacate judgment.

¶ 2 In 2005, a default judgment was entered against defendant Richard Smith after he failed to appear in a breach-of-contract suit filed by plaintiff Nationwide Acceptance Corporation. In 2014, plaintiff revived the judgment. Defendant appeared in the revival proceeding and subsequently filed a petition to vacate the default judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2014)). The petition alleged that the 2005

judgment was void because defendant had not been properly served with notice of the lawsuit, that plaintiff failed to state a cause of action by failing to plead that the statute of limitations had been satisfied, and that the doctrine of *laches* barred plaintiff's original complaint. The trial court denied defendant's section 2-1401 petition after an evidentiary hearing.

¶ 3 Defendant appeals, alleging that his evidence established that he was never properly served and, consequently, the default judgment was void. Defendant also alleges that the trial court erred in concluding that his other claims were untimely.

¶ 4 We affirm the trial court's judgment. The trial court denied the section 2-1401 petition based on live testimony it heard at the hearing on the motion. Yet defendant has failed to provide us with a transcript of that hearing. We cannot review the propriety of the trial court's decision without reviewing the evidence considered by the trial court. We must presume that the trial court's judgment was proper with respect to defendant's personal-jurisdiction argument.

¶ 5 And, assuming that the trial court found that defendant's remaining claims were time-barred, we affirm that finding, as well. Defendant's petition was filed well after the two-year limitations period in section 2-1401 had run. And the void-judgment exception to that limitations period does not apply, as neither the failure to state a claim, the expiration of the statute of limitations, nor a violation of the doctrine of *laches* would render the judgment void.

¶ 6 I. BACKGROUND

¶ 7 On May 2, 2005, plaintiff filed a breach-of-contract complaint against defendant, alleging that defendant had defaulted on a loan.

¶ 8 A special process server was appointed to serve defendant. According to an affidavit filed by the server, he left a copy of the complaint with an individual named Dorothy Smith at 7219

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South Richmond in Chicago on August 18, 2005 at 7:29 p.m. The affidavit described Dorothy as an African American female who was approximately 40 years old.

¶ 9 Defendant failed to appear. On October 17, 2005, the trial court entered a default judgment in plaintiff's favor. The court subsequently entered an order garnishing defendant's wages.

¶ 10 On June 19, 2014, plaintiff filed a petition to revive its judgment pursuant to section 2-1602 of the Code of Civil Procedure (735 ILCS 5/2-1602 (West 2014)). Defendant appeared through counsel and filed an answer to the petition. The trial court granted the petition and granted defendant leave to withdraw his answer.

¶ 11 Two days after withdrawing his answer, defendant filed a section 2-1401 petition seeking to vacate the default judgment. Count 1 of the petition alleged that the default judgment was void because the trial court entered it without personal jurisdiction. More specifically, count 1 claimed that neither defendant nor his sister Dorothy Bradberry, who lived with defendant, were home on August 18, 2005 at the time the special process server claimed to have left the complaint with Dorothy. Defendant attached affidavits from defendant and Dorothy, which both said that they were not home on that date at that time and that they never received a summons or complaint from the process server. Dorothy's affidavit also noted that she was 60 years old in 2005.

¶ 12 Count 2 of the section 2-1401 petition argued that the 2005 complaint "was either time barred or failed to state a cause of action since the default date was not specified." Count 3 of the section 2-1401 petition asserted that the doctrine of *laches* barred plaintiff's breach-of-contract suit because "[p]laintiff waited *** at least 8 years [from the default] before filing suit."

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¶ 13 After a hearing, the court denied the section 2-1401 petition. The court's order stated, in full, "Defendant's motion to quash is denied. The court hearing testimony from Defendant and Dorothy Bradberry."

¶ 14 Defendant filed a motion to reconsider, which stated that, "[b]ecause Plaintiff offered no testimony regarding the personal knowledge of the process server and the return of service mis-identifies the person who received the summons, the motion to quash should have been granted." Defendant added that Dorothy "testified that she did not receive any papers." Defendant also argued that counts 2 and 3 were "arguably valid *** since they were filed within 30 days of the revival [of the default judgment] and a revival reinvests the judgment with the same attributes and conditions which originally belong to it."

¶ 15 The court denied the motion to reconsider. In another brief written order, the court wrote, "Motion to reconsider is denied because [plaintiff's] cross[-]examination of affiants called into question the allegations in the affidavits." Defendant filed this appeal.

¶ 16

II. ANALYSIS

¶ 17 Defendant asserts that the trial court erred in denying his section 2-1401 petition and motion to reconsider because his and Dorothy's testimony "was sufficient to establish lack of service."

¶ 18 Defendant's argument must fail because it relies upon testimony that he did not provide to this court. The appellant bears the burden of presenting a sufficiently complete record on appeal. *Webster v. Hartman*, 195 Ill. 2d 426, 432 (2001); see also Ill. S. Ct. R. 323 (eff. Dec. 13, 2005) (requiring appellant to provide appellate court with report of proceedings, bystander's report, or agreed statement of facts). "Where the issue on appeal relates to the conduct of a hearing or proceeding, this issue is not subject to review absent a report or record of the proceeding."

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Webster, 195 Ill. 2d at 432. In the absence of such report or record, we must presume "that the order entered by the trial court was in conformity with law and had a sufficient factual basis." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). "Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Id.* Defendant, as the appellant in this case, bore this burden.

¶ 19 As defendant recognizes, the section 2-1401 petition "was *** based on the testimony of the witnesses at the hearing." Yet defendant has not provided this court with a transcript or bystander's report of that hearing. In the absence of a transcript, we cannot ascertain whether the trial court was presented with evidence that would be sufficient to rebut the affidavit of the special process server. We construe this absence against defendant, and presume that the trial court's denial of the petition was correct. *Id.*

¶ 20 While it is true that, in certain circumstances, we may decide the merits of an appeal despite the absence of a transcript, this case is not one of those circumstances. See, e.g., *Walker v. Iowa Marine Repair Corp.*, 132 Ill. App. 3d 621, 625-26 (1985) (considering merits of motion to transfer case where transcript was not necessary; briefs and other facts on which court based its decision were in record). A trial judge may grant or deny relief on a section 2-1401 petition on the pleadings or "after holding a hearing at which factual disputes are resolved." *People v. Vincent*, 226 Ill. 2d 1, 9 (2007). The standard of review that we apply to an appeal from the denial of a section 2-1401 petition depends on the manner in which the trial court disposed of the petition. *City of Chicago v. Chicago Loop Parking LLC*, 2014 IL App (1st) 133020, ¶ 34. When the trial court disposes of a section 2-1401 petition after an evidentiary hearing, as in this case, a deferential, manifest-weight-of-the-evidence standard of review is appropriate. *S.I. Securities v. Powless*, 403 Ill. App. 3d 426, 440 (2010).

¶ 21 We cannot decide whether the trial court's decision was against the manifest weight of the evidence, because we do not know what evidence the trial court heard. It would be inappropriate to decide the merits of this case without any transcript, bystander's report, or agreed statement of facts. We cannot simply assume that defendant and Dorothy testified to precisely the same facts reflected in their affidavits, especially since the court's order denying defendant's motion to reconsider indicated that the cross-examination of defendant and Dorothy undermined the claims made in their affidavits. Nor does defendant offer any explanation for how we could possibly review the trial court's judgment in this case. We decline to consider the merits of defendant's argument regarding the sufficiency of the proof of service.

¶ 22 Defendant also takes issue with the denial of counts 2 and 3 of his section 2-1401 petition, which, he claims, the trial court denied because they were untimely. None of the court's orders indicated that timeliness was the basis of its denial of those counts. And, as we highlighted above, we have no record of the hearing on defendant's petition. Thus, we fail to see how we can determine the basis for the denial of the other counts. This ambiguity created by the gaps in the record should be construed against defendant. *Foutch*, 99 Ill. 2d at 392.

¶ 23 But as with any case, in reviewing a court's disposition of a section 2-1401 petition, we may affirm on any basis in the record, regardless of whether it was the basis on which the trial court ruled. *Padilla v. Vazquez*, 223 Ill. App. 3d 1018, 1027 (1991). Regardless of whether the trial court dismissed those counts on the basis of untimeliness, we affirm on that basis. A section 2-1401 petition must be filed "not later than 2 years after the entry of the order or judgment" the petitioner seeks to vacate (735 ILCS 5/2-1401(c) (West 2014)), unless the petitioner seeks to vacate a judgment as void. 735 ILCS 5/2-1401(f) (West 2014); *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 103 (2002).

¶ 24 Defendant filed the petition in 2014, more than two years after the 2005 default judgment was entered. Neither count 2, which alleged that plaintiff's complaint failed to plead the statute of limitations, nor count 3, which asserted the doctrine of *laches*, contained allegations that would render the default judgment void. "[W]hether a judgment is void in a civil lawsuit that does not involve an administrative tribunal or administrative review depends solely on whether the circuit court which entered the challenged judgment possessed jurisdiction over the parties and the subject matter." *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 32. Even if the claims in counts 2 and 3 were true, they would not show that the trial court lacked jurisdiction when it entered judgment against defendant. See, e.g., *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 338-41 (2002) (failure to plead limitations period did not render judgment void because neither defective pleading nor expiration of statute of limitations affected trial court's jurisdiction); *Sundance Homes, Inc. v. County of DuPage*, 195 Ill. 2d 257, 270 (2001) (doctrine of *laches* essentially same as statute of limitations, only applied in equitable cases).

¶ 25 Nor did defendant allege any facts that would toll the two-year limitations period on his petition. See 735 ILCS 5/2-1401(c) (West 2014) (providing for tolling of limitations period when petitioner "is under legal disability or duress or the ground for relief is fraudulently concealed"). Thus, the trial court would not have erred in concluding that counts 2 and 3 were time-barred, assuming that was what the trial court actually found.

¶ 26 Defendant claims that, when the court revived the judgment at plaintiff's request in 2014, it also revived the two-year limitations period for defendant to file his section 2-1401 petition, thus allowing him to timely assert his statute-of-limitations and *laches* claims. Defendant cites *Bank of Eau Claire v. Reed*, 232 Ill. 238 (1908), in support of that proposition, but that case had nothing to do with the time limits on petitions to vacate judgments. Rather, in *Reed*, the supreme

court held that the defendant could not assert a defect in service as a defense to a petition to revive a judgment where the evidence supporting that defense came from outside the record. *Id.* at 240. Thus, defendant has cited no relevant authority for his novel proposition.

¶ 27 Moreover, in his opening brief, defendant's entire argument in support of his proposition is a single sentence. Defendant's failure to offer any genuine argument or authority for his claim results in his forfeiting this claim. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (requiring opening brief to contain "the contentions of the appellant and the reasons therefor" and providing that "[p]oints not argued are waived"); *People v. Nieves*, 192 Ill. 2d 487, 503 (2000) (defendant forfeited plain-error argument where entire argument consisted of "a single sentence"); *People v. Bui*, 381 Ill. App. 3d 397, 421 (2008) (argument waived under Rule 341(h)(7) where it consisted of "a single sentence").

¶ 28 Nor would we be inclined to adopt defendant's argument regarding the revival of the limitations period even if he had not waived it, as it runs counter to the plain language of section 2-1401. Section 2-1401's statute of limitations provides that a petition must be filed within two years of "the *entry* of the order or judgment." (Emphasis added.) 735 ILCS 5/2-1401(c) (West 2014). It does not state that a petition must be filed within two years of the entry or *revival* of the order or judgment. Had the legislature intended for the two-year limitations period to restart every time a judgment was revived, it would have used the word "revival"—a term with which the legislature was certainly familiar given its frequent use throughout section 2-1602 of the Code of Civil Procedure (see 735 ILCS 5/2-1602 (West 2014)).

¶ 29 And defendant's proposition would run afoul of section 2-1401's plain language because that statute expressly provides for three exceptions to the limitations period: (1) when the petitioner has been "under legal disability or duress" (735 ILCS 5/2-1401(c) (West 2014)); (2)

when "the ground for relief is fraudulently concealed" from the petitioner (*id.*); and (3) when the petitioner seeks to attack a void judgment (735 ILCS 5/2-1401(f) (West 2014)). We decline defendant's invitation to write a new exception into the language of section 2-1401, where the legislature has signaled no intent to do so.

¶ 30 In sum, defendant has failed to furnish this court with a complete record in order to review the trial court's findings as to defendant's personal-jurisdiction arguments. Because the trial court's findings were made based on live testimony, and we have no record of that testimony, we decline to review the merits of defendant's personal-jurisdiction claims. And defendant's arguments concerning the statute of limitations and *laches*, even if true, would not render the judgment void. They are thus barred by the two-year limitations period in section 2-1401(c), which was not extended when the trial court revived the default judgment.

¶ 31

III. CONCLUSION

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

¶ 33 Affirmed.