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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

ANDRZEJ LOBROW and BOGUMILA)	Appeal from the
LOBROW,)	Circuit Court of
Plaintiffs-Appellants,)	Cook County, Chancery Division
)	
v.)	No. 09 M1 148797
)	
JAMES C. TEN BROECK,)	Honorable
)	Joyce M. Murphy Gorman,
Defendant-Appellee.)	Judge Presiding.

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice McBride and Justice Ellis concurred in the judgment.

ORDER

¶ 1 *Held:* Plaintiff's petition for relief from judgment is dismissed for lack of jurisdiction as he failed to file his petition within the required two-year time period.

¶ 2 Plaintiff and counter-defendant, Andrzej Lobrow appeals *pro se* the circuit court's order denying his petition for relief from judgment pursuant to section 2-1401 of the Illinois Code of Civil Procedure (735 ILCS 5/2-1401 (West 2012)), challenging the circuit court's December 2009 ruling in favor of defendant and counter-plaintiff, James C. Ten Broeck, granting attorney's fees for outstanding services rendered. On appeal, plaintiff contends the

trial court erred by dismissing his petition because the underlying contingency and attorney's fee agreements were the product of undue influence. For the following reasons, plaintiff's appeal is dismissed.

¶ 3

BACKGROUND

¶ 4 According to the initial complaint, Andrzej and Bogumila Lobrow (the "Lobrows") hired defendant in September 2007 "to represent them as their attorney" regarding three pending lawsuits involving Bogumila's business. In conjunction with this representation, the Lobrows signed a contingency and attorney's fee agreement. In May 2008, defendant withdrew in all three matters. The Lobrows then filed the underlying action alleging that defendant "failed to perform the services for which he was employed," "charged [them] for services that he did not perform," "charged [them] for services in excess of the time actually required to provide the services," and "failed to refund or return any of the unearned money advanced to him by [the Lobrows]." Attached to the original complaint were copies of both the contingency fee and attorney's fee agreements signed by the Lobrows and defendant.

¶ 5 Defendant subsequently filed a counterclaim seeking payment for outstanding legal fees for services rendered during the course of his representation. On December 16, 2009, the trial court ultimately entered judgment in favor of defendant. The Lowbrows then filed a "joint" *pro se* motion to vacate the judgment arguing the judgment as applied to Andrzej should be vacated because he was not a party to the contract between defendant and Bogumila. Andrzej argued that he did not enter into an attorney-client relationship with defendant, nor did defendant render services to Andrzej because defendant's representation extended only to his wife Bogumila and her business. After filing their *pro se* posttrial motion, the Lobrows hired new counsel and were given the opportunity to amend their original motion. The amended motion filed by counsel was

subsequently denied March 25, 2010. The Lobrows did not appeal the circuit court's denial of their posttrial motion to vacate the judgment.

¶ 6 On May 19, 2015, plaintiff filed his first petition for relief from judgment, generally alleging that the judgment was unenforceable as it relates to him because he was not a party to the contract between Bogumila and defendant. After obtaining leave from the court, plaintiff refiled his petition on June 1, 2015. Subsequently, on August 12, 2015, plaintiff's petition was denied. Although we do not have a report of proceedings in the record, the circuit court's memorandum and order denying plaintiff's request to certify his bystander's report of the August 12 proceedings indicates that it denied plaintiff's petition for lack of jurisdiction because it was filed after the two-year time limitation required for section 2-1401 petitions and on its merits as "there [were] no new facts to present now which could [not] have been presented back in 2009 and 2010."

¶ 7

ANALYSIS

¶ 8 On appeal, plaintiff contends that the underlying order granting outstanding attorney's fees to defendant is improper as it applies to him because (1) defendant "took advantage in speculating on a language barrier to unduly influence [plaintiff] into entering a contractual obligation" and (2) he was not a party to the contract between Bogumila and defendant as defendant was hired only to represent his wife and her business. Defendant has not filed a response brief. However, we may consider this appeal pursuant to *First Capital Mortgage Corp. v. Talandis Const. Corp.*, 63 Ill. 2d 128, 133 (1976), because the record is simple and the errors are such that we can easily decide them without the aid of an appellee's brief. For the reasons that follow, we do not address plaintiff's challenge to the underlying judgment.

¶ 9 With few exceptions not applicable here, a section 2-1401 petition allows a court to vacate a final judgment more than 30 days after the final judgment has been entered and must be filed within two years of the entry of the complained of judgment. See 735 ILCS 5/2-1401(a), (c) (West 2012); *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 222 (1986). Generally, to be awarded relief under section 2-1401, a petitioner must prove by a preponderance of the evidence: "(1) the existence of a meritorious defense or claim; (2) due diligence in presenting this defense or claim to the circuit court in the original action; and (3) due diligence in filing the section 2-1401 petition for relief." *Airoom, Inc.*, 114 Ill. 2d at 220-21. If the petition fails to state a meritorious defense or demonstrate diligence in presenting the defense, the circuit court may dismiss the petition. *People v. Pinkonsly*, 207 Ill. 2d 555, 565 (2003). However, "where a section 2-1401 petition is filed beyond two years after the judgment was entered, it cannot be considered." *People v. Caballero*, 179 Ill. 2d 205, 210 (1997). The two-year limitations period does not apply to void orders, which may be brought at any time. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104 (2002); *Irving v. Rodriguez*, 27 Ill. App. 2d 75, 79 (1960).

¶ 10 Plaintiff acknowledges that he failed to file the instant petition within the two-year time period as required by statute. He argues, however, quoting *In re Marriage of Pagano*, 181 Ill. App. 3d 547, 558 (1989), that "because the [section] 2-1401 petition alleges impropriety by an attorney *** a [section] 2-1401 petition hearing should have been granted even in the absence of due diligence." Even assuming plaintiff is not required to show due diligence, he has not alleged that the underlying order was void. He argues only that he was unduly influenced into signing the underlying fee agreements. Plaintiff therefore must have challenged the judgment and/or subsequent order denying his posttrial motion to vacate the order pursuant to section 2-1401 within two years of the date the final judgment or order was entered, or by 2012 at the latest. See

735 ILCS 5/2-1401(a), (c). Here, plaintiff failed to file his petition until 2015. The trial court therefore correctly dismissed his petition for lack of jurisdiction. Accordingly, this court must also dismiss plaintiff's subsequent appeal. *Blake v. Harper*, 2012 IL App (3d) 110343, ¶ 12 (quoting *KT Winneburg, LLC v. Calhoun County Board of Review*, 403 Ill. App. 3d 744, 747 (2010)) (" [i]f [the] trial court did not have jurisdiction, the parties cannot confer jurisdiction on a reviewing court merely by taking an appeal.' ").

¶ 11 Briefly, we note that while setting forth the standard of review in his opening brief, plaintiff states that "[t]his [c]ourt *** may engage this matter anew and apply a *de novo* standard of review; as is appropriate in reviewing the [t]rial [c]ourt's disposition *** and the allegation that the [j]udgment is void." While we acknowledge that an allegation of voidness negates, *inter alia*, the timeliness requirement of a section 2-1401 petition (*Sarkissian*, 201 Ill. 2d at 104), other than a phrase concerning void judgments contained in his statement regarding the standard of review, plaintiff does not argue this further. Accordingly, to the extent plaintiff alleges the underlying judgment is void, this argument is forfeited. See *Vilardo v. Barrington Community School District 220*, 406 Ill. App. 3d 713, 720 (2010) (quoting *People v. Hood*, 210 Ill. App. 3d 743, 746 (1991) ("mere contention without argument or citation to authority do not merit consideration on appeal."); see also Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008) (a point not argued is forfeited).

¶ 12 Further, even if plaintiff's arguments on appeal could be loosely construed to allege the underlying order is void because he was unduly coerced into signing the fee agreements and not a party to the contracts, these allegations merely render the order voidable, not void, as a court does not lose jurisdiction based upon an error of fact, the law, or both. *People v. Davis*, 156 Ill. 2d 149, 156 (1993). Unlike void orders, a voidable (or erroneous) order is subject to timeliness

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requirements and therefore the two-year time requirement in section 2-1401 would still apply.
See *id.* at 155-56.

¶ 13

CONCLUSION

¶ 14 In conclusion, defendant's section 2-1401 petition for relief from judgment is dismissed for lack of jurisdiction as he failed to file his petition in the circuit court prior to the expiration of the two-year time limitation and plaintiff has not alleged the underlying order is void. For the foregoing reasons, plaintiff's appeal is dismissed.

¶ 15 Dismissed.