

2016 IL App (1st) 153299-U  
No. 1-15-3299  
December 27, 2016

SECOND DIVISION

**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).

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IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

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ROBERT TEPPER,	)	Appeal from the Circuit Court
	)	Of Cook County.
Plaintiff-Appellant,	)	
	)	No. 04 L 3226
v.	)	
	)	
CHRISTOPHER STOLLER,	)	The Honorable
	)	Robert L. Cepero,
Defendant-Appellee.	)	Judge Presiding.

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JUSTICE NEVILLE delivered the judgment of the court.  
Justices Pierce and Mason concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court erred when it vacated a revived judgment due to lack of notice, where the plaintiff had provided notice of the motion to revive the judgment in accord with Supreme Court Rule 106.

¶ 2 Robert Tepper obtained a judgment against Christopher Stoller in 2001, and the circuit court revived the judgment in 2008. In 2015, the circuit court granted Stoller's motion to vacate the revived judgment. The circuit court found that Tepper had not adequately served Stoller with notice of the motion to revive the judgment. In this appeal, we hold that Tepper

proved that he served Stoller with notice in accord with Supreme Court rules and the requirements of due process. Therefore, we reverse the circuit court's judgment and remand for further proceedings.

¶ 3

### BACKGROUND

¶ 4

The circuit court entered a judgment in favor of Tepper and against Stoller for \$100,530.93 in 2001. In 2006, Tepper filed a petition pursuant to section 2-1601 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1601 (West 2006)) for revival of the judgment. Tepper also filed a motion for service on Stoller by special order of the court, pursuant to section 2-203.1 of the Code. 735 ILCS 5/2-203.1 (West 2006). Tepper detailed the efforts of process servers to find and serve Stoller and listed all addresses he knew for Stoller and Stoller's relatives. Tepper also listed the address of one attorney who had worked for Stoller not long before the attempted service. The circuit court granted Tepper leave to attempt service on Stoller at all of the listed addresses in an effort to inform him of the motion to revive the judgment. After further unsuccessful attempts at service, in May 2008, the circuit court granted Tepper's motion for alternative service, allowing Tepper to attempt to serve Stoller at other addresses associated with Stoller. Following proof of the attempts at finding and serving Stoller, on May 21, 2008, the circuit court granted Tepper's motion for revival of the judgment.

¶ 5

Tepper subsequently filed a complaint to discover assets, alleging that First Midwest Bank held assets of a corporation for which Stoller owned all shares of stock. Stoller filed an answer to the complaint and a counterclaim in 2009. After years of litigation concerning the attempts to discover Stoller's assets, in February 2015, Stoller filed a motion to quash service

and vacate the revival of the judgment. Tepper, in response, pointed out that he obtained leave of the court to serve Stoller by special order of the court, and Stoller's responses showed that he knew of the motion for revival of the judgment long before he filed the motion to vacate. Tepper attached to his response exhibits showing his efforts to find and serve Stoller with notice of the motion to revive the judgment, along with the court order permitting alternative service.

¶ 6 By order dated June 16, 2015, the circuit court granted the motion to quash service and vacate the revival of the judgment. Tepper filed a timely notice for reconsideration. The circuit court denied the motion for reconsideration and Tepper filed a timely notice of appeal, listing both the order of June 16 and the order denying the motion for reconsideration as the orders appealed.

¶ 7 ANALYSIS

¶ 8 Because the order of June 16, vacating the revival of the judgment, finally disposed of the rights of the parties with respect to the petition to revive the judgment, we have jurisdiction to consider the appeal. See *In re Estate of Carlen*, 2015 IL App (5th) 130599, ¶ 16. Tepper filed a timely postjudgment motion, and a timely notice of appeal following the disposition of the postjudgment motion. See Ill. S. Ct. R. 303(a) (eff. Jan. 1, 2015); *In re Marriage of Uphoff*, 99 Ill. 2d 90, 95 (1983). Therefore, we have jurisdiction to review the circuit court's order of June 16, 2015, vacating the revival of the judgment. See *In re Estate of K.E.J.*, 382 Ill. App. 3d 401, 423-24 (2008).

¶ 9 In his brief on appeal, Stoller treats the case as though this court only had power to review the denial of the motion for reconsideration, and he contends that we owe great

deference to the circuit court's decision on that motion. Stoller misunderstands the applicable law. "An order denying an appellant's motion for reconsideration is not the order or judgment of the trial court which is brought before this court on appeal. Our role as a reviewing court is to consider the legal propriety of the trial court's decision, not in granting or denying a motion for reconsideration, but the underlying order or judgment which is at issue on a motion for reconsideration." *Best Coin-Op, Inc. v. Fountains on Carriage Way Condominium Ass'n*, 239 Ill. App. 3d 1062, 1063 (1992). Thus, we review the order of June 16, by which the circuit court vacated the revival of the judgment.

¶ 10 Stoller offers no argument in favor of the circuit court's order of June 16. He contends only that Tepper failed to present a sufficient record to challenge the June 16 order, because the record on appeal includes only a bystander's report, and not a transcript, for the oral argument on the motion for reconsideration. For our review of the order of June 16, 2015, we see no need for a transcript of the oral argument on reconsideration of that order. The record on appeal includes the motions for alternative service, exhibits detailing Tepper's efforts to find and serve Stoller, and Stoller's numerous court filings between 2009 and 2015, when he decided to claim that he had not received notice of the motion to revive the judgment. We find that Tepper met his burden of submitting "a record that fully and fairly presents all matters necessary and material for a decision on the questions he raises." *In re Estate of Jacobs*, 189 Ill. App. 3d 625, 629 (1989)

¶ 11 Supreme Court Rule 106 provides that "[n]otice of the filing of a petition under \*\*\* section 2--1601 \*\*\* of the Code \*\*\* shall be given by the same methods provided in Rule 105 for the giving of notice of additional relief to parties in default." Ill. S. Ct. R 106 (eff.

Aug. 1, 1985). Rule 105 provides that "notice may be served \*\*\* (1) By any method provided by law for service of summons, either within or without this State; \*\*\* [or] (3) By publication." The circuit court found that Tepper met the statutory requirements for service by special order of the court under section 2-203.1 of the Code. Stoller has not contested that finding. We agree that Tepper met the statutory requirements for service under Rule 105. Since Tepper's efforts at service gave "reasonable assurance that notice will actually be given and the person against whom the action is brought is given time to appear and defend on the merits," (*Dobrowolski v. LaPorte*, 38 Ill. App. 3d 492, 494 (1976)), those efforts met the requirements of due process. See also *Public Taxi Service, Inc. v. Ayrton*, 15 Ill. App. 3d 706, 711-12 (1973).

¶ 12 Accordingly, we hold that the circuit court erred when it quashed service and vacated the revival of the 2001 judgment. We reverse the circuit court's judgment and remand for further proceedings.

¶ 13 CONCLUSION

¶ 14 Tepper filed a timely notice of appeal from the order of June 16, 2015, which vacated the revival of the 2001 judgment. Because Tepper submitted a sufficient record to show that he served notice of the motion to revive the judgment in accord with Supreme Court Rule 106, and that service met the requirements of due process, we reverse the order vacating the revival of the 2001 judgment, reinstate the order reviving the judgment, and remand for further proceedings for enforcement of that judgment.

¶ 15 Reversed and remanded.