

No. 1-16-1021

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

| | | |
|-------------------------|---|-----------------------------|
| VERSIE CYNTHIA CHATMAN, |) | Appeal from the |
| |) | Circuit Court of |
| Petitioner-Appellant, |) | Cook County. |
| |) | |
| v. |) | No. 2012 D 004599 |
| |) | |
| CARL CHATMAN, |) | Honorable |
| |) | Jeanne Cleveland Bernstein, |
| Respondent-Appellee. |) | Judge Presiding. |

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

ORDER

- ¶ 1 *Held:* We affirmed the dismissal of petitioner's section 2-1401 petition to vacate the judgment of dissolution of marriage, finding that petitioner had failed to allege a meritorious claim or defense to the dissolution judgment and that the petition was untimely.
- ¶ 2 Petitioner-appellant, Versie Cynthia Chatman, appeals *pro se* from the dismissal of her section 2-1401 petition to vacate the judgment of dissolution of her marriage to respondent, Carl Chatman. We affirm.
- ¶ 3 Petitioner and respondent-appellee, Carl Chatman a/k/a Carl D. Chatman, were married on May 9, 1975, and then separated and stopped living together on or about December 11, 1979. In 2004, respondent was convicted of rape and sentenced to 30 years' imprisonment. On May 10, 2012, while respondent was imprisoned, petitioner filed a petition for dissolution of

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marriage. On July 3, 2012, the circuit court granted the petition and entered a judgment for dissolution of marriage. The judgment ordered that “[e]ach party is awarded all property in his or her own name, possession or control.”

¶ 4 In September 2013, the State moved to vacate respondent’s 2004 rape conviction and sentence. On September 10, 2013, the circuit court granted the State’s motion, vacated respondent’s conviction and sentence, and ordered his immediate release from prison.

¶ 5 On October 25, 2013, respondent moved, pursuant to section 2-702 of the Code of Civil Procedure (Code) (735 ILCS 5/2-702 (West 2012)), for a certificate of innocence. The State did not oppose it, and the circuit court granted the motion on November 19, 2013.

¶ 6 In April 2014, respondent filed a federal civil rights lawsuit, pursuant to 42 U.S.C. § 1983, against the City of Chicago, various police officers and sheriff’s deputies, the County of Cook, the Cook County Sheriff, the office of the Cook County State’s Attorney and an Assistant State’s Attorney, and the woman who had accused respondent of rape. Respondent alleged various theories of recovery based on his wrongful conviction. Respondent was represented by the law firm of Loevy & Loevy.

¶ 7 In 2015, petitioner looked through some documents respondent had left at her home and discovered a written retainer agreement dated May 19, 2006, and signed by attorney Russell Ainsworth, of Loevy & Loevy, and by respondent’s sister, Theresa Chatman, on respondent’s behalf. Pursuant to the retainer agreement, Loevy & Loevy agreed to represent respondent in any civil claims arising out of his wrongful prosecution for rape.

¶ 8 On December 3, 2015, petitioner filed a *pro se* petition to vacate the judgment of dissolution of marriage pursuant to section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2012)). In her *pro se* petition, petitioner alleged that the written retainer agreement she

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discovered in 2015 was her first indication that respondent might recover monies for his wrongful prosecution by filing a federal lawsuit, and that the lawsuit should be classified as marital property and any damages awarded to respondent pursuant thereto should be divided between them. Although the section 2-1401 petition was filed more than two years after the dissolution of marriage and thus would ordinarily be untimely under the two-year limitations period set forth in section 2-1401(c) (735 ILCS 5/2-401(c) (West 2012)), petitioner contended that the limitations period should be tolled because respondent and his sister Theresa had fraudulently concealed from her the existence of the retainer agreement. *Id.* (“Time during which the person seeking relief is under legal disability or duress or the ground for relief is fraudulently concealed shall be excluded in computing the period of 2 years.”).

¶ 9 On January 12, 2016, respondent filed a motion to dismiss the section 2-1401 petition under both sections 2-615 (735 ILCS 5/2-615 (West 2012)), and 2-619 (735 ILCS 5/2-619 (West 2012)), of the Code. Pursuant to section 2-615, respondent argued that petitioner had failed to state a claim for relief. Pursuant to section 2-619, respondent argued that petitioner failed to file the petition within two years as required by section 2-1401, and she had not shown fraudulent concealment so as to toll the running of the two-year limitations period.

¶ 10 On March 16, 2016, the circuit court entered a written order dismissing the section 2-1401 petition with prejudice. The record on appeal contains no transcript of the March 16, 2016, hearing, nor a bystander’s report certified by the trial court pursuant to Ill. S. Ct. R. 323(c) (eff. Dec. 13, 2005).

¶ 11 Petitioner appeals, *pro se*, the March 16, 2016, dismissal with prejudice of her section 2-1401 petition pursuant to sections 2-615 and 2-619 of the Code.

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¶ 12 First, we address the dismissal of petitioner’s section 2-1401 petition pursuant to section 2-615 of the Code.

¶ 13 Section 2-1401 sets forth a statutory procedure whereby final judgments and orders may be challenged more than 30 days after entry. 735 ILCS 5/2-1401 (West 2012). Section 2-1401 proceedings are subject to the rules of civil practice. *People v. Vincent*, 226 Ill. 2d 1, 8 (2007). Therefore, a section 2-1401 petition, as the initial pleading and “the procedural counterpart of a complaint” may be challenged by a motion to dismiss under section 2-615 of the Code. *In re Marriage of Little*, 2014 IL App (2d) 140373, ¶ 8. In ruling on a section 2-615 motion, the circuit court must accept all well-pleaded facts in the petition and all reasonable inferences therefrom. *Caulfield v. Packer Group, Inc.*, 2016 IL App (1st) 151558, ¶ 60. The critical inquiry is whether the allegations of the petition, when construed in the light most favorable to petitioner, are sufficient to establish a cause of action upon which relief may be granted. *Id.* Our standard of review is *de novo*. *Id.*

¶ 14 To prevail under section 2-1401, petitioner must affirmatively set forth specific factual allegations showing: (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. *R&J Construction Supply Co., Inc. v. Adamusik*, 2017 IL App (1st) 160778, ¶ 12. A “petition may be dismissed upon a challenge that, even taking as true its allegations, it does not state a meritorious [claim or] defense or diligence under section 2-1401 case law.” *Vincent*, 226 Ill. 2d at 8.

¶ 15 With respect to the first element of a section 2-1401 petition, the existence of a meritorious defense or claim, petitioner claims in her *pro se* petition, she is now aware of certain facts that were unknown to her at the time of the dissolution judgment and, if known then, would

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have affected or altered the judgment that was entered. Specifically, petitioner claims that, at the time of the dissolution judgment in 2012, she was unaware that respondent (via his agent, Theresa) entered into a retainer agreement in 2006 with Loevy & Loevy in which the firm agreed to represent respondent in any civil claims arising out of his wrongful prosecution. Respondent was released from prison and granted a certificate of innocence in 2013, after the dissolution judgment, and he filed his federal civil rights lawsuit in 2014. Petitioner argues that if she had known of the retainer agreement in 2006, she would have asked the circuit court to: (1) classify any resulting federal civil rights action as marital property; and (2) divide between petitioner and respondent any damages awarded to respondent pursuant to his federal civil rights action.

¶ 16 This court has recently held that a cause of action is marital property only if it accrues during the marriage. *In re Marriage of Rivera and Sanders-Rivera*, 2016 IL App (1st) 160552,

¶ 42. A cause of action accrues on “the date that the claimant had a right to file a claim for damages.” *Id.*

The cause of action at issue here is a section 1983 action alleging various theories of recovery premised on respondent’s wrongful conviction. A section 1983 action regarding a wrongful conviction accrues when “ ‘the conviction or sentence [was] reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court’s issuance of a writ of *habeas corpus.*’ ” *Id.* ¶ 31 (quoting *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994)). Similarly, “[a] cause of action for malicious prosecution does not accrue until the criminal proceeding on which it is based has been terminated in the plaintiff’s favor.” *Ferguson v. City of Chicago*, 213 Ill. 2d 94, 99 (2004).

¶ 17 In the present case, respondent’s section 1983 action must be classified as nonmarital property because it did not accrue until 2013, after the dissolution of marriage, when his

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conviction and sentence were vacated, he was released from prison, and he was granted a certificate of innocence. *In re Marriage of Rivera and Sanders Rivera*, 2016 IL App (1st) 160552, ¶ 31; *Heck v. Humphrey*, 512 U.S. at 486-87; *Ferguson*, 213 Ill. 2d at 99. As nonmarital property, respondent's section 1983 action is not subject to distribution to petitioner and she is not entitled to any portion of damages awarded to respondent pursuant to that action. See *In re Marriage of Wojcik*, 362 Ill. App. 3d 144, 155 (2005) (nonmarital property is not subject to equitable distribution upon divorce). Accordingly, petitioner's claim that the judgment of dissolution of marriage must be vacated so that the section 1983 action can be classified as marital property and any damages awarded thereto be apportioned between petitioner and respondent is without merit; and without a meritorious claim to vacate the dissolution judgment, the section 2-1401 petition was properly dismissed pursuant to section 2-615 of the Code.

¶ 18 The section 2-1401 petition was also properly dismissed under section 2-619 of the Code as being untimely filed. When respondent makes a motion to dismiss a petitioner's petition based on the statute of limitations under section 2-619, all well-pleaded facts and reasonable inferences are accepted as true for purposes of the motion. *Hermitage Corp. v. Contractors Adjustment Co.*, 166 Ill. 2d 72, 84-85 (1995). We review the dismissal *de novo*. *Snyder v. Heidelberger*, 2011 IL 111052, ¶ 8.

¶ 19 Section 2-1401(c) (735 ILCS 5/2-1401c) (West 2012)), sets forth a two-year limitations period for the filing of a section 2-1401 petition. Petitioner's section 2-1401 petition to vacate the judgment of dissolution of marriage was filed on December 3, 2015, more than two years after the July 3, 2012, dissolution judgment and thus was not timely filed.

¶ 20 Petitioner argues that under section 2-1401(c), the "[t]ime during which the person seeking relief is under legal disability or duress or the ground for relief is fraudulently concealed

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shall be excluded in computing the period of 2 years.” *Id.* Petitioner argues she had various physical ailments constituting a legal disability that prevented her from filing her section 2-1401 petition earlier.

¶ 21 “A person suffers from a ‘legal disability’ where he or she is entirely without understanding or capacity to make or communicate decisions regarding his [or her] person and totally unable to manage his [or her] estate or financial affairs. In a case where a legal disability is alleged, the record must contain sufficient allegations of fact from which one could conclude that the person seeking to be found legally disabled was incompetent or suffered from serious mental disorder which made that person entirely without understanding or capacity to make or communicate decisions regarding his person and totally unable to manage his estate or financial affairs.” [Internal quotation marks and citation omitted]. *In re John Doe*, 301 Ill. App. 3d 123, 126-27 (1998).

¶ 22 Petitioner’s allegations of various physical ailments do not amount to a legal disability, as she makes no allegations that her physical ailments rendered her incompetent, or unable, or incapable of making or communicating decisions regarding her person, or that she was totally unable to manage her estate or financial affairs.

¶ 23 Petitioner also contends that the two-year limitations period set forth in section 2-1401(c) should be tolled because respondent and his sister Theresa fraudulently concealed from her the existence of the retainer agreement respondent entered into in 2006 with Loevy & Loevy to represent him in any civil claims arising out of his wrongful prosecution for rape. Petitioner contends she was unaware respondent might file any civil claims until 2015, when she discovered the retainer agreement. Petitioner argues her section 2-1401 petition was timely filed within two years of her discovery of the retainer agreement.

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¶ 24 “To prove fraudulent concealment in a section 2-1401 petition, the petitioner must prove by clear and convincing evidence that the respondent intentionally misstated or concealed a material fact which the respondent had a duty to disclose and that the petitioner detrimentally relied on the respondent’s statement or conduct.” *Cavitt v. Repel*, 2015 IL App (1st) 133382,

¶ 46. Petitioner has not alleged any facts showing that respondent had any duty to disclose to her his retainer agreement with Loevy & Loevy, or his section 1983 action in federal court related to his wrongful conviction where the section 1983 action was nonmarital property not subject to distribution to petitioner.

¶ 25 Petitioner also has not alleged any affirmative acts by respondent that prevented her from discovering, within two years of the dissolution judgment, respondent’s section 1983 action arising out of his wrongful conviction and imprisonment. See *In re Marriage of Halas*, 173 Ill. App. 3d 218, 224 (1988) (holding that fraudulent concealment “consists of affirmative acts designed to prevent the discovery of a cause of action or ground for relief [and that] [s]ilence alone will not constitute fraudulent concealment”). Petitioner makes no allegations that respondent made any representations to her concerning his section 1983 action, much less any *fraudulent* misrepresentations. Also, petitioner has made no claim of detrimental reliance, where she knew of respondent’s wrongful conviction and subsequent release in 2013, within two years of the dissolution judgment but, apparently, never investigated whether he might have a section 1983 action in federal court related to his wrongful conviction and imprisonment. See *In re Marriage of Broday*, 256 Ill. App. 3d 699, 704 (1993) (holding that the fact that the wife could have discovered information about the husband’s financial status through her own investigation or by hiring an attorney diminished her claim of detrimental reliance on the husband’s alleged misrepresentations).

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¶ 26 Accordingly, petitioner has failed to show that the two-year limitations period should be tolled here. Petitioner's section 2-1401 petition was untimely filed and, therefore, the circuit court did not err in dismissing it pursuant to section 2-619 of the Code.

¶ 27 For the forgoing reasons, we affirm the circuit court's judgment. As a result of our disposition of this case, we need not address the other arguments on appeal.

¶ 28 Affirmed.