SIXTH DIVISION
September 22, 2017

No. 1-16-2738
2017 IL App (1st) 162738-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JACQUELINE FREEMAN,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 D 230384
	)	
KIRK FREEMAN,	)	Honorable
	)	Veronica Mathein,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Hoffman and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred when it denied defendant's section 2-1401 motion to vacate, where the court lacked personal jurisdiction over out-of-state defendant and its previous orders were therefore void; reversed.

¶ 2 Defendant Kirk Freeman appeals the trial court's order that denied his motion to vacate the court's previous orders entered over two years prior. Kirk's motion sought to vacate orders that entered judgment in favor of his former wife, plaintiff Jacqueline Freeman, for college expenses and unpaid retirement pay, and that awarded Jacqueline 50% of Kirk's military retirement pay. On appeal, Kirk argues that even though his motion to vacate was filed over two years after entry of the orders he sought to vacate, the circuit court erred when it denied his motion because the orders granting judgment to Jacqueline were void based on a lack of personal

and subject matter jurisdiction. We find that the trial court improperly denied Kirk's motion to vacate, and as a result, we reverse the decision of the circuit court.

¶ 3 BACKGROUND

¶ 4 The action underlying this appeal involves the registration of a foreign judgment which resulted from the parties' divorce. Kirk and Jacqueline were married on February 1, 1984, and had two children, Kristopher (born October 20, 1990), and Jazmyn (born July 29, 2000). Kirk and Jacqueline were divorced in Martin County, North Carolina on January 4, 2007. The order granting the parties' divorce stated, "[t]hat the bonds of matrimony heretofore existing between the [p]laintiff and [d]efendant be and they are hereby dissolved and the [p]laintiff is granted a divorce from the [d]efendant." The order also contained language that was scratched-out. The scratched-out language read: "That the [c]onsent [a]greement reviewed, signed, and agreed upon by both parties and submitted to the [c]ourt be incorporated in this [f]inal [d]ecree as requested." The judge who entered the divorce order wrote his initials next to the scratched out language.

¶ 5 On February 5, 2008, over one year after the divorce judgment was entered, Jacqueline filed a document titled "consent agreement" with the Martin County court clerk. The consent agreement was signed by both Kirk and Jacqueline, was notarized, and included provisions such as child custody, visitation, child support, college educational expenses, children's medical insurance, and division of military retirement pay. The end of the consent agreement included the following prayer for relief:

> "Wherefore, [Jacqueline] prays the [c]ourt for the following relief:
>
> 1. That the verified [c]omplaint of [Jacqueline] be allowed and taken as an affidavit upon which the [c]ourt may base all of its [o]rders in this case;

2. That the [c]ourt grant the relief prayed for in the attached complaint and that this consent agreement be incorporated in the final divorce decree;

3. That [Jacqueline] be granted exclusive care, custody and control of the minor children of the parties;

4. That [Jacqueline] reserve the right to make a claim for alimony, support and subsistence in a future action;

5. That [Jacqueline] is granted 50% of [Kirk's] retirement pay in accordance with the Uniformed Services Former Spouse Protection Act ("USFSPA") codified at 10 U.S.C. § 1408(a)(4);

6. That [Kirk] be ordered to pay to [Jacqueline] through direct deposit into an account established by [Jacqueline], the aforementioned amount of child support as established by the North Carolina Child Support guidelines for the use and benefit of the said minor children; and that said support continue until the age of 23 if both minor children attend college;

7. That, further, [Kirk] be ordered to pay 50% of the necessary and reasonable medical, dental, orthodontic and prescription drug expenses of the said minor children to the extent that such expenses are not paid by medical insurance or otherwise;

8. That equitable distribution of the marital property between [Jacqueline] and [Kirk] be reserved to be addressed in a future claim;

9. That [Jacqueline] be granted such other and further relief as the [c]ourt may deem just and proper in this case."

The consent agreement does not bear a judge's signature or stamp. Further, Jacqueline admits in her response brief that the consent agreement "is not an order or judgment of any court."

¶ 6 In July 2012, Jacqueline relocated from North Carolina to Glenview, Illinois with the parties' daughter, Jazmyn. Kirk remained in Conway, North Carolina, and continues to remain there as of the filing of this appeal.

¶ 7 On August 16, 2013, Jacqueline, acting *pro se*[1], filed a registration of foreign judgment in the circuit court of Cook County. The filing included, *inter alia*, the January 4, 2007, order from Martin county that granted the parties' judgment of divorce, the consent agreement, a petition for educational expenses, a petition to modify child support, and an application to sue or defend as an indigent person.

¶ 8 On August 27, 2013, Kirk was allegedly served with process. The record on appeal contains an affidavit of service of summons outside Cook County that stated:

> "M.W. Sledge on oath states:
>
> I am over 21 years old and not a party to this case. I served the summons and a copy of the complaint upon defendant as follows:
>
> (a) on defendant Kirk D Freeman, by leaving a copy of the summons and of the complaint with defendant personally on August 27, 2013, at the hour of 5:59 p.m. at the Northampton County Sheriff's Office."

The summons was not signed by M.W. Sledge, but instead was signed by Jacqueline and her signature was notarized. The summons contained a file-stamp from the Cook County clerk of court's office, dated September 30, 2013. It further bore a stamp from the Northampton sheriff's department that it was received on August 19, 2013.

¶ 9 In the appendix attached to Jacqueline's response brief, there is another affidavit of service of summons outside Cook County (appendix affidavit), which contains nearly identical

[1] We note that Jacqueline began these proceedings *pro se* and continued to represent herself throughout. She also represents herself *pro se* in this appeal.

language as the affidavit contained in the record. However, the appendix affidavit bears the name Michael Warren Sledge, not M.W. Sledge. Also, the appendix affidavit contains a file-stamp from the Northampton County court clerk's office, dated August 8, 2013, and is purportedly signed by Sledge, not Jacqueline. The notary stamp included on the appendix affidavit indicates that Sledge signed that document on October 30, 2013.

¶ 10 In a letter dated September 4, 2013, Kirk wrote to the clerk of the circuit court of Cook County informing her of "several issues regarding the case which has been filed against [him]." Prior to addressing those issues, Kirk's letter stated: "Before I state my issues and concerns with this case I want to advise you that "I am in no way subjecting myself or submitting myself to the jurisdiction of the [c]ircuit [c]ourt of Cook County. I do not believe the [c]ircuit [c]ourt of Cook County has any jurisdiction to address the issues raised in the documents [Jacqueline] has filed with the [c]ourt."

¶ 11 After her initial filing of the registration of foreign judgment, Jacqueline filed various motions with the court seeking to transfer her case from Skokie, a suburban district, to Chicago. In an order dated October 23, 2013, the court struck one of her motions seeking a transfer and specifically stated, "The court has strongly suggested that [Jacqueline] seek counsel as the court may not give [her] legal advice."

¶ 12 On October 28, 2013, Jacqueline filed a motion for default judgment, requesting that the court grant her the relief requested in her petitions filed on August 16, 2013, for modification of child support, spousal support, and educational expenses.

¶ 13 On November 21, 2013, the court set this case for a hearing regarding child support and educational expenses.

¶ 14 On December 23, 2013, the court conducted a hearing on the relief requested by Jacqueline. The record on appeal does not contain a transcript of the proceedings. However, Jacqueline included a transcript purportedly from the December 23, 2013, hearing in the appendix to her response brief. For reasons discussed later in this appeal, we do not consider the content of said transcript. The court ultimately entered two orders on December 23, 2013. One of the orders[2] stated in its entirety:

> "This case coming on to be heard on petitioner's petition as to secondary school expenses and payment of retirement expenses, due notice having been given, it is hereby ordered[:]
>
> 1. Judgment is entered for [Jacqueline] against [Kirk] for $17,162.00 in college expenses.
>
> 2. Judgment is entered for [Jacqueline] against [Kirk] for $9218.00 in unpaid retirement pay.
>
> 3. The court shall enter a military pay division order to enforce the divorce judgment in this case.
>
> 4. This case is off call."

¶ 15 The second order dated December 23, 2013, made certain findings of fact and conclusions of law, and ordered the following:

> "The former spouse (Jacqueline Freeman) is awarded 50 percent (50%) of the member's disposable military retired pay.

[2] Although the record indicates that Jacqueline proceeded *pro se* through the entirety of this case, the bottom left-hand corner of the order reflects that it was prepared by "J. Anthony Clark." However, the record does not contain an appearance by an attorney on behalf of Jacqueline.

> That payments to Jacqueline Freeman shall cease upon death but not remarriage of [Jacqueline] or [Kirk] as agreed upon in the [c]onsent [a]greement signed by [Jacqueline] and [Kirk] on January 4, 2007.
>
> That payment[s] are to be paid directly to Jacqueline Freeman by direct deposit from Defense Finance and Accounting Service on 1st of every month."

¶ 16 On January 10, 2014, Jacqueline filed a wage garnishment directed to Kirk's employer, the North CarolinA Department of Transportation.

¶ 17 On March 24, 2014, Jacqueline filed a motion for an order of support, wage deduction order, and notice to withhold income for support. Per the court's order this motion was subsequently withdrawn on April 1, 2014.

¶ 18 At some point following entry of the December 23, 2013 orders, Jacqueline moved back to North Carolina.

¶ 19 The record contains various pleadings filed by Jacqueline in the North Carolina courts and corresponding court orders that are dated during the time period in which the filings in this case ceased. For example, Jacqueline filed a motion for modification of child support on March 12, 2015, in Guilford County, which sought to "make consent agreement an order." On May 4, 2015, the Guilford County court dismissed her motion for failure to state a claim upon which relief can be granted. She also filed an "expedited complaint for contempt fraud" on March 31, 2016, requesting that the court find Kirk in criminal contempt, and find that he committed fraud. Further, on April 4, 2016, Jacqueline filed a registration of foreign judgment for enforcement, which sought to enforce the December 23, 2013, orders entered by the court in Cook County, and also stated that the "judge erred in not allowing the voluntary separation agreement to be

incorporated into the judgment [d]ecree for [d]ivorce as requested by [Jacqueline] at the time divorce judgment was entered."

¶ 20 The next activity on Jacqueline's registration of a foreign judgment case in Cook County was not until June 16, 2016, when Jacqueline filed a "motion for contempt and non-compliance of support order for unpaid arrears, to obtain with-holding or wage deduction order and all other legal proceedings available to the court for enforcement."

¶ 21 On July 7, 2016, an attorney filed an appearance on behalf of Kirk. The appearance was labeled a substitute appearance but the record does not reflect that any other appearance was ever filed on Kirk's behalf prior to July 7, 2016.

¶ 22 On August 9, 2016, Kirk filed a motion pursuant to section 2-1401 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2012)) to vacate the court's December 23, 2013, orders, arguing that the court lacked both subject matter and personal jurisdiction rendering the December 2013 orders void and subject to attack at any time. Jacqueline did not file a response to the motion to vacate.

¶ 23 On September 23, 2016, the court denied Kirk's motion to vacate. The order did not state a reason for the court's denial and the record on appeal does not contain a report of proceedings for that date.

¶ 24 Kirk filed his timely notice of appeal on October 12, 2016.

¶ 25 ANALYSIS

¶ 26 Kirk argues that the trial court erred in denying his section 2-1401 motion to vacate, because although his motion was filed over two years after the entry of the orders he sought to vacate, his motion should nonetheless have been granted where the trial court lacked personal and subject matter jurisdiction. Jacqueline responds that the court had both personal and subject

matter jurisdiction over Kirk, thus the trial court properly denied the motion to vacate. After a careful review of the record on appeal and the parties' submissions, we find that the record on appeal does not contain evidence that Kirk was ever served, thus the trial court lacked personal jurisdiction to enter the December 23, 2013, orders. As a result, we reverse.

¶ 27 Generally, petitions brought pursuant to section 2-1401 of the Code must be filed within two years of the order or judgment that the petitioner seeks to vacate. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 103 (2002). The petitioner also must allege a meritorious defense to the original action, and that the petition was brought with due diligence. *Id.* However, "[p]etitions brought on voidness grounds need not be brought within the two-year time limitation. Further the allegation that the judgment or order is void substitutes for and negates the need to allege a meritorious defense and due diligence." *Id.* at 104. "Review of a judgment on a section 2-1401 petition that is requesting relief based on the allegation that the judgment is void, shall be *de novo*." *Protein Partners, LLP v. Lincoln Provision, Inc.*, 407 Ill. App. 3d 709, 716 (2010).

¶ 28 Kirk argues that the court's December 23, 2013, orders were void and must be vacated due to the circuit court's lack of both personal and subject matter jurisdiction. We note that due to his voidness argument, his petition was not required to be filed within two years of the entry of the orders he seeks to vacate, and was also not required to allege a meritorious defense or due diligence. Jacqueline responds that the trial court's orders were proper. We agree with Kirk, and find that the court's December 23, 2013, orders were void.

¶ 29 We first address Kirk's argument that the circuit court lacked personal jurisdiction. "In order for a court to have personal jurisdiction over a party, three elements must be established: (1) proper service of process, (2) jurisdiction under the Illinois long-arm statute (

209 (West 2008)), and (3) due process under both the United States and Illinois Constitutions." *McNally v. Morrison*, 408 Ill. App. 3d 248, 254-55 (2011). "Failure to effect service as required by law deprives a court of jurisdiction over the person and any default judgment based on defective service is void." *Bank of New York Mellon v. Karbowski*, 2014 IL App (1st) 130112, ¶ 12.

¶ 30 The record on appeal contains an affidavit of service of summons outside Cook County that states on the top half of the page, "M.W. Sledge on oath states ***." Conversely, the signature line at the bottom of the page bears Jacqueline's signature, not Sledge's. This affidavit contains the file-stamp of the clerk of the circuit court of Cook county, dated September 30, 2013.

¶ 31 Further, Jacqueline has also attempted to submit the appendix affidavit, which is an affidavit of service of summons outside Cook County included in the appendix to her response brief. On the top half of the appendix affidavit, it reads, "Michael Warren Sledge on oath states ***" and the bottom half of the page bears a signature that appears to be that of Sledge. The appendix affidavit does not contain any file-stamps from Cook County and the only file-stamp appearing on the appendix affidavit is from Northampton County, North Carolina, dated August 8, 2014. Thus, it does not appear as though the affidavit that was purportedly signed by Sledge was ever made a part of the record in this case. There is no evidence that the appendix affidavit was ever filed with the clerk in Cook County.

¶ 32 It is well-settled that "[T]he record on appeal cannot be supplemented by attaching documents to a brief or including them in an appendix." *Scepurek v. Board of Trustees of Northbrook Firefighters' Pension Fund*, 2014 IL App (1st) 131066, ¶ 2. In this case, Jacqueline has attempted to supplement the record by including an affidavit purportedly signed by Sledge in

her appendix. In fact, Jacqueline has included more than one document in her appendix that is not a part of the record on appeal. In addition to the affidavit purportedly signed by Sledge, Jacqueline's appendix also includes a transcript from the December 23, 2013, court date, during which she obtained the judgments at issue against Kirk. This December 23, 2013, transcript also has not been properly made a part of the record on appeal. There is nothing before this court that shows that either the appendix affidavit or the December 23, 2013, transcript were ever before the trial court. Simply put, neither was ever made a part of the record in this case, and thus cannot be considered by this court. Jacqueline never asked this court to supplement the record as allowed by Rule 329. See Ill. S. Ct. R. 329 (eff. Jan. 1, 2016) ("Material omissions or in accuracies or improper authentication may be corrected by stipulation of the parties or by the trial court, either before or after the record is transmitted to the reviewing court, or by the reviewing court or a judge thereof"). Likewise, there is no evidence that Jacqueline sought to supplement the record in the trial court and the parties have not stipulated to the inclusion of the documents contained in Jacqueline's appendix.

¶ 33 We acknowledge that Jacqueline has opted to proceed *pro se* throughout the underlying case and this appeal. However, "[a] *pro se* litigant *** is not entitled to more lenient treatment than attorneys." *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 78. Instead, "[i]n Illinois, parties choosing to represent themselves without a lawyer must comply with the same rules and are held to the same standards as licensed attorneys." *Id.* Here, in an order dated October 23, 2013, the trial court specifically stated, "The court has strongly suggested that [Jacqueline] seek counsel as the court may not give [her] legal advice." Even after being advised to retain counsel by the trial court, Jacqueline chose to pursue this matter on her own behalf. "[A] *pro se* litigant must comply with the rules of procedure required of attorneys, and a court will not apply a more

lenient standard to *pro se* litigants." *Id.* Because we do not provide leniency where Jacqueline has opted to proceed *pro se* and has failed to comply with the rules regarding record supplementation, we disregard the improperly submitted contents of her appendix.

¶ 34 Further, although Jacqueline did not ask to supplement the record on appeal, we decline to do so *sua sponte* when the appendix affidavit does not bear a file-stamp from the circuit court of Cook County, rendering it impossible to determine when it was created or if it was ever viewed by the trial court or opposing counsel. Similarly, the December 23, 2013, transcript bears the Cook County clerk of court's file-stamp, dated December 6, 2016, which is inherently untrustworthy given that the notice of appeal was filed on October 12, 2016. Because the appendix affidavit and December 23, 2013, transcript were never properly made a supplement to the record on appeal and there is no evidence that these documents were ever viewed or considered by the trial court, we decline to consider them in reaching our decision in this appeal. As a result, the only affidavit that we rely on is included in the record on appeal, dated September 30, 2013, and bears the signature of Jacqueline.

¶ 35 Turning to our examination of the only affidavit properly before this court, we find that said affidavit does not evidence proper service on Kirk. In determining whether proper service of process occurred, we look to section 2-208 of the Code, which sets forth the requirements for personal service outside the state. Section 2-208(b) of the Code reads:

> "The service of summons shall be made in like manner as service within this State, by any person over 18 years of age not a party to the action. No order of court is required. An affidavit of the server shall be filed stating the time, manner and place of service. The court may consider the affidavit, or any other competent proofs, in

> determining whether service has been properly made." 735 ILCS 5/2-208(b) (West 2012).

"Personal jurisdiction over an out-of-state resident is dependent upon strict compliance with section 2-208 of the [Code]. Where there has not been strict compliance, there is no personal jurisdiction." *In re Marriage of Lewis*, 213 Ill. App. 3d 1044, 1045 (1991).

¶ 36 Section 2-208 explicitly states that "service of summons shall be made *** by any person *** not a party to the action." 735 ILCS 5/2-208(b) (West 2012). The affidavit before this court is signed by Jacqueline, one of the parties to this case. Although the top half of the affidavit bears the name "M.W. Sledge," the signature clearly bears Jacqueline's name. Thus, the contradictory language of the affidavit renders unclear who purportedly served Kirk with process. If Jacqueline served Kirk, then the service is defective because she is a party to this case. If Sledge served Kirk, then his service is defective because he did not sign the affidavit. Either possibility shows a failure to strictly comply with section 2-208 of the Code.

¶ 37 Although 2-208 of the Code permits us to consider "other competent proofs," we find no other evidence that Kirk was properly served. We note that Kirk's motion to vacate states: "Kirk was personally served by the Northampton County Sheriff's Office in Jackson, North Carolina on August 27, 2013. See attached Exhibit "O"[3] - Affidavit of Service of Summons Outside of Cook County, filed September 30, 2013." Conversely, however, in his opening brief Kirk states, "Allegedly a Northampton County [s]heriff personally served Kirk on or around August 27, 2013; however, a properly completed [a]ffidavit of [s]ervice was never produced or filed with the [c]ircuit [c]ourt." This statement by Kirk contradicts the statement contained in his motion to

[3] Although the record on appeal contains exhibits A through N, it, oddly, does not contain the Exhibit "O" referenced in Kirk's motion to vacate.

vacate. Further adding confusion is Jacqueline's response brief which summarizes her perspective as follows:

> "Kirk Freeman was personally served in Conway, Northampton County, North Carolina by Deputy Sheriff M.W. Sledge of the Northampton County [s]heriff department on August 27, 2013 as stated in Deputy Sledge's sworn, notarized affidavit submitted to the Cook County [c]ircuit [c]ourt under case file# 2013 D 230384 on August 16, 2013 that was signed by Jacqueline Freeman stating that Kirk Freeman was served by Northampton County [s]heriff and then when the notarized affidavit from Deputy Sheriff Michael W. Sledge was received that was filed sometime after October 30, 2013."

This statement by Jacqueline only adds confusion because she asserts that the notarized affidavit was submitted to the Cook County clerk's office on August 16, 2013, which would have been over ten days prior to Kirk's alleged service. Similarly, she states that the notarized affidavit was filed after October 30, 2013, but the affidavit contained in the record bears a file-stamp from the Cook County clerk of court dated September 30, 2013.

¶ 38 Jacqueline argues that the letter that Kirk wrote to the Cook County clerk of court on September 4, 2013, should be considered evidence that he was properly served. Looking at the contents of the letter, it is clear to this court that Kirk did not mention being served with process. Kirk begins the letter by stating that, "I am writing to inform you of several issues regarding the case which has been filed against me." He did not say how he came to learn about the case against him[4]. Additionally, Kirk's letter was not signed under oath. Simply put, Kirk's letter to

[4] Regardless of how Kirk came to know about the case, our supreme court recognizes that: "A judgment rendered without service of process ***, where there has been neither a waiver of process nor a general appearance by the defendant, is void regardless of whether the defendant had actual knowledge of the proceedings." *State Bank of Lake Zurich v. Thill*, 113 Ill. 2d 294, 308 (1986).

the court does not provide other competent proof of service. Ultimately, the record and the parties' briefs fail to provide any clarity regarding whether Kirk was, in fact, served, and whether proof of said purported service was properly filed with the court. Thus, we find lacking any other competent proofs that would aid in our determination of whether Kirk was served with process.

¶ 39 Jacqueline alternatively argues that even if Kirk was not properly served, his letter to the court waived any objection he may have to personal jurisdiction. "Personal jurisdiction may be established either by service of process in accordance with statutory requirements or by a party's voluntary submission to the court's jurisdiction." *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 18. Because we have already determined that it is unclear whether service of process was performed in accordance with the statutory requirements, we now look to whether Kirk voluntarily submitted to the court's jurisdiction.

¶ 40 Section 2-301(a) of the Code sets forth the manner in which a party may contest jurisdiction. In relevant part, it states:

> "(a) Prior to the filing of any other pleading or motion other than a motion for an extension of time to answer or otherwise appear, a party may object to the court's jurisdiction over the party's person, either on the ground that the party is not amenable to process of a court of this State or on the ground of insufficiency of process or insufficiency of service of process, by filing a motion to dismiss the entire proceeding or any cause of action involved in the proceeding or by filing a motion to quash service of process. Such a motion may be made singly or included with others in a combined motion, but the parts of a combined motion must be identified in the manner described in section 2-619.1. Unless the facts that constitute the basis for the objection are apparent

> from papers already on file in the case, the motion must be supported by an affidavit setting forth those facts." 735 ILCS 5/2-301(a) (West 2012).

Additionally, section 2-301(a-5) explains when waiver to a jurisdictional objection occurs, specifically stating:

> "(a-5) If the objecting party files a responsive pleading or motion (other than a motion for an extension of time to answer or otherwise appear) prior to the filing of a motion in compliance with subsection (a), that party waives all objections to the court's jurisdiction over the party's person." 735 ILCS 5/2-301(a-5) (West 2012).

¶ 41 Jacqueline argues that the request in Kirk's letter to have such correspondence placed in the court file amounts to personal testimony, and equates to a general appearance. We reject this contention because Jacqueline failed to cite, and we have not found, any legal authority supporting such a proposition. Jacqueline also contends that "[o]n February 28, 2014, Attorney Edward Seibert appeared on behalf of Kirk Freeman regarding Jacqueline Freeman filing a [m]otion for wage garnishment." Contrary to Jacqueline's assertion, the record does not contain any evidence of any attorney filing an appearance on behalf of Kirk until July 7, 2016, when Patrick Markey filed an appearance. As previously noted, although Markey's appearance was labeled as a substitute appearance, the record does not indicate that any other counsel ever filed an appearance on Kirk's behalf. The first motion or pleading that Markey filed on Kirk's behalf was a section 2-1401 motion to vacate the December 23, 2013, orders, which was filed on August 9, 2016. Kirk's motion to vacate asserted that the circuit court lacked both personal and subject matter jurisdiction. Because Kirk's motion to vacate was the first pleading or motion he filed, and he objected to the court's personal jurisdiction in that motion, Kirk has not waived his

right to object to personal jurisdiction, and has not voluntarily submitted to the court's jurisdiction.

¶ 42 In the interests of completeness, and notwithstanding the fact that the record before us does not contain sufficient proof that Kirk was properly served with process, we find it pertinent to explain that even if we assume Kirk was properly served with process, we would still find that the court below lacked personal jurisdiction over Kirk under the Illinois long-arm statute (735 ILCS 5/2-209 (West 2012)).

¶ 43 "Section 2-209 of the Code of Civil Procedure, commonly referred to as the Illinois long-arm statute, governs the exercise of personal jurisdiction by an Illinois court over a nonresident and is divided into three subsections identifying multiple grounds for exercising jurisdiction." *Russell v. SNFA*, 2013 IL 113909, ¶ 29. Further, our supreme court has typically used a two-part analysis in determining a jurisdictional issue under the long-arm statute, first deciding whether a specific provision of section 2-209 has been satisfied, and then deciding whether the due process requirements of both the federal and state constitutions have been met. *Id.* The threshold issue in a personal jurisdiction challenge in Illinois is the "minimum contacts" test. *Id.* ¶ 36. The determination of whether the minimum contacts test has been satisfied hinges on whether general or specific jurisdiction is being sought. *Id.*

¶ 44 "Specific or case-linked jurisdiction, ***, depends on an affiliation between the forum and the underlying controversy (*i.e.*, an activity or occurrence that takes place in the forum State and is therefore subject to the State's regulation)." (Internal quotation marks omitted.) *Khan v. Gramercy Advisors, LLC*, 2016 IL App (4th) 150435, ¶ 77. Subsection 2-209(a) of the Code governs specific jurisdiction, and lists the following 14 grounds by which a defendant may subject himself to Illinois jurisdiction:

"(1) The transaction of business within this State;

(2) The commission of a tortuous act within this State;

(3) The ownership, use, or possession of any real estate situated in this State;

(4) Contracting to insure any person, property or risk located within this State at the time of contracting;

(5) With respect to actions of dissolution of marriage, declaration of invalidity of marriage and legal separation, the maintenance in this State of a matrimonial domicile at the time this cause of action arose or the commission in this State of any act giving rise to the cause of action;

(6) With respect to actions brought under the Illinois Parentage Act of 1984, as now or hereafter amended, or under the Illinois Parentage Act of 2015 on and after the effective date of that Act, the performance of an act of sexual intercourse within this State during the possible period of conception;

(7) The making or performance of any contract or promise substantially connected with this State;

(8) The performance of sexual intercourse within this State which is claimed to have resulted in the conception of a child who resides in this State;

(9) The failure to support a child, spouse or former spouse who has continued to reside in this State since the person either formerly resided with them in this State or directed them to reside in this State;

(10) The acquisition of ownership, possession or control of any asset or thing of value present within this State when ownership, possession or control was acquired;

(11) The breach of any fiduciary duty within this State;

(12) The performance of duties as a director or officer of a corporation organized under the laws of this State or having its principal place of business within this State;

(13) The ownership of an interest in any trust administered within this State; or

(14) The exercise of powers granted under the authority of this State as a fiduciary." 735 ILCS 5/2-209(a) (West 2012).

On the other hand, "[g]eneral or all-purpose jurisdiction is jurisdiction over a defendant based on a forum connection unrelated to the underlying suit (*e.g.*, domicile)." (Internal quotation marks omitted.) *Khan*, 2016 IL App (4th) 150435, ¶ 77. Subsection 2-209(b) of the Code relates to general jurisdiction and allows a court to exercise jurisdiction against any person who:

"(1) Is a natural person present within this State when served;

(2) Is a natural person domiciled or resident within this State when the cause of action arose, the action was commenced, or process was served;

(3) Is a corporation organized under the laws of this State; or

(4) Is a natural person or corporation doing business within this State." 735 ILCS 5/2-209(b) (West 2012).

¶ 45 Kirk argues that Jacqueline cannot satisfy her burden under the long-arm statute because none of the foregoing requirements for either specific or general jurisdiction apply. Jacqueline does not respond to this argument, and fails to set forth any act through which Illinois would have jurisdiction over Kirk under the long-arm statute. Our review of section 2-209 of the Code and the facts of this case result in our conclusion that none of the long-arm statute's requirements are met here.

¶ 46 Looking to the requirements for specific jurisdiction, we find that Kirk did not engage in any of the 14 acts listed in subsection 2-209(a) of the Code. See 735 ILCS 5/2-209(a) (West

2012). Jacqueline does not argue that any of the 14 acts apply here, and even if she had, our independent review does not result in a finding that any of the 14 acts are applicable.

¶ 47 Turning to the issue of general jurisdiction, we similarly find that nothing contained in subsection 2-209(b) applies to this case. See 735 ILCS 5/2-209(b) (West 2012). When service allegedly occurred in this case, Kirk was in North Carolina, not Illinois, so even if said service was sufficient, which we have not found it was, subsection 2-209(b)(1) would not apply. Likewise, Kirk is not and has never been domiciled in Illinois. Further, there is no evidence or allegation that Kirk ever did business in Illinois. Thus, Illinois lacks general jurisdiction over Kirk.

¶ 48 The final channel through which Jacqueline could satisfy her burden under the long-arm statute is under subsection 2-209(c) of the Code, which is known as the "catchall provision." See 735 ILCS 5/2-209(c) (West 2012). Subsection 2-209(c) allows a court to "exercise jurisdiction on any other basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States." (Internal quotation marks omitted.) *Khan*, 2016 IL App (4th) 150435, ¶ 82. Due process requires that the defendant has certain minimum contacts with the state such that maintenance of the suit does not offend traditional notions of fair play and substantial justice. *International Shoe Company v. Washington*, 326 U.S. 310, 316 (1945). "In determining whether the federal due-process standard has been satisfied so as to warrant Illinois jurisdiction, we consider whether (1) the nonresident defendant had 'minimum contact' with Illinois such that there was 'fair warning' that the nonresident defendant may be haled into and Illinois court; (2) the action arose out of or related to the defendant's contacts with Illinois; and (3) it is reasonable to require the defendant to litigate in Illinois." *Estate of Isringhausen ex rel. Isringhausen v. Prime Contractors and Associates, Inc.*, 378 Ill. App. 3d 1059, 1065 (2008).

¶ 49 In this case, it is apparent to this court that the federal due process standard has not been satisfied. We do not find any contacts between Kirk and Illinois, thus he likely had no fair warning that he would be required to litigate here. Additionally, the underlying action was completely unrelated to Kirk's contacts, if any, with Illinois. Finally, we find no reasonable justification for requiring Kirk to litigate in Illinois. As of the filing of this appeal, Kirk and Jacqueline both live in North Carolina. Their dissolution of marriage was granted in North Carolina and the record contains evidence that concurrent litigation ensues there as Jacqueline continues to file motions in the North Carolina courts. Simply put, there is no connection between Kirk and this state that would satisfy Jacqueline's burden under the long-arm statute.

¶ 50 Ultimately, we find that the record lacks evidence that Kirk was properly served, thus the trial court lacked personal jurisdiction on that basis alone. However, even if we assumed that Kirk was properly served in North Carolina, we still find a lack of personal jurisdiction because Jacqueline failed to satisfy her burden under the long-arm statute. The circuit court lacked personal jurisdiction over Kirk when it entered its December 23, 2013, granting judgment in Jacqueline's favor, and as a result, said orders are void. Therefore, we reverse the circuit court's decision denying Kirk's motion to vacate.

¶ 51 Because we have found that the circuit court did not have personal jurisdiction over Kirk and reverse on that basis, we need not address Kirk's contention that the court below also lacked subject matter jurisdiction.

¶ 52 CONCLUSION

¶ 53 Based on the foregoing, we find that the trial court erred when it denied Kirk's motion to vacate the court's December 23, 2013, orders as void. Because the court lacked personal

jurisdiction over Kirk, the December 23, 2013, orders are void, and must be vacated, thus we reverse the decision of the trial court.

¶ 54 Reversed.