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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> MARRIAGE OF	)	Appeal from the Circuit Court
JILL HEINLEIN,	)	of Du Page County.
	)	
Petitioner-Appellee,	)	
	)	
and	)	No. 06-D-1477
	)	
PAUL HEINLEIN,	)	Honorable
	)	Elizabeth W. Sexton,
Respondent-Appellant.	)	Judge, Presiding.

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JUSTICE BURKE delivered the judgment of the court.  
Justices Hutchinson and Spence concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The trial court did not err in denying ex-husband's petition to vacate order finding arrearage and resetting required payments for child support and marital debt obligation.
- ¶ 2 Following a judgment in the parties' dissolution of marriage, respondent, Paul Heinlein, filed three petitions against petitioner, Jill Heinlein, to vacate a postjudgment order under section 2-1401 of the Code of Civil Procedure (Code). 735 ILCS 5/2-1401 (West 2014). The first petition was denied, and Paul, who appears *pro se*, did not appeal that order. The second petition

is still pending. The third petition was denied on the grounds of *res judicata*, and Paul appeals that ruling. We affirm.

¶ 3

### I. BACKGROUND

¶ 4 On December 1, 2007, the trial court entered a judgment for dissolution of marriage, which incorporated a marital settlement agreement and a joint parenting agreement. Nearly five years later, on September 25, 2012, Paul petitioned to modify child support and eliminate his marital debt obligation, due to unemployment or underemployment. The court temporarily reduced the child support and debt payments.

¶ 5 On March 29, 2013, Jill moved to reset the child support and debt obligation payments, alleging an arrearage of \$39,147. On May 13, 2013, the court ordered Paul's payments to be \$400 per week, dating back to December 6, 2012. The court also found Paul's arrearage to be \$38,454. On October 21, 2013, a rule to show cause was issued for nonpayment and Paul was ordered to make a purge payment of \$1,600 by November 19, 2013. On that date, Paul was found in contempt based on his failure to pay, and the court entered a jail commitment order against Paul until the purge payment was made, but Paul was released from custody at the request of Jill. Paul made the purge payment on November 27, 2013.

¶ 6 About one year later, on November 25, 2014, Paul filed a petition to vacate the May 13, 2013, order, which had reset his payment obligations following the temporary reduction and had found he owed an arrearage of \$38,454. Paul challenged the calculation of the arrearage, arguing that he had not received credit for all of his payments. On February 24, 2015, the court denied the petition, but the record does not show the court's reasoning or whether any evidence was admitted. A written order merely states that "Paul's motion to vacate is denied," and there is no transcript of the proceeding. Paul did not appeal that order.

¶ 7 On March 10, 2015, and May 13, 2015, Paul filed two more petitions to vacate the May 13, 2013, order. He again argued that the arrearage had been miscalculated and asked for an accounting by the agency administering the payments. The March 10, 2013, petition appears to remain pending.

¶ 8 In response to the May 13, 2015, petition, the State challenged Paul's factual allegations and argued that the motion was untimely and barred by *res judicata*. In his reply, Paul did not deny that *res judicata* bars the claim. On July 28, 2015, the court denied the petition, concluding that the issues raised already had been litigated and decided against Paul on February 24, 2015. On August 27, 2015, Paul filed a timely notice of appeal. See Ill. S. Ct. R. 304(b) (eff. Feb. 26, 2010) (conferring appellate court jurisdiction over “[a] judgment or order granting or denying any of the relief prayed in a petition under section 2-1401 of the Code of Civil Procedure”).

¶ 9

## II. ANALYSIS

¶ 10 A judgment for dissolution of marriage is afforded the same degree of finality as a judgment in any other proceeding, even where it incorporates a marital settlement agreement. *In re Marriage of Lyman*, 2015 IL App (1st) 132832, ¶ 55. To challenge the validity of an order beyond 30 days of its entry, a party must bring a petition pursuant to section 2-1401 or other method of postjudgment relief. The purpose of a section 2-1401 petition is to bring before the court facts not appearing in the record, which, if known at the time of the entry of judgment, would have prevented its rendition. *Lyman*, 2015 IL App (1st) 132832, ¶ 55. “Courts apply this section with the aim of achieving justice, not to give the litigant ‘a new opportunity to do that which should have been done in an earlier proceeding’ or to relieve the litigant ‘of the consequences of his mistake or negligence.’ ” *Lyman*, 2015 IL App (1st) 132832, ¶ 55 (quoting *In re Marriage of Travlos*, 218 Ill. App. 3d 1030, 1035 (1991)).

¶ 11 Paul accurately characterizes the May 13, 2015, pleading as a petition brought under section 2-1401 of the Code. To be entitled to relief under section 2-1401 of the Code, a petitioner must set forth specific factual allegations showing the existence of a meritorious claim, demonstrate due diligence in presenting the claim to the circuit court in the original action, and act with due diligence in filing the section 2-1401 petition. Section 2-1401 requires the petitioner to bear the burden of establishing his right to relief. To set aside a judgment based on newly discovered evidence, the petitioner must show the new evidence was not known to him at the time of the proceeding and could not have been discovered by the petitioner with the exercise of reasonable diligence. *Lyman*, 2015 IL App (1st) 132832, ¶ 56.

¶ 12 In this case, Paul filed two section 2-1401 petitions attacking the May 13, 2013, arrearage order. There is no bar to the filing of successive section 2-1401 petitions, aside from the doctrine of *res judicata*. *People v. Donley*, 2015 IL App (4th) 130223, ¶ 40. Under the doctrine of *res judicata*, a final judgment on the merits rendered by a court of competent jurisdiction bars any subsequent actions between the same parties or their privies on the same cause of action. *Hudson v. City of Chicago*, 228 Ill. 2d 462, 467 (2008). *Res judicata* bars not only what was actually decided in the first action, but also whatever could have been decided. *Hudson*, 228 Ill. 2d at 467. Three requirements must be satisfied for *res judicata* to apply: (1) the rendition of a final judgment on the merits by a court of competent jurisdiction; (2) the existence of an identity of cause of action; and (3) the parties or their privies are identical in both actions. *Hudson*, 228 Ill. 2d at 467.

¶ 13 A section 2-1401 petition can present either a factual or legal challenge to a final judgment or order, and the nature of that challenge dictates the proper standard of review on appeal. *Warren County Soil & Water Conservation District v. Walters*, 2015 IL 117783, ¶ 31.

When a section 2-1401 petition presents a fact-based challenge, it must allege facts to support the existence of a meritorious defense, due diligence in presenting this defense to the trial court, and due diligence in filing the section 2-1401 petition. *Warren County Soil & Water Conservation District*, 2015 IL 117783, ¶ 37. The question of whether relief should be granted lies within the sound discretion of the circuit court, and a reviewing court will reverse the circuit court's ruling on the petition only if it constitutes an abuse of discretion. *Warren County Soil & Water Conservation District*, 2015 IL 117783, ¶ 37. On the other hand, when a section 2-1401 petition presents a purely legal challenge to a judgment, such as a claim that the earlier judgment was void, the standard of review is *de novo*. *Warren County Soil & Water Conservation District*, 2015 IL 117783, ¶ 47. Here, Paul has made a fact-based challenge in arguing that the arrearage finding in the May 13, 2013, order does not reflect all of his payments, but the trial court denied the petition on the purely legal ground that it was barred by *res judicata*, which we review *de novo*.

¶ 14 The court was correct in denying the petition based on *res judicata*. Before the May 13, 2015, petition, Paul had filed two section 2-1401 petitions challenging the arrearage calculation on November 25, 2014, and March 10, 2015. The November 25, 2014, petition was denied on February 24, 2015, and Paul did not appeal that order. *Res judicata* applies because (1) the February 24, 2015, order was a final judgment on the merits by a court of competent jurisdiction; (2) there is an identity of cause of action; and (3) the parties are identical in both actions. See *Hudson*, 228 Ill. 2d at 467. Paul is foreclosed from bringing the May 13, 2015, petition to challenge the May 13, 2013, order based on issues that were raised or could have been raised in the November 25, 2014, petition.

¶ 15

### III. CONCLUSION

¶ 16 For the reasons stated, the July 28, 2015, order denying Paul's successive motion to vacate the postjudgment arrearage order is affirmed.

¶ 17 Affirmed.