

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).

2017 IL App (4th) 150343-U

NO. 4-15-0343

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

February 6, 2017

Carla Bender

4th District Appellate Court, IL

In re: the Detention of GREGORY MORRIS,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Cass County
v.)	No. 98MR17
GREGORY MORRIS,)	
Respondent-Appellant.)	Honorable
)	William O. Mays,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Turner and Justice Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court concluded that the trial court properly dismissed respondent's untimely section 2-1401 petition and equity did not require it to excuse respondent's delay.

¶ 2 In May 1999, a jury adjudicated respondent, Gregory Morris, a sexually violent person as defined by section 5(f) of the Sexually Violent Persons Commitment Act (Act) (725 ILCS 207/5(f) (West 1998)). The trial court committed respondent to the care, custody, and control of the Illinois Department of Health and Human Services until he was no longer sexually violent. Thereafter, periodic psychological reexamination reports consistently concluded that respondent remained a sexually violent person.

¶ 3 In August 2013, respondent filed a petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2012)). In his petition, respondent argued that the petition filed by the State in 1998 alleging he was a sexually violent

person was untimely according to section 15(a) of the Act (725 ILCS 207/15(a) (West 1998)), and thus, he was entitled to relief because his commitment was unfair, unjust, and unconscionable. The State filed a motion to dismiss pursuant to sections 2-615 and 2-619 of the Code (735 ILCS 5/2-615, 2-619 (West 2012)). The trial court dismissed respondent's petition, stating it was untimely and without merit.

¶ 4 Respondent appeals, arguing that the trial court erred by granting the State's motion to dismiss his petition because, although his section 2-1401 petition was untimely, equity required the court to excuse the delay. We disagree and affirm.

¶ 5 I. BACKGROUND

¶ 6 In 1987, respondent was convicted of the aggravated criminal sexual assault (Ill. Rev. Stat. 1987, ch. 38, ¶ 12-14) of two women. In 1994, respondent was convicted of the aggravated criminal sexual assault (720 ILCS 5/12-14 (West 1992)) of 22-year-old L.P. Respondent's assault of L.P. occurred while he was on parole and attending sex-offender treatment. The trial court imposed a six-year prison term for the assault of L.P., to be followed by three years of mandatory supervised release (MSR).

¶ 7 In December 1996, respondent began his MSR term, but in July 1997, respondent was reincarcerated for violating the terms of his release. Respondent served the remainder of his MSR term in prison. The record indicates respondent's scheduled discharge date from MSR was Monday, October 12, 1998. However, because that date was a holiday (Columbus Day), the Illinois Department of Corrections, in accordance with its policies and procedures, prepared to release respondent on the business day immediately preceding the holiday weekend, which was Friday, October 9, 1998.

¶ 8 On October 9, 1998, the State filed a petition under the Act alleging that respondent-

ent was a sexually violent person and requesting his commitment. The matter proceeded to trial and Dr. Jacqueline Buck testified as an expert in the fields of psychology and the evaluation of sexually violent persons. Buck opined that respondent suffered from various mental disorders, such as sexual sadism, alcohol abuse in a controlled environment, and narcissistic personality disorder with antisocial features. Buck opined further that it was substantially probable respondent would commit future sexually violent acts. Dr. Paul Heaton also testified as an expert, focusing on the treatment of sex offenders and sexually violent persons. Heaton diagnosed respondent with paraphilia not otherwise specified—rape, alcohol abuse in a controlled environment, narcissistic personality disorder, and sexual sadism.

¶ 9 On May 28, 1999, a jury found respondent was a sexually violent person, and the trial court ordered him civilly committed under the Act.

¶ 10 On August 2, 2004, respondent filed a *habeas corpus* complaint (Will County case No. 04-MR-563), arguing that the trial court did not have jurisdiction over the State's petition to commit him under section 15(a) of the Act (725 ILCS 207/15(a) (West 1998)). Specifically, respondent argued that the court lacked jurisdiction to commit him because the statute required the State to file the petition *before* the date of his discharge. Instead, the State filed its petition *the day of* his MSR discharge. The court dismissed his complaint, and respondent appealed. The Third District affirmed the court's dismissal and held that (1) statutory time limitations are not jurisdictional unless the provisions concern administrative review and (2) respondent failed to request relief that could be granted under a *habeas corpus* complaint. *Morris v. Budz*, No. 3-05-0316 (Oct. 13, 2006) (unpublished summary order under Supreme Court Rule 23(c)(2)).

¶ 11 On August 26, 2013, respondent filed a petition for relief from judgment pursuant

to section 2-1401 of the Code containing the same argument in his 2004 *habeas corpus* complaint—that is, the State's petition to commit him was untimely. In this petition, instead of arguing that the trial court lacked jurisdiction, he argued the judgment entered against him was unfair, unjust, and unconscionable. The State responded with a combined motion to dismiss under sections 2-615 and 2-619 of the Code. First, the State argued under section 2-619 that respondent's petition was filed beyond the two-year requirement and no sufficient excuse was alleged or shown in the petition. Second, the State argued under section 2-615 that respondent had failed to demonstrate due diligence in presenting his claim, as evidenced by his 2004 *habeas corpus* complaint that included the same issue regarding the State's timeliness in filing its petition for commitment. In response to the State's motion to dismiss, respondent asserted that (1) he raised a meritorious claim; and (2) the court may relax the due diligence requirement when necessary to provide relief from an unfair, unjust, or unconscionable judgment (citing *Kulikowski v. Larson*, 305 Ill. App. 3d 110, 710 N.E.2d 1275 (1999)).

¶ 12 In April 2015, the trial court granted the State's motion to dismiss, finding that (1) respondent's petition was untimely because he was aware of the issue as early as 2004, when he filed his *habeas corpus* complaint; and (2) the petition was without merit.

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 On appeal, respondent argues that the trial court erred by granting the State's motion to dismiss his section 2-1401 petition because equity required the court to excuse the delay. The State responds that respondent's section 2-1401 petition was insufficient because it was untimely and did not satisfy the requirements of a section 2-1401 petition.

¶ 16 Section 2-1401 of the Code allows a party to obtain relief from a final judgment

after 30 days, but no later than 2 years after its entry, unless the petitioner can show legal disability, duress, or fraudulent concealment. 735 ILCS 5/2-1401(a), (c) (West 2012). "A section 2-1401 petition for relief from a final judgment is the forum in a criminal case in which to correct all errors of fact occurring in the prosecution of a cause, unknown to the petitioner and court at the time judgment was entered, which, if then known, would have prevented its rendition." *People v. Haynes*, 192 Ill. 2d 437, 461, 737 N.E.2d 169, 182 (2000). "A section 2-1401 petition should be granted where the petitioner has pled and established a meritorious defense to the plaintiff's action as well as due diligence in presenting the defense and in filing the section 2-1401 petition for relief." *Engel v. Loyfman*, 383 Ill. App. 3d 191, 198, 890 N.E.2d 633, 639 (2008).

¶ 17 In the case at bar, the final judgment being challenged was entered on May 28, 1999, and respondent filed his section 2-1401 petition on August 26, 2013, over 14 years later. Although respondent does not allege any of the exceptions set forth in the Code as grounds for a late petition, he argues his petition should proceed because, in lieu of demonstrated due diligence, his commitment is unfair, unjust, and unconscionable. We note respondent's 2004 complaint for *habeas corpus* relief raised the same facts and issue, and therefore, this issue is barred by *res judicata*. However, he asks this court to relax our procedural requirements on the basis of equity, because the judgment entered against him is unfair, unjust, and unconscionable. Respondent argues, but for the trial court's error of allowing the State's late petition, he would not have been involuntarily committed. In support of his equity argument, respondent cites the Third District's decision *Kulikowski*.

¶ 18 In *Kulikowski*, 305 Ill. App. 3d at 112, 710 N.E.2d at 1277-78, the plaintiff alleged that she accompanied Bernard Larson to a local tavern, and over the course of several

hours, he consumed a large amount of alcohol and became intoxicated. She left the tavern with Larson and walked toward his vehicle, which was parked in front of a wall. *Id.* at 112, 710 N.E.2d at 1278. Larson started the engine, and as the plaintiff crossed in front of the vehicle to get to the passenger side door, the car lurched forward and pinned her against a wall, crushing her right leg. *Id.* On September 21, 1994, the plaintiff filed a complaint against Larson, First Midwest (land trustee for the tavern premises), and Charles Jenkins (the sole beneficiary of the trust). *Id.* at 112, 710 N.E.2d at 1277-78. She sued Larson under a theory of negligence and First Midwest and Jenkins under the Dramshop Act. *Id.* at 112, 710 N.E.2d at 1278. Larson settled with the plaintiff, and First Midwest and Jenkins failed to answer the complaint. *Id.* at 113, 710 N.E.2d at 1278.

¶ 19 On December 12, 1995, the plaintiff moved for a default judgment, which the trial court granted. *Id.* On March 29, 1996, without notice to Jenkins or First Midwest, a hearing was held to prove the plaintiff's damages of the default judgment. *Id.* The trial court entered an order finding both Jenkins and First Midwest liable for \$70,000. *Id.* The plaintiff notified the defendants of this judgment in a letter dated January 20, 1997. *Id.* On March 30, 1998, Jenkins and First Midwest filed a section 2-1401 petition to vacate the court's default judgment, arguing, *inter alia*, (1) they were improper parties under the Dramshop Act, and (2) principles of substantial justice and equity required any lack of due diligence to be excused because the default judgment was unfair, unjust, and unconscionable because the delay in notice of the entry of judgment cast "a cloud on the proceedings." *Id.* The trial court denied the defendants' petition and found they failed to exercise the diligence necessary to maintain a section 2-1401 petition. *Id.*

¶ 20 On appeal, First Midwest asserted it could not be liable as an "owner" under the Dramshop Act. *Id.* at 114, 710 N.E.2d at 1279. The Third District agreed with First Midwest

because it did not have any right to manage or control the property, only Jenkins did. *Id.* The court found the trial court abused its discretion and vacated the portion of the default judgment holding First Midwest liable, stating, "[o]nce First Midwest brought this fact to the attention of the trial court, equity required that First Midwest's lack of diligence be excused to provide it relief from an unconscionable default judgment." *Id.* As to Jenkins, the Third District, *inter alia*, affirmed a portion of the default judgment against him because he did not assert sufficient facts to defeat the plaintiff's claim against him. *Id.* at 116, 710 N.E.2d at 1280. The court noted, although a plaintiff does not have a duty to notify a defendant that a default judgment has been entered, a delay in notice exceeding 30 days is a factor to be considered by a court when determining whether equity will permit the default judgment to stand. *Id.* at 117, 710 N.E.2d at 1281.

¶ 21 Respondent argues the holding in *Kulikowski* suggests this court should excuse the delay in his section 2-1401 petition because equity requires us to do so. We disagree. The holding in *Kulikowski* concerned an improper party to a suit where a default judgment was entered and contained issues regarding notice.

¶ 22 In respondent's case, a default judgment was not entered against him. In fact, respondent was present and aware of the proceedings against him, and no issues were raised regarding notice. Respondent's section 2-1401 petition was filed over a decade after the two-year requirement and, as previously explained, is barred by *res judicata*. Respondent was a proper party to the suit and the judgment entered against him was proper, as demonstrated by the jury's findings and the periodic psychological reexamination reports that consistently concluded that respondent remained a sexually violent person. For these reasons, the discussed facts fail to support respondent's case, and it is clear why a different result was warranted in *Kulikowski*. Since we find the judgment entered against respondent is not unfair, unjust, or unconscionable and eq-

uity does not warrant a different result, we need not address the State's other arguments.

¶ 23

III. CONCLUSION

¶ 24

For the foregoing reasons, we affirm the trial court's judgment.

¶ 25

Affirmed.