2017 IL App (5th) 160130-U

NO. 5-16-0130

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

TAYLOR LAW OFFICES, P.C.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Effingham County.
	)	
v.	)	No. 07-SC-490
	)	
RYAN M. GREENMAN,	)	Honorable
	)	James J. Eder,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Presiding Justice Moore and Justice Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly denied the defendant's amended motion to vacate default judgment.

¶ 2 The defendant, Ryan M. Greenman, appeals *pro se* the denial of his amended motion to vacate default judgment wherein he alleged improper service and that he lacked legal and mental capacity at the time it was entered. The judgment of the circuit court is affirmed.

¶ 3 BACKGROUND

¶ 4 On August 27, 2007, the Taylor Law Office (plaintiff) filed a complaint against the defendant to recover legal fees. On December 11, 2007, the second alias summons

was returned with a signed affidavit of service noting that the summons was personally served on "Greenman, Ryan M. S06390 M-W-31 at Jacksonville Correctional Center on 12-11-07 at 9:01 am." On December 17, 2007, a default judgment was entered against the defendant in the amount of $8,299.25 plus costs and accruing 9% interest. On December 31, 2007, a notice of default judgment was filed with a signed proof of mailing to the defendant at the Jacksonville Correctional Center.

¶ 5 On January 6, 2015, a petition for revival of judgment was filed by the plaintiff. Several attempts were made to serve the defendant, who was finally served by abode service with an alias summons on September 17, 2015, by the Peoria County sheriff's office. On October 13, 2015, the defendant filed a motion to vacate default judgment alleging that the current service was "the first time defendant was made aware of any judgment obtained against him by the plaintiff," and he cited section 2-203.2 of the Code of Civil Procedure (Code) (735 ILCS 5/2-203.2 (West 2014)) (service on an inmate) in support of his argument that he was not properly served with the original cause of action. The plaintiff responded that the defendant was served personally and that "personal service is always proper service when conforming to the requirements of 735 ILCS 5/2-203." The response goes on to reference the signed affidavit of personal service and the notice of default judgment proof of mailing, both discussed *supra*. On January 21, 2016, the defendant filed an amended motion to vacate default judgment alleging failure to serve him with the original cause of action, again citing section 2-203.2, and that he was legally and mentally incompetent at the time of the original action.

¶ 6 On March 3, 2016, a hearing was held on the amended motion to vacate. This was the only transcript that was provided in the record on appeal, but it references a previous court appearance on the defendant's initial motion to vacate. At the March 3 hearing, the court stated, "Mr. Greenman I explained to you previously when you appeared before this court on your earlier motion that the law indicates that Sheriff's return of service is *prima facie* proof of service and should not be set aside unless impeached by clear and satisfactory evidence ***."

¶ 7 With regard to the defendant's second allegation, that he was legally and mentally incompetent at the time of the original action, he told the court that he suffered from several physical and psychological disorders, "from major depression, mania, anxiety and a slew of other disorders [and] *** I suffered bouts of extreme anxiety, panic attacks, even bouts of suicidal tendencies." The defendant provided no affidavits, medical records, or witnesses on his behalf at this hearing.

¶ 8 The court denied the defendant's amended motion to vacate, finding that the defendant could not substantiate any of his allegations as he did not provide any evidence to rebut the *prima facie* evidence of proof of service, nor did he provide any evidence aside from his own testimony to substantiate his incapacity claims.

¶ 9 After the court's decision was announced, the defendant asked if the court could provide a psychologist for him, as he did not have the financial means to hire one himself. The court stated that it could not appoint a psychologist in a civil case and that, even if it could, the psychologist would likely not support the defendant's lack of capacity at the time of service of the initial complaint which had occurred nine years earlier. The

court admonished the defendant regarding his appeal rights and other options. On April 1, 2016, the defendant filed this appeal.

¶ 10 ANALYSIS

¶ 11 On appeal, the defendant argues that the default judgment should be vacated for the following reasons: (1) failure of proper service under section 2-203 of the Code (735 ILCS 5/2-203 (West 2014)) and (2) he did not have the requisite capacity to be a party to a lawsuit. We do not agree.

¶ 12 We begin by noting our standard of review. "The decision to grant or deny a motion to vacate a default judgment lies within the sound discretion of the trial court, and we will reverse only if the trial court abused its discretion." *Marren Builders, Inc. v. Lampert*, 307 Ill. App. 3d 937, 941, 719 N.E.2d 117, 121 (1999). "A trial court has abused its discretion when it acts arbitrarily without the employment of conscientious judgment or if its decision exceeds the bounds of reason and ignores principles of law such that substantial prejudice has resulted." *Marren Builders, Inc.*, 307 Ill. App. 3d at 941, 719 N.E.2d at 121.

¶ 13 Sections 2-1301 and 2-1401 of the Code govern motions to vacate judgments. (735 ILCS 5/2-1301, 2-1401 (West 2014)). Section 2-1301 relates to motions to vacate within 30 days of judgment, and section 2-1401 relates to motions to vacate after 30 days of judgment. As this motion to vacate was filed in 2015, some eight years after entry of the December 17, 2007, default judgment, section 2-1301 does not apply. A motion to vacate a default judgment brought pursuant to section 2-1401 must generally be brought within two years of the entry of the challenged default judgment (735 ILCS 5/2-1401(c)

(West 2014)). However, a void judgment can be attacked at any time. 735 ILCS 5/2-1401(f) (West 2014); *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 103, 776 N.E.2d 195, 201 (2002). The defendant argues that the judgment was void because he was not served properly and that he did not have the requisite capacity to be a party to a lawsuit. We will discuss each of the defendant's arguments in turn.

¶ 14 The defendant first argues the judgment is void because he was not served according to section 2-203.2 of the Code, which provides for service of process on an inmate where the process server has been "refused entry into that correctional institution or facility or jail." 735 ILCS 5/2-203.2 (West 2014). However, the defendant did not need to be served according to section 2-203.2 of the Code, as the process server was not "refused entry into that correctional institution or facility or jail." The process server personally served the defendant in accordance with section 2-203 of the Code. The return summons states, "served Greenman, Ryan M. S06390 M-W-31 at Jacksonville Correctional Center on 12-11-07 at 9:01 am." Not only does the process server state all of the requisite information for the affidavit, he adds the defendant's inmate number–which was unnecessary–and he provides the specific time to the minute in which he personally served the defendant.

¶ 15 The defendant asserts that the judgment is void because he never received notice of the default judgment against him. Section 2-1302(a) of the Code states, "Upon the entry of an order of default, the attorney for the moving party shall immediately give notice thereof to each party who has appeared, against whom the order was entered, or such party's attorney of record. However, the failure of the attorney to give the notice

does not impair the force, validity or effect of the order." 735 ILCS 5/2-1302(a) (West 2014). According to the record, a notice of default judgment was filed and mailed to the defendant at Jacksonville Correctional Center on December 28, 2007. Regardless, it is immaterial whether the defendant did or did not receive the notice because the failure to give notice of the default judgment does not render the judgment void.

¶ 16 The defendant next argues the judgment is void because he lacked the capacity to be a party to a lawsuit, and he cites section 2-619 of the Code, which states:

> "Involuntary dismissal based upon certain defects or defenses. (a) Defendant may, within the time for pleading, file a motion for dismissal of the action or for other appropriate relief upon any of the following grounds. If the grounds do not appear on the face of the pleading attacked the motion shall be supported by affidavit: *** (2) That the plaintiff does not have legal capacity to sue or that the defendant does not have legal capacity to be sued." 735 ILCS 5/2-619 (West 2014).

¶ 17 "Persons of a mature age are presumed to be mentally competent. Incompetency cannot be inferred merely from *** illness." *Eslick v. Montgomery*, 3 Ill. App. 3d 447, 451, 278 N.E.2d 412, 415 (1972) (citing *Staude v. Heinlein*, 414 Ill. 11, 20, 110 N.E.2d 228, 232-33 (1953)). Further, the presumption is true regardless of combination of age and infirmity. *Eslick*, 3 Ill. App. 3d at 451, 278 N.E.2d at 415 (citing *Dalbey v. Hayes*, 267 Ill. 521, 527, 108 N.E. 657, 660 (1915)). The burden of showing mental incompetence is on the party seeking to set aside the transaction. *Eslick*, 3 Ill. App. 3d at 451, 278 N.E.2d at 415 (citing *Greathouse v. Vosburgh*, 19 Ill. 2d 555, 568, 169 N.E.2d

97, 103 (1960); *Johnson v. Lane*, 369 Ill. 135, 150, 15 N.E.2d 710, 717 (1938); and *White v. White*, 28 Ill. App. 2d 19, 27, 169 N.E.2d 839, 843-44 (1960)).

¶ 18 While witnesses may lack formal training in psychiatry or psychology, "nonexperts who have had an opportunity to observe a person may give their opinions of mental condition or capacity based on their observations." *People v. Coleman*, 168 Ill. 2d 509, 526, 660 N.E.2d 919, 928-29 (1995); see *People v. Bleitner*, 189 Ill. App. 3d 971, 976, 546 N.E.2d 241, 245 (1989).

¶ 19 In the present case, except for his own testimony, the defendant did not present any evidence via witnesses, affidavits, medical reports, etc., that he suffered from any mental incompetence at the time of the original personal service of the complaint on him at Jacksonville Correctional Center in 2007. While the defendant asserts that the court did not make "any inquiries with the [d]efendant on the nature of the issues, the severity or how he was [a]ffected," the defendant provided no evidence other than his own testimony. In fact, the court had previously admonished the defendant to provide evidence other than his own statements to support his allegations. The burden was on the defendant. He did not present witness testimony, affidavits, or medical records. No additional evidence was offered, and no independent corroboration was provided. The record shows the defendant did not meet his burden; therefore, the court did not abuse its discretion in denying the defendant's amended motion to vacate default judgment.

¶ 20 CONCLUSION

¶ 21 For the foregoing reasons, the judgment of the circuit court of Effingham County is affirmed.

¶ 22 Affirmed.