

NOTICE
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2018 IL App (5th) 160484-U

NO. 5-16-0484

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

AUTOVEST, LLC,)	Appeal from the
)	Circuit Court of
Plaintiff/Petitioner-Appellee,)	Franklin County.
)	
v.)	No. 13-SC-232
)	
STEFANIE MOSS,)	
)	
Defendant)	
)	Honorable
(Benton Rural King Supply, Inc., Respondent-Appellant).)	Eric J. Dirnbeck,
)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Justices Welch and Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court erred in granting the petitioner’s petition to vacate, pursuant to section 2-1401(f) of the Code of Civil Procedure (735 ILCS 5/2-1401(f) (West 2016)), its final order quashing the petitioner’s wage deduction summons and granting the respondent sanctions pursuant to Illinois Supreme Court Rule 137 (eff. July 1, 2013), where the circuit court’s order was not void and the petitioner did not base its petition on an allegation of due diligence or a meritorious defense.

¶ 2 The respondent, Benton Rural King Supply, Inc. (Rural King), appeals the October 17, 2016, order of the circuit court of Franklin County, which vacated its May 19, 2016, order quashing a wage deduction summons filed by the plaintiff, Autovest,

LLC (Autovest), and ordering Autovest to pay \$1363.90 in attorney fees to Rural King as a sanction pursuant to Illinois Supreme Court Rule 137 (eff. July 1, 2013). On March 16, 2017, Autovest filed a motion to dismiss Rural King’s appeal for a lack of jurisdiction, which this court has taken with the case. For the reasons that follow, we deny the motion to dismiss and we reverse the circuit court’s October 17, 2016, order, thereby reinstating the May 19, 2016, order.

¶ 3

FACTS

¶ 4 On July 25, 2013, the circuit court of Franklin County entered a judgment in favor of Autovest and against Stefanie Moss in the amount of \$2803.11 plus court costs of \$105 on Autovest’s complaint for breach of an installment loan contract. On or about March 17, 2016, Autovest attempted service of a wage deduction summons via certified mail on Rural King, directing the summons to “Reg Agent: David C. Nelson, 1500 Broadway Ave., P.O. Box 649, Mattoon, IL 61938,” and requiring Rural King to file answers to judgment creditor’s interrogatories on or before March 10, 2016.

¶ 5 On April 15, 2016, Rural King filed a special and limited entry of appearance, pursuant to section 2-301 of the Code of Civil Procedure (Code) (735 ILCS 5/2-301 (West 2016)), for the purpose of challenging personal jurisdiction and moving to quash service of process. Therein, Rural King alleged that although Autovest filed the wage deduction summons on February 2, 2016, it did not mail the summons until March 17, 2016, seven days after the summons required Rural King to file answers to Autovest’s judgment creditor interrogatories. Further, Rural King alleged David Nelson was not its registered agent or officer, and failure to serve its registered agent violated section 2-204

of the Code. 735 ILCS 5/2-204 (West 2016). Furthermore, Rural King contended that Autovest failed to make reasonable inquiry as to Rural King's registered agent prior to issuing the wage deduction summons, which Rural King argued was a violation of Illinois Supreme Court Rule 137 (eff. July 1, 2013). According to the affidavit of service by mailing attached to the motion to quash and notice of hearing, both were mailed to Autovest through its counsel of record, Blitt and Gaines, P.C., located in Wheeling.

¶ 6 On May 19, 2016, Rural King filed an affidavit of its counsel, attesting that the attorney fees and out-of-pocket expenses incurred by Rural King to challenge the wage deduction summons totaled \$1363.90. That same date, the circuit court entered a written order granting Rural King's motion, finding that it lacked jurisdiction over Rural King and quashing the wage deduction summons, incorporating the facts and reasoning set forth in Rural King's motion, and ordering Autovest and its counsel to pay Rural King attorney fees and costs in the amount of \$1363.90.

¶ 7 On September 13, 2016, Autovest filed a petition to vacate the May 19, 2016, order, pursuant to section 2-1401 of the Code. 735 ILCS 5/2-1401 (West 2016). In its petition, Autovest argued that the May 19, 2016, order was void because the notice of hearing on the motion falsely indicated that the hearing on Rural King's motion to quash was to take place on the "195th day of May, 2016," rather than the nineteenth day of May 2016. The petition specifically stated that it was being brought pursuant to section 2-1401(f) of the Code (735 ILCS 5/2-1401(f) (West 2016)), for the purpose of vacating a void order, and as such was not subject to time constraints or the requirements of a meritorious defense or due diligence. The petition argued that because the May 19, 2016,

order was entered against Autovest without notice or an opportunity to be heard as required by Illinois Supreme Court Rule 104(b) (eff. Jan. 4, 2013), it was void.

¶ 8 On October 3, 2016, Rural King filed a response to Autovest's section 2-1401 petition. In its response, Rural King argued that Autovest did, in fact, receive notice of the hearing because, although the notice of hearing did contain a typographical error, a letter sent to counsel for Autovest at the same time clearly indicated that the hearing was set for May 19, 2016. Rural King attached a copy of that letter to its response. In addition, Rural King attached two additional letters that it had sent to counsel for Autovest in reference to the May 19, 2016, order, including a copy of the order and requesting payment. These letters were dated May 20, 2016, and June 22, 2016. Rural King's response argued that the May 19, 2016, order was not void, and because Autovest did not file its section 2-1401 petition to vacate until September 13, 2016, despite having prior notice of the order, it could not meet the due diligence requirement of section 2-1401. Thereafter, Autovest filed a reply, arguing that sanctions under Illinois Supreme Court Rule 137 (eff. July 1, 2013) are not permitted as a remedy for a violation of the Wage Deductions Act (735 ILCS 5/12-806 (West 2016)).

¶ 9 A docket entry entered by the circuit court on October 13, 2016, indicates that attorneys for both Autovest and Rural King appeared and the circuit court "takes motions under advisement." On October 17, 2016, the circuit court entered a docket entry stating as follows: "Court has reviewed all pleadings related to plaintiff's 5/2-1401 petition to vacate this court's May 19, 2016, order. Plaintiff's motion is granted and this court's order entered on 5-19-16 is hereby vacated. No written order to enter. Clerk to send a

copy of this docket entry to all attorneys [and] parties of record.” On November 10, 2016, Rural King filed a notice of appeal.

¶ 10 On March 16, 2017, Autovest filed a motion to dismiss Rural King’s appeal. In the motion to dismiss, Autovest argues that this appeal must be dismissed for a lack of appellate jurisdiction because there is no judgment contained in the record on appeal. According to Autovest’s motion, the circuit court’s docket entry does not constitute an appealable judgment. In addition, Autovest argues that Rural King has failed to provide this court with an adequate record on appeal because there is no report of proceedings contained within the record on appeal. On March 20, 2018, this court entered an order taking Autovest’s motion to dismiss with the case.

¶ 11 ANALYSIS

¶ 12 Before addressing the merits of Rural King’s appeal, we consider Autovest’s motion to dismiss the appeal for a lack of jurisdiction, which was taken with the case. The main contention Autovest raises in its motion is that this court does not have jurisdiction to hear this appeal because the circuit court’s October 17, 2016, docket entry does not constitute an appealable judgment. Autovest cites a plethora of cases in support of its motion, all of which predate Illinois Supreme Court Rule 272 (eff. Nov. 1, 1990). Rule 272 makes clear that unless the circuit court requires a written judgment, a notation of the judgment in the record, *i.e.*, a docket entry, constitutes the final judgment of the court. Accordingly, we deny Autovest’s motion to dismiss on this basis.¹

¹In its motion to dismiss, Autovest also raises an issue of the adequacy of the record on appeal. However, this issue does not relate to the jurisdiction of this court over the appeal, but rather is an

¶ 13 Turning to the merits of Rural King’s appeal, we first address our standard of review. When a section 2-1401 petition raises a purely legal challenge to a judgment by alleging it is void under subsection (f), our standard of review is *de novo*. *Warren County Soil & Water Conservation District v. Walters*, 2015 IL 117783, ¶ 47. When a section 2-1401 petition is brought pursuant to subsection (f), the petitioner need not establish a meritorious defense or satisfy due diligence requirements. *Id.* ¶ 48 (citing *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104 (2002)). Accordingly, the merits of Rural King’s appeal turn on whether the circuit court erred in determining that its May 19, 2016, order was void.

¶ 14 “[W]hether a judgment is void in a civil lawsuit that does not involve an administrative tribunal or administrative review depends solely on whether the circuit court which entered the challenged judgment possessed jurisdiction over the parties and the subject matter.” *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 32. A judgment entered erroneously by a court having jurisdiction is voidable, rather than void, and falls outside of the ambit of a 2-1401(f) petition. *Juszczuk v. Flores*, 334 Ill. App. 3d 122, 125 (2002) (citing *In re Marriage of Mitchell*, 181 Ill. 2d 169, 174-75 (1998)).

¶ 15 Here, Autovest’s section 2-1401 petition states clearly that it is being brought pursuant to subsection (f), and states on the face of the petition that as such, it need not meet the meritorious or due diligence requirements that are otherwise applicable. According to Autovest’s petition, the circuit court’s May 19, 2016, order was void

argument that goes toward the merits of the appeal. Accordingly, we will address this argument as part of our analysis of the issues raised by Rural King on appeal.

because it was entered without notice to Autovest or an opportunity for Autovest to participate as required by Illinois Supreme Court Rule 104(b) (eff. Jan. 4, 2013).² We find that these allegations on the part of Autovest do not establish a lack of jurisdiction on the part of the circuit court and are rebutted by the record on appeal.

¶ 16 Autovest's 2-1401(f) petition does not allege that the circuit court lacked subject matter jurisdiction over the collections proceedings initiated by Autovest in this action, or that the May 19, 2016, order quashing service of the wage deduction summons and ordering Rule 137 sanctions was procured by fraud. Rather, the allegations in Autovest's 2-1401(f) petition attempt to establish that the order was entered without notice to it, in violation of Rule 104(b). However, in a case such as this, where Autovest initiated the collection proceeding by issuing the wage deduction summons, and is represented by counsel of record, there is no question that the circuit court had personal jurisdiction over Autovest. See *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 18 (personal jurisdiction may be established by a party's voluntary submission to the court's jurisdiction). Furthermore, Rule 104(d) (Ill. S. Ct. R. 104(d) (eff. Jan. 4, 2013)) makes clear that failure to deliver or serve copies as required by Rule 104(b) does not in any way impair the jurisdiction of the court over the person of any party. See *In re Estate of Gustafson*, 268 Ill. App. 3d 404, 408 (1994). As such, a defective notice of hearing under Rule 104(b) renders an order or judgment entered pursuant to said notice voidable, rather

²Rule 104(b) provides that "[p]leadings subsequent to the complaint, written motions, and other documents required to be filed shall be filed with the clerk with a certificate of counsel or other proof that copies have been served on all parties who have appeared and have not theretofore been found by the court to be in default for failure to plead."

than void. See *In re Rehabilitation of American Mutual Reinsurance Co.*, 238 Ill. App. 3d 1, 11 (1992).

¶ 17 Finally, the record contradicts any claim by Autovest that it did not receive actual notice of the hearing such that the May 19, 2016, order could be said to have been entered in violation of its right to due process of law. The notice of hearing received by counsel of record on behalf of Autovest contained a scrivener's error, such that the date of hearing was set forth as "the 195th day of May, 2016," rather than the nineteenth day of May 2016. Documentation appended to Rural King's response to Autovest's 2-1401 petition reflects that Rural King notified counsel for Autovest of the proper date of the hearing by letter. For all of these reasons, we find that at the time it entered its May 19, 2016, order, the circuit court had subject matter and personal jurisdiction to entertain Rural King's motion to quash and for sanctions, so that the order was, at most, voidable, rather than void.³ Accordingly, it was error to grant Autovest's petition to vacate the order pursuant to section 2-1401(f).

¶ 18 We briefly address Autovest's argument regarding the sufficiency of the record on appeal. According to Autovest, this court must summarily affirm the circuit court's order granting its motion to vacate its May 19, 2016, order because the record on appeal does not contain a report of proceedings of the hearing that took place on October 13, 2016. We disagree. The circuit court's October 17, 2016, order states that it granted Autovest's

³Autovest's argument that Rule 137 sanctions are inapplicable in wage deduction proceedings goes to the merits of the circuit court's order, rather than the circuit court's authority to enter the order. As such, it is not a proper subject for a petition brought pursuant to section 2-1401(f). *Juszczuk*, 334 Ill. App. 3d at 126 (citing *In re Marriage of Mitchell*, 181 Ill. 2d at 174-75).

2-1401(f) petition based on the pleadings. No evidentiary hearing took place. We further note that Autovest's petition specifically stated that it need not plead due diligence or a meritorious defense because it was bringing its petition pursuant to 2-1401(f). We recognize that the petition went on to include arguments regarding the merits of the May 19, 2016, order. However, an evidentiary hearing would only be necessary had Autovest amended its petition to, at a minimum, add allegations regarding due diligence in order to bring its petition within the general provisions of section 2-1401, rather than 2-1401(f). However, there is no such amended pleading in the record on appeal, as would be required in order to make such an amendment. See *Wilkins v. Dellenback*, 149 Ill. App. 3d 549, 553 (1986) (like other pleadings, a section 2-1401 petition must be in writing, filed with the clerk of the circuit court, and made part of the record). Accordingly, a report of proceedings is not necessary for this court to address the merits of Rural King's appeal.

¶ 19

CONCLUSION

¶ 20 For the foregoing reasons, we reverse the October 17, 2016, order of the circuit court of Franklin County, which vacated its May 19, 2016, order quashing Autovest's wage deduction summons and granting Rural King's motion for Rule 137 sanctions, thereby reinstating the circuit court's May 19, 2016, order.

¶ 21 Motion to dismiss denied; October 17, 2016, order reversed; May 19, 2016, order reinstated.