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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

FIRST BANK,)	Appeal from the Circuit
)	Court of Cook County.
Plaintiff-Appellee,)	
)	
v.)	No. 10 L 50373
)	
WALTER KAISER,)	
)	
Defendant-Appellee)	
)	
(Village Green, LLC; Mark R. Anderson; B.)	The Honorable
Gregory Trapani; and Jordan H. Kaiser,)	James C. Murray,
Defendants).)	Judge Presiding

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Karnezis and Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not err in denying the appellant's petition to vacate its judgment pursuant to section 2-1401 of the Code of Civil Procedure.

¶ 2 The plaintiff, First Bank, obtained a judgment against the defendants, Village Green, LLC, Mark R. Anderson, B. Gregory Trapani, Jordan H. Kaiser, and Walter Kaiser. The appellant, Walter Kaiser, thereafter filed a petition to vacate the judgment against him, pursuant to section 2-1401 of

the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2010)). The circuit court denied his petition, and the appellant now appeals. On appeal, the appellant argues that (1) his attorney lacked the authority to confess judgment against him without process, and (2) the circuit court lacked personal jurisdiction over him because he was not served with process and never waived service. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3 In February 2010, the plaintiff filed a complaint seeking judgment against each of the defendants for amounts due under a promissory note each executed or guaranteed. The count pertaining to the appellant, like the other counts, included a statement that the appellant waived service of process, "agree[d] that judgment may be entered against him," and "waive[d] all rights as authorized in the warrant of attorney." Attached to the complaint was a copy of a guaranty agreement executed by the appellant. That agreement includes a paragraph regarding confession of judgment. That paragraph states, in pertinent part, that "Guarantor hereby irrevocably authorizes and empowers any attorney-at-law to appear in any court of record and to confess judgment against Guarantor for the unpaid amount of this Guaranty ***, and to release all errors, and waive all rights of appeal."

¶ 4 On March 3, 2010, judgment was entered against the defendants. On March 15, 2011, the appellant filed a petition to vacate the judgment against him, pursuant to section 2-1401 of the Code. In his petition, the appellant noted that he had not been served with process in the underlying litigation. He asserted that, although his guaranty agreement authorized an attorney to enter a confession of judgment on his behalf in relation to the underlying note, it did not authorize a confession of judgment "without process." Thus, the appellant argued, the attorney who confessed

judgment on his behalf did so without authority, and the judgment ultimately entered against him was void.

¶ 5 On July 28, 2011, after reviewing briefing and hearing argument from the parties, the circuit court denied the appellant's petition. The appellant now timely appeals that judgment.

¶ 6 The appellant argues that the circuit court erred in denying his section 2-1401 petition. "Section 2-1401 establishes a comprehensive, statutory procedure that allows for the vacatur of a final judgment older than 30 days." *People v. Vincent*, 226 Ill. 2d 1, 7, 871 N.E.2d 17 (2008) (citing 735 ILCS 5/2-1401 (West 2002)). "Relief under section 2-1401 is predicated upon proof, by a preponderance of the evidence, of a defense or claim that would have precluded entry of the judgment in the original action and diligence in both discovering the defense or claim and presenting the petition." *Vincent*, 226 Ill. 2d at 7-8. The circuit court here denied the appellant's section 2-1401 motion based on the parties' legal arguments, without hearing evidence, and, on appeal, the parties dispute whether the circuit court acted in accordance with the law. Accordingly, this appeal presents questions of law, which we review *de novo*. See *People v. Vincent*, 226 Ill. 2d at 14-16 (explaining that entry of judgment on the pleadings is reviewed *de novo*).

¶ 7 Here, the appellant's proposed section 2-1401 "defense or claim" is that the attorney who confessed judgment on his behalf acted beyond the authority conferred by the guaranty agreement, because the attorney confessed judgment without the appellant's ever having been served with process. Thus, he argues, neither his confession of judgment nor his waiver of service was valid, and the judgment against him must be vacated. We disagree.

¶ 8 As the circuit court explained, the concept of confession of judgment is codified in section

2-1301(c) of the Code, which provides that "any person for a debt bona fide due may confess judgment by himself or herself or attorney duly authorized, *without process*." (Emphasis added.) 735 ILCS 5/2-1301(c) (West 2010). Although the circuit court based its ruling on this statutory provision, the appellant does not cite it on appeal, much less explain why the court was wrong to interpret the guaranty as invoking it. Nor do we independently see any reasonable interpretation of the guaranty that does not understand it to invoke section 1301(c). Further, as the plaintiff points out in its brief, our supreme court has upheld this statutory procedure for confessing judgments without process. See *First national Bank in DeKalb v. Keisman*, 37 Ill. 2d 364, 366, 265 N.E.2d 662 (1971). For these reasons, we agree with the circuit court that, by executing the guaranty agreement, the appellant authorized an attorney to confess judgment on his behalf without process, as contemplated by section 2-1301(c) of the Code.

¶ 9 In support of another result, the appellant directs us to our supreme court's decision in *Chase v. Dana*, 44 Ill. 262 (1867), a case in which the supreme court held that an attorney had exceeded the scope of his authority when he confessed judgment against the defendant. The facts of that case, however, reveal the a crucial distinction between it and the matter *sub judice*. In *Chase*, the defendant had executed a power of attorney to confess a judgment against him on an April 24, 1846, note, but the attorney attempted to confess judgment on an April 24, 1856, note. *Chase*, 44 Ill. at 262. As the supreme court explained, "[t]he authority was special, and limited to entering an appearance to, and the confession of a judgment on, one particular instrument; and an appearance could not be entered to, or a judgment confessed on, a different instrument." *Chase*, 44 Ill. at 262. Here, by contrast, there is no dispute that the appellant authorized an attorney to act with respect to

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the note underlying this suit. Thus, where the attorney in *Chase* had no authority, the authority of the attorney here was explicit. For that reason, we distinguish *Chase*, and we agree with the circuit court's ruling that the attorney who confessed judgment against the appellant did so with proper authority.

¶ 10 That conclusion forecloses the appellant's second argument, that the circuit court lacked jurisdiction over his person because he was not served with process. As the plaintiff observes in his brief, the attorney who confessed judgment on the defendant's behalf also waived service of process on his behalf. See *Owens v. Snyder*, 349 Ill. App. 3d 35, 40, 811 N.E.2d 738 (2004) ("personal jurisdiction can vest in the trial court if a party, by his actions, consents to or waives personal jurisdiction"); see also *In re M.W.*, 232 Ill. 2d 408, 427, 905 N.E.2d 757 (2009) (noting that an objection to lack of service may be waived).

¶ 11 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 12 Affirmed.