

No. 1-14-2524

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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MILIJANA VLASTELICA, Individually and as	)	Appeal from the
Next Friend of KRISTIAN N. CHEHAIBER,	)	Circuit Court of
	)	Cook County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 10 L 1908
	)	
JEFFREY W. BREND and LEVIN AND BREND, P.C.,	)	Honorable
	)	Kathy M. Flanagan,
Defendants-Appellees.	)	Judge Presiding.

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JUSTICE ROCHFORD delivered the judgment of the court.  
Justices Hall and Lampkin concurred in the judgment.

**ORDER**

*Held:* Circuit court's order denying plaintiff's section 2-1401 petition affirmed on the grounds that the petition was untimely filed and not exempt from the two-year limitation period as it did not raise a meritorious issue of voidness.

¶ 1 Plaintiff, Milijana Vlastelica, individually and as next friend of her minor son, Kristian N. Chehaiber (the minor), appeals from the order denying her petition which was filed pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2012)). We affirm the order of the circuit court because plaintiff failed to file her petition in a timely manner and raise a meritorious issue of voidness.

¶ 2 Plaintiff filed suit against the circuit court-appointed child representative in the underlying divorce action, Jeffrey W. Brend (Mr. Brend), and Mr. Brend's private law firm Levin

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and Brend, P.C. (collectively referred to as defendants) pursuant to section 506(a)(3) of the Illinois Marriage and Dissolution of Marriage Act. 750 ILCS 5/506(a)(3) (West 2010). The complaint generally alleged Mr. Brend did not act in the minor's best interests and included three counts: (1) legal malpractice; (2) intentional breach of fiduciary duty; and (3) intentional interference with plaintiff's custody rights actions. On July 2, 2010, the circuit court granted defendants' motion to dismiss with prejudice pursuant to section 2-619(a)(2) and (a)(9) of the Code (735 ILCS 5/2-619(a)(2), (9) (West 2010)), finding that defendants were absolutely immune from civil liability for Mr. Brend's work performed as child representative. Plaintiff filed a motion to reconsider, which the circuit court denied on August 16, 2010. Plaintiff appealed. On August 8, 2011, this court filed an opinion affirming the dismissal order, holding that Mr. Brend was entitled to absolute immunity for his work performed as the court-appointed child representative. See *Vlastelica v. Brend*, 2011 IL App (1st) 102587 (*Vlastelica I*).

¶ 3 Our supreme court denied plaintiff's petition for leave to appeal on November 30, 2011 (962 N.E.2d 490 (Table) (2011)), and her motion for leave to file a motion to reconsider that denial on January 11, 2012. Plaintiff then filed a petition for a writ of *certiorari* with the United States Supreme Court which was returned as untimely.

¶ 4 On August 8, 2013, plaintiff filed her *pro se* section 2-1401 petition, arguing that the circuit court erred in finding that Mr. Brend was entitled to absolute immunity and in dismissing the case with prejudice. Plaintiff also argued that the appellate court erred in affirming the circuit court's dismissal order. Plaintiff asked the circuit court to vacate the appellate court's opinion affirming the dismissal order and to reinstate the case. Defendants filed a pleading opposing plaintiff's section 2-1401 petition, arguing that the petition was "frivolous," and

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"nothing more than a rehash of the same arguments rejected multiple times by multiple courts."

Defendants requested, therein, that the circuit court deny plaintiff's section 2-1401 petition.

¶ 5 On August 23, 2013, the circuit court entered a preprinted order entitled "case management order," with an "x" marked next to the words, "case stricken from motion call." The order further stated, in handwriting: "[plaintiff's] 2-1401 petition is stricken because the court lacks jurisdiction." No hearing was held prior to the entry of the order. Plaintiff filed her *pro se* notice of appeal on September 20, 2013.

¶ 6 On May 2, 2014, we found that the August 23, 2013, order striking plaintiff's section 2-1401 petition from the motion call (without stating it was "with prejudice") was not a final judgment under Rule 303(a)(1) (Ill. S. Ct. R. 303(a)(1) (eff. June 4, 2008)) and, in the absence of a final judgment, we lacked jurisdiction over plaintiff's appeal. *Vlastelica v. Brend*, 2013 IL App (1st) 133025-U. Accordingly, we dismissed plaintiff's appeal.

¶ 7 On August 1, 2014, plaintiff filed a motion in the circuit court seeking the entry of a final judgment or, in the alternative, to adjudicate the section 2-1401 petition to vacate the judgment and reinstate the case. The circuit court, on August 18, 2014, entered an order denying plaintiff's section 2-1401 petition, with prejudice, in part, because it was untimely. Plaintiff has appealed from that order.

¶ 8 Section 2-1401 of the Code provides a procedure for obtaining relief from final judgments more than 30 days after their entry. 735 ILCS 5/2-1401 (West 2012). 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 the judgment was entered, would have precluded its entry. *In re Marriage of Broday*, 256 Ill. App. 3d 699, 705 (1993).

¶ 9 A petition under section 2-1401 "must be filed not later than 2 years after the entry of the order or judgment" unless the time limitation is tolled on the bases of legal disability, duress, or fraudulent concealment. 735 ILCS 5/2-1401(c) (West 2012). Furthermore, the time limitation does not apply to petitions brought on voidness grounds. 735 ILCS 5/2-1401(f) (West 2012); *McCarthy v. Pointer*, 2013 IL App (1st) 121688, ¶ 12 (citing *Sarkissian v. Chicago Board of Education*, 201 IL 2d 95, 103 (2002)). "The 'two-year period of limitations has been *strictly* construed by the courts, and we cannot, even if the circumstances were believed to warrant it, extend this limitation by judicial fiat.' " (Emphasis in original.) *Parker v. Murdock*, 2011 IL App (1st) 101645, ¶ 16 (quoting *Sidwell v. Sidwell*, 127 Ill. App. 3d 169, 173 (1984)). "Moreover, the fact that a post-judgment motion or an appeal may be pending does not serve to toll the period of limitation." *People v. Caballero*, 179 Ill. 2d 205, 211 (1997) (citing *Sidwell*, 127 Ill. App. 3d at 174).

¶ 10 Our review of the order denying plaintiff's section 2-1401 petition, which was based solely on the pleadings, is *de novo*. *People v. Vincent*, 226 Ill. 2d 1, 18 (2007) ("[W]hen a court enters either a judgment on the pleadings or a dismissal in a section 2-1401 proceeding, that order will be reviewed, on appeal, *de novo*."); *S.I. Securities v. Powless*, 403 Ill. App. 3d 426, 439 (2010) (citing *People v. Vincent*, 226 Ill. 2d at 16) ("[T]he *de novo* standard of review applies to section 2-1401 dispositions where the trial court either dismisses the petition or grants or denies relief based on the pleadings alone.") Therefore, the order denying plaintiff's section 2-1401 petition may be affirmed on any basis in the record, regardless of whether the circuit court relied upon that basis, or whether the circuit court's reasoning was correct. *Rodriguez v. Sheriff's Merit Commission of Kane County*, 218 Ill. 2d 342, 357 (2006).

¶ 11 The circuit court entered the order dismissing plaintiff's suit, with prejudice, on July 2, 2010. Plaintiff filed her section 2-1401 petition on August 8, 2013, just over three years after the entry of the dismissal order. Thus, plaintiff failed to comply with the two-year limitation of section 2-1401(c).

¶ 12 Plaintiff does not dispute that she failed to file her petition within the two-year limitation framework of section 2-1401(c). Further, plaintiff makes no argument under the fraudulent concealment, legal disability, or duress exceptions to the two-year limitation. Instead, she argues that the two-year limitation provision does not apply because her petition was brought pursuant to section 2-1401(f) on voidness grounds. 735 ILCS 5/2-1401(f) (West 2012). We have jurisdiction, as did the circuit court, to determine whether the July 2, 2010, dismissal order is void. *McCarthy*, 2013 IL App (1st) 121688, ¶ 12 (citing *Government Employees Insurance Co. v. Hersey*, 397 Ill. App. 3d 551, 553 (2010)). If the order is not void, we need not proceed further, as the section 2-1401 petition would be barred as untimely. *People v. Hubbard*, 2012 IL App (2d) 101158, ¶ 13.

¶ 13 In *Ford Motor Credit Co. v. Sperry*, 214 Ill. 2d 371 (2005), our supreme court held that a "void order or judgment is, generally, one entered by a court without jurisdiction of the subject matter or the parties, or by a court that lacks the inherent power to make or enter the order involved." *Id.* at , 379-80. However, more recently, our supreme court held that it "hereby reject[s] that portion of *Ford Motor Credit Co.* which defines a void judgment in a civil lawsuit, in part, as one entered by a circuit court which lacks 'inherent power.'" *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 42. The supreme court further held in *LVNV Funding, LLC*:

"A void judgment is one entered by a court without jurisdiction. In a civil lawsuit that does not involve an administrative tribunal or administrative review, jurisdiction consists

solely of subject matter or personal jurisdiction. \*\*\* There is no third type of jurisdiction known as the 'inherent power' to render a judgment." *Id.* ¶ 39.

¶ 14 Accordingly, we consider whether the circuit court here had personal jurisdiction over the parties and subject matter jurisdiction over plaintiff's civil claim for damages against defendants.

¶ 15 Plaintiff filed her suit against defendants in the circuit court of Cook County and appeared before the court in pursuit of her civil claims for damages against defendants. Defendants were served with summonses, filed appearances, and defended against plaintiff's claims. Thus, the circuit court had personal jurisdiction over all parties. *Government Employees Insurance Co.*, 397 Ill. App. 3d at 554 (a circuit court has personal jurisdiction over parties who are served and appear in a case).

¶ 16 "Subject matter jurisdiction is defined solely as the power of a court to hear and determine cases of the general class to which the proceeding in question belongs." *LVNV Funding, LLC*, 2015 IL 116129, ¶ 39. As to civil cases, circuit courts have constitutionally conferred subject matter over all justiciable matters. Ill. Const., 1970, art. VI, § 9; *LVNV Funding, LLC*, 2015 IL 116129, ¶ 35. Plaintiff brought this civil suit for damages against defendant in the law division of the circuit court of Cook County. The issue as to whether defendants were absolutely immune from civil liability as the court-appointed representative was raised by defendants' motion to dismiss those claims pursuant to section 2-619(a)(2), (9) of the Code. 735 ILCS 5/2-619(a)(2), (9) (West 2010). Such an issue is properly raised under section 2-619(a)(9). See *Meyer v. McKeown*, 266 Ill. App. 3d 324, 325 (1994) (citing *Geick v. Kay*, 236 Ill. App. 3d 868, 875 (1992) (finding a motion to dismiss based on the affirmative defense of absolute privilege may be brought under section 2-619(a)(9)). The circuit court, therefore, had subject-matter jurisdiction over plaintiff's civil claims for damages against defendants and over

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the issue of whether Mr. Brend was protected by absolute immunity as a court-appointed child representative in a domestic relations suit.

¶ 17 Plaintiff argues that the circuit court "did not have the inherent authority to award common-law absolute immunity" to Mr. Brend and therefore that the dismissal order was void. As discussed, though, our supreme court in *LVNV Funding, LLC* rejected its prior holding in *Ford Motor Credit Co.* defining a void judgment in a civil lawsuit, in part, as one entered by a circuit court which lacks inherent power. Rather, the question of whether a judgment is void depends solely on whether it was entered by a court without personal or subject matter jurisdiction. *LVNV Funding, LLC*, 2015 IL 116129, ¶39. As discussed, the circuit court here possessed both personal and subject matter jurisdiction and, thus, the dismissal order was not void.

¶ 18 Further, the outcome of this appeal would not change even if we were to consider plaintiff's argument that the circuit court lacked the inherent authority to award common-law absolute immunity to Mr. Brend. It is entirely within a court's authority to determine whether a defendant is protected from suit by common-law immunity. See *Cleavinger v. Saxner*, 474 U.S. 193, 200-01 (1985) (citing line of cases which determined the applicability of absolute immunity in various contexts). Plaintiff is, in essence, arguing that the circuit court erred in finding that Mr. Brend was protected from liability as the court-appointed child representative. However, a court does not "lose jurisdiction because it makes a mistake in determining either the facts, the law or both." *People v. Davis*, 156 Ill. 2d 149, 156 (1993). In any event, in *Vlastelica I*, we found the circuit court was correct in dismissing plaintiff's suit in that Mr. Brend enjoyed absolute immunity as the court-appointed child representative, an arm of the court, in the domestic relations matter.

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¶ 19 The circuit court had personal and subject-matter jurisdiction to determine whether Mr. Brend was protected from liability as set forth in defendants' motion to dismiss. Thus, the order dismissing plaintiff's suit was not void.

¶ 20 Because the dismissal order was not void, plaintiff's petition was not timely filed within the two-year limitation provision of section 2-1401(c). We need not consider the other arguments presented by the parties on appeal. The circuit court properly denied plaintiff's petition as tardy.

¶ 21 Affirmed.