

2026 IL App (3d) 250524-U
No. 3-25-0524
Order filed October 22, 2026

NOTICE: This order was filed under Illinois Supreme Court Rule 23 and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

BANK OF AMERICA, N.A., Plaintiff-Appellee,

v.

EDWARD HAMBRICK, Defendant-Appellant

Appeal from the Circuit Court of Will County.
Honorable Jeffrey J. Tuminello, Judge, Presiding.
No. 25-SC-2908

JUSTICE DAVENPORT delivered the judgment of the court.
Justices Holdridge and Anderson concurred in the judgment.

ORDER

- ¶ 1 *Held:* The circuit court properly denied defendant's petition for relief from judgment. The court did not err when it denied defendant's request for a *nunc pro tunc* correction of the record. Defendant forfeited his claims that his constitutional rights to due process and free access to the courts were violated. Affirmed.
- ¶ 2 Plaintiff, Bank of America, N.A., sued defendant, Edward Hambrick, to recover an unpaid credit card balance. The circuit court entered a default judgment in plaintiff's favor, and it later denied defendant's petition to vacate the judgment under section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2024)).

¶ 3 Defendant appeals, contending the circuit court abused its discretion in denying his petition and erroneously denied his request for a *nunc pro tunc* “correction of the record.” He also contends the circuit clerk violated his constitutional rights to due process and free access to the courts. We affirm.

¶ 4 I. BACKGROUND

¶ 5 A. Prejudgment Proceedings

¶ 6 In April 2025, plaintiff filed a small claims action against defendant, alleging defendant had failed to pay a \$2,592.43 balance that was due on his credit card account. The circuit clerk, at plaintiff’s request, issued a summons with a return date of June 13, 2025, the same day.

¶ 7 Defendant was served with the summons and complaint on May 3, 2025. Later that month, he mailed the circuit clerk two documents titled (1) “non-negotiable notice of acceptance and request for performance from accommodation parties [sureties] ‘Andrea Lynn Chasteen’ ‘et al.’ ”; and (2) “non-negotiable notice and demand for cross-claim against attorney for plaintiff ‘et al.’ ”¹ The “non-negotiable notice of acceptance” was file-stamped on May 27, 2025. In both documents, defendant stated he was “here by special appearance.”

¶ 8 On June 13, 2025, the parties appeared before the circuit court. Defendant identified himself and stated he was “appearing today by special appearance, not general appearance” and that he “reserve[d] all [his] rights under UCC 1-308 without prejudice.” Defendant asked the court to “close the account” and discharge the matter. The court ordered defendant to file an appearance by July 11, 2025, and continued the matter to July 29, 2025, for a bench trial. The court tendered a copy of the order to defendant and warned him that the failure to file an appearance as ordered

¹The titles of these documents, as well as other documents defendant submitted throughout these proceedings, were typed in all caps typeface. We have reproduced them in lowercase typeface to aid readability.

would likely result in a default judgment on the trial date. Defendant did not file an appearance as ordered.

¶ 9 On July 11, 2025, plaintiff moved for a default judgment, which was scheduled for presentment on July 21, 2025. Plaintiff sent notice of the hearing to defendant.

¶ 10 Thereafter, defendant mailed the circuit clerk a “special and limited appearance objecting to jurisdiction,” an accompanying memorandum, and several other documents. The documents were dated July 11, 2026, and file-stamped on July 16, 2025. In his “special appearance” mailing, defendant asserted the court lacked both subject-matter and personal jurisdiction. Defendant also stated he did not tender any filing fees with his submission, “as payment would constitute a voluntary submission to jurisdiction.”

¶ 11 On July 21, 2025, plaintiff presented its motion for default judgment. Defendant did not appear. The court continued the matter to July 29, 2025, for a hearing on the motion, directing plaintiff to give notice of the order to defendant. The next day, plaintiff sent notice as directed.

¶ 12 On July 28, 2025, plaintiff filed a new motion for default judgment, noting defendant had not filed his appearance as of July 22, 2025.² Plaintiff included an alternative request for dismissal without prejudice because the witness who could substantiate the complaint’s allegations had been “assigned to cover other legal matters” for plaintiff.

¶ 13 On July 29, 2025, the matter was called for trial and a hearing on plaintiff’s default motion. Plaintiff appeared, and defendant did not. Accordingly, no trial was held, and the court entered a default judgment against defendant, awarding plaintiff \$2,592.43 plus \$384.96 in costs.

¶ 14 B. Postjudgment Proceedings

²Plaintiff filed a notice of hearing on July 22, 2025, stating that its new default motion would be presented on July 29, 2025. The motion file-stamped until July 28, 2025.

¶ 15 On August 28, 2025, defendant used the court’s electronic filing system for the first time. He filed an appearance, signed “without prejudice,” along with a fee-waiver application. The court granted the fee waiver.

¶ 16 On September 18, 2025, defendant electronically filed a “Motion to Vacate Default Judgment.” He stated his motion was brought under section 2-1301(e) of the Code (735 ILCS 5/2-1301(e) (West 2024)) and, “in the alternative,” section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2024)).

¶ 17 In the section 2-1401 portion of his motion, defendant seemingly asserted the court lacked jurisdiction over him. He also stated, without alleging any specific facts, as follows:

“Plaintiff’s counsel acted as a debt collector and is subject to the Fair Debt Collection Practices Act ([‘]FDCPA[’]) [citation]. Their conduct—including misrepresentation of the amount and character of the debt, initiated suit in an improper venue, and using unfair litigation practices—violated [sections] 807, 808, and 811 of the FDCPA. The U.S. Supreme Court in *Heintz v. Jenkins*, 514 U.S. 291 (2005), confirmed that attorneys engaged in debt collection are bound by the FDCPA. These violations provide an independent meritorious defense and further justify vacating the default judgment.”

Defendant did not address his failure to appear at the July 11, 2025, hearing on plaintiff’s motion for default or his failure to appear on the July 29, 2025, trial date.

¶ 18 As part of his petition, defendant also requested a “*nunc pro tunc* order to correct the docket and record so that it reflects the true and accurate history of [his] filings.” Defendant listed several documents that he had mailed to the circuit clerk but were not filed or that were filed but he believed were stamped with an incorrect date. Defendant attached the documents, proof that he

had mailed the documents, and correspondence from the circuit clerk stating the reason some of the documents were being returned to him without being filed. These included the following:

- (1) his May 2025 mailing with a May, 27, 2025, file stamp (*supra* ¶ 7), which, according to a return receipt, was actually received by the clerk on May 23, 2025;
- (2) a “non-negotiable notice of special appearance demanding dismissal of plaintiff’s suit with prejudice for failure to state a claim for which relief may be granted and notice for cross-claim against attorney for plaintiff for cause”, mailed on June 4, 2025;
- (3) a “non-negotiable notice of acceptance,” mailed on June 4, 2025;
- (4) a “notice of inquiry to the clerk of court respecting failure to file form 1066 and form 1120 to account for taxes mandated to be paid on qualified mortgages and foreclosed property acquired by real estate mortgage investment conduits on ‘startup day,’ ” mailed on June 4, 2025;
- (5) his July 2025 mailings, file-stamped on July 16, 2025 (*supra* ¶ 10), which “were returned without docket entry”;
- (6) a “notice to the clerk of court for record correction,” mailed on August 15, 2025, and returned to defendant on August 27, 2025;
- (7) a “special and limited appearance in equity only” and “notice of motion to vacate default judgment” (combined into one document), mailed on August 15, 2025, and returned to defendant on August 27, 2025; and
- (8) a “notice of fault and dishonor,” mailed on August 15, 2025, and returned to defendant on August 27, 2025.

¶ 19 At the hearing on the motion to vacate, the parties’ arguments initially focused on whether section 2-1301 was applicable, as defendant’s motion was filed on September 18, 2025, more than

30 days after the default judgment was entered. Defendant asserted he had previously submitted a motion to vacate within 30 days of the default judgment, which was rejected by the clerk. Neither plaintiff nor defendant raised any argument with respect to the section 2-1401 portion of defendant's motion.

¶ 20 The court denied the motion, and this appeal followed.

¶ 21 II. ANALYSIS

¶ 22 Preliminarily, we note that while the "Motion to Vacate Default Judgment" requested relief under sections 2-1301(e) and 2-1401 of the Code, defendant raises no section 2-1301(e) argument on appeal. We therefore limit our analysis to whether the court properly denied the section 2-1401 portion of defendant's motion. Relatedly, because proceedings under section 2-1401 are initiated by the filing of a petition (see 735 ILCS 5/2-1401(a) (West 2024)), we will refer to defendant's "motion" as a petition throughout our analysis.

¶ 23 A. The Court Properly Denied Defendant's Section 2-1401 Petition

¶ 24 Defendant first contends the circuit court abused its discretion when it denied his section 2-1401 petition. Section 2-1401 of the Code allows a party to petition the court to vacate a final judgment more than 30 days old. 735 ILCS 5/2-1401 (West 2024). When seeking relief under this section, the party must set forth specific factual allegations establishing (1) the existence of a meritorious defense or claim, (2) due diligence in presenting the defense or claim to the circuit court in the original action, and (3) due diligence in filing the petition. *Warren County Soil and Water Conservation District v. Walters*, 2015 IL 117783, ¶ 51. "The quantum of proof necessary to sustain a section 2-1401 petition is a preponderance of the evidence." *Id.* When, as here, a defendant raises a fact-based challenge in a 2-1401 petition, we review the court's decision for an abuse of discretion. *Id.*

¶ 25 Defendant's petition failed to set forth any specific factual allegations to support the existence of a meritorious defense. In his petition, defendant asserted he had meritorious defenses under sections 807, 808, and 811 of the Federal Debt Collection Practices Act (15 U.S.C. §§ 1692e, 1692f, 1692i). Even assuming defendant's purported meritorious defenses under the Fair Debt Collection Practices Act "would defeat *** plaintiff's claim in the underlying action" (*Erickson v. Mitrione*, 2025 IL App (4th) 250297, ¶ 23 (internal quotation marks omitted)), defendant's petition failed to set forth any specific facts to establish those defenses. Indeed, defendant failed to state any facts establishing that plaintiff used false, deceptive, or misleading representations in connection with collecting the debt (*id.* § 1692e); used unfair or unconscionable means to collect or attempt to collect the debt (*id.* § 1692f); or brought the action in an improper venue (*id.* § 1692i).

¶ 26 Moreover, defendant's petition failed to set forth any facts to establish he acted diligently in the original action. "Due diligence requires the section 2-1401 petitioner to have a reasonable excuse for failing to act within the appropriate time." *Smith v. Airoom*, 114 Ill. 2d 209, 222 (1986). "Specifically, the petitioner must show that his failure to defend against the lawsuit was the result of an excusable mistake and that under the circumstances he acted reasonably, and not negligently, when he failed to initially resist the judgment." *Id.*

¶ 27 To establish his diligence in the original action, defendant relies on the various documents he filed or unsuccessfully attempted to file. He argues his unsuccessful attempts to file these documents "demonstrate active engagement and compliance attempts, not neglect."

¶ 28 Putting aside defendant's filings and attempted filings, defendant failed to appear in court at two critical hearings, despite having notice that plaintiff was seeking a default judgment. First, he failed to appear on July 21, 2025, when plaintiff presented its motion for default judgment, despite having received notice of that motion and hearing. The circuit court declined to enter a

default judgment on that date and instead entered and continued the motion to the previously scheduled trial date, July 29, 2025. On that date, however, defendant again failed to appear, despite having notice. In his section 2-1401 petition, defendant failed to offer *any* excuse, let alone a reasonable excuse, for not appearing on those two dates. *Id.*

¶ 29 As a final note on this issue, defendant was operating throughout these proceedings under the misunderstanding that filing an appearance and either paying the appearance fee or obtaining a fee waiver would waive his jurisdictional objections. Defendant’s understanding has not been the law for 25 years. See *KSAC Corp. v. Recycle Free, Inc.*, 364 Ill. App. 3d 593, 594-97 (2006) (explaining the effect of a 2001 amendment to section 2-301 of the Code). Indeed, “[f]iling a written appearance and paying an appearance fee do not waive an objection to personal jurisdiction, because neither of those acts involves a responsive pleading or a motion (which are the only kinds of acts that can cause a waiver ***).” *Id.* at 596.

¶ 30 Because defendant failed to allege any facts in his petition that would support a finding of a meritorious defense and diligence in the original action, we cannot say the circuit court’s decision to deny his petition was unreasonable. See *Walters*, 2015 IL 117783, ¶ 51; see also *Seymour v. Collins*, 2015 IL 118432, ¶ 41 (an abuse of discretion occurs when the circuit court’s decision is unreasonable). Accordingly, we affirm the circuit court’s denial of defendant’s petition.

¶ 31 *B. Nunc Pro Tunc* “Correction of the Record”

¶ 32 Defendant next contends the circuit court erred when it denied his request to order a *nunc pro tunc* “correction of the record.” A *nunc pro tunc* order is used to correct an order or judgment so that it conforms to the judicial action that was actually taken. See *People v. Melchor*, 226 Ill. 2d 24, 32 (2007). Our supreme court has explained “the use of *nunc pro tunc* orders or judgments is *limited* to incorporating into the record something which was actually previously

done *by the court* but inadvertently omitted by clerical error.” (Emphases added.) *Id.*; see *Peraino v. County of Winnebago*, 2018 IL App (2d) 170368, ¶ 16 (“*nunc pro tunc* orders incorporate into the record *judicial actions* taken by the court that were inadvertently omitted due to a clerical error” (emphasis added)). “[S]uch a correction must be based on a note, memorandum, or paper remaining in the record, and it cannot rest on a recollection of an individual or on a new affidavit or testimony.” *Id.* We review *de novo* the circuit court’s determination whether to grant a *nunc pro tunc* order. *Johnson v. Target Stores, Inc.*, 341 Ill. App. 3d 56, 68 (2003).

¶ 33 Here, defendant’s request for a *nunc pro tunc* order was not aimed at incorporating into the record a judicial action that was previously done but inadvertently omitted due to a clerical error. And defendant’s request for a correction was not based on a note, memorandum, or paper already in the circuit court record. As such, there was no basis for a *nunc pro tunc* order, and the circuit court properly denied defendant’s request.

¶ 34 Further, we note the circuit clerk was not required to file any of the documents defendant mailed for filing. Rule 9 requires that all documents in civil cases—except for certain types of documents not at issue here—must be filed electronically, unless the filer obtains an e-filing exemption on good cause shown. Ill. S. Ct. R. 9(a), (d) (eff. May 29, 2026). Defendant never obtained an e-filing exemption. Thus, defendant was required to file all his documents electronically. He did not do so until well after the entry of the default judgment. Thus, the clerk properly returned the mailed documents without filing them.

¶ 35 We acknowledge the circuit clerk may have sent defendant mixed messages by accepting and filing some of his mailings and then refusing others based on his failure to pay an appearance fee or failure to electronically file them. In any event, we fail to see how the circuit clerk’s alleged improper refusal to file and docket defendant’s mailings would require us to reverse the circuit

court's judgment. Even if all of defendant's various mailings were filed, that would not change the fact that defendant failed to appear on the trial date to raise his jurisdictional objections and purportedly meritorious defenses.

¶ 36 C. Defendant's Constitutional Claims Are Forfeited

¶ 37 Finally, we reject defendant's claims that he was denied his constitutional rights to due process and to free access to the courts when the clerk refused to file any of the documents he submitted before he obtained his fee waiver. Defendant failed to raise these claims in the circuit court, other than one fleeting reference to due process. As a result, he has forfeited his constitutional claims, and we need not address them further. See *e.g.*, *Colatorti v. Republican Legislative Committee for Twenty-Sixth Legislative District*, 2026 IL App (2d) 250230, ¶ 45.

¶ 38 III. CONCLUSION

¶ 39 We affirm the judgment of the circuit court of Will County.

¶ 40 Affirmed.