Illinois Official Reports

Appellate Court

Casteel v. Jiminez, 2022 IL App (1st) 201288

Appellate Court Caption	EARL R. CASTEEL, Plaintiff-Appellee, v. THADDEUS RICHARDO JIMINEZ, Defendant-Appellant.
District & No.	First District, Fifth Division No. 1-20-1288
Filed	March 25, 2022
Decision Under Review	Appeal from the Circuit Court of Cook County, No. 15-L-9370; the Hon. Gregory Wojkowski, Judge, presiding.
Judgment	Affirmed.
Counsel on Appeal	Richard M. Craig, of Law Offices of Richard M. Craig, P.C., of Chicago, for appellant. No brief filed for appellee.
Panel	PRESIDING JUSTICE DELORT delivered the judgment of the court, with opinion. Justices Hoffman and Connors in the judgment and opinion.

OPINION

¶ 1 BACKGROUND

¶ 2 Defendant, Thaddeus Richardo Jiminez, appeals from the circuit court's order that dismissed his petition filed pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2014)). We affirm.

¶ 3 FACTS

¶ 4 On September 24, 2015, plaintiff, Earl R. Casteel, filed a two-count complaint in the circuit court of Cook County, seeking damages against Jiminez. The complaint alleged that, about a month earlier, Jiminez "was conducting illegal activities" on a street in Chicago and had intentionally shot Casteel in both legs. Count I was a common-law claim for negligence; count II was a common-law battery claim under a theory of willful, wanton, or reckless conduct. The complaint was accompanied by a court form on which a box was checked indicating that plaintiff desired a trial by jury.

¶ 5 In October, 2015, Jiminez was personally served with the summons and complaint by the Kankakee County Sheriff. In February, 2016, attorney Steven Greenberg appeared for Jiminez. The appearance was also accompanied by a court form upon which a box was checked indicating that Jiminez desired a trial by jury. In the meantime, both state and federal prosecutors had charged Jiminez with various crimes in connection with the incident involving Casteel. Jiminez moved to stay this tort case pending the resolution of the criminal prosecutions. The motion for stay was entered and continued to a future date to coincide with a case management conference, but never actually resolved.

¶ 6 Casteel then filed a motion for partial summary judgment. In that motion, Casteel alleged that Jiminez had pleaded guilty in the United States District Court for the Northern District of Illinois to the offense of possession of a firearm by a convicted felon in connection with the incident in question and that, at the plea hearing, Jiminez had there stated in open court: "I shot individual A. He was on foot on the street." The federal court accepted Jiminez's plea and entered a finding of guilty. Casteel's motion further alleged that he, Casteel, was the "individual A" to whom Jiminez referred during his guilty plea. The motion included a copy of the transcript of the plea hearing, and an affidavit from Casteel describing his injuries and the medical expenses he incurred as the result of the shooting. Based on Jiminez's judicial admission during the federal plea hearing, Casteel requested partial summary judgment in his favor on the issue of liability. At the previously scheduled case management conference, the circuit court granted Jiminez time to respond to the motion, "by agreement." The record, however, contains no response to the motion ever filed by Jiminez.

¶ 7 On the date set for hearing on the motion, the circuit court entered an order noting that Casteel's attorney was present, but Jiminez's attorney was not, and it continued the motion for a future date. Then, on the later date, the court entered an order stating, "Plaintiff's motion for summary judgment is granted *instanter*. Defendant Jiminez is solely liable for the intentional tort committed on plaintiff as pled in the complaint at law," and continuing the case for a future case management conference. The court then entered orders from time to time that, *inter alia*, granted leave to take discovery and set the case for trial. These orders do not indicate whether anyone appeared for defendant when they were entered.

¶ 8 On December 9, 2016, the circuit court entered an order reciting that the case came before it for "trial and prove up" and that it had heard "testimony orally and by evidence deposition." The court entered judgment in favor of Casteel and against Jiminez for $6,351,900, which was the aggregate total of smaller awards for various elements of damages such as medical care, emotional distress, and the like. The court ordered that a copy of the judgment be mailed to attorney Greenberg within seven days. The order further states: "The court retains jurisdiction in this matter & this case is hereby dismissed."

¶ 9 A little more than a month later, Casteel filed numerous citations to discover assets to various financial institutions, companies, and persons, including Jiminez. Over the next two years, the case returned to the circuit court many times, as Casteel continued his efforts to collect on the judgment by attaching Jiminez's assets. Along the way, Casteel requested that the court issue a rule to show cause against Jiminez for his failure to appear in response to a citation served on him.

¶ 10 On December 18, 2019, attorney Richard Craig filed an appearance for Jiminez, that contained a handwritten notation stating "Defendant maintains and reiterates his jury demand filed on February 11, 2016." At the same time, Craig filed a petition pursuant to section 2-1401(f) of the Code (*id.* § 2-1401(f)), alleging that the December 9, 2016, prove-up hearing was "void" because the circuit court heard testimony on damages without a jury, although Jiminez had never withdrawn his jury demand. The lack of a jury trial was the sole basis for vacating the judgment raised in the section 2-1401 petition. The court set a briefing schedule and future hearing date on the petition.

¶ 11 Casteel filed a memorandum in opposition to the section 2-1401 petition, asserting that (1) Jiminez's motion to stay was never granted or even heard, so the case had not been stayed, (2) Jiminez "agreed" to "answer" the motion for partial summary judgment by August 5, 2016, (3) Jiminez did not respond to the motion and did not appear at either the August 16, 2016, or September 7, 2016, hearings on the motion, (4) on September 21, 2016, correspondence "was sent" to Greenberg indicating that the case was set for a December 9, 2016, "*Bench Trial*" (emphasis in original), (5) the trial was held and Jiminez did not appear, and (6) a copy of the judgment order was sent to Greenberg as the court had ordered.[1] Casteel also argued that the section 2-1401 petition was filed well after the applicable two-year statute of limitations (as provided in section 2-1401(c) of the Code (*id.* § 2-1401(c))) and that the exception allowing section 2-1401 petitions filed more than two years after a judgment if they sought to attack void judgments did not apply because the judgment order was not void.

¶ 12 In reply, Jiminez argued that the circuit court ordered that the matter be set for "trial," not "bench trial," as set forth in Casteel's notice to Jiminez. Jiminez admitted that he did not appear at the trial but argued that his absence did not vitiate his valid jury demand.

¶ 13 On October 29, 2020, the circuit court entered a 22-page memorandum opinion and order dismissing Jiminez's section 2-1401 petition. As is relevant here, the court recited that

[1]Casteel's response memorandum refers to 11 attached exhibits supporting these assertions, but the exhibits are not in the copy of the memorandum contained in the record before us. On appeal, the appellant has the burden to provide a complete record for review in the appellate court to support a claim of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391 (1984). If the appellant does not do so, this court will "presume[ ] that the order entered by the [circuit] court was in conformity with law and had a sufficient factual basis." *Id.* at 392.

(1) Jiminez's motion for stay had never been heard or granted and (2) Greenberg did not appear at the August 16 or September 17, 2016, hearings on the motion for partial summary judgment or at the bench trial and did not file any response to the motion.

¶ 14 The circuit court also recited the facts adduced at the prove-up hearing in painstaking detail, noting that the memorandum opinion and order would function as a bystander's report pursuant to Illinois Supreme Court Rule 323 (eff. July 1, 2017). The court summarized the testimony of Casteel and the mother of his six children, and the evidence depositions of various medical providers. At the conclusion of the presentation of evidence, Casteel requested an aggregate judgment exceeding $25 million. The court awarded $6,351,900, itemized as follows: $200,000 for disfigurement scars; $151,900 for medical bills, $1 million for pain and suffering; $1 million for loss of normal life; $1 million for emotional damages; and $3 million for punitive damages. The court noted that counsel for Casteel had complied with its directive that a copy of the judgment order be sent to Greenberg.

¶ 15 The circuit court also stated that at the bench trial, Casteel's attorney noted that Jiminez had been convicted of a murder about 10 years before the incident involving Casteel but that the conviction was eventually vacated. Jiminez sued for the wrongful conviction and received about $25 million in damages. The court further recited that plaintiff did not request a jury trial and that, at trial, it did not inquire if any jury demand was ever filed.

¶ 16 On the merits of the section 2-1401 petition, the circuit court found that its previous determination of liability on the motion for partial summary judgment was fully supported by Jiminez's guilty plea, which amounted to a judicial admission of liability in this civil case. The court also determined that the petition was not actually one attacking the judgment as being void. Rather, the court held, the petition actually attacked the judgment because the presence of a valid jury demand constituted "new facts" not known to the court at the time it entered the judgment. Having so construed the petition, the court dismissed it on several mutually independent grounds: (1) it was time-barred and did not fall within the voidness exception to the two-year limitation period, (2) it failed to demonstrate Jiminez's due diligence, (3) it did not set forth any meritorious defense, and (4) Jiminez waived his jury demand. Explaining its waiver determination, the court cited *Puglisi v. Hansford*, 193 Ill. App. 3d 803, 807 (1990), which held that a "nonappearing party's actions may constitute a waiver of his previously asserted right [to a jury trial]" and allow a default judgment to be entered by the court when the party fails to appear for trial. The court concluded that Greenberg had made a "tactical decision" to "not respond" to the judgment order, which "clearly indicated" that it was the result of a bench, not jury, trial. This, and other "tactical decisions" by Greenberg, "knowingly waived Jiminez's right to a jury trial," and to rule otherwise would "unfairly game the system."

¶ 17 Accordingly, the circuit court dismissed the section 2-1401 petition. This appeal followed.

¶ 18 ANALYSIS

¶ 19 Casteel has not filed a brief on appeal. However, the issues and record are straightforward, and we will address the merits of the appeal in accordance with the standards of *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128 (1976).

¶ 20 At the outset, we note that the parties committed a common error when litigating the section 2-1401 petition. A section 2-1401 petition is the initial pleading in a new proceeding, rather than a pleading seeking relief in the midst of an ongoing case. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 102 (2002). Because it is an initial pleading, a section 2-1401 petition

is "procedurally the counterpart of a complaint and subject to all the rules of civil practice that that character implies." *Blazyk v. Daman Express, Inc.*, 406 Ill. App. 3d 203, 207 (2010). Casteel should not have filed a memorandum in opposition to the section 2-1401 petition, but instead should have pleaded to it as if it were a complaint, such as by filing an answer, or a motion under section 2-615 or 2-619 of the Code. See 735 ILCS 5/2-615, 2-619 (West 2014). The parties and the circuit court treated the petition as if it were a motion filed in the normal course of litigation. Again, we find that this error was not fatal. The content of a pleading governs over its label. *In re Haley D.*, 2011 IL 110886, ¶ 67. The memorandum in opposition and the reply were the functional equivalents of briefs on a motion to dismiss, so they sufficed to frame a strictly legal question for the circuit court and this court. See *Studentowicz v. Queen's Park Oval Asset Holding Trust*, 2019 IL App (1st) 181182, ¶ 9.

¶ 21 On appeal, Jiminez concedes that he filed his section 2-1401 petition more than two years after the judgment, but he contends that the limitation period was inapplicable because the underlying judgment was void. We review orders dismissing a section 2-1401 petition *de novo*. *PNC Bank, National Ass'n v. Kusmierz*, 2022 IL 126606, ¶ 10.

¶ 22 Section 2-1401 of the Code provides a method by which a litigant can collaterally attack a judgment previously entered in a case. In *Aurora Loan Services, LLC v. Pajor*, 2012 IL App (2d) 110899, ¶ 15, the court explained that there are three types of section 2-1401 petitions:

> "The most familiar is the 'new facts' type, exemplified by *Smith v. Airoom, Inc.*, 114 Ill. 2d 209 (1986). Also familiar is the petition to vacate a void judgment as described in *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95 (2002). A third type, based on errors of law apparent on the face of the record, is now rare, but remains viable. *Collins* [*v. Collins*, 14 Ill. 2d 178 (1958),] contains the best description of this kind of petition."

¶ 23 "As a general rule, petitions brought pursuant to section 2-1401, to be legally sufficient, must be filed within two years of the order or judgment, the petitioner must allege a meritorious defense to the original action, and the petitioner must show that the petition was brought with due diligence." *Sarkissian*, 201 Ill. 2d at 103. Jiminez filed his section 2-1401 petition in 2019, more than two years after the circuit court entered the judgment against him in 2016. Despite the general two-year limitation period, however, a party may bring a section 2-1401 petition challenging a judgment on the basis that it was void at any time, and the voidness allegation substitutes for the meritorious defense and due diligence requirements. *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 11. A party may challenge a judgment as being void at any time, either directly or collaterally, and the challenge is not subject to forfeiture or other procedural restraints. *Id.* ¶ 38. The sole basis upon which the petition relies to vacate the judgment is that it was void. A judgment is not void unless it suffers from "the most fundamental defects, *i.e.*, a lack of personal jurisdiction or lack of subject matter jurisdiction." *Id.*

¶ 24 Personal jurisdiction is established either by effective service of process or by a party's voluntary submission to the court's jurisdiction. *In re Marriage of Verdung*, 126 Ill. 2d 542, 547 (1989). There is no dispute here that the circuit court had personal jurisdiction over Jiminez since he had been duly served with process within the State of Illinois and his attorney had filed an appearance and was active in the case for a time.

¶ 25 Likewise, the circuit court clearly had subject matter jurisdiction over this dispute. "Subject matter jurisdiction" refers to the power of a court to hear and determine cases of the general class to which the proceeding in question belongs. *Belleville Toyota, Inc. v. Toyota Motor*

Sales, U.S.A., Inc., 199 Ill. 2d 325, 334 (2002) (citing cases). "Circuit courts are courts of general jurisdiction and enjoy a presumption of subject matter jurisdiction ***." *Gruszeczka v. Illinois Workers' Compensation Comm'n*, 2013 IL 114212, ¶ 13. The unauthorized touching of the person of another constitutes a battery at common law. *In re Estate of Allen*, 365 Ill. App. 3d 378, 385 (2006); see also *LaMonte v. City of Belleville*, 41 Ill. App. 3d 697, 705 (1976) (holding that a shooting victim had a valid claim against shooter for common-law assault and battery). The complaint alleged two common-law claims for a tort committed upon an Illinois resident within the State of Illinois. Since circuit courts have general jurisdiction over common-law tort claims (see *Blount v. Stroud*, 232 Ill. 2d 302, 314 (2009)), the circuit court clearly had general jurisdiction here.

¶ 26 Jiminez nonetheless argues that the failure to honor a jury demand itself renders a judgment void, thus excusing compliance with the usual two-year limitation period, even if the court clearly had personal or subject matter jurisdiction. We find our supreme court's analysis in *LVNV Funding* to be instructive. There, the court rejected a section 2-1401 petition based on lack of due diligence, rather than on the two-year limitation at issue here. A defendant filed a section 2-1401 petition attacking a judgment entered in favor of a debt collection agency that, it turned out, was not duly licensed to collect debts. The lack of licensure, the court found, might have constituted a valid basis upon which to attack the judgment. *LVNV Funding*, 2015 IL 116129, ¶ 40. But the court rejected the defendant's claim that the agency's lack of licensure rendered the judgment in its favor void. The court stated that (1) "whether a judgment is void or voidable presents a question of jurisdiction"; (2) "if jurisdiction is lacking, any subsequent judgment of the court is rendered void and may be attacked collaterally"; and (3) a voidable judgment is an erroneous judgment entered by a court that possesses jurisdiction. (Internal quotation marks omitted.) *Id.* ¶ 27. It further explained:

> "In this case, the circuit court possessed jurisdiction over both the parties and the subject matter when LVNV filed its debt collection lawsuit. To be sure, LVNV's failure to register as a debt collection agency was error. And that error, if raised in a timely fashion, might have warranted dismissal of LVNV's lawsuit by the circuit court, merited reversal on direct appeal, or justified setting aside the final judgment under section 2-1401 if the requirements of that provision, such as due diligence, were established. But any error in failing to register did not deprive the circuit court of jurisdiction. Therefore, the circuit court's judgment is not void." *Id.* ¶ 40.

¶ 27 The *LVNV Funding* court did not explicitly determine whether a defect of the "most fundamental" type was a third type of basis for voidness or whether it merely described lack of personal or general jurisdiction. However, it did strongly suggest the answer to that question was "no," stating: "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." (Emphasis added.) *Id.* ¶ 39.

¶ 28 Our supreme court has explained that

> "[t]he purpose of a statute of limitation is to discourage the presentation of stale claims and to encourage diligence in the bringing of actions. [Citation.] Statutes of limitation and repose represent society's recognition that predictability and finality are desirable, indeed indispensable, elements of the orderly administration of justice [citation] that must be balanced against the right of every citizen to seek redress for a legally

recognized wrong." *Sundance Homes, Inc. v. County of Du Page*, 195 Ill. 2d 257, 265-66 (2001).

In light of our supreme court's reluctance to specifically establish a third class of void judgments other than the two familiar ones of general and special jurisdiction, we decline to create one ourselves. The error of conducting a bench, rather than jury, trial here simply falls outside the scope of the relief a court can grant under section 2-1401. The exception for void judgments does not apply because the circuit court had both subject matter and general jurisdiction. We therefore find the circuit court did not err in dismissing the section 2-1401 petition on the basis that it was time-barred. For these reasons, Jiminez's contentions of error fail.

¶ 29 CONCLUSION

¶ 30 Because the section 2-1401 petition was time-barred and the underlying judgment was not void, we affirm the circuit court's judgment dismissing the petition.

¶ 31 Affirmed.