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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

JOHN MICHELINI,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant/Cross-Appellee,	)	Cook County.
	)	
v.	)	No. 2023 L 2122
	)	
UCAN,	)	
	)	Honorable
Defendant-Appellee/Cross-Appellant.	)	Stephanie D. Saltouros,
	)	Judge, presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Gamrath and Justice C.A. Walker concurred in the judgment.

ORDER

¶ 1 *Held:* Circuit court's denial of defendant's motion to quash was erroneous where service of process was completed by an individual other than the one appointed by court order. Consequently, the default judgment entered against defendant was void for lack of personal jurisdiction. Because the default judgment was void, plaintiff's appeal of the order granting defendant's 2-1401 petition (735 ILCS 5/2-1401 (West 2024)) is dismissed as moot.

¶ 2 I. INTRODUCTION

¶ 3 In this case, we consider whether service strictly complied with the statute governing service (735 ILCS 5/2-202 (West 2022)) where the circuit court appointed a private investigator under a private detective agency’s license number, but a different employee of that agency served the defendant.¹ This case hinges on a single word. Plaintiff requested the appointment of a private detective agency “and” a private investigator employed by that agency. However, the entered order only appointed Lesley Mota, the investigator “of” the agency, Integrity Process Serving, Inc. (Integrity). Plaintiff maintains that service by a separate employee of Integrity complied with the statutes governing service.

¶ 4 On appeal, plaintiff alternatively asks us to rewrite the appointment order, replacing the word “of” with “and” to correct what they argue was a scrivener’s error in the entered order. For the reasons stated below, we cannot read “of” as “and,” nor can we modify the order’s language to retroactively validate service by Integrity’s other employee.

¶ 5 After default judgment was entered in plaintiff’s favor, defendant filed a section 2-1401 petition and sought to void the judgment, arguing that service was defective. The circuit court denied defendant’s post-judgment motion to quash service and vacate judgment as void for lack of personal jurisdiction. Plaintiff-appellant defends the denial, arguing that (a) his motion to appoint a special process server requested the appointment of the agency *and* the named private investigator, and (b) the court’s order appointing the private investigator listed the agency’s license number. Thus, appellant maintains that the appointment satisfied the requirements of section 2-202(a-5) to appoint a private detective agency as a special process

¹ Section 2-202(a-5) was amended by P.A. 103-671, § 5 (eff. Jan. 1, 2025) (removing requirement that a party move to appoint a special process server). References to section 2-202(a-5) in this order refer to the pre-amendment language of the statute in effect in 2023.

server. Section 2-202(a-5) allows “any employee” of an appointed agency to effect service of process.

¶ 6 However, as defendant argues in their cross-appeal, the agency was *not* named; the order facially only appoints the private investigator, Lesley Mota, as special process server. Accordingly, we find that the appointment was not made under section 2-202(a-5), and that the appointment was limited only to the named investigator, Mota.

¶ 7 Because service was not in strict compliance with the statute, the circuit court did not have personal jurisdiction over the defendant when it granted default judgment to the plaintiff. We therefore reverse the circuit court’s denial of defendant’s motion to quash and remand for proceedings consistent with this ruling.

¶ 8 Because we find that the circuit court’s default judgment order was void for want of personal jurisdiction, we do not reach the merits of Michelini’s appeal of the portion of the order granting defendant’s section 2-1401 petition.

¶ 9 II. BACKGROUND

¶ 10 Plaintiff, John Michelini, brought a suit against UCAN, an Illinois corporation, for a slip and fall that allegedly occurred on a sidewalk in front of UCAN’s premises located at 3605 W. Filmore, Chicago, in or around March of 2021. In broad strokes, plaintiff claims to have tripped and fallen on a sidewalk, causing him to fracture his femur and leaving him permanently reliant on a cane to walk. Plaintiff alleges that his fall was caused by some defect or hazard in the sidewalk—“a depression, hole, inequality, raised and/or broken part.” Plaintiff pled claims against UCAN for negligence and premises liability.

¶ 11 Michelini initially filed suit on March 1, 2023. Service was attempted by the Sheriff’s Office of Cook County, but the attempt was unsuccessful.

¶ 12 In April, plaintiff brought a motion to appoint “Private Investigator Lesley Mota (Illinois License Number 117001752) and her firm Integrity Process Serving, Inc. (Illinois License Number 117001752)” as special process servers.

¶ 13 On April 21, the circuit court entered an order that stated: “Private Investigator, Lesley Mota of Integrity Process Serving, Inc., (Illinois License License [sic] Number 117001752 is hereby appointed special process server in this cause.”²

¶ 14 Although the order appointed Lesley Mota, service was made by one Deshaun Walker, another employee of Integrity. Per his affidavit of service, on May 2, 2023, Walker served the summons and complaint on Nicole Hall, a Human Resources Generalist employed by UCAN.

¶ 15 Over the course of a year, no progress was made on the case. UCAN did not file an appearance or pleading, and plaintiff filed no motions. On June 20, 2024, the case was dismissed for want of prosecution based on “no activity” occurring in the case. Plaintiff subsequently moved to vacate the dismissal, and the case was reinstated on July 5, 2024.

¶ 16 After the case was reinstated, plaintiff moved to default defendant and for default judgment. On July 29, 2024, the circuit court granted a motion for default. A prove-up hearing was conducted on October 10, 2024, where Michelini submitted live testimony and copies of his medical bills. The circuit court then granted default judgment in plaintiff’s favor, awarding Michelini \$900,000 total, with \$68,655.61 awarded for his medical bills and \$831,344.39 awarded for “pain & suffering, [and] permanent disability.”

² The quoted sentence lacks a closing parenthesis.

¶ 17 Four months later, on February 10, 2025, UCAN filed their appearance and sought to vacate the default judgment. UCAN filed a combined (1) motion to quash service and vacate void judgment and (2) section 2-1401 petition for postjudgment relief.

¶ 18 In the motion to quash, UCAN asserted that the circuit court lacked personal jurisdiction to enter default judgment against them because service of process was not made in strict compliance with 735 ILCS 5/2-202 (West 2022). Service was not made by Lesley Mota, the private investigator named in the court’s appointment order. Instead, another employee of Integrity, who had not been specifically appointed by the court, served UCAN. Since they were never properly served, UCAN asserts that the judgment made against them was void for lack of personal jurisdiction.

¶ 19 In the section 2-1401 petition, UCAN sought to vacate the judgment, asserting that their failure to appear and defend the case was excusable, that they had a meritorious defense, and that they had been sufficiently diligent in presenting their defense to the court and filing their section 2-1401 petition.

¶ 20 UCAN’s petition blamed their failure to participate in the case on a comedy of errors and “bad luck.” From the start, UCAN appears to dispute that they were ever served by Walker. Nicole Hall, the person who allegedly received service, attested that she has “no memory of being served,” and UCAN employees claim to have been unable to locate the communications, records, or documentation of the service made on Hall. UCAN claims general unawareness of the lawsuit until it received notice of the default proceedings in 2024.

¶ 21 On Friday, July 26, 2024, UCAN received a faxed notice of Michelini’s motion for default for presentment on Monday, July 29. The HR employees that received the fax forwarded it to outside legal counsel, Violet Clark. However, the email to Clark was allegedly filtered out as

spam, and Clark did not discover it for another two months, at which point the default was entered and the 30-day period for vacating pursuant to 735 ILCS 5/2-1301(e) (West 2024) had elapsed.

¶ 22 UCAN claims not to have received any notice of the order defaulting it nor any of the orders setting the case for prove-up. Consequently, UCAN did not move to vacate, and it made no appearance at the prove-up hearing. Ostensibly, UCAN’s employees did not follow up with Clark regarding the matter.

¶ 23 On October 6, Clark discovered the email in her spam filter and emailed UCAN’s COO, Terri Sharpp, advising her to report the matter to UCAN’s insurer. However, Sharpp was on vacation in Africa at the time, and she only saw the email on October 30, 2024, *after* default judgment had been entered. On her return, Sharpp forwarded the papers to UCAN’s insurance broker, Jon Trapp. Notably, UCAN claims not to have received a copy of the default judgment order entered October 10, 2024, so the default judgment was not forwarded to Trapp. For reasons that are not clear from the record, Trapp did not forward the claim to UCAN’s insurer (Philadelphia Insurance Company) until December 30, 2024.

¶ 24 When the insurer followed up and issued a loss acknowledgement letter, Sharpp requested a status on the lawsuit from Clark and the insurer, at which point, on January 14, 2025, UCAN finally learned of the October 10, 2024, default judgment from the insurer.

¶ 25 Based on the foregoing, UCAN argued its lack of prior participation in the case was excusable and that it acted with reasonable diligence in defending the lawsuit. UCAN defensively claimed that its failure to follow up with Clark regarding the motion was excusable since it is “not legally sophisticated” and has “no internal legal department or employed lawyer.” Similarly, UCAN claimed that it was appropriate for it to assume that their insurer

was taking the necessary steps after the broker assured them that the documents would be submitted to the insurer “immediately.” Thus, UCAN insisted that its inaction as it waited for further guidance from counsel or the insurer was not unreasonable. UCAN also asserted that they had meritorious defenses they could raise if they were permitted to defend the case on the merits. Specifically, UCAN argued that the sidewalk is currently in good condition and that there are no records of repairs to the sidewalk since it was poured over nine years ago. They submitted pictures of the sidewalk in its current condition and an affidavit attesting that no repairs had been conducted.

¶ 26 Michelini filed a response, arguing that service was proper under section 2-202(a-5) (West 2022) (providing for court appointment of a private detective agency and allowing employees of the agency to serve under that appointment). Since the order included Integrity’s license number, and since the motion requested appointment of Integrity (in addition to Lesley Mota), Michelini argues that service by an employee of Integrity would be consistent with the appointment of Integrity pursuant to section 2-202(a-5).

¶ 27 With respect to the section 2-1401 petition, Michelini argued that UCAN could not demonstrate either of the diligence elements, citing the general principle that litigants have a duty to track the progress of their own case. See e.g., *American Consulting Association, Inc. v. Spencer*, 100 Ill. App. 3d 917, 922-23 (1981) (“All parties have a general duty to follow the progress of their case” and they may not be “relieved of the consequences of their own or their counsel’s failure to follow the progress of the case.”). Michelini argues that UCAN’s failure to inquire into the litigation or participate for seventeen months between service and default judgment (and then not until four months after default judgment was entered) was not

excusable neglect. With respect to the proposed defense, Michelini argued that UCAN's evidence of the state of the sidewalk at the time of the accident lacked proper foundation.

¶ 28 Relying only on the briefs and not giving the parties an opportunity for oral argument, the circuit court denied UCAN's motion to quash service but granted its section 2-1401 petition, thereby vacating judgment and reinstating the case.

¶ 29 III. ANALYSIS

¶ 30 Michelini filed his appeal to challenge the circuit court's order granting the 2-1401 petition and vacating his default judgment. UCAN has cross-appealed, challenging the circuit court's order denying its motion to quash service and vacate judgment as void for want of personal jurisdiction.

¶ 31 For the reasons stated below, we reverse the circuit court's denial of the motion to quash and dismiss Michelini's appeal regarding the section 2-1401 petition as moot.

¶ 32 A. Standard

¶ 33 "To enter a valid judgment, a court must have both jurisdiction over the subject matter and jurisdiction over the parties." *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 17. Strict compliance with the statutes governing service of process is a prerequisite to a court acquiring personal jurisdiction. *West Suburban Bank v. Advantage Financial Partners, LLC*, 2014 IL App (2d) 131146, ¶ 20.

¶ 34 "A judgment rendered without voluntary submission or service of process in strict statutory compliance is void regardless of whether the defendant had actual knowledge of the proceedings." *Municipal Trust and Savings Bank v. Moriarty*, 2021 IL 126290, ¶ 17. When a court issues a default judgment against a party without personal jurisdiction, the judgment is void and subject to challenge at any time. *Id.*; see also *C.T.A.S.S. & U. Federal Credit Union*

v. Johnson, 383 Ill. App. 3d 909, 910 (2008) (default judgment properly vacated where detective served process before court appointment).

¶ 35 Whether the circuit court obtained personal jurisdiction is subject to *de novo* review on appeal. *BAC Home Loans Servicing, LP*, 2014 IL 116311, ¶ 17. When a circuit court denies a motion to quash service of process without an evidentiary hearing, we review that decision *de novo*. *Amaba v. RFJ Land Management, LLC*, 2023 IL App (1st) 220549, ¶ 12.

¶ 36 B. The Circuit Court Erred in Denying UCAN’s Motion to Quash Service

¶ 37 On its own terms, the order entered by the circuit court only appointed private investigator Mota as special process server: “Private Investigator, Lesley Mota of Integrity Process Serving, Inc., (Illinois License License [sic] Number 117001752 is hereby appointed special process server in this cause.” The order did not appoint the agency, Integrity, nor did it appoint Walker.

¶ 38 “A special process server may not ‘delegate’ the service of process to one who was not named in the appointment.” *West Suburban*, 2014 IL App (2d) 131146, ¶ 19. “Nowhere in the statute is there a provision allowing the person ordered by the court to effect service to designate another person to fulfill this duty.” *ITT Thorp Corp. v. Hitesman*, 115 Ill. App. 3d 202, 206 (1983). Because the court did not appoint Walker, his service of process on UCAN was defective, and the court never acquired personal jurisdiction over UCAN.

¶ 39 Micheleni disputes the precedential value of *ITT Thorp Corp.*, arguing that the court was analyzing a prior version of the statute under which service by a “corporate entity is not contemplated.” *Id.* Under that version of the statute, circuit courts could appoint a “private person over 18 years of age and not a party to the action” to serve a defendant. *Id.* (quoting Ill. Rev. Stat. 1981, ch. 110, par. 2-202(a)). The appellate court then reversed and remanded the case, finding that the appointment of “Steven D. Logue and/or *his agent*” improperly allowed

for the appointee to delegate service when the statute did not provide for it. *Id.* at 205-6 (emphasis added). Since the statute only contemplated service by an appointed “person” and not a corporate entity, Michelini asserts that the appellate court’s commentary regarding delegation is no longer applicable.

¶ 40 We disagree. Granted, the statute has been amended to allow for the appointment of corporate entities, and the statute expressly allows the delegation of service of process by an agency to “any [of its] employee[s].” See 735 ILCS 5/2-202(a-5). However, there is no similar language contemplating such delegation where the court appoints an individual person. See 735 ILCS 5/2-202(a). The same language interpreted in *ITT Thorp Corp.*—“The court may, in its discretion upon motion, order service to be made by a private person over 18 years of age and not a party to the action”—was and is still operative. *Id.* Because we find that no agency was appointed under section 2-202(a-5), we find the statutory construction set forth in *ITT Thorp Corp.* relevant to the scope of an appointment of Mota as a “private person” under section 5/2-202(a). To wit, we apply the principle that, where a court appoints only an individual as special process server, the statute does not contemplate delegation of process of service to an unappointed individual or entity.

¶ 41 Notwithstanding that the order simply does not appoint Integrity, Michelini insists that the court appointed Integrity because the appointment motion and order complied with the statutory requirements of section 2-202(a-5). This section provides in pertinent part:

“Upon motion and in its discretion, the court may appoint as a special process server a private detective agency certified under the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004. Under the appointment, any employee of the private detective agency who is registered under that Act may serve

the process. The motion and the order of appointment must contain the number of the certificate issued to the private detective agency by the Department of Professional Regulation under the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004.” 735 ILCS 5/2-202(a-5).

¶ 42 Michelinini argues that the requirements of section 2-202(a-5) to appoint an agency were met because both the motion and order included the agency’s license number. The regulatory requirements that the private detective agency be certified and registered are not in dispute. Michelinini emphasizes that he specifically requested that both private investigator Mota and Integrity be appointed in his motion and that the order entered lists Integrity’s license.

¶ 43 Michelinini’s argument, however, is simply inconsistent with the text of the order. The order expressly appoints Mota. It does not purport to appoint Integrity. To reach his conclusion, Michelinini conflates satisfaction of the statutory prerequisites to appoint an agency with the actual appointment of that agency. This, however, is not supported by the statutory language. The statute provides that the court “may” appoint an agency, and it sets forth what conditions must be met for it to do so. *Id.* The inclusion of the license number in the motion and the order is necessary, but not sufficient, to appoint an agency. We believe that strict compliance with section 2-202(a-5) required, at a minimum, that the order purport on its own terms to appoint the agency. Here, the order lacks language indicating that the court intended to appoint Integrity.

¶ 44 Michelinini presents an alternative argument that the court’s failure to appoint the agency was a scrivener’s error, and that service of process may be upheld over the clerical error. To justify this, Michelinini notes that their motion requested the appointment of *both* Mota and Integrity, and that the motion was routine so divergence from a grant of the motion must have

been inadvertent.³ On this latter point, Michelini argues that the language of the order entered was not a product of judicial reasoning but was instead a clerical error. Michelini assumes that the court intended to appoint Mota and Integrity and seeks to have this court effectuate that intention.

¶ 45 Michelini suggests that, rather than “Private Investigator, Lesley Mota *of* Integrity,” the order should have read that “Private Investigator, Lesley Mota *and* Integrity” were appointed. Setting aside that this rewrite would require an additional change in verb tense (exchanging the “is” for an “are”) and the pluralization of “special process server” (both of which suggest that the draft order was drafted with the intention of appointing only one individual or entity), established law would not permit the correction Michelini seeks.

¶ 46 Whereas a court has the “inherent power to make an entry *nunc pro tunc* at anytime *** to correct a clerical error or matter of form so that the record reflects the actual order or judgment rendered by the court *** [a] *nunc pro tunc* entry may not be used to *** cure a jurisdictional defect.” *Kooyenga v. Hertz Equipment Rentals, Inc.*, 79 Ill. App. 3d 1051, 1056 (1979); see also *Harreld v. Butler*, 2014 IL App (2d) 131065, ¶¶ 13-16; cf. *C.T.A.S.S. & U. Federal Credit Union*, 383 Ill. App. 3d at 910 (rejecting argument that detective’s appointment *after* he served defendant satisfied statutory requirements). Even if Michelini was correct that the circuit court intended to appoint the agency and that its failure to do so was a clerical error, neither this court nor the circuit court could modify or ‘correct’ the text of the order to retroactively validate service of process and establish personal jurisdiction over UCAN. Under the circumstances of

³ We note that the order submitted to the court is identical to the one the court entered, including the various drafting errors (i.e., the repeated word “license” and the absence of a closed parenthesis). We further note that the order did not contain text granting the motion generally, but instead stated the specific appointment granted.

this case, the principle is well-warranted. Strict compliance with the statutory rules of service of process ensures that litigants receive due process and a meaningful opportunity to be heard prior to a court entering a ruling affecting their substantive rights. See *U.S. Bank Nat. Ass’n v. Johnston*, 2016 IL App (2d) 150128, ¶ 28; *Performance Network Solutions, Inc. v. Cyberklix US, Inc.*, 2012 IL App (1st) 110137, ¶ 44. UCAN was not obligated to participate in the suit until service was properly effectuated. To retroactively modify the appointment order to render the defective service proper *after* judgment has been entered would deprive UCAN of a meaningful opportunity to litigate the case on the merits after the court obtained personal jurisdiction.

¶ 47 In our disposition of the cross-appeal, we do appreciate plaintiff’s position. Plaintiff moved within the first two months of filing his complaint for the appointment of both the agency and private investigator as special process servers, and we suspect that the failure to appoint both in the order was inadvertent. Even though the error may not be fixed as a scrivener’s error, we understand that errors in drafting occur and that the routine nature of the motion and order may have been the reason this order was entered without being given enough attention by counsel. Furthermore, even if the agency was not appointed, we find it peculiar that service was attempted by a different private investigator than the one appointed in the order. The defects in service would have been avoided if Mota, the appointed private investigator, had attempted service rather than Walker. Still, the standard of strict compliance requires that we invalidate defective service whether or not the defect is inadvertent or excusable.

¶ 48 C. Micheline’s Appeal of the Section 2-1401 Petition Ruling Is Mooted

¶ 49 Because we have found that service was defective, and the circuit court did not have personal jurisdiction over UCAN, the default judgment entered against UCAN was void.

Consequently, the question of whether the court erred in granting UCAN's section 2-1401 petition is moot. Because disposition of UCAN's cross-appeal requires that the default judgment remain vacated, we do not reach the merits of Michelini's appeal.

¶ 50 IV. CONCLUSION

¶ 51 We therefore reverse the circuit court's denial of defendant's motion to quash service. Michelini's appeal is dismissed as moot. The default judgment order and the order defaulting UCAN are vacated by operation of this order. We remand for further proceedings on service in accordance with this order.

¶ 52 Reversed and remanded.