2026 IL App (1st) 251411

FIRST DIVISION
September 14, 2026

No. 1-25-1411

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

5425 CICERO LLC, Plaintiff-Appellee, v ROBERT DIDIANA a/k/a Bobby Didiana; LISA DIDIANA; and KIM GRAFFE, Defendants. (Robert Didiana, Defendant-Appellant).	)	Appeal from the Circuit Court of Cook County 24M4007754 Honorable Patricia S. Spratt Judge Presiding

PRESIDING JUSTICE ELLIS delivered the judgment of the court, with opinion.
Justices McBride and Van Tine concurred in the judgment and opinion.

OPINION

¶ 1 Defendant Robert Didiana showed up to his trial for unpaid rent and eviction on March 28, 2025, appearance in hand. Unbeknownst to him, the *pro se* appearance his attorney had prepared and e-filed for him was rejected by Odyssey, the statewide e-filing system. Because Robert had no appearance on file, the court refused to allow him to participate in the trial. The trial thus proceeded without the participation of Robert or the other two named defendants. After hearing only the plaintiff's evidence, the court entered a $55,000 judgment against defendants.

¶ 2 Later that same day, Robert appeared via counsel, who filed an appearance on behalf of all defendants and moved to vacate the judgment. Among other things, that motion to vacate

argued that the court erred in entering judgment because Robert had tried but inadvertently failed to file his *pro se* appearance, and he had meritorious defenses—including that he was not properly served with process.

¶ 3 The court agreed that service was improper as to all defendants and vacated the judgments against Robert's co-defendants, Lisa Didiana (Robert's wife) and Kim Graffe. But the court did not vacate the judgment against Robert. Despite the fact that the deficiencies in service applied equally to all three defendants, the court found that Robert had waived service by "participating" in the case—that is, by stepping up before the court on previous status hearings (albeit without an appearance).

¶ 4 We vacate the underlying judgment against Robert. Robert did not waive service of process by showing up to court on the previous status hearings. He was entitled to consideration on the merits of his claim of lack of service. And because we agree with the trial court that service on all three defendants was improper, the court lacked personal jurisdiction over Robert just as it did over his co-defendants. The judgment against Robert is void.

¶ 5 BACKGROUND

¶ 6 In December 2024, plaintiff 5425 Cicero LLC (Cicero) used a court-approved form to file a "Complaint for Commercial Eviction Only." The basis of the eviction was that "[t]he Defendant(s) failed to pay rent." The caption of the complaint shows "Rent or Damage Claimed $*55,000.00*." As noted, the complaint named Robert, his wife Lisa, and Kim.

¶ 7 The sheriff was unable to serve defendants, so the court appointed a special process server. On January 11, 2025, the special process server purported to serve all defendants in "Darien, Du Page County, IL" by delivering summons "to Lisa Didiana who identified themselves as the co-resident with identity confirmed by subject stating their name. The

individual accepted service with security camera (documents left, seen by subject). The individual appeared to be a female contact."

¶ 8 This, according to the affidavits of the special process server, resulted in personal service on Lisa and substitute service on Robert and Kim.

¶ 9 The court held a status hearing on February 3, where the order indicates that "defendant" was present—the order does not say *which* defendant, but the record suggests it was Robert. The court continued the matter for further status on March 17. That March 17 status order indicates "Robert Didiana present." The court continued the matter for trial on March 28 and ordered defendant to file an appearance "(7) seven days before trial"—by March 21.

¶ 10 As a technical matter, Robert did not file an appearance before trial. But as we would later learn by his affidavit, on March 19, an attorney, Jeffrey Brown, attempted to e-file an appearance on Robert's behalf. (As best we can tell, the attorney was not trying to file his own appearance but a *pro se* appearance for Robert.) The next morning, March 20, the appearance was rejected as an "Illegible, unreadable, or completely blank document." Neither Robert nor Mr. Brown was aware that the appearance had been rejected.

¶ 11 On the date of trial, March 28, Robert appeared in person, appearance in hand. The other two defendants were not present. The court refused to allow Robert to participate because he did not have an appearance on file. So the court conducted a trial without any of the defendants' participation. We do not have a transcript of this trial, but Cicero's counsel later described it: "As your Honor does recall, I'm sure, is that my client and I were in person. Mr. Didiana was in person. And I put Mr. Starkman on the stand, and he was sworn. And you asked him questions. I asked him questions. Mr. Didiana blurted out a couple of things. You asked some more questions, and the trial was over. You entered a verdict."

¶ 12 The court entered an order on March 28. Notably, the order leaves blank the boxes indicating whether it was "[b]y default" or "[a]fter contested hearing or trial." The order also checks the box indicating that "Defendants" were in court but notes: "No appearance filed." The order granted immediate possession to Cicero and awarded $55,000 in damages and $640 in court costs to Cicero.

¶ 13 Later that day, Mr. Brown entered an appearance for all three defendants and filed a motion to vacate the judgment under sections 2-1203 and 2-1301 of the Code of Civil Procedure. See 735 ILCS 5/2-1203, 2-1301 (West 2024). The motion admitted that Robert physically appeared at the February and March status dates via Zoom. The motion explained that Robert tried to file his appearance on March 19 and that the Odyssey rejection "was overlooked by Attorney Brown." Defendants requested the judgment be vacated to avoid "[a] substantial injustice."

¶ 14 As a proffer of a meritorious defense, counsel claimed that (1) it was improper to award damages, because the complaint "on its face *** seeks only possession;" (2) "Plaintiff admitted in open court that there is no signed lease by Defendants;" and (3) the judgment amount had no basis in "any factual agreement between the parties, nor any document executed by the parties, no[r] any law permitting such an amount."

¶ 15 On April 11, defendants supplemented their motion to vacate by arguing that service was improper. Counsel argued that on the supposed date of service, January 11, Lisa Didiana was not at her home—as listed on the affidavit of service—but in Florida. As proof, the supplement includes screenshots of plane tickets. For her part, Kim argued that substitute service was improper because she has never resided at the Darien home and has no relatives who do.

¶ 16 The court held a hearing on defendants' motion to vacate in June. We have a transcript of this hearing. The court credited Lisa's sworn and unrebutted testimony that she was in Florida on the day of purported service of process and thus she could not have been personally served. Noting that the affidavit of service indicated that Lisa "accepted service with security camera," the court reasoned that the process server "probably rang the Ring doorbell, which anybody can answer on their phone anywhere on the planet." The court ruled that service was improper as to Lisa. And because substitute service on Robert and Kim depended on the (invalid) service on Lisa, the court found service of process was improper as to all three defendants.

¶ 17 Given the lack of proper service, and thus the lack of personal jurisdiction, the court vacated the judgment "as to defendants Lisa Didiana and Kim Graffe." But the court refused to vacate the judgment as to Robert, even though service was improper on him as well, because "he participated. He stepped into the court, and he participated. So I will not vacate the judgment as to him." Cicero then immediately nonsuited the claims against Lisa and Kim, leaving only Robert as a defendant.

¶ 18 In defense counsel's attempt to clarify the ruling, the following colloquy took place between Mr. Brown and the court:

> "COUNSEL: So, your Honor, if I'm understanding your ruling, your ruling is that Mr. Didiana appeared before you, though—
>
> THE COURT: Several times and before Judge Lee. He participated.
>
> COUNSEL: Though he was not permitted to speak.
>
> THE COURT: Correct.
>
> COUNSEL: All right. So your contention or your ruling, Judge, is that Mr. Didiana waived his right to service of process upon him?

THE COURT: No. I'm saying he participated.

COUNSEL: Well, he participated, but he had never been served.

THE COURT: And that can happen. People come in and participate. People come in who haven't even been served yet and participate.

COUNSEL: Typically, though, when they do that, they get to talk. Mr. Didiana was not—

THE COURT: He got to talk every time except for at trial. That was made very clear to him: File your appearance. That's the entry ticket so that you can tell me at trial on the record what your case is.

COUNSEL: So your ruling is that even though he did submit an appearance to the Clerk of the Court, it was rejected, and therefore his appearance was invalid, and therefore he could not speak at trial?

THE COURT: Correct. There was no appearance of record."

¶ 19 Within 30 days of the court's denial of his motion to vacate, Robert appealed. Cicero, on the other hand, never challenged the vacatur of the judgment as to Lisa or Kim and thus, obviously, never appealed that ruling, either.

¶ 20 ANALYSIS

¶ 21 On appeal, Robert claims the court erred in refusing to vacate the judgment against him for several reasons, including (1) he was not properly served; (2) he did not waive service; and (3) even if he had waived service, as the circuit court unmistakably found, it was error to have proceeded with trial when Robert had clearly tried to file an appearance but failed. He has other arguments, but these are more than enough to convince us that we must vacate the trial court's judgment.

¶ 22 It is fundamental that a court may not enter judgment against a party without first obtaining jurisdiction over that person. *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 17. A judgment entered in the absence of personal jurisdiction is void and may be challenged at any time, either directly or collaterally. *Id.*

¶ 23 Unless a party voluntarily submits to the court's jurisdiction, jurisdiction over the person begins with service of process—formal notice that a plaintiff seeks a judgment against that person. *Id.* ¶ 18. A named party's awareness of the lawsuit is not sufficient; formal notice is required. See *State Bank of Lake Zurich v. Thill*, 113 Ill. 2d 294, 308 (1986); *Department of Healthcare & Family Services ex rel. Sanders v. Edwards*, 2022 IL App (1st) 210409, ¶ 42.

¶ 24 Here, plaintiff purported to serve each of the three defendants in one fell swoop (personal service on Lisa, substitute service on Robert and Kim) by serving Lisa at a house in Darien, Illinois, through a "security camera." The trial court credited Lisa's sworn, unrebutted testimony that she was in Florida on that date and ruled that Lisa was not personally served with process.

¶ 25 Neither party challenged that ruling at trial, nor does Cicero challenge it on appeal. It was undoubtedly correct. We have often noted that Illinois adopts the " ' "general method" ' of placing the papers "in the general vicinity of the person to be served and announcing the nature of the papers." ' " *Statia v. Orlet*, 2023 IL App (5th) 220731, ¶ 20 (quoting *Freund Equipment, Inc. v. Fox*, 301 Ill. App. 3d 163, 168 (1998), quoting *Currier v. Baldridge*, 914 F.2d 993, 995 (7th Cir. 1990)). Florida is not in the general vicinity of a home in Darien, Illinois.

¶ 26 The court likewise found that neither Robert nor Kim could be subject to "substitute" or "abode" service, as one requirement for such service is that the process server "leav[e] a copy at the defendant's usual place of abode, with some person of the family or a person residing there, of the age of 13 years or upwards." 735 ILCS 5/2-203(a)(2) (West 2024). That ruling was

obviously correct, too. By his own admission, the process server did not leave a copy of the summons with *any* person. Substitute service on Robert was clearly improper. (Kim went one better, noting that, even if Lisa had been served, Lisa is not a member of Kim's family, nor has Kim ever lived at that residence in Darien; it was not her abode.) And again, Cicero has never argued that substitute service on Robert was proper—not at the trial level and not on appeal.

¶ 27 So for our purposes, it is settled that plaintiff failed to serve the defendants—including Robert, the only remaining defendant at this stage. Which leaves only the question of whether Robert waived any objection to service of process and thus to personal jurisdiction.

¶ 28 As detailed above, the trial court claimed it was *not* finding that Robert waived service, only that he "participated" in the litigation. But that is saying the same thing a different way. A party's voluntary submission to the court's jurisdiction is the very act of waiving an objection to personal jurisdiction; saying Robert "participated" in the process is saying he waived any objection to personal jurisdiction. See *Mitchell*, 2014 IL 116311, ¶ 35 (interchangeably referring to defendant's "voluntary submission to the court's jurisdiction" and its "waiver of objections" to personal jurisdiction).

¶ 29 Our question, then, is whether Robert subjected himself to the court's jurisdiction—that is, whether he waived any objection to personal jurisdiction—by "participating" in the court's process. The answer is an unequivocal no, he did not. But a little history is in order, as the law on this topic drastically changed in 2000 by a statutory amendment.

¶ 30 Before the year 2000, Illinois law was quite unforgiving on the question of waiving an objection to personal jurisdiction. A party wishing to contest personal jurisdiction was required to file a particular kind of appearance—a "special appearance"—at the outset of the case. 735 ILCS 5/2-301(a) (West 1998). Any appearance not designated as a "special" appearance would

be deemed a "general appearance" (*id.*) that waived any objection to personal jurisdiction. See *People v. Maiden*, 2013 IL App (2d) 120016, ¶¶ 23-24 (noting that before 2000, " " '[a] general appearance was held to waive all objections to personal jurisdiction and subject the party to the authority of the court' " (quoting *KSAC Corp. v. Recycle Free, Inc.*, 364 Ill. App. 3d 593, 594 (2006))); *Cardenas Marketing Network, Inc. v. Pabon*, 2012 IL App (1st) 111645, ¶ 21 (same).

¶ 31 Indeed, waiver went even beyond merely filing an appearance with the wrong title: our supreme court had held that "any action taken by the litigant which recognizes the case as in court will amount to a general appearance unless such action was for the sole purpose of objecting to the jurisdiction." *Lord v. Hubert*, 12 Ill. 2d 83, 87 (1957); *Maiden*, 2013 IL App (2d) 120016, ¶ 24; *KSAC Corp.*, 364 Ill. App. 3d at 594. As the supreme court once put it during that era: "There are *** instances prior to entry of a general appearance or service of process where the court may have jurisdiction over a party because of either the person's *participation* in the case or recognition of benefits from the proceedings." *In re Marriage of Verdung*, 126 Ill. 2d 542, 547-48 (1989) (emphasis added).

¶ 32 From this came the concept of a party's "participation" (*id.*) in litigation that would constitute a voluntary submission to personal jurisdiction or, if you like, a waiver of any objection to personal jurisdiction. See, *e.g.*, *In re Marriage of Gorman*, 284 Ill. App. 3d 171, 178 (1996) ("[T]he requirement of prior service of process is waived where a person participates in the court proceeding, thereby recognizing the case as being in court.").

¶ 33 But that all changed in 2000, when the General Assembly amended the relevant statute in the Code of Civil Procedure, section 2-301, and dramatically relaxed the harsh waiver rule. See 735 ILCS 5/2-301 (West 2000). As we have noted on several occasions, in its amended form, section 2-301 did away with any distinction between "general" versus "specific" appearances

and contained an explicit waiver provision that is significantly narrower than the previous law. See *Maiden*, 2013 IL App (2d) 120016, ¶¶ 25-26; *OneWest Bank, FSB v. Topor*, 2013 IL App (1st) 120010, ¶ 11; *Cardenas*, 2012 IL App (1st) 111645, ¶ 21; *KSAC Corp.*, 364 Ill. App. 3d at 594-95.

¶ 34 Under the amended section 2-301, a party waives its objection to personal jurisdiction only if it files a responsive pleading or motion *before* filing a motion objecting to jurisdiction. 735 ILCS 5/2-301(a-6) (West 2024); *KSAC Corp.*, 364 Ill. App. 3d at 597; see *Cardenas*, 2012 IL App (1st) 111645, ¶ 24 (" '[a] party does not waive its objection to the court's jurisdiction over the party's person so long as the party objects to the court's jurisdiction before the party files a motion or other responsive pleading' " (quoting *Larochelle v. Allamian*, 361 Ill. App. 3d 217, 220 (2005))).

¶ 35 And the new section 2-301 allows a party to simultaneously file a different responsive pleading along with an objection to personal jurisdiction. See 735 ILCS 5/2-301(a) (West 2000) ("Such a motion [challenging personal jurisdiction] may be made singly or included with others in a combined motion ***.").

¶ 36 The relaxation of section 2-301's waiver rule did not stop there. The General Assembly amended section 2-301 again in 2018. See Pub. Act 100-291, § 5 (eff. Jan. 1, 2018) (amending 735 ILCS 5/2-301). Though the general rule remained that a party does not waive an objection to personal jurisdiction unless it files a responsive pleading or motion before challenging jurisdiction, the statute now exempts certain motions from that waiver rule:

> "A party filing any other pleading or motion prior to the filing of a motion objecting to the court's jurisdiction over the party's person *** waives all objections to the court's jurisdiction over the party's person prospectively, *unless the initial motion filed is one of*

the following:

(1) A motion for an extension of time to answer or otherwise plead.

(2) *A motion filed under Section 2-1301*, 2-1401, or 2-1401.1." 735 ILCS 5/2-301(a-6) (West 2024) (emphasis added).

¶ 37 As this discussion makes clear, the extent of Robert's "participation" in the litigation before the day of trial was irrelevant to whether he waived an objection to personal jurisdiction. He could only waive any such objection by filing a responsive pleading or motion before raising an objection to personal jurisdiction—and even then, if the motion he filed was brought under section 2-1301 or certain other statutory provisions, he would not waive his right to object.

¶ 38 As detailed above, here, Robert obviously filed nothing—not even an appearance—at the status hearings that preceded his trial for eviction and unpaid rent. So he could not have waived his objection to personal jurisdiction at those points. After the trial and adverse judgment against him, he ultimately filed a motion to vacate and, two weeks later, supplemented that motion with a challenge to personal jurisdiction.

¶ 39 Cicero argues that Robert waived his objection to personal jurisdiction because it came too late, as he first filed a motion to vacate on other grounds and *then* sought to supplement that pleading with a challenge to personal jurisdiction. Cicero is wrong three times over.

¶ 40 First, Robert supplemented his motion to vacate before the court had ruled, and still within thirty days of the judgment it challenged. We would be hard-pressed to say that his challenge to personal jurisdiction was not part and parcel of his original motion to vacate, his first responsive pleading. Cicero's argument is the very kind of "gotcha" argument that the amendments to section 2-301 were intended to eliminate. And as just noted, he is permitted to combine a motion challenging personal jurisdiction with other motions. See *id.* § 2-301(a);

Cardenas, 2012 IL App (1st) 111645, ¶¶ 25-26.

¶ 41 Second, Robert's initial motion to vacate was brought under section 2-1301 of the Code of Civil Procedure. As noted, under the most recent amendments to section 2-301 in 2018, that motion is specifically excluded from the waiver rule. See 735 ILCS 5/2-301(a-6)(2) (West 2024). So even if Robert's section 2-1301 motion to vacate were filed "before" his challenge to personal jurisdiction—it was not—Robert still did not waive his right to contest personal jurisdiction.

¶ 42 Third and most significantly, even if Cicero were correct that Robert waived his objection to personal jurisdiction when he filed his motion to vacate, that waiver would be prospective only. *Mitchell*, 2014 IL 116311, ¶ 44. Any such waiver "did not serve to validate retroactively the void orders entered prior to defendant's submission to the court's jurisdiction." *Id.*

¶ 43 In sum, the circuit court correctly ruled that Cicero did not properly serve any of the defendants, including Robert, with process. But the court erred in finding that Robert waived his objection to service and thus to personal jurisdiction. Robert was entitled to the same relief as his co-defendants. As the court lacked personal jurisdiction over Robert at the time judgment was entered, the judgment against him for $55,000 plus court costs was void. We vacate it.

¶ 44 Robert raised several other viable challenges to the judgment below, but we need not and should not reach them in light of our conclusion that jurisdiction was lacking.

¶ 45 CONCLUSION

¶ 46 The judgment of the circuit court is vacated. The cause is remanded for further proceedings.

¶ 47 Vacated and remanded.

***5425 Cicero LLC v. Didiana*, 2026 IL App (1st) 251411**

Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 24-M4-7754; the Hon. Patricia S. Spratt, Judge, presiding.
Attorneys for Appellant:	Jeffrey Grant Brown, of Jeffrey Grant Brown, P.C., of Chicago, for appellant.
Attorneys for Appellee:	Berton N. Ring, of Berton N. Ring, P.C., of Chicago, for appellee.