2026 IL App (1st) 260358-U
No. 1-26-0358
Order filed November 23, 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NOTICE: This order was filed under Illinois Supreme Court Rule 23 and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).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

FIRST DISTRICT, FIRST DIVISION

1205 MILWAUKEE, LLC, Plaintiff-Appellee,

v.

TONY COLE, Defendant-Appellant

Appeal from the Circuit Court of Cook County.
Honorable Brian Porter, Judge, Presiding.
No. 24 M1 1702994

JUSTICE HOWSE delivered the judgment of the court.
Justices Fitzgerald Smith and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the order of the circuit court denying defendant's petition for relief from judgment. The objection to the constructive service challenged by defendant is barred by the doctrine of collateral estoppel and, therefore, defendant has failed to demonstrate any entitlement to relief from the judgment.

¶ 2 Defendant Tony Cole appeals from the denial of his petition for relief from judgment under section 2-1401 of the Illinois Code of Civil Procedure (735 ILCS 5/2-1401 (West 2024)). Finding no reversible error, we affirm.

¶ 3 I. BACKGROUND

¶ 4 This commercial eviction case was brought by plaintiff 1205 Milwaukee, LLC in February 2024. Following a jury trial, judgment was entered in plaintiff's favor, and an order of possession was issued to plaintiff. Defendant appealed, and we affirmed the trial court's judgment. *1205 Milwaukee LLC v. Cole*, 2025 IL App (1st) 241467-U, ¶¶ 1, 42 (unpublished order under Supreme Court Rule 23, Jan. 21, 2025).

¶ 5 On August 8, 2025, defendant filed a petition for relief from the judgment under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2024)). Defendant's petition was brought under section 2-1401(f) and requested relief from the judgment on the basis that the judgment was void. In a written order, the trial court denied defendant's petition for relief from judgment. The trial court found that it had jurisdiction over the subject matter and the parties when it entered the judgment and, thus, the judgment was not void and the petition had to be denied. The trial court concluded its written order by explaining that any additional motions or petitions filed by defendant without leave of court may result in a monetary civil sanction.

¶ 6 Defendant filed a motion to reconsider the denial of his petition. Defendant subsequently filed a notice of appeal. However, when the notice of appeal was filed, the trial court had not yet ruled on defendant's motion to reconsider the denial of his petition. Accordingly, we found that we lacked jurisdiction because a timely filed postjudgment motion remained pending when defendant filed his notice of appeal. *1205 N. Milwaukee, LLC v. Cole*, 2026 IL App (1st) 251778 (summary order under Supreme Court Rule 23(c)(1), Feb. 2, 2026). Thereafter, the trial court denied defendant's motion to reconsider. Defendant now appeals the denial of his petition for relief from judgment.

¶ 7 II. ANALYSIS

¶ 8 In his opening brief, defendant argues that plaintiff lacked standing to bring this eviction action. Defendant contends in his brief that plaintiff "never proved ownership at the time the complaints were filed" and that "no admissible evidence of Plaintiff's standing was entered during trial." Defendant also argued in his opening brief that a fraud on the court resulted in the underlying judgment being void. In his reply brief, however, defendant "accepts" that "a standing defect *** does not by itself render a civil judgment void where the circuit court possessed jurisdiction." Indeed, a failure by the plaintiff to prove its standing does not deprive the circuit court of subject matter jurisdiction and does not render any resulting judgment void. *Nationstar Mortgage, LLC v. Canale*, 2014 IL App (2d) 130676, ¶¶ 10, 18. Defendant likewise acknowledges in his reply brief that the arguments he made concerning fraud are subject to the same treatment.

¶ 9 Defendant also raised several arguments in his opening brief related to the trial court's rulings in the underlying case to argue that he was denied due process or that the trial court improperly resolved discovery issues and other questions on the merits. Defendant's attempts to relitigate the trial court's discovery rulings and the merits of the underlying case are not appropriate here. This proceeding for relief from judgment is independent from the underlying case and is not the proper vehicle for resolving such matters. *Wilkerson v. Martin*, 2025 IL App (1st) 232053, ¶ 34. The matters raised by defendant concerning the conduct in the underlying case were issues for appeal, not for a petition for relief from the judgment. In fact, defendant did file an appeal and he raised some of the same issues concerning the conduct of the trial and pretrial proceedings that he raises here. The issues he did not raise in his direct appeal are forfeited (*People v. Morfin*, 2012 IL App (1st) 103568, ¶ 30) and the issues he did raise are barred by *res judicata* (*Stolfo v. KinderCare Learning Centers, Inc.*, 2016 IL App (1st) 142396, ¶ 25).

¶ 10 Acknowledging the fact that plaintiff refuted several of his arguments as a matter of law in its response brief, defendant concedes in his reply brief that his appeal has been narrowed to the single issue of personal jurisdiction. Setting all his other arguments aside, defendant maintains that "[t]he dispositive dispute is personal jurisdiction."

¶ 11 Defendant's petition for relief from judgment was based on his assertion that the underlying judgment is void. He brought his petition under section 2-1401(f) of the Code, and he has repeatedly asserted that the basis of his petition is the voidness of the judgment. The Illinois Supreme Court has repeatedly stated that a judgment is void only where it was issued by a court that lacked either subject matter or personal jurisdiction. *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 38. The issues defendant raises about standing, due process, and other alleged impropriety during the underlying proceedings are not germane to plaintiff's own chosen basis for his petition.

¶ 12 In the underlying case, defendant contested the use of service by publication to acquire jurisdiction over him. In arguing the personal jurisdiction issue, defendant disputes plaintiff's position that he waived any challenge to personal jurisdiction by litigating the case through a jury trial and an appeal.

¶ 13 Defendant submits that he filed a "notice to the court" on March 14, 2024 that sought no adjudicatory relief and then promptly filed a motion to quash service on March 19, 2024 in which he challenged the court's acquisition of personal jurisdiction. Only after filing that motion challenging personal jurisdiction did defendant file an appearance and a motion to dismiss in which he addressed the merits of the case. Defendant thus maintains that his prompt objection to personal jurisdiction and his continuing active contesting of personal jurisdiction for months thereafter make the judgment void and permits him to attack the judgment at this time.

¶ 14 After defendant filed the unsuccessful motion to quash service, he then proceeded to litigate the case through a jury trial. After judgment was entered against defendant, he appealed.

¶ 15 In the appeal from the judgment, defendant raised the service of process issue and we expressly rejected it, finding that the court acquired jurisdiction over defendant through proper service of process. Plaintiff filed the eviction complaint on February 16, 2024, and on March 14, 2024, defendant filed a document titled "Notice to the Court" in which defendant sought to "provide the court with a clear understanding of recent developments and their implications in the ongoing legal proceedings." We determined that because the notice to the court did not object to jurisdiction and it was filed prior to his motion to quash, he submitted to jurisdiction. *1205 Milwaukee LLC v. Cole*, 2025 IL App (1st) 241467-U, ¶ 39. Defendant did not petition the supreme court for leave to appeal that decision. Defendant now seeks to re-litigate the service of process issue by way of his petition under section 2-1401. However, he is collaterally estopped from doing so. *Nowak v. St. Rita High School*, 197 Ill. 2d 381, 389 (2001); *Hurlbert v. Charles*, 238 Ill. 2d 248, 255 (2010); *Wells Fargo Bank, N.A. as Trustee for Option One Mortgage Loan Trust 2007-4 Asset Backed Certificates, Series 2007-4 v. Lee*, 2021 IL App (1st) 190560-U, ¶¶ 17-18.

¶ 16 In *Lee*, we rejected the same challenge defendant now raises and for the same reasons.

> "Initially, we note that defendant's section 2-1401 petition would have been subject to dismissal on collateral estoppel grounds. Collateral estoppel prevents an issue that has been addressed by a court of competent jurisdiction from being later relitigated between the same parties in a different cause of action, such as in a section 2-1401 proceeding. *In re Marriage of Klebs*, 196 Ill. App. 3d 472, 479 (1990). The three requirements of collateral estoppel are that: (1) there was a final judgment on the merits in the prior case; (2) the party against whom estoppel is

asserted was a party or in privity with a party to the prior case; and (3) the issue decided in the prior case is identical to the issue presented in the suit in question. *Hurlbert v. Charles*, 238 Ill. 2d 248, 255 (2010).

All three elements were met here. There was a final judgment on the merits in the prior eviction case and defendant (the party to be estopped) was a party to that case. There was also an identity of issues between the eviction case and the section 2-1401 petition. During the eviction case, when denying the amended motion to quash service, the court considered and rejected defendant's argument regarding plaintiff's allegedly improper constructive service of him and found that it had personal jurisdiction over defendant; the section 2-1401 petition raises the same issue regarding plaintiff's constructive service of defendant that was already litigated and ruled on in the prior proceeding. Accordingly, relitigation of the constructive service issue in the circuit court was barred by collateral estoppel. See *Hirsch v. Optima, Inc.*, 397 Ill. App. 3d 102, 110 (2009) (a section 2-1401 petition may not be used to relitigate issues already decided)." *Lee*, 2021 IL App (1st) 190560-U, ¶¶ 17-18.

For the same reasons as those expressed in *Lee*, defendant's claim is barred and he has not demonstrated that he is entitled to any relief with regard to the denial of his petition for relief from judgment.

¶ 17 Defendant also argues that the circuit court erred when it included in its written order a warning about potential sanctions that could be imposed as a result of further filings from defendant. In its written order, the circuit court indicated that any additional motion or petition filed in the circuit court action without leave could result in a monetary sanction. That is not an

issue that is properly before us on appeal from denial of a petition for relief from judgment under section 2-1401. We find no basis to address the trial court's sanction warning.

¶ 18 III. CONCLUSION

¶ 19 For the foregoing reasons, we affirm.

¶ 20 Affirmed.