

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE CITY OF ROCKFORD,)	Appeal from the Circuit Court
)	of Winnebago County.
Plaintiff-Appellant,)	
)	
v.)	No. 17-CH-877
)	
JEFFREY A. GILLES, LANDMARK)	
NATIONAL CORPORATION, UNKNOWN)	
OWNERS, and NONRECORD CLAIMANTS)	
)	
Defendants)	Honorable
)	Lisa R. Fabiano,
(Jeffrey A. Gilles, Defendant-Appellee).)	Judge, Presiding.

PRESIDING JUSTICE BRENNAN delivered the judgment of the court, with opinion.
Justice Hudson concurred in the judgment and opinion.
Justice Schostok specially concurred, with opinion.

OPINION

¶ 1 Plaintiff, the City of Rockford (City), brought an action to foreclose special assessment liens on the property of defendant, Jeffrey A. Gilles. Following Gilles’s failure to appear, the trial court entered an order of default and judgment of foreclosure and sale. The trial court subsequently entered an order approving the report of sale and distribution, confirming the sale, and ordering eviction. More than two years later, Gilles filed a petition for relief from judgment pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2020)). The trial

court granted the petition and vacated the prior orders. For the reasons set forth below, we reverse the trial court's order granting the section 2-1401 petition.

¶ 2

I. BACKGROUND

¶ 3 Gilles owned two vacant lots located on Rote Road in Rockford. At some point, Gilles moved out of Illinois and to Colorado. It was undisputed that, over the course of 13 years—between 2004 and 2017—the City recorded with the Winnebago County Recorder 20 special assessment liens against the property. The liens were for the City's costs and expenses incurred in mowing the property, cleaning up hazardous debris, and/or abating nuisance vegetation on the property. The amount due totaled \$11,465.

¶ 4

A. Default Order and Order Confirming Sale

¶ 5 On November 29, 2017, the City filed a complaint to foreclose the special assessment liens against the property. The named defendants were Gilles, Landmark National Corporation (Landmark) (alleged to be the mortgage holder), unknown owners, and nonrecord claimants. Three attempts to serve Gilles personally at his last known address in Colorado were made on December 28, 2017, at 8:25 a.m.; January 3, 2018, at 11:45 a.m.; and January 9, 2018, at 3:30 p.m. The return of service noted, respectively, "NO CONTACT/LEFT CARD ON DOOR GATE OPEN," "NO CONTACT/LEFT CARD ON MAIL BOX GATE CLSED," and "NO CONTACT/LEFT CARD GATE CLOSED."¹ Subsequently, the trial court granted the City's motion to serve by publication. The certificate of publication was filed on June 5, 2018.

¹ With respect to Landmark, the return of service stated that the building was vacant and that a sign at the front of the property read that it was for sale or lease. Landmark is not a party to this appeal.

¶ 6 On July 30, 2018, the City filed a motion for a default judgment and for the entry of a judgment of foreclosure and sale of the property and a motion to shorten the redemption period on the basis that the property had been abandoned. The City’s proof of service reflects that notice of the motions was mailed to Gilles’s last known address in Colorado and to Landmark.

¶ 7 On August 23, 2018, the trial court entered an order of default against Gilles and the other defendants, a judgment of foreclosure and sale of the property, an order appointing a selling officer, and an order shortening the redemption period. A copy of the notice of sale was mailed to Gilles at his last known address in Colorado and to Landmark on September 3, 2018.

¶ 8 Following the sale of the property to the City, on November 1, 2018, the trial court entered an “Order Approving Report Of Sale And Distribution, Confirming Sale, And Order to Evict,” finding that there was no redemption or reinstatement within the relevant period, the court obtained personal jurisdiction over those defendants personally liable to the City for any deficiency from the sale, all notices required by section 15-1507(c) of the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1507(c) (West 2018)) were given, and the sale of the property to the City was fairly and properly made. The November 1, 2018, order also directed the selling officer to execute and deliver to the successful bidder a deed sufficient to convey title. Accordingly, a judicial deed for the property was issued to the City and recorded with the Winnebago County Recorder on November 8, 2018. On September 11, 2020, the City entered into a contract to sell one of the lots on the property to a third party.

¶ 9 B. Untimeliness of Section 2-1401 Petition

¶ 10 Over two years after the entry of the order approving the sale of the property, on November 19, 2020, Gilles filed a petition for relief from judgment pursuant to section 2-1401, with a supporting affidavit. (The affidavit was unsigned; Gilles filed a signed supporting affidavit on

December 2, 2020). Gilles sought an order vacating the order confirming sale, order for sale, and order of foreclosure.

¶ 11 Gilles alleged in his petition that he “never received actual notice of the proceeding” and “made no effort to avoid or evade service of process.” Rather, “during the applicable period, [he] lived in the State of Colorado, was employed as a physician in the State of Montana and spent the vast majority of his time in Colorado out of his residence and in hospitals and other medical facilities attending to his wife during her suffering of, treatment for, and ultimate death from brain cancer.”

¶ 12 Gilles alleged that he has a meritorious defense to the City’s foreclosure complaint “in that the value of the property foreclosed is substantially and unconscionably greater than the amounts due pursuant to mowing, weed or other municipal liens herein foreclosed by the [City] and at all relevant times, [Gilles] was financially able and willing to pay all such amounts due.” In addition, Gilles alleged that he acted diligently “from the time he discovered the claim to the land.” In his affidavit, Gilles specified that, upon failing to receive a 2019 tax bill for the property during the summer of 2020, he “checked with the Winnebago County Treasurer’s office on-line to discover that taxes were assessed in the name of the [City].” Gilles attested that, “[u]pon so learning, he immediately contacted his Illinois counsel who ordered a title search within days of such contact and within one week of receiving such title search reports, checked the contents of the court file on this matter, advised your affiant and in consultation with them, the decision was made to file this petition.”

¶ 13 The trial court set a briefing schedule on the section 2-1401 petition.

¶ 14 1. Gilles’s Supporting Memorandum

¶ 15 Giles acknowledged section 2-1401's limitations period but asserted that "extraordinary circumstances justify a tolling of the period." Giles argued that he was "prevented from asserting his rights in a most extraordinary way in that COVID closed public offices and interfered with the work of title companies."

¶ 16 Giles elaborated that, "on or about September 2, 2020," after he did not receive a tax bill in the summer of 2020 and learned that the property was assessed to the City as the owner, he contacted his attorneys to investigate. His attorneys "ordered a title search from NLT Title LLC on September 3, 2020," and on October 6, 2020, and October 21, 2020, his attorneys

"again contacted the title company concerning the title search and were advised that due to the COVID pandemic and closure of the Winnebago County Recorder's office and Winnebago County Clerk's office for a period of time, the title company was unable to conduct and provide a title search until November 2, 2020."

¶ 17 Upon subsequent receipt of the title search, "on or about November 12, 2020," Gilles's attorneys "visited the offices of the Winnebago County Clerk of Courts and examined the court file and determined that the title to the property had transferred from Gilles to the City as a result of a foreclosure action by the City of mowing liens." Then, on November 17, 2020, "Gilles's attorneys conferred with him and on November 18, 2020, this petition was filed." (The petition was actually filed on November 19, 2020). Accordingly, Giles argued that equitable tolling should be applied to allow consideration of the section 2-1401 petition.

¶ 18 Giles also reiterated that he established the existence of a meritorious defense to the underlying action in that he alleged his "complete willingness and ability to have satisfied that amount [(of the liens)] at the time the claim was made and is presently able and willing to, and offers to pay that amount plus interest, plus all of the City's court costs in the foreclosure action."

According to Gilles, he “never received notice of the liens and did not receive actual notice of the foreclosure” and the amount due was insignificant compared to the value of the property. Gilles concluded that he would suffer a significant forfeiture and the City would reap a windfall in the absence of relief under section 2-1401.

¶ 19 2. City’s Memorandum in Opposition

¶ 20 Initially, the City responded that the section 2-1401 petition was untimely and pointed to Gilles’s concession that he failed to file his petition within the two-year limitations period set forth in section 2-1401.² The City argued that the doctrine of equitable tolling did not apply to “invigorate defendant’s attempt to vacate the court’s default judgment.”

¶ 21 The City further argued that Gilles failed to allege facts to support the application of equitable tolling to the limitations period. Specifically, while Gilles asserted that the county offices were “closed for periods of time” due to the COVID-19 pandemic, he failed to specify the duration of the closings or demonstrate that in-person visits were indispensable to obtaining the requisite information. In this regard, he failed to allege diligent efforts, such as contacting the county offices

² While Gilles does not raise the issue, we point out the procedural impropriety of raising the untimeliness of the section 2-1401 petition in a memorandum in opposition to the petition. A section 2-1401 petition is the procedural equivalent of a complaint and subject to the rules of civil practice. *Casteel v. Jiminez*, 2022 IL App (1st) 201288, ¶ 20. Thus, the City should have filed a motion to dismiss on statute-of-limitations grounds, not a memorandum in opposition. *Id.* Nevertheless, the content of the pleading controls over its label. *Id.* The City’s memorandum in opposition was the functional equivalent of a motion to dismiss. See *id.* Thus, the timeliness of the petition was effectively raised in the trial court and is properly before this court. See *id.*

through other means. Accordingly, the City argued, Gilles failed to establish that the COVID-19 pandemic was an extraordinary circumstance that hindered the timely assertion of his rights.

¶ 22

3. Gilles's Reply

¶ 23 Gilles replied that, while he filed his section 2-1401 petition on November 19, 2020—“admittedly” more than two years after the November 1, 2018, final order confirming the sale of the property—the filing was “well within two years if one excludes even three weeks of the time the Winnebago County Administration building was closed to the public, March 21 through June 1, 2020.” Gilles recognized that “this period of time clearly did not itself impact Gilles’s ability to act, but tacking it to the end of the two year period would bring Gilles within the two year period.”

¶ 24 According to Gilles, “[i]n truth, his ability to act was impacted by the results of this specific closure in conjunction with the other effects of COVID shutdowns and other harms such as remote working, which adversely affected [his] ability to timely obtain a title search.” Specifically, at the time his attorneys ordered the title search, on September 3, 2020, “there still remained 59 days of the two year period.” However, Gilles stated, due to COVID-19 closures, the title company was unable to complete the title search until November 2, 2020. Thus, Gilles argued, he was faced with extraordinary barriers sufficient to warrant the application of the equitable tolling doctrine.

¶ 25

4. Trial Court's Ruling

¶ 26 On March 25, 2021, following argument, the trial court entered an order denying the City's request to dismiss the section 2-1401 petition as untimely and granting Gilles's request for equitable tolling of section 2-1401's limitations period on the basis that Gilles raised plausible grounds that, if true, supported that “COVID-19 posed an extraordinary barrier to [Gilles] obtaining information necessary to filing a timely Petition.”

¶ 27 In its oral ruling, the trial court found that the facts established that the delay occasioned by the COVID-19 pandemic meant it took Gilles three months, rather than the typical two weeks, to obtain a title search for the property. The trial court reasoned that this situation “satisfies [] the standard in 1401 for some extraordinary, some extraordinary barrier, an extraordinary barrier and irredeemable lack of information.” The trial court continued, “I think that’s what we have here for this period when, when the title company was not able to do the title search because of the closure of the, the, the county offices.”

¶ 28 The trial court further found that Gilles’s affidavit demonstrated that he did not have actual notice of the underlying lawsuit and that, when he learned in September 2020 that he no longer owned the property, he was diligent in contacting his attorneys, attempting to do a title search, and filing his section 2-1401 petition. In sum, the trial court concluded that “COVID was an extraordinary circumstance and equitable tolling applies” such that the section 2-1401 petition was timely.

¶ 29 C. Merits of the Section 2-1401 Petition

¶ 30 The trial court set a briefing schedule on the merits of the section 2-1401 petition, allowing Gilles to stand on his petition.

¶ 31 1. City’s Response

¶ 32 The City argued that Gilles was not entitled to relief under section 2-1401. The City first argued, in relevant part, that Gilles could not demonstrate the existence of a meritorious defense. While Gilles argued that he never received actual notice of the foreclosure proceeding, actual notice was not required. Rather, section 2-206(a) of the Code (*id.* § 2-206(a)) provided for service by publication in cases involving property within the jurisdiction of the court. The record reflected that the City complied with the statutory requirements of service by publication.

¶ 33 The City also argued that Gilles could not prove due diligence in filing and defending the section 2-1401 petition in the underlying proceeding. Regarding the filing of the petition, as of September 3, 2020, Gilles was on notice that the City had title to the property, yet he did not file his section 2-1401 petition until November 19, 2020. And finally, the City argued that granting the section 2-1401 petition would severely prejudice the City, given its contract with a third party for the sale of the property.

¶ 34 2. Gilles’s Reply

¶ 35 Gilles replied that “meritorious defense in equity can be established by showing that the forfeiture is completely out of proportion to the amount claimed by the City, and exceptional circumstances resulted in, if not excused, his failure to receive notice.” Specifically, Gilles stated his “belie[f] that the property is worth between \$500,000 and \$1 million” and that the amount due the City, including its attorney fees and costs, which Gilles was ready, willing, and able to pay, was only approximately \$25,000.³ Moreover, the attempts at personal service occurred “in the middle of the period when his wife was dying of brain cancer, March of 2017 to May of 2018, when he was driving 20+ hours back and forth every weekend, between his home in Colorado Springs, and his job in Montana.”

¶ 36 Regarding due diligence in the underlying proceeding, Gilles argued that he did not have notice of the underlying proceeding and therefore could not have acted diligently. He points out that he paid the real estate taxes on the property for many years and that, “[w]hile a landlord or other property owner may reasonably be expected to occasionally inspect a structure upon property, the same degree of attention would not be expected from an owner of vacant property.” Regarding due diligence in filing the section 2-1401 petition, Gilles argued that he promptly

³ We note that the record does not reflect the precise value of the property.

contacted his attorneys, who promptly ordered a title search and filed the petition within days of receipt of the title search. And finally, Gilles argued that the only potential prejudice to the City was the loss of a windfall.

¶ 37 3. Gilles’s Supplemental Affidavit

¶ 38 In addition to his reply in support of his section 2-1401 petition, Gilles filed a motion for leave to file a supplemental affidavit, which the trial court granted. In his supplemental affidavit, Gilles attested: “I moved from Rockford, Illinois to Colorado Springs, Colorado in approximately 2002 and purchased and moved into the house in which I still reside in Colorado Springs, Colorado in approximately 2005.” Throughout that time period, he maintained (and still maintains) a post office box for mail. In addition, Gilles attested that, “[b]eginning in August of 2015 and through 2018, I practiced medicine as an orthopedic surgeon in the State of Montana.”

¶ 39 Gilles further attested:

“On March 9, 2017, my wife [] *** was diagnosed with a malignant brain tumor from which she died on May 28, 2018.

[] Shortly after diagnosis, she accompanied me to and stayed in Montana at the clinic at which I was working for approximately six weeks to receive radiation therapy.

[] Thereafter, in approximately May, 2017, my wife [] moved back to our home *** in Colorado Springs and remained there until her death. During that period of time, which includes the period of time in which Plaintiff attempted to serve notice upon me, I commuted every weekend from my home in Colorado Springs to my work in Montana, round trip travel for which entailed approximately 23 hours and I returned to Colorado Springs on Friday to care for my wife each weekend and returned Sunday afternoon or evening to my employment in Montana.”

¶ 40 Gilles concluded that, “[t]o the best of my knowledge, I never received mail notice addressed to me at my post office box during relevant times herein.”

¶ 41 4. City’s Surreply

¶ 42 The City was granted leave to file a surreply. The surreply was largely devoted to a discussion of the propriety of the service methods used in this case.

¶ 43 5. Trial Court’s Ruling

¶ 44 Following argument on the section 2-1401 petition on June 23, 2021, the trial court took the matter under advisement. On August 17, 2021, the trial court entered an order granting Gilles’s section 2-1401 petition and vacating (1) the order of default, (2) the judgment order of foreclosure and sale, and (3) the order approving the report of sale and distribution, confirming the sale, and ordering eviction.

¶ 45 In its oral findings, the trial court found in, relevant part, that Gilles established a meritorious defense. Namely, Gilles showed that, “had he participated in the underlying suit, he could have redeemed the property” because he was “ready willing and able to pay the, the mowing costs and other liens that had been placed against the property.”

¶ 46 The trial court also found that Gilles’s lack of diligence in defending the underlying lawsuit was the result of excusable mistake, and not negligence, because “he had no actual notice of the underlying suit” and did not know his property was in foreclosure. The trial court found no evidence that Gilles avoided service, reasoning that there were only three service attempts at Gilles’s home in Colorado—“during the week over about a ten-day period over the holidays and all during work hours” and during a period when Gilles was working in Montana during the week and caring for his wife at a medical facility there on the weekends.

¶ 47 And finally, the trial court found that Gilles established due diligence in filing his section 2-1401 petition after he learned, in the summer of 2020, that he no longer held title to the property. At that point, Gilles “immediately contacted his lawyers and his lawyers did a title search to find out what, what happened.” The title search “took a little longer” because “the county clerk, I guess, was closed due to COVID. And they were, they were much slower than normal and so it was not until a few weeks after the—it took several months for, for that to be completed. But once [Gilles’s] attorneys found out that [*sic*] the reason for the transfer and title they immediately within about a week or ten days or so filed a 1401 petition and I think that’s diligence and shows due diligence in the filing of it.”

¶ 48 The trial court concluded that the City’s contract with a third party for the sale of the property was a complicating and significant factor but found that Gilles met the requirements of section 2-1401 and that, “after weighing all of the equities in the case that the equities lie in granting the petition here.” Accordingly, the trial court granted Gilles’s section 2-1401 petition.

¶ 49 The City timely appealed.

¶ 50

II. ANALYSIS

¶ 51 The threshold issue on appeal is whether the common law doctrine of equitable tolling may apply to extend the two-year limitations period in section 2-1401. This presents a question of law, subject to *de novo* review. See *People v. Abusharif*, 2021 IL App (2d) 191031, ¶ 9 (applying *de novo* review to the issue of whether the absence of a legal basis for a claim amounted to a legal disability sufficient to toll section 2-1401’s limitations period). For the reasons set forth below, we hold that, under the plain language of the statute and established authority from our supreme court, the limitations period in section 2-1401 is not subject to equitable tolling.

¶ 52 To place the parties' arguments in context, we first review the statutory scheme set forth in section 2-1401 and then address the intersection of the statute with the doctrine of equitable tolling.

¶ 53 A. Section 2-1401

¶ 54 Section 2-1401 provides a comprehensive statutory mechanism by which a final order or judgment in a civil or criminal case may be vacated or modified more than 30 days, but not more than two years, after its entry. *Warren County Soil & Water Conservation District v. Walters*, 2015 IL 117783, ¶ 31. The statute provides, in relevant part:

“Relief from final orders and judgments, after 30 days from the entry thereof, may be had upon petition as provided in this Section. Writs of error coram nobis and coram vobis, bills of review and bills in the nature of bills of review are abolished. All relief heretofore obtainable and the grounds for such relief heretofore available, whether by any of the foregoing remedies or otherwise, shall be available in every case, by proceedings hereunder, regardless of the nature of the order or judgment from which relief is sought or of the proceedings in which it was entered.” 735 ILCS 5/2-1401(a) (West 2020).

¶ 55 The filing of a section 2-1401 petition is considered a new proceeding, not a continuation of the old one. *Warren County*, 2015 IL 117783, ¶ 31. “The petition must be supported by an affidavit or other appropriate showing as to matters not of record.” 735 ILCS 5/2-1401(b) (West 2020). To be entitled to relief under section 2-1401, the petitioner must affirmatively set forth specific factual allegations supporting each of the following elements: (1) the existence of a meritorious claim or defense, (2) due diligence in presenting that claim or defense in the underlying action, and (3) due diligence in presenting the section 2-1401 petition. *Cavitt v. Repel*, 2015 IL App (1st) 133382, ¶ 46.

¶ 56 Preliminarily, however, included in section 2-1401 is a two-year limitations period. With certain statutory exceptions not pertinent here, section 2-1401 provides: “[T]he petition must be filed not later than 2 years after the entry of the order or judgment.” 735 ILCS 5/2-1401(c) (West 2020). Importantly, the statute identifies limited bases upon which the two-year limitations period may be tolled: “Time during which the person seeking relief is under legal disability or duress or the ground for relief is fraudulently concealed shall be excluded in computing the period of 2 years.” *Id.*

¶ 57 The purpose of the two-year limitations period is “a salutary one—to establish necessary stability and finality in judicial proceedings.” *Crowell v. Bilandic*, 81 Ill. 2d 422, 427-28 (1980). In *Crowell*, the plaintiff filed a petition under section 2-1401’s predecessor statute—section 72 of the Civil Practice Act (Ill. Rev. Stat. 1977, ch. 110, ¶ 72)—after the two-year limitations period had expired. *Crowell*, 81 Ill. 2d at 427. The petition neither acknowledged the untimeliness nor alleged legal disability, duress, or fraudulent concealment. *Id.* The trial court nevertheless denied the defendants’ motion to dismiss, and the appellate court affirmed on the basis that the allegations in the petition were sufficient to support a finding of fraudulent concealment. *Id.* at 426-27.

¶ 58 In reversing, our supreme court reasoned that, “[e]ven if we were to adopt the generous construction given plaintiff’s petition by the appellate court,” the allegations did not amount to fraudulent concealment. *Id.* at 428. Thus, the petition was effectively barred by the two-year limitations period. *Id.* The supreme court’s holding in *Crowell* was consistent with a litany of prior cases in which it strictly construed the limitations period in section 2-1401’s predecessor statute. See, e.g., *Withers v. People*, 23 Ill. 2d 131, 133-34 (1961) (“Section 72 requires that the petition be filed within two years after the rendition of final judgment, but the time during which the person seeking relief is under legal disability or duress or the ground for relief is fraudulently concealed

is to be excluded in computing the period of two years. We have consistently held that it is proper to dismiss a petition upon motion when it has not been filed within the statutory period.”); *Morgan v. People*, 16 Ill. 2d 374, 380 (1959) (rejecting the defendant’s argument that period of incarceration should be excluded in computing the two-year limitations period and noting that, “[c]ertainly if it was the intention of the [(advisory)] committee [(whose recommendations the legislature considered in amending section 72)] to add additional exceptions, this important feature would have been discussed in [the committee] comments”).

¶ 59 Likewise, in *Sidwell v. Sidwell*, 127 Ill. App. 3d 169, 173 (1984), the appellate court held that the untimeliness of the section 2-1401 petition at issue there was a “fundamental defect [that] preclude[d] any review of the prior litigation.” Noting that the two-year limitations period has been strictly construed, the court reasoned that “we cannot, even if the circumstances were believed to warrant it, extend this limitation by judicial fiat.” *Id.* Rather, the court stated, “The supreme court has held that the 2-year limitation mandated by this section must be adhered to in the absence of a clear showing that the person seeking relief is under legal disability or duress or the grounds for relief are fraudulently concealed.” *Id.* at 174 (citing *Crowell*, 81 Ill. 2d 422). Accordingly, the court held that, even if it considered the allegations in the petition to allege fraud in the entry of the underlying order, this would not change the result. *Id.* To hold otherwise would result in a lack of finality to judgments. *Id.*

¶ 60 As this court in *Fisher v. Rhodes*, 22 Ill. App. 3d 978, 981 (1974), explained, the legislature included a two-year limitations period in section 72 and specified legal disability or duress of the person seeking relief and fraudulent concealment of the ground for relief as the “only exceptions” that will toll the limitations period. “[I]t is an established rule regarding statutes of limitations that no exceptions thereto will be implied for if the legislature had intended to except

any class of persons from the effect of the statute, it would have done so and courts will not assume such authority or dominion.” *Id.* Accordingly, notwithstanding hardship from the application of the rule, “the court may construe only the clear words of the statute, and if its scope is to be enlarged, the remedy should be legislative rather than judicial.” *Id.* at 981-82.

¶ 61 Our supreme court has since maintained the exacting nature of section 2-1401’s limitations period. For instance, in *People v. Caballero*, 179 Ill. 2d 205, 210 (1997), the court, *inter alia*, affirmed the dismissal of the defendant’s section 2-1401 petition, noting that, “where a section 2-1401 petition is filed beyond two years after the judgment was entered, it cannot be considered.” Rather, “[t]his court has held that the two-year limitation mandated by section 2-1401 and its predecessor, *** [citation] must be adhered to in the absence of a clear showing that the person seeking relief is under legal disability or duress or the grounds for relief are fraudulently concealed.” *Id.* at 210-11 (citing *Crowell*, 81 Ill. 2d at 427); see *People v. Thompson*, 2015 IL 118151, ¶ 29 (“When a [(section 2-1401)] petition is filed after the two-year limitations period and there is no basis to excuse the delay, the petition cannot be considered unless the limitations period is waived by the opposing party.”).

¶ 62 Parenthetically, we note that our supreme court has recognized that a *void* judgment is not subject to the limitations period. That is, “when a section 2-1401 petition alleges that a judgment is void, the petition ‘need not be brought within the two-year time limitation,’ and ‘the allegation that the judgment or order is void substitutes for and negates the need to allege a meritorious defense and due diligence.’” *People ex rel. Alvarez v. \$59,914 United States Currency*, 2022 IL 126927, ¶ 16 (quoting *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104 (2002)). Gilles does not contend, and the record reflects no basis upon which to hold, that the judgment against him was void.

¶ 63 It was undisputed that Gilles filed his section 2-1401 petition after the expiration of the two-year limitations period. Nonetheless, Gilles did not assert a statutory basis for tolling the period, *i.e.*, that he was under legal disability or duress or that the grounds for relief were fraudulently concealed. See 735 ILCS 5/2-1401(c) (West 2020). Rather, Gilles relied upon the common law doctrine of equitable tolling as an additional basis to extend section 2-1401's limitations period. We turn to the equitable tolling doctrine.

¶ 64 B. Equitable Tolling

¶ 65 “Equitable tolling of a statute of limitations may be appropriate if the defendant has actively misled the plaintiff, or if the plaintiff has been prevented from asserting his or her rights in some extraordinary way, or if the plaintiff has mistakenly asserted his or her rights in the wrong forum.” *Clay v. Kuhl*, 189 Ill. 2d 603, 614 (2000). Extraordinary barriers that may warrant equitable tolling include legal disability, an irremediable lack of information, or circumstances where the plaintiff could not learn the identity of the proper defendants through the exercise of due diligence. *Doe v. Hastert*, 2019 IL App (2d) 180250, ¶ 48. “While equitable tolling is recognized in Illinois, it is rarely applied.” *American Family Mutual Insurance Co. v. Plunkett*, 2014 IL App (1st) 131631, ¶ 33 (noting that our supreme court has applied the doctrine once, in *Williams v. Board of Review*, 241 Ill. 2d 352 (2011)). Indeed, the only time our supreme court has applied the doctrine concerned a nonjurisdictional federal statute of limitations that, under federal law, was subject to a rebuttable presumption in favor of equitable tolling. *Williams*, 241 Ill. 2d at 361, 370 (statutory deadline in the federal Trade Act of 1974 (19 U.S.C. § 2101 *et seq.* (2006)) equitably tolled given the language of the statute, its subject and purpose, and the practical implications of applying equitable tolling). *Williams*, of course, applied federal law and did not involve a section 2-1401 petition attacking a final judgment.

¶ 66 Here, the City argues the statutory scheme of section 2-1401 precludes application of equitable tolling as a matter of law. Gilles responds that, while “mechanical construction of the statute” required filing his petition within the two-year limitations period, he established that the unprecedented nature of the COVID-19 pandemic warranted equitable tolling. This response, however, begs the question. Before determining whether Gilles established facts sufficient to warrant the application of the equitable tolling doctrine, we must resolve whether the doctrine may even apply to toll section 2-1401’s limitations period.

¶ 67 As noted, section 2-1401 explicitly identifies the limited bases upon which the two-year limitations period may be tolled: “Time during which the person seeking relief is under legal disability or duress or the ground for relief is fraudulently concealed shall be excluded in computing the period of 2 years.” 735 ILCS 5/2-1401(c) (West 2020). Thus, legal disability or duress of the person seeking relief and fraudulent concealment of the ground for relief are the “only exceptions” that will toll the limitations period. *Fisher*, 22 Ill. App. 3d at 981.

¶ 68 Accordingly, principles of statutory construction preclude us from reading in an additional exception for equitable tolling. See *In re Michelle J.*, 209 Ill. 2d 428, 437 (2004) (“We cannot rewrite a statute under the guise of statutory construction or depart from the plain language of a statute by reading into it exceptions, limitations, or conditions not expressed by the legislature.”). Indeed, precluding any exceptions beyond those provided in the statutory scheme of section 2-1401 is particularly compelling where the purpose of the two-year limitations period is “a salutary one—to establish necessary stability and finality in judicial proceedings.” *Crowell*, 81 Ill. 2d at 427-28. With this in mind, as discussed, our supreme court has strictly construed section 2-1401’s two-year limitations period. See *Thompson*, 2015 IL 118151, ¶ 29; *Caballero*, 179 Ill. 2d at 210.

¶ 69 Regardless of the underlying circumstances, we may not extend section 2-1401's limitations period by "judicial fiat." *Sidwell*, 127 Ill. App. 3d at 173. In *Selvy v. Beigel*, 309 Ill. App. 3d 768, 777 (1999), the appellate court rejected the argument that section 2-1401's limitations period could be extended beyond two years in the "interests of justice." Rather, the appellate court agreed with the trial court's determination that it had no discretion to grant a section 2-1401 petition after the limitations period expired, absent the specified bases in the statute, *i.e.*, legal disability, duress, or fraudulent concealment. *Id.* In other words, "[e]ven if we believed the circumstances to warrant it, this court could not extend the statutory limitation by judicial fiat." *Id.*

¶ 70 We also observe that two recent unpublished decisions from this court have rejected arguments seeking application of the equitable tolling doctrine to revive an untimely section 2-1401 petition. See *People v. Pope*, 2020 IL App (2d) 190854-U, ¶ 24 ("[S]ection 2-1401 provides its own exceptions to its limitations provision. *** We cannot depart from the plain language of a statute by recognizing exceptions, limitations, or conditions not expressed by the legislature."); *People v. Vargas*, 2020 IL App (2d) 190322-U, ¶ 17 ("[S]ection 2-1401's two-year limitation period 'must be adhered to in the absence of a clear showing that the person seeking relief is under legal disability or duress or the grounds for relief are fraudulently concealed.'" (quoting *Caballero*, 179 Ill. 2d at 210-11)).

¶ 71 While neither party cites the case, we note the decision of the Appellate Court, Third District, in *Department of Public Aid ex rel. Howard v. Graham*, 328 Ill. App. 3d 433 (2002). There, the majority held that,

"[i]n light of these extraordinary circumstances [(where the trial court's summary judgment order created the appearance that it made a judgment on the issue of paternity and that the only recourse was an appeal)] and for the purposes of this case only, we hold that the statute

of limitations shall be equitably tolled from the date of the trial court’s summary judgment order”

for purposes of challenging a paternity acknowledgement through a section 2-1401 petition. *Id.* at 436. Though we recognize the *sui generis* procedural peculiarity that led the *Graham* court to apply equitable tolling, we disagree with the application of the doctrine as an additional exception to section 2-1401’s limitations period, for the reasons discussed above.

¶ 72 Moreover, we point out the doctrine’s ill fit here. Gilles is not a plaintiff seeking to assert an untimely claim in the first instance. Rather, faced with a default judgment entered against him in the underlying proceeding, Gilles filed a collateral attack on the judgment through his section 2-1401 petition. Although section 2-1401 is applied with the aim of achieving justice, a section 2-1401 petition “was never intended to give a litigant a new opportunity to do that which should have been done in an earlier proceeding.” *In re Marriage of Travlos*, 218 Ill. App. 3d 1030, 1035 (1991). We acknowledge the harsh result here from the failure to comply with the limitations period, and we are not unsympathetic to Gilles’s circumstances as alleged. However, we cannot, by judicial fiat, extend the limitations period prescribed by the legislature for collaterally attacking final judgments.

¶ 73 In sum, the doctrine of equitable tolling is inapplicable to toll the two-year limitations period in section 2-1401. We therefore reverse the trial court’s order granting Gilles’s section 2-1401 petition. In light of our holding, we need not address the City’s alternative argument that reversal is warranted on the basis that Gilles failed to establish facts sufficient to warrant the application of equitable tolling. Moreover, we need not address the City’s further alternative argument that reversal is warranted on the basis that Gilles failed to establish grounds for relief

under section 2-1401, *i.e.*, the existence of a meritorious defense, due diligence in presenting the defense in the original action, and due diligence in presenting the section 2-1401 petition.

¶ 74

III. CONCLUSION

¶ 75 For the reasons stated, we reverse the order of the circuit court of Winnebago County granting the section 2-1401 petition and remand for proceedings consistent with this disposition.

¶ 76 Reversed and remanded.

¶ 77 JUSTICE SCHOSTOK, specially concurring:

¶ 78 Even if the doctrine of equitable tolling were a recognized reason to extend the deadline for filing a section 2-1401 petition, that doctrine would not be applicable to the facts of this case. This is because the affidavit that Gilles submitted in support of his petition was vague and did not demonstrate that he had been diligent in filing it. The affidavit did not explain why Gilles waited until the summer of 2020 to search the Winnebago County Treasurer’s office website to determine why he was no longer listed as the owner of the property. The affidavit also did not indicate on what day he did his search of the treasurer’s website or when he contacted his attorneys and asked them to start investigating. These shortcomings in the affidavit alone prevent Gilles from obtaining any equitable relief. *Hart v. Kieu Le*, 2013 IL App (2d) 121380, ¶ 9 (vague affidavit was insufficient to establish due diligence to invoke equitable tolling doctrine).

¶ 79 Even overlooking the vague affidavit, however, Gilles would not be entitled to any relief. Gilles asserted that he knew already “on or about September 2, 2020,” that the City was listed as the owner of the property rather than him. At this point, he had ample notice that there was a problem with his ownership of the property. Based on that notice, he should have immediately contacted the City or filed his section 2-1401 petition to regain possession of the property. Instead of doing that, however, he initiated a title search that confirmed what he already knew—that he no

longer owned the property. Unfortunately, he did not receive this confirmation until his time for filing his section 2-1401 petition had already passed.

¶ 80 As noted earlier, equitable tolling is warranted only when there is an extraordinary barrier that prevents the plaintiff from timely filing his action. *Doe v. Hastert*, 2019 IL App (2d) 180250, ¶ 48. Gilles's decision to not file his petition until after he received confirmation that he no longer owned the property does not constitute such an extraordinary barrier.

¶ 81 Gilles's loss of his property (which he values at up to \$1 million) due to his failure to pay special assessment liens of less than \$12,000 is indeed harsh. However, all statute of limitations provisions by their very nature are harsh. *Newell v. Newell*, 406 Ill. App. 3d 1046, 1054, (2011) (Schmidt, J., dissenting) ("the enforcement of a statute of limitations, by its very nature, always has harsh consequences: it terminates the prosecution of a claim regardless of the underlying merits" (emphasis omitted)). Our legislature has ultimately determined, though, that there must be finality of judgments and injured parties cannot have an indefinite time to bring their actions. *Sundance Homes, Inc. v. County of Du Page*, 195 Ill. 2d 257, 266 (2001) ("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."). As Gilles had the ability to ameliorate the harshness of the result of this case by timely filing his section 2-1401 petition but failed to do so, there is no relief that our courts can afford him.

City of Rockford v. Gilles, 2022 IL App (2d) 210521

Decision Under Review: Appeal from the Circuit Court of Winnebago County, No. 17-CH-877; the Hon. Lisa R. Fabiano, Judge, presiding.

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