NOTICE: This order was filed under Illinois Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2026 IL App (3d) 250010-U

Order filed November 24, 2026

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2026

NATIONSTAR MORTGAGE, LLC, d/b/a Mr. Cooper, Plaintiff-Appellant, v. LEE FORSETH, a/k/a Lee A. Forseth; MARSY FORSETH, a/k/a Marsy L. Forseth; UNKNOWN OWNERS and NONRECORD CLAIMANTS, Defendants (Lee Forseth and Marsy Forseth, Defendants-Appellees).	)	Appeal from the Circuit Court of the 18th Judicial Circuit, Du Page County, Illinois, Appeal No. 3-25-0010 Circuit No. 22-FC-410 Honorable Robert G. Gibson, Judge, Presiding.

JUSTICE BRENNAN delivered the judgment of the court.
Justices Holdridge and Bertani concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not abuse its discretion in denying plaintiff's section 2-1401 petition for relief from judgment as plaintiff failed to demonstrate due diligence.

¶ 2 Plaintiff, Nationstar Mortgage, LLC, filed a residential foreclosure complaint against defendants, Lee Forseth and Marsy Forseth, for nonpayment. Following nearly one year of case inactivity, the Du Page County circuit court dismissed the case for want of prosecution. Plaintiff filed a section 2-1401 petition for relief from judgment, which the court denied. Plaintiff appeals, arguing the court erred in denying the petition where it acted with due diligence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 This case represents the second residential foreclosure action filed by plaintiff against defendants. Before any litigation, the parties agreed to a forbearance, and defendants made payments prescribed by the agreement. Subsequently, plaintiff filed a foreclosure complaint against defendants in 2013 for nonpayment, and defendants filed a counterclaim for breach of contract (case No. 13-CH-2912). In 2019, on the eve of trial, plaintiff voluntarily dismissed its complaint and defendants agreed to dismiss their counterclaim.

¶ 5 On May 31, 2022, plaintiff refiled a foreclosure complaint against defendants following the end of the COVID-19 forbearance. Thereafter, defendants filed their answer and raised the affirmative defense of equitable estoppel and a counterclaim for breach of contract. After two extensions, plaintiff filed its answer and reply. The court held a status hearing on May 23, 2023, and plaintiff requested to continue the matter. However, no order was submitted to the court.

¶ 6 On April 18, 2024, nearly one year later, the court *sua sponte* dismissed the case for want of prosecution, providing that "[p]laintiff's counsel failed to submit an Order on 5/23/2023 with a future date." Notice was sent to the parties.

¶ 7 On May 24, 2024, plaintiff filed a section 2-1401 petition for relief from judgment (735 ILCS 5/2-1401 (West 2024)) to vacate the dismissal based on reasonable mistake and to reinstate the case. Attached to the petition was counsel's affidavit stating that he (1) engaged with opposing

counsel regarding a settlement between August and October 2023 and (2) "Plaintiff's counsel suffered personal and family issues between February and April 2024." Plaintiff included the notice it received of the dismissal, and it bore a stamp stating, "RECEIVED APR 25 2024."

¶ 8 On July 16, 2024, defendants filed a response, arguing that the section 2-1401 petition should be denied because plaintiff failed to demonstrate due diligence. Defendants acknowledged that the parties engaged in settlement correspondence by e-mail twice but noted that the settlement discussion was cursory and ended on August 3, 2023. Further, defendants argued that counsel's personal and family issues did not excuse the lack of diligence where at least four different attorneys had appeared on record in this new litigation: one for the complaint, one for the answer to the counterclaim, one for the section 2-1401 petition and settlement e-mails (the attorney at issue), and another for orders to the court. Defendants also argued the lack of due diligence was demonstrated repeatedly over the years.

¶ 9 On August 6, 2024, plaintiff filed a reply, arguing that it did not receive any notice that the court was considering dismissing its case for want of prosecution; both complaints were diligently filed (the first within a year of defendants' default and the second was after the end of the COVID-19 forbearance); and counsel for plaintiff had been present for all scheduled court dates. Plaintiff also argued that the due diligence requirement should be relaxed on equitable grounds where justice and fairness required the granting of the petition because it had not been able to recoup any principal or interest during this period and had advanced over $85,962.64 on taxes and insurance after defendants ceased payments.

¶ 10 On August 13, 2024, the court held a hearing on plaintiff's petition. Plaintiff stood on its filings. Plaintiff further explained that that counsel was "hospitalized at the end of April [2024] and eventually he left the firm as a result of these health issues and some other personal matters."

Defendants noted the lengthy litigation between the parties. Further, defendants stated that plaintiff's affidavit mostly focused on why counsel missed the 30-day deadline to file a section 2-1301 petition (735 ILCS 5/2-1301 (West 2024))—not why counsel failed to file an order with the court or pursue its case for almost a year. Defendants stated that they believed plaintiff received notice in each of the two months preceding the dismissal that the court was going to dismiss the case for want of prosecution. Plaintiff's counsel indicated it had no internal records of the notice, and we observe that the record on appeal contains no such notice. Ultimately, the court denied the petition for lack of due diligence, stating:

> "There's a lot that could be said whether there's a meritorious claim for defense *** but I'm going to focus on diligence in the original proceeding and diligence in filing *** this petition.
>
> As to diligence in the proceeding, plaintiff asked for additional time to respond to the affirmative defenses and counterclaim. That was granted. It was filed December 27th, and plaintiff was given until March 21st of 2023.
>
> Plaintiff still didn't file, filed a second motion for extension. On May 23rd the case was on the court call. May 23rd, 2023, no order was submitted, which is why it languished without a future court date. It wasn't until almost a full year later that the case was dismissed for want of prosecution and a notice was sent by the clerk, it's in the file, to [plaintiff's counsel] on April 18.
>
> So given the dismissal for want of prosecution and given the age of the case, and given the fact there was a prior case and this was about a default that occurred more than a decade ago, plaintiff was certainly required to be diligent in filing their petition.

> The notice was sent by the clerk, the petition wasn't filed within 30 days as it should have been. Due diligence is judged by the reasonableness of petitioner's conduct under all the circumstances, and a party must follow the progress of its case, and a 2-1401 petition will not relieve a party of the consequences of its attorney's negligence of the matter.
>
> On this record, the Court finds that these factors weigh in favor of defendant, and the petition to vacate the dismissal for want of prosecution and reinstate the case is denied."

¶ 11 On September 11, 2024, plaintiff filed a motion to reconsider wherein it provided more context to counsel's personal situation but did not provide a new affidavit. Specifically, the motion added that:

> "[P]rior attorney's father had a heart attack in late spring and was hospitalized, which significantly affected the prior attorney. He took some time off work as a result. Shortly thereafter, the prior attorney himself was personally hospitalized with emergency health issues, which again caused a leave of absence from work. Due to these serious health issues, he was forced to resign from the firm to deal with them. He was not terminated or let go. Dealing with these issues impacted his ability to timely file a Motion to Vacate pursuant to 735 ILCS 5/2-1301 on file."

Plaintiff also emphasized that due diligence should be relaxed where necessary to prevent unjust results. Following a hearing, the court denied the motion. Plaintiff appeals.

¶ 12 II. ANALYSIS

¶ 13 On appeal, plaintiff argues the court erred in denying its section 2-1401 petition because it demonstrated due diligence in pursuing its claim against defendants and in the filing of the petition.

Plaintiff also argues that the due diligence requirement should be relaxed to serve the interests of justice. Defendants counter that the court's ruling was proper. Plaintiff also argues in its reply brief that it was improper for the court to dismiss the petition *sua sponte* without any notice to the parties. This argument, however, was raised for the first time in its reply brief on appeal and does not cite any authority in support of the position in violation of Illinois Supreme Court Rule 341(h)(7). Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020) ("Points not argued are forfeited and shall not be raised in the reply brief, in oral argument, or on petition for rehearing."). Therefore, we do not consider it. See *Vancura v. Katris*, 238 Ill. 2d 352, 369-73 (2010).

¶ 14 Turning to the challenged section 2-1401 ruling, the parties initially dispute whether our standard of review is *de novo* or abuse of discretion. Plaintiff argues the *de novo* standard applies because the court's disposition of the petition was tantamount to judgment on the pleadings and was functionally equivalent to granting summary judgment, citing *Mills v. McDuffa*, 393 Ill. App. 3d 940, 948 (2009). Since *Mills* was decided, our supreme court in *Warren County Soil & Water Conservation District v. Walters*, 2015 IL 117783, ¶¶ 28-52, has explained the applicable standard of review as follows.

¶ 15 "[A] section 2-1401 petition can present either a factual or legal challenge to a final judgment or order." *Id.* ¶ 31. If the petition raises a purely legal issue that does not involve a factual dispute, equitable circumstances are inapplicable, and there is no need for the petitioner to establish a meritorious defense or satisfy the due diligence requirements. *Id.* ¶¶ 47, 48. In such circumstances, we apply a *de novo* standard of review. *Id.* However, where the petition raises a fact-dependent challenge to a final judgment or order which requires considering the equities of the underlying case, the circuit court's ruling is reviewed for an abuse of discretion. *Id.* ¶ 50.

¶ 16 Here, we are presented with a fact-dependent challenge, and plaintiff asked this court to consider equity and the interest of justice. Thus, we review the court's decision for an abuse of discretion. See *id.* When an abuse of discretion standard applies, we will not disturb the circuit court's ruling unless it is "arbitrary, fanciful, or unreasonable or where no reasonable person would take the view adopted by the *** court." *Seymour v. Collins*, 2015 IL 118432, ¶ 41. The question is not whether this court agrees with the action taken by the circuit court—but whether the court "acted arbitrarily without the employment of conscientious judgment or, in view of all the circumstances, exceeded the bounds of reason and ignored recognized principles of law so that substantial prejudice resulted." (Internal quotation marks omitted.) *Cullinan v. Fehrenbacher*, 2012 IL App (3d) 120005, ¶ 10.

¶ 17 A section 2-1401 petition provides a mechanism for a party to vacate a final order or judgment after its entry. 735 ILCS 5/2-1401(a) (West 2024). To obtain relief, a party must petition the court within two years of the final order or judgment (*id.* § 2-1401(a), (c)) and provide "an affidavit or other appropriate showing as to matters not of record" (*id.* § 2-1401(b)). The purpose of this petition is to provide a party with an opportunity after judgment is entered to present facts to the court that, if known at the time the judgment was entered, would have prevented its entry. *Paul v. Gerald Adelman & Associates, Ltd.*, 223 Ill. 2d 85, 94 (2006). However, it does not relieve a party of the consequences of their own mistakes or negligence of their counsel. *Erickson v. Mitrione*, 2025 IL App (4th) 250297, ¶ 45. Relatedly, a plaintiff is not excused from the consequences of its counsel's omissions as it should follow the progress of its case. See *Dudek, Inc. v. Shred Pax Corp.*, 196 Ill. App. 3d 720, 725 (1990). There is no bright-line rule in assessing the reasonableness of the plaintiff's excuse, and the court must consider "all of the circumstances

attendant upon entry of the judgment ***, including the conduct of the litigants and their attorneys." *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 222 (1986); see *Paul*, 223 Ill. 2d at 99-100.

¶ 18 To prevail under section 2-1401, the petitioner must demonstrate by a preponderance of the evidence "(1) the existence of a meritorious defense or claim; (2) due diligence in presenting this defense or claim to the circuit court in the original action; and (3) due diligence in filing the section 2-1401 petition for relief." *Smith*, 114 Ill. 2d at 221. In some instances, the due diligence requirement may be relaxed if justice requires such under extraordinary circumstances or where there is unconscionable conduct by the opposing party. *Gonzalez v. Profile Sanding Equipment, Inc.*, 333 Ill. App. 3d 680, 689 (2002). However, "the ambit of section 2-1401 relief must not be overbroadened to such an extent that principles of equity and an ordered concept of justice are diluted." (Internal quotation marks omitted.) *Smith*, 114 Ill. 2d at 227.

¶ 19 Here, the court found that plaintiff was not diligent in either maintaining its action or filing its section 2-1401 petition. The court noted that the litigation between the parties had been ongoing for years. As to the instant case, plaintiff had received extensions of time and failed to submit an order to the court with a new date, resulting in nearly a year of inactivity. While plaintiff argues that defendants' answer was filed late without leave of court and thus was not properly before the court, citing *Sawyier v. Young*, 198 Ill. App. 3d 1047, 1052 (1990), the fact remains that plaintiff nonetheless received time to file an answer and asked for extensions. This, of course, is a relevant consideration for the court in determining whether plaintiff acted diligently in pursuing its cause of action against defendants throughout the case. Similarly unavailing, plaintiff's contention that there were ongoing settlement discussions occurring does not help its due diligence claim; the discussions were fleeting and had apparently ended as of August 3, 2023, after which eight months

of inactivity followed. Under these circumstances, we cannot say the circuit court abused its discretion in determining that plaintiff did not exercise due diligence in prosecuting its case.

¶ 20 To the extent plaintiff relies upon counsel's personal and family issues to support its due diligence argument, the record demonstrates that these primarily occurred after the court dismissed the case for want of prosecution on April 18, 2024 (attorney hospitalized at the end of April; attorney's father hospitalized "late spring"). The timing of these events renders them of little relevance to the question of due diligence in prosecuting its case. As to the question of due diligence in presenting the section 2-1401 petition, plaintiff's records demonstrate that it received the notice on April 25, 2024. Despite this, no action was taken in the case until the section 2-1401 petition was filed on May 24, 2024. While a 36-day delay does not establish a *per se* lack of due diligence, as the circuit court observed, the litigation between the parties spanned over a decade and four different attorneys appeared on record for plaintiff throughout this litigation: three other attorneys were of record for the complaint, answer, section 2-1401 petition, and other orders to the court. Thus, the unavailability of one attorney when there were at least three other attorneys on record would not necessarily justify the delay in filing the section 2-1401 petition. Notwithstanding, even if we were to determine that the circuit court abused its discretion in finding that filing the section 2-1401 petition on the thirty-sixth day was not diligent, this would not impact our conclusion that the court correctly concluded that plaintiff did not otherwise diligently pursue its cause of action.

¶ 21 In this regard, we disagree with plaintiff that the circuit court abused its discretion by not relaxing or excusing the due diligence requirement both in its original decision and at the motion to reconsider. Plaintiff is correct that a court may relax the requirement of due diligence and vacate a judgment "where justice and good conscience" require it. *Smith*, 114 Ill. 2d at 225. The circuit

court here ultimately determined that, under the unique circumstances of this case, equity supported holding plaintiff to the consequences of its lack of diligence. Given the procedural posture of this case as detailed by the court, we cannot say that the court's denial of plaintiff's section 2-1401 petition was "arbitrary, fanciful, or unreasonable or where no reasonable person would take the view adopted by the *** court." *Seymour*, 2015 IL 118432, ¶ 41.

¶ 22 Finally, plaintiff also argues, for the first time on appeal, that the court erred when it failed to vacate the dismissal order pursuant to section 2-1301(e) of the Code of Civil Procedure (735 ILCS 5/2-1301(e) (West 2024)) because plaintiff had the option to refile the action within one year after the entry of the dismissal or within the remaining period of limitations, whichever was greater. This motion, however, was never filed in the circuit court and is forfeited. *Unique Insurance Co. v. Tate*, 2022 IL App (1st) 210491, ¶ 22.

¶ 23 III. CONCLUSION

¶ 24 The judgment of the circuit court of Du Page County is affirmed.

¶ 25 Affirmed.