

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2019 IL App (3d) 180352-U

Order filed September 19, 2019

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2019

COURTNEY LYNN LENANE,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Petitioner-Appellee,)	Will County, Illinois.
)	
v.)	Appeal No. 3-18-0352
)	Circuit No. 17-OP-2292
)	
TRISTAN DOBRIAN,)	Honorable
)	Jessica Colon-Sayre,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice Schmidt and Justice McDade concurred in the judgment.

ORDER

- ¶ 1 *Held:* Trial court did not abuse its discretion in denying respondent's motion to vacate stalking no contact order.
- ¶ 2 Petitioner, Courtney Lynn Lenane, filed a petition for an order of protection against respondent, Tristan Dobrian. Dobrian failed to appear, and a default judgment was entered against him. He filed three motions to vacate, which the trial court denied. On appeal, he claims that the trial court abused its discretion in refusing to vacate the order of protection. We affirm.

FACTS

¶ 3

¶ 4 On October 3, 2017, Lenane filed a petition for a “Stalking No Contact Order” against Dobrian, seeking to have herself and her husband named as protected parties. In her petition, Lenane alleged that she and her husband had been receiving unwanted emails and text messages from Dobrian for the past five years. She asserted that she contacted him several times, asking him to stop his harassing behavior, and he refused.

¶ 5 The trial court held an emergency hearing. At that hearing, Lenane produced text messages and emails in which Dobrian said, “I hate you. I hope you die.” The trial court entered an emergency stalking no contact order and set the matter for a plenary order of protection hearing on October 24, 2017. A copy of the summons, verified petition, and emergency stalking no contact order were personally served on Dobrian in Boulder, Colorado, on October 6, 2017.

¶ 6 Dobrian did not appear at the plenary hearing on October 24, 2017. The trial court found him in default and entered a two-year stalking no contact order against him.

¶ 7 On November 13, 2017, Dobrian filed a *pro se* motion to vacate the plenary order, claiming that Lenane lied in her petition and asked the court to overturn the order because Dobrian did not want it on his record. At the hearing on January 19, 2018, Dobrian was represented by counsel. His attorney indicated that he was adopting Dobrian’s *pro se* motion and wished to proceed to a hearing. He then acknowledged that Dobrian had been personally served with the emergency order on October 6, 2017, and had received notice of the October 24 plenary hearing date. During the hearing, Dobrian also informed the court that he failed to appear at the hearing because he thought Lenane “would not show up” and the order would not be entered. The court found that Dobrian’s motion did not provide a sufficient basis to vacate the order and denied it without prejudice.

¶ 8 On February 15, 2018, Dobrian filed another motion to vacate the default judgment, setting forth the same arguments raised in his first motion. He claimed that Lenane knowingly lied and that it was important to have the stalking no contact order removed from his record because he was applying for academic research positions. On March 7, 2018, the trial court entered an order denying Dobrian’s motion, reviewing it as a motion to reconsider the court’s order of January 19, 2018, denying the motion to vacate.

¶ 9 On March 19, 2018, Dobrian filed a third motion to vacate, again claiming that Lenane lied and that he wanted the stalking no contact order removed from his record. Dobrian also claimed that “[p]laintiff’s filing of the Stalking No Contact Order [was] unconstitutional.” The trial court denied the motion with prejudice on May 18, 2018. Dobrian filed his notice of appeal from that order on June 11, 2018.

¶ 10 ANALYSIS

¶ 11 Dobrian argues that the trial court abused its discretion in refusing to vacate the stalking no contact order entered against him based on his third motion to vacate filed on March 19, 2018.

¶ 12 Dobrian’s third motion to vacate the default judgment did not specify the statutory basis upon which he relied. Nevertheless, his motion to vacate the default judgment was governed by section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2018)). See *Gruss v. Beverly*, 201 Ill. App. 3d 502, 507 (1990). Section 2-1401 provides the statutory procedure by which final orders and judgment may be vacated “after 30 days from the entry thereof.” 735 ILCS 5/2-1401(a) (West 2018). To be entitled to relief under section 2-1401, a movant must set forth specific factual allegations supporting (1) the existence of a meritorious defense or claim, (2) due diligence in presenting that defense or claim to the trial court in the original action, and

(3) due diligence in filing the section 2-1401 petition. *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 220-21 (1986).

¶ 13 Generally, a motion to vacate filed under 2-1401 is directed to the sound discretion of the trial court, and the court’s decision will not be disturbed on appeal unless the court has abused its discretion. See *Warren County Soil and Water Conservation District v. Walters*, 2015 IL 117783, ¶ 51 (when motion to vacate presents fact-specific challenge to final judgment, as is the typical case, abuse of discretion standard applies). In exercising its discretion, the trial court “should consider all of the events leading up to judgment and should decide what is just and proper based on the facts of the case.” *Larson v. Pedersen*, 349 Ill. App. 3d 203, 208 (2004). “If reasonable persons could differ as to the propriety of the trial court’s actions, then the trial court cannot be said to have exceeded its discretion.” *Venzor v. Carmen’s Pizza Corp.*, 235 Ill. App. 3d 1053, 1059 (1992).

¶ 14 We cannot say that the trial court exceeded its discretion. Dobrian failed to exercise due diligence. At the hearing on his motion to vacate, Dobrian admitted that he received notice of the October 24, 2017, hearing two weeks before the scheduled date. He stated that he chose not to attend the hearing because he did not think Lenane would appear, but he did not allege any impediment to being present. Moreover, Dobrian’s motion to vacate did not allege a meritorious defense, and nothing in the record indicates that he had a meritorious defense to the allegations of harassing emails and texts. Under the circumstances, the trial court did not abuse its discretion by denying Dobrian’s third motion to vacate.

¶ 15 CONCLUSION

¶ 16 The judgment of the circuit court of Will County is affirmed.

¶ 17 Affirmed.