

**[J-14-2007]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**EASTERN DISTRICT**

M & P MANAGEMENT, LP,	:	No. 41 EAP 2006
	:	
Appellee	:	
	:	Appeal from the Judgment of Superior
	:	Court entered on 5/16/06 at No. 1303 EDA
v.	:	2005 affirming the order dated 4/21/05 of
	:	the Court of Common Pleas of
	:	Philadelphia County, Civil Division at No.
	:	3705 September term 2001
MICHAEL WILLIAMS,	:	
	:	
Appellant	:	ARGUED: March 7, 2007

**CONCURRING AND DISSENTING OPINION**

**MR. JUSTICE SAYLOR**

**DECIDED: November 20, 2007**

I agree with the Chief Justice's position that this Court may fashion a rule that elevates the interests of finality over validity as regards at least some range of confessed judgments that would otherwise be deemed "void," so long as notice and any other relevant due process requirements are satisfied. See Concurring Opinion, slip op. at 2 (Cappy, C.J.). I also concur with the majority's determination that this Court's adoption of Civil Procedural Rule 2959 was not intended to modify the void-versus-voidable distinction as developed in the cases.

I do, however, believe that, prospectively, at least, this Court should consider developments in the law that have occurred since that doctrine first appeared, particularly as such framework seems overly rigid in subordinating the interests of finality to validity. See generally Hodge v. Hodge, 621 F.2d 590, 592 (3d Cir. 1980)

“The problem has always been one of balancing judicial concerns for finality against those for validity of judgments. Although traditional doctrine emphasized the importance of validity, the modern trend accords substantially greater weight to finality.”); Jones v. Seymour, 321 Pa. Super. 32, 35 n.1, 467 A.2d 878, 880 n.1 (1983) (“The problems engendered by the rule that laches cannot run against a ‘void’ judgment has been the subject of much thoughtful commentary. . . . We note that while there are recent cases in which this court applie[d] the rule, . . . the Supreme Court cases which fashioned the rule are fairly old. The time may be ripe for the Supreme Court to review whether the rule is still appropriate.” (citations omitted)). In this regard, Appellee notes that the second Restatement of Judgments favors modification of the “void judgment” concept and adoption of a methodology emphasizing finality and the totality of the circumstances. See Appellee’s Supplemental Brief at 5. Section 12, in particular, indicates:

When a court has rendered a judgment in a contested action, the judgment precludes the parties from litigating the question of the court’s subject matter jurisdiction in subsequent litigation except if: (1) The subject matter of the action was so plainly beyond the court’s jurisdiction that its entertaining the action was a manifest abuse of authority; or (2) Allowing the judgment to stand would substantially infringe the authority of another tribunal or agency of government; or (3) The judgment was rendered by a court lacking capability to make an adequately informed determination of a question concerning its own jurisdiction and as a matter of procedural fairness the party seeking to avoid the judgment should have opportunity belatedly to attack the court’s subject matter jurisdiction.

REST. (SECOND) JUDGMENTS §12. The comment to this provision explains that

the principle of finality rests on the premise that the proceeding had the sanction of law, expressed in the rules of subject matter jurisdiction. . . . If the [jurisdictional] question

is decided erroneously, and a judgment is allowed to stand in the face of the fact that the court lacked subject matter jurisdiction, then the principle of validity is compromised. On the other hand, if the judgment remains indefinitely subject to attack for a defect of jurisdiction, then the principle of finality is compromised.

The essential problem is therefore one of selecting which of the two principles is to be given greater emphasis. Traditional doctrine gave greater emphasis to the principle of validity, at least when judgments of tribunals of limited jurisdiction were concerned, asserting that a judgment of a court lacking subject matter jurisdiction was “void” and forever subject to attack. . . .

The difficulties with traditional doctrine [included that] it resolved the problem of primacy between validity and finality in terms that did not, at least overtly, refer to other interests that might determine which of the two principles was given greater effect in a specific situation. If the principles of finality and validity are recognized as both being fundamental, then the only sensible way of choosing between them would appear to be in terms of such other interests.

Id., Official Cmt. a; see also Tice v. Nationwide Ins. Co., 284 Pa. Super. 220, 229-30, 425 A.2d 782, 787 (1981) (Spaeth, J., concurring) (observing that “the drafters of the Restatement (Second) express the opinion that if the requirements for validity are not met, a judgment may be subject to avoidance, not, however, as an automatic consequence, but depending on the nature of the defect, the opportunity of the complaining party to challenge the defect, and on whether there has been reliance on the judgment,” and opining that “[t]hese developments in the law should encourage us to take the view of the Restatement (Second)”).

In sum, even within the framework of procedural rules that potentially allow an invalid judgment to be attacked after expiration of the limitation period that would otherwise apply, as a matter of procedural rulemaking I would likely favor giving

preeminence to validity over finality only where the equities clearly favored the judgment debtor, such as where personal jurisdiction was lacking and it would be manifestly unfair to require the debtor to defend himself in a Pennsylvania court.

Finally, it seems clear that Appellant may not prevail under any reasonable construction of the existing rule. Appellant requested that the confessed judgments be stricken off on the basis that the amendments to the promissory notes did not restate the cognovit clauses. See Defendant's Motion to Strike Confessed Judgment at ¶¶33; RR. 20; Majority Opinion, slip op. at 2-4 & nn.1-2. This asserted defect plainly does not fall into the jurisdictional category delineated by the majority in order for the confessed judgments to be considered void. See id. at 1 ("A void judgment arises when the court lacks subject matter jurisdiction[.]"). Notably as well, the parties have briefed the issue and do not contend that the trial court lacked subject matter jurisdiction. Under these circumstances, the trial court's decision not to strike off the judgments can, in my view, be affirmed outright at this juncture. While the majority declines to address Appellee's argument to this effect on the premise that the issue is not before the Court, see Majority Opinion, slip op. at 7, such reasoning overlooks that an appellate court may affirm a valid judgment or verdict for any reason appearing as of record. See Commonwealth v. Parker, 591 Pa. 526, 534-35, 919 A.2d 943, 948 (2007). Therefore, as it is clear from the record that Appellee will prevail on remand (and indeed would be entitled to prevail regardless of whether Rule 2959(a)(3)'s time limitation could be applied to "void" judgments as that term is used by the majority), I would simply affirm the judgment of the trial court and relinquish jurisdiction to that tribunal for any further proceedings that may be necessary in the case.

Mr. Justice Eakin joins this concurring and dissenting opinion.