Opinion issued February 27, 2018

In The

Court of Appeals

For The

First District of Texas

NO. 01-17-00191-CV

HECTOR SANCHEZ, INDIVIDUALLY, AND CUAUHTEMOC CONSTRUCTION, Appellants

V.

R.S. CONCRETE, L.L.C., D/B/A R&S CONCRETE, L.L.C., Appellee

On Appeal from County Court at Law No. 2
Harris County, Texas
Trial Court Case No. 1087751

MEMORANDUM OPINION

Appellants, Hector Sanchez, individually, and Cuauhtemoc Construction[1] (collectively, "Sanchez"), appeal the trial court's judgment denying his petition for

[1] Sanchez, in his brief, states that Cuauhtemoc Construction is an assumed name.

a bill of review to set aside a default judgment rendered against him and in favor of appellee, R.S. Concrete, L.L.C., doing business as R&S Concrete, L.L.C. ("R&S"). In five issues, Sanchez contends that the trial court erred in denying his petition for a bill of review because he was not served with process in the underlying lawsuit, the bill-of-review limitations period was tolled by extrinsic fraud, and he was not afforded notice of the hearing on the motion for default, a hearing on his bill of review, or due process.

We affirm.

Background

This suit arises from a construction project that concluded in December 2007. In its original petition, R&S alleged that it supplied concrete and other materials for the project pursuant its contract with Sanchez, doing business as Cuauhtemoc, a sole proprietorship, and a personal guaranty by Sanchez. After R&S fulfilled its obligations under the contract, however, Sanchez refused, despite demand, to pay the balance of $18,224.97 outstanding on the account.

In January 2009, R&S sued Sanchez for breach of contract, sworn account, quantum meruit, and violations of the Prompt Payment Act and Texas Construction

Trust Fund Act.[2] After R&S was not successful in effectuating service of process on Sanchez, R&S moved for substituted service.[3]

In its motion for substituted service, R&S asserted that its attempts to effectuate service of process on Sanchez were not successful and that reasonably effective notice could be given to him by service at his usual place of residence, located at 7112 Amarillo Street, Houston, Texas, by leaving a copy with anyone over the age of 16 living at the residence or by posting it at the front gate or front door of the residence. To support its motion, R&S attached the affidavit of a private process server, Carl Schultheis, Jr., who testified that he had attempted, at various times on January 10, 13, 15, 17, 19, and 21, 2009, to personally serve Sanchez at his usual place of residence: 7112 Amarillo Street, Houston. The process server gave specific facts about his visits to Sanchez's house and his contact with Sanchez's wife and daughter. The daughter confirmed that Sanchez lived at that address. The process server noted that, although, on three occasions, he saw numerous trucks in the driveway, the daughter said that Sanchez was at work and that she did not know when he would return.

On February 6, 2009, the trial court granted R&S's motion for substituted service, ordering that service be made on Sanchez by leaving a copy with anyone

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2 *See* TEX. PROP. CODE ANN. §§ 28.001, 162.001 (West 2014).

3 *See* TEX. R. CIV. P. 106.

over the age of 16 living at the residence or "by posting at the front gate or front door of the residence." The trial court also ordered that process be mailed, by regular and certified mail, to Sanchez at the same address.

On February 27, 2009, the process server filed a verified return of service and affidavit, stating that, at 11:00 a.m. on February 21, 2009, he served Sanchez "by POSTING per Order by securely affixing to the main entry way" at 7112 Amarillo Street, Houston, Texas. Also on February 21, 2009, the process server sent to Sanchez, by regular and certified mail, return receipt requested, a copy of the citation and original petition. To his return, he appended the certified mail receipts.

On March 24, 2009, after Sanchez did not appear or answer, R&S moved for entry of a default judgment against him. R&S appended copies of the credit application that Sanchez executed on behalf of Cuauhtemoc; Sanchez's personal guaranty; its unpaid invoice; and the affidavit of Dolores Hernandez, an account manager for R&S. R&S also appended certificates of last known address and an affidavit of counsel in support of attorney's fees.

On March 31, 2009, the trial court, after finding that Sanchez was duly cited, the return had been on file for more than ten days, and Sanchez had not answered or appeared, granted R&S a default judgment on its claims. The trial court awarded to R&S, and against Sanchez, actual damages in the amount of $18,224.97, attorney's fees of $2,245.25, interest, and costs. Also on March 31, 2009, the Harris County

clerk sent notice of the default judgment to Sanchez at 7112 Amarillo Street, Houston, Texas.

On October 17, 2016, a writ of execution issued. On January 3, 2017, Sanchez's real property, located at 947 Gazin Street, Houston, Texas, was sold at a constable's sale.

On January 10, 2017, Sanchez filed a petition for a bill of review. He asserted that, although the four-year limitations period governing petitions for bill of review had expired, he was prevented by R&S's "extrinsic fraud" from filing his petition earlier. Specifically, R&S had "failed to serve [him] in person," despite that it had communicated with him in the past and could have "easily located" him. He asserted that his "address is 7112 Amarillo Street, Houston, Texas, 77020." Although, "[o]n February 21, 2009, service by certified mail was attempted" on him, "pursuant to an order by the trial court authorizing such service," he had "no recollection" of having been served.

Sanchez also asserted that he was prevented from filing his petition earlier by R&S's "extrinsic fraud," in that R&S had made "false promises of compromise." In December 2007, he purchased concrete and materials from R&S to fulfill his contract with a third party, "Ritmo Latino,"[4] pursuant to which Sanchez had agreed to provide concrete services, in the amount of $265,000.00, on a construction

[4] Not a party to this appeal.

project. He asserted that, for a "few months," he paid R&S. However, after Ritmo stopped paying him, he was unable to pay R&S. Sanchez asserted that, on July 31, 2008, he met with R&S, and its counsel, and showed them his unpaid invoices. He asserted that they "agreed" that he was "not at fault for the unpaid materials" and that Ritmo "was liable," and R&S "told him that [it] would not sue" him. Sanchez stated that he "understood" that R&S "would not pursue litigation against him" and "understood that the matter had been settled." He asserted that the parties had memorialized their agreement and that he had appended a copy of their agreement to his petition.

Sanchez further argued that he was deprived of due process because R&S had failed to provide timely notice of the hearing on its motion for default.

To his petition, Sanchez attached a copy of the default judgment; R&S's motion for substituted service; the process server's affidavit, detailing his attempts to personally serve Sanchez at 7112 Amarillo Street, Houston; the trial court's order authorizing substituted service; a December 10, 2007 "Letter of Agreement" between Ritmo and Sanchez, on behalf of Cuauhtemoc, agreeing to provide concrete services to Ritmo for the construction project; a July 31, 2008 letter by Sanchez to R&S, acknowledging receipt of its demand for payment and asserting that it had "issued check#_____ on _____ [sic] for payment of those deliveries"; and a "Deed

of Trust," filed on January 23, 2008, securing a loan to Sanchez, at "7112 Amarillo, Houston, TX."

R&S answered, generally denying the allegations and asserting, inter alia, that Sanchez's suit for bill of review was barred by limitations. R&S also filed objections to Sanchez's petition for a bill of review, asserting that it had served him with process in the underlying lawsuit in accordance with the trial court's order authorizing substituted service[5] and that Sanchez had failed to plead and prove that he was prevented from making an appearance due to fraud by R&S.

The trial court denied Sanchez's petition for bill of review.

Bill of Review

In reviewing the denial of a bill of review, every presumption is indulged in favor of the trial court's ruling, which will not be disturbed unless it is affirmatively shown that there was an abuse of discretion. *Xiaodong Li v. DDX Grp. Inv., LLC*, 404 S.W.3d 58, 62 (Tex. App.—Houston [1st Dist.] 2013, no pet.). A bill of review is a separate, independent suit brought by a party to a former action who is seeking to set aside a final judgment that is no longer subject to a motion for new trial or appealable. *Caldwell v. Barnes*, 154 S.W.3d 93, 96 (Tex. 2004); *Wolfe v. Grant Prideco, Inc*., 53 S.W.3d 771, 773 (Tex. App.—Houston [1st Dist.] 2001, pet. denied); *see* TEX. R. CIV. P. 329b(f). It is an equitable remedy available only when

[5] *See* TEX. R. CIV. P. 106.

a party has "demonstrated due diligence and can show, through no fault of its own, that no other legal remedy [is] available." *See Hernandez v. Koch Mach. Co*., 16 S.W.3d 48, 57 (Tex. App.—Houston [1st Dist.] 2000, pet. denied) (citing *Caldwell*, 975 S.W.2d at 537–38).

Ordinarily, a bill-of-review plaintiff must plead and prove "(1) a meritorious defense to the underlying cause of action, (2) which the plaintiff [was] prevented from making by the fraud, accident or wrongful act of the opposing party or official mistake, (3) unmixed with any fault or negligence on [its] own part." *Mabon v. Afri-Carib Enters., Inc*., 369 S.W.3d 809, 812 (Tex. 2012). However, when a bill-of-review plaintiff alleges a lack of service or notice, he is relieved of proving the first two elements. *Id*. And the third element, lack of negligence, is conclusively established. *Id*.

Additionally, a petition for a bill of review must be brought within four years of the date of the underlying judgment. *Valdez v. Hollenbeck*, 465 S.W.3d 217, 221 (Tex. 2015); *PNS Stores, Inc. v. Rivera*, 379 S.W.3d 267, 273 (Tex. 2012); *see* TEX. CIV. PRAC. & REM. CODE ANN. § 16.051 (West 2015). If the statute of limitations bars the petition for bill of review, "we do not reach the parties' arguments regarding its merits." *Britton v. J.P. Morgan Chase, N.A.*, No. 01-13-00928-CV, 2014 WL 3398504, at *7 (Tex. App.—Houston [1st Dist.] July 10, 2014, no pet.) (mem. op.);

see also Grant v. Grant, No. 01-16-00581-CV, 2018 WL 454756, at *4 (Tex. App.—Houston [1st Dist.] Jan. 18, 2018, no pet.) (mem. op.).

Limitations

In his first and third issues, Sanchez argues that the trial court erred in denying his bill of review because, although he filed his petition more than four years after the trial court signed the default judgment, the limitations period was tolled by extrinsic fraud. He argues that he was prevented from filing his petition earlier because R&S (1) "hid the suit" from him, i.e., "failed to serve [him] with process" and "failed to serve [him] in person when [it] could have easily located [him]," and (2) made "false promises of compromise," i.e., "told him that [it] would not sue."

The four-year limitations period governing a petition for a bill of review may be tolled, until the petitioner knew or should have known about the default judgment, if the petitioner proves that the challenged judgment was obtained through extrinsic fraud. *Rivera*, 379 S.W.3d at 275, 277 n.16; *Law v. Law*, 792 S.W.2d 150, 153 (Tex. App.—Houston [1st Dist.] 1990, writ denied) (stating that extrinsic fraud constitutes "only exception" to four-year limitations period); *see* TEX. CIV. PRAC. & REM. CODE ANN. § 16.051. Extrinsic fraud is that which denies a litigant the opportunity to fully litigate at trial all the rights or defenses that could have been asserted. *King Ranch, Inc. v. Chapman*, 118 S.W.3d 742, 752 (Tex. 2003). "Extrinsic fraud requires proof of some deception practiced by the adverse party that was collateral to the underlying

action." *Reynolds v. Reynolds*, No. 14–14–00080–CV, 2015 WL 4504626, at *4 (Tex. App.—Houston [14th Dist.] July 23, 2015, no pet.) (mem. op.) ("Extrinsic fraud is wrongful conduct occurring outside of the challenged trial proceeding, which affects the manner in which the judgment is procured."); *Alderson v. Alderson*, 352 S.W.3d 875, 878 (Tex. App.—Dallas 2011, pet. denied) (extrinsic fraud "must be purposeful in nature").

Extrinsic fraud occurs when a litigant has been misled by his adversary by fraud or deception or was denied knowledge of the suit. *Rivera*, 379 S.W.3d at 275. A fraudulent failure to serve a defendant with personal service, in order to obtain a judgment against him without actual notice to him, has been held to constitute extrinsic fraud. *Lambert v. Coachmen Indus. of Tex., Inc*., 761 S.W.2d 82, 87 (Tex. App.—Houston [14th Dist.] 1988, writ denied). Further, a failure by opposing counsel to notify all opposing parties of a trial setting has also been found to constitute extrinsic fraud. *Id.*

Thus, because Sanchez filed his bill-of-review petition on January 10, 2017, more than four years after the trial court's default judgment was signed, on March 31, 2009, his petition is barred by the four-year statute of limitations unless he established that R&S obtained the default judgment through extrinsic fraud.

1. Service of Process

In his first issue, Sanchez asserts that R&S "failed to serve [him] with process" and "failed to serve [him] in person when they could have easily located [him]" and "despite the fact that [R&S] and its attorney had communicated with [him] in person during 2008." He asserts that, "[b]y actual deceit, [R&S] hid the suit" from him, "preventing him from defending himself." Further, he "never received service of process" and "[n]o proof of receipt was tendered to the trial court."

"Texas law prefers personal service over substitute service." *Vespa v. Nat'l Health Ins. Co*., 98 S.W.3d 749, 751 (Tex. App.—Fort Worth 2003, no pet.); *see Mylonas v. Texas Commerce Bank–Westwood*, 678 S.W.2d 519, 522 (Tex. App.—Houston [14th Dist.] 1984, no writ) (substituted service is "not the preferred method"). "A plaintiff may resort to substituted service only upon the failure of the[] methods which provide proof of actual notice." *See State Farm Fire & Cas. Co. v. Costley*, 868 S.W.2d 298, 299 (Tex. 1993).

Rule 106(a) authorizes service by delivering the citation, with a copy of the petition, to the respondent in person or by registered or certified mail, return receipt requested. TEX. R. CIV. P. 106(a). If service under these methods fail, the trial court, upon motion supported by affidavit, may authorize service:

> (1) by leaving a true copy of the citation, with a copy of the petition attached, with anyone over sixteen years of age at the location specified in such affidavit, or

(2) in any other manner that the affidavit or other evidence before the court shows will be reasonably effective to give the defendant notice of the suit.

TEX. R. CIV. P. 106(b). The supporting affidavit must state (1) "the location of the [respondent's] usual place of business or usual place of abode or other place where [he] can probably be found" and (2) the specific facts showing that service under subsection (a) has been attempted "at the location named in such affidavit but has not been successful." *Id.* When a trial court orders substituted service under Rule 106(b), the order provides the only authority for the substituted service. *Vespa*, 98 S.W.3d at 752. "[A]ny deviation from the trial court's order necessitates a reversal of the default judgment based on service." *Id.*

Here, R&S, in its motion for substituted service, asserted that its attempts to effectuate service of process on Sanchez were not successful and that reasonably effective notice could be given to Sanchez by service at his usual place of residence, at 7112 Amarillo Street, Houston, Texas, by leaving a copy with anyone over the age of 16 living at the residence or by posting at the front gate or front door of the residence.

To support its motion, R&S attached the affidavit of the process server, who testified that, at various times on January 10, 13, 15, 17, 19, and 21, 2009, he attempted to personally serve Sanchez at his usual place of residence: 7112 Amarillo Street, Houston. The process server gave specific facts about his visits to Sanchez's

house and his contact with Sanchez's wife and daughter. Sanchez's daughter confirmed that Sanchez lived at that address. The process server noted that, although, on three occasions, there were numerous trucks in the driveway, the daughter said that Sanchez was at work and she did not know when he would return.

The process server's affidavit is sufficient to justify substituted service under rule 106(b) because it states (1) Sanchez's usual place of abode and (2) specific facts describing his unsuccessful attempts to personally serve Sanchez at that address. *See Costley*, 868 S.W.2d at 298 (process server's affidavit stating location of defendant's usual place of abode and specific facts describing unsuccessful attempts at personal service complied with Rule 106(b)); *see also* TEX. R. CIV. P. 106(b); *Pickersgill v. Williams*, No. A14-93-00424-CV, 1994 WL 2011, at *3–4 (Tex. App.—Houston [14th Dist.] Jan. 6, 1994, writ denied) (mem. op.) (holding affidavit referencing "the address I believe to be [defendant's] place of residence" sufficient).

The trial court granted R&S's motion for substituted service, ordering that service be made on Sanchez by leaving a copy with anyone over the age of 16 "living at the residence" or "by posting at the front gate or front door of the residence." The trial court also ordered that process be mailed, by regular and certified mail, to Sanchez at the same address.

The return-of-service affidavit in the record establishes that the process server, at 11:00 a.m. on February 21, 2009, served Sanchez "by POSTING per Order by

securely affixing to the main entry way" at 7112 Amarillo Street, Houston, Texas. Also on February 21, 2009, the process server sent to Sanchez, by regular and certified mail, to the same address, with return receipt requested, a copy of the citation and original petition. To the return, he appended the certified mail receipts.

We conclude that Sanchez was served with process in the underlying lawsuit in accordance with the trial court's order authorizing substituted service. *See* TEX. R. APP. P. 106; *Vespa*, 98 S.W.3d at 752; *see also Primate Constr., Inc. v. Silver*, 884 S.W.2d 151, 152 (Tex. 1994) ("The recitations in the return of service carry so much weight that they cannot be rebutted by the uncorroborated proof of the moving party.").

Further, with respect to Sanchez's complaint that R&S did not afford him timely notice of the hearing on its motion for default judgment, once, as here, citation and petition are served on a defendant, the plaintiff has no duty to notify a non-answering defendant before taking a default judgment on the causes of action asserted in the petition. *Long v. McDermott*, 813 S.W.2d 622, 624 (Tex. App.—Houston [1st Dist.] 1991, no writ) (holding that non-answering defendant not entitled to notice of hearing on damages).

On appeal, Sanchez complains that he did not receive "actual notice" of the citation and petition, and that the record does not contain "proof of receipt," with respect to the certified mailing. R&S was not required to show proof of actual

receipt, either through the posting at Sanchez's house or by certified mail. The process server's affidavit is sufficient proof that substituted service on Sanchez was completed in accordance with the trial court's order. *See Williams v. Asset Acceptance LLC*, No. 03-11-00520-CV, 2012 WL 2989219, at *4 (Tex. App.—Austin July 20, 2012, no pet.) (mem. op.) ("Although Williams claims that she did not receive actual notice of the citation and petition," the affidavit is "sufficient proof that substituted service on Williams was completed in accordance with the trial court's order.").

Sanchez asserted in his petition for bill of review that his "address is 7112 Amarillo Street, Houston, Texas, 77020." And, he concedes on appeal that, "[o]n February 21, 2009, service by certified mail was attempted" on him "pursuant to an order by the trial court authorizing such service." He simply asserts that he has "no recollection" of having been served. That he has "no recollection" of having been served is not evidence that he was not served or, more importantly, of fraud by R&S.

Sanchez asserts that service was not "reasonably calculated" to provide notice to him because R&S "failed to perfect service" on him at the Gazin address. Sanchez asserted in his petition for bill of review, however, which he filed in January 2017, that he "currently" lives at Gazin because of "water damage" and that the house at 7221 Amarillo Street "is *currently* uninhabitable due to water damage." (Emphasis added.) He did not assert that 7112 Amarillo Street was not his usual place of abode

in January and February 2009, when R&S served him. *See Sanders v. Sanders*, No. 01-11-00010-CV, 2011 WL 5100912, at *3 (Tex. App.—Houston [1st Dist.] Oct. 27, 2011, no pet.) (mem. op.) (noting that defendant "does not dispute that the house at 22319 Spring Crossing Drive was her usual place of abode").

Again, extrinsic fraud requires proof of some deception by the adverse party that was collateral to the underlying action. *See Rivera*, 379 S.W.3d at 275; *Reynolds*, 2015 WL 4504626, at *4. It requires wrongful conduct and that the fraud be purposeful. *See Okon v. Boldon*, No. 02-14-00334-CV, 2015 WL 4652775, at *4 (Tex. App.—Fort Worth Aug. 6, 2015, no pet.) (no pet.); *Alderson*, 352 S.W.3d at 878. Sanchez does not point to any wrongful or deceptive conduct by R&S. We conclude that Sanchez has not shown extrinsic fraud in regard to service of process or notice of the hearing on the default judgment.

2. *False Promise of Compromise*

Sanchez also asserts that he was prevented from filing his petition earlier by R&S's "false promises of compromise." Sanchez, in his petition for bill of review, asserted that, on July 31, 2008, he met with R&S, and its counsel, and showed them his unpaid invoices. He asserted that they "agreed" that he was "not at fault for the unpaid materials" and that Ritmo "was liable," and R&S "told him that [it] would not sue" him. Sanchez stated that he "understood" that R&S "would not pursue litigation against him" and "understood that the matter had been settled." He

asserted that the parties had memorialized their agreement and that he had appended a copy to his petition.

Nothing in the July 31, 2008 letter that Sanchez attached to his petition, however, evidences an agreement with R&S. In the letter, which Sanchez wrote to R&S, Sanchez acknowledged his receipt of R&S's demand for payment, asserted that he had "issued check#_____ on _____ [sic] for payment of those deliveries," and asked that R&S "verify" its records. Sanchez also asked R&S to execute a waiver and release, indicating that there were no outstanding claims on the project. There is no agreement by R&S. Sanchez does not direct us to any other evidence in the record constituting proof of any type of agreement or compromise with R&S. *See, e.g.*, *Grant*, 2018 WL 454756, at *2 (rejecting bill-of-review plaintiff's argument that defendant committed extrinsic fraud through representations that misled him and made him believe that plaintiff would not proceed with lawsuit because argument was not supported by testimony or evidence).

We conclude that Sanchez has not established extrinsic fraud. Thus, he is not entitled to a tolling of the statute of limitations. We hold that, because the four-year statute of limitations was not tolled, the trial court did not err in denying Sanchez's petition for bill of review. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 16.051; *Rivera*, 379 S.W.3d at 275; *Grant*, 2018 WL 454756, at *2; *Britton*, 2014 WL 3398504, at *6–7.

We overrule Sanchez's first and third issues.

Hearing on Bill of Review

In his second issue, Sanchez asserts that the trial court erred by not holding a hearing on his petition for bill of review. To the contrary, R&S asserts that the trial court denied Sanchez's petition after "hearing oral arguments." The record of such hearing has not been filed in the appeal.

We note, however, that the trial court's February 24, 2017 order denying Sanchez's petition for bill of review states:

> On this day, the Court considered Plaintiffs Original Petition for Bill of Review. After considering Plaintiff's motion, Defendant's response *and hearing arguments of counsel*, this Court is of the opinion that Plaintiff's motion should be denied.

(Emphasis added.) The trial court's docket sheet also states that it held a hearing on February 24, 2017. In our review, we must indulge every presumption in favor of the trial court's judgment, which will not be disturbed unless error is affirmatively shown. *See Xiaodong Li*, 404 S.W.3d at 62.

Sanchez asserts that he "objected to the submission of the matter without a hearing," directing us generally to a page in the trial court's docket sheet. The record reflects only that Sanchez specifically objected to the timeliness of R&S's notice of submission of its objections.

Sanchez does not direct us to any place in the record establishing that he objected to any lack of an evidentiary hearing on his petition for bill of review.

"[W]hen a party does not object to the trial court's failure to conduct an evidentiary hearing, error is waived." *Akhtar v. Leawood HOA, Inc.*, 525 S.W.3d 814, 820 (Tex. App.—Houston [14th Dist.] 2017, no pet.); *W. Hous. Airport, Inc. v. Millennium Ins. Agency, Inc.*, 349 S.W.3d 748, 755 (Tex. App.—Houston [14th Dist.] 2011, pet. denied); *see also* TEX. R. APP. P. 33.1. By not specifically objecting in the trial court to any lack of an evidentiary hearing, Sanchez waived the trial court's error, if any, by not holding such a hearing. *See W. Hous. Airport, Inc.*, 349 S.W.3d at 755.

We overrule Sanchez's second issue.

Due Process

Sanchez, in portions of his first and second issues, asserts that "there was no service" of process, the default judgment "is void and cannot be enforced," and the "only question before the court is whether or not it has jurisdiction over the person who is the judgment debtor." *See Peralta v. Heights Med. Ctr., Inc.*, 485 U.S. 80, 86–87, 108 S. Ct. 896, 900 (1988). In his fourth issue, Sanchez asserts that "the failure of service of process worked a denial of due process." In his fifth issue, he argues that he was deprived of due process and suffered a "manifest injustice" because he was not afforded notice of the hearing on the default judgment.

When, as here, the time to bring a direct attack has expired, a litigant may only attack a judgment collaterally. *Rivera*, 379 S.W.3d at 272 ("A void judgment may be attacked collaterally at any time."); *see also Zarate v. Sun Operating Ltd., Inc.*,

40 S.W.3d 617, 620–21 (Tex. App.—San Antonio 2001, pet. denied) (stating collateral attack has "no statute of limitations."). A judgment is void if the defects in service are so substantial that the defendant was not afforded due process. *Rivera*, 379 S.W.3d at 275.

In *Peralta*, the United States Supreme Court held that "a judgment entered without notice or service is constitutionally infirm," and some form of attack must be available when defects in personal jurisdiction violate due process. *See Rivera*, 379 S.W.3d at 272 (quoting *Peralta*, 485 U.S. at 84, 108 S. Ct. at 899). "[A]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under the circumstances, to apprise interested parties of the pendency of the action." *Id*. at 273 (quoting *Peralta*, 485 U.S. at 84, 108 S. Ct. at 899). A "[f]ailure to give notice violates 'the most rudimentary demands of due process of law.'" *Id*. (quoting *Peralta*, 485 U.S. at 84, 108 S. Ct. at 899). Thus, "a judgment may also be challenged through a collateral attack when a failure to establish personal jurisdiction violates due process." *Id.*

To the extent that Sanchez attempts to collaterally attack the default judgment as void for lack of service or notice, we have concluded, as discussed above, that he was served with process in the underlying lawsuit and was not entitled to notice of the hearing on the default judgment. Thus, the default judgment is not void on these

grounds and the record does not show that Sanchez was not afforded due process on the asserted grounds. *See id.*

We overrule Sanchez's remaining issues.

Conclusion

We affirm the trial court's judgment denying the petition for a bill of review.

Sherry Radack
Chief Justice

Panel consists of Chief Justice Radack and Justices Higley and Bland.