

Law of Voids

An order made without any authority at law is a void order.

A void judgment [or order] is, in legal effect, no judgment. By it no rights are divested. From it

no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally

worthless. It neither binds nor bars any one.' [Citation.]" (Bennett v. Wilson (1898) 122 Cal.

509, 513-514 [55 P. 390].) (Ibid)

The 9th Amendment, for example voids the Patriot Act. The 9th is higher law and dictates that

your rights may not diminish. When the government tried to pass a law like the Patriot Act

which literally takes the construct of "innocent until proven guilty" to "guilty without the right to

prove innocence" their new law is no law at all, it is void. By enacting the Patriot Act and

enforcing it the government commits high treason.

"If the order is void, it may be attacked at any time in any proceeding," Evans v Corporate Services, 207

III.App.3d 297, 565 N.E.2d 724 (2nd Dist. 1990)

"a void judgment, order or decree may be attacked at any time or in any court, either directly or

collaterally" Oak Park Nat. Bank v Peoples Gas Light & Coke Col, 46 III.App.2d 385, 197 N.E.2d 73, 77

(1st Dist. 1964)

"that judgment is void and may be attacked at any time in the same or any other court, by the parties or

by any other person who is affected thereby.". It is also clear and well established law that a void order

can be challenged in any court at any time." *People v Wade*, 116 Ill.2d 1, 506 N.E.2d 954 (1987)

"A void judgment may be attacked at any time, either directly or collaterally." *In re Marriage of Macino*,

236 Ill.App.3d 886 (2nd Dist. 1992)

"if the order is void, it may be attacked at any time in any proceeding," *Evans v Corporate Services*, 207

Ill.App.3d 297, 565 N.E.2d 724 (2nd Dist. 1990)

"a void judgment, order or decree may be attacked at any time or in any court, either directly or

collaterally" - The law is well-settled that a void order or judgment is void even before reversal. *Valley v*

Northern Fire & Marine Ins. Co., 254 U.S. 348, 41 S.Ct. 116 (1920)

"Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act

beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as

nullities. They are not voidable, but simply void, and this even prior to reversal." *Old Wayne Mut I. Assoc.*

vMcDonough, 204 U.S. 8, 27 S.Ct. 236 (1907); *Williamson v Berry*, 8 How. 495, 540, 12 L.Ed. 1170,

1189 (1850); *Rose v Himely*, 4 Cranch 241, 269, 2 L.Ed. 608, 617 (1808).

a court "cannot confer jurisdiction where none existed and cannot make a void proceeding valid." *People*

ex rel. Gowdy v Baltimore & Ohio R.R. Co., 385 Ill. 86, 92, 52 N.E.2d 255 (1943).

"It is clear and well established law that a void order can be challenged in any court." *Old Wayne Mut L.*

Assoc. vMcDonough, 204 U.S. 8, 27 S.Ct. 236 (1907)

"A void order which is one entered by court which lacks jurisdiction over parties or subject matter, or lacks

inherent power to enter judgment, or order procured by fraud, can be attacked at any time, in any court.

either directly or collaterally," *People ex rel. Brzica v. Village of Lake Barrington*, 644 N.E.2d 66 (III.App. 2 Dist. 1994).

"A judgment is characterized as void and may be collaterally attacked at any time where the record itself

furnished the facts which establish that the court acted without jurisdiction." *People v Byrnes*, 34

111.App.3d 983, 341 N.E.2d 729 (2nd Dist. 1975).

California

Motions to vacate void judgments may be made at any time after judgment. (*County of Ventura v. Tillett*,

supra, 133 Cal. App. 3d 105, 110.).

A judgment is void on its face if the trial court exceeded its jurisdiction by granting relief that it had

no power to grant. Jurisdiction cannot be conferred on a trial court by the consent of the parties.

{*Summers v. Superior Court* (1959) 53 Cal. 2d 295, 298 [1 Cal. Rptr. 324, 347 P.2d 668]; *Roberts v.*

Roberts (1966) 241 Cal. App. 2d 93, 101 [50 Cal. Rptr. 408].)

The court may ... on motion of either party after notice to the other party, set aside any void judgment or

order.' (For a discussion of the 1933 amendments to section 473 see *Estate of Estrem*, 16 Cal. 2d 563,

572 [107].

"Obviously a judgment, though final and on the merits, has no binding force and is subject to collateral

attack if it is wholly void for lack of jurisdiction of the subject matter or person, and perhaps for excess of

jurisdiction, or where it is obtained by extrinsic fraud. [Citations.]" (7 Within, Cal. Procedure, supra.

Judgment, § 286, p. 828.).

Section 437, subdivision (d) of U.S. Code, provides that a court, on noticed motion, may set aside void

judgments and orders. Courts also have inherent power to set aside a void judgment. {Reid v. Baiter

(1 993) 1 4 Cal.App.4th 1 1 86, 1 1 94.)

It is well settled that a judgment or order which is void on its face, and which requires only an inspection

of the judgment-roll or record to show its invalidity, may be set aside on motion, at any time after its entry,

by the court which rendered the judgment or made the order. [Citations.]' [Citations.]" (Ibid; accord Plotitsa

V. Superior Court {^983) 140 Cal.App.3d 755, 761

"[A] court may set aside a void order at any time. An appeal will not prevent the court from at any time

lopping off what has been termed a dead limb on the judicial tree -- a void order." {MacMillan Petroleum

Corp. V. Griffin (1950) 99 Cal. App. 2d 523, 533 [222 P.2d 69]; accord: People v. West Coast Shows, Inc.

(1970) 10 Cal. App. 3d 462, 467 [89 Cal. Rptr. 290]; Svistunoff v. Svistunoff {^52) 108 Cal. App. 2d 638,

641-642 [239 P.2d 650]; and see: 6 Witkin, Cal. Procedure (2d ed. 1971) Appeal, § 7, pp. 4024-4025.)

A "final" but void order can have no preclusive effect. "'A void judgment [or order] is, in legal effect, no

judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in itself, all

proceedings founded upon it are equally worthless. It neither binds nor bars any one.' [Citation.]" (

Bennett v. Wilson (1898) 122 Cal. 509, 513-514 [55 P. 390].) (Ibid)

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had no power to grant. Jurisdiction cannot be conferred on a trial court by the consent of the parties.

"(Summers v. Superior Court 53 Cal. 2d 295, 298 [1 Cal. Rptr. 324, 347 P.2d 668]; Roberts v.

Roberts (1966) 241 Cal. App. 2d 93, 101 [50 Cal. Rptr. 408].)

"Thus, the fact that a judgment is entered pursuant to stipulation does not insulate the judgment from

attack on the ground that it is void." In People v. One 1941 Chrysler Sedan (1947) 81 Cal. App. 2d 18, 21-

22 [183 P.2d 368]

"Obviously a judgment, though final and on the merits, has no binding force and is subject to

collateral attack if it is wholly void for lack of jurisdiction of the subject matter or person, and

perhaps for excess of jurisdiction, or where it is obtained by extrinsic fraud." (7 Witkin, Cal.

Procedure, supra. Judgment, § 286, p. 828.). Section 437, subdivision (d), provides that a court, on

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4024-4025.)

Time limitation does not apply where the judgment is based on a fraudulent return. (Washko v. Stewart,

supra, p. 318; Richert v. Benson Lbr. Co., supra, p. 677.).

It is true that the statute of limitations does not apply to a suit in equity to vacate a void judgment.

[Cadenasso v. Bank of Italy, supra, p. 569; Estate of Pusey, 180 Cal. 368, 374 [181 P. 648].) This rule

holds as to all void judgments, in two other cases, People v. Massengale and In re Sandel, the courts

hearing the respective appeals confirmed the judicial power and responsibility to correct void judgments

(in excess of jurisdiction).

Arkansas

Arkansas Supreme Court has "made it clear that actual knowledge of a proceeding does not validate

defective service of process." Green v. Yarbrough, 299 Ark. 175, 771 S.W.2d 760 (1989); Wilburn v.

Keenan Companies, Inc., 298 Ark. 461, 768 S.W.2d 531 (1989); Tucker v. Johnson, 275 Ark. 61, 628

S.W.2d281 (1982).

Void judgments have no legal effect. Davis v. Office of Child Support Enforcement, 322 Ark. 352, 357,

908 S.W.2d 649, 652 (1995) (citing Rankin v. Schofield, 81 Ark. 440, 98 S.W. 674 (1905)).

A void judgment or decree is a mere nullity, and has no force, either as evidence or by way of estoppel.

The holding that a void judgment may be attacked collaterally was reaffirmed in Chester v. Arkansas

State Board of Chiropractic Examiners, 245 Ark. 846, 435 S.W.2d 100 (1968).

A judgment rendered without jurisdiction is void. Cloman v. Cloman, 229 Ark. 447, 316 S.W.2d 817

(1958).

It is not necessary to appeal from a void order because it never became effective. A void order is subject

to collateral attack. Pendergist v. Pendergist, 267 Ark. 1114, 593 S.W.2d 502 (1980).

A void judgment amounts to nothing and has no force as res judicata." Arkansas State Highway

Commission v. Coffelt, 301 Ark. 112, 782 S.W.2d 45 (1990)

A void judgment cannot provide valid notice for a subsequent proceeding in circuit court. Rector v. State,

6 Ark. 187(1845).

Tennessee

U.S.C.A. Const. Amend. 5 -Triad Energy Corp. v. McNeil 110 F.R.D. 382 (S.D.N.Y. 1986): "Avoid

judgment is one which shows upon the face of the record a want of jurisdiction in the court assuming to

render the judgment, which want of jurisdiction may be either of the person, or of the subject-matter

generally, or of the particular question attempted to be decided or the relief assumed to be given.

(Citations omitted). 160 Tenn. at 336, 24 S.W. 2d at 883. "A void judgment lacks validity anywhere and is

subject to attack from any angle." State ex rel. Ragsdale v. Sandefur, 215 Tenn. 690, 701, 389 S.W.2d

266, 271 (1965); Acuff v. Daniel, 215 Tenn. 520, 525, 387 S.W.2d 796, 798 (1965).

Colorado

Ordinarily, the decision whether to grant relief under C.R.C.P. 60(b) is entrusted to the sound discretion of

the trial court. However, "a motion under [C.R.C.P. 60(b)(3)] differs markedly from motions under the

other clauses of [C.R.C.P. 60(b)]." 10A Wright, § 2862, at 322-24. If the surrounding circumstances

indicate that the defaulting party's due process right was unfairly compromised by lack of notice of the

default proceeding, then relief under C.R.C.P. 60(b)(3) is mandatory. See Carter v. Fenner, 136 F.3d

1000, 1005 (5th Cir. 1998) (holding that under Fed. R. Civ. Pro. 60(b)(4) it is a *per se* abuse of discretion

for a lower court to uphold a void judgment); V.T.A., Inc., 597 F.2d at 224 & n.8 ("If voidness is found, relief is not a discretionary matter; it is mandatory."); Small v. Batista, 22 F. Supp.2d 230, 231 (S.D.N.Y. 1998) ("[U]nlike other motions made pursuant to the other subsections of Rule 60(b), the court lacks discretion with respect to a motion made under Rule 60(b)(4). Accordingly, our review of motions for relief under C.R.C.P. 60(b)(3) is de novo. See Carter, 136 F.3d at 1005. Relief under C.R.C.P. 60(b)(3) is mandatory because a void Judgment "is one which, from its inception, was a complete nullity and without legal effect." Lubben v. Selective Serv. Sys. Local Bd. No. 27, 453 F.2d 645, 649 (1st Cir. 1972); see also Weaver Constr., 190 Colo, at 232, 545 P. 2d at 1045 ("It is an elementary principle of due process that where [a default judgment is obtained without service of process] ... the underlying judgment must be vacated in the first instance, as a void judgment cannot be allowed to remain in effect pending the outcome of a trial on the merits.") (emphasis added). Consequently, there is no judgment the propriety of which a court can review. Whether the judgment is void for failure to provide notice in compliance with C.R.C.P. 55(b) depends on whether the factual circumstances surrounding the default proceeding indicate that the defaulting party was nonetheless aware that a default judgment was sought against it and that the defaulting party had sufficient opportunity to be heard. C.R.C.P. 55(b) sets forth the due process expectations of a party against whom a default judgment is sought. If the notice provisions of C.R.C.P. 55(b) are not adhered to, then the presumption arises that the defaulting party has suffered a due process violation that renders the judgment against it void. However, before a judgment is set aside as void under C.R.C.P. 60(b)(3), reviewing courts should carefully examine whether, though the literal requirements of C.R.C.P. 55(b) were not adhered to, the defaulting party was nonetheless aware of the

default proceedings and was afforded a sufficient opportunity to be heard in defense. If there is

substantial evidence that the defaulting party had adequate notice of the default proceedings despite

failure of the moving party to comply with Rule 55(b), then the purposes of Rule 55(b) are achieved and

there is no basis for voiding the judgment. *First National Bank of Telluride v. Fleisher*, 2 P.3d 706 (Colo.

05/30/2000). Although defendant has now made an appearance in this action and is subject to the

jurisdiction of the court from the date he did so, his post-judgment appearance is not retroactive and does

not serve to validate the void judgment. See *Weaver Construction Co. v. District Court* We also reject

plaintiff's argument that defendant's C.R.C.P. 60(b)(3) motion was untimely. To the contrary, a void

judgment may be challenged at any time pursuant to C.R.C.P. 60(b)(3), and must be vacated upon

request. See *United Bank v. Buchanan*, 836 P.2d 473 (Colo. App. 1992). We have considered the effect

of a void judgment on numerous occasions and have consistently held that a Judgment entered where

a jurisdictional defects exist is a nullity. See, e.g., *People v. Dillon*, 655 P. 2d 841 (Colo. 1982) ("It is

axiomatic that any action taken by a court when it lacked jurisdiction is a nullity." *Davidson Chevrolet, Inc.*

V. City and County of Denver, 138 Colo. 171, 330 P.2d 1116 (1958) (same), cert, denied 359 U.S. 926, 3

L. Ed. 2d 629, 79 S. Ct. 609 (1959); see also *In re Marriage of Pierce*, 720 P. 2d 591 (Colo. App. 1985)

(same). The issue presented here was addressed by this court in *Don J. Best Trust v. Cherry Creek*

National Bank, 792 P. 2d 302 (Colo. App. 1990). In that case, a division of this court concluded that a

judgment entered against a garnishee which was void because the writ of garnishment was facially

insufficient could be attacked at any time. The court there stated: "This Conclusion is based upon the consideration that a void judgment is no judgment at all and, therefore, that the 'reasonable time' requirement of the rule 'means in effect, no time limitation.'" See Mathews v. Urban, 645 P. 2d 290 (Colo. App. 1982). But see Martinez v. Dixon, 710 P.2d 498 (Colo. App. 1985)" ("the clear language of C.R.C.P. 60(b) requires that the motion must be filed within [a] reasonable time if it alleges that the judgment is void"). However, it has been determined that the doctrine of laches cannot be relied upon to preclude an attack upon a void judgment. Thompson v. McCormick, 138 Colo. 434, 335 P.2d 265 (1959). Further, we have held that, if the judgment sought to be vacated is void because the court lacked subject matter jurisdiction, any time limit established by C.R.C.P. 60(b) is inapplicable. Mathews v. Urban, 645 P. 2d 290 (Colo. App. 1982). It has long been established as basic law that the validity of a judgment depends upon the court's jurisdiction of the person and of the subject matter of the particular issue it assumes to decide. Considering what is meant by the term "jurisdiction" it is well settled that this term includes the court's power to enter the judgment, and the entry of a decree which the court has no authority to enter is without jurisdiction and void. A void judgment may be attacked directly or collaterally. Newman v. Bullock, 23 Colo. 217, 47 Pac. 379; Atchison, Topeka and Santa Fe Railway Co. v. Board of County Commissioners, 95 Colo. 435, 37 P (2d). The defendants, Ivan and Molly Jenkins, appeal from a judgment of the Denver District Court holding them liable to the plaintiff. Merchants Mortgage & Trust Corporation, on a promissory note. The defendants challenge the judgment solely on the ground that the trial judge had no authority to decide the case after he had taken office as a judge of the Colorado Court of Appeals. We agree that the judgment is void, and we remand the case to the district court for further proceedings.

Merchants Mortgage & Trust Corporation filed a complaint in Denver District Court to collect on a promissory note executed by the defendants. The case was tried to the court before the Honorable Howard M. Kirshbaum on November 8 and 9, 1979. After trial, the judge took the matter under advisement. He was later appointed to the Colorado Court of Appeals and was sworn in as a judge of that court on January 11, 1980. On May 5, 1980, Judge Kirshbaum issued written findings of fact and conclusions of law and ordered judgment against the defendants. The defendants did not immediately challenge the judge's authority to act, but instead filed a motion for a new trial on other grounds on May 27, 1980. The plaintiff also filed a post-trial motion, seeking to alter or amend the judgment to allow recovery of its costs and attorney fees. On November 14, 1980, Chief Justice Paul V. Hodges issued an order pursuant to Colo. Const. Art. VI, § 5(3) appointing Judge Kirshbaum to hear and rule on the post-trial motions. The defendants then filed two additional motions, entitled "Objection to Jurisdiction" and "Motion to Void Judgment." In the first motion, the defendants asked that Judge Kirshbaum decline to hear any post-judgment motions, arguing that Colo. Const. Art. VI, § 5(3) does not authorize the chief justice to assign a court of appeals judge to perform judicial duties in a district court. In the second motion, they contended that the judgment of May 5, 1980, was void for lack of jurisdiction, again because the Colorado Constitution does not allow a court of appeals judge to be assigned to sit as a district court judge. On January 8, 1981, Judge Kirshbaum recused himself, and the case was reassigned to Denver District Judge Harold D. Reed to hear and determine all post-trial motions. Judge Reed denied the

defendants' motions to void the judgment and for a new trial, and granted the plaintiff's motion to alter or

amend the judgment to include its costs and attorney fees. The defendants then brought this appeal. We

conclude that the May 5, 1980, judgment is void and must be vacated Absent constitutional or statutory

authorization, a former district court judge does not have authority to act in a judicial capacity, and orders

entered by such a person after he ceases to be a district court judge are void. See *Olmstead v. District*

Court 57 Colo. 326, 403 P. 2d 442 (1965) (a district court judge whose term of office has expired lacks

power to entertain a post-trial motion although he heard legal argument on the motion while still a judge).

When Judge Kirshbaum made his decision, neither this court nor the chief justice had authorized such

action. Since the chief justice's order of November 14, 1980, was expressly limited to the post-trial

motions filed after the May 5, 1980, judgment, it provides no authority to support the judge's May 5 action.

Because the judgment is void, the plaintiff's argument that the judgment should not be reversed because

of procedural error having no prejudicial effect on the parties is inapposite. We also reject the plaintiff's

argument that the defendants should be estopped from challenging the validity of the judgment because

they acquiesced in its effectiveness until the chief justice's order was issued several months later. The

plaintiff's reliance on *In Re Estate of Lee v. Graber*, 419, 462 P.2d 492 (1969) for its estoppel

argument is misplaced. In that case, we held that a person who invokes the jurisdiction of a court, obtains

a decree, and acquiesces in the judgment for several years cannot assert its invalidity in a later action on

the basis that the first court had exceeded its authority because the amount in controversy exceeded its

jurisdictional limit. On the facts before us, we decline to extend the holding of *Lee v. Graber* to a situation

where the defendant challenges the judgment on the ground that the judge had no power to order it. We

held in *Olmstead v. District Court*, supra, that the parties by their actions cannot confer power on a former

judge who has no authority to act. 157 Colo, at 330,403 P. 2d at 443. *1\lercliants Mortgage & Trust Corp. v.*

Ivan R., 659 P.2d 690 (Colo. 03/07/1983). A void judgment it has no efficacy and may be treated as a

nullity. A void judgment is vulnerable to a direct or collateral attack regardless of the lapse of time. A

void judgment is a simulated judgment devoid of any potency because of jurisdictional defects only, in

the court rendering it. Defect of jurisdiction may relate to a party or parties, the subject matter, the cause

of action, the question to be determined, or the relief to be granted. A judgment entered where such

defect exists has neither life nor incipience, and a court is impuissant to invest it with even a fleeting spark

of vitality, but can only determine it to be what it is - a nothing, a nullity. Being naught, it may be attacked

directly or collaterally at any time. *Stubbs v. McGillis*, 44 Colo. 138, 96 Colo. 1005, 130 Am.S.R. 1 16, 18

L.R.A. N.S. 405. In *Anderson v. Colorado Department of Revenue*, 44 Colo. App. 157, 615 P.2d 51

(1 980) we held that a jurisdictional challenge to a conviction may be raised at a driver's license revocation

hearing because a void judgment is subject to attack directly or collaterally at any time. Likewise, since a

conviction based on a guilty plea accepted in violation of Grim. P. 1 1 (b) is constitutionally infirm, it may be

challenged in a later proceeding to impose a statutory liability, see *People v. Heinz*, 197 Colo. 102, 589

P.2d 931 (1979), and such a challenge may also be raised at a license revocation hearing.

Nevada

NRCP 60(b)(3) allows a party to move for relief from a judgment which is void, and while motions made under NRCP 60(b) are generally required to "be made within a reasonable time" and to be adjudicated according to the district court's discretion, this is not true in the case of a void judgment. Necessarily a motion under this part of the rule differs markedly from motions under the other clauses of Rule 60(b).

There is no question of discretion on the part of the court when a motion is made under [this portion of the Rule]. Nor is there any requirement, as there usually is when default judgments are attacked under Rule 60(b), that the moving party show that he has a meritorious defense. Either a judgment is void or it is valid. Determining which it is may well present a difficult question, but when that question is resolved, the court must act accordingly. By the same token, there is no time limit on an attack on a judgment as void. . . . [E]ven the requirement that the motion be made within a "reasonable time," which seems literally to apply . . . cannot be enforced with regard to this class of motion. Understandably, the parties were not attuned to our recent Jacobs decision during oral argument. Accordingly, it was determined at that time to allow the parties to supplement their briefs in order to determine with certainty whether, in fact, no default had been entered against Garcia prior to the entry of the default judgment. Garcia's supplemental material supplied additional evidence that no default was ever entered, including an affidavit by Clark County Court Clerk Loretta Bowman attesting that no such filing exists in the case file. Respondents also acknowledged that no default was ever entered but argue in their supplemental brief that Jacobs should not be applied retroactively, noting that the default judgment at issue herein was entered prior to our Jacobs decision. This argument is without merit. The court in Jacobs determined, consistent with law from other jurisdictions, that the default judgment entered in Jacobs was void. We accordingly ordered the

district court to grant relief from the void judgment, despite the fact that the ruling in Jacobs was, of

course, preceded by entry of the default judgment against Jacobs. If this case, rather than Jacobs, were

before us as a case of first impression, we would have reached the same conclusion. A void judgment \s

void for all purposes and may not be given life under a theory based upon lack of legal precedent. Garcia

V. Ideal Supply Co., 110 Nev. 493, 874 P.2d 752 (Nev. 5/19/1994). The defective service rendered the

district court's personal jurisdiction over Gasset invalid and the judgment against her void. For a

judgment \o be void, there must be a defect in the court's authority to enter judgment through either lack

of personal jurisdiction or jurisdiction over subject matter in the suit. Puphal v. Puphal, 669 P. 2d 191

(Idaho 1983). In Price v. Dunn, 106 Nev. 100, 787 P.2d 785 (1990). We now hold that the filing of a

motion to set aside a void judgment previously entered against the movant shall not constitute a general

appearance. See, e.g., Dobson v. Dobson, 108 Nev. 346, 349, 830 P.2d 1336, 1338 (1992). Nonetheless,

since the order was void, a judgment based thereon would likewise be void.. Nelson v. Sierra Constr.

Corp., 77 Nev. 334, 364 P. 2d 402. Under NRCP 60(b) a motion to set aside a void judgment is not

restricted to the six months' period specified in the rule. NRCP 54(a) provides that the word "judgment" as

used in these rules includes any order from which an appeal lies. Therefore there is no merit to

appellants' contention that the motion to vacate the judgment was not timely made. Foster v. Lewis, 78

Nev. 330, 372 P.2d 679 (Nev. 6/19/1962). A void judgment is subject to collateral attack; a judgment is

void if the issuing court lacked personal jurisdiction or subject matter jurisdiction; See 49 C.J.S.

Judgments § 401, at 792 (1947 & supp. 1991); 46 Am.Jur.2d Judgments §§ 621-56 (1969 & supp. 1991).

New Mexico

If a court's decision is plainly contrary to a statute or the constitution, the court will be held to have acted

without power or jurisdiction, making the judgment void for Rule 1 -060(B) purposes, even if the court had

personal and subject-matter jurisdiction. See, e.g., United States v. Indoor Cultivation Equip., 55 F.3d

1311, 1317 (7th Cir. 1995) (forfeiture statute required that complaint be filed within sixty days of certain

action; failure to meet that deadline meant that court had no power to order forfeiture, and its order was

void); Watts v. Pinckney, 752 F.2d 406, 409 (9th Cir. 1985) (after judgment awarded, defendant paid,

then found out this was action in admiralty that should have been brought solely against United States;

court held that judgment was void); Compton v. Alton S.S. Co., 608 F.2d 96, 104 (4th Cir. 1979)

(judgment by default awarded penalty wages under inapplicable statute; court held that judgment was

void, not just erroneous); see also V.T.A., Inc. v. Airco, Inc., 597 F.2d 220, 224-25 (10th Cir. 1979) (noting

that judgment can be void if court's action involves a "plain usurpation of power"); Crosby v. Bradstreet

Co., 312 F.2d 483, 485 (2d Cir. 1963) (court had no power to impose unconstitutional prior restraint on

publication of true statements, so thirty-year-old consent judgment was void). In APCA, APCA as a

defendant filed a cross-claim against defendant Martinez, but it was void because not served on Martinez.

On February 28, 1968, entry of judgment was made on APCA's cross-claim against Martinez. Four years

later, Martinez' heirs moved to set aside the APCA judgment under Rule 60(b) and in December, 1972,

the 1968 judgment was set aside because it was void. No time limit applies where a void judgment is entered. *Albuquerque Prod. Credit Ass'n v. Martinez*, 91 N.M. 317, 573 P.2d 672 (1978) . Since the 1973 judgment was void, the 1976 district court was required to set it aside pursuant to N.M.R. Civ. P. 60(b)(4) [§ 21-1-1(60)(b)(4)], N.M.S.A. 1953 (Repl. Vol.1970). There is no discretion on the part of a district court to set aside a void judgment. Such a judgment may be attacked at any time in a direct or collateral action. *Chavez v. County of Valencia*, 86 N.M. 205, 521 P. 2d 1154 (1974) . At this point we call attention also to language found in the opinion in *Moore v. Packer*, 174 N.C. 665, 94 S.E. 449, 450, noticed by us and quoted with approval in the *Ealy* case. It was there said: "A void judgment is without life or force, and the court will quash it on motion, or ex mero motu. Indeed, when it appears to be void, it may and will be ignored everywhere, and treated as a mere nullity." All the appellees rely upon this general rule in answer to appellants' challenge that they never took an appeal from the order and judgment setting aside the June, 1937 default judgment and decree. The court being without jurisdiction to set aside its earlier judgment and decree, quieting title, appellees might ignore it as a void order or judgment, they say, and for this reason were not required to take an appeal therefrom, and may question the jurisdiction of the court and the validity of the order or judgment at any time. *Board of County Commissioners of Quay County V. Wasson*, 37 N.M. 503, 24 P.2d 1098; *Fullen v. Fullen*, 21 N.M. 212, 153 P. 294; *Baca v. Perea*, 25 N.M. 442, 184 P. 482; *De Baca v. Wilcox*, 11 N.M. 346, 68 P. 922. In the case of *Upjohn Co. v. Board of Commissioners of Socorro Counf/ (Stephenson, Intervener)* 25 N.M. 526, 185 P. 279, 280, we held a judgment against a garnishee void where service of the writ of garnishment was made by a person other

than the sheriff, where we said: "The proceeding is wholly statutory, and compliance with the statute is

essential to confer upon the court jurisdiction of the res." And held that the court was vested with power to

set aside and vacate such void judgment at any time. A void judgment is one that has merely

semblance, without some essential element or elements, as where the court purporting to render it has

not jurisdiction. An irregular judgment is one entered contrary to the course of the court, contrary to the

method of procedure and practice under it allowed by law in some material respect, as if the court gave

judgment without the intervention of a jury in a case where the party complaining was entitled to a jury

trial, and did not waive his right to the same. Vass v. Building Association, 91 N. C. 55; McKee v. Angel,

90 N. C. 60. An erroneous judgment is one rendered contrary to law. The latter cannot be attacked

collaterally at all, but it must remain and have effect until by appeal to a court of errors it shall be reversed

or modified. An irregular judgment may originally and generally be set aside by a motion for the purpose

in the action. This is so because in such case a judgment was entered contrary to the course of the court

by inadvertence, mistake, or the like. A void judgment is without life or force, and the court will quash it

on motion, or ex mero motu. Indeed, when it appears to be void it may and will be ignored everywhere,

and treated as a mere nullity." Moore v. Packer, 174 N. C. 665, 94 S. E. 449, at page 450. [Tjhe

applicable ground [for relief] would be Rule 60(B)(4), void judgment, under which the failure to move to

vacate within one year after the entry of judgment would not be controlling. Classen v. Classen, 119 N.M.

582, 893 P.2d 478, 34 N.M. St. B. Bull. 24 (N.M.App. 02/27/1995). The appellants contend that the court

lost jurisdiction over the action thirty days after the judgment was vacated. They argue that the appellees

never appealed the order which vacated the judgment, consequently, thirty days later the court was

divested of authority to entertain any motion concerning these parties and the same cause of action, and

that for these reasons the motion to amend the cross-claim was improperly granted. This point is not well-

taken. The pertinent portions of Rule 60(b) state: On motion and upon such terms as are just, the court

may relieve a party or his legal representative from a final judgment, order, or proceeding for the following

reasons:... (4) the judgment is void.... An order granting a motion for relief under 60(b) must be tested by

the usual principles of finality; and when so tested will occasionally be final, although probably in most

cases it will not be. Thus where the court, in addition to determining that there is a valid ground for relief

under 60(b), at the same time makes a re-determination of the merits, its order is final since it leaves

nothing more to be adjudged.... Since Martinez never received notice of the cross-claim, the stipulated

judgment was void as to him. Therefore, it was completely proper for his heirs to move to set aside that

void judgment under Rule 60(b)(4). When the original judgment was vacated as to Martinez, the status

of the case was as though no judgment had been entered as to him. *Wuensche! v. New Mexico*

Broadcasting Corp., 84 N.M. 109, 500 P.2d 194 (1972) ; *Benally v. Piqman*, 78 N.M. 189, 429 P. 2d 648

(1967) ; *Arias v. Springer*, 42 N.M. 350, 78 P.2d 153 (1938). Rule 60(b) of the Rules of Civil Procedure

abolishes the common law writ of coram nobis but authorizes relief from a "final judgment, order, or

proceeding" on six specified grounds. Ground (2) involves newly discovered evidence; ground (4)

involves a void judgment, and ground (6) involves "any other reason justifying relief". Although Rule

60(b) is a civil rule, *State v. Romero*, supra, held that where a prisoner had served his sentence and had

been released, this civil rule could be utilized to seek relief from a criminal judgment claimed to be void.

This result was based on an intent to retain all substantive rights protected by the old writ of coram nobis.

See *State v. Raburn*, supra; *Roessler v. State*, 79 N.M. 787, 450 P.2d 196 (Ct. App. 1969), cert, denied,

395 U.S. 967, 89 S. Ct. 2115, 23 L. Ed. 2d 754 (1969). Continuing jurisdiction over final judgment. The

judgment entered on April 25 was a final judgment. The City argues that Brooks could obtain relief from

the writ issued on May 1 only under SCRA 1986, 3-704(B) (Repl. Pamp. 1990), which limits relief to (1)

mistake, inadvertence, surprise or excusable neglect; (2) fraud, misrepresentation or other misconduct;

(3) a void judgment, or (4) satisfaction, release or discharge of the judgment or the reversal or vacation

of a prior judgment upon which it is based. However, NMSA 1978, Section 34-8A- 6(E) (Repl. Pamp.

1990), states that "All judgments rendered in civil actions in the metropolitan court shall be subject to the

same provisions of law as those rendered in district court." Under NMSA 1978, Section 39-1-1 (Repl.

Pamp. 1991), final judgments and decrees entered by the district courts remain under the control of such

courts for thirty days after entry thereof. Therefore, the metropolitan court retained control of its judgment

and had the right to set it aside after granting a rehearing on the matter. See, e.g., *Nichols v. Nichols*, 98

N.M. 322, 326, 648 P.2d 780, 784 (1982) (district court is authorized under Section 39-1-1 to change,

modify, correct or vacate a judgment on its own motion) (citing *Desjardin v. Albuquerque Nat'l Bank*, 93

N.M. 89, 596 P.2d 858 (1979)). The fact that the void judgment has been affirmed on review in an

appellate court or an order or judgment renewing or reviving it entered adds nothing to its validity. Such a

judgment has been characterized as a dead limb upon the judicial tree, which may be chopped off at any

time, capable of bearing no fruit to plaintiff but constituting a constant menace to defendant." WALLS v.

ERUPCION MIN. CO. 6 P.2d 1021 Novembers, 1931.

North Carolina

And if the court has no jurisdiction over the subject matter of the action, the judgment in the action is void.

A void judgment is one which has a mere semblance, but is lacking in some of the essential elements

which would authorize the court to proceed to judgment. Harrell v. Welstead, 206 N.C. 817, 175 S.E. 283;

Monroe v. Niven, 221 N.C. 362, 20 S.E.2d 311." It is well established law that a void judgment is no

judgment, is a nullity without life or force, no rights can be based thereon, and it can be attacked

collaterally by anyone whose rights are adversely affected by it. Reid v. Bristol, 241 N.C. 699, 86 S.E. 2d

417; Casey v. Barker. Although Rule 60(b) contains the requirement that all motions made pursuant

thereto be made "within a reasonable time," the requirement is not enforceable with respect to motions

made pursuant to Rule 60(b)(4), because a void judgment is a legal nullity which may be attacked at any

time. 1 1 Wright and Miller, Federal Practice and Procedure: Civil §§ 2862, 2866 (1973). If the judgment of

divorce from bed and board at issue in the present case is void, then, as with any other void judgment, it

establishes no legal rights and may be vacated without regard to time. Cunningham v. Brigman, 263 N.C.

208, 139 S.E.2d 353 (1964). Our Supreme Court has described a void judgment as "one which has a

mere semblance but is lacking in some of the essential elements which would authorize the court to

proceed to judgment." Monroe v. Niven, 221 N.C. 362, 364, 20 S.E.2d 311, 312 (1942). "When a court

has no authority to act its acts are void." If the court was without authority, its judgment ... is void and of

no effect. A lack of jurisdiction or power in the court entering a judgment always avoids the judgment, and

a void judgment may be attacked whenever and wherever it is asserted, without any special plea.

Hanson v. Yandle, 235 N.C. 532, 535, 70 S.E.2d 565, 568 (1952), Carpenter v. Carpenter, 244 N.C. 286,

93 S.E. 2d 617 (1956).). A void judgment, however, binds no one and it is immaterial whether the

judgment was or was not entered by consent. Hanson, supra. "[I]t is well settled that consent of the

parties to an action does not confer jurisdiction upon a court to render a judgment which it would

otherwise have no power or jurisdiction to render." Saunderson, supra at 172, 141 S.E. at 574. Laches is

an equitable doctrine and ordinarily should not be a defense to a motion to open a judgment that is void.

46 Am. Jur. 2d Judgments § 752 (1969). In Powell v. Turpin, 224 N.C. 67, 29 S.E.2d 26 (1944), plaintiff

sought to have a tax foreclosure sale declared invalid for want of proper service of process. In deciding

for the plaintiff, the court stated, "It is likewise elementary that unless one named as a defendant has

been brought into court in some way sanctioned by law . . . , the court has no jurisdiction of the person

and judgment rendered against him is void." Id. at 70, 71, 29 S.E.2d at 28. The court in Powell also

examined whether such a judgment was subject to a collateral attack. "No statute of limitations runs

against the plaintiffs' action by reason of the judgment of foreclosure, and laches, if any appeared, is no

defense." Id. at 71, 29 S.E.2d at 29; see Page v. Miller and Page v. Hynds, 252 N.C. 23, 113 S.E.2d 52

(1960). Time, however great, does not affect the validity of a judgment; it cannot render a void judgment

valid." *Monroe v. Niven*, 221 N.C. 362, 365, 20 S.E.2d 311, 313 (1942). "A nullity is a nullity, and out of nothing nothing comes. *Ex nihilo nihil fit* is one maxim that admits of no exception." If there be a defect, e.g., a total want of jurisdiction apparent upon the face of the proceedings, the court will of its own motion, 'stay, quash, or dismiss' the suit. This is necessary to prevent the court from being forced into an act of usurpation, and compelled to give a void judgment ... so, (out of necessity) the court may, on plea, suggestion, motion, or *ex mero motu*, where the defect of jurisdiction is apparent, stop the proceedings.

238 N.C. at 646, 78 S.E.2d at 717-18. A void judgment is not a judgment at all, and it may always be treated as a nullity because it lacks an essential element of its formulation. See *Clark v. Carolina Homes, Inc.*, 189 N.C. 703, 128 S.E. 20 (1925). When a purported consent judgment is void because the consent is by an attorney who has no authority to consent thereto, the party for whom the attorney purported to act is not required to show a meritorious defense in order to vacate such void judgment. *Bath v. Norman*, 226 N.C. 502, 505, 39 S.E. 2d 363. Where there is no service of process, the court has no jurisdiction, and its judgment is void. A void judgment is a nullity, and no rights can be based thereon. *Collins v. Highway Com.*, 237 N.C. 277, 74 S.E.2d 709; *Moore v. Humphrey*, 247 N.C. 423, 101 S.E.2d 460 "'The passage of time, however great, does not affect the validity of a judgment; it cannot render a void judgment valid.' 31 Am. Jur., 66; Anno. 81 A.S.R., 559," Now 30-A Am. Jur., 170. *Monroe v. Niven*, 221 N.C. 362, 20 S.E.2d 311 . See also *Com'rs. of Roxboro v. Bumpass*, 233 N.C. 1 90, 63 S.E.2d 1 44. A void judgment is without life or force, and the Court will quash it on motion, or *ex mero motu*. Indeed, when it appears to be void, it may and will be ignored everywhere, and treated as a mere nullity." (Our Italics.) *Stafford v. Gallops*, 123 N.C. 19, 31 S.E. 265; *Moore v. Packer*, 174 N.C. 665, 94 S.E. 449; *Duffer v. Brunson*, 188 N.C. 789, 125

S.E. 619; Dail v. Hawkins, 211 N.C. 283, 189 S.E. 774; Simms v. Sampson, 221 N.C. 379, 20 S.E.2d

554; Mills v. Richardson, supra. See McIntosh, N.C.P.&P;, Sees. 651, 652 and 653. Quoting from Boone

V. Sparrow, supra, "A void judgment is not a judgment and may always be treated as a nullity ... it has no

force whatever; it may be quashed ex mero motu. Clark v. Homes, 189 N.C. 703, 128 S.E. 20." And

quoting from the latter, "A void judgment is not a judgment and may always be treated as a nullity. It lacks

some essential element; it has no force whatever; it may be quashed ex mero motu. Stallings v. Gully, 48

N.C. 344; McKee v. Angel, 90 N.C. 60; Carter v. Rountree, 109 N.C. 29; Mann v. Mann, 176 N.C. 353;

Moore v. Packer, 174 N.C. 665." A void judgment is without life or force, and the court will quash it on

motion, or ex mero motu. Indeed, when it appears to be void, it may and will be ignored everywhere, and

treated as a mere nullity." (Emphasis added.) The later decisions are in full accord: Stafford v. Gallops,

123 N.C. 19, 31 S.E. 265; Moore v. Packer, 174 N.C. 665, 94 S.E. 449; Duffer v. Brunson, 188 N.C. 789,

125 S.E. 619; Simms v. Sampson, 221 N.C. 379, 20 S.E.2d 554. See McIntosh, N.C. P. & P. 734-737. A

party who is subject to an order by a trial court which is void, may attack that order at any time, pursuant

to Rule 60(b)(4) of the Rules of Civil Procedure. N.C.G.S. § 1A-1, Rule 60(b) (1990); Allred, 85 N.C. App.

at 141, 354 S.E. 2d at 294 (void judgment is legal nullity which may be attacked at any time). A Void

judgment . . . binds no one and it is immaterial whether the judgment was . . . entered by consent." Id. at

144, 354 S.E. 2d at 295. Rule 60(b)(4) provides that a court may relieve a party from a judgment if it is

void. N.C. Gen. Stat. § 1A-1, Rule 60(b)(4)(1990). A void judgment is a nullity which may be attacked at

any time. *Allred v. Tucci*, 85 N.C. App. 138, 141, 354 S.E. 2d 291, 294, cert, denied, 320 N.C. 166, 358

S.E.2d 47 (1987). If a court has no jurisdiction over the subject matter, the judgment is void. *Pifer v. Pifer*,

31 N.C. App. 486, 229 S.E.2d 700, 702 (1976). A void judgment resembles a valid judgment, but lacks an

essential element such as jurisdiction or service of process. *Windham Distributing Co., Inc. v. Davis*, 72

N.C. App. 179, 323 S.E.2d 506 (1984), disc. rev. denied, 313 N.C. 613, 330 S.E.2d 617 (1985). A

judgment is not void if "the court had jurisdiction over the parties and the subject matter and had authority

to render the judgment entered." *Id.* at 181-182, 323 S.E.2d at 508 (quoting *In re Brown*, 23 N.C. App.

109, 110, 208 S.E.2d 282, 283 (1974)). It should be noted that since the Judgment entered by Judge

Griffin on 18 March 1992 is void, no final judgment on the merits has been entered in this case. Any

attempt by the defendants to appeal from that void judgment then, is inconsequential, and any errors

made in attempting such appeal are without lasting significance. The plaintiff may raise a collateral attack

on the order taxing costs as a defense to defendant's motion to dismiss only if the order taxing costs was

void ab initio. *State v. Sams*, 317 N.C. 230, 345 S.E.2d 179 (1986); *Stroupe v. Stroupe*, 301 N.C. 656,

273 S.E.2d 434 (1981); *Lumber Co. v. West*, 247 N.C. 699, 102 S.E.2d 248 (1958); *Massengill v. Lee*,

228 N.C. 35, 44 S.E.2d 356 (1947); *Edwards v. Brown's Cabinets*, 63 N.C. App. 524, 305 S.E.2d 765

(1983); *Manufacturing Co. v. Union*, 20 N.C. App. 544, 202 S.E.2d 309, cert, denied, 285 N.C. 234, 204

S.E.2d 24 (1974); but see *Thornburg v. Lancaster*, 303 N.C. 89, 277 S.E.2d 423 (1981); contra *In re Will*

of *Parker*, 76 N.C. App. 594, 334 S.E.2d 97, disc. rev. denied, 315 N.C. 184, 337 S.E.2d 859 (1985). In

State V. Sams, 317 N.C. 230, 235-36, 345 S.E.2d 179, 182-83, this Court stated that [a]n order is void ab

initio only when it is issued by a court that does not have jurisdiction. Such an order is a nullity and may

be attacked either directly or collaterally, or may simply be ignored. North Carolina allows for collateral

attacks. See *Daniels v. Montgomery Mutual Insurance Co.*, 320 N.C. 669, 360 S.E.2d 772 (N.C.

10/07/1987). A void judgment, however, binds no one. Its invalidity may be asserted at any time and in

any action where some benefit or right is asserted thereunder. A judgment is void if the court rendering it

does not have jurisdiction either of the asserted cause of action or of the parties. *Moore v. Humphrey*, 247

N.C. 423, 101 S.E.2d 460; *Mills v. Richardson*, 240 N.C. 187, 81 S.E. 2d 409; *Powell v. Turpin*, 224 N.C.

67, 29 S.E.2d 26; *Dunn v. Wilson*, 210 N.C. 493, 187 S.E. 802; *Clark v. Homes*, 189 N.C. 703, 128 S.E.

20; *Carter V. Rountree*, 109 N.C. 29, 13 S.E. 716.

Ohio

Irrespective of whether a party moves to vacate a judgment, Ohio courts have inherent authority to vacate

a void judgment. *Patton v. D/emer* (1988), 35 Ohio St.Sd 68. A void judgment \s one that is rendered by

a court that is "wholly without jurisdiction or power to proceed in that manner." In *re Lockhart* (1952), 157

Ohio St. 192, 195, 105 N.E.2d 35, 37. A judgment is void ab initio where a court rendering the judgment

has no jurisdiction over the person. *Records Deposition Service, Inc. v. Henderson & Goldberg, P.C.*

(1995), 100 Ohio App.3d 495, 502; *Compuserve, Inc. v. Trionfo* (1993), 91 Ohio App.3d 157, 161 ; *Sperry*

V. Hlutke (1984), 19 Ohio App.3d 156. In *Van DeRyt v. Van DeRyt* (1966), 6 Ohio St. 2d 31, 36, 35 Ohio

Op. 2d 42, 45, 215 N.E.2d 698,704, we stated, "A court has an inherent power to vacate a void

judgment because such an order simply recognizes the fact that the judgment was always a nullity."

Service of process must be reasonably calculated to notify interested parties of the pendency of an action

and afford them an opportunity to respond. A default judgment rendered without proper service is void. A

court has the inherent power to vacate a void judgment, thus, a party who asserts improper service need

not meet the requirements of Civ.R. 60(B). (Emphasis added.) Emge, 124 Ohio App.Sd at 61, 705 N.E.2d

at 408. We note further that appellant's main contention is that the default judgment granted by Judge

Connor is void because it was rendered against a non-entity. As will be addressed infra, judgments

against non-entities are void. A Civ.R. 60(B) motion to vacate a judgment is not the proper avenue by

which to obtain a vacation of a void judgment See Old Meadow Farm Co. v. Petrowski (Mar. 2, 2001),

Geauga App. No. 2000-G-2265, unreported; Copeico Capital, Inc. v. St. Mark's Presbyterian Church

(Feb. 1, 2001), Cuyahoga App. No. 77633, unreported. Rather, the authority to vacate void judgments is

derived from a court's inherent power. Oxiey v. lacks (Sept. 29, 2000), I. THE TRIAL COURT ABUSED

ITS DISCRETION BY DENYING MR. FINESILVER'S MOTION TO VACATE VOID JUDGMENT ^HEH

THE UNCONTROVERTED TESTIMONY OF MR. FINESILVER SUBMITTED TO THE TRIAL COURT

SHOWS THAT MR. FINESILVER NEVER RECEIVED THE COMPLAINT OF C.E.I., OR NOTICE OF

THE PROCEEDINGS IN THE TRIAL COURT. II. THE TRIAL COURT ABUSED ITS DISCRETION BY

FAILING TO HOLD A HEARING ON MR. FINESILVER'S MOTION TO VACATE VOID JUDGMENT

WHEN MR. FINESILVER TESTIFIED THAT HE NEVER RECEIVED NOTICE OF THE ACTION FILED

BY C.E.I. III. THE TRIAL COURT ABUSED ITS DISCRETION BY FINDING MR. FINESILVER

RECEIVED SERVICE OF THE COMPLAINT WHEN C.E.I. DID NOT OBTAIN SERVICE OF PROCESS

AS REQUIRED BY THE OHIO CIVIL RULES. IV. THE TRIAL COURT ABUSED ITS DISCRETION BY

FINDING THAT MR. FINESILVER WAS SERVED AT A PROPER BUSINESS ADDRESS WHEN MR.

FINESILVER HAD LEFT THE STATE AND NO LONGER MAINTAINED ANY PHYSICAL PRESENCE AT

SAID BUSINESS ADDRESS. After reviewing the record and the arguments of the parties, we reverse the

decision of the trial court. Cleveland Electric Illuminating Company v. Finesilver, No. 69363 (Ohio App.

Dist.8 04/25/1996). "The authority to vacate a void judgment is not derived from Civ.R. 60(B), but rather

constitutes an inherent power possessed by Ohio courts." Patton v. Diemer (1988), 35 Ohio St.Sd 68,

paragraph four of the syllabus; Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision

(2000), 87 Ohio St.Sd 363, 368. Because a court has the inherent power to vacate a void Judgment, a

party who claims that the court lacked personal jurisdiction as a result of a deficiency in service of process

is entitled to have the judgment vacated and need not satisfy the requirements of Civ.R. 60(B). State ex

rel. Ballard V. O'Donnell (^990), 50 Ohio St.3d 182, paragraph one of the syllabus; Cincinnati School Dist.

Bd. of Edn. at 368; Patton at paragraph three of the syllabus; Thomas at 343. See, also Williams v.

Ludlum {Aug. 20, 1999}, Portage App. No. 98-P-0016, unreported, at 7, 1999 Ohio App. LEXIS 3869. The

authority to vacate a void Judgment, therefore, is not derived from Civ. R. 60(B), "but rather constitutes

an inherent power possessed by Ohio courts." Patton, supra, paragraph four of the syllabus. A party

seeking to vacate a void Judgment must, however, file a motion to vacate or set aside the same.

CompuServe, supra, at 161 . Yet to be entitled to relief from a void Judgment a movant need not present

a meritorious defense or show that the motion was timely filed under Civ. R. 60(B). ("A void Judgment is

one entered either without jurisdiction of the person or of the subject matter." Eisenberg v. Peyton (1978),

56 Ohio App.2d 144, 148. A motion to vacate a void Judgment therefore, need not comply with the

requirements of Civ.R. 60(B) which the petitioner ordinarily would assert to seek relief from a

jurisdictionally valid judgment. Demianczul v. Demianczuii (1984), 20 Ohio App.Sd 244, 485 N.E.2d 785.

Entry was void because it constituted a modification of a property division without a reservation of

jurisdiction to do so--an act the court may not perform under *Wolfe v. Wolfe* (1976), 46 Ohio St.2d 399, at

paragraph one of the syllabus, and our opinion in *Schrader v. Schrader* (1995), 108 Ohio App.3d 25.

Because the notices required by R.C. Chapter 5715 were not given to Candlewood prior to the BOR's

July 2, 1997 hearing and after its August 18, 1997 decision, and no voluntary appearance was made by

Candlewood, the BOR's August 18, 1997 decision is a nullity and void as regards Candlewood. As one

Texas appellate court so aptly stated concerning a void Judgment, "[i]t is good nowhere and bad

everywhere." *Dews v. Floyd* (Tex. Civ. App. 1967), 413 S.W.2d 800, 804. A court has an inherent power to

vacate a void judgment because such an order simply recognizes the fact that the judgment was always a

nullity." The term "inherent power" used in the two preceding cases is defined in *Black's Law Dictionary* (6

Ed. 1990) 782 as "[a]n authority possessed without its being derived from another. A right, ability, or

faculty of doing a thing, without receiving that right, ability, or faculty from another." Because this claim

challenged the subject matter jurisdiction of the trial court, it was not barred by *res judicata* because a

void Judgment may be challenged at any time. See *State v. Wilson* (1995), 73 Ohio St.3d 40, 45-46, 652

N.E.2d 196, 200, fn. 6. If the trial court was without subject matter jurisdiction of defendant's case, his

conviction and sentence would be void ab initio. See *Patton v. Diemer* (1988), 35 Ohio St. 3d 68, 518

N.E.2d 941 , paragraph three of the syllabus. A void Judgment is a mere nullity, and can be attacked at

any time. *Tari v. State* (1927), 117 Ohio St. 481 , 494, 159 N.E. 594, 597-598. A movant, however, need

not present a meritorious defense to be entitled to relief from a void Judgment *Peralta v. Heights Med.*

Ctr., Inc. (1988), 485 U.S. 80, 108 S.Ct. 896, 99 L.Ed.2d 75. Nor must a movant show that the motion

was timely filed under the guidelines of Civ.R. 60(B) if a judgment is void. In re Murphy (1983), 10 Ohio

App.Sd 134, 10 OBR 184, 461 N.E.2d 910; Satava v. Gerhard (1990), 66 Ohio App.Sd 598, 585 N.E.2d

899; see, generally. Associated Estates Corp. v. Fellows (1983), 11 Ohio App.3d 112, 11 OBR 166, 463

N.E.2d 417.

OKLAHOMA

The general rule is that a void judgment is no judgment at all. Where judgments are void, as was the

judgment originally rendered by the trial court here, any subsequent proceedings based upon the void

judgment are themselves void. In essence, no judgment existed from which the trial court could adopt

either findings of fact or conclusions of law. Valley Vista Development Corp. v. City of Broken Arrow, 766

P.2d 344, 1988 OK 140 (Okla. 12/06/1988). A facially void judgment may be vacated at any time. Section

1038 provides that the passage of time does not operate to bar a quest to vacate a facially void judgment.

Read v. Read, 2001 OK 87 (Okla. 10/16/2001). The pertinent provisions of 12 O.S. Supp. 1993 §1038

state: "A void judgment, decree or order may be vacated at any time on motion of a party, or any person

affected thereby." Title 12 O.S. 1971 § 1038 provides that a void judgment may be vacated at any time on

motion of "any person affected thereby." The insurance company claims that it has never asked that the

default judgment be declared void, merely that the judgment should be ignored since it is a nullity.

Defendant's argument is supported by the general rule that a void judgment is no judgment at all. Le Clair

V. Calls Him, 106 Okl. 247, 233 P. 1087 (1925). "A void judgment is, in legal effect, no judgment at all. By

it no rights are divested; from it no rights can be obtained. Being worthless, in itself, all proceedings

founded upon it are necessarily equally worthless, and have no effect whatever upon the parties or

matters in question. A void judgment neither binds nor bars anyone. All acts performed under it, and all

claims flowing out of it, are absolutely void. The parties attempting to enforce it are trespassers." *Light v.*

Southwestern Insurance Company, 520 P. 2d 662, 1974 OK 35 (Okla. 03/19/1974). A void judgment may

be vacated at any time. Title 12, Oklahoma Statutes, Section 1038. d judgments may be vacated at any

time, *Churchill v. Muegge*, Okl., 323 P.2d 339, and may be vacated at any time on the motion of any

interested party. *State v. City of Tulsa*, 153 Okl. 262, 5 P.2d 744. A void judgment cannot constitute res

judicata. Denial of previous motions to vacate a void judgment could not validate the judgment or

constitute res judicata, for the reason that the lack of judicial power inheres in every stage of the

proceedings in which the judgment was rendered. *Bruce v. Miller*, 360 P. 2d 508, 1960 OK 266 (Okla.

12/27/1960). A void judgment is one that is void upon the face of the judgment roll. *Capitol Federal*

Savings Bank v. Bewley, 795 P.2d 1051 (Okla. 1990). The judgment roll has been defined to include the

petition, process, return, pleadings, reports, verdicts, orders and all acts and proceedings of the court.

Mayhue v. Mayhue, 706 P.2d 890 (Okla. 1985). A void judgment may be attacked at any time, whereas a

judgment which is only voidable may be successfully attacked only if the requirements of 12 O.S. 1981 §

1031 are met. 12 O.S. 1981 § 1038 ; *Capitol Federal Savings Bank v. Bewley*, supra. Here, it is clear

from the face of the order confirming sale that Appellant's due process rights were violated. Thus, the

order confirming sale is void on its face and the trial court was without jurisdiction to enter such order. The

trial court's judgment is REVERSED AND this matter is REMANDED for further proceedings consistent

with this opinion. Federal Deposit Ins. Corp. v. Duerksen, 810 P.2d 1308, 1991 OK CIV APP 39

(Okla.App.Div.3 04/30/1991). Any interested party may move to set aside a void judgment. High v.

Southwestern Insurance Co., Okl., 520 P. 2d 662 (1974). A different statutory rule applies when the

judgment sought to be vacated is alleged to be void. Under the provisions of 12 O.S. 1971 § 1038 any

party affected by a void judgment has an independent claim for vacation. It may seek vacation at any

time. Jent v. Brown, Okl., 280 P.2d 1005, 1008 [1955].

South Carolina

A void judgment is one that, from its inception, is a complete nullity and is without legal effect." Thomas

& Howard Co. v. T.W. Graham and Co., 318 S.C. 286, 291 , 457 S.E.2d 340, 343 (1995). The definition of

void under the rule only encompasses judgments from courts which failed to provide proper due process,

or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction." McDaniel v.

U.S. Fid. & Guar. Co., 324 S.C. 639, 644, 478 S.E.2d 868, 871 (Ct. App. 1996). It is fundamental that no

judgment or order affecting the rights of a party to the cause shall be made or rendered without notice to

the party whose rights are to be affected." Tyron Fed. Sav. & Loan Ass'n v. Phelps, 307 S.C. 361 , 362,

415 S.E.2d 397, 398 (1992). Generally, a person against whom a judgment or order is taken without

notice may rightly ignore it and may assume that no court will enforce it against his person or property.

The requirements of due process not only include notice, but also include an opportunity to be heard in a meaningful way, and judicial review. *Grannis v. Ordean*, 234 U.S. 385, 394 (1914) ("The fundamental requisite of due process of law is the opportunity to be heard."); *S.C. Dep't of Soc. Sen/s. v. Holden*, 319 S.C. 72, 78, 459 S.E.2d 846, 849 (1995).

Texas

Judicial action taken after the trial court's plenary power has expired is void. See *State ex. rel. Latty v.*

Owens, 907 S.W.2d 484, 486 (Tex. 1995); see also *Mapco, Inc. v. Forrest*, 795 S.W.2d 700, 703 (Tex.

1990) (defining a void judgment as one rendered when a court has no jurisdiction over the parties or

subject matter, no jurisdiction to render judgment, or no capacity to act as a court). A party affected by

void judicial action need not appeal. *State ex rel. Latty*, 907 S.W.2d at 486. If an appeal is taken,

however, the appellate court may declare void any orders the trial court signed after it lost plenary power

over the case.. "A void judgment is a nullity from the beginning, and is attended by none of the

consequences of a valid judgment. It is entitled to no respect whatsoever because it does not affect,

impair, or create legal rights." *Ex parte Seidel*, 39 S.W.3d 221, 225 (Tex. Grim. App. 2001). Only void

convictions are subject to collateral attack. *Christian v. State*, 865 S.W.2d 198, 201 (Tex. App. -Dallas

1993, pet. ref'd) (challenge to voidable error in conviction, raised on appeal from revocation order, was

impermissible collateral attack). A Void Judgment Is a Void Judgment Is a Void Judgment-BLW of

Review and Procedural Due Process in Texas, 40 Baylor L. Rev. 367, 378-79 (1988). See Thomas, 906

S.W.2d at 262 (holding that trial court has not only power but duty to vacate a void judgment). A

judgment is void only when it is clear that the court rendering judgment had no jurisdiction over the parties

or subject matter, no jurisdiction to render judgment, or no capacity to act as a court. When appeal is

taken from a void judgment, the appellate court must declare the judgment void. Because the appellate

court may not address the merits, it must set aside the trial court's judgment and dismiss the appeal. A

void judgment may be attacked at any time by a person whose rights are affected. See El-Kareh v.

Texas Alcoholic Beverage Comm'n, 874 S.W.2d 192, 194 (Tex. App.-Houston [14th Dist.] 1994, no writ);

see also Evans v. C. Woods, Inc., No. 1 2-99-001 53-CV, 1999 WL 787399, at *1 (Tex. App.-Tyler Aug.

30, 1999, no pet. h.). A void judgment is a "nullity" and can be attacked at any time. Deifik v. State, No.

2-00-443-CR (Tex.App. Dist.2 09/14/2001) "A void judgment is a nullity from the beginning, and is

attended by none of the consequences of a valid judgment. It is entitled to no respect whatsoever

because it does not affect, impair, or create legal rights." Since the trial court's dismissal "with prejudice"

was void, it may be attacked either by direct appeal or collateral attack Ex parte Williams, No. 73,845

(Tex.Crim.App. 04/1 1/2001). "A void judgment is a nullity from the beginning, and is attended by none of

the consequences of a valid judgment. It is entitled to no respect whatsoever because it does not affect,

impair, or create legal rights." Ex parte Spaulding, 687 S.W.2d at 745 (Teague, J., concurring). Since the

trial court's dismissal "with prejudice" was void, it may be attacked either by direct appeal or collateral

attack. See Ex parte Shields, 550 S.W.2d at 675 a void judgment can be collaterally attacked. See Glunz

v. Hernandez, 908 S.W.2d 253, 255 (Tex. App.-San Antonio 1995, writ denied); Tidwell v. Tidwell, 604

S.W.2d 540, 542 (Tex. Civ. App.- Texarkana 1980, no writ) (finding that a void judgment may be

collaterally attacked by a suit to set aside the judgment after it has become final if such void judgment

becomes material). We agree. A collateral attack is any proceeding to avoid the effect of a judgment

which does not meet all the requirements of a valid direct attack. See Glunz, 908 S.W.2d at 255. There is

neither a set procedure for a collateral attack nor a statute of limitations. See Glunz, 908 S.W.2d at 255;

Davis V. Boone, 786 S.W.2d 85, 87 (Tex. App.-San Antonio 1990, no writ). Collateral attacks may be only

used to set aside a judgment which is void, or which involved fundamental error. See Glunz, 908 S.W.2d

at 255. Fundamental error for this purpose means cases where the record shows the court lacked

jurisdiction or that the public interest is directly and adversely affected as that interest is declared in the

statutes or the Constitution of Texas. See id. The cases distinguish between judgments which are void,

and therefore may be set aside by a collateral attack, and those which are voidable and must be attacked

by a valid direct attack. See id. A judgment is void if it is shown that the court lacked jurisdiction 1) over a

party or the property; 2) over the subject matter; 3) to enter a particular judgment; or 4) to act as a court.

Jurisdiction could not be conferred by waiver or retroactively ELNA PFEFFER ET AL. v. ALVIN

MEISSNER ET AL. (11/23/55) 286 S.W.2d 241. Strictly speaking a void judgment \s one which has no

legal force or effect whatever. It is an absolute nullity and such invalidity may be asserted by any person

whose rights are affected, at any time and at any place. It need not be attacked directly, but may be

attacked collaterally whenever and wherever it is interposed. Usually it carries the evidence of its

invalidity upon its face, while a voidable judgment is one apparently valid, but in truth wanting in some

material respect; in other words, one that is erroneous. Such vice may be the want of jurisdiction over the

person or other similar fundamental deficiency, but which vice does not affirmatively appear upon the face

of the judgment. "e/LLY DUNKLiN v. A. J. LAND ET UX. 297 S.W.2d 360 (12/21/56). Where a void

Judgment has been rendered and the record in the cause, or judgment roll, reflects the vice, then the

court has not only the power but the duty and even after the expiration of the term to set aside such

judgment, i-larrison v. Wliiteley, Tex.Com.App., 6 S.W.2d 89. This court in Neugent v. Neugent,

Tex.Civ.App., 270 S.W.2d 223, followed and applied the rule announced in the Harrison-Whiteley case.

The Supreme Court, speaking through Folley, Commissioner, in Bridgman v. Moore, 143 Tex. 250, 183

S.W.2d 705, at page 707, said: "The court has not only the power but the duty to vacate the inadvertent

entry of a void judgment at any time, either during the term or after the term, with or without a motion

therefore." We will not extend this discussion further than to state that we here reaffirm the holding on the

point involved as announced by Justice Hightower in the former appeal (301 S.W.2d 181). While this

holding was premature in view of the action of the Supreme Court (304 S.W.2d 265) reversing our

holding, it was not upon the points discussed in Justice Hightower's opinion, but was on the point that

since the judgment appealed from was an interlocutory one and not final, the appeal should be dismissed.

However, we think our holding then is now appropriate. A void judgment has been termed mere waste

paper, an absolute nullity; and all acts performed under it are also nullities. Again, it has been said to be

in law no judgment at all, having no force or effect, conferring no rights, and binding nobody. It is good

nowhere and bad everywhere, and neither lapse of time nor judicial action can impart validity.

Commander v. Bryan, 123 S.W.2d 1008, (Tex.Civ.App., Fort Worth, 1938, n.w.h.); 34 Tex.Jur., Sec. 262,

page 177; Maury v. Turner, 244 S.W. 809, (Tex.Com.App., 1922). Also, a void judgment has been

defined as "one which has no legal force or effect, invalidity of which may be asserted by any person

whose rights are affected at anytime and at any place directly or collaterally." Black's Law Dictionary;

Reynolds v. Volunteer State Life Ins. Co., 80 S.W.2d 1087, (Tex.Civ.App., Eastland, 1935, writ ref.);

Gentry v. Texas Department of Public Safety, 379 S.W.2d 114, 119, (Tex.Civ.App., Houston, 1964, writ

ref., n.r.e., 386 S.W.2d 758). It has also been held that "It is not necessary to take any steps to have a

void judgment reversed, vacated, or set aside. It may be impeached in any action direct or, collateral.'

IHolder v. Scott, 396 S.W.2d 906, (Tex.Civ.App., Texarkana, 1965, writ ref., n.r.e.).

Washington

Court held that a quiet title action, not an action to vacate the judgment, was the appropriate means for

the grantee of a judgment debtor to clear the title of land sold under a void judgment. Krutz, 25 Wash, at

572-74, 577-78. In Krutz, the judgment and subsequent sheriff's sale were void for improper service.

Krutz, 25 Wash, at 566-78. The court stated that the grantee, who purchased from the judgment debtor,

was not a party to the prior judgment and could not have brought a motion to vacate the void judgment.

Krutz, 25 Wash, at 566-78. Similarly, Mueller, having an interest in the property as the purchaser from

Griffin's estate, made a collateral attack on the validity of the sheriff's sale through this quiet title action

If a motion to relieve a party from judgment is based on mistake, inadvertence, excusable neglect, newly

discovered evidence or irregularity in obtaining the judgment, it must be made within a year of the

judgment's entry. CrR 7.8(b). A motion based on a void judgment or "any other reason justifying relief

from the operation of the judgment" may be brought within a reasonable time. CrR 7.8(b)(5); State v.

Clark, 75 Wn. App. 827, 830, 880 P.2d 562 (1994)

A judgment is void when the court does not have personal or subject matter jurisdiction, or "lacks the

inherent power to enter the order involved." Petersen, 16 Wash. App. at 79 (citing Bresolin, 86 Wash. 2d

at 245; Anderson, 52 Wash. 2d at 761) (additional citation omitted). A trial court has no discretion when

faced with a void judgment, and must vacate the judgment "whenever the lack of jurisdiction comes to

light." M/fcrte// v. Kitsap County 59 Wash. App. 177, 180-81, 797 P.2d 516 (1990) (collateral challenge to

jurisdiction of pro tem judge granting summary judgment properly raised on appeal) (citing Allied Fidelity

Ins. Co. V. Ruth, 57 Wash. App. 783, 790, 790 P.2d 206 (1990)). As discussed above, since the judgment

is void, this collateral attack through the quiet title action was proper.

A challenge to a void judgment can be brought at any time. Matter of Marriage of Leslie, 112 Wash. 2d

612, 618-19, 772 P.2d 1013 (1989) (citing John Hancock Mut. Life Ins. Co. v. Gooley, 196 Wash. 357,

370, 83 P.2d 221 (1938) (additional citation omitted); CR 60(b)(5).

A trial court's decision to grant or deny a motion to vacate a default judgment is generally reviewed for an

abuse of discretion.; however, a court has a nondiscretionary duty to vacate a void Judgment. Leen, 62

Wash. App. at 478; In re Marriage of Markowski¹, 50 Wash. App. 633, 635, 749 P.2d 754 (1988); Brickum

Inv. Co. V. Vernham Corp., 46 Wash. App. 517, 520, 731 P.2d 533 (1987).

A motion to vacate under CR 60(b)(5) "may be brought at any time" after entry of judgment. Lindgren v.

Lindgren, 58 Wash. App. 588, 596, 794 P.2d 526 (1990), review denied, 116 Wash. 2d 1009, 805 P.2d

813 (1991); see also Brenner v. Port Bellingham, 53 Wash. App. 182, 188, 765 P.2d 1333 (1989)

("motions to vacate under CR 60(b)(5) are not barred by the 'reasonable time' or the 1-year requirement

of CR 60(b)"). Void judgments may be vacated regardless of the lapse of time. In re Marriage of Leslie,

112 Wash. 2d 612, 618-19, 772 P.2d 1013 (1989). Consequently, not even the doctrine of aches bars a

party from attacking a void judgment. Leslie, 112 Wash. 2d at 619-20.

Brenner provides a striking example of how meaningless the passage of time is in the context of a void

judgment There, a default judgment was entered in 1969 condemning all interests in certain real

property and vesting title in the Port of Bellingham. In 1985, Brenner sued the Port for damages resulting

from the condemnation action and alleged in part that the Port had failed to satisfy the statutory

requirements of service by publication. The trial court denied Brenner's motion for summary judgment,

ruling that the Port's error was merely an irregularity and, thus, voidable under CR 60(b)(1) rather than

void under CR 60(b)(5). The trial court also found that Brenner had failed to move to vacate the judgment

within a reasonable time as required by CR 60(b)(1). 53 Wash. App. at 185. The Court of Appeals

reversed, holding that the Port's failure to strictly comply with the requirements of service by publication

meant the court had no jurisdiction over Brenner when it entered the 1969 judgment condemning her

interest in the property. Recognizing that a default judgment entered without valid service is void and may

be vacated at any time, the court remanded the case to the trial court with instructions to vacate the 16-year-old judgment. 53 Wash. App. at 188. In the present case, the trial court expressly found Allstate's service of process was defective. "Proper service of the summons and complaint is essential to invoke personal jurisdiction over a party, and a default judgment entered without proper jurisdiction is void." Markowski, 50 Wash. App. at 635-36; see also Mid-City Materials, Inc. v. Heater Beaters Custom Fireplaces, 36 Wash. App. 480, 486, 674 P. 2d 1271 (1984). Because a party may move to vacate a void judgment any time (Leslie, 112 Wash. 2d at 618-19), the trial court erred by finding that Khan/ failed to bring his motion within a reasonable time. Further, as discussed in detail below, the trial court's finding that Khani had actual notice of the default judgment through the DOL notice is irrelevant on these facts. More significantly, the trial court erred by denying Khani's motion because it failed to fulfill its nondiscretionary duty to vacate a void judgment See Leen, 62 Wash. App. at 478; Markowski, 50 Wash. App. at 635. Thus, the trial court's order must be reversed and the case remanded with instructions to vacate the default judgment and quash the writ of garnishment. See Leslie, 112 Wash. 2d at 618 (a vacated judgment has no effect, and the parties' rights are left as though the judgment had never been entered).

A void judgment is always subject to collateral attack. Bresolin v. Morris, 86 Wash. 2d 241, 245, 543 P. 2d 325 (1975). A void judgment must be vacated whenever the lack of jurisdiction comes to light. Mitchell V. Kitsap Cy., 59. Wash. App. 177, 180-81, 797 P.2d 516 (1990).

"A void judgment may be attacked collaterally as well as directly. It is entitled to no consideration

whatever in any court as evidence of right, Kizer v. Caufield, 17 Wash. 417, 49 P. 1064.

A void judgment is defined in Dike v. Dike, 75 Wash. 2d 1, 7, 448 P.2d 490 (1968).

These historical rules are set against the fact that the law of reopening estates is derived from the law of

vacating judgments. In re Jones' Estate, 116 Wash. 424, 426, 199 P. 734 (1921). With the advent of CR

60, additional justifications upon which to reopen an estate may exist. Specifically, CR 60(b)(4) allows the

court to vacate a judgment procured through 'fraud . . . , misrepresentation, or other misconduct of an

adverse party.' CR 60(b)(4). Of course, a 'void judgment is also unenforceable. CR 60(b)(5). CR 60 also

contain a catchall provision, which permits the court to vacate a judgment for 'any other reason justifying

relief from the operation of the judgment.' CR 60(b)(1 1).

It is true that, under CR 60(b)(5), a court may vacate a void judgment at any time. A judgment is void if

entered by a court without jurisdiction. In re Marriage of Ortiz, 108 Wn.2d 643, 649, 740 P.2d 843 (1987).

Where the judgment was procured fraudulently so that it was void and its invalidity appeared on the face

of the record so that either on the Henkles' or on the commissioner's own motion, the court commissioner

had the power to vacate the void judgment \N\hou\ notice to McCormick. Morrison v. Berlin,, the court

commissioner did not manifestly abuse his discretion here. State v. Scott

Assuming the judgment to be void, the primary question is: Have they such right? There is no question

but that a court has inherent power to purge its records of void judgments. It may do so of its own motion.

It must be conceded that a party to the record, adversely affected by a void judgment, may have the

judgment vacated as a matter of right - and this without a showing of a meritorious defense. *Wo/e v.*

Page, 20 Wash. 208, 54 P. 1123; *Batchelor v. Palmer*, 129 Wash. 150, 224 P. 685. The parties to the

record (the *Pumneas*) in this case, however, are not adversely affected by the judgment in question. For

they have parted with their interest in the property, and the judgment has been satisfied. An order

vacating the judgment would affect their rights or liabilities in no manner whatsoever. As to them it is

'*functus officio*, wherefore the question of the legality or illegality of its obtention is a mere abstraction with

which it is no part of the business of appellate courts to deal.' *Davis v. Blair*, 88 Mo.App. 372.

Florida

Objections to a void judgment can be raised at any time. The final judgment entered upon

default in this case awarding un-liquidated damages without affording the defaulting party notice and

opportunity to be heard is a void judgment. Under the specific provisions of rule 1.540(b) R.C.P., a

motion to set aside a final judgment bottomed upon the reason that the judgment is void is not subject to

the one-year limitation but must be brought within a reasonable time. We glean from the record that

defendant's motion to set aside default and final judgment was filed when knowledge first came to the

defendant that the plaintiff was seeking satisfaction of the final judgment. Such, in our opinion, is within

the reasonable time requirement of the rule. *Osceola*, 238 So. 2d at 480 (emphasis in original). While it is

true that Rule 1.540(b)(4) states that a motion for relief from a void judgment must be made within a

"reasonable time," most courts have felt constrained to interpret the "reasonable time" requirement of the

rule to mean no time limit when the judgment attacked is void. Assuming that a judgment is null and void

for lack of jurisdiction does a Rule 1.540(b) motion for relief not brought within a reasonable time have the

effect of making a void judgment va\67 The answer is "no." Florida Rule of Civil Procedure 1.540 was

acknowledged by its drafters to be substantially the same as Federal Rule 60. Like a Rule 1.540 motion,

a federal motion for relief from a void judgment must be made within a "reasonable time." However,

federal courts have reasoned that since a void federal judgment can be collaterally attacked at any time

and because the judgment sustaining the collateral attack would have to be given effect in a subsequent

motion for relief to set aside the void judgment, the "reasonable time" limitation must generally mean no

time limitation, although there may be exceptional circumstances where the reasonable time limitation

would require diligence on the part of the movant. See 7 Moore's Federal Practice, | 60.25[4] (2d

Ed. 1983). Whigham v. Whigham, 464 So. 2d 674, 676 (Fla. 5th DCA 1985). See also Del Conte Enters.,

Inc. v. Thomas Pub. Co., 71 So. 2d 1268 (Fla. 3d DCA 1998); Falkner, 489 So. 2d at 758. In addition, in

DeClaire v. Yohanan, 453 So. 2d 375 (Fla. 1984), the Florida Supreme Court approved a chart which

indicates that there is no time limitation for attacking a void judgment under Rule 1.540(b). As we did in

Kennedy v. Richmond, we once again affirm that we agree with those cases, which, like Whigham and

Falkner, hold that a motion to vacate a void judgment under Rule 1.540 may be made at any time. While

there is language in Polani and Osceola which can be interpreted as holding that a particular limitation

applies to the time in which a motion to vacate a void judgment must be filed, those cases are, to that

extent, inconsistent with Florida Supreme Court authority: A void judgment is a nullity, . . . and is subject

to collateral attack and may be stricken at any time. The passage of time cannot make valid that which

has always been void but it can and often does render valid that which was merely voidable or

erroneously entered. *Ramagli Realty Co.*, 121 So. 2d at 654. Appellee further maintains that the trial

judge's order in the instant case should be affirmed since, unlike the defendants in cases like *Polani* and

Osceola, Ward did not promptly file his motion to vacate upon finding out about the judgment, but instead,

waited almost eight months. For all of the reasons previously discussed, we do not agree that the length

of the delay in filing a motion to vacate after learning of the entry of a void judgment is legally significant

since it is well established that the passage of time cannot make valid that which has been void from the

beginning. See *Ramagli Realty Co. v. Craver*. For instance, in *Del Conte Enterprises, Inc. v. Thomas*

Publishing Co., 71 1 So. 2d 1268 (Fla. 3d DCA 1998), the defendant filed a motion to vacate an amended

final judgment which was entered against it although the defendant had not been served with process.

Upon learning of the final judgment, the defendant communicated informally with the plaintiff in an attempt

to have the judgments vacated, but did not file a motion to vacate the judgment until over one year later.

The plaintiff, *Thomas Publishing Company*, responded that the defendant had not timely moved to vacate

the judgment. The trial court agreed that the judgment was void, but denied the motion to vacate because

it was not filed within a reasonable time. The Third District reversed and stated that because the judgment

was entered without service of process and was void, the fact that appellant moved to vacate the

judgment over one year after learning of it was "irrelevant." Id. at 1269. Accord Greisel v. Gregg, 733 So.

2d 1 1 19, 1 121 (Fla. 5th DCA 1999)(reversing order denying motion to vacate void judgment, despite trial

court's finding that six-year delay in filing the motion to vacate after defendant learned of the judgment

was "unconscionable"). Appellant, Del Conte Enterprises, Inc. (the "appellant") appeals the denial of a

motion to vacate an amended consent final judgment entered in favor of appellee, Thomas Publishing

Company ("Thomas Publishing"). We reverse, because the lack of proper service rendered the judgment

void, and relief from a void judgment can be granted at any time. In the case of East Auto Supply Co.,

Inc. V. Anchor Mortgage Servs., Inc., 502 So.2d 976 (Fla. 4th DCA 1987), our sister court held that since

a reinstated corporation is treated as though it had never been dissolved, service upon a registered agent

of a dissolved corporation is validated when a dissolved corporation is reinstated. In this case the

appellant was not reinstated until after the void judgment was entered. At least to the extent that the

holding in East Auto can be interpreted to mean that reinstatement after the entry of a void judgment

can validate that judgment we disagree with our sister court. The judgment was void when entered and

the fact that the appellant had to seek reinstatement in order to file a motion for relief from that judgment

did not breathe life into it. See Gotshall v. Taylor, 196 So.2d 479 (Fla. 4th DCA), cert, denied, 201 So. 2d

558 (Fla. 1967). See also Falkner v. Amerifirst Fed. Sav. & Loan Ass'n, 489 So. 2d 758 (Fla. 3d DCA

1986). The appropriate procedure for attacking a void judgment is by a motion for relief from judgment

pursuant to Florida Rule of Civil Procedure 1.540(b). Tucker, 389 So. 2d at 684. Failure to allege such

jurisdictional facts is generally fatal. Service is void, and any judgment obtained is void. Hargrave v.

Margrave, 495 So.2d 904 (Fla. 1st DCA 1986); Laney v. Laney, 487 So.2d 1109 (Fla. 1st DCA 1986);

Mouzon V. Mouzon, 458 So.2d 381 (Fla. 5th DCA 1984). Cf. Kimbrough v. Rowe, 479 So.2d 867 (Fla. 5th

DCA 1985). A void judgment obtained without personal jurisdiction or subject matter jurisdiction may be

set aside at any time. See Palmer v. Palmer, 479 So.2d 221 (Fla. 5th DCA 1985). A judgment entered

without notice to a party is void. Falkner v. Amerifirst Fed. Sav. & Loan Ass'n, 489 So.2d 758 (Fla. 3d

DCA 1986); cf. Grahn v. Dade Home Serv., Inc., 277 So.2d 544 (Fla. 3d DCA 1973) (where plaintiffs'

failure to timely comply with trial court's order resulted in the dismissal of the complaint and entry of

judgment against plaintiffs, the dismissal was reversed because the record failed to show that plaintiffs

received notice of order); McAlice v. Kirsch, 368 So.2d 401 (Fla. 3d DCA 1979) (default judgment was

void for failure to give notice to defendant even though defendant received original complaint which did

not name him and summons which was not addressed to him). See generally DeClaire v. Yohanan, 453

So.2d 375 (Fla. 1984) (general discussion of the origin, purpose and application of Fla. R. Civ. P.

1.540(b)). Since the trial court specifically found that Shields had not received notice of the trial, the

judgment was void. Because relief from a void judgment may be granted at any time, Falkner, 489 So. 2d

at 759, the trial court erred in denying Shields's motion as untimely. Consequently, the void judgment

should be vacated. Where a judgment is vacated or set aside, it is as though no judgment had ever been

entered. 49 C.J.S. Judgments § 306 (1977). Florida Rule of Civil Procedure 1.540 states that all motions

for relief from judgment must be filed within a reasonable time and in some situations not more than one

year after the judgment was entered. However, if a judgment or decree is void or it is not longer equitable

that the judgment or decree should have prospective application, the one year limitation does not apply.

This court and other Florida courts, both before and after the adoption of Florida Rule of Civil Procedure

1.540(b), have stated that a void judgment may be attacked "at any time" because a void judgment

creates no binding obligation upon the parties, is legally ineffective, and is a nullity. See *Watkins v.*

Johnson, 139 Fla. 712, 191 So. 2 (1939); *Malone v. Meres*, 91 Fla. 709, 109 So. 677 (1926); *Whigham v.*

Whigham, 464 So.2d 674, 10 FLW 624 (Fla. 5th DCA Mar. 7, 1985); *Florida Power & Light Co. v. Canal*

Authority, 423 So.2d 421 (Fla. 5th DCA 1982); *Tucker v. Dianne Elect, Inc.*, 389 So.2d 683 (Fla. 5th DCA

1980); *T.J.K. v. N.B.*, 237 So.2d 592 (Fla. 4th DCA 1970). See also *DeClaire v. Yohanan*, 453 So.2d 375

(Fla. 1984) (where judgment is void, there is no time limitation under Rule 1.540(b)). Assuming that a

judgment is null and void for lack of jurisdiction does a Rule 1.540(b) motion for relief not brought within a

reasonable time have the effect of making a void judgment valid? The answer is "no." Florida Rule of Civil

Procedure 1.540 was acknowledged by its drafters to be substantially the same as Federal Rule 60. Like

a Rule 1.540 motion, a federal motion for relief from a void judgment must be made within a "reasonable

time." However, federal courts have reasoned that since a void federal judgment can be collaterally

attacked at any time and because the judgment sustaining the collateral attack would have to be given

effect in a subsequent motion for relief to set aside the void judgment, the "reasonable time" limitation

must generally mean no time limitation, although there may be exceptional circumstances where the

reasonable time limitation would require diligence on the part of the movant. See 7 Moore's Federal

Practice, P60.25[4] (2d Ed. 1983). "A void judgment or decree is not entitled to the respect of a valid

adjudication, and may be declared inoperative by any tribunal in which effect is sought to be given it. "A

void adjudication has no legal or binding effect; it does not impair, or create, rights; it is not entitled to enforcement, and is ordinarily no protection to those who seek to enforce it. All proceedings founded on

such an adjudication are regarded as invalid, for a void judgment or decree is regarded as a nullity, as

mere waste paper. The situation is the same as if there had been no adjudication." Where such

judgments or decrees rendered in this State against married women are void (as is the personal judgment

in this case rendered on mere promissory notes for borrowed money) and the money so borrowed is not

shown to have been used so as to charge the separate property of the married woman in this State,

under the substantive law provisions of Section 1 and 2 of Article XI of the Florida Constitution, such a

void judgment in so far as it was rendered against the married woman and is predicated upon

promissory notes executed by her while a married woman and not a free dealer under the laws of this

State, may be quashed at any time by the court rendering the decree or judgment. Such notes being void

as a personal obligation of the married woman, her failure to defend against the notes does not give

validity to the judgment against her on promissory notes that are void as a personal liability against her,

when such notes were not shown to have been executed for any of the substantive law purposes named

in Sections 1 and 2 of Article XI, Constitution, and she was not a free dealer under the laws of Florida

when the notes were executed. The judgment as against the married woman being void when rendered,

may be quashed as to her, at her instance when she becomes a widow. A grantee of land from one

having outstanding against her a void judgment, may maintain a bill in equity to cancel a void judgment

as a cloud upon its title to the land. Where such a bill in equity may be maintained by the grantee of land,

a counter claim by the grantor to have the void judgment set aside, may likewise be maintained,

particularly under circumstances such as exist in this case. PROTECTIVE HOLDING CORPORATION v.

CORNWALL COMPANY {^ 0/30/36). 173 So. 804, 127 Fla. 252.

Georgia

A judgment void on its face may be attacked in any court by any person. Official Code of Georgia

Annotated, Vol. 7, 1993 , page 525. A judgment void because of lack of jurisdiction of the person or

subject matter may be attacked at any time. Official Code of Georgia Annotated, Vol. 7, 1993 , page 526.

Term "face of the record" has never been held to include papers involved in the litigation which are not a

part of the record kept under the authority and direction of the clerk of the court in which the suit is

pending; the phrase itself refers to the court record, not the file built up by litigants for their personal use,

Jennings v. Davis, 88 S.E. 2d 544 (1955). Attack on a void judgment may be made directly in equity or

collaterally, Wasden v. Rusco Indus., Inc. 211 S.E. 2d 733 (1975). This section (Georgia code section 9-

11-60) provides, generally, for collateral attack in any court by any person where a judgment is void on its

face - Official Code of Georgia Annotated, Vol. 7, 1993 , page 536. Judgment is "void on its face" when a

non-amendable defect appears on the face of the record or pleadings - Void judgment may be attacked

in any court by any person, Official Code of Georgia Annotated, Vol. 7, 1993 , page 537. Punitive

damages may be awarded only in tort actions. Code of Georgia, 51-12-5.1. An award of exemplary

damages cannot stand where compensatory damages were not awarded, *Artis v. Crenshaw*, 256 Ga.

488, 350 S.E. 2d 679 (1985) and *Clarke v. Cox*, 197 Ga. App. 83, 397 S.E. 2d 598 (1990). Georgia law

expressly provides for punitive damages but under Georgia law, three things are left for a jury to

determine: (1) When punitive damages shall be allowed, (2) the amount of such damages, and (3) the

purpose of the award as either to deter the wrongdoer from repeating the trespass or as compensation for

the wounded feelings of the plaintiff, *Curtis Publishing Co. v. Butts*, 351 F.2d 702 (5th Cir. 1965) aff'd 388

U.S. 130, 87 S. Ct. 1975, 18 L.Ed. 2d 1094 (1967). Question of punitive damages is one for jury. *King v.*

Towns, 102 Ga. App. 895, 118 S.E. 2d 121 (1960), *Moon v. Georgia Power Co.*, 127 Ga. App. 524, 194

s.e. 2d 348 (1972), and *Kicklighter v. Nails by Jannee, Inc.*, 616 F.2d 734 (5th Cir. 1980). Whether the

aggravating circumstances of the alleged tort warrant the award to the plaintiff of punitive damages is a

question for the jury, *Kelly v. Georgia Gas. & Elec. Co.*, 105 Ga. App. 104, 123 S.E. 2d 711 (1961) and

Bonds v. Fowl, 140 Ga. App. 140, 230 S.E. 2d 133 (1976). Punitive damages are only to be given if there

be circumstances of aggravation. Whether there be such circumstances or not, is a question for the

jury, and not the court, *Townsend & Ghegan Enters, v. W.R. Bean & Son*, 117 Ga. App. 109, 159 S. E. 2d

776 (1968). Seventy-five percent of any amounts awarded under the punitive damage section shall be

paid into the treasury of the state. Punitive damages shall be limited to a maximum of \$250,000.00, Code

of Georgia 51-12-5.1. 9-11-60 G *" CODE SECTION *" 12/03/01 9-11-60.(a) Collateral attack. A

judgment void on its face may be attacked in any court by any person.

Indiana

As to an act or omission rendering the judgment void, it is well settled that even though a void

judgment is a nullity and may be ignored by those whose rights are attempted to be affected thereby, a

court will not permit such a judgment to encumber the record, but will vacate the ineffectual entry thereof

on proper application, although the application is made after the term of the rendition of the judgment.

Even the lapse of a period of years does not necessarily preclude relief, which is sometimes declared

available regardless of what length of time has intervened since the rendition of the judgment. Laches

does not operate to preclude the opening or vacating of a void judgment, for the reason that no amount of

acquiescence can make it valid. 03/05/51 SLACK v. GRIGSBY 97 N.E.2d 145. The Treasurer correctly

states the effect of a lack of subject-matter jurisdiction as creating a void judgment - it is as if the case

had never been decided. Thus, it has been stated that there is no question of discretion on the part of a

court reviewing a void judgment, "[e]ither a judgment is void or it is valid." C. Wright & A. Miller, FEDERAL

PRACTICE AND PROCEDURE, (1973) Civil § 2862. And there is no time limit or laches on an attack on

a judgment as void. State v. Lindsey, (1952) 231 Ind. 126, 106 N.E.2d 230; Wright & Miller, supra at §

2862. Wright & Miller are even of the opinion that the reasonable time standard of Federal Trial Rule of

Procedure § 60(B) would not apply. Other effects of the void judgment rule are that an appellate court

must raise the subject matter jurisdiction issue sua sponte and that there can be no waiver of the issue or

conferred jurisdiction by consent. Matter of City of Ft. Wayne, (1978) 178 Ind. App. 228, 381 N.E.2d 1093,

1 095. A void judgment is one that, from its inception, is a complete nullity and without legal effect.

Stidham v. Welch, 698 N.E.2d 1152, 1154 (Ind. 1998). A void judgment is one rendered by a court . . .

without jurisdiction of a particular case or the parties[.]Yellow Cab Co. of Bloomington, Inc. v. Williams,

583 N.E.2d 774, 777 (Ind. Ct. App. 1991). Ind. Rules of Procedure, T.R. 60(B) (6) authorizes a trial court

to grant relief from a void judgment "upon such terms as are just. There is no . . . discretion on the part of

a court reviewing a void judgment Schoffstall v. Failey (1979), Ind. App., 389 N.E.2d 361 . Laches does

not operate to preclude the opening or vacating of a void judgment, for the reason that no amount of

acquiescence can make it valid. Under our constitution, there can be no valid trial of a criminal case

unless a defendant is defended by counsel, if he desires counsel. A judgment rendered where counsel

has been denied is void.... (Citations omitted). This court has further held that when a void judgment is

entered it can be attacked at any time, directly or collaterally, whenever the question is raised. (Citation

omitted). The rule therefore is that due diligence is not a necessary fact to be proven when it is alleged

and proved that the petitioner's constitutional rights have been violated. It was not necessary for

appellees to prove that due diligence was used in filing their petitions. 07/30/86 DANNY J. RAY v. STATE

INDIANA 496 N.E.2d 93. An award of attorneys' fees depends upon valid judgment being entered and

cannot be recovered as part of a void judgment. McMinn, at 620, 100 N.E.2d at 678. As already noted,

Pickett's sentence was not coercive in nature or for the benefit of Pelican and must, therefore, be

considered punitive and properly imposed only in a criminal contempt proceeding. As such, the trial

court's order was a void judgment and so its award of attorneys' fees must also fail. 07/17/86 DENNIS

PICKETT V. PELICAN SERVICE 495 N.E.2d 245. A void judgment implies no judgment at all, and its

nonexistence may be declared upon collateral attack, upon suggestion of an amicus curiae, or by the

court at any time upon its own motion." *Lowery v. State Life Ins. Co.* (1899), 153 Ind. 100, 102, 54 N.E.

442, 443. Generally there is no requirement for one subjected to a "void" judgment to do anything more

than call the trial court's attention to the mistake with a request that the same be corrected pursuant to

Trial Rule 59. See *State, ex rel. Eggers v. Branaman* (1932) 204 Ind. 238, 183 N.E. 653. A party may

secure an order declaring the invalidity of a void judgment by appeal. An appeal will lie from a void

judgment and an appellate tribunal may be successfully resorted to to secure a judicial determination of

its invalidity. *Board of Commissioners of Cass County v. The Logansport and Rock Creek Gravel Road*

Company (1882), 88 Ind. 199, 200; *Bartmess et al v. Holliday* (1901), 27 Ind. App. 544, 557, 61 N.E. 750.

Where it is alleged that there are radical jurisdictional defects, sufficient to render the judgment void and

subject to collateral attack, and that such lack of jurisdiction can be determined from the record (the

record proper is the petition and the return), habeas corpus is the proper remedy. Want of jurisdiction

over the person or subject-matter is always ground for such relief. If the court has acted without such

jurisdiction, the judgment is absolutely void, and one who is imprisoned under and by virtue of such a void

judgment may be discharged from custody on habeas corpus. 29 C.J. 30, note 16; 12 R.C.L. 1 196; *Miller*

V. Snider (1854), 6 Ind. 1 ; *People v. Simon* (1918), 284 Ill. 28, 19 N.E. 940. As to person, see *In re*

Mayfield (1890), 141 U.S. 107, 35 L. Ed. 635; *In re Reese* (1901), 107 Fed. 942; *Ex parte Reed* (1879),

100 U.S. 13, 25 L. Ed. 538; *Eureka Bank Cases* (1912), 35 Nev. 80, 126 Pac. 655. As to subject-matter,

see Hans Nielson, Petitioner (1889), 131 U.S. 176, 33 L. Ed. 118; Ex parte Lange (1874), 18 Wall. 163;

Ex parte Yarbrough (1884), 110 U.S. 651, 28 L. Ed. 274; Ex parte Justus (1909), 3 Okla. Crim. 111, 104

Pac. 933, 25 L.R.A. (N.S.) 483. We find an exhaustive and able case note in 154 A.L.R. 818 by P. H.

Vartanian on the subject 'Lapse of time as bar to action or proceeding for relief in respect of void

judgment.' We concur in his Conclusion that it is one of the fundamental policies of the law that there

should be an end to litigation and that adherence to such policy has resulted in the common law doctrine

of finality of judgments, and unless appealed from within a designated time and reversed for error, a

judgment rendered by a competent court having jurisdiction over the subject matter of the action and the

necessary parties thereto, cannot be vacated after the expiration of the term of court at which it was

rendered. However, in this state, by the statute under consideration, a limited control over judgments of

final settlement in the administration of decedent's estates, after the expiration of the term in which they

were rendered, is expressly conferred upon the courts and such a judgment may be vacated at any time

within three years from the date of its rendition for 'illegality, fraud or mistake in such settlement.' The

common law doctrine of the finality of judgments as modified by statute, however, presupposes a valid

judgment, the jurisdiction of the court over the subject matter and the parties, and the competency of the

court to render it. See cases cited in foot note 2, 154 A.L.R. 819. Consequently, says Vartanian, in the

case note to which we refer above, 'it is recognized by almost the unanimous consensus of judicial

authority that the doctrine and its corollary have no application to void judgments such as judgments

rendered by a court having no jurisdiction over either the subject matter of the action or the parties, or

both, or by a court having no power to render the judgment, or to judgments passing upon issues not

within the case; and that such judgments may be opened or vacated by the court rendering them on

motion made at any time, even after the expiration of the term at which they were rendered, or after the

expiration of the period allowed by statute for opening or vacating judgments on certain grounds. Most of

the courts, however, have confined this rule to judgments that are void on the face of the record and

where a judgment is merely irregular, voidable or void because of extrinsic facts such as fraud or mistake,

relief is governed by the common law rule or by the statute in those jurisdictions in which the common law

rule has been modified. See cases cited in foot note 7, 154 A.L.R. 825. It is our considered opinion,

supported by the great weight of authority, that the remedy afforded the appellants in this case by § 6-

1 424, supra, is not an exclusive one and the judgment involved, being void on the face of the record, is

subject to appropriate attack even though more than three years have elapsed since the date of its

rendition. There may be some doubt as to the propriety of an independent suit in equity to vacate a

patently void judgment in view of the fact that the overwhelming weight of authority indicates that such a

judgment may be set aside by motion in the same proceedings made in the court rendering the judgment,

thus furnishing what would seem to be an adequate remedy at law. Accord, *Smith v. Tisdal* (1 985), Ind.

App., 484 N.E.2d 42 (an action seeking relief from a void judgment may be brought at any time).

Michigan

A court may at any time relieve a party from a void judgment. A judgment entered by a court

without subject-matter jurisdiction is a void judgment and may be vacated at any time on the court's own

motion or upon the motion of any party thereto, including the party who originally invoked the jurisdiction

of the court. A fraud is perpetrated upon a court when some material fact is concealed from the court or

when some material misrepresentation is made to it; where, in a divorce case, the court was advised

regarding a possible reconciliation of the parties and the decision not to take additional proofs on the

issue of reconciliation was made by the trial court, not by either party, there was no fraud perpetrated

upon the court. Honigman & Hawkins, Michigan Court Rules Annotated (2d ed), p 1 90. A judgment

entered by a court without subject-matter jurisdiction is a void judgment and may be vacated at any time

on the court's own motion or upon the motion of any party thereto, including the party who originally

invoked the jurisdiction of the court. Carpenter v Dennison, 208 Mich 441 (1919); Orloff v Morehead

Manufacturing Co, 273 Mich 62 (1935); Shane v Hackney, 341 Mich 91 (1954); Millman Brothers, Inc v

Detroit, 2 Mich App 161 (1966). The district court found that the Wisconsin judgment was issued by the

small claims court in that jurisdiction, and that that court's jurisdiction is limited to actions, "where the

amount claimed is \$1 ,000 or less' (Wis Statutes 299.01 [4]) or 'where the value of the property claimed

does not exceed \$1,000' (Wis Statutes 299.01 [3])". In its original complaint filed in Wisconsin, plaintiff

listed the value of the property as \$1 ,800. Since the judgment ultimately entered was in excess of \$3,000,

the court concluded that the Marinette court did not have subject matter jurisdiction and reasoned that a

void judgment is attackable whenever its effects are felt. Therefore, it concluded no writ of garnishment

could issue based upon this void judgment. A judgment entered by a court without subject-matter

jurisdiction is a void judgment and may be vacated at any time on the court's own motion or upon the

motion of any party thereto, including the party who originally invoked the jurisdiction of the court.

Carpenter v Dennison, 208 Mich 441 [175 NW419] (1919); Orloff v Morehead Manufacturing Co, 273

Mich 62 [262 NW 736] (1935); Shane v Hackney, 341 Mich 91 [67 NW2d 256] (1954); Millman Brothers,

Inc V Detroit, 2 Mich App 161 [139 NW2d 139] (1966)." Banner v Banner, 45 Mich App 148, 153; 206

NW2d 234 (1973). The Justice had no jurisdiction to render judgment on March 18th. The transcript

shows a void judgment. All proceedings based thereon are void. The transcript must affirmatively show

jurisdiction. Wedel v. Green, 70 Mich 642. A "void" judgment, as we all know, grounds no rights, forms no

defense to actions taken thereunder, and is vulnerable to any manner of collateral attack (thus here, by).

No statute of limitations or repose runs on its holdings, the matters thought to be settled thereby are not

res judicata, and years later, when the memories may have grown dim and rights long been regarded as

vested, any disgruntled litigant may reopen the old wound and once more probe its depths. And it is then

as though trial and adjudication had never been. 1 0/1 3/58 FRITTS v. KRUGH. SUPREME COURT OF

MICHIGAN, 92 N.W.2d 604, 354 Mich. 97. On certiorari this Court may not review questions of fact.

Brown v. Blanchard, 39 Mich 790. It is not at liberty to determine disputed facts (Hyde v. Nelson, 1 1 Mich

353), nor to review the weight of the evidence. Linn v. Roberts, 1 5 Mich 443; Lynch v. People, 1 6 Mich

472. Certiorari is an appropriate remedy to get rid of a void judgment, one which there is no evidence to

sustain. Lake Shore & Michigan Southern Railway Co. v. Hunt, 39 Mich 469. Void judgment is subject to

collateral attack in State where rendered and in other States. 10/05/42 NANCE v. GENTRY, SUPREME

COURT OF MICHIGAN, 5 N.W.2d 689, 303 Mich. 1 21 .

MISSOURI

The motion is authorized by Rule 74.06(b), "on motion and upon terms that are just, the court

may relieve a party . . . from a judgment [where] (4) the judgment is void." The motion must be made

within a reasonable time. Rule 74.06(c). The "procedure for obtaining any relief from a judgment shall be

by motion as prescribed in these Rules or by an independent action." Rule 74.06(d). Here, we have a

motion filed in an equitable dissolution proceeding. It pleads all the elements of a cause of action to set

aside a void judgment which could be alleged in an independent action. The Missouri Supreme Court in

Sprung v. Negwer Materials, Inc., 727 S.W.2d 883 (Mo. banc 1987) held a motion to set aside a default

judgment in a civil damage suit was "sufficient to invoke the equitable powers of the court; . . . [and] may

be treated as an independent suit in equity." Id. at 889. Timothy Brown's motion contests the fundamental

requirement of subject matter jurisdiction which implicates the issue of void judgment. It falls within the

scope of the rule. Rule 74.06(d). We read Rule 74.06(b)(4) together with 74.06(d) to permit either motions

or independent actions where the issue is a void judgment. We recently defined a void judgment in K & K

Investments, Inc. v. McCoy, S.W.2d (Mo.App. E.D. 1 994)(slip op. #64245, decided May 3, 1 994)

as: One which has no legal force or effect, invalidity of which may be asserted by any person whose

rights are affected at any time and at any place directly or collaterally. One which, from its inception is and

forever continues to be absolutely null, without legal efficacy, ineffectual to bind parties or support a right,

of no legal force and effect whatever, and incapable of confirmation, to any degree. Judgment is a "void

judgment" if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or

acted in a manner inconsistent with due process. See also, *Piatt v. Piatt*, 815 S.W.2d 82, 83 (Mo. App.

1991) (quoting from *Black's Law Dictionary* 1574 (6th Ed. 1990)). A collateral proceeding may not

generally be used to contradict or impeach a final judgment. *La Presto v. La Presto*, 285 S.W.2d 568, 570

(Mo. 1955). However, a void judgment "is entitled to no respect, and may be impeached at any time in

any proceeding in which it is sought to be enforced or in which its validity is questioned by anyone with

whose rights or interests it conflicts." *Id.* Gary contends that the 1997 modification judgment is void in

several respects because it did not comply with the statutory procedures for terminating parental rights

section 21-1-444, RSMo Cum. Supp. 1996 and section 21-1-462, RSMo, 1994. The reported cases are

clear that an attack upon a void judgment is not subject to the "reasonable time" requirements of Rule

74.06. *Williams v. Williams*, 932 S.W.2d 904, 905-06 (Mo. App. 1996); *State ex rel. Houston v. Malen*,

864 S.W.2d 427, 430 (Mo. App. 1993) (questioned on other grounds by *Brackett v. Laney*, 920 S.W.2d

597 (Mo. App. 1996)). In *Williams*, the Eastern District held that a direct attack filed eight years after entry

of a void default judgment was timely under Rule 74.06. See *Williams*, 932 S.W.2d at 905-06. Similarly, in

Houston, the appellate court approved of a direct attack upon a judgment filed four years and three

months after the judgment was entered. See Houston, 864 S.W.2d at 430. A void judgment is subject to

direct or collateral attack at any time. Additionally, principles of equity such as laches or estoppel cannot

act as a bar to an attack upon a void judgment. See Houston, 864 S.W.2d at 430; Hampton v. Hampton,

536 S.W.2d 324, 326 (Mo. App. 1976). Under the holdings of Houston and Williams, Gary's three-year

delay in attacking the modification judgment cannot bar him from collaterally attacking that void judgment

in the conservatorship proceeding. One of the grounds the City circuit court specified for setting aside its

order was that "the judgment is void pursuant to Rule 74.06(b)(4)." A court may relieve a party from a final

judgment under Rule 74.06 by setting aside a judgment it finds void. A void judgment is defined as

follows: One which has no legal force or effect, invalidity of which may be asserted by any person whose

rights are affected at any time and at any place directly or collaterally. One which, from its inception is and

forever continues to be absolutely null, without legal efficacy, ineffectual to bind parties or support a right,

of no legal force and effect whatever, and incapable of confirmation, ratification, or enforcement in any

manner or to any degree. Judgment is a "void judgment" if court that rendered judgment lacked

jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process,

(citations omitted). The City circuit court found that the judgment was void because it had never obtained

jurisdiction over defendant and his wife in that they had not been served. Service of process is a

prerequisite to jurisdiction over the person of a defendant. Roberts v. Johnson, 836 S.W.2d 522, 524 (Mo.

App. 1 992). A judgment entered against a party by a court lacking personal jurisdiction over that party is

void. Id. A void judgment is not a "judgment, regularly made" as that term is used in § 51 1 .240. An

execution sale based on a void judgment does not vest title in the purchaser, even if the purchaser is a

stranger to the proceedings. *State ex rel. Horine Farms, Inc. v. Jones*, 830 S.W.2d 894, 896 (Mo. App.

1992) . Plaintiff's arguments relating to whether it was a bona fide purchaser for value do not apply in the

context of a void judgment. See *id.* The City circuit court's action setting aside ab initio its previous

judgment as void meant there was no judgment on which execution could be based. That the judgment

was also set aside for other reasons does not diminish the fact that the trial court found the judgment to

have been entered without jurisdiction and thus void. Plaintiff also contends that the execution sale could

not be set aside under Rule 74.03 because the sale was neither an order nor a judgment and defendant's

motion for summary judgment in the County case was not filed within six months. Plaintiff further argues

that defendant was not entitled to relief in the County case under Rule 74.06. Plaintiff asserts that

defendant did not properly support his motion in the County case with evidence to support findings which

plaintiff contends are required under Rules 74.03 and 74.06. These arguments have no merit.

Defendant's counterclaim filed in the County case was an independent action in equity to quiet title, to

cancel the sheriff's deed, and to set aside the execution. It was not a motion to set aside a judgment

under Rules 74.03 or 74.06. An execution sale may be set aside by an independent suit in equity. See

Huff V. Huff, 622 S.W.2d 731 , 733 (Mo. App. 1 981); *Workman v. Anderson*, 297 S.W.2d 51 9, 523 (Mo.

1957), and cases cited therein. It is axiomatic that a deed based on a void judgment may be collaterally

attacked. *Davison v. Arne*, 348 Mo. 790, 155 S.W.2d 155, 156 (Mo. 1941). An irregular judgment for

purposes of Rule 74.06(b) is defined as a judgment that is "materially contrary to an established form and

mode of procedure for the orderly administration of Justice. An irregularity must render the judgment

contrary to a proper result. The rule reaches only procedural errors which, if known, would have

prevented entry of a judgment." *Burris v. Terminal R.R. Ass'n*, 835 S.W.2d 535, 538 (Mo. App. 1992)

(citations omitted). A void judgment, on the other hand, is defined as: one which has no legal force or

effect, invalidity of which may be asserted by any person whose rights are affected at any time and at any

place directly or collaterally. One which, from its inception is and forever continues to be absolutely null,

without legal efficacy, ineffectual to bind parties or support a right, of no legal force and effect whatever,

and incapable of confirmation, ratification, or enforcement in any manner or to any degree. Judgment is a

"void judgment" if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties,

or acted in a manner inconsistent with due process. A void judgment is a nullity without integrity. *Ripley*

V. Bank of Skidmore, 355 Mo. 897, 198 S.W.2d 861 , 865 (1947); *Wright v. Mullen*, 659 S.W.2d 261 , 263

(Mo. App. 1983). It was also noted in *Wright*, that the absence of subject matter jurisdiction resulting from

a void judgment is a jurisdictional defect. *Wright*, 659 S.W.2d at 263. (citing *State ex rel., MFA Insurance*

Co. V. Murphy, 606 S.W.2d 661 , 663 (Mo. banc 1980). The parties to a void judgment are estopped from

raising a claim of lack of jurisdiction to enter a judgment in some circumstances. "It has often been said

that a void judgment is no judgment; that it may be attacked directly or collaterally. ... It neither binds nor

bars anyone. . . . [Y]et, notwithstanding, a party to such judgment may voluntarily perform it, by paying the

amount adjudged against him and, when paid, no inquiry will be made as to the validity of the judgment;

or he may perform the acts required by a void decree, or accept its benefits, and thereby estop himself

from questioning the decree. In other words, a party to a void judgment or decree may be estopped from

attacking it, either directly or indirectly." Tremayne v. City of St. Louis, 6 S.W.2d 935, 936 (Mo. banc

1928) (quoting Mohler v. Shank, 61 N.W. 981, 984 (Iowa. 1895)); see also RCA Mut. Ins. Co. v. Sanborn,

91 8 S. W.2d 893, 897 n.6 (Mo. App. 1 996), and Matter of Estate of Tapp, 569 S.W.2d 281 , 285 (Mo. App.

1978) (one accepting and retaining benefits of a void judgment is estopped to deny the validity of any part

thereof, or any burdensome consequences, even where invalidity arises from want of subject matter

jurisdiction). We have ex gratia reviewed the issue of void judgment under Rule 74.06(b). A dismissal is

void if entered without either actual or constructive notice. Henningsen, 875 S.W.2d at 1 19. The issue of

void judgment is not restricted by time. Rule 74.06(c); Blanton v. United States Fidelity and Guar. Co.,

680 S.W.2d 206, 208 (Mo. App. 1 984). We do not have jurisdiction to review an appeal of a void

judgment. It has often been said that a void judgment is no judgment; that it may be attacked directly or

collaterally It neither binds nor bars anyone [Y]et, notwithstanding, a party to such judgment

may voluntarily perform it, by paying the amount adjudged against him and, when paid, no inquiry will be

made as to the validity of the judgment; or he may perform the acts required by a void decree, or accept

its benefits, and thereby estop himself from questioning the decree. In other words, a party to a void

judgment or decree may be estopped from attacking it, either directly or indirectly. State ex rel. York v.

Daugherty, 969 S.W.2d 223, 225 (Mo. banc 1998); see also Matter of Estate of Tapp, 569 S.W.2d 281 ,

185 (Mo.App. 1978)(one accepting and retaining benefits of a void judgment is estopped to deny the

validity of any part thereof, or any burdensome consequences, even where invalidity arises from want of

subject matter jurisdiction); State, Dept. of Social Services v. Houston, 989 S.W.2d 950, 952 (Mo. banc

1999)(15 months failure to challenge validity of a child support modification order when circumstances

"invited an expression of a position contrary to compliance with the order by filing a petition for review"

constituted conduct affirming the validity of the order).

Nebraska

A void judgment may be attacked at any time in any proceeding 03/27/92 CHERYL PHYLIS MARSHALL v.

GARY LYNN 482 N.W.2d 1, 240 Neb. 322. It is the longstanding rule in Nebraska that "a void judgment may be

attacked at any time in any proceeding." Lammers Land & Cattle Co. v. Hans, 213 Neb. 243, 249, 328 N.W.2d

759, 763-64 (1983). Accord Drennen v. Drennen, 229 Neb. 204, 426 N.W.2d 252 (1988). Moreover, "' void

judgment is in reality no judgment at all. It does not bind the person against whom it is rendered. It may be

impeached in any action, direct or collateral.'" Stanton v. Stanton, 146 Neb. 71, 75, 18 N.W.2d 654, 656 (1945)

(quoting from Hassett v. Durbin, 132 Neb. 315, 271 N.W. 867 (1937)). See, also. Shade v. Kirk, 227 Neb. 775,

420 N.W.2d 284 (1988) (a void judgment is subject to collateral attack); Griffin v. Vandersnick, 210 Neb. 590,

316 N.W.2d 299 (1982) (a judgment entered without jurisdiction is void and subject to collateral attack); Strawn

V. County of Sarpy, 154 Neb. 844, 49 N.W.2d 677 (1951). Gary Marshall's paying any or all sums due under the

modified but void judgment does not operate to validate the void judgment. "Litigants cannot confer subject

matter jurisdiction on a judicial tribunal by either acquiescence or consent." Coffelt v. City of Omaha, 223 Neb.

108, 110, 388 N.W.2d 467, 469 (1986). Accord, *In re Interest of Adams*, 230 Neb. 109, 430 N.W.2d 295 (1988);

Andrews v. City of Lincoln, 224 Neb. 748, 401 N.W.2d 467 (1987); *In re Interest of LD. ef al.*, 224 Neb. 249, 398

N.W.2d 91 (1986). Although this court declares that a collateral attack on a prior plea-based conviction is

procedurally barred, the longstanding rule in Nebraska is that "'a void judgment is subject to collateral attack.'"

State ex rel. Ritthaler v. Knox, 217 Neb. 766, 768, 351 N.W.2d 77, 79 (1984). Accord, *SchiIke v. School Dist.*

No. 107, *supra* ; *State ex rel. Southeast Rural Fire P. Dist. v. Grossman*, 188 Neb. 424, 197 N.W.2d 398 (1972).

Moreover, "a void judgment may be attacked at any time in any proceeding." *Lammers Land & Cattle Co. v.*

Hans, 213 Neb. 243, 249, 328 N.W.2d 759, 763-64 (1983). Accord *Drennen v. Drennen*, 229 Neb. 204, 426

N.W.2d 252 (1988). "'A void judgment is in reality no judgment at all. It does not bind the person against whom it

is rendered. It may be impeached in any action, direct or collateral.'" *Stanton v. Stanton*, 146 Neb. 71, 75, 18

N.W.2d 654, 656 (1945). "'It is a general rule of law that a judgment which is null and void is subject to collateral

attack.'" 31 Am. Jur. 181, sec. 583. 'A void judgment may be impeached in a collateral proceeding.' 34 C.J. 510."

Drainage District No. 1 v. Village of Hershey, 139 Neb. 205, 211, 296 N.W. 879, 882 (1941). See, also, *Davis*

Management, Inc. v. Sanitary & Improvement Dist. No. 276, 204 Neb. 316, 282 N.W.2d 576 (1979); *County of*

Douglas v. Feenan, 146 Neb. 156, 18 N.W.2d 740 (1945). The courts of Nebraska, through their inherent

judicial power, have the authority to do all things reasonably necessary for the proper administration of justice,

whether any previous form of remedy has been granted or not. This holds particularly true in the case of a void

judgment. *Laschanzky v. Laschanzky*, 246 Neb. 705, 523 N.W.2d 29 (1994). A judgment issued from a

proceeding that violates a citizen's right to due process is void. *State v. Rehbein*, 235 Neb. 536, 455 N.W.2d 821

(1990); *State v. Von Dorn*, 234 Neb. 93, 449 N.W.2d 530 (1989); *State v. Ewert*, 194 Neb. 203, 230 N.W.2d 609

(1975); In re Application of Maher, North v. Dorrance, 144 Neb. 484, 13 N.W.2d 653 (1944); In re Betts, 36 Neb.

282, 54 N.W. 524 (1893). A void judgment may be set aside at any time and in any proceeding. VonSeggern v.

Willman, 244 Neb. 565, 508 N.W.2d 261 (1993); Marshall v. Marshall, 240 Neb. 322, 482 N.W.2d 1 (1992);

State V. Ewert,; Ehlers v. Grove, 147 Neb. 704, 24 N.W.2d 866 (1946); Hayes County v. Wileman, 82 Neb. 669,

118 N.W. 478 (1908). 'A void judgment may be attacked at any time in any proceeding.'" Marshall v. Marshall,

240 Neb. 322, 328, 482 N.W.2d 1 , 5 (1992). "A court of record has inherent authority to amend its records so as

to make them conform to the facts." Gunia v. Morton, 175 Neb. 53, 56, 120 N.W.2d 371, 373 (1963). "The

District Court, of course, may grant relief where the judgment is void or the court was without jurisdiction. It may

also correct a judgment in a criminal case to make it conform to the judgment actually pronounced." State v.

Adamsor), 194 Neb. 592, 594, 233 N.W.2d 925, 926 (1975). "Where a portion of a sentence is valid and a

portion is invalid or erroneous, the court has authority to modify or revise the sentence by removing the invalid

or erroneous portion" State v. McDermott, 200 Neb. 337, 339, 263 N.W.2d 482, 484 (1978). A judgment

entered by a court which lacks subject matter jurisdiction is void. It is the longstanding rule in Nebraska that

such a void judgment may be attacked at any time in any proceeding. 11/19/93 O. WILLIAM VONSEGGERN v.

WALTER H. WILLMAN 508 N.W.2d 261 . A judgment entered by a court which lacks subject matter jurisdiction

is void. Marshall v. Marshall, 240 Neb. 322, 482 N.W.2d 1 (1992). Also, it is the longstanding rule in Nebraska

that such a void judgment may be attacked at any time in any proceeding. Id. ; Drennen v. Drennen, 229 Neb.

204, 426 N.W.2d 252 (1988); Lammers Land & Cattle Co. v. Hans, 213 Neb. 243, 328 N.W.2d 759 (1983) . It

may be impeached in any action, direct or collateral. *Marshall v. Marshah. Stanton v. Stanton*, 146 Neb. 71, 18

N.W.2d 654 (1945); *Hassett v. Durbin*, 132 Neb. 315, 271 N.W. 867 (1937). See, also. *Shade v. Kirk*, 227 Neb.

775, 420 N.W.2d 284 (1988). That is because a void judgment is in reality no judgment at all. *Marshall v.*

Marshall. As only a void judgment is subject to attack in a habeas corpus action, an appellate court is limited in

such a case to reviewing a question of law, namely, is the judgment in question void? *Glantz v. Hopkins*, 261

Neb. 495, 624 N.W.2d 9 (2001); *Berumen v. Casady*, 245 Neb. 936, 515 N.W.2d 816 (1994). It is the

longstanding rule in Nebraska that such a void judgment may be raised at any time in any proceeding. *Bradley*

V. Hopkins, 246 Neb. 646, 522 N.W.2d 394 (1994); *VonSeggern v. Willman*, 244 Neb. 565, 508 N.W.2d 261

(1993). A void judgment may be attacked at any time in any proceeding. *Stanton v. Stanton*, 146 Neb. 71, 18

N.W.2d 654 (1945); *Drainage District No. 1 v. Village of Hershey* 139 Neb. 205, 296 N.W. 879 (1941). here a

judgment is attacked in a way other than a proceeding in the original action to have it vacated, reversed, or

modified, or a proceeding in equity to prevent its enforcement, the attack is a "collateral attack." *County of*

Douglas v. Feenan, 146 Neb. 156, 18 N.W.2d 740 (1945); *State ex rel. Southeast Rural Fire P. Dist. v.*

Grossman, 188 Neb. 424, 197 N.W.2d 398 (1972). Only a void judgment is subject to collateral attack. *Stanton*

V. Stanton, 146 Neb. 71, 18 N.W.2d 654 (1945); *Davis Management, Inc. v. Sanitary & Improvement Dist No.*

276, 204 Neb. 316, 282 N.W.2d 576 (1979). A void sentence is no sentence " *State v. Wren*, 234 Neb. 291,

294, 450 N.W.2d 684, 687 (1990). It has been a longstanding law in Nebraska that a void judgment may be

attacked at any time in any proceeding. State v. Ryan, 249 Neb. 218, 543 N.W.2d 128 (1996); State v. Ewert, 194 Neb. 203, 230 N.W.2d 609 (1975). In keeping with that, the longstanding rule in Nebraska is that a void judgment may be attacked at any time in any proceeding. Kuhlmann v. City of Omaha, 251 Neb. 176, 556 N.W.2d 15 (1996). Likewise, a district court has the power to question sua sponte at any time its statutory authority to exercise subject matter jurisdiction. See, County of Sherman v. Evans, 252 Neb. 612, 564 N.W.2d 256 (1997); In re Adoption of Kassandra B. & Nicholas B., 248 Neb. 912, 540 N.W.2d 554 (1995). Because res judicata does not bar collateral attacks on void judgments, the outcome of this issue hinges on whether the district court had subject matter jurisdiction to divide Howard's VA disability income. As illustrated by our foregoing analysis, if the district court lacked subject matter jurisdiction to divide the VA disability income, then that portion of the order dividing such income was void and subject to collateral attack in any subsequent enforcement action. The question of a court's subject matter jurisdiction does not turn solely on the court's authority to hear a certain class of cases, such as dissolutions of marriage or accounting actions; it also involves determining whether a court is authorized to address a particular question that it assumes to decide or to grant the particular relief requested. Compare, In re Interest of J.T.B. and H.J.T., 245 Neb. 624, 514 N.W.2d 635 (1994) (focusing on particular question lower court assumed to decide); Lewin v. Lewin, 174 Neb. 596, 119 N.W.2d 96 (1962) (indicating that court must have subject matter jurisdiction to address particular question it assumes to decide). Collateral Attack, is a proper means of collaterally attacking the validity of a void judgment.

09/30/94 CON M. BRADLEY v. FRANK X. HOPKINS 522 N.W.2d 394, 246 Neb. 646. We recognize that in LeGrand, the Nebraska Supreme Court stated that a "void judgment may be set aside at any time and in any proceeding." 249 Neb. at 7, 541 N.W.2d at 385. State v. LeGrand, 249 Neb. 1,9, 541 N.W.2d 380, 386 (1995).

Judgments: Collateral Attack . A void judgment may be attacked at any time in any proceeding. Jurisdiction.

Litigants cannot confer subject matter jurisdiction on a judicial tribunal by either acquiescence or consent.

03/27/92 CHERYL PHYLIS MARSHALL v. GARY LYNN, SUPREME COURT OF NEBRASKA 1992.NE.107 , 482 N.W.2d 1 , 240 Neb. 322, March 27, 1 992. It is the longstanding rule in Nebraska that "a void judgment may

be attacked at any time in any proceeding." Lammers Land & Cattle Co. v. Hans, 213 Neb. 243, 249, 328

N.W.2d 759, 763-64 (1983). Accord Drennen v. Drennen, 229 Neb. 204, 426 N.W.2d 252 (1988). Moreover, "'

void judgment is in reality no judgment at all. It does not bind the person against whom it is rendered. It may be

impeached in any action, direct or collateral.'" Stanton v. Stanton, 146 Neb. 71 , 75, 18 N.W.2d 654, 656 (1945)

(quoting from Hassett v. Durbin, 132 Neb. 315, 271 N.W. 867 (1937)). See, also. Shade v. Kirk, 227 Neb. 775,

420 N.W.2d 284 (1988) (a void judgment is subject to collateral attack); Griffin v. Vandersnick, 210 Neb. 590,

316 N.W.2d 299 (1982) (a judgment entered without jurisdiction is void and subject to collateral attack); Strawn

V. County of Sarpy, 154 Neb. 844, 49 N.W.2d 677 (1951). Gary Marshall's paying any or all sums due under the

modified but void judgment does not operate to validate the void judgment. "Litigants cannot confer subject

matter jurisdiction on a judicial tribunal by either acquiescence or consent." Coffelt v. City of Omaha, 223 Neb.

108, 110, 388 N.W.2d 467, 469 (1986). In re Interest of Adams, 230 Neb. 109, 430 N.W.2d 295 (1988);

Andrews v. City of Lincoln, 224 Neb. 748, 401 N.W.2d 467 (1987); In re Interest of LD. etal., 224 Neb. 249, 398

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State ex rel. Southeast Rural Fire P. Dist. v. Grossman, 188 Neb. 424, 197 N.W.2d 398 (1972). Moreover, "a

void judgment may be attacked at any time in any proceeding." Lammers Land & Cattle Co. v. Hans, 213 Neb.

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146 Neb. 71, 75, 18 N.W.2d 654, 656 (1945). "'It is a general rule of law that a judgment which is null and void is

subject to collateral attack.'" 31 Am. Jur. 181, sec. 583. 'A void judgment may be impeached in a collateral

proceeding.'" 34 C.J. 510." Drainage District No. 1 v. Village of Hershey, 139 Neb. 205, 211, 296 N.W. 879, 882

(1941). See, also, Davis Management, Inc. v. Sanitary & Improvement Dist. No. 276, 204 Neb. 316, 282 N.W.2d

576 (1979); County of Douglas v. Feenan, 146 Neb. 156, 18 N.W.2d 740 (1945).
Judgments: Jurisdiction:

Collateral Attack. A judgment entered by a court which lacks subject matter jurisdiction is void. It is the

longstanding rule in Nebraska that such a void judgment may be attacked at any time in any proceeding, at

any time. It may be impeached in any action, direct or collateral. Hassett v. Durbin, 132 Neb. 315, 271 N.W. 867

(1937). See, also, Shade v. Kirk, 227 Neb. 775, 420 N.W.2d 284 (1988). Collateral Attack, is a proper means of

collaterally attacking the validity of a void judgment, 09/30/94 CON M. BRADLEY v. FRANK X. HOPKINS

1994.NE.476 , 522 N.W.2d 394, 246 Neb. 646.

Hawaii

Defendants' motion for Rule 60(b)(4) relief were not raised during the foreclosure proceeding. However,

this is excusable under the rule because absent exceptional circumstances, there is no time limit on a

Rule 60(b)(4) attack on a judgment. See *Calasa v. Greenwell*, 2 Haw. App. 395, 398, 633 P.2d 553, 555

(1981) ("Except in exceptional situations, there is no time limit on an attack on a judgment as void."); see

also 11 C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure: Civil* § 2862, at 324-25 (2d ed.

1995) (construing the corresponding Federal Rule of Civil Procedure Rule 60(b)(4) by stating that "there

is no time limit on an attack on a judgment as void. ... A void Judgment cannot acquire validity because

of laches on the part of a judgment debtor."). "A void judgment," the court declared, "is void no matter

when." Granted, "[a] void judgment is void no matter when." But "[a] judgment is not void because it

[may be] erroneous. It is void only if the court that rendered it lacked jurisdiction of the subject matter, or

of the parties, or if it acted in a manner inconsistent with due process of law." 11 O. Wright & A. Miller,

Federal Practice and Procedure § 2862, at 198-200 (1973) (footnotes omitted). Nothing in the record

indicates the family court's decree was afflicted with any of these infirmities. Thus, the circuit court erred

in awarding the defendants judgment. *Cooper v. Smith*, 70 Haw. 449 (Haw. 06/09/1989). Defendant has

grounds for setting aside the default judgment which meet the requirements of H.R.C.P., Rule 60(b) (4).

There has been a denial of due process and the judgment is void. Plaintiff, however, contends that

defendant has failed to show a meritorious defense. But since the judgment was void, defendant did not

have to show a meritorious defense. 7 Moore, *Federal Practice*, § 60.25(2) at 264 (2d ed.). See the

following cases in which a void judgment was ordered vacated upon motion without any discussion of

the question whether a meritorious defense was shown: *Shilhan v. Ho*, 40 Haw. 302; *Gouveia v.*

Nakamura, 13 Haw. 450; *Phoenix Metals Corp. v. Roth*, supra, 79 Ariz. 106, 284 P.2d 645. In *Wise v.*

Herzog, 114 F.2d 486 (D.C. Cir.) it was held that a meritorious defense need not be shown when the

attack on the void judgment was by motion in the original suit. To the same effect are Schwarz v.

Thomas, 222 F.2d 305 (D.C. Cir.) and HiMin v. Edwards, 226 F.2d 410 (8th Cir.). Cf., Perlkins v. Sy/ces,

supra, in which the ground for setting aside the judgment was "surprise," and the circumstances were

somewhat different. Plaintiff's further contention is that defendant did not make his motion "within a

reasonable time" as required by Rule 60(b). The court below evidently held for plaintiff on the ground that

defendant delayed too long before making his motion. At most, there was a delay of nine months.

Considering that the defendant was outside the State and had to determine how best to defend the

California suit on the judgment, and considering also that the serious defects in the proceedings prior to

judgment were disclosed by the court's own records, we are of the view that the delay was not a sufficient

reason for denying the motion. Defendant argues that the requirement that the motion be made in a

reasonable time does not apply to a motion to set aside a void judgment. See 7 Moore, Federal

Practice, § 60.25(4) (2d ed.); 3 Barron and Holtzoff, Federal Practice and Procedure, § 1327; cf.. Baker v.

Brown, 18 Haw. 22. In Aiona v. Wing Sing Wo Co., supra, 45 Haw. 427, 368 P.2d 879, we had occasion

to note that the requirement that the motion be made in a reasonable time is applicable even to the

clauses of Rule 60(b) not governed by the one-year limitation, and we find it unnecessary to decide in this

case whether there is an exception to that requirement when the judgment is void. Though the judgment

must be set aside, the further question arises: Should the entry of default be set aside? Here H.R.C.P.,

Rule 55(c), is involved. The setting aside of a default judgment and the setting aside of the entry of a

default are two different things. *White v. Sadler*, supra, 350 Mich. 511, 87 N.W.2d 192; *United States v.*

Edgewater Dyeing & Finishing Co., 21 F.R.D. 304 (E.D. Pa.). In the present case, however, unless the

entry of the default is set aside the denial of due process remains. It is not a case for the exercise of

discretion. See *Roller v. Holly*, 176 U.S. 398, 409, in which the court said: "The right of a citizen to due

process of law must rest upon a basis more substantial than favor or discretion." Hence the entry of the

default, like the default judgment, must be set aside. The doctrine of *res judicata* is predicated upon a

valid judgment and a void judgment may not be used to invoke its application. *Conway v. Sanset*, 59

Misc. 2d 666, 300 N.Y.S.2d 243, 247 (1969); 46 Am. Jur. 2d Judgments § 440. Generally, a default

judgment constitutes a binding adjudication of all the rights of the parties embraced in the prayer for relief

which arise from the facts stated in the complaint. *Yuen v. London Guar. & Acq. Co.*, EtAl., 40 Haw. 213,

222-23 (1953). Rule 54(c) of the Hawaii Rules of Civil Procedure codifies the rule. It provides: Demand for

Judgment. A judgment by default shall not be different in kind from or exceed in amount that prayed for in

the demand for judgment. Except as to a party against whom a judgment is entered by default, every final

judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party

has not demanded such relief in his pleadings. By its plain meaning, HRCP Rule 54(c) restricts the scope

of relief that may be granted by default judgment to that specifically prayed for. The Federal Rules of Civil

Procedure upon which the Hawaii rule is based has been similarly interpreted. A default judgment cannot

give to the claimant greater relief than the pleaded claim entitles him to and Rule 54(c) provides that such

a judgment "shall not be different in kind from or exceed in amount that prayed for in the demand for

judgment." Since the prayer limits the relief granted in a judgment by default, both as to the kind of relief

and the amount, the prayer must be sufficiently specific that the court can follow the mandate of the Rule.

WISCONSIN

Orders or "[j]udgments entered contrary to due process are void." Neylan v. Vorwald, 121 Wis. 2d 481,

488, 360 N.W.2d 537, 540 (Ct. App. 1984) (citations omitted). A void judgment or order is something very

different from a valid one. Id. at 496, 360 N.W.2d at 544. "[I]t is legally ineffective[,] may be collaterally

attacked at any time in any proceeding, state or federal [and] it should be treated as legally ineffective in

the subsequent proceeding. Even the party which obtained the void judgment may collaterally attack it."

Id. A void judgment cannot be validated by consent, ratification, waiver or estoppel. Id. at 495, 360

N.W.2d at 544. This principle is "of ancient and universal application." We conclude that the term "order"

in 769.205(4) must be interpreted to mean a "valid order" to avoid an absurd result. Upon Nowak's 1991

motion, the trial court applied then effective Section(s) 767.65(40), Stats., 1991-92, and vacated

registration of the Arizona judgment. The order vacating the Arizona registration of judgment was never

appealed and remains in effect. Neither party disputes that the Arizona judgment was entered without

notice and contrary to due process, rendering it void. An order issued contrary to due process is not an

order issued "under a law substantially similar to this chapter." Section 769.205(4), Stats. Because the

Arizona judgment is void, it is not recognized under Section(s) 769.205(4). We need not give full faith and

credit to the void judgment of another state. Arizona's invalid judgment does not preclude Wisconsin from

establishing paternity and support. 04/10/96 STATE OF WISCONSIN, ex r v. BRIAN L. NOWAK

1996.WI.547. Void judgments can always be challenged. Moreover, there is no need for a trial in any of

the three instances. As a matter of law, the creditor violated the WCA and must suffer the consequences

of its wrongful repossession and prohibited debt collection practices. These consolidated cases concern a

car loan credit company's repossessions of three different customers' cars. The customers brought suit

claiming violations under the Wisconsin Consumer Act (WCA) for wrongful repossession of their autos

and prohibited debt collection practices. The basis for these causes of action was the alleged commercial

practice of the loan company creditor to commence replevin actions in a county where venue does not lie.

The two trial courts handling these three cases granted summary judgment to the creditor on the wrongful

repossession claim finding that each customer waived his or her claim by not appearing at the replevin

hearing and objecting to venue. While one trial court left the claim of prohibited debt collection practices

for the trier of fact, the other used waiver to dismiss the prohibited debt collection practices claim as well.

We reverse both trial courts. The WCA plainly treats venue as a jurisdictional issue. Therefore, the failure

to have proper venue means the judgment is void. Void judgments can always be challenged. Moreover,

there is no need for a trial in any of the three instances. As a matter of law, the creditor violated the WCA

and must suffer the consequences of its wrongful repossession and prohibited debt collection practices.

Community Credit is correct that the determination of whether the judgments were void or voidable is

critical in this case. A void Judgment is a mere nullity, and any proceedings founded upon it are equally

worthless. See *Fischbeck v. Mielenz*, 162 Wis. 12, 17, 154 N.W. 701, 703 (1916); *Neylan v. Vorwald*, 124

Wis. 2d 85, 99, 368 N.W.2d 648, 656 (1985). A void judgment cannot create a right or obligation, as it is

not binding on anyone. See *id.* A voidable judgment, on the other hand, has the same effect and force as

a valid judgment until it has been set aside. See *Slabosheske v. Chikowske*, 273 Wis. 144, 150, 77

N.W.2d 497, 501 (1956). Thus, a voidable judgment protects actions taken under it before it is reversed.

See *id.* Here, if the default judgments were voidable, then they were valid judgments until vacated. If so,

Community Credit's repossessions were based on valid judgments and were not wrongful. However, if the

default judgments were void, they had no legal effect. If void, they were not valid judgments. Thus, they

did not authorize Community Credit's repossessions of the cars. *Kett v. Community Credit Plan Inc.*, 222

Wis.2d 117, 586 N.W.2d 68 (Wis.App. 09/23/1998). And a void judgment can be attacked at anytime.

See *Neylan*, 124 Wis. 2d at 97, 368 N.W.2d at 655. This is an appeal from an order denying a motion to

vacate a small claims judgment. The motion claimed that the judgment was void, thus requiring that the

court vacate it pursuant to Section 806.07, Stats. The trial court denied the motion on the basis that the

exclusive remedy to reopen a small claims default judgment is time barred if brought more than six

months after the entry of judgment contrary to Section 799.29(1)(c). Stats. Because this case involves a

motion to vacate a void judgment, not a motion to reopen a default judgment, this court reverses.

Benitez v. Fasick, 220 Wis. 2d 358, 582 N.W.2d 505 (Wis.App. 05/27/1998). No statutory time limit applies

to a motion to vacate void judgments. A void judgment may be expunged at any time. See *West v. West*,

82 Wis.2d 158, 166, 262 N.W.2d 87, 90 (1978). Laches do not apply to a motion to vacate for voidness

either. See *id.* Nor does the reasonable time test of Section 806.07(2), Stats., apply to this motion. See

Neylan v. Vorwald, 121 Wis.2d 481, 497, 360 N.W.2d 537, 545 (Ct. App. 1984). We recognize that "' void

judgment cannot be validated by consent, ratification, waiver, or estoppel.'" *Neylan*, 124 Wis. 2d at 97,

368 N.W.2d at 655 (quoting *Kohler Co. v. DILHR*, 81 Wis. 2d 11, 25, 259 N.W.2d 695, 701 (1977)). Where

material facts are undisputed, the question of whether a judgment is void for lack of jurisdiction is a matter

of law that we review de novo. *State v. Big John*, 146 Wis. 2d 741, 748, 432 N.W.2d 576, 579 (1988). A

judgment is void if the court rendering it lacked subject matter jurisdiction. See *Wengerd v. Rinehart*, 114

Wis. 2d 575, 578, 338 N.W.2d 861, 864 (Ct. App. 1983). Also, a void judgment \s subject to collateral

attack. *State v. Madison*, 120 Wis. 2d 150, 158, 353 N.W.2d 835, 839 (Ct. App. 1984). Section 806.07,

Stats., governs relief from judgments. The Judicial Council Committee's Note, 1974, 67 Wis. 2d 726,

states the section "is substantially equivalent to Federal Rule 60(b) and replace[d former sec] 269.46."

*fn12 This court stated in *West v. West*, 82 Wis. 2d 158, 165-66, 262 N.W.2d 87 (1978), that the former

sec. 269.46(1) "presupposes the entry of a valid judgment ... It has nothing whatsoever to do with the

vacation of a void judgment." A void judgment may be expunged by a court at any time. In *Kohler Co.*

V. ILHR, 81 Wis. 2d 11, 25, 259 N.W.2d 695 (1977). "The fact that the award came many years after the

void order is of no consequence. In *Halbach v. Halbach*, 259 Wis. 329, 331, 48 N.W.2d 617 (1951), the

void judgment was challenged ten years after entry. The court stated that laches did not apply even if

the plaintiff had been dilatory or lackadaisical in his efforts to overturn the judgment. 'It is the duty of the

court to annul an invalid judgment.' "A void judgment cannot be validated by consent, ratification, waiver,

or estoppel. Furthermore, void judgments may be attacked collaterally. The 1960 application was still

valid." (Footnote omitted.). There is no time limit on an attack on a judgment as void. The one-year limit

applicable to some Rule 60(b) motions is expressly inapplicable, and even the requirement that the

motion be made within a 'reasonable time,' which seems literally to apply to motions under Rule 60(b)(4),

cannot be enforced with regard to this class of motion. A void judgment cannot acquire validity because

of laches on the part of the judgment debtor. A void judgment is something very different than a valid

judgment. The void judgment creates no binding obligation upon the parties, or their privies; it is legally

ineffective. . . . The judgment may also be set aside under 60(b)(4) within a 'reasonable time,' which, as

here applied, means generally no time limit, or the enforcement of the judgment may be enjoined. The

judgment may also be collaterally attacked at any time in any proceeding, state or federal, in which the

effect of the judgment comes in issue, which means that if the judgment is void it should be treated as

legally ineffective in the subsequent proceeding. Even the party which obtained the void judgment may

collaterally attack it. And the substance of these principles are equally applicable to a void state judgment.

A party attacking a judgment as void need show no meritorious claim or defense or other equities on his

behalf; he is entitled to have the judgment treated for what it is, a legal nullity, but he must establish that

the judgment is void." (Footnotes omitted.) The Judicial Council Committee's Note, 1974, 69 Wis. 2d 726,

states that sec. 806.07, Stats., is substantially equivalent to Federal Rule 60(b) and replaces sec. 269.46,

Stats. (1973). There is no suggestion that the committee intended a departure from former Wisconsin law

which is consistent with present federal cases construing Federal Rule 60(b). Section 806.07(2), Stats.,

requiring motions to vacate orders or judgments to be brought in a "reasonable time" does not apply to

void judgments. 05/29/85 KATHLEEN NEYLAN v. RICHARD VORWALD 368 N.W.2d 648, 124 Wis. 2d

85.

In Halbach v. Halbach, 259 Wis. 329, 331, 48 N.W.2d 617 (1951), the void judgment was challenged ten

years after entry. The court stated that laches did not apply even if the plaintiff had been dilatory or

lackadaisical in his efforts to overturn the judgment. "It is the duty of the court to annul an invalid

judgment."

A void judgment cannot be validated by consent, ratification, waiver, or estoppel. Furthermore, void

judgments may be attacked collaterally. The 1960 application was still valid. A judgment or order which is

void may be expunged by a court at any time. Such right to expunge a void order or judgment is not

limited by statutory requirements for reopening, appealing from, or modifying orders or judgments. [Cases

cited.]" State ex rel. Wall v. Sovinski, 234 Wis. 336, 342, 291 N.W. 344 (1940). See also. Home Bank v.

Becker, 48 Wis. 2d 1, 7, 179 N.W.2d 855 (1970). It is a well-settled rule that lack of subject matter

jurisdiction may not be consented to or waived. This "long-standing case law" rule is retained by sec.

802.06(8)(c), Stats. Clausen and Lowe, The New Wisconsin Rules of Civil Procedure: Chapters 801-803,

59 Marq. L Rev. 1, 52 (1976), citing Damp v. Town of Dane, 29 Wis. 419 (1872), A void judgment or

order may be expunged or vacated by a court at any time. State v. Banks, 105 Wis. 2d 32, 43, 313

N.W.2d 67, 72 (1981). Thus, the court was without authority to extend the injunction beyond two years

from the date the injunction first was entered. When a court acts in excess of its jurisdiction, its orders or

judgments are void and may be challenged at any time. Kohler Co. v. DILHR, 81 Wis. 2d 11, 25, 259

N.W.2d 695, 701 (1977). The extended injunction thus is void. A void judgment cannot be validated by

consent, ratification, waiver, or estoppel and may be attacked collaterally.

Moreover, it is axiomatic that a

judgment secured without obtaining personal jurisdiction over a party is void, and a void judgment can

be collaterally attacked at any time in any proceeding, state or federal. See Neylan v. Vorwald, 124 Wis.

2d 85, 99, 368 N.W.2d 648 (1985).

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