Saving's Clause

"Dismissal without prejudice" means that the suit is dismissed without a decision on the merits and isn't conclusive of the parties' rights. SDS Partners, Inc. v. Cramer, 305 Ill. App. 3d 893 (4th Dist. 1999). Andjelko Galic was quite negligent in filing the record on appeal in Richard Daniggelis' case before the ILLINOIS First Appellate Court, and, of course, didn't even file any briefs on the merits. Even after the IL Supreme Court had given Galic a "second chance" and directed the First Appellate Court to accept a late appeal, still, he failed to prosecute the case, and the Court dismissed his appeal. Since a dismissal for want of prosecution is, by its very nature, without prejudice, and not a bar to a subsequent suit on the same issues, the trial court doesn't have the authority to dismiss a case for want of prosecution with prejudice. Twardowski v. Holiday Hospitality Franchising, 321 Ill. App. 3d 509 (1st Dist. 2001).

For example, Section 5/13-217 of the Illinois Code of Civil Procedure provides that, if an action is dismissed for want of prosecution, the plaintiff (or his or her heirs, executors, or administrators) may commence a new action within one year or within the remaining period of limitation, whichever is greater. Section 13-217 is a savings statute designed to facilitate disposition of litigation on the merits and to avoid its frustration upon grounds unrelated to the merits. S.C. Vaughan Oil Co. v. Caldwell Troutt and Alexander, 181 Ill. 2D 489 (1998). This, of course, permits plaintiffs to proceed with new allegations in a timely re-filed action. A dismissal for want of prosecution is not a final and appealable judgment on the merits because, pursuant to Section 5/13-217, plaintiffs have an absolute right to re-file the action against the same party and to re-allege the same cause of action. [However, once the time period for refiling has expired under 735 ILCS 5/13-217, the litigation is terminated and the dismissal for want of prosecution constitutes a final judgment because the order absolutely fixes the rights of the parties. S.C. Vaughan Oil Co., 181 Ill. 2d at 502.] ***OOPS!? The current version of Section 217 provides as follows:*** "No action which is voluntarily dismissed by the plaintiff or dismissed for want of prosecution by the court may be filed where the time for commencing the action has expired." It would seem that the legislature excluded dismissals for want of prosecution, the basis for appellants' claim, apparently due to changes made by P.A. 89-7, which has been held unconstitutional. ***So, does this mean we can't use this means to reinstate?*** http://www.ILGA.gov/legislation/ilcs/fulltext.asp?DocName=073500050K13-217

UPDATE: I didn't catch that—the changes were found unconstitutional, and thus the older version is still in effect:

The current version of section 735 ILCS 5/13-217 doesn't provide for refiling after a DWP (Dismissal for Want of Prosecution). However, the IL Supreme Court, in ***Best v. Taylor Machine Works*****, 179 Ill. 2d 367 (1997),** held that the amendments that removed the provisions for refiling after a DWP were unconstitutional as not severable from other unconstitutional provisions of the Civil Justice Reform Amendments of 1995 (Pub. Act 89-7, § 15 (eff. Mar. 9, 1995)). Thus, the unamended version (which **does** allow for refiling of DWP cases) is the effective version. [[In fact, the IL Court, in ***Best*****,** declared unconstitutional the **ENTIRE** Civil Justice Reform Amendments of 1995 (Public Act 89-7), which made important changes beneficial to defendants in the laws affecting bodily injury, death, negligent injury to property, and product liability—not that this matters for DWP cases, but just saying.]]

"We emphasize that all of the remaining provisions of Public Act 89-7, which were not challenged in the instant cases, are deemed invalid in this case solely on grounds of severability." **(*Best*, 179 Ill.2d 367, at 471)** https://casetext.com/case/best-v-taylor-machine-works

Translation—the older version here is still current statutory law: "In the actions specified in Article XIII of this Act or any other act or contract where the time for commencing an action is limited, if...the action is voluntarily dismissed by the plaintiff, or **the action is dismissed for want of prosecution,...the plaintiff, his or her heirs, executors or administrators may commence a new action within one year or within the remaining period of limitation, whichever is greater,** after such judgment is reversed or entered against the plaintiff, or **after the action is voluntarily dismissed by the plaintiff, or the action is dismissed for want of prosecution,** or the action is dismissed by a United States District Court for lack of jurisdiction, or the action is dismissed by a United States District Court for improper venue." (Source: P.A. 87-1252.)"
http://www.ILGA.gov/legislation/ilcs/fulltext.asp?DocName=073500050K13-217

Also, perhaps Daniggelis' case is an Article XIII action, protected as follows: re Art.XIII actions: "(a) When any person is wrongfully ousted from possession, his or her right of entry or of action shall be deemed to have accrued at the time of such wrongful ouster." [735 ILCS 5/13-106(a)] http://Law.Justia.com/codes/illinois/2012/chapter-735/act-735-ilcs-5/article-xiii **—or maybe *not*, since it was dismissed for failure to file the record on appeal (e.g., for want or lack of prosecution) because of the amendatory Act of 1995, which removed that option from the updated statute for causes of action accruing on or after its effective date, e.g., 1995:** "(735 ILCS 5/13-217) (from Ch. 110, par. 13-217) (Text of Section WITH the changes made by P.A. 89-7, which has been held unconstitutional) Sec. 13-217. Reversal or dismissal. **In the actions specified in Article XIII of this Act or any other act or contract where the time for commencing an action is limited,** if judgment is entered for the plaintiff but reversed on appeal, or if there is a verdict in favor of the plaintiff and, upon a motion in arrest of judgment, the judgment is entered against the plaintiff, or the action is dismissed by a United States District Court for lack of jurisdiction, or the action is dismissed by a United States District Court for improper venue, then, whether or not the time limitation for bringing such action expires during the pendency of such action, the plaintiff, his or her heirs, executors or administrators may commence a new action within one year or within the remaining period of limitation, whichever is greater, after such judgment is reversed or entered against the plaintiff, or the action is dismissed by a United States District Court for lack of jurisdiction, or the action is dismissed by a United States District Court for improper venue. **No action which is voluntarily dismissed by the plaintiff or dismissed for want of prosecution by the court may be filed where the time for commencing the action has expired. This amendatory Act of 1995** applies to causes of action accruing on or after its effective date. (Source: P.A. 89-7, eff. 3-9-95.)" http://www.ILGA.gov/legislation/ilcs/fulltext.asp?DocName=073500050K13-217

Then how come the IL Sup. Ct. RECENTLY said you ***could*** used 5/13-217 to overcome DWP **as recently as 2010?** "Our supreme court has recognized that if a plaintiffs action is dismissed for want of prosecution (DWP), the plaintiff has the option, under section 13-217 of the Code of Civil Procedure, to refile the action within one year of the entry of the DWP order or within the remaining period of limitations, whichever is greater. 735 ILCS 5/13-217 (West 2008); S.C. Vaughan Oil Co. v. Caldwell, Trout Alexander, 181 Ill. 2D 489, 497 (1998)." (JACKSON v. HOOKER, 397 Ill. App.3d 614, 1st Dist. 2010: https://Casetext.com/case/jackson-v-hooker) [Never-mind—see above: The newer version was found unconstitutional. I feel stupid for overlooking that comment in the statutes, above.]

See also: http://applawyers-thebrief.blogspot.com/2014/06/illinois-appellate-court-dwp-order-not.html which alleges that, as recent as 2014, this: "In Federal National Mortgage Association v. Tomei, 2014 IL App (2d) 130652, the Illinois Appellate Court, Second District, held that it lacked jurisdiction to review a trial court's order vacating a dismissal for want of prosecution (DWP). Federal National filed a mortgage foreclosure action against Tomei. Following Federal National's failure to appear for a status hearing, the trial court dismissed the case for want of prosecution. Thereafter, Federal National filed a motion to vacate the DWP pursuant to section 2-1401 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-1401 (West 2012)), citing a "docketing error" for its failure to appear. The trial court granted the motion and reinstated the case."

735 ILCS 5/2-1401: Petition to Vacate Pursuant to 2-1401: aka – Writs of error coram nobis

As a procedural note, a trial court only retains jurisdiction over a matter for 30 days after it has entered a final judgment. Blazyk, 406 Ill. App. 3d at 206.

The purpose of a section 2-1401 petition is to present a legal or factual challenge to a final judgment or order. Warren County, 2015 IL 117783, ¶ 31. **While the petition is ordinarily used to bring facts to the attention of the trial court which, if known at the time of the judgment would have precluded its entry, the petition may also be used to challenge a purportedly defective judgment for legal reasons. Id.** ¶ 31. In order to prevail on a section 2-1401 petition the petitioner must establish **by a preponderance of the evidence** each of the following: (1) the existence of a meritorious defense; (2) due diligence in presenting this defense in the underlying litigation; and (3) due diligence in the filing of this section 2-1401 petition for relief. Id. ¶ 51 (citing Smith v.

Airoom, Inc., 114 Ill. 2d 209, 221 (1986)). The petitioner is required to support its section 2-1401 petition with an affidavit or other materials that are not otherwise included in the record. 735 ILCS 5/2-1401(b). In proving the first element, the existence of a meritorious claim or defense, a party is not required to show the validity of the meritorious claim or defense, but only its existence. Pirman v. A&M Cartage, 285 Ill. App. 3D 993, 1001 (1st Dist. 1996). As a result, this element is generally easily satisfied. Next, the party bringing the petition must show that it acted diligently both in the underlying action and in filing the petition to vacate the final order or judgment. The Illinois Supreme Court explained that section 2-1401 is not intended to relieve the defeated party for its own mistakes, negligence, or for the negligence of its attorney. Warren County, 2015 IL 117783, ¶ 38 (citing Airoom, 114 Ill. 2d at 222). Instead, section 2-1401 will only provide relief where the petitioner can show that its failure to defend or prosecute the lawsuit was "the result of an excusable mistake and that the petitioner acted reasonably under the circumstances and was not negligent." Id. In evaluating the petitioner's diligence the court examines the particular facts, circumstances, and equities of the underlying litigation. Warren County, 2015 IL 117783, ¶ 50. As a result, the petitioner must provide an affidavit and other documentation in support of its claimed diligence. Id. ¶ 31. Just as in any other civil proceeding, the party responding to the petition can and should provide its own affidavit and documents in opposition of the petition. Id. 51. The courts are cognizant of the fact that a section 2-1401 petition represents the last option to vacate a judgment or order. From the outset, the procedural context of these petitions implies that a petitioner—who had several other opportunities to vacate the judgment—lacks the diligence necessary to prevail. In order to successfully refute this lack of diligence, the petitioner must provide a "reasonable excuse" for failing to vacate the judgment at an earlier time. Airoom, 114 Ill. 2d at 222. In order to prevail, the petitioner must show that the entry of the final judgment or order was not known to the petitioner and could not have been discovered through the exercise of reasonable diligence. Juszczyk v. Flores, 334 Ill. App. 3d 122, 128 (1st Dist. 2002). Generally, when the petitioner has failed to act diligently the court will deny the petition to vacate the judgment. There are limited and extraordinary circumstances, however, where the court has ignored the diligence of the parties and granted the petition in the interest of preventing the unjust entry of a judgment and to do substantial justice between the parties. Coleman v. Caliendo, 361 Ill. App. 3d 850, 855-56 (1st Dist. 2005) While the first district, in R.M. Lucas Co. v. Peoples Gas Light & Coke Co., 2011 IL App (1st) 102955, ¶ 24, asserts that Vincent overruled the holding in Coleman, the Illinois Supreme Court's recent decision in Warren County—as discussed more fully below—explains equitable considerations are appropriate in reviewing a section 2-1401 petition. Warren County, 2015 IL 117783, ¶ 51

(735 ILCS 5/2-**1401**) (from Ch. 110, par. 2-1401) **Sec. 2-1401. Relief from judgments.**
(a) Relief from final orders and judgments, after 30 days from the entry thereof, may be had upon petition as provided in this Section. **Writs of error coram nobis and coram vobis, bills of review and bills in the nature of bills of review are abolished. All relief heretofore obtainable and the grounds for such relief heretofore available,** whether by any of the foregoing remedies or otherwise, shall be available in every case, by proceedings hereunder, regardless of the nature of the order or judgment from which relief is sought or of the proceedings in which it was entered. Except as provided in the Illinois Parentage Act of 2015, there shall be no distinction between actions and other proceedings, statutory or otherwise, as to availability of relief, grounds for relief or the relief obtainable.
(b) The petition must be filed in the same proceeding in which the order or judgment was entered but is not a continuation thereof. The petition must be supported by affidavit or other appropriate showing as to matters not of record. All parties to the petition shall be notified as provided by rule.
(c) Except as provided in Section 20b of the Adoption Act and Section 2-32 of the Juvenile Court Act of 1987 or in a petition based upon Section 116-3 of the Code of Criminal Procedure of 1963, the petition must be filed not later than 2 years after the entry of the order or judgment. Time during which the person seeking relief is under legal disability or duress or the ground for relief is fraudulently concealed shall be excluded in computing the period of 2 years.
(d) The filing of a petition under this Section does not affect the order or judgment, or suspend its operation.
(e) Unless lack of jurisdiction affirmatively appears from the record proper, the vacation or modification of an order or judgment pursuant to the provisions of this Section does not affect the right, title or interest in or to any real or personal property of any person, not a party to the original action, acquired for value after the entry of the order or judgment but before the filing of the petition, nor affect any right of any person not a party to the original action under

any certificate of sale issued before the filing of the petition, pursuant to a sale based on the order or judgment.
(f) Nothing contained in this Section affects any existing right to relief from a void order or judgment, or to employ any existing method to procure that relief.
Source: http://www.ILGA.gov/legislation/ilcs/fulltext.asp?DocName=073500050K2-1401

[**NOTE:** The two year period excludes time during which the party seeking relief is under legal disability **or duress** and when the ground for relief is fraudulently concealed. 735 ILCS 5/2-1401(c). Could ineffective counsel constitute duress? Daniggelis' attorney was very negligent, left the country a bunch of times, & let the appeal lapse for failure to file the Record on Appeal.]

The writ of coram nobis (aka: writ of error coram nobis) is the name of a legal order allowing a court to correct its original judgment upon discovery of a fundamental error which did not appear in the records of the original judgement's proceedings and would've prevented the judgment from being pronounced. The term "coram nobis" is Latin for "before us" and the meaning of its full name, quae coram nobis resident, is "which [things] remain in our presence". The writ of coram nobis originated in the English court of common law in the English legal system during the sixteenth century.

In December 2014, a writ of coram nobis was granted by a federal court to posthumously vacate the conviction of George Stinney, a 14-year-old African-American boy who was convicted of murder and executed in June 1944. ("South Carolina Judge Vacates Conviction of George Stinney in 1944 Execution," by Campbell Robertson, New York Times, 17 December 2014: https://www.nytimes.com/2014/12/18/us/judge-vacates-conviction-in-1944-execution.html) Moreover, Gordon Hirabayashi, Fred Korematsu, & Minoru Yasui, best known for their principled resistance to the internment of Japanese Americans during World War II, all had their convictions overturned through writs of coram nobis, and they were each awarded the Presidential Medal of Freedom.

In Mixon, a majority of the Court of Criminal Appeals failed to address the issues raised by the defendant in his appeal as of right, when the trial court erred by allowing the State to impeach the defendant's testimony with a prior sexual battery conviction, and the error is not harmless. Accordingly, the judgment of the Court of Criminal Appeals, which remanded this case to the trial court for further findings on the coram nobis claim, was reversed. The defendant's convictions of attempted rape, attempted incest, & sexual battery were vacated, and the case was remanded to the trial court for a new trial. (State v. Mixon, 983 SW 2d 661 (Tenn: Supreme Court 1999: https://Scholar.Google.com/scholar_case?case=2020995530047118426&q=coram+nobis&hl=en&as)
On December 22, 1995, the defendant filed in the trial court a petition for writ of error coram nobis. The petition was accompanied by a sworn affidavit from the victim in which she recanted her trial testimony, and stated as follows: "1. My name is [A.M.]. I am fifteen (15) years old, and I know the difference between telling the truth and telling a lie...2. I am the alleged victim of Vaughn Mixon, my father...5. The only time he touched my leg that day was when he was trying to reach for the keys from the ignition. I did not think he was trying to feel my legs in a sexual way." Therefore, The Tenn. Sup. Court granted Mixon's application for permission to appeal, and reversed the his convictions for attempted rape, attempted incest, and sexual battery—and remanded for a new trial. {But why wait for the Supreme Court to hear this: they are too over-burdened with cases, as it stands: That could take forever! And Daniggelis, who has suffered long as a victim, is already seventy-eight (78) years old.}

Motions to Vacate Pursuant to Section 2-1301

735 ILCS 5/2-1301:
(e) The court may in its discretion, before final order or judgment, set aside any default, and may on motion filed within 30 days after entry thereof set aside any final order or judgment upon any terms and conditions that shall be reasonable.
http://www.ILGA.gov/legislation/ilcs/ilcs4.asp?ActID=2017&ChapterID=56&SeqStart=15800000&SeqEnd=16400000

This lets litigants bring a motion to vacate either a non-final or final order:

A litigant can move to vacate a non-final order or judgment at any time before that order or judgment becomes final. Federal Nat'l Mortg. Ass'n v. Tomei, 2014 IL App (2d) 130652:

735 ILCS 5/2-1301: "(e) The court may in its discretion, before final order or judgment, set aside any default,..."

Once the order or judgment is final, the litigant must submit its motion within 30 days:

735 ILCS 5/2-1301: "(e) The court...may on motion filed within 30 days after entry thereof set aside any final order or judgment upon any terms and conditions that shall be reasonable.:

In the event that the litigant fails to bring a motion to vacate during the 30 day period, the court loses jurisdiction, —and, barring a miracle (see below, & above), the party's only option is to bring a petition to vacate the judgment under the more exacting standards provided for in **735 ILCS 5/2-1401, above.** Blazyk v. Daman Express, Inc., 406 Ill. App. 3d 203, 206-07 (2d Dist. 2010)

Revestment Doctrine

The revestment doctrine allows trial courts to be "revested" with jurisdiction more than 30 days after issuance of a final judgment –and without a timely post-judgment motion under **extremely limited circumstances:** ONLY if: (1) the parties actively participate in the proceedings; (2) no party objects to the trial court's lack of jurisdiction; and (3) the proceedings are inconsistent with the merits of the trial court's previous judgment. [People v. Bailey, 2014 IL 115459 (opinion filed Feb. 6, 2014)]

NOTE: Applying that to Richard Daniggelis' case, for it to work, one would have to trick (or convince) Atty. Joseph Younes to participate in post-judgment litigation, which (I think) would be VERY HARD! (He might be smart, and simply move the court for enforcement of its bad and oppressive judgment.) **Then again, maybe he *would* be dumb enough – if provoked – to reply to the prospective motions – and careless enough to fail to object. AND, this has happened before. OBSERVE:** In People v. Kaeding, 98 Ill.2d 237, 240-241 (1983), the prosecution filed a motion challenging the validity of the sentence five months after its imposition. Since the defense didn't object to the motion & actively participated in the proceeding, the outcome of the hearing couldn't be challenged later on jurisdictional grounds. The supreme ct held that this doctrine provides that the trial court is 'revested' with jurisdiction if the parties "actively participate without objection in proceedings which are inconsistent with the merits of the prior judgment." People v. Kaeding, 98 Ill. 2d 237, 241 (1983). Further, if the trial court is revested with jurisdiction of a late motion directed against the judgment, the motion extends the time to appeal, such that a notice of appeal filed within 30 days after the ruling on the motion will vest the appellate court with jurisdiction. See People v. MacArthur, 313 Ill. App. 3D 864, 868 (2000).

Supreme Court "Super Powers" aka 'supervisory appellate authority'

In Wauconda Fire Protection Dist. v. Stonewall Orchards, LLP, 214 Ill.2d 417 (2005), the IL Supreme Court **excused the filing of a deficient affidavit of intent to seek leave to appeal,** which would normally result in dismissal of the litigation. Instead, **the Court ignored the unsworn nature of the affidavit and accepted the late filing of the petition seeking Supreme Court review.** In People v. Lyles, (docket #98357, December 1, 2005), the high court **excused the failure to challenge the dismissal of an appeal within the time required** for the Appellate Court to retain jurisdiction of the case. **Despite the resulting loss of jurisdiction, the Supreme Court reinstated the appeal for consideration on the merits.**

Both rulings show that the IL Supreme Court can excuse compliance with its ***own*** rules of appellate procedure and thereby reinstate appellate jurisdiction. The magic phrase permitting this departure from the Supreme Court Rules is "supervisory authority." Both Wauconda and Lyles invoke the constitutional grant of this authority[1970 Constitution of Illinois, Article VI, Section 16] as justification for excusing compliance with the rules of appellate jurisdiction. Citing McDunn v. Williams, 156 Ill.2d 288 (1993), Lyles described the supervisory authority of the Supreme Court as "unlimited in extent" and as a legal source that "grants jurisdiction."

Contrary to what you might think, previous decisions have excused complete non-compliance with appeals rules. For example, in McDunn v. Williams, 156 Ill.2d 288 (1993), the Supreme Court assumed jurisdiction of a case and rendered a decision on the merits where no party appealed the ruling of the Appellate Court! The Court invoked its supervisory authority because of the importance of determining which person properly qualified for a judgeship. [NOTE: The Appellate Court decision in McDunn permitted two judges to sit on the same judicial seat simultaneously! No wonder the Supreme Court took the case!]

In fact, even way back then, in People v. Breen, 62 Ill.2d 323 (1976), the IL Supreme Court accepted review, in Springfield, despite dismissal of the case by the Appellate Court due to a lack of jurisdiction in the absence of a judgment of conviction. Wow!

Rule 315. Leave to Appeal From the Appellate Court to the Supreme Court

(a) Petition for Leave to Appeal; Grounds. Except as provided below for appeals from the Illinois Workers' Compensation Commission division of the Appellate Court, **a petition for leave to appeal to the Supreme Court from the Appellate Court may be filed by <u>any</u> party, including the State, in any case not appealable from the Appellate Court as a matter of right.** Whether such a petition will be granted is a matter of sound judicial discretion. **The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered: <u>the general importance of the question</u> presented; the <u>existence of a conflict between the decision sought to be reviewed and a decision of the Supreme Court</u>, or of another division of the Appellate Court; the <u>need for the exercise of the Supreme Court's supervisory authority</u>; and <u>the final or interlocutory character of the judgment sought to be reviewed</u>.**

Perhaps we could file a Rule 315 PLA petition (a Petition for Leave to Appeal) to the IL Supreme Court, based on all the screwups, and the fact that both an elderly man, and an expensive house, are both at risk – not to mention the precedent that is set when a bully can override a Historic Landmark restriction by purposely letting a house fall into repair –or the harm done by courts purposely ignoring PLAIN AND CLEAR evidence of fraud and forgery (no statutes of limitation), thereby endangering elderly victims and their houses, properties, and finances. [Conflict with legal precedent and/or failure of the Chancery judges, police, and state's attorney office to follow statutory law might also be good to raise on appeal. Or to an honest trial court judge.] The criteria for a Rule 315 petition: **Prayer for relief.** This is perhaps the most straightforward of the required contents. You simply are asking the court to allow your petition under Rule 315. This may also be an opportunity to provide a very short introduction about the nature of your petition and the issues you are raising. **Jurisdictional section.** This section only requires the date of the appellate court opinion, whether you filed a petition for rehearing, and the date the petition for rehearing was ruled upon if you filed one. It gives the court a basis to review the timeliness of your petition. **Points relied upon in asking the court to review the case.** By far, this is the most important section of your petition. Note it is not asking you why the appellate court should be reversed. It is asking why the case should be reviewed by the supreme court. The supreme court is not an "error correcting court." It only decides issues of general importance or conflicts in the reviewing court. Even if the appellate court opinion has errors in its analysis, that alone is not sufficient for further review. Your job in this section is to state the issues and why they meet the criteria in Rule 315. Some appellate practitioners devote as much as 1/3 or 1/2 of their petition to this section alone because it is the best opportunity to convince the court why your petition should be allowed versus the hundreds of others that are filed. The focus solely should be on the criteria in the rule and why your issues warrant further review. **Statement of facts.** Keep it short & sweet & refer to the Record on Appeal. **Argument.** Simply explain why the lower courts were wrong, based on the fact and the law governing them. Period. **Appendix.** A copy of the appellate court opinion or order must be included in the appendix. Other documents in the record and critical to the court's consideration of your petition should also be included, but err on the side of keeping the appendix short. **Format of Petition.** The petition and answer should be prepared and served according to the requirements set forth for briefs in Rule 341 through Rule 343.