

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

IN RE D.R.	:	No. 116197
A Minor Child	:	
[Appeal by M.R., Father]	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: September 17, 2026

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. AD23900455

Appearances:

P. Shipman Law, LLC, and Philip E. Shipman; Fowles Law, LLC, and Ted R. Fowles, *for appellant*.

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Rachel Eisenberg, Assistant Prosecuting Attorney, *for appellee CCDCFS*.

DEENA R. CALABRESE, J.:

{¶ 1} Appellant M.R. (“father”) appeals the January 28, 2026 judgment of the Cuyahoga County Court of Common Pleas, Juvenile Division (“juvenile court”), which denied his motion to vacate earlier custody judgments to the extent they affected his parental rights. Father argues that the appellee Cuyahoga County Division of Children and Family Services (“CCDCFS” or “the agency”) used an

incorrect address for service of process of the original complaint and subsequent pleadings, that he was never properly served, and therefore that the juvenile court never obtained personal jurisdiction over him. We find merit to the appeal. Accordingly, we reverse the juvenile court’s judgment denying father’s motion to vacate and remand the case to the juvenile court to vacate its judgments as to father.

I. Facts and Procedural History

{¶ 2} D.R. was born on January 26, 2014, to A.M. (“mother”) and father. Father acknowledged paternity, and child support was established by the juvenile court on June 14, 2016.

{¶ 3} On January 12, 2023, the agency removed five children, including D.R. — then eight years old — from mother’s care. The children were placed in the emergency predispositional temporary custody of the agency. The following day, the agency filed a complaint alleging that all five children were neglected, principally based on mother’s purported lack of stable and independent housing and her abuse of alcohol. Only one of the five children, D.R., is father’s child. The other four children share a different father, J.M.¹ The complaint alleged that both fathers failed to support, visit, or communicate with their respective children.

{¶ 4} The complaint specified father’s address as 4006 E. 52nd St., Newburgh Heights, OH 44105. The agency’s February 9, 2023 instructions for service of the summons and complaint upon father by certified mail likewise listed the Newburgh Heights address.

¹ The other four children are not at issue in this appeal.

{¶ 5} On March 14, 2023, following a preliminary hearing held that day, a magistrate's order indicated that while mother had been served, father had not. The following week, CCDCFS thereafter reissued service to father, again to the Newburgh Heights address, by filing a request for personal service on father.

{¶ 6} On March 23, 2023, the clerk of courts docketed a certificate of mailing indicating that the summons and complaint sent to father by certified mail had been returned unclaimed and that service had been reissued by ordinary mail that same date, again to the Newburgh Heights address. The returned certified mail envelope is part of the record; the envelope bears the notations "return to sender / unclaimed / unable to forward." There is nothing in the record indicating that ordinary mail service to the Newburgh Heights address was returned as undeliverable.

{¶ 7} On April 3, 2023, a juvenile court magistrate called the case for trial. Mother appeared with counsel. The trial court merely granted mother's oral motion to continue the trial. In an April 10, 2023 order memorializing the proceedings, the magistrate noted that "Service of Summons has been perfected on all parties."

{¶ 8} Trial commenced and concluded before a juvenile court magistrate on May 5, 2023. The magistrate heard testimony, and D.R. was adjudicated neglected. The parties agreed to proceed to disposition immediately. Emergency custody was terminated, and D.R. was committed to the temporary custody of CCDCFS. The case plan attached to the magistrate's decision specified an ultimate permanency goal of reunification. Among the magistrate's findings was that father "did not make

himself available to the Agency.” The juvenile court adopted the magistrate’s decision, including approval of the case plan, on May 24, 2023.

{¶ 9} On December 8, 2023, CCDCFS filed a motion to modify temporary custody of D.R. to legal custody. Specifically, the agency moved for legal custody to A.R., who is D.R.’s adult brother (and father’s adult son). In its brief in support, CCDCFS argued that the case plan designed to facilitate reunification had been unsuccessful. It claimed that mother had failed to complete case-plan objectives and again represented that father had not made himself available to the agency and was not involved in D.R.’s life. The certificate of service again specified the Newburgh Heights address for father. Following a motion hearing before a magistrate, the juvenile court granted legal custody of D.R. to A.R. by order dated March 26, 2024.

{¶ 10} On August 5, 2024, caregiver N.S. filed an application to establish an order of shared parenting along with A.R. The instructions for service that accompanied the application directed the clerk to serve both A.R. (by certified mail) and father (by ordinary mail) at the same address: 5356 E. 111th St., Garfield Heights, OH 44125. This is, in fact, the address where father claims he currently (and at all relevant times) resides. According to the clerk’s appearance docket, however, the motion was mailed to A.R. at a completely different address in Cleveland and was mailed to father at the same Newburgh Heights address previously used.

{¶ 11} A juvenile court magistrate held a motion hearing on November 12, 2024. N.S.’s motion was held in abeyance, with a hearing set for December 2, 2024.

N.S. and A.R. subsequently filed a proposed shared parenting plan. N.S. filed a statement of understanding for legal custody indicating she intended to become the legal custodian of D.R. A magistrate held the motion hearing as scheduled, and issued a decision designating N.S. as the legal custodian of D.R. The trial court adopted the magistrate's decision on December 18, 2024.

{¶ 12} The case sat dormant for just over eight months. On August 22, 2025, the Office of Child Support Services ("OCSS") filed a combined motion to intervene as a party in interest and motion to establish support. The motion included the juvenile court's June 14, 2016 order in Cuyahoga J.C. No. PR16703905 establishing paternity and child support. The caption specified father's Garfield Heights address. The instructions for service attached to the motion likewise requested service upon father at the Garfield Heights address. Service was issued on August 27, 2025.

{¶ 13} Father appeared before a magistrate on September 10, 2025, without counsel, and executed a waiver of service. The magistrate found that mother had not yet been served and therefore continued the matter. It scheduled a pretrial hearing for October 22, 2025, and trial for January 8, 2026.

{¶ 14} On October 22, 2025, father, still pro se, filed an emergency motion for temporary custody and a motion to modify custody. The latter pleading included an affidavit in which father swore, inter alia, that he "wasn't notified of the

emergency hearing.”² Father appeared at the pretrial that same day, and trial remained set, at that time, for January 8, 2026.

{¶ 15} A hearing on father’s motion for emergency custody was held on November 12, 2025, with father and N.S. present. The magistrate denied the motion for emergency custody, concluding that it did “not find that there is an emergency situation.” The magistrate further noted, however, that father had stated his position with respect to service of process:

The father stated that he filed these motions because all of the court proceedings in the past pertaining to custody all of the notifications were sent to an address that he never lived at. He never resided in Newburgh Heights. He’s unsure as to where this address came from. He’s uncertain how the child is doing because he does not go to the home. The Caretaker [N.S.] informed the Court that the mother went to the father’s home and informed him. The father denies that the mother came to his house to inform him about the court proceedings.

{¶ 16} On December 12, 2025, father, still pro se, filed the motion to vacate that is the subject of this appeal. Father’s motion asked the juvenile court to vacate its prior custody orders “due [to] lack of personal jurisdiction.” Father claimed he was “never properly served with the original summons/complaint filed in this case,” and that therefore the juvenile court’s “judgment is void.”³

{¶ 17} Father’s motion also included an affidavit. In his affidavit, father swore, inter alia, that he had lived at the Garfield Heights address since 2008. He

² Father also averred that legal custodian N.S.’s residence was “overcrowded” and that his son “sleeps on [the] floor.”

³ Father cited *Tomcho v. ALTL, Inc.*, 2018-Ohio-4613 (8th Dist.), in support of his motion.

swore that he “own[ed] the home and [had] continually and exclusively resided there since 2008.” He swore that he “never lived” at the Newburgh Heights address and “never received any correspondence regarding [D.R.] being removed from his mother’s custody or being placed in the legal custody” of A.R. He also swore that “[p]rior to the 2025 filing by child support, [he had] never been served with any pleadings, motions, or summonses filed in juvenile court concerning” D.R. Father attached several exhibits to his affidavit in an effort to demonstrate his residency, including information from the Cuyahoga County Auditor’s website, Cleveland water bills, and his homeowner’s policy.

{¶ 18} CCDCFS filed a brief in opposition to father’s motion to vacate on December 29, 2025, and the juvenile court held a hearing on January 21, 2026.

{¶ 19} Father appeared at the hearing pro se. Mother was present, as was N.S. The juvenile court asked father if he wished to be heard on his motion. Father responded in the affirmative, and the court heard father’s arguments without administering an oath. Father began:

[A]ll the correspondence to this custody case was sent to an address that I never lived at. As a matter of fact, the address in Newburgh Heights, I believe, was where [mother] used to live at. So I don’t even know how that — how I was — was even . . . associated with that address.

(Tr. 4.) Father stated that he had been at his current address in Garfield Heights “for close to 17 years[.]” (Tr. 4.) He stated that “[n]o documentation came there,” and that to his knowledge everything regarding the case “went to the address in Newburgh Heights.” (Tr. 4.) He told the court that he “never lived” at the Newburgh

Heights property “in [his] life,” that he owns the Garfield Heights property, and that he only found out about the underlying proceedings in the present case in August 2025, “when [he] got child support papers.” (Tr. 5.) He stated he felt “robbed” of the “opportunity to answer to this custody situation back when it first started” because he “had nothing to do with this [Newburgh Heights] address” that had “never been associated” with him. (Tr. 6-7.)

{¶ 20} CCDCFS did not cross-examine father or call any witnesses. Instead, it stated through counsel that the agency had used the Newburgh Heights address for father because “that was the information that the Agency received at the time.” (Tr. 7.) Pressed by the juvenile court to explain the provenance of the Newburgh Heights address, the agency stated that it was currently unaware of its origins and that the prosecutors who were previously involved in the case “are no longer with the office.” (Tr. 7.) When the juvenile court noted that one of the former prosecutors still worked in the building, albeit for the public defender’s office, CCDCFS’s counsel stated that the individual “doesn’t have access to any of this information anymore” and therefore she “did not ask her that.” (Tr. 8.)

{¶ 21} The bulk of the agency’s argument consisted of representations that mail sent to the Newburgh Heights address had never been returned as unsuccessful, and therefore “the Agency never was aware of the fact that the father was not receiving mail there.” (Tr. 8.) It acknowledged that father had provided evidence that he owned the Garfield Heights home since 2008, but argued that it

was not uncommon for parents to live somewhere else or request service at different locations, regardless of property ownership.

{¶ 22} In addition, the agency argued that father had admitted he knew of the custody change since February 2025, when the juvenile court “issued an order in a PR case” that “had the journal entry on the custody case” and was sent to father’s Garfield Heights address.⁴ (Tr. 9.) It therefore argued that father had known since February 2025 that legal custody of D.R. had been awarded to father’s adult son, A.R. The agency also noted that at least one piece of certified mail sent to the Garfield Heights address had been returned to the clerk on September 30, 2025, with the notations return to sender / vacant / unable to forward. Finally, it argued that father’s motion had not been filed within a reasonable time under Civ.R. 60(B).

{¶ 23} In response, father essentially argued that the agency’s references to other parents possibly having multiple homes did not apply to his situation because the Garfield Heights residence was his “only home,” i.e., “the only address [he had] been at.” (Tr. 14.) The following exchange then occurred:

[Father]: I just don’t understand how I became associated with [the Newburgh Heights] address. And that’s the question that I have or —

THE COURT: I think it’s a question I have too, and the Agency doesn’t know.

⁴ This appears to be a reference to proceedings in Cuyahoga J.C. No. PR16703905. A copy of the February 2025 order in that case, with attachments, was included as an exhibit to the agency’s December 29, 2025 brief in opposition to father’s motion to vacate. The hearing transcript, however, cannot be fairly read to suggest that father admitted — at least on the record — that he received any orders in February 2025. As noted above, father claimed he found out about the underlying proceedings in the present case in August 2025, “when [he] got child support papers.” (Tr. 5.)

(Tr. 15.) Father concluded:

[I]t's not crazy to think that people own multiple houses or whatever the case may be. Well, it's not the case here. [Garfield Heights] was my mailing address and my place of residency since 2008. . . . I've never been associated with a Newburgh Heights address. I've never even lived in Newburgh Heights.

(Tr. 17.)

{¶ 24} The juvenile court took the matter under advisement. On January 28, 2026, it issued an order denying the motion to vacate. The juvenile court's order contains no analysis. It states the date father filed his motion, the date the agency filed its opposition brief, the date of the hearing, and the court's one-sentence ruling: "The Motion to Vacate is denied."

{¶ 25} This timely appeal followed.

II. Assignments of Error

{¶ 26} Father presents two assignments of error for our review:

ASSIGNMENT OF ERROR 1: The Juvenile Court erred by failing to vacate its void judgments.

ASSIGNMENT OF ERROR 2: The Juvenile Court erred in denying Father's motion to vacate filed under Rule 60(B) of the Ohio Rules of Civil Procedure because Father was denied Due Process by never being given proper notice or a meaningful opportunity to be heard.

{¶ 27} We find merit to father's first assignment of error. Accordingly, we reverse the judgment of the juvenile court and remand for further proceedings consistent with this opinion.

III. Analysis

{¶ 28} In his first assignment of error, father argues that the juvenile court erred in denying his motion to vacate. We find merit to this assignment of error and view it as dispositive of father’s appeal.

{¶ 29} “Appellate courts review the denial of a motion to vacate under an abuse of discretion standard.” *Tomcho*, 2018-Ohio-4613, at ¶ 17 (8th Dist.), citing *Chilcote v. Kugelman*, 2013-Ohio-1896, ¶ 8 (8th Dist.), and *Linguist v. Drossel*, 2006-Ohio-5712 (5th Dist.). See also *Shiftmed, L.L.C. v. Westchester Parkway Consulting, L.L.C.*, 2025-Ohio-1554, ¶ 18 (8th Dist.); *Univ. Hts. v. Allen*, 2019-Ohio-2908, ¶ 12 (8th Dist.). A trial court “abuses its discretion when it exercises its judgment in an unwarranted way with respect to a matter over which it has discretionary authority.” *Hunter v. Troutman*, 2025-Ohio-366, ¶ 64 (8th Dist.), citing *Johnson v. Abdullah*, 2021-Ohio-3304, ¶ 35. “The term abuse of discretion implies that the court’s attitude is unreasonable, arbitrary, or unconscionable.” *Hunter* at ¶ 64, citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217 (1983). See also *State v. McAlpin*, 2026-Ohio-148, ¶ 14.

{¶ 30} “[T]o enter a valid judgment, a court must have personal jurisdiction over the defendant.” *Midland Funding, L.L.C. v. Cherrier*, 2020-Ohio-3280, ¶ 9 (8th Dist.), quoting *Mayfran Internatl., Inc. v. Eco-Modity, L.L.C.*, 2019-Ohio-4350, ¶ 9 (8th Dist.), citing *Maryhew v. Yova*, 11 Ohio St.3d 154, 156 (1984). A court acquires personal jurisdiction over a defendant when (1) the defendant is properly served with the complaint and summons, (2) the defendant makes a voluntary

appearance in the case, or (3) “limited acts by the party or his counsel that involuntarily submit him to the court’s jurisdiction.” *GGNSC Lima, L.L.C. v. LMOP, L.L.C.*, 2018-Ohio-1298, ¶ 14 (8th Dist.); *Austin v. Payne*, 107 Ohio App.3d 818, 821 (9th Dist. 1995), citing *Maryhew* at 156.

{¶ 31} A judgment rendered without personal jurisdiction is void. *GGNSC Lima* at ¶ 14, citing *Patton v. Diemer*, 35 Ohio St.3d 68 (1988), paragraph three of the syllabus. Indeed, such a judgment is void ab initio rather than merely voidable. *Tomcho* at ¶ 18. “Therefore, a judgment rendered without proper service is a nullity[.]” *Id.*, citing *Lincoln Tavern, Inc. v. Snader*, 165 Ohio St. 61, 64 (1956).

{¶ 32} “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.’” *Tomcho*, 2018-Ohio-4613, at ¶ 18 (8th Dist.), quoting *Patton* at paragraph four of the syllabus. Accordingly, “[t]his court follows the well-established precedent that “[a court’s] authority to vacate a void judgment is not derived from Civ.R. 60(B) but, rather, constitutes an inherent power possessed by Ohio courts.”” *Shiftmed*, 2025-Ohio-1554, at ¶ 19 (8th Dist.), quoting *King v. Water’s Edge Condominium Unit Owners’ Assn.*, 2021-Ohio-1717, ¶ 20 (8th Dist.), quoting *Patton* at paragraph four of the syllabus. The requirements of Civ.R. 60(B) are not applicable and need not be satisfied. *Id.* Instead, “[t]he proper procedure to challenge a void judgment is a common law motion to vacate.” *Id.*, citing *Kassouf v. Barylak*, 2023-Ohio-314, ¶ 18 (8th Dist.). A defendant who files a motion to vacate “only needs to establish

lack of proper service.” *Shiftmed* at ¶ 19. Accordingly, we need not address the requirements of Civ.R. 60(B). *Id.* at ¶ 20. *See also King* at ¶ 21.

{¶ 33} It is a plaintiff’s burden to obtain proper service on a defendant, and “[t]o be effective, service of process must comport with the requirements of due process.” *Id.* at ¶ 23, quoting *King* at ¶ 22. “Service of process is consistent with due process standards where it is reasonably calculated, under the circumstances, to give interested parties notice of a pending action and an opportunity to appear.” *King* at ¶ 22, quoting *Lauver v. Ohio Valley Selective Harvesting, L.L.C.*, 2017-Ohio-5777, ¶ 17 (12th Dist.).

{¶ 34} “Service upon an individual must be made at their ‘usual place of residence.’” *Shiftmed* at ¶ 24, quoting *Broadvox L.L.C. v. Oreste*, 2024-Ohio-340, ¶ 13 (8th Dist.). Juv.R. 16(A) states that a “summons shall be served as provided in Civil Rules 4(A), (C) and (D), 4.1, 4.2, 4.3, 4.5 and 4.6.” R.C. 2151.29 provides that “[s]ervice of summons, notices, and subpoenas . . . shall be made by delivering a copy to the person summoned, notified, or subpoenaed, or by leaving a copy at the person’s usual place of residence.” Civ.R. 4.1(A)(1)(a) authorizes service within this State to be sent by the clerk’s office via certified mail by the United States Postal Service. If the certified mail is returned with an endorsement stating that the envelope was unclaimed, then the attorney can request that service be sent by ordinary mail. “Service shall be deemed complete when the fact of mailing is entered of record, provided that the ordinary mail envelope is not returned by the postal authorities with an endorsement showing failure of delivery.” Civ.R. 4.6(D).

{¶ 35} As noted above, the record reflects that the original summons in this case was sent to father using the Newburgh Heights address by certified mail. That mailing was returned with failure-of-delivery notations that included “unclaimed.” The clerk of courts thereafter issued service by ordinary mail, which was not returned as undeliverable. This procedure comported with the civil rules. *Sullivan v. N. Eighteenth St. Energy Efficient Homeownership Project Ltd. Partnership*, 2022-Ohio-1472, ¶ 14 (10th Dist.). “Where the plaintiff follows the civil rules governing service of process, courts presume that service is proper unless the defendant rebuts this presumption with sufficient evidence of non-service.” *Hook v. Collins*, 2017-Ohio-976, ¶ 14 (8th Dist.).

{¶ 36} We note that at the hearing, the agency could not explain why it used the Newburgh Heights address for father. Unlike some other cases this court has considered, it is unclear whether service was legitimately directed to an address where the agency could reasonably anticipate father would receive it. *Compare King*, 2021-Ohio-1717, at ¶ 27 (8th Dist.) (summons and complaint sent to defendant’s statutory agent as listed with secretary of state); *Shiftmed*, 2025-Ohio-1554, at ¶ 15 (8th Dist.) (At a hearing, plaintiff introduced “numerous documents demonstrating [defendant’s] past use of the [service address] as a business address[.]”). *See also Hunt v. Alderman*, 2025-Ohio-2944, ¶ 20 (“[S]ervice to Alderman’s former residence did not satisfy the due-process requirement that service be reasonably calculated to reach the defendant.”). Father did state at the hearing, however, that mother at some point lived at the Newburgh Heights address.

We will assume, for the sake of argument, that the agency is entitled to the presumption of effective service based on successful ordinary mail delivery of the initial summons to the Newburgh Heights address.

{¶ 37} That does not end the inquiry. Father “is entitled to attempt to rebut this presumption with sufficient evidence of nonservice.” *Shiftmed* at ¶ 26. “A failure of service may . . . occur where “the defendant does not receive the summons and complaint, even though the plaintiff complied with the civil rules and service was made at an address where the plaintiff could reasonably anticipate that the defendant would receive it.”” *King* at ¶ 26, quoting *Chuang Dev. L.L.C. v. Raina*, 2017-Ohio-3000, ¶ 32 (10th Dist.), quoting *Erin Capital Mgt. v. Fournier*, 2012-Ohio-939, ¶ 19 (10th Dist.). *See also Rafalski v. Oates*, 17 Ohio App.3d 65, 67 (8th Dist. 1994) (Where the defendant never received the summons and complaint, she was entitled to have the judgment against her vacated even where the plaintiff complied with the civil rules and service was made at an address where the plaintiff could reasonably have anticipated the defendant would receive it.).

{¶ 38} The “presumption of proper service may be rebutted by evidence that the defendant did not reside, nor received mail, at the address to which such ordinary mail service was addressed.” *Hook*, 2017-Ohio-976, at ¶ 15 (8th Dist.), citing *McWilliams v. Schumacher*, 2013-Ohio-29, ¶ 49 (8th Dist.), citing *Cent. Ohio Sheet Metal, Inc. v. Walker*, 2004-Ohio-2816, ¶ 10 (10th Dist.). “[T]o rebut the presumption of proper service, the [defendant] must produce evidentiary-quality information demonstrating that he or she did not receive service.” *McWilliams* at

¶ 51; *Hathaway Brown School v. Cummings*, 2023-Ohio-374, ¶ 12 (8th Dist.). ““Where the defendant files a motion to vacate judgment, and swears under oath that he or she did not reside at the address to which process was sent, the presumption is rebutted, and it is incumbent upon the plaintiff to produce evidence demonstrating that defendant resided at the address in question.”” *Cherrier*, 2020-Ohio-3280, at ¶ 9 (8th Dist.), quoting *Hook* at ¶ 15, quoting *Watts v. Brown*, 1983 Ohio App. LEXIS 15311, *14-15 (8th Dist. Aug. 4, 1983).

{¶ 39} We acknowledge that this court has held that “[a] trial court is not required . . . to give preclusive effect to a movant’s sworn statement that he did not receive service of process when the record contains no other indication that service was ineffectual” and that a trial court therefore “may assess the credibility and competency of the submitted evidence of nonservice.” *K&D Mgt., L.L.C. v. Thomas*, 2023-Ohio-617, ¶ 21 (8th Dist.). Here, however, the agency made little effort to attack father’s credibility, and the trial court itself made no credibility findings whatsoever.

{¶ 40} The agency argued in its brief below that father’s evidence “that he owned the home . . . in Garfield Heights . . . does not sufficiently rebut the presumption that he was successfully served at a different address.” Despite the agency’s suggestions to the contrary, however, the affidavit father supplied with his motion to vacate did not merely aver that he owned the Garfield Heights home. He swore under oath that he had resided at the Garfield Heights residence “continually and exclusively” since 2008. He swore that he “never lived” at the Newburgh

Heights address and therefore “never received any correspondence” regarding the custody proceedings. He swore that “prior to the 2025 filing by child support,” he had not been served with anything, including a summons, concerning the custody proceedings. The agency did not cross-examine father and did not present witnesses. As already noted, the trial court made no credibility findings at the hearing or in its single-sentence decision. *See Blon v. Royal Flush, Inc.*, 2022-Ohio-1958, ¶ 27 (7th Dist.) (The affidavit of plaintiff’s counsel did not counter defendant’s statements regarding his residence, plaintiff “did not utilize the hearing on the motion to vacate to present testimony, such as by cross-examining” the defendant, and “the trial court’s decision did not appear to be based on credibility.”). Accordingly, father successfully rebutted the presumption of proper service and the burden shifted back to the agency “to demonstrate that he had, in fact, been properly served.” *Shiftmed*, 2025-Ohio-1554, at ¶ 27 (8th Dist.).

{¶ 41} Where, as here, a defendant rebuts the presumption of service, “it is incumbent upon the plaintiff to produce evidence demonstrating that defendant resided at the address in question.” *Hook*, 2017-Ohio-976, at ¶ 15 (8th Dist.), quoting *Watts*, 1983 Ohio App. LEXIS 15311, at *14-15 (8th Dist. Aug. 4, 1983); accord *Tomcho*, 2018-Ohio-4613, at ¶ 20 (8th Dist.); *Cherrier*, 2020-Ohio-3280, at ¶ 12 (8th Dist.). *See also Shiftmed* at ¶ 28.

{¶ 42} Nothing in the agency’s opposition brief or in its presentation at the hearing — which included no sworn testimony — established that father ever resided at the Newburgh Heights address, that he ever received mail at that location, or that

he in fact received service of the complaint. At the hearing, the agency's arguments essentially mirrored those in its written opposition to father's motion to vacate, where it relied heavily on the fact that multiple pleadings and notices had been mailed to the Newburgh Heights address and were never returned as undeliverable. The agency wrote that "neither CCDCFS nor the Court had any reason to believe [father] did not receive the mailings."

{¶ 43} We fail to see how the fact of successful delivery to the Newburgh Heights address indicates that father lived there. In its brief on appeal, as below, the agency argues that the fact that no items addressed to the Newburgh Heights address were returned as undeliverable "clearly shows that the address used in Newburgh Heights was an address the United States Postal Service considered to be an address for [father]." The fact that an envelope was not returned establishes, at most, that the postal service did not report a failure of delivery to the physical address. It does not independently suggest that the person named on the envelope resided or received mail there. In *Hook*, 2017-Ohio-976 (8th Dist.), just as in the present case, attempted service by certified mail was returned unclaimed and ordinary mail was thereafter delivered successfully. The judgment against the defendant was properly vacated, however, because the defendant rebutted the presumption of service and the plaintiff failed to provide evidence that the defendant actually resided at the disputed address. *See also Blon*, 2022-Ohio-1958, at ¶ 22 (7th Dist.) (The fact that ordinary mail was not returned did not establish that the defendant "still lived or received mail at that address.").

{¶ 44} The agency has cited no authority suggesting that mere delivery of ordinary mail to an address the postal service recognizes as valid demonstrates that a particular individual lives or receives mail there. In fact, accepting such a proposition would terminate the analysis at the analytical starting point, where service is made in compliance with the civil rules to an address where the plaintiff could reasonably anticipate the defendant would receive it. Such compliance, however — including unreturned ordinary mail under Civ.R. 4.6(D) as in *Hook* — results only in a rebuttable presumption of proper service. *Shiftmed*, 2025-Ohio-1554, at ¶ 26 (8th Dist.); *King*, 2021-Ohio-1717, at ¶ 26 (8th Dist.).

{¶ 45} Finally, the agency has not cited any cases suggesting that mother's possible connection to the Newburgh Heights property has any bearing on proper service of father. *See, e.g., Fournier*, 2012-Ohio-939 (10th Dist.) (holding trial court erred in not vacating a judgment where the plaintiff had attempted to serve the defendant at her parents' address).

{¶ 46} “[I]n determining whether valid service occurred, a trial court cannot wholly disregard testimony that is uncontradicted by any other witness or circumstance.” *Fournier* at ¶ 29, citing *Hayes v. Kentucky Joint Stock Land Bank*, 125 Ohio St. 359, 362, 365 (1932). Father's affidavit was un rebutted. No evidence contradicted father's sworn averments that he resided exclusively at the Garfield Heights home, never lived at the Newburgh Heights residence, and had never been served with the summons or other pleadings relating to custody of D.R. At the hearing, the juvenile court heard arguments from the agency's counsel but took no

sworn testimony. The only sworn testimony was from father, in the form of a straightforward affidavit. The juvenile court wisely held a hearing, but it “never placed the burden on [CCDCFS] to establish that it obtained proper service on [father]” and then “summarily denied the motion to vacate despite insufficient evidence of proper service.” *One Main Fin. Group, LLC v. Knight*, 2026-Ohio-1660, ¶ 20 (8th Dist.).

{¶ 47} In short, the agency failed to introduce any evidence that refuted father’s sworn testimony (in his affidavit) or his unsworn statements (at the hearing) that he did not reside at the Newburgh Heights residence and that he never received service of the complaint. It therefore failed to satisfy its burden to establish that service was properly made on father. *See Shiftmed*, 2025-Ohio-1554, at ¶ 29 (8th Dist.); *Cherrier*, 2020-Ohio-3280, at ¶ 15 (8th Dist.) (It was proper to vacate judgment where plaintiff elicited no testimony and presented no evidence to refute defendant’s testimony that he did not live at the address in question.); *Cummings*, 2023-Ohio-374, at ¶ 11-17 (8th Dist.) (Plaintiff’s failure to produce any evidence to rebut defendant’s testimony that he did not live at the service address entitled defendant to have judgment vacated.). *Compare In re K.J.*, 2023-Ohio-615, ¶ 20-21 (8th Dist.) (affirming denial of motion to vacate where father failed to file an affidavit and OCSS submitted an affidavit to demonstrate father’s residence at the service address).

{¶ 48} Without sufficient evidence of proper service upon father, the juvenile court lacked personal jurisdiction to enter any judgments against him and the

juvenile court abused its discretion in denying his motion to vacate. The juvenile court's judgments against father are void, and father is entitled to have the judgments vacated.

{¶ 49} Father's first assignment of error is sustained. We reverse the juvenile court's judgment denying father's motion to vacate and remand the case to the juvenile court to vacate its judgments as to father. Because the juvenile court lacked personal jurisdiction over father, the prior adjudicatory and dispositional orders cannot bind father or adjudicate his parental rights. We stress that our ruling today voids the underlying judgments only to the extent that they affect father's rights; it does not invalidate the proceedings as to parties over whom jurisdiction existed or require an immediate change in D.R.'s placement. *See, e.g., In re M. M.*, 2002 Ohio App. LEXIS 463, *18-19 (8th Dist. Feb. 7, 2002) (If service on father was defective, "the legal custody order would be invalid as to him only, and he could assert his own case."). *See also In re R.P.*, 2017-Ohio-276, ¶ 3-6 (9th Dist.) (summarizing proceedings after original judgment vacated). On remand, the juvenile court must afford father, upon proper notice, the proceedings he was denied and may enter such lawful temporary orders as are necessary to protect D.R. pending such proceedings.

{¶ 50} The resolution of father's first assignment of error renders his second assignment of error moot. App.R. 12(A)(1)(c). Indeed, as discussed more fully above, "the Civ.R. 60(B) requirements are not applicable when a party asserts the trial court lacked personal jurisdiction because of improper service of process." *King*, 2021-Ohio-1717, at ¶ 20 (8th Dist.). We therefore "need not consider the

parties' various arguments regarding how [father] did or did not meet the requirements of Civ.R. 60(B)." *Id.* at ¶ 21. Rather, "[t]he issue to be decided is whether effective service of process was made." *Id.*

{¶ 51} Judgment reversed. The case is remanded to the juvenile court to vacate its judgments as to father.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court, juvenile division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

DEENA R. CALABRESE, JUDGE

MICHELLE J. SHEEHAN, A.J., and
ANITA LASTER MAYS, J., CONCUR