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2012 IL App (3d) 110798-U

Order filed October 10, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
VIVIAN LAVERNE JAMISON,)	of the 12th Judicial Circuit,
)	Will County, Illinois,
Petitioner-Appellee,)	
)	Appeal No. 3-11-0798
and)	Circuit No. 10-D-2320
)	
ELVIS DONNELL JAMISON,)	Honorable
)	Bennett J. Braun,
Respondent-Appellant.)	Judge, Presiding.
)	

JUSTICE O'BRIEN delivered the judgment of the court.
Justices McDade and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* A judgment of dissolution of marriage was vacated as void because the trial court failed to acknowledge or rule upon the husband's responsive motions before finding him in default for failing to respond or appear in the dissolution proceedings.

¶ 2 The petitioner, Vivian Laverne Jamison, filed a petition for dissolution of her marriage to the respondent, Elvis Donnell Jamison. During the dissolution proceedings, the trial court found

that Elvis was in default for failing to respond or appear. Thereafter, the trial court entered a judgment of dissolution. Elvis appealed.

¶ 3

FACTS

¶ 4 Vivian's petition for dissolution of marriage, filed on November 29, 2010, alleged that there had been an irretrievable breakdown of her marriage to Elvis. The petition also alleged that Elvis was currently incarcerated. In response, on May 3, 2011, Elvis mailed several filings from the Big Muddy Correctional Center, including, *inter alia*, a motion to dismiss the petition for dissolution and a petition for an order of *habeas corpus ad testificandum*. The *habeas corpus* petition was typed, but the date and time of the hearing on the petition for dissolution of marriage were left blank.

¶ 5 On May 19, 2011, Vivian filed a motion for default, seeking to default Elvis for failing to plead to the petition for dissolution of marriage. After a hearing, the trial court granted the default, finding that Vivian's counsel presented due proof of notice to Elvis, and finding that Elvis did not file an appearance or a response. However, the trial court did not address Elvis's filings, particularly the motion to dismiss.

¶ 6 On May 23, 2011, Elvis mailed another motion from Big Muddy Correctional Center, a motion to dismiss the default. However, on July 5, 2011, the trial court again found Elvis defaulted for failing to file an appearance or response. In its order, the trial court did not mention the motion to dismiss the default, or Elvis's earlier motion to dismiss the petition. In response, on July 25, 2011, Elvis mailed from Big Muddy Correctional Center a motion to vacate or set aside on the default. Thereafter, on August 1, 2011, Elvis mailed a motion for a stay, alleging that he would be released from prison on August 29, 2011.

¶ 7 However, without acknowledging or ruling on any of Elvis's motions, the trial court proceeded with a prove up on August 11, 2011. The trial court noted that Elvis had previously been defaulted, and stated that it would enter a judgment for dissolution of marriage on September 20, 2011. It ordered a copy of the proposed judgment be sent to Elvis and ordered him to be present on September 20. Elvis did not appear, and the trial court entered the final judgment of dissolution of marriage on September 22, 2011. Elvis appealed.

¶ 8 ANALYSIS

¶ 9 Elvis argues that he was denied due process because he was not allowed to appear in court for the dissolution proceedings. He also argues that the trial court abused its discretion in seizing his property and that Vivian did not prove grounds for dissolution of marriage. We find that the due process argument is dispositive, so we do not reach the other issues.

¶ 10 Initially, we note that Vivian did not file an appellee brief. It is not our role to serve as an advocate for the appellee or search the record for reasons to sustain the trial court's judgment, although we may do so if justice so requires. *First Capitol Mortg. Corp. v. Talandis Constr. Corp.*, 63 Ill. 2d 128 (1976). Also, even absent an appellee brief, if the appellant's brief demonstrates *prima facie* reversible error, and the record supports such contentions of error, we may reverse the trial court. *First Capitol Mortg. Corp.*, 63 Ill. 2d at 133.

¶ 11 Once a party files a complaint, or other initial pleading, the defending party must answer, or move to dismiss the pleading under the provisions of the Code of Civil Procedure. *Blazyk v. Daman Express, Inc.*, 406 Ill. App. 3d 203, 207 (2010). A default judgment may be entered if the defending party fails to appear or plead. 735 ILCS 5/2-1301(d) (West 2008). It is within a trial court's discretion to set aside any default prior to the entry of a final order or judgment. 735

ILCS 5/2-1301(e) (West 2008). Generally, we review for an abuse of discretion a trial court's ruling on whether to set aside a default judgment. *In re Marriage of Ward*, 282 Ill. App. 3d 423 (1996). Our overriding consideration is whether substantial justice was done between the litigants. *Ward*, 282 Ill. App. 3d at 433. There are a number of factors that courts usually take into consideration, but it is not necessary to address any of them in this case because the trial court completely ignored Elvis's motion to set aside the default, in addition to ignoring Elvis's responsive pleading, petition for *habeas corpus*, and motion to stay. Under the circumstances, Elvis was denied substantial justice.

¶ 12 A judgment is void if it was entered by a court that lacked jurisdiction, over the parties or the subject matter, or lacked the inherent power to enter the order. *Potenz Corp. v. Petrozzini*, 170 Ill. App. 3d 617 (1988). A judgment is not void just because it is erroneous, but a judgment can be void if the trial court acted in a manner inconsistent with due process. *Potenz*, 170 Ill. App. 3d at 620. In this case, we find that the trial court's failure to acknowledge, address, or rule on any of Elvis's motions in the dissolution proceeding, especially in light of the fact that the trial court was aware that Elvis was incarcerated, was inconsistent with due process. The judgment of dissolution of marriage is void.

¶ 13 CONCLUSION

¶ 14 The judgment of the circuit court of Will County is vacated.

¶ 15 Vacated and remanded.