

¶ 3

BACKGROUND

¶ 4 This action originated on July 22, 1991, when Heather filed a complaint to determine parentage of Brandon Gage Dintelmann, who was born on October 2, 1990. The complaint alleged "[t]hat since April, 1991, [Robert] has maintained the physical custody of the minor child, Brandon Gage Dintelmann, and refuses to allow [Heather] to have contact with her minor child." On October 4, 1991, Robert responded to the complaint by acknowledging paternity of Brandon and asking the court to grant him temporary and permanent custody, as well as child support and attorney fees.

¶ 5 On October 23, 1991, the circuit court entered an order finding that the parties had reached an oral agreement and were in the process of executing a written agreement. The cause was reset for November 6, 1991. On that date, the circuit court entered a judgment of paternity, custody, support, and visitation. The circuit court awarded custody of Brandon to Robert, awarded visitation to Heather, and ordered Heather to pay \$50 per week in child support to Robert. The circuit court noted that the \$50 amount was in Brandon's best interests, even though the amount was lower than the 20% statutory guideline amount. See Ill. Rev. Stat. 1991, ch. 40, ¶ 505 (now codified as 750 ILCS 5/505(a)(1) (West 2010)).

¶ 6 On May 11, 1999, Heather filed a *pro se* motion requesting the court to modify the child support order on the basis that Brandon had been living with her since 1997. The cause was set for hearing on June 11, 1999. Both parties appeared on that date and agreed that since 1997, Brandon had been residing with Heather during the school year and with Robert during the summer. In its order entered on the same date, the circuit court ordered the parties to "decide who will have physical custody permanently at the end of th[e] summer," and the court "suspended [current support] pending the next hearing date" scheduled for September 13, 1999. In an order entered on September 14, 1999, the court found that Brandon was living with Heather and it therefore "abated [current support] while [Brandon] resides with

Heather." The court stated that the "[c]ause may be reset upon motion of either party."

¶ 7 On May 16, 2003, Robert filed a *pro se* motion seeking "to collect current and back child support." On July 14, 2003, both parties appeared *pro se* and the matter was reset for a pretrial conference on September 15, 2003. The circuit court ordered both parties to file financial statements within 30 days and ordered Heather to "look for work and keep [a] diary of job search." On September 15, 2003, Heather appeared with counsel and Robert appeared *pro se*. The matter was reset for October 14, 2003. It was later reset on the circuit court's motion on two separate occasions. On February 3, 2004, Robert appeared *pro se* and counsel for Heather did not appear because he was on federal jury duty. The matter was continued until February 24, 2004.

¶ 8 On February 24, 2004, Robert appeared *pro se*. Heather failed to appear, but Heather's attorney appeared. In its order, the circuit court stated the following:

"a) [Robert] informs the court that he personally spoke w/ [Heather] on 2-23-04 and informed her of this trial date;

b) [Heather] fails to appear; her counsel appears;

c) [Heather] has not kept her counsel or the clerk updated as to her current address.

The court orders that [Heather] is found in contempt of court for failing to pay child support in the amount of \$32,258.00[.]"

¶ 9 On March 3, 2004, Heather filed a motion for contempt and a motion to vacate the February 24, 2004, order. In the motion for contempt, Heather alleged that Robert had refused to allow Heather visitation with Brandon and had indicated that he would continue to do so until Heather paid the \$32,258 judgment. Heather asserted that such a position was unreasonable and against the law and asked that Robert be held in contempt. In the motion to vacate, Heather asserted that she did not have actual notice of the February 24 hearing due to a miscommunication between the clerk's office and her counsel and that contrary to

Robert's assertion at the hearing, he never told her about the court date.

¶ 10 The next filing in this matter did not occur until January 9, 2009, when the St. Clair County State's Attorney Child Support Division (the State) on behalf of Robert filed a petition for indirect civil contempt, alleging that Heather "willfully and contemptuously failed to comply with the [previous order awarding Robert \$32,258.00 in back child support] and is in arrears \$61,369.13 of which \$16,661.13 is interest as of November 30, 2008." On March 23, 2009, Heather appeared at the contempt hearing and made an oral motion to continue to allow her time to obtain counsel. In its order entered on March 23, 2009, the circuit court granted Heather's motion to continue and dismissed for want of prosecution her previous March 3, 2004, motion to vacate the February 24, 2004, order.

¶ 11 On April 6, 2009, Heather, represented by new counsel, filed a motion to dismiss the petition for indirect civil contempt and a motion for leave to file a counterclaim, alleging, *inter alia*, that the State lacked standing to bring the petition for contempt, the State should be estopped from collecting monies, and the sum should be waived for lack of action.

¶ 12 At a hearing on June 2, 2009, the State clarified that its most recent petition for contempt requested the court to hold Heather in contempt for failing to pay the \$32,258 due pursuant to the previous February 2004 contempt order. On August 7, 2009, after hearing arguments, the circuit court entered an order denying Heather's motion to dismiss the State's contempt petition. In its order, the circuit court found that the arrearage judgment of February 24, 2004, was valid and supported the contempt petition. The circuit court found that Heather's motion to vacate the February 24, 2004, judgment did not invalidate the judgment because Heather never acted on the motion and it was therefore properly dismissed pursuant to Twentieth Judicial Circuit Rules of Practice local rule 6.01(h) (20th Judicial Cir. Ct. R. 6.01(h) (Dec. 12, 1991)). The circuit court denied Heather's motion to dismiss and motion for leave to file a counterpetition. The circuit court specifically found that Heather's

motion for leave to file a counterclaim against Robert "has no basis for at least two reasons: (1) the parties' child is emancipated and (2) there is no child support order [against Robert] upon which the State could attempt collection." On August 12, 2009, the circuit court entered a money judgment against Heather in the amount of \$44,708 in principal and \$16,661.13 in interest. Heather filed a timely notice of appeal.

¶ 13 ANALYSIS

¶ 14 Heather first contends that the State is barred from bringing this action on behalf of Robert under the doctrine of *res judicata*. Robert replies that to a large extent, the State's petition sought to enforce an earlier judgment against Heather, and, therefore, *res judicata* principles do not apply. We agree with Robert.

¶ 15 The doctrine of *res judicata* is based upon the principle that a cause of action, "once adjudicated by a court of competent jurisdiction, should be deemed conclusively settled between the parties and their privies, except in a direct proceeding to review or set aside such adjudication." *Drabik v. Lawn Manor Savings & Loan Ass'n*, 65 Ill. App. 3d 272, 276 (1978). *Res judicata* prevents repetitive litigation in an effort to obtain judicial economy and to protect litigants from the burden of retrying an identical cause of action with the same party or privy. *Pedigo v. Johnson*, 130 Ill. App. 3d 392, 394 (1985). The three requirements of *res judicata* are: (1) a final judgment on the merits rendered by a court of competent jurisdiction, (2) an identity of parties or their privies, and (3) an identity of cause of action. *Cartwright v. Moore*, 394 Ill. App. 3d 1, 6-7 (2009).

¶ 16 As Robert points out, the instant litigation brought by the State on behalf of Robert sought primarily to enforce the \$32,258 judgment for child support entered against Heather on February 24, 2004. This was not a new cause of action brought by the State, but an enforcement action brought on behalf of Robert. Section 10-1 of the Illinois Public Aid Code specifically provides for child support enforcement services by the State on behalf of

persons who are not applicants or recipients of financial aid, but who need assistance in collecting child support. 305 ILCS 5/10-1 (West 2008). Seeking to enforce a judgment does not trigger *res judicata* principles.

¶ 17 The remainder of the State's case brought on behalf of Robert sought to enforce Heather's support obligations incurred after February 24, 2004, and prior to Brandon's emancipation. These support obligations came after the previous judgment was entered and could not have been asserted in the previous litigation because they had not yet arisen. Therefore, we find that the doctrine of *res judicata* in no way precluded the State from attempting to recover on behalf of Robert.

¶ 18 Heather next contends she detrimentally relied upon valid court orders suspending and abating her child support obligations and the State and Robert should be estopped from bringing this action. We disagree.

¶ 19 Equitable estoppel exists where a party, by his or her own statements or conduct, induces a second party to rely, to his or her own detriment, on the statements or conduct of the first party. *In re Marriage of Smith*, 347 Ill. App. 3d 395, 399 (2004). However, a party who claims the benefit of an estoppel cannot shut his eyes to obvious facts or neglect to seek information that is easily accessible and then claim ignorance to others. *McIntosh v. Cueto*, 323 Ill. App. 3d 384, 391 (2001). Such is the case here.

¶ 20 We cannot condone Heather's repeated failure to pay child support. The record is clear that the circuit court entered a \$32,258 judgment order against Heather on February 24, 2004. Heather was aware of the judgment as evidenced by the March 3, 2004, motion to vacate filed on her behalf. However, Heather failed to follow through on the motion and did nothing further until the instant litigation was filed by the State on behalf of Robert. Heather's blatant disregard for the judicial process prohibits her from making an equitable estoppel argument.

¶ 21 Likewise, we are unmoved by Heather's *laches* argument. Heather contends that the circuit court abused its discretion by not applying the equitable doctrine of *laches* to the instant litigation because Robert failed to use due diligence in asserting his claim. Robert responds that the circuit court was within its discretion in rejecting Heather's *laches* defense because Heather failed to show unreasonable delay on his part or that his actions or the State's actions caused Heather any "material prejudice." We agree with Robert.

¶ 22 "*Laches* is an equitable doctrine that precludes the assertion of a claim by a litigant whose unreasonable delay in raising that claim has prejudiced the opposing party." *In re Marriage of Smith*, 347 Ill. App. 3d at 401. The party asserting *laches* as a defense must prove the following two elements: (1) lack of diligence by the party asserting the claim and (2) injury or prejudice as a result of the delay in instituting the action to the party asserting *laches*. *Id.* Whether to apply *laches* to a case rests within the sound discretion of the trial court, and we will not disturb the trial court's decision absent an abuse of discretion. *Id.*

¶ 23 Even taking into account the gaps in time in the litigation, we fail to see how Heather was prejudiced. Our supreme court has rejected the argument that being required to pay accumulated child support constitutes prejudice. *Blisset v. Blisset*, 123 Ill. 2d 161, 170 (1988). In *Blisset*, the court specifically stated, "[A] spouse is not injured because he is forced to pay the accumulated support in one lump sum as opposed to weekly payments as ordered." *Blisset*, 123 Ill. 2d at 170 (quoting *Finley v. Finley*, 81 Ill. 2d 317, 330 (1980)). Thus, Heather has failed to establish a necessary element of *laches*, that she was injured as the result of the delay. See *Heinze v. Heinze*, 79 Ill. App. 3d 1121, 1190 (1979) (husband failed to establish injury or prejudice to him by wife's delay in seeking enforcement of her rights under their divorce decree in that he benefitted from the delay because he retained the use of funds that he otherwise would not have had).

¶ 24 Heather insists that if Robert had acted earlier, it might have moved her to act on her

motion to vacate before it was summarily dismissed by the circuit court. However, we decline to reward Heather for her own lack of diligence by allowing her to go forward with a *laches* claim. See generally *City of Rockford v. Suski*, 307 Ill. App. 3d 233, 243-44 (1999) (the ongoing nature of the refusal to comply with the trial court's order over an extended period of time was a sufficient basis to find that *laches* did not bar prosecution of contempt charge). Considering the record as a whole, we cannot say the circuit court abused its discretion in refusing to apply *laches* in the instant case.

¶ 25 Heather lastly argues that because her obligation to pay child support was abated on June 11, 1999, her child support payments continue to abate.

¶ 26 The circuit court addressed and superceded the 1999 abatement order with its February 24, 2004, order. In this order, the circuit court specifically found Heather in contempt for failing to pay child support and ordered her to pay \$32,258. Child support continued to accrue after this award because, unless expressly provided by a valid court order, "the obligation to support a child terminates upon the emancipation of the child." *Finley v. Finley*, 81 Ill. 2d 317, 325 (1980).

¶ 27 Heather's argument regarding abatement essentially attacks the circuit court's February 24, 2004, judgment finding her in contempt of court for failing to pay the child support due at that time. However, Heather cannot now seek to litigate issues that should have been raised prior to the February 24, 2004, contempt order. While Heather's attorney filed a motion to vacate the judgment within 30 days of its entry, Heather failed to set the motion for hearing or do anything further until the State sought to recoup the arrearage on Robert's behalf. After five years, the circuit court determined that Heather had abandoned her motion to vacate and formally dismissed it pursuant to local circuit court rule 6.01(h), which provides:

"(h) Failure to Call Motions for Hearing. The burden of obtaining a motion

setting in a civil case is on the party making the motion. If a motion setting is not obtained by the moving party within ninety (90) days from the date it is filed, the court may deem the motion withdrawn and deny the relief requested with or without prejudice." 20th Judicial Cir. Ct. R. 6.01(h) (Dec. 12, 1991).

We are not to interfere with a trial court's exercise of its authority under local rules in the absence of facts showing an abuse of discretion. *In re Marriage of Jackson*, 259 Ill. App. 3d 538, 543 (1994).

¶28 "Local rules are not mere 'technicalities' designed to ensnare unwary litigants; instead, they constitute important safeguards for the efficient administration of justice." *In re Marriage of Jackson*, 259 Ill. App. 3d at 543. In the instant case, Heather offered no satisfactory explanation for her delay and did not appeal from the March 23, 2009, dismissal of her abandoned motion to vacate. *In re Marriage of Waddick*, 373 Ill. App. 3d 703, 707 (2007) ("notice of appeal must be filed within 30 days after entry of the order disposing of the postjudgment motion"). At times, Heather acted *pro se*, but the motion to vacate was filed by counsel and subsequently abandoned. As pointed out in *Jackson*, "[t]rial courts must not allow the losing party to file a motion to vacate, let it languish, and then, when the losing party is in better circumstances, use that motion as a vehicle to contest the original issues before the court." *In re Marriage of Jackson*, 259 Ill. App. 3d at 543. That is exactly what Heather attempts to do in the instant case.

¶29 Heather failed to appeal the February 24, 2004, contempt order (*Revolution Portfolio, LLC v. Beale*, 341 Ill. App. 3d 1021, 1025 (2003) (order of contempt imposing monetary penalty must be appealed within 30 days of its entry or be barred)), failed to proceed on her motion to vacate the contempt order (20th Judicial Cir. Ct. R. 6.01(h) (Dec. 12, 1991)), failed to appeal the circuit court's dismissal of her motion to vacate the contempt order (*In re Marriage of Waddick*, 373 Ill. App. 3d at 707 ("notice of appeal must be filed within 30 days

after entry of the order disposing of the postjudgment motion")), and failed to comply with the contempt order. Her disobedience cannot be justified by retrying the issues as to whether the February 24, 2004, contempt order should have issued in the first place. See *Anderson Dundee 53 L.L.C. v. Terzakis*, 363 Ill. App. 3d 145, 154 (2005).

¶ 30 To allow Heather, the noncustodial parent, to escape from fulfilling her support obligation due to a blatant disregard for the judicial process would violate the public policy of our state as codified in the Illinois Parentage Act of 1984. See 750 ILCS 45/1.1 (West 2008) ("Illinois recognizes the right of every child to the physical, mental, emotional and monetary support of his or her parents under this Act"). Accordingly, the February 24, 2004, order stands, and the circuit court's August 7, 2009, contempt order, entered, in part, for failing to comply with the previous February 24, 2004, order, must be affirmed. See *Busey Bank v. Salyards*, 304 Ill. App. 3d 214, 238 (1999) (on review of judgment holding defendants in contempt for failure to turn over funds, failure to appeal previous turnover order left appellate court without jurisdiction to review merits of turnover order).

¶ 31 CONCLUSION

¶ 32 For the foregoing reasons, the judgment of the circuit court of St. Clair County is hereby affirmed.

¶ 33 Affirmed.