

2016 IL App (1st) 152480-U  
No. 1-15-2480  
October 18, 2016

SECOND DIVISION

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

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IN RE MARRIAGE OF CAROL J. REDA,	)	Appeal from the Circuit Court
	)	Of Cook County.
Petitioner-Appellant,	)	
	)	
v.	)	No. 10 D 9246
	)	
JOHN A. REDA,	)	
	)	The Honorable
Respondent-Appellee.	)	Mark Joseph Lopez,
	)	Judge Presiding.

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JUSTICE NEVILLE delivered the judgment of the court.  
Presiding Justice Hyman and Justice Mason concurred in the judgment.

**ORDER**

¶ 1       *Held:* A circuit court retains jurisdiction to enforce and modify a judgment incorporating a marital settlement agreement.

¶ 2       The petitioner, Carol Reda, filed a petition for dissolution of marriage from the respondent, John Reda, on September 21, 2010. On October 23, 2013, the parties entered into a settlement agreement which was proved up in court on the same day. The circuit court entered a judgment of dissolution of marriage on December 10, 2013, which incorporated the October 23, 2013, settlement agreement.

¶ 3 First, on September 4, 2014, John filed a section 2-1401 petition to modify the December 10, 2013 judgment of dissolution. Second, on September 22, 2014, John filed a section 511 petition requesting that the court modify the judgment of dissolution and allocate the parties' 2012 income tax liability. The circuit court denied the section 511 petition on October 23, 2014. On December 18, 2014, the circuit court denied John's section 2-1401 petition, but granted John's motion to reconsider and vacated the October 23, 2014 order.

¶ 4 On January 16, 2015, Carol filed a motion to reconsider the December 18, 2014 order granting John's section 511 petition. On February 9, 2015, the circuit court granted John's section 511 petition for contribution, allocated the parties' joint 2012 income tax liability, and granted Carol's motion to reconsider the December 18, 2014 order. On February 23, 2015, Carol filed a motion to reconsider the February 9, 2015 order and it was denied on August 17, 2015. On September 1, 2015, Carol filed an appeal seeking a review of the February 9, 2015 and August 17, 2015 orders, maintaining that the circuit court did not have jurisdiction to hear John's section 511 petition because it was the second motion to modify the dissolution judgment.

¶ 5 We find that John filed a petition to enforce or modify the December 10, 2013 judgment of dissolution of marriage predicated on section 511 of the Illinois Dissolution of Marriage Act (IMDMA) (750 ILCS 5/511 (West 2010)) and requested that the court allocate the parties' joint 2012 income tax liability. We also find that section 511 of the IMDMA permits a party to file a petition to enforce or modify a judgment of dissolution (750 ILCS 5/511 (West 2010)) and that the circuit court retains jurisdiction to enforce or modify its decrees. *Waggoner v. Waggoner*, 78 Ill. 2d 50, 53 (1979); see also *In re Marriage of Hall*, 404 Ill.

App. 3d 160, 164 (2010). We further find that John's section 2-1401 petition commenced a new action that was distinct and apart from the prior dissolution action where John filed his section 511 petition to enforce or modify the judgment of dissolution. *Burnicka v. Marquette National Bank*, 88 Ill. 2d 527, 530 (1984)). Therefore, we hold that the circuit court had jurisdiction to hear John's section 511 petition because the court retained jurisdiction to enforce or modify its dissolution judgment. Accordingly, we affirm the circuit court's February 9, 2015 and August 17, 2015 orders.

¶ 6

#### BACKGROUND

¶ 7

On September 21, 2010, Carol filed a petition for dissolution of marriage from her husband, John. On October 23, 2013, the parties entered into a settlement agreement which was proved up in court on the same day.

¶ 8

Section 10.1 of the settlement agreement provided, *inter alia*, that "[a]ny refunds for 2012 will be divided equally between the parties." Section 10.4 of the settlement agreement provided:

"Each party represents that, to the best of his or her knowledge, the parties have paid all income tax due to the Internal Revenue Service, to the State of Illinois and any other jurisdiction owed income tax. With respect to any joint income tax returns filed by the parties, both parties covenant and agree that, in the event of any audit or investigation of the returns, each party shall pay and be responsible for any and all liabilities \*\*\*."

¶ 9 The parties filed their joint 2012 income tax return on November 8, 2013. On December 10, 2013, the circuit court entered a judgment of dissolution of marriage which incorporated the October 23, 2013, settlement agreement.

¶ 10 On December 16, 2013, Carol and John received a notice from the California Franchise Tax Board indicating that there was a balance of \$12,789.74 due for their 2012 taxes. On December 23, 2013, Carol and John received a notice from the Internal Revenue Service indicating that they had a balance of \$33,361.39 due for their 2012 taxes. John paid the parties' state and federal 2012 income taxes of \$46,151.13 out of marital assets, the proceeds of a Jackson National Life Annuity.

¶ 11 Pursuant to Article VI of the settlement agreement, on or before December 9, 2013, John was required to pay Carol \$250,000 from the marital assets before they were divided and \$50,000 from his own funds to reimburse Carol for any funds John took from the marital funds since the filing of the petition for dissolution of marriage. Pursuant to Article VIII of the settlement agreement, John was required to pay \$94,950 to Carol for her interest in Sound Distribution and Sales, Ltd. on or before December 9, 2013. The total amount owed to Carol was \$394,950 and it was to be paid on or before December 9, 2013.

¶ 12 On December 18, 2013, Carol filed a petition for rule to show cause because John failed to remit payment in the amount of \$394,950 to Carol. On January 7, 2014, the circuit court entered an order for John to show cause why he should not be held in contempt for refusing to comply with the December 10, 2013 judgment of dissolution of marriage. On February 5, 2014, John was held in indirect civil contempt for failure to obey the circuit court's order and was given until February 28, 2014 for the court to determine if John should be purged of

contempt and other sanctions. The parties later agreed to continue the February 28, 2014 court date to March 26, 2014.

¶ 13 On February 8, 2014, Carol filed her petition for fees and costs requesting that the circuit court enter an order requiring John to pay \$2,850 for the six hours her attorney worked on the case.

¶ 14 On March 7, 2014, Carol filed her second petition for rule to show cause after she had neither received the \$394,950 from John, nor 50% of the sums from numerous marital accounts that Carol maintained John failed to remit as required by the December 10, 2013 judgment of dissolution of marriage.

¶ 15 On March 26, 2014, there was a contempt hearing and a hearing on Carol's second petition for rule to show cause, and the circuit entered an order finding that because John paid \$395,000 on February 13, 2014, a "partial purge is entered." The circuit also ordered that the issue of attorneys' fees on the first petition and the issue of interest from December 10, 2013 to February 13, 2014 on the \$395,000 would be continued for a hearing on May 2, 2014. The circuit also gave John time to respond to Carol's second petition for rule to show cause.

¶ 16 On March 31, 2014, Carol filed an amended petition for fees and costs seeking a court order requiring John to pay \$3,087.50 for the 6.5 hours Carol's attorney worked on the case. On May 2, 2014, the circuit court entered an order on Carol's "current petition" for rule to show cause requiring John to pay Nisen & Elliot (Carol's attorney's firm) \$2,375 for the contempt ruling "on or before June 2, 2014 for attorneys fees." The order also required John to pay Carol \$6,330.35 "on the prior contempt ruling on or before June 2, 2014 for Interest."

The court also granted Carol leave to "file a fee petition on current rule and Interest Petition on monies due and not paid from Dec.10, 2013 [judgment of dissolution of marriage] to present."

¶ 17 On July 3, 2014, Carol filed a petition for fees and costs requesting that the circuit court enter an order requiring John to pay \$6,531.25 for the 13.75 hours her attorney worked on the case. On September 23, 2014, the court entered an order in the amount of \$3,200.00 against John and in favor of Carol as a sufficient amount for attorneys' fees pursuant to section 508(b) of the IMDMA. 750 ILCS 5/508(b) (West 2012).

¶ 18 On July 7, 2014, Carol filed her petition for interest seeking \$8,046.72 in interest from John that was due on \$170,000 that he did not pay on time. The payment was due on December 10, 2013, but he paid on June 19, 2014.

¶ 19 On July 9, 2014, the circuit court entered an order on Carol's second petition for rule to show cause and her petition for fees and interest. The circuit court ordered John to pay Carol \$8,046.72 on or before August 8, 2014 as interest on the \$170,000. The circuit court also gave John until September 10, 2014 to "pay \$30,000 on the judgment."

¶ 20 In August 2014, Carol filed her amended second petition for rule to show cause seeking an order requiring John to: (i) release one half of his interest in real property (1235 North Cleaver, Unit #3, Chicago, Illinois 60622); (ii) pay \$8,046.72 which was due on August 8, 2014; and (iii) pay \$1,729.26 in interest on the \$30,000 that was due on December 10, 2013, but that was paid on August 1, 2014.

¶ 21 John' Section 2-1401 Petition

¶ 22 On September 4, 2014, John filed (i) a response to Carol's amended second petition for rule to show cause, and (ii) a counterpetition for modification of the December 10, 2013 judgment of dissolution of marriage pursuant to section 2-1401 of the Illinois Code of Civil Procedure. 735 ILCS 5/2-1401 (West 2010). In his counterpetition, John requested that the circuit court enter an order deleting the reference to unit 3 of the real property located at 1235 North Cleaver, Chicago, Illinois from section 7.1 of the marital settlement agreement. John maintained that after quit-claiming his interest in units 1 and 2 to a company he has 50% ownership in, Backstage Investments, LLC, he only owned an interest in units 1 and 2, but not unit 3 of the real property located at 1235 North Cleaver, Chicago, Illinois. He also maintained that because he never owned an interest in unit 3, it was never marital property and never a part of the marital estate. He further stated that even though the settlement agreement provided that John would cause Backstage Investments, LLC to transfer one-half of its interest in units 1, 2 and 3 to Carol, John cannot cause such a transfer because his partner, Michael Flynn, is the sole owner of unit 3 and does not consent to such a transfer. John explained that including unit 3 in the list was a mutual mistake of the parties that he was not aware of until April 2014. John claimed that he immediately notified Carol of the mistake once he became aware, requested that they modify the judgment to express the parties' true intentions, and Carol refused to make the modification.

¶ 23 On September 10, 2014, Carol filed a section 2-619 motion to dismiss John's section 2-1401 petition to modify the judgment of dissolution maintaining that the circuit court did not have jurisdiction to modify the judgment of dissolution of marriage. On September 22, 2014, John filed a response to the motion to dismiss claiming that the settlement agreement

contained a mutual mistake of the parties and that the circuit court had jurisdiction to modify the judgment of dissolution of marriage. On December 18, 2014, the circuit court entered an order finding that, *inter alia*, John's September 4, 2014 counterpetition to modify the December 10, 2013 judgment of dissolution of marriage pursuant to section 2-1401 was denied as to unit 3. The circuit court further held that Carol was to receive a "percentage interest of the percentage of equity \*\*\*."

¶ 24                    John's Section 511 "Petition for Contribution and to Avoid Unjust Enrichment"

¶ 25                    On September 22, 2014, John filed a section 511 petition for contribution. See 750 ILCS 5/511 (West 2010). In this petition, John sought contribution from Carol towards the payment of the parties' joint income tax liability for the 2012 tax year. On October 8, 2014, Carol filed a response to John's petition for contribution arguing that: (i) the circuit court does not have jurisdiction to "engraft new obligations into the judgment"; (ii) the circuit court does not have jurisdiction to make equitable modifications; (iii) it was John's personal fault for failing to timely file his taxes; and (iv) the taxes were paid almost entirely from marital property and not from John's income, and as a result he has been unjustly enriched. On October 23, 2014, the circuit court denied John's September 22, 2014 petition for contribution.

¶ 26                    John's Section 511 Petition for Contribution to Expenses of Property

¶ 27                    On October 16, 2014, John filed a petition for contribution to expenses of property pursuant to section 511 of the IMDMA (750 ILCS 5/511 (West 2010)) for real property located at 235 Main Street, Venice Beach, California, that Carol and John each owned a 25% interest in as tenants in common.



¶ 28 John's Section 2-1301 Motion for Reconsideration

¶ 29 On November 6, 2014, John filed, pursuant to section 2-1301 of the Illinois Code of Civil Procedure, a motion for reconsideration of the denial of his September 22, 2014, section 511 petition for contribution. 735 ILCS 5/2-1301 (West 2012).

¶ 30 On November 19, 2014, Carol filed a response to John's motion to reconsider arguing that John's motion to reconsider was improper and had no legal or factual basis because he failed to establish that there was newly discovered evidence that was unavailable at the time of the hearing on his original petition. Carol argued that John presented essentially the same petition for contribution in the form of a motion for reconsideration and that it was an improper use of a motion for reconsideration.

¶ 31 On December 18, 2014, the circuit court entered an order that granted John's November 6, 2014 motion for reconsideration, vacated the October 23, 2014 order that denied John's September 22, 2014 section 511 petition for contribution, and the matter was taken under advisement. On December 18, 2014, the circuit court also granted John's October 16, 2014 section 511 petition for contribution to expenses of property and ordered Carol to pay 25% of the net expenses of the Venice Beach, California property.

¶ 32 Carol's Motion to Reconsider the December 18, 2014 Order that Granted John's Section 511 "Petition for Contribution and to Avoid Unjust Enrichment"

¶ 33 On January 16, 2015, Carol filed a motion to reconsider the December 18, 2014 order that granted John's section 2-1301 motion to reconsider the circuit court's October 23, 2014 order that denied his section 511 petition for contribution and allocation of the parties' 2012 joint income tax liability. Carol maintained that: (i) the failure to file the taxes on time and

avoid the late fees was John's failure alone, and he should be responsible for the payment; (ii) an insufficient amount of taxes was taken from John's personal income and too much was taken from marital income; and (iii) granting John's motion to reconsider permits a modification of the judgment of dissolution in violation of section 510(b) of the IMDMA.

750 ILCS 5/510(b) (West 2010).

¶ 34

On February 9, 2015, the circuit court entered an order finding, in part, that:

- (i) the only reference in the parties' judgment entered December 10, 2013 to 2012 is at paragraph 10.1 which states only that:
- (ii) the 2012 federal and state of California tax liabilities are additional marital debt that was not addressed in the parties' dissolution judgment;
- (iii) without agreement of the parties or court order, John paid the tax liability out of marital assets and reduced the sum due and owing to Carol for her property settlement;
- (iv) Carol is technically correct that John has violated the prohibition against the modifying property settlements under 510(b) of the Act. However, reviewing the record, the Court finds the Act requires the Court to address the marital debt which the parties failed to address in their judgment, that being the 2012 calendar year tax liability;
- (v) "[g]iven the plain language of paragraph 10.1 [of the settlement agreement] that the parties agreed to share equally any tax refunds for the 2012 tax year, \*\*\* that the parties also share any tax liability equally;"
- (vi) both parties shall in part, equally pay any outstanding sums due to the federal government or the State of California for the 2012 tax year;
- (vii) Carol's motion for reconsideration is granted as the circuit court erred in applying the law when it entered its December 18, 2014 order;

The court ordered:

- (a) the December 18, 2014 order is vacated;

- (b) a supplemental judgment should be entered finding that the 2012 calendar year tax liability for both the federal government and the state of California is marital debt; and
- (c) both parties' award of property contained in the December 10, 2013 judgment of dissolution of marriage is reduced "by the specific dollar amount totalling 50% of the 2012 tax liability for the federal and state of California taxes."

¶ 35 Carol's Motion to Reconsider the February 9, 2015 Order

¶ 36 On February 23, 2015, Carol filed a motion to reconsider the order entered on February 9, 2015 arguing that: (i) the court did not have jurisdiction to modify the judgment of dissolution; (ii) John's tax liability claims were barred by *res judicata* for not raising them in his section 2-1401 petition; (iii) John is improperly seeking modification by presenting the same argument in his motion to reconsider as he did in the petition for contribution that the circuit court denied and John did not present any new evidence or facts that were not previously heard in his original petition for contribution.

¶ 37 On May 6, 2015, John filed a response to Carol's motion to reconsider in which he maintained that Carol's motion should be denied because it failed to meet the standards governing motions to reconsider in that it did not bring to the court's attention: (i) newly discovered evidence which was not available at the time of trial; (ii) changes in the law; or (iii) errors in the court's previous application of existing law. John also argued it should be denied because her position on who should be responsible for the 2012 tax liability is contrary to equity and is unjustified by any legal principle or by the undisputed facts in the record.

¶ 38 On May 11, 2015, Carol filed a reply maintaining that the circuit court erred in modifying the judgment of dissolution because: (i) the circuit court did not have jurisdiction to hear John's petition; (ii) John's arguments in his petition were barred by *res judicata*; and (iii) John did not meet the requirements of a section 2-1401 petition.

¶ 39 On August 17, 2015, the circuit court entered an order denying Carol's motion to reconsider the February 9, 2015 order, finding: (i) John's section 2-1401 petition only addressed his obligation to convey his interest in three condominium units to Carol; (ii) the section 2-1401 petition did not address the 2012 income tax liability and therefore, John was not required, on *res judicata* grounds, to raise the tax liability issue in his September 4, 2014 section 2-1401 petition; (iii) the 2012 federal and State of California tax liability was a marital debt that was not accounted for in the December 10, 2013 judgment of dissolution of marriage and must be paid for equally by both parties; and (iv) that there was no newly discovered evidence unavailable at the time of the original hearing, changes in law or errors in the court's previous application of law to warrant any modification or reconsideration of the February 9, 2015 order.

¶ 40 Carol filed her notice of appeal on September 1, 2015, seeking review of the February 9, 2015 and August 17, 2015 orders.

¶ 41 ANALYSIS

¶ 42 Carol seeks review of the circuit court's February 9, 2015 order, which found that the parties' joint 2012 income tax liability was a marital debt and granted John's section 511 petition to modify the December 10, 2013 judgment of dissolution. Carol also seeks review of the circuit court's August 17, 2015 order that denied her motion to reconsider the February

9, 2015 order. John's section 511 petition was denied on October 23, 2014, but his motion to reconsider was granted and the October 23, 2014 order was vacated on December 18, 2014. John's September 4, 2014 section 2-1401 petition was denied on December 18, 2014.

¶ 43 Carol maintains that the circuit court did not have jurisdiction to hear John's September 22, 2014 section 511 petition for contribution because John failed to appeal the court's order denying his section 2-1401 petition on December 18, 2014. Carol maintains that once John failed to appeal the December 18, 2014 order denying his section 2-1401 petition, the circuit court had no jurisdiction to hear any other motions to modify the judgment of dissolution of marriage.

¶ 44 **Circuit Court's Jurisdiction**

¶ 45 The circuit court's jurisdiction over a case is a question of law which we review *de novo*. *Hall*, 404 Ill. App. 3d at 164. Here, John filed a section 2-1401 petition and later a section 511 petition to enforce the judgment of dissolution of marriage. We note that in *Sears v. Sears*, 85 Ill. 2d 253, 259 (1981), our Supreme Court held that the circuit court does not have jurisdiction to hear multiple post-judgment motions. However, a section 2-1401 petition is not a post-judgment motion connected to the prior proceeding, but is instead, a new action filed with a new pleading in which the petitioner must allege and prove a cause of action subject to the rules of pleading governing complaints in civil cases. *Burnicka*, 88 Ill. 2d at 530. Unlike his section 2-1401 petition, John's section 511 petition did not initiate a new action, but sought to enforce the rights that existed in the December 10, 2013 judgment of dissolution and the circuit court retained jurisdiction to enforce its prior judgment. *Waggoner*, 78 Ill. 2d at 53. Therefore, the circuit court retained jurisdiction to enforce or



years after the entry of the final judgment) was not the result of fraud, duress, or disability, it could not vacate the judgment pursuant to section 2-1401 and found that there was no evidence of mutual mistake. *Hall*, 404 Ill. App. 3d at 163. On appeal, the appellate court found that the petitioner was not seeking to impose new or different obligations on the parties, but instead, she was enforcing the parties' rights which were set out in the marital settlement agreement. *Hall*, 404 Ill. App. 3d at 165 (citing *Allen*, 343 Ill. App. 3d at 413). The *Hall* court reasoned that because the petitioner was seeking to enforce the terms of the marital settlement agreement which was incorporated into the judgment, the circuit court had jurisdiction to enter an order enforcing the marital settlement. *Hall*, 404 Ill. App. 3d at 166 (citing *Allen*, 343 Ill. App. 3d at 413).

¶ 49 The language in the settlement agreement is clear. The parties agreed that "[a]ny refunds for 2012 will be divided equally between the parties." The parties further agreed to each "pay and be responsible for any and all liabilities" with respect to audits or investigations on any joint income tax returns filed by the parties. Here, the parties filed a joint 2012 income tax return on November 8, 2013. On December 16, 2013 and December 23, 2013, Carol and John received letters from the California Franchise Board and the Internal Revenue Service informing them of a joint 2012 income tax liability. In the settlement agreement, Carol and John each promised to be financially responsible for any tax liabilities resulting from their joint tax returns.

¶ 50 Like the petitioner in *Hall*, we find that John was not imposing new or different obligations on Carol by seeking contribution towards the parties' joint 2012 income tax liability. Instead, John was seeking to enforce the rights and obligations that existed in the

marital settlement agreement. Therefore, we find that the circuit court's order granting John's section 511 "Petition for Contribution and to Avoid Unjust Enrichment" enforced the marital settlement agreement.

¶ 51 Carol relies on *Mills v. McDuffa*, 393 Ill. App. 3d 940, 947 (2009) to support her position. The *Mills* court followed *People v. Vincent*, 226 Ill. 2d 1, 7 (2007), which held that the *de novo* standard of review applies to section 2-1401 dispositions where the trial court either dismisses the petition or grants or denies relief based on the pleadings alone. 393 Ill. App. 3d at 947. Carol's reliance on *Mills* is misplaced because the *Mills* court discussed the standard of review to use when reviewing a section 2-1401 petition, but did not discuss the circuit court's jurisdiction over a section 511 petition to enforce or modify a judgment. *Mills*, 393 Ill. App. 3d at 945-949. Therefore, the *Mills* decision does not support Carol's position.

¶ 52 Finally, we hold that the circuit court retained jurisdiction to enforce or modify the parties' judgment of dissolution and we affirm the circuit court's February 9, 2015 and August 17, 2015 orders.

¶ 53 **CONCLUSION**

¶ 54 The circuit court in a divorce proceeding retains jurisdiction to enforce its decrees. *Waggoner*, 78 Ill. 2d at 53; see also *Hall*, 404 Ill. App. 3d at 164. Therefore, the circuit court retained jurisdiction to hear John's section 511 "Petition for Contribution and to Avoid Unjust Enrichment" because it was enforcing John's clear rights and obligations under the parties' marital settlement agreement, and was not imposing new or different obligations on the parties. Accordingly, we affirm the orders entered by the circuit court.

¶ 55 Affirmed.