

2017 IL App (1st) 160355-U
No. 1-16-0355
September 26, 2017

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).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

<i>In re</i> the Marriage of PATRICIA DOYLE,)	Appeal from the Circuit Court
)	Of Cook County.
Petitioner-Appellee,)	
)	No. 11 D 330167
v.)	
)	
MICHAEL DOYLE,)	The Honorable
)	Patricia Logue,
Respondent-Appellant.)	Judge Presiding.

PRESIDING JUSTICE NEVILLE delivered the judgment of the court.
Justices Pucinski and Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court retains jurisdiction after the expiration of 30 days to enforce the terms of its judgment of dissolution.

¶ 2 During the pendency of Patricia and Michael's divorce, the circuit court entered a temporary order on August 24, 2012, directing Michael to deposit funds from his Thrift Savings Plan (TSP) account into Patricia's attorney's Interest on Lawyers Trust Account (IOLTA) account. On May 20, 2014, the circuit court entered its judgment of dissolution and, because Michael failed to comply with the temporary order, directed Michael to pay

Patricia 65% of the funds in his TSP account. When Michael did not comply with the TSP provision in the judgment of dissolution, Patricia filed a petition for rule to show cause which was denied and a motion for reconsideration which was granted and directed Michael to pay 65% of the funds in his TSP account. Michael appeals and maintains that the circuit court's order was void because the court lacked jurisdiction to enter the January 22, 2016, order 20 months after it entered the judgment of dissolution of marriage.

¶ 3 We find that the January 22, 2016 order was not void because the circuit court had subject matter jurisdiction over the Doyle's dissolution proceedings and personal jurisdiction over Patricia and Michael. We also find that since the court had subject matter jurisdiction over the dissolution proceedings and jurisdiction over the parties, the court had jurisdiction to enter the May 20, 2014 judgment of dissolution. Supreme court case law makes it clear that in domestic relations cases, the circuit court retains jurisdiction to enforce its orders. Therefore, when Michael failed to pay Patricia 65% of the funds in his TSP account, the court retained jurisdiction to enforce the TSP provision in the judgment of dissolution 20 months after the judgment was entered. Accordingly, we hold that the circuit court did not err when it entered the January 22, 2016 order enforcing its judgments 20 months after the judgment was entered.

¶ 4 Background

¶ 5 On May 11, 1974, Patricia Doyle and Michael Doyle were married and had one child, Madelyn Doyle, who is emancipated. During the marriage, Michael was employed by the United States Postal Service (USPS) as a postal clerk and mail carrier, and when he became the postmaster of Highwood, Illinois, he earned \$75,000 per year. Patricia was also employed

during the marriage and earned approximately \$50,000 per year. In January 2007, Michael moved from the marital home. On February 24, 2011, Patricia filed a petition for dissolution of marriage and alleged that irreconcilable differences prevented the continuation of their marriage. In her petition, Patricia prayed that she be awarded (i) temporary and permanent maintenance, including COBRA insurance coverage; and (ii) a just portion of the marital property of the parties. On March 11, 2011, Michael's attorney filed an appearance.

¶ 6 On April 4, 2012, Michael sent Patricia an email stating that he would discontinue paying certain bills on her behalf. On April 27, 2012, while her petition for dissolution of marriage was pending, Patricia filed a petition for temporary support and alleged that Michael had been paying some of her expenses since withdrawing from the home, but the April 4, 2012 email correspondence placed her on notice that Michael planned to cease his voluntary support. Patricia asked the court to order Michael to pay her \$1,500 per month in temporary support, attorney's fees and the costs of filing the petition.

¶ 7 On August 1, 2012, Michael retired from USPS and began receiving a monthly retirement annuity of \$4,640, which provides him with a yearly income of \$55,680, subject only to federal taxes. Michael also received a terminal vacation leave payment of \$15,000 and a TSP payout of \$17,000, both of which the court's judgment found were marital property.

¶ 8 On August 24, 2012, the circuit court ordered Michael to deposit the aforementioned funds into the IOLTA account of Steven Polachek, Patricia's attorney, for equitable distribution. Michael did not comply with the court's order; instead, he put the \$32,000 into his personal checking account and spent most of the funds.

¶ 9 On April 8, 2013, Patricia filed a motion and requested that the court set a hearing on her petition for temporary support. On September 10, 2013, the circuit court ordered Michael to pay Patricia \$600 per month in temporary maintenance beginning on September 15, 2013.

¶ 10 On May 20, 2014, the circuit court entered a judgment of dissolution of marriage. The court found that Michael deposited the funds from his terminal vacation leave payment and TSP into his personal checking account, and that he did not comply with the August 24, 2012 court order directing him to deposit the funds into Patricia's attorney's account. The court ordered Michael to pay Patricia 65% of the current marital value of his TSP account, calculated as if no loan had been taken out. The court also ordered Michael to make no withdrawals from the TSP until Patricia received the funds. Finally, the court awarded Patricia the marital residence along with the equity therein, divided Michael's annuity, and ordered Michael to appoint Patricia as the sole beneficiary of his survivor's annuity.

¶ 11 On June 19, 2014, Michael filed a motion to reconsider the May 20, 2014, judgment of dissolution of marriage and requested that the court amend the language in the order relating to his post-retirement payments to Patricia. On July 3, 2014, Patricia filed a response to Michael's motion to reconsider and asked the court to deny Michael's motion and award her attorney's fees and the costs of responding to Michael's motion.

¶ 12 On July 22, 2014, Michael filed an amended motion to reconsider the judgment of dissolution of marriage, and sought to have the circuit court modify the paragraphs in the order relating to the marital residence, its dissipation finding, and debt allocation, and he sought to modify the paragraph relating to his TSP. Michael alleged that paragraph 23 of the judgment of dissolution marriage incorrectly stated that Michael testified that he currently

had \$23,500 left in his TSP before the court ordered him to pay Patricia 65% of the current value of the TSP, calculated as if no loan had been taken out. Michael also alleged that he had actually testified that “the current value of the TSP was “\$0”, with the last loan he took out at a value of \$17,500.” Because Michael testified that the TSP had a current value of \$0 when the court ordered him to pay 65% of the current value of the TSP, Michael alleged that it would be inequitable for him to reimburse Patricia for any expenses from this loan. But if he was still ordered to pay money for the TSP loan, Michael alleged that it should only be 65% of \$17,500.

¶ 13 On July 23, 2014, Michael filed a corrected amended motion to reconsider, which included a newly added section entitled "Survivor's Benefit." Michael alleged that paragraph 8 of the judgment of dissolution of marriage mistakenly states that Michael receives a monthly retirement annuity from USPS. Michael alleged that the Civil Service Retirement System, rather than USPS, provides the annuity, and Michael pays \$800 a month for this benefit. Michael then noted that paragraphs 16 and F of the judgment of dissolution of marriage provided that Michael must immediately designate Patricia as the beneficiary of his survivor annuity with USPS. He alleged that the aforementioned paragraphs should be stricken because the USPS policy provided that Michael could designate a different survivor upon entry of a judgment of dissolution of marriage.

¶ 14 On August 28, 2014, the circuit court granted Michael's motion to reconsider the allocation of Michael's pension and survivor benefits, but denied the remainder of the motion to reconsider.

¶ 15 On October 6, 2014, Patricia filed a petition for rule to show cause against Michael. She sought to have him held in contempt because he failed to comply with the terms of the May 20, 2014 judgment of dissolution of marriage. Specifically, Patricia prayed for the court to direct Michael to show cause as to why he should not be held in indirect contempt for his failure to "pay Petitioner 65% of the current marital value of his Thrift Savings Plan account to be calculated as if no loan had been taken out." On October 27, 2014, the circuit court issued a rule against Michael to show cause as to why he should not be held in indirect civil contempt for his failure to comply with the judgment of dissolution of marriage.

¶ 16 On November 24, 2014, Michael answered the petition for rule to show cause and denied that he failed to pay Patricia 65% of the current marital value of his TSP account calculated as if no loan had been taken out. Rather, Michael maintained that the filing of his motion to reconsider, which had not been adjudicated at the time, stayed the enforcement of paragraph G of the judgment.

¶ 17 On February 9, 2015, the circuit court ordered Michael to tender the documentation regarding the TSP plan from the date the judgment was entered up to the current date.

¶ 18 On May 18, 2015, Patricia filed a second petition for rule to show cause against Michael, again alleging that Michael should be held in contempt for his failure to pay her 65% of the value of his TSP account as directed by the terms of the May 20, 2014 judgment of dissolution of marriage. She also alleged that Michael failed to comply with the terms of the February 9, 2015 order by tendering the TSP plan documentation. On June 10, 2015, the circuit court issued another rule against Michael to show cause as to why he should not be held in contempt of court for (i) his failure to pay Patricia 65% of the value of his TSP

account as ordered on May 20, 2014; and (ii) his failure to tender documentation regarding the TSP account as ordered on February 9, 2015.

¶ 19 On July 13, 2015, the court entered the following order:

"THE COURT FINDS:

1. That Respondent tendered in open court the account statements for his Thrift Savings Plan as of 07/23/12; 02/01/13; and 02/01/15, thereby complying with this court's order of 02/9/15.
2. That Respondent had withdrawn all funds from his Thrift Savings Plan on 01/24/13 prior to the judgment entered 05/20/14.

It is ordered that the petition for rule is denied."

¶ 20 On July 27, 2015, Patricia filed a motion to reconsider the July 13, 2015 order and argued the court did not review its TSP findings in the judgment of dissolution of marriage. In paragraph 8 of her motion, Patricia alleged the following:

"Since this Court was fully aware that the Respondent had withdrawn funds from his Thrift Savings Plan account prior to the entry of the Judgment for Dissolution of Marriage, as set forth in paragraph 10 of the Court's Findings, it is clear that it was the intention of the Court that the Petitioner was to receive 65% of the value of the funds Respondent deposited into his bank account on January 24, 2013, that account representing funds received from his Thrift Savings Plan account."

¶ 21 Patricia noted that paragraph 23 of the May 20, 2014 judgment of dissolution of marriage provided that "Michael will give Patricia 65% of the current marital value of his Thrift

Savings Plan account, calculated as if no loan had been taken out." She then presented the following exhibits: (i) Michael's TSP account statement as of July 23, 2012, which reflected a balance of \$23,559.93; and (ii) the deposit into his checking account on January 24, 2013, in the amount of \$20,562.48. Based on the figures presented in the exhibits, Patricia alleged that the value of Michael's TSP account "calculated as if no loan had been taken out," was \$23,559.93 when the May 20, 2014 judgment was rendered. Patricia then alleged that pursuant to this court's judgment of dissolution of marriage, she was entitled to \$15,313.95, which is 65% of \$23,559.93, the balance of Michael's TSP account as of July 23, 2012. Patricia asked the court to order Michael to pay her \$15,313.95.

¶ 22 On January 22, 2016, the court held a hearing on Patricia's motion to reconsider. (0002) Michael objected to the motion, arguing that Patricia did not identify the section of the Code of Civil Procedure (Code) the motion was predicated on. Michael then argued that because the motion was presumably filed pursuant to section 2-1203 of the Code, that provision is inapplicable because the order was not a judgment, but rather an order denying a petition for rule to show cause.

¶ 23 Patricia argued that the judge had the authority to reconsider its order. She further argued that Michael did not comply with the court's order to relinquish 65% of the funds from his TSP account and to transfer the funds to her lawyer's IOLTA account, which led to the filing of the rule to show cause. Patricia notes that Michael maintains that he does not owe Patricia any money because there were no funds in the TSP account when the court ordered Michael to give Patricia "65% of the current value" of the TSP account. Therefore, Patricia argues that

the use of the word "current" does not detract from the fact that Michael removed the money from the account in order to evade the court's order.

¶ 24 The court found that Michael still owed Patricia 65% of the funds in the TSP account. Patricia then requested that the court reconsider its order denying her petition for rule and enter an order directing Michael to relinquish the funds from the TSP account within seven days. On January 22, 2016, the circuit court entered an order granting Patricia's motion to reconsider and directed Michael to pay Patricia \$15,313.95 within 21 days.

¶ 25 Michael filed a timely notice of appeal on February 4, 2016.

¶ 26 Analysis

¶ 27 Michael appeals from the circuit court's January 22, 2016 order which granted Patricia's motion to reconsider and directed Michael to comply with the terms of its May 20, 2014 judgment of dissolution of marriage by paying Patricia \$15,313.95. An appellate court will not reverse a trial court's decision to grant or deny a motion to reconsider unless there was an abuse of discretion. *In Re Marriage of Epting*, 2012 IL App (1st) 113727, ¶ 24. An abuse of discretion occurs when no reasonable person would take the view adopted by the court. *Epting*, 2012 IL App (1st) 113727, ¶ 24; *In re Marriage of Blunda*, 299 Ill. App. 3d 855, 865 (1998). A clear abuse of discretion occurs when the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the court. *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009).

¶ 28 Jurisdiction

¶ 29 Michael argues that the circuit court's January 22, 2016 order directing him to pay Patricia \$15,313.95 was void because the order was entered 20 months after the court entered

its May 20, 2014, judgment of dissolution of marriage. The Illinois Supreme Court has held that the question of whether a judgment is void or voidable depends not on the lapse of time since the entry of the order but on whether the court entering the challenged order possessed jurisdiction over the parties and the subject matter. *In Re Marriage of Mitchell*, 181 Ill. 2d 169, 174 (1998); *People v. Davis*, 156 Ill. 2d 149, 155 (1993).

¶ 30 Accordingly, the first question we must answer is whether the January 22, 2016 judgment was void because the court did not have jurisdiction over the parties and the subject matter. Under article 6, section 9 of the Illinois Constitution, circuit courts have original jurisdiction over all justiciable matters. Ill. Const. 1970 art. VI, § 9; *In Re Marriage of Baniak*, 2011 IL App (1st) 092017, ¶ 15; *In Re Marriage of Schauburger*, 253 Ill. App. 3d 595, 602 (1993). A justiciable matter is a controversy appropriate for review by the court in that it is definite and concrete as opposed to hypothetical or moot touching upon the legal relations of parties having adverse legal interests. *In re Luis R.*, 239 Ill. 2d 295, 301 (2010); *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.* 199 Ill. 2d 325, 335 (2002); *Baniak*, 2011 IL App (1st), ¶ 15. We find that Patricia's petition for dissolution of marriage invoked a concrete controversy between parties, Patricia and Michael, that have adverse interests, so her petition presented a justiciable matter that properly invoked the circuit court's subject matter jurisdiction. *In re Luis R.*, 239 Ill. 2d at 301; *Belleville* 199 Ill. 2d at 335. Next, we consider the court's jurisdiction over the parties. A petitioner submits to the jurisdiction of the court by filing a petition or complaint. *In re Luis R.*, 239 Ill. 2d at 305; *In re M.W.*, 232 Ill. 2d 408, 426 (2009). A respondent, by contrast, either has personal jurisdiction imposed upon him by the effective service of summons, or consents to personal jurisdiction by his appearance. *In*

re Luis R., 239 Ill. 2d at 305; *In re M.W.*, 232 Ill. 2d at 426. We find that the circuit court acquired personal jurisdiction over Patricia when she filed the petition for a judgment of dissolution of marriage, and Michael consented to the personal jurisdiction of the circuit court when his counsel filed an appearance in this cause on his behalf. *In Re Luis R.*, 239 Ill. 2d 325, 335 (2002). Therefore, because we find that the circuit court had subject matter jurisdiction over the dissolution action and personal jurisdiction over the parties, we hold the January 22, 2016 judgment was not void.

¶ 31 Circuit Courts Retain Jurisdiction to Enforce Judgments and Orders

¶ 32 Having found that the January 22, 2016 order was not void, we must determine whether the circuit court retained jurisdiction to enter the January 22, 2016, order 20 months after entering its May 20, 2014, judgment of dissolution of marriage. Supreme Court case law teaches us that where the circuit court has subject matter jurisdiction over a case and personal jurisdiction over the parties, it retains jurisdiction after 30 days to enforce its judgments or orders. *Brewer v. Nat'l R.R. Passenger Corp.*, 165 Ill. 2d 100, 105 (1995) (citing *Beck v. Stepp*, 144 Ill. 2d 232, 238 (1991). *Smithberg v. Illinois Municipal Retirement Fund*, 192 Ill. 2d 291, 297-98 (2000). Therefore, we must determine whether the circuit court was divested of jurisdiction 30 days after it entered the judgment of dissolution or if it retained jurisdiction to enforce its judgment of dissolution 20 months after it was entered.

¶ 33 Michael argues that the circuit court was divested of jurisdiction to enforce its May 20, 2014 judgment of dissolution when more than 30 days expired before it entered the January 22, 2016 order. Michael also argues that a motion to reconsider was not the proper pleading for Patricia to file to have a court compel him to comply with the TSP provision in the

judgment of dissolution. We note that Michael does not deny that he did not comply with the circuit court's May 20, 2014 judgment of dissolution that directed him to pay Patricia 65% of funds in his TSP account. We also note that section 509 of the Act provides that "if a party fails to comply with a provision of a judgment, order or injunction ... the other party ... may move the court to grant an appropriate order. 750 ILCS 5/509 (West 2014). Thus, we find that Patricia, the other party, had a right, pursuant to section 509 of the Act, to file a petition for rule to show cause because of Michael's failure to comply with a provision in the judgment and, when the court denied Patricia's petition for rule to show cause, to file a motion for reconsideration asking the court to reconsider its denial of her petition for rule to show cause and to order Michael to comply with the provision in the judgment of dissolution that directed Michael to pay Patricia 65% of the funds in his TSP account. 750 ILCS 5/509 (West 2014).

¶ 34 Having found that section 509 of the Act gave Patricia the right to file a petition for rule to show cause and, with its denial, a motion to reconsider, we must determine whether the circuit court retained jurisdiction to enter the January 22, 2016 order 20 months after entering the May 20, 2014 judgment. We find *Smithberg* instructive and it provides us with guidance on how to determine if the circuit court retained jurisdiction. *Smithberg*, 192 Ill. 2d at 297-98

¶ 35 In *Smithberg*, James and Nancy Smithberg entered into a marital settlement agreement which was approved by the court and incorporated into a judgment of dissolution of marriage. *Smithberg*, 192 Ill. 2d at 292. As part of the agreement, James agreed that Nancy would be "listed as the recipient of any benefits payable upon the death of" James from the Illinois Municipal Retirement Fund (IMRF), and that he would "not designate any other

survivors, or allocate any survivorship benefits, to anyone other than" Nancy. *Smithberg*, 192 Ill. 2d at 293. James later remarried and in violation of the express terms of the judgment and marital settlement agreement, designated his second wife, Delores, as recipient of his IMRF death benefits. *Smithberg*, 192 Ill. 2d at 293. In response, Nancy filed a petition for rule to show cause why James should not be held in contempt for his willful violation of the judgment of dissolution. *Smithberg*, 192 Ill. 2d at 293. Before James could make the change to the IMRF beneficiary form, he died. *Smithberg*, 192 Ill. 2d at 294. IMRF refused to pay the death benefit to Delores, so Delores interpleaded the death benefit and sought relief in the circuit court. *Smithberg*, 192 Ill. 2d at 294-95. Nancy's response complained about James' wrongdoing and IMRF reminded the circuit court of its panoply of judicial powers. *Smithberg*, 192 Ill. 2d at 295.

¶ 36 The circuit court granted Delores' motion for summary judgment and the appellate court, applying equitable principles, reversed the circuit court. *Smithberg*, 192 Ill. 2d at 292. The *Smithburg* court affirmed the appellate court and stated:

“It is an elementary principle of law that a court is vested with the inherent power to enforce its orders. (Citation.) Where a domestic relations order has been entered, the trial court retains jurisdiction to enforce its order (Citation.), as further performance by the parties is often contemplated. (Citation.) In the case of the court that rendered James and Nancy's judgment of dissolution, jurisdiction was expressly retained for the purpose of enforcing all of its terms and conditions. Had James lived, there is no doubt that he could have been compelled by the use of contempt proceedings to abide by the terms of his

marital settlement agreement as incorporated in the court's judgment. His death, however, does not leave the courts powerless to rectify his wrongdoing and enforce Nancy's right to the death benefit.

Irrespective of empowering statutes, a court retains its traditional equitable powers. Such inherent equitable power, derived from the historic power of equity courts, cannot be taken away or abridged by the legislature. (Citation.) When the legislature encroaches upon a fundamentally judicial prerogative, this court has not hesitated to protect judicial authority. (Citation.)

Although the court's contempt power became useless with James' death as a means by which to enforce the judgment of dissolution, the circuit court in this case had equitable remedies at its disposal and should have employed them to afford Nancy relief. As the appellate court did, and as this court has previously done (Citations.), the circuit court could have simply considered 'that as done which ought to be done.' ” *Smithberg*, 192 Ill. 2d at 297-98.

¶ 37 Here, the circuit court entered a temporary order on August 24, 2012, which ordered Michael to deposit the funds he received from his TSP plan into Patricia's attorney's IOLTA account. When the temporary order was not complied with, the circuit court entered the May 20, 2014 judgment of dissolution of marriage which directed Michael to pay Patricia 65% of the current marital value of the TSP account (\$15,313.95). The temporary order and the judgment of dissolution are important in our review because these orders constitute procedural steps in the progression leading to the entry of the January 22, 2016 final judgment from which this appeal was taken. *People ex rel. Alvarez v. Price*, 408 Ill. App. 3d

457, 465 (2011). Michael also failed to comply with the May 2, 2014 judgment of dissolution. Section 509 of the Act gave Patricia a right to file a petition for rule to show cause. 750 ILCS 5/509 (West 2014). Patricia, like Nancy, filed a petition for rule to show cause because of Michael's failure to comply with the terms of the May 20, 2014, judgment of dissolution of marriage. *Smithberg* teaches us that the circuit court will not permit a party, like Michael, to violate the terms and conditions of a circuit court's judgments or orders. *Smithberg*, 192 Ill. 2d at 304. Therefore, following *Smithberg*, we hold that the circuit court retained jurisdiction, 20 months after entering the May 20, 2014 judgment of dissolution, to invoke its equitable remedies and enforce its judgment by directing Michael to turn over \$15,313.95 to Patricia in its January 22, 2016 order.

¶ 38 Michael cites *Holwell v. Zenith Electronics*, 334 Ill. App. 3d 917, 922 (2002) to support his position that the circuit court was divested of jurisdiction over the divorce case 30 days after the entry of the judgment of dissolution. *Holwell* involved an attorney who filed a petition for attorney's fees more than 30 days after the court entered its final order and had lost jurisdiction. *Holwell*, 334 Ill. App. 3d at 922. In our case, the court had jurisdiction when it entered the judgment of dissolution of marriage and the wife filed a petition to enforce a provision in the judgment of dissolution more than 30 days after the judgment was entered. While the *Holwell* court points out that the circuit court loses jurisdiction over a case pending before it 30 days after the entry of a final judgment terminating the litigation, it also points out that courts retain jurisdiction to enforce the terms of its judgment. *Holwell*, 334 Ill. App. 3d at 922. Therefore, since *Holwell* involved a party asking a court to grant a petition for attorney's fees after the court lost jurisdiction, and our case involves a party asking a court

that never lost jurisdiction to enforce a provision in its judgment, we find Michael's reliance on *Holwell* misplaced. Accordingly, the circuit court did not err when it directed Michael to pay Patricia 65% of the current marital value of his TSP account.

¶ 39

Conclusion

¶ 40

After reviewing the record, we find that the circuit court's January 22, 2016 order enforcing its judgment was not arbitrary or fanciful nor could it be said that no reasonable person would adopt the view taken by the trial court. We hold that the circuit court did not abuse its discretion. *Koster*, 235 Ill. 2d at 36; *Epting*, 2012 IL App at ¶ 24; *Blunda*, 299 Ill. App. 3d at 865. Therefore, the circuit court did not err when it entered the January 22, 2016 order enforcing its judgment of dissolution and directing Michael to pay Patricia \$15,313.95. Accordingly, we affirm the circuit court's order.

¶ 41

Affirmed.