2017 IL App (2d) 160543-U
No. 2-16-0543
Order filed March 30, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF BRETT M. HILDRETH,	)	Appeal from the Circuit Court of McHenry County.
Petitioner and Counterrespondent-Appellant,	)	
and	)	No. 13-D-786
CONNIE M. HILDRETH,	)	
Respondent and Counterpetitioner-Appellee.	)	Honorable Kevin G. Costello, Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Presiding Justice Hudson and Justice Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held*: Because the trial court reserved ruling on child support, its dissolution judgment was not final and appealable, and thus we dismissed petitioner's appeal from that judgment.

¶ 2 Brett M. Hildreth (petitioner), the petitioner-counterrespondent in this dissolution-of-marriage proceeding, appeals from what he contends is a final judgment in that proceeding. We hold that the court's reservation of the issue of child support made the judgment nonfinal, so that we lack jurisdiction of this appeal. We therefore dismiss the appeal.

¶ 3 I. BACKGROUND

¶ 4 On September 26, 2013, petitioner filed a petition for the dissolution of his marriage to respondent-counterpetitioner (respondent), Connie M. Hildreth. On March 21, 2016, the court entered a dissolution judgment and issued an associated memorandum decision. The judgment came after extended litigation, most notably a 13-day trial that focused on, but was not limited to, the custody of the couple's young son. The court granted the parties joint custody of their son and made petitioner the parent with the majority of parenting time. It awarded maintenance to respondent. On the issue of child support, the judgment and the memorandum decision are entirely consistent, but the memorandum decision is easier to follow. It stated:

> "Based on the disparity in the parties' incomes, [petitioner] shall pay sixty (60%) percent of B.M.H.'s school registration expenses, extracurricular activities and lessons, and uncovered medical expenses, and [respondent] shall pay forty (40%) percent. Each party's yearly share of extracurricular expenses is capped at $1,000. The matter of [respondent] paying any child support to [petitioner] over and above her share of expenses referenced above is reserved based on [respondent's] unemployment. [Respondent's] obligation to maintain a job log as court ordered shall continue. The matter of contribution to B.M.H.'s college expenses pursuant to 750 ICLS 5/513 [*sic*] is reserved."

¶ 5 Petitioner filed a motion for reconsideration within 30 days of the judgment's entry. Among other things, he asserted that the court erred in declining to award child support: he noted respondent's receipt of maintenance, which he argued was income for child support purposes, and further asserted that respondent had employment income from payment for service as her grandchild's nanny.

¶ 6 On June 8, 2016, the court entered an order granting in part and denying in part petitioner's motion to reconsider. It denied relief as to its child support ruling: "The fallacy in [petitioner's] argument is that it ignores the fact that the Court reserved the issue of payment of child support by [respondent] to [petitioner]." It then quoted the portion of the memorandum decision we have just provided. Further, the evidence at trial showed that respondent was not yet employed. The court advised petitioner that, should respondent become employed, he could "through written motion, seek to remove the reservation on child support." Moreover, "[a]s part of that motion, [petitioner was] also free to argue that maintenance payments to [respondent] constitute income for child support purposes."

¶ 7 Petitioner filed a notice of appeal on July 7, 2016.

¶ 8 II. ANALYSIS

¶ 9 We hold *sua sponte* that the court's ruling that child support was "reserved" deprives us of jurisdiction of this appeal. See *In re Marriage of Link*, 362 Ill. App. 3d 191, 192 (2005) (reviewing courts have a duty to consider *sua sponte* whether they have jurisdiction of an appeal and to dismiss the appeal if jurisdiction is lacking). Section 401(b) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/401(b) (West Supp. 2015)) provides:

> "Judgment [of dissolution] shall not be entered unless, to the extent it has jurisdiction to do so, the court has considered, approved, reserved or made provision for the allocation of parental responsibilities, the support of any child of the marriage entitled to support, the maintenance of either spouse and the disposition of property."

(The court may "reserve" an issue only when, on the motion of a party, it finds that appropriate circumstances exist or when both parties agree to the reservation. 750 ILCS 5/401(b) (West 2014). We note that the record reflects no such motion or agreement here.) If the court does

reserve one or more core issues, the result is a bifurcated judgment. *In re Marriage of Mardjetko*, 369 Ill. App. 3d 934, 936 (2007). Illinois law creates no general right to appeal after the entry of such a partial judgment. *In re Marriage of Leopando*, 96 Ill. 2d 114, 118-20 (1983). To be sure, a party may appeal the decision to bifurcate the judgment. *In re Marriage of Bogan*, 116 Ill. 2d 72, 75-76 (1986). He or she may also appeal a ruling on custody or an allocation of parental responsibilities pursuant to Illinois Supreme Court Rule 304(b)(6) (eff. Mar. 8, 2016). However, appeal of other matters in a bifurcated judgment must await the resolution of the entire dissolution claim. *Mardjetko*, 369 Ill. App. 3d at 936.

¶ 10 Although the trial court said that child support was reserved, this is not quite the end of the analysis. In *Mardjetko*, we held that the court had plainly declined altogether to decide certain core issues, resulting in a bifurcated judgment and no appellate jurisdiction. *Mardjetko*, 369 Ill. App. 3d at 937. Nevertheless, we deliberately added a passage of *dicta* addressing the often confusing use of the term "reserved" in dissolution judgments. We pointed out that "trial courts sometimes describe issues as being 'reserved' when, in fact, the court has *decided* the issue (usually based on circumstances it expects to be temporary), but intends to revisit the issue soon." (Emphasis in original.) *Mardjetko*, 369 Ill. App. 3d at 937. We disapproved this practice, as "nearly guarant[ing] confusion." *Mardjetko*, 369 Ill. App. 3d at 937. Still, we suggested that, "[w]here it is unmistakable that a trial court is using the word ['reserves'] in a sense that does not defeat the finality of the judgment, we will not frustrate that intent by adhering to the meaning of 'reserves' in the Act." *Mardjetko*, 369 Ill. App. 3d at 937. This last suggestion requires some clarification. A reviewing court starts with the overall presumption that the trial court's ruling was in conformity with the law. *McCann v. Dart*, 2015 IL App (1st) 141291, ¶ 15. We read an order designating an issue as "reserved" accordingly.

¶ 11 Here, the court made clear that it intended to delay the judgment on child support, and not to enter a judgment for zero support. Petitioner asked the court to reconsider what he characterized as ruling that, because respondent was unemployed, she did not have to pay child support. The court rejected this as a "fallacy" because the court had reserved the issue; the court even bolded the word "reserved." In other words, when petitioner argued that the court had erred in its child-support ruling, the court's response was to tell him that it had not yet ruled. We take the court at its word: it did not decide child support. The result is that the order is nonfinal and nonappealable.

¶ 12 III. CONCLUSION

¶ 13 For the reasons stated, we dismiss petitioner's appeal for want of jurisdiction.

¶ 14 Appeal dismissed.