2017 IL App (2d) 160695-U
No. 2-16-0695
Order filed February 6, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re GUARDIANSHIP OF T.K.J., a Minor.	)	Appeal from the Circuit Court of Kendall County.
	)	No. 11-P-41
(Scott Seehawer and Nancy Seehawer, Petitioners-Appellees, v. Mickenzie J., Respondent-Appellant).	)	Honorable John F. McAdams, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices McLaren and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in denying respondent's petition for relief from judgment.

¶ 2 Respondent, Mickenzie J., appeals the trial court's July 21, 2016, order denying her petition for relief from judgment pursuant to section 2-1401(f) of the Code of Civil Procedure (735 ILCS 5/2-1401(f) (West 2014)). For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 We note first that we granted respondent's motion to file a memorandum in lieu of a formal brief. That memorandum does not fully develop the underlying relevant facts. We did not receive response or reply briefs. Nevertheless, we have ascertained the following facts from

the record and have determined that we can resolve the issue on appeal without the aid of a response brief. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131 (1976).

¶ 5 According to respondent, in 2004, the State of Indiana entered an order, granting her full custody over her son, T.K.J., and establishing that T.K.J.'s father was Oliver Ellington, IV.

¶ 6 In late January 2011, respondent and T.K.J. moved to Illinois. Respondent's mother, Nancy Seehawer, and Nancy's husband, Scott Seehawer, resided in Illinois, and, on January 26, 2011, T.K.J. began living with them. On May 2, 2011, the Seehawers filed in Illinois a petition for guardianship over T.K.J. Attached to the petition was a notarized "parental consent agreement," dated January 26, 2011, wherein respondent attested that she was unable to adequately provide for T.K.J.'s care and that she agreed and authorized the appointment of the Seehawers as his guardians. On May 6, 2011, the Illinois court entered the order, appointing the guardians.

¶ 7 No appeal or other postjudgment motion or action followed until four years later when, on March 29, 2016, respondent filed a section 2-1401 petition for relief from judgment. The petition alleged that the 2011 order was void because Indiana had continuing jurisdiction over issues concerning T.K.J.'s custody, including guardianship. Specifically, respondent asserted that the 2004 Indiana order followed a "child custody proceeding" and that it constituted a "child custody determination" and "initial determination," as defined by the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA) (750 ILCS 36/102(3), (4), (8) (West 2010)).[1]

[1] The 2004 Indiana order does not appear in the record. In their response to the section 2-1401 petition, the Seehawers asserted that they did not have personal knowledge of these allegations and demanded strict proof thereof.

Respondent therefore argued that, in 2011, the Illinois court lacked subject matter jurisdiction under the UCCJEA to modify the Indiana court's 2004 custody order.

¶ 8 At hearing on the petition, respondent testified that, since 2011, she and T.K.J. have lived in Illinois. Nancy Seehawer confirmed that she is respondent's mother and T.K.J.'s grandmother. In 2011, respondent asked the Seehawers if T.K.J. could live with them; she did not object to their guardianship, and she submitted the guardianship forms with them. According to Nancy, the first time she was notified that respondent objected to the guardianship was when respondent filed the section 2-1401 petition.

¶ 9 The circuit court denied the section 2-1401 petition. The court determined that, consistent with *McCormick v. Robertson*, 2015 IL 118230, the court's subject-matter jurisdiction was derived from the Illinois Constitution, not the UCCJEA; consequently, *even if* the 2011 order violated the UCCJEA, it was not void and respondent's 2016 challenge to the order was, therefore, time-barred. Respondent appeals.

¶ 10 II. ANALYSIS

¶ 11 As the above facts demonstrate, this is an unusual case. Respondent invokes the UCCJEA, but the dispute does not concern parents in different states challenging a custody decision. Indeed, T.K.J.'s biological father has no involvement in this matter. Rather, respondent apparently received full custody of T.K.J. Then, in an exercise of her custodial authority, she brought him to Illinois and effectively modified her own custodial authority by requesting and consenting to the appointment of the Seehawers as guardians. For reasons not presently clear, four years later, she wished to undo those actions, now casting the 2011 order to which she agreed as the *court* improperly modifying the 2004 Indiana custody order, as opposed to *respondent* herself having taken actions to modify the scope of her custody. (We also note

again that the record does not even contain the 2004 Indiana order that allegedly forms the basis of respondent's appeal).

¶ 12 In any event, unusual facts aside, we acknowledge that respondent's actions were irrelevant in the sense that she could not consent to or waive subject-matter jurisdiction. See *In re M.W.*, 232 Ill. 2d 408, 417 (2009) (lack of subject-matter jurisdiction not subject to waiver and cannot be cured by consent). We review *de novo* whether a circuit court has subject matter jurisdiction to entertain a claim. *McCormick*, 2015 IL 118230, ¶ 18. Here, we agree with the circuit court that, even *assuming* that the 2011 order somehow violated the UCCJEA, those statutory violations did not divest the court of its inherent subject-matter jurisdiction.

¶ 13 In *McCormick*, our supreme court addressed the issue of subject-matter jurisdiction as it pertains to the UCCJEA. There, as here, the petitioner alleged that a court order was void due to lack of UCCJEA subject-matter jurisdiction. The supreme court affirmed the appellate court's determination that "compliance with the statute is not a prerequisite to the court's jurisdiction." *McCormick*, 2015 IL 118230, ¶ 1. The court explained that, pursuant to section 9 of the Illinois Constitution (Ill. Const. 1970, art. VI, § 9), the circuit court has subject-matter jurisdiction to consider any justiciable matter that does not fall within the original and exclusive jurisdiction of the supreme court. *McCormick*, 2015 IL 118230, ¶ 20. With respect to the UCCJEA, the court acknowledged that the statute spoke of "jurisdiction" to hear matters, but it explained that "[a]s used in the statute, however, 'jurisdiction' must be understood as simply a procedural limit on when the court may hear initial custody matters, not a precondition to the exercise of the court's inherent authority. It could not be more, for as we have held, that authority emanates solely from article VI, section 9, of our constitution (Ill. Const. 1970, art. VI, § 9)." *Id.* at ¶ 27.

¶ 14 The court further held that, as long as a matter is justiciable, a court's statutory violation does not deprive it of jurisdiction:

> "Compliance with statutory prerequisites involves an altogether different set of values. Adherence to statutory requirements is vital to the rule of law, and it is beyond doubt that actions taken by judges in contravention of such requirements are subject to challenge *when raised in an appropriate way at an appropriate time*. As former Chief Justice Miller aptly stated, 'the constitutional source of a circuit court's jurisdiction does not carry with it a license to disregard the language of a statute.' [Citation.] *** [H]owever, the fact that the litigants or the court may have deviated from requirements established by the legislature does *not* operate to divest the court of jurisdiction." (Emphasis added.) *McCormick*, 2015 IL 118230, ¶ 22.

Therefore, the court concluded, "[o]nce a court has subject matter jurisdiction over a matter, its judgment will not be rendered void nor will it lose jurisdiction merely because of an error or impropriety in its determination of the facts or application of the law." *Id.* at ¶ 28; see also, generally, *Gorup v. Brady*, 2015 IL App (5th) 150078, ¶¶ 19-20; *Fleckles v. Diamond*, 2015 IL App (2d) 141229, ¶ 41.[2]

¶ 15 Here, respondent essentially argues that *McCormick* should be distinguished because the UCCJEA provisions establish that Indiana had original and continuing jurisdiction concerning T.K.J.'s custody. We disagree. Again, a violation of the UCCJEA does not operate to divest the

[2] Respondent's reliance on *Gorup* for her assertion that the UCCJEA was, in fact, violated, is simply misplaced, for there, the party challenged the propriety of the trial court's decision by filing an appeal within 30 days of the order not, as here, more than four years later. See *Gorup*, 2015 IL App (5th) 150078, ¶ 17.

court of subject-matter jurisdiction. If raised in an "appropriate way at an appropriate time," the alleged UCCJEA violations could have been challenged. *McCormick*, 2015 IL 118230, ¶ 22. Respondent did not file any postjudgment action until four years after the order was entered, then sought relief via a section 2-1401 petition, alleging that the underlying judgment was void for lack of subject-matter jurisdiction. See 735 ILCS 5/2-1401(f) (West 2014) (providing an exception to the statute's requirement that petitions be filed no later than two years after the entry of the order or judgment (735 ILCS 5/2-1401(c) (West 2014)) if the party seeks relief from a void order or judgment). Respondent's claim for relief must fail, however, as we have determined that the underlying order is not void and is, therefore, time-barred. We affirm the denial of the section 2-1401 petition.

¶ 16 III. CONCLUSION

¶ 17 For the reasons stated, we affirm the judgment of the circuit court of Kendall County.

¶ 18 Affirmed.