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2017 IL App (3d) 160079-U

Order filed February 28, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
JANE P. JORDAN,)	Will County, Illinois.
)	
Petitioner-Appellee,)	Appeal No. 3-16-0079
)	Circuit No. 09-D-1145
and)	
)	
TONY R. JORDAN,)	
)	Honorable David Garcia,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices McDade and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred in awarding child support arrearages from a sale of real property that occurred prior to entry of the original child support order.

¶ 2 Respondent appeals multiple orders for child support entered against him. Specifically, respondent argues (1) the trial court did not have jurisdiction to award child support arrearages in the amount of \$46,056.98 from the 2010 sale of the Jordan River Baptist Church, and (2) the trial

court erred in imputing income to respondent without providing him proper notice and a meaningful opportunity to be heard. We reverse in part and dismiss in part.

¶ 3

FACTS

¶ 4

Petitioner, Jane P. Jordan, and respondent, Tony R. Jordan, were married on August 21, 1993. They have two children. In June 2009, Jane filed a petition for dissolution of marriage. The trial court entered a judgment of dissolution in January 2010 and reserved the issue of child support due to Tony's representation that he was unemployed.

¶ 5

In August 2013, Jane filed a *pro se* motion seeking to establish child support. Jane's motion alleged that Tony appeared to have sources of earnings that had not been disclosed or utilized for support. In the alternative, Jane sought an issuance of a rule to show cause for Tony's failure to pay anything in child support since the date of dissolution. Following a September 2013 hearing, the trial court entered an order setting Tony's child support obligation at \$105 per week. The court also found a child support arrearage in the amount of \$5300 for 2012.

¶ 6

In December 2013, Jane filed a *pro se* motion asking the trial court to find Tony in contempt, as he had not paid any amount toward his child support obligation. In February 2014, Jane hired an attorney and filed a petition to modify child support. Jane's petition contained a blanket allegation that "on information or belief, the respondent's income has increased." The motion requested that the court enter an order modifying the previous child support order *instanter*, or as appropriate.

¶ 7

In June 2014, Tony filed his own petition for modification of child support, alleging he was unemployed. The trial court held a hearing on the parties' petitions in December 2014. At the hearing, Tony testified he was laid off. He was a union carpenter, but could not find work.

According to an income and expense affidavit, Tony had a mortgage of \$880 and other miscellaneous expenses. Tony testified that his current wife's disability check was covering these expenses. On cross-examination, Tony testified he used to be a minister and the registered agent for the Jordan River Baptist Church (Church). However, Tony sold the Church in 2010 for \$161,000. Tony testified that the money from the sale went into various investments, including a rental property in Illinois and a single-family home in Michigan. Tony claimed that he had given Jane \$40,000 in cash from the sale over the past several years.

¶ 8 Jane testified she had not seen any money from the sale of the Church. She also testified to a conversation she had with Tony where he stated that even if he had to go to jail, no one could put their finger on his money; he would get out of jail and have the same amount of money in the account that he started with. No one could make him take care of his girls.

¶ 9 Following the hearing, the trial court entered an order imputing income to Tony in the amount of \$18 per hour for a 40-hour week. The court further ordered that "the matter of the sale of Jordan River Baptist Church & proceeds thereof deemed as income is reserved for future consideration with respondent to provide an account of said proceeds."

¶ 10 In January 2015, Tony filed a motion to reconsider the court's modification of child support and establishment of arrearage. Tony's motion alleged that Jane never asked the court to impute income to him, and that he was not given notice that imputation of income would be litigated before the court at the December 2014 hearing. The trial court entered an order denying the motion in March 2015.

¶ 11 Tony also filed a motion to reconsider the court's finding regarding the proceeds he received from the sale of the Church. The motion asserted that Jane's petition to modify child support (1) did not request modification of the original support order entered on September 9,

2013, (2) did not reference the sale of the Church, and (3) did not comply with the provisions of section 2-1401 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2014)). Tony’s motion further alleged that *res judicata* barred the relief the court was awarding, and that the proceeds from the sale of the Church were not income for purposes of setting child support.

¶ 12 On January 26, 2016, the trial court entered an order denying Tony’s motion to reconsider and found a child support arrearage in the amount of \$50,985.13—\$46,056.98 of which was from the sale of the Church.

¶ 13 Tony appeals the trial court’s January 26, 2016, order.

¶ 14 ANALYSIS

¶ 15 I. Sale of the Jordan River Baptist Church

¶ 16 Initially, we note that Jane has failed to file an appellee brief. However, where “the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee’s brief, the court of review should decide the merits of the appeal. In other cases if the appellant’s brief demonstrates [p]rima facie reversible error and the contentions of the brief find support in the record the judgment of the trial court may be reversed.” *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976). Accordingly, we will address Tony’s claims.

¶ 17 Tony first argues that the trial court’s January 26, 2016, judgment should be reversed to the extent it awarded Jane \$46,056.98 in child support arrearages from the 2010 sale of the Church. Specifically, Tony argues (1) Jane did not seek such relief, (2) Jane’s motion did not meet the requirements for vacating or amending a judgment pursuant to section 2-1401 of the Code, and (3) the issue of the sale of the Church as income was barred by *res judicata*. We agree that the trial court erred in awarding child support arrearages from the sale of the Church.

¶ 18 “A final order is an order that terminates and disposes of the parties’ rights regarding issues in the action so that, if affirmed, the trial court need only proceed with execution of the judgment.” *In re Marriage of Oertel*, 216 Ill. App. 3d 806, 813 (1991). Here, the trial court entered an order in September 2013 setting Tony’s child support obligation at \$105 per week and finding an arrearage for the previous year. On its face, this order was final and complete. No direct appeal was taken. Now, the only avenue to attack the order is through section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2012)).

¶ 19 A petition filed pursuant to section 2-1401 of the Code must meet several requirements. By a preponderance of the evidence, the petition must allege (1) the existence of a meritorious defense or claim, (2) due diligence in presenting this defense or claim to the trial court in the original action, and (3) due diligence in filing the section 2-1401 petition for relief. 735 ILCS 5/2-1401 (West 2014). The purpose of a section 2-1401 petition is to raise facts not appearing in the record which, if known to the court at the time judgment was entered, would have prevented its entry. *In re Marriage of Ehgartner-Shachter & Shachter*, 366 Ill. App. 3d 278, 287-88 (2006).

¶ 20 Jane’s February 2014 petition to modify child support, which alleged only that “on information or belief, the respondent’s income has increased,” failed to comply with these requirements. Both parties acknowledged below that the sale of the Church occurred at least two years prior to the court’s September 2013 order. However, Jane’s petition to modify support did not so much as reference the sale of the Church, let alone provide an explanation for her failure to bring it to the court’s attention in 2013. Accordingly, the trial court erred in allowing Jane to present evidence of the prior sale and in finding an additional child support arrearage in the amount of \$46,056.98.

¶ 21

II. Imputation of Income

¶ 22

Tony next argues the trial court erred in imputing income to him in its December 2014 order. However, Tony failed to include this issue in his notice of appeal. Illinois Supreme Court Rule 303(b)(iii)(2) (eff. June 4, 2008) provides that the notice of appeal “shall specify the judgment or part thereof or other orders appealed from and the relief sought from the reviewing court.” A notice of appeal confers jurisdiction on a reviewing court “to consider only the judgments or parts thereof specified in the notice of appeal.” *People v. Smith*, 228 Ill. 2d 95, 104 (2008). Without a properly filed notice of appeal, “a reviewing court has no jurisdiction over the appeal and is obliged to dismiss it.” *Id.* Although Jane failed to raise this issue in an appellee brief, this court has an independent duty to address matters relating to jurisdiction. *Id.*

¶ 23

Here, Tony’s notice of appeal specifically stated that he was appealing “[t]he order of January 26, 2016 awarding petitioner a judgment for arrearages in the amount of \$46,056.98 relating to the sale of a church by respondent.” The notice further stated: “By this appeal, Respondent-Appellant will ask the Appellate Court to reverse the order of January 26, 2016, and remand this cause for further action to set the arrearage owed by respondent without inclusion of the proceeds of the sale of said church as income for purposes of determining the amount of support due.” Nowhere does Tony’s notice of appeal reference the trial court’s June 2014 order imputing income to him or its March 2015 order denying his motion to reconsider. Accordingly, we lack jurisdiction to hear this portion of Tony’s appeal and are obligated to dismiss it. *Id.* at 105.

¶ 24

CONCLUSION

¶ 25

For the foregoing reasons, we reverse the trial court’s finding of an arrearage in the amount of \$46,056.98 for the 2010 sale of the Jordan River Baptist Church.

Reversed in part and dismissed in part.