

NOTICE
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2017 IL App (5th) 150449-U

NO. 5-15-0449

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

<i>In re</i> MARRIAGE OF)	Appeal from the
)	Circuit Court of
DEBORAH J. PEEL,)	St. Clair County.
)	
Petitioner-Appellee,)	
)	
and)	No. 03-D-320
)	
GARY E. PEEL,)	Honorable
)	Julie K. Katz,
Respondent-Appellant.)	Judge, presiding.

PRESIDING JUSTICE MOORE delivered the judgment of the court.
Justices Welch and Chapman concurred in the judgment.

ORDER

- ¶ 1 *Held:* Due to mootness, this court will not consider whether certain orders entered by the circuit court, concerning various assets held by the circuit clerk, are void. The circuit court did not err in declining to adjudicate a motion to review an order previously entered by a federal bankruptcy court.
- ¶ 2 The appellant, Gary E. Peel (Gary), appeals from orders denying various motions that he filed in post-divorce-decree proceedings involving his first ex-wife, Deborah J. Peel (Deborah). Gary raises two arguments in this appeal. This court concludes that the first argument is moot and the second argument is unpersuasive. The judgment of the circuit court is affirmed.

¶ 3

BACKGROUND

¶ 4 Gary and Deborah were married in June 1967. In April 2003, Deborah filed for dissolution of the marriage. In June 2003, the circuit court entered a dissolution judgment. The judgment incorporated therein a written marital settlement agreement (MSA) that the parties had entered into. The parties' MSA addressed various financial issues, including the distribution of marital assets. One of the marital assets consisted of stock and stock options in a privately held company named Applied Logic, Inc. (Applied Logic). Deborah and Gary owned the stock and the options as tenants in common. Under the terms of the MSA, Deborah and Gary would continue to own the shares as tenants in common until such time as any of three specified events occurred, and any proceeds from a sale or liquidation would be divided equally between Deborah and Gary. Also, the MSA required Gary to make monthly payments, characterized as "periodic loans," to Deborah, in the amount of \$1,000 per month or \$2,500 per month, depending on circumstances enumerated in the MSA. Gary also was required to reimburse Deborah for her health insurance premiums and for healthcare expenditures not covered by insurance.

¶ 5 In August 2004, Gary filed a section 2-1401 petition for relief from the judgment of dissolution. See 735 ILCS 5/2-1401 (West 2002). He subsequently filed an amended section 2-1401 petition. Ultimately, the circuit court denied the amended petition. In this appeal, Gary does not contest the denial of the section 2-1401 petition. Therefore, the petition's contents need not be described here.

¶ 6 In July 2005, Gary filed, in the United States Bankruptcy Court for the Southern District of Illinois (bankruptcy court), a voluntary petition for relief under Chapter 7 (liquidation) of the United States Bankruptcy Code. In November 2005, Deborah filed an unsecured claim against Gary's estate in bankruptcy. Her claim was predicated entirely on various provisions of the 2003 dissolution judgment and MSA. The bankruptcy case occasioned lengthy delays in the post-divorce-decree proceedings in the circuit court.

¶ 7 On June 25, 2007, the circuit court of Madison County entered a judgment dissolving the marriage of Gary and his second wife, whom Gary had married only a few months after the 2003 dissolution of his marriage to Deborah. The dissolution judgment incorporated a written marital settlement agreement between Gary and his second wife. This marital settlement agreement included two provisions pertinent to this appeal. Section D.c. of the agreement stated:

"To the extent not already transferred or conveyed, and to the extent that same is not claimed by other court process (including bankruptcy, foreclosure or [Gary's] post-divorce litigation with his first wife) [Gary's second wife] is awarded all of the furniture, furnishings, etc. acquired by the parties during their marriage. All stock, stock options, and other personal property of Gary E. Peel will be awarded to [Gary's second wife]."

Section G of the marital settlement agreement stated:

"Any moneys, if any, retrieved from the bankruptcy of Gary E. Peel will become the property of [Gary's second wife]."

(Gary attached a copy of the 2007 Madison County dissolution judgment, and a copy of his marital settlement agreement with his second wife, to a document that he filed in the circuit court of St. Clair County on July 20, 2012, a document described *infra*.)

¶ 8 In November 2007, in the United States District Court for the Southern District of Illinois, Gary was sentenced to federal prison for 144 months. In August 2011, he was resentenced to 144 months. See *United States v. Peel*, 668 F.3d 506 (7th Cir. 2012). He remains a federal prisoner.

¶ 9 In August 2011, the trustee of Gary's bankruptcy estate filed a document seeking the bankruptcy court's approval of a settlement the trustee had negotiated with Deborah concerning her claim against the estate. Gary filed objections to the proposed settlement.

¶ 10 On September 21, 2011, Deborah filed in the circuit court a motion to restrain the selling or encumbering of the parties' Applied Logic stock and stock options. Deborah alleged that the Applied Logic stock and options were the only substantial asset remaining from the parties' marriage. She further alleged that Gary still owed her money under the terms of their MSA, and that obligations continued to accrue under the MSA.

¶ 11 On December 19, 2011, the bankruptcy court entered an order approving the bankruptcy trustee's proposed settlement with Deborah, providing her with an allowed claim of \$158,455.63 against the bankruptcy estate. In paragraph 12 of the order, the bankruptcy court broke down Deborah's claim into various component parts, and attached a dollar figure to each component part. In subparagraph 12(f) of the order, the bankruptcy court allowed Deborah's claim for "monthly payments and reimbursement of health insurance premiums and medical reimbursements," in the amount of \$54,210.31.

¶ 12 Gary appealed from the bankruptcy court's order approving the settlement of Deborah's claim. Before the United States Court of Appeals, Seventh Circuit, Gary argued that certain portions of the order were erroneous, but he did not argue that subparagraph 12(f) was erroneous. Gary prevailed in that appeal. *In re Peel*, 725 F.3d 696 (7th Cir. 2013).

¶ 13 After remand of the bankruptcy case from the Seventh Circuit, Gary filed in the bankruptcy court a "motion to reconsider the claim of Deborah J. Peel (including the related 'order concerning application to compromise objection to claim.' " The motion to reconsider sought reconsideration of one particular provision of the bankruptcy court's order approving the settlement of Deborah's claim, but not subparagraph 12(f). The bankruptcy court modified its order in accordance with the Seventh Circuit's opinion and with Gary's motion to reconsider. Subparagraph 12(f) of the order, which had not been a point of contention on appeal or in the motion to reconsider, was unaltered.

¶ 14 On July 9, 2012, Deborah filed in the circuit court a motion supplementing her September 21, 2011, motion to restrain the selling of the Applied Logic stock and options. In her supplemental motion, Deborah informed the court that she had filed a claim in Gary's bankruptcy case and that she and the bankruptcy trustee had negotiated a settlement. She asked the circuit court to restrain Gary from disposing of any funds he had received, or would receive, from the bankruptcy trustee, and require him to deposit any such funds in escrow pending further order of the circuit court.

¶ 15 On July 20, 2012, Gary filed a *pro se* response and objection to Deborah's September 21, 2011, motion and her July 9, 2012, supplemental motion to restrain the

disposition of assets. Gary stated, *inter alia*, that he neither owned nor controlled any of the assets that were the subjects of Deborah's motion and supplemental motion; all of the assets belonged either to the bankruptcy estate or to Gary's second wife, as a result of his declaring bankruptcy and due to the terms of the 2007 Madison County judgment dissolving his marriage to his second wife. As mentioned *supra*, Gary attached to his filing a copy of the Madison County dissolution judgment and a copy of his marital settlement agreement with his second wife.

¶ 16 On July 26, 2012, upon notice to the parties, the circuit court entered a written order indicating that it had held a hearing on Deborah's motion and supplemental motion to restrain the disposition of assets, that no one had appeared on behalf of Gary, that Gary's response and objection to Deborah's motion and supplemental motion had been filed, and that the court had taken the matter under advisement.

¶ 17 Also on July 26, 2012, the circuit court entered a written order granting Deborah's motion and supplemental motion to restrain the disposition of assets. On July 31, 2012, the court entered a clarifying order, correcting a misnomer. The orders of July 26 and 31, 2012, restrained Gary from disposing of, or otherwise encumbering, the parties' Applied Logic stock and stock options until further order of the court, and further ordered him to surrender to the circuit clerk all Applied Logic stock or evidence of ownership of that stock. The order also required that Gary deposit with the clerk of the circuit court any funds he had received from the disposition of bankruptcy estate assets, required the bankruptcy trustee to deposit with the circuit clerk any funds that he might obtain and

that otherwise would be payable to Gary, and required the circuit clerk to hold all those funds until further order of the circuit court.

¶ 18 On August 13, 2012, Gary filed in the circuit court a motion to reconsider the two orders of July 26, 2012, and the clarifying order of July 31, 2012. Gary argued that he was incapable of complying with the order that he surrender to the circuit clerk all Applied Logic stock or evidence of ownership of that stock, because the bankruptcy estate had become the owner of the stock. In addition, Gary argued, *inter alia*, that he could not comply with the orders of July 26 and 31, 2012, without violating the 2007 Madison County judgment dissolving his second marriage, which had awarded to his second wife any funds that he otherwise would have received from the bankruptcy.

¶ 19 On August 31, 2012, Gary filed a supplement to his August 13, 2012, motion to reconsider the orders of July 26 and 31, 2012. For the first time, Gary invoked the Attachment Act (735 ILCS 5/4-101 to 4-228 (West 2010)), which sets forth the rules and procedures by which a creditor may obtain a prejudgment attachment of a debtor's property. Gary argued that the orders of July 26 and 31, 2012, amounted to an order for prejudgment attachment of his property (see 735 ILCS 5/4-101 (West 2010)), and that the attachment order was void because Deborah had not put forth the required bond (see 735 ILCS 5/4-107 (West 2010)).

¶ 20 Also on August 31, 2012, Gary filed in the circuit court a "motion to compel posting of security bond or in the alternative motion to rescind orders restraining assets." In this motion, Gary again argued that the two motions entered on July 26, 2012, plus the clarifying order of July 31, 2012, amounted to a prejudgment order for attachment of

property, and that the alleged attachment order needed to be rescinded unless Deborah posted a security bond. Gary cited to section 4-107 of the Attachment Act (735 ILCS 5/4-107 (West 2010)), which requires the circuit court, whenever it enters an order for attachment, to take from the party who sought the order a security bond in double the sum sworn to be due, and further requires the court to dismiss any attachment order entered without a bond taken.

¶ 21 On October 26, 2012, Gary filed a "reciprocal petition to restrain disposition of stock and/or other assets (including cash assets to be received from the bankruptcy court)." He prayed that the court, *inter alia*, would restrain Deborah from disposing of, or encumbering, her interest in the Applied Logic shares and stock options.

¶ 22 On December 18, 2012, the court entered a written order noting that Deborah appeared by counsel and that Gary did not appear. The order noted that both parties had filed pleadings to restrain one another from disposing of bankruptcy assets. The order required the bankruptcy trustee to deposit with the clerk of the circuit court all funds payable to Gary in the bankruptcy case, and required the circuit clerk to hold the funds until further order of the circuit court. The order also restrained the parties from taking any action to dispose of the Applied Logic stock.

¶ 23 On January 11, 2013, Gary filed a motion to reconsider the December 18, 2012, order. Gary argued that the order violated his constitutional rights to due process and access to the courts, having been entered without notice to him and without his participation in the proceedings that resulted in the order, despite his repeated requests to participate via telephone in all court proceedings.

¶ 24 On January 25, 2013, the bankruptcy court, in response to the bankruptcy trustee's request for instructions, entered a written order directing the trustee to deposit \$2,185 in cash with the clerk of the circuit court of St. Clair County, in accordance with the circuit court's order of December 18, 2012. The bankruptcy court noted that the \$2,185 represented bankruptcy-exempt funds that were otherwise payable to Gary. The bankruptcy court also noted that all other funds in the trustee's possession were nonexempt funds belonging to the bankruptcy estate and subject to the bankruptcy court's jurisdiction. In February 2013, the bankruptcy trustee deposited the \$2,185 in exempt funds with the St. Clair County circuit clerk.

¶ 25 On October 30, 2013, Gary filed in the bankruptcy court a motion to reconsider subparagraph 12(f) of the December 19, 2011, order approving the bankruptcy trustee's settlement of Deborah's claim. Gary averred that the claim described in subparagraph 12(f) was "unenforceable" and that the equities of the case required a reduction in that claim.

¶ 26 Apparently, the bankruptcy court never ruled on Gary's October 30, 2013, motion to reconsider. Shortly after Gary filed that motion to reconsider, the bankruptcy trustee filed in the bankruptcy court a motion for permissive abstention (see 28 U.S.C. § 1334(c)(1)), wherein he asked the bankruptcy court to abstain from hearing any further matters related to Deborah's claim. On November 20, 2013, the bankruptcy court entered a written order granting the trustee's motion for permissive abstention. The bankruptcy court stated that the bankruptcy case had become "essentially a two-party dispute" between Gary and Deborah concerning the terms of their MSA, and that the St. Clair

County circuit court was the appropriate forum for litigating such a dispute. On that basis, the bankruptcy court ruled that it would abstain from hearing any further matters associated with Deborah's claim against Gary's estate in bankruptcy. The bankruptcy court also directed the bankruptcy trustee to take whatever steps were necessary to allow for the expeditious closing of the bankruptcy case.

¶ 27 Sometime after the bankruptcy court entered its abstention order, Gary filed in the bankruptcy court a motion seeking sanctions against Deborah. On January 22, 2014, the bankruptcy court held a hearing on the motion for sanctions. At that hearing, Gary acknowledged, and the court agreed, that under the terms of a marital settlement agreement between Gary and his second wife, Gary had assigned to the second wife all of his interest in any distribution he could potentially receive from the bankruptcy estate.

¶ 28 On February 10, 2014, the bankruptcy court entered a written order denying Gary's motion for sanctions, on the ground that he lacked standing to bring the motion. (Gary attached a copy of this order to a motion he filed in the circuit court on April 20, 2015, which is described *infra*.) In its order, the bankruptcy court noted that Gary acknowledged that he had assigned "all of his interest in any distribution that he could potentially receive from the bankruptcy estate" to his second ex-wife. "Therefore," the bankruptcy court reasoned, "[Gary] acknowledges that he has no financial interest or financial stake in the bankruptcy estate, even if the case turns out to be a surplus case."

¶ 29 Gary appealed to the United States Court of Appeals for the Seventh Circuit, which dismissed the appeal as frivolous, after agreeing with the bankruptcy court that

Gary lacked bankruptcy standing. *Peel v. Peel*, No. 14-3459 (7th Cir. Mar. 10, 2015) (unpublished order).

¶ 30 On April 20, 2015, Gary filed in the circuit court a "motion for summary judgment or in the alternative motion for summary determination of major issue(s)." He argued that the orders entered on July 26, 2012, July 31, 2012, and December 18, 2012, amounted to prejudgment attachment orders that should be vacated due to their being entered "*ex parte* and without the mandatory security bond required by 735 ILCS 5/4-107." He also argued that his one-half interest in the Applied Logic shares was, in fact, no longer his property, for its ownership had been transferred to his second ex-wife by virtue of the 2007 Madison County dissolution judgment. Gary also argued that the cash the bankruptcy trustee had deposited with the clerk of the circuit court, in the amount of \$2,185, also was no longer his property, but belonged to his second ex-wife, by virtue of that selfsame Madison County judgment. According to Gary, the circuit court therefore lacked jurisdiction over his erstwhile one-half interest in the stock and the \$2,185 cash, and Deborah did not have any claim to those two assets.

¶ 31 On June 6, 2015, Deborah filed a response to Gary's summary-judgment motion. Deborah noted that Gary, in his motion, had stated that both his one-half interest in the Applied Logic stock and the \$2,185 in cash belonged to his second ex-wife, and Deborah argued that Gary therefore lacked standing to bring his "claim."

¶ 32 On August 31, 2015, the circuit court held a hearing on Gary's amended petition to vacate or modify the judgment of dissolution of marriage. The court may have heard other matters, as well, but the record does not include a transcript or bystander's report of

the hearing. Gary, still a federal prisoner, participated via telephone. At the close of the hearing, the court took the matter under advisement and granted Gary 14 days in which to file any additional pleadings.

¶ 33 On September 8, 2015, Gary filed in the circuit court a "motion to adjudicate 'second motion to reconsider the claim of Deborah J. Peel (including the related "order concerning application to compromise objection to claim").' " In this motion, Gary asked the circuit court to adjudicate the motion he had filed in the bankruptcy court on October 30, 2013, wherein he requested that the bankruptcy court reconsider subparagraph 12(f) of its December 19, 2011, order approving the bankruptcy trustee's settlement with Deborah.

¶ 34 On September 29, 2015, the circuit court entered three separate written orders, as follows:

(1) an order denying Gary's July 13, 2005, amended petition to vacate or modify the judgment of dissolution of marriage;

(2) an order denying four different motions, *viz.*: (i) Gary's August 13, 2012, motion to reconsider the two orders entered on July 26, 2012, and the clarifying order entered on July 31, 2012, (ii) Gary's August 31, 2012, motion to compel posting security bond or in the alternative motion to rescind orders restraining assets, (iii) Gary's August 31, 2012, "supplement" to the August 13, 2012, motion to reconsider, and (iv) Gary's January 11, 2013, motion to reconsider the circuit court's December 18, 2012, order requiring that all funds payable to Gary in the bankruptcy case be deposited with the clerk of the circuit court; and

(3) an order denying Gary's September 8, 2015, motion for the circuit court to adjudicate a motion that Gary had filed in the bankruptcy court on October 30, 2013, wherein he sought reconsideration of subparagraph 12(f) of the bankruptcy court's December 19, 2012, order approving the bankruptcy trustee's settlement of Deborah's claim. The circuit court explained that it lacked jurisdiction to review an order entered by the bankruptcy court.

¶ 35 On October 26, 2015, Gary filed a notice of appeal from all three of the orders entered on September 29, 2015, thus perfecting the instant appeal.

¶ 36 ANALYSIS

¶ 37 On appeal, Gary presents two arguments: (1) this court should vacate as void the orders entered by the circuit court on July 26, July 31, and December 18, 2012, for these orders amounted to "attachment orders" that violated the attachment article of the Code of Civil Procedure (735 ILCS 5/4-101 *et seq.* (West 2014)) and/or violated the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/101 *et seq.* (West 2014)); and (2) this court should reverse the circuit court's order denying, on the ground of a lack of jurisdiction, his "motion to adjudicate 'second motion to reconsider the claim of Deborah J. Peel (including the related "order concerning application to compromise objection to claim").' " (Gary does not contend that the circuit court erred in denying his amended petition to vacate or modify the judgment of dissolution of marriage.) Deborah answers that (1) the first issue is moot, and (2) the circuit court did not err in denying Gary's motion to adjudicate. This court agrees with Deborah.

¶ 38 As detailed *supra*, the circuit court's orders of July 26, July 31, and December 18, 2012, required Gary or the bankruptcy trustee to surrender to the circuit clerk, until further order of the circuit court, all of the Applied Logic stock and stock options and any funds that Gary had been paid, or was to be paid, by the bankruptcy trustee. In a document that he filed on July 20, 2012, Gary plainly stated that he no longer owned or controlled any of those assets, and that all of the assets belonged either to the bankruptcy estate or to Gary's second wife, by virtue of his bankruptcy and the terms of the 2007 Madison County judgment dissolving his marriage to his second wife. In addition, on August 13, 2012, Gary filed in the circuit court a document wherein he stated that the bankruptcy estate had become the owner of the stock and stock options and that his second wife had been awarded any funds that he otherwise would have received from the bankruptcy. Gary's marital settlement agreement with his second wife, which was incorporated into the 2007 Madison County dissolution judgment, specified that the second wife was awarded "all [of Gary's] stock, stock options, and other personal property" and "any moneys, if any, retrieved from [Gary's] bankruptcy."

¶ 39 In light of Gary's bankruptcy and Gary's marital settlement agreement with his second wife, it is plain that any assets affected by the circuit court's orders of July 26, July 31, and December 18, 2012, are assets that are not owned by Gary. They are assets owned by either the bankruptcy estate or Gary's second wife. If this court were to vacate the orders of July 26, July 31, and December 18, 2012, as Gary requests, Gary would not benefit in the slightest. The assets would be distributed to others; he would not be entitled to anything. In other words, this court cannot grant any effectual relief to Gary.

¶ 40 When a complaining party raises a particular issue but a reviewing court "cannot grant the complaining party effectual relief," the issue is moot. *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 522-23 (2001). In general, reviewing courts do not decide moot questions. *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 2016 IL 118129, ¶ 10. Due to the mootness of Gary's first argument, this court will not consider its merits.

¶ 41 As for his second issue, Gary argues that the circuit court erred in denying his "motion to adjudicate 'second motion to reconsider the claim of Deborah J. Peel (including the related "order concerning application to compromise objection to claim").'" As previously described, Gary's "motion to adjudicate" was essentially a request that the circuit court review and modify paragraph 12(f) of the bankruptcy court's December 19, 2011, order approving the settlement agreement between the bankruptcy trustee and Deborah. The circuit court, in its order denying the "motion to adjudicate," stated that it lacked jurisdiction to review or reverse an order entered by the bankruptcy court. Gary insists that the circuit court did have jurisdiction to review or reverse the bankruptcy court's order of December 19, 2011, by virtue of the bankruptcy court's order of November 20, 2013, wherein the bankruptcy court announced that it would abstain from hearing any further matter associated with Deborah's claim.

¶ 42 Contrary to Gary's assertion, the bankruptcy court's abstention order (see 28 U.S.C. § 1334(c)(1)) did not vest the circuit court with the authority to review prior decisions of the bankruptcy court. Nothing in the law implies such an effect. The circuit court was correct in saying that it lacked the jurisdiction to review the decisions of a

federal bankruptcy court. This court, too, lacks such jurisdiction. See *Cassidy v. Kentner*, 235 Ill. App. 3d 114, 115 (1992), wherein the appellate court discussed the supremacy clause of United States Constitution and federal bankruptcy statutes and concluded that it "lack[ed] any power to review the correctness of the rulings of a federal bankruptcy court." The circuit court did not err in denying the motion to adjudicate.

¶ 43 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 44 Affirmed.