NOTICE
Decision filed 02/01/17. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2017 IL App (5th) 160210-U

NO. 5-16-0210

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).

In re MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
JEAN STURGILL,	)	St. Clair County.
	)	
Petitioner-Appellee,	)	
	)	
and	)	No. 03-D-309
	)	
FRANKLIN STURGILL,	)	Honorable
	)	Julie K. Katz,
Respondent-Appellant.	)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Welch and Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court did not err in denying Father's motion to reconsider.

¶ 2 Father, Franklin Sturgill, appeals the decision of the circuit court of St. Clair County, entered April 25, 2016, denying his motion to reconsider. We affirm.

¶ 3 Father and Mother, Jean Sturgill, were married in 1988. Their marriage subsequently was dissolved in 2004. In 2013, Mother filed a petition for apportionment of college expenses for the parties' daughter who was then beginning college. Mother also filed a petition for rule to show cause and a petition for adjudication of indirect civil

contempt. The parties entered into a memorandum of understanding through mediation on September 3, 2014. The memorandum covered the issue of the college expenses as well as monthly support through the fall semester for the parties' daughter. The parties also allegedly agreed to each pay one-half of the daughter's uninsured medical costs. On October 14, 2014, the memorandum was incorporated as an order of the circuit court. Father filed a *pro se* motion to dismiss and a *pro se* motion to vacate the order of memorandum of understanding. The court denied Father's motion to vacate.

¶ 4 On September 15, 2015, the court held a hearing to settle all remaining petitions. Father was not represented by counsel, and asked for a continuance particularly in light of the fact that he had just received new pleadings some 15 minutes prior to the hearing. He further stated that until the date of the hearing he did not even realize his daughter intended to continue to attend college in the fall. The daughter had been attending SWIC and now desired to transfer to a four-year university to pursue her degree. At the time of the hearing the four-year institution had not yet been chosen, consequently Mother was asking for a prospective ruling. Mother was requesting that one-third of the costs be assigned to Father.

¶ 5 After being questioned by the court, Father eventually agreed to proceed to hearing. At the conclusion of the hearing, the court ordered that Father and Mother split the daughter's college expenses equally. Father was also ordered to pay half of the fall semester expenses at SWIC plus $330 per month in support. Additionally, Father was ordered to pay one-half of the daughter's unreimbursed medical bills and to continue her health insurance. The court subsequently issued a written order, dated November 20,

2015, with a hand written notation of the order being *nunc pro tunc* to September 15, 2015, the date of the hearing and the court's oral pronouncement from the bench at the conclusion of the hearing.

¶ 6 Father argues on appeal that the court erred in denying his request for a continuance when he was unprepared to proceed *pro se*, especially when he was given several pleadings and exhibits just 15 minutes prior to the hearing. He further contends the court failed to give him proper admonitions regarding evidence and procedure particularly with respect to the admission of one of the exhibits purported to be copies of numerous medical bills for the parties' daughter. More specifically, Father did not tender any hearsay or foundational objections and did not cross-examine Mother about the exhibit of medical bills when it was presented. When Father later attempted to throw doubt on whether all of the receipts pertained to his daughter and whether the receipts were true and unaltered copies, the court asked Father what it was to do with his beliefs when he never questioned Mother about the receipts while she was on the stand. The court never suggested to Father that he could have subpoenaed his daughter to testify about the bills or ask to continue the hearing to obtain the daughter's presence. Father concludes the court abused its discretion in failing to grant Father's motions to continue the hearing, and that abuse of discretion resulted in substantial prejudice to him, especially when he was ordered to pay half of the medical bills totaling some $15,000.

¶ 7 We first recognize the established right of a party to discharge his attorney at any time with or without cause, and to substitute other counsel. *Sullivan v. Eichmann*, 213 Ill. 2d 82, 90, 820 N.E.2d 449, 453 (2004). However, that established right is not absolute,

especially if substitution of counsel would unduly prejudice the other party or interfere with the administration of justice. *Sullivan*, 213 Ill. 2d at 90, 820 N.E.2d at 453. Similarly, it is within the court's discretion whether or not to grant a continuance. *Martinez v. Scandroli*, 130 Ill. App. 3d 712, 714, 474 N.E.2d 456, 457 (1985). A party does not have an absolute right to a continuance. *Thilman & Co. v. Esposito*, 87 Ill. App. 3d 289, 294, 408 N.E.2d 1014, 1018 (1980). A critical consideration in determining whether or not a continuance should be granted is whether the party seeking the continuance has acted with diligence. *Bethany Reformed Church of Lynwood v. Hager*, 68 Ill. App. 3d 509, 511, 386 N.E.2d 514, 516 (1979).

¶ 8 As the trial court here explained in its order, the petitions being heard on September 15 had been on file for two years. Father was represented by counsel while discovery was being conducted, and he and his counsel had more than sufficient time to investigate the contentions raised in the petitions. At the hearing itself, Father acknowledged he had already received all of the documents he had requested other than receipts for his daughter's college tuition for the semester that started one month prior to the hearing. While Father may have been better able to present his case had he been represented by counsel, he is the one who chose to represent himself and ultimately agreed to proceed at the hearing conducted on September 15, 2015. The transcript of the hearing reveals that he was allowed to testify, to cross-examine witnesses, and to introduce exhibits into evidence. As the court stated, "He was given every opportunity to present the evidence he wished to present. Just because he did not like the court's decision does not mean that he should get a new hearing."

¶ 9 Father also contends that there were no signed authorizations provided to him allowing him to review his daughter's educational records or applications for student loans, grants and aid as required by statute. As the court noted, the proper remedy for father's grievance pertaining to not being provided with information which he is authorized to receive is a contempt petition to enforce the terms of the judgment rather than a motion to reconsider. Father is not alleging the provisions of the judgement are inadequate, rather he is alleging that those provisions are not being followed.

¶ 10 Father's next contention is that the judgment here was entered after January 1, 2016, and therefore the court should have reconsidered its decision in light of the statutory amendments which became effective on that date. He also takes issue with the court issuing a written decision with the notation *nunc pro tunc* dating the order back to the date of the September hearing.

¶ 11 Subsequent to the court issuing an oral ruling at the conclusion of the hearing held on September 15, 2015, a judgment incorporating said ruling was entered on November 20, 2015. Father argues the court erred in characterizing the November judgment as *nunc pro tunc*. It is true that a trial court loses jurisdiction to vacate or modify its judgment 30 days after the entry of that judgment unless a timely postjudgment motion has been filed. At any time, however, a court may modify its judgment *nunc pro tunc* to correct a clerical error or matter of form so that the record conforms to the judgment actually rendered by the court. *Kooyenga v. Hertz Equipment Rentals, Inc.*, 79 Ill. App. 3d 1051, 1056-57, 399 N.E.2d 216, 219 (1979); *Dauderman v. Dauderman*, 130 Ill. App. 2d 807, 809-10, 263 N.E.2d 708, 710 (1970). The purpose of a *nunc pro tunc* order is to correct the

record of judgment, not to alter the actual judgment of the court. It may not be used to supply omitted judicial action, to correct judicial errors under the pretense of correcting clerical errors, or to cure a jurisdictional defect. *Kooyenga*, 79 Ill. App. 3d at 1057, 399 N.E.2d at 220. Here the court issued its ruling at the hearing held on September 15. The written order which conformed to the oral pronouncement was not issued until November. The court entered the November order *nunc pro tunc* to the date of the oral pronouncement so that it was clear the court's order took effect immediately upon pronouncement. There was no altering of the actual judgment of the court or any correction of judicial error. Again, a *nunc pro tunc* order is an entry now for something previously done, made to make the record speak now for what was actually done then. *Kooyenga*, 79 Ill. App. 3d at 1056, 399 N.E.2d at 219.

¶ 12 Father asserts, however, that the court should have granted his motion to reconsider and held a rehearing based on the statutory changes which became effective months before the trial court's April 25, 2016, order denying his motion to reconsider. Father claims he was prejudiced because he was exposed to liability for college and living expenses substantially in excess of the current statutory maximums. Unfortunately, for Father, the hearing and judgment occurred before the effective date of the statutory amendments. There was nothing left to rule on other than his motion to reconsider by the time the new statutory amendments took effect. Consequently, the new statutory amendments did not apply in this instance. See *In re Marriage of Cole*, 2016 IL App (5th) 150224, 58 N.E.3d 1286 (when hearings were held before the effective date of

the new law and the only item pending was the entry of the court's ruling, the old law should apply).

¶ 13 For the aforementioned reasons, we affirm the judgment of the circuit court of St. Clair County denying Father's motion to reconsider.

¶ 14 Affirmed.