2018 IL App (1st) 171224-U

FOURTH DIVISION
December 27, 2018

No. 1-17-1224

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 THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
STACY GREENBERG,	)	Cook County
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 08 D 878
	)	
DAVID GREENBERG,	)	
	)	
	)	Honorable
Respondent-Appellant.	)	David E. Haracz,
	)	Judge Presiding.
	)	

JUSTICE REYES delivered the judgment of the court.
Presiding Justice McBride and Justice Gordon concurred in the judgment.

ORDER

¶ 1 *Held*: Dismissing the appeal for lack of appellate jurisdiction where respondent filed the appeal while contempt proceedings against him related to the appealed orders remained pending.

¶ 2 Respondent David Greenberg appeals four orders entered by the circuit court of Cook County relating to petitioner Stacy Greenberg's petition for rule to show cause in a

postdissolution of marriage proceeding. On appeal, David maintains that the circuit court abused its discretion when it found he owed $64,000 in child support arrears, $1,532.62 in past due medical expenses for his children, $1,800 in activity charges for his children, and $52,528 in past due college expenses for one of his children. David further asserts that the trial court abused its discretion when it awarded Stacy attorney fees pursuant to section 508(b) of the Act in the amount of $4,668.75. However, because the circuit court's contempt proceedings against David were still pending at the time he filed his appeal, we conclude we lack jurisdiction and dismiss this appeal.

¶ 3 BACKGROUND

¶ 4 Stacy and David were married in March 1995. They had two children born during the marriage, Dina (born in 1997) and Isaac (born in 1999). In 2002, Stacy filed a petition for dissolution of marriage in the circuit court of the Nineteenth Judicial Circuit, Lake County, Illinois. On November 19, 2004, the circuit court of Lake County entered a judgment for dissolution of marriage based on a marital settlement agreement between the parties. The marital settlement agreement provided that Stacy would have sole custody of the children and David was to pay $340 per month in child support based on his net base salary of $1,214 per month. Regarding the children's college expenses, the marital settlement provided that the obligations of the parties would be determined in accordance with the provisions of Section 513 of the Illinois Marriage and Dissolution of Marriage Act. As for the children's medical expenses, the martial settlement agreement provided that David and Stacy would split all medical expenses equally.

¶ 5 Thereafter, an order was entered transferring venue to the circuit court of Cook County as both parties and the minor children now resided there. In October 2008, Stacy filed a motion to modify the judgment of dissolution to increase child support and other expenses as a result of an

increase in David's income as well as an increase in the children's financial needs. Over a year later, in February 2010, an agreed order was entered regarding child support and other expenses. It provided that David was to pay $831 per month along with an additional payment of $166 per month to reduce his arrears. David was also ordered to pay $435.20 in medical expenses. David was further ordered to pay one-half of the documented costs of the children's activities capped at $300 per child per calendar year.

¶ 6 On August 13, 2014, Stacy filed a petition for modification of the February 2010 child support order. The child support order was subsequently modified on October 2, 2014, to reflect another increase in David's income and to provide that David pay $778 every other week.

¶ 7 On October 5, 2015, Stacy filed a petition for contribution to postsecondary educational expenses and support. In her petition, Stacy argued that Dina was currently attending Indiana University and requested David be ordered to contribute to Dina's college expenses pursuant to the marital settlement agreement. Two days later, Stacy filed a petition for rule to show cause as to why David should not be held in indirect civil contempt of court for failing to comply with the terms of the marital settlement agreement as memorialized in the November 19, 2004, judgment order. Specifically, Stacy maintained that David failed to: pay his required child support; maintain the required life insurance for the benefit of the children; and pay his share of medical expenses.

¶ 8 In response to the petition for rule to show cause, David maintained that the marital settlement agreement was superseded by the February 24, 2010, order which modified the provisions of the agreement regarding medical expenses. David further argued that he was never informed or consulted regarding Dina's choice to attend an out-of-state university and was never provided with the receipts for medical expenses.

¶ 9 Thereafter, on November 30, 2015, David filed a petition for modification of child support and for health insurance coverage for the children. In his petition, David argued Dina attained the age of 18 and therefore he no longer had an obligation to pay child support for her pursuant to the marital settlement agreement. David further argued that he could provide health insurance for the children through his employer that was superior to their current coverage and requested that the judgment be modified to so reflect.

¶ 10 The circuit court conducted a hearing on Stacy's petition on November 9, 2016. While we do not have the benefit of a transcript of the proceedings, an order entered that day indicated that the circuit court "made findings" and continued the matter for the circuit court to provide a written judgment order.

¶ 11 On December 2, 2016, the circuit court entered an order regarding Stacy's petition for rule to show cause and motion for contribution.[1] The circuit court found David in indirect civil contempt of court for his willful and contumacious failure to comply with the judgment of dissolution of marriage as set forth in the petition for rule to show cause. David was ordered to pay $64,000 for past due child support for 2010 through 2015; $1,532.62 for past due heath care expenses; and $1,800 for past due activity charges through 2016. David was further ordered to pay two-thirds of 80% of Dina's college expenses, totaling $26,264 representing Dina's first two years of college. The circuit court further indicated that "the purge payments shall be set by separate order" and granted Stacy leave to file a petition for attorney fees and costs related to the petition pursuant to section 508(b) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/508(b) (West 2016)). The order also provided that "the court shall set a purge and payment schedule on January 12, 2017[.]"

[1] There is no record of proceedings for this hearing included in the record on appeal.

¶ 12 Thereafter, on January 12, 2017, the contempt proceeding was continued to February 15, 2017. David filed a motion to vacate the order of December 2, 2016, on February 1, 2017. This motion was denied on February 10, 2017.

¶ 13 On February 15, 2017, David filed an emergency motion to vacate the December 2, 2016, order. That same day, the circuit court denied David's emergency motion to vacate, took Stacy's petition for attorney fees under advisement, ordered David to pay Stacy $500 by February 17, 2017, and set a pretrial status day for April 20, 2017.[2]

¶ 14 On May 8, 2017, after hearing argument, the circuit court granted Stacy's petition in the amount of $4,668.75 for attorney fees. No transcript of the hearing is in the record on appeal.

¶ 15 On May 12, 2017, David filed a notice of appeal seeking reversal of orders entered on November 9, 2016, December 2, 2016, February 10, 2017, and May 8, 2017.[3]

¶ 16 ANALYSIS

¶ 17 On appeal, David maintains that the circuit court abused its discretion when it found he owed $64,000 in child support arrears, $1,532.62 in past due medical expenses, $1,800 in activity charges, and $52,528 in past due college expenses. David further asserts that the trial court abused its discretion when it awarded Stacy attorney fees pursuant to section 508(b) of the Act in the amount of $4,668.75. For the reasons that follow, we conclude we lack jurisdiction over this appeal.

¶ 18 Jurisdiction

¶ 19 In her response, Stacy maintains this court lacks jurisdiction over the appeal because the

[2] Neither Stacy's petition for attorney fees nor an order of April 20, 2017, are included in the record on appeal.

[3] The record indicates that on May 16, 2017, a body attachment against David was issued. The circuit court, however, later vacated this order finding it lacked jurisdiction to enter a body attachment because David had not been notified of the court date.

contempt order entered December 2, 2016, was not a final, appealable order. Stacy explains that the contempt proceeding against David was still pending below at the time David filed an appeal from that order as well as the orders related to the contempt order. In his jurisdictional statement, David contends that we have appellate jurisdiction over his appeal under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994) and Illinois Supreme Court Rule 303 (eff. Jan. 1, 2015). As this court has a duty to determine whether jurisdiction exists, we will consider the issue. *Palmolive Tower Condominiums, LLC v. Simon*, 409 Ill. App. 3d 539, 542 (2011). An appeal must be dismissed where our jurisdiction is lacking. *Id.* (citing *Mund v. Brown*, 393 Ill. App. 3d 994, 996 (2009)). Whether a court has jurisdiction presents a legal question to be determined *de novo*. *In re Marriage of Teymour*, 2017 IL App (1st) 161091, ¶ 10.

¶ 20 "Appellate jurisdiction is limited to review of final judgments unless an order falls within a statutory or supreme court exception." *Cole v. Hoogendoorn, Talbot, Davids, Godfrey & Milligan*, 325 Ill. App. 3d 1152, 1153 (2001) (citing *Pekin Insurance Co. v. Benson*, 306 Ill. App. 3d 367, 375 (1999)). In order to be considered final, an order must dispose of the rights of the parties, either upon the entire controversy or some definite and separate part of it. *In re Guardianship of J.D.*, 376 Ill. App. 3d 673, 676 (2007).

¶ 21 On December 2, 2016, the circuit court found David to be in indirect civil contempt. A contempt order, however, is not final or appealable until the party in contempt has been sanctioned or committed. *In re Marriage of Dianovsky*, 2013 IL App (1st) 121223, ¶ 34. Here, when David filed his notice of appeal from the orders of November 9, 2016, December 2, 2016, February 10, 2017, and May 8, 2017, he had neither been sanctioned nor committed with respect to the finding of contempt. Indeed, the circuit court held status hearings on the finding of contempt while this appeal was pending as demonstrated in the record on appeal. Thus, the

postdissolution contempt proceeding was not final or appealable before the notice of appeal was filed. See *id.* ¶ 37.

¶ 22 In his reply, David maintains that on July 11, 2018, the circuit court conducted a hearing and concluded that he was incapable of paying any amount set by the court as a purge. We allowed David to supplement the record with this order. David argues that due to this finding, the issue of a purge "became a non issue" and therefore "the lack of a purge amount, became irrelevant to the proceedings that took place on November 9, 2016, and the entry of the December 2, 2016, court order, and the argument raised by the Petitioner became mooted." David relies on two cases to support his argument, *Dixon v. Chicago & Northwestern Transportation Co.*, 151 Ill. 2d 108 (1992) and *Malone v. Chicago Transit Authority*, 76 Ill. App. 2d 451 (1966). Neither case stands for this proposition.

¶ 23 The July 11, 2018, order, however, does not "moot" David's claim as he suggests. The July 11, 2018, order provided as follows:

> "This matter coming before the Court for hearing on the purge on the 12/2/16 order, and for status on pending motions, the parties being present through counsel and David Greenberg appearing in person, and the court taking evidence and being advised, it is hereby ordered:
>
> 1. The court finds that David Greenberg does not have the ability to pay a purge, but, *the contempt finding contained within the 12/2/16 order remains in place*. Upon the respondent filing his 2017 tax returns, he shall tender the full refund to Petitioner upon receipt of same if he files individually, and 1/2 of the refund if he files jointly. *The Court leaves open an additional purge*. The refund and back-up documents shall be filed within 7 days of filing.

2. All other matters are set for status on August 23, 2018 at 9:30 a.m. to identify all outstanding pleadings and address the same." (Emphases added.)

We do not see how this order "mooted" the issue of contempt where it expressly provides that the December 2, 2016, order remains intact, reserves the issue of a purge for a later date, and enters and continues the contempt proceedings. Accordingly, because the contempt proceedings remain pending below, we lack jurisdiction to consider the orders relating to the contempt proceedings. See *Dianovsky*, 2013 IL App (1st) 121223, ¶ 34.

¶ 24 We also acknowledge that on appeal David challenges the order of May 8, 2017, awarding Stacy attorney fees in the amount of $4,668.75, and that this order did not contain a Rule 304(a) finding. We similarly conclude that we lack jurisdiction to consider this order because it is directly related to the contempt proceedings. See *cf. In re Marriage of Knoll and Coyne*, 2016 IL App (1st) 152494, ¶ 46 (concluding this court had jurisdiction because the issues on appeal were "wholly unrelated" to matters that remained pending before the circuit court). By his own words, "If this Honorable Court reverses the trial court's determination on child support than a reversal of the attorney fees would also be justified."

¶ 25 CONCLUSION

¶ 26 For the reasons stated, we conclude that David's appeal from the orders of November 9, 2016, December 2, 2016, February 10, 2017, and May 8, 2017, must be dismissed for lack of appellate jurisdiction.

¶ 27 Appeal dismissed.