

NOTICE
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2018 IL App (5th) 160024-U

NO. 5-16-0024

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).

JOANN SMITH, Individually and as Administrator of the Estate of Donald L. Smith, Deceased,)	Appeal from the
)	Circuit Court of
)	Madison County.
Plaintiff-Appellant,)	
)	
v.)	No. 15-L-679
)	
THE VANGUARD GROUP, INC., SCOTT SMITH, and)	
JEFFREY SMITH,)	
)	
Defendants)	Honorable
)	Barbara L. Crowder,
(Scott Smith and Jeffrey Smith, Defendants-Appellees).)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justice Moore concurred in the judgment.
Justice Chapman dissented.

ORDER

¶ 1 *Held:* The trial court's dismissal of the widow's declaratory judgment action seeking a declaration that her deceased husband's IRA beneficiary change while an injunction was in effect prohibiting the transfer of any accounts violated the injunction was affirmed, holding that the mere change of beneficiary while the injunction was in effect did not violate the injunction.

¶ 2 The plaintiff, JoAnn Smith (JoAnn), individually and as administrator of the estate of her deceased husband, Donald L. Smith (Donald), filed a declaratory judgment action

under section 2-701 of the Code of Civil Procedure (Code) (735 ILCS 5/2-701 (West 2012)) against the defendants, Scott Smith (Scott), Jeffrey Smith (Jeffrey), and the Vanguard Group, Inc. (Vanguard).¹ She sought a ruling that Donald's beneficiary change, naming his two sons, Scott and Jeffrey, as the primary beneficiaries of his Vanguard IRA, was ineffective because it was in violation of the circuit court's injunction. She also sought a determination that she was the rightful beneficiary of the Vanguard IRA. The defendants filed a motion to dismiss JoAnn's complaint. The court entered an order dismissing the declaratory judgment action on the basis that the stipulated dismissal of the underlying dissolution of marriage petition terminated the injunction by operation of law, allowing the beneficiary change to be effective, even if it violated the injunction when made. JoAnn appeals from the court's dismissal. We affirm.

¶ 3 Donald and JoAnn were married in 1974. On August 6, 2013, Donald filed a petition for a temporary restraining order and preliminary injunction against JoAnn "to maintain the status quo." He alleged that, during his two-week hospitalization starting on July 21, 2013, JoAnn had converted and attempted to convert assets from his various accounts. The court entered an order on August 8, 2013, ordering JoAnn to return all funds to their originating accounts, irrespective of whether the funds were individually or jointly held. The injunctive relief order further provided in part:

¹Vanguard was initially named as a defendant in this case, in its role as custodian of the assets of Donald's Vanguard IRA. By agreement of the parties and the court, the court entered a stipulation on August 13, 2015, staying all proceedings against Vanguard.

"Pursuant to the parties' stipulation, all other bank accounts, credit union accounts, investment accounts (including the Scottrade account), and any other accounts holding funds or investments of the parties shall be closed to any transactions and no trades, transfers, transactions, buy order or sell orders, withdrawals or deposits shall be made from any accounts without the written agreement of [Donald and JoAnn] or further court order."

¶ 4 On September 6, 2013, Donald filed a petition for dissolution of his marriage. The court consolidated the divorce case and the injunctive relief case on November 13, 2013. On or about March 13, 2014, while the injunction was still in effect, Donald changed the beneficiary on his Vanguard IRA from JoAnn to his sons, Scott and Jeffrey.

¶ 5 On October 29, 2014, Donald and JoAnn reconciled and reached a stipulated agreement to dismiss both the divorce and injunctive relief petitions. That order stated in part:

"All hold orders as to the financial accounts of the parties including but not limited to US Bank, Regions Bank, Shell Community Credit Union, Scottrade and MidAmerica Credit Union ordered in the above causes are dismissed and withdrawn by this order."

¶ 6 On March 30, 2015, Donald died. Shortly after his death, JoAnn learned that she would not receive the proceeds of his Vanguard IRA and that Scott and Jeffrey had been named as beneficiaries of that account.

¶ 7 JoAnn filed this action against the defendants on May 27, 2015, and asked the court to declare that she was the Vanguard IRA beneficiary. She based her argument on the fact that the beneficiary designation naming Scott and Jeffrey occurred while the injunction was in effect. She argued that the beneficiary designation was a clear violation of the order and, thus, Donald's beneficiary designation should be declared invalid. In count I of her complaint, she sought declaratory relief and asked the court to reinstate her as the sole beneficiary of the Vanguard IRA. In count II of her complaint, she alleged that Donald committed fraud by changing the IRA beneficiary in violation of the injunction.

¶ 8 The defendants filed a combined motion to dismiss JoAnn's complaint pursuant to sections 2-615 and 2-619(a)(4), (9) of the Code (735 ILCS 5/2-615 (West 2012); 735 ILCS 5/2-619(a)(4), (9) (West 2012)). The defendants argued that the court's agreement to the stipulated dismissal essentially vacated the injunction, which eliminated any basis for JoAnn's complaint against them.

¶ 9 On September 3, 2015, the court heard the motion to dismiss. The court dismissed count II (the fraud count) pursuant to section 2-615 of the Code with leave to refile and took the motion to dismiss count I (seeking declaratory relief) under advisement. Thereafter, on October 29, 2015, the court granted the motion to dismiss count I pursuant to section 2-619 of the Code. The court found that the voluntary dismissal of the dissolution petition dismissed any related temporary orders by operation of law. The court explained that "[o]nce the dissolution was dismissed, the beneficiary change

became effective even if it arguably violated the terms of the injunction when it was signed" and that "[t]he beneficiary change at a minimum is recognized as valid upon the dismissal of the dissolution." The court noted that the law did not require Donald to execute another beneficiary form after the dissolution was dismissed. The court denied JoAnn's motion to reconsider on January 4, 2016. JoAnn appeals from these orders.

¶ 10 The standard of review for a section 2-619 (735 ILCS 5/2-619 (West 2012)) dismissal of a complaint is *de novo*. *King v. First Capital Financial Services Corp.*, 215 Ill. 2d 1, 12 (2005). A section 2-619 motion admits the legal sufficiency of the complaint but may assert affirmative matters that defeat the claim. *Id.* The issue before the court is whether dismissal is proper as a matter of law.

¶ 11 Before addressing JoAnn's argument on appeal, we will address the defendants' argument that the injunctive order became void as a matter of law upon the voluntary dismissal of the dissolution petition. This argument is contrary to settled law in Illinois. A void order is an order that was a nullity from its inception due to a lack of personal or subject matter jurisdiction. *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 27 (citing *In re Marriage of Mitchell*, 181 Ill. 2d 169, 174 (1998)). A voidable order is an order entered erroneously by a court possessing jurisdiction. *Id.* The defendants do not contend that there was a lack of jurisdiction or that the order was erroneously entered. Thus, they do not present facts that support an argument that the order was either void or voidable.

¶ 12 A terminated injunctive order does not become void, having no legal effect, simply because of its termination. The appellate court rejected a similar argument in *New York Life Insurance Co. v. Sogol*, 311 Ill. App. 3d 156, 159-60 (1999) (holding that, although the husband's death terminated both the dissolution action and the injunction, it did not retroactively dissolve the injunction). We agree with the trial court's rejection of the defendants' arguments on these grounds.

¶ 13 We turn now to JoAnn's argument that the change of beneficiary violated the terms of the injunction. We affirm the trial court's dismissal of the declaratory judgment action because we find that there was no violation of the injunction while it was in effect.

¶ 14 JoAnn relies on *In re Marriage of Ignatius* in support of her argument. In *Ignatius*, the circuit court entered an injunction barring the parties from transferring or disposing of marital assets. *In re Marriage of Ignatius*, 338 Ill. App. 3d 652, 654 (2003). While the case was pending, the wife asked the court to modify the injunction to allow her to make estate planning decisions. *Id.* The court modified the injunction and ordered the parties to transfer all jointly-held assets into tenancy in common interests. *Id.* The wife died before a judgment of dissolution was entered and before all assets were transferred. *Id.* at 654-55. The parties' daughter intervened in the proceedings as executor of her mother's estate and asked the court to divide the marital estate in accordance with the injunction. *Id.* at 655. The court entered an order finding that the injunction survived the wife's death. *Id.* The husband asked the circuit court to dismiss the injunction. *Id.* The court denied his request. *Id.* The appellate court held that,

although the circuit court lost jurisdiction in the dissolution action to enforce its prior injunction after the wife's death, it did not foreclose an independent action for enforcement. *Id.* at 658, 661.

¶ 15 We agree with JoAnn that *Sogol* and *Ignatius* support the proposition that Donald was prohibited from any transactions that violated the injunction while it was in effect. However, those cases are distinguishable from the case before us. In both *Sogol* and *Ignatius*, which contain similarly worded injunctions to the one before us, a transfer of ownership of the accounts in question occurred as a result of the beneficiary change while the injunction was in effect, but only because of the death (also while the injunction was in effect) of one of the individuals involved. Thus, it was not the beneficiary change while the injunction was in effect that caused the ownership transfer that violated the injunction; rather, it was the death of the account holder while the injunction was in effect that caused the ownership transfer that violated the injunction.

¶ 16 Here, Donald did not die while the injunction was in effect. As we have previously noted, the voluntary dismissal of the dissolution petition was the terminating event for the injunction. Therefore, there was no ownership transfer of the Vanguard account while the injunction was in effect and no other change in the status quo with regard to ownership. As Donald still owned the Vanguard account when the injunction was terminated, there was no violation of the injunction.

¶ 17 Had the parties wished to draft their stipulation so that it prohibited a beneficiary change that did not result in a transfer of ownership while the injunction was in effect,

they could have done so. They did not, and, thus, a mere beneficiary change did not violate the terms of the injunction.

¶ 18 For the foregoing reasons, we affirm the order of the circuit court dismissing the declaratory judgment action.

¶ 19 Affirmed.

¶ 20 JUSTICE CHAPMAN, dissenting:

¶ 21 I respectfully disagree with my colleagues' analysis of the applicable case law. The majority acknowledges that under *Sogol* and *Ignatius*, Donald was prohibited from any transactions that violate the injunction while it was in effect. However, my colleagues excuse the prohibited beneficiary change that Donald made on the basis that Donald's death, which triggered the ownership transfer, did not occur until after the injunction terminated. I believe this interpretation of case law is at odds with the holdings in *Sogol* and *Ignatius*, as well as other settled law in Illinois. The *Sogol* court held that while death terminated a dissolution action and an injunction, it did not retroactively dissolve a preliminary injunction, as if it had never existed. *New York Life Insurance Co. v. Sogol*, 311 Ill. App. 3d 156, 159-60 (1999). Likewise, in *Ignatius*, the court found that "The validity of the court orders, and therefore any arguments respecting their validity or violation, does not end with closure of the dissolution case in which the orders were entered." *In re Marriage of Ignatius*, 338 Ill. App. 3d 652, 661 (2003). The

legal basis for these holdings is that a court having jurisdiction must be obeyed to preserve the status quo of litigation during its pendency. *Cummings-Landau Laundry Machinery Co. v. Koplín*, 386 Ill. 368, 385-86 (1944).

¶ 22 Here, the dismissal of the dissolution action did no more than terminate the injunction as provided for under section 501(d)(3) of the Illinois Marriage and Dissolution of Marriage Act. 750 ILCS 5/501(d)(3) (West 2012). Thus, I believe that the *Sogol* court's reasoning equally applies to our case. In both our case and in *Sogol*, the preliminary injunction was in place up until the termination of the dissolution. The dissolution action terminated in *Sogol* because of the husband's death; here, the dissolution terminated because of the parties' voluntary dismissal. Nothing in the statute or the case law leads us to believe this factual difference calls for a different result.

¶ 23 In yet another case, *Southern Illinois Medical Business Associates v. Camillo*, decided by this court, the court relied on *Koplín* and its progeny when it reversed the circuit court's injunction but upheld the court's damage award for violation of the injunction. *Southern Illinois Medical Business Associates v. Camillo*, 208 Ill. App. 3d 354, 366 (1991). Just as termination of an injunction does not retroactively defeat the injunction, the reversal of an injunction does not cause the contempt order to fail. To hold otherwise would frustrate the powers of the courts to preserve the status quo during litigation.

¶ 24 For the same reason, I find the majority's rationale—that the injunction should not be enforced because Donald would have been able to change the beneficiary without

legal recourse at any time after the dissolution dismissal—equally unavailing. Indeed, it would encourage parties to disregard an injunctive order in the hope that the other party might not discover the violation until after the litigation terminates. Such a ruling undermines the circuit court's power and effectiveness, as much as would allowing someone to disregard a court's order in the hope that it might be overturned on appeal. See *Camillo*, 208 Ill. App. 3d at 365 (citing *Koplin*, 386 Ill. at 385).

¶ 25 Based on the foregoing, I would reverse and remand for further proceedings.