NOTICE
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2018 IL App (5th) 160205-U

NO. 5-16-0205

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
DAVE A. REDNOUR,	)	Randolph County.
	)	
Petitioner-Appellee,	)	
	)	
and	)	No. 14-D-55
	)	
CIARA REDNOUR,	)	Honorable
	)	Richard A. Brown,
Respondent-Appellant.	)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Presiding Justice Barberis and Justice Cates concurred in the judgment.

ORDER

¶ 1 *Held*: Where the trial court's order finding that the parties revested the court with jurisdiction was not a final and appealable order, and appellant does not satisfy the supreme court rules for interlocutory appeals, this court lacks jurisdiction and we dismiss the appeal.

¶ 2 BACKGROUND

¶ 3 On June 2, 2014, the parties filed for dissolution of marriage, and judgment was entered on the same date. Incorporated into the judgment was a marital settlement agreement disposing of the parties' marital and nonmarital assets and debts. As part of

that agreement, Ciara agreed to pay Dave 40% of any recovery she might receive from a medical malpractice claim she had on file.

¶ 4 On July 8, 2014, Dave filed a contempt petition alleging that, in violation of the settlement agreement, Ciara had received monies from her malpractice claim and had not given him his share of the proceeds. Ciara filed three motions in response: (1) a motion to strike the section of the marital settlement agreement giving Dave 40% of her malpractice case recovery—alleging that Dave had a bankruptcy case pending and that this section of the agreement was in violation of the bankruptcy stay and thus void; (2) a motion to dismiss the petition alleging judicial estoppel because Dave had provided a sworn statement to the bankruptcy court that he had no interest in any pending litigation; and, (3) a motion to dismiss the petition alleging a lack of jurisdiction and standing based on the bankruptcy estate concept, that only the bankruptcy court could pursue a claim against her for contempt.

¶ 5 In response to Ciara's motions, Dave filed a motion for dismissal of his contempt petition and the court's rule to show cause order entered on July 8, 2014. He acknowledged that he had a pending bankruptcy petition at the time of the divorce, but on advice of counsel he had not obtained leave of the bankruptcy court to present the settlement agreement to the trial court. Thereafter, Dave filed a motion to vacate three paragraphs of the court's June 2, 2014, judgment as void for lack of jurisdiction. The three paragraphs addressed the division of real property, personal property, and debts. On the same date, Dave filed a motion asking the court to approve the marital settlement agreement; Dave explained that he had now sought and received an order from the

bankruptcy court granting relief from the automatic stay, which he attached as an exhibit. In response to Dave's motions, Ciara filed a motion for attorney fees and a motion to strike Dave's motion for approval of the marital agreement, for lack of jurisdiction and judicial estoppel.

¶ 6 On February 25, 2015, the trial court, finding both parties in agreement that portions of the judgment were void, granted both Ciara's motion to strike portions of the judgment and Dave's motion to vacate portions of the judgment. The court ordered paragraphs IV, V, and VI of the judgment of dissolution of marriage vacated as void. Thereafter, on March 17, 2015, the trial court ruled that the entire marital settlement agreement portion of the judgment was void *ab initio*.

¶ 7 Next, Ciara filed a motion for summary judgment on October 19, 2015, based on judicial estoppel—opposing any further claim by Dave to a portion of her malpractice case recovery. On March 4, 2016, the court heard and denied both Ciara's motion for summary judgment and her earlier filed motion to dismiss—alleging judicial estoppel. The trial court found that Dave's uncontroverted testimony established that he had told his bankruptcy attorney about Ciara's pending malpractice action, and that upon his attorney's advice he did not initially disclose his interest in that action. The court further directed that both parties file a memorandum on whether the court had jurisdiction to resolve the remaining issues created when the marital settlement agreement portion of the judgment was vacated. Both parties filed a memorandum of law in support of their positions.

¶ 8 On April 26, 2016, the trial court granted Dave's motion and found that the court had been revested with personal and subject matter jurisdiction, for the purpose of dividing property and debts, as well as determining whether maintenance was warranted. Ciara appeals from this order.

¶ 9 LAW AND ANALYSIS

¶ 10 Ciara contends that the trial court did not have jurisdiction to enter its April 26, 2016, revestment order. Dave argues that the trial court was properly revested with jurisdiction, but that this court does not have jurisdiction to hear Ciara's appeal because the revestment order is not a final and appealable order.

¶ 11 On appeal, we are obligated to examine both our own jurisdiction and the jurisdiction of the trial court in the cause at issue. *Cohen v. Salata*, 303 Ill. App. 3d 1060, 1063, 709 N.E.2d 668, 670 (1999). The review of a trial court's subject matter jurisdiction is *de novo*. *In re Marriage of Adamson*, 308 Ill. App. 3d 759, 764, 721 N.E.2d 166, 172 (1999).

¶ 12 We begin by examining the interplay between the federal bankruptcy court's jurisdiction and the state court's jurisdiction. Subject matter jurisdiction is the court's power to hear the general question involved and grant the relief requested. *In re M.M.*, 156 Ill. 2d 53, 64, 619 N.E.2d 702, 709 (1993). Section 362(a)(1) of the Bankruptcy Code divests the circuit court of jurisdiction over subject matter traditionally falling within the authority of state courts. *Cohen*, 303 Ill. App. 3d at 1064 (citing 11 U.S.C. § 362(a)(1) (1995)). Under section 362(a), the debtor's filing of a bankruptcy petition operates as a stay prohibiting the commencement or continuation of a judicial action or proceeding

involving the debtor and any property within the debtor's bankruptcy estate. 11 U.S.C. § 362(a) (2012). One exception to the section 362(a) automatic stay rule is that the filing of a bankruptcy petition does not stay the commencement or continuation of a civil action for the dissolution of marriage. *Id.* § 362(b)(2)(A)(iv). Thus, while the circuit court maintains general subject matter jurisdiction over the dissolution proceedings, it is divested of subject matter jurisdiction over the division of property that is the property of the bankruptcy estate, unless the automatic stay has been lifted. *In re Application of the County Treasurer & ex officio County Collector of Cook County*, 308 Ill. App. 3d 33, 40, 719 N.E.2d 143, 148 (1999). Any judgment taken against the bankruptcy estate while the stay is in effect is void *ab initio*. *In re Application of the County Collector for Delinquent Taxes*, 291 Ill. App. 3d 588, 591, 683 N.E.2d 995, 997 (1997); *Hood v. Hall*, 321 Ill. App. 3d 452, 454, 747 N.E.2d 510, 512 (2001).

¶ 13 As it relates to the present case, the parties agree that the marital settlement agreement portion of the judgment was in violation of the bankruptcy court's automatic stay, and consequently void as a matter of law. Here, both parties filed motions to vacate portions of the agreement. However, Ciara argues that once the trial court declared portions of the June 2, 2014, judgment void, the court no longer maintained any further jurisdiction over the case. Ciara bases this argument on her characterization of her motions for summary judgment and dismissal, in reality being section 2-1401 petitions which only prayed for the vacatur of the judgment and not a distribution of the marital estate. 735 ILCS 5/2-1401 (West 2014). Dave counters that the trial court retained subject

matter and personal jurisdiction through the doctrine of revestment to determine the remaining issues of the marital estate.

¶ 14 After the trial court enters a final judgment, the court retains jurisdiction for 30 days. *Harchut v. Oce/Bruning, Inc.*, 289 Ill. App. 3d 790, 793, 682 N.E.2d 432, 435 (1997). Generally, 30 days after the trial court enters a final judgment, the court loses jurisdiction and the court may not review its judgments. *Faust v. Michael Reese Hospital & Medical Center*, 79 Ill. App. 3d 69, 72, 398 N.E.2d 287, 289 (1979); *In re Marriage of Adamson*, 308 Ill. App. 3d 759, 764, 721 N.E.2d 166, 172 (1999). A court that loses jurisdiction after the passage of 30 days still retains jurisdiction to enforce its orders, if the judgment at issue either orders or contemplates additional actions by the parties. *Id.* However, after a court loses jurisdiction, a party may seek relief from a final order by filing a motion under section 2-1401. 735 ILCS 5/2-1401 (West 2014). A section 2-1401 action is considered a new action rather than a continuation of the original action. *Harchut*, 289 Ill. App. 3d at 793; 735 ILCS 5/2-1401(b) (West 2014). Our supreme court has held that a section 2-1401 petition provides a proper means of attacking void judgments. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104-05, 776 N.E.2d 195, 201-02 (2002). The statutory and general rules—that the section 2-1401 petition must be filed within two years; that the petitioner must allege a meritorious defense; and that the petition was brought with due diligence—do not apply when alleging that the judgment or order is void. *Id.* at 104. Furthermore, the court looks to the substance of the motion rather than its label to determine whether it is in fact a section 2-1401 motion. *Id.* An order which grants or denies relief prayed for in a petition under section 2-1401 is

appealable under Illinois Supreme Court Rule 304(b)(3). *Id.* at 105; Ill. S. Ct. R. 304(b)(3) (eff. Jan. 1, 1989).

¶ 15 Post 30-day relief may also be found in an application of the equitable doctrine of revestment. However, unlike under section 2-1401, a case proceeding under the revestment doctrine is a continuation of the original action. *Harchut*, 289 Ill. App. 3d at 793. Under the revestment doctrine, the litigants themselves revest a court of general jurisdiction with personal and subject matter jurisdiction after the 30-day period following final judgment. *People v. Kaeding*, 98 Ill. 2d 237, 241, 456 N.E.2d 11, 14 (1983). "In order for the rule to apply, the parties must actively participate without objection in proceedings which are inconsistent with the merits of the prior judgment." *Id.* The parties' conduct is inconsistent with the prior judgment if it clearly indicates that they do not consider the judgment final and binding. *In re Marriage of Adamson*, 308 Ill. App. 3d 759, 766, 721 N.E.2d 166, 174 (1999). Following the Illinois Supreme Court case of *People v. Kaeding*, our courts have applied the doctrine in dissolution cases allowing for modification of judgments. See *In re Marriage of Demond*, 142 Ill. App. 3d 134, 491 N.E.2d 501 (1986) (court held that husband and wife had revested court with jurisdiction to modify property distribution judgment); *In re Marriage of Wharrie*, 182 Ill. App. 3d 434, 538 N.E.2d 183 (1989) (court held revestment applicable and allowed a modification of a judgment incorporating a marital settlement agreement); *Elmore v. Elmore*, 219 Ill. App. 3d 61, 580 N.E.2d 619 (1991) (court held that jurisdiction had been revested by agreement of the parties allowing modification of property distribution judgment); *In re Marriage of Adamson*, 308 Ill. App. 3d 759, 721 N.E.2d 166 (1999)

(court held that the court's jurisdiction was revested to modify the original judgment where the parties' actions clearly indicated that they did not view the original judgment as final and nonmodifiable).

¶ 16 More recently, our supreme court in *People v. Bailey* reconfirmed its longstanding adherence to the revestment doctrine under the narrow requirements set out in *People v. Kaeding*. *People v. Bailey*, 2014 IL 115459, ¶ 12, 4 N.E.3d 474. The *Bailey* court stated, "Based on this review of our case law, we conclude that this court has applied the revestment doctrine when both parties have sought to modify or overturn the prior judgment [citations] and rejected its application if one party has opposed any setting aside of the prior judgment [citations]." *Id.* ¶ 25.

¶ 17 Ciara argues that her appellate jurisdiction derives from the trial court's February 25, 2015, consent order granting relief under section 2-1401, in finding the marital settlement agreement void. She cites Illinois Supreme Court Rule 304(b)(3) for the rule of law that an order resolving a section 2-1401 petition is a final judgment which is immediately appealable without a special finding of the trial court. Ill. S. Ct. R. 304(b)(3) (eff. Feb. 26, 2010). She also quotes *Washington Mutual Bank, F.A. v. Archer Bank* for this rule, "because a section 2-1401 petition begins a separate action [citation], the resolution of the petition ends the entire action, so no other time to appeal could exist." *Washington Mutual Bank, F.A. v. Archer Bank*, 385 Ill. App. 3d 427, 430, 895 N.E.2d 677, 680 (2008). However, it is precisely this rule–that a section 2-1401 ruling ends the action–that is fatal to her jurisdictional argument, because *she did not appeal the February 25, 2015, order granting her relief, nor could she, as she prevailed in that*

proceeding. Instead, Ciara appealed from the trial court's April 26, 2016, order—finding that the court was revested with jurisdiction. Consequently, Ciara cannot avail herself of the Rule 304(b)(3) exception to a "special finding" of the trial court.

¶ 18 We next turn to Ciara's alternative argument regarding revestment—that the trial court lacks jurisdiction to determine the distribution of marital property and debts, and maintenance, because the revestment doctrine is inapplicable to this case.

¶ 19 She primarily relies on the case of *Wierzbicki v. Gleason* in support of this argument. However, we find *Wierzbicki* to be inapposite to the instant case and of no value in deciding this issue. In *Wierzbicki*, the trial court vacated a final order which had reinstated a medical malpractice case, during the pendency of the appeal of the reinstatement order. *Wierzbicki v. Gleason*, 388 Ill. App. 3d 921, 925-26, 906 N.E.2d 7, 13 (2009). Following the trial court's vacating of its final order, the defendants voluntarily dismissed their appeal opposing the reinstatement. *Id.* However the plaintiff then appealed the trial court's dismissal of the reinstatement order. *Id.* In plaintiff's appeal, neither party initially raised the issue as to whether the trial court had jurisdiction to vacate the order on the basis that it was entered while the earlier appeal was pending. *Id.* at 926. This was brought to the parties' attention by the court and it then allowed the parties to address the jurisdictional issue in supplemental briefs and oral argument. *Id.* The plaintiff argued that once the notice of appeal was filed, the trial court was divested of jurisdiction to enter any order involving a matter of substance in the appeal. *Id.* at 926-27. In urging the application of the revestment doctrine, the defendants argued that, despite the fact that the trial court lost jurisdiction over the matter due to defendants'

appeal, the plaintiff invoked the doctrine when she failed to object to the trial court's order on the grounds that it lacked jurisdiction, and appealed the order as if it were valid. *Id.* at 927. The defendants further argued that once the defendants' appeal was dismissed, the trial court was revested with jurisdiction and the trial court's reinstatement dismissal order was transformed from a voidable order into a valid order. *Id.*

¶ 20 The appellate court rejected defendants' arguments, calling the defendants' reliance on the revestment doctrine misplaced. *Id.* at 928. The court found that the doctrine was inapplicable to a case where the trial court enters an order of substance during the pendency of an appeal. *Id.* The appellate court cited a list of cases holding that any order on a matter of substance entered by a court having lost jurisdiction pending an appeal is void. *Id*. at 926-27. The court also cited a list of cases holding that the narrow revestment doctrine only applies where the circuit court loses jurisdiction over a matter because of the passage of time after a judgment. *Id.* at 928-29. The court opined that "[a]ny extension of the doctrine of revestment, as now urged by defendants, would be inconsistent with the settled legal principles that a party may challenge a void order at any time and that such a claim may not be waived." *Id.* at 929-30.

¶ 21 We believe that Ciara mischaracterizes the holding in *Wierzbicki* and misapprehends the nature of revestment, as the holding in the *Wierzbicki* case does not challenge the application of the revestment doctrine in the instant case. The argument urged by the defendants in *Wierzbicki* amounted to a tortured attempt to apply the doctrine in an effort to transform a void order, entered by the trial court pending an appeal, into a valid order. The court refused to extend the doctrine to such a scenario.

¶ 22 The *Wierzbicki* case is simply not on point. In the instant case, no party is attempting to prevent the other party from challenging a void order. On the contrary, both parties here urged the court to find the prior judgment void, which it did, when it entered its consent judgment. We conclude that both parties' active participation, without objection, in filing petitions asking the court to vacate a portion of the prior judgment and then entering into a consent order validating same, clearly evidenced that the parties did not view the prior judgment as valid and binding. We find this conduct meets the *Kaeding* requirements for the application of the revestment doctrine. *Kaeding*, 98 Ill. 2d at 241; *Bailey*, 2014 IL 115459, ¶ 12.

¶ 23 Having determined that the application of revestment is an appropriate practical remedy to the circumstances of this case, we further find that Ciara cannot otherwise procedurally deprive the trial court of jurisdiction. The natural result of Ciara's argument would leave the parties divorced, but with no final disposition of any matters other than the dissolution. As such, her arguments are at odds with both the law of vacatur of judgments and the Illinois Marriage and Dissolution of Marriage Act.

¶ 24 "When part of a judgment is vacated, the effect is to leave the case as if that part of the judgment had never been entered." *In re Marriage of Hale*, 278 Ill. App. 3d 53, 56, 662 N.E.2d 180, 183 (1996); see also *Flavell v. Ripley*, 247 Ill. App. 3d 842, 847, 617 N.E.2d 1342, 1345 (1993). Thus, the vacatur of the marital settlement agreement left all issues related to the distribution of marital assets, debts, and maintenance in status *quo ante*, yet to be decided. See *Cohen*, 303 Ill. App. 3d at 1066. Once the automatic stay ended, there no longer was an impediment to the trial court's ability to acquire subject

matter jurisdiction. *Id.* Since Dave's petition to vacate the void judgment also requested the further relief of approving the marital settlement agreement (unlike Ciara's petition), his petition could be viewed in substance as either a 2-1401 petition or as a revestment petition. *Sarkissian*, 201 Ill. 2d at 104-05. These two modes of proceeding are not in conflict under the posture of this case as both seek to resolve all the remaining issues of the marital estate.

¶ 25 Furthermore, leaving the distribution of the marital estate unresolved is inconsistent with both the Illinois Marriage and Dissolution of Marriage Act and Illinois case law, as it relates to the finality of judgment under Illinois Supreme Court Rule 304(a). The court has a duty under the Illinois Marriage and Dissolution of Marriage Act to divide the marital estate in just proportions. 750 ILCS 5/503 (West 2014); *Hofmann v. Hofmann*, 94 Ill. 2d 205, 222, 446 N.E.2d 499, 505-06 (1983). In the oft-cited case of *In re Marriage of Leopando*, our supreme court held that the numerous issues involved with a dissolution of marriage case are all part of a single claim and not separately appealable under Rule 304(a). *In re Marriage of Leopando*, 96 Ill. 2d 114, 120, 449 N.E.2d 137, 140 (1983).[1] The *Leopando* court emphatically stated, "In fact, it is difficult to conceive of a situation in which the issues are more interrelated than those involved in a dissolution proceeding." *Id.* at 119.

[1] *In re Marriage of Leopando* has been superceded by Illinois Supreme Court Rule 304(b)(6) (eff. Feb. 26, 2010), related to child custody judgments.

¶ 26 While Dave seeks to remedy the void judgment by seeking a modified judgment to include a disposition of the marital estate, Ciara seeks to end the court's relief with the vacatur of the settlement agreement, thereby avoiding the award of any part of her lawsuit recovery in a distribution of marital assets. Essentially, she uses section 2-1401 as a sword, rather than as a shield for justice. As such, her arguments subvert the primary purpose of section 503 of the Illinois Marriage and Dissolution of Marriage Act—"to empower courts to order a just distribution of marital assets," as well as the purpose of section 2-1401—"to provide [equitable] relief as the ends of justice require." *In re Marriage of Hale*, 278 Ill. App. 3d at 56-57; 750 ILCS 5/503 (West 2014). We believe that the doctrine of revestment serves as an appropriate safeguard under these circumstances.

¶ 27 Finally, the trial court's revestment order is not a final order under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994), because the court has not yet entered its order regarding the remaining issues of the marital estate. *Gentile v. Hansen*, 131 Ill. App. 3d 250, 255, 475 N.E.2d 894, 898 (1984); *Harchut*, 289 Ill. App. 3d at 795. Rather, the order is interlocutory in nature and governed by Illinois Supreme Court Rule 307 (eff. Feb. 26, 2010), governing interlocutory appeals as of right, and Illinois Supreme Court Rule 308 (eff. Feb. 26, 2010), governing interlocutory appeals by permission. *Harchut*, 289 Ill. App. 3d at 796. Since there is no provision for this type of interlocutory appeal under Rule 307, and because there was no request made for permission from the trial court to appeal under Rule 308, this court lacks jurisdiction and the appeal must be dismissed. *Id.*

¶ 28 Appeal dismissed.