2019 IL App (2d) 180220-U
No. 2-18-0220
Order filed July 23, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF MICHELLE STRANYICZKI, Petitioner-Appellee, and LORAND STRANYICZKI, Respondent-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County No. 2014-D-493 Honorable Kevin T. Busch, Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Hutchinson and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's finding of indirect civil contempt where the trial court properly applied the law-of-the-case doctrine, and the evidence supported a finding that respondent was willfully disobedient of the court's order.

¶ 2 Respondent, Lorand Stranyiczki, appeals from the order of the circuit court of Kane County that found Lorand in indirect civil contempt for non-payment of child support. At the hearing on the petition for rule to show cause, the trial court cited the law-of-the-case doctrine as its reason for disallowing testimony about whether Lorand voluntarily reduced his income.

Lorand contends that the court erred in applying the law-of-the-case doctrine, and that its contempt ruling was against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On November 9, 2016, following a bench trial on Michelle Stranyiczki's petition for dissolution of marriage, the court found that Lorand colluded with others to shut down his business, Best Construction, to evade his obligations of support and maintenance. The court ordered Lorand to pay child support of $608 per month, but noted that this number was artificially low based on Lorand's voluntary reduction in income. *In re Marriage of Stranyiczki*, 2018 IL App (2d) 170176-U, ¶ 8 (*Stranyiczki I*). The court ordered that beginning November 1, 2017, child support would increase to $3079 per month based on Lorand's imputed income of "at least $300,000" per year. *Stranyiczki I*, 2018 IL App (2d) 170176-U, ¶ 8. The trial court additionally ordered Lorand to pay maintenance to Michelle at the rate of $1750 per month, and to take steps to maximize his income to historical levels before a review on the maintenance issue in January 2018. *Stranyiczki I*, 2018 IL App (2d) 170176-U, ¶ 8. In other words, as to child support, the court imputed income on a date certain one year in the future, but as to maintenance, the court pronounced its willingness to review imputation of income before it ordered a new maintenance requirement. We affirmed the court's order. *Stranyiczki I*, 2018 IL App (2d) 170176-U, ¶ 31.

¶ 5 On December 4, 2017, Michelle filed a petition for rule to show cause, alleging that Lorand had failed to comply with the court's order to pay the new amount of child support of $3079 per month as of November 1, 2017.

¶ 6 On February 22, 2018, the court held a hearing on Michelle's petition. Michelle testified that she had been receiving weekly payments of $544.15 from the "State Disbursement Unit,"

which she believed collected Lorand's support and maintenance payments through wage garnishments. The payments represented Lorand's combined monthly maintenance ($1750) and support ($608) obligations calculated as weekly payments. On November 1, 2017, support increased to $3079 per month, and the combined weekly payment to satisfy Lorand's obligation for maintenance and support increased to $1114.38. Lorand's payments to Michelle, however, did not increase after November 1, 2017. At the hearing on her petition to show cause, Michelle calculated the accumulated arrears through the end of February 2018 to be $14,600.20. The court admitted into evidence a document that Michelle created that itemized the payments she had received since the court's November 2016 order. Following Michelle's testimony, the court found that she made a *prima facie* case that Lorand had failed to pay support as ordered, and that the burden now shifted to Lorand to demonstrate why he had failed to comply with the court's order.

¶ 7 Lorand first called George Kovalik. Kovalik testified that Levanti Ference started LF Construction in 2009. In 2014, LF Construction was subcontracting on a job for Best Construction, which Lorand owned. Kovalik "took over" LF Construction after Lorand announced that Best Construction would be unable to pay LF Construction for the job. Michelle's attorney raised a relevance objection to this line of questioning. Lorand's attorney responded that he interpreted the trial court's November 2016 order directing Lorand to increase his income as meaning that Lorand had an ownership interest in LF Construction. Counsel indicated that he was attempting to demonstrate that Lorand did not own LF Construction and, therefore, was unable to increase his income as ordered. The court stated that its prior ruling was that Lorand essentially conspired to shut down his business, and that he had the ability to return to that level of income:

"THE COURT: I don't think this court found or anybody else found that your client was currently a titled owner. That wasn't the impact of the Court's findings or the ruling or the judgment or the Appellate Court's decision.

The point was—is that Mr. Stranyiczki and all of his so-called employees, co-workers, business partners, and I include Mr. Kovalik in that category, played musical chairs with these companies.

MR. NEALIS [(LORAND'S ATTORNEY)]: And this is to show that Mr. Kovalik wasn't playing musical chairs.

THE COURT: Well, again, I'm not going to allow you to retry the underlying case. Okay.

So, Mr. Nealis, we're not going to retry the issue of how the companies changed hands and why they changed hands because that has been decided and is now the law of the case."

¶ 8 The court permitted limited testimony on the current state of affairs regarding LF Construction. Kovalik testified that he was the sole owner of LF Construction and that Lorand was merely an employee, with no ownership interest. Kovalik further testified that LF Construction worked out of a space on Davis Road in Elgin, but that he could not remember the street number, and he could not recall the name of LF Construction's landlord. He testified that LF Construction loaned Lorand money for a car to use for work, but could not remember how much or how often Lorand was making payments.

¶ 9 Tammy Stamos testified next. She stated that she had been the office manager for G&J Services, which was also known as LF Construction, since April 2015. Prior to that, she worked as office manager for Best Construction, which also operated as G&J Services, from 2008 until

March 2015. Stamos testified that Kovalik was the owner of G&J Services and that Lorand had no authority beyond his position as an employee.

¶ 10 Lorand testified that just before his company, Best Construction, went out of business, Kovalik offered him a job as an estimator. He said that he went to work for LF Construction immediately upon closing Best Construction. He stated that he owed about $13,000 on his car and that he made $76,000 per year as an estimator. The State garnished his paychecks to make his maintenance and support payments. His rent was $2000 per month, and his mother paid half of the rent when she was in town.

¶ 11 Asked by his attorney during direct examination if he had made an effort to restart his business, Lorand responded that he could not. He explained that he asked Chase Bank for a loan, but that it turned him away based on his recent foreclosure and delinquent taxes. Lorand stated that he could not restart his company without a loan and that he had no other means to arrange financing.

¶ 12 Lorand testified that he started taking classes in late September 2017 to be licensed as an insurance agent. He earned his life insurance license in November 2017 and his health insurance license in December 2017. He earned $700 selling insurance between November 2017 and February 2018, which was not enough to cover the cost of his licensing.

¶ 13 During closing argument, Lorand's attorney did not dispute that Lorand had not paid the increased amount of support since November 1, 2017. He argued that Lorand attempted, without success, to obtain a loan to restart his construction business but that Chase Bank declined his request. According to Lorand's counsel, it would have been futile for Lorand to ask other banks to loan him money with the current state of his credit. Moreover, when Lorand realized that he could not restart his construction business, he tried to increase his income by selling insurance.

Despite these good-faith efforts, argued Lorand's attorney, he was unable to pay the increased support.

¶ 14 The court found that Kovalik was "not a very compelling witness." He knew very little about the business he purportedly owned and operated, did not know the address for his business, and did not even know who his landlord was. The court said that nothing that it heard during the hearing changed its belief that Lorand remained an integral part of the business (LF Construction), and that he would still reap the benefits that he did when he was earning $300,000 to $400,000 doing the same work with the same core group of people. The court found Lorand in indirect civil contempt of court and set a purge amount of $11,879.45. Lorand timely appealed.

¶ 15 II. ANALYSIS

¶ 16 Lorand argues that the trial court improperly applied the law-of-the-case doctrine, which resulted in an errant ruling that Lorand was in indirect civil contempt of court. Lorand further contends that the record showed that his actual income was less than his combined obligation for maintenance and support. Therefore, according to Lorand, the court's contempt finding was against the manifest weight of the evidence. Michelle responds that the court properly applied the law-of-the-case doctrine to the issue of Lorand's reduction in income. She further argues that Lorand failed to meet his burden of demonstrating that his noncompliance was not willful or contumacious, or that he had a valid excuse for his noncompliance.

¶ 17 A. Law of the Case

¶ 18 The law-of-the-case doctrine limits the relitigation of previously decided issues within the same case. *Hiatt v. Illinois Tool Works*, 2018 IL App (2d) 170554, ¶ 19. The doctrine protects parties' settled expectations, ensures uniformity of decisions, maintains consistency

during the course of a case, effectuates the proper administration of justice, and brings litigation to an end. *Hiatt*, 2018 IL App (2d) 170554, ¶ 19. The doctrine applies to previously decided issues of both law and fact. *Radwill v. Manor Care of Westmont, IL*, 2013 IL App (2d) 120957, ¶ 8. Whether to apply the law-of-the-case doctrine is a question of law, which we review *de novo*. *Hiatt*, 2018 IL App (2d) 170554, ¶ 19.

¶ 19 Lorand's argument that the law-of-the-case doctrine does not apply rests upon his contention that the imputation of income in the November 2016 order was an issue of fact. Lorand cites *Scheffel & Company, P.C. v. Fessler*, 356 Ill. App. 3d 308 (2005), to support his theory that the doctrine applies only to issues of law, not fact. Lorand misconstrues *Scheffel*. In *Scheffel*, the shareholders in an accounting firm voted to "involuntarily retire" the defendant, a certified public accountant, who then motioned the trial court to invalidate his non-compete covenant. *Scheffel*, 356 Ill. App. 3d at 309-10. The trial court denied the motion but limited the non-compete covenant's scope in years and geographic reach, and the appellate court affirmed that decision in *Scheffel I*. *Scheffel*, 356 Ill. App. 3d at 310. On remand, the accounting firm moved for a preliminary injunction to extend the covenant for as long as the defendant continued to receive deferred compensation, and the trial court granted the motion. *Scheffel*, 356 Ill. App. 3d at 311-12. The defendant appealed, arguing that the trial court violated the law-of-the-case doctrine.

¶ 20 The appellate court in *Scheffel II* agreed with the defendant's assertion that questions of law decided in previous appeals were binding on the trial court. *Scheffel*, 356 Ill. App. 3d at 312. The appellate court also noted that the law-of-the-case doctrine did not bind a trial court at a subsequent stage of litigation when there were different issues, different parties, or when the underlying facts had changed. *Scheffel*, 356 Ill. App. 3d at 312. Ultimately, the appellate court

in *Scheffel II* affirmed the trial court's decision, noting that the issue of deferred compensation in relation to the non-compete covenant differed from the issue which had been decided in *Scheffel I*: whether the covenant's time and distance restrictions were reasonable. *Scheffel*, 356 Ill. App. 3d at 312-13.

¶ 21 The appellate court in *Scheffel* confirmed that the law-of-the-case doctrine applies to questions of law, but nowhere in its decision did it proscribe trial courts from applying the doctrine to issues of fact. To the contrary, it is long established that the doctrine applies to issues of both law and fact. See *Western Theological Seminary v. City of Evanston*, 331 Ill. 257, 259 (1928) (previous opinion of the court found to be controlling when the "court had determined the law in the case as to all matters of law and fact"); *Radwill*, 2013 IL App (2d) 120957, ¶ 8 ("Issues previously decided include issues of both law and fact."); *American Service Insurance Co. v. China Ocean Shipping Co. Inc.*, 2014 IL App (1st) 121895, ¶ 17 ("The doctrine applies to questions of law and fact and encompasses a court's explicit decisions, as well as those decisions made by necessary implication."). Accordingly, the court did not err by applying the law-of-the-case doctrine to an issue of fact.

¶ 22 Moreover, Lorand did not demonstrate that the underlying facts had changed, despite his assertion that a person's annual income is generally subject to change. Lorand's line of questioning with Kovalik attempted to elicit information that supported his theory from the original trial, which was that he did not conspire to bankrupt his business and that he no longer had any ownership interest in LF Construction, G&J Services, or Best Construction. The trial court disallowed the testimony because that issue had been decided and affirmed on appeal. It was the same issue that Lorand raised in his original argument at trial, involving the same parties, and the facts had not changed. When the court told Lorand's attorney that this was not

the time to retry the case, he responded that "it seems like that is still an issue in this matter." It is clear that Lorand's questioning of Kovalik was an attempt to relitigate an issue that was already decided where the underlying facts had not changed, and the court correctly applied the law-of-the-case doctrine.

¶ 23 B. Contempt Finding

¶ 24 Civil contempt requires the existence of a court order and proof of willful disobedience of that order. *In re Marriage of Charous*, 368 Ill. App. 3d 99, 107 (2006). Civil contempt is classified as "indirect civil contempt" when it occurs outside the presence of the trial court. *In re Marriage of Charous*, 368 Ill. App. 3d at 107. The burden is initially on the petitioner to demonstrate by a preponderance of the evidence that the alleged contemnor violated the court order. *In re Marriage of Charous*, 368 Ill. App. 3d at 107. The burden then shifts to the alleged contemnor to show that his or her violation was not willful or contumacious and that he or she had a valid excuse for the violation. *In re Marriage of Charous*, 368 Ill. App. 3d at 107-08. Contumacious conduct is " 'conduct calculated to embarrass, hinder, or obstruct a court in its administration of justice.' " *In re Marriage of Charous*, 368 Ill. App. 3d at 108 (quoting *In re Marriage of Fuesting*, 228 Ill. App. 3d 339, 349 (1992)).

¶ 25 A finding of contempt is a question for the trial court, and such a finding will not be reversed unless it is against the manifest weight of the evidence or the record reflects an abuse of discretion. *In re Marriage of Charous*, 368 Ill. App. 3d at 108. A finding is against the manifest weight of the evidence when the opposite conclusion is clearly evident or where the finding is unreasonable, arbitrary, and not based on any of the evidence. *In re Marriage of Brill*, 2017 IL App (2d) 160604, ¶ 30. An abuse of discretion occurs when no reasonable person would take the view adopted by the trial court. *In re Marriage of Micheli*, 2014 IL App (2d) 121245, ¶ 20.

¶ 26 Here, Lorand attempted to explain and mitigate his failure to comply with the court's order to pay the increased support. Kovalik testified that he was the sole owner of LF Construction and that he had complete authority to determine Lorand's salary as his employee.

¶ 27 Lorand testified that he had not attempted to restart his business because Chase Bank turned him down for a loan and he could not run the business without a loan. He further testified that he began classes to obtain licenses to sell health and life insurance in September 2017, and he earned $700 between November 2017 and February 2018 selling insurance. Lorand testified to no other efforts to increase his income and comply with the support order.

¶ 28 After listening to the testimony and viewing the witnesses, the court was unpersuaded that Lorand had made efforts to comply with its order. It found that Kovalik was "not a very compelling witness," noting that he seemed to know little about the business that he purportedly owns and operates. The court reiterated its belief that Lorand plays a larger role in the business than his or Kovalik's testimony revealed:

> "As we sit here today, I still know no more clearly how Mr. Stranyiczki and the hierarchy of this business truly works. But nothing has changed my belief that Mr. Stranyiczki is an integral part of whatever familial relationship or friendship relationship or business partner relationship exists amongst the principals of LF Construction.
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> So Mr. Stranyiczki has not really succeeded in convincing this Court that whatever this business does that he still isn't, at some point in time, going to reap the benefits that he used to reap when he was pulling in 3 [*sic*] to $400,000 annually."

¶ 29 In this case, between November 2016 and February 2018, Lorand made a single failed attempt to obtain a loan that would enable him to restart his business. His only other effort to

increase his income was to seek employment as an insurance salesman, a position that was completely outside of his field of training or experience. He testified that he grossed only $700 and that his net income from that enterprise was less than zero. The minimal scope of Lorand's efforts reveals a lack of earnestness to comply with the court's order. The sparseness of his efforts was remarkable, given that he was not only approaching the known deadline to pay additional support, but was also subject to a potential hearing on maintenance that would focus on the strength of his endeavors to comply with the court's orders. Under these circumstances, the evidence supports a determination that Lorand was willfully disobedient of the court's order. Accordingly, the court's finding of indirect civil contempt was not against the manifest weight of the evidence or an abuse of its discretion.

¶ 30 III. CONCLUSION

¶ 31 For the reasons stated, we affirm the judgment of the circuit court of Kane County.

¶ 32 Affirmed.