2019 IL App (1st) 161316-U

FOURTH DIVISION
June 28, 2019

No. 1-16-1316

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
DEBBIE PITTMAN,	)	Cook County.
	)	
Petitioner-Appellant,	)	
	)	No. 12 D 10425
and	)	
	)	
RONNIE PITTMAN,	)	Honorable
	)	Andrea Schleifer,
Respondent-Appellee.	)	Judge Presiding.

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Reyes and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: This court lacks jurisdiction because petitioner's notices of appeal were untimely as to all issues except indirect civil contempt claims and appeal of those issues dismissed. The trial court did not abuse its discretion in finding petitioner to be in indirect civil contempt.

¶ 2 This appeal involves the litigious and protracted divorce proceedings between petitioner Debbie Pittman, appearing *pro se*, and respondent Ronnie Pittman. We note that both of the parties are legally blind. Following the trial court's judgment for dissolution of marriage in

August 2015, respondent alleged in his motion to reconsider the dissolution judgment that petitioner had fraudulently concealed considerable assets. In subsequent proceedings, the trial court (1) entered a temporary restraining order (TRO) against petitioner to enjoin her access to her bank accounts to prevent further removal of assets, (2) held petitioner in indirect civil contempt and ordered a purge of $15,000, (3) entered a modified dissolution judgment altering the financial and property distributions based on petitioner's actions, and (4) ordered petitioner to pay attorney fees for her prior counsel and partial payment of attorney fees for respondent's counsel.

¶ 3 Petitioner appeals, raising 20 issues on appeal. She argues that the trial court: (1) erred in failing to provide a reasonable accommodation under the Americans with Disabilities Act (ADA); (2) improperly relied upon her business bank account in its findings; (3) erred in denying petitioner her constitutional right to life when petitioner was ordered not to spend any money and not to have any assets; (4) erred in denying petitioner's motion for substitution of judge as of right; (5) erred in denying petitioner's substitution of judge for cause without a hearing before a different judge; (6) erred by charging petitioner with indirect civil contempt when the order could not be abided by, making the order indirect criminal contempt; (7) erred in finding petitioner guilty of indirect civil contempt and sanctioning her $15,000, and requiring her to pay respondent's attorney fees; (8) erred in denying petitioner an order of protection; (9) erred in disregarding the validated affidavit by notary Ray Dina, which verified a structured settlement was nonmarital property; (10) erred when it failed to impute respondent's income from all sources to determine maintenance and distribution of property; (11) improperly found respondent's Parkside property to be nonmarital; (12) erred in calculating the disbursements from the thrift savings plan (TSP); (13) erred in denying witnesses to testify for lack of

timeliness; (14) erred by denying an extension of time to allow petitioner's counsel time to prepare which forced the counsel to leave the courtroom on the first day of trial; (15) erred in denying petitioner's motion for summary judgment when respondent had failed to comply with discovery; (16) improperly found petitioner liable for the Credit Union One line of credit and that all marital debt was charged to petitioner when respondent had been the primary breadwinner; (17) erred in awarding attorney fees to various attorneys; (18) erred in sanctioning petitioner for noncompliance with discovery after learning petitioner had a hearing deficit; (19) erred in failing to make respondent pay the $1500 sanction to petitioner; and (20) erred when plaintiff was found in indirect civil contempt in July 2017 and sanctioned $9,000 without the opportunity to present a defense.

¶ 4 Given the extensive record, we recount the facts as necessary to address petitioner's issues raised on appeal.

¶ 5 The parties married on March 17, 1980, in Cook County, Illinois. The parties had two sons, both of whom are legal adults. As previously noted, both parties are legally blind and receive disability payments. During their marriage, petitioner worked as a transcriber through her business, Pittman Enterprises and Associates. Respondent was employed by the Internal Revenue Service.

¶ 6 The parties purchased a house located at 8738 S. Elizabeth Street in Chicago. During the proceedings, petitioner resided at the residence. The property was encumbered by two loans. One loan was through the Small Business Administration (SBA) for $12,000. The second loan was an equity line of credit through Credit Union One for $36,000. The equity in the home was approximately $39,000.

¶ 7 In November 2012, petitioner filed her petition for the dissolution of the marriage citing irreconcilable differences between the parties. Petitioner sought maintenance and attorney fees from respondent. In January 2013, respondent filed a counterpetition for dissolution of marriage also citing irreconcilable differences. Respondent asked to be awarded his nonmarital property free and clear of any claim by petitioner, that petitioner be required to pay a just portion of marital debts, and that petitioner be barred from receiving maintenance and be ordered to pay for her own attorney fees and costs.

¶ 8 Petitioner filed a motion for exclusive possession of the marital residence on February 19, 2013, alleging that petitioner's physical and mental well being was jeopardized by respondent's occupancy in the residence by both parties, including claims that respondent had grown increasingly physically and verbally abusive to petitioner. Respondent was granted 21 days to respond and a hearing on the motion was set for April 16, 2013. In the interim, petitioner filed an emergency petition for an order of protection on March 1, 2013, and sought exclusive possession of the residence. In her attached affidavit, petitioner stated that respondent had attacked her on February 22, 2013, and choked her. On March 1, 2013, the trial court entered an agreed order which granted respondent 24 hours to vacate the premises, and that petitioner was to have exclusive possession of the residence until further order of the court. Respondent was permitted to remove his clothing and personal items. He would be permitted to return at an agreed later date to remove any additional clothing or personal items.

¶ 9 On May 21, 2013, the trial court entered an order granting petitioner exclusive possession of the residence "immediately and continuously for the remainder of the proceedings." Respondent was granted specified dates and times to return with police to retrieve remaining

personal items. However, the trial court denied petitioner's petition for an order of protection. Specifically, the court found:

> "[Respondent's] conduct including physical contact and harassment denies [petitioner] of the quiet enjoyment of her home but based on the testimony and evidence presented it does not rise to the level required for an order of protection."

¶ 10 In June 2013, petitioner's counsel filed a motion to withdraw representation. Petitioner subsequently filed a *pro se* motion to reconsider the denial of an order of protection. Petitioner filed three amended versions of this motion to reconsider with the final amended version filed on September 16, 2013. The court denied the motion to reconsider stating that "there is no basis in law or fact alleged in petitioner's motion which would be a basis to reconsider the orders of May 21, 2013." On October 4, 2013, petitioner filed a *pro se* motion for an order of protection, which was identical to her previously filed third amended motion to reconsider. Petitioner attached several exhibits, including her own affidavit, transcriptions of phone messages from respondent, and an affidavit from petitioner's primary care doctor in which the doctor observed bruises on petitioner's neck in February 2013, and petitioner informed the doctor that respondent had been physically abusive.

¶ 11 On October 11, 2013, the trial court set the case for trial on February 7, 2014, with discovery to be completed on or before December 20, 2013, and parties shall exchange a list of all witnesses at least 14 days prior to trial. On November 1, 2013, the trial court denied petitioner's petition for an order of protection finding that (1) the allegations were insufficient to state a cause of action, (2) there was insufficient evidence of an emergency and insufficient to meet the standards provided under the Domestic Violence Act, and (3) an additional order of

protection petition without substantial allegations as to evidence to meet the required standards shall result in sanctions.

¶ 12 On January 31, 2014, petitioner filed a *pro se* motion for summary judgment "for failure to properly respond." Petitioner asserted that respondent failed to respond to her discovery requests, including interrogatories and production requests. On February 4, 2014, respondent filed a motion *in limine* asking the trial court to prohibit petitioner from calling any witnesses for which she had failed to give their name, address, or other identifying information. Attached to the motion was petitioner's witness list which included a list of names with no other information as well as unnamed representatives of multiple businesses.

¶ 13 On February 7, 2014, the day trial was set to begin, petitioner presented a motion for substitution of judge as a matter of right. The trial court denied the motion, noting that a party "can only get a substitution of judge as a matter of right if the judge has not ruled on anything. In this case, I have ruled on things and, therefore, it will be denied." Petitioner then asked for a substitution for judge for cause, but the court observed that it could not address any motion that has not been presented in writing. Petitioner stated that she did not feel she would get a fair trial. The court found that petitioner's reason was not sufficient to be awarded a substitution of judge for cause and pointed out that petitioner has "to articulate with specificity what the cause is. And feeling that won't get a fair trial is not sufficient." The request was denied. Petitioner then requested a continuance to get an attorney and asserted that she has not had the funds to pay for an attorney.

¶ 14 After the case was officially called, petitioner informed the court that documents sent by respondent's counsel on February 3, 2014, were supposed to be received by January 23, 2014. Petitioner pointed out that a note inside the packet stated January 3, 2014, but the mailing date on

the packet stated February 3, 2014. The court reviewed the certificate of service which was certified as mailed on January 3, 2014, but the FedEx tracking number indicated February 4, 2014. The court then granted petitioner's request to exclude anything in that packet that had not been previously tendered. Respondent's attorney withdrew the motion *in limine* to bar witnesses because the only witness present in court was petitioner's sister and respondent did not object to her testimony. The court noted that respondent had previously been given $30,000 to pay attorney fees from the TSP account. The court entered an order (1) denying petitioner's motion for substitution of judge; (2) denying petitioner's motion for summary judgment; (3) sanctioned respondent $1500 for the discovery violation; (4) awarded petitioner $30,000 for attorney fees from the marital TSP as interest against petitioner's marital share of the estate; and (5) continued the trial to March 5, 2014, based on respondent's failure to turn over documents in a timely fashion. Also on February 7, 2014, a new attorney filed an appearance for petitioner.

¶ 15 In March 2014, respondent filed a new motion *in limine* again seeking to bar petitioner's witnesses from testifying because her witness list failed to identify the type of witness and subjects on which the witness would testify as well as failed to provide any identifying information. In April 2014, petitioner filed a witness list with addresses for the listed potential witnesses as well as a list of trial exhibits. Also in April 2014, respondent filed a motion for Supreme Court Rule 137 sanctions and attorney fees. In the motion, respondent alleged that petitioner submitted an altered document with signatures deleted in an effort to misrepresent the facts before the trial court. On May 30, 2014, the trial court entered an order ruling on respondent's motion *in limine* precluding three of petitioner's witnesses and allowing one witness to testify about a limited subject area. On July 22, 2014, the trial court granted respondent's motion for Rule 137 sanctions, but amount of sanctions was reserved.

¶ 16 The trial on the dissolution petitions began on April 22, 2014, and continued over multiple days before concluding in August 2014. The only witnesses were petitioner, respondent, and Ray Dina, a notary public. The testimony elicited related almost entirely about income, spending, deposits, the loans on the marital residence, and employment history. The testimony is summarized below as necessary for the issues raised on appeal. Both parties are receiving disability payments.

¶ 17 Petitioner testified that she operated Pittman Enterprises and Associates as a medical, legal, and standard transcription service. According to petitioner, the business was no longer in operation because she was unable to get a license due to outstanding bills. However, petitioner admitted to using a bank account affiliated with the business, sending faxes from a business email, having a phone number listed for the business, and receiving mail for the business. Petitioner also issued a subpoena through her business name. Petitioner testified that she was no longer able to work due to her injuries from various accidents.

¶ 18 Petitioner received $916 per month in social security benefits. She also has received money settlements from various vehicular accidents. A settlement with Allstate Insurance in 1985 was structured for petitioner to receive $10,000 every five years in September 1999, 2004, 2009, and 2014, with a final payment of $151,545 in September 2019.

¶ 19 Petitioner testified at trial that she did not sign the loan documents for the Credit Union One home equity line of credit. She maintained that the only form she signed was a right to rescission document. She denied being a borrower on that loan and testified that respondent took out the loan.

¶ 20 Petitioner also testified that respondent signed a waiver of any interest in the proceeds from her structured settlement with Allstate. While the document was not admitted into

evidence, Ray Dina testified as to his usual procedure as a notary public. He was unable to recall notarizing the waiver document, but testified that his usual procedure was to verify the identity of the person signing the document. He did not testify that he reviewed the document with the signatory to confirm knowledge of contents in a document.

¶ 21 Petitioner testified that she obtained the proceeds of her Roth IRA during the separation. Petitioner also testified extensively about receiving a $10,000 draft payment from a settlement of a vehicular accident. According to petitioner, she was unable to deposit the proceeds because it was a draft and not a check, which would need more time to clear the bank. She gave the draft to a friend to deposit, who in turn gave petitioner $8,374 over several months.

¶ 22 Respondent worked for the IRS, but retired in 2013 due to complications from diabetes and he received dialysis three times a week. Respondent was still living in the marital residence when petitioner filed her action, but was hospitalized and remained in the hospital for an extended period of time. Petitioner claimed she did not know where respondent had gone, but he was later served in the hospital. Respondent receives pension benefits of $2700 and $890 in social security benefits per month.

¶ 23 The parties have a TSP which was earned during respondent's employment with the IRS. As of March 2013, the balance in the TSP was $120,494.74. Since that time, each of the parties has been awarded an advance of $30,000 to pay respective attorney fees. At the time of trial, the current balance was $79,500.

¶ 24 Since the separation, respondent has lived in a unit on North Parkside Avenue in Chicago. The building is a multi-unit building that respondent testified was left to him, his three siblings, the parties' children, and another grandchild by respondent's mother. Initially, he lived with one of his sisters and her family in one of the units until a rented unit was vacated. One of

his sisters managed the property. He paid a monthly amount for expenses, which he described as rent.

¶ 25 In February 2015, the trial court entered an oral ruling granting dissolution of marriage and division of property. On August 26, 2015, the trial court entered a written judgment for dissolution of marriage *nunc pro tunc* to February 18, 2015. The court found respondent's interest in the Parkside property to be nonmarital because respondent's tax returns showed no income generated from his interest and the court took judicial notice of the will which also left a piano and topaz ring to petitioner. The court awarded respondent his premarital bedroom chest and desk as well as his inherited dining set. Petitioner was awarded all property in the marital residence except for the following: stereo equipment, the microwave, the blender, the turkey fryer, the 50-inch television, all items left in respondent's upstairs bedroom when he was admitted to the hospital, all person items, the treadmills, the upright freezer, and the generator and chain saw.

¶ 26 Petitioner was awarded the marital home, subject to all liens and encumbrances. Both parties were ordered to execute all documents necessary to transfer the property into petitioner's name within 60 days. If petitioner failed to transfer the property into her name, then the property shall be placed for sale within 90 days. The court did not find petitioner's testimony that she did not sign the loan documents for the Credit Union One line of credit to be credible.

¶ 27 Respondent was awarded the balance of the TSP and 30% of petitioner's remaining payment of the structured settlement, $45,463.51. Petitioner was awarded maintenance in the amount of $541 per month. Respondent was ordered to maintain life insurance policies and designate petitioner as beneficiary of 50% of the proceeds until the parties receive their

respective percentages of the structured settlement. Each party was ordered to pay his or her respective attorney fees.

¶ 28 Both parties filed motions to reconsider the judgment. In November 2015, respondent filed an emergency petition for a temporary restraining order and preliminary injunction. The petition alleged that respondent's counsel sent a subpoena *duces tecum* to Allstate requesting records related to petitioner's structured settlement. According to the documents sent by Allstate, petitioner's structured settlement had a total annuity of $416,210. Petitioner was to receive a total of $64,665 between the date of execution and September 20, 2009, and a lump sum of $351,545 on September 20, 2014. Respondent also received a transmission detail report indicating that the lump sum was paid to petitioner on September 20, 2014, by deposit in a bank account. Petitioner also sent a letter to Allstate on September 2, 2014, directing where to deposit the payment. Respondent requested a TRO and preliminary injunction to enjoin petitioner from using, removing, or transferring the funds on deposit in her JPMorgan Chase account or any other accounts.

¶ 29 On November 10, 2015, the trial court found that an emergency existed and respondent had met his burden of showing irreparable harm should petitioner have prior notice of the petition. The court ordered JPMorgan Chase and Credit Union One to be temporarily joined as third-party defendants and enjoined them from transferring or disbursing or otherwise allowing access to any funds in petitioner's name. A TRO was entered against petitioner to restrain her from accessing monies in her name or within her control. Respondent was awarded leave to file a petition for civil contempt against petitioner. The TRO was set to expire on November 20, 2015. On November 19, 2015, the trial court extended the TRO and preliminary injunction by agreement of the parties to December 2, 2015.

¶ 30 On November 23, 2015, respondent filed his amended motion for reconsideration of the judgment for dissolution of marriage. Respondent asked the court to reconsider its judgment, equitably divide the marital assets received by petitioner on September 20, 2014, that he not receive less than 50%, order petitioner to refinance the former marital residence or pay off the mortgage, terminate the award of spousal maintenance and order petitioner to return any maintenance received, evenly divide Visa credit card debts between the parties, allow respondent to remove petitioner as a beneficiary of his life insurance, and the parties be responsible for all debts in their own names.

¶ 31 On December 2, 2015, the trial court entered an order on respondent's pending motion to reconsider and the TRO. The court extended the preliminary injunction "indefinitely pending the conclusion of this action and any appeals, if applicable." Petitioner was ordered to prepare an accounting tracing what she did with the monies received from Allstate. Petitioner remained "enjoined from accessing, transferring, spending, or otherwise controlling any assets in her name or under her control." The preliminary injunction was binding on petitioner, her agents, her attorneys, or anyone acting on her behalf or at her direction.

¶ 32 On January 29, 2016, respondent filed a petition for a rule to show cause against petitioner alleging a violation of the TRO in that petitioner spent, transferred, or withdrew $10,163.73 from a previously undisclosed Bank of America savings account between November 13, 2015, and December 23, 2015. Respondent asked for petitioner to be found in indirect civil contempt for her failure to comply with the TRO and preliminary injunction and asked for a purge of not less than $10,163.73. Respondent also requested attorney fees incurred in pursuing the TRO and preliminary injunction.

¶ 33 In February 2016, the trial court entered an order finding that a *prima facie* case of indirect civil contempt had been shown and the rule was issued why petitioner should not be held in contempt of court for failure to comply with a restraining order, order of accounting, and temporary injunction of her accounts. Petitioner was given leave to respond and the matter was set for hearing on April 12 and 13, 2016.

¶ 34 During the interim, petitioner's counsel filed a motion to withdraw and petitioner filed an appearance as representing herself *pro se*. On April 11, 2016, petitioner sent a letter to Chief Judge Timothy Evans requesting an investigation into the trial judge presiding over the case for bias and an abuse of power. Petitioner also attached a motion for substitution of judge for cause. On April 12, 2016, the motion for substitution of judge for cause was heard and denied by another trial judge and matter was returned to the judge presiding over the matter.

¶ 35 A hearing was conducted on April 12 and 13, 2016, on the motions to reconsider the dissolution judgment and on the rule to show cause why petitioner should not be held in indirect civil contempt. Petitioner appeared *pro se* at the hearing. The following evidence was presented in the contempt proceedings. Michael Wheeler testified that he has known petitioner for more than ten years. On February 25, 2015, petitioner wired $51,000 to his bank account. Two days later, $41,475.04 was withdrawn by cashier's check. On June 10, 2015, $41,400 was deposited back into Wheeler's account. On June 17, 2015, Wheeler paid an SBA loan for petitioner in the amount of $8,928.69. Wheeler testified that in February 2015, he was on disability and the bulk of the money in his account came from petitioner. According to Wheeler, petitioner borrowed money from him in 2012, but the actual amount was not disclosed. He admitted that petitioner borrowed an amount less than half of the $51,000 that was deposited into his account. In October 2015, petitioner called him and asked him to pay a bill of $7,300. Wheeler did not remember to

whom the money was paid. Wheeler also testified that he spent approximately $9,000 on petitioner's kitchen and $4,866.24 on braille apparatus for petitioner.

¶ 36 On November 19, 2015, Wheeler made a deposit into his account of $27,500 from a check from petitioner. However, Wheeler later testified that this check did not clear and was returned. On November 23, 2015, a withdrawal of $6,100 was made. Wheeler stated that he used $100, but the $6,000 went toward petitioner's kitchen.

¶ 37 On cross-examination by petitioner, Wheeler stated that he loaned her $15,000 in April 2012 for basement repairs to petitioner's house. Wheeler also loaned her $9,500 in 2013. Wheeler testified that they had an understanding that he would be paid back double for the loans because Wheeler had to wait to be repaid and he was one of the only people willing to help her out and give her a loan. Wheeler admitted that there were no signed loan agreements or promissory notes.

¶ 38 When the trial court asked petitioner if she was calling any witnesses at the hearing as the burden was on her, petitioner informed the court that based on a prior statement by the court indicating possible criminal charges, she would be pleading the fifth amendment right to remain silent. Respondent's attorney maintained that petitioner was not entitled to the fifth amendment protection because they were asking that petitioner be held in indirect civil contempt and it was not a criminal matter. An extended discussion ensued between the court, petitioner, and respondent's attorney. Petitioner appeared to misunderstand the proceedings. When reference was made to the accounting ordered by the court, petitioner stated that she complied and provided her bank statements for Chase and Bank of America. Respondent's attorney stated that the accounting was incomplete because it did not trace funds from one account to the other and it did not say what checks were written off of the account. Petitioner produced a handful of bank

statements and transactions histories from several accounts in her name. Counsel stated that petitioner had disclosed an account for Pittman Enterprises in a deposition, but had not produced any records. Petitioner told the court that she did not transfer any funds after she learned of the injunction on November 12, 2015, and her accounts were frozen. Petitioner asserted that the court told her former attorney that petitioner could keep her social security check.

¶ 39 Petitioner was then placed under oath as a hostile witness for respondent. Petitioner admitted that she did not prepare a document showing exactly what happened with all the funds she received from Allstate, but she did produce bank records. When asked about a payment made to Capital One on November 13, 2015, petitioner testified that she made the payment earlier, around the 9th or 10th. Petitioner gave a similar response when asked about a payment to Sam's Club on November 17, 2015, that the payment had been made earlier. She admitted to making a payment to Capital One on November 23, 2015, and it was after she knew of the restraining order, but she asserted the money possibly came from her social security. She also admitted to a payment to Capital One on December 7, 2015.

¶ 40 When asked about the check for $27,500 that was given to Wheeler, petitioner pled the fifth again. The trial court admonished petitioner that she was there for "civil contempt. This is not a criminal action." Petitioner continued to assert her fifth amendment rights. The court admonished petitioner as follows:

> "I'm again advising you that what I am hearing has nothing to do with criminal charges, that there would be no criminal charges arising from your violation of this order. You might be fined, and you could be potentially incarcerated until you complied if the Court found that that was appropriate. But civil contempt is different than criminal contempt, and civil contempt is not

> subject -- or the finding of civil contempt cannot be – the Fifth Amendment cannot be used to protect yourself from the sanctions that would be issued if you are found to be in contempt of court."

¶ 41 Petitioner was asked again about the check to Wheeler. She responded that she tendered that check to him on November 12, 2015. Petitioner later made a statement in which she said she did not understand what an accounting was and did not know what was expected of her. She provided her bank accounts with documentation. Her understanding was that a bank account served as an accounting.

¶ 42 At the conclusion of the contempt hearing, the trial court found petitioner to be in contempt. The hearing then proceeded to the motions to reconsider the dissolution judgment. As for the hearing on the motion to reconsider, respondent presented the testimony of Helen Hunt, a branch manager for Chase bank. Hunt detailed petitioner's account transactions from September 2014 to October 2015. Hunt testified that a deposit of $351,545 was made on September 19, 2014, by Allstate Insurance. A transfer of $300,000 was made to a savings account on September 22, 2014. On September 24, 2014, the combined balance in petitioner's checking and savings accounts was $338,323.33. On October 26, 2015, the combined balance in petitioner's checking and savings accounts was $108,913.95.

¶ 43 Following the proceedings, the court then entered the following order: (1) after respondent made monthly payments on any liens on the real estate from petitioner's monthly maintenance, the remainder was to be held on deposit in the client's fund account with his attorney; (2) petitioner was found to be in indirect civil contempt for willful violation of the November 10, November 19, and December 2, 2015 court orders; (3) petitioner shall purge herself of the finding of indirect civil contempt by payment of $15,000; (4) respondent's attorney

was granted 14 days to file a fee petition with petitioner being granted the same amount of time to respond; and (5) petitioner was granted 28 days to respond to her former attorney's fee petition. On April 21, 2016, respondent's attorney filed a fee petition seeking a judgment of $16,371.20 for attorney fees.

¶ 44 Petitioner filed a notice of appeal on May 10, 2016. On May 18, 2016, the trial court entered the following order after a hearing: (1) three subpoenas served by petitioner to US Bank, Credit Union One, and her first attorneys were quashed; (2) petitioner was barred from serving future subpoenas without leave of the court; (3) petitioner's motion objecting to sanction and motion for extension of time to pay sanction fees was denied; (4) petitioner's motion for reconsideration was denied; (5) respondent's motion for reconsideration was granted and matter was continued to June 10, 2016, for entry of the court's amended judgment for dissolution of marriage; (6) respondent's spousal maintenance obligation was terminated *instanter* and petitioner was barred from returning to that or any other court to request spousal maintenance in the future; (7) any spousal maintenance held in escrow was to be returned to respondent; (8) the fee petitions for respondent's attorney and petitioner's attorney were continued; and (9) petitioner "shall not file any further pleadings without leave of court as her filing of multiple motions and pleadings have failed to comply with minimum requirements of the rules of civil procedure, the Supreme Court and Circuit Court rules." On May 19, 2016, the trial court entered an order of commitment of petitioner for her willful contempt in violating the court orders and ordered the sheriff to take and keep custody of petitioner until she purged herself of contempt by posting a $15,000 cash bond. Petitioner filed an amended notice of appeal on May 19, 2016.

¶ 45 On June 10, 2016, the trial court made extensive findings on the record including amending the judgment for dissolution of marriage. Petitioner informed the court that the

$15,000 purge on the contempt order had been paid. The court awarded $5,098.20 to petitioner's attorney for outstanding attorney fees to be paid by July 11, 2016. The court found that the Allstate structured settlement documents presented to the court had been doctored either by petitioner or someone at her direction. Evidence from Allstate showed that petitioner received $351,000 while the action was pending in September 2014. The court awarded attorney fees of $16,371.20 to respondent's counsel and ordered the $15,000 paid to purge the contempt to be turned over in partial satisfaction of the attorney fees.

¶ 46 The trial court terminated any obligation for respondent to pay maintenance to petitioner retroactive to the entry of judgment and temporary maintenance. The court awarded the house to petitioner, but she was responsible for any liability on it. Petitioner was to hold respondent harmless from any liability. If petitioner failed to refinance the property causing respondent to be left with liability, then the property shall be transferred to him. Specifically, the court held that petitioner was obligated to pay the Credit Union One line of credit, the SBA loan, and any other obligations arising from the use and occupancy of the property. The court ordered petitioner to refinance the property in 120 days. Petitioner was ordered to pay rent in an amount sufficient to cover payments on both loans and other obligations on the property. If petitioner failed to pay those amounts, respondent was permitted to initiate actions to lock petitioner out, with a minimum of five days notice. If petitioner had not refinanced the property at the end of 120 days, then the property was to be sold by a broker of respondent's choosing. Respondent could then have exclusive rights to live in the home or to refinance it if he so chose. If the house was sold and there were sufficient funds from the proceeds, respondent was to be reimbursed $6,500.

¶ 47 Respondent was awarded the remaining funds in the TSP account as well as all rights to his pension and social security benefits. Petitioner was ordered to reimburse respondent $30,000

for the money advanced to her from the TSP account including any possible fees or taxes. The court further ordered that respondent was entitled to 30% of the proceeds in any lawsuit or settlements received or initiated prior to 2014 in Cook, Lake, DuPage, or Will Counties. A turnover order was to be issued to Chase to turn over the amount of approximately $107,000, the remaining funds from the Allstate payment, to respondent.

¶ 48 Petitioner was given all right, title, and interest in Pittman Enterprises, except for any accounts at Chase Bank or any other institutions in the name of Pittman Enterprises. Petitioner was entitled to keep her social security benefits as well as any future income from Pittman Enterprises or any other future organization. The contempt finding was discharged. The trial court made the judgment effective as of that day.

¶ 49 The record on appeal contains no other court transcripts of proceedings or orders following the June 10, 2016 proceedings. As a result, we have no documentation as to what transpired after that date in the trial court.

¶ 50 On appeal, petitioner raises multiple issues from the proceedings in the trial court. However, before we consider the merits of petitioner's claims, we must first review this court's jurisdiction over the instant appeal. While neither party raises the issue of jurisdiction, "an appellate court has an independent duty to consider whether or not it has jurisdiction to hear an appeal." *A.M. Realty W. L.L.C. v. MSMC Realty, L.L.C.*, 2016 IL App (1st) 151087, ¶ 67; see also *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213 (2009) ("A reviewing court must ascertain its jurisdiction before proceeding in a cause of action, regardless of whether either party has raised the issue.").

¶ 51 "It is a well-established proposition that jurisdiction only arises in the appellate court when a party timely files a notice of appeal." *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 521

(2001). "The timely filing of a notice of appeal is both jurisdictional and mandatory." *Secura*, 232 Ill. 2d at 213 (citing Ill. S. Ct. R. 301 (eff. Feb. 1, 1994)). "[T]he appellate court does not have the authority to excuse the filing requirements of the supreme court rules governing appeals." *Id*. at 217-18. "Unless there is a properly filed notice of appeal, the appellate court lacks jurisdiction over the matter and is obliged to dismiss the appeal." *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 176 (2011)

¶ 52 "This court, however, is without jurisdiction to review judgments, orders or decrees which are not final, except as provided by supreme court rule." *MidFirst Bank v. McNeal*, 2016 IL App (1st) 150465, ¶ 22. Supreme Court Rule 303(a)(1) provides an appeal from a final judgment within 30 days of its entry. Ill. S. Ct. R. 303(a)(1) (eff. July 1, 2017). If a timely posttrial motion has been filed, the time for filing a notice of appeal is within 30 days after the entry of the order disposing of the last pending postjudgment motion. *Id*.

¶ 53 We observe that *pro se* litigants, such as petitioner, are not entitled to more lenient treatment than attorneys. "In Illinois, parties choosing to represent themselves without a lawyer must comply with the same rules and are held to the same standards as licensed attorneys." *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 78. "*Pro se* litigants are presumed to have full knowledge of applicable court rules and procedures." *Steinbrecher*, 197 Ill. 2d at 528.

¶ 54 Petitioner's notices of appeal suffer from two fatal flaws. First, none of the orders preceding petitioner's notices of appeal were final orders. "An order is 'final' if it either terminates the litigation between the parties on the merits or disposes of the rights of the parties either on the entire controversy or on a separate and definite part of it." *Bennett v. Chicago Title & Trust Co.*, 404 Ill. App. 3d 1088, 1094 (2010); *Shermach v. Brunory*, 333 Ill. App. 3d 313, 316 (2002). A judgment is final if it determines the litigation on the merits so that if affirmed on

appeal, the only thing remaining is to proceed with execution of the judgment. *Shermach*, 333 Ill. App. 3d at 316. An order is final when any matters left for future determination are merely incidental to the ultimate rights that have been adjudicated by the order. *Id.* at 317. Stated another way, " ' "[a] decree is final if *** the matters left for future determination are merely incidental to the ultimate rights which have been adjudicated by the decree." ' " (Emphasis omitted.) *In re Marriage of Teymour & Mostafa*, 2017 IL App (1st) 161091, ¶ 21 (quoting *In re Custody of Purdy*, 112 Ill. 2d 1, 5 (1986), quoting *Barnhart v. Barnhart*, 415 Ill. 303, 309 (1953)). "[G]enerally only a judgment that does not reserve any issues for later determination is final and appealable." *In re Marriage of Susman*, 2012 IL App (1st) 112068, ¶ 13.

¶ 55 Here, petitioner filed a notice of appeal on May 10, 2016, and then filed an amended notice of appeal on May 19, 2016. The trial court found petitioner to be in indirect civil contempt with a purge of $15,000 on April 13, 2016. On May 18, 2016, the trial court denied petitioner's motion to reconsider the dissolution judgment and granted respondent's motion to reconsider on May 18, 2016. The following day, on May 19, 2016, the trial court entered an order of commitment for petitioner to be taken into custody by the sheriff until she purged herself of the contempt finding by posting $15,000. However, at the time those notices were filed, proceedings in the trial court were still ongoing. The trial court order of May 18, 2016, specifically indicated that the amended dissolution judgment would be entered on June 10, 2016. None of the orders preceding either the initial notice of appeal or the amended notice of appeal was final or appealable. The amended dissolution judgment remained outstanding as well as pending fee petitions for attorney fees. No final order had been entered from which petitioner could bring her appeal.

¶ 56 Second, we do not know when the final order was entered. The June 10, 2016, order was not the final judgment by the trial court because (1) the order left the resolution of the property open to further adjudication, and (2) the final rulings on attorney fees remained pending. Specifically, the court granted the property to petitioner with an order to refinance within 120 days while also ordering petitioner to make payments to cover the loans and other costs related to the property. If she failed to do this, then the property would be sold by a broker of respondent's choosing. The resolution of the property was not incidental to the June 10, 2016, order and we would have no ability to execute on that judgment. "In dissolution proceedings, a petition for dissolution advances a single claim, and issues such as custody, maintenance, property division, child support, and attorney fees are ancillary issues relating to that claim." *In re Marriage of Mackin*, 391 Ill. App. 3d 518, 520 (2009) (citing *In re Marriage of Leopando*, 96 Ill. 2d 114, 118-20 (1983)). "Orders resolving individual ancillary issues are not appealable until the court resolves the entire dissolution claim." *Id*. (finding that an order dividing marital property and setting maintenance, but that reserved ruling on child support for 180 days was not a final order). Without a ruling on the final resolution of the marital property, the trial court's judgment failed to fully adjudicate all matters such that this court could execute the judgment.

¶ 57 Moreover, it is unclear when the final rulings on attorney fees were entered. The court entered awards for petitioner's former attorney to be paid by July 11, 2016, as well as an award for respondent's attorneys, which was paid in part by the $15,000 paid to purge the contempt finding. See *Phoenix Capital, LLC v. Tabiti*, 2016 IL App (1st) 162686, ¶ 8 (finding the order from appealed was not final where the trial court had reserved the calculation of attorney fees in sanctions proceedings). Based on the record before us, there are no final orders from which

petitioner could timely appeal. Accordingly, we lack jurisdiction to consider most of the issues raised in petitioner's appeal.

¶ 58 However, we find that this court has jurisdiction for one portion of petitioner's appeal. Petitioner's claims related to the finding of indirect civil contempt were appealable under Supreme Court Rule 304(b)(5). Supreme Court Rule 304(b)(5) provides that "[a]n order finding a person or entity in contempt of court which imposes a monetary or other penalty" is appealable without a Rule 304(a) finding that there was no just reason to delay appeal. Ill. S. Ct. R. 304(b)(5) (eff. Mar. 8, 2016). "It is clear from the language of the rule that only contempt judgments that impose a penalty are final, appealable orders." *In re Marriage of Gutman*, 232 Ill. 2d 145, 153 (2008). While petitioner failed to indicate in her notice of appeal the proper Supreme Court Rule under which she could bring an appeal of the contempt finding, a notice of appeal is to be liberally construed. *In re Marriage of O'Brien*, 2011 IL 109039, ¶ 22. "[A] notice of appeal 'will confer jurisdiction on an appellate court if the notice, when considered as a whole, fairly and adequately sets out the judgment complained of and the relief sought so that the successful party is advised of the nature of the appeal.' " *Id.* (quoting *Burtell v. First Charter Service Corp.*, 76 Ill. 2d 427, 433-34 (1979)).

¶ 59 Petitioner's notices of appeal from May 10 and May 19, 2016, list generally, among other orders, the trial court's orders from April 13, 2016, and May 19, 2016, which included the contempt finding. On April 13, 2016, the trial court found petitioner to be in indirect civil contempt for violating the court orders of November 10, November 19, and December 2, 2015, and in order to purge the contempt finding, petitioner was required to pay $15,000 to the Clerk of the Circuit Court. Petitioner filed her first notice of appeal on May 10, 2016, which indicated she was appealing the trial court's August 26, 2015 judgment, reconsideration motions, and

"subsequent orders up to April 12 13 2016." Later, on May 19, 2016, the trial court entered an order of commitment on petitioner's order of indirect civil contempt. The same day, petitioner filed an amended notice of appeal which included May 18 and 19, 2016 orders. Since petitioner filed her notices of appeal within 30 days of the contempt orders and we are to liberally construe her notices of appeal, we conclude that her appeal of the contempt order was timely under Rule 304(b)(5).

¶ 60 We now turn to the merits of petitioner's contempt claims. According to petitioner, the trial court's finding of indirect civil contempt was in violation of her constitutional rights because the contempt finding was criminal in nature and she was not afforded the constitutional safeguards allowed for criminal proceedings.

¶ 61 "When a contempt appeal is filed, the standard of review is an abuse of discretion." *In re Marriage of O'Malley ex rel. Godfrey*, 2016 IL App (1st) 151118, ¶ 25. "A trial court abuses its discretion only when ' "no reasonable person would take the view adopted by the trial court." ' " *Id*. (quoting *Wilbourn v. Cavalenes*, 398 Ill. App. 3d 837, 848 (2010), quoting *Foley v. Fletcher*, 361 Ill. App. 3d 39, 46 (2005)). " 'Whether a contempt finding should be vacated is a question to be determined on the individual facts of the particular appeal.' " *Id*. (quoting *Doe v. Township High School District 211*, 2015 IL App (1st) 140857, ¶ 121).

¶ 62 "Contempt of court has been defined as ' "conduct that is calculated to impede, embarrass, or obstruct the court in its administration of justice or derogate from the court's authority or dignity, or to bring the administration of the law into disrepute." ' " *Windy City Limousine Co. LLC v. Milazzo*, 2018 IL App (1st) 162827, ¶ 36 (quoting *People v. Geiger*, 2012 IL 113181, ¶ 26, quoting *People v. Ernest*, 141 Ill. 2d 412, 421 (1990)). "Courts have the inherent authority to reprimand contemptuous conduct because 'such power is essential to the

maintenance of their authority and the administration of judicial powers.' " *Id.* (quoting *People v. Simac*, 161 Ill. 2d 297, 305 (1994)). "There are four main types of contempt: direct civil contempt, direct criminal contempt, indirect civil contempt, and indirect criminal contempt." *Id.* "Properly identifying the type of contempt is critical because the procedures that must be followed depend on the type of contempt involved." *Id.* "Direct and indirect contempt are distinguished based upon where the contemptuous conduct occurred. A direct contempt charge is brought when the alleged contemptuous conduct occurs in the direct presence of a judge, whereas an indirect contempt charge is brought when the alleged contemptuous conduct occurs outside the direct presence of a judge." *Id.* ¶ 40. Here, it is undisputed that petitioner was subject to an indirect contempt finding because her violation of the court orders, *i.e.*, spending money after an injunction had been entered, occurred outside the presence of the trial court. The issue before us is whether the indirect civil contempt finding was actually indirect criminal contempt in which petitioner's constitutional rights were violated.

¶ 63 "Civil and criminal contempt are distinguished based upon *why* the contempt charge was brought. A civil contempt charge is generally brought to compel compliance with a court order, whereas a criminal contempt charge is brought to punish past conduct, *i.e.*, punishing conduct that a court order prohibited." (Emphasis in original.) *Id.* ¶ 38. Stated differently, "criminal contempt is ' "instituted to punish, as opposed to coerce, *** for past contumacious conduct." ' " *O'Malley*, 2016 IL App (1st) 151118, ¶ 27 (quoting *Emery v. Northeast Illinois Regional Transportation Co.*, 374 Ill. App. 3d 974, 977 (2007), quoting *In re Marriage of Sharp*, 369 Ill. App. 3d 271, 279 (2006)).

¶ 64 "In other words, civil contempt concerns future conduct while criminal contempt concerns past conduct. Usually, the distinguishing characteristic between civil and criminal

contempt is the alleged contemnor's ability to purge the 'contempt charge by complying with the order the court sought to enforce.' " *Windy City*, 2018 IL App (1st) 162827, ¶ 38 (quoting *Milton v. Therra*, 2018 IL App (1st) 171392, ¶ 35). "A person held in civil contempt must have the ability to purge the contempt by complying with the court order." *O'Malley*, 2016 IL App (1st) 151118, ¶ 26. " 'Civil contempt proceedings have two fundamental attributes: (1) [t]he contemnor must be capable of taking the action sought to be coerced, and (2) no further contempt sanctions are imposed upon the contemnor's compliance with the pertinent court order.' " *In re Marriage of Weddigen*, 2015 IL App (4th) 150044, ¶ 20 (quoting *In re Marriage of Betts*, 200 Ill. App. 3d 26, 44 (1990)). " 'Civil contempt is coercive in nature rather than punitive; the finding of civil contempt results from failure to do something which the court has ordered for the benefit or advantage of another party to the proceeding, and the court acts to compel the contemnor to obey the order for the benefit of that other party.' " *In re Estate of Baldassarre*, 2018 IL App (2d) 170996, ¶ 27 (quoting *Betts*, 200 Ill. App. 3d at 44). The Illinois Supreme Court has "explained that '[w]hen a party is found in civil contempt of court, *** the contempt order is coercive in nature. The court seeks only to secure obedience to its prior order. Since the contempt order is coercive rather than punitive, the civil contemnor must be provided with the "keys to his cell." That is, he must be allowed to purge himself of contempt even after he has been imprisoned.' " *In re Marriage of Knoll & Coyne*, 2016 IL App (1st) 152494, ¶ 56 (quoting *In re Marriage of Logston*, 103 Ill. 2d 266, 289 (1984)).

¶ 65 "Contempt based on past actions which cannot be undone means that the contemnor lacks the ability to purge the contempt ***because the purpose of civil contempt is to compel compliance with court orders, not to punish." *O'Malley*, 2016 IL App (1st) 151118, ¶ 26. "Therefore, whenever a court order cannot be complied with, there cannot be a finding of civil

contempt." *Id*. "[T]he substance of the contempt finding, not the label given, is what will determine whether the contempt finding was criminal or civil in nature." *Id*. ¶ 28.

¶ 66 "[W]hen someone is charged with indirect contempt, regardless of whether it is civil or criminal, the alleged contemnor is entitled to certain due process protections, including notice and the opportunity to be heard." *Windy City*, 2018 IL App (1st) 162827, ¶ 41. "However, an alleged civil contemnor is entitled only to minimal due process protections whereas an alleged criminal contemnor is entitled to substantial due process protections." *Id*. "An indirect criminal contempt proceeding is a separate and distinct proceeding from that which underlies the contempt charge." *Id*. ¶ 46. "While this test might seem relatively straightforward, an analysis of the facts of any given case involving civil or criminal contempt is crucial, as the two often share the same characteristics." *Baldassarre*, 2018 IL App (2d) 170996, ¶ 28.

¶ 67 In this case, following a hearing on April 13, 2016, the trial court found petitioner in indirect civil contempt based on her violation of the court orders setting forth a TRO and preliminary injunction on petitioner's bank accounts in that she was prevented from spending, transferring, or otherwise controlling money. The rule to show cause filed by respondent asserted that petitioner had spent, transferred, or withdrew a total of $10,163.73 from a previously undisclosed bank account and failed to provide a complete accounting of the settlement payment from Allstate. The rule requested the court order petitioner to be incarcerated and to set a purge in an amount not less than $10,163.73. At the hearing, petitioner repeatedly invoked her fifth amendment right to remain silent when asked about her violation of the court orders and spending of money, but the court and respondent's counsel informed petitioner that it was not a criminal proceeding and she did not have a right against self incrimination. After finding petitioner to be in indirect civil contempt, the court ordered a purge of $15,000, which was based

on the $10,163.73 she spent in violation of the court's orders with the additional amount to cover attorney fees spent by respondent in prosecuting the rule to show cause. At the following court date on May 18, 2016, the trial court observed that petitioner had not yet paid the purge and the following day an order of commitment was entered to take petitioner into the custody of the sheriff until she paid the purge amount. Later, the court awarded the $15,000 purge amount the respondent's attorney in partial compliance with the award of attorney fees.

¶ 68 After reviewing the different purposes between civil and criminal contempt, we conclude that the trial court's proceedings were correctly considered to be indirect civil contempt. Petitioner violated the court's order and the purge was set to coerce compliance. A finding of civil contempt was proper because by paying the purge amount, petitioner was able to come into compliance with the trial court's order and once paid, the contempt order was lifted. "In proceedings concerning civil contempt, the trial court seeks only to secure obedience to its prior order." *In re Marriage of Berto*, 344 Ill. App. 3d 705, 712 (2003).

¶ 69 In the *Berto* case, the petitioner sought to have the respondent held in indirect civil contempt for failing to pay the ordered amount of child support. On the day of the contempt hearing, the respondent appeared and paid the entire arrearage, bringing himself into compliance with the court's order. Thus, the court declined to find him in civil contempt because there was no longer a way for him to purge himself of contempt and no basis to find him in contempt. *Id*. at 712-13.

¶ 70 In contrast, in *O'Malley*, the respondent was found to be in indirect civil contempt for failing to abide by the deadline in selling marital residence, lying about his capacity to buy the petitioner's share of the property, and "killing" a sale without consulting the petitioner. *O'Malley*, 2016 IL App (1st) 151118, ¶ 28. On appeal, he argued that the finding was actually

indirect criminal contempt and his constitutional rights were violated. The Fifth Division of this court agreed with the respondent, finding that once the marital residence had been sold, the respondent was unable to comply with the marital settlement agreement or any other court orders. *Id*. ¶ 30. The court concluded that the contempt finding could only be criminal in nature because it was punishing the respondent for past conduct. *Id*.

¶ 71 Here, the dominant purpose of the contempt finding was to coerce compliance with the court's orders prohibiting petitioner from spending money. The amount set reflected that amount with additional funds for attorney fees. The purge was not punitive, but for respondent's benefit after petitioner violated the court's order. After the civil contempt order was entered, petitioner held the keys to her cell, such that, once she paid the purge, she was free from the contempt order.

¶ 72 Moreover, "[i]n a civil context, noncompliance with a court order is *prima facie* evidence of contempt." *Baldassarre*, 2018 IL App (2d) 170996, ¶ 36. "When a party establishes a *prima facie* case of contempt, the burden shifts to the contemnor to show cause as to why he should not be held in contempt." *Id*. "To meet this burden, the contemnor may present evidence that his noncompliance was not willful and contumacious and that he had a valid excuse." *Id*. Here, the trial court found a *prima facie* case of contempt and the burden shifted to petitioner. At the hearing, petitioner repeatedly testified that money spent after the entry of the court order had been spent prior to her knowledge of the order, but had failed to post until after its entry. She also asserted that her attorney had informed her that she still had access to her social security income. As for the accounting, petitioner stated that she believed her submission of bank statements was sufficient as an accounting. In finding petitioner in contempt, the court concluded that petitioner had failed to satisfy the burden to show she was not in contempt. Based on the

evidence presented at the hearing, we cannot say that the trial court abused its discretion in finding petitioner in indirect civil contempt with a purge of $15,000.

¶ 73 Accordingly, based on the foregoing reasons, we affirm the trial court's entry of indirect civil contempt, and we dismiss all other issues raised in petitioner's appeal for lack of jurisdiction.

¶ 74 Appeal dismissed in part, affirmed in part.