2019 IL App (1st) 180663-U

SIXTH DIVISION
September 27, 2019

No. 1-18-0663

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re PARENTAGE OF KENNETH N. THOMPSON, JR., a Minor,	)	Appeal from the Circuit Court of Cook County,
(STEPHANIE GOLLIDAY,	)	
Petitioner-Appellee,	)	No. 1990 D 67916
v.	)	
KENNETH N. THOMPSON, SR.,	)	Honorable Gregory Emmett Ahern, Judge Presiding.
Respondent-Appellant).	)	

PRESIDING JUSTICE MIKVA delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

ORDER

¶ 1 *Held*: The order of the circuit court, finding respondent in indirect civil contempt for failure to pay child support payments, is affirmed. Respondent did not carry his burden of showing that the circuit court abused its discretion.

¶ 2 This case comes before us on an appeal from a finding of indirect civil contempt against respondent Kenneth Thompson, Sr. (Mr. Thompson) for his failure to pay child support to petitioner Stephanie Golliday (Ms. Golliday) with respect to their child Kenneth Thompson, Jr. (Kenneth Jr.). On appeal, Mr. Thompson, *pro se*, challenges the circuit court orders finding him

in contempt for failure to make payments in the past and directing him to pay monthly support payments going forward to Ms. Golliday. For the following reasons, we affirm the judgment of the circuit court.

¶ 3 I. BACKGROUND

¶ 4 This case began on October 30, 1990, when Ms. Golliday filed a "Complaint to Determine the Existence of the Father and Child Relationship" against Mr. Thompson. According to the complaint, a sexual relationship between Ms. Golliday and Mr. Thompson had resulted in Ms. Golliday giving birth to Kenneth Jr. on May 15, 1990. Ms. Golliday sought to have Mr. Thompson declared the natural father of Kenneth Jr. and ordered to pay child support and provide medical insurance for Kenneth Jr.

¶ 5 On March 1, 1991, the circuit court found that Mr. Thompson was the natural father of Kenneth Jr. and ordered Mr. Thompson to pay $250 per month in child support to Ms. Golliday. Mr. Thompson filed a petition to vacate the finding of parentage. The circuit court later entered an order indicating that Mr. Thompson had withdrawn his petition to vacate, but also entered a *nunc pro tunc* order staying the child support as of March 1, 1991.

¶ 6 On August 19, 1991, the court vacated the stay and reinstated the order for support from March 1, 1991.

¶ 7 On November 15, 1991, the assistant state's attorney who had been representing Ms. Golliday filed a motion to withdraw from representing her, referencing an attached affidavit (which does not appear with the motion in the record) in which Ms. Golliday had asked the State's Attorney to withdraw its appearance on her behalf and for all future payments of support be paid to her directly, rather than through the clerk of the circuit court. On December 13, 1991,

the circuit court granted that motion and, in the same order, indicated that "there [were] no arrears existing as of 11-23-91."

¶ 8 From the record on appeal, it appears that nothing further occurred in this case until July 13, 1999, when Ms. Golliday filed a petition for a rule to show cause against Mr. Thompson for his failure to pay child support and also asked for an increase or modification of child support.

¶ 9 On December 2, 1999, the circuit court entered two orders. The first order said that Mr. Thompson was "the legal father" of Kenneth Jr. and was obligated to provide support and health insurance for Kenneth Jr. "pursuant to prior order." That same order found Mr. Thompson in contempt of court and entered a judgment in favor of Ms. Golliday in the amount of $24,250 for child support arrearage and $4178.52 for medical insurance premium payment arrearage. The second order was a modified uniform order of support referencing the amount Mr. Thompson was in arrears and requiring him to pay $39.42 per month for medical insurance in addition to the $250 per month he had previously been ordered to pay for child support. The December 2, 1999, order said that it was in effect until June 31, 2008.

¶ 10 The next action that is relevant to this appeal did not occur until May 12, 2017, when Ms. Golliday filed a petition for adjudication of indirect civil contempt for Mr. Thompson's failure "to abide by" the trial court's orders of December 2, 1999. Ms. Golliday argued that despite those orders, Mr. Thompson had "willfully and purposely failed" to contribute child support or medical insurance for Kenneth Jr. Ms. Golliday asked that the court enter a rule to show cause why Mr. Thompson should not be held in contempt; order an account adjustment review to provide a summary of Mr. Thompson's outstanding child support balance; require Mr. Thompson to pay Ms. Golliday's attorney fees and costs; and impose sanctions upon Mr.

Thompson "for his contumacious conduct in refusing and failing to comply" with the order.

¶ 11 On September 1, 2017, the circuit court scheduled a hearing on Ms. Golliday's petition and ordered Mr. Thompson, as of that day, to pay Ms. Golliday $450 per month in child support on the first of every month.

¶ 12 On December 8, 2017, Mr. Thompson, *pro se*, filed a petition "for judgment on principle arrearage amount due, objection to attorney fees and determination of monthly arrearage payment." Mr. Thompson attached the affidavit that Ms. Golliday apparently had given the assistant state's attorney when the assistant state's attorney had filed his November 15, 1991, motion to withdraw. In that affidavit, which Ms. Golliday signed on September 24, 1991, she states that she "d[id] not desire to proceed any further to prosecute [Mr. Thompson] for paternity and that [she], of [her] own will, without duress, demand[ed] that the action be dropped." According to Mr. Thompson, because the circuit court, when it entered its calculation on December 2, 1999, did not see Ms. Golliday's affidavit, the State's Attorney's 1991 withdrawal, or the circuit court's order of December 13, 1991, which stated that no arrears existed as of November 23, 1991, its arrears calculation of December 2, 1999, was erroneous.

¶ 13 On January 18, 2018, Ms. Golliday filed a motion to strike or dismiss Mr. Thompson's December 8, 2017, petition, arguing, in part, that the facts on which Mr. Thompson relied were irrelevant, and child support judgments may be enforced at any time.

¶ 14 On March 7, 2018, the circuit court entered an order in response to Ms. Golliday's petition for adjudication of indirect civil contempt, Mr. Thompson's December 8, 2017, petition on arrearage, and Ms. Golliday's motion to strike or dismiss Mr. Thompson's petition. The court indicated it had considered Mr. Thompson's 2015, 2016, and 2017 tax returns, the exhibits

attached to his December 8, 2017, petition, and Mr. Thompson's testimony. Based on that evidence, the court found that Mr. Thompson "willfully and contumaciously violated the Uniform Order of Support dated December 2, 1999," by "failing to pay [Ms. Golliday] child support." The court noted that Mr. Thompson had failed to pay child support even after he received a $75,000 settlement in federal court around 2015. The court further found that Mr. Thompson presently owed Ms. Golliday a total of $65,000, including $47,195 for child support arrearages and $17,805 in attorney fees and costs. In "an effort to come to an affordable, realistic, and accountable payment plan for the parties," the court waived child support payments that had accrued during a period of 25 months when Mr. Thompson was incarcerated, as well as approximately $60,000 in interest. The court noted in its March 7, 2018, order that it was entering a separate order of adjudication of indirect civil contempt against Mr. Thompson for his failure to pay child support, and ordered Mr. Thompson to pay Ms. Golliday $300 per month until further order of the court. The court then continued the case to June 1, 2018, ordering Mr. Thompson to appear and present proof at that time that he had paid Ms. Golliday $900.

¶ 15 The following day, March 8, 2018, the court entered an order of adjudication of indirect civil contempt against Mr. Thompson, stating that on December 2, 1999, Mr. Thompson was ordered to pay child support in the amount of $250 per month plus $39.42 per month for medical insurance for Kenneth Jr.; on September 1, 2017, Mr. Thompson was ordered to pay a modified amount of $450 per month; as of March 1, 2018, Mr. Thompson had failed to pay the court-ordered $450 per month; Mr. Thompson had not given "any legally sufficient reasons" for his failure to comply with the order; and Mr. Thompson's conduct had "defeated and impaired the rights and interests" of Ms. Golliday, as well as "impeded and obstructed the Court in its

administration of justice." The court ordered commitment to be stayed until June 1, 2018, at which time Mr. Thompson could purge his contempt by posting $900 with the clerk of the circuit court.

¶ 16 On March 28, 2018, Mr. Thompson filed his *pro se* notice of appeal, specifically appealing the circuit court's order of March 7, 2018. Mr. Thompson's notice indicates that it was timely filed pursuant to Illinois Supreme Court Rule 303 (eff. July 1, 2017).

¶ 17 II. JURISDICTION

¶ 18 Initially, Ms. Golliday argues that this court does not have jurisdiction to hear Mr. Thompson's appeal. Mr. Thompson's brief does not include a statement of jurisdiction and he did not file a reply brief. Even if Ms. Golliday had not raised this issue, this court has an independent duty to determine whether it has jurisdiction over a case. *Archer Daniels Midland Co. v. Barth*, 103 Ill. 2d 536, 539 (1984).

¶ 19 While it is unclear whether either of the orders entered on March 7 or 8, 2018 are final, Rule 304(b) provides that certain non-final judgments may be appealed without a special finding by the circuit court. Ill. S. Ct. R. 304(b) (eff. March 8, 2016). These include judgments "finding a person or entity in contempt of court which imposes a monetary or other penalty." Ill. S. Ct. R. 304(b)(5) (eff. March 8, 2016). In Mr. Thompson's notice of appeal, he indicates he is appealing the order of March 7, 2018. The court found in that order that Mr. Thompson "willfully and contumaciously violated" a prior order of support—a necessary finding for holding someone in indirect civil contempt (*In re Marriage of Tatham*, 293 Ill. App. 3d 471, 480 (1997))—and that a separate order of indirect civil contempt against Mr. Thompson was being entered. That order of contempt was entered the following day, on March 8, 2018. Here, although Mr. Thompson's

notice of appeal indicates he is appealing the March 7, 2018, order, it can be fairly inferred that he is also appealing the order of indirect civil contempt that immediately followed it on March 8, 2018. See *Burtell v. First Charter Service Corp.*, 76 Ill. 2d 427, 433-34 (1979) (noting that a notice of appeal should be "liberally construed" and will be deemed sufficient if, "when considered as a whole, [it] 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").

¶ 20 Ms. Golliday argues that we do not have jurisdiction under Rule 304(b)(5) because the order of contempt did not include a penalty, which is required under that rule. However, while no *monetary* penalty was assessed against Mr. Thompson in the order of contempt, "contempt orders resulting in the imposition of fines *or imprisonment* are appealable without a Rule 304(a) finding." (Emphasis added.) *In re Marriage of Knoerr*, 377 Ill. App. 3d 1042, 1049 (2007). Here, the contempt order provides that "[c]ommitment [wa]s stayed until June 1, 2018," and that Mr. Thompson could purge the contempt by paying $900 before then. Mr. Thompson is appealing a finding of contempt that imposed a penalty, although that penalty was stayed to allow him an opportunity to purge his contempt. Accordingly, we have jurisdiction to review this appeal under Rule 304(b)(5).

¶ 21 III. ANALYSIS

¶ 22 In addition to our jurisdiction, we must consider the scope of our review. *In re Marriage of Nettleton*, 348 Ill. App. 3d 961, 967 (2004). Much of Mr. Thompson's brief focuses on the circuit court's child support orders of December 2, 1999. However, those orders are not before us on this appeal. Rule 303 provides that a notice of appeal must be filed within 30 days from a final judgment to be appealed from, or within 30 days "after the entry of the order disposing of

the last pending postjudgment motion." Ill. S. Ct. R. 303(a)(1) (eff. Feb. 1, 1994). To the extent that interlocutory orders are immediately appealable, those appeals also must be filed within 30 days of entry. Ill. S. Ct. R. 304. A finding of contempt does not allow a party to call into question a judgment of the court where the time to appeal has passed. See *Taapken v. Taapken*, 39 Ill. App. 3d 785, 786 (1976) (the plaintiff could not raise a claim about the propriety of the division of those certificates of deposit that he had failed to pay the defendant her portion of, which then was the basis of the finding of contempt against him, because "no appeal was taken within 30 days" of that order of division as required by Rule 303).

¶ 23 The circuit court's orders of March 7 and 8, 2018, are both within the scope of our review since they both operated to simultaneously find Mr. Thompson in contempt for failure to pay child support that he owed and to recalculate what he should pay going forward. With respect to those orders, Mr. Thompson first argues that they were improper because when the circuit court entered them, it relied on what he refers to as the "dead" order of August 19, 1991.

¶ 24 On August 19, 1991, the circuit court reinstated prior orders of support directing Mr. Thompson to pay $250 per month in child support to Ms. Golliday. Mr. Thompson's argument that this order is "dead" seems to have two bases: (1) Ms. Golliday's affidavit of September 24, 1991, in which she stated: "I do not desire to proceed any further to prosecute the defendant for paternity and that of my own will, without duress, demand that the action be dropped."; and (2) the order of December 13, 1991, which indicated there were "no arrears existing as of 11-23-91."

¶ 25 However, the orders before us do not rest on the August 19, 1991, orders. Rather, as the court made clear, the orders before us both rest on "the Uniform Order of Support dated

December 2, 1999." In that order, the court provided that child support payments would continue through June 30, 2008. Mr. Thompson appears to be arguing that the December 2, 1999, order is wrong because it failed to take into account the order entered on December 13, 1991, and Ms. Golliday's affidavit that accompanied the assistant state's attorney's motion to withdraw filed on November 15, 1991. Mr. Thompson cannot now question the December 2, 1999, order, which, as we found above, is not within the scope of our review.

¶ 26 Many of Mr. Thompson's other arguments are also directed at the December 2, 1999, order and therefore outside the scope of our review. To the extent that his remaining arguments could be applied to the March 7 and 8, 2018, orders, they are unconvincing.

¶ 27 Mr. Thompson urges us, for example, to apply what he refers to as the "*Saputo* doctrine," based on this court's decision in *In re Marriage of Saputo*, 363 Ill. App. 3d 1011 (2006). In that case, we found that a 1997 amendment to section 12-108(a) of the Code of Civil Procedure (Code) (735 ILCS 5/12-108(a) (West 2004)) allows for "child support judgments [to] be enforced at any time," eliminating a prior statutory limitations period in which such judgments could be collected. *Saputo*, 363 Ill. App. 3d at 1014. And, relatedly, the amendment to section 12-108(a) of the Code rendered inapplicable the revival statute, section 13-218 of the Code (735 ILCS 5/13-218 (West 2004)), to child support judgments. That statute requires a judgment be revived within 20 years of its entry. 735 ILCS 5/13-218 (West 2018). But, as the *Saputo* court explained, "[s]ince actual enforcement of child support judgments may occur 'at any time' pursuant to the amended section 12-108(a), there is no need for revival of these judgments under section 13-218." *Saputo*, 363 Ill. App. 3d at 1014.

¶ 28 Mr. Thompson seems to be arguing, based on *Saputo*, that when the court calculated the

amount of arrearage in 2018, Ms. Golliday was not entitled to any arrearage that accrued before July 1, 1997, when the amendment to section 12-108(a) went into effect. But we found in *In re Marriage of Davenport*, 388 Ill. App. 3d 988, 993 (2009), that as long as the 20-year statute of limitations on revivals "had not run by the time it was extended by the 1997 amendment," those child support payments would be subject to the amended statute; in other words, they could be enforced at any time.

¶ 29 In this case, as in *Davenport*, Mr. Thompson's child support obligations had not been in effect for 20 years when the 1997 amendment to section 12-108(a) eliminated any statute of limitations on the enforcement of child support judgments or need to revive the same. Accordingly, his argument under *Saputo* does not relieve him of his child support obligations.

¶ 30 Mr. Thompson also argues that Ms. Golliday's action to collect child support should be barred by *laches*. "*Laches* is an equitable doctrine that precludes the assertion of a claim by a litigant whose unreasonable delay in raising that claim has prejudiced the opposing party." *Id.* at 993. Our supreme court has held that "[*l*]*aches* is not available as a defense, however, unless the party asserting the doctrine has suffered an injury or prejudice as a result of the other party's delay in instituting an action," and that "a spouse is not injured because he is forced to pay the accumulated support in one lump sum as opposed to weekly payments." (Internal quotation marks omitted.) *Blisset v. Blisset*, 123 Ill. 2d 161, 170 (1988). Here, Mr. Thompson has not even been directed to pay Ms. Golliday a lump sum; he has been ordered to pay an amount in weekly installments.

¶ 31 Finally, to the extent that Mr. Thompson is actually contesting the finding of contempt entered against him and not the underlying child support orders, he has provided us with no basis

for finding that the circuit court abused its discretion. "Whether a party is guilty of contempt is within the discretion of the trial court, and we will not disturb its decision on appeal unless there has been an abuse of discretion." *In re Marriage of Sharp*, 369 Ill. App. 3d 271, 279 (2006). "The failure to make support payments as required by court orders is *prima facie* evidence of contempt." *Id.* "The burden then rests on the alleged contemnor to show that his noncompliance was not willful or contumacious and that he has a valid excuse for his failure to pay." *Id.*

¶ 32 Here, the court indicated in its March 7, 2018, order that it had considered several documents and testimony from Mr. Thompson in coming to its conclusion. Mr. Thompson does not explain how the court misread any of those documents and no transcript of the testimony or bystander's report has been provided. As our supreme court has made clear:

> "[A]n appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with the law and had a sufficient factual basis. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

¶ 33 We simply do not have a record in this case that enables us to question the circuit court's decision to hold Mr. Thompson in contempt. Mr. Thompson does not even argue in his brief on appeal that he was not willful or contumacious in his failure to pay support to Ms. Golliday. We also note that the circuit court's order of March 7, 2018, indicates that it carefully considered the evidence before it, as the court waived accruals and arrearages from the 25 months that Mr. Thompson was incarcerated and waived approximately $60,000 in interest. Based on the record

before us, we have absolutely no basis on which to find that the circuit court abused its discretion when it held Mr. Thompson in indirect civil contempt.

¶ 34 IV. CONCLUSION

¶ 35 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 36 Affirmed.