

No. 1-09-3428

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In Re</i> MARRIAGE OF NANCY J. REICH,)	Appeal from the
)	Circuit Court of
Petitioner-Appellee,)	Cook County.
)	
and)	Nos. 05 D 7216
)	08 MC1 6002
)	ACC90084
)	
LEO STOLLER,)	Honorable
)	Dennis J. Porter,
Respondent-Appellant.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Quinn and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 *Held:* Appeal dismissed where respondent was collaterally estopped from raising the constitutionality of certain orders that were previously decided; and we lacked jurisdiction to review an order not specified in the notice of appeal.

¶ 2 This appeal is yet another in a line of *pro se* challenges that respondent Leo Stoller has filed concerning his divorce from petitioner Nancy Reich. In this case, respondent appeals the orders entered on July 18, 2007, November 25, 2008, and November 12, 2009, contending that they violate his First Amendment right (U.S. Const., amend I) to publish speech on the internet,

and requests this court to vacate them. He also maintains that he was coerced and forced to sign the July 15, 2009, marital settlement agreement. Although the petitioner has not filed a brief in response, we will consider the appeal pursuant to the principles set forth in *First Capital Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-33 (1976).

¶ 3 The record and our prior orders, of which we may take judicial notice (*In re Brown*, 71 Ill. 2d 151, 155 (1978); *Weimann v. Kane County*, 150 Ill. App. 3d 962, 969 (1986)), show that on July 18, 2007, the circuit court entered an order prohibiting respondent from making any references, threatening or otherwise, to petitioner, also known as "Pookerbean," their three minor children, their attorneys and any other people connected with his divorce case on his blog site and anywhere else on the internet. Respondent subsequently filed a motion to vacate this order, which was denied on November 25, 2008. On that same date, an order of protection was entered enjoining respondent from making any reference to petitioner, their children, their attorneys and any other persons connected to his divorce case on his blog, Utube, or anywhere else on the internet. Respondent was also enjoined from displaying pictures of these people on the internet, and ordered to remove all references to them within 24 hours of entry of the order.

¶ 4 In another appeal before this court, respondent challenged the constitutionality of the November 2008 order of protection, and we upheld the order. *Stoller v. Village of Elmwood Park*, No. 1-09-2062, order at 11 (2011) (unpublished order under Supreme Court Rule 23), citing *Reich v. Stoller*, Nos. 1-09-0846 and 1-09-0956 (cons.) (2010) (unpublished order under Supreme Court Rule 23) . After respondent repeatedly failed to comply with the November 2008 order of protection, the trial court found him in criminal contempt of court on June 8, 2009, and ordered his incarceration in the Cook County Department of Corrections until he complied.

¶ 5 On July 15, 2009, respondent was released from incarceration based on his efforts to remove the blog and internet materials in question. On that same date, respondent entered a marital settlement agreement which incorporated the November 25, 2008, order of protection,

1-09-3428

and included a restraining order which provided for the same prohibitions as the order of protection. Respondent also entered an agreed order to dismiss a case he had filed against petitioner, her attorney, and 12 other defendants in 2007.

¶ 6 On July 16, 2009, respondent filed a verified motion to vacate and/or disregard the agreed dismissal order. He maintained that he was coerced into signing an unconscionable marital settlement agreement and the agreed order of dismissal. The circuit court ultimately denied his motion finding that it was not properly before it, and his subsequent oral motion to reconsider. The court also noted that there was no undue influence upon respondent in his signing of the agreed dismissal order.

¶ 7 In another appeal before this court, respondent argued, *inter alia*, that he was coerced into signing the November 2008 marital settlement agreement and the agreed dismissal order. He maintained that the contempt order for his imprisonment was used to coerce him into agreeing to an unfair divorce settlement and dismissing his case against the 14 defendants. This court found that the record did not support his contention, affirmed the judgment, and remanded for sanctions against respondent for filing a frivolous appeal. *Stoller*, No. 1-09-2062, order at 12-13, 17-18.

¶ 8 On November 12, 2009, the circuit court found respondent in indirect criminal contempt of court of the orders entered on July 18, 2007, and November 25, 2008. In its written order, the court observed that between November 26, 2008, and March 30, 2009, respondent, without provocation or cause in violation of the orders noted, posted numerous references and pictures of petitioner, their children, and petitioner's lawyer on his internet blog. The court found that respondent knowingly and contumaciously violated the orders without good cause or reason. The court fined respondent \$500, ordered him to submit to fingerprinting, and assessed him reasonable attorney's fees incurred in the prosecution of the contempt matter. Respondent then filed a timely *pro se* notice of appeal from that order.

¶ 9 On appeal, respondent maintains that the November 12, 2009, indirect criminal contempt order is void because the orders it found him in contempt of, namely the order of protection entered on November 25, 2008, and a similar order entered on July 18, 2007, are unconstitutional and do not pass strict scrutiny, citing *Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997). For the reasons that follow, we find that the doctrine of collateral estoppel precludes our review of this issue.

¶ 10 Collateral estoppel prohibits relitigation of an issue if the following elements are met: 1) the court rendered a final judgment in the prior case; 2) the party against whom estoppel is asserted was a party or in privity with a party in the prior case; and 3) the issue decided in the prior case is identical with the one presented in the instant case. *Gumma v. White*, 216 Ill. 2d 23, 38 (2005). Here, respondent previously attacked the constitutionality of the same November 25, 2008, order of protection in this court¹, and we upheld the order finding his argument unpersuasive and that he failed to demonstrate how the circuit court's order did not pass strict scrutiny. *Stoller*, No. 1-09-2062, order at 11, citing *Reich*, Nos. 1-09-0846 and 1-09-0956 (cons.). Accordingly, collateral estoppel precludes respondent from relitigating the identical issue which was already reviewed in prior actions. *Du Page Forklift Service, Inc. v. Material Handling Services, Inc.*, 195 Ill. 2d 71, 77 (2001).

¶ 11 In addition, the prohibitions in the order of protection entered on November 25, 2008, namely, that respondent cannot make any references to petitioner, their children, their attorneys and anyone else connected to his divorce case on the internet, are the same as the ones listed in the July 18, 2007, order. Since we have already reviewed and decided the constitutionality of those prohibitions, respondent is precluded from raising the constitutionality of the same provisions in the July 18, 2007, order under the doctrine of collateral estoppel.

¹In fact, respondent incorporates his briefs from those appeals in this appeal.

1-09-3428

¶ 12 Respondent also contends in his brief that he was forced into the marital settlement agreement, and that it is unconstitutional. We observe that respondent did not specify in his notice of appeal that he was also appealing the marital settlement agreement, and it cannot be inferred from the notice that he was appealing that agreement. Under these circumstances, we have no jurisdiction to review his contentions regarding the marital settlement agreement. *Fitch v. McDermott, Will and Emery, LLP*, 401 Ill. App. 3d 1006, 1014 (2010); *McGath v. Price*, 342 Ill. App. 3d 19, 32-33 (2003). Moreover, even if we had such jurisdiction, respondent would be collaterally estopped where he already challenged the agreement in *Stoller*, No. 1-09-2062, order at 12-13.

¶ 13 In light of the foregoing, this appeal is dismissed in part based on the doctrine of collateral estoppel, and in part for lack of jurisdiction.

¶ 14 Appeal dismissed.