

No. 1-10-0628

**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).

FIFTH DIVISION  
June 30, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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In re Parentage of:	)	Appeal from the
	)	Circuit Court of
R.D., a Minor,	)	Cook County.
	)	
VITA D.,	)	
	)	
Petitioner-Appellee,	)	
v.	)	No. 00 D 80591
	)	
KASTYTIS L.,	)	
	)	
Respondent-Appellant.	)	
	)	
KENDLE, MIKUTA, and FENSTERMAKER,	)	Honorable
	)	Martha Mills,
Appellant.	)	Judge Presiding.

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JUSTICE HOWSE delivered the judgment of the court.  
Presiding Justice Fitzgerald Smith and Justice Epstein  
concur in the judgment.

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**O R D E R**

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*HELD:* The circuit court had subject matter jurisdiction in a paternity case filed against defendant on behalf of a minor child even though judgment of dissolution entered previously found the minor was born to the marriage of the mother and another individual. An agreed order which modified a judgment of dissolution of marriage to find no children were born of the marriage, and which was entered more than 30 days after the original judgment, was not void for want of subject matter jurisdiction. The defense of *res judicata* did not deprive the court of jurisdiction over the paternity petition filed against the respondent-appellant.

The appellant, Kastytis Latvys, appeals from an order of the circuit court denying his section 2-1401 petition to vacate an alleged void judgment that was entered in a parentage case on December 9, 2002. The 2002 order found Latvys to be the father of a minor child, R.D.

On appeal, Latvys contends the circuit court did not have subject matter jurisdiction to hear the parentage case that resulted in the December 9, 2002, judgment against him because a prior judgment of dissolution which dissolved the mother's first marriage had previously made a finding that R.D. had been born to that marriage. Latvys contends the prior dissolution judgment precluded any further litigation regarding R.D.'s paternity, thereby depriving the circuit court of jurisdiction in the present matter. Latvys also argues an "agreed order" later modifying the judgment of dissolution to find no children were born to the marriage is also void for lack of subject matter jurisdiction.

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Appellant, Kendle, Mikuta, and Fenstermaker, represented Latvys during the proceedings below. Kendle, Mikuta, and Fenstermaker also appeal here from a court order finding them in civil contempt of court for wilful failure to comply with discovery orders the court entered to aid enforcement of the 2002 paternity judgment. Kendle, Mikuta, and Fenstermaker's sole contention is that the enforcement order is also void based on the voidness of the underlying paternity judgment.

For the reasons that follow, we affirm the circuit court's decision.

#### BACKGROUND

Vita Doubinene, petitioner-appellee, and Mindaugas Dubinas were married on August 24, 1985. Vita gave birth to a male child, R.D., on August 6, 1996. Vita's and Dubinas's marriage was dissolved when a judgment of dissolution of marriage was entered by the circuit court on August 14, 1997. The judgment specifically found that one child was born to the marriage, R.D.

As R.D. got older, Vita began to notice a striking physical resemblance between R.D. and Latvys. Vita married her second husband, Constantine Bahramis, on July 11, 2000.

On December 21, 2000, Vita filed a paternity action against Latvys on R.D.'s behalf. The circuit court ordered DNA testing be conducted. On February 28, 2001, Latvys filed a motion to dismiss the paternity case and strike the order for DNA testing,

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raising a *res judicata* defense. The motion relied on the existence of the prior judgment of dissolution, which contained a specific finding that R.D. was born during the marriage of Vita and Dubinas. The motion to dismiss was denied in an order dated July 19, 2001, which also ordered the DNA testing to proceed.

Dubinas, Vita's first husband, Constantine, Vita's second husband, and Latvys all submitted DNA samples for testing. The DNA test results excluded both Dubinas and Constantine as R.D.'s biological father. An analysis of the DNA tests revealed a 99.95% probability that Latvys was R.D.'s biological father.

On January 2, 2002, Vita filed a motion for summary judgment against Latvys in the paternity case based on the results of the DNA tests. Latvys filed a response and counter-motion for summary judgment, again raising a *res judicata* defense based on the existence of the finding that R.D. was born to the parties in the prior judgment of dissolution of marriage.

On July 17, 2002, Vita and Dubinas presented an "agreed order" to the circuit court in their dissolution of marriage case. The amended order noted that DNA tests had revealed Dubinas was excluded as being R.D.'s father. The judgment of dissolution was amended by the court based on the agreed order to find no children were born to Vita's and Dubinas' marriage.

Vita filed an amended motion for summary judgment on October 15, 2002, alleging the prior judgment of dissolution of marriage

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had been amended by an agreed order to state no children were born to that marriage. In reply to the amended motion, Latvys argued the court had no jurisdiction to enter the agreed order because no petition for relief had ever been filed in the dissolution proceedings.

On December 9, 2002, the circuit court entered an order denying Latvys' motion for summary judgment and granting Vita's motion for summary judgment. The order made a finding that Latvys is R.D.'s father. The court subsequently ordered Latvys make monthly payments for R.D.'s support. There is no indication Latvys ever appealed the December 9, 2002, order granting summary judgment.

On July 24, 2009, Latvys filed a section 2-1401 (735 ILCS 5/1-1401(f) (West 2008)) motion to vacate the December 9, 2002, judgment as void. The motion alleged the order finding Latvys is R.D.'s father is void because of the existence of the prior judgment of dissolution finding R.D. was born to the marriage of Vita and Dubinas. Latvys also argued the agreed order modifying the judgment in the dissolution of marriage case is void.

#### ANALYSIS

Latvys contends the circuit court's December 9, 2002, parentage order is void. Specifically, Latvys contends the trial court did not have subject matter jurisdiction to enter the order.

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A court without jurisdiction has no authority to act. Subject matter jurisdiction refers to whether a court has the power to hear the type of case before the court. *Lemons v. Lemons*, 57 Ill. App. 3d 473, 476 (1978). Personal jurisdiction refers to whether a court has acquired the ability to apply its subject-matter jurisdiction to an individual. *In re Shawn B.*, 218 Ill. App. 3d 374, 378 (1991). Orders entered by a court lacking jurisdiction are void *ab initio*. *In re M.M.*, 156 Ill. 2d 53, 64 (1993). The general rule, therefore, is that questions concerning a trial court's jurisdiction may be raised collaterally or directly at any time. *Robinson v. Human Rights Comm'n*, 201 Ill. App. 3d 722, 726 (1990). We review issues regarding a trial court's jurisdiction *de novo*. *Blount v. Stroud*, 232 Ill. 2d 302, 308 (2009).

Latvys contends the amendment to the judgment of dissolution was void for lack of jurisdiction because the circuit court modified the judgment 30 days after entry of the final order, in violation of section 2-1203 of the Illinois Code of Civil Procedure (735 ILCS 5/2-1203 (West 2002)). Latvys contends that since the amendment to the dissolution judgment was void, the finding in the judgment of dissolution of marriage that R.D. was born to the marriage of Vita and Dubinas was still valid. He contends, therefore, that the court was deprived of jurisdiction to consider matters pertaining to R.D.'s paternity.

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Contrary to Latvys' contention, we find the court had jurisdiction to modify the prior judgment in the dissolution of marriage case based on the agreed order entered by Vita and Dubinas.

In this case, an agreed order was presented to the court by both of the parties to the dissolution action, Vita and her first husband. We note that in a dissolution action, the circuit court retains extraordinary continuing jurisdiction not applicable to civil cases generally. *In re Marriage of Adamson and Cosner*, 308 Ill. App. 3d 759, 764 (1999), citing *In re Marriage of Wonderlick*, 259 Ill. App. 3d 692, 694 (1994). Although we recognize the order was presented more than 30 days after judgment, we find the court was still able to properly modify the dissolution of marriage judgment based on the agreed order filed by the parties. See *In re Marriage of Adamson and Cosner*, 308 Ill. App. 3d at 764 ("The parties are in the best position to evaluate their own circumstances, and they should be allowed to resolve their dispute by agreement even when the trial court would not, or could not, order the same resolution. Consequently, when the parties agree to settle a postdecree dispute by modifying the underlying judgment or marital settlement agreement, the trial court should enforce the new agreement unless it is unconscionable.")

We also find Latvys was not entitled to notice of the entry of the agreed order modifying the judgment for dissolution of

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marriage. "The fundamental requirement of due process in any proceeding which is to accord finality is notice reasonably calculated, under the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Tri-G, Inc. v. Burke, Bosselman & Weaver*, 222 Ill. 2d 218, 244-45 (2006). In defining what constitutes a necessary or interested party to a suit, our supreme court has noted "all persons who are legally or equitably interested in the subject matter and the result of the suit must be made parties." *Oglesby v. Springfield Main Bank*, 385 Ill. 414, 422-23 (1944). That interest, however, "must be a present substantial interest as distinguished from a mere expectancy of future contingent interest." *Oglesby*, 385 Ill. at 423. The only potential interest Latvys had in the agreed order was to contest amendment of the dissolution judgment to find no children were born to Vita's and Dubinas' marriage--the result of which could potentially make it harder for Latvys to contest R.D.'s paternity in the separately-pending paternity action filed against him. We find such an interest is the very definition of a "future contingent interest" in the dissolution proceeding.

Because Latvys was neither an actual party nor an "interested party" to the dissolution proceeding itself, we find he was not entitled to notice of actions taken with regard to the agreed order.

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Moreover, we see no reason why the court would not have had jurisdiction in this case to enter the December 9, 2002, parentage order even if the prior dissolution judgment had not been amended by the agreed order submitted to the court. We find no support for Latvys' assertion that the prior adjudication of the paternity issue in the divorce proceeding stood as a jurisdictional bar to the relitigation of that issue in the current paternity case.

The doctrine of *res judicata* precludes the relitigation of issues that have already been decided in an earlier proceeding. *Powers v. Arachnid, Inc.*, 248 Ill. App. 3d 134, 138 (1993). The doctrine bars a subsequent action between the same parties involving the same cause of action. *Benton v. Smith*, 157 Ill. App. 3d 847, 853 (1987). It also precludes a party from relitigating an issue that was decided in a prior proceeding involving a different cause of action. *Cirro Wrecking Co. v. Roppolo*, 153 Ill. 2d 6, 20 (1992). "The prior adjudication of an issue, however, does not establish a *jurisdictional* bar to relitigation of that question." (Emphasis in original.) *Village of Maywood Board of Fire and Police Com'rs v. Department of Human Rights*, 296 Ill. App. 3d 570, 578 (1998).

In support of his argument that the court lacked jurisdiction to hear the paternity action, Latvys cites *In re Parentage of G.E.M.*, 382 Ill. App. 3d 1102 (2008). We find *G.E.M.* is readily distinguishable from the case presented here.

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In *G.E.M.*, a mother and a friend signed a voluntary acknowledgment of paternity regarding the mother's minor child. Under the Illinois Parentage Act, a voluntary acknowledgment of paternity results in a conclusive presumption of paternity 60 days after it is executed by the parents. See 750 ILCS 45/5 (West 2006). The mother also subsequently filed a paternity case where a support order was entered.

The mother subsequently filed what was purported to be an agreed order to vacate the paternity finding, and then filed a second paternity case against another man. The alleged father in the second case filed a motion to dismiss the case on *res judicata* and collateral estoppel grounds, alleging the voluntary acknowledgment and the paternity finding in the prior paternity case precluded a finding of paternity against him.

In dismissing the mother's second paternity action, the court noted the order vacating the finding in the first paternity action was not actually an "agreed order" because it was never signed by the presumed father. *G.E.M.*, 382 Ill. App. 3d at 1113. The court also held the circuit court lacked jurisdiction to disturb the administrative paternity finding that resulted from the parties' voluntary acknowledgment of paternity under the Act because the statutory presumption was legislatively created, and, under the terms of the statute, could only be attacked by a subsequent

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petition alleging either fraud or mistake. *G.E.M.*, 382 Ill. App. 3d at 1112-13.

In this case, we are not confronted with an issue regarding a voluntary acknowledgment of paternity under the Illinois Parentage Act; rather, we are confronted with a judicial finding in a dissolution of marriage judgment that a minor was born to the marriage. There is also no doubt in this case that the agreed order entered in the dissolution case was an actual agreed order signed by both parties to that prior judgment. Accordingly, we find *G.E.M.* does not support a finding that the holding in the dissolution judgment created a jurisdictional bar to any further consideration of the paternity issue. *Cf. G.E.M.*, 382 Ill. App. 3d at 1112-13.

Our conclusion is further supported by the fact that a minor, unless made a party to the dissolution proceeding, is not actually bound by a finding of paternity in a dissolution of marriage judgment. See *Simcox v. Simcox*, 131 Ill. 2d 491, 497 (1989) ("We, therefore, hold that children are *not* privies of their parents in dissolution proceedings and, as such, are not bound by findings of paternity in such proceedings unless they are parties to the proceedings.")

Nothing in the record before us suggests R.D., a minor, was ever made a party in the prior marriage dissolution action. Nor does the record suggest that either an attorney or a guardian *ad*

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*litem* was appointed to represent R.D.'s interests during the dissolution action. *Cf. In re Griesmeyer*, 302 Ill. App. 3d 905, 915 (1998) ("We believe the relitigation of the minor's paternity in the parentage petition is barred by the prior, uncontested judgment of dissolution where the minor was represented by a guardian *ad litem* during the dispute over the minor's paternity.") Accordingly, we find the supreme court's holding in *Simcox* that a minor child is "not bound by findings of paternity in such proceedings unless they are parties to the proceedings" clearly controls the outcome of this case. See *Simcox*, 131 Ill. 2d at 497.

Notwithstanding, Latvys contends the legislature, in defining what constitutes a justiciable matter, may impose "conditions precedent" to the court's exercise of jurisdiction that cannot be waived. See *In re Marriage of Ransom*, 102 Ill. App. 3d 38, 40 (1981); *Glasco Electric Co. v. Department of Revenue*, 86 Ill. 2d 346, 352 (1981); *City of Chicago v. Shayne*, 27 Ill. 2d 414, 418 (1963).

We note paternity cases did not exist at common law. *People ex rel. Christiansen v. Connell*, 2 Ill. 2d 332 (1954). Through the legislature's adoption of the Illinois Parentage Act, the legislature created a new justiciable matter. See *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 335 (2002). The legislature's creation of a new justiciable

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matter, however, does not mean the legislature necessarily conferred jurisdiction on the circuit court. *Id.*

Article VI of the Illinois Constitution is clear that, except in the area of administrative review, the jurisdiction of the circuit court flows from the constitution itself. *Id.*, citing Ill. Const. 1970, art. VI, §9. The General Assembly has no power to enact legislation that would contravene article VI. *Id.*, citing *Tully v. Edgar*, 171 Ill. 2d 297 (1996). In *Belleville Toyota*, our supreme court held:

“Characterizing the requirements of a statutory cause of action as nonwaivable conditions precedent to a court’s exercise of jurisdiction is merely another way of saying that the circuit court may only exercise that jurisdiction which the legislature allows. We reiterate, however, that the jurisdiction of the circuit court is conferred by the constitution, not the legislature.” *Belleville Toyota, Inc.*, 199 Ill. 2d at 335-36.

As our supreme court explained, jurisdiction was considered a purely legislative concept in the 1818 state constitution. *Id.* at 336, citing *In re Estate of Mears*, 110 Ill. App. 3d 1133, 1134-38 (1982). Under our former constitution, adopted in 1870, the circuit court enjoyed “original jurisdiction of all causes in

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law and equity.' " *Id*, quoting Ill. Const. 1870, art. VI, §12. The circuit court's jurisdiction over special statutory proceedings, *i.e.*, matters which had no roots at common law or in equity, derived solely from the legislature. *Id* at 336. Thus, in cases involving purely statutory causes of action, unless the statutory requirements were satisfied, a court lacked jurisdiction to grant the relief requested. *Id* at 336-37.

However, the 1964 amendments to the judicial article of the 1870 constitution radically changed the legislature's role in determining the jurisdiction of the circuit court. *Id* at 337. Under the new judicial article, the circuit court enjoyed " 'original jurisdiction of all justiciable matters, and such powers of review of administrative action as may be provided by law.' " *Id*, quoting Ill. Const. 1870, art. VI, §9 (amended 1964). Thus, the legislature's power to define the circuit court's jurisdiction was expressly limited to the area of administrative review. *Id*. The current constitution, adopted in 1970, retained this limitation. *Id*.

As our supreme court noted in *Belleville Toyota*:

"In light of these changes, the precedential value of case law which examines a court's jurisdiction under the pre-1964 judicial system is necessarily limited to the

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constitutional context in which those cases  
arose." *Id.*

The cases Latvys cites rely on a rule of law that has its roots in the pre-1964 judicial system. *Id.* at 338. Citations and adherence to such rules is no longer appropriate in light of *Belleville Toyota* and our current constitution--unless the jurisdictional issue in question concerns an administrative review action. *Id.* Accordingly, we find Latvys' contention is without merit.

Because we find the December 9, 2002, underlying paternity order is not void, we also find the enforcement order entered by the court is not void. Accordingly, we find Kendle, Mikuta, and Fenstermaker's appeal of the enforcement order, which solely challenged the order on voidness grounds, is without merit.

#### CONCLUSION

We affirm the circuit court's judgment.

Affirmed.