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No. 3--09--0695

Order filed June 16, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
KATHLEEN ANN SIMPSON,)	of the 10th Judicial Circuit,
)	Peoria County, Illinois,
Petitioner-Appellee)	
)	
and)	No. 09--D--64
)	
THOMAS FRANKLIN SIMPSON,)	Honorable
)	Albert L. Purham, Jr,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice Carter and Justice Wright concurred in the judgment.

ORDER

Held: The respondent waived any objection to the trial court's jurisdiction over him by failing to object to the court's jurisdiction and by filing a responsive pleading. The trial court did not err in refusing to vacate its judgment of dissolution of marriage where the respondent did not present any facts to support his claim of a meritorious defense.

Following a hearing at which the respondent, Thomas Franklin Simpson, was absent, the trial court entered a judgment for dissolution of the marriage between the respondent and the

petitioner, Kathleen Ann Simpson. The respondent filed a motion to vacate the judgment, which the trial court denied. The respondent appealed, contending that: (1) the judgment was void because the trial court did not acquire jurisdiction over him; and (2) the trial court abused its discretion by denying his motion to vacate because he did not receive notice of the hearing and the judgment was not supported by the evidence. We affirm.

After less than two years of marriage, on January 27, 2009, the petitioner filed a petition for dissolution of marriage, alleging that the respondent was guilty of extreme and repeated physical and mental cruelty, without cause or provocation. Summons was served upon the respondent at the Woodford County jail, where he was incarcerated for domestic battery (720 ILCS 5/12--3.2(a)(2) (West 2008)) for shoving the petitioner and for violating an order of protection (720 ILCS 5/12--30 (West 2008)) by telephoning her. The respondent filed a *pro se* responsive pleading denying the allegations of physical and mental cruelty.

On March 25, 2009, the petitioner's attorney mailed notice of the initial hearing set for April 21, 2009, to the Woodford County jail. The respondent did not receive the notice because he had been transferred to Stateville prison. On March 30, 2009, the respondent's mother filed a change of address on behalf of the respondent. The form was signed by the respondent and listed his mother's address as his address of record.

On April 21, 2009, due to the respondent's failure to appear, the trial court continued the hearing to May 1, 2009. At the direction of the trial court, the petitioner's attorney sent notice of the continued hearing to the respondent's address of record at his mother's house. According to the respondent's brief, he received the notice from his mother on April 29, 2009, but was unable to communicate with the court due to his incarceration.

On May 1, 2009, in the respondent's absence, the petitioner testified that she did not provoke the respondent's extreme and repeated physical and mental cruelty and that on more than one occasion he had exhibited behavior that caused her to be "nervous and upset." She further testified that she and the respondent had divided their marital property and she did not seek maintenance or support. The court entered a judgment of dissolution of marriage, finding the respondent guilty of extreme and repeated physical and mental cruelty and dividing the marital property, with the respondent to assume full responsibility for all debts and obligations incurred during the marriage and neither party being awarded maintenance.

The respondent filed a motion to vacate, arguing that his mother was not authorized to file the change of address and that he did not receive proper notice of the hearing. The trial court issued a writ of *habeas corpus* so the respondent would have "a

chance to present his side of the case[.]"

On August 18, 2009, at the hearing on his motion to vacate, the respondent did not present any evidence regarding a meritorious defense to the allegations in the petition. Instead, he argued that he did not receive proper notice of the hearing. The trial court found that the respondent's claim that he did not authorize his mother to file the change of address was not credible and denied the motion to vacate. The respondent appealed.

First, the respondent argues that the judgment was void because the trial court lacked personal jurisdiction. According to the respondent's brief, the "summons was served upon [him] at the [Woodford County] jail." The respondent did not object to the court's jurisdiction and filed responsive pleadings to the petitioner's complaint. Therefore, the respondent waived any objection to the court's jurisdiction over his person. See 735 ILCS 5/2--301 (a--5) (West 2008) (if a party files a responsive pleading or motion prior to filing a motion objecting to the court's jurisdiction, then that party waives all objections to the court's personal jurisdiction).

Next, the respondent argues that the trial court erred in denying his motion to vacate because he had not received proper notice of the hearing and the judgment was not supported by evidence. In considering a motion to vacate, the court's primary

concern is whether substantial justice is being done between the litigants and whether it is unreasonable for the parties to proceed to trial on the merits. *In re Marriage of Garde*, 118 Ill. App. 3d 303 (1983). Factors to consider in deciding whether to vacate a judgment are the movant's due diligence and the showing of a meritorious defense or good excuse. *Garde*, 118 Ill. App. 3d 303.

We initially note that the respondent's brief acknowledges that he received notice of the May 1, 2009, hearing and his absence at the hearing was attributable to his incarceration, and not a lack of notice. Also, the notice of the hearing was properly sent to his address of record. Thus, the respondent's argument that the judgment should be vacated due to a lack of proper notice is meritless.

Additionally, it would have been unreasonable to vacate the judgment and proceed to trial on the merits. Although the respondent alleged that he had a meritorious defense in his motion to vacate, he did not set forth any facts to support that claim in his motion. See *Garde*, 118 Ill. App. 3d 303 (finding the trial court did not err in refusing to vacate its judgment where the movant's unverified motions to vacate contained no facts to support a claim of a meritorious defense). Also, the respondent had the opportunity to support his claim of a meritorious defense at the hearing on the motion to vacate but

failed to present any facts indicating a defense to the grounds for the divorce or indicating that the property division was unfair. See *Garde*, 118 Ill. App. 3d 303 (providing that justice does not require a second hearing where a previous opportunity to speak was not seized). Thus, it was not error for the trial court to refuse to vacate its judgment.

We therefore affirm the judgment of the circuit court of Peoria County.

Affirmed.