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2012 IL App (3d) 110335-U

Order filed March 13, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2012

LAURA A. BRZOWSKI, n/k/a LAURA A. ZASADNY,	)	Appeal from the Circuit Court of the 12 <sup>th</sup> Judicial Circuit, Will County, Illinois
	)	
Petitioner-Appellee,	)	
	)	
v.	)	Appeal No. 03-11-0335
	)	Circuit No. 07-OP-595
	)	
WALTER J. BRZOWSKI,	)	
	)	Honorable Marilee Viola,
Respondent-Appellant.	)	Judge Presiding.

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JUSTICE WRIGHT delivered the judgment of the court.  
Justices Carter and Holdridge concurred.

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**ORDER**

¶ 1 *Held:* Respondent appeals the 2011 extension of the plenary order of protection on the grounds that the original 2007 order and subsequent 2009 extension of the plenary order were void. Based on the doctrine of *res judicata* and the law-of-the-case, the trial court's decision is affirmed.

¶ 2 **BACKGROUND**

¶ 3 On May 3, 2007, the trial court entered a two-year plenary order of protection against

respondent-appellant Walter J. Brzowski, in favor of petitioner Laura A. Zasadny, respondent's former wife. Respondent appealed the entry of the 2007 order of protection based, in part, on a contention that the order was void for want of jurisdiction. This court rejected respondent's contention of voidness and affirmed the trial court's decision to grant the original plenary order of protection. *Brzowski v. Brzowski*, No. 3-07-0379 (2007) (unpublished under Supreme Court Rule 23). On August 19, 2008, the trial court denied respondent's motion to vacate the 2007 plenary order of protection, with prejudice, relying on the appellate holding in *Brzowski v. Brzowski*, No. 3-07-0379 (2007) (unpublished under Supreme Court Rule 23). This court later affirmed the trial court's denial of the motion to vacate in *Brzowski v. Brzowski*, No. 03-08- 0783 (2009) (unpublished under Supreme Court Rule 23).

¶ 4 On May 1, 2009, the trial court allowed petitioner's request for the first two-year extension of the 2007 plenary order of protection. Respondent appealed the extension of the 2007 order of protection based, in part, based on a contention that the 2007 order was void for want of jurisdiction. This court affirmed the trial court's 2009 order extending the 2007 plenary order of protection. *Brzowski v. Brzowski*, No. 03-09-0602 (2010) (unpublished under Supreme Court Rule 23).

¶ 5 On April 20, 2011, petitioner filed a notice and motion for a second two-year extension of the 2007 plenary order of protection. The record shows that, on April 28, 2011, both petitioner and respondent were present in court for the extension hearing. Respondent filed a motion to "reassert invalidity" of the underlying 2007 order of protection, and the 2009 extension of that order, on the grounds that both orders were void due to the trial court's lack of jurisdiction and petitioner's false allegations. Also on April 28, 2011, respondent moved to have Judge Marilee

Viola substituted from hearing the matter for cause. The request for substitution was denied after a hearing before Judge Baron. Thereafter, Judge Viola conducted a hearing on petitioner's 2011 motion to extend the plenary order of protection and respondent's motion to "reassert invalidity" of the 2007 order of protection. Judge Viola denied respondent's request to reargue the invalidity of the 2007 order and extended the plenary order of protection to April 25, 2013, at 9:00 a.m.

¶ 6 Respondent now appeals the 2011 extension of the plenary order of protection.

¶ 7 ANALYSIS

¶ 8 On appeal in the instant case, respondent claims, again, that the 2007 order of protection was void due to the court's lack of jurisdiction in 2007 and the petitioner's false and unproven allegations. Respondent also argues that he should prevail in this appeal because appellee did not file a brief for this court's consideration, in this appeal, or in prior appeals.

¶ 9 First, we address respondent's assertion that this court must decide the issues raised in this appeal in favor of respondent because the petitioner-appellee did not submit a brief to this court, now or in earlier appeals. Respondent contends this "repeated pattern" of failing to submit a brief demonstrates that petitioner "**cannot** overcome the direct jurisdictional and procedural attack against both Will County Case No. # 07-OP-595, *and* Cook County Case No. #01 D 14335 (emphasis in original)." We disagree.

¶ 10 Our supreme court has held that an appellate court may address the merits of a case on appeal, in the absence of an appellee's brief, if justice so requires and if the record and claimed errors are simple enough so that the appellate court can resolve the issues without the aid of an appellee's brief. *First Capitol Mortgage Company v. Talandis Construction Corporation*, 63 Ill. 2d 128, 133 (1976). This is such a case.

¶ 11 Here, respondent's only challenge to the validity of the 2011 extension of the 2007 plenary order of protection is based on a renewed contention that the 2007 and 2009 orders were void for want of jurisdiction and based on false allegations. These specific contentions of error have been reviewed and rejected by this court in the previous appeals involving the same parties and the same court orders.<sup>1</sup>

¶ 12 It is well established that questions of law decided in a previous appeal are binding on the trial court on remand, as well as on the appellate court in subsequent appeals. *Bjork v. Draper*, 404 Ill. App. 3d 493, 501 (2010). Therefore, we decline to readdress those issues based on the doctrines of *res judicata* and the law-of-the-case, which bars the relitigation of an issue of fact or law previously decided in the same case. Therefore, we conclude that the trial court did not violate defendant's due process rights by denying the request to reassert the invalidity of the 2007 plenary order of protection and the 2009 extension of that order. Hence, respondent's challenge to the 2011 extension of the 2007 plenary order of protection is without merit.

¶ 13 **CONCLUSION**

¶ 14 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 15 Affirmed.

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<sup>1</sup>This court has previously determined the trial court's entry of the original plenary order of protection on May 1, 2007, was valid and affirmed the order (*Brzowski v. Brzowski*, No. 3-07-0379 (2007)(unpublished under Supreme Court Rule 23)); affirmed the trial court's denial of respondent's motion to vacate the purported void plenary order of protection on August 19, 2008 (*Brzowski v. Brzowski*, No. 3-08-0783 (2009) (unpublished under Supreme Court Rule 23)); and affirmed the trial court's grant of a two-year extension of the 2007 plenary order of protection on May 1, 2009 (*Brzowski v. Brzowski*, No. 03-09-0602 (2010) (unpublished under Supreme Court Rule 23)).