

NOTICE

Decision filed 07/24/12. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2012 IL App (5th) 110510-U
NO. 5-11-0510
IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

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).

<i>In re</i> MARRIAGE OF)	Appeal from the
)	Circuit Court of
MICHELLE M. VOLKMANN,)	St. Clair County.
)	
Petitioner-Appellant,)	
)	
and)	No. 10-D-1133
)	
KEVIN J. VOLKMANN,)	Honorable
)	Randall W. Kelley,
Respondent-Appellee.)	Judge, presiding.

JUSTICE WEXSTTEN delivered the judgment of the court.
Justices Welch and Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not abuse its discretion in denying former wife's petition to vacate prior dissolution of marriage decree for lack of subject matter jurisdiction.

¶ 2 On January 27, 2011, the circuit court of St. Clair County entered a written judgment of dissolution of marriage, from which neither the petitioner, Michelle M. Volkmann, nor the respondent, Kevin J. Volkmann, appealed. On October 11, 2011, Michelle filed a motion to vacate the judgment of dissolution, which the circuit court denied. Michelle appeals, arguing that the circuit court improperly denied her motion to vacate because the prior judgment of dissolution of marriage was void for lack of subject matter jurisdiction. We affirm.

¶ 3 **FACTS**

¶ 4 On December 1, 2010, Michelle filed a petition for dissolution of marriage alleging,

inter alia, that irreconcilable differences had caused the irretrievable breakdown of the parties' marriage. On January 27, 2011, the parties filed a sworn stipulation, wherein they waived the two-year separation requirement in the Illinois Marriage and Dissolution of Marriage Act (the Act) (750 ILCS 5/401(a)(2) (West 2010)). Pursuant to the waiver allowed by the Act, the parties affirmatively stated that they had "lived separate and apart for a period of not less than six months next preceding the entry of the Judgment of Dissolution of Marriage." 750 ILCS 5/401(a)(2) (West 2010) (when grounds for dissolution of marriage involve irreconcilable differences, spouses may waive two-year requirement that they live separate and apart, if they have lived separate and apart for six months).

¶ 5 On the same date, the circuit court entered the judgment of dissolution of marriage, based on grounds of irreconcilable differences. In its judgment, the circuit court awarded Michelle the marital home, her household furnishings, her furniture, her clothing, her personal effects, and the 1998 GMC Blazer vehicle.

¶ 6 On April 1, 2011, Kevin died. On May 26, 2011, Greg Volkmann, the administrator of Kevin's estate, filed a petition for rule to show cause why Michelle had intentionally and willfully failed to comply with the judgment of dissolution of marriage.

¶ 7 On October 11, 2011, Michelle filed a motion to vacate the judgment of dissolution, alleging that the parties had not been separated for the requisite six-month period preceding entry of the judgment on January 27, 2011. Michelle argued that because the parties had not been separated pursuant to the statutory requirement, the circuit court had lacked subject matter jurisdiction to enter the judgment of dissolution and that the judgment was therefore void.

¶ 8 On November 1, 2011, the circuit court denied Michelle's motion to vacate. Michelle filed a timely notice of appeal.

¶ 9

ANALYSIS

¶ 10 Michelle argues that because the parties had not met the statutory six-month separation requirement, the circuit court lacked subject matter jurisdiction in the original proceedings to enter a judgment of dissolution of marriage, rendering the judgment void. Thus, she argues that the circuit court below improperly denied her motion to vacate the judgment of dissolution of marriage. We reject Michelle's contentions.

¶ 11 In the original proceedings, Michelle adjudicated her rights to a final judgment before the circuit court, which had general jurisdiction over the dissolution proceedings and the parties. Because the subject matter of the litigation was within the general jurisdiction of the circuit court, Michelle cannot claim for the first time after judgment on a motion to vacate that the circuit court lacked jurisdiction by reason of the existence of irregularities, or exceptional or special circumstances, or because the court had no jurisdiction to render the particular judgment or order. See *In re Marriage of Monken*, 255 Ill. App. 3d 1044, 1046-47 (1994) (wife not allowed to raise issue of subject matter jurisdiction after judgment on a motion to vacate).

¶ 12 Moreover, pursuant to Michelle's allegations in the petition and her sworn statement, stipulating that the parties had lived separate and apart for a period of not less than six months, the circuit court entered a final order of dissolution on January 27, 2011. The dissolution judgment awarded Michelle the marital home, furnishings, furniture, clothing, personal effects, and a vehicle; thus, Michelle benefitted from the dissolution of marriage judgment. Michelle did not object to jurisdiction during the trial, did not file a posttrial motion within 30 days of entry of the order of dissolution seeking to vacate the judgment due to lack of jurisdiction, and did not appeal the judgment. Instead, Michelle accepted the benefits of the dissolution and is estopped from subsequently challenging the validity of the dissolution even though the challenge is based upon the lack of subject matter jurisdiction.

See *In re Marriage of Yelton*, 286 Ill. App. 3d 436, 443 (1997) (having accepted the benefit of the divorce decree, wife estopped from raising the issue of the court's subject matter jurisdiction to enter the original order of dissolution); *In re Marriage of Monken*, 255 Ill. App. 3d at 1046 (one who accepts benefits of divorce decree is estopped from subsequently challenging the validity of the decree even if the challenge is based upon the lack of subject matter jurisdiction).

¶ 13 Lastly, we note that the circuit court below lacked the proper jurisdiction to vacate its previous judgment of dissolution because Michelle's motion to vacate was filed on October 11, 2011, more than 30 days following the entry of the final order of January 27, 2011. See *In re Marriage of Kane*, 249 Ill. App. 3d 412, 414 (1993) ("a trial court loses jurisdiction over the subject matter in a divorce proceeding after 30 days following the entry of a final order therein"); *Northern Illinois Gas Co. v. Midwest Mole, Inc.*, 199 Ill. App. 3d 109, 114 (1990) ("[a] post-judgment motion to vacate must be actually filed within 30 days of the entry of judgment for the trial court to have jurisdiction to consider it").

¶ 14 **CONCLUSION**

¶ 15 For the foregoing reasons, we affirm the judgment of the circuit court of St. Clair County.

¶ 16 Affirmed.