

2013 IL App (1st) 121850-U

THIRD DIVISION
May 8, 2013

No. 1-12-1850

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

NKUMEH IKECHUKWU,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 12 M1 118044
)	
MERCY ALU,)	Honorable
)	David A. Skryd,
Defendant-Appellee.)	Judge Presiding.

JUSTICE HYMAN delivered the judgment of the court.
Presiding Justice Neville and Justice Sterba concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's judgment in favor of defendant is affirmed where plaintiff's numerous claims are belied by the record.

¶ 2 In this action for fraud and breach of contract, *pro se* plaintiff Nkumeh Ikechukwu appeals from an order of the circuit court entering judgment in favor of defendant, Mercy Alu. Plaintiff sued Alu claiming Alu had fraudulently induced him into admitting paternity of her daughter. On appeal, Ikechukwu raises several issues, including claims that the circuit court denied him due process, the court improperly questioned its jurisdiction of the issue, Alu

breached a valid verbal agreement, Alu fraudulently induced Ikechukwu to act under the agreement, Alu was unjustly enriched, and the circuit court did not properly resolve the issues. We affirm.

¶ 3 This court's records show that the parties have been engaged in litigation over the issue of parentage and child support for several years. The record submitted to this court consists of a 37-page common law record and a six-page bystander's report drafted by Ikechukwu. For a more complete and accurate understanding of this litigation, we refer to our order from Ikechukwu's earlier appeal. *Illinois Department of Healthcare & Family Services ex rel. Alu v. Ikechukwu*, 2011 IL App (1st) 102650-U (unpublished order under Supreme Court Rule 23).

¶ 4 In July 2008, the Illinois Department of Health and Family Services filed a complaint against Ikechukwu on behalf of Alu and her child seeking a declaration of Ikechukwu's paternity, as well as child support and health insurance for the child. *Ikechukwu*, 2011 IL App (1st) 102650-U, ¶ 3. In his answer to the complaint, Ikechukwu admitted his paternity of the child. *Ikechukwu*, 2011 IL App (1st) 102650-U, ¶ 4. In December 2008, Ikechukwu filed a "motion for out-of-court agreement/settlement" claiming he had a verbal agreement with Alu that he would acknowledge his paternity and pay child support as determined by the court, and in return, Alu agreed that the support payments would stop after 12 months, that the payments would be made directly to her, and that she would not ask Ikechukwu for more money. *Ikechukwu*, 2011 IL App (1st) 102650-U, ¶ 7. On January 9, 2009, the circuit court entered an order of parentage, signed by both parties, stating Ikechukwu admitted his parentage. The court also entered an order, signed by both parties, for temporary child support of \$300 per month, and directed that an income withholding notice be served on Ikechukwu's employer. The order stated that Ikechukwu agreed to the payment amount. In addition, the court found that Ikechukwu's motion regarding the out-of-court agreement was withdrawn. *Ikechukwu*, 2011 IL App (1st) 102650-U, ¶ 8.

¶ 5 Ikechukwu subsequently filed numerous motions attempting to modify the order of parentage and reinstate the alleged out-of-court agreement, all of which were denied with prejudice by the circuit court. The court's order dated April 24, 2009, expressly stated that it was not bound by an out-of-court agreement by the parties regarding child support, and that when Alu was in court, she did not agree to the terms of the agreement described by Ikechukwu. The court then ordered Ikechukwu to make support payments of \$415 every two weeks to the State Disbursement Unit. *Ikechukwu*, 2011 IL App (1st) 102650-U, ¶¶ 9-10. Ikechukwu moved to vacate the parentage and support orders claiming Alu induced him to admitting paternity by agreeing to the terms of the alleged out-of-court agreement. *Ikechukwu*, 2011 IL App (1st) 102650-U, ¶ 13. The circuit court denied that motion with prejudice. *Ikechukwu*, 2011 IL App (1st) 102650-U, ¶ 15. In May 2010, Ikechukwu filed a petition to lower his child support payments, which was denied by the court. *Ikechukwu*, 2011 IL App (1st) 102650-U, ¶¶ 18, 22. In June 2010, the court awarded Alu \$5,098 in retroactive support for the time period before the temporary support payments. *Ikechukwu*, 2011 IL App (1st) 102650-U, ¶ 20.

¶ 6 In July 2010, Ikechukwu moved to vacate all orders and judgment in the case, again claiming that the court disregarded his out-of-court agreement with Alu, and that he was tricked into admitting paternity. *Ikechukwu*, 2011 IL App (1st) 102650-U, ¶ 21. On October 19, 2010, the circuit court entered an order denying the motion to vacate and removing the case from the court's active call. The court expressly stated that "continued efforts by [Ikechukwu] to revisit past rulings again will meet with sanctions." *Ikechukwu*, 2011 IL App (1st) 102650-U, ¶ 22.

¶ 7 On appeal in that case, Ikechukwu argued that the parentage and support orders should be reversed because he was fraudulently induced to admit his paternity. He also argued, *inter alia*, that the court erred in calculating the support amount, that he was denied due process, and that the circuit court was biased against him. *Ikechukwu*, 2011 IL App (1st) 102650-U, ¶ 1. This

court found that Ikechukwu failed to submit a sufficient record of the proceedings below to properly evaluate the merits of these issues because he did not provide a report of proceedings in any format. *Ikechukwu*, 2011 IL App (1st) 102650-U, ¶¶ 28, 31. For other issues, Ikechukwu failed to articulate a cohesive legal argument supported by authority in violation of Supreme Court Rule 341(h) (eff. July 1, 2008), barring this court from reaching the merits of those contentions. See, e.g., *Ikechukwu*, 2011 IL App (1st) 102650-U, ¶ 45. Consequently, this court rejected Ikechukwu's arguments and affirmed the circuit court's judgment. *Ikechukwu*, 2011 IL App (1st) 102650-U, ¶ 63. Our supreme court denied Ikechukwu's petition for leave to appeal. *Illinois Department of Healthcare & Family Services ex rel. Alu v. Ikechukwu*, No. 113782 (March 28, 2012).

¶ 8 On March 23, 2012, Ikechukwu filed the instant *pro se* complaint against Alu for fraud and breach of contract in the civil division of the circuit court. Ikechukwu alleged that about December 26, 2008, he and Alu entered into a verbal agreement to settle a paternity dispute whereby Ikechukwu would admit to paternity of Alu's daughter, and in exchange, Alu would withdraw her paternity suit and accept child support payments directly from Ikechukwu for no more than 12 months. Ikechukwu alleged that he paid Alu \$700 as consideration to settle the paternity case, and \$300 for the January 2009 child support payment. Ikechukwu argued that he admitted to paternity of the child, but Alu did not perform her part of the agreement, and instead, denied an agreement existed and kept the money. On that basis, Ikechukwu alleged that the paternity order and child support payments were fraudulently induced and unjustly enriched Alu. Ikechukwu requested a monetary judgment of \$2,500 plus interest and court costs for unjust enrichment due to Alu's deceitful acts and breach of their agreement.

¶ 9 Ikechukwu submitted a certified bystander's report he drafted as a report of proceedings pursuant to Supreme Court Rule 323(c) (eff. Dec. 13, 2005). That report states that on May 4,

2012, Alu failed to appear in court. After reading the complaint, the circuit court stated that the case appeared to be in regards to child support, and questioned its jurisdiction. Ikechukwu claimed the case was about fraudulent inducement and breach of an agreement, not child support. Ikechukwu confirmed that the breach of agreement claim was for \$1,000. The court then entered a default judgment for \$1,000 plus court costs in favor of Ikechukwu. The court refused to award Ikechukwu any money for fraudulent inducement because it found that particular claim was related to child support, for which it did not have jurisdiction.

¶ 10 That same day, Ikechukwu filed a motion to reconsider the judgment amount. Also that day, Alu filed a *pro se* motion to vacate the default judgment denying she ever entered into an out-of-court agreement with Ikechukwu. She stated that Ikechukwu previously raised the same challenge in the child support court where it was dismissed with prejudice. Alu asserted that Ikechukwu promised to "punish" her by filing frivolous lawsuits.

¶ 11 On May 22, 2012, the parties appeared before a different circuit court judge for a hearing on their motions. Ikechukwu stated that the parties had an agreement to settle the parentage complaint filed by Alu. He claimed that he paid Alu money as consideration for the agreement, but thereafter, she denied the agreement existed. Ikechukwu wanted the money he paid Alu returned to him. Alu told the court that Ikechukwu was ordered to pay child support in 2010, and he had been challenging that order ever since because he did not believe he had to pay child support. The court found that the case was about child support, and it did not have jurisdiction of that subject matter. Ikechukwu denied that the case was about child support and maintained that it was about breach of an agreement and fraud. Ikechukwu argued that Alu fraudulently induced him to enter the agreement. The circuit court vacated the default judgment entered May 4, 2012, and entered judgment in favor of Alu. Ikechukwu then argued that he needed a date for a trial where he could present evidence. The court explained that based on the testimony it heard and

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its review of the case, it found the case lacked merit, and granted Alu's motion to vacate the judgment.

¶ 12 Ikechukwu filed a *pro se* motion for rehearing asking the court to vacate the judgment entered May 22, 2012, and order a new trial. Ikechukwu argued that he was denied due process because he was not allowed to present evidence at the last hearing. He also maintained his arguments that Alu breached their verbal agreement and fraudulently induced him to enter into that agreement. Ikechukwu asked the court to order Alu to pay him \$39,107 as monetary damages for the "fraudulently induced support payments" which unjustly enriched Alu. Ikechukwu also stated that this action was not intended to reverse the prior paternity determination and child support ordered by the court. Ikechukwu attached to his motion copies of two money orders and a personal check payable to Alu totaling \$1,000, and a list of his bi-weekly child support payments garnished from his wages totaling \$39,107.33.

¶ 13 On June 13, 2012, the circuit court denied Ikechukwu's motion to vacate the judgment. The court asked Ikechukwu if he recalled that on the last court date Ikechukwu stated that in his culture, he does not pay child support. Ikechukwu denied making that comment. The court told Ikechukwu that he could not recover any child support payments from Alu, even if they were made prior to the parentage order. Ikechukwu maintained that the payments were for consideration of the agreement, not child support, and that it was unfair for Alu to keep the money. The court told Ikechukwu that he had to file his challenge in child support court. Ikechukwu stated that the child support court refused to consider the out-of-court agreement and advised him to file a private action against Alu to recover his money, which was his purpose for bringing this action. The court stated that it was denying Ikechukwu's motion for failure to present a cause of action, and that the case was finished in the circuit court.

¶ 14 In certifying the bystander's report, the circuit court added its own handwritten notes to the end of the report. Those notes state that Ikechukwu's report "while not entirely complete or accurate is adequate." The court summarized the proceedings, expressly stating that on May 22, 2012, "defendant's motion to vacate the default judgment was granted for good cause shown. Following that motion a trial was held and testimony and evidence from both sides was presented." The court further stated "[a]fter assessing the credibility of the witnesses and reviewing the testimony and evidence a judgment for defendant was granted."

¶ 15 In his *pro se* appeal, Ikechukwu raises several issues, including claims that the circuit court denied him due process, the court improperly questioned its jurisdiction of the issue, Alu breached a valid verbal agreement, Alu fraudulently induced Ikechukwu to act under the agreement, Alu was unjustly enriched, and the circuit court did not properly resolve the issues. He asks this court to vacate the judgment for Alu and either remand this case for further proceedings, or enter a monetary judgment in favor of Ikechukwu for \$1,000 plus interest and costs for his "actual claim," and \$39,107 in "damages" for fraudulent inducement, unjust enrichment and compensation.

¶ 16 As a threshold matter, we note that Alu has not filed an appellee's brief. This court, however, has elected to consider this appeal under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-33 (1976).

¶ 17 Furthermore, similar to Ikechukwu's prior appeal, we note that insofar as he attempts to frame some of his arguments as a violation of due process of law, we need not reach constitutional questions when the issue can be resolved on other grounds. *Lyon v. Department of Children and Family Services*, 209 Ill. 2d 264, 271 (2004).

¶ 18 Ikechukwu has provided this court with a bystander's report he drafted pursuant to Rule 323(c). In certifying that report, the circuit court noted that, although the report is adequate, it is

"not entirely complete or accurate." An appellant has the burden of presenting a sufficiently complete record of the circuit court proceedings to support his claims of error, and in the absence of such a record, this court will presume the circuit court's order conformed with the law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Any doubts arising from an incomplete record will be resolved against the appellant. *Foutch*, 99 Ill. 2d at 392.

¶ 19 We find that Ikechukwu has failed to demonstrate any error by the circuit court. The record, in fact, contradicts most of Ikechukwu's claims. Ikechukwu first contends that he was denied due process of law because the circuit court arbitrarily issued summary judgment in favor of Alu without conducting a trial, hearing testimony, or receiving evidence. This claim is directly contradicted by the circuit court's notation on the bystander's report where it expressly stated that "a trial was held and testimony and evidence from both sides was presented." The court further stated "[a]fter assessing the credibility of the witnesses and reviewing the testimony and evidence a judgment for defendant was granted."

¶ 20 Ikechukwu next contends that because Alu never filed an answer, she thereby admitted the allegations in his complaint, and the circuit court should have entered judgment in his favor. We disagree. The record shows that a default judgment was entered in favor of Ikechukwu before Alu filed any pleadings. That same day, Alu filed a *pro se* motion to vacate the default judgment expressly denying ever entering into an out-of-court verbal agreement with Ikechukwu. Alu further claimed that Ikechukwu previously raised this same challenge in the child support division of the circuit court where it was dismissed with prejudice. She also claimed Ikechukwu had promised to "punish" her by filing frivolous lawsuits. In the bystander's report, the circuit court stated that Alu's motion to vacate the default judgment "was granted for good cause shown." Thereafter, the court held a trial and entered judgment for Alu. Based on this record, we find no error by the circuit court.

¶ 21 Ikechukwu next says that the court questioned its jurisdiction of the subject matter of this case, finding it involved an issue of child support, and contends the civil division had jurisdiction even if the agreement related to parentage because Ikechukwu filed a breach of contract and fraud claim. We first note that there is no indication in the record that the circuit court dismissed this case for lack of jurisdiction. Subject matter jurisdiction refers to a court's power to adjudicate the issue involved and to grant the specific relief requested. In re *A.H.*, 195 Ill. 2d 408, 415 (2001). Issues involving child support are adjudicated in the domestic relations/child support division of the circuit court. The civil division cannot consider issues involving child support. The record shows that the court repeatedly advised Ikechukwu that it did not have jurisdiction to adjudicate an issue involving child support, and Ikechukwu repeatedly maintained that his claim was for breach of contract, not child support. The limited record before this court shows that the circuit court addressed Ikechukwu's complaint as a breach of contract claim to the extent possible, and found no merit in this claim. Accordingly, we find no jurisdictional error.

¶ 22 In his next three claims, Ikechukwu contends that the circuit court's entry of judgment in favor of Alu on the breach of contract issue was against the manifest weight of the evidence, the court should have found that Alu fraudulently induced Ikechukwu to admit paternity of the child, and Alu was unjustly enriched when she kept the money Ikechukwu paid her. In these claims, Ikechukwu repeatedly asserts that the circuit court did not conduct a trial or an evidentiary hearing, and he was not given an opportunity to present evidence to support his claims. As stated in regard to the first issue, Ikechukwu's claims are directly contradicted by the circuit court's notation on the bystander's report that "a trial was held and testimony and evidence from both sides was presented." The court further stated "[a]fter assessing the credibility of the witnesses and reviewing the testimony and evidence a judgment for defendant was granted." Consequently, we find these claims without merit as they are belied by the record.

¶ 23 Finally, Ikechukwu contends that the circuit court's judgment entered on May 22, 2012, is contradicted by its ruling denying his motion to reconsider on June 13, 2012. Ikechukwu quotes the court as stating that its reason for entering judgment for Alu on May 22, 2012, was "[l]ack of merit." Ikechukwu then quotes the court as stating that its reason for denying his motion to reconsider on June 13, 2012, was "[l]ack of cause of action." Ikechukwu claims these findings are contradictory, and that the record does not support these findings.

¶ 24 Ikechukwu's contention is without merit. It is Ikechukwu who drafted the bystander's report, attributing these words to the circuit court. The circuit court noted that Ikechukwu's report was "not entirely complete or accurate." Therefore, we do not have the court's exact language before us. Nor do we have any of the reasoning for the court's rulings, except for the court's notation that it entered judgment for Alu after "assessing the credibility of the witnesses and reviewing the testimony and evidence." Under these circumstances, the law requires that this court presume the circuit court acted in conformity with the law and ruled properly after considering the testimony and evidence before it. *Webster v. Hartman*, 195 Ill. 2d 426, 433-34 (2001); *Foutch*, 99 Ill. 2d at 391-32.

¶ 25 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 26 Affirmed.