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2015 IL App (3d) 140303-U

Order filed August 5, 2015

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2014

<i>In re</i> MARRIAGE OF	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
CHRISTINE KRIER,	)	Will County, Illinois.
	)	
Petitioner-Appellee,	)	
	)	
and	)	Appeal No. 3-14-0303
	)	Circuit No. 11-D-324
JOSEPH KRIER,	)	
	)	
Respondent-Appellant.	)	Honorable Dinah L. Archambeault,
	)	Judge, Presiding.

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JUSTICE SCHMIDT delivered the judgment of the court.  
Justices Holdridge and Wright concurred in the judgment.

**ORDER**

¶ 1       *Held:* The court did not abuse its discretion in denying respondent's section 2-1401 petition where respondent failed to: support his allegations with an affidavit or establish facts proving his allegations; or prove that he diligently defended the original action. We lack jurisdiction over the issue of child support where the court did not render a final judgment relating to child support. We affirm the trial court's order granting petitioner title and possession of a vehicle where the parties agreed to such a disposition.

¶ 2       Respondent, Joseph Krier, and petitioner, Christine Krier, married in February 2005. The parties had one child during the marriage. The court entered a judgment for dissolution in

August 2012. Subsequently, respondent filed numerous motions requesting that the court compel discovery, grant relief pursuant to section 2-1401 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-1401) (West 2014)), and reduce child support. The court conducted a hearing and entered an order on March 27, 2014, addressing respondent's motions. The court ordered respondent to tender title and possession of a blue 2011 Ford Fusion to petitioner in satisfaction of monies owed by respondent to petitioner through January 10, 2014, denied respondent relief under section 2-1401, and reserved the issue of child support for a later date.

¶ 3 Respondent appeals, arguing that the trial court erred in: denying his section 2-1401 petition; ordering him to pay child support; and awarding petitioner title and possession of the Ford Fusion. For the following reasons, we affirm.

¶ 4 **BACKGROUND**

¶ 5 Respondent and petitioner married on February 19, 2005. They had one child during the marriage. Petitioner filed for dissolution of marriage on February 18, 2011. The parties entered into a marital settlement agreement, resolving the issues of maintenance, property distribution, child custody, and child support. The court entered a judgment for dissolution of marriage on August 8, 2012.

¶ 6 After the court rendered the judgment, both respondent and petitioner filed numerous motions, causing them to appear in court on a monthly basis. Those motions are of no relevance to this appeal; thus, we will not discuss them in any detail.

¶ 7 The motions and orders that are relevant are as follows. In September of 2013, respondent filed a motion to reduce child support, which the trial court denied. Subsequently, respondent filed a motion to reconsider, which the court ultimately considered on March 27, 2014. On November 13, 2013, respondent filed a motion for relief pursuant to section 2-1401

alleging that: (1) petitioner failed to disclose the fact that she owned real estate with her father prior to the judgment for dissolution; and (2) respondent should not be required to pay petitioner's attorney fees where petitioner failed to disclose assets and income. The court conducted a hearing on March 27, 2014, pursuant to respondent's motion for relief under section 2-1401 and related motions, including respondent's motion to reduce child support.

¶ 8 Respondent argued that petitioner improperly claimed that she paid certain bills on her financial affidavit submitted prior to the court entering the judgment of dissolution. He alleged that she, in fact, did not pay such bills. When the court asked him what evidence he had to show that petitioner did not pay the bills, respondent stated, "That's why I'm requesting to compel discovery. I mean because Ms. Krier without having any financial subpoena, I cannot prove that she did not in fact do that." Respondent also alleged that petitioner purchased a home prior to the dissolution of judgment, but failed to inform respondent about this asset. Petitioner argued that her father took out the mortgage for the property; her name is only on the title so the property can transfer to her upon her father's death. Further, her father closed on the property after the date of dissolution. The court asked respondent, "why is this an issue if she was going to get another place to live once you're divorced?" The following exchange then took place:

"MR. JOSEPH KRIER[respondent]: Because — —.

THE COURT: Tell me why this is an issue.

MR. JOSEPH KRIER: Because [petitioner] has stated that she had no money and that is why I should be paying attorney's fees of hers, that that was part of it.

THE COURT: Okay. Let's look at the attorney's fees part, but how does the fact that her dad is buying her a place to live equate to her having money?"

¶ 9 Respondent then admitted that he knew petitioner earned \$70,000 per year at the time of dissolution, but alleged petitioner failed to produce any discovery requested by respondent. The court asked why the issue to compel discovery was not raised before the trial court prior to the judgment for dissolution. Respondent simply stated that there were motions pending before the trial court, but petitioner claimed she had no money.

¶ 10 After further discussion about the issues surrounding discovery, the court noted that the judgment for dissolution stated that the parties were familiar with all the wealth, property, estate, and income of the other as disclosed through the discovery process. The judgment also stated that the parties acknowledged that respondent did not produce documentation as requested for his business; petitioner was unaware of income respondent actually received from his business. The parties entered into the agreement freely and voluntarily and with full knowledge of each provision.

¶ 11 The court also considered respondent's motion to reduce child support. The parties and trial judge attempted to review the previous modifications to the original child support order; the judge was not the same judge who entered previous child support orders. The judge did not have the entire file before her and was unable to see the transcripts online due to the fact that previous hearings on child support were impounded. Based on the documents that the parties presented, the court concluded that past orders required respondent to file paperwork evidencing his injuries and unemployment status; respondent failed to comply as of March 27, 2014.

¶ 12 That same day, the court entered an order, stating:

"All of defendant's motions with regard to the motion to compel, motion for relief and claim of dissipation are denied. No discovery is required to be tendered by [petitioner and respondent] prior to the divorce judgment as it relates to the rule to show cause is denied. By agreement, [respondent] is required to tender title and possession of blue 2011 Fusion to [petitioner]. \*\*\* In exchange for this vehicle being tendered in good condition with clear, clean title, it will satisfy all monies owed by [respondent] for financial liabilities arising out of the divorce judgment and including back child support through Jan. 10, 2014, as well as all school, medical or extracurricular fees owed to either party. \*\*\* Child support is reserved until [June 10, 2014] for status of disability, [respondent] to bring proof of that decision. [Respondent's] motion to get psych evaluations is continued to that date, and will be amended to apply to issues, if any, arising after 3-27-14."

¶ 13 Respondent appeals, we affirm.

¶ 14 ANALYSIS

¶ 15 As an initial matter, we note that we have spent a considerable amount of time attempting to untangle and understand respondent's arguments; his brief is unintelligible. Based on our best efforts, we find that respondent's arguments boil down to three issues: (1) whether the trial court abused its discretion in denying respondent's section 2-1401 petition and related motions; (2) whether the court erred in ordering respondent to pay child support; and (3) whether the court erred in ordering respondent to tender title and possession of the Ford Fusion to petitioner.

¶ 16 Respondent argues that the court erred in denying his section 2-1401 petition and related motions. Petitioner argues that this court lacks jurisdiction to hear this appeal; respondent filed this appeal more than 30 days after the court entered the judgment of dissolution.

¶ 17 A party must file a notice of appeal within 30 days after the trial court enters the final judgment appealed from. Ill. S. Ct. R. 303(a)(1) (eff. June 4, 2008). It is true that respondent filed this appeal more than 30 days after the court entered the judgment of dissolution on August 8, 2012. However, respondent is not appealing from that order. Instead, respondent appeals from the March 27, 2014, order denying his section 2-1401 petition. We have jurisdiction over an order denying relief in a petition under section 2-1401 of the Code if the party requesting relief filed a notice of appeal within 30 days of the order. Ill. S. Ct. R. 304(b)(3) (eff. Feb. 26, 2010); Ill. S. Ct. R. 303(a)(1) (eff. June 4, 2008). Respondent filed a notice of appeal on April 1, 2014, which is within 30 days of the court's order denying his request for relief pursuant to section 2-1401. Therefore, we have jurisdiction over this appeal.

¶ 18 The trial court has discretion when determining whether to grant or deny a section 2-1401 petition. *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 221 (1986). We will not disturb the trial court's judgment absent an abuse of discretion. *Id.* A court abuses its discretion when its ruling is "arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court." *People v. Caffey*, 205 Ill. 2d 52, 89 (2001) (citing *People v. Illgen*, 145 Ill. 2d 353, 364 (1991)).

¶ 19 Petitions under section 2-1401 of Code (735 ILCS 5/2-1401) (West 2014)) must meet several requirements. By a preponderance of the evidence, the petition must: (1) allege and prove due diligence in defending the original action; (2) plead due diligence in bringing the petition to vacate the order in question; and (3) plead a meritorious defense. *Airoom.*, 114 Ill. 2d

at 221; *In re Marriage of Hoppe*, 220 Ill. App. 3d 271, 282 (1991). "The petition must be supported by affidavit or other appropriate showing as to matters not of record." 735 ILCS 5/2-1401(b) (West 2014). Here, respondent failed to comply with the requirements; he did not support his petition with an affidavit.

¶ 20 Further, respondent also failed to prove that he diligently defended the original action. Respondent is not entitled to relief pursuant to section 2-1401, unless he shows that, through no fault of his own, the trial court was unaware of the error of fact or the existence of a valid defense. *Airoom*, 114 Ill. 2d at 222. The purpose of section 2-1401 is to bring facts before the court, which the trial court did not know when entering judgment and, had the court knew of such facts, it would have entered a different judgment. *Manning v. Meier*, 114 Ill. App. 3d 835, 838 (1983); *Hoppe*, 220 Ill. App. 3d at 282.

¶ 21 At the section 2-1401 hearing, respondent alleged that petitioner failed to: pay bills, which she claimed to have paid; provide discovery relating to her financial situation; and disclose the fact that she purchased a residence prior to the judgment for dissolution. However, respondent did not establish that the trial court was unaware of facts relating to his arguments at the time it entered the judgment for dissolution of marriage. At trial, respondent's attorney presented motions to compel discovery. Moreover, respondent signed a marital settlement agreement stating that he had full knowledge of petitioner's wealth and entered into the agreement freely. At the March 27, 2015, hearing, respondent admitted that he was well aware of petitioner's income at the time he signed the marital settlement agreement. It is clear that respondent's attorney made the trial court aware of the discovery issues and that respondent was informed as to petitioner's financial situation.

¶ 22 Respondent also failed to establish by clear and convincing evidence that petitioner hid assets and failed to pay bills. When the court asked what facts respondent had in support of his allegation, he stated that he needed discovery in order to prove that petitioner did not pay such bills. As discussed above, respondent's attorney raised the discovery issues to the trial court. Furthermore, respondent did not provide any proof establishing that petitioner and her father owned the house prior to the judgment of dissolution. Petitioner stated that her father took out a mortgage on the residence so petitioner had a place to live. Also, her father closed on the transaction after the court entered the judgment for dissolution. Even if the closing occurred prior to August 8, petitioner needed a place to reside after the parties divorced; respondent failed to explain to the court why this was an issue.

¶ 23 We accordingly find that the trial court did not abuse its discretion in denying respondent's section 2-1401 petition and respondent's interrelated motions.

¶ 24 Respondent also argues that the court erred in ordering him to pay child support. We do not have jurisdiction to hear this issue; the court did not issue a final order regarding child support. The court's March 27 order stated: "Child support is reserved until [June 10, 2014], for status of disability, defendant to bring proof of that decision." We have jurisdiction over final orders. *Irvin v. Poe*, 18 Ill. App. 3d 555 (1974); Ill. S. Ct. R. 303(a) (eff. June 8, 2008) ("The notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the *final* judgment appealed from. (Emphasis added.)). A final order is one that terminates the litigation between the parties or disposes of the rights of the parties upon the entire issue or some definite part. Ill. S. Ct. R. 303(a) (eff. June 8, 2008). Here, the order did not terminate the dispute over child support; the court explicitly reserved the issue of child support for a later date. Therefore, we lack jurisdiction over this issue.

¶ 25 Finally, respondent argues that the court erred in ordering him to turn over title and possession of the Ford Fusion to petitioner. The order stated that, "*By agreement*, [respondent] is required to tender title and possession of blue 2011 Fusion to [petitioner]". An agreed order is not an adjudication of the parties' rights but, instead, a record of the parties' private contractual agreement. *In re Marriage of Rolseth*, 389 Ill. App. 3d 969, 971 (2009). Once entered, agreed orders are generally binding on the parties and cannot be amended or modified without the consent of both parties. *Id.* One party may challenge an agreed order by showing that the order resulted from fraudulent misrepresentation, coercion, gross disparity in the parties' position, incompetency of one of the parties, or that the contract is contrary to public policy, rendering it void. *Rolseth*, 389 Ill. App. 3d at 971; *Olsen v. Staniak*, 260 Ill. App. 3d 856, 861 (1994). Here, the court entered an agreed order. Respondent failed to argue or show that the order resulted from fraudulent misrepresentation, coercion, gross disparity in bargaining position of the parties, or that the agreement was contrary to public policy. We accordingly find that the agreed order is binding on both respondent and petitioner.

¶ 26 CONCLUSION

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

¶ 28 Affirmed.