2016 IL App (1st) 143113-U

No. 1-14-3113

Fourth Division
March 3, 2016

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

ILLINOIS DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES *ex rel.* MERCY ALU,	)	Appeal from the Circuit Court of Cook County.
Petitioner-Appellee,	)	
v.	)	No. 08 D 52636
NKUMEH IKECHUKWU,	)	
Respondent-Appellant.	)	James L. Kaplan Judge Presiding.

JUSTICE COBBS delivered the judgment of the court.
Justices Howse and Ellis concurred in the judgment.

O R D E R

¶ 1 *Held*: Judgment of the circuit court relating to parentage and child support orders affirmed where (1) certain of respondents claims are barred by *res judicata* and are untimely, (2) respondent is properly charged interest on unpaid portion of his retroactive support award pursuant to unambiguous language of the applicable statute, (3) the court properly found that certain claims were moot, (4) the court did not err in the amount of judgment it entered against petitioner due to overpayment by respondent, (5) the court did not abuse its discretion in denying respondent's petition to modify child support, and (6) the court did not err in denying his post decree petition.

¶ 2 This appeal involves orders entered by the circuit court of Cook County determining that *pro se* respondent, Nkumeh Ikechukwu, is the father of petitioner Mercy Alu's daughter, Y.I.,

and requiring him to pay current and retroactive child support to petitioner, as well as the circuit court's disposition of numerous post judgment motions relating to those parentage and support orders.

¶ 3 BACKGROUND

¶ 4 This litigation has been ongoing for over seven years, during which time respondent has filed countless motions, as well as numerous appeals. For purposes of this appeal, we recount the facts and procedural history necessary to address the arguments currently raised. For a more complete description of the history of this protracted litigation, we refer to our order from respondent's earlier appeal in Case No. 1-10-2650. *Illinois Department of Healthcare and Family Services ex rel. Mercy Alu v. Ikechukwu*, 2011 IL App (1st) 102650-U.

¶ 5 The common law record reveals that on July 15, 2008, the Illinois Department of Healthcare and Family Services (Department) filed a complaint against respondent on behalf of petitioner and her child, Y.I., seeking a declaration of respondent's paternity, as well as child support and health insurance for Y.I. On August 19, 2008, respondent filed an answer to the complaint, in which he stated that he "accepted the administrative support order [*sic*] that [Y.I.] is mine." The record reveals that respondent was referring to an order relating to administrative proceedings seeking to establish his paternity of Y.I. pursuant to section 160.61 of the Illinois Administrative Code. 89 IL ADC 160.61. An administrative order dated June 11, 2008, reflects that a father and child relationship was established between Y.I. and respondent, who was in default of the proceedings for failing to appear for a genetic test after receiving notice thereof.

¶ 6 On September 15, 2008, the Department filed a motion asking the circuit court to enter an order of parentage against respondent and order him to pay child support. Respondent then filed an "enhanced response" to the complaint in which he asserted that he never admitted to being

Y.I.'s father, but argued that the court need not enter an order of parentage because the issue of Y.I.'s paternity had already been determined in an administrative hearing. Thereafter, respondent sought to withdraw both his initial answer to the complaint, as well as his "enhanced response," and also sought to dismiss the complaint. He once again stated that paternity had been previously resolved through administrative proceedings.

¶ 7 On December 26, 2008, respondent filed a "motion for out-of-court agreement/settlement," in which he alleged that he had reached an agreement with petitioner. According to the motion, respondent agreed to acknowledge paternity of Y.I. and to pay child support in the amount to be determined by the court, and in exchange, petitioner agreed that those payments would be made directly to her and would stop after 12 months, and that she would not ask respondent for more money.

¶ 8 On January 9, 2009, the circuit court entered an order of parentage, which bears both parties' signatures and states that respondent is Y.I.'s father, and indicates that the hearing was "by agreement," and that "respondent admits parentage." That same day, the court entered an order, also bearing both parties' signatures, for temporary support in the amount of $300 per month to begin on January 20, 2009, and directed that an income-withholding notice be served on respondent's employer. In both orders, the court reserved the matters of current and retroactive support, and ordered respondent to provide income and tax documents and for both parties to complete financial disclosure statements. Also on January 9, 2009, the court entered an order reflecting that respondent's motions to dismiss the complaint and to acknowledge the out-of-court agreement were withdrawn.

¶ 9 Thereafter, respondent filed numerous motions, including, *inter alia*, (1) a motion to modify the order of parentage, reinstate the out-of-court agreement, and void portions of the

temporary order of support, (2) a "motion to express [his] concerns about this case to the judge," and (3) a motion to reinstate his motion to dismiss the complaint. Following a hearing on April 24, 2009, the circuit court denied with prejudice every motion that respondent had filed since its orders finding parentage and imposing temporary support were entered. Also on April 24, 2009, the court entered a uniform order of support, ordering respondent to make current child support payments in the amount of $415 every two weeks.

¶ 10 On May 4, 2009, respondent filed a motion "not to enforce [the] judgment entered on April 24, 2009," in which he appeared to argue that the order of support entered against him should not be enforced because the court had not yet disposed of all issues, including retroactive support. On that same day, the motion was denied, and, on the following day, respondent filed a notice of appeal from that order, which this court docketed.

¶ 11 On May 11, 2009, respondent filed a motion to vacate the orders on parentage and on current support. Therein, he objected to the amount of support ordered and claimed, *inter alia*, that petitioner had induced him to admit to Y.I,'s paternity by agreeing to the terms of their alleged out-of-court agreement. On July 10, 2009, while his motion to vacate was still pending, respondent filed a motion seeking to modify support and asking the court to calculate the amount of support using a disclosure statement dated June 30, 2009. On that same day, respondent filed an "affidavit on private agreement between the petitioner and the respondent," and a financial disclosure statement purporting to reflect his income as of June 30, 2009.

¶ 12 On September 22, 2009, the circuit court denied with prejudice respondent's motion to vacate, struck his motion to modify support as legally insufficient, as well as struck his "affidavit on private agreement." The order included language stating that "with regard to current support, this is a final order. There is no just reason to delay enforcement on appeal." On October 8, 2009,

respondent filed a notice of appeal from the September 22, 2009, order. This court docketed the appeal, and later consolidated it with respondent's previously filed appeal.

¶ 13 On May 4, 2010, respondent filed a new petition to modify child support. Therein, he asserted that due to a substantial change in circumstances, his net monthly income was currently $656.14, and, accordingly, that his child support payments should be lowered to $131.22 per month. Thereafter, on June 8, 2010, the circuit court entered an order awarding petitioner $5,098 in retroactive support for the period between July 30, 2008, when respondent was served with summons, and January 19, 2009, the day before respondent's first temporary support payment was due. Thus, in addition to respondent's current support obligation of $415, the order directed respondent to pay $25 every two weeks toward his retroactive support obligation.

¶ 14 On July 2, 2010, respondent filed a post judgment motion to vacate "all orders and judgment in this cause and dismiss the complaint." Therein, he argued, *inter alia*, that the court disregarded his out-of-court agreement with petitioner, and that he had been tricked into admitting Y.I.'s paternity and withdrawing some of his earlier motions. Additionally, on August 30, 2010, while his post judgment motion was pending, respondent filed a notice of appeal from "all prior orders of the circuit court," and a motion to stay enforcement of the support orders while the appeal was pending.

¶ 15 On October 19, 2010, the circuit court denied with prejudice respondent's post judgment motion "for the reasons stated in open court," as well as denied with prejudice his petition to modify support. The written order reflected that this case would be removed from active call and that "continued efforts by respondent to revisit past rulings again will meet with sanctions." Also on October 19, 2010, the court entered a separate order denying respondent's motion to stay enforcement of the support orders pending appeal. The following day, respondent filed an

amended notice of appeal from the denial of his post judgment motion as well as from all prior orders entered by the circuit court.

¶ 16 Disposition of Prior Appeals

¶ 17 On September 17, 2010, this court dismissed for lack of jurisdiction respondent's two interlocutory appeals, namely the one filed on May 5, 2009, from the denial of his motion to stay enforcement of the order of support, and the one filed on October 8, 2009, from the order which found that the order of support was final and appealable. *Illinois Department of Healthcare and Family Services ex rel. Mercy Alu v. Ikechukwu*, Nos. 1-09-1128 & 1-09-2756 (Cons.) (2010) (unpublished order under Supreme Court Rule 23).

¶ 18 Respondent's appeal relating to the denial of his post judgment motion as well as "all prior orders of the circuit court" remained pending before this court in Case No. 1-10-2650. On October 29, 2010, respondent filed a motion to set an appeal bond and stay enforcement of the judgment during the pendency of that appeal, which this court denied on November 25, 2009.

¶ 19 In an unpublished order dated October 21, 2011, this court affirmed the orders of the circuit court determining parentage and child support. *Illinois Department of Healthcare and Family Services ex rel. Mercy Alu v. Ikechukwu*, 2011 IL App (1st) 102650-U. In his appeal, respondent raised multiple challenges to the paternity and support orders, including claims that (1) petitioner had defrauded him, (2) the circuit court improperly relied on the administrative order of parentage, and (3) the circuit court miscalculated his net income and thus entered erroneous orders of current and retroactive support. Because the record respondent provided lacked reports of proceedings, this court presumed that the circuit court's orders were in conformity with the law and had a sufficient factual basis.

¶ 20 This court also rejected respondent's additional contentions, either for lack of a report of proceedings or lack of merit. These claims included assertions that the judge was biased against him, that he was denied due process because the judge did not rule on all of his motions, that the retroactive and temporary support orders were not entered at a proper time, and that the clerk incorrectly charged him certain fees. This court deemed moot respondent's claims that the circuit court should have stayed support enforcement at various times. Finally, this court rejected respondent's contention that all orders entered by the circuit court were void because the court never had subject matter jurisdiction over the parentage and support action. Respondent had argued that paternity of Y.I. had already been established through the administrative proceeding, and thus there was no controversy before the circuit court.

¶ 21 Subsequent Proceedings

¶ 22 Petition to Modify Child Support / Delinquency Fees

¶ 23 On February 14, 2012, respondent filed a petition to modify child support in which he argued that (1) a substantial change in circumstances had arisen due to a purported $64,000 loss in the value of a business he started, and (2) the order of support "is more than 20% inconsistent from the application of guidelines." That same day, respondent filed a petition to clarify his support obligation. Therein, he noted that although his court-ordered support obligation was $440 to be paid bi-weekly, $528 bi-weekly was occasionally withheld from his paycheck due to delinquency charges. Respondent denied that he had ever been delinquent in paying his child support obligation. On March 15, 2012, the court entered an order requesting an account adjustment review of respondent's child support payment history.

¶ 24 On July 24, 2012, respondent filed a motion asking the court to return "improperly intercepted" tax refunds, refund overpaid support, correct his account balance, and clarify his

retroactive support. Therein, he alleged numerous calculation errors, including that he was double charged in 2009 for 19 days of retroactive support, and that his retroactive support payments should not accrue interest.

¶ 25 On July 26, 2012, respondent filed a motion contesting the delinquency fees withheld from his most recent paycheck. He subsequently filed numerous other motions and documents, including a motion asking the court to provide information underlying the April 24, 2009 support order and another motion contesting delinquency fees.

¶ 26 On November 26, 2012, respondent filed a motion asking the court to strike or address "issue H" of the complaint. The complaint reflects that "issue H" was a general reference in the prayer for relief asking that "respondent furnish bond or other security to assure payment of any amount of support due." Due to respondent's ever-increasing motions, proceedings in this case were repeatedly continued to permit briefing thereon.

¶ 27 At a hearing held on March 28, 2013, respondent argued that a change in circumstances had arisen due to approximately $64,000 in losses he suffered in 2011 in relation to a stock trading business he started and operates from his home. He maintained that these losses made it difficult for him to repay loans he had taken out to start the business, and, as a result, suffered from undue financial hardship in light of the current level of child support. Respondent acknowledged that this business had no investors aside from him and that all losses and profits from it accrued to him. Although respondent's W2 form for 2011 reflected earnings of approximately $69,300 for his employment at the Rehabilitation Institute of Chicago, he submitted self-prepared financial documents reflecting a monthly net income of $498.53 for child support purposes.

¶ 28 The court found that the arrangement respondent described was not a business, but rather an artificial entity for him to "hold [his] investments and to take losses against that for [his] own purposes." Accordingly, the court denied respondent's petition to modify child support insofar as it was based on his purported business losses, but reserved ruling on the portion of the petition that was based on the question of whether the support order was above guidelines. The court also denied respondent's July 24, 2012, motion which sought various refunds for purported overpayments, noting that the documents before it reflected delayed payments which would account for the delinquency fees that were assessed against him.

¶ 29 On April 17, 2013, respondent filed another motion contesting delinquency fees withheld from his most recent paycheck, and subsequently filed numerous similar motions. On May 8, 2013, the court again ordered an account adjustment review from the Department, and continued the matter to await those results before addressing pending motions.

¶ 30 On September 18, 2013, the court denied without prejudice respondent's July 26, 2012, motion contesting delinquency fees, and gave him an opportunity to demonstrate that he had actually made the payments that appeared to be missing or delayed based on the tendered payment records. The court also entered an additional request for an account adjustment review. At a hearing held on December 18, 2013, the assistant State's Attorney provided respondent with a copy of the account adjustment review and the court prohibited respondent from filing additional motions before the next hearing date without leave of court.

¶ 31 The Administrative Decision

¶ 32 On January 9, 2014, respondent filed with the court a copy of a final administrative decision from the Department. The decision, dated December 26, 2013, reflected that respondent had initiated administrative proceedings on some of the issues raised in his circuit court motions.

Specifically, before the Department, as in the circuit court, respondent challenged the bi-weekly delinquency charges that were sometimes added to his support payment and withheld from his paycheck. Upon review, the Department determined that respondent's account was not delinquent, but rather, the delinquency was purely "on-paper" and was caused by a discrepancy between respondent's bi-weekly payment cycle and when the Department's computer system was "expecting" payments. The Department ordered that this issue be corrected so that respondent's account would not continue to be charged such delinquency fees. Additionally, the Department noted respondent's claim that he was "double charged" for 19 days of support between January 1, 2009, and January 19, 2009, but observed that he was challenging the dates and terms set forth in court orders, which it was not free to alter.

¶ 33 The Department rejected respondent's contention that he should not have been charged interest on the entire unpaid principal of the $5,098 retroactive support award, finding that such a charge was proper pursuant to applicable statutory amendments. Although respondent sought various refunds, the Department found that it must first perform a new accounting to determine what, if anything, he was owed. It further found that to the extent respondent had overpaid his support obligation and the funds had already been distributed to petitioner, only the circuit court had authority to fashion a remedy.

¶ 34 At a hearing held on January 15, 2014, the court considered the implications of the Department's administrative decision and addressed various outstanding matters. The court considered respondent's various challenges to the amount of his support payments largely moot given that the Department had addressed them. The court further stated that in the event respondent had overpaid his support obligations, he would be entitled to reimbursement directly from petitioner, and not the Department.

¶ 35 Overpayment / Remaining Portion of Petition to Modify

¶ 36 On February 20, 2014, respondent filed a motion seeking a refund of $3,767.42 for claimed overpayments. That motion was addressed at the next court hearing, held on March 27, 2014. Although the record does not contain a transcript of these proceedings, the order entered on that date reflects that the judge received and reviewed an accounting prepared by the Department on March 21, 2014, which showed that respondent overpaid petitioner by $997.24. The court found the Department's accounting "credible in all respects" and noted that petitioner did not deny the overpayment. The court further noted that respondent's proffered documents about the amount of his overpayment "lack credibility as he has repeatedly set forth amounts that are never reflected in the State's records." The court thus entered judgment in favor of respondent and against petitioner in the amount of $997.24. On April 22, 2014, respondent filed a motion asking the court to reconsider that judgment and award him a greater sum. Respondent contended that the Department's accounting of March 21, 2014, was wrong. His motion also asked the court to address or revisit certain claims.

¶ 37 Following a hearing held on May 14, 2014, the court denied respondent's partially-pending petition to modify child support. In doing so, the court found that although a downward modification in child support requires, *inter alia*, a showing that the needs of the child have changed, respondent had provided no information about Y.I.'s needs. The court also found that respondent had "double-paid" support for the first 19 days of January 2009, and calculated the overpayment amount as $561.67. The court set the matter for further hearing, however, so that respondent could provide proper notice to petitioner. Additionally, the court ordered respondent to discuss the Department's March 21, 2014, account review with a Department accountant before the court would consider granting his request that another such accounting be prepared.

Finally, the court addressed respondent's request that it rule on whether he had to furnish a bond to secure support payments. The court found that although respondent did not presently have to furnish a bond, the State was not precluded "from seeking a bond at another time, if a proper reason arises."

¶ 38 Post Decree Petition

¶ 39 On June 11, 2014, respondent filed a "post decree petition" under section 2-1203 of the Code of Civil Procedure, in which he asked the court to reconsider its May 14, 2014, order insofar as it denied his February 14, 2012, petition to modify child support. Respondent also asked the court to vacate the January 9, 2009, parentage order and the April 24, 2009, support order and "return all the support payments collected in the action." To the extent respondent's purported section 2-1203 petition sought to vacate parentage and support, the court treated it as a section 2-1401 motion, and, in an order dated August 20, 2014, denied that portion of respondent's petition. In doing so, the court found that the issues regarding parentage and support had been litigated, ruled on, and appealed, and were thus barred by *res judicata*.

¶ 40 On September 23, 2014, the court held a hearing on the remaining issues: respondent's challenges to the refund amount and the denial of his motion to modify child support. The court reiterated that the section 2-1401 portion of respondent's June 11, 2014, motion challenging parentage and support was denied with prejudice. The court cited to this court's unpublished order of October 21, 2011, as well as a subsequent unpublished order dated May 8, 2013,[1] and noted that respondent had repeatedly and unsuccessfully raised the same issues before the circuit

[1] This order reflects that on March 23, 2012, respondent filed a *pro se* action against petitioner for fraud and breach of contract based upon a purported private agreement about parentage and support. The terms of the purported agreement in that suit are identical to those he alleged in this case. The court entered judgment in favor of petitioner, and this court affirmed that judgment on appeal. *Nkumeh Ikechukwu v. Mercy Alu*, 2013 IL App (1st) 121850-U.

and appellate courts, and stated "I don't know why the State's Attorney's Office is not asking for sanctions when you've argued, reargued, and over argued the same issues over and over again."

¶ 41 The court declined to reconsider its rejection of respondent's petition to modify child support, stating that respondent "lacks credibility with his calculation of his net income because of the business deductions he is trying to take." The court denied respondent's motion seeking a greater overpayment refund, noting that respondent had not spoken with a Department accountant, in spite of its prior order that he do so. Accordingly, the court deemed the Department's most recent account review, which calculated $997.24 as the amount of overpayment, to be fair and proper. The court entered a $561.64 judgment in favor of respondent and against petitioner for the amount respondent had "double-paid" in support in January 2009. The court noted that all motions filed by respondent had been ruled on and that the case was "off the call." On October 10, 2014, respondent filed a notice of appeal from the September 23, 2014, order and "all prior orders" against him.

¶ 42 ANALYSIS

¶ 43 Supreme Court Rules Violations

¶ 44 We first address various violations of Supreme Court Rules evidenced in respondent's brief. Supreme Court Rule 341(h)(6) (eff. Feb. 6, 2013) requires that the appellant provide this court with a statement of the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment. Ill. S. Ct. R. 341(h)(6). Respondent's statement of facts provides little understanding of the case and instead features rambling argument and comment. For example, respondent asserts that the circuit court "ignored" all his motions and "arbitrarily" entered orders, that the court's rulings and orders were "unfair" and "not supported by facts or law," that the hearings held in this case were "sham" hearings, and that the circuit court "invoked

[his] net income [] from the thin air." Further, although the record reveals that respondent continually filed motions and petitions, of which the court had to dispose as they arose, in his statement of facts respondent asserts that the court adopted a piecemeal approach in resolving the issues in this case, thereby "creat[ing] a confusing posture" which then caused him to "mistakenly" file prior appeals.

¶ 45 Further, subsection (h)(9) of Rule 341 requires an appendix in accordance with Supreme Court Rule 342 (eff. Jan. 1, 2005), which, in turn, requires a complete table of contents, with page references, of the record on appeal. Ill. S. Ct. R. 341 (h)(9) (eff. Feb. 6, 2013); Ill. S. Ct. R. 342 (eff. Jan. 1, 2005). Although the record in this case consists of 1,025 pages spanning six separate volumes,[2] respondent's appendix consists of merely 11 entries encompassing 12 pages of the record. Finally, subsection (h)(4)(ii) of Rule 341 requires a precise jurisdictional statement or explanation of the basis for the appeal including the supreme court rules which confer jurisdiction. Ill. S. Ct. R. 341 (h)(4)(ii) (eff. Feb. 6, 2013). Here, respondent states that this appeal is pursuant to Illinois Supreme Court Rules 301, 303 and 307, but further states that "this court should find the appropriate jurisdiction to review any and all issues of this appeal" if those particular rules are not appropriate. It is not the function of this court to determine the jurisdictional basis of this appeal on respondent's behalf.

¶ 46 Although respondent is a *pro se* litigant, he is nevertheless held to the same standard as licensed attorneys, and therefore must comply with the same rules and procedures. *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 78. This court has the discretion to strike an appellant's brief and dismiss an appeal for failure to comply with Rule 341. *Id.*, ¶ 77. However, because we have the benefit of a cogent appellee's brief and it is possible to discern respondent's contentions

[2] We note that four volumes consist of common law record and the remaining two volumes consist of transcripts.

of error, we will address the merits of his appeal. See *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001).

¶ 47 Issues on Appeal

¶ 48 Respondent sets forth a lengthy list of issues he maintains are appropriate for review in this appeal, a majority of which pertain to the paternity and support orders that were entered in 2009 and 2010. In relation to the parentage order, respondent contends that it should be vacated because (1) the circuit court erred in using the administrative order as its basis, (2) he was fraudulently induced to enter into it, (3) a mutual mistake of fact was present as to the existence of an agreement on paternity, and (4) the order was invalid due to lack of consideration by the petitioner. In relation to the temporary support order, respondent contends that this court must set it aside because it was not in accordance with guidelines and because the circuit court entered it on the same day as the parentage order, which, according to respondent, is contrary to the language of the Parentage Act of 1984. In relation to the uniform order of support, respondent contends that it should be vacated because it does not adhere to statutory guidelines. In relation to the retroactive order of support, respondent contends that it should be vacated because it was improperly calculated. In relation to all of these orders, respondent maintains that they should be reversed because (1) petitioner did not complete, or serve him with, her financial disclosure statements, and (2) his due process rights were violated in that none of the issues were resolved on the merits.

¶ 49 *Res Judicata*

¶ 50 Petitioner maintains that the above listed claims are barred by the doctrine of *res judicata*. The determination of whether a claim is barred under the doctrine of *res judicata* is a question of law, which we review *de novo*. *Lutkauskas v. Ricker*, 2015 IL 117090, ¶ 43.

¶ 51 The equitable doctrine of *res judicata* is designed to prevent multiple lawsuits between the same parties where the facts and issues are the same. *Id.* ¶ 44. Pursuant to this doctrine, a final judgment on the merits rendered by a court of competent jurisdiction functions as a bar to subsequent suits between the same parties and involving the same cause of action. *Id.* A judgment is "on the merits" where it amounts to a decision as to the respective rights and liabilities of parties based on the facts before the court. *SDS Partners, Inc. v. Cramer*, 305 Ill. App. 3d 893, 896 (1999). In addition to the matters that were actually decided in the first action, *res judicata* applies equally to those matters that could have been decided in the prior suit. *Lutkauskas*, 2015 IL 117090, ¶ 44.

¶ 52 As previously noted, in an unpublished order dated October 21, 2011, this court affirmed the orders of parentage and child support. *Illinois Department of Healthcare and Family Services ex rel. Mercy Alu v. Ikechukwu*, 2011 IL App (1st) 102650-U. In that appeal, respondent raised, *inter alia*, the following claims: (1) the paternity order is invalid due to fraudulent inducement on the part of petitioner, (2) he was denied due process because the court improperly relied upon the administrative order on parentage, (3) the court incorrectly calculated the amount of current and retroactive support it ordered him to pay; (4) the temporary support order was unlawful because it was entered on the same day as the parentage order. Respondent is now attempting to raise these same claims in his present appeal. However, in our prior unpublished order, this court rejected all of these claims and affirmed the orders of parentage and support, thereby entering a decision as to the respective rights and liabilities of the parties. We thus find that respondent is barred by the doctrine of *res judicata* from raising these same claims in his current appeal. We further find that he is equally barred from raising claims which he could have, but did not, raise in that prior appeal. These include claims that the parentage order should be vacated because of a

mutual mistake of fact, as well as lack of consideration by petitioner, that petitioner did not complete or serve him with her financial statements, and that none of the issues were resolved on the merits, thereby violating his due process rights. *Lutkauskas,* 2015 IL 117090, ¶ 43.

¶ 53 Final and Appealable Orders

¶ 54 Respondent, however, maintains that this court's October 21, 2011, order is void *ab initio* because this court lacked subject matter jurisdiction.[3] In so arguing, respondent maintains that at the time this court rendered its decision in that appeal, "item H" of the complaint, which was the question of whether he should post bond to assure child support, remained an "outstanding issue," thereby preventing the orders relating to paternity and child support from being final and appealable. According to respondent, the court did not rule upon this issue until May 14, 2014, and thus the paternity and child support orders did not become final and appealable until that time.

¶ 55 In general, a determination is final if it finally disposes of the rights of the parties in relation to the entire controversy or a separate branch thereof. *Deckard v. Joiner*, 44 Ill. 2d 412, 416 (1970). For purposes of review, an order is considered final where matters left for future determination are "merely incidental to the ultimate rights which have been adjudicated by the judgment or decree." *Id.* at 417. In cases involving the determination of paternity and child support, an order fixing the amount of child support a respondent is to pay is final and appealable because the only matters left for the court, such as the enforcement of its support order or the increase of support if the need arises, are only incidental to the matters adjudicated in the initial support order. *Id*. That said, if a court's order of support reserves for future consideration issues such as retroactive child support, such an issue is not merely incidental, and thus there is no final

[3] Respondent asserts that due to this purported lack of jurisdiction, this court should vacate that order, recall its mandate to the circuit court, and "obliterate" that order from the official court index, as well as all electronic media.

judgment for purposes of appeal until that issue is resolved. *Franson on Behalf of Franson v. Micelli*, 172 Ill. 2d 352, 356 (1996).

¶ 56 In this case, the circuit court ruled on the issue of retroactive child support on June 8, 2010. Although, at that time, the court had not addressed whether respondent was required to post bond to assure child support, the record reveals that at no point in the course of this litigation has there ever been a pending motion asking that respondent be compelled to post bond.[4] Furthermore, even if such a motion had been pending on June 8, 2010, we find that the issue of whether a respondent should pay bond is related to enforcement of the support order, given that it is a means by which the court assures payment of a previously-ordered sum of support. Accordingly, we find that this issue was purely incidental, and would not have prevented the orders of parentage and support from being final for purposes of appeal. See *Deckard*, 44 Ill. 2d at 417.

¶ 57 Although respondent concentrates his argument on the bond issue, it appears that he may also be arguing that the September 23, 2014, court order pertaining to overpayment of support also prevented the parentage and support orders from being final and appealable before that date. We disagree, and find that, as with the question of bond, a question of overpayment of support is also merely incidental to the matters adjudicated in the initial orders of parentage and support. Accordingly, contrary to respondent's assertion, we find that this court did not lack jurisdiction to render our October 21, 2011 order, and, accordingly, that it properly serves as the basis for *res judicata* in relation to the above mentioned claims.

¶ 58 *Res judicata* aside, we find that these particular claims are also untimely. Pursuant to Illinois Supreme Court Rule 303(a)(1) (eff. June 4, 2008), respondent was required to file an

[4] The record shows that respondent's child support payments are automatically withdrawn from his salary. Thus, it appears that no such bond would be required under these circumstances.

appeal within 30 days of when final judgment was entered, or within 30 days after entry of the order disposing of a timely post judgment motion directed against that judgment. Here, respondent filed a post judgment motion in relation to the court's June 8, 2010, order on July 2, 2010. The court denied the post judgment motion on October 19, 2010. Accordingly, respondent was required to file an appeal within 30 days of that date. However, he did not file this appeal until October 10, 2014. Thus, even if respondent had not obtained a decision in this court in a prior appeal, thereby barring these claims due to *res judicata*, all of the above listed claims would nevertheless be untimely. We now turn to respondent's remaining claims.

¶ 59 Interest on Retroactive Support Award

¶ 60 Respondent contends that he should not be charged interest on the unpaid portion of the $5,098 retroactive support award.[5] The interest at issue was awarded pursuant to statute, so we must examine that statutory language. We review *de novo* an issue of statutory interpretation because it presents a question of law. *In re Christopher K.*, 217 Ill. 2d 348, 364 (2005).

¶ 61 Section 505(b) of the Illinois Marriage and Dissolution of Marriage Act provides, in pertinent part:

> "A support obligation, or any portion of a support obligation, which becomes due and remains unpaid as of the end of each month, excluding the child support that was due for that month to the extent that it was not paid in that month, shall accrue simple interest as set forth in Section 12-109 of the Code of Civil Procedure." 750 ILCS 5/505(b) (West 2014).

In turn, Section 12-109 of the Code of Civil procedure provides, in pertinent part:

[5] Petitioner points out that the Department addressed this issue in its administrative decision and questions whether it can be revisited by this court in the absence of certain prerequisites, which it appears respondent has not fulfilled. We need not address this issue, however, because we find that even assuming that respondent had fulfilled those prerequisites, his argument nevertheless fails.

> "Every judgment arising by operation of law from a child support order shall bear interest as provided in this subsection. The interest on judgments arising by operation of law from child support orders shall be calculated by applying one-twelfth of the current statutory interest rate as provided in Section 2-1303 to the unpaid child support balance as of the end of each calendar month. The unpaid child support balance at the end of the month is the total amount of child support ordered, excluding the child support that was due for that month to the extent that it was not paid in that month *and including judgments for retroactive child support*, less all payments received and applied as set forth in this subsection." (Emphasis added.) 735 ILCS 5/12-109 (West 2014).

¶ 62 We find that pursuant to this language, it is clear and unambiguous that the unpaid principal on a retroactive support judgment is included when calculating interest. It is further clearly evident that such accrual of interest is imposed by statute, and not, as respondent contends, a matter which results only upon the submission of a petition.

¶ 63 Respondent, however, maintains that the interest he was charged on the retroactive support award constitutes a statutory penalty pursuant to 735 ILCS 5/13, and is thus "barred after 2 years from the date the amount was awarded if the petitioner fail [*sic*] to request for the award of interest." Respondent acknowledges that he can cite no case law that directly supports this contention, but maintains that *Landis v. Marc Realty*, L.L.C., 235 Ill. 2d 1, 3 (2009), provides insight that "interest charged against [him] in this action was a statutory penalty bared [*sic*] after two years." In *Landis*, however, the Illinois Supreme Court answered in the affirmative the question of whether a particular provision of the Chicago Residential Landlord and Tenant Ordinance constituted a "statutory penalty," thereby requiring the plaintiffs to file their complaint within two years of when their cause of action accrued, pursuant to section 13-202 of the Code of

Civil Procedure (735 ILCS 5/13-202 (West 2004)). *Id.* at 303-04, 308. Respondent appears to construe *Landis* as imposing a two-year statute of limitations in any instance where interest is imposed pursuant to statute. However, here, unlike in *Landis*, petitioner was not required to file an action in order to attain interest on the retroactive support award. Rather, it was imposed automatically pursuant to statute. Accordingly, respondent's argument fails.

¶ 64 Respondent further maintains that the interest in this case was improper because in the written retroactive support order, the following phrase is included: "The amount of $5098 from 7/30/08 (date of summons service) to 1/19/09 is current and not due. Payment to be made prospectively at the amount of $25 every bi-week." According to respondent, inclusion of the phrase "current and not due" "bars interest on support from 7/30/08 to 1/19/09 in this action until 6/8/2010 order of support terminated or modified." We find that nothing in the record reflects that the circuit court intended to deviate from the statutory scheme for the accrual of interest. Furthermore, even if that had been the court's intent, respondent has cited no authority supporting the contention that the court had authority to alter the terms of the statute, which, as discussed above, provides that the accrual of interest is applicable to every child support judgment. See 735 ILCS 5/12-109(b) (West 2014).

¶ 65 Mootness of Income Withholding/Delinquency Fees Issue

¶ 66 Respondent next contends that the circuit court erred in deeming his claim regarding income withholding notices[6] to be moot in light of the administrative decision. According to respondent, his claim is not moot because it is an issue that is capable of repetition. Because it is a question of law, we review *de novo* the question of whether the circuit court's mootness determination is correct. *In re Rita P.*, 2014 IL 115798, ¶ 30.

[6] The record reveals that in referring to "income withholding notices," respondent is referring to certain notices reflecting that a greater amount would be withheld from his salary due to delinquency charges.

¶ 67 In general, Illinois courts do not decide moot questions, render advisory opinions, or consider issues where the result will not be affected regardless of how the issues are decided. *In re Alfred H.H.*, 233 Ill. 2d 345, 351 (2009). A matter is moot if no actual controversy exists or if events have occurred that make it impossible for the reviewing court to grant the complaining party effectual relief. *In re Marriage of Eckersall*, 2015 IL 117922, ¶ 9. Here, respondent raised two issues pertaining to the income withholding notices. He first maintained that they were erroneously issued because he was never delinquent in his payments. He then argued that due to these mistaken delinquency charges, he overpaid his support obligations. The record reveals that the court found only the first of these issues to be moot.

¶ 68 As previously discussed, in the administrative decision the Department found that respondent had been mistakenly assessed multiple delinquency charges due to a glitch in the computer system which caused respondent to appear to be delinquent "on paper," when he was in fact current with his payments. The Department gave directions for that computer issue to be fixed in order to prevent future incorrect delinquency charges, and ordered a new accounting to determine how much respondent overpaid his support obligation as a result of the mistaken delinquency charges. Notably, respondent does not maintain that the computer issue was not fixed or that he has been subjected to mistaken delinquency charges since the issue was brought to the Department's attention and corrected. Accordingly, it appears to be uncontested that this issue no longer exists. We thus find that no actual controversy exists regarding whether respondent is being mistakenly assessed delinquency charges, thereby rendering the issue moot.

¶ 69 Respondent, however, maintains that the capable of repetition yet evading review exception to the mootness doctrine is applicable in this case. This exception has the following two elements: (1) the challenged action must be of a duration too short to be fully litigated prior

to its cessation, and (2) there must be a reasonable expectation that "the same complaining party would be subjected to the same action again." *In re Alfred H.H.*, 233 Ill. 2d at 358 (quoting *In re Barbara H.*, 183 Ill. 2d 482, 491 (1998)).

¶ 70 According to respondent, he could be subjected to income withholding notices "for any reason including non-payment of support" at any time until Y.I. attains the age of majority. However, in so arguing, respondent fails to grasp that if he indeed failed to pay his child support obligations in the future, he would be rightfully subjected to income withholding notices at that time which would result in delinquency charges. Those notices and charges would be entirely separate and distinct from the ones about which he previously complained and which are presently before this court. The prior notices and charges were the result of a computer glitch. Given that the computer issue has been fixed, we find that it cannot reasonably be expected that respondent would be subjected to income withholding notices that are the result of this computer glitch. Although, as respondent points out, he may be subjected to income withholding notices at any point in the future, such notices would pertain to different factual scenarios, such as respondent's payment history at that particular point in time. The facts pertaining to the income withholding notices relevant in this appeal would have no bearing on such a different factual scenario. See *In re Alfred H.H.*, 233 Ill. 2d at 359-60 (in case involving involuntary commitment, finding capable of repetition yet evading review exception inapplicable where respondent disputed whether the specific facts adduced at the commitment hearing were sufficient to involuntarily admit him and argued that he would likely face another petition for involuntary commitment in the future). We thus find that the capable of repetition yet evading review exception to the mootness doctrine is inapplicable here.

¶ 71 Overpayment

¶ 72 Respondent next argues that the circuit court erred in the amount of the overpayment judgment it awarded in his favor and against petitioner in that he is entitled to $4,742.82 instead of the $997.24 that he was awarded due to overpaid support. In so arguing, he maintains that we may not consider the arguments that were made before the trial court on this issue, or that are included in petitioner's brief, because those arguments were inappropriately made by staff from the State's Attorney and Attorney General's offices. According to respondent, staff from neither of those offices can "argue" issues such as the refund of overpaid child support. In support, he cites to section 18(b) of the Illinois Parentage Act, which states that representation by those offices shall be limited to "establishment and enforcement of orders for support, and shall not extend to visitation, custody, property or other matters." 750 ILCS 45/18(B) (West 2014). We find that issues pertaining to the correct amount of child support that is owed relate to the establishment and enforcement of orders for support and do not constitute "other matters." Respondent has cited no authority stating otherwise.

¶ 73 In general, those who make voluntary overpayments of child support, even under circumstances where they mistakenly believe that those payments are legally required, are not entitled to credit for those overpayments. *In re Marriage of Tollison*, 208 Ill. App. 3d 17, 19-20 (1991). However, under circumstances where those overpayments were not voluntarily made, such as when they are the result of a wage deduction order, a court may order reimbursement of those involuntary child support payments. *Id.* at 20. Here, the record reveals that the Department conducted an accounting after the aforementioned computer glitch was discovered and corrected. Therein, the Department calculated that, as a result of the erroneous delinquency fees, respondent had overpaid petitioner $997.24. That accounting was supplied to the court in this case, and the court found it credible in all respects. Although respondent argued that he had overpaid by

significantly more, the court found that respondent's calculations were not credible, and noted that he had failed to speak with a Department accountant in spite of having been ordered to do so. Under these circumstances, we find that respondent failed to show that he was entitled to a larger sum, and, accordingly, that the court's judgment was not erroneous.

¶ 74 We note that respondent also argues that, as a result of the erroneous delinquency charges, the Department improperly intercepted state tax refunds due to him, and asks this court to direct petitioner to refund those funds. However, we find that this argument is subsumed within the question of the amount by which he overpaid support, which, as discussed above, was properly found to be $997.24.

¶ 75 Petition to Modify Support

¶ 76 Respondent also argues that the trial court erred in denying the petition to modify child support, which he filed on February 14, 2012. The decision of whether to modify a child support order is within the circuit court's discretion, and on review we will not disturb the court's decision absent an abuse of that discretion. *In re Marriage of Popa and Garcia*, 2013 IL App (1st) 130818, ¶ 21.

¶ 77 Pursuant to the Parentage Act, "any support judgment is subject to modification or termination only in accordance with Section 510 of the Illinois Marriage and Dissolution of Marriage Act." 750 ILCS 45/16 (West 2012). In turn, section 510 of the Illinois Marriage and Dissolution of Marriage Act provides that an order for child support may be modified (1) upon a showing of a substantial change in circumstances, or (2) without needing to show a substantial change in circumstances if certain conditions are present. 750 ILCS 5/510(a)(1), (2) (West 2012).

¶ 78 Substantial Change in Circumstances

¶ 79 Here, respondent first maintains that the court erred in denying his petition to modify child support because he made a showing of a substantial change in circumstances that was caused by $64,000 in business losses he suffered in 2011.

¶ 80 The record reveals that in 2011 respondent was employed at the Rehabilitation Institute of Chicago, where he earned approximately $69,300. According to respondent, in addition to that employment, he sought to earn additional money by starting a stock trading business that he operates out of his home, however, he sustained $64,000 in losses related to that business in 2011. He further contends that self-prepared financial documents he submitted to the court reflect that as a result of those losses his monthly net income for child support purposes is $498.53, thus warranting a downward modification in child support. However, at a hearing on his motion, respondent acknowledged that his stock trading business had no investors aside from himself, and that all profits from it accrued to him. We thus agree with the court's determination that respondent's "business" was not actually a business, but rather, an artificial entity. Further, to the extent that respondent sustained losses in relation to this "business," the circuit court was not required to find that these losses, which were the result of respondent's voluntary choice to invest in a stock trading business, amounted to a substantial change in circumstances. See *In re Marriage of Deike*, 381 Ill. App. 3d 620, 624-25, 632 (2008) (finding that $45,600 in business losses incurred by the minors' father did not constitute a substantial change in circumstances where he voluntarily chose to invest in opening a bar and grill after he was laid off from his prior employer).

¶ 81 The party seeking the relief bears the burden of demonstrating a substantial change in circumstances warranting a modification of child support. *In re Marriage of Mulry*, 314 Ill. App. 3d 756, 760 (2000). Here, we find that respondent failed to sustain that burden, and, accordingly,

the circuit court did not abuse its discretion in denying his petition to modify child support on this basis.

¶ 82 Guidelines

¶ 83 Respondent additionally contends that the court erred in denying his petition to modify child support because he was entitled to such a modification pursuant to section 510(a)(2)(A) of the Illinois Marriage and Dissolution of Marriage Act. 750 ILCS 5/510(a)(2)(A) (West 2012). That section provides that an order for child support may be modified without needing to show a substantial change in circumstances, if certain conditions are present. *Id.*

¶ 84 We first note that respondent contends, and the record reveals, that although this particular provision does not require that he show a substantial change in circumstances, the court appeared to deny the portion of his petition that was based on this provision for failure to show a substantial change in circumstances. However, we may affirm the circuit court's judgment based on any grounds that appear in the record, regardless of whether that particular ground was relied upon by the circuit court or whether the circuit court's reasoning was correct. *In re Marriage of Lehr*, 317 Ill. App. 3d 853, 862 (2000).

¶ 85 We further note that petitioner questions whether respondent can avail himself of this particular provision, which specifies that it applies only in cases in which a party is receiving child support enforcement services, because respondent is not the party receiving those services. 750 ILCS 5/510(a) (West 2012). We need not decide this question, however, because we find that even if respondent can avail himself of this provision, he has failed to show that the court abused its discretion in denying his petition to modify child support on this basis.

¶ 86 Pursuant to section 510(a)(2)(A) of the Illinois Marriage and Dissolution of Marriage Act, an order for child support may be modified "upon a showing of an inconsistency of at least

20% [] between the amount of the existing order and the amount of child support that results from application of the guidelines specified in section 505 of this Act []." 750 ILCS 5/510(a)(2)(A) (West 2012). In turn, section 505 provides that a court shall determine the minimum amount of support according to specified guidelines which are based on the number of children to be supported and a designated percentage of the supporting party's net income. 750 ILCS 5/505(a)(1) (West 2012). In cases involving only one child, the minimum amount of support is 20% of the supporting party's net income, which is defined as the total of all income from all sources, minus certain deductions, including "[e]xpenditures for repayment of debts that represent reasonable and necessary expenses for the production of income." 750 ILCS 5/505(a)(1), (a)(3)(h) (West 2012).

¶ 87 Here, the record reveals that the current support order is based on a bi-weekly net income of $2,076. According to respondent, however, the record "clearly shows" that his net income is actually only $498.53, and thus, the current support order, which is based on his prior net income of $2,076, is more than 20% inconsistent with the application of guidelines.[7]

¶ 88 As reflected in the self-prepared financial documents respondent submitted in support of his petition to modify child support, he sought to deduct from his monthly gross income certain expenditures that he maintained were "for repayment of debts that represent reasonable and necessary expenses for the production of income." Those claimed deductions were, for the most part, related to items such as expenses for a home office and payments on his home mortgage, credit card debt, and car loan, which it appears that respondent considered to be required expenditures for producing income on the basis that they related to an "at home" business,

[7] This court previously rejected respondent's claim that the circuit court miscalculated his net income in arriving at its support order determination. To the extent respondent is raising the same purported deductions in arriving at his net income calculation, we observe that a petitioner cannot use a motion to modify as a vehicle for launching a collateral attack on the accuracy of the evidence upon which the court relied in formulating its judgment." *In re Marriage of Hughes*, 322 Ill. App. 3d 815, 819 (2001).

primarily consisting of stock trading. Although respondent maintains that the financial statements and disclosures that he submitted were "undisputed and uncontested," the record reveals that the court found that those documents were not credible and that respondent had engaged in some "creative" accounting. As previously discussed, the court also found that respondent's stock trading business was not a true business, but rather, was merely an artificial means for claiming deductions, and that respondent "lacks credibility with his calculation of his net income because of the business deductions he is trying to take." We thus find that the circuit court did not abuse its discretion in denying respondent's petition to modify on the basis that the support order was inconsistent with applicable guidelines.

¶ 89 In reaching this conclusion, we have considered *Department of Public Aid ex rel. Nale v. Nale*, 294 Ill. App. 3d 747, 751 (1998), upon which respondent relies. Notably, in this case, because the parties agreed that a substantial change in circumstances was present, the reviewing court specified that it need not address whether a modification in support was warranted under section 510(a)(2)(A) of the Illinois Marriage and Dissolution Act, which deals with the statutory guidelines. *Id.* Accordingly, respondent's reliance upon this case is misplaced.

¶ 90 Post Decree Petition

¶ 91 Finally, respondent maintains that the trial court erred in denying a portion of his June 11, 2014, post decree petition on the basis of *res judicata* because this court's prior order of October 21, 2011, is void *ab initio*, and the issues of parentage and support were not resolved on the merits. As previously noted, respondent filed his June 11, 2014, post-decree petition under section 2-1303 of the Code of Civil Procedure, and asked the court to, *inter alia*, vacate the January 9, 2009, parentage order and the April 24, 2009, support order. To the extent respondent sought to vacate those orders, the court treated that portion of the petition as a section 2-1401

motion, which it denied on the basis of *res judicata*, finding that the issues regarding parentage and support had previously been litigated, ruled on and appealed. In doing so, the court referred to this court's order dated October 21, 2011, which was a prior appeal in this action, and May 8, 2013, which dealt with respondent's common law action against petitioner.

¶ 92 We have already discussed, and rejected, respondent's claim that our order dated October 21, 2011, is void *ab initio*. We need not address it further here. Respondent also argues that even if that order is valid, our ruling was not on the merits, and thus *res judicata* is inapplicable. In so arguing, respondent maintains that because, due to the lack of report of proceedings, this court presumed that the circuit court's orders on parentage and support were in conformity with the law and had a sufficient factual basis, no decision was made on the merits.

¶ 93 As previously noted, a judgment is "on the merits" where it amounts to a decision as to the respective rights and liabilities of parties based on the facts before the court. *SDS Partners, Inc.*, 305 Ill. App. 3d at 896. Although this court's judgment as to certain issues in our prior order was based on a presumption of correctness due to a lack of report of proceedings, the fact remains that we affirmed the judgment of the circuit court relating to, *inter alia*, the orders of parentage and support. By doing so, this court rejected respondent's contention that those orders should be vacated, and thereby decided that respondent's respective rights and liabilities remained the same in relation to those orders. Accordingly, respondent's argument fails.

¶ 94 Respondent further maintains that his common law action for fraud and breach of contract action against petitioner cannot serve as the basis for *res judicata* against him in this action because the two actions are clearly distinguishable in that one is a statutory proceeding and the other is based on common law. However, while the circuit court referred solely to *res judicata*, we may affirm the circuit court on any basis in the record, and we find that the doctrine

of collateral estoppel is applicable in relation to respondent's common law suit against petitioner. See *Schandelmeier-Bartels v. Chicago Park District*, 2015 IL App (1st) 133356, ¶ 34. The doctrine of collateral estoppel precludes relitigation of controlling facts or issues adjudicated in different causes of action that involve the same parties. *Id.* ¶ 35. In his common law suit against petitioner, respondent alleged that she had fraudulently induced him to agree to paternity as part of an alleged private settlement of child support. Thus, we find that the trial court did not err in finding that to the extent respondent sought to relitigate the issues that had been previously addressed in his common law action, he was barred from doing so.

¶ 95 CONCLUSION

¶ 96 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 97 Affirmed.