2016 IL App (1st) 153052-U

SIXTH DIVISION
September 30, 2016

No. 1-15-3052

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re the Marriage of:	)	Appeal from the Circuit Court of Cook County.
JAMES D. RILEY, JR.,	)	
Petitioner-Appellee,	)	No. 01 D 14035
and	)	
CHRISTINA M. RILEY,	)	Honorable Regina Scannicchio, Judge Presiding.
Respondent-Appellant.	)	

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

ORDER

¶ 1 ***Held:*** We dismiss this post-decree dissolution of marriage appeal for: (1) failure to provide an adequate record; (2) lack of an appealable order; and (3) lack of jurisdiction.

¶ 2 On September 16, 2004, the circuit court entered an order dissolving the marriage between petitioner James D. Riley, Jr., and respondent Christina M. Riley. The court awarded custody of the couple's two minor children to James and gave Christina certain visitation rights. The court initially reserved the determination of child support, but ordered Christina to pay

$140.00 per month toward health insurance premiums for the children. The court subsequently ordered Christina to pay child support of $400.00 per month.

¶ 3 In 2010, Christina obtained assistance from the Illinois Department of Healthcare and Family Services (DHFS) in her quest to reduce her support obligations. On June 10 of that year, DHFS filed a petition for downward modification on behalf of Christina, citing her changed financial circumstances. On July 1, 2010, the circuit court entered an order which, among many other things, stated that Christina was not present that day and was required to appear in court regarding the DHFS petition on the next court date, October 18, 2010. No transcript of either day's proceedings is in the record. DHFS eventually withdrew its petition.

¶ 4 In 2014, Christina, who had since moved to Florida, filed various *pro se* motions seeking to reduce her support obligations and requesting other forms of relief. Over the course of the next year, the court entered a series of orders governing discovery, scheduling, and other issues relevant to these motions.

¶ 5 On October 7, 2015, the court entered an order reciting that the case came before it that day on: (1) DHFS's motion to quash a subpoena; (2) Christina's (first) petition for rule to show cause against James; (3) Christina's petition to modify her child support obligations; (4) Christina's amended petition for rule to show cause against James regarding visitation; and (5) Christina's petition for a temporary restraining order. The court order noted that both parties were present in court, and it recited that it was entered upon "the court hearing testimony and argument on all petitions". The four-page order contains no less than 20 different findings and dispositions addressing various pending matters. As relevant to this appeal, the order: (1) denied Christina's "request for reimbursement of her travel expenses and costs to pursue her motion"; (2) denied Christina's request to retroactively modify her support obligations to 2005; (3)

granted Christina a modification of her support obligations in light of a change in circumstances and the emancipation of the parties' older child, retroactive only to May 30, 2014; (4) denied Christina's "oral request to modify the medical insurance contribution of $103.00 per month * * * without prejudice to the filing of a written motion"; (5) determined that Christina's outstanding medical contribution arrearage was $9,945.77 plus interest of $3,611.05, for a total of $13,556.05; and (6) scheduled a motion for sanctions against James which Christina had filed for hearing on December 2, 2015, and granted James 14 days to respond to that motion. There is no language in the order providing that it—either as a whole or any of its subsidiary parts—were final and appealable pursuant to Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016). No transcript of the proceedings held that day, or of the other hearings held on Christina's 2014 filings, is in the record.

¶ 6 On October 20, 2015, Christina filed a notice of appeal which stated that she was appealing the October 7 order. In particular, the notice states that Christina sought "Review of a denial of a judgment for retroactive downward modification of child support and downward modification of medical insurance contribution, as well as the denial of a judgment ordering the Appellee to pay Appellant's costs."

¶ 7 We note that Christina's *pro se* brief in this court contains several crucial omissions. The brief contains no index to the record, no copy of the notice of appeal, and no copies of the orders being appealed, as required by Illinois Supreme Court Rule 342(a) (Ill. Sup. Ct. R. 342(a) (eff. Jan. 1, 1995)). The rules of procedure concerning appellate briefs are rules, not mere suggestions, and it is within our discretion to strike a brief and dismiss the appeal for failure to comply with those rules. See *Niewold v. Fry*, 306 Ill. App. 3d 735, 737 (1999). However, despite this disregard for the appellate rules and the confusing presentation in the brief's

argument section, we decline to dismiss the appeal on this ground as we find the lack of compliance does not preclude our review.

¶ 8 Additionally, James has not filed a brief with this court. However, we will consider the appeal under the principle set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128 (1976), wherein the supreme court explained, "if the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief, the court of review should decide the merits of the appeal." *Id*. at 133.

¶ 9 We begin with an observation relevant to all of Christina's arguments. She seeks review of orders which were based on testimony, evidence, and discussions that occurred in open court, as well as findings the court made during those hearings. The record on appeal contains no transcripts of any of the hearings relating to the orders which Christina attacks on appeal. In *Foutch v. O'Bryant*, 99 Ill. 2d 389 (1984), our supreme court explained:

> "an appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Id*. at 391-92.

¶ 10 In the absence of a transcript, we must presume that the trial court's orders were well-grounded in fact and law and resolve any doubts in favor of the appellee. *Id*.; see also *In re Marriage of Ray*, 2014 IL App (4th) 130326, ¶ 17. We do not know what evidence or testimony was actually admitted, presented, or considered by the court, nor can we determine how the court

considered that evidence. And without that information, we have no meaningful way to assess the trial court's orders.

¶ 11 In her *pro se* brief before this court Christina raises numerous arguments which can be aggregated into three basic categories. First, she argues that the court erred by not modifying the medical insurance arrearage and the corresponding interest thereon. She claims that the trial court "determined" that her medical contribution should remain the same. Christina addresses the merits of this issue in her brief, pointing to certain evidence regarding the parties' income and how the past history of the case illustrates that the insurance amount may not have been actually agreed to by the parties ten years earlier. The October 7, 2015 written order demonstrates that Christina's characterization of the court's ruling is inaccurate. The order states that Christina's "oral request" on this issue was "denied without prejudice to the filing of a written motion". In the absence of any transcript contradicting the written order, we must conclude that the court did not resolve Christina's motion on its merits as she contends.

¶ 12 We have an obligation to review our jurisdiction on our own even if no party raises the issue. *In re Marriage of Baumgartner*, 2014 IL App (1st) 120552, ¶ 33. To be appealable, an order must fix absolutely and finally the rights of the parties so that, if affirmed, the only task remaining is to proceed with execution of the judgment. Ill. Sup. Ct. R. 303(a); *Big Sky Excavating, Inc. v. Illinois Bell Telephone Co.*, 217 Ill. 2d 221, 232-233 (2005). We look to the substance, rather than the form, of an order to determine whether it is final for the purposes of appeal, and consider its finality "with reference to the particular facts and circumstances of each case." *Clemons v. Mechanical Devices Co.*, 202 Ill. 2d 344, 350 (2002). From the record before us, it appears that Christina made an oral motion regarding the medical insurance and the court declined to consider it at all, preferring that she put it in writing. The court's decision to require

submission in that manner would be understandable, since having a written pleading would preserve the record and also would avoid surprise to James. Accordingly, it does not appear that the court resolved the issue on the merits. As such, there is no final order as to these claims that was appealable under the Illinois Supreme Court Rules, and we must dismiss the portion of the appeal regarding modification of the medical insurance premium.

¶ 13 Christina's second contention of error relates back to the June 1, 2010 order requiring her to appear in court personally on DHFS's petition for downward modification of Christina's support obligations—a petition which DHFS withdrew. Despite that withdrawal, Christina points back to the 2010 personal appearance order, arguing that appearing in Cook County on the various *later* non-DHFS post-decree matters was cost-prohibitive because she now lives in Florida. Her arguments center on section 316 of the Uniform Interstate Family Support Act, 750 ILCS 22/316 (West 2014) (Support Act). Section 316(a) of the Support Act states that "[t]he physical presence of a nonresident party who is an individual in a tribunal of this State is not required for the establishment, enforcement, or modification of a support order * * *." The key provision, section 316(f), states that "In a proceeding under this Act, a tribunal of this State shall permit a party or witness residing outside this State to be deposed or to testify under penalty of perjury by telephone, audiovisual means, or other electronic means * * *." Notably, the Support Act does not require that a *pro se* litigant must be allowed to *appear*, argue, or cross-examine witnesses merely by telephone; it only addresses how a "party or witness" may "be deposed or [ ] testify."

¶ 14 Christina contends that the Support Act required the court to allow her to appear telephonically on any post-decree matters relating to financial support for her children. She also presents various arguments that refusing to allow her to appear telephonically discriminated

against her on the basis of her economic and *pro se* status, and violated her right to equal protection of the laws. Noting that the Support Act does not explain how a party may submit a request to appear telephonically, she requests that this court give her and "future litigants" advice on how they may do so.

¶ 15 Christina directs us to no motion or pleadings in the record wherein she specifically requested the ability to appear telephonically pursuant to the Support Act, and our review of the record reveals none. More importantly, there is no order denying any such request. The June 1, 2010 order requiring her to appear was not entered in the context of any such request; rather, the court entered it in her absence, to facilitate DHFS's prosecution of its motion for downward modification. DHFS later withdrew that motion, rendering the issue moot. We acknowledge that Christina requested reimbursement for her travel costs—an issue we discuss below—but she forfeited review of the Support Act issue by failing to raise it in the trial court by actually requesting to appear telephonically. As our supreme court has explained, "The purpose of this court's forfeiture rules is to encourage parties to raise issues in the trial court, thus ensuring both that the trial court is given an opportunity to correct any errors prior to appeal and that a party does not obtain a reversal through his or her own inaction." *1010 Lake Shore Association v. Deutsche Bank National Trust Co.*, 2015 IL 118372, ¶ 14. Additionally, in civil cases, constitutional issues not presented to the trial court are deemed forfeited and may not be raised for the first time on appeal. *Sherman v. Indian Trails Public Library District*, 2012 IL App (1st) 112771, ¶ 21. Since there is no order for us to review, answering Christina's questions would amount to rendering an advisory opinion, something which we are prohibited from doing. *People ex rel. Partee v. Murphy*, 133 Ill. 2d 402, 410 (1990). We dismiss the appeal as to this issue.

¶ 16 Christina's third contention of error also mischaracterizes what occurred. She seeks review of what she states was the denial of her motion for sanctions and imposition of costs (including her interstate travel expenses) against James. As noted above, though, the October 7, 2015 order set Christina's motion for sanctions against James for hearing on December 2, 2015, with James granted 14 days to respond to that motion. Therefore, the portion of the October 7 order regarding sanctions was not appealable (see *supra* ¶ 12). Since the court did not deny the sanctions motion on October 7, we must consider what occurred on December 2.

¶ 17 The statement of jurisdiction in Christina's brief helps tie up this loose end. It states that she seeks review of orders entered on October 7, 2015 and December 2, 2015. The statement of facts in the brief asserts that on December 2, 2015, Christina again traveled to Cook County for the previously scheduled hearing on the sanctions motion, "but upon appearing, the court said that it didn't know why Respondent appeared as her motion for sanctions had merged with findings contained in the order that was rendered on October 7, 2015 and dismissed her sanctions motion." Neither a copy of the December 2, 2015 order nor a transcript of the hearing that day is in the record, but we will assume for the moment that her representation of what transpired is accurate.

¶ 18 Christina filed her notice of appeal on October 20, 2015, so it could not have addressed orders which the court had not yet entered and would not enter until six weeks later. It is true that a timely notice of appeal is to be liberally construed, and that it encompasses not only the order specified therein, but all orders in the procedural progression leading up to it. *Burtell v. First Charter Serv. Corp.*, 76 Ill. 2d 427, 434-435 (1979). However, the converse is not true. This court has no jurisdiction over orders entered *after* the date of the notice of appeal. See Ill. Sup. Ct. R. 303(a)(1) ("The notice of appeal must be filed * * * within 30 days *after* the entry of

the final judgment appealed from.") (Emphasis added.) Accordingly, we dismiss the portion of Christina's appeal which seeks review of the October 7, 2015 sanctions order for lack of an appealable order and the portion relating to the December 2, 2015 sanctions order for lack of jurisdiction.

¶ 19 For these reasons, we dismiss the appeal in its entirety.

¶ 20 Dismissed.