2016 IL App (2d) 151125-U
No. 2-15-1125
Order filed August 24, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re PARENTAGE of M.E.P., a Minor,	)	Appeal from the Circuit Court
	)	of Lake County
	)	
	)	No. 09-F-869
	)	
	)	Honorable
(Dana Prouty, Petitioner-Appellant, v. Adam	)	Charles D. Johnson,
Timothy Kafka, Respondent-Appellee).	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices McLaren and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court's order directing petitioner to appear in court with minor child was not a default judgment; trial court properly determined Illinois had relinquished jurisdiction in accordance with the Uniform Child-Custody Jurisdiction and Enforcement Act (Act) (750 ILCS 36/101 *et seq.* (West 2016)); making of contract substantially connected with Illinois did not override provisions of the Act and allow Illinois court to exercise jurisdiction; execution of warrant required neither notice to petitioner nor the filing of a motion; and trial court did not err in declining to award child support to noncustodial spouse despite difference in economic circumstances between the parties.

¶ 2 I. INTRODUCTION

¶ 3 Petitioner, Dana Prouty, appeals a series of orders of the circuit court of Lake County, raising five main issues. First, she argues that the trial court erred when it entered an alleged default order against her on December 11, 2014, where she lacked notice of the hearing at which it was entered. Second, she contends that the trial court erred in finding that Illinois had relinquished jurisdiction over this case for the purposes of the Uniform Child-Custody Jurisdiction and Enforcement Act (Act) (750 ILCS 36/101 *et seq.* (West 2016)). Third, she asserts that a contract between the parties gives Illinois jurisdiction over this case. Fourth, she argues that she was denied due process where, during a hearing held on January 5, 2015, the trial court purportedly entered an order requiring her to turn the minor, M.E.P., over to respondent, Adam Timothy Kafka, without notice to her that a motion for turnover was pending on that date. Fifth, she asserts that the trial court erred in terminating respondent's obligation to pay child support. For the reasons that follow, we affirm.

¶ 4 II. BACKGROUND

¶ 5 On October 30, 2008, petitioner gave birth to the minor, M.E.P. Respondent is M.E.P.'s father. On September 10, 2009, petitioner filed the instant action seeking to determine custody, child support, and other related issues regarding the minor. The parties entered into an agreed parenting order on July 12, 2010. In November 2013, petitioner filed a petition seeking to have the court "exercise Subject Matter Jurisdiction with respect to the custody of M.E.P." and two other minors (M.H.P. and M.J.P.), of whom petitioner was the mother and another man, Bradley Hughes, was the father. See *In re M.P.*, 2016 IL App. (2d) 160004-U. It further asked that the trial court enjoin the enforcement of a warrant issued by an Arizona court directing custody of M.E.P. and M.J.P. (M.H.P. had not yet been born) be turned over to their respective fathers.

¶ 6 The petition stated that petitioner had been in an "amorous relationship" with Hughes, an Arizona resident. It further alleged petitioner lived in Arizona on a temporary basis on September 12, 2012. It stated that "a custody proceeding is ongoing in the state of Arizona with respect to M.J.P., but no final custody determination ha[d] been made." The petitioner goes on to allege a course of conduct between the parties which are largely not material to the issues presented in this appeal, which concerns the jurisdiction and the procedural conduct of the proceedings below. As such, we will not set them forth in detail here; rather, any material fact will be discussed in the context of the issue to which it is relevant.

¶ 7 III. ANALYSIS

¶ 8 Petitioner raises five issues on appeal: that she was not given notice of a hearing on December 11, 2014, at which a default order was entered; that Illinois retained jurisdiction over the case; that Illinois has jurisdiction by virtue of a joint agreement regarding visitation (*i.e.*, a contract); that she was not given notice of a motion to turn over M.E.P. to respondent on January 5, 2015; and that the trial court erred in its determination regarding child support. We will discuss these issues in the order presented by petitioner. At various points in her brief, petitioner makes arguments that are undeveloped, unsupported by legal authority, or not substantiated by citation to the record. We will not address such contentions. *Velocity Investments, LLC v. Alston*, 397 Ill. App. 3d 296, 297 (2010).

¶ 9 A. The Purported Default Order

¶ 10 Petitioner first argues that an order by the trial court entered on December 11, 2014, was entered in default, as she had not appeared at the hearing, and should be vacated. She contends that she was not given notice of the hearing, so the default order is void. See *Buffington v. Yungen*, 322 Ill. App. 3d 152, 155 (2001). She also argues sanctions should be progressive, and

it was inappropriate to impose the sanction of default, as it is the most severe of sanctions. *Jaffe v. Fogelson*, 137 Ill. App. 3d 961, 964-65 (1985). While we have no quarrel with either proposition, the portion of the order that petitioner complains of was not a default order.

¶ 11 The order states, in pertinent part, as follows:

> "It is hereby ordered:
>
> (1) Count I of [respondent's] motion is granted. [Respondent's] obligation to pay child support to [petitioner] is terminated, retroactive to November 12, 2013.
>
> (2) Count II of [respondent's] motion (regarding setting [petitioner's] child support obligation) is set for status on January 5, 2015 at 9:00 a.m.
>
> (3) [Petitioner] shall appear before the Honorable Charles D. Johnson on January 5, 2015 at 9:00 a.m. in Courtroom 101 ***. [Petitioner] shall also bring the minor child (M.E.P.) with her to Court ***. Failure of [petitioner] and the minor child to appear *** shall result in the issuance of a writ of body attachment (arrest)."

The trial court subsequently vacated the portion of the order terminating respondent's obligation to pay child support; petitioner argues the trial court should have vacated the entire order.

¶ 12 The balance of the order, however, is neither a default nor a sanction. It simply required petitioner to appear in court at a certain time with M.E.P. Any turnover of M.E.P. to respondent was not done by virtue of this order; it was done pursuant to the Arizona warrant. A hearing was set for January 5, 2015, at which petitioner appeared, represented by counsel, and was given an opportunity to be heard. Indeed, the warrant had been previously enrolled in Illinois by a Lake County judge on December 5, 2013. This order indicates that both parties were present; hence, petitioner had an opportunity to raise any issues at this point. Moreover, at oral argument, petitioner's counsel was asked whether petitioner took any steps in Arizona to contest or quash

the warrant. Counsel was unable to identify any such steps. In short, the order petitioner complains of simply is not a default order and did not cause the turnover of M.E.P. to respondent.

¶ 13 B. Jurisdiction

¶ 14 Petitioner next contends that the trial court erred by finding that Illinois relinquished jurisdiction in favor of Arizona regarding all custody issues. The trial court noted that the issue had been twice presented to Illinois courts, and both times, the courts determined that Arizona and not Illinois had jurisdiction under the Act (750 ILCS 36/101 *et seq.* (West 2016)). Petitioner contends that Illinois had not fully relinquished jurisdiction, as the orders referenced by the trial court were emergency orders entered while emergency proceedings were pending in Arizona.

¶ 15 Petitioner makes much of the fact that in neither of the earlier orders did the courts state that *all* jurisdiction was relinquished. In the first, the trial judge stated that Arizona was the proper forum to litigate "these matters." In the second, the trial judge stated, while vacating an emergency order, that "all further proceedings should be held in the State of Arizona." Regarding the latter, petitioner points out, "[a]gain, that Order did not state that the 19th Judicial Circuit relinquished its jurisdiction as to all custody matters relating to M.E.P., but rather again dealt with an emergency Order of Protection while emergency proceedings were already taking place in Arizona." While we do not find such parsing of words particularly persuasive, we note that the second order concerning "all further proceedings" appears quite broad and the trial court could have reasonably interpreted it as a complete relinquishment of jurisdiction.

¶ 16 Petitioner then reasons that the January 5, 2015, order, where the trial court recognized the earlier orders, could not have been such a relinquishment, as the trial judge misapprehended the scope of the two earlier orders. However, it is axiomatic that we review the result the trial

arrived at rather than its reasoning. *In re Marriage of Ackerley*, 333 Ill. App. 3d 382, 392 (2002). Thus, assuming *arguendo*, January 5, 2015, was the first time an Illinois court relinquished jurisdiction, it was incumbent on petitioner (having the burden of proof on appeal (*TSP-Hope, Inc. v. Home Innovators of Illinois, LLC*, 382 Ill. App. 3d 1171, 1173 (2008))) to establish that, under the Act, relinquishing jurisdiction was improper—not simply that the trial court's reasoning was flawed.

¶ 17 Petitioner does argue that under Arizona law, the Arizona court lacked jurisdiction to modify an Illinois court's initial custody determination (the agreed parenting order on July 12, 2010). See *Melgar v. Campo*, 161 P.3d 1269, 1271-72 (Ariz. App. 2007). However, this argument is premised on Illinois not relinquishing jurisdiction, and, as explained above, at the very least, the second order referenced by the trial court in the January 5, 2015, order can be read as relinquishing "all" jurisdiction.

¶ 18 Petitioner points to section 202 of the Act (750 ILCS 36/202 (West 2016)), which states

> "Except as otherwise provided in Section 204, a court of this State which has made a child-custody determination consistent with Section 201 or 203 has exclusive, continuing jurisdiction over the determination until:
>
> > (1) a court of this State determines that neither the child, the child's parents, and any person acting as a parent do not have a significant connection with this State and that substantial evidence is no longer available in this State concerning the child's care, protection, training, and personal relationships; or
> >
> > (2) a court of this State *or a court of another state* determines that the child, the child's parents, and any person acting as a parent do not presently reside in this State." (Emphasis added.)

On December 12, 2013, the Superior Court of Maricopa County, Arizona, entered such an order (Arizona has a statute materially identical to section 36). It found that Illinois had original jurisdiction at the time the joint parenting agreement was entered. It noted that petitioner signed a Severance Petition filed in Arizona listing her and M.E.P.'s address as being in Phoenix, Arizona. The Arizona court determined that this was a judicial admission that petitioner was no longer an Illinois resident. It then noted various other similar filings. Hence, a court of another state has determined that neither M.E.P. nor her parents reside in Illinois, thus terminating exclusive and continuing jurisdiction in Illinois. Petitioner makes several complaints about the Arizona court's determination—both procedural and substantive. However, we are an Illinois court of review, and complaints about an Arizona court should be (or should have been) raised in Arizona. Indeed, we lack the authority to examine the *bona fides* of an Arizona court's decision. See *Doctor's Associates, Inc. v. Duree*, 319 Ill. App. 3d 1032 (2001) ("We similarly reject [defendant's] contention that his due process rights were infringed upon by the Kansas high court because the court lacked a 'command of the facts.' In essence, [Defendant] seeks an independent review of the findings and rulings made by the Kansas court. Undoubtedly, we are barred by the full faith and credit clause from engaging in such a review.")

¶ 19 Petitioner further relies on *McCormick v. Robertson,* 2015 IL 118230, ¶ 27, which held that regardless of the provisions of the Act, an Illinois trial court has jurisdiction over "all justiciable matters." This, of course, is true, as a circuit court's jurisdiction emanates from the constitution rather than from statutes. *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002). As such, the circuit court had (and continues to have) jurisdiction—in the sense of the power to modify—over the issue of child custody.

¶ 20 What petitioner fails to recognize is that despite the fact that the trial court literally has subject matter jurisdiction, the Act establishes prudential limitations on the exercise of that jurisdiction. In *Gorup v. Brady*, 2015 IL App (5th) 150078, ¶ 20, the Fifth District of this appellate court, addressing *McCormick* explained that while a trial court may have jurisdiction pursuant to the constitution, it nevertheless still must follow the Act in *exercising* that jurisdiction. Indeed, *McCormick* noted, " 'the constitutional source of a circuit court's jurisdiction does not carry with it a license to disregard the language of a statute.' " *McCormick*, 2015 IL 118230, ¶ 22 (quoting *In re M.M.*, 156 Ill. 2d 53, 75 (1993) (Miller, C.J., concurring)). Accordingly, we are compelled to reject petitioner's argument on this point; the mere fact that the trial court had subject matter jurisdiction does not mean that it should have exercised it. Indeed, a proper application of the Act requires a finding that it should not have.

¶ 21 In sum, after having reviewed petitioner's arguments, we conclude that the trial court properly determined that Illinois should not exercise jurisdiction over this matter and that the courts of Arizona are the proper forum.

¶ 22 C. The Contract as Basis for Jurisdiction

¶ 23 Petitioner points to an agreement entered into between the parties on November 19, 2013, regarding respondent's parenting time. In it, they agreed that respondent's visitation would occur in Illinois. Petitioner cites section 2-209(7) of the Code of Civil Procedure in support. 735 ILCS 5/2-209(7) (West 2016). Section 2-209 is our long-arm statute, and subsection 7 does, indeed, establish personal jurisdiction over a person who enters into a contract "substantially connected with this State." *Id.* Nevertheless, this argument fails for the same reason that petitioner's argument based on *McCormick*, 2015 IL 118230, did. Though section 2-209 addresses personal jurisdiction rather than subject matter jurisdiction (see *Viktron Limited*

Partnership v. Program Data, Inc., 326 Ill. App. 3d 111, 117 (2001)), it does not override the provisions of the Act that establish when that jurisdiction should be exercised. That is, even though a trial court has personal and subject matter jurisdiction is a given case, it should nevertheless decline to exercise that jurisdiction as indicated by the provisions of the Act. See *Gorup*, 2015 IL App (5th) 150078, ¶ 20. Accordingly, that the trial court had personal jurisdiction over respondent provides no help to petitioner.

¶ 24 D. Lack of Notice

¶ 25 Petitioner next complains that she was given no notice of a motion to turnover M.E.P. to respondent during the January 5, 2015, hearing. Indeed, no such written motion was filed. Petitioner again ignores the fact that the turnover of M.E.P. was effectuated pursuant to the Arizona warrant. We again note that the warrant was enrolled in Illinois on December 5, 2013, in a hearing at which petitioner was present. Thus, she was aware of the existence of the warrant. Petitioner cites nothing to support the notion that enforcing a warrant requires the filing of a motion or notice of any sort, and we are unaware of any such rule of law. Petitioner has not established that any sort of due process violation occurred in connection with the execution of the Arizona warrant.

¶ 26 E. Child Support

¶ 27 Petitioner's final claim is that the trial court erred in its child support determination. The trial court terminated its former order made in the agreed parenting order of July 12, 2010, and instead ordered respondent, now the custodial parent, to pay petitioner $50 per week for child support. It relied on *In re Marriage of Turk*, 2014 IL 116730, in deviating from the statutory guidelines, citing the disparity in the parties' income. However, it subsequently reconsidered

and found that it had applied *Turk* incorrectly. It then set respondent's child support obligation at $0.

¶ 28 Petitioner contends that the trial court misapplied *Turk*. *Turk* stands for the proposition that a custodial parent may, under appropriate circumstances, be ordered to pay child support to the noncustodial parent. *Turk*, 2014 IL 116730, ¶ 26. However, the rationale of *Turk* makes it easily distinguishable. The *Turk* court addressed circumstances where the noncustodial parent had significant visitation with the children. The court recognized that if the relative economic circumstances of the parties were different, with the custodial parent's resources being greater, it could "leave [the noncustodial] parent with insufficient resources to care for the child in a manner even minimally comparable to that of the wealthier parent." *Id*. ¶ 24. The court continued, "the instability resulting from having to 'live a dual life in order to conform to the differing socio-economic classes of his or her parents' may cause the child to experience distress or other damaging emotional responses." *Id*. ¶ 25 (quoting Laura Raatjes, *High-Income Child Support Guidelines: Harmonizing the Need for Limits with the Best Interests of the Child*, 86 Chi. Kent L. Rev. 317, 318-19 (2011)). It concluded that a *per se* prohibition of the payment of child support by a custodial parent would not serve the best interests of a child. *Id*. Here, petitioner has only supervised visitation with M.E.P. Thus, the factual situation present in *Turk* is absent in this case. *Turk* provides tangential guidance at best.

¶ 29 Citing *In re Marriage of Petersen*, 2011 IL 110984, petitioner also argues that the trial court erred in retroactively terminating child support as of November 12, 2013, the date that the Arizona court transferred custody to respondent. In the same order, the Arizona court suspended further child-support payments. *Petersen* sets forth the rule stated in section 510(a) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/510(a) (West 2016)), holding that

child support obligations may be modified retroactively only to the time at which the petition seeking the modification was filed. The trial court terminated respondent's child support obligation retroactively to the time when the Arizona court ordered exclusive custody of M.E.P. be granted to respondent. Petitioner contends this violates the rule set forth in *Petersen*.

¶ 30 Initially, we note that *Petersen* is readily distinguishable. In that case, at issue was the father's obligation to contribute to the college expenses of the children. *Petersen*, 2011 IL 110984, ¶ 1. As part of the original judgment of dissolution, this issue was "expressly reserve[d]" for future consideration. The mother filed a petition seeking to allocate college expenses between the parties, which included a request for reimbursement for sums expended prior to the filing of the petition. The *Petersen* court held that "a retroactive modification is limited to only those installments that date back to the filing date of the petition for modification." *Id*. ¶ 18. It explained that prior to the filing of the petition, the father "had no concrete obligation to provide for educational expenses." *Id*. In this case, an Arizona court ordered a change in custody as to M.E.P., and it also ordered that respondent's support obligation be suspended. Section 510(a) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/510(a) (West 2016)) only allows for modification of support obligations back to the time of the filing of the petition to modify to "*insure[] that the [the] respondent is put on notice prior to any change being made with respect to the original child support* and expense obligations." (Emphasis added.) *Petersen*, 2011 IL 110984, ¶ 18. Here, petitioner was on notice of a change in support obligations by the Arizona order. Hence, *Petersen* is distinguishable on this basis.

¶ 31 *Petersen* only concerns whether a trial court *has the ability* to modify a support obligation retroactively; it does not address whether the obligation *should* be modified. Here, the trial court did not articulate its reasoning as to why it believed it should terminate child support in this manner. However, we may affirm on any basis appearing in the record. *Alpha School Bus Co. v. Wagner*, 391 Ill. App. 3d 722, 734 (2009). Moreover, in the absence of detailed findings, we will presume that the trial court resolved disputed issues of fact in favor of its judgment. *Skokie Gold Standard Liquors v. Joseph E. Seagram & Sons, Inc.*, 116 Ill. App. 3d 1043, 1059 (1983). During the hearing in which the Illinois trial court terminated respondent's obligation and at oral argument, respondent addressed the issue of equitable estoppel. We will therefore consider estoppel as the basis of the trial court's order and presume it determined that the facts supported the application of that doctrine. Generally, a trial court's decision to apply the doctrine is reviewed using the manifest-weight standard of review. *In re Scarlett Z.-D*, 2015 IL 117904, ¶ 26. A decision is contrary to the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *DeLong v. Cabinet Wholesalers, Inc.*, 196 Ill. App. 3d 974, 979 (1990). As such, we will only revere here if the record reveals that it is clearly apparent that equitable estoppel does not apply.

¶ 32 Several cases hold that where there is a change in custody, estoppel may lie in favor of the formerly noncustodial spouse. See, *e.g.*, *In re Marriage of Duerr*, 250 Ill. App. 3d 232, 237 (1993) ("Further, under these circumstances, a finding of equitable estoppel precludes the petitioner from receiving an unwarranted benefit; the windfall of support payments for support she or he has not actually furnished."). These cases typically involve a change in custody, where the formerly noncustodial parent who had been ordered to pay child support was providing actual support for the child after the change in custody. If the other parent were permitted to enforce

the support order, the originally noncustodial spouse would be paying support twice—once by actually supporting the child now living with him and a second time by paying child support to the spouse who no longer had custody. The result would be an inequitable windfall to the formerly custodial spouse. See *In re Marriage of Webber*, 191 Ill. App. 3d 327, 331 (1989).

¶ 33 In this case, there was no change in custody despite the Arizona court order directing one. However, the reason no change in custody occurred is petitioner's failure to comply with that order. Moreover, the order expressly stated that the Arizona court was "temporarily suspending Father Kafka's child support obligation to Mother." Hence, petitioner wrongfully retained custody in derogation of the Arizona court knowing full well that respondent's child support obligation had been suspended. Generally, the wrongful conduct of a parent would be no reason to terminate support of a child. See *In re Marriage of Popa & Garcia*, 2013 IL App (3d) 130818, ¶¶ 27-28 (holding that, where mother left country with children, father's support obligation would not terminate (but would be held in trust) and that mother was nevertheless entitled to any amounts due in arrears). However, in this case, given that M.E.P. is now in respondent's custody and petitioner's visitation is limited, awarding petitioner a lump-sum arrearage would amount to nothing more than a windfall to her. The time when those sums would have gone to support M.E.P. has passed, and an award at this point would simply subsidize petitioner's decision to thwart the Arizona court's ruling. As such, it is not clearly apparent that equitable estoppel does not apply here. Therefore, we are compelled to affirm the trial court's ruling concerning the termination of child support, as it is not contrary to the manifest weight of the evidence.

¶ 34 IV. CONCLUSION

¶ 35 In light of the foregoing, the order of the circuit court of Lake County is affirmed.

¶ 36 Affirmed.