2017 IL App (1st) 161352-U

No. 1-16-1352

Order filed December 29, 2017

Fifth Division

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

In re MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
ANNE K. LEWIS,	)	Cook County.
	)	
Petitioner-Appellee,	)	No. 98 D 17831
	)	
and	)	Honorable
	)	Mark Lopez,
SCOT W. LEWIS	)	Judge, presiding.
	)	
Respondent-Appellant.	)	

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Reyes and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: This court affirmed the order of the circuit court finding the respondent in contempt for failing to comply with a previous court order to pay medical and post-high-school educational expenses of the parties' children.

¶ 2 The respondent, Scot W. Lewis (Scot), appeals *pro se* from an order of the circuit court of Cook County finding him in contempt for failing to pay his court-ordered share of the medical

and post-high-school educational expenses (educational expenses) of the parties' children and ordering him to pay $1,358.17 for the children's medical expenses, and $9,869.17 for their educational expenses.

¶ 3 On appeal, Scot contends that: (1) the circuit court denied him due process of law and violated Illinois Supreme Court Rule 185 (eff. Aug. 1, 1992) by refusing his request to participate in the hearing on the petition for a rule to show cause via telephone; (2) the court denied him due process of law and violated section 2-606 of the Code of Civil Procedure (Code) (735 ILCS 5/2-606 (West 2016)) when it refused to require the petitioner, Anne K. Lewis (Anne), to attach an exhibit documenting her claimed educational and medical expenses to her petition; and (3) the court erred in its interpretation of the parties' marital settlement agreement (MSA). A summary of the pertinent facts is set forth below.

¶ 4 BACKGROUND

¶ 5 The facts are taken from the record on appeal and from this court's Rule 23 Order disposing of Scot's previous appeal. *In re Marriage of Lewis*, 2015 IL App (1st) 122029-U.

¶ 6 On March 5, 2002, a judgment for dissolution of the parties' marriage was entered. The parties' MSA was incorporated into the judgment. The MSA provided in pertinent part that the parties were responsible for the educational expenses of their children, Katherine and Benjamin, beyond high school, "to the best of their respective abilities pursuant to Section 513 of the Illinois Marriage and Dissolution of Marriage Act [750 ILCS 5/513 (West 2002) (Act)][.]" The MSA further provided in pertinent part that the parties would "equally share the cost of all health care expenses *** incurred by the children and not covered by their health insurance coverage." Subsequently, Scot moved to California where he now resides.

¶ 7 In 2012, Anne filed a motion to set Scot's contribution to the children's educational expenses and a petition to show cause against Scot for failing to comply with the children's medical expenses provision in the MSA. Scot filed a petition to modify child support. The circuit court's order of June 14, 2012, provided that each party pay 50% of the cost of the children's educational expenses and found Scot in contempt for failing to contribute to the children's medical expenses. Scot appealed, and this court affirmed the June 14, 2012, order.[1] We rejected Scot's claim that he lacked the ability to pay 50% of the children's educational expenses. We also rejected Scot's claim that, in the event Anne did not provide him with sufficient documentation of those expenses, he was entitled to a setoff of his share of the children's medical and other expenses. Finally, we held that the court's denial of Scot's request to participate in the hearing via telephone did not deny Scot due process of law, and the circuit court did not err when it dismissed his petition to modify child support. *In re Marriage of Lewis*, 2015 IL App (1st) 122029-U, ¶¶ 61-62.

¶ 8 On February 16, 2016, Anne filed a motion for leave to file a petition for rule to show cause (Anne's petition).[2] She alleged that Scot had failed to pay the children's medical expenses from April 1, 2015, through December 31, 2015, and Benjamin's college educational expenses for the fall quarter of 2015 and the winter quarter of 2016. On February 25, 2016, the circuit court entered an order granting Anne leave to file her petition and ordering Scot to respond to the petition by March 25, 2016. A hearing on the petition was set for April 15, 2016.

[1] In addition, this court reversed the October 17, 2012, order, finding Scot in contempt for failure to comply with the June 14, 2012, order, for lack of jurisdiction. *In re Marriage of Lewis*, 2015 IL App (1st) 122029-U, ¶¶ 67, 70.

[2] A previous trial court order required the parties to seek leave to file pleadings.

¶ 9 Scot did not file a response addressing the allegations in Anne's petition. Instead, on April 11, 2016, Scot filed a motion to strike Anne's petition on the ground that she failed to attach exhibit A, referred to in the petition, as required by section 2-606 of the Code (735 ILCS 5/2-606 (West 2016)). According to the petition, exhibit A documented the children's medical expenses. Scot maintained that without the exhibit he was unable to defend against Anne's petition. Scot further maintained that, due to his financial circumstances, he was unable to retain counsel or to travel to Chicago. He requested permission to participate in the April 15, 2016, hearing via telephone.

¶ 10 On April 15, 2016, Scot did not appear for the scheduled hearing on Anne's petition. The circuit court entered an order finding that Anne was present and that the "record reflects that Scot has indicated that he has no intention of ever returning to Illinois and appearing in this Court." The court noted that "[t]he Court and Ms. Lewis received an unfiled copy of Scot's motion to strike, which does not appear to have been file[d] and therefore is a nullity." The court found that Scot owed $1,358.17 as his part of the children's medical expenses and that Scot owed $12,869.17 for Benjamin's educational expenses. The court found that Scot's failure to pay these amounts was willful and contemptuous.

¶ 11 Based on its findings, the trial court held Scot in contempt for failure to pay his share of the medical and educational expenses, and ordered him to pay $1,358.17 for the children's medical expenses and, after crediting him with a $3,000 prior payment, $9,869.17 for the children's educational expenses.[3]

¶ 12 Scot filed a timely notice of appeal from the April 15, 2016, order.

[3] The circuit court did not specify the type of contempt in which it held Scot.

¶ 13 ANALYSIS

¶ 14 I. Denial of Due Process and Rule 185

¶ 15 A. Standards of Review

¶ 16 Whether a party has been denied due process is a question of law, and our review is *de novo*. See *Stewart v. Lathan*, 401 Ill. App. 3d 623, 626 (2010) (whether a party received proper or adequate notice is a question of law). Likewise, construction of a supreme court rule presents a question of law to which *de novo* review applies. *In re Marriage of Webb*, 333 Ill. App. 3d 1104, 1108 (2002).

¶ 17 A circuit court's ruling on a matter within its discretion will not be disturbed absent a clear abuse of that discretion. See *People ex rel. Department of Transportation v. Kotara, L.L.C.*, 379 Ill. App. 3d 276, 286 (2008). "An abuse of discretion may be found only where the trial court's decision is arbitrary, fanciful or unreasonable, or where no reasonable person would take the view adopted by the trial court." *Kotata, L.L.C.*, 379 Ill. App. 3d at 286. In determining whether the circuit court abused its discretion the question is not whether this court might have decided the issue differently, but whether any reasonable person could have taken the position adopted by the trial court. *In re Marriage of Patel*, 2013 IL App (1st) 112571, ¶ 95.

¶ 18 B. Discussion

¶ 19 Scot contends that the circuit court's refusal to allow him to participate in the hearing via telephone violated the due process provisions of the United States Constitution and the Illinois Constitution, and the Illinois Constitution's guarantee of a remedy.

¶ 20 Due process requires that the parties receive notice and an opportunity to be heard. *Stewart*, 401 Ill. App. 3d at 626. Moreover, "[d]ue process is not denied when a party fails to

avail himself of the opportunity to be heard after it is offered to him." *In re E.L.*, 152 Ill. App. 3d 25, 33 (1987). Scot was given notice of the hearing, as evidenced by his reference to the hearing date in the motion to strike. He was given an opportunity to be heard but failed to file a timely response to the allegations in Anne's petition and failed to appear at the hearing. Since Scot was afforded notice and an opportunity to be heard, as a matter of law, we conclude that he was not denied due process.

¶ 21 Scot argues that, by failing to provide an alternative to ensure his participation in the contempt proceedings, the circuit court violated article I, section 12 of the Illinois Constitution. Section 12 provides as follows:

> "Every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law, freely, completely, and promptly." Ill. Const. 1970, art. I, ¶ 12.

Section 12 "is merely an expression of a philosophy and not a mandate that a certain remedy be provided in a specific form." (Internal quotation marks omitted.) *Segers v. Industrial Comm'n*, 191 Ill. 2d 421, 435 (2000) (quoting *DeLuna v. St. Elizabeth's Hospital*, 147 Ill. 2d 57, 72 (1992), quoting *Sullivan v. Midlothian Park District*, 51 Ill. 2d 274, 277 (1972)).

¶ 22 The alternative in this case was Rule 185, which provides in pertinent part that "the court may, at a party's request, direct argument of any motion or discussion of any other matter by telephone conference without a court appearance." Ill. S. Ct. R. 185 (eff. Aug. 1, 1992). "In interpreting a supreme court rule, we apply the same principles that are employed to construe a statute, and our goal is to determine the intent of the drafters of the rule." *In re Marriage of Webb*, 333 Ill. App. 3d at 1108. The legislative use of the term "may" is generally regarded as

indicating a permissive or directory reading, leaving the ruling on the issue to the discretion of the circuit court. *Gile v. Gile*, 333 Ill. App. 3d 1161, 1166 (2002). Therefore, Rule 185 requires the circuit court to exercise its discretion when ruling on a request to participate in proceedings via telephone.

¶ 23 In his motion to strike, Scot claimed that his financial situation precluded his hiring an attorney or traveling to Chicago to participate in the April 15, 2016, hearing. Scot relied on his prior financial disclosures. The latest one was filed in 2014, and Scot did not provide the circuit court with evidence of his financial situation in 2016 when he requested to participate in the hearing via telephone. Since Scot failed to provide evidence that his current financial circumstances precluded his attendance at the hearing on Anne's petition, the circuit court did not abuse its discretion in denying Scot's request to participate in the hearing via telephone.

¶ 24 In sum, the circuit court's refusal to permit Scot to participate via telephone in the hearing on Anne's petition did not deny Scot due process of law and did not violate Rule 185.

¶ 25 II. Section 2-606 of the Code

¶ 26 A. Standard of Review

¶ 27 Construction of a statute presents a question of law which we review *de novo*. *Kagan v. Waldheim Cemetery Co.*, 2016 IL App (1st) 131274, ¶ 26.

¶ 28 B. Discussion

¶ 29 Scot contends that Anne's failure to attach the exhibit to her complaint violated section 2-606 of the Code. Section 2-606 provides in pertinent part that "[i]f a claim or defense is founded upon a written instrument, a copy thereof, or of so much of the same as is relevant, must be attached to the pleading as an exhibit or recited therein [.]" 735 ILCS 5/2-606 (West 2016). Anne

alleged in the petition that on January 16, 2016, she sent an e-mail to Scot in which she submitted the children's medical expenses for the period from April 1, 2015, through December 31, 2015. Exhibit A, which Scot claims not to have received with the petition, purported to be a copy of the e-mail.

¶ 30 Anne's claims in her petition were not founded on exhibit A. Rather, her petition was based on terms contained in the parties' MSA and the order of June 12, 2014. The relevant parts of the MSA and the June 12, 2014, order were "recited therein" and therefore, Anne complied with section 2-606 of the Code. See *Farm Credit Bank of St. Louis v. Biethman*, 262 Ill. App. 3d 614, 622 (1994) (the law does not require that every relevant document a party seeks to introduce as an exhibit at trial must be attached to his pleading).

¶ 31 We conclude that Scot's motion to strike Anne's petition for failing to comply with section 2-606 of the Code was meritless.

¶ 32 III. Interpretation and Application of MSA

¶ 33 A. Standard of Review

¶ 34 The interpretation of a marital settlement agreement presents a question of law which this court reviews *de novo*. *In re Marriage of Kehoe and Farkas*, 2012 IL App (1st) 110644, ¶ 18.

¶ 35 B. Discussion

¶ 36 Scot contends that the circuit court erred by failing to require Anne to identify whether she paid the children's medical expenses with before-tax or after-tax dollars and by not crediting him with the medical expenses he had incurred on behalf of the children. He claims that without exhibit A, he does not know if and how the medical expenses claimed by Anne were paid.

¶ 37 The parties' MSA provides that the parties share equally the medical expenses of the children that are not covered by insurance. The MSA does not provide that the tax status of the funds used to pay medical expenses must be identified in order to determine the parties' equal shares of those expenses. Courts cannot remake the parties' agreement by adding new terms but must enforce them as written. *In re Marriage of Belk*, 239 Ill. App. 3d 806, 812 (1992). Moreover, the circuit court did not deny Scot a credit for medical expenses he incurred for the children. In this proceeding, Scot never brought to the circuit court's attention either in response to Anne's petition or by filing his own pleading what, if any, medical expenses he incurred for the children.

¶ 38 Scot further claims that the circuit court erred when it ruled that Scot pay 50% of the educational expenses of the children. Scot points out that the MSA requires that the parties have the ability to pay the educational expenses and that in light of his financial circumstances he does not have the ability to pay 50% of the educational expenses. Scot raised the same lack of financial ability argument in his prior appeal. This court affirmed the circuit court's ruling that the parties each pay 50% of the children's educational expenses and ordering Scot to pay 50% of Katherine's educational expenses. See *In re Marriage of Lewis*, 2015 IL App (1st) 122029-U, ¶¶ 40-43.

¶ 39 The law of the case doctrine controls here. That doctrine "bars relitigation of an issue that has already been decided in the same case [citation] such that the resolution of an issue presented in a prior appeal is binding and will control upon remand to the circuit court and in a subsequent appeal before the appellate court." *American Service Insurance Co. v. China Ocean Shipping Co. (Americas) Inc.*, 2014 IL App (1st) 121895, ¶ 17. The doctrine applies to questions of law and

fact and encompasses a court's decisions, whether explicit or by necessary implication. *American Service Insurance Co.*, 2014 IL App (1st) 121895, ¶ 17. There are two exceptions: "when a higher reviewing court makes a contrary ruling on the same issue subsequent to the lower court's decision and when a reviewing court finds that its prior decision was palpably erroneous." *American Service Insurance Co.*, 2014 IL App (1st) 121895, ¶ 17. Moreover, a ruling will not be binding in a subsequent stage of litigation when different issues are involved, different parties are involved, or the underlying facts have changed. *American Service Insurance Co.*, 2014 IL App (1st) 1218957, ¶ 17**.**

¶ 40 None of those exceptions applies in this case. No higher court of review has made a contrary ruling on the issue of the percentage each party is to pay toward the children's educational expenses. Scot has not provided this court with any new evidence or argument sufficient to cause this court to conclude that our prior decision finding no abuse of discretion in ordering Scot to pay 50% of the educational expenses for his children was palpably erroneous or to revisit the issue because the facts have changed.

¶ 41 We reject Scot's claims that the circuit court erred in refusing to require Anne to identify the tax status of the funds used to pay the children's medical expenses and that the court's failure to allow Scot a credit for medical expenses he claims to have incurred on the children's behalf was error. Scot's attempt to relitigate the issue of his 50% contribution to the children's educational expenses is barred by the law of the case doctrine.

¶ 42 CONCLUSION

¶ 43 The judgment of the circuit court is affirmed.

¶ 44 Affirmed.