2017 IL App (2d) 160490-U
No. 2-16-0490
Order filed March 21, 2017

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

JOSHUA D. SCRITCHFIELD,	)	Appeal from the Circuit Court
	)	of Kane County
Petitioner-Appellee,	)	
	)	
and	)	No. 14-D-215
	)	
SARAH EMANUELE,	)	Honorable
	)	Elizabeth K. Flood,
Respondent-Appellant.	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: The trial court correctly denied respondent's petition pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2016)): respondent was barred by collateral estoppel from asserting previously raised issues and all other issues that were not previously raised were untimely; trial court's alleged lack of personal jurisdiction over respondent did not prevent trial court from registering judgment against petitioner; and orders were not void such that they could be raised in collateral proceeding.

¶ 2 I. INTRODUCTION

¶ 3 Respondent, Sarah P. Emanuele, appeals**,** *pro se*, an order of the circuit court of Kane County denying her section 2-1401 petition (735 ILCS 5/2-1401 (West 2016)) seeking to vacate

the registration of a child-support order by petitioner, Joshua D. Scritchfield. The trial court rejected respondent's contention that the order had to be vacated because Illinois purportedly lacked personal jurisdiction over her. It further found that her other claims either were barred by the doctrine of collateral estoppel or were untimely. For the reasons that follow, we affirm.

¶ 4 II. BACKGROUND

¶ 5 The instant litigation concerns the support of a minor born to the parties in May of 2011. On October 5, 2011, a Tennessee trial court entered an order directing petitioner to "temporarily pay $816.00 monthly for support of the minor." Subsequently, on April 26, 2012, a permanent order was entered; however, that order was vacated by a Tennessee court of review on August 14, 2013, leaving the temporary order in place. On February 6, 2014, on the motion of respondent for voluntary dismissal, a Tennessee trial court entered an order setting aside the temporary order "by agreement of the parties." However, on February 11, 2104, petitioner requested the voluntary dismissal be set for a hearing. The hearing was set for February 28, 2014. On February 28, 2014, a Tennessee trial court entered an order finding that the parties no longer reside in Tennessee, that the minor's home state was now New York, and that the case be transferred to New York.[1] Respondent and the minor reside in New York; petitioner resides in Illinois.

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[1]In June 2013, New York courts entered two orders, the first is titled "temporary order of support by default" and orders petitioner to pay $423 per week for support of the minor and the second grants sole legal and physical custody of the minor to respondent. These orders were later dismissed when a New York court found that New York lacked personal jurisdiction over petitioner and that the Tennessee support order constituted *res judicata* as to the support issue—a

¶ 6 However, on February 24, 2014, before final termination of the Tennessee action, petitioner filed in this state a petition to register the temporary support order of October 5, 2011. He also sought to enroll an order pursuant to which income was being withheld from his wages to pay support for the minor. The orders were registered. On March 13, 2014, respondent filed a motion to vacate these orders, contending, *inter alia*, that the registered order had been vacated by the Tennessee trial court. On May 27, respondent's motion was denied. No appeal was filed.

¶ 7 On July 14, 2014, respondent filed a motion to vacate the May 27, 2014 order. On July 21, 2014, respondent filed a "motion for emergency relief requested." In it, she alleged that Illinois had registered a judgment that had been vacated by Tennessee and that, "[t]herefore you have a void judgment on your records that is precluding my child from receiving her constitutional right to child support in her home state" and that "[m]y child is receiving no child support from anywhere, from any state, because of our Court's decision to leave on your records a registration of something that does not exist and cannot be enforced." On July 22, 2014, a hearing on the motion was scheduled. No one appeared, and the motion was stricken without prejudice. Respondent did not appeal.

¶ 8 Respondent filed another motion seeking emergency relief on a number of theories. In an accompanying affidavit, she avers that she has "not received court ordered child support since july [*sic*] 16, 2014," though, if so, it is not apparent why she has not sought enforcement of the order registered in Illinois. On November 13, 2014, the trial court denied this motion, and no appeal followed.

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subsequent order of a New York reviewing court found the defect was actually subject matter jurisdiction.

¶ 9 On March 11, 2016, respondent, acting *pro se*, filed a petition in accordance with section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2016)). In it, respondent sought to vacate the registration of the Tennessee support order on various grounds, including that the trial court lacked personal jurisdiction over her, that the order was void, and that various statutory provisions had not been complied with. Petitioner filed an objection, citing collateral estoppel. The trial court rejected respondent's arguments on two grounds. First, the trial court determined that respondent had been given proper notice when petitioner initially filed the motion to register the order, pointing out that respondent filed a response to the motion a mere 15 days after petitioner's motion was filed. It then noted that, with the exception of the argument concerning personal jurisdiction, all issues had been raised in earlier motions to vacate. Two of them were resolved by final orders adverse to respondent (one was dismissed without prejudice), and respondent did not appeal any of the orders denying those earlier motions. Hence, collateral estoppel barred relitigation of such issues. Moreover, to the extent that an issue had not been raised prior to instant petition, it was time barred. Finally, assuming the personal-jurisdiction argument was not time barred, nothing in the controlling statute required the trial court to have personal jurisdiction over respondent to register a judgment that was to be enforced against petitioner. Therefore, the trial court granted petitioner's objection to respondent's petition. Respondent now appeals.

¶ 10 III. ANALYSIS

¶ 11 To resolve this appeal, we must address three issues. First, we must consider respondent's argument that the trial court lacked personal jurisdiction over her. Second, we must determine whether respondent's claims are barred by collateral estoppel or are, alternatively,

untimely. Third, we must address respondent's contention that the trial court's order registering the support order is void.

¶ 12 A. Personal Jurisdiction

¶ 13 Respondent first contends that the Illinois order registering the Tennessee support order must be vacated because the trial court lacked personal jurisdiction over her. The trial court disagreed and held that it did not need personal jurisdiction to register the judgment, which, we note, is to be enforced against petitioner. It noted that the controlling statute did not state that personal jurisdiction was required over the non-registering party for a trial court to register a judgment. See 750 ILCS 22/605 (West 2014). Whether jurisdiction is necessary under the statute presents a question of law subject to *de novo* review. See *Madison Miracle Productions, LLC v. MGM Distribution Co.*, 2012 IL App (1st) 112334, ¶ 34.

¶ 14 Initially, we note our agreement with the trial court—even if we owe it no particular deference here. The plain language of the statute does not mention jurisdiction over the non-registering party. See 750 ILCS 22/605 (West 2014). The statute's plain language is, of course, the best indication of the legislature's intent in enacting it. *Bruso by Bruso v. Alexian Brothers Hospital*, 178 Ill. 2d 445, 451 (1997). We cannot read into a statute a condition or limitation that is not present in that plain language. *Gaffney v. Board of Trustees of the Orland Fire Protection District*, 2012 IL 110012, ¶ 56. If we were to require the trial court to have personal jurisdiction over the nonregistering party, we would be adding that condition to the statute.

¶ 15 Respondent points to section 201 of the Uniform Interstate Family Support Act (Act) (750 ILCS 22/201 (West 2014)) in support of her claim that the trial court could not register the judgment without having personal jurisdiction over her. That section states, in pertinent part, "In a proceeding to establish or enforce a support order or to determine parentage of a child, a

tribunal of this State may exercise personal jurisdiction over a nonresident individual or the individuals guardian or conservator if" the individual meets any of a number of criteria set forth in the statute. However, respondent ignores the fact that the support order is directed against petitioner, so it is petitioner that the trial court would have to have personal jurisdiction over to enforce the order. We do not see anything in section 201 that would require the trial court to have personal jurisdiction over the party against whom the judgment is not directed.

¶ 16 Moreover, respondent also ignores the fact that she meets one of the criteria enumerated in the statute. Section 201 states that a court of this state has jurisdiction where "the individual submits to the jurisdiction of this State by consent in a record, by entering a general appearance, *or by filing a responsive document having the effect of waiving any contest to personal jurisdiction*." (Emphasis added.) 750 ILCS 22/201 (West 2014). On March 13, 2014, respondent filed her petition to vacate registration of the order. No objection to Illinois exercising personal jurisdiction over respondent was filed on or before this date. The petition itself does not mention personal jurisdiction as it pertains to respondent. Under such circumstances, we hold that, assuming *arguendo* that personal jurisdiction over respondent was required, respondent's act constituted the "filing [of] a responsive document having the effect of waiving any contest to personal jurisdiction." *Id.*

¶ 17 Section 2-301 of the Code explains the process through which a party may contest personal jurisdiction, providing, in pertinent part, as follows:

> "Prior to the filing of any other pleading or motion other than a motion for an extension of time to answer or otherwise appear, a party may object to the court's jurisdiction over the party's person, either on the ground that the party is not amenable to process of a court of this State or on the ground of insufficiency of process or insufficiency of service

> of process, by filing a motion to dismiss the entire proceeding or any cause of action involved in the proceeding or by filing a motion to quash service of process. Such a motion may be made singly or included with others in a combined motion, but the parts of a combined motion must be identified in the manner described in Section 2-619.1. Unless the facts that constitute the basis for the objection are apparent from papers already on file in the case, the motion must be supported by an affidavit setting forth those facts." 735 ILCS 5/2-301 (West 2014).

It continues: "If the objecting party files a responsive pleading or a motion (other than a motion for an extension of time to answer or otherwise appear) prior to the filing of a motion in compliance with subsection (a), that party waives all objections to the court's jurisdiction over the party's person." 735 ILCS 5/2-301 (West 2014). Here, respondent did not follow the proper procedure for contesting personal jurisdiction. As respondent did not file an objection to jurisdiction, we hold that she waived any objection to jurisdiction in accordance with section 201 of the Act. 750 ILCS 22/201 (West 2014); see also *In re Estate of Pellico*, 394 Ill. App. 3d 1052, 1067 (2009).

¶ 18 Accordingly, we hold that the trial court correctly determined it was not required to have personal jurisdiction over respondent to register the judgment. Furthermore, respondent submitted herself to the jurisdiction of this state by appearing without properly raising a jurisdictional argument.

¶ 19 B. Collateral Estoppel and Timeliness

¶ 20 We next turn to the related issues of collateral estoppel and timeliness. Collateral estoppel bars a party from relitigating an issue where it has been previously litigated between the parties. The elements of collateral estoppel are: "(1) identical issues; (2) a final judgment on the

merits; and (3) that the party against which estoppel is asserted was a party to the prior adjudication." *Dancor Construction, Inc. v. FXR Construction, Inc.*, 2016 IL App (2d) 150839, ¶ 37. It is undisputed that petitioner and respondent were the parties involved in the litigation of the registration order and the subsequent motions to vacate. Further, both the first and third motions were resolved adversely to respondent on the merits and not appealed, making both final orders. *In re Marriage of Gentile*, 69 Ill. App. 3d 297, 302 (1979). The current petition to vacate is actually a collateral attack; respondent cites section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2014)) in support of her motion. See *Burchett v. Goncher*, 235 Ill. App. 3d 1091, 1098 (1991). A collateral attack is a new, independent action. See *City of Chicago v. Midland Smelting Co.*, 385 Ill. App. 3d 945, 961 (2010). Hence, as the trial court noted, any issue raised in respondent's earlier motions to vacate, which were resolved adversely to respondent and not appealed, meet the criteria for the application of the doctrine of collateral estoppel. Such issues cannot now be relitigated; if respondent wished to contest the trial court's earlier rulings, the proper avenue would have been to appeal its rulings on the earlier motions (particularly the first one).

¶ 21 Moreover, any issue not raised in respondent's earlier motions to vacate is time barred. Section 606 of the Act (750 ILCS 22/606 (West 2014)) states, "A nonregistering party seeking to contest the validity or enforcement of a registered support order in this State shall request a hearing within the time required by Section 605." 750 ILCS 22/606 (West 2014). Section 605 specifies that a hearing must be requested within 20 days. 750 ILCS 22/605 (West 2014). Any issue not raised in respondent's first motion to vacate was thus not timely. We also note section 608, which states, "Confirmation of a registered support order, whether by operation of law or after notice and hearing, *precludes further contest of the order with respect to any matter that*

could have been asserted at the time of registration." (Emphasis added.) 750 ILCS 22/608 (West 2014).

¶ 22 In short, respondent cannot relitigate any issue she already raised, and it is too late to raise any new issues.

¶ 23 C. Voidness

¶ 24 Respondent asserts that the trial court's order registering the support order is void. It is true that a void order can be attacked at any time. *JoJan Corp. v. Brent*, 307 Ill. App. 3d 496, 502 (1999). However, what respondent identifies are not actually void orders. In Illinois, an order is void only if it is entered by a court that lacked the jurisdiction necessary to enter the order in question. *In re Jamari R.*, 2016 IL App (1st) 160850, ¶ 8. The authority of Illinois courts flows from the state's constitution (outside of the administrative realm, which is not pertinent here). *Belleville Toyota, Inc. v. Toyota Motor Sales. U.S.A., Inc.*, 199 Ill. 2d 325, 335 (2002). Thus, the failure to comply with a statutory scheme does not affect a court's jurisdiction and does not, in turn, result in a judicial act being void. *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 37. Moreover, once a court acquires jurisdiction over a case, it does not lose it simply because it makes a mistake of fact or law. *In re John C.M.*, 382 Ill. App. 3d 553, 568 (2008).

¶ 25 The considerations raised by respondent are not of the sort that would render an order void. For example, respondent charges that "[t]he Kane County Circuit Court did not actually properly register the said order for enforcement in accordance with [section 601 of the Act]." She contends that the statutory scheme requires the court to not simply register the order but to enforce it as well. She then concludes, "A registration without the requisite enforcement is void because a critical component of the action is missing." However, as explained above, under Illinois law, the trial court's purported failure to comply with the statute does not render its

actions void; rather, it would make the order voidable. A voidable order is only subject to attack on direct appeal and may not be attacked collaterally. *J.P. Morgan Mortgage Acquisition Corp. v. Straus*, 2012 IL App (1st) 112401, ¶ 11. Thus, any argument based on alleged noncompliance with a statutory scheme will not entitle respondent to prevail.

¶ 26 In a somewhat related argument, respondent argues that petitioner committed fraud before the Tennessee court. In some circumstances, this could result in the Tennessee order being void. Fraud that prevents a court from acquiring jurisdiction will render a subsequent order void; fraud committed after a court acquires jurisdiction will not. *In re Adoption of E.L.*, 315 Ill. App. 3d 137, 154 (2000). Here, respondent argues that petitioner submitted a fraudulent worksheet to the Tennessee court that calculated the child support payment (required of parties in Tennessee as a basis for calculating child support (Tenn. Comp. R. & Regs. 1240-02-04-.04(1))). Assuming this is true, this does not appear to us to be the sort of fraud that would deprive the Tennessee court of jurisdiction. The fraud respondent alleges is simply fraud in the course of the Tennessee proceedings, that is, fraud *after* the court acquired jurisdiction. In would not, therefore, render that order void.

¶ 27 IV. CONCLUSION

¶ 28 This is a rather perplexing case. Typically, the parent to whom support is owed would be the party registering and enforcing a judgment against the parent owing support. The opposite has happened here. The parent owing the support has registered the judgment in this state, presumably in an attempt to obtain a more convenient forum for himself. In essence, petitioner is using the statute as a shield when it is intended as a sword to aid the custodial parent in enforcing the support obligation of the noncustodial parent. We perceive nothing in the statute that forecloses petitioner from doing so. While this may make litigation more cumbersome for

respondent, it would be equally difficult for petitioner to litigate in New York. In any event, that the judgment is registered in Illinois does not prevent respondent from enforcing it. Indeed, the Act allows for the modification of such a support order in appropriate circumstances. See 750 ILCS 22/611 (West 2014).

¶ 29 In conclusion, we hold that respondent's arguments concerning personal jurisdiction are not well founded. Further, as the trial court correctly determined, collateral estoppel precludes respondent from asserting issues in her 2-1401 petition that were raised in her initial motion to vacate and any other argument is untimely. Finally, respondent's arguments pertaining to voidness provide no basis to grant her relief. The order of the trial court is therefore affirmed.

¶ 30 Affirmed.