2018 IL App (1st) 162039-U

No. 1-16-2039

June 5, 2018

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

In re PARENTAGE OF MONIQUE G.	)	Appeal from the
Rosario Rivera,	)	Circuit Court of
	)	Cook County.
Petitioner-Appellee,	)	
	)	
v.	)	No. 97 D6 3130
	)	
Ricardo Gonzalez,	)	Honorable
	)	James Kaplan,
Respondent-Appellant.	)	Judge, presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Justices Pucinski and Hyman concurred in the judgment.

ORDER

¶ 1 *Held*: Respondent's appeal is dismissed because the appellate court does not have jurisdiction.

¶ 2 Respondent, Ricardo Gonzalez, appeals *pro se* from orders directing him to pay child support to fund the college expenses of his daughter, Monique. See 750 ILCS 5/513 (West Supp. 2015). On appeal, Gonzalez contends that he should no longer contribute to Monique's college

education because there are other means for her to fund her own education. We dismiss the appeal for lack of jurisdiction.

¶ 3 The record on appeal reveals that on January 17, 1997, petitioner, Rosario Rivera, filed a complaint to determine the existence of a father-child relationship, alleging that "Carlos Gonzales" fathered her child, Monique. On April 4, 2001, Rivera filed an amended complaint, alleging that Gonzalez is the father of Monique. On April 16, 2001, the circuit court entered a default order of parentage and support, finding Gonzalez to be Monique's father, and ordering him to pay $35.00 per week in child support until August 3, 2015. The order also noted that Gonzalez and Rivera have four children together, and it mandated that Gonzalez was to enroll Monique in an independent health insurance plan. The record does not show that the parties ever married.

¶ 4 From June 2007 until February 2014, the circuit court issued numerous orders modifying and enforcing Gonzalez's child support and arrearage payments. On March 21, 2008, the cases regarding the parties' three other children were consolidated with Monique's case.

¶ 5 On June 17, 2014, the court issued an order modifying Gonzalez's child support payment to $89.05 per week, finding that Gonzalez was not in arrears in his child support payments. The order noted that two of the parties' four children were emancipated, and that medical insurance was "not available at this time." The order reserved the issue of medical insurance and mandated that Gonzalez was responsible for 50 percent of the medical expenses incurred by his minor children that were not covered by medical insurance.

¶ 6 On August 3, 2015, Gonzalez filed a motion seeking termination of child support payments for Monique because she had turned 18. On August 24, 2015, Rivera filed a motion

requesting that Gonzalez "contribute half" towards Monique's college expenses and that "the court give [Monique] child support from Richard Gonzalez." That same day, Rivera also filed a motion requesting that Gonzalez produce his 2014 W-2 and five recent pay stubs.

¶ 7 On September 15, 2015 the court ordered both parties to exchange 2013 and 2014 income tax returns with W-2s, and "their last five (5) most current pay stubs prior to the next court date." The order also required Rivera to obtain the cost of Monique's college education, and for Monique to obtain "release of information forms" from her college. The order continued the matter to October 6, 2015.

¶ 8 On October 6, 2015, the court issued an order, stating that the parties were present in court, that the court reviewed the tax returns and W-2's of the parties, and that the "incomes of the parties [are] found to be incapable of providing large sums from each of them necessary to fund tuition, books, and the like." In the order, the court noted that Gonzalez was paying $30.00 per week in reduced child support, and that he is obligated to pay that amount to Rivera under section 513 of the Illinois Marriage and Dissolution of Marriage Act. 750 ILCS 5/513 (West Supp. 2015) (Educational Expenses for a Non-Minor Child). The case was continued to August 10, 2016, for "status."

¶ 9 On June 30, 2016, Rivera filed a motion asking for "college contribution," arguing that Gonzalez was ordered to pay $30 per week in October 2015, and that he had disobeyed the court order. Rivera argued that she did not receive payments from Gonzalez, and requested that he "pay with interest for being late." On July 25, 2016, Gonzalez filed a motion, asking the court to reduce his payments in accordance with his income.

¶ 10 On July 25, 2016, the court entered a "CONTINUANCE ORDER," stating that the cause, coming to be heard on Rivera's motion for § 513 contribution, was continued to August 1, 2016 for "status." It also ordered Rivera and Gonzalez to appear, and for Gonzalez "to appear with the sum of $150 or be subject to possible contempt, *sua sponte* with possible sanction." That same day, Gonzalez filed a *pro se* notice of appeal in the circuit court, indicating that he was appealing a judgment to be rendered on a future date, August 1, 2016.

¶ 11 On August 1, 2016, the court entered another "CONTINUANCE ORDER," stating that the case was continued to September 1, 2016 for "status." It ordered Rivera and Gonzalez to appear, and also ordered Gonzalez "to appear with $150.00 as past contribution for child's NEIU costs. Father's net income for 2015 $12,444.00. Petitioner/mother to produce [Monique's] grade point average and current grades."

¶ 12 On August 24, 2016, this court granted Gonzalez's motion to amend his notice of appeal. Gonzalez filed an amended *pro se* notice of appeal in the circuit court that same day. The amended notice of appeal states that he is appealing judgments rendered on October 6, 2015, and August 1, 2016. Gonzalez filed his brief on April 17, 2017. Although Rivera did not file a brief in response to this appeal, we may consider the issue raised pursuant to the principles set forth in *First Capital Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976) (setting forth the principles for the disposition of appeals in cases where the appellees have not filed their briefs).

¶ 13 This court has an independent duty to consider whether or not it has jurisdiction to hear an appeal. See *People v. Lewis*, 234 Ill. 2d 32, 36-37 (2009) ("courts of review have an independent duty to consider jurisdiction"); *Daewoo International v. Monteiro*, 2014 IL App

(1st) 140573, ¶ 72. Our supreme court has stated that the ascertainment of a court's own jurisdiction is one of the "most important tasks of an appellate court panel when beginning the review of a case." *Secura Ins. Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213 (2009) ("A reviewing court must ascertain its jurisdiction before proceeding in a cause of action"); *People v. Smith*, 228 Ill. 2d 95, 106 (2008)

¶ 14 Rule 303(a)(1) provides that a notice of appeal "must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from, or, if a timely posttrial motion directed against the judgment is filed, whether in a jury or a nonjury case, within 30 days after the entry of the order disposing of the last pending postjudgment motion directed against that judgment or order, irrespective of whether the circuit court had entered a series of final orders that were modified pursuant to postjudgment motions." Ill. S. Ct. R. 303(a)(1) (eff. July 1, 2017). The timely filing of a notice of appeal is both jurisdictional and mandatory. *Secura Ins. Co.*, 232 Ill. 2d at 213. "The appellate court does not have the authority to excuse the filing requirements of the supreme court rules governing appeals." *Id.* at 217-18.

¶ 15 First, we find that the October 6, 2015, order was a final judgment. "A final judgment is one that disposes of the rights of the parties with regard to the entire controversy or a definite and separate part thereof." *Djikas v. Grafft*, 344 Ill. App. 3d 1, 8 (2003) (citing *Gibson v. Belvidere National Bank & Trust Co.*, 326 Ill. App. 3d 45, 48 (2001)). At the time of the October 6, 2015 order, the only matter in dispute between the parties that the court had not decided, was whether Gonzalez had to make a college contribution to Monique. The order states that the court considered evidence of both parties' income, and that Gonzalez had to pay, pursuant to section 513, the Educational Expenses section of the Act, $30 per week in college contribution for

Monique. Although the same order directed the parties to reconvene for a status hearing ten months later, the order disposed of the rights of the parties with regard to the college expenses controversy and was therefore final. See *Anest v. Bailey*, 265 Ill. App. 3d 58, 66 (1994) ("the presence of language retaining jurisdiction for purposes of enforcement does not necessarily render an otherwise final and appealable order nonfinal.")

¶ 16 The final order was entered on October 6, 2015, and (i) because Gonzalez did not file a notice of appeal within 30 days after the entry of this order (see Ill. S. Ct. R. 303(a)(1) (eff. Jan. 1, 2015) (In all cases tried without a jury, any party may, within 30 days after entry of the judgment file a motion for rehearing, retrial or to vacate the judgment), and (ii) because the time for filing the notice of appeal was not tolled by Gonzalez filing a posttrial motion challenging the October 6, 2015 order within 30 days after its entry, we find that we lack jurisdiction. Here, Gonzalez filed his notice of appeal on August 24, 2016, more than 322 days after the court issued its October 6, 2015 order. Therefore, because the notice of appeal was filed more than 30 days after the entry of the October 6, 2015 order, we do not have jurisdiction over Gonzalez's appeal. See *Secura Ins. Co.*, 232 Ill. 2d at 211 (vacating the judgment of the appellate court and dismissing an appeal where "the notice of appeal was not timely filed, thus depriving the appellate court of jurisdiction.").

¶ 17 Second, after reviewing the August 1, 2016 continuance order Gonzalez appeals from, we find that we lack jurisdiction because an order continuing a case is an interlocutory order. See *South Chicago Community Hospital v. Industrial Comm.*, 44 Ill. 2d 119, 121 (1969). While a continuance order is an interlocutory order, it is not appealable pursuant to Supreme Court Rules 306 or 307, which permit appeals from interlocutory orders. See Ill. S. Ct. R. 306 (eff. Mar. 8,

2016) (interlocutory appeals by permission); Ill. S. Ct. R. 307 (eff. Nov. 1, 2016) (interlocutory appeals as of right; *In re M.R.*, 305 Ill. App. 3d 1083, 1086 (1999)). Therefore, because the August 1, 2016 continuance order was an interlocutory order that is not within the purview of Rules 306 or 307, this court lacks jurisdiction to review the appeal from the continuance order. *In re Marriage of Kostusik*, 361 Ill. App. 3d at 108.

¶ 18 The August 1, 2016, continuance order was an interlocutory order and not a final order so it did not determine an issue in the litigation on the merits or dispose of the rights of the parties with regard to the entire controversy or a definite and separate part thereof. See *Djikas*, 344 Ill. App. 3d at 8. Accordingly, following *South Chicago Community Hospital*, we find that the August 1, 2016 continuance order was an interlocutory order that was not appealable pursuant to Supreme Court Rules 306 or 307.

¶ 19 Therefore, we dismiss the appeal for lack of jurisdiction.

¶ 20 Appeal dismissed.