

2018 IL App (1st) 172942-U

No. 1-17-2942

Order filed December 21, 2018

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).

Fifth Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

PAULETTE HARRIS EVANS,)	Appeal from the
)	Circuit Court of
Petitioner-Appellee,)	Cook County.
)	
v.)	No. 16 D 090299
)	
KEVIN LEE AMOS,)	Honorable
)	Abbey Romanek,
Respondent-Appellant.)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Hoffman and Hall concurred in the judgment.

ORDER

- ¶ 1 HELD: Respondent waived his right to challenge the lower court's jurisdiction over him where he filed an appearance and answer in response to a petition to register a foreign child support order over one year prior to raising his jurisdictional challenge.
- ¶ 2 Respondent, Kevin Amos, appears *pro se* following the trial court's order finding him in indirect civil contempt for the nonpayment of child support. Respondent contends the trial court

lacked jurisdiction to register and enforce the underlying out-of-state child support order. Based on the following, we affirm.¹

¶ 3

I. BACKGROUND

¶ 4 Respondent and petitioner, Paulette Harris-Evans, formerly known as Paulette Nosakhare, were married and shared one child, who was born on July 1, 1991. The parties divorced and, on November 2, 1995, a California court entered a custody order regarding the minor child. No child support was awarded at the time. In 1997, petitioner and the minor child moved to Missouri,² and the 1995 California custody order was registered with the circuit court in Jackson County, Missouri.

¶ 5 On May 19, 1999, the Missouri court modified the custody order and awarded petitioner \$312 per month in child support. Later, on October 17, 2006, a Jackson County, Missouri, trial court modified the child custody and support order again. The remodified order awarded petitioner \$547 per month beginning August 1, 2006, until further ordered by the court or until the minor child became emancipated.

¶ 6 On March 21, 2016, the Illinois Department of Healthcare and Family Services (DHFS) filed a petition pursuant to the Uniform Interstate Family Support Act (Act) (750 ILCS 22/602 (West 2016)) to register a foreign judgment, namely, the October 17, 2006, Jackson County, Missouri, remodified support order.³ On the same date, a notice addressed to respondent was filed, stating that the October 17, 2006, Jackson County, Missouri, remodified support order had

¹ In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

² The record does not indicate where respondent lived at the time.

³ Prior to the filing of this petition, the DHFS filed a motion to dismiss a petition under the Act. On March 9, 2016, the petition was dismissed without prejudice.

been registered in Cook County, Illinois. The notification provided respondent with his rights to contest the validity or enforcement of the registered order and notified him that the amount he allegedly owed in child support arrearage was \$17,368.88. The registered order was for enforcement purposes only, as the minor child had become emancipated on July 1, 2012.

¶ 7 On April 7, 2016, respondent filed a *pro se* appearance and answer contesting the validity and enforcement of the foreign support order, alleging he had met his support obligations under the order and, therefore, it should be dismissed.

¶ 8 On April 19, 2016, the DHFS filed a petition for rule to show cause for respondent's nonpayment of the \$17,363.88 child support arrearage. The DHFS requested that the trial court enter an order to show cause as to why respondent should not be held in contempt of court for his willful refusal to obey the support order. The DHFS clarified that its request was for an arrears order in the amount of \$547 per month due to the child's emancipation.

¶ 9 On September 15, 2016, following a hearing, the trial court ordered respondent to provide child support in the amount of \$547 per month in satisfaction of the October 17, 2006, Jackson County, Missouri child support order.⁴ The order was set to terminate when the arrearage was paid and satisfied in accordance with the Missouri order. The September 15, 2016, order provided that it had jurisdiction over the parties pursuant to respondent's presence in court on May 19, 2016.⁵ The trial court entered and continued the DHFS's rule to show cause.

⁴ The record does not contain a report of the proceedings or an acceptable substitute from the September 15, 2016, court appearance. Ill. S. Ct. R. 323 (eff. July 1, 2017).

⁵ The record does not contain a report of the proceedings or an acceptable substitute from the May 19, 2016, court appearance. Ill. S. Ct. R. 323 (eff. July 1, 2017).

¶ 10 Then, on July 14, 2017, the trial court found respondent in indirect civil contempt for the nonpayment of child support. The record does not contain a report of the proceedings or an acceptable substitute from that date. Ill. S. Ct. Rule 323 (eff. July 1, 2017). The court's written order provided that, in its September 15, 2016, order, respondent was directed to pay \$547 per month in child support. The order further provided that, as of June 30, 2017, respondent allegedly was in arrearage of \$13,876.75. The order added that respondent had not provided a legally sufficient reason for his failure to comply with the September 15, 2016, order despite having the means to do so and that his failure "to comply with said order is willful and contumacious." Moreover, the order stated that respondent's conduct had defeated and impaired the rights of petitioner and impeded the court's ability to administrate justice. The purge amount was set at \$7,500. Respondent was instructed to make a lump sum payment of \$400 at the next court date. The case was continued until September 15, 2017.

¶ 11 In the interim, on July 21, 2017, respondent filed a motion for substitution of judge. To his motion, respondent attached an affidavit stating, in relevant part, that, during his indirect civil contempt hearing, he verbally objected to the trial court's jurisdiction over him as an indigenous person.⁶ Respondent argued that the trial court lacked jurisdiction to register the Missouri child support order because he was an indigenous/Native American. Again, there is no report of proceedings or acceptable substitute from the July 14, 2017, hearing. Ill. S. Ct. R. 323 (eff. July 1, 2017). In addition, on July 21, 2017, respondent filed a *pro se* motion to "vacate/abate/strike/dismiss" the July 14, 2017, indirect civil contempt order based on lack of jurisdiction due to his status as an indigenous person. The trial court denied respondent's motion

⁶ Previously, on May 25, 2017, respondent filed a separate affidavit attesting to his ethnicity and race, namely, as Native American.

for substitution of judge on September 15, 2017. The case, however, was not given a subsequent continuance date and fell off the court's call.

¶ 12 On September 25, 2017, the DHFS filed a motion to redocket the case. Respondent challenged the redocketing of the matter based on jurisdictional grounds due to his status as an indigenous person. On October 23, 2017, the trial court entered an order granting the motion to redocket and continuing the case until December 13, 2017, for status on respondent's indirect civil contempt finding. The court instructed respondent to pay \$300 to the clerk of the court before the next court date. The order additionally stated that respondent's motions challenging the court's jurisdiction were denied where respondent failed to raise his jurisdictional objections in his initial appearance and answer filed on April 7, 2016.

¶ 13 On November 27, 2017, respondent filed a *pro se* notice of appeal. The notice provided that respondent was appealing the trial court's October 23, 2017, order, in relevant part, on jurisdictional grounds. Then, on December 13, 2017, the trial court entered a contempt status order. Following a hearing, the trial court found: (1) there was no appealable issue pending; (2) respondent had become current on his support obligation of \$547 per month; (3) respondent had not paid the \$300 lump sum to the clerk of the court as ordered on October 23, 2017; (4) respondent had not purged himself of the July 14, 2017, contempt finding; (5) respondent allegedly owed \$10,920.65 in arrearage as of December 8, 2017, with a credit of \$1,641.00 paid via income withholding; and (6) the remaining purge amount was \$5,859.00. The trial court ordered respondent to make a lump sum payment of \$400 to the clerk of the court and to

continue paying his \$547 monthly child support payments. The matter was continued until March 14, 2018, for contempt status.⁷

¶ 14

II. ANALYSIS

¶ 15 We note that this appeal was taken on appellant's *pro se* brief only. Our supreme court has instructed that "if the record is simple and the claimed errors are such that the court can easily decide them without the aid of appellee's brief, the court of review should decide the merits of the appeal." *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976). We, therefore, proceed with deciding the merits of this appeal.

¶ 16 Before we can consider respondent's substantive arguments, we must ascertain our jurisdiction, which we have a duty to consider *sua sponte*. *In re Marriage of Susman*, 2012 IL App (1st) 112068, ¶ 11.

¶ 17 In his *pro se* appellant brief, respondent alleges this court has jurisdiction pursuant to Illinois Supreme Court 306(a)(3) (eff. Nov. 1, 2017). Rule 306(a)(3) provides that a party may petition for leave to appeal to this court from a trial court order "denying a motion to dismiss on the grounds that the defendant has done nothing which would subject defendant to the jurisdiction of the Illinois courts." Ill. S. Ct. R. 306(a)(3) (eff. Nov. 1, 2017). Here, we find that Rule 306(a)(3) does not provide this court with jurisdiction to consider respondent's appeal where he subjected himself to the jurisdiction of the trial court by filing an appearance and answer on April 7, 2016. In other words, respondent did not timely file a motion to dismiss for

⁷ The record does not contain a report of the proceedings or an acceptable substitute from the November 27, 2017, or December 13, 2017, court appearances. Ill. S. Ct. R. 323 (eff. July 1, 2017).

lack of jurisdiction or receive a denial of that motion as required to vest this court with jurisdiction pursuant to Rule 306(a)(3).

¶ 18 That said, we do find this court has jurisdiction to consider respondent's appeal pursuant to another rule. Illinois Supreme Court Rule 304(b)(5) (eff. Mar. 8, 2016) provides that an interlocutory order finding a person in contempt of court which imposes a monetary or other penalty is appealable without a finding under Rule 304(a) of no just reason for delaying a final judgment as to fewer than all the claims. Our court has explained that only contempt orders which impose a sanction of some kind are appealable under Rule 304(b)(5). *In re Marriage of Levinson*, 2013 IL App (1st) 121696, ¶ 50 (citing *Revolution Portfolio, LLC v. Beale*, 341 Ill. App. 3d 1021, 1026 (2003)). In the trial court's July 14, 2017, indirect civil contempt order, a purge amount of \$7,500 was set. Respondent was also ordered to make a lump sum of \$400. We, therefore, find the requirements of Rule 304(b)(5) were satisfied where the trial court imposed a sanction in the form of a purge amount. See generally *Mehalko v. Doe*, 2018 IL App (2d) 170788, ¶ 28 ("the person held in civil contempt must have the ability to purge the contempt by complying with the court order").

¶ 19 Turning to the merits of respondent's claim, respondent contends the trial court lacked jurisdiction to register and enforce the October 17, 2006, Jackson County, Missouri, remodified support order. We find respondent's jurisdictional challenge is precluded by his voluntary submission to the jurisdiction of the trial court.

¶ 20 Section 2-301 of the Code of Civil Procedure (Code) (735 ILCS 5/2-301 (West 2016)) provides, in relevant part:

“Prior to the filing of any other pleading or motion other than that set forth in subsection (a-6) [a motion for extension of time to answer or otherwise plead or a motion filed under section 2-1301, 2-1401, or 2-1401.1], 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 the 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 ***.” 735 ILCS 5/2-301(a) (West 2016).

Subsection (a-6) further specifies that “a party filing any other pleading or motion prior to the filing of a motion objecting to the court’s jurisdiction over the party’s person as set forth in subsection (a) waives all objections to the court’s jurisdiction over the party’s person prospectively.” 735 ILCS 5/2-301(a-6) (West 2016).

¶ 21 The record contains an appearance and answer filed by respondent on April 7, 2016. Respondent first challenged the trial court’s jurisdiction on July 21, 2017.⁸ In his July 21, 2017, motions for substitution of judge and to “vacate/abate/strike/dismiss” the indirect civil contempt order, and accompanying affidavit, respondent alleged that the trial court lacked jurisdiction over him due to his status as an indigenous person. Respondent additionally alleged that he verbally challenged the trial court’s jurisdiction at the July 14, 2017, indirect civil contempt hearing. Pursuant to section 2-301, respondent was required to challenge the lower court’s jurisdiction *before* he filed his appearance and answer. 735 ILCS 5/2-301(a) (West 2016). Respondent’s failure to file a motion challenging the lower court’s jurisdiction prior to filing his appearance

⁸ The record does contain an affidavit and an “ethnicity and race identification” form, in which respondent declared himself to be a white, Native American. Those documents were file-stamped on May 26, 2017. However, the record does not contain an accompanying motion challenging the trial court’s jurisdiction on that date.

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and answer waived his ability to raise a subsequent jurisdictional challenge. 735 ILCS 5/2-301(a-6) (West 2016). We, therefore, conclude respondent's contention on appeal is waived.

¶ 22

III. CONCLUSION

¶ 23 We affirm the judgment of the trial court finding respondent in indirect civil contempt.

¶ 24 Affirmed.