THIRD DIVISION
May 15, 2019

No. 1-17-2680

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re MARRIAGE OF	)	
	)	Appeal from the
BENEQUENDE OUSMANE NACANABO[1],	)	Circuit Court
	)	Cook County
Petitioner-Appellee,	)	
	)	14 D3 30378
and	)	
	)	Honorable
AISSATA DJIRE,	)	Alfred Levinson
	)	Judge Presiding
Respondent-Appellant.	)	

JUSTICE ELLIS delivered the judgment of the court.
Justices Howse and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: Appeal dismissed. Even liberally construed, notice of appeal did not confer jurisdiction over order challenged.

¶ 2 In this appeal, respondent Aissata Djire argues in her brief that the circuit court erred by denying her section 2-1401 petition to vacate an order allowing her ex-husband, petitioner Benequende Ousmane Nacanabo, to remove the couple's two children to Africa. But the notice

[1] The record in this case uses multiple different spellings for petitioner's name. For the purposes of this Order, we have chosen the spelling of his name that appeared on the parties' petitions for dissolution of marriage.

of appeal in this case does not purport to appeal this order, and we have no choice but to dismiss this appeal for lack of jurisdiction.

¶ 3 BACKGROUND

¶ 4 Djire and Nacanabo are both African immigrants who were officially married in a civil ceremony in 2013. Prior to their marriage, the couple had two children. In 2014, Nacanabo filed a petition for dissolution of marriage; Djire counter-petitioned. Ultimately, they entered into a marital settlement agreement, and the court granted a judgment of dissolution in February 2015.

¶ 5 As part of the settlement, the parties agreed to joint custody and financial responsibility of their two children. But "the primary residential custody of the children" was awarded to Nacanabo. That decision was based, at least in part, "upon the fact that [Djire] is or has relocated to the State of North Carolina."

¶ 6 ***The Relocation Order***

¶ 7 Later, in July 2016, Nacanabo filed a petition to relocate the two minor children to his native country of Burkina Faso in Africa. Djire objected to the relocation. After a hearing on the matter, the court made oral and written findings of fact and allowed Nacanabo to relocate the children, albeit with certain conditions to protect Djire's visitation rights.

¶ 8 Aside from the relocation itself, three other aspects of that order are worth mentioning. First, the court required Nacanabo to post a $15,000 bond to insure that the children would be able to travel to the United States. Second, the court required Nacanabo to assume the cost of Djire's travel to Burkina Faso to visit the children. And third, given the children's move to Africa, the order modified Djire's parenting time, giving her two weeks of visitation in Burkina Faso annually (all at once or two weeklong periods) as well as allowing her, three times a week,

to speak with the children via some form of electronic video conferencing. She was also provided parenting time during the summer, between the children's school years.

¶ 9 This order was entered on October 19, 2016. Djire did not appeal it.

¶ 10 ***The Section 2-1401 Petition and October 18 Notice of Appeal***

¶ 11 About six months later, in April 2017, Djire filed a petition, pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2016)) to vacate the court's decision to allow the relocation. In the petition, she argued that the court made grave errors in its judgment by barring evidence of Nacanabo's alleged abuse and failing to appoint a guardian *ad litem*.

¶ 12 On October 4, 2017, the court denied the section 2-1401 petition. In a separate order on that same date, the court issued a rule to show cause why Djire should not be held in contempt for failure to pay child support and other expenses.

¶ 13 On October 18, Djire filed a *pro se* notice of appeal from the denial of her section 2-1401 petition. That appeal was docketed in this court as Appeal No. 1-17-2589.[2]

¶ 14 The October 18 notice of appeal indicated that Djire was appealing the judgment dated October 4, 2017—the denial of her section 2-1401 petition. In explaining the "relief sought" by her appeal, Djire wrote: "To have an opportunity to respond to the petitioner's responses to my 2-1401 motion before it is heard."

¶ 15 ***Further Proceedings in Trial Court and October 31 Notice of Appeal***

¶ 16 Meanwhile, on October 10, the trial court found Djire to be in contempt for failure to pay child support and other expenses. The court gave Nacanabo fourteen days to file a petition for attorney fees and costs in prosecuting the motion for rule to show cause.

[2] The notice of appeal in Appeal No. 1-17-2589 is contained in our record in this matter and, in any event, we may judicially notice the proceedings of another appeal before this court. *In re Marriage of Brudd*, 307 Ill. App. 3d 57, 62 (1999).

¶ 17 On October 30, 2017, the trial court entered an order covering a number of issues between the parties, including contempt and attorney fees, as well as Nacanabo's petition to modify the $15,000 bond. It's necessary to detail the contents of this October 30 order.

¶ 18 That October 30 order: (1) gave Djire 14 days to respond to the petition for fees and costs; (2) set the petition for hearing on November 21, 2017; (3) modified the relocation order to waive Nacanabo's bond, finding that his obligation is "deemed satisfied in full"; (4) based on the modification of bond, found that Djire's child support arrearages were "deemed satisfied in full"; (5) modified the relocation order to provide that Djire is responsible for all transportation costs when visiting her children; and (6) granted Djire's counsel leave to file a motion to withdraw on November 21, 2017.

¶ 19 The next day, October 31, Djire filed a second notice of appeal, the one that triggered this appeal. This notice of appeal, also filed *pro se*, indicated that the "Date of the judgment/order being appealed" is "October 30 2017." The notice specified that the "relief sought" from this court was "to have an opportunity to respond to the Petitioners to removal at bond and injunction on the October 30 2017 con't date until appeale [*sic*] can make decision."

¶ 20 ***This Court's Dismissal of Appeal No. 1-17-2589 (October 18 Notice of Appeal)***

¶ 21 On March 9, 2018, in Appeal No. 1-17-2589 stemming from the first notice of appeal Djire filed on October 18, 2017, this court entered an order of dismissal for want of prosecution, based on Djire's failure to timely file the record on appeal. The appellate record in that case reflects no attempt by Djire to request additional time to file the record on appeal, nor did Djire seek reconsideration of that dismissal.

¶ 22 In contrast, Djire has timely prosecuted the appeal before us, based on the second, October 31 notice of appeal. During the course of our initial review, we identified a potential

jurisdictional problem with this appeal. We thus requested supplemental briefing from the parties, to which Djire has responded.

¶ 23 ANALYSIS

¶ 24 We are obligated to independently consider our jurisdiction. *People v. Smith*, 228 Ill. 2d 95, 106 (2008) ("the ascertainment of its own jurisdiction is one of the two most important tasks of an appellate court panel when beginning the review of a case.")

¶ 25 The "notice of appeal confers jurisdiction on a court of review to consider only the judgments or parts thereof specified in the notice of appeal." *Id.* at 104 (2008). As Djire emphasizes in her supplemental brief, we liberally construe the contents of the notice. *In re Marriage of O'Brien*, 2011 IL 109039, ¶ 22. "[A] notice of appeal 'will confer jurisdiction on an appellate court if the notice, when considered as a whole, fairly and adequately sets out the judgment complained of and the relief sought so that the successful party is advised of the nature of the appeal.' " *Id*. (quoting *Burtell v. First Charter Service Corp.*, 76 Ill. 2d 427, 433-34 (1979)).

¶ 26 Djire makes no secret in her briefs to this court that her interest is in overturning the relocation order that allowed her husband to remove their children to Burkina Faso. Her briefs, apart from the discussion of jurisdiction we solicited, are focused exclusively on reversing the trial court's order denying Djire's section 2-1401 petition, which attacked the relocation order.

¶ 27 The relocation order, itself, was entered on October 19, 2016, *nunc pro tunc* to September 16. Djire did not appeal that order. Because the relocation order had also modified Djire's parenting time (to two weeks a year, summers, and three times a week via video conference), the relocation order was a modification of parental responsibilities that Djire was required to appeal

within thirty days per Illinois Supreme Court Rule 304(a)(6) (eff. Mar. 8, 2016). See *In re Marriage of Fatkin*, 2019 IL 123602, ¶¶ 28-30. But Djire did not appeal that order.

¶ 28 As noted, however, Djire did file a section 2-1401 petition to vacate that order some six months later, in April 2017. Her petition was denied on October 4, 2017.

¶ 29 Her first notice of appeal, filed on October 18, unquestionably appealed that October 4 judgment denying the section 2-1401 petition. But Djire did not prosecute that appeal. It was dismissed for want of prosecution, for failure to file the record on appeal, more than a year ago. Djire did not petition for reconsideration of that dismissal within 21 days (or ever). Once this court dismissed that appeal and Djire failed to timely petition for reconsideration (or seek additional time to file that petition), we lost jurisdiction over that appeal. *People v. Lyles*, 217 Ill. 2d 210, 216 (2005); see Ill. S. Ct. R. 367 (eff. July 1, 2017). We could not resurrect that appeal under any circumstances; we have no discretion whatsoever. *Lyles*, 217 Ill. 2d at 216.

¶ 30 So that leaves the second notice of appeal, filed on October 31, which triggered the appeal before this court. Unfortunately, no matter how liberally we construe that notice of appeal, we see no way in which we can interpret it as appealing the October 4 judgment denying the section 2-1401 petition.

¶ 31 On its face, as explained above, the October 31 notice of appeal sought a reversal of the October 30 order. We detailed above the myriad issues covered in that October 30 order (*supra* ¶ 18), which in shorthand concerned Nacanabo's fee petition, a modification of his bond, Djire's child support obligations, and Djire's counsel seeking to withdraw. The court modified the relocation order only insofar as it (1) held Djire, not Nacanabo, responsible for transportation costs for visitation of the children and (2) removed the bond requirement it had imposed on

Nacanabo for moving the children to Africa. There was no mention whatsoever of the section 2-1401 petition.

¶ 32 The relief specified by Djire in the October 31 notice of appeal, as discussed above, likewise made no mention of the section 2-1401 petition. Djire sought "an opportunity to respond to the Petitioners to removal at bond and injunction on the October 30 2017 con't date until appeale [*sic*] can make decision." Even liberally construed, and obviously accounting for the fact that Djire was acting *pro se* and writing in a language that was not her native tongue, we can only understand this requested relief as objecting to the modification of Nacanabo's bond that the court required as a condition of removing the children from Illinois. She mentioned one and only one judgment date—October 30—and said nothing about the section 2-1401 petition.

¶ 33 That, alone, would be fatal to any claim that Njire properly appealed the denial of her section 2-1401 petition in her second notice of appeal. We have forgiven typographical errors as to the date of the trial court's judgment being appealed, as long as the judgment actually being challenged is sufficiently *described* in the notice of appeal. See, *e.g.*, *McGrath v. Price*, 342 Ill. App. 3d 19, 31 (2003). But we cannot ignore the fact that "the notice not only failed to mention the [judgment at issue]; it specifically mentioned a different judgment, and only that judgment." *Smith*, 228 Ill. 2d at 105; see *People v. Smith*, 383 Ill. App. 3d 791, 794 (2008) (after remand from supreme court, dismissing case for lack of jurisdiction where notice of appeal listed November 10, 2004 order, but defendant actually challenged February 21, 2006 order.) Here, Djire's second notice of appeal *identified* only an October 30 judgment and *referred* only to that October 30 judgment.

¶ 34 Nor can we ignore the fact that Djire had, indeed, *properly* appealed the section 2-1401 petition's denial in her earlier, first notice of appeal. The contrast between the first and second

notices of appeal can only lead to the conclusion that the second notice of appeal was not intended to challenge the October 4 order denying her section 2-1401 petition.

¶ 35 Djire argues that her second notice of appeal, identifying the October 30 judgment as under appeal, incorporated the October 4 judgment as well, because the October 4 judgment was " 'a 'step in the procedural progression leading' to the judgment which was specified in the notice of appeal.' " *Marriage of O'Brien*, 2011 IL 109039, ¶ 23. That, unfortunately, is also incorrect. "It is well settled that the filing of a section 2-1401 petition marks the beginning of a new proceeding rather than a continuation of the old one." *JP Morgan Chase Bank, N.A. v. Bank of America, N.A.*, 2015 IL App (1st) 140428, ¶ 36. The section 2-1401 proceeding was not part of any progression of the underlying case; it was a separate action altogether.

¶ 36 We are mindful of and sympathetic to the fact that Djire was acting *pro se* when she filed each notice of appeal, and that the waters she tried to navigate were murkier still, given that English is not her first language. But no matter how generously we read her second notice of appeal, and no matter how much we might wish to give Djire her day in court, we have no choice but to dismiss this appeal.

¶ 37 Our supreme court, on the other hand, possesses the authority and discretion to allow Djire's challenge to the section 2-1401 petition to be considered, by virtue of its supervisory authority. See *Lyles*, 217 Ill. 2d at 217 ("although the appellate court had no discretion to take any action other than dismissing the appeal, that does not end the matter so far as this court is concerned. For although the appellate court must abide by this court's rules, this court possesses supervisory authority over the Illinois court system."). The supreme court could reinstate the first appeal and direct us to consider it, or it could direct us to treat this (second) appeal as an appeal of the October 4 order denying Djire's section 2-1401 petition.

¶ 38 But until such time as the supreme court directs us to do otherwise, we have no choice but to dismiss this appeal.

¶ 39 Appeal dismissed.