2019 IL App (1st) 180847-U

SIXTH DIVISION
March 29, 2019

No. 1-18-0847

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re PARENTAGE OF L. G., a Minor	)	Appeal from the Circuit Court of Cook County.
(Illinois Department of Healthcare and Family Services, *ex rel.* Nile C. on behalf of L. G.,	)	
Petitioner-Appellant,	)	
v.	)	No. 13 D 90982
Andrew G.,	)	
Respondent-Appellee	)	Honorable Abbey Fishman Romanek,
(Marilyn Longwell, child representative, Appellee.))	)	Judge Presiding.

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

¶ 1 ***Held:*** We dismiss this appeal for lack of jurisdiction. The order appealed is not an order allocating parental responsibilities under Illinois Supreme Court Rule 304(b)(1).

¶ 2 In 2010, petitioner Nile C. gave birth in Michigan to a son, L. G. The next year, she filed a domestic relations case (No. 11 D 91085) in the Circuit Court of Cook County against

respondent Andrew G., claiming he was the child's father. On October 25, 2012, the court entered an order noting that the case was brought to determine parentage and child support for L. G. and that Nile had refused to submit to genetic testing for herself or the child. The court thus entered an order dismissing the case without prejudice.

¶ 3 Then, in 2013, Nile filed a uniform support petition in a Michigan court, requesting a declaration that respondent Andrew was the father of L. G., and a determination of child support. The Michigan petition alleged that Nile was the custodial parent and that Andrew had not provided support since the child's birth.

¶ 4 On January 10, 2014, the State's Attorney of Cook County filed a petition under the Uniform Interstate Family Support Act, 750 ILCS 22/100 *et seq.* (West 2012) (UIFSA), on behalf of Nile and the Illinois Department of Healthcare and Family Services, seeking a hearing in Illinois on the previously filed Michigan uniform support petition. The Cook County case (No. 13 D 90982) is the underlying case in this appeal.

¶ 5 On August 19, 2014, the circuit court of Cook County entered orders finding that Andrew was the biological father of L. G., requiring Andrew to temporarily pay $1,000 per month in child support, and reserving the issue of retroactive support for future consideration. One of the orders explained that the child support determination was temporary "by agreement pending discovery." The parentage order specifically stated that there was "no finding" as to custody or visitation of the father or mother, with an adjacent handwritten notation reading "UIFSA", an apparent reference to the fact that Illinois courts may not rule on custody or visitation in UIFSA cases. Neither order mentioned any allocation of parental responsibility or custody.

¶ 6 The court thereafter entered orders from time to time continuing the issues of "medical" and retroactive and permanent child support because of ongoing discovery. Along the way, Nile

and L. G. moved to Illinois. On August 18, 2015, the court entered an order noting that the "UISFA State [Michigan] has closed case" and directing Nile to apply for the case to be transferred to the local Illinois IV-D program. (See Title IV, Part D of the Social Security Act, 42 U.S.C. § 651 *et seq.*).

¶ 7 On September 29, 2015, the circuit court entered a "final" uniform order of support noting that the issue of retroactive child support was "satisfied" and, by agreement, requiring Andrew to pay child support in the amount of $2,240 per month. Notwithstanding the "final" designation, the order again designated the child support amount as "temporary". Form language in the order required Andrew to enroll the child in a health insurance plan and pay 100% of the cost. The order also recited that is was entered under the parentage case filed by Illinois and not pursuant to the Michigan UIFSA case, as "Nile [C.] lives in Illinois". The order concluded with a notation that that the case was "off call".

¶ 8 In July, 2016, Andrew filed a petition for an order of protection in the then-dormant underlying case. The court entered an order prohibiting Nile from contact with Andrew or certain named family members of Andrew. The petition alleged, among other things, that there was no court order allocating any parental rights for Andrew with respect to L. G. The court extended the order of protection from time to time.

¶ 9 On December 21, 2016, the court entered orders: appointing Marilyn Longwell as a child representative pursuant to 750 ILCS 5/5-506(a)(3) (West 2014), continuing the case "regarding GAL report/recommendations on parenting plan", reserving the issue of Andrew's parenting time, and establishing a two-year plenary order of protection in favor of Andrew and against Nile.

¶ 10 On May 17, 2017, the court entered an order requiring Nile to provide information regarding the child's pediatrician to Longwell, to take L. G. to his pediatrician for school vaccinations within 14 days, and requiring the pediatrician to communicate any of his objections to vaccination to Longwell.

¶ 11 On July 26, 2017, Longwell filed a pleading entitled "Petition to Allocate Parental Responsibility for Health Care to Father, or in the Alternative to Order Immunization of Minor Child." This petition alleged that Nile, "in the absence of any court order to the contrary, has parental responsibility for the child." The petition also alleged that: (1) L. G. had never received an array of standard childhood vaccinations; (2) the mother asserted a religious objection to having L. G. vaccinated, although she was Catholic and that faith has no objections to vaccinations; (3) the mother's objection was based on "some non-scientific belief as to the properties of vaccines"; and (4) that Andrew, a dentist with medical training, desired that L. G. be vaccinated. Longwell requested that the court award "all parental responsibility for medical decisions regarding" L. G. to Andrew, or, in the alternative, order Nile to have "the minor child vaccinated for all diseases are per the requirements of Illinois law and to maintain such immunizations as required in the future."

¶ 12 Nile responded to the petition, indicating that she asserted a religious objection to having her son vaccinated pursuant to section 27-8.1(8) of the School Code (105 ILCS 5/27-8.1 (8) (West 2016)) and other statutes, because she believed in the body's "God-given ability to heal itself." She also claimed that she obtained sole custody of L. G. "by operation of law" under the prior child support order. The parties thereafter exchanged discovery relating to Longwell's petition and to other pending issues such as the order of protection.

¶ 13 On February 21, 2018, the court held an evidentiary hearing on Longwell's petition. The court considered testimony from Andrew, Nile, and the evidence deposition of the child's pediatrician. After the close of evidence, the parties submitted written arguments. Longwell acknowledged the contradictory desires of the parents regarding vaccinations. She took the position that the child should be vaccinated based on the recommendation of the child's pediatrician and to protect the child's health and the health of others. Nile, in response, argued that the child support order (entered September 29, 2015) gave her sole custody of L. G. She contended that both the Illinois Parentage Act of 1984 (750 ILCS 45/14(a)(2) (West 2014) (rep.), which was in effect at the time of the child support order, and its successor, the Illinois Parentage Act of 2015 (750 ILCS 46/802(c) (West 2016)), effective January 1, 2016, provided that in the absence of an explicit allocation of parental responsibilities order, the establishment of a child support obligation to one parent is to be construed as an order allocating all parental responsibilities to the other parent. Accordingly, Nile contended, the child representative's petition was actually a petition to *re*-allocate, or *modify*, existing parental responsibilities. The Illinois Marriage and Dissolution of Marriage Act requires a party seeking modification of parental responsibilities to show there has been a "significant change" in circumstances warranting the re-allocation and "that a modification is necessary to serve the child's best interest that have arisen since the entry of the existing parenting plan or allocation judgment or were not anticipated therein." 750 ILCS 5/610.5 (West 2016); 750 ILCS 46/808 (West 2016). Since there were no such circumstances, Nile argued, the petition must be denied. In response, Andrew argued that the child support order was a temporary order and thus not subject to the heighted modification requirements cited by Nile. He also joined Longwell's arguments favoring

vaccination. Around the same time, Nile filed a petition to remove the child from Illinois to Michigan, which Andrew contested.

¶ 14 On April 5, 2018, the circuit court entered a memorandum order reciting the evidence adduced at the hearing. The court noted that "[i]n the absence of any court order to the contrary, the petitioner has sole parental responsibility for [L. G.]."[1] The court found that it was in L. G.'s best interest "that he be vaccinated as required by the CDC for his well-being so that he is protected from outbreaks of infections that can and have spread throughout the community and will be required to miss school as a result of those outbreaks." The decretal portion of the order reads, in full: "IT IS HEREBY ORDERED THAT: 1) [L.G.] be vaccinated within 14 days; and 2) Further medical decision-making is reserved until the relocation issue is decided."

¶ 15 Although both the circuit court and this court denied Nile's requests to stay the vaccination order, the circuit court later reversed itself and stayed its vaccination order "pending further order of court", apparently because a stay was necessary to secure L. G.'s admission into school.

¶ 16 Nile filed a timely appeal from the vaccination order. On appeal, she contends that the vaccination order is both against the manifest weight of the evidence and was an abuse of discretion. In particular, she argues that there was no "substantial change in circumstances" warranting the court's upsetting the *status quo* (that is, her exclusive custody) by imposing a vaccination order against her wishes.

¶ 17 Before we can resolve that issue, we must address the issue of jurisdiction. This court has an independent duty to consider its jurisdiction. *Archer Daniels Midland Co. v. Barth*, 103 Ill. 2d

[1] Andrew disputes the accuracy of this statement. While he agrees that there is no court order governing custody, he contends that, when the court entered this order, neither parent had either a presumptive or judicially declared right to custody because the child support order was entered under UIFSA—not the Illinois Parentage Act—and created no presumption of custody.

536, 539 (1984). The jurisdictional statement in Nile's brief states that this court has jurisdiction under Illinois Supreme Court Rule 301, which provides for appeals as a matter of right from final judgment of a circuit court. Supreme Court Rule 301 provides "[e]very final judgment of a circuit court in a civil case is appealable as of right." Ill. S. Ct. R. 301 (eff. Feb. 1, 1994). A final judgment fixes absolutely and finally the rights of the parties in the lawsuit; it determines the litigation on the merits so that, if affirmed, the only thing remaining is to proceed with the execution of the judgment. *In re Adoption of Ginnell*, 316 Ill. App. 3d 789, 793 (2000). To be final, a judgment must dispose of the litigation or some definite part of it. *Id*. If jurisdiction is retained for the future determination of matters of substantial controversy, the order is not final. *Id*. Unless an exception applies, this court does not have jurisdiction to review judgments or orders which are not final. *Department of Public Aid ex rel. Chiapelli v. Viviano*, 195 Ill. App. 3d 1033, 1034 (1990). The vaccination order is not a final judgment under Rule 301, because it left many pending issues unresolved: medical decision-making and Nile's petition to relocate the child to Michigan, among others.

¶ 18 This court noted this potential jurisdictional defect and issued an order requesting clarification regarding its jurisdiction. We also noted that the order was apparently not appealable as an injunction under Supreme Court Rule 307(a)(1) because it was written in the passive voice ("IT IS HEREBY ORDERED THAT *** [L. G.] be vaccinated ***") and did not command *anyone* to do anything, particularly to take L. G. to a doctor and request that the doctor administer vaccine to him. As written, the order could have been construed to require Nile, Andrew, or the child representative to procure the vaccination.[2]

[2] Since we are dismissing this appeal and the circuit court will undoubtedly revisit the issue, we respectfully recommend that it clarify this issue in a future order.

¶ 19 Nile responded, repeating her contention that the vaccination order re-allocated existing parental responsibilities. She now asserts that this court has jurisdiction under Rule 304(b)(6). That rule allows for an immediate appeal of "[a] custody or allocation of parental responsibilities judgment or modification of such judgment entered pursuant to the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/101 et seq.) or Illinois Parentage Act of 2015 (750 ILCS 46/101 et seq.)." Ill. S. Ct. R. 304(b)(6) (eff. Mar. 8, 2016). Accordingly, for us to have jurisdiction, the vaccination order must have been a "custody or allocation of parental responsibilities judgment" or "modification" of such a judgment, entered under the specified acts.

¶ 20 We reject Nile's contention that the September 29, 2015 child support order granted her custody pursuant to those Acts, so that the vaccination order diminished her custodial rights and was appealable under Rule 304(b)(6). First, it is noteworthy that Nile did not bring her appeal as an accelerated docket case under Illinois Supreme Court Rule 311(a), which allows for expedited consideration of appeals relating to "interlocutory appeals in child custody or allocation of parental responsibilities cases." Documents filed in appeals brought under that rule bear a special, prominent caption noting "THIS APPEAL INVOLVES A MATTER SUBJECT TO EXPEDITED DISPOSITION UNDER RULE 311(a).". No such notice appears on any of the filings made in this case.

¶ 21 The child support order on which Nile relies was entered in a child support case brought by Illinois on behalf of Michigan pursuant to UIFSA. It was not until *after* the child support amount was originally fixed that the court found that the Michigan case was closed. Significantly, the Illinois statute adopting UIFSA does not allow Illinois courts to "render judgment or issue an order relating to child custody or visitation in a proceeding under this Act."

750 ILCS 22/104(b)(2) (West 2016). As such, the only issue before the Cook County court when it entered either the child support order was child support, not custody. The question arises, then, is whether the presumption of custody that normally attaches to child support orders applies here.

¶ 22 This court considered a similar issue in *In re B. B.*, 2011 IL App (4th) 110521. There, the petitioner asserted that a permanent child support order awarded her custody *sub silentio* pursuant to section 14(a)(2) of the Parentage Act of 1984. *Id.*, ¶ 21. That statute provided:

> "If a judgment of parentage contains no explicit award of custody, the establishment of a support obligation or of visitation rights in one parent shall be considered a judgment granting custody to the other parent. If the parentage judgment contains no such provisions, custody shall be presumed to be with the mother; however, the presumption shall not apply if the father has had physical custody for at least 6 months prior to the date that the mother seeks to enforce custodial rights."

The same language was still in force, unchanged, on September 29, 2015. The *B. B.* court emphasized that because the first sentence of the section refers to a "*parentage judgment*" (emphasis in original), the triggering of a mere statutory presumption was insufficient to establish a *de facto* custody judgment under the Parentage Act of 1984. *B. B.*, ¶ 24. The court concluded that "[s]ince a custody judgment did not exist when respondent sought custody of the parties' minor children, respondent's petition was for an initial custody judgment and not a modification of one." *Id.*, ¶ 27.

¶ 23 As explained above, L. G.'s custody and parental responsibilities have yet to be written on what is still a completely blank slate. Because we find the *B. B.* court's reasoning persuasive and adopt it here, we are compelled to reject Nile's contention that we have jurisdiction over this appeal as a "custody or allocation of parental responsibilities judgment or modification of such

judgment" under Rule 304(b)(6). Further supporting this conclusion is that because the circuit court phrased the vaccination order in the passive voice, the order was essentially insufficient to allocate any parental rights *at all*. If someone filed a petition for rule to show cause why Nile should be found in contempt for not getting L. G. vaccinated, contempt would probably not lie against her for failing to obey an order which did not specifically require *her* (Nile) to do anything.

¶ 24 There being no other asserted or apparent ground to establish our jurisdiction, we must dismiss this appeal for lack of jurisdiction.

¶ 25 Dismissed.