2019 IL App (1st) 182178-U

FIRST DIVISION
September 16, 2019

No. 1-18-2178



IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

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| *In re* MARRIAGE OF KATHRYN CRIVOLIO, | ) | Appeal from the |
| | ) | Circuit Court of |
| Petitioner-Appellee, | ) | Cook County |
| | ) | |
| and | ) | No. 10 D 9560 |
| | ) | |
| MARK McCOMBS, | ) | The Honorable |
| | ) | Mark J. Lopez, |
| Respondent-Appellant. | ) | Judge Presiding. |

JUSTICE PIERCE delivered the judgment of the court.
Justices Hyman and Walker concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court's order requiring respondent to seek leave of court before filing any pleadings in the State of Illinois is vacated, and we remand for any other proceedings not inconsistent with this order.

¶ 2 Respondent Mark McCombs appeals from the circuit court's entry of an order during postdissolution of marriage proceedings requiring Mark to "seek leave of [the circuit] court before filing any pleadings in the State of Illinois." Respondent Kathryn Crivolio has not filed an appellee brief, and thus we proceed on Mark's brief alone under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976) ("[I]f the

record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief, the court of review should decide the merits of the appeal. In other cases if the appellant's brief demonstrates *prima facie* reversible error and the contentions of the brief find support in the record the judgment of the trial court may be reversed."). For the reasons that follow, we vacate the circuit court's order and remand for any further proceedings not inconsistent with this order.

¶ 3 I. BACKGROUND

¶ 4 The prelude to this appeal is set forth in *In re Marriage of Crivolio*, 2017 IL App (1st) 160941-U (*Crivolio I*), in which we dismissed Mark's appeal from the circuit court's March 4, 2016, order entered during postdissolution of marriage proceedings prohibiting Mark "from filing *any pleadings in this matter* without first seeking leave of court[.]" (Emphasis added.) In *Crivolio I*, we observed

> "On March 4, 2016, the circuit court entered a written order granting Mark's motion for leave to file an interlocutory appeal. The circuit court's order does not identify the supreme court rule under which Mark's motion was being granted. The circuit court stated in its written order that it entered the December 10, 2015, order 'to restrict or prevent Mark's filing [of] harassing or vexatious litigation against his ex-wife,' and identified 19 filings by Mark between October 9, 2014, and December 3, 2015. The circuit court found that Mark was 'using his legal training and experience to harass his ex-wife with multiple filings,' and that it had 'a duty to maintain order in its courtroom and move cases along as efficiently as possible.' The circuit court noted that it had not prohibited Mark from filing any pleadings, and that the purpose of its order was 'to allow the court

> to make an informed decision after reviewing each proposed pleading to determine if it is harassing or vexatious in substance or in sheer volume to prevent Mark from abusing the court system for any improper purpose.' The circuit court 'amended' its December 10, 2015, order to include the findings contained in the March 4, 2016, order, and found that the December 10, 2015, order was 'final and appealable.' " 2017 IL App (1st) 160941-U, ¶ 7.

¶ 5 We dismissed Mark's appeal because we found that the circuit court's order was administrative in nature, and because it regulated the procedural details of the postdissolution of marriage litigation between Mark and Kathryn. *Id.* ¶ 13. Therefore the circuit court's order was not an appealable injunction for the purposes of Illinois Supreme Court Rule 307(a) (eff. Jan. 1, 2016). *Id.* ¶ 14.

¶ 6 While *Crivolio I* was pending in this court, Mark filed a complaint against Kathryn in the law division of the circuit court (law division complaint), asserting that Kathryn committed various torts when she unsuccessfully sought orders of protection against Mark in the postdissolution proceedings, and when she filed complaints against him for criminal harassment and disorderly conduct. Kathryn moved to dismiss Mark's law division complaint under section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2016)), arguing that the March 4, 2016, order entered in the postdissolution proceedings prohibited Mark's complaint. The circuit court denied her motion, observing that the March 4, 2016, order only applied to filings in the postdissolution proceedings. Kathryn was eventually successful in dismissing Mark's law division complaint with prejudice, and we affirmed the dismissal. *McCombs v. Crivolio*, 2019 IL App (1st) 181252-U (*Crivolio II*).

¶ 7 On May 31, 2018, Kathryn filed a motion in the postdissolution proceedings to modify the March 4, 2016, order, asserting that the order "ha[d] not successfully deterred [Mark] from engaging in harassing and vexatious litigation at Kathryn's expense." She further asserted that Mark "has an extensive history of harassing and intimidating Kathryn through judicial proceedings[.]" Kathryn requested an order requiring Mark to seek leave of court "for all later filed Illinois actions against Kathryn which stem from this pending litigation."

¶ 8 In response, Mark filed a "motion to dismiss" Kathryn's motion to modify the March 4, 2016, order. He asserted that the relief requested "far exceeds [the domestic relations] court's powers, would violate the [c]ircuit [c]ourt's rules and orders, circumvent the [Code] and appropriate the powers of judges in other divisions." He further asserted that Kathryn failed to make a showing that she lacked an adequate remedy at law or that she would suffer an irreparable injury absent an injunction. He argued that Kathryn could file motions to dismiss any complaints he filed, or seek sanctions under Illinois Supreme Court Rule 137 "for any injury she might suffer from allegedly vexatious pleadings filed by Mark." He also contended that the circuit court "has no power to issue a blanket injunction restraining Mark in any way from proceeding with any action against Kathryn that is unrelated to the proceedings herein."

¶ 9 On September 17, 2018, the circuit court entered a written order denying Mark's motion to dismiss. The circuit court granted Kathryn's motion and modified the March 4, 2016, order "so that [Mark] must seek leave of this [c]ourt before filing any pleadings in the State of Illinois. All other terms of the March 4, 2016[,] order shall remain in full force and effect." Mark filed a notice of interlocutory appeal on October 15, 2018. There is no report of proceedings for the September 17, 2018, hearing contained in the Supreme Court Rule 328 (eff. July 1 2017) supporting record that Mark submitted as part of this appeal.

¶ 10 II. ANALYSIS

¶ 11 On appeal, Mark advances five theories as to why the circuit court's September 17, 2018, order should be vacated. First, he asserts that the circuit court abused its discretion because the order purports to regulate the filing of pleadings that are unrelated to the issues in the postdissolution proceedings. Second, he contends that Kathryn failed to allege an irreparable injury or an inadequate remedy at law. Third, he argues that the order violates his "constitutional and statutory right to appellate review and Illinois Supreme Court Rule 301." Fourth, he argues that the order violates his "constitutional and statutory right to litigate in federal court." Finally, he contends that the order violates the rules of the circuit court of Cook County and its general orders.

¶ 12 We first examine our jurisdiction. We agree with Mark that we have jurisdiction under Rule 307(a), which provides that "[a]n appeal may be taken to the Appellate Court from an interlocutory order of court (1) granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction." Ill. S. Ct. R. 307(a)(1) (eff. Nov. 1, 2017). The term "injunction" is to be broadly construed. *Zitella v. Mike's Transportation, LLC*, 2018 IL App (2d) 160702, ¶ 14. An injunction is a "judicial process requiring a party to do a particular thing, or to refrain from doing a particular thing[.]" *Id.* In *Crivolio I*, we found that we lacked jurisdiction over Mark's appeal because the circuit court's order that prohibited Mark from filing any pleadings in the postdissolution proceedings without leave of court was "an administrative order intended to regulate the procedural details of the litigation, and is squarely within the circuit court's inherent authority to control its own docket." *Crivolio I*, 2017 IL App (1st) 160941-U, ¶ 14. We observed that

> " 'Orders of the circuit court that regulate only the procedural details of the litigation before the court, which thus can be properly characterized as merely "ministerial" or "administrative," cannot be the subject of an interlocutory appeal.' [Citation.] This includes orders related to the circuit court's inherent authority to control its own docket that do not affect the rights of the parties apart from the litigation. [Citation.]" *Id.* (citing *Short Brothers Construction, Inc. v. Korte & Luitjohan Contractors, Inc.*, 356 Ill. App. 3d 958, 960 (2005)).

¶ 13 Here, the circuit court's September 17, 2018, order not only continues the March 4, 2016, requirement that Mark obtain leave of court before he files any pleading that stems from the postdissolution proceedings, but it also enjoins Mark from filing any pleading in any court in Illinois without prior approval, thus regulating not only the postdissolution proceedings, but also any other litigation that Mark might initiate or be required to defend against, regardless of whether it involves Kathryn or the issues involved in postdissolution proceedings. Such an order is injunctive in nature because it operates as a restraint on Mark's ability to pursue any litigation in any court in Illinois, regardless of whether it is connected to the issues in the postdissolution proceedings, and the order is appealable because it falls outside of the circuit court's inherent authority to control its own docket. See *In re A Minor*, 127 Ill. 2d 247, 261 (1989) (finding that a circuit court order barring a newspaper from publishing the name of minor was an injunction because it "operated as a restraint upon the appellant in the exercise of its first amendment rights," and was appealable because it was not part of the circuit court's inherent power). The September 17, 2018, order cannot be characterized as ministerial or administrative, since the circuit court's order does more than regulate its own docket; instead, the order puts the circuit court in a position of the gatekeeper for dockets of other courts located in Illinois. We therefore

find that the circuit court's September 17, 2018, order is an appealable injunction under Rule 307(a).

¶ 14 The decision to enter an injunction depends on the facts of the case, and we review the circuit court's decision for an abuse of discretion. *In re Marriage of Gary*, 384 Ill. App. 3d 979, 983 (2008). The circuit court abuses its discretion only if it acts arbitrarily without the employment of conscientious judgment, exceeds the bounds of reason and ignores recognized principles of law, or if no reasonable person would take the position adopted by the circuit court. *Schmitz v. Binette*, 368 Ill. App. 3d 447, 452 (2006).

¶ 15 Our review of the circuit court's September 17, 2018, order is limited by the fact that Mark has not supplied this court with a transcript or any bystander's report of the September 17, 2018, hearing on Kathryn's motion to modify the March 4, 2016, order. As the appellant, it was Mark's burden to supply this court with a sufficiently complete record to support his claim of error. *Wells Fargo Bank, N.A. v. Hansen*, 2016 IL App (1st) 143720, ¶ 15 (citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984)). Because we are unable to discern whether the circuit court heard any evidence or oral argument on Kathryn's motion, and are unable to determine what factors the circuit court considered in reaching its decision on the motion to modify the March 4, 2016, order, we must presume that the circuit court acted within its authority and in accord with established legal principles. *Id.* Therefore, Mark can only prevail on appeal if he can show that the circuit court committed a *per se* abuse of its discretion. *Id.*

¶ 16 We need not specifically address all of Mark's arguments on appeal because we find that the circuit court's order of September 17, 2018, as written, is too broad and amounts to an abuse of discretion. After the law division judge rejected Kathryn's argument that the March 4, 2016, order barred Mark's filing of the tort claims against her (*supra* ¶ 6), Kathryn requested that the

domestic relations judge order Mark to seek leave of court "for all later filed Illinois actions against Kathryn *which stem from this pending litigation*." (Emphasis added.) The circuit court granted Kathryn's motion to amend the March 4, 2016, order. The circuit court's September 17, 2018, order kept the March 4, 2016, requirement that Mark obtain leave of court before he files any pleading that stems from the postdissolution proceedings—"All other terms of the March 4, 2016[,] order shall remain in full force and effect," (*supra* ¶ 9)—and it added the requirement that Mark "must seek leave of this court before filing *any pleadings in the State of Illinois*."Thus, on its face, the September 17, 2018, order specifically prohibits filing any pleading in the state, and is *not* limited, as Kathryn requested, to pleadings that "stem from [the] pending [postdissolution] litigation." The circuit court's order is overly broad because it goes well beyond the relief sought by Kathryn, and exceeds the bounds of the circuit court's discretion.

¶ 17 "Injunctive relief must be fashioned in such a way that it will protect the legitimate interests of the plaintiff without unduly burdening the ability of the defendant to exercise her rights." *Gary*, 384 Ill. App. 3d at 987. In *Gary*, the respondent sought to enforce a foreign marital separation order in the circuit court of McHenry County. The petitioner filed a petition for dissolution of marriage, also in McHenry County, and the two proceedings were consolidated. The respondent then filed a separate action in the circuit court of Cook County to enforce the foreign marital separation order. The petitioner sought to enjoin the respondent from proceeding with the enforcement action in Cook County. The McHenry County circuit court entered a preliminary injunction restraining the respondent from proceeding with the enforcement action in Cook County, and further enjoined the respondent from filing any actions in any other county or state on issues that were before the McHenry County circuit court "or that could be raised before" that court. *Id.* at 980. Although we found that the circuit court did not abuse its discretion

in restraining the respondent from proceeding with the enforcement action in Cook County (*id.* at 987), we concluded that the circuit court's injunction was too broad because it essentially required the petitioner to bring any claim she might have—regardless of its connection to the consolidated litigation—in McHenry County (*id.* at 988). We stated that "[t]here is no basis upon which the trial court may insist that it adjudicate such unrelated controversies, and thus it abused its discretion by including such broad language in the injunction." *Id.* We vacated the circuit court's injunction and "remanded for the entry of an injunction consistent with this opinion." *Id.*

¶ 18 Here, the circuit court's September 17, 2018, order does not set forth the basis for its reasoning in expressly modifying its previous March 4, 2016, order. The justifications underpinning the March 4, 2016, order, however, do not support the breadth of the September 17, 2018, order. The circuit court's September 17, 2018, order keeps the requirement that Mark obtain leave of court to file any pleading in the postdissolution proceedings and adds the requirement that he submit to the circuit court for review any proposed pleading "in the State of Illinois," regardless of its connection to the postdissolution proceedings. As we observed in *Crivolio I*, the purpose of the circuit court's March 4, 2016, order was " 'to restrict or prevent Mark's filing [of] harassing or vexatious litigation against his ex-wife[.]' " *Crivolio I*, 2017 IL App (1st) 160941-U, ¶ 7. The circuit court identified 19 filings by Mark in the postdissolution proceedings between October 9, 2014, and December 3, 2015, and "found that Mark was 'using his legal training and experience to harass his ex-wife with multiple filings[.]' " *Id.* The circuit court concluded that it was necessary to review each of Mark's proposed pleadings " 'to make an informed decision *** to determine if it is harassing or vexatious in substance or in sheer volume to prevent Mark from abusing the court system for any improper purpose.' " *Id.*

¶ 19 The circuit court's reasoning behind issuing the March 4, 2016, order requiring Mark to submit pleadings that he proposed to file in the postdissolution proceedings, however, does not justify the September 17, 2018, order's broad requirement that Mark submit *any* pleading he proposed to file in the State of Illinois, regardless of its connection to the postdissolution proceedings, to the circuit court for review. It might have been a reasonable exercise of the circuit court's discretion to grant the specific relief that Kathryn sought—requiring Mark to seek leave of court "for all later filed Illinois actions against Kathryn *which stem from this pending litigation*." (Emphasis added.) The September 17, 2018, order, however, is far too broad in scope because it unnecessarily limits Mark's right to file pleadings in state or federal court that have nothing to do with Kathryn or the postdissolution proceedings. Therefore, the portion of the circuit court's September 17, 2018, order requiring Mark to seek leave of court before filing any pleadings in the State of Illinois is vacated, the circuit court's March 4, 2016, order remains in full force and effect, and we remand for any other proceedings not inconsistent with this order. Upon remand, the circuit court is free to consider whether the entry of a less restrictive injunction is appropriate.

¶ 20 III. CONCLUSION

¶ 21 For the foregoing reasons, the September 17, 2018, judgment of the circuit court is vacated, and this cause is remanded to the circuit court.

¶ 22 Order vacated; cause remanded.