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2019 IL App (3d) 180300-U

Order filed February 25, 2019

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2019

LAURA BRZOWSKI, n/k/a LAURA ZASADNY,)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois
Petitioner-Appellee,)	
v.)	Appeal No. 3-18-0300 Circuit No. 07-OP-595
WALTER BRZOWSKI,)	Honorable Elizabeth D. Hoskins Dow
Respondent-Appellant.)	Judge, Presiding

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Holdridge and Wright concurred in the judgment.

ORDER

- ¶ 1 *Held:* Respondent's motion to strike and dismiss appellate court order striking respondent's document styled as an order of this court. Trial court did not err in dismissing respondent's petition as issues raised were *res judicata*, moot and barred by law of the case.
- ¶ 2 Respondent Walter Brzowski sought to vacate a plenary order of protection entered against him and in favor of his former wife, petitioner Laura Zasadny, f/k/a Brzowski, in 2007 and extended a number of times. We affirm.

FACTS

¶ 3

¶ 4

Petitioner Laura Zasadny, formerly known as Laura Brzowski, was granted a dissolution of her marriage to respondent Walter Brzowski in 2003 in Cook County. The Cook County court also entered a plenary order of protection. In 2007, the Will County trial court granted Laura a plenary order of protection, which covered herself, her husband and her two sons with Walter. Walter appealed, arguing that Laura failed to present sufficient evidence for the order of protection to be granted, the court was without jurisdiction to enter the order of protection, the judgment of dissolution was void and the criminal proceedings based on his alleged violation of a Cook County order of protection were invalid. We rejected Walter's arguments and affirmed the trial court's grant of a plenary order of protection. *Brzowski v. Brzowski*, No. 3-07-0379 (2007) (unpublished order under Supreme Court Rule 23). Walter moved in the trial court to vacate the order of protection and after the trial court denied his motion, he appealed. This court affirmed on the basis of *res judicata*. *Brzowski v. Brzowski*, No. 3-08-0783 (2009) (unpublished order under Supreme Court Rule 23).

¶ 5

In 2009, Laura sought, and the trial court granted, a two-year extension of the order of protection. Walter appealed, raising the issues he raised in his 2007 appeal and the additional argument that his due process rights were violated by the extension of the order of protection. We affirmed, finding that the extension was properly granted and that our review of the other issues was barred by *res judicata*. *Brzowski v. Brzowski*, No. 3-09-0602 (2010) (unpublished order under Supreme Court Rule 23). In 2011, Laura sought and was granted another two-year extension of the order of protection. Walter again appealed. This court found his arguments were barred by both *res judicata* and the law-of-the-case doctrine. *Brzowski v. Brzowski*, 2012 IL App (3d) 110335-U.

¶ 6 In 2012, Walter was convicted in Will County of criminal violation of the order of protection and sentenced to a three-year prison term. In 2013, the order of protection was again extended for two years. Walter appealed, raising the arguments he made in the prior appeals and that the order of protection was improperly extended because the trial judge who granted it had previously recused herself. We agreed, vacated the extension order, and remanded for further proceedings consistent with our opinion. *Brzowski v. Brzowski*, 2014 IL App (3d) 130404. We also entered a temporary extension of the order of protection to maintain the *status quo* until the matter could be heard in the trial court. *Id.* ¶ 23. On remand, the trial court entered a two-year extension of the order of protection. It was extended again in 2015 on Laura’s motion. Walter appealed and this court denied his motion for leave to file a late appeal and dismissed the case. *Brzowski v. Brzowski*, No. 3-15-0378 (Jan. 29, 2016) (dispositional order).

¶ 7 Walter continued to file various motions challenging the order of protection. In May 2016, the trial court dismissed the case and this court denied Walter’s leave to file a late appeal. *Brzowski v. Brzowski*, No. 3-16-0341 (June 30, 2016) (dispositional order). In March 2018, Walter filed a notice of motion for leave to declare the order of protection case invalid *ab initio*, a notice of motion to present an affidavit and an affidavit to further support his petition for leave. The trial court docket sheet indicates that on April 25, 2018, the court heard Walter’s “Motion for Declaratory Opinion regarding Due Process Violations from issuance of Emergency Order of Protection in 2007” and that the motion was denied due to the court’s lack of jurisdiction to issue declaratory opinions. Walter filed this appeal. The notice of appeal indicates Walter is appealing the trial court’s orders entered April 25, 2018, May 1, 2009, and May 3, 2007. Those orders included entry of the plenary order of protection and its extensions.

¶ 8 On December 13, 2018, Walter filed with this court a document entitled, “Amended Order revised on October 21, 2011, [No. 3-09-0602].” On December 20, 2018, we entered a minute order striking the filing, finding that the document Walter filed on December 13 was not filed, entered or in the record in this case and struck the filing. Walter challenged that order with a motion to vacate, which remains pending for our determination in this order.

¶ 9 ANALYSIS

¶ 10 On appeal, Walter raises a number of issues. First, however, we must decide Walter’s motion to vacate this court’s minute order entered December 20, 2018. In that order, we struck the document Walter filed as an amended order. He characterizes the amended order as a “proposed order” reflecting what he asserts this court should have decided in prior appeals.

¶ 11 A motion filed in a reviewing court must be in writing, state the relief sought and the grounds in support of the motion. Ill. S. Ct. R. 361(a) (eff. July, 1, 2017). This court may vacate its own orders under its inherent authority. *Illinois State Chamber of Commerce v. Pollution Control Board*, 67 Ill. App. 3d 839, 843 (1978).

¶ 12 In his motion to vacate, Walter argues the document he filed was supported by the record and reflects what rulings we should have entered in this case. He presents a variety of instances where errors occurred in the trial and appellate court rulings which the amended motion sought to remedy. He asserts that his previously filed motions for rehearing attempted to bring to this court’s attention various factual errors on which our orders were based. He challenges our issuance in the previous appeals of orders under Illinois Supreme Court Rule 23 (eff. Apr. 1, 2018) and the jurisdiction of the trial court to enter the orders from which he appealed. Walter further argues that this court violated his rights as a father and condoned the alienation of the father-son relationship and the participating justices violated their judicial oaths. He maintains

that Laura improperly used the Illinois Domestic Violence Act of 1986 (Domestic Violence Act) (750 ILCS 60/101 *et seq.* (West 2016)) and this court violated his due process rights to family restoration. According to Walter, he is entitled to seek redress of his grievances and entry of his amended order would serve to correct the errors made throughout this case.

¶ 13 We struck Walter's document because it was not an order entered by this court. Although Walter maintains in his motion to vacate that he did not intend to deceive this court, he styled his filing as a Rule 23 order, complete with a third district caption, and judgment and signature lines. As indicated throughout the pendency of these proceedings, Walter may and has filed extensive motions and appeals to present his positions and claims of error. He may not, however, file documents characterized to be an order issued by this court as a means to further his case. Moreover, Walter fails to provide any support for his motion to vacate. None of the alleged errors in Walter's motion address this court's order striking his December 13, 2018, filing. Rather, he reasserts the same arguments he has made in prior appeals. Even if the claimed errors challenged this court's December 20, 2018, order, which they do not, our review of the errors is barred by *res judicata* and the law of the case doctrine. Accordingly, we deny Walter's motion to vacate this court's December 20, 2018, order striking his December 13, 2018, filing.

¶ 14 Having decided Walter's motion to vacate, we turn to his arguments on appeal. He challenges the 2007 order of protection as defective for lack of evidence supporting Laura's claims of abuse, the 2009 extension of the order of protection as null and void, and the 2011 extension as void for lack of a legal basis to extend it. He also argues that Laura improperly used the Domestic Violence Act (750 ILCS 60/101 *et seq.* (West 2016)) to circumvent the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/101 *et seq.* (West 2016)), that the parties are still legally married because the dissolution court lacked jurisdiction, and that

the three Will County criminal cases against him should be dismissed because the Cook County order of protection on which the violations were based was invalid.

¶ 15 Illinois courts do not issue advisory opinions. *Razavi v. Walkuski*, 2016 IL App (1st) 151435, ¶ 7. “A decision is advisory if ‘it cannot result in appropriate relief to the prevailing party.’” *In re Estate of Stark*, 374 Ill. App. 3d 516, 525 (2007) (quoting *People v. Campa*, 217 Ill. 2d 243, 270 (2005)). A court lacks jurisdiction where there is not a justiciable matter before it. *Ferguson v. Patton*, 2013 IL 112488, ¶ 21. Justiciability includes the concept of advisory opinions. *Id.* ¶ 23. The purpose of justiciability is to ensure judicial authority is exercised in circumstances where an actual controversy is at issue. *Id.* We review *de novo* a trial court’s dismissal based on a lack of justiciability. *Morr-Fitz, Inc. v. Blagojevich*, 231 Ill. 2d 474, 488 (2008).

¶ 16 The record includes a document filed by Walter in March 2018 titled “Petition for Leave to Declare O.P. Case Invalid *Ab Initio*.” In the petition, Walter asks the trial court to issue a declaratory opinion statement addressing the points he raises in the motion and declaring the order of protection invalid *ab initio* on the basis that the trial court initially lacked jurisdiction to enter the plenary order in 2007. The trial court which entered the order on appeal dismissed Walter’s petition for lack of jurisdiction to issue advisory opinions. It follows the court reasoned that because the issues Walter raised in his petition had already been decided by the trial court and affirmed by this court, the trial court had nothing to determine and was thus without authority to address the motion. We affirm the trial court’s denial on that basis. We also consider that *res judicata*, law of the case and mootness require the denial of Walter’s motion and the dismissal of this appeal.

¶ 17 Under the doctrine of *res judicata*, “ ‘a final judgment on the merits rendered by a court of competent jurisdiction bars any subsequent actions between the same parties *** on the same cause of action.’ ” *Hudson v. City of Chicago*, 228 Ill. 2d 462, 467 (2008) (quoting *Rein v. David A. Noyes & Co.*, 172 Ill. 2d 325, 334 (1996)). For *res judicata* to apply, three requirements must be satisfied: (1) a final judgment rendered on the merits by a court of competent jurisdiction; (2) an identity of causes of action; and (3) the parties or their privies are identical. *Id.* *Res judicata* bars not only issues that were raised but also those that could have been raised. *Cabrera v. First National Bank of Wheaton*, 324 Ill. App. 3d 85, 92 (2001).

¶ 18 Under the law of the case doctrine, “ ‘where an issue has been litigated and decided, a court’s unreversed decision on that question of law or fact settles that question “for all subsequent stages of the suit.” ’ ” *Alwin v. Village of Wheeling*, 371 Ill. App. 3d 898, 910 (2007) (quoting *Pekin Insurance Co. v. Pulte Home Corp.*, 344 Ill. App. 3d 64, 69 (2003)). Law of the case bars relitigation of issues that had previously been decided in the same case. *In re Marriage of Carstens*, 2018 IL App (2d) 170183, ¶ 23 (citing *People ex rel. Madigan v. Illinois Commerce Comm’n*, 2012 IL App (2d) 100024, ¶ 31). The doctrine provides that issues decided previously on appeal are binding on the trial court on remand and on the appellate court for any further appeals. *Marriage of Carstens*, 2018 IL App (2d) 170183, ¶ 23.

¶ 19 When an appeal does not involve an actual controversy or the reviewing court cannot grant the requested relief, the appeal is moot. *In re Marriage of Donald B.*, 2014 IL 115463, ¶ 23 (citing *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 522-23 (2001)). Courts generally will not “decide moot questions, render advisory opinions, or consider issues where the result will not be affected regardless of how those issues are decided.” *In re Alfred H.H.*, 233 Ill. 2d 345, 351

(2009). A case is moot where the parties' children are now adults and cannot be forced by the courts to have a relationship with either parent. *Felzak v. Hruby*, 226 Ill. 2d 382, 391 (2007).

¶ 20 Walter has raised these same issues consistently in each of his appeals. In his first appeal, we affirmed the entry of the plenary order of protection and found we were without jurisdiction to consider the Cook County actions. See *Brzowski*, No. 3-07-0379. After the first appeal, we considered the issues *res judicata* and barred by the law of the case. See *Brzowski*, No. 3-08-0783; *Brzowski*, No. 3-09-0602; *Brzowski*, 2012 IL App (3d) 110335-U; *Brzowski*, 2014 IL App (3d) 130404.

¶ 21 The issues Walter raises in this appeal are still *res judicata* and barred under the law of the case doctrine. Everything that Walter has presented in this current appeal has been previously reviewed and decided by this court. Walter does not present any new evidence or legal theories or offer this court any basis to revisit any of our prior determinations affirming the plenary order of protection and its extensions, rejecting his contention that Laura evaded the more stringent requirements of the Marriage Act regarding property distribution and custody issues by proceeding under the Domestic Violence Act, and that this court has authority to review the Cook County dissolution order or order of protection or intervene in the criminal proceedings in Will County based on Walter's violations of the order of protection. In addition to being barred by *res judicata* and law of the case, Walter's claims of parental alienation and interference with his right of fatherhood are moot. Both his sons have reached adulthood and the court has no authority to order them to see Walter or establish a relationship with him. Clearly Walter disagrees with the decisions made in the trial court and in the appellate court, but his disagreement with those decisions does not make the decisions any less final. The trial court correctly denied Walter's request for declaratory relief.

¶ 22

CONCLUSION

¶ 23

For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 24

Affirmed.