

NOTICE
Decision filed 07/14/14. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2014 IL App (5th) 130486-U

NO. 5-13-0486

IN THE

APPELLATE COURT OF ILLINOIS

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 DISTRICT

ALISA ADAIR,)	Appeal from the
)	Circuit Court of
Petitioner-Appellee,)	Madison County.
)	
v.)	No. 97-F-185
)	
MILFORD MARSHALL,)	
)	
Respondent-Appellee)	Honorable
)	Duane L. Bailey,
(Lana Hassan, Intervenor-Appellant).)	Judge, presiding.

PRESIDING JUSTICE WELCH delivered the judgment of the court.
Justices Chapman and Schwarm concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion where the appellant was properly denied intervention as of right pursuant to section 2-408 of the Code of Civil Procedure (735 ILCS 5/2-408 (West 2012)), as intervention in the present case is not her only avenue for relief.

¶ 2 The intervenor-appellant, Lana Hassan (Hassan), sought to intervene as of right in a paternity action between the petitioner-appellee, Alisa Adair (Adair), and the respondent-appellee, Milford Marshall (Marshall), pursuant to section 2-408 of the Code of Civil Procedure (735 ILCS 5/2-408 (West 2012)). The trial court denied Hassan's

petition to intervene. For the reasons that follow, we affirm the judgment of the trial court.

¶ 3 The case from which this petition arises involves a paternity action between Marshall, the father of Hassan's child, and Adair, who also has a child by Marshall. The Illinois Department of Public Aid commenced this action on behalf of K.A.D., Adair's minor child, on July 2, 1997. Marshall denied paternity in his answer to the complaint; on August 7, 1997, the court ordered DNA tests. On January 11, 1999, the court entered an order that stated:

"The minor child in issue in this matter was adopted by Jeffrey A. [N.] in case no 97-AD-160 on 10-22-97. Defendant Milford Marshall, Jr. has no child support obligation owed to plaintiff as of 10-22-97. Case closed."

¶ 4 On July 30, 2012, Adair filed a *pro se* motion seeking child support for K.A.D., stating that Marshall owed support for the seven years before the child's adoption. Adair and Marshall appeared *pro se* before the court on September 12, 2012, and on September 17, 2012, the court issued an order finding in favor of Adair for \$26,000. The order noted that the parties had stipulated that "based on the previous child support order, an arrearage now exists in the amount of \$26,000 as of August 28, 2012." The court noted that Marshall indicated that the sum would be paid from the proceeds of the sale of a home which is part of his inheritance.

¶ 5 On October 16, 2012, Hassan filed a motion to intervene and a motion to vacate the September 17, 2012, order. The motions noted that Hassan had obtained a judgment

for child support arrearages against Marshall on July 31, 2012,¹ and that the court had placed liens against Marshall's real estate interests for payment. Hassan's motion to vacate alleged that the court lacked subject matter jurisdiction to enter the September 17, 2012, order for Adair's child support arrearages, because the January 11, 1999, order had found that Marshall no longer had a support obligation to K.A.D., and neither Marshall nor Adair filed any timely postjudgment motions to vacate or modify the court's previous ruling. Hassan's motion to intervene alleged that Adair and Marshall had conspired to obtain a court order for child support arrearages in order to deplete the available assets to satisfy the judgment owed to her. Hassan also alleged that she would be adversely affected by the order because her ability to collect her full judgment through the sale of Marshall's real estate interest would be diminished by the erroneous judgment in favor of Adair.

¶ 6 Hassan filed an amended motion to vacate on May 13, 2013, again alleging that the court lacked subject matter jurisdiction. The amended motion also stated that on April 12, 2013, Adair filed a child support lien in "In re the Estate of Betty Williams," Madison County case No. 12-P-332. The amended motion requested that the court vacate the September 17, 2012, order, dismiss the motion for child support arrearages due

¹The motions allege that Adair's *pro se* motion for arrearages was filed on the same day that Hassan had obtained her judgment for her arrearages against Marshall; however, the record reflects that Adair's motion was in fact filed on July 30, 2012.

to a lack of subject matter jurisdiction, and quash any notice of child support lien related to the September 17, 2012, order.

¶ 7 At a hearing held on May 24, 2013, the trial court heard arguments on both Hassan's motion to intervene in the action and her motion to vacate the September 17, 2012, order. Hassan's counsel argued that Hassan has no means of recourse other than to intervene and attack the order in this case, as she cannot make the argument that the order is void for lack of jurisdiction in the estate proceedings because a probate court would not have jurisdiction to find that a family court order is void. In response, Marshall's counsel argued that there is "absolutely no connection" between Hassan and the child support controversy between Adair and Marshall, and that just because one party's financial interest could be affected by another party's lawsuit, that does not give the third party a blanket right to intervene. He noted that Hassan had an alternate course of action because both Adair and Hassan had filed a claim in the estate, and therefore they can seek a superior interest as to each other in that suit. In regard to the motion to vacate, Marshall's counsel argued that even if Hassan were allowed to intervene, the court has subject matter jurisdiction over a case that arose in it originally, and there is no statute of limitations concerning child support. Hassan's counsel responded that while a court can go forward from a final order and determine arrearages, it cannot go backward, and that the court did not have jurisdiction 30 days after the January 11, 1999, final order.

¶ 8 In its order filed September 4, 2013, the trial court stated that Hassan "[had] no interest directly in determining the amount of child support that may or may not exist between Alisa Adair and Milford Marshall" and noted that either party could perfect an

action in the probate case, since it had a direct bearing on the ability of either party to receive payment on outstanding arrearage funds. The court stated that it believed Hassan had an adequate remedy in filing an action in the probate case, and that it was unnecessary for her to be involved in the current proceeding in order to protect her rights. The trial court denied the petition, stating that "Ms. Hassan's remedy is more appropriately filed in the pending probate matter where Mr. Marshall may receive some inheritance." Hassan appeals.

¶ 9 The standard of review for allowing or denying intervention is whether the decision was an abuse of discretion. *In re Estate of Barth*, 339 Ill. App. 3d 651, 661 (2003).

¶ 10 Section 2-408(a)(2) of the Illinois Code of Civil Procedure provides that anyone shall be permitted as of right to intervene in an action when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant will or may be bound by an order or judgment in the action. 735 ILCS 5/2-408(a)(2) (West 2012). In determining whether to grant a petition to intervene as a matter of right, a trial court's discretion is limited to determining timeliness, inadequacy of representation by parties already in the suit, and whether the party seeking to intervene has a sufficient interest in the suit. *City of Chicago v. John Hancock Mutual Life Insurance Co.*, 127 Ill. App. 3d 140, 144 (1984). When considering whether the party had a sufficient interest, the allegations of the intervening petition should be taken as true (*Bishop v. Village of Brookfield*, 99 Ill. App. 3d 483, 487 (1981)), and an interest is sufficient if the party has an enforceable right or will suffer a tangible detriment. *City of Chicago*, 127 Ill. App. 3d

at 144. The party must stand to gain or lose by the direct legal operation and effect of the judgment in the case; an interest that is speculative or hypothetical is insufficient to support intervention, and an interest that would merely be advantageous to the intervenor at some future date likewise does not entitle a party to intervene. *In re Marriage of Perkinson*, 147 Ill. App. 3d 692, 698-99 (1986).

¶ 11 Hassan argues that she has more than a general interest in the subject matter of the suit, because if the order were allowed to stand, her rights to her share of Marshall's inheritance would be diminished by Adair's competing lien. In its order, the trial court stated that Hassan's interest was not sufficiently direct so as to support intervention, as an adverse result of the child support order is a collateral effect to Hassan. Even taking Hassan's allegations of collusion between Adair and Marshall as true (and thus conceding that her interests are inadequately protected by the parties' adverse interests), we note that the order directly involves Adair and Marshall's child, not Hassan's child, and even indirectly, the legal effect in regards to Hassan is only that its existence allows for a competing lien in the probate case. It has no operable effect on Hassan's interest in the potential funds derived from the inheritance, which remains protected by her lien in the pending probate case. Thus, we cannot say the trial court abused its discretion in finding that her interest in the present case was too remote to grant her intervention by right.

¶ 12 Even if Hassan's interest were found to be sufficient to warrant intervention in this case, postjudgment intervention is limited to those situations in which it is the only way to protect the rights of the intervenor. *People ex rel. Scott v. Illinois Protestant*

Children's Home, Inc., 95 Ill. App. 3d 552, 561 (1981); *Schwechter v. Schwechter*, 138 Ill. App. 3d 602, 604, 608 (1985).

¶ 13 We find *Schwechter v. Schwechter*, 138 Ill. App. 3d 602 (1985), instructive in reaching this conclusion. In *Schwechter*, the court held that while the petitioner had a sufficient interest in a suit against her husband by her husband's parents to make her eligible to intervene as a matter of right, the trial court nevertheless did not err in denying the petition to intervene. *Id.* at 609. The petitioner's husband had executed a security loan in favor of his parents against all furnishings in the marital home and had the judgment by confession recorded against the home; the petitioner wished to intervene to protect her rights in the marital estate. *Id.* However, the husband and wife's marriage dissolution proceeding was pending simultaneously with the suit at issue. *Id.* The court found that as long as another case was pending which dealt with the subject matter of the petition, the petitioner had an alternate method of protecting her rights and was therefore not entitled to intervene. *Id.*

¶ 14 Similarly, while the apparent purpose of Hassan's petition to intervene is to prevent Marshall and Adair from depriving her of a fair and equitable share of Marshall's potential inheritance, Hassan has an alternate method of protecting her rights to child support arrearages through her lien in the probate case. In this instance, we agree with the trial court that Hassan's remedy is more appropriately sought in the pending probate matter, where she may claim that her interest in Marshall's inheritance is superior to Adair's allegedly invalid lien.

¶ 15 With an alternate remedial measure available to her in a pending case dealing with the subject matter at issue here, we find that intervention in this case is not necessary to protect the petitioner's rights to arrearages. Therefore, the trial court's determination was not an abuse of its discretion, and we affirm the order denying the intervenor's petition.

¶ 16 Affirmed.