FOURTH DIVISION
December 6, 2012

Nos. 1-10-3261 and 1-11-3218 (consolidated)

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re the MARRIAGE OF:	)	Appeal from the
	)	Circuit Court of
GAYLE RINALDI SPICER n/k/a GAYLE RINALDI FREY,	)	Cook County
	)	
	)	No. 09 D 04964
Petitioner-Appellee	)	
	)	Honorable
v.	)	Gerald C. Bender and
	)	Honorable Barbara Meyer,
CHARLES EDWARD SPICER,	)	Judges Presiding.
	)	
Respondent-Appellant.	)	

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Lavin and Justice Epstein concurred in the judgment.

ORDER

HELD: The circuit court lacked jurisdiction to modify a child support order originally entered in Louisiana where the requirements of section 611 of the Illinois Uniform Interstate Family Support Act (750 ILCS 22/611 (West 2010)) were not satisfied.

¶ 1 Petitioner-appellee Gayle Spicer (petitioner) filed a petition in the Circuit Court of Cook County to modify a child support order entered in Louisiana, which was granted after a hearing. The circuit court's order required, among other things, that respondent-appellant Charles Spicer (respondent) increase child support payments to the couple's youngest daughter and continue making payments after she reached the age of majority. Further, the court ordered respondent to contribute to his two older children's college expenses and pay one-half of all medical, dental and vision expenses that were not covered by insurance for all three of his children. When respondent did not comply with this modified order, the court found him in indirect civil and criminal contempt. Respondent appeals, alleging that: (1) the circuit court lacked subject matter jurisdiction to modify the Louisiana order; (2) the court lacked personal jurisdiction over him; (3) the court was without jurisdiction to award forms of support that were not available under Louisiana law; and (4) the order of contempt was void for lack of jurisdiction, or, alternatively, respondent acted in good faith when he failed to comply with the court's modified order. For the following reasons, we vacate the order of the circuit court modifying respondent's child support obligations as well as the order finding respondent in indirect civil and criminal contempt.

¶ 2 BACKGROUND

¶ 3 Petitioner and respondent were divorced on June 13, 2000, in Louisiana, which was also the state of their marriage. Two years earlier, a Louisiana court had rendered an initial judgment as to custody and child support of the parties' three children. In 2005, petitioner moved to Chicago with the couple's youngest daughter, Rachel. Subsequently, orders modifying respondent's custody and support obligations were entered in Louisiana in November 2007 and

November 2008, with no objection by petitioner.

¶ 4 In May 2009, petitioner sought to register the divorce decree and the November 2008 Louisiana child support order with the Circuit Court of Cook County. She then filed a petition to modify the November 2008 order, requesting: (1) an increase in child support for 17 year old Rachel, to continue after she turned 18; and (2) contribution to college expenses for the couples' older children. Petitioner also filed a rule to show cause for finding of indirect civil contempt based on respondent's alleged failure to comply with certain provisions in the November 2008 order. Respondent entered a general appearance and filed a response to the petitions. Respondent also testified at a hearing on the petition to modify which was held in November 2009; however, a transcript of the hearing was not made part of the record on appeal.

¶ 5 On January 5, 2010, petitioner filed a motion for entry of order which stated that due to the court's "voluminous" oral rulings following the November hearing, petitioner and respondent had been working together to prepare a written order. The motion went on to state that petitioner could not obtain respondent's approval on the final order and requested that the court nevertheless enter her proposed order, as it "represent[ed] this Court's findings and rulings in connection with the November 30, 2009 hearing." Approximately one week later, respondent filed a motion in opposition to entry of any order modifying child support on the basis that the court lacked subject matter and personal jurisdiction. Both motions were scheduled to be heard on January 14, 2010.

¶ 6 At the hearing, the court held that because Illinois was Rachel's state of residence, the court had jurisdiction to modify the Louisiana child support order. The court then entered

petitioner's proposed order, which reflected that certain provisions, including respondent's income for child support purposes and the need for respondent to continue supporting Rachel after she turned 18, were "by agreement." Additionally, the order stated that respondent "withdraws any and all defenses to the payments of any and all bills for medical expenses, dental expenses, or vision expenses for Rachel, Madison or Marshall that have been incurred as of the date of this order." On January 21, 2010, the court entered an order denying respondent's motion to deny entry of any order modifying child support. The court later denied respondent's motion to reconsider, which again raised arguments pertaining to jurisdiction and also challenged the application of Illinois rather than Louisiana law in calculating child support.

¶ 7 One month after the modified order was entered, petitioner filed second and third verified petitions for rule to show cause for finding of indirect civil and criminal contempt alleging that respondent had not complied with provisions of the January 14 order, including paying child support for Rachel, providing petitioner with paycheck stubs, contributing to Marshall and Madison's college expenses, and contributing to all three children's medical expenses. In September 2010, after holding a hearing, the circuit court found respondent in civil and criminal contempt of court and granted petitioner's motions for attorney's fees and sanctions.

¶ 8 In the meantime, petitioner had filed the Illinois modification order in the divorce record in Louisiana. Respondent petitioned the Louisiana trial court for a declaratory judgment seeking to have the Illinois judgment vacated for lack of subject matter and personal jurisdiction. The trial court granted respondent's motion and vacated the Illinois order. The Court of Appeal of Louisiana affirmed, finding that because the parties did not file written consents to Illinois

jurisdiction in the Louisiana tribunal, Louisiana had continuing, exclusive jurisdiction of the case. *Spicer v. Spicer*, 62 So. 3d 798, 802 (La. Ct. App. 2011). Thus, the court concluded that the Illinois order was unenforceable in Louisiana. *Id.*

¶ 9 Respondent filed his appeal in this court on October 28, 2010, which was dismissed on petitioner's motion. The supreme court denied respondent's petition for leave to appeal the dismissal, but entered a supervisory order directing us to consider the appeal on the merits.

¶ 10 ANALYSIS

¶ 11 On appeal, respondent challenges the court's personal and subject matter jurisdiction to modify the child support order entered in Louisiana. We review *de novo* the question of whether a court properly exercised its jurisdiction. *In re John C.M.*, 382 Ill. App. 3d 553, 558 (2008).

¶ 12 Before turning to the merits of respondent's claim, we first address petitioner's arguments regarding timeliness. Specifically, petitioner maintains that respondent's participation in the proceedings precludes him from raising a jurisdictional argument for the first time on appeal. This argument fails for two reasons. First, our supreme court has explicitly stated that a judgment entered by a court without jurisdiction of the parties or the subject matter is void and may be attacked at any time, either directly or collaterally. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 103 (2002) (quoting *Barnard v. Michael*, 392 Ill. 130, 135 (1945)); see also *In re Custody of Ayala*, 344 Ill. App. 3d 574, 582-83 (2003). Second, contrary to petitioner's contention, respondent did not wait until appeal to challenge jurisdiction. The record reflects that respondent made his first objection to subject matter and personal jurisdiction in a written motion filed on January 11, 2010. This was after the November 2009 hearing on petitioner's motion to

modify, but before an order on the motion was entered. Petitioner argues, with no citation to authority, that because the court made an oral ruling at the time of the November hearing, respondent's objections in January were the "practical equivalent" of waiting until appeal to contest jurisdiction. We cannot agree that an argument considered and rejected by a circuit court is comparable to one that is raised for the first time before an appellate court.

¶ 13 Having found that the jurisdictional objection was timely, we turn now to the merits of respondent's argument that the court lacked personal and subject matter jurisdiction. In an action under the Uniform Interstate Family Support Act (UIFSA), personal jurisdiction is governed in part by section 201. 750 ILCS 22/201 (West 2010). One of the bases through which an Illinois court can acquire jurisdiction over a nonresident individual is if "the individual submits to the jurisdiction of this State by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction." 750 ILCS 22/201(a)(2). It is undisputed that respondent here both entered a general appearance and filed several responsive pleadings to petitioner's motion. However, this alone is insufficient to establish personal jurisdiction, as section 201 goes on to state: "[t]he bases of personal jurisdiction set forth in subsection (a) or in any other law of this State may not be used to acquire personal jurisdiction for a tribunal of this State to modify a child support order of another state *unless the requirements of Section 611 or 615 are met.*" 750 ILCS 22/201(b) (emphasis added); see also *In re Marriage of Vailas,* 406 Ill. App. 3d 32, 41 (2010) (personal jurisdiction under

UIFSA requires compliance with both section 201 *and* section 611).[1]

¶ 14 Section 611, titled "Modification of Child-Support Order of Another State," sets forth several bases under which an Illinois tribunal may modify a foreign child support order that has been registered in Illinois. The relevant portion of section 611 reads:

> "(a) *** [U]pon petition a tribunal of this State may modify a child-support order issued in another state which is registered in this State if, after notice and hearing, the tribunal finds that:
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> ***
>
> (2) this State is the State of residence of the child, or a party who is an individual is subject to the personal jurisdiction of this State and all of the parties who are individuals have filed consents in a record in the issuing tribunal for a tribunal of this State to modify the support order and assume continuing, exclusive jurisdiction." 750 ILCS 22/611(a)(2).

In the instant case, Illinois is both the residence of a child – Rachel – as well as the petitioner; however, no written consents were filed in Louisiana by either petitioner or respondent. Petitioner concedes that the requirement of written consent is mandatory, but argues that because it is not jurisdictional, it can be waived. See *In re Custody of Sexton*, 84 Ill. 2d 312, 319 (1981) (mandatory statutory provision may be subject to waiver).

¶ 15 It is true that, because our constitution provides that circuit courts have jurisdiction of all

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[1] Section 615 refers to modification of child support orders entered in a foreign country or political subdivision and is not applicable here. See 750 ILCS 22/615 (West 2010).

justiciable matters (Ill. Const. 1870, art. VI, § 9), the courts do not have to look to a statute for jurisdictional authorization (*Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 530 (2001)). Stated differently, since jurisdiction is conferred by the constitution, the legislature cannot, except in the area of administrative review, impose conditions precedent on that jurisdiction by way of statute. *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 335 (2002). Therefore, a court's compliance, or lack thereof, with a statutory provision presents a question of law, not of subject matter jurisdiction. See *In re Estate of Pellico*, 394 Ill. App. 3d 1052, 1065 (2009). As such, we agree with petitioner that it can be waived. *Johnson Press of America, Inc. v. Northern Insurance Co. of New York*, 339 Ill. App. 3d 864, 874 (2003).

¶ 16 However, we do not agree that respondent waived the requirement in the instant cause. As discussed above, respondent objected to the missing written consents before the court entered an order. For this reason, this case is distinguishable from those cited by petitioner, where the first objection to a waivable statutory requirement did not occur until appeal. See, *e.g.*, *In re Marriage of Bussey*, 108 Ill. 2d 286, 293 (1985) (failure of wife to enroll divorce decree as required under section 511(c) of the Illinois Marriage and Dissolution of Marriage Act (IMDMA) was not raised in the trial court); *In re Marriage of Jerome and Martinez*, 255 Ill. App. 3d 374, 388 (1994) (husband did not object to failure to bifurcate proceedings pursuant to section 403(e) of the IMDMA at trial or in posttrial motions). In contrast, here, respondent did object to the court's right to hear the case before the final judgment was entered, on the grounds that section 611 of the UIFSA had not been satisfied. This gave the trial court the opportunity to hold a hearing on the question of compliance with section 611 before entering an order on petitioner's

motion to modify.[2] Accordingly, we hold that there was no waiver of the requirement of written consent to Illinois jurisdiction.

¶ 17 In a related argument, petitioner suggests that the parties consented by their actions to Illinois' continuing, exclusive jurisdiction. We disagree. Respondent's participation in the proceedings, in the form of entering an appearance and responding to the motion to modify, standing alone, does not amount to written consent filed in Louisiana. Were we to so hold, we would impermissibly conflate the requirement of section 201(a)(2), permitting a court to exercise jurisdiction over a nonresident who files a responsive document or a general appearance, with the written consent requirement of section 611(a)(2). See *In re Marriage of Kates*, 198 Ill. 2d 156, 163 (2001) (courts should construe statutes so that no terms are rendered superfluous or meaningless). The intent of the drafters of section 201(b) was to codify the principle that jurisdiction over a nonresident in modification cases did not depend on the usual bases of personal jurisdiction. *Marriage of Vailas*, 406 Ill. App. 3d at 37 (citing UIFSA § 201 comment, 9 U.L.A. 187 (2001)). To that end, the statute prescribes additional conduct – *i.e.*, written consent – that is required in order to invoke personal jurisdiction in a modification case. 750 ILCS 22/201(b); 750 ILCS 22/611(c). In order to remain in keeping with this legislative intent, we decline to adopt a rule that would essentially equate written consent with mere participation in the proceedings.

¶ 18 Our decision finds support in the well-settled principle that we must construe uniform

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[2] The trial court erroneously found that because Illinois was the state of Rachel's residence, the requirements of section 611 were satisfied.

legislation "so as to give effect to the beneficent legislative purpose in promoting harmony in the law." *In re Marriage of Gulla and Kanaval*, 234 Ill. 2d 414, 426 (2009). One of the purposes behind the UIFSA was to "avoid jurisdictional competition and conflict among state courts." 28 U.S.C. § 1738B (1997) (Congressional Findings and Declaration of Purpose, Public Law 103-383 § 2(c)(3)); see also *Linn v. Delaware Child Support Enforcement*, 736 A. 2d 954, 961 (Del. Super. Ct. 1999) ("[t]he goal of UIFSA (1992) is to provide a system where only one child support order is in effect at any one time"). In the case *sub judice*, Louisiana has continued to assert continuing, exclusive jurisdiction over the child support order on the basis that the parties have not filed written consents to Illinois jurisdiction. *Spicer*, 62 So. 3d at 802. Needless to say, a decision by this court that Illinois likewise has continuing, exclusive jurisdiction would give rise to the very scenario the drafters of the UIFSA sought to prevent.

¶ 19 In sum, we hold that, because the written consent requirement of section 611 was neither satisfied nor waived, the circuit court lacked personal jurisdiction over respondent. Therefore, the order modifying child support is void and must be vacated. See *Higgins v. Richards*, 401 Ill. App. 3d 1120, 1127 (2010). In light of our finding that the order is void, we need not address respondent's arguments regarding errors of law in the substance of the order.

¶ 20 Finally, we vacate the order of contempt entered against respondent, as a party cannot be held in contempt for violating a void order. *In re Marriage of Kneitz*, 341 Ill. App. 3d 299, 307 (2003).

¶ 21 CONCLUSION

¶ 22 For the reasons stated, we vacate the circuit court's order modifying respondent's child

support obligations, as well as the order of contempt against respondent.

¶ 23 Vacated.