

No. 1-13-0430

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re the Marriage of:	)	Appeal from the
MICHELLE GARDNER n/k/a HEETER,	)	Circuit Court of
	)	Cook County.
Petitioner-Appellee,	)	
	)	No. 94 D 450284
and	)	
	)	
MICHAEL WETZEL,	)	Honorable
	)	James L. Kaplan,
Respondent-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hall and Reyes concurred in the judgment.

ORDER

Held: We dismissed respondent's appeal for lack of jurisdiction where the order appealed from did not dispose of all the parties' claims and where the order lacked Illinois Supreme Court Rule 304(a) language.

¶ 1 Respondent, Michael Wetzel, appeals the January 11, 2013, order of the circuit court granting petitioner, Michelle Heeter's petition that respondent pay one-half of the funeral expenses for their deceased, 26-year-old son, Michael Wetzel, Jr. Respondent contends: (1) the circuit court should have stricken the petition for failing to specify the statute relied upon for the relief sought; (2) there is no legal basis for the trial court's January 11, 2013, order; and (3) the January 11, 2013, order was entered without proper notice and testimony. We dismiss for lack of appellate jurisdiction.

¶ 2 Petitioner gave birth to Michael Gardner on December 18, 1985, and to Christopher Gardner on September 1, 1987. On May 5, 1994, the Illinois Department of Public Aid brought a paternity case against respondent by filing a complaint under the Illinois Parentage Act of 1984 (750 ILCS 45/1 (West 1992)) to "determine the existence of the father and child relationship" as to Michael Gardner, then eight years of age. Also on May 5, 1994, the Illinois Department of Public Aid brought a second paternity case against respondent by filing a second "complaint to determine the existence of the father and child relationship" as to Christopher Gardner, then six years of age. Each complaint alleged petitioner and respondent engaged in sexual intercourse from September 1983 to December 1992, that as a direct result petitioner became pregnant with each child, and that respondent had already admitted parentage of each child.

¶ 3 On September 21, 1994, agreed orders were entered declaring respondent to be the natural father of Michael and Christopher Gardner.

¶ 4 On November 16, 1994, an agreed order was entered providing petitioner and respondent with joint custody of Michael and Christopher Gardner, and providing respondent with visitation rights and tax deduction rights/benefits. Also, on November 16, 1994, the circuit court entered orders requiring respondent to pay child support for Michael and Christopher Gardner.

¶ 5 On January 25, 1995, the circuit court entered an order granting respondent's motion to change Michael Gardner's last name to respondent's last name (Wetzel), and ordered that the applicable birth certificate be changed to reflect the same. The court entered a similar order with respect to Christopher Gardner.

¶ 6 On March 23, 2004, petitioner filed a three-count petition against respondent. Count I sought an increase in child support for their minor child, 16-year-old Christopher Wetzel, noting that respondent's child support obligation had been last modified on November 1, 1999, and that

since then, the amounts expended by petitioner on the care, control, and education of Christopher Wetzel (sometimes referred to herein as Christopher) had increased substantially. Petitioner alleged that respondent's ability to contribute to Christopher's support had also increased substantially. Count II sought support for their non-minor child, 18-year-old Michael Wetzel, Jr. (sometimes referred to herein as Michael). Petitioner alleged that Michael suffered from Duchenne muscular dystrophy and required continued support from both parents. Count III sought a rule to show cause why respondent should not be held in contempt for failing to comply with the circuit court's visitation order entered on January 25, 1995.

¶ 7 On May 11, 2004, respondent filed a response to petitioner's petition. With respect to count I, respondent denied that petitioner needed increased monies to pay for Christopher's support, and denied that respondent's ability to contribute to Christopher's support had increased substantially. With respect to count II, respondent admitted that Michael suffered from Duchenne muscular dystrophy, but denied that Michael needed the support of both parents as he "is entitled to Social Security benefits." With respect to count III, respondent denied violating the January 25, 1995, visitation order.

¶ 8 On September 15, 2004, the circuit court entered an order requiring respondent to pay petitioner \$5,800 within 60 days "to settle all arrearages and request for fees." The court also ordered respondent to increase his child support payments to \$314.47 per week "which includes support for the non-minor, Michael Wetzel, who is disabled." The order provided that "the non-minor support shall be reviewed in May of 2006."

¶ 9 On September 1, 2005, the circuit court entered an agreed order providing in pertinent part:

"1. The 9-15-04 order required respondent to pay \$5800.00 arrearages within 60 days, and he has not paid said amount.

2. Current support is \$314.47 for 2 children. In Sept 7, 2006 the minor child, Christopher, shall be 19 and support will be reduced to need based amounts for the disabled child Michael.

3. Respondent shall continue to pay \$314.47 per week after the emancipation of Christopher, and all amounts, over the need based support for Michael, shall be applied toward the \$5800.00 arrearage until said sum is paid in full."

¶ 10 Petitioner subsequently filed a "petition for rule to show cause, motion for setting and increase of child support and other relief,"¹ which stated in pertinent part:

"4. That this Court last addressed the issues of child support and care via the entry of its Order on September 1, 2005 ***.

5. That [r]espondent was to continue with child support payments and other financial assistance as set forth within the said Order entered herein on September 1, 2005.

6. That [petitioner] has received no child support payments from the [r]espondent of any amount since March 23, 2008 ***.

7. That the said Order entered herein on September 1, 2005 requires the further setting of child support payments and financial requirements of the [r]espondent upon Christopher, the other child of the parties, becoming emancipated, and Christopher is now emancipated.

¹ The date stamp on the copy of the petition contained in the record on appeal is too faint to read.

8. That the [respondent's] refusal to pay support and otherwise comply with the said Order of this Court has compelled [petitioner] to retain counsel herein and pursue this relief."

¶ 11 On March 5, 2009, the circuit court entered an order requiring respondent "to immediately commence paying the \$314.47 support each week to [p]etitioner, with same secured via Notice of Withholding to issue effective immediately." Also on March 5, 2009, the circuit court entered an order stating that petitioner had made a *prima facie* case of indirect civil contempt against respondent. The court ordered that "A Rule will issue against [r]espondent to show cause why he **** should not be held in contempt of Court for failure to pay support, moneys and care expenses for Michael Wetzel, Jr. as ordered by the Court on 9/1, 2005." The court ordered respondent to appear for a hearing on May 8, 2009. The record on appeal contains no transcripts of the May 8 hearing nor any order entered on that date.

¶ 12 On August 12, 2009, the circuit court entered an order for an "Account Adjustment Review." The account adjustment review was performed by the State of Illinois Child Support Program and concluded that, as of August 31, 2009, respondent was \$53,246.68 in arrears on his support payments. To preserve funds which can be used for the payment thereof, the circuit court entered an agreed order on September 24, 2010, enjoining respondent from "draining out any moneys from or otherwise causing any reduction in the value and holdings of" his union pension plan and 401(k) plan.

¶ 13 On May 19, 2011, respondent filed a petition pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2010)), seeking to vacate the 1994 and 1995 paternity and support orders. In pertinent part, the section 2-1401 petition stated:

"10. On or about April 2010, the Respondent had occasion to talk to Christopher.

11. During the conversation it became apparent that both the Respondent and Christopher had questions and doubts about who the children's biological father really as.

12. That Christopher related he had overheard his mother and her parents discussing having a DNA test for the boys.

13. That by agreement both Christopher and Michael Wetzel [Jr.] undertook DNA paternity tests.

14. That the results of the DNA tests excluded the Respondent as Christopher's biological father.

15. That upon learning of those facts, [respondent] had to secure the funds to hire counsel and said counsel need[ed] time to investigate the facts and prepare this pleading.

16. That at the time of the instigation of the parentage proceedings, the petitioner had affirmatively represented that she had no sexual intercourse with any other man at any time that could have led to a pregnancy.

17. That she made such representations knowing that they were untrue.

18. That the Petitioner made those representations in order to induce the Respondent to enter into a parentage judgment and pay child support based on his, what was to her, substantial salary as a union electrician.

19. That as a result of the results from the paternity test taken by Michael Jr. and the respondent, the respondent has substantial doubts as to the parentage of both boys.

20. That it was reasonable for the respondent to rely upon her representations."

¶ 14 In count I, respondent sought relief "due to the substantive unconscionability of the terms of the [1994 and 1995 parentage and support judgments]," specifically stating that the judgments are "unconscionable since at least one of the children is not the child of the Respondent." Respondent also alleged that "had the court known all of the facts, the Court would not have entered the [1994 and 1995 parentage and support judgments] due to the unconscionable nature of said judgment[s]." Respondent prayed that: the parentage and support judgments entered in 1994 and 1995 be vacated in their entirety; leave be granted for respondent to file a motion seeking repayment from petitioner for all funds paid to her for child support; and that he be granted such further relief as the court may deem just, including an award of attorney fees and costs. Count II sought the same relief based on petitioner's alleged fraud in misrepresenting her sexual history. Count III sought to vacate the 1994 and 1995 parentage and support judgments as voidable based on the lack of any evidence that Michael was disabled.

¶ 15 The DNA test results were not attached to the section 2-1401 petition or included in the record on appeal.

¶ 16 On August 4, 2011, petitioner filed a demand for a bill of particulars requesting additional details with regards to respondent's section 2-1401 petition. Respondent sought to strike petitioner's demand for a bill of particulars based on her failure to comply with Cook County Circuit Court Rule 13.3.1's financial disclosure requirement. On September 29, 2011, petitioner moved for dismissal of respondent's section 2-1401 petition for failure to answer the demand for a bill of particulars.

¶ 17 On October 11, 2011, respondent filed an emergency petition for reduction in child support, claiming he had been laid off from his job as a union electrician as of September 16, 2011, and was applying for unemployment. Respondent asked the circuit court to decrease his child support obligation for Michael "to an amount in keeping with his present income."

¶ 18 On December 7, 2011, petitioner filed a "counter-petition to draw funds from respondent's annuity and accounts to secure continued payment of respondent's support installments." Petitioner alleged therein that respondent was *not* laid off, that Michael's financial needs remained "great in amount," and that petitioner was seeking to further secure payment of respondent's current support obligations and of his child support arrearages by being allowed to draw funds from respondent's pension plan and from his 401(k) plan that had been the subject of the September 24, 2010, injunction order.

¶ 19 On January 18, 2012, shortly after attaining the age of 26 years, Michael Wetzel, Jr. died from complications relating to his illness and disability. He was unemancipated at the time of his death. On October 30, 2012, petitioner filed a "petition for payment of funeral home and funeral luncheon expenses." The petition was made pursuant to the "applicable sections" of the Illinois Marriage and Dissolution of Marriage Act, the Illinois Paternity Act, the Code of Civil Procedure, the Supreme Court Rules, and the Cook County Circuit Court Rules. The petition stated in pertinent part that Michael Wetzel, Jr. was "waked and cremated via the assistance of Lawn Funeral Home, Ltd.," resulting in a balance of \$8,937.44 for the services rendered; respondent participated in the making of the arrangements for said cremation, wake, funeral luncheon, etc. and "repeatedly assured" petitioner that he would "timely pay ½ of all the said expenses and costs of and pertaining thereto"; on February 17, 2012, petitioner informed respondent that the balance due to the funeral home was \$8,938.00, that she was going to the

funeral home the following day to pay her ½ share, to which respondent replied he would arrange to pay the other ½ share; on February 18, 2012, petitioner paid her ½ share of the funeral expenses and she also paid an additional \$540 from monies received at Michael's wake, for a total of \$4,989, but respondent paid nothing, leaving a balance due and owing of \$3,948.49, which was then invoiced to respondent; as of October 30, 2012, respondent still had paid nothing, causing the outstanding balance to increase via interest charges to \$4,275.59; and respondent stated on October 30, 2012, that he would not make "any payments whatsoever" toward the funeral expenses. The petition also had attached an account adjustment review performed by the State of Illinois Child Support Services indicating that as of September 30, 2012, respondent was \$60,928.47 in arrears on his child support payments.

¶ 20 Petitioner asked the court to order respondent to pay the balance due to the funeral home.

¶ 21 On November 13, 2012, respondent filed a motion to strike the petition for payment of funeral home and funeral luncheon expenses, stating in pertinent part that "there is no provision in any of the statutes cited for child support or *** any other type of support after the child is dead." The motion was noticed for a hearing date of January 14, 2013.

¶ 22 On January 11, 2013, the circuit court entered the following order:

"This cause coming on to be heard with lawyers for both parties present and advancing 1/14/13 hearing date to today and presenting argument and proceeding thereby on [petitioner's] motion/petition for payment of funeral home and funeral luncheon expenses, respondent's motion to strike same, and further argument addressing the issues as set forth in [petitioner's] motion, and the court being fully advised in the premises:

It is ordered:

1. [Petitioner's] petition filed 10/30/12 for payment of funeral home and funeral luncheon expenses granted with parties to pay all funeral home and funeral luncheon expenses as billed by the providers 50/50 (each party pays $\frac{1}{2}$ thereof) over respondent's objection as to reasonable and necessary.

2. Thereafter, on [petitioner's] motion for demand of bill of particulars heard shortly thereafter filed 9/29/11, same is granted with [respondent] to answer and provide that as requested by [petitioner] by 2/1/13 over respondent's response objecting thereto.

3. Case set status to 2/5/13 at 9:30 a.m.

4. Parties to exchange updated 13.3.1(s) by 2/1/13."

¶ 23 On February 5, 2013, the circuit court entered an order giving respondent seven days to respond to petitioner's bill of particulars, continuing the matter to March 20, 2013, for a status hearing on "all pending pleadings," and stating that no Rule 304 finding would be made and that the January 11, 2013, order was "not a final appealable order."

¶ 24 On February 14, 2013, respondent filed a notice of appeal from the January 11, 2013, order requiring him to pay $\frac{1}{2}$ of Michael's funeral expenses and requiring him to respond to the bill of particulars.

¶ 25 Petitioner contends we lack jurisdiction over respondent's appeal. A party seeking to appeal the circuit court's judgment must file a notice of appeal within 30 days after entry of "the final judgment appealed from, or, if a timely posttrial motion directed against the judgment is filed, *** within 30 days after the entry of the order disposing of the last pending postjudgment motion directed against that judgment or order." Ill. S. Ct. R. 303(a)(1) (eff. June 4, 2008). An order is final and appealable if it " 'terminates the litigation between the parties on the merits or

disposes of the rights of the parties, either on the entire controversy or a separate part thereof.' " *In re Marriage of Gutman*, 232 Ill. 2d 145, 151 (2008) (quoting *R.W. Duntelman Co. v. C/G Enterprises, Inc.*, 181 Ill. 2d 153, 159 (1998)). A final order disposing of fewer than all the parties' claims is generally not appealable absent an Illinois Supreme Court Rule 304(a) (Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010)) finding that there is no just reason to delay the appeal. *Gutman*, 232 Ill. 2d at 151. A claim is " 'any right, liability or matter raised in an action.' " *Id.* (quoting *Marsh v. Evangelical Covenant Church of Hinsdale*, 138 Ill. 2d 458, 465 (1990)).

¶ 26 The January 11, 2013, order appealed from required respondent to pay ½ of Michael's funeral expenses, but it did not dispose of all the parties' claims and did not contain Rule 304(a) language. Specifically, petitioner had an outstanding claim against respondent for over \$60,000 in child support arrearages and had filed a December 7, 2011, petition to draw funds from respondent's pension plan and from his 401(k) plan to secure continued payment thereof. There is no indication in the record before us that the circuit court ever ruled on the December 7, 2011, petition. Thus, as the December 7, 2011, petition remained outstanding and had never been disposed of by the circuit court and the order subsequently entered on January 11, 2013, requiring respondent to pay ½ of Michael's funeral expenses was not immediately appealable absent Rule 304(a) language. Accordingly, we dismiss respondent's appeal for lack of appellate jurisdiction.

¶ 27 We also note that respondent's section 2-1401 petition which challenged the 1994 and 1995 parentage and support judgments remains outstanding and has not been disposed of by the circuit court. Although the section 2-1401 petition is considered a new proceeding and not a continuation of the case that resulted in the January 11, 2013, order appealed from here (see *People v. Kane*, 2013 IL App (2d) 110594, ¶ 13), the court's ultimate resolution of said petition

will impact whether respondent is liable for the funeral expenses which were the subject of the January 11, 2013, order, and whether he is liable for the outstanding child support arrearages which are the subject of the December 7, 2011, petition. The outstanding section 2-1401 petition was one of the "pending pleadings" referred to by the circuit court in its February 5, 2013, order finding that the January 11, 2013, order was not final and appealable.

¶ 28 We further note that in his notice of appeal, respondent states he is appealing from the portion of the January 11, 2013, order requiring him to respond to petitioner's bill of particulars. Respondent makes no argument on appeal regarding the court's order requiring him to respond to petitioner's bill of particulars and, so, has waived review of the issue. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013).

¶ 29 For the foregoing reasons, we dismiss respondent's appeal.

¶ 30 Dismissed.