

No. 1-13-1388

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

<i>In re</i> MARRIAGE OF)	Appeal from the
)	Circuit Court of
RICHARD E. ALEKSY,)	Cook County
)	
Petitioner-Appellant,)	
)	No. 10 D 7534
v.)	
)	
TRUDY A. ALEKSY,)	Honorable
)	David E. Haracz,
Respondent-Appellee.)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Palmer and Justice McBride concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court dismissed a former husband's appeal from a modified judgment of dissolution as untimely filed. The appellate court, however, had jurisdiction over the former husband's appeal from the circuit court's subsequent orders and the circuit court did not err in maintaining the original percentage distribution of retirement assets where the former husband failed to facilitate transfer of the former wife's share of those assets.
- ¶ 2 Petitioner, Richard Aleksey (Richard), appeals from the entry of multiple orders, detailed

below, entered by the circuit court of Cook County in connection with postdissolution proceedings. On appeal, Richard argues the circuit court erred in: (1) reconsidering its distribution of the parties' retirement accounts; (2) granting respondent Trudy Aleksy's (Trudy) motion to reconsider contribution towards attorney fees; and (3) its valuation of the parties' retirement accounts. For the following reasons, we dismiss the appeal in part for lack of jurisdiction and otherwise affirm the judgment of the circuit court.

¶ 3

BACKGROUND

¶ 4 Given the issues Richard raises on appeal, we primarily focus on the facts relevant to the circuit court's modification of the judgment of dissolution, and the court's valuation and distribution of the parties' retirement accounts.

¶ 5 On July 29, 2010, Richard filed a petition for dissolution of marriage. A three-day trial commenced on September 19, 2011, at which the parties stipulated to the assets of the marriage and Richard agreed that Trudy was permanently disabled. The contested issues at trial concerned only the amount of maintenance and the division of the marital assets. On December 16, 2011, the circuit court entered its judgment of dissolution in which it found that Trudy was entitled to a disproportionate share of the marital assets and \$10,000 per month in permanent maintenance. Specifically, the circuit court awarded Trudy 55% of the marital home and 55% of the escrow amount from the sale of another marital property. The circuit court further ordered, "The Parties shall divide equally any and all retirement plans through the appropriate means including but not limited to a Qualified Domestic Relations Order. All Plans shall be divided as set forth above as of the date of this judgment." The circuit court also denied Trudy's petition for contribution of attorneys fees, ordering the parties to each pay their own attorneys fees. Lastly, the circuit court expressly retained jurisdiction over the matter for the purpose of enforcing all

the terms and provisions of the judgment of dissolution.

¶ 6 On January 11, 2012, Trudy filed a five-count motion to reconsider the judgment of dissolution pursuant to section 2-1203 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-1203 (West 2010)). Relevant to this appeal are counts III and V of Trudy's motion. In count III, Trudy asserted the circuit court failed to adequately consider all of the factors set forth in section 503(d) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/503(d) (West 2010)), when it failed to award her 55% of the entire marital estate, including the parties' retirement accounts. In count V of the motion, Trudy argued the circuit court failed to consider the factors set forth in section 508(a) of the Act (750 ILCS 5/508(a) (West 2010)) when it denied her petition for contribution of attorneys fees. In response, Richard argued Trudy's motion should be dismissed because "no newly discovered evidence has been produced for the Court to reconsider its decision" and "there is no compelling reason to reconsider, modify or vacate any finding of fact or conclusion of law."

¶ 7 On August 14, 2012, after hearing argument from both sides, the circuit court granted counts III and V of Trudy's motion to reconsider in part and denied the remaining three counts. The court expressly ordered: "Count III is granted and the court reconsiders its ruling and divides the retirement assets with 55% to Trudy Aleksy and 45% to Richard Aleksy[.] Count V is granted and Richard Aleksy shall pay the sum of \$10,000 to [Trudy's counsel] as for atty [sic] fees."

¶ 8 On September 13, 2012, Richard filed a "Petition for Re-Hearing on Respondent's Motion to Reconsider." In his motion, Richard argued Trudy failed to: (1) offer any newly discovered evidence; (2) assert any change of law; or (3) assert errors were made by the circuit court in applying existing law regarding the property disposition or the contribution of attorney

fees. In his prayer for relief, Richard requested the matter be set for rehearing on Trudy's motion to reconsider and further requested any other equitable and just relief. In response, Trudy asserted the basis of her motion to reconsider was that the circuit court erred in applying existing law regarding property distribution and contribution towards attorney fees. On October 1, 2012, the circuit court, after hearing argument, denied Richard's motion for rehearing. No reason was stated in the order and no record of proceedings for this date was included in the record on appeal.

¶ 9 On November 13, 2012, Trudy filed a petition to enforce the judgment of dissolution as modified by the August 14, 2012, order, as Richard had failed to facilitate the division of his retirement account. Trudy prayed that the circuit court order set forth that Richard was to take immediate steps to transfer her allocated portion of the retirement funds currently held by him. In response, Richard asserted that Trudy was not entitled to an increase in value of his retirement account and was only entitled to a percentage of the portion of his retirement account as of December 16, 2011, the date of the judgment of dissolution. On November 26, 2012, after hearing argument from the parties, the circuit court granted Trudy's petition to enforce. The circuit court further ordered:

"The Respondent is assigned the increase (growth) or losses to her allocated portion of Petitioner's IRA account since the date of the judgment through the date of the actual transfer. *** The Petitioner is entitled to his allocated portion as to the increase or losses (Growth) to his allocated portion of the Respondent's IRA. Neither of the parties are entitled to any actual contributions made by either party subsequent to the judgment."

¶ 10 On December 21, 2012, Richard filed a "Petition to Reconsider and for Clarification of

the Court Order Entered November 26, 2012," asserting the circuit court erred in its valuation of the retirement accounts. In response, Trudy argued the circuit court did not err in valuing her portion of the retirement accounts as of the date of the judgment of dissolution and awarding her any growth on those specific funds. On March 27, 2013, the circuit court ordered:

"1. The valuation of any and all retirement plans shall remain as set forth in the Judgment, that being the date of said judgment, December 16, 2011;

2. The retirement plan split as amended on August 14, 2012 remains in full force and effect;

3. Any and all increase in value of Petitioner's share of the retirement plans from the date of Judgment through the entry of a Qualified Domestic Relations Order or the division of the IRA shall be part of her portion.

4. Petitioner shall take immediate steps to split the IRA and present the Qualified Domestic Relations Order for entry pursuant to the Judgment and this Order."

¶ 11 On April 24, 2013, Richard filed a notice of appeal seeking relief from the March 27, 2013, order of the circuit court in which the court "incorrectly determined that Respondent-Appellee was entitled to the increase in the value of the asset which occurred after the valuation date, as well as from the August 14, 2012 modification to the division of the retirement plan."

¶ 12 On the same day, Trudy filed a petition for attorney fees and costs as well as a petition for rule to show cause regarding Richard's alleged refusal to divide the retirement assets. On June 19, 2013, Richard filed a response to both of Trudy's petitions. On June 24, 2013, the circuit court entered an order of indirect civil contempt and ordered Richard present a Qualified Domestic Relations Order (QDRO). The circuit court set the matter for status on June 25, 2013,

however no information regarding this hearing was contained in the record on appeal.¹

¶ 13 On October 28, 2013, Richard filed a "Petition for the Court to Make a Determination on the Dollar Amount of the IRA Disbursement" in which he asserted the parties had been unable to agree upon the dollar amounts for the distribution of his retirement account and requested the court make a determination as to the exact amount to be allotted to each party. On November 5, 2013, the circuit court heard arguments on Richard's motion and took the matter under advisement. On November 13, 2013, in regards to Richard's motion to calculate the division of the parties retirement accounts, the court ordered Trudy receive 55% of the retirement accounts and that "the accounts are to be divided as of the date of the actual distribution and transfer by [F]idelity [Investments]."

¶ 14 On November 27, 2013, the circuit court entered an order which stated in full:

"This matter coming to be heard upon the Petitioner's Motion to authorize and allow Fidelity Investments to implement the order of November 25, 2013, due notice having been given and the Court being fully advised

IT IS HEREBY ORDERED (over the objection of the Petitioner),

A. That Fidelity Investments shall transfer from the Fidelity IRA account in Trudy Aleksy's name ***, 45% of the total account in her name to the IRA account held by Richard Aleksy at Fidelity Investments IRA account number ***.

¹ During a November 5, 2013, hearing, the circuit court determined the QDRO was ordered in error because Richard's IRA was not a pension. Richard's counsel informed the court that "Fidelity Funds" needed a letter of direction, rather than a QDRO in order to transfer Trudy's portion of the funds. The record on appeal, however, does not otherwise reference the circuit court's determination on this issue.

B. That Fidelity Investments shall transfer from the Fidelity IRA account in the name of Richard E. Aleksy account number ***, 55% of the total account in his name to an IRA Account in Trudy Aleksy's name account number ***.

C. That as previously ordered that the above accounts are to be divided as of the date of the actual distribution and transfer by Fidelity Investments."²

¶ 15 On December 23, 2013, Richard filed an amended notice of appeal stating he "adopts his earlier notice of appeal and additionally appeals subsequent orders affecting his rights and duties under the law including the order of the court of November 27, 2013."

¶ 16 On March 7, 2014, the circuit court entered an order directing that Fidelity Investments transfer \$27,000 from Trudy's IRA account to Richard's IRA account. The respective account numbers were the same as those in the circuit court's November 27, 2013, order. Richard raises no issue regarding this order in this appeal.

¶ 17 On April 2, 2014, the circuit court entered an order signed by both parties' counsel, which stated in full:

"This matter having been heard on multiple occasions; the Court having entered orders on August 14, 2012, November 27, 2013 and March 7, 2014 disposing of the issues of the distribution of marital assets, the Court finds no just cause to delay appeal of this matter as set forth in Supreme Court Rule 304."

With this background, we turn to consider Richard's appeal.

¶ 18 ANALYSIS

¶ 19 Richard contends the trial court erred in entering the August 14, 2012, order granting Trudy's motion to reconsider, which modified the judgment of dissolution to provide that Trudy

² No order of November 25, 2013, is contained in the record on appeal.

receive 55% of the retirement accounts and \$10,000 in contribution towards her attorneys fees. Richard also contends the trial court erred in entering the March 27 and November 27, 2013, orders, which Richard maintains changed the date of valuation of the parties' retirement plans from the date of the judgment of dissolution to the date of distribution.

¶ 20 Initially, we must determine whether we have jurisdiction to decide this appeal. The parties did not raise this issue in their briefs to this court. We are always mindful, however, that this court has an independent duty to ensure that it has jurisdiction with respect to each of the circuit court's orders being appealed. *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213 (2009); *In re Marriage of Ehgartner-Shachter*, 366 Ill. App. 3d 278, 283 (2006).

¶ 21 The August 14, 2012, Order

¶ 22 We first consider our jurisdiction over Richard's appeal from the August 14, 2012, order granting Trudy's motion to reconsider the judgment of dissolution. In a nonjury case, a party may file a postjudgment motion within 30 days after the entry of the challenged judgment or within such further time the court grants within the 30 days or any extensions therefore. 750 ILCS 5/2-1203(a) (West 2010). A postjudgment motion is "a motion for a rehearing, or a retrial, or modification of the judgment or to vacate the judgment or for other relief." *Id.* Each party may make only one postjudgment motion directed at a judgment that is otherwise final. Ill. S. Ct. R. 274 (eff. Jan. 1, 2006).

¶ 23 Jurisdiction is conferred upon this court only through the timely filing of a notice of appeal, following a final judgment order. *In re Marriage of Capitani*, 368 Ill. App. 3d 486, 488-489 (2006). Generally, a notice of appeal must be filed within 30 days of the final judgment or, "if a timely posttrial motion directed against the judgment is filed, whether in a jury or a nonjury

case, within 30 days after the entry of the order disposing of the last pending postjudgment motion." Ill. S. Ct. R. 303(a)(1) (eff. Jun. 4, 2008). Of course, "where a trial court amends its initial final order, the clock is reset regarding the filing of posttrial motions attacking this new final judgment and, thus, the time is reset regarding the time for the filing of a notice of appeal." *Gibson v. Belvidere National Bank & Trust Co.*, 326 Ill. App. 3d 45, 50 (2001). Conversely, where the trial court denies a motion to reconsider, the timely filing of a notice of appeal within 30 days is both jurisdictional and mandatory. See, e.g., *In re Marriage of Sheth*, 2015 IL App (1st) 132611, ¶ 21 (and authorities cited therein).

¶ 24 "A judgment is final for appeal purposes if it determines the litigation on the merits or some definite part thereof so that, if affirmed, the only thing remaining is to proceed with the execution of the judgment." *In re Marriage of Verdung*, 126 Ill. 2d 542, 553 (1989). In dissolution proceedings, a petition for dissolution advances a single claim, and issues such as custody, maintenance, property division, child support, and attorney fees are ancillary issues relating to that claim. See *In re Marriage of Leopando*, 96 Ill. 2d 114, 119 (1983). Orders resolving individual ancillary issues are not appealable until the court resolves the entire dissolution claim. *Id.*

¶ 25 In this case, the circuit court entered a judgment of dissolution on December 16, 2011. The judgment of dissolution determined the litigation on the merits, not only dissolving the marriage, but also resolving issues including maintenance, the distribution of the marital assets, and attorney fees. Accordingly, the judgment of dissolution was a final judgment. *Verdung*, 126 Ill. 2d at 553; see *Leopando*, 96 Ill. 2d at 119.

¶ 26 On January 11, 2012, Trudy filed a postjudgment motion to reconsider the judgment of dissolution. Trudy's motion was filed within 30 days of the final judgment and thus was timely

under section 2-1203 of the Code. See 750 ILCS 5/2-1203(a) (West 2010). Trudy's timely filed postjudgment motion also tolled the time for filing a notice of appeal to this court. Ill. S. Ct. R. 303(a)(1) (eff. Jun. 4, 2008). On August 14, 2012, the circuit court entered an order granting Trudy's motion in part, modifying the judgment and thereby resetting the 30-day clock for filing a postjudgment motion or a notice of appeal to this court. See *Gibson*, 326 Ill. App. 3d at 50. Richard filed a petition for rehearing Trudy's motion to reconsider on September 13, 2012, which was 30 days after the circuit court entered the modified final judgment. Richard's motion was thus timely under section 2-1203 of the Code. See 750 ILCS 5/2-1203(a) (West 2010). Accordingly, Richard's petition tolled the time for filing a notice of appeal to this court. See Ill. S. Ct. R. 303(a)(1) (eff. Jun. 4, 2008).

¶ 27 On October 1, 2012, the circuit court, after hearing argument, denied Richard's motion for rehearing. Richard, however, did not file a notice of appeal to this court within 30 days of the order denying his motion for rehearing. Accordingly, this court lacks jurisdiction to hear Richard's appeal from that judgment. See *Sheth*, 2015 IL App (1st) 132611, ¶ 21; Ill. S. Ct. R. 303(a)(1) (eff. Jun. 4, 2008).

¶ 28 The March 27 and November 27, 2013, Orders

¶ 29 Richard next argues that the trial court erred in entering the March 27 and November 27, 2013, orders, which Richard maintains changed the date of valuation of the parties retirement plans from the date of the judgment of dissolution to the date of distribution. This portion of the litigation commenced on November 13, 2012, when Trudy filed a petition to enforce the judgment of dissolution as modified by the August 14, 2012, order. "Although the trial court loses jurisdiction to amend a judgment after 30 days from entry, it retains indefinite jurisdiction to enforce the judgment." *In re Marriage of Allen*, 343 Ill. App. 3d 410, 412 (2003); see *In re*

Marriage of Hall, 404 Ill. App. 3d 160, 164 (2010). Furthermore, in this case, the judgment of dissolution expressly provided the circuit court retained jurisdiction over the matter for the purpose of enforcing all the terms and provisions of the judgment of dissolution. Accordingly, the circuit court had jurisdiction to enter the March 27 and November 27, 2013, orders.

¶ 30 We next turn to the question of this court's jurisdiction to consider Richard's appeal from the March 27 and November 27, 2013, orders. In this case, Richard filed his first notice of appeal on April 24, 2013, within 30 days of the March 27, 2013, order. Richard filed his amended notice of appeal on December 23, 2013, within 30 days of the November 27, 2013, order. Trudy, however, filed a petition for attorney fees and costs as well as a petition for rule to show cause regarding Richard's alleged refusal to divide the retirement assets on April 24, 2013. Thus, pursuant to Illinois Supreme Court Rule 303(a)(2) (eff. Jul. 1, 2011), Richard's notices of appeal would become effective when the circuit court disposed of Trudy's timely filed postjudgment claims. See *In re Marriage of Valkiunas and Olsen*, 389 Ill. App. 3d 965, 967-68 (2008). The circuit court subsequently entered a finding of indirect civil contempt against Richard, but there is no indication that the circuit court resolved Trudy's petition for attorney fees and costs. Accordingly, Richard's notices of appeal became effective on April 2, 2014, when the circuit court entered a finding that there was no just reason to delay an appeal pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010).³ See *Valkiunas & Olsen*, 389 Ill. App. 3d at

³ In this case, Trudy does not question the form of the Rule 304(a) finding, but we note the April 2, 2014, order contains no reference to the justness of delaying enforcement of the judgment, or to the propriety of immediate appeal. "Our supreme court does not require that a circuit court parrot Rule 304(a) exactly in order to invoke it." *Palmolive Tower Condominiums, LLC v. Simon*, 409 Ill. App. 3d 539, 543 (2011). Yet our supreme court has "stopped short of

968. We therefore will consider the merits of Richard's challenge to the circuit court's March 27 and November 27, 2013, orders.

¶ 31 The Valuation of the Parties' Retirement Plans

¶ 32 Richard maintains the circuit court erred by changing the date of valuation of the parties' retirement plans from the date of the judgment of dissolution to the date of distribution. Trudy responds that the circuit court did not change the date of the valuation of the retirement plans, but issued orders reflecting any gains or losses in the retirement accounts during the period Richard held them after the entry of the modified judgment of dissolution.

¶ 33 Richard primarily relies upon the Illinois Supreme Court decision in *In re Marriage of Mathis*, 2012 IL 113496. In *Mathis*, our supreme court answered the following certified question:

" 'In a bifurcated dissolution [of marriage] proceeding, when a grounds judgment has been entered, and when there is a lengthy delay between the date of the entry of the grounds judgment and the hearing on ancillary issues, is the appropriate date for valuation of marital property the date of dissolution or a date as close as practicable to the date of trial of the ancillary issues?' " *Mathis*, 2012 IL 113496, ¶ 1.

indicating that Rule 304(a) does not require some reference to immediate enforcement or appealability or the justness of delaying enforcement or appealability." See *id.* (and cases cited therein). This court has held that an order lacking these references, but stating the order is appealable pursuant to Supreme Court Rule 304(a) satisfies the requirements of Rule 304(a), based on the express reference to the rule. *Abrams v. City of Chicago*, 338 Ill. App. 3d 179, 185 (2003), *rev'd on other grounds*, 211 Ill. 2d 251 (2004).

The *Mathis* court, interpreting section 503(f) of the Act (750 ILCS 5/503(f) (West 2010)), held that, in a bifurcated dissolution proceeding, the date of valuation for marital property is the date the court enters judgment for dissolution following a trial on grounds for dissolution or another date near it. *Mathis*, 2012 IL 113496, ¶ 30. This case does not involve a bifurcated dissolution proceeding. Rather, it involves a postdissolution proceeding to enforce the judgment occasioned by Richard's failure to facilitate the transfer of Trudy's share of the retirement plans.

¶ 34 In his brief, Richard notes that the rule established in *Mathis* mirrors the rule in other cases involving nonbifurcated proceedings. *Id.* ¶ 24. The *Mathis* court, however, distinguished this court's opinion in *In re Marriage of Schinelli*, 406 Ill. App. 3d 991 (2011), on the ground that it involved nonbifurcated proceedings. *Mathis*, 2012 IL 113496, ¶ 28. In *Schinelli*, the trial court entered a single order dissolving the parties' marriage and distributing the marital property, including the husband's 401(k) retirement account, and the issue was whether a decrease in the value of that account should be borne by the husband individually or the parties collectively. See *Mathis*, 2012 IL 113496, ¶ 28. The *Schinelli* court ruled that placing the entire burden of that loss on the husband was "both unfair and contrary to the judgment of dissolution," which sought an equal overall division of the parties' retirement assets. *Schinelli*, 406 Ill. App. 3d at 1002. The *Schinelli* court ordered that, on remand, the trial court should enter an order consistent with its initial order, awarding the parties the same percentages of the value of that account that they would have received under that order. *Id.* at 1005. The *Mathis* court concluded that "*Schinelli* is not contrary to the rule that the valuation date should be the date of dissolution." *Mathis*, 2012 IL 113496, ¶ 30. The *Mathis* court explained: "While the appellate court's decision in *Schinelli* did not preserve the amounts of the 401(k) account awarded in the initial order, it preserved the percentages awarded, and adhered to the intent of that order by dividing that account equally."

Id. The *Mathis* court also explained that the rule of dividing the property based on the date of dissolution "encourages the parties to stop litigating, so they can receive and manage their proportion of the marital property, and discourages gamesmanship because the parties would be on notice that dilatory tactics would not aid either side." *Id.*

¶ 35 In this case, the modified final judgment awarded Trudy 55% of the retirement assets. The circuit court's postdissolution orders, maintaining the percentage distribution of the retirement assets, merely sought to effectuate that intent. Insofar as the circuit court found Richard in indirect civil contempt due to his failure to facilitate the transfer of Trudy's share of the retirement assets, the orders entered in this case also reaffirm the need to discourage parties from engaging in dilatory gamesmanship. Accordingly, we conclude *Mathis* supports the circuit court's orders in this case. *Id.*

¶ 36 Richard also argues: " '[m]arital property rights cannot inure in property acquired after a judgment of dissolution of marriage [citation], and the same is true of the appreciation of marital property occurring after that judgment.' " *Id.* ¶ 26 (quoting *In re Marriage of Frazier*, 125 Ill. App. 3d 473, 476 (1984)). We agree. In this case, however, we are merely concerned with the appreciation of the property already awarded to Trudy by the modified judgment of dissolution, but not transferred to Trudy. *Mathis* and *Frazier* do not support the proposition that Richard has any rights to the appreciation of property awarded to Trudy for the period of time he failed to transfer said property to her.

¶ 37 In short, the March 27 and November 27, 2013, expressly state that the valuation of the retirement assets did not change. Any change in the amount to be transferred to Trudy was to reflect the percentage distribution established in the modified judgment of dissolution. Richard's challenges to these orders thus fail.

¶ 38

CONCLUSION

¶ 39 For all of the aforementioned reasons, Richard's appeal from the August 14, 2012, order is dismissed for lack of jurisdiction. The judgment of the circuit court is otherwise affirmed.

¶ 40 Dismissed in part; affirmed in part.