No. 2—10—0601
Order filed June 16, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF ROGER L. ROBERTS, JR., Petitioner-Appellant, and DEBORAH S. ROBERTS, n/k/a Deborah S. Thur, Respondent-Appellee.	)))))))))))	Appeal from the Circuit Court of De Kalb County. No. 06—D—185 Honorable William P. Brady, Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Zenoff and Schostok concurred in the judgment.

ORDER

Held: The trial court properly held petitioner in contempt for failing to comply with a judgment provision requiring him to refinance the marital home and pay proceeds to respondent; although petitioner contended that the provision was void because the debt was discharged in bankruptcy and only the bankruptcy court could require him to reaffirm (so as to refinance) the debt, he nevertheless was free to do so, and his failure to do so rightly subjected him to contempt.

Petitioner, Roger L. Roberts, appeals from an order finding him in contempt of court for failing to comply with a provision of the judgment for dissolution of marriage that required him to refinance the marital home and pay $30,000 from the proceeds of that refinance to respondent,

Deborah S. Roberts, n/k/a Deborah S. Thur. Roger claims that the trial court lacked the authority to make him essentially reaffirm a debt that was discharged in bankruptcy. We affirm.

The facts relevant to resolving this appeal are as follows. On July 7, 2006, Roger petitioned to dissolve his marriage to Deborah. In answer to Deborah's interrogatories, Roger indicated that he lived in the marital home and that he would do so after the marriage was dissolved.

The parties' marriage was dissolved on July 7, 2009, and a judgment for dissolution of marriage was entered on August 18, 2009. That judgment indicated that both parties filed for bankruptcy. Deborah's bankruptcy was completed with a discharge on June 24, 2009. Roger's bankruptcy was still pending when the dissolution judgment was entered, but it was anticipated that Roger's bankruptcy would be completed with a discharge within 90 days after September 24, 2009.

In the dissolution judgment, the trial court awarded the marital home to Roger. However, the dissolution judgment provided that:

> "Roger shall refinance the marital home within six (6) months of his date of Roger's bankruptcy discharge (or dismissal if no discharge), using proceeds from refinancing the marital home to pay to Deborah the sum of twenty-seven thousand five hundred and no/100 dollars ($27,500.00) as and for the equity in said marital home. This $27,500.00 takes into account the fair market value of the property as $267,000.00 when it was purchased in 2006, the $2,500.00 lien of Victor Puskas for services to Deborah as her previous attorney, (which if Deborah pays outside the lien, shall not be used to reduce Deborah's claim to $27,500.00, but will instead be the otherwise $30,000.00), and the $2,500.00 dissipation of Deborah for her Washington trip."

The dissolution order was subsequently amended in ways not relevant here, and, on December 28, 2009, Deborah filed a notice of appeal, attacking the custody provisions for the parties' three children. Roger never cross-appealed, and Deborah did not take issue on appeal with the provision in the dissolution judgment that required Roger to refinance the debt on the marital home and pay her $30,000 from the proceeds of that refinance. See *In re Marriage of Roberts*, No. 2—09—1359 (2010) (unpublished order under Supreme Court Rule 23) (*Roberts I*).

On March 30, 2010, Deborah petitioned to hold Roger in contempt of court. Deborah claimed, among other things, that Roger failed to refinance the debt on the marital home and pay her $30,000 from the proceeds of that refinance.

At the hearing on the contempt petition, Deborah testified that she received Roger's bankruptcy discharge papers. Roger was discharged in bankruptcy in the middle of October 2009. Deborah did not reaffirm the debt on the marital home, because she assumed that Roger did.

Roger testified that, at the time of trial on his petition to dissolve his marriage to Deborah, he intended to reaffirm the debt on the marital home. Roger was going to do so, because he wanted to live in the marital home with the parties' children.[1] At some time prior to October 2009, Roger stopped making the mortgage payments. Roger indicated that he was unable to reaffirm the debt on the marital home, as he could not make all the necessary payments. Because Roger could not make the payments, he could not refinance the house, and, thus, he agreed that he never tendered to Deborah any of the $30,000 due to her pursuant to the dissolution judgment. In June 2010, the

[1]We noted as much in *Roberts I* when we indicated that the trial court decided to award Roger custody of the parties' two youngest children precisely because Roger was going to stay in the marital home and, thus, provide the youngest children with some stability.

marital home was sold in foreclosure. Nevertheless, despite these financial straits, Roger testified that he was about to purchase another home that was located on the same street as the marital home.

The trial court found Roger in indirect civil contempt of court. The court stated:

"With respect to the $30,000, [Roger] hasn't shown me that he's done anything to even try to come in compliance with that court order. ***

He hasn't shown me that he was unable to make—get the—get refinanced. Certainly he was unable once he stops paying it and that's certainly if the court had been aware of what his intention was at that point in time, I don't know how the court would have ended up ruling on other issues that it ruled on at that time.

Certainly the fact that the children were going to be able to stay in the marital residence was something of importance to the court when it made its ruling regarding the custody issues. And [Roger's] decision to circumvent the court order to pay [Deborah] the money that I determined was owed I'm not—I'm not allowing [Roger] to evade his responsibility on that. ***

The court is going to sentence [Roger] at this point in time to six months in the county jail. The court will set the purge amount at $30,000."

This timely appeal followed.[2]

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[2]After the court found Roger in indirect civil contempt of court, Roger filed an emergency motion to stay the judgment. The trial court denied the motion, and Roger filed a similar motion in this court. While that motion was pending here, Roger, according to the minute orders, "filed" a bond of $30,000, which we presume means that Roger posted bond. After Roger posted bond, we denied the emergency motion to stay the judgment that Roger filed in this court.

At issue in this appeal is the propriety of the order finding Roger in contempt of court. Roger claims that the court's order requiring him essentially to reaffirm the debt on the marital home, refinance that debt, and then pay Deborah $30,000 from the proceeds of that refinance was void, because only the bankruptcy court had the power to make him proceed that way.[3]

Deborah argues that this court cannot review Roger's claim for two reasons. First, she claims that Roger cannot now collaterally attack the dissolution judgment via the contempt proceedings. Deborah contends that, had Roger believed that the dissolution judgment was void, he should have raised that issue in a direct appeal following entry of that judgment. Second, Deborah argues that Roger forfeited review of his argument by failing to raise in the contempt proceedings his belief that the dissolution judgment was void. We disagree with both contentions.

First, although Deborah is correct in her assertion that contempt proceedings are collateral to and independent of the case in which the contempt arises, the cases that Deborah cites for this proposition all discussed the collateral nature of contempt proceedings in the context of appellate jurisdiction. See *In re Marriage of Gutman*, 232 Ill. 2d 145, 152-53 (2008); *People ex rel. Scott v. Silverstein*, 87 Ill. 2d 167, 172 (1981); *Kazubowski v. Kazubowski*, 45 Ill. 2d 405, 414-15 (1970). In this case, no issue is raised concerning this court's jurisdiction. Moreover, this court recently examined whether a dissolution judgment that a husband was guilty of violating was void, such that the husband could not be held in contempt. See *In re Marriage of Barile*, 385 Ill. App. 3d 752, 757-58 (2008). We may do the same here.

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[3]Deborah notes that nowhere in the dissolution judgment did the trial court explicitly order Roger to reaffirm the debt on the marital home. We agree. However, reaffirming the debt was a natural precondition of refinancing.

Second, we find unfounded Deborah's claim that Roger forfeited review of the issue he raises. If, as Roger suggests, the provision in the dissolution judgment that required him essentially to reaffirm the debt on the marital home and then refinance the debt is void, it may be attacked at any time. See *In re Marriage of Mitchell*, 181 Ill. 2d 169, 174 (1998). Thus, the rule of forfeiture does not apply. See *People v. Thompson*, 209 Ill. 2d 19, 27 (2004).

Turning to the merits of Roger's claim, we begin by noting that a party cannot be held in contempt of court for violating a void order. See *Barile*, 385 Ill. App. 3d at 758. " '[A] void order or judgment is one entered by a court without jurisdiction of the subject matter or the parties, or by a court that lacks the inherent power to make or enter the order involved.' " *Mitchell*, 181 Ill. 2d at 177 (quoting *In re Estate of Steinfeld*, 158 Ill. 2d 1, 12 (1994)). Whether an order is void is a question of law that we review *de novo*. *People v. Hauschild*, 226 Ill. 2d 63, 72 (2007).

Here, if the trial court exceeded its authority in essentially requiring Roger to reaffirm the debt on the marital home, because the power to do so rested exclusively with the bankruptcy court, the portion of the dissolution judgment that required Roger to refinance the debt on the home and pay Deborah $30,000 from the proceeds of that refinance is void, and Roger cannot be held in contempt for violating it. Thus, with that in mind, we must decide whether the bankruptcy court exclusively controlled whether Roger could reaffirm the debt on the marital home. That is, we must consider whether Roger otherwise could reaffirm the debt so as to comply with the trial court's order. We conclude that he could.

The discharge of a debt through bankruptcy proceedings affords a debtor a fresh start. *In re Graham*, 430 B.R. 473, 477 (Bankr. E.D. Tenn. 2010). Although the debtor is no longer personally liable for a discharged debt, the discharged debt is not extinguished. *Id.* That is, the debtor may

voluntarily choose to reaffirm any dischargeable debt by executing a reaffirmation agreement with the specific creditor. *Id.* A reaffirmation agreement is a contract for a new repayment obligation, and the state laws on contracts, not the bankruptcy laws, govern these agreements. *Id.*

Thus, without any authorization from the bankruptcy court, Roger could reaffirm the debt on the marital home. Yet, the evidence presented indicated that Roger never even attempted to reaffirm that debt. Because Roger, by failing to reaffirm the debt on the marital home, created the circumstances under which the applicable provisions of the dissolution judgment were not complied with, he cannot now claim that he cannot be held in contempt. See *County of Cook v. Lloyd A. Fry Roofing Co.*, 59 Ill. 2d 131, 137 (1974) (the contemnor may not assert his inability to comply where he has voluntarily created the incapacity).

For these reasons, the judgment of the circuit court of De Kalb County is affirmed.

Affirmed.