2011 IL App (2d) 100683-U
No. 2—10—0683
Order filed August 18, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF KRISTINE L. COLLINS,	)	Appeal from the Circuit Court of Du Page County.
Petitioner-Appellee,	)	
and	)	No. 06—D—2554
KELLY COLLINS,	)	Honorable James J. Konetski,
Respondent-Appellant.	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices McLaren and Bowman concurred in the judgment.

ORDER

Held: The trial court properly held respondent in contempt for failing to comply with a child-support order: the order was not void for lack of jurisdiction, as in the dissolution judgment the court had reserved jurisdiction to enter the order; respondent's failure to comply was willful, as he did not seek employment as required for compliance and he did not establish a legally valid excuse for that failure.

¶ 1 This is the appeal from a contempt order; respondent, Kelly Collins, was ordered imprisoned until he paid past-due child support, although that imprisonment is stayed pending the resolution of this appeal. Respondent asserts that the court lacked jurisdiction to enter the support order that it

has held respondent in contempt for violating, but also asserts that the finding that respondent willfully violated the order was contrary to the manifest weight of the evidence. We hold that the court had necessarily reserved jurisdiction to enter the support order, and that it therefore was enforceable, not void. We further hold that respondent failed to meet his burden to show that his violation of the support order was not willful or contumacious, so that the court did not err in holding him in contempt. We therefore affirm.

¶ 2 I. BACKGROUND

¶ 3 Petitioner, Kristine L. Collins, filed her petition for divorce on November 20, 2006. The couple had one child, then two years old. The court entered a judgment of dissolution on April 7, 2008. It stated that respondent was self-employed and living with his mother. The judgment incorporated a marital settlement agreement and a joint parenting agreement. The marital settlement agreement provided as follows:

> "The issue of the Husband's obligation to pay child support to the Wife is hereby reserved. The Husband is placed on a job search ***. *** The Husband shall be required to report to the court on a bi-weekly basis with his first reporting date to be 4-29-2008, at 9:25 a.m. Once the Husband has obtained employment, he shall be required to pay the Wife an amount equal to 20% of his net income as defined by 750 ILCS 5/505 of the Illinois Marriage and Dissolution of Marriage Act [(Act)] from the date of hire. Husband shall also provide Wife with his pay stub from such employment within 7 days of his receipt of same."

¶ 4 On July 21, 2008, counsel for petitioner represented to the court that respondent had reported getting a job with a painting contractor, but then later reported that it had fallen through. Respondent was present without counsel. He did not dispute counsel's characterization of what happened, but

"[g]uarantee[d]" that he would have a job within two weeks, saying, "I don't care if I got to go to McDonald's." Respondent did not deny that he had failed to fill out the required job-search diary.

¶ 5 August 5, 2008, was a status date, and respondent failed to appear. Counsel for petitioner represented that respondent had reported working independently as a painter. The court entered an order requiring respondent to be present on August 19, 2008.

¶ 6 Respondent missed the August 19, 2008, status date, and petitioner asked the court to set child support in his absence. She testified that respondent had contributed a total of $990 toward day care expenses and $200 in child support "since the judgment of dissolution was entered." She further testified that respondent was "still self-employed" and had been self-employed at the time of "the divorce." She asked for $115 a week in child support "[b]ased on what he used to make." The court set child support at $115 a week, a figure that was "not specifically based on [respondent's] income [but] based on [the] child's needs." The judgment was to be retroactive to April 19, 2008, respondent's first job-search status date.

¶ 7 On September 30, 2009, petitioner filed a petition for a rule to show cause. In it, she asserted that respondent had failed to comply with the August 19, 2008, child support order, thus incurring an arrearage of $20,360.82. The court issued the rule.

¶ 8 Respondent moved to "[s]trike and [d]ismiss." He asserted that, because petitioner had not filed a petition seeking modification of child support, the court lacked jurisdiction to enter the August 19, 2008, order.

¶ 9 Petitioner responded, asserting that, because the issue had been "reserved," the August 19, 2008, order was the original child support judgment in the dissolution action, so that no new

pleading was needed to give the court jurisdiction. The court agreed and ruled that the child support order was the original child support order, and not a modification.

¶ 10 The court, although recognizing that respondent's circumstances contained elements of a moral dilemma, found respondent in contempt and sentenced him to imprisonment until he started paying the arrearage. (It ultimately stayed imprisonment pending appeal.) On appeal, respondent argues that, in spite of the marital settlement agreement's statement that child support was "reserved," the dissolution judgment was final, so that petitioner would have needed to file a new petition to give the court jurisdiction to enter a support order. He also argues that the contempt finding was contrary to the evidence. We reject both contentions.

¶ 11 II. ANALYSIS

¶ 12 Respondent has raised two claims of error. First, he asserts that, when the parties said that the issue of child support was "reserved," they intended it to mean not that the court retained jurisdiction to set child support, but only that the court would revisit the matter when respondent obtained employment. He reasons that, because it did not retain jurisdiction, petitioner would have needed to file a petition to modify child support to give the court jurisdiction to enter the August 19, 2008, child support order. It would follow that, because she did not file a petition, the court lacked jurisdiction to enter the order, rendering it void and thus unenforceable in a contempt proceeding. The trial court found that it had jurisdiction and the lack of a set dollar amount in the original judgment supports the court's determination that it reserved jurisdiction to further deal with the issue. Therefore, no petition for modification was needed for the court to have jurisdiction to enter the August 19, 2008, order, and that order was enforceable. Second and alternatively, respondent asserts that the court's holding that he was willfully and contumaciously in contempt of the August

19, 2008, order was against the manifest weight of the evidence. We conclude that respondent failed to meet his burden to prove that the violation was not willful and contumacious, we thus must affirm the contempt finding. We address each of these issues in turn.

¶ 13 We agree with respondent that the use of the term "reserved" in a dissolution judgment does not *in every instance* imply a reservation of jurisdiction. See *In re Marriage of Mardjetko*, 369 Ill. App. 3d 934, 937 (2007) (noting that courts sometimes use "reserved" to indicate that they have decided something, but intend to revisit it soon). However, when an essential issue remains unresolved, if the judgment is to comply with the Act, "reserved" *must* imply a reservation of jurisdiction. This is an instance in which the court necessarily retained jurisdiction. Child support is an essential issue that the April 7, 2008, judgment did not decide.

¶ 14 Section 401(b) of the Act (750 ILCS 5/401(b) (West 2008)) provides for reservation of issues in appropriate circumstances, but requires that a dissolution judgment resolve all essential issues:

> *"Judgment shall not be entered unless*, to the extent it has jurisdiction to do so, *the court has considered, approved, reserved or made provision* for child custody, *the support of any child of the marriage entitled to support*, the maintenance of either spouse and the disposition of property. The court may enter a judgment for dissolution that reserves any of these issues either upon (i) agreement of the parties, or (ii) motion of either party and a finding by the court that appropriate circumstances exist." (Emphases added.) 750 ILCS 5/401(b) (West 2008).

Thus, when there exists a child entitled to support, the court must either decide the amount of support to which the child is entitled or reserve the matter under the section.

¶ 15 Here, the court had not fully and properly decided the issue of child support. Section 505(a)(5) of the Act (750 ILCS 5/505(a)(5) (West 2008)) requires that the level of support be set either as a straight dollar amount or as a baseline dollar amount with a percentage over that. Therefore, the support amount of 20% set by the April 7, 2008, judgment was statutorily incomplete. The facts contained in the record support the conclusion that the trial court intended to retain jurisdiction over this issue. The court required respondent to undertake a job search and report to the court periodically on that search in order to establish a statutory guideline support amount once he obtained employment. Given that the April 7, 2008, judgment did not fully and finally decide child support, an essential issue, the only other choice under section 401(b) was to reserve the issue, which is what the judgment said that it did.

¶ 16 When the court reserves an issue under section 401(b), it retains jurisdiction. Under the rule in *In re Marriage of Leopando*, 96 Ill. 2d 114, 119 (1983), there is only one claim in a marriage: a request for the marriage's dissolution. All other matters are ancillary questions. As a result, the dissolution action is capable of producing only one judgment that is final for the purposes of appealability. That judgment is the one that comes after the resolution of *all* issues. See *Leopando*, 96 Ill. 2d at 118-20 (holding that the pendency of financial issues delayed the appealability *as a final order* of a "final" custody decision). But see Ill. S. Ct. R. 304(b)(6) (eff. Feb. 26, 2010) (newly providing for the immediate appealability of most custody orders). The court cannot lose jurisdiction before it enters its final judgment, so when the court reserves an issue under section 401(b), that is the same as retaining jurisdiction. The court thus had jurisdiction to enter the August 19, 2008, child support order, so respondent is wrong to argue that it was void and unenforceable.

¶ 17 Respondent asserts in the alternative that the court's holding him in contempt of the child support order was "against the manifest weight of the evidence." Specifically, he asserts that "the testimony before the trial court was insufficient to support the order finding [him] to be in willful contempt of court." With this argument, respondent has reversed the burden of proof, and the argument is thus fatally flawed.

¶ 18 Respondent had the burden of showing that his admitted failure to make the ordered child support payments was not willful or contumacious.

> "The failure to make support payments as ordered is *prima facie* evidence of contempt. [Citation.] Once the party bringing the contempt petition establishes a *prima facie* case, the burden shifts to the alleged contemnor to prove that the failure to make support payments was not willful or contumacious and that there exists a valid excuse for his failure to pay. [Citation.] '[W]hether a party is guilty of contempt is a question of fact for the trial court, and *** a reviewing court will not disturb the finding unless it is against the manifest weight of the evidence or the record reflects an abuse of discretion.' " *In re Marriage of Barile*, 385 Ill. App. 3d 752, 758-59 (2008) (quoting *In re Marriage of Logston*, 103 Ill. 2d 266, 286-87 (1984)).

¶ 19 Respondent did not meet his burden of showing that his failure to pay was not willful or contumacious. We accept, at least for purposes of argument, that respondent did not have the money to make the support payments. Respondent concedes that his obligation to make the payments was also an obligation to seek a source from which to make the payments, that is, to seek paying employment. He also concedes that he did not seek such employment. He asserts that the failure can be excused for two reasons. First, he asserts that, given the poor economic climate of 2008 and

the particular weakness of the construction industry,[1] the employment prospects of a painter and remodeler with a history of alcoholism were so poor as to make a job search futile. Second, he asserts that, given the low chances of his getting employment, he "made the highest and best use of his time by caring for his mother during the last months of her life." We hold that respondent's first assertion is not adequately supported by evidence and that his second assertion is forfeited as inadequately supported in his appellate brief.

¶ 20 First, although the economic conditions have been such that it should be recognized that any job search of respondent's would have likely been difficult and not guaranteed of success, those conditions are not clearly so disastrous that futility can be assumed. The trial court could not properly accept, without evidence, that respondent was without marketable skills and the court's ruling was not against the manifest weight of the evidence.

¶ 21 Respondent has not adequately supported as legal argument his second assertion, which is that the highest use of his time was caring for his dying mother. More specifically, he has failed to provide any authority that supports his caring for his mother as a proper reason for not seeking a job. Respondent's position on this point is not entirely clear to us. Perhaps he is suggesting that he has something akin to a necessity defense in a criminal case. Whatever he intended, he has failed to argue the issue or support it with any authority. He has thus forfeited the issue. Ill. S. Ct. R.

[1]Respondent seems to be asking this court to take judicial notice of the 2008 housing crash and its effects on the construction industry. Such notice is appropriate. "A court may take judicial notice of matters of common knowledge[.]" *Harris Trust & Savings Bank v. American National Bank & Trust Co. of Chicago*, 230 Ill. App. 3d 591, 597 (1992).

341(h)(7) (eff. July 1, 2008); *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 493 (2002) (any point not argued or supported by citation to relevant authority is forfeited).

¶ 22 III. CONCLUSION

¶ 23 For the reasons we have stated, we affirm the judgment holding respondent in contempt of court.

¶ 24 Affirmed.