No. 2—10—0827
Order filed May 23, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

WILLIAM C. DiPUMA,	)	Appeal from the Circuit Court
	)	of Winnebago County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 08—L—325
	)	
CUMULUS BROADCASTING, INC.,	)	Honorable
	)	J. Edward Prochaska,
Defendant-Appellee.	)	Judge, Presiding.

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

ORDER

Held: (1) We had jurisdiction of plaintiff's appeal, as the trial court did not enter a final and therefore appealable judgment until it ruled on attorney fees, and plaintiff appealed within 30 days thereafter; (2) because defendant's principal place of business was in Georgia (although it employed plaintiff's ex-wife in Illinois), the penalty for defendant's failure to withhold child support was properly calculated under Georgia's, not Illinois's, version of the Uniform Interstate Family Support Act.

Plaintiff, William C. DiPuma, filed a complaint under the Illinois version of the Uniform Interstate Family Support Act (Act) (the Income Withholding for Support Act) (750 ILCS 28/1 *et seq*. (West 2008))), against defendant, Cumulus Broadcasting, Inc. Plaintiff's complaint alleged that defendant had violated the Act by knowingly failing to withhold money owed for child support from

the wages of Christina Kunde, in accordance with a judgment dissolving plaintiff's marriage to Kunde. After a bench trial, the trial court found for plaintiff and penalized defendant $171,200, based on the formula in section 35 of the Act (750 ILCS 28/35 (West 2008)). Defendant moved to reconsider, contending that, because its principal place of business is in Georgia, the penalty had to be calculated in accordance with Georgia law. The trial court granted the motion, reduced the penalty to $480, and awarded plaintiff attorney fees and costs. Plaintiff then appealed.

On appeal, plaintiff argues that the trial court's original judgment was correct and that the court erred in applying Georgia law. Defendant responds that (1) we lack jurisdiction over the appeal, because it is untimely; and (2) the court's modified judgment is correct. We affirm.

Plaintiff's complaint, filed March 11, 2008, alleged as follows. On September 19, 2007, and at all other pertinent times, defendant employed Kunde at a radio station in the Rockford, Illinois, area. On or about September 19, 2007, defendant was served per the Act with a notice to withhold income (notice). The notice required defendant to deduct $60 biweekly from Kunde's wages until an arrearage of $2,400 in child support was satisfied. Although plaintiff's attorney at the time, Cynthia Briscoe, tried several times to contact defendant's payroll administrator, defendant knowingly failed repeatedly to withhold the wages as required. Therefore, defendant was liable for penalties in accordance with section 35(a) of the Act, *i.e.*, $100 per each day, after a seven-day grace period, that the amount designated in the notice was not paid to the State Disbursement Unit. See 750 ILCS 28/35(a) (West 2008). Plaintiff's complaint attached a copy of the order of withholding, which was dated June 7, 2007, and listed defendant, as payor, at 3535 Piedmont Road in Atlanta, Georgia.

On January 19, 2010, the case proceeded to a bench trial. As the parties do not dispute liability, but only the proper penalty, we note merely the following. In her testimony, Briscoe recounted that, on September 11, 2007, she mailed a copy of the notice to defendant at the Atlanta address listed in the order of withholding. In February 2007, Briscoe had mailed a notice directly to Kunde's office in Rockford. Defendant did not comply with the September 11, 2007, notice, and, in December 2007, Briscoe resent the notice to D. J. Donnelly, the director of defendant's payroll department, at defendant's new address in Atlanta. Kunde's pay stubs for January did not show that the $60 had been withheld as required. On February 8, 2008, Briscoe faxed another notice to Donnelly in Atlanta. Kunde's next pay stub showed that the $60 had been duly withheld, but, because defendant was still delinquent for September 2007 through February 2008, Briscoe filed suit.

Donnelly testified that defendant owned four radio stations in the Rockford area but that she worked in the corporate office in Atlanta. When the business manager in defendant's Rockford office received the February 2007 notice, she faxed it to Donnelly, who recorded the information.

On March 10, 2010, the trial court issued a "memorandum of decision," holding that (1) plaintiff had proved that defendant had knowingly violated the Act; and (2) under section 35(a) of the Act (750 ILCS 28/35(a) (West 2008)), defendant was liable for $171,200 in penalties plus court costs. The court made the order immediately appealable under Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010).

On April 8, 2010, defendant moved to modify the judgment, arguing that the penalty had to be recalculated. Defendant contended that, under *In re Marriage of Gulla*, 234 Ill. 2d 414 (2009), the penalty must be based not on section 35(a) of the Act but on the penalty provision of the cognate Georgia statute (Ga. Code Ann. §§19—11—19, 19—11—154 (2010)). Defendant reasoned that,

under *Gulla*, Georgia law applied because defendant is located in Georgia, having its principal place of business there. The motion noted that Briscoe had sent the September 11, 2007, notice and all related subsequent correspondence to defendant's corporate office in Georgia. Plaintiff responded to the motion, arguing that, because Kunde had worked at defendant's station in Illinois, defendant was located in this state and *Gulla* did not apply.

On June 11, 2010, after hearing arguments, the judge agreed with defendant that, under *Gulla*, the penalty must be based on the law of Georgia. The judge then stated:

> "I am going to modify my order and change the judgment to in favor of Mr. Dipuma [*sic*] and against Cumulus in the amount of $480 plus interest, costs, and reasonable attorney's fees.
>
> And I guess I would continue this matter to allow counsel for Dipuma [*sic*] to submit an affidavit in support of the attorney's fees aspect of the case since I don't believe that's been addressed up until now nor did I require her to do that up until now. So I'm going to modify the order to reflect that the judgment is in favor of Dipuma [*sic*] against Cumulus, $480 plus interest, costs, and attorney's fees. And I'll set this matter over for a few weeks to allow counsel for Dipuma [*sic*] to attempt to submit evidentiary material in support of what the interest, costs, and attorney's fees calculation should be."

The judge set July 22, 2010, for a "ruling on the interest, costs, and attorney's fees aspect of the judgment and entry of judgment that day." On June 30, 2010, Briscoe and plaintiff's trial attorney filed fee affidavits. On July 19, 2010, the trial court entered a written order stating that its March 10, 2010, order was modified so as to award plaintiff $480 plus $25,475 in costs and attorney fees. On August 17, 2010, plaintiff filed a notice of appeal.

On appeal, plaintiff argues that *Gulla* is distinguishable and that the trial court erred in awarding penalties in accordance with Georgia law. Defendant contends that (1) we lack jurisdiction to hear this appeal; and (2) in any event, the modification was correct. We disagree with defendant's first contention, but we agree with the second, and therefore we affirm on the merits.

Defendant argues that the appeal must be dismissed as untimely. According to defendant, the final judgment in this case was entered on June 11, 2010, when the trial court modified its earlier judgment and granted plaintiff the relief that he sought (albeit not in the amount that he had requested) in the complaint. Defendant recognizes that, after entering the June 11, 2010, order, the court awarded plaintiff attorney fees and costs. However, defendant reasons, the award of fees and costs was not based on the pleadings in plaintiff's complaint, so that the post-June 11, 2010, proceedings that resulted in the award were not part of the principal action, making the June 11, 2010, order a final judgment on all the claims now raised on appeal. See *Buntrock v. Terra*, 348 Ill. App. 3d 875, 882-84 (2004); *Hartford Fire Insurance Co. v. Whitehall Convalescent & Nursing Home, Inc.*, 321 Ill. App. 3d 879, 885-87 (2001). Therefore, defendant concludes, under Illinois Supreme Court Rule 303(a) (eff. May 1, 2007), plaintiff had to file his notice of appeal within 30 days after the judgment of June 11, 2010, which he did not do.

We disagree with defendant's reading of the record. On June 11, 2010, the trial court did not actually enter a final judgment. Instead, as the transcript of the hearing that day shows, the judge stated only that the original judgment had to be modified (drastically). He added, however, that he would not actually enter a new judgment—on any issues—until the matter of attorney fees and costs was heard and resolved. The grant of a motion to modify a judgment creates a new judgment that restarts the jurisdictional clock for an appeal (see *Gibson v. Belvidere National Bank & Trust Co.*,

326 Ill. App. 3d 45, 48-49 (2001)). In this case, the new judgment was not entered on June 11, 2010, when the judge merely stated how he would rule on the claim raised by plaintiff's complaint, but only on July 19, 2010, when the court actually incorporated that ruling, along with one on attorney fees and costs, in a judgment. Plaintiff appealed within 30 days of this judgment, and, therefore, we have jurisdiction.

We turn to the merits. Plaintiff contends that the trial court erred in holding that this case is controlled by *Gulla* and, consequently, in holding that the penalty must be determined by Georgia law. For the reasons that follow, we hold that *Gulla* is squarely on point and compels affirmance.

In *Gulla*, the trial court found that Knobias, Inc., failed to withhold and remit child support payments, which were due Suzanne Gulla under an Illinois judgment, from its employee, Gulla's ex-husband Stephen Kanaval. The court ordered the company to pay Gulla a penalty, which the court calculated per section 35(a) of the Act. According to the supreme court, Knobias was "located in Mississippi" but employed Kanaval in New York. *Gulla*, 234 Ill. 2d at 417. This court had affirmed the judgment, but the supreme court affirmed as modified and remanded, holding that the penalty should have been based on Mississippi's version of the Act, not Illinois's version. *Id.* at 428.

The court explained that, under either state's version of the Act, an employer who willfully fails to comply with an income-withholding order issued by another state " 'is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this State.' " *Id.* at 427-28 (quoting 750 ILCS 22—505 (West 2006) and Miss. Code Ann. §93—25—75 (West 2006)). Thus, Knobias's penalty had to be calculated in accordance with "the law of its state—Mississippi [citiation]." *Id.* at 428.

The supreme court's opinion is slightly unclear, in that it states that Knobias was "located in Mississippi" (*Gulla*, 234 Ill. 2d at 417), without elaborating on the basis for this statement. However, our opinion states that Knobias was "a Mississippi corporation" (*In re Marriage of Gulla*, 382 Ill. App. 3d 498, 504 (2008)), and it appears that the withholding notice was sent to Mississippi. In all likelihood, Knobias had its principal place of business in Mississippi. Much more important for our purposes, the supreme court attached absolutely no significance to the fact that Kanaval, Knobias's employee, worked for the company in New York. The court did not even entertain the possibility that Knobias's presence in that state would trigger New York's version of the Act.

Here, plaintiff contends, as he did in the trial court, that *Gulla* is distinguishable because there was evidence that, unlike Knobias, defendant has contacts with Illinois, as it employs people (including Kunde) in Rockford. As is clear from our summary of *Gulla*, this "distinction" is legally irrelevant. The evidence showed that defendant has its corporate office in Georgia (where the notice was sent). Thus, it is located in Georgia, no less than Knobias was located in Mississippi. The fact that Kunde, the obligor, worked for defendant in Illinois must have the same legal significance as the fact that Kanaval worked for Knobias in New York—none. Also, we see no significance to the fact that the first notice of withholding was mistakenly sent to Kunde's immediate employer in Rockford. What matters is that defendant is located in Georgia. Therefore, the trial court properly assessed the penalty in accordance with Georgia law.

The judgment of the circuit court of Winnebago County is affirmed.

Affirmed.