2013 IL App (2d) 121252-U
No. 2-12-1252
Order filed July 17, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF NOREEN P. PERL,	)	Appeal from the Circuit Court
	)	of Lake County.
Petitioner-Appellant,	)	
	)	
and	)	No. 00-D-229
	)	
BARRON S. PERL,	)	Honorable
	)	Jay W. Ukena,
Respondent-Appellee.	)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Presiding Justice Burke and Justice Jorgensen concurred in the judgment.

ORDER

Held: The trial court properly denied petitioner's section 2-1401 prayer to vacate an agreed order as having been beyond the court's subject matter jurisdiction: the court had jurisdiction because the order (pertaining to custody and child support) raised a justiciable matter and was effectively an initial pleading that placed that matter before the court, and any errors that the court made in entering the order did not divest the court of its jurisdiction.

¶ 1 Noreen P. Perl, the petitioner in a dissolution-of-marriage action, appeals from an order denying that portion of her petition under section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2010)) in which she sought to vacate as void an order by which she and Barron

S. Perl, the respondent, had agreed to modify custody and child support. She asserts that, because the agreed order was not preceded by a petition from either party, the court lacked subject matter jurisdiction to enter the order. We hold that the agreed order was effective as a petition or petition substitute for the purpose of giving the court subject matter jurisdiction. We therefore affirm the court's denial of the part of the petition at issue here.

¶ 2 I. BACKGROUND

¶ 3 On June 4, 2001, the court entered a judgment dissolving the Perls' marriage. Noreen received sole custody of the four children. Barron, based on a finding that his income was $250,000 annually, was to pay child support of $5,000 a month until May 1, 2007, and $6,200 a month thereafter.

¶ 4 On April 20, 2009, the court entered an agreed order that gave Barron sole custody of the oldest child. The order also modified Barron's support obligation to $4,000 a month. Noreen and Barron both signed the agreement. That order stated:

> "This cause having come before this court by agreement of the parties and the Court being fully advised in the premises:
>
> THE COURT DOTH HEREBY FIND:
>
> 1. The [parties] having stipulated that Barron S. Perl is a fit and proper person to have sole care, custody, and control of Brandon R. Perl, born June 29, 1992, and that the modification provided for below is in the best interests of Brandon.
>
> IT IS THEREFORE ORDERED
>
> 2. Barron S. Perl shall have sole residential and physical custody of the minor child, Brandon R. Perl.

3. Barron shall pay to Noreen P. Perl the sum of $4,000.00 per month child support based on the needs of the minor children and by this Order is found to be in compliance with his child support obligations."

¶ 5 On October 31, 2011, Noreen filed a three-count "Petition to Vacate and Other Relief." In count I, she asked the court to vacate the April 20, 2009, order. She argued that the order was void: the court had lacked subject matter jurisdiction because no party had filed a petition seeking modification of custody or child support. In count II, she asserted that, because the order was void, child support had continued to come due at the original rate, such that an arrearage of $116,600 existed. Count III requested a modification of child support based on what she asserted was a substantial change in circumstances between June 4, 2001, when the court entered the original support order and the date of the petition's filing.

¶ 6 Barron appeared and, on December 27, 2011, filed a motion to "Strike and Dismiss" the petition, citing section 2-615 of the Code (735 ILCS 5/2-615 (West 2010)). In opposition to counts I and II, he asserted (1) that the petition was untimely and (2) that no pleading need be before the court for the court to enter an agreed order. He also contested count III. The court denied the motion, but later ruled that the parties, by submitting an agreed order, had submitted themselves to the jurisdiction of the court, so that the order was not void. It therefore denied counts I and II. It further found (pursuant to Illinois Supreme Court Rule 304(a) (Feb. 26, 2010)) that, as to count I only, no just reason existed for delaying appeal of its ruling. It ordered an evidentiary hearing on count III.

¶ 7 Noreen moved for reconsideration of the two counts' denial, asserting that the court had made an error of law. The court denied the motion to reconsider on October 11, 2012, in an order

labeled an agreed order; this order also dealt with other pending matters. Noreen filed a notice of appeal on November 8, 2012.

¶ 8 On November 21, 2012, Noreen moved for the grant of a Rule 304(a) finding as to the denial of count II. The court considered that motion on December 10, 2012, but denied it.

¶ 9 The parties filed an agreed statement of facts that, in large part, summarizes the record; it also contains conclusions of law. It notes that the court denied Noreen's counts I and II without an evidentiary hearing. It states that the parties intended that the order of October 11, 2012, be an agreed order only as to matters not at issue here.

¶ 10 II. ANALYSIS

¶ 11 On appeal, Noreen again argues that the court lacked subject matter jurisdiction to enter the April 20, 2009, order; she concedes that it had personal jurisdiction of the parties. She relies on cases that include *In re Marriage of Sawyer*, 264 Ill. App. 3d 839 (1994), and *In re Marriage of Thornton*, 373 Ill. App. 3d 200 (2007).

¶ 12 Noreen further argues the trial court erred in entering the order because it did not receive any evidence that a substantial change in circumstances had occurred and did not consider required statutory factors for changing custody or setting a support level. Given that Noreen relies entirely on her claim that the order was void due to lack of jurisdiction, the implication of the argument is that the order was void because the court lacked authority to enter the order without making the statutorily required findings.

¶ 13 Barron initially asserts that *this* court lacks jurisdiction. He argues that counts I and II of the petition were part of a single claim. He reasons that the Rule 304(a) finding as to count I alone was therefore ineffective, and that, given the pendency of count III, the appeal is premature.

¶ 14 Alternatively, he argues that the trial court was correct to rule that it had had jurisdiction to enter the order. He points particularly to the holdings in *People ex rel. Gibbs v. Ketchum*, 284 Ill. App. 3d 70 (1996), and *In re Marriage of Nau*, 355 Ill. App. 3d 1081 (2005), as supporting his position.

¶ 15 Initially, we hold that we have jurisdiction: no Rule 304(a) finding is necessary for the immediate appealability of a partial denial of section 2-1401 relief. Illinois Supreme Court Rule 304(b)(3) (eff. Feb. 26, 2010) explicitly provides for the immediate appealability of any grant or denial of section 2-1401 relief:

> "The following judgments and orders are appealable without the finding required for appeals under paragraph (a) of this rule:
>
> * * *
>
> (3) A judgment or order granting or denying *any* of the relief prayed in a petition under section 2-1401 of the Code of Civil Procedure." (Emphasis added.)

In *In re Marriage of Carlson*, 101 Ill. App. 3d 924, 932 (1981), the reviewing court held that an "award of temporary custody was *part of the relief* prayed for in the section 72 [now section 2-1401] petition and is therefore a final and appealable order without any specific finding." (Emphasis added.) The same reasoning applies here; in refusing to vacate the order, the court denied some section 2-1401 relief, so that denial is immediately appealable.

¶ 16 Turning to the merits of Noreen's petition, the trial court was correct in ruling that it had jurisdiction to enter the agreed order, and therefore it acted correctly in denying relief; the parties' submission of the agreed order established the court's jurisdiction. The issue here is strictly one of subject matter jurisdiction, and, in particular, whether an agreed order submitted to the court

functions as an initial pleading that invokes the court's subject matter jurisdiction. As our discussion will show, subject matter jurisdiction depends only on whether an initial pleading shows the existence of a justiciable matter. (The *existence* of justiciable matter is not in dispute here.) However, given Noreen's argument that the court failed to follow statutory mandates, we also point out one thing that is *not* necessary for subject matter jurisdiction to exist: that the court conformed to the relevant statutory mandates.

¶ 17 The general rule is that a court has subject matter jurisdiction whenever a justiciable matter exists. *E.g.*, *In re Luis R.*, 239 Ill. 2d 295, 300-01 (2010). Such a matter exists, so that the court has subject matter jurisdiction to hear and determine a claim, when the claim before the court is in the general class of cases to which the Illinois Constitution's grant of original jurisdiction pertains. *E.g.*, *Luis R.*, 239 Ill. 2d at 302.

¶ 18 Implicit in this rule is that a party has taken some action to properly place the claim before the court. See, *e.g.*, *Luis R.*, 239 Ill. 2d at 301 (quoting *In re M.W.*, 232 Ill. 2d 408, 426 (2009)) ("To invoke a circuit court's subject matter jurisdiction, a petition or complaint need only 'alleg[e] the existence of a justiciable matter.' "). That action is—usually and perhaps always—the filing of an initial pleading. Supreme court cases state that the initial pleading is what frames the matter so as to establish the existence of subject matter jurisdiction. See *Blount v. Stroud*, 232 Ill. 2d 302, 316 (2009) ("[T]he court's jurisdiction is dependent upon whether the plaintiff's case, as framed by the complaint or petition, presents a justiciable matter."); *M.W.*, 232 Ill. 2d at 426 ("subject matter jurisdiction *** is invoked by the filing of a petition or complaint alleging the existence of a justiciable matter."). Turning this around, an initial pleading setting out the kind of claim that the court can address is thus sufficient to establish the court's subject matter jurisdiction.

¶ 19 Given Noreen's argument that the court could not have considered statutorily mandated factors for support and custody, we point out that not only is the existence of a justiciable matter before the court *necessary* for subject matter jurisdiction, it is also, in cases that do not seek review of administrative decisions, *sufficient* for subject matter jurisdiction. Noreen seeks to distinguish some cases on the basis that, here, the court could not have, for instance, made the necessary finding that the agreed order was in the children's best interests. Such possible errors by the court are not relevant to whether it had jurisdiction.

¶ 20 The kind of argument Noreen makes is familiar but superseded. The supreme court decisively rejected such reasoning in three watershed cases: *People ex rel. Graf v. Village of Lake Bluff*, 206 Ill. 2d 541, 553 (2003), *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 335-36 (2002), and *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 529-30 (2001). Under the rule of those cases, the sole source of subject matter jurisdiction is article VI, section 9, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 9), and (in cases not involving administrative review) such jurisdiction's existence depends solely on the existence of a justiciable matter. *Belleville Toyota*, 199 Ill. 2d at 335-36. Thus, failures by the court to follow statutory mandates do not divest it of jurisdiction. *E.g.*, *In re Antwan L.*, 368 Ill. App. 3d 1119, 1128 (2006).

¶ 21 The preceding discussion requires the conclusion that, if the agreed order was effective as an initial pleading stating a justiciable matter, the court had subject matter jurisdiction. The parties properly do not dispute that the matter was justiciable, and, as we will now show, the order was effective as an initial pleading, so that subject matter jurisdiction existed.

¶ 22 As we already noted, one purpose of an initial pleading is to frame the matter so as to show that the claim is one over which the court has subject matter jurisdiction. The core purpose of an

initial pleading "is to crystallize the issues in controversy," so that a "defendant [or respondent] will know what claims it has to meet." *Filliung v. Adams*, 387 Ill. App. 3d 40, 51 (2008).

¶ 23 The statement of the pleading need not be a complete one or a successful one: even a fatally flawed pleading is sufficient to establish subject matter jurisdiction. *E.g.*, *Luis R.*, 239 Ill. 2d at 303. Moreover, the substance of a filing, not its title, determines how a court ought to classify it. *E.g.*, *People ex rel. Ryan v. City of West Chicago*, 216 Ill. App. 3d 683, 688 (1991).

¶ 24 Given these principles, an agreed order concerning support or custody will generally be effective as an initial pleading. The subject matter of the order will show that it relates to the kind of matter that the court addresses. The crystalizing function is unnecessary, as the agreed character means that no material issues are in controversy or that the parties have achieved an acceptable compromise; more generally, the content of the order informs the parties of what is at stake. Parties could label a filing that conveyed the same information a "joint petition for custody and support modification and proposed agreed order." Such a label would make the court's subject matter jurisdiction obvious, but nothing would be added substantively. As the change would be merely one of form, the submission of the proposed order must be equally effective to establish subject matter jurisdiction.

¶ 25 The approach just described was essentially that of the court in *Gibbs*. The *Gibbs* court held that a "stipulation" concerning custody and support *was* a pleading. *Gibbs*, 284 Ill. App. 3d at 77. By the description in the decision (*Gibbs*, 284 Ill. App. 3d at 72), the "stipulation" was indistinguishable from what others might caption as an agreed order.

¶ 26 The other cases that the parties have cited are also consistent with this result.

¶ 27 In *Nau*, the parties submitted an order by which they agreed that their child, who had previously lived with his mother, would split his time between his two parents, and that support payments would cease. *Nau*, 355 Ill. App. 3d at 1083. The mother later sought to vacate the order as void, asserting that, under section 511 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/511 (West 2002)), a court can modify child support only after a party files a petition. *Nau*, 355 Ill. App. 3d at 1083-84. On appeal, she also asserted that the order violated the notice provision of section 601 of the Act (750 ILCS 5/601 (West 2002)). *Nau*, 355 Ill. App. 3d at 1084. This court held that, because both parties had signed the agreed order and appeared in court, "the purposes of section 601, including providing notice and alerting the parties about the subject matter of the controversy, were satisfied." *Nau*, 355 Ill. App. 3d at 1084. We cited *Gibbs* in support of the legitimacy of the proceedings, holding that no difference existed between an agreed order and the document called a stipulation *Gibbs*. *Nau*, 355 Ill. App. 3d at 1086. We noted that, although the parties' personal appearance made their awareness of what was at issue particularly clear, their signing of the order alone must have been enough to alert both of them to the matters that would be before the court. *Id.*

¶ 28 In *Sawyer*, the court held "that a trial court cannot modify a spouse's child support obligations without a petition for modification first being filed." *Sawyer*, 264 Ill. App. 3d at 848. However, that court did not need to consider whether an agreed order presented to the court had the effect of a petition; no order was before the court. *Sawyer*, 264 Ill. App. 3d at 847.

¶ 29 *Thornton* is similar; the error recognized was that the trial court ended maintenance without any pleading *or* agreed order. See *Thornton*, 373 Ill. App. 3d at 207 (over the ex-wife's objection, the court ended maintenance without the ex-husband having filed any pleading).

¶ 30 Noreen distinguishes *Nau*, *Gibbs*, and other cases on the basis that the courts in those cases had better cause to accept the agreed orders. For the reasons stated above in the discussion of *Graf*, *Belleville Toyota*, and *Steinbrecher*, whether the court had a proper factual or statutory basis to enter the order is not relevant to the court's subject matter jurisdiction. That the agreed order effectively served as a petition is sufficient to establish the court's jurisdiction, and no error of the kind Noreen discusses would divest jurisdiction.

¶ 31 III. CONCLUSION

¶ 32 For the reasons we have stated, we affirm the denial of count I of Noreen's section 2-1401 petition.

¶ 33 Affirmed.