W2014 IL App (2d) 140215-U
No. 2-14-0215
Order filed November 20, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF	)	Appeal from the Circuit Court
JORY SHURE,	)	of Lake County.
	)	
Petitioner-Appellee,	)	
	)	
and	)	No. 06-D-2285
	)	
DANIEL SHURE,	)	Honorable
	)	Jay W. Ukena,
Respondent-Appellant.	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: (1) In holding respondent in contempt, the trial court did not deny him due process: he was on notice of his need to show an inability to pay child support and was given an opportunity to do so, and the court found that he had the ability to pay; (2) we declined to sanction respondent under Rule 375(b): although his brief violated supreme court rules and raised some frivolous issues, one issue was cogently stated and had at least arguable merit.

¶ 2 Respondent, Daniel Shure, appeals from an order of the circuit court of Lake County finding him in contempt, contending that the trial court denied him due process when it failed to advise him of the need to show that he was unable to pay child-support arrears, failed to provide

him an opportunity to do so, and failed to expressly find that he had the ability to pay. Because respondent was not denied due process, we affirm.

¶ 3 I. BACKGROUND

¶ 4 The marriage of petitioner, Jory Shure,[1] and respondent was dissolved on May 22, 2008. On October 10, 2010, the trial court entered a judgment, which found, in part, that respondent was in contempt for failing to make timely child-support payments and ordered him to do so. Subsequently, petitioner filed several petitions for a rule to show cause why respondent should not be found in contempt for his continued failure to pay child support. Following a hearing on July 25, 2013, at which respondent appeared *pro se*, the court issued a rule to show case. In doing so, the court advised respondent that, because it was issuing the rule to show cause, the burden shifted to him to show why he should not be held in indirect civil contempt for failing to make the child-support payments. Respondent stated that, although he understood that the burden had shifted to him, it was "one thing to defend [himself] and a different thing to have the burden of proof where [he had] to affirmatively prove that [he] didn't do something."

¶ 5 The trial court then considered respondent's financial status. In doing so, the court swore in respondent. When asked what his income had been the prior two years, respondent answered "relatively nothing." He added that he had been living off of his savings. He stated that he was willing to pay child support "as [he could]" but that responding to the various petitions for a rule to show cause made it "impossible for [him] to pay." He stated that he had told petitioner that he could pay her "some money" and that as he obtained money he would be happy to pay her. Respondent added that he "[made] money when [he could]."

[1] It appears that petitioner now goes by the name Jory Strosberg.

¶ 6 On September 26, 2013, the trial court orally found that respondent "[did] not have justification not to pay the amount of money" sought by petitioner and that he "barely paid per the court order." Therefore, the court found respondent in indirect civil contempt.

¶ 7 The court also issued two written orders on September 26, 2013. One disposed of a petition for attorney fees. The other was a form order of indirect civil contempt. That latter order found that respondent was in arrears on his child support. The order sentenced respondent to six months of periodic imprisonment and set the amount to purge the contempt at $50,000. The order stayed the imprisonment until January 6, 2014.

¶ 8 On October 10, 2013, respondent filed a *pro se* motion to reconsider the September 26, 2013, order finding him in contempt. He contended that, through no fault of his own, he lacked the ability to pay the child-support arrears and to purge the contempt.

¶ 9 In his affidavit attached to his motion to reconsider, respondent averred that he was unable to pay and had been unable to do so "since the inception of the contempt proceedings against him." He added that his inability to pay was neither willful nor his fault, but instead was the result of his age, salary history, and general economic conditions. According to respondent, he was actively seeking employment sufficient to pay the purge amount.

¶ 10 On January 6, 2014, the trial court conducted a hearing on various matters, including respondent's motion to reconsider. Respondent was represented by counsel at the hearing.

¶ 11 Counsel, referring to *Turner v. Rogers*, 564 U.S. __, 131 S. Ct. 2507 (2011), argued that, because respondent was without counsel when he was found in contempt, he should have been given the opportunity to introduce evidence that he was unable to pay the child support. To that end, counsel requested that the matter be continued to February 4, 2014, so that respondent could

produce financial materials that had been requested by petitioner pursuant to Illinois Supreme Court Rule 237 (eff. July 1, 2005).

¶ 12 According to petitioner's counsel, respondent had never responded to the Rule 237 request, never submitted tax returns as required by the judgment of dissolution, and never filed a petition under Illinois Supreme Court Rule 298 (eff. Nov. 1, 2003) to be treated as indigent. Petitioner's counsel added that, pursuant to a "tax intercept," petitioner had obtained just over $15,000 from respondent's bank account.

¶ 13 Respondent testified at the January 6, 2014, hearing that he was on the verge of obtaining employment connected to the Albanian government. According to respondent, that employment would allow him to pay the child-support arrears and purge the contempt.

¶ 14 The trial court continued the matter to February 4, 2014, so that respondent could submit documents regarding his potential employment and financial status. The court continued the stay of the imprisonment under the September 26, 2013, order.

¶ 15 On February 4, 2014, petitioner filed a motion for sanctions, asserting, among other things, that respondent had not complied with the January 6, 2014, order requiring him to produce financial documents pursuant to Rule 237. The court entered an order dated February 4, 2014, that, among other things, gave respondent seven days to respond to the motion for sanctions, continued respondent's motion for reconsideration to February 19, 2014, and ordered respondent to attend his deposition on February 7, 2014. On February 11, 2014, respondent, through counsel, responded to the motion for sanctions.

¶ 16 On February 19, 2014, the trial court entered an order that, among other things, denied respondent's motion to reconsider "for the reasons set forth on the record."[2] The order further

[2] Although a hearing was held on February 19, 2014, respondent has not included a

provided that, as a condition of the continued stay, petitioner would be allowed access to respondent's residence to inventory respondent's personal property so that she could sell it to satisfy the child-support arrears and reduce the purge amount. In that regard, the court ordered respondent to sign all necessary documents related to the sale of the property and that the proceeds would go to petitioner. The order added that nothing was to be removed or sold until further order of the court. The order also set the matter for status regarding the stay and other issues on February 28, 2014.

¶ 17 On February 27, 2014, respondent, through counsel, filed a notice of appeal from the denial of his motion to reconsider.

¶ 18 On February 28, 2014, the trial court conducted a hearing. Petitioner informed the court that respondent had filed a notice of appeal the day before. Petitioner also stated that at the February 19 hearing the court had found that respondent was not indigent. Respondent did not object to that assertion.

¶ 19 The trial court issued an order on February 28, 2014, finding, among other things, that respondent's failure to comply with court orders related to child support, including the February 19, 2014, order, was "contumacious and without compelling cause or justification." The February 28 order also reduced the purge amount to $20,000, lifted the stay of the sentence, and remanded respondent to the custody of the sheriff pursuant to the terms of the September 26, 2013, order. The case was continued to March 3, 2014.

¶ 20 On March 3, 2014, the trial court entered an agreed order. As part of that order, respondent was released from custody and the stay was reimposed. The March 3 order allowed petitioner continued access to respondent's residence to obtain and sell personal property to

---

transcript of that proceeding in the record on appeal.

satisfy the purge amount, child-support arrears, and other expenses. Finally, the March 3 order continued the matter to July 8, 2014, and incorporated the parties' agreement not to pursue any pending, or file any new, petitions before that date.

¶ 21 After filing his notice of appeal, respondent filed his *pro se* brief in this court. We struck the brief and ordered respondent to review the appellate rules and file a new brief that complied fully with those rules. Respondent filed a new brief.

¶ 22 II. ANALYSIS

¶ 23 On appeal, respondent challenges the September 26, 2013, order finding him in contempt and imposing the sentence of periodic imprisonment and the February 19, 2014, order denying his motion to reconsider. In that regard, he contends that the trial court denied him due process, because it failed to notify him of the need to show his inability to pay, failed to provide him an opportunity to do so, and failed to expressly find that he had the ability to pay. He also argues that the court, in its February 19, 2014, order, effectively transferred his personal property to petitioner in violation of section 503(g) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 503(g) (West 2012)). Finally, he contends that the February 28, 2014, order was improper, again because he was denied due process.

¶ 24 Petitioner responds in several respects. First, she argues that there is no jurisdiction, because neither the September 26 order nor the February 19 order was final or contained a finding under Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010). She also maintains that neither order imposed a sanction for contempt, appealable under Illinois Supreme Court Rule 304(b)(5) (eff. Feb. 26, 2010), because the court stayed the sentence.

¶ 25 Second, she contends that respondent's brief should be stricken and the appeal dismissed because it fails to comply in several respects with Illinois Supreme Court Rules 341 (eff. Feb. 6, 2013) and 342 (eff. Jan. 1, 2005).

¶ 26 Third, she maintains that we have no jurisdiction to consider the February 28, 2014, order, because it was entered after respondent filed his notice of appeal.

¶ 27 Fourth, as to the merits of the appeal, petitioner asserts that the September 26 order was constitutionally valid because respondent was fully aware of the need to show his inability to pay.

¶ 28 Fifth, petitioner contends that the February 28, 2014, order did not constitute a new finding of contempt.

¶ 29 Sixth, as to respondent's contention that the court ordered him to convey personal property in violation of section 503(g) of the Act, petitioner argues that respondent agreed to convey the property to avoid going to jail.

¶ 30 Finally, petitioner seeks attorney fees, costs, and expenses against both respondent and his attorney, Robert Shearer, under Illinois Supreme Court Rule 375 (eff. Feb. 1, 1994). In doing so, she contends that the brief violates several appellate rules, that we lack jurisdiction, and that the appeal is frivolous.

¶ 31 We begin by addressing the issue of our jurisdiction. Appellate jurisdiction is limited to reviewing final judgments, unless the order reviewed comes within one of the exceptions for interlocutory orders identified by our supreme court. *Puleo v. McGladrey & Pullen*, 315 Ill. App. 3d 1041, 1043 (2000). A judgment or order is final if it disposes of the rights of the parties, either upon the entire case or upon some distinct part thereof. *Puleo*, 315 Ill. App. 3d at 1043-44.

¶ 32 Pertinent to this case, Rule 304(b)(5) permits interlocutory appeals, without a finding of no just reason for delay, from contempt orders that impose a monetary or other penalty. *In re the Estate of Hayden*, 361 Ill. App. 3d 1021, 1026 (2005); *Revolution Portfolio, LLC v. Beale*, 341 Ill. App. 3d 1021, 1025 (2003). Therefore, only a contempt order that imposes a sanction is immediately appealable. *In re Marriage of Gutman*, 232 Ill. 2d 145, 152 (2008). Such an order must be appealed within 30 days of its entry. *Revolution Portfolio, LLC*, 341 Ill. App. 3d at 1025. However, a timely filed motion to reconsider tolls the time for an appeal until the entry of the order disposing of the motion to reconsider. *Hilgart v. 210 Mittel Drive Partnership*, 2012 IL App (2d) 110943, ¶ 15 (citing Ill. S. Ct. R. 303(a)(1) (eff. May 30, 2008)).

¶ 33 Here, the September 26, 2013, contempt order imposed a sanction, that being periodic imprisonment. Therefore, it was appealable. Petitioner contends, however, that it did not impose a sanction, because the trial court stayed the sanction. Petitioner does not cite, nor are we aware of, any case holding that a stay of the sanction in a contempt order negates the import of the sanction. The plain language of Rule 304(b)(5) requires only that the order impose a sanction. It does not require that the sanction be carried out before the order becomes appealable. Therefore, we conclude that the September 26, 2013, order imposing periodic imprisonment was appealable upon its entry.

¶ 34 That leaves the issue of the timeliness of the appeal. Respondent filed his motion to reconsider the September 26, 2013, order on October 10, 2013. Therefore, the motion to reconsider was timely. The trial court did not dispose of the motion to reconsider until February 19, 2014. Respondent, in turn, filed his notice of appeal on February 27, 2014. Thus, the appeal was timely, and we have jurisdiction to review those orders.

¶ 35 We next address petitioner's request that we strike respondent's brief and dismiss the appeal. The rules of appellate procedure are rules and not mere suggestions. *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 7. Failure to comply with the rules regarding appellate briefs is not inconsequential. *Hall*, 2012 IL App (2d) 111151, ¶ 7. The purpose of the rules is to require the parties to present clear and orderly arguments so that the reviewing court can properly ascertain and dispose of the issues. *Hall*, 2012 IL App (2d) 111151, ¶ 7. A brief that does not substantially conform to the applicable rules may be justifiably stricken. *Hall*, 2012 IL App (2d) 111151, ¶ 7. However, striking an appellate brief is a harsh sanction and is appropriate only when the violation of the rules hinders our review. *Hall*, 2012 IL App (2d) 111151, ¶ 15.

¶ 36 In this case, respondent's brief fails to comply with several aspects of Rule 341. It contains no jurisdictional statement (see Ill. S. Ct. R. 341(h)(4)(ii) (eff. Feb. 6, 2013)), no statement of facts with citation to the record (see Ill. S. Ct. R. 341(h)(6) (eff. Feb. 6, 2013)), no statement of issues (see Ill. S. Ct. R. 341(h)(3) (eff. Feb. 6, 2013)), no concise statement of the standard of review for each issue (see Ill. S. Ct. R. 341(h)(3) (eff. Feb. 6, 2013)), no citations to the record in the argument section (see Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013)), and no appendix (see Ill. S. Ct. R. 341(h)(9) (eff. Feb. 6, 2013)). These defects are particularly troubling in light of our order striking respondent's original brief and directing him to consult the rules and file a compliant brief.

¶ 37 Nonetheless, we are able to discern the issues raised by respondent. Moreover, petitioner was able to do so and to present meaningful responses thereto. Thus, we deny the request to strike the brief and dismiss the appeal.

¶ 38 We next address respondent's challenge to the February 28, 2014, order. A notice of appeal confers jurisdiction on the reviewing court to consider only the judgments or parts thereof specified in the notice of appeal. *In re Marriage of King*, 336 Ill. App. 3d 83, 86 (2002).

¶ 39 Here, although respondent challenges the propriety of the February 28 order, he filed his notice of appeal on February 27, 2014. Therefore, he could not have included that order in the notice of appeal. Indeed, the notice of appeal specified that he is appealing only from the February 19, 2014, order denying his motion to reconsider the September 26, 2013, order finding him in contempt. Thus, we do not have jurisdiction to consider any issues related to the February 28, 2014, order.[3]

¶ 40 We next address respondent's claim that the February 19, 2014, order violated section 503(g) of the Act. We cannot reach that issue, as the notice of appeal did not include that part of the February 19 order. See *In re Marriage of King*, 336 Ill. App. 3d at 86. Rather, it specified that respondent was appealing only that part of the February 19 order that denied his motion to reconsider.

¶ 41 Even if the notice of appeal encompassed that part of the February 19 order related to the sale of personal property, we do not have jurisdiction to review that aspect of the order. Because the order did not dispose fully of the personal property issue, it was not final. See *In re Marriage of Yerdung*, 126 Ill. 2d 542, 553 (1986) (a judgment is final only if it determines the merits of the case, or some definite part thereof, such that, if affirmed, all that remains is to execute the judgment). Indeed, the court made the sale subject to further order of the court.

[3] By appealing from the February 19 order that denied his motion to reconsider, his appeal necessarily includes the September 26 order. See *In re Marriage of King*, 336 Ill. App. 3d at 86-88.

¶ 42 Even if the order was final, it appears that respondent agreed to the sale of the assets and made no objection based on section 503(g) of the Act.[4] Thus, such an argument is forfeited. See *Vine Street Clinic v. HealthLink, Inc.*, 222 Ill. 2d 276, 301 (2006).

¶ 43 That leaves respondent's challenge to the September 26, 2013, order finding him in contempt and the February 19, 2014, order denying his motion to reconsider. The failure to make child-support payments pursuant to a court order is *prima facie* evidence of contempt. *In re Marriage of Sharp*, 369 Ill. App. 3d 271, 279 (2006). Once the *prima facie* case is established, the burden shifts to the alleged contemnor to show that his noncompliance was not willful or contumacious and that he has a valid excuse for not paying. *In re Marriage of Sharp*, 369 Ill. App. 3d at 279. To prove such a defense, the alleged contemnor must show that he does not have the money and that he has not disposed wrongfully of the money or assets with which he might have paid. *In re Marriage of Lyons*, 155 Ill. App. 3d 300, 307 (1987). The review of a contempt order is subject to the abuse-of-discretion standard. *In re Marriage of Sharp*, 369 Ill. App. 3d at 279.

¶ 44 In our case, respondent did not show that he had an inability to pay. Nor does he argue on appeal that he did not have that ability. Instead, relying on *Turner*, he argues only that he was denied due process because the trial court never advised him that he had to show an inability to pay, never considered his ability to pay, and never made an express finding of an ability to pay.

¶ 45 In *Turner*, the Supreme Court addressed the issue of whether an indigent defendant had a right to state-appointed counsel in a civil contempt proceeding that could lead to his

[4] We say "appears" as we do not have the transcript of the February 19 proceeding. Therefore, we resolve any doubts against respondent. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984).

incarceration. *Turner*, 564 U.S. at __, 131 S. Ct. at 2515-16. The Court held that such an indigent defendant does not have an automatic right to counsel under the due process clause of the Fourteenth Amendment. *Turner*, 564 U.S. at __, 131 S. Ct. at 2520. The Court explained that due process does not require the provision of counsel where the party seeking child support is not represented and the state provides alternate safeguards such as clear notice of the importance of the ability to pay, a fair opportunity to present, and to dispute, relevant information, and a finding of an ability to pay. *Turner*, 564 U.S. at __, 131 S. Ct. at 2520.

¶ 46 Respondent here does not contend that he was entitled to appointed counsel. Rather, he extrapolates from *Turner* a general due process requirement that the court must advise him of his need to show an inability to pay, give him an opportunity to make his case, and make an express finding of an ability to pay.

¶ 47 Respondent's reliance on *Turner* fails for two reasons. First, the record does not show that respondent, who was proceeding *pro se* when the contempt order was entered, was indigent.[5] Nor did he contend that he was. In fact, for much of the proceedings below he was represented by private counsel. Respondent's failure to establish that he was indigent makes *Turner* inapplicable.

¶ 48 Second, we do not read *Turner* as creating a general due process requirement irrespective of a potential contemnor's indigency. Rather, the Court emphasized that its holding was limited to a situation where the party obligated to pay the child support was found to be indigent.

[5] We note that, at the February 28, 2014, proceeding, petitioner's counsel asserted that the trial court had found at the February 19, 2014, hearing that respondent was not indigent and that respondent did not challenge that assertion. Again, any doubt in that regard is resolved against respondent. See *Foutch*, 99 Ill. 2d at 392.

Turner, 564 U.S. at __, 131 S. Ct. at 2512. *Turner* did not impose its due process protections untethered from a finding of indigency. Therefore, because respondent never raised the issue of, or established, his indigency when he was found to be in contempt, he cannot avail himself of the due process protections of *Turner*.

¶ 49 Moreover, the record belies respondent's claim that he was denied the procedural safeguards identified in *Turner*. He was clearly notified that, once the court found that there was a *prima facie* case of contempt and issued the rule to show cause, he had the burden to show why he should not be held in contempt. It should have been evident to respondent from the many discussions in court regarding his assets that his ability to pay was a critical issue. That was particularly borne out at the July 25, 2013, hearing, at which respondent testified that he understood that the burden had shifted to him. More importantly, he testified regarding his income for the prior two years, that he was living off of savings, that he was able to pay "as [he could]," that the petitions for a rule to show cause had made it "impossible for him to pay," and that as he obtained money he would happily pay child support. The record clearly establishes that respondent was aware of the need to show an inability to pay, that his ability to pay was an issue, and that he actually introduced evidence and argued regarding his ability to pay.

¶ 50 As for a finding of an ability to pay, the trial court orally found on September 26, 2013, that respondent "[did] not have justification not to pay [child support]." In light of the fact that the issue of respondent's ability to pay had been before the court at the July 25 hearing, the court's finding necessarily encompassed a finding that respondent had an ability to pay.[6]

[6] Respondent does not contend that the trial court erred in finding that he had the ability to pay. In any event, the record would not support that contention.

¶ 51 Based on the foregoing, respondent's reliance on *Turner* fails. He was neither indigent nor otherwise denied due process regarding the contempt proceeding. Therefore, he has not established any basis to reverse either the contempt finding of September 26, 2013, or the denial of his motion to reconsider on February 19, 2014.

¶ 52 Finally, we address petitioner's request to impose sanctions under Rule 375(b). Petitioner contends that sanctions are appropriate because respondent's brief is replete with violations of the rules and contains frivolous arguments.

¶ 53 Rule 375(b) permits this court to impose, in its discretion, a sanction where an appeal is frivolous or not taken in good faith. *In re Marriage of Steel*, 2011 IL App (2d) 080974, ¶ 111. Although we certainly do not condone respondent's failure to comply with the rules and we recognize the frivolity of several of his claims, we do not, on balance, consider the appeal to be sanctionable, as the due process issue was cogently stated and had at least arguable merit. See *In re Marriage of Steel*, 2011 IL App (2d) 080974, ¶ 111. Thus, we deny the request for sanctions under Rule 375(b).

¶ 54 III. CONCLUSION

¶ 55 For the reasons stated, we affirm the judgment of the circuit court of Lake County finding respondent in contempt and denying his motion to reconsider, and we deny petitioner's request for sanctions.

¶ 56 Affirmed.