2017 IL App (2d) 160130-U
No. 2-16-0130
Order filed March 9, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

MICHELLE L. MITCHELL, f/k/a Michelle M. Flannery,	)	Appeal from the Circuit Court of McHenry County.
Plaintiff-Appellant,	)	
v.	)	No. 01-DV-411
KEVIN T. FLANNERY,	)	Honorable Kevin G. Costello,
Defendant-Appellee.	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: The trial court had jurisdiction to consider defendant's petition to enforce the modified child support order; plaintiff's claim that the judgment of dissolution and subsequent orders were void was waived due to plaintiff's failure to present any clear and coherent argument in support and, even if not waived, the arguments were without merit.

¶ 2 Plaintiff *pro se*, Michelle L. Mitchell, f/k/a Michelle M. Flannery, appeals the judgment of the circuit court of McHenry County holding her in indirect civil contempt for failing to fulfill her child support obligations under the February 2005 judgment of dissolution and the April 7, 2011, order modifying plaintiff's child support obligation. On appeal, plaintiff contends that, because she appealed the April 7, 2011, order modifying plaintiff's child support obligation, and

because the mandate from this court was not returned until after the trial court considered and adjudicated the petition for rule to show cause of defendant *pro se*, Kevin T. Flannery, seeking to enforce plaintiff's child support obligation, the trial court lacked jurisdiction over the subject matter of defendant's petition, rendering void the trial court's January 13, 2016, order. Plaintiff also argues that "the circuit court erred when he proceeded without adjudicating the serious question of the loss of subject matter jurisdiction of the circuit court raised in [plaintiff's] responsive pleading [to defendant's petition]." We affirm.

¶ 3 I. BACKGROUND

¶ 4 This appeal has a lengthy and vigorous history. The genesis of this appeal has its roots in the February 10, 2005, judgment of dissolution, in which custody of the parties' child was solely awarded to defendant with plaintiff receiving prescribed visitation. Plaintiff was also ordered to pay $435 per month as her child support obligation. In June 2008, plaintiff's child support obligation was modified to $133 per week, payable through the State Disbursement Unit with no arrearage. In January 2009, plaintiff filed a motion to modify child support, and in February 2009, plaintiff amended the motion, seeking to abate child support altogether. On April 7, 2011, the trial court entered its judgment on plaintiff's motion to abate child support, modifying plaintiff's child support obligation to $50 per week plus a $10 per week payment to pay down plaintiff's child support arrearage and accumulated statutory interest, for a total of $60 per week to be paid through the State Distribution Unit.

¶ 5 Plaintiff timely appealed the trial court's judgment. On August 1, 2012, this court filed a Rule 23 Order affirming the judgment of the trial court. *Flannery v. Flannery,* 2012 IL App (2d) 110374-U (*Flannery I*). Plaintiff sought leave to appeal to our supreme court, and this was denied. Plaintiff then filed a petition for a writ of *certiorari* to the United States Supreme Court.

The Supreme Court eventually denied plaintiff's petition, and, on February 29, 2016, this court's mandate issued in *Flannery I*.

¶ 6 While *Flannery I* was pending in the various appellate courts, on October 2, 2015, defendant filed a petition for rule to show cause seeking enforcement of plaintiff's child support obligations under the judgment of dissolution and the subsequent orders modifying plaintiff's child support obligation. Defendant alleged that since June 9, 2008, plaintiff had not made a single child support payment. On November 10, 2015, defendant, without leave of court, filed his amended petition for rule to show cause. In his amendment, defendant alleged that, since 2010, defendant had received only two child support payments from plaintiff, both stemming from plaintiff's tax refunds which were partially diverted to defendant. On November 24, 2015, plaintiff moved for an extension of time to file her response to the petition for rule to show cause. On December 1, 2015, the trial court granted defendant leave to file his amended petition for rule to show cause and held that this provided good cause to allow plaintiff's request for an extension.

¶ 7 On December 8, 2015, plaintiff filed her response to the amended petition for rule to show cause. Plaintiff's response was 33 pages in length, and plaintiff attached 34 exhibits comprising some 407 pages of material, much of it irrelevant to the issue of whether plaintiff had fulfilled her child support obligations. Before filing her oversized response, plaintiff had not sought leave to exceed the local 15-page limitation. On December 14, 2015, defendant filed a motion for leave to file a second amended petition for rule to show cause. This amendment sought to correct various nonsubstantive errors in the petition for rule to show cause and the amended petition.

¶ 8 On January 6, 2016, the trial court held an evidentiary hearing on the petition for rule to

show cause. Defendant, plaintiff, and plaintiff's advocate under the American with Disabilities Act (ADA advocate), Sheila Mannix, all testified. On that date, the trial court granted defendant leave to file his second amended petition for rule to show cause, granted plaintiff leave to file her oversize response, and, pursuant to plaintiff's agreement, held that plaintiff's response would stand as her response to the second amended petition for rule to show cause. The trial court took the matter under advisement.

¶ 9 On January 13, 2016, the trial court issued its memorandum decision and order regarding defendant's second amended petition for rule to show cause. The trial court summarized the evidence presented at the January 6, 2016, hearing:

> "In his Petition for Rule, [defendant] seeks to hold [plaintiff] in contempt for noncompliance with the Court's February 10, 2005, and [April 7, 2011,] Orders for child support.
>
> As referenced above, [plaintiff] filed a written Response to the Petition for Rule. Her Response was lengthy (33 pages), well in excess of the 15 page limit under local rules. Nevertheless, the Court granted [plaintiff's] belatedly filed Motion to File an Oversize Brief. [Plaintiff's] Response also contained a binder of 34 exhibits. A significant portion of [plaintiff's] Response was directed toward a purported collateral attack on the February 10, 2005, and April 7, 2011, Orders. The Court advised the parties at the onset of the hearing that the Court would not entertain argument or evidence attempting to collaterally attack the Orders as procedurally that was not properly before the Court. Rather, the Court advised the parties that the Court would allow argument and evidence on two issues: 1) whether [plaintiff] violated the February 10, 2005, and/or April 7, 2011, Orders; and 2) if [plaintiff] violated one or both of those Orders, whether

her conduct was willful and contumacious.

On February 10, 2005, a Judgment was entered granting [defendant] custody of the parties' minor child, A.F. The Judgment ordered [plaintiff] to pay child support for A.F. of $435.00 per month. On June 9, 2008, pursuant to Court Order, [plaintiff's] child support obligation was modified to $133.00 per week. On April 7, 2011, the Court entered a detailed Order modifying [plaintiff's] child support obligation to $50.00 per week, and finding a child support arrearage of $3,970.53 (not considering interest). [Plaintiff] was also ordered to pay $10.00 per week toward the arrearage. On that same date, by separate Order, the Court entered a Judgment in favor of [defendant] and against [plaintiff] in the sum of $19,800.00 for attorney fees as a sanction under Supreme Court Rule 137.

Both parties relied on Exhibit C to [plaintiff's] Response which consists of the 'McHenry County Child Support Payment History' dated April 7, 2011, and January 30, 2015, bearing the certification of the McHenry County Circuit Clerk. Those records establish that [plaintiff] has paid a total of $14,049.86 in child support, with the only two payments since April 7, 2011, being a $121.00 payment on January 10, 2012, and a $508.76 payment on April 7, 2014. [Defendant] testified that those payments were intercepts by the Illinois Department of Revenue from tax refunds for [plaintiff]. [Defendant] testified that he has received no child support payments from [plaintiff] since April 7, 2011, other than those reflected in the January 30, 2015, McHenry County Child Support Payment History. [Plaintiff] did not dispute that testimony.

At the close of [defendant's] case, the Court issued the Rule to Show Cause, finding that [defendant] had made a *prima facie* case that [plaintiff] had failed to comply

with her court-ordered child support obligations.

In her case, [plaintiff] appeared to attempt to establish an inability to pay as a defense to the requested finding of contempt. Michelle failed to provide specific evidence, such as a Local Rule 11.02 Financial Affidavit of her current financial status.[2] She testified that she is on two forms of public aid (healthcare and SNAP benefits). She makes money babysitting, cleaning houses, and taking care of pets and horses. She provided no evidence as to her present income. Her only expense is buying food for her dog and a $10 a month health club membership, as her live-in boyfriend pays for her living expenses. She is taking college courses. Most of her tuition is paid for by grants; the remainder by her mother. Currently, she is studying Health Information Technologies. She provided no testimony as to when she might receive a degree. She has 'borrowed' a vehicle from her mother since 2008 or 2009. [Plaintiff] was a licensed real estate broker, however, her license has been suspended because of her child support arrearage. She believes it was suspended on January 12, 2015. She testified that she has not been paid any money for real estate work since approximately 2008. [Plaintiff] waitressed for a short time, but contends she lost that job due to a subpoena issued to that employer. [Plaintiff] did not testify to any health issues that would prevent her from employment.

Dr. Mannix also testified, and her C.V. was received into evidence. Dr. Mannix

[2] Subsequently, without leave of Court and after the proofs had closed, on January 12, 2016, [plaintiff] filed a [*sic*] 11.02 Financial Affidavit. The Court has reviewed the Financial Affidavit and finds that it does not materially affect the Court's Decision.

testified she reviewed [defendant's] bank records from Harris Bank pursuant to subpoena in support of [plaintiff's] contention that as part of the divorce [defendant] altered bank records. Dr. Mannix also confirmed that [plaintiff's] broker's license is currently suspended.

It should be noted that Dr. Mannix interjected herself into the hearing on several occasions requesting breaks on behalf of [plaintiff], claiming that cognitively [plaintiff] was 'shutting down.' The Court saw no indication that [plaintiff] was cognitively shutting down. Nevertheless, the Court granted [plaintiff] a reasonable number of breaks during the hearing."

¶ 10 The trial court prefaced its analysis:

"The Court file is replete with examples of pleadings and other filings by [plaintiff] that have been found to be frivolous and/or sanctionable to the point where an Order was entered requiring [plaintiff] to obtain leave of Court prior to filing any pleadings or motions. [Plaintiff's] practice of frivolous filings has continued with her Response to the Petition for Rule. Separating the little, if any, wheat from the chaff that makes up almost the entirety of [plaintiff's] Response is a difficult task. However, once [plaintiff's] tales of conspiracies and harassment by various governmental officials (*i.e.*, judges), agencies, and other parties are extracted, the Court's analysis is simple and straightforward: 1) did [plaintiff] violate her court-ordered child support obligations; and 2) if so, was her conduct willful and contumacious."

¶ 11 The trial court held that, from April 7, 2011, to October 2, 2015 (the date the petition for rule to show cause was filed), the evidence established that plaintiff had not met her child support obligations. The trial court also determined that the evidence supported a finding that,

since October 2, 2015, plaintiff had failed to make any child support payments, but, because the petition for rule to show cause was filed on that date, the proceedings were limited to the April 7, 2011, to October 2, 2015, timeframe.

¶ 12 The trial court then determined that plaintiff had attempted to raise a defense of inability to pay to the petition for rule to show cause. Specifically, the trial court reasoned:

> "[Plaintiff's] testimony in support of [her defense of inability] was both vague and sparse. The only expenses she testified to were dog food and a health club ($10 per month). Apparently, her boyfriend and/or her mother pay for all her other expenses. She earns income from various babysitting and pet sitting jobs, however, failed to provide any testimony as to the amount of that income. The fact that for at least two years, [plaintiff] was to receive a tax refund (before same was intercepted) suggests that she has earned income. The April 7, 2011, Order lowered [plaintiff's] child support obligation to a statutory guideline percentage based on minimum wage, full-time employment. [Plaintiff] provided no evidence that she is incapable of obtaining minimum wage employment; in fact, she has been working at various jobs. [Plaintiff's] only explanation for her lack of steady employment appears to be the Recession of 2007/2008, which she contends makes it impossible, along with the suspension of her broker's license, for her to earn a living selling real estate. [Plaintiff's] pointing to her broker's license is a red herring. By her own admission, [plaintiff] did not earn a penny from real estate for at least five years prior to her suspension. Her excuse stemming from the 2007/2008 real estate collapse is likewise hollow. The Court will take judicial notice that the real estate selling business was hard hit by the collapse, but will also take judicial notice that many agents in the industry have persevered and continued to make a living at it. It appears

> [plaintiff] simply gave up.
>
> In sum, [plaintiff] has fallen woefully short of her burden of proving an inability to pay her court-ordered support obligation. Despite her support obligation being reduced to a minimal amount via the April 7, 2011, Order, since that date, [plaintiff] has failed to voluntarily pay a penny toward her support obligation even though she has earned income."

¶ 13 The trial court held that plaintiff had failed to comply with her child support obligations set forth in the February 2005 and April 2011 orders. The court further held that plaintiff's noncompliance was without justification and was willful and contumacious.

¶ 14 The trial court determined that plaintiff's child-support arrearage totaled $15,090.77, excluding interest. The trial court ordered that plaintiff be held in indirect civil contempt, and sentenced her to an indeterminate term of incarceration in the McHenry County Jail, not to exceed six months. By paying to defendant her arrearage in full, plaintiff would be able to purge herself of contempt. However, the trial court ordered the sentence stayed on the condition that plaintiff timely pay to defendant her full child support obligation of $50 per week plus $10 per week for the arrearage until the entire arrearage plus any accrued interest was paid in full. If, however, plaintiff failed to comply with the conditions of the stay, she would be immediately remanded to the custody of the McHenry County sheriff and serve the sentence of contempt unless she would purge herself of contempt by paying off the arrearage.

¶ 15 Plaintiff timely appeals.

¶ 16 II. ANALYSIS

¶ 17 On appeal, plaintiff first argues that the trial court did not have jurisdiction over defendant's petition for rule to show cause because the appellate mandate resolving *Flannery I*,

which involved one of the orders on which the petition for rule to show cause was based, had not issued. Plaintiff also argues the trial court erred in not addressing "the serious question of the loss of subject matter jurisdiction" that she raised in her response to defendant's petition for rule to show cause. We address each issue in turn.

¶ 18 A. Appellate Mandate and Trial Court Jurisdiction

¶ 19 Plaintiff first argues that the trial court lacked subject matter jurisdiction over defendant's petition for rule to show cause because, at the time the petition was filed and continuing until after the petition was adjudicated, the appellate court had not issued its mandate returning jurisdiction to the trial court. Plaintiff argues that, as a result, the trial court's order was void because the trial court lacked subject matter jurisdiction. We disagree.

¶ 20 It is true that, when a party files a notice of appeal, the appellate court's jurisdiction immediately attaches, divesting the circuit court of its jurisdiction over the matter. *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 173 (2011). That blanket statement is subject to an important proviso that plaintiff apparently failed to consider: the circuit court retains jurisdiction over the cause after the filing of the notice of appeal in order to determine matters that are collateral or incidental to the judgment. *Id.* at 173-74. To put it another way, the circuit court *always* retains jurisdiction to enforce its orders. *In re Marriage of Benson*, 2015 IL App (4th) 140682, ¶ 40. Thus, even though here, the trial court lost jurisdiction over the substantive issues involved in the appeal in *Flannery I*, it maintained jurisdiction to enforce its child-support orders embodied in its February 2005 judgment of dissolution and the April 2011 order modifying plaintiff's child support obligation.

¶ 21 Plaintiff's argument centers on the effect of the February 29, 2016, issuance of our mandate. While it is true that the filing of the appellate mandate in the circuit court is necessary

to reinvest the circuit court with jurisdiction over the cause (*Hickey v. Riera*, 332 Ill. App. 3d 532, 543 (2001)), defendant's petition for rule to show cause did not seek to substantively change the terms of plaintiff's child support obligation; rather, it sought only to enforce that obligation. Because defendant's petition for rule to show cause sought enforcement of the judgments defining plaintiff's child support obligation, the trial court retained jurisdiction to entertain defendant's petition. *Benson*, 2015 IL App (4th) 140682, ¶ 40. Moreover, the record does not show that plaintiff sought a stay of judgment while her appeal was pending or that a stay of judgment was ever granted or entered. Thus, there was no impediment to the trial court receiving and adjudicating defendant's petition.

¶ 22 Because the trial court retained jurisdiction in this matter for the purpose of enforcing its orders, its January 13, 2016, order was not void, only voidable. Plaintiff offers no arguments assailing the merits of the trial court's judgment in its January 13, 2016, order. Accordingly, we reject plaintiff's contention that the trial court lacked jurisdiction to consider and adjudicate defendant's petition for rule to show cause,

¶ 23 B. "The Serious Question of the Loss of Subject Matter Jurisdiction"

¶ 24 Plaintiff next argues that the trial court erred when it failed to consider the argument she presented in her response to defendant's petition for rule to show cause that all previous orders entered in this cause were void because the trial court lacked subject matter jurisdiction or the orders were the products of fraud on the trial court. Plaintiff's argument on appeal is wholly impenetrable word salad. A reviewing court is entitled to have the issues before it clearly defined. *People v. Chatman*, 357 Ill. App. 3d 695, 703 (2005). An appellant's failure to properly present his or her arguments can amount to a waiver of those arguments on appeal. *Id.*

Plaintiff's incoherent and confusing presentation of her arguments is so extreme that we hold she has indeed waived them on appeal. *Id.*

¶ 25 Waiver notwithstanding, as best we can make out, plaintiff seems to argue that the fact she proceeded without representation during the hearing on child custody rendered the April 2005 judgment of dissolution void. Plaintiff appears to contend that the decision of a Cook County circuit court concerning whether the defense of equitable estoppel could be applied to a State agency to modify a party's obligation to pay to the State a child support obligation mistakenly incurred somehow supports her contention that the judgment of dissolution and subsequent orders were void orders. This argument is nonsensical and we reject it.

¶ 26 Plaintiff also seems to contend that the unfairness of being ordered to pay child support also renders void the judgment of dissolution and subsequent orders. Plaintiff "reasons" that, in some fashion, her obligation to pay child support to the custodial parent when she is receiving public aid infringes on the agencies providing that aid thereby rendering void the judgment of dissolution and subsequent orders. In support, plaintiff cites *In re Marriage of Hulstrom*, 342 Ill. App. 3d 262, 271-72 (2003), in which the court held that an order attempting to divide social security benefits was void. We note that *Hulstrom* specifically noted that the Social Security Act specifically barred the transfer of benefits, preempting the property distribution provisions of Illinois law. *Id.* Plaintiff does not offer any support that her undescribed public aid is received under the auspices of authority that would preempt her child support obligation. Because she does not close the loop of her argument, we cannot accept it.

¶ 27 Finally, plaintiff cites at length portions of her response to defendant's petition for rule to show cause because she was prevented from arguing it below. These passages provide no substance or support to her contention on appeal. Instead, we agree with the trial court that they

are a lengthy attack on the judgment of dissolution and subsequent orders untimely raised and imperfectly presented. They are without merit, and we reject them.

¶ 28 III. CONCLUSION

¶ 29 For the foregoing reasons, the judgment of the circuit court of McHenry County is affirmed.

¶ 30 Affirmed.