2022 IL App (4th) 220218-U

NO. 4-22-0218

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
December 5, 2022
Carla Bender
4th District Appellate
Court, IL

COUNTRY NORTH, INC., d/b/a United Realty Professionals; JAN MANSFIELD, and SAUL SERNA, Plaintiffs-Appellees, v. JOHN MURRAY and KEY REALTY, INC., d/b/a United Realty IL, Defendants-Appellants.	))))))))	Appeal from the Circuit Court of Winnebago County No. 14CH976 Honorable Lisa Renae Fabiano, Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Steigmann and Bridges concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Defendants failed to establish that the order upon which the trial court's indirect civil contempt finding was based was a void order.

(2) Attorney fees are an appropriate remedy in civil contempt cases, and the trial court did not err by ordering the contumacious defendant to pay plaintiffs' attorney fees.

¶ 2 In February 2022, the trial court entered an order finding defendant, John Murray—owner of defendant Key Realty, Inc., d/b/a United Realty IL (Key Realty)—in indirect civil contempt of court for willfully violating a court order. He appeals, arguing the court erred by (1) finding him in contempt based upon the violation of a void order and (2) awarding attorney fees to plaintiffs—Country North, Inc., d/b/a United Realty Professionals (Country North); its sole shareholder, Jan Mansfield; and Jan's husband, Saul Serna. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Country North, owned by Jan, and Key Realty, owned by John, are both Illinois corporations that provide real estate services. In April 2013, Jan and John began to jointly operate their businesses, creating jointly held assets. By September 2014, they decided to separate and began discussing the breakup of their joint operation.

¶ 5 On October 17, 2014, plaintiffs filed the underlying action—Winnebago County case No. 14-CH-976—against defendants. They alleged that one of the parties' jointly owned assets was the domain name "unitedrealtycompany.com." According to plaintiffs, defendants "intentionally interfered and intermeddled" with their ownership interest in that domain name by causing it to direct internet traffic to Key Realty's website rather than an "agreed upon landing page" with links to the websites of both parties. Plaintiffs sought damages and requested a temporary restraining order or preliminary injunction that would require defendants to remove "the direction of [the domain name] to [Key Realty's] own website and redirect[ ] it to the single-page landing with links to both [Key Realty's and Country North's] websites."

¶ 6 The same day plaintiffs' action was filed, the trial court entered a temporary restraining order that granted them their requested relief. On October 22, 2014, the temporary restraining order was dissolved by an agreed order.

¶ 7 The record reflects that at least two other lawsuits were filed concerning the breakup of the parties' joint business relationship—Winnebago County case Nos. 14-CH-997 and 14-CH-1034. In case No. 14-CH-997, John and Key Realty brought suit against Chantelle Mansfield, identified in the record as Jan's daughter and the bookkeeper for the parties' joint operation.

¶ 8 The record further shows that on October 29, 2014, the trial court conducted a hearing. The appellate record does not contain a transcript of the hearing; however, a docket entry

reflects appearances by the parties and their attorneys and states as follows: "Hearing Result: Cause comes on for Status. Cause Continued." The same date, the court entered two orders. Each order was captioned with both case No. 14-CH-976 and case No. 14-CH-997, and indicated that the order resulted from a "pretrial conference." In one order, the court ordered certain things to be done, including that the parties in the cases turn over documents in their possession, their jointly and separately owned assets be inventoried, and Country North make certain updates to its website and social media accounts. The second order, referred to by the parties on appeal as the "Bank Account Order," provided as follows:

> "This matter coming before the Court on pretrial conference, with the Court being fully advised in the premises, IT IS ORDERED:
>
> that all checks or other funds transfer(s) from the United Realty Illinois windup account held at Chase Bank shall occur only by joint signatures from both parties, with one signature from either John Murray or Joe Murray and the countersignature from either Chantelle Mansfield or Jan Mansfield. No party shall unreasonably withhold the execution of a check or disbursement to third parties."

¶ 9 Thereafter, the underlying case remained pending. The record shows plaintiffs amended their original complaint three times. They ultimately sought declaratory relief and raised claims of unjust enrichment, breach of contract, consumer fraud, conversion, deceptive trade practices, trespass to chattels, breach of fiduciary duty, and for an equitable accounting. The case was also consolidated with case No. 14-CH-1034, an action filed by defendants against plaintiffs and Chantelle.

¶ 10 In November 2016, defendants filed a motion to disburse funds. They noted the October 2014 Bank Account Order and asserted that "funds held jointly in the Chase Bank

Account" were needed to pay taxes owed by "[t]he joint entity of the parties." According to defendants, the parties could not come to an agreement regarding the distribution of funds in the account. They asked the trial court to grant their motion "in the amount of $75,000 for payment of taxes." Defendants attached a copy of the Bank Account Order to their filing along with correspondence sent by their attorney to plaintiffs' counsel, requesting that plaintiffs cosign a check from the parties' "joint business account" for the payment of taxes. Following a hearing, the court denied defendants' motion.

¶ 11 In July 2021, plaintiffs filed a petition for rule to show cause. They alleged John violated the Bank Account Order by causing or allowing checks, in amounts totaling $64,468.25, to be issued from the bank account identified in the order without plaintiffs' approval. Plaintiffs asked the trial court to (1) issue a rule to show cause requiring John to explain why he should not be held in indirect civil or criminal contempt for his continuing violations of the Bank Account Order, (2) order John to pay plaintiffs' attorney fees related to their petition, (3) order John to make restitution for all amounts disbursed in violation of the Bank Account Order, and (4) order John to restore the improperly disbursed funds to the bank account. The same month, the court entered a rule to show cause, ordering John to appear before the court and show cause why he should not be held in contempt of court for his failure to abide by the Bank Account Order.

¶ 12 On September 29, 2021, and November 30, 2021, the trial court conducted hearings on the issue of whether John should be held in indirect civil contempt. (The matter was presided over by a different trial judge than the one who entered the Bank Account Order.) On November 5, 2021, while the matter was pending, defendants filed a motion to vacate the October 2014 Bank Account Order. They argued plaintiffs' petition for rule to show cause was based on John's removal of funds from "a solely-owned account which Key [Realty] maintain[ed] at Chase Bank."

Defendants argued the court "had no legal grounds" to restrict John's use of such an account and, as a result, the court's order should be vacated. Alternatively, defendants argued the court improperly determined that the account was jointly owned by Key Realty and Country North, which they argued should also result in the order being vacated.

¶ 13 During the September and November 2021 hearings, plaintiffs presented testimony from both Chantelle and Jan. Chantelle testified she was Jan's daughter and did bookkeeping for the parties' joint business. She recalled that there were multiple bank accounts associated with the joint business, including one that she identified as "the United Realty IL operating account," which held a substantial amount of money. Money in that account came from commissions earned by the joint enterprise, specifically, "closings by real estate brokers." Chantelle testified real estate agents were paid from that account and some of the money in the account went to Jan "as an owner of the joint enterprise." The parties' joint expenses after their breakup were also paid from the account. Following the breakup, Chantelle wrote checks from the account to pay agents from both Country North and Key Realty.

¶ 14 Chantelle testified the "United Realty IL operating account" at Chase Bank was the "wind-up" bank account referred to in the October 2014 Bank Account Order. She identified that account as having an account number ending with 5681 (hereinafter account No. 5681). After the October 2014 Bank Account Order was entered, checks from account No. 5681 were signed by both Chantelle and John's brother, Joe Murray. Chantelle testified that the last jointly approved check written on the account was reflected in a May 2015 statement from Chase Bank that also showed an account balance of $85,996.44. As of the morning of the September 2021 hearing, the account had a balance of $43,536.69.

¶ 15 Chantelle identified bank statements showing withdrawals from account No. 5681

after May 2015, which were not approved by plaintiffs. The withdrawals included (1) a check for $15,000 and electronic withdrawals totaling $9,889.75 in March 2018; (2) a check for $17,000 in January 2019; and (3) checks for $13,653, $10,221.75, and $8,593.50 in January 2020. Chantelle testified that bank statements also showed the account was charged "below balance fee[s]" that totaled $540. The bank statements plaintiffs submitted showed that immediately prior to the March 2018 withdrawals, account No. 5681 had a balance of $85,996.44.

¶ 16 Chantelle testified that to her knowledge, account No. 5681 was a joint account that was owned by the owners of the parties' joint business. She stated signatories on the account were John, his wife, Joe, Jan, Serna, and herself. Chantelle asserted that she signed most of the checks for the account.

¶ 17 Jan testified that she and John entered into an agreement to "merg[e] [their] entities together," and that according to the agreement, each received a one-half ownership interest in the joint enterprise. She identified herself as an owner of account No. 5681 along with John and stated she was also a signatory on the account. Jan maintained she did not approve of the above-specified withdrawals from account No. 5681 in 2018, 2019, and 2020, and she did not become aware of them until July 2021.

¶ 18 John testified on his own behalf. He stated he was the sole owner of and officer for Key Realty, which was "doing business as United Realty Illinois." He asserted Key Realty and Country North "planned to merge" but their plan "never came to fruition."

¶ 19 John presented evidence that in December 2013, he opened account No. 5681 at Chase Bank. He identified a "depository account balance summary" from Chase Bank, dated September 29, 2021, that identified the owner of the account as Key Realty, doing business as United Realty IL. The summary also identified authorized signatories on the account as John, his

wife, and his brother. John denied that there had ever been any other owners of the account. He stated he authorized Chantelle and Jan to be signers on the account, but they never completed the authorization process required by Chase Bank. John presented evidence that he inquired about authorized signatories on the account with Chase Bank and received the following email response from a Chase Bank employee: "According to documents that I have access to, it appears that [Chantelle and Jan] were preauthorized by [John] to be added as signers on the account however it also appears that they never came in to sign the required signature cards therefore were nether [*sic*] added." John maintained he was the sole owner of account No. 5681 and that Chantelle and Jan were never signatories on the account.

¶ 20 John further testified he was not aware of any joint account held by the parties. Further, he maintained that it was never his belief that account No. 5681 was the "wind-up" account referred to in the October 2014 Bank Account Order. He denied that any money was taken from account No. 5681 "for a wind up of any sort of *** business enterprises [he] had with Jan." John stated that his motion to disburse, requesting that plaintiffs cosign a check for $75,000 for the payment of taxes, was not referencing account No. 5681. He acknowledged that he did not know of any other account that had a balance of $75,000 or more and did not know what specific account was being referred to in his motion to disburse.

¶ 21 In rebuttal, Chantelle testified that aside from Chase Bank account No. 5681, no other accounts connected to the parties' business had a balance of more than $75,000. Additionally, she stated that before the trial court entered its October 2014 Bank Account Order, the parties agreed to the use of dual signatures for accounts held at Chase Bank. She identified email correspondence sent from John to other parties in the case, as well as an individual at Chase Bank, in which he asked for "restrictions" on "United Realty" accounts, including that "[a]ll checks

require two signatures," specifically the signatures of Chantelle and Joe. Chantelle also identified bank statements from 2014 for account No. 5681. The statements contained images of cleared checks signed by Chantelle. Prior to September 2014, the cleared checks were primarily single-signature checks. After that time, the statements for account No. 5681 began to show cleared checks with dual signatures, including the signatures of both Chantelle and Joe. Chantelle testified that after the early part of 2015, the balance of account No. 5681, which totaled $85,996.44, essentially "stay[ed] the same." She agreed there was "generally no activity [reflected in the account statements] for the remainder of 2015."

¶ 22 Ultimately, the trial court found John in indirect civil contempt for violating the October 2014 Bank Account Order. In setting forth its oral ruling, the court rejected John's argument that the order was void because there was no "judgment against [him]" and held that the account referenced in the order was account No. 5681. The court found the evidence presented showed that final bills and commissions from the parties' joint operation were paid out of account No. 5681. Additionally, it determined John knew that account No. 5681 was the one being referred to in the order. To support that determination, the court pointed to (1) the lack of activity on the account from 2015 to the first alleged unauthorized withdrawals in 2018 and (2) defendants' motion to disburse funds, which the court found sought funds out of account No. 5681. Regarding "ownership" of the account, the court stated as follows:

> "You know ownership is a different issue I don't think we've decided that here. I think that has been a dispute, probably throughout the case, how this money in this account gets divided up. I don't think that, that wasn't what this hearing is about; it's not what I'm deciding today *** that's for a different day. But I think *** the only issue is whether [John] violated the order and, I think, by taking [the

money] out whether it's his or not his, it was controlled by this order."

The court stated it would order John to restore the money that was withdrawn from account No. 5681 and amend the October 2014 Bank Account Order to clearly refer to that account. It also held that defendants' motion to vacate the Bank Account Order "should be denied."

¶ 23 On February 16, 2022, the trial court entered a written order consistent with its oral ruling. It found John in indirect civil contempt for violating the October 2014 Bank Account Order. It specifically found that John had caused $74,358 to be withdrawn from account No. 5681 in violation of the order, and that he also caused $540 in fees to be charged to the account because of his withdrawals. The order stated John had "cured *** the Unauthorized Disbursements" by returning funds to the account in July and December 2021, but that he had not yet "cured" the $540 fees charged to the account. The court ordered that John could purge himself of his contempt by depositing $540 into account No. 5681, or having those fees waived by the bank by February 18, 2022. Further, it ordered interest to accrue until John purged himself of the continuing indirect civil contempt of court. In the event John did not purge his contempt by February 28, 2022, the court ordered that he be incarcerated and required to pay $100 a day until his contempt was purged. Finally, the court ordered John to pay plaintiffs $3175 in reasonable attorney fees, which were "incurred for the prosecution of the Petition for Rule to Show Cause."

¶ 24 This appeal followed.

¶ 25 II. ANALYSIS

¶ 26 A. Void Order

¶ 27 On appeal, defendants first argue that the trial court erred by finding John in contempt based upon the violation of a void order. According to defendants, the Bank Account Order was void because the court did not have subject matter jurisdiction to enter a preliminary

injunction and "freeze" bank assets in the absence of a judgment against John. They also argue the court violated their due process rights by enjoining property (1) without a hearing and (2) when issues related to the bank account referenced in the order were "simply not before the court." Defendants further contend that the Bank Account Order could not be valid as a prejudgment attachment because the procedures for obtaining such were never satisfied.

¶ 28 "[C]ivil contempt is designed to compel future compliance with a court order." *In re M.S.*, 2015 IL App (4th) 140857, ¶ 35, 29 N.E.3d 1241. Contempt is indirect when it occurs outside the presence of the court. *Id.* ¶ 37. " 'The existence of an order of the court and proof of willful disobedience of that order are essential to any finding of indirect contempt.' " *Id.* (quoting *In re Marriage of Spent*, 342 Ill. App. 3d 643, 653, 796 N.E.2d 191, 200 (2003)). "With civil contempt, the contemnor bears the burden of showing the noncompliance was not willful and contumacious and a valid excuse existed for the failure to follow the court order." *Willis v. Macon County State's Attorney*, 2016 IL App (4th) 150480, ¶ 17, 78 N.E.3d 423.

¶ 29 However, "[a] party cannot be held in contempt for violating a void court order." *In re Marriage of Dobbs*, 358 Ill. App. 3d 308, 310, 831 N.E.2d 1154, 1156 (2005); see also *Cory Corporation v. Fitzgerald*, 403 Ill. 409, 415, 86 N.E.2d 363, 366 (1949) ("A violation of a void order is an absolute bar to a conviction for contempt of court."). "Under Illinois law, a party may challenge a judgment as being void at any time, either directly or collaterally, and the challenge is not subject to forfeiture or other procedural restraints." *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 38, 32 N.E.3d 553. A judgment is void when it is entered by a court that lacks personal or subject matter jurisdiction. *Id.*; see also *In re Marriage of Allen*, 265 Ill. App. 3d 208, 211, 638 N.E.2d 340, 343 (1994) ("A judgment is void when entered by a court without jurisdiction of the parties or the subject matter.").

¶ 30 "Subject matter jurisdiction is defined solely as the power of a court to hear and determine cases of the general class to which the proceeding in question belongs." *LVNV Funding*, 2015 IL 116129, ¶ 39. With the exception of administrative review actions, "a circuit court's subject matter jurisdiction is conferred entirely by our state constitution." *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334, 770 N.E.2d 177, 184 (2002). In particular, the Illinois Constitution provides "that jurisdiction extends to all 'justiciable matters.' " *Id.* (quoting Ill. Const.1970, art. VI, § 9). "[T]o invoke the subject matter jurisdiction of the circuit court, a plaintiff's case, as framed by the complaint or petition, must present a justiciable matter." *Id.* "Whether a court has subject matter jurisdiction is a question reviewed *de novo*." *Dobbs*, 358 Ill. App. 3d at 310.

¶ 31 As stated, defendants characterize the trial court's Bank Account Order as a preliminary injunction or prejudgment attachment, which the court lacked the authority to enter. In response, plaintiffs assert the Bank Account Order was entered not as a preliminary injunction or prejudgment attachment, but pursuant to an agreement of the parties. Further, they contend the appellate record is insufficient for reviewing defendants' claim of a void order.

¶ 32 "[T]o support a claim of error, the appellant has the burden to present a sufficiently complete record." *In re Marriage of Gulla & Kanaval*, 234 Ill. 2d 414, 422, 917 N.E.2d 392, 397 (2009). "Without an adequate record preserving the claimed error, the court of review must presume the circuit court's order had a sufficient factual basis and that it conforms with the law." *Id.* "Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392, 459 N.E.2d 958, 959 (1984). Additionally, when no verbatim transcript of a proceeding is obtainable, parties may present a bystander's report or an agreed statement of facts. Ill. S. Ct. R. 323 (eff. July 1, 2017).

¶ 33 Here, we agree that defendants have failed to present a sufficiently complete record to support their claim that the trial court's Bank Account Order was void. The Bank Account Order states it was issued following a "pretrial conference." The record reflects that the same date it was entered, the parties and their attorneys appeared for a hearing before the court. However, the appellate record contains no transcript of those proceedings, bystander's report, or agreed statement of facts describing what occurred. It does not reflect the extent to which the Bank Account Order was discussed during those proceedings, or whether the parties agreed upon or disputed its entry. Further, as plaintiffs point out, the order itself was captioned with both case No. 14-CH-976 and case No. 14-CH-997. Significantly, defendants have not provided the record for case No. 14-CH-997 on appeal and they do not argue that the Bank Account Order lacks relevancy to issues presented in that case.

¶ 34 Additionally, we find the record that has been presented on appeal in this case supports plaintiffs' assertion that the Bank Account Order was a valid order that was agreed to by the parties. Illinois has a strong public policy supporting amicable settlement of disputes. *In re Marriage of Jones*, 2022 IL App (5th) 210104, ¶ 36. The trial court has authority to enter orders that are agreed to by the parties even in the absence of a pending motion or petition. *Id.* (finding that in a dissolution of marriage case, the trial court had authority to enter an agreed order despite the lack of an underlying petition to modify); see also *People ex rel. Gibbs v. Ketchum*, 284 Ill. App. 3d 70, 78, 671 N.E.2d 1149, 1154 (1996) (holding that although there was no pending petition or motion before the trial court, "that fact alone will not deprive the court of the authority to act where the parties agree in a stipulation concerning some matter which requires resolution by the court"). "[T]rial courts maintain discretion concerning whether to issue an order based on an agreement by the parties." *In re D.M.*, 395 Ill. App. 3d 972, 977, 918 N.E.2d 1091, 1096 (2009).

¶ 35 In their reply brief, defendants clarify that they do not dispute that the trial court had subject matter jurisdiction over the underlying case "in general," and they make no jurisdictional claims with respect to case No. 14-CH-997. Thus, in both cases, the court would have had subject matter jurisdiction to enter an order that was agreed to by the parties and which pertained to matters pending before the court. At issue in both case No. 14-CH-976 and case No. 14-CH-997 was the breakup of the parties' joint operation. It is clear from the contempt proceedings that account No. 5681 was utilized by the parties in the joint operation and that the question of how to disburse the funds from that account was a disputed issue in the breakup. On appeal, defendants do not dispute the court's finding that the account referenced in the October 2014 Bank Account Order was account No. 5681.

¶ 36 Additionally, citing to both of the October 2014 orders, defendants acknowledge that "the parties then engaged in a pretrial settlement conference to try to simplify their issues." Evidence presented during the contempt proceedings indicated that prior to the Bank Account Order's entry, the parties had already agreed in email communications that disbursements from account No. 5681 would be subject to a dual-signature requirement. Further, nothing in the record shows defendants objected to the Bank Account Order in the seven years between when it was entered and when John was accused of violating it. The record also shows that defendants abided by the order. In particular, they sought leave from the court to access funds in the account described in the order when they could not obtain plaintiffs' authorization.

¶ 37 Finally, to the extent defendants challenge the Bank Account Order as being entered without a proper hearing or without a determination of who owned the account, we note that the order provides that the trial court was "fully advised in the premises." That explicit phrase has been interpreted to mean "that the trial court heard adequate evidence, received enough

information, or listened to sufficient law and argument to enable it to reach what it believed to be the right decision on the issue presented." *In re Marriage of Nau*, 355 Ill. App. 3d 1081, 1085, 824 N.E.2d 650, 653 (2005).

¶ 38 Again, as set forth in *Foutch*, 99 Ill. 2d at 392, any doubts that arise from the incompleteness of the record in a case must be resolved against the appellant. Here, the record presented on appeal suggests the entry of a valid order. The absence of information and details regarding what occurred before the trial court on October 29, 2014, when the Bank Account Order was entered, must be resolved against defendants. Accordingly, we find defendants have failed to establish that the Bank Account Order was entered without subject matter jurisdiction and that the court did not err in (1) refusing to vacate the order or (2) finding John in indirect civil contempt for violating the order.

¶ 39 B. Attorney Fees

¶ 40 On appeal, defendants also argue the trial court erred by awarding plaintiffs' attorney fees as part of its civil contempt order. They contend that in Illinois, parties must generally bear the responsibility for paying their own attorney fees absent a statute or contractual agreement that provides otherwise. Defendants further contend that in a civil contempt case, an award of attorney fees is improper. We disagree.

¶ 41 "The power of a court to punish for contempt is inherent in all courts as essential to proper and effective functioning of the courts and to the administration of justice." *Frank B. Hall & Co. v. Payseur*, 99 Ill. App. 3d 857, 862, 425 N.E.2d 1002, 1006 (1981). "An appropriate remedy, in cases of both civil and criminal contempt, may well be to require the contumacious party to bear the reasonable costs, as well as attorneys' fee, of the contempt proceeding." *Id.*; *Mehalko v. Doe*, 2018 IL App (2d) 170788, ¶ 30, 110 N.E.3d 328 (same). "Although there may be

some incidental benefit to the moving party, it would be inequitable not to require the contumacious party to pay such costs." *Payseur*, 99 Ill. App. 3d at 862; see also *Comet Casualty Co. v. Schneider*, 98 Ill. App. 3d 786, 793, 424 N.E.2d 911, 916-17 (1981) (stating the assessment of attorney fees is an appropriate remedy for civil contempt).

¶ 42 Here, the trial court was authorized to award plaintiffs reasonable attorney fees as a remedy for John's civil contempt. Defendants make no claim that the amount awarded by the court was unreasonable. We find their claim of error lacks merit.

¶ 43 III. CONCLUSION

¶ 44 For the reasons stated, we affirm the trial court's judgment.

¶ 45 Affirmed.