2018 IL App (1st) 172087-U

SIXTH DIVISION
SEPTEMBER 28, 2018

No. 1-17-2087

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MARY CAVITT,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 95 D 79903
	)	
STEVEN REPEL,	)	Honorable
	)	Pamela E. Loza,
Defendant-Appellee.	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Delort and Justice Connors concurred in the judgment.

ORDER

¶ 1 The plaintiff-appellant Mary Cavitt (Mary) appeals from a December 8, 2016 order of the circuit court of Cook County, in which it concluded that it no longer had jurisdiction to decide Mary's request to require retroactive child support from the defendant-appellee Steven Repel (Steven)[1]. We find that Mary's notice of appeal was untimely, and thus we lack jurisdiction to decide the merits of this appeal.

[1] Steven is also known as Steven Ludington.

¶ 2 BACKGROUND

¶ 3 This case has a long and complex history. We will recount only those facts necessary for a resolution of this appeal.

¶ 4 Mary and Steven, who were never married, are the biological parents of a son, Noah, who was born in 1995. In September 1995, Mary filed a petition for parentage and support. In 1997, the circuit court entered a "Judgment for Parentage" (parentage judgment). The parentage judgment incorporated a settlement agreement, under which Mary obtained sole custody of Noah. The judgment also provided that Steven would pay Mary $500 per month in child support. The parentage judgment specified that Steven's monthly child support obligation would terminate upon the first of certain specified events, including Noah's graduation from high school, or Noah reaching the age of 18 after graduating from high school.

¶ 5 In 2000, Mary filed a "petition for modification of child support" seeking to increase Steven's monthly child support obligation. In October 2008, Mary voluntarily dismissed that petition.

¶ 6 On June 29, 2009, Mary filed a "petition for modification of child support and other relief" (the 2009 petition) seeking, *inter alia*, additional retroactive child support for the years since the 1997 parentage judgment. On January 26, 2010, Mary filed an "amended petition for modification of child support and other relief" (the 2010 amended petition), which added specific allegations regarding Steven's assets and income.

¶ 7 In June 2010, Steven filed a motion to dismiss the 2010 amended petition. Among other arguments, Steven contended that Mary could not seek modification of support for any time prior to June 29, 2009, the filing date of the 2009 petition.

¶ 8 In September 2010, Mary filed a "petition to void" the 1997 parentage judgment. The circuit court construed that filing as a petition pursuant to section 2-1401 of the Code of Civil Procedure. 735 ILCS 5/2-1401 (West 2010).

¶ 9 In August 2011, Mary filed a "motion for interim increase in child support." On February 22, 2012, the circuit court (Judge Pamela E. Loza) entered an order increasing Steven's monthly child support obligation to $765. However, the February 2012 order did not address whether Mary was entitled to any retroactive support.

¶ 10 In October 2012, Mary filed a "petition for college costs" seeking an order requiring Steven to contribute to Noah's college costs, pursuant to section 513 of the Illinois Marriage and Dissolution of Marriage Act. 750 ILCS 5/513 (West 2012) (permitting award of "Educational Expenses for a Non-minor Child").

¶ 11 While the petition for college costs was still pending, on May 29, 2013, Mary filed a "Motion for Interim Contribution Toward College Costs and Retroactive Interim Increase in Child Support" (May 2013 motion). The May 2013 motion acknowledged that the petition for college costs was pending, but stated that Noah was in "emergency need of funds" to pay for college expenses. The May 2013 motion included numerous allegations about Steven's income and assets, including that Steven had purchased a Porsche automobile in August 2007. The May 2013 motion requested that the court order Steven to pay "$2000 per month retroactive to the date [Steven] purchased a Porsche" "through the date child support is last owed." The May 2013 motion also requested that, "once child support ceases," Steven should be ordered to provide $2000 per month in "college costs, until a final determination of [Steven's] college and ancillary cost obligations are decided."

¶ 12 On May 31, 2013, Steven filed a motion to terminate child support (motion to terminate). The motion to terminate alleged that Steven no longer owed monthly support under the terms of the parentage judgment, as Noah had graduated high school in May 2013.

¶ 13 In July 2013, Noah reached 18 years of age. On November 1, 2013, the trial court (Judge Mary Trew) entered an order in which it agreed with Steven's contention that Mary could not seek modification of child support prior to June 29, 2009, the filing date of Mary's 2009 petition. The November 1, 2013 order stated that "Child support may be modified as of June 29, 2009 going forward."

¶ 14 On November 13, 2013, the trial court (Judge Trew) entered a number of additional orders on pending motions. Among those, the trial court entered an order granting Steven's May 2013 motion to terminate. That order stated that the "effective termination date is July 8, 2013," the date of Noah's 18th birthday. However, the November 13, 2013 order made no mention of any claim for retroactive child support.

¶ 15 In another November 13, 2013, order, the court denied "Steven's Motion to strike the Amended Petition under [section 2-615] for lack of legal sufficiency of the pleadings." In a separate order on November 13, 2013, the trial court stated that various pending motions, including Mary's "Petition for College Costs," "Petition for Retroactive Child Support," and "Motion for Interim Contrib[ution] Towards College Costs, all require evidentiary hearings."

¶ 16 The parties' briefs and the record indicate that no evidentiary hearing was ever held with respect to any request for retroactive child support. Rather, over the next few years, the parties continued to engage in extensive and contentious litigation in the trial court, much of which centered around Mary's discovery requests. In addition, the parties litigated in this court. In

2015, our court affirmed the dismissal of Mary's section 2-1401 petition seeking to vacate the 1997 parentage judgment. *Cavitt v. Repel*, 2015 IL App (1st) 133382.

¶ 17 The record reflects numerous bitterly-contested motions in the trial court, including motions for sanctions and motions to limit subpoenas and discovery requests. On April 25, 2016, the trial court (Judge Jean M. Cocozza) entered an order that struck a motion to compel filed by Mary. The April 25, 2016 order additionally stated that: "Leave to file motions [is] suspended without further leave of court. This applies to both parties."

¶ 18 On June 15, 2016, Judge Cocozza entered an order finding that Steven's "motion to dismiss the 2010 amended petition for modification of child support is moot." According to the June 2016 order, Mary's 2010 amended petition had been granted by Judge Loza's February 22, 2012 order, such that the 2010 amended petition was "no longer pending." Thus, the June 15, 2016 order stated that the "only matters pending" were Mary's October 2012 "Petition for College Costs" and her May 2013 "Motion for Interim Contribution Towards College Costs and Retroactive Interim Increase in Child Support."

¶ 19 On July 12, 2016, Mary filed a motion for reconsideration of the June 2016 order. In that motion, she maintained that her 2010 amended petition for modification had not been decided, as the February 22, 2012 order merely granted an "interim" increase in child support. The parties argued Mary's motion for reconsideration before Judge Cocozza on October 13, 2016. The trial court agreed with Mary's counsel, that the issue of "retroactive support" had yet to be decided. Judge Cocozza indicated that this issue would be "part of the trial" before Judge Karen J. Bowes. Thus, on October 13, 2016, the court (Judge Cocozza) entered a written order that granted Mary's motion to reconsider "[s]olely as to the issue of retroactive child support from the period covering June 29, 2009 through February 22, 2012." That order further specified that the "Child

Support order of Judge Loza, February 22, 2012, stands"; and that the November 2013 "Termination of Child Support order of Judge Trew stands." Further, the October 13, 2016 order stated that "Judge Bowes' discretion as to the application of any retroactive child support shall be heard with pending trial scheduled, if any."

¶ 20 Steven then filed a motion to reconsider the October 13, 2016 order and to reinstate the order of June 15, 2016. On October 17, 2016, the parties appeared before Judge Bowes. At that time, Judge Bowes indicated that she would conduct proceedings to decide Steven's contribution to Noah's college costs. However, Judge Bowes indicated that she would *not* decide the issue of whether Mary was entitled to any retroactive child support. Rather, Judge Bowes indicated that any child support issue should be decided by Judge Cocozza.

¶ 21 On October 24, 2016, Judge Bowes entered an order reflecting that the parties had agreed to a settlement, at least with respect to Steven's contribution to Noah's college costs. That order specified that: "The matter as to the Petition for College Costs [and] 2nd interim petition for college costs are dismissed with prejudice for the extent of Noah's college costs until his graduation." The October 24, 2016 order makes no mention of child support other than college costs.[2] On that same date, Judge Bowes transferred the case to Judge Cocozza.

¶ 22 On October 28, 2016, the parties appeared before Judge Cocozza. In the course of arguing whether Mary's claim for retroactive support had been resolved by prior orders, the parties' counsel disputed the scope of the February 2012 order entered by Judge Loza. Judge Cocozza expressed her belief that "it would be appropriate if you went back to Judge Loza and find out what she meant" in entering the February 2012 order. Thus, the court transferred the case back to Judge Loza.

[2]Steven claims that the settlement reflected in this order encompassed *all* outstanding child support claims, including retroactive support, but the order says nothing about child support beyond college costs.

¶ 23 On December 8, 2016, the parties appeared before Judge Loza. Steven's counsel argued that Mary could not obtain retroactive child support, in light of Judge Trew's November 2013 order, terminating child support as of Noah's 18th birthday. Steven's counsel urged that the November 2013 order "became a fixed order" because Mary did not appeal it, and so there was "nothing left in the case." Steven's counsel argued that "the Court doesn't have any further jurisdiction on the matter" as any child support issue was "finally and totally resolved back in 2013."

¶ 24 Mary's counsel emphasized that, during the February 22, 2012 hearing, Judge Loza stated that she was ordering only an "interim" increase in child support "without prejudice." Mary's counsel also pointed out that, although Judge Trew entered the November 2013 order granting Steven's motion to terminate, Judge Trew also entered separate orders in November 2013 denying Steven's motion to strike the 2010 amended petition and indicatinig that an evidentiary hearing should be held on Mary's claim for retroactive support.

¶ 25 Judge Loza acknowledged that, when she entered the February 2012 order increasing monthly child support, she indicated that it was a temporary order "without prejudice." However, Judge Loza emphasized that Mary did not appeal the November 2013 order terminating child support. The court reasoned that "if Judge Trew's [November 2013] order stands, then this Court has lost jurisdiction ***." Judge Loza further remarked to Mary's counsel that: "You also waited and waited ***, and if you don't ask for it, you waive it. And at this point in time the Court finds that Judge Trew entered an order on November 18, 2013, terminating the support. It was not appealed. Therefore, this Court at that time lost jurisdiction regarding the child support issue." Thus, on December 8, 2016, the trial court entered a written

order stating: "Child support termination order of 18 Nov[ember] 2013 stands" and "This court finds that it lost jurisdiction to further modify support."

¶ 26 On January 6, 2017—without first seeking leave to do so—Mary filed a "Motion for Reconsideration and to Vacate in Part the December 8, 2016 Order *** and Reinstate Amended Petition for Modification of Retroactive Child Support for Evidentiary Hearing" (motion for reconsideration). In the motion for reconsideration, Mary argued, *inter alia*, that the November 2013 order terminated only Steven's "current" child support obligation, but did not resolve her claim for retroactive support.

¶ 27 On January 31, 2017, the parties appeared before Judge Loza on the motion for reconsideration. At that time, the trial court noted that Mary had failed to seek leave to file that motion, as required by the April 25, 2016 order. On that basis, the trial court struck Mary's motion. The corresponding written order states that the motion for reconsideration is "stricken" but nevertheless permitted Mary "to file a written request for explanation as to why [she] should be granted leave to file a Motion for Reconsideration and to vacate a portion of the December 8, 2016 order."

¶ 28 On February 9, 2017, Mary filed a "combined motion" (the February 9, 2017 motion), seeking leave to file a motion to vacate the January 31, 2017 order striking the motion for reconsideration, as well as leave to file a "motion for reconsideration and to vacate in part the December 8, 2016 order *** and reinstate amended petition for modification of retroactive child support for evidentiary hearing ***."

¶ 29 On July 26, 2017, the trial court entered an order denying Mary's February 9, 2017 motion. In that order, the trial court noted that: "Given the outrageous litigiousness of the case, it was reasonable for the court to enter the April 25, 2016 order to control the litigation" and that

Mary had offered "no reason why she did not ask the Court [for] permission" to file her motion for reconsideration.

¶ 30 On August 22, 2017, Mary filed a notice of appeal. In this court, the parties continued to file numerous motions, which, *inter alia*, accused each other of distorting the record and making irrelevant arguments in their appellate briefs. On May 24, 2018, Steven filed a motion to strike certain portions of Mary's opening appellate brief. On June 12, 2018, we granted that motion in part, striking sections II and III of Mary's opening brief. On June 28, Mary moved to strike all or portions of Steven's response brief. On July 20, 2018, we denied that motion. On July 24, 2018, Steven filed a motion to strike portions of Mary's reply brief. After Mary filed her response, we took that motion under consideration for resolution within the context of the case.

¶ 31 ANALYSIS

¶ 32 Before this court can consider the merits of Mary's appeal, we have a duty to consider whether we have jurisdiction. *Won v. Grant Park 2, L.L.C.*, 2013 IL App (1st) 122523, ¶ 5.

¶ 33 Steven contends that we lack jurisdiction because Mary's August 2017 notice of appeal was untimely under the Illinois Supreme Court Rules. He asserts that, when Mary's motion for reconsideration was stricken on January 31, 2017, it left Mary "with no motion filed within 30 days" of the December 8, 2016 final order.[3] Steven otherwise argues that Mary's subsequent February 9, 2017 motion was an improper successive postjudgment motion, and that the filing of that motion could not and did not toll the time for her to file a notice of appeal. Thus, Steven contends that Mary's notice of appeal was "out of time."

¶ 34 Mary's reply brief, to the extent it discusses appellate jurisdiction, argues primarily that the trial court abused its discretion when it struck her motion for reconsideration based on the

[3]Mary acknowledges that the trial court's December 8, 2016 order concluding that it no longer had jurisdiction was a final order. See *People v. Walker*, 395 Ill. App. 3d 860, 865 (2009) ("a finding of a lack of jurisdiction that effectively ends the litigation is final and appealable.").

"procedural defect" of her counsel's failure to seek leave to file that motion, as required by the April 2016 order. She does not dispute that her counsel did not comply with the April 2016 order, but argues that, had her counsel attempted to seek leave before filing the motion for reconsideration, "he would have ended up being beyond the 30-day filing date required by [section] 2-1301" of the Code of Civil Procedure to file a timely motion to reconsider the December 8, 2016 order. Mary otherwise argues that, when Steven filed motions, the trial court did not enforce the April 2016 order's requirement to first seek leave of court. Thus, she claims that "based on the court's conduct [Mary's counsel] did not believe it was enforcing the April 25, 2016 order." She claims the "trial court wrongfully imposed different standards on [Mary] than it did on [Steven]" and thus she "did not receive equal protection." Mary otherwise asserts that her motion for reconsideration was not resolved until July 26, 2017, and thus her August 22, 2017 notice of appeal was timely.

¶ 35 "The timely filing of a notice of appeal is both mandatory and jurisdictional. [Citations.] Accordingly, our supreme court commands strict compliance with its rules governing the time limits for filing a notice of appeal, and neither a circuit court nor an appellate court has the authority to excuse compliance with the filing requirements mandated by the supreme court's rules. [Citations.]" *Dus v. Provena St. Mary's Hospital*, 2012 IL App (3d) 091064, ¶ 10.

¶ 36 Illinois Supreme Court Rule 303(a)(1) provides, in relevant part:

> "The notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from, or, if a timely posttrial motion directed against the judgment is filed, *** within 30 days after the entry of the order disposing of

> the last pending postjudgment motion directed against that judgment or order ***." Ill. S. Ct. R. 303(a)(1) (eff. July 1, 2017).

This rule "mandates that a notice of appeal must be filed within 30 days of a final order, unless a 'timely posttrial motion directed against the judgment is filed.' [Citation.] In that event, the notice of appeal is due 'within 30 days after the entry of the order disposing of the last pending postjudgment motion directed against that judgment or order.' " *Dus*, 2012 IL App (3d) 091064, ¶ 11.

¶ 37 Furthermore, Rule 303(a)(2) provides, in relevant part:

> "A party intending to challenge an order disposing of any postjudgment motion ***, must file a notice of appeal, or an amended notice of appeal within 30 days of the entry of said order ***, but where a postjudgment motion is denied, an appeal from the judgment is deemed to include an appeal from the denial of the postjudgment motion. *No request for reconsideration of a ruling on a postjudgment motion will toll the running of the time within which a notice of appeal must be filed under this rule.*" (Emphasis added.) Ill. S. Ct. R. 303(a)(2) (eff. July 1, 2017).

Under this rule, "[a] motion to reconsider the trial court's ruling on a postjudgment motion does not extend the time to appeal." *Dus*, 2012 IL App (3d) 091064, ¶ 11.

¶ 38 In support of his argument that Mary's appeal is untimely, Steven relies on our court's analysis in *Yazzin v. Meadox Surgimed, Inc.*, 224 Ill. App. 3d 288 (1991), which also involved a stricken postjudgment motion, and which we find to be instructive. In *Yazzin*, the defendant's motion for summary judgment was granted on December 28, 1989; within 30 days, plaintiff filed

a post-trial motion. *Id.* at 289. On the hearing date for the post-trial motion, February 9, 1990, "plaintiff's counsel failed to appear in court and an order was entered striking the post-trial motion." *Id.* Six days later, plaintiff filed a " 'Re-Notice of Motion' " and scheduled another hearing. *Id*. The hearing was held on March 22, 1990, at which time the court denied the posttrial motion. *Id.* On April 17, 1990, plaintiff filed a notice of appeal. *Id.*

¶ 39 Our court in *Yazzin* noted that "plaintiff did not file successive post-trial motions" because, after her post-trial motion was stricken, "she did not refile it or file a second post-trial motion" but "only filed another notice of motion rescheduling the hearing" on the original post-trial motion. *Id.* at 290. Nevertheless, our court concluded that plaintiff's notice of appeal was untimely, explaining:

> "[T]he post-trial motion had to be filed within 30 days of final judgment. [Citation.] *When it was stricken more than 30 days after judgment, it was no longer pending and could not be refiled*. The order striking the motion was not vacated. As a result, when plaintiff refiled a notice of motion, it had no effect because there was no motion pending. Further, filing the notice of the post-trial motion did not toll the time to file a notice of appeal. [Citation.] Even assuming that the order striking plaintiff's post-trial motion 'disposed' of it under Rule 303(a), plaintiff's notice of appeal filed more than 30 days later was not timely filed, and, as a result, this court does not have jurisdiction." (Emphasis added.) *Id.* at 291.

¶ 40 We find that the Supreme Court Rules mandate a similar conclusion under the facts of this case. Here, the trial court's final order was filed on December 8, 2016. To preserve Mary's

right to appeal pursuant to Rule 303(a), Mary had to file a notice of appeal, or a postjudgment motion, within 30 days. Mary filed a motion for reconsideration on January 6, 2017. However, she admittedly failed to seek leave to do so, in violation of the trial court's April 2016 order, and the court struck her motion. Moreover, she failed to file a notice of appeal within 30 days of the December 8, 2016 final judgment.[4] Her failure to take *either* action ultimately doomed her request for appellate review.

¶ 41 Mary's January 6, 2017 motion for reconsideration was "stricken" on January 31, 2017 —more than 30 days after the December 8, 2016 order. Thus, upon the entry of the order on January 31, 2017, striking her motion, Mary had *no pending motion* directed against the December 8, 2016 order. See *Yazzin*, 224 Ill. App. 3d at 291 (when a post-trial motion "was stricken more than 30 days after judgment, it was no longer pending and could not be refiled."). Further, Mary had not filed a notice of appeal, and by the time her motion was stricken on January 31, 2017, it was too late to do so, as more than 30 days had passed since the December 8, 2016 order. Accordingly, her notice of appeal, which was not filed until several months later, was untimely.

¶ 42 We acknowledge that the trial court, in its January 31, 2017 order striking Mary's motion, allowed Mary to "file a written request" as to "why [she] should be granted leave" to file a motion for reconsideration. Regardless of that courtesy extended to Mary, the trial court simply could not expand the time to file a notice of appeal, as that is prescribed by our supreme court. *Won*, 2013 IL App (1st) 122523, ¶ 20 ("neither a trial court nor an appellate court has the

[4]We note that nothing precluded Mary from filing a notice of appeal, even before the trial court heard her postjudgment motion. Indeed, Rule 303(a)(2) provides that "a notice of appeal filed *before* the entry of the order disposing of the last pending postjudgment motion *** becomes effective when the order disposing of said motion or claim is entered." (Emphasis added.) The corresponding Committee Comments state that this provision "protects the rights of an appellant who has filed a 'premature' notice of appeal by making the notice of appeal effective when the order denying a postjudgment motion or resolving a still-pending separate claim is entered." (Committee Comments, March 16, 2007).

authority to excuse compliance with the filing requirements mandated by the supreme court rules."). After striking Mary's initial postjudgment motion on January 31, 2017, the trial court was not empowered to extend her time to file a notice of appeal.

¶ 43 We further note that Mary's notice of appeal would still be untimely, even if we were to construe the January 31, 2017 order as *denying* her postjudgment motion for reconsideration, rather than merely "striking" it. See *Yazzin*, 224 Ill. App. 3d at 291 ("Even assuming that the order striking plaintiff's post-trial motion 'disposed' of it under Rule 303(a), plaintiff's notice of appeal filed more than 30 days later was not timely filed"). Even supposing that the January 31, 2017 order was a denial, under Rule 303(a), Mary would have had 30 days from that date in which to file a notice of appeal. Yet, Mary did not file a notice of appeal until August 2017.

¶ 44 Further, Mary's February 9, 2017 motion, to the extent it sought reconsideration of the January 31, 2017 order striking her initial motion for reconsideration, could not delay her deadline to file a notice of appeal. See Ill. S. Ct. R. 303(a)(2) ("No request for reconsideration of a ruling on a postjudgment motion will toll the running of the time within which a notice of appeal must be filed under this rule."); *Dus*, 2012 IL App (3d) 091064, ¶ 16 (after a timely posttrial motion was denied, "the 30-day time period for filing a notice of appeal began to run" and a motion to reconsider the denial "would not toll or extend the time for filing an appeal regardless of when such a motion was filed."). Moreover, Mary could not file a subsequent postjudgment motion without violating Rule 274, which is explicit that "A party may make only one postjudgment motion directed at a judgment order that is otherwise final." Ill. S. Ct. R. 274 (eff. Oct. 14, 2005).

¶ 45 We note that our conclusion is consistent with promoting the interest in finality of litigation, expressed by our supreme court:

> "There is no provision in the *** supreme court rules which permits a losing litigant to return to the trial court indefinitely, hoping for a change of heart or a more sympathetic judge. Permitting successive post-judgment motions would tend to prolong the life of a lawsuit at a time when the efficient administration of justice demands a reduction in the number of cases pending in trial courts and would lend itself to harassment. There must be finality, a time when the case in the trial court is really over and the loser must appeal or give up. Successive post-judgment motions interfere with that policy." *Sears v. Sears*, 85 Ill. 2d 253, 259 (1981).

This case exemplifies the concern for never-ending litigation expressed by the supreme court in *Sears*. The record makes abundantly clear that the parties have been excessively litigious in the trial court (and in this court) for many years. Indeed, that litigiousness is what prompted the trial court to enter the April 2016 order requiring the parties to seek leave of court before filing additional motions. Regardless of Mary's claim that this order was applied unfairly, she does not dispute that she violated its requirement, which led to the striking of her motion for reconsideration of the December 8, 2016 judgment. More importantly, her failure to file a timely notice of appeal precludes us from engaging in any review of the merits of her arguments.

¶ 46 For the foregoing reasons, we conclude that Mary's August 2017 notice of appeal was untimely. As a result, we lack jurisdiction to decide the merits of the appeal. Finally, we note that, in light of our conclusion that we lack jurisdiction, Steven's motion to strike Mary's reply

brief, which was taken for consideration in the context of resolving the case, is dismissed as moot.

¶ 47 Appeal dismissed.