2020 IL App (1st) 171816-U
No. 1-17-1816

SECOND DIVISION
November 24, 2020

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE THE PARENTAGE OF D.L.,	)	Appeal from the Circuit Court
	)	of Cook County.
Petitioner-Appellee,	)	
	)	
v.	)	No. 09 D3 79099
	)	
C.S.,	)	
	)	The Honorable
Respondent-Appellant.	)	Mary C. Marubio,
	)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Lavin and Cobbs[1] concurred in the judgment.

MODIFIED ORDER UPON ILLINOIS SUPREME COURT SUPERVISORY ORDER

¶ 1 *Held:* Where the order appealed from was not final and where there remained multiple petitions and motions pending at the time of the appeal and there was no Supreme Court Rule 304(a) finding, the appeal was dismissed for lack of jurisdiction.

¶ 2 Respondent C.S. appeals from the trial court's grant of petitioner D.L.'s motion to modify child support and denial of his cross-motion to modify child support. For the reasons that follow, we conclude that we lack jurisdiction and therefore dismiss this appeal. Pursuant to the

[1] On Justice Mason's retirement, Justice Cobbs was substituted on the panel. Justice Cobbs has reviewed the briefs and the supervisory order issued by the Illinois Supreme Court.

Illinois Supreme Court's supervisory order issued on October 15, 2020, we also modify this order to replace the parties' names with initials. *In re the Parentage of D.L. v. C.S.*, No. 126401 (Ill. Oct. 15, 2020) (supervisory order).

¶ 3 BACKGROUND

¶ 4 The common law record on appeal in this case is somewhat lacking, as it contains no documents prior to February 2013. According to the findings of fact contained in the order appealed from, however, it appears that the parties engaged in a sexual relationship in 2008 until January 2009, while respondent was separated from his wife. From the relationship between the parties came a child, A.L., who was born in October 2009. Respondent has not met A.L. and does not maintain a relationship with him. While petitioner and A.L. live in Illinois, respondent lives in New Jersey with his wife and daughter.

¶ 5 In August 2013, petitioner filed a motion to modify child support. In that motion, petitioner alleged that respondent was, at the time, ordered to pay child support in the amount of $1,790.26 per pay period (every two weeks), which reflected guideline support of 20% based on respondent's 2010 net income of $232,733.93 per year. Petitioner further alleged that in 2012, respondent switched employment—without notifying the trial court—which resulted in a substantial increase in salary, bonuses, and stock incentives. Petitioner requested that the trial court increase the ordered child support to reflect guideline support of 20% based on respondent's new, increased income.

¶ 6 In addition to filing a response to petitioner's motion to modify, respondent also filed his own motion to modify child support. In his cross-motion to modify, respondent argued that he was entitled to a downward deviation from guideline child support, because he was an "above average earner," petitioner embellished A.L.'s monthly expenses, petitioner should be required

to contribute more to A.L.'s financial support, and an award of guideline support would result in a windfall to petitioner.

¶ 7 On June 30, 2017, after four days of hearing evidence on the cross-motions to modify child support, the trial court issued a written opinion granting petitioner's motion to modify and denying respondent's. In that opinion, the trial court found that respondent's change in employment and increased income constituted a substantial change in circumstances that warranted modification of child support and that guideline support of 20% was appropriate. In addition, after examining the relevant factors under section 505(a)(2) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/505(a)(2) (West 2016)), the trial court concluded that the downward deviation requested by respondent was not warranted. Therefore, the trial court ordered respondent to pay $5,446.83 per month in child support, which represented 20% of his 2016 income, not including bonuses. It also ordered that respondent pay 20% of any additional income, such as bonuses, as child support, and to contribute 20% of his annual restricted stock unit awards (RSUs) to a 529 account of which A.L. was to be the beneficiary. The trial court also ordered respondent to pay retroactive child support dating back to 2013, totaling $47,792.92. Noting respondent's claim that he had previously overpaid child support, the trial court directed the parties to prepare an order for an account adjustment review. In addition, the parties were directed to draft and submit a uniform order for support and to prepare and present the trial court with proposals on protocols for respondent's reporting of bonuses and RSUs.

¶ 8 On July 6, 2017, respondent filed a notice of appeal. At the time that respondent filed his notice of appeal, the record reflects that there were numerous unresolved motions and petitions. Specifically, based on the record before us, the following appear to remain unresolved: petitioner's March 18, 2013, petition for Rule 137 sanctions; respondent's undated motion to

quash a February 9, 2012, rule to show cause; respondent's March 22, 2013, petition for rule to show cause; and petitioner's September 9, 2013, "Motion for Sanctions Against Rebecca Zarzecki for Violation of Illinois Rules of Professional Conduct."

¶ 9 ANALYSIS

¶ 10 On appeal, respondent argues that the trial court erred in granting petitioner's motion to modify and denying his. More specifically, respondent argues that the trial court considered improper factors in determining that a downward deviation from guideline support was not warranted, improperly credited and adopted petitioner's testimony regarding A.L.'s expenses, was incorrect in concluding that guideline support did not result in a windfall to petitioner, improperly double counted his bonus income in calculating the amount of child support, improperly awarded college expenses, and failed to stay payment of retroactive child support pending the account adjustment review. We need not address the merit of these contentions, however, because we conclude that we lack jurisdiction over this appeal.

¶ 11 In his brief on appeal, respondent contends that we have jurisdiction pursuant to Supreme Court Rules 301 and 303. Supreme Court Rule 301 (eff. Feb. 1, 1994) provides that "[e]very *final* judgment of a circuit court in a civil case is appealable as of right." (Emphasis added.) Supreme Court Rule 303(a)(1) (eff. July 1, 2017) provides in relevant part that "[t]he 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 ***." (Emphasis added.) Of importance in this case is the requirement that the judgment appealed from be final. See *In re Marriage of Verdung*, 126 Ill. 2d 542, 553 (1989) ("Jurisdiction of appellate courts is limited to reviewing appeals from final judgments, subject to statutory or supreme court rule exceptions."). "A judgment is final for appeal purposes

if it determines the litigation on the merits or some definite part thereof so that, if affirmed, the only thing remaining is to proceed with the execution of the judgment." *Id.*

¶ 12 Petitioner contends that the trial court's June 30, 2017, order on the cross-motions to modify child support was not final, because it reserved the entry of an order for account adjustment review, the entry of a uniform order for child support, and presentation and adoption of protocols for the reporting of respondent's bonuses and RSUs. Respondent argues in response that these matters—an account adjustment review, uniform order for child support, and protocols for bonuses and RSUs—were merely ancillary to the disputed issues in the cross-motions to modify child support. According to respondent, the issues that were actually before the trial court were all resolved, specifically, monthly child support, support from bonuses and RSUs, contribution to child care expenses, and retroactive child support.

¶ 13 We agree with petitioner that the June 30, 2017, order was not final. Despite respondent's claim to the contrary, it is readily apparent that not all the issues related to the modification of child support were resolved in the June 30, 2017, order and that more remained to be done before one could proceed with execution of the judgment. The order reflects that respondent made a claim that he had overpaid child support. This claim was not resolved in the June 30, 2017, order as evidenced by the fact that the trial court directed the parties to prepare an order for an account adjustment review on the issue of overpayment. Respondent implicitly acknowledges that the overpayment issue remains unresolved when he argues on appeal that the trial court should not have decided the issue of retroactive child support until an account adjustment review was completed and the amount of his overpayment ascertained. In addition, although the June 30, 2017, order determined most of the child support issues in broad terms, it left unresolved important details of the child support award necessary for enforcement—frequency of payments,

payment arrangements, termination date, etc. These details would have been resolved in the uniform order for child support. Moreover, the June 30, 2017, order completely left open the procedures by which respondent was to report his bonuses and RSUs. Again, these details would have been necessary for enforcement of the order for support based on respondent's bonuses and RSUs. See *In re Marriage of Capitani*, 368 Ill. App. 3d 486, (2006) (judgment for dissolution of marriage was not final where it reserved jurisdiction to enter a joint parenting order based on a joint parenting agreement to be submitted by the parties, because without the detailed provisions of a joint parenting order, an order on custody and visitation rights is not enforceable or reviewable). Accordingly, because the June 30, 2017, order was not a final judgment, we lack jurisdiction to review it.

¶ 14 Even if the June 30, 2017, order was final, we still would not have jurisdiction over this appeal, because based on the record before us, it appears that there remained unresolved claims pending at the time that respondent filed his notice of appeal and the trial court did not enter a finding under Supreme Court Rule 304(a) (eff. Mar. 8, 2016) that there was no just reason to delay enforcement or appeal. Supreme Court Rule 304(a) governs situations where a party seeks to appeal from an order that does not resolve all claims against all parties. It provides:

> "If multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both. *** In the absence of such a finding, any judgment that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not enforceable or appealable and is subject to

revision at any time before the entry of a judgment adjudicating all the claims, rights, and liabilities of all the parties."

¶ 15 In this case, the trial court's order granting petitioner's motion to modify child support and denying respondent's did not resolve all claims against all parties. At the time that respondent filed his notice of appeal, there were at least four motions or petitions that were pending and unresolved. The record on appeal does not reflect that any of these motions and petitions were ever resolved. Despite these pending motions and petitions, respondent did not request, and the trial court did not enter, the necessary finding under Rule 304(a) that there was no just reason to delay enforcement or appeal. Accordingly, we lack jurisdiction over respondent's appeal. See *In re Marriage of Teymour*, 2017 IL App (1st) 161091, ¶¶ 41, 43 (holding that where there are postdissolution matters, whether related or unrelated to issue up on appeal, pending at the time of appeal, appellate jurisdiction is lacking unless there is a finding that there is no just reason to delay enforcement or appeal under Rule 304(a)).

¶ 16 CONCLUSION

¶ 17 For the foregoing reasons, this appeal is dismissed.

¶ 18 Appeal dismissed.