

2021 IL App (1st) 192344-U

No. 1-19-2344

Order filed March 31, 2021

Fourth Division

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

| | | |
|--|---|-------------------|
| <i>In re</i> MARRIAGE OF DEMETRIOS KOTTARAS, |) | Appeal from the |
| |) | Circuit Court of |
| Petitioner-Appellee, |) | Cook County. |
| |) | |
| and |) | No. 11 D 4468 |
| |) | |
| DEMETRIA KOTTARAS, n/k/a DEMETRIA |) | |
| PAPADOPOULOS, |) | Honorable |
| |) | David C. Haracz, |
| Respondent-Appellant. |) | Judge, presiding. |

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Gordon and Justice Martin concurred in the judgment.

ORDER

¶ 1 *Held:* In a matter involving a post-dissolution of marriage order, the appellate court lacked jurisdiction over the ex-wife's appeal from the order that struck her petition to review, extend and increase her maintenance because other claims like child support remained pending before the trial court, which did not make a finding that there was no just reason to delay an appeal.

¶ 2 In a post-dissolution of marriage proceeding, respondent-appellant Demetria Kottaras, n/k/a Demetria Papadopoulos (Papadopoulos), filed a petition to review, extend and increase her

maintenance and child support. After her petition was scheduled for a hearing, petitioner-appellee Demetrios Kottaras (Kottaras) moved for discovery sanctions based on Papadopoulos's failure to comply with discovery orders. The circuit court granted Kottaras's motion and struck Papadopoulos's petition to review her maintenance, terminated Kottaras's obligation to pay her maintenance, and reserved ruling on the issues of child support and reimbursement of temporary maintenance. Papadopoulos appealed.

¶ 3 On appeal, Papadopoulos argues that (1) the trial court ruled on a dispositive motion without giving her time to retain new counsel, (2) the court imposed the sanction without giving her due process, and (3) her erroneous belief that an automatic bankruptcy stay was in effect mitigated her failure to comply with the court's discovery order.

¶ 4 For the reasons that follow, we dismiss this appeal based on lack of jurisdiction.¹

¶ 5 I. BACKGROUND

¶ 6 In May 2011, Kottaras filed a petition for dissolution of marriage. He and Papadopoulos had married in 2000 and had two children, who were born in 2008 and 2010. In July 2014, the trial court entered a judgment of dissolution of marriage that incorporated the parties' May 2014 joint parenting agreement and custody judgment and July 2014 marital settlement agreement. The marital settlement agreement provided that, in lieu of separate maintenance and child support, Kottaras would pay unallocated maintenance/support² of \$5000 per month for 48 months. This

¹ In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

² As of January 1, 2019, the option of unallocated maintenance was eliminated from the Illinois Marriage and Dissolution of Marriage Act, except in regard to enforcing prior agreements. See Pub. Act 100-923, § 10 (eff. Jan. 1, 2019) (amending 750 ILCS 5/504(b-4)).

provision allowed Papadopoulos to request an extension of maintenance if she filed a petition for review within four years.

¶ 7 In July 2018, Papadopoulos timely petitioned the court to review, extend and increase the maintenance/support. She alleged that Kottaras had an annual salary of \$186,000 and additional income from teaching at a law school and from a pension. She also alleged that her income as a parttime office assistant, pension income from Kottaras and current \$5000 monthly maintenance/support failed to cover her and the children's expenses. She asked the court to continue her unallocated maintenance/support and increase it to at least \$7000 per month.

¶ 8 In his response, Kottaras alleged that Papadopoulos failed to show that she made reasonable efforts toward her obligation to become self-supporting; application of the statutory guidelines for calculating the duration of her maintenance award would have entitled her to receive a maintenance award for four years and eight months; he commenced paying unallocated maintenance/support on March 1, 2013, pursuant to the court's agreed order of February 27, 2013; and her maintenance award could have terminated as far back as October 2017. He stated that Papadopoulos failed to tender the requisite financial affidavit to support her petition and asked the court to deny her petition.

¶ 9 After Papadopoulos filed an emergency motion for temporary support and her financial affidavit, the trial court on October 23, 2018, ordered Kottaras to pay \$5000 monthly in temporary unallocated maintenance/support until a hearing was held on Papadopoulos's petition, which the court scheduled for January 31, 2019.

¶ 10 On October 29, 2018, Papadopoulos petitioned for contribution to her interim attorney fees and costs in the amount owed through the date of the hearing on her petition plus an additional

\$15,000 for prospective attorney fees and costs. She alleged that she had incurred over \$122,000 in debt and was unable to pay that indebtedness based on her limited income and lack of assets; she owed over \$28,000 in attorney fees to Katz & Stefani, LLC, a portion of which were incurred for post-decree matters unrelated to her petition to review; and Kottaras had substantial income, assets and earning ability to pay her incurred and prospective attorney fees and costs and thereby enable her to participate in the litigation on an equal footing with him.

¶ 11 On November 13, 2018, Kottaras petitioned the court for a rule to show cause, a finding of indirect civil contempt, and for sanctions based on Papadopoulos's failure to adequately cooperate and communicate about issues involving the parties' children in violation of the court's June 5, 2017 order, which required the parties to cooperate with a court-appointed parenting coordinator. Specifically, Kottaras alleged that Papadopoulos refused to pay her modest portion of the coordinator's fees and thereby precluded Kottaras from having access to the coordinator to resolve the parties' parenting disputes. Kottaras also requested attorney fees and costs incurred by this petition in accordance with the terms of the June 5, 2017 order. The trial court scheduled a hearing on Kottaras's petition for January 31, 2019.

¶ 12 On December 18, 2018, the court granted Katz & Stefani, LLC leave to withdraw as Papadopoulos's counsel and ordered her to respond to Kottaras's petition for rule to show cause by January 22, 2019.

¶ 13 On December 31, 2018, Papadopoulos filed a chapter 7 bankruptcy case, No. 18-35899, in the United States Bankruptcy Court for the Northern District of Illinois.

¶ 14 On January 18, 2019, Kottaras served discovery requests and a notice of Papadopoulos's January 25, 2019 deposition on her new counsel. Kottaras also served formal discovery requests on Papadopoulos on March 4, 2019.

¶ 15 On May 14, 2019, Kottaras filed an emergency motion for appointment of a children's therapist, arguing that Papadopoulos was obstructing the selection of a therapist.

¶ 16 On May 16, 2019, Kottaras moved to compel production of documents and for sanctions under Illinois Supreme Court Rule 219(c) (eff. July 1, 2002), arguing that he could not prepare for trial without Papadopoulos's discovery responses.

¶ 17 On July 31, 2019, the trial court issued an order, which stated that counsel for Papadopoulos represented that she had filed a petition for bankruptcy; matters concerning the division or allocation of the parties' property and debts were stayed pending resolution of the bankruptcy matter; and matters concerning custody, visitation, child support and maintenance would continue to pend before the court because the automatic bankruptcy stay did not apply.

¶ 18 On September 24, 2019, the court ordered Papadopoulos to comply with Kottaras's discovery requests by October 24, 2019. This deadline was subsequently extended to October 31, 2019. On October 29, 2019, Papadopoulos's counsel filed a motion to withdraw as counsel.

¶ 19 On October 30, 2019, Kottaras petitioned for a rule to show cause, a finding of indirect civil contempt, and discovery sanctions under Rule 219(c), arguing that Papadopoulos failed to appear for her scheduled deposition or respond to any discovery requests and deliberately delayed litigation of this cause to continue collecting temporary maintenance from Kottaras. Kottaras asked the court, *inter alia*, to strike Papadopoulos's petition to review and extend maintenance and hold her in default.

¶ 20 On November 1, 2019, the trial court, after hearing argument, granted Papadopoulos's counsel's motion to withdraw; granted Kottaras's petition for a rule to show cause; struck Papadopoulos's petition to review and extend maintenance; terminated finally and forever Kottaras's obligation to pay maintenance of any kind to Papadopoulos; struck the November 19, 2019 hearing date; and set a November 8, 2019 status hearing for entry of an order setting Kottaras's child support obligation based on the parties' financial affidavits and reimbursement of temporary maintenance paid to Papadopoulos by Kottaras without prejudice, which issue was reserved.

¶ 21 On November 15, 2019, Papadopoulos appealed. She argues that (1) the trial court failed to give her 21 days to obtain new counsel and erroneously imposed dispositive sanctions on her on the same day her attorney withdrew as counsel, (2) the court violated her due process rights when it imposed sanctions on her, and (3) her failure to comply with the court's discovery order was mitigated by her erroneous belief that an automatic bankruptcy stay remained in effect.

¶ 22

II. ANALYSIS

¶ 23

Jurisdiction

¶ 24 Kottaras moved to dismiss this appeal based on lack of jurisdiction, arguing that several matters remained pending in the trial court after the November 1, 2019 order from which Papadopoulos appealed. He contends that the pending matters were (1) Papadopoulos's October 2018 petition for contribution to attorney fees and costs, (2) the January 2019 two-count fee petition of Katz & Stefani, LLC, (3) Kottaras's motion for attorney fees from Papadopoulos in connection with his emergency motion for a court-appointed children's therapist, and (4) the setting of Kottaras's new child support obligation after the termination of Papadopoulos's right to

unallocated maintenance/support payments. Specifically, Kottaras argues that the trial court did not make the requisite finding under Supreme Court Rule 304(a) (eff. Mar. 8, 2016) that would enable this court to review Papadopoulos's appeal of the November 1, 2019 order while the other claims remained pending.

¶ 25 In her response, Papadopoulos contends that this court has jurisdiction over this appeal under Supreme Court Rule 301 (eff. Feb. 1, 1994) because the order that struck her petition to review and extend maintenance and “terminated finally and forever [Kottaras's] obligation to pay maintenance of any kind” constituted an involuntary dismissal of an action and operated as an adjudication on the merits. She argues that no issues remained pending that required a Rule 304(a) finding because her bankruptcy filing divested the trial court of jurisdiction to adjudicate any fee petitions, neither party filed a separate claim for child support, and the issues of setting child support or reimbursement were not ripe for decision by the trial court because those issues were dependent on the outcome of this appeal.

¶ 26 This court ruled that Kottaras's motion to dismiss for lack of jurisdiction would be taken with the case. This court has a duty to determine whether jurisdiction exists. *Palmolive Tower Condominiums, LLC v. Simon*, 409 Ill. App 3d 539, 542 (2011). An appeal must be dismissed where our jurisdiction is lacking. *Id.*

¶ 27 “Appellate jurisdiction is limited to review of final judgments unless an order falls within a statutory or supreme court exception.” *Cole v. Hoogendoorn, Talbot, Davids, Godfrey & Milligan*, 325 Ill. App. 3d 1152, 1153 (2001). To be considered final, an order must dispose of the rights of the parties, either upon the entire controversy or some definite and separate part of it. *In re Guardianship of J.D.*, 376 Ill. App. 3d 673, 676 (2007).

¶ 28 However, a final order is not necessarily immediately appealable. Supreme Court Rule 304(a) 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.”

¶ 29 “Thus, prior to the resolution of all claims with respect to all parties, any order entered in a case, even if final as to any one party or claim, is not appealable unless the order contains a finding that there is no just reason to delay enforcement or appeal, in compliance with Rule 304(a).” *In re Marriage of Sanchez*, 2018 IL App (1st) 171075, ¶ 23. The order that is the subject of this appeal does not include a Rule 304(a) finding.

¶ 30 The parties correctly note that the appellate court is divided as to whether an order that disposes of a post-dissolution matter is final and appealable without the requisite finding under Rule 304(a) when other post-dissolution claims remain pending. This split of authority turns on whether each petition or motion in a post-dissolution proceeding is considered either a separate action or a new claim in the same action. *In re Marriage of Demaret*, 2012 IL App (1st) 111916, ¶ 26. “[I]f the post-dissolution petition under consideration is construed as a separate action from the original dissolution proceeding, then appellate court jurisdiction exists upon a final resolution

of that petition under Rule 301 regardless of the pendency of an unrelated petition.” *Id.* The Third District, in *In re Marriage of A’Hearn*, 408 Ill. App. 3d 1091, 1097 (2011), and the First District, in *In re Marriage of Carr*, 323 Ill. App. 3d 481, 485 (2001), have construed post-dissolution petitions in this fashion. However, if a post-dissolution petition is instead considered a new claim within the same action, then appellate jurisdiction would exist to review a final decision on that petition, while another petition remained pending only if there has been a Rule 304(a) finding. *In re Marriage of Demaret*, 2012 IL App (1st) 111916, ¶ 26. The Second District, in *In re Marriage of Alyassir*, 335 Ill. App. 3d 998, 999-1000 (2003), and the Fourth District, in *In re Marriage of Gaudio*, 368 Ill. App. 3d 153, 157-58 (2006), adopted this position.

¶ 31 This court, in *In re Marriage of Teymour*, 2017 IL App (1st) 161091, recently examined this split of authority and determined after “a thoughtful and extensive discussion and review of the case law that it would ‘join the Second and Fourth Districts and adhere to Rule 304(a)’s mandate that a final order disposing of one of several claims may not be appealed without an express finding that there is no just cause for delay.’ ” *In re Marriage of Sanchez*, 2018 IL App (1st) 171075, ¶ 26 (quoting *In re Marriage of Teymour*, 2017 IL App (1st) 161091, ¶ 41). In so holding, the *Teymour* court declined to follow an earlier line of First District cases (*In re Marriage of Knoll*, 2016 IL App (1st) 152494, ¶ 46, and *In re Marriage of Baumgartner*, 2014 IL App (1st) 120552, ¶¶ 34-36), “which held that a Rule 304(a) finding was not required to appeal an order resolving ‘one of several postdissolution matters so long as the matters still pending below are unrelated to the matter on appeal.’ ” *In re Marriage of Sanchez*, 2018 IL App (1st) 171075, ¶ 26 (quoting *In re Marriage of Teymour*, 2017 IL App (1st) 161091, ¶ 35).

¶ 32 Like the court in *Sanchez*, we find the analysis of *Teymour* to be well-reasoned and convincing. Consequently, we conclude that we lack jurisdiction to consider the order that struck Papadopoulos's petition to review her maintenance and terminated Kottaras's obligation to pay her maintenance because that order was not accompanied by the requisite Rule 304(a) finding. Although the order did state that it terminated Kottaras's maintenance obligation "finally and forever" that language was not sufficient to support appellate jurisdiction under Rule 304(a). See *Palmolive*, 409 Ill. App 3d at 544 ("A circuit court's declaration that an order is 'final and appealable,' without reference to the justness of delay, or even reference to immediate appealability, evinces no application of the discretion Rule 304(a) contemplates.").

¶ 33 We reject Papadopoulos's assertions that the issue of child support was not pending in the trial court because neither party filed a separate claim for that issue and both the child support and reimbursement issues were dependent on her appeal of the maintenance issue. Papadopoulos's petition sought review of both her maintenance and the child support. The trial court's order clearly struck the portion of her petition concerning review of her maintenance and terminated Kottaras's obligation to pay her any further maintenance. The order, however, clearly indicated that the issue of child support, which was now severed from the unallocated \$5000 monthly maintenance/support payment, remained pending. Moreover, the court informed the parties that it would proceed to consider the matter of child support based upon the parties' filed financial affidavits.

¶ 34 For these reasons, we conclude that Papadopoulos's appeal from the order that struck the portion of her petition that sought a review of maintenance and terminated Kottaras's obligation to pay her maintenance must be dismissed for lack of appellate jurisdiction.

¶ 35

III. CONCLUSION

¶ 36 For the foregoing reasons, we dismiss this appeal due to lack of jurisdiction.

¶ 37 Appeal dismissed.