2016 IL App (1st) 150576-U

FIRST DIVISION
JUNE 20, 2016

No. 1-15-0576

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re RUTH VILLEGAS MEDELLIN,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellee,	)	Cook County.
	)	
v.	)	No. 13 D 4946
	)	
CARLOS MARTINEZ DUNCKER,	)	Honorable
	)	Raul Vega,
Respondent-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The Appellate Court lacked jurisdiction to review the respondent-appellant's challenge to a non-final child support order, or to review the dismissal of the respondent's mislabeled petition purporting to challenge that child support order pursuant to section 2-1401 of the Code of Civil Procedure. 735 ILCS 5/2-1401 (West 2014). Furthermore, since the respondent-appellant admittedly purged his contempt by paying the specified purge amount, his appeal from the trial court's orders holding him in contempt and sentencing him to jail for failure to pay the purge amount were rendered moot. Thus, his appeal is dismissed.

¶ 2 In this custody dispute, arising from the allegedly wrongful removal of the parties' children from their home country of Mexico, respondent-appellant Carlos Martinez Duncker

(Carlos) appeals from an order directing him to pay child support to the petitioner-appellee Ruth Villegas Medellin (Ruth). He also appeals the dismissal of his purported section 2-1401 petition seeking to vacate the child support order, a subsequent order holding him in civil contempt for failure to comply with the child support order, and other orders related to the contempt finding. We find that we lack appellate jurisdiction with respect to the child support order and the order dismissing the corresponding section 2-1401 petition, because the child support order was not a final order. Further, we conclude that Carlos' admitted purge of the court's contempt finding renders moot, his claims of error from the other trial court orders challenged on appeal. Thus, we dismiss this appeal.

¶ 3 BACKGROUND

¶ 4 This appeal arises from an action initiated by Ruth alleging that Carlos wrongfully removed the parties' children from their native country of Mexico in violation of her parental rights. Notably, this case has been before this court previously, when we considered a prior appeal by Carlos from a civil contempt order arising from his failure to comply with an order directing him to pay Ruth's attorneys' fees. *Medellin v. Ramirez*, 2015 IL App (1st) 141987-U.

¶ 5 Ruth and Carlos, both Mexican citizens, were married in Mexico in 2002. Carlos was licensed to practice medicine in Mexico, but claims that he is retired. The parties had two children together during their marriage (the children), who were born in Mexico in 2003 and 2005. *Id.* ¶ 5.

¶ 6 According to Ruth, she and Carlos lived together with the children in Mexico until February 2012. However, Carlos moved with the children to Chicago, Illinois without notifying Ruth. *Id.* ¶ 6.

¶ 7 Before Carlos left Mexico with the children, he had obtained a divorce and sole custody of the children through Mexican court proceedings, without providing notice to Ruth. Carlos subsequently remarried, and he lived in Chicago with the children and his current wife at the time this action was initiated. *Id.* ¶ 7.

¶ 8 In May 2013, after learning of the children's whereabouts, Ruth filed a petition in the circuit court of Cook County seeking the return of the children to Mexico (the May 2013 petition). The May 2013 petition was premised on the Hague Convention on the Civil Aspects of International Child Abduction (Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. 11670, 1343 U.N.T.S. 89) (hereinafter, the Convention),[1] and the International Child Abduction Remedies Act, 42 U.S.C. § 11601 *et seq.* (2006) (hereinafter, ICARA), the federal statute implementing the Convention. The May 2013 petition alleged that Carlos' removal of the children was wrongful and sought an order directing the return of the children to Mexico, in order for a Mexican court to determine custody. *Medellin*, 2015 IL App (1st) 141987-U, ¶¶ 8-9. The May 2013 petition remained pending during the other proceedings discussed herein.

¶ 9 On December 18, 2013, Ruth filed an "emergency petition for temporary custody, to enforce international order and other relief" (the December 2013 petition) seeking temporary custody based upon Illinois statutes, namely the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) as well as the Illinois Marriage and Dissolution of Marriage Act

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[1] "The Convention *** seeks to secure the prompt return of children wrongfully removed to or retained in any signatory state. [Citation.] A central purpose of the Convention is to discourage parents from crossing international borders in search of a more sympathetic forum in which to litigate custody issues." (Internal quotation marks and citation omitted). *In re Marriage of Krol and Kubala*, 2015 IL App (1st) 140976, ¶ 17.

(IMDMA). On December 27, 2013, the court entered an order granting Ruth "temporary possession" of the children. *Id.* ¶¶ 14, 19.

¶ 10 On December 24, 2013, Ruth filed a petition seeking interim and prospective attorneys' fees pursuant to section 508(a) of the IMDMA. 750 ILCS 5/508(a)(1),(a)(6) (West 2012). She claimed that, given her lack of financial resources, she needed such relief to permit her to maintain the action. *Medellin*, 2015 IL App (1st) 1411987-U, ¶ 18.

¶ 11 Following briefing on the availability of such fees in a case initiated under the Convention, and after reviewing the parties' financial disclosures, on June 2, 2014, the court ordered Carlos to pay $67,552 in interim and prospective fees to Ruth's counsel. *Id.* ¶ 31. On June 24, 2014, the court held Carlos in indirect civil contempt for failure to pay the attorneys' fees and issued a separate body attachment order. *Id.* ¶ 34. Carlos sought to appeal from these non-final orders, but this court dismissed his appeal due to a lack of appellate jurisdiction. *Id.* ¶¶ 52-57.

¶ 12 On July 25, 2014, Ruth filed a "petition to set child support" "pursuant to Sections 501 and 505 of the Illinois Marriage and Dissolution of Marriage Act." Notably, that petition was not filed as an independent action, but was filed within the same case (No. 2013 D 4946) as the pending May 2013 petition. The child support petition alleged that Carlos had not provided any support to Ruth since she had been granted temporary possession of the children in December 2013, and claimed that Carlos' support was needed to fund the children's living expenses.

¶ 13 On July 29, 2014, the court entered an order directing Carlos to pay all fees necessary for the children to be enrolled in school and scheduled a hearing on the child support petition. On August 11, 2014, Carlos filed a motion to strike or stay the petition to set child support, asserting that Ruth was foreclosed from seeking such relief under the IMDMA, since the proceedings had

originally arisen under the Convention. The motion to strike claimed that the child support petition was "not properly before this Court as the underlying case is premised on the argument that this Court lacks jurisdiction to make determinations under the [IMDMA.]" Carlos also asserted that the child support petition was "premature as no determination has been made regarding whether this Court or the courts in Mexico have jurisdiction to make a determination regarding child support." Thus, Carlos requested a stay of any proceedings under the IMDMA, pending determination of the May 2013 petition.

¶ 14 On August 11, 2014, the trial court denied Carlos' motion to strike the petition for child support and directed him to file a response. On August 14, Carlos filed a response which admitted that he had not provided child support to Ruth since December 2013, but stated he paid the children's school tuition and had maintained their medical insurance.

¶ 15 On August 15, 2014, the court entered an order directing payment of monthly child support (the child support order). That order reflects that, although counsel for both parties were present and the court heard testimony from Ruth, Carlos had failed to appear. As the court was "unable to ascertain the income of [Carlos]," the court entered a "needs based order of support" in the amount of $2,442 per month. The order also directed Carlos to continue to maintain health insurance coverage for the children and to pay their school expenses. The child support order specified that it was retroactive to July 25, 2014; directed Carlos to pay the sum of $472.65 for July 2014 support within 7 days; and further directed Carlos to pay the August 2014 child support amount by the end of that month. Carlos failed to do so.

¶ 16 On September 11, 2014, Ruth filed a verified petition for rule to show cause why Carlos should not be held in indirect civil contempt for, *inter alia*, his failure to comply with the August 2014 child support order, as well as his failure to pay the children's school fees pursuant to the

court's July 29, 2014 order. The court subsequently granted Carlos 14 days to respond and directed him to appear in court on October 10, 2014.

¶ 17 On October 2, 2014, Carlos answered the verified petition for rule to show cause for indirect civil contempt. The answer admitted that he had not paid any sums pursuant to the child support order but claimed that it had been "inappropriately entered under the IMDMA and not under the Convention" and also denied that he had the ability to comply with that order. Similarly, he admitted that he had not paid any of the children's school fees pursuant to the July 29, 2014 order but stated that the order "was not entered in accordance with the Convention" and that he was "financially unable to comply" with that order.

¶ 18 Separately, on October 8, 2014, Carlos filed a "Petition for Relief from Judgment Entered August 15, 2014," purportedly pursuant to section 2-1401 of the Code of Civil Procedure, seeking to vacate the child support order. 735 ILCS 5/2-1401 (West 2014). Carlos' section 2-1401 petition first alleged a "Count 1" claiming that the August 2014 child support order was "void for lack of subject matter jurisdiction." That count alleged that, while temporary child support was permitted by the IMDMA, that statute was inapplicable in a proceeding arising from the Convention. Carlos' section 2-1401 petition also contained a second count, alleging that Ruth had committed "fraud on the court" by failing to respond to discovery requests and failing to disclose certain assets, and that her concealment and "misleading testimony" compelled vacating the child support order.

¶ 19 On October 10, 2014, the court entered an order holding Carlos in indirect civil contempt, upon finding that he had failed to comply with the July 29, 2014 order regarding school expenses and the August 15, 2014 child support order "without compelling cause or justification." The court set a purge amount of $2,442 to be paid by October 15, 2014, and the order specified that if

he did not comply by that date he would be sentenced to 180 days in jail. The court set status on the purge payment for October 16, 2014, and ordered Carlos to be present in court at that time.

¶ 20 Carlos did not pay by October 16, 2014, and he failed to appear in court on that date. Thus the court entered a body attachment order directing the sheriff of Cook County to bring Carlos before the court.

¶ 21 On February 13, 2015, Ruth filed a "motion to sentence respondent" to jail due to Carlos' failure to comply with the October 2014 civil contempt order and his failure to appear pursuant to the body attachment order of October 16, 2014. In his opposition to that motion, Carlos did not deny that he had failed to purge the contempt finding, but argued that it would be premature to sentence him for contempt, in light of his pending section 2-1401 petition to vacate the underlying child support order.

¶ 22 However, on February 26, 2015, the court entered an order denying Carlos' section 2-1401 petition for relief from the child support order. On the same date, the court entered a separate order sentencing Carlos to 180 days in jail for his failure to purge the October 2014 contempt order, specifying that he should remain incarcerated "until the first of the following to occur: (1) payment of the $2,442 purge, or (2) the expiration of 180 days." Notwithstanding the sentencing order, the record does not indicate that Carlos was ever incarcerated for his failure to purge his contempt prior to this appeal.

¶ 23 On March 9, 2015, Carlos filed a notice of appeal from: the August 2014 child support order; the February 26, 2015 order denying his section 2-1401 petition to vacate the child support order; the September 2014 rule to show cause; the October 2014 contempt and body attachment orders; and the February 26, 2015 order sentencing him for failure to purge the contempt order. The notice of appeal invoked Supreme Court Rule 304(b) as the basis for appellate jurisdiction.

¶ 24 On May 5, 2015, while this appeal was pending, Carlos filed a status report with this court reflecting that he had paid the purge amount. That submission states that: "On April 20, 2015, [Carlos] was required to attend a deposition in the underlying matter. To avoid incarceration, [Carlos] paid the contempt purge amount of $2,442.00 when he appeared for the deposition." The status report further states that Carlos "paid the purge amount without waiving his right to appeal the underlying order requiring him to pay child support, which [Carlos] continues to protest as invalid." Attached to the status report was a "receipt for payment of purge amount" in which Carlos' counsel stated that on April 20, 2015, he provided Ruth's counsel with a check payable to Ruth in the amount of $2,442, specifying that the "check is being provided to purge the contempt order entered on October 10, 2014."

¶ 25 ANALYSIS

¶ 26 Carlos' appellate brief raises several arguments that the child support order and related orders were improper because this action initially arises from the Convention. He asserts that the child support order was "invalid because the Hague Convention and ICARA explicitly bar courts from considering any child custody issues"; that Ruth did not properly file a petition for support pursuant to the IMDMA; and that such a petition was independently barred because the UCCJEA prohibits a party "from seeking child support in one jurisdiction when an action is pending in another." Carlos further argues that the child support order was improper due to Ruth's "numerous misrepresentations and omissions to the court" and because she has otherwise "pursued impermissible issues that prevented the timely determination of the [May 2013] Petition and prejudiced" Carlos.

¶ 27 Before we may address the merits of Carlos' substantive arguments, however, we must determine whether the trial court orders at issue are reviewable. Ruth asserts that we lack

jurisdiction to decide the August 2014 child support order or the denial of Carlos' corresponding section 2-1401 petition seeking to vacate that order. Further, Ruth urges that Carlos' admitted payment of the purge amount renders moot his appeal from the contempt order or the corresponding sentencing order. For the reasons set forth below, we agree with Ruth.

¶ 28 First, to the extent that Carlos attempts to appeal directly from the August 2014 child support order, it is clear that we lack jurisdiction to review that non-final order. "Unless a Supreme Court Rule or statute provides appellate jurisdiction, this court only has jurisdiction to review appeals from final judgments." *Van Der Hooning v. Board of Trustees of University of Illinois*, 2012 IL App (1st) 111531, ¶ 6. "An order is final and appealable if it terminates the litigation between the parties on the merits or disposes of the rights of the parties, either on the entire controversy or a separate part thereof. [Citation.] Absent a Rule 304(a) finding, a final order disposing of fewer than all of the claims is not an appealable order and does not become appealable until all of the claims have been resolved." *In re Marriage of Gutman*, 232 Ill. 2d 145, 151 (2008).

¶ 29 "Appellate jurisdiction is limited to reviewing a final judgment that disposes of the rights of the parties, either on the entire case or on some definite and separate part of the controversy. [Citation.] A judgment is final if it determines the litigation on the merits so that, if affirmed, the only thing remaining is to proceed with the execution of the judgment. [Citation.] Further, an order is final when matters left for future determination are merely incidental to the ultimate rights that have been adjudicated by the order. [Citation.] Where an order resolves less than all the claims brought by a party, the order is not final and appealable. [Citation.]" *Shermach v. Brunory*, 333 Ill. App. 3d 313, 316-17 (2002).

¶ 30 In light of these principles, it is clear that the child support order was not a final, appealable order, as it did not dispose of the parties' claims in the litigation or leave only "incidental" matters pending between the parties. To the contrary, as recognized by Carlos himself, the May 2013 petition that initiated the action remained pending and unresolved.

¶ 31 Carlos' reply brief argues that the child support order was final and appealable, since the petition for child support did not state it sought only *temporary* support, and the August 2014 child support order did not state that it was "temporary," but directed monthly payments without specifying any time at which such payments "would be reviewed or revisited." He argues that: "Consequently, the child support order entered in this matter was a final order setting support under § 505 [of the IMDMA], *which was improperly entered prior to a decision on the underlying Hague Petition.*" (Emphasis added).

¶ 32 Carlos' argument directly contradicts his position that the child support order is final and appealable. That is, it is precisely *because* the child support order was "entered prior to a decision on the underlying [Convention] Petition" that it cannot be construed as a "final" order. As the court had not decided the primary question raised by the initial May 2013 petition — whether the children had been wrongfully removed from Mexico pursuant to the Convention— Carlos cannot claim that the August 2014 support order was a "final" order, such that the only matters left for future determination were merely incidental. To the contrary, the issue that began the litigation remained unresolved when the August 2014 child support order was entered. As a result, the child support order was not a final order.

¶ 33 Moreover, there is no provision of the Supreme Court Rules that would otherwise permit our direct review of the child support order on an interlocutory basis. In entering the child support order, the court did not make an "express written" finding that there was "no just reason

for delaying either enforcement or appeal," as required to permit appeal from a judgment as to fewer than all of the claims for relief in an action pursuant to Rule 304(a). Ill. S. Ct. R. 304(a) (eff. March 8, 2016). Moreover, Carlos does not argue that the August 2014 child support order fits within any of the categories of non-final "Judgments and Orders Appealable Without Special Finding" pursuant to Rule 304(b). Ill. S. Ct. R. 304(b) (eff. March 8, 2016).

¶ 34 We similarly find that we lack jurisdiction to review the February 26, 2015 denial of Carlos' purported section 2-1401 petition, which sought to vacate the August 2014 child support order. Carlos urges that we have appellate jurisdiction to review that decision pursuant to Rule 304(b)(3), which permits appellate review of a "judgment or order granting or denying any of the relief prayed in a petition under section 2-1401 of the Code of Civil Procedure." Ill. S. Ct. R. 304(b)(3) (eff. March 8, 2016).

¶ 35 We disagree. A petition for relief pursuant to Section 2-1401 unambiguously applies to "final orders and judgments." 735 ILCS 5/2-1401 (West 2014); see also *Warren County Soil and Water Conservation District v. Walters*, 2015 IL 117783, ¶ 31 ("It is undisputed that section 2-1401 of the Code represents a comprehensive statutory procedure authorizing a trial court to vacate or modify a *final* order or judgment in civil and criminal proceedings.") (Emphasis added.)).

¶ 36 As we have explained above, the August 2014 child support order was not a final order, as it did not resolve the crux of the underlying litigation, which was whether the children had been wrongfully removed from Mexico pursuant to the Convention. In turn, it was improper for Carlos to seek to vacate that order through section 2-1401.

¶ 37 Although Carlos erroneously labeled his submission as a section 2-1401 petition, Rule 304(b)(3) does not permit review of a plainly mislabeled challenge to a non-final order. Carlos'

labeling of his submission as a section 2-1401 petition does not confer jurisdiction on this court. "[T]he character of a pleading should be determined from its content, not its label. Accordingly, when analyzing a party's request for relief, courts should look to what the pleading contains, not what it is called." *In re Haley D.*, 2011 IL 110886, ¶ 67; *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 102 (2002) ("Regardless of the label which the Board gave to its motion, the motion was, in substance, a section 2-1401 motion.").

¶ 38 In this case, the purported section 2-1401 petition was improper, as it did not challenge a final order. As suggested by Ruth, Carlos' challenge to the child support order would have been more properly characterized as a motion to reconsider that non-final order. See *People ex rel. Hughes*, 278 Ill. App. 3d 116, 118 (1996) (agreeing that challenge to finding of paternity pleaded as a purported section 2-1401 petition "should be viewed as a motion for reconsideration of summary judgment on the issue of paternity rather than a request for relief as to final judgments pursuant to section 2-1401 of the Code" because "a finding of paternity alone is not a final order").

¶ 39 In this case, since Carlos did not raise a genuine section 2-1401 petition from a *final* order, Rule 304(b)(3) was improperly invoked to seek our review of the trial court's denial of that challenge to the child support order. To permit appellate review under these facts would allow litigants to escape the requirements of the Supreme Court Rules and obtain appellate review of non-final orders merely by mislabeling challenges to non-final orders as Carlos did with his section 2-1401 petition in this case. We agree with Ruth that Carlos "should not be permitted to make an end-run around the jurisdictional prerequisites contained in our Supreme Court's Rules by disguising a motion to reconsider as one challenging a final order." Thus, just as we lack jurisdiction to review the non-final August 2014 child support order, we conclude that we lack

jurisdiction to review the trial court's dismissal of the purported section 2-1401 challenge to that order.

¶ 40 We note that, apart from Rule 304(b)(3), Carlos' reply brief also makes reference to Rule 304(b)(4) as a basis for appellate jurisdiction. He claims that upon denial of his purported section 2-1401 petition, "the appellate court properly gained jurisdiction over [his] appeal under Supreme Court Rule 304(b)(3) and (4)." Rule 304(b)(4) permits appellate jurisdiction from "A final judgment or order entered in a proceeding under section 2-1402 of the Code of Civil Procedure." Ill. S. Ct. R. 304(b)(4) (eff. March 1, 2016). Section 2-1402 concerns post-judgment collection proceedings by a judgment creditor against a judgment debtor. 735 ILCS 5/2-1402 (West 2014). As Carlos does not attempt to articulate how Rule 304(b)(4) might vest this court with jurisdiction (and there is nothing in the record suggesting that it applies), we also reject his attempt to invoke appellate jurisdiction under that rule.

¶ 41 Having concluded that we lack jurisdiction to review the August 2014 child support order or the dismissal of the purported section 2-1401 petition, we address the reviewability of the separate trial court orders identified in Carlos' notice of appeal, including the October 2014 contempt order and the February 2015 order sentencing him for his failure to purge his contempt. [2]

[2] Although Carlos' notice of appeal specified that he sought review of the September 2014 rule to show cause, the October 2014 contempt and body attachment orders, and the February 26, 2015 order sentencing him to jail for his failure to purge the contempt, the argument in his opening brief is limited to the underlying child support order. Thus, his challenges to the contempt-related orders are arguably forfeited. See Ill. S. Ct. R. 341(h)(7) ("Points not argued are waived and shall not be raised in the reply brief.") In any event, we find that his admitted purge of the contempt renders any such challenges moot.

¶ 42 Ruth's brief does not dispute that we have jurisdiction of such orders pursuant to Supreme Court Rule 304(b)(5), under which our court may review a non-final order "finding a person or entity in contempt of court which imposes a monetary or other penalty." Ill. S. Ct. R. 304(b)(5); see also *In re Marriage of Newton*, 2011 IL App (1st) 090683, ¶ 7 ("Contempt judgments that impose a penalty are final, appealable orders.").

¶ 43 We recognize that, if we were to exercise our jurisdiction to review the contempt order, we would then review the child support order upon which it was based, notwithstanding that the child support order was non-final and otherwise not appealable. See *In re Marriage of Sharp*, 369 Ill. App. 3d 271, 277 (2006) ("The review of a contempt finding necessarily requires review of the order upon which it is based. [Citation.] Thus, we have jurisdiction to review the *** order compelling respondent to pay temporary maintenance and child support to petitioner."); *In re Marriage of Newton*, 2011 IL App (1st) 090683, ¶ 8 ("Where an unappealable interlocutory order results in a judgment of contempt including a fine or imprisonment, such a judgment is a final and appealable judgment and presents to the court for review the propriety of the order of the court claimed to have been violated.").

¶ 44 However, distinct from the issue of jurisdiction, Ruth asserts that Carlos' payment of the purge amount set in the October 2014 contempt order renders moot any appeal from that order. We agree and conclude that Carlos' admitted purge of his contempt renders moot his attempt to appeal the contempt order, as well as the related body attachment and sentencing orders which arose from the same finding of contempt.

¶ 45 Our supreme court has stated that "a valid purge condition is a necessary part of an indirect civil contempt order. [Citation.] A contemnor must be able to purge the civil contempt by doing that which the court has ordered him to do." *Felzak v. Hruby*, 226 Ill. 2d 382, 392

(2007). With respect to mootness, the same supreme court decision recognized that: "When 'intervening events have rendered it impossible for the reviewing court to grant effectual relief to the complaining party' [citation], then the appeal, and issues therein, are considered moot. 'The fact that a case is pending on appeal when the events which render an issue moot occur does not alter this conclusion. [Citation.]'" *Id.* at 392. Thus, in *Felzak*, our supreme court deemed moot an appeal from an order holding a minor's father and stepmother in contempt for disobeying an order requiring them to allow a grandparent visitation with the child. The court reasoned that since the minor had reached the age of 18 while the appeal was pending, "it became impossible for [the parents] to purge the civil contempt" because they could not compel an 18-year-old to visit her grandparent; as a result, "[t]hose issues raised in the contempt proceedings are necessarily moot." *Id.* at 391-92.

¶ 46 Similarly, our case law illustrates that when a finding of contempt has been purged by satisfaction of the conditions of the contempt order, the appeal from the contempt order is moot. For example, in *In re Marriage of Betts*, 155 Ill. App. 3d 85 (1987), which also involved an order of contempt arising from nonpayment of child support, the respondent "assert[ed] the trial court erred when it required him to pay in one lump sum the amount set in arrears in order to purge himself of the contempt order." *Id.* at 103. However, our court held that his "[a]ctual payment of the entire amount in full *** renders the point moot. There is nothing to be accomplished by reversing this purging order ***." *Id.* at 104.

¶ 47 In other cases, our court has similarly found challenges to contempt orders are mooted where the contempt has been purged. See, e.g., *J.S.A. v. M.H.*, 384 Ill. App. 3d 998, 109-10 (2008) (in parentage action, party's challenge to finding of contempt for failure to obey order directing her to submit to DNA testing was moot, since "she purged the finding of contempt" by

eventually submitting to DNA testing); *In re Keon C.*, 344 Ill. App. 3d 1137, 1148 (2003) (Where respondent was held in indirect civil contempt for failure to comply with child support order, "Paying the entire arrearage *** purged these issues and rendered the contempt issue moot").

¶ 48 In this case, the October 10, 2014 contempt order clearly stated that contempt would be "purged" by Carlos' payment of the sum of $2,442. Likewise, the February 2015 sentencing order was explicitly based on "his failure to purge the contempt order" and specified that he would not be subject to incarceration upon "payment of the $2,442 purge."

¶ 49 Carlos has acknowledged, in his status report and appellate briefing, that he paid the purge amount on April 20, 2015. However, his reply brief urges that Ruth's mootness argument "fails to address [Ruth's] waiver of any objection" to his purge. Specifically, he urges that Ruth's mootness argument should be rejected under the doctrine of *laches*, because "[a]t no point since [Carlos] paid the purge on April 20, 2015 *** did [Ruth] file a motion to dismiss the present appeal on mootness grounds." Carlos emphasizes that, after he filed his opening appellate brief on June 15, 2015, Ruth filed two motions to extend her time to file her response brief, but she did not raise the mootness issue until her brief was filed on September 11, 2015. He argues that *laches* applies because her "substantial delay" in raising a mootness argument "has prejudiced [him] in that he has proceeded to prepare and file his brief on this appeal, and in that the improperly awarded child support has continued to accrue."

¶ 50 We do not find Carlos' *laches* argument persuasive. "The doctrine of *laches* is defined as the neglect or omission to assert a right which, taken in conjunction with a lapse of time and circumstances causing prejudice to the opposite party will operate as a bar to a suit." *Negron v. City of Chicago*, 376 Ill. App. 3d 242, 246-47 (2007). "For the doctrine of *laches* to apply, a

defendant must assert that the plaintiff had knowledge of his right but failed to assert it in a timely manner. [Citation.] However, if the defendant is not injured by the delay, then he may not defeat the claim by asserting *laches*." *Id.* at 247.

¶ 51 We find *laches* inapplicable to this situation. *Laches* is a failure to assert a right that operates "as a bar to a suit" at the trial court level. However, Carlos is attempting to invoke the doctrine to preclude Ruth from raising a mootness argument on appeal, not a claim or cause of action in the trial court. Indeed, the mootness argument could not have possibly been raised prior to the appeal, because Carlos did not pay the purge amount until this appeal was already pending.

¶ 52 Carlos essentially argues that Ruth forfeited her mootness argument because she did not file a motion to dismiss the appeal on that basis before filing her appellate brief. We acknowledge that, pursuant to Supreme Court Rule 361(h), she could have raised her mootness argument earlier by filing a dispositive motion. Ill. S. Ct. R. 361(h) (eff. Jan. 1, 2015) (permitting the filing of dispositive motions "challenging the Appellate Court's jurisdiction or raising any other issue that could result in the dismissal of any portion of an appeal or cross appeal without a decision on the merits of that portion of the appeal or cross-appeal.") However, nothing in that rule suggests that an appellee *must* raise such a challenge by motion, or lose the ability to make the argument in her appellate brief. Moreover, Carlos does not cite any case applying *laches* as a bar to an appellate argument. Thus, we decline to apply *laches* in this case.

¶ 53 Further, we reject Carlos' suggestion that the language of his May 5, 2015 status report shielded his appeal from a mootness challenge. His reply brief claims that his status report "report[ed] that he had paid the purge, but that he did so under protest and with no intention of waiving his appeal rights."

¶ 54 Even assuming that a reservation of rights in the May 2015 status report could apply retroactively to his April 20, 2015 payment of the purge amount, we note that the language of the status report did *not* purport to reserve his right to appeal the October 2014 contempt order. Rather, the status report stated that he "paid the purge amount *without waiving his right to appeal the underlying order requiring him to pay child support*, which [Carlos] continues to protest as invalid." Thus, the status report did not purport to retain his right to appeal the October 2014 contempt order, but only maintained his challenge to the underlying August 2014 child support order (which we have already concluded was non-final and non-appealable). Thus, the language of the status report does not alter our finding of mootness with respect to the contempt order.

¶ 55 As Carlos admittedly purged the contempt by tendering payment of $2,442, we agree with Ruth that his appeal from the October 2014 contempt order is moot. For the same reason, we need not address the corresponding rule to show cause, body attachment order, or the February 2015 sentencing order, which were similarly rendered moot by his payment of the $2,442 purge amount.

¶ 56 We thus conclude that: (1) we lack jurisdiction to review the non-final August 2014 child support order; (2) we lack jurisdiction to review the denial of the improperly pleaded section 2-1401 petition seeking to vacate the child support order; and (3) Carlos' challenges to the October 2014 contempt finding and related orders are moot, given his admitted purge of the contempt.

¶ 57 For the foregoing reasons, we dismiss the appeal.

¶ 58 Appeal dismissed.