2024 IL App (2d) 230459-U
Nos. 2-23-0459
Order filed June 25, 2024

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

SECOND DISTRICT

In re MARRIAGE OF MOIRA WHEELOCK,	)	Appeal from the Circuit Court of Lake County.
Petitioner-Appellee,	)	
and	)	No. 98-D-2208
DAVID WHEELOCK,	)	Honorable Patricia L. Cornell
Respondent-Appellant.	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justice Kennedy concurred in the judgment.
Justice Hutchinson dissented in the judgment.

ORDER

¶ 1 *Held*: We lack jurisdiction to consider this appeal where the record shows that a final order remains pending.

¶ 2 Respondent, David P. Wheelock, appeals the judgment of the circuit court of Lake County denying his motion for entry of a corrected qualified Illinois domestic relations order (QILDRO) and granting motions to enforce the judgment and to modify in favor of petitioner, Moira L. Wheelock. For the reasons below, we find that we are without jurisdiction to consider the appeal.

¶ 3 I. BACKGROUND

¶ 4 On April 26, 1999, the circuit court entered an order dissolving the marriage of petitioner and respondent and incorporating their marital settlement agreement therein. On December 7, 2001, the trial court entered an order advising respondent to enter a QILDRO as to respondent's pension account. However, through mistake or otherwise, petitioner—through a retained expert—instead entered the QILDRO.

¶ 5 Respondent retired on May 8, 2015. After several years in which petitioner had begun receiving payments pursuant to the parties' QILDRO, respondent moved the court for the entry of a corrected QILDRO. In turn, both parties filed motions to amend the QILDRO. Ultimately, on July 6, 2023, the court ruled in petitioner's favor, and ordered that "[a]n [a]mended QILDRO shall be entered recalculating [petitioner's] share of the pension benefits." Respondent moved to reconsider, and, on October 12, 2023, the circuit court denied his motion.

¶ 6 Respondent appeals.

¶ 7 II. ANALYSIS

¶ 8 Because a final QILDRO had not been entered yet in this matter, we lack jurisdiction to consider this appeal. "A reviewing court must ascertain its jurisdiction before proceeding in a cause of action, regardless of whether either party has raised the issue." *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213 (2009). Pursuant to Illinois Supreme Court Rule 303 (eff. July 1, 2017), which respondent cites as the basis for his appeal, a notice of appeal confers jurisdiction onto this court where it has been filed "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." "A final order must dispose of the rights of the parties as to the entire controversy or some part of the controversy which is definite and separate, so that

nothing remains but an execution of the judgment." *In re Marriage of Petraitis*, 263 Ill. App. 3d 1022, 1038 (1993). "[T]he trial court retains jurisdiction in a case until it has disposed of all matters before the court." *Armour & Co. v. Mid–America Protein, Inc.*, 37 Ill.App.3d 75, 77 (1976). For instance, where a judgment provides for the preparation of a qualified domestic relations order (QDRO), and where no such order has been entered, there has been no final order for purposes of appellate jurisdiction. *Petraitis*, 263 Ill. App. 3d at 1038 ("Since it appears that no QDRO had been entered***, the matter of distribution of the marital property had not been disposed of, and the [circuit] court retained jurisdiction to resolve that matter"); but see *In re Marriage of Platt*, 2015 IL App (2d) 141174, ¶¶ 16-17 (appellate court provided, in *dicta,* that dissolution judgment was finalized once petitioner died and QDRO was not considered to be a "substantive part of the judgment").

¶ 9 Here, the trial court's July 6, 2023, order was nonfinal on its face, as it explicitly provided for the entry of a subsequent, amended QILDRO resolving the distribution of respondent's pension, which remains to be filed. Accordingly, because no final order has been entered, respondent's notice of appeal is premature, and we have no jurisdiction to consider this matter until an amended QILDRO has otherwise been filed. *Petraitis*, 263 Ill. App. 3d at 1038. Once the amended QILDRO has been filed, respondent can file a timely notice of appeal thereafter. See *In re Marriage of Knoerr*, 377 Ill. App. 3d 1042, 1049-50 (2007).

> "However, if pending claims have been resolved and the time to file a new notice of appeal has expired, Rule 303(a)(2) allows respondent to establish the effectiveness of the present notice of appeal. In the latter event, respondent may file a petition for rehearing and to supplement the record, thereby establishing our jurisdiction to address the merits." *Id.*

¶ 10 While our dissenting colleague argues that "all that is left is to proceed with the execution of the judgment," she ignores the purpose of the QILDRO, which is to inform all relevant parties *how* to execute the instant dissolution judgment. In other words, the judgment cannot be executed until a valid QILDRO is entered. In either event, we respectfully disagree with the dissent's conclusion that an order explicitly calling for further action by the parties can be considered final.

¶ 11 III. CONCLUSION

¶ 12 For the reasons stated, we dismiss the appeal.

¶ 13 Appeal dismissed.

¶ 14 JUSTICE HUTCHINSON, dissenting.

¶ 15 Because I believe we have appellate jurisdiction in this case, I dissent. I believe the order in this case was in fact final, and all that is left is to proceed with the execution of the judgment. See *Blumenthal v. Brewer*, 2016 IL 118781, ¶ 25 (noting that "[w]hile the order need not dispose of all the issues presented by the pleadings, it must be final in the sense that it disposes of the rights of the parties, either upon the entire controversy or upon some definite and separate part thereof").

¶ 16 Part of the execution of judgment in the trial court is the entry of orders that confirm its execution. Those filings and orders acknowledging compliance are *not* part of the judgment we need to review; they are routine, ministerial matters for the trial court and circuit clerk. See *In re Marriage of Petraitis*, 263 Ill. App. 3d 1022, 1040 (1993) (noting that the mechanics of payments "under a QDRO can arguably be characterized as ministerial rather than as a judicial decision"). Furthermore, the third parties and plan administrators might be unwilling to produce those necessary documents without a clear decision reviewing the orders at issue.

¶ 17 In short, everything we need to review the judgment, entered on the single claim in these postdissolution proceedings, is already before us. Although I can find no Illinois authority directly

on point, I find the Ohio Supreme Court's decision in *Wilson v. Wilson*, 116 Ohio St. 3d 268 (2007) to be a pitch perfect statement of the relevant law on this issue:

> "[A] divorce decree is a final, appealable order, regardless of whether it calls for a QDRO that has not yet issued; the QDRO merely implements the divorce decree.
>
> A QDRO does not in any way constitute a further adjudication on the merits of the pension division, as its sole purpose is to implement the terms of the divorce decree. Therefore, it is the decree of divorce that constitutes the final determination of the court and determines the merits of the case. After a domestic relations court issues a divorce decree, there is nothing further for the court to determine.
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> * * *
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> The QDRO in this case does not affect a substantial right of the parties in that it merely mimics the order of the original divorce decree. The original divorce decree was the order which established the [parties'] property distribution and provided for an equitable pension division. This is the order which determined the rights of the parties. The QDRO in this case differs in no way from the divorce decree and is itself a ministerial tool used by the trial court in order to aid the relief that the court had previously granted. * * * Indeed a QDRO may not vary from, enlarge, or diminish the relief that the court granted in the divorce decree, since that order which provided for the QDRO has since become final.
>
> A divorce decree completely divides the property. The trial court should determine in the judgment of divorce the value of the pension and the percentage to give to each spouse, which may include, as was done here, expert testimony regarding the value of the unvested pension and the correct percentage discount for the time remaining until the

pension becomes vested. The QDRO is merely a tool used to execute the divorce decree.

We note that if we were to adopt the reasoning of the court of appeals in this case, the parties could be forever barred from bringing an appeal because if plaintiff does not work for the time required to make his pension vest, then the QDRO would never issue, and an appeal would be impossible. We hold that a divorce decree that provides for the issuance of a QDRO is a final, appealable order, even before the QDRO is issued. Consequently, the court of appeals erred in dismissing the case for lack of a final, appealable order." (Citations and internal quotation marks omitted.) *Wilson*, 116 Ohio St. 3d at 271-72.

¶ 18 For these reasons, I respectfully dissent.