

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).

2023 IL App (3d) 230012-U

Order filed August 8, 2023

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2023

<i>In re</i> MARRIAGE OF ANGELA D. TREND,)	Appeal from the Circuit Court of the 12th
)	Judicial Circuit, Will County, Illinois.
Petitioner-Appellant,)	
)	Appeal No. 3-23-0012
and)	Circuit No. 13-D-1217
)	
JEFFREY TREND,)	Honorable
)	David Garcia,
Respondent-Appellee.)	Judge, Presiding.

JUSTICE BRENNAN delivered the judgment of the court.
Justices Peterson and Davenport concurred in the judgment.

ORDER

¶ 1 *Held:* In this marital dissolution proceeding, the trial court erred when it ordered that the father have sole decision-making responsibilities pursuant to the parties' agreed order allocating visitation to the mother, where the agreed order did not reallocate decision making. The mother's argument with respect to visitation has no merit. This court lacks jurisdiction to review the order for support against the mother and the trial court's denial of her request for access to the children's medical and therapy records. Order vacated and cause remanded.

¶ 2 The parties, Angela D. Trend and Jeffrey Trend, married and had three children together before petitioning for dissolution of marriage. They entered into a marital settlement agreement (MSA) which provided for support and allocated parental responsibilities. Angela had the majority

of parenting time and Jeffrey paid child support. Subsequently, Jeffrey obtained an order of protection against Angela, pursuant to which he obtained all parenting time. The trial court later ordered that Jeffrey have sole decision-making responsibilities. Angela appeals. For the reasons that follow, we vacate the order and remand for further proceedings.

¶ 3

I. BACKGROUND

¶ 4

Angela and Jeffrey married in 2004 and had three children together: Ty. T. (now age 17), To. T. (now age 16), and S.T. (now age 14). The parties petitioned for dissolution of their marriage and, in August 2015, the trial court entered a dissolution judgment which incorporated the parties' MSA. The parties agreed to a number of terms under the heading "CHILD CUSTODY & VISITATION" as follows.

¶ 5

The parties agreed to maintain "joint legal custody" of the children, wherein "[l]egal custody for the purpose of this agreement refers to the authority to make major decisions regarding minor children of the marriage, which can include but are not limited to health care, religion, and education[.]" They agreed Angela would have "[p]rime [r]esidential [c]ustody" (crossing off the term "sole physical custody"), referring to "the authority to make routine and day-to-day decisions regarding the children and where the children's primary residence will be[.]" They also agreed "the non-custodial parent" would have visitation two designated nights per week and every other weekend. Also pursuant to the MSA, Jeffrey was ordered to pay Angela child support of \$323 weekly.¹

¶ 6

A. Post-Dissolution Proceedings

¹ The MSA actually states that child support is "to be paid by Angela D Trend," but the record indicates that Jeffrey had been paying support and neither party disputes that he was the intended obligor.

¶ 7 In 2019, Angela obtained an order of protection against Jeffrey² during which Jeffrey’s parenting time was briefly reduced, then suspended, then partially reinstated. In February 2020, the trial court ordered that Jeffrey have 6 hours of weekly supervised parenting time. On June 29, 2020, Jeffrey filed an emergency motion to modify parenting time. On July 30, 2020, the trial court ordered that Jeffrey have 12 hours of weekly unsupervised parenting time “[a]s previously ordered” and set a hearing date for the June 29 emergency motion to modify parenting time. On September 11, 2020, Jeffrey filed a motion for change of custody, requesting a majority of the parenting time. On October 28, 2020, Jeffrey filed another emergency motion to modify parenting time. On January 21, 2021, Jeffrey filed another emergency motion to modify parenting time, requesting “to resume his parenting time as reflected in the [MSA].” The court granted an emergency motion to modify parenting time on February 10, 2021, ordering that Jeffrey’s parenting time be expanded commensurate with the parties’ agreement in the MSA (two designated nights per week and every other weekend).

¶ 8 On April 8, 2021—while Jeffrey’s motion for a change of custody remained pending—Jeffrey petitioned for an emergency order of protection in a separate proceeding (21 OP 617). We take judicial notice of the trial court record in the related appeal No. 3-22-0215, an appeal from case 21 OP 617, to the extent helpful in resolving the issues raised in the instant appeal. “An appellate court may take judicial notice of readily verifiable facts if doing so will aid in the efficient disposition of a case, even if the parties did not seek judicial notice in the trial court.” *Godfrey Healthcare & Rehabilitation Center, LLC v. Toigo*, 2019 IL App (5th) 170473, ¶ 49 (citing *People v. Davis*, 65 Ill. 2d 157, 165 (1976)). The record in that case involves orders of protection between the parties which will aid in our determination of the issues on appeal.

² It is unclear from the record when the order of protection against Jeffrey expired.

¶ 9 In 21 OP 617, the trial court granted Jeffrey’s petition and entered an emergency order of protection against Angela on April 8, 2021. See 750 ILCS 60/217 (West 2020). Pursuant to that order, the court granted Jeffrey physical care and possession of the children, denied Angela parenting time, and denied Angela access to “school records or any other records of the minor children.” The court extended the order of protection on various dates, through February 24, 2022.

¶ 10 Central to the instant appeal, on February 4, 2022, the trial court entered an agreed order pertaining to supervised visitation by Angela. The order provided that Angela would have up to four hours of weekly supervised visitation and laid out conditions. The order did not purport to allocate any parental rights or responsibilities aside from visitation, which would occur “until further order of court.” The order of protection against Angela was extended several more times beyond February 2022. On February 15, 2022, Angela filed a reply to Jeffrey’s September 11, 2020, motion to shift custody.

¶ 11 Meanwhile, Jeffrey filed two additional motions relevant to this appeal: (1) a June 4, 2021, motion to terminate child support (and for reimbursement for overpayment) and (2) a July 20, 2021, petition for child support. Both asserted that Jeffrey had had sole physical and residential custody of the children (*i.e.*, parenting time) since entry of the April 8, 2021, order of protection. Angela also filed multiple motions seeking access to the children’s mental health records for use in the proceedings pursuant to the Illinois Mental Health and Developmental Disabilities Confidentiality Act, 740 ILCS 110/1 *et seq.* (West 2020) (Confidentiality Act), which the trial court denied. Moreover, on June 3, 2021, the trial court appointed a guardian *ad litem* (GAL).

¶ 12 B. February 2022 Hearings

¶ 13 The trial court conducted hearings from February 22 to 24, 2022. At the February 22 hearing, Jeffrey’s counsel stated she had two pending motions pertaining child support (the motion

to terminate and the petition for support). Counsel specified, “I am asking for them both to go back retroactive to April 8th when custody was changed.” Angela’s counsel interjected, clarifying his position that custody did not change when the order of protection against Angela was entered. The court responded, “You’re playing around with descriptions. *Custody did change on an order of protection*, and I am not going to make him pay for child support on kids that she doesn’t have.” (Emphasis added.)

¶ 14 Jeffrey’s counsel also indicated she would be withdrawing Jeffrey’s September 11, 2020, motion for change of custody as well as a pending October 28, 2020, motion to modify parenting time “[b]ased on the [February 4, 2022,] agreed order.” Angela’s counsel responded that the agreed order did not affect parental decision-making. The parties then disputed the effect of the February 4, 2022, agreed order. Angela’s counsel characterized the order as “interim” and stated, “The order says nothing about decision making. That is still an open issue.” Jeffrey’s counsel argued that Jeffrey, as the custodial parent, should have sole decision-making authority. The court responded, “Well, that’s something you guys got to work out. Right now it’s all on [Jeffrey’s] side because he’s the one with the children, and she has visitation. *So he’s going to make all of the decisions until they can work things out* where they don’t play these stupid games over and over again. ***. *So if that’s what the order says, that’s what I’m going to enforce.*” (Emphases added.)

The court added, “So that’s the order I’m going to enforce. You guys agreed to it. That’s it.” Angela’s counsel insisted that the agreed order did not deal with decision making and that no pending motion placed decision-making responsibilities at issue. The court responded, in part, “I think that any time that the parents can work it out, it’s the best. ***. But right now he has the kids,

and I am not lifting a change in custody right now.” The court later added, “I’ve already said that you guys have to work it out.”

¶ 15 The parties briefly revisited the decision-making issue at the following day’s hearing (February 23, 2022). Overall, the court’s discussion of the decision-making issue indicated that it believed that the parties’ February 4, 2022, agreed order allocated decision-making responsibilities and that the court had authority to modify that allocation, but declined to do so. In addition to the two motions withdrawn at the prior day’s hearing, Jeffrey’s counsel orally withdrew his June 29, 2020, motion to modify parenting time “[d]ue to the agreed order.” The court proceeded on Jeffrey’s pending June 30, 2020, motion for job search in which he requested the court order that Angela seek employment.

¶ 16 On February 24, 2022, the court conducted a hearing on Jeffrey’s motions regarding child support. Angela did not appear; her counsel did appear but, at the outset of the hearing, left the courtroom without leave of court. The hearing proceeded in his absence, and the trial court entered an order of support requiring that Angela repay Jeffrey \$9143.82 due to overpayment of child support and begin paying Jeffrey child support of \$243 every other week.

¶ 17 C. Subsequent Proceedings

¶ 18 On April 21, 2022, Angela filed a motion to “vacate or limit the scope of” the agreed order entered on February 4, 2022. She argued the trial court “orally f[ou]nd that parental decision making should lie exclusively with Jeffrey” in reliance on the February 4, 2022, agreed order. She requested the court vacate that order or “Constrain It to the Limits Understood By the Parties at the Time of Its Entry” or, alternatively, modify it pursuant to section 610.5(a) of the Illinois Marriage and Dissolution of Marriage Act (IMDMA).

¶ 19 On April 25, 2022, Angela filed a motion to (1) reconsider and vacate the February 24,

2022, order for support or, in the alternative, (2) modify the order pursuant to section 510(a)(1) of the IMDMA. She argued, in relevant part, that the order was entered without sufficient supporting evidence and failed to follow statutory computation guidelines. The motion did not challenge that part of the order requiring Angela to repay Jeffrey \$9143.82 due to overpayment of child support, though she did request that the court vacate the order for support entirely. The court never ruled on the motion to reconsider-or-modify and it remains pending.

¶ 20 On September 20, 2022, the trial court entered an order addressing numerous motions. In relevant part, the order summarily denied Angela’s April 21, 2022, motion.

¶ 21 On September 26, 2022, Angela filed an amended motion for, *inter alia*, a final order on parental responsibilities. The motion requested a final written order for purposes of appeal and stated:

“On February 22, 2022, this Court ruled that Respondent Jeffrey Trend should be allocated all parental responsibilities for the Trends’ three minor children. [Citation.] The ruling relied primarily on a February 4, 2022 visitation order allowing [Angela] 4 hours of supervised, weekend visitation. [Citation.] No written order reflecting the Court’s ruling on parental responsibilities has been entered to date.”

At a December 14, 2022, hearing, Angela’s counsel explained, “You ruled on the 22nd of February that [Jeffrey] would have full parental responsibilities. So I’m just looking for an order that reflects that.” The same day, the trial court entered an order which provided, in part, “Jeffrey Trend has sole decision-making with respect to the three minor children.”

¶ 22 This appeal followed.

¶ 23 II. ANALYSIS

¶ 24 Angela first argues the trial court erred when it ordered that Jeffrey have sole decision-

making responsibilities for the parties' children pursuant to the February 4, 2022, agreed order. Second, she contends the court abused its discretion when it entered the February 24, 2022, order for support. Third, she suggests the court erroneously denied her request for access to her children's medical and therapy records for use in court proceedings under the Confidentiality Act, 740 ILCS 110/1 *et seq.* (West 2020). Before reaching the merits, however, we address this court's jurisdiction.

¶ 25 A. Jurisdiction

¶ 26 Jurisdiction is a threshold issue and this court has an independent duty to consider its jurisdiction. *In re Marriage of Salviola*, 2020 IL App (1st) 182185, ¶ 36. The appellant bears the burden of establishing jurisdiction and we must dismiss an appeal where it is lacking. *Id.*

¶ 27 Angela asserts jurisdiction is proper under multiple rules. Importantly, Angela's April 25, 2022, motion (requesting reconsideration or modification of the February 24, 2022, order for support) remains pending. Accordingly, this is an appeal from fewer than all of the claims in the trial court. See Ill. S. Ct. R. 304(a) (eff. March 8, 2016). Ordinarily, appeal from a final judgment of such a claim requires "an express written finding that there is no just reason for delaying either enforcement or appeal or both." *Id.* A modification of "[a] custody or allocation of parental responsibilities judgment" entered pursuant to the IMDMA, however, is appealable without the required finding. Ill. S. Ct. R. 304(b)(6) (eff. March 8, 2016).

¶ 28 Here, Angela appeals from the trial court's December 14, 2022, order allocating decision-making responsibilities to Jeffrey, though the trial court made no 304(a) finding. The record reflects that the court's December 14, 2022, order was entered after entry of the February 4, 2022, agreed order, after the order of protection had lapsed (see *Jeffrey T. v. Angela T.*, 2023 IL App (3d) 220215-U, ¶¶ 63-72), and pursuant to Angela's motion for final order on parental responsibilities.

Based on this procedural history, the only possible basis for entry of the December 14, 2022, order was to clarify that the February 4, 2022, agreed order modified the MSA. Accordingly, the trial court modified the parties' agreed allocation of parental responsibilities pursuant to the IMDMA, and this court has jurisdiction to review this modification under Supreme Court Rule 304(b)(6).

¶ 29 With respect to Angela's Confidentially Act and child-support-order claims, however, this court lacks jurisdiction to review them because the trial court made no 304(a) findings. *In re Marriage of Crecos*, 2021 IL 126192, ¶ 45 (“[F]or purposes of appellate jurisdiction, unrelated postdissolution matters constitute separate claims, so that a final order disposing of one of several claims may not be appealed without a Rule 304(a) finding.”).

¶ 30 We also note this is an accelerated appeal filed under Illinois Supreme Court Rule 311(a), which requires this court to issue a decision within 150 days after the notice of appeal is filed, “[e]xcept for good cause shown[.]” Ill. S. Ct. R. 311(a)(5) (eff. July 1, 2018). Notice of appeal was filed on January 12, 2023. By rule, in the absence of good cause shown, this court's disposition was due on June 11, 2023, which has passed. However, Angela filed two motions for extension of time to file her brief, Jeffrey filed one motion for extension of time to file his brief, and Angela filed a motion for extension of time to file her reply brief, all of which were granted without objection. These extensions provide good cause for issuing our decision beyond the 150-day deadline. See *In re Cal. E.*, 2023 IL App (4th) 220930, ¶¶ 96-98.

¶ 31 B. Allocation of Decision-Making Responsibilities

¶ 32 Turning to the merits, we consider whether the trial court erred in interpreting the February 4, 2022, agreed order as an agreement to vest Jeffrey with sole decision-making responsibilities for the parties' three children. There exist two agreements potentially relevant to the allocation of decision-making responsibilities: the parties' MSA and the February 4, 2022, agreed order. This

appeal requires us to interpret the agreed order in the context of the MSA.

¶ 33 “An agreed order adopted by the court is not an adjudication of the parties’ rights but, rather, a record of their private, contractual agreement and must be construed to give effect to the parties’ intent, which is determined from the language of the order when there is no ambiguity in its terms.” *Watkins*, 2017 IL App (3d) 160645, ¶ 28. “An agreed order must be interpreted in its entirety, considering all facts and circumstances surrounding its execution, as well as all pleadings and motions from which it stems.” *Id.* Our objective is to ascertain the parties’ intent based on the language of the agreement itself. *In re Marriage of Dynako*, 2021 IL 126835, ¶ 15. Contract interpretation presents a question of law we review *de novo*. *Id.* Agreements that involve children are binding where they are in the best interest of the children and the court approves. 750 ILCS 5/502(b) (West 2022); *Blisset v. Blisset*, 123 Ill. 2d 161, 168 (1988) (noting that parents may modify child support obligations only with court approval).

¶ 34 We conclude the trial court erred when it ruled that Jeffrey had sole decision-making responsibilities pursuant to the February 4, 2022, agreed order. The MSA expressly allocated decision-making responsibilities, providing that the parties would share “joint legal custody” to include “the authority to make major decisions regarding minor children.” We further note that “custody,” as used in the IMDMA at the time the parties entered into the MSA, included “significant decision-making responsibilities.” See 750 ILCS 5/600(d) (West 2020) (“ ‘Parental responsibilities’ means both parenting time and significant decision-making responsibilities with respect to a child.”); *In re Marriage of Yabush*, 2021 IL App (1st) 201136, ¶ 4 n.2 (noting prior version of IMDMA used term “custody” when discussing allocation of parental responsibilities). The February 4, 2022, order did not reference the MSA and did not otherwise reference or discuss any terms related to decision-making responsibilities. Rather, the agreed order was a contractual

agreement to allow visitation (parenting time), presumably entered into where Angela was otherwise prohibited from seeing the children due to the pending order of protection. In support we observe that the agreement allowed Angela supervised visitation “until further order of court,” which cannot be reasonably construed as permanently amending the MSA and reallocating decision-making responsibilities. Indeed, the record does not support that Jeffrey sought reallocation of decision-making responsibilities by motion at any time. Accordingly, the trial court erred in construing the February 4, 2022, agreement as modifying the parties’ MSA as to decision-making responsibilities and ordering that Jeffrey have sole decision-making responsibilities.

¶ 35

C. Visitation

¶ 36

Finally, we address Angela’s argument that the trial court modified visitation between the parties (*i.e.* parenting time) without following statutory requirements in that the court “made a complete shift of almost all visitation” from Angela to Jeffrey solely on the basis of the February 4, 2022, agreed order and without making necessary statutory findings. As already discussed, however, the court did not purport to modify parenting time pursuant to a contested petition; rather, it modified Angela’s parenting time based on an erroneous construction of the February 4, 2022, agreed order. In its proper construction, the agreed order provided that Angela would have supervised visitation “until further order of the court” predicated on the parties’ understanding that Angela was otherwise prohibited from seeing the children due to the order of protection against her. The agreed order contemplated that once the order of protection expired, the MSA would again govern parenting time. Thus, this argument has no merit.

¶ 37

Based on the foregoing, we vacate the trial court’s order that Jeffrey have sole decision-making responsibilities. We do not reach those claims of error beyond our jurisdiction and thus remand for further proceedings not inconsistent with this opinion.

¶ 38

III. CONCLUSION

¶ 39 For the reasons stated, we vacate the order of the circuit court of Will County and remand for further proceedings.

¶ 40 Order vacated and cause remanded.