

No. 123264

IN THE

SUPREME COURT OF ILLINOIS

JoAnn Smith, Individually; and,	)	On Petition For Leave To Appeal
JoAnn Smith as Administrator of the	)	from the Appellate Court of
Estate of Donald L. Smith, Deceased,	)	Illinois, Fifth Judicial District
	)	No. 5-16-0024
Plaintiffs-Petitioners,)	
-vs-	)	There on Appeal from the Third
	)	Judicial Circuit, Madison County,
The Vanguard Group, Inc.;	)	Illinois, No. 15-L-679
Scott Smith; and, Jeffrey Smith,)	
	)	The Honorable Barbara Crowder
Defendants-Respondents.)	Judge Presiding

APPELLANTS' BRIEF

Oral Argument Requested

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*Points & Authorities**The Appellate Court Erred in Affirming Dismissal of Count I of Plaintiffs Complaint Under 735 ILCS 5/2-619(a)(4) and (9)*

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<i>Cummins-Landau Laundry Mach. Co. v. Koplín</i> , 386 Ill. 368, 54 N.E. 462 (Ill. 1944)	4, 6, 8, 9
<i>Southern Illinois Medical Business Assocs. v. Camillo</i> , 208 Ill. App. 3d 354, 567 N.E.2d 74, 81 (Ill. App. Ct. – 5 th Dist. 1991)	4, 8, 9
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Introduction

The appellate court affirmed dismissal by the circuit court of Plaintiffs' action for declaratory judgment. The supreme court granted Plaintiffs' Petition for Leave to Appeal. The question raised on the pleadings is whether the circuit court properly dismissed Count I.

Statement of the Issues

Whether the appellate court erred in affirming dismissal of Count I of Plaintiffs' Complaint under 735 ILCS 5/2-619(a)(4), and (9). The standard of review for dismissal of the Complaint, and the legal issues presented is de novo. *King v. First Capital Fin. Servs. Corp.*, 215 Ill. App. 2d 1, 828 N.E.2d 1155, 1161 (Ill. 2005).

Statement of Jurisdiction

On January 31, 2018, the appellate court issued a Rule 23 Order affirming dismissal of Count I of Plaintiffs' Complaint. The court's Order of January 31, 2018, was a final order (A-1). On February 14, 2018, Plaintiffs filed a timely Petition for Leave to Appeal pursuant to Rule 315. The court granted the petition on May 30, 2018.

Statement of Facts

On May 27, 2015, Plaintiffs filed a Complaint against Defendants, The Vanguard Group, Inc.; and, Donald L. Smith's (the decedent) sons, Scott Smith and, Jeffrey Smith, (Record on Appeal, C3). In Count I of the Complaint, Plaintiff, JoAnn Smith alleged that she was the surviving spouse

of decedent, and had been appointed the Administrator of his estate (C3, Compl., Ct. I, paras. 1-2 – paragraph references are to the Complaint, Count D). The Vanguard Group, Inc. is the administrator of an IRA in the name of Donald L. Smith (C3, para. 3).

Defendants, Scott Smith and Jeffrey Smith, are listed as the beneficiaries of the IRA (C4, para. 4). Plaintiff alleged that the Defendants had been listed as the beneficiaries of the IRA in violation of a court order entered in *Smith v. Smith*, Case No. 13-D-811, consolidated with Case No. 13-CH-610.

On or about July 31, 2013, decedent designated Plaintiff as his primary beneficiary of his IRA, and there were no secondary beneficiaries (C5, para. 15; and, C26-C27). On August 6, 2013, decedent filed a Petition for Issuance of Temporary Restraining Order and for Preliminary Injunction against Plaintiff in Case No. 13-CH-610 (C3, para. 16; and, C59). On August 8, 2013, Judge Crowder entered a preliminary injunction which stated in pertinent part as follows (C5, para. 17; and, C28, C30):

9. Pursuant to the parties' stipulation, all other bank accounts, credit union accounts, investment accounts (including the Scottrade account), and any other accounts holding funds or investments of the parties *shall be closed to any transactions* and no trades, transfers, transactions, buy orders or sell orders, withdrawals or deposits shall be made from any accounts without the written agreement of both Petitioner and Respondent or further Court order [emphasis added].

On September 6, 2013, decedent filed for divorce against Plaintiff in Case No. 13-D-811 (C5, para. 18). On November 14, 2013, Judge Heflin

consolidated cases 13-CH-610 and 13-D-811 (C5, para. 19; and, C32-C33). In addition, the existing “injunctive orders” in 13-CH-610 were ordered to remain in full force and effect as orders in 13-D-811 (C32).

On March 13, 2014, decedent changed the beneficiary on his IRA account at The Vanguard Group, Inc., to his sons, Defendants, Scott Smith and Jeffrey Smith (C3, para. 20; and, C34-C35). Plaintiff had no knowledge of the change of beneficiary designation until after the death of the decedent (C3, para. 21).

On October 29, 2014, by agreement of the parties, the court dismissed Case Nos. 13-D-811, and 13-CH-610 (C6, para. 22; and, C19). Plaintiff alleged that while the court’s injunction was in effect, the decedent improperly changed the beneficiary on the IRA, in violation of the court’s Order and in fraud of Plaintiff’s interest in marital property (C6, para. 23). Because the court’s preliminary injunction was in effect at the time of the change of beneficiary, the decedent’s change of beneficiary of the IRA was ineffective (C6, para. 23).

Donald L. Smith died on March 30, 2015 (C6, para. 24). The Vanguard Group, Inc. IRA has a value in excess of \$500,000 (C6, para. 25). In her Complaint, Plaintiff requested a declaratory judgment to determine and fix the rights of the respective parties, because an actual controversy existed over the IRA (C6, paras. 26-28).

Defendants, Scott Smith and Jeffrey Smith filed a Motion to Dismiss (C15). The court entered an Order dismissing Count I of the Complaint based on Section 2-619(a)(4) (C47), and (a)(9) (C99). The trial court reasoned that once the dissolution proceeding was dismissed, the beneficiary change became effective even if it arguably violated the terms of the injunction (C49). It recognized the beneficiary change as valid upon dismissal of the dissolution (C49). The appellate court affirmed, finding that the decedent's change of beneficiaries did not violate the injunctive order while it was in effect. ¶16-17 (A-7). The Supreme Court granted leave to appeal.

Argument

The appellate court erred in affirming dismissal of Count I of Plaintiffs' Complaint under 735 ILCS 5/2-619(a)(4), and (9).

The appellate court's opinion is in conflict with the Supreme Court's decision in *Cummins-Landau Laundry Mach. Co. v. Koplin*, 386 Ill. 368, 54 N.E. 462 (Ill. 1944). If the court has jurisdiction of the cause, an injunction granted in the exercise of such jurisdiction must be obeyed. *Id.* at 469. A party must obey a circuit court's order of injunction. *Southern Illinois Medical Business Assocs. v. Camillo*, 208 Ill. App. 3d 354, 567 N.E.2d 74, 81 (Ill. App. Ct. – 5th Dist. 1991). This is so even if the injunction is later vacated or reversed. *Id.* at 82, citing *Cummins-Landau Laundry Mach. Co.* If a court has jurisdiction of the subject matter and of the parties, then the

court's order must be obeyed until such time as it is set aside by either the issuing or the reviewing court. *Id.*

In contrast, the appellate court held that the change of beneficiary designation did not violate the injunction while it was in effect. ¶13 (A-6). The court agreed with Plaintiff that the decedent was prohibited from any transactions that violated the injunction while it was in effect. ¶15 (A-6). It reasoned that in *New York Life Ins. Co. v. Sogol*, 311 Ill. App. 3d 156, 724 N.E.2d 105 (Ill. App. Ct. – 1st Dist. 1999), and *In re Marriage of Ignatius*, 338 Ill. App. 3d 652, 788 N.E.2d 794 (Ill. App. Ct. – 2nd Dist. 2003) that a transfer of ownership of the accounts in question occurred as a result of the beneficiary change while the injunction was in effect, but only because of the death (also while the injunction was in effect) of one of the individuals involved. ¶15 (A-6). Thus, it was not the beneficiary change while the injunction was in effect that caused the ownership transfer that violated the injunction; rather it was the death of the accountholder while the injunction was in effect that caused the ownership transfer that violated the injunction. ¶16 (A-7). The appellate court is in error in finding the injunctive order only related to an ownership change, and not any transactions as stated in the order.

The injunctive relief order provided in part (¶3, A-2 & 3; C28, 30):

Pursuant to the parties' stipulation, all other bank accounts, credit union accounts, investment accounts (including the Scottrade account), and any other accounts, holding funds or investments of the parties *shall be closed to any transactions* and no trades, transfers,

transactions, buy orders or sell orders, withdrawals or deposits shall be made from any accounts without the written agreement of [Donald and JoAnn] or further Court order [emphasis added].

The appellate court found that Donald was prohibited from any transactions that violated the injunction while it was in effect (§15, A-6), yet inexplicably concluded that changing the beneficiary of his IRA was not in violation of the court's order. The Supreme Court holds that an injunction must be obeyed even if the injunctive order was erroneously entered. The decedent violated the injunction when he engaged in a transaction: changing the beneficiary of his IRA. The appellate court's holding conflicts because it permitted the decedent to violate the injunction. The injunctive order must be obeyed to preserve the status quo as noted by the dissent, citing *Cummins-Landau Laundry Mach. Co.* ¶21 (A-8).

The circuit court reasoned erroneously that once the dissolution was dismissed, the beneficiary change was effective even if it arguably violated the terms of the injunction when it was signed (A-13). The court stated in its Order of Dismissal of the Complaint that the injunction terminated when the Petition for Dissolution was dismissed. (A-13). The court further stated the parties terminated their dissolution by voluntary dismissal which terminated the temporary orders by operation of law and whether the action taken by Donald Smith to change beneficiaries was governed by the language of the preliminary injunction and therefore the change constituted a violation of the terms of the temporary order was not dispositive of the outcome of the

proceeding (A-13). The court stated that the change of beneficiary was voidable, not void (A-13). The appellate court agreed that a terminated injunctive order does not become void, having no legal effect, simply because of its termination. ¶12 (A-5). Both courts were in error in finding that the change of beneficiary did not violate the injunction while it was in effect. The change of beneficiary designation occurred on March 13, 2014, and violated the court's injunction (C3, para. 20; and, C34-35). The subsequent dismissal of the divorce on October 29, 2004 (C6, para. 22; and C19), did not excuse the violation of the injunctive order. The injunction must be obeyed.

The majority's opinion is further in conflict with decisions of the First District and the Second District. The dissent notes that under *Sogol* and *Ignatius*, Donald was prohibited from any transactions that violate the injunction while it was in effect. ¶21 (A-8). The majority excused the prohibited beneficiary change that Donald made on the basis that Donald's death, which triggered the ownership transfer, did not occur until after the injunction terminated. *Id.* This interpretation is at odds with the holdings in *Sogol* and *Ignatius*. The *Sogol* court held that while death terminated a dissolution action and an injunction, it did not retroactively dissolve a preliminary injunction as if it had never existed. 311 Ill. App. 3d at 159-160 (¶21, A-8). In *Ignatius*, the court found that, "[t]he validity of the court orders, and therefore any arguments respecting their validity or violation, does not end with closure of the dissolution case in which the orders were

entered....” 338 Ill. App. 3d at 661 (¶21, A-8). The legal basis for these holdings is that a court having jurisdiction must be obeyed to preserve the status quo of litigation during its pendency, citing *Cummins-Landau Laundry Mach. Co.*, 386 Ill. at 385-386 (¶21, A-8).

The dismissal of the dissolution action did no more than terminate the injunction as provided for under Section 501(d)(3) of the Illinois Marriage and Dissolution of Marriage Act. ¶22 (A-8 & 9.) In the case at bar and in *Sogol*, the preliminary injunction was in place up until the termination of the dissolution. ¶22 (A-9). The dissolution action terminated in *Sogol* because of the husband’s death. *Id.* In the case at bar the dissolution terminated because of the parties’ voluntary dismissal. *Id.* Nothing in the law requires the factual difference calling for a different result. *Id.*

The dissent further noted that the appellate court’s decision conflicted with its own holding in *Southern Illinois Medical Business Assocs. v. Camillo*, 208 Ill. App. 3d 354, 567 N.E.2d 74 (Ill. App. Ct. – 5th Dist. 1991) (¶23, A-9). The court relied on *Cummins-Landau Laundry Mach. Co.* and its progeny when it reversed the circuit court’s injunction but upheld the court’s damage award for violation of the injunction. 208 Ill. App. 3d at 366. Just as termination of an injunction does not retroactively default the injunction, the reversal of an injunction does not cause the contempt order to fail. ¶23 (A-9).

The appellate court’s effort to distinguish the cases is erroneous. It states that there was no ownership transfer of the IRA while the injunction

was in effect and no other change in the status quo with regard to ownership. ¶16 (A-7). But there was a change in the status quo because the change of beneficiary designation violated the injunction. The court improperly limited the injunctive effect of the order to a change in ownership, even though it barred all transactions. The injunctive order did not specifically refer to a beneficiary change, but it did prohibit, in very broad terms, all transactions. A transaction is an act or instance of conducting business or other dealings; something performed or carried out; and, any activity involving two or more persons. Black's Law Dictionary (10th ed. 2014).

The question presented has general importance under Illinois law. The import of the trial court's dismissal of the complaint, and the appellate court's affirmance is that a party can violate an injunctive order of the court without any consequences. The dissent stated (¶24, A-9 & 10):

Indeed, *it would encourage parties to disregard an injunctive order in the hope that the other party might not discover the violation until after the litigation terminates. Such a ruling undermines the circuit court's power and effectiveness*, as much as would allowing someone to disregard a court's order in the hope that it might be overturned on appeal. See Camillo, 208 Ill. App. 3d at 365 (citing Koplín, 386 Ill. At 385).

This case presents the need for the exercise of the Supreme Court's supervisory authority. To allow a party to violate an injunctive order undermines respect for the court system.

The appellate court's judgment was final and not interlocutory. The appellate court's decision rendered on January 31, 2018 (A-1), was a final order, affirming the circuit court's dismissal of the Complaint. The standard

of review for dismissal of the Complaint, and legal issues presented is *de novo*. *King v. First Capital Fin. Servs. Corp.*, 215 Ill. 2d 1, 828 N.E.2d 1155, 1161 (Ill. 2005).

Conclusion

The appellate court's order affirming the dismissal of Count I of the Complaint should be reversed. Judgment should be entered in favor of Plaintiff awarding her the IRA. Alternatively, the case should be remanded for proceedings consistent with the Supreme Court's order. Plaintiff requests such other and further relief as the court finds equitable and just.

Respectfully submitted:

JoAnn Smith, Individually; and, JoAnn
Smith, Administrator of the Estate of
Donald L. Smith, Deceased

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Certificate of Compliance

I, Phillip H. Hamilton, attorney for Plaintiffs-Petitioners certify that this brief conforms to the requirements of Rule 341(a) and (b). The length of the brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 10 pages.

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No. 123264

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SUPREME COURT OF ILLINOIS

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JoAnn Smith as Administrator of the)	from the Appellate Court of
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Plaintiffs-Petitioners,)	
-vs-)	There on Appeal from the Third
)	Judicial Circuit, Madison County,
The Vanguard Group, Inc.;)	Illinois, No. 15-L-679
Scott Smith; and, Jeffrey Smith,)	
)	The Honorable Barbara Crowder
Defendants-Respondents.)	Judge Presiding

Proof of Service

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

The undersigned certifies that he electronically filed Appellants' Brief and Appendix to Brief with the court on June 27, 2018. In addition, 13 paper copies of the brief were mailed to the Illinois Supreme Court in compliance with the Supreme Court of Illinois Electronic Filing Procedures and User Manual. A copy was further emailed to opposing counsel Michael J. Hertz, Esq. at mhertz@lbtddl.com; and, Eric D. Brandfonbrener, Esq. at ebrand@perkinscoie.com.

Respectfully submitted:

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NOTICE
Decision filed 01/31/18. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2018 IL App (5th) 160024-U

NO. 5-16-0024

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

JOANN SMITH, Individually and as Administrator of the	)	Appeal from the
Estate of Donald L. Smith, Deceased,	)	Circuit Court of
	)	Madison County.
Plaintiff-Appellant,)	
)	
v.	)	No. 15-L-679
)	
THE VANGUARD GROUP, INC., SCOTT SMITH, and)	
JEFFREY SMITH,)	
)	
Defendants	)	Honorable
	)	Barbara L. Crowder,
(Scott Smith and Jeffrey Smith, Defendants-Appellees).	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justice Moore concurred in the judgment.
Justice Chapman dissented.

ORDER

¶ 1 *Held:* The trial court's dismissal of the widow's declaratory judgment action seeking a declaration that her deceased husband's IRA beneficiary change while an injunction was in effect prohibiting the transfer of any accounts violated the injunction was affirmed, holding that the mere change of beneficiary while the injunction was in effect did not violate the injunction.

¶ 2 The plaintiff, JoAnn Smith (JoAnn), individually and as administrator of the estate of her deceased husband, Donald Smith (Donald), sought a ruling that Donald's beneficiary change, naming his two sons, Scott and Jeffrey, as the primary beneficiaries of his Vanguard IRA, was ineffective because it was in violation of the circuit court's injunction. She also sought a determination that she was the rightful beneficiary of the Vanguard IRA. The defendants filed a motion to dismiss JoAnn's complaint. The court entered an order dismissing the declaratory judgment action on the basis that the stipulated dismissal of the underlying dissolution of marriage petition terminated the injunction by operation of law, allowing the beneficiary change to be effective, even if it violated the injunction when made. JoAnn appeals from the court's dismissal. We affirm.

¶ 3 Donald and JoAnn were married in 1974. On August 6, 2013, Donald filed a petition for a temporary restraining order and preliminary injunction against JoAnn "to maintain the status quo." He alleged that, during his two-week hospitalization starting on July 21, 2013, JoAnn had converted and attempted to convert assets from his various accounts. The court entered an order on August 8, 2013, ordering JoAnn to return all funds to their originating accounts, irrespective of whether the funds were individually or jointly held. The injunctive relief order further provided in part:

"Pursuant to the parties' stipulation, all other bank accounts, credit union accounts, investment accounts (including the Scottrade account), and any other

¹Vanguard was initially named as a defendant in this case, in its role as custodian of the assets of Donald's Vanguard IRA. By agreement of the parties and the court, the court entered a stipulation on August 13, 2015, staying all proceedings against Vanguard.

accounts holding funds or investments of the parties shall be closed to any transactions and no trades, transfers, transactions, buy order or sell orders, withdrawals or deposits shall be made from any accounts without the written agreement of [Donald and JoAnn] or further court order."

¶ 4 On September 6, 2013, Donald filed a petition for dissolution of his marriage. The court consolidated the divorce case and the injunctive relief case on November 13, 2013. On or about March 13, 2014, while the injunction was still in effect, Donald changed the beneficiary on his Vanguard IRA from JoAnn to his sons, Scott and Jeffrey.

¶ 5 On October 29, 2014, Donald and JoAnn reconciled and reached a stipulated agreement to dismiss both the divorce and injunctive relief petitions. That order stated in part:

"All hold orders as to the financial accounts of the parties including but not limited to US Bank, Regions Bank, Shell Community Credit Union, Scottrade and MidAmerica Credit Union ordered in the above causes are dismissed and withdrawn by this order."

¶ 6 On March 30, 2015, Donald died. Shortly after his death, JoAnn learned that she would not receive the proceeds of his Vanguard IRA and that Scott and Jeffrey had been named as beneficiaries of that account.

¶ 7 JoAnn filed this action against the defendants on May 27, 2015, and asked the court to declare that she was the Vanguard IRA beneficiary. She based her argument on the fact that the beneficiary designation naming Scott and Jeffrey occurred while the

injunction was in effect. She argued that the beneficiary designation was a clear violation of the order and, thus, Donald's beneficiary designation should be declared invalid. In count I of her complaint, she sought declaratory relief and asked the court to reinstate her as the sole beneficiary of the Vanguard IRA. In count II of her complaint, she alleged that Donald committed fraud by changing the IRA beneficiary in violation of the injunction.

¶ 8 The defendants filed a combined motion to dismiss JoAnn's complaint pursuant to sections 2-615 and 2-619(a)(4), (9) of the Code (735 ILCS 5/2-615 (West 2012); 735 ILCS 5/2-619(a)(4), (9) (West 2012)). The defendants argued that the court's agreement to the stipulated dismissal essentially vacated the injunction, which eliminated any basis for JoAnn's complaint against them.

¶ 9 On September 3, 2015, the court heard the motion to dismiss. The court dismissed count II (the fraud count) pursuant to section 2-615 of the Code with leave to refile and took the motion to dismiss count I (seeking declaratory relief) under advisement. Thereafter, on October 29, 2015, the court granted the motion to dismiss count I pursuant to section 2-619 of the Code. The court found that the voluntary dismissal of the dissolution petition dismissed any related temporary orders by operation of law. The court explained that "[o]nce the dissolution was dismissed, the beneficiary change became effective even if it arguably violated the terms of the injunction when it was signed" and that "[t]he beneficiary change at a minimum is recognized as valid upon the dismissal of the dissolution." The court noted that the law did not require Donald to

execute another beneficiary form after the dissolution was dismissed. The court denied JoAnn's motion to reconsider on January 4, 2016. JoAnn appeals from these orders.

¶ 10 The standard of review for a section 2-619 (735 ILCS 5/2-619 (West 2012)) dismissal of a complaint is *de novo*. *King v. First Capital Financial Services Corp.*, 215 Ill. 2d 1, 12 (2005). A section 2-619 motion admits the legal sufficiency of the complaint but may assert affirmative matters that defeat the claim. *Id.* The issue before the court is whether dismissal is proper as a matter of law.

¶ 11 Before addressing JoAnn's argument on appeal, we will address the defendants' argument that the injunctive order became void as a matter of law upon the voluntary dismissal of the dissolution petition. This argument is contrary to settled law in Illinois. A void order is an order that was a nullity from its inception due to a lack of personal or subject matter jurisdiction. *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 27 (citing *In re Marriage of Mitchell*, 181 Ill. 2d 169, 174 (1998)). A voidable order is an order entered erroneously by a court possessing jurisdiction. *Id.* The defendants do not contend that there was a lack of jurisdiction or that the order was erroneously entered. Thus, they do not present facts that support an argument that the order was either void or voidable.

¶ 12 A terminated injunctive order does not become void, having no legal effect, simply because of its termination. The appellate court rejected a similar argument in *New York Life Insurance Co. v. Sogol*, 311 Ill. App. 3d 156, 159-60 (1999) (holding that, although the husband's death terminated both the dissolution action and the injunction, it

did not retroactively dissolve the injunction). We agree with the trial court's rejection of the defendants' arguments on these grounds.

¶ 13 We turn now to JoAnn's argument that the change of beneficiary violated the terms of the injunction. We affirm the trial court's dismissal of the declaratory judgment action because we find that there was no violation of the injunction while it was in effect.

¶ 14 JoAnn relies on *In re Marriage of Ignatius* in support of her argument. In *Ignatius*, the circuit court entered an injunction barring the parties from transferring or disposing of marital assets. *In re Marriage of Ignatius*, 338 Ill. App. 3d 652, 654 (2003). While the case was pending, the wife asked the court to modify the injunction to allow her to make estate planning decisions. *Id.* The court modified the injunction and ordered the parties to transfer all jointly-held assets into tenancy in common interests. *Id.* The wife died before a judgment of dissolution was entered and before all assets were transferred. *Id.* at 654-55. The parties' daughter intervened in the proceedings as executor of her mother's estate and asked the court to divide the marital estate in accordance with the injunction. *Id.* at 655. The court entered an order finding that the injunction survived the wife's death. *Id.* The husband asked the circuit court to dismiss the injunction. *Id.* The court denied his request. *Id.* The appellate court held that, although the circuit court lost jurisdiction in the dissolution action to enforce its prior injunction after the wife's death, it did not foreclose an independent action for enforcement. *Id.* at 658, 661.

¶ 15 We agree with JoAnn that *Sogol* and *Ignatius* support the proposition that Donald was prohibited from any transactions that violated the injunction while it was in effect.

However, those cases are distinguishable from the case before us. In both *Sogol* and *Ignatius*, which contain similarly worded injunctions to the one before us, a transfer of ownership of the accounts in question occurred as a result of the beneficiary change while the injunction was in effect, but only because of the death (also while the injunction was in effect) of one of the individuals involved. Thus, it was not the beneficiary change while the injunction was in effect that caused the ownership transfer that violated the injunction; rather, it was the death of the account holder while the injunction was in effect that caused the ownership transfer that violated the injunction.

¶ 16 Here, Donald did not die while the injunction was in effect. As we have previously noted, the voluntary dismissal of the dissolution petition was the terminating event for the injunction. Therefore, there was no ownership transfer of the Vanguard account while the injunction was in effect and no other change in the status quo with regard to ownership. As Donald still owned the Vanguard account when the injunction was terminated, there was no violation of the injunction.

¶ 17 Had the parties wished to draft their stipulation so that it prohibited a beneficiary change that did not result in a transfer of ownership while the injunction was in effect, they could have done so. They did not, and, thus, a mere beneficiary change did not violate the terms of the injunction.

¶ 18 For the foregoing reasons, we affirm the order of the circuit court dismissing the declaratory judgment action.

¶ 19 Affirmed.

¶ 20 JUSTICE CHAPMAN, dissenting:

¶ 21 I respectfully disagree with my colleagues' analysis of the applicable case law. The majority acknowledges that under *Sogol* and *Ignatius*, Donald was prohibited from any transactions that violate the injunction while it was in effect. However, my colleagues excuse the prohibited beneficiary change that Donald made on the basis that Donald's death, which triggered the ownership transfer, did not occur until after the injunction terminated. I believe this interpretation of case law is at odds with the holdings in *Sogol* and *Ignatius*, as well as other settled law in Illinois. The *Sogol* court held that while death terminated a dissolution action and an injunction, it did not retroactively dissolve a preliminary injunction, as if it had never existed. *New York Life Insurance Co. v. Sogol*, 311 Ill. App. 3d 156, 159-60 (1999). Likewise, in *Ignatius*, the court found that "The validity of the court orders, and therefore any arguments respecting their validity or violation, does not end with closure of the dissolution case in which the orders were entered." *In re Marriage of Ignatius*, 338 Ill. App. 3d 652, 661 (2003). The legal basis for these holdings is that a court having jurisdiction must be obeyed to preserve the status quo of litigation during its pendency. *Cummings-Landau Laundry Machinery Co. v. Koplín*, 386 Ill. 368, 385-86 (1944).

¶ 22 Here, the dismissal of the dissolution action did no more than terminate the injunction as provided for under section 501(d)(3) of the Illinois Marriage and

Dissolution of Marriage Act. 750 ILCS 5/501(d)(3) (West 2012). Thus, I believe that the *Sogol* court's reasoning equally applies to our case. In both our case and in *Sogol*, the preliminary injunction was in place up until the termination of the dissolution. The dissolution action terminated in *Sogol* because of the husband's death; here, the dissolution terminated because of the parties' voluntary dismissal. Nothing in the statute or the case law leads us to believe this factual difference calls for a different result.

¶ 23 In yet another case, *Southern Illinois Medical Business Associates v. Camillo*, decided by this court, the court relied on *Koplin* and its progeny when it reversed the circuit court's injunction but upheld the court's damage award for violation of the injunction. *Southern Illinois Medical Business Associates v. Camillo*, 208 Ill. App. 3d 354, 366 (1991). Just as termination of an injunction does not retroactively defeat the injunction, the reversal of an injunction does not cause the contempt order to fail. To hold otherwise would frustrate the powers of the courts to preserve the status quo during litigation.

¶ 24 For the same reason, I find the majority's rationale—that the injunction should not be enforced because Donald would have been able to change the beneficiary without legal recourse at any time after the dissolution dismissal—equally unavailing. Indeed, it would encourage parties to disregard an injunctive order in the hope that the other party might not discover the violation until after the litigation terminates. Such a ruling undermines the circuit court's power and effectiveness, as much as would allowing

someone to disregard a court's order in the hope that it might be overturned on appeal.

See *Camillo*, 208 Ill. App. 3d at 365 (citing *Koplin*, 386 Ill. at 385).

¶ 25 Based on the foregoing, I would reverse and remand for further proceedings.

THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

FILED
OCT 29 2015

JOANN SMITH, INDIVIDUALLY
And as Administrator of the Estate of
DONALD L. SMITH, Deceased

CLERK OF CIRCUIT COURT #60
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

V

15 L 679

THE VANGUARD GROUP, INC.,
SCOTT SMITH, AND JEFFREY SMITH

ORDER

This case came before the court on the Smith Defendants motion to dismiss. The court dismissed Count II with leave to amend and took the motion as to Count I under advisement to review the authorities.

Joann and Donald Smith were married at the time of his death. Count I is filed by Joann Smith regarding an IRA owned by Donald L. Smith, account No. *****4160. The claim is that Donald Smith changed the beneficiary on the IRA in violation of an order entered in 13 CH 610/13-D-811. The beneficiary was changed from Joann Smith to Scott and Jeffrey, sons of Donald Smith. Joann Smith seeks a declaratory judgment that she is the owner of the IRA.

Plaintiff moves to dismiss count I under both 735 ILCS 5/2-615 and 5/2-619(a)(4). Count I adequately states a cause of action and therefore the motion under 735 ILCS 5/2-615 is denied.

The remaining motion under 735 ILCS 5/2-619(a)(4) challenges the claim that Donald Smith's change of beneficiary was in violation of existing court orders and should therefore be deemed invalid. Donald Smith filed an action against Joann in 13-CH-61 on August 6, 2013. The parties entered into an agreed preliminary injunction requiring that funds that had been removed from the parties' accounts be restored and other issues regarding property usage, and that also provided:

"9. Pursuant to the parties' stipulation, all other bank accounts, credit union accounts, investment accounts (including the Scottrade account) and any other accounts holding funds or investments of the parties shall be closed to any transactions

and no trades, transfers, transactions, buy orders or sell orders, withdrawals or deposits shall be made from any accounts without the written agreement of both Petitioner and Respondent or further Court order."

Donald Smith filed a petition for dissolution of marriage, Madison County No. 13-D-811, on September 6. The 13 CH 610 case was consolidated into the dissolution file, providing, "By consent of the parties and in light of the substantial identity of issues in 13 CH 610 and 13 D 811 is ordered that the CH case shall be consolidated in the 13 D 811. The existing Injunctive Orders in 13 CH 610 shall remain in full force and effect as orders in 13 D 811."

A later order was issued in 13 D 811 on December 20, 2013, that modified the earlier injunction by allowing for annual transfers to be made from the Scottrade Account and the Vanguard IRA due to federal and IRS requirements for annual distributions to be made.

Donald Smith changed the beneficiary on his IRA at Vanguard from Joann to his sons Scott and Jeffrey Smith on March 13, 2014.

On October 29, 2014, the parties entered into a Stipulated Order of Dismissal listing both the 13 D 811 and 13 CH 610 case numbers that stated "the parties have reconciled and stipulate and agree that the above stated causes be dismissed and that the court enter this order of dismissal. All hold orders as to the financial accounts of the parties including but not limited US Bank, Regions Bank, Shell Community Credit Union, Scottrade and MidAmerica Credit Union ordered in the above causes are dismissed and withdrawn by this order."

Defendants maintain the October 29, 2014 order bars Count I of plaintiff's complaint. Plaintiff cites *New York Life Ins. Co. v. Sogol*, 311 Ill.App.3d 156 (1st dist. 1999). The facts were that the husband changed beneficiaries on his life insurance while a preliminary injunction was in effect. The dissolution action ended because the husband died while the case was pending. Under the IMDMA, an action is dismissed upon the death of one of the parties if a judgment dissolving the marriage has not been entered; if the marriage has been dissolved when one of the parties dies, then the court finishes the dissolution action. The *Sogol* court held that the death of the husband did not retroactively dissolve the preliminary injunction even though his death did end the dissolution action because the injunction was in effect all the way up to his death. The court therefore disallowed the beneficiary change.

The provisions of 750 ILCS 5/501(d)(3) provide that any temporary order "terminates when the Petition for Dissolution is dismissed." The general rule is that a case that has been dismissed without prejudice results in the proceedings being declared a nullity and leaves the parties in the same position as if the case had not been filed. See, *Johnson v DuPage Airport Authority*, 644 N.E. 2d 802 (2d dist. 1994); *Tierney v. Burlington Northern Railroad Company*, 608 N.E. 2d 479 (1st dist. 1993); *Chestnut v. Chestnut*, 77 Ill. 347 (1875)(a divorce that was dismissed after an order to pay temporary alimony revoked the temporary order).

Here, the parties terminated their dissolution by voluntary dismissal which terminated the temporary orders by operation of law. Whether the action taken by Donald Smith to change beneficiaries was governed by the language of the preliminary injunction and therefore the change constituted a violation of the terms of the temporary order is not dispositive of the outcome of this proceeding. Once the dissolution was dismissed, the beneficiary change became effective even if it arguably violated the terms of the injunction when it was signed. The change could at best be termed voidable, not void. The dismissal occurred. The beneficiary change at a minimum is recognized as valid upon the dismissal of the dissolution. Donald Smith was free to have named the beneficiaries of his choice (unless otherwise prohibited or other theories invalidate the elections). The law does not require him to have executed another beneficiary form after the dissolution was dismissed.

The motion to dismiss under 735 ILCS 5/2-619 is granted as to Count I.

Plaintiff to file her amended complaint (regarding Count II) as previously ordered.

The clerk is to send a copy of this order to counsel of record.

Entered: 10/29/15



 Judge

7.	Entry of Appearance of Lucco, Brown, Threlkeld & Dawson, L.L.P.	07-17-2015	C0000014
8.	Motion to Dismiss Pursuant to 735 ILCS 5/2-615 and 735 ILCS 5/2-619	07-17-2015	C0000015
9.	Notice of Appearance on behalf of Defendant The Vanguard Group, Inc.	08-04-2015	C0000020
10.	Stipulation Regarding The Vanguard Group, Inc.	08-13-2015	C0000023
11.	Response to Defendants' Motion to Dismiss (Exhibits 1-4 at C0000026-35)	08-17-2015	C0000036
12.	Corr. 8-14-15	08-17-2015	C0000044
13.	Order (resetting Motion to Dismiss)	08-21-2015	C0000045
14.	Order	09-03-2015	C0000046
15.	Order	10-29-2015	C0000047
16.	Motion to Supplement the Record; and to Reconsider	11-16-2015	C0000050
17.	Corr. 11-11-15	11-16-2015	C0000092
18.	Amended Proof of Service	11-23-2015	C0000093
19.	Corr. 11-20-15	11-23-2015	C0000094
20.	Order	12-18-2015	C0000095
21.	Defendants' Response to Plaintiff's Motion to Supplement the Record and to Reconsider	12-18-2015	C0000096
22.	Order	01-04-2016	C0000099
23.	Notice of Appeal	01-13-2016	C0000100
24.	Corr. 1-13-16	01-13-2016	C0000103

25.	Letter from Appellate court dated 1-15-16 with copy of Notice of Appeal	01-19-2016	C0000104
26.	Corr. 1-13-16	01-19-2016	C0000108
27.	Court docket	03-14-2016	C0000109



SUPREME COURT OF ILLINOIS

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May 30, 2018

In re: JoAnn Smith, Indv., etc., Appellant, v. The Vanguard Group, Inc.,
et al. (Scott Smith et al., Appellees). Appeal, Appellate Court,
Fifth District.
123264

The Supreme Court today ALLOWED the Petition for Leave to Appeal in the above
entitled cause.

We call your attention to Supreme Court Rule 315(h) concerning certain notices which
must be filed.

Very truly yours,

Carolyn Taft Gosbell

Clerk of the Supreme Court