

STATE OF MICHIGAN
COURT OF APPEALS

DOMINIC RIGGIO,

Plaintiff-Appellee,

v

SHARON RIGGIO,

Defendant-Appellee,

and

SUE E. RADULOVICH and SUE RADULOVICH,
P.C.,

Appellants.

UNPUBLISHED

May 25, 2010

No. 290221

Macomb Circuit Court

LC No. 2007-005787-DO

Before: SAAD, P.J., and HOEKSTRA and SERVITTO, JJ.

PER CURIAM.

Defendant's former attorney, Sue E. Radulovich, and her professional corporation, Sue Radulovich, P.C. (appellants), appeal by leave granted the trial court's December 22, 2008, January 20, 2009, and January 30, 2009 orders. We remand this case to the trial court for an evidentiary hearing regarding the court's subject matter jurisdiction over this action.¹

On October 3, 2007, plaintiff Dominic Riggio filed a complaint for divorce against defendant Sharon Riggio. Plaintiff alleged in the complaint that he had resided in the state of Michigan for more than 180 days immediately preceding the filing of the complaint. Radulovich represented defendant in the divorce action. On defendant's motion, the trial court directed

¹ Our remand of this case should not be interpreted as reinstating the underlying divorce action, which was dismissed by stipulation. Rather, the remand revives this action for the limited purpose of determining whether the trial court had jurisdiction over the parties' divorce action at the time it entered the orders directed toward appellants, and, if it did not, what relief appellants are entitled to. Further, we note that neither party to the divorce action itself filed responsive appellate briefs; therefore, it appears to us that appellants are the only interested parties.

Radulovich to deposit a check made payable to defendant's trust in the approximate amount of \$494,000 into a client trust fund. Plaintiff and defendant reached a settlement agreement that was placed on the record on October 28, 2008.

However, on December 15, 2008, before a judgment of divorce was finalized, Radulovich filed a motion in which she argued that the trial court lacked subject matter jurisdiction over the divorce action. According to Radulovich, in the days prior to October 28, 2008, she discovered that plaintiff had signed a declaration of domicile in Florida on April 17, 2007, less than 180 days before plaintiff filed the complaint for divorce. After plaintiff responded affirmatively at the October 28, 2008 hearing that he had resided in Michigan for 180 days immediately before filing the complaint for divorce, Radulovich questioned the ethical effect of signing a judgment of divorce that, because it included jurisdictional statements, contained a falsehood. Radulovich stated that she contacted the State Bar of Michigan for an ethics advisory opinion. In response to the advice she received, and against defendant's instructions, Radulovich informed the trial court of the jurisdictional issue. In her motion, Radulovich requested that she be allowed to withdraw from the case, the trust funds in her possession be released, but minus the \$150,000 she was owed in fees, plaintiff be sanctioned, and the case be dismissed.

At a December 22, 2008 hearing, the trial court indicated that an evidentiary hearing was necessary to resolve the jurisdictional issue. It scheduled a hearing for February 6, 2009, but agreed with plaintiff that the hearing might not be necessary if defendant withdrew the motion. The trial court granted Radulovich's motion to withdraw, and ordered Radulovich to forward any and all funds she was holding on defendant's behalf to plaintiff's counsel within 14 days.

Radulovich moved for reconsideration of the trial court's order. She argued that the court erred by failing to stay the proceedings pending a determination of whether it had jurisdiction. According to Radulovich, the trial court, pursuant to case law, was prohibited from ordering her to withdraw from the case and to transfer the trust funds in her possession without first deciding the jurisdictional question.

On January 12, 2009, plaintiff filed a motion to show cause why Radulovich should not be held in contempt for violating the trial court's December 22, 2008 order and refusing to turn over defendant's funds in her possession. The trial court entered the show cause order and directed Radulovich to appear on January 20, 2009.

Radulovich failed to appear at the January 20, 2009 hearing. The trial court entered an order adjourning the show cause hearing to January 30, 2009. The order also froze any and all of Radulovich's Comerica Bank accounts, whether personal or business accounts, reserved sanctions against Radulovich pending the January 30, 2009 hearing, and required Comerica Bank to produce account information on all accounts containing Radulovich's name or the name of her professional corporation. On January 29, 2009, the trial court denied Radulovich's motion for reconsideration.

Radulovich again failed to appear at the January 30, 2009 hearing. Following the hearing, the trial court ordered that all of defendant's funds held in Radulovich's client trust account be transferred to plaintiff's counsel's trust account and that, thereafter, the funds in the

remaining accounts containing Radulovich's name be released from court order. The trial court also assessed attorney fees in the amount of \$1,920 against Radulovich.

At the February 6, 2009 evidentiary hearing, counsel for plaintiff indicated that, because of the jurisdictional issue, plaintiff desired to voluntarily dismiss his complaint for divorce. The trial court entered a stipulated order dismissing the action without prejudice. The order specifically stated that plaintiff had filed the action in good faith, that he had met all jurisdictional requirements, and that the action was being refiled solely to ensure that the trial court was vested with jurisdiction to decide the matter.

This Court initially denied appellants' application for leave to appeal the December 22, 2008, January 20, 2009, and January 30, 2009 orders, *Riggio v Riggio*, unpublished order of the Court of Appeals, entered March 13, 2009 (Docket No. 290221), but granted the application on reconsideration, *Riggio v Riggio*, unpublished order of the Court of Appeals, entered April 24, 2009 (Docket No. 290221).

On appeal, appellants argue that the trial court erred by entering the December 22, 2008, January 20, 2009, and January 30, 2009 orders without first determining whether it had jurisdiction over the divorce action. According to appellants, once the trial court's subject matter jurisdiction was placed in question, the trial court was required to stay the proceedings until it resolved the jurisdictional dispute. We agree.

Questions involving a court's subject-matter jurisdiction may be raised at any time, even for the first time on appeal. *Midwest Energy Coop v Pub Serv Comm*, 268 Mich App 521, 523; 708 NW2d 147 (2005). Such issues are questions of law that this Court reviews de novo. *Reed v Reed*, 265 Mich App 131, 157; 693 NW2d 825 (2005).

Under MCL 552.9(1), "[a] judgment of divorce shall not be granted by a court in this state in an action for divorce unless the complainant or defendant has resided in this state for 180 days immediately preceding the filing of the complaint[.]" This residency and waiting period requirement is jurisdictional. *Stamadianos v Stamadianos*, 425 Mich 1, 7; 385 NW2d 604 (1986); *Smith v Smith*, 218 Mich App 727, 730; 555 NW2d 271 (1996). Thus, if this requirement is not met, a trial court is not authorized to grant a judgment of divorce and must dismiss the case. *Smith*, 218 Mich App at 730. "When a court lacks subject matter jurisdiction to hear and determine a claim, any action it takes, other than to dismiss the action, is void." *Bowie v Arder*, 441 Mich 23, 56; 490 NW2d 568 (1992).

We find this Court's decision in *Smith*, 218 Mich App 727 to be instructive. In *Smith*, the defendant husband moved to dismiss the divorce action based on lack of jurisdiction. Despite the defendant's repeated assertion that the trial court lacked jurisdiction, the court declined to rule on the issue and instead issued a bench warrant for the defendant's arrest for nonpayment of child support and ultimately entered a default judgment of divorce. *Id.* at 731-732. This Court held that the trial court failed to acknowledge the limits of its authority by refusing to resolve the jurisdictional issue. *Id.* at 732. This Court also recognized that the defendant's child support arrearages were based on the trial court's temporary child support orders. Regarding these orders, this Court stated that "[i]f the trial court lacked jurisdiction over this case, then it lacked authority to enforce *any* action with respect to the case, including the support orders." *Id.* (emphasis in original.) Further, this Court stated that even if neither party raised the issue, if a

jurisdictional dispute arises, “a court should, on its own motion, recognize its lack of jurisdiction by staying the proceedings, resolving the jurisdictional question, and dismissing the case if jurisdiction is lacking.” *Id.* at 731.

In this case, when apprised of the jurisdictional dispute, the trial court did not stay the proceedings to resolve the dispute. Rather, the court entered the three orders adverse to appellants at issue in this appeal and erroneously indicated that the jurisdictional issue could be resolved if defendant withdrew her motion to dismiss the case. Contrary to the trial court’s approach to the dispute, jurisdiction arises by law and cannot be conferred by waiver or stipulation of the parties where it is otherwise lacking. *Bowie*, 441 Mich at 56; *Smith*, 218 Mich App at 733. Therefore, the trial court erred by failing to stay the proceedings and resolve the jurisdictional dispute before taking further action.

Having determined that the trial court erred, we must next determine the remedy to which appellants are entitled. Appellants argue that if the trial court had stayed the proceedings and resolved the jurisdictional question, it would have concluded that it lacked jurisdiction and dismissed the case. Appellants contend that, accordingly, the three orders at issue in this appeal are void and must be vacated. Appellants necessarily assume that the trial court lacked jurisdiction over this case and ask this Court to make such an assumption as well. Without an evidentiary hearing on this issue, however, it is unclear whether the trial court lacked jurisdiction. Therefore, we conclude that the only appropriate remedy is to remand to the trial court to reinstate the case and conduct an evidentiary hearing to determine whether the court had subject matter jurisdiction over the action. If the trial court determines that it lacked subject matter jurisdiction, then the court must vacate the December 22, 2008, January 20, 2009, and January 30, 2009 orders.

Remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Henry William Saad

/s/ Joel P. Hoekstra

/s/ Deborah A. Servitto