IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
April 8, 2015 Session

IN RE: JUSTIN H.

Direct Appeal from the Circuit Court for Bedford County
No. 12062 Franklin L. Russell, Judge

No. M2013-02517-COA-R3-JV – Filed May 29, 2015

This appeal involves a child support order entered after an international adoption. The trial court found that the child's adoptive mother failed to pay child support as previously ordered by the court, and therefore, the mother was adjudged in contempt. On appeal, the mother argues that the trial court lacked subject matter jurisdiction to enter the previous order requiring her to pay child support and also lacked jurisdiction to hold her in contempt of that order. Alternatively, she argues that she did not willfully violate the court's order. Finally, the mother argues that a separate injunction entered by the trial court is also void for lack of subject matter jurisdiction and/or procedural irregularities. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed and Remanded

BRANDON O. GIBSON, J., delivered the opinion of the court, in which ARNOLD B. GOLDIN, J., and KENNY ARMSTRONG, J., joined.

Jennifer Lynn Thompson, Nashville, Tennessee, for the appellant, Torry Hansen.

Larry Lamont Crain, Brentwood, Tennessee, for the appellees, National Council for Adoption, and World Association for Children and Parents.

OPINION

I. FACTS & PROCEDURAL HISTORY

This is the second appeal in this case. *See In re Justin A.H.*, No. M2013-00292-COA-R3-CV, 2014 WL 3058439 (Tenn. Ct. App. Jun. 7, 2014) *perm. app. denied* (Tenn. Nov. 19, 2014). As we noted in the first appeal, this case has a "convoluted and complicated" procedural history. *Id.* at *1. However, the following facts are pertinent to

the issues raised in this appeal.

The child at issue in this lawsuit, Justin, was born in Russia in 2002. In 2009, Tennessee resident Torry Hansen sought to adopt Justin through Russian adoption procedures. The World Association for Children and Parents ("WACAP"), based in the State of Washington, was the adoption and placement agency that processed the adoption. As part of the adoption process, WACAP and Ms. Hansen entered into a written placement agreement, in which Ms. Hansen agreed to "remain financially responsible for all costs of care for the child" if he was removed from Ms. Hansen's home, and she agreed to "reimburse WACAP for any and all costs incurred by WACAP for the care of the child after removal from [her] home." In September 2009, Ms. Hansen officially adopted Justin in proceedings before the Primorsky Krai Court of the Russian Federation. By virtue of the adoption, Justin became a United States citizen. Ms. Hansen then returned to the United States with the child to live in Bedford County, Tennessee.

Not long after Ms. Hansen returned to Tennessee with Justin, she began experiencing behavioral difficulties with the child. In April 2010, Ms. Hansen placed the child on a one-way flight back to Russia. On the transnational flight, the child was unaccompanied and had no provisions and no luggage besides a backpack. Ms. Hansen pinned a note to the child's backpack addressed to the Ministry of Education in Moscow. The note described Justin as "mentally unstable" and asserted that Ms. Hansen was "misled by the Russian Orphanage workers and director regarding his mental stability and other issues." For those reasons, Ms. Hansen said, she no longer wanted to parent the child. In the note, Ms. Hansen indicated that she was "returning [the child] to [the Ministry of Education's] guardianship and would like the adoption disannulled [sic]." After the child was delivered to the Ministry of Education, he was placed in a Russian children's home/orphanage.

On May 11, 2010, WACAP, the adoption agency that brokered the adoption, filed this lawsuit against Ms. Hansen in the circuit court of Bedford County, alleging that the child was dependent and neglected and seeking the appointment of a guardian and a guardian ad litem for the purposes of seeking child support. The lawsuit generated widespread media attention, and Ms. Hansen in particular was vilified. On May 19, 2010, shortly after she was served with process in the circuit court lawsuit, Ms. Hansen relocated from Tennessee to an undisclosed location in California.

Because of the dependency and neglect allegation, the circuit court case was transferred to juvenile court by agreement of the parties.[1] The juvenile court ultimately

[1]While the case was pending in juvenile court, on June 7, 2011, the Russian Federation Supreme Court annulled Ms. Hansen's adoption of the child.

dismissed the case, and the case was appealed to the circuit court for *de novo* review. On appeal to circuit court, the petition was amended to add the child as a petitioner and to seek child support and damages arising out of the alleged breach of the adoption contract.[2]

Ms. Hansen filed numerous motions in the circuit court but failed to respond to discovery, failed to appear at scheduled depositions, and failed to appear at various hearings. After protracted proceedings, the trial court granted the petitioners' motion for default judgment against Ms. Hansen for failing to file an answer to the petition and failing to cooperate in discovery. The trial court subsequently conducted a hearing on damages, at which Ms. Hansen did not appear. On May 18, 2012, the trial court entered an order awarding damages to WACAP and to Justin as the third-party beneficiary of the written placement agreement between Ms. Hansen and WACAP. The trial court also found that the child, then age ten, would "remain in need of future care, maintenance and support going forward until he reaches the majority age of eighteen, or is re-adopted." Consequently, the trial court held the child to be dependent and neglected and ordered Ms. Hansen to pay $1,000 per month in ongoing child support, commencing on June 1, 2012. The trial court noted that a bank account had been established on behalf of the minor child by his legal custodian at a certain bank in Russia, and that this account had been designated by the Russian authorities as a depository for any funds recovered on behalf of the child. Ms. Hansen was ordered to remit her child support payments by mailing or delivering a check "to the Clerk of the Circuit Court of Bedford County, Tennessee, together with any applicable Clerk's fee, unless otherwise directed by this Court." Apparently, the clerk would then forward the funds to Russia.

Ms. Hansen appealed to this Court. On appeal, this Court considered three arguments raised by Ms. Hansen regarding the subject matter jurisdiction of the trial court. She claimed that the trial court lacked subject matter jurisdiction to award child

[2]Specifically, the amended petition added Justin "by and through his next friends" WACAP and Leonid Lvovich Mityaev (Mr. Mityaev's surname has been spelled various ways in the record and in the documents filed by the parties. In this opinion, we will spell his name "Mityaev," as it was spelled in the first documents filed in his name in the trial court.) "as the Legal Custodian of the minor child." According to the amended petition, Mr. Mityaev was the director of the orphanage where Justin resided after returning to Russia and the Russian official serving as the child's legal custodian. The petition stated that Mr. Mityaev "consented to serve as next friend" in seeking child support from Ms. Hansen. The petition also added as a petitioner the National Council for Adoption as the designated liaison for Mr. Mityaev. The petition asserted that Mr. Mityaev had authorized the National Council for Adoption to serve as liaison on Mr. Mityaev's behalf to seek an order requiring Ms. Hansen to pay child support. The petition described the National Council for Adoption as "the leading national adoption advocacy nonprofit," incorporated in Texas, with principal offices located in Virginia, and members throughout the United States.

support because (1) the petitioners did not have physical custody of the child, (2) the adoption had been nullified by the Russian Federation Supreme Court, and (3) the juvenile court did not have subject matter jurisdiction over a breach of contract claim. 2014 WL 3058439, at *11. Regarding the first argument, the Court of Appeals concluded that Justin was a proper party to the lawsuit and that Mr. Mityaev was the appropriate representative. *Id.* at *12. As for the second issue, the Court found that Ms. Hansen's argument regarding the annulment was a substantive defense that Ms. Hansen could have pursued in the circuit court if she had chosen to engage in the proceedings; however, it was not a basis for divesting the trial court of subject matter jurisdiction to adjudicate a claim for child support. *Id.* at *13. Finally, the Court noted that the circuit court had jurisdiction to consider the breach of contract claim. *Id.* at *13. This Court's opinion was issued on June 7, 2014.

While the appeal was pending, Ms. Hansen ceased paying child support in accordance with the May 2012 order. On February 21, 2013, the petitioners filed a petition for contempt, alleging that Ms. Hansen failed or refused to pay child support for the months of November and December 2012 and January and February 2013, and therefore she owed an arrearage of $4,000. On February 28, 2013, the trial court entered an order modifying only the manner and method of payment of Ms. Hansen's child support obligation. Commencing on March 1, 2013, Ms. Hansen was directed to mail her child support payments directly to counsel for one of the petitioners rather than to the court clerk's office. Counsel was directed to deposit the funds into his law firm's trust account and then to wire or transmit such funds to Mr. Mityaev or to the appropriate custodian or representative of the child for deposit into the trust account for the benefit of the child.

At some point, Ms. Hansen made a full or partial payment toward her child support obligation. However, on July 5, 2013, the petitioners filed another petition for contempt, alleging that Ms. Hansen was $6,000 in arrears as of July 1. The petitioners also sought an injunction enjoining and restraining Ms. Hansen from further prosecution of an action she filed in California, which, according to the petitioners, was an attempt to collaterally attack the orders of the Bedford County Circuit Court.

The trial court held a hearing on September 26, 2013, and entered a written order resolving these issues on October 15, 2013. The court found that Ms. Hansen "willfully failed or refused to abide by the orders of this Court regarding the payment of child support," and it awarded the petitioners a judgment of $8,000 for Ms. Hansen's arrearage through the month of September 2013. The trial court further found that the California lawsuit instituted by Ms. Hansen was a collateral attack on the orders of the court, and

consequently, the court enjoined Ms. Hansen from any further prosecution of that action. Ms. Hansen timely filed a notice of appeal to this Court.

II. ISSUES PRESENTED

Ms. Hansen presents the following issues, as we perceive them, for review on appeal:

> 1. Whether the circuit court lacked subject matter jurisdiction to modify the child support order in February 2013 when the interested parties left Tennessee in 2010;
>
> 2. Whether the circuit court lacked subject matter jurisdiction to enter the October 2013 order holding Ms. Hansen in contempt for nonpayment of child support;
>
> 3. Whether the circuit court lacked subject matter jurisdiction to restrain and enjoin Ms. Hansen from further prosecution of the civil action in California;
>
> 4. Whether the court erred by finding Ms. Hansen in willful violation of the court's order.

For the following reasons, we affirm the decision of the circuit court.

III. DISCUSSION

A. Subject Matter Jurisdiction to enter the February 2013 Order

First, we consider whether the Bedford County Circuit Court lacked subject matter jurisdiction to enter the February 2013 order changing the method and manner of payment of Ms. Hansen's child support obligation. As previously discussed, the trial court's original child support order was entered in May 2012 and required Ms. Hansen to pay $1,000 per month in child support commencing June 1, 2012. The order noted the bank account established on behalf of the minor child at the Russian bank but required Ms. Hansen to remit her child support payments to the clerk of the circuit court "unless otherwise directed by this Court." The February 28, 2013 order changed only the method of payment of Ms. Hansen's child support obligation, directing her to mail the checks to counsel for one of the petitioners, for forwarding to Russia, rather than to the clerk of the court. Ms. Hansen argues that the circuit court had no jurisdiction to "modify" the

original child support order in this manner, pursuant to the Uniform Interstate Family Support Act, Tenn. Code Ann. § 36-5-2001, *et seq*., because she and the child left Tennessee in 2010, and the other petitioners are out-of-state entities.

"The typical child support case on appeal to this Court involves a child and parents who are all Tennessee residents and, as such, the subject matter jurisdiction of a Tennessee court to enter a child support order is not an issue." *Torrico v. Smithson*, No. M2004-01924-COA-R3-JV, 2006 WL 334032, at *3 (Tenn. Ct. App. Feb. 13, 2006). When interstate jurisdictional questions arise, the Uniform Interstate Family Support Act ("UIFSA") "controls the establishment, enforcement, or modification of support orders across state lines." *LeTellier v. LeTellier*, 40 S.W.3d 490, 493 (Tenn. 2001). The UIFSA has been adopted in all fifty states, 90 A.L.R.5th 1, and is codified at Tenn. Code Ann. § 36-5-2001, *et seq.* The UIFSA "is intended to 'recognize that only one valid support order may be effective at any one time.'"[3] *LeTellier*, 40 S.W.3d at 493 (quoting Unif. Interstate Family Support Act, U.L.A. (1996) (prefatory notes)). It was "designed to establish uniform national standards for the initial entry, enforcement, and modification of [] support orders and to eliminate those difficult situations where different states claim the authority to issue contradictory orders" after a party to a domestic dispute moves from one state to another. *Butler v. Butler*, No. M2011-01341-COA-R3-CV, 2012 WL 4762105, at *3 (Tenn. Ct. App. Oct. 5, 2012) (citing *Staats v. McKinnon*, 206 S.W.3d 532, 544 (Tenn. Ct. App. 2006)).

"The UIFSA is a complex statute, but it is designed to prevent the occurrence of competing multistate support orders; thus, the ability of one state to modify the prior order of another is extremely limited." *State ex rel. Strickland v. Copley*, No. W2007-01839-COA-R3-CV, 2008 WL 3875425, at *4 (Tenn. Ct. App. 2008). "Key to promoting UIFSA's intent is the concept of 'continuing exclusive jurisdiction.'" *LeTellier*, 40 S.W.3d at 493. A state that issues a child support order has continuing exclusive jurisdiction over that order until certain narrowly defined circumstances occur, and no other state may modify the order as long as the issuing state has continuing exclusive jurisdiction. *Id.*

A court has continuing exclusive jurisdiction over a child support order "[a]s long as this state remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued," or until all of the parties file written consents with the tribunal of this state allowing a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction. Tenn. Code Ann. § 36-5-2205(a)(1). In other words,

[3]An amended version of UIFSA, enacted by chapter 901 of the 2010 Tennessee Public Acts, has not yet taken effect.

> As long as one of the individual parties or the child continues to reside in the issuing state, and as long as the parties do not agree to the contrary, the issuing tribunal has continuing, exclusive jurisdiction over its order--which in practical terms means that it may modify its order. . . .
>
> The other side of the coin follows logically. Just as Subsection (a)(1) defines the retention of continuing, exclusive jurisdiction, by clear implication the subsection also defines how jurisdiction to modify may be lost. That is, if all the relevant persons--the obligor, the individual obligee, and the child--have permanently left the issuing state, the issuing state no longer has an appropriate nexus with the parties or child to justify exercise of jurisdiction to modify. Further, the issuing tribunal has no current information about the factual circumstances of anyone involved, and the taxpayers of that state have no reason to expend public funds on the process.

Tenn. Code Ann. § 36-5-2205 cmt.[4]

Applying these principles to the case at bar, the Bedford County Circuit Court no longer had continuing exclusive jurisdiction to modify its initial child support order in 2013, because Ms. Hansen and Justin had permanently left Tennessee. *See Earls v. Mendoza*, No. W2010-01878-COA-R3-CV, 2011 WL 3481007, at *12 (Tenn. Ct. App. Aug. 10, 2011) ("once the parents and their minor children have left the issuing state, that state no longer has jurisdiction to modify its order"). However, this does not mean that the Tennessee trial court was without jurisdiction to enter any order pertaining to child support, as Ms. Hansen suggests. Even if the issuing state loses continuing exclusive jurisdiction and the power to modify its child support order, "the original order of the issuing tribunal remains valid and enforceable." Tenn. Code Ann. § 36-5-2205 cmt. "The original order remains in effect until it is properly modified in accordance with the narrow terms of [UIFSA]." *Id.*

The circuit court's February 28, 2013 order changed only the method of payment of Ms. Hansen's child support obligation, directing her to mail her checks to opposing counsel rather than to the circuit court clerk. Ms. Hansen argues on appeal that this constituted an impermissible "modification" of the original child support order. She argues that an issuing state cannot alter a child support order "in any way" once all parties have left the state. We respectfully disagree. *See, e.g.*, *Vaile v. Porsboll*, 268 P.3d 1272, 1275 (Nev. 2012) (recognizing that a court lacking jurisdiction to modify its

[4]Courts give "substantial deference" to the "Comments to Official Text" contained throughout UIFSA. *LeTellier*, 40 S.W.3d at 493 n.2. Although the official comments are not binding, they "'are very persuasive in interpreting the statute to which they apply.'" *Id.* (quoting *Smith v. First Union Nat'l Bank*, 958 S.W.2d 113, 116 (Tenn. Ct. App. 1997)).

child support order under UIFSA may nevertheless enter an order clarifying the child support order "for the purpose of enforcement"); *see also In re Marriage of Hartman*, 305 Ill.App.3d 338, 344, 712 N.E.2d 367, 372 (Ill. Ct. App. 1999) (concluding that a later order addressing child support constituted a permissible attempt to *enforce* an existing obligation, rather than an improper *modification* of the underlying order); *Kendall v. Kendall*, 340 S.W.3d 483, 510 (Tex. Ct. App. 2011) (same).

The UIFSA does not define "modification." However, where UIFSA is silent, the Full Faith and Credit for Child Support Orders Act "FFCCSOA", 28 U.S.C. § 1738B, "'may help fill any gaps.'" *Cohen v. Cohen*, 470 Mass. 708, 716-717, 25 N.E.3d 840, 847 (Mass. 2015) (quoting *Spencer v. Spencer*, 10 N.Y.3d 60, 66, 853 N.Y.S.2d 274, 882 N.E.2d 886 (2008)). Section 1738B(b) of the FFCCSOA defines "modification" as "a change in a child support order that affects the amount, scope, or duration of the order and modifies, replaces, supersedes, or otherwise is made subsequent to the child support order." Other courts have applied this definition in order to determine whether a child support order has been "modified" for purposes of the UIFSA. *See, e.g.*, *State ex rel. Children, Youth & Families Dep't v. Andree G.*, 143 N.M. 195, 202-203, 174 P.3d 531, 538-539 (N.M. Ct. App. 2007).

In *Hamilton v. Hamilton*, 914 N.E.2d 747, 749 (Ind. 2009), the Supreme Court of Indiana was asked to decide whether an Indiana trial court impermissibly modified a Florida child support order in violation of the UIFSA. The original Florida order was registered for enforcement in Indiana pursuant to the UIFSA, but the Florida court maintained continuing exclusive jurisdiction to modify the order because one of the parties still resided there. *Id.* The Florida order required the father to pay $1,473 in monthly child support. *Id.* The Indiana trial court issued a series of orders acknowledging the father's obligation and arrearages but ultimately permitting him to avoid incarceration if he paid $150 per week through a wage assignment. *Id.* at 753. The Supreme Court of Indiana framed the issue as "whether the trial court's orders constituted valid enforcement or impermissible modification of the original Florida support judgment." *Id.* Recognizing that the UIFSA does not define "modification," the court looked to the definition provided by the FFCCSOA, which requires a change in a child support order that affects "'the amount, scope, or duration'" of the order. *Id.* (quoting 28 U.S.C. § 1738B(b)). The court distinguished child support modifications from mere "[e]nforcement measures," meaning practices "regarding the time, manner, and mechanisms for enforcing judgments." *Id.* at 752.

Applying these principles, the Supreme Court of Indiana concluded that the Indiana trial court's orders requiring the father to pay $150 per month to avoid incarceration were "valid enforcement mechanisms" rather than modifications, as arrearages continued to accrue in accordance with the Florida order. *Id.* at 753. The trial

court gave full faith and credit to the Florida support order and did not alter "the amount, scope, or duration" of the father's monthly obligation of $1,473. *Id.* (citing 28 U.S.C. § 1738B(b)). The court explained that the Indiana trial court had discretion to specify "the manner of compliance" with the original support order, "and to fashion a remedy that would most effectively compel payment." *Id.* As such, the orders of the Indiana trial court were consistent with UIFSA. *Id.* at 754.

The Supreme Court of Massachusetts recently applied the same definition of "modification" found in the FFCCSOA in order to determine whether a child support order was impermissibly modified in violation of the UIFSA. In *Cohen v. Cohen*, 25 N.E.3d at 842 (Mass. 2015), the court concluded that a "modification" did occur because the later order required the obligor to pay child support for a period beyond that established by the original order and for educational costs and uninsured medical expenses that were not addressed in the original order. *Id.* at 847-48. These changes clearly "affected the amount, scope, and duration of support" and were impermissible where the trial court lacked jurisdiction to modify the original decree. *Id.* at 847.

The Supreme Court of New York used the same rationale in *Reis v. Zimmer*, 263 A.D.2d 136, 140-141, 700 N.Y.S.2d 609, 612-613 (N.Y.A.D. 4 Dept. 1999). In that case, a New York court acquired jurisdiction to enforce a Massachusetts child support order but not to modify it. *Id.* at 143. The New York court entered an order that allowed the father to cease sending child support payments to his wife and to instead deposit the funds in an account for his own use in order to pay for his transportation costs and related expenses in connection with his visits with his children. *Id.* at 140. The father claimed that this did not constitute a "modification" of the original order because the total amount of his obligation remained the same. *Id.* at 141. The Supreme Court disagreed. The court construed the UIFSA "in conjunction" with the FFCCSOA and applied its definition of a modification as a change affecting "'the amount, scope, or duration of the order.'" *Id.* (quoting 28 U.S.C. § 1738B(b)). The court concluded that the lower court's order allowing diversion of the child support payments to the special account for father's own benefit did in fact "modify" the father's existing child support obligation. *Id.*

We likewise find it appropriate to apply the FFCCSOA's definition of "modification" to "fill the gap" where the UIFSA does not define the term. The Tennessee Supreme Court has observed that the FFCCSOA was intended to be "consistent with UIFSA" and "follow the contours of UIFSA." *LeTellier*, 40 S.W.3d at 497-98. The two Acts "were intended to work together without conflict." *Id.* at 498-99 (construing provisions of the FFCCSOA "in harmony with UIFSA to the greatest extent possible").

Applying the definition found in the FFCCSOA, we conclude that the trial court

did not impermissibly "modify" the original child support order by changing only the intermediary designated to receive Ms. Hansen's child support payment. The original order required Ms. Hansen to pay $1,000 per month to the circuit court clerk, who would apparently send the payment to the designated account in Russia. Regardless of whether the Tennessee trial court maintained continuing exclusive jurisdiction to modify this child support order, it "remain[ed] valid and enforceable."[5] Tenn. Code Ann. § 36-5-2205 cmt. In other words, "the Tennessee trial court retained jurisdiction to enforce its initial child support order." *Earls*, 2011 WL 3481007, at *13. Pursuant to the February 2013 order, Ms. Hansen was required to pay the same amount -- $1,000 per month -- by mailing the payment to opposing counsel for forwarding to Russia. This order did not affect "the amount, scope, or duration" of the existing child support order, 28 U.S.C. § 1738B(b), so as to qualify as a modification of the order. Instead, this minor alteration constituted an enforcement mechanism, specifying the manner of compliance with the original support order in a way that would most effectively achieve payment for the ultimate beneficiary in Russia.[6] Therefore, we reject Ms. Hansen's argument that the trial court lacked subject matter jurisdiction to enter its February 2013 order regarding the child support obligation.

B. Subject Matter Jurisdiction to enter the October 2013 Order

Ms. Hansen's next issue is whether the trial court possessed subject matter jurisdiction to enter the order finding her in contempt in October 2013. She bases this argument on her previous assertion that the court lacked jurisdiction to enter its February 2013 order, simply stating that if the court lacked jurisdiction to enter the February order, "[i]t follows that the trial court below was also without jurisdiction to modify child support when it entered the order October 15, 2013." She asserts that both orders "purport to modify the child support." For the reasons already discussed, we disagree. Neither the February order nor the October order affected the amount, scope, or duration of the original child support order. Like the February order, the October order simply enforced Ms. Hansen's child support obligation. The October order found Ms. Hansen "willfully failed or refused to abide by the orders of this Court regarding the payment of child support." The trial court possessed subject matter jurisdiction to enforce its orders pursuant to the UIFSA. The loss of continuing exclusive jurisdiction does not deprive a tribunal of the power to enforce arrearages that have accrued during the existence of a valid order. Tenn. Code Ann. § 36-5-2205 cmt.

[5]"[I]f only one child support order exists, it is to be denominated the controlling order, irrespective of when and where it was issued and whether any of the individual parties or the child continue to reside in the issuing state." Tenn. Code Ann. § 36-5-2207 cmt.

[6]Counsel for Ms. Hansen stated at oral argument before this Court that the February 2013 order was entered because the clerk's office encountered difficulty having currency converted.

C. The California Litigation

Next, Ms. Hansen argues that the Bedford County Circuit Court lacked jurisdiction to restrain and enjoin her from further prosecution of the lawsuit she filed in California. She alleges that the temporary injunction proceeding was flawed in several respects, based on the request for injunction being joined with a petition for contempt, the alleged lack of a hearing on a permanent injunction, the alleged failure to file a surety bond, and issues regarding the endorsement and filing of the injunction.[7] The trial court's order specifically enjoined Ms. Hansen "from any further prosecution of the civil action *Torry A. Hansen v. L.L. Mitayev*, et al., Docket No. 174595 in the Superior Court of Shasta County, California." However, the particular lawsuit addressed by the injunction was dismissed by the Superior Court of Shasta County, California. As a result, the arguments raised on appeal by Ms. Hansen regarding the procedural defects in the injunction are now moot.

"The doctrine of justiciability prompts courts to stay their hand in cases that do not involve a genuine and existing controversy requiring the present adjudication of present rights." *McIntyre v. Traughber*, 884 S.W.2d 134, 137 (Tenn. Ct. App. 1994) (citing *State ex rel. Lewis v. State*, 208 Tenn. 534, 537, 347 S.W.2d 47, 48 (1961); *Dockery v. Dockery*, 559 S.W.2d 952, 954 (Tenn. Ct. App. 1977)). "A case must remain justiciable (remain a legal controversy) from the time it is filed until the moment of final appellate disposition." *Norma Faye Pyles Lynch Family Purpose LLC v. Putnam County*, 301 S.W.3d 196, 203-204 (Tenn. 2009) (citing *State v. Ely*, 48 S.W.3d 710, 716 n.3 (Tenn. 2001); *Alliance for Native Am. Indian Rights, Inc. v. Nicely*, 182 S.W.3d 333, 338 (Tenn. Ct. App. 2005); 1 Ronald D. Rotunda & John E. Nowak, *Treatise on Constitutional Law* § 2.13(c)(ii), at 261 (4th ed. 2007)). "A moot case is one that has lost its justiciability because it no longer involves a present, ongoing controversy." *Nicely*, 182 S.W.3d at 338 (citing *McCanless v. Klein*, 182 Tenn. 631, 637, 188 S.W.2d 745, 747 (1945); *County of*

[7]Ms. Hansen framed her issue regarding the injunction in terms of "subject matter jurisdiction," but her specific arguments are based on various alleged procedural deficiencies with regard to the entry of the injunction. Nonetheless, we have considered the issue of subject matter jurisdiction and determined that the circuit court did possess jurisdiction to enter an injunction in this case. Pursuant to Tennessee Code Annotated section 16-10-111, "a circuit court may hear and determine a suit of an equitable nature 'upon the principles of a court of equity, with power to order and take all proper accounts, and otherwise to perform the functions of a chancery court.'" *Clinton Books, Inc. v. City of Memphis*, 197 S.W.3d 749, 753 (Tenn. 2006) (involving a request for injunctive relief filed in circuit court). When the petitioners sought an injunction in the Bedford County Circuit Court, they were requesting that the circuit court act as a court of equity. *See id.* As such, the circuit court had subject matter jurisdiction to enter an injunction. *See also* Tenn. Code Ann. § 17-1-204(a) ("The judges and chancellors shall have interchangeable and concurrent jurisdiction to grant injunctions, attachments and all other extraordinary process, issuable out of, and returnable to, any of the circuit or chancery courts of this state.")

Shelby v. McWherter, 936 S.W.2d 923, 931 (Tenn. Ct. App. 1996)). A case may lose its justiciability "either by court decision, acts of the parties, or some other reason occurring after commencement of the case." *Putnam County*, 301 S.W.3d at 204. A case will be considered moot if it "does not involve a genuine, continuing controversy requiring the adjudication of presently existing rights," such that it would serve "as a means to provide some sort of judicial relief to the prevailing party." *Nicely*, 182 S.W.3d at 338. "Where a case on appeal is determined to be moot and does not fit into one of the recognized exceptions to the mootness doctrine,[8] the appellate court will ordinarily vacate the judgment below and remand the case to the trial court with directions that it be dismissed." *Id.* at 339 (citing *Ford Consumer Fin. Co. v. Clay*, 984 S.W.2d 615, 617 (Tenn. Ct. App. 1998); *McIntyre*, 884 S.W.2d at 138).

The issues surrounding the trial court's injunction are now moot. The trial court's order enjoined Ms. Hansen from any further prosecution of one particular lawsuit, and that lawsuit was dismissed for reasons unrelated to the trial court's injunction. Therefore, no "genuine, continuing controversy" exists requiring this Court to adjudicate "presently existing rights." *See Nicely*, 182 S.W.3d at 338. The injunction is therefore vacated, and the case is remanded with directions for the trial court to dismiss the petitioners' request for an injunction.

D. Willful Contempt

Finally, Ms. Hansen argues that the trial court erred in finding that she willfully failed or refused to comply with the court's orders regarding the payment of child support. The trial court found that Ms. Hansen was $8,000 in arrears as of September 2013 and that her failure to pay was in fact willful. "With respect to a trial court's findings of civil contempt, the factual issues of whether a party violated an order and whether a particular violation was willful, are reviewed de novo, with a presumption of correctness afforded the trial court's findings." *Lovlace v. Copley*, 418 S.W.3d 1, 17 (Tenn. 2013). In this case, our ability to review the factual support for the trial court's findings is hampered by the fact that the record before us does not contain a transcript of

[8] Courts have recognized several circumstances that provide a basis for declining to invoke the mootness doctrine, including:

> (1) when the issue is of great public importance or affects the administration of justice, (2) when the challenged conduct is capable of repetition and of such short duration that it will evade judicial review, (3) when the primary subject of the dispute has become moot but collateral consequences to one of the parties remain, and (4) when the defendant voluntarily stops engaging in the challenged conduct.

Putnam County, 301 S.W.3d at 204. None of the exceptions is implicated here.

the contempt hearing or a statement of the evidence prepared in accordance with Tennessee Rule of Appellate Procedure 24(c). The appellant has a duty to prepare a record that conveys a fair, accurate, and complete account of what transpired in the trial court regarding the issues that form the basis of his or her appeal. *In re M.L.D.*, 182 S.W.3d 890, 894 (Tenn. Ct. App. 2005). "Absent the necessary relevant material in the record an appellate court cannot consider the merits of an issue." *State v. Ballard*, 855 S.W.2d 557, 561 (Tenn. 1993). "It is well settled that, in the absence of a transcript or statement of the evidence, there is a conclusive presumption that there was sufficient evidence before the trial court to support its judgment, and this Court must therefore affirm the judgment." *Outdoor Mgmt., LLC v. Thomas*, 249 S.W.3d 368, 377 (Tenn. Ct. App. 2007) (citing *McKinney v. Educator & Executive Insurers, Inc.*, 569 S.W.2d 829, 832 (Tenn. Ct. App. 1977)). Therefore, we may only reverse the trial court's decision if we find, based on the "technical" record before us, that the trial court committed an error of law. *In re M.R.*, No. M2007-02532-COA-R3-JV, 2008 WL 2331030, at *3 (Tenn. Ct. App. W.S. Jun. 3, 2008) (citing *In re Conservatorship of Chadwick*, No. E2006-02544-COA-R3-CV, 2008 WL 803133, at *2 (Tenn. Ct. App. Mar. 27, 2008)).

The trial court found that Ms. Hansen was $8,000 in arrears as of September 2013. Therefore, it appears that she was current in her child support obligation only through January 2013. The record on appeal does contain an affidavit from the court clerk's office indicating that the clerk received checks in February and April 2013 from Ms. Hansen's mother. The checks contained lengthy diatribes covering the front and back of the checks, alleging that the child support order was obtained by fraud, illegal and void. The clerk forwarded the first check to counsel for the petitioners but returned the second check to Ms. Hansen's mother. The clerk's letters instructed her to reissue a check without lengthy writings that could cause delays in processing and also noted that the February 2013 order required child support checks to be mailed to counsel for the petitioners rather than the court clerk. According to the clerk's affidavit, she did not receive any more checks from Ms. Hansen. This limited evidence does not lead us to conclude that the trial court erred in finding that Ms. Hansen willfully violated the court's orders regarding the payment of child support.

IV. CONCLUSION

For the aforementioned reasons, the decision of the chancery court is hereby affirmed and remanded for further proceedings. Costs of this appeal are taxed to the appellant, Torry Hansen, and her surety, for which execution may issue if necessary.

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BRANDON O. GIBSON, JUDGE