THE ILLINOIS ASSOCIATION OF DEFENSE TRIAL COUNSEL
IDC QUARTERLY

Appellate Practice Corner

Scott L. Howie
Pretzel & Stouffer, Chartered, Chicago

Yakich v. Aulds: Supreme Court Finds Order Not Just Erroneous But Invalid

As the highest court in the state judicial system, the Illinois Supreme Court has the final say on matters of state law. Even when societal changes suggest a reason to reexamine the supreme court's decisions, that court alone has the authority to overrule or modify its precedents. That authority derives from the principle of *stare decisis* and the supreme court's role as the ultimate arbiter of state law.

This edition of the Appellate Practice Corner examines *Yakich v. Aulds*, 2019 IL 123667, in which the court asserted that authority in the context of a direct appeal under Illinois Supreme Court Rule 302—and held that an order of the trial court that disregarded the supreme court's precedent did not permit an appeal under that rule, despite satisfying the technical requirements of the rule.

Trial Court Declines to Follow Supreme Court Precedent . . .

Yakich was before the supreme court on a direct appeal under Rule 302(a)(1) after the trial court held that section 513 of the Illinois Marriage and Dissolution of Marriage Act (Act), 750 ILCS 5/513(a), violated the Equal Protection Clause of the United States Constitution. *Yakich*, 2019 IL 123667, ¶ 3. The opposing parties were the parents of a daughter and had never been married to each other. Many years earlier they had agreed upon various matters concerning their daughter, as reflected in an agreed order, but the order was silent on their obligations to contribute to her college expenses. *Id.* The mother filed a contribution action under section 513 of the Act, seeking to require the father to pay an equitable share of their daughter's anticipated college costs. *Id.* The father objected, complaining that he had not been involved in the college-selection process. *Id.*

The trial court initially suggested that section 513 raised a potential equal protection issue. In the court's view, married people have leverage over where their children go to college because they are not obligated to pay for their children's education, while section 513 deprives unmarried parents of that leverage by imposing such an obligation on them—a distinction the trial court regarded as unfair. *Id.* ¶ 4. Nonetheless, the court ordered each parent to pay 40 percent of their daughter's college expenses, with the daughter herself to bear the remaining 20 percent. *Id.*

The father challenged that order, echoing the court's suggestion that section 513 violated the Equal Protection Clause. *Id.* ¶ 5. The Illinois Supreme Court had upheld that section against a similar as-applied challenge nearly 40 years earlier. *Id.* (citing *Kujawinski v. Kujawinski*, 71 Ill. 2d 563 (1978)). In *Yakich*, the father argued that *Kujawinski* "no longer applied due to changes in family structures, including an increase in the number of divorced and never-married parents." *Id.*

The trial court observed that other states had struck down similar parental-contribution laws on this basis on equal-protection grounds. *Id.* ¶ 7; *see also id.* ¶ 12 (citing *Curtis v. Kline*, 666 A.2d 265 (Pa. 1995)). It acknowledged that

Kujawinski rejected this reasoning because the supreme court previously found a rational basis for treating unmarried parents differently; their children "faced more disadvantages and were less likely to receive financial help with college from their parents than children of married parents[.]" *Id.* ¶ 7. But the trial court pronounced this rationale "no longer tenable," and held that section 513 violated the father's right to equal protection and was unconstitutional as applied. *Id.* ¶¶ 7, 12. The trial court vacated its prior order requiring him to pay a share of his daughter's college expenses. *Id.* The mother appealed this order directly to the supreme court under Rule 302(a)(1). *Id.* ¶ 8.

. . . and Supreme Court Finds Trial Court's Order Invalid

The supreme court, however, refused to consider the order on its merits—or even to issue a decision squarely affirming or reversing the order. Because the trial court had not followed *Kujawinski*, the supreme court held, its order was not valid and could not be appealed under the rule. *Id.* ¶ 15. Accordingly, the supreme court vacated the trial court's order, dismissed the appeal, and remanded the case to the trial court for further proceedings. *Id.*

Judging from the supreme court's description of the trial court's order, it appears to have satisfied the plain language of Rule 302(a)(1) allowing a direct appeal to the supreme court. As the rule requires, in that order "a statute of the United States or of this state [had] been held invalid[.]" *See* Ill. S. Ct. R. 302(a)(1). But *Yakich* introduced an important qualifier into the understanding of that rule, allowing a direct appeal only when there is a "valid judgment" pending before the supreme court. *Yakich*, 2019 IL 123667, ¶ 15. *Yakich* held that an order is not valid, and therefore does not permit a direct appeal under that rule, if it purports to overrule supreme court precedent. *Id.* The court expressly rejected the proposition that a lower court may treat such precedent as outdated or obsolete:

> Regardless of the impact of any societal evolution that may have occurred since we issued our decision in *Kujawinski*, that holding remains directly on point here, and the trial court committed serious error by not applying it. Our circuit and appellate courts are bound to apply this court's precedent to the facts of the case before them under the fundamental principle of *stare decisis*. "When this court 'has declared the law on any point, *it alone can overrule and modify its previous opinion*, and the lower judicial tribunals are bound by such decision and it is the duty of such lower tribunals to follow such decision in similar cases.' "

Id. ¶ 13 (quoting *Blumenthal v. Brewer*, 2016 IL 118781, ¶ 61) (quoting *Price v. Phillip Morris, Inc.*, 2015 IL 117687, ¶ 38) (emphasis in original)).

The supreme court did not reverse the trial court's order in *Yakich*; instead, it vacated the order and remanded the case for further proceedings. *Id.* ¶ 15. Strictly speaking, it did not find the trial court's ruling to be legally wrong; it found the ruling invalid because it purported to overrule supreme court precedent and therefore was not within the trial court's power. *Id.*

Indeed, without a valid judgment, the supreme court seems to have questioned its own jurisdiction to address the merits under Rule 302(a)(1). Though it did not expressly mention jurisdiction, the court concluded that because there was no valid judgment before it, "we must necessarily dismiss this appeal and remand the cause to the circuit court for further proceedings." *Id.* (citing *People v. Bingham*, 2018 IL 122008, ¶ 25).

In emphasizing the role of *stare decisis*, *Yakich* underscores the obligation of lower courts—including the appellate court—to apply supreme court precedent faithfully. It is for the supreme court alone to determine if its precedent has

become outdated or should no longer be the law. This stricture should not preclude a lower court from distinguishing a supreme court decision; similarly, there may be other reasons to reach a conclusion that differs from what an otherwise relevant supreme court decision might suggest. But when such a decision is on point, a lower court may not take it upon itself to disregard that decision, even if the court believes there are legitimate reasons for doing so—or even if it believes the supreme court might do so itself.

A Road Map for Challenging Supreme Court Precedent

Indeed, it is possible that the trial court in *Yakich* meant to give the supreme court an opportunity to reexamine its reasoning in *Kujawinski* and to determine if that decision should remain the law of Illinois. The supreme court's decision in *Yakich*, however, makes it clear that this was not the way to do so. Indeed, in observing that that the trial court was "free to question the continuing vitality of *Kujawinski*" so long as it did not "declare that precedent a dead letter," the supreme court hinted at a more appropriate process. *See id.* ¶ 13.

Had the trial court followed *Kujawinski*, an appeal could have taken a typical route—beginning with the appellate court, which presumably would have followed *Kujawinski* as well, and then a petition for leave to appeal to the supreme court, where the father could have argued that *Kujawinski* was ripe for reconsideration in the court that decided it. In addition to respecting the supreme court's precedent, this procedure would have enabled that court to determine whether to accept the case for review at all, and it would have given the court a proper chance to determine if *Kujawinski* should be overruled or modified.

A *caveat*: While the principle of *stare decisis* would preclude the trial and appellate courts from disregarding supreme court precedent, an attempt to challenge the "continuing vitality" of such a precedent in the supreme court would presumably require a litigant to preserve the issue in the lower courts—and thus to raise the corresponding arguments in those courts, despite every expectation that those courts will be obligated to reject them.

Is the Order Invalid, or Just Erroneous?

An interpretation of Rule 302(a)(1) that gives effect only to "valid" orders raises some interesting practical concerns. In *Yakich* the trial court was candid about departing from precedent, and there seems to have been no dispute that it deliberately chose not to follow *Kujawinski*. But a court's treatment of precedent is not always so clear. It is not uncommon for opposing sides to disagree about whether a ruling expands upon supreme court precedent or flouts it. Likewise, a party may argue that a lower court has misunderstood governing precedent, or that the supreme court itself has effectively overruled a precedent *sub silentio*. On some issues there may be controlling federal decisions, including those of the United States Supreme Court, that affect the interpretation of Illinois Supreme Court precedent.

When the validity of a state or federal statute is in dispute, the availability of a direct appeal under Rule 302(a)(1) may depend on these distinctions, which may require a determination of whether a lower court has entered an erroneous order to be reversed or an invalid one to be vacated.

THE ILLINOIS ASSOCIATION OF DEFENSE TRIAL COUNSEL
IDC QUARTERLY

Conclusion

While the trial court in *Yakich* erred in failing to follow *Kujawinski*, its ruling was based on a seemingly legitimate challenge to a 40-year-old holding that predated significant changes in social conditions related to the matter in dispute. *Yakich* asserted the principle of *stare decisis* and the supreme court's own authority, but it pointedly expressed no opinion as to the merits of the parties' constitutional arguments. *Id.* ¶ 15. As a consequence, *Yakich* should be understood as reinforcing the correct procedure for reviving such challenges—or any challenge to the validity of a statute—in the context of unfavorable precedents.

About the Author

Scott L. Howie is a partner at *Pretzel & Stouffer, Chartered*, in Chicago, specializing in post-trial and appellate practice in the state and federal courts. He received his undergraduate degree from Northwestern University in 1989 and his law degree from Chicago-Kent College of Law in 1994. Mr. Howie is a member and past director of the Illinois Appellate Lawyers Association, where he co-chairs the Moot Court Committee.

About the IDC

The Illinois Association Defense Trial Counsel (IDC) is the premier association of attorneys in Illinois who devote a substantial portion their practice to the representation of business, corporate, insurance, professional and other individual defendants in civil litigation. For more information on the IDC, visit us on the web at www.iadtc.org or contact us at PO Box 588, Rochester, IL 62563-0588, 217-498-2649, 800-232-0169, idc@iadtc.org.