

2017 IL App (1st) 161493-U

No. 1-16-1493

Order filed July 14, 2017

Fifth Division

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

<i>In re</i> MARRIAGE OF)	
)	Appeal from the
WIDO A. CANALES,)	Circuit Court of
)	Cook County.
Petitioner-Appellee,)	
)	No. 10 D 8327
and)	
)	Honorable
ELVIA CANALES,)	Raul Vega,
)	Judge, presiding.
Respondent-Appellant.)	

PRESIDING JUSTICE GORDON delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

ORDER

- ¶ 1 *Held:* This appeal must be dismissed when the notice of appeal was filed more than 30 days after the entry of the judgment appealed from.
- ¶ 2 Respondent Elvia Canales appeals *pro se* from the trial court's September 4, 2013, order granting petitioner Wido Canales temporary custody of their son, and temporarily suspending her visitation privileges. On appeal, respondent contends, *inter alia*, that the trial court was

prejudiced against her and refused to either speak to her in Spanish or appoint an interpreter. We dismiss.

¶ 3 Although the record on appeal does not contain a transcript or report of the proceedings, the following facts can be gleaned from the common law record.

¶ 4 Petitioner and respondent were married in 2002, and subsequently had two children together. Melanie was born in 2003, and Wido, Jr., was born in 2004.

¶ 5 Petitioner filed a petition for dissolution of marriage in August 2010. The record reveals that a trial was held on November 12, 2012, and March 26, 2013. In May 2013, the trial court entered a judgment for dissolution of marriage and final custody judgment (the judgment). In pertinent part, the judgment awarded sole custody of Melanie to petitioner and sole custody of Wido, Jr., to respondent.

¶ 6 On September 4, 2013, following a hearing, the trial court entered an order finding that respondent had “exercised her visitation rights in a manner that is harmful to the children and the children’s custodian” and that visits between respondent and “the minor children would endanger seriously the children’s mental and emotional health.” Therefore, the trial court awarded temporary custody of Wido, Jr., to petitioner and “temporarily suspended and reserved until further order of Court” all visitation. On April 10, 2015, the trial court entered a judgment after trial awarding custody of Wido, Jr., to petitioner and suspending visitation between respondent and the children “until further order of Court.”

¶ 7 On June 1, 2016, respondent filed a *pro se* notice of appeal from the trial court's September 4, 2013, order.¹

¶ 8 On appeal, respondent contends, *inter alia*, that the trial court was prejudiced against her and refused to either speak to her in Spanish or appoint an interpreter.

¶ 9 Although petitioner has not filed an appellee's brief, we may address this appeal under the principles of *First Capitol Mortgage Corp. v Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 10 As an initial matter, this court must address our jurisdiction. This court has the duty to independently consider our own jurisdiction, and must dismiss an appeal if jurisdiction is wanting. See *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213 (2009) ("A reviewing court must ascertain its jurisdiction before proceeding in a cause of action, regardless of whether either party has raised the issue.").

¶ 11 "Unless a Supreme Court Rule or statute provides appellate jurisdiction, this court only has jurisdiction to review appeals from final judgments." *Van Der Hooning v. Board of Trustees of University of Illinois*, 2012 IL App (1st) 111531, ¶ 6. " 'An order is final and appealable if it terminates the litigation between the parties on the merits or disposes of the rights of the parties, either on the entire controversy or a separate part thereof.' " *In re Marriage of Gutman*, 232 Ill. 2d 145, 151 (2008) (quoting *R.W. Dunteman Co. v C/G Enterprises, Inc.*, 181 Ill. 2d 153, 159 (1998)). "[A] permanent custody order is a final order, appealable without regard to the pendency of remaining issues in the dissolution proceeding." *In re Marriage of Harris*, 2015 IL

¹ This is the second time respondent has appealed the trial court's September 4, 2013, order. See *In re Marriage of Canales*, 2015 IL App (1st) 133331-U, ¶ 7 (dismissing appeal for noncompliance with Illinois Supreme Court Rule 341 (eff. Feb. 6, 2013)).

App (2d) 140616, ¶ 16. See also *In re Marriage of Harris*, 2015 IL App (2d) 140616, ¶ 16 (quoting Ill. S. Ct. R. 304, Committee Comments (adopted Feb. 26, 2010)) (noting that the comments “suggest that the applicability of Rule 304(b)(6) is limited to permanent custody determinations ‘as distinguished from any temporary or interim orders of custody *** and any orders modifying child custody subsequent to the dissolution of a marriage’ ”).

¶ 12 In the case at bar, the trial court’s September 2013 order granted temporary custody of Wido, Jr., to petitioner and temporarily suspended respondent’s visitation privileges. The language of the order was clear, it was not a final and appealable order; rather, it was temporary. The nonfinal nature of the September 2013 order is made clear by the trial court’s April 10, 2015, “Judgment,” which awarded custody of Wido, Jr., to petitioner and suspended visitation between respondent and the children “until further order of the Court.”

¶ 13 Moreover, even if this court were to construe the September 2013 order as a final and appealable order pursuant to Illinois Supreme Court Rule 304(b)(6) (eff. Feb. 26, 2010) which allows for the immediate appeal of “[a] custody judgment ***; or a modification of custody,” we would still be without jurisdiction because respondent did not file a timely appeal.

¶ 14 Here, the trial court entered the complained of order on September 4, 2013, and respondent filed her notice of appeal on June 1, 2016. Supreme Court Rule 303(a) provides, in pertinent part, that “notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from ***.” Ill. S. Ct. R. 303(a)(1) (eff. Jan. 1, 2015). Respondent did not file an appeal within 30 days. Without a properly filed notice of appeal, the appellate court lacks jurisdiction over the matter and must dismiss the appeal. *Huber v. American Accounting Ass’n*, 2014 IL 117293, ¶ 8. See also *Secura Insurance Co.*, 232 Ill. 2d at

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213 (“The timely filing of a notice of appeal is both jurisdictional and mandatory.”).

Accordingly, the appeal is dismissed.

¶ 15 Appeal dismissed.