2017 IL App (3d) 150588-U

Order filed January 24, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

SUZANNE M. DOYLE WELCH,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Petitioner-Appellant,	)	Will County, Illinois.
	)	
v.	)	Appeal No. 3-15-0588
	)	Circuit No. 06-F-672
JEFFREY A. NEESE,	)	
	)	Honorable Victoria M. Kennison,
Respondent-Appellee.	)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Presiding Justice Holdridge and Justice McDade concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court had subject matter jurisdiction over the issues before it. The trial court violated petitioner's due process rights in ruling on the merits of a petition at a status hearing without providing the parties with prior notice. We vacate the trial court's corresponding order and remand for further proceedings.

¶ 2 Petitioner, Suzanne Doyle-Welch petitioned to have her child, born T.D. Doyle on March, 14, 2006, removed to the state of Florida. Respondent, Jeffrey Neese (the father), petitioned to change the minor's name to T.D. Neese. The trial court granted Suzanne's removal petition and issued a final order. The trial court heard the parties' arguments on Jeffrey's name change petition and ruled, changing the minor's name to T. Doyle Neese at a status hearing. The

trial court issued an order, amending its prior removal order to incorporate its ruling on the name change. Suzanne appeals, arguing (1) her due process rights were violated when the trial court granted Jeffrey's petition to change the minor's name, (2) Jeffrey's petition was not a proper pleading before the court when the trial court issued the order changing the minor's name, and (3) the trial court applied the wrong standard of review to Jeffrey's petition. We find that the pleading was properly before the court, but vacate the trial court's order.

¶ 3 BACKGROUND

¶ 4 Suzanne and Jeffrey are the child's biological parents. Jeffrey's name is listed on his birth certificate, and Suzanne does not dispute that Jeffrey is the father. The parties were never married and have no other children together. When the minor was born, Suzanne gave him her last name at that time: Doyle. Jeffrey alleges Suzanne forced him to sign the birth certificate giving the child Suzanne's surname when he would not agree to marry Suzanne. The parties entered into a joint parenting agreement in October 2007, wherein Suzanne was the minor's primary residential parent subject to Jeffrey's visitation.

¶ 5 Suzanne and Jeffrey have been litigating numerous issues regularly since the minor's birth. Notably in 2009, when Suzanne petitioned to remove the minor but was denied, Jeffrey petitioned the court to change the minor's name. The trial court never ruled on the 2009 name change petition.

¶ 6 Suzanne married Brian Welch in October 2011 and changed her last name to Doyle-Welch. In December 2014, Suzanne petitioned to remove the minor to the state of Florida. Jeffrey filed a petition to modify custody in February 2015, which also contained a request to modify the minor's name. The hearings for Suzanne's request to remove the minor took place in May 2015 over the course of three days.

¶ 7 The parties argued the merits of Suzanne's removal request and the trial court ultimately granted it, issuing an order on July 28, 2015. At the hearings, Jeffrey's counsel solicited testimony from Jeffrey and Suzanne that Jeffrey had attempted to have the minor's name changed previously and that it was an issue on which the parties disagreed. Jeffrey's counsel represented to the court that there was a pending petition for name change before the court, which was not being argued at that time. During his testimony, Jeffrey confirmed that he had filed a petition to change the minor's name in May 2009, and that Suzanne was listing herself on school documents with the sole last name of Welch.

¶ 8 After the trial court granted the petition to remove, Jeffrey withdrew his motion to modify custody on June 3, 2015. On June 16, 2015, Jeffrey filed a separate petition to change the minor's name. Jeffrey did not explicitly bring his petition pursuant to section 21-101 of the Code of Civil Procedure (Code) (735 ILCS 5/21-101 (West 2014)), section 602 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/602 (West 2014)), or any other statute. In the petition, he argued there was no just reason why the minor should not have his last name, and that it was problematic for the minor to live in a house where he is the only one with the last name Doyle. Suzanne moved to strike and dismiss Jeffrey's petition, arguing, *inter alia*, it did not comply with section 21-101 of the Code (735 ILCS 5/21-101 (West 2014)) and was further barred *res judicata*.

¶ 9 In August 2015, the trial court denied Suzanne's motion to strike the petition for name change. The trial court issued an order setting a status hearing on the petition for August 12, 2015, before the hearing on the merits of the petition scheduled for August 20. The trial court advised the parties to resolve the issue by agreement and stated that it was considering amending its July 28 order to include a ruling on the name change petition.

¶ 10 At the August 12 hearing, Suzanne presented an emergency motion to continue the August 20 hearing. Suzanne asserted in her motion that she had to be at a meeting with the minor's new teacher in Florida that day, and that he "is already enrolled under his current name since school starts on August 24th so even holding the name change hearing on August 20th would not be soon enough to register him under a changed name, if that were to be granted." The parties did not discuss the motion to continue the hearing on the record. Suzanne's counsel explained to the court Suzanne's preference to keep the minor's name as is or, in the alternative—in order of descending preference—changed to T.D. Doyle Neese or T. Doyle Neese. Suzanne's counsel also represented to the court that the minor did not wish to have his name changed. Jeffrey expressed his desire to have the minor's name changed to T.D. Neese.

¶ 11 Declaring that it was considering the minor's best interest, the trial court ruled that it would modify its July 28 order to reflect that the minor's name be changed to T. Doyle Neese. The trial court stated that its decision was expressly based on the "overwhelming" evidence it heard during the May 2015 hearings. The trial court issued a written order on August 14, 2015, consistent with these statements. The trial court's order also denied Suzanne's motion to continue and struck the pending August 20 hearing.

¶ 12 Suzanne appeals.

¶ 13 ANALYSIS

¶ 14 Suzanne argues that the August 14, 2015, order violates her right to due process, and the trial court's July 28, 2015, order is void for lack of subject matter jurisdiction. She further argues the trial court did not apply the correct standard of review in changing the minor's name, and its ruling was against the manifest weight of the evidence. We vacate the trial court's August 14 order.

¶ 15 I. Suzanne's Proper Pleading Argument

¶ 16 Suzanne's improper pleading argument challenges the trial court's subject matter jurisdiction. This is an issue that cannot be waived, and we are obligated to take notice of it. *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 333-34 (2002). Whether there was a proper pleading before the court is an issue of law we review *de novo*. *City of Marseilles v. Radke*, 287 Ill. App. 3d 757, 761 (1997).

¶ 17 Suzanne argues that the name change petition was not a proper pleading before the trial court at times relevant to its July 28, 2015, judgment. By her logic, the trial court exceeded its jurisdiction by entering an order without a properly presented judicial question before it and the July 28 order is void. She cites *In re Marriage of Fox*, 191 Ill. App. 3d 514 (1989), and *Ottwell v. Ottwell*, 167 Ill. App. 3d 901 (1988), in support, claiming this case is analogous to each. Both cases are inapposite to the case at bar.

¶ 18 We see no legally sound rationale that robs the trial court of subject matter jurisdiction in this case. The appellate courts in the cases Suzanne cites found trial court orders void, noting that the trial court's jurisdiction was not properly invoked because the parties failed to file a petition requesting the relief they received. *In re Marriage of Fox*, 191 Ill. App. 3d at 521-22; *Ottwell v. Ottwell*, 167 Ill. App. 3d at 908-09. Suzanne acknowledges that Jeffrey's petition for name change was pending before the trial court. Her argument that Jeffrey's petition was never properly before the court has no legal foundation. It ignores the fact that Jeffrey filed a separate petition for name change shortly after withdrawing his original one. The record clearly indicates that there was a pleading before the court on the issue: Jeffrey's petition to change the minor's name, which he filed on June 16, 2015. Thus, the court had subject matter jurisdiction over the matter when it issued its July 28 and August 14 orders.

¶ 19 II. Suzanne's Due Process Argument

¶ 20 Suzanne also argues the trial court violated her right to due process in issuing the August 14, 2015, order granting Jeffrey's name change petition. She asserts that she was denied the right to be heard on the issue before the court made its ruling, claiming (1) she was specifically told by the trial court and Jeffrey's counsel that the petition for name change was not being addressed at the hearings on her petition for removal, (2) the only petition being addressed at those hearings was that petition alone, which in no way implicates Jeffrey's petitions for name change, (3) no evidence was presented to the court regarding the minor's name change, and (4) the trial court's decision to change the minor's name was based on its presumption of what the parties would argue.

¶ 21 An allegation of a due process violation is an issue of law we review *de novo*. *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 201 (2009). The fundamental requirements of due process are notice of a proceeding and an opportunity to present objections. *Id.* (citing *Tri-G, Inc. v. Burke, Bosselman & Weaver*, 222 Ill. 2d 218, 244-45 (2006)).

¶ 22 Suzanne claims she was never provided notice the name change petition "would be addressed by the trial court as a result of the hearing held on [her] Petition for Removal." In the cases she cites in support of her argument, the appellants were entirely unaware that the issue of custody was before the court before the trial courts ruled on the issue. *In re Custody of Ayala*, 344 Ill. App. 3d 574, 586-87 (2003); *Suriano v. Lafeber*, 386 Ill. App. 3d 490, 494 (2008); *In re Sanjuan-Moeller ex rel. Moeller*, 343 Ill. App. 3d 202, 204 (2003). That is not the case here.

¶ 23 There is ample evidence in the record establishing that the trial court heard evidence directly related to the minor's name change. To assert that there was none, as Suzanne does, simply is not true. The trial court heard testimony regarding the name change during the

hearings on the petition for removal. The trial court also heard arguments on the issue at the August 12 status hearing. Ruling on the merits of a petition at a status hearing without providing the parties with prior notice, however, violates due process rights. See *People v. Bounds*, 182 Ill. 2d 1, 5 (1998) (finding that in postconviction proceedings the trial court does not have the discretion to convert a status hearing to a hearing on the merits without giving notice to the parties); see also *People v. Pearson*, 216 Ill. 2d 58, 70 (2005), and *People v. Kitchen*, 189 Ill. 2d 424, 434-35 (1999).

¶ 24 As previously discussed, Jeffrey's motion was set to be heard by the court on August 20, 2015. Hence, Suzanne filed her petition to continue the hearing date. The trial court denied Suzanne's motion to continue the hearing and granted Jeffrey's name change petition ahead of the scheduled hearing. The August 14 order acknowledged from the outset that the "matter comes on for status as previously set by the Court" and later concluded that "in light of the Court's ruling in this matter regarding the name change [ ] the currently scheduled hearing date of August 20, 2015 is stricken."

¶ 25 While the trial court had informed the parties it was considering amending its prior order to include a ruling on the name change, the parties were not on notice that it would do so on August 12. This lack of notice violated Suzanne's right to procedural due process. The court's decision to deny the request for continuance was reasonable under the circumstances. The matter should have been heard on August 20.

¶ 26 While the trial court was likely attempting to remedy a problem Suzanne called to its attention—her inability to attend the August 20 hearing—the invited-error doctrine does not apply. See *In re Detention of Swope*, 213 Ill. 2d 210, 217 (2004) (under the invited-error doctrine, "a party cannot complain of error which that party induced the court to make or to

which that party consented."). Suzanne attempted to continue the scheduled date of the hearing. She did not push the trial court to rule on the issue at the status hearing. The trial court *sua sponte* ruled on the merits ahead of the scheduled hearing on the merits. Therefore, we vacate the trial court's order and remand the cause for further proceedings.

¶ 27 Having found that the trial court's ruling on Jeffrey's name change petition violated due process and vacating the order, we need not address Suzanne's remaining arguments regarding the trial court's August 12 ruling.

¶ 28 III. Suzanne's Request for a New Judge

¶ 29 Suzanne concludes her appellate brief asking this court to enter an order "reassigning this matter to a new judge on remand pursuant to Illinois Supreme Court Rule 366(a)(5)" (eff. Feb. 1, 1994). The rule gives reviewing courts discretion to make any order or grant any relief that a particular case may require, including reassigning a matter to a new judge on remand. *Eychaner v. Gross*, 202 Ill. 2d 228, 279 (2002). "Judges, of course, are presumed impartial, and the burden of overcoming the presumption by showing prejudicial trial conduct or personal bias rests on the party making the charge." *In re Marriage of O'Brien*, 2011 IL 109039, ¶ 31 (citing *Eychaner v. Gross*, 202 Ill. 2d at 280). An erroneous ruling by the trial court is an "insufficient reason[] to believe that the court has a personal bias for or against a litigant." *Eychaner v. Gross*, 202 Ill. 2d at 280. Suzanne makes no argument of prejudice or bias and has, therefore, failed to meet this burden. Accordingly, we decline Suzanne's request.

¶ 30 CONCLUSION

¶ 31 For the foregoing reasons, we vacate the trial court's August 14, 2015, order and remand to the circuit court of Will County for further proceedings.

¶ 32 Vacated and remanded.