2018 IL App (1st) 172596-U

FOURTH DIVISION
June 28, 2018

No. 1-17-2596

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re PARENTAGE OF Z.D. and T.D., Minors,	)	
	)	Appeal from
	)	the Circuit Court
FREDERICA K.,	)	of Cook County
	)	
Petitioner-Appellee,	)	
	)	14 D6 79076 &
v.	)	04 D6 79149 Cons.
	)	
JERRY D.,	)	
	)	Honorable
Respondent-Appellant.	)	Doretha Renee Jackson,
	)	Judge Presiding

JUSTICE McBRIDE delivered the judgment of the court.
Justices Gordon and Ellis concurred in the judgment.

ORDER

¶ 1 *Held*: Dismissed for lack of jurisdiction because the order at issue was not a final and appealable order, and because no other exception applied to allow Respondent to appeal.

¶ 2 Respondent, Jerry D., *pro se* appeals the circuit court's order allowing Petitioner, Frederica K., to relocate the parties' minor daughters, Z.D. and T.D., from Illinois to Georgia following an evidentiary hearing. For the reasons that follow, we conclude that this court lacks jurisdiction to consider the merits of his appeal, and accordingly, it must be dismissed.

¶ 3 As an initial matter, we note that Respondent has submitted only the common law record in this appeal, and has not submitted a certified report of proceedings or acceptable substitute as provided by Illinois Supreme Court Rule 323. See Ill. S. Ct. R. 323(a) (eff. July 1, 2017) ("The report of proceedings shall include all the evidence pertinent to the issues on appeal"); Ill. S. Ct. R. 323(c) ("If no verbatim transcript of the evidence of proceedings is obtainable the appellant may prepare a proposed report of proceedings from the best available sources, including recollection."); Ill. S. Ct. R. 323(d) ("The parties by written stipulation may agree upon a statement of facts material to the controversy and file it without certification in lieu of and within the time for filing a report of proceedings.").

¶ 4 Our review of the common law record shows that this cause began on March 18, 2014, when Petitioner filed a "Complaint to Determine Parentage and Petition for Sole Custody, Temporary and Permanent Child Support, Comprehensive Visitation Schedule for Respondent, Contribution Toward Expenses, and Tax Dependency Exemption." In the complaint, Petitioner alleged that the parties' minor child, Z.D., was born on March 25, 2008, and requested that the court "acknowledge respondent as the legal father of the minor child." Petitioner further alleged that "Upon information and belief, the minor has overheard Respondent speak of mother in a derogatory fashion regarding her love and concern for the minor children of the parties," and requested that she be "awarded the sole custody, care, education, and control of the minor child with Respondent having a specific, supervised visitation schedule." She requested that she be awarded child support for two children—Z.D. and the parties' older minor child, T.D., born in 2002—and that Respondent be required to contribute to various expenses. Petitioner also asked that Respondent be ordered to complete a parenting class, and that the court continue Respondent's current visitation schedule of alternating weekends and one day after school,

which the parties entered into prior to court involvement. Finally, Petitioner stated that "Upon information and belief, Respondent's current financial support does not provide for more than 51% of the needs of the minor child" and requested that the court "grant her the child tax dependency exemption for year 2013 and all future years."

¶ 5 On May 2, 2014, Respondent filed a *pro se* appearance. Over the next three and a half years, the parties engaged in extensive litigation regarding various issues involving the minor children, including child support, discovery issues, and Respondent's nonpayment of child support and related expenses. Respondent acted *pro se,* or through an attorney, at varying times throughout the proceedings.

¶ 6 Of particular note, on July 25, 2014, Petitioner filed an "Emergency Motion to Suspend Visitation," alleging that after returning home from a July 20, 2014, visit with Respondent, the minor T.D. "reported that she had been hit by a belt by respondent" and Petitioner "observed the minor T.D. to have red markings consistent with being hit with *** a belt." Petitioner further stated that "Z.D. corroborated T.D.'s outcry and was observed to experience trauma from having witnessed the beating." Petitioner alleged that it was "in the best interest of the minor children that visitation with Respondent be temporarily suspended until further order of court as the incident on July 20, 2014 has seriously endangered the minors' welfare when with Respondent."

¶ 7 After presentment of the emergency motion, the court entered an order suspending Respondent's visitation with the minor children until further order of court. The court granted Respondent 28 days to respond to the emergency motion, and continued the matter for hearing on the emergency motion.

¶ 8 On December 17, 2014, the court entered an order stating, in part:

> "This matter coming to be heard on Petitioner's Emergency Motion to Suspend Visitation, this matter having been set at 1:30 PM and called at 2:10 PM, Respondent and his counsel not appearing, the court being fully advised in the premises, it is hereby ordered that *** Petitioner's motion is granted; visitation between Respondent and the minor children is suspended until further order of court."

¶ 9 In subsequent orders, Respondent was given gradually increasing parenting time with the minor children. Respondent was initially allowed weekly "telephone contact" with the minor children, then ordered to participate with the children in family therapy on October 3, 2014. Thereafter, the court granted Respondent supervised holiday visitation on December 17, 2014, then "supervised *** twice monthly" visitation on April 28, 2015.

¶ 10 On September 25, 2015, Petitioner filed a "Petition for Rule to Show Cause and Other Relief" alleging that Respondent had "willfully and contumaciously refused to [pay] his one-half portion of the minor children's summer camp expense." Respondent moved to strike the petition on October 8, 2015, alleging that he had actually overpaid Petitioner, and attaching a chart entitled "Child Support Payment History" that listed alleged "child support" payments dating back to 2002.

¶ 11 After a number of continuances, the court held a pretrial conference on Petitioner's Petition for Rule to Show Cause on May 24, 2016. The court required Respondent to pay a lump sum, as well as weekly payments, towards the minor children's summer camp expenses. The court ordered that "should respondent fail to make payments, sanctions including but not limited to body attachment may be issued." The court then continued the matter for further pretrial on July 19, 2016.

¶ 12 On May 26, 2016, Respondent *pro se* filed a notice of appeal from the May 24, 2016 order.

¶ 13 When the matter was called for pretrial on July 19, 2016, the court entered an order acknowledging that Respondent had appealed the order of May 24, 2016, and ordered that the matter was "off call pending the appeal."

¶ 14 On August 22, 2016, Respondent filed in the circuit court a "Motion for Appeal by Permission and Appellate Rule 306(a)(5)" arguing that his "rights [we]re being trampled and he [wa]s improperly being separated from his children." Respondent requested that the circuit court enter an order granting his motion to appeal to the Appellate Court.

¶ 15 On August 26, 2016 Respondent filed a "Petition for Leave to Appeal Pursuant to Supreme Court Rule 306(a)(5)" in this court, seeking to appeal the circuit court's order entered on May 24, 2016. Respondent's notice of appeal and Petition for Leave to Appeal were docketed under two separate appellate case numbers, which were consolidated based on this court's determination that they both sought to appeal the May 24, 2016 order.

¶ 16 This court denied Respondent's Petition for Leave to Appeal as untimely on September 9, 2016, finding that it was filed well beyond the 14 day period allowed under the rule. Ill. Sup. Ct. R. 306(a)(5) (eff. Mar. 8, 2016). On September 29, 2016, this court entered another order pursuant to a "Motion for Clarification," filed by Respondent. This court also dismissed the appellate case number associated with Respondent's notice of appeal filed May 26, 2016, finding that the May 24, 4016 order was not final and appealable.

¶ 17 The case continued in the circuit court, and on June 7, 2017, Respondent filed an "Emergency Petition for Injunctive Relief." Respondent stated that Petitioner had "remarried and seeks to relocate to the State of Georgia" with the minor children. He further stated, "[u]pon

information and belief, [Petitioner] has secretly taken the children to Atlanta, Georgia without permission from this Court or by agreement from the Respondent." Respondent stated that he was seeking "custody of his children" and "prays that this Court issue an injunction barring [Petitioner] from leaving or moving [the minor children] from this great state of Illinois without this Court's permission or by agreement from the Respondent."

¶ 18 That same day, the court entered an *ex parte* order, with Respondent present and Petitioner not present. The court entered and continued Respondent's emergency motion for injunctive relief, and granted Petitioner 14 days to respond. The court ordered that "neither party shall remove the children from the State of Illinois except by order of court."

¶ 19 On June 14, 2017, Petitioner filed a "Petition for Relocation of the Minor Children Pursuant to 750 ILCS 5/609.2 and 750 ILCS 5/602." Petitioner noted that she previously filed an emergency motion to suspend visitation based on T.D.'s report that she had been hit with a belt by Respondent during his parenting time and, that Respondent's parenting time was suspended initially on July 25, 2014. Thereafter, Respondent was "granted telephone access with the minor children ***; granted the ability to participate with the minors in family therapy ***; granted supervised Holiday visitation ***; and granted extended supervised visitation." Petitioner contended that, despite the visitation allowed, "Respondent ha[d] unilaterally opted *not* *** to participate as ordered to re-establish a meaningful relationship with the minor children." (Emphasis in original). Petitioner alleged that "[a]fter consideration of the relocation statute and the best interest factors for this Honorable Court's consideration, it is in the best interest of the minor children that Petitioner be granted leave to remove the minor children to the State of Georgia." Petitioner stated that she had an employment "relocation opportunity in the Atlanta, Georgia metropolitan area," and that "extended family currently resides in the metro Atlanta

area." Petitioner further stated that she would "facilitate and encourage a close and continuing relationship between the other parent and the children via reasonable telephone and email communication, Holiday visitation, and extended visits when school is not in session" and that "the minor children's overall quality of life, for example, living conditions and educational opportunities" would "improve greatly" after the move.

¶ 20 On June 19, 2017, a "child's representative" was appointed, and Respondent's petition for injunctive relief and Petitioner's petition for relocation were continued for trial.

¶ 21 On July 17, 2017, the court entered an order allowing Petitioner to take the children to Georgia from July 20 to July 27, and granting Respondent parenting time upon their return, from July 28 to July 30.

¶ 22 On August 9, 2017, the court had an *in camera* interview with the minor children. The court entered an order directing the parties to refrain from discussing the *in-camera* interview with the minor children "or sanctions will be issued." The court then ordered both parties to contact their respective schools and determine "any repercussions of late enrollment and *** inform the court of same ***; the parties are advised that the court may then, *sua sponte*, enter an interim ruling in the best interest of the minor children."

¶ 23 On August 11, 2017, the court entered an order, stating in part:

> "This order being entered pursuant to the court order of 8/9/2017, wherein the parties were advised that the court may, *sua sponte*, enter an interim ruling in the best interest of the minor children regarding late school enrollment, the court only having received a report (attached hereto) from Mom's attorney at 1:31pm today and having no report from Dad's counsel as of 4:05pm today. The court being advised in the premises;

IT IS ORDERED:

Based upon the following factors, Mom is allowed to temporarily relocate with the minor children, beginning August 15, 2017, until after the court has issued its ruling following the 8/23/2017 and 8/24/2017 hearing regarding relocation:

1. Based upon the GAL's 7/31/17 memo, (attached hereto) to the court wherein she reported 'I see no reason not to let them go in that way they would not be behind in school' this statement presumably applies to the children being allowed to temporarily move[] to Atlanta;

2. The in-camera interview conducted with the minor children on 8/9/17; and

3. The report of Mom's attorney regarding the conversation she had with *** High School Principal in Georgia, specifically that 'The school board policy could be implemented and the minor would be involuntary dropped from enrollment this year ***. ' This statement presumably applies to the minor child enrolling after August 24 2017.

The parties are admonished that the issuance of this ruling prior to hearing may result in the minor children returning to the State of Illinois for the purpose of Dad having residential care and being enrolled in an Illinois school.

The parties are further admonished that after the hearing the children will be ordered to receive counseling and other supportive services may be ordered for the parents and the children."

¶ 24 On August 15, 2017, Respondent, *pro se*, filed an "Emergency Petition for Injunctive Relief." Respondent stated that his attorney had been "terminated from this case" because, despite speaking with counsel prior to the deadline, counsel failed to report to the court regarding the school registration process. Respondent contended that his due process rights had been violated by granting Petitioner "an unsolicited [*sic*] pass to take his children from *** Illinois" between August 15, 2017 and August 23, 2017.

¶ 25 On August 17, 2017, Respondent filed a "Motion for Stay" of the trial court proceedings pending appeal. Despite the fact that no notice of appeal had been filed and that the court had not yet ruled on his emergency petition for injunctive relief, Respondent contended that the denial of his petition for injunctive relief was "an appealable order pursuant to Supreme Court Rule 307(a)(1)."

¶ 26 After a hearing on Petitioner's petition for relocation and Respondent's motion for injunctive relief the court entered a written order on August 23, 2017. The court denied Respondent's motions for injunctive relief and for a stay, and "continued [the matter] for further hearing on Petitioner's Petition for Relocation," stating that it would "resume with Respondent's Cross-Examination of Petitioner" the next day.

¶ 27 On August 24, 2017, the following day, the court entered an order noting that "all parties and child rep [were] present," and that the court had "heard testimony and taken evidence" on the matter. The court then informed the parties that it would "send a written ruling to all parties," and further ordered the "parties and the minor children [to] engage in family therapy" on September 1 or 2, 2017.

¶ 28 On September 1, 2017, the court entered the following order:

"This matter coming before the court for hearing on Petitioner's Motion for Relocation pursuant to 750 ILCS 5/609.2 to relocate to Georgia with the parties minor children (Z.D. and T.D.); Petitioner-Mom, Attorney, Respondent-Dad, self-represented, and the GAL appearing for the ruling, The [*sic*] court being advised in the premises;

Based upon the sworn testimony of Mom and Dad, evidence introduced by both and the "in-camera" with the minor children, the court makes the following findings;

FINDINGS:

1. Mom has had the majority of parental allocated responsibilities and parenting time since the minor children's birth;

2. Dad had sufficient notice regarding Mom's desire to relocate to Georgia with the minor children;

3. The minor children have extensive Paternal family in Georgia including Dad's siblings;

4. Mom will have gainful employment in Georgia;

5. The children will attend a Georgia school that has significantly higher ratings than the school the minor children would attend living in Illinois with Dad;

6. Mom's move to Georgia will allow her to have stable financial life which should lead to an improved lifestyle and residence for the minor children;

7. Dad failed to exercise the vast majority of his Parenting Time over the past 3 years;

8. Dad failed to fully participate in the children's school life in Illinois;

9. The children's relationship with Dad is impaired and requires supportive services for reunification; including counseling; and

10. Both children wish to move to Georgia with Mom."

¶ 29 After setting out the above findings, the court ordered that the minor children should be allowed to relocate to Georgia with Petitioner. The court specified parenting time for Respondent via telephone and video, as well as in person in Illinois and Georgia on holidays and school breaks, and allocated responsibility between the parties for travel expenses to allow for such visitation.

¶ 30 On September 19, 2017, Petitioner filed a "Petition for Rule to Show Cause and Other Relief" alleging that Respondent violated the August 24, 2017, order, by not engaging in family therapy with Petitioner and the minor children.

¶ 31 The same day, the court entered an order finding a *prima facie* case of indirect civil contempt for Respondent's failure to comply with the August 24, 2017 order requiring him to engage in family therapy. The court granted Respondent 28 days to respond to the rule to show cause.

¶ 32 On September 21, 2017, Respondent filed a notice of appeal from the "Final Order entered on Sept. 21, 2017."

¶ 33 On October 4, 2017, Respondent *pro se* filed a "Motion for Application of Supreme Court Rule 137 [Sanctions]" against "Petitioner and her Counsel" for "bogus issues presented as true to this trial court on September 19, 2017 in a 'Petition for Rule.' " Respondent contended that the counseling session had been rescheduled, and that "the incompetent staff at the

[counseling] facility recommended by the court never bothered to contact [Respondent], after numerous calls to schedule such session."

¶ 34 In a November 14, 2017, order, the last order in the common law record in this appeal, the court entered an order striking Respondent's Rule 137 motion for his failure to appear, and ordering that the "allocation judgment shall not be entered pending appeal."

¶ 35 In this court, Respondent alleges several errors on the part of the trial court, including that his "parental rights were abrogated" when the court entered the prior, interim order, allowing Petitioner and the children to temporarily relocate to Georgia from August 15 until the court's ruling after an August 23 and 24, 2017, hearing. Respondent contends that no "formal hearing or motion" supported such an order, and contests the court's authority to enter the order "*sua sponte*." Respondent further contends that the interim order was erroneous because it prevented him from placing his children in school in Illinois. Respondent additionally argues that the trial court "mistakenly appointed an attorney which was intended to be a Guardian- ad- Litem for [his] children" but that the attorney "stood as a lawyer for [his] children, only." Respondent further objects to having been forced to pay fees for the Guardian ad Litem. Respondent next contends that the court erred in "forc[ing] [him] to participate in a trial he was not prepared for, after having lost his counsel one week prior." Finally, Respondent alleges a number of improprieties on the part of the circuit court, contending that the trial court "manipulate[ed] the circumstances before trial which dictated a different outcome at trial had the orderly flow of justice not been obstructed."

¶ 36 Although Petitioner has not filed an appellee's brief, we will consider the instant appeal on appellant's brief only, pursuant to the principles of *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976) (allowing consideration of appeal

on appellant's brief only where the record is simple and errors can be considered without additional briefing).

¶ 37 However, before reaching the merits of this appeal, this court has an independent duty to ascertain our jurisdiction, and to dismiss the appeal if jurisdiction is lacking. *Department of Central Management Services v. American Federation of State, County & Municipal Employees*, 182 Ill. 2d 234, 238 (1998); *R.W. Dunteman Co. v. C/G Enterprises, Inc.*, 181 Ill. 2d 153, 159 (1998); *Ferguson v. Riverside Medical Center*, 111 Ill. 2d 436, 440 (1985).

¶ 38 In his appellant brief, Respondent contends that he is appealing the order of September 1, 2017, and that this court has jurisdiction pursuant to Illinois Supreme Court Rule 304(b)(6), which allows parties to appeal "(6) A custody or allocation of parental responsibilities judgment or modification of such judgment entered pursuant to the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/101 *et seq.*) or Illinois Parentage Act of 2015 (750 ILCS 46/101 *et seq.*)."

¶ 39 Upon review of the record, this court noted that Respondent's notice of appeal indicates that he seeks review of the circuit court's "September 21, 2017 order," with the number "21" handwritten into a blank space on the otherwise typed document. However, the record contains no order of September 21, 2017. Instead, it appears, as Respondent contends in his brief, that he is seeking to appeal the order of September 1, 2017.

¶ 40 Based on the record, we find that Respondent made a scrivener's error when he wrote the date of the order he was appealing. *Schaffner v. 514 West Grant Place Condominium Ass'n*, 324 Ill. App. 3d 1033, 1042 (2001); *State Security Insurance Co. v. Linton*, 67 Ill. App. 3d 480, 486 (1978) (the wrong date on a notice of appeal does not create a fatal defect when it is a typographical error). In *Schaffner*, this court defined a "scrivener" as a writer, and a

"scrivener's error" as a clerical error resulting from a minor mistake or inadvertence when writing or when copying something on the record, including typing an incorrect number. *Schaffner,* 324 Ill. App. 3d at 1042. The scrivener's error does not inhibit this court's ability to ascertain from the record that Respondent is appealing from the September 1, 2017, order. *Linton,* 67 Ill. App. 3d at 486. Accordingly, we find that the incorrect date on Respondent's notice of appeal was a scrivener's error that did not create a fatal defect. *Linton,* 67 Ill. App. 3d at 486.

¶ 41 Having so found, we must next determine whether we have jurisdiction to consider the order of September 1, 2017. We will first consider whether our jurisdiction lies under Supreme Court Rule 304(b)(6), as Respondent contends.

¶ 42 Rule 304(b)(6) allows for an immediate appeal of "[a] custody judgment entered pursuant to the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/101 et seq.) or section 14 of the Illinois Parentage Act of 1984 (750 ILCS 45/14); or a modification of custody entered pursuant to section 610 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/610) or section 16 of the Illinois Parentage Act of 1984 (750 ILCS 45/16)." Ill. S. Ct. R. 304(b)(6) (eff. Feb. 26, 2010).

¶ 43 This court has previously rejected a party's claim that a relocation order may be appealed under Rule 304(b)(6), however, finding that such orders are not so inherently tied to custody to qualify for immediate appeal under that Rule. In the parentage case of *In re Rogan M.*, 2014 IL App (1st) 132765, ¶ 1, the mother sought to appeal the judgment of the trial court denying her petition to remove her minor child from Illinois to California. The mother contended that the appellate court had jurisdiction under Rule 304(b)(6), asserting that "a removal petition

constitutes a 'custody judgment' or 'modification of custody' as contemplated by" that Rule. *Id.*, ¶ 21. This court disagreed, holding that the fact that removal is related to custody:

> "does not mean we should consider a removal order to be a custody judgment or modification of custody for the purposes of jurisdiction. *** Rather, we conclude that had the drafters—who we presume were aware of the relationship between custody and removal—intended to include removal judgments as part of Rule 304(b)(6), they would have included such language. *** Accordingly, we do not find jurisdiction is proper under Rule 304(b)(6)." (Citations omitted). *Id.*, ¶ 23,

¶ 44 Although we find that this court lacks jurisdiction under Rule 304(b)(6)—the only Rule cited by Respondent—this court will also consider whether the September 1, 2017, order was a final order, or whether jurisdiction is proper under any other Rule, since citation to the wrong rule in a notice of appeal does not deprive this court of jurisdiction. See *O'Banner v. McDonald's Corp.*, 173 Ill. 2d 208, 210–11 (1996).

¶ 45 "Appellate jurisdiction is limited to review of final judgments unless an order falls within a statutory or supreme court exception." *Cole v. Hoogendoorn, Talbot, Davids, Godfrey & Milligan*, 325 Ill. App. 3d 1152, 1153 (2001) (citing *Pekin Insurance Co. v. Benson*, 306 Ill. App. 3d 367, 375 (1999)); *Department of Public Aid ex rel. Chiapelli v. Viviano*, 195 Ill. App. 3d 1033, 1034 (1990). In order to be considered final, an order must dispose of the rights of the parties, either upon the entire controversy or some definite and separate part of it. *In re Guardianship of J.D.*, 376 Ill. App. 3d 673, 676 (2007). A final judgment fixes absolutely and finally the rights of the parties in the lawsuit; it determines the litigation on the merits so that, if affirmed, the only thing remaining is to proceed with the execution of the judgment. *In re*

Adoption of Ginnell, 316 Ill. App. 3d 789, 793 (2000). If jurisdiction is retained for the future determination of matters of substantial controversy, the order is not final. *Id.*

¶ 46 In this case, when Respondent filed his September 21, 2017, notice of appeal from the September 1, 2017 order, the circuit court had not yet resolved all claims. Specifically, on September 19, 2017, Petitioner filed a petition for rule to show cause regarding Respondent's failure to attend family therapy with the minor children. The court granted Respondent 28 days to respond to the rule to show cause, and had not yet ruled on whether Respondent would be found in contempt.

¶ 47 Indeed, we note that the circuit court appears to have continued the proceedings on Petitioner's petition for rule to show cause, and Respondent has since filed another notice of appeal in this action on February 28, 2018. In filings under that appeal, Respondent asserts that the circuit court found him in indirect civil contempt on February 2, 2018, and in his notice of appeal, Respondent contends that the "order entered on February 2, 2018 is inextricably intertwined with issues currently under appeal with the First Judicial District of the Illinois Appellate Court" in this appeal. See *In Interest of A.T.*, 197 Ill. App. 3d 821, 834 (1990) ("a court may take judicial notice of matters of record in its own proceedings.").

¶ 48 In light of the above, we conclude that the September 1, 2017, order was not a final appealable order. See *Ginnell*, 316 Ill. App. 3d at 793; *Rogan M.*, 2014 IL App (1st) 132765, ¶ 19.

¶ 49 The only other exception that could be applicable to Respondent's appeal can be found in Rule 306, entitled "Interlocutory Appeals by Permission." Rule 306(a)(5) provides that "A party may petition for leave to appeal to the Appellate Court from *** from interlocutory orders affecting the care and custody of or the allocation of parental responsibilities for unemancipated

minors or the relocation (formerly known as removal) of unemancipated minors, if the appeal of such orders is not otherwise specifically provided for elsewhere in these rules." Ill. Sup. Ct. R. 306(a)(5) (eff. July 1, 2017).

¶ 50 Respondent, however, never sought permission to appeal the court's order allowing the minor children's relocation by filing a petition for leave to appeal in this court as would be required under Rule 306(a)(5). In certain limited circumstances, the appellate court may acquire jurisdiction by exercising its discretion to characterize the appellant's notice of appeal and appellate brief as a petition for leave to appeal under Rule 306(a)(5). See *In re Marriage of Kostusik*, 361 Ill. App. 3d 103, 109 (2005) (finding that a husband's notice of appeal, filed within five days of the entry of a temporary custody order, could be characterized as a petition for leave to appeal under Rule 306(a)(5), and was sufficient to invoke the appellate court's jurisdiction. The husband invoked 306(a) in seeking review, and was "apparently confused" by new supreme court rules expediting child custody appeals, and his confusion was "not unreasonable" given the lack of case law on the new rules); see also *In re Curtis B.*, 203 Ill. 2d 53, 63 (2002) (where, prior to the filing of a mother's appeal, the appellate court had not yet held the provision relied on by mother to invoke jurisdiction unconstitutional, she had "no reason to cite to any [other] statute or rule." Accordingly, the mother's failure to also cite Rule 306(a)(5) to invoke jurisdiction did not forfeit her opportunity to have the appeal heard under that Rule). However, even if this court were permitted to do so, the date of filing of Respondent's notice of appeal precludes this court from acquiring jurisdiction under Rule 306, which provides that the "petition, supporting record and the petitioner's legal memorandum, if any, shall be filed in the Appellate Court within 14 days of the entry or denial of the order from which review is being sought, with proof of personal or e-mail service as provided in Rule 11." Ill. Sup. Ct. R.

306(a)(5) (eff. July 1, 2017). See *People v. Salem*, 2016 IL 118693, ¶ 19 ("The appellate court's power attaches only upon compliance with the rules governing appeals *** [and the] appellate court does not have the authority to excuse the filing requirements of the supreme court rules governing appeals" (Internal citations and quotation marks omitted); *In re Estate of Eloise Virginia Prunty*, 2018 IL App (4th) 170455, ¶ 23 (noting that Rule 306(a) time limits are "jurisdictional."). While Respondent attempted to appeal the order of September 1, 2017, his notice of appeal was not filed until September 21, 2017, more than 14 days after the entry of the order at issue.

¶ 51 In sum, because the order allowing Petitioner to relocate with the children was not a final and appealable order, and because no other exception applies to allow Respondent to appeal the September 1, 2017 order, we do not have jurisdiction to consider this appeal. Accordingly, we must dismiss it for lack of jurisdiction.

¶ 52 Dismissed.