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2018 IL App (3d) 160753-U

Order filed May 9, 2018
Modified upon denial of rehearing June 18, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

DANIEL R. WALKER, SR.,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Petitioner-Appellant,)	Will County, Illinois,
)	
v.)	Appeal No. 3-16-0753
)	Circuit No. 11-F-509
)	
KATRINA N. JEFFERSON,)	Honorable
)	Elizabeth D. Hoskins Dow,
Respondent-Appellee.)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices McDade and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err when it *sua sponte* dismissed Walker’s section 2-1401 petition. Also, the issues raised relating to Walker’s June 2016 emergency petition for visitation or parenting time were not properly before this court because the trial court never ruled on the petition.

¶ 2 In June 2016, the petitioner, Daniel R. Walker, Sr., filed an emergency petition for visitation or parenting time as to the parties’ minor child D.R.W. In July 2016, Walker filed an emergency section 2-1401 petition, arguing that the trial court’s May 31, 2013, order suspending

his visitation was void for lack of personal jurisdiction. In November 2016, Walker filed an emergency motion for appointment of a mediator, an emergency motion to require the respondent, Katrina N. Jefferson, to attend parenting classes, and an emergency motion objecting to the hearing on the guardian *ad litem*'s (GAL's) recommendation and to discharge the GAL. On November 7, 2016, the trial court denied Walker's emergency motions and his section 2-1401 petition. The court continued the matter on the issue of visitation. Walker appeals.

¶ 3

FACTS

¶ 4

This appeal represents the parties' second appeal before this court. In *Walker v. Jefferson*, 2015 IL App (3d) 130978-U, this court held that the trial court did not have personal jurisdiction over the defendant to grant an extension of the plenary order of protection in case No. 11-OP-1295. Therefore, this court held that the extension and all subsequent proceedings and extensions in that case were void. In the custody case, case No. 11-F-506, this court held that the Walker's motions to vacate the court's May 31, 2013, judgment were properly stricken for want of prosecution and the issue of coercion was not properly before the court and otherwise moot. Because the issues raised on appeal only relate to the custody case, we limit our background to the filings in that case occurring after this court's September 14, 2015, mandate.

¶ 5

On June 16, 2016, Walker filed an emergency petition for visitation or parenting time.

¶ 6

On July 1, 2016, Walker filed an emergency petition for relief from the trial court's May 31, 2013, judgment suspending his visitation pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2016)). Over three years prior, on February 6, 2013, Jefferson filed an emergency motion to suspend Walker's visitation. The motion alleged that Walker's visitation with D.R.W. endangered the minor's physical, moral, mental, and emotional health; that Walker had a history of felonies and incarcerations; and an active warrant was out for

his arrest for several felonies. At the February 13 hearing on Jefferson's emergency motion, Walker failed to appear. The court suspended his visitation without prejudice and the court set the case for status on April 12. On April 12, Walker again failed to appear and Jefferson's motion was continued to May 31. At the May 31 hearing, Walker was absent without explanation. The court conducted a hearing and granted Jefferson's motion to suspend Walker's visitation with D.R.W. In his section 2-1401 petition, Walker argued that the court's May 31 order was void for lack of personal jurisdiction because he was not served by summons for Jefferson's February 6 motion to suspend visitation.

¶ 7 On July 8, 2016, the trial court appointed Amber Mikula as GAL for D.R.W.

¶ 8 On September 9, 2016, the GAL recommended at a status hearing that any visitation ordered by the trial court should be supervised.

¶ 9 On September 28, 2016, Walker filed a proposed order for allocation of parenting time and an objection to the GAL's recommendation.

¶ 10 On November 1, 2016, Walker filed an emergency motion for appointment of a mediator, an emergency motion to require Jefferson to attend parenting classes, and an emergency motion objecting to the hearing on the GAL's recommendation and to discharge the GAL.

¶ 11 On November 7, 2016, the trial court held on a hearing on Walker's pending motions. The GAL again recommended supervised visitation. The court's written order indicates that it (1) denied Walker's objection to the GAL's recommendation, (2) denied Walker's emergency motion objecting to a hearing on the GAL's recommendation, (3) denied Walker's section 2-1401 petition, and (4) continued the case on the issue of Walker's visitation. The transcript from the hearing indicates that the court advised Walker that supervised visitation would be a starting point but it did not enter an order granting him supervised visitation. The court continued the

case for Walker to provide a copy of his lease and proof of his employment.

¶ 12 On December 6, 2016, the trial court continued the case to January 10, 2017, for Walker to provide a copy of his lease and proof of his employment.

¶ 13 Walker appeals.

¶ 14 ANALYSIS

¶ 15 On appeal, Walker argues that the trial court (1) erred as a matter of law when it denied his section 2-1401 petition and (2) abused its discretion when it denied his petition for visitation or parenting time. Jefferson did not file an appellee brief in this case. However, because these issues can easily be decided without the aid of an appellee’s brief, we will address them. See *First National Bank of Ottawa v. Dillinger*, 386 Ill. App. 3d 393, 395 (2008).

¶ 16 I. Section 2-1401 Petition

¶ 17 Walker argues that the trial court erred as a matter of law when it denied his section 2-1401 petition (735 ILCS 5/2-1401 (West 2016)). Specifically, he argues that (1) the court’s May 31, 2013, order is void for lack of personal jurisdiction and (2) his due process rights were violated when the court ruled on his section 2-1401 petition without notice.

¶ 18 Section 2-1401 establishes a statutory procedure that allows for vacatur of a final judgment older than 30 days but not older than two years. 735 ILCS 5/2-1401(a), (c) (West 2016). However, “[p]etitions brought on voidness grounds need not be brought within the two-year time limitation.” *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104 (2002). To obtain relief, the petition must be filed in the same proceeding in which the order or judgment being challenged was entered but is not a continuation thereof. 735 ILCS 5/2-1401(b) (West 2016). The petition must be supported by an affidavit or other appropriate showing as to matters not of record. *Id.* We review a trial court’s denial of a section 2-1401 petition *de novo*. *Warren*

County Soil & Water Conservation District v. Walters, 2015 IL 117783, ¶ 47 (section 2-1401 petitions presenting purely legal questions are reviewed *de novo*). A trial court’s ruling on a section 2-1401 is deemed a final order and appealable without any special finding. Ill. S. Ct. R. 304(b)(3) (eff. Mar. 8, 2016); see *Sarkissian*, 201 Ill. 2d at 102.

¶ 19 Here, Walker argues that Jefferson failed to serve him by summons for her February 2013 petition to suspend visitation, and therefore, the trial court’s May 31, 2013, order suspending his visitation is void for lack of personal jurisdiction. Walker relies on section 601(d) of the Illinois Marriage and Dissolution of Marriage Act, which states, in relevant part:

“Proceedings for modification of a previous custody order commenced more than 30 days following the entry of a previous custody order must be initiated by serving a written notice and a copy of the petition for modification upon the child’s parent, guardian and custodian at least 30 days prior to hearing on the petition.” 750 ILCS 5/601(d) (West 2012).

¶ 20 He argues that section 601(d) “illustrates that notices of such modification of a previous custody order requires the issuance of a *summons*.” (Emphasis added.) First, the Illinois Marriage and Dissolution of Marriage Act is inapplicable here because the parties were never married. This court already explained in its previous order that such cases are instead governed by the Illinois Parentage Act of 1984 (750 ILCS 45/1 *et seq.* (West 2012)). See *Walker*, 2015 IL App (3d) 130978-U, ¶ 70. Nonetheless, the plain language of section 601(d) does not provide that a *summons* must issue, but rather, that an individual proceeding under this section must provide written notice and a copy of the petition for modification. Second, under Illinois Supreme Court Rule 341(h)(7) (eff. Nov. 1, 2017), an appellant’s brief must contain with both argument and citation to *relevant* authority. *Vancura v. Katris*, 238 Ill. 2d 352, 369-70 (2010). “*Pro se* litigants

are not excused from following rules that dictate the form and content of appellate briefs.” *Lewis v. Heartland Food Corp.*, 2014 IL App (1st) 123303, ¶ 5. Failure to comply with Rule 341(h)(7) results in forfeiture. *Vancura*, 238 Ill. 2d at 369-70. Therefore, Walker forfeited this issue.

¶ 21 Walker also argues that his due process rights were violated because he was not provided notice that the trial court was going to rule on his section 2-1401 petition during a hearing on his emergency motions and the court ruled on the matter without his input, Jefferson’s response, and an evidentiary hearing. Here, he fails to cite *any* authority to support this argument. An issue that is merely listed or included in a vague allegation or error is not “argued” for purposes of Rule 341(h)(7). *Id.* Assuming that Walker did not forfeit this argument, it is without merit.

¶ 22 First, a trial court is not precluded from ruling on a section 2-1401 petition because of the lack of a responsive pleading from the respondent. *People v. Vincent*, 226 Ill. 2d 1, 9 (2007). Jefferson’s failure to respond to the petition resulted in an admission of all well-pleaded facts and rendered Walker’s petition ripe for adjudication. See *id.* at 9-10. Second, without a challenge by Jefferson, the court was not required to hold an evidentiary hearing. See *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 223 (1986). Third, a court may dispose of a matter *sua sponte* when it is clear on its face that the requesting party is not entitled to relief as a matter of law. *Vincent*, 226 Ill. 2d at 12. Last, a section 2-1401 petitioner whose petition was disposed of by the court *sua sponte* could file a motion for rehearing under section 2-1203 of the Code of Civil Procedure (735 ILCS 5/2-1203 (West 2016)). “Thus, the availability of corrective remedies, such as a motion to reconsider, renders the lack of notice prior to the ruling less of a concern.” *Vincent*, 226 Ill. 2d. at 13.

¶ 23 II. Petition for Visitation or Parenting Time

¶ 24 On June 16, 2016, Walker filed an emergency petition for visitation or parenting time.

Walker argues that the trial court abused its discretion when it denied his petition on November 7. He also argues that the court's November 7 ruling regarding supervised visitation was void because he did not request supervised visitation and neither did Jefferson. Walker contends this court has jurisdiction to address this issue under Illinois Supreme Court Rule 304(b)(6) (eff. Mar. 8, 2016). Rule 304(b)(6) allows interlocutory appeals for "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.*)." Ill. S. Ct. R. 304(b)(6) (eff. Mar. 8, 2016).

¶ 25 However, our review of the record shows that there was no ruling on Walker's June 2016 petition from which he could appeal. The trial court's written order from November 7 did not dispose of Walker's petition or grant him any form of visitation. Although the court stated that supervised visitation was the starting point in this case, it withheld any ruling until Walker could present proof of his lease and employment. The court continued the matter to December 6. The court's written order from December 6 provides, "Case is continued for status of supervisor, [Walker's] residence, and employment on 1/10/17 at 9:00 am." Walker filed his notice of appeal on December 6, before the court ruled on the issue of visitation.

¶ 26 Because (1) Walker does not appeal from a custody or allocation of parental responsibilities judgment or modification of such judgment under Rule 304(b)(6) and (2) the trial court did not make a special finding under Rule 304(a), there is no judgment from which he could appeal. Walker also takes issue with the role of the GAL in this case. However, again, this contention is also not appropriately before this court under Rule 304(b)(6).

¶ 27 CONCLUSION

¶ 28 For the foregoing reasons, we affirm the trial court's order dismissing Walker's section 2-

1401 petition. We lack jurisdiction to review Walker's other claims in relation to his petition for visitation or parenting time.

¶ 29 Affirmed in part; dismissed in part.