

2019 IL App (1st) 181147-U

No. 1-18-1147

Order Filed June 14, 2019

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

JAMES PAYNE,) Appeal from the
) Circuit Court of
Petitioner-Appellee,) Cook County.
)
v.) No. 2017 D 48
)
PAULETTE DOWELL,) Honorable
) Jeanne Cleveland Bernstein,
Respondent-Appellant.) Judge Presiding.

JUSTICE HALL delivered the judgment of the court.

Presiding Justice Rochford and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the denial of respondent's section 2-1401(f) petition to vacate an order of the circuit court. The circuit court's order was not void; the court had subject matter jurisdiction, and the petitioner's lack of standing was not jurisdictional.

¶ 2 This is an interlocutory appeal pursuant to Illinois Supreme Court Rule 304(b)(3) (eff. Mar. 8, 2016). Respondent Paulette Dowell (Paulette) appeals from an order of the circuit court of Cook County denying her petition for relief pursuant to section 2-1401(f) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401(f) (West 2016)) in this proceeding for allocation of parental rights. On appeal, Paulette contends that the denial of her section 2-1401(f) petition was error. We disagree and affirm the circuit court's denial of her petition.

¶ 3 **BACKGROUND**

¶ 4 The parties never married, but lived together in James' Brookfield residence for several years prior to the commencement of the proceedings in this case. Their household consisted of James, Paulette, C.S., Paulette's five-year-old daughter from a prior relationship, and the parties' two-year-old biological daughter, G.P. James acknowledged paternity of G.P.

¶ 5 On January 4, 2017, James filed a verified petition for allocation of parental responsibilities and parenting time with respect to G.P. James requested that the parties be awarded joint significant decision making responsibilities and that he be designated the residential parent for G.P. James further requested that he be awarded exclusive possession of the Brookfield residence.

¶ 6 On January 10, 2017, James filed an emergency motion to set temporary parenting time with G.P. alleging the following facts. In December 2016, an order of protection had been entered against James prohibiting him from contacting Paulette directly. The order provided that Ruth P., James' sister, was to contact Paulette to facilitate parenting time between the parties. The order of protection provided that the orders of the circuit court regarding parenting time took precedence over the order of protection. In response to Ruth's efforts to facilitate parenting for

James with G.P. Paulette refused to permit James to visit with G.P until a court ordered her to do so.

¶ 7 On January 19, 2017, the circuit court appointed attorney Robert Downs guardian *ad litem* (GAL Downs) for G.P. and directed him to investigate and determine a parenting-time schedule for the parties with G.P. The court awarded temporary supervised parenting time for James with G.P. On February 9, 2017, James appeared with his attorney, Ashley Fontana, and Paulette appeared *pro se* for a status hearing. The circuit court vacated the previous parenting-time schedule for James with G.P. and ordered a new schedule of unsupervised parenting time for James with both G.P. and C.S. Since Paulette was now residing with her mother, the court further ordered that James be awarded exclusive possession of the Brookfield residence. The case was continued for status on the GAL's investigation into the state of Paulette's mental health. Prior to the next status hearing, Paulette retained attorney J. Brian McDonnell to represent her in the proceedings. At the status hearing on March 10, 2017, the circuit court revised the parenting-time schedule for James with G.P. and C.S. The case was continued for status to April 5, 2017.

¶ 8 On March 30, 2017, James filed an emergency petition requesting that the court designate him as the residential parent for both G.P. and C.S. James alleged that Paulette was exhibiting unstable, erratic and dangerous behavior placing G.P. and C.S. in danger while in her care. In his affidavit in support of the emergency petition, James averred that in January and February 2017, Paulette made unsupported allegations accusing James of sexually abusing the minors, forcing them to undergo vaginal examinations. Paulette had refused to comply with the court's orders regarding James' parenting time with C.S. and G.P., which required police intervention. James

further averred that Paulette was overwhelmed with the caretaking responsibilities for G.P. and C.S. and her abuse of prescription drugs used in combination with alcohol rendered her behavior erratic, destructive and dangerous while she was under the influence of those substances. James further averred that “[The Department of Children and Family Services] has similar concerns and is recommending that I be named custodial parent of both children.” James requested that the court name him temporary physical custodian of G.P. and C.S., award him temporary decision-making responsibilities for both children and order Paulette’s parenting time be supervised.

¶ 9 On March 31, 2017, the circuit court held a hearing on the emergency petition. James and his attorney were present as was GAL Downs. Attorney Fontana informed the court that Paulette’s attorney had contacted her and advised that he had a conflict. She disclosed to the court that Paulette had contacted her the previous night, saying that she had documents to present to the court. Attorney Fontana stated that she informed Paulette that it was unethical for her to be speaking to Paulette and encouraged Paulette to be present at the hearing. Paulette’s mother and another relative were present in the courtroom. Her mother informed the court that Paulette was ill and that her attorney told her to request a continuance. Attorney Fontana answered ready for the hearing, and the GAL had no objection to proceeding with the hearing.

¶ 10 The circuit court questioned GAL Downs as to the results of his investigation. GAL Downs informed the court that allegations in the emergency petition were consistent with the results of his investigation and experience. The court appointed James as the designated residential parent for the minors on a temporary basis, pending an investigation into the allegations contained in the emergency petition. The court granted Paulette supervised visitation with the minors. The case was continued to April 27, 2017, for status on the investigation.

¶ 11 Paulette filed a motion to vacate the March 31, 2017, order pursuant to section 12-1301(e) of the Code (735 ILCS 5/12-1301(e) (West 2016)). On April 27, 2017, the circuit court ordered James to respond to the motion to vacate within 21 days and ordered Paulette to reply within 7 days. The court further ordered Paulette to file a written response to James' emergency petition. The record does not contain any evidence that a hearing on the section 12-1301(e) motion was held or its disposition.

¶ 12 On January 2, 2018, Paulette filed a verified petition to vacate the March 31, 2017, order on voidness grounds pursuant to section 2-1401(f) of the Code. In her motion, Paulette alleged that the March 31, 2017, order was void because the circuit court lacked subject matter jurisdiction and because James lacked standing to adjudicate the right to custody of C.S. under the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 50/1 *et seq.* (West 2016)) or the Illinois Parentage Act of 2015 (Parentage Act) (750 ILCS 46/101 *et seq.* (West 2016)). Paulette requested that the March 31, 2017, order, as it pertained to C.S., be vacated and that custody of C.S. be returned to her.

¶ 13 Following a hearing on April 20, 2018, the circuit court ruled that since the April 24, 2017, section 12-1301(e) motion to vacate the March 31, 2017, order had not been brought forward for hearing within 90 days, the motion was no longer pending before the court. The court denied the section 2-1401(f) petition with prejudice, finding it had jurisdiction over C.S. The court ordered the parties to respond to James' pending petitions for child support and petition for a rule to show cause against Paulette. The case was set for status on June 12, 2018.

¶ 14 On May 15, 2018, Paulette filed her notice of appeal from the April 20, 2018, order, denying her motion to vacate the March 31, 2017, order.

¶ 15

ANALYSIS

¶ 16

I. Appellate Jurisdiction

¶ 17 James contends that this court lacks jurisdiction to decide the merits of this appeal because it was not a final order. Since an appeal must be dismissed if our jurisdiction is lacking, we have a duty to determine whether we have jurisdiction of Paulette's appeal. *In re Marriage of Sanchez and Sanchez-Ortega*, 2018 IL App (1st) 171075, ¶ 20.

¶ 18 In her jurisdictional statement, Paulette maintains that we have jurisdiction of this appeal pursuant to Illinois Supreme Court Rules 301 (eff. Feb. 1, 1994) and 304(b)(3) (eff. March 8, 2016). We agree with James that Rule 301 is not a basis for our jurisdiction in this case. See Ill. S. Ct. R 301 (appeals from final judgments disposing of the entire controversy).

¶ 19 Rule 304(b)(3) provides for appeals from “[a] judgment or order granting or denying any of the relief prayed for in a petition under section 2-1401 of the Code of Civil Procedure.” In *In re Custody of Ayala*, 344 Ill. App. 3d 574 (2003), the respondent challenged custody orders as void for lack of jurisdiction pursuant to section 2-1401. The trial court denied the motion, and the respondent appealed. On appeal, the petitioner challenged appellate jurisdiction on the basis that the denial order was not final and appealable because there were matters pending before the trial court.

¶ 20 The appellate court rejected the petitioner's argument, stating as follows:

“Given that the challenged orders were not final as required by section 2-1401, the court arguably could have determined that section 2-1401 was not the appropriate procedure by which to seek relief from the orders. However, our supreme court has held that a petition seeking relief from a void judgment is to be considered a section 2-1401 petition, albeit

not subject to the timeliness and due diligence requirements of section 2-1401. [Citation.]

The fact that [the respondent] challenged the orders solely on the basis of voidness was sufficient to construe her motion to vacate as a valid section 2-1401 motion.” *Custody of Ayala*, 344 Ill. App. 3d at 581-82.

The court held that since petitions seeking relief from void judgments are section 2-1401 petitions, “ ‘any order granting or denying such relief is a final ruling, appealable pursuant to [Rule 304(b)(3)] .’ ” *Custody of Ayala*, 344 Ill. App. 3d at 582 (quoting *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 105 (2002)). Thus the court determined that it had jurisdiction under Rule 304(b)(3) to consider the respondent’s appeal.

¶ 21 James relies on *EMC Mortgage Corp. v. Kemp*, 2012 IL 113419. In that case, Ms. Kemp appealed the denial of her section 2-1401 petition, in which she had sought to vacate two nonfinal orders. The supreme court held that the nonfinal orders were not properly brought in a motion to vacate under section 2-1401. Since Ms. Kemp’s motion to vacate was premature under section 2-1401, Rule 304(b)(3) was inapplicable to convey appellate jurisdiction. See *EMC Mortgage Corp.*, 2012 IL 113419, ¶ 13.

¶ 22 Unlike Ms. Kemp’s premature claim, Paulette’s claim that the March 31, 2017, order was void was properly brought under section 2-1401(f) petition. *Custody of Ayala*, 344 Ill. App. 3d at 582. Therefore, we have jurisdiction to consider the merits of Paulette’s appeal.

¶ 23 II. Denial of Paulette’s Section 2-1401(f) Petition

¶ 24 Paulette contends that the circuit court erred in denying her section 2-1401(f) petition to vacate the March 31, 2017, order. Paulette maintains that the March 31, 2017, order was void on

the following grounds: (1) the circuit court lacked subject matter jurisdiction, and (2) James lacked standing to be designated the temporary residential parent for C.S.

¶ 25 A. Standard of Review

¶ 26 The standard of review applicable to a ruling on a section 2-1401 petition is determined by the nature of the challenge it presents. *Stolfo v. Kindercare Learning Centers, Inc.*, 2016 IL App (1st) 142396, ¶ 22. A petition raising a voidness claim presents a legal challenge to the judgment and is reviewed *de novo*. *Stolfo*, 2016 IL App (1st) 142396, ¶ 22.

¶ 27 B. Discussion

¶ 28 1. *Subject Matter Jurisdiction*

¶ 29 Paulette challenges the circuit court’s subject matter jurisdiction on the grounds that (1) there was no pleading before the circuit court requesting the relief the court ordered as to C.S., (2) the court wrongly believed that James was a stepparent to C.S., and (3) the court erroneously concluded that it had subject matter jurisdiction under the *parens patriae* doctrine.

¶ 30 “ ‘ “[S]ubject matter jurisdiction” refers to the power of a court to hear and determine cases of the general class to which the proceeding in question belongs.’ ” *McCormick v. Robertson*, 2015 IL 118230 ¶ 19 (quoting *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002)). Except for administrative actions where review is provided by statute, a circuit court’s jurisdiction is conferred entirely by our state constitution. *McCormick*, 2015 IL 118230 ¶ 19. “[T]he jurisdiction of the circuit courts extends to all ‘justiciable matters except when the Supreme Court has original and exclusive jurisdiction relating to redistricting of the General Assembly and to the ability of the Governor to serve or resume office.’ ” *McCormick*, 2015 IL 118230 ¶ 20 (quoting Ill. Const. 1970, art. VI, § 9).

¶ 31 “The court’s authority to exercise its jurisdiction and resolve a justiciable question is invoked through the filing of a complaint or petition, pleadings that function to frame the issues for the trial court and circumscribe the relief the court is empowered to order.” *Custody of Ayala*, 344 Ill. App. 3d at 584. In *Custody of Ayala*, the reviewing court explained:

“A party cannot be granted relief in the absence of corresponding pleadings; if a justiciable issue is not presented to the court through proper pleadings, the court cannot *sua sponte* adjudicate an issue. [Citation.] ‘Orders entered in the absence of a justiciable question properly presented to the trial court by the parties are void since they result from court action exceeding its jurisdiction.’ ” *Custody of Ayala*, 344 Ill. App. 3d at 584 (quoting *Ligon v. Williams*, 264 Ill. App. 3d 701, 707 (1994)).

¶ 32 In *Ligon*, the mother filed complaints requesting a determination of parentage and an order of child support. The father appeared and admitted paternity. Informed that the minor had been staying with the father, the trial court found that a parent-child relationship existed and awarded custody of the minor to the father. The mother filed a section 2-1401 petition seeking return of the minor to her. The trial court denied the petition, but the appellate court reversed, finding the custody order void because neither party had filed a petition or counterclaim seeking custody. *Ligon*, 264 Ill. App. 3d at 708 (the only justiciable questions raised by the parentage petition were the establishment of the parent/child relationship and the support obligation).

¶ 33 In *In re Marriage of Fox*, 191 Ill. App. 3d 514 (1989), the reviewing court determined that a contempt petition brought against the mother did not present the trial court with a justiciable matter sufficient for the court to make a child-custody determination. *Marriage of Fox*, 191 Ill. App. 3d at 520 (the justiciable matter before the court was an alleged violation of

the visitation provisions of the judgment of dissolution of marriage). While the term “ ‘subject-matter jurisdiction’ ” did not extend to the facts of the case before it, the reviewing court concluded that the custody order was void because the jurisdiction of the court was not properly invoked. *Marriage of Fox*, 191 Ill. App. 3d at 521-22. In *Ottwell v. Ottwell*, 167 Ill. App. 3d 901 (1988), the reviewing court held that the trial court lacked subject matter jurisdiction to modify child support where no petition to modify the child support obligations in the divorce decree was before the trial court. Therefore, the orders modifying child support were void. *Ottwell*, 167 Ill. App. 3d at 909.

¶ 34 Paulette relies on this court’s statement in *People ex. rel. Jackson v. Mannie*, 393 Ill. App. 3d 745 (2009), that “[t]he circuit court’s authority is limited to exercising the powers conferred upon the court by the [Parentage] Act, and the court cannot deviate from the procedure outlined in that statute.” *People ex. rel. Jackson*, 393 Ill. App. 3d at 748. However, as in the cases discussed above, in *People ex. rel. Jackson*, we found that the trial court’s order was void based on the lack of a justiciable issue. See *People ex. rel. Jackson*, 393 Ill. App. 3d at 750 (the trial court’s order, vacating a 30-year-old parentage and support order based on the results of a DNA test ordered by the court, was void because it raised the issue of paternity, which was not properly before the trial court).

¶ 35 *People ex. rel. Jackson*, *Lignon*, *Marriage of Fox* and *Ottwell* are distinguishable from the present case in that the trial court orders in those cases were void for granting relief not sought by the pleadings before the trial court. While the present case commenced with James filing a verified petition to allocate parental responsibilities and parenting time as to G.P., during the proceedings James was granted visitation with both G.P. and C.S. There is no indication that

Paulette objected to those orders as lacking subject matter jurisdiction over C.S. James subsequently filed his emergency petition seeking to be designated the residential parent for both C.S. and G.P., based on allegations of Paulette's erratic behavior and the children's safety. The emergency petition further alleged that Paulette had violated the circuit court's previous visitation orders as to both C.S. and G.P. Paulette received notice of the hearing. While she maintained she was not able to appear, she was aware that James was seeking to be designated the residential parent for both C.S. and G.P. Thus the circuit court was not acting *sua sponte* when it ordered that James be named the designated residential parent. Since there was a justiciable issue before it as to both C.S. and G.P., the circuit court's subject matter jurisdiction was properly invoked.

¶ 36 Paulette maintains that the circuit court's incorrect belief that C.S. was James' stepdaughter deprived it of subject matter jurisdiction because James could not fulfill the statutory requirements of the Act to commence an action for allocation of parental responsibilities. However, the failure to comply with a statutory requirement or prerequisite does not negate the circuit court's subject matter jurisdiction. *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 37.

¶ 37 Paulette maintains that the doctrine of *parens patriae* did not give the circuit court subject matter jurisdiction over C.S. to place her with James. See *In re Marriage of Mancine and Gansner*, 2014 IL App (1st) 111138-B, ¶ 57 (*parens patriae* power is to be used in emergency situations, not for general custody disputes between parents and nonparents). However, in the present case, invoking its *parens patriae* power was not necessary to establish the circuit court's subject matter jurisdiction to place C.S. with James.

¶ 38 Under the *de novo* standard, we do not defer to the circuit court's judgment or reasoning. *Nationwide Advantage Mortgage Co. v. Ortiz*, 2012 IL App (1st) 112755, ¶ 20. Furthermore, we review the determination of the trial court, not its reasoning and may affirm on any basis in the record whether or not the trial court relied on that basis or its reasoning was correct. *Antonacci v. Seyfarth, Shaw, LLP*, 2015 IL App (1st) 142372, ¶ 21.

¶ 39 In the present case, the circuit court's power to hear and determine cases of the general class to which the proceeding in question belongs is undisputed, and we find it had a justiciable issue as to C.S. raised by the pleadings before it. Even without invoking its *parens patriae* power, the circuit court had subject matter jurisdiction to enter the March 31, 2017, order placing C.S. with James.

¶ 40 *2. Standing*

¶ 41 Paulette contends that the circuit court's March 31, 2017, order was void because James lacked standing under the Act or the Parentage Act to request that he be designated the residential parent for C.S. See 750 ILCS 5/601.2(b)(3) (West 2016); 750 ILCS 46/201(b) (West 2016). James concedes that he is unable to establish a father-child relationship as to C.S. under the Parentage Act. However, even as a nonparent his lack of standing does not render the circuit court's March 31, 2017, order void.

¶ 42 “[A] nonparent’s ‘standing’ under section 601(b)(2) does not refer to whether a litigant has a justiciable interest in a controversy [citation]. It is merely a threshold issue, and thus although the nonparent’s standing must be determined before proceeding to a ‘best interests’ determination, it is not a component of the court’s subject matter jurisdiction.” *In re A.W.J.*, 197 Ill. 2d 492, 496-97 (2001). In that case, Jean, the maternal grandmother, sought custody of

A.W.J., the minor-grandchild, who had been placed in the custody of Linda, the paternal grandmother. Linda's motion to dismiss was denied. Following a best interests hearing, Jean was awarded sole custody of A.W.J., and the decision was affirmed by the appellate court. On review, the supreme court affirmed, finding, *inter alia*, that "[b]ecause the error alleged is not jurisdictional, we would not be required to vacate the court's order even if we found the court to have erred." *In re A.W.J.*, 197 Ill. 2d at 497. Thus, even as a nonparent, James' lack of standing did not render the circuit court's order of March 31, 2017 void.

¶ 43 Finally, to the extent that Paulette raises a claim that she was denied due process by the entry of the March 31, 2017, order, the record belies her claim. "The basic requirements of procedural due process are notice and opportunity to be heard and to defend in an orderly proceeding adapted to the nature of the case." *In re Marriage of Mierlak*, 100 Ill. App. 3d 228, 230 (1981). In this case Paulette had notice of the hearing on James' emergency motion to be named residential parent for C.S. and G.P. and an opportunity to appear at the hearing to address James' allegations contained therein. We note further that while Paulette filed a section 12-1301(e) motion to vacate the March 31, 2017, order, she did not pursue that motion to hearing or ruling.

¶ 44 Based on our review of the record in this case, we conclude that the circuit court had subject matter jurisdiction to enter the order of March 31, 2017, and James' lack of standing did not render the order void. Therefore, the denial of Paulette's section 2-1401(f) petition was correct.

¶ 45 Accordingly, the judgment of the circuit court is affirmed.

¶ 46 Affirmed.