NOTICE
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2019 IL App (5th) 180504-U

NO. 5-18-0504

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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 re MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
MARK S. ANDERSON,	)	Williamson County.
	)	
Petitioner-Appellee,	)	
	)	
and	)	No. 18-D-203
	)	
ANDREA ANDERSON,	)	Honorable
	)	Carey C. Gill,
Respondent-Appellant.	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Presiding Justice Overstreet and Justice Cates concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's order granting an injunction requiring the respondent to return the minor children to Illinois is reversed where the petitioner filed his emergency petition to enjoin removal of the minor children under the wrong statute, and the trial court's order failed to comply with the requirements of section 11-101 of the Code of Civil Procedure (735 ILCS 5/11-101 (West 2016)).

¶ 2 The respondent, Andrea Anderson, appeals the order of the Williamson County circuit court granting an injunction in favor of the petitioner, Mark Anderson, and requiring her to return the parties' minor children to Illinois by October 22, 2018. For the following reasons, we reverse.

¶ 3 As a preliminary matter, because this appeal involves an interlocutory appeal in a child custody case, Illinois Supreme Court Rule 311(a)(5) (eff. Mar. 8, 2016) requires that, except for good cause shown, the appellate court issue its decision within 150 days of the filing of the notice of appeal. Accordingly, the decision in this case was due on March 17, 2019. The case was placed on the March 27, 2019, oral argument schedule, and we now issue this Rule 23 order.

¶ 4 The petitioner and the respondent were married on May 25, 2002, in Tennessee. They had two children, Allie Gray Anderson, born January 8, 2003, and Amelia Elizabeth Anderson, born February 10, 2005. They lived in their marital residence located in Creal Springs, Illinois, until their separation in July 2018. On July 26, 2018, before a petition for dissolution of marriage was filed, the respondent moved to Tennessee with the two children. She was originally from Tennessee, and her family still lived there. She claimed that the petitioner told her to return to Tennessee and that the children could decide whether they wanted to live in Tennessee with her or remain in Illinois; the petitioner claimed that she moved with the children to Tennessee while he was at work and that there had been no previous discussion about the move.

¶ 5 On August 1, 2018, the petitioner filed a petition for dissolution of marriage, requesting that the parties be awarded joint parenting responsibilities and parenting time with the minor children, with him receiving the majority of the parenting responsibilities and parenting time. The petitioner also filed an emergency petition to enjoin removal of the minor children from Illinois. In the emergency petition, he argued that the respondent had relocated the minor children from Illinois and had moved them more than 25 miles

from Creal Springs without his or the trial court's consent. The petitioner cited to the definition of "relocation" in section 600(g)(3) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/600(g)(3) (West 2016)), which deals with the allocation of parental responsibilities. In that section, "relocation" is defined as follows: "a change of residence from the child's current primary residence to a residence outside the borders of this State that is more than 25 miles from the current primary residence." *Id.* The petitioner argued that the relocation was in violation of section 609.2(c) of the Act (*id.* § 609.2(c)), which provided as follows:

> "A parent intending a relocation, as that term is defined in paragraph (1), (2), or (3) of subsection (g) of Section 600 of this Act, must provide written notice of the relocation to the other parent under the parenting plan or allocation judgment. A copy of the notice required under this Section shall be filed with the clerk of the circuit court." *Id.*

¶ 6 The petitioner contended that he had not been provided with written notice of the respondent's intent to relocate nor did he approve of the relocation. In addition, the petitioner argued that by relocating the minor children to Tennessee, the respondent had willfully concealed the children from him in contravention of section 501.1(a)(2) of the Act, which instructed that a dissolution action restrained both parents from concealing a minor child from the other parent until further order of the trial court (*id.* § 501.1(a)(2)). The petitioner further argued that the move was not in the minor children's best interests in that their time with their father had been completely denied, that they had been removed from their previous school in which they were currently registered, and that their lives with their family and friends had been drastically disrupted. Thus, the petitioner argued that the respondent should be ordered to immediately return the minor

children to Illinois pending a full hearing on the petition for dissolution of marriage and requested that the respondent be enjoined from removing the children from Illinois in the future. On August 23, 2018, the petitioner filed a motion for *in camera* interview of the minor children.

¶ 7 On August 28, 2018, the respondent filed a motion to strike the summons and emergency petition to enjoin the removal of the minor children pursuant to section 2-615(b) of the Code of Civil Procedure (Code) (735 ILCS 5/2-615(b) (West 2016)). In the motion, the respondent argued, in pertinent part, that she moved from Illinois to Tennessee before the petitioner had filed the petition for dissolution of marriage; that the emergency petition contained no statutory basis that would allow the trial court to make any decision regarding her relocation before commencement of the dissolution proceedings; and that the definition of "relocation" contained in the Act only applied to an allocation of parental responsibilities, which was inapplicable here because the respondent moved before the petition for dissolution of marriage was filed. She also argued that the written notice requirement for relocation set forth in section 609.2(c) of the Act did not apply as there was no parenting plan or allocation judgment. Thus, the respondent argued that the petitioner's emergency motion should be stricken in its entirety as the petitioner had failed to file the proper pleading, and there was no legal basis for the court to make any type of decision.

¶ 8 The respondent also filed a counterpetition for dissolution of marriage and a counterpetition for temporary relief. According to the counterpetition for temporary relief, the parties had discussed separation and the respondent moving with the minor

children to Tennessee so they would have the support of her family. The petition indicated that the petitioner was "drinking nightly, often to the point where he began slurring his words and would become emotionally and verbally abusive to [the respondent], in the presence of the minor children, and directly towards the minor children." On three occasions, the petitioner told the respondent to leave the marital residence and return to Tennessee in the presence of the minor children. He also said that the children could decide whether they wanted to stay in Illinois or move to Tennessee. The petition indicated that due to the petitioner's increased use of alcohol and volatile behavior, the acrimony between the parties had risen to such a level that the respondent and the minor children felt that a move to Tennessee would be in the family's best interests.

¶ 9 The petition further indicated that the children decided to move with their mother; that, since August 1, 2018, they have attended school in Tennessee; that they participated in various clubs at their new school; and that the respondent had obtained employment there. The respondent requested that she be awarded the majority of parenting time subject to a reasonable visitation schedule, noting that she was the minor children's primary caregiver throughout their lives.

¶ 10 Attached to the counterpetition was an affidavit of Allie Anderson in which she stated that the petitioner told the respondent to move to Tennessee and that her and her sister could decide where they wanted to live; that she decided to move to Tennessee because the Tennessee school had a better academic program, she wanted to be better prepared for college, and she felt like she did not have any true friends at her previous

high school; and that she wanted to live in Tennessee because the education was better, she was in advanced classes, she had made friends at her new school, and she made the football cheerleading team there. Also attached to the counterpetition was an affidavit from Amelia Anderson in which she stated that she decided to move because it was easier to talk to her father from a distance; she was able to see her family whenever she wanted; and it gave her a chance for a fresh start where she could see her father, but he was not "in control." She indicated that she wanted to remain in Tennessee because she had already made good friends, she was more involved in school activities, she had made the cheerleading team, and she did not have to worry about "doing something wrong every second." Both Allie and Amelia requested an *in camera* interview so that they could express their feelings and concerns about the situation.

¶ 11 On August 31, 2018, and September 4, 2018, the trial court held a hearing on the petitioner's emergency petition and the respondent's motion to strike. Regarding the motion to strike, the respondent's counsel argued that the relocation statute did not apply at this time because neither parent had been awarded the majority of the parenting time under a parenting plan or allocation judgment. The petitioner's counsel argued that the respondent was required to follow the relocation statute if she wanted to move the minor children on a permanent basis. After considering counsels' arguments, the trial court denied the motion to strike, stating as follows:

> "[T]here being no case law interpreting whether it's proper or improper to go ahead and apply that statute, I'm going to use that relocation—it was only six days before the filing. It's so close in time. Really—I don't know if residency had been established in the new place, and I think it fair that it was intended that a petition was going to be filed at some point. *** [A]nd it makes the most sense, I think, to

> look at the best interest of the children and apply the standards to determine whether relocation is, in fact, proper or not at this point. So that is my finding for the denial of the motion to strike, and I will hear the petition."

The court further stated as follows:

> "And I do understand, also, your argument that *** there was no allocation that *** the respondent had the majority of the parenting time because there was nothing, in fact, filed at all. But, jointly, they *** both had as much as they wanted jointly, and the moving of the children outside of the state by [the respondent] essentially stopped that jointness from happening, which is why I'm going to use the removal standard. So she also didn't have an order giving her the majority of the parenting time. So, for the record, those are the basis [*sic*] for my ruling."

¶ 12 The trial court then proceeded to hear testimony related to the petitioner's emergency petition to enjoin the removal of the children from Illinois.

¶ 13 The petitioner testified that he had two daughters with the respondent, Allie, who was currently 15, and Amelia, who was currently 13. He has resided at the Creal Springs residence since 1992, and it had been the minor children's home since birth. Allie attended school in the Crab Orchard school system for 11 years, and Amelia had been in that school system for 9 years. They were both on the cheerleading team, were members of a local saddle club, participated in local rodeos, and had lifelong friends in the community. He was close to his daughters and helped them with their horse-related activities. He denied telling the respondent to take the children and move to Tennessee, denied having any discussion with the respondent about her moving to Tennessee, and denied having any discussion about separation. He explained that before the respondent moved that there were "some words said out of anger that were probably twisted and misinterpreted."

¶ 14 Although the children have been to Tennessee to visit the respondent's family, they have never lived there. The petitioner believed that it was in the children's best interests to remain in Creal Springs where they have their community, friends, and teachers to rely on for support. He further testified that he was employed full-time as a service manager at Clayton Homes and his hours were flexible. He has family in the area that could help him with the children; he has an older daughter, a brother, and a sister-in-law that lived in the area. He acknowledged that most of the respondent's family lived in Tennessee and that she has no family living in Illinois. He also acknowledged that his brother and sister-in-law have never met the minor children but explained that they would love to meet them.

¶ 15 The petitioner acknowledged that, while the minor children lived in Illinois, the respondent took them to school every day and to their activities. He testified that he has not had insurance for the children since April 2015 but that he would be able to obtain insurance for them soon. He started drinking in April 2018 but never allowed alcohol into the house before that. He explained that he started drinking after his mother passed away, and he felt that there was "pressure coming from *** all around [him]." He admitted posting personal details about the parties' separation on his Facebook account where Allie could see it but claimed that it was appropriate for his daughter to see because it was the truth. The children have not been back to Creal Springs since the respondent moved with them. The respondent would only allow the children to come home for his mother's funeral if she brought them to the funeral herself. He acknowledged that he currently has contact with them nightly.

¶ 16 The respondent testified that she moved to Troy, Tennessee, with the children because her parents, cousins, and other relatives live in the area. She has no family in Illinois and did not socialize much with the petitioner's mother. She explained that they had discussed separation on various occasions throughout their marriage. Before she moved to Tennessee, they had a big fight because she was late getting home with the girls after visiting her parents' house. When they got home, she noticed that he had been drinking, and they got into an argument. He told her, in the children's presence, to return to Tennessee and let "mommy and daddy take care of [her]." He also said that the children could decide whether they wanted to stay or move with her.

¶ 17 While living in Illinois, she was employed as the school nurse at Crab Orchard School. She did not have health insurance because it was too expensive. She has health insurance with her current employment. She helped the children with their homework, cleaned the household, took the children to their activities, and took the children to their doctor's appointments. The children played sports and belonged to various clubs at Crab Orchard School. They both participated in rodeos and horse shows and would continue to have the opportunity to participate in those in Tennessee.

¶ 18 The respondent testified that the petitioner forbade alcohol in the home but that changed around April or May 2018, when he started drinking every day. She testified that he was controlling, that they did not have a loving relationship, and that he was verbally abusive. She moved out of the marital residence because it was not good for their children to see this, and she had a good support system in Tennessee.

¶ 19 The respondent testified that she did not force Allie to move to Tennessee, she did not promise to buy Allie anything if she moved, Allie packed her own room that day, and Allie helped pack up some of the belongings in the house. Amelia also wanted to move to Tennessee, she did not force her or promise her anything to move, and she also packed her own room. She testified that, in Tennessee, they live in a three-bedroom double wide, and there is enough land for their horses. Allie was really excited about her new school because it had advanced-level classes and a small animal class. The Crab Orchard school system did not have advanced classes, but the children could be bused to Marion to advanced classes there. Amelia participated in various clubs that were not offered in the Crab Orchard school system.

¶ 20 The respondent testified that she has not prevented Allie from having phone contact with the petitioner and has even encouraged her to call him, but the children have been hesitant to call him because he did not talk about anything positive. In August 2018, Allie became upset while talking to the petitioner because he told her that he was going to "put a bullet between his eyes." He threatened to call the police on several occasions, saying that he was going to report the respondent for kidnapping. She believed that the children should live with her because they are happy, and she feels like they want to remain with her. She explained that she would have stayed in Illinois if the children wanted to stay. She acknowledged that there is not an arena where the children can participate in horse-related activities near their residence in Tennessee.

¶ 21 The respondent acknowledged that the petitioner did not see the children for approximately 30 days after the move. She did not offer to let the children return to

Illinois for a weekend visit because she was afraid he would not send them back. She acknowledged that she offered to take them to his mother's funeral but would not let them go alone because she was afraid that he would not let them return to Tennessee. She clarified that they did not want to go without her. As for the children's affidavits attached to her counterpetition, she explained that they typed up the information contained in the affidavits without any help from her and then they emailed the information to her attorney. She did provide some information to her attorney based on what the children had said and that information was also included in the affidavits. Both children had an opportunity to read the affidavits before signing them, and she never told them that they had to sign the affidavits.

¶ 22 Thereafter, the trial court conducted an *in camera* interview of the children. Following the interview, the court stated as follows:

> "I've heard a lot of testimony between Friday and today. I've now talked to both of the girls. I've talked to them about their feelings, about school, their interests and activities, and I've talked to them about the move.
>
> I understand that this is not contempt, you didn't have to ask my permission to remove the kids from the state because there was nothing pending. But this is based on a lot of *** your testimony. I found it particularly troubling the actions, your actions of the last 37 days prior to the court date. I'm going to grant the injunction. I am going to require you to move the children back here. You can be 25 miles from the place of the residence, up to 25 miles. So *** you don't have to be back in Crab Orchard, you can be somewhere that has cheerleading, you can be somewhere that has Beta Club; you can be in a different school. I understand the *** activities.
>
> I'm basing my decision on the factors of the statute, the cases I've looked at regarding a lot of cases both directions. This is a hard decision.
>
> I understand they have their grandparents there in Tennessee, but you'll be able to still visit them. I understand there was testimony that maybe there was

some limits in visiting family before, but that's been found by several cases to not be enough. You're not telling me that you had to be there because that was your only place to live.

You've made some decisions on your job. I think you can maybe find something here again. I'm going to give you a little bit of time though to get the girls moved over.

* * *

I'm going to finish my ruling and we'll figure out logistically how we're going to do this. There was insidious visitation with the father, or not visitation but involvement of the father. He was involved, maybe not in the doctor's appointments and dental appointments; he was involved in the activities.

And I want to say, ma'am, I'm troubled by the actions of the funeral. I told you that on Friday. And that is a large part of the basis of my decision, that you were afraid that if you brought the kids back here and let them spend an overnight visit with their dad that, in your words, something to the nature that he'd keep the kids from you. He never threatened to move them anywhere or take them to another state, and that is, in fact, what you did and you kept them from him.

The whole thing with the phone calls, your own testimony about when they call, when he calls, and then they set a time to call, and then they don't answer. Well, they set a time, and that's why a 13- and 15-year old maybe aren't the ones in charge of those decisions.

And I know he calls repeatedly and maybe gets a little agitated over it, but I know you've said it was hard for them to remember sometimes at times or what they had going on at that time, and that's *** why we need more regular parenting time with both of the parents.

So you can move within the 25 miles of Crab Orchard if you know that there's a better school area or something that has those activities or a better job for you within 25-mile radius.

Had you allowed time with their dad or visits with their dad, or if *** you were telling me that he got to talk to them every night at the same time and that was working great, it might have been different, but it was your testimony, in particular, that I'm basing this decision on."

¶ 23 The trial court then set the matter for a status hearing to give the parties time to develop a plan for the respondent to move back to Illinois.

¶ 24 On September 17, 2018, the trial court entered a written order drafted by the petitioner's counsel and signed by both attorneys on the "petition for injunction," enjoining the respondent from removing the parties' minor children from Illinois.

¶ 25 On September 28, 2018, the respondent filed a motion to reconsider, arguing that the court erred in its issuance of the preliminary injunction in that the petitioner's emergency petition contained no statutory basis that would allow the court to make any decision regarding the respondent's move from Illinois to Tennessee; that the respondent was under no statutory obligation to seek the petitioner's approval to move with the minor children as no dissolution proceedings had been filed at that time; that there was no basis for the respondent to provide notice of relocation as there was no parenting plan or allocation judgment at that time; that the emergency petition alleged none of the elements necessary for the court to enter a preliminary injunction; and that no evidence had been presented that the petitioner had an ascertainable right that required protection, that there was a likelihood of irreparable harm absent an injunction, that the petitioner had no adequate remedy at law, and that there was a likelihood of success on the merits.

¶ 26 Moreover, the respondent contended that the trial court's oral or written rulings did not make any findings on the requirements for the issuance of a preliminary injunction. The respondent also argued that the court made no finding that the parties should return to the status quo but that the respondent had to return to Illinois with the children within 25 miles of the marital residence and enroll them in an Illinois school. Further, the

respondent contended that for the court to find that the petitioner would likely be successful on the merits, it would have to make a determination regarding the best interests of the children as set forth in sections 602.5(c) and 602.7(b) of the Act (750 ILCS 5/602.5(c), 602.7(b) (West 2016)), and the court's written order did not make such a finding.

¶ 27 The respondent further argued that she and the minor children would likely suffer irreparable harm if required to return to Illinois because the minor children were currently thriving in their current environment; she would have to give up employment that provided her and the children with the same schedule, her affordable health insurance, and her rent-free housing; and her income would decrease as she earned approximately $6000 more annually in Tennessee.

¶ 28 Although the trial court allowed the respondent the option of enrolling the children in a different Illinois school, the respondent argued that, when issuing the injunction, the court did not take into consideration the financial resources of either party, her ability to obtain alternative housing, and her ability to obtain employment commensurate with the schedule the minor children had enjoyed since Allie was in the second grade. Thus, she requested that the court enter a temporary parenting schedule that allowed the petitioner significant parenting time with the minor children and allowed her to remain in Tennessee with the children.

¶ 29 On October 2, 2018, before ruling on the motion to reconsider, the trial court entered an order by docket entry, requiring the minor children to return to Williamson County and enroll in a Williamson County school on or before October 22, 2018.

¶ 30 At the October 17, 2018, hearing on the motion to reconsider, the trial court clarified that it was not ordering the respondent to move back to Illinois and that the injunction only concerned the children. On October 18, 2018, the court entered a written order denying the motion to reconsider. In the order, the court acknowledged that the respondent was correct that the petitioner's emergency petition to enjoin removal of the minor children from Illinois "did not reference 750 ILCS 50/501(a)(2)(ii),[1] the statutory authority for the injunction in this proceeding," and that, since there was no petition to relocate on file, section 609.2(c) of the Act was not applicable at that time. However, the court then stated as follows:

> "Procedurally, it should be noted that Respondent left the State of Illinois with the minor children prior to the filing of this case. Although this Court did not find that Respondent's actions violated any statute, this Court denied the Respondent's Motion to Strike the Emergency Petition. That ruling was based, in part, on the fact that the move from the State of Illinois was on July 26, 2018, these proceedings were contemplated at that time, and a Petition for Dissolution of Marriage was filed on August 1, 2018. This court heard arguments on the Emergency Petition under Section 501(a)(2)(ii) and although the Emergency Petition referenced enjoining 'removal from' Illinois, it was in fact requesting this Court enter an Order requiring the minor children to return to the State of Illinois. Regardless of the procedural sequence of events, this Court considered the request for injunctive relief under Section 501(a)(2)(ii), as this Court will not permit the move outside the State of Illinois a mere 4 days prior to the filing of this case to give any advantage to one party over the other."

¶ 31 The trial court noted that our supreme court has made clear that an injunction hearing was not the equivalent of a best-interests hearing. In a removal hearing, the sole

[1]The trial court referenced 750 ILCS 50/501 in its order, but this statute does not exist. However, it appears that the court meant to reference 750 ILCS 5/501, which allows a trial court to grant temporary relief in all proceedings under the Act. Specifically, section 501(a)(2)(ii) of the Act allows a court to enjoin a party from removing a child from the jurisdiction of the court for more than 14 days. 750 ILCS 5/501(a)(2)(ii) (West 2016).

issue was the children's best interests but, at a hearing for an injunction, the focus was more on the parents' interests. The court noted that it considered the parties' testimony as well as the statements of the minor children when making its decision and that its ruling was based on the following: the father's relationship with the minor children; the father's involvement in the minor children's activities and care; the mother's relationship with the children; the mother's involvement with the children's activities and care; the mother's denial of any contact with the father for the first eight days after the move to Tennessee; the mother's denial of the children's return to Illinois to attend their paternal grandmother's funeral; the mother's denial of the minor children's return to Illinois to visit their father in the marital home; the mother's acquiescence in the minor children's inability to maintain/keep scheduled telephone calls with the father; and the inability of both parties to cooperate on setting up a schedule for parenting time with the father while the minor children were in Tennessee.

¶ 32 Further, the trial court stated as follows:

> "Although a full best-interest hearing was not held, this Court also considered interests of the minor children, including but not limited to school course curriculum and schedules; school activities; and extra-curricular activities. Further, this Court's ruling was based, in part, on the *in camera* interviews of the minor children on September 4, 2018.
>
> It is noted that Respondent 'Approved' the Order dated September 17, 2018[,] and any objection to that Order has been waived. Moreover, the injunction was granted as Petitioner established the elements for issuance of an injunction. Petitioner has a clearly ascertainable right, denial of parenting time shows a likelihood of irreparable harm for which no adequate remedy at law exists, and parenting time is presumed under Section 602.7(b) of the Marriage Act, so there is a likelihood of success on the merits."

Accordingly, the court denied the motion to reconsider and ordered the minor children to return to Illinois, within 25 miles of their prior home in Crab Orchard, on or before October 22, 2018. The court also made clear that this order did not affect the respondent's rights regarding any move outside Illinois. The respondent appeals the court's written order dated September 17, 2018, which granted the preliminary injunction, and the court's related docket entry dated October 2, 2018, which ordered the minor children to return to Williamson County by October 22, 2018.

¶ 33 Initially, we have ordered taken with the case the petitioner's motion to strike the notice of appeal. In both the motion and his brief, the petitioner argues that we lack jurisdiction to consider the merits of the respondent's arguments on appeal because the trial court did not enter a finding that there was no just reason for delaying either enforcement or an appeal pursuant to Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016), and the court's order was not one of the enumerated orders listed in subsection (b) that are appealable without the special finding. Ill. S. Ct. R. 304(b) (eff. Mar. 8, 2016).

¶ 34 Rule 304(b)(6) allows for an immediate appeal of "[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). The Committee Comments to Rule 306 provide, in pertinent parts, as follows:

> "The term 'custody judgment' comes from section 610 of the [Act] [citation], where it is used to refer to the trial court's permanent determination of custody entered incident to the dissolution of marriage, as distinguished from any temporary or interim orders of custody entered pursuant to section 603 of the Act [citation] and any orders modifying child custody subsequent to the dissolution of

> a marriage pursuant to section 610 of the Act [citation]." Ill. S. Ct. R. 304(b)(6), Committee Comments (rev. Feb. 26, 2010).

The trial court's order was neither a permanent determination of custody entered incident to a dissolution of marriage or an order modifying child custody subsequent to a dissolution of marriage. Thus, we do not have jurisdiction under Rule 304(b)(6) to consider the appeal.

¶ 35 Although we find that this court lacks jurisdiction under Rule 304(b)(6) (the only rule cited by the respondent in her brief for the basis of jurisdiction), we will consider whether there is jurisdiction under Illinois Supreme Court Rule 307(a)(1) (eff. Nov. 1, 2017), as 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, 211 (1996). Rule 307(a)(1) instructs that an appeal may be taken from an interlocutory order granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction. Ill. S. Ct. R. 307(a)(1) (eff. Nov. 1, 2017). Here, the trial court entered an injunction requiring the minor children to return to Illinois. Thus, because this is an interlocutory order granting an injunction, we have jurisdiction under Rule 307(a)(1) to consider the merits of the appeal. Accordingly, we deny the petitioner's motion to strike the notice of appeal.

¶ 36 We therefore turn to the respondent's first arguments on appeal, *i.e.*, that the trial court did not have the authority to grant an injunction under section 609.2 of the Act (the relocation statute) and that the petitioner's emergency petition was not legally sufficient to obtain an injunction under section 501 of the Act because it did not set forth any allegations in regard to the requirements for the issuance of a preliminary injunction.

¶ 37 Section 609.2(b) and (c) of the Act instructs that a parent who has been allocated the majority of parenting time or either parent who has been allocated equal parenting time may seek to relocate with the minor child as long as that parent follows the requisite statutory procedure (750 ILCS 5/609.2(b), (c) (West 2016)). Here, the emergency petition relied on the relocation statute, but neither parent had been awarded the majority of the parenting time under a parenting plan or allocation judgment nor was there a petition to relocate on file. Thus, the relocation requirements set forth in section 609.2 do not govern in this case. Accordingly, the petitioner's emergency petition was erroneously filed under section 609.2.

¶ 38 The petitioner argues that his emergency petition was in essence a request for injunctive relief under section 501(a)(2)(ii) of the Act (*id.* § 501(a)(2)(ii)), which is the statutory authority for the issuance of a preliminary injunction enjoining a party from removing a minor child from the jurisdiction of the court for more than 14 days. However, the emergency petition neither mentions section 501 nor the requirements for the issuance of a preliminary injunction.

¶ 39 A preliminary injunction preserves the status quo until the merits of the case can be decided. *In re Marriage of Slomka*, 397 Ill. App. 3d 137, 143 (2009). To grant a preliminary injunction, the court must find that: (1) plaintiff possesses a certain and clearly ascertainable right that needs protection; (2) plaintiff will suffer irreparable harm without the protection of the injunction; (3) there is no adequate remedy at law; and (4) there is a substantial likelihood that plaintiff will succeed on the merits of the case.

In re Marriage of Schmitt, 321 Ill. App. 3d 360, 371 (2001). A complaint for injunctive relief must plead facts that clearly establish the right to injunctive relief. *Id.*

¶ 40 Not only did the emergency petition not plead facts that clearly established the right to injunctive relief, it did not even set out the requirements for the issuance of a preliminary injunction. The petitioner did not merely miss one of the requirements for a preliminary injunction; the petition did not address any of the requirements. Thus, the emergency petition was legally insufficient to seek injunctive relief under section 501 of the Act.

¶ 41 Moreover, the trial court's September 17, 2018, written order, which granted the injunctive relief, did not meet the statutory requirements of section 11-101 of the Code (735 ILCS 5/11-101 (West 2016)). Section 11-101 of the Code provides as follows:

> "Every order granting an injunction and every restraining order shall set forth the reasons for its entry; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action[.]" *Id.*

The trial court's written order merely stated that the respondent was enjoined from removing the parties' minor children from Illinois; it did not set forth the reasons for its entry, and it was not specific in terms. Although we recognize that the trial court attempted to correct this error in its October 2018 written order by basically reformulating the emergency petition into a request for injunctive relief under section 501 of the Act, this course correction does not alleviate the unfairness to the respondent, who had been defending against an emergency petition filed under the relocation statute, not a request for injunctive relief under section 501.

¶ 42 We cannot condone the reformulating of a pleading requesting injunctive relief where that pleading was erroneously filed under the wrong statute and did not even mention the requirements for the issuance of that relief. Section 501 of the Act provides the petitioner with the exact relief that he is requesting; he just needed to follow the proper statutory procedure in requesting that relief.

¶ 43 Accordingly, we reverse the trial court's injunction requiring the respondent to return the minor children to Illinois.

¶ 44 Reversed.