2018 IL App (1st) 173064-U

No. 1-17-3064

Fourth Division
June 28, 2018

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

In re MARRIAGE OF	)	
	)	Appeal from the Circuit Court
MARTHA PADILLA,	)	of Cook County.
	)	
Petitioner and Counterrespondent-Appellee,	)	No. 14 D 6997
	)	
and	)	The Honorable
	)	William S. Boyd,
ROBERT KOWALSKI,	)	Judge Presiding.
	)	
Respondent and Counterpetitioner-Appellant.	)	
	)	

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice Burke and Justice Ellis concurred in the judgment.

ORDER

¶ 1 *Held:* The denial of respondent's petitions for substitution of judge for cause were not against the manifest weight of the evidence, nor was it against the manifest weight of the evidence for the trial court to find that respondent had engaged in abuse which resulted in the entry of a two-year plenary order of protection.

¶ 2 The instant appeal is the second time the parties have appeared before this court concerning an order of protection issued by the trial court pursuant to the Illinois Domestic Violence Act of 1986 (Domestic Violence Act) (750 ILCS 60/101 *et seq.* (West 2014)). In

2016, the trial court issued an emergency *ex parte* order of protection, which awarded petitioner Martha Padilla the physical care and possession of the 12-year-old son of petitioner and respondent Robert Kowalski.[1] In the first appeal, respondent claimed that the trial court had improperly delayed ruling on respondent's motion for rehearing in violation of the Domestic Violence Act and we ordered the motion for rehearing to be heard within 10 days of the issuance of our opinion. *In re Marriage of Padilla*, 2017 IL App (1st) 170215, ¶ 29. The trial court accordingly entered an order setting the matter for hearing 10 days after the entry of our opinion. Three days before the hearing date, respondent sought a substitution of judge for cause, which delayed the proceedings because the petition had to be given to another judge for hearing. The motion was subsequently denied, but the proceedings were further delayed because, the day before the issuance of our opinion, respondent's counsel had withdrawn, necessitating a 21-day stay for respondent to secure new counsel. Respondent additionally filed a motion to reconsider the denial of his petition to substitute the judge, which also held up the proceedings and which was also denied. The trial court denied respondent's motion for rehearing on the emergency order of protection on July 14, 2017.

¶ 3 The parties commenced a hearing on a plenary order of protection, which was delayed, in part, because respondent filed a petition to vacate the earlier denial of his petition for substitution of judge; the petition to vacate was denied. The trial court ultimately entered a two-year plenary order of protection on December 1, 2017. Respondent appeals both the denials of his motions for substitution of judge and the entry of the two-year plenary order of protection, arguing that the trial judge was biased against him. For the reasons that follow, we affirm.

[1] The parties have additional children, but they are over 18 years old.

¶ 4 BACKGROUND[2]

¶ 5 The parties are a married couple who have been engaged in an action for dissolution of their marriage, commencing on September 29, 2014, that has resulted in extended litigation. In addition to numerous motions and pleadings on both sides, respondent has sought to remove a number of judges from the case. We provide the following recitation, which was compiled by petitioner in an October 13, 2017, motion to dismiss one of respondent's petitions, for context.[3] The motion claims that between May 27, 2016, and March 15, 2017, respondent has filed no fewer than eight petitions for substitution of judge (one as of right and seven for cause), two motions to reconsider the denials of such petitions, one petition to vacate the denial of a petition for substitution of judge, and one motion to transfer venue; during that same time, two judges also recused themselves from the case.

¶ 6 The motion claims that respondent first filed a petition for substitution of judge for cause against Judge David Haracz[4] on May 27, 2016, which was amended on June 8, 2016. This petition was heard and denied by Judge Helaine Berger on July 1, 2016. On July 29, 2016, respondent filed a motion to reconsider the denial and, on September 1, 2016, the motion to reconsider was assigned to Judge Berger. According to the motion, respondent filed a petition for substitution of judge for cause against Judge Berger that same day; it appears that Judge Berger denied that petition, as well as the motion to reconsider the petition for substitution of Judge Haracz, on September 7, 2016.

[2] The background information up to the point of our prior opinion is primarily taken from that opinion. The remaining information is taken from the supporting record filed by respondent.

[3] We have supplemented the petitioner's recitation with information from the electronic docket of the circuit court of Cook County, of which we may take judicial notice. See *TCF National Bank v. Richards*, 2016 IL App (1st) 152083, ¶ 50.

[4] Since the instant appeal requires us to determine whether the denial of respondent's petitions for substitution of judge for cause were properly granted, the specific trial judges involved in the proceedings are relevant, so we include their names in our recitation of the facts.

¶ 7 Judge Haracz recused himself on October 11, 2016, and the case was returned to the presiding judge for random assignment on October 14, 2016. The case was assigned to Judge Veronica Mathein on October 20, 2016, and on the same day, respondent filed a motion for substitution of judge as a matter of right against Judge Mathein. The case was again returned to the presiding judge for random assignment and on October 20, 2016, was assigned to Judge Carole Bellows, who recused herself, resulting in an assignment of the case to Judge William Boyd.

¶ 8 On October 26, 2016, respondent filed a petition for substitution of judge for cause against Judge William Boyd; the matter was assigned to Judge Jeanne Cleveland Bernstein, who struck the motion when respondent failed to appear for the hearing. On October 28, 2016, respondent filed a petition for substitution of judge for cause against Judge Bernstein. On March 13, 2017, respondent filed an amended petition for substitution of judge for cause against Judge Boyd and also filed a motion to transfer the case to a different county due to the lack of available judges—the motion to transfer claimed that there were only eight or nine judges remaining in the domestic relations division who had not heard the case in some manner. Both petitions were denied. On September 30, 2017, respondent filed another petition for substitution of judge for cause against Judge Boyd, which was denied by Judge Pamela Loza. On July 11, 2017, respondent filed a motion to reconsider the denial of his petition for substitution and, on July 13, 2017, respondent filed a petition for substitution of judge for cause against Judge Loza. The petition for substitution of Judge Loza was denied, and Judge Loza denied the motion to reconsider the denial of the petition for substitution for Judge Boyd. Finally, on September 19, 2017, respondent filed a petition to vacate the March

15, 2017, order denying his petition for substitution of Judge Boyd. It is the petitions for substitution of Judge Boyd that are at issue on appeal.

¶ 9 I. September 7, 2016, Emergency Order of Protection

¶ 10 On September 7, 2016, petitioner filed a petition for an order of protection pursuant to the Domestic Violence Act against respondent, her husband; the petition indicated that there was also a pending dissolution action between the parties in the domestic relations division. On the same day, after a hearing before Judge Judith Rice, the judge entered an emergency *ex parte* order of protection against respondent, which prohibited respondent from entering petitioner's home, granted petitioner physical care and possession of the parties' then-12-year-old child, and denied respondent visitation or any contact with the child. The order was to be in effect until September 28, 2016, at which point the matter was set for a hearing. On September 16, 2016, respondent filed a motion for rehearing and to vacate the emergency order of protection.

¶ 11 The emergency order of protection was extended several times, with hearing on respondent's motion for rehearing likewise entered and continued a number of times. At the same time, there were a number of other motions before the court, including petitioner's motion to disqualify respondent's counsel and respondent's motion to remove the guardian *ad litem*. The specific chronology of the extensions and continuances are set forth in detail in our prior opinion (*Padilla*, 2017 IL App (1st) 170215, ¶¶ 3-10); the latest extension set the matter for hearing on March 7, 2017, at which point we considered respondent's

interlocutory appeal concerning the delay on hearing respondent's motion for hearing. At some point during the proceedings, Judge William Boyd became assigned the matter.[5]

¶ 12 II. March 13, 2017, Petition for Substitution of Judge for Cause

¶ 13 While the first appeal was pending, on March 13, 2017, respondent filed an "amended petition"[6] for substitution of Judge Boyd for cause pursuant to section 2-1001(a)(3) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1001(a)(3) (West 2016)). In the petition, respondent claimed that Judge Boyd was not fair and impartial and that the judge "had acknowledged his prejudice against [respondent] as a result of a series of extra judicial and ex parte communications." Respondent claimed that "actual prejudice is manifest in prejudicial rulings and absence of rulings."

¶ 14 Respondent's arguments were primarily based on three incidents. First, respondent claimed that on October 20, 2016, the parties were before Judge Boyd when, during a recess, the judge had a "private in chambers conference with Attorney Anthony Bass, attorney for the property management firm unilaterally retained by [petitioner]. Thereafter, Judge Boyd steadfastly refused to conduct the hearing on the Emergency Ex Parte Order of Protection." With respect to this hearing,[7] respondent claimed that the judge engaged in private conversations with Bass several times. When respondent's counsel became aware of one of the conversations, counsel asked the sheriff to interrupt the conversation. When the judge returned to the bench, he advised the parties "that Attorney Bass and Judge Boyd had been

[5] Respondent claims that the assignment occurred on October 20, 2016, and petitioner does not dispute this assertion. The first orders entered by Judge Boyd that appear in the record on appeal are dated October 20, 2016.

[6] No earlier petition for substitution of judge appears in the record on appeal. According to petitioner's counsel during the hearing on the petition, an earlier petition had been filed but was stricken when respondent and his counsel failed to appear in court for the hearing on that petition.

[7] There is no report of proceedings or bystander's report of this hearing contained in the record on appeal.

friends for over a twenty year period of time. Further, Judge Boyd related that his integrity was beyond reproach. However, Judge Boyd did not divulge the content of his communications with Attorney Bass." Respondent claimed that the judge's conversations with Bass were problematic because Bass represented Full Circle Realty & Management Company, which managed certain rental properties involved in the dissolution action. Respondent also claimed he had several pending claims against Bass personally concerning Bass' filing of notices of *lis pendens* against three properties that were part of the marital estate and claimed that, in the course of that litigation, Bass had stated in open court that he represented petitioner. Accordingly, respondent argued that "[g]iven Attorney Bass' admission that he represents [petitioner], Judge Boyd should not have engaged in closed door ex parte conversations without attorneys for [respondent] and the guardian ad litem being present."

¶ 15 In support of his claim, attached to the petition for substitution of judge was a copy of a January 27, 2016, appearance filed by Bass in the dissolution action, in which he appeared on behalf of "Full Circle Realty."[8] Also attached to the petition were copies of two petitions for temporary restraining orders filed by respondent, which sought, *inter alia*, to enjoin petitioner from retaining Full Circle Realty as a property manager for certain rental properties that were part of the marital estate, as well as a copy of a notice of intent to claim dissipation, in which respondent claimed that petitioner was dissipating marital funds through the retention of Full Circle Realty, which was improperly managing the rental properties. Additionally, attached to the petition was a copy of a petition for rule to show cause as to

[8] As the management company was not a party to the dissolution action, the record is unclear as to why its appearance was necessary or permissible. However, the petition also attaches an April 8, 2016, order in which Judge Haracz denied a petition for rule to show cause; the attorney signature block on that order names Bass as attorney for "3rd party Full Circle," indicating that there may have been proceedings involving the management company that are not included in the record on appeal.

why Bass' law firm should not be found in contempt for its refusal to comply with a subpoena for deposition, as well as an order denying a different petition for rule to show cause, which lists Bass on the attorney signature block. Finally, attached to the petition was a copy of an April 8, 2016, complaint filed by respondent against Bass in a case captioned Kowalski v. Bass, case no. 2016 L 003582, for slander of title and declaratory judgment concerning three notices of *lis pendens* filed by Bass, as well as an order of default entered after Bass failed to appear, answer, or otherwise plead.

¶ 16 In the second alleged incident raised in the petition for substitution, respondent claimed that after a hearing on the order of protection was continued due to the judge's absence, the judge made a comment at the rescheduled hearing date indicating that he did not appreciate that respondent attempted to have the matter heard in the judge's absence; respondent claimed that "Judge Boyd did not disclose what he had heard; the source of this ex parte communication, nor did he ever provide [respondent] with the ability to respond."

¶ 17 Finally, in the third alleged incident, respondent claimed that on January 20, 2017, the presiding judge of the domestic relations division "directed inflammatory correspondence concerning [respondent's] counsel to Judge Boyd"; according to respondent, "Judge Boyd did not seek to notify the parties whether he had received this and again did not provide the parties with an opportunity to respond." With respect to the letter, respondent claimed that on January 20, 2017, the presiding judge of the domestic relations division *sua sponte* sent a letter addressed to respondent's counsel, on which petitioner's counsel, the guardian *ad litem*, and Judge Boyd were copied, which respondent characterized as "inflammatory." Respondent claimed that Judge Boyd's "receipt and review of correspondence from [the

presiding judge] along with failure to allow an opportunity to respond constitutes improper extrajudicial communication," which prejudiced respondent.

¶ 18 In support of this claim, attached to the petition for substitution of judge was the letter sent by the presiding judge to respondent's counsel, on which the chief judge, Judge Boyd, petitioner's counsel, and the guardian *ad litem* had been copied. The letter was dated January 20, 2017, and provided, in full:

> "Chief Judge Evans forwarded me a letter from you dated December 24, 2016 complaining that I had not responded to correspondence that you purportedly sent me on August 8, 2016. I must advise you that no correspondence was ever received by me, my secretary, the Division law clerks, or any other staff members.
>
> In reviewing your purported letter to me, you appear to be requesting that the matter be referred to the Child Representative Committee so that [the guardian *ad litem*] is removed from the approved Child Representative list. Your letter is an *ex parte* communication, essentially seeking that I exercise my administrative authority to rule upon a pending motion instead of obtaining a ruling from the duly, randomly assigned judge presiding over the matter. This request was made without notice to your opponent, the child representative, or an appropriate pleading before the Court. I am therefore forwarding the letter that you claim to have sent me, together with the attached pleading, to all attorneys of record and the Judge assigned to the case.
>
> Finally, your letter to Chief Judge Evans makes baseless and false allegations impugning my integrity which I will not dignify with a response."

¶ 19 On March 15, 2017, respondent's petition for substitution of Judge Boyd for cause came for hearing before Judge John Thomas Carr. Both parties stood on the pleadings and, after reviewing the petition and its exhibits, the judge denied the petition, finding:

> "I don't find the allegations in there to rise to the level of substitute out Judge Boyd. I find that it is not more probably true than not true that a cause arose that would disqualify Judge Boyd in this matter. You know, I'm reading all of this. Nobody has indicated anything about what the conversation was that occurred with Mr. Bass, I think it is. Judge Boyd indicated that it was a friend for numerous years. There has been nothing indicated as to whether or not he even talked to Mr. Bass about the case, and so that being the case, I think that's the main, well, then, you also have the thing about somebody telling him about the hearing. That, without anything further, that could have been his clerk saying that, clerk or the coordinator, somebody saying that the hearing was at. So I don't find that to be anything that would rise again to the level of disqualifying Judge Boyd."

Respondent's counsel argued with respect to the finding about Bass, but the judge found the argument unpersuasive, finding:

> "[I]n this particular case, Judge Boyd explained that he has known Mr. Bass for a number of years and I think that that's sufficient to explain Mr. Bass being in the back. So I just don't find it to be, how should I put it, persuasive that Judge Boyd took whatever steps you think he took to disqualify himself, so bottom line, I'm denying your motion for substitution of Judges."

¶ 20 III. June 23, 2017, Appellate Court Decision

¶ 21 On June 23, 2017, we issued our opinion in respondent's interlocutory appeal concerning the lack of a hearing on respondent's motion for rehearing on the emergency order of protection. On appeal, we found that the Domestic Violence Act mandated a hearing on a motion for rehearing involving exclusive possession within 14 days and that the delay in conducting such a hearing violated the express terms of the statute. *Padilla*, 2017 IL App (1st) 170215, ¶ 29. Accordingly, we ordered the trial court to conduct a hearing on respondent's motion for rehearing within 10 days of the entry of our June 23, 2017, opinion. *Padilla*, 2017 IL App (1st) 170215, ¶ 29.

¶ 22 On June 26, 2017, the trial court entered a disposition order extending the emergency order of protection until July 3, 2017, and setting the matter for hearing on that day. The order noted that "[t]his order is entered per the mandate of the Appellate Court issued June 23, 2017 to set the hearing date on the emergency order of protection within 10 days from the date of entry of the Appellate Court opinion. July 3, 2017 is 10 days from the date of entry of the opinion."

¶ 23 IV. June 30, 2017, Petition for Substitution of Judge for Cause

¶ 24 On June 30, 2017,[9] respondent filed another petition for substitution of Judge Boyd for cause. In the petition, in addition to repeating the arguments made in his prior petition, respondent claimed that as a result of Judge Boyd's conduct in refusing to hear respondent's motion for rehearing, several watchdog groups had conducted rallies concerning the case, which included the circulation of satirical political handouts, which "have engendered the prejudice of Judge Boyd." Respondent also pointed to the judge's conduct at a June 22, 2017,

[9] The petition contained in the record on appeal is not file-stamped. However, the order denying the petition states that the petition was filed on June 30, 2017.

hearing, which was conducted the day after the rallies, in which the judge granted respondent's counsel leave to withdraw but refused to permit respondent to address the court himself, despite the fact that respondent was a licensed attorney who had filed his appearance in the case and despite the fact that he permitted petitioner to address the court. Additionally, respondent claimed that the judge's entry of the June 26, 2017, disposition order was improper, as it was a substantive ruling made less than 21 days after respondent's counsel had withdrawn.

¶ 25 On July 3, 2017, the new petition for substitution of Judge Boyd was assigned to Judge Pamela Loza for hearing. Judge Loza entered an order denying the motion for substitution of judge;[10] the order also found that our opinion was issued without our knowledge that respondent's counsel had withdrawn the previous day, such that no further proceedings could be conducted until the expiration of the 21-day period for respondent to retain new counsel. Accordingly, respondent's motion to reconsider was set for hearing on July 14, 2017. Additionally, "[b]y operation of law," Judge Loza extended the emergency order of protection for an additional 21 days, through June 22, 2017.

¶ 26 On July 3, 2017, after the case was reassigned to Judge Boyd, he entered an order that provided:

> "This cause coming before the Court for hearing on [respondent's] motion to rehear order of protection pursuant to the Appellate Court opinion issued June 23, 2017 to set the hearing within 10 days of entry of opinion; [respondent] having filed a motion to substitute Judge Boyd for cause; Judge Pamela Loza having conducted a

[10] The order states that the petition for substitution of judge "is denied for the reasons specially stated in open court." However, no report of proceedings from July 3, 2017, appears in the record on appeal.

> full hearing on the motion for substitution and having entered an order on today's date ruling as follows: (a) that the Appellate Court was unaware that [respondent's] counsel was granted leave to withdraw on June 22, 2017 when it mandated Judge Boyd to conduct the hearing within 10 days; that a conundrum was created between Supreme Court Rule that [respondent] has 21 days to obtain new counsel and the Appellate Court's mandate; (b) that the hearing on [respondent's] motion to rehear must be set on July 14, 2017; that the order of protection must be extended 21 days from June 22, 2017[;] that the motion to disqualify Judge Boyd is denied; [respondent] having agreed to Judge Loza's order except for the portion denying the motion to substitute Judge Boyd; the Court being advised in the premises, it is hereby ordered:
>
> (1) [Respondent's] motion to rehear and vacate the emergency order of protection is set for hearing at 2:00 p.m. on July 14, 2017.
>
> (2) [Petitioner's] petition for rule to show cause against [respondent] is set for hearing at 2:00 p.m. on July 14, 2017.

¶ 27 On July 11, 2017, respondent filed a motion to reconsider the July 3, 2017, order denying the petition for substitution of judge.

¶ 28 On July 13, 2017, the motion to reconsider was transferred to the presiding judge for assignment to Judge Loza, who had ruled on the petition for substitution of judge. It appears that respondent then sought to substitute Judge Loza for cause on July 13, when the presiding judge transferred respondent's petition for substitution of Judge Loza for cause to Judge Renee Goldfarb for a hearing. The same day, Judge Goldfarb entered an order denying "the petition for substitution of Judge Loza, for cause, filed by respondent," and also entered an

order returning respondent's motion to reconsider to Judge Loza for hearing. The presiding judge also entered an order returning the case to Judge Loza for hearing on the motion to reconsider on July 14, 2017. On that date, Judge Loza denied respondent's motion "per reasons stated on the record" and transferred the case to be returned to Judge Boyd.[11]

¶ 29 On July 13, 2017, Judge Boyd entered a disposition order extending the emergency order of protection until August 3, 2017.

¶ 30 V. Hearings on Motion for Rehearing and Order of Protection

¶ 31 On July 14, 2017, the parties came before Judge Boyd for a hearing on respondent's motion for rehearing on the emergency order of protection. At the hearing, respondent clarified that he was seeking a modification pursuant to section 224(b) of the Domestic Violence Act. After hearing arguments, the trial court found that "you have not given me any basis to modify under Section 224(b) of the Illinois Domestic Violence Act, therefore, your motion is denied." The court set a hearing on the plenary order of protection for July 27, 2017, and instructed respondent that "[y]ou make sure you have all of your witnesses ready." On the same day, the trial court entered a disposition order extending the emergency order of protection to July 27, 2017, and setting the matter for hearing on that date.

¶ 32 On July 27, 2017, the parties came before the court for a hearing on petitioner's order of protection, at which the guardian *ad litem* (GAL) testified and petitioner testified on direct examination. The GAL testified that he had been appointed in April 2015 and had been the GAL ever since. The GAL testified that parenting orders were entered on October 19, 2015, and November 3, 2015; the orders provided for respondent to pick up his child from school on certain days and the November 3 order specified that time was of the essence and that

[11] There is no report of proceedings for this hearing contained in the record on appeal.

respondent was required to be at the school within 15 minutes of the pickup time. The GAL testified that there was an "incident" in January 2016, in which the child was not picked up from school "so phone calls were being made to find out who was going to pick up and where and what time." The GAL received a letter from the child with respect to this incident, in which the child expressed "numerous concerns about what was happening with his dad," especially at the school. The GAL read the letter into the record; the letter stated that the child was "not feeling comfortable with [his] dad and [he was] scared to be with him right now." The letter explained that the child was at his school, waiting for respondent, who was late, and that the child "was right next to my teach when he flipped out on her and said bad things to her," which made the child "very upset" and "very embarrassed and ashamed for what he did and said." The letter said that "[a]bout a dozen kids and several adults and teachers saw it happen. [The child] started crying because [he] got scared and could not stand it anymore, and [his] teachers moved [him] to another room." The child attempted to speak with respondent about the incident and "[a]ll he did was keep blaming the school and [the child's] teachers for his bad behavior." The letter stated that the child felt that "[i]t is very hard to concentrate at school and on my homework because I'm scared of what he will do next Thursday. I had to leave basketball practice early and today I did not go to my game because I am scared *** that my dad will try to take me by force and I do not want to go with him right now." The letter concluded: "Tomorrow I will have to miss basketball practice and another basketball game because I'm scared of what he may do. Please do not make me go with my dad right now. I really do not even want to be with him even if someone else is with me. I still remember that he did not pick me up on Christmas when we both agreed he would pick me up at 2:00 o'clock. Now the school has banned him from the school and all sporting

events and the sports director has to go to all of my games because of my dad. Please help my dad understand that I am scared of him right not and that he needs to learn to behave ***."

¶ 33 The GAL testified that, after receiving the letter, he suggested to the child that the child meet with respondent in a therapeutic setting. With respect to the reference to basketball mentioned in the letter, the GAL testified that the child had informed him that at a basketball game, "his dad was screaming and yelling at various people who were sitting next to dad and that it was embarrassing for him."

¶ 34 The GAL testified that he had been in communication with the administration at the child's school regarding the incidents that had occurred at school in order "to try and ameliorate the problem that was occurring, allow [the child] to go with his dad if that was possible, but there was an issue with the security guards and mom and they asked him to leave the premises, so that clearly was not going to happen." The GAL testified that on January 12, 2016, he received at least three or four phone calls from one of the school's directors and its head concerning an incident involving a pickup of the child. According to the GAL, "[the child] was inside the school, mom was insisting that [the child] go with him [*sic*], [the child] was inside apparently crying. He had been waiting for dad, dad hadn't shown up yet. He wanted to call his mom to say dad isn't here can you pick me up. And based on what I was told there was an incident between [respondent] and the people in the school and the security guard." In response to the incident, the GAL received a letter from the school, a portion of which he read into the record:

> "It is accurate that the school admin team has discussed whether [respondent] can be on the premises. Last Wednesday January 13 I discussed with [respondent] and [his counsel] an incident in the gym a few days prior to the incident in the school building.
>
> At this time and based on the two separate incidents we recommend that [respondent] not attend the home basketball game on January 30, 2016, until we can have a conversation with him about the incidents and to communicate to him what it is we expect of all of our parents. The next home game is February 13, so hopefully we can sit and talk by then."

The letter also requested a court order indicating what the parties had agreed to with respect to the pickups of the child and requested "communication from [the GAL] to [respondent] that he is not permitted on the premises for the near future with a date to rescind this restriction to be determined in early February once the court order has been reviewed by all the parties." The GAL testified that, to his knowledge, the restriction had not been lifted.

¶ 35 The GAL testified that he attempted to facilitate a meeting between the child and respondent at the child's therapist's office and that he had met with the child there himself. The GAL explained that he met with the child at the therapist's office because that was the only place the child would meet him because "[the child] said that was the only place he felt safe and he didn't want me to get hurt." The GAL further explained that on August 3, 2016, there was a protective order entered because the GAL had read to respondent a letter that the child had sent to the GAL, which greatly upset the child after respondent confronted the child about it. The child told the GAL that respondent had cautioned the child that if the child contacted the GAL or wrote any other letters "bad things were going to happen to people."

Respondent also made disparaging remarks to the child about petitioner and the court proceedings, and "because of that he was scared and afraid."

¶ 36 The GAL testified that on August 9, 2016, he was attempting to facilitate a meeting between the child and respondent, and the child sent the GAL an email explaining why he did not want to do so. According to the GAL, this email was "a compilation of his thoughts and memories of things that had occurred during the period of time that we've been talking from the prior Christmas until now." The GAL then read portions of the email into the record; however, at the end of the GAL's testimony, the trial court denied admission of the email due to questions as to its authenticity. As this would apply both to the document itself and to the GAL's reading of it into the record, we do not relate the substance of the email.

¶ 37 The GAL was asked his opinion as to whether the child was sincere about his feelings and testified that "I think [the child] believes that he's afraid." The GAL testified that he believed that "it's important" for the child to visit with his father in a therapeutic setting.

¶ 38 Petitioner also testified on her own behalf; she provided testimony on direct examination at this hearing, while her cross-examination occurred at the conclusion of the hearing on December 1, 2017. Petitioner testified that she lived at the marital home with the minor child, as well as an older son and daughter; respondent had not resided at that address since the end of April 2014. She testified that she filed a petition for an order of protection on September 7, 2016, alleging certain incidents of abuse by respondent.

¶ 39 Petitioner testified that an October 19, 2015, order provided respondent parenting time, which was to begin on October 30, 2015. On October 23, 2015, petitioner picked the child up from school and went home. At approximately 3:45 p.m., petitioner "started getting phone calls at home from some unknown number, and then somebody proceeded to start ringing the

doorbell consistently and banging on the windows." Petitioner testified that the home phone had an answering machine connected, which was set so that messages would play out loud as they were being recorded. When she was receiving phone calls from the unknown number, petitioner received a message on the answering machine, which was played in court. While the recording is not included in the record on appeal, petitioner identified the voice on the recording as respondent's and testified that after she and her sons heard the recording, they felt "[t]errified." Approximately 7 p.m. that night, "[s]omebody started consistently wailing on the doorbell and banging on the windows"; petitioner testified that to reach the home, a visitor would need to bypass a locked front gate. Petitioner "looked out [the] window and [she] saw [respondent], he was out there screaming that [she'd] better open the f*** door because he's going to come in one way or another, and he said if he has to knock down the door to get his son, he's going to knock down the door." Petitioner called the police, who interviewed both her and the child; petitioner testified that there was no police report made.

¶ 40 Petitioner testified that the next morning, October 24, 2015, was a Saturday morning and the child had a football game at the park. They were preparing to leave when petitioner observed respondent in front of the house. They proceeded to leave through the back and went to the child's game. That Monday, October 26, petitioner obtained an emergency order of protection against respondent. The parties went to court on October 30 and the order of protection was dismissed on petitioner's motion. Petitioner testified that she agreed to dismiss the order of protection "because [respondent] agreed to certain things and to stay away from the house."

¶ 41 Petitioner testified that on January 9, 2016, she was at the child's basketball game; it was respondent's parenting time and respondent was supposed to visit with the child until 7 p.m.

However, respondent left the child at the basketball game, which ended at approximately noon; petitioner found out when the child informed her after the game that he was going home with her.

¶ 42 The following Monday, January 11, 2016, petitioner received a call from the school's athletic director. During the call, petitioner learned that "several parents had called the school complaining about [respondent's] behavior at the basketball game." The next day was respondent's parenting time, and petitioner received a phone call from the child's teacher after 5 p.m. because respondent had not arrived to pick the child up; the school instructed petitioner to come pick him up. Petitioner explained to the teacher that she did not have a vehicle and instructed her older daughter and son to go to the school to pick the child up. Petitioner then received a call from one of the school's principals who stated that respondent had arrived. Petitioner called the GAL to ask what she should do, and the GAL advised her to permit respondent to take the child; petitioner instructed the school to permit respondent to take the child. Petitioner then received a call from the school's other principal, who demanded the GAL's phone number, after which the principal called petitioner again and instructed her to pick up the child immediately. Petitioner instructed her older children to pick up the child, which they did. When they arrived home, petitioner learned "that [respondent] was in the lobby of the school and that the Chicago Police Department had been called by the school security and that they evacuated the lobby." The child was "very upset and crying when he got home."

¶ 43 The next morning, January 13, 2016, the GAL informed petitioner that the school had determined that it was unsafe for the child to leave with respondent. Petitioner spoke to one of the school's principals and learned "that [respondent] had gotten out of control, was

screaming at the teachers, the principals had to come out, the security had to call the Chicago Police Department, and that [respondent] had been detained and that the school had filed assault charges against him." Petitioner further testified that "[t]he school stated that [respondent] was not going to be allowed at the school for any reason and he was not going to be allowed at any of the sporting events at the school." Respondent's next parenting time was January 23, 2016, but the child refused to go with respondent.

¶ 44 Petitioner testified that respondent was not entitled to parenting time on January 29, 2016, but respondent attempted to pick the child up from school. He was not permitted to do so, so that day, he went before a judge and obtained a court order requiring petitioner to turn over the child; petitioner testified that respondent represented to the judge that it was his parenting time when it actually was not.

¶ 45 Petitioner testified that on February 5, 2016, petitioner was preparing to take the child to school and noticed respondent outside, in front of the house. The child "got very upset and scared," so they left through the back door. When they drove away, respondent followed then. Petitioner testified that the child "was adamant that he was not going to school because he was scared his father was going to try to go into the school and take him by force, so [the child] refused to go to school that day." Petitioner drove around, ending up at a restaurant in Skokie, where she spent approximately an hour trying to calm the child. After that incident, petitioner filed a motion to suspend respondent's visitation. The parties participated in "emergency intervention," which resulted in the suspension of respondent's parenting time and an order for respondent to attend therapy with the child.

¶ 46 Petitioner testified that she subsequently arranged therapy sessions for respondent with the child at the child's therapist's office, where the child had been attending therapy for two

and a half years. The session was set for February 13, but respondent arrived late and did not stay long after he arrived.

¶ 47 Petitioner testified that on April 16, 2016, respondent had parenting time with the child, and petitioner learned from the child and from his sister that the child had called 911 on respondent. The child told petitioner that "[h]e was very, very scared and terrified of his father." Prior to calling 911, the child called his sister and informed her that he was scared of his father and wanted to go home. She then called respondent. After she called her father, she told the child to call 911. The child's sister was able to record the call and later played the recording for petitioner. After listening to the call, petitioner felt "[t]errible" about the treatment of the child.

¶ 48 Petitioner testified that on August 3, 2016, a protective order was entered that prohibited the parties from discussing with the child any disclosures that the child may have made to the GAL. On August 9, 2016, respondent had parenting time with the child; he picked the child up at approximately 4:05 p.m. and was supposed to have parenting time until 7 p.m. However, he returned the child at 4:22 p.m. Petitioner testified that when the child returned, "[h]e was crying, screaming, he called me, open up the gate, open up the gate, mom, open up the gate, he kept repeating that, he was crying. And I opened up the gate and he ran in the house, he was shaking and he was crying."

¶ 49 Petitioner testified that on September 6, 2016, it was the child's first day of seventh grade, and respondent was supposed to have parenting time. However, the child "was still very distraught" over the August 9 visit and refused to visit with respondent, so the GAL suggested petitioner arrange a session at the therapist's office, which she did. Petitioner took the child to the therapist's office, but respondent appeared only at the end of the session. The

child was not permitted to leave with respondent after the session; petitioner learned that respondent "had gotten irate and was screaming" and that the therapist deemed it unsafe for the child to leave with respondent and asked respondent to leave.

¶ 50 After the session, petitioner and the child went home. Petitioner testified that "[w]hen we got home we started again getting phone calls from numbers I did not recognize, and then somebody started wailing on the doorbell and banging on the windows again and screaming, and I looked out and it was [respondent] screaming that he was taking his son." The child was able to hear the commotion and began to cry. Petitioner called 911, and testified that the situation made her feel "[t]errible." Petitioner testified that she "was terrified and scared because he had—that he was going to come in and, you know, do what he said he was going to do, take [the child]."

¶ 51 Petitioner testified that the next day, September 7, the parties were before the court on a "motion to disqualify a judge." Petitioner was present with counsel, and discussed the incident with her counsel. Counsel informed her that because they were in court for a limited purpose, it was not the appropriate venue to file for an order of protection and suggested that she go to the courthouse on Harrison Street to obtain that, which she did.

¶ 52 Petitioner testified that she was afraid of respondent and that she was seeking a plenary order of protection to protect herself and the child. Petitioner testified that continued abuse would "[a]bsolutely" occur if such an order of protection was not entered. Petitioner also sought to prohibit respondent from coming to the marital home or the child's school, and to allocate to her the decision-making with respect to the child.

¶ 53 The hearing was continued until August 25, and the order of protection was extended 21 days, to August 17. On August 17, 2017, the trial court extended the emergency order of

protection to September 7, 2017, and set the resumed hearing on the plenary order of protection on September 21, 2017; the order provided that the August 25 hearing date was stricken. On September 7, 2017, the emergency order of protection was extended to September 21, 2017.

¶ 54 On September 21, 2017, the trial court entered a disposition order extending the emergency order of protection to October 5, 2017, and setting the continued hearing on the plenary order of protection for that date.

¶ 55 VI. Petition to Vacate Denial of March 14, 2017, Petition for Substitution of Judge

¶ 56 Also on September 21, 2017, respondent filed a petition to vacate the March 15, 2017, order denying his petition for substitution of Judge Boyd pursuant to section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2016)). The petition claimed that respondent had discovered new evidence concerning attorney Bass, namely, that on September 12, 2017, petitioner executed an affidavit in connection with respondent's complaint against Bass in which she admitted that Bass was her attorney. The petition argued that this made Bass' conversation with Judge Boyd even more inappropriate.

¶ 57 Attached to the petition to vacate was an affidavit from petitioner, dated September 12, 2017, and filed September 13, 2017, in respondent's lawsuit against Bass concerning the filing of notices of *lis pendens*, case no. 2016 L 003582. The affidavit was certified pursuant to section 1-109 of the Code (735 ILCS 5/1-109 (West 2016)) and provides, in full:

"I Martha Padilla being first duly sworn upon my oath states as follows:

1. I filed a Dissolution of Marriage petition against my husband Robert Kowalski case number 2014 D 6997.

2. In May of 2015, Robert Kowalski[ ] filed a disclosure statement in the Domestic Relations matter not disclosing any ownership or interest in any real estate.

3. I retained Attorney Anthony Bass of Grasso Bass, P.C. to research and represent all my real estate interest and act as my Attorney in Fact for all such matters.

4. Because of Mr. Bass's work, I learned that Robert Kowalski had an undisclosed interest in over 25 properties in Chicago with an estimated value of over $3 million.

5. This discovery forced Robert Kowalski to finally disclose some of the properties that he had concealed his ownership interest to me and the court.

6. Attorney Anthony Bass as [*sic*] my lawyer and Attorney in Fact I requested, directed and authorized him to file lis pendants [*sic*] on the properties stated in the motion which were subject to my marital interest.

7. Due to the numerous lawsuits filed by Robert and Jan Kowalski, I couldn't obtain a real estate property manager without consenting to providing legal representation in the event they were sued or subpoenaed by Jan or Robert Kowalski.

8. When my property management company, Full Circle Realty[,] was harassed by Jan and Robert Kowalski with subpoenas and subject to a Rule to Show Cause, I requested Attorney Bass to represent it which was summarily resolved and dismissed by the court. See attached Judges [*sic*] order admonishing Kowalski as exhibit 'D'.

9. I will continue working with my current lawyers to obtain a permanent injunction from the Domestic Relations Judge precluding Robert Kowalski from the further selling [of] any of these marital properties and those listed in his Disclosure statement."

¶ 58 The petition to vacate was transferred to Judge Carr, who entered an order on October 2, 2017, indicating that there had been a hearing on the petition[12] and ordered respondent to procure a transcript of the March 15, 2017, hearing; the matter was continued to October 13, 2017, for further hearing. On the same day, Judge Carr entered a disposition order extending the emergency order of protection to October 23, 2017.

¶ 59 On October 13, 2017, petitioner filed a motion to dismiss the petition to vacate pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2016)), claiming that respondent was aware that Bass represented petitioner as early as October 20, 2016, and March 13, 2017, because he made those allegations in his prior petitions for substitution of judge based on Bass' representations in the action filed against him by respondent.

¶ 60 On October 13, 2017, Judge Carr denied the motion to dismiss, but also denied the petition to vacate "for the reasons set forth on the record"[13] and the case was transferred back to Judge Boyd. On the same day, the parties agreed to continue all matters until October 23, 2017. Two different judges then entered disposition orders extending the emergency order of protection to November 13, 2017, and then December 4, 2017, and the continued hearing was set for December 1, 2017.

¶ 61 VII. Conclusion of Hearing on Order of Protection

¶ 62 The hearing was concluded on December 1, 2017, with both petitioner and respondent testifying before Judge Boyd. Respondent, who was representing himself after the earlier withdrawal of his counsel,[14] cross-examined petitioner and then testified on his own behalf.

[12] There is no report of proceedings for this hearing contained in the record on appeal.

[13] The record on appeal does not contain a transcript of the proceedings.

[14] We note that respondent is a licensed attorney; however, according to the website of the Illinois Attorney Registration and Disciplinary Commission, at the time of the hearing, his license had been

Respondent's cross-examination of petitioner largely consisted of respondent's challenging the assertions made by petitioner in her affidavit supporting her petition for the order of protection. Respondent also suggested that the order of protection was merely a "ploy" to modify the visitation schedule, which petitioner denied. Petitioner also admitted that the child was aware of the existence of an protective order, although she could not recall whether she or the GAL had informed the child of that fact. Petitioner denied that she ever encouraged the child to refuse parenting time with respondent.

¶ 63 Prior to respondent's testimony, respondent indicated that he had subpoenaed several police officers, administrators from the child's school, and the child's therapist, but that they had not appeared in court, so he asked that they be compelled to appear. Respondent represented that the school administrator would testify about the veracity of the letter banning him from the school campus, while the police officers would testify concerning "all the banging and whatnot on gates." With respect to the police officers, the court clarified that the police officers were called by petitioner after the reported banging, so they would not have been in a position to observe whether banging had in fact occurred; respondent disputed this assertion, claiming that he was the one who called the police. The court found that their testimony would not have been probative and so denied respondent's request to continue the hearing until they could be compelled to appear. With respect to the school administrators, the court found that respondent wished to elicit testimony concerning an incident in January 2016 and another incident after the entry of the order of protection, neither which had probative value concerning the entry of the September 2016 order of protection. With respect to the therapist's presence, the court did not find any probative value to his presence.

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suspended for a period of six months, effective October 13, 2017. See *BAC Home Loans Servicing, LP v. Popa*, 2015 IL App (1st) 142053, ¶ 21 (noting that we may take judicial notice of such records).

¶ 64 Respondent then testified on his own behalf, denying that he had ever harassed petitioner and denying that he had ever banged on any doors with sticks or otherwise scared anyone. With respect to the incident at the basketball game, respondent testified that someone was blocking his view of the game and respondent made comments to that effect. Respondent testified that there was no interference with the game itself and that the referee did not call a time-out due to the disruption or anything similar.

¶ 65 With respect to the January 12, 2016, incident, respondent testified that "when I go into school to pick up my son, I expect my son to be tendered to me." Respondent testified that when he went into the school to pick up the child, the school for some reason refused to tender him the child and instead contacted petitioner. Respondent testified that "[i]t was my parenting time that day, and I was there to parent. I wasn't there to be fighting with the police." Respondent denied that he was barred from the child's school.

¶ 66 With respect to the allegations of ringing the doorbell, respondent testified that he did not ring the doorbell to harass petitioner and, in fact, did not ring the doorbell at all. When the child's therapist refused to permit the child to leave with respondent, respondent testified that "I could have done a lot of things that day, Your Honor. I could have been very bellicose, I could have been aggressive, I could have stood my ground, I could have summoned the police right to that office. I should have stormed in there and I could have removed my son because I had every right to take my son." However, when the therapist requested that respondent not "make a scene in [his] office," respondent acceded to his request. Respondent also testified that he did not like the child going to therapy there, because the child was told falsehoods about respondent's purported conduct.

¶ 67 Respondent also denied making hurtful comments to the child, testifying that "I'm not ripping into [the child], but I want to be a father. I'm not my son's friend, I'm not a buddy, I'm his father. And I do have certain expectations and hopes for my son. And that isn't considered ripping into [the child]." Respondent testified that on the day the child called 911, "[o]ur conversation may have become loud, but was I screaming at him, no, I was not." Respondent admitted that "[t]he day started out really rough" and that the child may have been crying a bit; respondent further admitted that the child wanted to speak to his sister and respondent "wasn't really keen on him conversing with his sister during my parenting time. He needed time with dad." However, he and the child "hashed out whatever was going on like two men would hash it out. So we were all good, and we had a really nice time that day." Respondent denied that it was the child who called 911, testifying that it was petitioner.

¶ 68 After hearing testimony and the arguments of the parties, the trial court found that petitioner had met her burden of establishing that she and the child had suffered abuse as defined by the Domestic Violence Act at the hands of respondent. With respect to the credibility of the parties, the trial court found:

> "The Court finds that the testimony of the petitioner has been credible at all times. The Court finds the testimony of the respondent not to be credible, and oftentimes evasive."

¶ 69 On the same day, Judge Boyd entered a plenary order of protection, to be in effect until December 1, 2019, which granted petitioner 100% allocation of parental responsibilities and provided that respondent's parenting time "shall occur only in a therapeutic setting." On December 8, 2017, respondent filed a notice of interlocutory appeal.

¶ 70 ANALYSIS

¶ 71 On appeal, respondent challenges the denial of his petitions for substitution of judge, as well as the entry of the plenary order of protection.

¶ 72 I. Appellate Jurisdiction

¶ 73 As an initial matter, we must discuss the question of our jurisdiction to consider respondent's claims on appeal. As an appellate court, we are required to consider our jurisdiction, even if the parties do not raise the issue. *A.M. Realty Western L.L.C. v. MSMC Realty, L.L.C.*, 2016 IL App (1st) 151087, ¶ 67. The question of whether we have jurisdiction over the instant appeal presents a question of law, which we review *de novo*. *In re Marriage of Demaret*, 2012 IL App (1st) 111916, ¶ 25; *In re Marriage of Gutman*, 232 Ill. 2d 145, 150 (2008). *De novo* consideration means we perform the same analysis that a trial judge would perform. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011).

¶ 74 In the case at bar, respondent filed an interlocutory appeal pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. Nov. 1, 2017), which provides for appeal of an interlocutory order "granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction." "To determine what constitutes an appealable injunctive order under Rule 307(a)(1) we look to the substance of the action, not its form. *** Actions of the circuit court having the force and effect of injunctions are still appealable even if called something else." *In re A Minor*, 127 Ill. 2d 247, 260 (1989). An injunction is "a 'judicial process operating in personam, and requiring [a] person to whom it is directed to do or refrain from doing a particular thing.' " *In re A Minor*, 127 Ill. 2d at 261 (quoting Black's Law Dictionary 705 (5th ed. 1979)). "An order of protection is an injunctive order because it directs a person to refrain from doing something, such as to refrain from entering or residing where he or she lived before the order

was entered." *In re Marriage of Fischer*, 228 Ill. App. 3d 482, 486-87 (1992). Thus, the plenary order of protection was an injunctive order and we have appellate jurisdiction to consider its propriety.

¶ 75 The question of whether we have jurisdiction to consider respondent's challenges to the denial of his petitions for substitution of judge, however, does not have such a clear-cut answer. Our supreme court has made clear that "[t]he law is well established that unless specifically authorized by the rules of this court, the appellate court has no jurisdiction to review judgments, orders or decrees which are not final." *Department of Central Management Services v. American Federation of State, County & Municipal Employees*, 182 Ill. 2d 234, 238 (1998). An order denying substitution of judge is not a final order and, accordingly, it is not generally immediately appealable. *In re Marriage of Nettleton*, 348 Ill. App. 3d 961, 969 (2004). However, in the case at bar, respondent seeks review of that order in connection with the appeal of an order that is appealable under Rule 307(a)(1), as noted above. Thus, the question is whether the appealability of the order of protection also renders the orders denying substitution of judge appealable.

¶ 76 "[I]n an interlocutory appeal, the scope of review is normally limited to an examination of whether or not the trial court abused its discretion in granting or refusing the requested interlocutory relief." *In re Lawrence M.*, 172 Ill. 2d 523, 526 (1996). "An appeal under Rule 307 does not open the door to a general review of all orders entered by the trial court up to that date. Interlocutory appeals are piecemeal in nature and Rule 307 provides for some very specific exceptions to the rules against piecemeal appeals." *City of Chicago v. Airline Canteen Service, Inc.*, 64 Ill. App. 3d 417, 428 (1978). Accordingly, some courts have found that motions for change of venue or for substitution of judge are not rendered appealable

when raised in connection with Rule 307 appeals. See, *e.g.*, *Murges v. Bowman*, 254 Ill. App. 3d 1071, 1084 (1993); *Airline Canteen*, 64 Ill. App. 3d at 428-29; *Mexicali Club, Inc. v. Illinois Liquor Control Comm'n*, 37 Ill. App. 3d 797, 799 (1976).

¶ 77 However, in 1994, the Fourth District found the reasoning of such cases unpersuasive, at least in the case of "any prior error that bears directly upon the question of whether the order on appeal was proper." *Sarah Bush Lincoln Health Center v. Berlin*, 268 Ill. App. 3d 184, 187 (1994), *rev'd on other grounds*, 179 Ill. 2d 1 (1997). The *Berlin* court reasoned that:

> "[t]he difficulty with the holdings of *Murges* and *Airline Canteen Service* is that they permit a judge who should not be hearing a motion for interlocutory injunctive relief to hear that matter without the objecting party having any recourse. The propriety of an order granting or denying interlocutory injunctive relief can only be determined in a Rule 307(a)(1) appeal. [Citations.] Rather than following the holdings of *Murges* and *Airline Canteen Service*, we consider the proper scope of the review under Rule 307 is to review any prior error that bears directly upon the question of whether the order on appeal was proper." *Berlin*, 268 Ill. App. 3d at 186-87.

The *Berlin* court continued:

> "While the judge from whom substitution was sought here is an able and respected jurist, the rationale of the procedure for substitution of judge is that the party seeking substitution perceives that the determination of the judge who hears the matter is likely to 'affect' the outcome of the matter before the judge. The importance of a proper ruling on a motion for substitution of judge is so great that some courts have held that the wrongful refusal of a proper request for substitution of judge renders all

subsequent orders by that judge entered in the case void. [Citations.]" *Berlin*, 268 Ill. App. 3d at 187.

¶ 78 After the holding in *Berlin*, courts have been split on the issue of whether an order concerning substitution of a judge is appealable. See, *e.g.*, *Partipilo v. Partipilo*, 331 Ill. App. 3d 394, 398 (2002) (relying on *Berlin* to find an order denying substitution of judge was appealable "by way of [the appellant's] appeal seeking injunctive relief"); *U.S. Bank National Ass'n v. IN Retail Fund Algonquin Commons, LLC*, 2013 IL App (2d) 130213, ¶ 25 (finding no jurisdiction over order granting motion for substitution of judge); *In re Marriage of Nettleton*, 348 Ill. App. 3d 961, 970 (2004) (finding that "we believe that the supreme court rule should prevail over the ruling of *Berlin*, such that we are precluded from reviewing the merits of the rulings on the motions").

¶ 79 While we make no comment on whether an order denying substitution of judge is generally appealable in connection with a Rule 307 appeal of an injunctive order, we conclude that the orders at issue in the instant case are appealable. As framed in his brief on appeal, respondent's argument with respect to the order of protection is that it was "the Product of a Biased Judge," which also served as the basis for his seeking the substitution of Judge Boyd several times for cause. Thus, review of respondent's claims with respect to the order of protection will necessarily involve consideration of the substitution of judge proceedings. It is difficult to imagine any situation in which the alleged prior error could "bear[ ] directly upon the question of whether the order on appeal was proper" (*Berlin*, 268 Ill. App. 3d at 187) more than the instant case. Accordingly, we find that we may properly consider the propriety of the orders denying respondent's petitions for substitution of judge and proceed to the merits of respondent's arguments.

¶ 80 II. Substitution of Judge

¶ 81 Respondent first argues that his petitions for substitution of judge for cause were improperly denied. Such petitions are governed by section 2-1001(a)(3) of the Code, which authorizes each party in a civil case to seek substitution of the trial judge for cause. 735 ILCS 5/2-1001(a)(3) (West 2016). "Although the statute does not define 'cause,' Illinois courts have held that in such circumstances, actual prejudice has been required to force removal of a judge from a case, that is, either prejudicial trial conduct or personal bias." *In re Marriage of O'Brien*, 2011 IL 109039, ¶ 30. This statute "[is] to be liberally construed to promote rather than defeat the right of substitution, particularly where the 'cause' claimed by the petitioner is that the trial judge is prejudiced against him." *In re Estate of Wilson*, 238 Ill. 2d 519, 553 (2010).

¶ 82 In the case at bar, all of respondent's petitions were transferred for hearing before judges other than Judge Boyd and respondent was given the opportunity to have a hearing or a hearing was conducted on the petitions. In considering a petition for substitution of judge for cause, the judge hearing the petition " 'like any other fact finder, [was required to] weigh the evidence to determine whether the named judge showed prejudice.' " *Cushing v. Greyhound Lines, Inc.*, 2013 IL App (1st) 103197, ¶ 360 (quoting *In re Marriage of Schweihs*, 272 Ill. App. 3d 653, 659 (1995)). Accordingly, "we *** will not reverse a determination on allegations of prejudice unless the finding is contrary to the manifest weight of the evidence." *Schweihs*, 272 Ill. App. 3d at 659. "A decision is against the manifest weight of the evidence only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence." *Eychaner v. Gross*, 202 Ill. 2d 228, 252 (2002).

¶ 83 "Judges, of course, are presumed impartial, and the burden of overcoming the presumption by showing prejudicial trial conduct or personal bias rests on the party making the charge." *O'Brien*, 2011 IL 109039, ¶ 31. "Where bias or prejudice is involved as the basis for seeking substitution, it must normally stem from an extrajudicial source, *i.e.*, from a source other than from what the judge learned from her participation in the case before her. A judge's previous rulings almost never constitute a valid basis for a claim of judicial bias or partiality." *Wilson*, 238 Ill. 2d at 554.

¶ 84 In the case at bar, respondent raises two issues in support of his argument that substitution should have been granted. First, he argues that Judge Boyd's conversation with Bass demonstrated actual prejudice. Second, he argues that Judge Boyd demonstrated "Deep-Seated Antagonism" through his delay in ruling on the order of protection and other matters. Respondent's second argument requires only a brief discussion. As noted, "[a] judge's previous rulings almost never constitute a valid basis for a claim of judicial bias or partiality." *Wilson*, 238 Ill. 2d at 554. Our supreme court has looked to the United States Supreme Court in noting:

> " '[O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible. Thus, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge. They *may* do so if they reveal an opinion that derives from an extrajudicial source; and they *will* do so if they reveal such a high degree of favoritism or antagonism as to make

fair judgment impossible.' " (Emphasis in original.) *Eychaner*, 202 Ill. 2d at 281 (quoting *Liteky v. United States*, 510 U.S. 540, 555 (1994)).

¶ 85 In the case at bar, respondent does not identify any behavior from Judge Boyd that would rise to the level of the deep-seated antagonism necessary for a claim of judicial bias based on a judge's in-court conduct. The only behavior pointed to by respondent is the fact that this court's prior opinion found that the failure to hold a hearing on respondent's motion for rehearing violated the Domestic Violence Act and that the hearing was not concluded until December 1, 2017. However, respondent's argument fails to recognize that a hearing on his motion for rehearing was actually conducted on July 14, 2017, as soon as the stay based on the withdrawal of respondent's counsel had expired; it was the hearing on the order of protection itself that was continued to December 1, 2017. Respondent's argument also fails to acknowledge that part of the delay was due to his own conduct. Respondent apparently filed petitions for rule to show cause against the guardian *ad litem* and respondent on July 24, 2017, and July 25, 2017, which were set for presentment by agreement of the parties on August 9, 2017.[15] On that date, a briefing schedule was entered by agreement of the parties, which continued the matter to September 14, 2017. Respondent also apparently filed a motion to quash subpoenas and for sanctions, for which an agreed order was entered on August 28, 2017, setting a briefing schedule and setting the matter for hearing on October 5, 2017.[16] Additionally, an agreed order dated September 8, 2017, set a briefing schedule on a motion to quash subpoenas filed by petitioner and on several motions filed by respondent: (1) a "Petition for Temporary Restraining Order, Preliminary Injunction and Other Relief"; (2) a

[15] The petitions for rule to show cause do not appear in the record on appeal. However, there is a July 26, 2017, order finding that these petitions were not emergencies, and an August 2, 2017, continuance order setting the matter for presentment on August 9, 2017, by agreement of counsel.

[16] The motion to quash subpoenas and for sanctions does not appear in the record on appeal; the agreed order is the only reference to this motion that is contained in the record on appeal.

"Motion to Turn Over Package"; (3) a "Motion to Compel Compliance with SCT Rule 922, 218, 923 and Appellate Opinion"; and (4) a citation to remove the guardian *ad litem*.[17] Finally, respondent filed a petition to vacate the earlier denial of his petition for substitution on September 21, 2017, which was denied on October 13, 2017. On that same date, an agreed order was entered, continuing "all pending matters" to October 23, 2017. Accordingly, we find nothing in the timing of the hearing demonstrating such deep-seated antagonism that would entitle respondent to substitution.

¶ 86 We turn, then, to respondent's primary argument, concerning Judge Boyd's communication with Bass. In respondent's March 13, 2017, petition for substitution of judge, respondent claimed that during an October 20, 2016, hearing the judge engaged in private conversations with Bass several times. When respondent's counsel became aware of one of the conversations, counsel asked the sheriff to interrupt the conversation. When the judge returned to the bench, he advised the parties "that Attorney Bass and Judge Boyd had been friends for over a twenty year period of time. Further, Judge Boyd related that his integrity was beyond reproach. However, Judge Boyd did not divulge the content of his communications with Attorney Bass." Respondent claimed that the judge's conversations with Bass were problematic because Bass represented Full Circle Realty & Management Company, which managed certain rental properties involved in the dissolution action. Respondent also claimed he had several pending claims against Bass personally concerning Bass' filing of notices of *lis pendens* against three properties that were part of the marital estate and claimed that, in the course of that litigation, Bass had stated in open court that he represented petitioner. Accordingly, respondent argued that "[g]iven Attorney Bass'

[17] None of these motions appear in the record on appeal; the agreed order is the only reference to these motions that is contained in the record on appeal.

admission that he represents [petitioner], Judge Boyd should not have engaged in closed door ex parte conversations without attorneys for [respondent] and the guardian ad litem being present."

¶ 87 As noted, after the hearing on the petition for substitution before Judge Carr, Judge Carr denied the petition. Respondent's counsel argued with respect to Judge Carr's finding about Bass (see *infra* ¶ 19), but the judge found the argument unpersuasive. See *infra* ¶ 19. Later, in respondent's petition to vacate the denial of this petition, respondent added new allegations about Bass' relationship with petitioner based on petitioner's affidavit admitting that Bass had represented her in connection with real estate matters. The petition to vacate was also denied.

¶ 88 We cannot find that the denial of respondent's petitions was against the manifest weight of the evidence. The record on appeal is missing any transcript or bystander's report of the October 20, 2016, hearing at which the alleged *ex parte* communications occurred. Accordingly, there is no way for us to review (1) when these alleged conversations occurred, (2) what respondent's counsel's objection was, or (3) what Judge Boyd's response was. The only evidence we have is respondent's claims in his petitions that the judge advised the parties "that Attorney Bass and Judge Boyd had been friends for over a twenty year period of time. Further, Judge Boyd related that his integrity was beyond reproach. However, Judge Boyd did not divulge the content of his communications with Attorney Bass." Nor, as was pointed out by Judge Carr, is there any evidence of the content of these communications or even if Judge Boyd was aware of Bass' connection to the case. All we have is the fact that Judge Boyd had a conversation with someone whom he had known for a number of years on an unidentified subject, who happened to have a peripheral connection with the case before

the judge—even though the judge may not have been aware of that connection at the time of the conversation. We cannot find that the mere existence of this conversation means that Judge Carr's denial of the petition for substitution was against the manifest weight of the evidence.

¶ 89 We are unpersuaded by respondent's reliance on *People v. Bradshaw*, 171 Ill. App. 3d 971 (1988), and *In re Marriage of Wheatley*, 297 Ill. App. 3d 854 (1998), both of which are cases in which *ex parte* communications were held to have required recusals by the judge. The instant case involves substitution of a judge, not the propriety of a judge's refusal to recuse himself. As our supreme court has noted "recusal and substitution for cause are not the same thing" and they are subject to different rules and standards. *O'Brien*, 2011 IL 109039, ¶ 45. Furthermore, while *Branshaw* also involved a substitution for cause, our supreme court criticized that court's analysis for interchanging the concepts of recusal and substitution throughout its opinion without citation to legal authority (*O'Brien*, 2011 IL 109039, ¶ 37), making that case's value unclear. Additionally, both cases appear to have a more complete record of the allegedly improper communication, as opposed to the instant case, in which there is no evidence about the content of the communications or even whether Judge Boyd was aware of Bass' relationship to the case. Accordingly, we do not find these cases persuasive and affirm the denial of respondent's petitions for substitution of judge for cause.

¶ 90 According to petitioner's affidavit, which respondent submitted in connection with his petition to vacate the denial of the petition for substitution, petitioner was in fact represented by Bass in connection with the dissolution action, but Bass' appearance is not of record in this case and it appears that Bass' involvement was on another matter involving the parties'

real estate. Certainly if Bass had a prior friendship with the judge, it was not the proper time to have a conversation with the judge, even if the conversation was only about the weather.

¶ 91 Even if that conversation created an aire of impropriety, it was not enough for a court to grant a petition for substitution of judge for cause. See *In re Marriage of O'Brien*, 2011 IL 109039, ¶ 43 (expressly rejecting the imposition of an "appearance of impropriety" standard into substitution proceedings). "[A]ctual prejudice has been required to force removal of a judge from a case, that is, either prejudicial trial conduct or personal bias." *O'Brien*, 2011 IL 109039, ¶ 30. Here, as noted, there are no details about the conversation between the judge and Bass found in the record and there is no evidence of any prejudice towards respondent. In the case at bar, the history of the case illustrates that respondent claimed that almost all of the judges who heard his case were prejudiced against him, yet he provided no evidence of that prejudice. He claimed that the completion of the evidentiary hearing on the order of protection was held up by Judge Boyd, when he presented petitions for substitution of judge for cause, petitions to vacate orders denying petitions for substitution of judge for cause, a motion to remove the GAL, and numerous other motions that required the continuance of the completion of the hearing on the order of protection. We cannot find that anything in the record on appeal demonstrated prejudice such that the petitions for substitution of judge should have been granted and therefore affirm the denial of those petitions.

¶ 92 III. Order of Protection

¶ 93 Respondent also argues that the trial court erred in granting a two-year plenary order of protection because it was the product of a biased judge. "In any proceeding to obtain an order of protection, the central inquiry is whether the petitioner has been abused." *Best v. Best*, 223 Ill. 2d 342, 348 (2006). Whether such abuse occurred is an issue of fact that must be proved

by a preponderance of the evidence. *Best*, 223 Ill. 2d at 348. "At this point the standard of review for findings of abuse is self-evident. When a trial court makes a finding by a preponderance of the evidence, this court will reverse that finding only if it is against the manifest weight of the evidence." *Best*, 223 Ill. 2d at 348. As noted, "[a] decision is against the manifest weight of the evidence only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence." *Eychaner*, 202 Ill. 2d at 252.

¶ 94 In the case at bar, petitioner made a number of allegations against respondent, testifying that respondent was verbally abusive to her and the child; that respondent appeared at her home, leaning on the doorbell and banging on her windows with sticks; and that respondent would appear outside her home, requiring her to leave through the back. Respondent's arguments are based on his claims that he was merely engaged in his court-permitted parenting time and did not engage in the behavior alleged by petitioner. However, this is a classic case of a credibility determination, which is left to the trial court. "Under the manifest weight standard, we give deference to the trial court as the finder of fact because it is in the best position to observe the conduct and demeanor of the parties and witnesses." *Best*, 223 Ill. 2d at 350. "A reviewing court will not substitute its judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn." *Best*, 223 Ill. 2d at 350-51. In the case at bar, both parties testified as to their actions and the trial court was able to observe their demeanor and to resolve any conflicts in the evidence by making credibility determinations. The trial court specifically found that "the testimony of the petitioner has been credible at all times. The Court finds the testimony of the respondent not to be credible, and oftentimes evasive." We will not second-

guess this finding on review, nor will we substitute our judgment for that of the trial court in terms of the weight to be given to the evidence. Furthermore, we note that the GAL also testified, and his testimony corroborated petitioner's testimony in a number of ways. The GAL testified about the incident at school, in which respondent's behavior in picking up the child resulted in school officials refusing to permit the child to leave with him and to call the police. The GAL also testified that this incident, in addition to the incident in which respondent lost his temper at the child's basketball game, led the school to prohibit respondent from entering school grounds, at least temporarily. The GAL further corroborated petitioner's testimony that the child had expressed fear of respondent, testifying about the child's communications to the GAL, in which the child had indicated that respondent's behavior greatly upset him. Accordingly, we cannot find the trial court's finding of abuse to be against the manifest weight of the evidence, nor can we find any error in respondent's related contentions concerning the length of the order of protection or in the limitation that respondent's parenting time occur in a therapeutic setting.

¶ 95 We are unpersuaded by respondent's argument that petitioner was using the Domestic Violence Act "as a subterfuge to gain custody." The allegations in petitioner's petition for an order of protection were based on fear engendered by respondent's actions. The trial court heard testimony from the parties and the guardian *ad litem* related to the merits of those allegations, and determined that abuse had been demonstrated. There is no evidence that the purpose of the order was to obtain a custody ruling as opposed to preventing abuse other than respondent's arguments to the contrary. We must also note that respondent claims that he is entitled to no contact whatsoever with the child. However, the order of protection specifically provides that respondent is permitted parenting time with the child "in a therapeutic setting."

Thus, respondent is permitted to visit with his child, but in a setting in which the child feels safe. This limitation also points to the purpose of the order as protection of the child, not obtaining custody.

¶ 96 We are similarly unpersuaded by respondent's argument that he should have been permitted a continuance so that he could secure the appearance of additional witnesses. "A trial court's decision on a requested continuance is a matter of discretion and will not be overturned absent an abuse of that discretion." *Henderson-Smith & Associates, Inc. v. Nahamani Family Service Center, Inc.*, 323 Ill. App. 3d 15, 28 (2001). In the case at bar, the trial court warned respondent to "make sure you have all of your witnesses ready" in time for the July 27, 2017, hearing. These witnesses were not present in court on July 27, 2017, nor were they present when the hearing resumed on December 1, 2017. We cannot find it an abuse of discretion for the court to have denied respondent yet more time to secure the presence of the witnesses, especially when the court also found that their testimony would not be probative.

¶ 97 Finally, we do not find persuasive respondent's argument that the order should be reversed because the trial court failed to make specific findings. Under the Domestic Violence Act, there are statutory factors that must be considered by the trial court, including "the nature, frequency, severity, pattern and consequences of the respondent's past abuse *** and the likelihood of danger of future abuse." 750 ILCS 60/214(c)(1)(i) (West 2016). The Domestic Violence Act further provides that:

> "[T]he court shall make its findings in an official record or in writing, and shall at a minimum set forth the following:

(i) That the court has considered the applicable relevant factors described in paragraphs (1) and (2) of this subsection.

(ii) Whether the conduct or actions of respondent, unless prohibited, will likely cause irreparable harm or continued abuse.

(iii) Whether it is necessary to grant the requested relief in order to protect petitioner or other alleged abused persons." 750 ILCS 60/214(c)(3) (West 2016).

¶ 98 In the case at bar, the trial court made oral findings that petitioner and the child had suffered abuse as defined by the Domestic Violence Act at the hands of respondent and that petitioner had met her burden of proof under the Domestic Violence Act. The trial court further found that petitioner's testimony "has been credible at all times" and that respondent's testimony was not credible. Consequently, the trial court entered the order of protection. Respondent is correct that the trial court could have issued more expansive findings. However, we cannot say that the findings made by the trial court were deficient so as to require reversal. In her testimony, in addition to testifying about the specific examples of respondent's conduct, petitioner expressly testified that she was afraid of respondent and that she was afraid that the abuse would continue if the order of protection was not entered. As noted, the trial court expressly found petitioner's testimony credible "at all times." Furthermore, "[a] reviewing court will not overturn an order for lack of greater specificity when the record supports the statutorily required findings." *In re Marriage of McCoy*, 253 Ill. App. 3d 958, 965 (1993). Here, the written order in connection with the trial court oral pronouncements satisfied the statutory requirements and we do not find reversible error on this basis.

¶ 99 CONCLUSION

¶ 100 For the reasons set forth above, we cannot find that respondent's petitions for substitution of judge for cause were improperly denied, nor can we find error in the trial court's entry of a two-year plenary order of protection.

¶ 101 Affirmed.