

2024 IL App (1st) 230295-U

No. 1-23-0295

Order filed April 19, 2024

Fifth Division

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

MICHELLE BROZELL n/k/a MICHELLE KENNEDY,)	Appeal from the
)	Circuit Court of
Petitioner-Appellee,)	Cook County.
)	
v.)	No. 07 D 9410
)	
EUGENE BROZELL,)	Honorable
)	Matthew W. Jannusch,
Respondent-Appellant.)	Judge, presiding.

JUSTICE NAVARRO delivered the judgment of the court.
Presiding Justice Mitchell and Justice Mikva concurred in the judgment.

ORDER

- ¶ 1 *Held:* Appellant’s *pro se* appeal from the trial court’s denial of his motion to vacate plenary orders of protection against him must be dismissed where his only arguments on appeal pertain to the August 10, 2009, judgment of dissolution of marriage, over which we lack jurisdiction.
- ¶ 2 Respondent Eugene Brozell filed a *pro se* notice of appeal in this post-decree dissolution of marriage proceeding. On appeal, he contends (1) that on several occasions he was denied the opportunity to present “all evidence” that would “exonerate” him, (2) that the trial court erred by

admitting the testimony of the children's representative, (3) that the August 10, 2009, judgment for dissolution of marriage improperly awarded 50% of his pension to petitioner, his ex-wife, Michelle Brozell n/k/a Michelle Kennedy, and (4) that he was denied his constitutional rights throughout the proceedings.¹ We dismiss for lack of jurisdiction.

¶ 3

I. BACKGROUND

¶ 4 Eugene and Michelle were married on September 9, 2000, and had two children. On September 18, 2007, Michelle filed a petition for dissolution of marriage. On October 5, 2007, the trial court entered an agreed interim order of protection as to Michelle and against Eugene for the pendency of the "proceedings."

¶ 5 In 2008, the court appointed Gloria Block as the children's representative.

¶ 6 On August 10, 2009, the trial court entered a plenary order of protection against Eugene, which covered Michelle and the children, in effect until August 9, 2011. Pursuant to the order, Eugene received eight hours of supervised visitation a month. The trial court further entered a judgment for dissolution of marriage, which granted Michelle sole custody of the minors and 50% of Eugene's pensions.

¶ 7 On March 25, 2011, the trial court entered a supplemental agreed order modifying the judgment for dissolution of marriage to state that Eugene and Michelle were each required to pay half of the children's representative's fees. The order further required Eugene and Michelle to communicate via "ourfamilywizard.com" and to check the site on a daily basis.

¹ For clarity, we refer to Eugene Brozell and Michelle Brozell n/k/a Michelle Kennedy by their first names.

¶ 8 On August 8, 2012, the trial court found Eugene in indirect civil contempt for failure to make payments in accordance with the August 10, 2009, dissolution order. On December 7, 2012, the trial court found Eugene in indirect civil contempt for failure to check and communicate through ourfamilywizard.com. On November 7, 2013, the trial court found Eugene in indirect civil contempt for failure to pay the children's representative's fees.

¶ 9 On May 31, 2019, the trial court found Eugene in contempt of court for failure to pay child support, and entered a judgment of \$43,385.34 in favor of Michelle. The court also found Eugene in contempt of court for failure to pay the children's representative's fees.

¶ 10 On July 31, 2019, the trial court entered judgments totaling \$15,507.50 against Eugene for Michelle's attorney fees and the children's representative's fees.²

¶ 11 On June 24, 2020, Michelle filed an emergency *ex parte* petition for an order of protection against Eugene on behalf of herself and the children, pursuant to sections 219 and 220 of the Domestic Violence Act (750 ILCS 60/219, 220 (West 2020)). A plenary civil order of protection was entered on July 14, 2020, effective until July 14, 2022. Pursuant to the order, Eugene was prohibited from texting, calling, or otherwise communicating with Michelle or the children. On April 27, 2022, Michelle filed a motion to extend the plenary order of protection.

¶ 12 On May 25, 2022, the trial court extended the plenary order of protection until August 10, 2022, and set a hearing date of August 10, 2022. On May 27, 2022, the court entered a "Corrected Disposition Order" setting the hearing for August 15, 2022, and extending the plenary order of protection until that date.

² Eugene filed a *pro se* notice of appeal, which was assigned number 1-19-1789 in this court. We dismissed the appeal for want of prosecution. See *Brozell v. Brozell*, No. 1-19-1789 (Jan 30, 2020) (dispositional order).

¶ 13 On August 15, 2022, the trial court extended the plenary order of protection for two years, until August 15, 2024. On August 22, 2022, a corrected order as to Eugene's address was entered.

¶ 14 On September 13, 2022, Eugene filed, through counsel, a motion to vacate the August 15, 2022, and August 22, 2022, plenary orders of protection.

¶ 15 In an affidavit in support, Eugene averred that he believed the cause was set for a hearing on August 17, 2022. However, after he was served with the August 15, 2022, order of protection, he checked his email and learned of the August 15, 2022, date. He further averred that Michelle's counsel never provided him with copies of the August 15 and August 22, 2022, orders to "review and approve" prior to submitting them to the court.

¶ 16 On January 17, 2023, the court held a videoconference hearing on the motion to vacate. Michelle and Eugene appeared and were represented by counsel. Following the hearing, the trial court denied Eugene's motion to vacate the orders entered on August 15 and August 22, 2022.

¶ 17 On February 14, 2023, Eugene filed a *pro se* form notice of appeal. The section titled "Type of Appeal" is unchecked. The sections asking the appellant to "List the date of every order or judgment you want to appeal" and to "State your relief" are blank. The certification pursuant to section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109 (West 2022)), does not bear a signature.

¶ 18 On March 23, 2023, Michelle filed a motion to dismiss the appeal for failure to comply with Illinois Supreme Court Rules 303 (eff. July 1, 2017), 306 (eff. Oct. 1, 2020), and 312 (July 1, 2017). This court entered and continued the motion to dismiss, and directed Eugene to file the August 15, 2022, and August 22, 2022, plenary orders of protection with this court by April 17, 2023.

¶ 19 Eugene complied with the directive, and we subsequently denied Michelle’s motion to dismiss the appeal on April 12, 2023. On July 5, 2023, we granted Michelle’s motion electing not to file a brief and to rely on the arguments raised in her motion to dismiss.

¶ 20

II. ANALYSIS

¶ 21 On appeal, Eugene contends that on “several occasions” including August 10, 2009, and July 31, 2019, the trial court denied him the opportunity to present “all evidence” that would “exonerate” him and explain his “contumacious behavior,” and that the court erred by admitting the testimony of children’s representative Block, who misrepresented “vital information.” Eugene also challenges the portion of the August 10, 2009, judgment for dissolution of marriage, which awarded 50% of his pensions to Michelle and argues that he was denied his constitutional rights throughout the “entire” proceeding.

¶ 22 Initially, our review of Eugene’s appeal is hindered by his failure to comply with Illinois Supreme Court Rule 341(h) (eff. Oct. 1, 2020). While Eugene’s brief contains a narration of the dissolution proceedings from his point of view, it lacks cohesive legal arguments, reasoned bases for those arguments, and citations to the record in violation of Rule 341(h)(7). “Arguments that do not comply with Rule 341(h)(7) do not merit consideration on appeal and may be rejected by this court for that reason alone.” *Wells Fargo Bank, N.A. v. Sanders*, 2015 IL App (1st) 141272, ¶ 43. Accordingly, to the extent that Eugene’s brief fails to comply with Rule 341(h)(7), his arguments are forfeited. Considering the content of Eugene’s brief, it would be within our discretion to dismiss this appeal on that basis alone. See *Epstein v. Galuska*, 362 Ill. App. 3d 36, 42 (2005). However, even were this court to attempt to overlook those deficiencies, this appeal must be dismissed for lack of jurisdiction.

¶ 23 “The filing of a notice of appeal is the jurisdictional step which initiates appellate review.” (Internal quotation marks omitted.) *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 176 (2011). Illinois Supreme Court Rule 303(b)(2) (eff. July 1, 2017) requires that a notice of appeal “shall specify the judgment or part thereof or other orders appealed from and the relief sought from the reviewing court.” The “notice of appeal confers jurisdiction on a court of review to consider only the judgments or parts thereof specified in the notice of appeal.” *People v. Smith*, 228 Ill. 2d 95, 104 (2008). “We lack jurisdiction to consider issues not specified in the notice of appeal.” *In re Estate of York*, 2015 IL App (1st) 132830, ¶ 34.

¶ 24 Although a notice of appeal is jurisdictional, it is also “generally accepted that such a notice is to be construed liberally.” *Smith*, 228 Ill. 2d at 104. The notice of appeal serves “to inform the prevailing party that the other party seeks review of the trial court’s decision.” *People v. Lewis*, 234 Ill. 2d 32, 37 (2009). An appellant’s failure to comply strictly with the form of the notice of appeal is not fatal if the deficiency is not substantive and the appellee is not prejudiced. *Smith*, 228 Ill. 2d at 105. Our supreme court has held that “a notice of appeal ‘will confer jurisdiction on an appellate court if the notice, when considered as a whole, fairly and adequately sets out the judgment complained of and the relief sought so that the successful party is advised of the nature of the appeal.’ ” *In re Marriage of O’Brien*, 2011 IL 109039, ¶ 22 (quoting *Burtell v. First Charter Service Corp.*, 76 Ill. 2d 427, 433-34 (1979)).

¶ 25 In the case at bar, Eugene used a form notice of appeal that has sections for the appellant to “List the date of every order or judgment you want to appeal,” and “State your relief.” Both of those sections are blank. However, Eugene attached what appears to be a draft of his motion to vacate the August 15, 2022, and August 22, 2022, plenary orders of protection; and we ordered

him to file with this court both of those plenary orders of protection. Accordingly, construing the notice of appeal and subsequent filings very liberally, we could have found that the notice of appeal notified the parties and this court that appellant was appealing the trial court's denial of Eugene's motion to vacate the August 15, 2022, and August 22, 2022, plenary orders of protection.

¶ 26 However, we cannot construe the notice of appeal this way since appellant's brief, filed after he had filed the orders of protection that we ordered him to file, made it clear that he does not challenge the trial court's denial of his motion to vacate the plenary orders of protection. Rather, he challenges the trial court's orders and judgments throughout the years-long dissolution proceedings, including the 2009 judgment for dissolution of marriage, over which we have no jurisdiction. See *In re Marriage of Gordon*, 233 Ill. App. 3d 617, 627 (1992) (a petition for a protective order under the Domestic Violence Act filed in a marital dissolution case is a separate claim and is not an ancillary part of the claim for dissolution). This brief makes clear that we have no jurisdiction over the order or orders that are actually being appealed. Therefore, this appeal must be dismissed. See *In re Marriage of Sanchez & Sanchez-Ortega*, 2018 IL App (1st) 17105, ¶ 20 ("An appeal must be dismissed where [appellate] jurisdiction is lacking.").

¶ 27 **III. CONCLUSION**

¶ 28 For the reasons stated above, we dismiss the appeal for lack of jurisdiction.

¶ 29 Appeal dismissed.