2022 IL App (1st) 220773-U

No. 1-22-0733

Order filed November 23, 2022

Third 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

In re V.M.-L., A Minor,	)	
	)	
(The People of the State of Illinois,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellee,	)	Cook County.
	)	
v.	)	No. 20 JA 38
	)	
M.P.-L.,	)	Honorable
	)	Jennifer Joyce Payne,
Respondent-Appellant).	)	Judge, presiding.
	)	

JUSTICE BURKE delivered the judgment of the court.
Justices Gordon and Reyes concurred in the judgment.

ORDER

¶ 1 *Held*: We dismiss this appeal as moot because the circuit court's denial of respondent's motion to vacate a temporary custody order concerns an order that is no longer in effect and that has been superseded by adjudicatory and dispositional orders, and because it is impossible for us to grant the relief that respondent seeks.

¶ 2 Respondent, M.P.-L., appeals from the circuit court's denial of her motion to vacate or modify an order placing temporary custody of her minor child, V.M.-L., with the Department of

Children and Family Services (DCFS). Respondent filed that motion because DCFS placed V.M.-L. in the temporary custody of an unlicensed, nonrelative foster parent who did not qualify as fictive kin, and because respondent wanted her brother to have custody instead. The circuit court has since entered adjudicatory, dispositional, and permanency orders, and V.M.-L. has been returned to the DCFS guardianship administrator's custody for placement during the permanency stage of this case. We find that this appeal is moot and no exception to the mootness doctrine applies; therefore, we dismiss it.

¶ 3 I. BACKGROUND

¶ 4 M.P.-L. gave birth to V.M.-L on September 15, 2019. On January 9, 2020, the State filed a petition for adjudication of wardship alleging that V.M.-L. was neglected, abused, and without proper care because respondent suffered from paranoid schizophrenia. At the time of V.M.-L.'s birth, respondent had not been taking her schizophrenia medication and was psychotic. She was also psychiatrically hospitalized on two occasions shortly after his birth. The circuit court held a temporary custody hearing on January 9, 2020, at which it found probable cause to believe that V.M.-L. was abused, neglected, or dependent, and granted temporary custody to the DCFS guardianship administrator.[1] DCFS placed V.M.-L. with a nonrelative foster parent, K.P., in January 2020.

¶ 5 On July 7, 2021, respondent filed a motion to vacate or modify the temporary custody order. Respondent alleged that K.P. was an unlicensed foster parent who did not qualify as fictive

[1] The transcript of the January 9, 2020, temporary custody hearing is not included in the record on appeal, but the circuit court's written temporary custody order is.

kin.[2] Respondent requested that V.M.-L. be placed with her brother, a licensed foster parent with two foster children in his care.[3] Respondent cited section 2-10(9)(c) of the Juvenile Court Act of 1987 (the Act) (705 ILCS 405/1-1 *et seq.* (West 2020)), which allows a juvenile court to modify or vacate a temporary custody order when "[a] person not a party to the alleged abuse, neglect or dependency, including a parent, relative or legal guardian is capable of assuming temporary custody of the minor" (705 ILCS 405/2-10(9)(c) (West 2020)), and argued that her brother qualified as such a caregiver.

¶ 6 The court addressed respondent's motion during an adjudicatory hearing on September 15, 2021. The court stated that, at a prior pretrial conference, it had found respondent's motion to vacate or modify the temporary custody order to be "untimely."[4] However, the court explained that it would "consider [respondent's] prayer for relief" that her brother be appointed V.M.-L.'s guardian and would "view [respondent]'s motion in that light." During the adjudicatory hearing, the State moved into evidence respondent's medical records from two hospitals. These medical records are not included in the record on appeal, but the circuit court stated that they established that respondent was psychiatrically hospitalized due to schizophrenia twice while pregnant with V.M.-L. and twice when he was three months old. The court made an adjudicatory finding that V.M.-L. was a dependent minor without proper care due to respondent's mental disability.[5]

[2] "Fictive kin" refers to individuals who are not related to the minor's family by birth or marriage, but who "have an emotionally significant relationship *** that would take on the characteristics of a family relationship." *In re Z.J.*, 2020 IL App (2d) 190824, ¶ 25 n. 1.

[3] Respondent and her brother have the same initials, M.P.-L., so we will refer to them as "respondent" and "respondent's brother" to avoid confusion.

[4] The report of proceedings does not include a transcript of this pretrial conference.

[5] The State withdrew its allegations of abuse and neglect during the adjudication hearing and proceeded only on the allegation that V.M.-L. was without proper care due to respondent's mental disability.

¶ 7 The court proceeded immediately to a dispositional hearing. In relevant part, the evidence established that, in late 2019, two families hosted V.M.-L. on a short-term basis through a crisis program called Safe Families but were unwilling to take longer-term custody of him. Safe Families informally recommended K.P. to DCFS as a foster parent because she had acted as a host for Safe Families in the past. DCFS placed V.M.-L. with K.P. in early January 2020. Both Safe Families and DCFS knew that K.P. was not a licensed foster parent, and DCFS classified her as fictive kin even though she had no prior relationship with V.M.-L. or respondent. DCFS placed V.M.-L. with K.P. because none of respondent's in-state relatives were willing to take custody of V.M.-L. in January 2020. A DCFS placement review conducted in the autumn of 2020 concluded that V.M.-L.'s placement with K.P. violated DCFS policy because she was not a licensed foster parent or fictive kin. Nevertheless, K.P. provided a safe and appropriate home for V.M.-L., provided for his needs, and became bonded with him. She obtained her foster parent license in approximately June 2021 and V.M.-L. remained in her temporary custody.

¶ 8 Respondent's brother and his wife are licensed specialized foster parents authorized to take care of up to six foster children. Respondent's brother visited V.M.-L. regularly and wished to take custody of him and introduce him to his family's Haitian cultural background. Respondent's brother and his wife had custody of two foster children whom they planned to adopt. One of those foster children, a 14-year-old boy, was receiving sexualized behavioral therapy and was the subject of an in-home safety plan. During the pendency of this case, respondent expressed some ambivalence about V.M.-L. being placed with her brother to caseworkers and, on at least one occasion in 2021, told a caseworker that she did not want her son placed with her brother.

¶ 9 On May 4, 2022, the court entered a dispositional order making V.M.-L. a ward of the court and finding respondent unable to care for him. The court acknowledged that K.P. was not a licensed foster parent or fictive kin when DCFS placed V.M.-L. with her in January 2020, and that DCFS erred in making that placement. However, the court explained that it could not remedy DCFS's error by placing V.M.-L. with respondent's brother because of safety concerns presented by his 14-year-old foster son. Specifically, records entered into evidence established that the 14-year-old foster son's sexual behavioral issues were more serious than respondent's brother and his wife had testified, and a psychosexual assessment recommended that he not have unsupervised contact with any child under the age of 12. The court stated that it would not directly order V.M.-L. to be removed from K.P.'s home as a remedy for DCFS's error in January 2020, but the court did terminate temporary custody and returned V.M.-L. to the DCFS guardianship administrator with the right to place him. The court also denied respondent's motion to vacate the temporary custody order and entered a permanency order with a goal of returning V.M.-L. to respondent within 12 months.

¶ 10 On May 24, 2022, respondent filed a notice of appeal from the "[f]indings after adjudication and dispositional hearings."

¶ 11 II. ANALYSIS

¶ 12 Respondent contends that the circuit court should have granted her motion to vacate or modify the temporary custody order and should have placed V.M.-L. in her brother's custody. Respondent also argues that her counsel rendered ineffective assistance by not filing the motion to vacate until approximately a year and a half after the temporary custody order was entered.

Respondent contends that counsel's delay prejudiced her because it resulted in the circuit court denying her motion to vacate as untimely on September 15, 2021.[6]

¶ 13 The Act sets forth the procedure by which a juvenile court decides whether a child should be removed from his or her parents and be made a ward of the court. *In re Arthur H.*, 212 Ill. 2d 441, 462 (2004). The State initiates proceedings by filing a petition alleging that it is in the minor's best interest to be made a ward of the court. 705 ILCS 405/2-13(1)-(3) (West 2020). Upon the filing of a petition, the juvenile court conducts a temporary custody hearing to determine who will have temporary custody of the minor until further hearings can determine whether the minor should be adjudged a ward of the court and where the minor should be placed for permanent custody. 705 ILCS 405/2-10 (West 2020); *In re A.H.*, 195 Ill. 2d 408, 417 (2001). At the temporary custody hearing, the court makes a threshold determination as to whether there is probable cause to believe that the minor is abused, neglected, or dependent. 705 ILCS 405/2-10(1) (West 2020). A dependent minor "is without proper care because of the physical or mental disability of his parent" (705 ILCS 405/2-4(1)(b) (West 2020)), as V.M.-L. was in this case. If the court finds probable cause, it must determine whether it is a matter of urgent care and immediate necessity for the protection of the minor to remove him from his home. 705 ILCS 405/2-10(2) (West 2020); *In re Ashley F.*, 265 Ill. App. 3d 419, 424 (1994). Once the court has entered a temporary custody order, any party may file a motion to vacate or modify that order (705 ILCS 405/2-10(9) (West 2020)), as respondent did in this case. After the temporary custody hearing, the matter proceeds to

[6] The record on appeal does not support respondent's account of the procedural history. As noted above, on September 15, 2021, the circuit court indicated that it had previously found that respondent's motion to vacate or modify the temporary custody order was untimely, but it did not deny that motion. Rather, the court said that it would consider the substance of the motion, which sought to place V.M.-L. with respondent's brother. The court denied respondent's motion to vacate on May 4, 2022.

an adjudicatory hearing, a dispositional hearing, and a permanency hearing. *In re A.H.*, 195 Ill. 2d at 417.

¶ 14 Although the parties do not raise the issue of our jurisdiction in their briefs, we have an independent duty to determine whether we have jurisdiction over this matter and to dismiss the appeal if we lack jurisdiction. *In re Tiona W.*, 341 Ill. App. 3d 615, 619 (2005). First, we must determine whether the order from which respondent appeals is a final order because we do not have jurisdiction to review non-final orders. See *In re Marriage of Kostusik*, 361 Ill. App. 3d 103, 108 (2005). In determining whether appellate jurisdiction exists, we look to the nature of the challenged order rather than the nature of the hearing from which it arose. *In re Faith B.*, 349 Ill. App. 3d 930, 935 (2004). Respondent's notice of appeal states that she is appealing from the "[f]indings after adjudication and dispositional hearings." However, her brief makes clear that she only challenges the circuit court's denial of her motion to vacate or modify the temporary custody order under section 2-10(9)(c) of the Act.[7] An appeal regarding a temporary custody order under section 2-10 of the Act is interlocutory in nature. *Kostusik*, 361 Ill. App. 3d at 108 ("A temporary custody order *** by its very nature, is not a final, appealable order."). So, it would appear that respondent challenges a nonfinal order over which we do not have jurisdiction. However, "the order denying respondent's motion to vacate the court's temporary custody was an order entered during the proceedings specified in the notice of appeal – namely, the dispositional ruling making the minor[] [a] ward of the court and giving legal guardianship to DCFS." *In re E.C.-F.*, 2022 IL App (2d) 210675, ¶ 9 (not yet released for publication and subject to revision or withdrawal); see

[7] As respondent's reply brief states, "the ultimate issue in this appeal is whether the trial court incorrectly denied Respondent M.P.-L.'s motion[ ] to vacate and/or modify the trial court's January 9, 2020, temporary custody order."

also *In re Faith B.*, 349 Ill. App. 3d at 935 (a dispositional order is generally considered final and appealable). Accordingly, we have jurisdiction to review the denial of respondent's motion to vacate or modify the temporary custody order. See *In re E.C.-F.*, 2022 IL App (2d) 210675, ¶ 9.

¶ 15 We must next consider whether this appeal is moot. From the time an appeal is filed in the appellate court until the time the appellate court disposes of the case, the case must continue to present an actual controversy. *Maday v. Township High School District 211*, 2018 IL App (1st) 180294, ¶ 45. "The existence of a real controversy is an essential prerequisite to appellate jurisdiction" (*In re Estate of Wellman*, 174 Ill. 2d 335, 353 (1996)), and "courts of review in Illinois do not decide moot questions, render advisory opinions, or consider issues where the result will not be affected regardless of how those issues are decided" (*In re Barbara H.*, 183 Ill. 2d 482, 491 (1998)). Because mootness presents a question of appellate jurisdiction, we must address the issue regardless of whether the parties have raised it. *Tirio v. Dalton*, 2019 IL App (2d) 181019, ¶ 21. "A case on appeal is rendered moot where the issues that were presented in the trial court do not exist any longer because intervening events have rendered it impossible for the reviewing court to grant the complaining party effectual relief." *In re India B.*, 202 Ill. 2d 522, 542 (2002).

¶ 16 " 'Generally, an appeal of findings made in a temporary custody hearing is moot where there is a subsequent adjudication of wardship supported by adequate evidence.' " *In re J.W.*, 386 Ill. App. 3d 847, 852 (2008) (quoting *In re Edward T.*, 343 Ill. App. 3d 778, 792 (2003)). That is the case here. Respondent only challenges the denial of her motion to vacate or modify the circuit court's temporary custody findings of January 9, 2020. The circuit court entered an adjudication of wardship on September 15, 2021. The adjudication of wardship was based on the court's review of respondent's medical records, which established that respondent suffered from schizophrenia

that required multiple psychiatric hospitalizations shortly before and after V.M.-L.'s birth. There was also adequate evidence to support the court's dispositional order of May 4, 2022, in which the court concluded that it could not place V.M.-L. with respondent's brother due to safety concerns presented by his 14-year-old foster son. We see no reason to depart from the general rule of mootness in this case. The circuit court's adjudication of wardship and dispositional findings rendered moot any issues regarding the January 9, 2020, temporary custody order, including respondent's motion to vacate or modify that order. See *In re J.W.*, 386 Ill. App. 3d at 852.

¶ 17 This case is also moot because we cannot grant the relief that respondent seeks, which is vacatur or modification of the temporary custody order. That order is no longer in effect because the dispositional order of May 4, 2022, terminated it and returned V.M.-L. to the custody of the DCFS guardianship administrator. So, there is nothing for us to vacate. Moreover, respondent ultimately challenges the trial court's temporary custody findings in that she argues that her motion to vacate or modify those findings should have been granted. "In order to review the findings made at the temporary custody hearing, we would need to review a transcript of that hearing." See *In re Edward T.*, 343 Ill. App. 3d at 793. Respondent has not provided this Court with a transcript of the temporary custody hearing, and it is her burden to file an adequate record on appeal. See *id.*

¶ 18 We also cannot order the circuit court to place V.M.-L. in respondent's brother's custody, as she requests. The circuit court has entered adjudicatory, dispositional, and permanency orders, none of which respondent challenges on appeal. Those orders remain in effect, so this case is now in the permanency phase under section 2-28(2) of the Act (705 ILCS 405/2-28(2) (West 2020)). During the permanency phase, the circuit court cannot order a specific placement of V.M.-L. with anyone, including respondent's brother. See *In re B.S.*, 2021 IL App (5th) 200039, ¶ 31 (citing *In*

re M.V., 288 Ill. App. 3d 300, 306 (1997) (section 2-28(2) precludes the juvenile court from ordering specific placements "after DCFS has been appointed guardian of the minor"); *In re T.L.C.*, 285 Ill. App. 3d 922, 926-27 (1996) (juvenile court cannot order specific placement of a minor when DCFS is granted guardianship in a dispositional order)). We will not order the circuit court to do something it has no authority to do, so we cannot grant the relief that respondent seeks.

¶ 19 There are exceptions to the mootness doctrine that allow us to review the merits of an issue on appeal even though the issue is moot. *In re Alfred H.H.*, 233 Ill. 2d 345, 355-61 (2009). The three most recognized exceptions are (1) when it would be in the public's interest to resolve the issue on appeal, (2) where the issue is capable of repetition yet evading review, and (3) where there are collateral consequences to the issue. *Id.* Respondent does not contend that any of these exceptions apply because she does not address mootness at all. We find that this child custody dispute does not present a question that is of a public nature, so the public interest exception does not apply. See *id.* at 355. The collateral consequences exception does not apply because respondent has not suffered, and is not threatened with, an actual injury given that the temporary custody order that she challenges has been terminated and is not in effect. See *id.* at 361. Nor does this issue fall under the "capable of repetition, but evading review" exception. For that exception to apply, "the challenged action must be too short in duration to be litigated fully prior to its cessation," and there must be a "reasonable expectation that the same complaining party will be subject to the same action again." *In re Benny M.*, 2017 IL 120133, ¶¶ 19-20. At a minimum, respondent has not met the first prong. The circuit court fully heard and considered the essence of respondent's motion, *i.e.*, that V.M.-L. should be removed from K.P.'s custody and placed in respondent's brother's custody. As noted above, the circuit court addressed both requests in its dispositional ruling, which

was based on the evidence and wholly reasonable. Accordingly, we find that this appeal is moot, and no exception to the mootness doctrine applies.

¶ 20 For completeness, we briefly address respondent's claim that counsel rendered ineffective assistance by untimely filing the motion to vacate or modify the temporary custody order. We use the formula of *Strickland v. Washington*, 466 U.S. 668 (1984) to evaluate claims of ineffective assistance in juvenile court proceedings. *In re Br. M.*, 2021 IL 125969, ¶ 43. Under *Strickland*, a respondent must show substandard performance by counsel and resulting prejudice to establish ineffective assistance. *Id.* In this case, respondent cannot establish prejudice. Even if counsel's filing of the motion to vacate was untimely, the circuit court did not deny the motion on that basis. Rather, the court thoroughly considered the substance of the motion during the adjudicatory and disposition hearings and heard extensive evidence on respondent's claims. As explained above, the court found that DCFS erred by placing V.M.-L. with K.P., but also found that placing V.M.-L. with respondent's brother was not appropriate due to safety concerns regarding his older foster son. So, counsel's alleged untimeliness in filing the motion did not prevent a full hearing and ruling on the merits of that motion and did not prejudice respondent. Even if this appeal were not moot, respondent's claim of ineffective assistance would fail.

¶ 21 This case is moot, and no exception to the mootness doctrine applies. Accordingly, we dismiss this appeal as moot. See *In re Marriage of Peters-Farrell*, 216 Ill. 2d 287, 293 (2005) (when appeal is moot and no exception to the mootness doctrine applies, the reviewing court must dismiss the appeal.).

¶ 22 III. CONCLUSION

¶ 23 For the foregoing reasons, we dismiss this appeal as moot.

¶ 24 Appeal dismissed.