Illinois Official Reports

Appellate Court

Fricke v. Jones, 2021 IL App (5th) 200044

Appellate Court Caption	JEROMY FRICKE, Petitioner-Appellee, v. AARON JONES, Respondent-Appellant.
District & No.	Fifth District No. 5-20-0044
Filed	November 9, 2021
Decision Under Review	Appeal from the Circuit Court of Williamson County, No. 19-OP-318; the Hon. Carey C. Gill, Judge, presiding.
Judgment	Affirmed in part and dismissed in part.
Counsel on Appeal	Jonathan C. Kibler, of Southern Illinois Law Center, LLC, of Carbondale, for appellant. No brief filed for appellee.
Panel	PRESIDING JUSTICE BOIE delivered the judgment of the court, with opinion Justice Moore concurred in the judgment and opinion. Justice Vaughan specially concurred, with opinion.

OPINION

¶ 1 The petitioner, Jeromy Fricke, filed a petition pursuant to the Illinois Domestic Violence Act of 1986 (Domestic Violence Act) (750 ILCS 60/101 *et seq.* (West 2018)), requesting the circuit court to enter an emergency order of protection and a plenary order of protection against the respondent, Aaron Jones. Jones is the maternal grandfather of Fricke's four minor children, and Fricke sought protection of the minor children from Jones. The circuit court entered an *ex parte* emergency order of protection naming the minor children as persons protected under the order. The circuit court subsequently granted multiple continuances of the hearing on Fricke's request for a plenary order of protection (plenary hearing), and the circuit court extended the emergency order of protection to each new plenary hearing date. Jones appeals from three interlocutory orders entered by the circuit court pertaining to the expiration date of the emergency order of protection. For the following reasons, we dismiss Jones's appeal from one of the interlocutory orders and affirm the other two of the interlocutory orders.

¶ 2 I. BACKGROUND

¶ 3 On August 8, 2019, Fricke filed a petition against Jones pursuant to the Domestic Violence Act, seeking emergency and plenary orders of protection for his four children. Fricke alleged in his petition that Jones was physically and verbally abusive to the children. On the same day that Fricke filed his petition, the circuit court entered an emergency order of protection directing Jones to, among other things, stay away from his minor grandchildren. The circuit court initially set the emergency order of protection to expire on August 28, 2019, and scheduled an August 28, 2019, hearing on Fricke's request for a plenary order of protection.

¶ 4 Counsel for Jones filed an entry of appearance on August 27, 2019. The next day, the parties appeared in court and agreed to continue the plenary hearing to September 18, 2019, to allow Jones's attorney time to prepare for the hearing. The circuit court, therefore, extended the emergency order of protection to September 18, 2019, without objection.

¶ 5 On September 18, 2019, the parties appeared in court for the plenary hearing, and the circuit court's docket entry indicates that the parties told the circuit court that they needed a half-day hearing, given the number of witnesses and the length of their testimony. The circuit court's docket entry states, "Case shall be reset for 10/7/19 at 9:00 a.m." The docket entry further states that Jones's attorney objected to the hearing date, but the record does not state the grounds for the objection, and there is no transcript of this hearing in the record. The circuit court's September 18, 2019, order extending the emergency order of protection to October 7, 2019, is not at issue in this appeal.

¶ 6 Prior to the October 7, 2019, hearing, Fricke gave Jones notice of his intent to present evidence at the plenary hearing of hearsay statements made by the children. Therefore, on October 7, 2019, Jones filed a motion *in limine* seeking to prohibit Fricke from offering the hearsay statements into evidence. The parties apparently agreed off the record to an immediate hearing on the admissibility of the hearsay statements. The record on appeal does not include a transcript of the October 7, 2019, hearing, but the circuit court's October 7, 2019, docket entry shows that the circuit court conducted an evidentiary hearing on the issues stemming from Jones's motion *in limine*. The circuit court granted the motion in part and denied the motion in part. The circuit court's docket entry indicates that the circuit court then continued the plenary hearing to October 10, 2019, without objection.

¶ 7 On October 10, 2019, Jones filed a second motion *in limine* objecting to additional hearsay statements. The parties appeared in court on October 10, 2019, to begin the plenary hearing, but Fricke's attorney requested more time to respond to Jones's new motion *in limine*. Over Jones's objection, the circuit court granted Fricke seven days to respond to the motion *in limine* and continued the plenary hearing to October 28, 2019. In its docket entry, the circuit court wrote that it extended the emergency order of protection to the date of the next hearing.

¶ 8 The parties appeared in court on October 28, 2019. The circuit court heard arguments on Jones's second motion *in limine* and granted the motion in part and denied the motion in part. In its docket entry, the circuit court scheduled the plenary hearing to begin on November 18, 2019, for a half-day hearing. The circuit court also set aside the morning of December 2, 2019, and the entire day on December 23, 2019, for additional proceedings if needed for the plenary hearing. On October 28, 2019, the circuit court also entered a written order extending the emergency order of protection to November 18, 2019. The record does not reflect any objection to the circuit court's extension of the emergency order of protection to November 18, 2019.

¶ 9 The parties appeared in court on November 18, 2019, and the circuit court began the plenary hearing. The record on appeal does not include a transcript of this hearing, but the circuit court's docket entry from this day indicates that Fricke presented the testimony of three witnesses. At the conclusion of that day's proceeding, the circuit court entered a written order extending the emergency order of protection until the next scheduled hearing on December 2, 2019. The record does not reflect any objection to the circuit court's extension of the emergency order of protection to that date.

¶ 10 The parties appeared in court on December 2, 2019, to continue with the plenary hearing. Again, the record does not include a transcript of this hearing, but the circuit court's docket entry from this date indicates that the parties presented additional testimony from witnesses at this hearing. At the conclusion of that day's proceedings, the circuit court entered a written order extending the emergency order of protection to the next hearing date on December 23, 2019. The record does not reflect any objections to the circuit court's extension of the emergency order of protection to this date.

¶ 11 The parties appeared in court on December 23, 2019, to continue with the plenary hearing, and the circuit court's docket entry indicates that the parties presented additional evidence. Only a very small portion of the transcript of this hearing is part of the record on appeal. The circuit court's docket entry from this hearing indicates that the court recessed at 1:15 p.m. and that Fricke's counsel informed the circuit court of a family emergency. The circuit court, therefore, continued the hearing to February 7, 2020, and extended the emergency order of protection to that date over Jones's objection.

¶ 12 The partial transcript of the December 23, 2019, proceeding establishes that Jones objected to the extension of the order of protection to February 7, 2020, because the new expiration date was "outside of 21 days." The circuit court, however, ruled as follows: "Based on counsel emergency, which is—which extension is granted for good cause shown due to extensive amount of testimony and numerous trial dates and the Court's schedule, the [emergency order of protection] is extended to that date." The court further explained, "I had some felony criminal trial set, I have a lot of emergency—other emergencies set throughout January, and I am out for a week, which I've given you all the trial dates that I could do in 2019. I gave you every date I had." Over Jones's objection, the circuit entered an interlocutory order (December

23 order) that extended the emergency order of protection to February 7, 2020. This December 23 order was the first of three interlocutory orders from which Jones now appeals.

¶ 13 In a later docket entry also on December 23, 2019, the circuit court "*sua sponte*" set a new January 15, 2020, hearing date to resume the plenary hearing. The circuit court also noted in the docket entry that the emergency order of protection was extended "as previously ordered" and that if the case concluded on January 15, 2020, "prior orders can be addressed at that time."

¶ 14 Jones filed a motion to vacate the December 23 order that extended the emergency order of protection to February 7, 2020. On January 13, 2020, the circuit court reviewed the case file and entered a written order (January 13 order) stating that it was granting Jones's motion to vacate, in part. Specifically, in its findings, the circuit court agreed with Jones that the Domestic Violence Act "limits the extension of emergency orders of protection to not less than 14 nor more than 21 days." However, the circuit court further found, "But for good cause shown, this extension shall be until hearing date of 1/15/20 at 11 a.m." The circuit court, therefore, amended the December 23 order so that the emergency order of protection would expire on January 15, 2020, which was the next scheduled plenary hearing date. The circuit court's January 13 order is the second of three interlocutory orders from which Jones now appeals.

¶ 15 On January 14, 2020, Fricke filed a motion to continue the January 15, 2020, plenary hearing, requesting that the hearing be continued to its original February 7, 2020, date. The record on appeal does not include any further pleadings, orders, rulings, or transcripts in the proceedings below after the filing of Fricke's motion to continue. Jones filed his notice of appeal on February 7, 2020, purporting to appeal from three interlocutory orders: the December 23 order, the January 13 order, and a third interlocutory order purportedly entered on January 16, 2020 (January 16 order). The record on appeal does not include any order entered after the January 13 order. Therefore, the record on appeal does not include the January 16 order from which Jones purports to appeal from.

¶ 16 II. ANALYSIS

¶ 17 A. Jurisdiction

¶ 18 Jones brings this interlocutory appeal pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. Nov. 1, 2017). Rule 307 governs interlocutory appeals as of right, including appeals from interlocutory orders "granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction." *Id.* The first issue we must address is whether the orders appealed from qualify as injunctive orders for purposes of Rule 307(a)(1) interlocutory appeals as of right.

¶ 19 Illinois courts have held that 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). In the present case, the emergency order of protection directed Jones to refrain from doing certain things, including seeing his grandchildren, being at his grandchildren's home, or attending some events at his grandchildren's schools. The emergency order of protection, therefore, qualifies as an injunctive order from which Jones could appeal pursuant to Rule 307(a)(1). See *In re Marriage of Sanchez*, 2018 IL App (1st) 171075, ¶ 34 ("An order of protection is injunctive in substance.").

¶ 20 In the present case, however, Jones is not appealing from the emergency order of protection itself. Instead, he is appealing from three interlocutory orders that pertained to the expiration date of the emergency order of protection. We believe that these orders also qualify as injunctive orders for purposes of Rule 307(a)(1) interlocutory appeals as of right. In reaching this conclusion, we are aware that circuit court orders that regulate only the procedural details of litigation are considered " 'ministerial' " or " 'administrative' " and "cannot be the subject of an interlocutory appeal" *In re A Minor*, 127 Ill. 2d 247, 262 (1989). This is true because such orders "do not affect the relationship of the parties in their everyday activity apart from the litigation and are therefore distinguishable from traditional forms of injunctive relief." *Id.*

¶ 21 In the present case, however, the interlocutory orders extending or modifying the expiration date of the emergency order of protection are more than administrative orders regulating the parties' litigation in court. Instead, the orders pertaining to the expiration of the emergency order of protection concern matters that affect the parties' everyday life, apart from their litigation. Like the initial emergency order of protection, the interlocutory orders appealed from had the substantive effect of directing Jones to refrain from doing certain things. In addition, the orders impacted Jones's everyday activities and his relationship with his grandchildren, apart from the litigation. Accordingly, the orders appealed from qualify as injunctive orders for purposes of Rule 307(a)(1). *In re Marriage of Padilla*, 2017 IL App (1st) 170215, ¶ 17 ("the initial emergency order of protection was an injunctive order, as was each order entered that extended the emergency order of protection").

¶ 22 Our reasoning is consistent with the policy of Illinois courts to broadly construe the meaning of the term "injunction" under Rule 307(a)(1). *In re A Minor*, 127 Ill. 2d at 261. In addition, the Illinois Supreme Court has defined an injunction as

> "a judicial process, by which a party is required to do a particular thing, or to refrain from doing a particular thing, according to the exigency of the writ, the most common sort of which operate as a restraint upon the party in the exercise of his real or supposed rights." (Internal quotation marks omitted.) *Id.*

See also *Hamilton v. Williams*, 237 Ill. App. 3d 765, 776 (1992) ("Actions of the circuit court having the force and effect of injunctions are appealable even if labeled as something else.").

¶ 23 Here, the substance and effect of each interlocutory order that modified the expiration date of the emergency order of protection met the supreme court's definition of an injunction. The orders had the substantive effect of restraining Jones's conduct, as the orders established the timeframe in which Jones must abide by the restrictive terms of the emergency order of protection. The orders, therefore, operated in conjunction with the emergency order of protection as a restraint on Jones. Therefore, the orders were appealable pursuant to Rule 307(a)(1).

¶ 24 Having determined that the interlocutory orders appealed from qualify as appealable interlocutory orders under Rule 307(a)(1), we must next determine whether Jones timely filed a notice of appeal from the orders he challenges on appeal. Rule 307(a) states that the appeal must be perfected within 30 days from the entry of the interlocutory order by filing a notice of interlocutory appeal. Ill. S. Ct. R. 307(a) (eff. Nov. 1, 2017). Jones's notice of appeal purports to appeal from the December 23 order, the January 13 order, and the January 16 order. Jones filed his notice of appeal on February 7, 2020. Accordingly, Jones timely appealed from the January 13, 2020, and January 16, 2020, orders, but he did not file a notice of interlocutory appeal from the December 23 order within 30 days of the entry of that order. Therefore, we

must determine whether we have jurisdiction to hear the merits of Jones's interlocutory appeal from the December 23 order.

¶ 25 Generally, Rule 307 allows only the review of the order from which a party takes an appeal and does not open the door to a general review of all orders entered by the trial court up to the date of the order that is appealed. *Panduit Corp. v. All States Plastic Manufacturing Co.*, 84 Ill. App. 3d 1144, 1151 (1980). However, Illinois courts have concluded that "Rule 307 allows [the appellate court] to review any prior error that bears directly upon the question of whether an order on appeal was proper." *Glazer's Distributors of Illinois, Inc. v. NWS-Illinois, LLC*, 376 Ill. App. 3d 411, 420 (2007) (citing cases).

¶ 26 Here, Jones timely appealed the January 13 order. The circuit court entered the January 13 order on Jones's motion attacking the December 23 order, granting Jones's motion in part and modifying the December 23 order by changing the date upon which the emergency order of protection would expire. Under these facts, the merits of the December 23 order can be addressed in this interlocutory appeal. The December 23 order is intertwined with the propriety of the January 13 order. Because Jones's timely appeal from the January 13 order bears directly upon the issue of whether the circuit court properly entered the December 23 order, we have jurisdiction to consider the merits of Jones's challenge to the December 23 order. See also *Sarah Bush Lincoln Health Center v. Berlin*, 268 Ill. App. 3d 184, 187 (1994) ("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").

¶ 27 In addition, we note that Illinois courts have held that a motion to vacate a protective order is in the nature of a motion seeking to dissolve or modify an injunction and that the denial of such a motion to vacate is appealable under Rule 307(a)(1). *In re Marriage of Sanchez*, 2018 IL App (1st) 171075, ¶ 34 ("[The appellant] filed a notice of appeal within 30 days of the denial of his motion to vacate, and therefore we have appellate jurisdiction to review that order under Rule 307(a)(1)."). Jones's timely appeal from the January 13 order gives us jurisdiction to address the merits of Jones's challenge to the December 23 order as set out in his motion to vacate the December 23 order. See also *Doe v. Department of Professional Regulation*, 341 Ill. App. 3d 1053, 1059 (2003) (an order denying a motion to vacate or reconsider an order that had granted a preliminary injunction was, in effect, an order refusing to dissolve the injunction and was, therefore, appealable under Rule 307(a)(1)).

¶ 28 B. Mootness Doctrine

¶ 29 Before we consider the merits of Jones's appeal, we must also address mootness. Based on the record before us, the emergency order of protection was set to expire on February 7, 2020. We cannot grant Jones effective relief if the underlying emergency order of protection has expired.

¶ 30 "An issue raised on appeal becomes moot when the issue no longer exists due to events occurring after the filing of appeal that make it impossible for the appellate court to grant effective relief." *Benjamin v. McKinnon*, 379 Ill. App. 3d 1013, 1020 (2008). However, "[a] case that is considered moot may still be subject to review if it involves a question of great public interest." *Whitten v. Whitten*, 292 Ill. App. 3d 780, 784 (1997). Illinois courts have held that, even after the expiration of an order of protection renders issues raised on appeal "formally moot," the issues nonetheless can be reviewable "under the public-interest exception to the mootness doctrine." *Benjamin*, 379 Ill. App. 3d at 1020; see also *Whitten*, 292 Ill. App.

3d at 784 (holding that the Domestic Violence Act addresses "a grave societal problem" and involves matters of public interest). The factors relevant to the public interest exception are (1) the public nature of the question, (2) the desirability of an authoritative determination for the purpose of guiding public officers, and (3) the likelihood that the question will generally recur. *In re A Minor*, 127 Ill. 2d at 257.

¶ 31 We believe that the issues Jones has raised on appeal present us with issues of significant public interest. The purposes of the Domestic Violence Act can be accomplished only if the courts properly apply the statutory requirements. See *Whitten*, 292 Ill. App. 3d at 784. In addition, the proper use of emergency orders of protection under the Domestic Violence Act is crucial to the legislature's goal of providing legal protection to the victims of domestic violence. Therefore, we hold that the public interest exception to the mootness doctrine applies in this case, and we will address the merits of Jones's appeal.

¶ 32 C. December 23 Order

¶ 33 Turning to the merits of Jones's argument directed at the December 23 order, we first note that, in an interlocutory appeal brought pursuant to Rule 307(a), the controverted facts or the merits of the case are not decided. *Woods v. Patterson Law Firm, P.C.*, 381 Ill. App. 3d 989, 993 (2008). The only question in such an appeal is whether there was a sufficient showing to affirm the order of the trial court granting or denying the relief requested. *Id.* Generally, our standard of review in addressing this question is whether the circuit court abused its discretion in granting or denying the relief requested. *Id.* We will find an abuse of discretion where the record shows that "the circuit court acted arbitrarily without the employment of conscientious judgment or, in view of all the circumstances, exceeded the bounds of reason and ignored recognized principles of law so that substantial prejudice resulted." (Internal quotation marks omitted.) *Zurich Insurance Co. v. Raymark Industries, Inc.*, 213 Ill. App. 3d 591, 594-95 (1991).

¶ 34 In the present case, however, the December 23 order extended the emergency order of protection from December 23, 2019, to February 7, 2020, an extension of 46 days. Jones argues that the December 23 order was improper because, according to Jones, the Domestic Violence Act prohibits the circuit court from extending an emergency order of protection for a duration greater than 21 days. Therefore, Jones's appeal from the December 23 order does not present us with an issue involving the circuit court's exercise of discretion but presents us with an issue of statutory interpretation, which is a question of law that we review *de novo*. *Unzicker v. Kraft Food Ingredients Corp.*, 203 Ill. 2d 64, 74 (2002).

¶ 35 The primary objective of statutory interpretation is to ascertain and give effect to the intent of the legislature. *People v. Perry*, 224 Ill. 2d 312, 323 (2007). The plain language of the statute is the best indication of the legislature's intent. *People v. Christopherson*, 231 Ill. 2d 449, 454 (2008). Also, the legislature has instructed us to liberally construe the Domestic Violence Act and apply it in a way that promotes its underlying purposes. 750 ILCS 60/102 (West 2018). The underlying purposes of the Domestic Violence Act include supporting the efforts of victims of domestic violence to avoid further abuse by reducing an abuser's access to the victim so that victims are not trapped in abusive situations by fear of retaliation. *Id.* § 102(4).

¶ 36 In the present case, we disagree with Jones's interpretation of the plain language of section 220 of the Domestic Violence Act. The plain language of section 220(a)(1) of the Domestic Violence Act specifically states that an emergency order of protection shall be effective not

less than 14 nor more than 21 days, "*[u]nless [it is] re-opened or extended or voided by entry of an order of greater duration*." (Emphasis added.) *Id.* § 220(a)(1). Where statutory language is clear and unambiguous, courts should apply the statute as written. *People v. Rowell*, 2020 IL App (4th) 190231, ¶ 16. We believe that this statutory language clearly and unambiguously conveys discretion to the circuit court to enter an order extending an emergency order of protection to a duration greater than 21 days.

¶ 37 In the present case, the circuit court was faced with having to continue the plenary hearing due to Fricke's attorney having a family emergency. Jones did not object to a continuance of the hearing, and there is no suggestion that the continuance was not required. The limited transcript that is available in the record establishes that the circuit court explained to the parties that it had a crowded docket the next 21 days that included a felony criminal trial, other emergencies set throughout the month of January 2020, and a week in January during which the judge presiding over the proceeding was "out." The circuit court gave the parties every date that it had available and ultimately continued the plenary hearing to the earliest date that was available to all the parties and the court, a date that was more than 21 days away. The circuit court, therefore, extended the emergency order of protection to the next plenary hearing date to protect the victims, and the statutory language quoted above allowed the circuit court discretion to do so even though the plenary hearing would not resume for more than 21 days. Without this discretion, the circuit court would be powerless to protect victims of domestic violence from further abuse when circumstances beyond the circuit court's control require a continuance of the plenary hearing for more than 21 days. A denial of the circuit court of this discretion would be contrary to the plain language of section 220(a)(1) and would frustrate the statute's expressly stated purpose. Accordingly, we reject Jones's argument that the circuit court lacked statutory authority to enter the December 23 order.[1]

¶ 38 D. January 13 Order

¶ 39 Next, Jones argues that the circuit court erred by failing to enter the January 13 order in "open court." Jones cites section 220(e) of the Domestic Violence Act, which provides that "[e]xtensions" of orders of protection "may be granted only in open court." 750 ILCS 60/220(e) (West 2018). "Open court" is defined as (1) a court that is in session and engaged in judicial business, presided over by a judge, and attended by the parties and their attorneys; and (2) a court session that the public may attend. *People v. Gore*, 2018 IL App (3d) 150627, ¶ 24 (citing Black's Law Dictionary 1263 (10th ed. 2014)).

¶ 40 In the present case, the circuit court entered the January 13 order on Jones's motion to vacate and after a review of the court file, not in open court. The record does not reflect any court proceeding in the present case that took place on January 13, 2020. Jones, therefore, argues that the January 13 order was an improper extension of an emergency order of protection outside of "open court." We disagree.

¶ 41 As stated above, pursuant to the December 23 order, the emergency order of protection was set to expire on February 7, 2020. Before this expiration date, the circuit court entered the

[1]Jones does not argue, alternatively, that the circuit court abused its discretion in entering the December 23 order, so we need not separately review the circuit court's exercise of its discretion. Jones argues only that the circuit court lacked authority to enter the order, and we have rejected that argument for the reasons explained.

January 13 order, which modified the expiration date of the emergency order of protection from February 2, 2020, to January 15, 2020.[2] Courts have the inherent power to review, modify, or vacate an interlocutory order at any time before final judgment. *Catlett v. Novak*, 116 Ill. 2d 63, 68 (1987). Importantly, the substantive effect of the circuit court's modification of the December 23 order was a *reduction* of the period in which the emergency order of protection would remain in effect; the January 13 order did not *extend* the emergency order of protection. Accordingly, section 220(e)'s "open court" requirement for "extensions" does not apply to the January 13 order, and Jones's challenge to the January 13 order has no merit.

¶ 42 E. January 16 Order

¶ 43 Finally, Jones's notice of appeal purports to appeal from an interlocutory order entered by the circuit court on January 16, 2020. However, the record on appeal does not include an order entered on January 16, 2020. Accordingly, we have no basis to review the merits of this order.

¶ 44 Illinois Supreme Court Rule 321 (eff. Feb. 1, 1994) provides that the record on appeal shall consist of, among other things, the judgment appealed from. Pursuant to *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984), Jones, as the appellant, bears the burden to present a sufficiently complete record of the proceedings in the circuit court to support his claim of error. Any doubts arising from the incompleteness of the record will be resolved against the appellant. *Id.* at 392. Because the record on appeal does not include a January 16 order, Jones has failed to support his claimed error with a complete record, and we must reject his challenge to this order. We dismiss Jones's interlocutory appeal from the January 16 order. See *Best Coin-Op, Inc. v. Fountains on Carriage Way Condominium Ass'n*, 239 Ill. App. 3d 1062, 1062-63 (1992) (appeal dismissed where appellant failed to include the order appealed from in the record on appeal).

¶ 45 III. CONCLUSION

¶ 46 For the foregoing reasons, we affirm the circuit court's interlocutory orders entered on December 23, 2019, and January 13, 2020, and dismiss Jones's appeal from any interlocutory orders entered by the circuit court on January 16, 2020.

¶ 47 Affirmed in part and dismissed in part.

¶ 48 JUSTICE VAUGHAN, specially concurring:

¶ 49 I agree with the majority's disposition; however, I write separately to highlight the jurisdictional illusion that arises by providing appeals from emergency or interim orders of

[2] The circuit court's January 13 order incorrectly states that it was a *nunc pro tunc* order. *Nunc pro tunc* orders incorporate into the record judicial actions taken by the court that were inadvertently omitted due to clerical error. *People v. Melchor*, 226 Ill. 2d 24, 32 (2007). The procedure may not be used to supply judicial action that did not take place or correct judicial errors under the pretense of correcting clerical errors. *Id.* at 32-33. For purposes of our analysis, however, we consider the substance of the order, not its label. See *Gallaher v. Hasbrouk*, 2013 IL App (1st) 122969, ¶ 24 (the character and effect of an order is determined by its substance, not its label). The substance of the January 13 order was a modification of a prior interlocutory order.

protection under Illinois Supreme Court Rule 307(a) or Rule 307(b) (eff. Nov. 1, 2017) due to the mootness doctrine.

¶ 50 Our statutes allow for the issuance of emergency, interim, or plenary orders of protection, with durations also governed by statute. See 750 ILCS 60/217, 218, 219 (West 2018). An emergency order of protection is effective for not less than 14 nor more than 21 days, an interim order is effective up to 30 days, and a plenary order may not exceed two years. *Id.* § 220(a), (b)(0.05). An order of protection that "affects the parties in their everyday activities" is an immediately appealable interlocutory, order. *In re Marriage of Blitstein*, 212 Ill. App. 3d 124, 129-30 (1991), *overruled on other grounds by Best v. Best*, 223 Ill. 2d 342, 350 (2006).

¶ 51 An appeal from an interlocutory order is governed by the Illinois Supreme Court rules. See Ill. S. Ct. R. 304 (eff. Mar. 8, 2016); R. 306 (eff. Oct. 1, 2020); R. 307 (eff. Nov. 1, 2017). Some appeals require findings or permission (see Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016); R. 306(a) (eff. Oct. 1, 2020)) while others allow the appeal by right (see Ill. S. Ct. R. 304(b) (eff. Mar. 8, 2016); R. 307 (eff. Nov. 1, 2017)). Each have specific time frames for filing the appeal, record, and briefs. None of the rules include the words "order of protection." However, based on the Illinois Supreme Court's interpretation of "injunction" when addressing a temporary restraining order in *In re A Minor*, 127 Ill. 2d 247, 260-61 (1989), and appellate district application of that interpretation to an order of protection (see *Blitstein*, 212 Ill. App. 3d at 130; *In re Marriage of Fischer*, 228 Ill. App. 3d 482, 486-87 (1992); *In re Marriage of Padilla*, 2017 IL App (1st) 170215, ¶ 19), parties appeal an emergency or interim order of protection pursuant to Rule 307.

¶ 52 Rule 307 provides three time frames for appeal. See Ill. S. Ct. R. 307 (eff. Nov. 1, 2017). Paragraph (a), which was used by appellant, states that "[e]xcept as provided in paragraphs (b) and (d)," the appeal and supporting record must be filed within 30 days from the entry of the interlocutory order. Ill. S. Ct. R. 307(a) (eff. Nov. 1, 2017). The appellant's initial brief is due seven days later, with the appellee's responsive brief due seven days thereafter. Ill. S. Ct. R. 307(c) (eff. Nov. 1, 2017). Appellant's reply brief is then due seven days later. *Id.* Therefore, an appeal from the entry of the protective order and completed briefing (if no extensions are requested) would be timely 51 days after the order was issued.

¶ 53 Under Rule 307(b), if an interlocutory order is entered *ex parte*, the appellant must first file a motion to vacate the order, and an appeal may be taken if the motion is denied or if the court does not act on the motion within seven days of its presentation. Ill. S. Ct. R. 307(b) (eff. Nov. 1, 2017). The appeal, and supporting record, must be filed within 30 days from either a denial of the motion to vacate or seven days following the presentation of the motion. *Id.* The briefing is then completed 21 days thereafter. Ill. S. Ct. R. 307(c) (eff. Nov. 1, 2017). As such, an appeal from the entry of the *ex parte* interlocutory order and completed briefing (if no extensions were required) would be timely 58 days from the date the order was issued.

¶ 54 However, as noted above, unless an extension is granted for a longer period, emergency orders are effective for no more than 21 days, and an interim order is effective for no more than 30 days. Therefore, an appeal of either order under Rule 307(a) or (b) would be moot before the briefing even began. A cause of action "is deemed moot if no actual controversy exists or if events occur that make it impossible for the court to grant effectual relief." *Tully v. McLean*, 2013 IL App (1st) 113663, ¶ 16.

¶ 55 "As a general rule, courts 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 Alfred H.H.*, 233 Ill. 2d 345, 351 (2009). Three recognized exceptions to this rule have developed in Illinois, which include (1) the collateral consequences exception, (2) the public interest exception (used by my colleagues herein), and (3) the capable-of-repetition-yet-avoiding-review exception. *In re Rita P.*, 2014 IL 115798, ¶ 24. However, even if an exception applies, the specific parties involved in the emergency or interim order of protection appealed under Rule 307(a) or (b) will not benefit or receive timely relief from the court addressing a moot issue under the exceptions. Such result runs contrary to an appeal "of right" provided pursuant to Rule 307.

¶ 56 The only rule that allows for timely consideration of an order expiring in 30 days or less by this court, as well as effective relief to the parties on appeal, is found in Rule 307(d). Paragraph (d) provides for an expedited appeal requiring the appellant to file the petition and supporting record within two days of the entry or denial of the "temporary restraining order" issued in the trial court. Ill. S. Ct. R. 307(d)(1) (eff. Nov. 1, 2017). The responsive brief is then filed two days later with no extensions or reply brief allowed except by order of the court. Ill. S. Ct. R. 307(d)(2), (3) (eff. Nov. 1, 2017). The appellate court's decision is due five business days thereafter. Ill. S. Ct. R. 307(d)(4) (eff. Nov. 1, 2017). As such, an appeal under paragraph (d) potentially takes only nine days to complete from the entry of the trial court's order to the issuance of the appellate court's decision. Given the desire for actual and effective relief, it is understandable why an appellant would appeal an emergency or interim order of protection under Rule 307(d) and equally understandable why a court might recognize such action although not specifically allowed by the language found within Rule 307(d). See *Padilla*, 2017 IL App (1st) 170215, ¶ 18 (finding that the appellate court had jurisdiction of the appeal under either Rule 307(a)(1) or Rule 307(d) when the appeal was from an order continuing an emergency order of protection and the appeal was filed two days after the order was issued).

¶ 57 It is notable that trial courts—previously—had the authority to "enter an order of injunction, mandatory or restraining" under the domestic violence statute provided in Part 2 of Injunctions. Ill. Rev. Stat. 1981, ch. 110, ¶ 11-201 (repealed by Pub. Act 82-783, art. III, § 44 (eff. July 13, 1982)). The statute also granted trial courts authority to issue emergency relief, stating: "The court may grant emergency relief without notice, pursuant to Section 11-101 of this Act, upon a showing of immediate and present danger of abuse to the plaintiff or minor children and may enter an order, pending notice and full hearing on the merits ***." *Id.* Section 11-101 was entitled "Temporary restraining order" and provided the required showing for the issuance of the order without notice. *Id.* ¶ 11-101. As such, domestic violence plaintiffs would receive a "temporary restraining order" upon a showing of immediate and present danger of abuse. At that time, however, paragraph (d) of Rule 307 did not exist.

¶ 58 History further reveals that when the Domestic Violence Act was enacted, the term "restraining order" was replaced with "order of protection." See Ill. Rev. Stat. 1986, ch. 40, ¶ 2311-3. Thereafter, in 1988, Rule 307 was amended to allow for an expedited appeal in the language found in paragraph (d), which rule then, as now, only addressed temporary restraining orders.

¶ 59 "[R]ules of statutory construction apply with equal force to the interpretation of all supreme court rules." *In re J.T.*, 221 Ill. 2d 338, 355 (2006) (Kilbride, J., concurring in part and dissenting in part) (citing *In re Estate of Rennick*, 181 Ill. 2d 395, 404 (1998)). The cardinal rule of statutory construction is to ascertain and give effect to the intent of the drafter, and the best evidence of the drafter's intent is the plain and ordinary language of the rule. *King v. First*

Capital Financial Services Corp., 215 Ill. 2d 1, 26 (2005). When the language is clear, the plain and ordinary meaning must be given effect without reliance on other aids of construction. *Id.* Certain statutory terms have clear and well settled meaning under the common law. When terms have acquired a settled meaning through judicial construction, it is presumed that the drafter knew of the prior interpretation unless a contrary intention is provided. *Carver v. Bond/Fayette/Effingham Regional Board of School Trustees*, 146 Ill. 2d 347, 353 (1992). As written, Rule 307(d) limits its application to "temporary restraining orders" and was not intended to encompass "orders of protection" because these terms, through the passage of time, are no longer interchangeable.

¶ 60 While not defined by statute, typically, " '[t]he purpose of a temporary restraining order is to preserve the status quo until the court can conduct a hearing to determine whether it should grant a preliminary injunction.' " (Emphasis omitted.) *County of Boone v. Plote Construction, Inc.*, 2017 IL App (2d) 160184, ¶ 28 (quoting *American Federation of State, County & Municipal Employees v. Ryan*, 332 Ill. App. 3d 965, 966 (2002)). Conversely, an order of protection "means an emergency order, interim order[,] or plenary order, granted pursuant to this Act [(the Illinois Domestic Violence Act of 1986)], which includes any or all of the remedies authorized by Section 214 of this Act." 750 ILCS 60/103(12) (West 2018). Such remedies include orders, *inter alia*, that (1) prohibit abuse, neglect, or exploitation of the petitioner; (2) grant exclusive possession of a residence; (3) provide stay away orders; (4) require counseling; and (5) render custody and parenting time determinations, which typically do not preserve the status quo. *Id.* § 214. While not all temporary restraining orders preserve the status quo (see *Kalbfleisch v. Columbia Community Unit School District Unit No. 4*, 396 Ill. App. 3d 1105, 1118-19 (2009)), after the term "restraining order" was changed to "order of protection," the terms can no longer be considered synonymous or interchangeable.

¶ 61 This distinction creates a jurisdictional oddity because typically temporary restraining orders deal with personal or real property, whereas emergency and interim orders of protection deal with people. As such, it is difficult to reconcile an appellant's ability to expeditiously review an order addressing property under Rule 307(d) but not provide the same right for emergency or interim orders of protection under the same paragraph when appeal of the latter leaves unsuccessful petitioners with no protection from potential future abuse or no safe place to live and unsuccessful respondents with orders affecting, or potentially violating, their constitutional rights, due to—at best—an unwarranted lack of parenting time or—at worst—criminal charges.

¶ 62 Based on strict statutory interpretation, neither unsuccessful appealing party has any true recourse because, even if their appeal is timely under Rule 307(a) or Rule 307(b) and provides jurisdiction to this court, the issue on appeal would be moot as to those parties leaving the appeal ripe only for discretionary review under the exceptions to the mootness doctrine. Therefore, while appeals under Rule 307 are "of right" and require no prior finding by the trial court or permission by the appellate court, the "right" is of little merit, and more a mirage, when an emergency or interim order must be appealed pursuant to Rule 307(a) or (b).

¶ 63 For these reasons, I specially concur.