2024 IL App (5th) 220681-U

NO. 5-22-0681

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re PARENTAGE OF B.S., a Minor	)	Appeal from the
	)	Circuit Court of
(Melissa Schmitt,	)	Madison County.
	)	
Petitioner-Appellant,	)	
	)	
v.	)	No. 08-F-288
	)	
Christopher Heeb,	)	
	)	
Respondent-Appellee	)	
	)	Honorable
(The Department of Healthcare and Family Services, Intervening Petitioner-Appellee)).	)	Ronald S. Motil, Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Cates and McHaney concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court order disqualifying the petitioner-mother's attorney based on a conflict of interest is affirmed where the petitioner-mother forfeited any challenge to this order as her appellate brief did not comply with Illinois Supreme Court Rule 341(h)(7) (eff. Oct. 1, 2020). Also, we do not have jurisdiction to consider the petitioner-mother's challenge to the trial court's order quashing her witness subpoena where the issue is moot because the witness is deceased.

¶ 2 The petitioner-mother, Melissa Schmitt, appeals from the trial court's order disqualifying Christine Kovach from representing her in the underlying action in which the intervening petitioner-appellee, the Illinois Department of Healthcare and Family Services (Department), was

providing, on her behalf, child support enforcement services. The respondent-appellee, Christopher Heeb, was the father of Schmitt's child. The petitioner also appeals from the court's decisions granting the Department's motion to quash a witness subpoena and denying her an evidentiary hearing on the disqualification issue. The petitioner filed a petition for leave to appeal pursuant to Illinois Supreme Court Rule 306(a)(7) (eff. Oct. 1, 2020), which this court granted. On appeal, the petitioner argues that the trial court erred in granting the motion to disqualify Kovach based on a conflict of interest,[1] the court erred in quashing her witness subpoena, and the court erred in denying her an evidentiary hearing before disqualifying Kovach. For the reasons that follow, we affirm.

¶ 3 Initially, the Department contends that this court does not have jurisdiction to consider an order quashing a subpoena under Rule 306(a). Our jurisdiction over this appeal is based on Rule 306(a)(7), which permits an interlocutory appeal by permission of an order granting a motion to disqualify the attorney for any party. None of the bases for appellate jurisdiction identified in Rule 306 include an order quashing a witness subpoena. Thus, this order would normally be outside our scope of review under Rule 306. However, we can review the court's quashing of the witness subpoena where it is sufficiently dependent on the merits of the court's decision to disqualify Kovach as the petitioner's attorney. See *U.S. Bank National Ass'n v. IN Retail Fund Algonquin Commons, LLC*, 2013 IL App (2d) 130213, ¶ 18 (in Rule 306 interlocutory appeals, the appellate court only has jurisdiction to review orders that are specifically identified in Rule 306, and those orders that are related to the merits of the identified orders).

[1]The disqualification was based on the fact that Kovach was previously employed by the Madison County State's Attorney's Office; in that employment, Kovach represented the Department in this matter on behalf of the petitioner from 2008 to the end of December 2010, and the Department never gave informed consent for her to subsequently represent the petitioner in this matter.

¶ 4 However, regardless of whether the order quashing the witness subpoena sufficiently related to the disqualification of Kovach, we note that the subpoena issue is now moot because the witness identified in the subpoena is deceased. On March 18, 2022, Kovach filed a witness subpoena directed at Marilyn "Lyn" Kuttin, a Department employee who was regional manager of the office located in Collinsville, Illinois; this office handled child support cases filed in Madison and St. Clair Counties. This subpoena commanded Kuttin's appearance at the April 4, 2022, hearing, and was emailed and mailed to Kuttin that same day. However, on March 27, 2023, Kuttin passed away.

¶ 5 "An appeal is moot if no actual controversy exists or if events have occurred that make it impossible for the reviewing court to grant the complaining party effectual relief." *In re Marriage of Peters-Farrell*, 216 Ill. 2d 287, 291 (2005). An existence of a real dispute is not a mere technicality but, instead, is a prerequisite to the exercise of this court's jurisdiction. *Id.* As mootness is decided based on the information available to the court at the time of the decision, intervening events that occur after the decision in the trial court should be considered. *Morr-Fitz, Inc. v. Blagojevich*, 231 Ill. 2d 474, 493 (2008). Thus, the appellate court may consider facts not set forth in the record. *Patel v. Illinois State Medical Society*, 298 Ill. App. 3d 356, 364 n.6 (1998).

¶ 6 Although, in her reply brief, the petitioner acknowledges that Kuttin has passed away, she argues that the subpoena was not directed to Kuttin as an individual, and there were many Department employees who could be called to testify as to "events, course of conduct, and contact" between the Department and her attorney beginning in February 2015. However, we note that the subpoena was directed to Kuttin, even though it was in her official capacity as a Department employee; it commanded her to appear at the April 2022 hearing and instructed that her failure to appear would subject her to contempt of court; and it did not instruct that an alternate Department

employee could appear in Kuttin's place. The petitioner has cited to no case law that permits an alternative Department employee to appear in Kuttin's place where the subpoena is directed to and has identified Kuttin as the employee that was required to appear at the hearing and makes no provision for an alternative. Moreover, the petitioner has not identified any exception to the mootness doctrine that would apply here. See *People v. Madison*, 2014 IL App (1st) 131950, ¶ 12 (in general, a party resisting a finding of mootness has the burden to show an exception to the mootness doctrine). Thus, we conclude that we do not have jurisdiction to review this order as part of this appeal.

¶ 7 Turning to the remaining issues, the petitioner elected, under Illinois Supreme Court Rule 306(c)(8) (eff. Oct. 1, 2020), to have her petition for leave to appeal stand as her appellate brief. However, her petition for leave to appeal was deficient in that it presented no argument as to why the trial court purportedly erred in disqualifying Kovach as her attorney or why the court erred by not permitting her an evidentiary hearing on the issue. Rather, the petition merely sets forth a statement of facts, a statement of jurisdiction, and a statement of the issues followed by a list of the requested relief. Although it identifies the issues raised on appeal, the petition contains absolutely no legal argument explaining why the trial court erred in its rulings on those issues. The petitioner also has not cited to any legal authority in her petition. It is not until her reply brief that she actually sets out any legal arguments for those identified issues.

¶ 8 A reviewing court is entitled to have the issues clearly defined with pertinent authority and is not simply a depository into which the appealing party may dump the burden of argument and research. *People v. Oglesby*, 2016 IL App (1st) 141477, ¶ 205. As such, Illinois Supreme Court Rule 341(h)(7) (eff. Oct. 1, 2020) requires an appellant's brief contain "[a]rgument, which shall

contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." See *id.*

¶ 9 The failure to cite any authority or to articulate an argument will result in forfeiture of that argument on appeal. *Id.* Further, Rule 341(h)(7) provides that points not argued in the initial brief are forfeited and may not be subsequently raised in the reply brief. Thus, an appellant cannot avoid forfeiture by developing her arguments in her reply brief when she has failed to do so in her initial brief. Accordingly, we conclude that the petitioner's failure to comply with Rule 341 results in forfeiture of her arguments on appeal. See *First National Bank of LaGrange v. Lowrey*, 375 Ill. App. 3d 181, 211 (2007).

¶ 10 Moreover, the petitioner has filed a motion to strike portions of the appellee's and intervening petitioner-appellee's briefs that do not properly cite the record on appeal. This motion was taken with the case on June 26, 2023. Although the petitioner's motion to strike fails to identify the portions of the briefs that she requests be stricken, we do note that she has identified some comments made by the appellees in their brief that she believes were not supported by the record on appeal. After reviewing the appellees' briefs, we deny the petitioner's motion; however, we note that, in this decision, we have not relied on any statements in the parties' briefs that were not supported by the record on appeal.

¶ 11 For the foregoing reasons, the judgment of the circuit court of Madison County is hereby affirmed.

¶ 12 Motion denied; judgment affirmed.