

2011 IL App (1st) 111111-U  
1-11-1111

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(3)(1).

Third Division  
August 10, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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IN RE THE PARENTAGE OF Z.S. AND K.L.,	)	Appeal from the
Minors.	)	Circuit Court of
	)	Cook County.
(John Shelton,	)	
	)	
Petitioner-Appellee,	)	06 D 81009
	)	
v.	)	
	)	
Shana Larry,	)	Honorable
	)	Debra Walker,
Respondent-Appellant.) <sup>1</sup>	)	Judge Presiding.

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JUSTICE NEVILLE delivered the judgment of the court.  
Presiding Justice Quinn and Justice Steele concurred in the judgment.

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<sup>1</sup> Larry captioned this case “In re the Marriage of John Shelton and Shana Larry. However, Shelton never married Larry so that caption is incorrect. Therefore, we use the caption that Larry applied to her petition in the trial court to have the court name Shelton as the father of her children.

ORDER

*HELD:* Where the trial court’s written order conflicted with its oral pronouncements, the oral rulings controlled. The appellate court partially vacated the written order because of the conflict with the oral ruling. The appellate court lacks jurisdiction to review the amended order under Supreme Court Rule 304(b)(6), because the order did not include a final custody judgment.

¶ 1 In the course of proceedings under the Illinois Parentage Act (750 ILCS 45/1 *et seq.* (West 2006)), the trial court ordered the mother to turn a child over to the father. The court explained that it ordered only temporary possession, and the court had not made a custody determination. However, on a form order filed the same day, the court checked a box indicating that it awarded custody of the child to the father. The mother now appeals from the custody decision. We find that the court did not intend to decide custody in its written order, and, therefore, we vacate that part of the order which awarded the father custody of the child. Having vacated the custody provision in the order, we find that we must dismiss the appeal for lack of jurisdiction.

¶ 2 BACKGROUND

¶ 3 Shana Larry gave birth to Z.S. on June 12, 2006. A court entered an order permitting John Shelton, Z.S.’s father, visitation with Z.S. Shana gave birth to K.L. on March 4, 2008. On January 12, 2011, Shana filed a petition to name Shelton as K.L.’s father, and a separate petition for child support. On January 18, 2011, Shelton filed a petition in which he sought “temporary possession and permanent custody” of both children.

¶ 4 The trial court heard the petitions on January 19, 2011. In response to the court’s

questions, both parties said they believed Shelton fathered both Z.S. and K.L. Shelton testified that he had not seen the children for three months prior to the hearing. Shelton sought to proceed on his petition for temporary possession of the children on an emergency basis. The court granted the motion. Shelton presented as an exhibit, a petition Shana's mother, Teresa Larry, filed in Du Page County, asking the Du Page County Court to name her guardian of Z.S. and K.L., because Shana could not provide shelter for the children. Shana signed a form in which she agreed that the court should name Teresa as guardian for the children. Shana admitted in court that Shelton had not seen his children for some months. The court heard argument, but no further testimony from the parties, and none from other witnesses.

¶ 5 At the conclusion of the hearing, the trial court entered several separate orders. In one, the court ordered Shana and Teresa to turn over Z.S. and K.L. to Shelton, who would retain possession until further order of the court, while Shana would start supervised visits with the children. In that order, the court directed Shana to dismiss the Du Page County proceedings, and the court continued proceedings on Shelton's petition for permanent custody. In a form labeled "Order of Parentage," the court named Shelton as K.L.'s father, and the court checked boxes indicating that Shelton "shall have custody of minor child/ren," while Shana "shall have supervised visitation rights." In another form order, which the court entered based solely on the allegations of Shelton's petition, the court directed Shana to submit to drug tests immediately after court proceedings.

¶ 6 On February 17, 2011, Shana moved to vacate the court's orders dated January 19,

2011. Shana argued that the court should not have entered a custody order without hearing testimony concerning custody, the court should not have ordered drug treatment without any supporting evidence, the court should not have restricted Shana to supervised visits with her children, and the court could not direct Shana to dismiss the Du Page County proceedings because she did not initiate those proceedings.

¶ 7 In an order dated February 23, 2011, the court noted that it had not ordered treatment or repeated testing, and because Shana’s drug tests all came back negative, the court did not require any further testing or treatment. The court promised to confer directly with the Du Page County judge who had ruled on Teresa’s petition for guardianship. In all other respects, the court, without explanation, denied Shana’s motion to vacate the orders dated January 19, 2011. Shana filed a response to Shelton’s petition for custody, and she filed her own petition for custody of the children. On March 22, 2011, Shana filed a notice of appeal from the custody order of January 19, 2011.

¶ 8 Because no court reporter transcribed the proceedings of January 19, the parties and the court prepared a bystander’s report of that day’s proceedings. According to the bystander’s report, at the hearing on January 19, Shana argued that the court should not enter a custody determination without testimony from the parties and without an evaluation of the interests of the children by a representative for the children. The court ordered Shana to bring the children to Shelton, but, according to the bystander’s report, “this was not a final determination of custody, but a temporary possession order.” The court noted that it had set a “briefing schedule \*\*\* for [Shelton’s] Verified Petition for Custody.”

¶ 9

ANALYSIS

¶ 10

Shana contends that Supreme Court Rule 304(b)(6) (Ill. S. Ct. R. 304(b)(6) (eff. Feb. 26, 2010)) gives this court jurisdiction to decide her appeal. That rule provides:

“The following judgments and orders are appealable without the finding required for appeals under paragraph (a) of this rule:

\* \* \*

(6) A custody judgment entered pursuant to \*\*\* section 14 of the Illinois Parentage Act of 1984 (750 ILCS 45/14); or a modification of custody entered pursuant to \*\*\* section 16 of the Illinois Parentage Act of 1984 (750 ILCS 45/16).”

¶ 11

Shelton asks us to dismiss this appeal for lack of jurisdiction on grounds that the trial court did not enter a custody judgment. Shana responds that on the “Order of Parentage,” the trial court checked the box indicating that Shelton “shall have custody of minor child/ren.”

¶ 12

The written order here conflicts with the explicit account the court gave in the bystander’s report. There the court said it entered only an order for temporary possession, and not a final custody determination. Illinois courts have often said, “If there is a conflict between a trial court's written and oral orders, the oral order controls.” *In re Tr. O.*, 362 Ill. App. 3d 860, 867-68 (2005); see also *In re William H.*, 407 Ill. App. 3d 858, 865-66 (2011) citing *In re R.W.*, 371 Ill. App. 3d 1171, 1173-74 (2007) and *In re Taylor B.*, 359 Ill. App. 3d 647, 651 (2005). One court added the useful qualification that if an oral pronouncement shows inconsistency with the court’s other pronouncements and acts, this court may decide

to apply the written record instead of the mistaken oral pronouncement. *People v. Tackett*, 130 Ill. App. 3d 347, 353 (1985).

¶ 13 Here, as in *William H.*, the trial court checked a box on a preprinted form order, when the court's other acts and pronouncements indicate an intent contrary to that shown by the checked box. The court checked the box to give Shelton custody of K.L., but then the court said that it ordered only temporary possession, and would later address the petition for permanent custody. Shelton argues that the court entered no custody order, and both parties presented to the trial court further pleadings in preparation for a full hearing on custody of the children. We find that the bystander's report, and not the written order, indicates the trial court's true intent. Accordingly, we vacate the "Order of Parentage" entered on January 19, 2011, only insofar as that order awards custody of either child or both children to Shelton. With that part of that order vacated, Rule 304(b)(6) confers no further jurisdiction on this court to consider the appeal.

¶ 14 CONCLUSION

¶ 15 In accord with the trial court's intent, as reflected in the bystander's report and the order for continuance of proceedings on the parties' petitions for custody of the children, we vacate the Order of Parentage insofar as the court in that order awarded custody of any child to Shelton. In all other respects, we dismiss the appeal for lack of jurisdiction.

¶ 16 Vacated in part, dismissed in part.