

No. 1-10-3442

**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(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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TAMARA PERRY,	)	
	)	Appeal from the Circuit
	)	Court of Cook County,
Petitioner-Appellee,	)	Domestic Relations Division.
	)	
v.	)	No. 08 D 631023
	)	
MAURICE PENNINGTON, SR.,	)	Honorable
	)	Edward A. Arce,
Respondent-Appellant.	)	Judge Presiding.
	)	

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JUSTICE ROBERT E. GORDON delivered the judgment of the court.  
Justices Cahill and McBride concurred in the judgment.

**ORDER**

*Held:* Where respondent failed to file petition for leave to appeal pursuant to Rule 306(a)(5), appellate court lacked jurisdiction to consider appeal.

On November 1, 2010, respondent Maurice Pennington, Sr., and petitioner Tamara Perry appeared before the trial court for a hearing on an emergency order of protection issued against Maurice.<sup>1</sup> The order of protection had removed their minor child, age seven, from Maurice's

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<sup>1</sup> We refer to the parties by their first names for clarity, since the parties have each held the role of petitioner and respondent in court proceedings.

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custody<sup>2</sup> and granted Tamara the temporary custody of the child. Maurice was not present for the entry of the order or the proceedings that led to the order. The court vacated the order of protection and entered three orders: one granting Tamara visitation of the couple's child, who was in the custody of Maurice; one ordering psychological evaluations of the parties; and one ordering a home study. Maurice appeals from the entry of these orders, claiming that the trial court did not have the statutory authority to enter them. Maurice further argues that the orders were void because the emergency order of protection was procured through fraud. We dismiss this appeal for lack of jurisdiction.

#### BACKGROUND

Maurice and Tamara were married on February 27, 2003. On November 17, 2008, Maurice filed a *pro se* petition for dissolution of marriage, alleging that Tamara committed adultery, was guilty of "extreme and repeated mental cruelty," and repeatedly contracted sexually transmitted diseases. The parties had a male child, born February 13, 2003, who was residing with Maurice at the time of the dissolution petition. Maurice sought a judgment of dissolution to include custody of their child, as well as a division of property and an order barring Tamara from any right or claim of maintenance from Maurice.

On February 20, 2009, Maurice filed a motion for default because Tamara had not filed her appearance or otherwise appeared. On April 30, 2009, the court entered a finding of default, ordered the marriage dissolved, found that Maurice was a fit and proper person to care for the

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<sup>2</sup> Maurice was awarded custody under a judgment of dissolution of marriage entered on April 30, 2009.

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child and it would be in the best interest of the child to be in Maurice's custody, and reserved the issues as to Tamara's right to receive maintenance, her right to visitation of the child, and her obligation to pay child support. A dissolution of the marriage judgment was entered on April 30, 2009.

On October 8, 2010, Tamara filed a postjudgment *pro se* petition for an order of protection on her behalf and on behalf of the child, which was heard by the same judge that had entered the judgment for dissolution of marriage. Tamara claimed that there had been a history of past abuse and that she was fearful of further abuse. She attached an affidavit in support of her petition, including a statement that on July 31, 2010, Maurice "hit" her and was sent to jail for 18 days. Maurice was not in attendance.

On the same day, the court entered an emergency order of protection, changing custody of the minor child to Tamara by giving her temporary custody and ordering Maurice to return the child to Tamara and enjoining Maurice from any contact by any means with Tamara and the child. The order was to remain in place until October 22, 2010, at which time a hearing would occur. In its findings, the court found that it had jurisdiction pursuant to the Illinois Domestic Violence Act and the Uniform Child Custody Jurisdictional Enforcement Act. The court found that Tamara had been abused by Maurice, the abuse consisting of harassment and interference with personal liberty, and found that the abuse was likely to continue if the relief was not granted. The court found that there existed a danger that the child would be abused or neglected and that Maurice had not acted in the best interest of the child. The court also found that Maurice had a history of mental illness.

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On October 12, 2010, Maurice filed a *pro se* emergency motion to vacate of the order of protection. Maurice denied the claims in Tamara's petition, stating that "[a]ll allegations made by her are a lie" and that Tamara had only recently returned into the child's life after Maurice had a friend contact her "to remind her that she has a son."

On October 18, 2010, Maurice filed a "motion to dismiss order of protection or to reopen or to vacate the order of protection." In the *pro se* motion, Maurice claimed that the case information summary for his case showed that he filed an appearance on July 26, 2010. However, Maurice claimed that he did not file an appearance and did not appear in court on that date. Maurice also argued that several provisions of the Illinois Domestic Violence Act were unconstitutional "because without evidence my son's custody was taken from me and placed into the hands of his mother without this judgment being given by my peers nor pursuant to the law of the land." Maurice asked the court to "dismiss, vacate or reopen its emergency order of protection and rehear evidence" because the court did not have jurisdiction over him since he never filed an appearance. Alternatively, Maurice asked the court to find that the statutes were unconstitutional.

On the same day, the court entered a disposition order, extending the emergency order of protection to October 25, 2010. The court also modified the emergency order of protection to grant visitation to Maurice in the interim. On October 25, 2010, the court set the matter for hearing on November 1, 2010, and also indicated that it would conduct an *in camera* interview with the child.

On October 27, 2010, Maurice filed a "motion to dismiss, strike, dissolve or vacate

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emergency order of protection or to find unconstitutional the Illinois Domestic Violence Act.” In the motion, Maurice asked the court to return the child to his custody because Tamara had a history of mental health problems, to find that the affidavit in support of the petition for an order of protection failed to show evidence of abuse, and to find that the stated provision of the Illinois Domestic Violence Act was unconstitutional because it allowed an emergency order to issue without any evidence being presented to the court. Maurice also asked for a finding that Tamara used the emergency order of protection as a motion for modification of custody, which was “impermissible.”

On November 1, 2010, Rachel Heaston, an attorney from the Legal Assistance Foundation of Metropolitan Chicago, entered an appearance on behalf of Tamara. On the same day, the court held a hearing on the emergency order of protection. The court vacated the emergency order of protection and entered orders setting visitation for Tamara, requiring the parties to submit to a home study and psychological evaluation, and requiring Maurice to reenroll the child in school. On November 9, 2010, Maurice filed a *pro se* “motion for a rehearing, modification of judgment or to vacate portions of the courts [*sic*] judgment and for sanctions against the respondent [Tamara] for perjury.” In the motion, Maurice asked that the court reopen the evidentiary portion of the hearing on the emergency order of protection to allow him to file copies of a police report from July 30, 2010. In Tamara’s affidavit in support of an order of protection against Maurice, she alleged that Maurice had hit her on July 30, 2010.<sup>3</sup> At the

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<sup>3</sup> Maurice’s motion lists the date as July 30, 2010, but Tamara’s affidavit lists the date as July 31, 2010.

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November 1, 2010, hearing,<sup>4</sup> Tamara testified that Maurice struck her in the face on July 30, 2010, which was why she called the police to have him arrested. At the hearing, Maurice testified that he grabbed Tamara by both arms and walked her backward out of his room. The arrest report indicated that “ ‘The above arrested on signed complaint after pushing victim during a domestic dispute involving their child,’ ” and showed that Tamara was uninjured. Maurice claimed that if he had struck Tamara, some bruise would have appeared on her skin.

Maurice asked that the court reopen the evidence phase of the hearing so that he could impeach her with the police report. Maurice claimed that Tamara committed perjury both in the affidavit and while testifying before the court. He argued that the court should vacate any orders it had made pursuant to the perjury.

Maurice further argued that since Tamara did not prove her case, the order of protection should have been dismissed and Maurice should not have been ordered to receive a psychological evaluation. Maurice claimed that since Tamara did not prove her case and since she committed perjury, the remedies under the Illinois Domestic Violence Act were not available to the court and thus, the court could not order Maurice to undergo a psychological evaluation.

Maurice also argued that the situation was not a contested child custody proceeding and since Tamara committed perjury and neither parent requested a home study investigation, the court did not have the authority to enter such an order and it must be vacated.

On November 19, 2010, the court denied Maurice’s motion. On the same day, Maurice filed a *pro se* notice of interlocutory appeal. In support, Maurice argued that the court entered a

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<sup>4</sup> There is no report of proceedings from the hearing in the record on appeal.

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visitation order, an order for psychological evaluations, and an order for a home study, despite the fact that Tamara did not petition the court for visitation or custody. Maurice claimed the court “turned the Emergency Order of Protection in[to] a full blown custody proceeding” and, on its own motion, changed the proceeding into one for visitation and custody modification outside the statutory guidelines. Maurice also claimed that during the hearing on the motion for rehearing, the court “completely ignored” Maurice’s claim that Tamara committed perjury.

#### ANALYSIS

On appeal, Maurice raises two issues: he claims that the orders concerning visitation, psychological evaluations, and home visits are void because the trial court lacked jurisdiction to enter them and also claims that the orders are void because the emergency order of protection was procured through fraud.<sup>5</sup> We took this case under consideration on Maurice’s brief and the record and have received no response from Tamara.

While Maurice focuses on the trial court’s jurisdiction, we find that we cannot consider this appeal because we lack jurisdiction. The orders from which Maurice appeals are interlocutory orders. Maurice claims we have jurisdiction to consider them under Illinois Supreme Court Rule 307(a)(1) (eff. Mar. 20, 2009), which provides that “[a]n appeal may be taken to the Appellate Court from an interlocutory order of court: (1) granting, modifying,

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<sup>5</sup> In his brief, Maurice included an argument that his constitutional rights were violated when the trial court appointed counsel for Tamara and did not appoint counsel for him. However, he includes one sentence in support of his argument, which merely rephrases his point heading. Thus, we do not consider this argument.

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refusing, dissolving, or refusing to dissolve or modify an injunction.” However, Maurice is not appealing the trial court’s vacating the order of protection, which contained an injunctive component. Instead, Maurice is appealing orders that were entered in addition to the order of protection being vacated.<sup>6</sup> Those orders would properly be governed by Illinois Supreme Court Rule 306(a)(5) (eff. Sept. 1, 2006), which provides that “[a] party may petition for leave to appeal to the Appellate Court from the following orders of the trial court: \*\*\* (5) from interlocutory orders affecting the care and custody of unemancipated minors, if the appeal of such orders is not otherwise specifically provided for elsewhere in these rules.” Maurice did not petition for leave to file his appeal. Accordingly, we cannot consider the merits of his claim.

#### CONCLUSION

We find that we lack jurisdiction to consider the instant appeal since Maurice did not file a petition for leave to appeal pursuant to Rule 306(a)(5).

Appeal dismissed for lack of jurisdiction.

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<sup>6</sup> We note that Maurice makes an inherently contradictory argument. He argues that we have jurisdiction pursuant to Rule 307(a)(1), which would require the orders entered to be part of the proceeding on the order of protection. However, he also argues that the trial court lacked jurisdiction because the orders were unrelated to the order of protection.