

2011 IL App (1st) 102650
No. 1-10-2650

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FIFTH DIVISION
October 21, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ILLINOIS DEPT. OF HEALTHCARE AND FAMILY SERVICES ex rel. MERCY ALU)	Appeal from the
)	Circuit Court of
)	Cook County
)	
Petitioner-Appellee,)	
)	
v.)	No. 08 D 52636
)	
NKUMEH IKECHUKWU,)	
)	
Respondent-Appellant.)	
)	
)	Honorable
)	Patricia M. Logue
)	Judge Presiding.

JUSTICE JOSEPH GORDON delivered the judgment of the court.
Presiding Justice Epstein and Justice McBride concurred in the judgment.

ORDER

Held: Where appellant did not provide this court with a sufficient record of the proceedings below to evaluate the merits of his appeal, the orders entered by the circuit court determining parentage, child support, and denying a petition for substitution of judge, were presumed to be in conformity with the law and have a

sufficient factual basis. Additionally, appellant's motions to stay enforcement of support orders pending a final judgment and pending appeal are now moot because a final judgment has been rendered by the circuit court and is now being rendered on appeal. Further, the appellant waived his contentions which were not supported by authority as required by Illinois Supreme Court Rule 341(h).

¶ 1 Respondent Nkumeh Ikechukwu, *pro se*, appeals from a parentage order determining that respondent is the father of petitioner Mercy Alu's daughter, Y.I., and from orders which require him to pay current and retroactive child support to petitioner. Respondent contends that the parentage and support orders should be reversed because he was fraudulently induced to admit that he is Y.I.'s father. In an inconsistent manner, he further contends that he was denied due process because the circuit court improperly relied on an administrative order on parentage issued by the Illinois Department of Health and Family Services ("the Department"), because there is no evidence that he acknowledged Y.I.'s paternity, and also because the court declined to rule on all of his motions and hear all the evidence presented by him. Respondent further contends that the support orders were improper because the court erred in calculating the support amount and the date when support was to commence, and erred in declining to stay enforcement of the support order until the judgment was final. Additionally, respondent contends that the orders should be reversed and the case dismissed because the circuit court judge was biased against him. Further, respondent challenges the propriety of a temporary order of support, the court's finding that an order of current support was enforceable and appealable, and certain filing fees. Lastly, respondent contends, in his reply brief, that the circuit court lacked subject matter jurisdiction over this matter.

¶ 2 BACKGROUND

¶ 3 Initially, we note that defendant has only provided us with a common law record, and has not included a transcript of the proceedings below. Accordingly, we will reconstruct the factual background to the extent that it can be effected from the common law record. Based on the common law record, on July 15, 2008, the Department, which is represented by the State's Attorney's Office, filed a complaint against respondent, on behalf of petitioner and her child, Y.I., to determine the existence of a father and child relationship pursuant to the Illinois Parentage Act of 1984. The complaint alleged that respondent is the father of Y.I., who was born to Alu on August 25, 2007, and sought a declaration of respondent's paternity, as well as child support and health insurance for Y.I.

¶ 4 Earlier, on June 11, 2008, the Department issued an administrative order to establish the paternity of Y.I. pursuant to section 160.61 of the Illinois Administrative Code. 89 IL ADC 160.61. That order found that a father and child relationship was established between Y.I. and respondent, who was in default of the proceedings because he failed to appear for a genetic test after receiving notice thereof. On August 19, 2008, respondent filed an answer to the complaint, in which he stated that he "accepted the administrative support order [sic] that [Y.I.] is mine." On September 15, 2008, the Department filed a motion asking the circuit court to enter an order of parentage against respondent, and order him to pay child support and provide health insurance for Y.I.

¶ 5 Respondent, on September 19, 2008, filed a document titled "motion for a hearing and enhanced response to complaint to determine the existence of the father and child relationship, impending motion for order of parentage, child support and healthcare." In that motion,

respondent stated that he "never admitted being the father of [Y.I.]," but claimed that the court should not enter an order of parentage because the issue of Y.I.'s paternity had already been determined in an "[a]dministrative hearing." Further, it appears that on November 20, 2008, respondent filed a motion to withdraw his previous answer to the complaint and his "enhanced response," and a motion to dismiss the complaint, where he again, stated that "the issue of paternity was resolved in [a]dministrative [o]rder of June 11, 2008."

¶ 6 On that same day, on November 20, 2008, the circuit court entered an order for genetic testing of petitioner, respondent and Y.I., to establish the child's paternity, and on December 19, 2008, respondent filed a "petition/appeal for judicial review of order for DNA testing," in which he alleged that genetic testing was against his culture and religious beliefs. Respondent further stated in that petition that DNA testing was unnecessary because Y.I.'s paternity had been resolved in the administrative order of June 11, 2008.

¶ 7 On December 26, 2008, respondent filed a "motion for out-of-court agreement/settlement," in which he alleged that he had reached an agreement with petitioner. According to the motion, respondent agreed to acknowledge paternity of Y.I. and to pay child support in the amount to be determined by the court, and in exchange, petitioner agreed that those payments would stop after 12 months and would be made directly to her, and that petitioner would not ask respondent for more money.

¶ 8 On January 9, 2009, the circuit court entered an order of parentage, which bears both parties' signatures and states that respondent is Y.I.'s father, and indicates that the hearing was "by agreement," that "respondent admits parentage " and that "respondent was advised of his admission." On that day, the court also entered an order, also bearing both parties' signatures, for

temporary support in the amount of \$300 per month to begin on January 20, 2009, and directed that an income-withholding notice be served on respondent's employer. That order stated that respondent agreed to the amount of the payments. In both orders, the court reserved the matters of current and retroactive support, and ordered respondent to provide income and tax documents and for both parties to complete financial disclosure statements. Also on that date, the court entered an order finding that respondent's motions to dismiss the complaint, to vacate the prior order on genetic testing and to acknowledge the out-of-court agreement were withdrawn, and the court set an additional hearing date for April 24, 2009.

¶ 9 Before that following hearing date, respondent filed numerous motions. On January 21, 2009, he filed a motion to modify the order of parentage and reinstate the out-of-court agreement and to void portions of the temporary order of support. On March 23, 2009, he filed a document labeled "motion to express [his] concerns about this case to the judge," in which he alleged that the court's previous orders had not been based on law or fact and did not acknowledge the parties' out-of-court agreement. Also on March 23, 2009, respondent filed a motion asking the court to reinstate his motion to dismiss the complaint and his objection to genetic testing, to "reverse" unspecified charges and fees, to "nullify" its income withholding order, and to enter an order of protection against petitioner.

¶ 10 Pursuant to the hearing on April 24, 2009, the circuit court denied with prejudice every motion that respondent filed since its prior order of January 9, 2009, finding parentage and imposing temporary support, except for respondent's motion for an order of protection, which was not mentioned. That order stated that it was not bound by an out-of court agreement by the parties with regard to Y.I.'s support, and that in any event, petitioner was present and did not

agree to the terms of the agreement described by respondent. On that same day, the court entered a uniform order of support, which stated that the respondent's biweekly net income was \$2,076, and ordered him to make current support payments in the amount of \$415 every two weeks. The court noted in the order that it had reviewed both parties' asset disclosure statements, and directed that payments be made to the State Disbursement Unit and, again, that an income-withholding notice be issued to respondent's employer.

¶ 11 On April 27, 2009, respondent filed a "petition for substitution of judge for cause pursuant to 735 ILCS 5/2-1001(a)(3)." As grounds for cause, he alleged that Judge Logue, who presided over this case, had not acted impartially for several reasons, such as the fact that she conducted the hearing on current support even though petitioner did not submit her asset disclosure statement on time, and the judge's failure to explicitly rule on certain motions filed by respondent. Respondent further alleged that the judge did not review all of the evidence submitted by respondent before she refused to extend an initial order of protection which appears to have been previously entered against petitioner. Additionally, respondent alleged that Judge Logue unlawfully commented that this case was "all about the child," indicating that she was acting out of concern for the child, and not for the allocation of responsibility. In addition, respondent alleged that judge improperly commented that she could not trust respondent because he refused to take the DNA test. On June 11, 2009, the court denied respondent's motion, after being considered by a different judge.

¶ 12 On May 4, 2009, while waiting for the ruling on his motion for substitution of judge, respondent filed a motion "not to enforce [the] judgment entered on April 24, 2009," in which he appeared to argue that the order of support entered against him should not be enforced because

the court had not yet disposed of all issues, including as retroactive support. On that same day, the motion was denied, and on the next day, May 5, 2009, respondent filed a notice of appeal from that order, which this court docketed.

¶ 13 Additionally, on May 11, 2009, while respondent had previously filed a motion not to enforce, he now moved to vacate the orders on parentage and on current support, rather than simply forestall their enforcement. In that motion, respondent objected to the amount of support ordered and claimed that petitioner had induced him to admit to Y.I.'s paternity by agreeing to the terms of their alleged out-of-court agreement. Respondent further alleged that he was "tricked" by the State's attorney into admitting the child's paternity and agreeing to the support amount on January 9, 2009, because he was not presented with all of the pages of the order of temporary support before he signed it. Attached to the motion was a series of e-mail exchanges between respondent and petitioner, in which respondent requests petitioner to agree to accept payments directly from him for no longer than 12 months and dismiss the case. It appears that petitioner stated in those e-mails that she is indifferent as to whether the child support payments are paid through the State Disbursement Unit or directly into an account set up for the child, but she does not appear to agree to dismiss the case or to limit the duration of the payments.

¶ 14 On July 10, 2009, while his foregoing May 11 motion was still pending, respondent filed a motion seeking to modify support and asking the court to calculate the amount of support using a disclosure statement dated June 30, 2009. On that same day, respondent filed a document titled "affidavit on private agreement between the petitioner and the respondent," and a financial disclosure statement purporting to reflect his income as of June 30, 2009. While the record contains another financial disclosure statement, dated April 23, 2009, it unclear as to whether it

was attached to respondent's motion to modify support, or his previously filed motion to vacate the orders from April 24, 2009.

¶ 15 On September 22, 2009, the circuit court entered an order, in which it denied with prejudice respondent's motion of May 11, 2009, in which he asked the court to vacate the orders entered on April 24, 2009. Also in that order, the court struck respondent's motion of July 10, 2009, to modify support, as legally insufficient, as well as respondent's "affidavit on private agreement." The order included a Supreme Court Rule 304(a) finding, stating that "with regard to current support, this is a final order. There is no just reason to delay enforcement or appeal."

¶ 16 On October 8, 2009, respondent filed a notice of appeal from the order entered on September 22, 2009, and asked the court to vacate the order and "declare that 4/24/2009 orders are not enforceable or appealable pursuant to Illinois Supreme Court Rule 304(a)." This court docketed the appeal, and later consolidated with respondent's previously filed appeal.

¶ 17 Thereafter, on November 30, 2009, respondent filed an emergency motion to stay enforcement of his support order pending appeal, which was denied in a order which stated that the court found no basis to stay enforcement of the support order, "in light of other available remedies and harm to the minor child, as well as the support order of April 24, 2009, being lawfully ordered and consistent with the guidelines."

¶ 18 On May 4, 2010, respondent filed a new petition to modify child support, which stated that since April 24, 2009, a substantial change in circumstances had arisen, such that his net monthly income was currently \$656.14, and that under the statutory guidelines, his child support payments should be lowered to \$131.22 per month. On that same day, respondent also filed a petition to correct the order of support entered on April 24, 2009, which alleged, inconsistently

with his petition to modify, that the court made a mathematical error in calculating the amount of support awarded to the child because as of April 24, 2009, respondent's net monthly income was already as low as \$656.14 per month. The figures alleged in those motions correspond to a financial disclosure statement that respondent apparently filed on December 31, 2009.

¶ 19 On May 27, 2010, the circuit court entered an order which denied respondent's petition to correct the order of support as untimely and continued the petition to modify support. On June 8, 2010, the court entered another order continuing the petition to modify, and an order which directed him to provide the court with W-2 forms, tax returns, and other information that would be relevant to that petition.

¶ 20 Also on June 8, 2010, the circuit court entered an order which awarded petitioner \$5,098 in retroactive support for the period between July 30, 2008, when respondent was served with summons, and January 19, 2009, the day before respondent's first temporary support payment was due. The order appears to indicate that it calculated that amount based on the same figure of respondent's net income that was used in the support order entered on April 24, 2009. Thus, in addition to respondent's current support obligation in the amount of \$415, the order directed respondent to pay \$25 every two weeks toward his retroactive support obligation.

¶ 21 On July 2, 2010, respondent filed a post-judgment motion to vacate "all orders/judgment and dismiss the complaint," in which he again argued, *inter alia*, that the court disregarded his out-of-court agreement with petitioner, and that he had been tricked into admitting Y.I.'s paternity and into withdrawing some of his earlier motions. On July 9, 2010, he filed a motion challenging the \$90 fee that he paid for filing his post-judgment motion. Additionally, on August 30, 2010, while his post-judgment motion was pending, respondent filed a notice of appeal from

"all prior orders of the circuit court," and a motion to stay enforcement of the support orders while the appeal was pending, pursuant to Illinois Supreme Court Rule 305(a).

¶ 22 On October 19, 2010, the circuit court entered an order which denied with prejudice respondent's post-judgment motion "for the reasons stated in open court," as well as respondent's petition to modify support. The order further stated that this case would be removed from active call and that "continued efforts by respondent to revisit past rulings again will meet with sanctions." On that same day, the court entered a separate order which denied respondent's motion to stay enforcement of the support orders while appeal is pending, and stated that "it is not an appropriate case for a stay of child support enforcement."

¶ 23 On the next day, October 20, 2010, he filed an "amended notice of appeal" from the denial of his post-judgment motion, and again, from all prior orders entered by that court.

¶ 24 In an unpublished order dated September 17, 2010, this court dismissed for lack of jurisdiction respondent's two interlocutory appeals, namely, the one filed on May 5, 2009, from the denial of his motion to stay enforcement of the order of support, and the one filed on October 8, 2009, from the order which found that the order of support was final and appealable. On October 29, 2010, respondent filed a motion to set an appeal bond and stay enforcement of the judgment during the pendency of his final appeal, which this court denied on November 25, 2010.

¶ 25 ANALYSIS

¶ 26 What now remains pending is respondent's appeal from all the orders which have been entered by the circuit court, including the orders on parentage and temporary support entered on January 9, 2009, the order on current support entered on April 24, 2009, the order of May 5,

2009, which denied his motion not to enforce the order on current support until there was a final judgment, the order on retroactive support entered on June 8, 2010, and the order of October 19, 2010, which denied his post-judgment motion, his motion to modify support and his motion to stay enforcement while this appeal is pending. In respondent's remaining appeal, he contends that the trial court erred in entering the order of parentage because he was fraudulently induced to admit to Y.I.'s paternity and because the court improperly relied on the administrative order on parentage. He further contends that the court erred in entering the orders on current and retroactive support because it miscalculated his net income. Additionally, respondent contends that he was denied due process when the circuit court denied some of his motions which were uncontested, and that the court improperly failed to stay enforcement of the orders of support before there was a final judgment, during the pendency of his motion to vacate the court's judgment, and during the pendency of this appeal. He further contends that he was denied due process when the circuit court denied his motion for substitution of judge because, according to respondent, the judge presiding over this case was biased. Additionally, respondent claims that he was denied his right to due process when the circuit court failed to rule on all of his motions. In addition, he contends that the trial court erred in not deciding the issue of retroactive support on the same date that it ruled on current support, and that it erred in entering an order of temporary support on the same date as it entered an order on parentage. He further challenges the propriety and amount of fees with which he was charged by the clerk of the court. Lastly, respondent argues, for the first time in his reply brief, that the circuit court lacked subject-matter jurisdiction over this matter.

¶ 27 We note, initially, that insofar as respondent attempts to set forth some of his arguments

as a violation of due process of law, we need not reach constitutional questions when a matter can be resolved on other grounds. *Lyon v. Department of Children and Family Services*, 209 Ill. 2d 264, 271 (2004). We next note that respondent has failed to comply with the supreme court rules for appellate briefs set forth in Illinois Supreme Court Rule 341 (S. Ct. R. 341 (eff. Jul. 1, 2008)). Respondent has failed to include in his brief a concise statement of the applicable standard of review for each issue with citation to authority, as required by Rule 341(h) (Ill. S. Ct. R. 341(h)), or a certificate of compliance as required by Rule 341(c).

¶ 28 However, more significant is the fact that respondent has not provided us with a sufficient record of the proceedings below to permit us to properly evaluate the merits of this appeal, much less decide this appeal in his favor. See *Lill Coal Co. V. Bellario*, 30 Ill. App. 3d 384, 385 (1975); *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984).

¶ 29 The supreme court held, in *Foutch*, 99 Ill. 2d at 392, that an appellant has the burden to present a sufficiently complete record of the proceedings at the trial level to support a claim of error. Moreover, in the absence of such record on appeal, it will be presumed that the order entered by the trial court was in conformity with the law and had a sufficient factual basis, and any doubts which may arise from incompleteness of the record will be resolved against the appellant. *Foutch*, 99 Ill. 2d at 392. In that case, since appellant did not provide a transcript, or bystander's report, of the hearing on a motion to vacate, there was no basis for holding that the trial court had committed an error in denying the motion. *Foutch*, 99 Ill. 2d at 392; see also *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005) (holding that absent an adequate record preserving the claimed error, any doubts arising from the incompleteness of the record will be resolved against the appellant, and the order of the circuit court will be affirmed); see also

Cannon v. William Chevrolet/Geo, Inc., 341 Ill. App. 3d 674, 685 (2003) ("Without the transcript, we are unable to discern the trial court's reasoning and whether it abused its discretion."); see also *Coleman v. Windy City Balloon Port, Ltd.*, 160 Ill. App. 3d 408, 419 (1987), citing *Mileke v. Condell Memorial Hospital*, 124 Ill. App. 3d 42, 48-49 (1984), *In re marriage of Hofstetter*, 102 Ill. App. 3d 392, 396 (1981) ("[i]t is not the obligation of the appellate court to search the record for evidence supporting reversal of the circuit court. ***

When portions of the record are lacking, it will be presumed that the trial court acted properly in entry of the challenged order and that the order is supported by the part of the record not before the reviewing court").

¶ 30 However, when an issue on appeal confronts solely a question of law, which we review *de novo*, the transcripts of the circuit court's hearings may be unnecessary if the question of law is otherwise adequately defined. *Gonella Baking Co. v. Clara's Pasta di Casa, Ltd.*, 337 Ill. App. 3d 385, 388 (2003). Accordingly, we may address such questions in the absence of a transcript because they are sufficiently ascertainable without access to the colloquy of the circuit court and the parties. *Id.*

¶ 31 In this case, respondent has failed to provide us with any report of the proceedings below. See S. Ct. R. 323(a) (eff. Dec. 13, 2005) (the report of the proceedings, "may include evidence, oral rulings of the trial judge, a brief statement of the trial judge of the reasons for his decision, and any other proceedings that the party submitting it desires to have incorporated in the record on appeal"). Nor is there a bystander's report which is authorized under Illinois Supreme Court Rule 323(c) (See S. Ct. R. 323(c)) (eff. Dec. 13, 2005) ("[i]f no verbatim transcript of the evidence of proceedings is obtainable the appellant may prepare a proposed report of proceedings

from the best available sources, including recollection”), nor any agreed statement of facts filed by the petitioner which is authorized by Rule 323(d) (See S. Ct. R. 323(d) (eff. Dec. 13, 2005) (“[t]he parties by written stipulation may agree upon a statement of facts material to the controversy and file it without certification in lieu of and within the time for filing a report of proceedings”). All that appears before us is the common-law record, which includes copies of the complaint filed by the Department, the numerous motions filed by respondent throughout the proceedings, the circuit court’s orders on parentage and support, as well as orders disposing of respondent's other motions. As shall be discussed below, while certain of respondent's contentions on appeal may lend themselves for review, even in the absence of a transcript, most of his contentions cannot.

¶ 32 We now address respondent's contentions which cannot be adequately addressed in the absence of a transcript. First, respondent contends that the circuit court improperly entered the order on parentage on January 9, 2009, because he was fraudulently induced to admit paternity of Y.I. He maintains that he only admitted paternity because petitioner had agreed not to seek child support for no longer than one year, and to take payments directly from him, in exchange for that admission. In a related and apparently inconsistent argument, respondent claims that he was denied due process because the order on parentage was entered against him in the absence of his acknowledgment of paternity, and the court improperly relied on the administrative order.

¶ 33 Additionally, respondent challenges the orders on current and retroactive support, stating that the circuit court erred in calculating his net income and ignored the figures in his financial disclosure statements, which according to respondent, reveal that his monthly income is \$656.14, not \$2,076 as stated in the order. According to respondent, he was also denied due process when

the circuit court failed to review the evidence that he presented with regard to his net income. He further maintains that the court erred in granting the support orders because petitioner did not provide a financial disclosure statement of her own. Respondent also argues that the court erred in calculating the amount of retroactive support because it did not account for payments allegedly made to petitioner outside of court, and erred in calculating his bi-weekly payments toward that amount because if he pays \$25 until the child reaches majority, his payments will exceed the amount that he owes.

¶ 34 Additionally, respondent contends that he was denied due process when the circuit court allegedly denied some of his motions which petitioner did not contest, but respondent does not itemize those motions. He further maintains that the circuit court erred in failing to stay enforcement of the current support order before the court entered a final judgment on June 8, 2010, and that its 304(a) finding on September 22, 2009, that the order on current support was final and appealable, was improper. Similarly, respondent contends that the trial court erred in failing to stay enforcement of the support orders during the pendency of this appeal, pursuant to Rule 305(a).

¶ 35 With regard to respondent's challenge to the order on parentage based on the contention that he was defrauded and the court improperly relied on the administrative order, we do not know the colloquy between the parties at that hearing, and the order indicates that the hearing was "by agreement," bears his signature, and states that "respondent admits parentage" and that "after hearing, respondent was advised of his admission." Further, the first order entered on April 24, 2009, stated that petitioner had denied entering into an out-of-court agreement with respondent, and that, in any event, the agreement would not bind the court. Additionally, we do

not have the transcripts of the hearings after which the court ruled on current and retroactive support. With regard to the order on current support, it stated that respondent's bi-weekly income is \$2,076, and that it reviewed both parties asset disclosure statements. Further, the order on retroactive support does not state that respondent had made any prior payments, and while it directed respondent to pay \$25 every two weeks towards the amount of \$5,098, nothing indicates that those payments are to continue after respondent has finished paying that amount. With respect to the orders that denied respondent's allegedly uncontested motions, not only do we not know to which motions respondent refers, but none of the orders entered by the circuit court indicate whether petitioner contested them at the hearing, or the court's reasoning for denying them. Similarly, we do not have the transcript of the hearings on respondent's motion to stay enforcement of the order on current support until it disposed of all pending issues, or the hearing on his motion to stay enforcement of the support orders during the pendency of this appeal. In addition, the parties' briefs do not indicate whether any of the orders entered by the circuit court were entirely based on facts already in the record or whether new facts were adduced at the hearing. Without a transcript or bystander's report, we do not know what evidence, if any, was presented to the circuit court, or what set of asset disclosure statements the circuit court referred to in its ruling. Thus, we cannot review any of the issues raised or assess the trial court's findings and basis for its legal conclusions. As such, without a record of the proceedings, we can only speculate as to the reasons for the circuit court's findings made in its orders, and such speculation is not an adequate basis upon which we may conclude that the circuit court erred in entering a summary judgment in favor of plaintiff.

¶ 36 Moreover, respondent's motions to stay enforcement pending a final judgment and

pending appeal would now be moot since final judgment has been rendered in the circuit court and is now being rendered on appeal. Similarly, respondent's related contention to automatically stay enforcement while his motion to vacate was pending is likewise moot because that motion has already been ruled upon. With regard to this last contention, respondent maintains that was denied his right to due process of the law when the circuit court did not stay enforcement of the support orders between July 2, 2010, when he filed a motion to vacate the orders previously entered by the circuit court, and October 19, 2010, when the court disposed of that motion. In support of that contention, respondent relies on section 2-1203 of the Illinois Code of Civil Procedure ("Code"), which provides that "a motion [such as a motion to vacate] filed in apt time stays enforcement of the judgment." 735 ILCS 5/2-1203(a)-(b) (West 2009). We note that while respondent labels this contention as a due process violation, he simply argues that the circuit court's failure to stay enforcement of the support orders was contrary to the language of the Code, and states, without citation to authority, that "due process requires existing laws and procedures to be followed." Not only is such a bare contention insufficient to support a due process argument, but we need not address a constitutional question if the issue can be resolved on other grounds. *Lyon*, 209 Ill. 2d at 271.

¶ 37 This court generally will not resolve moot questions, or render advisory decisions. *In re Robert S.*, 213 Ill. 2d 30, 45 (2004). An appeal is moot if no actual controversy exists between the parties or if events have occurred which make it impossible to grant the complaining party effectual relief. *In re Marriage of Peters-Farrell*, 216 Ill. 2d 287, 291 (2005); *In re Marriage of Michaelson*, 359 Ill. App. 3d 706, 717 (2005). The existence of a real dispute is not merely a technicality, but a prerequisite to the exercise of this court's jurisdiction. *Id.* For instance, in

Peters-Farrell, 216 Ill. 2d at 291, our supreme court held that after the circuit court had entered a judgment of dissolution of marriage that resolved all the issues between the parties, the wife's challenge to the husband's subpoenas for the her prescription records had become moot, and the court, therefore, lacked jurisdiction to reach it. *Id.*

¶ 38 In this case, the circuit court entered a final judgment on June 8, 2010, when it resolved the issue of retroactive support, and it disposed of his motion to vacate when it denied it on October 19, 2010. In fact, respondent does not argue that any stay on enforcement of support would have been continued after that last date. Thus, even if it would have been proper for the circuit court to stay enforcement of the support orders before a final judgment was entered, or during the pendency of respondent's motion to vacate, that stay would have ended no later than October 19, 2010. Similarly, as we dispose of respondent's appeal, he can no longer receive effectual relief during the pendency of his appeal under Rule 305(a), and the issue of whether the support orders should have been stayed during any of the periods claimed by respondent is now moot.

¶ 39 Respondent, however, apparently contends that although the stay which he requested for the duration of the proceedings below and for the pendency of this appeal is not chronologically feasible, the issue is not moot because if such stay had been warranted, he would now be entitled to the return of those payments made during that period. Respondent's argument lacks merit. Section 14(c) of the Illinois Parentage Act of 1984 provides that orders of support entered by the circuit court "shall be deemed to be a series of judgments against the person obligated to pay support," each entered as of the date the payment becomes due under the terms of the order, and enforceable as of that date. 750 ILCS 45/14(c) (West 2008). Consequently, an order on child

support begins to accrue as of the date that the first payment becomes due, and overdue payments become a vested right. See e.g. *In re Marriage of DiFatta*, 306 Ill. App. 3d 656, 661 (1999) (child support payments accrued before petition to modify had become a vested right). Thus, even if the orders of current or retroactive support had been stayed throughout the proceedings, respondent's support obligation would have been accruing since the entry of each order, and he would now owe petitioner those amounts in arrearage. Accordingly, we conclude that respondent is not entitled to the return of any support payments made to petitioner pursuant to the orders of support entered by the circuit court.

¶ 40 We next address respondent's contentions that he was denied his right to due process when the circuit court denied his motion for substitution of judge. As with respondent's previously discussed arguments, we cannot sufficiently address this contention in the absence of a transcript of the proceedings below because that transcript may well have revealed the entire context in which the judge's comments were made so as to negate any prejudicial intent against the respondent.

¶ 41 While respondent does not *in heac verba* contest the circuit court's denial of his motion for substitution for judge, which was decided before a different judge, he nevertheless appears to argue that Judge Logue showed bias before and after the entry of that order. He maintains that Judge Logue gave an "unfair advantage" to petitioner by: (1) using the allegedly incorrect amount of net income to calculate his support obligation; (2) entering an order that respondent would be sanctioned if he filed additional motions to revisit past rulings; (3) failing to stay enforcement of the support orders during the pendency of his motion to vacate; (4) not entering a ruling on all of respondent's motions; and (5) entering a 304(a) finding that the order on current support was final

and appealable.

¶ 42 It is well established that a trial judge is presumed to be impartial, and the party asserting bias bears the burden of overcoming that presumption by presenting evidence of a personal bias stemming from an extrajudicial source and evidence of prejudicial trial conduct. *In re Estate of Hoellen*, 367 Ill. App. 3d 240, 248 (2006). We will reverse the trial court's ruling on that motion only if the manifest weight of the evidence requires a different result. *In re Marriage of Carrillo*, 372 Ill. App. 3d 803, 813 (2007). Further, a judge reviewing a for-cause motion for substitution of another judge should assess the constitutional due process implications raised when such substitution is sought, and guard against the risk of actual bias by determining whether the average judge in the challenged judge's position is likely to be neutral or whether there is a potential for bias. *In re Marriage of O'Brien*, No. 109039, slip op at 7 (August 4, 2011). Accordingly, a judge's previous ruling are almost never a valid basis for a claim of judicial bias or partiality. *In re Estate of Wilson*, 238 Ill. 2d 519, 554 (2010). As our supreme court has noted:

¶ 43 "[O]pinions formed by a judge on the basis of the facts introduced or events occurring in the course of the proceedings, or of prior proceedings, do not constitute a basis for a bias or a partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible. Thus, judicial remarks that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge. They may do so if they reveal an opinion that derives from an extrajudicial source; and they will do so if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible." *Id.* (quoting *Eychanter v. Gross*, 202 Ill. 2d 228, 281 (2002) (quoting *Liteky v.*

United States, 510 U.S. 540, 555 (1994)); see also *Alancar by Alancar v. Peoples Gas Light & Coke Co.*, 288 Ill. App. 3d 644, 649-50 (1997) (the court found that there had been an insufficient showing of bias merely because the court stated that it was inclined to grant a motion for sanctions).

¶ 44 In this case, as mentioned above, respondent claims that the circuit court judge showed bias by deliberate misstatement and miscalculation of his net income, by her "threat" to sanction him, by her failure to stay enforcement of its orders and to rule on all of respondent's motions, and by entering a 304(a) finding before there was a final judgment. As previously noted, we have not been provided with a transcript of the proceedings below, and the mere statement in the order as to respondent's net income does not itself indicate bias or antagonism against him. Likewise, the order in which the circuit court stated that further attempts to revisit prior rulings will be met with sanctions was intended to discourage the respondent from improper attempts to belatedly revisit prior rulings at a point in the proceedings when the matter was ripe for judicial review and where any relief against such rulings could be sought on appeal, and where further persistent efforts to reopen those matters at the circuit court was inappropriate. Thus, the admonition from the circuit court not to revisit prior rulings that were ripe for appeal does not reflect personal antagonism which could make fair judgment unlikely. *Wilson*, 238 Ill. 2d at 554.

In fact, even if the language in those orders could be construed on its face to show bias against respondent, we cannot determine, in the absence of a transcript of those hearings, whether the judge adequately explained those remarks so as to demonstrate the lack of intent or purpose to show any bias or hostility. Furthermore, the mere fact that the circuit court did not stay enforcement of the order on support during the pendency of respondent's motion to vacate does

not indicate bias, especially since respondent did not even file a motion for such a stay. Neither does the fact that the circuit court did not explicitly rule on all of respondent's numerous motions, or that it entered a 304(a) finding, which merely allowed respondent to appeal that order before the circuit court ruled on retroactive support. Accordingly, we conclude that respondent has failed to overcome the presumption that Judge Logue was impartial.

¶ 45 We next address respondent's contention that he was denied his right to due process because the circuit court failed to rule on all of his motions. As shall be demonstrated below, we cannot fully address this contention in the absence of a transcript of the proceedings and, in any event, we would not need to reach the merits of this contention even if we had been provided with a transcript because respondent failed to present a cogent argument or to cite to any authority in support of that argument as required by Supreme Court Rule 341(h).

¶ 46 Respondent maintains that the circuit court did not rule on certain motions which he filed, including: (1) his "motion for hearing/enhanced response to complaint and pretrial conference;" (2) his motion to withdraw answer to complaint and enhanced response; (3) his motion to dismiss the complaint; and (4) his petition for temporary order of protection filed on March 23, 2009. He further contends that none of his motions filed prior to November 20, 2008 were ever ruled upon by the circuit court.

¶ 47 It is well established that a party who files a motion "has the responsibility to obtain a ruling from the court on his motion in order to avoid waiver on appeal." *City of Springfield v. West Coke Mill Development Corp.*, 312 Ill. App. 3d 900, 909 (2000) (quoting *People v. Stack*, 311 Ill. App. 3d 162, 176 (1999) (quoting *People v. Redd*, 173 Ill. 2d 1, 35 (1996))) (internal quotation marks omitted). In fact, "when no ruling has been made on a motion, the motion is

presumed to have been abandoned absent circumstances indicating otherwise." *Rodriguez v. Illinois Prisoner Review Bd.*, 376 Ill. App. 3d 429, 433 (2007). In this case, nothing in the orders entered by the circuit court indicates that respondent ever sought to obtain a ruling on his motions before the circuit court, and in the absence of the transcripts of the proceedings below, we presume that respondent abandoned those motions. *Foutch*, 99 Ill. 2d at 392.

¶ 48 More significant, however, is the fact that respondent has failed to state a cogent argument to support the notion that the failure to rule on all of his motions amounts to a violation of his right to due process, or to cite any authority in support of that proposition as required by Rule 341(h)(7). In fact, this court has held that the bare contention that an alleged error by the circuit court denied appellant of his right to due process is insufficient to comply with our supreme court rules governing appellate briefs. *Kankakee Concrete Products, Corp. v. Mans*, 81 Ill. App. 3d 53, 58 (1980). Respondent in this case merely states, without citation to authority, that due process requires him to be given the opportunity to assert his claims and defenses, and an opportunity to be heard, and he then cites to the motions which were allegedly not ruled upon by the circuit court. Since respondent has failed to comply with Rule 341(h) and articulate a cohesive legal argument supported by authority, we cannot reach the merits of his contention. *Bank of Ravenswood v. Maiorella*, 104 Ill. App. 3d 1072, 1074 (1982).

¶ 49 We now turn to respondent's contentions which we may address without regard to the fact that we have not been provided with a transcript of the proceedings below, such as his claim that the circuit court erred in reserving the issue of retroactive support when it ruled on his current support obligation, and in entering an order on temporary support contemporaneously with the order on parentage. We shall also address his challenge to certain fees charged by the clerk of

court and his contention that the circuit court lacked subject matter jurisdiction over this case.

¶ 50 Respondent contends that the court erred, and violated his right to due process, when it ruled on the issue of current support on April 24, 2009, but reserved the issue of retroactive support, which was not ruled upon until June 8, 2010. In support of that argument, respondent relies on the language of section 14(b) of the Illinois Parentage Act of 1984, which provides that "[t]he court shall order all child support payments, determined in accordance with such guidelines, to commence with the date summons is served." 750 ILCS 45/14(b) (West 2008).

Respondent appears to argue that the statute requires courts to determine the entire support obligation, both current and retroactive to the date summons was served, in one order. Insofar as respondent claims that this alleged error is a violation of due process, not only is his unsupported contention waived under Rule 341(h), but as noted above, we need not address it if the issue can be resolved on non-constitutional grounds. *Lyons*, 209 Ill. 2d at 271.

¶ 51 Nothing in the language of the Parentage Act of 1984 appears to restrict the circuit court's discretion as to when to address each pending support matter. In fact, section 14(a)(1) provides that "[t]he judgment shall contain *or explicitly reserve* provisions concerning any duty and amount of child support," thereby implicitly allowing a circuit court to reserve a matter on child support in a judgment that resolves another. 750 ILCS 45/14(a)(1) (West 2008).

¶ 52 In this case, while the circuit court reserved the issue of retroactive support when it entered an order on current support, it subsequently entered an order, on June 8, 2010, for such support payments for the period beginning when summons was served on respondent. Thus, nothing indicates that the circuit court failed to comply with section 14(b) of the Parentage Act of 1984.

¶ 53 In a similar argument, respondent next appears to contend that the circuit court erred in entering an order of support on the same day it entered an order on parentage, and in enforcing that support order beyond that date. According to defendant, such an award is contrary to the language of the Parentage Act of 1984, which provides that "pending the outcome of a judicial determination of parentage, the court shall issue a temporary order of child support." 750 ILCS 45/13.1 (West 2008). Respondent appears to interpret that language to imply that an order for temporary support cannot extend beyond the date when a parentage order is entered.

¶ 54 We note that respondent has not provided any authority which supports his interpretation of the language of the Parentage Act of 1984, and has therefore, waived that argument pursuant to Illinois Supreme Court Rule 341(h)(7), which requires appellants to cite to authority in support of each of their contentions. S. Ct. R. 341(h)(7). Respondent merely cites to cases which state that the circuit court's power in parentage cases is statutory, and that in interpreting the Parentage Act of 1984, we must give effect to the plain and ordinary meaning of its language.

¶ 55 Moreover, even if respondent had not waived that contention, he is still barred from seeking review of the temporary support order entered on January 9, 2009. It is well established that absent circumstances that are not present here, a party may not seek review of an order which he has agreed to. *Grubert v. Cosmopolitan Nat. Bank of Chicago*, 269 Ill. App. 3d 408, 411 (1995). In this case, the order on temporary support, which was entered contemporaneously with the order on parentage, bears respondent's signature and states that respondent agreed to pay \$300 per month on a temporary basis. To the extent that respondent claims that he was fraudulently induced to agree to that order, we conclude that, as discussed above, in the absence of a transcript of the hearing, any doubts as to whether respondent did, in fact, agree to those terms will be

resolved against him. *Foutch*, 99 Ill. 2d at 392. Thus, respondent cannot now seek review of that order.

¶ 56 We next address respondent's challenge to the fee charged by the clerk of the circuit court when he filed his motion to vacate the circuit court's judgment, and his contention that he was prematurely billed with the annual maintenance fee. With regard to the fee to file a motion to vacate, respondent argues that he should not have been charged a fee because his motion fell into one of the exceptions to the statute governing that fee, and alternatively, that he should not have been charged more than \$60 because he filed the motion within 30 days.

¶ 57 Section 27.2a of the Illinois Clerks of Court Act provides that a fee of \$50 to \$60 is to be charged to those who file a "petition to vacate or modify any final judgment or order of the court, except in *** a petition to reopen an estate, to modify, terminate, or enforce a judgment or order for child or spousal support, or to modify, suspend, or terminate an order for withholding, if filed before 30 days after the entry of the judgment or order." 705 ILCS 105/27.2a(g)(1) (West 2007). Conversely, a fee of \$75 to \$90 is to be charged to those who file a "petition to vacate or modify any final judgment or order of the court," with the same exceptions cited above, "if filed later than 30 days after the entry of the judgment or order." 705 ILCS 105/27.2a(g)(2) (West 2007).

¶ 58 Here, respondent filed a motion to vacate all prior orders entered by the court on July 2, 2010, which was within 30 days of the order on retroactive support, entered on June 8, 2010, and the motion sought, *inter alia*, to terminate orders for child support. However, that motion also sought to vacate all other orders entered by the circuit court, not all of which were orders of support, and the earliest of which was entered on January 9, 2009, far in excess of 30 days.

Thus, we conclude that the circuit court did not err in charging respondent the \$90 fee under that

statute.

¶ 59 Moreover, respondent's argument that he was prematurely charged with an annual maintenance fee also lacks merit. He maintains that the trial court improperly charged him with that fee as early as January, 2010, because the circuit court did not enter a final judgment on this matter until June 8, 2010.

¶ 60 Section 27a(bb)(4) of the Illinois Clerk of Court Act allows the clerk of court to collect an annual fee from persons making child support payments for maintaining child support records and processing of support orders. 705 ILCS 105/27a(bb)(4) (West 2007). It appears from the record that respondent was already making child support payments pursuant to the circuit court orders as of January, 2010, and nothing in the language of the statute appears to suggest that the clerk cannot collect that fee until a final judgment is entered in child support cases. Thus, we conclude that the trial court did not err in assessing such fee before June 8, 2010.

¶ 61 Lastly, respondent contends, for the first time in his reply brief, that the judgment of the circuit court should be reversed because that court did not have subject-matter jurisdiction over this case. According to respondent, all orders entered by the circuit court, including the orders on current and retroactive support, are void because the paternity of Y.I had already been established through the administrative order, and therefore, there was no controversy before the court on the paternity issue.

¶ 62 While an appellant ordinarily waives any arguments which are not raised in the appellant's brief pursuant to Rule 341(h)(7), the alleged absence of subject matter jurisdiction cannot be waived by either of the parties, and may be raised at any time, even *sua sponte* by a reviewing court. *Veazey v. LaSalle Telecommunications, Inc.*, 334 Ill. App. 3d 926, 933-34

(2002). Nevertheless, respondent's contention lacks merit. Even if the issue of Y.I.'s paternity had already been established by an administrative order and was no longer justiciable when the Department filed the complaint, that is of little consequence because that has no bearing on the issue of support, which had not yet been determined and was still the subject of a live controversy between the parties. See e.g. *Messenger v. Edgar*, 157 Ill. 2d 162, 170-71 (1993) ("[t]he requirement of an actual controversy is meant only to distinguish justiciable issues from abstract or hypothetical disputes and is not intended to prevent the resolution of concrete disputes in which a definitive and immediate determination of the rights of the parties is possible.") Respondent's reliance on *In re Parentage of: G. E. M.*, 382 Ill. App. 3d 1102 (2008), is misplaced because in that case, not only had the issue of support already been resolved by the court and there were no issues pending between the parties, but motion to vacate the order on parentage was also barred by the statute of limitations. In this case, however, petitioner sought to establish respondent's support obligations, which had not been determined when the Department filed the complaint.

¶ 63 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 64 Affirmed.