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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> MARRIAGE OF	)	Appeal from the Circuit Court
JENNIFER B. NORRIS,	)	of Lake County.
	)	
Petitioner-Appellee,	)	
	)	
and	)	No.    05-D-1840
	)	
KENNETH B. NORRIS,	)	Honorable
	)	Veronica M. O'Malley,
Respondent-Appellant.	)	Judge, Presiding.

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JUSTICE HUDSON delivered the judgment of the court.  
Justices Burke and Schostok concurred in the judgment.

**ORDER**

*Held:* (1) The essence of respondent's substantive due process claim was that he was not provided with notice and an opportunity to be heard in a meaningful manner and thus the claim would be reclassified as a procedural due process claim; and (2) respondent's claim of a violation of procedural due process would be rejected where respondent failed to establish a deprivation of a fundamental interest.

¶ 1 Respondent, Kenneth B. Norris, appeals from an order of the circuit court of Lake County granting the emergency petition of petitioner, Jennifer B. Norris, to remove the parties' three children from Illinois to North Carolina. On appeal, respondent contends that the hearing on the

emergency petition resulted in a deprivation of his rights to substantive and procedural due process under the United States and Illinois Constitutions. We affirm.

¶ 2 The record reveals the following relevant facts. Petitioner and respondent were married on June 28, 1997. Three children were born of the marriage. On April 11, 2006, the circuit court of Lake County entered a judgment dissolving the parties' marriage. Incorporated into the judgment of dissolution was a marital settlement agreement, pursuant to which the parties agreed to share joint custody of the minor children, with petitioner serving as the residential parent. The marital settlement agreement also set forth a visitation schedule between the parties and the children and required respondent to pay petitioner unallocated maintenance and child support.

¶ 3 Following entry of the judgment of dissolution, the parties filed numerous postdissolution petitions. Among these was an "Emergency Petition" filed by petitioner on October 25, 2010, seeking to permanently remove the three minor children from Illinois to North Carolina pursuant to section 609 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/609 (West 2010)). The petition alleged that petitioner and her children faced eviction from their Lake Forest, Illinois home in November 2010 because petitioner was no longer able to pay her rent. Petitioner claimed that her only alternative was to move into her parent's residence in Pinehurst, North Carolina, and that she needed to quickly acquire permission to change residency to allow the children to enroll in school there. Petitioner noted that respondent moved to New York in January 2009. She alleged that since respondent's relocation, he has only seen the children three times and that he has not been involved in their activities, education, health care, or the day-to-day decisions concerning the minors. In any event, petitioner contended that respondent's ability to visit with the children would not be affected by her move since there are frequent air and train connections between New York and North Carolina. An affidavit executed by petitioner was attached to the

emergency petition. On October 25, 2010, the notice of the emergency petition was served by facsimile upon respondent's then attorney and a court-appointed representative for the children.

¶ 4 A hearing on the emergency petition was held on October 27, 2010. Although a transcript of that hearing is not available, a bystander's report signed by the attorneys for both parties and the children's representative reflects the following. When the case was initially called, petitioner's attorney and the children's representative approached the bench and informed the court that respondent's attorney was in another courtroom attending to another matter. Petitioner's attorney told the court that he had agreed to give respondent's attorney three or four days to respond to the emergency petition. The court stated that it had reviewed the petition and that it had to be dealt with that day. After respondent's attorney arrived, the case was recalled and the court reiterated that it had reviewed the petition and it had to be dealt with that day. The court then asked petitioner's attorney to explain why the matter presented an emergency.

¶ 5 Petitioner's attorney represented that petitioner, who was renting her home on a month-to-month basis, was losing the home for nonpayment of rent. Counsel attributed this to respondent being behind on his child-support payments to petitioner, petitioner's inadequate salary, and the high cost of living in Lake Forest. Counsel further represented that petitioner's parents had offered to let petitioner and the minors reside rent-free in their North Carolina home. In response, respondent's attorney urged that proceeding that day was unfair to respondent, who lived in New York and was unable to attend court that day. Over the objection of respondent's attorney, the trial court concluded that there was an emergency and the matter proceeded to a hearing in respondent's absence.

¶ 6 Petitioner's attorney then reiterated the argument he previously made. He added that if removal were permitted, petitioner's parents would provide free daycare, which would allow

petitioner to search for a better-paying job in North Carolina. Counsel further submitted that if the move were allowed, visitation for respondent would be easier as New York is closer to North Carolina than it is to Chicago and there are a significant number of nonstop flights between the New York City area and North Carolina. Respondent's attorney stipulated that the children's proposed move to North Carolina would not interfere with or impede respondent's visitation with the children and that it may make it easier for respondent to exercise visitation. Nevertheless, she reiterated that it is unfair to hold a hearing without respondent being present. Moreover, counsel urged that the children were better off remaining in Lake Forest, the town where they had grown up and gone to school. Respondent's attorney also pointed out that petitioner already had a job in Illinois and there was no proof that she could obtain a better position in North Carolina. The children's representative shared respondent's concerns about removing the children from their home in Lake Forest. Nevertheless, he did not see how respondent could successfully oppose the emergency petition in light of his New York residency and his limited involvement with the children. The children's representative told the court, however, that he did not want the children to be removed from school in the middle of the semester as petitioner requested.

¶ 7 The court then placed petitioner under oath. Petitioner affirmed that she was behind on her rent, that her landlord was now demanding payment of all rent due, that she was able to live with her parents in North Carolina, and that respondent has had little contact with the children since July 2008. Respondent's attorney was then provided the opportunity to make further argument and to ask questions of petitioner. Thereafter, the court found petitioner credible and concluded that respondent's visitation with the children would not be impeded were they to move to North Carolina. As a result, in an order entered the same day as the hearing, the court granted petitioner

permission to permanently remove the three minor children from Illinois to North Carolina. On November 24, 2010, respondent filed a notice of appeal from the October 27, 2010, order.

¶ 8 Also on November 24, 2010, respondent filed a motion to reconsider, arguing that the trial court's October 27, 2010, ruling was erroneous. Among other things, respondent argued that his due process rights were violated in that he was not provided the required notice so that he could appear in court and defend against the emergency petition, that petitioner failed to follow the local rule for filing an emergency petition, and that petitioner failed to establish the existence of an "emergency." Alternatively, respondent asked the court to stay the October 27, 2010, order and make a finding pursuant to Illinois Supreme Court Rule 304(a) that the order was final and appealable. On December 8, 2010, petitioner filed a response to respondent's motion to reconsider. In her response, petitioner represented that in reliance on the October 27, 2010, order, she had begun preparations for the move, including notifying her landlord that she would be vacating the premises, resigning from her job, providing the school in North Carolina with the children's enrollment information, and informing the children of the move. Petitioner further represented that at the October 27, 2010, hearing, respondent's attorney acknowledged knowing a week prior to the hearing that the emergency motion would be presented when it was and what the allegations would be. Petitioner also asserted that October 27, 2010, had been an agreed court date.

¶ 9 A hearing on the motion to reconsider was held on December 13, 2010, at which respondent was present. At the hearing, respondent's attorney argued that notice, while in dispute as to sufficiency, had been "very, very short." Counsel further asserted that respondent did not have an opportunity to respond, appear, investigate, or present evidence. As a result, counsel contended that respondent's due process rights had been violated. Both petitioner's attorney and the children's representative represented that respondent's attorney had received notice prior to the actual service

of the emergency petition. The children's representative added that he did not believe that the ultimate outcome would differ if the trial court were to grant respondent relief on reconsideration. The court stated that it remembered the case well and considered it an emergency with proper notice. The court also noted that respondent was represented by an attorney. Thereafter, the court denied all of the relief requested by respondent in his motion to reconsider.

¶ 10 On December 14, 2010, respondent filed a notice of appeal from the December 13, 2010, order denying his motion to reconsider and the October 27, 2010, order granting the emergency petition. The December 14, 2010, appeal was consolidated with the November 24, 2010, appeal. Subsequently, petitioner moved to dismiss the consolidated appeal, arguing that this court lacked jurisdiction because other postdissolution matters were pending in the circuit court at the time the trial court ruled on the emergency petition. On January 24, 2011, this court granted petitioner's motion and dismissed the consolidated appeal. Thereafter, respondent's petition for leave to appeal was denied by the supreme court. See *In re Marriage of Norris*, 949 N.E.2d 659 (2011). On May 25, 2011, the trial court, over respondent's objection, entered an order transferring all pending pleadings to North Carolina. The order states that "[a]s all pending matters have been transferred to North Carolina \*\*\* there are no further matters pending before this Court and this case is taken off call." On June 8, 2011, respondent filed a notice of appeal "from the final 'Order' entered on May 25, 2011 (and any and all underlying and attendant orders)."

¶ 11 Prior to addressing the issue raised in this appeal, we note that respondent has filed a motion for leave to file his reply brief and the record *instanter*. We grant respondent's motion. On the merits, respondent argues that the "abbreviated proceeding conducted by the trial court on October 27, 2011, violated [his] right to due process of law as guaranteed by the federal and state constitutions."

¶ 12 The Fourteenth Amendment to the United States Constitution prohibits any state from “depriv[ing] any person of life, liberty, or property, without due process of law.” U.S. Const., amend. XIV, § 1. Similarly, the Illinois Constitution provides that “[n]o person shall be deprived of life, liberty or property without due process of law.” Ill. Const. 1970, art. 1, § 2.<sup>1</sup> The due process clause consists of a substantive component and a procedural component. *Seal v. Morgan*, 229 F. 3d 567, 574 (6th Cir. 2000); *Messenger v. Edgar*, 157 Ill. 2d 162, 176 (1993). Each component has different objectives and imposes different constitutional limitations on government power. *Howard v. Grinage*, 82 F. 3d 1343, 1349 (6th Cir. 1996). The substantive component limits what government may do irrespective of the procedural protections involved. *In re Marriage of Miller*, 227 Ill. 2d 185, 197 (2007); *Boyanowski v. Capital Area Intermediate Unit*, 215 F. 3d 396, 399 (3rd Cir. 2000). In contrast, procedural due process requires a fair procedure before the government can infringe upon an individual’s life, liberty, or property interest. *Seal*, 229 F. 3d at 574. The touchstone of procedural due process is notice and an opportunity to be heard in a meaningful manner. *Seal*, 229 F. 3d at 574; *Tate v. American General Life & Accident Insurance Co.*, 274 Ill. App. 3d 769, 773 (1995).

¶ 13 As noted above, respondent contends on appeal that the hearing conducted by the trial court on October 27, 2010, violated his right to both substantive due process and procedural due process. In support of his claim that his right to substantive due process was violated, respondent asserts that

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<sup>1</sup> Respondent advances no argument for the proposition that our state due process clause provides him greater protection than the federal due process clause. In such cases, our supreme court has treated the two clauses as coextensive, guided by federal precedent. See *In re Marriage of Miller*, 227 Ill. 2d 185, 195-96 (2007). We do the same here.

the trial court denied him of “his proverbial ‘day in court’ or the ability to adequately give his side of the story and address the [removal] factors.” Respondent further asserts that he “did not receive a *real* hearing, only a procedure with the trappings of a hearing” and that he was not “given a meaningful opportunity to defend himself.” (Emphasis in original.) Although labeled as a substantive due process violation, the essence of this claim is that respondent was not provided notice and an opportunity to be heard in a meaningful manner. As such, we consider this argument as merely an extension of respondent’s claim that his right to procedural due process was violated.

¶ 14 To establish a procedural due process claim, a litigant must show (1) a life, liberty, or property interest; (2) a deprivation of that interest; and (3) inadequate procedural protections prior to the deprivation. *Khan v. Bland*, 630 F. 3d 519, 527 (7th Cir. 2010); *Behl v. Duffin*, 406 Ill. App. 3d 1084, 1096 (2010). Respondent observes that a parent has a fundamental interest in the care, custody, and control of his or her children. *In re Amanda F.*, 208 Ill. 2d 148, 165 (2003). Even so, respondent fails to establish a deprivation of this liberty interest. There is no evidence that respondent’s parenting time or his ability to interact with his children have been affected as a result of the October 27, 2010, hearing on the removal petition. At that time of the hearing, respondent was a resident of New York. He did not dispute petitioner’s allegation that he had only seen the children on three occasions between July 2008 and October 2010. Moreover, his attorney, who was present at the hearing, stipulated the children’s proposed move to North Carolina would not interfere with or impede respondent’s visitation with the children and that it may make it easier for respondent to exercise visitation. Further, in his motion to reconsider, respondent made no contentions that his rights as a parent would be impacted, only that the children were doing well in Illinois and attended “top rated schools.” Most importantly, respondent has never proffered a reason why the move to North Carolina would not be in the children’s best interests. See *In re Marriage*

*of Eckert*, 119 Ill. 2d 316, 325-27 (1988) (noting that in removal cases the paramount question is whether the move is in the best interests of the children and identifying several factors which should be considered in making a best-interests determination); see also *In re Marriage of Collingbourne*, 204 Ill. 2d 498, 522-23 (2003) (same). Because respondent failed to establish a deprivation of any fundamental interest, we are compelled to find respondent's procedural due process claim must fail.

¶ 15 For the foregoing reasons, we affirm the judgment of the circuit court of Lake County.

¶ 16 Affirmed.