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No. 3--10--0924

Order filed March 17, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

JOHANNA L. KUHNERT, n/k/a)	Appeal from the Circuit Court
JOHANNA L. CAPPS,)	of the 14th Judicial Circuit,
)	Whiteside County, Illinois,
Petitioner-Appellee,)	
)	
v.)	No. 10--OP--174ST
)	
STEVEN R. SCOTT,)	Honorable
)	Michael R. Albert,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Presiding Justice Carter and Justice Wright concurred in the judgment.

ORDER

Held: The terms of the plenary order of protection did not conflict where the order allowed the respondent to visit with his daughter in accordance with a previous custody order, but mandated that he stay 500 feet away from her as a protected party at all other times. However, the plenary order of protection must be revised so it is complete on its face without reference to any other documents. We affirm in part and remand with directions.

The respondent, Steven R. Scott, appeals the trial court's denial of his motion to reconsider or vacate a plenary order of

protection entered against him in favor of the petitioner, Johanna L. Kuhnert, n/k/a Johanna L. Capps. The respondent also appeals the trial court's denial of his motion to consolidate this matter with the parties' custody case involving S.S., their daughter. We affirm and remand with directions.

FACTS

On April 9, 2001, S.S. was born. On March 8, 2004, in the parties' custody case, an order was entered giving the parties joint custody of S.S., with the petitioner having custodial rights and the respondent having visitation rights during the week, holidays, and every other weekend (case No. 2003--F--1).

On August 20, 2010, the petitioner obtained an emergency order of protection against the respondent in this case. On September 28, 2010, the petitioner obtained a plenary order of protection against the respondent, which named the petitioner and S.S. as protected parties. The plenary order indicated that the respondent was to "stay away from the Petitioner and/or other protected persons[] (See R03)" and provided that additional terms of the order were "set forth herein." Section R03 of the plenary order indicated that the respondent was to stay at least 500 feet away from "the Petitioner and/or protected person(s)' and their residence, [the word 'school' crossed out], daycare, employment and any other specified place." The term "stay away" was defined as meaning that the respondent was to refrain from physical

presence and nonphysical contact with the petitioner whether, direct, indirect, or through third parties.

Under part C of the plenary order, entitled "Remedies Involving Children," the court indicated that the petitioner was to have physical care and possession of S.S. Paragraph seven of the same section granted the respondent visitation with S.S. "pursuant to order in 03F1 entered on [March 8, 2004]" and prohibited the respondent from going to the petitioner's residence to meet S.S. The order indicated that the exchange of S.S. between the parties was to take place at the Rock Falls police department.

On November 3, 2010, the trial court conducted a hearing on the respondent's motion to reconsider, vacate, or modify the plenary order of protection. The respondent, through his attorney, argued that the section of the plenary order that ordered him to "stay away" from the petitioner and S.S. conflicted with the section of the order that permitted visitation between him and S.S. The respondent requested that the court remove S.S. as a protected party or modify the stay away restriction. The petitioner's attorney argued that there was no conflict because the order was clear that the respondent was to stay 500 feet away from the petitioner and S.S., except for visitation purposes.

The trial court stated, "I don't think it is necessary, but

for clarification purposes I will modify the order in Paragraph 7 to simply provide that notwithstanding anything set forth above the following visitation is allowed." The trial court granted the motion to modify and denied the motion to vacate and reconsider. Although the court recorded its ruling on its docket sheet, neither party provided an order to this court of its ruling on the motion to reconsider, nor did they provide a modified order of protection.

The trial court also denied the respondent's pending motion to consolidate this case regarding the order of protection with the parties' custody case (No. 2003--F--1). The court denied the consolidation motion as moot, finding that there was nothing pending in the current order of protection case because the plenary order had been entered and it was a final and appealable order. The respondent appealed.

ANALYSIS

I. Order of Protection

On appeal, the respondent first argues that the trial court erred by denying his motion to reconsider because the order of protection contained contradictory terms. Under the Illinois Domestic Violence Act of 1986, any order of protection shall describe "[e]ach remedy granted by the court, in reasonable detail *and not by reference to any other document*, so that respondent may clearly understand what he or she must do or

refrain from doing." (Emphasis added.) 750 ILCS 60/221(a) (West 2008).

The plenary order indicated that the respondent was prohibited from coming within 500 feet of the petitioner, S.S., their residence, S.S.'s daycare, or the petitioner's place of employment. The word school was crossed out, indicating that the respondent was permitted to go to S.S.'s school, as long as he did not go within 500 feet of S.S.

Additionally, the plenary order stated that additional terms of the order were "set forth herein." The visitation exception was clearly an "additional term." Under the visitation exception, the respondent was allowed to visit with S.S. as per the custody order, and exchanges were to be made at the police department. The respondent was familiar with the custody order, as it had been in effect for over six years at the time the plenary order was entered, so that it was of sufficient detail to put him in a position to clearly understand what he was supposed to do or refrain from doing. Accordingly, there was no conflict within the terms of the order of protection. Therefore, we affirm the denial of the motions to reconsider and vacate the plenary order.

We acknowledge that the order of protection referenced the custody order describing his visitation days and times. The statute's plain language indicates that the order should not

reference any other document. 750 ILCS 50/221(a) (West 2008). Thus, the trial court must insert the applicable days and times that the respondent is permitted to have visitation with S.S. in the space provided on the preprinted form of the order of protection. Consequently, we remand with instructions for the trial court to vacate the order of protection and enter a revised plenary order that includes language modifying paragraph seven of the order that "notwithstanding anything set forth above the following visitation is allowed" and that sets forth the days and times of the respondent's visitation as indicated in the custody order, but without reference to the custody order. That is, the revised order is to be complete on its face.

We do not vacate the order but, instead, remand with instructions for the trial court to do so to avoid a lapse in the protective order.

II. Consolidation of Cases

The respondent argues that the trial court erred by denying his motion to consolidate the parties' case regarding the order of protection with their custody case. Under the Code of Civil Procedure, "actions pending in the same court *may* be consolidated, as an aid to convenience, whenever it can be done without prejudice to a substantial right." (Emphasis added.) 735 ILCS 5/2--1006 (West 2008). Thus, it is within the trial court's broad discretion to determine the propriety of

consolidating actions, and its decision will not be overturned absent an abuse of discretion. *Ad-Ex, Inc. v. City of Chicago*, 247 Ill. App. 3d 97 (1993).

We agree with the trial court that the respondent's request for consolidation is moot. A plenary order is the final order in an order of protection case. *Scheider v. Ackerman*, 369 Ill. App. 3d 943 (2006). An order is final if it determines the litigation on the merits so that, if affirmed, nothing remains for the trial court to do but to execute the order. *Scheider*, 369 Ill. App. 3d 943. Here, there is no further action required in the order of protection case, other than executing our directions on remand and modifying the terms of the plenary order. Therefore, the trial court did not abuse its discretion in determining that the respondent's request for consolidation was moot.

CONCLUSION

For the foregoing reasons, the judgment of the circuit court of Whiteside County is affirmed in part and remanded with directions.

Affirmed in part and remanded with directions.