

Nos. 1-11-1432, 1-11-1441, 1-11-1442, 1-11-1444, 1-11-1445, 1-11-1446, 1-11-1447, 1-11-1448
consolidated

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent
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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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|----------------------|---|-------------------------|
| CHRISTINE A. RUSS, |) | Appeal from the Circuit |
| |) | Court of Cook County, |
| |) | |
| Plaintiff-Appellee, |) | |
| |) | |
| v. |) | No. 01 D 79454 |
| |) | |
| JIM M. BURGER, |) | |
| |) | The Honorable |
| Defendant-Appellant. |) | Fe Fernandez |
| |) | Philip Lieb |
| |) | Edmund Ponce de Leon |
| |) | Daniel Miranda and |
| |) | Veronica Mathein, |
| |) | Judges, Presiding. |

JUSTICE TAYLOR delivered the judgment of the court.
Justices Howse and Palmer concurred in the judgment.

ORDER

¶ 1 *Held:* Appellate court did not have the authority to entertain appeals that it previously dismissed and defendant failed to file a timely petition for rehearing. Further, a trial court judge did not abuse her discretion in denying a petition to substitute her for cause where defendant failed to allege grounds for substitution; and correctly

declined to rule on a motion that been previously denied by another judge.

¶ 2 Defendant Jim Burger appeals from a judgment of the circuit court of Cook County ordering him to pay retroactive child support to plaintiff, Christine Russ, dating back to the birth of the parties' daughter, J. G. Defendant contends that the trial court committed numerous errors throughout the proceedings of this parentage and support action, and that as a result, this court should reverse the judgment of the trial court and remand this matter for further proceedings.

¶ 3 BACKGROUND

¶ 4 The record shows that on April 23, 2001, plaintiff filed a petition to determine the existence of a father and child relationship between defendant and J. G., in which she sought both current and retroactive child support back to the birth of the child on March 20, 1984. In his response, defendant argued that he should not be responsible for retroactive child support because over the course of J. G.'s life, plaintiff had refused his offers to pay child support. In light of that response, plaintiff filed, on June 20, 2001, a motion to determine the existence of a father and child relationship and for temporary support.

¶ 5 On that same day, plaintiff also filed a petition for an order of protection against defendant, in which she alleged that defendant had, *inter alia*, stalked J. G, called plaintiff's residence excessively and illegally obtained J. G.'s school records. On July 16, 2001, while plaintiff's petition was pending, the circuit court entered an order of parentage, in which the court found that defendant was J. G.'s natural father and ordered him to make bi-weekly payments of \$131.17 in current child support, and \$26 in arrearage. It appears that the arrearage was for the period between the filing of the plaintiff's petition for support and the date the order of support was entered.

¶ 6 On August 7, 2001, defendant filed an answer to plaintiff's petition for an order of protection, where he denied the allegations and appeared to argue that plaintiff's attorney Michael Radzilowsky improperly contacted J. G.'s school to prevent him access to those records. On August 20, 2001, the circuit court granted plaintiff an order of protection for one year and struck defendant's response.

¶ 7 On August 27, 2001, defendant filed three petitions for rule to show cause why Radzilowsky and plaintiff should not be held in contempt for allegedly making false statements to the court and J. G.'s school, and on September 6, 2001, he filed a motion to vacate plaintiff's order of protection, again alleging that Radzilowsky lied to the court. Defendant claimed that the trial court erred in failing to discipline Radzilowsky for making false statements, and that it improperly struck defendant's response to the petition for the order of protection without allowing him to object.

¶ 8 While his motion was pending, defendant filed a motion for substitution of judge, alleging that judge Fe Fernandez improperly refused to discipline Radzilowsky and failed to remain impartial at the hearing on plaintiff's petition for an order of protection. He further claimed that Judge Fernandez improperly denied him the right to present a defense against that petition, which was based on false allegations by the plaintiff.

¶ 9 On October 30, 2001, Judge Fernandez denied defendant's motion for substitution of judge, and when asked about defendant's motion to vacate the order of protection and his petitions for rule to show cause, she stated that she did not have them. The court then transferred that case to Maywood, Illinois, due to its closer proximity to the parties' residences. Defendant filed a timely appeal from the order of protection entered against him, which this court dismissed.

¶ 10 After the case was transferred to Maywood, defendant filed a motion seeking visitation of J. G. At a hearing on that motion on January 9, 2002, plaintiff's counsel explained that J. G., who was almost 18 years old, did not want to be contacted by the defendant, and the transcript of that hearing indicates that defendant temporarily exited the courtroom. At the following hearing, on February 19, 2002, J. G. confirmed that she did not want to have any contact with her father and the court then stated that it would not enter an order on visitation because J. G. was only a month away from turning 18, at which point the court would lose jurisdiction.

¶ 11 Meanwhile, on February 11, 2002, plaintiff filed a motion for a hearing date "for determination of permanent support in arrears," which apparently sought an order for retroactive support of J. G. dating back to her birth. Defendant, in response, filed a motion to dismiss plaintiff's motion, arguing that the issue of retroactive support had already been determined by the order from July 16, 2001, in which the court ordered defendant to pay \$26 "in arrears."

¶ 12 Defendant then filed two new petitions for rule to show cause against Radzilowsky, in which he alleged that the attorney made false statements to the court at the hearing on January 9, 2002. At the next hearing, on March 21, 2002, the parties informed the trial court that defendant had multiple pending petitions for rule to show cause and a motion to vacate the order of protection, and the court stated that it would wait to rule on those motions until after the issue of retroactive child support has been determined.

¶ 13 On April 26, 2002, defendant filed a petition for substitution of judge for cause, this time to substitute Judge Philip Lieb, who had been presiding over this case after Judge Fernandez transferred it to Maywood. Defendant claimed that Judge Lieb improperly "stalled" the proceeding on his motion for visitation until after J.G.'s eighteenth birthday and refused to

address defendant's pending motions. He further alleged that Judge Lieb had an ex parte conversation with plaintiff at the hearing on January 9, 2002, and that there was a conspiracy against him by the Clerk's office and by the court itself to protect Judge Fernandez.

¶ 14 On May 16, 2002, Judge Lieb conducted a hearing where plaintiff's counsel explained to the court that he believed defendant was actually in the courtroom during the time when the alleged ex parte conversation took place, and the court reporter admitted that the times when defendant allegedly left were not in her original notes. The judge then stated that he would let another judge decide whether such an ex parte exchange took place, entered a memorandum order in which he struck all allegations other than the ex parte communication and submitted the motion for a hearing before another judge. On that same day, defendant's petition was denied by Judge Edmund Ponce de Leon.

¶ 15 On June 5, 2002, plaintiff filed a motion for payment of medical bills, seeking to split the costs of J. G.'s medical expenses over the past two years, and a motion for defendant's contribution to J. G.'s expected college expenses of \$2,100 per semester, which were granted on June 19, 2002. Shortly after, on June 28, 2002, defendant filed a new motion for substitution of judge for cause, which alleged the same errors as his prior motion for substitution of Judge Lieb, and added that Judge Lieb did not discipline Radzilowsky for failing to subpoena J. G.'s school as previously ordered. At the following hearing, on September 9, 2002, the court stated that defendant's motion for substitution of judge did not allege any new issues that could not have been litigated in his prior motion, and that if defendant wished to challenge Judge Ponce de Leon's denial of his previous motion, he would have to file an appeal. The court then again informed the parties that it would address defendant's pending motions after ruling on whether

there will be retroactive support, and if so, how far back.

¶ 16 On October 24, 2002, the trial court entered an order granting retroactive child support back to J. G.'s birth, and on December 16, 2002, it determined the amount of such retroactive support to be \$59,313.55. That sum was to be paid off by drawing \$172.76 from defendant's biweekly paycheck.

¶ 17 On October 28, 2002, before the court determined the amount of retroactive support, defendant filed a motion for Rule 137 sanctions against plaintiff's counsel, alleging that he falsely stated that J. G.'s college expenses were expected to be \$2,100, when her actual expenses turned out to be only \$926. On that day, he also filed what appears to be a motion to schedule a hearing to adjudicate his pending petitions and motions, namely, all of his petitions for rule to show cause, his motion to vacate the order of protection, and his motions for sanctions against Radzilowsky. While there is no transcript before us of a hearing on defendant's motion, defendant alleges that such a hearing was held on November 18, 2002, at which time the court refused to address his pending motions and directed him to leave the courtroom. The common law record does show, however, that on that day, plaintiff filed a motion to strike defendant's motion for a ruling on his pending pleadings.

¶ 18 On January 13, 2003, defendant filed a motion to "reconsider/vacate" the orders on retroactive support entered on October 24 and December 16, 2002. In that motion, he alleged that improper actions by Judge Fernandez and Judge Lieb deprived them of jurisdiction to enter those orders, and that they are, therefore void. Such allegedly improper actions included both judges' failure to vacate the order of protection entered on August 30, 2001, Judge Lieb's alleged ex parte conversation with plaintiff's counsel on January 9, 2002, his actions relating to

defendant's motions for substitution of judge, and his decision to continue defendant's motion for visitation until after J. G. turned 18. He also alleged that his right to due process was violated when the court failed to rule on his pending motions.

¶ 19 Before responding to defendant's motion, plaintiff filed, on February 13, 2003, a petition for rule to show cause as to why defendant should not be held in contempt for not making any payments toward retroactive support pursuant to the order from December 16, 2002. On February 27, 2003, a hearing was held on defendant's motion and plaintiff's petition, and it appears that at that time, this case was before Judge Daniel Miranda. At that hearing, defendant averred that his motion to reconsider was predicated on approximately 20 of his motions that remained pending, and the court then entered an order directing the parties to file with the court a list of all such motions.

¶ 20 Pursuant to that order, defendant filed, on March 19, 2003, a document purporting to be a list of motions that judges Fernandez and Lieb had either refused to address or ruled improperly. It included defendant's three petitions for rule to show cause from August 27, 2001, three additional petitions to show cause against Radizlowsky and four motions for sanctions against him. It also included defendant's motion to vacate the order of protection, his motions for substitution of judge, his motions to dismiss plaintiff's motion for retroactive support, and his motion to vacate the order granting such support. On that same day, he also filed a response to plaintiff's petition for rule to show cause, in which he argued that the orders on retroactive support were void because the court improperly failed to report Radillowsky to the Attorney Registration and Disciplinary Commission (ARDC) when he allegedly lied to the court.

¶ 21 At the two following hearings, on May 22 and July 22, 2003, the court first sought to

determine whether there were, in fact, outstanding matters as defendant claimed. In doing so, it stated that defendant was never granted leave to file any of his petitions for rule to show cause, but whether that was an abuse of discretion was an issue for appeal. The court further noted that defendant's motions to vacate the order of protection and to dismiss plaintiff's motion on retroactive support, as well as all the motions for sanctions against Radzilowsky were all outside its judicial purview because it was past the time when the trial court could rule on them.

Similarly, the court stated that if Judge Lieb had denied the motion to set a hearing date for the aforementioned motions, defendant would have to file an appeal. It then noted that defendant's petitions to substitute Judge Fernandez and Judge Lieb were, in fact ruled on, and again, his only recourse was to appeal those rulings.

¶ 22 Turning to the merits of defendant's motion to vacate or reconsider the orders on retroactive support, the court found that even if defendant's allegations were true, such that the previous judges failed to rule on his motions and made improper rulings, those actions did not deprive the trial court of jurisdiction. Accordingly, it held that the rulings from October 24 and December 16, 2002, were not void *ab initio*, and defendant's motion to vacate was denied. The court also denied plaintiff's rule to show cause as to why defendant should not be held in contempt for not making payments on retroactive support, stating that the order on support was stayed while defendant's motion to vacate was pending. At that time, plaintiff withdrew her motions for contributions to J. G.'s college expenses and medical bills.

¶ 23 On August 13, 2003, defendant filed a notice of appeal from the orders on retroactive support, and on September 20, 2004, his appeal was dismissed for his failure to file an appellate brief. Before the appeal was dismissed, however, plaintiff filed a new petition for rule to show

cause as to why the defendant should not be held in contempt for not making payments on retroactive support, and citation to discover assets. On July 7, 2004, after the case was transferred to Judge Veronica Mathein in Chicago, the court found that defendant was unable to pay the retroactive support as ordered on December 16, 2002, and denied plaintiff's petition. The court then held that all other collection options available to a judgment creditor would be available to the plaintiff, and that from that point on, the case was off call.

¶ 24 Six years later, on August 17, 2010, plaintiff filed a new petition to rule to show cause, again, alleging that defendant failed to make support payments pursuant to this court's order on December 16, 2002. After a short hearing on October 5, 2010, the court told plaintiff that a petition for rule to show cause was not the proper method to collect on her judgment, at which time plaintiff withdrew her petition and the court issued a new citation to discover the defendant's assets. Since the petition was filed by attorneys Richard Caifano and David Feldman, who had not previously represented plaintiff throughout these proceedings, defendant filed a motion for default judgment, alleging that Caifano and Feldman could not properly represent plaintiff while Radzilowsky was her only attorney of record. On November 29, 2010, Caifano filed an appearance as additional counsel, and on December 22, defendant's motion was denied.

¶ 25 Aside from the motion for default judgment, defendant filed, on September 24, 2010, a motion for sanctions against Caifano and plaintiff, alleging they improperly asked for interest in plaintiff's new petition for rule to show cause after the court had previously denied it. He later filed two other motions for sanctions against Caifano and Feldman, the first of which, on September 27, 2010, alleged that the attorneys failed to state whether the petition for rule sought civil or criminal contempt. In his second motion, on January 18, 2011, defendant claimed, *inter*

alia, that they improperly filed pleadings on plaintiff's behalf before they filed a motion for leave to appear, and while Radzilowsky was still plaintiff's attorney of record. Defendant then filed a new motion for default judgment based on plaintiff's and Caifano's failure to respond to his motions for sanctions from September 24, 2010, which the court denied.

¶ 26 On February 9, 2011, Caifano and Feldman filed their own motion for sanctions against defendant, and after defendant filed his initial response and the attorneys filed their reply, defendant apparently filed a response to that reply. On April 20, 2011, the trial court denied both parties' motions for sanctions, noting that plaintiff's petition had been withdrawn, and struck defendant's second response to Caifano's motion for sanctions. That order also included a Rule 304 finding that there was no just reason to delay enforcement or appeal from the ruling.

¶ 27 While plaintiff's petition for rule to show cause was pending, defendant filed, on September 22, 2010, and again on November 2, 2010, new motions to schedule hearing dates for the same motions and petitions that he brought before Judge Miranda in 2003, and insisted that those pleadings remained pending. At a hearing on November 12, 2010, the court gave Radzilowsky, who appeared on behalf of plaintiff, 28 days to respond. Plaintiff filed her late response on December 16, 2010, which defendant moved to strike on December 27. On the following day, the trial court dismissed defendant's motion on the bases that it did not have jurisdiction and that the pleading was untimely.

¶ 28 Further, while defendant's motions were pending, defendant filed, on January 10, 2011, a new petition for substitution of judge for cause, this time against Judge Mathein, who, according to defendant, failed to remain fair and impartial towards defendant throughout this case. Defendant argued that she showed bias against him when she refused to adjudicate his prior

motions and petitions and declined to discipline Caifano and Feldman. He also argued that she had a history of bias against pro-se litigants, and cited past unrelated cases where Judge Mathein ruled against other pro-se parties and they subsequently accused her of impartiality. That motion was denied by Judge Mathein on January 31, 2011.

¶ 29 ANALYSIS

¶ 30 On a consolidated appeal, defendant now contends that the orders from the circuit court of Cook County granting plaintiff an order of protection and ordering defendant to pay retroactive child support back to the birth of J. G. is void because of numerous errors made by the court. With regard to the order of protection, defendant argues that the court improperly refused to discipline Radzilowsky for sending a letter to defendant's employer and telling J. G.'s school that plaintiff already had an order of protection. He also claims that he was denied the opportunity to present evidence or cross-examine plaintiff, and that the court granted the motion on an improper basis. With respect to the order on retroactive support, defendant contends that the court determined the amount of retroactive support in its initial order on parentage and support entered on July 16, 2001, and that plaintiff's counsel fraudulently inserted the word "reserved" on that order so he could later relitigate that issue. He further maintains that on October 30, 2001, Judge Fernandez improperly failed to rule on his petitions for rule to show cause and motion to vacate the order of support by falsely stating that she did not have those documents in her file, and on November 18, 2001, Judge Lieb improperly directed him to leave the courtroom when he sought a hearing date on those motions and petitions. Additionally, defendant claims that Judge Miranda and Judge Mathein both deprived him of due process by denying his request to have those prior motions and petitions adjudicated. He further argues that

judges Fernandez, Lieb and Miranda improperly ruled on defendant's petitions to substitute them, and that Judge Ponce de Leon erred in denying the petition to substitute Judge Lieb for cause.

¶ 31 We first note that this court lacks jurisdiction to entertain defendant's appeals from the order of protection entered on August 20, 2001, and the orders on retroactive support entered on October 24 and December 16, 2002. When an appeal from a circuit court order is dismissed and a petition for rehearing is not filed within 21 days as required by Illinois Supreme Court Rule 367, the dismissal order becomes final and the appellate court loses its jurisdiction to consider additional arguments stemming from the order. *Woodson v. Chicago Board of Education*, 154 Ill. 2d 391, 397 (1993). Judge Miranda's order denying defendant's motion to vacate the orders on retroactive support was a final order from which defendant timely appealed, and this court dismissed that appeal for his failure to file an appellate brief. Since it does not appear that defendant filed a petition for rehearing, we must now dismiss his appeal from the order of protection by Judge Fernandez and the orders on retroactive support by Judge Lieb.

¶ 32 While this court does have jurisdiction to entertain the orders entered by Judge Mathein, defendant's challenges to those orders are unpersuasive. In addressing his challenges to those orders, we also note that even if this court had jurisdiction to entertain defendant's appeal from the orders of protection and on retroactive support entered by Judge Fernandez and Judge Lieb, he would fare no better. We next observe that the record on appeal is incomplete. Specifically, it does not contain transcripts of several hearings to which defendant cites, including the alleged hearing on defendant's motion to schedule a later hearing to adjudicate his pending petitions and motions. It is well established that it is the burden of the appellant to provide a sufficiently complete record of the proceedings in the trial court to allow for meaningful appellate review.

Foutch v. O'Bryant, 99 Ill. 2d 389, 392 (1984); *Lewandowski v. Jelenski*, 401 Ill. App. 3d 893, 902 (2010). In the absence of the record containing the alleged error, 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. Furthermore, it is the responsibility of the movant to request a ruling on it, and when no ruling has been made on a motion, it is presumed abandoned unless circumstances indicate otherwise. *Rodriguez v. Illinois Prisoners Review Board*, 376 Ill. App. 3d 429, 433 (2007).

¶ 33 In this case, respondent has failed to provide us with any report of the proceedings that allegedly took place on November 18, 2002. 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”). In fact, not even the common law record contains a written order to support defendant's contention that the trial court refused to rule on those motions and petitions when defendant allegedly requested it. In the absence of such records, or any evidence of a refusal to rule on defendant's pending motions and petitions, or his motion to have those pleadings adjudicated, we therefore presume that defendant did not seek such a ruling on that date and abandoned them. Furthermore, even if we were to assume, as defendant urges, that the trial court did, in fact, deny defendant's motion to schedule a hearing to determine his pending motions and petitions, that would not change our conclusion. In the absence of a transcript, we can only speculate as to what evidence was introduced at that hearing, and presume that the trial court acted in conformity with the law. *Foutch*, 99 Ill. 2d at 392.

¶ 34 Furthermore, with respect to Judge Miranda's denial of his motions to adjudicate his prior pleadings, we further note that a trial court has the inherent authority to control its business, and this court has long recognized its discretion to deny a motion if it has not been called up for a hearing for an inexcusably long period. See, e.g., *Terrill v. St. Louis Southwestern Ry. Co.*, 154 Ill. App. 3d 983, 986 (1987) (court did not abuse its discretion in denying a motion for dismissal where its movant did not seek a ruling for five years after filing). Of all of the motions and petitions on which defendant sought ruling before Judge Miranda, the oldest was filed on August 27, 2001, and the most recent, on October 28, 2002, and were heard before that judge on May 22, 2003. We also note that when defendant presented those motions and petitions before Judge Miranda, he was not calling for a ruling on them, but merely arguing that the orders on retroactive support from October 24 and December 16, 2002, were void because of Judge Lieb's refusal to rule on those pending pleadings. Thus, Judge Miranda did not abuse his discretion in denying the motions to adjudicate those prior pleadings. Moreover, even if the trial court had, in fact, denied defendant's motion to determine all of his pending motions and petitions on November 18, 2002 as defendant contends, it was not an abuse of discretion for Judge Miranda to deny ruling on defendant's motion, since it raised issues that had already been ruled upon, namely, his request for adjudication on those prior pleadings. See, e.g., *Kay v. Kay*, 46 Ill. App. 2d 446,451 (1964).

¶ 35 More significantly, with respect to Judge Mathein's denial of his later motion, the trial court lacked jurisdiction to rule on his motion at that time, since this court had already dismissed his appeal from Judge Miranda's final order and he did not file a timely petition for rehearing. See *Jayko v. Fraczek*, 2010 IL App (1st) 103665, ¶29 (once an order becomes final and

appealable, with the passage of 30 days, it may not supply an omitted judicial action). In fact, considering that defendant filed his motion to have his prior pleadings adjudicated before Judge Mathein, several years after the last of those pleadings was filed, it would not have been an abuse of discretion to decline ruling on them even if the court had authority to do so.

¶ 36 Furthermore, with regard to defendant's other challenges to the order of protection and order on retroactive support, we note that, as with the alleged hearing on defendant's motion to determine his pending pleadings discussed above, the record before us does not contain the transcripts from the hearings in question. All that appears before us with regard to those rulings is the common law record containing the petition for the order of protection against defendant and the order granting it on August 30, 2001, as well as plaintiff's initial motion for temporary support and the written order on support from July 16, 2001. Without transcripts, we can only speculate as to what evidence was presented to the trial court when it granted the order of protection and whether the trial court did, in fact intend to reserve the issue of retroactive support. Thus, under these circumstances, we must presume that the trial court had a sufficient factual basis and acted in conformity with the law in granting the order of protection against defendant and in reserving the issue of retroactive support. Likewise, in the absence of a transcript indicating otherwise, we presume that the trial court did, in fact, intend to reserve that issue as reflected in its written order. *Foutch*, 99 Ill. 2d at 392.

¶ 37 We are similarly unpersuaded by defendant's contentions that the orders on retroactive support should be reversed and his case remanded, because Judges Fernandez, Lieb and Mathein all improperly ruled on their own motions for substitution of judge for cause, and that Judge Ponce de Leon improperly ruled on his petition to substitute Judge Lieb after considering Judge

Lieb's memorandum and order.

¶ 38 With regard to the instances when judges Fernandez, Lieb and Mathein ruled on their own petitions for substitution, we note that while section 2-1001(a)(3) of the Illinois Code of Civil Procedure provides that a petition for substitution of a judge for cause must be heard by a judge other than the judge named on the petition, a party's right to have his petition reviewed by another judge is not automatic. See *In Re Estate of Wilson*, 238 Ill. 2d 519, 553 (2010). Instead, to trigger the right to a hearing before a different judge to determine whether substitution of judge is warranted, that party's petition must allege grounds that, if true, would justify substitution of that judge. *Id.* at 554. In fact, our supreme court has long recognized that when bias or prejudice is alleged as the basis for substitution, it must normally stem from an extrajudicial source, and that a judge's previous rulings almost never constitute a valid basis for a claim of judicial bias or partiality. *Id.* It has held:

¶ 39 "[O]pinions formed by a judge on the basis of facts introduced or events occurring in the course of the current proceedings, or 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 during the course of a trial 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." (emphasis in original) *Eychaner v. Gross*, 202 Ill. 2d 228, 281 (2002) (quoting *Liteky v. United States*, 510 U.S. 540, 555 (1994)).

¶ 40 In this case, defendant filed petitions for substitution of three different judges for cause,

all of which were based on bias and impartiality. Each petition was supported in part by his contention that each of those judges failed to discipline plaintiff's counsel for making false statements in court or violating a court order, which does not amount to the type of favoritism or antagonism that would justify substitution of a judge. In addition, we note that defendant alleged in his petition to substitute Judge Fernandez, that she denied him "the right to present his defense to the petition for an order of protection." However, such a broad statement, in the absence of specific allegation as to what the court did, and without a transcript containing the context surrounding the court's alleged actions, did not warrant a transfer of that petition to another judge. See *People v. Jackson*, 205 Ill. 2d 247, 277 (2001) (allegation of judicial impartiality must be viewed in context and evaluated in light of specific events that took place); *Leshner v. Trent*, 407 Ill. App. 3d 1170, 1176 (2011) (trial judges are presumed to be fair and impartial and a party alleging judicial bias must overcome that presumption).

¶ 41 Further, both of his petitions to substitute Judge Lieb were also based on that judge's decision to continue his motion for visitation until after J. G. turned 18, an alleged "conspiracy" against him by the Clerk's office and an alleged ex parte conversation with plaintiff's counsel. We note that even if the alleged ex parte communication sufficiently amounted to the type of favoritism towards plaintiff so as to justify a substitution of judge, Judge Lieb transferred the petition to Judge Ponce de Leon after striking defendant's remaining allegations. Further, defendant's claim that the court was corrupt and conspiring against him were unfounded, and the allegation that the judge erroneously failed to rule on his motions did not amount to the type of bias that would have justified such a transfer. Similarly, his petition to substitute Judge Mathein for cause alleged bias for refusing to adjudicate his prior motions and a "history" of impartiality

against pro-se litigants when she ruled against them in prior cases. While his claim was based on an alleged prejudice against all pro-se litigants, the mere fact that those litigants made similar accusations of bias following adverse rulings against them does not reveal such deep seated antagonism against them so as to warrant substitution.

¶ 42 Moreover, defendant's argument that once Judge Ponce de Leon received Judge Lieb's memorandum of order, he should have recused himself so as to avoid the appearance of impropriety, is unpersuasive. A trial judge is under no duty to recuse himself, on his own motion, when a party has failed to move for substitution of judge. See, e.g., *People v. Rynberk*, 92 Ill. App. 3d 112, 117 (1980). Thus, since defendant never filed a petition to substitute Judge Ponce de Leon, who does not appear to have acted in a prejudicial manner towards defendant, the judge's failure to recuse himself does not warrant reversal.

¶ 43 Defendant next contends that the court erred in allowing Caifano and Feldman to represent plaintiff while she was still represented by Radzilowsky, and in denying defendant's motions for sanctions against the attorneys for filing plaintiff's petition for rule to show cause when they were not her attorney of record. However, this court has recognized that a party may be represented by more than one attorney and more than one law firm at the same time, and an attorney may become a party's attorney of record by filing any pleading on behalf of his client, even if that client's other counsel has not withdrawn. *Firkus v. Firkus*, 200 Ill. App. 3d 982, 990 (1990). Thus, the court committed no error in allowing Caifano and Feldman to appear on behalf of plaintiff and declining to impose sanctions on them for their representation of plaintiff.

¶ 44 Next, defendant contends that the trial court improperly denied his other motion for sanctions against Caifano and Feldman, for failing to specify, in plaintiff's petition for rule to

show cause, whether they sought to hold defendant in criminal or civil contempt. Similarly, he maintains that the court also erred in not imposing sanctions against Caifano and plaintiff, by default, when they did not timely respond to his motion for sanctions for improperly asking for interest in plaintiff's petition for rule to show cause. We note, however, that the allowance of sanctions pursuant to Illinois Supreme Court Rule 137, for pleadings unwarranted under existing law, is entrusted to the discretion of the trial court, and the denial of such sanctions will not be disturbed absent abuse of discretion. See, e.g., *Rein v. David A. Noyes and Co.*, 271 Ill. App. 3d 368, 774 (1995). Here, even if plaintiff's petition for rule to show cause did not comply with the law as defendant maintains, that petition was withdrawn after the only hearing on it, which appears to have lasted only a few minutes. Under these circumstances, we conclude that the trial court did not abuse its discretion in denying defendant's motion for sanctions.

¶ 45 Lastly, defendant contends that this matter should be remanded because the trial court abused its discretion when it: (1) granted plaintiff leave to file her petition for rule to show cause even though she never asked for such leave; (2) allowed plaintiff to withdraw that petition after presenting testimony; (3) struck defendant's second response to Caifano's and Feldman's motion for sanctions; and (4) had an alleged ex parte conversation with Caifano before the hearing on April 20, 2011. Those contentions are unpersuasive.

¶ 46 Even if the trial court improperly granted plaintiff leave to file a petition for rule to show cause, such error would be harmless because that petition was ultimately withdrawn after a short hearing. See, e.g., *Bell Leasing Brokerage, LLC v. Roger Auto Service, Inc.*, 372 Ill. App. 3d 461, 469 (2007) ("[i]f the outcome of a case would not have been different absent the error, a judgment or decree will not be disturbed.") Similarly, we conclude that since the court informed

plaintiff, after a short hearing, that her petition for rule to show cause was not the appropriate manner to enforce her judgment, it was not an abuse of discretion to allow plaintiff to withdraw her petition at that time. Contrary to defendant's claim, plaintiff's withdrawal of her petition for rule to show cause did not constitute a dismissal of her lawsuit, which was at that time, at post-judgment stage. Moreover, not only was defendant not prejudiced when the court struck his second response to Caifano's motion for sanctions that was ultimately denied, we are not aware of any rules of procedures that allow a party opposing a pleading to file a second response to it, in order to address points brought by the other party's reply. See S. Ct. R. 181; S. Ct. R. 182. Finally, defendant's claim that Judge Mathein had an ex parte conversation with plaintiff is based solely on the fact that the order from April 20, 2011, drafted by plaintiff, contained a Rule 304 finding, and according to defendant, plaintiff's counsel could not have predicted such a finding unless the court had directed him to include it some time before the hearing. However, nothing in the record suggests that such inclusion of a 304 finding was not merely because he sought such a finding, and in no way does that indicate that an ex parte communication took place.

¶ 47 For the foregoing reasons, we dismiss defendant's appeals from the judgment of the circuit court of Cook County on plaintiff's petition for order or protection and motion for retroactive support, and affirm the orders entered by the circuit court denying defendant's motion to adjudicate his prior motions, and his motions to sanction plaintiff's counsel.

¶ 48 Dismissed in part; affirmed in part.