

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2012 IL App (4th) 110293-U

Filed 3/23/12

NO. 4-11-0293

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: the Marriage of KATHERINE E. WIGHT,)	Appeal from
n/k/a KATHERINE E. GARRISON,)	Circuit Court of
Petitioner-Appellee,)	McLean County
and)	No. 09D332
JERRY WIGHT,)	
Respondent-Appellant.)	Honorable
)	David W. Butler,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justice Appleton and Justice Pope concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court concluded that the appropriate cause of action was to reverse and remand for further proceedings because the petitioner-appellee failed to file an appellee brief and the issues in the case (1) could not be easily decided and (2) would require the court to act as advocate for the petitioner-appellee.

¶ 2 On June 17, 2009, petitioner, Katherine E. Wight, n/k/a Katherine E. Garrison, filed a Hildalgo County, Texas, confirmation of arrears and modification, which included, among other things, a judgment against respondent, Jerry Wight, for \$3,038 in child-support arrears and \$2,586 in medical-support arrears. That same day, petitioner filed an "affidavit in support of filing of foreign judgment."

¶ 3 In July 2010, the trial court issued a rule to show cause, seeking cause as to why respondent should not be held in indirect civil contempt for failing to pay the child- and medical-

support judgments. Following an August 2010 hearing on that rule to show cause, at which respondent did not appear, the court found respondent in indirect civil contempt and entered judgment in favor of petitioner.

¶ 4 In September 2010, respondent's counsel filed a limited entry of appearance, seeking only to dismiss petitioner's cause of action for lack of jurisdiction. Following an exchange of motions related to respondent's contention that the trial court lacked jurisdiction, the court denied respondent's motion.

¶ 5 Respondent appeals, arguing that the trial court erred by denying his motion to quash and dismiss because he was not provided proper notice of the enrollment and enforcement matters in the McLean County, Illinois, trial court. Because (1) petitioner failed to file an appellee's brief with this court and (2) we conclude that appellant's brief demonstrates *prima facie* reversible error, we reverse and remand for further proceedings.

¶ 6 I. BACKGROUND

¶ 7 On June 17, 2009, petitioner, filed a Hildalgo County, Texas, confirmation of arrears and modification, which included, among other things, a judgment against respondent for \$3,038 in child-support arrears and \$2,586 in medical-support arrears. That same day, petitioner filed an "affidavit in support of filing of foreign judgment."

¶ 8 In July 2010, the trial court issued a rule to show cause, seeking cause as to why respondent should not be held in indirect civil contempt for failing to pay the child- and medical-support judgments. Following an August 24, 2010, hearing on that rule to show cause, at which respondent did not appear, the court found respondent in indirect civil contempt and entered judgment in favor of petitioner. The court's judgment ordered respondent to pay petitioner

\$9,581 in various arrearages and attorney fees.

¶ 9 In September 2010, respondent's counsel filed a limited entry of appearance, seeking only to dismiss petitioner's cause of action for lack of jurisdiction. In his accompanying affidavit and motion to quash and dismiss, respondent claimed that the court lacked jurisdiction because he (1) had not been properly served, as he received "certified correspondence" on August 24, 2010—the day of the hearing on the rule to show cause—at a "box" he rented in a "commercial store," (2) was not subject to long-arm jurisdiction, and, in fact, (3) had only "driven through Illinois a few times, but not more than five times in [his] life." In December 2010, following an exchange of motions related to respondent's jurisdictional claims, the court denied respondent's motion, as follows:

"This cause was heard on Respondent's Motion to Quash and Dismiss filed September 14, 2010. The Court has considered the pleadings, affidavits, and memoranda and arguments of counsel.

IT IS ORDERED that the Motion to Quash and Dismiss is denied."

¶ 10 This appeal followed.

¶ 11 **II. ANALYSIS**

¶ 12 Respondent argues that the trial court erred by denying his motion to quash and dismiss because he was not provided proper notice of the enrollment and enforcement matters in the McLean County, Illinois, trial court. As previously explained, petitioner did not file a brief with this court in response to respondent's argument in this regard. Because we

conclude that respondent's brief demonstrates *prima facie* reversible error, we reverse and remand for further proceedings.

¶ 13 In *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133, 345 N.E.2d 493, 495 (1976), the supreme court explained the options a reviewing court may exercise when, as here, an appellee fails to file a brief, as follows:

"We do not feel that a court of review should be compelled to serve as an advocate for the appellee or that it should be required to search the record for the purpose of sustaining the judgment of the trial court. It may, however, if justice requires, do so. Also, it seems that if the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief, the court of review should decide the merits of the appeal. In other cases if the appellant's brief demonstrates *prima facie* reversible error and the contentions of the brief find support in the record the judgment of the trial court may be reversed."

¶ 14 In other words, the supreme court has set forth three distinct discretionary options a reviewing court may exercise in the absence of an appellee's brief: (1) it may serve as an advocate for the appellee and decide the case when the court determines justice so requires; (2) it may decide the merits of the case if the record is simple and the issues can be easily decided without the aid of the appellee's brief; or (3) it may reverse the trial court when the appellant's brief demonstrates *prima facie* reversible error that is supported by the record. *Thomas v. Koe*, 395 Ill. App. 3d 570, 577, 924 N.E.2d 1093, 1098-99 (2009) (citing *Talandis Construction*

Corp., 63 Ill. 2d at 133, 345 N.E.2d at 495.) " '*Prima facie*' means, '[a]t first sight; on first appearance but subject to further evidence or information' and '[s]ufficient to establish a fact or raise a presumption unless disproved or rebutted.' " *Thomas*, 395 Ill. App. 3d at 577, 924 N.E.2d at 1099 (quoting Black's Law Dictionary 1228 (8th ed. 2004)).

¶ 15 Here, we are charged with deciding, using only respondent's arguments and the record—which, although it includes a report of proceedings outlining respondent's arguments, does not include a transcript of proceedings—whether respondent received notice that the Texas judgment had been filed in Illinois or any of the proceedings against him. Given the (1) lack of (a) a record of the proceedings and (b) a detailed order from the trial court outlining its findings in this case, and (2) fact that respondent's arguments strongly suggest that he was not provided notice of these proceedings, we conclude that respondent's brief demonstrates *prima facie* reversible error within the meaning of *Talandis Construction Corp.*, 63 Ill. 2d at 133, 345 N.E.2d at 495. Under the circumstances of this case, we conclude that our appropriate course of action is to reverse and remand for further proceedings.

¶ 16 In so concluding, we emphasize that our conclusion is not a disposition on the merits. All we have concluded is that respondent has met the *prima facie* standard discussed by the supreme court in *Talandis Construction Corp.*, 63 Ill. 2d at 133, 345 N.E.2d at 495. We are not reversing the trial court's judgment because we have concluded that the court erred. Indeed, it is entirely possible that had petitioner briefed these issues, we might have found no error in the court's rulings and affirmed. Nonetheless, we have determined that reversal here is appropriate because (1) the record is not simple and the issues cannot easily be decided without the aid of the appellee's brief and (2) justice does not require us under these circumstances to serve as an

advocate for the appellee and so decide the case.

¶ 17

III. CONCLUSION

¶ 18 For the reasons stated, we reverse the trial court's judgment and remand for further proceedings.

Reversed and remanded.