

No. 1-11-3144

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

WILLIAM DANIELS,)	Appeal from the
)	Circuit Court of
Petitioner-Appellee,)	Cook County.
)	
v.)	No. 11 OP 73462
)	
CHERYL LOPEZ,)	Honorable
)	Mauricio Araujo,
Respondent-Appellant.)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Rochford and Delort concurred in the judgment.

ORDER

- ¶ 1 *Held:* Trial court did not abuse its discretion in denying respondent's request to accept as true the facts in her request for admission of facts in this order of protection case.
- ¶ 2 Petitioner William Daniels obtained a plenary order of protection against respondent, Cheryl Lopez, pursuant to the Illinois Domestic Violence Act of 1986 (750 ILCS 60/101 *et seq.* (West 2010)). Respondent has filed an interlocutory appeal from that order (Supreme Court Rule 307(a) (eff. Feb. 26, 2010)), contending that the trial court erred in refusing to admit the facts contained in her request for admission of facts pursuant to Supreme Court Rule 216 (eff. Jan. 1, 2011), and in allowing petitioner to present evidence contradicting those admissions. Although petitioner has not filed a brief in response, we may consider the appeal pursuant to the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-33 (1976).
- ¶ 3 On May 23, 2011, petitioner filed a petition seeking an order of protection against respondent

with whom he had a dating or engagement relationship. In that petition, he alleged that he resides at 8823 South Emerald Avenue in Chicago, and that respondent had called his wife pretending to be someone else trying to set up an appointment to come to his house on May 22, 2011. He also alleged that respondent tampered with his vehicle fuel tank on May 16, 2011, and that, in March 2011, respondent sent harassing Facebook messages, came to his house and threatened him and his wife. Petitioner claimed that this harassment has threatened the safety and comfort of his family, and that he can no longer park his car in front of his home. Petitioner thus requested that respondent be ordered to stay away from him and his family, his car and his home, and that she be further enjoined from any contact with them whatsoever.

¶ 4 An emergency order of protection was issued against respondent to be in effect until June 13, 2011. On June 23, 2011, respondent filed an appearance through counsel, and the emergency order of protection was extended several times through September 25, 2011.

¶ 5 On September 1, 2011, respondent's counsel filed a certificate of service stating that he served a request for admission of facts upon petitioner by depositing the same in the mail, with prepaid postage, at the United States Post Office (USPO) before 5 p.m. on July 28, 2011. Counsel attached to the certificate of service a copy of the United States Postal Service delivery confirmation receipt, which is stamped July 28, 2011, and a printout from the USPO website showing the tracking and delivery confirmation for the document. The tracking and delivery confirmation contained a delivery date of July 29, 2011, and the indicated address.

¶ 6 Counsel also attached the request for admission of facts to the certificate of service. In this document, respondent essentially requested petitioner to deny the allegations of harassment in his petition for an order of protection by admitting that they did not occur. Petitioner was also advised therein that if he failed to respond within 28 days after he was served with the request as required by Supreme Court Rule 216 (eff. Jan. 1, 2011), the facts set forth in the request would be deemed true.

¶ 7 On September 1, 2011, the parties appeared before the court for a hearing. Petitioner appeared *pro se*, and respondent's counsel informed the court that petitioner had not responded to the request for admission of facts. Petitioner told the court that he never received the request for admission of facts, explaining that he resides in a two-flat building which has three separate residences, and that his street address did not include an apartment number designation. The court observed that the petition for an order of protection and the emergency order of protection did not have a unit number listed in the address. Respondent's counsel then provided a copy of the request for admission of facts to petitioner in open court, and requested that it be so noted. The court stated, without objection from counsel, that "[p]etitioner [was] served request to admit in open court today," then included a notation to this effect in its written order, and continued the matter.

¶ 8 On September 29, 2011, the matter was called before a different judge. Respondent's counsel informed the court of the pending issue regarding the request for admission of facts. Counsel noted that the document was sent to petitioner more than 28 days ago, and that in the event petitioner was still denying that he received it, counsel gave him another copy of the request for admission of facts on the last court date. Petitioner then told the court that he faxed counsel a copy of his responses on September 27, 2011. When the court inquired if petitioner or anyone in his family had received the request for admission of facts at his house, petitioner stated that neither his wife, nor one-year-old daughter received it. The court observed that the judge who had presided over the proceeding on September 1, 2011, apparently was not persuaded that petitioner was served properly, where she acknowledged on the record that petitioner was "served with request to admit in open court today." The court then concluded that petitioner was served in open court on September 1, 2011, the "clock start[ed] ticking [from] there," and that petitioner's response on September 27, 2011, fell within the 28-day time period. To overcome counsel's objection to the lack of certification in the petitioner's response, the court had petitioner swear to his answers in open court.

¶ 9 Subsequently, at a hearing on the petition for an order of protection, petitioner testified that

he had an ongoing sexual relationship with respondent while he was separated from his wife. In July 2010, he was unable to keep an engagement with respondent, and she "snapped," and started sending him "crazy" telephone messages. The messages stopped while he was out of the country. However, when he returned and reunited with his wife, respondent started sending him Facebook messages, after which petitioner unfriended her on Facebook.

¶ 10 Petitioner further testified that in March 2011, respondent appeared at his front door. Petitioner had not told his wife about respondent, and told her to leave and not come back. A few days later, respondent appeared at his home again. When he and his wife answered the door, respondent threatened petitioner's wife.

¶ 11 Petitioner testified that respondent sent him more Facebook messages, and provided copies of those messages to the court in which she stated, "I hate your wife." Another message said, "answer this [message]; or I'm coming over as early as possible," and another message stated that certain messages on his wife's Facebook page came from her and that if he wants to play with her too, "you will regret it, pussy." Respondent also sent petitioner's wife several messages, including "I apologize for coming to your house and sleeping with your husband." Respondent did not testify.

¶ 12 At the close of evidence, the court entered a plenary order of protection against respondent. In doing so, the court noted that respondent appeared at petitioner's house when asked not to go there, and sent threatening Facebook messages to him. The court stated that the Facebook messages showed a pattern of harassment combined with returning to petitioner's house after being told not to do so. The court found petitioner credible, and noted that its order of protection was valid until December 30, 2012.

¶ 13 On appeal, respondent contends that the trial court erred in denying her motion to deem facts admitted on the basis of petitioner's failure to respond to her request for admission of facts within 28 days after being served, as required under Supreme Court Rule 216. She maintains that service was proper, that petitioner failed to establish good cause for an extension of time to respond, and

thus requests that the order of protection be reversed.

¶ 14 Respondent asserts that the standard of review for the issue raised is *de novo*. We disagree. Although we apply *de novo* review when considering the construction of a supreme court rule, requests for admission of facts are part of the discovery process, and we, therefore, review a trial court's decision concerning the course and conduct of pretrial discovery under an abuse of discretion standard. *Vision Point of Sale, Inc. v. Haas*, 226 Ill. 2d 334, 342, 345-47 (2007).

¶ 15 Supreme Court Rule 216(a) (eff. Jan. 1, 2011) provides, in pertinent part, that "[a] party may serve on any other party a written request for admission by the latter of the truth of any specified relevant fact set forth in the request." The rule further provides that

"[e]ach of the matters of fact and the genuineness of each document of which admission is requested is admitted unless, within 28 days after service thereof, the party to whom the request is directed serves upon the party requesting the admission *** a sworn statement denying specifically the matters of which admission is requested or *** written objections" to the request. Ill. S. Ct. R. 216(c) (eff. Jan. 1, 2011).

¶ 16 The purpose of Rule 216 is to establish material facts that do not require formal proof at trial, allowing for a more streamlined and efficient case where disputed issues may be clearly and succinctly presented. *In re County Treasurer*, 2012 IL App (1st) 112897, ¶ 27. Strict compliance, particularly with providing a timely sworn response, is required. *Id.* The failure to do so will result in a judicial admission that is considered incontrovertible, withdrawing that fact from contention. *Id.* The rules of procedure apply equally to *pro se* litigants and a court will not apply a more lenient standard to them. *People v. Vilces*, 321 Ill. App. 3d 937, 940 (2001).

¶ 17 However, Supreme Court Rule 183 (eff. Feb. 16, 2011) provides that a party may receive an extension of time to file a response or objection if good cause is shown for the delay. Whether good

cause exists is fact-dependent and rests within the sound discretion of the trial court. *In re Marriage of Holthaus*, 387 Ill. App. 3d 367, 373 (2008). In determining whether good cause exists, the trial court may consider whether the party's original delinquency was caused by mistake, inadvertence, or attorney neglect, but may not engage in an open-ended inquiry which considers conduct unrelated to the causes of the party's original noncompliance. *Vision Point of Sale, Inc.*, 226 Ill. 2d at 353.

¶ 18 In the case at bar, the record shows that on July 28, 2011, respondent initially attempted to serve the request for admissions of facts document on petitioner, by sending it via United States Postal Service mail to the address provided by him, *i.e.*, 8823 South Emerald Avenue in Chicago. On September 1, 2011, respondent's counsel informed the court that petitioner had not responded to the request, and asserted that the facts contained therein should be admitted. Petitioner responded that he never received the document, then explained that there were three separate residences at the listed address, and that his street address did not include an apartment designation. The court observed that the certificate of service and the United States Postal Service delivery confirmation receipt did not list a unit number. Under these circumstances, the court found that service was not properly effectuated by that mailing, but that petitioner was served with the request for admissions of fact in open court on September 1, 2011, and granted a continuance for a response. The record shows that respondent's counsel specifically asked the court to note for the record that petitioner received the request for admission of facts in open court, and the judge stated, without any objection from respondent, that petitioner was "served" that day. At a hearing on September 29, 2011, a different judge presided over the case, who recognized the September 1, 2011 date as the operative date of service. Accordingly, the court found that petitioner had filed a timely response on September 27, 2011, and denied respondent's motion to deem facts admitted.

¶ 19 Respondent acknowledges the court's authority to grant an extension under Rule 183, but claims that petitioner must first show good cause to do so, and that petitioner did not provide a cognizable basis in this case. She maintains that petitioner's simple denial that he had not received

the request for admission of facts was insufficient to show good cause, particularly where it was sent to petitioner at the address he listed in the documents filed with the court.

¶ 20 Rule 183, however, provides that, "[t]he court, for good cause shown on motion after notice to the opposite party, may extend the time for filing any pleading or the doing of any act which is required by the rules to be done within a limited period, either before or after the expiration of the time." The plain language of the rule makes good cause a prerequisite to relief, and the burden of establishing good cause rests on the party seeking relief under it. *Vision Point of Sale, Inc.*, 226 Ill. 2d at 353. The circuit court has sound discretion to consider all objective, relevant evidence presented by the delinquent party regarding why there is good cause for his failure to comply with the original deadline and why an extension of time should be granted. *Vision Point of Sale, Inc.*, 226 Ill. 2d at 353.

¶ 21 In the case at bar, the record shows that petitioner listed his address without a unit number in the petition for an order of protection. He then explained to the court that there were three separate residences at that address, and that he had not received the request for admission of facts from respondent. In deciding good cause for petitioner's noncompliance with the original deadline, the court could properly consider petitioner's mistake or inadvertence in not listing a unit number (*Vision Point of Sale, Inc.*, 226 Ill. 2d at 353), and on the facts presented, essentially found good cause in it and permitted the in-court service. Under these circumstances, we find no abuse of discretion by the circuit court in allowing an extension of time to respond. *Id.*

¶ 22 In reaching this conclusion, we find *Montalbano Builders, Inc. v. Rauschenberger*, cited by respondent, to be factually distinguishable. *Montalbano Builders v. Rauschenberger*, 341 Ill. App. 3d 1075 (2003). In *Montalbano Builders Inc.*, the reviewing court held that proper service of notice cannot be frustrated by the mere allegation that plaintiff did not receive the document sought to be served. *Id.* at 1078-79. The same court noted, however, that there may be circumstances where an extension to respond to a request for admission of facts is appropriate; such as, where plaintiff did

not receive it based on defendant accidentally neglecting to include the request in the envelope, or where it is inadvertently lost by plaintiff's attorney. *Id.* at 1079. The *Montalbano Builders, Inc.* court then explained that in that case, plaintiff's argument might have been more compelling if it immediately rectified the situation at the time it realized that it did not respond, but, instead, waited four months, providing no legitimate reason for that lengthy delay. *Id.*

¶ 23 Here, by contrast, petitioner claimed that he did not receive the request for admission of facts, which was mailed to him on July 28, 2011. Although there was no dispute that he had provided the address listed in his petition, he explained that his building had three separate residences and that no unit number was listed in the address on his petition, thereby showing inadvertence or mistake on his part. Moreover, when petitioner received the document in court on September 1, 2011, he responded without undue delay on September 27, 2011, which immediately rectified the situation. This is unlike plaintiff in *Montalbano Builders Inc.*, who waited four months to respond, thereby making petitioner's cause in the case at bar more compelling. We, therefore, find no abuse of discretion by the trial court in denying respondent's motion to deem facts admitted in her request for admission of facts, based on petitioner's alleged failure to comply with the requirement of Rule 216. *Vision Point of Sale, Inc.*, 226 Ill. 2d at 345-47.

¶ 24 In light of the foregoing, we affirm the order of the circuit court of Cook County.

¶ 25 Affirmed.