

No. 1-13-0422

court made numerous errors during pretrial proceedings. For the reasons that follow, we dismiss respondent's appeal for lack of jurisdiction.

¶ 3 BACKGROUND

¶ 4 On February 6, 2012, petitioner filed a petition for the dissolution of her marriage to respondent. On February 27, 2012, respondent filed a petition for the appointment of counsel, asserting that he could not afford to hire an attorney and that his incarceration would limit his ability to participate in the dissolution proceedings and, on March 22, 2012, the court entered an order denying that motion. Respondent subsequently filed numerous motions, including, on July 31, 2012, a motion for substitution of judge as a matter of right. The court denied the motion that same day because it had already made substantive rulings on other matters in the case.

¶ 5 On August 29, 2012, respondent filed a motion for substitution of judge for cause, alleging that the circuit court judge's statements and conduct showed that the judge was biased and prejudiced against him and that he would not receive a fair trial as a result. On September 4, 2012, respondent's motion for substitution of judge for cause was assigned to a different judge and, on September 10, 2012, that judge denied the motion, finding that respondent had failed to allege facts which established personal bias or prejudice.

¶ 6 Respondent filed various additional motions, including, on November 1, 2012, a "Motion for Injunctive Relief – Interlocutory Appeal" in which he asserted that the circuit court judge was biased against him, he required the assistance of appointed counsel, his due process rights had been violated, and he could appeal from the order denying his motion for substitution of judge pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. Feb. 26, 2010), which allows a party to appeal from certain interlocutory orders. Respondent requested that the court grant the motion

No. 1-13-0422

or, if it denied the motion, to forward it to the appellate court for further review. Respondent subsequently filed various other motions and, on December 11, 2012, the court entered an order relating that respondent received a number of documents in court that day regarding his previous motions and that the case was being continued to January 3, 2013, for the commencement of trial. That same day, respondent filed a notice of appeal pursuant to Illinois Supreme Court Rule 307(a)(1) in which he gave notice that he was appealing from an order entered that day in which the court allegedly denied his motion for interlocutory appeal. On January 3, 2013, just prior to the start of trial, the court orally denied all of respondent's pending motions.

¶ 7

ANALYSIS

¶ 8 As an initial matter, this court will decide the merits of this appeal on respondent's brief alone, as petitioner has not filed an appellee's brief, the record is not complex, and the claimed errors can be decided without the aid of an appellee's brief. *State Farm Mutual Insurance Co. v. Ellison*, 354 Ill. App. 3d 387, 388 (2004). A reviewing court must consider its jurisdiction over an appeal and dismiss the appeal if it lacks jurisdiction. *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 251-52 (2010). Pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. Feb. 26, 2010), a party may appeal from an interlocutory order "granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction."

¶ 9 In this case, respondent filed a notice of appeal on December 11, 2012, giving notice that he was appealing from an order entered that day, in which the court allegedly denied his "Motion for Injunctive Relief – Interlocutory Appeal," pursuant to Rule 307(a)(1). The court, however, did not rule on that motion in its order from December 11, 2012. Rather, the order reflects that respondent received a number of documents regarding some of his previously filed motions that

No. 1-13-0422

day and that the case was being continued until January 3, 2013, for the commencement of trial. As such, it appears from the record on appeal that respondent's motion was denied on January 3, 2013, when the court denied all of respondent's pending motions just before the start of trial, and that respondent's notice of appeal is untimely because the order from which he was appealing had not yet been entered at the time he filed his notice of appeal.

¶ 10 Moreover, the denial of respondent's "Motion for Injunctive Relief – Interlocutory Appeal" is not an appealable order under Rule 307(a)(1). While the title of respondent's motion indicates that respondent was seeking injunctive relief, the issue of whether an order from which an appeal is taken falls within the parameters of Rule 307(a)(1) is determined by the substance of the action, rather than by its form. *Craine v. Bill Kay's Downers Grove Nissan*, 354 Ill. App. 3d 1023, 1025 (2005). An injunction is a judicial process whereby a court controls a party's conduct by directing the party to perform or refrain from performing a certain act. *Skonick v. Alzheimer & Gray*, 191 Ill. 2d 214, 221 (2000). In his motion, respondent sought an appeal from the circuit court's previous denial of his motion for substitution of judge but did not seek injunctive relief as he did not ask the court to require a party to do or refrain from doing an act. Thus, the court was not "granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction" when it denied respondent's motion and that denial cannot form the basis of an interlocutory appeal. Ill. S. Ct. R. 307(a)(1) (eff. Feb. 26, 2010).

¶ 11 CONCLUSION

¶ 12 Accordingly, we dismiss this appeal for lack of jurisdiction.

¶ 13 Dismissed.