2015 IL App (3d) 130978-U
Consolidated with 130979-U

Order filed September 14, 2015
Modified Upon Denial of Rehearing December 3, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

DANIEL R. WALKER, Plaintiff-Appellant, v. KATRINA N. JEFFERSON, Defendant-Appellee.	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois. Appeal Nos. 3-13-0978 and 3-13-0979 Circuit Nos. 11-F-509 and 11-OP-1295
KATRINA N. JEFFERSON, Plaintiff-Appellee, v. DANIEL R. WALKER, Defendant-Appellant.	)	The Honorable Chrystel L. Gavlin and Matthew G. Bertani Judges, Presiding.

PRESIDING JUSTICE McDADE delivered the judgment of the court.
Justices Carter and Holdridge concurred in the judgment.

ORDER

¶ 1 *Held*: In case 11-OP-1295, the trial court did not have personal jurisdiction over defendant to grant an extension of the plenary order of protection on May 17, 2012. Thus the extension and all subsequent proceedings and extensions in that case were void. In defendant's custody case 11-F-509, motions to vacate for want of prosecution were properly stricken. Lastly, defendant's issue of coercion is not properly before this court and is otherwise moot.

¶ 2 This appeal involves two cases that were maintained as separate filings in the circuit court of Will County though at times they had shared presiding judges and shared proceedings dates. One is a custody contest filed in May 2011 as case number 11-F-509 (custody case) in which Daniel R. Walker sued Katrina N. Jefferson seeking custody of their minor child, D.R.W., born September 23, 2010. The other case filed in July 2011 as case number 11-OP-1295 involves an emergency order of protection (OP case) that Jefferson sought for herself and D.R.W. against Walker. These cases remained active and separate in the trial court when Walker filed interlocutory appeals in both cases in December 2013. For consideration, they were then consolidated by minute order in this court on May 2, 2014.

¶ 3 The primary presiding judge for both cases beginning in 2011 was Judge Matthew Bertani. Judge Robert Baron presided over one proceeding in the custody case in November 2011. Judge Chrystel Gavlin presided over proceedings for both cases from January 2013 to December 2013. Judge Bertani returned to preside over the proceedings for the custody case on December 27, 2013.

¶ 4 With regard to the OP case, Walker appeals the trial court's order of November 18, 2013, extending Jefferson's then plenary order of protection. In the custody matter, Walker appeals the trial court's order striking his motion for want of prosecution to vacate the alleged void judgment entered on May 31, 2013, suspending his visitation with D.R.W. He further argues the trial court erred in striking his subsequent motion to vacate judgment of his stricken motion for want of prosecution. We affirm in part and vacate in part.

¶ 5 FACTS

¶ 6 The facts of the custody case and OP case are initially discussed separately to ensure clarity of their respective procedural histories. Their facts are then discussed together beginning October 9, 2012, due to Walker's filing and subsequent withdrawal of combined motions in both cases.

¶ 7 Custody Case

¶ 8 At the inception of the custody case filed *pro se* by Walker on May 17, 2011, D.R.W. was eight months old. She is presently four years of age.

¶ 9 Walker filed his custody petition against Jefferson pursuant to the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/101 *et seq.* (West 2012)) though the parties have never been married. On July 5, 2011, Jefferson, by counsel, filed a counter petition for sole custody pursuant to the Illinois Parentage Act of 1984 (Parentage Act) (750 ILCS 45/1 *et seq.* (West 2012)). Both Walker and Jefferson were present at a hearing on the custody matter on July 13, 2011. The trial court entered an order reflecting an agreed temporary visitation schedule and set the hearing on custody, child support, and visitation for October 5.

¶ 10 On Walker's motion, the October 5 hearing was continued for status to October 26. He then filed an interim emergency motion for appointment of a guardian *ad litem* on October 25. The October 26 status hearing was, however, further continued to November 18 along with Walker's guardian *ad litem* motion because it "was not deemed to be an emergency."

¶ 11 Mediation regarding D.R.W.'s custody was conducted on November 18 resulting in an agreed custody and visitation arrangement. Jefferson was granted sole custody of D.R.W. and Walker was allowed supervised visitation. The agreement also included the term that "upon the child reaching the age of three (3) either party may petition the court to modify the visitation

provisions of this agreed custody judgment, without a showing of a substantial change in circumstances." No guardian *ad litem* was appointed.

¶ 12 In May 2012, Walker filed emergency motions to disqualify Jefferson's counsel and to modify custody and his visitation with D.R.W. The trial court denied the motion to disqualify counsel as well as the motion to modify custody as the latter did not comply with the term of the custody agreement to forgo such motions until D.R.W. reached age three unless there was a substantial change in circumstances. The trial court did find that the motion to modify supervision regarding visitation did not offend the custody agreement and set a status hearing on it for July 17, 2012.

¶ 13 On June 11, 2012 Walker sought reconsideration of the denial of his motion to modify custody and visitation. The trial court scheduled the hearing on the motion to coincide with the date of the status hearing already set for July 17. That hearing was then continued to September 11 when it was again continued to October 30 for trial solely on the issue of supervised visitation. Both parties were served with notice in open court.

¶ 14 Order of Protection

¶ 15 In the OP case (11-OP-1295) filed on July 19, 2011, Jefferson petitioned for an emergency order of protection against Walker that included D.R.W. as a protected person pursuant to the Illinois Domestic Violence Act (Domestic Violence Act). (750 ILCS 60/201 *et seq*. (West 2010)). Jefferson alleged that, during a drop-off of D.R.W. for a scheduled visitation, Walker held her at knife point in his home while D.R.W. was left alone for an unspecified amount of time in the car on a hot summer day. After a short while, Walker allowed Jefferson to bring D.R.W. into the house but continued to detain them. The petition also claimed Walker stalked Jefferson on nine occasions. The emergency order of protection was granted with the

court reserving ruling on the issue of custody of D.R.W. until the hearing scheduled for August 9. Walker was not served with the petition.

¶ 16 Walker was not present at the emergency order of protection hearing on August 9. The court then extended the order until August 30. Walker was served on August 15 with the August 9 emergency order of protection extension. He then filed a motion to vacate the order for lack of service.

¶ 17 Both Jefferson and Walker appeared at the hearing on August 30. Walker's motion to vacate was denied. The emergency order of protection was extended another month until September 15. Both parties were served with the order in open court.

¶ 18 On September 15, the emergency order of protection was again extended and the matter was continued to October 5 at Walker's request for more time to seek counsel. Both parties were served with the extension order in open court.

¶ 19 On October 5, Walker still had not retained counsel. However, the parties' facts included with their respective appellate briefs and the docket report note that a hearing for the order of protection was conducted. After testimony was heard, the trial court entered a plenary order of protection and set a status hearing on that matter for November 18. The actual order from that proceeding, however, shows that though the box for plenary on the standardized order of protection form was checked to indicate that it was a "plenary" order being granted, the order states: "EMERGENCY ORDER OF PROTECTION ENTERED 7/19/11 AND EXTENDED 8/09/11, 8/25/11, AND 9/15/11, ALL AT THE REQUEST OF RESPONDENT TO OBTAIN COUNSEL, TO REMAIN IN FULL FORCE AND EFFECT."

¶ 20 Walker was not served in open court with the "plenary" order of protection. However, the sheriff's service report for the "plenary" order of protection noted that on October 15, Shiela

Thompson – a person with whom Walker allegedly lived – was at the last known residence of Walker and confirmed she had given him the previous notices left by the sheriff's deputies. Thompson further advised that Walker no longer resided with her, and that she could not provide a current address.

¶ 21 At the hearing on November 18, due service upon Walker was found. Again, according to the parties and the docket report after testimony was heard, the court extended the "plenary" order of protection until May 17, 2012. However, the record shows that on this day an actual order granting the plenary order of protection was issued. The trial court also held that Walker's visitation with D.R.W. was to be consistent with the parties' custody agreement terms entered on that same day. (Discussed *supra*).

¶ 22 On May 17, the trial court extended the plenary order of protection another 18 months until November 18, 2013, on the basis of Jefferson's oral assertion of urgency in open court.

¶ 23 On June 5, Walker filed a motion to correct the docket. He claimed that it should reflect that a plenary order of protection was not granted, testimony was not heard, and evidence was not submitted on October 5, 2011; that the emergency order of protection was extended until November 18, 2011; that the plenary order of protection was granted on November 18, 2011, when again no testimony was heard and no evidence submitted; and that there was no testimony or evidence submitted on May 17, 2012.

¶ 24 Walker also filed a motion to reconsider the order and vacate the plenary order of protection on June 11, 2012. He argued that (1) the court erred in extending the plenary order of protection on May 17, 2012, as there were no affidavits or motion filed for the extension; (2) the court erred in granting the plenary order of protection as it failed to make the requisite findings; (3) the court denied his right to due process by not appointing a guardian *ad litem* so that the

infant could be independently represented during the proceedings; and (4) the court failed to make specific findings reflecting how his presence would not be in the best interest of D.R.W. prior to granting the plenary order of protection.

¶ 25 On September 11, 2012, the trial court denied Walker's motion to reconsider and vacate the plenary order of protection. The record is devoid of any reference to Walker's petition to correct the docket.

¶ 26 Combined Motions

¶ 27 On October 9, Walker filed a motion in both cases for an order to issue a subpoena and for access to Jefferson's mental health records, but withdrew it on January 22, 2013, after several continuances. Walker's motion to modify visitation in the custody case, which had been combined with the aforementioned withdrawn motion, was continued to March 14, 2013.

¶ 28 On February 6, 2013, Jefferson filed an emergency combined motion in both cases seeking to suspend visitation, modify the order of protection, and strike the March 14, 2013, trial date set in the custody case. The motion alleged that Walker's visitation with D.R.W. endangered the minor's physical, moral, mental, and emotional health; that Walker had a history of felonies and incarcerations; and he had admitted in open court to violating the plenary order of protection several times. Moreover, an active warrant was out for his arrest for several felonies.

¶ 29 At the February 13 hearing on Jefferson's emergency motions, Walker failed to appear. The trial court suspended his visitation with D.R.W. without prejudice in both cases and struck the March 14 trial date in the custody case.

¶ 30 Walker's unresolved motion to modify his supervised visitation in the custody case and Jefferson's motions to suspend visitation in both cases were set for status on April 12; however,

Walker again failed to appear. Walker's motion was stricken and Jefferson's motions were continued to May 31.

¶ 31 At the May 31 hearing, Walker was again absent without explanation or excuse. The trial court, nevertheless, conducted a hearing and granted Jefferson's motion in both cases suspending Walker's visitation with D.R.W.

¶ 32 Walker's Incarceration and Motions to Vacate Judgment

¶ 33 The docket reports in both cases show the trial court clerk received a letter from Walker dated June 12, 2013, that was entered into the docket on June 24, 2013, with a return address to Walker at the Will County Adult Detention Facility (WCADF). In his letter, Walker requested copies of the docket sheets showing the status of both cases. The clerk responded to the request and mailed the sheets to Walker at the WCADF address shown on the letter.

¶ 34 On November 7, Walker filed emergency motions to vacate the alleged void judgment suspending his visitation with D.R.W. in both cases. However, on November 13 the motions were stricken from the call in both cases for want of prosecution because, as noted by the trial court, Walker failed to appear for the hearing on the matter.

¶ 35 On November 18, 2013, the trial court conducted the scheduled hearing on Jefferson's motion for an extension of the plenary order of protection. Walker was again noted as absent and the trial court conducted the hearing, extending the plenary order of protection two years to November 18, 2015.

¶ 36 Walker then sent another letter to the trial court clerk dated November 20, 2013, and entered into the docket on November 22, 2013, directly informing the court he was currently in jail. He included motions to vacate the judgment striking his previous motions to vacate the void judgment in both cases and asked the court to request his presence for the hearing. This second

motion was also stricken for want of prosecution in the custody case because Walker was again noted as having failed to attend its hearing on December 2. The record shows no hearing or ruling with respect to this second motion in the OP case.

¶ 37 On December 12, Walker filed an emergency motion to vacate the plenary order of protection. He also filed motions on December 16 asking the court to modify visitation, appoint a guardian *ad litem*, and issue an order for a writ of *habeas corpus* ad testificandum. On December 17, he filed a notice of appeal regarding his stricken motions to vacate judgment in both cases and the order of November 18, 2013, extending the plenary order of protection.

¶ 38 On December 16, both parties failed to appear for the hearing regarding Walker's motions to vacate the plenary order of protection and issue an order for a writ of *habeas corpus* ad testificandum. The motions were denied.

¶ 39 Both Jefferson and Walker were again absent on December 27 for the hearing on Walker's motions to modify custody and appoint a guardian *ad litem*. The court did specifically note that Walker failed to appear as he was currently incarcerated. The matters were continued for a hearing on February 14, 2014, when it was further continued.

¶ 40 Walker's interlocutory appeals filed December 17, 2013, were before us. We entered an order on September 11, 2015, affirming in part and vacating in part the trial court's rulings.

¶ 41 After we filed our order in this appeal, Walker filed an emergency motion to supplement the record on appeal and a petition for rehearing. We deny them both.

¶ 42 First his emergency motion requests to supplement the record with a copy of the transcripts from the proceedings dated November 18, 2011. He asserts that which was previously submitted to this court allegedly contained edits and omissions. We deny this motion because the burden rested on Walker to provide a sufficient record to support his claims of error. See *Foutch*

v. O'Bryant, 99 Ill.2d 389, 391-92 (1984). In the absence of a sufficient record, the reviewing court will presume that the trial court's order was in conformity with established legal principles and had a sufficient factual basis. *Id*. Any doubts arising from the incompleteness of the record are resolved against the appellant. *Id*. at 392.

¶ 43 In December 2013, Walker requested the transcripts from various proceedings and was made aware of the cost for the transcripts and that he would need to pay that cost before the transcripts would be produced for the record on appeal. He filed a motion to proceed *in forma pauperis* in February 2014 that was rendered moot after he paid his fee to proceed with the appeal. (735 ILCS 5/5-105 (b) (West 2014) (upon application and finding by the court that the applicant is an indigent person, the court can "grant leave to sue and defend the action without payment of fees, costs, and charges of the action.") He did not file another motion to proceed *in forma pauperis*, but professed simply in his motion for an order directing the court reporter to furnish transcripts of proceedings for the appeal that he was entitled to a free copy. We denied the motion. See 735 ILCS 5/5-105 (b) (West 2014) (requiring the court to "furnish on request of any *indigent* party a transcript for purposes of appeal"). Moreover, Walker states he purchased a copy of the transcript from the November 18 proceeding prior to the time of his appeal. Though he claims he was unable to access it and submit it for the record on appeal due to his incarceration, he acknowledged that he repurchased the transcripts after his release in March 2015. He fails to explain to this court why he did not repurchase them while incarcerated and submit them for the record as he did with his other filings or move to supplement the record on appeal immediately following his release, which was prior to our issuance of this order.

¶ 44 Next, Walker contends in his petition for rehearing that this court erred (1) in not finding that the “extensions” of Jefferson’s emergency order of protection issued on August 9, 30,

September 15, and October 5 were void because he was not served with notice prior to the orders issuances; (2) in failing to find that the trial court's order from May 31, 2013, suspending his visitation with the minor was void; and (3) in finding that he waived the argument of coercion. We also deny this request for rehearing with slight modification to the order.

¶ 45 ANALYSIS

¶ 46 Walker asserts several issues here on appeal. He argues that the trial court abused its discretion in issuing and extending the emergency order of protection as well as the plenary order of protection as the orders were void *ab initio*. He also claims that he was denied his right to an impartial judge in the OP case and cites the extension hearing on May 31, 2013, as evidence.

¶ 47 With regard to the custody case, he contends that the trial court erred in striking his motion to vacate the judgment entered on May 17, 2012, for want of prosecution and the subsequent striking of his motions to vacate the aforementioned strikes, also for want of prosecution, as the underlying order was void. He also states that he was coerced into agreeing to the original terms of the visitation agreement in the custody case because the issue of Jefferson's pending order of protection extension was discussed during the mediation for the agreement. We take each issue in turn.

¶ 48 Order of Protection

¶ 49 We address first Walker's claim that the trial court abused its discretion in issuing and extending Jefferson's original order of protection and her plenary order of protection. He argues that the orders are void *ab initio* because the trial court had not acquired personal or subject matter jurisdiction over him. He was not served with notices of the emergency order of protection or the plenary order of protection. In the alternative, he asserts that there was no

petition filed by motion or affidavit requesting the extension of the plenary order of protection on or before May 17, 2012, the natural expiration date of the plenary order of protection. Thus the order extending it to November 18, 2013, is void.

¶ 50 Jefferson counters stating that the trial court had personal and subject matter jurisdiction at all times in the OP case. She asserts that none of the orders was void but properly petitioned for, issued, and served upon Walker. Jefferson concedes that the only questionable order was that of May 17, 2012, extending the plenary order of protection to November 18, 2013. She argues, however, that though she did not file a petition for an extension of the plenary order of protection on or prior to its date of expiration, the trial court did not err in issuing the extension upon her verbal assertion of urgency during the hearing. She argues that the pertinent section of the Domestic Violence Act, "[a]n extension of a plenary order of protection may be granted, upon good cause shown***" (750 ILCS 60/220(e) (West 2010)), should be understood to mean that if the matter is contested then it should be extended for good cause shown during the hearing without regard to filing a petition. Since Walker admitted to pleading guilty to two violations of the plenary order of protection during the hearing on May 17, good cause to extend it was shown. Thus, she concludes the plenary order of protection was properly extended.

¶ 51 Initially we note that when an interim order of protection under the Domestic Violence Act has expired and been replaced by a plenary order of protection, issues regarding the interim order are moot and not a basis for affording relief. *Wilson v. Jackson*, 312 Ill. App. 3d 1156, 1163 (2000). However, we are able to review expired orders of protection under the public interest exception to the mootness doctrine as the "Domestic Violence Act addresses problems of public interest and that the purposes of the Act can only be achieved if courts properly apply its requirements." *Id*. Whether a defendant has been properly served with notice of an emergency

order of protection and whether service is required are issues likely to recur. Thus we consider Walker's contention that the granted orders of protection are void *ab initio* because the trial court did not acquire jurisdiction over him as he did not have notice of Jefferson's emergency order of protection or its extension at the onset of the OP case.

¶ 52 With regard to subject matter jurisdiction, a trial court obtains jurisdiction simply if the asserted claim is "justiciable." *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334-35 (2002). A claim for any form of order of protection is made justiciable by statute. (750 ILCS 60/201 et seq. (West 2014)) It shall issue if the trial court finds respondent abused any person protected under the statute. 750 ILCS 60/214(a) (West 2014).

¶ 53 A trial court's acquisition of personal jurisdiction is reviewed *de novo*. *C.T.A.S.S. & U. Fed. Credit Union v. Johnson*, 383 Ill. App. 3d 909, 910 (2008). A judgment is void and may be challenged at any time if entered without jurisdiction over the parties. *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 17. Our courts have long held that "[a] general appearance by a party waives any objection to personal jurisdiction over that person." *Cameron v. Owens-Corning Fiberglas Corp.*, 296 Ill. App. 3d 978, 983 (1998) (citing *Duncan v. Charles*, 5 Ill. 561, 569, (1843)); *Zvonarits v. Vollen*, 64 Ill. App. 3d 958, 964 (1978). Absent waiver, personal jurisdiction can be acquired if the party is served with process in a manner prescribed by statute. *State Bank of Lake Zurich v. Thill*, 113 Ill. 2d 294, 308 (1986); Ill. S. Ct. R. 11(b)(2) (eff. Dec. 29, 2009); 750 ILCS 60/211 (West 2010); 735 ILCS 5/2-203(a), 2-301 (West 2010). These same requirements hold true in cases involving petitions for orders of protection. See 750 ILCS 60/208, 211 (West 2014). However, under section 217 of the Domestic Violence Act an emergency order of protection shall issue "regardless of prior service of process or of notice upon the respondent, because *** the harm which [the remedy requested by the petitioner] is

intended to prevent would be likely to occur if the respondent were given any prior notice ***." 750 ILCS 60/217(3)(i) (West 2014). Thus the Domestic Violence Act statutorily provides for personal and subject matter jurisdiction with respect to the court's issuance of emergency orders of protection.

¶ 54 In this case, Jefferson petitioned for and was granted an emergency order of protection in July 2011. Thus service of notice of the petition upon Walker was not required for the court to grant that order. The court's issuance of the "extension" of the order on August 9 was also valid. At that time, Walker had yet to be served with the summons from the court for its reserved ruling on the issue of custody included in Jefferson's petition for an emergency order of protection. We find the extension was actually a *continuance* to allow time for Walker to be served. See 750 ILCS 60/213(b) (West 2014) ("[c]ontinuances should be granted only for good cause shown"). Thus a written motion for an extension was not required.

¶ 55 When he was finally served on August 15, Walker filed a motion to have the order vacated for lack of service. His motion and his *pro se* general appearance at the hearing on the motion on August 30 were voluntary submissions to the court's jurisdiction that operated prospectively. See *BAC Home Loans Servicing LP v. Mitchell*, 2014 IL 116311, ¶ 43, 44 (noting a general appearance in court with respect to a filed motion in opposition to a ruling operates as prospective acquisition of personal jurisdiction to allow the respondent her "day in court"). The court properly denied his motion[1] and continued the proceedings to September 15 at Walker's request for time to secure an attorney. The court continued the proceedings once again to

[1]Though section 224 (d) of the Domestic Violence Act allows for a respondent to argue lack of notice, it also requires he present "a meritorious defense to the order or its remedies or that the order and any of its remedies was not authorized by the Act." 750 ILCS 60/224(d) (2014). Walker failed to satisfy the latter.

October 5 at Walker's request. Each time both parties were served with notice of the extension and summons for the continued proceeding. Thus the court had jurisdiction over Walker when it issued and extended the emergency order of protection.

¶ 56 Now though the parties and the OP case docket report note that a "plenary" order of protection was granted at the October 5 hearing, we find that the order was merely another extension of the emergency order of protection. That order's findings clearly state that the emergency order of protection was to remain in full effect. Additionally, those findings note that the previously granted extensions were at Walker's request for time to seek counsel. The docket report notes that even at the October 5 hearing Walker had yet to retain counsel. Walker does not contest these findings. Because we do not have the transcript from that hearing, we resolve our doubts against Walker and find that the extension granted on October 5, was also at Walker's request to allow time for him to seek counsel. See *Foutch v. O'Bryant*, 99 Ill.2d 389, 391–92 (1984). Though he was not served in open court with the October 5 extension as he had been at previous proceedings, when the plenary order of protection was finally issued on November 18, due service of the October 5 extension was found as Walker was served pursuant to section 2-203(a) of the Illinois Code of Civil Procedure. 735 ILCS 5/2-203(a) (West 2014). Therefore, the court had personal jurisdiction over Walker in those proceedings and to issue those orders.

¶ 57 However, unlike emergency orders of protection, the Domestic Violence Act requires service of notice for petitions for plenary orders of protection and any extensions thereof. Jefferson tasks us, however, with interpreting section 220 of the Domestic Violence Act to mean that the extension of a plenary order of protection can be granted upon oral urgency alone, without a petition.

¶ 58 Questions of statutory interpretation are reviewed *de novo. Feltmeier v. Feltmeier, 207* Ill. 2d 263, 267 (2003). We first look to the plain language of the statute, which provides us with the "best indication of the legislature's intent." *County of Knox ex rel. Masterson v. Highlands, L.L.C., 18*8 Ill. 2d 546, 556 (1999). If the statutory language is clear, it must be given effect without utilizing other tools of interpretation. *Id. Al*so, "[a] court must view the statute as a whole, construing words and phrases in light of other relevant statutory provisions and not in isolation." *People v. Jackson, 2*011 IL 110615, ¶ 12.

¶ 59 Section 219 of the Domestic Violence Act states that "[a] plenary order of protection shall issue if petitioner has served notice of the hearing for that order on respondent ***" 750 ILCS 60/219 (West 2014). Section 220(e) provides that a plenary order of protection may be extended pursuant to the requirements of section 219 – the appropriate section – and on the basis of petitioner's motion or affidavit that no material change in circumstances has occurred since the entry of the order. 750 ILCS 60/220(e) (West 2014).

¶ 60 We have already found that Walker was properly served with notice and entered a general appearance on November 18 when Jefferson's plenary order of protection was issued. In review of sections 219 and 220 of the Domestic Violence Act, our legislature specifically set forth the requirements to be met by a petitioner desiring an extension of a plenary order of protection. A motion or affidavit must be filed explaining to the court why the order should be extended and notice of the hearing on that petition must be served upon respondent. See 750 ILCS 60/219, 220(e) (West 2014). Moreover, nowhere in the entire act can one read or reasonably infer that such a petition or any petitioned-for order of protection – emergency, interim, or plenary – need not be writing. See 750 ILCS 60/202, 205, 211, 220 (West 2014).

¶ 61 In this case, the record is devoid of any petition, motion, or affidavit for an extension of Jefferson's plenary order of protection filed by her on or prior to May 17, 2012, the expiration date of the plenary order of protection. *c.f. Lutz v. Lutz*, 313 Ill. App. 3d 286 (2000) (the lapse of time between expiration of original plenary order of protection at 9:20 a.m. and the new order entered at 2:20 p.m. was found to be *de minimis* allowing the motion to extend to be shown as being filed prior to expiration of the original order pursuant to the Domestic Violence Act). This failure to file the motion and to serve it upon Walker rendered the order extending the plenary order of protection entered on May 17 and all subsequent orders void.

¶ 62 These void orders and proceedings include the plenary order of protection proceeding on May 31, 2013, where Walker alleges that the trial judge, Judge Gavlin, was not impartial. Walker asserts that he attempted to retain Judge Gavlin as counsel in November 2012 prior to her accepting her judgeship; he had shared information regarding the case with her; and Judge Gavlin showed her partiality by favorably prejudging Jefferson's potential motion to extend the plenary order of protection during the May 2013 hearing. Though this matter is moot as the proceeding is void, we, nevertheless, find the record is devoid of any factual basis supporting Walker's assertions and the issue has been waived because none of the subsequent proceedings or motions filed by Walker includes contentions regarding Judge Gavlin's alleged partiality. *Parks v. Kownacki,* 193 Ill. 2d 164, 180 (2000) (issues not raised in a complaint and points not argued in the trial court are waived on appeal). Thus this argument is without merit and has been forfeited.

¶ 63 Further we note a trial judge has inherent authority to manage her courtroom and her docket. *People v. Coleman,* 358 Ill. App. 3d 1063, 1068 (2005). In review of the transcript from the hearing on May 31, 2013, we do not find that Judge Gavlin prejudged the merits of

Jefferson's potential motion to extend the plenary order of protection. Judge Gavlin asked about the upcoming expiration of the plenary order of protection and if the matter would be argued in her court. She then required Jefferson to file a notice and a motion to extend, if so. That dialogue was neither improper nor indicative of favorable prejudgment.

¶ 64 That proceeding, however, along with the other orders and proceedings that followed the erroneously granted plenary order of protection extension on May 17, 2012, are void.

¶ 65 Custody case: Motion to Vacate Judgment

¶ 66 Our findings in the OP case, however, do not negate the trial court's allowance of Jefferson's motion to suspend Walker's visitation with D.R.W. in the custody case. Walker argues that the trial court erred in striking, for want of prosecution, his motions to vacate the judgments in both cases entered on May 31, 2013, that suspended his visitation with D.R.W.

¶ 67 As previously discussed, the order extending the plenary order of protection entered on its expiration date of May 17, 2012, is void and all subsequent proceedings in the OP case are void. Thus the only matter before us concerning Walker's stricken motions to vacate judgment is the order entered in the custody case on May 31, 2013.

¶ 68 First we address our jurisdiction to entertain an appeal involving a dismissal for want of prosecution as such a dismissal is not typically a final appealable judgment. Generally, a trial court retains jurisdiction over a cause of action until a final judgment on the merits has been entered. *Progressive Universal Insurance Company, v. Hallman*, 331 Ill. App. 3d 64, 67 (2002). Section 13–217 of the Illinois Code of Civil Procedure (the Code) provides that when a claim is dismissed for want of prosecution, the movant "may commence a new action within one year or within the remaining period of limitation, whichever is greater;" judgment is not to be considered

final until after that time has elapsed. 735 ILCS 5/13–217 (West 2010). See *C. Vaughan Oil Company, v. Caldwell, Troutt & Alexander*, 181 Ill. 2d 489, 508 (1998).

¶ 69 In this case, Walker's motions were stricken on November 13 and December 2, 2013. The time to refile a claim in the trial court challenging those orders has since expired. Thus the issue is properly before us.

¶ 70 Moving forward, we note that it is within the sound discretion of the trial court to determine whether there has been (1) a failure to act or (2) other circumstances showing a lack of prosecution justifying dismissal of an action for want of prosecution. *Lange v. City of Chicago*, 9 Ill. App. 3d 1082, 1084 (1973). Although Walker has not actually raised this issue, we briefly address the propriety the dismissal with respect to Walker's failure to attend the hearings. Walker's presence at the hearing, or the lack thereof, was, for part of the time, within the control of the trial court. It is well established in our courts that a party to an action has a right to be present at the trial for that action. *In re Marriage of Allison*, 126 Ill. App. 3d 453, 457 (1984). However, a party who is incarcerated contemporaneously loses, with the general freedoms of travel and movement, the freedom to attend trials for civil cases. It is within the sound discretion of the court to determine whether an incarcerated party's presence is required at a hearing in a civil case and issue an order of *habeas corpus ad testificandum*. *Beahringer v. Roberts*, 334 Ill. App. 3d 622, 629 (2002), *as modified on denial of reh'g* (Oct. 11, 2002). *Allison*, 126 Ill. App. at 459-60. A trial court does not abuse its discretion by not issuing a writ of *habeas corpus* when the incarcerated party would have been unable to refute sufficient evidence of supporting allegations against him. *Odom v. Odom*, 133 Ill. App. 869, 870 (1971).

¶ 71 In the present case, the record reflects the court knew at least by June 2013 of Walker's incarceration. However, the fact that he was being held for multiple felonies supports one of

Jefferson's allegations in the motion that the court granted in the order Walker sought to strike. The record also supports other allegations in Jefferson's motion, including Walker's admission in open court during the May 17, 2012, proceeding to violating the POP and the documentation of Walker's criminal history. Therefore, though Walker's presence at the hearing was clearly at the discretion of the court, we find no abuse of that discretion as Walker would have been unable to refute the allegations made in Jefferson's motion to suspend his visitation. There is a reviewable lack of prosecution when the appellate court does not find the trial court abused its discretion in a decision regarding visitation rights of a noncustodial parent. See *Wittendorf v. Worthington*, 2012 IL App (4^{th}) 120525, ¶ 50.

¶ 72 Walker further alleges that the underlying order entered on May 31, 2013, was void as (1) they were procured by misrepresentation that the statute under which the case was tried did not require Walker's requested guardian *ad litem*; (2) it was obtained by fraud due to Jefferson's alleged omissions about her mental illnesses; (3) it violates the custody agreement forgoing such litigation until after D.R.W. reached the age of three; and (4) it was barred by the doctrines of *res judicata* and collateral estoppel. We find that the trial court did not abuse its discretion in suspending Walker's visitation with D.R.W. and his arguments to the contrary fail.

¶ 73 Walker's first claim of error challenging which statute was applicable falls short. He argues that the trial court should have relied upon the Marriage Act instead of the Parentage Act asserted by Jefferson in an effort to prevent the assignment of a guardian *ad litem*.

¶ 74 A trial court's determination of visitation in a parentage case where, as here, the parties have never being married is governed by section 14 of the Parentage Act (750 ILCS 45/14 (West 2012)) that incorporates various sections of the Marriage Act (750 ILCS 5/101 *et seq.* (West 2012)). The mandatory appointment of a guardian *ad litem* under the Marriage Act was not

incorporated. However, appointment of a guardian *ad litem* is permitted at the court's discretion under the Parentage Act by the court's own motion or that of any party. 750 ILCS 45/18 (a-5) (West 2012).

¶ 75 In the instant case, there is no final decision denying Walker's motions to appoint a guardian *ad litem* for which he could appeal. See *Hallman*, 331 Ill. App. 3d at 67. Walker's emergency motion to assign a guardian *ad litem* filed on October 25, 2011, was originally deferred because it was not an emergency. It does not appear from the record that his demand for the appointment of a guardian *ad litem* was ever ruled upon.

¶ 76 Walker's second contention that the May 31, 2013, order was void because Jefferson committed fraud upon the court by not disclosing her alleged mental unfitness, also fails. Walker moved on November 20, 2012, for the court to issue a subpoena and grant access to Jefferson's mental health records in an effort to disclose to the court her history of mental illness. In her answer to that motion, Jefferson does not dispute her mental challenges. Additionally, at a hearing on January 22, 2013, Walker withdrew the motion. Because he has not provided this court with a transcript of that hearing for this court to discern if anything improper may have occurred, any doubts regarding the voluntariness of the motion's withdrawal or allegations of fraud are resolved against Walker. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Thus, we find there was no fraud perpetrated upon the court.

¶ 77 Walker's third argument that the underlying order suspending his visitation with D.R.W. violated the terms of the original custody agreement is without merit. The relevant term of the custody agreement prohibits either party from filing a motion to modify visitation prior to D.R.W. reaching the age of three, unless there are substantial changes in circumstances. At the time Jefferson filed the motion to suspend Walker's visitation, D.R.W. was one year old.

Nevertheless, Jefferson alleged in her petition that Walker presented a danger to D.R.W.'s physical, mental, moral, and emotional health. Walker not only had a history of felonies and incarcerations and admitted in open court to violating the plenary order of protection several times, but there was an active warrant out for his arrest for several additional felonies. We agree with the trial court that those allegations along with their supporting documentation and the fact that Walker was later incarcerated pursuant to the aforementioned warrants (see *Odom*, 133 Ill. App. 2d at 871) constituted a substantial change in circumstances allowing the change in Walker's visitation with D.R.W. without violating the custody agreement term.

¶ 78 Lastly, Walker's fourth argument is that the order suspending his visitation is void as it was barred by the doctrines of *res judicata* and collateral estoppel. This argument is also without merit. *Res judicata* bars relitigation of a claim when there has been a final judgment on the merits. *People ex rel. Burris v. Progressive Land Developers, Inc.*, 151 Ill. 2d 285, 294 (1992). The doctrine of collateral estoppel also bars relitigation but of an issue that had already been decided in a prior adjudication, actual litigation. *Hurlbert v. Charles*, 238 Ill. 2d 248, 255 (2010); *Nowak v. St. Rita High School*, 197 Ill. 2d 381, 390 (2001).

¶ 79 In this case, the order suspending Walker's visitation was initially granted without prejudice on February 13, 2013, as Walker was not present. Contrary to Walker's assertions, that was not a final judgment subject to the doctrine of *res judicata* because a hearing on the merits of the case had not been conducted. After several continuances due to Walker's absence and in spite of his continued absence, the hearing on Jefferson's motion to suspend Walker's visitation with D.R.W. was finally held on May 31. The hearing included testimony and evidence from Jefferson. Only then did the trial court issue the final judgment granting Jefferson's motion to suspend Walker's visitation.

¶ 80 With respect to collateral estoppel, the issue of suspending Walker's visitation had not been decided in any prior adjudication as there had been no actual litigation of the issue until May 31. The doctrines of *res judicata* and collateral estoppel, therefore, are inapplicable.

¶ 81 The trial court's order suspending Walker's visitation with D.R.W. on May 31, 2013, was not an abuse of its discretion because the trial court used the appropriate statute to govern the custody case; there was no evidence of fraud presented with respect to Jefferson's mental health; the custody term was not violated as there was a substantial change in circumstances; and the decision was not barred by the doctrines of *res judicata* or collateral estoppel. Thus the trial court's striking of Walker's motions for want of prosecution was justified as there was a lack of prosecution.

¶ 82 Coercion

¶ 83 Turning now to Walker's third and final issue on appeal, he asserts that he was coerced into agreeing to the original terms of the visitation agreement on November 18, 2011. He argues that had the issue of his pending plenary order of protection not been allowed in the discussions during his custody mediation, he would not have agreed to the original visitation terms.

¶ 84 "A case is moot if the issues involved in the trial court have ceased to exist because intervening events have made it impossible for the reviewing court to grant effectual relief to the complaining party." *People v. Roberson*, 212 Ill. 2d 430, 436 (citing *In re A Minor*, 127 Ill.2d 247, 255 (1989)); See *La Salle Nat. Bank v. City of Chicago*, 3 Ill. 2d 375, 378-79 (1954)("Where the issues involved in the trial court no longer exist, an appellate court will not review a case merely to decide moot or abstract questions, to establish a precedent, or to determine the right to, or the liability for, costs, or, in effect, to render a judgment to guide potential future litigation.")

¶ 85 Though Walker properly argued his claim of coercion in his emergency petition to vacate void judgment and modify custody agreement filed on November 13, 2013, and now appeals, the issue was rendered moot because of the subsequent suspension of his visitation, which was properly ordered. Thus, we need not address his allegation of coercion with respect to the original visitation terms.

¶ 86 CONCLUSION

¶ 87 We find the trial court erred in granting an extension of the plenary order of protection at the hearing on May 17, 2012, as it did not have personal jurisdiction over Walker. That granted extension and all subsequent orders and proceedings in the OP case are void. This includes the plenary order of protection proceeding where Walker erroneously alleges the trial judge displayed her inability to be impartial and favorably prejudged the merits of Jefferson's potential motion to extend the plenary order of protection. Not only does Walker fail to support his contention of the trial judge's partiality with evidence in the record but he has also waived this issue on appeal as he failed to argue it in the trial court. Also, the dialogue during the proceeding between the trial judge and Jefferson was merely courtroom management and not a showing of favorable prejudgment.

¶ 88 The void plenary order of protection extension and subsequent proceedings, however, have no effect on the trial court's proper striking of Walker's motions to vacate judgment for want of prosecution in the custody case. Suspension of his visitation in the underlying order was not an abuse of the trial court's discretion and the trial court did not err in striking Walker's motions to vacate for want of prosecution. Additionally, though Walker's claim of coercion regarding the original custody terms of D.R.W. is not properly before this court, it was rendered

moot by the order suspending his visitation. Accordingly, for the reasons set forth above, the judgments of the circuit court of Will County are affirmed in part and vacated in part.

¶ 89 Affirmed in part and vacated in part.