

**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).

2015 IL App (4th) 150042-U

NO. 4-15-0042

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**  
July 7, 2015  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

WILLIAM HALEY III,	)	Appeal from
Petitioner-Appellee,	)	Circuit Court of
v.	)	Sangamon County
ASHLEY EDWARDS,	)	No. 10F706
Respondent-Appellant.	)	
	)	Honorable
	)	Steven H. Nardulli,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.  
Justices Pope and Turner concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court erred when it (1) entered a temporary order modifying custody; and (2) took judicial notice of evidence presented at a prior custody hearing.

¶ 2 Following a December 2014 custody hearing, the trial court entered an order awarding temporary custody of L.H. to petitioner, William Haley III. Respondent, Ashley Edwards, petitions this court for leave to appeal pursuant to Illinois Supreme Court Rule 306(a)(5) (eff. July 1, 2014), as an interlocutory order affecting the care and custody of her son. She argues the trial court erred by granting William's petition for temporary custody and taking judicial notice of evidence presented at a prior hearing. We vacate the temporary custody order and remand for a new hearing before a different judge.

¶ 3 I. BACKGROUND

¶ 4 The parties are familiar with the facts and acrimonious history of this case and we set forth only those facts necessary to understand this court's disposition.

¶ 5 A. Procedural History

¶ 6 The parties, Ashley Edwards and William Haley III, were in a relationship and had one child together, L.H. (born September 2, 2010).

¶ 7 In September 2010, William signed a voluntary acknowledgement of paternity and filed a *pro se* petition to establish parentage, seeking exclusive custody of L.H. William never set the matter for hearing. In April 2011, the Sangamon County State's Attorney's office filed a petition to intervene and a complaint for support. In May 2011, the trial court ordered William to pay \$40 per week in child support. Although the support order did not reference custody or visitation, section 14(a)(2) of the Illinois Parentage Act of 1984 (750 ILCS 45/14(a)(2) (West 2012)) states "the establishment of a support obligation \*\*\* shall be considered a judgment granting custody to the other parent."

¶ 8 In October 2013, William filed a "petition to establish custody and visitation" requesting the trial court establish "reasonable and liberal visitation." In February 2014, after Ashley failed to attend mediation and failed to appear at previously scheduled hearings, the trial court entered a default judgment against Ashley, awarding custody of L.H. to William. Later that same month, Ashley moved to vacate the default judgment on grounds she did not receive notice of the hearings. The court vacated the default judgment, entered a temporary order granting custody to William, and ordered the parties to attend mediation to find a temporary visitation schedule. Once the default judgment awarding custody to William was vacated, the court apparently treated William's petition as a petition to modify custody based upon a May 2011 child support order.

¶ 9

## B. The April 2014 Hearing

¶ 10

On April 23, 2014, a hearing was held on the issues of custody and visitation.

The trial court heard testimony from William and Ashley, the maternal and paternal grandparents, and Officer Michael Gamble. This court summarized the evidence as follows:

"The evidence established the parties' relationship with each other was quite volatile. William accused Ashley of denying him visitation for extended periods of time, acting inappropriately at custody exchanges, and raising L.H. in an unstable environment. Ashley accused William of not being involved in L.H.'s life and making disparaging remarks about her in front of L.H. Several witnesses testified, giving varying accounts of two separate incidents where Ashley became physically violent, endangering L.H.'s health and safety. One incident involved Ashley driving to William's house with L.H. in the backseat, barging into his house, refusing to leave, and knocking items off a television stand. A second incident involved Ashley accusing her then boyfriend, Carlos, of sexually abusing her son. When Carlos attempted to leave, Ashley followed him with a hammer and smashed his car's front and rear windshields. Ashley acknowledged she consumed alcohol and smoked marijuana prior to her argument with Carlos. Each party testified about particular examples of the other's inability to cooperate and facilitate L.H.'s relationship with the

other parent." *Haley v. Edwards*, 2014 IL App (4th) 140400-U,  
¶ 13 (unpublished order pursuant to Supreme Court Rule 23).

¶ 11 C. Trial Court's Findings

¶ 12 On April 25, 2014, the trial court entered a written order finding clear and convincing evidence a change in circumstances occurred and concluded it was in L.H.'s best interest to modify custody. The court ordered L.H. to be placed in William's custody and awarded Ashley reasonable and liberal visitation. The court further ordered Ashley to pay \$100 per month child support.

¶ 13 D. Appeal

¶ 14 Ashley appealed the custody and child-support orders of April 25, 2014. On appeal, we found the trial court lacked jurisdiction to *sua sponte* modify custody and support because the only pleading before the court was William's petition for visitation, not custody. *Haley*, 2014 IL App (4th) 140400-U (unpublished order under Supreme Court Rule 23). Additionally, the court's April 25, 2014, order violated Ashley's due-process rights since the record on appeal failed to show she had notice the court might consider or determine custody at the hearing on William's petition for visitation. We explained:

"Once the default judgment awarding custody to William was vacated, the court apparently treated later proceedings as dealing with custody and made a decision according to what the trial court believed was in the child's best interest. However, much of the evidence on which the court relied should never have been presented because no custody pleading was ever filed." *Id.* ¶ 36.

We vacated the trial court's orders, restored custody to Ashley, and remanded with directions to set a reasonable visitation schedule. *Id.*

¶ 15 E. Petition To Modify Custody

¶ 16 In November 2014, after custody of L.H. was restored to Ashley, William filed a "petition for temporary custody and child support" and a "petition to modify child custody." The petitions alleged a substantial change in circumstances and modification of custody would serve L.H.'s best interest. The petitions allege the following substantial changes in circumstances: Ashley (1) moving to Chicago; (2) refusing William visitation; (3) creating a dangerous environment by consuming alcohol and drugs; (4) falsely accusing her paramour of sexually assaulting L.H.; (5) engaging violent behavior while L.H. was under her care; (6) continuously disparaging and maligning William in L.H.'s presence; and (7) refusing to foster a positive relationship between L.H. and William.

¶ 17 F. The December 2014 Hearing

¶ 18 On December 22, 2014, a hearing was held before the same trial judge on William's petition for temporary custody. At the beginning of the hearing, the judge advised both parties he reviewed the transcript of the April 23, 2014, hearing and was taking judicial notice of the testimony presented that day. The judge instructed the parties to limit the testimony to matters occurring after the April 23, 2014, hearing and reminded the parties the burden is on William.

¶ 19 The trial court heard additional testimony from William and Ashley and the maternal and paternal grandmothers. After hearing the testimony, the court determined Ashley had not "changed her behavior" or "truly changed as an individual" and ordered L.H. to be returned to William, "at least on a temporary basis."

¶ 20 On January 8, 2015, the trial court entered its formal written order granting William's petition for temporary custody and child support. The written order states in part:

"Based upon the evidence presented, and based upon the evidence previously presented, the court finds that a change in circumstances affecting [L.H.] has occurred since the entry of the last custody order. The court finds that it is in the best interests of [L.H.] that he be placed in William's temporary custody. Although Ashley has taken steps to address some of the anger issues that caused the court significant concern when L.H. was originally placed with William, those concerns still exist."

The court further ordered Ashley to pay \$200 per month child support and awarded her reasonable and liberal visitation.

¶ 21 On January 22, 2015, Ashley filed in this court a petition for leave to appeal pursuant to Illinois Supreme Court Rule 306(a)(5) (eff. July 1, 2014). On February 26, 2015, we allowed Ashley's petition for leave to appeal.

¶ 22 This appeal followed.

¶ 23 II. ANALYSIS

¶ 24 Ashley argues the trial court erred when it took judicial notice of the April 2014 hearing and barred the parties from presenting evidence of events that occurred prior to April 2014. Ashley asks this court to vacate the temporary custody and child-support orders, restore her custody of L.H., and remand for a permanent custody hearing before a different judge.

¶ 25 As a preliminary matter, we strike the portions of Ashley's and Williams' briefs which improperly cite to the unpublished order in *Beattie v. Bybee*, 2013 IL App (5th) 130188

(unpublished order under Supreme Court Rule 23). An unpublished order "is not precedential and may not be cited by any party except" under limited circumstances not relevant here. Ill. S. Ct. R. 23(e) (eff. July 1, 2011).

¶ 26 We previously concluded Ashley's due process rights were violated at the April 2014 hearing and "much of the evidence on which the court relied should never have been presented because no custody pleading was ever filed." *Haley*, 2014 IL App (4th) 140400-U,

¶ 36. If Ashley had notice the court would consider custody, the evidence presented at the April 2014 hearing might have been different. Under these circumstances, it was impermissible for the court to take judicial notice of the evidence presented at the April 2014 hearing.

¶ 27 A. Epilogue

¶ 28 We appreciate the concern of the trial judge in attempting to make certain that he is making the best decision for the interests of L.H. This is one of the most difficult and important tasks a trial judge undertakes. However, the children and the parents are entitled to a certain degree of finality and conclusiveness when an order of custody is entered. Frequent changes in residence are difficult for all involved, especially for children in their formative years. "Changing schools, establishing new friendships, assimilating into new neighborhoods, and the like can be traumatic even if the family unit is intact." *In re Marriage of Valliere*, 275 Ill. App. 3d at 1101, 657 N.E.2d at 1044. The reality of the situation before this court is L.H. has been bounced back and forth between Springfield and County Club Hills, from one parent to the other. Custody has been changed two times in the past year and we are mindful a reversal of the trial court's decision will result in uprooting L.H. yet again. L.H. is now four years old and might well be starting kindergarten in the autumn of this year. As our colleagues in the First District have stated, the best interests of the child are the paramount concern for appellate courts in

custody cases, and "[t]he strictures of the legal system should not operate to cause more chaos." *Carroll v. Carroll*, 64 Ill. App. 3d 925, 929, 382 N.E.2d 7, 10 (1978).

¶ 29 Accordingly, we remand this cause for a full custody hearing before a different judge and restore Ashley with custody of L.H. We assume a reasonable visitation schedule can be implemented and hope the trial court can enter a final order before the start of the school year.

¶ 30 Given our disposition of this case, we do not address any other issues.

¶ 31 III. CONCLUSION

¶ 32 We vacate the custody and child-support order entered January 8, 2015. We remand to the trial court for a full custody hearing before a different judge. We restore physical custody of L.H. to Ashley until the trial court has entered the permanent order.

¶ 33 Vacated and remanded for further proceedings.