

**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) 150340-U

NO. 4-15-0340

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

December 18, 2015

Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

DAWN IVANCICTS,

Petitioner-Appellee,

v.

MICKEY GRIFFITH,

Respondent-Appellant.

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Appeal from

Circuit Court of

Livingston County

No. 14OP6

Honorable

Robert M. Travers,

Judge Presiding.

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JUSTICE HOLDER WHITE delivered the judgment of the court.

Justices Turner and Appleton concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court reversed, concluding the expiration of the plenary stalking no contact order left nothing with legally binding effect for the trial court to exercise its jurisdiction over.

¶ 2 In January 2014, the trial court entered a plenary stalking no contact order, to expire January 31, 2015, pursuant to section 100 of the Stalking No Contact Order Act (Act) (740 ILCS 21/100 (West 2014)). On January 22, 2015, petitioner, Dawn Ivanciets, filed a motion to extend the plenary order and set the matter for a hearing on March 4, 2015. On March 4, 2015, respondent, Mickey Griffith, filed a motion to strike petitioner's motion to extend the order, principally arguing the court lacked jurisdiction to extend the plenary order because the order expired on January 31, 2015. On March 4, 2015, the court denied respondent's motion to strike and entered an agreed interim order pending interlocutory appeal, which extended the plenary order to August 28, 2015.

¶ 3 In March 2015, respondent filed a motion to reconsider or, in the alternative, for question certification pursuant to Illinois Supreme Court Rule 308 (eff. Jan. 1, 2015). In April 2015, the court declined to reconsider its ruling. However, the court agreed to certify the following questions for interlocutory appellate consideration:

"(1) Whether, under the provisions of 740 ILCS 21/105, the filing of a motion for extension of a [p]lenary [n]o [s]talking [o]rder tolls the expiration of that order?"

"(2) Whether, under the provisions of 740 ILCS 21/105, the court has jurisdiction to extend a [p]lenary [n]o [s]talking [o]rder after that order expires, absent any tolling of that expiration?"

"(3) Whether the [p]etitioner's [m]otion to [e]xtend was sufficient to put the [r]espondent on [n]otice of the bases upon which [p]etitioner relied to seek an extension, and, if not, whether it was sufficient to toll the expiration of the plenary order, provided that tolling is found to exist?"

In June 2015, this court granted leave to appeal. We answer the first question in the negative. As to the second question, we find the court has jurisdiction to adjudicate motions of this nature, but the expiration of the plenary order left nothing with legal effect for the court to exercise jurisdiction over. Because we reverse and remand for the circuit court to vacate the interim order, we decline to address the third certified question.

¶ 4 I. BACKGROUND

¶ 5 In January 2014, petitioner filed a petition for a stalking no contact order, alleging respondent drove straight toward her and swerved at the last minute to avoid contact on two

occasions. The petition further alleged respondent discharged a BB rifle in her direction and threatened to burn down her shed. On January 31, 2014, the trial court entered a plenary stalking no contact order, prohibiting respondent from contacting petitioner and requiring him to stay 50 feet from petitioner except when the parties were in vehicles on the lane accessing their adjoining properties. The order was to remain in effect until January 31, 2015. The form order contained the following clause: "This order can be extended upon notice filed in the office of the Clerk of this Court and a hearing held **prior to the expiration of this Order**. NOTE: To ensure adequate time for a hearing, it is recommended that Petitioner seek an extension at least 3 weeks prior to the expiration of this order." (Emphasis in original.)

¶ 6 On January 22, 2015, petitioner filed a motion to extend the plenary stalking no contact order, alleging, "[t]here has been no change of circumstances since the entry of the plenary order \*\*\* in this cause, and [petitioner is] fearful that without this [o]rder, [r]espondent's conduct will resume." The matter was set for a hearing on March 4, 2015. On March 4, 2015, respondent filed a motion to strike petitioner's motion to extend the plenary order. In the motion to strike, respondent argued the trial court lacked jurisdiction to extend the plenary order because the order expired on January 31, 2015, and no provision of the Act provided for tolling of the expiration upon the filing of a motion to extend the order. Alternatively, respondent argued the motion to extend was facially inadequate because it did not sufficiently notify respondent of the basis for extension of the order. Respondent further argued his compliance with the stalking no contact order belied petitioner's claim circumstances had not changed. On March 4, 2015, the court denied respondent's motion to strike and entered an agreed interim order pending appeal, which expired August 28, 2015. In August 2015, the interim order was again extended to January 15, 2016.

¶ 7 On April 20, 2015, the trial court declined to reconsider its ruling on respondent's motion to strike, but certified the three questions now before this court.

¶ 8 This interlocutory appeal followed.

¶ 9 II. ANALYSIS

¶ 10 On appeal, respondent asks this court to consider whether the (1) filing of a motion to extend a plenary stalking no contact order tolls the expiration of that order under section 105 of the Act; (2) trial court has jurisdiction to extend an expired plenary stalking no contact order, assuming the expiration is not tolled by the filing of a motion to extend; and (3) motion to extend sufficiently (a) notified respondent of the bases for extension of the order, or (b) tolled the expiration, if we decide the Act does provide for tolling of expiration.

¶ 11 A. Tolling Under Section 105 of the Act

¶ 12 Respondent argues nothing in section 105 of the Act provides for the tolling of the expiration of a plenary order upon the filing of a motion to extend that order. This is a matter of statutory interpretation, presenting a question of law which we review *de novo*. *Benjamin v. McKinnon*, 379 Ill. App. 3d 1013, 1020, 887 N.E.2d 14, 20 (2008).

¶ 13 In interpreting the Act, we seek to ascertain and give effect to the intention of the legislature. *Id.* The statutory language is the best indicator of legislative intent. *McElwain v. Office of Illinois Secretary of State*, 2015 IL 117170, ¶ 12, 39 N.E.3d 550. We give words their plain and ordinary meaning, viewed in light of other relevant statutory provisions. *Benjamin*, 379 Ill. App. 3d at 1020, 887 N.E.2d at 20. We give effect to clear and unambiguous language without resort to other tools of statutory interpretation. *Id.*

¶ 14 The Act provides victims of stalking a civil remedy requiring the offenders to stay away from the victims. 740 ILCS 21/5 (West 2014). A victim may obtain a plenary stalking no

contact order upon serving the respondent with notice of the hearing and establishing (1) personal jurisdiction under section 50 of the Act; (2) the requirements of section 80 of the Act are satisfied; (3) respondent has appeared or process was served under section 60 of the Act; and (4) respondent has answered or is in default. 740 ILCS 21/100 (West 2014).

¶ 15 Section 105 of the Act addresses the duration and extension of stalking no contact orders. Plenary orders "shall be effective for a fixed period of time, not to exceed 2 years." 740 ILCS 21/105(b) (West 2014). However,

"Any emergency or plenary order may be extended one or more times, as required, provided that the requirements of Section 95 or 100, as appropriate, are satisfied. If the motion for extension is uncontested and the petitioner seeks no modification of the order, the order may be extended on the basis of the petitioner's motion or affidavit stating that there has been no material change in relevant circumstances since the entry of the order and stating the reason for the requested extension." 740 ILCS 21/105(c) (West 2014).

¶ 16 Respondent argues the language of the statute is silent as to whether the filing of a motion to extend a plenary order tolls the expiration of that order. Respondent contends it is within the province of the legislature to include express tolling provisions in statutory language, and the absence of such language indicates no tolling will occur. Specifically, respondent points to section 5-6-4(a) of the Unified Code of Corrections (Code) as an example of a statute where the legislature saw fit to include an express tolling provision. 730 ILCS 5/5-6-4(a) (West 2014). Section 5-6-4 of the Code relates to petitions alleging probation violations. In pertinent part,

section 5-6-4 reads: "Personal service of the petition for violation of probation or the issuance of such warrant, summons[,] or notice shall toll the period of probation \*\*\* until the final determination of the charge, and the term of probation \*\*\* shall not run until the hearing and disposition of the petition for violation." *Id.*

¶ 17           However, petitioner concedes the plenary order in this cause expired on January 31, 2015, more than 30 days before the March 4, 2015, hearing on the motion to extend. Petitioner argues there is jurisdiction to extend an order after the expiration of the order, so there need not be any tolling of the expiration of the order for the trial court to extend that order. We disagree.

¶ 18           As we noted earlier, the provisions of a statute are not to be read in isolation. *Benjamin*, 379 Ill. App. 3d at 1020, 887 N.E.2d at 20. Section 105(c) provides "[a]ny emergency or plenary order may be extended one or more times, as required, provided that the requirements of Section 95 or 100, as appropriate, are satisfied. \*\*\* Extensions may be granted only in open court and not under the provisions of subsection (c) of Section 95, which applies only when the court is unavailable at the close of business or on a court holiday." 740 ILCS 21/105(c) (West 2014). Section 105(d) provides "[a]ny stalking no contact order which would expire on a court holiday shall instead expire at the close of the next court business day." 740 ILCS 21/105(d) (West 2014). Thus, the statute provides for the tolling of an order's expiration date only in the event the expiration date falls on a holiday—a day when a petitioner could not avail themselves of an extension according to subsection (c). Nothing in the statute suggests a motion to extend a plenary order suspends the expiration date of the order, and we decline to read a tolling provision into the Act. "[W]e may not depart from plain statutory language by reading into the statute

exceptions, limitations, or conditions not expressed by the legislature." *McElwain*, 2015 IL 117170, ¶12, 39 N.E.3d 550.

¶ 19 We also find unpersuasive the trial court's reasoning regarding a policy reason to consider a motion to extend after the plenary order has expired. The court stated "self-represented litigants \*\*\* really aren't going to be familiar with the statute or certainly they're not going to be in a position to address arguments such as this; and they might well file something on the last day or set it for hearing after the expiration of the order itself." We find the court's concern misplaced in light of the language of the plenary order itself. The order contains an express clause stating, "This order can be extended upon notice filed in the office of the Clerk of this Court and a hearing held **prior to the expiration of this Order**. NOTE: To ensure adequate time for a hearing, it is recommended that Petitioner seek an extension at least 3 weeks prior to the expiration of this order." (Emphasis in original.) This notice to the petitioner clearly informs *pro se* litigants a motion to extend *and* a hearing on that motion must occur before the plenary order expires. This warning also supports our conclusion that a motion to extend does not toll the expiration of a plenary order.

¶ 20 B. Jurisdiction To Extend an Expired Order Under the Act

¶ 21 The next question certified for our consideration concerns the trial court's jurisdiction over a motion to extend an expired order. Petitioner asserts the Act intends the court to have continuing jurisdiction over an expired plenary stalking no contact order. Petitioner cites only one case in support of her argument: *Lutz v. Lutz*, 313 Ill. App. 3d 286, 728 N.E.2d 1234 (2000).

¶ 22 In *Lutz*, respondent appealed the extension of a plenary order of protection entered pursuant to the Illinois Domestic Violence Act of 1986 (Domestic Violence Act) (750

ILCS 60/220 (West 1998)). The original plenary order was set to expire on October 28, 1998, at 9:20 a.m. *Lutz*, 313 Ill. App. 3d at 288, 728 N.E.2d at 1236. On October 20, 1998, the petitioner filed a motion to modify the plenary order, which the trial court treated as a motion to extend. *Id.* On October 28, 1998, at 2:20 p.m., five hours after the original plenary order expired, the court entered an order extending that original plenary order. *Id.* at 290, 728 N.E.2d at 1237. The respondent contended the court erred in extending an order already expired by its own terms. *Id.* This court rejected that argument, stating:

"[P]etitioner filed her motion to extend *prior* to the expiration of the original order and the matter was scheduled for hearing on the day of expiration. While a technical argument may be made the original order had expired at the time of extension, we find the minor lapse of time to be *de minimus*. We find no error on the part of the trial court in issuing an extended order at this time."

(Emphasis in original.) *Id.*

¶ 23 As an initial matter, we note the provision for extending plenary orders at issue in *Lutz* is practically identical to the provision at issue in this case. The Domestic Violence Act's extension provision reads, in relevant part:

"Any emergency, interim[,] or plenary order may be extended one or more times, as required, provided that the requirements of Section 217, 218[,] or 219, as appropriate, are satisfied. If the motion for extension is uncontested and petitioner seeks no modification of the order, the order may be extended on the basis of petitioner's motion or affidavit stating that there has been no



material change in relevant circumstances since entry of the order and stating the reason for the requested extension." 750 ILCS 60/220(e) (West 2014).

The extension provision at issue in this matter reads, in pertinent part:

"Any emergency or plenary order may be extended one or more times, as required, provided that the requirements of Section 95 or 100, as appropriate, are satisfied. If the motion for extension is uncontested and the petitioner seeks no modification of the order, the order may be extended on the basis of the petitioner's motion or affidavit stating that there has been no material change in relevant circumstances since the entry of the order and stating the reason for the requested extension." 740 ILCS 21/105(c) (West 2014).

Because the two provisions are practically identical, we find the court's reasoning in *Lutz* instructive.

¶ 24 The case at bar does not present the *de minimus* delay present in *Lutz*. Here, the trial court entered an order extending the plenary order 32 days after that order expired. We cannot say the lapse in time was *de minimus*. The stalking no contact order expired on January 31, 2015, and had been without legal effect for 32 days by the time the court held a hearing on March 4, 2015. Therefore, the order extending the expired plenary order merely "extended" a document with no legal effect.

¶ 25 Petitioner misstates the holding in *Lutz* in her brief. The *Lutz* court did not find the "technical argument" there is no authority to extend an expired order at odds with the statutory scheme or public policy. Indeed, the arguments made in *Lutz* were not characterized as

jurisdictional. Moreover, the *Lutz* court reviewed the trial court's extension of the protective order under an abuse-of-discretion standard and found the five-hour gap between the plenary order's expiration and the entry of the extension order *de minimus*. *Lutz*, 313 Ill. App. 3d at 289, 728 N.E.2d at 1237.

¶ 26 Our decision is also informed by the Second District in *Scheider v. Ackerman*, 369 Ill. App. 3d 943, 860 N.E.2d 1140 (2006). In *Scheider*, the defendant asked the appellate court to declare a plenary order of protection void. *Id.* at 944, 860 N.E.2d at 1140. The defendant argued the trial court lost jurisdiction over the matter when an interim order expired before the entry of the plenary order. *Id.* The Second District rejected this argument, concluding, "[n]othing in the law causes a trial court to lose jurisdiction over an order of protection proceeding before it rules on the petitioner's entitlement to a plenary order." *Id.* at 945, 860 N.E.2d at 1141. The court determined jurisdiction continued until the trial court entered a final order ruling on the petitioner's right to a plenary order and the expiration of the interim order did not extinguish jurisdiction over the conclusion of proceedings on the plenary order.

¶ 27 Unlike the *Scheider* court, we are presented with an expired plenary order, not an interim order. Thus, there is no overarching proceeding for the court to exercise jurisdiction over in this case as there was in *Scheider* following the expiration of an interim order. Here, the trial court entered a final ruling on the plenary order. The court, as a general rule, has the authority to exercise subject matter jurisdiction over motions to extend plenary stalking no contact orders. "Subject matter jurisdiction refers to the power of a court to hear and determine cases of the general class to which the proceeding in question belongs [citation], and this jurisdiction extends to all justiciable matters [citations]." (Internal quotation marks omitted.) *LVNV Funding, LLC v.*

*Trice*, 2015 IL 116129, ¶ 35, 32 N.E.3d 553. However, in this situation, the expiration of the plenary order left nothing with legally binding effect for the court to exercise jurisdiction over.

¶ 28 Petitioner contends section 105 provides for continuing jurisdiction to extend expired plenary orders. In support, petitioner points to provisions regarding the duration of plenary orders entered in conjunction with criminal prosecutions, a situation inapplicable to the case at bar. 740 ILCS 21/105(b) (West 2014). Petitioner also contends respondent's view of section 105(c) allows only for uncontested extensions and would require a petitioner to file for a new stalking no contact order any time a respondent objects to an extension.

¶ 29 We disagree with this conclusion and with petitioner's characterization of respondent's position. If petitioner timely filed a motion for extension and set the hearing for a date prior to the expiration of the order—as the order in this case explicitly directed her to do—the court could have exercised its jurisdiction to extend the plenary order even if respondent objected. The crucial point on which this case turns is the expiration of the plenary order, not the time the motion to extend is filed, as petitioner maintains. This is so because, by definition, there is nothing with legal effect left for the court to exercise jurisdiction over once the order expires. Black's Law Dictionary defines expiration as follows: "A coming to an end; esp., a formal termination on a closing date." Black's Law Dictionary 619 (8th ed. 2004). One cannot extend that which no longer exists. Accordingly, we find the court erred in denying respondent's motion to strike petitioner's motion to extend and reverse and remand for the circuit court to vacate the interim order.

¶ 30 We note petitioner raised a constitutional argument regarding jurisdiction for the first time at oral argument. Although petitioner's new claim does not affect our decision, we take this opportunity to remind counsel we will not consider arguments raised for the very first time at

oral argument. *Strategic Energy, LLC v. Illinois Commerce Comm'n*, 369 Ill. App. 3d 238, 246, 860 N.E.2d 361, 369 (2006).

¶ 31 C. Sufficiency of the Motion To Extend

¶ 32 Because we reverse and remand for vacatur of the interim order, we need not consider the sufficiency of petitioner's pleading.

¶ 33 III. CONCLUSION

¶ 34 For the reasons stated, we reverse the trial court's judgment and remand with instructions.

¶ 35 Reversed and remanded.