FIRST DIVISION
FEBRUARY 1, 2016

No. 1-15-1455

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re the Marriage of	)	Appeal from the
	)	Circuit Court of
RAYMOND C. GUNN,	)	Cook County.
	)	
Plaintiff-Appellant,	)	
	)	No. 2009 D 7204
v.	)	
	)	
IVY C. DAVIS,	)	Honorable
	)	Jeanne C. Bernstein,
Defendant-Appellee.	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Liu and Justice Connors concurred in the judgment.

ORDER

¶ 1 *Held*: Circuit court did not err in denying plaintiff ex-husband's section 2-1401 motion to vacate a court order requiring him to produce his minor child in Illinois, where the order was not void and was not a modification of an existing custody arrangement between the parties. Purge provision in a body attachment order entered against ex-husband for failing to comply with court order properly allowed ex-husband to purge himself of civil contempt of court. Circuit court did not mischaracterize the contempt of court as civil, rather than criminal, in nature.

¶ 2 This appeal arises from the April 15, 2015 order entered by the circuit court of Cook County, which denied plaintiff Raymond Gunn (Raymond)'s motion to vacate the circuit court's

January 13, 2015 ruling ordering his and defendant Ivy Davis (Ivy)'s minor child, C.J.G., to be produced in Illinois. The April 15 2015 order also found Raymond in civil contempt of court, resulting in the issuance of a body attachment order for him, for failure to comply with multiple previous court orders. On appeal, Raymond argues that the circuit court erroneously denied his motion to vacate filed pursuant to section 2-1401 of the Illinois Code of Civil Procedure (Code) (735 ILCS 2-1401 (West 2012)). For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 3 BACKGROUND

¶ 4 On October 1, 2003, Raymond and Ivy married in Cook County, Illinois. Ivy was 16 years old and eight months pregnant with the couple's child at that time. Raymond was then 22 years old. On November 7, 2003, the couple's daughter, C.J.G, was born. By March 2004, Raymond and Ivy's marriage had deteriorated and they ceased living in the same household. Ivy then moved with C.J.G. to Georgia to reside with family, while Raymond continued to live in Illinois.

¶ 5 In January 2009, Ivy signed a parental consent document authorizing Raymond to travel with C.J.G. to Ghana, West Africa, stating that it was also Ivy's intent to subsequently join them for a visit in Ghana. According to Ivy, it was her understanding at the time she signed the parental consent form that Raymond and their child would return to the United States in May 2009. Raymond's father and stepmother lived in Ghana. Raymond did not return to the United States with C.J.G.

¶ 6 On August 3, 2009, Raymond, through counsel, filed a petition for dissolution of marriage in the circuit court of Cook County, claiming that he and the child then currently

resided in Olympia Fields, Illinois. Ivy was unrepresented by counsel and remained *pro se* throughout the entirety of the divorce proceedings.

¶ 7 On February 8, 2010, Ivy, acting *pro se*, filed a motion asking the court to require Raymond to return C.J.G. to the United States, and asking the court to hold him in contempt of court for failing to do so. On March 4, 2010, the circuit court of Cook County entered an order requiring Raymond, Ivy, and their child to be present for a status hearing before the court on April 29, 2010. On March 5, 2010, Raymond, by counsel, filed a motion for temporary child custody (motion for temporary custody), requesting that he be granted temporary custody of C.J.G. and Ivy only be awarded visitation rights. In the motion, Raymond asserted that he was the primary caretaker of the child, that he and the child resided in Accra, Ghana, and that the child attends a private school in Accra. On April 29, 2010, Ivy filed a *pro se* motion, asking that temporary physical custody of C.J.G. be awarded to her and Raymond be awarded visitation of the child in the United States only, and requesting that C.J.G.'s passport be "revoked" so that Raymond could no longer remove her from the United States "due to [his] not allowing me to see [C.J.G.] for 1½ years." On April 30, 2010, Raymond filed an amended motion for temporary custody, requesting that he be allowed temporary custody of C.J.G. and be allowed to remove her to Ghana, and asking that Ivy only be granted supervised visitation rights.

¶ 8 On May 7, 2010, the circuit court entered an order granting Raymond permission to travel from Chicago to Ghana with C.J.G., "subject to further hearing on temporary custody and removal," but to return the child to Illinois no later than July 22, 2010. In a separate order entered on the same day, the circuit court granted Ivy supervised visitation, and stated that "[i]n the event of international dispute regarding child custody issue, Illinois will be the jurisdiction

that adjudicates the issue. Illinois being the home state of the child and having that jurisdiction pursuant to the Hague Convention."

¶ 9 On August 3, 2010, the circuit court entered an order granting Raymond temporary custody of C.J.G, and granting him leave to remove the child to Ghana until December 22, 2010, when he shall return with the child to Illinois. The order also granted Ivy "liberal telephone and e-mail contact" with the child, as well as supervised visits with the child in December 2010, when the child is to return to Illinois on December 22, 2010. It is unclear from the record whether Raymond returned to Illinois with C.J.G. by December 22, 2010.

¶ 10 On April 25, 2011, the circuit court held a hearing, at which Ivy acted *pro* se and Raymond was represented by counsel, and thereafter entered a judgment of dissolution of marriage, dissolving the marriage between Raymond and Ivy. The judgment provided Raymond with sole custody of C.J.G., as well as leave of court to remove the child from the United States to Ghana. Handwritten text next to one of the provisions in the judgment for dissolution, states that C.J.G. "by agreement of the parties is being educated in Ghana." The judgment awarded Ivy supervised visitation with C.J.G. in the State of Illinois for the next 18 months, provided that Ivy posts a $5,000 bond with the Clerk of the Circuit Court of Cook County before June 30, 2011. Upon full compliance with her 18-month supervised visitation, the clerk shall then refund her $5,000 bond. The judgment ordered that Ivy's visits be supervised by C.J.G.'s maternal grandmother, Carol Davis. The judgment also granted Ivy visitation rights with the child for two weeks during the summer holiday and one week during the Christmas holiday. The judgment specified that the circuit court "retains jurisdiction of the aforementioned matters for the purpose of enforcing all the terms and conditions of the Judgment for Dissolution of Marriage." The

record indicates that since the judgment was entered in 2011, Raymond had moved back to Illinois, while C.J.G. remained in Ghana with Raymond's father and stepmother.

¶ 11 On May 20, 2014, Ivy, now represented by counsel, filed a petition to modify the custody arrangement (petition to modify), arguing that there had been a substantial change in circumstances such that modification was warranted. Ivy argued, *inter alia*, that for the past three years, C.J.G. had not lived with Raymond; that C.J.G. had not been in the United States in the past three years to visit Raymond; that Ivy had not had any form of regular parenting time with C.J.G. for the past five years; that Ivy had not been provided with the child's mailing address; that Ivy's attempts to communicate with C.J.G. by telephone or writing were frequently thwarted during the past five years; that Ivy had not been provided with, or had any access to, the child's medical or school records; that from December 27, 2013 to January 4, 2014, the child visited Illinois and spent unsupervised overnight visits with Ivy, to which Raymond did not object; that on January 4, 2014, C.J.G. returned to Ghana with Raymond's father and stepmother, but was not in the custody of Raymond; that the child was then currently suffering from malaria and extensive dog bites from dogs on the property owned by Raymond's father and stepmother in Ghana; that C.J.G. was regularly under the care of foreign nannies, cooks and tutors while Raymond's father and stepmother leave Ghana for lengthy periods of time for travel; that the child had experienced both physical and verbal abuse from caretakers in Ghana; and that it was in the best interest of the child to be returned to the United States and Ivy be granted sole permanent custody of the child. Ivy requested that the circuit court enter an order requiring C.J.G. to return to Illinois; transferring sole temporary and permanent custody to Ivy; setting a temporary parenting time schedule for visitation with Ivy during the pendency of this case; allowing telephone contact between Ivy and the child on a regular basis; providing Ivy with

information regarding the location and residence of the child in Ghana; and providing Ivy with information regarding the child's medical condition and all past and present medical and school records.

¶ 12 On January 13, 2015, the circuit court entered an order stating that: (1) the minor child, C.J.G., be produced in Illinois on or before February 15, 2015; (2) Raymond's attorney shall inform Ivy's attorney by January 20, 2015 when the minor child will arrive in Illinois and of her flight itinerary; (3) the minor child shall remain in Illinois until further order of court; (4) Matthew Ingram has been appointed as child representative for the minor child, C.J.G.; (5) hearing regarding Ivy's petition to modify is set for February 27, 2015; (6) that Ivy have visitation with the minor child in Illinois and post a bond pursuant to the judgment entered on April 25, 2011, and that once bond is posted, Ivy shall have visitation in Illinois with the minor child when Ivy travels to Illinois from Georgia; (7) the deposition of Raymond shall take place on February 4, 2015, the location of which shall be communicated to Raymond's counsel by January 30, 2015; (8) Ivy's counsel acknowledges that discovery may not be tendered to Ivy's counsel prior to the hearing on February 5, 2015; (9) a hearing is set for February 5, 2015 on whether Ivy's visitation with the minor child, C.J.G. shall be supervised or unsupervised pursuant to the judgment entered on April 25, 2011; and (10) both parties are ordered to appear in court on February 5, 2015 for the hearing.

¶ 13 On January 23, 2015, Raymond filed a motion to reconsider the court's January 13, 2015 order. On January 29, 2015, Ivy filed a petition for rule to show cause, asking the court to issue a rule requiring Raymond to show cause as to why he should not be held in indirect civil contempt for his willful violation of the court's January 13, 2015 order. Ivy argued that Raymond's counsel has failed to provide Ivy's counsel with C.J.G.'s flight itinerary by January

20, 2015, as required by the January 13, 2015 order. On that same day, January 29, 2015, Raymond filed an amended motion to reconsider the court's January 13, 2015 order. Attached to the amended motion to reconsider are multiple exhibits, including a copy of a January 20, 2015 correspondence from C.J.G.'s private school in Ghana, denying a request made by Raymond's father for a leave of excused absence from school for the purpose of allowing the child to travel to Illinois.

¶ 14 On February 2, 2015, as a result of Raymond's failure to cooperate, counsel for Raymond filed a motion to withdraw from representation. On February 5, 2015, the circuit court entered an order stating that: (1) Raymond is ordered to comply with the January 13, 2015 order requiring him to produce the minor child, C.J.G., in Illinois on or before February 15, 2015; (2) motion to withdraw from representation filed by Raymond's counsel is hereby continued to the hearing date of February 27, 2015; (3) Raymond has failed to appear in court for the February 5, 2015 hearing and failed to comply with the court's January 13, 2015 order and a "body attachment order has been issued by this court on Raymond"; (4) the date of February 9, 2015 is stricken; and (5) this matter is set for hearing on February 27, 2015.

¶ 15 On February 18, 2015, Ivy filed a second petition for rule to show cause against Raymond, arguing that he has failed to produce C.J.G. in Illinois on or before February 15, 2015, in violation of the court's January 13, 2015 and February 5, 2015 orders.

¶ 16 On February 25, 2015, the circuit court entered an order stating that: (1) the minor child, C.J.G. be produced in Illinois, *instanter*; (2) Raymond has 21 days to file an appearance or hire new counsel; (3) the motion to withdraw from representation filed by Raymond's counsel is hereby granted; (4) Raymond has 21 days to respond to Ivy's two petitions for rule to show cause; (5) Raymond's passport was tendered to child representative, Matthew Ingram, in open

court and shall be held by Ingram until further order of court; (6) this cause is set for status/hearing on Ivy's petitions for rule to show cause on March 18, 2015; (7) the hearing scheduled for February 27, 2015 is hereby stricken."

¶ 17 On April 1, 2015, new counsel for Raymond filed an appearance before the court, along with a motion to vacate the court's January 13, 2015 order (motion to vacate) pursuant to section 2-1401 of the Code. See 735 ILCS 2-1401 (West 2012). On April 10, 2015, Ivy filed a response to Raymond's motion to vacate.

¶ 18 On April 15, 2015, following a hearing, the circuit court entered an order denying the motion to vacate: (1) Raymond's motion to vacate the January 13, 2015 order is denied; (2) Raymond "having failed to appear at February 5, 2015 hearing, having failed to comply with the court's January 13, 2015 and February 5, 2015 orders, and having failed to appear in court on April 15, 2015 for a court hearing[1] causing the court to hold [Raymond] in contempt. Rule was issued and returnable instanter"; (3) Raymond, "having been found in contempt of court causing the court to put body attachment [order] on him for his failure to appear in court, failure to produce the minor child, failure to appear for court ordered deposition, failure to appear for hearing on February 5, 2015 and April 15, 2015"; (4) Raymond "having been held in contempt of court and is remanded to the custody of the Cook County Jail until the minor child, C.J.G. is produced in Illinois. Bond is set at the production of the minor child, C.J.G., in Illinois. Purge to be production of minor child. Contempt has been ordered over [counsel's] objection"; (5) Raymond shall be able to avoid being arrested if he voluntarily surrenders himself to the Cook County Sheriff; (6) Raymond "shall remain in custody until the minor child, C.J.G. is produced

[1] Although counsel for both parties appeared in court on April 15, 2015, neither Raymond nor Ivy personally appeared on that court date.

in Illinois"; (7) finding of contempt and the issuing of Raymond's body attachment "is over counsel's objection per [Raymond's] motion to vacate ***." On that same day, a body attachment order was issued against Raymond for his failure to comply with the court's January 13, 2015 and February 5, 2015 orders, failure to comply with a court-ordered deposition, and failure to produce the minor child in Illinois.

¶ 19 On May 15, 2015, Raymond filed a timely notice of appeal. On May 28, 2015, Raymond filed an emergency motion to stay the body attachment order (emergency motion to stay) before this court. On May 29, 2015, this court granted the emergency motion to stay up to and including June 3, 2015, for the purpose of preserving the status quo pending the filing of a response by Ivy. On June 5, 2015, this court extended the stay up to and including June 22, 2015. However, on June 19, 2015, this court denied Raymond's emergency motion to stay and dissolved the May 29, 2015 and June 5, 2015 rulings, finding that the motion and supporting record "do not demonstrate that [Raymond] has a likelihood of success on the merits."

¶ 20 ANALYSIS

¶ 21 This court has jurisdiction over this appeal pursuant to Illinois Supreme Court Rule 304(b)(3) (eff. Jan. 1, 2006), which makes appealable, without the necessity of a special finding by the court, judgments and orders "granting or denying any of the relief prayed in a petition under section 2-1401 of the Code of Civil Procedure." See Ill. S. Ct. R. 304(b)(3) (eff. Jan. 1, 2006).

¶ 22 At the outset, we note that all of the parties' briefs contain deficiencies violating our supreme court rules. Neither Raymond nor Ivy's brief contains any record citations in the argument section, in violation of our Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008). Likewise, the brief filed before this court by the minor child's legal representative, Ingram,

violates Rule 341(h)(6) and (h)(7) (eff. July 1, 2008), as it is completely devoid of any citations to the record in either the statement of facts or the argument section. When parties' appellate briefs contain numerous Rule 341 violations, it is within this court's right to strike the briefs and dismiss the appeal. *In re Marriage of Petrik*, 2012 IL App (2d) 110495, ¶ 38. We decline to do so on this occasion because, despite the deficiencies in the briefs, with some effort, this court was able to locate the pertinent information within the record with which to resolve this appeal. However, we caution all parties that, in the future, failure to comply with the mandatory rules of our supreme court will result in having their briefs stricken and the appeal possibly dismissed.

¶ 23 Turning to the merits of the appeal, we note that the sole issue on appeal is whether the circuit court erred in denying Raymond's section 2-1401 motion to vacate the court's January 13, 2015 ruling ordering the minor child, C.J.G., to be produced in Illinois, and finding Raymond in contempt of court for failing to produce the child in Illinois and for failing to comply with multiple previous court orders. A circuit court's judgment on the pleadings or dismissal in a section 2-1401 proceeding is reviewed *de novo*. *In re Marriage of Streur*, 2011 IL App (1st) 082326, ¶ 30. However, section 2-1401 petitions decided after an evidentiary hearing are subject to an abuse of discretion standard of review on appeal. *People v. Vincent*, 226 Ill. 2d 1, 17 n. 4 (2007); *Paul v. Gerald Adelman & Associates, Ltd.*, 223 Ill. 2d 85, 95 (2006). Here, although the circuit court's April 15, 2015 written order denying Raymond's section 2-1401 motion to vacate specifies that the order was entered after a "hearing," no transcript of the proceedings was included in the record on appeal for us to determine whether an *evidentiary* hearing took place or simply a hearing on the parties' oral arguments that would warrant different standards of appellate review. Nevertheless, we need not decide which standard of review—*de novo* or abuse

of discretion—applies because under either standard, we find that the circuit court did not err in denying Raymond's motion to vacate.

¶ 24 Section 2-1401 of the Code provides a statutory mechanism by which a final order or judgment may be vacated or modified more than 30 days after its entry. 735 ILCS 5/2-1401 (West 2010). A petition brought under this provision is not a continuation of the original proceeding, but a commencement of a new cause of action, subject to the rules of civil practice, with the purpose of bringing to the attention of the circuit court facts not of record which, if known by the court at the time judgment was entered, would have prevented its rendition. *Streur*, 2011 IL App (1st) 082326, ¶ 30; *In re Marriage of Buck*, 318 Ill. App. 3d 489, 493 (2000). A section 2-1401 petitioner bears the burden to allege and prove facts sufficient to justify relief. *Buck*, 318 Ill. App. 3d at 493.

¶ 25 To be entitled to relief under section 2-1401, the petitioner must affirmatively set forth specific factual allegations supporting each of the following elements: (1) the existence of a meritorious claim or defense; (2) due diligence in presenting that claim or defense in the original action; and (3) due diligence in presenting the section 2-1401 petition. *Streur*, 2011 IL App (1st) 082326, ¶ 30. Specifically, to set aside a judgment based on newly discovered evidence, the evidence must be such as could not reasonably have been discovered at the time of or prior to the entry of the judgment. *Buck*, 318 Ill. App. 3d at 493. A section 2-1401 petition must be filed within two years of entry of the relevant final judgment, but any time during which the ground for relief is fraudulently concealed is excluded from the two-year period. 735 ILCS 5/2-1401(c) (West 2010).

¶ 26 Raymond argues that the circuit court erred in denying his motion to vacate the January 13, 2015 order. He first argues that the January 13, 2015 order was void, because the circuit

court lacked inherent power and statutory authority to order the child to be produced in Illinois, by claiming that it amounted to a "modification" of the custody and visitation agreement that was already set in place by the April 25, 2011 judgment for dissolution of marriage. Raymond argues that such *sua sponte* modification was an abuse of discretion on the court's part because no hearing had been held on modifying the child custody arrangement, where Ivy's petition to modify was still pending before the circuit court on January 13, 2015, and the "indefinite" nature of the child's return to Illinois amounted to a modification of the provisions in the April 25, 2011 judgment allowing for C.J.G. to be educated in Ghana and providing Raymond with leave of court to remove the child from the United States to Ghana. He claims that because the January 13, 2015 was void, he need not satisfy the section 2-1401 factors set forth above.

¶ 27 Ivy counters that the circuit court properly denied Raymond's motion to vacate, arguing that the January 13, 2015 order was not void and that Raymond was not entitled to relief where he failed to satisfy the statutory requirements under section 2-1401. She argues that the circuit court had subject matter jurisdiction, personal jurisdiction, and the inherent power to enter the January 13, 2015 order under both the Illinois Marriage and Dissolution of Marriage Act and the Illinois Uniform Child-Custody Jurisdiction and Enforcement Act.

¶ 28 Ingram, the minor child's court-appointed legal representative, argues that the circuit court did not err in denying Raymond's motion to vacate, where the court's January 13, 2015 order was not void, and neither the court nor Ivy were trying to relitigate the divorce or the terms of the April 2011 judgment for dissolution of marriage. Instead, Ingram argues, the circuit court had jurisdiction under the Illinois Uniform Child-Custody Jurisdiction and Enforcement Act to order the child to be produced in court in order for him, as the child's representative, to represent the minor.

¶ 29 A void order or judgment is, generally, one entered by a court without jurisdiction of the subject matter or the parties, or by a court that lacks the inherent power to make or enter the order involved. *McCarthy v. Pointer*, 2013 IL App (1st) 121688, ¶ 13. A void judgment is from its inception a complete nullity and without legal effect. *Id.* Once a court has obtained jurisdiction, an order will not be rendered void nor will the court lose jurisdiction merely because of an error or impropriety in the court's determination of the facts or law. *Id.* Section 2-1401 petitions alleging an order or judgment is void, "do not have to be brought within two years of the void order or judgment," nor do they need to allege a meritorious defense or due diligence under the statute. *Parker v. Murdock*, 2011 IL App (1st) 101645, ¶ 18.

¶ 30 Raymond does not dispute that the circuit court had personal jurisdiction over him, where he is a resident of Illinois and purposefully availed himself of the jurisdiction of the state by initiating divorce proceedings in an Illinois circuit court, filing responsive pleadings to Ivy's petition to modify the child custody arrangement in the same Illinois court, and filing other motions and pleadings prior to the circuit court's entry of the January 13, 2015 order. See *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (in order for personal jurisdiction to comport with federal due process requirements, defendant must have certain minimum contacts with the forum state such that maintaining the suit there does not offend traditional notions of fair play and substantial justice); *Bolger v. Nautica International, Inc.*, 369 Ill. App. 3d 947, 951 (2007) (the minimum contacts required for personal jurisdiction must be based on some act by which defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws). Nor does Raymond appear to argue that the circuit court lacked subject matter jurisdiction to enter the January 13, 2015 order mandating him to produce the minor child in court. Section 601 of the Illinois Marriage and

Dissolution of Marriage Act (Marriage Act) confers jurisdiction on Illinois courts "to make a child custody determination in original or modification proceedings" which may be commenced in the court by the filing of a petition by a parent. 750 ILCS 5/601 (West 2014); see also 750 ILCS 5/610 (West 2014) (modification of child custody judgments). Further, under sections 201 and 202 of the Illinois Uniform Child-Custody Jurisdiction and Enforcement Act (Child-Custody Jurisdiction Act), once Illinois has entered an original custody decree, the Illinois court retains continuing jurisdiction over the matter unless the court concedes jurisdiction to another state or determines that none of the parties or the child reside in Illinois. 750 ILCS 36/201, 202 (West 2014). Here, the April 25, 2011 judgment for dissolution of marriage, which resolved the issue of child custody, specifies that the circuit court "retains jurisdiction *** for the purpose of enforcing all the terms and conditions of the Judgment for Dissolution of Marriage." Although C.J.G. resides in Ghana, Raymond has continued to reside in Illinois since 2011 and his continued presence in the state grants the circuit court continuing and exclusive jurisdiction over the matter.

¶ 31 Raymond instead argues that the circuit court lacked "inherent power" to enter the January 13, 2015 ruling ordering the child to be produced in Illinois. However, pursuant to section 210 of the Child-Custody Jurisdiction Act, the court "may order a party to the [child custody] proceeding who is in this State to appear before the court in person with or without the child" and "may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this [s]ection." 750 ILCS 36/210 (West 2014). Thus, under the statutory authority of section 210, the circuit court had the inherent power to order C.J.G. to be physically produced in Illinois, in order to ensure her safety, where she had not returned to

Illinois since December 2013, Ivy had not seen her in at least one year, and it is unclear how much time had transpired since Raymond—the custodial parent—had physically seen C.J.G

¶ 32 Nor do we agree with Raymond's bald characterization of the circuit court's order to produce C.J.G. in Illinois as a "modification" of the original custody arrangement contained in the April 25, 2011 judgment of dissolution of marriage. Raymond cites no case law to support this argument. In entering the January 13, 2015 order, the circuit court was simply exercising its inherent power to ensure the safety of C.J.G. and to appoint Ingram as the child's legal representative in preparation for adjudication of Ivy's petition to modify that was pending before the court—which included allegations that the child had extensive dog bites from her living condition in Ghana, that she was regularly under the care of abusive caretakers in Ghana while Raymond's father and stepmother left Ghana for lengthy periods of time. The entry of the January 13, 2015 order did not change Raymond's status as having sole custody of C.J.G., as established by the April 2011 judgment for dissolution of marriage. For similar reasons, we disagree with Raymond's assertion that the "indefinite" nature of the minor's return to Illinois, amounted to a modification of the child custody arrangement that was set in place by the April 25, 2011 judgment. The circuit court had simply ordered the return of C.J.G. to Illinois during the pendency of Ivy's petition to modify "until further order of court." C.J.G. would remain in the sole custody of Raymond during the time she is in Illinois, with visitation rights granted to Ivy, while Ivy's petition to modify was pending before the circuit court. Thus, because the circuit court had personal jurisdiction, subject matter jurisdiction, and the inherent power to enter the ruling ordering Raymond to produce C.J.G. in Illinois, we find that the January 13, 2015 order was not void. Therefore, because the order complained-of was not void, Raymond must affirmatively set forth specific factual allegations supporting each of the aforementioned section

2-1401 factors. Raymond has failed to do so, and has not made any arguments on appeal suggesting that he has made such a showing. Accordingly, we hold that the circuit court did not err in denying his motion to vacate on this basis.[2]

¶ 33 Raymond next argues that it would not be in C.J.G.'s best interest to require her presence in Illinois indefinitely, and that the circuit court erred in failing to weigh the best interest factors set forth under section 602 of the Marriage Act prior to "modifying" the custody arrangement by its January 13, 2015 order. Citing no case law, he contends that because C.J.G. is enrolled in a private school in Ghana, and the school would not grant her an excused absence to be in Illinois for an indefinite duration of time, it would be against public policy and against her best interest to mandate her presence in Illinois.

¶ 34 Ivy counters that it was in the best interest of C.J.G. to be produced in Illinois pending the child custody proceedings, arguing that Raymond's unwillingness to facilitate a relationship between C.J.G. and Ivy, and his alienation of the child from Ivy over a two-year period, goes directly against one of the best interest factors under section 602 of the Marriage Act. Ivy also argues that it is against public policy that Raymond has unilaterally ceded his parental rights and responsibilities to third parties without leave of the circuit court, noting that Raymond's father and stepmother were not granted custody of C.J.G. and have not attempted to assert custodial rights over the minor in Illinois. She claims that to allow a custodial parent to turn the care of the minor child over to third parties, over the rights of the noncustodial parent, would allow one parent to divest the court of its ability to determine what is in the best interest of the child. Ivy argues that both the January 13, 2015 and April 15, 2015 orders were necessary to ensure the

[2] The record does not contain a transcript of the April 15, 2015 hearing on Raymond's motion to vacate. Thus, any doubts which may arise from the incompleteness of the record will be resolved against Raymond as the appellant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984).

safety and health of C.J.G., and it would be difficult for the court to conduct an examination into the child's best interests without requiring her to be produced in court.

¶ 35 Ingram points out that it is against public policy for a child to live in another country where neither parent resides. He argues that the court's order requiring C.J.G.'s presence in Illinois was not an order to change custody arrangement, but was one to ensure that the minor could be interviewed and legally represented.

¶ 36 We reject Raymond's best interests argument, as it is again premised upon his mischaracterization of the court's January 13, 2015 order requiring production of C.J.G. in Illinois, as a "modification" of the parties' child custody arrangement. As we have already found, the order requiring the child to be produced in Illinois was not a child custody modification, but an exercise of the court's statutory and inherent authority under the Marriage Act and the Child-Custody Jurisdiction Act to ensure the child's health and safety. As discussed, the order requiring C.J.G. to be produced in Illinois did nothing to change Raymond's status as having sole custody of C.J.G., as set in place by the April 2011 judgment. As such, we find section 602 of the Marriage Act, which lists relevant best interest factors to be considered by the circuit court in making custody determinations, to be inapposite. Thus, we hold that the circuit court did not err in denying Raymond's motion to vacate the January 13, 2015 order, on this basis.

¶ 37 Next, Raymond argues that the purge provision in the circuit court's April 15, 2015 body attachment order was improper,[3] because he does not "possess the keys to his cell" and he does

[3] Raymond also notes that the court had previously entered a body attachment order against him on February 5, 2015, but that it was quashed on February 9, 2015. The record shows that the earlier body attachment order was never quashed, but only that a February 9, 2015 court date was stricken. As noted, the February 5, 2015 body attachment order was issued for Raymond's failure to comply with the January 13, 2015 order and for failure to appear in court for the February 5, 2015 hearing. However, the February 5, 2015 body of attachment order only

not have the ability to meet the purge requirement since his passport has been confiscated by the circuit court's February 25, 2015 order. He claims that because he was not in possession of his passport, he cannot personally travel to Ghana to retrieve C.J.G. and return her to Illinois.

¶ 38 Ivy argues that Raymond, as the custodial parent, has the ability to purge himself of his contempt of court, where it has routinely been Raymond's father and stepmother who would travel with C.J.G. from Ghana to Illinois and Raymond has not made any assertions to the contrary. Ingram's arguments echo those presented by Ivy.

¶ 39 A court has the authority to enforce its orders by issuing a finding of contempt. *In re Marriage of Levinson*, 2013 IL App (1st) 121696, ¶ 52. "Civil contempt proceedings are coercive, that is, the civil contempt procedure is designed to compel the contemnor perform a specific act." *Id.* Civil contempt proceedings have two fundamental attributes: "(1) [t]he contemnor must be capable of taking action sought to be coerced, and (2) no further contempt sanctions are imposed upon the contemnor's compliance with the pertinent court order." *In re Marriage of Betts*, 200 Ill. App. 3d 26, 43 (1990). In other words, the contemnor "must have an opportunity to purge himself of contempt by complying with the pertinent court order." *Id.* If the contempt sanction is incarceration, "the respondent's circumstances should be such that he may correctly be viewed as possessing the 'keys to his cell.' " *Id.* (quoting *In re Marriage of Logston*, 103 Ill. 2d 266, 289 (1984)). Whether a party is guilty of contempt is within the sound discretion of the circuit court, and we will not reverse a court's determination absent an abuse of discretion. *Levinson*, 2013 IL App (1st) 121696, ¶ 52.

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required the county sheriff "to seize the contemnor and bring contemnor before this Court to answer this finding."

¶ 40 In the case at bar, the April 15, 2015 body attachment order against Raymond was issued by the circuit court as a direct result of his failure to comply with multiple requests by the court's previous orders to produce C.J.G. in Illinois, as well as his failure to appear for court-ordered deposition and other hearings. The body attachment order, along with the April 15, 2015 order denying Raymond's motion to vacate, state that Raymond shall only purge the contempt by producing C.J.G. in Illinois. We reject Raymond's argument that the confiscation of his passport crippled his ability to comply with the court's order to produce C.J.G. in Illinois, such that he could not purge himself of contempt because he did not possess the "keys to his cell." By Raymond's own admission in his affidavit appended to his January 29, 2015 amended motion to reconsider the court's January 13, 2015 ruling, Raymond's father and stepmother lived and worked in the United States for 30 years before retiring and moving to Ghana. There is evidence in the record to suggest that Raymond's father and stepmother have traveled with the child from Ghana to Illinois on past occasions. The court's order requiring Raymond to produce C.J.G. in Illinois does not specify that it must be Raymond himself who travels to Ghana to retrieve C.J.G. Raymond makes no argument regarding his efforts to arrange for C.J.G. to be returned to Illinois. Nor does he refute assertions by Ivy which imply that on prior occasions, C.J.G. traveled between Illinois and Ghana in the company of her grandparents without Raymond. Raymond does not argue that he lacked the cooperation or assistance of his father and stepmother to return C.J.G. to Illinois in order to satisfy the purge requirement. He simply has not shown any effort to bring the child back to the United States. Therefore, we find that Raymond indeed holds the "keys to his cell," and the purge provision in the April 15, 2015 body attachment order did not constitute an abuse of discretion by the circuit court.

¶ 41 We further reject Raymond's contention that the circuit court mischaracterized him as being held in "indirect civil contempt" when in fact he was being held in "indirect criminal contempt." The crux of Raymond's argument is that since he is unable to purge himself of the contempt finding, as a result of the confiscation of his passport, then the nature of the sanction being imposed was criminal in nature. Accordingly, he suggests the sanction is punitive. He further argues that since the contempt finding is actually that of indirect criminal contempt, he was denied the safeguards afforded under the law.

¶ 42 The primary determinant of whether contempt proceedings are civil or criminal in nature is the purpose for which contempt sanctions are imposed. *Betts*, 200 Ill. App. 3d at 43. If contempt sanctions are imposed for coercive purposes—to compel the contemnor to perform a particular act—the contempt is civil in nature. *Id.* On the other hand, criminal contempt sanctions are imposed for the purpose of punishing past misconduct. *Id.* In light of our ruling that Raymond had the ability to purge himself of the contempt by producing C.J.G. in Illinois, we find that the circuit court's finding of contempt was correctly characterized as civil, rather than, criminal in nature. Thus, we cannot grant Raymond relief on this basis. Accordingly, we hold that the circuit court did not err in denying Raymond's section 2-1401 motion to vacate the January 13, 2015 order requiring him to produce C.J.G. in Illinois, and in finding him in civil contempt of court for failing to do so.

¶ 43 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 44 Affirmed.