

No. 1-13-3222

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 under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

<i>IN RE</i> THE MARRIAGE OF)	Appeal from the
)	Circuit Court of
RICHARD A. MOSS)	Cook County, Illinois.
)	
Petitioner-Appellant,)	
)	
)	No. 11 D 009865
and)	
)	
MARTHA C. MOSS,)	The Honorable
)	Jeanne Cleveland Bernstein,
Respondent-Appellee.)	Judge Presiding.
)	

JUSTICE TAYLOR delivered the judgment of the court.

Presiding Justice Palmer and Justice Gordon concurred in the judgment.

ORDER

¶ 1 *Held:* Entry of an order of default with defective notice to respondent did not violate his right to due process where he failed to file his appearance. Further, temporary injunctive relief granted in an order of default was not improper where the moving party had previously sought that relief in prior pleadings which are not challenged in this appeal. Moreover, granting exclusive possession of a residence to spouse currently residing there was not improper where the characterization of the residence had not yet been decided. Lastly, the record did not

sufficiently show that the trial court judge was partial where the relief granted was consistent with the parties' prior agreement.

¶ 2 Petitioner Richard Moss appeals from a judgment of the circuit court granting respondent Martha Moss' motion for default, in which the court awarded respondent exclusive possession of the parties' once-shared residence and ordered petitioner to pay her spousal and child support, as well as expenses related to the residence. He contends that he did not receive notice of respondent's motion for default, and that, in any event, the trial court's order exceeded the scope of the relief sought, and that it was improper because the residence in question was petitioner's non-marital property and the award of support exceeds his income.

¶ 3 BACKGROUND

¶ 4 The parties were married on October 13, 2001, and have two children, who were 6 and 4 years old when Richard filed a petition for dissolution of the marriage on October 11, 2011. In that petition, Richard alleged that the residence where the parties resided, namely, 1039 Penny Lane, Palatine, Illinois, is his non-marital property, which should be awarded to him. He also sought joint custody of the parties' children and to bar Martha from seeking maintenance. On November 10, 2011, Martha filed her answer to Richard's petition and her own counter-petition for dissolution of the marriage, in which she denied that the Palatine residence was Richard's non-marital property, and claimed that it should be subject to equitable division, along with the rest of the assets acquired during the marriage. In fact, Martha alleged that Richard had moved out of the residence where she continued to live with the parties' children. Additionally, Martha sought sole custody of the children, who needed special educational support, as well as child and spousal support, noting that she was a stay at home mother who did not work outside the home.

¶ 5 On September 20, 2012, Martha filed a petition for a temporary restraining order and/or preliminary injunction, for exclusive possession of the Palatine residence, in which she sought to

exclude Richard from the residence and to enjoin him from disposing or otherwise encumbering the property. In that petition, Martha described instances in which Richard took actions to access Martha's personal effects and papers after he moved out of the parties' residence. With respect to Richard's claim that the house was his non-marital property, Martha explained that the reason why the titled and mortgage were in Richard's name only was that her credit became poor when the parties' former residence went into foreclosure. According to Martha, the foreclosure did not affect Richard's credit because the mortgage on that prior residence had been taken on Martha's name only. The court entered an agreed order granting Martha exclusive use and possession of the master bedroom suite of the residence, without interference or tempering by Richard.

¶ 6 On October 12, 2012, while her previous motion remained pending, Martha filed an emergency petition for injunctive relief and, again, exclusive possession of the residence. In that motion, she alleged that over a weekend which Martha spent out of town with the parties' children, Richard stayed at the residence with a female guest and left personal items behind to indicate that he had a guest at the house. The court entered an order on that same day, this time granting Martha's emergency petition without prejudice, thereby enjoining Richard from entering the residence without Martha's permission and granting Martha temporary exclusive possession of the residence.

¶ 7 On November 26, 2012, Richard filed a motion for summary judgment or, alternatively, for declaratory relief in which he sought a finding that the Palatine residence was his non-marital property. While there is no dispute that the residence was purchased during the marriage, Richard alleged that he purchased the home using, as the down payment, only funds acquired through inheritance from his late father. He further stated that the title to the residence, as well as the mortgage loan on the property were in his name only. In response, Martha filed a motion

to dismiss Richard's motion for summary judgment or declaratory relief, which was not verified. On March 8, 2013, the court entered an order leaving the characterization of the Palatine residence as marital or non-marital to be heard in conjunction with the trial in this cause.

¶ 8 Trial began on June 10, 2013, prior to which on that same day, the court entered an order titled "agreed final sole custody judgment." In that order, the parties agreed that Martha would have custody of the children, and set a visitation schedule for Richard. Once trial began, Richard testified that he had been able to reach agreements with Martha regarding child support and maintenance based on the court's recommendations made during pre-trial conference. Richard acknowledged that the amounts calculated, which he was willing to abide by, were \$3,276 per month for child support and \$2,878 for maintenance, reviewable in four years. He stated, however, that he was concerned about his ability to make those payments on his monthly net income of \$8,984.

¶ 9 In support of that concern, Richard introduced into evidence his disclosure statement pursuant to Rule 13.3.1, in which he indicated that his gross monthly income was \$17,000, which, after subtracting required monthly deductions, came to a net income of \$8,984.24. One of the required deductions listed was a direct deposit to Martha in the amount of \$800. Richard also indicated in that statement that his household expenses related to the Palatine residence, including mortgage payments and taxes, cost him \$4,009.93 per month.

¶ 10 With respect to the character of the Palatine residence, Richard testified, consistently with his pleadings, that the funds used to make the down payment on the Palatine residence were drawn from monies that he inherited from his father, who passed away on March 25, 2011. He further attested that title to the residence was taken in his name only and that he was the only borrower on the mortgage. According to Richard, he had wanted to keep the house as a

"separate asset," and when he refinanced the mortgage, Martha only executed it as the borrower's spouse for the purpose of waiving homestead rights.

¶ 11 On June 11, 2013, before Richard completed his testimony or rested the case, the trial was continued and additional trial dates were set for July 24, and September 23 and 25, 2013. Three days later, on June 14, 2013, Martha filed an emergency petition for a temporary restraining order, preliminary injunction, and an "order suspending visitation until further order of court," in which she alleged that since the last trial date, Richard had sent her harassing and intimidating e-mails and refused to honor their visitation schedule. The court granted the motion, enjoining Richard from harassing Martha and suspending visitation until further order of the court. At the next hearing, on July 1, 2013, the trial court granted Richard's counsel's motion for leave to withdraw and allowed Richard 21 days to secure new counsel or file his *pro se* appearance. The court also ordered Richard to pay child support to Martha in the amount of \$3,276.88 per month, consistent with the parties' prior attestation at trial, and to pay all the housing costs as had been his custom and practice. The issue of maintenance was continued and the restraining order remained in place.

¶ 12 At the next hearing, on July 24, 2013, Richard appeared in person, but had not secured new counsel or filed an appearance *pro se*. The court, however, entered an order allowing Richard to file his appearance *instante*, which he still did not do. In that order, the court also struck July 24 as a trial date, but ordered that the September trial dates would remain scheduled. The following status hearing was scheduled for July 30, 2013.

¶ 13 Two days later, on July 26, 2013, Martha filed a document styled "motion for default order, to set prove-up hearing for entry of default judgment, for entry of support order and other relief." Martha stated that while she explained to Richard that her counsel could not

communicate with him directly unless he filed his appearance *pro se*, he never filed such an appearance or secured new counsel. She further alleged that on July 25, 2013, Richard sent her an e-mail advising her to "motion for a default," and that he gave up. Thus, Martha sought a finding of default against Richard, a set date for a prove-up hearing and a final order of support for both maintenance and child support. Attached to the motion were e-mails from Richard telling Martha to have her counsel prepare a settlement agreement, that he was "done" and that she could have everything she wanted, as well as Martha's counsel's repeated responses that she could not communicate with Richard directly until he filed a stamped appearance *pro se*, or secured new counsel with whom she could communicate instead. The motion also included an e-mail in which Richard stated that his "take home pay" was \$10,164 a month. Also on record is a certificate of service addressed to Richard, stating that it was sent via U.S. mail on July 26, 2013. While it indicated that notice was mailed to "counsel of record," the listed recipient was followed by what appears to be his home address.

¶ 14 On July 30, 2013, the court entered a written order titled "agreed order," in which it found Richard to be in default for failing to file his appearance within the time allotted, as well as a second written order, again finding Richard in default and setting the matter for prove-up hearing and entry of a judgment of dissolution of marriage. Further, and in addition to continuing the previously ordered child support payments, the court awarded Martha maintenance in the amount of \$2,878, consistent with the parties' oral agreement to which they attested on June 10, 2013. The court further extended Martha's exclusive possession of the Palatine residence until July, 2014, finding that Richard's failure to act in this case had stymied her efforts to secure a separate rental residence. It also ordered Richard to continue to pay the monthly mortgage and the other expenses related to the residence, which he had already been

incurring. However, the court ordered Martha to pay Richard \$1,800 per month while she resided at the Palatine residence as her contribution towards the cost of maintaining the residence, but only if Richard remained current in his own support obligations. Lastly, it enjoined Richard from selling or encumbering the residence until further notice.

¶ 15 On August 9, 2013, Richard's new counsel filed an appearance and a motion to vacate the court's default order from July 30, 2013. In the motion, Richard's new counsel argued that the default order was oppressive and exceeded the relief sought in Martha's motion for default, which contained insufficient allegations to support an injunction. At the next scheduled hearing date, on August 16, 2013, the trial court vacated the finding of default in the order from July 30, 2013 and set up a briefing schedule with regard to the other portions of the order.

¶ 16 Martha, in her response to Richard's motion, pointed out that while Richard's motion rested largely on the assumption that the Palatine residence was his non-marital property, the character of that residence had not yet been determined at that time. In his reply, Richard argued, *inter alia*, that Martha's response did not comply with the Illinois Code of Civil Procedure in that she did not admit or deny each of Richard's specific allegations in his motion. On October 4, 2013, the trial court denied Richard's motion to vacate the remaining portions of the default order. In doing so, the court stated at the hearing that his pleadings contained inaccuracies, which Martha pointed out in her response.

¶ 17 Before the hearing on his motion to vacate the default order, however, Richard filed a motion to modify support, in which he alleged that since the entry of the support order on July 30, he lost his employment. He further alleged that when he agreed to the amounts of child support and maintenance, he believed that he would be the one residing at the Palatine residence, not Martha. Thus, he had not anticipated to pay for the expenses related to that residence while

also paying for his own separate home. That motion remained pending when Richard filed an interlocutory appeal from the trial court's order denying his motion to vacate the default order.

¶ 18 ANALYSIS

¶ 19 On appeal, Richard first contends that the trial court erred in entering the default order against him without proper notice. According to Richard, there is no indication that he was notified of Martha's motion for default, and that her attempt to notify him by mail was insufficient to comply with the applicable Illinois Supreme Court Rules and Cook County local court rules. Due to the lack of a timely notice, Richard maintains that he was deprived of his right to due process, and that the entry of default in the absence of proper notice was drastic, unwarranted and grossly unfair.

¶ 20 Richard's argument hinges on the requirement of Cook County Circuit Court Rule 2.1(c)(i), which requires notice of motions, if given by mail, to be "deposited *** on or before the fifth (5th) court day preceding the hearing of the motion." According to Richard, Martha did not comply with that rule because the only certificate of service on file states that she mailed him notice of her motion on July 26, 2013, less than five days before the motion was heard on July 30. He also relies, *inter alia*, on Illinois Supreme Court rule 104(b), which requires litigants to give notice of all motions, and explains that the rules set by our supreme court and local circuit courts must be enforced so as to ensure that due process is accorded to every litigant.

¶ 21 However, Martha correctly notes that under all pertinent supreme court and circuit court rules, a litigant is required to send notice of motions only to parties who have filed their appearance and those who have not missed the deadline for filing such appearance. In fact, Illinois Supreme Court Rule 104(b), cited by Richard himself, provides that:

¶ 22 "Pleadings subsequent to the complaint, written motions, and other documents required to be filed shall be filed with the clerk with a certificate of counsel or other proof that copies have been served on all parties *who have appeared* and have not theretofore been found by the court to be in default for failure to plead." Ill. S. Ct. R. 104(b) (emphasis added).

Similarly, Cook County circuit court rule 2.1(a) states that "written notice of the hearing of all motions shall be given to all parties *who have appeared* and have not theretofore been found by the court to be in default for failure to plead, and to all parties whose time to appear has not expired on the date of notice." Ill. Cook County Circuit Court Rule 2.1. (emphasis added).

¶ 23 In fact, it is well established that while professional courtesy might require a litigant to notify her opposing party of her intention to seek a default judgment, such litigant is under no legal responsibility to provide notice to a party who has failed to file an appearance. See, e.g., *Smith v. Airoom*, 114 Ill. 2d 209, 227 (1986) (plaintiff not required to notify defendant of motion where no appearance had been entered by him); *In re Atwood's Estate*, 97 Ill. App. 2d 311, 325 (1968) (executor not required to send notice of deposition to parties who had not filed their appearances); *Trojan v. Marquette National Bank*, 88 Ill. App. 2d 428, 434-35 (1967) (defendant not entitled to notice of dismissal of case where at no time had she filed her appearance *pro se* or through counsel). Insofar as notice requirements are designed to protect a party's due process rights, we note that while notice and opportunity to be heard are basic requirements of procedural due process, such rights are not denied when a party fails to avail himself of the opportunity to be heard after it is offered. See *Lescher v. Barker*, 57 Ill. App. 3d 777, 782-83 (1978).

¶ 24 In this case, Richard had not filed his appearance, either *pro se* or through counsel, when Martha filed her motion for default on July 26, 2013. The court had advised him of the need to

file an appearance when his previous counsel withdrew on July 1, 2013, at which time the court gave him 21 days to file an appearance. Furthermore, while Richard was present at the hearing on July 24, 2013, the court allowed him to file his appearance *instanter*, even after his original deadline had expired, and yet Richard again failed to do so. While Richard now argues that he attempted to participate in the proceedings, Martha's exhibits attached to her motion indicate that her counsel repeatedly informed Richard that she could not communicate with him directly until he had a stamped appearance on file. Under these circumstances, Martha had no legal responsibility to send Richard notice of her motion for default. Moreover, even if professional responsibility required Martha to notify Richard of her intention to seek a default judgment, it appears that Martha's counsel mailed him such notice on the day she filed the motion. While the notice states that it was mailed to "counsel of record," it is clear that it was addressed to Richard himself, at what appears to be his home address. Thus, we conclude that the entry of the order of default against Richard did not violate his constitutional right of due process, or any of his rights under the rules of the Illinois Supreme Court or the Cook County Circuit Court.

¶ 25 Richard's contention that the entry of the order of default was unwarranted and grossly unfair due to defective notice is similarly unpersuasive. While a default judgment is a drastic measure, to be employed only as a last resort, it may be justified by a party's failure to file a timely appearance after his attorney withdraws. See *Berman v. Dempsey*, 257 Ill. App. 3d 496, 498-500 (1994). Once a trial court enters a default order, it may set it aside "upon any terms and conditions that shall be reasonable." 735 ILCS 5/2-1301(e) (West 2012). A trial court's refusal to vacate a default judgment may be reversed for an abuse of discretion or because of a denial of substantial justice. *Rockford Housing Authority v. Donahue*, 337 Ill. App. 3d 571, 574 (2003) (citing *Venzor v. Carmen's Pizza Corp.*, 235 Ill. App. 3d 1053, 1056-57 (1992)).

¶ 26 Richard argues that the default judgment was unwarranted because he had been present at the hearing on July 24, 2013, and had previously participated in all the court proceedings, and therefore, could not anticipate that the court would enter an order of default against him. However, as noted above, the record indicates that Martha's counsel mailed a notice of her motion for default directly to Richard. The documents attached to Martha's motion for default indicate that Richard had told her that he was "done" with litigating this case and that she could have everything that she wanted, suggesting that he no longer intended to participate in further proceedings. In fact, when Richard secured new counsel, the trial court vacated the finding of default against him and upheld only the other portions of the judgment, which included the awards of maintenance and support that Richard had previously agreed to pay Martha. Thus, the trial court's refusal to vacate the order of default did not result in substantial injustice.

¶ 27 Richard next contends, however, that regardless of whether he was properly served with notice of Martha's motion for default, the trial court's default judgment improperly granted Martha exclusive possession of the Palatine residence, ordered him to maintain the home and not encumber it, and entered a confiscatory and oppressive order of support. We initially note that the challenge to the order from July 30, 2013 is now moot, since it awarded Martha exclusive possession of the Palatine residence only until July, 2014. In fact, Richard's obligation to pay the expenses related to the residence and his injunction from disposing of, or otherwise encumbering the residence are in effect only for as long as Martha resides in the residence with the parties' children. See *Dixon v. Chicago & Northwestern Transportation Co.*, 151 Ill. 2d 108, 116 (1992) ("[a]n issue is moot if no actual controversy exists or where events occur which make it impossible for the court to grant effectual relief."). However, after the filing of this appeal, the

trial court has entered a new order which extended the terms of the order from July 30, 2013 for an additional year, in light of which we now address Richard's challenges to the order.

¶ 28 He maintains that ordering Richard to pay for the expenses related to that home and enjoining him from disposing or encumbering it exceeded the relief she sought in her motion for default and he, therefore, was entitled to notice that she would seek such possession. He further argues that those portions of the relief granted Martha which related to the Palatine residence, including her exclusive possession of it, constituted injunctions, but Martha failed to provide a verified complaint or affidavits showing all the elements required to secure an injunction.

¶ 29 We note, however, that long before filing her motion for default, Martha had already filed two petitions for exclusive possession of the residency, the first of which also sought to enjoin Richard from encumbering or disposing of the residence. The circuit court's first order granting Martha exclusive possession of the Palatine residence was entered as early as October 2012, and the one enjoining Richard from encumbering it was based upon the parties' agreement. Furthermore, the court had previously ordered Richard to pay for the expenses related to the residence, on July 1, 2013, at a hearing attended by Richard.

¶ 30 While Illinois Supreme Court Rule 105 requires notice to be given to parties in default when new or additional relief is sought against that party (Ill. S. Ct. R. 105 (eff. Jan. 1, 1989)), an order on default is void under that rule only where none of the pleadings filed in conjunction with that case would give that party reason to anticipate that such relief would be sought. See, e.g., *Charles v. Gore*, 248 Ill. App. 3d 441, 449-50 (1993); *Joseph A. Thorsen Co. v. Evans*, 82 Ill. App. 3d 1119, 1123-14 (1980). Here, we cannot say that Richard could not have anticipated that Martha would have sought to extend the temporary relief that was already in place. Accordingly, the order is not void due to lack of notice.

¶ 31 Similarly, although the Illinois Code of Civil Procedure (Code) and the Illinois Marriage and Dissolution of Marriage Act (IMDMA) require a party seeking temporary injunctive relief to set forth sufficient facts to meet the elements of an injunction, Richard does not now challenge Martha's previous petitions that gave rise to the original orders granting her exclusive possession of the residence, enjoining him from encumbering it, and ordering to pay for its expenses. Instead, he challenges only Martha's motion for default, which resulted in an order that merely extended the previously granted relief during the pendency of trial. The continuance of a temporary injunction rests in the discretion of the trial court, which is vested with great discretion to resolve such matters. *Eads Coal Co. v. United Mine Workers of America District 12*, 27 Ill. App. 3d 692, 703 (1975). It is established that an injunction will be continued "if it appears that less harm from this course will result to the enjoined party if he should be finally victorious than would accrue to the complainant from the absence of the injunction if he were the winning party." [Internal quotation marks omitted]. *Simpkins v. Maras*, 17 Ill. App. 2d 238, 246 (1958). Since the record shows that Martha has been residing at the Palatine residence with the parties' children throughout this proceeding, and the question of her interest in the residence remains unresolved, the trial court did not abuse its discretion.

¶ 32 Richard, nevertheless, contends that there was no evidentiary basis for awarding Martha exclusive possession of the Palatine residence because when she filed her motion for default, the evidence on the record showed that the residence was Richard's non-marital property. He further claims that the trial court violated section 701 of the IMDMA in awarding Martha exclusive possession of the Palatine residence for a period that went beyond the August 16, 2013 scheduled date for the entry of the dissolution of marriage.

¶ 33 However, the record shows that the characterization of the Palatine residence had not been resolved when Richard's counsel withdrew and the trial was suspended. While Richard argues that when the default order was entered, the only evidence on record show that the residence was his non-marital property, the trial was not concluded and no determination had been made. Thus, the court did not err in extending the order that granted Martha exclusive possession of the residence. See, *e.g.*, *Smith v. City of Chicago*, 299 Ill. App. 3d 1048, 1053 (1998) ("[t]he earliest possible point in time at which a trial court could possibly examine all of the evidence presented in support of any given claim is the close of plaintiff's case, any directed verdict entered in favor of defendant prior to defendant having rested is premature.").

¶ 34 Furthermore, while the order on default entered on July 30, 2013 scheduled the date for the entry of the judgment on the dissolution of marriage for August 16, 2013, that date was later vacated, along with the finding of default against Richard. In fact, the record indicates that the matter is still awaiting trial during the pendency of this appeal. Under these circumstances, even if it was improper for the trial court to extend Martha's exclusive possession of the residence beyond the entry of a judgment of dissolution of marriage, that issue is now moot. See *Dixon*, 151 Ill. 2d at 116.

¶ 35 Richard next challenges the awards of child support and maintenance. He maintains that those awards, in conjunction with the requirement that he pay all the expenses related to maintaining the Palatine residence while Martha resides there with their children, were "confiscatory" as they exceed his income.

¶ 36 As Martha correctly notes, however, the support orders, which were entered prior to the order on default, are not properly before this court for interlocutory review. This appeal from the default order entered on July 30, 2013, was filed pursuant to Illinois Supreme Court Rule 307,

which governs interlocutory appeals from an order "granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction." Ill. S. Ct. R. 307(a)(1) (eff. Mar. 20, 2009). However, in determining what constitutes an appealable injunction under Rule 307, this court must look to the substance of the action, not its form. *In re Marriage of Molloy*, 407 Ill. App. 3d 987, 992 (2011).

¶ 37 Here, as noted above, the child support award was initially entered on July 1, 2013, after Richard testified at trial that he agreed with the terms of that award. While the maintenance award was first entered as part of the default order on July 30, 2013, that award was similarly consistent with Richard's testimony that he would agree to that award. Since Richard would be also required to pay for expenses associated with the residence, the court required Martha to contribute to those expenses if Richard met his obligations. Not only were those awards agreed upon by Richard, but they are not injunctive in nature, and therefore, not appealable under Rule 307. Instead, the proper review of a temporary child support award, or a temporary maintenance award is a motion to modify such an award pursuant to section 501 of the IMDMA. 750 ILCS 5/501(a) (West 2012).

¶ 38 Richard's contention that the trial court's refusal to vacate the default order in its entirety should be reversed because it "did not do substantial justice" is similarly unpersuasive. While Richard correctly notes that the standard governing a trial court's consideration of a motion to vacate default is whether substantial justice was done between the litigants (see *Sikorski v. Sikorski*, 127 Ill. App. 3d 614, 617 (1984)), the court in this case did, in fact, vacate the finding of default against Richard. The portions of the order from July 30, 2013 that the court declined to vacate granted only temporary relief to Martha until trial continues in this matter. Thus, the trial court's refusal to vacate such temporary relief does not constitute reversible error.

¶ 39 Lastly, Richard contends that should this matter be remanded to the trial court, it should be assigned to a different judge because the judge who presided over this matter at the court below showed "animosity, hostility, ill will and/or distrust" toward Richard. Since we are not reversing and remanding this matter for the reasons explained above, we need not address this contention. We note, however, that his claim is unpersuasive in any event.

¶ 40 As Richard himself notes, in order to obtain a remand to a new judge, a party must show " 'something more' " than merely the fact that the judge presided over this matter at the trial court. *People v. Reyes*, 369 Ill. App. 3d 1, 25 (2006) (quoting *People v. Vance*, 76 Ill. 2d 171, 181 (1979)). While a party may meet such requirement by demonstrating animosity, hostility, ill will, distrust, prejudice, predilections or arbitrariness, the determination that a judge is disqualified due to prejudice is not a judgment to be made lightly. *Id.* In fact, it is well settled that trial judges are presumed to be impartial, and the burden of overcoming that presumption rests on the party seeking to show prejudice, who must present evidence of personal bias from extrajudicial sources and prejudicial conduct at trial. *In re Marriage of Hartian*, 222 Ill. App. 3f 566, 569 (1991). Furthermore, allegedly erroneous ruling by the circuit court are insufficient to establish that a judge had a personal bias or prejudice for or against a party. *Id.*

¶ 41 According to Richard, the trial court displayed animosity towards him by entering a default order when he was not properly notified of Martha's motion, as well as granting Martha a support award that exceeded his income. In addition, he points to the court's denial of his motion to vacate, when the court stated that his motion contained misleading statements, as well as to the court's order allowing his previous counsel to withdraw after trial had begun, as further indications of hostility.

¶ 42 As fully discussed above, the record indicates that Martha notified Richard of her motion for default on the day that she filed it, and she was not required to comply with the timing requirements under circuit court rule 2(c)(i). Further, the award of maintenance and child support under the default order were consistent with the amounts that Richard had already agreed to pay Martha, and according to Richard's own disclosure statement, he was already paying for the expenses related to the maintenance of the Palatine residence. While he claimed, in his motion to vacate, that when he agreed to the child support and maintenance awards, he anticipated that he would be the one living at that residence, he does not deny that he expected to pay for the expenses related to that residence in addition to the support award. In fact, the trial court even ordered Martha to pay Richard \$1,800 as her own contribution to those expenses, so as to take Richard's ability to support himself into account. Furthermore, Martha's response to Richard's motion to vacate pointed out inaccuracies in Richard's characterization of the default order, such that the trial court's comments to that effect did not show prejudice or animosity towards Richard. With regard to the court's order allowing Richard's former attorneys to withdraw after trial began, we note that Richard did not object to their withdrawal, that the trial court gave him 21 days to secure new counsel, and when he had not done so by that time, the court allowed him to file his appearance *instantly* and continued the trial proceedings. Under these circumstances, we conclude that the evidence on the record is insufficient to show prejudice, bias or hostility toward Richard so as to justify remand to a different judge.

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

Affirmed.