2014 IL App (1st) 133383-U

SIXTH DIVISION
June 20, 2014

No. 1-13-3383

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

SARAH E. CORWIN, n/k/a SARAH HASTINGS, Petitioner, v. SCOTT L. CORWIN, Respondent.	Appeal from the Circuit Court of Cook County
	No. 02 D 331147
SCOTT L. CORWIN, Third-Party Petitioner-Appellee, v. JOHN HASTINGS, Third-Party Defendant for Discovery Purposes Only-Appellant.	Honorable Nancy J. Katz, Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed an order of the circuit court of Cook County granting a former husband leave to name the former wife's new husband as a defendant for discovery purposes in post-dissolution proceedings to determine child support.

¶ 2 John Hastings (John) appeals an order of the circuit court granting a motion presented by Scott Corwin (Scott) to name John as a third party for discovery purposes in postdissolution of marriage proceedings between Scott and his former wife, Sarah Hastings (Sarah). On appeal, John argues the circuit court lacked personal jurisdiction over him and improperly joined John as a party under section 2-405 of the Illinois Code of Civil Procedure (Code)(735 ILCS 5/2-405 (West 2010)). For the following reasons, we affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 The record on appeal discloses the following facts. Scott and Sarah were married in 1999 and divorced in 2004. Sarah received residential custody of their daughter, Trinity. In 2006, Sarah married John, a Utah resident. She petitioned the court to remove Trinity to Utah, but subsequently withdrew the petition. The parties then entered into a proposed agreed order modifying their custody arrangement. The circuit court adopted the agreed order, which it entered on July 27, 2006. The order provided that Scott would have residential custody of Trinity while Sarah moved to Utah. The order also provided that residential custody of Trinity would switch to Sarah when Trinity reached the age of 12. Trinity was six years old at the time. Pursuant to the agreed order, neither party would provide the other with child support.

¶ 5 In 2007 and 2008, Sarah exercised visitation with Trinity approximately 23-24 times each year. In these years, Sarah either flew into Chicago or arranged for Trinity to fly to Utah. In 2008, Scott filed his first petition to set child support, arguing the costs of Trinity's care had increased. On February 15, 2008, a subpoena for deposition (or subpoena *duces tecum*), notarized and bearing the seal of the clerk of the circuit court of Cook County, was issued for

John; the subpoena indicates it was served by Federal Express delivery. The record does not indicate that John responded to the subpoena. On May 29, 2008, the circuit court declined to find a change in circumstances to justify a support modification.

¶ 6 On January 8, 2009, Scott filed another petition to set child support. Scott was terminated from his employment effective January 9, 2009.

¶ 7 On April 9, 2009, James Zwit executed a sworn, notarized affidavit of service. [1] In the affidavit, Zwit stated he personally served John on April 9, 2009, by handing him a copy of the February 15, 2008 subpoena and other court documents[2] at approximately 2:50 p.m., in front of the Elizabeth Blackwell School in Schaumburg, Illinois. According to Zwit, John threw the subpoena and other documents to the ground. Zwit provided a general description of John and further stated the service and John's response were witnessed by Scott and a woman named Holly Bradley, who was standing outside the school.

¶ 8 On July 31, 2009, the circuit court entered an order finding John in indirect civil contempt for failure to comply with the February 18, 2008, subpoena.

¶ 9 On August 25, 2009, John, proceeding *pro se*, filed a motion to quash the subpoena. In the motion, John asserted that on April 9, 2009, he was not served with a subpoena because John

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[1] Scott's brief asserts Zwit was a special process server. Zwit's affidavit does not indicate whether he was a special process server.

[2] In addition to the subpoena, Zwit stated he personally served John with: a notice of motion (dated April 28, 2008); a petition for a rule to show cause; a court order (dated January 12, 2008); and order for a rule to show cause (dated May 5, 2008); a rule to show cause (dated May 19, 2008); and a March 30, 2009, order setting a pretrial case management conference in this case for April 3, 2009. The details of these documents are not specified in the affidavit.

and Trinity were escorted though the rear exit of the school by school personnel to avoid any confrontation with Scott. John also argued the information Scott sought was not relevant to the proceedings and he was not obliged to support Trinity based on his status as her stepfather. John attached an unsworn letter to the motion, claiming that on April 9, 2009, someone in Scott's company attempted to hand him an envelope, which John refused.[3] According to John's letter, this person then threw the envelope in front of a school bus driver, who retrieved the envelope, took it into the school and provided it to the school's administration. On August 28, 2009, the circuit court entered an order finding in part that John failed to purge himself of contempt (as found in the July 31, 2009, order) and that his motion to quash was filed, but not noticed nor presented.

¶ 10 Meanwhile, after Sarah became pregnant, she exercised visitation with Trinity fewer than 10 times in 2009.

¶ 11 On March 16, 2010, following a hearing, the trial court found that circumstances had changed sufficiently to warrant a child support order. The court determined that Scott's income had decreased substantially due to his loss of employment and Trinity's living expenses increased, while Sarah's travel expenses decreased because she was not visiting Trinity as often. The court set child support at $3,000 per month. Sarah appealed.

¶ 12 This court reversed and remanded. *Corwin v. Corwin*, 2012 IL App (1st) 102706-U. We ruled the trial court did not abuse its discretion in holding that a substantial change in circumstances occurred, where Scott's financial resources had declined significantly and the costs of Trinity's care had increased. *Id*. at ¶¶ 19-21. This court, however, "reject[ed] the assertion that fewer visits by Sarah can constitute a change of circumstances alone to support a

[3] John does not identify this individual in his *pro se* motion or the accompanying letter.

modification in the child support order." *Id*. at ¶ 21.

¶ 13 This court then reviewed the circuit court's decision to set child support at $3,000 monthly. We noted at the outset the rule for determining the financial resources of a noncustodial parent who has remarried is "in flux." *Id*. at ¶ 25. We found no case law, however, on the particular issue of whether, where the noncustodial parent earns no income, the income of the new spouse may be treated as if a portion is "income" of the noncustodial parent for purposes of setting child support. *Id*. at ¶ 27. Moreover, this court observed the record was not fully developed in the circuit court as to the funds truly available to Sarah from John. *Id*. This court concluded we would not extend the law to reach the circumstances presented and indicated the record did not support such an extension of the law. *Id*. at ¶ 29. Accordingly, we reduced the child support to $1,000 per month *nunc pro tunc* to the date of its entery of March 16, 2010, and remanded the matter to the circuit court for a new hearing to set child support. *Id*. at ¶ 33.

¶ 14 In March 2011, while the prior appeal was pending before this court, Scott sought to join John as a party to the postdissolution proceedings, pursuant to sections 2-406 and 2-1402 of the Code (735 ILCS 5/2-406, 2-1402 (West 2010)), as well as sections 501(a)(3), 505 and 511 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/501(a)(3), 505, 511 (West 2010)). On May 12, 2012, Scott renewed his request in a motion to add John as a third party pursuant to section 2-405 of the Code (735 ILCS 5/2-405 (West 2010)). Sarah opposed the motion, arguing the circuit court lacked subject matter jurisdiction and personal jurisdiction over John. Sarah asserted that John had not appeared to contest Scott's efforts to add John as a party because the circuit court lacked jurisdiction and John was not properly served with the motions.

¶ 15 Meanwhile, in October and November 2011, John filed a motion and amended motion requesting the circuit court set aside the July 31, 2009, order finding John in indirect civil

contempt, as well as the August 28, 2009 order finding John had failed to purge himself of the court's prior contempt order and imposing a $100 sanction for each day John failed to comply with the February 18, 2008, subpoena.

¶ 16 On July 16, 2012, following a hearing on the matter, the circuit court entered an order which, among other things, granted Scott's motion to add John as a third party and granted John's motion to set aside the July 31 and August 28, 2009 orders against him. The order specifies John is named as a third-party defendant for discovery purposes only. On August 14, 2012, John filed a timely notice of appeal to this court.

¶ 17 On August 30, 2013, this court issued an order dismissing the appeal, based on John's failure to obtain an express written finding that there is no just reason for delaying enforcement or appeal of the order appealed from, pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010). *Corwin v. Corwin*, 2013 IL App (1st) 122448-U. On September 19, 2013, Sarah filed a motion to modify the circuit court's order of July 16, 2012, to include a Rule 304(a) finding. On October 17, 2013, after considering Sarah's motion and Scott's response thereto, the circuit court entered an order granting Sarah's motion to amend the circuit court's July 16, 2012, order to include a Rule 304(a) finding. On October 29, 2013, John filed a timely notice of appeal to this court.

¶ 18 ANALYSIS

¶ 19 The Deficiencies in John's Brief

¶ 20 Prior to addressing the merits of this appeal, we observe John's brief fails to comply with various Illinois Supreme Court Rules. For example, Illinois Supreme Court Rule 341(h)(4)(ii) (eff. Feb. 6, 2013) requires a jurisdictional statement including facts which are necessary to demonstrate that the appeal is timely. John's brief merely repeats his prior jurisdictional

statement, citing cases this court has found inapposite (*Corwin*, 2013 IL App (1st) 122448-U, ¶¶ 14-15) and referring to the prior notice of appeal filed on August 14, 2012 (which John's brief incorrectly states as having been filed on August 13, 2012).

¶ 21 Illinois Supreme Court Rule 341(h)(6) (eff. Feb. 6, 2013) requires the appellant's brief "shall contain [a statement of] the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal." The statement of facts in John's brief is comprised of 1 1/2 pages and only six references to the record on appeal, although the record itself is comprised of more than a dozen volumes and thousands of pages of material. The statement of facts refers to exhibits in the appendix to John's brief, but occasionally without reference to where or whether these exhibits are located in the record, including the motion to add John as a party underlying this appeal. Approximately one-third of John's statement of facts is comment or argument.

¶ 22 Illinois Supreme Court Rule 341(h)(9) (eff. Feb. 6, 2013) requires the appellant's brief to include an appendix conforming to Illinois Supreme Court Rule 342 (eff. Jan 1, 2005). Accordingly, the appendix is required to include "a table of contents to the appendix, a copy of the judgment appealed from, any opinion, memorandum, or findings of fact filed or entered by the trial judge or by any administrative agency or its officers, any pleadings or other materials from the record which are the basis of the appeal or pertinent to it, the notice of appeal, and a complete table of contents, with page references, of the record on appeal." Ill. S. Ct. R. 342(a) (eff. Jan 1, 2005). John's brief does not contain a table of contents to the appendix, the October 17, 2013, order granting the motion for a Rule 304(a) finding, the notice of appeal from that order, or a table of contents to the record on appeal.

¶ 23 Our supreme court's rules " ' "are not aspirational. They are not suggestions. They have

the force of law, and the presumption must be that they will be obeyed and enforced as written." ' " *Rodriguez v. Sheriff's Merit Commission of Kane County*, 218 Ill. 2d 342, 353 (2006) (quoting *Roth v. Illinois Farmers Insurance Co.*, 202 Ill. 2d 490, 494 (2002) (quoting *Bright v. Dicke*, 166 Ill. 2d 204, 210 (1995))). "The appellate court has the discretion to strike an appellant's brief and dismiss the appeal as a result of the appellant's failure to provide a complete statement of facts." *Alderson v. Southern Co.*, 321 Ill. App. 3d 832, 845 (2001). We recognize, however, " '[w]here violations of supreme court rules are not so flagrant as to hinder or preclude review, the striking of a brief in whole or in part may be unwarranted.' " *Hurlbert v. Brewer*, 386 Ill. App. 3d 1096, 1101 (2008) (quoting *Merrifield v. Illinois State Police Merit Board*, 294 Ill. App. 3d 520, 527 (1997)).

¶ 24 As this case is not particularly complex, this court, in the exercise of its discretion, chooses to consider this appeal on its merits. John's failure to comply with the rules, however, is not without consequences. It is generally the appellant's burden to affirmatively demonstrate error from the record. *In re Alexander R.*, 377 Ill. App. 3d 553, 557 (2007). The First District's docket is full and noncompliance with the supreme court rules does not help us resolve appeals expeditiously. *In re Estate of Parker*, 2011 IL App (1st) 102871, ¶ 47. "Reviewing courts will not search the record for purposes of finding error *** when an appellant has made no good-faith effort to comply with the supreme court rules governing the contents of briefs." *Id.* " '[I]t is neither the function nor the obligation of the Appellate Court to act as an advocate or search the record for error [citation].' " *People v. Universal Public Transportation, Inc.*, 2012 IL App (1st) 073303-B, ¶ 50 (quoting *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993)). With these admonitions in mind, we turn to consider the merits of John's appeal.

¶ 25 The Merits of the Appeal

¶ 26 On appeal, John contends the circuit court's order joining him as a defendant for discovery purposes is void because the court lacked personal jurisdiction over him. John also argues the joinder was improper under section 2-405 of the Code. We address these arguments in turn.

¶ 27 Personal Jurisdiction

¶ 28 John first argues the order adding him as a party to these proceedings is void on the ground Illinois courts lack jurisdiction over him. John observes that "[a] plaintiff has the burden of establishing a *prima facie* case for jurisdiction when seeking jurisdiction over a nonresident defendant." *MacNeil v. Trambert*, 401 Ill. App. 3d 1077, 1080 (2010). John also notes "that 'where a defendant has not been served with process, the court has no jurisdiction to enter a judgment against him.' " *Isaacs v. Shoreland Hotel*, 40 Ill. App. 2d 108, 110 (1963) (quoting *Janove v. Bacon*, 6 Ill. 2d 245, 249 (1955)). Scott responds that Illinois courts have personal jurisdiction over John, not only because he was personally served in Illinois during these proceedings, but also pursuant to section 2-209 of the Code (735 ILCS 5/2-209 (West 2008)), commonly known as "the Illinois long-arm statute," which "governs the exercise of personal jurisdiction by an Illinois court over a nonresident" *Russell v. SNFA*, 2013 IL 113909, ¶ 29.

¶ 29 John's argument—and Scott's response thereto—presuppose that the court was required to have obtained personal jurisdiction over John prior to entering an order allowing Scott to add John as a party to the action. Yet none of the cases cited by either party stand for that proposition. Indeed, these cases cited all presuppose a defendant has already been named in a complaint.

¶ 30 To be sure, a court may only impose a judgment *against a party* over whom it has obtained personal jurisdiction. See *In re Dar. C.*, 2011 IL 111083, ¶ 60. "Where a trial court

does not have personal jurisdiction over a *party*, any order or judgment entered *against that party* is void and subject to direct or collateral attack at any time." (Emphases added.) *Howard v. Missouri Bone & Joint Center, Inc.*, 373 Ill. App. 3d 738, 740 (2007). John cites no authority for the proposition that an order naming a person or entity as a party to an action is necessarily an order entered "against that party." To the contrary, Illinois law generally contemplates the naming of parties prior to service of process upon parties.

¶ 31 For example, in Illinois:

> "[e]very action, unless otherwise expressly provided by statute, shall be commenced by the filing of a complaint. The clerk shall issue summons upon request of the plaintiff. The form and substance of the summons, and of all other process, and the issuance of alias process, and the service of copies of pleadings shall be according to rules."" 735 ILCS 5/2-201(a) (West 2010).

"Process, by which the court acquires power or jurisdiction over the person, can take the form of a summons [citation] or of a subpoena [citation]." *Whitley v. Lutheran Hospital*, 73 Ill. App. 3d 763, 766 (1979). The service of a summons empowers the court to compel discovery from parties to an action, while the service of a subpoena permits the court to compel discovery from nonparty deponents. *Id.* Service of process serves two purposes. *Equity Residential Properties Management Corp. v. Nasolo*, 364 Ill. App. 3d 26, 31 (2006). First, effective service is a means of protecting the defendant's right to due process by allowing for proper notification of interested individuals and an opportunity to be heard. *In re Dar C.*, 2011 IL 111083, ¶ 61. " 'Second, it vests jurisdiction in the court over the person whose rights are to be affected by the litigation.' " *Nasolo*, 364 Ill. App. 3d at 31. Furthermore, "[p]rior to the filing of any other pleading or motion other than a motion for an extension of time to answer or otherwise appear, a *party* may

object to the court's jurisdiction over the *party's* person." (Emphases added.) 735 ILCS 5/2-301(a) (West 2010). The Code, and our case law, thus generally contemplate that the issuance of a summons for a party requires a pleading naming a person or entity,[4] and that an objection to personal jurisdiction may be filed by a person or entity already named as a party.[5] In addition, section 2-405 of the Code contains no requirement that the court already have obtained jurisdiction over a defendant prior to joinder. 735 ILCS 5/2-405 (West 2010).

¶ 32 In short, persons or entities are named and added or joined as parties as a prerequisite to the issuance of process, which is the typical method by which an Illinois court may obtain jurisdiction over a party defendant. Objecting to an order naming or joining a person or entity as a party based on a lack of personal jurisdiction represents a fundamental misunderstanding of Illinois civil procedure. See 735 ILCs 5/2-201(a), 2-301(a) (West 2010). Accordingly, John's argument on this point fails.

¶ 33 Joinder Pursuant to Section 2-405

¶ 34 John also contends the circuit court order joining him as a defendant for discovery purposes was improper under section 2-405 of the Code, which provides:

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[4] A notable exception is the naming of respondents in discovery under section 2-402 of the Code (735 ILCS 5/2-402 (West 2010)), which John notes is not at issue in this appeal.

[5] In this case, we further observe the objections to Scott's motion were filed by Sarah, not John. Generally, "a party may 'object to personal jurisdiction or improper service of process only on behalf of himself or herself, since the objection may be waived.' "" *In re M.W.*, 232 Ill. 2d 408, 427 (2009) (quoting *Fanslow v. Northern Trust Co.*, 299 Ill. App. 3d 21, 29 (1998)). This rule of standing is consistent with the rule that "a party may object to the court's jurisdiction over *the party's person*." (Emphasis added.) 735 ILCS 5/2-301(a) (West 2010).

> "Any person may be made a defendant who, either jointly, severally or in the alternative, is alleged to have or claim an interest in the controversy, or in any part thereof, or in the transaction or series of transactions out of which the controversy arose, or whom it is necessary to make a party for the complete determination or settlement of any question involved therein, or against whom a liability is asserted either jointly, severally or in the alternative arising out of the same transaction or series of transactions, regardless of the number of causes of action joined." 735 ILCS 5/2-405(a) (West 2010).

The standard of review of a trial court's decision to require joinder of a party is whether the trial court abused its discretion. See *Carrao v. Health Care Service Corp.*, 118 Ill. App.3d 417, 430 (1983) (citing *Lain v. John Hancock Mutual Life Insurance Co.*, 79 Ill. App. 3d 264, 267 (1979)).[6]

¶ 35 Pursuant to section 2-405:

> " 'A necessary or indispensable party is one whose presence in the suit is required for any of three reasons: (1) to protect an interest which the absentee has in the

[6] John also notes the Illinois Marriage and Dissolution of Marriage Act provides "[t]he court may join additional parties necessary and proper for the exercise of its authority under this Act." 750 ILCS 5/403(d) (West 2010). In his brief, John asserts this authority applies "only in the presence of a very narrow set of circumstances." See *In re Marriage of Schweihs*, 222 Ill. App. 3d 887, 894-96 (1991); *In re Sharp*, 65 Ill. App. 3d 945, 951 (1978). Although the cases John cites present particular sets of circumstances, the plain language of the statute does not suggest any limitation on the court's authority, other than the parties added be necessary and proper for the exercise of the court's authority.

> subject matter of the controversy which would be materially affected by a judgment entered in his absence [citations]; (2) to reach a decision which will protect the interests of those who are before the court [citations]; or (3) to enable the court to make a complete determination of the controversy. [Citation.]' " *Carrao*, 118 Ill. App.3d at 430-31 (citing *Lain*, 79 Ill. App. 3d at 267).

The parties discuss all three reasons to some degree, but we address the third reason, as it is dispositive in this case.

¶ 36 In this court's decision of Sarah's prior appeal, this court observed:

> "[T]he rule for determining the financial resources of a noncustodial parent who has remarried is in flux. The traditional rule has been that '[t]he financial status of a current spouse may not be considered to ascertain the ability of a party to fulfill a child support obligation.' *In re Marriage of Keown*, 225 Ill. App. 3d 808, 813 (1992); see also *Street v. Street*, 325 Ill. App. 3d 108, 113 (2001) (noting the "long line of cases" that have held that a new spouse's income is not relevant in proceedings seeking to modify child support orders). In a similar vein, the legislature has provided by statute that '[n]either husband nor wife shall be liable for *** the separate debts of each other.' 750 ILCS 65/5 (West 2006). However, as the court in the *Street* case noted, 'there is clearly a current trend in the case law moving away from the traditional rule of law on this issue.' *Street*, 325 Ill. App. 3d at 114." *Corwin*, 2012 IL App (1st) 102706-U, ¶ 25.

We found no case, however, "that has ruled upon the particular issue presented by the instant case; that is, where the noncustodial parent earns no income, may the income of the new spouse be treated as if a portion is 'income' of the noncustodial parent for purposes of setting child

support." *Corwin*, 2012 IL App (1st) 102706-U, ¶ 27.

¶ 37 After analyzing our supreme court's decision *In re Marriage of Rogers*, 213 Ill. 2d 129 (2004), which involved classifying gifts received by a party as income, we concluded the circuit court's ruling that money John provided Sarah for her living expenses, litigation expenses and visitation travel costs could not be classified as gifts. *Corwin*, 2012 IL App (1st) 102706-U, ¶¶ 29-30. This court did not conclude, however, that John's income could not be considered by the trial court as a matter of law.[7] Rather, this court ruled that, given Sarah's contention that the "income" imputed to her far exceeded her earning potential given her level of education and her employment history, a monthly child support award of $3,000 was excessive, *"[e]ven considering John's support, which might enable Sarah to contribute a higher percentage of her own income based on availability of greater resources* ***." (Emphasis added.) *Corwin*, 2012 IL App (1st) 102706-U, ¶ 31.

¶ 38 Thus, our prior order, which is the law of the case in these proceedings (*W.C. Richards Co., Inc. v. Hartford Accident & Indemnity Co*., 311 Ill. App. 3d 218, 222 (1999)), generally considered John's support as relevant to the amount to be awarded as child support. Accordingly, the circuit court was entitled to do the same on remand.

¶ 39 The remaining question is whether the trial court abused its discretion in determining it

[7] Although we adhere to our prior ruling that John's support of Sarah should not be treated as a gift, we observe that on related issues, such as maintenance and awarding attorney fees on a petition to modify child support, this court has treated a former wife's role as a homemaker to be considered as the equivalent of employment producing income. See *In re Marriage of Hassiepen*, 269 Ill. App. 3d 559, 569-70 (1995); *In re Marriage of Hensley*, 210 Ill. App. 3d 1043, 1052 (1991).

was necessary to add John as a defendant for discovery purposes in order to completely determine the appropriate level of child support. After all, a subpoena was issued to John regarding particular financial information and thus it could be argued that the information Scott seeks could be discovered from John as a nonparty deponent. On the other hand, Scott suggests John has refused to comply with discovery under valid process of the circuit court, which would support the necessity of naming John as a party to the proceedings. Accordingly, to answer this question, we consider whether the circuit court obtained personal jurisdiction over John as a nonparty deponent. This court applies the *de novo* standard of review when the circuit court decides the issue of personal jurisdiction solely on the basis of documentary evidence, as the record establishes the circuit court did in these proceedings. *Graver v. Pinecrest Volunteer Fire Department*, 2014 IL App (1st) 123006, ¶ 13.

¶ 40 Section 2-209 of the Code (735 ILCS 5/2-209 (West 2008)), commonly known as "the Illinois long-arm statute," provides that an Illinois court may exercise jurisdiction in any action against any person who is a natural person present within this state when served. 735 ILCS 5/2–209(b)(1) (West 2008). In 1989, Illinois amended section 2-209 of the Code to extend its jurisdiction to the maximum extent permitted under the due process clause. *Vailas v. Vailas*, 406 Ill. App. 3d 32, 40 (2010). Prior to this amendment, Illinois courts have repeatedly held service of process on a nonresident who is physically present in the State, albeit briefly, is a sufficient basis for *in personam* jurisdiction. *Robertson v. Sollitt*, 151 Ill. App. 3d 214, 221 (1986) (and cases cited therein). This court has also held personal service in Illinois meets the constitutional requirements of due process. *Vailas*, 406 Ill. App. 3d at 39.

¶ 41 In this case, the record contains the sworn affidavit of a special process server stating he personally handed a subpoena (along with other petitions and court orders) to John in Illinois on

April 9, 2009. John's *pro se* motion to quash the subpoena attached an unsworn letter denying he accepted the subpoena from the special process server. "In Illinois, the affidavit of service is *prima facie* evidence that process was properly served." *Paul v. Ware*, 258 Ill. App. 3d 614, 617 (1994). An uncorroborated opponent's affidavit merely stating that he had not been personally served is insufficient to overcome the presumption favoring the affidavit of service. See *id.* Thus, based on the record, the circuit court obtained personal jurisdiction over John as a nonparty deponent.

¶ 42 Given this record, the circuit court, which was required to determine the appropriate amount of child support, was unable to completely determine the issue due to John's refusal to provide the information as a properly and constitutionally served nonparty deponent. Accordingly, the circuit court did not abuse its discretion in granting Scott leave to name John as a defendant for the purpose of obtaining discovery of the information necessary to determine the child support issue.

¶ 43 CONCLUSION

¶ 44 In summary, we conclude the circuit court did not err in granting Scott leave to name John as a defendant for discovery purposes only. For all the aforementioned reasons, the order of the circuit court of Cook County is affirmed.

¶ 45 Affirmed.