2015 IL App (1st) 141987-U

FIRST DIVISION
DECEMBER 7, 2015

No. 1-14-1987

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re RUTH VILLEGAS MEDELLIN,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellee,	)	Cook County.
	)	
v.	)	No. 13 D 4946
	)	
CARLOS MARTINEZ DUNCKER RAMIREZ,	)	Honorable
	)	Raul Vega,
Respondent-Appellant.	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: Absent a transcript or report of the relevant proceedings, the record on appeal was insufficient to demonstrate that the portion of the trial court's June 22, 2014 order requiring the parties to surrender their passports was a "penalty" related to the trial court's simultaneous finding that the respondent was in civil contempt. Thus, the respondent could not establish that the court entered a contempt order imposing "a monetary or other penalty" supporting appellate jurisdiction under Supreme Court Rule 304(b)(5). Appeal dismissed for lack of jurisdiction.

¶ 2 Respondent-appellant Carlos Martinez Duncker Ramirez appeals from a number of non-final trial court orders, including a June 24, 2014 order finding him in civil contempt and

directing him to surrender his passport. The respondent asserts that we have jurisdiction pursuant to Illinois Supreme Court Rule 304(b)(5) (eff. Jan. 1, 2006) because the order to surrender his passport constituted a "penalty" imposed in conjunction with the contempt finding. We find that the respondent has not demonstrated jurisdiction and thus dismiss the appeal.

¶ 3 BACKGROUND

¶ 4 This appeal arises from an action initiated by the petitioner-appellee, Ruth Villegas Medellin, alleging that the respondent wrongfully removed the parties' children from their native country of Mexico in violation of her parental rights.

¶ 5 The petitioner and the respondent, both Mexican citizens, were married in Mexico in 2002. The respondent was licensed to practice medicine in Mexico, although he claims that he is retired. The parties had two children together during their marriage (the children), who were born in Mexico in 2003 and 2005.

¶ 6 According to the petitioner, she and the respondent lived together with the children in Mexico until February 24, 2012. On that date, she alleges that the respondent "barred petitioner from the family home with the assistance of private security guards" and, without notifying her, moved with the children to Chicago, Illinois.

¶ 7 The petitioner asserts that, before the respondent left Mexico with the children, he had "secretly obtained a divorce" order from a Mexican court and "obtained custody of the minors in a secret proceeding in Mexico City" without providing notice to the petitioner of such court proceedings. The respondent subsequently remarried and was living in Chicago with the children and his current wife at the time this action was initiated.

¶ 8 In May 2013, after learning of the children's whereabouts, the petitioner filed a petition in the circuit court of Cook County seeking the return of the children to Mexico (the May 2013

petition). The May 2013 petition was premised on the Hague Convention on the Civil Aspects of International Child Abduction (Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. 11670, 1343 U.N.T.S. 89) (hereinafter, the Convention),[1] and the International Child Abduction Remedies Act, 42 U.S.C. § 11601 *et seq.* (2006) (hereinafter, ICARA), the federal statute implementing the Convention.

¶ 9 The May 2013 petition alleged that the respondent's removal of the children was wrongful and in violation of the petitioner's rights under Mexican law. The May 2013 petition sought a court order directing the return of the children to Mexico, "where an appropriate custody determination [can] be made by a Mexican court under Mexico law." In conjunction with the May 2013 petition, the petitioner also sought a temporary restraining order prohibiting the removal of the children from Cook County, which was granted by the court on May 31, 2013.

¶ 10 On June 7, 2013, the respondent moved to dissolve the temporary restraining order in a submission which claimed that he had obtained a valid divorce from the petitioner in Mexico in July 2011. The respondent further claimed that in January 2012, a Mexican court order granted him custody of the children, and that a separate Mexican court order in February 2012 had terminated the petitioner's parental rights. In subsequent filings, the respondent admitted that he had not told the petitioner in advance that he was taking the children to the United States, but he claimed that he was under no obligation to do so once her parental rights had been terminated. On June 24, 2013, the respondent filed a motion to dismiss the May 2013 petition in which he

[1] "The Convention *** seeks to secure the prompt return of children wrongfully removed to or retained in any signatory state. [Citation.] A central purpose of the Convention is to discourage parents from crossing international borders in search of a more sympathetic forum in which to litigate custody issues." (Internal quotation marks and citation omitted). *In re Marriage of Krol and Kubala*, 2015 IL App (1st) 140976, ¶ 17.

specifically denied the petitioner's claim that she had lacked notice of the Mexican proceedings leading to the termination of her custody rights.

¶ 11 On July 3, 2013, the petitioner submitted a response to the motion to dismiss which contended that she had recently obtained a Mexican court ruling (entered the previous day, July 2, 2013) that set aside the 2011 divorce decree and the 2012 orders terminating her custody rights. The petitioner claimed that the July 2, 2013 Mexican court decision had found "that the divorce and custody claims obtained by Respondent were the result of fraud." The petitioner thus argued that there was no longer any controlling Mexican decision regarding custody of the children, and so the "case must be returned to Mexico for such a determination."

¶ 12 The court was subsequently advised that the respondent sought to challenge the July 2, 2013 Mexican court order in the Mexican court system. Accordingly, on July 8, 2013, the trial court entered and continued the respondent's pending motion to dismiss and motion to dissolve the temporary restraining order.

¶ 13 In October 2013, the respondent was arrested during a trip to Uruguay, while the children and the respondent's current wife remained in Chicago. The record reflects that the respondent's arrest was prompted by the petitioner's complaints to Mexican authorities concerning the respondent's removal of the children. On October 17, 2013, the petitioner filed an emergency motion for temporary custody in the trial court which claimed that Mexican authorities had issued "arrest warrants for Respondent for his fraud in the process in Mexico" and that the respondent was being extradited to Mexico from Uruguay. On October 18, the court entered an order striking that motion upon finding that there was "not an emergency."

¶ 14 On December 18, 2013, petitioner filed a notice that she was changing her legal counsel in this matter. On the same date, the petitioner, through her new counsel, filed an "emergency

petition for temporary custody, to enforce international order and other relief" (the December 2013 petition). Whereas the May 2013 petition was brought pursuant to the Convention and ICARA and sought the return of the children to Mexico for a custody determination by the Mexican courts, the December 2013 petition sought an award of temporary custody based upon Illinois statutes, namely the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) as well as the Illinois Marriage and Dissolution of Marriage Act (IMDMA).

¶ 15 The December 2013 petition argued that the petitioner was entitled to custody as the result of recent developments in Mexican proceedings. Specially, she alleged that on December 9, 2013, "the Family Court in Mexico granted Provisional Custody to" the petitioner based, in part, on the respondent's false statements to the Mexican court and "the abandonment of the minor children in the United States during his travel to Uruguay." The December 2013 petition claimed that the respondent had been "charged in Mexico with the Federal Crime of Child Trafficking" and remained in custody. The petitioner claimed that the children were enrolled in a school in Chicago, and had been "abandoned" by the respondent since his arrest.

¶ 16 The December 2013 petition claimed that the court had temporary emergency jurisdiction pursuant to section 204 of the UCCJEA (750 ILCS 36/204(c)) (West 2012), "as the children are present in this state and have been abandoned by their father in this state." The petitioner also cited IMDMA provisions allowing courts to issue temporary custody orders "in accordance with the best interest of the child." See 750 ILCS 5/603(a) (West 2012). In addition to seeking an award of temporary custody, the petitioner simultaneously requested that, pursuant to the UCCJEA, the court recognize the December 9, 2013 Mexican court order that she claimed had given her "provisional custody" of the children. See 750 ILCS 36/313 (West 2012)).

¶ 17 On December 20, 2013, the court entered and continued the December 2013 petition. At the same time, the court, *sua sponte* issued a preliminary injunction "prohibiting either party *** from removing the children from Cook County" until further order of the court.

¶ 18 On December 24, 2013, the petitioner filed a "petition for interim and prospective attorney's fees and costs" pursuant to section 508(a) of the IMDMA, which provides that "[t]he court from time to time, *** after considering the financial resources of the parties, may order any party to pay a reasonable amount for his own or the other party's costs and attorney's fees" in connection with the "maintenance or defense of any proceeding under" the IMDMA or "[a]ncillary litigation" "reasonably connected with" a proceeding under the IMDMA. 750 ILCS 5/508(a)(1),(a)(6) (West 2012). The petitioner claimed that, given her lack of financial resources, she needed an award of attorney's fees to permit her to maintain the action and to ensure "a level playing field with [respondent] in terms of legal representation." She claimed that she had borrowed funds to pay her counsel's retainer, was likely to incur over $15,000 in additional fees, and was unable to earn income as she was living in the United States on a temporary visa while she sought the return of the children. On the other hand, she claimed that the respondent was "an expert in molecular nuclear medicine" who was "gainfully employed earning a substantial income."

¶ 19 On December 27, 2013, the court entered an order granting the petitioner "temporary possession" of the children. On the same date, the court appointed a guardian *ad litem* for the children, directed the guardian to assist in transferring the children to the petitioner, and further ordered the guardian to hold the children's passports.

¶ 20 The respondent subsequently sought leave to appeal from the order directing transfer of the children to the petitioner. On January 14, 2014, this court denied the respondent's petition for leave to appeal.

¶ 21 On January 17, 2014 the respondent filed a motion to strike the petitioner's request for interim and prospective attorney's fees. That motion contended that, because the action had been commenced pursuant to the Convention, the petitioner could not seek interim fees pursuant to section 508(a) of the IMDMA. The respondent claimed that the Convention only allows an award of attorney's fees after a final determination of the merits, not interim or prospective fees as sought by the petitioner.

¶ 22 Also on January 17, 2014 the respondent filed his opposition to the December 2013 petition. In that submission, he claimed that his October 2013 arrest was based on "fraudulent information" provided to the Mexican authorities by the petitioner and denied that he remained in the custody of law enforcement. The respondent also denied that the December 9, 2013 Mexican court order relied upon by the petitioner had granted her custody of the children, but maintained that the 2012 court order terminating her parental rights remained in effect.

¶ 23 On January 22, 2014, the petitioner responded to the respondent's motion to strike her petition for interim and prospective attorney's fees. The petitioner argued that, although her May 2013 petition had been brought under the Convention, she could nevertheless recover interim fees because her December 2103 petition for temporary custody was filed pursuant to the IMDMA. In response, the respondent filed a reply brief arguing that the December 2013 petition could not "convert" the case from one under the Convention, which does not allow interim and prospective fees, to a case under the IMDMA. He contended that since the May 2013 petition sought the return of the children for a Mexican court to determine custody, the petitioner could

not rely on the attorney's fee provisions of the IMDMA, which governs custody determinations by Illinois courts.

¶ 24 The court subsequently ordered the parties to submit financial disclosure statements. On January 29, 2014, the respondent submitted a financial disclosure stating that he was 50 years old, "retired," and subsisting on a $346 monthly pension from the Mexican government. With respect to assets, the respondent identified several savings and checking accounts with balances totaling approximately $390,000. The respondent also reported that the previous month (December 2013), he had sold a property in Chicago for $270,000, and that in November 2013 he had sold a property in Mexico City for $110,000. The January 2014 disclosure indicated that the respondent now resided at a home that he owned in Texas.

¶ 25 On February 3, 2014, the court denied the respondent's motion to dismiss the May 2013 petition, as well as his motion to dismiss the petition seeking attorney's fees. The petitioner subsequently filed an amended attorney's fee petition averring that she had accrued over $19,000 in outstanding legal fees and expected to incur over $20,000 in additional fees.

¶ 26 On March 13, 2014, the court entered an order reflecting that the respondent's counsel indicated that the respondent was "willing to agree to a voluntary return" of the children to Mexico. The court invited the parties to submit briefing on its "authority to accept a voluntary return order from respondent negating a Hague Convention hearing."

¶ 27 On March 21, 2014, the petitioner filed a memorandum opposing the respondent's request to "return the children to Mexico without granting [the petitioner] a hearing on her underlying petitions." In that submission, the petitioner claimed that on February 6, 2014, a Mexican appellate court had ruled in her favor and "confirmed the elimination of" the 2011 and 2012 judgments that had dissolved the parties' marriage, granted custody of the children to the

respondent, and terminated her parental rights. The petitioner urged that it was necessary for the trial court to reach the merits as to whether the removal of the children had been wrongful, contending that the respondent remained "a substantial flight risk to repeat his scam all over again" and "may remove the children to a country that is not a signatory to the Hague Convention."

¶ 28 In the same memorandum, the petitioner further argued that neither the Convention nor ICARA precluded the award of interim attorney's fees pursuant to Illinois law. She further contended that, as she had been compelled to "temporarily reside in the United States for nearly one year in order to secure the return of her children," the respondent should be required to pay restitution for the travel and living expenses she incurred in seeking the children's return. The petitioner requested that the court "impound [the respondent's] passport" until he paid for such expenses.

¶ 29 On March 24, 2014, the petitioner also filed a "petition to register and enforce" the February 6, 2014 Mexican appellate court order. On May 13, 2014, the respondent opposed that petition, claimed that the Mexican appellate court decision "has no legal effect under Mexican law" and did not grant custody to either parent. The respondent maintained that no Mexican court order had restored the petitioner's parental rights. Also on May 13, 2014 the respondent filed a separate memorandum in which he again argued that an award of interim and prospective fees pursuant to the IMDMA was improper, as the case had been initiated pursuant to the Convention.

¶ 30 On May 22, 2014, the court ordered the parties to exchange updated financial disclosure statements. The respondent filed an updated disclosure on May 29, 2014. Notably, whereas his January 2014 statement had disclosed checking and saving accounts totaling about $390,000, the

respondent's May 2014 statement listed only two checking accounts totaling approximately $3,800. The respondent did not disclose any other assets other than his Texas residence and an income tax refund of $7,000.

¶ 31 The court subsequently conducted an evidentiary hearing with respect to the petition for interim and prospective attorney's fees. The record contains no transcript of that hearing, although the court's written order of June 2, 2014 reflects that the court heard the parties' testimony. In that order, the court explicitly found that the respondent's testimony was "totally incredible," that the respondent was "hiding money and hiding behind his current wife," and that the respondent's sale of his home in Mexico was "a sham." The court also found that "it is unbelievable that [the respondent] spent $400,000 in four months." After additionally finding that the respondent had the ability to pay, the court ordered him to pay interim fees to the petitioner's counsel in the amount of $37,552, as well as $30,000 in prospective fees. The court ordered the payment of the sum of $67,552 within one week, by June 9, 2014.

¶ 32 On June 6, 2014, the respondent filed a motion to reconsider, again urging that interim fees were improper under the Convention and that the IMDMA provisions allowing interim fees were inapplicable to this case. On June 18, 2014, the court denied the motion to reconsider.

¶ 33 On June 18, 2014, the petitioner filed a petition for rule to show cause as to why the respondent should not be held in indirect civil contempt for his failure to pay the attorney's fees ordered by the court on June 2, 2014. On June 24, 2014, the court conducted a hearing on the petition for contempt. The record on appeal contains no transcript or report of proceedings from that hearing, but the court's corresponding written order reflects that the respondent "offered no testimony or evidence" at that hearing.

¶ 34 The court proceeded to hold the respondent in indirect civil contempt. The court's written order of June 24, 2014 specifically found that the respondent was able to comply with the June 2, 2014 order requiring his payment of the petitioner's attorney's fees, and that his failure to comply was "willful, contumacious and without compelling cause or justification." The June 24, 2014 order concluded:

> "1. [The respondent] is hereby held in indirect civil contempt of court for failure to pay [the petitioner's counsel] the sum of $67,552.00 as ordered on June 2, 2014.
>
> 2. [The respondent] may purge himself of contempt by paying [the petitioner's counsel] the sum of $67,552.00.
>
> 3. A body attachment shall issue by separate order of court.
>
> 4. Counsel for each party shall retain their respective clients' passports in their possession until further order of court."

In a separate body attachment order also issued on June 24, 2014, the court directed the sheriff to bring the respondent before the court to answer the rule to show cause.

¶ 35 On June 27, 2014, the respondent filed a notice of appeal from: (1) the June 2, 2014 order directing him to pay $67,552 in interim and prospective attorney's fees; (2) the June 18, 2014 denial of his motion to reconsider the June 2, 2014 order; (3) the June 24, 2014 order finding him in contempt and directing him to surrender his passport to counsel; and (4) the body attachment order also entered on June 24, 2014.

¶ 36 On the same date that he filed his notice of appeal, the respondent moved to stay enforcement of the orders that he challenged on appeal. On July 3, 2014, the trial court ordered

the respondent to appear with his passport at a hearing on July 7, 2014. At the July 7 hearing, the respondent's counsel reported that the respondent had *not* turned over his passport to his attorneys. At that time, the trial court denied the motion to stay pending appeal.

¶ 37 On July 17, 2014, the respondent filed a motion in the appellate court to stay enforcement of the trial court orders challenged on appeal. On July 31, 2014, our court granted that motion contingent on the respondent's posting of a $70,000 surety bond.

¶ 38 ANALYSIS

¶ 39 The respondent's appeal raises several arguments as to why the trial court erred in ordering him to pay interim and prospective attorney's fees and why he should not be held in contempt for failing to comply with that order. However, before we may consider those arguments, we must determine whether we have jurisdiction to decide this appeal.

¶ 40 "Unless a Supreme Court Rule or statute provides appellate jurisdiction, this court only has jurisdiction to review appeals from final judgments." *Van Der Hooning v. Board of Trustees of University of Illinois*, 2012 IL App (1st) 111531, ¶ 6. There is no dispute that the orders appealed from in this case were *not* final judgments. Nevertheless, the respondent contends that we have appellate jurisdiction pursuant to Illinois Supreme Court Rule 304(b)(5), which provides that "[a]n order finding a person or entity in contempt of court which imposes a monetary or other penalty" is immediately appealable. Ill. S. Ct. R. 304(b)(5) (eff. Jan. 1, 2006). Our supreme court has recognized that "[i]t is clear from the language of the rule that only contempt judgments that impose a penalty are final, appealable orders. Until the entry of a contempt order imposing a sanction, a contempt petition provides no basis for obtaining immediate appellate jurisdiction over any part of the case under Rule 304(b)(5)." *In re Marriage of Gutman*, 232 Ill. 2d 145, 153 (2008).

¶ 41 Notably, on July 28, 2014, the petitioner moved to dismiss this appeal due to lack of appellate jurisdiction. Specifically, the petitioner argued that the June 24, 2014 order finding the respondent in contempt did not impose any "monetary or other penalty" to permit appellate jurisdiction under Rule 304(b)(5).

¶ 42 The respondent's opposition to the petitioner's motion to dismiss his appeal acknowledged that the June 24, 2014 order "d[id] not impose a monetary penalty."[2] However, he contended that the court had "imposed sanctions" on him, and that Rule 304(b)(5) applied to confer jurisdiction, because the court had ordered him to surrender his passport to his attorneys when it held him in contempt. He argued that—considering his personal circumstances as a retired doctor licensed to practice in Mexico but not the United States—the order was "punitive" because it deprived him of the "ability to travel to his home country to seek employment" to earn the funds necessary for him to pay the $67,552 attorney's fee award. He further argued that the trial court's "intent to penalize" him could be derived from the language of trial court's findings in the June 2, 2014 order that his testimony was "totally incredible" and that he was "hiding money," and from the fact that the trial court had allowed him only one week to pay the $67,552 fee award.

¶ 43 On August 28, 2014, our court took the petitioner's motion to dismiss this appeal with the case. At that time, we directed the parties to address in their briefs "the issue of whether the trial

[2] Although the June 24, 2014 order specified that the respondent could purge himself of contempt by paying $67,552 to the petitioner's counsel, that portion of the order merely directed him to comply with the previous June 2, 2014 order requiring him to pay that amount. Thus, it cannot be construed as an independent monetary penalty for contempt. See *In re Marriage of Buchmiller*, 135 Ill. App. 3d 182, 185-86 91985) (holding that a contempt order "call[ing] for no liability to the respondent beyond that already occasioned by earlier orders of the court entered prior to the finding of contempt" did not "punish" the respondent and thus was not appealable).

court's order requiring the [respondent] to surrender his passport to his attorneys, imposed a penalty which made the order appealable under Rule 304(b)."

¶ 44 In his appellate briefing, the respondent maintains that the order to surrender his passport was a penalty "due to [his] particular situation as a retired lawful permanent resident alien who has never been licensed to practice medicine in the United States." He argues that the order "in effect posed a punishment" because without his passport he cannot work in Mexico, "which is the only way in which [he] can earn sufficient salary to comply" with the June 2, 2014 order requiring him to pay attorney's fees. Thus, he contends that the portion of the June 24, 2014 order requiring him to surrender his passport "makes it impossible for [respondent] to attempt to comply" with the court's prior order.

¶ 45 The respondent further argues that the court's order regarding his passport is punitive because it violated his constitutional rights to freedom of travel and due process. He urges that the order was "not supported by any controversy over or evidence of [his] possible intention to flee the country." He claims that the order "cannot be justified by an intention to keep [him] from fleeing the country" because he is a lawful permanent resident who "not only intends but is required to remain in the United States."

¶ 46 The respondent acknowledges that the court also ordered the *petitioner* to surrender her passport, but nevertheless contends that the order was punitive as applied to him, given his "unique circumstances." He also concedes that he did not surrender his passport but argues that this "does not negate the punitive effect of the order requiring that he do so."

¶ 47 The petitioner, on the other hand, argues that the trial court's requirement for *both* parties to surrender their passports to their counsel cannot be construed as a penalty imposed against the respondent. The petitioner urges that, although the court's directive for the parties to surrender

their passports was contained in the same order that found the respondent in contempt, "there is no causal link" between these two portions of the June 24, 2014 order. Thus, she argues that the portion of the order concerning the parties' passports "was not designed to punish [the respondent] for failing to comply" with the prior order concerning payment of attorney's fees.

¶ 48 The petitioner further urges that "the issue of [the respondent] being a flight risk was squarely before the Court," as she had specifically expressed that concern in prior court submissions. Thus, she suggests there is no reason to conclude that the court ordered the surrender of passports as "penalty" for the respondent's contempt.

¶ 49 The petitioner also argues that the respondent cites no evidence in the record to support his contention that he is unable to earn income outside of Mexico. To the contrary, the petitioner points out that the trial court's June 24, 2014 order found that the respondent "has the ability to comply" with the prior order requiring him to pay the petitioner's attorney's fees. She urges that, "in the absence of an adequate supporting record," we "must presume that the trial court's findings are correct."

¶ 50 After reviewing the record on appeal, we conclude that the respondent has not established that the portion of the June 24, 2014 order directing him to surrender his passport was a "penalty" establishing appellate jurisdiction under Rule 304(b)(5). Importantly, it is the respondent's burden, as the appellant, to demonstrate our court's jurisdiction. See *U.S. Bank National Ass'n v. In Retail Fund Algonquin Commons, LLC*, 2013 IL App (2d) 130213, ¶ 24 ("As the appellants, defendants have the burden to establish our jurisdiction") (citing Ill. S. Ct. R. 341(h)(4) (eff. July 1, 2008)). Furthermore, "an appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error." *Foutch v. O'Bryant*, 99

Ill. 2d 389, 391 (1984). "Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Id.* at 392.

¶ 51 We note that the respondent's reply brief states that the "transcripts for the days on which the appealed orders were entered simply do not exist," but argues that there is no need for them because the trial court's orders were "legally insufficient in and of themselves — the trial court had no authority to issue them in the first place." He argues that "transcripts and bystander records are not absolutely mandatory where the record otherwise contains sufficient evidence for the appellate court to make a decision," and that the record here "contains sufficient evidence of the legal invalidity of the Contempt Order and Fee Order to enable this Court to decide the legal issues presented."

¶ 52 The respondent's argument is unpersuasive as applied to the question of jurisdiction. Regardless of whether a transcript would be necessary to demonstrate the *merits* of his appeal—such as whether the trial court had authority to order the payment of interim attorney's fees pursuant to the IMDMA—as a threshold matter the respondent must first demonstrate that our court has *jurisdiction* to review such non-final orders. The respondent's only asserted basis for our court's jurisdiction is Rule 304(b)(5), which applies only where a contempt order imposes a "monetary or other penalty." Ill. S. Ct. R. 304(b)(5). Thus, if we cannot discern such a "penalty" from the record before us on appeal, we lack jurisdiction to proceed to address the substantive arguments raised by the respondent.

¶ 53 In this case, the respondent has not presented a sufficient record for us to determine that we have jurisdiction under Rule 304(b)(5). It is far from clear that the portion of the trial court's June 24, 2014 order directing the respondent *and* the petitioner to surrender their passports was imposed as a "penalty" arising from the separate portion of that order holding the respondent in

contempt. As the record on appeal contains no transcript or report of proceedings from the hearing on that date, we are left without the trial court's reasoning as to why it ordered the parties to surrender their passports at that time. As a result, there is simply nothing in the record to indicate that the court's decision to order the parties to turn over their passports was intended as a sanction resulting from the simultaneous contempt finding. This is especially the case since the court directed *both* parties to surrender their passports. The respondent offers no plausible reason as to why the trial court would impose the same "punishment" on the petitioner, when only the respondent was held in contempt.

¶ 54 Rather, it appears to be equally likely that, apart from any "penalty," the court simply wanted to ensure that neither the petitioner or the respondent could leave the United States before the case was resolved. The court may have decided that securing the parties' passports was necessary to preserve the *status quo* and ensure that the parties (and the children) remained in the jurisdiction. The court's prior order directing the guardian *ad litem* to hold the children's passports suggests that the court was already concerned about the possibility that one of the parties might attempt to remove the children from the United States prior to a decision on the merits. Moreover, the petitioner had previously argued to the court that the respondent was a "flight risk" and might attempt to remove the children without her knowledge (as he had admittedly done in 2012).

¶ 55 In any event, the respondent's failure to include a transcript or record of the proceedings precludes us from determining whether the trial court's order regarding the parties' passports was a penalty. "Where the issue on appeal relates to the conduct of a hearing or proceeding, this issue is not subject to review absent a report or record of the proceeding. Instead, absent a record, 'it [is] presumed that the order entered by the trial court [is] in conformity with the law

and had a sufficient factual basis.'" *Webster v. Hartman*, 19 Ill. 2d 426, 432 (2001) (quoting *Foutch*, 99 Ill. 2d at 392)). Given the lack of a supporting record, we certainly cannot presume that the court's order directing the parties to surrender their passports was a contempt "penalty" sufficient to allow us to exercise jurisdiction under Rule 304(b)(5).

¶ 56 We note that the respondent goes to great lengths to argue that, because he is licensed to practice medicine only in Mexico, the trial court's order must be viewed as a penalty because it precluded him from traveling to the one country where he could gain employment. As the petitioner correctly points out, he does not cite any support from the record to support his underlying factual contentions. Moreover, even if his statements about his personal circumstances were true, absent a record of the proceedings, we cannot presume that the court intended to impose a penalty against him when it ordered *both* parties to surrender their passports.

¶ 57 In sum, we conclude that the record does not demonstrate that the trial court imposed a "penalty" when it found the respondent in civil contempt. Thus, he cannot invoke Rule 304(b)(5) as a basis for appellate jurisdiction. As the respondent identifies no other basis for appellate jurisdiction over the non-final trial court orders at issue (and we find no other basis in the rules of our supreme court), we must dismiss the respondent's appeal.

¶ 58 As we conclude that we lack jurisdiction, we do not address the remaining arguments in the parties' briefs.

¶ 59 For the foregoing reasons, we dismiss the appeal.

¶ 60 Appeal dismissed.