2016 IL App (1st) 161605-U

SIXTH DIVISION
DECEMBER 23, 2016

No. 1-16-1605

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re MARRIAGE OF	)	Appeal from the
HEATHER BUDORICK,	)	Circuit Court of
	)	Cook County.
Petitioner-Appellee,	)	
	)	
and	)	No. 14 D2 30119
	)	
DANIEL BUDORICK,	)	Honorable
	)	Regina A. Scannicchio,
Respondent-Appellant.	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: The interlocutory appeal challenging the trial court's denial of a motion to vacate the parties' custody judgment, as well as the denial of appellant's petition for substitution of judge, is dismissed for lack of appellate jurisdiction.

¶ 2 In this marital dissolution proceeding, respondent-appellant Daniel Budorick appeals from interlocutory orders denying his request to vacate a custody judgment, as well as from a prior order denying his petition for substitution of the trial judge. For the following reasons, we find that we lack jurisdiction and dismiss the appeal.

¶ 3 BACKGROUND

¶ 4 Petitioner-appellee Heather Budorick (Heather) and respondent-appellant Daniel Budorick (Daniel) were married in 1995. Two sons (the children) were born during the marriage, in 2000 and 2001.

¶ 5 In March 2014, Heather filed a petition for dissolution of marriage. In December 2014, with the assistance of a mediator, Howard Rosenberg (the mediator), the parties reached a joint parenting agreement (the parenting agreement). At that time, both Heather and Daniel were represented by counsel. During the subsequent proceedings relevant to this appeal, Daniel, who is an attorney, has represented himself.

¶ 6 The parenting agreement stated that Heather and Daniel would have joint custody of the children and would share responsibility for education and health decisions. The parenting agreement specified that Heather's residence would be "the children's primary residence." Daniel was granted parenting time overnight once per week, as well as every other weekend.

¶ 7 The parenting agreement provided that in the event of disputes that could not be resolved by the parties within seven days, the parties "shall participate in the non-binding mediation of their dispute" with the mediator. The parenting agreement was signed by both parties and was incorporated into a custody judgment entered December 1, 2014 (the custody judgment).

¶ 8 Despite the custody judgment, litigation continued with respect to other issues in the dissolution action. The record reflects that in 2015 and early 2016, the parties engaged in contentious discovery disputes in preparation for a trial on financial issues, including the determination of child support obligations and division of marital property.

¶ 9 A trial on such financial issues was scheduled to commence on March 21, 2016. On March 16, 2016, the court held a pretrial conference. There is no transcript or record of

proceedings from that conference in the record. According to Daniel, at that conference, the trial court (Judge Scannicchio) made several remarks and rulings which, he alleges, demonstrated her prejudice against him. Among such remarks, he claimed that Judge Scannicchio indicated (incorrectly) that the parenting agreement identified Heather as the "custodial parent," and stated that this fact would entitle her to an award of child support from Daniel.

¶ 10 On March 17, 2016, Heather filed a notice of intent to claim dissipation, which claimed that, since Heather filed for dissolution of marriage, Daniel had worked "far below his earning capacity," reducing the income to the marital estate.

¶ 11 Also on March 17, 2016, Daniel initiated a separate lawsuit in the United States District Court, Northern District of Illinois (the federal court), naming Heather's parents as defendants. Daniel's federal lawsuit alleged that Heather's parents had wrongfully converted assets from marital accounts held in Heather's name or from joint accounts held by Heather and Daniel. Daniel's federal court lawsuit asserted federal diversity jurisdiction, based on the Connecticut residency of Heather's parents.

¶ 12 The following day, March 18, 2016, Daniel filed a notice of removal in the federal court lawsuit, removing this dissolution of marriage action to the federal court. In the circuit court, he filed a "notice of filing notice of removal" stating that the circuit court "may not proceed any further unless and until this case is remanded." Also on March 18, Daniel sent a letter to Judge Scannicchio regarding the notice of removal, stating that "this Court no longer has jurisdiction" and "may not proceed any further" in the divorce case.

¶ 13 On March 21, 2016, the previously scheduled trial date, Heather and her counsel, Stuart Gordon, appeared in court before Judge Scannicchio. Daniel did not appear in court at that time, believing he had no obligation to do so in light of his notice of removal. There is no transcript of

the March 21, 2016 court proceedings. However, it is not disputed that on that date, Judge Scannicchio asked Heather's counsel, Gordon, to telephone Daniel to see if he was planning to appear in court. Daniel responded that he was not coming to court on that date. On March 21, 2016, the court entered an order acknowledging the notice of removal, and setting the matter for "status of remand" on April 15, 2016.

¶ 14 On March 22, 2016, the federal court issued an order in which it dismissed Daniel's complaint against Heather's parents, without prejudice, because it failed to contain sufficient allegations to establish federal diversity jurisdiction. In the same order, the federal court struck the notice of removal, and directed the clerk of the district court "to remand the state court divorce action forthwith." The federal court order further stated that the notice of removal "has no impact on the state court's ability to continue to preside over the divorce action."

¶ 15 On March 29, 2016, Heather filed a motion to set trial dates "as early as possible." On March 30, the parties appeared before the court. At that time, Daniel argued that the circuit court could not exercise jurisdiction until it received a separate directive from the clerk of the district court transmitting the federal court's March 22, 2016 order striking the notice of removal. During that argument, Judge Scannicchio remarked "We're not going to play Mr. Budorick's game, because I want the record to be very clear that Mr. Budorick's procedural trial strategy was to delay the trial, which [the federal court], in essence, said, but we're not going to do this." Nonetheless, the court agreed not to set trial dates at that time, but would await notification from the federal court.

¶ 16 On April 15, 2016, Judge Scannicchio conducted a status conference, which was attended by Heather's attorney, Gordon, as well as Daniel. Heather's counsel, Gordon, requested that the court set trial dates as soon as possible. Gordon stated: "Your Honor did say last time that when

it was continued – because Mr. Budorick filed that notice of removal a day or two before the actual trial – that you would get us in as quickly as humanly possible." On April 15, 2016, the court set trial to commence on June 13, 2016.

¶ 17 On April 28, 2016, Daniel filed a petition for substitution of judge for cause, claiming that a number of comments and rulings at the March 16, 2016 conference and thereafter demonstrated that Judge Scannicchio had "deep seated antagonism" towards Daniel and a "high degree of favoritism" for Heather.

¶ 18 Several of the petition's allegations pertained to alleged statements by Judge Scannicchio at the March 16, 2016 pre-trial conference, (for which there is no transcript). First, Daniel claimed that Judge Scannicchio stated "she may have a duty to report" Daniel to the Attorney Registration and Disciplinary Commission (ARDC) "due to his alleged misconduct vis-a-via a loan application that Mr. and Mrs. Budorick completed." Second, the petition claimed that Judge Scannicchio stated that she would not allow Daniel to present evidence that Heather's failure to pay mortgage and utility bills caused Daniel to borrow money, including a $97,000 loan from Daniel's brother, which Daniel asserted should be deemed a marital obligation.

¶ 19 Daniel further alleged that Judge Scannicchio stated "she would not follow" the provision of section 15(d) of the Income Withholding for Support Act, 750 ILCS 28/15(d) (West 2016), to the extent it required the calculation of Heather's income to include profit sharing. Daniel asserted Heather had "$30,000 to $40,000 a year" in such income, and that the failure to account for this income would negatively impact Daniel in the determination of maintenance and child support.

¶ 20 Daniel's petition also claimed that Judge Scannicchio had shown bias by advising Heather's counsel to file a notice of intent to seek dissipation, and he accused the court and Heather's counsel of improper *ex parte* communications on March 21, 2016.

¶ 21 Daniel's petition also claimed that Judge Scannicchio had "refused to comply with the federal removal statutes," as "she tried to exercise jurisdiction" after Daniel had filed a notice of removal, and that she "sought to force Daniel to appear" in court on March 21, 2016. As proof of bias, the petition also cited Judge Scannicchio's statement on March 30, 2016 that "We are not going to play Mr. Budorick's game, because I want the record to be very clear that [Daniel's] trial strategy was to delay the trial."

¶ 22 In a supporting affidavit, Daniel further claimed that the threat to report him to the ARDC was an attempt to coerce him to accept settlement terms that he did not want. He also claimed that by having Heather's counsel call him on March 21, Judge Scannicchio demonstrated that she "took it personal" when he sought to remove the action and that the court "wanted to exact a penalty against me."

¶ 23 On May 9, 2016, Heather filed an answer to the petition for substitution of judge, which denied substantially all of the allegations of misconduct stated in the petition and Daniel's affidavit.

¶ 24 In conjunction with his petition to substitute, on May 12, 2016, Daniel deposed Jan Boback, his former counsel in this case, who was present in Justice Scannicchio's courtroom on March 21, 2016.[1] Boback testified that on that date, Judge Scannicchio told Heather's counsel that the trial could not proceed because "You know as well as I do that I have no jurisdiction."

[1] According to an affidavit submitted by Daniel, Boback was present in the courtroom on March 21, 2016, because Boback had a pending petition for attorney's fees against Daniel, filed when Boback withdrew from representing Daniel in late 2015.

Boback also testified that Judge Scannicchio said to Heather "I'm sorry, ma'am" when telling her that trial would not proceed at that time. On May 16, 2016, Daniel filed a supplemental affidavit citing Boback's testimony as further evidence of Judge Scannicchio's alleged bias.

¶ 25 Judge John Thomas Carr was assigned to decide the petition to substitute Judge Scannicchio. Judge Carr held a hearing on May 17, 2016, during which Daniel examined Gordon regarding what had transpired at the March 21, 2016 conference. Gordon testified that Judge Scannicchio had stated that the trial would not proceed that day since Daniel had filed a notice of removal. Gordon also acknowledged that the judge directed him to call Daniel to ask if he was planning to appear on that date. Asked if Judge Scannicchio said anything to Heather, Gordon answered "she said something like I'm sorry or something along those lines and we're not going to go ahead today." Gordon did not recall that Judge Scannicchio made any specific comments about the case. Daniel also gave testimony in support of his petition at the May 17, 2016 hearing, and was cross-examined by Gordon.

¶ 26 The hearing on Daniel's petition continued on May 19, 2016, and Daniel examined Heather regarding the events at the March 21, 2016 conference. Heather remembered that Judge Scannicchio had asked her attorney to call Daniel. However, she did not recall anything else that was said by the judge either to her or to her counsel.

¶ 27 Following Heather's testimony, Heather's counsel moved for a directed finding to deny the petition for substitution of judge. Judge Carr granted the motion, finding that Daniel had alleged only that Judge Scannicchio's decisions "may have been wrong," but that he had not demonstrated that she was biased against him.

¶ 28 One week later, on May 26, 2016, Daniel filed a "Motion to (i) Vacate, Modify and/or Change Custody Judgment, (ii) Continue the Trial Date, (iii) Compel Deposition of the Mediator

Who Aided in the Negotiation of the Joint Parenting Agreement That Was Incorporated in the Custody Judgment, (iv) Compel Deposition of Others with Knowledge of the Mediation Process, and (v) Enjoin the Petitioner from Attempting to Enforce the Terms of the Custody Judgment or Use the Terms of Custody Judgment in Any Way, Until Such Time as the issues addressed in this Motion are Finally Determined, on Appeal, if Necessary" (the motion to vacate). Notably, the motion to vacate did not specify any statutory authority upon which it was based.

¶ 29 The primary argument of the motion to vacate was that Daniel had agreed to the parenting agreement based on "material false representations" made to him by the mediator. The motion to vacate (and Daniel's supporting affidavit) asserted that the mediator made false statements to Daniel that induced him to agree to provisions which, he alleged, Judge Scannicchio had since relied upon in stating that Heather was entitled to child support.

¶ 30 In his supporting affidavit, Daniel averred that the mediator had told him "that the parenting agreement "had nothing to do with" child support or maintenance and that whether he and Heather "agreed to 50%-50% custody or some other percentage split of custody" would have no impact on the amount of child support. He also claimed that the mediator told him that the agreement "had nothing to do with determining 'custodial parent' or 'residential parent,' " and that the parenting agreement's designation of Heather's address as the children's "address of record" would not impact child support or maintenance.

¶ 31 Daniel's affidavit claimed that the mediator "encouraged me to let [Heather] have more [parenting] time" and "lied to me multiple times to get me to agree to allowing Heather's address to be the 'children's address of record' and to allow [Heather] to have more time with the Boys." Daniel claimed he would never have agreed to allow Heather's address to be the children's

"address of record" or allow Heather "more than 50%-50% custody" if he knew that such terms would "automatically allow [Heather] to receive child support or maintenance."

¶ 32 The motion to vacate requested that "the current trial be continued at least ninety (90) days" in order for Daniel to conduct further discovery, including the depositions of the mediator, Heather, and Heather's counsel. Daniel claimed that such depositions were necessary "to flush out what the Mediator told Heather, and what if any inappropriate communications took place between the Mediator and [Heather's former counsel]" prior to the mediation.

¶ 33 Separate from its allegations against the mediator, the motion to vacate asserted that a "change in circumstances" warranted modification of the custody judgment, citing Heather's alleged "irrational and improper conduct *** wherein Heather repeatedly either leaves one of the Boys at practice or refuses to take one of the Boys to practice, trying to force Daniel to take time away from his job, as well as trying to force Daniel to be in two places at one time." The motion also claimed that Heather's income had "steadily increased, while Daniel's income has markedly fallen" since the custody judgment. The motion also alleged that Daniel had become aware of "multiple improper financial transactions between Heather and her parents"; his supporting affidavit accused Heather and her parents of concealing assets that should be included in the marital estate.

¶ 34 Heather filed a response to the motion to vacate on June 2, 2016. Heather's response urged that the motion was defective because, *inter alia*, it failed to specify a statutory basis for the relief sought; failed to plead the elements of a petition to vacate a judgment pursuant to section 2-1401 of the Code of Civil Procedure; and failed to plead elements necessary to support an injunction. Heather admitted that her income had increased, but otherwise denied the factual allegations in the motion to vacate.

¶ 35 The motion to vacate was heard before Judge Scannicchio on June 3, 2016. The court indicated that it had reviewed the motion to vacate but had not yet reviewed Heather's response.

¶ 36 At the outset, the court asked Daniel to clarify whether his motion was a request to modify the custody judgment based on changed circumstances or to vacate the judgment entirely. Daniel responded that "I'm going to have to move to vacate then because *** [the mediator] can't be impartial because he made misrepresentations to me."

¶ 37 Daniel asserted to Judge Scannicchio that "you told me in the pretrial that the joint parenting agreement provided that Heather is going to be the custodial parent" and that Heather was therefore entitled to child support. Judge Scannicchio denied that she had done so, pointing out that the parenting agreement did not designate a custodial parent, and stating that "the word primary residence or custody doesn’t automatically trigger or deny child support."

¶ 38 Daniel maintained that Judge Scannicchio had stated that "the residential provision in the agreement" determines child support and that because of this provision, the court had already determined that Heather "was going to be the custodial parent and she should get child support."

¶ 39 Judge Scannicchio denied this, stating that the court would consider multiple factors at trial to determine support, including "the allocation of parental responsibility, the financial resources of the parties, the needs of the parties, the needs of the children, [a] variety of other factors ***." The court proceeded to deny the motion to vacate, concluding: "There is no basis to vacate. There is no basis to modify. *** You're actually seeking to modify a term that you believe in some way affects the issue of child support. That is not a proper basis to bring to the Court before even going to mediate."

¶ 40 On June 9, 2016, Daniel filed a notice of interlocutory appeal (the notice of appeal), which sought reversal of the June 3, 2016 order denying the motion to vacate, citing Supreme

Court Rules 304(b)(3), 304(b)(6), and 307(a)(1) as supporting appellate jurisdiction. The notice of appeal also sought reversal of Judge Carr's May 19, 2016 order denying Daniel's petition for substitution of judge, "pursuant to case authority" but citing no Supreme Court Rule.

¶ 41 In July 2016, while this appeal was pending, the circuit court entered an order setting November 2016 trial dates. On October 13, 2016, pursuant to a motion by Daniel, we issued an order instructing the circuit court not to proceed with trial, pending our resolution of this interlocutory appeal.

¶ 42 ANALYSIS

¶ 43 Before we may address the merits of the appeal, we must analyze whether our court has jurisdiction. "An appellate court is under a duty to consider its jurisdiction and to dismiss an appeal if jurisdiction is lacking." *Craine v. Bill Kay's Downers Grove Nissan*, 354 Ill. App. 3d 1023, 1024 (2005). For the following reasons, we find that we lack jurisdiction to review either the June 3, 2016 order denying the motion to vacate, or the May 19, 2016 order denying the petition for substitution of judge.

¶ 44 As neither of the challenged orders is a final order resolving this dissolution action, a specific Supreme Court Rule or statute must apply in order to support jurisdiction in this court. *Van Der Hooning v. Board of Trustees of University of Illinois*, 2012 IL App (1st) 111531, ¶ 6 ("Unless a Supreme Court Rule or statute provides appellate jurisdiction, this court only has jurisdiction to review appeals from final judgments."). With respect to the June 3, 2016 order denying the motion to vacate, Daniel suggests that three Supreme Court Rules support appellate jurisdiction. We consider these in turn, but find that none supports jurisdiction.

¶ 45 First, Daniel relies on Rule 304(b)(3), which permits appellate review of a "judgment or order granting or denying any of the relief prayed [for] in a petition under section 2-1401 of the

Code of Civil Procedure." Ill. S. Ct. R. 304(b)(3) (eff. March 8, 2016). We conclude that Daniel's reliance on this rule to support our review of the June 3, 2016 order is unfounded, since his motion to vacate was not a valid petition under section 2-1401 of the Code of Civil Procedure (Code). 735 ILCS 5/2-1401 (West 2014).

¶ 46 Simply put, as the motion to vacate did not seek to vacate a *final* order, it cannot be construed as a section 2-1401 petition. A petition for relief pursuant to Section 2-1401 unambiguously applies to "final orders and judgments." 735 ILCS 5/2-1401 (West 2014); see also *Warren County Soil and Water Conservation District v. Walters*, 2015 IL 117783, ¶ 31 ("section 2-1401 of the Code represents a comprehensive statutory procedure authorizing a trial court to vacate or modify a *final* order or judgment in civil and criminal proceedings." (Emphasis added.)).

¶ 47 In other words, in order to be a valid section 2-1401 petition, the motion to vacate must have challenged a *final* judgment or order. "A judgment is final if it determines the litigation on the merits so that, if affirmed, the only thing remaining is to proceed with the execution of the judgment. [Citation.] Further, an order is final when matters left for future determination are merely incidental to the ultimate rights that have been adjudicated by the order." *Shermach v. Brunory*, 333 Ill. App. 3d 313, 316-17 (2002).

¶ 48 The target of Daniel's motion to vacate, the December 2014 custody judgment, was not a final order. Our supreme court has explained that a "final" order in the context of a marital dissolution does not exist until there is a determination of all ancillary issues, including child support:

> "A petition for dissolution advances a single claim; that is, a request or an order dissolving the parties' marriage. The numerous

> other issues involved, such as custody, property disposition and support are merely questions which are *ancillary* to the cause of action. [Citation.] *** Should the trial court decline to grant the petition for dissolution, no final relief may be obtained relating to the other issues. *** Practically speaking, then, until all of the ancillary issues are resolved, the petition for dissolution is not fully adjudicated." *In re Marriage of Leopando*, 96 Ill. 2d 114, 119 (1983).

Thus, "a party to a dissolution case generally may not appeal from the trial court's ruling on a particular issue until the entry of the judgment of dissolution resolving all of the predissolution issues." *In re Marriage of Duggan*, 376 Ill. App. 3d 725, 736 (2007) (citing *Leopando*, 96 Ill. 2d at 119).

¶ 49 The December 2014 custody judgment that was the subject of the motion to vacate was not a final order in this marital dissolution action, as it did not purport to address financial issues in the divorce such as child support, maintenance, or division of marital assets — issues that were scheduled to be decided at trial when Daniel brought his motion to vacate. Indeed, Daniel's motion to vacate was largely premised on his contention that terms within the custody judgment would adversely affect the court's subsequent determination of child support.

¶ 50 As the December 2014 order did not resolve all issues in the dissolution action, Daniel could not seek to vacate that non-final order through section 2-1401. As section 2-1401 was not an appropriate method to challenge the non-final December 2014 custody judgment, the June 3, 2016 order denying the motion to vacate cannot be construed as a "judgment or order granting or denying any of the relief prayed in a petition under section 2-1401 of the Code of Civil

Procedure." Ill. S. Ct. R. 304(b)(3) (eff. March 8, 2016). As Daniel's motion to vacate did not constitute a valid section 2-1401 petition, we reject the suggestion that Rule 304(b)(3) affords us appellate jurisdiction. To do otherwise would improperly expand our jurisdiction to appeals involving non-final judgments based merely upon litigants' improper citation to section 2-1401.

¶ 51 We next consider Daniel's reliance on Rule 304(b)(6), which allows for interlocutory appeals from "A custody or allocation of parental responsibilities judgment or modification of such judgment entered pursuant to the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/101 *et seq*.) or Illinois Parentage Act of 2015 (750 ILCS 46/101 *et seq*.)." Ill. S. Ct. R. 304(b)(6) (eff. March 8, 2016).

¶ 52 We do not find that the June 3, 2016 order denying Daniel's motion to vacate falls within this rule, and thus the rule does not afford us jurisdiction. Although his motion to vacate sought to attack the December 2014 custody judgment, the June 3, 2016 order denying that motion was not a "custody or allocation of parental responsibilities judgment." That is, the June 3, 2016 order did not set forth any allocation of parental responsibilities, but merely denied Daniel's challenge to the December 2014 custody judgment. Nor did the June 3, 2016 order modify any of the terms of the prior December 2014 custody judgment, such that it could be considered a "modification" of the custody judgment within the language of Rule 304(b)(6). The drafters of Rule 304(b)(6) could have, but did not, specifically allow for interlocutory appeals from the *denial* of a request for modification of a prior custody judgment. As the June 3, 2016 order does not fall within the plain language of Rule 304(b)(6), we reject it as a basis for appellate jurisdiction in this case.

¶ 53 We next consider whether we have jurisdiction to review the June 3, 2016 order pursuant to Rule 307(a)(1), which permits an appeal from an interlocutory order "granting, modifying,

refusing, dissolving, or refusing to dissolve or modify an injunction." Ill. S. Ct. R. 307(a)(1) (eff. Jan. 1, 2016). Daniel urges that this rule applies to the June 3, 2016 order denying the motion to vacate because it denied his request for an injunction, to the extent that the motion to vacate sought to "(i) 'enjoin' Heather from enforcing or otherwise using the Custody Judgment, and (ii) continue the trial date." Thus, he contends that the motion to vacate sought a "stay" of the enforcement of the custody judgment and an injunction.

¶ 54 We disagree with Daniel's characterization of the June 3, 2016 order, to the extent he suggests that it denied an injunction so as to implicate Rule 307(a)(1). Our supreme court has instructed that "To determine what constitutes an appealable injunctive order under Rule 307(a)(1) we look to the substance of the action, not its form. [Citation]." *In re A Minor*, 127 Ill. 2d 247, 260 (1989). "Actions of the circuit court having the force and effect of injunction are still appealable even if called something else." *Id.*

¶ 55 Our supreme court explained:

> "An injunction has been defined as a 'prohibitive, equitable remedy issued or granted by a court at the suit of a party complainant, directed to a party defendant in the action, *** forbidding the latter to do some act *** which he is threatening or attempting to commit,' or, more simply, as a 'judicial process operating in personam and requiring [a] person to whom it is directed to do or refrain from doing a particular thing.' [Citation]. Our court has similarly described an injunction as 'a judicial process, by which a party is required to do a particular thing, or to refrain from doing a particular thing, according to the exigency of the writ, the most

> common sort of which operate as a restraint upon the party in the exercise of his real or supposed rights.' [Citation.]" *Id.* at 261.

¶ 56 We recognize that Daniel's motion to vacate was labeled, in part, as a motion to "enjoin" Heather "from attempting to enforce the terms of the custody judgment or use the terms of the custody judgment in any way." Notwithstanding this label, in examining the substance of the motion to vacate, we do not find that it sought injunctive relief within the meaning of Rule 307(a)(1). That is, the substance of Daniel's motion did not seek to bar Heather from engaging in any particular conduct. Rather, it was simply an attempt to vacate or modify the terms of the custody judgment. The record makes clear that the purpose of the motion was not to change Heather's conduct with respect to the children. Indeed, Daniel admittedly filed the motion because he felt, based on alleged comments by Judge Scannicchio, that the terms of the December 2014 custody judgment might affect the court's determination of his child support obligation to his detriment.

¶ 57 To adopt Daniel's characterization of his motion as "injunctive" in nature would essentially permit litigants to invoke interlocutory appellate jurisdiction under Rule 307(a) to challenge any circuit court order denying a motion to vacate a prior order, so long as the appellant's motion was worded as a request to "enjoin" enforcement of the prior order. See *Mund v. Brown*, 393 Ill. App. 3d 994, 997 (2009) (rejecting defendants' argument that Rule 307(a) allowed interlocutory jurisdiction over denial of their motions to dismiss because they had "sought, in essence, an injunction to stop the plaintiff from pursuing a SLAPP suit against them," since, "[u]nder this analysis, every motion to dismiss would be a request for an injunction to stop a lawsuit and would be immediately appealable."). Such a broad interpretation of the limits of

Rule 307(a)(1) would run contrary to our supreme court's instruction to determine jurisdiction by reference "to the substance of the action, not its form." *In re A Minor*, 127 Ill. 2d at 260.

¶ 58 Further, although we recognize that "the denial of a motion to stay is treated as the denial of a request for a preliminary injunction" for purposes of Rule 307(a), *Rathje v. Horlbeck Capital Management, LLC*, 2014 IL App (2d) 140682, ¶ 25, we reject Daniel's argument that his motion to vacate sought a "stay" or other injunctive relief. On its face, Daniel's motion to vacate did not request a "stay" of the trial court proceedings. Rather, the motion to vacate merely sought a 90-day continuance of the trial date in order to conduct additional discovery regarding his claims that the mediator had made false representations to him. However, "Illinois courts have rejected the notion that matters involving purely discovery issues are appealable as injunctions." *Id.* (citing *Allianz Insurance Co. v. Guidant Corp.*, 355 Ill. App. 3d 721, 729 (2005)); see also *In re A Minor*, 127 Ill. 2d at 261-62 ("Orders of the circuit court which can be properly characterized as 'ministerial,' or 'administrative'—because they regulate only the procedural details of litigation before the court—cannot be the subject of an interlocutory appeal"). Thus, we also reject Daniel's suggestion that a request for a trial continuance to conduct discovery implicates injunctive relief within the scope of Rule 307(a)(1).

¶ 59 Having determined that we do not have jurisdiction over the June 3, 2016 order denying the motion to vacate, we turn to address whether we have jurisdiction to review the prior circuit court order denying Daniel's petition to substitute Judge Scannicchio. Daniel does not suggest that the denial of his petition was a final order, nor does he cite to any Supreme Court Rule expressly permitting an interlocutory appeal from such an order. Instead, Daniel relies upon two decisions of our appellate court, which permitted review of a petition for substitution of judge,

when challenged in conjunction with appeals concerning injunctive relief under Rule 307(a)(1). We find that those cases are inapplicable.

¶ 60 First, in *Sarah Bush Lincoln Health Center v. Berlin*, 268 Ill. App. 3d 184 (1994), the defendant physician appealed, pursuant to Rule 307(a)(1), from a preliminary injunction enforcing a restrictive covenant that prohibited his employment within 50 miles of the plaintiff's location. In addition to challenging the injunction, the defendant independently argued on appeal that the judge who granted the injunction "erred by hearing the case after previously denying a timely motion by defendant for substitution of judge as a matter of right." *Id.* at 185. The Fourth District concluded that it did have jurisdiction to review the ruling on the motion for substitution of judge, because it was sufficiently related to the grant of injunctive relief. The court reasoned that "The propriety of an order granting or denying interlocutory injunctive relief can only be determined in a Rule 307(a)(1) appeal" and that "we consider the proper scope of the review under Rule 307 is to review any prior error that bears directly upon the question of whether the order on appeal was proper." *Id.* at 187. Thus, *Berlin* implicitly held that the denial of the substitution of judge motion "b[ore] directly upon" the subsequent entry of the injunction.

¶ 61 The First District subsequently relied on *Berlin* to permit appellate review of the denial of a petition for substitution of judge for cause, in conjunction with its interlocutory review of the circuit court's denial of injunctive relief in a marital dissolution action. *Partipilo v. Partipilo*, 331 Ill. App. 3d 394 (2002). In that case, the circuit court had denied the appellant wife's "motion to enjoin [husband] from proceeding with the divorce case," pending the resolution of a separate action initiated by the wife concerning a corporation owned by the couple; the circuit court had "also denied her motion for substitution of judge for cause." *Id.* at 398. The appellant's husband challenged whether the interlocutory appeal of the denial of appellant's

request for injunctive relief (which was premised upon Rule 307(a)), also allowed our court to review the denial of her motion for substitution of judge. However, our appellate court found that "under [*Berlin*], we find we can consider [appellant's] claim of error in substitution of judge by way of her appeal seeking injunctive relief." *Id.*

¶ 62 Daniel argues that *Berlin* and *Partipilo* apply to allow us jurisdiction with respect to the denial of Daniel's petition for substitution of judge. Heather disputes this argument. She notes that in a 2013 decision, the Second District found that *Berlin* and *Partipilo* were unpersuasive, and concluded that Rule 307(a)(1) did *not* operate to extend appellate jurisdiction to review of a petition granting a motion for substitution of judge. See *U.S. Bank National Ass'n v. In Retail Fund Algonquin Commons, LLC*, 2013 IL App (2d) 130213.

¶ 63 In any event, however, we find that *Berlin* and *Partipilo* are simply not applicable to these facts and therefore do not serve as a basis to provide jurisdiction in Daniel's appeal from the denial of his petition for substitution of judge. *Berlin* and *Partipilo* suggest only that we may review the denial of a motion for substitution of judge *when the decision is related to an order granting or denying injunctive relief*, for which Rule 307(a)(1) otherwise provides appellate jurisdiction. That is, the *Berlin* and *Partipilo* decisions indicate that when Rule 307(a)(1) jurisdiction is implicated, the appellate court may also review a decision that "bears directly" upon the injunctive order. *Berlin*, 268 Ill. App. 3d 184 (1994). However, that is not the case here, as the denial of Daniel's motion to vacate *did not* constitute the denial of an injunction for purposes of Rule 307(a)(1). Accordingly, the cases cited by Daniel to assert appellate jurisdiction are inapplicable.

¶ 64 As we have rejected Daniel's arguments and there is no other basis for us to exercise jurisdiction over the denial of his petition for substitution of judge, we conclude that we lack

jurisdiction to review that non-final order. We thus conclude that we lack jurisdiction to consider the merits of either the May 19, 2016 order denying Daniel's petition for substitution of judge, or the June 3, 2016 order denying Daniel's motion to vacate the December 2014 custody judgment. Accordingly, we dismiss this appeal for lack of jurisdiction, and we instruct the circuit court to proceed with trial on any remaining issues in this case.

¶ 65 Appeal dismissed.