

2014 IL App (2d) 131057-U
No. 2-13-1057
Order filed September 8, 2014

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of DuPage County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 12-DV-1210
)	
PAUL HANTEL,)	Honorable
)	Karen M. Wilson,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Zenoff and Schostok concurred in the judgment.

ORDER

¶ 1 *Held:* Subsequent events that voided emergency order of protection did not preclude prosecution for a violation of that order of protection that occurred while it was still in effect.

¶ 2 Defendant, Paul Hantel, pleaded guilty to one count of violation of an order of protection (a misdemeanor). 720 ILCS 5/12-3.4 (West 2012). He then sought to withdraw his plea; however, the trial court denied defendant's motion to withdraw. For the reasons that follow, we affirm.

¶ 3 Defendant contends that the trial court erred in denying his motion to withdraw his plea because he claims that there was no factual or legal basis for the plea and that he therefore has a meritorious defense. See *People v. Dougherty*, 394 Ill. App. 3d 134, 140 (2009). He argues that certain events occurring after the entry of the interim order of protection he was accused of violating “had a retroactive effect, or *nun pro tunc* [sic] effect,” and rendered that order void. As such, defendant continues, as that order is void, there was no valid order of protection in effect for him to have violated. We review a trial court’s decision on a motion to withdraw a guilty plea for an abuse of discretion. *People v. Hughes*, 2012 IL 112817, ¶ 32. As such we will not reverse unless no reasonable person could agree with the position taken by the trial court. *People v. Becker*, 239 Ill. 2d 215, 234 (2010).

¶ 4 Defendant explains that the acts forming the basis for the charge occurred on August 21, 2012, when defendant entered the victim’s place of employment. This locale was a “protected address” identified in an emergency order of protection that issued on August 2, 2012, and was served on defendant three days later. An interim order issued on August 22, 2012. Also on August 22, the State filed a complaint charging defendant with a violation of the emergency order.

¶ 5 In a separate paternity action pending between defendant and the victim, an agreed order was entered on August 23, 2012, which defendant characterizes as a civil no-contact order. The full text of the order is as follows:

“Matter coming for hearing on emergency motion and parties in agreement; w/out prejudice it is hereby ordered:

(1) Father will pay the sum of \$500 per month or 20% of his correctly calculated net income for child support. Payments mailed to her weekly.

(2) Mother shall have temp. custody of minor child.

(3) Father shall have visitation on alternating weekends starting August 24, 2012 from Fri [sic] at 7 pm to Sunday at 6 pm. Additionally he shall have parenting time on Tues [sic] and Thur [sic] from 6 pm to 800 pm [sic].

(4) Until next court order, Father's visitation shall be supervised by his parents at all times. Further, the exchange of the child will take place by grandparents and/or mother only. Father will not be present at the exchange. The child will be picked up/dropped off at 2432 Berry St [sic] Joliet, or any other location that the grandparents & mother may agree.

(5) This order subject to revision based upon grandparents' agreements as to supervision.

(6) Status on Sept [sic] 19, 2012 at 11 am."

Despite defendant's characterization, nothing in this order addresses or prohibits contact between defendant and the victim.

¶ 6 A hearing was set for a plenary order of protection on September 19, 2012; however, on that date, an order was entered stating that, on the motion of the petitioner (the victim), the emergency order was dismissed. Subsequently, in the paternity action, another agreed order was entered on October 17, 2012. It contained a provision stating, "The Father is prohibited from having contact with the Mother's residence located at 2133 Cherrywood Circle, Naperville, Illinois, and place of employment at Hapag-Lloyd America in Lisle, Illinois." Defendant entered his guilty plea on October 31, 2012.

¶ 7 Based on this sequence of events, defendant argues that there was no valid order of protection in effect on August 21, 2012, when he went to the victim's place of employment. He

reasons as follows. Section 220(a) of the Illinois Domestic Violence Act of 1986 (Act) (750 ILCS 60/220(a) (West 2012)) states as follows:

“(a) Duration of emergency and interim orders. Unless re-opened or extended or *voided by entry of an order of greater duration*:

(1) Emergency orders issued under Section 217 shall be effective for not less than 14 nor more than 21 days;

(2) Interim orders shall be effective for up to 30 days.” (Emphasis added.)

Defendant asserts that the no-contact orders entered in the paternity action on October 17 and (purportedly) August 23 constituted orders of greater duration, as contemplated by section 220(a) of the Act. Defendant also points out that the petition for a plenary order was dismissed on September 19, 2012. These orders, according to defendant, “considered together, had a retroactive, or a *nunc pro tunc* [*sic*] effect.” Defendant relies on *People v. Barwicki*, 365 Ill. App. 3d 398 (2006), in support of his argument.

¶ 8 There are several problems with defendant’s argument. First, a *nunc pro tunc* order does not work a substantive legal change on a past date. *In re Marriage of Gingras*, 86 Ill. App. 3d 14, 16 (1980). Rather, “A *nunc pro tunc* order is a decree the court enters in the present to make the record speak for something that was done previously.” *In re Marriage of Erickson*, 136 Ill. App. 3d 907, 915 (1985). Thus, an order entered *nunc pro tunc* cannot render a previously valid order void; instead, it could merely memorialize past action rendering an order void, which would be effective at the time the past action had been taken. See *Erickson*, 136 Ill. App. 3d at 915.

¶ 9 Additionally, the plain language of section 220(a)—the lodestar by which we interpret statutes to the extent possible (*People v. Martin*, 2011 IL 109102, ¶ 21)—is of no assistance to

defendant. The section states that an emergency or interim order may be “voided by entry of an order of greater duration.” This indicates that the earlier order is valid until voided by the entry of a subsequent order. As such, the original order is voidable rather than void. See *JoJan Corp. v. Brent*, 307 Ill. App. 3d 496, 507 (1999). Defendant acknowledges that the emergency order was voidable rather than void. This, however, is fatal to defendant’s argument.

¶ 10 Even an erroneous order of a court must be obeyed until it is properly vacated. See *In re Marriage of Barile*, 385 Ill. App. 3d 752, 759 (2008) (“Having concluded that petitioner could be held in contempt for violating a voidable order, we next consider whether the trial court erred when it found that petitioner should not be held in contempt for failing to pay respondent maintenance.”); *People v. Rodriguez*, 169 Ill. App. 3d 131, 139 (1988) (“By analogy, we consider persuasive the established doctrine that persons subject to an injunctive order issued by a court with jurisdiction are expected to obey that decree until it is modified or reversed even if they have proper grounds to object to this order.”). Thus, assuming, *arguendo*, that defendant is correct that actions occurring subsequent to his violation of the emergency order of protection rendered that order void, he was still obligated to obey it in the meantime.

¶ 11 Indeed, to hold otherwise would be to ascribe an absurd intent to the legislature. Orders of protection generally progress from emergency orders, to interim orders, and then to plenary orders. See David H. Taylor, *Defending the Indefensible to Further a Later Case: Sanctioning Respondents in Illinois Domestic Violence Cases*, 23 N. Ill. U. L. Rev. 403, 406 (2003). Pursuant to section 220(a), the issuance of an interim order voids an earlier emergency order, and a plenary order voids both shorter orders. See 750 ILCS 60/220(a) (West 2012). It would be perverse to allow a defendant to escape criminal liability for conduct violating an emergency order of protection where the emergency order of protection is later superseded by a more

expansive order of protection. Indeed, the very conduct violative of the earlier order of protection would likely form a basis for issuing the later order of protection. We will not ascribe to the legislature such an absurd intent. See *Village of Lake in the Hills v. Niklaus*, 2014 IL App (2d) 130654, ¶ 15. Quite simply, we hold that the legislature did not intend the issuance of a subsequent and more expansive order of protection to act as a bar to a prosecution for a violation of an earlier such order.

¶ 12 Defendant relies on *Barwicki*, 365 Ill. App. 3d 398; however, that case provides little support for defendant's position. In that case, the court held:

“Here, as already noted, the trial court's dismissal of the complaint was not based on factual findings made in the divorce proceeding; rather, the dismissal of the complaint was based on the fact that the order of protection had been vacated *nunc pro tunc*. And again, without a valid order of protection, there can be no prosecution for violation thereof.”

The State attempted to argue that the trial court—in a separate proceeding—had misapplied the *nunc pro tunc* doctrine. *Id.* at 401. However, the *Barwicki* court refused to address the propriety of the *nunc pro tunc* order, as it was issued in a separate proceeding, not appealed, and thus constituted a final order. *Id.* at 400. As such, that question was not before the court, and the *Barwicki* court accepted the validity of the order. Conversely, in this case, the issue is whether the earlier order of protection can be voided retroactively. Unlike *Barwicki*, the ability of an order to invalidate an earlier order of protection *nunc pro tunc* is squarely before us. As we explain above, it cannot. *Barwicki* does not address this issue and, hence, does not hold otherwise.

¶ 13 In conclusion, we reject the central tenet of defendant's argument that the entry of a subsequent order of protection of greater duration renders an earlier order *void ab initio* such that a defendant cannot be prosecuted for a violation of the earlier order. As a result, the trial court did not err in refusing defendant's request to withdraw his guilty plea.

¶ 14 Affirmed.