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2016 IL App (3d) 150087-U

Order filed January 6, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2016

<i>IN RE</i> THE ESTATE OF GABRIEL M.K.,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
a Minor,)	Will County, Illinois,
)	
PEGGY VILLARREAL,)	
)	
Petitioner,)	
)	
and)	
)	
PATRICIA VILLARREAL,)	Appeal No. 3-15-0087
)	Circuit No. 12-P-835
Appellee,)	
)	
v.)	
)	
VERONICA VILLARREAL,)	
)	
Respondent,)	
)	
and)	
)	
MATTHEW KLINDERA,)	Honorable
)	J. Jeffrey Allen
Respondent-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE O'BRIEN delivered the judgment of the court.
Justices Carter and Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* Appeal dismissed for lack of jurisdiction where there was no pending petition for visitation and thus no final order for this court to consider on appeal.

¶ 2 Respondent Matthew Klindera sought visitation with his child, Gabriel M.K., who was placed under the custody and guardianship of his maternal grandmother, Patricia Villarreal, when Matthew and Gabriel's mother were arrested and jailed shortly after his birth. The trial court struck Matthew's petition. We dismiss the appeal for lack of jurisdiction.

¶ 3 **FACTS**

¶ 4 The minor, Gabriel M.K. is the son of respondents Matthew Klindera and Veronica Villarreal. Gabriel was born on August 2, 2012. On November, 13, 2012, Veronica's sister, Peggy Villarreal, filed a petition for the emergency appointment of a guardian for Gabriel because Matthew and Veronica were arrested and put in the Will County jail. On November 19, the trial court appointed a guardian *ad litem* (GAL) for Gabriel and granted temporary guardianship to Patricia Villarreal, Gabriel's maternal grandmother.

¶ 5 On December 2012, Matthew filed petitions for the appointment of a short-term guardian and alternative guardian. Matthew complained that he and Veronica did not choose Patricia to be the guardian and alleged that she was keeping Gabriel from him and Veronica. On January 29, 2013, the trial court entered a plenary order of guardianship to Patricia on the GAL's motion. In March 2013, Veronica petitioned for visitation, arguing that she was out of jail and in inpatient rehabilitation. After an April 22, 2013, hearing, the trial court ordered that Patricia remain guardian, that she allow visitation between Gabriel and Veronica, and that she provide monthly written updates to Matthew on Gabriel's milestones and progress. The updates were to include photographs.

¶ 6 On December 20, 2013, Matthew filed a petition for visitation in which he alleged there were new circumstances pertinent to his visitation request. First, he was no longer at the Will County Adult Detention Center but had moved to the Department of Corrections at Sheridan, where he was participating in an intense drug treatment program. Second, it was in Gabriel's best interest that he develop a relationship with his father, that the best interest factors under section 602(c) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/602(c) (West 2012)) included the maximum involvement of the parents; and that visitation should be awarded under section 607 of the Act (750 ILCS 5/607 (West 2012)) unless it would endanger the child.

¶ 7 Matthew further pointed to section 1-35 of the Department of Human Services Act (20 ILCS 1305/1-35 (West 2012)), which instructs that the DOC provide informational materials for incarcerated parents as support for his request. Matthew claimed that he had not received any monthly progress reports or photographs from Patricia since July 1, 2013, and that he tried to contact Gabriel by phone but Patricia refused to allow him to talk to his son. Matthew noted that the visiting area at Sheridan was child-friendly. Matthew also complained that Patricia took Gabriel to see his aunt, who was also incarcerated. Finally, Matthew asserted that the GAL approved of his request for visitation.

¶ 8 A hearing on Matthew's petition took place on January 3, 2014. Matthew was not in attendance. The GAL informed the trial court that Patricia was not willing to take Gabriel to Sheridan to visit his father but that she continued to provide him monthly updates on Gabriel. The trial court approved and entered the guardian's annual report. It also struck Matthew motion for visitation. The trial court found that visitation remained in Patricia's discretion. Patricia was to send a six-month update to Matthew with photographs and continue to send monthly updates,

with copies to the GAL. In January 2015, the trial court decreased the monthly updates to bimonthly based on Patricia's statements that there was not much information to update every month. The trial court acknowledged Matthew's interest in Gabriel but determined that visitation at the prison was not appropriate at that time. Matthew appealed.

¶ 9

ANALYSIS

¶ 10

On appeal, Matthew argues that the trial court erred when it denied his request for visitation. Matthew asserts that the trial court failed to hold a best interest hearing and improperly continued the order of guardianship. Matthew also argues that the GAL failed to adequately fulfill her duties.

¶ 11

Before addressing the merits of the appeal, we must consider our jurisdiction. An appellate court has a *sua sponte* duty to ensure it has jurisdiction. *In re Marriage of Ehgartner-Shachter & Shachter*, 366 Ill. App. 3d 278, 283 (2006). The appellate court's jurisdiction is limited to the review of appeals from final judgments, subject to various exceptions. *In re Marriage of Ehgartner-Shachter & Shachter*, 366 Ill. App. 3d at 283 (quoting *In re Marriage of Verdung*, 126 Ill. 2d 542, 553 (1989)). For the purposes of an appeal, a judgment is final if it determines the action, or some definite part of it, on the merits so that the only thing left remaining is for the trial court to execute the judgment. *In re Adoption of Ginnell*, 316 Ill. App. 3d 789, 793 (2000). A final judgment must dispose of or terminate the litigation or some definite part of it. *Id.* Where the trial court keeps jurisdiction to determine matters of substantial controversy in the future, the order is not final. *Id.* Whether we have jurisdiction is a question of law we review *de novo*. *Yunker v. Farmers Automobile Management Corp.*, 404 Ill. App. 3d 816, 821 (2010).

¶ 12 Matthew petitioned for visitation but failed to appear at the hearing on his petition in January 2014. The trial court struck Matthew’s petition and he did not file another petition. The trial court ordered the guardian continue to provide monthly updates and photographs to Matthew. In January 2015, at the hearing on the guardian’s annual report, the trial court stated that because Gabriel was working on other issues, going to Sheridan to visit his father was “probably not the first and foremost thing for him right now.” Matthew’s notice of appeal indicated that he was appealing from the January 2, 2015, order. That order did not deny visitation. While the trial court appears to address Matthew’s visitation request, there was no pending petition for visitation. Matthew did not appeal from the order striking his petition for visitation and thus there is nothing for this court to consider. Because we lack jurisdiction, we must dismiss Matthew’s appeal.

¶ 13 For the foregoing reasons, the appeal is dismissed.

¶ 14 Appeal dismissed.