

NOTICE

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2014 IL App (4th) 140400-U

NO. 4-14-0400

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

October 8, 2014

Carla Bender
4th District Appellate
Court, IL

WILLIAM HALEY III,
Petitioner-Appellee,
v.
ASHLEY EDWARDS,
Respondent-Appellant.

) Appeal from
) Circuit Court of
) Sangamon County
) No. 10F706
)
) Honorable
) Steven H. Nardulli,
) Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Pope and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court's order modifying child custody and child support is void because the pleadings did not present a justiciable question as to those issues.

(2) Respondent's procedural due-process rights were violated because she did not receive notice the court would consider modifying child custody at the visitation hearing.

¶ 2 In April 2014, the trial court removed custody of L.H. from respondent, Ashley Edwards, and awarded custody to petitioner, William Haley III. Ashley appeals, arguing (1) the court lacked jurisdiction to *sua sponte* award William custody without a pleading requesting such relief; (2) the court erred when it ordered Ashley to pay \$100 per month in child support without testimony regarding her income; (3) her procedural due-process rights were violated because the pleadings did not put her on notice child custody was at issue and she never received

notice of the court hearings; and (4) the trial court's decision to award sole custody to William was against the manifest weight of the evidence. We reverse and remand with directions.

¶ 3

I. BACKGROUND

¶ 4

We reverse on the grounds the trial court lacked subject-matter jurisdiction to modify child custody and child support, and need not reach the remaining issue of whether the trial court's decision to modify custody was against the manifest weight of the evidence. We discuss the facts pertinent to the issues decided on appeal and briefly summarize the evidence adduced at trial.

¶ 5

A. Pretrial Proceedings

¶ 6

The parties, Ashley Edwards and William Haley III, were in a relationship and had one child together, L.H. (born September 2, 2010). In September 2010, William signed a voluntary acknowledgement of paternity and filed a *pro se* petition to establish parentage, seeking exclusive custody of L.H. William never set the matter for hearing. In April 2011, the Sangamon County State's Attorney's office (State) filed a petition to intervene and a complaint for support. In May 2011, the trial court ordered William to pay \$40 per week in child support. In March 2013, the State filed a rule to show cause, alleging William failed to make child-support payments and was \$1,914.06 in arrears. The trial court ordered William to continue paying \$40 per week plus an additional \$5 per week toward the arrearage.

¶ 7

On October 4, 2013, William filed a "Petition [To] Establish Custody and Visitation," alleging he "is a fit and proper person to have the temporary and permanent visitation with the minor child" and it is in the child's best interest "petitioner be given reasonable and liberal visitation." The petition's prayer for relief sought "reasonable and liberal visitation" and "such other and further relief as [the] Honorable Court deems equitable and just." On

October 26, 2013, the Cook County sheriff served the summons and the petition on David Edwards (Ashley's father) at Ashley's permanent residence in Country Club Hills. The sheriff's service affidavit indicates the summons and petition were also mailed to Ashley's permanent address.

¶ 8 On November 20, 2013, Ashley, *pro se*, and William and his attorney appeared before the court for a case-management conference. The trial court ordered the parties to attend mediation and scheduled a status hearing for December 18, 2013. Ashley failed to attend mediation and failed to appear at the December court hearing. The trial court noted the docket entry for December 18, 2013, incorrectly stated Ashley was present in court. The matter was continued to January 22, 2014, and Ashley again failed to appear. The court set the matter for hearing on February 5, 2014. On February 5, 2014, the trial court entered a default judgment against Ashley, awarding custody to William. The court's docket entry states:

"Ashley Edwards fails to appear. The court notes that Ms. Edwards has failed to appear for case management conferences and has failed and/or refused to participate in mediation. Until the further order of the court, the minor child of the parties, [L.H.], born September 2, 2010, is placed in the custody of William Haley. The issue of visitation between [L.H.] and Ashley is reserved until such time as Ashley Edwards appears before the court[.]"

¶ 9 On February 14, 2014, Ashley filed a motion to vacate, alleging she did not receive notice of the hearings. On February 24, 2014, the trial court vacated the default judgment, entered a temporary order granting custody to William, and ordered the parties to attend mediation to agree on a temporary visitation schedule.

¶ 10 On March 12, 2014, Ashley filed an "Emergency Petition For Temporary Visitation," alleging William willfully and contumaciously failed to cooperate with Ashley and refuses to foster a relationship between her and L.H. On March 14, 2014, the trial court held a hearing on Ashley's motion and entered a temporary visitation order. On April 24, 2014, the cause proceeded to trial and the court addressed the issues of custody and visitation.

¶ 11 On the day of trial, Ashley's counsel noted she did not have a copy of any petition to modify custody. The trial court replied the petition to establish custody and visitation is the same thing as a petition to modify. The court explained:

"THE COURT: There was a child support Order, and in that child support Order, because there was no custodian named, it's presumed that Ms. Edwards was the custodian because she was the person receiving child support. So to establish custody and visitation is in effect asking to modify that implicit Order."

We note section 14(a)(2) of the Illinois Parentage Act of 1984 (750 ILCS 45/14(a)(2) (West 2012)) states "the establishment of a support obligation *** shall be considered a judgment granting custody to the other parent."

¶ 12 B. The Trial

¶ 13 The trial court heard testimony from William and Ashley, the maternal and paternal grandparents, and Officer Michael Gamble. The evidence showed L.H. lived much of his life in Springfield and was doing well socially and emotionally. The evidence established the parties' relationship with each other was quite volatile. William accused Ashley of denying him visitation for extended periods of time, acting inappropriately at custody exchanges, and raising L.H. in an unstable environment. Ashley accused William of not being involved in L.H.'s life

and making disparaging remarks about her in front of L.H. Several witnesses testified, giving varying accounts of two separate incidents where Ashley became physically violent, endangering L.H.'s health and safety. One incident involved Ashley driving to William's house with L.H. in the backseat, barging into his house, refusing to leave, and knocking items off a television stand. A second incident involved Ashley accusing her then boyfriend, Carlos, of sexually abusing her son. When Carlos attempted to leave, Ashley followed him with a hammer and smashed his car's front and rear windshields. Ashley acknowledged she consumed alcohol and smoked marijuana prior to her argument with Carlos. Each party testified about particular examples of the other's inability to cooperate and facilitate L.H.'s relationship with the other parent.

¶ 14 After reviewing the evidence, the trial court issued a detailed eight-page ruling addressing the relevant statutory factors and the testimony presented. The court determined the most important factors in this case were the willingness and ability of each parent to facilitate and encourage a relationship between the other parent and child and whether there had been physical violence by the child's potential custodian. Regarding the first factor, the trial court found:

"The evidence establishes that when Ashley was in Springfield, she would permit visitation. She would, however, periodically go to Country Club Hills without notice, during which time there was no visitation, sometimes for extended periods of time.

Based upon the testimony, and having observed the credibility of the witnesses, the court finds that Ashley did not and will not foster a positive relationship between [L.H.] and William

if she were awarded custody. This conclusion is supported by evidence that she would periodically leave Springfield without notice and without making arrangements for visitation. She would not provide information to William about [L.H.]'s activities. Since William has had custody she has made visitation exchanges emotionally difficult for [L.H.]

This case does not merely revolved [*sic*] around Ashley's unwillingness to foster a positive relationship between [L.H.] and William, a fact which is reinforced by her complete disregard of the court process and William's interests that he sought to enforce through the court process. *** The concern that Ashley would ignore William's role as a parent and would alienate [L.H.] from William is exacerbated by Ashley's temper and her destructive, angry manner."

¶ 15 As to whether there had been physical violence or a threat of physical violence by the child's potential custodian, the trial court noted two instances where Ashley's temper jeopardized L.H.'s safety. The court explained:

"The court is also concerned that even at this date, when the court inquired about [L.H.]'s welfare during the Carlos incident, Ashley did not appear to understand the jeopardy into which she placed [L.H.] by virtue of what she described as her state of extreme alcohol and drug intoxication.

The court is not certain which is more problematic, Ashley losing her temper and violently smashing a car's windows or her willingness to accuse someone of sexually abusing her child when angry.

* * *

The court does not believe that the two incidents about which it heard testimony were the only two incidents in the past four years in which Ashley's behavior has been a problem. The fact that two landlords did not want to rent to her because of her behavior in their apartments is consistent with her angry outbursts that were described in court."

¶ 16 The trial court did not find Ashley to be a credible witness. She provided conflicting testimony about whether L.H. was present during her fight with Carlos, she evaded questions regarding noise complaints at her apartment, and she blamed L.H. for creating the noise. The court found "her testimony that William was not interested in pursuing time with [L.H.], as well as her demeanor on the witness stand all point to the conclusion that Ashley is not worthy of belief." In contrast, the court found William to be a fit person and "less likely *** to manipulate and denigrate the other parent."

¶ 17 The trial court found clear and convincing evidence a change in circumstances had occurred and concluded it was in L.H.'s best interest to modify custody. The court ordered L.H. to be placed in William's custody and awarded Ashley reasonable and liberal visitation. The court further ordered Ashley to pay "\$100 per month child support, to be offset against William's child support arrearage."

¶ 18 This appeal followed.

¶ 19 II. ANALYSIS

¶ 20 A. Child Custody

¶ 21 Ashley contends the trial court lacked authority to modify custody because William's petition did not present a justiciable question, thus rendering its April 25, 2014, custody order void. She argues the petition failed to allege a substantial change in circumstances and the prayer for relief did not request custody. Ashley also argues her procedural due-process rights were violated because the pleadings did not put her on notice a child-custody determination would be made and because she never received notice of the court hearings. The clerk sent notices to the wrong address.

¶ 22 With limited exceptions, circuit courts have " 'original jurisdiction of all justiciable matters.' " *Ligon v. Williams*, 264 Ill. App. 3d 701, 707, 637 N.E.2d 633, 638 (1994) (quoting Ill. Const. 1970, art. VI, § 9). A "justiciable matter" is "a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests." *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 335, 770 N.E.2d 177, 184 (2002). "The court's authority to exercise its jurisdiction and resolve a justiciable question is invoked through the filing of a complaint or petition." *Ligon*, 264 Ill. App. 3d at 707, 637 N.E.2d at 638. "These pleadings function to frame the issues for the trial court and to circumscribe the relief the court is empowered to order; a party cannot be granted relief in the absence of corresponding pleadings." *Id.* If a justiciable issue is not presented to the court through proper pleadings, the court cannot *sua sponte* adjudicate an issue. *Id.* Orders that are entered in the absence of a justiciable question properly presented to the court by the parties are void since they result from court action

exceeding its jurisdiction. *Id.* We review *de novo* the question of whether a circuit court has subject-matter jurisdiction. *McCormick v. Robertson*, 2014 IL App (4th) 140208, ¶ 15, 15 N.E.3d 968.

¶ 23 We find *In re Marriage of Suriano*, 386 Ill. App. 3d 490, 902 N.E.2d 116 (2008), instructive. In *Suriano*, the respondent filed his fifth petition for rule to show cause why the petitioner should be held in contempt for making the children's health care decisions without consulting respondent in violation of the parties' agreed order. *Id.* at 491-92, 902 N.E.2d at 117. After a hearing on the petition, the trial court terminated the joint parenting agreement *sua sponte* and determined it was in the children's best interest to modify custody. *Id.* at 492, 902 N.E.2d at 118. The court determined on appeal the trial court's order was void because the court's jurisdiction to determine custody was not properly invoked. The only pleading (*i.e.*, justiciable matter) before the court was respondent's fifth rule to show cause and not a child-custody determination. *Id.* at 493, 902 N.E.2d at 119. The trial court's order violated sections 601(b) and (c) of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act), which require a child-custody proceeding to be commenced by filing a petition for custody and giving notice to the child's parents that the hearing on the contempt petition will involve custody issues. *Id.* (citing 750 ILCS 5/601(b), (c) (West 2006)); see also *In re Marriage of Fox*, 191 Ill. App. 3d 514, 520, 548 N.E.2d 71, 75 (1989) (trial court's jurisdiction to determine custody was not properly invoked where the justiciable matter before the court was an alleged violation of the visitation order, not child custody). The trial court's *sua sponte* custody order was void.

¶ 24 In this case, the only pleading before the trial court was William's petition for visitation. It was titled "petition [to] establish custody and visitation," but the only justiciable matter before the court was William's request to be awarded "reasonable and liberal visitation"

with L.H., not modification of child custody. No petition initiating a child-custody proceeding was filed as provided in section 601(b) of the Marriage Act. 750 ILCS 5/601(b) (West 2012). Nowhere in this record is there any indication Ashley was notified, as required by section 601(c), the hearing on the petition for visitation would involve custody issues. 750 ILCS 5/601(c) (West 2012); *Fox*, 191 Ill. App. 3d at 521, 548 N.E.2d at 75. The trial court had no jurisdiction to *sua sponte* modify child custody. The court's April 25, 2014, order is void.

¶ 25 Additionally, this court's findings in *In re Custody of Ayala*, 344 Ill. App. 3d 574, 800 N.E.2d 524 (2003), are also instructive. In that case, this court found on appeal the trial court exceeded its jurisdiction when it modified custody where no pleading had been filed requesting such relief. *Id.* at 585, 800 N.E.2d at 535. This court further found the order violated the mother's due-process rights because she had no notice custody would be considered or decided at the hearing. *Id.* at 587, 800 N.E.2d at 537. The only matters before the court on the date of the hearing related to visitation issues and the mother's failure to respond to pleadings.

¶ 26 Similarly here, the trial court's April 25, 2014, order violated Ashley's due-process rights. Due process of law requires a party be accorded notice and an opportunity to be heard. *Id.* at 586, 800 N.E.2d at 537. Ashley did not receive notice the trial court might consider or determine child custody at the hearing on William's petition for visitation. As in *Ayala*, the only matters before the court related to William's allegations he is a fit and proper person to have visitation with L.H. In the prayer for relief, William requested he be awarded "reasonable and liberal visitation" with L.H. and any "other and further relief [the court] deems equitable and just." We do not construe this request for visitation as a request to modify custody. Therefore, the court's order also violated Ashley's due-process rights.

¶ 27 To the extent Ashley argues her due-process rights were violated because the circuit clerk failed to send notices of hearings to her permanent address in Country Club Hills, we note "[i]t is a fairly simple matter to keep people and courts advised of one's whereabouts." (Internal quotation marks omitted.) *In re Marriage of Swift*, 76 Ill. App. 3d 154, 157, 394 N.E.2d 923, 926 (1979); *Esczuk v. Chicago Transit Authority*, 39 Ill. 2d 464, 467, 236 N.E.2d 719, 721 (1968) ("once a court acquires jurisdiction, it is the duty of the litigants to follow the [progress of their own] case"). The trial judge noted Ashley failed to provide the circuit clerk with an updated address.

¶ 28 William argues *Ayala* is distinguishable because he filed a "petition [to] establish custody and visitation." He asserts "[t]he title to the pleading clearly advised Respondent the petition applied to custody." A pleading's substance and not its title determines its character. *R&G, Inc. v. Midwest Region Foundation for Fair Contracting, Inc.*, 351 Ill. App. 3d 318, 321, 812 N.E.2d 1044, 1046 (2004) (a court is not bound by the title of a pleading). A court should examine the substance of a document to determine how it should treat the document. Here, the petition does not request custody, nor does it allege a substantial change in circumstances or modification of custody would serve L.H.'s best interest. The substance of the petition relates to the sole issue of visitation.

¶ 29 William next contends his petition contained a general prayer for relief and the court has discretion to exceed the relief requested. This is a *non sequitur*. As discussed above, orders entered in the absence of a justiciable question are void and subject to attack at any time since they result from the court exceeding its jurisdiction. *Ligon*, 264 Ill. App. 3d at 707, 637 N.E.2d at 638. The issue of custody must be properly before the court before it can grant relief. We reject William's argument his pleadings may be amended at any time, before or after

judgment, to conform the pleadings to the proof at trial. Ashley would sustain prejudice and surprise if William could simply amend his petition to cure the court's jurisdictional defect after a trial. *Sheffler v. Commonwealth Edison Co.*, 2011 IL 110166, ¶ 69, 955 N.E.2d 1110 (setting forth four factors a reviewing court considers when deciding whether a trial court abused its discretion in denying a party's motion to amend).

¶ 30 No pleadings requested the relief awarded and Ashley had no notice custody would be addressed on April 23, 2014. The court exceeded its jurisdiction in awarding custody to William on April 25, 2014, and the order awarding custody is vacated.

¶ 31 B. Child Support

¶ 32 Ashley next asserts the trial court erred when it modified child support. She argues no evidence was presented at trial regarding her income and the court made no express findings of fact to support its calculation of \$100 per month. Curiously, Ashley's brief does not raise the issue of whether William's petition alleges a justiciable matter regarding child support. Since subject-matter jurisdiction cannot be waived, "this court has an obligation to take notice of matters which go to the jurisdiction of the circuit court in the case then before us." *Belleville Toyota*, 199 Ill. 2d at 333-34, 770 N.E.2d at 184.

¶ 33 A trial court's subject-matter jurisdiction is invoked through the filing of a complaint or petition. *Ligon*, 264 Ill. App. 3d at 707, 637 N.E.2d at 638. The only pleading with respect to child support was the State's petition to intervene and petition for support, filed on April 18, 2011. On May 19, 2011, the trial court ruled on the State's petition and set child support at \$40 per week. On March 12, 2013, the State filed a rule to show cause, alleging William failed to pay child support and was \$1,914.06 in arrears. On April 24, 2013, the court ordered William to pay an additional \$5 per week until the arrearage is paid in full. The trial

court finally resolved the issue of child support on April 24, 2013. Neither party filed a motion to reconsider or a motion to modify.

¶ 34 No pleading with respect to child support was pending and neither party requested a modification of child support. We conclude the trial court's *sua sponte* order modifying child support was error. *Ayala*, 344 Ill. App. 3d at 585, 800 N.E.2d at 535; see also *In re Marriage of Sawyer*, 264 Ill. App. 3d 839, 848, 637 N.E.2d 559, 565 (1994) ("a trial court cannot modify a spouse's child support obligations without a petition for modification first being filed"). We further note no evidence was presented at trial as to Ashley's income and the trial court did not make the explicit findings necessary to support any deviation from the statutory guidelines. See *In re Marriage of Sweet*, 316 Ill. App. 3d 101, 108, 735 N.E.2d 1037, 1043 (2000) (a trial court must make express findings if it deviates from the statutory guidelines for support). We believe the trial court's actions were prompted by a desire to provide stability for L.H. and make Ashley take some responsibility for child support and for exercising visitation. However, the court was limited to the issues raised in William's petition to modify visitation. Accordingly, we hold the trial court erred when it established an award for child support, and the order modifying child support is vacated.

¶ 35 III. CONCLUSION

¶ 36 We vacate the custody and child-support orders of April 25, 2014, and remand to the trial court. Once the default judgment awarding custody to William was vacated, the court apparently treated later proceedings as dealing with custody and made a decision according to what the trial court believed was in the child's best interest. However, much of the evidence on which the court relied should never have been presented because no custody pleading was ever

filed. We reverse the trial court's orders, restore custody to Ashley, and remand with the direction to set a reasonable visitation schedule to which the parties should be ordered to adhere.

¶ 37 Reversed and remanded with directions.