Illinois Official Reports

Appellate Court

People v. Peterson, 2022 IL App (3d) 220206

Appellate Court Caption	THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. DREW W. PETERSON, Defendant-Appellee (Joel A. Brodsky, Appellant).
District & No.	Third District No. 3-22-0206
Filed	December 2, 2022
Decision Under Review	Appeal from the Circuit Court of Will County, No. 09-CF-1048; the Hon. Edward A. Burmila Jr., Judge, presiding.
Judgment	Affirmed.
Counsel on Appeal	Joel A. Brodsky, of Chicago, appellant *pro se*. Michael J. Renzi, Public Defender, of Joliet (Jason Strzelecki, Assistant Public Defender, of counsel), for appellee. James W. Glasgow, State's Attorney, of Joliet (Patrick Delfino, Thomas D. Arado, and Justin A. Nicolosi, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.

Panel JUSTICE HAUPTMAN delivered the judgment of the court, with opinion.
Justices Daugherity and Hettel concurred in the judgment and opinion.

OPINION

¶ 1 Appellant, Joel A. Brodsky, appeals from an order of the Will County circuit court enjoining appellant from speaking about his representation of Drew W. Peterson and from disseminating or disclosing any information regarding such representation, or any information obtained during such representation, to any media outlet or to any individuals other than his own counsel.

¶ 2 Pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. Nov. 1, 2017), this court has appellate jurisdiction over the interlocutory appeal of the circuit court's order. The standard of review we employ is whether the trial court abused its discretion when it entered the order at issue. *Zurich Insurance Co. v. Raymark Industries, Inc.*, 213 Ill. App. 3d 591, 594 (1991). This court is charged with determining whether the trial court " 'acted arbitrarily without the employment of conscientious judgment ***and ignored recognized principles of law so that substantial prejudice resulted.' " *Id.* at 594-95 (quoting *In re Marriage of Aud*, 142 Ill. App. 3d 320, 326 (1986)). For the reasons set forth below, we affirm.

¶ 3 I. BACKGROUND

¶ 4 In 2012, Peterson was convicted by a jury of murdering his third wife, Kathleen Savio, and was sentenced to 38 years in prison. Brodsky provided legal representation to Peterson during his trial. Approximately nine years later, on October 19, 2021, Peterson filed a *pro se* petition for postconviction relief under section 122-1 of the Post-Conviction Hearing Act (725 ILCS 5/122-1 (West 2020)), alleging, *inter alia*, that Brodsky provided ineffective assistance of counsel, lied about his experience defending accused murderers, encouraged Peterson to engage with the media to increase Brodsky's fame and legal practice, responded harshly to the advice of cocounsel, and threatened to withdraw as lead counsel if Peterson testified at trial.

¶ 5 On May 17, 2022, while Peterson's petition for postconviction relief was pending in the circuit court, WGN News, of Chicago, aired a television interview with Brodsky. WGN News also published a written article, titled "Drew Peterson's former attorney considers revealing killer cop's secrets," that included excerpts from Brodsky's television interview. See Ben Bradley & Andrew Schroedter, *Drew Peterson's Former Attorney Considers Revealing Killer Cop's Secrets*, WGN 9: WGN Investigates (May 18, 2022), https://wgntv.com/news/wgn-investigates/drew-petersons-former-attorney-considers-revealing-killer-cops-secrets/ [https://perma.cc/5BF8-6U9H]. In relation to the unsolved disappearance of Peterson's fourth wife, Stacy Peterson (Stacy), the article quoted Brodsky as stating, " 'It's something that weighs on my conscience.' " *Id.* Brodsky was also quoted as declaring: " 'I would never do anything that would hurt a former client, but he's in prison, he's never getting out. So, if he's a man, he'd say "I'm done, here's what happened," so people can have closure.' " *Id.* Brodsky further intimated " 'I feel bad about *** [Peterson] still not taking responsibility and Stacy still being missing. I'm thinking about maybe revealing what happened to Stacy and where she is.' " *Id.* In addition, with respect to both Stacy and Peterson's third wife, Savio, Brodsky was quoted

as broadly asserting " 'I know everything about both of [Peterson's] wives—everything.' "[1] *Id.*

¶ 6 The day after Brodsky's television interview, May 18, 2022, Peterson served Brodsky with an emergency motion for an order prohibiting the disclosure or dissemination of information obtained during his legal representation of Peterson. Peterson argued that, in light of his ineffective assistance of counsel claim, Brodsky was a potential witness in the postconviction proceedings. Thus, while Brodsky no longer provided legal representation to Peterson, the circuit court "ha[d] an interest in taking necessary actions to preserve the fairness and integrity of" the postconviction process. According to Peterson, "even the suggestion by [Brodsky] that [Peterson] made inculpatory statements would so drastically prejudice [Peterson] and taint any potential jury pool that a fair trial could never be had in this matter." Peterson maintained that Brodsky's statements in the television interview revealed an intent "to disseminate and disclose the substance of communications allegedly had with *** Peterson" that were "clearly *** privileged *** between a client and attorney." Brodsky also suggested that, based on those communications, "he knows what actually happened to Kathleen Savio and Stacey [*sic*] Peterson." In Peterson's view, the scenario created by Brodsky was without precedent and in conflict with the Illinois Rules of Professional Conduct of 2010 and the canons of ethics applicable to attorneys. Peterson's emergency motion was noticed for hearing on the following day, May 19, 2022.

¶ 7 Brodsky and plaintiff, the People of the State of Illinois, were present at that hearing. Peterson was also present by counsel. When Peterson's attorney began his argument on the emergency motion, Brodsky interjected for the purpose of arguing lack of jurisdiction. The circuit court acknowledged Brodsky's argument before stating that he "was not a party to th[is] hearing at the moment" and should "[j]ust have a seat."

¶ 8 Peterson's attorney continued his argument, characterizing the implication from Brodsky's interview as that "Brodsky knew what had happened to the victim in this case, [Savio,] as well as Mr. Peterson's fourth wife," Stacy. Thus, "the only way to preserve the integrity and the fairness of th[e] [postconviction] process [wa]s to issue *** a gag order[,] preventing Mr. Brodsky *** from disseminating or disclosing any information in any form or in any manner whatsoever in relation to this case." Otherwise, Brodsky's dissemination or disclosure of privileged information "would go a long way toward tainting any potential jury pool *** that would serve in a new trial."

¶ 9 The State agreed with the stated facts and Peterson's position, including that Brodsky was a potential witness in the postconviction proceedings and that Brodsky's dissemination or

[1]The article indicated Brodsky feels betrayed by the legal profession. In 2019, Brodsky's law license was suspended for two years by the Illinois Supreme Court. Brodsky attributed the suspension to overzealous defense of his clients and expressed regret about his conduct. However, Brodsky questioned why other high-profile lawyers and politicians, including former speaker of the Illinois House of Representatives, Michael J. Madigan, and City of Chicago Alderman, Edward M. Burke, who were charged with violations of federal law, could retain their law licenses. Brodsky's suspension has expired, but he has not applied for a reinstatement of his law license, stating " 'It's almost like I don't want to get back into a dirty business—what I think is a dirty business.' " Ben Bradley & Andrew Schroedter, *Drew Peterson's Former Attorney Considers Revealing Killer Cop's Secrets*, WGN 9: WGN Investigates (May 18, 2022), https://wgntv.com/news/wgn-investigates/drew-petersons-former-attorney-considers-revealing-killer-cops-secrets/ [https://perma.cc/5BF8-6U9H]

disclosure of privileged information would violate the Illinois Rules of Professional Conduct of 2010, but argued that Peterson could potentially waive the attorney-client privilege pertaining to the communications at issue by testifying during the third stage of the postconviction proceedings.

¶ 10 The circuit court responded, at some length, to the parties' arguments. The court described the ability to speak confidentially with an attorney, even an attorney who has retired or been disciplined, as "sacrosanct" and "a bedrock [principle] of our system." The court noted that the General Assembly has established a right of "every single person in the State of Illinois *** to petition the Court post-conviction about claims that their constitutional rights have been violated," including for violations of the right to effective assistance of counsel. The court opined that "a situation where an attorney would make a statement to the news media that it's about time *** [to] tell the truth almost goes directly to the claim that there was ineffective assistance of counsel. It's astonishing that such a thing would happen[ ]" because "it places the whole [postconviction] hearing procedure at risk."

¶ 11 At this point in the hearing, Brodsky again interjected, requesting to be heard on the emergency motion. Brodsky stated, "[y]ou're talking about an order that's going to bind me, I have a right to be heard." The circuit court denied Brodsky's request, stating "if I issue the order, then you will be able to file any motions that you want in regard to that order, but you are not a participant and this isn't an evidentiary hearing." The circuit court then continued its detailed findings on the record, indicating that further statements by Brodsky to the news media "would make the whole [postconviction] process almost meaningless[ ] [and] would almost require a new trial on its face if such a conversation [between Brodsky and Peterson] was published outside of the courtroom." The circuit court granted the emergency motion, finding that "any reasonable person would *** view [Brodsky's statements] as a threat to Mr. Peterson." The court indicated that it would revisit its order once the State filed a motion to dismiss Peterson's petition for postconviction relief. The court then reiterated that Brodsky could contest the order by filing any motions that he wanted.

¶ 12 Immediately after the hearing, the circuit court entered a written order, formally granting Peterson's emergency motion. The circuit court's order provided as follows:

> "Petitioner's Emergency Order is GRANTED, and Joel Brodsky is hereby enjoined from speaking about his representation of Mr. Peterson and from disseminating or disclosing any information regarding such representation, or any information obtained in the course of such representation, to any media outlet or to any individuals other than his own counsel. This order to remain in effect until further order of this Court."

Brodsky timely appealed under Illinois Supreme Court Rule 307(a)(1) (eff. Nov. 1, 2017).

¶ 13 II. ANALYSIS

¶ 14 In this appeal, the sole issue is whether the circuit court erred by granting Peterson's emergency motion and entering the May 19, 2022, order after Brodsky's WGN News television interview and the subsequent written article.[2] Brodsky raises several arguments to

[2]We may take judicial notice of Brodsky's statements in the WGN News television interview and the subsequent written article, as those media sources render Brodsky's statements "readily verifiable" and "capable of instant and unquestionable demonstration." *Muller v. Zollar*, 267 Ill. App. 3d 339, 341 (1994) (citing *May Department Stores Co. v. Teamsters Union Local No. 743*, 64 Ill. 2d 153 (1976)).

challenge that ruling, including that the circuit court lacked both personal and subject matter jurisdiction, the circuit court's order constituted an invalid prior restraint of speech, defendant's motion was legally insufficient, and Peterson waived the privilege that attached to the communications relating to Stacy. For the reasons explained below, we reject Brodsky's arguments.

¶ 15 A. Personal Jurisdiction

¶ 16 Brodsky initially argues that the circuit court lacked personal jurisdiction to enter the May 19, 2022, order. Brodsky notes that he was neither made a party to nor served with process or a subpoena in these postconviction proceedings. As such, Brodsky maintains that his only connection to these postconviction proceedings is that of a potential witness.

¶ 17 In response, Peterson and the State argue that Brodsky failed to challenge the circuit court's personal jurisdiction by filing a motion under section 2-301(a) of the Code of Civil Procedure. See 735 ILCS 5/2-301(a) (West 2020). Peterson and the State emphasize that Brodsky chose not to file any motions in the circuit court, despite the circuit court's apparent invitation to do so. Peterson and the State submit that Brodsky thereby forfeited his personal jurisdiction argument on appeal. Alternatively, Peterson and the State argue that the circuit court had personal jurisdiction over Brodsky because any defects in the service of process were technical and nonsubstantive. Peterson and the State note that Brodsky was served with the emergency motion and notice of hearing at his place of residence. Brodsky then personally appeared for that hearing the next day. Therefore, they maintain Brodsky cannot reasonably claim defective service or a lack of notice.

¶ 18 We review both personal and subject matter jurisdiction issues *de novo*. See *People v. Matthews*, 2016 IL 118114, ¶ 9; *Keller v. Walker*, 319 Ill. App. 3d 67, 70 (2001).

¶ 19 At the outset we note that the State and Peterson agree that Brodsky forfeited his argument that the trial court lacked personal jurisdiction. "However, forfeiture is a limitation on the parties and not on the appellate court. [Citation.] We can overlook forfeiture and address the merits of an issue when it is necessary to obtain a just result ***." *Jill Knowles Enterprises, Inc. v. Dunkin*, 2017 IL App (2d) 160811, ¶ 22 (citing *In re Marriage of Holthaus*, 387 Ill. App. 3d 367, 377-78 (2008)). We choose not to address the issue of forfeiture because we find for the following reasons that Brodsky's substantive argument fails.

¶ 20 Personal jurisdiction, which refers to the circuit court's power to exercise adjudicatory authority over individuals, may be established by either service of process in accordance with statutory requirements or by a party's voluntary submission to the jurisdiction of the circuit court. *MI Management, LLC v. Proteus Holdings, LLC*, 2018 IL App (1st) 160972, ¶ 36; *Municipal Trust & Savings Bank v. Moriarty*, 2021 IL 126290, ¶ 17 (citing *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 18). If a circuit court enters a judgment without satisfying one of these modes of obtaining personal jurisdiction, then the judgment is void, regardless of the defendant's actual knowledge of the proceedings. *Moriarty*, 2021 IL 126290, ¶ 17 (citing *State Bank of Lake Zurich v. Thill*, 113 Ill. 2d 294, 308 (1986)).

Further, Brodsky's statements, by virtue of the WGN News, Chicago, television interview and the subsequent written article, are "part of the public record [citation] and *** [judicial] notice will aid in the efficient disposition of [the] case." *Id.*; see also *People v. Ayala*, 2022 IL App (1st) 192484, ¶ 84 n.6 (taking judicial notice of an article published by the *Chicago Tribune*).

¶ 21 However, it is not necessary for a person to be a party to a lawsuit in order to be amenable to an injunction, such as a court-ordered prior restraint of speech. See *In re A Minor*, 127 Ill. 2d 247, 263 (1989) (citing *O'Brien v. People ex rel. Kellogg Switchboard & Supply Co.*, 216 Ill. 354, 366 (1905)). Our supreme court has noted, "nonparties have often been the subject of injunctions." *Id.* (citing *Bullard v. Bullard*, 66 Ill. App. 3d 132, 134 (1978)); see also *Stavros v. Karkomi*, 28 Ill. App. 3d 996, 1003 (1975) ("[I]t is clear that one may be bound by an injunctional order, although he is not formally named as a party ***.").

¶ 22 Here, we conclude that the circuit court properly exercised personal jurisdiction over Brodsky. Peterson served the emergency motion and notice of hearing on Brodsky at his place of residence. Brodsky then voluntarily appeared in the circuit court, the very next day, for the hearing on Peterson's emergency motion. Thus, it is beyond dispute that Brodsky, under section 11-101 of the Code of Civil Procedure, received both personal service and actual notice of the emergency motion and hearing before the entry of the May 19, 2022, order. See 735 ILCS 5/11-101 (West 2020). In fact, Brodsky admits, in the first footnote of his reply brief, "[i]t is undisputed that in this case the Appellant was given notice." In determining whether notice is sufficient, courts are to focus "not on whether the notice is formally and technically correct, but whether the object and intent of the law were substantially attained thereby." (Internal quotation marks omitted.) *MI Management*, 2018 IL App (1st) 160972, ¶ 39. Therefore, the circumstances presented were more than sufficient to confer personal jurisdiction over Brodsky and bind him with the May 19, 2022, order. See *id.*

¶ 23 B. Subject Matter Jurisdiction

¶ 24 Brodsky further maintains that the circuit court lacked subject matter jurisdiction to enter the May 19, 2022, order. Specifically, Brodsky argues that the circuit court usurped the exclusive jurisdiction of our supreme court to enforce the Illinois Rules of Professional Conduct of 2010.

¶ 25 Subject matter jurisdiction "refers to a tribunal's power to hear and determine cases of the general class to which the proceeding in question belongs." *Zahn v. North American Power & Gas, LLC*, 2016 IL 120526, ¶ 13 (citing *J&J Ventures Gaming, LLC v. Wild, Inc.*, 2016 IL 119870, ¶ 23). The Illinois Constitution vests the circuit courts with original jurisdiction over "all 'justiciable matters,' " except when the Illinois Supreme Court "possesses 'original and exclusive jurisdiction.' " *Id.* (quoting Ill. Const. 1970, art. VI, § 9). Therefore, if a matter brought before the circuit court is justiciable and not within the supreme court's original and exclusive jurisdiction, the circuit court has subject matter jurisdiction. *Id.* (citing *McCormick v. Robertson*, 2015 IL 118230, ¶ 20). A matter is justiciable when it presents a controversy that is appropriate for review by the circuit court, meaning it is definite and concrete, as opposed to hypothetical or moot, and touches upon the legal relations of parties with adverse legal interests. *MI Management*, 2018 IL App (1st) 160972, ¶ 61.

¶ 26 Undeniably, circuit courts have subject matter jurisdiction in postconviction proceedings. See 725 ILCS 5/122-1 (West 2020). Just as clearly, circuit courts have subject matter jurisdiction to restrain speech with injunctive relief. See 735 ILCS 5/11-101 (West 2020); *infra* ¶ 31. However, Brodsky claims that the circuit court exceeded its subject matter jurisdiction by binding him with the May 19, 2022, order. In doing so, Brodsky complicates an otherwise straightforward issue by confusing the circuit court's discretion to restrain his speech with subject matter jurisdiction. Clearly, the circuit court was presented with a justiciable matter

after Brodsky participated in the WGN News television interview and Peterson filed an emergency motion that sought to restrain Brodsky's speech. See Ill. Const. 1970, art. VI, § 9; *Zahn*, 2016 IL 120526, ¶ 13. In other words, the circuit court was presented with a definite and concrete controversy that touched upon the adverse legal interests of Brodsky and Peterson, *i.e.*, whether Brodsky could be subjected to a prior restraint of speech in order to safeguard Peterson's right to a fair trial in the event that he succeeded on his petition for postconviction relief. See *MI Management*, 2018 IL App (1st) 160972, ¶ 61. This justiciable matter, which in no way required the circuit court to enforce the Illinois Rules of Professional Conduct of 2010, is all that was required for subject matter jurisdiction. Even had the circuit court abused its discretion when entering the May 19, 2022, order, it undeniably had subject matter jurisdiction to address the matter presented by the parties.

¶ 27 Brodsky further maintains that the circuit court lacked subject matter jurisdiction because Brodsky's comments to WGN News referred only to Stacy and that he "never said he was thinking about revealing what happened to Kathy Savio."

¶ 28 We find this argument singularly unconvincing. While Brodsky's interview did focus on the whereabouts of Stacy, he specifically stated "I know everything about both of his wives—everything." It is difficult to conceive how disclosure of Peterson's role in the disappearance of Stacy would not taint any jury pool in a new trial for the murder of Savio.

¶ 29 C. Prior Restraint of Speech

¶ 30 Brodsky challenges the circuit court's May 19, 2022, order as an invalid prior restraint of speech. He articulates this challenge by maintaining that the order is overbroad and vague and there is neither evidence nor findings to support the order.

¶ 31 A prior restraint has been described as "a predetermined judicial prohibition restraining specified expression." *Chicago Council of Lawyers v. Bauer*, 522 F.2d 242, 248 (7th Cir. 1975). Circuit court orders that restrain the making of extrajudicial comments are construed as injunctions. See *In re Marriage of Granger*, 197 Ill. App. 3d 363, 372 (1990); see also *In re J.S.*, 267 Ill. App. 3d 145, 147 (1994). Such an injunction is " 'the most serious and the least tolerable infringement on First Amendment rights.' " *Kemner v. Monsanto Co.*, 112 Ill. 2d 223, 243 (1986) (quoting *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976)); accord *Same Condition, LLC v. Codal, Inc.*, 2021 IL App (1st) 201187, ¶ 30. The injunction's proponent "carries a heavy burden of showing justification for the imposition of such a restraint." *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971).

¶ 32 A prior restraint is not, however, unconstitutional *per se*. The courts have long held that liberty of speech, and of the press, is not an absolute right. *Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 708 (1931). "The phrase 'prior restraint' is not a self-wielding sword. Nor can it serve as a talismanic test." *Kingsley Books, Inc. v. Brown*, 354 U.S. 436, 441 (1957).

¶ 33 That said, to be constitutional, a circuit court's order must satisfy an exception to the prohibition on prior restraints of speech. *Kemner*, 112 Ill. 2d at 243 (citing *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 559 (1975)); accord *In re A Minor*, 127 Ill. 2d at 265; *Same Condition*, 2021 IL App (1st) 201187, ¶ 32.

¶ 34 Notably, courts have recognized such an exception where the "disclosure of information concerning pending litigation by the parties or their counsel would present a clear and present danger *or* a reasonable likelihood of a serious and imminent threat to the litigants' right to a

fair trial." *Kemner*, 112 Ill. 2d at 243; see also *In re A Minor*, 127 Ill. 2d at 265-66 (stating a "serious and imminent threat" must not be capable of being "addressed by other, less speech-restrictive means"). This is because a party's right to a fair trial is guaranteed by the due process clause of the fourteenth amendment to the United States Constitution (U.S. Const., amend. XIV) and "the right to free speech occasionally must yield to the right of a fair trial." *Same Condition*, 2021 IL App (1st) 201187, ¶ 48 (citing *Kemner*, 112 Ill. 2d at 244); *Pennekamp v. Florida*, 328 U.S. 331, 347 (1946).

¶ 35 Historically, landmark discussions of prior restraint have addressed freedom of the press. See, *e.g.*, *Stuart*, 427 U.S. at 589 (Brennan, J., concurring, joined by Stewart and Marshall, JJ.). But the matter before us is not a traditional free press case. We here consider the broadly disseminated public statement of a former attorney in which he suggests that he may openly divulge confidential information disclosed to him by his former client. In the words of the trial court, it is astonishing that such a thing would happen.

¶ 36 Illinois Rules of Professional Conduct of 2010 Rule 3.6(a) (eff. Jan. 1, 2010) states an attorney who "is participating or has participated in the *** litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and would pose a serious and imminent threat to the fairness of an adjudicative proceeding in the matter." See *Kemner*, 112 Ill. 2d at 243; *In re A Minor*, 127 Ill. 2d at 265-66. That rule also elaborates on the type of conduct and publicity that poses a "serious and imminent threat to the fairness of a proceeding." Ill. R. Prof'l Conduct (2010) R. 3.6 cmt. 5 (eff. Jan. 1, 2010); *People v. Kelly*, 397 Ill. App. 3d 232, 267 (2009); see also *Kemner*, 112 Ill. 2d at 243; *In re A Minor*, 127 Ill. 2d at 265-66. Prior to January 1, 2010, the aforementioned conduct and publicity was contained in the text of Rule 3.6. See *Kelly*, 397 Ill. App. 3d at 268. Now, however, the types of conduct and publicity posing a "serious and imminent threat to the fairness" of those proceedings are contained, in almost exactly the same form as before the revisions, in the comments to Rule 3.6. *Id.* at 267-68; Ill. R. Prof'l Conduct (2010) R. 3.6 cmt. 5 (eff. Jan. 1, 2010). Those comments, in part, provide:

> "[5] There are *** certain subjects that would pose a serious and imminent threat to the fairness of a proceeding, particularly when they refer to *** a criminal matter *** or any other proceeding that could result in incarceration. These subjects relate to:
>
> (1) the character, credibility, reputation or criminal record of a party ***;
>
> (2) in a criminal case or proceeding that could result in incarceration, *** the existence or contents of any confession, admission, or statement given by a defendant ***;
>
> ***
>
> (4) any opinion as to the guilt or innocence of a defendant *** in a criminal case or proceeding that could result in incarceration." Ill. R. Prof'l Conduct (2010) R. 3.6 cmt. 5(1), (2), (4) (eff. Jan. 1, 2010).

¶ 37 Having outlined these general legal principles, we consider the specific arguments presented by Brodsky on appeal. In doing so, we review the circuit court's prior restraint of speech for an abuse of discretion. *Same Condition*, 2021 IL App (1st) 201187, ¶ 30 (citing *In re J.S.*, 267 Ill. App. 3d at 147-48). For a reversal, we must determine that the circuit court

acted arbitrarily and without conscientious judgment or ignored recognized principles of law, resulting in substantial prejudice. *In re J.S.*, 267 Ill. App. 3d at 148.

¶ 38 Brodsky argues the May 19, 2022, order is, "on its face, 'just too broad to pass constitutional muster' " and must be vacated. Peterson and the State respond by arguing that Brodsky's argument is based on the "patently erroneous assumption" that an attorney has a first amendment right to disclose or disseminate privileged communications. In their view, such a right would render the attorney-client privilege "utterly meaningless and without effect."

¶ 39 It is true "any restraining order which denies parties and counsel their first amendment rights in the interest of a fair trial must be neither vague nor overbroad." *Kemner*, 112 Ill. 2d at 244; accord *Same Condition*, 2021 IL App (1st) 201187, ¶ 48; *In re J.S.*, 267 Ill. App. 3d at 152. Prior restraints of extrajudicial comments are overbroad if they "curtail[ ] speech which d[oes] not present a threat to a fair trial along with speech which presented such a threat" or are not "narrowly drawn so as not to prohibit speech *** that would not be prejudicial to a fair trial." *Kemner*, 112 Ill. 2d at 246-47 (discussing cases where prior restraints of extrajudicial comments were found to be overbroad). Prior restraints of extrajudicial comments are vague if they are not " 'clearly defined,' " as to comport with the policy of "provid[ing] a fair warning to those affected by the *** order [citation], and *** prevent[ing] infringements upon constitutionally protected activity." *Id.* at 247 (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972)).

¶ 40 We bear in mind that we are tasked to consider the imminence and magnitude of the danger said to flow from the particular (Brodsky's) utterance and then to balance the character of the evil, as well as its likelihood, against the need for free and unfettered expression. *In re A Minor*, 149 Ill. 2d 247, 255 (1992) (citing *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829, 843 (1978)).

¶ 41 We are aided by the fact that the record in this case is short and clear. There is no question about the current status and legal posture of the parties, and there is no denial of what Brodsky said in the WGN News interview. We give Brodsky's statements their obvious and unmistakable meaning. While we acknowledge that prior restraints should not be justified by mere possibilities, we find the character of the present evil undeniable and its likelihood palpable. These conclusions are supported by Brodsky's obvious lack of respect for the attorney-client privilege.

¶ 42 We conclude that the circuit court's May 19, 2022, order, which operated as a prior restraint of Brodsky's speech, was necessary due to the clear and present danger *or* reasonable likelihood of a serious and imminent threat to Peterson's right to a potential new trial. Looking to comment 5 of Rule 3.6 for guidance, it is obvious that Brodsky's statements, as a whole, related directly to Peterson's "character, credibility, reputation or criminal record"; "the existence or contents of any confession, admission, or statement given" by Peterson; and an "opinion as to the guilt" of Peterson "in a criminal case." See Ill. R. Prof'l Conduct (2010) R. 3.6 cmt. 5(1), (2), (4) (eff. Jan. 1, 2010). Brodsky could not be allowed to so brazenly threaten to disseminate, to the public, the contents of the privileged communications at issue in this case.

¶ 43 Further, we conclude that, in light of the particular statements made by Brodsky in the WGN News television interview and subsequent written article, the circuit court's May 19, 2022, order was neither overbroad nor vague.

¶ 44 Brodsky asserts that the injunction must be limited to matters involving Savio. Specifically, he posits that any order of the trial court which touches on the subject of Stacy, or appellant speaking about Stacy, is overbroad and beyond the authority of the trial court. Such a position would allow Brodsky to tell his story about Stacy.

¶ 45 The circuit court's order enjoins Brodsky from *** disseminating or disclosing *** any information "obtained in the course of such representation (of Drew Peterson)." This prohibition might appear broad were we to operate in a vacuum. It is not so considering the facts underlying the injunction. First, we reiterate that Brodsky stated in his interview that he "know(s) everything about both of his (Peterson's) wives—everything." Second, we must consider that Stacy's hearsay statements were used against Peterson at trial and that Peterson was accused of causing her unavailability.

¶ 46 Brodsky cites *Kemner*, 112 Ill. 2d 223, in support of his argument that the trial court's order is unconstitutionally overbroad and vague. Monsanto was the defendant in 22 consolidated cases arising from a Sturgeon, Missouri, tank car derailment and chemical spill. The plaintiffs claimed damages for injuries and property damage caused by exposure to the chemicals. The chemical, produced by Monsanto, was allegedly contaminated with dioxin.

¶ 47 The trial commenced February 6, 1984, in St. Clair County, Illinois. On March 1, 1984, the National Institute of Occupational Safety and Health (NIOSH) held a news conference in St. Louis, Missouri, wherein NIOSH officials announced that a former St. Louis trucking company employee had developed a rare form of cancer "possibly linked to dioxin." The NIOSH news conference received extensive local media coverage. This single case of cancer was viewed on some media accounts as Missouri's first verified illness caused by dioxin. *Kemner*, 112 Ill. 2d at 232.

¶ 48 On March 15, 1984, Monsanto sent a letter entitled "Background Information for St. Louis Area News Media" to 14 media organizations in and around St. Louis, explaining Monsanto's role in the St. Clair County lawsuit, and decrying the " 'exaggerated NIOSH pronouncements' " and attempting to " 'sensitize' " the news agencies " 'to the need to be careful, responsible and accurate in the way dioxin subjects are reported in the future.' " *Id.* at 232-33.

¶ 49 On March 19, 1984, the plaintiffs filed a motion praying, *inter alia*, that Monsanto be ordered to refrain from issuing any type of press release related to the subject matter of the trial during the time the case was being tried. (The trial lasted over two years.) The court issued a temporary restraining order and, after a hearing, entered an order including the following:

> " 'Defendant Monsanto Company shall not in any press release, background statement, interview, publication or any other contact with the media, by any agent, servant, employee, attorney or independent contractor, mention this case or intimate its existence or its trial or any particular facts or circumstances or positions of parties concerning it until judgment is entered by this Court. The term "media" includes local, national and multi-national, print and electronic.' " *Id.* at 235.

¶ 50 Monsanto appealed and the appellate court affirmed with one justice dissenting. *Kemner v. Norfolk & Western Ry. Co.*, 133 Ill. App. 3d 597 (1985). The supreme court reversed, finding the order both overbroad and vague. *Kemner*, 112 Ill. 2d at 246-47.

¶ 51 We find important distinctions between *Kemner* and this case. We must first acknowledge the obvious. The disclosures prohibited by the circuit court's order are protected by the

attorney-client privilege. According to the May 19, 2022, order, Brodsky is enjoined from "speaking about his *representation* of Mr. Peterson and from disseminating or disclosing any information regarding such *representation*, or any information obtained in the course of such *representation*." (Emphasis added.)

¶ 52 We are confident that the gag order is easily read to forbid exactly what Brodsky threatened to do—take his case to the media in violation of the attorney-client privilege—and no more.

¶ 53 Neither is the order unconstitutionally vague. We note the United States Supreme Court's observation in *Grayned*, 408 U.S. 104. "Condemned to the use of words, we can never expect mathematical certainty from our language. The words [of the statute at issue] are marked by 'flexibility and reasonable breadth, rather than meticulous specificity' [citation], but we think it is clear what the ordinance as a whole prohibits." *Id.* at 110.

¶ 54 The gag order which was found to be void for vagueness in *Kemner* read, in part, that the parties and their attorneys were prohibited from " 'taking any action outside this courtroom that is *calculated to or is reasonably foreseeable to influence any juror in this cause*.' " (Emphasis in original.) *Kemner*, 112 Ill. 2d at 248 (quoting *Kemner*, 133 Ill. App. 3d at 602). The court determined that the parties could only guess at what action would fall under the proscription as worded. Given the specificity of this trial court's order and its clear limitation to information obtained in the representation of defendant, no such problem is presented here.

¶ 55 Also, the supreme court in *Kemner* based its decision to invalidate the gag order, in part, on its determination that a less restrictive alternative existed: the trial court's inherent power to impose contempt citations if the parties attempted to influence the jury. *Id.* at 249. In this case, no contempt citation could undo the damage to Peterson's right to a fair and impartial trial.

¶ 56 Few people in the history of Illinois jurisprudence have achieved Drew Peterson's level of notoriety. We find it nearly inconceivable that any revelation about Stacy would not taint the jury pool should Peterson receive a new trial.

¶ 57 Brodsky next argues that the circuit court failed to receive evidence or issue factual findings to support the May 19, 2022, order. As such, Brodsky argues the present record lacks any evidence of a clear and present danger or serious and imminent threat to the fairness and integrity of a potential trial involving Peterson. Indeed, Brodsky maintains, "the likelihood of a jury trial happening is infinitesimally small, way too small to interfere with the First Amendment."

¶ 58 In response, Peterson and the State argue that they appeared in the circuit court and agreed to the factual representations in Peterson's emergency motion. They also note that the circuit court was familiar with the underlying criminal case and the postconviction proceedings and could have taken judicial notice of Brodsky's television interview and the subsequent written article. As such, Peterson and the State question what additional or more detailed information could have justified the circuit court's May 19, 2022, order and protected Peterson's right to a future fair trial.

¶ 59 Our supreme court has stated that courts may "restrain parties and their attorneys from making extrajudicial comments *** *only* if the record contains sufficient specific findings *** that the parties' and their attorneys' conduct poses *a clear and present danger or a serious and imminent threat to the fairness and integrity of the trial*. [Citations.]" (Emphases in original.) *Id.* at 244; accord *Same Condition*, 2021 IL App (1st) 201187, ¶ 48; see also Ill. R. Prof'l

Conduct (2010) R. 3.6 cmt. 1, (eff. Jan. 1, 2010). Further, this requirement is consistent with section 11-101, which provides: "Every order granting an injunction and every restraining order shall set forth the reasons for its entry; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained ***." 735 ILCS 5/11-101 (West 2020).

¶ 60 We recognize that the court's order does not set forth the findings *per se*, but under *Kemner*, it is the record to which we look. See *Kemner*, 112 Ill. 2d at 244.

¶ 61 At the hearing on defendant's emergency motion, the trial court inquired and the State and the defendant stipulated to the following facts and assertions:

> "6) On or about May 17, 2022, news media (specifically, WGN News, Chicago) aired an interview with Joel Brodsky in which Brodsky indicated in essence that he intends to disseminate and disclose the substance of communications allegedly had with Drew Peterson;
>
> 7) Moreover, Brodsky, in the course of said interview, suggests that on the basis of such alleged communications, he knows what actually happened to Kathleen Savio and Stacey [*sic*] Peterson;
>
> 8) In the course of the interview, Brodsky actually speculates as to whether the "time has come" to disclose the substance of these communications, which, if they had taken place at all, would clearly be privileged communications between a client and attorney;
>
> 9) The mere suggestion by an attorney that he is considering publicly disclosing the contents of privileged communications with a former client is virtually without precedent in the history of the judicial system of the United States of America and is contrary to not only the Illinois Rules of Professional Conduct but every canon of ethics governing attorneys."

¶ 62 After counsel for the State and the defendant argued for entry of the emergency order, the court made, on the record, the following statements and observations:

> "It's crystal clear that it is a bedrock of our system that a person, and they may be the most vial [*sic*] criminal in the entire United States, still has the ability to speak confidentially to an attorney.
>
> And even if that attorney is disciplined or retires or whatever the circumstances are, those privileged conversations are sacrosanct, they can't be revealed.
>
> And if we look at the proceeding that's before us now, even though the defendant is convicted, the General Assembly has decided that every single person in the State of Illinois who has been in prison has the right to petition the Court post-conviction about claims that their constitutional rights have been violated.
>
> And so much so that when the defendant first files such a petition, all he has to do is say that that happened and the Court must move on to the next level of the proceedings.
>
> *** [T]hat's where we are, we are at that second stage. And one of the allegations that the defendant made, *** is that he believed he received the ineffective assistance of counsel at the trial, ***.
>
> ***

> And to create a situation where an attorney would make a statement to the news media that it's about time that I tell the truth almost goes directly to the claim that there was ineffective assistance of counsel. It's astonishing that such a thing would happen. I mean it places the whole hearing procedure at risk if Mr. Brodsky were to do such a thing.
>
> * * *
>
> So as I said, it would make the whole process almost meaningless. It would almost require a new trial on its face if such a conversation was published outside of the courtroom.
>
> * * *
>
> And the State agrees that these are the facts in this case, and there is no way to interpret those statements other than that Mr. Brodsky wanted somehow or other to interject himself into this proceeding.
>
> And any reasonable person would almost view it as a threat to Mr. Peterson to say such a thing, and I can't let that happen."

¶ 63 While the circuit court may not have reiterated verbatim the "clear and present danger or serious and imminent threat" language in *Kemner*, we believe these findings are implicit and obvious in the court's statement on the record. We accordingly reject Brodsky's argument that the record does not support the circuit court's order.

¶ 64 D. Legal Sufficiency of the Defendant's Motion

¶ 65 We are also unconvinced by the appellant's claim that defendant's emergency motion for order prohibiting witness from disclosing or disseminating information was legally insufficient. Brodsky cites *Phelan v. Wright*, 54 Ill. App. 2d 178, 183 (1964), for the proposition that under section 11-101 of the Code of Civil Procedure, "an unverified petition, unsupported by any affidavit, is insufficient to support the entry of an injunction." However, *Phelan* was decided under a prior version of section 11-101. The current statute, which took effect on January 1, 1986, makes no mention of verification or affidavit, providing only that "[n]o court or judge shall grant a preliminary injunction without previous notice of the time and place of the application having been given the adverse party." 735 ILCS 5/11-102 (West 2020).

¶ 66 Furthermore, the prior statute specifically required verification only when no notice was given to the defendant. See *County of Lake v. X-Po Security Police Service, Inc.*, 27 Ill. App. 3d 750, 755-56 (1975); *Hoover v. Crippen*, 151 Ill. App. 3d 864, 868 (1987). In this case, the appellant was given notice of the emergency motion and, in fact, was present in court on May 19, 2022, the day the emergency motion was heard.

¶ 67 E. Waiver of Attorney-Client Privilege

¶ 68 The attorney-client privilege is indeed a bedrock of our justice system. If legal advice of any kind is sought from an attorney, then communications made for that purpose, in confidence by the client to the attorney, are protected from disclosure by the attorney, unless the protection is waived by the client. See *Center Partners, Ltd. v. Growth Head GP, LLC*, 2012 IL 113107, ¶ 30; accord *Daily v. Greensfelder, Hemker & Gale, P.C.*, 2018 IL App (5th) 150384, ¶ 22. This attorney-client privilege is evidentiary in nature and provides protection to the client's

communications by prohibiting their unauthorized disclosure in judicial settings. See *Center Partners*, 2012 IL 113107, ¶ 30. The attorney-client privilege, which "is one of the oldest privileges for confidential communications known to the common law," is essential to the proper function of our adversarial system of justice. *Id.* (citing *In re Marriage of Decker*, 153 Ill. 2d 298, 312-13 (1992)). This is because the attorney-client privilege encourages and promotes full and frank consultation between a client and attorney by removing the fear of the compelled disclosure of information. *Id.* ¶ 31 (citing *Waste Management, Inc. v. International Surplus Lines Insurance Co.*, 144 Ill. 2d 178, 190 (1991)). Moreover, the attorney-client privilege recognizes that sound legal advice from an attorney serves public ends and depends upon the attorney being fully informed by the client. *Id.* (citing *Fischel & Kahn, Ltd. v. Van Straaten Gallery, Inc.*, 189 Ill. 2d 579, 585 (2000)).

¶ 69 Only the client can waive the attorney-client privilege. *Id.* ¶ 35 (citing *Decker*, 153 Ill. 2d at 313). An attorney cannot, over the client's objection, effectuate such a waiver. *Id.* The client waives the attorney-client privilege by "voluntarily testif[ying] to the privileged matter [citation], or *** voluntarily inject[ing] into the case either a factual or legal issue, the truthful resolution of which requires examination of confidential communications." *Id.* (if the client discloses a privileged communication to a third-party, then that communication is no longer privileged and is discoverable or admissible in the litigation).

¶ 70 Brodsky argues that Peterson waived the attorney-client privilege, which initially protected statements "regarding his communication[s] with *** [Brodsky] about the disappearance of Stacy *** and more," by participating in nationwide media interviews and filing his petition for postconviction relief. Brodsky maintains that, under Illinois Rules of Professional Conduct of 2010 Rule 1.6(b)(5) and comment 10 (eff. Jan. 1, 2016), he was not required to wait for the postconviction proceedings to begin to respond to Peterson's accusations of ineffective assistance of counsel. Rather, he argues that he could "respond immediately and in the same forum that the false accusation has been made."

¶ 71 Rule 1.6(b)(5) and comment 10 thereto provide as follows:

> "(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:
>
> * * *
>
> (5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;
>
> * * *
>
> [10] Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. Such a charge can arise in a civil, criminal, disciplinary or other proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person, for example, a person claiming to have been defrauded by the lawyer and client acting together. The

> lawyer's right to respond arises when an assertion of such complicity has been made. Paragraph (b)(5) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend also applies, of course, where a proceeding has been commenced." Ill. R. Prof'l Conduct (2010) R. 1.6(b)(5) & cmt. 10 (eff. Jan. 1, 2016).

¶ 72 Brodsky seems to read the rule and comment to say his right to respond is unfettered, stating: "By his own actions the Defendant has waived any right or privilege he has, and the Appellant is allowed to explain and refute the false allegations made against him using information he has obtained from the Defendant."

¶ 73 Peterson and the State reply that the attorney's right to respond is not without limitation and that the information to be disclosed must be narrowly tailored to allow the attorney a sufficient opportunity to answer the precise claims against him, but no more. They argue that "even an allegation of ineffective assistance of counsel does not give an attorney a free pass to disclose every privileged communication that might have been had between himself and the client." We observe in passing that there is no shortage of discussion on this issue in the federal courts, where claims of ineffective assistance of counsel are routinely raised in *habeas corpus* petitions. See *United States v. Pinson*, 584 F.3d 972 (10th Cir. 2009) (supporting a narrowly tailored waiver); *Bittaker v. Woodford*, 331 F.3d 715 (9th Cir. 2003) (same).

¶ 74 We find clear support for a narrow waiver in the language of Rule 1.6(b)(5), stating that an attorney is permitted to respond to the extent the attorney reasonably believes necessary to establish a defense to the client's claim. We concur with defendant's conclusion that "nothing about the specific allegations of ineffective assistance of counsel made by Defendant-Appellee in his *pro se* petition for post-conviction relief would require Appellant to disclose any supposed inculpatory statements (especially any supposed inculpatory statements about Stacy Peterson) in order to establish a defense to such claims."

¶ 75 We find comment 10 to Rule 1.6 inapplicable, as Peterson has alleged neither complicity of Brodsky in his conduct nor other specific misconduct, as defined by the Rules of Professional Conduct of 2010.

¶ 76 While appellant has not raised the subject matter waiver doctrine by name, we find it implicit in his arguments. The subject matter waiver doctrine holds that with respect to privileged attorney-client communications " '[t]he client's offer of his own *** testimony as to a *specific communication* to the attorney is a waiver as to all other communications to the attorney on the same [subject] matter.' " (Emphasis in original.) *Center Partners*, 2012 IL 113107, ¶ 37 (quoting 8 John H. Wigmore, Evidence in Trials at Common Law § 2327, at 638 (McNaughton rev. ed. 1961)). Likewise, the "client's offer of his own or his 'attorney's testimony as to a *part of any communication* to the attorney is a waiver as to the whole of that communication, on the analogy of the principle of completeness.' " (Emphasis in original.) *Id.* (quoting 8 John H. Wigmore, Evidence in Trials at Common Law § 2327, at 638 (McNaughton rev. ed. 1961)). The waiver is, however, limited. As our supreme court has noted, "Illinois has long recognized the doctrine of subject matter waiver, *** holding that when a client voluntarily testifies and waives the privilege, such waiver 'extends no further than the *subject matter concerning which testimony had been given by the client*.' " (Emphasis in original.) *Id.* ¶ 38 (quoting *People v. Gerold*, 265 Ill. 448, 481 (1914)).

¶ 77 There is no bright-line test for deciding what constitutes the subject matter of a waiver. *Id.* ¶ 67; accord *Selby v. O'Dea*, 2020 IL App (1st) 181951, ¶ 233. A court must weigh the circumstances of the disclosure, the nature of the legal advice sought by the client from the attorney, and the prejudice to the parties of permitting or prohibiting additional disclosures. *Center Partners*, 2012 IL 113107, ¶ 67; accord *Selby*, 2020 IL App (1st) 181951, ¶ 233.

¶ 78 While the foregoing principles are broadly recognized, courts, both state and federal, have struggled with the question of "whether the subject matter waiver doctrine extends to disclosures of privileged communications made in an extrajudicial setting." *Center Partners*, 2012 IL 113107, ¶ 42. In *Center Partners*, our supreme court addressed this matter as one of first impression in Illinois. After an extensive review of state and federal authority, our supreme court declined to extend the subject matter waiver doctrine to extrajudicial disclosures, reasoning that a limitation of the doctrine to disclosures in judicial settings was found to better serve the purpose of the doctrine, namely, "to prevent a party from strategically and selectively disclosing partial attorney-client communications with his attorney to use as a sword, and then invoking the privilege as a shield to other communications so as to gain a tactical advantage *in litigation*." (Emphasis in original.) *Id.* ¶ 57 (citing *In re Keeper of the Records (Grand Jury Subpoena Addressed to XYZ Corp.)*, 348 F.3d 16, 24 (1st Cir. 2003)). The purpose of guarding against abuses of the judicial process and ensuring the full context of partial disclosures are discoverable to aid the truth-seeking function and fairness would not be served by an expanding the doctrine to extrajudicial disclosures. See *id.* Rather, expanding the subject matter waiver doctrine to extrajudicial disclosures would "necessarily broaden the scope of the doctrine's purpose." *Id.* A limitation of the subject matter waiver doctrine was also found to be "sound policy."[3] *Id.* ¶ 60.

¶ 79 We accordingly conclude that the extrajudicial speech, dissemination, or disclosures enjoined by the trial court's order do not fall within the subject matter waiver doctrine and that Peterson has not waived the attorney-client privilege regarding the subject matter sought to be disclosed by appellant, Brodsky.

¶ 80 The essence of this case is the sanctity of the attorney-client privilege.

> "It is essential to the ends of justice that clients should be safe in confiding to their counsel the most secret facts, and to receive advice in the light thereof, without peril of publicity. Disclosures made to this end should be as secret and inviolable as if the facts had remained in the knowledge of the client alone." *Dickerson v. Dickerson*, 322 Ill. 492, 500 (1926).

¶ 81 The trial court got it right when it characterized this principle as a bedrock of our legal system. It is absolutely essential that a client have the ability to speak confidentially to their

[3]In *Center Partners*, our supreme court acknowledged certain federal court cases, some which were unpublished or published only as federal rules decisions, applied the subject matter waiver doctrine to extrajudicial disclosures. See *Center Partners*, 2012 IL 113107, ¶¶ 51-56, 58. However, in contrast to the cases declining to extend that doctrine to extrajudicial disclosures, our supreme court found the acknowledged federal court cases "d[id] not contain any reasoning or explanation for why subject matter waiver should extend to purely extrajudicial disclosures." *Id.* ¶ 58. Therefore, our supreme court found the acknowledged federal court cases were not "as persuasive as the more complete analyses found" in the cases that disfavored an extension of the subject matter waiver doctrine to extrajudicial disclosures. *Id.* Here, Brodsky points to no case, from Illinois or otherwise, that favors an extension of the doctrine.

attorney.

¶ 82 III. CONCLUSION

¶ 83 For the foregoing reasons, we conclude that the trial court did not abuse its discretion. The judgment of the circuit court of Will County is accordingly affirmed.

¶ 84 Affirmed.