

No. 1-17-2704

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
FIRST JUDICIAL DISTRICT

<i>In re</i> ESTATE OF JOEL KAPLAN, a Disabled Person)	Appeal from the
)	Circuit Court of
(Mark Kaplan and Brian Kaplan, as Co-guardians)	Cook County.
of the Estate of Joel Kaplan, a Disabled Person,)	
)	No. 16 P 001240
Petitioners-Appellees,)	
)	Honorable
v.)	Carolyn G. Quinn,
)	Judge, presiding.
ERIC BUNT,)	
)	
Respondent-Appellant).)	

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* We dismissed this appeal from orders denying a petition for substitution of judge for cause and limiting visitations with the ward, which were entered in a guardianship case, for lack of appellate jurisdiction.

¶ 2 Respondent-appellant, Eric Bunt, appeals from the order of the circuit court denying his motion for substitution of judge for cause, after the circuit court found he did not have standing to challenge a visitation order entered in a guardianship proceeding brought by petitioners-appellees, Mark Kaplan and Brian Kaplan, plenary co-guardians of the estate of their father, Joel Kaplan, a disabled person. He asks that we reverse the order denying his petition and find the

visitation order “void.” However, we dismiss this appeal for lack of appellate jurisdiction, as Mr. Bunt did not include the visitation order in his notice of appeal and the order denying his petition for substitution of judge for cause is a non-final, non-appealable interlocutory order.¹

¶ 3 In February 2016, Mark and Brian filed a petition pursuant to section 11a-3 of the Probate Act of 1975 (Act) (755 ILCS 5/11a-3 (West 2016)) seeking their appointment as plenary co-guardians of the person and estate of Joel. Pursuant to section 11a-4 of the Act, they also filed a separate petition seeking appointment as temporary co-guardians of the person and estate of Joel. Judge Shauna L. Boliker presides over the guardianship proceedings.

¶ 4 At the time the petitions were filed, Joel was residing in an apartment at The Clare, an assisted living facility in Chicago. Edgar Staren, one of Joel’s friends, was also living in an apartment at The Clare.² Mr. Bunt became acquainted with Joel through Mr. Staren.

¶ 5 The petition for temporary guardianship asserted that in June 2014, Joel had suffered a stroke and as a result he was totally reliant upon others for assistance with all aspects of his daily living. Joel met Suzanne Mallo online and she had become his companion over the prior eight months. Joel had indicated that he wished to marry Ms. Mallo. Mark and Brian contended that the stroke had left Joel easy to manipulate, unable to understand the implications of marriage and unable to consent to such a union. Additionally, Joel had been the victim of financial exploitation on several occasions over the previous seven months. On the day the petitions were filed, the circuit court appointed a guardian *ad litem* (GAL). After a hearing on the petition for appointment of temporary co-guardians and receiving the GAL’s recommendation that the

¹ In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order stating with specificity why no substantial question is presented.

² On September 1, 2017, the court granted the co-guardians the authority to relocate Joel to the Symphony of Evanston.

appointment was warranted, the circuit court granted the petition and appointed Mark and Brian as temporary co-guardians.

¶ 6 After the parties engaged in discovery, a multiday trial was held in December 2016 on the petition for plenary guardianship. On January 27, 2017, the circuit court found Joel to totally lack understanding or capacity to make or communicate responsible decisions regarding his own personal care and to be totally unable to manage his estate or financial affairs. The court appointed Mark and Brian as his plenary co-guardians. On appeal, we affirmed that decision. *In re Estate of Kaplan*, 2018 IL App (1st) 170540-U.

¶ 7 One day prior to their appointment as plenary co-guardians, Mark and Brian sought an emergency order of protection for Joel against Ms. Mallo. Their request was based, in part, on allegations that Ms. Mallo had been verbally abusive to Joel. On that day, Judge Boliker entered an emergency order of protection (EOP) directing Ms. Mallo to stay away from Joel and his apartment, and that the EOP was extended on February 9, 2017. In a March 3, 2017, letter, Mark and Brian advised Mr. Bunt and Mr. Staren: (1) of the entry of the EOP; (2) that Mark and Brian were aware that Mr. Bunt and Mr. Staren had been facilitating contacts between Joel and Ms. Mallo; and (3) that those contacts were in violation of the EOP. On May 5, 2017, the circuit court entered a two-year plenary order of protection which directed Ms. Mallo to stay away from Joel and prohibited her from contacting Joel “under any circumstances.”³ The plenary order of protection also forbade Ms. Mallo from contacting Joel through third-persons.

¶ 8 Additionally, on July 26, 2017, Mark and Brian filed a petition for a plenary order of protection for Joel against Mr. Bunt. They alleged that Mr. Bunt was a “[p]ersonal assistant to person with disabilities or a person who has responsibility for a high-risk adult with disabilities.”

³ After a request for substitution of judge as of right by Ms. Mallo, the petition for plenary order of protection was heard and granted by Judge Aicha M. MacCarthy.

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The petition also alleged that Ms. Mallo had repeatedly violated the May 5, 2017, plenary order of protection and that she and Joel were regularly communicating by cell phone with the assistance of Mr. Bunt and Mr. Staren. In an exhibit to the petition, Joel's caregivers at The Clare confirmed that phone conversations had occurred and reported that Joel became upset after talking with Ms. Mallo. Additionally, Mark and Brian alleged in their petition that Ms. Mallo had dinner with Joel at a Chicago restaurant on July 21, 2017, in violation of the plenary order of protection against Ms. Mallo, and that Mr. Bunt was with them. The petition was noticed for hearing on August 4, 2017.⁴

¶ 9 On August 4, 2017, counsel for Mr. Bunt entered an appearance and filed a motion for substitution of Judge Boliker as a matter of right under section 2-1001(a)(2) of the Code of Civil Procedure ("Code"). 735 ILCS 5/2-1001(a)(2) (West 2016). The motion was granted and the petition for plenary order of protection against Mr. Bunt was randomly assigned and transferred to Judge Carolyn G. Quinn.

¶ 10 Before Judge Quinn, counsel for Mr. Bunt asserted that Mr. Bunt had never been a caregiver for Joel and therefore the Illinois Domestic Violence Act did not apply to him. See 750 ILCS 60/103(6) (West 2016) (defining the "[f]amily or household members" who are subject to the Illinois Domestic Violence Act). Judge Quinn entered an order giving Mr. Bunt time to file a motion to dismiss the petition and set a hearing for August 25, 2017. Judge Quinn then confirmed with the parties that only the petition for order of protection against Mr. Bunt had been transferred to her and that the guardianship case remained pending before Judge Boliker.

⁴ Based on similar allegations, the co-guardians filed a petition for rule to show cause against Ms. Mallo for her continuous violations of the plenary order of protection and a petition for plenary order of protection for Joel against Mr. Staren. Additionally, for the same reasons, the co-guardians requested authority to relocate Joel from the Clare to another facility which, as mentioned above, the court granted on September 1, 2017. Those proceedings are not part of this appeal.

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Judge Quinn then noted that the petition for order of protection against Mr. Bunt did not present an “emergency” in that Mark and Brian, as co-guardians could seek an order “to restrict [Joel’s] visitation” as part of the guardianship case before Judge Boliker.

¶ 11 Later that same day, after conferring with the GAL, Mark and Brian requested a visitation order in the guardianship case. Judge Boliker granted their request and entered an order providing that Joel was “not authorized” to have contact with Mr. Bunt, and “authorized” Mark and Brian “to take necessary steps to ensure there is no contact between Joel Kaplan and Eric Bunt.” By email, counsel for Mark and Brian notified counsel for Mr. Bunt of the entry of the visitation order.

¶ 12 On August 17, 2017, Mr. Bunt filed a petition for substitution of Judge Boliker for cause under section 2-1001(a)(3)(i) of the Code. 735 ILCS 5/2-1001(a)(3)(i) (West 2016). It is this petition which is at issue on appeal. Mr. Bunt also filed a motion to vacate the August 4, 2017, visitation order, which he described as a protective order.

¶ 13 On August 28, 2017, the date set for presentation of the petition for substitution of judge for cause and the motion to vacate, the petition was randomly assigned and transferred to Judge Quinn and a briefing schedule was set. In their written response to the petition for substitution for cause, the co-guardians argued—in part—that Mr. Bunt had no standing in the guardianship proceeding, pursuant to *Struck v. Cook County Public Guardian*, 387 Ill. App. 3d 867, 877 (2008) (holding that an “individual who is not ward’s guardian does not have standing to appeal a decision of the circuit court on behalf of the ward,” including a visitation order). Mr. Bunt replied that the visitation order was an *ex parte* order of protection against him, which was entered by Judge Boliker only after the substitution as of right as to the petition for order of protection against him was granted.

¶ 14 On October 6, 2017, Judge Quinn entered an order denying the petition for substitution of Judge Boliker for cause “for the reasons stated on the record.” In its oral ruling the court gave, as reasons for the denial of the petition, the following: (1) Mr. Bunt was granted a substitution for Judge Boliker as of right only as to Mark and Brian’s petition for an order of protection against him; (2) Mr. Bunt had never been a party to the “separate and distinct” guardianship proceeding; (3) Mr. Bunt mischaracterized the August 4, 2017, visitation order as an order of protection; (4) Mark and Brian, as plenary co-guardians, had the authority to seek to restrict Joel’s visitations in the guardianship case; and (5) Mr. Bunt had no standing in the guardianship proceeding, nor standing with regard to the co-guardians’ “decisions as to who can have access to the ward.” Judge Quinn did not consider Mr. Bunt’s motion to vacate the visitation order, because that would now be for Judge Boliker to hear as it was part of the guardianship proceeding. There is no order resolving the motion to vacate contained in the record on appeal, and in his appellant’s brief Mr. Bunt indicates that the motion has never been decided.

¶ 15 On November 3, 2017, Mr. Bunt filed a notice of appeal, seeking review solely from the order denying his petition for substitution of Judge Boliker for cause.

¶ 16 On appeal, Mr. Bunt argues that his petition for substitution of judge for cause was denied in error, and asks that we reverse the order denying his petition for substitution of judge for cause and “void” the August 4, 2017, visitation order.

¶ 17 Before considering the merits of this appeal, we must first consider whether appellate jurisdiction exists. See *In re Marriage of Nettleton*, 348 Ill. App. 3d 961, 967 (2004) (citing *In re Marriage of Blanchard*, 305 Ill. App. 3d 348, 351 (1999)).

¶ 18 Mr. Bunt asserts that we have jurisdiction under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994) and Illinois Supreme Court Rule 303 (eff. July 1, 2017), which allow for appeals from final judgments, orders or decrees.

¶ 19 We first determine whether we have jurisdiction to consider the denial of the petition for substitution of judge for cause. This court has held that an order denying a motion for substitution of judge is not a final order, whether substitution was sought for cause (*Inland Commercial Property Management, Inc. v. HOB I Holding Corp*, 2015 IL App (1st) 141051, ¶ 19) or as of right (*In re Marriage of Nettleton*, 348 Ill. App. 3d at 969). Rather, such an order is “an interlocutory order that is appealable on review from a final order.” *Inland Commercial*, 2015 IL App (1st) 141051, ¶ 19; see also *In re Marriage of Morgan*, 2019 IL App (3d) 180560, ¶ 14 (“the denial of a motion for substitution of judge for cause is an interlocutory order, is not final for purposes of appeal, and cannot be converted into a final order by the mere inclusion of Rule 304(a) language.”)

¶ 20 The order denying Mr. Bunt’s petition for substitution of judge for cause was not a final order and may not be appealed under Supreme Court Rules 301 and 303. Further, although the denial of a motion for substitution is appealable on review of a final order, there has been no final order relating to Mr. Bunt. Mr. Bunt did not seek to intervene in the guardianship proceeding, and as he acknowledges on appeal, his motion to vacate the visitation order was never resolved and remains pending. Therefore, the visitation order cannot be considered a final order at this time. See also *Struck*, 387 Ill. App. 3d at 880 (Theis, J., specially concurring) (noting that a visitation order in an ongoing guardianship case is not final). Additionally, in the separate claim involving the petition for order of protection against Mr. Bunt, Judge Quinn denied his motion to dismiss the petition and the record does not show that the petition for order

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of protection against Mr. Bunt was ever resolved. Therefore, the denial of the petition for substitution for cause cannot be reviewed, as there has never been a final adjudication of any claim or dispute to which Mr. Bunt may be considered to have participated in the proceedings below.

¶ 21 As to Mr. Bunt's challenge to the visitation order on appeal, this order was not included in his notice of appeal. A reviewing court has jurisdiction to consider only the judgment or orders which are specified in the notice of appeal. *J.P. Morgan Chase Bank, N.A. v. Bank of America, N.A.*, 2015 IL App (1st) 140428, ¶ 23. The notice of appeal states that Mr. Bunt is appealing *only* from the October 6, 2017, order of Judge Quinn, and the only relief he requests is that this specific order be reversed. Even if Mr. Bunt has standing to appeal the visitation order, and even if the visitation order was a final and appealable order, we do not have jurisdiction to consider his challenge to that order.

¶ 22 For these reasons, we find that this court lacks jurisdiction over Mr. Bunt's appeal from the denial of his petition for substitution of judge for cause and his request on appeal to find the visitation order void. We therefore dismiss his appeal.

¶ 23 Appeal dismissed.