

NOTICE
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2019 IL App 5th 190364-U

NO. 5-19-0364

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

<i>In re</i> MARRIAGE OF BETHANY S. STOCK,)	Appeal from the
)	Circuit Court of
Petitioner-Appellee,)	Clinton County.
)	
and)	No. 17-D-27
)	
ROBERT W. STOCK,)	Honorable
)	Allan F. Lolie Jr.,
Respondent-Appellant.)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Justices Barberis and Boie concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not abuse its discretion in denying father’s petition for a temporary restraining order (TRO) compelling mother to return the parties’ child to Illinois from Texas where father failed to establish, by a preponderance of the evidence, the essential elements of a TRO and, due to the amount of time that mother and the minor had lived in Texas by the time father brought his petition for hearing, the entry of a TRO would not serve to preserve the status quo until a hearing on the merits could be held.

¶ 2 The respondent, Robert W. Stock, appeals, pursuant to Illinois Supreme Court Rule 307(d) (eff. Nov. 1, 2017), the August 22, 2019, order of the circuit court of Clinton County which denied his petition for a temporary restraining order (TRO). Robert sought the TRO in order to compel the petitioner, Bethany S. Stock, to return the parties’ four-year-old

child, A.S., from where she was living in Texas back to live in Illinois. For the following reasons, we affirm.

¶ 3

FACTS

¶ 4 Bethany filed a petition for a dissolution of her marriage with Robert on March 9, 2017. On July 31, 2017, the circuit court entered a temporary parenting time order allowing Robert visitation with A.S. at designated times. According to a March 15, 2018, interim report filed by A.S.'s guardian *ad litem* (GAL), drug testing by the circuit court revealed Robert was using amphetamines and methamphetamines in January of 2018, and Robert and Bethany agreed to suspend Robert's visitation. On April 27, 2018, the circuit court entered a temporary parenting time order, agreed to by Bethany and Robert, restricting Robert's parenting time to supervised visits until such time as Robert could complete a substance abuse program and successfully pass drug screenings.

¶ 5 On September 20, 2018, Robert filed a petition for immediate return of A.S. to Illinois. The petition alleged that Bethany had moved to Texas with A.S. without complying with section 609.2 of the Illinois Marriage and Dissolution of Marriage Act. 750 ILCS 5/609.2 (West 2018). However, Robert never requested a hearing on his petition. An interim report filed by the GAL on October 14, 2018, indicated that Bethany moved to Texas with A.S. on May 23, 2018. According to this report, at the time of the move Robert was not visiting with A.S. due to his testing positive for amphetamines. The report indicated, however, that beginning in June of 2018, Robert had unsupervised visitation with A.S. for one week per month until September of 2018, when he failed to meet Bethany in Arkansas to return A.S. at the designated time.

¶ 6 A January 11, 2019, docket entry reveals that the circuit court ordered, over Bethany’s objection, that Robert have unsupervised visitation with A.S. from February 2, 2019, until February 16, 2019, with Robert to pick up and return A.S. by meeting Bethany in Arkansas. The circuit court stated in its docket entry that “the court strongly cautions both parties to refrain from any threats regarding not returning [A.S.] at the end of parenting time.” Pursuant to a March 4, 2019, docket entry, however, the circuit court temporarily stayed Robert’s in-person parenting time stating, “the court fears that [Robert] will not return [A.S.]”

¶ 7 On April 29, 2019, Robert filed a petition for a TRO and/or preliminary injunction, again requesting that the court order Bethany to move back to Illinois with A.S. In support of his petition, Robert filed his own affidavit. In that affidavit, Robert avers, *inter alia*, as follows:

“[A]lthough orders subsequent to my September 20, 2018, emergency petition imply that [A.S.] is in Texas, the issue of a [TRO] to require [A.S.] to return to Illinois has not been addressed. Orders for [Bethany] and I to meet and exchange [A.S.] are not indicative of my consent to her relocation; I only agreed to such orders because the [c]ourt has refused to address the issue of whether [Bethany] must return [A.S.] to Illinois until the time of a final hearing in this matter. I have had to agree to orders that indicate [A.S.] is in Texas in order to obtain any parenting time.”

¶ 8 The circuit court held a hearing on Robert’s petition for a TRO and/or preliminary injunction on August 22, 2019. Julie Weber testified that she is a licensed professional counselor who has been providing counseling services to A.S. since November of 2017.

Julie testified that A.S. loves Texas and that consistency in the life of A.S. is very important for her. According to Julie, since an incident occurring in February of 2019, A.S. has become fearful of Robert not returning her after visitation. Julie emphasized the importance of reestablishing a relationship between Robert and A.S. cautiously, beginning with short-term supervised visitation.

¶ 9 Robert testified that he did not return A.S. after a visit on February 16, 2019. A Facebook video with over two thousand views was admitted into evidence over Robert's objection. The video depicted Robert in a standoff with the St. Clair County Sheriff's Department as he narrated and videotaped the event live on Facebook. A series of Facebook posts made by Robert were also admitted into evidence over his objection. These posts depict Robert making various allegations of conspiracy against the court, the attorneys, and others, as well as allegations that A.S. had been sexually abused by members of Bethany's family. Several of the posts contained pictures of A.S.

¶ 10 Bethany testified that there was a cycle of domestic abuse between her and Robert dating back prior to their marriage. She testified that she moved to Texas out of fear for her safety. According to Bethany, Robert had been indicted on multiple felonies in Texas for violating an order of protection, witness tampering, and possession of a controlled substance. He is required to wear an ankle monitor and to stay out of the State of Texas without a court order.

¶ 11 Following the presentation of evidence and argument, the circuit court denied Robert's petition for a TRO, noting that all issues, including Bethany's relocation, the allocation of parental responsibilities, and parenting time, were scheduled to be heard on

the merits at an evidentiary hearing beginning on November 5, 2019. In the meantime, the circuit court ordered that Robert have supervised visitation with A.S. immediately following the hearing on the TRO, as well as over Labor Day weekend and Columbus Day weekend. On August 26, 2019, Robert filed a petition for interlocutory review of the circuit court's order, pursuant to Illinois Supreme Court Rule 307(d) (eff. Nov. 1, 2017).

¶ 12

ANALYSIS

¶ 13 The applicable standards for our resolution of Robert's appeal are as follows:

“A [TRO] is a drastic remedy which may issue only in exceptional circumstances and for a brief duration. [Citation.] The purpose of a [TRO] is to preserve the status quo until the court can conduct a hearing to determine whether it should grant a preliminary injunction. [Citation.] To be entitled to temporary injunctive relief, [a party] must demonstrate that they: (1) possess a protectable right; (2) will suffer irreparable harm without the protection of an injunction; (3) have no adequate remedy at law; and (4) are likely to be successful on the merits of their action. [Citation.] We will reverse the trial court's denial of a [TRO] only if the trial court abused its discretion. [Citation.]” *American Federation of State, County, & Municipal Employees v. Ryan*, 332 Ill. App. 3d 965, 966-67 (2002).

¶ 14 “A circuit court abuses its discretion when its ruling ‘is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court.’ ” *Taylor v. County of Cook*, 2011 IL App (1st) 093085, ¶ 23 (quoting *People v. Caffey*, 205 Ill. 2d 52, 89 (2001)). After reviewing Robert's supporting record, we find that the circuit court did not abuse its discretion in denying Robert's petition for a TRO. By the

time Robert brought his TRO to a hearing, Robert had knowledge that Bethany had been residing with A.S. in Texas for approximately one year. A hearing on the merits of Robert's request that Bethany be required to move back to Illinois with A.S. is scheduled to take place in approximately two months. Prior to the hearing on Robert's petition for a TRO, Robert had been prohibited by the circuit court from in-person visitation with A.S. since February of 2019 due to the incident in which he refused to return A.S. at the designated time, culminating in a standoff with the St. Clair County Sheriff's Department in the presence of A.S. A.S.'s counselor testified that it is best for A.S. that a relationship between A.S. and Robert should be reintroduced slowly, due to the incident that took place in February. To that end, the circuit court has ordered three supervised visits to take place between August and the November trial.

¶ 15 On these facts, we agree with the circuit court that Robert cannot establish that he will suffer irreparable harm without the TRO requiring Bethany to relocate to Illinois with A.S. immediately. In addition, Robert has not set forth an argument that he has no adequate remedy at law. Finally, we cannot find that the status quo would be preserved by granting Robert a TRO. At this juncture, the status quo is that Bethany and A.S. reside in Texas. Accordingly, the circuit court's decision to deny Robert's petition was not an abuse of discretion.

¶ 16 **CONCLUSION**

¶ 17 For the foregoing reasons, we affirm the August 22, 2019, order of the circuit court of Clinton County, which denied Robert's petition for a TRO.

¶ 18 Affirmed.