

Nos. 1-18-1640, 1-18-2343, & 1-18-2375 (cons.)

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 Z.W.)	
)	
Minor-Respondent-Appellee)	Appeal from the
)	Circuit Court of
(Joyce W.,)	Cook County, Illinois,
)	Probate Division.
Respondent)	
)	No. 07 P 5201
v.)	
)	Honorable
Mahdee Muhammad and Danielle Purnell-Hopkins,)	Susan Kennedy Sullivan,
)	Judge Presiding.
Petitioners-Appellants).)	

JUSTICE MASON delivered the judgment of the court.
Justices Pucinski and Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court’s order discharging petitioners as guardians affirmed where petitioners had actual notice of hearing on respondent’s motion to discharge and court did not abuse its discretion in denying petitioners’ motion for reconsideration.

¶ 2 Twelve-year-old Z.W. was born in August 2006 to then sixteen-year-old Joyce W.

Shortly thereafter, he was placed under the guardianship of Danielle Purnell-Hopkins, and, later,

Mahdee Muhammad. On May 18, 2018, the court discharged Z.W.'s guardians and ordered the minor returned to Joyce. The guardians appeal, *pro se*, arguing that the trial court erred in denying their motion to vacate and reconsider the discharge. The guardians also challenge the trial court's denial of several of their motions, including (i) various motions to dismiss filed between November 2017 and February 2018; (ii) a motion to transfer the probate action into the pending adoption action; and (iii) a motion for substitution of judge as of right. Finding no error, we affirm.

¶ 3

BACKGROUND

¶ 4

Muhammad is Joyce's cousin. He is married to Purnell-Hopkins and they have three children together. After Z.W. was born in 2006, Purnell-Hopkins cared for him intermittently until she petitioned for guardianship in 2007.¹ Purnell-Hopkins was appointed Z.W.'s temporary guardian in October 2007, when Z.W. was just over one year old. Joyce initially consented to Purnell-Hopkins' appointment, but in the time it took to publish notice to the father listed on Z.W.'s birth certificate, Joyce changed her mind, reportedly because she learned that she could no longer remain in the group home in which she was living if her child was not with her.

¶ 5

On the recommendation of the guardian *ad litem*, and over Joyce's objection, the court entered guardianship in favor of Purnell-Hopkins on June 24, 2008. Since that time, Joyce has filed numerous motions to modify parenting time and discharge guardianship.

¶ 6

Muhammad was appointed co-guardian of Z.W. on July 27, 2017, due to the fact that Purnell-Hopkins moved to Tennessee to care for her mother. This began the extensive motion practice between the parties. Between August 2017 and February 2018, Joyce moved to vacate the court's appointment of Muhammad and also to discharge guardianship and/or modify

¹ According to Muhammad, he was not able to serve as the guardian for Z.W. at this time because he had a Tennessee driver's license.

visitation. Muhammad and Purnell-Hopkins, in turn, filed no less than six motions to dismiss. On January 9, 2018, the guardians also petitioned to adopt Z.W. in a separate action.²

¶ 7 On February 21, 2018, both Joyce and Muhammad appeared in court and voluntarily withdrew all pending motions in the probate case without prejudice. Also on that date, the court entered an order modifying Joyce’s parenting time and set the case for status on May 7.

¶ 8 When Muhammad failed to comply with the February 21 order as it related to Joyce’s parenting time, Joyce filed a *pro se* petition to discharge guardianship on March 22, 2018.

¶ 9 In anticipation of the May 7 court date, the guardian *ad litem* filed an interim supplemental report. In that report, he noted that Joyce had not seen her son in almost six months due to Muhammad’s failure to comply with the February 21 court order. During that time, Joyce secured a lease for a two-bedroom apartment that was clean, furnished, and secure, in an improving neighborhood. Joyce also had a driver’s license and a car in good condition, contrary to Muhammad’s representation that Joyce’s car had been severely damaged in an accident. Joyce produced evidence that she worked overnights Sunday through Thursday for Amazon. She also drove for Uber on an as-needed basis. A criminal records check revealed there were no misdemeanor or felony charges pending against Joyce, again contrary to Muhammad’s representation.

¶ 10 The guardian *ad litem* recommended overnight visits for Joyce, but needed more facts to make a recommendation on her petition to discharge. Specifically, he sought to (i) look into Joyce’s proposed care provider for Z.W. during her overnight shifts; (ii) verify Joyce’s income; (iii) conduct an additional home visit with “all parties” including Z.W.; and (iv) compare the school in Joyce’s neighborhood with the schools Z.W. was currently attending. Complicating

² Joyce learned of these proceedings belatedly because she was served by publication, despite the fact that her address was known to the guardians.

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the matter of comparing schools was the fact that the guardian *ad litem* learned that the bank had foreclosed on Muhammad's home at 20706 Gardner Avenue in Chicago Heights and the home appeared to be vacant. Muhammad had not updated his address with the court and the guardian *ad litem* did not know where Z.W. and Muhammad were living.

¶ 11 Muhammad did not appear at the May 7 court date. (While he claimed he did not have notice of this court date, he was in court on February 21 when the date was set.) On that date, the court set the hearing on guardianship for May 18. On May 10, the guardian *ad litem* mailed a notice of the hearing date address to both Muhammad and Purnell-Hopkins at the Gardner Avenue address.

¶ 12 Also on May 10, Muhammad moved to continue the May 18 court date (which he claimed to have discovered on his own) on the basis that he needed to attend his son's high school graduation in Tennessee. On May 14, with Muhammad in court, the court entered and continued Muhammad's motion, but reiterated in its order that the hearing would proceed on May 18 at 2:00 p.m. Two days later, Muhammad moved to stay the proceedings and also moved to substitute judge as of right. The record does not reveal the court's ruling on these motions.

¶ 13 On May 18, neither guardian was in court as of 2:30 p.m. After hearing testimony from Joyce, the guardian *ad litem*, and two unnamed witnesses (of which there is no transcript in the record), the court discharged guardianship of Z.W. and closed the estate. The court found all witnesses to be credible and further found that Joyce had demonstrated a change in circumstances, namely, that she was gainfully employed, had leased the same apartment since March 2018, and had a care plan for Z.W. during her work hours. With regard to the guardians, the court noted that Purnell-Hopkins had not appeared in any court proceedings or disclosed her Tennessee address. Therefore, all notices had been mailed to her last known address. As for

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Muhammad, the court found that he had made baseless allegations against Joyce regarding her criminal background and employment history and misrepresented his own address. The court ordered Z.W., who was also not in court, to be turned over to his mother *instanter*.

¶ 14 When the guardians had not turned over Z.W. as of May 30, the trial court held Muhammad in direct civil contempt and remanded him to the custody of the Cook County sheriff. Muhammad was released from custody on May 31, when he finally surrendered Z.W. in open court. (The record is silent as to where Purnell-Hopkins was during this time.)

¶ 15 On May 30, Joyce filed a *pro se* motion for an emergency order of protection against Muhammad, alleging that she received threatening messages from him warning her not to pursue court proceedings if she wanted to see her son. She further alleged that her tires were “flattened” on May 27 and again on May 28, after she had fixed them. Judge Stephanie Saltouros granted the order and, on Muhammad’s motion, consolidated the order of protection proceedings with the probate case on July 2, 2018.

¶ 16 A hearing was held on the emergency order before the probate judge on August 6, 2018. At the hearing, Joyce testified regarding the threatening messages and the flattened tires. She also testified that the police came to her house in June because Muhammad had told them that Z.W. was being beaten. The evidence at the hearing further revealed that Muhammad took Z.W. out of the state before the May 18 hearing in contravention of the court’s order. Finally, the court’s order recounted that Muhammad called the Department of Children and Family Services alleging that Z.W. was going door to door begging. An order of protection was granted against Muhammad in favor of Joyce and Z.W. up to February 6, 2019. The record does not indicate whether the order of protection was extended beyond that time.

¶ 17 While the proceedings on the order of protection were ongoing, on June 15, 2018, Purnell-Hopkins, through counsel, moved to vacate and/or reconsider the court's May 18 order on the grounds that she did not have notice of the hearing date. Muhammad, too, filed a motion to vacate the May 18 order, also arguing that he was not properly served.

¶ 18 The court held a hearing on the guardians' motion on October 10 at which Purnell-Hopkins was represented by counsel but Muhammad appeared *pro se*. The court ultimately denied the motion to vacate and/or reconsider. The guardians timely appealed.

¶ 19 ANALYSIS

¶ 20 At the outset, this court notes that the guardians' *pro se* brief borders on incomprehensible. While the brief contains citations to the record and case law as required by Illinois Supreme Court Rule 341(h)(7) (eff. May 25, 2018), these citations are scanty at best, and the guardians make no attempt to explain how the cited case law is relevant to their arguments. In addition, the brief contains material that is neither part of the record nor relevant to the appeal, including descriptions of alleged colloquies with the trial court, proceedings in the adoption case, and accusations of wrongdoing by virtually everyone involved in the proceedings. We remind the guardians that a reviewing court is "not simply a repository into which a party may dump the burden of argument and research." *People ex rel. Illinois Department of Labor v. E.R.H. Enterprises*, 2013 IL 115106, ¶ 56.

¶ 21 While the lack of readability and failures to comply with supreme court rules would warrant dismissing the guardians' appeal outright, because we are able (albeit with considerable struggle) to decipher the guardians' arguments, we proceed to the merits. See *Rosestone Investments, LLC v. Garner*, 2013 IL App (1st) 123422, ¶¶ 18-19.

¶ 22 The guardians' primary argument on appeal is that the court erred in denying their motion to vacate or reconsider its May 18 order discharging guardianship. The motion to vacate was premised on the guardians' argument that the court lacked personal jurisdiction over them because they were not served with Joyce's March 18 motion to discharge guardianship. We review a motion to vacate for an abuse of discretion. *Wells Fargo Bank, N.A. v. Hansen*, 2016 IL App (1st) 143720, ¶ 14. An abuse of discretion occurs when the court's decision is arbitrary, or fanciful, or when no reasonable person would take the view adopted by the trial court. *Liceaga v. Baez*, 2019 IL App (1st) 181170, ¶ 27.

¶ 23 Although Joyce did not complete the proof of service by mail in her notice of motion to discharge guardianship, pursuant to Illinois Supreme Court Rule 104(d) (eff. Jan. 1, 2018), the failure to serve a pleading or motion does not deprive the court of jurisdiction over the party. Rather, if a party entitled to service was not served due to the fault of the filing party, the aggrieved party may obtain the document from the clerk of the court, with costs to be reimbursed by the filing party. *Id.* We have routinely declined to upset a court's order where a party is not prejudiced by the failure of service. See, e.g., *Hartsman v. Pittsburgh Corning Corp.*, 261 Ill. App. 3d 706, 727 (1994); *Schlenz v. Castle*, 132 Ill. App. 3d 993, 1014 (1985).

¶ 24 Here, neither guardian can show prejudice. On May 10, the guardians were mailed a notice of the May 18 hearing date on Joyce's petition at their last known address. Indeed, Muhammad himself filed what he titled a "Motion for Continuance" on this same date, representing that he was aware that there was "some type of motion enter[ed] in this case" with a "return date" of May 18, 2018. Muhammad sought to continue that date so that he could attend his son's high school graduation in Tennessee. Muhammad was also in court on May 14, when the court entered an order confirming that the hearing on Joyce's petition to discharge would be

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held on May 18 at 2 p.m. Likewise, Purnell-Hopkins, in an affidavit dated May 11, 2018, averred that she had been “told about actions that are going on in this Probate court” and that she had “[received] documents when it comes to [Z.W.] and court from [her] husband Mahdee Muhammad.” Purnell-Hopkins was also served with Muhammad’s May 10 motion for continuance at her last known address. Thus, although neither guardian was present for the May 18 hearing, both had actual notice of the court proceedings that day and cannot show prejudice. Accordingly, we conclude that the court did not abuse its discretion in declining to vacate its May 18 order based on lack of notice.

¶ 25 The guardians’ challenge to the trial court’s denial of their motion for reconsideration fares no better. The purpose of a motion to reconsider is to bring to the court’s attention (i) newly discovered evidence; (ii) changes in the law; or (iii) errors in the court’s previous application of the law. *State Farm Mutual Automobile Ins. Co. v. Progressive Northern Ins. Co.*, 2015 IL App (1st) 140447, ¶ 68. It is *not* a vehicle for raising a new legal theory or factual argument. *Id.* To the contrary, “[t]rial courts should not permit litigants to stand mute, lose a motion, and then frantically gather evidentiary material to show that the court erred in its ruling.” *Gardner v. Navistar Int’l Transportation Corp.*, 213 Ill. App 3d 242, 248 (1991). We review a denial of a motion for reconsideration that is based on the submission of additional facts that were not presented at the original hearing for an abuse of discretion. *Muhammad v. Muhammad-Rahmah*, 363 Ill. App. 3d 407, 415 (2006).

¶ 26 On appeal, the guardians argue that the court erred in denying their motion to reconsider because they presented evidence that a witness for Joyce lied under oath at the May 18 hearing. Notwithstanding the fact that this allegation was not included in either guardians’ written motion for reconsideration but was raised for the first time at the hearing, we find no merit to this

contention. Had the guardians appeared at the May 18 hearing, they would have had the opportunity to cross-examine the witness and call into question her credibility. Because they chose not to appear, the court did not abuse its discretion in rejecting their belated argument that the witness was untruthful.

¶ 27 The guardians also challenge what they describe as the court’s “denial” of their numerous motions to dismiss filed between November 2017 and February 2018. However, the guardians’ failure to identify the order denying their motions to dismiss in their notice of appeal deprives us of jurisdiction.

¶ 28 Pursuant to Illinois Supreme Court Rule 303(b)(2) (eff. July 1, 2017), the notice of appeal “must specify the judgment or part thereof or other orders appealed from ***.” In other words, a reviewing court has jurisdiction only over those matters which are raised in the notice of appeal. *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 176 (2011). Here, the guardians’ notice of appeal encompassed “every order or judgment dated 5/14/18 on up 1/29th/19 [sic] in the case(s) 2007 P 005201 and Consolidated case 18 OP 74608.” In their brief, the guardians failed to direct this court to the specific order they are challenging, and our own review does not reveal any order entered between those dates denying a motion to dismiss. To the contrary, our review of the record reveals that Muhammad voluntarily withdrew all motions to dismiss on February 21, 2018.

¶ 29 The guardians’ challenge to the court’s “denial” of their “motion to transfer the probate case into the adoption case” suffers from similar deficiencies. Again, the guardians have failed to identify either the motion or the order ruling on it in the record, and this court’s own extensive review of the record has likewise failed to unearth either document.

¶ 30 Turning finally to the guardians' challenge to the trial court's ruling on their motion for substitution of judge as of right, this, too, is meritless. A party is entitled to a single substitution of judge without cause as of right if a hearing has not been held and the judge has not ruled on a "substantial issue." 735 ILCS 5/2-1001(a)(2) (West 2016). These requirements serve to preclude judge shopping. *In re Petition to Annex Certain Territory to Village of Lemont*, 2017 IL App (1st) 170941, ¶ 13. A substantial issue is one that relates directly to the merits of the case. *Petalino v. Williams*, 2016 IL App (1st) 151861, ¶ 18. However, even in the absence of a substantive ruling, a court may deny a motion for substitution of judge if the movant had an opportunity to form an opinion regarding the judge's reaction to his or her claims. *In re D.M.*, 395 Ill. App. 3d 972, 976-77 (2009). We review a trial court's ruling on a motion for substitution of judge as of right *de novo*. *Id.* at 977.

¶ 31 Here, Muhammad filed his motion for substitution as an emergency on May 16, 2018, two days before the court was scheduled to hear Joyce's petition for discharge. At the time, the case had been pending before the same trial judge for at least one year. Prior to Muhammad's motion, the judge had made numerous rulings in the case, including a ruling modifying Joyce's parenting time. The order modifying parenting time certainly relates to the merits of the case, given that any change in parenting time was necessarily based on a change in Joyce's circumstances, bringing her closer to her stated goal of securing the release of Z.W. from guardianship altogether.

¶ 32 Even assuming this was not a substantive ruling, Muhammad was aware, when he filed the motion for substitution, of the judge's position on the merits of his claim. The judge had repeatedly admonished him not to refer to Z.W. as his son, and had emphasized that Joyce's

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parental rights were superior to his. Accordingly, we conclude that his motion for substitution as of right was untimely.³

¶ 33

CONCLUSION

¶ 34

For the foregoing reasons, we affirm the court's order discharging guardianship.

¶ 35

Affirmed.

³ To the extent Muhammad challenges the denial of his motion for substitution of judge on August 28, 2018, this too, was untimely, as it was made after the judge had presided over the hearing terminating guardianship. See 735 ILCS 5/2-1001(a)(2) (West 2016).