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APPELLATE COURT 2ND DISTRICT

IN THE APPELLATE COURT OF ILLINOIS, SECOND DISTRICT

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APPEAL TO THE APPELLATE COURT OF ILLINOIS, SECOND DISTRICT, FROM THE CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT

BENJAMIN WINDERWEEDLE	}	
(aka GRAYSON JACKSON)	}	
Petitioner,	}	
v.	}	Circuit Court No: 14D 1411
JULIA WINDERWEEDLE	}	Trial Judge: The Honorable Janelle Christensen
Respondent.	}	Reviewing Court No. 02-20-0344

MEMORANDUM IN SUPPORT OF PETITION FOR REVIEW UNDER RULE 307(d)

INTRODUCTION

This matter involves a court making substantive rulings infringing on the fundamental right to care, custody and control of one's children on status calls, when there is no allegation of any wrongdoing, no notice, motion, hearing or required finding of serious endangerment to the minor children – and no record. This matter also involves a court denying a party access to post-COVID 19 remote proceedings because of an asserted right to make his own recording of a broadcast by the court itself.

JURISDICTION

On June 17, 2020, Petitioner-Appellant (hereinafter "Kash Jackson") filed a petition for a temporary restraining order (TRO), seeking to stay enforcement of Lake County's local court rule 1-4.01, which bars recording court proceedings by a party. C 103-C 123, C 125-C 131. On June 19, 2020, the request for a TRO was denied. C 009-C 015. Accordingly, this court has jurisdiction pursuant to Rule 307(d). Alternatively, this court has jurisdiction pursuant to Rule

307(a)(1) because Petitioner-Appellant filed a petition for preliminary injunction on May 29, 2020 and that petition was also denied on June 19, 2020. C 103-C 123, C 125-C 131.

This court also has jurisdiction to review two orders entered in 2018 which are null and void. One order entered on March 12, 2018 occurred when the circuit court had no jurisdiction. C 004. Another order entered on November 14, 2018 is null and void because the court exceeded its jurisdiction by making a substantive ruling impacting fundamental parenting rights without a justiciable issue properly presented before it. C 005-C 006.

"It is a well-settled principle of law that a void order may be attacked at any time or in any court, either directly or collaterally." *People v. Thompson*, 209 Ill. 2d 19, 25 (2004). "In fact, courts have an independent duty to vacate void orders and may *sua sponte* declare an order void." *Id.* at 27. "It does not automatically follow that Rule 303 [or any rule] applies as a jurisdictional bar" where "[a] void judgment, order or decree will be reversed on appeal whenever it is brought before a reviewing court by any means possible in a particular case." *Eckel v. MacNeal*, 256 Ill.App.3d 292, 295-96 (1993); *Cain v. Sukkar*, 167 Ill.App.3d 941, 944 (1988) (recognizing voidness of a decree would not prevent a challenge on appeal even though that order is not a "final judgment"). Voidness of a decree creates appealability and, thus, jurisdiction in the reviewing court. *Jojan Corp. v. Brent*, 307 Ill. App.3d 496, 503 (1989).

STATEMENT OF FACTS

Kash Jackson is a 20-year naval veteran, in which he held a top-secret security clearance. C 019. He is currently receiving veterans disability benefits and is indigent. C 127. Kash Jackson was the 2018 Libertarian Party Candidate for Governor in Illinois, while representing himself in this case *pro se*. *Id.* One of the signature issues in Kash Jackson's campaign were father's rights, a presumption of equal shared parenting, and broader family court transparency and reform. C

104-C 105. While massively outspent, Kash Jackson finished in 4th place with over 109,000 votes. C 019. Mr. Jackson has two children, a son K.W. (DOB 02/02/06) and daughter K.W. (DOB 08/29/07), who currently reside in Illinois with their mother. Mr. Jackson currently resides in Arkansas. C 051.

Fearing reprisals and retaliation as he toured the state speaking to the media about family law reform in Illinois, Kash Jackson temporarily removed this case into federal court. C 046-C 048. On March 8, 2018, this case was removed and jurisdiction of the circuit court eliminated. C 047, C 062-C 063. The clerk's office changed the status of this case to "closed." C 061.

The federal district court *sua sponte* remanded this case back to Lake County Circuit Court on April 2, 2018. C 057. But before that occurred, Judge Joseph Salvi, the prior judge in this case, re-opened the case and entered an order on March 12, 2018, making Mr. Jackson's parenting time with his daughter by agreement with Respondent-Appellee (hereinafter "Julia Winderweedle"), effectively severing his parenting time. C 004. This order was made with a complete absence of jurisdiction, no motion seeking any such relief, no notice, no hearing of any kind, and no finding of serious endangerment to warrant a restriction on Kash Jackson's parenting rights – and no record. C 048. Mr. Jackson was not present for this proceeding, as he was informed it was cancelled. C 065-C 066.

Less than a month after this case was remanded to Lake County Circuit Court, Al Salvi, Judge Joseph Salvi's brother, a personal injury lawyer and former 1996 Republican Party nominee for U.S. Senate, wrote a series of Facebook posts on April 30, 2018, calling for Kash Jackson to give up his spot on the ballot to Al Salvi. C 049, C 068. In one of these posts, Al Salvi noted his brother was the judge in this case. *Id.* On August 5, 2018, Kash Jackson motioned for Judge Salvi to recuse himself for the familial conflict of interest. C 049. This proceeding was not on the record, but it was covered by the *Daily Herald* newspaper. *Id.* Judge Salvi refused to recuse himself. *Id.*

About a month later, on September 14, 2018, this court decided *In re Marriage of Peradotti*, 2018 IL App (2d) 180247, in which this court held that a court lacks jurisdiction to issue substantive orders of any kind after a familial conflict of interest arises and a judge refuses to recuse themself. C 049-C 050. The circuit court judge in the *Peradotti* case was none other than Judge Joseph Salvi, who recused himself and then unrecused himself when his nephew was an attorney at a law firm that was representing parties in a case before him. *Id.*

In the final weeks of the gubernatorial campaign, Kash Jackson allegedly missed two status calls while publicly campaigning for governor across the state. C 005-C 006. On November 14, 2018, one week after the general election, Judge Salvi *sua sponte* suspended Kash Jackson's parenting time with both children on a status call. *Id.* There was no allegation of abuse or neglect, no motion filed, no notice, no hearing and no finding of endangerment that would warrant a restriction – and no record. Mr. Jackson was not present at this status call. *Id.*

For months, Julia Winderweedle refused any contact with their minor children, citing the orders entered by Judge Salvi. C 021. In February 2020, Judge Janelle Christensen was assigned to this case. On August 15, 2019, Kash Jackson's present attorney filed an appearance and a motion to vacate the November 14, 2018 order. C 016-C 022. On November 25, 2019, that motion was summarily denied – without a record. C 043. Instead, the court appointed a new Guardian *ad Litem*. C 044.

In a February 26, 2020 phone call, K.W. stated repeatedly he wanted to visit with Mr. Jackson in Arkansas during spring break. C 051. The Guardian *ad Litem* stated repeatedly her belief Mr. Jackson is not an endangerment to the minor children. C 081.

On March 10, 2020, Mr. Jackson filed an emergency motion for spring break parenting time and for other relief. C 046-C 071. Included in this motion were prayers to declare void and vacate the March 12, 2018 and November 14, 2018 orders. *Id.* On March 12, 2020, Kash Jackson

appeared in court and was arrested and jailed briefly for civil contempt for attempting to request a protective order before disclosing his residential address in Arkansas. C 072-C 077, C 107. He was released that morning and the case continued to March 13, 2020. *Id.* On March 13, he was given three days of spring break parenting time with no overnights with his son K.D. in Illinois. C 078-C 079. However, that visitation never occurred due to Julia Winderweedle refusing to provide the children, refusing to allow the children to speak to their Guardian *ad Litem*, and the forthcoming emergency coronavirus orders. C 081-C 087.

After filing another emergency motion, Kash Jackson was given one weekly *supervised* phone call with his son, in an order entered on April 24, 2020, despite there never being a finding of endangerment to warrant a restriction. C 088-C 090, C 092-C 094. He was never given make-up time with K.W. for the time he was ordered to have during spring break, but was thwarted by Julia Winderweedle. *Id.*

On April 24, 2020, Judge Christensen learned that Kash Jackson obtained an audio-recording of the March 12, 2020 proceeding in which he was arrested for civil contempt, and played part of that audio in a Facebook live post, which garnered over 27,000 views online. C 007-C 008, C 107. On May 22, 2020, the court issued an order scheduling a hearing for June 23 and 25, 2020 on a range of matters, to be held remotely on the Zoom platform. C 100-C 101. While in court on May 22, Judge Christensen indicated that recording court proceedings is not permitted under Lake County's local court rules. C 007-C 008. Kash Jackson's counsel responded his belief that Mr. Jackson has a right to record court proceedings. *Id.* On May 28, 2020, Judge Christensen issued a *sua sponte* order cancelling the Zoom hearing and ordered all parties to appear in court in-person, and surrender any recording devices including smartphones. *Id.* This contradicted the court's own promotional video that remote proceedings are a necessary response to a public health concern. C 126, ¶5.

On May 29, 2020, Kash Jackson filed a petition for declaratory relief and preliminary injunction, seeking to enjoin enforcement of Lake County Local Rule 1-4.01, which was cited by the court to allegedly allow banning all recordings of court proceedings. C 103-C 123. On June 17, 2020, knowing Mr. Jackson was unable to travel from Arkansas to Illinois to attend the June 23 and June 25 hearings, he filed an emergency motion to hear the May 29, 2020 petition as a temporary restraining order (TRO). C 125-C 131. On June 19, 2020, the request for the TRO was denied, as was the request for a preliminary injunction. C 009-C 015. The circuit court invoked Local Rule 2-1.01 Q, and decided the matter on Mr. Jackson's pleadings; there was no oral argument or further briefing. *Id.*

STANDARD OF REVIEW

Issues involving questions of due process and statutory construction are subject to *de novo* review. *People v. Austin M*., 2012 IL 111194, ¶66. The *de novo* standard is applied when pure questions of law are at issue. *Reliable Fire Equipment Co. v. Arredondo,* 2011 IL 111871, ¶13. The standard of review for the granting or denial of a temporary restraining order when there is a question of fact is abuse of discretion. *Stocker Hinge Manufacturing Co. v. Dornel Industries, Inc*., 94 Ill.2d 535,541 (1983). The trial court must exercise its discretion within the bounds of the law. *Maxon v. Ottawa Publishing Co*., 402 Ill. App. 3d 704, 710 (2010). The questions at issue in this matter are issues of constitutional due process and the constitutionality of a local court rule, and are therefore subject to *de novo* review.

ARGUMENT

I. The Circuit Court Erred In Not Restraining Enforcement of Lake County Local Rule 1-4.01[1]

[1] While challenging the constitutionality of a local court rule is unusual, it is not unprecedented. *See Sullivan v. OHIC*, 2014 IL App (1st) 111125.

The Circuit Court accurately recited the text of Local Rule 1-4.01 and the relevant provisions at issue in this case. C 009-C 010. It also accurately recited the text of Illinois Supreme Court Rule 63A(8), which the local rule cites as the alleged basis to give authority to sweepingly prohibit all recordings by parties. C 010. The Circuit Court also accurately described the nature of Petitioner-Appellant's claim, that Local Rule 1-4.01 is an unconstitutionally overbroad time, place and manner restriction, and infringes on the right to free speech and to petition the government under the First Amendment, and that it violates due process rights by discriminating against indigent persons' ability to obtain a record for appeal. C 009, C 103-C 123.

A. Illinois Supreme Court Rules Do Not Bar Recording Court Proceedings By Individual Parties

However, the Circuit Court broadly misinterpreted the scope and purpose of Rule 63A(8), and other Supreme Court rules and orders issued pursuant to that rule. Accordingly, the Lake County Circuit Court is trying to tether a sweeping ban on recording court proceedings by all persons to Supreme Court Rule 63A(8), which does not grant that authority.

Supreme Court Rule 63A(8) aims to ensure court proceedings are conducted with decorum and without distraction, and is directed to complications of the news media covering courtrooms. It defines photographic, broadcasting and recording devices to include smaller hand-held devices. The Supreme Court's extended media coverage rule is further elaborated in Order M.R. 2634, which applies only to the news media for the purpose of gathering and disseminating news to the public. Supreme Court Rule 63A(8) does not attempt to restrict the right of individuals to record their own proceedings, or to restrict their right of free speech and to petition the government. These rules apply to the news media to prevent distractions and to avoid contamination of a jury pool. There is no jury pool in domestic relations courts, which are courts of equity with no jury trial.

On May 22, 2020, the Supreme Court of Illinois issued M.R. 3140, which adopted new Rule 45, and amended Rules 46 and 241. The Supreme Court issued its Policy on Remote Court Appearances in Civil Proceedings, effective May 2020. Neither of these two documents bar recording of remote court proceedings by parties, for both nontestimonial and testimonial proceedings. The commentary to Rule 45 in M.R. 3140 states "courts are encouraged to liberally grant requests to appear remotely and to be particularly accommodating of case participants who face an obstacle to appearing personally in court, including but not limited to distance from the court, difficulty with traveling, military service…" disability or work requirements. It further states remote court appearances should not result in additional costs. Nowhere in these rules does it say courts can discriminate against parties, or needlessly expose them to a public health crisis based upon their beliefs or intention to record the proceedings.

B. Free Speech

Mr. Jackson believes he has an absolute First Amendment free speech right to record and disseminate recordings of a Zoom broadcast of a public circuit court proceeding, as Zoom proceedings are broadcasts by the court itself. He further asserts a right to record in-person public court proceedings and disseminate those recordings, as long as the recordings are not disruptive of the circuit court's proceeding.

Petitioner-Appellant and the circuit court agree that the applicable standard is the intermediate scrutiny standard. C 011, C 108-C 109. There is no dispute that the local court rule at issue is content neutral. However, the Circuit Court erred by claiming there is an important public interest justification for the broad application of Local Rule 1-4.01, and that the burdens imposed by Rule 1-4.01 do not reach too far and are narrowly tailored.

First, the Circuit Court mischaracterized the sweeping nature of the *ACLU of Illinois v. Alvarez*, 679 F.3d 583 (7th Cir. 2012) holding. This case held there is no government interest in

protecting conversational privacy when public officials are performing their duties in public places and engaging in public communications audible to persons who witness the events. *Id.* at 586, C 109-C 113. *Alvarez* holds that the public official has no expectation of privacy, but the public place also has no expectation of privacy. *Id* at 606. A courtroom is a public place, and thus there is no government interest in barring recordings of public proceedings. Moreover, *Alvarez* stated repeatedly that making a recording is protected speech, and is just as protected as disseminating a recording. *Id* at 595-596.

Since there is no government interest in privacy of public court proceedings, the court must discern some other important public interest. Local Rule 1-4.01 does not articulate what public interest it aims to serve, which is a problem in itself. The only other interest besides conversational privacy the Circuit Court could conjure is an alleged interest in not having multiple recordings. C 011. There is no dispute that Lake County does not provide court reporters for post-judgment civil domestic relations proceedings, nor does it record court proceedings. Local Rule 1-1.08. As a result, if a party cannot afford a court reporter, there is no recording or record at all. Moreover, as is occurred in this case, substantive orders are entered without due process on status calls in domestic relations courts, in which there could be no foreseeable need to hire a court reporter. The claim a circuit court has an interest in barring recordings because having no recordings is more beneficial to the administration of justice than having multiple recordings, fails even a rational basis standard. Supreme Court Rule 323 on bystanders reports establishes the procedure when there is no official record. That procedure is orderly and has been in effect for decades, and the Circuit Court never addressed the acceptability of bystanders reports at all. C 113-C 114.

Besides claiming the circuit court has a right to prevent a record on appeal altogether, the circuit court claims it has an ability to tell the appellate courts what constitutes a common law record. C 012. It claims film, videotape, photograph and audio reproductions obtained by the news

media cannot be included into a record on appeal. Local Rule 1-4.02 applies to the media and is inapplicable to this matter. But if Rule 1-4.02 purports to bar what the circuit court claims -- that evidence from a courtroom cannot be used as evidence -- it is begging for a similar challenge by a party with standing.

In conclusion, the Circuit Court fails to identify any government interest that outweighs the free speech rights of the parties. That it could not name any interest is not surprising because Local Rule 1-4.01 fails to identify what public interest it is purportedly serving. Petitioner-Appellant concedes that a circuit court could conceivably identify a government interest and narrowly tailor recording restrictions in effort to maintain decorum and minimize disruptions, protect the confidentiality of closed proceedings and particularly sensitive matters. But Local Rule 1-4.01 does not do that, it is plainly overbroad. Some recordings of court can be accomplished with no disruptions at all. In fact, the recording in question from March 12, 2020 in this case, the court had no idea the proceeding was audiorecorded until it was informed by opposing counsel on April 24, 2020.

C. Due Process

The Circuit Court acknowledges that at least one other circuit court in Illinois found a substantive due process right to record court proceedings. The Illinois Supreme Court in *People v. Clark*, 2014 IL 115776, applied the *Alvarez* holding to dismiss an indictment for alleged eavesdropping against a father who recorded a custody proceeding on First Amendment grounds. The 4th District Appellate Court in *In re Marriage of Weddigen*, 2015 IL App (4th) 150044, likewise dismissed a contempt finding against a father who advocated recording court proceedings. The court in *Weddigen* avoided the constitutional issues, but a concurrence by Judge Steigmann argued there is an affirmative First Amendment right to record court proceedings. C 109-C 112.

The Circuit Court attempts to distinguish *M.LB. v. S.L.J.*, 519 U.S. 102 (1996), a United States Supreme Court case that held states who offer a right to appeal cannot discriminate against indigent persons by denying them access to a record for appeal. However, the "character and intensity" of the individual interest at stake in this case, the fundamental right to care, custody and control of one's biological children, is the same right the Supreme Court recognized as acutely in need of protection in *M.L.B. Id.* at 120-121.

Before the orders entered on March 12 and November 14, 2018, Mr. Jackson had unrestricted parenting time with both children. Those orders effectively terminated his parenting rights going on two years. The plaintiff in *M.L.B.* was afforded basic procedural due process in the circuit court, while Mr. Jackson was denied it completely. His parenting rights were effectively terminated without even an accusation of unfitness, and he was afforded no notice, motion, hearing, finding of endangerment, or a record he could use to appeal.

This unconscionable practice occurs systemically in domestic relations courts in Illinois and around the country. These courts suspend parenting time unlawfully and indefinitely, but then hide behind the excuse the severance of rights is not permanent. The Guardian *ad Litem* in this case, a seasoned domestic relations attorney in Lake County, stated to Mr. Jackson his parenting rights were terminated on a phone call (which he recorded).

There is another important distinction between the *M.L.B.* case that weighs in Mr. Jackson's favor. The 19th Judicial Circuit does not provide recordings or transcripts at all, unlike other collar counties and the circuit court in Mississippi in *M.L.B.*. The Circuit Court stated: "[T]he court can rationally decline to bear the costs of an appeal in cases such as this." C 014. Lake County is declining to bear the costs of appeal by denying records or transcripts entirely, including when it makes orders impacting fundamental parental rights on status calls. The Mississippi courts recorded proceedings and offered a transcription service, but the costs were prohibitive for the

indigent plaintiff. The 19th Judicial Circuit is refusing to even offer the service, to which it could exact a reasonable toll. Accordingly, the due process violation by denying a recording and transcription service altogether is more severe than the Supreme Court found to have occurred in *M.L.B.*

Finally, the Circuit Court is correct that the language cited by Petitioner-Appellant in the Court Reporter's Act, 705 ILCS 70/5, allowing a recording system to be supplied by a party or the party's attorney, was repealed in January 1, 2020. But the new language of 705 ILCS 70/5 (amended in Public Act 101-0581) does not expressly disallow a recording system by someone other than a court reporter. Rather, that language was eliminated because it was superfluous.

D. Right To Petition The Government

The Circuit Court believes a transcript is an adequate substitute for a recording for purposes of public advocacy. Both the Illinois Supreme Court and 7th Circuit Court of Appeals expressly disagree and stated an audio or audiovisual recording have unique and powerful qualities. C 113.

The Circuit Court ignores the right to influence the most important jury pool – the electorate in the court of public opinion, who votes for our judges, with media that can be absorbed through watching and listening. The same applies to recordings for purposes of constructing verbatim court transcripts or bystanders reports for appellate review. The same applies to the executive and legislative branches.

Until *ACLU v. Alvarez*, publicly recording police in their official duties would not be possible in Illinois without risking prosecution for eavesdropping. If the encounter with George Floyd in Minneapolis occurred in Chicago, nobody would have likely known about it – and a transcript would not capture what occurred for those eight minutes. The 19th Judicial Circuit is

arguing it is acceptable to record police, but not circuit court judges. The *ACLU v. Alvarez* case makes no such distinction.

II. The Orders Entered on March 12, 2018 and November 14, 2018 Are Null And Void

The March 12, 2018 order was entered while this case was temporarily removed to federal district court. C 046-C 048. The law is clear a circuit court in Illinois retains no jurisdiction until a federal removal is remanded. C 047. The order plainly states the March 12, 2018 proceeding was a status call, with no motion set for hearing. C 004. Accordingly, Mr. Jackson's due process rights were grossly violated, when the circuit court completely lacked jurisdiction.

The November 14, 2018 order is void on its face, as it states there was no motion to restrict Mr. Jackson's parenting time, no notice of motion, and no hearing scheduled. C 005-C 006. Moreover, there was no finding of serious endangerment or significant impairment to the children's emotional development, as required in 750 ILCS 5/603.10. *In re Marriage of Diehl*, 221 Ill. App. 3d 410, 429 (1991), *In re Custody of G.L.*, 2017 IL App (1st) 163171, ¶¶33. Even if there was a finding, it would not rise to the endangerment standard to restrict parenting time. C 017-C 020. Mr. Jackson was alleged to have missed two status calls while he was in the final stretch of a very public gubernatorial campaign and to have missed two visits with one of his children, as well as a counseling session, and to be temporarily living with a friend after the lease on his house expired. C 005-C 006. Moreover, Judge Salvi was disqualified for refusing to recuse himself on August 5, 2018.

The Circuit Court's lack of a justiciable matter applies to both the March 12, 2018 and November 14, 2018 orders. The law is clear these orders are void *ab initio.* The Court's authority to exercise its jurisdiction and resolve a justiciable question is invoked through the filing of a complaint or petition, pleading that function to frame the issuesf or the trail court and circumscribe

the relief the court is empowered to order. *Ligon v. Williams*, 264 Ill. App. 3d 701, 707 (1994). A party cannot be granted relief in the absence of corresponding pleadings; if a justiciable issue is not presented to the court through proper pleadings, the court cannot *sua sponte* adjudicate an issue. *Id.* Orders that are entered in the absence of a justiciable question properly presented to the court by the parties are void since they result from court action exceeding its jurisdiction. *Id.*" *Q*uoting *from In re Marriage of Suriano,*386 Ill. App. 3d 490 (2008).

III. Conclusion

The circuit court is telling a disabled Navy veteran that he cannot makes his own recording of his own court proceedings, to advocate for social change and to protect his basic due process rights. They are trying to make Mr. Jackson drive from Arkansas while indigent in the middle of a pandemic for exerting his right to record public officials conducting public business. They are further claiming Mr. Jackson cannot even record remotely held status calls, after the court issued substantive orders on status calls violating his fundamental civil rights twice, with no motion up for consideration. Mr. Jackson has a right to make his own record, especially considering the circuit court violated his due process rights without providing him a record.

RESPECTFULLY SUBMITTED:

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CERTIFICATE OF DELIVERY

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The undersigned hereby certifies under penalties of perjury as provided by law, pursuant to 735 ILCS 5/1-109, that the above notice and any attached pleadings were sent via [X] E-mail, [ ] personal delivery, [ ] facsimile transmission, and/or [ ] U.S. Mail from 8974 N. Western Avenue #114, Des Plaines, IL 60016 with proper postage pre-paid to the addresses set forth above before the hour of 4:00 p.m. on the day of June 22, 2020.

Edwin F. Bush III