

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

<i>In re</i> PARENTAGE OF A.U.-A., a Minor	)	
	)	Appeal from the Circuit Court
(Ryann U.,	)	of Cook County.
Petitioner-Appellant,	)	
	)	No. 20 D 450097
v.	)	
	)	The Honorable
Skye A.,	)	Scott Tzinberg,
Respondent-Appellee).	)	Judge Presiding.
	)	

JUSTICE REYES delivered the judgment of the court.

Presiding Justice Martin and Justice Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* Where the petitioner filed a motion for substitution of judge as of right prior to trial and before the judge entered any substantive orders, the trial court erred in denying her motion, requiring reversal of the order and vacatur of all subsequent orders entered by the trial court.

¶ 2 Petitioner Ryann U. filed a parentage action against respondent Skye A., concerning the parties' daughter, minor A.U-A. In response, respondent filed a petition for allocation of parental responsibilities. During the pendency of the proceedings, petitioner filed a motion for substitution of judge as of right, but petitioner's motion was denied, as the judge found that

there had been a substantial ruling made in the matter. The parties proceeded to prepare for trial and, shortly before trial, petitioner disclosed a number of witnesses. As a result, respondent filed a motion *in limine* requesting that these witnesses be barred due to their untimely disclosure, which was granted, and trial proceeded without petitioner's witnesses. Petitioner now appeals, contending that (1) her motion for substitution of judge should have been granted and (2) the trial court erred in barring her witnesses from testifying at trial. For the reasons set forth below, we reverse the trial court's denial of petitioner's motion for substitution of judge, vacate all subsequent orders, and remand for further proceedings.

¶ 3

BACKGROUND

¶ 4

Minor A.U.-A. was born on March 28, 2019, to petitioner and respondent, who were unmarried; respondent signed a voluntary acknowledgement of paternity the day after the minor was born. Both parents are enrolled members of the Turtle Mountain Band of Chippewa Indians, and respondent resides on the tribe's reservation in North Dakota. The parents met while they were attending school in North Dakota and were living in North Dakota at the time that petitioner became pregnant, but they moved to Illinois, where petitioner's parents resided, to deliver the child when they discovered that petitioner's pregnancy was high-risk. After the minor's birth, both petitioner and respondent initially returned to North Dakota, but petitioner relocated to Illinois in March 2020, where she and the minor resided with her parents.

¶ 5

On June 19, 2020, the Illinois Department of Healthcare and Family Services (HFS) filed a complaint for support against respondent on petitioner's behalf, alleging that HFS had been providing child support services to the minor and requesting that respondent be ordered to pay

child support.¹ In response, respondent filed a petition for allocation of parental responsibilities (parental responsibilities petition), as well as a motion for a temporary parenting time schedule while the parental responsibilities petition was pending (parenting time motion). In the parental responsibilities petition, respondent sought sole decision-making responsibilities concerning the minor, and sought to relocate her to his home in North Dakota, which he alleged was in her best interest.

¶ 6 In her answer to the parental responsibilities petition, petitioner alleged that she had been the minor's primary caretaker at all times since she was born, and requested sole decision-making responsibilities and the majority of parenting time. Petitioner also sought an order prohibiting respondent from removing the minor from Illinois and ordering any in-person parenting time to take place in Illinois "to prevent removal of the minor child from [petitioner's] care or concealing of the whereabouts of the minor child."

¶ 7 In her answer to the parenting time motion, petitioner alleged that there existed a history of domestic violence and controlling behavior by respondent toward petitioner, and that when petitioner informed respondent that she wished to end their relationship, "[respondent] threatened to remove the minor child from [petitioner] in Illinois and take her back to the reservation in North Dakota, and he stated that he would seek to use law enforcement and/or the tribal courts to his advantage to make sure 'you won't get her back.' " Petitioner alleged that, in the event that respondent removed the child to the reservation, "[petitioner's] ability to enforce any Order of this Court for return of the child or to seek law enforcement assistance for turnover of the minor child would be significantly limited due to the independent, sovereign

¹ HFS involvement in the matter ceased on February 23, 2022, when it withdrew its complaint for support due to petitioner's ability to pursue any support issues through her own counsel.

jurisdiction of the tribe.” Accordingly, petitioner requested that any in-person parenting time take place in Illinois or, if permitted to travel to North Dakota over petitioner’s objection, “that any parenting time be supervised in a manner sufficient to prevent removal of the minor child from the jurisdiction of this Court.”

¶ 8 On July 2, 2021, the circuit court entered an agreed order granting petitioner temporary parenting time, to be exercised in Illinois; the agreed order was extended several times. The circuit court also appointed a guardian *ad litem* (GAL) to assist the court concerning the allocation of parental responsibilities. The parties eventually agreed to expand the geographical scope of respondent’s visits, with the circuit court entering an agreed order in January 2023 permitting respondent to exercise his parenting time in Minnesota.

¶ 9 The case was assigned to the trial judge in early 2024, and on March 17, 2024, the trial court set a schedule providing that discovery should be completed by July 23, 2024; that date was extended several times, and a trial date was eventually set for January 16 and 17, 2025.

¶ 10 On January 10, 2025, petitioner filed an emergency motion to continue the trial and for appointment of an evaluator pursuant to section 604.10(b) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/604.10(b) (West 2024)). On January 13, 2025, after hearing arguments of counsel and the GAL, the trial court denied the motion. The order denying petitioner’s motion provided, in full:

“This cause coming on [*sic*] to be heard on the Emergency Motion to Continue Trial, for Appointment of an Evaluator Pursuant to 750 ILCS 5/604.10(b) and for Other Relief of [petitioner], all parties, their attorneys, and GAL being present by Zoom, the Court hearing arguments of Counsel and the GAL, and being fully advised in the premises;

FINDS:

1. That under the definition of Emergency as set forth in A/O 2022 D12,^[2] this matter is not found to be an Emergency.

THEREFORE, IT IS HEREBY ORDERED:

1. Emergency Motion to Continue Trial, for Appointment of an Evaluator Pursuant to 750 ILCS 5/604.10(b) and for Other Relief is denied and this matter shall commence trial on the previous dates ordered by this Court.”

¶ 11 On January 17, 2025, the trial was rescheduled to April 3 and 4, 2025, due to the GAL’s inability to be present in court; in the same order, the trial court continued petitioner’s motion to continue the trial and for appointment of a section 604.10(b) evaluator to February 27, 2025, and entered a briefing schedule on the motion.³

¶ 12 On February 14, 2025, petitioner filed a motion for substitution of judge as of right, claiming that she was entitled to the substitution where the trial judge had not ruled on any substantial issues in the case. On February 25, 2025, respondent filed a response, contending that the trial judge entered a substantive order on January 13, 2025, when it denied petitioner’s emergency motion to continue the trial and for appointment of a section 604.10(b) evaluator.

² General administrative order 2022 D 12 concerns the procedure to submit emergency motions in the domestic relations division of the circuit court of Cook County. See Cook County Cir. Ct. G.O. 2022 D 12 (Sept. 21, 2022).

³ In his response to petitioner’s motion for substitution of judge as of right, discussed further below, respondent claimed that, after the emergency motion was denied, petitioner’s counsel “then told the Court he was going to file the same motion before trial as a non-emergency to continue the trial, which he did.” We observe, however, that the record contains no subsequently filed “non-emergency” form of petitioner’s motion, and the trial court’s order denying petitioner’s motion for substitution of judge does not reference such a motion. The trial court’s ultimate order concerning the parental responsibilities petition indicates that petitioner re-filed her motion to continue the trial and for appointment of a section 604.10(b) evaluator as a non-emergency matter on January 16, 2025.

¶ 13 The parties came before the trial court for a hearing on petitioner’s motion for substitution of judge on February 27, 2025, and the trial court denied petitioner’s motion in a written order on March 6, 2025. In its order, the trial court noted that petitioner’s January 10, 2025, emergency motion to continue trial and for appointment of a section 604.10(b) evaluator was the subject of a hearing, at which the trial court heard argument from both parties’ attorneys, as well as receiving input from the GAL, concerning the necessity for a section 604.10(b) evaluator.⁴ The trial court’s order then indicated that, “[a]fter hearing all arguments, the Court determined there was no need for a 604.10(b) evaluator and found that the request for same was not an emergency and denied Petitioner’s Emergency Motion.”

¶ 14 The trial court found that “[t]he determination of whether the Court will appoint a 604.10(b) evaluator, an expert, is a substantial issue/factor in an allocation and parenting time matter.” The trial court further found that “this Court conducted a Hearing on [petitioner’s] Emergency Motion and expressed its opinion on the relief requested. The Court denied the Motion vs. setting a briefing schedule and future hearing,” distinguishing the instant matter from *In re Marriage of Crecos*, 2015 IL App (1st) 132756, a case which concerned a similar issue. Consequently, the trial court found that its January 13, 2025, order denying petitioner’s emergency motion constituted a ruling on a substantial issue in the case such that petitioner was not entitled to a substitution of judge as of right.

¶ 15 On March 10, 2025, the trial court entered an order denying petitioner’s motion to continue trial and for a section 604.10(b) evaluator, and reaffirmed that the matter would proceed to trial on April 3 and 4, 2025.

⁴ We observe that the record on appeal does not contain a transcript or bystander’s report for either the January 13, 2025, hearing on petitioner’s emergency motion or the February 27, 2025, hearing on her motion for substitution of judge.

¶ 16 On March 31, 2025, petitioner filed a witness disclosure pursuant to Illinois Supreme Court Rule 213(f) (eff. Jan. 1, 2018), and on April 2, 2025, respondent filed a motion *in limine* to bar petitioner's witnesses and exhibits at trial, claiming they were untimely disclosed. Specifically, respondent asserted that the parties were required to complete written discovery by November 11, 2024, but petitioner did not disclose her witnesses until March 31, 2025, and did not provide a list of exhibits which she intended to use at trial until April 2, 2025. On April 3, 2025, the trial court granted respondent's motion *in limine*, barring any witnesses or exhibits which had not been timely disclosed.

¶ 17 Trial on the parental responsibilities petition occurred over five days in April and May 2025. Prior to commencement of the trial, the trial court clarified that the primary question at issue was the amount of parenting time which respondent should receive, as well as the location of that parenting time. At trial, both parents and the GAL testified, as did both petitioner's mother and respondent's mother.

¶ 18 After the trial but before the trial court's ruling, petitioner filed a motion to reopen proofs and an amended motion to reopen proofs. In her initial motion to reopen proofs, petitioner claimed that respondent had harmed the minor during a recent visit, which resulted in the Illinois Department of Children and Family Services opening an investigation, and requested that the trial court reopen the proofs and consider the eventual results of the investigation prior to entering its final judgment. In her amended motion to reopen proofs, petitioner additionally requested that she be permitted to introduce the witness and evidentiary testimony which the trial court had barred, which included evidence of the respondent's domestic violence toward her, evidence of his threatening to take the minor from her, and evidence concerning the

operations of the Turtle Mountain tribe. The trial court denied petitioner's motion on August 5, 2025.

¶ 19 On August 29, 2025, the trial court entered a final allocation of parental responsibilities judgment. The trial court observed that there was no dispute between the parties that petitioner would have the majority of parenting time and that the minor would reside in Illinois. The trial court further found that, despite petitioner's asserted fears concerning tribal jurisdiction, she had not established a reason why respondent should be restricted from exercising his parenting time at his home on the reservation in North Dakota. The trial court, however, found it logistically impossible for respondent to exercise regular parenting time at his home, given the distance and the expense involved. As such, the trial court found that respondent's parenting time on the reservation should occur during the minor's breaks from school, including spring break, summer vacation, Thanksgiving break, and winter break. His regular monthly parenting time should continue to alternate between Illinois and Minnesota, as previously established. The trial court also found that the parties should make decisions concerning medical issues and religion jointly and that petitioner would have final decision-making responsibilities concerning education and extracurricular activities after consultation with respondent.

¶ 20 Petitioner timely filed a notice of appeal, and this appeal follows.⁵ We observe that this appeal is an accelerated appeal pursuant to Illinois Supreme Court Rule 311(a) (eff. July 1, 2018), which requires us to issue a decision within 150 days after the filing of the notice of appeal, except for good cause shown. The notice of appeal in this case was filed on September 10, 2025, and an amended notice of appeal was filed on September 26, 2025. Petitioner

⁵ We observe that the petitioner filed a motion to stay the enforcement of the judgment pending appeal, but the record on appeal does not contain a disposition on that motion.

received extensions of time to file her appellate brief, which was ultimately filed on March 2, 2026. This court *sua sponte* gave respondent until June 2, 2026, to file an appellee brief but he ultimately chose not to do so. As respondent did not file an appearance or responsive brief, we entered an order on June 18, 2026, taking the instant accelerated appeal on petitioner's brief and the record on appeal alone. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976). Accordingly, we find that good cause is shown for the delay in filing this disposition and proceed to consider the merits of petitioner's arguments on appeal. See *In re J.S.*, 2020 IL App (1st) 191119, ¶ 36 (finding good cause for issuing decision after deadline where there were extensions of time requested by the parties); *In re Zariyah A.*, 2017 IL App (1st) 170971, ¶ 69 (finding good cause for issuing decision after deadline where there were multiple extensions of time requested by the parties, among other procedural delays).

¶ 21

ANALYSIS

¶ 22

On appeal, petitioner contends that (1) her motion for substitution of judge should have been granted and (2) the trial court erred in barring her witnesses from testifying at trial. Section 2-1001(a)(2) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1001(a)(2) (West 2024)) permits each party to obtain one substitution of judge as a matter of right, so long as "it is presented before trial or hearing begins and before the judge to whom it is presented has ruled on any substantial issue in the case." When properly raised, the right to a substitution of judge is absolute and the trial court has no discretion to deny such a motion. *Palos Community Hospital v. Humana Insurance Co.*, 2021 IL 126008, ¶ 25. If a motion for substitution of judge is improperly denied, every order entered after the filing of the substitution motion must be vacated. *Id.* ¶ 34. An order denying a motion for substitution of judge as of right is reviewed *de novo*. *Crecos*, 2015 IL App (1st) 132756, ¶ 21.

¶ 23 In this case, petitioner contends that her February 14, 2025, motion for substitution of judge as of right should have been granted where it was presented before trial and before the judge had ruled on any substantial issue in the case. In response to her motion, respondent claimed that the trial judge entered a substantive order on January 13, 2025, when it denied petitioner’s emergency motion to continue the trial and for appointment of a section 604.10(b) evaluator. In denying her motion for substitution of judge, the trial court agreed with respondent, finding that, in considering petitioner’s emergency motion, it heard arguments from counsel and from the GAL and “determined there was no need for a 604.10(b) evaluator and found that the request for same was not an emergency and denied Petitioner’s Emergency Motion.”

¶ 24 As an initial matter, we observe that the trial court’s statement that it “determined there was no need for a 604.10(b) evaluator” does not appear in the January 13, 2025, order denying petitioner’s emergency motion, nor does the record contain a report of proceedings including such an oral finding. The January 13, 2025, order contains a single finding—“[t]hat under the definition of Emergency as set forth in A/O 2022 D12, this matter is not found to be an Emergency”—before the denial of the motion. We also observe that, while not contained in the record on appeal, both respondent and the trial court referred to a second, non-emergency, version of the same motion which was filed shortly after the denial of the emergency motion. The trial court also entered a briefing schedule on petitioner’s motion and respondent filed a response, followed by a reply from petitioner. This is consistent with the procedure set forth in the administrative order referenced by the trial court, which provides that “[i]f it is determined that the matter presented is not a valid emergency, the movant will be directed to place the matter on the Court’s regular motion call and to notify all parties that the motion will not be heard as an emergency.” Cook County Cir. Ct. G.O. 2022 D 12(4)(d) (Sept. 21, 2022).

Consequently, despite the trial court's later statement, we cannot find that the record demonstrates that the January 13, 2025, order disposed of petitioner's emergency motion on its merits. See *Hartgraves v. Don Cartage Co.*, 63 Ill. 2d 425, 432 (1976) (any corrections of or additions to the record which contradict the clear and unambiguous contents of the record must be supported by more than the memory of the trial judge). Accordingly, we consider whether the trial court's denial of petitioner's motion on the basis of its non-emergency character constituted a "substantial ruling" under section 2-1001(a)(2) of the Code.

¶ 25 A ruling is considered "substantial" for purposes of section 2-1001(a)(2) "when it relates directly to the merits of the case." *Crecos*, 2015 IL App (1st) 132756, ¶ 25; see also *Nasrallah v. Davilla*, 326 Ill. App. 3d 1036, 1039-40 (2001); *In re Estate of Gay*, 353 Ill. App. 3d 341, 343 (2004). As such, in *Crecos*, a different division of this court found that an order providing that a motion was " 'not an emergency' " and setting a briefing schedule did not constitute a substantial ruling on the merits of the relief prayed for in the motion. *Crecos*, 2015 IL App (1st) 132756, ¶ 26. Based on *Crecos*, petitioner's motion for substitution of judge should similarly have been granted here, where the trial court found that the matter was not an emergency.

¶ 26 In this case, the trial court found *Crecos* inapplicable where "[u]nlike *Crecos*, this Court conducted a Hearing on [petitioner's] Emergency Motion and expressed its opinion on the relief requested. The Court denied the Motion vs. setting a briefing schedule and future hearing. As such, the Court [f]inds the January 13, 2025[,] Order to be a substantial order" under section 2-1001(a)(2). We observe, however, that our supreme court has made clear that a party's ability to "test the waters" is not a valid basis to deny a motion for substitution of judge. *Palos Community Hospital*, 2021 IL 126008, ¶ 28. Thus, the *Crecos* court's discussion of whether

the trial judge “expressed his opinion on the relief prayed for” in the emergency motion (*Crecos*, 2015 IL App (1st) 132756, ¶ 26) is no longer a factor in determining whether the motion for substitution should be granted.

¶ 27 We similarly find unpersuasive the distinction between denying the motion and setting a briefing schedule. As noted, the record indicates that, following the January 13, 2025, denial of petitioner’s emergency motion, litigation on the substance of the motion continued, with the trial court entering a briefing schedule on January 17, 2025, and both parties subsequently engaging in briefing on the matter. Thus, it is not at all obvious that “[t]he Court denied the Motion vs. setting a briefing schedule and future hearing,” as it indicated in its order denying the motion for substitution of judge. Indeed, as we previously observed, the hearing of the motion as a non-emergency is the proper procedure under the administrative order cited by the trial court as its basis for the denial of the emergency motion. See Cook County Cir. Ct. G.O. 2022 D 12(4)(d) (Sept. 21, 2022).

¶ 28 Finally, to the extent that the trial court’s order may be read to suggest that the hearing on the emergency motion was a “hearing” for purposes of section 2-1001(a)(2), we disagree. As noted, one of the requirements for a substitution of judge as of right is that such a motion “is presented before trial or hearing begins.” 735 ILCS 5/2-1001(a)(2) (West 2024). Courts have interpreted a “hearing” for purposes of section 2-1001(a)(2) as a hearing on the merits of the underlying litigation. See, *e.g.*, *Gohari v. McDonald’s Corp.*, 2022 IL App (1st) 201086, ¶ 21; *Albanesi v. Pavilion Apartments*, 2025 IL App (1st) 240674-U, ¶ 45. Thus, for instance, oral argument on a motion to dismiss has been considered such a “hearing” (see *Albanesi*, 2025 IL App (1st) 240674-U, ¶ 45), while a hearing on a motion for discovery has not (see *Gohari*, 2022 IL App (1st) 201086, ¶ 21). Here, we cannot find that the hearing on petitioner’s

emergency motion constituted a “hearing” for purposes of section 2-1001(a)(2), as it was not a hearing on the merits of the underlying litigation.

¶ 29 In this case, where petitioner’s motion for substitution of judge as of right was presented (1) before trial or hearing began and (2) before the judge had ruled on any substantial issue in the case, her right to a substitution of judge was absolute and the trial court lacked the discretion to deny the motion. See *Palos Community Hospital*, 2021 IL 126008, ¶ 25. We therefore reverse the trial court’s denial of her motion. In addition, we must vacate every order entered after the filing of the substitution motion. See *id.* ¶ 34. This cause is further remanded to the circuit court with instructions to assign the matter to a different judge in accordance with petitioner’s motion for substitution of judge as of right.

¶ 30 CONCLUSION

¶ 31 For the reasons set forth above, the trial court erred in denying petitioner’s motion for substitution of judge as of right pursuant to section 2-1001(a)(2) of the Code. The order denying her motion is reversed, all orders entered after the improper denial are vacated, and the matter is remanded for further proceedings before a different judge.

¶ 32 Orders reversed and vacated; cause remanded with instructions.