This appeal involves a question of child custody, allocation of parental responsibilities, adoption, termination of parental rights or other matters affecting the best interests of a child

No. 2-18-0283

IN THE
ILLINOIS APPELLATE COURT
SECOND JUDICIAL CIRCUIT

IN RE: PARENTAGE OF:	)	
	)	On Appeal from the Circuit
	)	Court of the Eighteenth Judicial
MICHELLE WATTS,	)	Circuit, DuPage County,
	)	Illinois
Petitioner,	)	
	)	
and	)	No. 09 F 143
	)	
MICHAEL GANTINE,	)	The Honorable Thomas Else
	)	Presiding
	)	
Respondent		

BRIEF AND ARGUMENT OF APPELLEE MICHAEL GANTINE

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NATURE OF THE CASE

This case involves an appeal of the trial court's denial of Appellant MICHELLE WATTS's Amended Petition pursuant to Section 2-1401 of the Illinois Code of Civil Procedure to Vacate the Court's orders of February 1, 2016 and February 29, 2016.

ISSUE PRESENTED FOR REVIEW

Whether the trial Court abused its discretion in denying MICHELLE WATT's Amended Motion to Vacate the Court's orders of February 1st and February 29th of 2016.

STATEMENT OF FACTS

The salient review of the record for purposes of the instant appeal rightly commences with the order that was entered in this cause on April 20, 2015 after a two-day hearing which granted Respondent MICHAEL GANTINE's ("MICHAEL") request to implement a parenting schedule and denied Petitioner MICHELLE WATT's ("MICHELLE") request to extend a previously issued plenary order of protection. (C. 548). The aforementioned order established a reunification protocol for MICHAEL and the parties' minor child; J.R.G., given the significant amount of time that MICHAEL had not seen the child. (C. 548). In issuing its findings, the Court emphasized that MICHELLE's espoused fears seeking an extended order of protection were unfounded. (SR. 452). The Court noted the previously issued order of protection made no finding of any physical abuse of the minor child by MICHAEL. (SR. 453-454). In denying MICHELLE's request to extend the September 24, 2012 order of protection, the Court specifically found that no threat of harm existed. (SR. 454).

MICHELLE filed a motion thereafter to reconsider the Court's reunification order, again maintaining that MICHAEL should have no contact with the minor child. (C. 553-556). MICHELLE's request to reconsider was denied by order dated June 15, 2015. (C. 564)

While MICHELLE was unable to upend the reunification order, she nonetheless succeeded through motion practice to advance her stated goal and at least forestall MICHAEL's reunification with J.R.G. The parties ultimately agreed that Dr. Mark Goldstein. Psych.D. would shepherd the reunification between MICHAEL and the minor child. (C. 601).

Nonetheless, MICHELLE proved to be minimally cooperative with Goldstein's reunification process at the beginning and outright hostile toward the reunification process by the Fall of 2015. Indeed, per order dated August 17, 2015 (three months after the original reunification order), the court appointed Guardian Ad Litem specifically secured an order requiring MICHELLE to contact Goldstein and cooperate with his intake procedure. (C. 609). Subsequently, MICHAEL filed a Petition to Rule to Show Cause on September 3, 2015 alleging that MICHELLE had failed to contact Goldstein per the August 17th order. (C. 612-613). Another Petition for Rule to Show Cause filed thereafter filed by MICHAEL on December 3, 2015, again alleging not only lack of

cooperation with the reunification process but also overt manipulation of the child given revelations that MICHELLE had told J.R.G. that another man, not MICHAEL, was his Father. (C 622-624).

Unbeknownst to anyone involved in the case, MICHELLE left Illinois without leave of Court and secreted herself and the child in the State of Washington sometime in November of 2015. (C. 886) She changed her name to Lauren Ryan after she fled to Washington. (SR. 585). She secured a different birth certificate for the child. (SR. 583). MICHELLE change both her and the child's social security numbers. (C. 587-588). She undertook multiple measures against detection in order that MICHAEL never see the child. (C. 591-592).

MICHAEL's second Petition for Rule resultant from MICHELLE's want of cooperation with the reunification process was set for hearing on January 8, 2016 by order dated December 14, 2015. (C. 625). Critically, the order provides; "if the Rule issues that date, same shall be returnable instanter". (C. 625). MICHELLE's counsel then filed a Motion to Withdraw on December 22, 2015. (C. 628-629). The Notice of Motion accompanying the pleading denotes MICHELLE's address as 444 E. Roosevelt Rd. in Lombard, Illinois. (C.626). MICHELLE's attorney initially attempted to withdraw on January 5, 2016 but the Court deferred that request in light of the previously filed and scheduled enforcement proceeding. (C. 630). MICHELLE, long departed from Illinois with the child, never followed through with Goldstein's reunification regiment and her attorney withdrew on January 8, 2016. (C. 631). Critically, the address in MICHELLE's counsel's Notice of Motion accompanying the Motion to Withdraw was the only published address for MICHELLE for the duration of the post decree ligation. (C 626). Indeed, MICHELLE specifically sought and secured the Court's approval not to disclose her address back in December of 2014 when the Court appointed its Guardian Ad Litem. (C.475-477).

MICHELLE was found in indirect civil contempt of Court on January 8, 2016 given her overt lack of cooperation with the reunification plan. (C. 632). A body attachment likewise issued on January 8, 2016 for MICHELLE to be taken into custody by the DuPage County Sheriff's Department. (C. 633). The case was continued to February 1, 2018 for status on MICHELLE's purge of her contemptuous conduct. (C. 632).

As a result of MICHELLE's overall disconnect from the case given her criminal flight from Illinois in November of 2015, MICHAEL filed a Petition for Modification of Allocation of Parental Rights and Responsibilities on January 25, 2016. (C. 635-637). MICHAEL's Petition was brought pursuant to Sections 609 and 610 of the Illinois Marriage and Dissolution of Marriage Act. (C. 635).

In his Petition, MICHEL affirmatively claimed that he was able to provide a suitable home for the minor in his home in Coral Gables, Florida. (C. 636). Notice of that Petition was sent to MICHELLE at the Roosevelt Road address, exactly as stated in her attorney's Notice of Motion incident to her withdrawal. (C. 634).

When the matter appeared on February 1, 2016 in connection with the purge of MICHELLE's non-cooperation with the reunification plan, the Court ordered that possession of the child be turned over to MICHAEL without prejudice. (C. 638). As a result of MICHELLE's unabated want to cooperation and participation in the proceedings, legal custody and parental rights and responsibilities relative to the minor child was awarded to MICHAEL on February 29, 2016. (C. 639).

To facilitate the search for the missing child, MICHAEL petitioned the Court again on March 8, 2016. (C. 641). Accordingly, the order for parental responsibility was subsequently modified to provide that any law enforcement official could take possession of the minor child to effectuate his turn over to MICHAEL. (C. 644). Again, notice of this motion was sent to MICHELLE at her last known address. (C. 640).

As affirmatively alleged by MICHELLE in her original Petition to Vacate filed February 9, 2017, the DuPage County Sheriff's Department in conjunction with the Bellevue, Washington Police Department located MICHELLE and the child in the State of Washington on January 27, 2017. (C. 655-658). MICHAEL secured the child's return over MICHELLE's objection in Washington and the child has been since residing with MICHAEL in Florida. (C. 657).

MICHELLE only sought relief in the Illinois courts when she filed a Motion to Vacate the Body Attachment and Custody/Parental Allocation order on February 9, 2016; almost a year subsequent to the entry of the subject orders when J.R.G. was discovered in Washington and turned over to MICHAEL. (C. 655-658).

ARGUMENT

I. TRIAL COURT's DENIAL OF APPELLANT's AMENDED MOTION TO VACATE WAS ABUNDANTLY SUPPORTED BY THE RECORD AND THE EVIDENCE

A petition to vacate or modify a judgment under Section 2-1401 must set forth allegations supporting the existence of a meritorious claim or defense, due diligence in presenting the claim or

defense to the circuit court in the original action, and due diligence in filing the petition. ***Paul v. Gerald Adelman & Associates, Ltd.***, 223 Ill.2d 85, 858 N.E.2d 1 (Ill. 2006). Generally, a decision whether to grant or deny a section 2-1401 petition is within the sound discretion of the circuit court and will not be reversed absent an abuse of that discretion. ***Id.*** An abuse of discretion occurs when the circuit court's ruling is unreasonable, fanciful, or arbitrary, or where no reasonable person would agree with the view of the circuit court. ***Blum v. Koster***, 235 Ill. 2d 21, 36 (2009). A trial court abuses its discretion only when no reasonable person would take the view adopted by the trial court. ***In re Marriage of O'Malley ex rel. Godfrey***, 2016 IL App (1st) 151118. However, a section 2-1401 petition may also raise a legal challenge to a final judgment or order. ***Warren County Soil & Water Conservation District v. Walters***, 2015 IL 117783, ¶ 41.

Here, MICHELLE failed to advance any evidence on any of the requisite factors in order to warrant relief and, as a result, her Amended Petition to Vacate was rightfully denied. Additionally, her legal challenge to the orders at issue merely attempt to remake previous arguments relative to diligence which are likewise unsupported, and in fact contradicted by, the record.

A. MICHELLE received Notice of the ongoing proceedings

MICHELLE initially argues that the turnover order of February 1, 2016 and the superseding order awarding MICHAEL parental right and responsibilities on February 29, 2016 in relation to J.R.G. was void for want of notice. Tactically, MICHELLE reclassifies her argument in contrast to claims advanced to the court below no doubt in an effort to elicit elevated *de novo* appellate scrutiny.

However, MICHELLE never claimed to the court below that the orders were void. Rather, she couched her notice arguments as part of her required Section 2-1401 alleged meritorious defense to the entry of subject orders of February 1st and February 29th of 2016. As a result, MICHELLE's voidness claims cannot now be considered for the fist time on appeal.

It is well established that issues raised for the first time on appeal and not previously raised in the trial court, are waived or forfeited. ***Haudrich v. Howmedica, Inc.***, 169 Ill. 2d 525, 536, 662 N.E.2d 1248 (Ill. 1996); ***Mann v. Thomas Place, L.P.***, 2012 IL App (1st) 110625. Indeed, a trial court cannot err in failing to decide an issue not presented to it for decision. ***Linhoff v. Fishman***, 2015 Ill. App. (1st)141980-U, ¶ 10. Here, MICHELLE only raised arguments regarding notice in the context of advancing her purported meritorious defense for purposes of Section 2-1401. Nowhere in the record below does MICHELLE argue that the Court lacked either personal or

subject matter jurisdiction to enter the orders at issue in this appeal. Irrefutably, those arguments are waived and cannot be now introduced on appeal.

Irrespective, MICHELLE's claim of want of notice is overwhelmingly contradicted by the record and the testimony at trial.

At the outset, there is a presumption of delivery of notice if sent by regular mail directed to a proper address; where the rules provide for that method of service, notice is thus satisfied by use of regular mail. ***CitiMortgage Inc. v. Lewis***, 2014 IL App (1st) 131272, ¶ 39. Service by regular mail applies to post judgement supplemental proceeding in family law matters. ***In re Marriage of Ponsart***, 118 Ill.App.3d 664, 667, 455 N.E.2d 271, 273 (1st Dis. 1983); Illinois Supreme Court Rule 11(c)(3).

Here, MICHELLE affirmed the receipt of notice of the critical petitions at issue. In fact, there is no question that MICHAEL's Petition for Rule to Show Cause filed December 3, 2015 which culminated in the turn over order of February 1, 2018 was properly served inasmuch as MICHELLE was represented by counsel at that time. (C. 621). In addition, MICHELLE concedes in her brief that the Notice of Motion in connection with MICHAEL's Petition for Modification of Parental Rights and Responsibilities was sent to the Lombard address denoted on her prior counsel's Motion to Withdraw (Brief of Appellant, pg. 24). MICHAEL's Motion to Clarify the Order of February 29, 2016, sent to MICHELLE on March 8, 2018 was likewise sent to this address. (C. 640). Indeed, MICHELLE initially acknowledged the Lombard post office box as her address in her original motion to vacate filed February 9, 2017 but claimed that mail received at this location had not been forwarded per MICHELLE's request. (C. 654). In addition, MICHELLE's sworn statement filed in the Washington courts affirmatively states that she did not leave a forwarding address as part and parcel of her plan to hide. (C.877). Nonetheless, at hearing in connection with her motion to vacate the orders at issue, MICHELLE acknowledged that the multiple notices from MICHAEL's counsel relative to the Parental Allocation Modification Petition and Other pleadings were delivered to her post office box. (C. 877, SR. 579). Further, the Guardian Ad Litem testified unrebutted that he personally emailed the February 1, 2016 turn over order to MICHELLE. (C. 877, SR. 680-681).

In essence, MICHELLE seeks to utilize her flight from Illinois as both a shield and sword to avoid any repercussions from her knowing conduct. By her own testimony, MICHELLE willfully stopped communicating with the Court appointed Guardian Ad Litem because she thought he was

biased and not looking out for the minor child. (SR. 646-647). Indeed, MICHELLE eventually lodged a complaint against the Guardian Ad Litem with the Attorney Registration and Disciplinary Commission. (SR. 698-699)

At hearing on the motion to vacate, MICHELLE reaffirmed her prior sworn declaration to the Court in Washington stating that she did not leave a forwarding address. (SR. 575). Still, MICHELLE acknowledged that the Notices of the Petitions she subsequently sought to vacate were delivered to post office box she owned. (SR 579). MICHELLE further conceded that she canceled an appointed with Dr. Goldstein in the middle of his investigation at the time she fled to Washington. (SR. 601). MICHELLE admitted that she changed the child's name secured a false birth certificate and tendered a falsified birth certificate for the child to enroll him in school in Washington. (SR. 588).

Against the backdrop of these extensive, calculated, and heinous maneuvers to avoid deduction and subvert the trial court's orders and in turn deprive J.R.G of any relationship with MICHAEL, MICHELLE now asserts that she is blameless in relation to her willful severance from the ongoing litigation.

MICHELLE asks that this Court embrace her espoused selective obliviousness to the underlying case to justify the relief sought. However, a litigant has the obligation to follow the progress of his case and the inadvertent failure to do so is not a ground for relief. ***Genesis & Sons, Ltd. v. Theodosopoulos***, 223 Ill. App. 3d 276, 280, 585 N.E.2d 188, 193 (2d Dist. 1991); ***JP Morgan Chase Bank v. Alfiscar***, 2018 Ill. App. (1st) 170411, ¶ 26. A litigant has a duty to follow the progress of his or her case, and a section 2-1401 petition will not relieve a litigant of the consequences. ***KNM Holdings, Inc. v. James***, 2016 IL App (1st) 143008, ¶ 22.

B. MICHAEL's Enforcement and Modification Petitions were continuations of the existing proceedings.

Moreover, post-decree petitions do not constitute "new actions," but are merely continuations of dissolution proceeding. ***In re Marriage of Kozloff***, 101 Ill.2d 526, 531, 463 N.E.2d 719, 721 (Ill.1984); *accord* ***Steger v. Eineke***, 2017 IL App (2d) 160692-U, ¶ 18. As a result, MICHELLE's argument relative to the applicability of Section 601.2 of the Illinois Marriage and Dissolution of Marriage Act, *750 I.L.C.S. Act 5, §601.2*, is misplaced. As noted in MICHELLE's brief, the Florida Parentage Judgment regarding these litigants was enrolled in Illinois on October

10. 2012. (C. 425). As a result, MICHAEL Petition for Modification did not constitute the commencement of new proceedings; rather a modification of the underlying parentage judgment pursuant to Section 610.5 of the Illinois Marriage and Dissolution of Marriage Act ("IMDMA"). *750 I.L.C.S. Act 5, §610.5.* Indeed, by its heading, Section 601.2 applies to the commencement of new cases, not this case where a Judgment had already been entered and the reunification process promulgated by the Court's April 20, 2015 remained unresolved given MICHELLE's flight from Illinois and ongoing acknowledged evasive actions to avoid detection by not only MICHAEL but the Court as well. Clearly, given the existing of the prior custody order, MICHAEL's modification proceedings were governed by Section 610 of the IMDMA insofar as MICHAEL specifically sought modification versus an initial parental rights and responsibilities determination.

C. Trial Court maintained jurisdiction over the parties and the subject matter of the proceedings.

MICHELLE maintains that the Court lacked both personal and subject matter jurisdiction when it entered the orders of February 1st and 29th. However, the cases cited by MICHELLE fail to support of her claim that those orders are void insofar as they are inapposite to the case at bar.

Initially, MICHELLE's reliance on ***In Re Marriage of Fox,*** 191 Ill. App. 3d 514, 548 N.E.2d 71 (4th Dist. 1989) is misplaced. The ***Fox*** court reasoned that the pending litigation for contempt with respect to visitation did not present to the trial court a "justiciable matter" sufficient for the trial court to make a child custody determination. Rather, the justiciable matter before the court was an alleged violation of the visitation provisions of the judgment of dissolution as opposed to child custody. ***Id.*** 193 Ill.App.3d at 521-522, The case at issue is clearly distinguishable; MICHAEL in fact filed a Petition seeking modification of the parties parenting plan in addition to the enforcement proceedings associated with MICHELLE's lack of cooperation with the reunification plan. In this case, MICHAEL rightfully invoked the Court's subject matter jurisdiction by filing his Petition for Modification of Parental Rights and Responsibilities. (C. 635-637).

Similarly, MICHELLE's dependence on ***Custody of Ayala***, 344 Ill.App.3d 574, 800 N.E.2d 524 (1st Dist. 2003) is unfitting. Like to Court in ***Fox***, the First District in ***Custody of Ayala*** reasoned that an award of shared custody of a minor to non-parental third parties was not properly before the court because no pleading in the case was directed at the relief granted. Id. 344 Ill.App.3d. at 588, 800 N.E.2d at 538. The ***Ayala*** Court further reasoned that an award of custody

to third parties in derogation of the custody rights of a natural parent is an unusual form of relief given the presumption that the right of a natural parent to custody of a child is superior to the claim of a third party. ***Id.*** In the instant case, there is no question that MICHAEL is J.R.G.'s natural parent and that the parties were frequently before the Court resultant from the failed reunification regiment emanating from the Court's April 20, 2015 order. MICHAEL's Petition for Modification, statutorily authorized by Section 610 of the IMDMA cleared authorized the trial court to transfer parental rights and responsibilities to MICHAEL given MICHELLE's dilatory conduct.

Correspondingly, ***In re Marriage Suriano and Lafeber***, 386 Ill. App. 3d 490, 902 N.E.2d 116 (1st. Dist. 2008) the only pleading pending before the court was respondent's fifth rule to show cause to hold petitioner in contempt for violating a parenting order. As in ***Fox,*** the justiciable matter before the court was an alleged violation of the provisions of the agreed order and not a child custody determination and, as a result, the court had no jurisdiction to sua sponte terminate the parties' joint parenting agreement. ***Id.*** 386 Ill.App.3d at 493, 902 N.E.2d at 119.

In the face of the foregoing substantial record supporting abundant notice to MICHELLE, MICHELLE persists in arguing that the February 1st and 29th orders are void for want of subject matter jurisdiction. Specifically, MICHELLE argues that MICHAEL never asked to relocate J.R.G as part of his Petition for Modification of Parental Rights and Responsibilities.

Subject matter jurisdiction refers to the court's power to hear and determine cases of the general class to which the proceeding in question belongs. ***In Re M.W.***, 232 Ill. 2d 408, 905 N.E.2d 757 (Ill. 2009). Illinois law is clear that not every error made by the trial court or every failure to strictly comply with the provisions of the applicable statute creating the justiciable matter is an act in excess of statutory authority that renders the court's judgment void. The Supreme Court in ***M.W.*** held that the state's failure to give notice of amended delinquency petition to minor's father, as required by Juvenile Court Act, did not deprive circuit court of subject matter jurisdiction to adjudicate the petition. ***Id.*** 232 Ill.2d at 422, 905 N.E.2d at 766. The ***M.W.*** court reasoned that the question of subject matter jurisdiction is a matter of the justiciability of the class of cases to which the instant case belongs independent of error or irregularity in the proceeding. Id. 232 Ill.2d at 422, 905 N.E.2d at 768.

Relatedly, an order for guardianship order was not void for failure of probate court to follow certain statutory requirements. ***In re Estate of Steinfeld***, 158 Ill.2d 1, 630 N.E.2d 801 (Ill. 1994). In ***Steinfeld***, the Supreme Court rejected a claim of voidness brought by a disabled adult's brother for

want of inclusion of a statutory required physician's report. In holding that the Court possessed subject matter jurisdiction and that the attacked order was not void, the Supreme Court reasoned that alleged procedural omissions were not conditions precedent to the court's acquisition of jurisdiction and do not divest the Court of subject matter jurisdiction. ***Id.*** 158 Ill.2d at 16, 630 N.E.2d at 808.

Contrary to MICHELLE's assertion, MICHAEL's Petition to Modify Parental Rights and Responsibilities was brought pursuant to both Sections 609 and 610 of the Illinois Marriage and Dissolution of Marriage Act. (C. 635). In his Petition, MICHAEL affirmatively claimed that he was able to provide a suitable home for the minor in his home in Coral Gables, Florida. (C. 636). Even if the Court were to ascribe any weight to MICHELLE's argument, it would not render any of the orders at issue void for, at best, any perceived exclusion was procedural and not jurisdictional in nature.

Accordingly, MICHELLE's claim that the Court lacked subject matter jurisdiction to modify the allocation of Parental Rights and Responsibilities in this cause is substantively incorrect. At any rate, any harmless error in the court below does rise to a claim for lack of subject matter jurisdiction.

MICHELLE further contends that the Court could not order the turnover of the child to MICHAEL on February 1, 2016 is affirmative belied by the common law record. In this regard, it is important to distinguish the terms of the turnover order in relation to the ultimate order modifying the parenting judgment and transferring parental decision making and parenting time to MICHAEL. The attributes of civil contempt are that (1) the contemnor is able to perform the action demanded by the court and (2) no further civil sanctions are imposed if the contemnor complies. ***In re Marriage of O'Malley ex rel. Godfrey***, 2016 IL App (1st) 151118, ¶ 27.

Here, the trial court adopted a measured and restrained approach to secure MICHELLE's compliance with the reunification plan. Indeed, the turnover order is explicitly without prejudice and does not constitute a modification of custody. (C. 638) The trial court was well within its discretion to order MICHELLE to turnover of J.R.G. to MICHAEL to purge her noncompliance resultant from the Mittimus for Contempt previously issued January 8, 2016 which remained outstanding as of the February 1, 2016 court date. The mittimus for contempt issued when MICHELLE was represented by counsel and related to the enforcement aspects of the case; specifically, MICHELLE's purge of her contemptuous conduct. (C. 632). Inasmuch as

MICHELLE had long since left the jurisdiction as of February 1, 2016, she nonetheless had not complied with the reunification requirements emanating from the April 20, 2015 court order. Clearly, turnover of the child exclusively to MICHAEL for possession only was warranted to effectuate enforcement of the Court's prior orders.

D. Modification of Parental Rights and Responsibilities was in the best interest of the minor child

In an attempt to articulate a meritorious defense necessary to satisfy the requirements of Section 2-1401, MICHELLE incredulously claims that there was no evidence to substantiate that the modification in parental responsibility relative to the Court's February 29, 2016 was in the best interests of the J.R.G..

The court has broad discretion in making a best interest determination and the reviewing court affords great deference to the trial court's determination in recognition of that court's far superior position for evaluating the parents, child, and all other evidence. ***In re Marriage of Dobey***, 258 Ill. App. 3d 874, 876 (4th Dist. 1994). In considering a child's best interests, it is axiomatic that a child is entitled to a healthy, close relationship with both parents. ***Id.*** Once the trial court has determined modification is required by clear and convincing evidence, the reviewing court will not disturb that decision unless it is contrary to the manifest weight of the evidence. ***In re Marriage of Oros***, 256 Ill. App. 3d 167, 168, 627 N.E.2d 1246, 1248 (4th Dist. 1994). There is a strong and compelling presumption in favor of the result reached by the trial court in a removal case. ***In re Marriage of Dorfman***, 2011 IL App (3d) 110099, ¶ 46.

MICHEAL's verified Petition alleged facts and circumstances which MICHELLE does not now deny; specifically, that MICHELLE fled the jurisdiction without leave of Court and was obsessed with her campaign to stop at nothing to deprive J.R.G of a relationship with MICHAEL. (C. 635). MICHAEL's Petition further alleged that MICHELLE had done untold psychological harm in telling J.R.G that someone other than MICHAEL was his Father. (C. 636). The Petition further flatly raised MICHELLE's questionable mental health consequently flowing from her unlawful flight from Illinois. (C. 636). Critically, the Guardian Ad Litem affirmed both as of February of 2016 and at hearing on MICHELLE's Amended Motion to Vacate that the award of parental rights and responsibilities to MICHAEL was in J.R.G's best interests. (SR. 682). The GAL's unequivocal and unrebutted support of the both the turnover order and the modification of

parental responsibility as alleged in MICHAEL's Petition manifestly contradict MICHELLE's claim of error in this regard. In end, MICHELLE's ignorance toward the altered circumstances she created by her unlawful flight from Illinois prompting MICHAEL's subsequent pursuit of relief cannot be sanctioned by this Court.

E. MICHELLE failed to exercise any diligence in defending or redressing MICHAEL's Petitions for Enforcement and Modification

Illinois law is clear that a Section 2-1401 Petitioner must show diligence in presenting the defense or claim in the original action as well as due diligence in filing the section 2-1401 petition. ***Warren County Soil & Water Conservation District v. Walters***, 2015 IL 117783, ¶ 37.

In order to prevail on the diligence component associated with the original action, the petitioner must show that the entry of the final judgment or order was not known to the petitioner **and** could not have been discovered through the exercise of reasonable diligence. ***Juszczyk v. Flores***, 334 Ill. App. 3d 122, 128 (1st Dist. 2002). (*Emphasis Added*). Clearly, Section 2-1401 is not intended to relieve a litigant of the consequences of his own mistake or negligence. ***Smith v. Airoom, Inc.***, 114 Ill. 2d 209 (Ill. 1986). Overall, the purpose of a section 2-1401 petition is to bring facts to the attention of the circuit court which, if known at the time of judgment, would have precluded its entry. ***Paul v. Gerald Adelman & Associates, Ltd.,*** 223 Ill. 2d 85, 94 (Ill. 2006).

The record is simply devoid of any act of diligence on MICHELLE's part from the entry of the order of February 29, 2016 until MICHELLE filed her initial pleading to vacate the subject orders only after J.R.G. had been located and turned over to MICHAEL by law enforcement in early 2017. MICHELLE reiterates her claim of lack of notice in her brief but does not even attempt to argue that would have been unable to become aware of the ongoing litigation in the circuit court after she fled with the exercise of the most minimal diligence. Indeed, MICHELLE's reasons for failing to participate in the litigation since November of 2016 are obvious and overt; she actively hid the child to intentionally avoid this Court and the advent of orders establishing a relationship between MICHAEL and the minor child. The hearing on MICHELLE's Petition to Vacate served to ratify the propriety of the modification of parental rights and responsibilities in favor of MICHAEL. The most minimal exercise of reasonable diligence on MICHELLE's part would have unequivocally made known to MICHELLE the legal circumstances of J.R.G. in relation to MICHAEL. There is nothing in the record to date that the Court did not know at the time it modified the parental rights and responsibilities that warrants alterations to those orders.

With regard to MICHELLE's purported diligence in filing the 2-1401 Petition, the record is clear that she did nothing after she fled to address the merits of the litigation. As previously stated, MICHELLE only sought relief in the Illinois courts when she filed a Motion to Vacate the Body Attachment and Custody/Parental Allocation order on February 9, 2016; almost a year subsequent to the entry of the subject orders when J.R.G. was discovered in Washington and turned over to MICHAEL. (C. 655-658). Clearly, had MICHELLE not been discovered by law enforcement in Washington, she would have never filed any petitions in this Court.

With regard to MICHELLE's diligence claim ostensibly attributable to the actions of her prior counsel, MICHAEL maintains that those arguments were not plead nor argued in the court below and thus waived and he relies on precedent cited earlier in this brief in support of his position. MICHAEL moreover points to previously cited precedent *supra* detailing the proposition that MICHELLE was individually responsible for minimally monitoring her case independent of counsel in rebuttal to her claim that counsel, rather than MICHELLE, is to blame for her lack of participation in the proceedings.

Moreover, MICHAEL emphasizes that Section 2-1401 is the modern substitute for relief for common law writs and equitable remedies such as *corum nobis* and a 2-1401 Petition may be invoke the equitable powers of the court, when the exercise of such power is necessary to prevent injustice ***Warran County Soil v. Walters***, 2015 IL 117783, ¶32. Accepting the premise that a Section 2-1401 may warrant consideration of equitable factors, it logically follows that the Court must scrutinize MICHELLE's claims in the context of her intentional and calculated evasion of this Court and its agents in passing judgment on her motion to vacate. In this regard, equitable considerations undoubtedly disfavor MICHELLE's Petition considering the doctrine of unclean hands. The doctrine of unclean hands applies if a party seeking equitable relief is guilty of misconduct, fraud, or bad faith toward the party against whom relief is sought and if that misconduct is connected with the transaction at issue in the litigation. ***Zahl v.Krupa***, 365 Ill.App.3d. 653, 850 N.E.2d 304 (2d. Dist. 2006.).

In the instant case, the Judgments collaterally attacked by MICHELLE are the byproduct of her fraud and abusive concealment of the child by initially failing to cooperate with the Court and Dr. Goldstein and thereafter concealing J.R.G. from the Court and it agents. To grant MICHELLE the relief sought would reward her for absconding to Washington and advance her criminal campaign to deprive MICHAEL and the minor child of a relationship with one another.

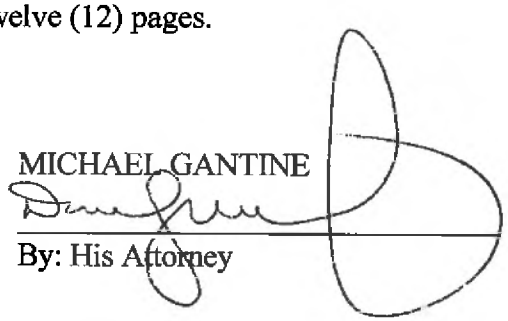
MICHELLE's capricious claim that the order awarding parental rights and parenting time to MICHAEL was tragic to the child. In this regard, she perpetuates her ongoing delusion that her detailed criminal evasion of the trial court and the concomitant detriment of this child's having any relationship with his Father is any less tragic.

CONCLUSION

For the reasons herein advanced, Appellee MICHAEL GANTINE requests that the Court affirm the rulings of the trial court.

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is twelve (12) pages.



MICHAEL GANTINE

By: His Attorney