

**APPEAL TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT
FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - DOMESTIC RELATIONS DIVISION**

Rebecca Reyes,)	
)	
Petitioner-Appellee)	
)	
vs.)	No. 08 D 4072
)	Consolidated With
Joseph Reyes,)	08 D 4080
)	
Respondent-Appellant)	Hon. Edward R. Jordan
)	

**PETITION APPEALING ENTRY
OF TEMPORARY RESTRAINING ORDER**

Now comes the Respondent-Appellant, Joseph Reyes, and pursuant to Illinois Supreme Court Rule 307(a) and 307(d), Petitions this Court to reverse and dissolve the Temporary Restraining Order entered by the Honorable Edward R. Jordan in the above entitled cause on December 11, 2009. In support of this Petition the Respondent-Appellant states as follows:

I. Relief Requested:

Respondent-Appellant Joseph Reyes, (hereinafter "Joseph"), requests that this Court enter and order either dissolving the Temporary Restraining Order entered on December 11, 2009. In the alternative Joseph requests that this Court dissolve the Temporary Restraining Order and remand this matter this matter for an evidentiary hearing with directions to the trial court to apply the standards set forth in *In Re The Marriage Of David Minix and Wendy Minix*, 344 Ill.App.3d 801 (2003).

II. Grounds For The Relief Requested:

A. The Motion For TRO And The Order Of December 11, 2009:

On December 4, 2009, Petitioner-Appellee Rebecca Reyes (hereinafter "Rebecca"), filed her Motion For Temporary Restraining Order And Preliminary Injunction. (R C5-12) She served

notice of the presentation of this motion on Joseph's attorney by regular mail on the same day. (R. C13) The motion was set for its first presentation to the trial court on December 11, 2009. (R. C13) On December 11, 2009, Rebecca's Motion For Temporary Restraining Order And Preliminary Injunction was presented to the trial court for the first time in open court. Joseph, his lawyer, Rebecca's lawyer, and the GAL for the minor child Ela Reyes were the present before the trial court at that time. Rebecca did not appear. The parties are married but are in the process of getting divorce in this case. The parties have one minor child Ela who is three (3) years old. (R. C5) Rebecca has temporary custody of Ela, and Joseph has regularly scheduled visitation. (R. C5-8)

Rebecca's Motion For Temporary Restraining Order And Preliminary Injunction prayed that the court enjoin Joseph from "taking the minor child to church or to take any other actions counter to her Jewish religious education and upbringing during the pendency of this cause". (R. C8) In support of this motion Rebecca alleged that Rebecca is Jewish, and that Joseph converted from Catholicism to Judaism shortly before the parties marriage. (R. C5-8) She further alleges that the parties agreed that they would raise the child in the Jewish faith, and that during their marriage they celebrated Jewish religions holidays and some Jewish customs in their home.¹ She goes on to allege that the parties three (3) year old daughter has been enrolled in a pre-school program at Temple Shalom in Chicago and that after the filing of the instant divorce case in April of 2008, and the parties separation shortly thereafter, she has continued to raise the child in the Jewish faith. (R. C5-8)

Rebecca next goes on to allege that at some point in the past few weeks, without any notice to her, Joseph, who has returned to his Catholic faith after the filing of the divorce case by Rebecca, took his three (3) year old daughter Ela to church with him and his family, and engaged in a

¹ From Rebecca's description it appears that they practiced the Reformed version of Judaism as there is no allegation that they observed the Sabbath, kept a Kosher home, or practiced other rituals of the Conservative or Orthodox branches of Judaism.

Baptism ceremony with his daughter. (R. C5-8) No allegation was made that the minor child was harmed during this ceremony or that she even understood the concept of what a baptism is, nor is it alleged that the baptism was some sort of forced conversion of the child from Judaism to Catholicism.(R. C5-8) Finally, it is not alleged that Joseph is in any way attempting to prevent his daughter from being raised in the Jewish faith, or that he considers his daughter to be a member of any religious faith other than Judaism.

Rebecca's finally alleges in her motion that if Joseph continued to take his child to Church and engage in the ceremonies of the Catholic faith with his daughter, this would cause irreparable injury to his daughter, that engaging in the Baptism ceremony with Ela was inappropriate. (R. C5-8) She finally alleges that if Joseph is allowed to continue to take his child to Church and engage in the ceremonies of the Catholic faith with his daughter that the three (3) year old child will suffer emotional distress and that the child will be confused to her emotional detriment. (R. C5-8)

Rebecca's Motion For Temporary Restraining Order And Preliminary Injunction is supported by her affidavit (R C11-12) which states inter alia:

- She learned on November 26, 2009 that Joseph had Ela Baptized in a Church when Joseph sent her an e-mail and photographs.
- That Joseph, Ela and herself are Jewish.
- That she is upset that Joseph would have Ela Baptized in a Church without notifying her because such actions are counter to Ela's religious education and upbringing.
- It is not in Ela's best interest to be Baptized
- That if Joseph is not restrained he will continue to take Ela to Church and take other actions counter to Ela's Jewish education and upbringing.

The affidavit does **not** allege any **facts** showing that (a) the three (3) year old child Ela was harmed in the Baptism, (b) that either the Baptism or taking the child to Church in any way interferes with the child's continued Jewish education and practice, (c) that the Baptism converted

Ela to a faith other than Judaism or that Joseph considers the child to be any faith other than Jewish, or (d) that the three (3) year old child even understood the significance of what was happening at the Baptism or that she evens understands that there are different religious faiths and practices.

On December 11, 2009, at the **first presentation** of Rebecca's Motion For Temporary Restraining Order And Preliminary Injunction to the Court, **and without any evidence or testimony being taken**, the trial court entered the following order (R. C4):

"This cause coming to be heard on the Petitioner's Petition for Temporary Restraining Order and Preliminary Injunction, counsel for both parties and the child's rep being present and Respondent present, the court reviewing the verified Petition and hearing the arguments of counsel **but hearing no live testimony**,
IT IS HEREBY ORDERED:

1. That based upon the Petitioner's verified Petition a status quo preliminary injunction is issued enjoining and restraining JOSEPH REYES, his agents, servants and employees, **from exposing ELA REYES to any other religion other than the Jewish religion** during his visitation and said preliminary injunction shall remain in full force and effect during the pendency of these proceedings.
2. That Petitioners Petition shall be heard at trial which is scheduled to commence January 12, 2010.

Entered: December 11, 2009
Judge Edward R. Jordan" (emphasis added)

The Court can take judicial notice that the Christmas holiday is approaching in ten (10) days. Also under the current visitation schedule Joseph has visitation with his daughter Ela on Christmas Eve. Under the Order of December 11, 2009, Joseph cannot take his daughter to see Santa Clause, to see a Christmas Tree being lit, or even give his daughter a Christmas present. He cannot take his daughter to Church on Christmas Eve, attend Mass with his daughter present, or even take Ela to his family's house for Christmas dinner.

B: The December 11, 2009 Order Is A Temporary Restraining Order:

Even though the Order of December 11, 2009 contains some reference to it being a "preliminary status quo order" or "preliminary injunction", it is clearly a Temporary Restraining. The order was entered on its first presentation to the Court, five (5) days after it was mailed to the

Attorney for Joseph. It was entered based solely on the contents of the motion, and no evidence or testimony was taken in support of the motion. (R. C4) It is an order which states on its face that its purpose is to preserve the status quo, ("status quo preliminary injunction"), pending a hearing on the motion. An order whose purpose is to preserve the status quo pending a hearing is a TRO.

"The purpose of a TRO is to allow the trial court to preserve the status quo until it can hold a hearing to determine whether it should grant a preliminary injunction." ***Hirschauer v. Chicago Sun-Times*, 192 Ill. App. 3d 193, 199 (Ill. App. Ct. 1st Dist. 1989)**

The fact that no evidence or testimony was taken in the proceedings leading up to the entry of the Order is further proof that the Order is not a preliminary injunction. A preliminary injunction requires an evidentiary hearing. ***Paddington Corp. v. Foremost Sales, Promotions, Inc.*, 13 Ill. App. 3d 170, 173 (Ill. App. Ct. 1st Dist. 1973)**

C. The Trial Court Totally Disregarded The Case Of *In re Marriage of Minix*, 344 Ill. App. 3d 801, 809 (2003), Which Defines The Right To Religious Practices Of Non-Custodial Parents With Their Minor Children:

The issue of what rights a non-custodial parent has to practice his or her religion, and engage in religious ceremonies with his or her child, during visitation with the minor child, has been addressed and defined by the appellate court.

"Consistent with our decision in Tiskos/Stewart and other relevant authority, we hold that section 608 of the Dissolution Act permits the custodial parent to control the child's religious upbringing absent proof that involvement in any other religion is not harmful to the child. Trial courts have the authority to set forth accommodations during lawful visitation periods with a showing that such accommodations are necessary to eliminate or prevent any harm to the child and are in the child's best interest. **Absent proof of harm or that attendance at religious services with the noncustodial parent somehow interferes with the custodial parent's selection of the child's religion, the noncustodial parent is entitled to his or her visitation period without interference from the custodial parent** despite the authority granted to the custodian in section 608 of the Dissolution Act." ***In re Marriage of Minix*, 344 Ill. App. 3d 801, 809 (2003)**" (emphasis added)

Clearly, the only reason that an Illinois court can enter an order interfering with a non-custodial parents religious practices during that parents visitation periods is if (1) the religious

practice harms the child, or (2) if the religious practice interferes with the custodial parents selection of the child's religion. No fact which shows that either of these factors exists has been established in Rebecca's Motion. In fact Rebecca's motion is more about her being upset, then it is about anything else. No fact are alleged in either the Motion or the attached Affidavit which show that the three (3) year old Ela was harmed, confused, or distressed or in any way effected by having a priest put water on her head and saying a few prayers, or by attending Church with her Joseph on any other occasion. Nothing indicates that Ela was not delighted by her fathers and his family joy at the occasion, or that she does not love sitting next to Joseph while he attends Church on Sunday. Further, nothing in the Motion or attached Affidavit indicates that Ela even comprehended what was going on, or that Joseph intended this to be anything more than sharing a joyful experience with his daughter. Absolutely nothing in the Motion or Affidavit shows that Joseph intended the ceremony, or the Church attendance, to in anyway convert Ela or interfere with her being Jewish or receiving a Jewish upbringing or education.

"Allegations of mere opinion, conclusion, or belief are not sufficient to show a need for injunctive relief. (Betts.) "[T]o establish a cause of action for injunctive relief plaintiffs must allege facts necessary to establish that their legal remedy is inadequate and that irreparable injury will result should injunctive relief not be granted. Consequently, allegations in a complaint that are conclusory in those respects are insufficient." (Larkin v. Howlett (1974), 19 Ill. App. 3d 343, 345, 311 N.E.2d 367.) **Allstate Amusement Co. of Ill., Inc. v. Pasinato, 96 Ill. App. 3d 306, 308 (Ill. App. Ct. 1st Dist. 1981)**

"A plaintiff in his request for temporary relief must raise fair question as to the existence of the right claimed, lead the court to believe that he will probably be entitled to the relief prayed for if the proof should sustain his allegations and make it appear advisable that the positions of the parties should stay as they are until the court has the opportunity to consider the case on the merits. (Toushin v. city of Chicago (1974), 23 Ill. App. 3d 797, 320 N.E.2d 202.) An applicant is not entitled to a temporary injunction as a matter of right; he must show (1) it is clear that he has a lawful right for which he seeks protection, (2) he will be irreparably harmed, and (3) his remedies at law are inadequate." **Kaplan v. Kaplan, 98 Ill. App. 3d 136, 141 (Ill. App. Ct. 1st Dist. 1981)**

Finally, to enter such an order, with such wide ranging restrictions of Joseph's freedom of religion, and an order which seems to establish a religion for the child, based solely on the untested conclusory affidavit of one party, is inappropriate. Especially for an area that impinges on rights of a constitutional magnitude. (First Amendment rights to religious freedom and against government establishment of religion)

'A TRO is a drastic, emergency remedy which may issue only in exceptional circumstances and for a brief duration.' ***Abdulhafedh v. Secretary of State*, 161 Ill. App. 3d 413, 416 (Ill. App. Ct. 2d Dist. 1987)**

WHEREFORE, the Appellant-Respondent Joseph Reyes prays that the Court enter an order dissolving the Temporary Restraining Order entered on December 11, 2009. In the alternative Joseph requests that this Court dissolve the Temporary Restraining Order and remand this matter this matter for an evidentiary hearing with directions to the trial court to apply the standards set forth in ***In Re The Marriage Of David Minix and Wendy Minix*, 344 Ill.App.3d 801 (2003)**.

Respectfully Submitted

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I, Joel A. Brodsky, the attorney, certify that on December 14, 2009, I served the attached Petition Appealing Entry Of Temporary Restraining Order by personal delivery to the persons to whom it is directed at the addresses indicated above.

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