No. 1-09-3403

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE THE MARRIAGE OF:	)	
	)	On Appeal from the Circuit Court of
REBECCA REYES,	)	Cook County, Illinois, County Department
	)	Domestic Relations Division
Petitioner/Appellee,	)	
	)	
and	)	No. 08 D 4072 consolidated with 08 D 4080
	)	
JOSEPH REYES,	)	The Honorable Edward Jordan
	)	Judge Presiding
Respondent/Appellant.	)	

RESPONSE IN OPPOSITION TO PETITION APPEALING ENTRY OF TEMPORARY RESTRAINING ORDER

Michael G. DiDomenico, Esq.
Lake Toback
33 N. Dearborn St., Suite 900
Chicago, IL 60602
Telephone No. (312) 726-7111
Facsimile No. (312) 726-2385

Attorneys for Petitioner-Appellee

TABLE OF CONTENTS

POINTS AND AUTHORITIES

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE THE MARRIAGE OF:	)	
	)	
REBECCA REYES,	)	
	)	
Petitioner/Appellee,	)	
	)	
and	)	Case No. 1-09-3403
	)	
JOSEPH REYES,	)	
	)	
Respondent/Appellant.	)	

RESPONSE IN OPPOSITION TO PETITION APPEALING ENTRY OF TEMPORARY RESTRAINING ORDER

NOW COMES the Petitioner-Appellee, REBECCA REYES ("Rebecca"), by and through her attorneys, **LAKE TOBACK**, and for her Response in Opposition to the Petition Appealing Entry of Temporary Restraining Order filed by the Respondent-Appellant, JOSEPH REYES ("Joseph"), respectfully states to this Honorable Court as follows:

ARGUMENT

I. The Trial Court's December 11, 2009 Order Is A Status Quo Injunction

As alleged in Rebecca's verified petition, the parties are Jewish. (SR7) Joseph made the decision to voluntarily convert to Judaism prior to the birth of the minor child and the parties made the decision to raise the child in the Jewish faith. They actively practiced Judaism themselves and with the child.

In the midst of an acrimonious divorce and with no prior notice to or consultation with Rebecca (who is the temporary sole custodian by order entered by the Circuit Court) (SR1), Joseph had the child baptized and began taking her to a Roman Catholic church. He then only informed Rebecca of the baptism in a *tongue-in-cheek* email responding to a request for family photographs. (SR11)

Joseph now cries foul when the trial court intervened to preserve the status quo with respect to the child's religious upbringing based upon the verified pleading filed by Rebecca. Joseph has also, along with his lawyer (Joel Brodsky), paraded the trial court's order to the local media, unnecessarily making a public spectacle out of this child's life, and demonstrating that Joseph does not have the best interests of the child at all in the front of his thinking.

A party seeking only to maintain the status quo is not required to establish that he or she is likely to succeed on the merits of his or her action. The party must only establish a "fair question" of whether his or her right deserves protection. Status quo is defined as the "last, peaceable uncontested status which preceded the litigation." In re Marriage of Joerger, 221 Ill.App.3d 400, 404, 407 (1991). Status quo injunctions may be granted even when the movant's ultimate success on the merits is in "serious doubt." In re Marriage of Petersen, 319 Ill.App.3d 325, 337 (2001). A preliminary injunction is granted before hearing of the case on the merits for purposes of preventing a threatened wrong or any further perpetration of injury in order to preserve the rights of the parties or the subject or object of the controversy in its then-existing condition. Opportunity Center of Southeastern Illinois, Inc. v. Bernardi, 145 Ill.App.3d 899, 903 (1986).

In this case, the "last, peaceable uncontested status" was that the child was being actively raised in the Jewish faith by **agreement of the parties**. Only that the parties are adverse to each other vis-à-vis this divorce proceeding, did Joseph make the unilateral decision to expose the child to a different religion which, as alleged by Rebecca, will cause the child emotional harm, confuse her and cause herself emotional distress. Rebecca is entitled to present evidence as to these claims at the evidentiary hearing set to commence on January 12, 2010, less than 30 days from now. (SR4) The trial court is vested with wide discretion to preserve the status quo pending the disposition of her petition, especially when the subject matter of the petition concerns the best interests of the child. See, In re O.H., L.M., B.M., B.L., 329 Ill.App.3d 254, 260 (2002) (Circuit Court has plenary power, independent of any authority given to it by the legislature, to act solely in the best interests of the child and for the child's own protection).

There is, at the very least, a "fair question" of 1) which party should be responsible for making decisions regarding the child's religious upbringing; and 2) what the terms of any visitation schedule will be and any accommodations to that schedule related to religion are in the child's best interests. See, In re Marriage of Tisckos, 161 Ill.App.3d 302 (1987) (affirming trial court's order requiring father to arrange for daughter's attendance at church services of faith in which she was being raised by mother during his visitation as an "accommodation"). All of these issues will be properly before the circuit court on January 12, 2010.

This Court should take serious note and consideration that the January 12, 2010 date is the trial date on the underlying complaint for dissolution of marriage, not merely a date for an evidentiary hearing on Rebecca's petition for injunctive relief. It is the trial to

determine all issues arising out of the dissolution of marriage proceeding. Joseph's appeal is contrary to the express policy of the Supreme Court, which discourages piecemeal litigation. See In re Marriage of Leopando, 96 Ill.2d 114 (1983). Custody of the child remains at issue in this case and thus, the issue of which party will ultimately be responsible for making decisions concerning the child's religious upbringing will be before the trial court at that time. See, 750 ILCS 5/608. The Circuit Court's order effectively "holds over" this issue for 30 days and recognizes the status quo until the entire case goes to trial. Granting the relief sought by Joseph would have the deleterious effect of piecemealing a matter that is set to be tried on all issues in less than 30 days. Same would further be contrary to the child's best interests and the order is not an abuse of the circuit court's discretion under the circumstances.

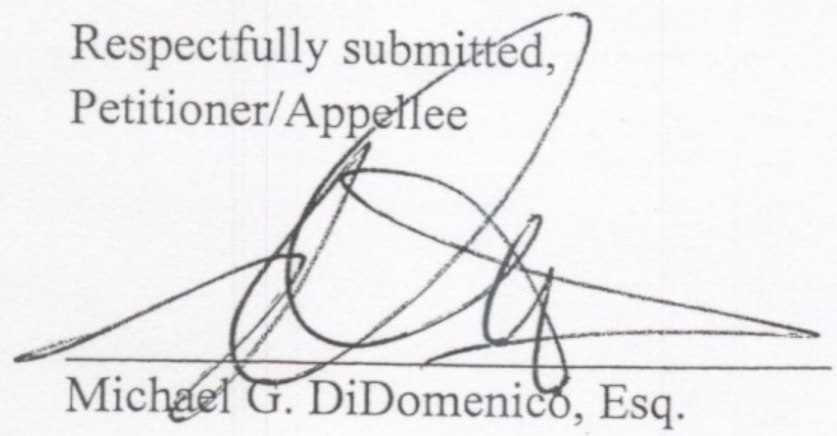
II. The Minix Case Is Inapplicable As It Relates To the December 11, 2009 Order

Joseph relies solely on In re Marriage of Minix, 344 Ill.App.3d 801 (2003) in urging this court to dissolve the circuit court's December 11, 2009, order. The Minix court affirmed a denial of a divorced mother's request to prohibit the father from taking the child to church during his visitation. The court affirmed the trial court because "neither evidence of doctrinal differences nor any harm to the child was presented." Id. at 809. In other words, after an evidentiary hearing it was determined the mother did not present sufficient evidence to obtain the relief she requested. In this case, there has been no evidentiary hearing or an opportunity for either party to present evidence as to their competing positions on this issue. That hearing will occur on January 12, 2010, as the trial court noted in the December 11, 2009, order. (SR6) By this appeal, Joseph is attempting to try the case in this Court and without an evidentiary hearing.

CONCLUSION

Based upon the foregoing argument and citations presented, Joseph's appeal should be dismissed and his requested relief should be denied by this Court.

Respectfully submitted,
Petitioner/Appellee

By: 
Michael G. DiDomenico, Esq.

LAKE TOBACK
Attorneys for Rebecca Reyes
33 North Dearborn, Suite 900
Chicago, Illinois 60602
Telephone No. (312) 726-7111
Facsimile No. (312) 726-2385