

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Aliyah Monroe,

Petitioner,

vs.

Timothy McDowell,

Respondent,

On Petition for an Extraordinary Writ of Mandamus to the
United States Supreme Court

APPENDIX TO PETITION FOR EXTRAORDINARY
WRIT OF MANDAMUS

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted May 10, 2024*

Decided May 10, 2024

BeforeFRANK H. EASTERBROOK, *Circuit Judge*AMY J. ST. EVE, *Circuit Judge*JOHN Z. LEE, *Circuit Judge*

No. 23-3040

ALIYAH MONROE,
*Plaintiff-Appellant,**v.*TIMOTHY McDOWELL,
*Defendant-Appellee.*Appeal from the United States District
Court for the Southern District of
Illinois.

No. 3:23-cv-02854-SPM

Stephen P. McGlynn,
*Judge.***ORDER**

* The appellee was not served with process and is not participating in this appeal. We have agreed to decide the case without oral argument because the appellant's brief and the record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. See FED. R. APP. P. 34(a)(2)(C).

A state court issued a child-custody decision that required Aliyah Monroe to split custody with the child's father. Monroe sued the father, invoking federal diversity jurisdiction, 28 U.S.C. § 1332, and asked a federal district court to "vacate" the custody decision. The court dismissed the case based on two limits to federal jurisdiction. The first is the *Rooker-Feldman* doctrine, which bars federal district courts from hearing cases brought by state-court losers who complain of injuries caused by state-court judgments and seek review and rejection of those judgments. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 283–84 (2005) (citing *Rooker v. Fid. Tr. Co.*, 263 U.S. 413 (1923); *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462 (1983)). The second is the domestic-relations exception to federal diversity jurisdiction, which bars federal courts from adjudicating "divorce, alimony, and child custody" matters. *Ankenbrandt v. Richards*, 504 U.S. 689, 703 (1992). Both rationales provide an independent basis for dismissal, and we affirm.

Monroe alleges the following, which we take as true for purposes of this appeal. *See Sherwood v. Marchiori*, 76 F.4th 688, 693 (7th Cir. 2023). In 2018, Monroe and Timothy McDowell had a child together in Illinois. Later, Monroe moved to Florida, and McDowell moved to Missouri. After they had each left the state, an Illinois court awarded split custody: It required that the parents exchange the child in Tennessee (initially, every two weeks, but now every four weeks). The state court warned Monroe that if she was found in contempt of the order, it would assign primary custody to McDowell.

On appeal, Monroe argues that the district court had jurisdiction to overturn the state court's child-custody decision because, in her view, the state court lacked jurisdiction over non-state residents. *See* 750 ILCS 36/202. But asking a federal district court to redress a state court's judgment—even one that is allegedly unauthorized under state law—falls squarely within *Rooker-Feldman*'s prohibition. *See Exxon Mobil Corp.*, 544 U.S. at 284; *Mains v. Citibank, N.A.*, 852 F.3d 669, 676 (7th Cir. 2017).

The domestic-relations exception to federal diversity jurisdiction, which Monroe does not address on appeal, provides another basis for us to affirm. State courts have "special proficiency" in handling child-custody decisions, *Marshall v. Marshall*, 547 U.S. 293, 308 (2006) (quoting *Ankenbrandt*, 504 U.S. at 704), and Monroe's challenge to the custody decision is blocked by the statutory-based exception to federal diversity jurisdiction for custody disputes. *See Arnold v. Villareal*, 853 F.3d 384, 387 n.2 (7th Cir. 2017) (citing *Friedlander v. Friedlander*, 149 F.3d 739, 740–41 (7th Cir. 1998)).

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen
United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604



Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

FINAL JUDGMENT

May 10, 2024

Before

FRANK H. EASTERBROOK, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

| | |
|-------------|--|
| No. 23-3040 | ALIYAH MONROE, Plaintiff - Appellant v. TIMOTHY McDowell, Defendant - Appellee |
|-------------|--|

Originating Case Information:

District Court No: 3:23-cv-02854-SPM
Southern District of Illinois
District Judge Stephen P. McGlynn

The judgment of the District Court is AFFIRMED, in accordance with the decision of this court entered on this date.

Clerk of Court

Appendix E

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

ALIYAH MONROE,

Plaintiff,

v.

Case No. 23-CV-02854-SPM

TIMOTHY McDOWELL,

Defendant.

JUDGMENT IN A CIVIL ACTION

DECISION BY THE COURT.

IT IS ORDERED AND ADJUDGED that pursuant to the Court's Order of September 25, 2023 (Doc. 10), this action is **DISMISSED** without prejudice.

DATED: September 25, 2023

**MONICA A. STUMP,
Clerk of Court**

**By: s/ Jackie Muckensturm
Deputy Clerk**

**APPROVED: s/ Stephen P. McGlynn
STEPHEN P. McGLYNN
U.S. District Judge**

IN THE CIRCUIT COURT
FOR THE TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

In Re The Matter of)
)
TIMOTHY McDOWELL)
)
Petitioner,)
)
vs.)
)
ALIYAH MONROE)
)
Respondent.)

No.: 20-F-89

FILED
ST. CLAIR COUNTY

FEB 25 2022

4

Maria L. Zim
CIRCUIT CLERK

**JUDGMENT OF ALLOCATION OF PARENTAL
RESPONSIBILITIES INCORPORATING PARENTING PLAN**

This cause coming before the Court after a hearing of the parties; Petitioner, Timothy McDowell (Herein after referred to as Father) appears with and by counsel, Gary A. Mack of the LAW OFFICES OF GARY A. MACK P.C., Respondent, Aliyah Monroe (herein after referred to as Mother) appears by the Law Firm of Sandifer & Associates parties after a hearing and the Court being fully advised in the premises, FINDS AND ORDERS AS FOLLOWS:

1. The Court on or about December 01, 2020, entered a Joint Parenting Plan which set for the Parenting Time and Joint Parenting Responsibilities.
2. Subsequently the Respondent file a Petition for Leave for Relocation to the state of New Mexico.
3. The Petitioner subsequently filed a Petition to Modify Parenting Time.
4. The Court held a multi-day hearing in which the parties were able to present testimony and documentary evidence.
5. After a hearing the Court and considering the witness testimony and documentary evidence the Court rules as follows:

IT IS THEREFORE ADJUDGED DECREED AND ORDERED AS FOLLOWS:

A. **ALLOCATION OF PARENTAL RESPONSIBILITIES:** The Mother and Father are hereby stilled awarded joint parental responsibilities concerning the issues of education, health/medical issues, day-care providers, religious decisions, and extracurricular

activities for the minor child as previously stated in the Court's order dated December 01, 2020.

B. **PARENTING TIME:**

ORDINARY PARENTING TIME SCHEUDLE: The Court modifies the parenting time in the December 01, 2020, Court Order as follows unless otherwise agreed, the parenting time schedule will be as follows:

1. Each party shall have parenting time with the minor child in two (2) uninterrupted weeks and continuing uninterrupted until December 11, 2020.

After December 11, 2020, the parties shall rotate parenting time on an uninterrupted 4-weeks with the Father having his first of uninterrupted 4-weeks of parenting time starting on December 11, 2021. The parties shall use this parenting time schedule of uninterrupted one 4-weeks rotation until one of the following events occur:

- a. When the minor child starts PRE-K, the Father then shall have the majority of parenting time with the minor child. The Father shall have parenting time of the minor child during the school year which is from one week from the start of school of each year until May 31st of each year.
 - i. If the minor child does NOT start school until August (of 2023) the parties shall continue to rotate on an uninterrupted 4-week basis.
 - ii. If the minor child DOES begin school (Jan of 2023) Mother shall be allowed to exercise ordinary weekend parenting time once a month (over any long weekend meaning the minor child is off on a day or days preceding the weekend or following the weekend) in accordance with the school schedule. If no long weekend exists for a given month, Mother will exercise parenting time the second weekend of the month. Father is to give Mother a school schedule at the beginning of the school year.
 - iii. If the minor child DOES begin school (Jan of 2023) Mother shall also have summertime months of JUNE and JULY. (See also paragraph 2).
- b. If the Mother is found to be in contempt of court for her refusal to follow the new parenting time of an uninterrupted 4-week rotation the Father shall then be awarded the majority of parenting time with the minor child as set forth in the above paragraph(a).
- c. If the Mother relocates with in fifty(50) miles of the Father's place of residence the parties then shall use the uninterrupted 4-week rotation as the parenting time.

2. HOLIDAYS:

The parties will always have the following parenting time for the holidays and will use the specific holiday schedule set forth below and it shall have priority over any

regularly scheduled weekly/weekend time, if the holidays mentioned are holidays. Parenting time for holiday parenting time shall start at 4:00 pm the day before the listed holiday and end the following Monday of the Holiday at 4:00pm.

- a. During **ODD** -numbered years: The Mother shall have following holidays: Thanksgiving Break, the 2nd half of Christmas Break (the Saturday following Christmas Day until the Saturday before school resumes) Last Day of Christmas Break -whichever is last-in accordance with school calendar).
- b. During **EVEN** numbered years the Mother would have the following holidays: Spring Break, the 1st half of Christmas Break (the Saturday after school breaks for Christmas until the Saturday following Christmas Day).
- c. The Father shall have parenting time every Father 's Day and his birthday.
- d. The Mother shall have every **EVEN** year the child's birthday.
- e. The **Mother** shall have Mother's Day and her birthday **every year**.
- f. Since the Father had parenting time in Christmas of 2021, the parties exchange will be modified in May of 2022 in that Dad shall have minor child from May 14, 2022 to June 4, 2022. The parties will then exchange the minor child every four weeks on a Saturday of each month. The parties shall use this parenting time schedule of uninterrupted 4 WEEKS (so that exchanges will continue to occur on Saturdays) until one of the triggering events detailed in section B.1 occurs. The parties shall use this pattern:
 1. June -MOTHER
 2. July- FATHER
 3. August- MOTHER
 4. September- FATHER
 5. October-MOTHER
 6. November- FATHER
 7. December- MOTHER (though January 7, 2023)

*Beginning January, 2023 the parents shall use the above Holiday time schedule indicated in section 2 if and/or when the minor child has started school.

g. That notwithstanding anything stated above, the birthdays of both the Mother and Father, Mother's Day, Father's Day, and the ordinary holiday parenting time shall take priority over ordinary parenting time schedule.

3. Summer Parenting Time: Mother is awarded exclusive parenting time in the summer for the months of JUNE and JULY.
4. The Father shall have all other parenting time with minor child.

C. **MODIFICATION OF PARENTING TIME OR ALLOCATION OF PARENTAL RESPONSIBILITIES AND DISPUTE RESOLUTION**

If either parent wishes to change the significant decision-making responsibilities or parenting time set forth in Section A of this order, parents are Ordered to attempt to make such changes through mutual discussion. They shall do the same in the event that the parents cannot agree as to a vital decision affecting the welfare of the child. Should mutual discussion not be effective, or should the parties reach impasse, the Circuit Court of St. Clair County shall retain continuing jurisdiction to adjudicate any disputed issue. The parents will be ordered, additionally, to submit any such disputed issue for resolution by an impartial mediator, mutually agreed upon, before applying to the Court for relief. In the event the parties cannot agree as to the mediator or if the mediation is unsuccessful; a Court proceeding may be filed by either party. The parents are Ordered to share equally the costs of the mediator. If the mediation is unsuccessful, the costs of the mediator may be included in a Petition for fees and costs in connection with an enforcement or mediation proceeding.

The parties are informed that if any conflicts arise between the parties as to any of the provisions of this Joint Parenting Order and agreement or the implementation thereof, that the complaining parent shall first notify the other parent of the nature of the complaint and both parents shall make reasonable attempts to negotiate a settlement of the conflict. Whenever practicable under the circumstances, said complaint shall be made in written form and given to or mailed to the other parent. The party receiving said complaint shall when practicable reply to the said complaint in a similar manner in written form. If the parties are unable to resolve their conflict within a reasonable period of time, the parties must submit any such disputed issue or conflict for resolution to any impartial mediator, mutually agreed upon, before applying to the court for relief as to all matters which do not involve serious endangerment of the child's physical, mental, moral or emotional health. This is not to construe upon the mediator judicial functions or give him jurisdiction for matters such as collection of child support or enforcement of judicial decisions, but merely an attempt to mediate matters dealing with the effectuation of the joint assigned parental responsibilities' arrangements of the parties. In the event the parties cannot agree on the mediator, or if the mediation is unsuccessful, or if any immediate and serious endangerment is alleged, a court proceeding may be filed by either party. If the parties choose an impartial mediator, then the parties *may be ordered* to share equally the cost of the mediator. If the mediation is unsuccessful, the cost of the mediator may be included in the petition for fees and costs in connection with the court proceeding.

D. **COMMUNICATION:**

- A. 1. Communication between the parents regarding the care and well-being of the minor child shall take place via telephone, Video conferencing, text and/or email.
2. When the child is in the care of the Mother or Father, each parent shall be able to communicate with child via the above method. Video Conferencing shall be used for communication at shall be at least one (1) time per week a video call shall be made

(as agreed to by the parties) but in no event no later than 7:00pm. Each video call shall be at least twenty (20) minutes in length.

E. SUPPLY AND RETURN OF PERSONAL ITEMS

The parents shall each have sufficient clothing and personal items for the child at his/her residence and the parties shall not be required to supply one another with same at the transfer of the child. The parents shall ensure that any clothing or personal items sent with the child is returned to the other parent at the conclusion of his/her parenting time.

CURRENT INFORMATION

MOTHER'S INFORMATION

Residential address: 1624 Jonquil Park Dr. Clovis, NM

Home phone number: 1-530-790-5422

Name of employer: United States Air Force

E-Mail Address: Monroealiyah11@yahoo.com

Employer phone number:

FATHER'S INFORMATION

Residential address: 8752 Santa Bella Drive Unit G Hazelwood, Missouri

Home phone number: 618-560-3522

Cell phone number: 618-560-3522

E-mail address: Son2god91@icloud.com

Name of employer: Church In Action

Employer address: P.O. Box 425 Arnold, Mo.

Employer phone number:

F. CHANGE OF ADDRESS

If a parent has a change of address, that parent shall give the other parent at least 60 days prior written notice. If it is not possible to give 60 days prior notice, then the parent moving shall notify the other parent as soon as possible with the intended date of change and the new address.

G. ACCESS TO RECORDS OF CHILD:

- a. Each parent shall have a right of access to child's medical, dental, and psychological records (subject to the Mental Health and Developmental Disabilities Confidentiality Act"), children's care records, school and extracurricular records, reports, and schedules, etc.

- b. Both parents shall actively participate in the child's raising and guiding and to that end shall share all information in connection with medical, dental, and psychological needs as well as the education and progress in school. Medical and school records shall be made available to both parents and each of them shall be notified of consultation and incited to confer with teachers, counselors or medical professionals concerning the children's education, psychological needs, and health care. Both parents shall sign the necessary school forms for the release of school information to the other.
- c. The parents are ordered/encouraged (to) in matters of major concern, including, but not limited to, education, religious training, extraordinary medical care, and extra-curricular activities, they will consult with each other and will make every effort to reach vital decisions jointly. Each parent shall apprise the other of the necessity of making such vital decisions. In case of emergency, where time does not allow consultation with the other parent, the party with physical possession of the child shall take whatever emergency action is necessary to meet his or her health care or other needs. As soon as possible thereafter, the parent making such an emergency decision will advise the other parent of the same.
- d. Parents shall notify each other as soon as possible in cases of emergencies, health care, or other significant child-related issues.
- e. Parents shall notify each other as soon as possible to cases of emergencies, healthcare, or other significant child-related issues. Both parents shall inform each other of any medical or health problems which arose while they had physical possession of the children when the information of said medical or health problem would aid the other parent in the care and treatment of the children. Both parents shall provide each other with any medications which the children are taking at the time of the transfer and with sufficient information to allow the parent assuming possession to obtain refills of that medication.
- f. Both parents shall, when requested, provide information to the other parent regarding the names, addresses, telephone numbers and other necessary facts concerning the providers of any medical or health care of the children.

H. TRANSPORTATION: The parties shall exchange the minor child at McDonalds located at 812 West College Street Pulaski, Tennessee at the beginning and the end of parenting time as stated in the above parenting time schedule until December 11, 2021. After December 11, 2021 the parties shall exchange the minor child at the McDonalds located at 702 North Main Street Bristow, Oklahoma.

I. Designation of Custodian: For purposes of all State and Federal statutes that require a designation or determination of "custody" or custodian the Father is designated as the custodian.

This designation shall not affect and of either parent's rights or responsibilities under this Court Order.

J. Residential Address for School Purposes; The Father's address shall be designated as the child's residential address for school enrollment.

K. **SCHOOL:**

The parties shall take the necessary action with the school authorities of the schools in which the child is to be enrolled to:

- a) List both parties as a parent of the child.
- b) Authorize the school to release to Father/Mother of any and all information concerning the child;
- c) Ensure that the Father/Mother receives copies of any notices regarding the child.
- d) The Father/Mother shall promptly transmit to the Mother/Father copies of any notices regarding the child received concerning parent-teacher meetings, school club meetings, school program, athletic schedules and any other school activities in which the child may be engaged or interested.
- e) The Father/Mother shall promptly, after receipt of same, furnish to the Mother/Father a photocopy of the child's grade or report card and copies of any other reports concerning the child's status or progress.
- f) The Father/Mother shall, when possible, arrange appointments for parent-teacher conference at a time when the Mother/Father can be present and whenever possible they shall be attended by both parents.

L. **RULES WITH RESPECT TO PARENTING:**

- a) Each parent shall refrain from discussing the conduct of the other parent in the presence of the child except in a laudatory or complimentary way, and shall encourage significant others, spouses, fiancé's, partners, etc. likewise.
- b) Under no circumstances shall the question of child support, either as to amount, manner, or transmission of payment, be raised in the presence of the child;
- c) Parenting Time with the minor child shall not be withheld because of the non-payment of child support. The payment of child support shall not be withheld because of the refusal of the Mother/Father to grant or exercise parenting time to the Mother/Father;
- d) The Mother/Father shall not threaten to withhold parenting time from the Mother/Father. The Mother/Father shall not threaten to prevent or delay the return of the child to the Mother/Father after a period of parenting time;
- e) The Mother/Father shall prepare the child both physically and mentally for parenting time

with the Mother/Father. The child shall be available at the time mutually agreed upon between the parties for the beginning of parenting time; child do not have a "veto" on whether to attend parenting time until emancipated or further order of court.

- f) The Mother/Father shall advise the Mother/Father as soon as possible if the Mother/Father is unable to keep a planned parenting time with the child;
- g) Neither parent shall unreasonably question the child regarding the activities of the other parent;
- h) Neither parent shall expose the child to any immoral conduct between the parent and another person;
- i) Neither party shall drink to excess in the presence of the child and shall not knowingly expose the child to illegal drugs or anyone addicted to drugs. Exposure to illegal drugs, abuse of prescription drugs or others addicted to drugs or intoxication by alcohol shall constitute reasonable grounds to withhold parenting time and file for Modification of Parental Time and/or Parenting Responsibilities.
- j) The Mother/Father shall not visit the child at unreasonable hours;
- k) The Mother/Father shall work with the Mother/Father to arrange parenting time schedules which shall take into account the child's education, athletic and social activities. By agreement, the Mother/Father may take the child to appropriately planned activities; Both parents can attend the children's major education and extracurricular activities and events regardless of whether it is his or her parenting time with the child.
- l) Either parent may temporarily take the child to another state for vacation or for other good reason with reasonable notice to the other parent;
- m) In the event that either party takes the child for an extended period of time (in excess of twenty-four hours) to a place other than their home, the party shall inform the other party of the child's whereabouts;
- n) If parenting time does not occur through no fault of the Mother/Father, compensatory/make up parenting time shall be arranged;
- o) Both parents shall at all times conduct themselves in a manner which promotes the beneficial effect on the minor child of parenting time with the Mother/Father.
- p) Each parent will provide the other parent with all of his or her updated residence and business addresses and phone numbers, cell phone numbers and email address.
- q) If a child is going to be away from a parent's residence overnight without the parent and with persons who are family during the parent's parenting time, the parent shall provide the other parent with contact information including the names, addresses and phone numbers of

the location where the child will be staying before the departure.

r) If either parent takes the child away from the residence for vacation or for an extended period(3 days or more), the parent will provide the other parent with contact information including the names, addresses and phone number of the location(s) where the child will be staying and the travel itinerary information at least seven(7) days before departure.

M. **Child Support:** The Court does not award either parent child support given the parenting time scheduled in the above matter. No party is awarded any retro-active support.

N. **Travel Expenses:** The Court denies the Father's request for reimbursement of travels expenses.

O. **Attorney Fees:** The Court awards the Father's attorney fees in the amount of 2,580.00. A judgment in the amount of \$2,580.00 is take against the Mother in favor of the Law Firm of Gary A, Mack P.C. The Mother has paid in full the attorney fees ordered above.

P. **RELOCATION:**

PROCEDURE: If a parent who has the majority of parenting time or equal parenting time wishes to relocate with the child, the relocating parent must:

- i. Provide written notice of relocation to the other parent and file a copy of the notice with the Clerk of the Circuit Court.
- ii. Such written notice shall be provided at least 60 days **before relocation** unless impracticable or otherwise ordered by the court, in which case notice shall be provided as soon as possible.
- iii. The written notice must include, at a minimum,
 1. Intended date of relocation
 2. Address of new residence, if known
 3. Length of time of relocation, if not permanent.

NO OBJECTION:

If the non-relocating parent does not object to the relocation and signs the notice, the relocating parent shall file the notice with the court. Relocation shall be allowed without any further court action. Parents will modify the parent plan or allocation by agreement to accommodate the relocation and submit such plan to the court for approval.

WITH OBJECTION:

If the non-relocating parent objects to the relocation, or fails to sign the notice, or the parents cannot agree on modification of the parenting plan or allocation judgment, the parent seeking relocation must file a petition seeking permission to relocate.

DISPUTE RESOLUTION AFTER RELOCATION:

Any issues arising from the parent's future relocation shall be resolved by: the same procedure as set forth in the subsection entitled "Reallocation of parenting Time, Allocation of Parental Responsibilities and Dispute Resolution" found in Section "C": hereinabove.

Q. **DEFINITIONS**.

SIGNIFICANT DECISION-MAKING – means decision-making on issues of long-term important to the children. These significant decisions include, but are not limited to

- Education, including choice of schools and tutors
- Health, including medical, dental, and psychological needs
- Religion, including choice of religion or denomination, religious schooling, religion's training, and participation in religious customs or traditions.
- Extra-curricular activities.

RELOCATION – constitutes a substantial change in circumstances and is defined as:

- A change of residence from the child's current primary residence in the county of Cook, DuPage, Kane, Lake, McHenry, or Will to a new residence within this State that is more than 25 miles from the child's current residence;
- A change of residence from the children's current primary residence located in a county not listed in paragraph (1) to a new residence within this State that is more than 50 miles away from the child's current primary residence; or
- A change of residence from the children's current primary residence to a residence outside the borders of this State that is more than 25 miles from the current primary residence.

R. The Court retains jurisdiction over the parties and of the subject matter herein.

S. The prior court orders not modified herein remain in full force and effect.

Judge A. Campbell

Judge Campbell

Prepared by:

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NOTICE
Decision filed 11/23/22. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

NOS. 5-22-0479, 5-22-0344 cons.
IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

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).

| | | |
|-----------------------|---|--------------------|
| TIMOTHY McDOWELL, |) | Appeal from the |
| |) | Circuit Court of |
| Petitioner-Appellee, |) | St. Clair County. |
| |) | |
| v. |) | No. 20-F-89 |
| |) | |
| ALIYAH MONROE, |) | Honorable |
| |) | Stacy L. Campbell, |
| Respondent-Appellant. |) | Judge, presiding. |

JUSTICE MOORE delivered the judgment of the court.
Presiding Justice Boie and Justice Welch concurred in the judgment.

ORDER

¶ 1 In these actions, which have been consolidated in this court, the respondent, Aliyah Monroe (Aliyah), pursuant to Illinois Supreme Court Rules 304(b) (eff. Mar. 8, 2016) and 307(a) (eff. Nov. 1, 2017), challenges the May 13, 2022, and June 28, 2022, orders of the circuit court of St. Clair County. The May 13, 2022, order (May Order), *inter alia*, found Aliyah in indirect civil contempt of court for failing to return the parties' minor child, A.M., to the petitioner, Timothy McDowell (Timothy), in accordance with the schedule set forth in the circuit court's February 25, 2022, allocation of parenting time. The June 28, 2022, order (June Order), maintained the status quo of the parenting time arrangement pending further order of the circuit court. For the following reasons, we dismiss the appeals for a lack of appellate jurisdiction pursuant to Illinois Supreme Court Rule 23(c)(1) (eff. Jan. 1, 2021).

¶ 2 “Appellate courts have a duty to consider, *sua sponte*, whether we have jurisdiction over an appeal and to dismiss the appeal if jurisdiction is lacking.” *In re Marriage of Mackin*, 391 Ill. App. 3d 518, 519 (2009). In addition, a party cannot consent to or waive jurisdiction. *Id.* Aliyah has brought the instant appeals pursuant to Illinois Supreme Court Rules 304(b) (eff. Mar. 8, 2016) and 307(a)(1) (eff. Nov. 1, 2017), arguing that various portions of each apply to the consolidated appeals. We first examine our jurisdiction as to the initial appeal challenging the May Order.

¶ 3 The May Order was issued following a hearing where both parties were present with counsel and testified. The circuit court issued the May Order finding Aliyah in indirect civil contempt for wrongfully withholding A.M. from Timothy and failing to abide by the February 25, 2022, allocation judgment order which granted the parties a rotating four-week uninterrupted parenting time schedule. The May Order allowed Aliyah to purge herself of the contempt by returning A.M. to Timothy later that same day, granted Timothy make-up parenting time until June 28, 2022, and awarded Timothy attorney fees and expenses related to the denial of his parenting time to be determined at a later time following the filing of affidavits and a prove-up hearing on those fees and expenses.

¶ 4 On appeal, Aliyah does not dispute the circuit court’s contempt finding itself, but merely challenges the circuit court’s award of make-up parenting time to Timothy. In the case at bar, Aliyah claims that there are two separate bases for jurisdiction. One such basis is Illinois Supreme Court Rule 304(b)(5) (Mar. 8, 2016), which provides that “[a]n order finding a person or entity in contempt of court which imposes a monetary or other penalty” is appealable without a Rule 304(a) finding. Aliyah contends that the award of make-up parenting time to Timothy, and thus, removal of her normal scheduled parenting time, constitutes a penalty allowing for an appeal under this rule. We disagree.

¶ 5 Our Illinois Supreme Court has held that “only a contempt *judgment that imposes a sanction* is a final, appealable order.” (Emphasis in original.) *In re Marriage of Gutman*, 232 Ill. 2d 145, 152 (2008). “While we are mindful that, to the parent, any reduction in parenting time feels like a penalty, Illinois law establishes that parenting time is something that is guided by the best interests of the child and is not a vehicle used to punish either parent.” *In re Marriage of Knoll*, 2016 IL App (1st) 152494, ¶ 44; see, e.g., 750 ILCS 5/607.5(c)(5) (West 2020) (providing that “[i]f the court finds by a preponderance of the evidence that a parent has not complied with allocated parenting time according to an approved parenting plan or a court order, the court, in the child’s best interests, shall issue an order that may include one or more of the following: *** (5) a requirement that makeup parenting time be provided for the aggrieved parent or child ***”); *Pryweller v. Pryweller*, 218 Ill. App. 3d 619, 633 (1991) (“We also emphasize that, even in contempt proceedings involving visitation abuse issues, the importance of the children’s best interests must not be lost, and the children should not be used as pawns.”); *In re Marriage of Mitchell*, 319 Ill. App. 3d 17, 22 (2001) (“Visitation should not be used to penalize or reward parents for their conduct.”). Thus, the circuit court’s finding that Timothy was entitled to make-up parenting time cannot be considered a penalty or sanction imposed on Aliyah that would render the indirect civil contempt order appealable under Rule 304(b)(5).

¶ 6 In the alternative, Aliyah argues that jurisdiction can be conferred upon this court through Illinois Supreme Court Rule 304(b)(6) (eff. Mar. 8, 2016), which allows for appeals from “[a] custody or allocation of parental responsibilities judgment or modification of such judgment entered pursuant to the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/101 *et seq.*) or Illinois Parentage Act of 2015 (750 ILCS 46/101 *et seq.*).” Aliyah argues that the court’s award of make-up parenting time constitutes a modification from the allocation judgment. This is

incorrect. “A court is vested with inherent power to enforce its orders and preserve its dignity by the use of contempt proceedings.” *People v. Warren*, 173 Ill. 2d 348, 368 (1996). Here, the circuit court exercised its powers to *enforce* the terms of its allocation judgment, which required Timothy to receive equal parenting time, *not* to modify it. Because the circuit court’s action was consistent with its allocation judgment and only acted to enforce said judgment, it cannot be considered a modification of said judgment. Accordingly, there is no jurisdiction under Rule 304(b)(6) either.

¶ 7 Next, Aliyah challenges the circuit court’s June Order. On June 28, 2022, the parties were present before the circuit court for a hearing on two pending motions, Aliyah’s motion for reconsideration and other relief and Timothy’s petition to modify parenting time, both of which had been filed prior to the circuit court’s May Order. During the hearing, the circuit court also noted that it “was also going to review parenting time because at this point [Timothy] has the minor child. The minor child was awarded to [Timothy] for make[-]up parenting time.” The circuit court then went on to note that Aliyah had filed the initial appeal of the two present consolidated appeals challenging the May Order as discussed above. The circuit court stated that it lacked jurisdiction to hear any pending motions concerning the allocation judgment or involving parenting time as a result of the pending appeal. Thus, the circuit court, having determined that it lacked jurisdiction following Aliyah’s filing of an appeal, declined to hear the issues scheduled on that date and entered a case management order stating the following: “The status quo shall be maintained. The minor child will remain with Petitioner until further order of the Court.” Following the entry of that order, Aliyah filed a second appeal which is the later of these two consolidated cases.

¶ 8 Thus, we now turn to the issue of whether this court has jurisdiction to entertain Aliyah’s challenges to the June Order. Aliyah argues that jurisdiction exists through two rules, Illinois Supreme Court Rules 304(b)(6) (eff. Mar. 8, 2016) and 307(a)(1) (eff. Nov. 1, 2017). As stated

above, Illinois Supreme Court Rule 304(b)(6) (eff. Mar. 8, 2016) allows for appeals from “[a] custody or allocation of parental responsibilities judgment or modification of such judgment entered pursuant to the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/101 *et seq.*) or Illinois Parentage Act of 2015 (750 ILCS 46/101 *et seq.*).” However, we find that the June Order does not constitute an allocation judgment or a modification as anticipated by this rule for two reasons. First, as alluded to above, the order is consistent with the allocation judgment. Secondly, it is not in any way determinative or final as to the issue of allocation of parenting time. The June Order specifically states that it is maintaining the status quo set forth by the May Order “until further Order of the Court.” And the circuit court during the hearing repeatedly explained to Aliyah that once the appeal was decided, jurisdiction would return to the circuit court so that it could decide the issues pending before it. The circuit court’s June Order clearly is not making a judgment as to allocation of parenting time, but instead, is merely maintaining the status quo which existed at the time Aliyah decided to file an appeal and thus deprived the circuit court of jurisdiction to hear any substantive issues in the case. It is well settled that “[f]iling a notice of appeal puts the cause beyond a trial court’s jurisdiction—our jurisdiction attaches *instanter.*” *People v. Ford*, 2020 IL App (2d) 200252, ¶ 14. “Accordingly, after the filing of a notice of appeal, a trial court is divested of jurisdiction to enter any additional substantive orders in the case.” *Id.* “The trial court retains the power only to (1) enforce the judgment or (2) correct clerical errors or matters of form so that the record conforms to the judgment.” *Id.* Here, the circuit court was simply maintaining the status quo in an attempt to enforce the contempt order which it had the authority to do under section 607.5(c)(1) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/607.5(c)(1) (West 2020) (“If the court finds by a preponderance of the evidence that a parent has not complied with allocated parenting time according to an approved parenting plan or a court

order, the court, in the child’s best interests, shall issue an order that may include *** an imposition of additional terms and conditions consistent with the court’s previous allocation of parenting time or other order[.]”)).

¶ 9 Aliyah next argues that the order constituted an injunction that is appealable under Illinois Supreme Court Rule 307(a)(1) (eff. Nov. 1, 2017), which allows this court to consider appeals from interlocutory orders entered by the circuit court “granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction.” Accordingly, we examine the record on appeal to determine whether the circuit court’s June Order maintaining “the status quo” constitutes “injunctive relief” for purposes of the rule.

¶ 10 “When determining whether an order ‘constitutes an appealable injunctive order under Rule 307(a)(1) we look to the substance of the action, not its form.’ ” *Santella v. Kolton*, 393 Ill. App. 3d 889, 901 (2009) (quoting *In re A Minor*, 127 Ill. 2d 247, 260 (1989)). As such, “[a]ctions of the circuit court having the force and effect of injunctions are still appealable even if called something else.” *In re A Minor*, 127 Ill. 2d at 260-61. While an injunction can be defined as “‘a judicial process, by which a party is required to do a particular thing, or to refrain from doing a particular thing’ ” (*id.* at 261 (quoting *Wangelin v. Goe*, 50 Ill. 459, 463 (1869))), “[o]rders of the circuit court which can be properly characterized as ‘ministerial,’ or ‘administrative’—because they regulate only the procedural details of litigation before the court—cannot be the subject of an interlocutory appeal.” *Id.* at 262 (citing *People ex rel. Scott v. Silverstein*, 87 Ill. 2d 167, 171 (1981)). Such orders “do not affect the relationship of the parties in their everyday activity apart from the litigation, and are therefore distinguishable from traditional forms of injunctive relief.” *Id.*

¶ 11 Applying these principles to the action taken by the circuit court in ordering the status quo to be maintained regarding parenting time with A.M., we find that the orders are “ministerial” or “administrative” in that the circuit court was merely maintaining the status quo of the case due to Aliyah’s pending appeal and its lack of jurisdiction as a result. The June Order does not find against Aliyah and does not require her to do or to refrain from doing anything. The June Order does not decide any definitive rights of the parties. The June Order simply memorialized the circuit court’s finding of its lack of jurisdiction and inability to rule on the pending issues of the case until Aliyah’s appeal was decided. Aliyah cannot decide to appeal a circuit court’s decision, thereby depriving that court of jurisdiction, and then argue she was wronged by the circuit court’s inability to address her other claims or grant her relief sought thereafter.

¶ 12 Finally, we note that throughout Aliyah’s briefs on appeal she argues that a certain provision of the circuit court’s February 25, 2022, allocation judgment was not proper and should be found void by this court. In fact, this issue is largely the focus of her arguments. However, as noted above, we lack jurisdiction to hear her appeals and as a result the issue is not properly before us. We do note that Aliyah could have challenged the provision complained of in an appeal following the circuit court’s entry of that decision, but chose not to do so.

¶ 13 For the foregoing reasons, we dismiss the appeals for a lack of appellate jurisdiction pursuant to Illinois Supreme Court Rule 23(c)(1) (eff. Jan. 1, 2021).

¶ 14 Appeals dismissed.