

¶ 3 After the denial of the petitioner’s motion for substitution of judge, the case proceeded with Judge Wallace presiding. Due to being hearing impaired, the petitioner filed various motions requesting specific interpreters and real-time transcription for all hearings and trial. An American Sign Language (ASL) interpreter was provided for all hearings, but the circuit court denied the petitioner’s requests for a specific ASL interpreter, a certified deaf interpreter (CDI),¹ and real-time transcription.

¶ 4 On February 13, 2024, the circuit court entered an allocation of parental responsibilities judgment pursuant to the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/602.5 (West 2022)), and the petitioner timely appealed. On appeal, the petitioner does not challenge the circuit court’s findings regarding the allocation of parental responsibilities. Instead, the petitioner argues that the circuit court erred in denying her motion for substitution of judge and in denying her requested accommodations. For the following reasons, we reverse the judgment of the circuit court of Hardin County.

¶ 5 I. BACKGROUND

¶ 6 The petitioner and the respondent are both hearing impaired. They lived together for a period of time in Colorado and had one child, N.J., born July 2011. In approximately February 2015, the parties separated, and the minor remained with the petitioner. The respondent stayed in Colorado, and currently resides there. The petitioner eventually moved to Illinois and started receiving child support services through DHFS. On April 20, 2021, the Attorney General of the State of Illinois filed a complaint on behalf of DHFS *ex rel.*, against the respondent, seeking child support on behalf of the petitioner pursuant to the Illinois Public Aid Code (305 ILCS 5/10-1 *et seq.* (West 2020)).

¹According to the petitioner’s motion filed on March 3, 2023, an ASL interpreter focuses on translating spoken language into sign language, whereas a CDI specializes in “the use of interpreting, gestures, miming, incorporated props, drawing, and other tools to provide detailed deaf communication.”

¶ 7 On June 6, 2022, the respondent, *pro se*, filed a petition for allocation of parental responsibilities. The Office of the Attorney General sent correspondence to the circuit court on August 4, 2022, indicating that it was prohibited from being involved in proceedings concerning the allocation of parental responsibility, but would proceed on the issue of child support after the parties had resolved their parental responsibilities.

¶ 8 The circuit court conducted a status conference on August 9, 2022, at which both parties appeared *pro se*, and an ASL interpreter was provided. The circuit court ordered the parties to participate in mediation and further ordered that the “PARTIES & PARTIES’ PARAMOURS SHALL NOT POST ABOUT FAMILY CASE ON FACEBOOK.” An attorney from the Land of Lincoln Legal Aid entered an appearance for the petitioner on August 10, 2022, and counsel for the respondent entered an appearance on August 23, 2022.

¶ 9 On October 4, 2022, the petitioner filed a motion for substitution of judge pursuant to section 2-1001(a)(2) of the Code of Civil Procedure (735 ILCS 5/2-1001(a)(2) (West 2022)). The motion stated that Judge Wallace had not made a ruling on any substantial issue in the case. The respondent filed an objection to the petitioner’s motion for substitution of judge on October 6, 2022. The respondent’s objection stated that on September 19, 2022,² Judge Wallace had “made findings sufficient to order the parties to refrain from contact with one another outside of issues relative to the minor child” and that the restrictive act was sufficient to constitute a substantive ruling.

¶ 10 A hearing on the petitioner’s motion for substitution of judge was held before the Honorable Judge Foster on November 10, 2022. There is no report of proceedings regarding this hearing within the record on appeal. Judge Foster entered a written order the same day that set

²The docket sheet indicates that a motion related to mediation was filed by the petitioner on September 19, 2022, but there were no orders entered or hearings conducted on September 19, 2022.

forth the procedural history of the case, case law regarding the right for substitution of judge, and then stated as follows:

“Considering the rulings made by Judge Wallace in light of the above legal authorities, the Court finds that Judge Wallace made a ruling on a substantial issue in this case before petitioner filed her Motion. On August 9, 2022, among other things, Judge Wallace ordered that the ‘parties and parties’ paramours shall not post about the family case on Facebook.’ This is in the nature of a preliminary injunction which goes to the merits of the case and concerns what is in the best interests of the parties’ child. None of the other rulings by Judge Wallace before petitioner filed her Motion are rulings on a substantial issue in the case except this one ruling.”

The written order then denied the petitioner’s motion for substitution of judge and referred the case back to Judge Wallace for further proceedings.

¶ 11 Prior to filing the motion for substitution of judge, on September 22, 2022, the petitioner filed a *pro se* request for interpreter. The request indicated that the petitioner desired an ASL interpreter and a CDI for all court dates. On February 14, 2023, the petitioner again filed a *pro se* request for an ASL interpreter and a CDI for all court appearances. The circuit court made a docket entry on February 21, 2023, noting that the petitioner was represented by counsel and directing that any and all motions, except a motion in regard to counsel, shall be filed by petitioner’s counsel. On March 3, 2023, petitioner’s counsel filed a request for an ASL interpreter at all court dates, but it did not include a request for a CDI.

¶ 12 On March 7, 2023, counsel for the petitioner filed a motion to withdraw stating that there had been a breakdown in the attorney/client relationship and that it was not possible for counsel to continue to represent the petitioner in this matter. The circuit court granted the motion to withdraw on April 11, 2023, and the petitioner proceeded *pro se*.

¶ 13 On May 23, 2023, the petitioner electronically mailed a request for a specific, preferred ASL interpreter, a request for a CDI, and a request for real-time transcription to the circuit clerk.

The petitioner also filed a motion for accommodations on May 31, 2023, stating, in part, as follows:

“I, [petitioner], am Pro Se Litigant in the above-styled case. I am deaf and, as such, require accommodations to ensure effective communication and participation in all legal proceedings. I am writing to request that the Court provide me with my preferred ASL Interpreter named, *** and Real-Time Transcription services.

I recently learned that the Court has hired different ASL Interpreter for the upcoming proceedings on June 2nd, 2023, which is not my preferred Interpreter and may impede my ability to understand and fully participate in the proceedings [*sic*].”

On June 1, 2023, the petitioner again filed a request for real-time transcription, her preferred ASL interpreter, and a CDI for all court proceedings.

¶ 14 At a hearing conducted on June 2, 2023, the circuit court stated as follows with regard to the petitioner’s accommodations requests:

“An ASL interpreter will be provided for all proceedings. The Court’s been in contact with the AOIC Access to Justice Division to obtain affirmation that the Court and the circuit clerk are complying with the access to justice for the hearing impaired. [Petitioner] cannot choose who the ASL interpreter is, cannot choose a specific person. Further, the Court doesn’t have to provide three means of interpretation, as requested. Again, the Court will provide an ASL interpreter for all proceedings. That is what is available in our area. Even though interpreters tend to travel for three hours or more, that is what’s available in our area. The circuit clerk has been in contact with Interpretet,^[3]

³Interpretet provides court-certified interpreters for criminal and civil proceedings in Illinois state courts.

which has stated that there are no CDI interpreters in our area. But, again, if this case proceeds to trial, the Court will make every effort to secure both an ASL and CDI interpreter for trial as requested ***.”

¶ 15 On June 30, 2023, the petitioner filed a motion requesting that the circuit court provide her with the “AOIC Documentation pertaining to our accommodations request” referenced by the circuit court at the June 2, 2023, hearing. The motion further requested “an immediate review and modification of the accommodations in accordance with 28 C.F.R. [§] 35.160(a)(1), (b)(1) and the State of Illinois Second Judicial Circuit Policy on Access for Persons with Disabilities.” On July 5, 2023, the petitioner again filed a motion to modify accommodations. The motion noted that the petitioner’s prior requests “were subsequently rejected on June 2nd, 2023, during the court proceedings” and again requested “an ASL Interpreter of my preference.”

¶ 16 The circuit court conducted a hearing on September 5, 2023. There is no report of proceedings for this hearing within the record on appeal. According to the circuit court’s docket entry of September 5, 2023, the petitioner was present, *pro se*, and two ASL interpreters were present. The circuit court noted that the circuit clerk had requested a CDI, but that the request had been denied by Interprenet due to the unavailability of CDI. The docket entry also indicated that the circuit court had awarded the respondent the majority of parenting time and directed that the minor obtain her belongings from the petitioner’s home that day, in the presence of law enforcement. The docket entry further stated that the circuit court would issue a written order after deciding on visitation and child support. The same day, the circuit court entered a written order finding that the DHFS had provided services to the petitioner and ordered that, “[b]ased on the Court’s order that primary custody of the minor be placed now with the Respondent and not the Petitioner, child support is set at \$0 that Respondent has to pay to Petitioner.”

¶ 17 The circuit court entered a 25-page written order regarding the allocation of parental responsibilities on February 13, 2024. Since the circuit court’s findings regarding parental responsibilities are not being challenged on appeal, we will only set forth that portion of the circuit court’s written order pertaining to the petitioner’s accommodation requests. In that regard, the circuit court’s written order stated as follows:

“The Clerk has already been in contact with Interpret [*sic*] about a CDI interpreter request to which the Clerk was informed that there are no CDI Interpreters in our area. Interpret sends the interpreter that is available for this area and day to which the Court has no control over. Even though the Court perceives [petitioner’s] actions in filing multiple requests for different means of interpretation as stall tactics, this Court contacted Administrative Office of Illinois Courts (hereinafter referred to as AOIC) Access to Justice Division to obtain confirmation that the Court was complying with access to justice for the hearing impaired. AOIC confirmed that [petitioner] cannot choose who Interpret [*sic*] assigns to this case and cannot choose a specific person. Further, the Court does not have to provide three different means of interpretation as [petitioner] requested. The Court also takes note that the parties were in front of this Court in Hardin County Case Number 21-CM-1 whereas [petitioner’s] paramour, ***, was accused of Domestic Battery and pled guilty to Battery of [petitioner]. [Petitioner] actively participated in court proceedings, including testifying. [Petitioner] and her paramour only used ASL interpreters throughout the criminal case and requested no other means of interpretation during those proceedings.”

¶ 18 On March 12, 2024, the petitioner filed a timely notice of appeal. On appeal, the petitioner raises two issues. First, the petitioner argues that the circuit court erred in denying her motion for substitution of judge and, second, that the circuit court erred in denying her requests for

accommodations. Although we find the first issue to be dispositive, we will address both issues since the issue of accommodation is likely to reoccur upon remand.

¶ 19

II. ANALYSIS

¶ 20 Before proceeding with our analysis, we note that no appellee brief has been filed in this matter. This court will not serve as an advocate for an appellee nor search the record for the purpose of sustaining the judgment of the circuit court. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976). If, however, the record is simple and the claimed errors are such that this court can easily decide them without the aid of an appellee’s brief, the appeal should be decided on the merits. *Id.* Further, if the appellant’s brief “demonstrates *prima facie* reversible error and the contentions of the brief find support in the record[,] the judgment of the trial court may be reversed.” *Id.* In this matter, we find that the appellant’s brief demonstrates a *prima facie* reversible error that is supported in the record on appeal.

¶ 21

A. Motion for Substitution of Judge

¶ 22 Section 2-1001(a)(2) of the Code of Civil Procedure (735 ILCS 5/2-1001(a)(2) (West 2022)) states that a civil litigant is entitled to one substitution of judge without cause as a matter of right when he or she timely exercises the right, the motion is made before trial or hearing begins, and before “the judge to whom it is presented has ruled on any substantial issue in the case.” “The right to substitution of judge is absolute when properly made, and the circuit court has no discretion to deny the motion.” *Cincinnati Insurance Co. v. Chapman*, 2012 IL App (1st) 111792, ¶ 23. As such, where the conditions are met, the circuit court has no discretion to deny the request unless it is shown that the motion was made simply to delay or avoid trial. *Illinois Licensed Beverage Ass’n v. Advanta Leasing Services*, 333 Ill. App. 3d 927, 932 (2002). Because the circuit court has no discretion to deny a proper motion for substitution of judge as of right, it presents a question of law, and our review is *de novo*. *Id.*

¶ 23 Here, the petitioner’s motion for substitution of judge was denied based on Judge Foster’s finding that Judge Wallace’s order of August 9, 2022, that the parties and parties’ paramours shall not post about the case on Facebook, was in the nature of a preliminary injunction. Judge Foster held that the order went “to the merits of the case and concerns what is in the best interests of the parties’ child.” As such, Judge Foster found this to be a ruling on a substantial issue in the case and further found that none of the other rulings made by Judge Wallace, prior to the motion for substitution of judge, were on a substantial issue.

¶ 24 “A ruling that directly relates to the merits of the case is considered a ruling on a substantial issue in the case.” *Rodisch v. Commacho-Esparza*, 309 Ill. App. 3d 346, 350-51 (1999). Although Judge Foster found that the Facebook ruling was in the nature of a preliminary injunction, reviewing courts have found that such orders are not injunctive, but are “administrative” or “ministerial” because they imposed on the parties an administrative or ministerial sense to regulate their behavior as the matter progresses. See *In re Marriage of Eckersall*, 2014 IL App (1st) 132223, ¶¶ 20, 24; *In re Marriage of Girard*, 2023 IL App (1st) 231361-U, ¶ 25; see generally *In re A Minor*, 127 Ill. 2d 247, 262 (1989).

¶ 25 As our supreme court explained in *In re A Minor*, 127 Ill. 2d at 262:

“Not every nonfinal order of a court is appealable, even if it compels a party to do or not do a particular thing. Orders of the circuit court which can be properly characterized as ‘ministerial,’ or ‘administrative’—because they regulate only the procedural details of litigation ***. *** They 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.”

¶ 26 The reviewing court in *In re Marriage of Eckersall*, 2014 IL App (1st) 132223, found that, despite its “custody/visitation injunction order” label, the order appealed did not “purport to

adjudicate any substantive issues, but, rather, precludes the parents from engaging in specified conduct that could be detrimental to the welfare of the children.” *Id.* ¶ 20. As such, the *Eckersall* court found that the order was not an injunction or the functional equivalent of an injunction. *Id.* ¶ 24.

¶ 27 With regard to social media posts, the reviewing court in *In re Marriage of Girard*, 2023 IL App (1st) 231361-U, found that the circuit court’s order requiring the parties to oversee the deletion of the minor children’s social media posts regarding the litigation, and to instruct the children to not to make any future such posts, was merely ministerial or administrative in nature because the order did not adjudicate any substantive issues related to the litigation. *Id.* ¶ 25.

¶ 28 In this matter, Judge Wallace’s order that the parties and the parties’ paramours shall not post about the case on Facebook did not affect or adjudicate any substantial issue between the petitioner and the respondent. For example, it did not make any determination regarding parenting time, child support, or parental decision making. Rather, the circuit court’s order merely entered a preventative measure designed to control the situation among the parties so that, as the litigation progressed, the minor child would be protected from any conflicting or derogatory postings on social media. As such, we do not find that Judge Wallace’s August 9, 2022, order was in the nature of a preliminary injunctive, but instead, we find that it was ministerial or administrative in nature as it did not adjudicate any substantial issue related to the litigation. Thus, we find that Judge Wallace had not ruled on any substantial issue in the case prior to the petitioner’s motion for substitution of judge and that the circuit court erred in denying the petitioner’s motion for substitution of judge.

¶ 29 This court has reviewed the common law record, which spans a period of almost three years. Although not set forth in the background section, we are aware that the petitioner failed to participate in mediation, failed to abide by the circuit court’s visitation orders, failed to file a

proposed parenting plan, and failed to meet with the minor's guardian *ad litem*. The petitioner's failure to participate in mediation and failure to abide by the circuit court's visitation orders resulted in monetary sanctions of over \$2000. We are also aware that the respondent retained counsel, made numerous trips to this State from Colorado for court hearings, and that the minor is now residing in Colorado with the respondent.

¶ 30 Precedent, however, is clear with regard to the action that this court must take in this matter. Where a substitution of judge of right has been improperly denied, any order entered subsequent to the improper denial is void and the matter must be remanded to the circuit court for a new trial with directions that it be transferred to another judge of the circuit court for further proceedings not inconsistent with this decision. *In re Marriage of Birt*, 157 Ill. App. 3d 363, 369 (1987); see also *Illinois Licensed Beverage Ass'n*, 333 Ill. App. 3d at 932. Therefore, we reverse the circuit court's order of November 10, 2022, denying the petitioner's motion of substitution of judge as a matter of right. We further remand this matter to the circuit court with directions that all orders entered subsequent to the improper denial are void and direct that this case be assigned to another judge of the circuit court for further proceedings.

¶ 31 **B. Accommodation Requests**

¶ 32 As this case must be reversed and remanded for further proceedings before a different judge, we would not normally address the petitioner's remaining issue. The remaining issue, however, involves the petitioner's requests for accommodations due to being hearing impaired. Since that issue is most likely to recur on remand, we find it prudent to address the issue at this time.

¶ 33 Section 8-1402 of the Code of Civil Procedure addresses accommodations for an individual with a hearing disability in civil litigation and states as follows:

“Whenever any deaf person is a party to any legal proceeding of any nature, *** the court in all instances shall appoint a qualified interpreter of the deaf sign-language to interpret the proceedings to and the testimony of such deaf person. *** Accommodations shall be made in accordance with the federal Americans with Disabilities Act of 1990 so that a qualified individual with a hearing disability may participate as a party, witness, juror, or spectator in any legal proceeding.” 735 ILCS 5/8-1402 (West 2022).

¶ 34 The Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. § 12132 (2018)) prohibits a public entity from discriminating against any individual with a disability because of that disability. The implementing regulation of the ADA regarding communications for a disabled individual states as follow:

“The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. In determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to the requests of individuals with disabilities. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.” 28 C.F.R. § 35.160(b)(2) (2000).

¶ 35 We review a circuit court’s determination regarding accommodations under an abuse of discretion standard. See *People ex rel. Myers v. Briggs*, 46 Ill. 2d 281, 287 (1970); see also *People v. Tyrrel*, 185 Ill. App. 3d 57, 62 (1989); *People v. Bragg*, 68 Ill. App. 3d 622, 630 (1979). An abuse of discretion may be shown where it appears from the record that the individual was not “understandable,” “comprehensible,” or “intelligible” such that the lack of accommodation deprived the individual of a basic right. See *Bragg*, 68 Ill. App. 3d at 630.

¶ 36 The petitioner argues that the circuit court was required to start with the assumption that the petitioner's statements regarding her accommodation needs were accurate and as such, that a CDI was needed for the petitioner to understand the proceedings. The petitioner also argues that the circuit court failed to make findings as to why a CDI was not necessary, other than taking judicial notice of the fact that the petitioner had testified with an ASL interpreter in a criminal proceeding. The petitioner states that she "is disappointed that the trial court could not see the difference between being a witness and being forced to go *pro se* and actually conduct the hearing." As such, the petitioner states that it is "[n]o wonder that [the petitioner] did not call any witnesses or testify in her own behalf," and that the trial "turned out to be totally one-sided." The petitioner acknowledges, however, that she was not able to locate an Illinois case which would compel a result in her favor.

¶ 37 The petitioner points to her failure to call witnesses and/or testify on her own behalf in support of her arguments that the ASL interpreter was insufficient for her to understand the proceedings. To translate means to put into another language or form. Webster's New World Dictionary (2d ed. 2002). As such, the purpose of an ASL translator is to translate spoken words to ASL. The choice of whether to call a witness, or which witnesses to call, is a matter of trial strategy for trial counsel. *In re H.C.*, 2023 IL App (1st) 220881, ¶ 96; *People v. Enis*, 194 Ill. 2d 361, 378 (2000). The decision to testify is within the complete discretion of the party. See *In re B.R.*, 2022 IL App (2d) 210673-U, ¶ 42. These are decisions that all *pro se* litigants take upon themselves in proceeding *pro se* without the assistance of learned counsel. "In Illinois, parties choosing to represent themselves without a lawyer must comply with the same rules and are held to the same standards as licensed attorneys." *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 78.

¶ 38 The translation of the English language to ASL would in no way effect these decisions unless the interpreter failed to properly translate when the circuit court inquired whether the petitioner had any witnesses—an error the petitioner does not allege. In fact, the petitioner makes no allegations that the interpreter misinterpreted any of the words spoken by the circuit court, counsels, or the parties.

¶ 39 We further note that the circuit court was familiar with the petitioner and observed the petitioner giving testimony in a criminal case. The circuit court noted that the petitioner was able to testify without any difficulty with an ASL interpreter. The circuit court noted that neither the petitioner, nor the defendant who was the petitioner’s paramour and was also hearing impaired, made any requests for auxiliary aid or CDI services in the criminal matter beyond the ASL interpreter provided by the circuit court.

¶ 40 Section 8-1402 of the Code of Civil Procedure (735 ILCS 5/8-1402 (West 2022)) requires “a qualified interpreter of the deaf sign-language” as accommodations for an individual with a hearing disability. The circuit court in this matter provided a qualified ASL interpreter. The regulation implementing the ADA requires that the public entity give “primary consideration” to the choice of the individual, but primary consideration does not mean that individual’s choice in every circumstance. *People v. Long*, 296 Ill. App. 3d 127, 130 (1998). The circuit court considered the petitioner’s request for a CDI and attempted to obtain a CDI for the final hearing; however, no CDI was available.

¶ 41 We note that the report of proceedings filed in this matter contains only the transcript for the circuit court hearing conducted on June 2, 2023, at which the petitioner was represented by counsel. Therefore, we are hindered in our ability to review the petitioner’s communications, or any difficulty she may have had with communications, at any other hearing. Any doubts which arise from an incomplete record, however, will be resolved against the appellant. *Foutch v.*

O'Bryant, 99 Ill. 2d 389, 392 (1984). From our review of the record, it does not appear that the petitioner was not “understandable,” “comprehensible,” or “intelligible” such that the lack of CDI accommodation deprived the petitioner of a basic right. Based on the above, we find that the circuit court did not abuse its discretion in denying the petitioner’s requests for a specific ASL interpreter, a CDI, or real-time transcription.

¶ 42 This is not to say that a CDI or real-time transcription may always be denied where an ASL interpreter is provided. The determination of whether or not one or more accommodations are necessary is generally within the discretion of the trial judge who is in the best position to assess the individual’s facility with the various means of interpretation and communication. See generally *Bragg*, 68 Ill. App. 3d at 630. If proper communications cannot be obtained solely through an ASL interpreter, the circuit court is required to provide such accommodations to ensure the party’s effective communication during all proceedings.

¶ 43 III. CONCLUSION

¶ 44 Based on the foregoing, we find that the circuit court erred in denying the petitioner’s motion for substitution of judge as of right and reverse the November 10, 2022, order of the circuit court. We further find that any order entered subsequent to the improper denial is void and remand this matter to the circuit court with directions that it be transferred to another judge of the circuit court for further proceedings not inconsistent with this decision.

¶ 45 Given the procedural history of this matter, we further direct that the mandate in this case be issued immediately. As quickly as possible after the issuance of the mandate, we strongly urge the circuit court to hold a hearing on temporary custody pursuant to section 603.5 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/603.5 (West 2022)). During that hearing, the circuit court may determine the temporary allocation of parental responsibilities regarding the minor’s best interest, in accordance with the standards set forth in sections 602.5 and 602.7 (*id.*

§§ 602.5, 602.7), and the circuit court may again order the relocation of the minor in accordance with section 609.2 (*id.* § 609.2) on a temporary basis before the entry of the final allocation judgment.

¶ 46 Reversed and remanded with directions.