

No. 1-11-0534

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MATTHEW THOMAS,)	Appeal from the
)	Circuit Court of
Petitioner-Appellee,)	Cook County.
)	
v.)	No. 05 D3 79076
)	
ERIKA KASSAI-SURIN, n/k/a/ ERIKA)	
IZABELLE C. ALEXANDER,)	Honorable
)	Alfred Lee Levinson,
Respondent-Appellant.)	Judge Presiding.

PRESIDING JUSTICE LAVIN delivered the judgment of the court.
Justices Pucinski and Salone concurred in the judgment.

ORDER

Held: The circuit court did not err in: (1) finding respondent in indirect civil contempt and; (2) restricting respondent's visitation. Case is remanded to deal with discrepancies between the amount of back child support ordered in light of inconsistent documentary evidence within the record to clarify, and if necessary, correct the amount of back child support ordered to be paid to petitioner.

¶ 1 This appeal stems from child custody proceedings in the lower court granting petitioner, Matthew Thomas, sole custody of the child, Annelise, he had with respondent, Erika. After the granting of sole custody to Matthew in July 2009, the court held hearings throughout the subsequent year based on alleged violations of circuit court orders relating to Erika's responsibilities to Matthew and Annelise. This culminated in the circuit court holding Erika in

indirect civil contempt and restricting her visitation of the minor child. Erika appeals from the order and, for the reasons discussed at length below, we affirm the circuit court's judgment and remand solely on the narrow matter of confirming the amount of back child support owed by Erika.

¶ 2

I. BACKGROUND

¶ 3 Matthew and Erika's brief romantic relationship began in May 2004 and ended several months later. During that time, Erika became pregnant with Annelise. Although the two were no longer in a relationship during the majority of Erika's pregnancy, Matthew maintained contact with her and attended her medical appointments, prenatal classes and ultrasound appointments. On June 18, 2005, Annelise was born. Subsequently, Matthew filed a "Petition to Establish Paternity and for Temporary and Joint Permanent Custody," in which he sought: (1) to be declared the natural and biological father of Annelise; and (2) sole custody of Annelise. Both parties thereafter filed petitions seeking temporary custody of Annelise. The circuit court initially awarded temporary custody to Erika, ordered the parties to submit to mediation, appointed a child representative, and found Matthew to be the biological father of Annelise.

¶ 4 Matthew was granted visitation rights, which were modified several times as needed pursuant to a schedule established by the circuit court. Initially, Matthew was granted periods of supervised visitation on every Monday, Thursday, and one weekend day, but was quickly granted unsupervised visitation rights. For the next two years, Matthew's periods of visitation remained approximately the same, until he was eventually granted overnight visitation and ultimately joint custody prior to trial. Matthew was also ordered by the circuit court to pay a total of \$570 a

month as child support, which he complied with. Dr. Mark Goldstein was appointed by the circuit court to conduct interviews and make recommendations related to Annelise's custody pursuant to section 604(b) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/604(b) (West 2006)). Also, Dr. Daniel Hynan was appointed to conduct an evaluation of Annelise's best interests under section 604.5 of the Act (750 ILCS 5/604.5 (West 2006)) and make a recommendation to the circuit court.

¶ 5 Although trial was originally set to commence on May 12, 2007, it was continued a number of times for various reasons. A joint custody order was originally to be entered on December 2, 2008, but Erika objected to the order and a trial commenced on April 15, 2009.

¶ 6 On June 2, 2009, the circuit court entered a detailed, 55-page memorandum opinion and order, which, among other things: (1) granted Matthew sole custody of Annelise and established Erika's visitation rights; (2) restricted Erika from traveling outside of the United States with Annelise; (3) ordered Erika to pay \$490 a month in child support as well as her share of Annelise's medical expenses; (4) ordered Erika to seek full-time employment and maintain a "job diary" memorializing her efforts in doing so; (5) ordered Erika to provide copies of income tax returns due to her prior failure to file tax returns; and (6) established Annelise's full name.

¶ 7 On July 2, 2009, Erika filed a motion for modification of the judgment as it related to: the determined visitation, child support, Annelise's name, counseling, and travel outside of the United States. On that same day, Erika also filed a motion to reconsider or vacate the circuit court's judgment, for a rehearing or retrial of the judgment, and to introduce additional evidence. In response, Matthew filed an answer to Erika's motion to reconsider, a motion to dismiss Erika's

motion to modify the circuit court's judgment, and a petition for rule to show cause, seeking to hold Erika in indirect civil contempt for failing to pay child support and maintain a job diary as ordered. Erika's motions were both denied in written orders on November 3, 2009, although the trial court noted that it would consider a modification of child support should Erika present evidence of her good faith attempts to pay support and seek employment. On February 16, 2010, Erika's child support payment was reduced to \$250 a month. As to the issues of Erika's missed child support payments and failure to maintain a job diary, the circuit court held a number of status hearings and ordered production of various related documents (*e.g.*, payment lists, copies of checks, job search records, Erika's resume, etc.) but did not make any conclusive determinations.

¶ 8 On July 30, 2010, Matthew filed another motion for rule to show cause, arguing that Erika had still failed to comply with the circuit court's orders by, *inter alia*, continuing to fail to pay child support, failing to maintain full-time employment or a job diary, failing to provide Matthew with copies of her income tax returns as ordered, and failing to pay for her share of Annelise's medical and legal expenses. The motion also alleged that in contravention of the circuit court order, Erika had been having inappropriate conversations with Annelise regarding Matthew and was "badgering" him with emails and phone calls on issues already decided.

¶ 9 Matthew amended his motion on September 1, 2010, expanding upon the factual basis for his claims. After Erika filed her answer, a hearing on the motion was set for October 7, 2010, but Erika failed to appear. After hearing testimony and considering evidence presented to it, the circuit court ordered a body attachment for Erika and found her in indirect civil contempt for

failure to: (1) pay child support and medical expenses for Annelise; (2) maintain and tender a job diary; (3) provide copies of her income tax returns; (4) demonstrate proof of a valid driver's license and automobile insurance; and (5) foster a nurturing relationship between the siblings.

The circuit court then specifically found that the acts and omissions by Erika were detrimental to the nurturing of Annelise and endangered her, and modified Erika's visitation rights to require supervision and limited her contact with Annelise's caretakers.

¶ 10 Erika filed a motion to vacate this order and also filed an "Emergency Motion to Reinstate Unsupervised Visitation and for Additional Parenting Time or for a Change of Custody." These motions were denied by the trial court on the basis Erika had not yet complied with the child support statute and had not show any evidence of a change in circumstances to warrant reconsideration of its prior rulings. The circuit court then declared the case to be off call, prompting Erika to file a notice of appeal, apparently challenging the circuit court's January 6, 2011, order denying her motions.

¶ 11 II. ANALYSIS

¶ 12 1. Visitation Restrictions

¶ 13 Erika's first contention on appeal relates to the trial court's restrictive visitation order. The underlying action was initiated under the Illinois Parentage Act of 1984 (Parentage Act) (750 ILCS 45/1 *et seq.* (West 2006)). Pursuant to section 14 of the Parentage Act, visitation issues are resolved in accordance with factors set forth in the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/101 (West 2006)). 750 ILCS 45/14(a)(1) (West 2006). Specifically, section 607(c) of the Marriage Act provides that the circuit court "may modify an

order granting or denying visitation rights of a parent whenever modification would serve the best interest of the child; but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral or emotional health." 750 ILCS 5/607(c) (West 2006). Visitation orders will not be disturbed on appeal absent on abuse of discretion. *In re Marriage of Ross*, 355 Ill. App. 3d 1162, 1167 (2005). An abuse of discretion occurs only when a circuit court's decision is arbitrary, fanciful, unreasonable, or when no reasonable person would take the same view. *Sbarboro v. Vollala*, 392 Ill. App. 3d 1040, 1055 (2009).

¶ 14 Here, on October 7, 2010, the circuit court held a hearing on Matthew's previously filed motion for rule to show cause. After the hearing, the circuit court restricted Erika's visitation rights in the form of requiring supervision and restricting telephonic contact, explaining that the "acts of commission and omission on the part of [Erika] is detrimental to the nurturing of the minor and that the conduct of [Erika] creates endangerment to the minor and threatens the welfare of the minor."

¶ 15 Erika initially contends, without any legal precedent, that the trial court "erred in excluding testimony" from her before modifying visitation rights. As an initial matter, we note that Erika has not cited any relevant legal authority within her brief on this issue as required by Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008). She further fails to develop the issue in any meaningful way in her one-paragraph argument, but instead complains that the trial court did not appoint an attorney for her. This court is entitled to have the issues clearly defined with pertinent authority cited and is "not a depository in which appellant may dump the burden of

argument and research." *In re Marriage of Auriemma*, 271 Ill. App. 3d 68, 72 (1995) (quoting *Thrall Manufacturing Co. v. Lindquist*, 145 Ill. App. 3d 712, 719 (1986)). Bare contentions without argument or citation to relevant authority do not merit consideration on appeal. *Hassan v. Wakefield*, 204 Ill. App. 3d 155, 159-60 (1990). Furthermore, even *pro se* litigants are not excused from following the rules that dictate the form and content of appellate briefs. *In re Marriage of Barile*, 385 Ill. App. 3d 752, 757 (2008). Failures to comply with these requirements on an issue on appeal result in forfeiture of that issue. *Vilardo v. Barrington Community School District 220*, 406 Ill. App. 3d 713, 720 (2010). Accordingly, based on these principles, Erika's contention her is arguably forfeited.

¶ 16 Even if we were to entertain consideration of Erika's contention that her testimony was improperly excluded, the circuit court order provides that it heard appropriate testimony regarding the issues. Furthermore, it noted that Erika had failed to appear at the hearing, despite the circuit court delaying the hearing by at least an hour in an effort to provide her a further opportunity to appear on that day. Therefore, any argument that the circuit court somehow erred in excluding Erika's testimony at the hearing ignores the fact that Erika absented herself from the hearing.

¶ 17 Erika next argues that the trial court erred in failing to find that Matthew must prove by a preponderance of the evidence that restricting visitation and telephonic contact was in the best interest of the minor child. A parent is entitled to reasonable visitation rights unless the custodial parent proves, by a preponderance of the evidence, that without a restriction of visitation, the child's physical, mental, moral or emotional health will be seriously endangered. *In re Marriage*

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of Campbell, 261 Ill. App. 3d 483, 492 (1993).

¶ 18 Our review on this issue, and the vast majority of the remaining issues raised by Erika, is significantly hindered by the fact that Erika has failed to provide a transcript, or a sufficient substitute, of the hearing on this motion where evidence and testimony was presented. It is well settled that:

"[A]n appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391–92 (1984).

In the absence of a complete record, we must presume that the trial court had ample grounds supporting its determination. *Rock Island County v. Boalbey*, 242 Ill. App. 3d 461, 462 (1993).

¶ 19 As an initial matter, Erika again largely fails to advance a sufficient argument in support of her position. Instead she offers conclusory statements that Matthew failed to satisfy his burden. She further argues, without legal support, that the circuit court should have required a "psychologist, a counselor or another custody evaluator" to determine Annelise's best interests. But, as we previously noted, after considering the evidence and testimony presented, the trial court found that Erika had continually failed to pay her child support, satisfy her obligations regarding Annelise's medical expenses, maintain a job diary as ordered, maintain and provide copies of her income tax returns, and foster a nurturing relationship between the siblings. It

further made a specific finding that Erika's acts endangered the minor child's best interests. Evidence in the record, such as exhibits attached to various motions and prior circuit court orders, substantiate the occurrence of Erika's various and numerous violations of the circuit court's June 2, 2009, custody order. It also bears mention that in visitation restriction cases, where a judgment order recites that the court considered the testimony and makes the requisite finding of endangerment, this court "must presume that the evidence heard was sufficient to support the judgment absent any contrary indication appearing in the record." *In re Marriage of Griffiths*, 127 Ill. App. 3d 123, 125-26 (1984) (evidence before circuit court regarding endangerment was presumed sufficient due to lack of transcript of hearing on petition to modify visitation and circuit court's specific finding of endangerment). Accordingly, because the circuit court made the requisite finding of endangerment, appeared to consider the appropriate factors, and no determinative contrary evidence exists in the record before us, we must presume that the circuit court properly exercised its discretion here and did not err.

¶ 20 2. Failure to Pay Child Support and Violation of Child Support Statute

¶ 21 Erika also contends that the circuit court "erred in adjudicating respondent in indirect civil contempt of court for failure to pay child support and medical expenses," and that it also erred in finding she had violated the applicable child support statute. As an initial matter, we observe that Erika has, at times, injected a number of unrelated arguments throughout her brief appearing to challenge the circuit court's determinations of her monthly child support obligations. Issues regarding the amount of Erika's court ordered monthly child support obligation were not before or considered by the circuit court in any way when it ruled on the issues now before us on

appeal. Instead, the relevant issue before the circuit court was the degree to which Erika had failed to satisfy her child support and medical expense obligations. Erika has challenged the order against her holding her in indirect civil contempt. Any argument challenging the reasoning behind the amount of her monthly child support obligations is not properly before us and we will not consider that issue.

¶ 22 Whether a party is guilty of contempt is a question of fact for the circuit court, and this court will not disturb its finding unless it is against the manifest weight of the evidence or the record indicates an abuse of discretion. *Killion v. City of Centralia*, 381 Ill. App. 3d 711, 715 (2008) (quoting *In re Marriage of Logston*, 103 Ill. 2d 266, 286–87 (1984)). Here, Matthew's motion alleged that Erika failed to satisfy her child support obligations from June 2009 to September 2010. From June 2009 until February 2010, Erika was required to pay \$490 per month. In February 2010, the circuit court abated Erika's support obligations to \$250 per month.¹ Therefore, as of the October 2010 hearing, Erika owed \$490 per month for 7 months and \$250 per month for 8 months, for a total of \$5,430. Furthermore, medical expenses owed to Matthew allegedly totaled \$238.20, for a obligation total parental arrearage of \$5,668.20. Detailed documentation within the record indicates that Erika had paid approximately \$2,755.99 in child support during that time period, an amount not disputed in any significant way by the parties,

¹ We note that Erika's brief contains a contention that the June 2, 2009, \$490 monthly child support order should have been lowered. This, in fact, did occur on February 16, 2010, after the circuit court received evidence of her financial situation.

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leading to an outstanding balance of approximately \$2,912.

¶ 23 The circuit court, however, found Erika to be in indirect civil contempt for failure to pay child support and medical expenses totaling \$5,786.47. There appears to be a significant discrepancy between the back support and expenses calculated by the court and the documentation within the record on appeal, particularly when compared with the monthly amount of child support Erika is ordered to pay. We would be remiss were we not to acknowledge the possibility that more evidence and testimony was presented during the hearing to explain the difference in amounts, as another document within the record does show some type of outstanding balance of \$4,731.53 as of August 31, 2010. Unfortunately, the document is singularly lacking in detail. Accordingly, while it is clear that, under any scenario, there is sufficient evidence to support a finding of indirect civil contempt based on failure to pay child support and medical expenses, it is less clear what the precise amount should be and the evidence before us strongly suggests a possible error in the calculation. Accordingly, we must remand this issue to the circuit court for the limited purpose of confirming the amount of child support and medical expenses in arrears as of October 7, 2010 and, if deemed necessary by the circuit court, to correct the amount owed.

¶ 24 Next, respondent argues that the circuit court erred in holding her in indirect civil contempt without "first ordering a rule." First, we find Erika's argument in her brief on this matter to be legally incomprehensible. For example, the single case she cites in support, *In re Alexis H.*, 401 Ill. App. 3d 543 (2010), is a case dealing with the adjudication of wardship of three children, where the issues involved the propriety of evidence regarding sexual abuse and

do with the circuit court orders. Furthermore, the fact that Erika points to job search logs in the record only shows that they existed at some place or some time, but does not require the conclusion that they were properly tendered as ordered by the circuit court. Matthew's motion argued that Erika's job diary, which was required to be tendered weekly, had not been received for over four months. Again, we reiterate that we have no documentation regarding the actual hearing on Matthew's motion for rule to show cause and thus the incompleteness of the record here only allows us to speculate as to how and why the circuit court exercised its discretion, as any number of things that might constitute a "failure to maintain and tender a job diary." Since we have insufficient documentation before us to conduct a proper review, we will not impute error on a circuit court's decision where none is evident, and must presume that the circuit court had sufficient grounds supporting its finding.

¶ 27

4. Income Tax Returns

¶ 28 Erika contends that the circuit court erred in finding that she had not provided copies of her income tax return as ordered. The circuit court had previously provided that Erika, being in the habit of not filing her income tax returns, must turn over to Matthew, no later than May 1 of each calendar year, copies of her federal and state income tax return, W-2s, 1099s, and other related tax documents. Matthew's motion alleged that Erika had not submitted anything to him as of August 30, 2009.

¶ 29 Respondent's argument here is again incomplete and is comprised of only four sentences with no citation to authority. She appears to claim, however, that she had complied with the circuit court order because she had mailed "the return" to Matthew on September 17, 2010.

Notably, this date was just over a month after Matthew had filed his motion for rule to show cause that had complained of, *inter alia*, Erika's failure to tender her tax returns to him. We further note that the evidence she points to in the record in support of her argument is simply a mailing receipt as opposed to any dated copies of the returns themselves. Moreover, in Erika's answer to Matthew's motion, she actually admitted to the allegation that she had failed to comply with the circuit court's order but attempted to excuse her noncompliance by claiming that she had filed for an extension on her "2009 tax return." As stated above, however, the trial court ordered her to turn over federal and state income tax returns by May 1 of any given year and we find nothing in the record allowing her to disregard this date without seeking leave, or at least notifying, the circuit court or Matthew of her intention to do so. The record indicates that Erika repeatedly failed to comply with the circuit court's various orders, and that the circuit court has provided reasonable leeway under the circumstances. Nevertheless, Erika here again disregarded a circuit court order, let a deadline lapse without notification or excuse, and then frantically attempted to comply in a most untimely manner only when the possibility of being held in indirect civil contempt appeared on the horizon. The circuit court did not err in finding that Erika did not comply with its order here.

¶ 30 5. Driver's License and Automobile Insurance

¶ 31 Erika next contends that the trial court erred in finding that she failed to demonstrate proof of a valid Illinois driver's license and auto insurance. Matthew's motion for rule to show cause alleged that he had no proof that Erika, as was ordered by the circuit court, had a valid Illinois driver's license and automobile insurance. Erika points to an exhibit attached to her

providers.

¶ 34 With unerring consistency, these arguments suffer from the same infirmities as outlined above. Furthermore, Erika continues to make conclusory statements, and persistently argues without pointing to anything in particular that there is "no proof" to substantiate Matthew's claims and that he has made "false allegations." Without a transcript, affidavit or some other supporting record, we have no way of determining the veracity of these allegations. Evidence and testimony was offered during the hearing which very well could have constituted the proof and substantiation of Matthew's allegations that Erika claims does not exist.² Matthew had advanced a number of allegations in his motion for rule to show cause related to the findings made by the circuit court, which the circuit court apparently found to be credible based on the evidence and testimony provided on October 7, 2010. Furthermore, limitations on contact with Annelise, her school and her medical providers is nothing more than the expected consequence of the enforcement of the circuit court's determination that Erika's visitation with Annelise must now be supervised until further court order.

¶ 35 In sum, we decline to accept Erika's unsubstantiated claims that there is "no proof" or factual basis to the circuit court's findings. We simply will not presume that the circuit court

² We observe that the evidence that we can glean from the record tends to generally support Matthew's claims. For example, the restriction on contact with Annelise's medical providers appears be based, at least in part, on Erika having taken Annelise to a pediatrician without proper notification and administering unnecessary medication to her.

erred in some way without at least some evidence indicating as such. Furthermore, we note that Erika continues to complain of the fact that she was never given an "opportunity" to testify. Again, we find such a complaint to be devoid of any truth since she was, in fact, given an opportunity to testify on October 7, 2010, but did not even show up for the hearing.

¶ 36

7. Contact With Petitioner

¶ 37 Erika next contends that the trial court erred in ordering that no contact shall be made between Erika and Matthew verbally or telephonically, and that she be denied access to Matthew's residence within 1,000 feet. Erika, again, argues in a conclusory fashion that there is no evidence indicating that such a restriction would be necessary and offers a number of irrelevant arguments about the circuit court's holding. The absence of a hearing transcripts makes it impossible to divine exactly why the circuit court chose to restrict contact, but Matthew's motion indicates that Erika had, on several occasions, driven past his residence to photograph and videotape him at his own residence. Police reports within the record substantiate these claims and a letter from Erika herself appears in the record where she has admitted to "openly videotaping" Matthew. In any event, we will defer to the circuit court's findings because without evidence to the contrary, we must presume it properly exercised its discretion based on the evidence and testimony presented to it. We find nothing in the record or in Erika's argument that would persuade us to find otherwise.

¶ 38

III. CONCLUSION

¶ 39 In conclusion, we decline to find that the circuit court erred in holding Erika in indirect civil contempt, temporarily restricting her visitation with Annelise, and limiting her contact with

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Matthew, and affirm its judgment. However, due to a significant discrepancy between the circuit court's order and reliable documentation within the record, we remand this matter for the limited and sole purpose of confirming, and if necessary, correcting, the amount of back child support and medical expenses that were owed to Matthew on October 7, 2010.

¶ 40 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed and the cause remanded for further proceedings.

¶ 41 Affirmed and remanded.