FIFTH DIVISION
January 14, 2011

No. 1-10-0524

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BENJAMIN WILLIAMS	)	Appeal from the
	)	Circuit Court of
	)	
	)	Cook County.
Petitioner-Appellant,	)	
	)	
v.	)	
	)	
FELICIA SAUNDERS,	)	
	)	
	)	
Defendant-Appellee,	)	No. 09 D 080779
	)	
	)	
	)	Honorable
	)	Martha A. Mills,
	)	Judge Presiding.

JUSTICE JOSEPH GORDON delivered the judgment of the court.
Justices Fitzgerald-Smith and Howse concurred in the judgment.

ORDER

Held: Where appellant did not provide us with a sufficient record of the proceedings below to evaluate the merits of the appeal, the order entered by the trial court dismissing the case for lack of jurisdiction was presumed to be in conformity with

the law and have a sufficient factual basis.

Petitioner Benjamin Williams, *pro se*, appeals from an order of the circuit court of Cook County dismissing his complaint for custody of his minor child, Tieaquesha Ali'ze Williams, for lack of personal jurisdiction over respondent and lack of subject matter jurisdiction. For the reasons that follow, we affirm.

I. BACKGROUND

Initially, we note that defendant has only provided us with a common law record, and has not included a transcript of the proceedings below. Based on this limited record, we are only able to glean what appears to be the following facts and procedural history, which, as shall be more fully discussed below, are not sufficient to give us the facts on record pursuant to Illinois Supreme Court Rules 321 (S. Ct. R. 321 (eff. Feb. 1, 1994)) and 323 (S. Ct. Rs. 323 (eff. Dec. 13, 2006).

On October 29, 2009, defendant filed a document styled "complaint to determine legal custody of minor child," in which he named as "defendants:" respondent, Felicia Saunders, as well as Letrice Brown, Julie Slocum, the Department of Social Services of Pettis County, Missouri, and Juvenile Officer Maria Mittelhauser. According to the complaint, this was an action brought pursuant to the Illinois Parentage Act of 1984, 750 ILCS 45/1 et seq.(West 2009), the UCCJEA, 750 ILCS 36/201 et seq. (West 2009), and the UCCJA, which has been repealed and was incorrectly cited as 750 ILCS 36/102 et seq. (West 2009). Petitioner alleged, in the complaint, that he and respondent are the parents of minor child Tiequesha Williams, who was born on November 23, 2002, in the state of Illinois. Petitioner also alleged that he and

respondent shared custody of the child for the first six months of the child's life, and that, in May 2003, respondent released physical custody of the child to petitioner. Moreover, petitioner alleged that the minor child lived with petitioner and his mother until August 2004, and that, from August 2004 to June 2005, the child then lived with "both parents." Petitioner further alleged that the child resided with respondent from June 2005 to May 2006, and that the child then lived with petitioner from May 2006 to October 2006. In October 2006, an acquaintance of respondent's allegedly removed the child from petitioner without his permission and took her to the state of Missouri.

In addition, petitioner alleged that in December 2006, the Department of Child and Family Services was called to investigate respondent in Missouri, and that in January 2007, the child was taken into state custody by Pettis County, Missouri.[1] He also appears to allege, in the complaint, that Mittelhauser and Slocum failed to notify him of the emergency order of protection entered on that matter, which, according to petitioner, is required under the UCCJA and the UCCJEA. Petitioner also alleges that the state of Missouri failed to hold a hearing to determine his parental fitness before making a custody decision, in spite of the fact that he has an established relationship with the child. He further alleged that the child and her siblings, who are not petitioner's children, were placed in temporary foster homes in January 2007, and that the child lives with foster parent, Brown. Further, according to the complaint, Slocum ordered Brown to stop all contact between petitioner and the child, and both Slocum and Mittlehauser

[1]Petitioner attached to his appellate brief documents which are outside the common law record, but that are connected to the minor child's custody case in Pettis County, Missouri.

admitted that Illinois was the child's home state prior to custody proceedings. Finally, the complaint alleges that the child "would be in an environment of love, and one of familiar circumstances as to not interrupt her life," and that respondent "waived parental rights, and petitioner's rights are intact as guaranteed by state law." Based on petitioner's allegations, he appears to seek custody of the minor child.

The common law record next shows that on December 28, 2009, petitioner filed a motion for summary judgment, in which he alleged that the child did not live in Pettis County, Missouri "six months prior to the custody decree being entered," and therefore, Illinois has subject matter jurisdiction over this matter under UCCJEA and UCCJA. On January 6, 2010, petitioner also filed a document styled "request for guardian ad litem appointment," in which he sought the appointment of a guardian ad litem to represent the minor child and appear at the hearing on his motion for summary judgment.

On January 27, 2010, the circuit court entered an order dismissing petitioner's complaint for lack of jurisdiction over respondent, and more significantly, lack of subject matter jurisdiction. In the order, the circuit court noted that there was no service on respondent, and that "[t]he [p]etitioner stated that the child is living in Missouri and has been for more than the last six months." The court also found that Missouri was the home state of the child under UCCJEA. Petitioner appeals.

II. ANALYSIS

On appeal from that order, defendant contends that the circuit court "abused its discretion" in dismissing this action for lack of subject matter jurisdiction over this action, and

that it erred in ruling that it lacked personal jurisdiction over respondent. He further contends that the circuit court had statutory jurisdiction to modify a custody decree from a foreign state, and that Illinois is a more appropriate forum to enter such a decree. Petitioner maintains that the minor child has more significant connections with Illinois than with Missouri and that her absence from Illinois is temporary. Moreover, petitioner argues that his right to due process was violated when a custody decree was entered without first conducting a parental fitness hearing, and when he was not allowed to present evidence that Illinois was the child's home state. Petitioner further maintains that a custody agreement between himself and respondent "preempts" any orders from a Missouri court, and seems to argue that the child's removal from Illinois was improper.

We note, initially, that petitioner has failed to comply to the supreme court rules for appellate briefs set forth in Illinois Supreme Court Rule 341 (S. Ct. R. 341 (eff. Jul. 1, 2008)). Most importantly, petitioner failed to include citations to the record and refers to matters outside of the record, in violation of Rule 341(h)(7) (210 Ill. 2d R. 341(h)(7) (eff. Jul. 1, 2008)); *Bank of Ravenswood v. Maiorella*, 104 Ill. App. 3d 1072, 1074 (1982)). Petitioner has also failed to include in his brief a concise statement of the applicable standard of review for each issue with citation to authority, as required by Rule 341(h)(7) (Ill. S. Ct. R. 341(h)(7) (eff. Jul. 1, 2008)). However, we are not inclined to dismiss the appeal on that basis alone. More significant is the fact that petitioner has not provided us with a sufficient record of the proceedings below to permit us to properly evaluate the merits of this appeal, much less decide this appeal in his favor. See *Lill Coal Co. V. Bellario*, 30 Ill. App. 3d 384, 385 (1975); *Foutch v. O'Bryant*, 99 Ill. 2d

389, 392 (1984).

The supreme court held, in *Foutch*, 99 Ill. 2d at 392, that an appellant has the burden to present a sufficiently complete record of the proceedings at the trial level to support a claim of error by that court. In addition, in the absence of such record on appeal, it will be presumed that the order entered by the circuit court was in conformity with the law and had a sufficient factual basis, and any doubts which may arise from incompleteness of the record will be resolved against the appellant. *Foutch*, 99 Ill. 2d at 392. In *Foutch*, 99 Ill. 2d at 392, since appellant did not provide a transcript or bystander's report of the hearing on a motion to vacate, the reviewing court had no basis for holding that the trial court had committed an error in denying the motion. In fact, in *In re Marriage of Gulla and Kanaval*, 234 Ill. 2d 414, 423-24 (2009), where appellant failed to provide a transcript, bystander's report or agreed statement of fact of the circuit court's hearing in which it found that it had jurisdiction over appellant, the supreme court held it must presume that the circuit court's finding correct. See also *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005) (holding that in the absence of an adequate record preserving the claimed error, any doubts arising from the incompleteness of the record will be resolved against the appellant, and the order of the circuit court will be affirmed); see also *Coleman v. Windy City Balloon Port, Ltd.*, 160 Ill. App. 3d 408, 419 (1987), citing *Mileke v. Condell Memorial Hospital*, 124 Ill. App. 3d 42, 48-49 (1984), *In re marriage of Hofstetter*, 102 Ill. App. 3d 392, 396 (1981) ("[i]t is not the obligation of the appellate court to search the record for evidence supporting reversal of the circuit court. *** When portions of the record are lacking, it will be presumed that the trial court acted properly in entry of the challenged order and that the order is

supported by the part of the record not before the reviewing court"), but see *Walker v. Iowa Marine Repair Corp.*, 132 Ill. App. 3d 621, 625 (1985) (reviewing court properly reached the merits of the case without the benefit of a transcript where it was clear from the circuit court's order that its ruling could only have been based on the pleadings and affidavits in the record presented).

In this case, determination by the circuit court of its in personam jurisdiction over the respondent and of its subject matter jurisdiction to determine child custody are fact specific, and depend upon the factual evidence presented. Under the Illinois Code of Civil Procedure, 735 ILCS 5/2-203(a)(1) and (2) (West 2008), service of summons on an individual must be made by leaving a copy of the summons with that individual personally, or leaving a copy at that person's place of abode, with a person of the family or a person residing there. Therefore, to review the circuit court's finding that there was no service on respondent, we must turn to what evidence was presented indicating service of process on respondent. Further, under the UCCJEA, 750 ILCS 36/203 (West 2008), "a court of this State may not modify a child-custody determination made by a court of another State unless a court of this State has jurisdiction to make an initial determination under Section 201(a)(1) or (2) ***" Sections 201(a)(1) and (2) provide that except as otherwise provided under Section 204, which is not applicable to this matter, a court of this State has jurisdiction to make an initial custody determination only if:

> "(1) this State is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this State but a

parent or person acting as a parent continues to live in this State;

(2) a court of another state does not have jurisdiction under paragraph (1), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this State is the most appropriate forum under Section 207 or 208, and:

(A) the child and the child's parents, or the child and at least one parent or a person acting as a parent, have significant connections with this State other than mere physical presence; and

(B) substantial evidence is available in this State concerning the child's care, protection, training, and personal relationships." 750 ILCS 36/201 (West 2008).

Thus, to review the circuit court's finding that it lacked subject matter jurisdiction, we must turn to what evidence was presented of the child's current state of residency and how long the child has resided there, or whether any evidence was presented indicating that a court of another state does not have jurisdiction or has declined to exercise it.

In this case, petitioner has failed to provide us with any report of the proceedings below. See S. Ct. R. 323(a) (eff. Dec. 13, 2005) (the report of the proceedings, "may include evidence, oral rulings of the trial judge, a brief statement of the trial judge of the reasons for his decision, and any other proceedings that the party submitting it desires to have incorporated in the record on appeal"). Nor is there a bystander's report which is authorized under Illinois Supreme Court Rule 323(c) (See S. Ct. R. 323(c)) (eff. Dec. 13, 2005) ("[i]f no verbatim transcript of the

evidence of proceedings is obtainable the appellant may prepare a proposed report of proceedings from the best available sources, including recollection"), nor any agreed statement of facts filed by the plaintiff which is authorized by Rule 323(d) (See S. Ct. R. 323(d) (eff. Dec. 13, 2005) ("[t]he parties by written stipulation may agree upon a statement of facts material to the controversy and file it without certification in lieu of and within the time for filing a report of proceedings"). All that appears before us is the common-law record, which includes copies of petitioner's complaint, his motion for summary judgment, and the circuit court's order dismissing his complaint for lack of personal jurisdiction over respondent, and lack of subject matter jurisdiction under UCCJEA.

The circuit court's order dismissing petitioner's complaint found that there was no service on respondent, and that petitioner himself stated that the child was living in Missouri at that time and had been for more than the previous six months. In the order, the circuit court stated simply that the case was dismissed for lack of jurisdiction over respondent and for subject matter jurisdiction, and noted that Missouri was the home state of the child under the UCCJEA. The order does not state its reasoning, or what evidence was presented at the hearing, besides noting that petitioner stated that the child had been living in Missouri for the past six months. Without a transcript or a bystander's report, we do not know what evidence was presented at the circuit court with respect to the child's residency, or upon which the court may have based its conclusion that it lacked personal jurisdiction over respondent and that it lacked subject matter jurisdiction under the UCCJEA. In addition, there is no record to support petitioner's contention that he was not allowed to present evidence of the child's home state. Thus, we cannot review

any of the other issues raised or assess the trial court's findings and basis for its legal conclusions. As such, without a record of the proceedings, we can only speculate as to the reasons for the circuit court's findings that Missouri was the home state of the child, and that it lacked personal jurisdiction over respondent and subject matter jurisdiction under UCCJEA. Such speculation is not an adequate basis upon which we may conclude that the circuit court erred in dismissing the matter for lack of jurisdiction. Therefore, under these circumstances, we must presume that the circuit court's ruling had a sufficient factual basis and was in conformity with the law. See *Gulla and Kanaval*, 234 Ill. 2d at 423-24; see also *Foutch*, 99 Ill. 2d at 392; *Coleman*, 160 Ill. App. 3d at 419.

Affirmed.

FITZGERALD-SMITH, J., and HOWSE, J., concur.