

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).

NO. 4-10-0738

Order filed 2/14/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: K.F., a minor,)	Appeal from
MATTHEW FAIRCHILD,)	Circuit Court of
Petitioner-Appellee)	Adams County
V.)	No. 02F133
DANIELLE DAVIS,)	
Respondent-Appellant.)	Honorable
)	John C. Wooleyhan,
)	Judge Presiding.

JUSTICE MYERSCOUGH delivered the judgment of the court. Justices Turner and Steigmann concurred.

ORDER

Held: Trial court's decision to award custody of minor child to his father would not be overturned where mother failed to include a complete record and present a legally sufficient argument on appeal, each in violation of supreme court rules.

Respondent, Danielle Davis, appeals the August 2, 2010 order granting custody of her minor child, K.F. born February 4, 2000, to petitioner, Matthew Fairchild, the minor child's father. Although respondent was represented by counsel in the trial court, she appears *pro se* on appeal. Respondent argues (1) the trial court erred in finding the child suffered from obesity and experienced instability in his life, (2) the presiding judge had an impermissible *ex parte* conversation with petitioner's attorney and thereby engaged in impermissible conduct in violation of the Code of Judicial Conduct, and (3) respondent received the inade-

quate assistance of trial counsel. Because respondent neither presented transcripts of the hearing in violation of Supreme Court Rule 321 (eff. Feb. 1, 1994), nor presented a brief in compliance with Supreme Court Rule 341 (eff. Sept. 1, 2006), her arguments are forfeited. Therefore, this court affirms.

I. BACKGROUND

On February 4, 2003, by stipulation, the trial court found petitioner to be K.F.'s father and awarded joint custody to petitioner and respondent, who lived together at the same residence. Respondent and petitioner were not married. From the end of 2004 to mid-2005, various motions were filed by respondent, who no longer lived with petitioner. Each of these motions were stricken because respondent failed to appear at the scheduled hearings. In July 2005, respondent filed a motion for child support and permission to remove K.F. from the State of Illinois. Petitioner failed to appear at the hearing on respondent's motion for removal, and the trial court granted the petition. Respondent failed to appear at the hearing on her motion for child support, and her motion was stricken.

Subsequently, petitioner filed a petition for change of custody on June 11, 2009. Therein, petitioner argued a substantial change in circumstances warranted a change in the physical care, custody, and control of K.F. from respondent to petitioner. Petitioner alleged that K.F.'s physical residence had been

changed at least 16 times in nearly four years. As a result, petitioner alleged, K.F. was prevented from having a stable and routine environment and household such that his mental, emotional, and environmental well-being were jeopardized. Petitioner alleged it was in K.F.'s best interest that he be awarded the physical care, custody, and control of the minor. Respondent filed a motion to dismiss, arguing the parties did not submit to mediation as required by their joint-parenting agreement. Respondent also filed another motion for child support. On August 31, 2009, the trial court ordered the parties to participate in mediation. The mediator found that there was not a reasonable likelihood the disputed issues could be resolved through mediation.

On August 2, 2010, after a hearing where both parties were present with counsel and evidence was presented, the trial court granted petitioner's petition for change of custody. The transcript of this hearing is not contained in the record on appeal. In a written order, the court found respondent had changed her residence in excess of 15 times since July 2005. One such move to Jefferson, Missouri, was with the permission and knowledge of the court, but additional moves to other states were not court authorized. The court also found K.F. had developed obesity while under respondent's care, and respondent had made no substantial effort to correct or treat the condition. The court

concluded petitioner had shown by clear and convincing evidence that the minor child's best interests would be served by awarding custody of the child to petitioner. Respondent filed a motion to vacate the court's order, which was denied. This appeal followed.

II. ANALYSIS

Respondent argues the trial court erred in finding (1) the minor child suffered from obesity and experienced instability in his life and (2) the presiding judge had an impermissible *ex parte* conversation with petitioner's attorney and thereby engaged in impermissible conduct in violation of the Code of Judicial Conduct. She also argues she received the inadequate assistance of trial counsel.

This court notes petitioner did not file an appellee's brief on appeal. Although this court has the discretion to decide an appeal where an appellee's brief has not been filed (see *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133, 345 N.E.2d 493, 495 (1976)), it will not be exercised here as respondent failed to provide a complete record and failed to present a cogent argument with pertinent legal authority, each in violation of supreme court rules.

Supreme Court Rule 321 provides that "[t]he record on appeal shall consist of the judgment appealed from, the notice of

appeal, and the entire original common[-]law record, unless the parties stipulate for, or the trial court, after notice and hearing, or the reviewing court, orders less." Ill. S. Ct. R. 321 (eff. Feb. 1, 1994). The appellant bears the burden of presenting a sufficiently complete record necessary for a determination of the issues raised. *Buerkett v. Illinois Power Co.*, 384 Ill. App. 3d 418, 421, 893 N.E.2d 702, 708 (2008). Without such a record, this court will presume the trial court acted correctly, (*Leary v. Eng*, 214 Ill. App. 3d 279, 283, 573 N.E.2d 352, 355 (1991)), and any doubts which arise from the incompleteness of the record will be resolved against the party bringing the appeal (*Alpha School Bus Co., Inc. v. Wagner*, 391 Ill. App. 3d 722, 734, 910 N.E.2d 1134, 1147 (2009)).

Respondent failed to include as part of the common-law record a transcript of the August 2, 2010, change of custody hearing. Respondent did not provide an alternative, such as a bystander's report or an agreed statement of facts as provided for in Supreme Court Rule 323. Ill. S. Ct. R. 323 (eff. Dec. 13, 2005). Her contentions of error concerning the trial court's factual findings cannot be ruled upon without a verbatim transcript of the hearing or an acceptable alternative thereto. Reviewing the trial court's written order, the only evidence of the hearing properly before this court, we must presume the trial court acted correctly in placing custody of the minor child with

petitioner.

Respondent also argues the trial court and petitioner's attorney engaged in improper *ex parte* communication. According to respondent's brief, she overheard the trial judge and petitioner's attorney speaking in chambers about a DUI with which respondent had been charged. Without a transcript of the hearing, however, it is impossible to know whether respondent raised this issue before the trial court and properly preserved it for review.

Finally, respondent's brief does not comply with Supreme Court Rule 341(e)(7) in that a reasoned argument with citation to pertinent legal authority was not presented. Supreme Court Rule 341(e)(7) requires that the argument portion of an appellant's brief "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied upon." Ill. S. Ct. R. 341(e)(7) (eff. September 1, 2006).

Respondent's brief consists of little more than a recitation of facts and a series of questions. Respondent cited neither relevant pages of the record nor any legal authority to support her claims of error. Arguments that do not meet the requirements of Rule 341(e)(7) do not merit consideration on appeal. *Maun v. Department of Professional Regulation*, 299 Ill. App. 3d 388, 399, 701 N.E.2d 791, 799 (1998). In conjunction

with the less-than-complete record, this court is left with no choice but to affirm the trial court's judgment.

III. CONCLUSION

For the foregoing reasons, we affirm the trial court's judgment.

Affirmed.