

No. 1-11-3580

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

JILL CULLINAN,)	Appeal from the
)	Circuit Court of
Petitioner-Appellee,)	Cook County.
)	
v.)	No. 10 D 530230
)	
TIMOTHY CULLINAN,)	Honorable
)	Kathleen Kennedy,
Respondent-Appellant.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Karnezis concurred in the judgment.

ORDER

¶ 1 *Held:* We affirmed the judgment for dissolution of marriage and the denial of respondent's motions to reconsider, where respondent waived most of the issues on appeal and where other issues were nonappealable because they were the subject of an agreed order.

¶ 2 Respondent, Timothy Cullinan, filed this *pro se* appeal from the judgment for dissolution of marriage and the denial of his motions to reconsider. Respondent raises over 20 issues for review, most of which allege the trial judge was biased against him. We affirm.

¶ 3 The parties were married on September 14, 1990. Petitioner, Jill Cullinan, is employed by Cook County in the department of vital statistics. Respondent is a custodian at Goodwill Retail

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Services. The parties have one child, Arlene, born on June 9, 1998.

¶ 4 On March 23, 2010, the trial court entered an emergency order of protection against respondent, prohibiting him from committing physical abuse, harassment, and interference with the personal liberty of petitioner and Arlene. The court granted petitioner exclusive possession of the marital residence and denied respondent any visitation rights with Arlene.

¶ 5 Petitioner filed a *pro se* petition for dissolution of marriage on March 25, 2010. Petitioner alleged respondent was guilty of extreme and repeated mental cruelty toward her and that she did nothing to provoke him. The next day, March 26, 2010, respondent filed a petition for dissolution of marriage through counsel. Respondent alleged irreconcilable differences led to the irretrievable breakdown of the marriage. Both actions were filed in Cook County.

¶ 6 On April 13, 2010, the trial court entered an agreed order consolidating both actions, granting petitioner temporary custody of Arlene until further order of the court and, exclusive possession of the marital residence. The trial court dismissed the order of protection and granted respondent visitation with Arlene three days per week, from 3:30 p.m. to 6:30 p.m. or, by agreement of the parties.

¶ 7 On July 19, 2010, the trial court entered another order granting respondent visitation with Arlene three days per week. Pursuant to the order, respondent was required to notify petitioner every Friday of the three, 3-hour periods he would visit Arlene. If respondent failed to notify petitioner on Friday, then he would not receive visitation with Arlene the following week.

¶ 8 In March 2011, petitioner filed an emergency petition to modify visitation, alleging respondent had not visited with Arlene since November 2010, that he had struck Arlene, and that

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Arlene no longer wanted to visit with him. On March 14, 2011, the trial court entered an emergency order denying respondent any further visitation with Arlene until Arlene's therapist states she is ready to visit with him and, until further order of the court.

¶ 9 On July 13, 2011, the trial court entered a judgment for dissolution of marriage. The judgment indicates the trial was heard May 12 and May 25, 2011. There is no transcript, nor any transcript substitute (*e.g.*, a bystander report or an agreed statement of facts as provided for in Illinois Supreme Court Rule 323 (Ill. S. Ct. R. 323 (eff. Dec. 13, 2005)) for either day in the record.

¶ 10 Both parties were represented by counsel, and the Assistant Public Guardian represented Arlene as child representative. Both parties testified and the trial court received documents in evidence; however, there are no exhibits in the record on appeal. The judgment states the parties "agreed and the [c]hild [r]epresentative concurs that [p]etitioner should be granted sole custody of Arlene" and, respondent should be granted visitation with Arlene "as recommended by Arlene's therapist. This custody agreement is in Arlene's best interest." Accordingly, pursuant to the parties' agreement, the court granted petitioner sole custody of Arlene and granted respondent visitation as recommended by Arlene's therapist.

¶ 11 The judgment states the parties "contest the issues of maintenance, child support and child-related expenses, division of [p]etitioner's pension and allocation of debt." The judgment states petitioner's expenses for Arlene are \$490 per month and, respondent pays \$20 per week in child support pursuant to an earlier order. Petitioner pays for Arlene's health insurance and pays most of the co-pays for Arlene's counseling. The court found petitioner has borne most of the financial responsibility for Arlene since the parties separated.

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¶ 12 The trial court expressly found petitioner's testimony was more credible than respondent's, and that respondent's testimony had been impeached on several occasions.

¶ 13 The trial court ordered respondent to pay \$43.28 per week in child support through income withholding, and 25% of Arlene's health insurance premium, health care expenses not covered by insurance, and extracurricular expenses. The court granted respondent 50% of petitioner's pension and barred each party from asserting any claims for spousal support, maintenance or alimony against the other. The court awarded each party all vehicles, personal property, and bank accounts currently in their possession and ordered each party to be responsible for paying his/her own attorney fees and costs.

¶ 14 The trial court awarded respondent the marital residence as his sole and exclusive property and ordered him to refinance within 60 days to remove petitioner from liability as to any and all debt related to that property. The trial court ordered respondent to be solely responsible to pay all bills related to the marital home including, but not limited to, the mortgage with Citimortgage, the line of credit with TCF Bank, the real estate taxes, insurance and the utilities as of June 1, 2011.

¶ 15 On July 19, 2011, respondent filed *pro se* amended motions for "[dissipation] of assets, contempt of court, [dissipation] of property, child custody and visitation, substitute for cause." With respect to the alleged dissipation of assets, respondent accused petitioner of "withdrawing money" and "using credit card and not turning over mail to keep respondent informed." With respect to the alleged dissipation of property, respondent alleged all his belongings were now "gone" and that petitioner was to blame. With respect to contempt of court, respondent alleged petitioner had removed his personal belongings and caused the disappearance of the family dog. With respect to

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child custody and visitation, respondent alleged petitioner has "committ[ed] a felony and has lied to keep [him] away from the minor." With respect to his motion for substitution for cause, respondent alleged the trial court had not heard or assessed his various motions "in the correct steps," which had led him to "severe disadvantages."

¶ 16 On August 18, 2011, petitioner's motion for substitution of judge was denied. The remaining motions were continued to November 18, 2011. On November 18, the trial court entered an order stating respondent's motion to reconsider child custody and visitation was denied "after hearing." No transcripts of the hearing nor any bystander report or agreed statement of facts are included in the record on appeal.

¶ 17 With respect to respondent's remaining motions, the trial court entered an order on November 18, 2011, stating:

"Both parties present, *pro se*, the court hearing argument and evidence on respondent's motions filed [7/19/11] which the court treated as motions to reconsider ***. The court finds no new evidence; all evidence presented today could have been presented at trial. No basis to modify, vacate or reconsider the judgment. *** Respondent's motions filed [7/19/11] are denied." No transcripts of the hearing nor any bystander's report or agreed statement of facts are included in the record on appeal.

¶ 18 On December 6, 2011, respondent filed a timely notice of appeal from the judgment for dissolution of marriage and the denial of his motions to reconsider.

¶ 19 First, respondent argues the trial court violated the motion procedure and standards set forth in section 20 of the Citizen Participation Act (735 ILCS 110/20 (West 2010)). The Citizen

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Participation Act protects against lawsuits known as "Strategic Lawsuits Against Public Participation" (SLAPP) in government. *Stein v. Krislov*, 405 Ill. App. 3d 538, 540 (2010). SLAPPs are "lawsuits aimed at preventing citizens from exercising their political rights or punishing those who have done so." *Wright Development Group, LLC, v. Walsh*, 238 Ill. 2d 620, 630 (2010). The present case involves a divorce action, not a SLAPP and, therefore, the Citizen Participation Act is not applicable here.

¶ 20 Respondent next lists several motions he filed that, allegedly, were not given hearings or considered, which left him at a "disadvantage throughout the proceedings." However, the record on appeal indicates that a number of the motions listed were heard and ruled upon (*e.g.*, his motion for substitution of the judge for cause, his motion regarding attorney's fees, and his post-trial motions filed on July 19, 2011). Respondent has failed to specifically argue which motions were not ruled upon or, how he was prejudiced, thereby, in light of the dissolution judgment that resolved all outstanding issues. Accordingly, respondent has waived review thereof. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008).

¶ 21 Next, respondent argues the trial court engaged in improper, *ex parte* communications with petitioner on March 14, 2011, when it entered an order on petitioner's emergency petition to modify a prior visitation order which had allowed respondent visitation three days per week for three hours at a time. The March 14 order provided respondent would have no further visitation until the minor's therapist states the minor is ready to visit him and, until further order of the court. Respondent contends the March 14 order was entered without giving him due notice and was made solely on the basis of petitioner's arguments which, in the absence of notice to him, constituted *ex parte*

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communications. In support of his argument, that he had no notice of the March 14 hearing, respondent cites to the notice of motion and the pleading attached thereto (*i.e.*, the emergency petition), both of which, he claims, was filed on March 16, 2011, two days after the hearing.

¶ 22 As a preliminary matter, we note the record is not clear as to when the notice of motion and the emergency petition were filed. The notice of motion and emergency petition each contain a printed filing stamp stating it was filed on "Mar 1[_] 2011." On each filing stamp, the printed number after the 1 is so dull as to be unreadable, and someone has inked in the number 6 after the 1 to indicate the notice of motion and emergency petition were filed on March 16. However, we are unable to determine whether the unidentified person who filled in the number on each filing stamp was correct in reading it as a 6. Also, the notice of motion contains a certificate and affidavit indicating it was sent via facsimile to respondent's counsel, but no date is listed as to when the fax was sent.

¶ 23 The March 14 order states petitioner was present in court with her attorney at the hearing on the petition, and that the child representative also was present. The order does not state respondent was present, but it does state "due notice" had been given. We are unable to examine the transcript of the hearing on the emergency petition to determine the basis of the court's finding of adequate notice, because no such transcript has been included in the record on appeal. Nor is there a bystander report or an agreed statement of facts. As the appellant, respondent has the burden of providing a sufficiently complete record for review and, in the absence of such a record, we presume the trial court had a sufficient factual basis for finding that notice was given. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

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¶ 24 Also, to the extent respondent is attempting to appeal the custody and visitation issues which were agreed to by the parties and were incorporated in the judgment for dissolution of marriage, we note "once an agreed order is entered, it is not appealable unless it was the result of fraud, coercion or inequities between the parties." *McGath v. Price*, 342 Ill. App. 3d 19, 31 (2003). Although respondent claims he was treated inequitably by petitioner and by the trial court, he has cited no evidence in the record in support thereof. Accordingly, respondent cannot appeal the agreed order.

¶ 25 Respondent next raises the following issues for review: (1) "the court system did not treat him with the respect of the law as an equal," thereby violating his right to due process; (2) "the court did not hear the case fairly and with patience" in violation of Canon 3 of the Code of Judicial Conduct (Ill. S. Ct. R. 63 (eff. April 16, 2007)); (3) "there was no reason shown to the court [justifying his] removal from the home" prior to the judgment for dissolution of marriage; (4) "the court should have not allowed documents to be used in trial without [his] being given a copy or a chance to review" in violation of Illinois Supreme Court Rule 213(i) (Ill. S. Ct. R. 312(i) (eff. Jan. 1, 2007)); (5) "the outcome of the judgment shows that [he] was not given a level ground to stand on and his [interests were] not considered" in violation of section 413 of the Illinois Marriage and Dissolution of Marriage Act (hereinafter the Marriage Act) (750 ILCS 5/413 (West 2010)); (6) the court failed to follow the rules of construction set forth in section 102 of the Marriage Act (750 ILCS 5/102 (West 2010)); (7) "the court should have addressed [issues involving parental powers] at the onset" pursuant to section 602.1 of the Marriage Act (750 ILCS 5/602.1 (West 2010)) ; (8) "[petitioner] has been given great leeway in keeping [respondent] from having a strong relationship with the minor Arlene C."; (9) the court failed to give the custody proceedings priority as required

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by section 606 of the Marriage Act (750 ILCS 5/606 (West 2010)); (10) the court failed to grant him reasonable visitation rights in violation of section 607 of the Marriage Act (750 ILCS 5/607 (West 2010)); (11) the attorney fees order was erroneous, as it failed to take into account the financial resources of the parties as required by section 508 of the Marriage Act (750 ILCS 5/508 (West 2010)); (12) the "court system" allowed petitioner to remove him from the marital home without reason, prior to the judgment for dissolution of marriage, in violation of section 701 of the Marriage Act (750 ILCS 5/701 (West 2010)); (13) the court system did not hear his motions in a timely manner, which allowed petitioner to remove over \$16,000 from the marital assets; (14) petitioner's attorneys used their greater resources to protract the marriage dissolution process, outlasting him until an unfair settlement was reached, in violation of the purpose of section 501 of the Marriage Act (750 ILCS 5/501 (West 2010)); (15) the court violated section 501.1 of the Marriage Act (750 ILCS 5/501.1 (West 2010)) by failing to find petitioner dissipated \$8,000, which she had received from a home loan; and (16) the trial court misrepresented various facts in the judgment for dissolution of marriage.

¶ 26 Respondent asks us to remand the case to "be heard by an unbiased Judge who will listen to all parties," or find that the court's actions were grievous acts of "misconduct" and "the entire case should be heard in [an] unbiased and fair court system" in Will County.

¶ 27 Respondent has waived review of all these issues by failing to make a cohesive legal argument or an adequate analysis of case law in support thereof, and by failing to cite to relevant portions of the record. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008); *In re Marriage of Auriemma*, 271 Ill. App. 3d 68, 72 (1994) (quoting *Thrall Car Manufacturing Co. v. Lindquist*, 145 Ill. App. 3d

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712, 719 (1986)) (" [a] reviewing court is entitled to have the issues on appeal clearly defined with pertinent authority cited and a cohesive legal argument presented. The appellate court is not a depository in which the appellant may dump the burden of argument and research.' ") See also *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 674, fn. 1 (2008) (finding waiver due to the party's failure to provide relevant citations to the record).

¶ 28 Also, the custody and visitation issues were the subject of an agreed order and are not appealable. See our discussion above.

¶ 29 Further, to adequately consider the fairness of the underlying proceedings as requested by respondent, we need to examine the transcripts of the trial and the hearings on the post-trial motions. However, no transcripts of the trial or post-trial hearings, nor any bystander reports, or agreed statement of facts, are included in the record on appeal.

¶ 30 As discussed above, respondent is the appellant and, therefore, he bears "the burden of presenting a sufficiently complete record of the proceedings at trial to support a claim of error." *Midstate Siding & Window Co., Inc. v. Rogers*, 204 Ill. 2d 314, 319 (2003) (citing *Foutch v. O'Bryant*, 99 Ill. 2d at 391-92). In the absence of a complete record, a reviewing court presumes an order entered by the trial court was in conformity with the law and had a sufficient factual basis. *Foutch*, 99 Ill. 2d at 392. "In fact, when the record on appeal is incomplete, a reviewing court should actually 'indulge in every reasonable presumption favorable to the judgment from which the appeal is taken, including that the trial court ruled or acted correctly.'" *Smolinski v. Vojta*, 363 Ill. App. 3d 752, 757-58 (2006) (quoting *People v. Majer*, 131 Ill. App. 3d 80, 84 (1985)). Accordingly, in the absence of a complete record here, we will presume the orders of the trial court were proper.

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¶ 31 We understand the harshness of this result and that respondent pursued his appeal without counsel. However, "*pro se* litigants are presumed to have full knowledge of applicable court rules and procedures and must comply with the same rules and procedures as would be required of litigants represented by attorneys." *In re Estate of Pellico*, 394 Ill. App. 3d 1052, 1067 (2009).

¶ 32 For the foregoing reasons, we affirm the trial court. As a result of our disposition of this case, we need not address the other arguments on appeal.

¶ 33 Affirmed.