

January 2, 2012. The record on appeal in this cause was due on September 9, 2011 (Supreme Court Rule 311(a)(5) (eff. Feb. 26, 2010)). On September 19, 2011, this court entered an order giving Timothy seven days to show cause why the appeal should not be dismissed for want of prosecution for failure to file the record on appeal. On October 4, 2011, Timothy filed a letter with this court indicating that the record on appeal had not been prepared by the circuit clerk's office because he had been unable to pay the required fee, and stating that he would be able to pay the fee within two weeks. On October 5, 2011, this court entered an order discharging the September 9, 2011, show-cause order and directing the circuit clerk of St. Clair County to prepare and file the record on appeal in accordance with Supreme Court Rule 311(a)(4) (eff. Feb. 26, 2010). The due date for the record on appeal was extended to October 26, 2011. The record was filed on November 3, 2011. Timothy, who is proceeding *pro se*, filed his brief on appeal on December 2, 2011. On December 15, 2011, Denise informed this court via letter that she was not going to file a brief and would stand on the record.

¶ 4

FACTS

¶ 5 Timothy and Denise Tedesco were married in Hawaii on November 11, 1994. One child, B.T., was born on January 26, 1997. The family moved to Florida in 2002. On August 18, 2006, the circuit court of Manatee County, Florida, entered an order granting Denise's petition for dissolution of marriage. The judgment incorporated the parties' marriage settlement agreement, which provided, *inter alia*, that Denise would have primary custody of B.T., with Timothy having liberal visitation rights, including 60 days each summer. The agreement also provided that Denise's relocation to Illinois with B.T. was approved.

¶ 6 On August 18, 2010, Denise filed a petition to register the Florida judgment and an emergency petition to modify custody and visitation. In her petition to modify custody, Denise alleged, *inter alia*, that since the entry of the judgment of dissolution there had been

numerous disputes between the parties regarding visitation, culminating in Timothy's refusal to return B.T. from his latest summer visitation. Denise sought sole custody of B.T. and to have Timothy's visitation rights terminated, restricted, or made subject to supervision. Denise also filed a petition for a rule to show cause why Timothy should not be held in contempt for failing to abide by the August 18, 2006, judgment of dissolution.

¶ 7 The circuit court scheduled a case management conference for October 26, 2010, and ordered Timothy to appear on that date and show cause why he should not be held in contempt for failing to abide by the August 18, 2006, judgment of dissolution. Timothy filed a motion to continue the case management conference and the show-cause hearing. Following the October 26, 2010, hearing, at which Timothy appeared by telephone, the circuit court granted Denise's petition to register the Florida judgment of dissolution. The court also granted Timothy's motion to continue the case management conference and the show-cause hearing, and set a hearing on those matters for December 12, 2010.

¶ 8 On November 12, 2010, Timothy filed another motion to continue the case management conference and the show-cause hearing. The circuit court granted the motion and set a status hearing for January 18, 2011. After the January 18, 2011, status conference at which Timothy again appeared by telephone, the court ordered Timothy to contact Denise's counsel and the judge's clerk to schedule a Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA) (750 ILCS 36/101 *et seq.* (West 2008)) conference with the Florida court. The court also ordered discovery to be completed by March 15, 2011, and set a hearing on all pending matters for April 21, 2011.

¶ 9 On February 18, 2011, Timothy served interrogatories on Denise. Denise filed a motion for a protective order pursuant to Supreme Court Rule 201(c) (eff. July 1, 2002), arguing that Timothy's discovery requests were burdensome and intended to prevent a speedy resolution of the case. Denise's motion noted that in September of 2009 she had provided

extensive discovery to Timothy in connection with a proceeding in Florida.

¶ 10 On April 11, 2011, Timothy again requested a continuance arguing, *inter alia*, that Denise had not yet responded to his interrogatories. That same day, the circuit court entered an order noting that Timothy had not conferred with its clerk or opposing counsel to schedule a UCCJEA conference, and directed him to do so within seven days. The circuit court declined to address Timothy's motion for a continuance until he scheduled the UCCJEA conference.

¶ 11 On April 19, 2011, Timothy filed an amended motion to continue the April 21, 2011, hearing. Timothy also filed a response to the court's April 11, 2011, order indicating that he had provided the requested information to the clerk but had been unable to contact petitioner's counsel.

¶ 12 On April 21, 2011, the circuit court proceeded with the hearing on the show-cause order and the emergency petition to modify custody. The court noted that although its clerk had confirmed the parties' availability, Timothy failed to appear either in person or by telephone despite repeated attempts to contact him. The court denied Timothy's motion to continue, found him in default, and set a default hearing for May 24, 2011. The court also granted Denise's motion for a protective order, ruling that she needed only to update the discovery she had provided on October 1, 2009.

¶ 13 On May 19, 2011, Timothy filed a motion pursuant to section 2-1001(a)(3) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1001(a)(3) (West 2010)) seeking a substitution of judge for cause and arguing, *inter alia*, that Judge Rudolf had engaged in *ex parte* communications with Denise's counsel. Timothy also filed a motion to stay the proceedings until the motion for substitution was ruled on and a motion to continue the May 24, 2011, default hearing. The trial court granted Timothy's motion to continue and forwarded his motion for substitution for cause to the chief judge. A hearing on Timothy's

motion for substitution for cause was scheduled for June 15, 2011.

¶ 14 On June 14, 2011, Timothy filed a motion to continue the June 15, 2011, hearing. On June 15, 2011, Judge Baricevic denied Timothy's motion to continue and his motion for substitution of judge for cause. The court found that Timothy's conduct demonstrated a pattern of delay and that he had failed to raise any issues that would support an order for a substitution of judge for cause.

¶ 15 On June 27, 2011, Timothy filed a motion for a substitution of judge as of right pursuant to section 2-1001(a)(2) of the Code (735 ILCS 5/2-1001(a)(2) (West 2010)). Judge Baricevic denied Timothy's motion for substitution, finding that he had failed to allege issues needed to pursue a motion to substitute and that the motion was not verified. The trial court further found that the motion had been filed to harass the court and delay the proceedings.

¶ 16 On July 5, 2011, Timothy filed a verified motion for substitution pursuant to section 2-1001(a)(2) of the Code and a motion to stay the proceedings until the verified motion for substitution was ruled upon.

¶ 17 On July 6, 2011, a default hearing was held on Denise's emergency petition to modify custody and on her petition to show cause. Timothy did not appear either in person or by telephone. Denise testified that she had moved back to Illinois with B.T. in May of 2006, during the pendency of the dissolution proceedings. She filed the emergency petition to modify custody after Timothy failed to timely return B.T. after his 2010 summer visitation. Denise explained that she had sent B.T. to Florida for his summer visitation on June 6, 2010. Pursuant to the terms of the judgment of dissolution, Timothy was to have B.T. for 60 days and return him on August 4, 2010. However, when Denise emailed Timothy to discuss the details of returning B.T., Timothy would not give her any specific answers. Denise eventually contacted the police, in both Illinois and Florida. Timothy would not cooperate with the police. Timothy eventually returned B.T. on August 16, 2010, two days before

school was to start. Denise testified that she had previously had difficulties with Timothy regarding visitation and child support. He had filed numerous pleadings in the Florida courts and had engaged in numerous delaying tactics in those cases. Denise also testified that Timothy had come to Illinois around January 26, 2011, for B.T.'s birthday and had stayed here five or six days. Timothy stayed with his parents, who also live in Illinois. Timothy had not picked up B.T. for his summer 2011 visitation. Denise had emailed Timothy to arrange a pickup time and to find out when Timothy would be returning B.T., but Timothy refused to provide that information.

¶ 18 The circuit court found that Denise had proved by clear and convincing evidence that there had been a change in circumstances and that it was in B.T.'s best interests that she be granted sole custody. The court noted that although the marital settlement agreement required considerable cooperation between the parties, Timothy had failed to communicate or cooperate with Denise. The court also noted that there was a period during which it appeared that B.T. might not be returned, and that he was returned only two days before school started. The court ordered that summer visitation would be stayed until the parties came to an agreement in writing regarding visitation, including 48-hour advanced notice and the return of the child one week prior to the start of school. All other visitation was to remain the same unless Timothy failed to communicate with Denise regarding dates and times of pickup and delivery. The court also found Timothy to be in indirect civil contempt but reserved sanctions.

¶ 19 Later that day, the trial court entered an order denying Timothy's verified motion for substitution of judge and his motion for a stay of the proceedings. The court found that the motion had not been properly verified and that Timothy had failed to serve a copy of the motion on Denise. The court further found that the motion was untimely because it had previously ruled on a substantive matter.

¶ 20 Timothy appeals.

¶ 21

ANALYSIS

¶ 22 On appeal, Timothy argues first that the trial court erred in denying his motions to continue the April 21, 2011, hearing. He contends that Denise's failure to timely answer his interrogatories left him unable to prepare a defense. We disagree. Timothy served his interrogatories on Denise on February 18, 2011. Denise filed a motion for a protective order and served notice on Timothy that the motion would be heard on April 21, 2011. The circuit court had declined to consider Timothy's motion to continue the April 21, 2011, hearing because he had not scheduled the UCCJEA conference, as ordered by the court. Timothy did not appear on April 21, 2011, and the court's efforts to reach him by telephone were unsuccessful despite his previous indication that he would be available. The circuit court found him in default, denied his motion for a continuance, and granted Denise's motion for a protective order. In his brief on appeal, Timothy acknowledges that Denise answered his interrogatories shortly before the April 21, 2011, hearing. Although he argues that this did not provide him with adequate time to prepare his defense, we note that the default hearing on Denise's emergency petition to modify custody was not held until July 6, 2011, several weeks after Timothy received Denise's discovery materials. Timothy again chose not to appear, either in person or by telephone. A motion for a continuance is addressed to the sound discretion of the trial court, and its decision will not be disturbed on appeal absent an abuse of that discretion. *People v. Rodgers*, 288 Ill. App. 3d 167, 680 N.E.2d 437 (1997). Under the circumstances of this case, we cannot say that the trial court abused its discretion in denying Timothy's motion for a continuance.

¶ 23 Timothy next argues that the trial court abused its discretion in considering *ex parte* communications with opposing counsel and unsworn statements by the presiding judge's clerk in finding Timothy to be in default. Specifically, Timothy claims that Denise's attorney

had previously told him that the 8:30 a.m. hearing on the petition to modify custody had been continued and that a UCCJEA conference would be held at 9 a.m., and that Judge Rudolf had initially decided on April 21, 2011, to continue the hearing on the petition to modify custody, but, after an *ex parte* communication with opposing counsel and the clerk's "hearsay" statement that the parties had confirmed their availability, reversed that decision and decided to proceed with the hearing. This contention is meritless.

¶ 24 In its January 18, 2011, order, the trial court set a hearing on all pending matters, including Denise's emergency petition to modify custody and the rule to show cause, for April 21, 2011. Timothy filed a motion to continue the April 21, 2011, hearing, but the trial court refused to rule on Timothy's motion until he complied with the court's January 18, 2011, order by scheduling a UCCJEA conference. On April 13, 2011, Denise served a notice of the April 21, 2011, hearing on Timothy. On April 19, 2011, Timothy filed a motion seeking permission to appear by telephone at the April 21, 2011, hearing. He also filed an amended motion to continue "the Show Cause and Emergency Petition to Modify Custody and Visitation hearing scheduled for April 21, 2011[,] at 08:30 AM."

¶ 25 It is clear from the foregoing that Timothy knew that a hearing on Denise's emergency petition to modify custody and on the rule to show cause would be held on April 21, 2011, yet he did not appear, either in person or by telephone. Nothing in the record supports Timothy's assertion that Denise's attorney had told Timothy that the 8:30 a.m. hearing on the petition to modify had been continued, or that Judge Rudolf had initially decided to continue the hearing. We note that there is no verbatim transcript of the April 21, 2011, hearing, nor is there a bystander's report or an agreed statement of facts as provided for in Supreme Court Rule 323 (eff. Dec. 13, 2005). An appellant bears the burden of presenting a sufficiently complete record of the proceedings at trial to support a claim of error (*Foutch v. O'Bryant*, 99 Ill. 2d 389, 391, 459 N.E.2d 958, 959 (1984)) and any doubts arising from the

presentation of the record will be resolved against the appellant (*Griffiths v. Griffiths*, 127 Ill. App. 3d 126, 130, 468 N.E.2d 482, 485 (1984)). Because the record does not support Timothy's claim that the circuit court had initially decided to continue the April 21, 2011, hearing, his claims that the circuit court abused its discretion in reversing itself and proceeding with the hearing are meritless.

¶ 26 Finally, Timothy argues that the trial court erred in denying his motion for a substitution of judge as of right. Section 2-1001(a)(2)(i) of the Code provides that each party shall be entitled to one substitution of judge without cause as a matter of right. 735 ILCS 5/2-1001(a)(2)(i) (West 2010). In order to prevent a litigant from seeking a change of judge only after he has formed an opinion that the judge may be unfavorably disposed toward his cause, a motion for substitution of judge as a matter of right must be made at the earliest practicable moment before commencement of the trial or hearing and before the judge presiding over the case has ruled on any substantial issue. *Powell v. Dean Foods Co.*, 405 Ill. App. 3d 354, 938 N.E.2d 170 (2010).

¶ 27 Timothy's motion for substitution of judge as a matter of right was clearly untimely. The motion was filed on June 27, 2011, more than three months after Timothy had been found in default and more than two months after he had filed his motion to substitute Judge Rudolf for cause. Not only had the trial court made a substantial ruling in the case, Timothy had clearly formed an opinion that Judge Rudolf might be unfavorably disposed toward his cause. Consequently, the trial court properly denied the motion.

¶ 28 CONCLUSION

¶ 29 For the foregoing reasons, we affirm the judgment of the circuit court of St. Clair County.

¶ 30 Affirmed.