

NOTICE
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2014 IL App (4th) 130626-U

NO. 4-13-0626

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
April 1, 2014
Carla Bender
4th District Appellate
Court, IL

In re: MARRIAGE OF)	Appeal from
JOEL M. SANGERMAN,)	Circuit Court of
Petitioner-Appellee,)	Logan County
and)	No. 09D120
LISA ELAINE SANGERMAN,)	
Respondent-Appellant.)	Honorable
)	Thomas M. Harris, Jr.,
)	William A. Yoder,
)	Judges Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Appleton and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, declining to address the respondent's claims that the trial court abused its discretion by awarding the petitioner child support and attorney fees because the record on appeal was not adequate.

¶ 2 In October 2009, the trial court dissolved the marriage between petitioner, Joel M. Sangerman, and respondent, Lisa Elaine Sangerman, and granted physical custody of the parties' two daughters, L.S. (born August 24, 2005) and B.S. (born April 29, 2009), to Lisa, in accordance with the terms of their joint parenting agreement. In October 2010, the court entered an agreed custody order that awarded Joel "exclusive" care, custody, and control of L.S. and B.S., subject to Lisa's reasonable visitation. In April 2011, Lisa filed a petition to (1) modify the October 2010 custody order, requesting that the court award her primary custody of L.S. and B.S. (count I); or (2) set aside the October 2010 custody order on the basis of fraud and reinstate the

parties' October 2009 joint parenting agreement (count II).

¶ 3 In May 2012, following a lengthy discovery process, Joel filed a motion for summary judgment under section 2-1005 of the Code of Civil Procedure (735 ILCS 5/2-1005 (West 2012)). In November 2012, the trial court granted summary judgment in Joel's favor as to both counts alleged in Lisa's April 2011 petition. That same month, Joel filed two motions, requesting (1) child support under section 505 of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/505 (West 2012)) and (2) attorney fees under section 610(c) of the Dissolution Act (750 ILCS 5/610(c) (West 2012)). In June 2013, the court ordered Lisa to pay Joel \$15,000 toward his attorney fees and \$343 monthly for child support.

¶ 4 Lisa appeals, arguing that the trial court abused its discretion by granting Joel attorney fees and child support. We affirm.

¶ 5 I. BACKGROUND

¶ 6 (We note that, initially, Judge Thomas M. Harris, Jr., presided over this case. However, Judge William A. Yoder presided over the March 2013 hearing that is the subject of this appeal.)

¶ 7 In April 2003, Joel and Lisa married. In October 2009, the trial court dissolved their marriage. Their joint parenting agreement granted Lisa primary residential custody of L.S. and B.S., subject to Joel's custody on various days of the week. In July 2010, Joel filed an emergency motion for temporary custody and a petition to modify custody, both requesting that the court modify the parties' joint parenting agreement. In support of his filings, Joel claimed that Lisa was abusing psychotropic medications, smoking cannabis in the presence of L.S. and B.S., and acting recklessly. Joel also claimed that Lisa allowed Dustin Heinzl, a drug abuser, to reside in the home that she shared with L.S. and B.S.

¶ 8 Based thereon, in October 2010, the trial court amended the October 2009 joint parenting agreement by granting Joel exclusive care, custody, and control of L.S. and B.S., subject to Lisa's visitation on alternate weekends as agreed to by the parties. The court's order found that (1) Lisa "has maintained a relationship with *** Heinzl, who has, in the past, abused both prescriptive medication and illegal substances"; (2) "Heinzl recently suffered from an overdose of drugs and was hospitalized"; and (3) following his hospital release, Heinzl "participated in a drug clinic and has continued to reside" with Lisa.

¶ 9 In April 2011, Lisa filed a petition requesting that the trial court modify the October 2010 custody order by naming her as primary custodian of L.S. and B.S. because Joel "created an environment that seriously endanger[ed] the mental and emotional well-being of the parties' children" (count I). Alternatively, Lisa requested that the court set aside the October 2010 custody order on the basis of fraud and reinstate the parties' October 2009 joint parenting agreement (count II). In count I, Lisa alleged that (1) Joel told L.S. and B.S. that she was a "bad" and "stupid" person, who "does bad things" (allegations 8(a), 8(b), and 8(c)); (2) Joel had moved in with his paramour and her three children (allegation 8(d)); (3) Joel and his paramour denigrated Lisa in front of L.S. and B.S. (allegation 8(e)); (4) Joel argued with his paramour in the presence of L.S. and B.S. and his paramour threw a toothbrush at L.S. (allegation 8(f)); (5) Joel refused to keep her informed of L.S.'s school progress (allegation 8(g)); and (6) in retaliation for Lisa's refusal to rekindle their previous relationship, Joel limited her contact with L.S. and B.S. (allegation 8(h)). As to count II, Lisa alleged, in part, that Joel fraudulently induced her to move from her home in Lincoln to Chicago—where Joel resided—on the false promise that he would assist her financially and permit her generous visitation with L.S. and B.S.

¶ 10 Following a lengthy discovery process, Joel filed a motion in May 2012 for sum-

mary judgment. In November 2012, Judge Harris granted Joel summary judgment on both counts of Lisa's April 2011 petition, finding, as follows:

"As to count I, the court *** finds there is no competent evidence to support the allegations contained in [allegations] 8(a), (b), (c), (e) and (f). Moreover, the court finds that none of the allegations contained in count I, if true *** rise to the [level] of serious endangerment. The court grants the motion for summary judgment as to count I for those reasons.

As to count II, the petition to modify alleges that the custody order of October *** 2010 should be set aside on the basis of fraud. ***

As an initial matter, the court['s] *** ruling will encompass not only a claim of fraud, but fraud, coercion, and duress as is implied in the respondent's response. *** [T]he court finds that the facts as alleged *** don't rise to the level of clear and convincing evidence sufficient to set aside the order of October 2010 pursuant to section 2-1401 of the [Code of Civil Procedure. 735 ILCS 5/2-1401 (West 2012)]."

¶ 11 That same month, Joel filed separate motions requesting (1) child support under section 505 of the Dissolution Act and (2) attorney fees under section 610(c) of the Dissolution Act. On March 18, 2013, Judge Yoder conducted a hearing on Joel's separate motions. (The record does not contain a transcript of the proceedings that occurred at that hearing.) The docket entry from that hearing provided as follows:

"Petitioner appears with [counsel]. Respondent appears with [counsel]. [Arguments presented on the] issue of attorney[] fees. Cause under advisement (court to review record). Cause proceeds to hearing on motion to modify child support. Petitioner and respondent are sworn and testif[y]. *** Petitioner and Respondent [are] given [seven] days to submit any calculations re[garding] support."

¶ 12

In June 2013, the trial court entered the following written order:

"The court, having heard the argument of counsel, having reviewed the exhibits and court file, and being otherwise advised in the premises.

It is hereby ordered:

(1) The respondent is ordered to pay attorney fees to petitioner as a result of petitioner having to defend against respondent's motion to modify custody and/or set aside order. Said motion having been disposed of by way of summary judgment in favor of petitioner[.] There being no genuine issue of material fact. Petitioner, having expended in excess of \$27,000 to defend said motion, fees in the amount of \$15,000 are ordered reimbursed to petitioner by respondent. ***

(2) Respondent is ordered to pay to petitioner *** for child support 28% of her net income. Respondent's child support is set at \$343 [per] month retroactive to [December 1, 2012]. Said support is to

be paid pursuant to a uniform order of support."

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 In *In re Marriage of Gulla & Kanaval*, 234 Ill. 2d 414, 422, 917 N.E.2d 392, 397 (2009), the supreme court provided the following guidance, which applies to this case:

"This court has long recognized that to support a claim of error, the appellant has the burden to present a sufficiently complete record. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156[, 839 N.E.2d 524, 531] (2005); *Webster v. Hartman*, 195 Ill. 2d 426, 432[, 749 N.E.2d 958, 962] (2001); *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92[, 459 N.E.2d 958, 959] (1984). From the very nature of an appeal it is evident that the court of review must have before it the record to review in order to determine whether there was the error claimed by the appellant. [Citation.] An issue relating to a circuit court's factual findings and basis for its legal conclusions obviously cannot be reviewed absent a report or record of the proceeding. [Citations.] Without an adequate record preserving the claimed error, the court of review must presume the circuit court's order had a sufficient factual basis and that it conforms with the law." [Citations.] (Internal quotation marks omitted.)

¶ 16 In this case, Lisa appeals the trial court's June 2013 order, granting attorney fees and child support in Joel's favor following a March 2013 hearing. At that hearing, the record shows that the parties presented (1) argument on Joel's motion for attorney fees and (2) evidence

and arguments on Joel's motion for child support. As we have previously noted—and both parties concede—a transcript of the proceedings from the March 2013 hearing does not exist.

¶ 17 On November 8, 2013, this court entered the following order, responding to Lisa's motion to supplement the record on appeal:

"The matter of the filing of a Bystander's Report is RESERVED until the Bystander's Report is submitted to the court as prescribed by Supreme Court Rule 323. Counsel is required to proceed under this rule and must submit a motion for leave to file a proper Bystander's Report at the time it is offered for consideration by the Appellate Court. The Court will rule on that matter at that time."

¶ 18 On November 25, 2013, approximately two weeks later, Lisa filed her brief with this court. In support of her argument that the trial court abused its discretion by granting Joel attorney fees, Lisa contended, in part, that the court failed to comply with section 610(c) of the Dissolution Act. See 750 ILCS 5/610(c) (West 2012) ("Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment."). In her brief, Lisa alleged, as follows:

"No transcript of the proceedings had with respect to the hearing on [Joel's] motion of attorney[] fees exists. Thus, contemporaneous[] with the filing of this brief and argument, [Lisa] has prepared a bystander's report *** of said proceedings and has filed a motion for leave to file the same. In said report, [Lisa] asserts that the trial court, at the conclusion of the hearing, made no such finding nor were there any other comments regarding the nature of

the proceedings made by the trial court that could be construed as find[ings] of vexatiousness [*sic*] or harassment."

Lisa confirmed that she did not file a bystander's report or an agreed statement of facts. See Ill. S. Ct. Rs. 323(c), (d) (eff. Dec. 13, 2005). Therefore, Lisa's assertions, standing alone, cannot constitute competent evidence sufficient to overturn the court's rulings as to attorney fees or child support. *Webster*, 195 Ill. 2d at 434, 749 N.E.2d at 963.

¶ 19 On the issue of attorney fees, the record of the March 2013 hearing shows that counsel presented argument in support of the parties' respective positions. However, absent a transcript of those proceedings, bystander's report, or agreed statement of facts, we decline to speculate as to the content—or lack thereof—of those arguments. More important, the absence of a record deprives this court of reviewing any exchange that may have taken place among the court and parties regarding the content of their arguments or evidentiary issues underlying their respective positions, as frequently occur in such proceedings. Thus, because the record on appeal is not adequate, we decline to address Lisa's claims attacking the court's award of attorney fees in Joel's favor.

¶ 20 Similarly, as to Lisa's claim contesting the trial court's award of child support, she contends that the court abused its discretion by awarding 28% of her net income as mandated by section 505(a)(1) of the Dissolution Act (750 ILCS 5/505(a)(1) (West 2012), instead of deviating downward from that mandate as permitted by section 505(a)(2) of the Dissolution Act (750 ILCS 5/505(a)(2) (West 2012)). We note that in support of their respective positions, the parties rely primarily on the exhibits entered by the court that detail their respective financial positions. On this issue, the supreme court's guidance in *Gulla* is even more applicable, given that no record exists disclosing the testimony Joel or Lisa provided, as well as the arguments made by counsel,

if any, as to the relevant factors that would substantiate such a departure. See 750 ILCS 5/505(a)(2) (West 2012) (outlining the nonexclusive list of relevant factors a court may consider before deviating downward from the statutorily mandated child-support obligation in section 505(a)(1) of the Dissolution Act).

¶ 21 Accordingly, because the record before us is devoid of any basis upon which we can conclude that the deference normally accorded to the trial court in such circumstances should not apply, we affirm the trial court's judgment.

¶ 22 III. CONCLUSION

¶ 23 For the reasons stated, we affirm the trial court's judgment.

¶ 24 Affirmed.