2015 IL App (2d) 140476-U
No. 2-14-0476
Order filed May 14, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF ANN MARIE ANDEXLER, Petitioner-Appellee, and CHRISTOPHER A. ANDEXLER, Respondent-Appellant.	))))))))))	Appeal from the Circuit Court of Du Page County. No. 12--MR--70 Honorable John W. Demling, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Hudson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court satisfied the UCCJEA jurisdictional requirements before modifying the Florida court's final judgment of dissolution of marriage with minor children, and the trial court's suspension of respondent's visitation rights until further court order did not constitute an abuse of discretion. We affirmed the ruling of the trial court.

¶ 2 Respondent, acting *pro se*, Christopher A. Andexler, appeals from the trial court's order suspending his visitation rights with his four minor children with petitioner, Ann Marie Andexler. Respondent raises two main issues on appeal: the first is whether the trial court had jurisdiction to modify the Florida court's final judgment of dissolution, which established the

original parameters of his visitation rights; the second is whether the trial court abused its discretion in suspending his visitation rights until further court order. We hold that the trial court complied with the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA) requirements and affirm its order suspending respondent's visitation rights.

¶ 3 I. BACKGROUND

¶ 4 Petitioner and respondent lived in Florida and had four children during the course of their marriage: a girl and three younger boys. On April 18, 2011, the circuit court of Volusia County, Florida, entered a "Final Judgment of Dissolution of Marriage with Minor Children," finding the parties' marriage to be irretrievably broken. At this point, the children ranged between 8 and 13 years of age. The court ordered that respondent was entitled to contact with the children three days per month, with no overnight visits unless approved by court order. The court further ordered that petitioner would be solely responsible for day-to-day decisions regarding the children's welfare. The order stated the Florida court "retain[ed] jurisdiction for the enforcement and modification of this Judgment."

¶ 5 Concurrent with the dissolution judgment, the Florida court also entered a "Final Judgment Granting Relocation" to petitioner. The court noted that, upon the parties' agreement, petitioner had previously moved to Illinois with the four children. The court ruled that relocation was in the best interest of the children, based largely on its findings that respondent committed "acts of domestic violence to and in front of the children" and that petitioner and the children had experienced an improved quality of life since moving to Illinois. Similar to the dissolution judgment, the relocation judgment stated that the Florida court "reserve[d] jurisdiction over the parties and the subject matter for purposes of enforcement and modification."

¶ 6 On January 17, 2012, petitioner filed a petition to enroll the Florida judgments in the Du Page County Circuit Court (the trial court). On February 27, 2012, petitioner filed a "Petition to Modify Respondent's Visitation and for Other Relief." Petitioner asserted therein that the relationship between respondent and the children had become further strained since they moved to Illinois. She outlined several instances of contentious phone calls and visitations, adding that police involvement was required on at least three occasions. Petitioner asserted that respondent's actions endangered the children's physical, mental, moral, and emotional health. She requested that respondent's visitation rights be terminated, or, in the alternative, supervised.

¶ 7 On March 6, 2012, the trial court entered an order granting petitioner's petition to enroll the Florida judgments. That same order also referenced the UCCJEA and stated that the Illinois trial judge had a phone conversation with the Florida circuit court judge who presided over the dissolution and relocation proceedings. The written order provided that, pursuant to the UCCJEA and the phone call, the State of Florida relinquished "jurisdiction over all issues relating to the minor children of the parties," and the State of Illinois asserted jurisdiction over the same.

¶ 8 On May 21, 2012, the trial court appointed a guardian *ad litem* (GAL) to specifically address whether there should be any restrictions on respondent's visitation rights. On June 7, 2012, the GAL reported that she had interviewed each of the family members. She recommended that respondent seek individual counseling and that his visits with the four children be supervised. Although respondent initially objected, the trial court ultimately entered an agreed order pursuant to the GAL's recommendations, additionally stating that the children would continue meeting with their counselor, Warren Matson.

¶ 9 On March 10, 2014, the trial court conducted a hearing on the petition to modify respondent's visitation rights. Matson was admitted as an expert witness in the field of mental health. He frequently met with the children, both individually and together, from early 2012 through May or June 2013. Matson testified that the children no longer wanted to visit with respondent, characterizing their feelings toward him as generally anxious, fearful, and angry. He added that the children described multiple instances of physical harm suffered at the hands of respondent. In Matson's opinion, respondent's visitations were seriously endangering the children's emotional health.

¶ 10 The GAL testified that she met with the children on multiple occasions, both individually and together. The children told her that respondent used two types of paddles for discipline in their home: one called the "regular paddle" and another red-painted paddle called the "bloody paddle." The children each described instances of harm, indicating that they remained fearful of respondent even when other people were in the room. The GAL believed the children to be truthful and said she had not seen any evidence that they had been coached. She characterized the children's feelings as "hopeless," explaining that they felt they were being forced into contact with respondent against their will. The children said the court-ordered visits remained confrontational, and they wished they could initiate contact with respondent at their own discretion. The GAL believed that continued court-ordered visitations would seriously endanger the children's mental and emotional health.

¶ 11 Respondent, who appeared *pro se*, testified in the narrative and was questioned by the trial judge. Respondent believed petitioner had threatened and coerced the children in an effort to destroy his relationship with them. Respondent also believed in corporal punishment and admitted paddling the children between 20 and 30 times, but denied ever abusing them or

inflicting any bruises. He admitted that one of the paddles was stained a cherry color, but denied that it was ever referred to as the "bloody paddle." Respondent maintained that he paddled the children only when they were younger.

¶ 12 The trial court delivered its findings on March 13, 2014, reading from a six-page written order. The court noted the number of times respondent admitted paddling the children and the Florida court's previous finding that respondent "committed acts of domestic violence to and in front of the children." The court also summarized the consistent opinions of Matson and the GAL that continued visitation with respondent would seriously endanger the children's mental and emotional health. In addition, the reports from the supervised visits at the Du Page County Family Center reflected negative patterns of communication and behavior. These factors led the trial court to find that continued visitation with respondent would "seriously endanger the mental and emotional health of the children." Accordingly, the trial court ordered that respondent "shall not have visitation of any kind with the minor children until further Order of this Court."

¶ 13 The trial court's six-page written order was entered on April 18, 2014. Respondent filed a timely notice of appeal on May 16, 2014.

¶ 14 II. ANALYSIS

¶ 15 We begin by noting that respondent inundated the docket below with countless *pro se* filings. As was the case with the majority of his motions and petitions in the trial court, the arguments respondent sets forth on appeal are somewhat difficult to follow. A reviewing court is entitled to have briefs submitted that present an organized and cohesive legal argument in accordance with our supreme court's rules. *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001). Nonetheless, our jurisdiction to entertain a party's *pro se* appeal is unaffected by the insufficiency of his or her brief, especially if we have the benefit of a

cogent brief of the other party. *Bielecki v. Painting Plus, Inc.*, 264 Ill. App. 3d 344, 354 (1994). Accordingly, we will address respondent's relevant and discernible legal arguments.

¶ 16 Respondent contends that the trial court lacked the ability to suspend his visitation rights in the first instance. He argues that, pursuant to the jurisdictional language in the Florida judgments and the relevant provisions of the UCCJEA, the Florida court retained jurisdiction over all matters pertaining to his visitation rights. Simply put, respondent is incorrect.

¶ 17 Our supreme court recently addressed the issue of jurisdiction as it pertains to the UCCJEA. In *McCormick v. Robertson*, 2015 IL 118230, ¶ 19, the high court reiterated that "a circuit court's subject matter jurisdiction is conferred entirely by our state constitution." Under section 9, article VI of the Illinois Constitution, the circuit courts have subject matter jurisdiction over "all justiciable matters except when the Supreme Court has original and exclusive jurisdiction relating to redistricting of the General Assembly and to the ability of the Governor to serve or resume office." *Id.* ¶ 20; Ill. Const., 1970, art. 6, § 9. The term of "jurisdiction" used in the UCCJEA "must be understood as simply a procedural limit on when the court may hear initial custody matters, not a precondition to the exercise of the court's inherent authority." *Id.* ¶ 27.

¶ 18 With that in mind, we note that Illinois has adopted provisions of the UCCJEA setting forth guidelines for establishing jurisdiction to modify a "child-custody determination" made by a court of another state. 750 ILCS 36/203 (West 2012). Under the UCCJEA, a "child-custody determination" means a "judgment, decree, or other order of a court providing for the legal custody, physical custody, *or visitation* with respect to a child." (Emphasis added.) 750 ILCS 36/102(3) (West 2012). A "modification" is a "child custody determination" that "changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same

child, whether or not it is made by the court that made the previous determination." 750 ILCS 36/102(11) (West 2012). Thus, for purposes of the UCCJEA, the Illinois court's suspension of respondent's visitation rights here constituted a modification of the Florida court's initial child custody determination.

¶ 19 Pursuant to section 203, an Illinois court may modify a child-custody determination made by a court of another State if the Illinois court has jurisdiction to make an "initial determination" under section 201(a)(1) of the UCCJEA, *and* the court of the other state determines that it no longer has exclusive, continuing jurisdiction. 750 ILCS 36/203 (West 2012). Section 201(a)(1) provides that an Illinois court may obtain jurisdiction to make an "initial child-custody determination" if Illinois was the children's "home state" on the date of the commencement of the proceeding. A child's "home state" is the state in which the child lived with a parent for at least six consecutive months immediately preceding the commencement of a "child-custody proceeding." 750 ILCS 36/102(7) (West 2012). A "child-custody proceeding" means a "proceeding in which legal custody, physical custody, *or visitation* with respect to a child is at issue." (Emphasis added.) 750 ILCS 36/102(4) (West 2012).

¶ 20 In this case, petitioner filed her "Petition to Modify Respondent's Visitation and for Other Relief" on February 27, 2012, thereby commencing a child custody proceeding. As discussed above, the Florida court's relocation judgment was entered concurrently with its dissolution judgment on April 18, 2011. Therein, the Florida court found that petitioner had already moved to Illinois with the children. The record includes no indication that the children resided anywhere but Illinois between the time they moved to Illinois and the time petitioner filed her petition; this time period encompassed, at a minimum, 10 months (April 18, 2011 to February 27, 2012). Therefore, we conclude that Illinois was the home state of petitioner and the

children before petitioner commenced the child-custody proceeding. This satisfied section 201(a)(1) of the UCCJEA.

¶ 21 As noted, where section 201(a)(1) is satisfied, section 203 then authorizes an Illinois court's modification of a child-custody determination made by another state, provided that the court of the other state determines it no longer has "exclusive, continuing, jurisdiction." 750 ILCS 36/203 (West 2012). The trial court's March 6, 2012, order in this case stated that the trial judge had a phone conversation with the Florida judge who entered the dissolution and relocation judgments. Pursuant to that phone conversation, the Florida court relinquished jurisdiction over "all issues pertaining to the minor children," and the Illinois court asserted jurisdiction over the same. This March 6, 2012, order satisfied section 203 because it was tantamount to the Florida court's determination that it no longer had exclusive, continuing jurisdiction over the children. Furthermore, the record on appeal contains no report of proceedings for the March 6, 2012, hearing; therefore, we must resolve any resulting doubts against respondent. See *In re Marriage of Holtorf*, 397 Ill. App. 3d 805, 811 (2010) (stating that the appellant bears the burden of presenting the complete record, and the reviewing court will resolve any doubts arising from an incomplete record against the appellant). For these reasons, we conclude that the relevant UCCJEA requirements were satisfied before the trial court modified the Florida court's child-custody determination.

¶ 22 We now turn to respondent's contention that the trial court erred in suspending his visitation rights. Although respondent fails to address the appropriate standard of review, (Ill. S. Ct. R. 341(h)(3) (eff. Feb. 6, 2013)), he argues generally that the trial court's ruling was erroneous because petitioner failed to establish that the children were endangered.

¶ 23 The trial court is vested with wide discretion in resolving visitation issues, and a reviewing court will not interfere with the trial court's determination unless an abuse of discretion occurred, or where manifest injustice has been done to the child or parent. *In re Marriage of Minix*, 344 Ill. App. 3d 801, 803 (2003). "A trial court abuses its discretion only where no reasonable person would take the view adopted by the trial court." *In re Marriage of Schneider*, 214 Ill. 2d 152, 173 (2005). "Great deference must be accorded to [the court's] decision since the trial court is in a superior position to judge the credibility of witnesses and determine the needs of the child." *In re Marriage of Craig*, 326 Ill. App. 3d 1127, 1129 (2002).

¶ 24 The Illinois Marriage and Dissolution of Marriage Act provides that a court "may modify an order granting or denying visitation rights of a parent whenever modification would serve the best interest of the child; but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral or emotional health." 750 ILCS 5/607(c) (West 2012). A suspension of visitation is an example of a restriction that must meet the serious-endangerment standard. *In re Marriage of Ross*, 355 Ill. App. 3d 1162, 1167 (2005).

¶ 25 Respondent argues that the evidence was insufficient to show that his children were physically harmed. He asserts that his use of corporal punishment did not rise to the level of abuse, and that such evidence was erroneously presumed from the children's out-of-court statements. However, the trial court's order was based on its finding that continued visitation with respondent would "seriously endanger the mental and emotional health of the children." Thus, a determination of whether respondent physically abused the children is not necessary for our review of the trial court's judgment.

¶ 26 In any event, the Florida court's relocation judgment included a finding that respondent "committed acts of domestic violence to and in front of the children." The GAL also testified that the children detailed consistent and corroborating stories of emotional and physical harm during their individual interviews. In one instance, respondent forced the daughter out of the shower for paddling. When the daughter locked herself in her bedroom, respondent removed the bedroom door from its hinges and paddled her. Respondent's paddling eventually led his children to begin cushioning their pants with toilet paper; when respondent learned of this, he began paddling their bare bottoms.

¶ 27 Respondent claimed he only paddled the children "when they were little." However, Matson testified that the boys told him respondent had threatened to spank them during one of their more recent supervised Skype visits. Among the exhibits admitted into evidence was a report from a supervised Skype visit at the Du Page County Family Center in April 2013. Family consultant, Rudy Johnson, noted that respondent had told the boys, "[y]ou realize if you treated me like this face to face, I would swat your bottom. You guys just sit there quietly, I get to walk around. You can sit there and consider the rest of the visit a time out." According to Johnson, "[t]he boys were taken aback and did not respond."

¶ 28 A reviewing court may affirm the trial court's judgment on any basis supported by the record, regardless of the basis relied upon by the trial court. *In re Estate of Bontkowski*, 337 Ill. App. 3d 72, 78 (2003). Here, the trial court's finding regarding the serious endangerment of the children's mental and emotional health was overwhelmingly supported by the consistent testimony from Matson and the GAL, as well as the reports from the supervised visits at the Du Page County Family Center. Moreover, respondent's statement during the supervised Skype visit referenced above indicates that the harmful behavior he exhibited in Florida, whether

physical or emotional, followed his children to Illinois. In fact, the children's rising level of discomfort during the visits in Illinois led the Du Page County Family Center to conclude that it could no longer provide supervised visitation for the family. Under these circumstances, we decline to find that the trial court's order suspending respondent's visitation rights constituted an abuse of discretion.

¶ 29 In addition to his arguments regarding the trial court's jurisdiction and the propriety of its ruling, respondent makes passing reference to Illinois Supreme Court Rule 922 (eff. July 1, 2006), which requires that "all child custody proceedings shall be resolved within 18 months from the date of service of the petition or complaint to final order." Under the rule, the 18-month time limit does not apply where the parties "agree in writing and the trial court makes a written finding that the extension of time is for good cause shown." Ill. S. Ct. R. 922 (eff. July 1, 2006). Rule 922 is one of several rules intended to "expedite cases affecting the custody of a child, to ensure the coordination of custody matters filed under different statutory Acts, and to focus child custody proceedings on the best interests of the child, while protecting the rights of other parties to the proceedings." Ill. S. Ct. R. 900(a) (eff. July 1, 2006).

¶ 30 Respondent points out that these proceedings exceeded 18 months in duration, but no written finding was entered regarding any extension. However, the record reflects that respondent did not object to the timeliness of the proceedings or invoke Rule 922 in the trial court. As a result of his failure to preserve this issue, it is forfeited. Even so, we note that forfeiture is a limitation on the parties and not the reviewing court, and can be relaxed to reach a just result. *In re Darius G.*,406 Ill. App. 3d 727, 732 (2010).

¶ 31 Here, the record reflects that respondent was largely responsible for circumstances of which he now complains. Respondent requested several continuances from the trial court in an

effort to align the pertinent hearings with his trips from Florida to Illinois. He also filed various *pro se* motions, including motions to dismiss due to improper jurisdiction and procedure, and motions to remove the GAL and Matson from any association with the case. The trial court did its best to accommodate respondent's requests for continuances, while also managing the docket to provide adequate time for dealing with his *pro se* motions. Given the manner in which respondent chose to litigate this case, this is not an instance where the relaxation of forfeiture limitations is necessary to reach a just result.

¶ 32 III. CONCLUSION

¶ 33 For these reasons, we affirm the judgment of the circuit court of Du Page County.

¶ 34 Affirmed.