2015 IL App (4th) 150452-U

NO. 4-15-0452

FILED
October 28, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

RYAN NEWMAN,	)	Appeal from
Petitioner-Appellant,	)	Circuit Court of
v.	)	Adams County
MONICA THOMPSON,	)	No. 09F133
Respondent-Appellee.	)	
	)	Honorable
	)	Scott H. Walden,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Harris and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: Petitioner failed to establish any reversible error in the circuit court's denial of his petitions for modification of custody and visitation.

¶ 2 Petitioner, Ryan Newman, appeals *pro se* the Adams County circuit court's May 29, 2015, denial of his petitions for modification of custody and visitation in regard to his minor child with respondent, Monica Thompson. Since the parties were never married, the Illinois Parentage Act (Parentage Act) (750 ILCS 40/1 *et seq.* (West 2014)) governed the proceedings in this case. On appeal, petitioner asserts (1) the court violated several Illinois Supreme Court rules during the proceedings on his petitions, (2) the guardian *ad litem* violated supreme court rules, (3) the court violated his statutory and constitutional rights to visitation with his minor child, and (4) the court erred by denying his petition for a modification of custody. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The parties have one child in common, S.N. (born in 2008). In July 2009, petitioner filed *pro se* a petition to establish parentage and for joint custody of S.N. In September 2009, petitioner filed *pro se* an amended petition, seeking sole custody of S.N. The petition noted respondent was incarcerated. In December 2009, the circuit court held a hearing on petitioner's amended petition for custody, and petitioner failed to appear. Due to petitioner's absence, the court denied his petition but set forth some requirements for respondent. On January 28, 2010, the court found respondent had complied with its orders and dismissed the case.

¶ 5 In December 2012, the Illinois Department of Healthcare and Family Services filed a complaint for child support against petitioner. Petitioner failed to appear at the February 2013 hearing on the complaint, and the circuit court ordered him to pay $400 a month in child support. In July 2014, petitioner filed *pro se* a petition for modification of child support. The next month, he filed *pro se* a motion to vacate the court's February 2013 child-support judgment, which the court denied on February 25, 2015.

¶ 6 On August 11, 2014, petitioner filed his petition for modification of custody, asserting respondent has (1) medical problems which cause her to pass out and become incoherent and (2) repeatedly taken S.N. to a prison to visit respondent's fiancé, who is a convicted murderer. That same month, petitioner filed an emergency petition for temporary custody, noting respondent was hospitalized. The court held a hearing on the emergency motion, at which respondent failed to appear. The court denied the motion. In November 2014, petitioner filed his petition for visitation. In January 2015, the circuit court appointed Saleem Mamdani as guardian *ad litem* on "change of custody matters."

¶ 7 On May 27, 2015, the circuit court filed Mamdani's guardian *ad litem* report

under seal and noted the parties had been provided copies. In his report, Mamdani recites the history of the case and the facts he learned from interviewing the parties and S.N. and reviewing relevant documents. After examining the evidence and balancing the best-interest factors, Mamdani opined a modification of custody was not warranted. He noted neither party presented a compelling argument for custody being placed with him or her. Both parties had a criminal history. Respondent had significant health problems and had S.N. attend respondent's visits with a convicted murderer in prison. Respondent also stated she had lived with her mother due to health problems but moved out after a month when she realized drug activity was going on at the home. Respondent reported petitioner had a history of domestic violence. Despite all of her parents' issues, Mamdani found S.N. was well-adjusted to her current situation, and neither party presented evidence S.N. was not doing well in her current placement.

¶ 8 On May 29, 2015, the circuit court held a hearing on all pending motions. We note that, during the hearing, petitioner interrupted the circuit court numerous times and complained about the legal system. It got to a point where the court told petitioner he would be found in contempt if he continued to state he was getting "railroaded." In making its judgment, the court first addressed petitioner's petition to modify child support. Evidence was presented on that issue, and after hearing that evidence, the court denied the petition. The court then addressed the modification of custody. Petitioner did not present any evidence, and thus the only thing before the court was the guardian *ad litem*'s report. Based on that report, the court denied petitioner's petition to modify custody. In doing so, the court found a change in circumstances had occurred but did not find modification was in S.N.'s best interest. Last, the court addressed visitation. Petitioner again failed to present any evidence on the issue. Due to his failure to present evidence, the court denied petitioner's petition for visitation. However, the court noted

its denial of the petition was not to be considered a prohibition or denial of visitation. It noted respondent had granted petitioner visitation in the past and expressed a willingness to have S.N. visit with petitioner.

¶ 9 On June 1, 2015, petitioner filed his notice of appeal from the circuit court's judgment on his petitions for modification of custody and visitation in sufficient compliance with Illinois Supreme Court Rule 303 (eff. Jan. 1, 2015). Accordingly, we have jurisdiction under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994).

¶ 10 II. ANALYSIS

¶ 11 A. Briefing in This Case

¶ 12 We begin by noting respondent has not filed a brief on appeal. A reviewing court is not compelled to serve as an advocate for the appellee and is not required to search the record for the purpose of sustaining the circuit court's judgment. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133, 345 N.E.2d 493, 495 (1976). However, if the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief, the court should decide the merits of the appeal. *First Capitol Mortgage Corp.*, 63 Ill. 2d at 133, 345 N.E.2d at 495.

¶ 13 Additionally, petitioner's appellant brief is noncompliant with most of the requirements of Illinois Supreme Court Rule 341 (eff. Feb. 6, 2013). Importantly, he fails to provide any citation to the appellate record in both his statement of facts and his argument. See Ill. S. Ct. Rs. 341(h)(6), (h)(7) (eff. Feb. 6, 2013). "Strict adherence to the requirement of citing relevant pages of the record is necessary to expedite and facilitate the administration of justice." *Prairie Rivers Network v. Illinois Pollution Control Board*, 335 Ill. App. 3d 391, 408, 781 N.E.2d 372, 385 (2002). Arguments that fail to provide relevant citations to the appellate record

do not merit consideration and may be rejected for that reason alone. *Prairie Rivers Network*, 335 Ill. App. 3d at 409, 781 N.E.2d at 385. Moreover, arguments on appeal must be supported with "logical and reasoned argument." *Einstein v. Nijim*, 358 Ill. App. 3d 263, 274-75, 831 N.E.2d 50, 60 (2005).

¶ 14 Accordingly, we will only address those arguments of petitioner's that are both understandable based on his brief and the record before us and not mere conclusory statements.

¶ 15 B. Noncompliance With Supreme Court Rules Pertaining to Child Custody Proceedings

¶ 16 Petitioner contends the circuit court violated Illinois Supreme Court Rules 901(a), (c) (eff. Feb. 26, 2010) and 904 (eff. July 1, 2006), all of which pertain to child-custody proceedings. However, he does not cite the relevant pages of the appellate record and provide a clear and understandable argument on those issues. Even assuming petitioner's allegations are true, we find those rules are directory rather than mandatory. Thus, reversal and remand for a new hearing on petitioner's petition for modification of custody and visitation are not warranted.

¶ 17 "Whether a statutory command is mandatory or directory is a question of statutory construction, which we review *de novo*." *People v. Robinson*, 217 Ill. 2d 43, 54, 838 N.E.2d 930, 936 (2005). Our supreme court has explained the difference between mandatory and directory as follows: "[S]tatutes are mandatory if the intent of the legislature dictates a particular consequence for failure to comply with the provision. [Citation.] In the absence of such intent the statute is directory and no particular consequence flows from noncompliance." *People v. Delvillar*, 235 Ill. 2d 507, 514-15, 922 N.E.2d 330, 335 (2009). Moreover, courts "presume that language issuing a procedural command to a government official indicates an intent that the statute is directory." *Delvillar*, 235 Ill. 2d at 517, 922 N.E.2d at 336. However, the presumption can be overcome under either of the following two conditions: "[(1)] when there is negative

language prohibiting further action in the case of noncompliance or [(2)] when the right the provision is designed to protect would generally be injured under a directory reading." *Delvillar*, 235 Ill. 2d at 517, 922 N.E.2d at 336.

¶ 18 Illinois Supreme Court Rule 901 (eff. Feb. 26, 2010) provides the following:

> "(a) Expedited Hearings. Child custody proceedings shall be scheduled and heard on an expedited basis. Hearings in child custody proceedings shall be held in strict compliance with applicable deadlines established by statute or by this article.
>
> ***
>
> (c) Continuances. Parties, witnesses and counsel shall be held accountable for attending hearings in child custody proceedings. Continuances shall not be granted in child custody proceedings except for good cause shown and may be granted if the continuance is consistent with the health, safety and best interests of the child. The party requesting the continuance and the reasons for the continuance shall be documented in the record."

As to Illinois Supreme Court Rule 904 (eff. July 1, 2006), it expressly does not pertain to proceedings under the Parentage Act and indicates Illinois Supreme Court Rule 923 (eff. July 1, 2006) applies instead. Rule 923 provides, in pertinent part, the following: "In a child custody proceeding under this part, an initial case management conference pursuant to Rule 218 shall be held not later than 90 days after service of the petition or complaint is obtained." Ill. S. Ct. R. 923 (eff. July 1, 2006).

¶ 19 Our review of the plain language of the three aforementioned rules shows neither

condition for overcoming the presumption the rules are directory exists. First, no language exists prohibiting the trial court from taking further action in the instance of noncompliance with the rules. Second, the right the provisions are designed to protect, *i.e.*, the expeditious resolution of child-custody proceedings, would generally be delayed further under a mandatory, rather than directory reading. A reversal of the circuit court's custody judgment and remand for further proceedings for violation of the rules demonstrates a mandatory reading of the rules would cause further delay in the final resolution of child-custody proceedings and be at odds with the purpose of the rules.

¶ 20 C. Guardian *Ad Litem*

¶ 21 Petitioner next raises numerous challenges to the guardian *ad litem*'s conduct in this case. While petitioner voiced his displeasure with the guardian *ad litem* at the May 2015 hearing, he never made an objection to the circuit court's admission of the guardian *ad litem*'s report or raised any violations of Illinois Supreme Court Rule 907 (eff. July 1, 2006) in the circuit court. Accordingly, petitioner has forfeited this issue by failing to raise it in the circuit court. See *Einstein*, 358 Ill. App. 3d at 275, 831 N.E.2d 5at 60 (finding a party forfeited an issue on appeal by failing to raise it before the trial court).

¶ 22 D. Visitation

¶ 23 Petitioner contends that, by denying his petition for visitation, the circuit court violated his entitlement to reasonable visitation under section 607 of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/607 (West 2014)) and his right to due process under the fourteenth amendment to the United States Constitution (U.S. Const., amend. XIV)). With regard to his due-process argument, petitioner also mentions the court's repeated denial of his requests for custody of S.N. We disagree with petitioner's assertions.

¶ 24 As previously stated, the parties were never married, so the Parentage Act applies. Additionally, a visitation order has never been entered in this case. Our supreme court has pointed out the Parentage Act does not expressly refer to section 607 of the Dissolution Act in making an initial visitation order. See *In re Parentage of J.W.*, 2013 IL 114817, ¶ 44, 990 N.E.2d 698. Moreover, it has held that, in a proceeding to determine visitation privileges under section 14(a)(1) of the Parentage Act (750 ILCS 45/14(a)(1) (West 2010)), the petitioner bears the initial burden of showing that visitation will be in the minor child's best interest under the provisions set forth in section 602 of the Dissolution Act (750 ILCS 50/602 (West 2010)). *J.W.*, 2013 IL 114817, ¶ 53, 990 N.E.2d 698. The supreme court thoroughly explained why visitation in an action under the Parentage Act is treated differently than visitation in an action under the Dissolution Act. See *J.W.*, 2013 IL 114817, ¶¶ 45-50, 990 N.E.2d 698. Accordingly, petitioner bore the burden of showing visitation was in S.N.'s best interest, and he failed to present any evidence in support of his petition. Thus, the lack of a formal visitation order was due to petitioner's own inaction and not a violation of any statutory or constitutional rights. Moreover, the court emphasized it was not prohibiting visitation and noted respondent had allowed petitioner visitation with S.N. and showed a willingness to continue to do so.

¶ 25 Like visitation, petitioner's inactions with regard to his custody petitions played a large role in the denial of those petitions. With the first one, petitioner failed to appear at the hearing on the petition, and at the second, petitioner failed to present any evidence. Accordingly, petitioner has not established a due-process violation related to his custody petitions.

¶ 26 E. Modification of Custody

¶ 27 Last, petitioner asserts the circuit court erred by denying his petition for modification of custody.

¶ 28 Unlike an initial visitation determination, section 16 of the Parentage Act (750 ILCS 45/16 (West 2014)) expressly provides the provisions of the Dissolution Act apply to a modification of custody. Under section 610(b) of the Dissolution Act (750 ILCS 5/610(b) (West 2014)), a court may not modify a prior custody judgment unless it finds, by clear and convincing evidence, that (1) a change in circumstances of the child or his custodian has occurred and (2) modification of custody is necessary to serve the child's best interest. To warrant modification, the change in circumstances must affect the child's welfare. *In re Marriage of Rogers*, 2015 IL App (4th) 140765, ¶ 57, 25 N.E.3d 1213. As to the child's best interest, the Dissolution Act provides that relevant factors for making that determination include the following:

> "(1) the wishes of the child's parent or parents as to his custody;
>
> (2) the wishes of the child as to his custodian;
>
> (3) the interaction and interrelationship of the child with his parent or parents, his siblings and any other person who may significantly affect the child's best interest;
>
> (4) the child's adjustment to his home, school and community;
>
> (5) the mental and physical health of all individuals involved;
>
> (6) the physical violence or threat of physical violence by the child's potential custodian, whether directed against the child or directed against another person;
>
> (7) the occurrence of ongoing or repeated abuse ***,

whether directed against the child or directed against another person;

(8) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child;

(9) whether one of the parents is a sex offender; and

(10) the terms of a parent's military family-care plan that a parent must complete before deployment if a parent is a member of the United States Armed Forces who is being deployed." 750 ILCS 5/602(a) (West 2014).

This court has acknowledged "stability and continuity are major considerations in custody decisions, so that a presumption exists in favor of the present custodian." *In re Marriage of Spent*, 342 Ill. App. 3d 643, 652, 796 N.E.2d 191, 199 (2003).

¶ 29 We will not disturb a circuit court's judgment on custody modification unless it is against the manifest weight of the evidence. *In re Marriage of Bates*, 212 Ill. 2d 489, 515, 819 N.E.2d 714, 728 (2004). " 'A judgment is against the manifest weight of the evidence only when an opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on evidence.' " *In re Marriage of Epting*, 2012 IL App (1st) 113727, ¶ 23, 994 N.E.2d 535 (quoting *Bazydlo v. Volant*, 164 Ill. 2d 207, 215, 647 N.E.2d 273, 277 (1995)). "A custody determination inevitably rests on the parties' temperaments, personalities, and capabilities, and the witnesses' demeanor." *Spent*, 342 Ill. App. 3d at 652, 796 N.E.2d at 199. The circuit court has "the best position to review the evidence and to weigh the credibility of the witnesses." *Bates*, 212 Ill. 2d at 515, 819 N.E.2d at 728. Thus, we afford its custody determination " 'great

deference.' " *Bates*, 212 Ill. 2d at 516, 819 N.E.2d at 728 (quoting *In re Marriage of Gustavson*, 247 Ill. App. 3d 797, 801, 617 N.E.2d 1313, 1316 (1993)).

¶ 30 Petitioner's argument regarding custody is unclear. It seems he is arguing the circuit court declined to find a change in circumstances had occurred because S.N. had not suffered actual harm. However, the record clearly shows the court did find a change in circumstances had occurred and then went on to determine if a modification of custody was in S.N.'s best interest. The court ultimately concluded a change in custody was not in the minor child's best interest. The court in no way required petitioner to establish actual harm to S.N. before it would find changed circumstances. Accordingly, petitioner's argument is without merit.

¶ 31 III. CONCLUSION

¶ 32 For the reasons stated, we affirm the judgment of the Adams County circuit court.

¶ 33 Affirmed.