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FIRST DIVISION
June 6, 2016

No. 1-16-0188
2016 IL App (1st) 160188-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CAROL R.,	)	
	)	Appeal from the
Petitioner-Appellee,	)	Circuit Court of Cook County.
	)	
v.	)	11 D 052755
	)	
JEFFREY B.,	)	
	)	Honorable Daniel R. Degnan,
Respondent-Appellant.	)	Judge Presiding.
	)	

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Cunningham and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's decision denying respondent's motion to vacate its previous sole custody judgment in favor of petitioner was affirmed where respondent's brief did not comply with Rule 341(h)(7) and respondent failed to provide a sufficient record on appeal.

¶ 2 This is an expedited appeal that concerns the care and custody of a minor. After an evidentiary hearing, the trial court determined it was in the best interest of the minor child, Wisdom B. (Wisdom), that sole custody be awarded to Wisdom's mother. Wisdom's father appeals, arguing that he was denied due process because the trial court did not allow him to present certain evidence that was not in his possession at the time of the hearing. For the reasons set forth below, we affirm.

¶ 3 BACKGROUND

¶ 4 Wisdom, the minor child of petitioner mother, Carol R., and respondent father, Jeffrey B., was born on March 16, 2002. Petitioner and respondent were never married but they resided together from 2001 until 2007 or 2008. The case at bar commenced on August 25, 2011, when the Illinois Department of Healthcare and Family Services filed a petition for support on behalf of petitioner against respondent, seeking to order respondent to pay backdated child support. Included with the petition was a voluntary acknowledgement of paternity that was signed by respondent two days after Wisdom's birth. Respondent was served with the petition for support on September 6, 2011, and thereafter, he filed a *pro se* appearance and continued to represent himself throughout the trial court proceedings[1].

¶ 5 Throughout the next few years, the court entered various support orders. After a hearing on January 18, 2012, the court entered a support order requiring respondent to pay retroactive child support in the amount of $478.50 per month. On June 18, 2012, after a hearing in which respondent refused to testify, the court entered judgment in the amount of $23,033.44 against respondent for retroactive child support, payable in monthly installments of $741.67. Thereafter, respondent brought a motion to modify his support payment. His motion was granted on August 26, 2013, and his support payment was modified because respondent provided evidence of the amount of his monthly pension benefit. Respondent also filed a motion to eliminate the judgment for retroactive support, which was denied on March 24, 2014.

¶ 6 On July 7, 2014, respondent filed a petition for residential custody of Wisdom. In his petition, he also asked for a referral to family mediation services and that a child representative be appointed. The court referred the parties to a parent education program and mediation on July 14, 2014. On August 14, 2014, respondent filed a petition for temporary residential custody,

[1] Respondent also continues to represent himself *pro se* in this appeal.

wherein he alleged that he should be granted residential custody of Wisdom because she was tardy to school at least 30 times in each of the previous 3 school years. Petitioner filed a response on October 14, 2014, asking that respondent's request be denied.

¶ 7 Thereafter, the parties engaged in the court-referred mediation. The record contains a mediation status report, unsigned by either party, that states:

> "Parents have agreed to the following:
>
> Joint [c]ustody[.]
>
> Wisdom will remain in her current school through the eighth grade.
>
> Either Mom or Dad will accompany Wisdom to any parties where alcohol is being consumed.
>
> Parents will not talk negatively about the other to or in front of Wisdom.
>
> Parents will negotiate [p]arenting [time] with each other and not Wisdom on a week to week basis.
>
> Parents will negotiate [h]oliday and [v]acation [t]ime on an as needed basis."

¶ 8 Subsequently, the court appointed a child representative, Pamela Kuzniar, who filed her appearance on behalf of Wisdom on January 9, 2015. When this case was in court on January 23, 2015, the court ordered that all parties were allowed to submit pretrial memoranda. On March 10, 2015, the court ordered that respondent's pleadings for change in residential custody, and petitioner's response thereto, were set for trial[2] on July 13, 2015. Also, the court's order required that "the parties shall exchange exhibits and witness lists on or before June 30, 2015 ***."

[2] Although the trial court's March 10, 2015, order used the term "trial," it appears from the record that on July 13, 2015, the trial court actually conducted an evidentiary hearing, rather than a traditional bench or jury trial.

¶ 9 On July 13, 2015, the court conducted an evidentiary hearing and entered an order that stated:

> "This matter coming to be heard upon Respondent's Motion for Residential Custody of Minor Child filed July 7, 2014[,] and response thereto, after conducting an evidentiary hearing and considering the testimony of parties, their witnesses[,] and exhibits tendered[,] the court requests that the Child Representative prepare a Final Custody Judgment granting [petitioner] sole custody of the minor child and grant [respondent] liberal visitation consistent with the findings of this court."

The record does not contain a transcript, report of proceedings, bystander's report, or agreed statement of facts for the evidentiary hearing held on July 13, 2015.

¶ 10 On August 3, 2015, a four-page final sole custody judgment that was prepared by the child representative was entered with the court. The custody judgment referenced testimony that occurred during the hearing, but did not include any quotations or excerpts. The custody judgment stated, *inter alia*, that "it is apparent that this is not a case suited for joint custody as the parties lack the ability to cooperate effectively and consistently in matters that directly affect the joint parenting of the child. [Respondent] identifies himself as superior to [petitioner], the parties do not possess the proper level of trust or the ability to communicate[,] which is essential to joint parenting." The custody judgment also recognized that Wisdom loves both her parents and has a healthy relationship with extended family on both sides. The judgment additionally stated that petitioner is "far more familiar than [respondent] with [Wisdom's] family relationships, adjustments to school, her friends[,] and her overall participation in her community." Further, the judgment stated that "[i]n spite of the irregular parenting[,] it is apparent that [respondent] influenced [Wisdom] in a positive way." Ultimately, the judgment

reflected that "[g]iven all of the testimony and evidence presented[,] an award of final sole custody of the minor child to [petitioner] serves the best interest of the minor child."

¶ 11 On August 14, 2015, respondent filed a motion to vacate the final sole custody judgment. The motion contained the following three sentences as grounds for the motion:

> "1. School records concerning the attendance history of [Wisdom] were not available on the hearing date and show a 4 year record of a clear and consistent pattern of extraordinary tardiness up to and including the school year 2014-2015.
>
> 2. Implicit and conformation bias caused evidence favorable to the [r]espondent and critical of the [p]etitioner to be consistently ignored.
>
> 3. The court erred in refusing to take into account all the facts about, and conduct of the parties, available to the court, in ruling in petitioner's favor."

¶ 12 On September 14, 2015, petitioner was given 28 days to respond to respondent's motion to vacate. On October 7, 2015, petitioner timely filed her response, asserting that the motion should be denied because respondent had ample time to prepare for trial and it was improper for him to now argue that he was unable to present Wisdom's school records. The response also stated that "[t]he [c]ourt had the ability to hear and consider [r]espondent's narrative and evidence, as well as his answers to cross examination," and thus the court's decision was not manifestly unjust and respondent's motion was improper.

¶ 13 On December 22, 2015, the trial court entered an order denying respondent's motion to vacate the final sole custody judgment. The court's order stated its findings as follows:

> "The court finds:
>
> (1) Prior to hearing on today's date, the court reviewed the trial notes, custody judgment entered on 8/3/15, respondent's motion to vacate and response thereto, the evidence

presented at trial, including 2012/2013 and 2014/2015 report card, as well as respondent's notice of filing and corresponding documents filed on 11/30/15,

(2) After review of the aforementioned documents, notes, and evidence presented, the court finds that it properly and adequately considered all of the above and does not find any reason to vacate the custody judgment entered on 8/3/15.

(3) Discovery having been closed several months and respondent's filing attempting to act as requests to admit are found to be improper and untimely."

The record does not contain a transcript, report of proceedings, bystander's report, or agreed statement of facts for the hearing on respondent's motion to vacate held on December 22, 2015.

¶ 14 On January 19, 2016, respondent timely filed his notice of appeal.

¶ 15 ANALYSIS

¶ 16 On May 20, 2016, this court, on its own motion, ordered that this case be taken for consideration on the record and respondent's brief only because petitioner failed to file a brief within the time prescribed by Illinois Supreme Court Rule 311(a) (eff. Feb. 26, 2010). Although petitioner has not filed a response brief, we may proceed under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976) (holding that a court of review should not be obliged to serve as an advocate for the appellee or to search the record in order to sustain the judgment of the trial court, but may if justice so requires).

¶ 17 On appeal, respondent presents two issues for review: (1) whether the trial court erred in denying respondent the opportunity to present evidence that was not in respondent's possession at the time of trial, and (2) whether respondent was denied due process. Cases involving an appeal of a custody determination are reviewed for an abuse of discretion. *Shinall v. Carter*, 2012 IL App (3d) 110302, ¶ 30. "In cases regarding custody, a strong presumption favors the

result reached by the trial court, and the trial court is vested with great discretion because of its superior opportunity to observe and evaluate witnesses when determining the best interests of the child." *Id.* Thus, we do not disturb a trial court's custody ruling unless it is against the manifest weight or is an abuse of discretion. *Id.*

¶ 18 In this case, however, we do not reach the merits of respondent's appeal due to the fatally deficient argument section of his brief and the lack of a sufficient record. Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013) states that an appellant's argument "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Illinois courts have consistently recognized that mere assertions, without argument or citation to authority, do not merit consideration on appeal. See *e.g.*, *Vilardo v. Barrington Community School District 220*, 406 Ill. App. 3d 713, 720 (2010) and *People v. Hood*, 210 Ill. App. 3d 743, 746 (1991). "Contentions supported by some argument but by absolutely no authority do not meet the requirements of Supreme Court Rule 341." *Vilardo*, 406 Ill. App. 3d at 720. "These rules are not merely suggestions, but are necessary for the proper and efficient administration of the courts." *Walters v. Rodriguez*, 2011 IL App (1st) 130488, ¶ 5. We emphasize that "the appellate court is not a depository in which the appellant may dump the burden of argument and research." *Id.* This court is entitled to have the issues before it clearly defined with relevant authority cited and a coherent legal argument presented. *Id.*

¶ 19 Here, respondent's entire, one-paragraph argument section reads,

> "Jeffrey B. filed substantial documentary evidence that speaks directly to the best interest of Wisdom B.. That evidence is part of the common record. I believe the judge erred when he refused to consider any documentary evidence that Jeffrey B. did not have

copies of and in his possession at the time of the trial. Jeffrey B. should have had the restriction explained to him and given a continuance to enable him to more completely argue his case. Additionally, the continuance order of Jan. 23rd, 2015 is not part of the common record, but Jeffrey B. has a copy. This allowed for a pre-trial memorandum to be filed before a march 10th hearing. Courtesy copies were to be submitted to all parties, the judge and child representative. Jeffrey B's mistakenly, but reasonably, concluded the courtesy copies would be part of the record and available for access in future proceedings as part of the file. Similarly, after the March 10th hearing date, the resultant continuance order is not part of the common record; it calls for the exchange of exhibits, witness list before June 30th and a copy of Cook County Rule 13.3.1(b) Disclosure Statement, along with courtesy copies. Both of these submissions contained information that is very important in terms of getting a better understanding of nature and character of Jeffrey B.. There is enough evidence that is part of the record that cast doubt on the appropriateness of the court's decision. The Sole Custody Judgment can only seem valid if every fact and circumstance that is favorable to Jeffrey B. is ignored and every fact and circumstance that is unfavorable to Carol R. is also ignored.

'An appellate court must review the sufficiency of the evidence underlying a trial courts findings at the adjudication hearing and must/should reverse such findings when they are against the manifest weight of the evidence, when the appellate court finds that the opposite conclusion is clearly evident or when the determination is unreasonable, arbitrary and not based on the evidence.'

720[ ]ILCS[ ]405/2-3; In re Juan M., 2012 Il.App.(1st) 113096,par 49."

¶ 20 Respondent's argument section is inexcusably deficient because it does not comport with Rule 341(h)(7). Although respondent has chosen to proceed *pro se*, that does not absolve his brief's shortcomings. *Pro se* litigants are not excused from following rules that dictate the form and content of appellate briefs. *Lewis v. Heartland Food Corp.*, 2014 IL App (1st) 123303, ¶ 5. Here, respondent's argument section does not contain a single citation to the record on appeal. Further, respondent's sole legal citation is unrelated to his argument and, instead, appears to convey the standard of review on appeal. He provides no other case law or statutory citations. Respondent fails to support his contentions with any authority, in direct contravention of Rule 341. Respondent's argument section lacks any legally supported assertions, which allows us to treat his position as having been procedurally defaulted. See *Vilardo*, 406 Ill. App. 3d at 720.

¶ 21 We also find dispositive the fact that the record on appeal lacks a transcript, report of proceedings, bystander's report, or agreed statement of facts for the July 13, 2015, evidentiary hearing regarding respondent's motion for residential custody, and the December 22, 2015, hearing on respondent's motion to vacate sole custody judgment, which are the subject of this appeal. An appellant has the burden to present a sufficiently complete record, and in the absence of such a record, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). "Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Id.* at 392.

¶ 22 Respondent attempts to argue that the trial court's decision to grant sole custody to petitioner was improper. He asserts, "I believe the judge erred when he refused to consider any documentary evidence that [respondent] did not have copies of and in his possession at the time of trial." Even if we were to reach the merits of respondent's appeal, his argument is impossible

to review because no transcript or similar record of the evidentiary hearing, or any other hearing in this case, was contained in the record on appeal. Thus, we could not determine whether the trial court "refused to consider any documentary evidence ***" when we do not know if the trial court, in fact, ever disallowed such evidence, or what the basis for the exclusion was, if evidence was indeed excluded. Ultimately, we do not know what testimony or arguments were presented at the evidentiary hearing or the hearing on respondent's motion to vacate. According to *Foutch*, we must construe the deficient record against respondent, the appellant. *Id.* The record before this court is incomplete and prevents us from undertaking a substantive review. Under these circumstances, we presume the trial court heard adequate evidence to support its decision and that its orders were in conformity with the law. See *Webster v. Hartman*, 195 Ill. 2d 426, 433-34 (2001).

¶ 23 CONCLUSION

¶ 24 Due to the foregoing deficiencies in respondent's brief and the record on appeal, we affirm the trial court's decision to deny respondent's motion to vacate the final sole custody judgment that granted sole custody to petitioner.

¶ 25 Affirmed.