2016 IL App (2d) 150901-U
No. 2-15-0901
Order filed March 8, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF LYDIA GEDULDIG,	)	Appeal from the Circuit Court
	)	of Du Page County.
Petitioner-Appellant,	)	
	)	
and	)	No. 14-D-2033
	)	
MICHAEL GEDULDIG,	)	Honorable
	)	John W. Demling,
Respondent-Appellee.	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices McLaren and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: In this marriage dissolution case, petitioner was not deprived of due process or equal protection of the law, and she cannot assert discrimination claims for the first time on appeal. The trial court's custody and dissolution judgments are affirmed.

¶ 2 Petitioner, Lydia Geduldig, petitioned for dissolution of her marriage to respondent, Michael Geduldig, and respondent counter-petitioned, seeking sole custody of their minor child, A.G. Following a trial at which petitioner proceeded *pro se*, the trial court: dissolved the parties' marriage; awarded the parties joint custody of A.G., with respondent having primary residential custody and petitioner having reasonable and liberal visitation; awarded petitioner $850 in

monthly maintenance; awarded respondent $150 in monthly child support; and, generally, equally divided the parties' assets and debts. Petitioner, still *pro se*, appeals, challenging the trial court's custody and dissolution judgments, claiming that she was deprived of due process and equal protection of the law and that she suffered discrimination. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The parties were married in 1992 and had two children. M.G. was born in 1996 and is now emancipated, and A.G. was born in 2002. The parties initiated divorce proceedings in 2012, but they subsequently reconciled.

¶ 5 On October 3, 2014, petitioner petitioned for dissolution of the parties' marriage, alleging irreconcilable differences. She sought maintenance, child support, and attorney fees. Respondent filed a counter-petition, seeking dissolution and requesting sole custody of A.G., subject to visitation by petitioner.

¶ 6 On June 19, 2015, the trial court appointed Lynn Mirabella as the guardian *ad litem* (GAL) for A.G. In the order, the trial court directed Mirabella to render an opinion concerning custody and visitation. It further directed that she *not* make a written report to the court, but reserved the issue.

¶ 7 Trial was held on July 29, and August 5, 2015. The court heard testimony, relevant portions of which we discuss below, from the GAL, petitioner, and respondent.

¶ 8 On August 5, 2015, the trial court entered a custody judgment, awarding the parties joint custody of A.G., with respondent having primary residential custody and petitioner having "reasonable and liberal" visitation.

¶ 9 On August 21, 2015, court entered its dissolution judgment. It ordered that, commencing after petitioner vacated the marital residence, respondent pay to petitioner $850 per month in

maintenance. The court also ordered petitioner to pay respondent $150 per month in child support (resulting in a net payment of $700 to petitioner per month). The trial court ordered that the parties were equally responsible to pay for the "children's" medical and extracurricular expenses, and reserved the issue of college expenses. It awarded respondent interest in Comfort Air Systems, Inc., his business, and the marital residence in Westmont (with respondent to refinance and pay to petitioner $52,510 for her portion of the equity in the home minus one-half of the parties' credit card debt, which was in the form of a home equity line of credit). It granted petitioner 10 days following the closing on the refinancing of the home to vacate the premises. The parties were also awarded their respective automobiles, and the court equally divided respondent's retirement accounts, one with UBS and one with the Sheet Metal Workers Retirement Fund. The court also ordered the parties to divide their personal property and noted that, if they were unable to do so, the court would undertake the task. Petitioner appeals.

¶ 10 II. ANALYSIS

¶ 11 Preliminarily, we note that petitioner's appellate briefs are disorganized, contain much irrelevant information and rambling and incoherent statements, fail to cite to Illinois authority, and contain, as noted below, facts and arguments raised for the first time on appeal. Petitioner's *pro se* status does not excuse her from complying with appellate procedures and supreme court rules. *In re A.H.*, 215 Ill. App. 3d 522, 529 (1991). However, because we are able to ascertain her arguments, we shall consider the merits of her appeal. *Id.* at 530.

¶ 12 Turning to the merits, petitioner challenges the trial court's custody and dissolution judgments. Section 503(d) of the Illinois Marriage and Dissolution of Marriage Act (Act) provides that, in a dissolution proceeding, the court is to divide the parties' marital property in

just proportions considering all relevant factors. 750 ILCS 5/503(d) (West 2014). Those relevant factors include:

> (1) each party's contribution to the marital estate; (2) the dissipation of marital assets by either party; (3) the value of the property assigned to the spouse; (4) the duration of the marriage; (5) the relevant economic circumstances of each spouse when the division of the property is to become effective; (6) any obligations and rights arising from a prior marriage of either party; (7) any antenuptial agreement of the parties; (8) the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties; (9) the custodial provisions for any children; (10) whether the apportionment is in lieu of maintenance; (11) the reasonable opportunity of each spouse for future acquisition of capital assets and income; and (12) the tax consequences of the property division upon the respective economic circumstances of the parties. See 750 ILCS 5/503(d) (West 2014).

¶ 13 The trial court has broad discretion in the valuation and subsequent distribution of marital assets. *Kew v. Kew*, 198 Ill. App. 3d 61, 65 (1990). An abuse of discretion occurs only when no reasonable person would take the view adopted by the trial court. *In re Marriage of Courtright*, 229 Ill. App. 3d 1089, 1093 (1992). See, *e.g.*, *In re Marriage of Swigers*, 176 Ill. App. 3d 795, 801 (1988) (the parties' contributions to the acquisition of marital property when one spouse is the homemaker and the other spouse is the wage earner can be considered as relatively equal).

¶ 14 Further, "[t]he court may enter an order of joint custody if it determines that joint custody would be in the best interests of the child, taking into account the following: (1) the ability of the parents to cooperate effectively and consistently in matters that directly affect the joint parenting of the child ***; (2) [t]he residential circumstances of each parent; and (3) all other factors which

may be relevant to the best interest of the child." 750 ILCS 5/602.1(c) (West 2014). Joint custody does not necessarily imply equal parenting time. 750 ILCS 5/602.1(d) (West 2014). The trial court has broad discretion in fashioning a custody decree in the best interest of a child. *Davis v. Davis*, 63 Ill. App. 3d 465, 469-70 (1978). In custody cases, a strong presumption favors the result reached by the trial court because of the trial court's superior opportunity to observe and evaluate witnesses when determining the best interests of the child. *Shinall v. Carter*, 2012 IL App (3d) 110302, ¶ 30. Therefore, we will not disturb a trial court's custody award unless the court abused its discretion or its factual determinations are against the manifest weight of the evidence. *Id.*

¶ 15 Although not entirely clear, petitioner raises three issues, none of which are supported by Illinois authority. First, she argues that she was denied equal protection and denied due process of the law in that the trial court erred in granting respondent primary residential custody of A.G., where evidence of domestic violence by respondent raised questions of the child's safety. Second, she contends that the trial court's division of marital assets violated her due process rights because it was inappropriate and favored respondent. Third, petitioner argues that the trial court violated the Illinois Human Rights Act where it was prejudiced against petitioner because she identifies as bisexual and suffers from PTSD from alleged sexual abuse suffered at age four. For the following reasons, we find her claims unavailing.

¶ 16 A. Child Custody

¶ 17 First, petitioner argues that she was denied due process and equal protection of the law in that the trial court erred in granting respondent primary residential custody of A.G., where evidence of domestic violence by respondent raised questions of the child's safety. She

primarily takes issue with the GAL, arguing that she conducted an insufficient investigation and was biased against petitioner. For the following reasons, we reject these arguments.

¶ 18 Petitioner begins by reciting numerous complaints concerning the GAL's role in this case, questioning, among other things, the thoroughness of her investigation and her actions concerning a report allegedly submitted only to the court and not also to petitioner. As to the investigation, she contends that the GAL (whose alleged bias against petitioner commenced during the parties' 2012 divorce proceedings, which terminated after the parties' reconciled) failed to adequately investigate or consider domestic violence allegations that petitioner had raised. She reasons that this failure to investigate and consider the allegations is reflected in the unequal custody award. We reject this claim as speculative and unfounded. There is no evidence in the record of bias on the GAL's part. Petitioner is clearly dissatisfied with the custody award. She partly bases her allegations on the fact that respondent was awarded primary residential custody. However, the fact that this was the GAL's recommendation does not, without more, imply that the GAL was biased against petitioner. The GAL testified to her background, which included 25 years in the practice of law and over 11 years as a GAL, including work as guardian in about 120 cases. Further, she stated that, in this case, she interviewed respondent, A.G., and M.G. and spoke to petitioner (in chambers and in court on the day of trial; petitioner concedes that she did not want to meet with the GAL due to her experience with her in 2012). The GAL related that she also reviewed the pleadings and noted that she had previously been appointed GAL in 2012 when the parties had initiated divorce proceedings and that she recollected the issues in that case. She opined that it was in A.G.'s best interests that the parties have joint custody, but that physical custody be with respondent, with reasonable and liberal visitation for petitioner, and noted that she prepared a proposed judgment.

The GAL explained that she based her opinion on the fact that A.G. had indicated a strong preference to live with her father (and her father concurred) and that she worried about her mother's "issues" concerning people being against her and becoming very anxious and upset. M.G. (who attends College of Du Page and lives in the marital residence) agreed that A.G.'s best interests would be served by living with respondent.

¶ 19 The GAL acknowledged petitioner's allegations of marital abuse, including allegations of rape, and her assertions that she had reported this to police. However, the GAL stated that, in her investigation, she found no one who corroborated any allegations of physical or mental abuse of petitioner by respondent. The GAL also related that petitioner was concerned about a letter that A.G. had written that petitioner viewed as a sign that her daughter was suffering from the effects of the marital abuse. The GAL testified that neither A.G. nor respondent corroborated these allegations. They described the letter, which contains the phrases "Twinkle Twinkle Little Butt" and "rainbows are just FARTS," as reflecting that A.G. was "goofing around." During her cross-examination of the GAL, petitioner asked only if the GAL spoke to A.G. about the letter, to which the GAL responded in the affirmative. We find no error with the trial court's adoption of the GAL's recommendation. Although petitioner has not labeled her argument as such, she essentially raises a challenge to the court's credibility findings (albeit without any citation to relevant authority). However, her argument fails because she does not address how the court's finding that the GAL was credible was unreasonable.

¶ 20 Petitioner also claims that the GAL did not provide her with a copy of a report she submitted to the court, asserting that this constituted an *ex parte* communication resulting in a violation of her due process rights. At the conclusion of her testimony, the GAL was discharged and she thanked the court and noted that she would "give you a copy of my report that I prepared

as well." The record contains no such report, and respondent maintains that no report was submitted to the court. We conclude that there was no violation of petitioner's due process rights. The order appointing the GAL specified that she was *not* directed to prepare a report to the court. Although not clear, the reference to a report could be a reference to an earlier mention in her testimony of a proposed judgment that the GAL had prepared for the court. The trial court directed that the document be marked as the court's exhibit No. 1 and directed the deputy to make a copy of it. The GAL noted at that point that she had extra copies, and that she had not yet provided the parties with copies. It is not clear if the document was tendered at that point or at the conclusion of the GAL's testimony. However, there is no basis in the record upon which we could conclude that a second document (or any document from the GAL) exists that was not shared with petitioner.

¶ 21 Petitioner also complains that she was not allowed to testify "fairly" during trial concerning her allegations of domestic violence. We reject this argument. Petitioner essentially complains that she was not allowed to testify as to matters that the court ruled constituted hearsay. The record reflects that, at trial, petitioner, who appeared *pro se*, was frustrated by her unfamiliarity with the rules of procedure and the law. Based on our review of the record, petitioner received a fair hearing. Although it (correctly) sustained objections based on hearsay and that her testimony was presented in narrative form, the trial court allowed petitioner to enter into evidence a six-page summation of her complaints related to the marriage and her alleged history of PTSD. Petitioner's frustrations in fully presenting her allegations of domestic violence or other evidence are due to her inability to effectively represent herself. Here, the trial court properly sustained objections to petitioner's hearsay and narrative testimony.

¶ 22 B. Division of Assets

¶ 23 Petitioner's second argument is that the trial court's division of marital assets violated her due process rights because it was inappropriate and favored respondent. We reject this argument.

¶ 24 Petitioner complains that the marital home's valuation was not based on an appraisal, a point she raised during trial. This argument is unavailing because she essentially agreed to the court's findings and did not offer an alternative valuation. The court valued the marital residence at $190,000. At the July 29, 2015, trial date, the court asked petitioner if the home was worth that amount, and she replied "I think it might be a little more but probably." At the August 21, 2015, trial date, petitioner complained that the valuation was based only on testimony and not an appraisal. However, she did not offer an alternative valuation. Based on this record, we cannot conclude that the trial court's findings were erroneous.

¶ 25 Petitioner next challenges the court's division of assets. She first contends that she was not emotionally prepared to address the issue when it first came up during trial because she had just concluded her tearful testimony concerning "months of sexual assaults." We reject this claim because petitioner did not ask for a recess and, in any event, the trial did extend to a second court date, at which time she could have raised her claims. Petitioner also complains that the trial court did not properly assess the value of respondent's business, arguing that it should have been assessed as marital property. We reject this claim. At trial, petitioner noted that she went to work to help pay the family's expenses so that respondent could start the business. She also argued that the business vehicles should have been considered marital assets. The court considered these claims and rejected them. It noted that it reviewed the tax returns and found that the vehicles were used in the business to generate its income. "That's what generates the income that's used to pay you your maintenance." It further determined that the business had no

other assets and that its "real value" was its ability to generate income/goodwill, which respondent was essentially splitting with petitioner via his maintenance payments. These findings were not unreasonable.

¶ 26 C. Human Rights Act

¶ 27 Third, petitioner argues that the trial court violated the Illinois Human Rights Act (775 ILCS 5/1-101 *et seq.* (West 2014)), where it was prejudiced against petitioner because she identifies as bisexual and suffers from PTSD from alleged sexual abuse suffered at age four. We reject this claim because it is raised for the first time on appeal. See 775 ILCS 5/7A-102 (West 2014). Notwithstanding the fact that a party cannot raise such a claim for the first time on appeal, there is no evidence in the record of such bias or prejudice. Indeed, there is no mention of petitioner's bisexuality in the record; she raises it for the first time on appeal, as she does the allegation that she was discriminated against during trial because of her PTSD (which she did mention at trial). Her claim is purely speculative.

¶ 28 Petitioner also claims bias and prejudice on the GAL's part. Again, this claim was not raised below, her bisexuality is not contained in the record, and the evidence reflected no such bias or prejudice by the GAL. This claim is speculative.

¶ 29 III. CONCLUSION

¶ 30 For the reasons stated, the judgment of the circuit court of Du Page County is affirmed.

¶ 31 Affirmed.