

2016 IL App (2d) 151258-U
No. 2-15-1258
Order filed May 9, 2016

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> PARENTAGE OF E.J and H.J., Minors)	Appeal from the Circuit Court
)	of Du Page County.
)	
)	
)	No. 14-F-562
)	
)	Honorable
(Christopher J., Petitioner-Appellant, v.)	Robert Douglas,
Tricia D., Respondent-Appellee).)	Judge, Presiding.

JUSTICE Birkett delivered the judgment of the court.
Justices Jorgensen and Burke concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's judgment awarding sole custody to respondent was affirmed where appellant violated several Illinois Supreme Court rules in his brief, including his failure to file a complete record on appeal.

¶ 2 Petitioner, Christopher J., appeals from an order of the trial court awarding respondent, Tricia D., sole custody of the parties' minor daughters, E.J. and H.J. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Christopher and Tricia have never been married, but two daughters were born to them. E.J. was born on June 19, 2010, and H.J. was born on May 14, 2013. After a breakdown of their

relationship, Christopher filed a petition for temporary and permanent sole custody of the girls on July 25, 2014. On September 14, 2014, Tricia filed a cross-petition for sole custody and child support. An evidentiary hearing was held on both petitions over a nine-day period from May to September 2015.

¶ 5 In a letter opinion dated September 8, 2015, the trial court stated that it had considered all the evidence presented, the credibility of the witnesses, including their demeanor and manner while testifying, the exhibits that were received, arguments of counsel, applicable case and statutory law, and the relevant portions of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/501 *et seq.* (West 2014)). It also noted that it had considered the weight and quality of the evidence presented, had drawn reasonable inferences where appropriate, and applied the requisite standards and burdens of proof. It made very thorough factual findings, and finally it considered the statutory factors for determining the best interests of the children in custody proceedings. 750 ILCS 5/602 (West 2014). Ultimately, the court held that it was in the children's best interest that sole residential custody be given to Tricia, with reasonable visitation to Christopher. Christopher filed a timely notice of appeal.

¶ 6 II. ANALYSIS

¶ 7 On appeal, Christopher argues that the trial court's custody ruling was against the manifest weight of the evidence. Although he sets his next arguments out as separate issues, they are in fact arguments as to why the trial court erred in its ruling. Specifically, Christopher also argues that the trial court failed to consider the children's adjustment to their home, school and community (750 ILCS 5/602(d) (West 2014)), and the court erred in finding that Tricia would be more likely to facilitate a relationship between he and the children versus Christopher being more likely to facilitate a relationship between Tricia and the children. Within these

arguments, Christopher raises several sub-arguments, for example, that the trial court erred in barring the parties' former cleaning lady from testifying as to Tricia's ability to create a safe home for the children.

¶ 8 In response, Tricia first argues that Christopher's brief should be stricken and the trial court's judgment should be affirmed for Christopher's failure to comply with applicable rules of procedure. As support for her argument, she raises four violations of supreme court rules in Christopher's brief: (1) he failed to include the standard of review in any of his numerous claims of error, in violation of Supreme Court Rule 341(h)(3) (eff. Feb. 6, 2013); (2) he failed to cite to page references in the record on appeal in his statement of jurisdiction (Ill. S. Ct. R. 341(h)(4)(ii) (Feb. 6, 2013)); (3) he failed to cite to authorities and page references numerous times throughout his brief (Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013)); and (4) he failed to provide a complete record as required by Supreme Court Rule 321 (eff. Feb. 1, 1994).

¶ 9 Pursuant to Supreme Court Rule 341(h)(3), the appellant must include a concise statement of the applicable standard of review for each issue, with citation to authority, either in the discussion of the issue in the argument section of the brief, or under a separate heading placed before the discussion in the argument. Ill. S. Ct. R. 341(h)(3) (eff. Feb. 6, 2013).

¶ 10 In cases appealed to this court, all facts recited in the statement of jurisdiction shall be supported by page references to the record on appeal. Ill. S. Ct. R. 341(h)(4)(ii) (eff. Feb. 6, 2013). Also, the appellant's brief shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied upon. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). Finally, along with other documents, the record on appeal shall consist of the entire common law record. The common law record includes every document filed in the

cause, and any documentary exhibits offered and filed by any party. Ill. S. Ct. R. 321 (eff. Feb. 1, 1994).

¶ 11 We agree with Tricia that Christopher’s brief violates most of the supreme court rules listed above. We find that Christopher violated Supreme Court Rule 341(h)(3) (eff. Feb. 6, 2013) when he did not list the standard of review with pertinent authority for any of the issues that he raised on appeal. We note that Christopher does reference a standard of review in the heading of his first issue, where he contends that the trial court’s ruling regarding custody was against the manifest weight of the evidence. However, he provides no authority to support his claim that the manifest weight of the evidence standard is the proper standard of review here. Later in his brief Christopher provides authority for the definition of “manifest weight of the evidence,” but again does not provide authority for the proposition that this court should review judgments involving the custody of children under this standard.

¶ 12 We also find that Christopher violated Supreme Court Rule 341(h)(4)(ii) (eff. Feb. 6., 2013) because his statement of jurisdiction contains no page references to the record. However, we find no violation of Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013). Tricia argues that on numerous occasions Christopher failed to cite any authority or make any page reference to support his arguments on appeal. In reviewing Christopher’s brief we find that he adequately referenced the record in his analysis. Also, the majority of Christopher’s arguments on appeal were that the trial court erred in applying the statutory “best interest” factors to determine custody as set out in section 5/602 of the Act (750 ILCS 5/602) (West 2014)). That analysis is primarily factually driven, and we do not find any violation for Christopher’s failure to cite factually similar cases.

¶ 13 Before we turn to Tricia's final claim of procedural error we must also address another supreme court rule violation in Christopher's brief. The record in this case is over 2,500 pages—almost 2,000 pages of which are reports of proceedings. However, Christopher's statement of facts is woefully inadequate at only 5 pages long.

¶ 14 Illinois Supreme Court Rule 341(h)(6) (eff. Feb. 6, 2013) requires the appellant to include a statement of facts outlining the pertinent facts accurately and with appropriate reference to the pages of the record on appeal. Ill. S. Ct. R. 341(h)(6) (eff. Feb. 6, 2013). Here, Christopher has violated section (h)(6) of this rule by failing to provide all the pertinent facts in this case. Where a brief has not complied with Rule 341, we may strike the statement of facts or dismiss the appeal should the circumstances warrant. *Szczesniak v. CJC Auto Parts, Inc.*, 2014 IL App (2d) 130636 ¶ 8 (citing *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 9).

¶ 15 Next, and perhaps most egregious, we find that Christopher violated Supreme Court Rule 321 (eff. Feb. 1, 1994) when he did not include the exhibits in the record on appeal. We note that copies of these exhibits are contained in the appendix of his brief. However, such an inclusion does not make those documents part of the record. *McGee v. State Farm Fire & Casualty Co.*, 315 Ill.App.3d 673, 679 (2000) (attachments to briefs that are not included in the record are not properly before this court and will not be considered).

¶ 16 As the appellant in this matter, Christopher had the burden to present a sufficiently complete record of the proceedings at trial, and any doubts which may arise from the incompleteness of the record will be resolved against him. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Here, in the trial court's order it noted that it had relied on the exhibits introduced at trial in making its decision regarding custody. Also, in Christopher's brief, he relies heavily on the exhibits to support his claim that the trial court erred in giving Tricia sole

custody. Without the benefit of all the evidence we have no basis upon which to evaluate the trial court's decision, and we must presume that the trial court's judgment had a sufficient factual and legal basis. *In re K.S. and J.S.*, 317 Ill. App. 3d 830, 832-33 (2000) (trial court ruling upheld pursuant to *Foutch* where appellant failed to include trial exhibits and other portions of the record on appeal) .

¶ 17 The Illinois Supreme Court Rules are not suggestions; they have the force of law and must be complied with. *Szczesniak v. CJC Auto Parts, Inc.*, 2014 IL App (2d) 130636, ¶ 8 (citing *People v. Campbell*, 224 Ill. 2d 80, 87 (2006)). Here, Christopher violated numerous supreme court rules in his brief on appeal. The deficiencies in the record on appeal, the severely inadequate statement of facts, as well as the other deviations from the requirements of the supreme court rules are overwhelming, and prevent this court from conducting an informed review. For all these reasons, we affirm the judgment of the trial court.

¶ 18 III. CONCLUSION

¶ 19 For the reasons stated, we affirm the judgment of the trial court giving Tricia full custody of the parties' children.

¶ 20 The judgment of the circuit court of Du Page County is affirmed.

¶ 21 Affirmed.