2016 IL App (4th) 150905-U

NO. 4-15-0905

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
April 18, 2016
Carla Bender
4th District Appellate
Court, IL

In re: MARRIAGE OF	)	Appeal from
GEORGE Z. GASYNA,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
and	)	No. 12D2
SARAH M. NIXON,	)	
Respondent-Appellant.	)	Honorable
	)	Arnold F. Blockman,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Knecht and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's judgment, concluding the trial court did not abuse its discretion in refusing to admit irrelevant or prejudicial evidence and the court's decision was not against the manifest weight of the evidence.

¶ 2 In May 2012, the trial court entered a judgment dissolving the marriage of petitioner, George Z. Gasyna, and respondent, Sarah M. Nixon. The judgment resolved the grounds for dissolution but reserved all ancillary issues, including child custody and visitation determinations. Following a hearing in July 2015, the court entered an order designating George as the custodial parent and placing temporary restrictions on Sarah's parenting time.

¶ 3 Sarah appeals, arguing (1) the trial court erred in refusing to admit relevant evidence, and (2) the court's determinations regarding custody and visitation were against the manifest weight of the evidence. We affirm.

¶ 4 I. BACKGROUND

¶ 5 These proceedings were extremely contentious and involved numerous filings in the trial court. We summarize only the evidence necessary to resolve this appeal.

¶ 6 A. General Background

¶ 7 The parties were married on July 5, 1997, in Quebec, Canada. In 2006, the couple moved to Urbana, Illinois. The parties have one minor child, S.G. (born November 14, 2008). The marriage began to deteriorate following S.G.'s birth, and in 2010, Sarah and S.G. relocated to Montreal. On January 3, 2012, George filed a petition for dissolution of marriage in Champaign County. Shortly thereafter, Sarah filed a petition to resolve custody in Canada. On May 18, 2012, the trial court entered an order dissolving the marriage on grounds only and reserving all other ancillary issues. The May 18, 2012, docket entry noted, "the issue of custody is being resolved in Canada." The matter progressed and the court entered supplemental judgments on marital debt and property divisions unrelated to this appeal.

¶ 8 In August 2014, Sarah and S.G. moved back to Urbana. The Canadian custody proceedings were dismissed and the custody proceedings were to continue in the Champaign County circuit court. Beginning in August 2014, George had visitation with S.G. every other weekend and Wednesday afternoons.

¶ 9 In September 2014, S.G. allegedly told Sarah that George had touched her "gina" (S.G.'s term for vagina) while she was at his house for visitation. Sarah made an audio recording of her conversation with S.G. and called the police.

¶ 10 Although there was no temporary custody order in place, on October 9, 2014, the parties requested the trial court enter an agreed order regarding temporary visitation for George every Wednesday afternoon and alternating weekends. The agreed order memorialized in the record on October 9, 2014, was eventually entered on November 18, 2014. On November 13,

2014, Sarah filed a motion for restricted or supervised visitation, alleging George (1) repeatedly touched S.G.'s vagina, (2) slapped S.G. on the arm where she had just received a booster shot, and (3) hit S.G. on the leg. In December 2014, the matter proceeded to a hearing on Sarah's motion for restricted or supervised visitation.

¶ 11 B. First Petition for Supervised Visitation

¶ 12 On December 17, 2014, the trial court held a hearing on Sarah's petition for restricted visitation. This was the first time the court was made aware the parties intended to pursue a permanent custody determination in Illinois. Accordingly, the court entered a case-management order and ordered a home and background evaluation pursuant to section 604(b) of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/604(b) (West 2014)).

¶ 13 At the December 2014 hearing, Debra Poblano, a school social worker, testified she met with S.G. a total of four times between September and December 2014. S.G.'s teacher and Sarah referred S.G. to Poblano. Poblano testified, in November 2014, S.G. said "she had recently gotten a flu shot, and when she was with her father, he had hit her on the same spot where she got her flu shot and it hurt." Poblano contacted the Department of Child and Family Services (DCFS). There was no pending DCFS investigation at the time of the December 2014 hearing.

¶ 14 Urbana police officer Tim McNaught testified he became involved after receiving a September 18, 2014, report that George abused S.G. Sometime between September 19, 2014, and September 30, 2014, McNaught spoke with Sarah, who told him S.G. reported George touched S.G.'s vagina. According to McNaught, Sarah had numerous audio recordings on her cellular telephone. McNaught testified Sarah had two recordings from September 18, 2014, in

which she questioned S.G. regarding George's alleged sexual abuse. In the recordings, S.G. stated she was about to use the bathroom at George's house and, while she was still standing, George touched her vagina. According to McNaught, S.G. also stated George told her this was supposed to make her feel happy and was supposed to be fun.

¶ 15 McNaught further testified he had concerns about Sarah's questioning of S.G. because the preferred method in abuse cases is to have the details come out for the first time during an interview with a certified forensic interviewer. According to McNaught, there are specific protocols to follow when interviewing a child because the frequency with which a child talks about the alleged abuse can affect the story. McNaught testified Sarah asked S.G. specific questions about "where [the alleged sexual abuse] happened, how many times it happened, how many fingers, how he touched [S.G.], how it made her feel, what he told her, [and] what he said to her."

¶ 16 Urbana police officer Cortez Gardner testified he responded to Sarah's September 2014 report. Gardner testified he listened to the audio recording Sarah made. According to Gardner, "[a]s [he] was listening to the recording, Sarah was actually mouthing each word as the recording went on, as if it was *** rehearsed several times."

¶ 17 On December 18, 2014, the parties reached an agreement regarding visitation and the trial court denied the request for a finding of serious endangerment and supervised visitation.

¶ 18 C. Second Petition for Supervised Visitation

¶ 19 On January 20, 2014, Sarah filed another petition for supervised visitation based on allegations of physical and sexual abuse in December 2014 and January 2015. Sarah testified she took S.G. to the emergency room on December 26, 2014, following a visit with George because S.G. had some bruising and a scratch on her face. Dr. Kathleen Buetow testified Sarah

walked into Carle Clinic on December 29, 2014, with S.G. Dr. Buetow testified S.G. disclosed the following instances of abuse by George: shaking S.G.'s head and banging it against the table; jamming a sharp stone into S.G.'s palm; telling S.G. she should hurt herself and throw herself down the stairs; punching S.G. in the stomach; and touching S.G.'s vagina. In Dr. Buetow's opinion, George physically and sexually abused S.G. and both George and Sarah emotionally abused S.G. by using her as a pawn in their divorce proceedings.

¶ 20 Dr. Buetow again interviewed S.G. on January 15, 2015, and testified S.G. disclosed an incident of sexual abuse which occurred the day before. According to Dr. Buetow, S.G. stated George took S.G. to his office, pulled down her pants, and touched her "gina." Dr. Buetow testified S.G. told her George pulled down his pants and wanted S.G. to touch his penis. S.G. told Dr. Buetow she ended up touching George's penis with her toes. Dr. Buetow further testified she was aware of prior concerns S.G. had been coached. In Dr. Buetow's opinion, S.G. did not seem to have been coached on her statements.

¶ 21 The hearing was terminated after George agreed to a temporary order to have no contact with S.G. except as required by the home and background evaluator.

¶ 22 D. Permanent Custody Hearing

¶ 23 In July 2015, the trial court held a hearing on permanent custody and visitation.

¶ 24 1. *Dr. Helen Appleton*

¶ 25 Dr. Helen Appleton, a licensed psychologist, testified she was appointed by the trial court to perform a home and background evaluation. Dr. Appleton testified she relied, in part, on 18 recordings Sarah made of S.G. reporting sexual abuse by George. According to Dr. Appleton, S.G. appeared sleepy in some of the recordings, which were made late at night. Dr. Appleton had concerns about the way in which Sarah questioned S.G. during these recordings,

which was suggestive and "would be in a sense teaching [S.G.] that she had been sexually abused." Dr. Appleton testified research showed children who are repeatedly asked about an event occurring, even if the questions are not suggestive, eventually reported the event happening. She further testified Officer Gardner's testimony that Sarah was mouthing along to the September 2014 recording also seemed to indicate the recordings had been practiced or coached.

¶ 26 According to Dr. Appleton, Officers McNaught and Gardner arranged for a Child Advocacy Center (CAC) interview after the September 2014 allegations. Dr. Appleton received a copy of the CAC interview. S.G. did not report any incidents of abuse in that interview.

¶ 27 Dr. Appleton acknowledged Dr. Buetow's report, but she noted Dr. Buetow's interview with S.G. was not recorded, so there was no way to determine whether the proper protocols were followed. Dr. Appleton relied upon the fact Dr. Buetow introduced facts that had not been alleged. For example, in her first interview, Dr. Buetow specifically asked S.G. if she had ever touched George's penis. According to Dr. Appleton, the appropriate question should have been more general. The next time Dr. Buetow interviewed S.G., S.G. alleged she had touched George's penis. According to Dr. Appleton, S.G.'s allegations progressed and appeared to be influenced by others.

¶ 28 Dr. Appleton interviewed Detective Rachel Ahart, who had interviewed S.G. during the criminal investigation into the sexual-abuse allegations. According to Dr. Appleton, Detective Ahart asked S.G. what helped her remember all the allegations she made about her father. S.G. told Detective Ahart Sarah helped S.G. practice by pretending to be the doctor and asking S.G. questions. During the course of the evaluation, Sarah insisted Dr. Appleton look at S.G.'s drawings that represented acts of abuse and sent a family of stuffed owls for S.G. to

demonstrate the abuse with. Dr. Appleton testified, "I have never had a parent or anybody send in *** visual aids to help a child. A child that has been abused is able to report. They do not need all this support."

¶ 29 Dr. Appleton testified S.G. and Sarah shared a remarkably close relationship. However, this also posed some concern because, according to Dr. Appleton, S.G. was willing to say whatever her mother wanted to hear. For example, at one of the interviews, S.G. told Dr. Appleton she was looking forward to seeing George at the next observation. However, shortly thereafter, Sarah expressed concern that seeing George would traumatize S.G. and reported S.G. was terrified. Dr. Appleton testified S.G. would be warm and affectionate with George, but her demeanor would change when Sarah was present and S.G. would not make eye contact with her father.

¶ 30 Dr. Appleton's report detailed the many instances Sarah alleged showed George's mental illness. The report noted George had a history of mental-health care, and his psychiatric symptoms and depression were more acute during his relationship with Sarah. "During the relationship, he appeared to listen to and accept her diagnoses of him, participating in groups and mental health care to address the deficits she noted." The report concluded George did not have any current mental-health issues that would limit his ability to parent S.G. According to Dr. Appleton's report, Sarah denied ever diagnosing George, claimed he was verbally and emotionally abusive, and asserted he was a danger to S.G. The report concluded Sarah did not have mental-health issues that would limit her ability to parent S.G. However, there was evidence she had mental-health problems that interfered with her ability to function and her ability to work with George to co-parent S.G.

¶ 31 Dr. Appleton's report opined Sarah and S.G. shared a *folie à deux*. A *folie à deux* is a term for a shared psychosis. In Dr. Appleton's opinion, Sarah and S.G. shared a delusion that George sexually abused S.G. Dr. Appleton testified "there is also the possibility that Sarah has taught this to [S.G.] and [S.G.] believes it and Sarah does not and Sarah is just trying to get even with George, but I think [Sarah] actually believes it herself." In Dr. Appleton's opinion, George did not sexually abuse S.G.

¶ 32 Dr. Appleton recommended George have primary physical custody of S.G. and Sarah should not have contact with S.G. for at least two months. If, after two months, S.G.'s therapist believes S.G. is ready, supervised visitation with Sarah should begin. Dr. Appleton recommended Sarah engage in counseling and unsupervised visitation should not occur until Sarah "is able to understand how her negative feelings toward George affected [S.G.] and led [S.G.] to say and report the things that she did."

¶ 33 Respondent's counsel asked Dr. Appleton if George expressing interest in having sexual relations with a relative would be the type of evidence that would indicate the sexual abuse occurred. Dr. Appleton testified it might be a risk factor. Counsel asked, "Did you [*sic*] ever tell you about a cousin by the name of Ania from Sosnowiec who was sixteen years old and he wanted to screw her little plump ass right off?" Counsel then showed Dr. Appleton an exhibit marked "Respondent's Exhibit Number 1." This exhibit is not in the record on appeal. Counsel also showed Dr. Appleton an exhibit marked "Respondent's Exhibit Number 2" and asked, "And in that he talks about—he says 'If I were more worthless, I would want to shove a crimping iron up her cunt.' He's referring to a former girlfriend of his; is that correct?" Dr. Appleton testified she did not know. This exhibit is also not in the record on appeal.

¶ 34 2. *George Gasyna*

¶ 35 George testified he had supervised visitation with S.G. in Canada in 2012. Following the Canadian equivalent of a home and background evaluation, George had unsupervised visitation in Canada until Sarah and S.G. returned to Urbana in August 2014. George testified he started having overnight visitation in October 2014. George, his fiancée, Ana Lucic, and their daughter, E.L., lived in a two-bedroom apartment, and S.G. would sleep on an air mattress in an alcove of the living room when she stayed the night. George, Ana, and E.L. had since moved to a three-bedroom house in Champaign so S.G. would have her own room.

¶ 36 George denied the September 2014 allegations of sexual abuse. According to George, S.G. was using the bathroom at his house when she called to him for help. He entered the bathroom and found S.G. sitting on the toilet with all her clothes on the floor. She asked for his help wiping her bottom, and he obliged. George further denied the allegations of physical abuse.

¶ 37 George also denied the January 2015 allegations of sexual abuse. George testified he picked S.G. up from school, took her to a restaurant, and then went to his office at the University of Illinois campus. According to George, S.G. watched a video while he used the Internet. He and S.G. were in his office for about 40 to 45 minutes, the door was open most of the time, and the floor was very busy. He and S.G. then met Ana and E.L. for ice cream.

¶ 38 George testified he agreed to have no visitation with S.G. until the home and background evaluation was complete. George further testified there was an ongoing DCFS investigation, and he agreed to participate in a safety plan that prevented him from seeing E.L. until DCFS recommended otherwise. According to George, DCFS requested Dr. Appleton's report, which George gave them with the court's permission. At some point a juvenile court action was initiated and DCFS placed S.G. in George's care prior to the shelter-care hearing.

¶ 39 George also acknowledged two documents labeled "exhibit 1" and "exhibit 2" were diary entries he wrote when he was approximately 17 years old. Again, these exhibits are not in the record on appeal.

¶ 40 George testified his relationship with S.G. had completely transformed since Sarah and S.G. returned to Urbana. When Sarah and S.G. were still in Canada, his relationship with S.G. was "wonderful." Since she returned to Urbana, S.G. has displayed anger toward George.

¶ 41 George testified about his mental-health history and treatment history. According to George, he struggled with depression and was diagnosed with Asperger's syndrome. George further testified he had sought treatment over the years for borderline personality disorder, suicidal thoughts, and issues of partner abuse. George also took prescription antidepressants for a time but testified he was no longer depressed or taking antidepressants.

¶ 42 On cross-examination, respondent's counsel made an offer of proof regarding a third diary entry which contained the words, "Bittersweet is the cunt sap of a 13 year old." George agreed he wrote the words and further testified, "This is a quote from a Leonard Cohen novel. This is—Leonard Cohen is a Canadian musician and novelist, and he wrote a song, actually, about this. *** And in my analysis of his work [in the diary entry] I am surprised that somebody so respected would be able to write something like that, and have it published in his novel. This is from 'Beautiful Losers.' " The trial court denied the offer of proof.

¶ 43 3. *Sarah Nixon*

¶ 44 Sarah testified she and S.G. lived with friends for approximately one month when they returned to Urbana in August 2014. She then rented a house until the end of November 2014. She and S.G. then stayed with the same friend as before, but in a different house.

According to Sarah, she and S.G. moved into another house approximately one month before the permanent custody hearing began.

¶ 45 Sarah testified she was not currently employed but was working on her Ph.D. She had a contract teaching position from August to December 2006. Sarah also testified her former employer was seeking funding to hire Sarah to teach for the dance department at the University of Illinois. Prior to S.G.'s birth, Sarah was employed full time and supported George while he obtained his Master's degree and Ph.D. Following S.G.'s birth, Sarah stayed home to be S.G.'s primary caretaker.

¶ 46 According to Sarah, she was actively involved in S.G.'s education, volunteering in the classroom and attending parent-teacher conferences. Sarah testified about S.G.'s various extracurricular activities and stated she was primarily responsible for organizing them. However, Sarah testified George was supportive of the extracurricular activities and participated in S.G.'s religious education and other activities.

¶ 47 According to Sarah, it had always been her position, both in the Canadian proceedings and the Illinois proceedings, that George should have supervised visitation with S.G. Sarah testified part of the reason she wanted George to have supervised visitation with S.G. was due to an incident that occurred in March 2011. According to Sarah, George tried to kill the entire family when he turned the car toward the center divider and took his hands off the steering wheel of the car while driving on the highway. Sarah further testified George had told her he had a suicide plan that involved driving his car into the concrete center dividers on a highway.

¶ 48 Sarah testified, "George expressed great distress about not knowing how to touch [S.G.]'s naked body. He didn't want to touch her when she was naked." According to Sarah, George had mental-health problems and diagnosed himself with borderline personality disorder.

Sarah testified George was convinced he had been sexually abused as a toddler and was a sex addict. Sarah further testified about an incident in 2010 where she woke up to find George crouched over S.G.'s sleeping form, holding a pillow in his hands. Sarah called 9-1-1 and George was admitted to The Pavilion for a psychiatric evaluation.

¶ 49 Sarah testified she believed S.G.'s statements that George sexually abused her, even in light of Dr. Appleton's opinion she and S.G. had a shared delusion regarding the abuse. According to Sarah, she never coached S.G. or suggested what S.G. should say about George.

¶ 50 Sarah testified there had been an allegation of sexual abuse in January 2014, while she and S.G. still lived in Canada. According to Sarah, she wanted to protect S.G. Sarah admitted she agreed to unsupervised visitation, including overnight visitation, in August 2014, when she and S.G. returned to Urbana. Sarah testified she was "coercively forced to agree to" visitation because George filed for sole custody after Sarah reported the September 2014 sexual-abuse allegations.

¶ 51 Respondent's counsel attempted to enter into evidence an agreement signed by the parties on June 10, 2013. The written agreement awarded custody to Sarah and laid out visitation for George. Respondent's exhibit No. 28 involved an agreement for the period between February 18, 2013, and July 1, 2013. Respondent's exhibit No. 29 involved an agreement for the period between July 1, 2013, and June 30, 2014 (although unlabeled, our review of the record did reveal a signed agreement with these dates). The trial court denied the admission of these documents as evidence of settlement negotiations because the Canadian court never entered these agreed parenting plans as orders.

¶ 52 Respondent's counsel also sought to introduce testimony about a conversation George and Sarah had in February or March 2010. By way of an offer of proof, Sarah testified

George told her he molested his younger sister when he was a teenager. According to Sarah, George moved from Poland to Canada after he was 12 years old. George told Sarah he took his sister into the woods when they lived in Poland and "force[d] her to hit him on his bare bottom with [tree] branches." The trial court denied the offer of proof, finding the fact this allegedly happened during George's childhood, combined with the prejudicial effect, outweighed the probative value.

¶ 53 4. *Custody Determination*

¶ 54 In reaching its decision, the trial court thoroughly addressed the statutory factors, finding both parents wanted custody of S.G. The court noted George had expressed a desire for S.G. to be placed in foster care, but the court found this position stemmed from George's fear of continued allegations of abuse by Sarah and S.G. The court did not give this factor much weight but found it slightly favored Sarah.

¶ 55 The trial court found S.G. was closely bonded with Sarah, but she was too young for the court to give any weight to her preference regarding custody.

¶ 56 In addressing the child's adjustment to home, school, and community, the trial court found S.G. had lived with Sarah since 2010 and was well-adjusted to her school and community. The court found this factor favored Sarah.

¶ 57 The trial court next considered the child's interactions with her parents and significant others. The court found Sarah's "whole life [was] focused on this child custody" proceeding. The court noted Dr. Appleton's observation that Sarah was not working or pursuing a career. On the other hand, the court found George, Ana, and E.L. all had a good relationship with S.G. The court found this factor slightly favored George.

¶ 58 The trial court found the mental-health factor strongly favored George. The court noted George's history of mental-health problems, but it found George sought help and worked on his depression. Conversely, the court found Sarah had some mental-health problems, noting her tendency to be controlling, anxious, and suspicious. The court further noted Sarah was scattered, unfocused, and unable to concentrate.

¶ 59 The trial court "simply [did not] believe the allegations of sexual and physical abuse." The court noted the hours of tapes of Sarah repeatedly asking S.G. about sexual abuse, S.G.'s statement to Detective Ahart that practicing with her mother helped her remember the abuse allegations, and the visual aids Sarah sent with S.G. for the interviews with Dr. Appleton. The court further noted there was mental and verbal abuse between the parties throughout the relationship and that the abuse went both ways. Accordingly, the court found the physical-abuse factor and the existence-of-abuse factors were both a draw and favored neither parent.

¶ 60 The trial court considered the parties' willingness to facilitate a relationship with the other and found this factor strongly favored George. The court found Sarah "has engaged in essence a four-year campaign *** to alienate and brainwash this child into believing that dad is bad." The court described the tapes of Sarah questioning S.G. as "shocking." The court gave a number of examples of the types of questions Sarah asked during these interviews:

> " 'What happens today when your pants are taken off and you're not given your underpants? *** Are you scared daddy will hurt you? Please tell me how daddy touched you. How many fingers? I believe you. You're to be believed. I believe [S.G.] I know [S.G.] tells the truth. It's time to wash your hands and show

> mommy how it happened. I am your protector. *** He said he hit you with a sharp point. Has mom ever hit you?' "

The transcript contains several pages of the small "sampling" the court noted for the record.

¶ 61 The trial court also considered various nonstatutory factors, including the existence of testimony from Dr. Buetow and S.G.'s counselor that indicated they believed there had been abuse. The court also noted the relative stability of the parties. George and Ana had a stable residence and George was a tenured professor at the University of Illinois. Conversely, Sarah had four residences in the course of one year, had no real employment for many years, and had been working on her doctoral degree since 2003. The court noted many instances where Sarah refused to accept responsibility for her actions. Finally, the court noted its belief Sarah returned to Illinois because the Canadian custody litigation was not going her way and she wanted to try again to prevent George from having contact with S.G.

¶ 62 Ultimately, the trial court awarded George custody of S.G. Sarah was to have no contact with S.G. for at least two months except for weekly Skype calls. After two months, if S.G.'s counselor felt S.G. was ready, Sarah would have supervised visitation. The court imposed various other orders regarding counseling and family therapy and expressed its hope Sarah would eventually be able to exercise more traditional, unsupervised visitation.

¶ 63 This appeal followed.

¶ 64 II. ANALYSIS

¶ 65 As an initial matter, we address the timeliness of our disposition in this matter. Illinois Supreme Court Rule 311 (eff. Feb. 26, 2010) requires accelerated dispositions in appeals involving child custody and allocation of parental responsibilities determinations. Rule 311(a)(5) provides: "[e]xcept for good cause shown, the appellate court shall issue its decision

within 150 days after the filing of the notice of appeal ***." Ill. S. Ct. R. 311(a)(5) (eff. Feb. 26, 2010). Sarah filed her notice of appeal on November 5, 2015. Counsel then waited until November 24, 2015, to ask the court reporter to prepare the necessary transcripts, which were filed with the circuit court on January 22, 2016. Counsel then asked for (1) an extension to file the report of proceedings and to file the opening brief; (2) a second extension to file the opening brief; and (3) an extension to file the reply brief (three days after it was initially due). In the interest of justice, we allowed the extensions for the matter to be fully and properly briefed. See *In re B'Yata I.*, 2013 IL App (2d) 130558, ¶ 26, 999 N.E.2d 817. We also note counsel mailed the reply brief on March 8, 2016, but did not put the record in the mail to this court until March 14, 2016. Consequently, this court did not receive the complete record until March 18, 2016. Oral arguments were held on April 12, 2016. This court has made every effort to handle this matter efficiently and we find good cause for issuing our disposition after the 150-day deadline. See *id.*

¶ 66 On appeal, Sarah argues (1) the trial court erred in refusing to admit relevant evidence, and (2) the court's determinations regarding custody and visitation were against the manifest weight of the evidence. We turn first to the court's evidentiary rulings.

¶ 67 A. Evidentiary Rulings

¶ 68 Sarah contends the trial court erred in refusing to admit (1) George's journal entries from 25 years earlier, (2) evidence of a conversation George and Sarah had in 2010 in which George purportedly admitted sexually abusing his sister when he was a teenager, and (3) evidence of custody agreements executed by Sarah and George during their custody proceedings in Canada.

¶ 69 The relevance and admission of evidence are within the sound discretion of the trial court. *Bachman v. General Motors Corp.*, 332 Ill. App. 3d 760, 797-98, 776 N.E.2d 262, 295 (2002). "A trial court will not be found to have abused its discretion with respect to an evidentiary ruling unless it can be said that no reasonable man would take the view adopted by the court." *In re Leona W.*, 228 Ill. 2d 439, 460, 888 N.E.2d 72, 83 (2008).

¶ 70 Respondent argues the trial court erred in denying the admission of respondent's exhibit Nos. 1, 2, and 15—the journal entries which counsel on appeal argues establish George's "long history of deviant sexual thoughts." Exhibit Nos. 1 and 2 are not in the record on appeal. "An appellant has the burden to present a complete record on appeal and any 'doubts which may arise from the incompleteness of the record will be resolved against the appellant.' " *Clay v. County of Cook*, 325 Ill. App. 3d 893, 899, 759 N.E.2d 6, 11 (2001) (quoting *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392, 459 N.E.2d 958, 959 (1984)). While we acknowledge appellant has attached these exhibits as an appendix, this is an improper method of supplementing the record. See, *e.g.*, *Scepurek v. Board of Trustees of the Northbrook Firefighters' Pension Fund*, 2014 IL App (1st) 131066, ¶ 2, 7 N.E.3d 179. Because these exhibits are not properly in the record on appeal, we refuse to consider these appended documents. *Geary v. Telular Corp.*, 341 Ill. App. 3d 694, 697 n.1, 793 N.E.2d 128, 130 (2003).

¶ 71 On the day of oral argument, more than five months after filing the notice of appeal, counsel for Sarah filed a motion to supplement the record with exhibit Nos. 1 and 2. Counsel had an opportunity to examine the record and it was incumbent on counsel to ensure these exhibits were included in the record for our review. See *In re Marriage of Sharp*, 369 Ill. App. 3d 271, 275, 860 N.E.2d 539, 544 (2006). We decline to reward counsel's lack of diligence by allowing this untimely, piecemeal creation of the record. *Id.* Moreover, as of the date of oral

argument, this court still did not have a certified supplemental record containing the exhibits. As such, and in order to avoid any further delay in the filing of this disposition, we deny the motion to supplement the record. Accordingly, we turn to respondent's exhibit No. 15.

¶ 72 Sarah contends the trial court abused its discretion in refusing to admit a journal entry which contained the words "bittersweet is the cunt sap of a thirteen year old." Specifically, Sarah argues this journal entry demonstrates George's attraction to young children. We disagree.

¶ 73 Our review of the journal entry clearly shows George is referencing a work by "Mister Cohen." Indeed, George testified this line was a quote from a work by Leonard Cohen, a Canadian author and musician. George's ponderings regarding Leonard Cohen's artistic works are clearly irrelevant to *any* issue in this case. As such, we find the trial court did not abuse its discretion in refusing to admit wholly irrelevant musings regarding the words of another.

¶ 74 We turn now to the evidence of a conversation George and Sarah had in 2010 in which George purportedly admitted sexually abusing his sister when he was a child. The trial court refused to allow this evidence, finding the intervening time exceeded the bounds of relevancy and, when combined with the prejudicial effect, it outweighed any probative value the testimony might have.

¶ 75 As stated before, it is within the trial court's discretion to determine the relevancy of evidence. A court may reject evidence as irrelevant if the evidence is remote, uncertain, or speculative. *People v. Morgan*, 197 Ill. 2d 404, 456, 758 N.E.2d 813, 843 (2001). Relevant evidence may be excluded where the prejudicial effect substantially outweighs the probative value. *Hatchett v. W2X, Inc.*, 2013 IL App (1st) 121758, ¶ 20, 993 N.E.2d 944.

¶ 76 The testimony Sarah sought to enter into evidence involved incidents from George's childhood, approximately 30 years before. The trial court's position that the remoteness

of the evidence pushed the bounds of relevancy is not arbitrary or unreasonable. *Leona W.*, 228 Ill. 2d at 460, 888 N.E.2d at 83. Moreover, the testimony was certainly prejudicial. *Hatchett*, 2013 IL App (1st) 121758, ¶ 20, 993 N.E.2d 944 (quoting *LaSalle Bank, N.A. v. C/HCA Development Corp.*, 384 Ill. App. 3d 806, 822, 893 N.E.2d 949, 964-65 (2008)) ("Prejudice is [an] 'undue tendency to suggest a decision on an improper basis.' "). We cannot say the court abused its discretion in refusing to admit this evidence based on its limited relevancy and its prejudicial effect.

¶ 77 Finally, we turn to the trial court's decision to exclude exhibit Nos. 28 and 29 because they contained inadmissible settlement discussions for specific periods of time. These agreements were entered into in the course of the Canadian custody proceedings. The Canadian court never ruled on the agreements or entered the agreements as orders of the court. The trial court found these agreements constituted the parties' efforts to negotiate and compromise and excluded them on that basis. We agree the parties' agreements as to visitation and custody were part of settlement negotiations and, thus, were irrelevant and prejudicial. *Plooy v. Paryani*, 275 Ill. App. 3d 1074, 1088, 657 N.E.2d 12, 23 (1995). The agreements were made only for specified periods of time, indicating the parties did not intend to enter into an agreement permanently. Moreover, the Canadian court never entered these agreements as orders. These agreements were also irrelevant to the issue of whether George or Sarah should have custody of S.G. *In re Marriage of Suriano*, 324 Ill. App. 3d 839, 850, 756 N.E.2d 382, 391-92 (2001). We conclude the court did not abuse its discretion in excluding these visitation agreements.

¶ 78 Moreover, even if these visitation agreements were not made in the course of settlement negotiations, the error was harmless. The trial court entered multiple agreed orders regarding temporary visitation and custody which were very similar to the visitation agreements.

The court would not have been swayed by these two documents in light of all the evidence adduced at trial in support of awarding George custody of S.G.

¶ 79 B. Manifest Weight of the Evidence

¶ 80 Sarah contends the custody determination was against the manifest weight of the evidence. Specifically, Sarah contends the evidence was undisputed that Sarah had always been S.G.'s primary caretaker and George had only minimal contact with S.G. since 2010.

¶ 81 We find Sarah's brief on this issue is deficient under Illinois Supreme Court Rule 341(h)(7) (eff. Jan. 1, 2016). The "argument" section cites to only one case (*In re B.B.*, 2011 IL App (4th) 110521, 960 N.E.2d 646) for the proposition that a custody determination will be reversed if it is against the manifest weight of the evidence. Indeed, the brief does not even cite the Marriage Act, despite arguing the statutory factors weigh in Sarah's favor. Mere contentions without argument or citation to authority do not merit consideration on review. *Elder v. Bryant*, 324 Ill. App. 3d 526, 533, 755 N.E.2d 515, 521-22 (2001). "Contentions that are supported by some argument, yet lack citations of authority, do not meet the requirements of Rule 341[]." *Id.* at 533, 755 N.E.2d at 522. This court is entitled to have pertinent authority cited and is not a repository into which an appellant may dump the burden of research. *Id.* The failure to provide citations to relevant authority, and the accompanying lack of analysis applying the facts at issue to the relevant law, is insufficient to meet the requirements of Rule 341(h)(7). We therefore reject this argument for this reason alone. *Id.*

¶ 82 III. CONCLUSION

¶ 83 For the reasons stated, we affirm the trial court's judgment.

¶ 84 Affirmed.