2016 IL App (4th) 160336-U

NO. 4-16-0336

FILED
September 13, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

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| In re: MARRIAGE OF | ) | Appeal from |
| GLORIA PEREIRA-DRISCOLL, | ) | Circuit Court of |
| Petitioner-Appellant, | ) | Sangamon County |
| and | ) | No. 05D500 |
| JUSTIN P. DRISCOLL, | ) | |
| Respondent-Appellee. | ) | Honorable |
| | ) | Karen S. Tharp, |
| | ) | Judge Presiding. |

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Knecht and Justice Holder White concurred in the judgment.

**ORDER**

¶ 1 *Held*: The appellate court affirmed, finding the trial court did not err in denying petitioner's motion to reconsider.

¶ 2 In December 2007, the trial court entered a judgment for dissolution of marriage between petitioner, Gloria Pereira-Driscoll, and respondent, Justin P. Driscoll. In September 2015, Justin filed a motion to modify custody of the parties' son, J.D. In December 2015, the court placed custody of J.D. with Justin. In January 2016, Gloria filed a motion to reconsider, which the court denied.

¶ 3 On appeal, Gloria argues the trial court abused its discretion in denying her motion to reconsider. We affirm.

¶ 4 I. BACKGROUND

¶ 5 Gloria and Justin were married in August 2002, and J.D. was born in 2003. In

June 2005, Gloria filed a petition for dissolution of marriage and a petition for temporary relief. In July 2005, Justin filed a *pro se* answer. In January 2006, he filed a *pro se* petition for visitation. In February 2006, the trial court entered an order of temporary support and visitation.

¶ 6 In December 2007, the trial court entered the judgment for dissolution of marriage. The parties entered into a marital settlement agreement, whereby J.D. was placed in the sole custody of Gloria and visitation was allocated to Justin. The court also ordered Justin to pay $240 per month in child support.

¶ 7 In July 2009, the Illinois Department of Healthcare and Family Services filed a petition for modification of child support, alleging a substantial change in circumstances existed in that Justin's income had substantially increased. The petition sought an order increasing child support. In August 2009, the trial court entered a default order of support.

¶ 8 In January 2010, the trial court entered an order finding unsupervised visitation would seriously endanger J.D. The court's order set forth the times for Justin's visitation. Gloria also filed a *pro se* motion to modify.

¶ 9 In June 2011, Gloria filed a petition to modify visitation, alleging there had been a substantial change in circumstances warranting a modification. Gloria alleged Justin physically abused J.D. in February 2011, and the Department of Children and Family Services found credible evidence of physical abuse. Gloria alleged she obtained an emergency order of protection, which required Justin to have supervised visits with J.D. Gloria also filed a motion to modify the dissolution judgment. The trial court entered an order, requiring Justin to add J.D. to his health-insurance policy and enroll in a parenting class. The court did not require Justin's visits with J.D. to be supervised.

¶ 10 In June 2013, Gloria filed a *pro se* motion to modify, requesting a change in

visitation. Gloria also filed a petition for an order of protection, and an *ex parte* order was entered. In July 2013, the trial court required the parties to undergo mediation. In August 2013, the trial court vacated the emergency order of protection and dismissed Gloria's petition. The court also indicated visitations were to remain unsupervised and the parties were no longer required to mediate.

¶ 11 In September 2015, Justin filed a motion to modify, seeking custody of J.D. and stating J.D. no longer lived with Gloria. In October 2015, the trial court entered an order, stating an *ex parte* order of protection entered on September 22, 2015, would continue and granting Justin visitation.

¶ 12 In December 2015, the trial court entered an order on Justin's motion to modify custody. The order noted an incident in which Gloria hit J.D. in the face and later struck him with a belt on the arm and back. Gloria then sent text messages to Justin stating he needed to come and get J.D. At a hearing on an order of protection, J.D. stated he did not feel comfortable at his mother's home because she might hit him again. J.D. stated he felt comfortable with his father. The court found by clear and convincing evidence that modification of custody was necessary to serve the minor's best interests. The court placed custody of J.D. with Justin. The court did not find J.D.'s physical, mental, moral, or emotional health would be seriously endangered by unrestricted visitation with Gloria, finding J.D. "appears mature enough that he will know how to respond and seek help if needed." The court also terminated Justin's child-support obligation.

¶ 13 In January 2016, Gloria filed a motion to reconsider, claiming the trial court erred in not ordering mediation. In March 2016, the court stated an impediment to mediation existed in that an emergency order of protection was in place prohibiting contact between the parties.

The court denied Gloria's motion to reconsider. This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 Gloria has filed a *pro se* brief in this case as the appellant. Justin has not filed a brief as the appellee. 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 trial court's judgment. 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. On the other hand, if the appellant's brief demonstrates *prima facie* reversible error and the contentions in the brief find support in the record, the trial court's judgment may be reversed. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133, 345 N.E.2d 493, 495 (1976).

¶ 16 In the case *sub judice*, Gloria has not provided a required statement of facts in her brief. See Ill. S. Ct. R. 341(h)(6) (eff. Jan. 1, 2016). She has not referred to pages of the record relied on. There are no transcripts either, save for a November 2006 stipulation. Gloria has also cited no case law to support her claim of error. Instead, Gloria's *pro se* argument is essentially her attorney's January 2016 motion to reconsider. Therein, the motion argued the trial court erred by not ordering mediation in accord with Illinois Supreme Court Rule 905(a) (eff. Sept. 1, 2013), which requires courts to provide for mediation in cases involving custody and visitation unless "the court determines an impediment to mediation exists." Here, the court found an impediment to mediation existed, in that an emergency order of protection was in place prohibiting contact between the parties. Without a sufficient argument to support her claim of error, along with a lack of transcripts of court hearings, we find Gloria has failed to show the trial court abused its discretion in denying her motion to reconsider.

¶ 17 III. CONCLUSION

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

¶ 19 Affirmed.