2017 IL App (2d) 160323-U
No. 2-16-0323
Order filed March 16, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

SANDRA CANGEMI,	)	Appeal from the Circuit Court
	)	of Lake County.
Petitioner-Appellee,	)	
	)	
v.	)	No. 10-F-833
	)	
DANIEL CAMPANELLA,	)	Honorable
	)	Patricia S. Fix,
Respondent-Appellant.	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justice Zenoff concurred in the judgment.
Justice Schostok specially concurred.

ORDER

¶ 1 *Held*: Because respondent did not include reports of proceedings or their substitutes for the relevant hearings necessary to support his claims of error, the trial court's judgment was presumed to be in conformance with the law and supported by an adequate factual basis.

¶ 2 Respondent *pro se,* Daniel Campanella, appeals the judgment of the circuit court of Lake County modifying the transportation provisions of the parenting agreement regarding the minor child of respondent and petitioner, Sandra Cangemi, and denying respondent's request for attorney fees pursuant to a February 7, 2012, order requiring the parties to submit disputes to mediation before filing a motion or petition in the circuit court. Respondent contends that the

trial court abused its discretion in placing the burden of transporting the minor child to and from all parenting-time exchanges and erred in refusing to award him attorney fees. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In May 2009, petitioner gave birth to the parties' child. Thereafter, respondent admitted paternity. On April 1, 2011, the parties entered a parenting agreement setting forth their agreement regarding custody, parenting time, decision-making, and other related issues. The parenting agreement provided that the parties would exercise joint custody with petitioner being given residential custody and respondent receiving liberal visitation. The parties also agreed to confer with each other and cooperate in making all important decisions regarding the child's health, welfare, education, and upbringing. Of particular relevance, the parenting agreement provided for the transportation of the child between the parties:

> "The parties agree that they shall be jointly responsible for the child's transportation to and from [respondent's] residence when he has regular parenting time, including but not limited to the costs and planning associated with same. [Respondent] shall be responsible for picking the minor child up from [petitioner's] residence when his regular parenting time commences and [petitioner] will be responsible for picking up the minor child from [respondent's] residence when her regular parenting time commences. The parties may agree otherwise in writing signed by both parties. The party with whom the child is residing shall be responsible for taking the child to and from her regularly scheduled school and extracurricular activities."

In addition, the trial court ordered respondent to pay $400 per month as child support and one-half of the child's medical and dental insurance.

¶ 5 From this modestly hopeful beginning, the parties' personal relationship soured. In

February 2012, respondent filed a petition for rule to show cause, seeking to take the child on a week-long trip that conflicted with petitioner's weekend. On February 7, 2012, the trial court adjudicated the dispute, allowing the vacation to take place, but ordering that petitioner receive an extra parenting weekend to make up for the one she would be missing. Additionally, the trial court ordered: "except as to enforcement of the parenting provisions, if either party files a motion/petition without attempting mediation, they shall be responsible for attorney's fees of the other party."

¶ 6 As time passed, respondent, who was self-employed at all relevant times, claimed that he had lost a major client causing a significant drop in his income. Respondent filed four petitions to modify his child support obligation, all of which claimed that his income had fallen and petitioner's income exceeded his. The trial court held that respondent failed to demonstrate a significant change in circumstances and denied the first three petitions to modify. As to the fourth petition to modify, the parties entered an agreed order setting respondent's child support obligation at $300 per month.

¶ 7 On October 2, 2015, petitioner filed a petition for modification seeking to modify, among other things, the transportation provision of the parenting agreement. Petitioner alleged that, because respondent was self-employed and had a flexible schedule, he could take over all of the transportation of the child between the parties: respondent would pick up the child before his visitation and return the child to petitioner when it was her parenting time. Petitioner alleged that her schedule was inflexible and, on certain days, she would get the child home late causing petitioner to go to bed even later, which adversely impacted her work. Petitioner suggested that placing the transportation obligation solely on respondent would actually result in the child being able to spend more time with respondent than under the current shared transportation obligation.

¶ 8 On November 9, 2015, respondent filed his response to the petition to modify. Respondent admitted and denied the various allegations. Additionally, respondent raised as an affirmative defense the issue of the February 7, 2012, order requiring the parties to submit to mediation before bringing a petition or motion before the court. On December 17, 2015, the trial court entered an order referring the parties to mediation on, among other things, the transportation issue. Among other issues resolved on that date were respondent's third and fourth petitions to modify child support which, as noted above, resulted in the diminution of respondent's child support obligation to $300 per month.

¶ 9 On January 19, 2016, the trial court held a hearing on petitioner's petition to modify. No report of proceedings, bystander's report, or agreed statement of facts regarding the content of the hearing appear in the record. The trial court entered an order stating, pertinently: "Count 1 of [petitioner's] motion [*sic*] [seeking to modify the transportation provision of the parenting agreement] is granted and [respondent] shall be responsible for transportation for his regular and holiday parenting time as long as he is self-employed and has flexibility of schedule."

¶ 10 On February 18, 2016, respondent filed a 69-point motion to reconsider. Petitioner filed her response, and on March 31, 2016, the trial court held a hearing on the motion to reconsider. Once again, no report of proceedings, bystander's report, or agreed statement of facts appears in the record to describe the content of the hearing. After the hearing, the trial court entered an order denying the motion to reconsider. Pertinently, in the March 31, 2016, order the trial court expressly held that respondent had presented no new facts that could not have been presented at the January 19, 2016, hearing on petitioner's petition to modify; the court could not review any evidence, such as the August, October, and December 2012 reports of the guardian *ad litem*, that was not raised or placed into evidence during the January 19, 2016, hearing; respondent

presented no new law to justify reconsideration; and respondent failed to argue that the trial court abused its discretion in reaching its decision in the January 19, 2016, hearing. The trial court then ordered, pertinently: "That [respondent's] motion to reconsider is hereby denied given the court's findings herein." Respondent timely appeals.

¶ 11 II. ANALYSIS

¶ 12 On appeal, respondent argues that the trial court abused its discretion in modifying the transportation provision of the parenting agreement. Respondent also argues that the trial court erred in not awarding attorney fees pursuant to the February 7, 2012, order.

¶ 13 As an initial matter, we note that respondent is *pro se*. However, that fact does not relieve respondent of the responsibility to comply with the Illinois Supreme Court Rules before this court. *In re Marriage of Petrik*, 2012 IL App (2d) 110495, ¶ 38. One of the key rules concerns the preparation of reports of proceedings or their substitutes for purposes of reviewing an appeal. Ill. S. Ct. R. 323 (eff. Dec. 13, 2005). Briefly summarized, the appellant is to include in the record reports of proceedings for the relevant hearings before the trial court. *Id.* If no verbatim transcript is available, the appellant may prepare a bystander's report or the parties may agree upon a statement of facts material to the issues on appeal. *Id.* Here, respondent included no reports of proceedings for any of the hearings before the trial court, particularly, for the January 19, 2016, hearing on petitioner's petition to modify or the March 31, 2016, hearing on respondent's motion to reconsider. Likewise, respondent did not prepare a bystander's report or submit an agreed statement of facts regarding the issues on appeal.

¶ 14 It has been long held that it is the appellant's burden to provide a sufficiently complete record to support the claimed errors. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). In the absence of a sufficiently complete record on appeal, the reviewing court will presume that the

order entered by the trial court was in conformity with law and had a sufficient factual basis. *Id.* at 392. Any doubts arising from the incompleteness of the record will be resolved against the appellant—the party with the burden to produce the sufficiently complete record. *Id.*

¶ 15 Respondent first challenges the trial court's modification of the transportation provision. The trial court has wide discretion over modifications to custody and the surrounding details. *In re Marriage of Betsy M.*, 2015 IL App (1st) 151358, ¶ 59. We will not disturb the trial court's decision absent an abuse of that discretion. *Id.*

¶ 16 The lack of the reports of proceedings or their substitutes fatally hampers our review of the modification of the transportation provision. The January 19, 2016, order recited that the trial court held a hearing and also heard the arguments of counsel regarding petitioner's request to modify the transportation provision of the parenting agreement. These words signify that evidence may have been taken, the parties presented specific arguments that may have shaped the trial court's thinking, and the trial court may have discussed various aspects of the issues when it was entertaining the parties' arguments as well as when it pronounced judgment. Moreover, the trial court made the factual finding that it was in the child's best interests to modify the transportation provision, so long as respondent was self-employed and maintained a flexible schedule. This also suggests that the trial court may have elucidated what it considered in reaching such a finding as it pronounced its judgment, but this information is not available to us as a result of respondent's noncompliance with the Supreme Court Rules. We thus must presume that the trial court acted reasonably with an adequate factual basis. *Wells Fargo Bank, N.A. v. Hansen*, 2016 IL App (1st) 143720, ¶ 15 (reviewing court considered whether to set aside a trial court's discretionary ruling; the reviewing court held that, in the absence of relevant reports of proceedings or their substitutes, it would presume that the trial court followed the law

and that it had an adequate factual basis for reaching its decision). Accordingly, we affirm the trial court's judgment modifying the transportation provision of the parenting agreement.

¶ 17 Next, respondent argues that the attorney-fee clause from the February 7, 2012, order imposes a condition precedent to the filing of a motion or petition that does not seek to enforce the parenting provisions of the parenting agreement. According to respondent, petitioner was required first to seek mediation before filing a petition to modify the parenting agreement. However, we note that mediation was accomplished, including the issue of revising the transportation provision (on which the parties were unable to reach an agreement) before the petitioner's petition to modify came on for hearing. We believe that, in such a circumstance, the purpose of the attorney-fee clause was substantially fulfilled.

¶ 18 In any event, our review is nevertheless fatally impeded by the lack of reports of proceedings or their substitutes. In the January 19, 2016, order, the trial court found, as a matter of fact, that the "failure to mediate by [petitioner] is not a basis for fees given [the] history of the case." We cannot discern, from the incomplete record before us, precisely to what the trial court was referring. Because the record is incomplete, we must resolve questions arising from the very incompleteness of the record against respondent. *Foutch*, 99 Ill. 2d at 392. Accordingly, because the attorney-fee provision was substantially complied with and because the incomplete record requires us to invoke the presumption that the trial court's order on attorney fees was in conformity with the law and had a sufficient factual basis, we affirm the trial court's judgment in this regard.

¶ 19 III. CONCLUSION

¶ 20 For the foregoing reasons, the judgment of the circuit court of Lake County is affirmed.

¶ 21 Affirmed.

¶ 22 JUSTICE SCHOSTOK specially concurring:

¶ 23 The respondent's argument, if true, suggests that the trial court abused its discretion in ordering that the respondent be solely responsible for transporting the child back and forth to the petitioner. However, as the majority correctly points out, the respondent has not included a sufficient record for this court to make a definite determination. In the event of future legal disputes between the parties, I encourage the parties to provide this court with a bystander's report or an agreed statement of facts as to the trial court proceedings so that this court is able to review the merits of the parties' disputes.