2017 IL App (2d) 161100-U
No. 2-16-1100
Order filed October 12, 2017

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re THE MARRIAGE OF LISA I. MYERS, Petitioner-Appellee, and GARY MYERS, Respondent-Appellant.	))))))))))	Appeal from the Circuit Court of De Kalb County. No. 07-D-58 Honorable Marcy L. Buick, Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Zenoff and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: Appellant did not support his contentions of trial court error or bias.

¶ 2 In this *pro se* appeal, the respondent, Gary Myers, challenges numerous circuit court orders, including the judgment for dissolution of marriage as well as orders entered before and after that judgment. Gary argues that the orders were the product of bias and prejudice on the part of the trial court, and that the trial court denied him due process. As Gary has failed to support his contentions, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Gary and the petitioner, Lisa Myers, were married in 1986. In 2007, Lisa petitioned for legal separation. In 2010, the trial court entered a judgment of legal separation. At that point, the two oldest children were no longer minors. The trial court entered a parenting order that granted Lisa sole legal custody of the five then-minor children and awarded Gary visitation. Gary appealed from that judgment, and we affirmed. See *In re Marriage of Myers*, No. 2-10-1091 (Mar. 21, 2011) (unpub. order under Supreme Court Rule 23). In 2011, Lisa filed a petition for dissolution, which was consolidated with the earlier case.

¶ 5 In February 2014, Gary filed an amended petition to modify custody. Trial on that petition commenced in May 2014 and continued over eight days, eventually concluding on June 3, 2015.

¶ 6 On June 24, 2015, the trial court entered a memorandum order. The trial court began by noting that Gary's visitation with his children was suspended in 2010, several months after the parenting order was entered, when one of the older daughters alleged that Gary had sexually abused her. The trial court noted that Gary was not charged with any crime and the allegations had never been tried in any court. Further, it appeared that the allegations were unfounded following an investigation by the Department of Children and Family Services. However, Gary's visitation was suspended at that time and had never been reinstated. Turning to the basis for Gary's petition, the trial court found that Gary had not proven the allegations he raised regarding Lisa's care of the remaining two minor children and that the children appeared to be doing well and were excelling in their school work. Accordingly, the trial court denied the petition to modify custody. On July 15, 2015, Gary filed a motion to reconsider the denial.

¶ 7 On August 20, 2015, Gary filed a motion to reinstate visitation. In it, he alleged that no hearing regarding endangerment had ever been held, and thus, pursuant to section 607 of the

Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/607 (West 2014)), there was no legal basis for any restriction on his visitation.

¶ 8 On August 21, 2015, the trial court heard oral argument and denied Gary's motion to reconsider the denial of his motion to modify custody. Lisa asked for and was granted time to respond to the motion to reinstate visitation.

¶ 9 On September 25, 2015, the parties appeared in court for status. That morning, Gary filed a motion for an immediate hearing on visitation, along with a motion to discharge a rule to show cause entered against him earlier. Lisa filed a motion to strike various documents filed by Gary. During the discussion, Lisa reminded the court that she had several rules to show cause outstanding against Gary (related to his failure to make various payments) and asked that those be heard as soon as possible. The case was continued to December 1, 2015, for trial "on all issues."

¶ 10 Trial commenced on December 1, 2015, and proceeded over the course of several other days in December 2015 and January 2016. However, the only reports of the trial proceedings in the record are those from January 8 and 15, 2016.

¶ 11 On December 23, 2015, Gary filed an emergency motion to reinstate visitation. On January 4, 2016, the trial court heard argument on that motion and entered an order reappointing the guardian *ad litem* who had previously served, to investigate the resumption of visitation. On January 15, the trial court ordered the parties to determine whether the GAL would be willing to accept the appointment.

¶ 12 On January 29, the trial court entered another order, *sua sponte* modifying its order of January 4 by vacating the appointment of the GAL. Instead, the court ordered the two minor

children to be brought to court on February 10 for *in camera* interviews. Among other things, the order stated:

> "No attorney or party are [*sic*] required to be present at that time. ***
>
> The court anticipates interviewing the children separately. The parties are permitted to submit questions to the court, in writing, in advance, as a suggestion/request, but the court will make all decisions as to any questions actually asked of the children, expected to be about their wishes re visitation n/k/a parenting time with father.
>
> The parties both waive the right of counsel being present, knowing a transcript will be prepared, and sealed in the file (impounded in the file) accessible to the parties and counsel, but not the public, or to others unless with leave of court."

Gary later submitted written questions as permitted by the order.

¶ 13 On February 8, 2016, the trial court ruled on several pending matters. First, the court denied Lisa's pending petition for a rule to show cause for Gary's nonpayment of child support, finding that Gary had not acted contemptuously in failing to pay because the minor children were not living with Lisa during much of the period at issue. The trial court next granted partial relief to Gary on his motion to terminate child support, suspending his current child support obligation for the same reason. However, there was an arrearage on the prior child support Gary owed, the amount of which the trial court calculated. The trial court granted Gary's request to delay his payment of the arrearage for 90 days. Finally, the trial court granted Lisa's motion for temporary maintenance and found that the appropriate amount under section 504(b-1) of the Act (750 ILCS 5/504(b-1)(a) (West 2014)) would be $28,949 per year, to be paid in biweekly payments of $1,113.42, commencing February 9, 2016.

¶ 14 On February 11, the trial court entered an order noting that it had interviewed the two minor children *in camera* the day before pursuant to section 604.10 of the Act, and ordering a transcript to be prepared and filed in the record under seal. The order stated that the transcripts could "be viewed and released only upon an order by the court."

¶ 15 On February 16, Gary filed a motion for access to the transcripts of the *in camera* interviews. Gary noted that both the trial of the dissolution and his motion to reinstate visitation were pending before the court, and asserted that access to the transcripts was "essential for ongoing strategy and presentation in the pending litigation" and for purposes of any later appeal. The motion asked that both parties be granted access to the transcripts as soon as they were available.

¶ 16 On February 19, the trial court entered an order granting Gary temporary unsupervised visitation with the children on alternate weekends and one weekday afternoon each week. In addition, the court ordered that Gary be permitted to attend school and extracurricular events involving the children. The trial court also entered an order setting a second round of *in camera* interviews with the children for March 22, and continuing Gary's motion for access to the transcripts.

¶ 17 On February 26, after Gary had failed to pay two temporary maintenance payments, Lisa filed a petition for a rule to show cause. The petition was heard on March 18, and the court stated that it would rule on March 25. On March 18, the court also entered an order clarifying that, although Lisa retained sole legal custody of the minor children, Gary was permitted to enter their school to pick them up for scheduled visits.

¶ 18 On March 22, the trial court entered an order similar to the one entered on February 11, noting that it had interviewed the children *in camera* and ordering a transcript to be prepared and

filed under seal, stating that the transcripts could be "viewed and released only upon an order by the Court."

¶ 19 On March 25, the trial court addressed several pending matters, beginning with Gary's motion to reinstate his parenting time with the children. Lisa advised the court that she did not oppose the motion, and Gary's parenting time was reinstated consistently with the terms of the 2010 parenting agreement between the parties. The trial court also addressed matters related to Gary's failure to pay temporary maintenance. It denied Gary's motion to reconsider the grant of temporary maintenance. It then issued its ruling on the rule to show cause for failing to pay temporary maintenance as ordered, finding Gary had the ability to pay the temporary maintenance but refused to pay simply because he disagreed with the order. The trial court therefore found Gary in indirect civil contempt for "wilfully and contumaciously failing to pay temporary maintenance as ordered." However, the trial court delayed sentencing Gary until April 15, telling him that it was doing so "to give you the opportunity to work and pay some maintenance." The trial court advised Gary that if he made some payments of temporary maintenance, that would help him when the trial court considered his sentence. The April 15 court date was later changed to April 18 via an agreed order.

¶ 20 On April 18, after learning that Gary still had not paid any temporary maintenance to Lisa and hearing oral argument, the trial court remanded Gary to the custody of the sheriff until he paid the purge amount of $3,500. (This amount was lower than the arrearage, which the trial court found to be $6,680.52.) Gary was taken to jail. Gary's sentence was later modified to periodic imprisonment (work release).

¶ 21 On May 2, the trial court set June 21 and two dates thereafter for the continuation of the trial. The parties were ordered to file any pretrial motions by May 20.

¶ 22 On May 13, Gary filed an amended motion for access to the transcripts of the *in camera* interviews. This motion repeated the previous reasons for seeking the transcripts, but added the fact that Lisa had recently filed a petition for an order of protection on behalf of the children. Gary asserted that he also needed the transcript to rebut Lisa's allegations in that petition. On May 24, the trial court entered an order denying this motion. The trial court stated that the interviews had been conducted for the sole purpose of assisting the court in ruling on Gary's motion to reinstate visitation. The court did not believe that the transcripts should be made available simply to serve as ammunition for further litigation between the parties. Further, as the court had already granted the motion for visitation, the purpose of the interviews had been served and Gary would not be prejudiced by denying access to the transcripts.

¶ 23 On May 20, Gary filed a motion to allocate parenting time and parental responsibilities, seeking custody of the children. Gary alleged that the children had run away from Lisa and had stated a wish to live with him. Gary also asserted that Lisa's accusations against him in her petition for an order of protection were false. At the May 27 pretrial, the court found that this petition raised a new matter that could not be resolved during the ongoing trial. Lisa was granted 30 days to file her response to the motion.

¶ 24 On June 6, Gary filed a motion seeking the original audio recordings of the trial proceedings on January 8 and 15. Gary believed that, when he was cross-examining a witness on one of those dates, the witness had testified about "her lifelong commitment to support Lisa both emotionally and financially for the rest of her life," even up to the level of $20,000 per month. A few days after that testimony, Gary mentioned the testimony to the trial court, but the court said it did not recall hearing the testimony. When Gary obtained the transcripts of the proceedings on those dates, they did not include the testimony he remembered, and Gary's

attempt to have the court reporter remedy the supposed omission was fruitless. Gary sought access to the original recordings in an effort to obtain a "correct verbatim transcript." On June 16, the court denied Gary's motion, finding that there was no legal authority supporting such a request.

¶ 25 On June 7, Gary filed a motion requesting that the trial judge recuse herself, alleging that she was a friend of, and had worked with, one of Lisa's friends who had testified on earlier trial dates. On June 10, the trial court took the matter under advisement. On June 14, Gary filed a document detailing the ways in which he believed the trial court had displayed bias against him. On June 17, the trial court denied the motion to recuse, noting that the parties were in the midst of the dissolution trial. The trial court explained that the fact that it had ruled against Gary on certain issues did not establish bias. Further, as to Lisa's friend, the court noted that Gary had long been aware of the trial court's acquaintance with the friend but had never until now raised any issue of prejudice. The court commented that, given the fact that Gary had sought to stay the trial, it believed the motion was an improper attempt to delay the proceedings.

¶ 26 The final days of trial took place on June 21, 22, and 24, 2016. No report of those proceedings appears in the record.

¶ 27 On July 11, 2016, the trial court entered a judgment for dissolution of marriage. In it, the trial court addressed child support, maintenance, the division of marital property and debts, and attorney fees. The trial court specifically reserved ruling on Gary's motion to allocate parenting time and parental responsibilities.

¶ 28 On August 5, Lisa filed a motion to reconsider certain aspects of the judgment for dissolution. That same day, the trial court entered an order noting that Gary had been found in indirect civil contempt on three separate matters and remained subject to ongoing periodic

imprisonment. Accordingly, the trial court *sua sponte* dismissed without prejudice Gary's pending motion to allocate parenting time and parental responsibilities.

¶ 29 On August 10, Gary filed his own motion to reconsider the judgment for dissolution. He then filed an amended version of the motion on September 9. On September 16, the court heard oral argument on both parties' motions for reconsideration and took the matter under advisement. No record of proceedings from that date appears in the record. On October 27, the trial court entered an order granting Lisa's motion in part and denying Gary's motion. The trial court's order also granted Lisa's motion for attorney fees in the amount of $82,360.

¶ 30 On November 29, Gary filed a motion to reconsider the trial court's order of October 27, "and for re-trial." Among other things, he sought reconsideration of the award of attorney fees. On December 2, the trial court granted a motion by Lisa to strike Gary's November 29 motion on the ground that it was untimely, having been filed more than 30 days after October 27.

¶ 31 On December 27, Gary filed a motion for leave to file a late notice of appeal. We granted that motion over Lisa's objection.

¶ 32 II. ANALYSIS

¶ 33 Gary's notice of appeal identified three orders as the primary orders being appealed: the judgment for dissolution entered July 11, 2016; the order of October 27, 2016, denying his motion to reconsider the judgment for dissolution; and the order of December 2, 2016, striking his motion to reconsider the order of October 27. In addition, the notice of appeal stated: "Inclusive are also the Custody/Parenting Time Orders of: June 24, 2015; March 25, 2016; May 24 & 27, 2016 and September 25, 2016" and the order dated June 17, 2016. Gary later amended his notice of appeal to correct the date of "September 25, 2016," to "September 25, 2015."

¶ 34 We first address the issue of our jurisdiction over Gary's appeal. In opposing Gary's motion for leave to file a late notice of appeal, Lisa argued that we lacked jurisdiction over the appeal. We found that we have such jurisdiction, for the following reasons.

¶ 35 Our Supreme Court has held that, generally speaking, no aspect of a dissolution case may be appealed until the judgment for dissolution is entered, because up until that time, all of the claims asserted in the dissolution are part of one, unitary claim that must be resolved at once. *In re Marriage of Leopando*, 96 Ill. 2d 114, 120 (1983). Thus, none of the orders being challenged in Gary's current appeal that were entered before July 11, 2016, could have been appealed separately.[1]

¶ 36 Gary filed a timely postjudgment motion seeking reconsideration of the judgment, thereby extending the trial court's jurisdiction until that motion was resolved. Ill. S. Ct. R. 303(a)(1) (eff. Jan. 1, 2015). Once the trial court denied Gary's motion for reconsideration on October 27, 2016, Gary had 30 days to file his notice of appeal.

¶ 37 Gary did not appeal within 30 days. Instead, on November 29, he filed a motion to reconsider the order of October 27, 2016. This motion was untimely, as it was filed more than 30 days after the order of October 27. Lisa moved to strike the November 29 motion, and the trial court granted that motion.

¶ 38 Realizing that he was at risk of losing the right to appeal, Gary filed a motion seeking leave to file a late notice of appeal on December 27, 2016. This motion was timely under

[1] This general rule does not apply to a finding that a party has acted in contempt of court or to the grant or modification of orders relating to parental responsibilities, which are separately appealable under Illinois Supreme Court Rules 304(b)(5) & (b)(6) (eff. Mar. 8, 2016). That is why we had jurisdiction to hear Gary's earlier appeals of such orders.

Supreme Court Rule 303(d), which allows an appellant to file a motion for an extension of time to file a notice of appeal at any time "within 30 days after the expiration of the time for filing a notice of appeal." Ill. S. Ct. R. 303(d) (eff. Jan. 1, 2015). Gary's time to file his notice of appeal expired on November 26, 2016. Although the 30-day window after that technically expired on December 26, that date was a court holiday, and the courthouse was not open until the next day, December 27. Thus, Gary's Rule 303(d) motion was timely filed. We granted that motion, and have jurisdiction to review all of the orders mentioned in the notice of appeal. We therefore turn to the substance of this appeal.

¶ 39 We begin by noting that Gary's opening brief is an incoherent, headache-inducing rant that raises only one real issue, the alleged bias of the trial court against Gary, which he contends rose to the level of advocacy on behalf of Lisa and aided the fraudulent cover-up of child abuse by Lisa. Gary asserts that fraud upon the court committed by Lisa and the trial court's alleged bias (1) is sufficient to warrant the reversal of the judgment for dissolution as well as various pretrial orders, and (2) means that the trial court lacked jurisdiction to enter those orders. (He also argues that the bias raises an issue of such fundamental importance—an alleged fraudulent conspiracy to deprive him of his civil rights, including his access to his children—that we should skip our review and simply forward the appeal on to the Illinois Supreme Court. We decline to do so.) His brief contains almost no support for his accusations of bias other than the fact that the trial court ruled against Gary on several occasions.

¶ 40 The burden of showing bias by a judge is substantial. *Eychaner v. Gross*, 202 Ill. 2d 228, 280 (2002). "A trial judge is presumed to be impartial, and the burden of overcoming this presumption rests on the party making the charge of prejudice." *Id.* Arguments like Gary's—that the trial court's bias can be assumed from its rulings—are not enough to meet this burden:

> "A judge's rulings alone almost never constitute a valid basis for a claim of judicial bias or partiality. [Citation.] Allegedly erroneous findings and rulings by the trial court are insufficient reasons to believe that the court has a personal bias for or against a litigant. ***
>
> Rather, the party making the charge of prejudice must present evidence of prejudicial trial conduct and evidence of the judge's personal bias." *Id*.

Thus, the mere entry of rulings adverse to Gary is not enough to demonstrate bias by the trial court.

¶ 41 Apart from his general argument about the trial court's adverse rulings, Gary raises only a few more specific arguments about the trial court's alleged bias. For instance, he contends that the trial court "manipulated the evidence allowed in, and treated the parties differently in open court." But Gary does not tell us when this occurred, or document that it in fact occurred, providing no citations to the record. Further, to the extent that the alleged conduct occurred during any of the trial dates other than January 8 and 15, 2016, or on any occasion after April 18, 2016, Gary has forfeited his argument by failing to include the relevant transcripts in the record on appeal. It is the responsibility of the appellant to provide a record sufficient to permit informed review, and absent such a record the reviewing court will presume that the trial court's rulings are legally justified and supported by the facts. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

¶ 42 Gary also asserts that the trial court delayed hearing his petitions for a rule to show cause against Lisa and to terminate temporary maintenance while proceeding with the contempt hearings against him, and required him to supplement discovery responses but did not require the same of Lisa. However, Gary has not provided us with citations to the record that support his

contentions. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) (the argument section of an appellate brief must contain "citation of the authorities and the pages of the record relied on" with respect to each argument raised). In fact, for the most part, Gary does not include *any* citations to the record in conjunction with his accusations. Even in the rare instances that Gary has included some citations to the record, the portions of the record he cites to do not relate to the assertions for which he cites them. "An appellant's failure to properly present his own arguments can amount to waiver of those claims on appeal." *People v. Chatman*, 357 Ill. App. 3d 695, 703 (2005). Accordingly, Gary has forfeited these contentions.[2]

¶ 43 Confessing that he has failed to adequately support his argument, Gary invites us to search the record to discover the evidence of this purported bias. This is not our job, and we decline his invitation.

[2] Gary also contends that the trial court's bias can be seen in the court's exclusion of certain evidence during the March and April 2016 contempt proceedings against him as well as in the timing of those proceedings, because he was allowed insufficient time before the hearing to prepare his defense, and the finding of contempt undermined his ability to exercise his newly-restored visitation. We rejected these contentions in our decision in Gary's earlier appeal of his contempt proceeding, finding that Gary failed to support his evidentiary arguments, his representations about the timing of the hearings were inaccurate, and the sole cause of Gary's inability to exercise his visitation rights was his unjustified refusal to pay the temporary maintenance ordered by the trial court. See *In re Marriage of Myers*, 2017 IL App (2d) 160304-U, ¶¶ 24, 27-28. The conduct of the contempt proceedings does not provide any support for Gary's assertion that the trial court was biased.

> "[A] reviewing court is not simply a depository into which a party may dump the burden of argument and research. *** A court of review is entitled to have the issues clearly defined and to be cited pertinent authority. A point not argued or supported by citation to relevant authority fails to satisfy the requirements of Supreme Court Rule 341(h)(7), (i) (see Ill. S. Ct. R. 341(h)(7), (i) (eff. Feb. 6, 2013)). Both argument and citation to relevant authority are required. Failure to comply with the rule's requirements results in forfeiture." (Emphasis omitted.) *People ex rel. Illinois Dep't of Labor v. E.R.H. Enterprises*, 2013 IL 115106, ¶ 56.

¶ 44 Although Gary's notice of appeal identifies nine orders he wishes us to us review, his brief fails to identify any basis for reversal except for the generic charges of bias discussed above. (Gary included slightly more specific arguments in his reply brief, but it is axiomatic that any arguments raised for the first time in the reply are forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) (an appellant's opening brief must contain argument, supported by citations to the record and legal authority, and "[p]oints not argued are waived and shall not be raised in the reply brief").) Accordingly, Gary has failed to sustain his burden of demonstrating error.

¶ 45 We note that Gary was acting *pro se* for many of the proceedings in the trial court, as well as in the present appeal. However, we cannot apply a lower threshold to his pleadings and arguments than those of other litigants who appear before us. See *McCutcheon v. Chicago Principals Ass'n*, 159 Ill. App. 3d 955, 960 (1987) ("While reviewing courts are open to all persons who seek redress of their grievances, a party's decision to appear *pro se* does not relieve that party from adhering as nearly as possible to the requirements of the rules of practice.").

¶ 46 III. CONCLUSION

¶ 47 For the reasons stated, the judgment of the circuit court of De Kalb County is affirmed.

¶ 48 Affirmed.