2017 IL App (2d) 170204-U
No. 2-17-0204
Order filed October 24, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF JANICE A. KOZA, Petitioner-Appellant, and DAVID W. KOZA, Respondent-Appellee.	))))))))))	Appeal from the Circuit Court of McHenry County. No 11-DV-294 Honorable Christopher M. Harmon, Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Jorgensen and Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's order was not inconsistent in granting respondent the final decision-making authority regarding the children's educational, medical, and extracurricular activities and allowing mediation for resolving disputes; petitioner forfeited the argument that the guardian *ad litem* exceeded his authority and that his opinions and recommendations were unsupported by the evidence; and, the trial court's findings that there had been a substantial change in circumstances and that modification of parental responsibilities and parenting time was necessary to serve the best interests of the children was not against the manifest weight of the evidence; affirmed.

¶ 2 In this post-decree appeal, petitioner, Janice A. Koza, appeals the trial court's order allocating parental responsibility to respondent, David W. Koza, and allocating parenting time,

on an approximately equal basis. Petitioner contends: (1) the trial court's order was inconsistent in that it granted respondent the final decision-making authority but, at the same time, included a mediation provision for resolving disputes; (2) the guardian *ad litem* (GAL) exceeded his authority and his opinions and recommendations were not supported by the facts; and, (3) respondent failed to prove a substantial change in circumstances warranting a change from the original joint parenting agreement, and the order allocating parental responsibilities and parenting time was not based on the facts or in the children's best interests. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Respondent and petitioner were married on August 28, 1999, and they have two children. Petitioner filed a petition for dissolution of marriage on March 30, 2011. On August 23, 2012, the parties entered into a joint parenting agreement. The agreement awarded the parties joint legal custody of their children.

¶ 5 On March 5, 2014, petitioner filed an eight-count, second-amended motion to modify the joint custody judgment. Respondent filed a motion to strike four of the counts and a motion for the appointment of a GAL. The trial court struck three of petitioner's counts, another count was resolved by court order, and a fifth count was eventually abandoned. The trial court also appointed a GAL.

¶ 6 On February 4, 2016, respondent filed a motion to sever the joint parenting agreement, to modify the parties' parenting judgment, and to increase his parenting time and for other relief. In his motion, he alleged that a "substantial change in circumstances" had occurred as contemplated by section 610.5(c) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/610.5(c) (West 2016)), requiring a change in the decision-making authority with respect to issues regarding the children and in the parties' parenting time schedule or,

alternatively, that the changes were in the children's best interests. Respondent requested an order allocating to him the sole decision-making authority regarding the children's medical care, education, religion, and extracurricular activities. He also requested the parenting schedule be modified to an equal "5-2-2-5" schedule. Finally, respondent sought to make-up parenting time for the time he alleged petitioner had withheld from him.

¶ 7 The GAL filed a report recommending that respondent be granted the sole decision-making authority on major decisions involving the children. He also recommended that respondent's parenting time be increased.

¶ 8 The matter came before the court for an evidentiary hearing on October 3, 2016, on petitioner's second-amended motion to modify the joint custody judgment and respondent's motion to sever the joint parenting agreement, to modify the parties' parenting judgment, and to increase parenting time. The court heard testimony from the parties and the GAL. Following closing arguments, the trial court issued a 40-page memorandum decision and order followed by an allocation judgment of parental responsibilities on February 8, 2017. The court noted the contested issues at the hearing were the request for a right of first refusal, the designation of a custodian, and allocation of parenting responsibilities regarding decision-making and parenting time.

¶ 9 In its memorandum decision, the court stated that the evidence suggested that, since the entry of the joint parenting agreement and order and the entry of the judgment for dissolution, there had been issues directly involved and related to the parenting and care of the parties' children. The court found there had been issues of communication difficulties and inability to cooperate, which had been ongoing and which has had an impact upon the children's regular visitation schedules and routing pick-ups and drop-offs; their educational needs, progress and

related issues; their extracurricular activities and their parents' ability to attend these functions at the same time; their physical and mental well-being, including medical, dental, optical, and psychological care; the parents' ability to attend appointments related to the children's medical care; and each child's relationship with one another and their parents. The trial court then summarized the testimony of the parties and of the GAL.

¶ 10 The court next turned to section 602.5 of Act (750 ILCS 5/602.5 (West 2016)), the relevant statutory provision governing the allocation of parental decision making. The court explicitly addressed each of the 15 factors set forth in section 602.5, and the evidence presented relevant to each factor. The court found factors 2, 4, 8, 11, and 15 favored respondent. Factors 1, 3, 5, 6, 7, and 9 favored neither party and factors 10, 12, 13, and 14 were not applicable. None of the factors favored petitioner. Based on the evidence, the court allocated parental responsibility as follows: The parties were to consult one another regarding educational-related issues, medical and healthcare issues, and the children's lessons and extracurricular activities, with respondent being allocated final decision-making authority and responsibility. Both parties were to have equal decision-making responsibility relating to the children's religious education and upbringing.

¶ 11 As to the parenting time schedule, the trial court discussed the relevant statutory provision governing the allocation of parenting time between the parties set forth under section 602.7 of the Act (750 ILCS 5/602.7 (West 2016)). The court explicitly addressed each of the 17 factors and the evidence presented at trial relevant to each factor. It found factors 6, 8, 12, and 13 favored respondent. Factors 1, 2, 3, 4, 5, and 7 did not favor either party, and factors 10, 11, 14, 15, 16, and 17 were not applicable. None of the factors favored petitioner. After

carefully considering the evidence, the court found it in the best interest of the parties' children to allocate approximately equal parenting time between respondent and petitioner.

¶ 12 The court subsequently issued a judgment order setting forth the parties' specific rights and responsibilities with respect to their parenting-related issues, including the regular parenting time schedule, rules regarding the parties' vacation time, and a specific holiday parenting schedule.

¶ 13 Petitioner timely appeals.

¶ 14 II. ANALYSIS

¶ 15 As a threshold matter, we first address respondent's request that we strike petitioner's brief and dismiss her appeal due to the multiple errors and omissions in her brief. We agree that petitioner's brief is in severe violation of Supreme Court Rule 341 (eff. July 1, 2017). Among other things, petitioner's brief contains improper margins and font size and improper use of single-spacing. Also a majority of the paragraphs are not indented and there are numerous misstatements and typographical errors, making it extremely difficult to read. In addition, the Statement of Facts is littered with confusing, inconsequential, and argumentative facts. Her presentation of each party's testimony is clearly biased. The facts also do not include any specifics necessary to an understanding of the case, as petitioner fails to provide the fundamental details relevant to the proceedings. Finally, we observe that petitioner divides the argument portion of her brief into 24 sections that contain incredibly long and rambling headings, which make her issues difficult to discern as well as address.

¶ 16 Our "rules of procedure are rules and not merely suggestions." *Ryan v. Katz*, 234 Ill. App. 3d 536, 537 (1992). Consequently, Rule 341's mandates detailing the format and content of appellate briefs are compulsory. See *Voris v. Voris*, 2011 IL App (1st) 103814, ¶ 8. Where

an appellant's brief contains numerous Rule 341 violations and, in particular, impedes our review of the case at hand because of them, it is our right to strike that brief and dismiss the appeal. See *Marriage of Petrik*, 2012 IL App (2d) 110495, ¶ 38 (citing *Kic v. Bianucci*, 2011 IL App (1st) 100622, ¶ 23 (failure to follow Rule 341 may result in forfeiture of consideration of issues on appeal)). Ultimately, we are " ' "not a depository in which the appellant may dump the burden of argument and research" ' " for his cause on appeal. *Petrik*, 2012 IL App (2d) 110495, ¶ 38 (quoting *Kic*, 2011 IL App (1st) 100622, ¶ 23, quoting *Thrall Car Manufacturing Company v. Lindquist*, 145 Ill.App.3d 712, 719 (1986)).

¶ 17 Despite these numerous errors, this case involves the best interests of the children, and therefore we will not strike the brief and dismiss the appeal. However, we will disregard any argument in the Statement of Facts and any facts not based on the record. We admonish counsel to strictly comply with Supreme Court rules in future filings with the court.

¶ 18 A. Inconsistent Order

¶ 19 While the argument section of petitioner's brief is divided into 24 sections with long and loquacious headings, we have identified basically three issues for review. The first is the argument that the trial court's order was inconsistent in that it grants respondent the final authority over issues dealing with the children's educational, medical, and extracurricular activities but at the same time includes a mediation provision for resolving disputes.

¶ 20 The Act provides that the court may allocate to one or both of the parents, the "significant-decision making responsibility for each significant issue affecting" the children, "which shall include, without limitation," education, health, religion, and extracurricular activities. 750 ILCS 5/602.7(b), (d) (West 2016).

¶ 21 In the present case, the trial court summarized the evidence presented relevant to section 602.7(b) at length. After taking into consideration the evidence and the statutory factors listed in section 602.7, the court found it in the best interests of the children to have the parties consult one another regarding the children's educational, medical, and extracurricular-related issues and it allocated to respondent the final decision-making authority and responsibility. Both parents were to have equal decision-making responsibility for those issues relating to the children's religious education and upbringing.

¶ 22 However, the judgment order entered by the trial court does more than decide the decision-making authority regarding the areas of education, medical, and extracurricular activities. By its terms, the judgment order addresses other areas where the parties will share decision-making responsibilities. For example, it has a provision concerning communication and notice requirements for each parent with regard to the children. The order sets a detailed allocation of parenting time during the school year and during the summer, including holidays, vacation, and travel.

¶ 23 As pointed out by respondent, the topics on which he has decision-making authority are—on their face—not subject to mediation, as the trial court's judgment order gives him alone the power to make the final decision regarding those issues. If petitioner has any objections to respondent's final authority regarding one of those decisions, her remedy would be to file for a change of custody or to seek an emergency injunction in the children's best interests. Certainly disputes may arise in the other areas where respondent has not been allocated decision-making authority. In those instances, the mediation clause would apply. In areas where respondent has authority, the mediation provision does not apply. Accordingly, we do not find either provision is inconsistent with the other.

¶ 24 B. GAL

¶ 25 Petitioner next argues that the GAL exceeded his authority and that his opinions and recommendations were not supported by the facts. Petitioner has forfeited this claim by failing to object at trial. See *Drews v. Gobel Freight Lines, Inc.*, 144 Ill. 2d 84, 103 (1991).

¶ 26 C. Trial Court Order

¶ 27 We last address petitioner's argument that respondent did not prove a substantial change in circumstances warranting a change from the joint parenting agreement and that the trial court's order was not based on the facts or in the children's best interests.

¶ 28 Section 610.5(c) of the Act provides that the trial court has the authority to modify a parenting plan or allocation judgment (formerly known as a custody order) "if the court finds, by a preponderance of the evidence, that on the basis of facts that have arisen since the entry of the existing parenting plan or allocation judgment ***, a substantial change has occurred in the circumstances of the child or of either parent and that a modification is necessary to serve the child's best interests." 750 ILCS 5/610.5(c) (West 2016).

¶ 29 A trial court's determination concerning parental responsibilities and custody, including custody modification, is given great deference because the court is in a superior position to judge witness credibility and determine the best interests of the children. *In re Marriage of Lonvik*, 2013 IL App (2d) 120865, ¶ 33. We will not reverse the trial court's judgment unless it is clearly against the manifest weight of the evidence, that is, only when the opposite conclusion is clearly evident. *In re Parentage of J.W.*, 2013 IL 114817, ¶ 55. Where the evidence permits multiple inferences, we will accept those inferences that support the trial court's order. *In re Marriage of Bates*, 212 Ill. 2d 489, 516 (2004).

¶ 30 Here, we cannot say the court's decision to reallocate parental decision-making responsibilities and parenting time was against the manifest weight of the evidence. The first prong of section 610.5 requires respondent to show by a preponderance of the evidence that a change in circumstances has occurred. Petitioner contends that respondent failed to show a material change in circumstances. We disagree. The trial court found that since the entry of the joint parenting agreement and its incorporation into the judgment for dissolution of marriage, the parties' relationship "has been an epic failure and the level of dysfunction which existed [when the joint parenting agreement was entered], has progressively gotten worse." Evidence at the hearing supports this finding. Among other problems, petitioner had difficulty communicating and cooperating with respondent and she made decisions regarding the educational and medical needs and extracurricular activities of the children without consulting respondent. The trial court's finding that a substantial change in circumstances had occurred was not against the manifest weight of the evidence.

¶ 31 The trial court's finding under the second prong of section 610.5(c), concerning the best interests of the children, is also supported by the evidence. As to parental decision-making responsibilities pursuant to section 602.5 (750 ILCS 5/602.5 (West 2016)), the trial court noted that each party wished to sever the joint parenting agreement and requested that the court enter an allocation judgment granting them, to the exclusion of the other, sole decision-making authority over the children's medical, educational, and extracurricular matters. Neither party requested sole decision-making authority for religious matters. The evidence supports the trial court's finding that petitioner viewed the joint parenting agreement subjectively, rather than objectively, allowing her to interpret its terms in a way to suit her needs. The court found that both parents loved their children very much, but the court could not ignore petitioner's testimony

that, if respondent were to be granted sole-decision making authority with regard to the children's medical, educational, and extracurricular activities, she would not participate. We agree with the court that this raised a "specter" that it could not ignore; the reasonable inference being that, in the event respondent was granted sole-decision making authority, petitioner's ultimatum of declining to participate in any way strongly suggested she was placing her interests before those of her children, which would not be in their best interests. Alternatively, respondent's testimony regarding his interpretation of his responsibilities and obligations under the joint parenting agreement as to petitioner and their respective roles in decision-making authority supported the trial court's finding that respondent would give petitioner's suggestions and opinions consideration when making decisions if she chose to participate. The court thoroughly weighed the best-interest factors set forth in section 602.5 and found five favored respondent. We find the court's decision regarding the allocation of parental responsibilities was not against the manifest weight of the evidence.

¶ 32 As to parenting time, the court observed that both parties requested changes from what was previously set in the joint parenting agreement. Petitioner requested parenting time on alternating weekends, with respondent exercising parenting time with their son every Tuesday from 4 to 6 p.m. and with their daughter every Wednesday from 4 to 6 p.m., which would give each parent one-on-one time with each child during the week. The court noted that this would reduce the children's "transitions" from household to household and alleviate petitioner's anxiety regarding contact with respondent during exchanges. The court further noted that, while petitioner's proposed schedule would allow respondent increased individual time with the children, the overall impact would substantially reduce his parenting time from the current

schedule and increase petitioner's parenting time over and above what she currently exercises, which the court did not find to be in the best interests of the children.

¶ 33 Finally, the court stated that respondent requested a 5-2-2-5 parenting time schedule, which in theory is an equal division of parenting time between the parties. The court believed that this schedule would reduce the number of "transitions," and would allow each party to have full weekends. The trial court's parenting time schedule allows both parents to consistently interact with the children and have overnight parenting time on a weekly basis. It also permits each party to equally share in the responsibility of getting the children to and from school and establishes a predictable parenting schedule. The trial court analyzed the best-interest factors in section 602.7 (750 ILCS 5/602.7 (West 2016)) and found that they favored increasing respondent's parenting time. This determination was not against the manifest weight of the evidence.

¶ 34 III. CONCLUSION

¶ 35 For the preceding reasons, we affirm the judgment of the circuit court of McHenry County.

¶ 36 Affirmed.