

2018 IL App (2d) 180528-U
No. 2-18-0528
Order filed November 29, 2018
Modified Upon Denial of Rehearing January 17, 2019

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

In re PARENTAGE OF J.A.B.,
a Minor,

(Richard B., Petitioner-Appellant, v.
Amelia D., Respondent-Appellee)

) Appeal from the Circuit Court
) of Lake County.
)
) No. 16-F-617
)
) Honorable
) Elizabeth Rochford,
) Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Hudson and Justice Jorgensen concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not abuse its discretion in denying father parental responsibility or visitation, and allowing mother to remove minor child from Illinois.
- ¶ 2 Petitioner, Richard B., appeals from a judgment that disposed of four pleadings: (1) his motion to adjudicate parentage of J.A.B and allocate parental responsibility; (2) his motion for visitation; (3) a motion by respondent, Amelia D., for an extension of a plenary order of protection; and (4) Amelia's petition to remove J.A.B. from Illinois. The court allocated all parental responsibility to Amelia, granted her leave to relocate J.A.B. outside Illinois, denied

Richard visitation, and extended a plenary order of protection against Richard for two years. We affirm.

¶ 3

I. BACKGROUND

¶ 4 On July 26, 2016, Richard filed a motion to determinate or adjudicate the parentage of J.A.B., and Richard was adjudicated the father on January 17, 2017. The parties filed several pleadings, which culminated in a bench trial in June 2018, regarding (1) the allocation of parental responsibility as initially presented by Richard in his motion to determine or adjudicate parentage; (2) Richard's petition for visitation; (3) Amelia's motion for an extension of her plenary order of protection against Richard; and (4) Amelia's petition for leave to remove J.A.B. from Illinois.

¶ 5 There was no court reporter in the trial court, but Richard could have remedied that circumstance by filing a bystander's report under Illinois Supreme Court Rule 323(c) (Ill. S. Ct. R. 323(c) (eff. Dec. 13, 2005)) or an agreed statement of facts under Rule 323(d) (Ill. S. Ct. R. 323(d) (eff. Dec. 13, 2005)). Either could have provided context for his allegations and the reasons for the trial court's rulings.

¶ 6 As there is no transcript, bystander's report, or agreed statement of facts to provide a record of the proceedings, we take the following facts the trial court's written order. J.A.B. was born in 2014 and resided in Illinois until July 2017. At trial, Amelia testified that she had maintained primary care of J.A.B. since his birth, and had been the exclusive residential parent since he was six months old. J.A.B. was healthy and well-cared for and had not been in the presence of or interacted with Richard since J.A.B. was six months old. Amelia testified that, soon after J.A.B. was born, she and Richard experienced problems in their relationship, and Richard accused the baby of being the cause. Richard instructed Amelia to go to a hardware

store and purchase plastic sheets, duct tape, rope, and other material that he intended to use to dispose of J.A.B. Amelia reported the incident, and Richard was arrested.

¶ 7 Amelia also testified that Richard beat her severely twice in 2015, resulting in his conviction of aggravated domestic battery. The second beating fractured vertebrae in Amelia's neck, among other injuries, and at the time of trial, she was still suffering from that and other injuries that required several corrective cervical surgeries.

¶ 8 On the conviction of aggravated domestic battery, Richard was initially sentenced to probation and an accompanying order of protection was entered. Richard violated the terms of his probation and the order of protection. His probation was revoked, and he was sentenced to a prison term in the Department of Corrections. He is eligible for parole in July 2019.

¶ 9 Amelia explained that she and J.A.B. had resided outside Illinois since July 2017 for her social, physical, and financial welfare, and that of her minor children. A short time before trial, Amelia received a copy of a letter that Richard had sent to an attorney representing a plaintiff in a pending personal injury action against Amelia's business. In the letter, Richard stated falsely to the plaintiff's attorney that Amelia's business was really his and that Amelia had stolen it from him. The letter to the attorney also falsely alleged that Amelia had fabricated the charges of domestic abuse against Richard. He offered to assist the plaintiff against Amelia. The trial court found that the communication was intended to harass and financially harm Amelia.

¶ 10 Amelia also testified that Richard was still angry at her and J.A.B. and that he would harm them if he knew where they lived and was released from prison. Amelia remains very afraid of Richard and fears for the safety of her, J.A.B., and her older child from another relationship. Amelia testified that she and Richard cannot communicate or cooperate peacefully to make joint parenting decisions.

¶ 11 Richard appeared *pro se* and testified by telephone from prison. He confirmed that J.A.B. had been residing with Amelia since he became incarcerated about two years before trial. Richard conceded that he was unable to provide a residence or otherwise contribute to J.A.B.'s support. Richard had not seen J.A.B. since before he was incarcerated and believed that J.A.B. does not know him. However, Richard opined that he is entitled to joint parental decision making and that the Department of Children and Family Services (DCFS) should transport J.A.B. to prison for visits.

¶ 12 The trial court found that records in Richard's criminal history corroborated Amelia's testimony regarding Richard's violence, including his conviction of aggravated domestic battery. The court found that J.A.B. had no relationship with Richard, who by reason of his incarceration, was unable to provide a suitable residence or other support.

¶ 13 The court found Amelia's testimony credible and that she reasonably believed that Richard wishes to harm her, J.A.B., and her child from her prior relationship. The court also found that the parties cannot communicate or participate in joint parenting. Therefore, the court concluded, it is in the best interests of J.A.B. that Amelia be granted sole decision-making authority regarding medical, educational, and extracurricular matters.

¶ 14 The court found that Richard cannot provide for J.A.B.'s residential or personal needs or care, and that it is in the best interests of the child to place him with Amelia. The court found by a preponderance of the evidence that Richard engaged in conduct that seriously endangered J.A.B.'s mental, moral, and physical health by his actions against Amelia and threats against J.A.B. The court found that restriction of all contact with J.A.B. is necessary to protect him and Amelia.

¶ 15 Noting that Amelia had provided Richard with proper notice of her motion to relocate, the court found under section 609.2 of the Dissolution Act that Amelia's stated reason for the relocation, personal safety, is valid. Richard's objection to relocation was only intended to frustrate and control Amelia. Richard had contact with J.A.B. only during the first six months of his life, and Amelia has been the primary caregiver since his birth. The court found that parenting time was not appropriate during Richard's incarceration, because his history of domestic violence, threats against J.A.B., and the child's tender age were impediments to fashioning reasonable allocation of parental responsibilities to Richard. The court granted Amelia's motion to relocate J.A.B. outside Illinois and to not disclose the precise location of her residence, for safety reasons.

¶ 16 The June 27, 2018, order allocated all parenting time to Amelia; continued the prohibition against parenting time for Richard; allocated all decision making authority to Amelia; and barred her address from being revealed, subject to further order of court. Amelia was granted leave to relocate outside Illinois permanently, and the order of protection against Richard was extended for two years. Richard's appeal followed.

¶ 17

II. ANALYSIS

¶ 18 Richard challenges the order allocating all parental responsibility to Amelia, granting her leave to relocate J.A.B., and denying him visitation. Richard lists 11 allegations of error but does not include a separate argument section or even address each issue specifically in his brief.

¶ 19 "The procedural rules governing the content and format of appellate briefs are mandatory." *Ammar v. Schiller, DuCanto & Fleck, LLP*, 2017 IL App (1st) 162931, ¶ 11. Richard appears *pro se* on appeal, but he is required to meet all procedural requirements.

Ammar, 2017 IL App (1st) 162931, ¶ 16 (“Where a party has chosen to represent himself, he is held to the same standard as a licensed attorney and must comply with the same rules”).

¶ 20 Richard’s brief does not include a concise statement of the applicable standard of review for each issue; state, without argument, the facts necessary to an understanding of the case; cite the record on appeal; or present coherent arguments with supporting authority as to any error in the trial court’s decisions, as required by subsections (h)(3), (h)(6), and (h)(7) of Illinois Supreme Court Rule 341 (eff. Nov. 1, 2017).

¶ 21 When an appellant fails to meet the requirements of Rule 341 as to the content and format of briefs, this court has the authority to dismiss the appeal. *Ammar*, 2017 IL App (1st) 162931, ¶ 11. We decline to dismiss this appeal, but to the extent we can sort out Richard’s allegations of error, we determine that they lack merit.

¶ 22 Richard contends that he was deprived of his right to be present during the hearing. Richard, who was incarcerated in the Department of Corrections, appeared *pro se* by audio teleconference. The cases that Richard cites do not relate to incarcerated parties appearing in parentage cases, like this one. Furthermore, Richard did not have a due process right to be present in person in court when he was lawfully incarcerated. See *In re J.S.*, 2018 IL App (2d) 180001, ¶¶ 21-28.

¶ 23 Richard then argues in passing that the trial court erred in dismissing his private attorney on the matter of extending the plenary order of protection. Richard does not cite to the record or to any authority supporting reversal, and there is no transcript from which we could discern an error. Under *Foutch v. O’Bryant*, 99 Ill. 2d 389 (1984), Richard, as the appellant, has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error; and in the absence of such a record on appeal, it will be presumed that the order entered by the

trial court conformed with the law and had a sufficient factual basis. *Foutch*, 99 Ill. 2d at 391-92.

¶ 24 Acknowledging the incompleteness of the record, Richard asserts that he repeatedly requested transcripts of the proceedings at no cost but never received them. As previously stated, there was no court reporter present during the proceedings. Richard could have requested a substitute under Rule 323, such as a bystander's report or agreed statement of facts, but he failed to do so.

¶ 25 In his brief, Richard mentions several other instances of alleged denial of due process or abuse of discretion by the trial court. He claims the court wrongly denied his motion to continue, but he does not cite authority or provide a record to review any alleged abuse of discretion.

¶ 26 Richard claims that the trial court abused its discretion by telling him several times during the hearing that he could not speak. He also claims that he could not hear Amelia's testimony, his subpoenas were ignored, and the trial judge was biased against him. The court also allegedly erred in consolidating, against Richard's will, the parental responsibility case with the order of protection case. The incompleteness of the record hinders our review of these claims of procedural error, and the many doubts that arise are resolved against Richard. See *Foutch*, 99 Ill. 2d at 392.

¶ 27 Richard argues that Amelia's testimony, as summarized in the court's written order, was "100% lie," and therefore, the relocation order was against the manifest weight of the evidence. There is no transcript or suitable substitute against which the court's findings can be compared. Richard also argues that Amelia should have paid for a private attorney for him, but there is no record of a motion or a hearing on such a request.

¶ 28 Finally, Richard argues that the Department of Corrections limited his access to the prison law library and “pulled [him] from the shower” without notice for the hearing by telephone. However, Richard does not explain how his rights were violated or how he was prejudiced. The Department of Corrections is not a party to these proceedings, rendering his claims irrelevant to this appeal.

¶ 29 Richard has left it to this court to assist him by combing the record to construct a rational argument on these issues. A reviewing court is not simply a depository into which a party may dump the burden of argument and research. *People ex rel. Illinois Dept. of Labor v. E.R.H. Enterprises*, 2013 IL 115106, ¶ 56. 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 Rule 341(h)(7). *Vancura v. Katris*, 238 Ill. 2d 352, 370 (2010) (“Both argument and citation to relevant authority are required. An issue that is merely listed or included in a vague allegation of error is not ‘argued’ and will not satisfy the requirements of the rule.”). We conclude that Richard has neither articulated his arguments nor supported them with adequate authority to warrant reversal of the trial court’s order.

¶ 30

III. CONCLUSION

¶ 31 For the reasons stated, the judgment of the circuit court of Lake County is affirmed.

¶ 32 Affirmed.