2019 IL App (3d) 190165-U

Order filed September 11, 2019

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2019

In re MARRIAGE OF	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
DAVID KLOCEK,	)	Will County, Illinois.
	)	
Petitioner-Appellee,	)	Appeal Nos. 3-19-0165
	)	3-19-0251
and	)	Circuit No. 14-D-2108
	)	
SHERRI KLOCEK,	)	
	)	Honorable Elizabeth D. Dow,
Respondent-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE SCHMIDT delivered the judgment of the court.
Justices Holdridge and Lytton concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's allocation of parental responsibilities was not against the manifest weight of the evidence or an abuse of discretion. The trial court did not abuse its discretion by imposing a trust for the support of the children.

¶ 2 Respondent, Sherri Klocek, appeals from trial court orders which, pursuant to the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/501 *et seq.* (West 2018)), allocated parental responsibilities of the parties' minor children and dissolved her marriage. We affirm.

¶ 3 I. FACTS

¶ 4 Petitioner, David Klocek, and respondent, Sherri Klocek, married on September 28, 1996. The parties had four children during the course of their marriage. The parental responsibilities of three of the children are at issue in the instant case, A.K., K.K., and S.K. Sherri was the guardian of an additional minor child, E.B., her niece, in an unrelated probate case. Sherri homeschooled all of the children.

¶ 5 On December 5, 2014, Sherri filed a verified petition for an order of protection in which she alleged that David's testosterone replacement therapy had made him violent. Sherri claimed that David had threatened to burn down the family home and harm the children. The circuit court granted the emergency order of protection the same day. Subsequently, David left the marital home and, on December 16, 2014, filed a petition for dissolution of marriage followed shortly thereafter by a motion for visitation, alleging Sherri was keeping the children from him. David did not see the children for almost a year after leaving the marital home.

¶ 6 In June 2015, the circuit court granted David's motion for a directed finding and dismissed the 2014 order of protection. In December of the same year, the circuit court, over Sherri's objection, ordered that David would have parenting time every Saturday. However, the children refused to engage in visitation with David. The court appointed Maria Potter of Leyden Counseling as a reunification counselor for David and the children.

¶ 7 On January 1, 2016, on David's motion and over Sherri's objection, the court appointed Eugene Fimbianti as guardian *ad litem* (GAL). On June 30, 2016, the court conducted a pretrial conference and received the status of the GAL's investigation. After hearing the status of the GAL's investigation, the court awarded David temporary allocation of the majority of parenting time with the children and sole decision-making authority. Moreover, the marital residence was to be listed for sale and the proceeds placed in escrow.

¶ 8 In July of 2016, the court ordered supervised visitation between Sherri and the children as recommended by Potter. The court found, upon the GAL's oral report, that Sherri had seriously endangered the children's mental and/or emotional health and a restriction of parenting time was in the best interests of the children until further court order. David also received legal custody of the children for the purpose of enrolling them in public school. From June 30, 2016, up to the filing of this appeal, Sherri's visitation with the children has been supervised.

¶ 9 In January 2017, David filed a motion for child support and contribution, as well as a petition for allocation of parental responsibilities regarding decision-making authority and parenting time.

¶ 10 In August 2017, the court transferred supervised visitation from Potter at Leyden Counseling to Wolfe Behavioral and Health Services. However, Wolfe did not provide supervised visitation. The following October, the court reappointed Leyden Counseling to facilitate supervised visitation for Sherri and the children. Again, supervised visitation was never provided subsequent to the entry of that order and no visitation occurred between Sherri and the children from May 2017 through June 2018. In August 2018, the court appointed Reem Cutinello, a licensed clinical social worker at Finding Balance, as reunification counselor. However, Cutinello stopped the reunification counseling after one visit because the children alleged they were abused at the hands of Sherri. Cutinello required that individual counseling occur before reunification counseling could continue.

¶ 11 On December 12, 2018, the court, acknowledging no reunification counseling was taking place and that Sherri had extremely limited parenting time in the last year and a half, again approved Wolfe for reunification therapy. The court was informed later that month that Wolfe

did not offer reunification counseling and, instead, Sherri would return to Cutinello and follow the recommendation that individual therapy take place before reunification therapy.

¶ 12 The parties engaged in extensive motion practice during the pendency of this case. Multiple rules to show cause, motions to hold the other party in contempt, and numerous amounts of emergency motions were filed. In November of 2018, the matter proceeded to trial.

¶ 13 The court heard testimony from Eugene Fimbianti. He participated in the June 30, 2016, pretrial conference and made an oral report to the court wherein he stated he observed obvious signs of Sherri attempting to alienate the children from David. During an interview, Sherri told him the children were terrified of David and refused to exit the car at visitation exchanges. Sherri described an incident where David had thrown one of the children across the room by her hair. Fimbianti interviewed the three children. They stated that their father needed to stop using drugs, that their paternal grandmother wanted to take them away from Sherri, and that their grandmother had murdered their grandfather. The children also believed David had burglarized their home, and that he intended to burn the house down and murder all of the farm animals. When asked how they knew their grandmother had murdered their grandfather, the oldest of the children stated it was "obvious." The children never wanted to see David again.

¶ 14 Fimbianti initially recommended that the children stay with Sherri while undergoing intensive reunification counseling with David. This recommendation changed after Fimbianti attempted to conduct a follow-up "surprise" visit with the children. He attempted to contact Sherri, but she would not answer. Fimbianti, in turn, contacted Sherri's then attorney and asked her to contact Sherri because he "knew she was home." When he arrived at the home, he was prevented from entering the property by a locked steel gate. Sherri eventually came outside to talk to Fimbianti with the children but "made them stay 15 to 20 feet from [him]; wouldn't allow

them any closer to [him]; wouldn't unlock the chain for [him] to have a visit; and the girls sat there refusing to talk to [him]." In an e-mail sent to Maria Potter, Fimbianti explained it was his belief that "Sherri has not complied with anything, nor is she ever likely to do so with anything in this case. Sherri will seize any and all opportunities to undermine and weaken Mr. Klocek's relationship with his daughters if she were allowed unsupervised contact in any form." He also believed that Sherri had an issue with substance abuse, specifically "prescription opioid-based medications and benzodiazepines such as Xanax." He based these suspicions on conversations he had with Coleen Wengler, the GAL for E.B. in the probate case, a drug test that returned a result for benzodiazepine in that same case, and phone conversations with Sherri in which she sounded impaired.

¶ 15 Fimbianti also detailed an incident where it was alleged Sherri had violated the order of supervised visitation by slipping a cell phone into the one of the children's bag. David discovered the phone in the possession of one of the children. Further, Cutinello explained to Fimbianti that all of the children alleged they were abused by Sherri; she reported the allegations to the Department of Children and Family Services.

¶ 16 Fimbianti conducted a follow-up interview in the summer of 2017 after the children had been residing with David. He reported that they seemed to be adjusting well to the living situation, were happy, and were enjoying public school.

¶ 17 After considering all of the factors in section 602.7 of the Act and explaining his reason as to each factor, Fimbianti concluded David should be awarded the majority of parenting time with Sherri only receiving supervised visitation after completing the counseling recommended by Cutinello. Fimbianti had serious concerns for the safety and welfare of the children if Sherri was granted unsupervised visitation.

¶ 18 Potter testified at the trial. She was initially the reunification counselor for David and the children until the court order modifying custody. During reunification counseling with David, K.K. told Potter that she had been abused by David. Her description of the abuse mirrored the incident Sherri had described to Fimbianti. Potter continued to counsel the children at their request after the change in custody—conducting approximately nine sessions from December of 2017 through June 2018. During counseling, the children alleged that Sherri had abused them by striking them with her hands, spoons, coarse belts, and a "carrot stick." The GAL explained that a "carrot-stick" is a horse whip.

¶ 19 Potter also oversaw supervised visitation between Sherri and the children. She noted that Sherri made comments during the visitation sessions that were concerning, namely comments about the divorce proceedings, David, and obtaining documents for the proceedings. Potter tried to redirect Sherri from conversation on these topics to visitation with the children. Further, there were instances where Sherri was demeaning to the girls, specifically when the girls received haircuts and had their ears pierced. Sherri would let the girls know how upset she was about the changes in their appearance. One instance that stood out to Potter was when K.K. told Sherri she was going to join a singing group. According to Potter, Sherri reminded K.K. "well, don't forget you don't like to sing in front of people[.]" She also explained to the court her knowledge of the cell phone Sherri allegedly gave to the children and how stricter guidelines for visitation sessions were put into place after that occurrence. She stated that "mostly because of this case" she no longer supervises family visitation. In her professional opinion, Potter believed Sherri's visitation should be supervised and the children should remain with David.

¶ 20 The court also heard testimony from Wengler. Wengler testified that she was the GAL of a minor ward, E.B. in a probate case in which an emergency motion was filed. Sherri's mother

(E.B.'s grandmother) filed the motion alleging that Sherri was abusing prescription medication and alcohol, mentally unstable, and unable to care for the minor child. The probate court charged Wengler with conducting an investigation into the accusations. Wengler interviewed Sherri and believed that she was impaired during the interview. Sherri was unable to provide sufficient answers to background questions and "apologized for being unable to give complete answers because she had not taken any pain pills that day and was having difficulty concentrating and recalling information." Wengler also interviewed Sherri's mother. She repeated the accusation made in the emergency motion. Additionally, she claimed to have witnessed Sherri hit the children, discuss the ongoing divorce with the children, show the children divorce papers, and found a bottle of vodka in Sherri's bedroom.

¶ 21 E.B. expressed that she no longer wished to reside with Sherri because she was "mean" to her and "hit her" and the other children with a spoon leaving marks. E.B. also stated that Sherri had told her David was "bad." She did not understand why Sherri would say that because David seemed "nice." Wengler also testified to a conversation with Sherri's neighbor who described Sherri as "abusive" toward the children. Sherri submitted to multiple drug tests for the probate case. Sherri provided a list of prescription medications she was taking prior to the drug tests. Wengler described it as "quite a list of medications." Sherri tested positive for benzodiazepine on one of the tests. The probate court eventually placed the minor with her grandmother. Wengler explained that Sherri was held in contempt in the probate case for repeatedly failing to pay GAL fees assessed against her, but after an "extended period of time" purged the contempt.

¶ 22 Aona Anderson also testified at trial. Anderson was Sherri's manager at Fresenius Hospital. Sherri was employed by Fresenius but had not worked there since September 2017 due to a workplace accident. A wheelchair had rolled over Sherri's foot. At the time of the injury,

Sherri was working full-time. Anderson stated Sherri was able to return to work whenever she was willing to do so.

¶ 23 Sherri testified that she had a positive, close relationship with the children and denied the allegations of abuse. She was denied workers' compensation benefits for her workplace injury after an arbitration hearing, but was receiving long term disability through an insurance plan and had applied for social security disability. She was currently living with friends in a single-family home. She denied giving the girls the cell phone and insisted that one of them had taken it out of her bag. She also denied being impaired when contacting Fimbianti, instead, claiming she was at work when she had called him and was trying to be quiet.

¶ 24 David testified that the court ordered Sherri numerous times to pay GAL fees and failed to comply with the orders. Eventually the court took the fees out of her portion of funds being held in escrow from the sale of the marital home. David had only received sporadic and varying amounts for child support since the temporary modification order in 2016. Sherri, as a result, was two years behind on child support payments. David had filed a wage garnishment with Sherri's employer in June of 2017, but by September of that year she was no longer working.

¶ 25 David asked that Sherri's share of the marital portion of his retirement accounts be held in trust for the benefit of the children. He explained that "Sherri doesn't follow court orders. She doesn't pay child support. She is not going to help pay for medical expenses. I already know."

¶ 26 In its allocation judgment, the trial court found, *inter alia*, pursuant to sections 602.5 and 602.7 of the Act, that the children had adjusted well to their current living conditions with David and that they expressed concerns, including allegations of abuse, about Sherri. Both parents wished to be the sole decision-maker and have the majority of parenting time, but the lengthy history of this case demonstrated that the parties were incapable of making joint decisions.

Further, Sherri was not working, had filed for social security disability, and had complained about not being able to afford supervised visitation services. Moreover, Sherri, at the beginning of the case, made all of the significant decisions regarding the children. However, since the June 2016 order she had limited interaction with the children. The court found the allocation of parental responsibilities and parenting time was reasonable and was in the best interests of the children.

¶ 27 The court also made a specific finding that supervised visitation was needed.

> "33. By the preponderance of the evidence, RESPONDENT engaged in conduct that seriously endangered the children's mental and physical health, and it is so ordered that PETITIONER shall have sole significant decision-making responsibility for the minor children and RESPONDENT's parenting time shall be restricted pursuant to 750 ILCS 5/603.10, and RESPONDENT's parenting time shall be supervised in accordance with the recommendations from children's last agreed-upon supervisor and counselor, Reem Cutinello."

¶ 28 The court rejected Sherri's testimony that David's testosterone replacement therapy caused him to be violent. The court found the testimony unreliable and uncorroborated.

¶ 29 The trial court, in its judgment dissolving the parties' marriage, ordered that 50% of the marital portion of David's Vanguard 401(a) and 403(b) retirement accounts be transferred to Sherri via a qualified domestic relations order. The proceeds of this transfer were to be placed in a trust account pursuant to section 503(g) of the Act for the sole benefit of the parties' minor children.

¶ 30 The court also detailed that David had filed several petitions to adjudicate Sherri in indirect civil contempt during the proceedings. The court found Sherri had been held in contempt pursuant to one of the petitions and awarded fees and costs to David. The court found retroactive child support in the amount of $20,425 and ordered the amount paid out of Sherri's half of the proceeds from the sale of the marital home being held in escrow. Sherri appeals.

¶ 31 II. ANALYSIS

¶ 32 As an initial matter, we note Sherri's arguments are imperfect and not fully developed. Her brief is poorly drafted, does little to illuminate the issues, and citation to relevant authority is almost nonexistent. Illinois Supreme Court Rule 341(h)(7) has led to the oft-cited axiom that "[t]he appellate court is not a repository into which an appellant may foist the burden of argument and research." See, *e.g.*, *Ramos v. Kewanee Hospital*, 2013 IL App (3d) 120001, ¶ 37. " 'Points not argued are [forfeited]' and failure to properly develop an argument and support it with citation to relevant authority results in forfeiture of that argument." *Id.* (quoting Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008)). With this principle in mind, we address the arguments, or modicums thereof, presented to this court without undertaking the burden of argument or research.

¶ 33 A. Allocation of Parental Responsibilities

¶ 34 Sherri argues on appeal that the trial court erred "in allocating parental responsibilities of the minor children to [David], removing the minor children from [Sherri's residence,] and ordering [Sherri's] parenting time with the children to be supervised at all times." David contends that the trial court did not err and asks us to affirm the lower court.

¶ 35 1. *Allocation of Parenting Time and Decision-Making*

¶ 36 The gist of Sherri's arguments appears to be that the trial court's factual findings were against the manifest weight of the evidence and that the court gave improper weight to the children's preference of custody. In challenging the court's judgment, Sherri does not discern between the trial court allocating decision-making and parenting time. Instead, she simply asserts that the trial court erred "in allocating parental responsibilities." She then goes on to merely attack the testimony presented at trial and the court's factual findings, failing to mention any of the statutory factors set forth in sections 602.5 and 602.7 of the Act.

¶ 37 It is well established that "the best interests of the child is the 'guiding star' by which all matters affecting children must be decided." *In re Parentage of J.W.*, 2013 IL 114817, ¶ 41 (citing *Nye v. Nye*, 411 Ill. 408, 415 (1952)); 750 ILCS 5/602.7, 602.5 (West 2018). Sections 602.7(b) and 602.5(c) of the Act list 16 and 14 factors, respectively, that the circuit court must consider in determining the child's best interests and provides that the court may also consider "any other factor that the court expressly finds to be relevant." *Id.* § 602.7(b), 602.5(c). A trial court's parenting time and decision-making determination is afforded great deference because the trial court is in a superior position to judge the credibility of the witnesses and determine the best interests of the child. *In re Marriage of Bates*, 212 Ill. 2d 489, 516 (2004); *In re Marriage of Radae*, 208 Ill. App. 3d 1027, 1029 (1991). Thus, the trial court's factual findings will not be disturbed on appeal unless they are against the manifest weight of the evidence. *In re Marriage of Seitzinger*, 333 Ill. App. 3d 103, 108 (2002).

¶ 38 Under these circumstances, the trial court's finding that it was in the best interests of the children to award David the majority of parenting time and sole decision-making authority was not against the manifest weight of the evidence.

¶ 39 Sherri dedicates the majority of her brief to assailing Fimbianti's actions and testimony as GAL. However, it should be noted that the trial court did not base its conclusion solely off of his testimony and report. There were multiple sources of testimony that would have allowed the court to come to the same conclusion.

¶ 40 Fimbianti and Potter testified that supervised visitation should continue and that the children should remain with David. Fimbianti and Wengler testified that there were indications of prescription drug abuse. Fimbianti, Potter, and Wengler testified to allegations of abuse recounted by the minors at the hands of Sherri. Sherri, in turn, points this court to her own testimony as the sole support for her contention that the lower court's findings were in error. However, "it is a well established rule that the credibility of witnesses should be left to the trier of fact because it alone is in the position to see the witnesses, observe their demeanor, and assess the relative credibility of witnesses where there is conflicting testimony on issues of fact." *In re Marriage of Kaplan*, 149 Ill. App. 3d 23, 28 (1986). Sherri's assertion that the trial court's factual findings were against the manifest weight of the evidence fails under the weight of similar testimony from multiple witnesses.

¶ 41 Toward the end of her argument on this point, Sherri haphazardly cites to case law that apparently stands for the proposition that the trial court placed a disproportionate amount of weight on the children's wishes relating to parenting time and decision-making authority. While this is our best estimation, her brief lacks a coherent argument on this point and includes no citation to the record that would lead one to believe the trial court engaged in such behavior. After reviewing the record, it is obvious the court was presented with sufficient evidence to consider the mandated factors and listed findings that correspond to a number of those factors. See *In re Marriage of Adams*, 2017 IL App (3d) 170472, ¶ 21 ("Although the trial court must

consider all relevant facts, it is not required to make an explicit finding or reference to each factor."). This semblance of an argument is without merit.

¶ 42 Accordingly, the weight of the evidence in the record supports the court's ruling as to the allocation of parental responsibilities.

¶ 43 2. *Previous Order Modifying Parenting Time*

¶ 44 Sherri also avers that it was error for the trial court to remove the children from her residence. However, she goes on to cite no authority supporting this statement nor does she further develop her argument aside from the one sentence asserting error. Regardless, the order modifying parenting time was entered on June 30, 2016. The trial court went on to enter a final determination of parenting time which superseded the temporary order. Accordingly, Sherri's contention of error regarding the temporary modification order is moot. See *In re Marriage of Fields*, 283 Ill. App. 3d 894, 901 (1996).

¶ 45 3. *Supervised Visitation*

¶ 46 Sherri goes on to assert that the trial court erred by ordering her visitation with the children be supervised. The trial court here remediated what it found to be serious endangerment of the children's mental and physical well-being by implementing supervised visitation with Sherri until further court order.

¶ 47 A restriction under section 603.10 of the Act entails a two-step process with each step having a different standard of review. See *In re Marriage of Mayes*, 2018 IL App (4th) 180149, ¶¶ 59, 61 (stating step one requires a factual finding of serious endangerment and step two involves the remediation of that danger by issuing a restriction via court order). When there is a challenge to the factual findings supporting a restriction, the appropriate standard of review is whether the decision was against the manifest weight of the evidence. *Id.* ¶ 59. However, when

the challenge is to the restriction chosen to remediate the endangerment posed to the child, the restriction is reviewed for an abuse of discretion. *Id.* ¶ 61.

¶ 48 Sherri does not cite to any relevant authority regarding section 603.10 findings or focus any of her argument on developing this point of contention. She does not even cite to the record where the finding of serious endangerment was made. As described above, the implementation of a restriction is more nuanced than what Sherri's brief would lead one to believe. She has failed to flesh out this argument and is remiss in not stating the applicable standard of review. "Our adversary system is designed around the premise that the parties know what is best for them, and are responsible for advancing the facts and arguments entitling them to relief." *Castro v. United States*, 540 U.S. 375, 386 (2003) (Scalia, J., concurring in part and concurring in the judgment, joined by Thomas, J.). We will not shoulder Sherri's burden of argument and research. See *supra* ¶ 32. This argument has been forfeited.

¶ 49 Even if not forfeited, the trial court's finding that Sherri seriously endangered the children's mental and physical health is clearly supported by the allegations of child abuse from Sherri's mother, neighbor, and the children, along with other incidents contained in the record.

¶ 50 B. Imposition of Section 503(g) Trust

¶ 51 Sherri presents this court with a tortured argument as to why the trial court erred in imposing a trust pursuant to section 503(g) of the Act on her share of the marital portion of David's retirement accounts. She apparently suggests that the court erred by (1) not making a best interest finding in imposing the trust and (2) finding that special circumstances existed to justify imposing the trust. David argues the trial court did not abuse its discretion in the imposition of the trust. He also points out that Sherri presents an incomplete record on appeal.

¶ 52 Section 503(g) of the Act provides in pertinent part:

> "The court if necessary to protect and promote the best interests of the children may set aside a portion of the jointly or separately held estates of the parties in a separate fund or trust for the support, maintenance, education, physical and mental health, and general welfare of any minor, dependent, or incompetent child of the parties." 750 ILCS 5/503(g) (West 2018).

A need to protect the interests of the children arises when the noncustodial parent is either unwilling or unable to make child support payments. *Melamed v. Melamed*, 2016 IL App (1st) 141453, ¶ 41. We review the decision to impose a trust under section 503(g) of the Act for an abuse of discretion. *In re Marriage of Liszka*, 2016 IL App (3d) 150238, ¶ 77.

¶ 53 Although the trial court in its written order did not state that the imposition of the trust was in the best interests of the children, Sherri has forfeited this argument on appeal by providing an insufficient record to review the matter. See *Foutch v. O'Bryant*, 99 Ill. 2d 389 (1984) (stating the appellant has the burden of presenting a sufficiently complete record of the proceedings in the circuit court to support a claim of error and any doubts that arise from the incompleteness of the record will be resolved against the appellant). Sherri failed to include the transcript from the presentation of judgment at the trial court level in the record on appeal, precluding a review of whether any oral pronouncements regarding the imposition of the trust were made. In the absence of a complete record on appeal, it will be presumed that the order entered by the trial court was in conformity with law. *Id.*

¶ 54 Finally, Sherri argues that there was "no special circumstances that would warrant the establishment of a trust" nor was there any "evidence presented that [she] was unlikely to provide for the support of the children." These assertions are contradicted by the record.

¶ 55 There are multiple instances where Sherri was either unwilling or unable to pay court-ordered fees. The court heard testimony that she refused to pay GAL fees in the instant case and in the probate case. In the probate case, the court found her in contempt for not paying the fees until she purged the contempt by complying. In the case at bar, she was ordered several times to pay the fees until the court eventually levied the amount against her share of proceeds from the sale of the marital home. The trial court found Sherri "complained that she did not have the money to pay for" supervised visitation. Sherri also exhibited an indifference to court orders during the pendency of the proceedings with the court finding her in contempt and awarding attorney fees to David. Moreover, Sherri was unemployed, living with friends, and had not paid child support in approximately two years. If not for the proceeds from the sale of the marital home, it is likely the retroactive child support and the GAL fees would remain unpaid. These circumstances are sufficient for the imposition of a trust for the support of the children.

¶ 56 We find no flaw in the trial court's exercise of discretion.

¶ 57 III. CONCLUSION

¶ 58 For the foregoing reasons, we affirm the judgment of the circuit court of Will County.

¶ 59 Affirmed.