

No. 1-19-2036

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
FIRST DISTRICT

<i>In re</i> MARRIAGE OF)	Appeal from the
)	Circuit Court of
SUCHITRA R. SRIPADA,)	Cook County
)	
Petitioner-Appellee,)	
)	
and)	No. 2014 D 009241
)	
KALYAN T. BHARATHAM,)	Honorable
)	Renee G. Goldfarb,
Respondent-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Rochford and Delort concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court acted within its jurisdiction in, *sua sponte*, modifying its order. In affirming, we conclude that the circuit court’s finding that the respondent’s conduct seriously endangered his minor child’s mental and psychological health is not against the manifest weight of the evidence and its resulting order that restricted his parenting time to supervised visitation and that required him to complete an anger management course, take parenting classes, and participate in reunification therapy with the minor child was not an abuse of discretion.

¶ 2 On April 2, 2018, a judgment of dissolution of marriage was entered, dissolving the marriage of the petitioner, Suchitra R. Sripada, and the respondent, Kalyan T. Bharatham. The judgment provided for the custody of, and visitation with, P.S., the minor child of the parties. Kalyan now appeals from orders of the circuit court, which provide that his parenting time with P.S. be supervised by a therapist and which require him to attend an anger management course, parenting classes, and reunification therapy. For the reasons which follow, we affirm.

¶ 3 On July 10, 2019, Suchitra filed a petition seeking, in addition to other relief, an order restricting Kalyan's parenting time with P.S. to supervised visitation. According to the petition, Kalyan caused P.S. to suffer a bloody nose during his parenting time on March 13, 2019. The following factual recitation is taken from the relevant pleadings and the evidence adduced during the hearing on the petition held on July 31, 2019.

¶ 4 P.S. was five years old in March 2019 and was attending the kindergarten program at the British International School of Chicago. When Kalyan picked P.S. up from the school on March 13, 2019, he was informed that P.S. had bitten the finger of another child. After arriving at his residence with P.S., Kalyan told the child that he was "going to ground him" and then put P.S. into a closed walkway leading from the master bedroom to the bathroom. According to Kalyan, P.S. fell and landed on his face when he tried to escape from the closed walkway, causing his nose to bleed. However, P.S. told several individuals that Kalyan picked him up and dropped him and that he landed on his face.

¶ 5 Four witnesses testified during the July 31, 2019 hearing on Suchitra's petition to restrict Kalyan's parenting time: the parties; Melanie Pignotti from the Children's Advocacy Center; and Jean Conde, P.S.'s guardian *ad litem*.

¶ 6 Pignotti testified that she conducted a forensic interview of P.S. on April 10, 2019, at the request of the Cook County Sheriff's office. She stated that she made a video recording of that interview and identified the video, which was then admitted into evidence. In that video, P.S. describes being placed in a dark room by Kalyan, being picked up by Kalyan, and being dropped onto the carpeted floor on his nose. He stated that Kalyan was mad when he dropped him. According to P.S., he does not feel safe with Kalyan.

¶ 7 Kalyan testified to the events of March 13, 2019. He stated that when he picked up P.S. from school on that date, P.S.'s teacher told him that P.S. had bitten another student's finger. According to Kalyan, he did not get upset or agitated. Rather, he spoke to P.S. about the incident as he drove to his apartment, trying to determine why P.S. bit another child. Kalyan stated that P.S. was incommunicative. Kalyan testified that he continued to talk to P.S. about the incident after they arrived at the apartment, and that he told P.S. he was "going to ground him." P.S. became belligerent and threw a plastic stool at him. Kalyan stated that he then put P.S. in a 10-foot by 4 or 5-foot walkway between the master bedroom and the bathroom. He testified that he intended to keep P.S. there for a minute until the child said that he was sorry. According to Kalyan, P.S. attempted to rush out of the walkway and lost his balance, causing him to fall forward and hit his nose on the carpet, resulting in a bloody nose. Kalyan denied picking P.S. up and dropping him on his face. After calling Suchitra and informing her of the incident, Kalyan took P.S. to the Physicians Immediate Care facility in Niles, Illinois. Suchitra arrived at the facility about 20 minutes after P.S. and Kalyan. The Niles police were called to the facility and remained for 15 to 20 minutes until the Cook County Sheriff's police arrived. After questioning the parties, a deputy sheriff released P.S. into the custody of Suchitra. No arrests were made.

¶ 8 Jean Conde testified that she interviewed P.S. on March 19, 2019. She stated that P.S. admitted biting another child at school, but also said that it was an accident. He told her that, when his father, Kalyan, arrived at school and was told of the incident, he was very upset. P.S. described Kalyan as being very angry as they drove home. Conde testified that P.S. told her that, when they got to the apartment, Kalyan stated that he was going to ground him. According to P.S., Kalyan put him in a room, closed the door, and turned off the lights. Conde stated that P.S. said that, when he banged on the door, Kalyan became angry, opened the door, picked him up and dropped him on his face, resulting in a bloody nose. She testified that P.S. demonstrated how he was dropped, and she estimated that it was from a height of about three feet. She also testified that P.S. told her that Kalyan was yelling at his mother, Suchitra, while they were at the urgent care facility. Conde denied seeing any serious injuries to P.S. when she interviewed him, but also said that she was unable to assess whether his nose was swollen. Conde recommended that Kalyan attend parenting classes and reunification therapy supervised by Dr. David Finn.

¶ 9 Suchitra testified that P.S. admitted to her that he had bitten his best friend's finger at school when his friend put his finger in his mouth. She stated that P.S. told her that Kalyan yelled at him after being told of the incident and told him that he would be grounded. P.S. also admitted that he threw a plastic stool at Kalyan. Suchitra testified that P.S. informed her that Kalyan placed him in a room in his apartment with no lights and locked the door. According to P.S., when he banged on the door, Kalyan opened the door, pushed him, picked him up and then threw him facedown on the floor. Suchitra stated that Kalyan called her on March 13, 2019, and said that he was taking P.S. to be "checked out" because of a bloody nose P.S. sustained after falling on the carpet in Kalyan's apartment. According to Suchitra, after she arrived at the urgent care facility, Kalyan began yelling at her and continued yelling when the nurse attempted to ask P.S. what had happened

to him. She testified that the attending physician, Dr. Richard Dahl, had both the police and the Department of Children and Family Services notified of the incident and that both the local police and Cook County Sheriff's deputies arrived at the facility. After an initial investigation, a sheriff's deputy told her to take P.S. home. According to Suchitra, days after March 13, 2019, P.S. told her: "I don't want to go to daddy;" and "He is always angry with me." She stated that Kalyan has an anger problem. At the time of the hearing on July 31, 2019, P.S. had not seen Kalyan for over four months.

¶ 10 In addition to the video of the April 10, 2019 forensic interview of P.S., conducted by Pignotti, the court was also provided with the body-cam videos recorded by the Cook County Sheriff's deputies at Physicians Immediate Care facility.

¶ 11 Following the hearing on July 31, 2019, the trial judge entered an order, continuing the matter to August 5, 2019, for ruling.

¶ 12 When the matter came before the court on August 5, 2019, the trial judge made extensive comments on the record. She recounted that she had heard the testimony of the witnesses, watched the forensic interview of P.S., and had also watched the body-cam videos recorded by the Cook County Sheriff's deputies. The trial judge recited P.S.'s statement that, when Kalyan is mad, he puts him in a room, but that Kalyan had never picked him up and dropped him before March 13, 2019. She questioned Kalyan's credibility when he testified that he had never "grounded" P.S. before March 13, 2019, and when he testified that P.S. fell on his own. The trial judge found that P.S. was either picked up or pushed, causing him to fall to the floor and hit his nose. She did not believe Kalyan when he said he was calm and not agitated during the incident. Although she did not believe that Kalyan intended to hurt P.S., the trial judge agreed with the guardian *ad litem's* assessment that there must be professional involvement in Kalyan's reunification with P.S.,

particularly because of the March 13, 2019, incident and P.S.'s statements that he did not want to see his father. She found that Kalyan was in need of parenting classes, reunification therapy, and anger management classes, but went on to state: "I don't think that there is any clear and present danger that would require my finding by a preponderance of the evidence that he [Kalyan] needs supervised visitation." She did, however, state that, if Dr. Finn believes that reunification therapy and anger management therapy have been helpful to Kalyan, he might suggest a supervisor for a short period of time. She further stated: "I'm going to go with the recommendation of Dr. Finn [a]nd we can get some updates, particularly if this starts as soon as possible." The trial judge went on to state: "I don't believe there is a need for supervised visitation, but there may be a need for it in the beginning; and I will defer just to see what is in the best interest of the child." The written order entered by the circuit court on August 5, 2019, provided that: "The findings + rulings by the court that were transcribed by the court reporter this day are made part of this order as if transcribed herein."

¶ 13 On August 12 and 13, 2019, the circuit court entertained, and granted, Suchitra's petition to relocate, with P.S., to Minnesota. In addition to granting Suchitra's petition to relocate, the circuit court's order of August 13, 2019, also provided that: "Status on entry of a new parenting schedule is set for August 22, 2019, at 10:00 a.m."

¶ 14 On August 22, 2019, when the issue of parenting time was before the court, the trial judge stated that it was "an issue with relocation." After the trial judge inquired whether there had been an agreement between the parties as to Kalyan's parenting time with P.S., Kalyan's attorney told the court: "[M]y client would not be doing anything by agreement." The trial judge stated her understanding that Kalyan had no intention of participating in reunification therapy with Dr. Finn. After acknowledging that, following the previous hearing she did not find, by a preponderance of

the evidence, that Kalyan engaged in conduct that seriously endangered P.S.'s physical health, the trial judge stated that she did, however, find that Kalyan engaged in conduct that seriously endangered P.S.'s mental and psychological health. She then ordered Kalyan to participate in reunification therapy with Dr. Finn in addition to anger management classes. In summation, the trial judge stated: "So[,] it's the ruling of this court that if there is to be any parenting time, absent the requirements that this court has put in, that it will be supervised parenting time." In response to an inquiry by Suchitra's attorney, the trial judge stated that she was modifying the order of August 5, 2019, and agreed with the attorneys that a written order would follow.

¶ 15 On September 5, 2019, the circuit court entered a written order stating that, on its own motion, the court was clarifying its order of August 5, 2019. In that order, the circuit court required Kalyan to complete an anger management course, take parenting classes, and participate in reunification therapy with the minor child. The circuit court also ordered that Kalyan's parenting time with P.S. be supervised by a therapist.

¶ 16 On October 4, 2019, Kalyan filed a notice of appeal from the circuit court's orders of July 31, 2019, August 5, 2019, August 12, 2019, August 13, 2019, and September 5, 2019. In his brief on appeal, however, Kalyan argues only for the reversal of the circuit court's order of August 5, 2019, and September 5, 2019. Illinois Supreme Court Rule 341(h)(7) (eff. May 25, 2018) provides, in relevant part, that points not argued in an appellant's brief are waived. Consequently, Kalyan has forfeited any claim of error in the orders entered by the circuit court on July 31, 2019, August 12, 2019, and August 13, 2019. We will address only his claims of error addressed to the orders of August 5, 2019, and September 5, 2019.

¶ 17 Kalyan makes several arguments addressed to the power of the trial court to, *sua sponte*, modify its own orders, which merit very little analysis. For his first assignment of error, Kalyan

argues that the circuit court exceeded its authority when, in its order of September 5, 2019, the circuit court, *sua sponte*, modified its order of August 5, 2019. In his brief, Kalyan acknowledges the holding in *Parello v. Parello*, 87 Ill. App. 3d 926, 931 (1980), which states that a trial court has jurisdiction to either modify or vacate a final judgment for a period of 30 days after entry, either on motion of a party or *sua sponte*. He argues, however, that the enactment of sections 2-1301(e), and 2-1203(a) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1301(e), 2-1203(a) (West 2018)), after *Parello* was decided, limits the circuit court's power to, *sua sponte*, modify a final judgment within 30 days of its entry. We find no merit in the argument based upon the enactment of either statute. Although section 2-1301(e) of the Code provides that the circuit court may set aside a final judgment on motion made within 30 days of its entry and section 2-1203(a) provides for motions made within 30 days after the entry of a judgment in non-jury cases, neither statute suggests that the legislature intended to interfere with the circuit court's power to act on its own motion within 30 days of the entry of a final judgment. See *Freeman v. Chicago Transit Authority*, 33 Ill. 2d 103, 105 (1965).

¶ 18 Kalyan next argues that the circuit court erred in modifying its judgment of August 5, 2019, without first conducting an evidentiary hearing. The flaw in the argument is the fact that the circuit court did conduct an evidentiary hearing. That hearing was held on July 31, 2019, and the circuit court's modifications of September 5, 2019, were based on the evidence adduced at the July 31, 2019 hearing, as the trial judge clearly stated in her remarks on August 22, 2019.

¶ 19 We find equally without merit Kalyan's alternative argument that the circuit court's order was an improper *nunc pro tunc* order. The circuit court never claimed, or held, that its order of September 5, 2019, was being entered *nunc pro tunc* to August 5, 2019. The September 5, 2019

order, on its face, states that it clarified the August 5, 2019 order, and the trial judge stated during her remarks of August 22, 2019, that she was modifying the August 5, 2019 order.

¶ 20 For the reasons stated, we find no error in the circuit court having, *sua sponte*, modified its order of August 5, 2019.

¶ 21 Finally, Kalyan argues that, if the trial court acted within its jurisdiction when, on September 5, 2019, it modified its August 5, 2019 order, then the trial judge's finding that he seriously endangered P.S.'s mental and psychological health is against the manifest weight of the evidence. This issue requires a more comprehensive analysis.

¶ 22 Section 603.10(a) of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/603.10(a) (West 2018)) provides that if, after a hearing, "the court finds by a preponderance of the evidence that a parent engaged in any conduct that seriously endangered the child's mental, moral, or physical health or that significantly impaired the child's emotional development, the court shall enter orders as necessary to protect the child." The overriding consideration is the best interest of the child. *In re A. W.J.*, 197 Ill. 2d 492, 497-98 (2001); *In re Marriage of Debora N.*, 2013 IL App (1st) 122145, ¶ 45.

¶ 23 In order to justify the entry of an order pursuant to section 603.10(a) of the Marriage Act, the trial court is required to make a factual determination that the parent's conduct seriously endangered the child's mental, moral, or physical health or that significantly impaired the child's emotional development. We review its determination in this regard under a manifest weight of the evidence standard. *In re Marriage of Mayes*, 2018 IL App (4th) 180149, ¶ 58. A finding is against the manifest weight of the evidence when an opposite conclusion is clearly apparent. *In re Parentage of J.W.*, 2013 IL 114817, ¶ 55. Whether this court might have reached the same conclusion is not the test of whether the circuit court's determination of a question of fact is supported by the

manifest weight of the evidence. Rather, the appropriate test is whether there is sufficient evidence in the record to support the circuit court's determination. See *In re Marriage of Matchen*, 372 Ill. App. 3d 937, 946 (2007).

¶ 24 If the trial court determines that a parent's conduct has seriously endangered the child, it must then enter orders necessary to protect the child, which may include supervised visitation and treatment programs for behavior. *Mayes*, 2018 IL App (4th) 180149, ¶ 55. The fashioning of an appropriate order is a matter committed to the sound discretion of the trial court, and its selection of appropriate restrictions will not be disturbed on appeal unless the trial court has abused its discretion. *Id.* ¶ 61. An abuse of discretion occurs when no reasonable person would have imposed the same restrictions as the trial court. *Id.*

¶ 25 In her oral pronouncements of August 5, 2019, the trial judge stated that she did not think that there was any clear and present danger that would require her to find that Kalyan needed supervised visitation. She went on to state that, although she did not believe that there was a need for supervised visitation, there may be a need for supervised visitation in the beginning. On that date, the trial judge clearly found that Kalyan had an anger problem and needed anger management classes. In her remarks on August 22, 2019, made following her being advised that Kalyan had no intention of participating in reunification therapy, the trial judge acknowledged her earlier statements and then stated that, although she did not find, by a preponderance of the evidence, that Kalyan engaged in conduct that seriously endangered P.S.'s physical health, she did find, by a preponderance of the evidence, that Kalyan's conduct seriously endangered P.S.'s mental and psychological health. From the trial judge's remarks on August 22, 2019, it is clear that the conduct of which she was speaking was not only Kalyan's behavior on March 13, 2019, but also his inability to control his anger and respond appropriately to stressing situations. The finding that

Kalyan is prone to exhibitions of anger is supported by Suchitra's testimony, P.S.'s statements when he was interviewed by both Pignotti and Conde, the evidence relating to Kalyan's behavior at the urgent care facility, the event leading to P.S.'s injury on March 13, 2019, and the trial judge's own observation that, on several occasions during court proceedings, Kalyan lost his temper, began screaming and would not stop. The effect of Kalyan's anger on P.S. is clear when, as the trial court found, the child is afraid of his father, he states that he does not want to go with his father, and states that his father is always angry with him.

¶ 26 We find, based upon the evidence in the record, that the circuit court's determination on September 5, 2019, that Kalyan's conduct seriously endangered P.S.'s mental and psychological health is not against the manifest weight of the evidence as an opposite conclusion is not clearly apparent. In addition, we find that the circuit court's resulting order that restricted Kalyan's parenting time to supervised visitation and that required him to complete an anger management course, take parenting classes, and participate in reunification therapy with the minor child was not an abuse of discretion.

¶ 27 Based on the foregoing analysis, we affirm the judgment of the circuit court.

¶ 28 Affirmed.