

"custodial schedule" accompanied the petition and gave respondent "reasonable rights of visitation" with both minors. The schedule set forth, in detail, the days and times for visitation, including holidays.

¶ 5 On September 27, 2012, the trial court, the Honorable Steven H. Nardulli presiding, entered an order awarding temporary custody to petitioner and alternating weekend visitation to respondent, reserving the issue of child support. The court ordered the parties to participate in mediation. In November 2012, respondent filed a *pro se* "motion to modify" seeking full custody of the minors.

¶ 6 On December 14, 2012, the trial court, the Honorable Brian T. Otwell presiding, conducted a final hearing on the petition for dissolution. The court's docket entry indicates: "Witness sworn. Evidence heard." After considering the evidence presented, the court found irreconcilable differences had arisen between the parties, causing an irretrievable breakdown of the marriage. The court entered a final judgment of dissolution, awarding custody of the minor children to petitioner, with reasonable visitation to respondent. The record does not reveal upon what bases the court relied in making its custody determination. The court's judgment was entered on a preprinted form. The court made no entry on the judgment form itself indicating the amount of child support ordered. Specific visitation times were checked and times added in the appropriate places on the form.

¶ 7 In January 2013, petitioner filed a *pro se* petition for rule to show cause, indicating respondent had "failed to make the payments as ordered by the court." In support of her petition, petitioner claimed the trial court had ordered respondent to pay child support in the amount of \$200 per month, which he allegedly had not done.

¶ 8 In March 2013, the trial court conducted a hearing on petitioner's petition for rule to show cause, but neither party appeared. The court continued the petition "generally." In April 2013, respondent filed a *pro se* motion to modify, seeking a decrease in his support obligation, claiming he was "only making \$350 per month." Also in April 2013, petitioner filed a subsequent petition for rule to show cause, claiming again respondent had "failed to make the payments as ordered by the court."

¶ 9 In May 2013, respondent filed a *pro se* motion to modify, seeking "full custody" of the minors without stating any bases or grounds for his request. In August 2013, the trial court, the Honorable John M. Madonia presiding, entered a written order which indicated both parties had appeared *pro se* at a hearing, witnesses were sworn, and evidence heard. The court awarded respondent custody of the two minor children "subject to reasonable visitation by petitioner as set forth further in this order." The court ordered petitioner to pay child support.

¶ 10 In an accompanying "memorandum of opinion," the trial court found as follows:

"The court initially notes that, in order to be in compliance with statutory provisions, respondent was required to file an affidavit in support of his motion to modify because his motion was filed within two years of the parties' judgment for dissolution which awarded custody of the parties' two children to petitioner. However, the court acknowledged during the parties' appearance in court in June that respondent had never been represented by counsel throughout any point in his case and was largely

unfamiliar with the court process for litigating his claim. Based on the administration of an oath prior to taking respondent's testimony at the June hearing, the court was satisfied that the respondent had sufficiently met the requirements of 750 ILCS 5/610 [(West 2010)] and had properly supported his allegations that his two minor children were placed in an environment that seriously endangered the physical, mental, moral or emotional health of the parties' children. Upon making that determination, the court scheduled an evidentiary hearing for August 20, 2013, to give both parties an opportunity to prepare for the presentation of their evidence at the hearing.

On August 20, 2013, the court held the hearing as scheduled. *** Respondent called three witnesses and himself to testify. *** Based upon the credibility of the witnesses, especially those closely related to petitioner, the court found that since the entry of the parties' judgment for dissolution, petitioner had been evicted from a three-bedroom home in the small town of Auburn, which prompted her to relocate to her father's residence with the two minor children. According to petitioner's father, petitioner's temporary move to his residence was filled with turmoil that caused her to vacate the residence after two days. Although petitioner left the residence after her brief stay, the children,

according to her father, remained for approximately three additional weeks before petitioner removed them from her father's home and relocated them to a two bedroom trailer in the town of Riverton in Sangamon County. Much of the testimony received on behalf of respondent focused on the living conditions existing in petitioner's trailer ***. The court believed that hearing evidence of both living arrangements was essential to determine if the children had been placed in a seriously endangering environment and to determine if a change in custody would be in the best interests of the children.

Through testimony provided by petitioner's grandfather and the respondent, as well as the petitioner herself during her testimony and cross-examination, the court found that petitioner resided in the trailer with her boyfriend, who is a convicted felon with convictions for crimes of violence, and his two children, who were of the approximate age of Konnor and Emma, both of whom are under the age of six. Petitioner also resided with a child of hers from a different relationship. Thus, there were five minor children living in the two bedroom trailer at the time of the hearing in this cause."

¶ 11 The trial court indicated it also relied on testimony related to the high-crime area in which petitioner resided, the fact piranhas were housed in a fish tank in the home, and the

existence of exposed wires "dangerously accessible" above the children's bunk beds. Whereas, the court found the testimony describing respondent's living conditions was "drastically different." Respondent resides with his mother and her husband in a four-bedroom home in Chatham with a large yard and a swing set. Although testimony indicated cats and dogs would "tend to relieve themselves in the home too frequently," no testimony indicated "the children suffered from any allergies related to the animals." The court stated: "Other than the complaint referencing the animals, petitioner could not establish any other allegations that would have given the court concern as to the living conditions of respondent and his family."

¶ 12 The trial court further noted petitioner "was not always properly influencing or supervising the children." She used "vulgar and profane language in front of, and directly to, the children" and used physical means to subdue them. "One particular incident described through testimony caused the court some concern as police responded to the trailer for unspecified reasons and made multiple attempts to contact petitioner upon their arrival, only to be greeted by sounds of children inside the trailer." The court indicated petitioner "eventually awoke and presented herself to the authorities with a simple explanation that she had overslept and was unaware that the police had been for some time attempting to contact her."

¶ 13 After considering the evidence presented, the trial court found the children's present environment with petitioner seriously endangered their physical, mental, moral, or emotional well being, and that, based on the opportunities afforded to them, if custody were changed, it was in the best interest of the children for their custody to be modified." This appeal followed.

¶ 14

II. ANALYSIS

¶ 15 The record before us consists only of one common-law volume, which contains the trial court's written order and separate memorandum of opinion. However, we have no verbatim transcript from the hearing on the motion to modify custody that would demonstrate error as alleged by petitioner. Nor do we have a bystander's report or a statement of facts as alternative methods of a preserved record as provided in Illinois Supreme Court Rule 323 (eff. Dec. 13, 2005).

¶ 16 To determine whether error occurred as argued by petitioner, this court must have before it a record of the proceedings from the trial court. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391 (1984). Petitioner, as the appellant, bears the burden to present a sufficiently complete record. Without a sufficiently complete record, "it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis." *Foutch*, 99 Ill. 2d at 392. "A reviewing court may not guess at the harm to an appellant *** where a record is incomplete. This is not its role. Rather the reviewing court evaluates the record, as it is, for error. Where the record is insufficient or does not demonstrate the alleged error, the reviewing court must refrain from supposition and decide accordingly." *People v. Edwards*, 74 Ill. 2d 1, 7 (1978).

¶ 17 Not only is the record insufficient, but petitioner's *pro se* brief consists of the following, in its entirety:

1. Reasons for appeal are following. Children are unhappy and losing weight and losing schooling time.
2. Emma [] is not enlisted into Chatham schools. She is going to private preschool and less hours.
3. Children have come home to mothers' house with flea,

welts, and abrasions on them.

4. Children do not have their own beds.

5. Father don't spend time with them.

6. Kids are terrified of their father.

7. Judge went off hearsay.

8. There was no one in the courtroom while trial was going on not even a bailiff, not judge secretary or stenographer, no one other than the judge, I, and children's father, and witness.

9. Testimonies given were not true nor was there any evidence.

I, Tabetha Lanham, would like to request all transcripts regarding the judgment of August 20, 2013."

Petitioner's brief is inadequate, as it fails to comply with Illinois Supreme Court Rule 341(h) (eff. Feb. 6, 2013). Because we are not required to apply a more lenient standard to a *pro se* appellant (*In re A.H.*, 215 Ill. App. 3d 522, 529-30 (1991)), we could determine petitioner has forfeited her challenge of the court's order by failing to comply with the supreme court's rules regarding the content of briefs on appeal (see *Progressive Universal Insurance Co. of Illinois v. Taylor*, 375 Ill. App. 3d 495, 501-02 (2007)). Nevertheless, we will consider the merits of her appeal on the record as it stands and in light of the deficiencies in the brief filed. See *A.H.*, 215 Ill. App. 3d at 529 (requirements set forth in Rule 341 are admonishments to the parties and not limitations upon this court's jurisdiction).

¶ 18 We also note respondent did not file a brief in this appeal. However, reversal is

not automatic when the party who received a favorable ruling in the court below fails to file a brief on appeal. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-32 (1976). "[T]he burden remains on the appellant to show error." *Talandis*, 63 Ill. 2d at 132. This court is "not compelled to serve as an advocate for an appellee" (*In re Marriage of Purcell*, 355 Ill. App. 3d 851, 855 (2005)), but neither are we required to search the record for the purpose of sustaining the trial court's judgment (*Talandis*, 63 Ill. 2d at 133).

¶ 19 Here, we must rely exclusively on the trial court's judgment and accompanying memorandum of opinion in evaluating petitioner's claimed error with no assistance from her brief, a brief from respondent, or a record of the proceedings. Respondent filed the motion to modify the custody judgment within two years of the entry of the final judgment of dissolution of marriage, which awarded petitioner "exclusive custody" of the parties' minor children.

¶ 20 Sections 610(a) and (b) of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/610(a), (b) (West 2010)) establish a dual-step process for modification petitions filed and heard within two years of the last custody judgment. Section 610(a) gives the trial court, under limited circumstances, the authority to conduct a hearing on a petition to modify, relying on the legal standards set forth in section 610(b). *In re Marriage of Spent*, 342 Ill. App. 3d 643, 649 (2003).

¶ 21 Section 610(a) provides:

"Unless by stipulation of the parties ***, no motion to modify a custody judgment may be made earlier than 2 years after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe the child's present environment may

endanger seriously his physical, mental, moral[,] or emotional health." 750 ILCS 5/610(a) (West 2010).

¶ 22 Section 610(b) provides:

"The court shall not modify a prior custody judgment unless it finds by clear and convincing evidence, upon the basis of facts that have arisen since the prior judgment or that were unknown to the court at the time of entry of the prior judgment, that a change has occurred in the circumstances of the child or his custodian *** and that the modification is necessary to serve the best interest of the child. *** The court shall state in its decision specific findings of fact in support of its modification *** if either parent opposes the modification[.]" 750 ILCS 5/610(b) (West 2010).

¶ 23 According to the trial court's memorandum of opinion, the court found a sufficient basis to allow respondent to be heard on his modification petition within two years of the previous custody judgment without the requirement of an affidavit. At the hearing, the court considered testimony from witnesses regarding the children's living arrangements and environment. Thereafter, the court found those living arrangements constituted a "seriously endangering environment" and determined a change in custody was appropriate. The court relied on testimony that petitioner and the parties' two minor children were living with petitioner's other child, petitioner's boyfriend, and his two children in a two-bedroom trailer. The trailer was located in a "high-crime area" and contained several safety issues, such as a fish tank housing piranhas and exposed wiring in the children's' bedroom. The court also relied on

"credible testimony" tending to prove petitioner "was not always properly influencing or supervising the children." The court found she "often used vulgar and profane language in front of, and directly to, the children," was "overly physical" with them, and was asleep (with the children present) on one occasion when the police arrived at her home. After the trial court made the requisite credibility determinations and considered the evidence presented, the court found "the children's present environment with petitioner seriously endangered their physical, mental, moral, or emotional well being, and that, based on the opportunities afforded to them if custody were changed, it was in the best interest of the children for their custody to be modified."

¶ 24 Given the state of the record before us, we must presume the trial court's judgment was entered in accordance with the evidence presented and applicable law. *People v. Probst*, 344 Ill. App. 3d 378, 385 (2003) (holding that where the failure of an appellant to include a report of proceedings deprives a reviewing court of the ability to scrutinize the reasoning behind a trial court's decision, a reviewing court should affirm). The presumption of correctness is especially strong when, as here, there is an indication the court was "fully advised in the premises." *Boysen v. Antioch Sheet Metal, Inc.*, 16 Ill. App. 3d 331, 333 (1974) ("Of further significance is that the judgment order expressly provides that the trial court heard evidence and was fully advised in the premises. Such language raises the presumption that the judgment is supported by the evidence in absence of any contrary indication in the order or record."). Therefore, based on the inadequacy of the record in this case, and petitioner's failure to adequately support her claim of error in her brief, we must presume the court's judgment was correct.

¶ 25

III. CONCLUSION

¶ 26 For the foregoing reasons, we affirm the trial court's judgment.

¶ 27 Affirmed.