FOURTH DIVISION
FEBRUARY 24, 2011

No. 1-10-1878

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE THE MARRIAGE OF:	)	
CLIFTON D. HEALY,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellant,	)	Cook County.
	)	
and	)	08 D 3027
	)	
ANNA R. HEALY,	)	The Honorable
	)	David Haracz,
	)	Judge Presiding.
Respondent-Appellee.	)	

JUSTICE PUCINSKI delivered the judgment of the court.

Presiding Justice Gallagher and Justice Lavin concurred in the judgment.

ORDER

HELD: The circuit court did not abuse its discretion in denying petitioner's motion for reconsideration of his request for: (1) a modified custody order; (2) an appointment of a psychologist for the minor children; and (3) Rule 137 sanctions against the respondent and her attorneys. Petitioner (1) failed to make the threshold showing for modifications of custody orders within two years of judgment; (2) failed to make the requisite statutory showing for the court to appoint a psychologist; and (3) failed to allege specific false statements made by

respondent and her attorneys in a pleading.

Petitioner-Appellant, Clifton D. Healy, appeals the circuit court's order of June 7, 2010, denying his motion for reconsideration of the court's denial of his requests for relief contained in response to an emergency motion by his ex-wife, respondent-appellee Anna R. Healy. Anna filed an emergency motion for suspension of Clifton's visitation rights, which was later withdrawn. However, in Clifton's response to Anna's emergency motion, he requested the following relief: (1) custody of the minor children; (2) an order requiring that the children be counseled by another psychologist, rather than the psychologist recommended by the children's primary physician; and (3) sanctions against Anna and her attorneys. The trial court denied all of Clifton's requests and denied his motion to reconsider. We determine the circuit court did not abuse its discretion in denying his motion for reconsideration of all of Clifton's requested relief. First, Clifton failed to make a threshold showing necessary to modify child custody orders. Second, Clifton failed to make a showing of the statutory factors necessary for an appointment of a psychologist by the court. Lastly, Clifton failed to make a showing of any false statements in Anna's pleading. Therefore, we affirm the court's order denying Clifton's motion to reconsider.

BACKGROUND

Petitioner-appellant, Clifton D. Healy, and respondent-appellee, Anna R. Healy, are divorced. On May 29, 2009, following a bench trial, the circuit court entered a judgment and dissolution of marriage. The judgment awarded Anna sole custody of the children, entitling Clifton to visitation rights.

The children reported to Anna after one of Clifton's visitation weekends with the

children, February 5, 2010, through February 7, 2010, that Clifton ordered them to kiss four religious icons before they went to bed. When the four-year-old minor refused to kiss the religious icons, Clifton went to the kitchen, returned with a wooden spoon, and hit the child with the spoon three times. The child again refused to kiss the religious icons and Clifton again hit her three times with the wooden spoon. Again, the child refused to kiss the religious icons, and Clifton again hit her three times with the wooden spoon, for a total of nine strikes. Both children were frightened of Clifton and did not want to go back and visit him.

After learning of this incident, on February 9, 2010, Anna brought the children to see their counselor, Tamara L. Newell, of NorthShore University Health System in Evanston, Illinois. After meeting with both children, Newell informed Anna in a letter dated February 9, 2010, that she would recommend to the Illinois Department of Children and Family Services (DCFS) that: (1) Clifton not be allowed to visit the children until DCFS or a supervisor appointed by the court would observe Clifton's visitations; and (2) the visitations should take place only under such third-party supervision pending the final outcome of DCFS' investigation.

Based on Newell's assessment and recommendations, on February 10, 2010, Anna, through her counsel, filed an Emergency Motion for Suspension of Clifton's Visitation Rights, because Clifton was scheduled for another visitation with the children that same evening. Following a hearing that day, the circuit court entered an order continuing the matter, ordering the parties to "not use corporal punishment or otherwise strike the children," and granting the parties leave to reappear if DCFS were to issue or recommend a course of action. The circuit court also granted leave to Clifton to file a response, which he did.

Clifton responded to Anna's motion and prayed for its denial and also requested various forms of affirmative relief, including: (1) temporary custody of the children; (2) an order granting him leave to choose his own psychologist to evaluate the children; and (3) sanctions against Anna and her lawyers for filing a false pleading. Anna filed a written response on March 24, 2010. On April 6, 2010, Anna learned from DCFS that the investigation had closed and DCFS would not be recommending any suspension of Clifton's visitation rights. Thus, on April 7, 2010, Anna withdrew her emergency motion for suspension of Clifton's visitation rights.

At a hearing on April 8, 2010, the circuit court entered an order denying Clifton's requests. On May 10, 2010, Clifton filed a motion to reconsider, and thereafter filed several amendments to his motion to reconsider. At a hearing on June 7, 2010, Clifton's motion to reconsider was denied. Clifton timely appealed this order.

ANALYSIS

Clifton argues the circuit court abused its discretion in denying the following requests in his response to Anna's emergency motion for suspension of his visitation rights: (1) temporary and permanent custody of the minor children; (2) an order requiring that the children be counseled by a psychologist selected by him, rather than the psychologist recommended by the children's primary physician; and (3) sanctions against Anna and her attorneys. Clifton appeals not from the original order denying his relief, but from the court's denial of his motion to reconsider. The standard of review on a motion for reconsideration is set forth in *John Alden Life Insurance Co. v. Propp*, 255 Ill. App. 3d 1005, 627 N.E.2d 703 (1994). *Merchants Bank v. Roberts*, 292 Ill. App. 3d 925, 929, 686 N.E.2d 1202, 1206 (1997). " 'The intended purpose of a

[motion] to reconsider is to bring to the court's attention (1) newly discovered evidence which was not available at the time of the first hearing, (2) changes in the law, or (3) errors in the court's previous application of existing law.' " *Propp*, 255 Ill. App. 3d at 1011, 627 N.E.2d at 707, quoting *Gardner v. Navistar International Transportation Corp.*, 213 Ill. App. 3d 242, 248-49, 571 N.E.2d 1107, 1111 (1991).

Clifton does not argue newly discovered evidence or changes in the law, but, rather, merely that the court erred in its previous application of the law in originally denying his requests for relief. Orders denying a motion for reconsideration are reviewed under the abuse of discretion standard. *Peregrine Financial Group, Inc. v. Futronix Trading, Ltd.*, 401 Ill. App. 3d 659, 660, 929 N.E.2d 1226, 1227 (2010), citing *Robidoux v. Oliphant*, 201 Ill. 2d 324, 347, 775 N.E.2d 987, 1000 (2002). A circuit court abuses its discretion " 'only when its ruling is arbitrary, fanciful or unreasonable or where no reasonable man would take the view adopted by the trial court.' " *In re Marriage of Lindman*, 356 Ill. App. 3d 462, 467, 824 N.E.2d 1219, 1223 (2005), quoting *People v. Santos*, 211 Ill. 2d 395, 401, 813 N.E.2d 159, 162 (2004). Absent such a showing, we will not disturb the trial court's ruling. We address the denial of each request in turn.

I. Custody

Clifton argues that the court abused its discretion in refusing to grant his request for custody of the children. Anna was granted sole custody of the children by the judgment and dissolution of marriage order of May 29, 2009. Thus, Clifton sought modification of that custody order. The Illinois Parentage Act of 1984, (750 ILCS 45/1 *et seq*. (West 2008)),

provides that modification of custody judgments is governed by the Illinois Marriage and Dissolution of Marriage Act (IMDMA) (750 ILCS 5/101 *et seq*. (West 2008)). 750 ILCS 45/16 (West 2008). Section 610 of the Act (750 ILCS 5/610 (West 2008)) governs modification of custody awards and provides, in pertinent part:

> "(a) Unless by stipulation of the parties or except as provided in subsection (a-5), 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.
>
> (a-5) A motion to modify a custody judgment may be made at any time by a party who has been informed of the existence of facts requiring notice to be given under Section 609.5 [750 ILCS 5/609.5].
>
> (b) 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 existence of facts requiring notice to be given under Section 609.5 of this Act [750 ILCS 5/609.5] shall be considered a change in circumstance. ***" 750 ILCS 5/610 (West 2008).

Sections 610(a) and (b) of the Act establish a dual-step process for modification petitions filed and heard within two years of the last custody judgment. *Department of Public Aid ex rel.*

Davis v. Brewer, 183 Ill. 2d 540, 554, 702 N.E.2d 563, 569 (1998). Because Clifton sought modification of the child custody order within two years of its entry, he was required to make a threshold showing with 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 2008); *Brewer*, 183 Ill. 2d at 555-56, 702 N.E.2d at 569. Once the threshold showing of child endangerment is made, then the case proceeds to an evidentiary hearing and the party seeking modification must show, by clear and convincing evidence, that facts arising after the judgment or that were unknown at the time of the judgment indicate a change has occurred in the circumstances of the child or the custodian, and that the modification sought is necessary to serve the best interest of the child. 750 ILCS 5/610(b) (West 2008); *Brewer*, 183 Ill. 2d at 556, 702 N.E.2d at 569-70.

The underlying purpose of section 610 of the IMDMA is to " ' "seek to discourage continuing litigation involving children" ' " and prevent " ' "ping pong" ' " litigation in custody disputes. *Brewer*, 183 Ill. 2d at 553, 702 N.E.2d at 568, citing Ill. Ann. Stat., ch. 40, par. 610(a), Historical & Practice Notes, at 94 (Smith-Hurd 1980). "By setting a high threshold for disturbing custody within two years of a permanent custody order, section 610 of the Dissolution Act promotes stability and continuity in the 'custodial and environmental relationships' of children of divorce." *In re Marriage of Marsh*, 343 Ill. App. 3d 1235, 1242-43, 799 N.E.2d 1037, 1043 (2003).

We find that Clifton failed to make the threshold showing of child endangerment necessary under section 610(a). Clifton did not even argue child endangerment before the circuit

court, and he similarly fails to make such argument before us. Clifton merely makes arguments concerning visitation interference, access to the children's medical information, and Anna misinforming DCFS. As the circuit court observed:

> "With regard to the request for temporary custody, we are within the two-year period. I don't see any allegations of serious endangerment here. If there has been visitation interference as alleged, and not really having given the respondent a chance to respond then that is a separate motion."

Clifton wholly failed to satisfy the threshold requirement of showing child endangerment by affidavits under section 610(a) of the IMDMA. Thus, we find the circuit court did not abuse its discretion in denying Clifton's motion to reconsider the court's denial of relief in the form of modifying custody.

II. Selection of Psychologist

Clifton also argues that the circuit court abused its discretion in refusing his request to select a different counselor for the children, citing to section 608 of the IMDMA, which provides the following:

> "(c) The court may order individual counseling for the child, family counseling for one or more of the parties and the child, or parental education for one or more of the parties, when it finds one or more of the following:
>
> (1) both parents or all parties agree to the order;
>
> (2) the court finds that the child's physical health is endangered or his or her emotional development is impaired including, but not limited to, a finding of

visitation abuse as defined by Section 607.1; or

(3) the court finds that one or both of the parties have violated the joint parenting agreement with regard to conduct affecting or in the presence of the child." 750 ILCS 5/608 (West 2008).

There was no agreement, and thus the question is whether the second or third ground was established. As to the second ground, section 607.1 of the IMDMA provides that "[v]isitation abuse occurs when a party has willfully and without justification: (1) denied another party visitation as set forth by the court; or (2) exercised his or her visitation rights in a manner that is harmful to the child or child's custodian." 750 ILCS 5/607.1(a) (West 2008).

Here, Clifton merely argues the following:

"*** Ms[.] Newell, at minimum, could not safeguard the best interests and welfare of the children in the face of Anna's clear attempts to concoct and carry out a scheme to deprive the minor children of their visitation with their father. However, the facts about Ms. Newell's involvement go well beyond a failure to safeguard but demonstrate a willingness to comply with Anna's schemes. At either pole of interpretation of Ms. Newell's actions the court was obligated to protect the best interests of the children and should have ordered that they be seen by another counselor/psychologist. Instead, the court evidently considered that the impeached credibility of both Anna and Ms. Newell outweighed considerations about the children's own welfare."

Clifton made no showing to the circuit court on either ground in section 608, that the children's physical health was endangered or their emotional development was impaired

including a finding of visitation abuse, or that one or both parties "violated the joint parenting agreement with regard to conduct affecting or in the presence of the child." 750 ILCS 5/608 (West 2008). Thus, there were no facts from which the court could make any such findings. We note also that section 608 is discretionary: "The court *may* order individual counseling for the child ***." 750 ILCS 5/608 (West 2008). Clifton has failed to make any showing that the court erred in its previous application of existing law and abused its discretion in denying his motion for reconsideration. Accordingly, we find the court did not abuse its discretion in denying the motion for reconsideration of its denial of this request.

III. Sanctions

Lastly, Clifton argues the circuit court abused its discretion in denying his request for sanctions against Anna and her attorneys for filing a false pleading. Illinois Supreme Court Rule 137 (Ill. S. Ct. R. 137 (eff. Feb. 1, 1994)) provides:

> "Every pleading, motion and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. *** The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. *** If a pleading, motion, or other paper is signed in violation of this rule, the court, upon

> motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney fee." Ill. S. Ct. R. 137 (eff. Feb. 1, 1994).

"Pursuant to Rule 137, the trial court may impose sanctions against a party or his counsel for filing a motion or pleading that is not well grounded in fact, not supported by existing law, or lacks a good-faith basis for modification, reversal, or extension of the law, or is interposed for any improper purpose." *Whitmer v. Munson*, 335 Ill. App. 3d 501, 513-14, 781 N.E.2d 618, 628 (2002), citing *Peterson v. Randhava*, 313 Ill. App. 3d 1, 6-7, 729 N.E.2d 75, 79 (2000). "[T]he rule is not intended to penalize litigants and their attorneys merely because they were zealous, yet unsuccessful." *Whitmer*, 335 Ill. App. 3d at 514, 781 N.E.2d at 628-29, citing *Peterson*, 313 Ill. App. 3d at 7, 729 N.E.2d at 79. Because the rule is penal in nature, it must be strictly construed. *Whitmer*, 335 Ill. App. 3d at 514, 781 N.E.2d at 629, citing *Peterson*, 313 Ill. App. 3d at 7, 729 N.E.2d at 79. The decision whether to impose sanctions under Rule 137 is committed to the sound discretion of the circuit court, and that decision will not be reversed on appeal absent an abuse of discretion. *Morris B. Chapman & Associates v. Kitzman*, 193 Ill. 2d 560, 579, 739 N.E.2d 1263, 1275 (2000), citing *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 487, 693 N.E.2d 358, 372 (1998).

Clifton argues that Anna's attorneys insufficiently investigated Anna's claims before filing her emergency motion. Clifton points to the following as deficient investigation on the

part of Anna's attorneys sufficient to impose sanctions: "Anna's lawyers did not depose Ms. Newell nor obtain a signed and sworn affidavit from her, nor contact the children's pediatrician." However, Rule 137 requires only "reasonable inquiry," and a belief thereafter that the pleading "is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose." Ill. S. Ct. R. 137 (eff. Feb. 1, 1994). We find no authority for the proposition that depositions must be taken and affidavits sworn to satisfy Rule 137.

Counsel for Anna indicated at the hearing on April 8, 2010, that the basis for filing the motion was that:

> "the children had just gotten back from Clifton's house and had just *** told their mother that Clifton had hit them with the spoon, nine times because they would not kiss the religious items. That is why Mrs. Healy called us, that is why we filed the motion. The children were upset, that is why we noticed it as an emergency, because they had another visitation scheduled ***."

Further, we note in the record an affidavit by Anna's counsel, Beata Buzik, associated with the firm of K&L Gates, LLP, attorneys for Anna, in support of withdrawal of emergency motion for suspension of visitation rights. According to the affidavit, since February 10, 2010, Anna's counsel had been in contact with DCFS about the status of the investigation into the claims by the children of abuse by Clifton. Further, Anna's counsel averred that on April 6, 2010, DCFS informed her that the investigation was closed and it was determined no DCFS services were needed. Thereafter, Anna's counsel withdrew the motion. There is no indication

in this case that Anna's counsel failed to conduct a reasonable inquiry or committed any other conduct which could give rise to a Rule 137 sanction.

Moreover, though Clifton repeatedly refers to allegedly "false" allegations in Anna's emergency motion, at no point does he deign to inform this court which allegations are false. Nowhere in his briefing before this court, does Clifton state which allegations in Anna's pleading were false. Notably, nowhere does Clifton deny that he struck his four-year-old daughter repeatedly with a wooden spoon, as set forth in Anna's motion. Instead, Clifton argues that "Anna's lawyers should have known of her previous call to DCFS *** in which she was told that it was not illegal to spank children in the state of Illinois." Thus, as Clifton does not point to any untrue statements, Rule 137 does not even apply. See *Bouhl v. Gross*, 133 Ill. App. 3d 6, 13, 478 N.E.2d 620, 626 (1985) (where defendant did not point to an untrue statement in a pleading, prior section 2-611 did not apply because this Rule requires the party seeking relief to establish both that statements in the pleadings were untrue and that they were made without reasonable cause). Therefore, the trial court did not abuse its discretion in denying Clifton's motion for reconsideration of his request for fees and costs as a Rule 137 sanction against Anna and her attorneys.

CONCLUSION

Clifton failed to satisfy his burden in showing that the circuit court abused its discretion in denying his requests for affirmative relief in the form of: (1) a modified custody order for the minor children; (2) a different choice of psychologist; and (3) fees and costs as a sanction against Anna and her attorneys. Therefore, we affirm the court's order of June 7, 2010, denying his

motion for reconsideration.

Affirmed.