2014 IL App (1st) 121573-U

SIXTH DIVISION
MARCH 21, 2014

No. 1-12-1573

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SHANEETRA GROSS,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellee,	)	Cook County.
	)	
v.	)	No. 11 OP 76562
	)	
GAYLE WARD,	)	Honorable
	)	Mauricio Araujo,
Respondent-Appellant.	)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice ROCHFORD and Justice REYES concurred in the judgment.

O R D E R

¶ 1 *Held*: Where respondent failed to present a complete and sufficient record on appeal, the trial court is presumed to have acted in conformity with the law.

¶ 2 Petitioner, Shaneetra Gross, filed a civil action under the Illinois Domestic Violence Act of 1986 (IDVA) seeking an order of protection against respondent, Gayle Ward. On appeal, respondent raises no issue concerning the issuance of that order, but contends that the trial court erred in awarding attorney fees to petitioner during that proceeding. Although petitioner has not

filed a brief in response, we may consider the merits of this appeal under the principles set forth in *First Capital Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 3 The record shows that on September 6, 2011, the court granted petitioner an emergency order of protection, ordering respondent to stay away from petitioner and the school she was attending. The order was to remain in effect until September 26, 2011, and was subsequently extended through December 9, 2011, on which date the parties were set to have a hearing.

¶ 4 On December 6, 2011, respondent's counsel filed an emergency motion to withdraw as counsel citing a potential conflict of interest. The motion was heard and granted about 10 a.m. on December 9, 2011, during which counsel informed the court that respondent had retained new counsel. The court noted that the matter was set for hearing that afternoon, and stated to respondent:

> COURT: All right. I assume we're not going to hearing today because your attorney is not here. Your new attorney here?
>
> RESPONDENT: He will be here at 2 o'clock.
>
> COURT: 2 o'clock? Are we set for hearing at 2 o'clock?
>
> PETITIONER'S COUNSEL: We are.
>
> * * *
>
> COURT: Okay. So your new attorney is coming in?
>
> RESPONDENT: He is. He will be here.
>
> COURT: Okay. Leave to withdraw granted. Tell him they have to file their appearance downstairs before they step up; okay?
>
> RESPONDENT: Okay. I will.

COURT: All right. I'll see you guys for hearing at 2 o'clock.

RESPONDENT: Okay.

¶ 5 The case was later recalled, and respondent's new counsel stepped up on his behalf. New counsel stated that he was filing a motion for a continuance as he had been recently retained and had not had an opportunity to prepare for the hearing. The court then stated:

COURT: Well, here's the thing. This morning counsel was getting out and they said, and that's why I asked Mr. Ward, you know, is your attorney going to be ready *** [a]nd he said he had an attorney and they were ready to go. Because if he said he's just withdrawing, then I would say you got 21 days for somebody to come in and file their appearance and his client wouldn't have come in, and he wouldn't have come in and then we would have been done this morning.

NEW COUNSEL: Sure.

COURT: And he wouldn't have spent the latter part of the morning and early part of this afternoon prepping his client, getting ready, and everything else.

NEW COUNSEL: I understand, Judge.

* * *

COURT: I'm not particularly happy. I got to admit because if you had told me this morning, he would have been free. He

could have done something else. Actually, I think I kicked one of his hearings because this hearing was coming up so we could have done all of this. It would have been much easier; right?

RESPONDENT: I understand, Judge.

¶ 6 The court then addressed petitioner and her counsel, as follows:

COURT: If you want to talk about some kind of – I don't know the word "penalty" sticks in my head, I can entertain that if you want to. This was just wasted time.

PETITIONER'S COUNSEL: Well, I'm asking for attorney's fees as part of the relief anyway, so that would be part of my request at that hearing.

COURT: Okay. So it will be part of the request at the hearing. Then *** I don't need to address it now.

¶ 7 The court noted in its order extending the order of protection until December 29, 2011, that it would "entertain [petitioner's] request for attorney's fees as a result of appearing in court at 2 p.m. after [respondent's] counsel withdrew and [respondent] represented that he had hired new counsel and would be prepared to proceed at 2 p.m. today."

¶ 8 That same afternoon, the case was recalled, and respondent's new counsel informed the court that he had talked to respondent, who stated that he did not mean to convey to the court that counsel would be ready for hearing today. New counsel contended that "it's more of a misunderstanding than him intentionally misleading this Court." The court then stated:

> The record will speak for itself as to what transpired this morning. In that regard, that will all be taken into account when—if and when we get to attorney fees so—you'll be making those arguments for that at the appropriate time.
>
> * * *
>
> I'm pretty sure he said that he was ready, that you would be ready. I'll grant you that maybe I was mistaken. But as I understood it, and until somebody pulls the transcript of this morning, that's how I remember it. *** It doesn't prejudice anybody anyways in this because I'll be taking up the attorney fee petition at *** some later point and we'll argue about it then.

¶ 9 After a hearing on February 21, 2012, the court issued a written order based on findings "which were made orally for transcription[.]" The court granted petitioner's order of protection, and ordered respondent to pay $1000 to petitioner's counsel "as monetary compensation for loss(es) related to" the December court date. The transcript of the hearing in which the order was issued has not been included in the record on appeal.

¶ 10 On March 26, 2012, respondent filed a "motion to vacate order for monetary compensation to petitioner for attorney's fees" alleging that he never stated that his attorney would be ready for the hearing. On April 26, 2012, the court denied respondent's motion.

¶ 11 In this court, respondent seeks reversal of the grant of attorney fees to petitioner. He contends that the court has authority to sanction a party under its contempt power, or statute and supreme court rules, but asks this court to find these bases inapplicable because the record does

not indicate that the court relied on these bases in its order. Instead, he argues that the court was acting under its "inherent power to control its docket" in imposing the sanction, but that doing so was improper because there was no "bad-faith" conduct that warranted it. *Sander v. Dow Chemical Co.*, 166 Ill. 2d 48, 66-67 (1995).

¶ 12 A trial court has inherent authority to take such steps as are "necessary" to "prevent undue delays in the disposition of cases caused by abuses of procedural rules, and also to empower courts to control their dockets." *Sander*, 166 Ill. 2d at 66. Reversal of a trial court's decision to impose a particular sanction is only justified when the record establishes a clear abuse of discretion. *Sander*, 166 Ill. 2d at 67.

¶ 13 Before considering the merits of defendant's contention, however, we must address the status of the record on appeal. Supreme Court Rule 323(a) (eff. Dec. 13, 2005) provides that the appellant has the responsibility to ensure that the record on appeal contains a report of proceedings, a bystander's report, or an agreed statement of facts including all the evidence pertinent to the issues on appeal. Rule 323 is not a mere suggestion, but has the force and effect of law and is binding on litigants as well as the court. *In re Marriage of Thomsen*, 371 Ill. App. 3d 236, 241 (2007). The appellant bears the burden of presenting a sufficiently complete record because it is not possible to review an issue relating to a trial court's findings of fact and the basis for its legal conclusion absent a report or record of the proceedings. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005). Without a complete record, we must presume that the relevant order of the circuit court had a sufficient factual basis and conformed with the law. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). "Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch*, 99 Ill. 2d at 392.

¶ 14 In this case, respondent appeals from the imposition of attorney fees in an order, which indicated that the basis for the decision was set forth orally for transcription. Respondent, however, has not included the transcript or an acceptable substitute from the hearing in which the court awarded the fees of which he now complains. The transcript of the prior hearing and the order entered by the court suggest that the basis for the fees related to the court proceeding on December 9, 2011. However, the record contains no written motion for fees, response from respondent, or a transcript or bystander's report of the hearing in which the fees were awarded. Thus, we do not have access to the information presented to the court in this matter, or the basis for the findings made. As a result, we are unable to review the question of whether the trial court abused its discretion in awarding petitioner attorney fees.

¶ 15 The burden is on respondent as appellant to provide a complete record on appeal. *Foutch*, 99 Ill. 2d at 391-92. In its absence, there is no basis for holding that the trial court abused its discretion, and we must presume that the trial court's decision was in conformity with the law. *Foutch*, 99 Ill. 2d at 391-92.

¶ 16 For the foregoing reasons, we affirm the decision of the circuit court of Cook County.

¶ 17 Affirmed.