2013 IL App (1st) 123009-U

THIRD DIVISION
June 28, 2013

No. 1-12-3009.

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MARK R.,	)	Appeal from the
	)	Circuit Court of
	)	Cook County.
Petitioner-Appellee,	)	
	)	No. 07 D 279004
v.	)	
	)	
DAIVA S.,	)	Honorable
	)	Martha Mills,
Respondent-Appellant.	)	Judge Presiding.

JUSTICE HYMAN delivered the judgment of the court.
Presiding Justice Neville and Justice Sterba concurred in the judgment.

O R D E R

¶ 1 *Held*: Respondent did not have a constitutional right to a jury trial in a child custody proceeding, and the trial court's decision to grant custody of minor child to petitioner was not against the manifest weight of the evidence.

¶ 2 Respondent, Daiva S. and petitioner, Mark R., are the parents of a minor daughter, Itala R., who was born in June 2005. The parties never married, and their relationship ended in December 2006. In October 2007, Mark was granted temporary custody of Itala. Following a three-day custody hearing in July 2012, the trial court issued a final custody

judgment finding that it would be in Itala's best interest that Mark be awarded sole custody. Daiva now appeals, arguing (1) she was entitled to a jury trial under the Illinois and United States Constitutions, and (2) the trial court's finding that it was in Itala's best interest to award Mark sole custody was based on factors that are irrelevant under controlling law.[1] For the reasons set forth below, we affirm.

¶ 3 Background

¶ 4 Mark and Daiva met in November 2003. In May 2005, Daiva moved into Mark's home. Itala was born in June 2005. In late 2006, Daiva filed an order of protection against Mark, alleging assault and battery. An *ex parte* order was granted, and Mark was ordered to leave the home, while Daiva and Itala continued living there. In December 2006, Mark obtained a court order allowing him to enter the home, with a police escort, to retrieve personal belongings. According to Mark, the house was a "shambles" and a "disaster area." Mark received permission from the court to re-enter the home on January 19, 2007, again with a police officer, to take pictures. Daiva was not home at that time, and Itala was in the house with a babysitter. Pictures of the house are not in the record on appeal, but the trial court said they depict a "disaster area," with cat litter and feces, food and other matter spread all over. There was also an old Christmas tree within inches of an open electric outlet that the police made Mark remove because it was a fire hazard. After Mark reported back to the court, Daiva was ordered out of the home and Mark was allowed to return to the home. The trial court also dismissed the prior order of protection

[1] We note that Daiva has not filed a reply brief with this court.

against Mark.

¶ 5 On January 30, 2007, Mark filed a summons seeking an order of parentage as well as an emergency order of protection. The trial court enjoined Daiva from removing Itala from the state and ordered Mark to undergo DNA testing. The DNA test included Mark as Itala's father and a paternity order was entered on June 26, 2007. The court granted Mark visitation with Itala, who was still living with Daiva, and ordered him to pay child support. In August 2007, Mark received a phone call from a man who was living with Daiva. The man told Mark that Daiva had been arrested for shoplifting, and he was "stuck" with the baby. Mark picked up Itala and took her home. On October 4, 2007, the trial court granted Mark temporary custody of Itala and denied Daiva visitation. The record indicates Daiva was in the custody of the United States Immigration and Customs Enforcement (ICE) for possible deportation. Later, when she was released on bond from ICE's custody, the court permitted Daiva to have supervised visitation with Itala.

¶ 6 On February 5, 2008, the trial court appointed attorney Amy Gertler as Itala's representative and she entered an appearance as guardian *ad litem*. On that same date, the court referred Daiva for a psychiatric evaluation. Dr. Vesna Pirec, who completed the evaluation, concluded, based on interviews of Daiva alone, that she does not demonstrate any symptoms of mental illness. On May 14, 2008, after the GAL's meeting with the parties, the trial court permitted Daiva to have supervised visits with Itala twice a week for four hours at a time. The court ordered Mark to hire a third party to supervise the visits and to pay for two hours of supervision per week. Daiva was required to pay for

the other six hours per week. On December 8, 2008, Daiva filed a motion for substitution of visitation supervisors, asserting that her relationship with Professional Supervising Associates had broken down. The court entered an agreed order naming Apna Ghar, a Chicago social services agency, as visitation supervisor.

¶ 7 On December 31, 2008, Daiva filed a motion for temporary unsupervised visitation. On February 20, 2009, the court entered an agreed order allowing Daiva some unsupervised visitation with Itala at a specific location. Daiva's other visits with Itala were to occur under the supervision of Mara Greenberg. On March 17, 2009, following an incident during a supervised visit, Mark filed an emergency motion to suspend visitation. Greenberg testified that she was supervising a visit between Itala and Daiva, who was advised that she was not to take Itala outside of Greenberg's presence. But, sometime in the afternoon, Daiva took Itala for a walk and left without her cell phone. Mark was to pick up Itala at 5 p.m., but she and Daiva had not returned. At about 6 p.m., Daiva called Greenberg from Northwestern Hospital. The police were called, and they eventually located Itala and Daiva sometime after midnight. Itala was returned to Mark and Daiva was held in custody over night pending an investigation into possible kidnaping charges. Greenberg said Daiva told her she went to various hospitals trying to establish that Mark had abused Itala, so DCFS would intervene in the case. The next day, Greenberg reported the incident to the child representative and ceased being a visitation monitor. The court vacated previous visitation orders and permitted Daiva visitation only under the supervision of Apna Ghar.

¶ 8 On May 7, 2009, the trial court entered an order allowing supervised visits with another agency at Daiva's expense, so long as the visits occurred at the agency. The court entered an expanded visitation order on June 11, 2009. On August 14, 2009, Amy Gertler filed a motion to withdraw as Itala's guardian *ad litem*. The motion stated that the trial court had ordered Gertler to hold Daiva's passport, and that on July 22, 2009, following a hearing in court, Daiva and a male friend appeared at Gertler's office and demanded Daiva's passport. The motion stated this was not the first time Daiva had appeared at Gertler's office demanding her passport. The motion also stated that earlier that day, outside of the courtroom, Daiva became verbally and physically aggressive with Gertler after learning that Gertler did not endorse a proposed order presented to the court. Gertler alleged she was unable to perform her duties as Itala's GAL under the circumstances. On September 10, 2009, a new child representative from Loyola University's Child Law Clinic was appointed.

¶ 9 In December 2010, Mark obtained an order of protection against Daiva after she failed to return Itala after a visit. According to Mark's motion, on December 5, 2010, Daiva arrived at Mark's home to pick up Itala. She was supposed to be accompanied by a friend who would serve as a visitation supervisor but instead was with a man who identified himself as attorney Robert Holstein. After Daiva put Itala in the car, Mark asked them to wait so he could write down identifying information. Holstein drove off, but Mark was able to get the license plate number. Daiva was to return Itala by 6 p.m., but she did not. Mark called the police. Following advice from the police, Mark went to

Daiva's house, but neither Daiva nor Itala were there. After three days, Mark and his attorney went to the police station. At about 2 a.m. on the fourth day, the police located Daiva at a residence in Chicago and returned Itala to Mark. The record states that Itala was crying, scared, and hungry, and that her hair had been cut off crudely. The motion also alleged Daiva had tried to obtain her passport from the person ordered by the court to hold it, which showed her intent to take the child to Lithuania, Daiva's home country. On February 23, 2011, Daiva filed a *pro se* motion to dismiss the order of protection and to return Itala to her primary custody. The court denied the request and continued the order of protection until April 27, 2011. The court also ordered Daiva not to file motions without prior leave of court.

¶ 10 On April 27, 2011, the trial court terminated the interim order of protection and permitted Daiva twice weekly visits of one to two hours with Itala at Apna Ghar. The court also appointed the Cook County Public Guardian as Itala's representative. On May 10, 2011, Daiva filed a *pro se* motion, alleging the site of the supervised visits was not "well maintained." She then filed an emergency *pro se* motion again asserting the visitation location was not well maintained and asking for either unsupervised visits or for Mark to be required to pay for the visitation supervisor. The trial court denied the motions and reminded Daiva that she was not to file motions without leave of court.

¶ 11 On July 6, 2011, Daiva's attorney withdrew from the case, and immediately after, Daiva filed a *pro se* motion for change of custody. The trial court denied Daiva's motions but entered an order allowing supervised visitation. Daiva's new attorney filed an

appearance on July 29, 2011, and the parties proceeded with discovery. In mid-September 2011, Daiva, accompanied by an unidentified man, went to Itala's school and complained that Itala's hands were burnt and she was not fed. She inquired about the supervision of children when they are outside and accused the school or Mark of abusing the child. On September 22, 2011, the trial court ordered Daiva not to appear at Itala's school without a previous appointment with school personnel.

¶ 12 Daiva's attorney filed a motion to withdraw on October 18, 2011, which was granted on November 15, 2011. On October 31, 2011, Daiva filed a *pro se* petition asking for unsupervised visitation or in the alternative, requiring Mark to pay to cost of the visitation monitor. On November 7, 2011, the trial court entered an order stating that Daiva did not have leave to file a motion for visitation. The court continued the case until February 22, 2012 for a pretrial hearing, and ordered Daiva to immediately file her financial disclosure statement and tax returns. Daiva did not appear on February 22, 2012, and the trial court ordered the scheduled March 22, 26, and 27, 2012 trial dates be stricken. Daiva filed her *pro se* appearance on May 21, 2012, but did not appear at the next scheduled court date on June 13, 2012 or provide the court with a valid address for service of process and notice.

¶ 13 The custody hearing was held on July 23, 24, and 25, 2012. Mark was represented by an attorney, Itala was represented by a child representative from the Cook

County Public Guardian's Office, and Daiva appeared *pro se*.[2] Daiva did not file a record of the proceedings or a bystander's report with this court, so the following is taken from the trial court's judgment order. Mark testified that he and Itala live in a three-bedroom home in Des Plaines that Mark owns. Mark graduated from medical school in Poland, but is not licensed to practice medicine in this country and is employed as a researcher at the Kraff Eye Institute. Mark said Itala is healthy and sees her pediatrician and dentist regularly. She had just completed first grade and was performing satisfactorily at school. Itala also participates in several extracurricular activities, including dance lessons and soccer, and Mark takes her swimming, biking, skiing, and bowling. Mark said he helps Itala with her homework, attends teacher conferences, and provides for her needs, including housing, food, clothing, toys, and books. Itala attends Polish school and some family members, including her paternal grandmother live nearby.

¶ 14 Mark testified that he questioned Daiva's stability and said she exhibits erratic behavior and megalomania, claiming that she knows the Pope, movie stars, and celebrities. Mark further testified that he loves Itala, wants to provide her a stable home, and wants sole custody. He wants Itala to spend time with Daiva, and the court found that he has been cooperative in facilitating supervised visitation.

¶ 15 Mark's office manager at Kraff Eye Institute testified she often sees Mark and Itala together at his work on Saturdays, that Itala seems happy and well-cared for, and that

[2] Since June 2007, Daiva was represented by several attorneys, all of whom withdrew. Shortly before the custody hearing, Daiva requested a continuance to hire another attorney. The trial court denied the request.

Mark seems like a loving and caring father. The mother of one of Itala's friends testified that Mark is a caring, loving, and attentive father, who does not say negative things about Daiva, and that Itala is a happy, well-adjusted, and smart child.

¶ 16 Daiva testified that in addition to Itala, she has another daughter, who was born in January 2010. That child is in the custody of the father. Daiva has supervised visitation and said she last saw the child a year earlier. Daiva said she owns her own company, Sanda Living Assistance Services, which connects caregivers to those needing services. She works primarily from her home. She also owns two import-export companies in Lithuania and claimed income from 2008 to 2011 ranging from $70,000 to $200,000 per year.

¶ 17 Daiva introduced a picture of Itala from December 25, 2008, showing a bruise on her left shoulder. The trial judge noted there was no testimony about how Itala got the bruise and said she was not inclined to find that Itala has been abused. Daiva further testified that Mark kept Itala locked in her bedroom and fed her food in bed. She claimed that in 2006, she woke up and found Mark standing over her at 4 a.m. with a pillow in his hands, and she believed he was going to suffocate her. She said in 2006, Mark threatened to shoot her in the arm so she could not work and Mark threatened her with deportation proceedings if she did not drop charges against him. She also alleged Mark sent her "vile" e-mails, sometimes in Itala's name.

¶ 18 Daiva testified she was living at 900 North DeWitt Place in Chicago and paying $1800 a month in rent, but the owner of the property testified Daiva had been evicted on

February 19, 2012, a month after she moved in. Daiva also claimed to be living at a Sheraton Hotel in Chicago but did not know the address. Sometime between 2007 and September 2011, Daiva lived in a condominium at 5321 North Lincoln Avenue in Chicago. Daiva claimed to be a part-owner of the unit, but records revealed she was not. The bank foreclosed on the unit, and Daiva moved in with an acquaintance, Philip Huff. Daiva told Huff she needed a place to stay and would pay $500 per month. Huff said she only paid a total of $250 and moved out after 2½ months. He also testified Daiva claimed to know famous people, including the Pope and Tom Cruise. Huff got an order of protection against Daiva after she hit him in the face when he tripped over her computer cord. He filed a complaint against Daiva for violation of that order, and she was arrested and spent several days in the hospital wing at the Cook County Jail.

¶ 19 Daiva testified she has no intention of taking Itala to Lithuania and denied Mark's allegations that she is mentally unstable. In turn, she accused Mark of being unstable. She claimed Mark did not take proper care of Itala's hygiene and health care and made poor school choices for Itala.

¶ 20 Evidence was introduced regarding criminal charges pending against Daiva following an arrest for retail theft on April 17, 2012, and a charge for trespass to property, resisting a peace officer, and obstructing identification. Daiva denied the charges, but the court noted she had two August 2012 court dates regarding those charges. The court also reviewed the visitation reports dating back to 2008 and found statements that Daiva was rude and abusive to visitation supervisors, some of whom were her friends, that she

consistently tried to avoid the visitation rules, had numerous arguments in front of Itala, and frequently said negative things about Mark. There were also reports that she failed to pay the supervisors or paid with a bad check. Also, Daiva had to be warned numerous times that court orders precluded her from driving without a license, insurance, or a car seat. The court acknowledged some reports showed Daiva and Itala did interesting things and seemed to have a good time together.

¶ 21 After hearing testimony from both parents and several non-interested witnesses, and admitting several exhibits, the trial court entered a final custody judgment. The court found Mark's testimony to be credible in most respects but stated "he has not been the total good guy in the relationship." The court found the testimony of Daiva largely not credible, noting it was disorganized as to time and events, repetitive, and untrue as to important matters. The court was troubled by comments from several people that while Itala seems to love Mark and Daiva, she is, at times, detached and withdrawn from both parents. The court opined that Itala "is in the middle of something she cannot understand" and "is pulled in both directions."

¶ 22 The trial court then reviewed the factors set forth in section 5/602(a) of IMDMA (750 ILCS 5/602(a) (West 2008)), including the wishes of the parents, the arguments of the child's representative, the interrelationships of the parents, the child's adjustment to her home, school, and community, the mental and physical health of all the individuals, any physical violence or threat of violence by the parties, instances of abuse by either of the parties, and the willingness of each parent to facilitate and encourage a close and

continuing relationship between the child and the other parent. The court stated that both parents want custody. The court did not interview Itala, but noted that the child representative thought the child should be in Mark's sole custody. The court found that Itala was well-adjusted to her family, school, community, and friends for the five years she has lived with Mark. The court stated there had been physical violence or the threat of violence, largely by Daiva. Mark has shown he will facilitate a relationship between Itala and Daiva, while Daiva has not proved she will do the same for Mark, given her repeated violations of court orders regarding visitation. The court found Mark to be a fit parent and Itala to be unfit. The court also found Itala would benefit from the continuity and stability of her current home, school, and care. Based on all of these factors, the court held it was in Itala's best interest to be in the sole custody of her father. The court allowed Daiva to continue supervised visitation. On August 21, 2012, Daiva filed a notice of appeal.

¶ 23 Analysis

¶ 24 A. Daiva's Brief

¶ 25 At the outset, we must address issues regarding the brief Daiva filed with this court and her failure to comply with Supreme Court Rules. Supreme Court Rules 341(h)(6) and (7) require an appellant's brief to include appropriate references to the pages of the record relied on. Ill. Sup. Ct. R. 341(h)(6) & (7) (eff. Feb. 6, 2013). See, *e.g., People v. Karim,* 367 Ill. App. 3d 67, 94 (2006) (it is neither the function nor the obligation of this court to act as an advocate or search the record for error). Daiva's brief

makes no reference to the record. Daiva also failed to adequately comply with Rule 342(a), which requires an appellant to include in his or her brief an appendix with, among other things, a copy of the judgment appealed from, any findings of fact or memorandum opinions issued by the circuit court, any relevant pleadings, and a complete table of contents of the record on appeal. Ill. Sup. Ct. R. 342(a) (eff. Jan. 1, 2005). Here, Daiva's brief fails to include any table of contents of the record on appeal.

¶ 26 In addition, and more significantly, Daiva has failed to provide the court with the exhibits admitted in the trial court or a report of proceedings in the custody hearing, which are required by Rule 321. Ill. S. Ct. R. 321 (eff. Feb. 1, 1994). Nor has she filed an acceptable substitute, such as a bystander's report or an agreed statement of facts, as provided for in Rule 323. Ill. S. Ct. R. 323(a) (eff. Dec. 13, 2005). The appellant has the burden of providing a sufficient record of the trial proceedings to support his or her claims of error. *Foutch v. O"Bryant*, 99 Ill. 2d 389, 391 (1984). In the absence of a record, we must presume the trial court acted in conformity with the law and had a sufficient factual basis for its findings. *Id.* Furthermore, any doubts arising from an incomplete record will be resolved against the appellant. *Id*.

¶ 27 Supreme court rules are not mere suggestions; they are rules that must be followed. *In re Estate of Michalak*, 404 Ill. App. 3d 75, 99 (2010). "Where an appellant's brief fails to comply with supreme court rules, this court has the inherent authority to dismiss the appeal." *Epstein v. Galuska*, 362 Ill. App. 3d 36, 42 (2005). We recognize, however, that striking a brief for failure to comply with supreme court rules is

a harsh sanction. *In re Detention of Powell*, 217 Ill. 2d 123, 132 (2005). Accordingly, and with these limitations in mind, we will consider the merits of this appeal.

¶ 28 A. Right to a Jury Trial in a Custody Hearing

¶ 29 Daiva first contends she was denied her constitutional right to a jury trial in violation of Article I, Section 2 of the Illinois Constitution and the Fourteenth Amendment to the United States Constitution. A party's right to a jury trial is reviewed *de novo*. Preliminarily, we note the record contains no evidence Daiva made a jury demand at any time during the custody proceedings. So, even assuming she had a right to a jury trial, she likely waived that right. See 735 ILCS 5/2-1105 (West 2008) ("A defendant desirous of a trial by jury must file a demand therefor not later than the filing of his or her answer. Otherwise, the party waives a jury."). Waiver aside, Daiva did not have a constitutional right to a jury trial.

¶ 30 Article I, section 13 of the Illinois Constitution provides, "[t]he right of trial by jury as heretofore enjoyed shall remain inviolate." Ill. Const. 1970, art I, § 13. As our supreme court has held, this provision guarantees the right to a jury trial as it existed at common law at the time of the adoption of the constitution. *People ex rel. Daley v. Joyce*, 126 Ill.2d 209, 215 (1988). Conversely, the constitutional right to a jury trial does not apply to statutory proceedings that were unknown at the common law at the time of the adoption of the 1970 constitution. *People ex rel. O'Malley v. 6323 North LaCrosse Avenue*, 158 Ill. 2d 453, 457 (1994).

¶ 31 Parties in domestic relations proceedings do not have a common law right to a

jury trial. *In re Marriage of Sidwell*, 28 Ill. App. 3d 580, 584-85 (1975). In *Sidwell*, the husband, the defendant in a divorce proceeding, filed a jury demand on the issues of alimony, attorneys' fees, and special equities. *Id.* at 584. The appellate court stated that the defendant did not have a common law right to a jury trial and that since divorce proceedings were traditionally chancery actions, the right to a jury trial could only be conferred by statute. *Id*. at 585. The court noted that the Divorce Act (Ill. Rev. State. 1971, ch 40, § 8) refers only to a jury trial on the divorce complaint, not on other questions arising from the dissolution of a marriage. *Id*. Therefore, the husband's request for a jury trial was properly denied.

¶ 32 Unlike the Divorce Act, which provided for jury trials in some instances, the IMDMA expressly excludes a jury trial on all cases arising under the statute. Section 5/103 specifically states that there "shall be no trial by jury under this Act." 750 ILCS 6/103 (West 2008). Section 6/606 also states in a custody hearing, the "court, without a jury, shall determine questions of law and fact." 750 ILCS 5/606 (West 2008). Since a custody determination is made under the provisions of the IMDMA even where, as here, the parents are not married (*In re S.L.*, 327 Ill. App. 3d 1035, 1038 (2002)), Daiva did not have a right to a jury trial under the Act

¶ 33 Further, Illinois courts have recognized that the seventh amendment to the United States Constitution relates only to the courts of the United States and that the states, as far as concerns the seventh amendment, are left to regulate trials in their own ways. *People v. Kelly*, 347 Ill. 221, 229 (1931). This recognition stems from the United States Supreme

Court determination that the first 10 amendments, including the seventh amendment, do not concern state action, but deal only with federal action. *Minneapolis & St. Louis R.R. Co. V. Bombolis*, 241 U.S. 211, 217 (1916). ("[T]he seventh amendment applies only to proceedings in courts of the United States and does not in any manner whatever govern or regulated trials by jury in state courts or the standards which must be applied concerning the same"); see also *Osborn v. Haley*, 549 U.S. 225, 252, n. 17 (2007). In addition, the right to a jury trial articulated in the United States Constitution does not extend to states through the fourteenth amendment. *Bublitz v. Wilkins Buick Mazda, Suzuki, Inc*., 377 Ill. App. 3d 781 (2007).

¶ 34 Therefore, because Daiva had no common law or statutory right to a jury trial, she was not deprived of due process where the custody decision was made by a trial judge.

¶ 35 C. Trial Court's Custody Determination

¶ 36 Next, we consider Daiva's contention that the trial court's decision to grant sole custody to Mark was not based on controlling law. Daiva asserts that in making the custody determination, the trial court should only have considered the factors set forth in section 5/602 of the IMDMA (750 ILCS 5/602(a) (West 2008)), and instead considered factors that fell outside the scope of that Act, including the fact that Mark lives in a home in the suburbs, has been employed with Kraff Eye Institute for 16 years, and graduated from medical school in Poland. Daiva also argues the trial court improperly considered testimony that she is unstable, despite a psychiatric evaluation finding she does not demonstrate any symptoms of mental illness.

¶ 37 In making a custody determination, the trial court's primary consideration is the best interest and welfare of the child involved. *Prince v. Herrera*, 261 Ill. App. 3d 606, 611 (1994). Regardless of whether parents have ever been married, in making a custody determination, a trial court must consider the statutory best interest factors in section 5/602(a) of the IMDMA (750 ILCS 5/602(a) (West 2008)). See *In re S.L.*, 327 Ill. App. 3d 1035, 1038 (2002). Section 5/602 (a) provides that the court is to consider "all relevant factors" including the following in determining a child's best interest:

"(1) the wishes of the child's parent or parents as to his custody;

(2) the wishes of the child as to his custodian;

(3) the interaction and interrelationship of the child with his parent or parents, his siblings and any other person who may significantly affect the child's best interest;

(4) the child's adjustment to his home, school and community;

(5) the mental and physical health of all individuals involved;

(6) the physical violence or threat of physical violence by the child's potential custodian, whether directed against the child or directed against another person;

(7) the occurrence of ongoing or repeated abuse as defined in Section 103 of the Illinois Domestic Violence Act of 1986, whether directed against the child or directed against another person;

(8) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child; and

(9) whether one of the parents is a sex offender.

(10) the terms of a parent's military family-care plan that a parent must complete before deployment if a parent is a member of the United States Armed Forces who is being deployed" 750 ILCS 5/602(a) (West 2010).

¶ 38 The trial court's custodial decision rests on temperaments, personalities and capabilities of the parties, and the trial judge is in the best position to evaluate these factors. *In re Marriage of Petraitas*, 263 Ill. App. 3d 1022, 1031 (1993). The trial court has broad discretion in determining custody and we will not disturb that determination unless it is against the manifest weight of the evidence and it appears a manifest injustice has occurred. *In re Parentage of J.W.*, 2013 IL 114817, ¶ 55. A judgment is against the manifest weight of the evidence only when the opposite conclusion is clearly apparent. *In re A.P.*, 2012 IL 113875 ¶ 17.

¶ 39 Our review of the available record shows this was a contentious custody dispute, with conflicting testimony, and allegations of parental unfitness on each side. But, there is sufficient evidence to support the trial court's decision. The trial court held a three day custodial hearing and heard testimony from both parents, Mark's supervisor, a visitation monitor, and friends and acquaintances of both parents. The parties also submitted several exhibits, including a doctor's custody evaluation, photographs of Mark's home and of Itala, Daiva's arrest and conviction records, reports on Daiva's supervised visits, and Daiva's income tax records. None of these exhibits are included in the record on appeal. Nor does the record contain a transcript, a certified bystander's report, or an agreed statement of facts from that hearing. As appellant, Daiva had the burden of providing a

sufficient record of the trial proceedings to support her claims of error. *Foutch*, 99 Ill. 2d at 392. She failed to present a transcript or a bystander's report showing what other evidence was presented at the hearing to support her argument. Therefore, we will presume the circuit court's decision to grant custody to Mark had a sufficient factual basis.

¶ 40 In its final custody judgment, the court stated it heard testimony about several incidents in which Daiva failed to abide by the visitation rules set forth by the court, by taking Itala for several days and failing to return her to Mark at the scheduled time. In at least two instances, Mark had to contact the police to find Itala. Daiva also refused to adhere to restrictions imposed by the court regarding driving without a license, insurance, or a car seat. There was evidence that Daiva was rude and abusive toward the visitation supervisors in front of Itala and said negative things about Mark. It was also unclear whether Daiva could provide a stable home for Itala. Daiva testified she was living in an apartment in Chicago, but the owner of the property said Daiva had been evicted several months earlier. Daiva also claimed to be living in a hotel but could not recall the name. It also appears Daiva falsely claimed to be part owner of a condominium where she resided for several years before the mortgage was foreclosed. Mark, on the other hand, has been living with Itala in a home in Des Plaines for several years, that is close to her school, her extracurricular activities and her paternal grandmother.

¶ 41 The court acknowledged Mark was not the "total good guy in the relationship" but in reviewing the factors set forth in section 5/602(a) of the IMDMA, found Mark is a fit

parent, who will facilitate a relationship between Itala and Daiva and that Itala will benefit from the continuity and stability of her current home, school, and care. Conversely, the court concluded that Daiva's testimony was not credible, she was responsible for most of the physical violence or threats of violence between the parties, she failed to demonstrate she would facilitate a relationship between Itala and her father, and was not a fit parent at that time. Based on all of this evidence, as well as the recommendation of the child representative, the trial court determined it was in Itala's best interest that Mark be awarded sole custody of Itala. Based on the evidence, this finding was not against the manifest weight of the evidence.

¶ 42 Daiva contends the court improperly considered factors that are not listed in section 602(a) of the statute, namely, Mark's ownership of a home in the suburbs, his 16-year employment with Kraff Eye Institute as a medical researcher, and his medical degree in Poland, as well as her mental fitness, despite a lack of evidence that she has mental or emotional health issues. We disagree. First, section 5/602(a) permits the trial court to consider "all relevant factors" including those expressly listed, which may help determine what is in the child's best interest. Although mere financial disparity between the parties is insufficient to justify an award of custody, the trial court may consider the relative economic positions of the parties as a factor in determining the best interests of the child. *In re Marriage of Fahy*, 208 Ill. App. 3d 677, 95 (1991). Therefore, the trial court did not err in considering that Mark had lived in the same home and maintained the same job for several years, particularly in light of evidence that Daiva had moved several times in the

course of these proceedings and failed to provide the court a precise location as to where she was living. These factors also go to the stability of the home environment, which is a relevant factor in making a custody determination.

¶ 43 Daiva also objects to the trial court's consideration of Mark's testimony that she was unstable where a psychiatric evaluation showed she did not suffer from any mental illness. A parent's conduct is relevant to the stability of the home environment, which is a major consideration in a custody determination. *In re Marriage of Stone*, 164 Ill. App. 3d 1046, 1053 (1987). Several witnesses, in addition to Mark, testified about Daiva's erratic behavior, her claims that she knew famous people, and her rude and sometimes abusive conduct toward custody supervisors and acquaintances. Indeed, the trial judge herself said she witnessed Daiva's erratic behavior in court. These are proper considerations in making a custody determination and support the trial court's custody determination.

¶ 44 III. Conclusion

¶ 45 For the reasons set forth above, we affirm the circuit court.

¶ 46 Affirmed.