No. 2—10—0456
Order filed May 26, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

ILLINOIS DEPARTMENT OF HEALTH-CARE AND FAMILY SERVICES *ex rel.* TRICIA HAMIL-MARTINEZ,	)	Appeal from the Circuit Court of Lake County.
Petitioner-Appellee,	)	
v.	)	No. 09—F—712
DANIEL L. SCHLABACH,	)	Honorable Veronica M. O'Malley,
Respondent-Appellant.	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

Held: As respondent conceded, his section 2—1401 petition was untimely; thus, the trial court properly dismissed it and granted petitioner's petition to enforce respondent's liability for child support.

Pro se respondent, Daniel L. Schlabach, appeals judgments (1) denying his petition for relief under section 2—1401 of the Code of Civil Procedure (735 ILCS 5/2—1401 (West 2008)); and (2) awarding relator, Tricia Hamil-Martinez (Tricia), child support from respondent. We affirm.

On July 29, 2009, petitioner, the Illinois Department of Healthcare and Family Services (Department), filed a "Petition to Set Child Support," alleging that Tricia is the mother and custodian

of Ashly Hamil (Ashly), who was born on June 20, 1995, and that, on June 21, 2001, Tricia and respondent signed a "Voluntary Acknowledgment of Paternity" (VAP), stating that respondent is Ashly's biological father. The petition sought to enforce respondent's liability for support (see 305 ILCS 5/10—10 (West 2008)) and establish respondent's current obligation. It attached a copy of the VAP, which was signed by Tricia, respondent, and a witness, Gary Martinez.

On August 26, 2009, respondent appeared *pro se*. On September 24, 2009, attorney Michael Freeman appeared for him. At some point, respondent, through Freeman, filed a "petition for DNA testing." The petition is not in the record on appeal. On November 19, 2009, the Department moved to strike the petition. The Department noted that, after signing the VAP, respondent had had 60 days to contest it (see 750 ILCS 45/5(b)(1) (West 2000)) and that, after the VAP was reduced to a judgment, he had had 2 years to file a section 2—1401 petition to vacate the judgment (see 735 ILCS 5/2—1401(c) (West 2000)). The Department argued that respondent had missed both deadlines.

On December 15, 2009, respondent, by Freeman, filed an "Affidavit in Support of 2/1402 [*sic*] Motion to Vacate Finding of Paternity and for DNA Test." The affidavit alleged as follows. From before 1994 through 2001, respondent had been an alcoholic and a drug addict. When Ashly was born, Tricia told him that he was the father, and he believed her at the time. Tricia initiated proceedings to obtain paternity testing but dismissed them in 1996. In June 2001, respondent visited Tricia and Gary at Tricia's home. After the three of them smoked marijuana, Tricia handed respondent a blank form and told him that he needed to sign it for Ashly's "school purposes." Respondent signed the form but did not date it, and he could not recollect Tricia or Gary signing the form. Shortly afterward, respondent was arrested. He was in prison until September 30, 2005. After

leaving prison, he visited Ashly several times; she said that she loved him even though he was not her "real daddy." Respondent heard no more about the VAP until the Department filed its petition.

The Department answered the petition, again arguing that respondent had waited too long to attack the paternity finding. On February 4, 2010, the trial court dismissed the petition as untimely (see 735 ILCS 5/2—1401(c) (West 2008)) and continued the proceedings on the Department's petition. On March 4, 2010, respondent, now proceeding *pro se*, moved to reconsider the dismissal of his petition, asserting that, after he signed the VAP, the document had been altered without his consent. On March 11, 2010, respondent appeared by Freeman. On April 8, 2010, Freeman withdrew. Also on April 8, 2010, the court entered a support order. On April 22, 2010, the court entered an "agreed amended order" requiring respondent to pay $75 in prospective weekly child support and $2,625 in arrearages. On May 7, 2010, respondent filed a notice of appeal.

As the Department notes, respondent's brief is seriously deficient. Although respondent is proceeding *pro se*, he must still follow the supreme court rules for appeals. *Epstein v. Galuska*, 362 Ill. App. 3d 36, 42 (2005). Among these are that an appellant's brief must include a statement of facts that contains the facts necessary to an understanding of the case, stated accurately and fairly without comment, and containing appropriate references to the record. Ill. S. Ct. R. 341(h)(6) (eff. July 1, 2008)). Respondent's brief's statement of facts does not cite the record and omits most of the facts needed for an understanding of the case. Also, an appellant's brief must contain a section entitled "Argument, which shall contain the contentions of the appellant and the reasons therefor, with citations of the authorities and the pages of the record relied on." Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). The brief's one-page argument section cites neither the record nor any legal authority.

The brief's failure to adhere to the supreme court rules is, in part, the cause of an even more serious problem—the failure to present clear and coherent grounds for relief. A court of review should not have to strain to clarify or develop an appellant's arguments and thereby risk becoming his advocate. *Vernon Hills III Ltd. Partnership v. St. Paul Fire & Marine Insurance Co.*, 287 Ill. App. 3d 303, 311 (1997). As the Department notes, it is difficult to discern what respondent is contending.

Respondent appears to argue not that the trial court erred in deciding either the facts or the law, but only that his attorney failed to make the court aware of "a none existing [*sic*] Parent[-]Child Relationship" that, respondent contends, was based on an allegedly invalid VAP. If this is respondent's argument, then, whatever claim he might have against his attorney for malpractice (and we intimate no opinion on the merits of such a possible action), he has no ground for reversal here. In his reply brief, respondent concedes that his section 2—1401 petition was untimely. However, respondent again asserts that there was no evidence presented of "any Parent-Child relationship" or of "a relationship of any kind with this child."

We gather, as does the Department, that the gist of respondent's appeal is that, because he has no "[p]arent-[c]hild relationship" with Ashly, and because the VAP was somehow deficient, he is entitled to relief of some sort. We agree with the Department that the appeal lacks merit.

First, we agree with the Department that the trial court properly rejected any challenge to the VAP (insofar as respondent actually raised one). As the Department notes, respondent could challenge the VAP by either (1) rescinding his acknowledgment of paternity within 60 days after he signed the VAP (750 ILCS 45/5(b)(1) (West 2000)) or (2) challenging the VAP by a section 2—1401 petition (*Department of Public Aid ex rel. Howard v. Graham*, 328 Ill. App. 3d 433, 435

(2002). Absent voidness, a challenge via section 2—1401 is limited to the grounds of fraud, duress, and material mistake of fact (750 ILCS 45/6(d) (West 2008); *Graham*, 328 Ill. App. 3d at 435).

Respondent did not choose rescission, but he did file a section 2—1401 petition. However, as the Department observes, the petition was untimely—as respondent now concedes. Also, while respondent argues that the VAP was undated and improperly witnessed, these allegations do not invoke any of the limited grounds on which to invalidate the VAP. Therefore, the trial court did not err in rejecting respondent's section 2—1401 petition and granting the Department's support petition.

Respondent appears to argue second that, regardless of the merits of his attack on the VAP, he is entitled to relief of some sort because he had no "[p]arent-[c]hild relationship" with Ashly. Again, respondent's exact reasoning is unclear. However, as the Department notes, the "Points and Authorities" section of his brief does cite two subsections of section 8 of the Illinois Parentage Act of 1984 (Act) (750 ILCS 45/8(a)(3), (a)(4) (West 2008)), which provides statutes of limitations for actions under sections 7(b) and 7(b—5) of the Act to declare the non-existence of the parent-child relationship (see 750 ILCS 45/7(b), (b—5) (West 2008)). As the Department notes, however, section 8 does not create any rights; sections 7(b) and 7(b—5) are available only to a man who has been adjudicated the child's natural father, based on the presumption arising out of his marriage to the natural mother (see 750 ILCS 45/5(a)(1), (a)(2) (West 2008)); and respondent's apparent interpretation of the phrase "parent-child relationship"—one turning on the amount of contact between the father and the child—is not the statutory definition, *i.e.*, "the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes

rights, privileges, duties, and obligations." 750 ILCS 45/2 (West 2008). Thus, respondent's assertion that he had no parent-child relationship with Ashly is incorrect and does not help him.

For the foregoing reasons, the judgment of the circuit court of Lake County is affirmed.

Affirmed.