No. 2—10—1091
Order filed March 21, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF	)	Appeal from the Circuit Court
	)	of De Kalb County.
LISA I. MYERS,	)	
	)	
Petitioner-Appellee,	)	
	)	
and	)	No. 07—D—58
	)	
GARY MYERS,	)	Honorable
	)	James Donnelly,
Respondent-Appellant.	)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices McLaren and Bowman concurred in the judgment.

ORDER

Held: Review of the record did not support appellant's contentions that trial court's conduct of the trial was biased or improper, and remainder of appellant's arguments were forfeited.

In August 2010, the circuit court of De Kalb County entered a judgment for legal separation of the petitioner, Lisa Myers, and the respondent, Gary Myers. After the trial court denied Gary's posttrial motion to reconsider, he filed this appeal. For the reasons that follow, we affirm.

The parties were married in 1986, and have seven children, two of whom were no longer minors by the time the judgment for legal separation was entered. The judgment, which was entered on August 2, 2010, contained a finding that the parties separated on or about March 17, 2005, and granted sole legal custody of the five minor children to Lisa and awarded Gary visitation. On the same date, the trial court entered other orders, including a parenting order (containing specifics of the custody and visitation arrangements), a uniform order for child support in the amount of $828 bi-weekly, and a handwritten order addressing child support and school expenses. In this last order, the trial court noted that it "initially made a finding that child support would be set at 50% of his [Gary's] net income, but reversed it's [*sic*] ruling based upon father contributing up to $1,000 per child per year for homeschooling expenses." The trial court also made a finding that Gary had no unpaid arrearage of child support, and discharged all of the rules to show cause that were still pending before the court.

Gary filed an initial posttrial motion to reconsider various aspects of the orders entered on August 2, 2010, and then amended his motion. On September 27, 2010, the trial court denied Gary's motion, but amended the judgment to include a finding pursuant to Supreme Court Rule 304(a) (eff. Feb. 26, 2010) that there was no just reason to delay enforcement or appeal of that judgment. Gary filed a timely notice of appeal stating that he was appealing from all of the orders entered on August 2, 2010, and also from the order denying his posttrial motion.

On appeal, Gary's specific contentions of error are somewhat unclear. In his "introductory paragraph," Gary states that "no issues are raised *** as to the Judgment of Legal Separation itself, but as to each and every term of the decision." Gary's statement of the issues on appeal is directed toward the court's conduct of the trial as a whole rather than any particular ruling, and includes:

"whether the trial court abused its discretion by impermissibly acting as an advocate," whether the trial court impermissibly controlled the questioning of witnesses, and whether the trial court erred in limiting the admission of evidence Gary had obtained by subpoena. In his statement of facts, Gary outlines the contentions of error he made in his posttrial motion. However, he never indicates that he wishes to raise any of those contentions of error before this court, and he does not discuss them further in the argument portion of his brief. Accordingly, we view the appeal as raising only the overall issue of the trial court's conduct of the trial, which Gary contends deprived him of a fair trial.

One of Gary's primary contentions is that, by directly questioning some of the witnesses, the trial court abandoned its role as an impartial factfinder and became an advocate for Lisa. A trial judge may question witnesses to elicit truth, clarify ambiguities in the witnesses' testimony, or shed light on material issues. *Obernauf v. Haberstich,* 145 Ill. App. 3d 768, 771 (1986); *People v. Costello,* 95 Ill. App. 3d 680, 686 (1981). The trial court is given wider latitude in examining witnesses in bench trial, where the risk of prejudice is less and the court's inquiries are compatible with its role as fact-finder. *Obernauf,* 145 Ill. App. 3d at 771. However, the trial court must ensure that it remains impartial in its conduct of the trial and does not become an advocate for either party. *People v. Faria,* 402 Ill. App. 3d 475, 479 (2010). "The scope of such examination depends on the individual circumstances of the case and rests largely in the court's discretion." *Id.* Accordingly, we will vacate the judgment in a bench trial only if the trial court's questioning of the witnesses demonstrates an abuse of that discretion.

Gary has not identified (either by describing in detail or by providing cites to the record on appeal) any instance in which the trial court's questioning of witnesses exceeded the bounds of propriety or demonstrated active advocacy on behalf of Lisa. For this reason alone, we could find

that he has forfeited this argument. *See* Ill. S. Ct. R. 341(h)(7) (eff. Sept. 1, 2006) (the argument portion of the appellant's brief must "contain the contentions of the appellant and the reasons therefor, with citation of *** the pages of the record relied on"; points not supported with such citations to the record are forfeited). Rather than rely on forfeiture, however, we have reviewed the entire record including the transcripts of the trial in order to consider the trial court's questions to witnesses in context. Having done so, we find no abuse of the trial court's discretion. At the time of trial, Gary was proceeding *pro se* and, as was natural for someone untrained in the law, he made frequent errors in the presentation of his evidence and his witnesses. The transcripts reveal that the trial court was concerned by the length of time that the case had already been pending, and accordingly it sought to keep the presentation of evidence focused on the factors that would be relevant to the determinations that it was required to make. Occasionally it sought to do this, or attempted to clarify the testimony, by questioning witnesses directly. However, we see no indication that its questions crossed the line into advocacy for either party, or that it abused its discretion in conducting its own occasional examination of the witnesses.

Gary also complains that the trial court was "hostile" to him, in that it ruled against him and in favor of Lisa "constantly." Again, he provides no specific examples from the record to support this allegation. Moreover, our own review of the record rebuts the argument that the trial court was unfair to Gary or biased against him. "A trial judge is presumed to be impartial, and the burden of overcoming this presumption rests on the party making the charge of prejudice." *Faria*, 402 Ill. App. 3d at 482. Here, although the trial court awarded Lisa sole custody of the children and some of what she sought in child support, it ruled in Gary's favor on a number of issues, including the child support arrearage (Lisa claimed that Gary had an arrearage of $40,000 to $50,000, but the trial court

found that he had none) and visitation (the trial court stated several times that it was concerned with ensuring that Gary could maintain his close relationship with his children, and granted him visitation beyond the levels sought by Lisa). Thus, Gary's accusation of hostility or bias is not supported by the record. *Id.* In connection with the child support arrearage, we note that Gary also argues that the trial court did not give him proper credit for all of the support that he paid. However, he fails to provide any specifics regarding how the trial court's calculations or rulings were erroneous, and so he has forfeited his argument on this point. Ill. S. Ct. R. 341(h)(7) (eff. Sept. 1, 2006).

Gary also asserts that the trial court refused to permit him to present his case, and compares his trial to the two-minute limit imposed on public comments which we criticized in *Klaren v. Village of Lisle,* 316 Ill. App. 3d 770, 786 (2000). This comparison is ludicrous. The trial court here in general demonstrated commendable patience, allowing the trial of this relatively simple matter to proceed over the course of four days and permitting Gary to testify (and argue) at length regarding his view of the breakdown of the marriage and what he viewed as Lisa's attempts to alienate the children from him. In light of the ample time given to the case on previous days, we see nothing improper in the trial court's announcement, at the beginning of the fourth day of trial, that the parties were required to present the remainder of their cases by the end of that day.

Gary next argues that, although the judgment for legal separation required him to pay up to $1,000 per child per year for homeschool supplies, Lisa took that money and enrolled some of the children in a private Christian academy instead. We express no opinion on this allegation because it is not properly before us. Of necessity, neither the judgment nor the other orders entered on August 2, 2010, could rule on Lisa's behavior taking place after that date. Nor could Lisa's conduct properly be raised in Gary's posttrial motion to reconsider the August 2, 2010, judgment and orders,

as that motion was limited to alleged errors in those orders themselves. The assertion that a party has not complied with the language or the spirit of a court order is a matter to be taken up with the trial court in a new proceeding. Accordingly, we express no opinion on this argument.

The final issue Gary identifies on appeal is that the trial court improperly limited "the witnesses to be called, and subpoenaed, the YMCA, and the paramour of the wife, etc., *** in direct violation of Supreme Court Rule 204." We cannot make heads nor tails of this assertion, nor can we see that Supreme Court Rule 204 (eff. Jan. 1, 1996), which provides the method by which subpoenas may be issued, provides support for any claimed error by the trial court. Accordingly, we find this argument forfeited as well. For all of the foregoing reasons, the judgment of the circuit court of De Kalb County is affirmed.

We close by addressing an area of concern that, while it did not affect our analysis above, cannot go unremarked. That concern is the utter disregard shown for appellate procedure shown by Gary's attorney, K.O. Johnson. This case involves the appeal of a ruling on child custody, and accordingly it is designated as an "accelerated" case under Supreme Court Rule 311 (eff. Feb. 26, 2010). Such cases are to be briefed and decided on a highly expedited schedule so that issues relating to the safety and security of children are not left unresolved while courts review such fundamental decisions. Despite clear direction from this court to follow the expedited deadlines, Gary's attorney failed to file the record on appeal within the time specified, and then failed to file a brief until this court issued an order stating that it would dismiss the appeal for lack of prosecution unless a brief were filed within ten days. (Gary filed his brief on the tenth day.) Lisa did not file any response brief. However, we may address Gary's arguments despite the lack of an appellee's brief as the questions Gary raises are relatively straightforward. *First Capitol Mortgage Corp. v. Talandis*

Construction Corp., 63 Ill. 2d 128, 133 (1976) (a reviewing court should decide the merits of an appeal where the record is simple and the claimed error is such that a decision can be made easily without the aid of an appellee's brief). Even after the time for the appellee's brief had expired, however, Gary's attorney continued to prevent the court from commencing its consideration of the appeal by withholding the record, which he had retained for use in preparing his brief. Gary's attorney would not comply with requests to return the record until again threatened with dismissal. To cap it off, with less than three weeks to go before this court was required to issue its decision pursuant to Rule 311(b)(5), Gary's attorney filed a motion seeking leave to file an amended brief "*instanter*"—and did not even attach a copy of the amended brief he wished to file, instead stating that he planned to file it within seven days. Gary then failed to file anything within the seven-day period.

This pattern of delay and disregard for the rules of accelerated appeals is appalling and inexcusable. We also note that the brief submitted by Gary contained almost no legitimate argument or proper citation to the record and applicable legal authority. Gary's attorney is hereby notified that similar conduct in the future will not be tolerated by this court.

Affirmed.