No. 2—10—1231
Order filed May 18, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF KAREN LANIER GRADOS, Petitioner-Appellee, and STEVEN GRADOS, Respondent-Appellant.	))))))))))	Appeal from the Circuit Court of DeKalb County. No. 08—D—205 Honorable William P. Brady, Judge, Presiding.

JUSTICE BOWMAN delivered the judgment of the court.
Justices Zenoff and Burke concurred in the judgment.

ORDER

Held: Where appellant failed to produce necessary reports of proceedings for reviewing court, trial court ruling was presumed correct under *Foutch*. Appellant's remaining arguments failed for failing to establish the trial court abused its discretion in its rulings. Judgment of the trial court was therefore affirmed.

Respondent, Steven Grados, appeals *pro se* several aspects of the circuit court's judgment of dissolution of his marriage to petitioner, Karen Lanier Grados. For the reasons that follow, we affirm the judgment of the circuit court of DeKalb County.

On June 26, 2008, Karen filed a petition for dissolution of marriage in DeKalb County, which stated that the parties were married on August 8, 1998, in DeKalb County and had two children:

Alexander, born on August 5, 2003, and Royce, born on November 29, 2006. Illinois was the state of residence of the children since birth. Karen, a flight attendant for Delta Airlines, was residing in Sycamore, in the marital home. Steven was a state trooper in Pennsylvania and resided in another marital home in that state. Karen sought temporary custody and support from Steven. On July 11, 2008, Attorney Sharon Sheehan filed an appearance on behalf of Steven in the DeKalb County court, but one month later moved to withdraw as his counsel. Karen was awarded temporary custody of the children and temporary possession of the Sycamore home. On September 23, 2008, Steven and his new attorney, Charles Rose, appeared in court, and the parties were ordered to schedule a telephone mediation session and if necessary, face-to-face mediation. Steven was also ordered to pay $1,500 per month in child support and half of the cost of daycare. Steven changed attorneys again on January 20, 2009; attorney Sean Smith filed an appearance on Steven's behalf. After several status dates, which found that Steven failed to produce documents, the court granted Karen leave to file a rule to show cause. On July 28, 2009, Attorney Sean Smith moved to withdraw as Steven's counsel.

On August 25, 2009, Steven was served with Karen's rule to show cause for his failure to produce documents and failure to pay child support. Attorney Vincent Cook appeared on Steven's behalf on October 27, 2009, at which time the court found Steven, who did not appear, in contempt of court for failing to pay $682.33 in child support. That amount was eventually satisfied. On January 12, 2010, the court granted Karen's petition for attorney fees, ordering Steven to pay $1,361.30 for fees associated with the rule to show cause.

The matter was set for trial on June 8, 2010. On that date, Attorney Cook filed a motion to continue the trial due to Steven's inability to be present at trial due to health issues. Attorney Cook stated in the motion that he was out of town and was unable to bring the motion sooner. Attached

to Attorney Cook's motion was an unsigned doctor's note dated April 22, 2010, that indicated Steven was being treated for neck and back pain and was on light duty at work. Also attached was a physician script dated June 3, 2010, for "continued physical therapy" due to disc disease in the lower back. Cook also argued that there was still outstanding discovery requests by both parties. The matter must have been continued although there is no order in the record. On August 12, 2010, Attorney Cook moved to withdraw as Steven's counsel and moved to continue the August 24 trial date because Steven could not travel due to medical restrictions. Attached to the motion was a medical script signed by a physician assistant, dated July 6, 2010, stating "please excuse officer Grados he suffers from chronic low back pain we do not feel he should be traveling in a car." The trial court denied the motion to continue, finding the evidence was insufficient to substantiate that Steven was unable to be in court. The court also denied the motion to withdraw but would allow the motion to be renewed on the day of trial. On August 20, 2010, Steven filed a *pro se* petition for substitution of judge for cause, stating the judge was biased against him for being a resident of Pennsylvania and being unable to attend court dates in Illinois. He also filed a *pro se* "objection to jurisdiction over the person," stating he was told by counsel that this matter "HAD" to be heard in Illinois. On August 23, 2010, Steven filed a document stating that he would be representing himself and that the court was in violation of the Americans with Disabilities Act. On August 25, 2010, Judge Klein found no basis for Judge Brady's removal, as no evidence was presented and Steven failed to appear or argue his motion.

On August 25, 2010, Judge Brady found Steven to be in default for failing to produce documents and ordered that he was "barred from participating in the trial/prove-up in this matter" set for September 7, 2010. Counsel for Karen presented her case at some point between September

7 and the entry of the judgment. A report of proceeding dated October 20, 2010, is included in the record. On that date the trial court found that a judgment for dissolution of marriage would be entered based on irreconcilable differences. It then verbally outlined its order, which was set forth in the judgment for dissolution of marriage order. We summarize the order as follows. It granted sole custody of the children to Karen subject to reasonable visitation rights to be agreed upon by the parties. Karen was granted the Sycamore home; Steven was granted the Pennsylvania home. Steven was granted a 21% interest in Karen's Delta retirement plan; Karen was granted a 30% interest in Steven's state employee retirement system account. Steven was granted 75% of an account worth $50,000, and 100% of an account worth $8,200. Each party was granted their American Funds IRA accounts. Steven was granted two other accounts, worth $2,200, and his life insurance policy worth $16,000. Karen was granted her Fidelity stock account, a nonmarital account worth roughly $3,000. Steven was ordered to pay a $13,000 debt with Discover; however, the Visa and American Express debt apparently was related to Karen's commuting costs and those were assigned to her, which totaled approximately $16,000. The court ordered that Steven pay $752 of his biweekly pay in child support and half of day care and preschool expenses for the children. No maintenance was awarded. The judgment was entered on November 9, 2010.

Following the judgment order, the court granted Karen's motion for attorney fees, ordering Steven to pay $9,848 for her fees. That order was entered November 30, 2010. Steven filed a notice of appeal on December 3, 2010.

It is difficult to discern Steven's arguments on appeal. We begin by noting that Karen filed a motion to dismiss the appeal, which was ordered taken with the case, for Steven's failure to comply with Supreme Court Rules 323 (Ill. S. Ct. R. 323 (eff. Dec.13, 2005)), and 342 (Ill. S. Ct. R. 342 (eff.

Jan. 1, 2005)). The motion argues that Steven has failed to supply the report of proceedings and instead attempts to retry the case on appeal without any citation to the record. Karen further argues that many of Steven's arguments refer to events that are outside of the record, including perjury and fraud. Although we deny Karen's motion to dismiss the appeal, we agree with Karen that many of Steven's arguments are subject to the holding in *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984) ("appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with the law and had a sufficient factual basis"). As *Foutch* stated, "[a]ny doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Id.*; also see Ill. S. Ct. R. 323. We will apply *Foutch* where appropriate. Regarding Karen's argument that Steven failed to comply with Rule 342, we will find arguments forfeited for his failure to comply with this rule or any other supreme court rule where we deem necessary.

Turning to Steven's arguments on appeal, we first address his argument that the trial court did not have personal jurisdiction over him. It is well-settled that personal jurisdiction may be acquired over a party by his appearance or by effective service of summons. *Johnson v. Ingalls Memorial Hospital*, 402 Ill. App. 3d 830, 846 (2010). Further, section 2—301(a-5) of the Code of Civil Procedure (735 ILCS 5/2—301(a-5) (West 2008)) provides that a party forfeits all objections to the court's personal jurisdiction over the party by filing a responsive pleading or motion other than a motion seeking an extension of time to answer or otherwise appear. 735 ILCS 5/2—301(a-5); *id.* Here, Steven filed appearances, responses, motions, and petitions, and participated in the litigation

for years. He did not object to jurisdiction until shortly before the trial date. Under these facts, we find that Steven has forfeited any objection to the court's personal jurisdiction over him.

Next, Steven makes several references to various aspects of the trial court's valuation and division of the marital property and child support award. His references do not form an entirely cohesive argument. He complains about the value of the Sycamore house, the unfair division of the credit card debt and retirement accounts, attorney fees, child support arrears, and the date of which the child support was to accrue. Without any record of the proceedings, we assume the trial court's order was in conformity to the law and had a factual basis. See *Foutch*, 99 Ill. 2d at 391-92. Even if the record was adequate in this case, Steven's arguments on these points do not conform to Rule 341(h)(7) because the arguments do not contain citations to authority relied upon or pages in the record. His arguments would therefore be forfeited for this reason even if the reports of proceedings were available. See Ill. Sup. Ct. R. 341(h)(7) (eff. Mar. 16, 2007) ("Points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing").

Additionally, Steven argues many evidentiary issues outside of the record, including that the Sycamore home did not have a mortgage balance, that he paid certain child support sums, and that he will be paying more than 60% of his monthly income to Karen in child support and property distribution payments. Yet, Steven failed to file a motion to reopen any proofs in the trial court. Even if he did file such a motion, a trial court's decision to grant or deny a motion to reopen proofs rests upon the consideration of whether there is some excuse for the failure to introduce the evidence at trial, whether the other party would be surprised or unfairly prejudiced by the new evidence, whether the evidence is of utmost importance to the movant's case, and whether there are cogent reasons to deny the motion. *In re Marriage of Drone*, 217 Ill. App. 3d 758, 766 (1991). Here, the

record demonstrates that Steven continually failed to comply with discovery requests and failed to appear in court, which resulted in the court's sanction order. Thus, it appears that the court's failure to consider the alleged evidence to which Steven refers is due to Steven himself, and even if he filed a motion to reopen proofs, the court had a basis to deny it.

Steven next argues that his due process rights were violated when the court decided to hold trial despite his injury which prevented him from traveling to Illinois, and that the trial court violated the Americans with Disabilities Act by failing to provide reasonable accommodations for him to participate in trial. We reject both arguments. First, the trial court denied Steven's motion to continue the trial in August because it found the evidence (a medical script signed by a physician's assistant stating Steven should not travel by car) was insufficient to substantiate that Steven was unable to be in court. The denial or granting of a motion to continue a trial lies within the sound discretion of the trial court and will not be overturned unless that discretion has been abused. *Dempsey v. Sternik*, 147 Ill. App. 3d 571, 579 (1986). A critical factor in review of a trial court's decision to grant or deny a motion to continue is whether the movant acted with diligence in proceeding with the cause. *Id.* It is also true that a judge should not refuse a motion for continuance when the ends of justice require it. *Id.* In this case, Steven waited until the day of trial to inform the court of his back injury. Even so, Steven's "evidence" only indicated that he should not drive but there was no evidence indicating that Steven could not fly to Illinois or otherwise travel to this state. Steven presented no evidence as to when he was injured, the extent of his injury, or when he would be available for trial. Accordingly, we do not agree that the trial court abused its discretion in denying Steven's motion to continue the trial.

Second, the Americans with Disabilities Act (Act) (42 U.S.C. § 12102 (2006)) defines a disability as requiring the following:

> "(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;
>
> (B) a record of such an impairment; or
>
> (C) being regarded as having such an impairment."

"Major life activities" under the Act include "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working." 42 U.S.C. § 12102 (2006). However, the Act also provides that one will not be "regarded as having" an impairment if the impairment is transitory, meaning an impairment with an actual or expected duration of six months or less, and minor. 42 U.S.C. § 12102 (2006). Here, Steven failed to establish that he had an impairment as defined under the Act. Therefore, Steven's claim under the Act fails.

Finally, regarding Steven's references to the custody order and visitation schedule, we note that the trial court awarded temporary custody to Karen and later awarded her permanent custody, leaving a visitation schedule open and to be determined by the parties. Steven states in his brief that he filed a petition for modification of custody, partial custody or visitation but has not received a response from the court. However, this court dismissed that petition on January 2, 2011, noting that a petition for modification of child custody should be filed in the circuit court, not the appellate court. We also note that Steven never filed any petitions in the circuit court regarding custody or visitation prior to or after the judgment of dissolution. Since the trial court left open the issue of visitation, it would be advisable for Steven to pursue a visitation schedule within the circuit court if he so desires.

For the reasons stated, we affirm the judgment of the circuit court of DeKalb County.

Affirmed.