2012 IL App (2d) 110997-U
No. 2-11-0997
Order filed February 14, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re ISABELLA and BETHANY G., Minors	)	Appeal from the Circuit Court
	)	of Du Page County.
	)	
	)	No. 08-D-846
	)	
	)	
(Marikay F. and Norris F., Petitioners-Appellants v. Jerrod G. and Trisha S.G., Respondents-Appellees).	)	Honorable
	)	Brian R. McKillip,
	)	Judge, Presiding.

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

ORDER

Held: The trial court did not err in denying the petitioners' motion for appointment of a child advocate or in granting the respondents' petition for sanctions. We grant the respondents' motion for sanctions on appeal against the petitioners.

¶ 1 On March 23, 2011, the petitioners, Marikay and Norris F., filed an emergency motion to appoint a child advocate. On May 9, 2011, the trial court denied the petitioners' motion and granted the request of the respondents, Jerrod G. and Trish S.G., for leave to file a petition for sanctions pursuant to Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994). On June 2, 2011, the respondents filed their petition for sanctions. On September 14, 2011, the trial court granted the respondents'

petition. The petitioners appeal, *pro se*, from these orders. The respondents have moved for sanctions against the petitioners for the filing of a frivolous appeal. We affirm the trial court's judgment and grant the respondents' motion for sanctions on appeal.

¶ 2 I. BACKGROUND

¶ 3 The petitioners' daughter, Rachel G., was married to the respondent, Jerrod. On May 28, 2005, Jerrod and Rachel were involved in an automobile accident. Rachel died as a result of the accident. Jerrod suffered traumatic brain injury and other peripheral injuries that necessitated hospitalization and several months of rehabilitation. At the time of the accident, Jerrod and Rachel had two minor children: Isabella (born December 15, 2000) and Bethany (born February 26, 2003). While Jerrod was undergoing rehabilitation, the minor children lived with and were cared for by their maternal grandparents, the petitioners.

¶ 4 On June 23, 2005, the petitioners filed a petition for guardianship of Isabella and Bethany. A guardian *ad litem* was appointed during the guardianship proceedings. The guardianship petition was later withdrawn with prejudice. On April 22, 2008, the petitioners filed a petition for custody of the children. Ultimately, two agreed orders were entered disposing of the need for trial on the petition. The first agreed order, entered July 31, 2009, provided that the petitioners' petition for custody was withdrawn with prejudice and that Jerrod would retain sole custody of his children. It further provided that the petitioners "shall have grandparent visitation" with the children and that visitation would be "determined in accordance with the best interest standard" as contained in the Illinois Marriage and Dissolution of Marriage Act (the Act) (750 ILCS5/602 (West 2008)).

¶ 5 A subsequent agreed order was entered on August 5, 2009. That order provided that, following an August 1, 2009 meeting between the parties and the guardian *ad litem*, the parties had

"resolved all of the pending [m]otions and that they shall implement a grandparent visitation schedule as agreed upon between the parties in accordance with the representations and discussion on August 1, 2009." The parties did not move to modify or vacate either of the agreed orders. The record indicates that at some point Jerrod remarried. In December 2009, Jerrod's new wife, Trish, adopted the minor children.

¶ 6 On February 5 , 2010, the petitioners filed a motion to establish a visitation schedule, alleging that Jerrod had failed to establish a regular schedule of visitation between the petitioners and the minor children. On September 15, 2010, following a hearing, the trial court issued a letter memorandum granting the petitioners' motion and setting forth a visitation schedule. On September 30, 2010, an order was entered in accordance with the trial court's memorandum. On December 13, 2010, the trial court denied the petitioners' *pro se* motion to reconsider. Thereafter, the petitioners filed a timely notice of appeal and the respondents filed a timely notice of cross-appeal. The appeals were docketed in this court as case number 2-11-0042. On appeal, this court affirmed the trial court's determination. See *In re Isabella and Bethany G.*, No. 2-11-0042 (June 1, 2011) (unpublished order under Supreme Court Rule 23).

¶ 7 On March 23, 2011, while appeal No. 2-11-0042 was pending, the petitioners, represented by an attorney, filed, in the trial court, an emergency motion to appoint a child advocate. In the motion, the petitioners alleged that Isabella and Bethany's 15-year old stepbrother had (1) pushed the children down the stairs in Jerrod's home; (2) videotaped the girls in the bathroom while naked with his cell phone; and (3) entered Bethany's bedroom, on several occasions, while she was dressing and in her underwear and had grabbed Bethany "by her buttocks and underpants and physically lift[ed] her off the ground, while verbally humiliating her and mocking her." The

petitioners further alleged that the children exhibited the classic symptoms of "parental alienation syndrome" and that they had witnessed Isabella crying for 10 minutes during a Skype visitation. As relief, the petitioners requested that the trial court appoint a child advocate, specifically a "trained psychologist with knowledge of Parental Alienation Syndrome," and modify the agreed orders to include a change of sole custody of the children to the petitioners.

¶ 8 On April 20, 2011, the respondents filed a response, denying the allegations. In addition, the respondents argued that there was no petition for custody pending, the petitioners lacked standing to bring a petition for custody, and that there was no credible evidence to support the petitioners' claims. The respondents also requested sanctions against the petitioners pursuant to Supreme Court Rule 137 (eff. Feb. 1, 1994) on the basis that the petitioners' motion was not warranted by existing law and was brought to harass the respondents.

¶ 9 On May 9, 2011, following a hearing, the trial court entered an order denying the petitioners' motion to appoint a child advocate and granting the respondents leave to file a petition for sanctions pursuant to Rule 137. At the hearing, the trial court heard arguments of the parties but did not allow the presentation of any evidence. The trial court noted that the petitioners' motion was not in any way related to visitation, the only relief the petitioners were entitled to seek with respect to the minor children. The trial court further noted that even if the allegations against the stepbrother were true, the motion still did not relate, in any way, to grandparent visitation.

¶ 10 On June 2, 2011, the respondents filed a petition for sanctions pursuant to Rule 137. The respondents argued that the petitioners' motion to appoint a child advocate was irrelevant to the issue of grandparent visitation and needlessly added to the cost of litigation. The respondents requested

that the petitioners be sanctioned in the amount of the attorney fees that the respondents had incurred in responding to the petitioners' motion.

¶ 11 On August 24, 2011, a hearing was held on the petition for sanctions. On September 14, 2011, the trial court issued a letter of opinion granting the petition for sanctions. The trial court found that:

> "In short, there was no existing law that warranted the motion filed by the [petitioners]. The [petitioners] had not sought any relief with respect to their court ordered visitation with their grandchildren, the only basis upon which they may appear before the court, and they had no standing to request the relief sought in that motion."

Accordingly, the trial court entered a sanction against the petitioners in the amount of $2,126, which represented the attorney fees incurred by the respondents in responding to the petitioners' motion. An order was entered the same day incorporating the trial court's letter of opinion. Thereafter, the petitioners filed a timely notice of appeal.

¶ 12 II. ANALYSIS

¶ 13 On appeal, the petitioners argue that the trial court erred in (1) failing to hear evidence at the hearing on their motion to appoint a child advocate; (2) denying the motion to appoint a child advocate; and (3) granting the respondents' petition for sanctions.

¶ 14 At the outset, we note that the respondents argue that the petitioners' appellant brief fails to comply with Supreme Court Rule 341 (eff. Mar. 16, 2007) because the statement of facts is riddled with argument, and the petitioners failed to provide a clear statement of the nature of the case, standard of review, or clear statement of facts. The respondents request that we strike the appellants' briefs and award them the attorney fees incurred in responding to this appeal.

¶ 15 We agree that the petitioners' appellant briefs fail to comply with Rule 341 in multiple respects. For example, the briefs fail to articulate a cohesive legal argument or cite to any relevant authority, in violation of Rule 341(h)(7). Where an appellant's brief fails to comply with supreme court rules, this court has the inherent authority to strike the brief and dismiss the appeal. *Epstein v. Galuska*, 362 Ill. App. 3d 36, 42 (2005). However, the striking of an appellate brief is a harsh sanction and is appropriate only when the procedural violations interfere with or preclude our review. *Moomaw v. Mentor H/S, Inc.*, 313 Ill. App. 3d 1031, 1035 (2000). In the present case, we are able to decipher the arguments set forth in the petitioners' briefs and we therefore decline to strike the briefs.

¶ 16 Turning to the merits, the trial court did not err in denying the petitioners' motion to appoint a child advocate or in failing to hear evidence at the hearing on that motion. The trial court essentially found that the petitioners' motion had no basis in the law. We review questions of law *de novo*. *Barbara's Sales, Inc. v. Intel Corporation*, 227 Ill. 2d 45, 58 (2007). Section 506 of the Act allows for the appointment of an attorney to serve in the capacity of an attorney, a guardian *ad litem*, or a child representative in proceedings involving custody or visitation of a child. See 750 ILCS 5/506 (West 2010). In addition, either at the court's own request or upon motion of a party, the trial court may order an evaluation concerning the best interest of the child as it relates to custody or visitation. See 750 ILCS 5/604(b), 604.5 (West 2010). In the present case, there was no custody petition pending. The petitioners withdrew their petition for custody with prejudice. In addition, there had already been a hearing on the petitioner's motion to establish a visitation schedule, a visitation schedule had been established, and the petitioners were seeking review of that schedule on appeal. Accordingly, there were no custody or visitation petitions pending and the trial court

correctly determined that there was no legal framework to support the petitioners' motion to appoint a child advocate.

¶ 17 The petitioners next argue that the trial court erred in granting the respondents' petition for sanctions. A trial court's imposition of Rule 137 sanctions is reviewed for an abuse of discretion. *Nelson v. Chicago Park District*, 408 Ill. App. 3d 53, 67 (2011). An abuse of discretion occurs when no reasonable person could agree with the view adopted by the trial court. *Id.* at 68. Rule 137 requires the trial court to provide an explanation in imposing sanctions. *Id.* A reviewing court may only affirm the imposition of sanctions on the grounds specified by the trial court. *Id.* Rule 137 provides in pertinent part the following:

> "Every pleading, motion and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name * * *. The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation."

¶ 18 In the present case, the trial court's imposition of sanctions was based on its determination that the petitioners' motion was not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law. As explained above, this determination was correct. There were no pending petitions for custody or visitation and, therefore, no legal framework

to support the petitioners' motion. Accordingly, the trial court did not abuse its discretion in granting the petition for sanctions.

¶ 19 In so ruling, we note that the respondents request that we impose sanctions on appeal against the petitioners pursuant to Supreme Court Rule 375(b) (eff. Feb. 1, 1994). Rule 375(b) allows a reviewing court to impose sanctions if it determines that an appeal is frivolous. Pursuant to that rule, an appeal is deemed frivolous "where it is *** not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law." The petitioners' motion to appoint a child advocate was not warranted by existing law and the appeal from the order denying the motion was similarly not warranted by existing law and was not based on a good-faith argument for the extension, modification, or reversal of existing law. As such, we grant the respondent's motion for sanctions on appeal. We direct the respondents to file, within 14 days, a statement of reasonable expenses and attorney fees incurred in defending the appeal. The petitioners will then have 14 days to respond to the reasonableness of the expenses and fees. This court will then file an order determining that amount of the sanction to be imposed upon the petitioners. See *Magee v. Garreau*, 322 Ill. App. 3d 1070, 1078 (2002).

¶ 20 III. CONCLUSION

¶ 21 For the reasons stated, we affirm the judgment of the circuit court of Du Page County and impose sanctions against the petitioners under Supreme Court Rule 375(b).

¶ 22 Affirmed; sanctions imposed.