2013 IL App (2d) 130886-U
No. 2-13-0886
Order filed September 6, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF RENEE POURNARAS, Petitioner-Appellant, and VASILIOS POURNARAS, Respondent-Appellee.	))))))))))	Appeal from the Circuit Court of Lake County. No. 10-D-416 Honorable Donna Jo Vorderstrasse, Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Hudson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court did not err in entering temporary restraining order requiring parties' son to attend public school until further hearing on the issue.

¶ 2 This is a mother's appeal from a temporary restraining order (TRO) ordering the parties' son to continue attending public elementary school while the issue of the appropriate school for him is considered and resolved. We affirm the entry of the TRO.

¶ 3 BACKGROUND

¶ 4 The petitioner, Renee Pournaras, and the respondent, Vasilios Pournaras, were married in South Carolina. They later separated and Renee moved to Illinois with the parties' son, I.P., while Vasilios remained in South Carolina. I.P., who was born in 2006, is currently in second grade.

¶ 5 Pursuant to a joint parenting agreement (JPA) entered in 2010, the parties share joint legal custody of I.P., although Renee has residential custody. The JPA provided, among other things, that the parties would "jointly consult with each other and jointly decide matters concerning schools" for I.P. The agreement also stated that I.P. "has been raised in the Greek Orthodox faith" and "will be raised in that faith." The agreement included a provision requiring the mediation of any serious dispute regarding I.P.'s care and upbringing, as follows:

> "The parties hereby agree and stipulate in the event the parties disagree concerning the child, any aspects of the custody arrangements or about this Joint Parenting Agreement, *** or if there are disputes or alleged breaches, proposed changes, either temporary or permanent, *** or other difficulties or disagreements, they shall use any court approved mediator in an attempt to reasonably resolve their differences, prior to *** applying to the court for relief."

¶ 6 On August 9, 2013, Renee's attorney informed Vasilios's attorney that Renee would like I.P. to attend a private Catholic school and was willing to pay the cost of tuition. Renee's attorney represented that the parties had spoken previously about the issue and that Vasilios was "adamantly" opposed. In fact, however, the parties had not yet spoken about the issue.

¶ 7 On August 12, Renee contacted Vasilios directly about the issue, emailing him. In the email, she stated that she knew they had "not talked about this for a couple of years" but she thought private school would benefit I.P., and asked for his thoughts. Accordingly to Vasilios, he responded, asking for information about the proposed school.

¶ 8 On August 15, Renee responded and identified the proposed school as St. Theresa's School in Palatine. She further stated that the first day of school would be August 23, 2013.

¶ 9 On August 17, Vasilios emailed Renee, expressing annoyance that Renee had first sent the inquiry through the parties' attorneys; apparently falsely told her attorney that she had spoken with him and he was against the idea; and had not contacted him about the issue sooner so that they would have time to discuss the idea before school started. Vasilios concluded by saying that, as Renee had wanted the attorneys involved, he would wait until his attorney returned from vacation before they would respond. (His attorney was on a previously scheduled vacation ending August 18.)

¶ 10 On August 19, Vasilios's attorney emailed Renee's attorneys, complaining about the short notice and Renee's peremptory enrollment of I.P. in St. Theresa's. The attorneys discussed the matter further on August 21. Vasilios's attorney said she wasn't sure whether Vasilios objected or not, and said she would get back to Renee's attorney on August 23.

¶ 11 On August 22 (the day before school was to start), Renee emailed Vasilios repeating her desire to send I.P. to private school "once I was informed that there was a space" at St. Theresa's, her willingness to pay at least this year's tuition, and her understanding from the attorneys that he did not have any objection. Vasilios contacted his attorney, who informed Renee's attorney that Vasilios did not agree with transferring I.P. from the public school he had previously attended for the last two years, Sanford Elementary School. Vasilios also emailed Renee directly to tell her the same thing. Renee emailed back to Vasilios, asking him to reconsider, and Vasilios responded that he continued to believe I.P. should not be transferred. Both parents professed to be seeking the best for I.P.

¶ 12 On August 23, although the parties had not resolved their dispute on the issue, I.P. began attending St. Theresa's Catholic School.

¶ 13 On August 28, Vasilios filed a verified "emergency motion to compel compliance with the joint parenting agreement and injunction to prohibit attendance at private school." Renee filed a response the same day, and the parties' attorneys appeared in court to argue the motion.

¶ 14 After hearing the arguments, the trial court entered an order finding that: (1) the situation was indeed an emergency; (2) Vasilios had met all the requirements for an injunction, including a clearly ascertainable right, irreparable harm, no adequate remedy at law, a likelihood of success on the merits, and that the injunction was necessary to preserve the status quo; (3) and the court's action was necessary to enforce the JPA, which required joint decision-making regarding I.P.'s education. The order prohibited Renee from taking I.P. to St. Theresa's and required her to re-enroll him in his former public elementary school, which he would attend until further order of court. The order also directed the Child's Representative to review the situation and make a recommendation, and set the matter for hearing on September 9, 2013. Renee then filed this emergency appeal.

¶ 15 ANALYSIS

¶ 16 A trial court's decision to grant or deny preliminary injunctive relief is within the trial court's discretion, and thus such a decision is usually reviewed only for an abuse of that discretion. *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 62-63 (2006). A trial court abuses its discretion when its ruling is arbitrary, fanciful or unreasonable or where no reasonable person would take the view adopted by the trial court. *People v. Anderson*, 367 Ill. App. 3d 653, 664 (2006). However, when the interpretation of a contract is essential to the grant or denial of the temporary injunctive relief, that interpretation is reviewed *de novo*. *Mohanty*, 225 Ill. 2d at 63.

¶ 17 Renee first argues that the trial court lacked subject-matter jurisdiction to entertain Vasilios's petition for injunctive relief, because the JPA stated that the parties would mediate any serious disputes before proceeding to court. "A JPA, like a marital settlement agreement (MSA), is a contract between the parties." *In re the Marriage of Coulter and Trinidad*, 2012 IL 113474, ¶ 19. In view of the "strong public policy of Illinois to encourage parties to resolve as many issues as possible by agreement before resorting to litigation" (*id*., ¶ 29, citing 750 ILCS 5/102 (West 2010)), clauses in JPAs and MSAs requiring divorcing parties to attempt mediation before bringing disputes to court are generally enforceable. However, the power of divorcing parents to enter into a JPA is constrained by the power of the trial court to ensure the well-being of the children involved. See *In re Marriage of Duffy*, 307 Ill. App. 3d 257, 260 (1999), citing 750 ILCS 5/502(b) (West 1998) (the terms of a JPA are binding upon the court except for those provisions relating to support, custody, and visitation of children).

¶ 18 Here, the mediation clause of the JPA applied equally to both Renee and Vasilios, and both were entitled to enforce it. However, the JPA also required consultation and joint decision-making by the parties over matters including I.P.'s education. When interpreting a contract, it must be construed as a whole, viewing each provision in light of the others. *Gallagher v. Lenart,* 226 Ill. 2d 208, 233 (2007). Accordingly, when construing contracts, courts attempt to read them harmoniously so as to give effect to every provision, if possible, because it must be assumed that every provision was intended to serve a purpose. See *Valley Forge Insurance Co. v. Swiderski Electronics, Inc.,* 223 Ill. 2d 352, 362 (2006).

¶ 19 Renee may not enforce the mediation clause of the JPA in such a manner as to eliminate Vasilios's right to participate jointly in significant parenting decisions such as the school I.P.

attends—a right that is at the heart of any JPA. Thus, that mediation clause may only be enforced in a manner that preserves Vasilios's decision-making rights. In *In re Marriage of Kincaid*, 2012 IL App (3d) 110511, ¶ 36, the court held that a JPA provision requiring mediation of serious disputes should be interpreted to require a parent to engage in mediation before changing the previous arrangement between the parties (in that case, that the children would attend therapy at the father's expense). A similar reading of the JPA between Renee and Vasilios would require Renee to mediate any potential change in schools before such a change could take place.

¶ 20 In this case, however, we believe that Renee's actions should be viewed as waiving the mediation requirement entirely. By unilaterally choosing to remove I.P. from his former school and enroll him at St. Theresa's despite the clear existence of a dispute, Renee waived her right to insist on Vasilios's performance of this term with respect to that dispute.

> "Waiver is commonly defined as 'the intentional relinquishment of a known right.' *Ryder v. Bank of Hickory Hills*, 146 Ill. 2d 98, 104 (1991). It may be made by an express agreement or it may be implied from the conduct of the party who is alleged to have waived his right. *Id*. at 105. *** An implied waiver may arise where the party against whom waiver is asserted pursues a course of action or acts in such a way that demonstrates his intention to waive a right, or his actions are inconsistent with any intention other than waiving the right. *Id*." *Hahn v. County of Kane*, 2013 IL App (2d) 120660, ¶ 11.

Renee was aware of the term requiring the mediation of any serious disputes regarding, *inter alia*, I.P.'s education. She was likewise aware, no later than August 22, 2013, that there was indeed a serious dispute over the possible change in schools. Nevertheless she chose to proceed with that change in schools without seeking to mediate the dispute. This action signaled her intent to forgo

mediation of the dispute, serving as an implied waiver of the mediation requirement. *Id*. The fact that Renee waited until shortly before school was to start likewise supports the inference that she intended to forgo mediation of the dispute, as it was reasonably foreseeable that the mediation process would take more than two weeks.

¶ 21 In light of Renee's implied waiver of the mediation requirement with respect to this dispute, she may not now insist on mediation as a precondition to resolving the dispute in court. The trial court did not err in entertaining Vasilios's petition for immediate injunctive relief.

¶ 22 Renee next argues that the trial court should not have granted temporary injunctive relief because parenting decisions must be made by a custodial parent, not the courts. See *Coulter*, 2012 IL 113474, ¶ 25 (noting the fundamental constitutional right of fit parents to determine what is in their children's best interests). Renee's argument is misplaced, however, because it rests on the faulty premise that she is the sole custodial parent. To the contrary, the JPA establishes that she and Vasilios share custody of I.P., and her status as residential parent does not give her any greater decision-making rights with respect to issues such as I.P.'s education. Where, as here, there are two custodial parents who disagree regarding the best interests of the child, a court may resolve that disagreement without impinging on the constitutional prerogatives of either parent.

¶ 23 Renee also argues that the trial court erred in treating the matter as an emergency, because "the entire emergency was precipitated by the failure to act of Vasilios and his counsel." However, Renee herself created the short time frame by giving Vasilios only two weeks' notice of the proposed change in schools. She then magnified that short time frame into an emergency by choosing to proceed with the change despite the existence of opposition from Vasilios. We find no error in the trial court's finding that the matter had become an emergency.

¶ 24 Renee asserts that Vasilios did not present evidence or testimony in court to support his petition, and thus the trial court had no basis for entering the TRO. However, Vasilios's petition was verified, thus providing evidence to support his request for relief. Moreover, Renee concedes that the trial court's order was a TRO. A TRO proceeding is a summary one, designed only to preserve the status quo on an emergency basis until a hearing on a preliminary injunction can occur. *Passon v. TCR, Inc.*, 242 Ill. App. 3d 259, 264 (1993). In a summary proceeding, oral argument is sufficient and no evidentiary hearing is required. *Id*. at 263. Accordingly, Renee's attack on the evidentiary value of Vasilios's petition lacks merit.

¶ 25 Finally, Renee argues that Vasilios did not meet his burden of showing an adequate basis for the entry of the TRO. As noted above, we review the trial court's entry of the TRO only for abuse of discretion. *Mohanty*, 225 Ill. 2d at 62-63. A TRO may be issued "upon a *summary* showing of the necessity of the order to prevent immediate and irreparable harm." *Peoples Gas Light & Coke Co. v. City of Chicago*, 117 Ill. App. 3d 353, 355 (1983) (emphasis in original). Here, however, our review is hampered by the fact that Renee has not included a transcript of the TRO hearing in the supporting record. Thus, although we know the arguments raised in the petition and the response filed by the parties, we cannot know the arguments presented to the trial court at the hearing and thus cannot know in full the bases for its findings and ruling.

¶ 26 In any appeal, it is the responsibility of the appellant to supply a complete record sufficient to permit review of the issues it wishes to raise on appeal. *In re County Treasurer and Ex Officio County Collector*, 373 Ill. App. 3d 679, 684 n.4 (2007). In the absence of such a record, we must presume that the order entered by the trial court was in conformity with the law and had a sufficient factual basis. *Koppel v. Michael*, 374 Ill. App. 3d 998, 1008 (2007) (citing *Foutch v. O'Bryant*, 99

Ill. 2d 389, 391-92 (1984)). Here, lacking a record of the TRO hearing, we must presume that the entry of the TRO was adequately supported and in conformity with the law.

¶ 27 In closing, we note that Renee also sought, in her appeal, a stay of the TRO. For the reasons stated above, we deny that request.

¶ 28 Lastly, Renee also filed, in this court, a motion seeking the disqualification of the attorney originally representing Vasilios on appeal (Christopher White) and the striking of the appellee's brief, on the basis that White had acted as her counsel in this case some years earlier. Although we are concerned by her allegations of a conflict, we are unable to rule on that motion here, as the time for response has not yet expired. We note that Vasilios has taken one step in response to the motion to disqualify: Vasilios's trial counsel (an attorney not affiliated with White) has filed an additional appearance on his behalf in this court. Thus, even if we eventually grant the motion to disqualify, Vasilios would not be unrepresented in this court. Further, we find that our current inability to address the conflict posed by White's representation of Vasilios in this court will not delay proceedings in the trial court, as White represents Vasilios only in this court (not the trial court), and Vasilios's trial counsel will continue to represent him in the trial court as well as on appeal. As to the other relief sought in the motion—the striking of the appellee's brief previously submitted on behalf of Vasilios—Renee has failed to cite any legal authority for the proposition that the appellee's brief must be stricken due to the disqualification of his original appellate counsel. Accordingly, we consider this request for relief forfeited. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (where a party does not offer any argument or meaningful authority in support of that argument, the argument is forfeited); *Mikolajczyk v. Ford Motor Co.,* 374 Ill. App. 3d 646, 677 (2007) (same).

¶ 29 CONCLUSION

¶ 30 For the reasons stated, we affirm the order entered by the circuit court of Lake County on August 28, 2013, and remand for further proceedings, including the scheduled hearing on further injunctive relief. Nothing in this decision should be construed as expressing any opinion regarding the merits of the matters remaining to be presented to the trial court.

¶ 31 Affirmed.