2014 IL App (2d) 140063-U
No. 2-14-0063
Order filed May 7, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF CAROLYN FABIAN, Petitioner-Appellee, and KENNETH A. BLOUNT, Respondent-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County. No. 13-F-708 Honorable David P. Kliment, Judge, Presiding.

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

ORDER

¶ 1 *Held*: The trial court did not err in denying Kenneth's motion to change venue; since there is no report of proceedings of the hearing for modification of child custody, or an appropriate substitute, such as a bystander's report, we presume that the granting of the petition had conformed to the law and had a sufficient factual basis; affirmed.

¶ 2 Respondent, Kenneth A. Blount, appeals *pro se* from the order of the circuit court of Kane County granting petitioner's, Carolyn Fabian's, petition for modification of custody of the party's minor child, C.B. Kenneth raises two issues on appeal. The first is whether the trial

court erred in denying his motion to change venue to Virginia. The second is whether the trial court abused its discretion in granting the petition for modifying custody. We affirm.

¶ 3 I. BACKGROUND

¶ 4 A judgment for dissolution was previously entered in Lake County, Illinois, dissolving the marriage between the parties. The Lake County case was transferred to McHenry County, Illinois, for further proceedings. In July 2001, the court ordered Kenneth sole custody of the minor. The court allowed Kenneth to move the child to Virginia. Pursuant to order, Carolyn was provided substantial parenting time with the minor, including during the minor's summer break from school. Carolyn filed a petition seeking to establish the McHenry County judgment in Kane County, where she now resides.

¶ 5 While visiting with Carolyn during the child's summer break from school in 2013, he advised Carolyn that he had been physically and emotionally abused. Based on this information, Carolyn filed a petition to modify custody on both a temporary and permanent basis pursuant to section 5-610(b) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5-610(b) (West 2012)). To protect the child, Carolyn sought and obtained an emergency order of protection.

¶ 6 In response to the petition to establish the McHenry County judgment, Kenneth requested that the Kane County court not assume jurisdiction and order that any further proceedings in the matter take place in Virginia. He alleged that any teachers, neighbors, and friends who would have observed the interaction between Kenneth and the child would be in Virginia.

¶ 7 The trial court granted Carolyn's petition to establish the McHenry County judgment in Kane County and set the matter for status on the petition to modify. The trial court appointed a guardian *ad litem*.

¶ 8 On November 5, 2013, following a hearing, the trial court entered an order denying Kenneth's motion for a change of venue, Carolyn's request for temporary relief, and set the cause for another hearing on the petition to modify custody. After hearing evidence, the trial court granted Carolyn's petition and awarded residential custody of the parties' minor child to Carolyn based on the factors set forth in section 602 of the Act (750 ILCS 5/602 (West 2012)). In the order, the court specifically addressed each of the best interest factors set forth under section 602.

¶ 9 II. ANALYSIS

¶ 10 Carolyn argues that the relief Kenneth seeks on appeal should be denied due to the numerous violations of Supreme Court Rules in his appellate brief. Illinois Supreme Court Rule 341(h) (eff. Feb. 6, 2013) requires the appellant to include a statement of facts, containing the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal (Rule 341(h)(6)); an argument with citation of the pages of the record relied on (Rule 341(h)(7)); a "concise statement of the applicable standard of review for each issue, with citation to authority, either in the discussion of the issue in the argument or under a separate heading placed before the discussion in the argument" (Rule 341(h)(3)); and an appendix (Rule 341(h)(9)).

¶ 11 Kenneth's appellate brief contains numerous violations of Rule 341's requirements. Kenneth's brief does not contain an appendix or citations to the record, and his statement of facts contains argument. Conspicuously absent from Kenneth's brief is a concise statement of the applicable standard of review for each issue, with citation to authority.

¶ 12 We caution Kenneth to be mindful of the rules that have been established in order to provide meaningful and expeditious review of issues presented. The rules of procedure

concerning appellate briefs are rules, not mere suggestions, and failure to comply with the rules is not an inconsequential matter. See *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 7. Moreover, Kenneth's *pro se* status does not excuse him from complying with the appellate procedures required by supreme court rules. *Coleman v. Akpakpan*, 402 Ill. App. 3d 822, 825 (2010). However, despite these shortcomings, we elect to consider the merits of Kenneth's claims.

¶ 13 Nevertheless, we find Kenneth's argument on appeal flawed. First, in determining proper venue for a custody matter, Kenneth's argument is premised on an outdated version of the Illinois statute concerning jurisdiction. He cites to cases interpreting the Uniform Child-Custody Jurisdiction Act (UCCJA), which was repealed, effective January 1, 2004, and replaced by the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA) (codified in Illinois as 750 ILCS 36/101 *et. seq*. (West 2012)).

¶ 14 Of importance, is that the UCCJEA was implemented to address the ambiguity that existed over the principle of exclusive and continuing jurisdiction. Section 202 of the UCCJEA states:

> "(a) Except as otherwise provided in Section 204, a court of this State which has made a child-custody determination consistent with section 201 or 203 has exclusive, continuing jurisdiction over the determination until:
>
> (1) a court of this State determines that neither the child, the child's parents, and any person acting as a parent do not have a significant connection with this State and that substantial evidence is no longer available in this State concerning the child's care, protection, training, and personal relationships; or

(2) a court of this State or court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this State." 750 ILCS 36/202 (a) (West 2012).

¶ 15 In this case, a judgment for dissolution of marriage was entered in Lake County, Illinois, which incorporated a parenting agreement. In 2000, the case was enrolled in McHenry County, Illinois, where the court entered a custody modification order. We presume that Illinois was the child's home state when the initial custody determination was made, as required under section 201(a)(1) of the UCCJEA (750 ILCS 36/201(a)(1) (West 2012)).

¶ 16 Since the entry of the judgment of dissolution, Carolyn has continued to reside in Illinois. At the time of the filing of the petition to enroll the McHenry County judgment and the petition to modify custody, Carolyn resided in Kane County, Illinois, where she filed the referenced pleadings. The fact that Kenneth no longer resides in Illinois or that Illinois is not the home state of the child does not strip Illinois of its exclusive and continuing jurisdiction under the UCCJEA where the initial custody decision was made in this state and where Carolyn is still a resident. See 750 ILCS 36/202(c) (West 2012). Moreover, the fact that Kenneth commenced proceedings in Virginia does not have an impact on the issue of jurisdiction. Because Illinois has exclusive and continuing jurisdiction, the Virginia court must defer to Illinois before exercising jurisdiction over custody issues. As pointed out by Carolyn, to date Illinois has not relinquished jurisdiction.

¶ 17 The flaw in Kenneth's second contention is the lack of a record of the hearing. The crux of Kenneth's second argument attacks the trial court's ruling on the factual issues in resolving the petition to modify custody. However, Kenneth failed to provide a transcription of the hearing, or an appropriate substitute, such as a bystander's report or agreed statement of facts, pursuant to Illinois Supreme Court Rule 323 (Ill. S. Ct. R. 323 (eff. Dec.13, 2005)). It is the duty

of the appellant to present this court with a sufficiently complete record of the trial court proceedings to support his claim of error. *Midstate Siding & Window Co. v. Rogers*, 204 Ill. 2d 314, 319 (2003). "An issue relating to a circuit court's factual findings and basis for its legal conclusions obviously cannot be reviewed absent a report or record of the proceeding." *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005). Therefore, when the issues on appeal relate to the conduct of a hearing or proceeding, the absence of a transcript or other record of that proceeding means this court must presume the order entered by the circuit court was in conformity with the law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). "Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Id*. at 392.

¶ 18 We are unable to conduct a meaningful review of the issue modifying custody, and we presume that the trial court's ruling was in conformity with the law and had a sufficient factual basis. Based on this record, we cannot say that the trial court's decision to award custody of the child to his mother was against the manifest weight of the evidence. See *In re Marriage of Bates*, 212 Ill. 2d 489, 515 (2004) (reviewing court will not disturb trial court's decision to modify the terms of a custody agreement unless its decision is against the manifest weight of the evidence and constitutes an abuse of discretion).

¶ 19 III. CONCLUSION

¶ 20 For the reasons stated, we affirm the judgment of the circuit court of Kane County.

¶ 21 Affirmed.