2014 IL App (2d) 140249-U
No. 2-14-0249
Order filed September 9, 2014

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.
Presiding Justice Burke and Justice Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in modifying the petitioners' visitation schedule.

¶ 2 On November 13, 2012, the respondents, Jerrod G. and Trish S.G., filed a motion to terminate grandparent visitation of the petitioners, Marikay and Norris F., with the respondents' children, Isabella and Bethany G. On October 29, 2013, following a hearing, the trial court entered an order suspending the grandparent visitation schedule for 18 months and ordering that all grandparent visitation during that time be in the best interests of the minors as determined by the respondents. The petitioners appeal, *pro se*, from that order. We affirm.

¶ 3 I. BACKGROUND

¶ 4 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 a 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.

¶ 5 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 The first agreed order, entered July 31, 2009, provided that the petitioners' petition for custody was withdrawn with prejudice and that Jerrod would retain sole custody of his children.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 section 602 of the Illinois Marriage and Dissolution of Marriage Act (the Act) (750 ILCS 5/602 (West 2008)).

¶ 6 The second 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." Once again, the order provided that the best interest standard as contained in section 602 of the Act would be the standard "used now and in the future in determining, setting, and modifying any additional grandparent visitation." The parties have never moved to modify or vacate either of these agreed orders. The record indicates that at some point Jerrod remarried. In December 2009, Jerrod's new wife, Trish, adopted the minor children.

¶ 7 On February 5, 2010, the petitioners filed a motion to establish a visitation schedule. On September 15, 2010, the trial court issued a letter memorandum granting the petitioners' motion and setting a visitation schedule of one Saturday or Sunday per month from noon until 8 p.m.; two overnights during the Christmas break from school; two overnights during spring break; two periods of extended visitation during the summer from Thursday at noon until the following Sunday at 8 p.m. (in lieu of monthly visitation set forth above); once a week internet communication (Skype) of between 10 and 20 minutes; and any additional visitation as agreed upon between the parties. On September 30, 2010, an order was entered in accordance with the trial court's memorandum. On appeal, this court affirmed the trial court's ruling. See *In re Isabella and Bethany G.*, No. 2-11-0042 (June 1, 2011) (unpublished order under Supreme Court Rule 23).

¶ 8 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 were being mistreated by their stepbrother and that the children exhibited the classic symptoms of "parental alienation syndrome." The petitioners requested that the trial court appoint a child advocate and modify the agreed orders to include a change of sole custody of the children to the petitioners.

¶ 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 Supreme Court Rule 137 (eff. Feb. 1, 1994). On June 2, 2011, the respondents filed a petition for sanctions pursuant to Rule 137. On September 14, 2011, the trial court granted the motion for sanctions, finding that there was no existing law that warranted the motion filed by the petitioners and that they had no standing to request the relief sought in

that motion. On appeal, this court affirmed the trial court's determination. See *In re Isabella and Bethany G.*, No. 2-11-0997 (February 15, 2012) (unpublished order under Supreme Court Rule 23).

¶ 10 On November 13, 2012, the respondents filed a motion to terminate grandparent visitation. In that motion, the respondents alleged that on November 3, 2012, while the petitioners were exercising visitation with the children, the petitioners took them to a hospital emergency room, subjecting the children to a physical examination based on the petitioners' concern that the children both had too low a body mass index (BMI). The respondents further alleged that they were not aware of the hospital visit until the children were returned from visitation. The respondents argued that the petitioners continually used their visitation privileges to the detriment of the children and the respondents' family unit. The respondents requested that the grandparent visitation schedule be eliminated and that the petitioners be ordered to pay the respondents' attorney fees.

¶ 11 On January 8, 2013, the petitioners filed a response to the motion to terminate. The petitioners alleged that they never abused their visitation and that their visit to the emergency room was not motivated by a desire to interfere with the respondent's family unit, but was based on the need to act on behalf of the best interests of the children.

¶ 12 On January 16, 2013, the trial court entered an order that, while the motion to terminate visitation was pending, grandparent visitation should continue, but that:

> "the [petitioners] shall not take the [minors] to any medical facility, counselor or physician unless of an emergency nature and then only to an emergency facility. Furthermore, the court *sua sponte* orders that the [petitioners] are not to take the children

to DCFS, police department, state's attorney's office or any government agency without first notifying the [respondents.]"

¶ 13 On January 25, 2013, the petitioners filed a motion to permit discovery of the children's DCFS and medical records. The petitioners argued that the records were essential to provide a complete set of facts for the court's review. On February 4, 2013, the trial court denied the motion as to the children's medical records but granted it as to their DCFS records and ordered that those records be submitted for an *in camera* inspection. On March 15, 2013, following an *in camera* inspection of the children's DCFS records, the trial court determined that the records would be released to the parties' attorneys, subject to a stipulated protective order requested by DCFS.

¶ 14 On March 12, 2013, the respondents filed a petition for an order of protection. Therein, the respondents alleged that the petitioners used their visitation privileges to the detriment of the children and to harass and interfere with the respondents' family unit. The respondents noted that the petitioners filed a police report alleging abuse and also filed numerous complaints with DCFS. The respondents alleged that all these complaints were unfounded. The respondents requested a no contact order and an order prohibiting any further harassing conduct.

¶ 15 A hearing was held on the respondents' motion to terminate grandparent visitation and the petition for order of protection on June 12, 13, and 17, 2013. Trish testified that she was a registered nurse for 10 years. She had worked in pediatrics, neonatal intensive care, and the emergency room. Isabella was 12 and Bethany was 10 years old. In November 2012, when the children were returned from a visit with the petitioners, she learned that they had been taken to the emergency room. The petitioners had given Jerrod some papers from the hospital that indicated the concern was whether the children were malnourished and neglected. On January 8,

2012, she had received an email from Marikay regarding the children being underweight. At that point, she did height and weight measurements of the children and determined that they were a healthy weight per the guidelines of the Centers for Disease Control (CDC). Trish further testified that the children saw a pediatrician regularly for wellness visits and sports physicals. She had voiced a concern to the pediatrician concerning Bethany's weight but the pediatrician assured her that it was normal for children to gain weight at different rates.

¶ 16 Trish further testified that, in January 2012, DCFS notified her that a police report had been filed with the Channahon police department concerning domestic violence. She called and spoke with the chief of police, who told her the police had contacted the children's school. Additionally, a DCFS case worker came to her house to investigate a complaint about the children's nutrition and the amount of food in the home. The caseworker spoke with Isabella, Bethany, and two of her other children in private. Trish testified that the petitioners' actions have caused a tremendous amount of tension in her marriage. Scheduling their day around the weekly Skype visits affected the children's moods, which affected the whole family. She requested that visitation with the petitioners be terminated.

¶ 17 Jerrod testified that he was in nursing school and was due to finish in September 2013. In January 2012 he received an email from the petitioners regarding the children's BMIs. Jerrod testified that he and Trish did their own BMI calculations of the children using the CDC website and determined that they were in the appropriate ranges for their ages. However, 11 months later, on November 3, 2012, the petitioners took the children to the hospital for a physical examination. He learned about this when the children were dropped off at his house after a scheduled visit and Marikay handed him the hospital discharge papers. He had not given the petitioners permission to take his daughters to the hospital.

¶ 18 Jerrod was aware that Marikay had filed a police report in early 2012. He did not read the whole police report but he knew the police were given some videotapes of Skype visits between the petitioners and the children. Sometime in 2012, a couple of monthly Skype visits were eliminated in exchange for allowing one overnight visitation per month. Trish had worked out this agreement with the petitioners. The reason for the change was that the children did not like the Skype visits. This modified visitation lasted from early 2012 until about August 2012. After that, they resumed the original Skype visits and eliminated the overnight visitation.

¶ 19 Jerrod was aware that there were a couple of DCFS investigations. The most recent was in March 2013. At that time an investigator came to his house, looked in the kitchen and refrigerator, and spoke with the children privately. The same investigator came back a week later and spoke privately with two of his stepchildren. He assumed the investigator issued a report but he had never seen it.

¶ 20 Jerrod testified that the petitioners have caused him a lot of stress. The Skype visits often interfered with the children's activities and invitations to do things with friends. This often agitated the children. The petitioners had also caused financial stress because they had caused him to incur extensive legal fees. He believed it was in the best interest of the children to terminate grandparent visitation.

¶ 21 Marikay testified that she became concerned over the children's weights in October 2010. She kept records of their heights and weights between October 2010 and January 2012. In January 2012 she sent an email to the respondents expressing concern over the children's weights. Trish had sent a response indicating that (1) the children regularly saw a pediatrician and (2) Trish's own BMI calculations indicated that the children were a healthy weight.

¶ 22 Marikay acknowledged that on November 3, 2012, during her visitation with the children, the petitioners took them to the hospital. Marikay never told the respondents that she intended to take the children to the hospital. At the hospital, she told a social worker that she had concerns about the children being underweight. She requested that they be examined and the hospital personnel complied. A nurse took the children's heights and weights, and a doctor examined them. Marikay was given discharge papers. Marikay testified that she took the children to the emergency room in November 2012 because she believed DCFS needed a medical report to commence an investigation.

¶ 23 Marikay also acknowledged that she had filed a complaint with the Channahon police department in January 2012. She spoke with Officer Potts and told him that during a visit in December 2011, Bethany told Marikay that Jerrod hits her very hard on the back of the head and that it hurts and she cries. Shortly after she complained to the police department, Marikay contacted DCFS. Marikay contacted DCFS again on June 18, 2012, and reported concerns about the children being underweight. She called the DCFS hotline again in February 2013 and expressed concern that nothing had been done to help the children. In March 2013, she called the officer manager for DCFS in Joliet and she called the hotline. Later in March she spoke with someone else at DCFS.

¶ 24 Norris Freedman acknowledged that in September 2010, a specific visitation schedule was entered. He and Marikay had always been flexible with the schedule to best meet the needs of the children and their schedules. The children always enjoyed the visits and had never expressed a desire to end the visits early. He and Marikay had a large extended family that they often included during the children's visits. Norris further testified that after the visitation schedule was entered in September 2010, the first visit was in October 2010. At that time, the

petitioners had not seen the children for about nine months. Isabella looked very thin and emaciated and Bethany also looked too thin, although not as bad as Isabella. Norris acknowledged that in November 2012, during a visit, he and Marikay took the children to the emergency room because of concerns that they were underweight.

¶ 25 On October 17, 2013, the trial court issued a letter memorandum. The trial court stated that it considered the testimony of the witnesses, the evidence presented, and the provisions of the Act (750 ILCS 5/101 *et seq*. (West 2012)). The trial court found that the hearing revealed "a misunderstanding of the status of the [petitioners] in the [children's] lives." The trial court determined that the petitioners viewed themselves as "mutual caregivers" along with the respondents. The trial court explained that they were not. Rather, the respondents had sole custody of the children and were solely responsible for every aspect of their lives.

¶ 26 The trial court believed that the regular weighing and measuring of the children was not part of normal grandparent visitation, it interfered with the respondents' parental rights, and was unjustified. The trial court found that the petitioners did not act in good faith but "exploited" their visitation time to seek evidence to provoke DCFS intervention in the respondents' home. The trial court found that the "weigh-ins" and the unauthorized trip to the emergency room were disruptive and likely had a negative impact on the children's self-esteem. Further, it created stress on the respondents' family.

¶ 27 The trial court found that the petitioners had repeatedly overstepped their boundaries as grandparents. The trial court stated that this case was not about the children's body mass indexes but was "about appropriate boundaries for grandparents in light of the parents' fundamental and constitutionally protected right to make decisions concerning the care, custody, and control of their children." The trial court believed that the petitioners were less motivated by a concern for

the children and "more motivated by their own agenda to obtain guardianship or custody of the children." Nonetheless, the trial court stated that it was not inclined to terminate visitation or enter an order of protection. Rather, the trial court suspended the visitation order for a period of 18 months and stated that "visitation shall take place when and on such conditions as deemed by the [respondents] to be in the best interest of the two minor children." The trial court prohibited the petitioners from taking the children to a healthcare provider in the absence of an emergency and from taking the children to a law-enforcement or other governmental agency while the children were in their possession without prior consent of the respondents. On October 29, 2013, an order was entered consistent with the trial court's letter memorandum.

¶ 28 Thereafter, the petitioners' attorney filed a motion to withdraw, which the trial court granted. On November 20, 2013, Marikay filed a *pro se* motion for reconsideration. On February 11, 2014, the trial court denied that motion. In a letter of opinion, the trial court stated:

> "In this case the most important factor by far is the child's interaction and relationship with his parents, siblings and other person significantly affecting the child's best interests. It is of utmost importance that the children continued to enjoy the support of [their] family unit. That support has been threatened by the [petitioners'] interference with the decisions of the [respondents] as parents.
>
> *** In the instant case, I believe the failure of the [petitioners] to recognize boundaries and usurping parental rights and responsibilities are critical factors to consider in determining the best interest of [the children]. That conduct by the [petitioners] warrants the order entered."

¶ 29 II. ANALYSIS

¶ 30 At the outset, we note that the petitioners' appellant brief is not in compliance with Rule 341. The brief contains a rambling statement of facts that includes unnecessary commentary and fails to articulate an organized or cohesive legal argument for us to consider. The appellate court is not a depository in which the appealing party may dump the burden of argument and research. *Williams v. Danley Lumber Co.*, 129 Ill. App. 3d 325, 325 (1984). We acknowledge that the petitioners are appealing *pro se*, but admonish them that their *pro se* status does not excuse them from complying with the appellate procedures required by our supreme court rules. *In Interest of A.H.*, 215 Ill. App. 3d 522, 529-30 (1991). 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, based on the record before us, we are able to review the orders appealed from. Any arguments that the petitioners believed they raised, but which we were not able to make sense of and are therefore not addressed below, are forfeited. Additionally, any arguments raised that were not supported by citations to any relevant legal authority are also forfeited and not addressed below. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008); *Vilardo v. Barrington Community School District 220*, 406 Ill. App. 3d 713, 720 (2010) (contentions not supported by citation to relevant authority do not warrant consideration on appeal and are forfeited).

¶ 31 On appeal, the petitioners argue that the trial court abused its discretion in modifying their grandparent visitation schedule and in denying their motion for reconsideration. As noted above, the parties entered into an agreed order that stated the petitioners "shall have grandparent visitation" with the children and that the setting of or modifying of visitation would be

"determined in accordance with the best interest standard" as contained in section 602 of the Act (750 ILCS 5/602 (West 2008)). Such an agreed order is a consent decree and is contractual in nature. *In re M.M.D.*, 213 Ill. 2d 105, 114 (2004). "Once such a decree has been entered, it is generally binding on the parties and cannot be amended or varied without the consent of each party." *Id.* However, provisions regarding visitation, including those embodied in a consent decree, are always subject to modification by a court upon changed circumstances when necessary to promote a child's best interests. *Id.* at 118.

¶ 32 In the present case, based on the agreed orders, the trial court was required to determine whether modification of the grandparent visitation schedule was in the best interest of the children. A trial court's best interest determination will not be reversed unless it is against the manifest weight of the evidence. *In re Jay H.*, 395 Ill. App. 3d 1063, 1071 (2009). The reason for such a deferential standard is that "the trial court is in a superior position to assess the credibility of the witnesses and weight of the evidence." *In re Stephen K.*, 373 Ill. App. 3d 7, 25 (2007). A finding is against the manifest weight of the evidence only if it is unreasonable, arbitrary and not based on the evidence presented, or if the opposite conclusion is clearly evident. *Best v. Best*, 223 Ill. 2d 342, 350 (2006).

¶ 33 In the present case, the trial court suspended the court-imposed visitation schedule for a period of 18 months and stated that "visitation shall take place when and on such conditions as deemed by the [respondents] to be in the best interest of the two minor children." Based on the record before us, we cannot say that the trial court's determination was against the manifest weight of the evidence.

¶ 34 In making its best interest determination, the trial court stated that it considered the best interest factors found in section 602 of the Act. The section 602 factors relevant to the present

circumstances include: (1) the wishes of the parents; (2) the wishes of the child; (3) the interaction and interrelationship of the child with his parents, his siblings and any other person who may significantly affect the child's best interest; (4) the child's adjustment to his home, school and community; and (5) the mental and physical health of all individuals involved. 750 ILCS 5/602 (West 2012).

¶ 35 The trial court stated that it was giving special weight to the first factor, the respondents' wishes as to visitation. This was not improper, as there is a presumption that a fit parent's decision to limit visitation is in the children's best interest. *Wickham v. Byrne*, 199 Ill. 2d 309, 318 (2002). As to the wishes of the children, while Norris testified that the minors enjoy their visits and have never asked to end them early, the respondents testified that the Skype visits agitated the children because they often interfered with extracurricular or social activities. Based on the testimony, this factor neither weighs in favor of nor against modification.

¶ 36 However, the last three factors weigh in favor of modification. Both respondents testified that dealing with the petitioners and their constant interference with and undermining of the respondents' parental rights has caused the family both financial and emotional distress. The testimony also indicated that the Skype visits often interfered with the children's activities, which agitated the children and created stress for the family. Finally, the evidence did not support the petitioners stated concern that the children were malnourished. Accordingly, we cannot say that the trial court's determination was against the manifest weight of the evidence. We presume that the respondents will act in the best interest of the children and allow visitation as is necessary for them to maintain their bond with their maternal family. The record indicates that the respondents have been reasonable up to this point, despite the antagonistic conduct of the petitioners. We join the trial court in the hope that the suspension of the visitation order will not

result in a *de facto* termination of visitation and that when the matter is revisited in 18 months, the parties will agree that conflict surrounding visitation is not in the best interest of the children.

¶ 37 III. CONCLUSION

¶ 38 For the reasons stated, we affirm the judgment of the circuit court of Du Page County.

¶ 39 Affirmed.