2017 IL App (2d) 150620-U
Nos. 2-15-0620 & 2-16-0384, cons.
Order filed May 24, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF CONSTANCE HANNINEN, Petitioner-Appellant, and RONALD JARVIS, Respondent-Appellee.	))))))))))	Appeal from the Circuit Court of Lake County. No. 11-D-2222 Honorable Christopher B. Morozin and Donna-Jo Vorderstrasse, Judges, Presiding.

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

ORDER

¶ 1 *Held*: The appellant failed to demonstrate that the trial court erred in any of its orders related to this dissolution proceeding.

¶ 2 The petitioner, Constance Hanninen, appeals *pro se* from various orders entered in the dissolution of her marriage to the respondent, Ronald Jarvis. Because she has not demonstrated any error, we affirm.

¶ 3 BACKGROUND

¶ 4 Constance and Ronald (who is also *pro se* in this court), entered into a common-law marriage in Washington, D.C. They have two minor children, Kalle (born on July 21, 2000) and

Harley (born on April 5, 2003). In November 2011, Constance filed a petition for dissolution of marriage. On February 8, 2012, the trial court entered an order granting temporary sole custody of the children to Constance and ordered Ronald to pay temporary child support in the amount of $1,500 per month. In September 2013, the parties entered into a parenting agreement, under which Constance had sole legal custody of both children.

¶ 5 On October 20, 2014, a trial commenced on the petition for dissolution. At the trial, Constance was represented by counsel and Ronald represented himself *pro se*. During trial, the parties stipulated that they were married under common law but that the date of the marriage was in dispute. They agreed to proceed in a bifurcated fashion. They would present evidence for the trial court's determination as to the date of the marriage. After that determination, the parties would proceed to try to reach a settlement as to the remaining dissolution issues before proceeding to trial on those issues.

¶ 6 Edward Kasouf testified that he was the executor of the estate of Emile Telle. Telle passed away on June 7, 2000. As executor of her estate, he sold a condominium she owned in Washington D.C. to Ronald on July 31, 2000. Prior to the sale, he had been a social acquaintance of Constance and Ronald. He recalled that before, during, and after the sale of the condominium, Ronald referred to Constance as his wife. Kasouf acknowledged that, as executor, he had transferred the deed to Telle's condominium to Ronald and that the deed referred to Ronald as "an unmarried person." Kasouf testified that he lived in a condominium that was owned by Constance, that Constance was an old friend, and that he did not pay market rent. When questioned by the trial court, Kasouf testified that Constance had paid for his travel expenses to come to court and that, while he believed the parties were married in 1999, he was not invited to a ceremony and could not remember when he was told they were married.

¶ 7 Ronald identified a document he signed in 1999, related to consent to freeze embryos. He acknowledged that he signed it and that the form identified Constance as his partner. He also identified a patient summary form with a box that said "MS," which stood for marital status. Ronald acknowledged that there was an "M" in the box but testified that the "M" should have been in the box next to it, for "Religion," and stood for "Methodist." Ronald identified a health benefits election form dated May 1, 2001. Attached to the form was a two-paragraph statement, signed by Ronald on June 15, 2001, indicating that he wished to add his common law wife, Constance, to his health insurance. Ronald testified that the parties agreed to be common law married at this time because Constance needed an operation and thus needed insurance. Ronald acknowledged that, in his counter-petition for dissolution of marriage, he stated the date of the parties' common law marriage was September 1, 2001. Ronald also acknowledged that one of the attachments to his motion to dismiss the petition for dissolution of marriage was an affidavit in which he stated that the date of the parties' common law marriage was May 31, 2001.

¶ 8 Constance testified that she and Ronald exchanged vows in a private ceremony sometime between October 15 and 23, 1999. She acknowledged that in her petition for dissolution she had stated the date of marriage was September 1, 2000. She chose this date because Ron had moved in with her in January or February of 2000 and, at the time, she believed a common law marriage was not valid until the parties had lived together for six months. However, she later learned, after she had filed her petition for dissolution, that there was no six-month cohabitation requirement. Constance also acknowledged that in an amended petition for dissolution of marriage, which was never filed but was signed under oath, she alleged that the date of the parties' marriage was January 30, 2000. Constance further acknowledged that she was in need of surgery in June 2001. Her insurance would not pay for a laparoscopic procedure so she asked Ronald if she could be added to his health insurance plan. When questioned by the court,

Constance acknowledged that, on a 1999 patient summary form from a medical clinic, the parties had not filled in the space under "spouse's name."

¶ 9 Clayton Hanninen testified that he was Constance's brother. He further testified that at his family's Thanksgiving 1999 celebration, Constance and Ronald announced that Constance was pregnant. Clayton's wife asked if they planned to get married. Constance said she did not believe in marriage. Clayton testified that he remembered when Constance needed surgery and the parties discussed placing Constance on Ronald's insurance. At that time, Clayton asked how they would do that since they were not married. That was the first time he heard the parties make reference to a common law marriage. Clayton acknowledged that there was considerable animosity between him and Constance and that there was currently litigation between them, related to their deceased mother's estate.

¶ 10 On October 23, 2014, following closing argument, the trial court rendered its ruling. The trial court noted that it gave little weight to Kasouf's testimony as it was vague and general, Kasouf was biased in favor of Constance as he lived in a condo owned by her and paid a reduced rate of rent, and Kasouf acknowledged signing a deed that indicated Ronald was not married. The trial court noted Clayton's testimony that the parties announced Constance's pregnancy at Thanksgiving in 1999 and that a conversation ensued wherein Constance stated she did not believe in marriage. The trial court found this testimony credible and uncontradicted. The trial court noted that Constance had made inconsistent allegations under oath as to the date of the parties' common law marriage. The trial court noted that, in contrast, Ronald testified that the parties entered into a common law marriage in May 2001. This testimony was consistent with Ronald's response to the petition for dissolution, wherein he stated the date of the marriage was May 1, 2001. The trial court noted that, on the parties' patient summary form dated October 24, 1999, the space for a spouse's name was left blank. The trial court also noted that the signed

statement attached to the health benefits election form signed by Ronald on May 1, 2001, indicated that Constance was Ronald's common law wife. The trial court found this evidence, including Ronald's testimony, more credible and reliable. The trial court concluded that the date of the parties' common law marriage was May 1, 2001, when Constance was enrolled in Ronald's health insurance plan.

¶ 11 On November 24, 2014, following a hearing, the trial court entered a judgment of dissolution that incorporated the September 2013 parenting agreement. The trial court also ordered Ronald to pay monthly child support of $1,400, commencing December 1, 2014, subject to a redetermination on January 16, 2015. Additionally, after having reviewed financial affidavits and income tax returns, the trial court found that the 2012 monthly child support should have been set at $1,795, and the monthly child support for 2013 and through November 2014 should have been set at $1,561. Thus, the trial court found that Ronald owed Constance additional child support of $3,160 for 2012 and $732 for 2013. The trial court noted that the issues of (1) additional child support for 2014, (2) arrears for 2014 child support, (3) an alleged overpayment of child support, and (3) arrears in health and extracurricular expenses would be determined at the January 16, 2015, hearing.

¶ 12 On January 16, 2015, the trial court entered an order stating that, as it was in need of additional information, the matter would be continued to February 2, 2015. On February 2, 2015, the matter was continued to March 9, 2015. On March 9, 2015, after a hearing on the reserved matters, the trial court entered an order indicating that it would issue a written order within 14 days. There is no transcript of this hearing in the record on appeal.

¶ 13 On March 19, 2015, the trial court ordered that monthly child support would be $1,168, retroactive to December 1, 2014. The trial court found that Ronald (1) was in arrears in child support for 2014 in the amount of $5,745; (2) had overpaid child support from January 2015

through February 28, 2015 in the amount of $895; and (3) was entitled to an additional credit of $1,430.72 for 2013 child support. The trial court ordered that the arrearage, minus the credits, would be paid at the rate of $235 per month.

¶ 14 On January 9, 2015, after an argument with Constance, Kalle went to live with Ronald. On April 21, 2015, Ronald petitioned for modification of custody, visitation, and child support.

¶ 15 On June 17, 2015, Constance filed a notice of appeal in this court, appealing from trial court orders dated August 3, 2012; July 31, 2013; October 23 and November 24, 2014; and March 19, 2015. The notice of appeal also indicated that she was appealing from the trial court's failure to issue certain rulings in 2012, 2013, and 2014. This notice of appeal was docketed in this court as case number 2-15-0620.

¶ 16 On August 28, 2015, the date of the hearing on Ronald's April 2015 petition, Constance filed a response to the petition in which she agreed that sole custody of Kalle should be transferred to Ronald. The parties concluded the hearing on that date but there is no transcript of the hearing included in the record on appeal.

¶ 17 On September 22, 2015, the trial court ruled on Ronald's motion for modification of child support, custody, and visitation. The trial court noted that the parties had agreed that Ronald should have sole custody of Kalle. The trial court noted that Constance offered little evidence of her income. While she had previously owned several investment properties, she testified that she transferred all her real estate to her paramour, at a loss and for no consideration. She testified that her paramour pays all her household bills and debts, totaling $4,553 per month. The trial court imputed this amount of income to Constance because she "had chosen not to find employment but instead to live off" her paramour. Based on this income, statutory child support for Kalle would be $910 per month. The trial court found that Ronald's net income was $4,170 per month and that statutory child support for Harley would be $834 per month. Because each

party had similar resources to draw upon for child support, the trial court deviated from statutory guidelines by terminating Ronald's child support obligation, finding that each parent should provide financial support only for the child residing with that parent. The trial court granted the modification retroactive to the date of the filing of the petition for modification, April 21, 2015, and thus ordered Constance to refund the child support that Ronald had paid since that date. Constance filed a motion to reconsider this order, challenging the trial court's ruling regarding child support. Ronald also moved to reconsider. The trial court eventually denied both motions to reconsider. Constance filed a timely notice of appeal, which was docketed in this court as case number 2-16-0384. On August 9, 2016, on this court's own motion, the appeals in case numbers 2-15-0620 and 2-16-0384 were consolidated.

¶ 18 ANALYSIS

¶ 19 At the outset, we note that there is an outstanding motion in this appeal. On March 30, 2017, Constance filed a motion to reconsider our order on a previously filed motion. Specifically, on February 24, 2017, Constance had filed a motion to file a corrected Points and Authorities and Table of Contents for her appellant's brief and to file a two-part appendix. On March 17, 2017, we denied Constance's motion as untimely. Constance asks us to reconsider this order. We decline to disturb our previous determination. Constance had filed her appellant brief on January 26, 2017 and did not file her motion to correct/amend until almost one month later and shortly before the appellee brief was due. Further, Constance has suffered no prejudice as anything properly contained in the appendix is also part of the record on appeal. Ill. S. Ct. R. 342(a) (eff. Jan. 1, 2005). Additionally, our determination as to the issues raised on appeal did not turn on any shortcomings in the Points and Authorities or Table of Contents. Constance's motion to reconsider is therefore denied.

¶ 20 Turning to the merits, Constance's first contention on appeal is that the trial court erred in determining the date of the parties' common law marriage. A trial court's findings of fact will not be disturbed on review unless those findings are against the manifest weight of the evidence. *Eychaner v. Gross*, 202 Ill. 2d 228, 251 (2002). " 'A judgment is against the manifest weight of the evidence only when an opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on evidence.' " *Goldberg v. Astor Plaza Condominium Ass'n*, 2012 IL App (1st) 110620, ¶ 60 (quoting *Bazydlo v. Volant*, 164 Ill. 2d 207, 215 (1995)). "This deferential standard of review exists because the trial court is in a superior position to determine and weigh the credibility of the witnesses, observe witnesses' demeanor, and resolve conflicts in their testimony." *Id.*

¶ 21 In the present case, we cannot say that the trial court's determination was against the manifest weight of the evidence. The parties presented conflicting evidence as to the date of the marriage and the trial court was in the best position to resolve this conflict. *Id.* The trial court found Ronald's testimony to be more credible as he was more consistent as to the start date of the marriage. Further, the documentary evidence supported the trial court's determination. On the patient summary form signed in 1999, where a spouse's name was supposed to be listed, the parties left the box blank. However, a signed statement with a health benefits election form dated May 1, 2001, indicated that Ronald wanted to add Constance to his insurance benefits as she was his common law wife and they had the express intent to be married. Clayton also testified that the first time he heard the parties refer to a common law marriage was when Constance needed surgery and Ronald planned to add her to his insurance plan. Based on this evidence, we cannot say that the trial court's determination that the date of the parties' marriage was May 1, 2001, was arbitrary or unreasonable. As such, we affirm the trial court's determination.

¶ 22 Constance's second contention on appeal is that the trial court abused its discretion in failing to seal certain trial testimony and documentary evidence that contained confidential and sensitive medical information. There is a presumptive right of public access to judicial records. *Coy v. Washington County Hospital District*, 372 Ill. App. 3d 1077, 1079 (2007). To overcome the presumption, the moving party bears the burden of establishing both that there is a compelling interest for restricting access and that the resulting restriction furthering that interest is tailored as narrowly as possible. *Id.* at 1080. Illinois has a strong and broad public policy in favor of protecting the privacy rights of individuals with respect to their medical information. *Id.* at 1082. A trial court's determination as to whether court records should be sealed is reviewed for an abuse of discretion. *A.P. v. M.E.E.*, 354 Ill. App. 3d 989, 997 (2004).

¶ 23 In the present case, the trial court granted Constance's motion to seal certain documents, related to *in vitro* fertilization procedures, which were admitted into evidence. Constance argues that the trial court failed to seal trial testimony and other documentary evidence that contained sensitive medical information. However, Constance fails to cite to any pages of the record where the trial court denied any requests to seal any other evidence or testimony. Supreme Court Rule 341(h)(7) provides that the appellant's brief shall include an argument containing the appellant's contentions, the reasons therefore, citation of the authorities, and the pages of the record on which the appellant relies. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). Supreme Court Rule 341(h)(7) further provides that parties forfeit any points not properly argued. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). We find that, by failing to cite to the pages in the record relied upon as required by Rule 341(h)(7), Constance forfeited her argument that the trial court erred when it failed to seal certain evidence or testimony. Ill. S. Ct. R. 341(h)(6), (h)(7) (eff. July 1, 2008). "A reviewing court is entitled to have issues clearly defined with pertinent authority cited and cohesive arguments presented [citation], and it is not a repository into which an appellant

may foist the burden of argument and research [citation]; it is neither the function nor the obligation of this court to act as an advocate or search the record for error [citation]." *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993).

¶ 24 Constance's third contention on appeal is that the trial court erred in granting Ronald's April 2015 motion to modify child support. The trial court rendered its ruling on September 22, 2015, following an August 28, 2015, hearing, and subsequently denied Constance's motion to reconsider. Motions to modify child support must be decided on the facts and circumstances of each case; therefore, the standard of review is whether the trial court abused its discretion. See *In re Marriage of Singleteary*, 293 Ill. App. 3d 25, 35-36 (1997). "An abuse of discretion occurs only where no reasonable person could agree with the position taken by [the] trial court." *In re Marriage of Ackerley*, 333 Ill. App. 3d 382, 395 (2002).

¶ 25 In the present case, we are unable to review whether the trial court abused its discretion in granting Ronald's motion to modify child support. Constance has failed to provide this court with either a transcript from the August 2015 hearing on the motion to modify or an appropriate substitute, such as a bystander's report or an agreed statement of facts. "[A]n 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 law and had a sufficient factual basis. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). In the absence of a complete record, especially when the abuse of discretion standard applies, we presume that the trial court acted properly. *Id.*

¶ 26 Constance's fourth contention on appeal is that the trial court erred in allowing Ronald to evade discovery requests, refusing to continue the trial date due to the lack of discovery from Ronald, and failing to consider certain income of Ronald's for the purposes of child support. We

do not address the merits of these arguments as they have not been properly presented on appeal. "It is well established that a court of review is entitled to have briefs submitted that are articulate and organized and that present cohesive legal argument in conformity with our Supreme Court rules." *Eckiss v. McVaigh*, 261 Ill. App. 3d 778, 786 (1994). Hence, mere contentions that are not supported by coherent argument, legal authority, and citation to the record do not merit consideration. See *People v. Sprind*, 403 Ill. App. 3d 772, 779 (2012). Constance's argument as to the discovery issues falls short of these standards. Constance fails to state, in a coherent manner, what Ronald failed to produce and how she was prejudiced by not receiving it. While Constance lists citations to the record of alleged instances where Ronald was allowed to refuse to produce discovery, those citations are not to the record in the consolidated cases that are the subject of this appeal, but to the record in a previous appeal. It is the appellant's burden to provide a sufficient record in each appeal (*Foutch*, 99 Ill. 2d at 391-92), and we are not required to search the record in another case. Furthermore, in many instances, Constance makes claims with no citation to the record whatsoever.

¶ 27 Moreover, in arguing that she never received full discovery as to Ronald's net income, Constance launches into arguments about the impropriety in the trial court's decisions as to custody, marital property, and Ronald's net income, as if these issues were directly before us. However, the function of a reviewing court is to determine whether the trial court made an error of law or a determination not supported by the record, not to re-weigh the evidence and arrive at our own conclusion. *In re Estate of Bennoon*, 2014 IL App (1st) 122224, ¶ 72 (the trial court "is in a superior position to observe the demeanor of the witnesses while testifying, to judge their credibility and to determine the weight their testimony and other trial evidence should receive"). We "may not substitute our judgment for that of the trial court regarding the credibility of the witnesses, the weight to be given the evidence, or the inference to be drawn." *Tully v. McLean*,

409 Ill. App. 3d 659, 670-71 (2011). Accordingly, this court cannot consider these matters anew. For the foregoing reasons, Constance's argument relating to alleged errors in discovery is forfeited. *Sprind*, 403 Ill. App. 3d at 779.

¶ 28 Constance's fifth contention on appeal is that the trial court erred in determining child support as set forth in its March 19, 2015, order. Specifically, Constance argues that a previous uniform order for support included a provision that Ronald would make a delinquency payment of $150 per month if he failed to timely make his child support payments. Constance further argues that Ronald had failed to timely make all his child support payments and delinquency payments therefore accrued, but that the trial court's award to Constance did not include the delinquency payments. This argument is forfeited. Constance has failed to provide a transcript of the March 9, 2015, hearing and, absent a sufficient record, we presume the trial court's judgment was in conformity with the law. *Foutch*, 99 Ill. 2d at 391-92.

¶ 29 Constance's sixth contention on appeal is that the trial court, in its July 2013, November 24, 2014, and March 19, 2015, orders, failed to include statutory interest in child support arrearages owed to her. Section 505(b) of the Illinois Marriage and Dissolution of Marriage Act provides authority for the trial court to assess simple interest at the rate of 9% per annum on any unpaid child support obligations which become due and remain unpaid for 30 days or more. 750 ILCS 5/505(b) (West 2014). Once again, however, this argument is forfeited. The record on appeal does not contain any transcripts of proceedings related to the July 2013 or the March 19, 2015, orders. Absent a sufficient record on appeal, we must presume the trial court's orders on these dates conformed with the law and included the requisite statutory interest. *Foutch*, 99 Ill. 2d at 391-92. There is a transcript of the November 24, 2014, prove-up hearing. However, in the November 2014 order the trial court did not determine any amounts owed for arrearages. Rather, the trial court held that the issue of arrears was reserved for future hearing. The trial

court awarded additional amounts of child support for 2012 and 2013, but these amounts were not arrearages. Rather, they were an adjustment to the amount of temporary child support awarded in February 2012. As such, because the amounts did not represent any amounts overdue at that time, they did not accumulate interest.

¶ 30 Constance's final contention on appeal is that the trial court erred in its September 22, 2015, order, when it imputed income to her for purposes of determining child support. In order to impute income to a party, the court must find that the party is voluntarily unemployed, is attempting to evade a support obligation, or has unreasonably failed to take advantage of an employment opportunity. *In re Marriage of Gosney*, 394 Ill. App. 3d 1073, 1077 (2009). However, the record on appeal does not contain a transcript of the August 28, 2015, hearing, which was the basis for the trial court's September 22, 2015 written order. In the absence of a transcript from that hearing, we must presume that the trial court had an adequate basis to impute income to Constance.

¶ 31 CONCLUSION

¶ 32 For the foregoing reasons, the judgment of the circuit court of Lake County is affirmed.

¶ 33 Affirmed.