2013 IL App (3d) 130175-U

Order filed December 16, 2013

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2013

In re MARRIAGE OF	)	Appeal from the Circuit Court
NICHOLE IGEL,	)	of the 12th Judicial Circuit,
	)	Will County, Illinois,
Petitioner-Appellee,	)	
	)	Appeal No. 3-13-0175
v.	)	Circuit No. 09-D-654
	)	
JEFFREY IGEL,	)	
	)	Honorable Joseph C. Polito,
Respondent-Appellant	)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Presiding Justice Wright and Justice O'Brien concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's order restricting father's visitation was affirmed because although the court did not formally state that it found a serious endangerment to the children, the court's reasoning for restricting visitation was set forth on the record and was amply supported by the evidence. Father forfeited appellate review of other alleged errors because he failed to object to the admission of evidence at trial, acquiesced in an alleged error, and failed to comply with supreme court rules regarding appellant's briefs.

¶ 2 Petitioner Nichole Igel and Respondent Jeffrey Igel were married in 2000 and had two children together, Andrew and Anthony. On April 15, 2009, Nichole filed a petition for

dissolution of marriage, charging that Jeffrey had been guilty of extreme and repeated mental cruelty and alleging that there had been an irretrievable breakdown of the marriage. Nichole also filed a petition seeking temporary custody of the children, exclusive use of the marital home, and temporary financial support.

¶ 3 The record reveals that the parties engaged in numerous quarrels regarding custody and visitation of the two minor children. After filing her petition for dissolution, Nichole filed a verified petition for an emergency order of protection against Jeffrey, alleging that Jeffrey had been verbally abusive in front of the children, made harassing phone calls, had substance abuse issues, and was "mentally unstable." The court granted the petition and entered an emergency order of protection on April 23, 2009; this order granted Nichole sole custody and granted Jeffrey supervised visitation with the children. On April 31, Jeffrey responded by filing a petition seeking temporary sole legal custody of the children, alleging that Nichole was abusive and engaged in "erratic and unbearable behavior toward him and the children." Jeffrey also moved to vacate the emergency order of protection, and sought an order to compel a mental health examination of Nichole and subpoena her medical records.

¶ 4 The parties entered into an agreed order on July 14, 2009, which set a temporary visitation schedule. This order allowed Jeffrey unsupervised overnight visitation. On September 11, 2009, Nichole filed an emergency petition to suspend Jeffrey's visitation. In her petition, she alleged that Jeffrey took the children with him to Chicago and left them alone in a hotel room while he went to the hotel bar and consumed alcohol. On September 21, 2009, the court entered an order suspending Jeffrey's visitation; the transcript of the hearing is not present, although stipulated testimony from physicians was presented which indicates that Jeffrey had issues with

alcohol abuse.

¶5 Subsequently, the court allowed Jeffrey limited visitation, and ordered his visitation be supervised by Pat Igel, Jeffrey's mother. On April 28, 2010, Nichole filed a petition for rule to show cause, alleging that Jeffrey's visitation was not actually being supervised and that Jeffrey was engaging in inappropriate conduct with the children. On May 18, 2010, this petition was voluntarily withdrawn, and the court appointed a guardian ad litem (GAL) for the children.

¶ 6 On June 17, 2010, Nichole filed an emergency motion to compel a mental and physical examination of Jeffrey pursuant to Supreme Court Rule 215. In her petition, she alleged that Jeffrey displayed strange behavior and had erratic mood swings when he showed up for visitation with Alex, Jeffrey's son from a previous marriage. Nichole alleged that Jeffrey made bizarre statements to Alex, such as that he had three hundred million dollars hidden, he had powerful friends in Washington, and that everyone would "bow down" to his power.[1] She also alleged that Jeffrey appeared intoxicated and began vomiting in front of Alex. In addition, Jeffrey called the GAL and made similar statements on her voicemail. In her emergency motion, Nichole requested that the court order Jeffrey to submit to a drug and alcohol test and undergo a mental health examination. Nichole also filed a motion to suspend Jeffrey's visitation with their

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[1]Alex recorded his father making these statements described in Nichole's petition, and these videos were shown to the trial court. This court also reviewed the videos. While we will not elaborate in detail on the content of the videos, they do show a man who appears to be Jeffrey, intoxicated and displaying erratic mood swings. He makes a number of bizarre statements regarding his power in Washington and people bowing down to him. He also makes insulting statements directed at Alex, Nichole, his first wife, and the trial judge.

children.

¶ 7 The court ordered Jeffrey to submit to drug and alcohol testing on June 30, 2010. On July 8, 2010, the parties entered into an agreed order, in which Jeffrey agreed to undergo the Rule 215 evaluation and agreed he would have his visitation suspended pending the evaluation.

¶ 8 On July 13, 2010, the court entered a bifurcated judgment for dissolution of marriage. This order dissolved the parties' marriage but reserved issues of property, maintenance, child support, custody, and visitation.

¶ 9 Subsequently, the GAL submitted a report evaluating Jeffrey's conduct with his minor children. The GAL wrote that she was greatly alarmed by Jeffrey's mental state and opined that "there is a substantial risk of harm should the minor children continue to be exposed to him without further evaluation." The GAL recommended that supervised visitation continue, and that a new supervisor be appointed who could stop Jeffrey from making inappropriate comments to his children.

¶ 10 The report of the Rule 215 examination was prepared by Dr. Gardner. In her report, she discussed Jeffrey's substance abuse and mental health issues, and opined that Jeffrey's symptoms were consistent with a mood disorder and character problems such as narcissism or paranoia. She opined that Jeffrey was not likely to be physically violent with those around him, although he did have a tendency towards paranoia and breaks from reality under stress or the influence of alcohol consumption. Dr. Gardner stated that Jeffrey's problems could necessitate supervision around the children, especially since he exhibited some of these issues in front of them. She also recommended that Jeffrey receive additional treatment for alcohol use.

¶ 11 Jeffrey filed a motion to terminate his supervised visitation, which the court denied

following a hearing on October 13, 2011. The court relied on the GAL's opinion and stated "[a]t this point Mr. Igel is 'nowhere near' lifting the restriction requirement of supervised visitation." Jeffrey's mother was removed as the supervisor, and visitation continued under the supervision of mental health professionals.

¶ 12 The matter was then set for trial on January 17, 2011, to resolve the outstanding issues in the case. The court heard evidence regarding custody and visitation on January 17 and 18, during which the Dr. Gardner's examiner's report was put into evidence. On January 18, the court made an oral finding that sole custody should be awarded to Nichole and that Jeffrey's supervised visitation should continue. The court stated that it was clear that Jeffrey had mental health issues, was "acting out," and appeared to have a problem with alcohol consumption. The court stated it would need to see a completed drug and alcohol report and a detailed report from a psychiatrist in order to reconsider supervised visitation.

¶ 13 Over the remaining days of trial, the court heard testimony regarding property and financial issues. The court entered a written judgment for dissolution on October 1, 2012. For the issues relevant to appeal, the court: (1) granted Nichole sole custody and awarded Jeffrey supervised visitation once per week, subject to reconsideration upon his completion of drug and alcohol treatment and his completion of a psychiatric evaluation; (2) found that Jeffrey's current net income was $1,160 per month, and ordered that he pay current child support of $75 per week; (3) ordered Jeffrey pay retroactive child support of $91.50 per week for the period of April 5, 2009 through March 29, 2010; (4) ordered that Jeffrey pay for health insurance for the children going forward, and that he reimburse Nichole $9,942 for past health insurance premiums paid by Nichole during the pendency of the case; and (5) that Jeffrey be responsible for the payment of

his own attorney's fees, and that he contribute $30,000 towards Nichole's attorney's fees.

¶ 14 The trial court denied Jeffrey's motion to reconsider on February 13, 2013, and Jeffrey appealed on March 13, 2013. Any additional facts necessary to consider the arguments of the parties will be included below.

¶ 15 ANALYSIS

¶ 16 Here on appeal, Jeffrey raises five separate issues contending the trial court made various errors. But before we address his arguments, we must note a deficiency with Jeffrey's appellant's brief. Under Supreme Court Rule 341(h)(6), an appellant's brief must include a statement of facts "which shall contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment," along with appropriate citations to the record. Ill. Sup. Ct. R. 341(h)(6) (eff. July 1, 2008). Much of Jeffrey's statement of facts is mere recitation that certain orders were entered by the court, with no detail given about the court's rationale for entering these orders or the findings of fact underlying these orders. Similarly, no detail was given regarding the evidence presented by the parties over the course of a four day trial that was conducted by the court. Jeffrey states that following the trial, the court made oral findings regarding some rulings that he now claims to be error, but he does not discuss those findings. He omits discussing a large portion of the proceedings in the trial court relevant to his appealable issues. A significant portion of his four-and-a-half page statement of facts merely sets forth the claims of error that Jeffrey alleged in his motion to reconsider.

¶ 17 While a few relevant aspects of the case are discussed in sufficient detail, overall Jeffrey's statement of facts left this court ill-informed and wondering about practically everything that happened in the trial court. We cannot say that we have been presented with a fair recitation of

the facts of this case. We find that Jeffrey's statement of facts does not contain the facts necessary to give this court a sufficient understanding of this case, as required by Rule 341(h)(6). Most importantly, Jeffrey has not adequately informed this court about the context of the trial court's rulings which he now challenges as error. In our discretion we believe it would be unfair to strike Jeffrey's entire brief or dismiss his appeal, and therefore will not do so. See *Niewold v. Fry*, 306 Ill. App. 3d 735, 737 (1999). However, we do note that this has hindered our review of some of the issues in this case, and this court may deem insufficiently presented issues forfeited. *Gandy v. Kimbrough*, 406 Ill. App. 3d 867, 875 (2010). We now turn to our analysis of Jeffrey's arguments.

¶ 18 First, Jeffrey argues that the trial court erred in ordering that he was only to have supervised visitation. Section 5/607(a) of the Illinois Marriage and Dissolution of Marriage Act (IMDMA) states that "[a] parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral or emotional health." 750 ILCS 5/607(a) (West 2012). Thus, the statute requires that before the court places a "restriction" the noncustodial parent's visitation, the court must find that unrestricted visitation would pose a serious endangerment to the child. *In re Marriage of Tisckos*, 161 Ill. App. 3d 302, 310 (1987). In this case, the trial court's judgment for dissolution restricted Jeffrey to only supervised visitation with but did not explicitly state that unrestricted visitation would pose a serious endangerment. According to Jeffrey, the lack of an explicit, formal finding requires reversal because the trial court is required to make "an explicit threshold finding of serious endangerment" to restrict visitation rights. *In re Marriage of Solomon*, 84 Ill. App. 3d 901, 907 (1980). Whether the statute requires an explicit, formal

finding is an issue of statutory construction we review *de novo*. *In re Application of Cnty. Collector*, 356 Ill. App. 3d 668, 670 (2005).

¶ 19 We disagree with Jeffrey's construction of the statute. The trial court is not required to formally recite that reasonable visitation would result in serious endangerment to the child in order to comply with the statute. *In re Marriage of Johnson*, 100 Ill. App. 3d 767, 771 (1981). "[W]hen the trial court's reasoning for restriction of visitation rights is undeniably and explicitly set forth in the record, and those findings are supported by the evidence," we may affirm an order of restricted visitation even when the trial court did not explicitly state that reasonable visitation would be a serious endangerment. *Johnson*, 100 Ill. App. 3d at 771. While Jeffrey relies on *Marriage of Solomon* in his argument that an explicit finding must be made, we find that case is distinguishable. In *Solomon*, the trial court applied a best interest of the child standard in determining that visitation should be restricted, instead of the required serious endangerment standard. *Solomon*, 84 Ill. App. 3d at 907. The *Solomon* court therefore determined that a remand was necessary so the trial court could make findings according to the proper standard. *Solomon*, 84 Ill. App. 3d at 909.

¶ 20 In the present case, there is no indication that the court applied an improper standard in restricting Jeffrey's visitation; in fact, it is clearly apparent from the record that the court was concerned that Jeffrey's behavior could pose a danger to the children if left unsupervised. In its oral findings of January 18, 2012, the court discussed its reasons for continuing to restrict Jeffrey's visitation, citing concerns about his alcohol consumption and mental health. There is ample evidence in the record to warrant a conclusion that, given Jeffrey's mental health and substance abuse issues, unsupervised visitation would result in serious endangerment to the

children. We are not required reverse the court's order merely because it failed to make a formal finding of serious endangerment, although we encourage trial courts to specifically articulate a finding of serious endangerment and to clearly place their rationale for restricting visitation on the record to facilitate meaningful appellate review. Because its reasons for ordering supervised visitation can be discerned from the record, and its reasoning is amply supported by the evidence, we affirm the court's order. See *Johnson*, 100 Ill. App. 3d at 771.

¶ 21 In his second contention of error, Jeffrey argues that in making its custody and visitation decision, the trial court erroneously admitted and relied on Dr. Gardner's report, which was prepared pursuant to Supreme Court Rule 215. He cites *Washburn v. Terminal R. R. Ass'n of St. Louis*, 114 Ill. App. 2d 95 (1969), and asserts that this case stands for the proposition that a Rule 215 report cannot be admitted into evidence. Jeffrey misreads this case. *Washburn* held that it was error to treat the examining doctor as an agent of the party requesting the Rule 215 examination and to admit the doctor's report as a statement against the requesting party's interest. See *Washburn*, 114 Ill. App. 2d at 103. The case does not hold that Rule 215 reports are generally inadmissible. Moreover, we find Jeffrey forfeited any claim of error by failing to object to the report's admission. The record reveals that when Nichole's counsel referenced the examiner's report, Jeffrey merely objected that the report was "not in evidence yet. We have never put it in evidence." Nichole's counsel then moved to admit the report, and Jeffrey did not object to the report's admission. When a party does not object to the admission of evidence, that party forfeits the issue on appeal. See *Babikian v. Mruz*, 2011 IL App (1st) 102579, ¶ 13. Accordingly, we reject Jeffrey's argument here.

¶ 22 Third, Jeffrey claims the trial court erred as a matter of law by ordering him to contribute

$30,000 towards Nichole's attorney fees when no petition for contribution had been filed. According to Jeffrey, section 5/503(j) of the IMDMA (750 ILCS 5/503(j) (West 2012)) requires that a petition be filed prior to a hearing on contribution towards fees, and that as a matter of law, the court was powerless to order contribution without a petition on file. We note that both Jeffrey and Nichole moved for contribution without filing a petition for contribution. Jeffrey has not cited to a point in the proceeding, prior to his motion to reconsider, where he objected to having the hearing on contribution without the filing of a petition. When Jeffrey made this same argument to the trial court in his motion to reconsider, the court found Jeffrey had agreed that the hearing on contribution could be done without the filing of a petition. We agree and find that Jeffrey has forfeited any allegation of error under the doctrine of acquiescence or invited error. See *In re Det. of Swope*, 213 Ill. 2d 210, 217 (2004) (a party cannot complain of error which that party induced or to which that party consented).

¶ 23 As his fourth contention of error, Jeffrey argues that the trial court abused its discretion by awarding retroactive child support. On this issue, we note that in his argument section, Jeffrey has failed to cite to any pages of the record where the relevant evidence appears. This violates Supreme Court Rule 341(h)(7), which requires that in an appellant's argument, "reference shall be made to the pages of the record on appeal or abstract, if any, where evidence may be found." Ill. Sup. Ct. R. 341(h)(7) (eff. July 1, 2008). Jeffrey's failure to cite to any pages of the record in his argument is exacerbated by his sparse statement of facts, which contains no detail regarding the trial court's ruling on retroactive child support. This court will not comb through the record to find the evidence supporting an appellant's argument. See *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993) ("[I]t is neither the function nor the obligation of this court to

act as an advocate or search the record for error."). Accordingly, we deem this issue forfeited. See *Gandy*, 406 Ill. App. 3d at 875. Jeffrey's fifth argument—that the trial court abused its discretion by ordering Jeffrey to pay the children's health insurance premiums—is similarly deficient. This issue is forfeited as well.

¶ 24 CONCLUSION

¶ 25 For the reasons stated, the judgment of the circuit court of Will County is affirmed.

¶ 26 Affirmed.