2016 IL App (3d) 160104-U

Order filed June 24, 2016

---

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2016

| | | |
|---|---|---|
| LENA BADAMI, | ) | Appeal from the Circuit Court |
| | ) | of the 12th Judicial Circuit, |
| Petitioner-Appellee, | ) | Will County, Illinois. |
| | ) | |
| v. | ) | Appeal No. 3-16-0104 |
| | ) | Circuit No. 16 OP 220 |
| ERIK WOYTOWYCH, | ) | |
| | ) | The Honorable |
| Respondent-Appellant. | ) | Elizabeth Dow, |
| | ) | Judge, Presiding. |

---

JUSTICE McDADE delivered the judgment of the court.
Justices Holdridge and Schmidt concurred in the judgment.

---

**ORDER**

¶ 1 *Held*: Where one parent is harassing the minor by attempting to initiate medical treatment and he fails to comprehend how such actions are not only contrary to the parenting order that affords final decision making authority concerning the minor's general welfare to the other parent, but also contrary to the final decision of the other parent, the trial court did not abuse its discretion by issuing a plenary order of protection.

¶ 2 This case involves the issuance of a plenary order of protection for petitioner, Lena Badami, against respondent, Erik Woytowych. Lena filed an emergency order of protection

against Erik alleging that, contrary to their custody order, Erik sought medical care, testing, and treatment for their minor son, C.W., without her knowledge or consent. She further asserted that Erik enlisted the aid of C.W.'s school officials by asking them not to tell her about the testing. After granting the emergency order of protection, the court denied Erik's subsequently filed emergency motion to advance and motion to vacate. It also denied his second motion to vacate and granted Lena a plenary order of protection preventing Erik from seeking any additional medical treatment of C.W. short of emergencies. Erik appeals *pro se* arguing that that trial court erred in granting the plenary order of protection because (1) it was granted pursuant to false allegations and (2) the trial court was biased. We affirm.

¶ 3 FACTS

¶ 4 Erik and Lena have never been married, but are the parents of C.W. They have a custody order in place that gives Lena sole custody of C.W. Regarding medical records and general determinations of C.W.'s welfare, the order states in pertinent part in section 4, "[t]he Father shall have the right to directly contact all medical, dental, psychiatric, psychological, counseling and the like providers for the minor child, and to obtain all information concerning the minor child directly from said providers, and to participate in all counseling and other medical/dental treatment for the child."

¶ 5 Sections 11 and 12 of the parenting order state:

> "The Mother *** as sole custodian, shall advise the Father,' *** 'prior to making any such major determination as may effect (sic) the interest of the child, such as the child's education, religion, and other areas in which parental discretion and consent may be sought, however, the Mother as sole custodian retains the exclusive right to make the determination, subject to the limitations

provided herein, in the event of a disagreement between the parties subject to Father's right to petition the Court for relief if he feels the Mother's decision is not in the best interest of the child."

***

"If any conflicts arise between the parents as to any of the provisions of this Parenting Order or the implementation thereof, the complaining parent shall first notify the other party of the nature of the complaint and both parents shall make reasonable attempts to negotiate a settlement of the conflict. Wherever practicable under the circumstances, said complaints shall be made in written form and given to or mailed to the other parent. The parent receiving said complaint shall, when practical, reply to the complaint in a similar manner in written form. If the parties are unable to reach an agreement, and in the event the Father should believe that the Mother has made a decision which is contrary to the best interest of the child, he may apply to the Court of competent jurisdiction for appropriate relief."[1]

¶ 6 The following facts were adduced from the record and the hearings regarding Lena's emergency order of protection, Erik's motion to advance and motion to vacate, and the hearing on Lena's plenary order of protection. At all of the trial court hearings, Lena was represented by counsel and Erik was *pro se*. All evidence referenced as submitted was submitted during the plenary order of protection hearing. Much of that, however, has not been included in the record here on appeal.

[1] These excerpts from parenting order come from the snippet of the order Erik provided for the record and uncontested excerpts provided in Lena's brief.

¶ 7 In November 2015, Erik and Lena attended a parent/teacher meeting at C.W.'s school to discuss C.W.'s overall development. They were informed that he was not performing well in his courses, specifically reading. The administrators suggested that it might be due to eye convergence insufficiency disorder. They provided the parties with an information packet about the disorder. According to Lena, the information stated that the disorder is sometimes misdiagnosed as Attention-Deficit/Hyperactivity Disorder (ADHD). It is uncontested that a statement by Erik during that meeting was Lena's first notification that he had already scheduled an appointment with a doctor to have C.W. tested for ADHD.

¶ 8 Just prior to the appointment, Erik sent Lena an email. The email, which was submitted into evidence, showed that Lena did not agree that C.W. needed to be tested for ADHD and she declined to attend the appointment.

¶ 9 At a parent/teacher meeting on December 1, it is uncontested that Erik stated for the first time to Lena and the school administrators that C.W. had been seen by a Dr. Zarif and diagnosed with ADHD. It was noted that on November 24, 2015, Dr. Zarif had prescribed "Methyphenidate" [sic], also known as Ritalin, to C.W. The record is unclear whether Erik had begun to administer the medication to C.W. at that time.

¶ 10 On January 18, 2016, Erik took C.W. to another doctor, Dr. Hashim. Lena stated that she had been purposefully misinformed about the reason for the doctor's appointment and the location. She submitted into evidence text messages from Erik, which he acknowledged as his, that showed the false reason for the appointment and gave an allegedly incorrect address to the doctor's office. Erik objected to the allegation that it was purposeful misdirection, but based the objection on relevancy grounds. The court overruled the objection.

¶ 11 Lena later gained access to the medical documents from C.W.'s appointment with Dr. Hashim and submitted the documents into evidence. The documents listed C.W. with an incorrect last name and showed that he had been accompanied to the appointment by both parents, although Lena did not go to the appointment. The documents also stated that specialized testing – using Vanderbilt Scales from the American Academy of Pediatrics (surveys) – was to be conducted at C.W.'s school by his teachers. Although Lena claims Erik told the school not to inform her of the testing, the emails Erik sent to the school officials, which were read and submitted into evidence by Lena, requested only that they not give her the originals of the surveys, as they were to go to the doctor.

¶ 12 On January 19, both parties were present for a medical appointment at which a Dr. Martin diagnosed C.W. with eye convergence insufficiency disorder. His medical report was submitted into evidence.

¶ 13 Lena also noted at trial that a Dr. Tracy P. Robinson had been observing C.W. since July 21, 2012, and discussed his assessment of C.W. She stated that the doctor did not disagree with the possibility that C.W. might have ADHD, but noted that more extensive testing should be done. She submitted into evidence a report of C.W.'s psychological consultation with Dr. Robinson held on February 2. Dr. Robinson stated in his report that the evaluation he had done was consistent with eye convergence insufficiency disorder. Erik objected to the testimony on the grounds of the facts not being evidence. He stated he had never received the medical records from C.W.'s visits with Dr. Robinson. When queried by the court as to whether he knew C.W. had been seeing Dr. Robinson since 2012, Erik stated that after learning of C.W.'s visits to Dr. Robinson he attempted to gain access to the medical records from Lena and Dr. Robinson's office. The access was, however, allegedly withheld by Lena and denied by Dr. Robinson's

office due to Lena's failure to pay the consultation bill. The court overruled the objection stating that Lena could testify as to why she took C.W. to see Dr. Robinson. Erik did not object to Dr. Robinson's report being submitted into evidence.

¶ 14 Through email on February 1, 2016, Erik informed Lena that on January 30, Dr. Hashim, had diagnosed C.W. with either ADHD or Attention Deficit Disorder (ADD), had prescribed Ritalin to C.W., and Erik would be dropping off the filled prescription later that day. Erik contested whether he also told Lena in that email that he had been administering the medication to C.W. since January 30. However, the email, which was submitted at the hearing and is also a part of the record on appeal, clearly shows that Erik stated to Lena that C.W. "has been taking this medication since Saturday when the Doctor prescribed it. He took it this morning."

¶ 15 On February 2, Lena filed an emergency order of protection to prevent Erik from forcing C.W. to take the medication. The trial court granted the emergency order of protection prohibiting Erik from seeking medical care for C.W. short of an emergency and suspended his visitation with C.W. Erik filed an emergency motion to vacate and an emergency motion to advance the hearing on the order of protection.

¶ 16 On February 5 the trial court denied Erik's motions. It did not allow Erik to present or submit any of the evidence he alleged would show Lena had made false allegations to secure the emergency order of protection.

¶ 17 The hearing on the plenary order of protection was held on February 16. Erik objected several times during Lena's testimony. The majority of the objections were overruled, as the court found the challenged statements were based on her own personal knowledge and understanding and on statements Erik made to her that were against his interests.

¶ 18 When Erik began to cross-examine Lena, the court found that he insisted upon her answering questions that she (1) had already answered and (2) were contrary to the requirements of the parenting authority. The court stated it understood the parenting order granted Lena final decision making authority with respect to C.W.'s general welfare, which included his medical treatments, if any. The court subsequently intervened in Erik's cross-examination of Lena to ask Erik about what his response *should* have been to Lena's disagreement with his desire to put C.W. on Ritalin. Erik provided varying responses not in accord with the parenting order. The court stated that its understanding of the order was that Erik should have petitioned the court alleging, "Listen, this is what I have decided that I think needs to be in [C.W.'s] best interest." It noted that it did not believe nine year old children should be taking Ritalin, but that it was not a medical expert able to determine whether C.W. should be on the medication. It was the "family court judge" and would tell the parties only "what [their] options [were] flying in the face of this." It entered a plenary order of protection against Erik effective until February 16, 2018, but reinstated his visitation schedule with C.W.

¶ 19 At the close of the proceedings, the court added that if it ever learned that Erik had told "anybody who is involved in [C.W.'s] care, 'please do not inform mom,' there will be hell to pay."

¶ 20 Erik timely appealed.

¶ 21 ANALYSIS

¶ 22 We first address the fact that although both parties filed *pro se* appellate documents neither party completely complied with the requirements of Illinois Supreme Court Rule 341 (eff. Jan. 1. 2016). These procedural rules govern the content and mandatory format of appellate briefs. *People v. Houston*, 226 Ill.2d 135, 153 (2007). "The fact that a party appears *pro se* does

not relieve that party from complying as nearly as possible with the Illinois Supreme Court Rules for practice before this court." *Voris v. Voris*, 2011 IL App (1st) 103814, ¶ 8. Both parties failed to appropriately cite any authority for their various arguments in their respective briefs.[2] Additionally, Erik did not include a complete appendix or attach a copy of the notice of appeal or the final order from which he appeals to his appellate brief as required by Illinois Supreme Court Rule 342 (eff. Jan. 1, 2005).

¶ 23 Although these violations would warrant dismissal of the appellant's claims on appeal, we find that there is sufficient information for us to effectively address the merits of the issues Erik's has raised.

¶ 24 Plenary Order of Protection

¶ 25 Protective orders issued under the Illinois Domestic Violence Act of 1986 (Act) may be entered against persons who have abused a child in their care. 750 ILCS 60/214(a) (West 2014). The Act defines abuse as "physical abuse, harassment, intimidation of a dependent, interference with personal liberty or willful deprivation." 750 ILCS 60/103(1) (West 2014). Harassment is defined by the Act as "knowing conduct which is not necessary to accomplish a purpose that is reasonable under the circumstances." 750 ILCS 60/103 (7) (West 2014).

¶ 26 A trial court has broad discretion in deciding whether abuse, as defined by the Act has occurred. *Radke ex rel. v. Radke*, 347 Ill. App. 3d 1123, 267 (2007). Its decision will not be reversed absent a showing of an abuse of that discretion. *Id*.

¶ 27 Erik argues here on appeal that the trial court erred in issuing the plenary order of protection because the emergency order was improperly granted. He asserts that Lena provided

[2] We note that Erik listed three cases under the subheading "POINTS AND AUTHORITIES" in his brief. We also take note of Lena's listing of statutes under the subheading "POINTS AND AUTHORITIES" in her reply brief. Such listings, however, do not satisfy the requirements of Rule 341(h) (7).

the court with false information regarding whether he had administered Ritalin to C.W. He further claims that the trial court was biased. Those claims are not borne out of the record.

¶ 28 Erik failed to include in the record here on appeal a number of documents submitted to the trial court, including the parties' complete parenting order. He does not, however, challenge either excerpts provided by Lena which discuss her rights as the final arbiter C.W.'s general welfare or his right to petition the court if he disagrees with her decisions. As noted by the trial court, Lena's rights, as the final decision maker, involve the determination of whether C.W. should begin any medical treatment, including the taking of Ritalin.

¶ 29 The record, however, shows that Erik had C.W. examined by two doctors against Lena's wishes. It further notes, and Erik acknowledges, that he informed Lena through email that he had gotten a prescription of Ritalin filled for C.W., that he had been giving C.W. the medication since it was prescribed, and that Lena would need to *continue* to administer the medication to C.W. Erik's actions, although generally reasonable for a parent, were harassment of C.W. under the terms of the parenting order. The order provides a procedure to follow if Erik disagrees with Lena's decisions. Erik failed to follow the procedure and acted improperly. The day after she received the previously described email from Erik, Lena applied on that basis for an emergency order of protection. Based on these facts, the trial court did not abuse its discretion by issuing the emergency order of protection.

¶ 30 The trial court also did not err in issuing the plenary order of protection. Although Erik stated, apparently falsely, at the hearing that he had not in fact begun to administer Ritalin to C.W., he failed to comprehend how his actions amounted to unnecessary conduct pursuant to the parenting order. The transcript of the hearing shows that Erik did not understand or accept that the general welfare of C.W. included his medical treatment, and he disputed the trial court's

statement to that effect. (Erik continues to argue here on appeal that he has the right to make such decisions.) After allowing Erik to attempt, unsuccessfully, to realize, on his own, the limitations of his authority under the parenting agreement, the court ultimately had to explain the only procedure available to him if he disagreed with a decision that was Lena's alone to make. Because Erik was unable or unwilling to comprehend Lena's decision-making authority and the legal steps he would have to take to challenge her decisions, it was not an abuse of the court's discretion to enter the plenary order of protection prohibiting Erik from seeking any other medical care for C.W. except in actual emergencies.

¶ 31 Alleged Judicial Bias

¶ 32 We note Erik's claim that the trial court was biased. In addition to intervening during Erik's cross-examination of Lena and stating its personal opinion that no child should be on Ritalin, Erik also notes the court's general disdain and its expressed future repercussions if Erik tells others not to make Lena – the primary custodial parent – aware of information relevant to their son. The statement was made despite the fact that the record shows only that Erik asked the school administrators not to return the original survey documents to Lena because they were to go to the doctor.

¶ 33 Illinois Supreme Court Rule 63(A)(3) (eff. July 1, 2013), which is canon 3 of the Code of Judicial Conduct, provides the following: "[a] judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity." However, a judge "is vested with power to compel courtroom decorum and must conduct proceedings in a manner such as will inspire respect for the law and administration of justice." *People v. Ray*, 126 Ill. App. 3d 656, 664 (1984).

¶ 34 A review of the transcript as a whole shows that when the court intervened during Erik's cross-examination of Lena, it was merely explaining to Erik where he erred in attempting to have C.W. placed on Ritalin despite Lena's objections. It was also explaining to him the requirements of the parenting order and the legal procedure he would have to take if he disagrees with a decision that was exclusively Lena's to make. As evidenced by the arguments Erik presented at the hearing and again here on appeal, the court's intervention was necessary to counter Erik's line of questions to Lena, which highlighted his insistent, though erroneous, interpretation of the parenting order. Furthermore, the court stated that it was not a medical expert but the family court judge charged only with determining legal options and thus its opinion of Ritalin was irrelevant. The court's last challenged statement regarding any possible blocking of notification to Lena was an alert to Erik of the consequences of such actions *if* they ever occurred. Such information was simply not well received.

¶ 35 We find no bias in the trial court's actions or any abuse of its discretion in issuing the plenary order of protection in this case.

¶ 36 CONCLUSION

¶ 37 The judgment of the circuit court of Will County is affirmed.

¶ 38 Affirmed.