

NOTICE

Decision filed 03/10/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

NO. 5-10-0267

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

<i>In re</i> MARRIAGE OF)	Appeal from the
)	Circuit Court of
DEBRA ANN THOMAS,)	White County.
)	
Petitioner-Appellant,)	
)	
and)	No. 01-D-69
)	
ROBERT LEE THOMAS,)	Honorable
)	Timothy R. Neubauer,
Respondent-Appellee.)	Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.
Presiding Justice Chapman and Justice Spomer concurred in the judgment.

R U L E 2 3 O R D E R

Held: The appellant's failure to present a report of proceedings, an agreed statement of facts, or a valid bystander's report prevented this court from reviewing the issues related to the trial court's findings of fact and the basis for its legal conclusions. Absent a sufficiently complete record, this court must presume that the trial court had a sufficient factual basis for its orders and that the orders conformed with the law.

The petitioner, Debra Ann Thomas, appeals from the judgment of the circuit court of White County reducing the child support obligation of the respondent, Robert Lee Thomas, and from its order finding her in indirect civil contempt of court. We affirm.

BACKGROUND

The parties' marriage was dissolved on September 17, 2001. Pursuant to the marital settlement agreement incorporated into the judgment of dissolution, Debra was granted the custody of the parties' child, Aleesha Ann Thomas, born March 13, 1996. Robert was ordered to pay \$82.20 per week in child support.

On May 1, 2006, the trial court entered an order allowing Debra to remove Aleesha to Pennsylvania and modifying Robert's visitation schedule. On April 6, 2009, Robert filed a petition for a rule to show cause alleging that Debra withheld visitation on the weekend of March 19, 2009, when he traveled to Pennsylvania to exercise his visitation time with Aleesha. On the same day, Robert filed a petition for a modification of custody, requesting the residential custody of Aleesha. On December 2, 2009, Debra filed a motion to amend and clarify the visitation schedule and a petition for a modification of child support.

The petition for a modification of custody, the motion to amend and clarify visitation, the petition for a modification of child support, and the petition for a rule to show cause were heard on May 3, 2010. No transcript of the proceedings was made at the time of the hearing. On May 24, 2010, the trial court entered an agreed order. Pursuant to the order, Debra was to remain the sole custodian of Aleesha, and a visitation schedule was established. The trial court ordered Robert to pay child support in the amount of \$50 per week. In determining child support, the trial court considered "the added expense for the father of arranging for transportation for visitation and other changes in circumstances."

On May 24, 2010, the trial court also entered an order on the rule to show cause. The trial court found that, pursuant to a court order, Robert was entitled to visitation with Aleesha on her March 19, 2009, birthday weekend. The court found that Debra was aware that Robert planned to exercise his court-ordered visitation and that she willfully failed to deliver Aleesha to Robert in indirect civil contempt of court. Debra was ordered to reimburse Robert for his travel fees and to pay his attorney fees. Debra filed a timely notice of appeal from both May 24, 2010, court orders.

ANALYSIS

Debra argues that the trial court erred in not following the statutory guidelines for child support and in finding that her actions were willful and contumacious and in indirect

civil contempt of court. We affirm the trial court's orders.

Debra has failed to submit a sufficiently complete record. Specifically, the record lacks a transcript of the proceedings of the May 3, 2010, hearing. Supreme Court Rule 321 (eff. Feb. 1, 1994) provides that, unless the parties stipulate otherwise or the court orders less, the record on appeal shall consist of the judgment appealed from, the notice of appeal, and the entire common law record, including any report of proceedings prepared in accordance with Supreme Court Rule 323 (eff. Dec. 13, 2005). If no verbatim transcript of the proceedings is available, the appellant may submit a bystander's report or an agreed statement of facts. Ill. S. Ct. Rs. 323(c), (d) (eff. Dec. 13, 2005). The record includes no agreed statement of facts, but Debra included a purported bystander's report in the appendix to her brief. The purported bystander's report was made by Debra's attorney on appeal and reports the "testimony provided by all witnesses at the trial held on May 3, 2010, in this cause of action as told to [him] by Debra Ann Thomas." The attorney who prepared the report was not her attorney at the May 3, 2010, hearing. The report is not comprehensive because, as stated in paragraph six of the report, the court held an *in camera* interview of Aleesha to which Debra was not a witness.

Supreme Court Rule 323(c) (eff. Dec. 13, 2005) provides, in pertinent part, "If no verbatim transcript of the evidence of proceedings is obtainable the appellant may prepare a proposed report of proceedings from the best available sources, including recollection." Pursuant to the rule, the appellant must serve all the parties with the proposed bystander's report, and the other party has the opportunity to serve proposed amendments or an alternative proposed report of proceedings. Ill. S. Ct. R. 323(c) (eff. Dec. 13, 2005). The appellant then must present the proposed report or reports and any proposed amendments to the trial court for settlement and approval. Ill. S. Ct. R. 323(c) (eff. Dec. 13, 2005). The trial court can hold hearings if necessary and shall "settle, certify, and order filed an accurate

report of proceedings." Ill. S. Ct. R. 323(c) (eff. Dec. 13, 2005). Absent stipulation, only a certified report of proceedings shall be included in the record on appeal. Ill. S. Ct. R. 323(c) (eff. Dec. 13, 2005).

In the instant case, the purported report of proceedings is not included in the record, but in the appendix to Debra's brief. A certificate of service is included in the appendix, in which Debra's attorney certifies, "[P]ursuant to Illinois Supreme Court Rule 323(c), a true copy of the foregoing Bystander's Report was served upon all interested parties hereto ***." There is nothing in the brief or record to show that Debra presented the proposed bystander's report to the trial court for settlement and approval. The record does not contain a report of proceedings certified by the trial court. Because the purported report of proceedings included in the appendix to Debra's brief is not certified by the trial court, it is not a valid bystander's report.

Supreme Court Rule 323(a) (eff. Dec. 13, 2005) provides that the appellant has the responsibility to ensure that the record on appeal contains a report of proceedings, a bystander's report, or an agreed statement of facts including all the evidence pertinent to the issues on appeal. Rule 323 is not a mere suggestion but has the force and effect of law and is binding on litigants as well as the court. *In re Marriage of Thomsen*, 371 Ill. App. 3d 236, 241 (2007). The appellant bears the burden of presenting a sufficiently complete record because it is not possible to review an issue relating to a trial court's findings of fact and the basis for its legal conclusion absent a report or record of the proceedings. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005). "Without an adequate record preserving the claimed error, the reviewing court must presume the circuit court had a sufficient factual basis for its holding and that its order conforms with the law." *Corral*, 217 Ill. 2d at 157. The court should resolve doubts arising from the incompleteness of the record against the appellant. *Corral*, 217 Ill. 2d at 157.

In the present case, Debra claims that the trial court is punishing Aleesha by "indiscriminately reducing the amount of child support due to the fact that the parents live in different states." She further argues that the trial court abused its discretion when it found her in indirect contempt of civil court for willfully failing to deliver Aleesha to Robert to exercise his court-ordered visitation. Because Debra has failed to provide a sufficient record, we do not know what evidence or arguments were presented at the hearing, and we do not know the basis for the trial court's decision. Under these circumstances, we presume the trial court's orders conformed to the law and were grounded on a sufficient factual basis. See *Corral*, 217 Ill. 2d at 157.

CONCLUSION

For the foregoing reasons, the judgments of the circuit court of White County are affirmed.

Affirmed.