

2014 IL App (2d) 130821-U
No. 2-13-0821
Order filed April 30, 2014

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

In re PARENTAGE OF COLE P., a Minor,)	Appeal from the Circuit Court of Du Page County.
)	
)	No. 08-F-277
)	
(Kirsten B., Petitioner-Appellee, v. James P., Respondent-Appellant).)	Honorable Timothy J. McJoynt, Judge, Presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices Schostok and Birkett concurred in the judgment.

ORDER

- ¶ 1 *Held:* Since there is no report of proceedings of the pre-trial conference or an appropriate substitute, such as a bystander's report, we presume that the interim fee order conformed to the law and had a sufficient factual basis; affirmed.
- ¶ 2 Respondent, James P., attacks the validity of the underlying order for him to pay \$5,000 in interim attorney fees that led to an indirect civil contempt finding for failing to pay that amount. He raises two issues on appeal. The first is whether the trial court's failure to make findings in support of its award of interim attorney fees violates section 501(c-1)(3) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/501(c-1)(3) (West 2012)). The second is whether petitioner, Kirsten B., carried her burden of proof that she was entitled to

the interim award. Although petitioner has not filed a brief on appeal, we will consider the appeal pursuant to the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-33 (1976).

¶ 3

I. BACKGROUND

¶ 4 This case originated as a paternity action brought under the Illinois Parentage Act of 1984 (Parentage Act) (750 ILCS 45/1 *et seq.* (West 2008)). Ultimately, on January 19, 2011, the trial court awarded joint legal custody to petitioner and respondent, the unmarried parents of the minor child, Cole P. On September 21, 2009, petitioner filed her second petition for interim attorney fees, pursuant to section 17 of the Parentage Act (750 ILCS 45/17 (West 2008)). On September 1, 2010, the trial court entered an order requiring respondent to pay \$5,000 as interim attorney fees to petitioner's attorney pursuant to section 501(c-1) of the Act (West 2010). Respondent filed a motion to reconsider on September 30, 2010, which was denied on August 27, 2012.

¶ 5 On October 15, 2010, petitioner filed a petition for rule to show cause for indirect civil contempt of court for failing to comply with the September 1, 2010, order. On May 20, 2013, following a hearing, the trial court issued a rule to show cause against respondent. On August 7, 2013, the trial court held respondent in indirect civil contempt of court for violating its September 1 order, requiring respondent pay \$5,000 as interim attorney fees. Respondent timely appeals from the order holding him in civil contempt of court for failing to pay the interim fee.

¶ 6

II. ANALYSIS

¶ 7 Respondent contends that the trial court's failure to make oral or written findings in support of its award of interim attorney fees violated section 501(c-1)(3) of the Act. Respondent further argues that petitioner failed to carry her burden of proof that she was entitled to the

interim award. We review for an abuse of discretion the trial court's decision to award attorney fees. *In re Marriage of Radzik*, 2011 IL App (2d) 100374, ¶ 45.

¶ 8 Respondent is correct that neither the order nor the record contains any findings by the trial court supporting the award of interim fees. The trial court also conceded as much. Furthermore, the record does not contain documentary support for the award. The problem with respondent's contention is that the absence of a complete record does not inure to his benefit.

¶ 9 On June 25, 2010, the trial court engaged in a pre-trial conference with both parties' attorneys, which led to the September 1, 2010, order. No record of the conference or bystander's report or agreed statement of facts was provided on appeal. In ruling on respondent's motion to reconsider the award of interim fees to petitioner on August 27, 2012, the trial court indicated that it had reviewed its notes from the pre-trial conference. The court further recalled that it based its order upon the materials and information that were exchanged between the parties and the court at the pre-trial conference. The court stated that, at the time of the pre-trial conference, it was well aware of the law concerning interim fees and it had enough information to make its determination.

¶ 10 Respondent was represented by counsel at the pre-trial conference and when the interim fee was ordered. Any claim of impropriety in conducting the informal hearing off the record at an in-chambers conference was forfeited by respondent when he failed to object.

¶ 11 As stated, the pre-trial conference was never transcribed and an appropriate substitute, such as a bystander's report or agreed statement of facts, was never provided to this court pursuant to Illinois Supreme Court Rule 323 (Ill. S. Ct. R. 323 (eff. Dec.13, 2005)). It is the duty of the appellant to present this court with a sufficiently complete record of the trial court proceedings to support his claims of error. *Midstate Siding & Window Co. v. Rogers*, 204 Ill. 2d

314, 319 (2003). “An issue relating to a circuit court’s factual findings and basis for its legal conclusions obviously cannot be reviewed absent a report or record of the proceeding.” *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005). Therefore, when the issues on appeal relate to the conduct of a hearing or proceeding, the absence of a transcript or other record of that proceedings means this court must presume the order entered by the circuit court was in conformity with the law and had a sufficient factual basis. *Foutch v. O’Bryant*, 99 Ill. 2d 389, 391-92 (1984). “Any doubts which may arise from the incompleteness of the record will be resolved against the appellant.” *Id.* at 392.

¶ 12 Even though there are no documents in the record to support the fee award, including respondent’s exhibit 1 from the motion to reconsider, we must presume that the documents exchanged at the hearing supported the award. And, although the trial court conceded that it did not include written factual findings in its September 1, 2010, order, there is nothing in section 501(c-1)(3) that such findings be in writing. Section 501(c-1)(3) provides that the court shall assess an interim award in an amount necessary “upon findings that the party from whom attorney’s fees and costs are sought has the financial ability to pay reasonable amounts and that the party seeking attorney’s fees and costs lacks sufficient access to assets or income to pay reasonable amounts.” 750 ILCS 5/501 (c-1)(3) (West 2012)); *cf.* 705 ILCS 405/2-21(1) (West 2012) (trial court must put in writing the factual basis supporting a parent’s unfitness or inability to care for a minor). Again, in the absence of a record of the informal hearing, we must presume that the trial court followed the law and made findings at that time. The absence of evidence relating to the trial court’s findings is not evidence of the absence of valid findings.

¶ 13 Finally, we note that respondent did file a motion to reconsider the September 1, 2010, order on September 30, 2010, citing the trial court’s failure to include findings in its written

order as a basis to vacate the order. The dilemma here is that respondent did not call the motion for hearing until August 27, 2012, putting the trial court in the untenable position of trying to recollect events from two years earlier. Respondent cannot be rewarded for slumbering on his rights.

¶ 14 In sum, we are unable to conduct a meaningful review of this appeal, and we presume that the trial court's ruling on the interim fee was in conformity with the law and had a sufficient factual basis. Based on this record, we cannot say the trial court abused its discretion in issuing the interim fee award.

¶ 15

III. CONCLUSION

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

¶ 17 Affirmed.