2017 IL App (2d) 1600689-U
No. 2-16-0689
Order filed April 20, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re the MARRIAGE of,	)	Appeal from the Circuit Court
CHARLES L. BERKEBILE,	)	of McHenry County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 13-DV-219
	)	
DARIA M. BERKEBILE, by and through	)	
her plenary guardian, Scott K. Summers,	)	Honorable
	)	Kevin G. Costello,
Respondent-Appellant.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justice Burke and Justice Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court correctly determined that visitation with mother would seriously endanger the children and would not be in their best interests; the court's decision to allocate mother zero parenting time was appropriate.

¶ 2 In December 2000, petitioner Charles L. Berkebile and respondent Daria M. Berkebile were married. Charles (now 47 years old) is employed as an airline pilot; Daria (now 44) is unemployed. The marriage resulted in the birth of two children, Daniel (now 15) and Sara (now 12). Daria suffers from a psychological condition, and has been diagnosed with an

undifferentiated "delusional disorder." In 2013, Charles petitioned for the dissolution of the marriage and sought orders of protection for himself and the children. Orders of protection against Daria remained extant throughout most of the proceedings. Daria was arrested five times for violating those orders and has been found unfit to stand trial in several criminal proceedings. In a separate probate proceeding, a plenary guardian was appointed for Daria in 2015.

¶ 3 On July 22, 2016, the trial court entered a judgment of dissolution, which *inter alia* awarded Charles sole decision-making responsibility for Daniel and Sara. The court further found that parenting time with Daria would seriously endanger the children and would not be in their best interests. As part of the judgment the trial court entered an 11-page memorandum setting forth its factual findings with respect to the allocation of decision-making responsibility and parenting time. The court also entered plenary orders of protection barring Daria from coming within 500 feet of Charles, Daniel, and Sara.

¶ 4 Daria (through her guardian) filed a timely notice of appeal from the trial court's dissolution judgment, but on appeal she challenges only the trial court's serious-endangerment/best-interests findings and its decision to allocate no parenting time to her. Charles has responded by letter indicating that he would not be filing an appellee's brief; however, the issue presented is simple enough that an appellee's brief is not required for us to resolve this appeal. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 5 We first determine our jurisdiction, which we have an independent duty to consider. A trial court loses jurisdiction to vacate or modify its judgment—but not to enforce that judgment—30 days after it disposes of the last motion directed at the judgment. *In re Marriage of Heinrich*, 2014 IL App (2d) 121333, ¶ 35. Here, the court entered the party's dissolution

judgment on July 22, 2016; Daria timely filed her notice of appeal on August 17, 2016. Subsequently, however, on September 6, 2016, Charles filed a petition for a rule to show cause against Daria concerning a property matter between the parties unrelated to parenting time. Thereafter, Daria filed several cross-petitions for rules to show cause and motions to stay other various portions of the dissolution judgment. We note that all of the parties' post-decree petitions were filed after August 23, 2016, *i.e.*, in excess of 30 days of the judgment's entry. *Cf. In re Marriage of Kuyk*, 2015 IL App (2d) 140733, ¶ 22. Therefore, we have jurisdiction over this appeal and can proceed to its merits.

¶ 6 Daria's appellate brief offers a scant argument with little support. In the conclusion section of the brief, Daria mentions the orders of protection for the first time and simply asks us to reverse them along with the portion of the trial court's judgment concerning parenting time. We *could* find that Daria has forfeited her argument concerning the orders of protection (see *Vancura v. Katris*, 238 Ill. 2d 352, 370 (2010) ("[a]n issue that is merely listed or included in a vague allegation of error is not 'argued' " in the reviewing court); *cf.* Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016)), which would render moot Daria's more-developed argument concerning parenting time. But even if we overlook Daria's forfeiture concerning the orders of protection, we find her argument concerning parenting time unavailing.

¶ 7 Because the trial court is in a superior position to consider the evidence and the parties' demeanor, we will only overturn its parenting-time allocation if it was against the manifest weight of the evidence, *i.e.*, if the opposite conclusion was clearly warranted. *In re Parentage of J.W.*, 2013 IL 114817, ¶ 55. We find that the evidence amply supports the trial court's judgment.

¶ 8 According to Daria, the trial court erred in finding that visitation with Daria would seriously endanger the children's welfare and was contrary to their best interests. See 750 ILCS

5/602(a), 607(a) (West 2016). The primary basis for Daria's argument is her reliance on *In re Marriage of Lombaer*, 200 Ill. App. 3d 712 (1990), in which the appellate court held that the expert medical testimony presented in that case was insufficient to show that visitation with the mother would seriously endanger her children. We disagree with Daria that *Lombaer* controls any decision in this case.

¶ 9 In *Lombaer*, the court found the mother's psychiatric hospitalization and failure to take her prescribed medication was "insufficient to meet the onerous standard of serious endangerment ***." *Id*. at 724. Moreover, there was "no indication that the court considered the various [best-interest] factors" as "[v]irtually no evidence was adduced as to the children's best interests." *Id.* at 723.

¶ 10 Here, however, there was considerable evidence apart from Daria's brief hospitalizations and use of medication to support the trial court's determination that any visitation would seriously endanger the children. There was also significant evidence concerning the children's best interests. The trial court's memorandum opinion notes that:

> "Daria's significant [mental] health issues have been a major impediment to sustaining any meaningful interaction with the children since the [initial order or protection] was entered.
>
> [* * *]
>
> Since the entry of the [order of protection], all attempts to provide Daria with parenting time with the children have failed. All of those failure as due solely to Daria's actions. She alienated the persons who volunteered to supervise her visitation to the point where they refused to serve in that capacity. She consistently refused to act within the parameters of the supervised contact."

The trial court's memorandum opinion goes on to reference "a heartbreaking video" of a FaceTime exchange between Daria and her son Daniel, in which he "begged his mother to not interject inappropriate comments and to get the psychiatric help she so desperately needs." The court noted that the emotional damage done to Daniel "was apparent" from his reactions in the video. We do not have the video in question; it was not provided to us. But we may presume that it was consistent with the trial court's observations. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984).

¶ 11 The standards of serious endangerment and best interests have been satisfied in this case. Daria's unsuccessful psychiatric treatment was not the sole basis for the trial court's determination. *Cf. In re Marriage of Lombaer*, 200 Ill. App. 3d at 716. Rather, the trial court was given substantial evidence of Daria's inability or unwillingness to comply with the court's orders, the instructions of treatment providers, as well as her own guardian—all to the children's detriment. As noted, we do not have all of the evidence or all of the transcripts of proceedings held before the trial court. But the portions of the record that have been tendered to this court are both illuminating and disturbing. The court file contains approximately two thousand pages of Daria's text messages, letters, and emails to Charles, to the children, and to the trial court judge. These documents show an alarming failure on Daria's part to reconcile herself with the realities of her situation and to abide by the trial court's guidelines during supervised visits. No court should lightly find that visitation with a parent would seriously endanger a child's welfare, or that it is in a child's best interest to immediately sever most all contact with a parent. See generally *Lombaer*, 200 Ill. App. 3d at 723-25. However, under the extreme circumstances of this case, the evidence strongly supported that determination.

¶ 12 Accordingly, the trial court's finding that visitation with Daria would seriously endanger the children and would not be in their best interests was not contrary to the manifest weight of the evidence. Therefore, we affirm the judgment of the circuit court of McHenry County.

¶ 13 Affirmed.