2017 IL App (2d) 160887-U
No. 2-16-0887
Order filed February 1, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF CONSTANCE HANNINEN, Petitioner-Appellant, and RONALD JARVIS, Respondent-Appellee.	))))))))))	Appeal from the Circuit Court of Lake County, Illinois. No. 11-D-2222 Honorable Raymond D. Collins and Joseph V. Salvi, Judges, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Presiding Justice Hudson and Justice Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The appellant failed to demonstrate that the trial court abused its discretion in denying the motion to modify the parties' parenting agreement.

¶ 2 The petitioner, Constance Hanninen, appeals *pro se* from various orders entered by the circuit court of Lake County. Because she has not adequately supported her right to any relief, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Constance and the respondent, Ronald Jarvis (who is also *pro se* in this court), entered into a common-law marriage in Washington, D.C. They have two minor children, Kalle (born

on July 21, 2000) and Harley (born on April 5, 2003). Constance filed a petition for dissolution in November 2011. A parenting agreement between the parties was entered by the trial court in September 2013, under which Constance had sole legal custody of both children.

¶ 5 In October 2014, both parties filed emergency motions to modify the parenting agreement. Ronald's motion sought to change certain aspects of the pick-up arrangements. Constance's motion sought to restrict Ronald's visitation, on the ground that Ronald had grabbed Kalle's arm and dragged her toward him on a recent visit. The motion alleged that this was not an isolated incident and that both children wished to suspend visits with Ronald. Constance's motion also stated that she had called DCFS regarding the incident. The trial court found that neither motion presented an emergency and continued them for briefing and hearing. It also appointed a child's representative, Nicole Slobe, and ordered Slobe and the children's guardian *ad litem* to address the issues raised in Constance's motion to modify. On November 24, 2014, the trial court entered a judgment of dissolution that incorporated the September 2013 parenting agreement without issuing any new ruling on custody or visitation.

¶ 6 On January 9, 2015, after an argument with Constance, Kalle went to live with Ronald. On April 21, 2015, Ronald petitioned for a modification of custody, visitation, and support. He alleged that Kalle desired to reside with him and he requested sole legal custody of her, with corresponding changes to the parties' visitation schedule and his child support obligation. On August 28, 2015, the date of the hearing on Ronald's petition, Constance filed a response to the petition in which she agreed that "sole custody of K.J. [Kalle] should be transferred" to Ronald, noting that the child representative, GAL, and Kalle's therapist had all recommended that she allow Kalle to continue to reside with Ronald and thus she had no practical control over Kalle's education, medical care, or day-to-day upbringing. She wished to retain custody of Harley. She

suggested that visitation between Kalle and her be "left to the mutual agreement" of the two. She argued that Ronald should continue to pay child support, albeit at a reduced rate, because she was unemployed and lacked financial resources to adequately support a home for Harley.

¶ 7 On September 22, 2015, the trial court entered an order regarding Ronald's motion to modify child support that stated, in pertinent part: "On August 28, 2015, prior to the commencement of the hearing on the modification of child support, this Court was informed by the GAL and the parties that the parties were in agreement that Kalle would continue to reside with RONALD. Therefore, the Court finds that Kalle had been residing with RONALD and would continue to reside with RONALD by the agreement of the parties. The parties agree that Kalle is doing better at *** RONALD's house at this time." Noting that Constance had not filed her response within 28 days of Ronald's petition as ordered, nor had she requested any additional time in which to file her response, the trial court stated that it had not considered Constance's untimely response when making its ruling. The trial court noted the high level of conflict between the parties "over every issue imaginable" and stated that its ruling—that each parent should provide financial support only for the child residing with that parent—was based in part on the hope that this would minimize the conflict. Constance filed a motion to reconsider this order, challenging only the trial court's ruling regarding child support. She did not challenge any other aspect of the September 2015 order. Ronald also moved to reconsider. The trial court eventually denied both motions to reconsider.

¶ 8 In November 2015, the trial court ordered each party and the GAL or child representative to submit proposals for the allocation of parental decision-making and parenting time, and set March 4, 2016, as the hearing date for those issues. The day before that hearing, Constance filed an emergency motion seeking the return of Kalle to her home along with parental decision-

making authority over Kalle's education and health. Constance alleged that "illegal actions are carried out while [Kalle was] in his [Ronald's] agreed supervision *** this year" and that Kalle's grades had dropped from an A/B average to a C/D average.

¶ 9 The hearing regarding the issues of parental decision-making, the children's residences, and parenting time proceeded on March 4, 2016. No transcript of this hearing is included in the record on appeal.

¶ 10 On March 7, 2016, the trial court entered an order modifying the prior parenting agreement. The order provided that Kalle would continue to reside primarily with Ronald and Harley would continue to reside primarily with Constance. The order stated that the "[p]arties have agreed to modify the custody provision of their parenting agreement in accordance with the new statutes and agree that a sole or joint custody designation [would] not serve their children's best interest and instead of a custody designation, shall allocate parent responsibilities and decisions" as follows: Ronald would have final decision-making authority over Kalle's education and health, while Constance would have the same authority over Harley's education and health. The order recited the parties' agreement that academic performance was "essential to their children's success" and required the parent with authority to take certain actions if a child's grades fell below certain thresholds.

¶ 11 On April 5, 2016, Constance filed an unverified "motion to reconsider" the trial court's March 7, 2016, order entering the parties' parenting agreement. The motion asserted that Kalle's grades had fallen and that she had "partaken in 3 acts of criminal activity" while in Ronald's care. A printout of Kalle's current grades was attached, showing that Kalle was getting Cs and Ds in all of her classes except for Health. In his unverified response, Ronald asserted that Constance had participated in the March 7, 2016, meeting at which both parties and the GAL and

child's representative all agreed to the terms of the order entered that day, and that both parties had answered affirmatively when asked by the trial court whether they were in agreement as to those terms. Ronald also argued that Kalle had been diagnosed with depression and that both he and Kalle were working hard on improving her grades, but she continued to struggle.

¶ 12 On August 30, 2016, Constance's motion regarding the parenting agreement dated March 7, 2016, came before the trial court for hearing (along with several other pending matters). After hearing Constance's presentation of the grounds for her motion and Ronald's response, the trial court ordered the parents to bring Kalle in for an *in camera* interview the next day.

¶ 13 The record does not contain any transcript of any proceedings on August 31, 2016. The written order of that date simply continued the hearing on the "motion to modify the parenting agreement" until the following day for ruling.

¶ 14 On September 1, 2016, the trial court entered an order denying Constance's "motion to modify" the parenting agreement entered March 7, 2016. The order also stated that, *sua sponte*, the trial court was modifying the parenting order to make certain changes in the pick-up and drop-off arrangements. Finally, the order stated that no other matters were pending. Again, the record does not contain any transcript of the proceedings on that date.

¶ 15 Constance filed a motion to reconsider the trial court's ruling on the motion to modify child support (one of the matters decided on August 30, 2016). After that motion was denied on September 20, 2016, Constance filed the appeal that is before us now.

¶ 16 II. ANALYSIS

¶ 17 Before delving into the substance of Constance's appeal, we pause to determine the issues that are properly before us in this appeal. Constance's notice of appeal stated that she was challenging the orders dated: March 7, 2016; August 30, August 31, September 1, and

September 20, 2016; and unspecified "rulings" entered between October 2015 and October 2016. There are a number of rulings encompassed by the listed orders. Thus, our first task is to determine the scope of Constance's appeal.

¶ 18 The notice of appeal "shall specify the judgment or part thereof or other orders appealed from and the relief sought from the reviewing court." Ill. S. Ct. R. 303(b)(2) (eff. Sept. 1, 2006). Because the filing of a proper notice of appeal is the jurisdictional step that initiates appellate review, "Illinois courts have held that a notice of appeal confers jurisdiction on a court of review to consider only the judgments or parts thereof specified in the notice of appeal." *People v. Smith*, 228 Ill. 2d 95, 104 (2008) (citing cases).

¶ 19 However, "while a notice of appeal is jurisdictional, it is generally accepted that such a notice is to be construed liberally." *Id*. Our supreme court has stated:

> "The notice of appeal serves the purpose of informing the prevailing party in the trial court that the unsuccessful litigant seeks a review by a higher court. Briefs, and not the notice of appeal itself, specify the precise points to be relied upon for reversal. Courts in this State and the Federal courts have repeatedly held that a notice of appeal will confer jurisdiction on an appellate court if the notice, when considered as a whole, fairly and adequately sets out the judgment complained of and the relief sought so that the successful party is advised of the nature of the appeal. [Citations.] Unless the appellee is prejudiced thereby, the absence of strict technical compliance with the form of the notice is not fatal, and where the deficiency in the notice is one of form only, and not of substance, the appellate court is not deprived of jurisdiction." *Burtell v. First Charter Service Corp.*, 76 Ill. 2d 427, 433–34 (1979).

¶ 20 Considering the various orders listed in the notice of appeal, we find that the phrase "October 2015-October 2016 rulings" is insufficient to confer any appellate jurisdiction, because it is too vague to offer any guidance about the specific points on which Constance contends that the trial court erred. As to the remaining orders listed in the notice of appeal, several appear to have been listed simply as a precautionary measure. For instance, the orders of August 30 and 31, 2016, contained rulings on other matters, but as to the issue of the parenting agreement, they simply continued the hearing on that issue. Similarly, the order dated September 20, 2016, did not relate to the parenting agreement, but simply denied the last motion still pending before the trial court, thereby clearing the way for this appeal. Constance's brief makes it clear that, in this appeal, she challenges only the trial court's September 1, 2016, denial of her April 5, 2016, motion seeking to have Kalle live with her and to have parental decision-making authority over Kalle. (The sole point identified for argument in the brief is that the trial court abused its discretion in denying that motion.) Accordingly, we confine our review to the order dated September 1, 2016, although we also consider the March 7, 2016, order entering the parenting agreement, to the extent that it is pertinent to the appeal.

¶ 21 We briefly summarize the relevant legal and procedural events. Constance agreed in August 2015 that Ronald should have "sole custody" of Kalle, who should continue to live with Ronald. Although the March 7, 2016, parenting agreement changed the terminology applied to this arrangement—providing that Kalle would reside with Ronald, who would have "final decision-making authority" over her education and health—it did not work any substantial change in the previous agreed arrangement. Thus, Constance's April 5, 2016, motion seeking to have Kalle live with her and to have parental decision-making authority over Kalle was in essence a motion to modify the previous custody arrangement. We note that, although

Constance styled the motion as a motion to reconsider, the trial court referred to it as a motion to modify the parenting agreement, and in this court Constance refers to it in the same terms.

¶ 22 The allocation of parental decision-making responsibilities with respect to a minor child is governed by section 602.5 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/602.5 (West 2016)). That section provides that decision-making responsibilities must be allocated "according to the child's best interests," although the parties may agree on that allocation. *Id*. Once decision-making responsibilities have been allocated, the modification of that allocation is governed by section 610.5 of the Act. 750 ILCS 5/610.5 (West 2016). Under that provision, a court may modify the allocation if it finds, on the basis of facts that have arisen since the entry of the current parenting plan or allocation order, that a substantial change has occurred in the circumstances of the child or the parents and that modification is necessary to serve the child's best interests. 750 ILCS 5/610.5(c) (West 2016). However, neither parent may seek to modify an existing allocation within two years of the date on which it was made unless the parent seeking modification presents affidavits showing that "there is reason to believe the child's present environment may endanger seriously [the child's] mental, moral, or physical health or significantly impair the child's emotional development." 750 ILCS 5/610.5(a) (West 2016). A trial court's determination regarding parental decision-making responsibilities, like its determination of custody under the previous versions of the Act, is given great deference because that court is in a superior position to judge the credibility of the witnesses and determine the best interests of the child. *In re Marriage of Lonvik*, 2013 IL App (2d) 120865, ¶ 33. We will not reverse that determination on appeal unless "it is clearly against the manifest weight of the evidence and it appears that a manifest injustice has occurred. [Citation.] A judgment is against

the manifest weight of the evidence only when the opposite conclusion is clearly apparent." *In re Parentage of J.W.*, 2013 IL 114817, ¶ 55.

¶ 23 In this case, Constance has not adequately supported her arguments on appeal. Specifically, in order for us to be able to review the trial court's determination regarding the allocation of parenting responsibilities, we must be able to review the trial court's reasoning. Here, however, we have no record of that reasoning because we are missing some of the relevant transcripts. The trial court's written order of September 1, 2016, did not contain any findings, but only stated, without elaboration, that Constance's motion to modify the parenting agreement was denied. Although Constance provided a transcript of the August 30, 2016, hearing at which the parties presented their own testimony, the trial court made no ruling at that time, instead arranging to interview Kalle *in camera* the next day. There is no further record regarding the factors considered by the trial court or any findings it may have made orally on either August 31, 2016, or September 1, 2016, the date of the order being appealed.

¶ 24 In any appeal, it is the responsibility of the appellant to supply a complete record sufficient to permit review of the issues it wishes to raise on appeal. *People v. Carter*, 2015 IL 117709, ¶ 19. In the absence of such a record, we must presume that the order entered by the trial court was in conformity with the law and had a sufficient factual basis. *Koppel v. Michael*, 374 Ill. App. 3d 998, 1008 (2007) (citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984)). Any doubts that arise from the incompleteness of the record must be resolved against the appellant. *Carter*, 2015 IL 117709, ¶ 19. In this appeal, we lack any record suggesting that the trial court's denial of Constance's motion to modify the parenting agreement was against the manifest weight of the evidence. Accordingly, we must affirm that determination.

¶ 25 Even if Constance had provided us with a record adequate to permit meaningful review of the trial court's decision, other factors would mandate affirmance of that decision. As noted above, a parent may not seek to modify a parenting agreement within two years of the entry of that agreement, unless he or she submits affidavits demonstrating that the child's current environment poses a risk of serious endangerment of the child's mental, moral, emotional or physical health. 750 ILCS 5/610.5(a) (West 2016). Here, the current agreement regarding Kalle's residence and Ronald's decision-making authority over her (previously known as "sole legal custody") was entered on September 22, 2015. (The March 7, 2016, parenting agreement changed the terminology of this portion of the agreement, but it did not make any substantial change in Kalle's residence or which parent had decision-making authority over her.) Constance filed her motion to modify on April 5, 2016, less than seven months later. That motion was not verified and did not include any affidavits. Accordingly, the motion was not proper under section 610.5(a) of the Act. The trial court would have correctly denied the motion on that basis alone.

¶ 26 We note that, in portions of her brief on appeal, Constance appears to ask that this court consider her motion to modify the parenting agreement as if it were directly before us. (See, *e.g.*, the appellant's brief at p. 2: "Now comes the appellant, Connie, *pro se*, requesting this court change a parenting agreement ***.") However, this court has no authority to do so. The function of a reviewing court is to determine whether the trial court made an error of law or a determination not supported by the record, not to re-weigh the evidence and arrive at our own conclusion. See *In re Estate of Bennoon*, 2014 IL App (1st) 122224, ¶ 72 (the trial court "is in a superior position to observe the demeanor of the witnesses while testifying, to judge their credibility, and to determine the weight their testimony and the other trial evidence should

receive"). We "may not substitute our judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn." *Tully v. McLean*, 409 Ill. App. 3d 659, 670-71 (2011). Accordingly, this court cannot simply consider the matter afresh as Constance asks us to do.

¶ 27 Before closing, we must address the poor quality of the parties' briefs in this court. Constance includes a few citations to the record on appeal and fewer citations to pertinent legal authority. Ronald's "brief" is even more deficient, containing absolutely no citations of any kind. Neither brief included a table of contents to the brief. Constance, as the appellant, also bore the burden of providing a table of contents for the record on appeal, but she failed to do so.

¶ 28 As our supreme court has stated: "[A] reviewing court is not simply a depository into which a party may dump the burden of argument and research. *** A court of review is entitled to have the issues clearly defined and to be cited pertinent authority. A point not argued or supported by citation to relevant authority fails to satisfy the requirements of Supreme Court Rule 341(h)(7), (i) (see Ill. S. Ct. R. 341(h)(7), (i) (eff. Feb. 6, 2013)). Both argument and citation to relevant authority are required. Failure to comply with the rule's requirements results in forfeiture." (Emphasis omitted.) *People ex rel. Illinois Dep't of Labor v. E.R.H. Enterprises*, 2013 IL 115106, ¶ 56.

¶ 29 Further, our Supreme Court Rules apply equally to represented and *pro se* litigants. "While reviewing courts are open to all persons who seek redress of their grievances, a party's decision to appear *pro se* does not relieve that party from adhering as nearly as possible to the requirements of the rules of practice enunciated by our supreme court." *McCutcheon v. Chicago Principals Ass'n*, 159 Ill. App. 3d 955, 960 (1987). We note that Constance and Ronald have at least two other appeals currently pending before this court. (Those appeals are on a less

expedited timetable, as they do not raise any issues relating to the best interests of a child.) Both parties are hereby cautioned that any filings that do not comply with the relevant Supreme Court Rules may be stricken by this court, subject to re-filing in a compliant manner.

¶ 30 III. CONCLUSION

¶ 31 For the reasons stated, the judgment of the circuit court of Lake County is affirmed.

¶ 32 Affirmed.