2017 IL App (2d) 170319-U
No. 2-17-0319
Order filed September 1, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF HEATHER M. JONES,	)	Appeal from the Circuit Court
	)	of Boone County.
Petitioner-Appellant,	)	
	)	
and	)	No. 14-D-160
	)	
BRIAN A. JONES,	)	Honorable
	)	John H. Young,
Respondent-Appellee.	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices McLaren and Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly modified custody of the parties' minor children to grant respondent primary residential custody and decision-making responsibilities. Affirmed.

¶ 2 In this very contentious post-dissolution case, petitioner, Heather M. Jones, *pro se*, appeals the trial court's order granting respondent's, Brian A. Jones', also *pro se*, petition to modify parental responsibilities. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On September 26, 2014, petitioner, age 25 and a dietary aid, petitioned for dissolution of her marriage to respondent, age 35 and a counselor. The parties were married in 2009 and had

two children: Hannah (born January 28, 2010) and Abigail (born December 11, 2011). In her petition, petitioner alleged that she obtained temporary custody of the minors after an order of protection was entered in case No. 14-OP-165. She sought permanent custody of the minors.

¶ 5 On September 26, 2014, the trial court, by agreement, granted petitioner temporary physical custody of the minors subject to respondent's reasonable visitation (in a public place).

¶ 6 The trial court entered its dissolution judgment on December 10, 2014, awarding the parties joint custody of the minors and awarding physical custody to petitioner, subject to reasonable and seasonable visitation by respondent. The trial court ordered respondent to pay $109 per week for child support through the later of December 11, 2029, or upon the younger child's high-school graduation. The court found that the sum the parties agreed to meets or exceeds statutory guidelines. The parties had waived maintenance. The trial court also approved the parties' marital settlement agreement.

¶ 7 On February 11, 2015, the court modified respondent's child-support obligation, finding that his net income equaled $30,869 and adjusting his weekly payment to $166.15, beginning February 13, 2015.

¶ 8 The parties and Patrick Mitchell, petitioner's boyfriend and, later, spouse, sought multiple orders of protection and/or no stalking/no contact orders against the opposing party. The issues centered on disputes concerning visitation exchanges and/or harassment of the opposing party.

¶ 9 In April 2016, petitioner obtained an emergency order of protection against respondent through July 29, 2016, based on her allegations that respondent had sexually abused the minors. In October 2016, DCFS determined that the charges were unfounded. In a subsequent report, the GAL reported that the polygraph examiner told her that respondent was truthful and he believed

that respondent had not touched his daughters in a sexual manner. Abigail's counselor told the GAL that the minor had not reported that her father had physically or sexually hurt her.

¶ 10 On August 5, 2016, the trial court entered an order following a hearing on a petition for plenary order of protection after being advised that respondent had missed substantial visitation time. The court found there was no basis to impose a restriction on respondent's visitation with the minors. However, the court ordered that the parents stay away from each other at exchanges for visitations and not exit their cars when exchanging the minors.

¶ 11 On August 17, 2016, petitioner, now *pro se*, petitioned for full custody of the minors, alleging that respondent lacked interest in co-parenting and put "his hostility, anger and revenge motives before the children's needs and well[-]being." Respondent, also *pro se* at this time, sought a contempt finding against petitioner (alleging violations of the visitation order), attorney fees, and filed a "motion for change of residence" (seeking residential custody of the minors and 85-90% of parenting time). Respondent also alleged that Patrick struck respondent and the minors and that petitioner lied to doctors and counselors.

¶ 12 The trial court appointed Peggy Gerkin guardian *ad litem*. In the GAL's first report, dated October 6, 2016, she concluded that respondent did not sexually abuse the minors or physically abuse them. The GAL characterized petitioner's allegations as false and surmised that she had an ulterior motive. The GAL's report details three videos Mindy, respondent's wife, recorded around August 2016 of the minors. The GAL stated that the video sequence "is very disturbing to watch. Mindy is persistently videotaping and asking questions. She is supplying the information she wants the girls to repeat when she asks the question. The girls don't really seem phased by the bombardment of questions; however, the video clearly shows that Mindy is talking quickly and asking them leading questions." Other videos apparently showed the girls

discussing fighting at petitioner's home and describe Patrick as "mean" and state that he "punches walls." Also "Mommy says to lie, Daddy is mean." The GAL also noted that Mindy tried to elicit from the minors that Patrick " 'lay on top' " of them, characterizing them as inappropriate interview techniques. The GAL reported that Abigail's counselor stated that the minor disclosed no problems in either petitioner's or respondent's homes. The GAL concluded that the children have been harmed by the conflict between their parents and their spouses, and they require therapy. She recommended that parenting time be equally allocated between the parents. (The GAL revised this recommendation in a later report, detailed below.) The GAL also recommended make-up visitation time for respondent for the time lost due to the sexual-abuse allegations.

¶ 13 Petitioner petitioned for appointment of a new GAL, alleging bias and, without specifying, not acting in the children's best interests. The trial court, on October 6, 2016, denied the petition seeking to remove the GAL; struck the petition seeking full custody; and struck the petition for change of residence. The court also ordered that a March 2, 2016, visitation order remain in effect and a September 28, 2016, modification order (requiring that transfers be conducted at the police station) remain in effect.

¶ 14 On October 13, 2016, respondent moved to modify custody, alleging that "domestic violence takes place at" petitioner's home and that petitioner "emotionally and mentally abuses" the minors "in attempts to destroy my relationship with them." In an affidavit, he averred that petitioner raised false sexual-abuse allegations against him in attempts to destroy respondent's relationship with his daughters. (He later withdrew this motion.)

¶ 15 On November 23, 2016, petitioner petitioned to modify custody, alleging that respondent "is an endangerment to" the minors "because he disregards" their medical conditions and

"refuses to give them their [asthma] medication." She also alleged that respondent was abusive, without specifying the circumstances. Petitioner also petitioned for relocation and to end harassment.

¶ 16 On December 15, 2016, the trial court determined that the motion to end harassment and the petition to relocate were not adequately pleaded, and, on its own motion, dismissed the pleadings. The court set for hearing the competing petitions to change custody.

¶ 17 On January 23, 2017, respondent moved to modify the allocation of parental responsibilities, alleging that petitioner lived with/was married to "a man with a history of violence. My wife and two stepsons have a no[-]contact order against him. He also had an order of protection in Marion [County] from his former girlfriend. Patrick [Mitchell, petitioner's husband, who works as an EMT] has gotten physical with me in front of my children." He also alleged that petitioner "tried to brainwash the girls that I sexually abused them. She made them lie to doctors[.]"

¶ 18 A. GAL's 2017 Report

¶ 19 On March 7, 2017, the GAL filed a 33-page report (her second and final one) with the court, recommending that respondent have the majority of the parenting time with the minors. She summarized numerous communications with the parties, including several in-person meetings, and telephone conversations with relatives and friends. She referred to her earlier report, which related that respondent had passed a lie-detector test and DCFS unfounded the reports petitioner had made concerning sexual abuse by respondent against the minors. The GAL noted that she had observed the minors with respondent after the order of protection was dismissed and that the girls "were delighted to see their" father.

¶ 20 The GAL also summarized numerous police reports that petitioner, respondent, Patrick, and Mindy had made, alleging harassment and other issues primarily related to visitation exchanges, but also concerning allegations that the minors' asthma medications were not being properly administered and harassment of the other parties' spouse/family members. It also included a September 14, 2016, report filed by a Galaxy One cell-phone technician, who related an argument by the parties and stated he was concerned for the minors' safety. The police report stated that the "parties have calmed down now."

¶ 21 The GAL opined that the minors appear to be happy with their father and do not fear him. If petitioner cannot show a valid reason to deny or frustrate respondent's parenting time, then "she has unreasonably withheld the children from [respondent] subsequent to the entry of the Joint Parenting Agreement." The GAL noted that petitioner's lack of cooperation for visits showed that she was not acting in the minors' best interests, and petitioner has failed to facilitate respondent's parenting time. She expressed concern about Abigail's uncontrollable crying on a video Patrick recorded, wherein Abigail had stated that she did not want to see respondent. The GAL also noted that the court should consider respondent's residence for school purposes.

¶ 22 The GAL concluded that both parents love their daughters and that the minors would be upset if they did not frequently see their parents. She recommended against sexual-abuse counseling and noted that Patrick and Mindy "need to stay out of all decision[-]making as they are not the parents." Petitioner, in the GAL's opinion, has demonstrated that she will take steps against the minors' best interests, where she is denying respondent parenting time. Thus, respondent should have the majority of the parenting time.

¶ 23 B. March 8, 2017, Hearing

¶ 24 On March 8, 2017, a hearing was held on the parties' motions to modify custody. Each party appeared *pro se*, and the GAL was also present. Respondent and the GAL testified.

¶ 25 Respondent testified that he lives in McConnell with his wife, Mindy, and his two stepsons, ages 16 and 14, who live with them full-time. Respondent has a bachelor's degree and works in social services. Mindy is self-employed.

¶ 26 Respondent seeks to have the majority of the parenting time and to be allocated significant decision-making responsibilities. He testified that he believes that Patrick is a violent man, as evidenced by his treatment of his own child and his threats to Mindy. Respondent noted that his stepsons and Mindy have no-stalking, no-contact orders against Patrick in Stephenson County after he had made certain threats concerning the minors. Respondent also referred to the Galaxy One cell-phone representative who was so concerned about the minors that he contacted the police (for which the trial court noted a report was attached to the GAL's report). Respondent also testified that there is an emergency order of protection in Marion County from Tawnie (Patrick's former wife) as against their son, who has a fractured skull and facial bruising.

¶ 27 As to his motion, respondent testified that he believes that petitioner's home is unsafe due to Patrick's behavior. He also noted that petitioner had brought false allegations of sexual abuse against him, had caused "serious boundaries," and had tried to tarnish respondent's relationship with the minors. Respondent also stated that Abigail had missed 19 days of school in five months (8 days of which were unexcused, meaning that no one called the school). Hannah had 4 unexcused absences, 10 excused absences, and 9 tardies. He was unaware if any of the absences were due to medical appointments, and, if they were, he was not given more than 24 hours' notice.

¶ 28 The GAL testified that she wished to add to her report that there was an emergency order of protection issued against Patrick over the weekend in Marion County. The petition states that Patrick's son fell at the zoo and sustained a skull fracture and bruising and that he was not returned to his mother on time at the end of the visitation period. The GAL had no changes to her recommendations. She agreed with the (November 2016) unfounded reports from DCFS, this time concerning petitioner's house; the GAL opined that the children were not hit, punched, kicked, and they did not have any marks or bruises from any issues that were reported.

¶ 29 The GAL stated that the minors were comfortable around respondent and enjoyed their time with him. They love him, and he loves them. It was while with petitioner that Abigail reported being scared while outside, and there is a video Patrick recorded of her crying uncontrollably, where she says that she does not want to see her father. This caused emotional trauma to Abigail while in petitioner's care. Also, the GAL agreed that failing to be with respondent during the sexual-abuse-allegation period (four months) was emotionally harmful to the minors.

¶ 30 It would be in the minors' best interests, she opined, that they reside with respondent as their custodial parent because petitioner did not facilitate visitations. The GAL does not believe that there is a lot of domestic violence in petitioner's home. Her recommendations are based on petitioner's efforts to prevent normal visitation by respondent based on her sexual-abuse allegations. The GAL does not believe that the minors were sexually abused.

¶ 31 C. Trial Court's Findings

¶ 32 On April 12, 2017, the trial court, in open court, announced its findings on the parties' motions to modify custody. First, the court noted that it had had the opportunity, on multiple occasions, to view the parties' demeanor, attitude, testimony, and presentation and found that

they "cannot get along even in open court. Both their posture, their attitude, and demeanor drips and oozes with hostility toward one another. These parties are highly litigious. There have been multiple police reports, multiple DCFS investigations, multiple orders of protection in this court and at least two others." Although there is a presumption "that both parties should co-parent[,] these parties have demonstrated that they simply cannot."

¶ 33 The court also noted the parties' *pro se* status and that their exhibits and much of their testimony lacked proper foundation or "had other evidentiary issues." The court also noted that several witnesses the GAL interviewed provided statements that could not be considered by the court; another did not have any recent contact with respondent; and that Heather's mother was hostile toward respondent.

¶ 34 The trial court found that both parties' spouses "have significant issues," including that Mindy "inappropriately taped the children." Patrick, the court found, was openly hostile at a visitation exchange and taped the girls crying uncontrollably, which the GAL had found highly inappropriate. Also, there was a third-party report (*i.e.*, the technician) concerning an argument between Patrick and petitioner.

¶ 35 The trial court agreed with the GAL's assessment that the parties could not continue with the status quo, which was "consistent police reports, use of orders of protection[ ], no-stalking orders, and court proceedings. The status quo is not in the best interests of these two little girls."

¶ 36 The court found that both parties "met the other more than halfway in this contentiousness." Most compelling to the court was petitioner's "clear failure to facilitate [respondent's] parenting time. She persisted, and apparently still persists, in believing [respondent] sexually molested the girls; however, the DCFS investigation returned unfounded.

The police did not prosecute. [Respondent] vehemently denies the allegations. I find that this was done to frustrate visitation, and it was a drastic step" by petitioner.

¶ 37 The trial court adopted the GAL's findings and recommendations. It ordered that the children not be enrolled in sexual abuse counseling, but that they be enrolled in therapeutic counseling, with respondent responsible for attendance during his parenting time and with information communicated to petitioner. The court stated that there is to be no corporal punishment by any parent or step-parent; neither Patrick nor Mindy is to make any parenting decisions for the minors; there are to be no derogatory statements by anyone against anyone on the other side of the proceedings; and there is to be no discussion of finances or the litigation in front of the minors.

¶ 38 The trial court "reluctantly" granted respondent's petition to modify parental responsibilities, and it revoked the December 10, 2014, joint parenting agreement. It allocated to respondent significant decision-making responsibilities concerning the minors' education, medical care, and extracurricular activities. Day-to-day decisions are to be made by the party who has the children at the time such decisions are necessary. For school attendance purposes only, respondent's address is to be the residential address (but the girls would complete the current school year at their present address). Visitation exchanges shall continue to occur at police stations.

¶ 39 The court further ordered that, beginning August 18, 2017, petitioner will have parenting time every other weekend and one night per week with no overnight. During the summer, she will have every other weekend (6 p.m. Thursday through 6 p.m. Monday), along with the second weeks of June, July, and August.

¶ 40 Finally, the court emphasized to the parties that "the blatant hostility between the parties, the parents, and everybody else *** must stop." Petitioner appeals.

¶ 41 II. ANALYSIS

¶ 42 Petitioner, *pro se*, argues that the trial court erred in modifying custody. For the following reasons, we reject her claims.

¶ 43 Preliminarily, we note that our analysis is hampered by the parties' *pro se* status and resulting lack of familiarity with the law and rules of court administration. *Pro se* litigants are not entitled to more lenient treatment than attorneys. See *Lewis v. Heartland Food Corp.*, 2014 IL App (1st) 123303, ¶ 5. In Illinois, parties choosing to represent themselves without an attorney are "presumed to have full knowledge of applicable court rules and procedures and must comply with the same rules and procedures as would be required of litigants represented by attorneys." *In re Estate of Pellico*, 394 Ill. App. 3d 1052, 1067 (2009).

¶ 44 With these principles in mind, we note that petitioner's brief fails to comply with supreme court rules. First, her brief fails to abide by our supreme court's rules regarding the structure and content of appellate briefs. See Ill. S. Ct. R. 341 (eff. Jan. 1, 2016); R. 342 (eff. Jan. 1, 2005). These rules are not mere suggestions, but are compulsory. *In re Marriage of Hluska*, 2011 IL App (1st) 092636, ¶ 57. Nor are they merely hoops through which a party must jump. The purpose of these rules is to require the parties to present clear and orderly arguments before a reviewing court, so that the court can properly ascertain and dispose of the issues involved. *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 7. Here, petitioner's brief contains no citations to the record in violation of Illinois Supreme Court Rule 341(h)(7). Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016). The failure to substantiate factual assertions with such citation to the record warrants the dismissal of an appeal because it renders it "next to impossible

for this court to assess whether the facts as presented *** are an accurate and fair portrayal of the events in this case." *Collier v. Avis Rent A Car System, Inc.*, 248 Ill. App. 3d 1088, 1095 (1993). Second, petitioner's assertions are not coherent legal arguments and are not supported by citations to legal authority as required by Illinois Supreme Court Rule 341 (eff. Jan. 1, 2016). Rule 341(h)(7) requires that the argument "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016). "Supreme Court Rule 341 governing the form and contents of briefs is not just an arbitrary exercise of the supreme court's supervisory powers; its end purpose is that a reviewing court may properly ascertain and dispose of the issues involved." *Tannenbaum v. Lincoln National Bank*, 143 Ill. App. 3d 572, 574-75 (1986). See also *Northwestern Memorial Hospital v. Sharif*, 2014 IL App (1st) 133008, ¶ 20 ("It is well established that '[r]eviewing courts are entitled to have the issues clearly defined, to be cited pertinent authorities and are not a depository in which an appellant is to dump *** argument and research as it were, upon the court.' " (quoting *In re Estate of Kunz*, 7 Ill. App. 3d 760, 763 (1972))).

¶ 45 Despite the deficiencies in petitioner's brief, we turn to consider the merits of the appeal. A trial court's determination concerning parental responsibilities and custody, including custody modification, is given great deference because the court is in a superior position to judge witness credibility and determine the best interests of the child. *In re Marriage of Lonvik*, 2013 IL App (2d) 120865, ¶ 33; *In re Marriage of Divelbiss*, 308 Ill. App. 3d 198, 206 (1999). We will not reverse the trial court's judgment unless it is clearly against the manifest weight of the evidence, that is, only when the opposite conclusion is clearly evident. *In re Parentage of J.W.*, 2013 IL 114817, ¶ 55.

¶ 46 The court must allocate parenting time according to a child's best interests. 750 ILCS 602.7 (West 2016). Section 602.7(b) of the Act provides that, in determining best interests, the court shall consider all relevant factors, including, but not limited to:

"(1) the wishes of each parent seeking parenting time;

(2) the wishes of the child, taking into account the child's maturity and ability to express reasoned and independent preferences as to parenting time;

(3) the amount of time each parent spent performing caretaking functions with respect to the child in the 24 months preceding the filing of any petition for allocation of parental responsibilities or, if the child is under 2 years of age, since the child's birth;

(4) any prior agreement or course of conduct between the parents relating to caretaking functions with respect to the child;

(5) the interaction and interrelationship of the child with his or her parents and siblings and with any other person who may significantly affect the child's best interests;

(6) the child's adjustment to his or her home, school, and community;

(7) the mental and physical health of all individuals involved;

(8) the child's needs;

(9) the distance between the parents' residences, the cost and difficulty of transporting the child, each parent's and the child's daily schedules, and the ability of the parents to cooperate in the arrangement;

(10) whether a restriction on parenting time is appropriate;

(11) the physical violence or threat of physical violence by the child's parent directed against the child or other member of the child's household;

(12) the willingness and ability of each parent to place the needs of the child ahead of his or her own needs;

(13) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child;

(14) the occurrence of abuse against the child or other member of the child's household;

(15) whether one of the parents is a convicted sex offender or lives with a convicted sex offender and, if so, the exact nature of the offense and what if any treatment the offender has successfully participated in; the parties are entitled to a hearing on the issues raised in this paragraph (15);

(16) the terms of a parent's military family-care plan that a parent must complete before deployment if a parent is a member of the United States Armed Forces who is being deployed; and

(17) any other factor that the court expressly finds to be relevant." 750 ILCS 5/602.7(b) (West 2016).

¶ 47 First, petitioner argues that there should have been more evidence in the GAL report that was not submitted. She contends that only one party was investigated and "under the microscope." We reject this argument as undeveloped. Presumably, petitioner believes that she was unfairly and critically assessed by the GAL, whereas respondent was given only a cursory and/or favorable assessment. The record belies this assumption. We believe that the trial court reasonably assessed the parties' credibility and did not err in adopting the GAL's report, which, in our view, consisted of a thorough and fair assessment of both parties and the children's best interests. The GAL specifically noted that she did not believe that there was domestic violence in petitioner's home. Thus, we fail to see how petitioner was "under the microscope" and

unfairly assessed. As to respondent, the GAL addressed the sexual-abuse allegations and noted that DCFS had determined they were unfounded. She also observed the minors' behavior when visiting their father, noting that they were delighted to see him and loved him, and made particular note of the parties' contentious relationship. The GAL recommended that respondent be granted more custody only on the basis that petitioner had not facilitated visitations, which, as the primary custodian, she was required to do. See 750 ILCS 5/602.7 (West 2016).

¶ 48 Next, petitioner asserts that the judgment did not take into consideration the minors' health. She again fails to specify the aspect of the court's findings with which she takes issue. In her notice of appeal, she references "ongoing medical negligence with [respondent] not being able or doing [*sic*] the children's medical needs properly." This is an apparent reference to the fact that petitioner administers the minors' asthma medication via a nebulizer (pursuant to prescription) and respondent administers it twice daily via inhalers (pursuant to prescription). Respondent testified that the minors might have been confused, thinking that they are not getting the correct medication at respondent's home because it is administered differently at each house; he speculated that the minors might have told petitioner that they were not getting their medication. Also, petitioner makes brief mention of respondent's alleged "lack of interest" in the minors' medical appointments. However, respondent testified that he was not given 24 hours' notice of appointments. We find no error with the court's findings with respect to the minors' health needs. Petitioner has not asserted that the children are being administered the wrong medication and respondent addressed the scheduling issues in his testimony. The trial court's resolution of these issues was not unreasonable.

¶ 49 Next, petitioner complains that there is a foreseeable risk to the children by respondent's behavior. This is a vague reference to the unsubstantiated and unfounded sexual-abuse

allegations. We reject this claim. The trial court did not err in discounting/rejecting these allegations and in adopting the GAL's recommendation (based on the unfounded DCFS report and her own interviews and document review) that the children were not abused and need not be enrolled in sexual-abuse counseling.

¶ 50 Finally, petitioner argues that the trial court mixed up the evidence, pointing to the fact that, at the conclusion of the April 12, 2017, hearing, the trial court, after announcing its findings, handed back the incorrect exhibits to each party. Petitioner contends that this reflects that the trial court's ruling was erroneous and resulted in a "mistrial." We reject her claim as speculative. There is nothing in the record that reflects any confusion on the presentation or weighing of evidence.

¶ 51 III. CONCLUSION

¶ 52 For the reasons stated, the judgment of the circuit court of Boone County is affirmed.

¶ 53 Affirmed.