THIRD DIVISION
November 21, 2018

No. 1-17-2195

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
CINQUE R.,	)	Cook County.
	)	
Petitioner-Appellant,	)	
	)	
and	)	No. 06 D 630907
	)	
JANEEN W.,	)	Honorable
	)	Sharon O. Johnson,
Respondent-Appellee.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Ellis concurred in the judgment.

ORDER

¶ 1 *Held*: The appeal of the judgment of the circuit court of Cook County denying the petition to modify custody is dismissed; petitioner failed to comply with Illinois Supreme Court Rule 341 resulting in the forfeiture of his right to review of the trial court's judgment.

¶ 2 This appeal arises from an ongoing custody dispute between petitioner, Cinque Robinson, and respondent, Janeen D. Watson. The order appealed denied Robinson's petition to modify custody (now known as allocation of parental responsibilities). The trial court denied the

petition but ordered a change in parental responsibilities. For the following reasons, we dismiss this appeal.

¶ 3 BACKGROUND

¶ 4 The dissolution proceedings originally began in September 2006. At that time petitioner sought sole custody of the parties' minor child (born August 14, 2006). On May 17, 2007, the trial court entered a judgment for dissolution of marriage granting sole custody of the child to respondent and granting petitioner visitation. Both before and after the judgment dissolving the marriage petitioner filed numerous pleadings related to visitation. We will discuss only the pleadings relevant to the issue in this appeal. The pleading that is the subject of this appeal is petitioner's May 2015 amended petition to modify custody. Petitioner filed a *pro se* petition to modify custody in April 2014, and in May 2015, petitioner, then represented by counsel, filed the amended petition.

¶ 5 Petitioner titled the April 2014 motion "Emergency Motions for Contempt-of-Court and Modification of Custody." The motion alleged that respondent "interfered with visitation on Easter weekend" between April 18 and 20, 2014. Petitioner alleged that although he had agreed to allow respondent to have the child that weekend, she "gave it back" when petitioner asked her to, because it was Easter weekend. The April 2014 motion alleged that respondent's mother left several messages for petitioner, asking him to allow respondent to have the child that weekend. Allegedly, when petitioner told respondent to tell her mother it was his weekend and he wanted to keep it, respondent told petitioner to tell her himself. Petitioner's motion does not allege he did not have the minor on those dates. However, a later pleading respondent filed stated that respondent had the child that weekend in accordance with petitioner's earlier agreement. The motion also complained of an instance in October 2013 when respondent failed to turn over the child for visitation. (The trial court later found that respondent's failure to provide a visit was

not willful or contumacious because the visitation order was capable of two different interpretations as to the weekend in question.)

¶ 6 The April 2014 motion also alleged that respondent has "adversely affected the relationship" between him and the child by intentionally misleading the trial court and the justice system. In the April 2014 motion petitioner specifically complained that respondent twice falsely accused him of sexually assaulting the child. He alleged that the Illinois Department of Children and Family Services (DCFS) found respondent's first complaint unfounded and during the time frame of the second complaint the minor was with her mother. Petitioner's motion alleged that the child had begun to exhibit poor behavior in school, including pulling down her pants, kissing boys, and rolling on the floor, she is "behind socially," and that the child's reading comprehension is below her grade level. Petitioner further noted that respondent had admitted to physically pushing him while he was holding their daughter while at the same time accusing him of punching respondent in the face and kicking her in the chest. Petitioner's April 2014 motion sought temporary physical custody of the child "pending trial for permanent physical custody" and an order finding respondent in contempt of court for interfering with petitioner's visitation and his relationship with the child. On April 28, 2014, the trial court entered petitioner's motion and continued the matter to July 28, 2014.

¶ 7 On October 16, 2014, petitioner filed a petition on behalf of the child for an order of protection against respondent. The petition for order of protection claimed that abuse to the child occurred between May 28, 2014 and June 2, 2014 in which the child "sustained deep blue, purple and red bruises on her outer right thigh." The petition for order of protection also stated that respondent had accused petitioner of abuse, but a court found him not guilty on October 1, 2014. The petition for order of protection on behalf of the child also complained that the child had been denied visitation with petitioner, and petitioner "had to endure prison and legal fees, etc." He

also stated that his character had been defamed because of false arrests, and he had incurred attorney fees, costs, and missed employment. The trial court denied a petition for an emergency order of protection petitioner filed, and continued the petition for order of protection for a hearing after service or notice to respondent.

¶ 8 On January 8, 2015, the trial court referred the matter to Forensic Clinical Services. In a separate order on the same date the court denied the petition for order of protection. The court specifically found "that no evidence was presented indicating the minor obtained the injuries at [the] mother's home" and that petitioner "did not sustain his burden of proof." The court continued the matter for status on the referral to Forensic Clinical Services for an evaluation and also continued the matter for a hearing on petitioner's motion to show cause and emergency motion for contempt of court and modification of custody. The court ordered petitioner to take parenting classes and also ordered: "Neither parent is to use corporal punishment on the minor in particular no belt is to be used to spank the minor."

¶ 9 Petitioner's May 2015 amended petition to modify custody argues "there has been a substantial change in circumstances that necessitates a change in the custodial arrangement." The amended petition alleges:

1. J.R.'s grades are suffering. On information and belief, respondent does not help J.R. with her homework.
2. J.R. has behavioral issues. During the time that J.R. is with petitioner for a long period of time, usually four weeks of visitation in the summer, J.R.'s behavior improves.
3. When J.R. returns to respondent's care for the school year, J.R.'s behavior deteriorates.
4. J.R.'s behavior in school is a cause for concern as she has resorted to spitting, kicking, and even stabbing one of the other students with pencils and scissors.

The amended petition detailed some of J.R.'s conduct. Petitioner attached emails from J.R.'s teachers informing petitioner of the conduct alleged in the amended petition. The amended petition further alleged that respondent had been on a campaign to interfere with petitioner's visitation, that respondent had been cited several times for visitation abuse, and that respondent had twice falsely accused petitioner of sexually assaulting J.R. The amended petition sought "sole care, custody, control and education" of J.R.

¶ 10 On December 10, 2015, petitioner filed an emergency motion for visitation in which he alleged his visitation was being interfered with. On December 17, 2015, the trial court denied petitioner's December 10, 2015 emergency motion, finding the motion "is not an emergency and is therefore denied." The court ruled that trial on all pending matters would be held on April 13 and 14, 2016. On January 7, 2016, petitioner filed a notice of appeal from the trial court's December 17, 2015 judgment on petitioner's motion seeking an emergency modification of custody. This court affirmed the trial court's order denying petitioner's emergency motion to change custody. *In re Marriage of Cinque R.*, 2016 IL App (1st) 160035-U. On August 12, 2016, petitioner filed a notice of appeal from an August 5, 2015 judgment of the trial court, and on April 5, 2017, this court dismissed that appeal for want of prosecution.

¶ 11 On May 31, 2017, the trial court set a hearing date of August 28-29, 2017 for petitioner's May 2015 amended motion to change custody. On August 28, 2017, petitioner filed a pleading titled "Emergency Motion for Temporary Change in Parenting Time *Instanter* Pending Outcome of Motion to Dismiss Due to a Current Dangerous Mental, Physical and Emotional Environment." Petitioner attached his own affidavit to the pleading. On August 28, 2017, petitioner also filed a motion for summary judgment on his May 2015 amended petition to change custody. Petitioner's August 28, 2017 pleadings are primarily a recitation of the history

of allegations in the several motions filed with regard to J.R.'s custody and visitation and a restatement of prior arguments.

¶ 12 Following the hearing, the trial court entered a written order on petitioner's May 2015 amended petition to modify custody. The trial court ordered that respondent "shall remain the residential parent of the minor child and shall have parenting time with the minor child at all times other that Petitioner's parenting time." The order also stated what petitioner's parenting time would be and ordered all prior orders with respect to the parties' joint decision-making regarding medical, education, religious, and extracurricular activities shall stand.

¶ 13 This appeal followed.

¶ 14 Respondent did not file an appellee's brief in this court. On September 24, 2018, this court entered on order that this appeal would be decided on the record and appellant's brief only.

¶ 15 ANALYSIS

¶ 16 Petitioner appeals from an order of the trial court denying his petition to modify "an order allocating parental decision-making responsibilities" and "parenting time." 750 ILCS 5/610.5 (West 2016).[1] Under section 610.5 of the Illinois Marriage and Dissolution of Marriage Act (Act), "the court shall modify a parenting plan or allocation judgment when necessary to serve the child's best interests if the court finds, by a preponderance of the evidence, that on the basis of facts that have arisen since the entry of the existing parenting plan or allocation judgment or were not anticipated therein, a substantial change has occurred in the circumstances of the child or of either parent and that a modification is necessary to serve the child's best interests." 750 ILCS 5/610.5(c) (West 2016). "The question in a modification proceeding is always what is in

[1] "[E]ffective January 1, 2016, the terms 'allocation of parental responsibilities: decision making' and 'allocation of parental responsibilities: parenting time' have replaced the phrase 'custody' throughout the Act. See Pub. Act 99-90, §§ 5-15 (eff. Jan. 1, 2016)." *In re Custody of G.L.*, 2017 IL App (1st) 163171, ¶ 25.

the best interests of the children." *In re Marriage of Adams*, 2017 IL App (3d) 170472, ¶ 19. We will uphold the trial court's determination of what is in the child's best interest unless it is against the manifest weight of the evidence. *Id*.

¶ 17 Initially, we must address petitioner's brief to this court, which he submitted *pro se*. We begin with the requirements for appellant's briefs, which are found in Illinois Supreme Court Rule 341(h) (eff. Nov. 1, 2017) and which reads in pertinent part, as follows:

> "(h) Appellant's Brief. The appellant's brief shall contain the following parts in the order named:
>
> (1) A summary statement, entitled 'Points and Authorities,' of the points argued and the authorities cited in the Argument. This shall consist of the headings of the points and subpoints as in the Argument, with the citation under each heading of the authorities relied upon or distinguished, and a reference to the page of the brief on which each heading and each authority appear. Cases shall be cited as near as may be in the order of their importance.
>
> (2) An introductory paragraph stating (i) the nature of the action and of the judgment appealed from and whether the judgment is based upon the verdict of a jury, and (ii) whether any question is raised on the pleadings and, if so, the nature of the question.
>
> * * *
>
> (3) A statement of the issue or issues presented for review, without detail or citation of authorities.
>
> * * *
>
> The appellant must include a concise statement of the applicable standard of review for each issue, with citation to authority, either in the discussion of the

issue in the argument or under a separate heading placed before the discussion in the argument.

(4) A statement of jurisdiction:

* * *

> (ii) In a case appealed to the Appellate Court, a brief, but precise statement or explanation under the heading 'Jurisdiction' of the basis for appeal including the supreme court rule or other law which confers jurisdiction upon the reviewing court; the facts of the case which bring it within this rule or other law; and the date that the order being appealed was entered and any other facts which are necessary to demonstrate that the appeal is timely. In appeals from a judgment as to all the claims and all the parties, the statement shall demonstrate the disposition of all claims and all parties. All facts recited in this statement shall be supported by page references to the record on appeal.

* * *

(6) Statement of Facts, which shall contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal in the format as set forth in the Standards and Requirements for Electronic Filing the Record on Appeal.

(7) Argument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on. Evidence shall not be copied at length, but reference shall be made to the pages of the record on appeal where evidence may be found. Citation of numerous

> authorities in support of the same point is not favored. Points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing.
>
> (8) A short conclusion stating the precise relief sought, followed by the names of counsel as on the cover.
>
> (9) An appendix as required by Rule 342." Ill. S. Ct. R. 341(h).

¶ 18 The purpose of our supreme court's rules regarding the structure and content of appellate briefs "is to require the parties to present clear and orderly arguments before [the] reviewing court, so that the court can properly ascertain and dispose of the issues involved." *U.S. Bank Trust National Ass'n v. Junior*, 2016 IL App (1st) 152109, ¶ 17 (citing *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 7). "These rules are not mere suggestions, but are compulsory." *Id.* (citing *In re Marriage of Hluska*, 2011 IL App (1st) 092636, ¶ 57). Further, with regard to these rules *pro se* litigants are not entitled to more lenient treatment than attorneys. *Id.* ¶ 16 (citing *Lewis v. Heartland Food Corp.*, 2014 IL App (1st) 123303, ¶ 5). "In Illinois, parties choosing to represent themselves without a lawyer 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." (Internal quotation marks omitted.) *Id.* (citing *In re Estate of Pellico*, 394 Ill. App. 3d 1052, 1067 (2009)).

¶ 19 Petitioner's appellant's brief contains a section titled "Points and Authorities" but it does not contain "the headings of the points and subpoints as in the Argument," or a "reference to the page of the brief on which *** each authority appear." Ill. S. Ct. R. 341(h)(1). Petitioner's "Points and Authorities" is a list of three statutes and one case with no headings and no page numbers. In the "Nature of the Case" section of petitioner's brief he wrote "This is an action for modification of parental responsibilities under Illinois law." Petitioner did not state the judgment

appealed from or whether "any question is raised on the pleadings." Ill. S. Ct. R. 341(h)(2). Petitioner did provide an adequate statement of the issues presented for review and statement of jurisdiction. Ill. S. Ct. R. 341(h)(3), (4). Petitioner's "Statement of Facts" is a listing of the procedural history of most of the proceedings surrounding the parenting of J.R. that lists pleadings, allegations in those pleadings, and judgments thereon and some factual assertions including assertions about statements at the trial of the petition at issue in this appeal. The "Statement of Facts" contains no references "to the pages of the record on appeal." Ill. S. Ct. R. 341(h)(6). Petitioner's "Argument" does not provide "citation of the authorities and the pages of the record relied on." Ill. S. Ct. R. 341(h)(7). The only citation to a legal authority in the six-sentence long "Argument" section of petitioner's brief appears when petitioner writes that the trial judge "failed to uphold the January 8, 2015 order to not hit J.R. with a belt, in violation of 750 ILCS 60/102, which clearly states that courts are to quickly enter and enforce orders that prevent continued abuse and to recognize that such abuse is criminal in nature and that the courts too often allow the abusers to escape." Petitioner failed to state "the precise relief sought." Ill. S. Ct. R. 341(h)(8). Petitioner did include an appendix to his brief with minor deficiencies, including the failure to include the notice of appeal or a table of contents of the record on appeal. See Ill. S. Ct. R. 342 (eff. July 1, 2017).

¶ 20 The deficiencies in petitioner's brief provide sufficient grounds to dismiss his appeal. "The failure to substantiate factual assertions with *** 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.' [Citation.]" *Junior*, 2016 IL App (1st) 152109, ¶ 18 (citing *Collier v. Avis Rent A Car System, Inc.*, 248 Ill. App. 3d 1088, 1095 (1993)). This deficiency is compounded in this appeal by the fact that plaintiff failed to provide a sufficiently complete record on appeal. "[T]o support a

claim of error on appeal the appellant has the burden to present a sufficiently complete record." *Webster v. Hartman*, 195 Ill. 2d 426, 432 (2001). "Where the issue on appeal relates to the conduct of a hearing or proceedings, this issue is not subject to review absent a report or record of the proceeding. Instead, absent a record, 'it [is] presumed that the order entered by the trial court [is] in conformity with the law and had a sufficient factual basis.' [Citation.]" *Id.* (quoting *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984)). Where the record lacks information of the evidence presented at a hearing, "it is presumed that the court heard adequate evidence to support the decision that was rendered unless the record indicates otherwise. [Citation.]" (Internal quotations omitted.) *Id.* at 433 (quoting *Skaggs v. Junis*, 28 Ill. 2d 199, 201-02 (1963)). In this case, petitioner failed to include a transcript of the evidence presented at the hearing on the petition in this case. Plaintiff did procure the portion of the transcript representing the trial court's ruling, but that transcript is not included in the record on appeal. Instead, petitioner included it in the appendix to his appellant's brief. "Attachments to briefs not included in the record are not properly before the reviewing court and cannot be used to supplement the record." *Zimmer v. Melendez*, 222 Ill. App. 3d 390, 394-95 (1991). Therefore, the transcript of the trial court's oral ruling cannot be considered. See *Oruta v. B.E.W. and Continental*, 2016 IL App (1st) 152735, ¶ 32.

¶ 21 Moreover, to the extent petitioner included an argument, is consists solely of conclusions. Petitioner makes two statements that could be construed as his contentions of error in this case. First, petitioner states "J.R.'s grades went from good to bad and *** her conduct at school was bad. This alone constitutes a substantial change in J.R.s circumstances." Second, petitioner states that the trial judge "failed to uphold the *** order to not hit J.R. with a belt." "It is a rudimentary rule of appellate practice that an appellant may not make a point merely by stating it without presenting any argument in support." (Internal quotation marks omitted.) *Junior*, 2016

IL App (1st) 152109, ¶ 18 (quoting *Housing Authority of Champaign County v. Lyles*, 395 Ill. App. 3d 1036, 1040 (2009)). This court is "not a depository into which the appellant may dump the burden of argument and research." *In re Marriage of James and Wynkoop,* 2018 IL App (2d) 170627, ¶ 37; *In re Estate of Divine,* 263 Ill. App. 3d 799, 810 (1994). We will decline to reach the merits of a contention where the party making it fails to "articulate a cohesive legal argument supported by authority." *AT&T Teleholdings, Inc. v. Department of Revenue*, 2012 IL App (1st) 110493, ¶ 36. The failure to comply with Rule 341(e)(7) forfeits review of an issue. *Brown v. Tenney*, 125 Ill. 2d 348, 362-63 (1988) ("A point not argued or supported by citation to relevant authority fails to satisfy the requirements of Supreme Court Rule 341(e)(7) ([citation]) and is, therefore, waived. [Citation.] Accordingly, we decline to address these issues.").

¶ 22 Based on the foregoing, we are compelled to find petitioner has forfeited his right to review of the trial court's judgment and we dismiss the appeal.

¶ 23 Setting aside the problems with petitioner's brief, petitioner states J.R.'s performance and behavior in school is evidence of a change in circumstances. Presumably, petitioner means to argue the trial court should have granted his request for a modification of the allocation of parental responsibilities based on that alleged change in circumstances. The trial court's order in this case did find that modification of the parenting schedule was proper and the court in fact did modify the allocation of parenting time.[2]

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[2] Although not properly before this court, we note that according to the transcript in the appendix to petitioner's brief, the trial court sought to modify the allocation of parenting time in the best interest of J.R. expressly to address J.R.'s failing performance in school; however, petitioner objected to the schedule the trial court proposed based on his concerns about whether he would be able to comply with the schedule given his current employment. According to the transcript in the appendix, the trial court stated as follows:

> "The trial court is vested with wide discretion in resolving visitation issues. [Citation.] We will not interfere with the trial court's determination unless an abuse of discretion occurred or where manifest injustice has been done to the child or parent. [Citations.]
>
> A best interest determination is heavily fact dependent; it cannot be reduced to a simple bright line test, but rather must be made on a case-by-case basis, depending on the circumstances of each situation. [Citation.] On review, a trial court's determination of what is in the child's best interest will not be reversed unless it is against the manifest weight of the evidence and has resulted in manifest injustice. [Citation.] There is a strong presumption in favor of a trial court's ruling because it had the opportunity to observe the parents and the children and evaluate their temperaments, personalities and capabilities. [Citation.]" *In re Marriage of Betsy M.*, 2015 IL App (1st) 151358, ¶¶ 59-60.

¶ 24 Petitioner's brief notwithstanding, we have carefully reviewed the record and we are cognizant of petitioner's claims, including that J.R.'s school performance and behavior improve when petitioner spends more time with her. Based on that review and the strong presumption

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> "[A]t one point [petitioner] stated that there—the child had always struggled or had—was struggling before the entry of the last order; therefore, the change in grades was not a change in circumstances.
>
> 610.5(e), however, allows the Court to modify a parenting plan or allocation judgment without a showing of change in circumstances if the modification is in the best interest and it amounts to a minor modification. This Court is concerned that the child may not be getting the requisite assistance with school work and that mother, due to her work schedule, is not available as often as the child may need for the purpose of assisting her with school work.
>
> * * *
>
> Father seems to be available and willing to give the additional assistance with the school work. Therefore, I find that it is in the best interest of the minor child that we do modify the parenting schedule ***."

afforded the trial court's ruling we cannot say that a manifest injustice has been done to J.R. by the trial court's September 1, 2017 order that is the subject of this appeal. As for petitioner's claim the trial court failed to uphold the January 8, 2015 order that the parties not use corporal punishment on J.R., particularly spanking her with a belt, that allegation was not a part of the petition to modify that is the subject of this appeal. Petitioner is referencing a petition for an order of protection, which the trial court denied on July 22, 2016. Petitioner filed a motion to reconsider the July 22, 2016 order, which the record suggests was denied on August 5, 2016. Thus, the denial of the petition for an order of protection was the probable subject of petitioner's dismissed appeal. That order is not currently before this court and petitioner's argument regarding it are irrelevant.

¶ 25 Based on his complete failure to comply with Illinois Supreme Court Rule 341, which is a mandatory rule of procedure and not merely a suggestion (*In re Marriage of Foster*, 2014 IL App (1st) 123078, ¶ 115), the appeal is dismissed, and the trial court's judgment is affirmed.

¶ 26 CONCLUSION

¶ 27 For the foregoing reasons, the appeal is dismissed and the judgment of the circuit court of Cook County is affirmed.

¶ 28 Affirmed.