

No. 1-17-2903

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

<i>In re</i> MARRIAGE OF JENNIFER CUAYONG PONO)	Appeal from the
n/k/a JENNIFER ARZADON,)	Circuit Court of
)	Cook County
Petitioner-Appellee,)	
)	
and)	No. 08 D 9806
)	
NESTOR YANONG PONO,)	Honorable
)	Robert W. Johnson,
Respondent-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Cunningham and Delort concurred in the judgment.

ORDER

¶ 1 *Held:* We find that the circuit court did not abuse its discretion when it entered an order of indirect civil contempt against the respondent, Nester Pono, for his failure to comply with its May 19, 2010 Parenting Agreement. We also find that Nestor forfeited his review of the remaining arguments on appeal as a result of his failure to comply with Illinois Supreme Court Rule 341(h)(7) (eff. Nov. 1, 2017).

¶ 2 The respondent, Nestor Pono, appeals from the circuit court’s order finding him in indirect civil contempt for failing to comply with its May 19, 2010 Parenting Agreement. On

appeal, Nestor argues that this court should reverse the circuit court's contempt order because: (1) the order was invalid; (2) his due process rights were violated; (3) the circuit court abused its discretion when it entered the order of indirect civil contempt because his violation of the Parenting Agreement was not willful and contumacious conduct; (4) the inquiry into the child support issue during the November 2, 2017 hearing was in error when his violation of the Parenting Agreement was the only issue before the circuit court; and (5) he should not have been precluded from testifying at the hearing about the incident leading to J.A. running away from Jennifer's home. For the reasons that follow, we affirm.

¶ 3 Jennifer Pono (n/k/a Jennifer Arzadon), the petitioner, married Nestor on August 16, 1997, producing two children, J.L., now 20 years old, and J.A., now 15 years old. Nestor and Jennifer's marriage was dissolved on May 19, 2010, after the circuit court entered a Judgment of Dissolution of Marriage, incorporating a Marital Settlement Agreement and Parenting Agreement into the judgment.

¶ 4 The Parenting Agreement provides that Jennifer has sole custody of the children and that Nestor will have parenting time. Section 1.2 of the Parenting Agreement states in pertinent part: "The parties agree that *** [Jennifer] shall have sole custody. [Jennifer] and [Nestor] shall have the right to parenting time and have the company of minor children as frequently and liberally as the parties may agree upon from time-to-time." Section 2.2 of the Parenting Agreement provides:

"Parenting time shall be as liberal and frequent as the parties may agree upon from time-to-time, but in any event the parties shall have specific parenting time with the minor children as follows:

A. Regular Parenting Time. [Nestor] shall have parenting time with the minor children every Sunday from 10:00 a.m. until Wednesday at 5:00 p.m.

B. Regular Parenting Time. [Jennifer] shall have parenting time with the minor children every Wednesday from 5:00 p.m. until Sunday at 10:00 a.m.”

Section 8.3 of the Parenting Agreement provides: “[i]f either party feels that the terms and conditions of this Parenting Agreement are inadequate or inappropriate in view of the children’s age, developmental progress, and/or preference, that the party shall make his or her concerns known to the other party in writing. The parties may amend the provisions of this Parenting Agreement solely by Order of Court.”

¶ 5 In September or October 2016, J.A. ran away from Jennifer’s home. Subsequently, Nestor and Jennifer orally agreed that, for an unspecified period of time, Nestor would have parenting time with J.A. from Sunday at 10:00 a.m. until Thursday at 5:00 p.m. Nestor has been keeping J.A. from “Sunday morning until Thursday night” and returning J.A. to Jennifer Friday morning since she ran away.

¶ 6 On January 4, 2017, Nestor filed a petition for modification of parental responsibilities and parenting time. In his petition for modification, Nestor requested that the circuit court award him with “major parental responsibilities and significant parenting time,” by modifying the Parenting Agreement to grant Jennifer parenting time with J.A. from “Thursday at 5 pm *** until Sunday at 10 am every other week” and limiting telephone contact between Jennifer and J.A. during the week between the hours of 6:00 pm and 7:30 pm, unless there is an emergency.

¶ 7 On January 9, 2017, the circuit court ordered the parties to participate in alternative dispute resolution “on the issues of allocation of parental responsibilities and parenting time (modification) prior to the court setting a hearing *** or requiring Jennifer to respond to Nestor’s petition” and it continued the petition. On February 27, 2017, Jennifer filed her response to

Nestor's petition to modify parental responsibilities and parenting time, requesting that the circuit court deny the petition.

¶ 8 On July 27, 2017, and after the parties failed to reach an agreement through mediation, the circuit court appointed Michael I. Bender as J.A.'s child representative. Mr. Bender interviewed Jennifer, Nestor, J.A., and J.L.

¶ 9 On October 12, 2017, Jennifer filed a petition for rule to show cause why Nestor should not be held in indirect civil contempt for failing to comply with the court-ordered Parenting Agreement. In her petition, Jennifer maintained that, although she and Nestor entered into a temporary oral amendment to the Parenting Agreement, she desires to return to the original Parenting Agreement that grants Nestor parenting time with J.A. from Sunday at 10:00 am until Wednesday at 5:00 pm. She further maintained that her attorneys issued two formal demand letters¹, demanding that Nestor comply with the original terms of the Parenting Agreement and that Nestor refused and continues to refuse to comply. On October 20, 2017, Nestor filed a response to Jennifer's petition for rule to show cause, praying that the court deny the petition. On October 27, 2017, the circuit court issued an order on rule to show cause why Nestor should not be held in indirect civil contempt for his failure to "comply with parenting time" as ordered by the court on May 19, 2010, and was ordered to appear for a hearing on November 2, 2017, to respond to the rule.

¶ 10 On November 2, 2017, and before proceeding with the hearing, the circuit court allowed Mr. Bender to present his report after interviewing Jennifer, Nestor, J.A., and J.L. Mr. Bender stated the following at the hearing:

¹ The actual letters are not included in the record.

“The practice of the parties has been to give [Nestor] Sunday to Thursday as opposed to Sunday to Wednesday.

At this point, [Nestor] is seeking Sunday through Friday.

* * *

There is a conflict between [Jennifer’s] husband and the child. And the child used to be afraid of [Jennifer’s] husband, who has a temper. Nothing that I could point to to tell you that there is domestic abuse, but a lot of outbursts and rage; and it makes the child afraid. It’s not something that the child is used to in the environment that this child has previously been raised in.”

¶ 11 When the circuit court asked Mr. Bender to give examples about “rage.” He responded, “So, yelling, screaming, grabbing things and shaking them; not people but demonstrating (indicating) extreme anger without the actual striking of a person.” These indications of the stepfather’s rage are reported by J.L, J.A., and Jennifer.

¶ 12 Mr. Bender further reported, “according to the oldest daughter, the youngest daughter pretty much just stays in her room and hides from the stepfather, doesn’t like him very much. I think that has a lot to do with why she’s more comfortable in father’s home.”

¶ 13 When the circuit court asked Mr. Bender his recommendations on Nestor having custody of J.A. from Sunday to Friday, instead of Sunday to Thursday (as had been the recent practice), he responded: “I would probably keep *** the practice as it is, Sunday to Thursday; expand it a day from where the current order is. *** I can’t give you a reason why [Jennifer] should lose another day.”

¶ 14 The circuit court also conducted a hearing on the rule to show cause why Nestor should not be held in indirect civil contempt for his failure to comply with the Parenting Agreement on

November 2, 2017. Nestor provided the following testimony at the hearing. In September or October of 2016, J.A. ran away from Jennifer's home at 2 o'clock in the morning. He picked her up and brought her to his home. He and Jennifer had a discussion about J.A. and they agreed that J.A. should stay with him for an indefinite period of time. From the time J.A. ran away in September or October 2016 until the hearing, J.A. had been staying with Nestor from Sunday until Thursday, and Jennifer never asked Nestor to return to the original schedule. Nestor also testified that J.A. wanted to stay with him and spend less time at Jennifer's home.

¶ 15 When asked were there any other problems other than J.A. running away, Nestor further testified that Jennifer does nothing to intervene while her husband frequently screams and yells at J.A. and J.L., causing them pain. He admitted that no incidents of rage, anger, yelling or screaming occurred recently. When asked to give a specific date he testified, "I would say -- I can't remember the exact date, but I would say last year. Sometime last year. Let me see. 2015, which is two years ago."

¶ 16 At the hearing, Jennifer admitted that J.A. ran away and that she agreed to the amended parenting schedule with Nestor after J.A. ran away. She also admitted she did not ask Nestor to return J.A. right away. When asked why it took nearly a year for her to tell the court that Nestor violated the court order, she testified, "I struggled with [Nestor] complying with all the court orders. *** That's why I brought this to the attention of the Court so that I could get the assistance through the legal system."

¶ 17 Jennifer further testified that her attorney informed Nestor that she was no longer in agreement with the temporary parenting schedule. She also testified to the following:

"[F]rom *** August 2016, when I went to Attorney Pecherek, I just let him handle all of my requests.

And I had requested that my daughter be returned to me because it's not doing anything positive to the overall welfare. And so far, I've just been waiting for the Court to assist me on that."

¶ 18 At the conclusion of the hearing, the circuit court entered an order finding Nestor in indirect civil contempt for his failure to comply with the Parenting Agreement. The circuit court gave the following reasoning for its ruling:

"You know, initially when I heard the report of the GAL, I envisioned some ongoing or even current incident of rage or arguing. But from *** [Nestor's] own testimony, he hasn't heard of anything happening since 2015.

He's aware of the Court's order that it's basically a 50/50 schedule. So, *** he's not arguing that the child should never go over to mom's house.

It's just this 24-hour period in which *** she shouldn't go to mom's house that coincidentally would be the basis of not paying any support at all.

There hasn't been any incident since 2015 from [Nestor's] own recollection. No testimony about any physical abuse.

And [Jennifer] said through her attorney, she informed [Nestor] that she wishes to return to the same schedule, which is just a 24-hour period.

So, the Court finds [Nestor] in contempt. We're going to give this a 30-day date to make sure the order is complied with."

¶ 19 That same day, the court entered a written order, finding Nestor in indirect civil contempt for failure to obey the circuit court's May 19, 2010 order directing Nestor to "exercise parenting time with the minor child from Sunday at 10:00 a.m. until Wednesday at 5:00 pm." The circuit

court ordered Nestor committed to the Cook County jail until he purged himself of contempt by “exercising parenting time with the minor child from Sunday at 10:00 am until Wednesday at 5:00 pm” and ordered the commitment stayed until December 7, 2017.

¶ 20 On November 30, 2017, Nestor filed his timely amended notice of appeal requesting that this court review the November 2, 2017 order which found him in indirect civil contempt for his failure to comply with the Parenting Agreement.

¶ 21 Before turning to the merits of the appeal, we must first address the claim raised by Jennifer that this court does not have jurisdiction to hear the appeal. Jennifer maintains that because the order of indirect civil contempt did not impose a sanction, but instead ordered Nestor to comply with an existing court order (the Parenting Agreement), that this court does not have jurisdiction to hear the appeal. We disagree.

¶ 22 Illinois Supreme Court Rule 304 (b)(5) permits a party to appeal from “[a]n order finding a person or entity in contempt of court which imposes a monetary or *other penalty*.” (Emphasis added.) Ill. S. Ct. R. 304(b)(5) (eff. Mar. 8, 2016). The civil contempt order must be in writing setting forth the grounds which support a finding of contempt (*Central Production Credit Association v. Kruse*, 156 Ill. App. 3d 526, 534 (1987)) and it must include a penalty. *Lewis v. Family Planning Management, Inc.*, 306 Ill. App. 3d 918, 922-26 (1999). “[I]n cases of civil contempt, *** the appropriate punishment is to commit the contumacious party to imprisonment until he has complied with the mandate of the court.” *People v. Redlich*, 402 Ill. 270, 277 (1949).

¶ 23 On November 2, 2017, the circuit court entered a written order finding Nestor in indirect civil contempt for failure to obey the circuit court’s May 19, 2010 order directing Nestor to “exercise parenting time with the minor child from Sunday at 10:00 a.m. until Wednesday at 5:00 pm.” The circuit court further ordered Nestor committed to the Cook County jail until he

purged himself of contempt by “exercising parenting time with the minor child from Sunday at 10:00 am until Wednesday at 5:00 pm.” Our supreme court has stated that an appropriate sanction for civil contempt is committing the party to imprisonment until he has complied with the court mandate. *Redlich*, 402 Ill. 270 at 277. The contempt order imposed a sanction, committing Nestor to the Cook County jail, therefore, the order was immediately appealable and we have jurisdiction to hear this appeal. *In re Estate of Hayden*, 361 Ill. App. 3d 1021, 1026 (2005).

¶ 24 Because Nestor’s contention that the order of indirect civil contempt was invalid will affect this court’s ability to rule on the merits, we will address this issue first. *People v. Flowers*, 208 Ill. 2d 291, 308 (2003), as modified on denial of reh’g (Jan. 26, 2004) (“[T]he appellate court is not vested with authority to consider the merits of a case merely because the dispute involves an order or judgment that is, or is alleged to be, void). A valid contempt order must contain a purge provision, and a civil contempt order which does not include such a provision is void. *In re Marriage of Knoll & Coyne*, 2016 IL App (1st) 152494, ¶ 58, reh’g denied (Nov. 18, 2016). “A void order does not cloak the appellate court with jurisdiction to consider the merits of an appeal.” *Flowers*, 208 Ill. 2d at 307.

¶ 25 The contempt order committed Nestor to the Cook County jail until he purged himself of contempt by “exercising parenting time with the minor child from Sunday at 10:00 am until Wednesday at 5:00 pm” and ordered the commitment stayed until December 7, 2017. The purge provision must “specify what the offending party is required to do to purge [himself] of the contempt.” *In re Estate of Lee*, 2017 IL App (3d) 150651, ¶ 40. Here, the circuit court specifically stated that Nestor would purge himself of contempt by adhering to the original Parenting Agreement and by returning his daughter to Jennifer on Wednesday by 5:00 pm. There

is no evidence in the record which establishes Nestor's inability to comply with this order. In fact, during the hearing, Nestor admitted that he could return J.A. to Jennifer. Because the contempt order presented Nestor with an opportunity to purge himself of the contempt by complying with the order and returning to the original Parenting Agreement, the order was valid and we have jurisdiction to reach the merits of the appeal. *Flowers*, 208 Ill. 2d at 307; *Coyne*, 2016 IL App (1st) 152494, ¶ 58.

¶ 26 Indirect contempt occurs outside the presence of the trial court. *In re Marriage of McCormick*, 2013 IL App (2d) 120100, ¶ 17. Proof of willful disobedience of a court order is essential to a finding of indirect civil contempt. *Id.* Once the petitioner establishes that a violation occurred by a preponderance of the evidence, the alleged contemnor has the burden of establishing that the violation was not willful and contumacious and that he had a valid excuse for failing to follow the order. *Id.* Indirect civil contempt sanctions may not be imposed upon an individual unless he has been accorded due process of law. *In re Marriage of Betts*, 200 Ill. App. 3d 26, 52 (1990). "In civil contempt, the contemnor is entitled to minimal due process." *Shillitani v. United States*, 384 U.S. 364, 371 (1966). The basic components of due process are notice and the opportunity to be heard." *Betts*, 200 Ill. App. 3d at 53, citing *Ex Parte Robinson*, 86 U.S. 505, 512–13 (1873). "Contumacious behavior consists of 'conduct calculated to embarrass, hinder, or obstruct a court in its administration of justice or [conduct] lessening the authority and dignity of the court.'" (Emphasis added.) *In re Marriage of Charous*, 368 Ill. App. 3d 99, 108 (2006) "[W]hether a party is guilty of contempt is a question of fact for the trial court, and *** a reviewing court will not disturb the finding unless it is against the manifest weight of the evidence or the record reflects an abuse of discretion." *In re Marriage of Logston*, 103 Ill. 2d 266, 286–87 (1984). A judgment is against the manifest weight of the evidence "only if the

opposite conclusion is *clearly evident* or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented.” (Emphasis added.) *Best v. Best*, 223 Ill. 2d 342, 350 (2006). The circuit court abuses its discretion when its ruling is “arbitrary, unreasonable, fanciful, or where no reasonable person would take the view adopted by the circuit court.” *Brown v. Advocate Health & Hospitals Corp.*, 2017 IL App (1st) 161918, ¶ 10. “In determining whether there has been an abuse of discretion, we may not substitute our judgment for that of the trial court, or even determine whether the trial court exercised its discretion wisely.” *Simmons v. Garces*, 198 Ill. 2d 541, 568 (2002).

¶ 27 Nestor contends that the circuit court denied him his due process rights by: (1) not giving him an opportunity to file a response or plead to the alleged violation of the parenting order; (2) failing to set a briefing schedule; and (3) improperly shifting the burden to him in a rule to show cause proceeding. We disagree.

¶ 28 Nestor was not deprived of his due process rights because: (1) the rule to show cause notified him of the contempt charge, described the facts upon which the charge was based (“failure to comply with parenting time”), and informed him of the time and place of the hearing (November 2, 2017 at 1:00pm) and (2) the hearing on the rule provided him an opportunity to be heard. *Betts*, 200 Ill. App. 3d at 53. In this case, the evidence established that Nestor violated the original Parenting Agreement as it is undisputed by both parties that Nestor kept J.A. an extra day. At the hearing, Nestor was given the opportunity to explain why he kept J.A. for an additional day. Both the notice and the hearing were sufficient for indirect civil contempt, which is only afforded minimal due process. *Shillitani*, 384 U.S. at 371. Therefore, we find that Nestor’s due process rights were not violated. *Betts*, 200 Ill. App. 3d at 53.

¶ 29 Next, Nestor contends that the circuit court abused its discretion when it entered the order of indirect civil contempt because his violation of the Parenting Agreement was not willful and contumacious. We disagree.

¶ 30 Nestor's primary justifications for not complying with the original Parenting Agreement were (1) his concern for J.A.'s safety; (2) Jennifer's assent to temporarily modify the Parenting Agreement; and (3) J.A.'s desire to stay primarily with him. The circuit court was not persuaded by his justifications, reasoning that: (1) there hasn't been any incident of rage since 2015 from Nestor's own recollection; (2) Nestor is not arguing that J.A. should never go over to Jennifer's house, only that she should lose 24 hours of visitation; and (3) Jennifer informed [Nestor] that she wishes to return to the original Parenting Agreement. The record is silent as to whether the letters informing Nestor of her desire to return to the original Parenting Agreement were actually sent. However, because the burden is on the appellant to submit a substantially complete record, we will assume that the circuit court carefully weighed all of the evidence and that the circuit court's reliance on Jennifer's assertion that she asked Nestor to comply with the original Parenting Agreement, as well as its entry of the contempt order were in conformity with the law and had sufficient factual bases. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984), see also *Skaggs v. Junis*, 28 Ill. 2d 199, 201-02 (1963) (where this court held that where it is alleged that the evidence presented was actually insufficient to support the court's finding, the burden of preserving said evidence rests with the party who appeals, and absent such preservation, it must be assumed that the evidence that was heard fully supported the court's finding).

¶ 31 Moreover, Illinois courts have held that a parent must comply with court-ordered visitation even when the child has expressed hostility toward the other or when the child does not desire to visit the other parent. *In re Marriage of Charous*, 368 Ill. App. 3d 99, 111-12 (2006)

(where the court found that the mother's refusal to comply with the parenting agreement was willful and contumacious when she provided no evidence that visitation would compromise the childrens' safety and well-being, when the childrens' representative had no objection to visitation with the father, and despite contentions that the children did not want to visit with father). Here, like in *Charous*, Mr. Bender and Nestor testified to the stepfather exhibiting rage, but neither presented evidence which established that returning to the original Parenting Agreement, by spending an extra 24 hours in Jennifer's home, would compromise J.A.'s safety. Further, Mr. Bender has no objection to J.A. visiting with Jennifer, stating that he saw no reason why Jennifer should lose an extra day of visitation, and Nestor did not object to J.A. spending some time at Jennifer's home. Lastly, J.A.'s desire to stay with Nestor does not justify a parent's violation of a Parenting Agreement. *Charous*, 368 Ill. App. 3d at 113, citing *Doggett v. Doggett*, 51 Ill. App. 3d 868, 872 (1977) (where this court held that a parent cannot shift the blame to the child for their failure to comply with court-ordered obligations). Therefore, we find that the record presents evidence to support a finding of indirect civil contempt. While there is evidence in the record that could have prompted the circuit court to enter an alternate ruling, this court will not reverse the judgment of the circuit court just because another result was possible. *Simmons*, 198 Ill. 2d at 568. We will not act as a trier of fact. *Webster v. Hartman*, 195 Ill. 2d 426, 434 (2001) ("The trial court 'as the trier of fact *** in a position superior to a court of review' makes determinations based on the evidence and weighs the credibility of participants to the litigation"). Based on the evidence presented, we conclude that the circuit court neither abused its discretion nor reached a decision contrary to the manifest weight of the evidence when it rejected Nestor's justifications for his failure to comply with the May 19, 2010 Parenting Agreement and when it found him in indirect civil contempt.

¶ 32 Nestor further maintains that the circuit court erred when it allowed a hearing on child support on November 2, 2017. He does not provide a cohesive legal argument or analysis of case law to support this conclusion. Illinois Supreme Court Rule 341(h)(7) provides that an appellant's brief shall contain the following parts in the order named:

“Argument, which shall contain the contentions of the appellant and the reasons therefor [sic], 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.” Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017).

A party fails to fulfill the requirements of Rule 341(h)(7) if he does not present argument along with citations to relevant supporting authority. *In re Marriage of Moorthy & Arjuna*, 2015 IL App (1st) 132077, ¶ 75. “[A] reviewing court is entitled to have the issues on appeal clearly defined with pertinent authority cited and a cohesive legal argument presented. The appellate court is not a depository in which the appellant may dump the burden of argument and research.” (Internal quotation marks omitted.) *Gandy v. Kimbrough*, 406 Ill. App. 3d 867, 875 (2010). Here, Nestor makes a very brief, cursory argument that the circuit court erred when, during the hearing on the rule to show cause, it conducted a hearing on child support, which is insufficient and constitutes a forfeiture of the issue. *Arjuna*, 2015 IL App (1st) 132077, ¶ 75.

¶ 33 Lastly, Nestor maintains that the circuit court erred when it precluded Nestor from testifying about the incident leading to J.A. running away from Jennifer's home. Nestor relies on section 606.5(c) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/606.5(c))

(West 2016) to support his argument. Section 606.5 governs hearings concerning the allocation of parental responsibilities. Section 606.5(c) allows the admission of previous statements “made by the child relating to any allegations that the child is an abused or neglected child *** in a hearing *concerning allocation of parental responsibilities.*” (Emphasis added.) 750 ILCS 5/606.5(c) (West 2016). The November 2, 2017 hearing was a hearing on the rule to show cause why Nestor should not be held in indirect civil contempt for his failure to comply with the May 19, 2010 Parenting Agreement. It was not a hearing concerning allocation of parental responsibilities. Nestor has failed to set forth a cohesive legal argument or present any analysis of case law which would support his contention that the circuit court erred in limiting the scope of his testimony during the hearing on the rule to show cause. Accordingly, this argument is forfeited. *Arjuna*, 2015 IL App (1st) 132077, ¶ 75.

¶ 34 Affirmed.