2018 IL App (1st) 181242-U

FIFTH DIVISION
Order filed: September 28, 2018

No. 1-18-1242

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

In re CUSTODY OF D.M.,	)	Appeal from the
	)	Circuit Court of
(Sindy Mejia,	)	Cook County
	)	
Petitioner-Appellant,	)	
	)	
v.	)	No. 14 D 79423
	)	
Mauricio Rubschlager,	)	Honorable
	)	Pamela E. Loza,
Respondent-Appellee).	)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Rochford and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: Where the petitioner failed to provide a sufficient record for review, we affirm the trial court's orders that (1) entered a default judgment in favor of the respondent on his amended petition for sole custody of the parties' minor child, and (2) denied the petitioner's amended motion to reconsider or vacate that judgment.

¶ 2 The petitioner, Sindy Mejia, appeals from orders of the circuit court of Cook County that (1) entered a default judgment in favor of the respondent, Mauricio Rubschlager, on his amended

petition for sole custody of their minor child, D.M., and (2) denied her amended motion to vacate or reconsider that judgment. For the following reasons, we affirm.

¶ 3 The following factual recitation, taken from the pleadings, exhibits, and orders of record, contains only what is necessary for our disposition of the issues on appeal. The record lacks transcripts, bystander's reports, or agreed statements of fact for the relevant proceedings.

¶ 4 The parties, who were never married, are the natural parents of D.M., born on March 20, 2013. On March 25, 2014, Rubschlager filed a "Petition to Determine the Existence of the Father and Child Relationship and Establish Joint Custody and Visitation" (original petition for joint custody).[1] Mejia filed an answer and counter-petition in which she sought, *inter alia*, sole custody of D.M.

¶ 5 On November 1, 2017, the trial court granted a motion to withdraw filed by Mejia's attorneys, the Law Office of Jeffrey M. Leving, Ltd. (Leving attorneys). Mejia did not appear in court on that date. The trial court entered a written order that (1) required her to file an appearance *pro se* or through counsel within 21 days, and (2) stated that she "must appear in court" when the matter is heard for "further status" on November 27, 2017. Also on November 1, 2017, Rubschlager filed an "Amended Petition for Sole Allocation of Parental Responsibilities, Child Support, and Other Relief" (amended petition for sole custody). The record does not contain a certificate of service or other proof that the amended petition for sole custody was served on Mejia or the Leving attorneys, and no reference to the amended petition appears in the court's November 1, 2017 order.

¶ 6 On November 2, 2017, the Leving attorneys filed a notice of withdrawal and certificate of service, which stated that copies of the notice and the trial court's order were mailed to Mejia on

[1] For readability, capitalized text from the record is rendered in standard case throughout this order.

November 1, 2017. The notice did not mention Rubschlager's amended petition for sole custody, but stated that if Mejia did not file an appearance within 21 days or appear in court on November 27, 2017, "a default/dismissal may be entered against [her]."

¶ 7 Mejia did not appear in court on November 27, 2017. That day, Rubschlager filed a "Certificate and Motion for Default" in which he asserted that "there [was] proof of service of process on [Mejia] by *** personal service *** on March 20, 2014," and that he gave her "notice" of his "intention to request a default and to proceed to a default prove-up hearing." The record does not contain a certificate of service or other proof that the motion for a default judgment was served on Mejia. The trial court entered a written order that set the matter for "prove up" on December 28, 2017, and stated that Mejia must appear in court on that date. Neither Rubschlager's motion nor the court's November 27, 2017 order mentions Rubschlager's amended petition for sole custody.

¶ 8 On November 30, 2017, attorney Fernando Carranza filed an appearance for Mejia. Carranza, but not Mejia, appeared at the hearing on December 28, 2017. That day, the trial court entered a written order, titled "Default Judgment for Allocation of Parental Responsibilities," wherein the court stated that (1) an order of default was entered against Mejia on Rubschlager's amended petition for sole custody, and (2) Rubschlager was granted "[s]ole [a]llocation of [p]arental [r]esponsibilities." The order further stated that:

> "A. [Mejia] has failed to file an appearance in this cause to date as ordered by the court on November 1, 2017.[2] More than 30 days has elapsed since personal service of summons and the Petition was made, and Respondent has failed to respond or otherwise plead to [Rubschlager's] petition. ***

[2] Although the trial court's order states that Mejia "failed to file an appearance in this cause" as of December 28, 2017, in her brief on appeal, she asserts that the court "allowed [Carranza's] appearance to stand, but denied [his] oral motion for a continuance on all matters."

> B. [Mejia] was previously served with notice of this hearing *** and informed of her right to be present in order to contest the entry of Judgment for Allocation of Parental Responsibilities. [Mejia] failed to appear several times as ordered by the court."

The court further stated that its order was "a final judgment and there is no just reason for delaying either enforcement or appeal or both."

¶ 9 On January 16, 2018, Mejia filed a motion to vacate or reconsider the default judgment pursuant to section 2-1301 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1301 (West 2016)). In an amended motion filed on January 31, 2018, she contended that she "did not have sufficient notice" of Rubschlager's amended petition for sole custody and "unintentionally failed to appear" at the December 28, 2017 hearing because she "was not sufficiently apprised" of the motion for a default judgment.

¶ 10 In an affidavit attached to her amended motion, Mejia attested that she was unable to attend the November 1, 2017 hearing on the Leving attorneys' motion to withdraw and had not received a copy of the trial court's order by the time her father retained Carranza on November 17, 2017. When Carranza filed his appearance on November 30, 2017, Mejia still did not know that she had been required to appear in court on November 27, 2017. She met with Carranza on December 6, 2017. By this time, she had received a copy of the November 1, 2017 order, but neither received notice of Rubschlager's motion for a default judgment nor a copy of the order of November 27, 2017. Therefore, although Carranza informed her that the "online docket reflected a date of December 28, 2017, which appeared to be for presentment of [Rubschlager's] motion for default," she did not know that: (1) the motion had been presented on the day it was filed; (2)

the December 28, 2017 date was for a hearing on the motion; or (3) she was required to appear in court on that date.

¶ 11 On March 6, 2018, Rubschlager filed a response to Mejia's amended motion to vacate or reconsider in which he claimed that he "sent" her copies of the "Notice of Motion, Motion for Default, and Proposed Allocation Judgment" along with "a copy of the November 27, 2017 order." Rubschlager's response did not include an affidavit or exhibits. On March 9, 2018, Mejia filed a reply wherein she argued that Rubschlager failed to produce evidence that he notified her of his amended petition for sole custody, his motion for a default judgment, or the trial court's November 27, 2017 order.

¶ 12 Following a hearing on May 16, 2018, the trial court entered a written order denying Mejia's amended motion to vacate or reconsider the default judgment of December 28, 2017. The court stated that, after being "fully briefed and advised" and hearing "both sides *** on the matter," it determined that Mejia was "properly served" with "[n]otice and service of all dates (for appearance and court)." This appeal followed.

¶ 13 On appeal, Mejia contends that the trial court erred by entering a default judgment in favor of Rubschlager on his amended petition for sole custody. She maintains that he did not notify her of the amended petition or the motion for a default judgment thereon, and that prior to the proceedings on December 28, 2017, she was unaware that he sought sole custody, rather than joint custody, of D.M. Based on the foregoing, Mejia also argues that the trial court erroneously denied her amended motion to vacate or reconsider the default judgment. Rubschlager, in response, maintains that certain documents *de hors* the record show that Mejia had notice and, "even if there were technical violations," they were not prejudicial because "she knew of the

scheduled motions and hearing dates" and her attorney attended the hearing on December 28, 2017.

¶ 14 Although section 2-1301 motions to vacate or reconsider are typically subject to the abuse-of-discretion standard of review *(Aurora Loan Services, LLC v. Kmiecik*, 2013 IL App (1st) 121700, ¶ 26; *JP Morgan Chase Bank v. Fankhauser*, 383 Ill. App. 3d 254, 259 (2008)), the primary issue that Mejia raises on appeal—whether the trial court erred in entering a default judgment against her due to insufficient notice—is a question of law and our review is, therefore, *de novo*. See *Stewart v. Lathan*, 401 Ill. App. 3d 623, 626 (2010) ("the determination of whether a party received proper or adequate notice is a question of law"). Under *de novo* review, this court conducts "the same analysis that a trial judge would perform," and does not "defer to the trial court's judgment or reasoning." *Nationwide Advantage Mortgage Co. v. Ortiz*, 2012 IL App (1st) 112755, ¶ 20.

¶ 15 As noted, the record in this case does not contain a transcript for the hearing on December 28, 2017, nor is there a bystander's report or an agreed statement of facts filed pursuant to Supreme Court Rules 323(c) and (d). Ill. S. Ct. R. 323(c), (d) (eff. July 1, 2017). Mejia, as the appellant, had "the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). Without an adequate record on appeal, "it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis." *Id.* at 392. Under such circumstances, "[a]ny doubts which may arise from the incompleteness of the record," including the absence of relevant transcripts, must be "resolved against the appellant." *Id.* at 392.

¶ 16 Notwithstanding *Foutch*, this court has recognized that a transcript of proceedings in the trial court may be unnecessary when an appeal solely involves a question of law. For example, in

Gonella Baking Co. v. Clara's Pasa di Casa, Ltd., 337 Ill. App. 3d 385, 388 (2003), we found that the lack of a transcript did not preclude our review of the trial court's order granting a motion to dismiss because the appeal "confront[ed] solely a question of law, that being whether the pleadings, affidavits, and other documents on record warranted a dismissal." Under those circumstances, this court was "in the same position as the trial court, reviewing only the record before it." *Id.* Because we were not required to defer to trial court's reasoning in conducting our *de novo* review of the same documents that were before the trial court, "the transcripts of the hearings on the motion to dismiss [were] unnecessary." *Id.*

¶ 17 Critically, the principles set forth above rely on the assumption that a reviewing court has access to the same information underlying the trial court's decision. This is not the situation in the present case, where the trial court's order of December 28, 2017, stated that Mejia was "served with notice of this hearing" and was "informed of her right to be present in order to contest the entry of Judgment for Allocation of Parental Responsibilities." Without a transcript of proceedings or substitute therefor, we can only speculate as to the factual basis for the trial court's determination that, as a matter of law, Mejia had sufficient notice of the proceedings. For similar reasons, the incomplete record also precludes our review of the trial court's exercise of discretion in denying Mejia's motion to vacate or reconsider the default judgment. As the trial court stated in its May 16, 2018 order, it was "fully briefed and advised," heard argument from "both sides," and determined that Mejia was "properly served" with "[n]otice and service of all dates." Absent a transcript of the hearing, we cannot ascertain what information was before the court when it entered its order. Accordingly, we must presume that the court's orders of December 28, 2017 and May 16, 2018, had sufficient factual bases and were in conformity with the law. *Foutch*, 99 Ill. 2d at 392. Consequently, both orders must be affirmed.

¶ 18 For the foregoing reasons, we affirm the orders of the trial court that (1) entered a default judgment in favor of Rubschlager on his amended petition for sole custody, and (2) denied Mejia's motion to reconsider or vacate that judgment.

¶ 19 Affirmed.