2018 IL App (4th) 170840-U

NO. 4-17-0840

FILED
June 21, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

NATHAN J. BARBER,	)	Appeal from the
Respondent-Appellant,	)	Circuit Court of
v.	)	Sangamon County
CARRIE L. DOOM,	)	No. 16F236
Petitioner-Appellee.	)	
	)	Honorable
	)	Matthew Maurer,
	)	Judge Presiding.

PRESIDING JUSTICE HARRIS delivered the judgment of the court.
Justices Holder White and Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's judgment is affirmed where respondent failed to present discernible and reasoned arguments in his appellant's brief or a complete record of the underlying proceedings.

¶ 2 Respondent, Nathan J. Barber, and petitioner, Carrie L. Doom, are the parents of A.B. (born June 17, 2012). Following an evidentiary hearing in October 2017, the trial court entered an order awarding sole decision making authority over the parties' child to Carrie; finding parenting time with Nathan, an inmate in the Illinois Department of Corrections (DOC), would seriously endanger A.B.'s well being; granting Carrie's petition for a name change; and entering a judgment against Nathan "in the amount of $2,416.28 for tuition, child care, summer care, and medical expense arrearage." Nathan appeals *pro se*, raising several challenges to the underlying proceedings. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On April 19, 2016, this case was initiated by the filing of a complaint for support by the Illinois Department of Healthcare and Family Services (Department). The Department asked the trial court to order Nathan to pay child support and medical support for A.B., who was then residing with Carrie. On May 19, 2016, Nathan filed a petition for a visitation order.

¶ 5 On June 6, 2016, Carrie filed a petition for allocation of decision-making responsibility, parenting time, and child support. She alleged that she and Nathan were never married and that A.B. currently resided with her subject to supervised parenting time with Nathan. Carrie alleged that she and A.B. were the subjects of an emergency order of protection entered against Nathan on December 21, 2015, and that a plenary order of protection was entered on May 5, 2016. She asked that the trial court award her temporary and permanent parental responsibility and decision-making authority over A.B. and that it order Nathan to pay child support and to contribute to other child-related expenses. On June 13, 2016, Carrie also filed a petition for temporary relief regarding the issues of child support and other child-related expenses.

¶ 6 On August 2, 2016, the trial court conducted a hearing in the matter. The appellate record does not contain a transcript of the hearing; however, the trial court's docket entry reflects that it awarded temporary decision-making responsibility over A.B. to Carrie. The court also expanded Nathan's parenting time with A.B. but ordered that it continue to be supervised "by an agency." Finally, the court ordered Nathan to pay half of A.B.'s day care costs, or $297.50 per month, and directed Carrie's attorney to prepare a written order within 10 days.

¶ 7 On August 4, 2016, the parties' order of protection case (Case No. 15-OP-2399) was consolidated with their family case (Case No. 16-F-236). The trial court's docket entry re-

flects that the plenary order of protection against Nathan was to remain in effect until May 3, 2018.

¶ 8 On August 11, 2016, the trial court's written order providing temporary relief was filed. In addition to the findings set forth in the court's August 2, 2016, docket entry, the court's written order stated as follows:

> "The Court finds that [an award of parental and caretaking responsibilities to Carrie] is in [A.B.'s] best interest and that impediments to the parents being able to cooperate exist[,] including that there is an order of protection against [Nathan] and in favor of [Carrie], *** in place until May 3, 2018. The evidence has established that Nathan has displayed physical violence and threats of violence towards Carrie and that she has been abused by him as defined [by statute].
>
> C. The Court further finds that Carrie has shown, by a preponderance of the evidence, that Nathan has engaged in conduct where his ongoing parenting time presents a serious endangerment to [A.B.], and such that the Court finds that it is appropriate to restrict parenting time at the present by requiring that Nathan's parenting time with [A.B.] shall be supervised. ***
>
> D. The court finds that Nathan was not a credible witness, and he was not honest when he testified. The court notes in particular that Nathan claims he has zero dollars *** income per

> month, and he denied sending the text messages to Carrie, in evidence as Petitioner's Exhibit 1. Notwithstanding said finding, child support is reserved at this time to give Nathan additional time for his self employment/business to develop."

Following a hearing on November 14, 2016, the court modified its temporary order by requiring that Nathan and Carrie split day care expenses of $406.25 per month and that Nathan also pay half of A.B.'s aftercare expenses.

¶ 9 On March 2, 2017, Carrie filed a petition for temporary relief to suspend parenting time. She alleged that, at the time of the August 2, 2016, evidentiary hearing, evidence was presented to the trial court that Nathan had seven pending felony charges in Sangamon County for the offenses of residential burglary (two counts), criminal damage to property (two counts), and violation of an order of protection (three counts). Carrie further alleged that, on February 2, 2017, Nathan was additionally charged with domestic battery, harassment by telephone, and intimidation. Further, on February 14, 2017, Nathan's bond was increased in one of his pending felony cases based on a finding by the trial court that Nathan was a danger to the community. Carrie maintained that it was in A.B.'s best interest to temporarily suspend Nathan's parenting time. Following a telephone conference with the parties on March 23, 2017, the trial court granted Carrie's motion and suspended Nathan's parenting time with A.B. until further order of the court.

¶ 10 On April 12, 2017, Carrie filed a petition for name change. She sought to change A.B.'s surname from Nathan's to her own.

¶ 11 The record reflects that, in his criminal cases, Nathan pleaded guilty to the offens-

es of residential burglary, violation of an order of protection, and intimidation. On May 11, 2017, he was sentenced to consecutive prison terms of 5 years, 30 months, and 2 years, respectively.

¶ 12 On June 22, 2017, the trial court set August 22 and 23, 2017, as the hearing date for all pending motions in the parties' family case. On August 18, 2017, Nathan filed a motion for a writ of *habeas corpus*. He alleged he was imprisoned in DOC and asked the trial court to issue a writ to compel his presence at the upcoming hearing dates. On August 21, 2017, he filed a motion for video conference, asking the court to enter an order allowing him "to be present at the trial via video conference on both August 22, 2017[,] and August 23, 2017." The same day, the court granted Nathan's motion for video conference.

¶ 13 On August 22, 2017, the trial court granted a motion by Nathan to continue the hearing over Carrie's objection. The court's docket entry stated as follows: "[Nathan] was to participate through video or phone conference; however, an issue has arisen and [DOC] will not allow a phone conference for more than 30 minutes with [Nathan] at the present time." The matter was rescheduled for hearing on October 17 and 18, 2017. The court stated that Nathan's counsel was "to coordinate a video or phone conference with his client" but that another continuance would not be allowed in the event that Nathan was unable to participate.

¶ 14 On September 22, 2017, Nathan filed another motion for video conference, which the trial court granted. On the day of the hearing, October 17, 2017, Nathan filed a motion to continue, asserting "technology would not allow the video conference from [his correctional facility] to the courtroom for hearing" and, as a result, he was unable to be present. He asked the court to continue the matter until such time as he could be available in person, by writ, or when the technological issues with the video conferencing could be corrected.

¶ 15 Again, the appellate record does not contain a transcript of the October 17, 2017, hearing. However, the trial court's docket entry reflects that it denied Nathan's "Motion to Continue and Motion for Writ." Although Nathan was not personally present for the hearing, the docket entry shows that both parties were represented by counsel and that evidence was presented on pending matters, including Nathan's petition for visitation, Carrie's petition for allocation of parental decision-making and responsibility, rules to show cause filed by both parties, and the previously reserved issues of "back due child care and tuition." Additionally, the court stated Nathan was allowed to present testimony via an evidence deposition at his own expense. On November 6, 2017, a telephone conference was conducted, during which Nathan's counsel advised the court that Nathan would "not be proceeding with the evidentiary deposition."

¶ 16 On November 15, 2017, the trial court heard closing arguments in the matter and rendered its decision. The appellate record does not contain a transcript of the proceedings. However, the court's docket entry states as follows:

> "The Court awards decision making solely to [Carrie]. In allocating parenting time[,] the Court has considered the testimony, statutory factors[,] and best interest of the child and the Court finds parenting time with [Nathan] at [his correctional facility] would seriously endanger the child's well being. ***
>
> In regards to [Carrie's] Motion for Name Change, the Court has considered all of the relevant statutory factors, testimony, and evidence and the Court grants the Petition for Name Change.
>
> The Court enters Judgment against [Nathan] and in favor of [Carrie] in the amount of $2,416.28 for tuition, child care, summer care, and medical expense ar-

rearage.

The Court sets [Nathan's] child support at $0 and terminates his support obligation until his release."

Finally, the court directed Carrie's counsel to prepare an order consistent with its ruling.

¶ 17 On November 16, 2017, Nathan filed his notice of appeal. On December 8, 2017, the trial court's written order was filed. Although Nathan's notice of appeal was filed prior to the filing of the court's written order, we treat it as being filed on that date or after. Ill. S. Ct. R. 303(a)(1) (eff. July 1, 2017) ("A notice of appeal filed after the court announces a decision, but before the entry of the judgment or order, is treated as filed on the date of and after the entry of the judgment or order.").

¶ 18 II. ANALYSIS

¶ 19 Initially, we note that this is an accelerated appeal under Illinois Supreme Court Rule 311 (eff. July 1, 2017). Pursuant to that rule, this court is required to issue decisions in accelerated cases within 150 days after the filing of a notice of appeal, except for good cause shown. Ill. S. Ct. R. 311(a)(5) (eff. July 1, 2017). Here, that deadline has passed as more than 150 days have elapsed since the filing of Nathan's notice of appeal. (The record reflects Nathan's notice of appeal was filed on November 16, 2017, and this court's disposition was due to be filed by April 15, 2018.) However, not only did this court grant Nathan two extensions of time to file his appellant's brief; on March 13, 2018, Carrie filed a motion for extension of time to file her appellee's brief based on Nathan failure to provide service of any of his appellate court filings, including his appellant's brief. On March 27, 2018, we ordered Nathan's brief stricken "for lack of proof of service" and granted him leave to file a brief in compliance with the supreme court

rules. On April 3, 2018, Nathan filed his corrected appellant's brief and, on May 1, 2018, Carrie's appellee's brief was filed. Based on these circumstances, in particular Nathan's failure to comply with the rules regarding service, we find good cause shown for exceeding the 150-day deadline.

¶ 20 Another preliminary matter we must address is Nathan's failure to comply with Illinois Supreme Court Rule 341 (eff. Nov. 1, 2017), setting forth the requirements for appellate court briefs. Nathan's appellant's brief fails to comply with Rule 341 in several respects as to both form and content. Most problematic is Nathan's failure to sufficiently set forth the facts necessary to a resolution of this appeal or coherent and reasoned arguments challenging the trial court's judgment. Nathan's "Statement of Facts" consists of a single paragraph and improperly fails to contain either "the facts necessary to an understanding of the case" or references to pages of the appellate record. Ill. S. Ct. R. 341(h)(6) (eff. Nov. 1, 2017). Further, in his "Argument" section, Nathan failed to clearly set forth his "contentions" on appeal and "the reasons therefor." Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017). He also failed to properly cite legal authority or, again, any pages of the record. *Id.* Finally, Nathan's reply brief is deficient under Rule 341(j) (eff. Nov. 1, 2017), in that it is not "confined strictly to replying to arguments presented" in Carrie's appellee's brief.

¶ 21 "The rules of procedure concerning appellate briefs are not mere suggestions, and it is within this court's discretion to strike the plaintiff's brief for failing to comply with Supreme Court Rule 341." *Crull v. Sriratana,* 388 Ill. App. 3d 1036, 1045, 904 N.E.2d 1183, 1190 (2009). Further, "[t]he fact that a party appears *pro se* does not relieve that party from complying as nearly as possible to the Illinois Supreme Court Rules for practice before this court." *Voris v.*

Voris, 2011 IL App (1st) 103814, ¶ 8, 961 N.E.2d 475.

¶ 22 In this instance, Nathan's contentions on appeal are difficult to discern. Where decipherable, they are conclusory and without any reasoned basis. Ultimately, Nathan's failure to sufficiently comply with Rule 341 frustrates appellate review of the trial court's judgment to his detriment.

¶ 23 Moreover, aside from presenting a deficient brief that we would be warranted in striking, Nathan has also failed to present a complete record of the underlying proceedings. "[A]n appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a 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." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92, 459 N.E.2d 958, 959 (1984). Any doubts which may arise from the incompleteness of the record will be resolved against the appellant. *Id.* at 392.

¶ 24 Here, the record does not contain transcripts of any pertinent hearing before the trial court. In particular, there is no transcript of the October 17, 2017, hearing that resulted in the judgment from which Nathan appeals. At that hearing, witnesses testified and evidence was presented regarding financial issues, allocation of parenting time and responsibilities, and Carrie's request to change A.B.'s surname. During that hearing, the trial court also decided issues regarding Nathan's inability to be present and denied his motion to continue and "Motion for Writ." Each of these issues required the trial court to make factual findings based upon arguments of the parties, testimony, or other evidence of which there is no record for review. Given the absence of the hearing transcript, we presume that the trial court's decision as to these issues conformed to

law and had sufficient factual bases. Nathan's challenges to the trial court's judgment must fail as the record does not demonstrate any error.

¶ 25 Nathan argues that his failure to present a complete record must be excused because he could not afford to pay the cost for the hearing transcripts. He notes that he was found indigent by the trial court and that this court granted his request to waive the $50 filing fee. Not only does Nathan fail to cite any legal authority to support his suggestion that he was entitled to free hearing transcripts, we note that, in lieu of a hearing transcript, an appellant may present a bystander's report, or the parties on appeal may present an agreed-upon statement of facts. (Ill. S. Ct. R. 323(c), (d) (eff. July 1, 2017); *Hall v. Turney*, 56 Ill. App. 3d 644, 649, 371 N.E.2d 1177, 1181 (1977) ("[I]n the context of civil cases *** where a verbatim transcript is not obtainable because of [the] appellant's inability to pay for it, a bystander's report of proceedings could, and should, be substituted."). Nathan did not avail himself of either alternative in the instant appeal.

¶ 26 Additionally, Supreme Court Rule 323(a) (eff. July 1, 2017) provides that for a hearing transcript to be included within the appellate record an appellant must "make a written request to the court reporting personnel *** to prepare a transcript of the proceedings" at issue. The court reporting personnel then prepares a transcript and files it with the clerk of the circuit court. Ill. S. Ct. R. 323(b) (eff. July 1, 2017). Further, with regard to accelerated cases, Rule 311(a)(4) (eff. July 1, 2017) states as follows:

> "The record on appeal and the transcript of proceedings in a child custody or allocation of parental responsibilities case shall be filed no later than 35 days after the filing of the notice of appeal ***. Any request for extension of the time for filing shall be accompanied by an affidavit of the court clerk or court reporting person-

nel stating the reason for the delay, and shall be served on the trial judge and the chief judge of the circuit. *Lack of advance payment shall not be a reason for non-compliance with filing deadlines for the record or transcript*." (Emphasis added.) Ill. S. Ct. R. 311(a)(4) (eff. July 1, 2017).

¶ 27 Here, Nathan has not asserted that he requested a transcript of the pertinent hearings in his case. Had he done so, according to Rule 311(a)(4), his inability to provide advance payment would not have presented a barrier to the inclusion of the transcripts within the appellate record.

¶ 28 III. CONCLUSION

¶ 29 For the reasons stated, we affirm the trial court's judgment.

¶ 30 Affirm.