2018 IL App (4th) 180301-U

NO. 4-18-0301

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
September 18, 2018
Carla Bender
4th District Appellate
Court, IL

MATTHEW S.,	)	Appeal from the
Petitioner-Appellant,	)	Circuit Court of
v.	)	McLean County
ANDRIA C.,	)	No. 16CF328
Respondent-Appellee.	)	
	)	Honorable
	)	Mark A. Fellheimer,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Turner and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court's order which granted sole parental responsibility to the mother and restricted the father's parenting time to written letters.

¶ 2 Petitioner, Matthew S., is the father of two minor children. Andria C. is the mother of Matthew's children and is their custodial parent. Matthew and Andria were never married. In October 2016, Matthew filed a petition for allocation of parental responsibilities (even though he was then incarcerated in the federal prison in Marion in southern Illinois) in which he requested (1) shared decision-making authority over his two children and (2) shared parenting time. In June 2017, the trial court granted Andria sole decision-making authority and denied Matthew's request for "in-person" parenting time at the prison. The court allowed Matthew to have parenting time in the form of writing letters to the children twice a month. However, the court granted Andria the authority to review the contents of the letters. The court also re-

quired Andria to send copies of the children's report cards, school photographs, and a list of their extra-curricular activities to Matthew. In April 2018, the trial court denied Matthew's motion to sanction Andria.

¶ 3 Matthew appeals *pro se*, essentially arguing that (1) limiting his parenting time to written letters was against the manifest weight of the evidence, (2) the trial court erred in allowing Andria to screen his letters, (3) the trial court erred by not sanctioning Andria, (4) he was entitled to mediation services, (5) he was not given fair notice and an opportunity to respond to Andria's motions, and (6) he was entitled to an attorney. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 Matthew is the father of two minor children—J.S. and G.S. In October 2016 when Matthew filed his petition, J.S. was 11 years old and G.S. was 6 years old. Matthew has been incarcerated in the federal prison in southern Illinois since 2012 and is not expected to be released until 2035. Andria is the mother of J.S. and G.S. and is their custodial parent.

¶ 6 In October 2016, Matthew filed a petition for allocation of parental responsibilities in which he requested (1) shared decision-making authority over his two children and (2) shared parenting time. In May 2017, Andria filed a response in which she requested (1) sole decision-making authority and (2) all the parenting time.

¶ 7 In June 2017, the trial court granted Andria sole decision-making authority. The court denied Matthew's request for "in-person" parenting time at the prison. The court allowed Matthew parenting time in the form of writing letters to his children twice a month. However, the court granted Andria the authority to review the contents of the letters. The court required Andria to send copies of the children's report cards, school photographs, and a list of their extra-curricular activities to Matthew. The court ordered Matthew not to share or disseminate the chil-

dren's information within the prison system. In reaching its decision, the court concluded as follows:

> "The court finds mother to be credible as to her concerns regarding *** prison visits in that the children suffered a mental, moral, and emotional toll when they did visit [their] father while [he was] in prison previously and that by allowing them to visit [their] father in a federal prison is not in their best interests and would be detrimental to their emotional health and, quite possibly, their physical health. *** As the children age, it may become appropriate for prison visits, but not at this time based on these facts. *** Furthermore, there was no evidence of strong bonds that had developed between the children prior to his incarceration that would weigh in favor of ordering in person prison visits."

¶ 8 In July 2017, Matthew filed a motion to reconsider. In October 2017, Andria filed a petition for allocation of parental responsibilities, arguing that she should no longer be required to provide copies of the children's report cards, school photographs, and a list of their extra-curricular activities to Matthew because Matthew was allegedly sharing this information with other prisoners. In February 2018, Matthew filed a motion in which he essentially argued that Andria should be held in contempt and sanctioned for allegedly failing to comply with the trial court's June 2017 order. In April 2018, the trial court denied all of the motions of both Matthew and Andria.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 Matthew appeals *pro se*, essentially arguing that (1) limiting his parenting time to written letters was against the manifest weight of the evidence, (2) the trial court erred in allow-

ing Andria to screen his letters, (3) the trial court erred by not sanctioning Andria, (4) he was entitled to mediation services, (5) he was not given fair notice and an opportunity to respond to Andria's motions, and (6) he was entitled to an attorney. We address these issues in turn.

¶ 12 A. Lack of Appellate Brief

¶ 13 Initially, we note that Andria has not filed a brief in this appeal. A reviewing court will not act as an advocate for a party who fails to file a brief. *Diane P. v. M.R.*, 2016 IL App (3d) 150312, ¶ 9, 55 N.E.3d 208. However, when the record is simple and the claimed errors can be easily decided without the aid of an appellate brief, a reviewing court should decide the appeal on the merits. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133, 345 N.E.2d 493, 495 (1976). These criteria apply in this case. Accordingly, we will proceed to the merits of the case.

¶ 14 B. Parenting Time

¶ 15 Matthew argues that limiting his parenting time to written letters was against the manifest weight of the evidence. We disagree.

¶ 16 Under the Illinois Parentage Act of 2015, the trial court allocates parental responsibilities by applying "the relevant standards of the Illinois Marriage and Dissolution of Marriage Act." (Act) 750 ILCS 46/802 (West 2016). Under the Act, the court must allocate parenting time according to the best interests of the child. 750 ILCS 5/602.7(a) (West 2016). The party seeking a modification in allocation of parenting time has the burden of showing that a modification is in the best interest of the child. *In re Marriage of Betsy M.*, 2015 IL App (1st) 151358, ¶ 49, 46 N.E.3d 373. In determining the child's best interest for purposes of allocating parenting time, the court shall consider all relevant factors, including, without limitation, the following:

"(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;

* * *

(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;

* * *

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

¶ 17 The trial court's best interest determination is entitled to great deference because the trial court—as compared to a reviewing court—is in the superior position to observe the proceedings and assess the credibility of the witnesses. *In re Marriage of Whitehead and Newcomb-Whitehead*, 2018 IL App (5th) 170380, ¶ 21, 97 N.E.3d 566. A trial court's determination regarding a child's best interests will not be reversed on appeal unless the decision is against the manifest weight of the evidence and it appears that a manifest injustice has occurred. *In re P.D.*, 2017 IL App (2d) 170355, ¶ 18, 87 N.E.3d 1040. A decision is against the manifest weight of the evidence when the opposite result is clearly evident from the record. *In re Marriage of Betsy*

M., 2015 IL App (1st) 151358, ¶ 61.

¶ 18 In this case, the ninth statutory factor weighs heavily against allocating "in-person" parenting time to Matthew because he is incarcerated in southern Illinois while Andria lives in central Illinois. 750 ILCS 5/602.7(b)(9) (West 2016). The distance between Andria, who lives in Normal, Illinois, and Matthew, who is incarcerated in Marion, Illinois, is approximately 235 miles by car, and there is no direct access to the prison by train. The third factor also weighs against Matthew because he has been in prison since 2012. *Id.* § 602.7(b)(3). The seventh and eighth factors also weigh against Matthew because, according to the trial court's findings, "the children suffered a mental, moral, and emotional toll when they did visit [their] father while [he was] in prison previously[.]" *Id.* § 602.7(b)(7), (8).

¶ 19 In sum, based upon the record before us, we conclude that the trial court's determination regarding the children's best interest was not against the manifest weight of the evidence. *In re P.D.*, 2017 IL App (2d) 170355, ¶ 18.

¶ 20 C. The Authority To Screen Matthew's Letters

¶ 21 Matthew also argues that the trial court erred in allowing Andria the authority to screen his letters. We disagree.

¶ 22 The trial court shall allocate decision-making responsibilities according to the best interests of the child. 750 ILCS 5/602.5(a) (West 2016). The Act does not require that each parent be allocated decision-making responsibilities. *Id.* Moreover, "[a] parent shall have sole responsibility for making routine decisions with respect to the child and for emergency decisions affecting the child's health and safety during that parent's parenting time." *Id.* § 602.5(d).

¶ 23 In this case, the trial court limited Matthew's parenting time to writing letters and denied his request for decision-making responsibility over the children. The court also granted

Andria sole decision-making responsibility and gave her the authority to screen the contents of the letters sent to the children. On appeal, citing to section 602.5(d) of the Act, Matthew argues that he "has sole decision[-]making responsibility" during his parenting time—which in this case would be the letters he writes to his children. Accordingly, Matthew argues that Andria cannot screen his letters.

¶ 24 Section 602.5(d) allows a parent to make "*routine decisions*" and "*emergency decisions*" that arise during parenting time. *Id.* This section does not grant "sole decision[-]making responsibility" during parenting time. Accordingly, we reject Matthew's gross misinterpretation of section 602.5(d) of the Act.

¶ 25 In the alternative, Matthew argues that the trial court's order violated due process of law because it granted Andria "the power to arbitrarily deny mail correspondence." We reject this alternative argument as patently without merit because it fundamentally misinterprets section 602.5(d) of the Act. *Id.*

¶ 26 D. Sanctions

¶ 27 Matthew further argues that the trial court erred by failing to sanction Andria because she allegedly failed to send him copies of the children's report cards, school photographs, and a list of their extra-curricular activities. We disagree.

¶ 28 The trial court's denial of sanctions is subject to an abuse of discretion standard. *In re Detention of Lieberman*, 2017 IL App (1st) 160962, ¶ 53, 80 N.E.3d 649. An abuse of discretion occurs only when the trial court's decision is arbitrary, fanciful, unreasonable, or when no reasonable person would take its view. *Seymour v. Collins*, 2015 IL 118432, ¶ 41, 39 N.E.3d 961.

¶ 29 The record shows that Matthew may have shared information about the children

with other prisoners—which would have been a direct violation of the trial court's order. In fact, Andria requested permission to stop sending this information to Matthew for this very reason. Accordingly, we conclude the trial court did not abuse its discretion by failing to sanction Andria.

¶ 30 E. Mediation Services

¶ 31 Matthew further argues that he was entitled to mediation services. We disagree.

¶ 32 The interpretation of a court rule is a question of law reviewed *de novo*. *People v. Brindley*, 2017 IL App (5th) 160189, ¶ 15, 82 N.E.3d 856. Illinois Supreme Court Rule 923 provides that "[i]f there is no agreement regarding allocation of parental responsibilities or a parenting plan or both, the court shall schedule the matter for mediation in accordance with Rule 905(b) and shall advise each parent of the responsibilities imposed upon them by the pertinent local court rules." Ill. S. Ct. R. 923(a)(3) (eff. Mar. 8, 2016). Illinois Supreme Court Rule 905(b) requires that each judicial circuit shall provide mediation services for the allocation of parental responsibilities "unless the court determines an impediment to mediation exists." Ill. S. Ct. R. 905(b) (eff. Mar. 8, 2016). The Rules of the Eleventh Judicial Circuit Court, which includes McLean County, states that "[i]n any dissolution or family case involving contested issues of child parenting responsibilities, parenting time, or relocation, *** the court shall order the parties to mediation prior to the setting of any contested hearing unless the court determines an impediment to mediation exists." 11th Judicial Cir. Ct. R. 154 (eff. Jan. 1, 2016).

¶ 33 In this case, the trial court did not require the parties to attend mediation, given that Matthew is incarcerated in a federal prison in southern Illinois and is not expected to be released until 2035. The court's action of not requiring meditation was not an error because an "impediment" to mediation existed.

¶ 34 F. Fair Notice and an Opportunity To Respond

¶ 35 Matthew further argues that his due process rights were violated because the trial court allegedly entered judgments without giving Matthew an opportunity to respond. We strike this argument because it fails to comply with Illinois Supreme Court Rule 341. Ill. S. Ct. R. 341(h)(6), (7) (eff. Nov. 1, 2017).

¶ 36 Illinois Supreme Court Rule 341 requires a statement of facts "which shall contain the facts necessary to an understanding of the case, stated accurately and fairly *** with appropriate reference to the pages of the record on appeal[.]" Ill. S. Ct. R. 341(h)(6) (eff. Nov. 1, 2017). This rule also requires an argument "which shall contain *** citation of the authorities and the pages of the record relied on." Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017). Compliance with Rule 341 is mandatory and this court may, in its discretion, strike an argument based on failure to comply with the applicable rules of appellate procedure. *McCann v. Dart*, 2015 IL App (1st) 141291, ¶ 12, 30 N.E.3d 468. A reviewing court is entitled to have issues clearly defined with pertinent authority cited and cohesive arguments presented. *People v. Universal Public Transportation, Inc.*, 2012 IL App (1st) 073303-B, ¶ 50, 974 N.E.2d 251. It is neither the function nor obligation of the appellate court to act as an advocate or search the record for error. *Id.*

¶ 37 In this case, Matthew argues "his constitutional right to fair notice and opportunity was violated when the trial court entered the judgment on [May 25, 2017] after [Andria] responded to [Matthew's brief] without him being served with a copy of said petition[.]" Matthew further argues "there were two separate instances where the trial court entered a judgment before [Andria] was given an opportunity to respond."

¶ 38 Matthew's statement of facts contains no reference to these alleged errors. Fur-

ther, despite Matthew's claims, his argument contains no citation to the record showing where these alleged errors occurred. Moreover, according to the record before this court, no judgment was even entered on May 25, 2017.

¶ 39 It is not the function or obligation of this court to search the record for an error. *Universal Public Transportation, Inc.*, 2012 IL App (1st) 073303-B, ¶ 50. Accordingly, we strike this argument because it fails to comply with Illinois Supreme Court Rule 341. *Dart*, 2015 IL App (1st) 141291, ¶ 12; Ill. S. Ct. R. 341(h)(6), (7) (eff. Nov. 1, 2017).

¶ 40 G. Attorney Representation

¶ 41 Last, Matthew argues he was entitled to a court-appointed attorney because the denial of his request for decision-making authority and in-person parenting time was the equivalent of the termination of his parental rights. See *In re Adoption of K.L.P.*, 198 Ill. 2d 448, 461, 763 N.E.2d 741, 749 (2002) ("an indigent parent in a termination proceeding brought under the Juvenile Court Act is entitled to court-appointed counsel[.]")

¶ 42 We reject this argument because the State was not seeking to terminate his parental rights. Instead, Matthew merely filed a motion for allocation of parental responsibilities. The denial of this motion is not comparable to the termination of his parental rights. Compare *In re D.T.*, 212 Ill. 2d 347, 356, 818 N.E.2d 1214, 1222 (2004) ("When a trial court finds that the best interests of the child warrants termination of parental rights and enters an order to that effect, the parent-child relationship is permanently and completely severed.") with 750 ILCS 5/602.8(b) (West 2016) ("[t]he court may modify an order granting or denying parenting time") and 750 ILCS 5/603.10(b) (West 2016)) ("The court may modify an order restricting parental responsibilities if, after a hearing, the court finds by a preponderance of the evidence that a modification is in the child's best interests[.]"). In essence, Matthew's parental rights have not been "perma-

nently and completely severed." *In re D.T.*, 212 Ill. 2d at 356. Instead, the contours of his parental rights have merely been modified. Moreover, Matthew still has the possibility to modify the trial court's ruling in the future. See 750 ILCS 5/602.8(b), 603.10(b) (West 2016). Accordingly, Matthew's final argument is without merit.

¶ 43 III. CONCLUSION

¶ 44 For the reasons stated, we affirm the trial court's judgment. As a final matter, we also thank the trial court for its helpful and well-written order.

¶ 45 Affirmed.