

No. 1-17-2399

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

JUNE WATSON,)	Appeal from the
)	Circuit Court of
Petitioner-Appellant,)	Cook County.
)	
v.)	No. 09 D 79016
)	
DEREK WHITE,)	Honorable
)	Pamela E. Loza,
Respondent-Appellee.)	Judge, presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Delort and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 *Held:* Judgment allocating parental responsibilities, including designation of respondent as custodian of the two minor children, affirmed where petitioner failed to provide a sufficient record to show that the circuit court erred in entering judgment.

¶ 2 Petitioner June Watson appeals *pro se* from an order of the circuit court of Cook County entering judgment allocating parental responsibilities, including designation of respondent, Derek White, as custodian of the couple's two minor children. On appeal, petitioner contends that the circuit court erred in granting respondent custody of their son, Da.W., because

respondent lacks employment and financial stability, and has a history of domestic violence from 2010. Petitioner also argues that respondent has never filed any pleadings against her to obtain custody of Da.W. In addition, petitioner argues that the court should not have removed Da.W. from her custody where there was no finding that she had neglected or abused him. We affirm.

¶ 3 Throughout all of the proceedings in this case, petitioner and respondent have represented themselves *pro se*. Documents in the record show that petitioner and respondent are the parents of two minor children, a daughter, De.W., born July 14, 2003, and a son, Da.W., born May 17, 2012. Respondent was awarded custody of their daughter on August 5, 2005, and has maintained custody of her since that date.

¶ 4 The record shows that since January 2009, petitioner has filed numerous motions regarding the parentage and custody of their daughter, and since January 2013, has filed similar motions in regards to their son. On June 12, 2009, the circuit court entered an order stating that the parties had joint legal custody of their daughter. The court named respondent as the residential custodian, and petitioner was granted visitation on alternating weekends.

¶ 5 In December 2009, petitioner obtained an emergency order of protection against respondent that was in effect until December 29, 2009. The order prohibited respondent from physically abusing petitioner, or having any unlawful contact with her. Petitioner obtained a similar emergency order of protection against respondent in April 2010 which was in effect until April 23, 2010.

¶ 6 On January 4, 2013, petitioner filed a complaint against respondent to have him declared the natural father of their son, Da.W., and for respondent to be ordered to pay child support. Their son was living with petitioner. On September 5, 2013, the court entered an order of

parentage adjudicating respondent as the natural and biological father of their son, and ordering him to pay petitioner \$100 a month for child support.

¶ 7 In 2015, petitioner filed multiple *pro se* motions seeking residential custody of their daughter. Petitioner claimed that respondent was not providing her with proper care, was making inappropriate comments to her, and was denying petitioner her visitation. Petitioner also stated that respondent was not involved in their son's life and not paying child support. On May 27, 2016, the court entered orders granting respondent visitation with his son on alternating weekends, and adding respondent's name to their son's birth certificate.

¶ 8 In January 2017, petitioner filed multiple motions seeking to obtain residential custody of their daughter. Petitioner argued that respondent had not had a job or an apartment in 13 years, and was not taking proper care of their daughter. Petitioner also argued that respondent showed no interest in their son, and therefore, should not have any visitation rights with him. In addition, petitioner asserted that based on past comments and incidents, she believed respondent exhibited "incestive" behavior. On March 31, 2017, the court appointed a guardian *ad litem* (GAL) to represent the children and continued the case for status on the issue of allocation of parental responsibilities.

¶ 9 On July 11, 2017, the court entered an order granting respondent continued sole allocation of parental responsibilities for their daughter, and denying petitioner's motion for residential custody of their daughter. The court continued the case for status and possible hearing on the allocation of parental responsibilities for the couple's son. The court noted that petitioner had failed to appear in court on this date, and ordered that both parties were required to be present on the next court date.

¶ 10 On August 30, 2017, the court held a hearing on the allocation of parental responsibilities. There is no report of proceedings for this hearing. The court's order entered on this date states that it examined the documentation presented and heard testimony from both parents, the child Da.W. *in camera*, the paternal grandmother, and the GAL. The court ordered that both children shall reside primarily with respondent commencing immediately, and granted petitioner parenting time with both children on alternating weekends. The court granted respondent sole parental responsibility for decisions regarding school, medical needs, and extra-curricular activities, and granted both parents joint responsibility for decisions regarding religion. The order indicates that both parents shall have access to the school and medical records for both children. The order further indicates that the GAL shall prepare a judgment for allocation of parental responsibilities to be presented for entry on September 8, 2017.

¶ 11 On September 6 and 7, 2017, petitioner filed motions for substitution of judge arguing that, although she was residing in a homeless shelter, she should have been granted sole custody of both children. Petitioner stated that their son had not been harmed or hurt in any way, and that there had been no finding against her by the Department of Children and Family Services. Petitioner stated that in 2010, respondent committed domestic violence when he abused petitioner in front of their daughter. Petitioner stated that she had completed parenting classes. Petitioner alleged that respondent lied under oath when he stated that he wanted custody of their son because respondent never filed a motion for custody. Petitioner also alleged that the circuit court was prejudiced against her.

¶ 12 On September 8, 2017, the circuit court entered an order of judgment on the allocation of parental responsibilities, which reflects the court's rulings in the August 30 order. The order

indicates that respondent shall make all significant decisions regarding the children's education, health, extra-curricular and recreational activities, and all other matters. Both parents are to make all significant decisions regarding the children's religion together. The order further indicates that both children would reside with respondent, and petitioner would have visitation with both children every other weekend. The order also indicates that respondent was designated as the children's custodian.

¶ 13 On September 25, 2017, petitioner's motions for substitution of judge were denied. On September 28, 2017, petitioner filed a timely notice of appeal.

¶ 14 On appeal, petitioner contends that the circuit court erred when it granted respondent custody of their son because respondent lacks employment and financial stability, and has a history of domestic violence from 2010. Petitioner also argues that respondent has never filed any pleadings seeking custody of their son. In addition, petitioner argues that the court should not have removed their son from her custody where there was no finding that she had neglected or abused him. Petitioner asserts that the court erred when it found that she did not provide their son with a stable home because her decision to relocate from an apartment to a shelter was due to safety issues to remove their son from a neighborhood with gang violence and shootings. Petitioner claims that because their daughter chose to reside with respondent, the court also granted respondent custody of their son. Petitioner argues that the court's order is unconstitutional and without probable cause.

¶ 15 Respondent has not filed a responsive appellee's brief. This court, however, has elected to consider this appeal under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-33 (1976).

¶ 16 As a threshold matter, we note that petitioner's *pro se* notice of appeal indicates an incorrect judgment date of September 1, 2017. The final judgment allocating parental responsibilities was entered on September 8, 2017, which reflected the court's rulings from its order entered on August 30, 2017, the date of the hearing. A reviewing court's jurisdiction is limited to considering only the judgment specified in the notice of appeal. *People v. Smith*, 228 Ill. 2d 95, 104 (2008). The notice, however, should be construed liberally. *Id.* A notice is sufficient to confer jurisdiction on the appellate court when, considered as a whole, it fairly and adequately sets out the judgment complained of and relief sought, thereby advising the other party of the nature of the appeal. *Id.* at 105. Where an error in the notice of appeal is one of form rather than substance, and the appellee is not prejudiced, the appellant's failure to strictly comply with the form of notice is not fatal to our jurisdiction. *Id.*

¶ 17 Here, although petitioner specified an incorrect judgment date, we find that when liberally construed, her notice was sufficient to confer jurisdiction on this court. There was no order or judgment entered by the court on September 1. The only orders entered by the court were the August 30 order, which stated the court's rulings allocating parental responsibilities following the hearing, and the September 8 order, which was the final judgment allocating parental responsibilities reflecting the court's August 30 rulings. For her relief sought on her notice of appeal, petitioner states "[t]he D.C.F.S. system has me as unfounded within the system and defined 'speech therapy' as not a form of neglect." Consequently, it is clear that the judgment petitioner is challenging is the allocation of parental responsibilities. Petitioner's indication of September 1 rather than September 8 was merely a defect in form. Her notice was

sufficient to notify respondent of the nature of her appeal. In addition, petitioner's notice filed on September 28, 2017, was timely filed. Accordingly, we have jurisdiction.

¶ 18 Petitioner has attached to her brief numerous documents that are not included in the record on appeal. We are precluded from considering the information contained in these documents as they are not properly before this court and cannot be used to supplement the record. *Revolution Portfolio, LLC v. Beale*, 341 Ill. App. 3d 1021, 1024 (2003).

¶ 19 Insofar as petitioner asserts that the circuit court's judgment is unconstitutional and without probable cause, we need not reach constitutional questions when the issue can be resolved on other grounds. *Lyon v. Department of Children & Family Services*, 209 Ill. 2d 264, 271 (2004).

¶ 20 Our review of this appeal is hampered by an incomplete record. An appellant has the burden of presenting a sufficiently complete record of the circuit court proceedings to support claims of error, and in the absence of such a record, this court will presume that the circuit court's order conformed with the law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Any doubts arising from an incomplete record will be resolved against the appellant. *Id.*

¶ 21 Pursuant to Supreme Court Rule 323 (eff. July 1, 2017), in lieu of a circuit court transcript, an appellant may file a bystander's report (Rule 323(c)) or an agreed statement of facts (Rule 323(d)). Here, the record does not contain a report of the circuit court proceedings, specifically, the August 30 hearing allocating parental responsibilities, in any format.

¶ 22 The record before this court consists of one volume of common law documents. From the court's August 30 order, we know that the court held a hearing on the allocation of parental

responsibilities during which it examined documentation and heard testimony from both parents, the child Da.W. *in camera*, the paternal grandmother, and the GAL. However, without a report of proceedings, this court has no knowledge of what documentation was presented by whom, or what the testimony from the various witnesses revealed. Nor do we know what arguments were made, what findings the court made, or the reasoning and rationale that provided the basis for the circuit court's ruling. Under these circumstances, this court must presume that the trial court acted in conformity with the law and ruled properly after considering the evidence before it. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156-57 (2005); *Foutch*, 99 Ill. 2d at 391-92.

¶ 23 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 24 Affirmed.