2019 IL App (1st) 180972-U

No. 1-18-0972

March 29, 2019

First Division

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

LIONELL MARTIN,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 13 D 80823
	)	
DANA EVANS-HYPOLITTE,	)	Honorable
	)	Maritza Martinez,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE WALKER delivered the judgment of the court.
Presiding Justice Mikva and Justice Griffin concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the circuit court's judgment where the appellant failed to present a sufficient record on appeal and procedural deficiencies prevent this court from conducting review on the merits.

¶ 2 Plaintiff Lionell Martin appeals *pro se* from an order of the circuit court of Cook County denying his motion for, among other requests, a modification of his child support obligation. Defendant Dana Evans-Hypolitte has not filed a response brief. Upon Martin's motion to

"proceed and rule," we now consider his appeal without the benefit of Evans-Hypolitte's brief. We affirm.

¶ 3 BACKGROUND

¶ 4 The record on appeal contains only the common law record. Martin did not file a transcript, bystander's report, or agreed statement of facts of any of the trial court proceedings. See Ill. S. Ct. R. 323 (eff. July 1, 2017); *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391 (1984) ("[A]n appellant has the burden to present a sufficiently complete record of the proceedings at trial[.]"). The common law record contains extensive pleadings filed by the parties and orders from the trial court over the past six years. We set forth below the pertinent facts gleaned from the common law record.

¶ 5 Although, the parties had one minor child together born on December 10, 2013, they had already separated on July 25, 2013. On November 8, 2013, Martin filed a *pro se* petition in the Cook County Circuit Court to establish parentage and custody of the minor child. On March 31, 2014, the court granted Evans-Hypolitte residential custody, ordered the parties to submit financial disclosure statements, and ordered Martin, who was unemployed, to maintain a job diary regarding his submitted job applications. Following genetic testing, the parentage of the minor child was also established with Evans-Hypolitte as the natural mother and Martin as the natural father. The court also ordered Martin to have supervised visitation with the child and to pay $100 per month in child support beginning on April 4, 2014.

¶ 6 Over the next few years, Martin filed several motions to modify his child support obligation. On July 16, 2014, the trial court entered an order modifying Martin's child support obligation and increasing the payment to $365 every two weeks. On February 16, 2017, the court

entered an order decreasing Martin's child support obligation to $160.40 every two weeks. Martin continued to file motions to modify his child support, which the trial court denied.

¶ 7 At some point during these proceedings, a guardian was appointed to represent the rights of the minor child. After the court released the appointed guardian, it ordered the parties to pay the public guardian's attorney fees.

¶ 8 Martin also filed two motions for a substitution of judge, one on August 24, 2015 and one on August 23, 2017. Following hearings before a separate judge, each motion was denied.

¶ 9 On April 27, 2018, Martin filed a motion to produce financial documents, to modify the order for the public guardian's fees, to modify his current child support order, and to "remove matter from call." The court denied his motion on May 14, 2018. Martin now appeals from that order.

¶ 10 ANALYSIS

¶ 11 On appeal, Martin requests that this court modify his child support order and grant his motion for a substitution of judge. He contends the trial court's decision denying his motions to modify his child support order and for substitution of judge was clearly erroneous.

¶ 12 As a threshold matter, we note that Martin failed to identify either of the orders denying his motions for substitution of judge in his notice of appeal, and we have an independent duty to ensure that jurisdiction is proper. See *In re Marriage of Knoerr*, 377 Ill. App. 3d 1042, 1043 (2007). Illinois Supreme Court Rule 303(b) (eff. July, 1, 2017) requires that the notice of appeal "specify the judgment or part thereof or other orders appealed from and the relief sought from the reviewing court." Martin only identified the May 14, 2018 order in his notice of appeal, though he includes in the notice of appeal that judicial bias is an issue from which he seeks

relief. Notices of appeal are to be construed liberally. *In re F.S.*, 347 Ill. App. 3d 55, 68 (2004). Accordingly, failure to specify a particular order is not fatal if the order specified directly relates back to the order from which review is sought, or stated another way, if the order not specified is a "'step in the procedural progression leading to the judgment specified in the notice of appeal.'" *Id.* at 68-69; *Perry v. Minor*, 319 Ill. App. 3d 703, 708-09 (2001) (quoting *Burtell v. First Charter Service Corp.*, 76 Ill. 2d 427, 435 (1979)). Orders denying motions for substitution of judge are interlocutory, and as such, it was necessary for Martin to appeal those decisions from a final order. *In re Marriage of Nettleton*, 348 Ill. App. 3d 961, 969 (2004) (stating that motions for substitution of judge are not final "because they are reviewable on appeal from the final order"). The May 14, 2018 order was final and appealable because, as far as this court can discern from the common law record, there are no pending claims to be resolved in the trial court. See *In re Marriage of Harnack and Fanady*, 2014 IL App (1st) 121424, ¶ 36; *In re Marriage of Susman*, 2012 IL App (1st) 112068, ¶ 13 ("[G]enerally only a judgment that does not reserve any issues for later determination is final and appealable.").

¶ 13 As mentioned, Martin failed to include the transcript for any of the trial court proceedings, or any acceptable substitute permitted under Illinois Supreme Court Rule 323(c) (eff. July 1, 2017). Martin, as the appellant, bears the burden to furnish this court with a sufficiently complete record. *Foutch*, 99 Ill. 2d at 391-92. "Any doubts which may arise from an incompleteness of the record will be resolved against the appellant." *Id.* at 392. Without transcripts of the proceedings, we rely solely on the documents contained in the common law record on appeal, and we presume the trial court acted in conformity with the law and had a factual basis for its ruling. *Wing v. Chicago Transit Authority*, 2016 IL App (1st) 153517, ¶ 9.

¶ 14 Incompleteness of the record aside, Martin's brief contains multiple procedural deficiencies pursuant to Illinois Supreme Court Rule 341(h) (eff. Nov. 1, 2017) that prevent this court from conducting a meaningful review of his claims of error. "The purpose of the rules is to require parties to present clear and orderly arguments, supported by citations of authority and the record, so that this court can properly ascertain and dispose of the issues involved." *Gruby v. Department of Public Health*, 2015 IL App (2d) 140790, ¶ 12. Although we recognize that Martin is proceeding *pro se*, compliance with these rules is mandatory for all litigants. *Voris v. Voris*, 2011 IL App (1st) 103814, ¶ 8. Parties proceeding *pro se* are presumed to know the rules and procedures and must comply with them, just as are those parties who are represented by attorneys. *In re Estate of Pellico*, 394 Ill. App. 3d 1052, 1067 (2009).

¶ 15 Among the deficiencies in his brief, Martin has failed to include a statement of jurisdiction. Ill. S.Ct. R. 341(h)(4) (eff. Nov. 1, 2017). He also incorrectly identifies the standard of review as "clearly erroneous." Ill. S.Ct. R. 341(h)(3) (eff. Nov. 1, 2017); *In re Marriage of Deike*, 381 Ill. App. 3d 620, 630 (2008) (stating the standard of review for the modification of child support orders is abuse of discretion); *In re Chelsea H.*, 2016 IL App (1st) 150560, ¶ 54 (stating the appellate court reviews a trial court's ruling on a motion for substitution of judge as of right as *de novo*); *Levaccare v. Levaccare*, 376 Ill. App. 3d 503, 510 (2007) (stating the reviewing court will only reverse a trial court's determination on a motion for substitution of judge for cause if the finding is against the manifest weight of the evidence). Finally, Martin's arguments are inadequately presented and unsupported by citation to the record and to relevant legal authority, other than a citation to the statute governing child support. Ill. S.Ct. R. 341(h)(7) (eff. Nov. 1, 2017). "[A] reviewing court is not simply a depository into which a party may dump

the burden of argument and research." *People ex rel. Illinois Department of Labor v. E.R.H. Enterprises, Inc.*, 2013 IL 115106, ¶ 56.

¶ 16 Martin's first two claims relate to the trial court's denial of his request to modify his child support obligation, and his last claim is that his motion for substitution of judge should have been granted. Martin contends that the court should have granted his motion to modify child support because there has been a substantial change of circumstances and his motion for substitution of judge should have been granted because the trial judge in these proceedings has not been fair and unbiased towards him.

¶ 17 However, Martin's motion and the trial court's order contained in the common law record do not reveal to this court the evidence and arguments presented to the trial court or the reasoning for its rulings on either of these issues. See *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 155-56 (2005) (concluding that it could not determine what the trial court's order was based on when "nothing in the supporting record contain[ed] any factual findings or the basis for the circuit court's decision"). In his brief, Martin quotes the trial court from what we presume is the hearing on his motion, but we have no ability to confirm or deny what the parties or the court stated during the hearing without transcripts from the proceedings. See *Wing*, 2016 IL App (1st) 153317, ¶ 8 (noting the court could not conclusively determine what occurred at trial based on appellant's descriptions). Martin has not met his burden of providing a sufficient record to review his claims of error. See *Foutch*, 99 Ill. 2d at 391 ("[T]he court of review must have before it the record to review in order to determine whether there was the error claimed by the appellant."). Accordingly, the presumption that the trial court acted in conformity with the law and had a factual basis for its ruling has not been overcome.

¶ 18 CONCLUSION

¶ 19 Due to the insufficient record on appeal and the procedural deficiencies in his brief, we are unable to review Martin's claims on the merits. See *Wing*, 2016 IL App (1st) 153517, ¶ 13 (affirming the trial court's judgment where procedural deficiencies and an insufficient record prevented review of appellant's claims). Even if we were able to bypass the requirements of a complete record, Martin's brief does not contain cohesive arguments with relevant legal authority to support his conclusory allegations. See *In re Dave L.*, 2017 IL App (1st) 170152, ¶ 22 ("It is neither the function nor the obligation of this court to act as an advocate or search the record for error."). Because we have no basis for concluding that the trial court erred in denying his motion, we affirm.

¶ 20 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 21 Affirmed.