2019 IL App (1st) 182571-U

No. 1-18-2571

Order filed August 30, 2019

Sixth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

STEVE MIGUEL,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 14 D 679036
	)	
MARISSA GLAISTER,	)	Honorable
	)	Fredrick H. Bates,
Defendant-Appellee.	)	Judge Presiding.

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the trial court's child custody order because the record on appeal is insufficient to determine whether the court committed any error.

¶ 2 Steve Miguel appeals *pro se* from the circuit court's order granting, in part, Marissa Glaister's motion for joint custody of their daughter. On appeal, Miguel contends that the court's factual findings were not supported by the evidence. We affirm.

¶ 3 There is no report of the circuit court proceedings in the record on appeal and the common law record appears to be incomplete. However, the following facts can be gleaned from the limited record on appeal.

¶ 4 On January 2, 2018, Glaister filed a motion alleging that Miguel was preventing her from speaking to their daughter, despite the existence of a 2014 court order granting her custody of the child. In his response to the motion, Miguel asserted that the child had resided with him since "2013/2014" and that he did not want their daughter to be in Glaister's home because of a history of domestic violence between Glaister her boyfriend.

¶ 5 On March 27, 2018, the court entered and continued Glaister's motion and entered an interim custody order. The court scheduled specific times for telephone calls between Glaister and the child, and two hours of weekly visitation at a local restaurant. The court also ordered each party to complete an online parenting course and to have a home study performed. Two days later, Glaister filed a notice of appeal from the March 27 order.

¶ 6 On August 8, 2018, the circuit court ordered the parties to produce evidence of the child's primary residence, including school and doctors' records, and set the case for a later date to determine "physical custody of [the] child and school enrollment." However, the circuit court later realized that Glaister's pending appeal had removed the case from its jurisdiction. The court vacated the August 8 order.

¶ 7 On August 23, this court dismissed Glaister's appeal for want of prosecution. The next day, Miguel moved the circuit court to set a date for hearing on the outstanding issues in the case.

¶ 8 On September 6, 2018, the court ordered Glaister's boyfriend to complete a home study, DCFS background check, and interview. The court also entered and continued Glaister's January 2 motion, and extended the March 27 interim custody order.

¶ 9 On November 5, 2018, the circuit court entered an order finding "[b]oth parents fit" based on the home studies. The home studies do not appear in the record. The court also set the case for a hearing on Glaister's motion.

¶ 10 According to its November 27, 2019 order, the circuit court treated Glaister's January 2 motion as a "motion for Joint Custody and Residential Parent status." After a "[f]ull hearing with multiple witnesses," the court found that it was in the child's best interest to reside with Miguel. The court also found that neither parent presented any "risk to the child's physical, mental, moral or emotional health." Consequently, the court granted Glaister joint "decision making responsibilities over education, health, religion and extra-curricular activities" and "liberal Parenting Time approximately 50/50 as much as possible." This appeal followed.

¶ 11 On appeal, Miguel contends that the circuit court erred in its factual findings that the child had lived with him since 2014 and that Glaister did not present any risk to the child's physical, mental, moral, or emotional health. He also argues that the court erred in granting Glaister joint decision-making responsibilities and "50/50" parenting time.

¶ 12 Glaister has not filed an appearance in this appeal, nor has she filed a brief. Consequently, this court entered an order taking the case on Miguel's brief only. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131 (1976) (a reviewing court can decide the merits of the appeal where the record is simple and the claimed errors can be decided without the aid of an appellee's brief).

¶ 13 Our standard of review in cases of child custody is somewhat muddled. Our supreme court has held that determinations of child custody are within the sound discretion of the trial court, and that we review such determinations for abuse of discretion. *In re Custody of Sussenbach*, 108 Ill. 2d 489, 498-99 (1985). However, the court has also held that "the question for the reviewing court is whether the trial court's decision is contrary to the manifest weight of the evidence." *Id.* at 499. See also *In re Marriage of Seitzinger*, 333 Ill. App. 3d 103, 108 (2002) ("the trial court's ruling will not be disturbed unless it is against the manifest weight of the evidence or is an abuse of discretion.").

¶ 14 However, we need not decided whether to apply the manifest-weight-of-the-evidence standard or the more deferential abuse-of-discretion standard, because the deficiencies in the record prevent us from reviewing the merits of the case. The common law record does not contain the home studies ordered by the circuit court or any other evidence presented to the court. But the most crucial omission from the record is any transcript or bystander's report from the "[f]ull hearing with multiple witnesses" referenced in the court's November 27 order.

¶ 15 Miguel attempts to remedy these deficiencies by including several exhibits to his Rule 342 appendix. These exhibits include, among other things, copies of home studies, police call logs, and the child's medical records. However, the record on appeal cannot be supplemented by simply attaching documents to the appendix of a brief. *In re Parentage of Melton*, 321 Ill. App. 3d 823, 826 (2001). We cannot consider improperly appended documents not included in the record on appeal. *Id.*

¶ 16 On appeal, it is the appellant's burden to provide a complete record for review in the appellate court. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391 (1984). If no such record is provided, "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. In order to determine whether there was actually an error, a reviewing court must have a record before it to review. *Id.*

¶ 17 "The linchpin in *** child custody cases is the best interests of children." *Moseley v. Goldstone*, 89 Ill. App. 3d 360, 369 (1980). In its November 27 order, the circuit court referenced 750 ILCS 5/602.5, which requires that "the court shall allocate decision-making responsibilities according to the child's best interests." 750 ILCS 5/602.5 (West 2016). Without a complete record of the evidence before the circuit court, and without a record of the testimony that it heard, we are in no position to find that the circuit court made an error in crafting an order in the best interests of Miguel and Glaister's daughter.

¶ 18 Far too many appeals, particularly *pro se* appeals, are doomed from their inception because of deficient records. Circuit court judges should make a point of impressing upon *pro se* litigants how vital the services of a court reporter or the use of a bystander's report can be to the ultimate success of their cases.

¶ 19 We do not suggest that if the record contained a report of proceedings we would have necessarily reversed the circuit court in this case; we only note that without an official report of the proceedings, we are unable to conduct any review at all. We therefore affirm the judgment of the circuit court of Cook County.

¶ 20 Affirmed.