2019 IL App (2d) 180672-U
No. 2-18-0672
Order filed January 7, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF VISHAL MALHOTRA, Petitioner-Appellant, and LAURA DINUNZIO, f/k/a LAURA MALHOTRA, Respondent-Appellee.	))))))))))	Appeal from the Circuit Court of Kane County. No. 11-D-1230 Honorable Rene Cruz, Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Schostok and Hudson concurred in the judgment.

ORDER

¶ 1 *Held:* Those claims of errors on appeal not clearly defined with pertinent authority cited and cohesive legal arguments presented are forfeited; those claims of error not supported with a record on appeal are assumed to be correctly determined; and the only remaining claim regarding the modification of the joint parenting agreement is affirmed. Affirmed.

¶ 2 Following the dissolution of their marriage, petitioner, Vishal Malhotra, and respondent, Laura Denunzio, f/k/a Laura Malhotra, entered into a joint parenting agreement for their minor child in which they agreed to have their child reside in Pennsylvania with Laura. On March 13,

2017, the court found a substantial change in circumstances and modified the joint parenting agreement giving the significant decision-making responsibility to Laura. On August 14, 2018, Vishal filed a petition for the return of the child from Pennsylvania and to reallocate the significant decision-making responsibilities to him. Vishal appeals *pro se* following the trial court's denial of his petition. He raises a number of issues on appeal. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 The parties were married on August 6, 2004, and their child, T.M., was born in June 2008. The judgment of dissolution granted joint custody to the parties. Pursuant to the joint parenting agreement, the child resided in Pennsylvania with Laura.

¶ 5 On March 13, 2017, the trial court granted Laura's petition to modify the joint parenting agreement. The court found, by a preponderance of the evidence, that there had been a substantial change in circumstances since the entry of the parties' joint parenting agreement more than two years previously and that a modification was necessary to serve the child's best interests. The court found that it was in the child's best interests that all significant decision-making responsibility be allocated to Laura with the exception of decision-making responsibility for the religious upbringing to be shared between the parties.

¶ 6 Vishal subsequently filed a petition for return of the child to Illinois and for him to be the primary parent of the child. The court found section 602.5 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/5-602.5 (West Supp. 2017)) applicable to the petition. Based on the evidence presented and the factors the court found relevant, the court denied the petition. It found no basis and no testimony to indicate that it would be in the child's best interest for Vishal to be the primary parent. This appeal followed.

¶ 7 II. ANALYSIS

¶ 8 Preliminarily, we must address certain deficiencies in Vishal's statement of facts. The content of an appellant's brief is governed by Supreme Court Rule 341(h) (eff. May 25, 2018). Every appellant, even a *pro se* appellant, must comply with the requirements of Rule 341(h). *Biggs v. Spader*, 411 Ill. 42, 44-46 (1951) (*per curiam*). Vishal's brief fails to comply.

¶ 9 Under Rule 341(h)(6) (eff. May 25, 2018), a statement of facts "shall contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal." Vishal's statement of facts does not set forth those facts necessary to an understanding of the case. It is replete with arguments and allegations, many of which are irrelevant. The statement of facts fails to mention what evidence was presented at the hearing on Laura's petition to modify the joint parenting agreement or the reasoning for the trial court's decision. Nor does it state what facts were presented at the hearing on Vishal's petition to return the child to Illinois or the trial court's reasoning for denying Vishal's petitions. Additionally, Vishal sets forth the dates of 28 court orders and the pages these orders are located in the common law record. However, he does not specify what occurred in these orders or how they are relevant to his appeal. This court is not a depository into which an appellant may foist the burden of argument and research. See, *e.g.*, *Stenstrom Petroleum Services Group, Inc. v. Mesch*, 375 Ill. App. 3d 1077, 1098 (2007). On the basis of an unsatisfactory statement of facts alone, we may strike his brief and dismiss the appeal.

¶ 10 Vishal's argument section fairs no better. Our ability to respond to his arguments is severely limited. His claims on appeal either fail to present transcripts that would demonstrate

error (see *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984)), or fail to be clearly defined with pertinent authority cited and cohesive legal arguments presented (see S. Ct. R. 341(h)(7)).

¶ 11 In order to support a claim of error on appeal, the appellant has the burden to present a sufficiently complete record. *Foutch*, 99 Ill. 2d at 391-92. In fact, "[f]rom the very nature of an appeal it is evident that the court of review must have before it the record to review in order to determine whether there was the error claimed by the appellant." *Id*. at 391. Where the issue on appeal relates to the conduct of a hearing or proceeding, this issue is not subject to review absent a report or record of the proceeding. Instead, absent a record, "it [is] presumed that the order entered by the trial court [is] in conformity with the law and had a sufficient factual basis." *Id*. at 392.

¶ 12 Rule 341(h)(7) (eff. May 25, 2018), sets forth the requirements for the argument portion of an appellant's brief. Under Rule 341(h)(7), an appellant's argument "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018). "Citations to authority that set forth only general propositions of law and do not address the issues presented do not constitute relevant authority for purposes of Rule 341(h)(7)." *Robinson v. Point One Toyota, Evanston*, 2012 IL App (1st) 111889, ¶ 54. "[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*, 2013 IL 115106, ¶ 56; see also *Walters v. Rodriguez*, 2011 IL App (1st) 103488, ¶ 6 (holding that appellate courts are not required to "complete legal research to find support for" an appellant's arguments). "Issues that are ill-defined and insufficiently presented do not satisfy" Rule 341(h)(7) and are considered forfeited. *Walters*, 2011 IL App (1st) 103488, ¶ 6.

¶ 13 Not only is Vishal's appellate brief insufficient, but we are without the benefit of a brief filed by Laura. However, reversal is not automatic when the party who received a favorable ruling in the court below fails to file a brief on appeal. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-32 (1976). "The burden remains on the appellant to show error." *Id*. at 132. This court is "not compelled to serve as an advocate for an appellee." *In re Marriage of Purcell*, 355 Ill. App. 3d 851, 855 (2005). We address each of Vishal's contentions of error to the extent that we are able to understand them, and the reasons that we must either affirm or forfeit them.

¶ 14 Vishal's first argument lumps together three issues dealing with five rules to show cause. Specifically, he argues that the trial court erred (1) by not holding a hearing for "show of cause petitions and thereby made a clear error in ruling of March 3, 2014"; (2) in its ruling of July 25, August 8, and August 9, 2016, by not holding a hearing for "show of cause petitions and dismissing/strickening these petitions as having been filed 'untimely' "; and (3) in its ruling of August 14, 2018, by not holding a hearing "for pending show of cause petitions, and other pending sanctions and contempt pleadings which court dismissed/strickened."

¶ 15 Vishal fails to provide the relevant transcripts regarding how the trial court abused its discretion by ruling as it did and not holding hearings and dismissing or striking the petitions on March 3, 2014, and July 25, August 8, and August 9, 2016. The record contains neither a verbatim transcript of the proceedings at issue, nor a permissible substitute for a verbatim transcript. Although Vishal provides a certified bystander report in which the court states on April 28, 2017, that Vishal's "pleadings on [child custody] cases would not be heard till it has resolved all matters relating to allocation, and [Vishal's] pleadings on Bringing Back the Child to Illinois," this does not provide an explanation for the trial court's specific reasons for its August

14, 2018, ruling. As stated, it was Vishal's burden, as the appellant, 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, we will presume that the orders entered by the trial court were in conformity with the law and had a sufficient factual basis. See *Foutch*, 99 Ill. 2d at 391-92. Apart from failing to provide a sufficient record, Vishal also does not clearly identify what show of cause petitions, pending sanctions, and contempt petitions are at issue. We are not a depository into which an appellant may deposit the burden of argument and research. Accordingly, we must assume that the trial court's reasoning was sound.

¶ 16 In the fourth issue, Vishal argues, *inter alia*, that in its orders of March 3, 2014, July 17, 2015, and January 28, 2016, the trial court erred in denying contempt rulings and not providing for his attorney fees. We note that, in reading the bystander's report, contrary to his assertion, it appears that the court did grant Rule 137 sanctions against Laura and awarded Vishal $4,200 in attorney fees on March 3, 2016. Nevertheless, Vishal's argument is not well organized, cohesive, and he cites no pertinent authority. This argument violates Rule 341(h)(7), and it therefore is forfeited. See *In re Marriage of Auriemma*, 271 Ill. App. 3d 68, 72 (1994) (quoting *Thrall Car Manufacturing Co. v. Lindquist*, 145 Ill. App. 3d 712, 719 (1986)) (" '[A] reviewing court is entitled to have the issues on appeal clearly defined with pertinent authority cited and a cohesive legal argument presented.' ".).

¶ 17 In the fifth issue, Vishal contends that the trial court erred in its March 13, 2017, granting Laura's petition to reallocate parenting responsibilities and time "wherein it terminated Vishal's parenting rights, and reduced his parenting time." Vishal apparently is referring to the trial court's ruling on Laura's motion to modify the joint parenting agreement. We first observe that

Vishal's parenting rights were never "terminated." Secondly, Vishal fails to set forth a standard of review in violation of Rule 341(h)(7).

¶ 18 Although Vishal fails to cite a standard of review, we will address the arguments he raises in the fifth issue. Petitions to modify the allocation of parental decision-making responsibilities are governed by section 610.5 of the Act. 750 ILCS 5/610.5 (West Supp. 2017). That section provides in pertinent part that the court may modify an allocation judgment if it is in the child's best interests and a substantial change in circumstances supports the modification. *Id.* "The standard of review for modification of a child custody order after a dissolution judgment becomes final is whether the modification is against the manifest weight of the evidence or an abuse of discretion." *In re Marriage of Kading*, 150 Ill. App. 3d 623, 631 (1986). A decision is contrary to the manifest weight of the evidence only where the opposite decision is clearly apparent. *In re Marriage of Engst*, 2014 IL App (4th) 131078, ¶ 24. A court abuses its discretion where its decision is arbitrary, fanciful, or unreasonable. *McClure v. Haisha*, 2016 IL App (2d) 150291, ¶ 20.

¶ 19 Vishal asserts that the court terminated the joint parenting agreement when "in reality the preponderance of evidence for the entire 3 days of trial is nothing but one exhibit that Vishal submitted." Other than his assertion that he submitted one exhibit in support of his argument that the joint parenting agreement should not have been terminated, Vishal does not state what other evidence he presented to show why Laura's request was unreasonable. Nor does he state where in the record he provided this evidence or what other evidence he submitted to overturn the trial court's judgment.

¶ 20 Vishal also claims that the trial court improperly relied on the guardian *ad litem*'s recommendation that the court modify the parenting responsibility. The guardian *ad litem*'s

recommendations are not controlling. *Prince v. Herrera*, 261 Ill. App. 3d 606, 615 (1994) (custody recommendations of psychiatrist and social services workers not controlling). A recommendation concerning the custody of a child is just that, a recommendation, and the trial court is free to evaluate the evidence presented and accept or reject the recommendation. *Id*. at 615-16. See also 750 ILCS 5/506(a) (eff. Jan.1, 2016) (concerning the court's appointment for the child an attorney, GAL, or child representative, "In no event is this Section intended to or designed to abrogate the decision making power of the trier of fact. Any appointment made under this Section is not intended to nor should it serve to place any appointed individual in the role of a surrogate judge.").

¶ 21 Vishal further argues that the trial court failed to enforce mandatory parenting classes for Laura. Based on our review of the record, the trial court found this irrelevant. The court asked Vishal what he thought if Laura took a parenting class, and if his opinion of her being dishonest and needing mental help would change. All the court focused on here was whether Vishal and Laura could work together for the child's best interests, which the court found had nothing to do with Laura taking a mandatory parenting class. We agree.

¶ 22 In sum, Vishal fails to cite any evidence which demonstrates that the trial court's decision that it was in the child's best interest to modify the agreed parenting order was against the manifest weight of the evidence.

¶ 23 In the sixth issue, Vishal argues that he was improperly served an emergency petition for injunction "and blind-sighted." Vishal asserts that he was not being treated fairly because the trial court deemed that he was harassing Laura by calling her fraudulent. He cites to the trial court's finding in the record, wherein the court reiterated that it did not believe there was a way either Vishal or Laura could communicate civilly with each other, but the court noted that

Vishal's responses were always filled with some type of cheap shot, "which doesn't breed for joint parenting." Vishal's argument is not cohesive, coherent, or well-developed, and has no legal basis. Accordingly, we find it forfeited under Rule 341(h)(7).

¶ 24 In Vishal's seventh contention, he appears to assert that Laura committed fraud by failing to follow the joint parenting agreement, and that she certified falsities in response pleadings and affirmative defenses to either conceal her actions or gain benefit from it. Vishal maintains that the trial court abused its discretion by not holding hearings and not finding Laura in contempt "even though manifested weight of evidence clearly showed that she had no justification except her own self-serving interests to hurt Vishal and minimize his parenting influence on [their child]." The trial court did not rule on fraud. As in the sixth issue, there is no legal basis for this argument and it too must be forfeited under Rule 341(h)(7).

¶ 25 Vishal argues in the eighth issue that the trial court erred in its denial of his petition to return the child to Illinois because, *inter alia*, it (a) applied the wrong statute, (b) relied on a flawed guardian *ad litem* report and restricted certain other evidence, and (c) misstated facts contrary to what it previously had ordered. Vishal does not argue why section 602.5 is inapplicable to his petition, but then seems to assert that it does apply. We observe, however, that section 602.5 of the Act concerns the allocation of parental responsibilities and decision-making, which is applicable to Vishal's petition. In any event, Vishal does not provide a citation to the record of the proceedings. Without a citation to the record, we assume the trial court's reasoning was sound.

¶ 26 Vishal next argues that the trial court erred in the allocation of guardian *ad litem* and parenting coordinator fees. Vishal cites no case law or Illinois Supreme Court Rule to support his argument. Rather, the lone authority cited by Vishal is sections 5-506 and 5-508(b) of the

Act (750 ILCS 5/5-506, 5-508(b) (West 2016)). While section 5-506 permits the court to appoint an attorney to represent a minor and provides for fees and costs (750 ILCS 5/5-506(b) (West 2016)) and section 5-508(b) applies to client's rights and responsibilities respecting fees and costs, Vishal fails to explain the relevance of either section or provide any analysis of his claim. We emphasize that Vishal has failed to give this court any guidance on how these statutes are relevant, apply to his claim, or entitle him to any relief. Vishal's failure to do so violates Rule 341(h)(7). See *Velocity Investments, LLC v Alston*, 397 Ill. App. 3d 296, 298 (2010).

¶ 27 Vishal next argues that the trial court erred in striking his pleadings with prejudice. Once more, Vishal's argument is not well developed and provides no assistance. Vishal does not say why the dismissal of pending petitions was improper or even state what petitions were dismissed. This violates Rule 341(h)(7) and is forfeited.

¶ 28 Vishal last argues that the trial court erred by not providing for substitution of judge for cause. Vishal points out that Judge Busch presided over the substitution of judge hearing, but Vishal has not provided a verbatim transcript from the relevant hearing on the motion that would demonstrate error as alleged. Nor do we have a bystander's report or a statement of facts as alternative methods of a preserved record as provided in Illinois Supreme Court Rule 323 (eff. Dec. 13, 2005). To determine whether error occurred as argued by Vishal, this court must have before it a record of the proceedings from the trial court. *Foutch*, 99 Ill. 2d at 391-92. Vishal bears the burden to present a sufficiently complete record, and without it, we will presume that the order entered by the trial court was in conformity with law and had a sufficient factual basis. *Id*. at 392.

¶ 29 III. CONCLUSION

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

¶ 31 Affirmed.