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FILED
July 18, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re MARRIAGE OF	)	Appeal from the
ANTOINE L. JOHNSON,	)	Circuit Court of
Petitioner-Appellee,	)	McLean County
v.	)	No. 12D570
ANNA B. JOHNSON, n/k/a ANNA B. AGUSTIN,	)	
Respondent-Appellant.	)	Honorable
	)	Sarah R. Duffy,
	)	Judge Presiding.

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

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court's judgment that (1) denied multiple petitions for orders of protection and (2) found that respondent mother abused allocated parenting time.

¶ 2 In October 2012, the petitioner, Antoine L. Johnson, filed a petition for dissolution of marriage. Antoine had been married to respondent, Anna B. Johnson n/k/a Anna B. Agustin, for a little over a year. Antoine and Anna had one child, A.J. (born May 27, 2013), who was born after the dissolution of marriage. In January 2013, the McLean County circuit court entered a judgment of dissolution of marriage. In March 2014, the McLean County circuit court entered a stipulated order modifying the judgment to include a reference to the parties' agreement to joint custody.

¶ 3 In September 2018, Anna filed an emergency motion in McLean County to modify allocation of parenting time in which she alleged that Antoine physically assaulted her in

front of A.J. Anna attached a copy of an emergency order of protection against Antoine that the Cook County circuit court entered at Anna's request following the incident. In October 2018, the McLean County circuit court denied the motion and ordered the parties to follow a previously entered "Parenting Allocation Plan," subject to certain minor modifications.

¶ 4 Later in October, November, and December 2018, Anna filed petitions in McLean County circuit court for emergency and plenary orders of protection against Antoine and in favor of herself and A.J. During this same period of time, Antoine filed petitions for rule to show cause and to hold Anna in indirect civil contempt based on her failure to comply with the Parenting Allocation Plan and the denial of Antoine's parenting time. The trial court conducted multiple evidentiary hearings on all of these petitions and denied Anna's petitions for an order of protection. The court also found Anna abused Antoine's parenting time and ordered her to post a bond to ensure compliance with prior orders.

¶ 5 In January 2019, the trial court conducted a hearing on outstanding issues and to clarify the record prior to transferring the case to the Cook County circuit court. The court entered a written order (1) clarifying the basis for its October 2018 order modifying the previous Parenting Allocation Plan, (2) clarifying that it did not find Anna in contempt and instead imposed the bond pursuant to section 607.5 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/607.5(c)(4) (West 2018)), (3) entering a finding that there was no just reason for delay pursuant to Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016), and (4) transferring the case to Cook County for further proceedings.

¶ 6 Anna appeals, arguing the trial court erred by (1) denying her petitions for orders of protection, (2) denying her motion to continue Antoine's emergency petition for indirect civil contempt, (3) finding she abused Antoine's parenting time, (4) denying her emergency motion to

modify parenting time, and (5) *sua sponte* transferring the case to Cook County. We disagree and affirm.

¶ 7 I. BACKGROUND

¶ 8 A. The Dissolution of Marriage

¶ 9 In October 2012, Antoine filed a petition for dissolution of marriage. The petition stated that Antoine lived in McLean County and Anna lived in Grundy County. The petition further stated that the parties did not have any children. A judgment of dissolution of marriage was entered in January 2013.

¶ 10 In January 2014, the parties submitted a letter to the trial court, stating they had a child, A.J. (born May 27, 2013), conceived during marriage and born after the dissolution of marriage. The parties requested joint custody and included a proposed visitation schedule. The court sent the parties a letter indicating that it declined to approve the agreement and set the matter for a custody hearing.

¶ 11 In March 2014, the court entered a "stipulated order," signed by the parties and their counsel, that awarded the parties joint custody of A.J. and delineated terms governing parenting time and decision making.

¶ 12 Subsequently, the record reflects that the parties had recurring problems with parenting time. The trial court held multiple hearings and entered multiple orders amending the parenting agreement. On December 12, 2016, the court entered an agreed order that gave Antoine parenting time on Sunday, Monday, and Tuesday, and Anna parenting time on Wednesday, Thursday, Friday, with the parties alternating Saturdays.

¶ 13 On May 18, 2018, after court-ordered mediation and settlement conferences, the trial court conducted a status hearing at which both parties appeared. The docket entry for that

day states, "Parenting plan approved in best interest of minor child. Order entered. See Order. This resolves all pending issues." On that same day, a document titled "Parenting Allocation Plan," signed by both parties and the trial court, was filed. The plan stated that the parties lived in Orland Hills, Illinois, which is in Cook County. The plan stated that both parents were responsible for decision making and that A.J. was to attend school in "Kirby School District 140 until graduation from high school." Regarding parenting time, Antoine had parenting time Sunday through Tuesday, and Anna had parenting time Wednesday through Friday, with the parties alternating Saturdays.

¶ 14 B. The Emergency Motion To Modify Allocation of Parental Responsibilities

¶ 15 On September 10, 2018, Anna *pro se* filed an emergency motion to modify allocation of parental responsibilities. Anna alleged that there was a substantial change in circumstances because Antoine attacked her in front of A.J. In an affidavit attached to the motion, Anna averred that on September 6, 2018, Antoine came to her house uninvited and refused to leave. Anna stated she started video recording him and he "got angry and attacked me by pushing me to the ground and hitting me." Anna further stated she got up and ran behind her "200 lbs" kitchen table, which Antoine then pushed into her, injuring her abdomen. Anna told her teenage son to call 911 and Antoine left. Anna stated she filed charges in Cook County on September 7, 2018, and attached an emergency order of protection from Cook County obtained that same date. That order listed Anna, A.J., and Anna's son as protected persons.

¶ 16 On October 5, 2018, the trial court conducted a hearing on Anna's emergency motion to modify. After hearing testimony, the court denied the motion and ordered "[t]he terms of [the] Parenting Allocation Plan filed 5/18/18 remain in full force and effect." The docket entry for that day further states that "[the parties] shall exchange the minor child at the Shorewood,

IL[,] Police Department. Renee Johnson ([Antoine's] Mother) shall be permitted to complete parenting time exchanges while order of protection (Cook Co.) is in place." On October 10, 2018, a written order was entered that stated "[t]he Parenting Allocation Plan entered on May 18, 2018, shall hereby be fully enforced and followed by the parties effective October 5, 2018." The order also stated that A.J. was to attend school in Kirby School District 140 per the Parenting Allocation Plan.

¶ 17 On October 17, 2018, Antoine filed an emergency motion to modify parenting time, arguing that (1) Anna was not taking A.J. to school in Kirby School District and (2) Anna had not exchanged A.J. for parenting time because Antoine's mother was there for the exchange.

¶ 18 On October 18, 2018, Anna, through counsel, filed an emergency motion for an order of protection and to reconsider the trial court's October 5, 2018, oral ruling. In the motion, Anna stated that on September 27, 2018, she attended a bond hearing in Antoine's criminal case stemming from the September 6, 2018, incidence of domestic violence. The court in Cook County entered a criminal plenary order of protection in favor of Anna and her son against Antoine, but did not include A.J. because there were ongoing proceedings in McLean County.

¶ 19 Later on October 18, 2018, the trial court conducted a hearing on Antoine's emergency motion to modify. Halfway through testimony, the court conferred with counsel for the parties in chambers. A written order was entered that same day purporting to be an "Amended Order" of the "Order entered October 10, 2018." The written order restated the language contained in the October 10, 2018, order and added (1) times and places for exchanges, (2) Antoine's mother could complete the exchanges, and (3) "Saturday, October 20, 2018[,] shall be [Antoine]'s Saturday."

¶ 20 C. The Hearing on Anna's Petition for Plenary Order of Protection

¶ 21 On November 2, 2018, Anna filed an amended verified petition for order of protection. In the amended petition, Anna recounted the events of September 6, 2018, in greater detail and averred that "[Antoine's] hands hit me and pushed me to the ground. I got up and told him to 'get out of my house'. He then pushed a 300 lbs table into me, pining [*sic*] me against the wall."

¶ 22 On November 20, 2018, the trial court conducted a hearing on Anna's amended verified petition for an order of protection. Antoine testified that he went to Anna's home on September 6, 2018, because A.J. had been to the doctor that day and Anna asked him to come watch the kids while she picked up A.J.'s prescription. A video taken by Anna was played and Antoine was asked questions during its presentation. In the video, Antoine was standing in the kitchen and Anna was repeatedly asking him to leave, but Antoine ignored her. Antoine testified that A.J. had an issue at school that Antoine wanted to talk to A.J. about. He thought Anna was recording him "to put on a show," and he was not going to leave without talking to A.J.

¶ 23 About two minutes into the video, Antoine asked Anna about paperwork from the doctor's visit. Antoine testified that as he asked this, he saw documents on the kitchen table and went to pick them up. In the video, Anna yelled at him to stop and to get his own paperwork. The remainder of the video is difficult to follow because there is so much motion. However, Anna's counsel paused the video at certain moments and asked Antoine to describe where he was and what was on the screen.

¶ 24 In the video, Anna moves toward the kitchen table and then there is a commotion. The footage is blurred and no discernible statements are made. A few seconds later, the screen goes black and Anna can be heard screaming for her son to call 911 and for Antoine to leave. A few seconds after that, Anna again yells at Antoine to leave and tells him he is not going to get

violent and push her table into her in front of her daughter. In the video, Anna continues to yell at him to leave and then says he is scaring their daughter. A few seconds after that, A.J. can be heard crying. The video then ends. The entire video is about three minutes long.

¶ 25 Antoine testified that, at one minute and fifty seconds into the video, he picked up A.J. to say goodbye and held her in his right arm. Antoine stated he then saw the paperwork on the table and went to pick it up. Antoine testified that Anna moved to the table and took the medical documents and that caused him to "stumble." As he stumbled, he put his daughter down; Anna was standing opposite the kitchen table from him. Antoine testified that he did not know if the table moved, but he did not move it.

¶ 26 Anna's counsel then played a video from Antoine's phone which overlapped with the end of Anna's video. In that video, Anna is behind the kitchen table with her back to the wall. The table is on the very left side of the kitchen, and A.J. is seen walking toward her mother and stopping just in front of the table. Antoine is several feet away. Anna yells that Antoine is not going to come into her house and be violent. Antoine, behind the camera, starts walking away. Antoine is heard suggesting that Anna was lying and going to make up further accusations. Anna yells that Antoine is upsetting their daughter, and Antoine yells that Anna is the one upsetting her. The video ends, and A.J. is not heard crying.

¶ 27 Anna's counsel asked Antoine about the location of objects on and around the table. Antoine agreed that there appeared to be a large metal cup on the table and that one of the chairs was pushed away from the table as if someone had stood up and not pushed the chair in. Antoine agreed there was a light hanging above the table, but the table was not centered under the light. Antoine stated he did not know how Anna had the kitchen set up so he did not know if the table was in its usual spot.

¶ 28 Anna testified that she had recently moved to Morris, Illinois, in Grundy County. She testified that Antoine called her on September 6, 2018, while she was giving A.J. a bath, and Anna told him she could not speak at that time. Antoine then showed up at her house, banging on the door. Anna answered the door and told him to leave because she was about to go pick up a prescription. Antoine "let himself in" when he saw A.J. come down the stairs. Anna testified that she began recording him shortly thereafter.

¶ 29 As with Antoine, Anna's counsel played the three minute long video that she recorded that night and asked Anna questions to clarify what was occurring. Anna testified that before the altercation, the chairs around the table were pushed in, a stainless steel cup was on the table, and there was a white spot on the table from the reflection of the hanging light. Anna stated she moved around the table to grab the medical paperwork when Antoine attacked her and they struggled. Antoine then pushed the table into her. Anna testified that she had major abdominal pain and went to the hospital for treatment.

¶ 30 Anna further testified that she moved to Morris shortly after she got an order of protection because she was scared for her safety and the safety of her children. She enrolled the children in school in Morris in September.

¶ 31 On cross-examination, Anna acknowledged she claimed in the Cook County petition for order of protection that Antoine grabbed her and slammed her to the ground, but she did not make a similar claim in the current proceedings. The trial court then questioned her as follows:

> "Q. So you agree at this time that the statement that you made that was attached to the emergency motion to modify allocation of parental responsibilities where you indicate he got angry and attacked me by pushing me to the ground

and hitting me, that is not accurate?

A. Yes.

Q. Why would you put that in there if it was not accurate?

A. Everything just happened so fast and when he—I mean I put that down as hitting when we did struggle, his hands were on my body so that's why I put hitting down because he did touch my body in the meanst (sic) of me trying to come around the table and he's—I mean he's verified under oath as well that there was, we struggled there. So by him putting his hands on me, I did write hitting on there.

Q. But you also, and I'm just trying to understand, you also indicated he pushed you to the ground. That is not accurate, correct?

A. Well, he did push me. Again with having his hands on me, I slipped. I didn't fall all the way to the ground. I slipped and caught myself and proceeded.

Q. So is this an exaggeration of what occurred? It's truthful but an exaggeration? Is that a fair assumption?

A. Yes."

Anna also acknowledged to the trial court that she stated in her affidavit that the table was 200 pounds and that it would take substantial force to move the table.

¶ 32 Antoine then moved for a directed finding, arguing that Anna was not a credible witness. Anna argued that the criminal plenary order of protection entered in Cook County contained a finding that Anna was abused and, therefore, the court in the instant case must also find abuse. Anna further argued that A.J. was entitled to an order of protection because the domestic violence statute provided that protected persons include the abused and any dependent

child. 750 ILCS 60/201(a) (West 2018). In the alternative, Anna asserted that she should survive a directed finding because (1) Anna testified that the table moved, (2) she was injured by the table, and (3) the only person who could have moved the table was Antoine.

¶ 33 The trial court ruled that Anna was not entitled to an order of protection because (1) she already had a plenary order of protection in Cook County and (2) the court could not enter competing orders of protection. The court rejected Anna's claim that it was required to find abuse because the Cook County circuit court had found abuse. The court also disagreed that A.J. was automatically considered abused under the statute if Anna was abused. The court noted Anna had credibility problems because (1) she had inconsistently claimed the table was 200 pounds and 300 pounds and (2) she averred in this and other petitions that Antoine hit her and pushed her to the ground but did not present any testimony to that effect at the hearing.

¶ 34 The court also found after reviewing the evidence in the light most favorable to Anna that nothing indicated that the table had moved. Based on the court's viewing of the videos, pictures, and the testimony, it concluded that the table was not centered under the hanging light prior to the scuffle and that had the table moved in the manner described, the items on the table would have moved or fallen off. The court concluded as follows:

> "So do I believe something happened between the parties? I think there was definitely something that happened. Do I think this child was abused such that an order of protection should be entered? The answer is no. And even, even if I considered that there was abuse, even if I take that as true, I don't believe the order of protection is necessary to protect this child and prohibit irreparable harm or continued abuse. There is no contact between the parties. There is an order of protection. I've entered the appropriate orders in this case. *** There is no

evidence outside of this altercation between the parties that father abused this child."

¶ 35 D. Anna's Second Petition for Order of Protection

¶ 36 On November 30, 2018, Anna filed a new verified petition for emergency order of protection. In the petition, Anna alleged that when she took her daughter to school on November 29, 2018, A.J. began crying and stating she did not want to go to school "because my daddy will get me and hit me again." On November 30, 2018, the trial court conducted a hearing on Anna's emergency petition. The court denied the petition and continued the case for a hearing on a plenary order of protection.

¶ 37 On December 20, 2018, the trial court conducted a hearing on Anna's second petition for plenary order of protection. Anna testified that (1) she took A.J. to a doctor's appointment on November 28, 2018 and (2) after the appointment, A.J. told Anna that Antoine had hit her (A.J.). Antoine objected to the testimony as hearsay.

¶ 38 Anna presented a video, in which Anna asked A.J. how she got bruises on her leg. The video showed two small circular bruises, one on each of A.J.'s legs. A.J. responded that her "daddy hit [her]." When asked what Antoine hit A.J. with, A.J. replied, "his hand." Anna further testified that she took A.J. to school the next morning and A.J. began crying and shaking and "repeatedly said over and over again, I don't want to stay here. My daddy's going to come and get me. My daddy's going to come and hurt me again." Anna testified that A.J. told a social worker at the school the same thing. According to Anna, A.J. was "crying hysterically" and it took an hour to calm her down. Antoine objected to the video and A.J.'s statements as hearsay.

¶ 39 On cross-examination, Anna acknowledged that in 2013, the Department of Children and Family Services (DCFS) conducted an investigation when A.J. "indicated that her

dad hurt her," and concluded those allegations were "unfounded." Anna was also asked if she "admitted under oath in the transcript from that [DCFS] hearing essentially on the appeal of that finding, that you doctored a photograph of [A.J.]" Anna stated that she could not recall, but did not deny the allegation.

¶ 40 On redirect examination, Anna offered a video of A.J. from the night before the hearing. In the video, A.J. was crying in her bed and stated she did not "want to go."

¶ 41 Antoine argued that the videos and statements of A.J. were inadmissible hearsay and the trial court agreed. The court considered multiple hearsay exceptions and found that none applied. Without A.J.'s statements, the court concluded that Anna had not demonstrated abuse. The court found that Anna's testimony was not credible and noted that Anna had exaggerated in prior hearings and pleadings. The court further noted that Anna did not deny doctoring a photograph in a prior DCFS investigation. Finally, the court took notice of the fact that Anna's second petition was filed 10 days after her prior petition for a plenary order of protection was denied and her second petition was the first time Anna alleged to a court that Antoine hurt A.J.

¶ 42 E. Antoine's Petitions for Indirect Civil Contempt

¶ 43 In October, November, and December 2018, Antoine filed multiple petitions for rule to show cause and to hold Anna in indirect civil contempt for her failure to comply with the trial court's orders. Specifically, Antoine filed six separate petitions, though only one is at issue on appeal. Each of the first five petitions alleged Anna failed to comply with prior court orders by either denying Antoine parenting time on specific days or by removing or failing to take A.J. to school in Kirby School District 140.

¶ 44 On December 17, 2018, Antoine filed an emergency petition for rule to show cause that contained two separate counts and 80 allegations. The first count alleged Anna

willfully failed to comply with the trial court's prior parenting time orders by failing to exchange A.J. on specific dates. In particular, Antoine alleged he missed specific days in October and November 2018 and had not had any parenting time or contact with A.J. since November 28, 2018. The second count alleged Anna removed A.J. from school or otherwise failed to take her to school in Kirby School District 140 as required by the court's orders. Antoine set forth each date missed and the facts surrounding any days Anna removed A.J. from school early. These allegations largely mirrored the ones in Antoine's previous five petitions.

¶ 45 On December 20, 2018, after hearing testimony on Anna's petition for order of protection, the trial court conducted a hearing on Antoine's emergency petition for indirect civil contempt. Prior to the hearing, Anna filed a motion to continue, arguing her counsel only received the petition on December 18, 2018, and did not have time to adequately investigate or prepare for a hearing. The trial court denied Anna's motion.

¶ 46 Antoine began by calling JoAnn Greene, the principal at the school in Kirby School District 140 that A.J. was supposed to attend. (We note that Anna had subpoenaed Greene to testify at the hearing on Antoine's petition, but Antoine called the witness in his case in chief.) Greene testified that her school did not offer "half-time" kindergarten; instead, all students attend on a full-time basis. Greene testified that A.J. had missed 25½ days of school that year and provided an attendance record kept by the school that delineated each day of school, whether A.J. attended, and if so, whether she left early.

¶ 47 Antoine testified that he was supposed to have parenting time on Sundays, Mondays, Tuesdays, and alternating Saturdays. Antoine further testified consistent with his emergency petition regarding each specific day Anna withheld parenting time. Altogether, Antoine testified he missed 18 days of parenting time. Antoine stated he had not had any contact

with A.J. since November 28, 2018, despite communicating through counsel.

¶ 48 Anna testified on her own behalf. She testified that due to the order of protection in Cook County, she could not contact Antoine on certain days when there was supposed to be an exchange. Anna further stated that she did not receive a written order from the trial court on October 5, 2018, and had to rely on oral rulings. Anna stated she did not exchange A.J. on October 13, 2018, because when she went to the police department where the exchange was to occur, she saw Antoine parked in a car up the street, and his mother was supposed to complete the exchange. Anna testified she had not exchanged A.J. since November 28, 2018, because she had filed a petition for an order of protection based on abuse to A.J. and Anna was afraid abuse would occur. Anna further stated she took A.J. to a school in Morris for the same reasons.

¶ 49 The trial court made detailed findings on the record. First, the court stated it was considering Antoine's emergency petition under 750 ILCS 5/607.5 (West 2018) as an abuse of allocated parenting time. The court stated it made a clear oral ruling on October 5, 2018, which was entered as a docket entry, and ruled that the parties were to make exchanges at the Shorewood Police Department and Antoine's mother was permitted to make the exchange. The court noted it made this ruling so the parties could continue parenting time while still complying with the Cook County order of protection. The court found Anna's testimony that she was confused about the ruling "quite honestly disingenuous," and noted that Anna's credibility problems from the order of protection hearings persisted. The court also believed its October 18, 2018, order further clarified the parenting time schedule and how exchanges were to take place.

¶ 50 The trial court found Anna abused her parenting time. It acknowledged that Anna was concerned about abuse of A.J., but it also noted that the emergency petition for order of protection was denied on November 30, 2018, and no other order existed that restricted

Antoine's parenting time. As part of its ruling, the court gave Antoine make-up parenting time, including the first nine Saturdays in 2019. The court reserved the possibility of awarding additional parenting time and attorney fees. The court again ordered A.J. to attend school in Kirby School District 140 per the agreed Parenting Plan. To ensure compliance, the court ordered Anna to post a $2500 cash bond and set multiple status hearings to monitor the case.

¶ 51 F. Anna's Motions To Reconsider

¶ 52 On November 16, 2018, Anna filed a motion to reconsider the court's October 18, 2018, order. In essence, Anna argued that the court lacked authority to modify the May 18, 2018, Parenting Allocation Plan. Anna claimed the Parenting Plan was not a court order and had not been incorporated into a court order until October 5, 2018. Because the only thing pending before the court at the time of the hearing was Anna's motion to modify allocation of parental responsibilities and that motion was denied, the trial court did not have authority to later modify that order on October 10, 2018, and October 18, 2018.

¶ 53 On December 20, 2018, Anna filed a motion to reconsider the trial court's denial of her first petition for an order of protection. On January 8, 2019, Anna filed a motion to reconsider the court's denial of her second petition for an order of protection.

¶ 54 On January 8, 2019, the trial court conducted a hearing on Anna's November 16, 2018, and December 20, 2018, motions to reconsider and denied them. On January 14, 2019, the court conducted a hearing on Anna's January 8, 2019, motion to reconsider and denied that motion as well. Also at the January 14, 2019, hearing, the court entered an order stating that on its own motion it was transferring the case to Cook County.

¶ 55 On January 22, 2019, the trial court conducted a hearing on outstanding issues and to clarify the record prior to transferring the case to Cook County. The court entered a

written order (1) clarifying the basis for its October 10, 2018, order modifying the May 18, 2018, Parenting Plan, (2) clarifying that it did not find Anna in contempt and instead imposed the bond pursuant to section 607.5 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/607.5(c)(4) (West 2018)), (3) entering a finding that there was no just reason for delay pursuant to Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016), and (4) transferring the case to Cook County for further proceedings. The court explained on the record that it was conducting the hearing in part "to manage this before the case gets shipped out to Cook County. So I do have the draft of my order that we discussed at the last court date." The court also stated as follows: "I'm transferring this case. The order that I indicated I would enter last week, I did not enter on Friday, I held off [until] today so I could make the parties aware."

¶ 56 II. ANALYSIS

¶ 57 Anna appeals, arguing the trial court erred by (1) denying her petitions for orders of protection, (2) denying her motion to continue Antoine's emergency petition for indirect civil contempt, (3) finding she abused Antoine's parenting time, (4) denying her emergency motion to modify parenting time, and (5) *sua sponte* transferring the case to Cook County. We disagree and affirm.

¶ 58 A. Anna's Petitions for Orders of Protection

¶ 59 Anna first argues the trial court erred by denying her first and second petitions for orders of protection. First, Anna contends section 201(a) of the Illinois Domestic Violence Act (750 ILCS 60/201(a) (West 2018)) makes A.J. a protected party as a matter of law. Second, Anna asserts the trial court erred by not considering video evidence. Third, Anna argues the trial court's findings that Anna and A.J. were not abused were against the manifest weight of the evidence. We address each argument in turn.

¶ 60 1. *A.J. Was Not Automatically a Protected Person*

¶ 61 Anna first claims that A.J. was a protected person under the plain language of section 201(a) of the Illinois Domestic Violence Act (750 ILCS 60/201(a) (West 2018)) and the trial court was required to enter an order of protection on her behalf. The interpretation of a statute presents a question of law which is reviewed *de novo*. *In re Marriage of Solano*, 2019 IL App (2d) 180011, ¶ 46.

¶ 62 The Illinois Domestic Violence Act states as follows: "The following persons are protected by this Act: (i) any person abused by a family or household member; *** [and] (iii) any minor child or dependent adult in the care of such person." 750 ILCS 60/201(a) (West 2018). An order of protection must include "[t]he name of each petitioner that the court finds was abused *** and the name of each other person protected by the order and that such person is protected by this Act." 750 ILCS 60/221(b)(1) (West 2018).

¶ 63 Although A.J. certainly falls under the Act's protection, she was not automatically a protected person under the Cook County order, and the trial court was not required to enter an order of protection in her favor and against Antoine. "Once one member of a household is abused, the court has *maximum discretionary power* to fashion the scope of an order of protection to include other household members or relatives who may be at risk of retaliatory acts by the abuser." (Emphasis added.) *In re Marriage of McCoy*, 253 Ill. App. 3d 958, 963, 625 N.E.2d 883, 886 (1993). The Cook County emergency order specifically listed Anna, her son, and A.J. as "protected persons." The criminal plenary order of protection specifically listed only Anna and her son as protected persons and instead stated that proceedings related to A.J. had to occur in McLean County. Accordingly, A.J. was not a protected party under the order.

¶ 64 Anna's interpretation would render statutory language superfluous. If every minor

child was automatically covered when a parent received an order of protection, further proceedings would not be required and orders of protection would not be required to state "the name of each other person protected by the order." 750 ILCS 60/221(b)(1) (West 2018). "One section of a statute should not be interpreted in a way that renders another section of the same statute irrelevant." *In re County Collector*, 2014 IL App (2d) 140223, ¶ 17, 25 N.E.3d 712. The trial court was not required to enter an order of protection for A.J.

¶ 65 2. *A.J.'s Statements in the Videos Were Inadmissible Hearsay*

¶ 66 Anna next claims the trial court erred by not considering statements made by A.J. in two videos presented at the hearing on Anna's second petition for order of protection. Anna claims that videos do not have the ability to lie and are therefore admissible. Her argument fundamentally misunderstands the nature of Antoine's hearsay objection.

¶ 67 Hearsay is an out-of-court statement offered for the truth of the matter asserted and is generally inadmissible due to its lack of reliability absent an exception. *People v. Davison*, 2019 IL App (1st) 161094, ¶ 30. Here, Anna was offering A.J.'s out-of-court statements contained in the videos for their truth: to prove Antoine hit A.J. On appeal, Anna does not argue that those statements fall under any hearsay exceptions, and we will not do her arguing for her.

¶ 68 Anna's sole contention is that the *video* cannot lie and therefore the statements must be admissible. Anna cites *People v. Tharpe-Williams*, 286 Ill. App. 3d 605, 609, 676 N.E.2d 717, 720 (1997) in support of her argument; however, that case is easily distinguishable. In *Tharpe-Williams*, two witnesses testified at trial regarding events that they witnessed by viewing a contemporaneous telecast of security cameras. *Id*. at 607-08. On appeal, the defendant argued the testimony was inadmissible hearsay because the witnesses did not have personal knowledge of the incident and were merely repeating what "the video camera, a third party, had

to say." *Id*. at 608. The Second District held that the video was not hearsay because "[o]bjects such as a video camera neither have nor lack credibility or trustworthiness," and therefore "the underlying basis for excluding hearsay evidence does not apply to 'out-of-court statements' made by a video camera." *Id.* at 609.

¶ 69 In this case, Antoine objected to the statements captured by the video, not the video itself. In the video, Anna asked A.J. to explain how she got the bruises on her legs. This situation clearly presents the same credibility and trustworthiness issues that any hearsay evidence presents. Accordingly, *Tharpe-Williams* is distinguishable, and the trial court did not err by excluding A.J.'s statements.

¶ 70 3. *The Trial Court's Findings Were Not Against the Manifest Weight of the Evidence*

¶ 71 Anna further contends that the trial court's findings that Anna and A.J. were not abused were against the manifest weight of the evidence. A trial court's finding "on whether abuse or neglect occurred will not be disturbed on appeal unless contrary to the manifest weight of the evidence." (Internal quotation marks omitted.) *Best v. Best*, 223 Ill. 2d 342, 349, 860 N.E.2d 240, 244 (2006). "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *Id*. at 350. The trial court's findings are given deference because it is in the best position to observe the conduct and demeanor of the parties and witnesses. *Id*. "A reviewing court will not substitute its judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn." *Id*. at 350-51.

¶ 72 In her brief, Anna offers no argument or explanation as to why the trial court's ruling on her second petition for an order of protection was against the manifest weight of the evidence. Accordingly, this argument is forfeited. *In re Marriage of Kiferbaum*, 2014 IL App

(1st) 130736, ¶ 21, 19 N.E.3d 1204 (issues not clearly defined or sufficiently presented are forfeited). We note that even if the argument were not forfeited, as noted above, the trial court properly excluded A.J.'s hearsay statements and Anna did not present any other substantive evidence that demonstrated that A.J. was abused at all, much less by Antoine.

¶ 73 Regarding Anna's first petition, Anna argues at length that the videos and photos demonstrate that the kitchen table moved and the trial court erred by finding that it did not. However, after reviewing the evidence, we cannot conclude that the opposite conclusion is clearly evident. We agree with the trial court that the videos from September 6, 2018, indicate that something happened between the parties, but it is unclear exactly what occurred. Further, the trial court concluded that Anna was not a credible witness because she repeatedly made conflicting and exaggerated claims in her verified petitions and under oath. Under these circumstances, we conclude the trial court's findings were not against the manifest weight of the evidence. See *Best*, 223 Ill. 2d at 350-51.

¶ 74 B. Anna's Motion To Continue the Contempt Hearing

¶ 75 Anna next argues that the trial court erred by denying her motion to continue Antoine's emergency petition for indirect civil contempt and by "transforming" the contempt proceeding to an abuse of parenting time proceeding. We disagree.

¶ 76 "The trial court has the discretion to grant or deny a motion for continuance, and its decision will not be disturbed on appeal unless it has resulted in a palpable injustice or constituted an abuse of discretion." *In re Parentage of I.I.*, 2016 IL App (1st) 160071, ¶ 29, 69 N.E.3d 402. A trial court abuses its discretion only when its decision is arbitrary, fanciful, or unreasonable or where no reasonable person would take the view adopted by the trial court. *Id.* A particularly strong factor is whether the moving party has shown a lack of diligence in

proceedings with the litigation. *Id*. ¶ 30.

¶ 77 Here, Antoine's five previously filed petitions for indirect civil contempt set forth substantially the same allegations as those contained in his emergency petition. Further, Anna's counsel admitted to the court that Greene was present solely to testify on Antoine's emergency petition. Therefore, Anna was not prejudiced because she was able to subpoena her own witness to attend the hearing. Moreover, we find significant that, in the motion to continue, Anna's counsel acknowledged receiving Antoine's emergency petition by email two days before the hearing. See Ill. S. Ct. R. 11(c) (eff. July 1, 2017) (mandating electronic service of documents); Ill. S. Ct. R. 12(b)(3) (eff. July 1, 2017) (written acknowledgement by party sufficient proof of service). Finally, Antoine's emergency petition was simple, specific, and pertained to things directly within Anna's personal knowledge. Antoine alleged he did not have parenting time with A.J. on specific days and that Anna did not take A.J. to the proper school on specific days. Nothing in Antoine's petition required extensive investigation, and Anna in fact subpoenaed the one witness who could definitively state when and whether A.J. attended school in Kirby District 140. Accordingly, the trial court did not abuse its discretion when it denied Anna's motion to continue.

¶ 78 Alternatively, Anna argues the trial court erred by changing the proceeding from a contempt hearing to a hearing on abuse of parenting time. Anna contends that the standard in contempt proceedings is higher than under section 607.5 of the Illinois Marriage and Dissolution of Marriage Act. See 750 ILCS 5/607.5 (West 2018).

¶ 79 We conclude Anna has forfeited this argument by not raising it to the trial court. *In re Marriage of Kasprzyk*, 2019 IL App (4th) 170838, ¶ 40 ("Issues not raised in the trial court are forfeited and may not be raised on appeal."). Anna did not object at the December 20, 2018,

hearing or in any subsequent filings or motions to reconsider (of which there were many) on the ground that the trial court improperly construed Antoine's emergency petition as a motion pursuant to section 607.5.

¶ 80 Moreover, as stated above, Antoine's detailed allegations clearly set forth the facts he claimed demonstrated that Anna violated prior court orders and interfered with his parenting time. And, at the hearing, Anna admitted she did not produce A.J. for parenting time in December despite the trial court's denial of her petition for an emergency order of protection on November 30, 2018. Accordingly, we cannot conclude Anna was prejudiced by the trial court's actions.

¶ 81 C. Abuse of Allocated Parenting Time

¶ 82 Third, Anna argues the trial court could not have found that she violated its orders relating to parenting time because she had motions to reconsider pending. Section 2-1203(b) of the Code of Civil Procedure provides that timely filed posttrial motions stay the enforceability of final judgments. 735 ILCS 5/2-1203(b) (West 2018). Anna claims the Parenting Plan was not a court order until October 5, 2018, when the trial court ordered it to "remain in force and effect." The court modified that order on October 10, 2018, and October 18, 2018, and Anna filed a motion to reconsider the court's October 18, 2018, ruling on November 16, 2018. As such, Anna claims she did not have to follow the May 18, 2018, Parenting Plan until the trial court ruled on her motion to reconsider in January 2019. We disagree.

¶ 83 First, the record demonstrates that the May 18, 2018, Parenting Plan was in fact a court order. The trial court signed and dated the Plan and the docket entry for that date states "Parenting plan approved in best interests of minor child. Order entered. See Order. This resolves all pending issues." Therefore, the trial court clearly intended the May 18, 2018,

Parenting Plan to be a final order. See 750 ILCS 5/610.5(e)(4) (West 2018) (allowing trial court to modify parenting plan if it is in best interest of child and agreed to by the parties).

¶ 84 Second, the parties intended the Parenting Plan to be a final order. The parties agreed to the parenting plan after attending mediation and submitting individual parenting plans. In September 2018, Anna *pro se* filed a motion to modify the Parenting Plan. Anna claims on appeal that because she was *pro se*, she should not be held to this admission. But everything about the proceedings below indicates that the parties believed the Parenting Plan had the force and effect of a court order.

¶ 85 Third, in the docket entry for October 5, 2018, the trial court ordered the Parenting Plan to "remain in full force and effect." We acknowledge that the court's written order stated, "The Parenting Allocation Plan entered on May 18, 2018, shall hereby be fully enforced and followed by the parties effective October 5, 2018." It is not clear what the trial court meant when it used this phrase, but the record demonstrates the May 18, 2018, Parenting Plan was a final order, and the trial court believed it to be a final order when it ordered it to "remain in full force and effect." Regardless of what the trial court tried to do, the Parenting Plan was a final order.

¶ 86 Because the May 18, 2018, Parenting Allocation Plan was a final order, at most Anna's motion to reconsider stayed enforcement of the *modifications* entered in October 2018. She was still required to comply with the underlying Parenting Plan, yet Anna admitted she never exchanged A.J. or took her to Kirby School District 140 after November 28, 2018.

¶ 87 Even assuming Anna was somehow excused from following the May 18, 2018, Parenting Plan, the prior court order allocating parenting time, entered December 12, 2016, gave Antoine parenting time on Sunday, Monday, and Tuesday, and Anna parenting time on

Wednesday, Thursday, and Friday, with the parties alternating Saturdays. In other words, there was still plenty of evidence that Anna abused her parenting time with respect to the *original* parenting plan which fully justified the trial court's finding.

¶ 88 Anna also contends that her petitions for orders of protection entitled her to deny Antoine parenting time to protect A.J. However, Anna's emergency petition for an order of protection was filed on November 30, 2018, and was denied after a hearing that same day. As the trial court observed when in found Anna had abused her parenting time "[t]here is no other order for restriction on [Antoine's] parenting time." Any argument to the contrary fails.

¶ 89 D. Anna's Emergency Motion to Modify

¶ 90 Fourth, Anna claims the trial court erred when it denied her motion to modify allocation of parental responsibilities. Anna asserts that (1) the court lacked authority to enter the relief it did because Anna did not request it, (2) she demonstrated that she was abused, (3) neither party was living in Kirby School District 140 at the time the court entered its October 5, 2018, order, (4) the May 18, 2018, Parenting Plan was unenforceable, and (5) she lacked notice and an opportunity to be heard.

¶ 91 We earlier determined that the court did not err when it found that Anna was not "abused" under the meaning of the Illinois Domestic Violence Act and that the Parenting Allocation Plan was enforceable. Further, the trial court conducted a hearing on October 5, 2018, and reviewed the evidence presented. Anna did not include a transcript from the hearing or a bystander's report. The appellant has the burden to present a sufficiently complete record of proceedings to support her claim of error, and any doubts that arise from the incompleteness of the record will be resolved against the appellant. *In re Marriage of Keaton*, 2019 IL App (2d) 180285, ¶ 14. In the absence of such a record, "it will be presumed that the order entered by the

trial court was in conformity with the law and had a sufficient factual basis." *Id.*

¶ 92 In its January 22, 2019, order, the trial court clarified that it entered its order pursuant to the "any other appropriate relief" request in Anna's motion and the request for a modification of parenting time. Specifically, the court stated that it denied Anna's request to modify *parental decision making*, but it did set exchange times for A.J. based on Anna's request to modify *parenting time* because the Cook County order of protection necessitated a change. In other words, the court denied in part and granted in part Anna's motion to modify. The court also stated that its order did not make any significant modifications to the parties' parenting time.

¶ 93 Section 610.5 of the Illinois Marriage and Dissolution of Marriage Act permits a trial court to modify a parenting plan in certain situations. 750 ILCS 5/610.5 (West 2018). Pursuant to subsection (c), the court can modify a parenting plan if there has been a substantial change in circumstances and a modification is necessary to serve the child's best interests. *Id.* § 610.5(c). Pursuant to subsection (e)(2), the court can modify a parenting plan without a change in circumstances if the modification is minor and in the best interests of the child. *Id.* § 610.5(e)(2).

¶ 94 Here, the trial court's action is supported under either subsection. Either the Cook County order of protection was a substantial change in circumstances which required modification of the Parenting Plan, or, as the trial court stated in its January 22, 2019, order, the modification was "minor" because it simply set forth when and how the parents were to exchange A.J. while complying with the existing order of protection.

¶ 95 Anna clearly had notice of the proceedings because she filed the motion. The trial court was not limited to the relief requested in her motion. Instead the court was free to make any modification it believed was in the best interests of the child. See *id.* § 610.5(c), (e)(2). As we

just explained, the court's order in this case allowed the parties to continue to follow the Parenting Plan while complying with the Cook County order of protection. Accordingly, the trial court did not err when it modified the Parenting Plan.

¶ 96 E. The *Sua Sponte* Transfer to Cook County

¶ 97 Finally, Anna argues the trial court erred when it *sua sponte* transferred the case to Cook County. In its January 22, 2019, order, the trial court stated it was transferring the case to Cook County pursuant to section 512(c) of the Illinois Marriage and Dissolution of Marriage Act. Section 512(c) states as follows:

> "If neither party then resides in the judicial circuit wherein the judgment was entered or last modified, further proceedings shall be had in that circuit or in the judicial circuit wherein either party resides; provided, however, that the court may, in its discretion, transfer matters involving a change in the allocation of parental responsibility to the judicial circuit where the minor or dependent child resides." 750 ILCS 5/512(c) (West 2018).

Anna does not argue that the trial court abused its discretion by transferring the case to Cook County. Instead, she argues that the court acted improperly by failing to give notice and an opportunity to be heard to the parties.

¶ 98 To the extent the trial court acted *sua sponte*, the record demonstrates it gave the parties advanced notice and the opportunity to be heard. The court entered an order on January 14, 2019, transferring the case to Cook County. The docket entry for that day states, "On Court's own motion, the cause is transferred to the Circuit Court of Cook County, Illinois for further proceedings. Written order to follow." On January 22, 2019, the trial court conducted a hearing on an emergency motion to enforce and "to manage this before the case gets shipped out to Cook

County. So I do have the draft of my order that we discussed at the last court date." The court also stated as follows: "I'm transferring this case. The order that I indicated I would enter last week, I did not enter on Friday, I held off [until] today so I could make the parties aware." Anna's counsel filed a motion to continue prior to the hearing which requested a status hearing on pending matters. At the hearing, Anna's counsel argued that he needed time to prepare witnesses to respond to Antoine's pending motions. The court stated it was not considering any pending motion and that the Cook County court could handle the outstanding issues.

¶ 99 Based on the above, Anna had notice and the opportunity to be heard on whether the case should be transferred to Cook County. The trial court (1) informed the parties of its decision, (2) discussed with them a proposed order it planned on entering, and (3) waited to enter said order until after the parties were given the opportunity to speak at a hearing. Anna had a full week to file a motion or object to the transfer if she thought it was improper, but she made no such argument. Accordingly, we reject Anna's argument that the court's transfer order was issued without notice and an opportunity to be heard.

¶ 100 In conclusion, we thank the trial court for its patience in dealing with acrimonious and litigious parties and for its detailed findings and orders which this court found helpful.

¶ 101 III. CONCLUSION

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

¶ 103 Affirmed.