FIRST DIVISION
June 15, 2012

No. 1-11-1896

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE THE MARRIAGE OF:	)	Appeal from the
	)	Circuit Court of
SANDRA PADRON,	)	Cook County.
	)	
Petitioner-Appellant,	)	
	)	
and	)	08 D 1698
	)	
ERNESTO PADRON,	)	Honorable
	)	Veronica B. Mathein,
Respondent-Appellee.	)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Hoffman and Justice Karnezis concurred in the judgment.

ORDER

HELD: Petitioner Sandra Padron's procedural due process rights were not violated by a lack of notice concerning the two trial court orders at issue and the trial court did not abuse its discretion in denying her petition to vacate the judgment for dissolution of marriage.

¶ 1 Petitioner, Sandra Padron, appeals from a number of circuit court orders leading up to and pertaining to the judgment of dissolution of her marriage to respondent, Ernesto Padron. On September 20, 2010, petitioner, who was *pro se* at the time, was defaulted for failing to appear and the circuit court entered a judgment for dissolution of marriage on respondent's counter petition for dissolution of marriage.

¶ 2 The judgment, *inter alia*, dissolved the marriage; awarded sole custody, care, and control of the couple's four children to respondent; ordered petitioner to comply with a circuit court order of September 15, 2009, which required her to submit to a psychological evaluation pursuant to Supreme Court Rule 215 (166 Ill. 2d R 215) as a condition precedent to obtaining unsupervised visitation; barred petitioner from attending any of the children's scholastic or extracurricular activities; barred petitioner from seeking maintenance; and awarded respondent possession of the marital residence and ordered petitioner to execute a quit claim deed so that the residence could be listed for sale.

¶ 3 Petitioner filed a motion to vacate a default judgement and judgment for dissolution of marriage pursuant to sections 2-1203 and 2-1301(e) of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-1203, 2-1301(e) (West 2006)). Petitioner was later granted leave to file an amended motion to vacate. The amended motion to vacate was heard and denied on June 6, 2011. Petitioner filed a timely notice of appeal on July 6, 2011, and an amended notice of appeal on August 9, 2011. For the reasons that follow, we affirm.

¶ 4 BACKGROUND

¶ 5 Respondent has failed to submit a brief and therefore this appeal is taken and considered on the record and the petitioner's brief only. See *Oak Park v. Smuda*, 214 Ill. App. 3d 1032, 1033

(1991). The record reveals the following relevant facts and procedural history. The parties were married on May 26, 1991, in Chicago, Illinois. They have four children: Marco, born April 8, 1996; Matthew, born May 1, 2000; Catalina, born July 7, 2005; and Anais, born December 22, 2007.

¶ 6 Both of the parties graduated from the University of Illinois Medical School in 2000. Respondent passed his board exams and was licensed as a medical physician in 2004. He completed his residency in 2006. Respondent practices in pain management and anesthesiology. Petitioner passed two of three board exams, but failed the third board. She did not retake the exam.

¶ 7 The parties physically separated in December 2007, when respondent left the marital residence. Petitioner filed an action for dissolution of marriage on February 22, 2008. In July 2008, the parties entered into an agreement regarding custody and visitation, with petitioner maintaining primary physical custody of the children subject to specified visitation with respondent. Attorney Regina A. Scannicchio was appointed to represent the children on November 21, 2008.

¶ 8 On January 26, 2009, respondent filed a motion for temporary custody of the children alleging that the petitioner had interfered with his visitation and had engaged in a course of conduct designed to alienate him from his children. Respondent further alleged that the petitioner's behavior had become erratic causing him to become concerned for the children's physical and emotional well-being. Respondent requested the trial court to issue an order appointing the children an evaluator and representative pursuant to section 604(b) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/604(b) (West 2004)), to determine issues of custody and parenting.

¶ 9 On February 3, 2009, respondent filed an emergency motion for temporary turnover of the children until a custody determination could be made. Respondent requested that the children be

turned over to him immediately on a temporary basis and that petitioner be given supervised visitation. In support of the emergency motion, respondent alleged that: on January 24, 2009, petitioner left the children home alone without adult supervision; on January 25, 2009, petitioner allowed an unrelated adult senior-male to take Marco and Matthew to the movies, library and dinner; on at least three separate occasions, petitioner had failed to pick up Catalina from preschool; and that petitioner refused to talk with respondent regarding Marco's bleeding hemorrhoid.

¶ 10 On February 3, 2009, a hearing was held on respondent's emergency motion for turnover of the children. Both of the parties were represented by their respective counsels and the children were represented by Attorney Scannicchio. Testifying were petitioner; respondent; respondent's stepfather, Robert Dopke; and Ms. Julie Raino, a director of student life at Quest Academy in Palatine, Illinois where Marco was in seventh grade, Matthew was in third grade, and Catalina was in preschool. Ms. Raino presented her testimony telephonically.

¶ 11 After hearing argument, the trial court denied respondent's emergency motion for turnover of the children. Hearings on respondent's motion for temporary custody of the children and for modification of temporary support commenced on June 24, 2009. Petitioner proceeded *pro se*. Respondent put on his case and petitioner cross-examined him. Petitioner was allowed to bring in four witnesses to testify on her behalf.

¶ 12 On August 10, 2009, the trial court entered an order directing that if respondent planned to travel out of the jurisdiction with the children he must provide petitioner with a travel itinerary. The court also directed that neither party shall take the children out of the country and that petitioner shall tender all of the children's passports to the court by August 13, 2009.

¶ 13 On August 27, 2009, the trial court entered an order giving respondent temporary possession of the children. Petitioner, who was absent from court, was granted visitation privileges. In the order, the trial court noted that the petitioner had failed to turn over the children's passports and she had contacted the police and the Department of Children and Family Services (DCFS) regarding unfounded allegations against respondent.

¶ 14 On September 15, 2009, respondent filed an emergency motion to suspend or restrict petitioner's visitation with the children until she underwent a psychological evaluation pursuant to Supreme Court Rule 215. In support of the motion, respondent alleged that on Friday, September 11, 2009, sometime after petitioner had picked up the children for her scheduled visitation, she transported all four children to a hospital in Kenosha, Wisconsin where she reported that the youngest child had been sexually assaulted by respondent.

¶ 15 No indication of abuse was found. In light of petitioner's unfounded allegations, the trial court entered an order on September 15, 2009, enjoining petitioner, who was absent from court, from any and all contact with the children, except for telephone contact. The trial court also ordered petitioner to submit to a 215(A) psychological evaluation within seven days of the order.

¶ 16 On September 23, 2009, petitioner filed an emergency motion to vacate the orders of August 27, 2009 and September 15, 2009. Petitioner's primary argument was that the orders were entered in her absence because she did not receive proper notice of the proceedings.

¶ 17 In a hearing conducted on September 24, 2009, the trial court stated that even if petitioner had not received notice of the proceedings, the court still felt that it was an emergency situation where petitioner had made false allegations against respondent to the police and the DCFS. The trial

court further stated that over the last several months it had become increasingly concerned with the petitioner's mental and emotional health, which is why it ordered her to undergo a psychological evaluation. The trial court determined that petitioner's emergency motion to vacate the orders of August 27, 2009 and September 15, 2009, was not an emergency matter.

¶ 18 On October 13, 2009, petitioner filed an amended emergency motion to vacate the orders of August 27, 2009 and September 15, 2009. Further hearings were held on November 18, 2009. Petitioner continued to proceed *pro se*. The trial judge, Judge David E. Haracz, stated that he was recusing himself from the case because petitioner was acting *pro se* and he had recently learned that his son was on the same swim team as the parties' oldest son, Marco.

¶ 19 Judge Veronica B. Mathein was eventually assigned to the case and hearing was held on January 21, 2010. Petitioner continued to proceed *pro se*. Judge Mathein struck petitioner's emergency motion to vacate the orders of August 27, 2009 and September 15, 2009, after petitioner refused to argue the motion.

¶ 20 The judge also granted respondent's motion to list the marital residence for sale and his request for supervised discovery so the case could "move along." The judge gave petitioner 28 days to serve respondent with discovery, even though the time for discovery had ended. The judge also granted respondent leave to file a counter petition for dissolution of marriage.

¶ 21 On February 9, 2010, petitioner filed a motion to substitute Judge Mathein pursuant to section 2-1001(a) of the Code (735 ILCS 5/2-1001(a) (West 2006)). On February 17, 2010, Judge Jeanne Cleveland Bernstein entered an order denying petitioner's motion and the case was transferred to the presiding judge for transfer back to Judge Mathein. On the same date, petitioner filed a second

motion to substitute Judge Mathein.

¶ 22 On March 8, 2010, Judge Mathein heard argument on petitioner's second motion for substitution of judge. Petitioner also argued for the case to be transferred out of domestic relations. Petitioner allegedly fell ill during the hearing. Judge Mathein entered an order denying petitioner's oral motion to transfer the matter to another division. The judge continued the matter to March 10, 2010, for a hearing before Judge Pamela E. Loza regarding petitioner's motion for substitution of judge. Judge Mathein also determined that if petitioner had not recovered from her illness by the time of the hearing scheduled for March 10, 2010, then the matter would be continued on a daily basis each day on Judge Loza's calender until such time as petitioner had recovered from her illness.

¶ 23 Petitioner failed to appear for the March 10th hearing. Judge Loza entered an order dismissing petitioner's second motion for substitution of judge for want of prosecution. In the order, the judge noted that the petitioner had refused medical treatment when she was in court on March 8, 2010, and that thereafter, petitioner issued subpoenas to Judges Helaine L. Berger, Veronica B. Mathein, and David E. Haracz, with the clerk of the court on March 9, 2010, which indicated to the court that petitioner was not in the hospital and was therefore required to appear in court for the present hearing. Judge Loza transferred the matter to Presiding Judge Moshe Jacobius to be returned to Judge Mathein. In a separate order, also entered on March 10, 2010, Judge Mathein continued the matter to March 15, 2010.

¶ 24 Petitioner failed to appear for the March 15th hearing. Judge Mathein entered an order granting petitioner's motion to continue and also granted her 14 days to respond to respondent's petition for a rule to show cause as to why petitioner should not be held in indirect civil contempt

for failing to abide by prior court orders directing her to sign the listing agreement for sale of the marital residence.

¶ 25 On March 23, 2010, Judge Mathein entered an order setting a date of May 10, 2010, for a hearing on respondent's petition for a rule to show cause and for a finding of indirect civil contempt against petitioner for her failure to sign the listing agreement for sale of the marital residence.

On April 9, 2010, pursuant to section 2-1203 of the Code, petitioner filed a motion to vacate the orders of March 10, 2010, entered by Judges Loza and Mathein. On April 22, petitioner filed a motion to vacate the order of March 23, 2010, entered by Judge Mathein.

¶ 26 Petitioner failed to appear for the hearing of May 10, 2010. Judge Mathein entered an order finding petitioner in indirect civil contempt for failing to sign the listing agreement for sale of the marital residence. The judge also issued a body attachment to secure petitioner's presence in court to answer to the rule to show cause.

¶ 27 On May 17, 2010, Judge Mathein entered an order striking petitioner's motion to vacate the orders of March 10, 2010, entered by Judges Loza and Mathein, and her motion to vacate the order of March 23, 2010, entered by Judge Mathein. The judge ordered that discovery and any depositions be competed by June 25, 2010. Petitioner failed to appear at the May 17th hearing.

¶ 28 On July 15, 2010, Judge Mathein entered an order striking the trial date of September 14, 2010, but letting stand the trial dates of September 8 and 9, 2010. On August 11, 2010, petitioner filed an emergency motion requesting a telephone conference, to among other things, modify and extend the dates for closure of discovery. The trial court refused to conduct any telephone hearings.

¶ 29 On September 8, 2010, trial commenced on respondent's counter petition for dissolution of

marriage. Petitioner failed to appear and was held in default. After hearing the evidence, Judge Mathein dissolved the marriage between respondent and petitioner on grounds of irreconcilable differences. The judgment for dissolution of marriage was entered on September 20, 2010.

¶ 30 The judge awarded respondent sole custody, care, control and education of the four children. The issues of petitioner's child support, contribution to the children's expenses, and visitation were reserved. The judge ordered petitioner to submit to a 215(A) psychological evaluation as a condition precedent to obtaining unsupervised visitation with the children; the judge added that she would entertain a petition for supervised visitation. The judge barred petitioner from attending any of the children's activities, whether scholastic or extracurricular.

¶ 31 After noting that petitioner had obtained a medical degree and had completed her residency, the judge barred petitioner from seeking maintenance from respondent. The judge awarded respondent possession of the marital residence and ordered petitioner to execute a quit claim deed so that the marital residence could be listed for sale. Petitioner would receive 50% of the proceeds from the sale of the marital residence, and if any money was owed, it would be a debt shared on a 50/50 basis.

¶ 32 The judge determined that the parties would be responsible for any and all debt incurred in their own names. And each party was held responsible for their own attorney's fees and costs.

¶ 33 On February 17, 2011, petitioner, through her attorney and pursuant to sections 2-1203 and 2-1301(e) of the Code, filed an amended motion to vacate the default and judgment for dissolution of marriage. On June 6, 2011, after hearing argument on the matter, Judge Mathein entered an order denying petitioner's amended motion to vacate default and the judgment for dissolution of marriage.

This timely appeal followed.

¶ 34 ANALYSIS

¶ 35 As an initial matter, we address petitioner's contention that Judge Mathein lacked jurisdiction to proceed to trial on September 8, 2010, on respondent's counter petition for dissolution of marriage. Petitioner contends that on the date of trial, Judge Mathein reinstated jurisdiction in Judge Loza when she vacated Judge Loza's order of March 10, 2010, which had dismissed for want of prosecution (DWP) petitioner's second motion for substitution of judge for cause. Petitioner maintains that Judge Mathein's order vacating Judge Loza's DWP order, reinstated jurisdiction in Judge Loza, causing the second motion for substitution of judge to remain pending at the time of trial. We disagree.

¶ 36 Once a case is dismissed, with or without prejudice, a trial court loses its jurisdiction to alter its judgment after the expiration of thirty days following the dismissal unless a motion to vacate the dismissal and reinstate the cause is filed within the term time. *Kempa v. Murphy*, 260 Ill. App. 3d 701, 704 (1994); *Spears v. Spears*, 52 Ill. App. 3d 695, 697 (1977). Here, Judge Mathein never lost jurisdiction over the case because it was never dismissed. Rather, petitioner's second motion for substitution of judge was dismissed by Judge Loza for want of prosecution.

¶ 37 A review of the record shows that the clerk of the court mistakenly docketed an entry indicating that Judge Loza's order of March 10, 2010, had dismissed petitioner's case for want of prosecution. The judge's order however merely dismissed petitioner's second motion for substitution of judge for want of prosecution after petitioner failed to appear for argument on the motion.

¶ 38 After Judge Mathein became aware of the clerk's error, she entered an order vacating the

erroneous entry. Moreover, there was no motion for substitution of judge pending at the time of trial on September 8, 2010, because petitioner failed to notice her motion to vacate the DWP of March 10, 2010, within 90 days of its filing as provided in Circuit Court of Cook County Rule 2.3 (Cook Co. Cir. Ct. R. 2.3 (July 1, 1976)).

¶ 39 Petitioner next contends that the trial court failed to provide her with procedural due process. Petitioner maintains that she was absent from court on August 27, 2009, when the trial court held a hearing and afterwards entered an order giving respondent temporary possession of the children. She further contends that she was absent from the court on September 15, 2009, when the trial court held an emergency hearing and ordered her to submit to a psychological evaluation and enjoined her from any contact with the children, except for telephone contact. Petitioner claims she was absent from these hearings because she failed to receive proper notice of the hearings and therefore her procedural due process rights were violated. We must disagree.

¶ 40 A procedural due process claim presents a legal question subject to *de novo* review. *In re Shirley*, 368 Ill. App. 3d 1187, 1190 (2006). The fundamental requirements of due process are notice of the proceeding and an opportunity to present any objections. *Tri-G, Inc. v. Burke, Bosselman & Weaver*, 222 Ill. 2d 218, 244-45 (2006).

¶ 41 *Pro se* litigants are presumed to have full knowledge of applicable court rules and procedure. *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 528 (2001); *Domenella v. Domenella*, 159 Ill. App. 3d 862, 868 (1987). This includes a duty to track their cases and learn the dates upon which a hearing is to occur. *Tiller v. Semonis*, 263 Ill. App. 3d 653, 657 (1994). The failure of a litigant to be notified of a hearing date does not constitute an excuse for failing to appear at the hearing. *Id.*

¶ 42 Assuming, *arguendo*, that the petitioner did not receive notice of the hearing of August 27, 2009, her procedural due process rights were still not violated where she had a duty to follow the progress of the case and learn the date upon which the hearing was to occur (*In re Matter of K.O.*, 336 Ill. App. 98, 106 (2002)). In addition, the petitioner's due process requirements were satisfied by a post-deprivation hearing conducted on September 24, 2009, where the petitioner was given an opportunity to argue that the order should be vacated. See *Lehman v. Stephens*, 148 Ill. App. 3d 538, 549 (1986) (a post-deprivation hearing may satisfy due process requirements); *Savage v. Mui Pho*, 312 Ill. App. 3d 553, 557 (2000) ("It is when the failure to serve notice denies the party an opportunity to be heard or to respond, thereby denying a party's procedural due process rights, that an *ex parte* order entered without notice may be deemed null and void").

¶ 43 Petitioner's alleged failure to receive notice of the emergency hearing of September 15, 2009, also did not deprive petitioner of her procedural due process rights where the trial court deemed the matter of the hearing to be an emergency under circuit court rule 13.4(d)(ii)(c) (eff. April 2002), and petitioner participated in a post-deprivation hearing where she was given an opportunity to argue that the order should be vacated. See *City of Quincy v. Carlson*, 163 Ill. App. 3d 1049, 1054 (1987) (in emergency situations, due process will be satisfied by a post-deprivation hearing). Under these circumstances, we cannot conclude that petitioner was denied procedural due process of law. See *American Re-Insurance Co. v. MGIC Investment Corporation*, 73 Ill. App. 3d 316, 325-26 (1979).

¶ 44 Petitioner next contends that the trial court's order of August 27, 2009, giving respondent temporary possession of the children was improper because the court entered the order without considering the statutory factors set forth in section 602(a) of the Act (750 ILCS 5/604(a) (West

2008)). Again, we must disagree.

¶ 45 A trial court's determination of custody will not be disturbed unless it is against the manifest weight of the evidence, manifestly unjust, or there is a clear abuse of discretion. *In re Marriage of Diehl*, 221 Ill. App. 3d 410, 424 (1991). There is a strong and compelling presumption that the trial court, the entity closest to the litigation, made the proper custody decision. *Id.*

¶ 46 Section 602(a) of the Act requires trial courts to determine custody in accordance with the children's best interests by considering all relevant factors, including the ten factors listed in this section. *In re B.B.*, 960 N.E.2d 646, 653 (2011). The factors enumerated in section 602(a) are not an exclusive list of factors. *In re Marriage of Diehl*, 221 Ill. App. 3d at 424. Moreover, a trial court is not required to make specific findings of fact under section 602(a) as long as the record reflects that evidence of the factors was considered by the court before making its decision. *Id*; *In re Marriage of Slavenas*, 139 Ill. App. 3d 581, 585 (1985). Our review of the record satisfies us that the trial court considered the relevant factors prior to granting respondent temporary possession of the children on August 27, 2009.

¶ 47 We are also satisfied that the trial court's decision of September 15, 2009, enjoining petitioner from any contact with the children, except for telephone contact, and requiring her to submit to a psychological evaluation met the statutory requirement. Section 607 of the Act governs a parent's visitation rights.

¶ 48 Section 607(a) of the Act entitles a parent who was not granted custody of his or her child to reasonable visitation rights unless the court finds that visitation would seriously endanger the child's physical, mental, moral, or emotional health. 750 ILCS 5/607(a) (West 1994). The custodial

parent carries the burden of proving by a preponderance of evidence that visitation with the non-custodial parent would seriously endanger the child. *In re Marriage of Fields*, 283 Ill. App. 3d 894, 905 (1996). We believe respondent met this burden of proof.

¶ 49 On September 15, 2009, respondent filed an emergency motion to suspend or restrict petitioner's visitation with the children until she underwent a psychological evaluation pursuant to Supreme Court Rule 215. In support of the motion, respondent alleged that on Friday, September 11, 2009, sometime after petitioner had picked up the children for her scheduled visitation, she transported all four children to a hospital in Kenosha, Wisconsin where she reported that respondent had sexually assaulted the parties' youngest child. No indication of abuse was found.

¶ 50 In light of respondent's allegations and the fact that no indication of abuse was found, the trial court entered an order on September 15, 2009, enjoining petitioner from any contact with the children, except for telephone contact. The trial court also ordered petitioner to submit to a 215(A) psychological evaluation.

¶ 51 At a subsequent hearing on a motion to vacate the order, the trial court noted that all of petitioner's allegations against respondent had been unfounded. The court added that over the past several months it had become increasingly concerned with the petitioner's mental and emotional health, which was one of the reasons it had ordered her to submit to a 215(A) psychological evaluation.

¶ 52 A trial court is vested with considerable discretion in resolving visitation issues because of its opportunity to observe the parties and witnesses and evaluate the evidence. *In re Marriage of Lindsey*, 158 Ill. App.3d 769, 771 (1987). A trial court's determination on a motion for modification

of visitation rights will not be disturbed unless it is against the manifest weight of the evidence or is an abuse of discretion. *In re Marriage of Diehl*, 221 Ill. App. 3d at 424; *Sarchet v. Ziegler*, 278 Ill. App. 3d 460, 462 (1996). Based on the record before us, we find that the trial court's decision was not against the manifest weight of the evidence and we find nothing to indicate an abuse of discretion.

¶ 53 Petitioner next contends that the trial court erred by hearing matters out of order of relevance, ordering the sale of the martial residence, and awarding all martial assets to respondent. Each of these arguments is based on an alleged denial of procedural due process by lack of notice of the trial court's order of August 27, 2009 and September 15, 2009. However, we have determined that the petitioner's due process rights were not violated by a lack of notice concerning these two orders and therefore petitioner's related arguments are meritless.

¶ 54 Finally, we reject petitioner's contention that the trial court abused its discretion in denying her amended motion to vacate the judgment for dissolution of marriage. Under section 2-1301(e) of the Code, "the court may *** on motion filed within 30 days after entry thereof set aside any final order or judgment upon any terms and conditions that shall be reasonable." 735 ILCS 5/2-1301(e) (West 2006). The decision to grant or deny a motion to vacate a judgment lies within the sound discretion of the trial court whose decision will not be disturbed on appeal absent an abuse of the discretion. *Mann v. The Upjohn Co.*, 324 Ill. App. 3d 367, 377 (2001).

¶ 55 The moving party has the burden of establishing sufficient grounds for vacating the judgment. *Kosten v. St. Anne's Hospital*, 132 Ill. App. 3d 1073, 1080 (1985). The primary concern in ruling on a motion to vacate is whether substantial justice is being done between the litigants and

whether it is reasonable under the circumstances to compel the nonmovant to proceed to trial on the merits. *W.M. Mold and Tool v. DeRosa*, 251 Ill. App. 3d 433, 439 (1993). The trial court may also consider due diligence, the severity of the penalty as a result of the judgment, and the hardship to the nonmovant if he or she is required to proceed to trial. *Mann,* 324 Ill. App. 3d at 377; *W.M. Mold,* 251 Ill. App. 3d at 439.

¶ 56 In this case, the record shows that the trial court clearly considered whether substantial justice was being done to the parties. At the hearing on the amended motion to vacate the judgment for dissolution of marriage, the trial court stated that vacating the judgment would be a substantial injustice to respondent. The trial also court noted that from the time petitioner decided to proceed *pro se*, that she had failed to exercise due diligence and had repeatedly failed to appear at scheduled hearings and that on one occasion when she did appear, she refused to argue her own motion.

¶ 57 This case has lingered in the circuit court for three years and, after all of the delays and lack of cooperation by the petitioner, it would be a substantial injustice upon respondent if the trial court were to vacate the judgment for dissolution of marriage and hold a new trial. See generally *Mann,* 324 Ill. App. 3d at 377-79. Based upon our review of the record, we conclude that the trial court did not abuse its discretion in denying petitioner's amended motion to vacate the judgment for dissolution of marriage.

¶ 58 For the foregoing reasons, the judgement of the circuit court of Cook County is affirmed.

¶ 59 Affirmed.