2024 IL App (2d) 230177-U
No. 2-23-0177
Order filed January 11, 2024

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF JOSE VEGA, Petitioner-Appellee, and ANA L. LOPEZ, Respondent-Appellant.	))))))))))	Appeal from the Circuit Court of Lake County. No. 18-D-1696 Honorable Ari Fisz, Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justice Mullen concurred in the judgment.
Justice Jorgensen specially concurred.

ORDER

¶ 1 *Held*: Respondent's appeal of September 2020 and August 2022 interlocutory orders is dismissed for lack of jurisdiction. Respondent's appeal of the issue of her February 28, 2020, motion to strike is procedurally defaulted. Of the remaining issues, the trial court's best-interests determination was not against the manifest weight of the evidence because good cause existed and respondent failed to demonstrate prejudice accruing from the trial court's failure to conclude the proceedings on petitioner's petition to modify the allocation of parental responsibilities, and the May 19, 2023, order did not constitute an unconstitutional deprivation of respondent's due process rights.

¶ 2 Respondent, Ana L. Lopez, appeals the May 19, 2023, judgment of the circuit court of Lake County granting the February 28, 2020, petition for modification of the allocation of parental responsibilities of petitioner, Jose Vega, and the denials of respondent's March 31, 2020, motion

to reinstate parenting time, respondent's January 12, 2022, petition to reinstate the terms of the original parenting plan,[1] and respondent's January 24, 2022, motion for temporary allocation of parental responsibilities. In this appeal, respondent argues that the trial court: (1) in September 2020 and again in August 2022, violated her rights to due process by improperly restricting her parenting time, (2) erred in denying her motion to strike petitioner's February 28, 2020, petition to modify the allocation of parental responsibilities, (3) erred in considering the best-interest factors because its judgment was against the manifest weight of the evidence, (4) erred by not complying with the Illinois Supreme Court Rules in timely resolving the issues of allocation of parental responsibilities, and (5) the May 19, 2023, order was unconstitutional in various respects. We dismiss in part respondent's appeal from interlocutory orders for lack of jurisdiction and we affirm in part the court's judgment on the other issues raised in this appeal.

¶ 3 I. BACKGROUND

¶ 4 We summarize the relevant facts appearing in the record. In July 2014, the parties married. During the marriage, the parties had two children, M.V. and V.V. In October 2018, petitioner filed for dissolution of marriage. On June 7, 2019, the parties' marriage was dissolved, and the trial court entered separate orders regarding the allocation of parental responsibilities and child support. The parties agreed that respondent would be responsible for making significant decisions regarding the children's education, health, religion, and extracurricular activities, and petitioner would have parenting time on alternating weekends and evenings twice a week.

¶ 5 On February 28, 2020, petitioner filed a petition to modify the allocation of parental responsibilities. The apparent impetus for petitioner's request was the discovery that M.V. had

[1]Respondent's January 12, 2022, petition requested other relief that was previously disposed, and we reference only the portion outstanding at the time the trial court entered its order.

suffered a burn on his arm. M.V. and V.V. were placed in petitioner's custody, and respondent's parenting time was limited and occurred only under supervision. On March 31, 2020, respondent filed a motion to strike petitioner's petition to modify and to reinstate the parenting allocation from the judgment of dissolution. In July 2020, the trial court appointed a guardian *ad litem* to represent the children's interests. In August 2021, respondent was allowed visitation within her own home to be supervised by her father.

¶ 6 In October 2021, respondent discharged her attorney and began to represent herself.

¶ 7 On January 12, 2022, respondent filed a motion to discharge the guardian *ad litem*, waive the fees, and to reinstate the parenting time schedule from the judgment of dissolution. On January 24, 2022, respondent filed a motion for a temporary allocation of parenting time in which she sought temporary full-time custody of the children, alleging that M.V. had a bruise on his leg and that petitioner was forcing M.V. to shower with him. On March 1, 2022, the court denied respondent's motion to strike petitioner's petition to modify, and it denied both respondent's request to discharge the guardian *ad litem* and to waive the fees.

¶ 8 In April 2022, the trial court removed the supervision requirement from respondent's visitation with the children. The next month, in May 2022, the court increased the amount of respondent's visitation with the children.

¶ 9 In August 2022, respondent filed a petition to discharge the guardian *ad litem*, and, on August 19, 2022, a petition seeking sole custody of the children. Also on August 19, 2022, the trial court entered an order apparently prepared by the guardian setting briefing schedules on the pending motions, and which included an agreed provision in which respondent's parenting time was returned to the April 2022 level. On August 22, 2022, respondent filed an emergency motion seeking to change the agreed portion of the August 19, 2022, order that diminished her parenting time and to restore it to the May 2022 levels. On August 29, 2022, the court determined that no

emergency existed and left in place the briefing schedule for pending motions as well as the scheduled hearing dates.

¶ 10 On September 13, 2022, respondent filed a notice of appeal, which she denominated as an interlocutory appeal, apparently of the decrease in her parenting time occasioned by the August 19, 2022, agreed order. *In re Marriage of Vega*, No. 2-22-0322 (Jan. 26, 2023) (unpublished summary order under Illinois Supreme Court Rule 23(c)) (*Vega I*), slip op. ¶ 4. Because there was no final order from which respondent sought to appeal, and because respondent identified no orders she was attempting to appeal in her notice of appeal, we concluded that we lacked jurisdiction and dismissed the appeal in *Vega I*. *Id.* ¶ 9.

¶ 11 On January 30, 2023, the trial court granted respondent's motion for substitution of judge in this matter, and the matter was reassigned to Judge Fisz. On February 8, 2023, respondent appears to have persisted in her motion for substitution of judge. The trial court, Judge Fisz, explained the procedure to respondent, and she withdrew her persisting request to substitute Judge Fisz.

¶ 12 On February 9, 2023, the trial court ordered that neither party would be permitted to file any documents of any kind in the case without the court's prior permission. The court increased respondent's parenting time to alternating weekends beginning on Saturday and noon and ending on Sunday at 8 p.m., with parenting time on alternating Wednesday evenings for the weeks in which she did not have weekend parenting time. The court expressly stated that, based on the guardian *ad litem*'s recommendation, it would increase respondent's parenting time to Friday and Saturday overnights on alternating weekends. The court further struck all motions respondent filed since July 15, 2022, excepting any that had been ruled upon.

¶ 13 On March 15, 2022, the trial court expanded respondent's parenting time to begin at 4 p.m. on Friday and end at 8 p.m. on Sunday. The court ordered the parties to prepare and tender their

witness lists to each other and the guardian *ad litem*, on or before March 21, 2023. Finally, the court noted that there were four pleadings that remained pending on that date: petitioner's petition to modify the allocation of parental responsibilities, respondent's motion to reinstate the parenting allocation from the dissolution judgment, respondent's January 12, 2022, motion to reinstate parenting time (which had been denied in part), and respondent's January 24, 2022, motion for a temporary allocation of parenting time.

¶ 14 On May 9, 2023, the hearing on the pending motions commenced and continued on May 10 and May 16. On May 19, 2023, the trial court issued its decision.

¶ 15 The trial court first recounted the background events that led to the May 9 hearing. The parenting plan that was part of the judgment of dissolution gave respondent solely the significant decision-making responsibilities, primary physical custody of the parties' children, and most of the parenting time. Petitioner was allowed overnight parenting time on Friday and Saturday nights every other weekend, plus three hours on Tuesday and Thursday evenings.

¶ 16 Late in 2019 or early in 2020, petitioner discovered a "bad burn" on M.V.'s arm and notified the Department of Children and Family Services (Department). According to petitioner, M.V.'s school also contacted the Department around this time with concerns about M.V.'s truancy, and petitioner was further concerned about M.V.'s well-being in respondent's custody. The Department opened an investigation and eventually determined the concerns to be "founded." The Department removed M.V. and V.V. from respondent's custody and placed them with petitioner. In addition, the Department removed respondent's other children (who are not involved in this case) from her custody and placed them in the custody of their biological father. In December 2020, those three children were returned to the custody of respondent and her husband, but M.V. and V.V. remained in petitioner's custody. Later, in 2021, the Department voluntarily dismissed

(made a voluntary finding of "unfounded") its case involving respondent, apparently to settle respondent's appeal against the Department.

¶ 17 During the time this case was pending in the trial court, petitioner had primary physical custody of the parties' children, and they lived in his household, along with his wife and young child. Respondent initially was allowed supervised parenting time, and her parenting time eventually evolved into unsupervised parenting time giving her Friday and Saturday overnights every other weekend with M.V. and V.V.

¶ 18 The trial court extensively discussed the testimony of the guardian *ad litem* because it had not ordered him to provide a report to the court. The guardian *ad litem* testified that, in February 2021, respondent accused petitioner of sexually abusing respondent's oldest child, who was unrelated to petitioner, but the guardian *ad litem* never discovered any corroborating evidence, and petitioner was not charged based on respondent's allegations. The court noted that, during the May 2023 hearing, petitioner himself "forcefully and credibly denied" the allegations of sexual abuse against her oldest child. The guardian *ad litem* testified that respondent had alleged that petitioner's original report to the Department was a false accusation. However, the guardian *ad litem* explained that, at the time of petitioner's report to the department, respondent's home was chaotic, and petitioner's report, as well as the report from M.V.'s school, were investigated and determined to be founded. Respondent filed an appeal of the Department's determinations, and the Department voluntarily dismissed the matters.

¶ 19 The guardian *ad litem* recommended that the children remain primarily with petitioner and that respondent's parenting time be increased from two overnight every two weeks to four overnights every two weeks: Thursday through Saturday and returned on Sunday one week, and overnight on Thursday during the second week. The guardian *ad litem* noted that he was concerned about respondent's "instability" during the case, although, in his opinion, respondent had been

presenting as more stable than she had in the past. Leaving the status quo intact while increasing respondent's overnight parenting time satisfied his concerns about respondent's stability as well as accommodated the wishes of the children without subjecting them to undue stress by changing their living arrangements. The guardian *ad litem* opined that granting respondent's request and returning to the parenting arrangement of the dissolution judgment would have been very difficult for the children to understand and get used to.

¶ 20 The trial court then analyzed the allocation of significant decision-making responsibility for the children, noting it applied the factors listed in section 602.5 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/602.5 (West 2022)). The court noted:[2] (1) it had no evidence regarding the children's wishes; (2) the children were well adjusted to the current living arrangements and their school and community; (3) all individuals involved were in good physical and mental health; (4) the testimony indicated that the parents were likely to be unable to cooperate with each other to make decisions; (5) the court presumed that the parents had shared decision-making responsibility during the marriage, and recounted that the decision making had changed from respondent following the divorce to petitioner when he gained custody of the children; (6) the parties agreed in their parenting plan that was incorporated into the dissolution judgment that respondent would exercise sole decision-making responsibility; (7) both parents requested sole decision-making authority; (8) petitioner had demonstrated the he has been able to meet the children's needs since he received custody, and, similarly, when respondent had custody, she had been able to meet the children's needs from the time of the divorce to January 2020, but the court took note of the Department's concerns that led to the removal of the children from respondent's custody, particularly related to the reports from M.V.'s school about truancy and

[2]The numerations refer to the subsections of section 602.5(c) of the Act (*id.* § 602.5(c)).

respondent's lack of responsiveness to school communications; (9) the parties resided in the same city relatively close to each other, although the parties demonstrated difficulty in cooperating; (10) the court reiterated that, beyond what it had discussed, there were no reasons weighing heavily against respondent to restrict her decision-making under section 603.10 of the Act (*id.* § 603.10); (11) – (14) the court received no evidence on those factors; and (15) the court discussed evidence given by petitioner's mother:

> "[petitioner's mother] testified that prior to the parties' divorce, there was an occasion where she found what she described as a 'suicide note' written by [respondent's] oldest child. [Petitioner's mother] testified that she gave this note to [respondent]. [Petitioner's mother] seemed to suggest that [respondent] did not do much to deal with the situation. During her questioning of [petitioner's mother], [respondent] then asked [her] whether she had any evidence that she had give the note to [respondent], or whether it was just 'your word against mine.' [Petitioner's mother] strongly and convincingly reiterated that she had given the note to [respondent]. Based on the Court's observations of [respondent] and [petitioner's mother] during this exchange, it was crystal clear to the Court that [petitioner's mother] was telling the truth. The Court found this exchange disturbing. It raised concerns for the Court about [respondent's] credibility, as well as the lengths she was willing to go to in order to convince the Court to find in her favor. The Court is well aware of the stakes in this hearing. Nothing is more important than time with one's children. But trying to mislead the Court into thinking that her eldest son did not in fact write a suicide note seems a bridge too far. Moreover, [petitioner's mother] also testified that it had been reported to her that shortly before [the Department] removed M.V. and V.V. from [respondent's] home, M.V. had made comments about killing himself as well."

¶ 21 The court balanced the factors it had discussed and determined that it was in the children's best interests that petitioner be given sole decision-making authority.

¶ 22 The trial court next turned to the issue of allocating parenting time regarding the children. It applied the factors listed in section 602.7 of the Act (*id.* § 602.7). The court noted:[3] (1) both parents requested that the other have only every other weekend; (2) the children (particularly nine-year-old M.V.) wished to maintain the current parenting time allocation, and the guardian *ad litem* testified that, when the children did not have overnight parenting time with respondent, they were unhappy, but they were happy with the current arrangement; (3) in the two years following the divorce, respondent spent the majority of time taking care of the children, but since petitioner's petition to modify, petitioner spent the majority of the time taking care of the children; (4) the parenting plan entered pursuant to the dissolution judgment provided that respondent would exercise decision-making responsibilities for the children and would be the primary caretaker; (5) the children's relationships with petitioner and respondent and their families were good; (6) the children were doing well living primarily with petitioner; (7) – (9) same analysis as presented in the allocation of decision-making responsibilities; (10) restrictions that may have been placed on respondent's parenting time in 2020 were no longer appropriate; (11) there was credible testimony that respondent had been physically violent with petitioner; (12) both parties were generally willing to place the children's needs above their own, however, petitioner expressly "repeatedly indicated he would do whatever the Court thought would be best for the children," while respondent "seemed focused on how she had been wronged, as opposed to what was best for the children;" (13) no evidence was presented on each party's willingness to foster a relationship between the children and the other party; (14) abuse of household members was covered by the

[3]The numerations refer to the subsections of section 602.7(b) of the Act (*id.* § 602.7(b)).

mention of incidents earlier in the discussion; (15) – (16) not applicable; and (17) same as the discussion of factor (15) in the section 602.5 analysis.

¶ 23 The trial court determined that it was in the children's best interests that petitioner continue to have the primary parenting allocation. It implemented the recommendation of increased parenting time for respondent, extending her parenting time to three overnights, Thursday through Saturday on alternating weeks. In addition, after about six weeks, respondent was to also receive an overnight on Thursday when she did not have weekend parenting time.

¶ 24 Respondent timely appeals.

¶ 25 II. ANALYSIS

¶ 26 On appeal, respondent contends that the trial court improperly violated her due process rights by restricting her parenting time. Next, she argues that the trial court erred in denying her motion to strike petitioner's petition to modify. Respondent also contends that the court's best-interests determination was against the manifest weight of the evidence. Respondent also challenges the timeliness of the decision resolving the allocation of parental responsibilities. Finally, respondent contends that the May 19, 2023, order was unconstitutional. We consider the issues in turn.

¶ 27 Before we turn to respondent's issues on appeal, we must note first that the disposition in this appeal was due November 28, 2023, 150 days after the filing of respondent's notice of appeal. Respondent requested and we granted three extensions of time to allow the bystander's report to be prepared. Once that was submitted, petitioner did not file his appearance until after we had notified him that his brief was overdue, and he did not submit his response brief until about two weeks thereafter. Respondent submitted her reply brief after the 150-day deadline had elapsed. We conclude that, due to the delays in providing a complete record and briefing, good cause exists to have exceeded the deadline for resolution of this appeal.

¶ 28 We also note that the parties are both representing themselves, proceeding *pro se*. A litigant representing him- or herself must comply with the same rules and is held to the same standards as a licensed attorney. *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 78. Further, a *pro se* litigant will not be accorded more lenient treatment because of choosing to forgo representation. *Id.* With these preliminary considerations settled, we turn to respondent's contentions on appeal.

¶ 29 A. Interlocutory Orders Restricting Parenting Time

¶ 30 Respondent first argues that the trial court's September 10, 2020, order restricting her parenting time improperly infringed her due process rights. We conclude that we lack jurisdiction over this issue.

¶ 31 Generally, a party may appeal only from a final order. Ill. S. Ct. R. 301 (eff. Feb 1, 1994); *Ally Financial Inc. v. Pira*, 2017 IL App (2d) 170213, ¶ 22. A final order is one which determines the merits of the litigation so that all that remains is to proceed with the execution of the judgment. *Id.* Here, respondent purports to appeal from the trial court's September 10, 2020, order. That order provided, pertinently, that the matter was continued until October 22, 2020, "for review and status of parenting time for [respondent] and for hearing on the issue of child support to be paid by [respondent]." The order was thus facially nonfinal because it contemplated both further proceedings and expressly provided for review of respondent's parenting time—the very issue about which she is complaining on appeal. As a nonfinal order, therefore, the September 20, 2020, order cannot be appealed absent an applicable exception.

¶ 32 Illinois Supreme Court Rule 306(a)(5) (eff. Oct. 1, 2020) provides the applicable exception, allowing a party to petition the appellate court for leave to appeal an interlocutory rule affecting the allocation of parental responsibilities. However, the party must file a notice of appeal within 14 days of the entry of the challenged order. Ill. S. Ct. R. 306(b)(1) (eff. Oct. 1, 2020). Here, the

notice of appeal is dated May 30, 2023, which is more than 32 months after the entry of the September 10, 2020, order. Even if we were to deem respondent's notice of appeal as a request for leave to appeal the September 10, 2020, order, it is untimely and ineffective to confer jurisdiction under Rule 306(a)(5). Accordingly, we lack jurisdiction to consider respondent's contentions regarding the September 10, 2020, order, and we dismiss this portion of the appeal. *River Breeze, LLC v. Granholm*, 2022 IL App (2d) 210704, ¶ 18 (the court has the duty to examine its jurisdiction even if no party has challenged it, and to dismiss the appeal or a portion of the appeal if it lacks jurisdiction).

¶ 33 Respondent also contends that her due process rights were infringed by the trial court's entry of the August 19, 2022, order which diminished her parenting time from levels agreed to in May 2022 to those which existed in April 2022. We again lack jurisdiction over this issue.

¶ 34 The August 19, 2022, order provided that, by agreement of the parties, respondent would have unsupervised parenting time with the children on Sundays from noon to 8 p.m. The order also provided that the matter was continued to October 7, 2022, for hearing on pending motions and to review parenting time. Thus, the order was once again facially nonfinal, as it specifically noted that there were pending, unresolved issues along with a review of parenting time. As a nonfinal order, we lack jurisdiction over it. *Pira*, 2017 IL App (2d) 170213, ¶ 22.

¶ 35 In addition, respondent's notice of appeal was filed on May 30, 2023, more than nine months after the entry of the August 19, 2022, order. Even if we were to consider the May 30, 2023, notice of appeal a request for interlocutory review of an order affecting parenting time under Rule 306(a)(5), it is untimely. Ill. S. Ct. R. 306(b)(1) (a party must file a notice of appeal from an interlocutory order affecting parenting time within 14 days of the entry of the challenged order). Therefore, because we lack jurisdiction, we must also dismiss this portion of respondent's appeal. *Granholm*, 2022 IL App (2d) 210704, ¶ 18.

¶ 36 B. Denial of Motion to Strike

¶ 37 Respondent next argues that the trial court erred by denying her motion to strike petitioner's petitions filed February 28, 2020. On February 28, 2020, petitioner filed three petitions: a petition for modification of child support, a petition to relocate, and a petition for modification of allocation of parental responsibilities. On March 31, 2020, respondent filed a motion to strike petitioner's February 28, 2020, petitions, in which she argued that each of the three petitions should be stricken because her then counsel of record was not properly served. We interpret this argument to be that respondent did not have proper notice of the petitions. In addition, she argued that the petition for relocation should be stricken for failure to comply with specific provisions governing relocation. On September 10, 2020, the trial court entered an order noting that petitioner's petition to relocate had been withdrawn, and it terminated his child support obligation. The order continued petitioner's petition to modify the allocation of parental responsibilities. On March 15, 2023, the trial court entered an order noting that four pleadings were at that time pending: petitioner's February 28, 2020, petition to modify allocation of parental responsibilities, respondent's March 31, 2020, motion to reinstate parenting time, respondent's January 12, 2022, motion to reinstate parenting time (which was denied in part), and respondent's January 24, 2022, motion for temporary allocation of parenting time. Respondent's motion to strike was not referenced in the March 15, 2023, order, and the record does not show that respondent objected that the motion was still outstanding or unruled upon. On May 19, 2023, the court entered its order disposing of the four remaining motions.

¶ 38 On appeal, respondent again argues that the trial court erroneously denied her motion to strike because her then counsel of record was not served, and petitioner's petition to relocate did not comply with time requirements and was improperly vague. We believe the record affirmatively rebuts respondent's contentions on appeal.

¶ 39 Petitioner withdrew his petition to relocate with the children. Upon its withdrawal, referenced in the trial court's September 10, 2020, order, it was no longer before the trial court and is not now before us. Respondent's argument concerning the withdrawn petition to relocate is likewise not properly before us, and we reject it.

¶ 40 The September 10, 2020, order also implicitly rejected respondent's argument that respondent did not have notice of the February 28, 2020, petitions. It ruled and granted relief on petitioner's petition to modify child support, and it continued his petition to modify the allocation of parental responsibilities. We believe that the substantive ruling on the petition to modify child support suggests that it also rejected, for the same reason, respondent's motion to strike for failure to serve counsel with respect to petitioner's petition to modify the allocation of parental responsibilities. In addition, the proceedings extended for over 31 more months. When, in March 2023, the trial court noted that there were four pending motions before it, respondent did not notify the court that it had never ruled on her motion to strike, and she did not argue that she had no notice of the petition to modify the allocation of parental responsibilities. Thus, respondent's failure to demand a ruling on her motion to strike coupled with the implicit rejection of the motion to strike strongly suggest that that she abandoned the motion. *Commerce Trust Co. v. Air 1st Aviation Cos., Inc.*, 366 Ill. App. 3d 135, 142 (2006) (it is the responsibility of the party to request a ruling on a motion, and where no ruling has been made, the motion is presumed to have been abandoned absent circumstances indicating otherwise). This results in a procedural default of any issue related to the abandoned motion for purposes of appeal. *Rodriguez v. Illinois Prisoner Review Board*, 376 Ill. App. 3d 429, 433 (2007). We thus need not address this issue on appeal.

¶ 41 In addition, we noted that respondent also filed a January 12, 2022, motion to dismiss petitioner's petition to modify the allocation of parental responsibilities, which restated nearly verbatim the arguments in her March 31, 2020, motion to strike. On appeal, she does not address

any argument to the January 12, 2022, motion to dismiss, and for that reason, has forfeited our consideration of the issue. Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020) (points not argued are forfeited); *In re Marriage of Lindell*, 2023 IL App (2d) 220055, ¶ 55. Further, respondent did not object to the trial court's statement in March 2023, that there were four motions pending before it, and it did not identify the January 12, 2022, motion to dismiss as one of the pending motions. As discussed above, because respondent did not object to the court's omission of the January 12, 2022, motion to dismiss from its announcement of motions pending before it, respondent effectively abandoned her January 12, 2022, motion to dismiss, leading to a procedural default which also precludes our consideration of the issue.

¶ 42 C. Best-Interests Determination

¶ 43 Respondent argues that the trial court's assessment of the children's best interests was against the manifest weight of the evidence because it failed to consider relevant factors. We disagree.

¶ 44 The Act requires a court to allocate parenting time according to the best interests of the children. 750 ILCS 5/602.7(a) (West 2022). In accomplishing this allocation, the court must consider all relevant factors, including (1) the wishes of each parent, (2) the wishes of the children, (3) the amount of time each parent spent performing caretaking functions regarding the children in the 24 months preceding the filing of a petition for allocation of parental responsibilities, (4) any prior agreement between the parents relating to caretaking functions, (5) the relationships between parents, children, and siblings, and other persons affecting the children's best interests, (6) the children's adjustment to their home, school, and community, (7) the mental and physical health of all involved, (8) the children's needs, (9) the distance between the parents' residences, (10) whether restricting parenting time is appropriate, (11) past, present, and future possibility of physical violence by a parent against the children or other family members, (12) each parent's

willingness and ability to place the children's needs ahead of his or her own, (13) each parent's willingness and ability to foster a close and continuing relationship between the other parent and the children, (14) the occurrence of abuse against the children or other family members, (15) whether one parent is a sex offender or resides with a sex offender, (16) the terms of a parent's military family-care plan, if applicable, (17) any other factor that the trial court expressly finds to be relevant. *Id.* § 602.7(b).

¶ 45 The trial court is in the best position to consider the credibility of the witnesses and to determine the children's best interests; therefore, its decision regarding the allocation of parental responsibilities and parenting time will be accorded significant deference. *In re Marriage of Whitehead & Newcombe-Whitehead,* 2018 IL App (5th) 170380, ¶ 15. We will disturb the trial court's judgment regarding the children's best interests only if it is against the manifest weight of the evidence, is manifestly unjust, or is the result of an abuse of discretion. *Id.* ¶ 21. A judgment is against the manifest weight of the evidence only if an opposite conclusion is apparent or if the findings appear unreasonable, arbitrary, or not based on the evidence. *Id.*

¶ 46 Respondent contends that the trial court "made a clear and significant error" because it neglected to consider respondent's status as a stay-at-home mother, the children's relationship with respondent's family and siblings, the significant amount of time petitioner's wife rather than petition spent caring for the children, respondent's stability and ability to parent, and the children's wishes. Respondent further contends that the guardian *ad litem* did not adequately represent the children or relay their wishes, and she notes that the fathers of her other children never accused her of abusing or neglecting their children. Respondent also contends that the trial court did not consider how it would split up holiday visits between petitioner and respondent.

¶ 47 Respondent's contentions are belied by the record. In its written order, the trial court expressly discussed each of the factors listed in section 602.7(b). The court also expressly

referenced its analysis of respondent's credibility and its concerns with "the lengths she was willing to go in order to convince the Court to find in her favor," over respondent's denial that her eldest child had any mental health issues or had expressed any ideas about killing himself. The court further noted that M.V. had also reportedly made comments about killing himself shortly before the Department removed him and V.V. from respondent's home. Respondent, essentially, is asking this court to substitute its judgment for that of the trial court, and to give paramount importance to the several factors she identifies instead of looking at the record as a whole. When we review the record as a whole and analyze the trial court's written order, we see that the court's analysis is rooted in the evidence. Accordingly, we cannot say the trial court's judgment was against the manifest weight of the evidence, constituted an abuse of discretion, or was otherwise manifestly unjust. We reject respondent's contention.

¶ 48 D. Timeliness of Decision

¶ 49 Respondent argues that the trial court did not comply with the time requirements of Illinois Supreme Court Rule 922 (eff. Mar. 8, 2016). Rule 922 provides:

> "All allocation of parental responsibilities proceedings under this rule in the trial court shall be resolved within 18 months from the date of service of the petition or complaint to final order. In the event this time limit is not met, the trial court shall make written findings as to the reason(s) for the delay. The 18-month time limit shall not apply if the parties, including the attorney representing the child, the guardian *ad litem* or the child representative, agree in writing and the trial court makes a written finding that the extension of time is for good cause shown. In the event the parties do not agree, the court may consider whether an extension of time should be allowed for good cause shown."

Respondent argues that the trial court did not complete the proceedings on petitioner's petition to modify the allocation of parental responsibilities within the 18-month limit set by Rule 922, and it

did not secure the parties' agreement to extending the proceedings beyond the 18-month limit or provide a written explanation of the good cause necessary to extend the proceedings beyond the 18-month limit.

¶ 50 Respondent's argument fails. We note that respondent delayed the proceedings with her appeal in *Vega I*, and she apparently filed other notices of appeal that she agreed to dismiss. In addition, petitioner's petition to modify was filed at the beginning of the Covid-19 pandemic, and the precautions employed during the pandemic also delayed the resolution of his petition.

¶ 51 We note that, on January 12, 2022, respondent effectively refiled her motion to strike, repeating nearly verbatim the March 31, 2020, motion to strike filed by her then attorney. In addition to the arguments raised in the March 31, 2020, motion to strike, respondent contended that petitioner's "failure to comply with" Rule 922 merited dismissal of petitioner's petition to modify. Respondent included only a synopsis of the requirements of Rule 922: that petitions to modify allocation of parental responsibilities must be resolved in 18 months, agreement of the parties to extend the proceedings beyond the time limit, and written findings that the extension of time is for good cause. Respondent included no actual argument or citation to authority to support her contention that the failure to conclude proceedings on petitioner's petition to modify within 18 months merited dismissal. On March 1, 2022, the trial court denied respondent's motion to dismiss, determining that the petition to modify was adequate as a matter of law and stated a basis upon which the court could grant effective relief.

¶ 52 On appeal, respondent provides no citation to any authority to support her contention that the trial court's failure to comply with Rule 922 constitutes grounds to reverse its judgment. Generally, this would result in forfeiture of the contention. Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020), *Granholm*, 2022 IL App (2d) 210704, ¶ 31 (argument forfeited where a party fails to cite to pertinent legal authority). Respondent does, however, suggest that she experienced prejudice

because of the failure of the trial court to resolve the allocation matter within the 18-month time limit because the children grew accustomed to petitioner having primary residential custody during that period, and the guardian *ad litem* and the court both relied on this accustomedness in recommending and determining, respectively, the allocation of parenting time. We therefore consider respondent's argument, as she has suggested that the violation of the time limit resulted in prejudice.

¶ 53 We hold that, despite the trial court's failure to observe the requirements of Rule 922, good cause existed for the proceedings to have extended beyond 18 months. First, we note that petitioner had petitioned to modify the allocation of parental responsibilities following his complaint to the Department concerning the children's safety with respondent. We further note that, at the same time, M.C.'s school contacted the Department with concerns about M.V., and these concerns were deemed to be founded by the Department. (The Department eventually voluntarily dismissed the case, apparently due to the unrelenting barrage of appeals and threats to appeal by respondent.) Based on this, the court's first responsibility was to ensure the children's safety, and this took time. Once the court became satisfied with respondent's stability and that the children would be safe, it increased her parenting time accordingly. This is especially true because access to the courts was restricted at the time this case began due to the State's response to the Covid-19 pandemic. This added to the time it took to accomplish the ensuring of the children's safety and the restoration of some of respondent's parenting time.

¶ 54 Next, we note that respondent filed notices of appeal at various junctures and pursued an appeal in *Vega I*, and this delayed the trial court's resolution of this matter. Further, on the heels of her appeal in *Vega I*, respondent moved to substitute the judge in this matter, and, on January 30, 2023, that motion was granted. From the reassignment to the final decision took five months. The appeals and substitution took a substantial amount of time, and together with the delay due to

ensuring the children's safety and Covid-19 precautions, this constitutes good cause for the delay. This does not excuse the trial court's failure to observe the requirements of Rule 922, particularly its obligation to provide a written rationale as to why good cause existed for it to fail to adhere to the 18-month time limit, but it does mean that respondent was both a willing participant and cause of substantial portions of the delay in this case, and it means that she cannot claim to have been prejudiced as a result of the delay. Accordingly, we reject respondent's contention.

¶ 55 E. Constitutionality of the May 19, 2023, Order

¶ 56 Respondent argues that the May 19, 2023, order was unconstitutional. She reasons that, because the ruling was adverse, her due process rights were infringed. We disagree.

¶ 57 The United States and Illinois Constitutions preclude the government from depriving a person of life, liberty, or property without the due process of law. U.S. Const., amend. XIV; Ill. Const. 1970, art. I, § 2. As an initial observation, this case does not involve governmental action seeking to deprive respondent of any rights; rather, petitioner seeks, through judicial adjudication, a modification of the parties' parental responsibilities, as contemplated in the judgment of dissolution and the agreement of the parties incorporated into that judgment. Putting that observation to the side, due process does not protect a person from the deprivation itself, rather, it protects a person from the mistaken or unjustified deprivation of life, liberty, or property. *Village of Downers Grove v. Village Square III Condominium Ass'n*, 2022 IL App (2d) 210098, ¶ 85. Generally, due process affords a person an opportunity to be heard before the deprivation occurs, and it includes the right to present evidence and argument on one's own behalf, the right to cross-examine adverse witnesses, and an impartial tribunal ruling upon the evidence that has been offered. *Id.*

¶ 58 Respondent was clearly afforded the right to present evidence, argue, cross-examine, and these rights were exercised before an impartial tribunal. Therefore, she has been afforded due process of law and her argument to the contrary is without merit.

¶ 59 Respondent argues that the guardian *ad litem* tainted the trial court's judgment because he "possessed insufficient knowledge about the case two years into its proceedings." Respondent does not provide specific examples of how the guardian *ad litem*'s knowledge was insufficient or how this purported insufficiency tainted the court's judgment. We recognize that, in the May 19, 2023, order the court relied on the guardian *ad litem*'s testimony and opinions, but respondent does not refer to anything in the judgment that supports her contention. In the absence of argument or at least examples in the record to support her contention, we will not comb through the record and create arguments on respondent's behalf. *In re Application of County Collector*, 2023 IL App (1st) 210523, ¶ 37 (reviewing court will not search the record to find error in order to reverse the trial court judgment; reviewing court is not a repository into which a party may foist the burden of researching and developing the party's argument). We reject respondent's contention.

¶ 60 Next, respondent repeats her contention that she was prejudiced by the length of the proceedings and the trial court's failure to conclude the proceedings within the timeframe contemplated by Rule 922. For the reasons given above, we reject respondent's contention.

¶ 61 Respondent argues that, in August 2022, the guardian *ad litem*'s entry of an apparent agreed order that reduced her parenting time violated her due process rights. Specifically, on August 19, 2022, the trial court entered an order that stated, pertinently, "By agreement of the parties, Respondent shall have unsupervised parenting time with the minor children on every Sunday from 12:00 noon to 8:00 pm." This parenting time tracked the court's April 25, 2022, order, but, on May 20, 2022, the court ordered that respondent have overnight parenting time on alternate weekends and Wednesday visitation on the weeks she did not have overnight parenting

time. Following the entry of the August 19, 2022, order, respondent filed an emergency motion seeking to restore her parenting time to that given in the May 20, 2022, order. There followed months of delay occasioned by respondent's appeal in *Vega I*, and her motion for substitution of judge. On February 9, 2023, the court restored her parenting time to the level of the May 20, 2022, order, and it further ordered that, if the court were satisfied with respondent's progress, her parenting time would be (and was) increased in March.

¶ 62 While we recognize that there was an apparent mistake contained in the August 18, 2022, order, we also note that the order represented on its face that the parenting time allocation was by agreement of the parties. Respondent ignores this in her argument and, apparently, believes that by ignoring the language of the order, she is absolved from its import, namely, that she *agreed* to the parenting time in the order. Respondent does not explain how agreeing to an apparently incorrect order affects her argument. Indeed, this underscores the fact that respondent, who was exercising her right to self-representation, needed to carefully read the contents of any proposed order before agreeing to it.

¶ 63 We note respondent immediately attempted to change the order to which she agreed in her emergency motion. Respondent then, however, frustrated action on her attempts to correct her parenting time through her improper notice of appeal (see *Vega I*, ¶ 9) and through her motion for substitution of judge, all of which delayed any progress until February 2023. In February 2023, the trial court moved expeditiously to restore respondent's parenting time and to increase her parenting time if an increase would serve the children's best interests. Based on this, we perceive no deprivation of due process. Respondent was herself responsible for much of the delay in resolving the apparent error, either through an improvident agreement or from actively delaying the resolution. We reject respondent's argument.

¶ 64 Respondent argues that her and the children's fundamental rights to familial association were unconstitutionally violated by the original separation and change in primary custody and parenting time to petitioner before he filed the petition to modify the allocation of parental responsibilities. The record belies her contention. The children were taken from her custody due to concerns raised with the Department by both petitioner and M.V.'s school. While the Department ultimately voluntarily dismissed the case (and we wonder how this dismissal could have remotely infringed upon respondent's due-process rights), the case was determined to have been founded at the outset. The termination of that case, rightly or wrongly, settled the issue of the separation of the children from respondent, and she can no longer complain about the propriety of that separation. This case, by contrast, involved the possible modification of the allocation of parental responsibilities, and the status quo was respondent having primary custody and responsibility for the children, with the court being asked to determine, ultimately, whether the children's best interests were served by a modification of the parties' parental responsibilities. Respondent's argument, being directed at redress from the long-dismissed case in which the Department separated the children from her custody, is both misdirected and untimely. We therefore reject it.

¶ 65 Respondent contends that she was prejudiced by the lack of verbatim transcription of the proceedings and unstated "inaccuracies present in the bystander report." Respondent, as appellant, has the responsibility to provide a complete and accurate record on appeal, and this includes transcriptions of the relevant hearings. *In re Marriage of Main*, 2020 IL App (2d) 200131, ¶ 29. Recognizing this responsibility, respondent secured a bystander's report of the May 2023 hearings on the pending motions. Ill. S. Ct. R. 323(c) (eff. July 1, 2017). Respondent suggests without actual argument or identification of any errors that the bystander's report was inaccurate. In the absence of any identification of inaccuracies or errors we are unable to evaluate this claim. Ill. S.

Ct. R. 341(h)(7) (eff. Oct. 1, 2020). Given that respondent availed herself of the procedure to remedy the lack of a verbatim transcript and that she identifies nothing in the bystander's report as inaccurate or erroneous, we reject her contention.

¶ 66 Respondent also argues that, as a matter of substantive due process, the change in primary residence and reduction of parenting time, the "inadequate representation by the guardian *ad litem*," and the lack of verbatim hearing transcripts compromised "the fairness and justice of the [trial] court's ruling. Respondent's argument misses the mark.

¶ 67 Substantive due process is a limit to what the government may do. *In re Amanda D.*, 349 Ill. App. 3d 941, 946 (2004). It protects fundamental rights, such as the right to raise one's children. *Id.* When a fundamental right is at issue, governmental action that impairs that right must be narrowly tailored to advance a compelling state interest. *Id.* Here, however, there is no governmental action infringing on respondent's rights, fundamental or otherwise. *Petitioner* petitioned to modify the allocation of parental responsibilities, and thus, his action occurred in the State's judicial forum, but the State itself has done nothing in this case to impinge upon or even affect respondent's rights.

¶ 68 Moreover, to the extent that respondent is arguing some sort of cumulative error, we have determined no error arising from the reduction in parenting time, the guardian *ad litem*'s performance, or the lack of verbatim hearing transcripts. In the absence of any error, we cannot find any cumulative error. Accordingly, we reject respondent's contentions.

¶ 69 III. CONCLUSION

¶ 70 For the foregoing reasons, we dismiss in part this appeal and affirm in part the judgment of the circuit court of Lake County.

¶ 71 Dismissed in part and affirmed in part.

¶ 72 JUSTICE JORGENSEN, specially concurring:

¶ 73 While I concur in the majority's decision rejecting the respondent's contention that she was prejudiced because of the trial court's failure to resolve the allocation matter in 18 months, I write separately to voice my concerns with the court's failure to make written findings in accordance with Rule 922, to fully articulate the delay.

¶ 74 On appeal, respondent calls attention to the fact that the allocation of parental responsibilities of M.V. and V.V. should have been completed within 18 months. As the majority correctly points out, respondent significantly contributed to this delay. Our majority speculates as to the reasons for the delay, and our conclusions are not unreasonable, but compliance with the Rule would provide the appellate court with a factual basis for the delay. Accordingly, I strongly admonish the trial court to monitor the 18-month time limit for resolution or to fulfill its obligations to make *written findings* as to the reasons for delay (regardless of the agreement of the parties). The Illinois Supreme Court has dictated that, "[a]ll allocation of parental responsibilities proceedings under this rule in the trial court shall be resolved within 18 months from the date of service of the petition or complaint to final order." Ill. Sup. Ct. R. 922 (eff. Mar. 8, 2016). This Rule is one of several rules which are intended to "expedite cases affecting the custody of a child, to ensure the coordination of custody matters filed under different statutory Acts, and to focus child custody proceedings on the best interests of the child, while protecting the rights of other parties to the proceedings." Ill. Sup. Ct. R. 900(a) (eff. Mar. 8, 2016). The purpose Rules 900 *et seq*. is to "ensure that child custody proceedings are expeditious, child-focused and fair to all parties," placing "great emphasis on the best interest of the child." Ill. Sup. Ct. R. 900(a), Committee Comments (rev. Mar. 8, 2016). When the trial court fails to adhere to the Rules, we are left to speculate on the reasons for the delay, which should not be the province of the reviewing court.