

No. 1-18-1307

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JOSEPH MADJINOR,)	Appeal from the
)	Circuit Court of
Petitioner-Appellant,)	Cook County.
)	
)	No. 13 D 80731
v.)	
)	
JOYCE ADDO,)	Honorable
)	Pamela Loza,
Respondent-Appellee.)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Delort and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 *Held:* We lack jurisdiction over this appeal because the order from which petitioner appeals was neither a final order, nor a custody or allocation of parental responsibilities judgment; dismissed.

¶ 2 Petitioner, Joseph Madjinor, appeals from the circuit court’s order that appointed a children’s representative and ordered him to pay a portion of the fees. For the following reasons, we dismiss this appeal for lack of jurisdiction.

¶ 3 **BACKGROUND**

¶ 4 As explained in further detail later in this order, petitioner failed to present a statement of facts or appendix containing a table of contents of the record on appeal, and thus we have gathered the following information from combing through the 700-page record.

¶ 5 This case began on October 23, 2013, when petitioner filed a petition for joint custody and other relief. The petition stated that petitioner and respondent, Joyce Addo, were never married, but had two children, who were then 8 and 10 years old. Petitioner and respondent lived together until August 2013.

¶ 6 In the years thereafter, petitioner and respondent engaged in litigation related to custody and parenting. On October 5, 2016, the court entered an allocation judgment that provided for the allocation of parental responsibilities and a parenting plan. This judgment was entered by agreement of the parties. Also on that date, the court entered an order requiring petitioner to pay \$551.00 per month in child support. Subsequently, the parties engaged in various disputes and requested to modify said judgment.

¶ 7 On May 8, 2018, respondent filed a verified petition to modify the decree allocating parenting time, requesting that the court modify the parenting schedule to provide that the children reside with her on school days and on as many weekends as the children desire, and that the issue of an appropriate parenting schedule for summer vacation be reserved.

¶ 8 On May 17, 2018, when the case was in court for presentment of respondent's verified petition to modify, the court entered an order that stated as follows:

“(1) Petitioner granted 28 days through June 14, 2018 within which to respond to the verified petition by Joyce Addo to modify decree allocating parenting time;

(2) Lisa Copeland is hereby reappointed as representative of both minor children of the parties. The initial expense of retention of the representative shall be equally split

between the parties without prejudice and subject to a hearing and/or further order of court.

(3) Children’s representative shall investigate matters alleged in the verified petition and shall appear on June 29, 2018 at 9:30 a.m. to report on status of her involvement. All pending matters entered and continued to June 19, 2018 at 9:30 a.m. (including petitioner’s petition for rule).”

¶ 9 On May 30, 2018, respondent filed a motion to modify the May 17, 2018, order regarding appointment and payment of the children’s representative. The motion stated that upon learning of her reappointment, Copeland stated that she would not commence representation without prior receipt of a \$3,000 retainer. Copeland informed respondent’s counsel that she had not received any part of the quoted retainer from petitioner and that she was previously required to garnish his wages in order to obtain payment for her earlier services. The motion to modify also stated that a “gross disparity” had existed and continued to exist between the incomes of petitioner and respondent. Petitioner was employed full-time as a manager at Walmart and respondent worked only part-time as a nanny. According to the October 5, 2016, allocation judgment, petitioner’s gross income was \$86,137 per year and respondent’s gross income was \$31,200 per year. Respondent’s motion to modify also alleged that petitioner had since received increases in salary and/or bonuses that constituted a material change in circumstances justifying an increase in child support. The motion asked that the court appoint a replacement children’s representative, and that in recognition of the disparity in incomes, that petitioner be required to pay the full retainer of the children’s representative.

¶ 10 On June 12, 2018, respondent filed a petition to modify the decree and order an increase in child support. The petition to modify the decree stated that petitioner had recently purchased a

home for \$419,500, for which he had to pay a \$20,000 down payment. Respondent argued that the petitioner's ability to pay such a substantial expense was further indication of a substantial change in circumstances. Respondent also asserted that she was entitled to an increase in child support payments based on petitioner's unwillingness to pay for certain of the children's school-related expenses.

¶ 11 On June 12, 2018, the court entered an order that stated as follows:

“This case coming before the court on motion of respondent, Joyce Addo, to modify the May 17, 2018, order due notice having been served, the petitioner Madjinor having failed to appear and the court being advised:

It is hereby ordered that the motion is allowed and that Matthew Kirsh is appointed representative for both minor children in the place and stead of Lisa Copeland with the petitioner to pay 60% of any necessary retainer and respondent to pay 40% of any necessary retainer, said retainer not to exceed \$2,000 and the payment by the parties to be made without prejudice to reallocation and subject to further order of court. Both parties shall contact Matthew Kirsh within 72 hours of entry of this order. Children's representative Matthew Kirsh and petitioner shall appear on June 29, 2018 at 9:30 a.m. for status.”

Also on that date, the court entered a separate order appointing the children's representative and setting forth more detailed terms of his appointment—for example, that Kirsh was to address all issues raised by respondent's petition for reallocation of parenting time.

¶ 12 On June 19, 2018, petitioner filed a notice of appeal, stating that he sought the following relief from this court:

“Appointment of Matthew Kirsh be reversed[.]

Monies or fees ordered or being imposed on petitioner to pay be reversed[.]
Motion filed by respondent and was allowed on 06/12/2018 be reversed.”

¶ 13

ANALYSIS

¶ 14 Petitioner’s *pro se* brief sets forth the following three issues for review:

- “1. Whether the trial court made a mistake by bypassing and blocking a motion filed by Dad to address problems of court ordered decree violatios [*sic*] by mom from being heard in court then ordering for a motion filed by Mom to be opened for hearing.
2. Whether the trial court made a mistake by appointing a child representative to only serve the interest of only one parent (Mom) a motion she filed without doing same to Dad[.]
3. Whether the trial court made a mistake by imposing and ordering Dad to pay monies (fees) to child representative who is only ordered to take care of motion filed by Mom and not that of motion filed by Dad.”

¶ 15 Prior to addressing these contentions, we have an independent duty to review our jurisdiction over an appeal and dismiss it when it does not exist. *Vines v. Village of Flossmoor*, 2017 IL App (1st) 163339, ¶ 8. The Illinois Constitution bestows on this court the jurisdiction to hear appeals from all final judgments entered in the circuit court. See Ill. Const. 1970, art. VI, § 6. The constitution also grants our supreme court the right to “provide by rule for appeals to the Appellate Court from other than final judgments.” *Id.* Therefore, without a specific supreme court rule, we are without jurisdiction to review any judgment, order, or decree that is not final. *In re Marriage of Fatkin*, 2019 IL 123602, ¶ 26.

¶ 16 Petitioner’s brief states that he has brought this appeal pursuant to Supreme Court Rule 301, “because the trial court’s judgment ended a civil (non-criminal) case.” Rule 301 states that

“[e]very final judgment of a circuit court in a civil case is appealable as of right.” Ill. S. Ct. R. 301 (eff. Feb. 1, 1994). Petitioner appeals from the circuit court’s June 12, 2018, order which allowed respondent’s motion to modify the court’s May 17, 2018 order. The court’s May 17, 2018, order reappointed Copeland as the children’s representative and ordered the parties to split her fee evenly. The court’s June 12, 2018, order subsequently appointed Kirsh as the children’s representative and ordered petitioner to pay 60% of the fee and respondent to pay 40%. Also on that date, the court ordered Kirsh to address all issues raised by the respondent’s petition for reallocation of parenting time.

¶ 17 We find that the court’s June 12, 2018, order was not final. “A judgment is considered final if it terminates the litigation between the parties on the merits or disposes of the rights of the parties, either on the entire controversy or a separate part thereof.” (Internal quotation marks omitted.) *In re A.H.*, 207 Ill. 2d 590, 594 (2003). The court’s June 12, 2018, order merely appointed a children’s representative and stated how his fees would be apportioned. In fact, that order further stated that the children’s representative was to address all issues raised in respondent’s petition for reallocation of parenting time. Thus, the court had not yet made any final determinations regarding the allocation of parenting time. None of petitioner’s rights were set or fixed in the court’s June 12, 2018, order, and thus it was not final and appealable. See *id.* Further, it is apparent that the litigation had not been terminated because the record on appeal contains orders entered subsequent to June 12, 2018, that indicate matters were still pending.

¶ 18 For example, the record contains a June 28, 2018, order, that states as follows:

“IT IS HEREBY ORDERED that status hearing and all pending matters, including presentment of the Petition by Respondent Joyce Addo to Modify Decree and

Order an Increase in Child Support, are continued to July 23, 2018 at 9:30 a.m., without further notice. The status date of June 29, 2018 is stricken.”

Another order indicating that substantive issues relating to the respondent’s motions were still pending was entered on July 23, 2018. It stated as follows:

“This case coming befor [sic] the court on respondent’s petition to increase support and for status hearing, counsel for the parties and the children’s representative appearing, the court being advised that Joyce Addo has met previously with the children’s representative Matthew Kirsh and that petitioner is scheduled to meet with the children’s representative on August 1, 2018 and otherwise being advised:

It is ordered that petitioner Madjinor shall respond to the petition to increase support by August 20, 2018. This case is set for further status on all pending petitions by respondent and for status on August 28, 2018 at 9:30 a.m.”

¶ 19 These two orders indicate that the children’s representative was still in the process of addressing substantive issues and that the court had not yet entered a judgment affecting the parties’ parenting rights. Based on the foregoing, the court’s June 12, 2018, order was not final, and thus we lack jurisdiction under Rule 301.

¶ 20 Although petitioner did not bring this appeal pursuant to Rule 304(b), we find it necessary to address why his appeal is also not properly before this court under that rule. Rule 304(b)(6) allows for the immediate appeal from any “custody or allocation judgment or modification of such judgment entered pursuant to the Illinois Marriage and Dissolution of Marriage Act [citation] or Illinois Parentage Act of 2015 [citation].” Ill. S. Ct. R. 304(b)(6) (eff. Mar 8, 2016). The question thus becomes whether the court’s June 12, 2018, order appointing a new children’s representative and ordering petitioner to pay 60% of those fees was a “custody or

allocation of parental responsibilities judgment or modification of such judgment,” such that petitioner’s immediate appeal of that order was proper. We find that it was not.

¶ 21 It is clear that the court’s June 12, 2018, order was not a custody judgment, and thus that part of Rule 304(b)(6) does not apply. The order does not reference custody in any way and it does not suggest a change in the terms of the parties’ custody agreement. The court simply did not order anything that would affect the parents’ custody rights.

¶ 22 We also find that the judgment from which petitioner appeals was not an “allocation of parental responsibilities judgment or modification of such judgment.” Ill. S. Ct. R. 304(b)(6) (eff. Mar. 8, 2016). Our supreme court recently recognized that “under the Marriage Act, an allocation of parental responsibilities judgment is a judgment that allocates ‘both parenting time and significant decision-making responsibilities with respect to a child,’ and the ‘modification of such judgment’ would be any decision that modifies either of those two variables.” *Fatkin*, 2019 IL 123602, ¶ 29.

¶ 23 In this case, the court entered an allocation judgment that provided for the allocation of parental responsibilities and a parenting plan on October 5, 2016. The order from which petitioner appeals did not modify that allocation judgment. The court’s June 12, 2018, order did not modify parenting time or decision-making responsibilities. It merely appointed a children’s representative to help advise the court regarding issues that were pending in motions filed by respondent that may or may not ultimately affect the parties’ parenting time or decision-making responsibilities. Because the June 12, 2018, order was not an allocation judgment and did not modify an allocation judgment, we lack jurisdiction to review that order under Rule 304(b). As such, we dismiss petitioner’s appeal.

¶ 24 As a final matter, we admonish petitioner to review our supreme court rules should he opt to file a timely appeal in the future. Even if we had jurisdiction over this appeal, we would not have reached the merits because petitioner’s brief is egregiously deficient. Petitioner failed to comply with Rule 341(h) (Ill. S. Ct. R. 341(h) (eff. May 25, 2018)) in multiple ways. For example, his brief does not contain a statement of facts (Ill. S. Ct. R. 341(h)(6) (eff. May 25, 2018)), an argument section (Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018)), or an appendix (Ill. S. Ct. R. 341(h)(9) (eff. May 25, 2018)). The most serious violation is his failure to advance any argument supported by case law. Such a deficiency merits forfeiture. Ill. S. Ct. R. 341(h)(7) (“Points not argued are forfeited and shall not be raised in the reply brief, in oral argument, or on petition for rehearing.”); see also *CE Design, Ltd. v. Speedway Crane, LLC*, 2015 IL App (1st) 132572, ¶ 18 (stating that “failure to provide an argument and to cite to facts and authority, in violation of Rule 341, results in the party forfeiting consideration of the issue”). Thus, we find it pertinent to note that even if we had jurisdiction, petitioner’s contentions would be forfeited. We remind petitioner that “[a]n appellant’s *pro se* status does not alleviate the duty to comply with our supreme court’s rules governing appellate procedure.” *Wing v. Chicago Transit Authority*, 2016 IL App (1st) 153517, ¶ 7. We further admonish petitioner that “[t]he appellate court is not merely a repository into which an appellant may dump the burden of argument and research, not is it the obligation of this court to act as an advocate or seek error in the record.” (Internal quotation marks omitted.) *CE Design, Ltd.*, 2015 IL App (1st) 132572, ¶ 18.

¶ 25 **CONCLUSION**

¶ 26 Based on the foregoing, this appeal is dismissed for lack of jurisdiction.

¶ 27 Dismissed.