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2012 IL App (3d) 120158-U

Order filed July 2, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

DAVID WOECHENER, JR.,)	Appeal from the Circuit Court
)	of the 14th Judicial Circuit,
Petitioner-Appellee,)	Rock Island County, Illinois,
)	
v.)	Appeal No. 3-12-0158
)	Circuit No. 10-F-475
NATASHA DAVIS,)	
)	Honorable
Respondent-Appellant.)	Lori Lefstein,
)	Judge, Presiding

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Wright and Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's award of custody of two boys to father was not against the manifest weight of the evidence, which established that father had been caring for the boys since 2006 and had created a stable and safe environment for them.

¶ 2 Petitioner David Woechener, Jr. filed a petition to establish paternity and for sole custody of J.W. and Z.W., his sons with respondent Natasha Davis, who filed a counter-petition, also seeking sole custody of the boys. The trial court granted David sole custody and awarded Natasha visitation. She appealed. We affirm.

¶ 3

FACTS

¶ 4 Petitioner David Woechener and respondent Natasha Davis began a relationship in 1999. In 2000, their son, J.W., was born prematurely and subsequently diagnosed with cerebral palsy. A second son, Z.W., was born in 2002. The couple's relationship ended in 2003, at which time the boys remained with Natasha in the Quad Cities area. In 2004, Natasha and the boys moved to Hannibal, Missouri. They moved in the summer of 2006 to Fort Madison, Iowa, where Natasha found better job opportunities as a dancer. In October 2006, Natasha voluntarily sent the boys to live with David, who had remained in the Quad Cities area. The move was precipitated by an allegation that Z.W. was sexually abused by his babysitter and an allegation that Natasha medically neglected J.W. by repeatedly failing to bring him to his medical appointments. Both allegations were confirmed as founded by the Iowa Department of Human Services. In December 2006, Natasha returned to Hannibal. She thereafter moved to Hope, Arkansas, and then to Washington, Arkansas.

¶ 5 Beginning in 2008, the boys spent each summer with Natasha in Arkansas. In August 2010, she refused to return the boys to David and filed for custody in Arkansas. Natasha enrolled the boys in the local school, which was ranked in the top five in the state. David filed a petition to establish parentage and to obtain custody in Rock Island County. In November 2010, the Arkansas court determined that it lacked jurisdiction because Illinois was the boys' home state, dismissed Natasha's petition, and under its "inherent and legislative powers" and per the parties' prior arrangement, ordered immediate custody of the boys returned to David. In December 2010, David filed an amended petition to establish paternity and for custody. Natasha thereafter filed in Rock Island County a counter-petition seeking custody and for leave to remove the boys to Arkansas. In May 2011, the trial court entered an order establishing David's parentage, granting him temporary custody

of J.W. and Z.W., awarding Natasha visitation, and appointing a guardian *ad litem* for the boys. A parenting agreement, which the parties had developed at court-ordered mediation, was incorporated into the order. The parenting agreement is not in the record on appeal.

¶ 6 In June 2010, Natasha took the boys to the Rock Island police department, claiming that J.W. told her they had been engaged in sexual behavior with each other and another child, and that their father was physically abusive to them. Both J.W. and Z.W. were interviewed at the child advocacy center, and following an investigation, Natasha's claims were determined to be unfounded. She then took the boys to Arkansas for her summer visitation with them. In July, 2010, Natasha sought permission from the court for an emergency mental health placement for Z.W., arguing that Z.W. had been harming himself and was in critical need of treatment, and David would not consent. A social worker with Therapeutic Family Services in Hope, Arkansas, wrote a letter urging hospitalization for Z.W., expressing that it was "difficult to see the digression and the emotional distress present in both boys" and that it was "evident that Ms. Davis loves her children and is seeking only what she feels will be beneficial and helpful." A letter from the boys' Rock Island counselor, whom they had been seeing since January 2011, expressed that Z.W. had not demonstrated any self-harmful behaviors, and that his safety had not been a concern to her. She also stated surprise "at the decline in functioning for Z.W. as described to me since his departure to his mother's home this summer." The trial court granted the motion. Also in July, 2010, Natasha filed another report with the Rock Island sheriff's department in which she alleged that David was engaged in unlawful drug use. An officer searched David's home with his consent and found no evidence of drug activity. In his report closing the case, the officer stated that he informed Natasha of the consequences of filing a false police report and that she replied she would "get her kids back through the state of Arizona [*sic*]." The same month, she

filed a report of abuse with the Arkansas Department of Human Services, alleging that David maltreated J.W. and Z.W. by striking them on the face and head, throwing them, and providing inadequate supervision. After investigation, the allegations were considered unfounded.

¶ 7 A custody trial took place. Natasha testified that she currently rented a four-bedroom, handicapped accessible home in a rural area in Arkansas. She was engaged to a man who lived two and one-half hours away in Louisiana. She worked as a certified nursing assistant (CNA), with a work schedule of one eight-hour shift on Thursdays and two 16-hour shifts on Fridays and Saturdays. She had two children from a prior marriage and had surrendered her parental rights to them after they were made wards of the state. They were adopted by Natasha's foster parents and she continued to maintain a relationship with them. J.W. and Z.W. knew her older children, who lived in the Quad Cities area, and spent time with them when possible. When the boys were with her, they had an established routine. They had family day every Sunday and ate dinner together at night. They played board games and cards, made desserts, and visited her mother and fiancée. They also watched movies and played with the Wii system. She enrolled the boys in therapeutic horseback riding. She had strong community support, as evidenced by the fundraiser held to assist her with legal expenses to obtain custody of the boys. The community also offered various cultural activities, such as museums, and access to medical care for J.W.

¶ 8 Before the boys went to live with David in 2006, she had been their primary caretaker. She was involved in obtaining initial services for J.W., including equipment and physical therapy. David did not participate. When J.W. was in David's care, David did not require him to wear his leg braces or special night gear. She refused to sign a power of attorney for surgery for J.W. in January 2010, because she was not comfortable with the document. Based on a call she made to Shriners, she

believed that she could give verbal consent over the phone for the surgery. When the boys came to Arkansas for summer vacation in 2010, J.W.'s walker was too small, although David had modified it. Natasha acknowledged that J.W. had recently won a gold medal in the Special Olympics while using it and without wearing braces. She purchased J.W. a new walker, wheelchair, and leg braces. She also bought J.W. glasses with a prescription she received from David and took both boys to the dentist. She also took J.W. for a hearing examination and believed that he needed hearing aids. Prior to boys' 2010 summer visit, Natasha had not been involved in their medical care, particularly J.W.'s, since early 2007.

¶ 9 In summer 2010, she started them in counseling based on her belief that they were engaging in inappropriate sexual behavior. She contacted a neighbor whose children were in counseling and spoke to the counselor. She was unsure whether she had made a report but she did implement a safety plan, which would alert her to one of the boys leaving their bedroom at night. She believed that the boys learned the behavior at their father's house. David interfered with her rights to be involved with her boys, including withholding visitation and preventing her from contact with their schools. David did not allow her to speak to the boys when she called them. He did not return her phone calls, did not keep her informed about J.W.'s medical issues, and insisted on communicating only through text messaging. She acknowledged that she and David had both set up email accounts per the mediation agreement but insisted that David would not respond to her emails. She admitted into evidence copies of a number of emails she had sent to David to which he did not respond. She complained that he abused drugs and kept drugs in his bedroom. She never contributed financially to David but did she did buy the boys clothes every year.

¶ 10 David testified that he was self-employed through a tree service and that he and the boys had

recently moved into a five-bedroom duplex. Although it was not handicapped accessible, J.W. was able to negotiate his way around the house. J.W. continued to be treated by the same pediatrician he had seen since birth. In March 2007, David arranged for J.W. to have surgery to extend his leg muscles. In January 2010, David arranged for J.W. to have another surgery; however, Natasha would not consent and the surgery did not take place. He obtained a therapeutic bicycle for J.W. and kept him involved in Special Olympics. He served as coach of Z.W.'s flag football team. David denied interfering in Natasha's visitation, and stated that she had the boys for the summers. He bought J.W. his own phone with Natasha's number programmed into it so they could communicate freely. He followed through with all medical recommendations made by the boys' pediatrician and enrolled the boys in counseling in January 2011. Both boys were doing well in school. J.W. did not have any disciplinary problems at school or home. Z.W. had some behavioral issues, including bullying and anger.

¶ 11 Exhibits admitted at trial included a report of the boys' guardian *ad litum* (GAL). The GAL found that both David and Natasha tried to do what was best for the children, including maintaining a civil relationship but that Natasha "was working the boys with promises to get them to voice a preference for her." The GAL did not ask the boys their preference on custody because she did not feel it appropriate, given the boys' young ages. She observed both children with David and Natasha and found the boys were attached to both parents. The GAL noted Natasha's history with social services and expressed astonishment over Z.W.'s "regression" while in Natasha's care over the summer of 2011. The GAL determined that "David has clearly provided adequate medical care for the children." She recommended that custody remain with David who would provide the "most stable and appropriate care." The GAL also recommended that Natasha continue to have extended visitation

with the boys when they are not in school. Three letters from the Therapeutic Family Services, Inc., in Lewisville, Arkansas, were submitted as exhibits. They establish that J.W. and Z.W. received social services from August to November 2010; the social worker recommended placement with Natasha. A counselor's letter indicated that she had counseled them from September to December 2010 and recommended the boys be returned to Natasha pending a custody determination. In July 2011, the same counselor wrote a second letter expressing concerns about David's use of drugs and his ensuing behaviors, and Z.W.'s risk for self-harm. .

¶ 12 The trial court issued an opinion and entered an order granting sole custody of J.W. and Z.W. to David and setting a visitation schedule for Natasha. She appealed. David did not file a brief on appeal. However, because the record is straightforward and issue on appeal may be decided without the aid of appellee's brief, we address the merits of Natasha's appeal. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 13

ANALYSIS

¶ 14 Natasha argues that the best interests of J.W. and Z.W. would be served by an award of their custody to her. She maintains that the statutory factors favor her as the custodial parent and that the trial court erred when it awarded custody to David.

¶ 15 In determining custody, the trial court uses the following factors, in pertinent part:

- (1) the wishes of the child's parent or parents as to his custody;
- (2) the wishes of the child as to his custodian;
- (3) the interaction and interrelationship of the child with his parent or parents, his siblings and any other person who may significantly affect the child's best interest;
- (4) the child's adjustment to his home, school and community;

- (5) the mental and physical health of all individuals involved;
- (6) the physical violence or threat of physical violence by the child's potential custodian, whether directed against the child or directed against another person;
- (7) the occurrence of ongoing or repeated abuse as defined in Section 103 of the Illinois Domestic Violence Act of 1986 [750 ILCS 60/103], whether directed against the child or directed against another person;
- (8) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child.” 750 ILCS 5/602(a) (West 2010).

¶ 16 The trial court must determine custody in accordance with the best interest of the child. *In re Petraitis*, 263 Ill. App. 3d 1022, 1030 (1993). In a custody dispute, the primary consideration is the best interest and welfare of the child. *Hall v. Hall*, 226 Ill. App. 3d 686, 689 (1991). A strong presumption favors the custody determination reached by the trial court. *In re Marriage of Seitzinger*, 333 Ill. App. 3d 103, 108 (2002). A trial court’s best interest findings in deciding custody are afforded great deference because it is in a better position to observe the witnesses and assess their credibility. *In re Marriage of Ricketts*, 329 Ill. App. 3d 173, 177 (2002). We will not disturb a trial court’s custody ruling unless it is against the manifest weight of the evidence or is an abuse of discretion. *Ricketts*, 329 Ill. App. 3d at 177.

¶ 17 We find that the evidence supports the trial court’s award of sole custody to David. In its opinion, the trial court set forth the statutory factors and its determination under each factor. We find that its analysis and conclusion was not against the manifest weight of the evidence. Both parents wanted custody, and although the boys were not asked their preference regarding custody, the record

establishes that the boys enjoyed close and loving relationships with both parents. Each has relatives in the Quad Cities area, with whom the boys interacted. The boys were doing well in school. They were involved in extracurricular activities while in David's care. J.W. participated in Special Olympics and band. Z.W. played football on a team that David coached. While Natasha indicated that she experienced substantial behavioral problems with the boys, David reported that the boys were well behaved and engaged in appropriate conduct while in his care. He acknowledged Z.W.'s behavioral issues and enrolled him in counseling. Both parents offered the opinions of the boys' counselors, which offered sharply conflicting observations regarding the boys. Contrary to Natasha's allegations, David consistently ensured that J.W. received appropriate medical care, including regular physical and occupational therapy and surgeries when necessary. Moreover, for several years she was not involved in J.W.'s medical care, and prior to that period she was found to have medically neglected J.W. for failing to keep his medical appointments. Her recent efforts to oversee the boys' medical care, especially J.W.'s, occurred immediately prior to her petition seeking custody.

¶ 18 Both David and Natasha are healthy and physically able to care for the boys. However, the GAL expressed concern about Natasha's stability, noting her frequent moves and potential move to Louisiana in the future to join her fiancée. In addition, Natasha made several serious accusations that were determined to be unsubstantiated, including that David physically and emotionally abused the boys and used drugs. The boys were involved in the investigations and did not corroborate Natasha's accounts. There was no evidence of any abuse while the boys were in David's care. We note that David remained somewhat uncooperative in fostering Natasha's communication with J.W. and Z.W., although he did set up a dedicated email account and purchased a cellular phone for J.W. with sufficient monthly minutes. He was slow or failed to respond to Natasha and did not keep her

apprised of the boys' activities and medical issues.

¶ 19 We thus consider that the best interest factors support the trial court's award of custody to David. David had appropriately and adequately been caring for the boys since 2006. At that time, allegations of medical neglect against Natasha and sexual abuse by the babysitter were determined to be founded. She was thereafter involved with the boys at her convenience. Once she determined she wanted custody of J.W. and Z.W., she made several allegations against David, all of which were determined to be unfounded. David, meanwhile, established a stable and safe home for the boys. They attended school regularly. J.W. received appropriate medical care. We consider that the boys' best interests are served by remaining with David. The trial court's order set a schedule for regular communication between Natasha and David and should resolve their communication issues. The trial court also ordered that visitation with Natasha continue during the summers and other school breaks. We thus find that the trial court did not abuse its discretion in determining that an award of custody to David was in the best interests of J.W. and Z.W.

¶ 20 For the foregoing reasons, the judgment of the circuit court of Rock Island County is affirmed.

¶ 21 Affirmed.