

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).

2012 IL App (3d) 120437-U

Order filed October 12, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

WILLIAM AKRUM,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
Plaintiff-Appellee,)	Peoria County, Illinois,
)	
v.)	Appeal No. 3-12-0437
)	Circuit No. 11-F-136
)	
JERRI GENOVESE,)	Honorable
)	Kevin R. Galley,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Lytton and McDade concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in finding that it was in the best interest of the child to award sole custody of the parties' minor child to the father.

¶ 2 The respondent, Jerri Genovese, appeals from an order of the circuit court of Peoria County awarding the petitioner, William Akrum, sole custody of their three-year-old daughter, Milana. Genovese maintains that the trial court erred in finding that Akrum could provide the child a more stable environment and exhibited a greater willingness to facilitate visitation. For

the following reasons, we affirm the judgment of the trial court granting sole custody of Milana to Akrum.

¶ 3

FACTS

¶ 4 Genovese and Akrum met in the summer of 2007 and began living together with Akrum's mother, Jobie Scaggs, a few months later. They both attended college at Bradley University, where Scaggs was a professor. Milana was born on February 22, 2009. In May 2009, Akrum graduated with a degree in English, and the couple moved to a duplex a few blocks away from Scaggs's house. In August 2009, Akrum enrolled in a graduate program at Bradley and began taking courses toward a masters degree in English. Both Genovese and Akrum continued to work and go to school and both participated in caring for Milana. Daily care for Milana was shared among various family members of both parties.

¶ 5 During this time, the couple engaged in increasingly loud and emotional arguments and separated on December 26, 2009. Genovese and Milana remained at the duplex, and Akrum returned to Scaggs's residence. In April 2010, Akrum moved to his own apartment a few blocks from the duplex where Genovese and Milana resided. Akrum saw Milana on a daily basis and shared almost equal time with the child. In March 2011, both Genovese and Akrum moved to new residences about a mile apart.

¶ 6 On February 25, 2011, Akrum filed a petition seeking to establish his paternity of Milana. A temporary custody and visitation order was entered on April 20, 2011, naming Genovese as temporary residential custodian and providing for "reasonable visitation," including each Wednesday evening and alternate weekends. The temporary order was written on a form which contained the preprinted statement: "the parties shall cooperate with one another to ensure that

each parent has maximum involvement with the minor child." That statement was stricken at the insistence of Genovese. The record established that, after the entry of the temporary order, Akrum's time with Milana decreased significantly and that Akrum was largely unsuccessful in his requests for visitation beyond Wednesday evenings and alternate weekends.

¶ 7 Akrum testified that, during the semester after the temporary order was entered, he was required to take a class on Wednesday evenings. Initially, Genovese agreed to allow visitation on Tuesdays instead of Wednesdays. Before the first Tuesday night visit was to take place, she changed her mind and would not agree to accommodate Akrum's school schedule. He requested times other than Tuesday but never received any responses to those requests. Akrum testified that he chose to have one hour of visitation with Milana on Wednesday evenings and to show up for class an hour late.

¶ 8 In February 2011, Genovese moved approximately 15 miles away to Marquette Heights, Illinois, to live with her fiancé, Ben Deal. Akrum voiced objections to this move based upon his belief that Milana should not be exposed to this new environment, including the presence of Deal. However, soon after the move to Marquette Heights, Genovese began planning to break off the relationship with Deal and relocate elsewhere.

¶ 9 Beginning in November 2011, Genovese contemplated moving to Plainfield, Illinois, where her mother resided. She planned to take Milana with her. She communicated her intentions to relocate to Plainfield to the guardian *ad litem*; however, she made no attempt to discuss with Akrum her potential relocation. Akrum testified that he found out about the move to Plainfield only when Genovese accidentally sent a copy of a text message to him in which she discussed the possibility of breaking her lease in Peoria in December 2011. When Akrum

inquired about Genovese's plans to relocate, she refused to respond. Genovese testified that she sent emails and text messages to Akrum regarding her planned move to Plainfield, as well as her plans to enroll Milana in preschool there. Akrum denied receiving those communications.

¶ 10 Akrum filed a motion with the court on December 14, 2011, seeking to prevent Genovese from relocating Milana to Plainfield, which was approximately a two and a half hour drive from Peoria. The guardian *ad litem* opined that the move to Plainfield would damage the strong bond between Akrum and Milana. The guardian's report further opined that custody should remain with Genovese but that, if she moved to Plainfield, Akrum's visitation opportunities should be expanded.

¶ 11 On January 1, 2012, Genovese moved to Plainfield. An interim agreement was worked wherein Akrum would have visitation with Milana from Friday through Monday on alternate weekends, and there would be no Wednesday visitation. It was also agreed that visitation exchanges would take place at a designated point approximately midway between Peoria and Plainfield. As a result of Genovese's move to Plainfield, Akrum's visitation opportunities were diminished, as he was required to wait two weeks between visits with Milana.

¶ 12 Without informing Akrum, Genovese enrolled Milana in preschool beginning the day before the hearing on Akrum's petition. Milana's school schedule called for her attendance each Monday, Wednesday, and Friday, from 8 a.m. to 11:30 a.m. Genovese acknowledged that the preschool schedule would conflict with Akrum's weekend visitation schedule.

¶ 13 Both parties presented extensive evidence and testimony from friends and family members regarding the hostilities and deteriorating relationship between the two. Both also presented extensive testimony regarding the negative personality traits of the other party.

Following the close of evidence, the trial court granted sole custody to Akrum. The court, commenting that the matter of custody was "a close case," found that either party would be able to have sole custody of Milana, noting that, despite the testimony presented, neither could be considered unfit to have custody of the child. Ultimately, the court determined that it was in the best interest of Milana that custody be granted to Akrum. After reviewing all the relevant evidence, the court determined that Genovese's actions in moving to Plainfield without informing Akrum evidenced an unwillingness to facilitate a relationship between Milana and Akrum. The court further noted that, all other factors being equal, Akrum was more likely to facilitate Genovese's relationship with Milana; thus, the court awarded sole custody of the child to him. Genovese then brought this timely appeal.

¶ 14

ANALYSIS

¶ 15 On appeal, Genovese argues that the trial court erred in granting custody of Milana to Akrum. In a custody dispute, the primary consideration is the best interest and welfare of the child. *Hall v. Hall*, 226 Ill. App. 3d 686 (1991). When determining what custodial order serves the best interest of the child, the trial court must consider all relevant factors, including the statutory factors listed in section 602(a) of the Illinois Marriage and Dissolution of Marriage Act (the Act). 750 ILCS 5/602(a) (West 2010). Section 602(a) of the Act is applicable even where the parents of the minor were never married to each other. *Hall*, 226 Ill. App. 3d at 691. Section 602(a) lists nine factors: (1) the parents' wishes; (2) the minor's wishes; (3) the minor's interactions with parents, siblings, and others who may affect the minor's best interest; (4) the minor's adjustment to his or her home, school, and community; (5) the mental and physical health of all individuals involved; (6) physical violence, or threats thereof, by the minor's potential

custodian, whether directed at the minor or another person; (7) the occurrence of ongoing or repeated abuse, whether directed at the minor or another person; (8) the willingness of each parent to facilitate a relationship between the minor and the other parent; and (9) whether one of the parents is a sex offender. *Hall*, 226 Ill. App. 3d at 692; 750 ILCS 5/602(a) (West 2010).

¶ 16 The trial court's consideration and weighing of the relevant statutory factors is to be given great deference. *In re Marriage of Seitzinger*, 333 Ill. App. 3d 103, 108 (2002). Therefore, a trial court's award of sole custody will not be overturned on appeal unless the court abused its discretion or its factual determinations are against the manifest weight of the evidence. *Id.*; *Hall*, 226 Ill. App. 3d at 689. An abuse of discretion occurs when the court's ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would take the same view. *Favia v. Ford Motor Co.*, 381 Ill. App. 3d 809, 814 (2008). A factual determination will be found to be against the manifest weight of the evidence if the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, or not based on the evidence in the record. *In re J'America B.*, 346 Ill. App. 3d 1034, 1038 (2004).

¶ 17 In this case, the record supports the trial court's award of sole custody to Akrum. Its order granting sole custody to Akrum was, therefore, neither an abuse of discretion nor against the manifest weight of the evidence. The court considered the evidence in its proper context and determined that most of the statutory factors either favored neither party or were not applicable. The trial court observed that the only statutory factor which provided any basis upon which to differentiate which party should have sole custody was the willingness of each parent to facilitate a relationship between Milana and the other parent. The trial court found that Akrum would be more likely to encourage a close relationship between Milana and Genovese in view of

Genovese's actions in relocating to Plainfield without adequately informing Akrum of the move or considering the adverse impact such a move would have on Milana's relationship with Akrum.

¶ 18 As indicated by the trial court, the case was close and the evidence did not strongly favor either party. As such, the court's finding that one factor, the willingness to facilitate a close relationship, was most significant in determining custody was not unreasonable. Moreover, to the extent that a factual dispute existed as to whether Genovese's actions indicated an unwillingness to encourage a close relationship between Milana and Akrum, we cannot say that the trial court's finding was against the manifest weight of the evidence. While Genovese testified that she communicated her intentions to move to Plainfield to Akrum and attempted to minimize the impact of her move on Milana's relationship with Akrum, the court credited Akrum's testimony that she had not discussed with him her plans to move or the impact the move would have on his relationship with Milana. We also note that Genovese moved not once, but twice, without first discussing how the move would impact Milana's relationship with Akrum. We must defer to the trial court's findings. Doing so, we affirm the trial court's decision to award sole custody of Milana to Akrum.

CONCLUSION

¶ 19 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 20 Affirmed.