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2012 IL App (3d) 120476-U

Order filed September 24, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
JOY MARZ,)	of the 12th Judicial Circuit,
)	Will County, Illinois,
Petitioner-Appellee,)	
)	Appeal No. 3-12-0476
and)	Circuit No. 11-D-918
)	
STEVEN W. MARZ,)	Honorable
)	Joseph C. Polito,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Holdridge and Wright concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's order allowing the mother to remove the child to Michigan is affirmed. The trial court's finding that the move would enhance the child's quality life was not against the manifest weight of the evidence.
- ¶ 2 Respondent, Steven W. Marz, appeals from an order of the trial court allowing petitioner, Joy Marz, to remove the parties' daughter from New Lenox, Illinois, to Monroe, Michigan. We affirm.

¶ 3 Joy and Steve were married on March 5, 2002. They had one child during their marriage, Kayla, born on June 20, 2003. Joy also has two children from a previous marriage, Taylor and Sophia. At the time of the removal order, Taylor was 16 years old and Sophia was 14. Both girls have a close relationship with Steve and use his last name.

¶ 4 In May of 2011, Joy petitioned for dissolution of marriage. A joint parenting agreement was entered on December 9, 2011. According to the terms of the agreement, the parties were awarded joint custody of Kayla, and Joy was named as the residential parent. The parties agreed that Kayla would be enrolled in New Lenox schools. Six weeks later, Joy petitioned for removal, seeking to remove Kayla to Michigan to pursue a job.

¶ 5 The testimony at the removal hearing revealed that Joy and Steve suffered financial hardship during their marriage. Steve lost his job as a union carpenter in 2009, and Joy, who had been staying at home with the children, attempted to find employment to replace Steve's income. Joy had a high school education. She found employment but was soon laid off. In 2010, the couple's home was foreclosed upon, and they filed for bankruptcy.

¶ 6 Joy moved out of the marital home with the children in the fall of 2010. She rented a home in New Lenox for \$2,200 a month. She paid \$1,400 a month and received assistance from a friend, who paid the remaining \$800. Eventually, she was unable to afford the rental home and moved into her parent's townhouse. She and the girls shared the home with Joy's 81-year-old mother, her 86-year-old father, and her older brother. Joy and Kayla shared a bed, and Taylor and Sophia slept on a couch in the living room.

¶ 7 During this time, Joy supported her family with assistance from the local food pantry. She also obtained state health insurance for Kayla. Joy continued to seek employment and

pursued many positions beyond the Chicago area. She declined to accept two positions in Indiana because they were outside the state.

¶ 8 In the summer of 2011, Joy accepted a position with Superheat, a company based in New Lenox. She worked as a regional sales coordinator in the New Lenox office, making an annual salary of \$52,000.

¶ 9 Chris Brown, the regional sales manager for Superheat, testified that within a few weeks of hiring Joy, he realized that she was a dedicated worker and overqualified for the position in which she had been hired. He offered her a job as an account manager in the Toledo, Ohio area. He told her that she would be responsible for servicing clients in Superheat's Michigan and Ohio sales territory and would be able to work from home. He also told her that her responsibilities would require her to travel on occasion to visit customers within her region. Joy accepted the position for a salary of \$70,000 per year, plus commission and benefits.

¶ 10 In March of 2012, Joy moved, with Taylor and Sophia, to Monroe, Michigan. The trial court granted Steve's temporary order to keep Kayla in Illinois with him to complete the remainder of the school year.

¶ 11 Joy testified that her house in Monroe had four bedrooms and that she paid \$1,600 per month in rent. Monroe has a population of 20,000, as compared to New Lenox, with a population of 27,000. It takes about 4½ hours to drive 275 miles from New Lenox to Monroe. Joy testified that Monroe has a lower cost of living than New Lenox but that it also has a higher crime rate. Joy further testified that the New Lenox school district is one of the top districts in Illinois based on test scores.

¶ 12 Joy further testified that Kayla would attend school in Ida, Michigan if Joy's school choice application was accepted. She stated that, based on information she obtained from an independent school ranking website, the Ida school district is ranked 162 out of 591 districts in Michigan. If Kalya was not accepted into the Ida school district, she would attend Manor Elementary, which received an overall grade of "B" and a grade of "C" in reading. Taylor and Sophia attend the Ida school district. Joy talked to several school officials who assured her that Kayla would be able to attend the Ida schools.

¶ 13 Prior to the parties' separation, Kayla lived her entire life in New Lenox. Both her paternal and maternal grandparents live in New Lenox. Kayla has dinner with her paternal grandparents every Wednesday night. Steve's mother testified that she has a close relationship with Kayla, as well as Taylor and Sophia. Joy's family also resides nearby. Five of Joy's ten siblings live in the New Lenox area. Joy has no family in Monroe, Michigan, but she has a close friend in her new neighborhood, Lucy. If Joy is late coming home from work, Lucy takes care of the girls after school.

¶ 14 Kayla attended Nelson Prairie school in New Lenox in first grade. She then attended a different school in New Lenox in second grade and went back to Nelson Prairie school in third grade. Her best friends go to school with her in New Lenox. Steve testified that Kayla has friends over to the house to play after school. Steve's neighbor testified that his daughter and Kayla are inseparable. The two families go on trips together and go boating nearly every weekend during the summer.

¶ 15 Steve testified that he has visitation with all three girls and has never missed a single visit. He stated that he often visits Kayla at school during lunch and other activities. He has

been to her school 9 to 15 times during the school year for various events. He regularly attends parent-teacher conferences, doctor appointments and other school meetings.

¶ 16 Susan Danforth, Kayla's third grade teacher at Nelson Prairie, testified that Kayla participates in a special reading program at school. She stated that Kayla's overall performance in school was below average in reading and math. Kayla struggled in school and needed assistance. She testified that Kayla is very shy and timid but is able to make friends and has several friends at school. She also noted that Kayla did not miss any days of school in third grade and had no late homework. She was aware that Kayla had been living with her father since March 2012. She has seen no change in Kayla's performance or behavior since she moved in with Steve.

¶ 17 During mediation, the parties agreed to an arrangement of visitation if Joy's petition was granted. According to the terms of the agreement, Joy and Steve would drive and meet halfway for the exchange for visitation. They also agreed that visitation would occur every other weekend from 6:30 p.m. on Friday to 6:00 p.m. on Sunday. Since Steve would no longer receive Wednesday visitations, Joy agreed to an additional week of summer visitation.

¶ 18 At the conclusion of the hearing, the trial court found that (1) the proposed move would greatly enhance the general quality of life for Joy and Kayla and would offer the family a sense of financial security, (2) neither party had an invalid motive for their actions, (3) the move permitted a realistic and reasonable visitation schedule, and (4) Joy was sincere in her statements that she would allow all three girls to maintain a close relationship with Steve and his family. The court granted Joy's petition for removal, effective on Kayla's last

day of school in May of 2012.

¶ 19

ANALYSIS

¶ 20

Steve argues that the trial court erred when it granted Joy's petition for removal. Among other things, Steve claims that the trial court (1) improperly concluded that the living conditions would be better in Monroe, (2) erred in finding that the schools in Monroe were comparable to the schools in New Lenox, and (3) failed to consider the loss of contact with New Lenox family and friends on Kayla's quality of life.

¶ 21

The paramount question presented by a removal case is whether the move is in the best interests of the child. See 750 ILCS 5/609(a) (West 2010). Section 609(a) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/609(a) (West 2010)) provides, in relevant part:

"The court may grant leave *** to any party having custody of any minor child or children to remove such child or children from Illinois whenever such approval is in the best interests of such child or children. The burden of proving that such removal is in the best interests of such child or children is on the party seeking the removal."

¶ 22

In *In re Marriage of Eckert*, 119 Ill. 2d 316 (1988), the supreme court held that a ruling on the best interests of the child in a removal action necessarily involves a careful consideration of the specific circumstances of each individual case. Reviewing courts grant great deference to the trial court's removal decision, as the trial court is in the best position to observe the parties and assess their personalities and capabilities. *Eckert*, 119 Ill. 2d 316; *In re Marriage of Guthrie*, 392 Ill. App. 3d 169 (2009). "The presumption in favor of the result reached by the trial court is always strong and compelling." *Eckert*, 119 Ill. 2d at 330.

Thus, we will not reverse a trial court's ruling on a petition for removal unless it is contrary to the manifest weight of the evidence. *Guthrie*, 392 Ill. App. 3d 169. A judgment is against the manifest weight of the evidence when the opposite conclusion is clearly apparent or when the trial court's findings are unreasonable, arbitrary or not based on the evidence. *In re Custody of K.P.L.*, 304 Ill. App. 3d 481 (1999).

¶ 23 The *Eckert* court set forth five factors for courts to consider when deciding a removal petition: (1) "the proposed move in terms of likelihood for enhancing the general quality of life for both the custodial parent and the children"; (2) "the motives of the custodial parent in seeking the move to determine whether the removal is merely a ruse intended to defeat or frustrate visitation"; (3) "the motives of the noncustodial parent in resisting the removal"; (4) "the visitation rights of the noncustodial parent"; and (5) "whether *** a realistic and reasonable visitation schedule can be reached if the move is allowed." *Eckert*, 119 Ill. 2d at 326-27.

¶ 24 The *Eckert* factors are not exclusive, however, and the trial court should consider any and all relevant evidence in arriving at its decision. *In re Marriage of Collingbourne*, 204 Ill. 2d 498 (2003). No single fact or factor is controlling, and the weight to be given each varies from case to case. *Collingbourne*, 204 Ill. 2d 498. The trial court may further consider the potential of the relocation to increase the general quality of life for both the custodial parent and the child, including any benefit the child may receive from enhancement of the custodial parent's well-being. *Ford v. Marteness*, 368 Ill. App. 3d 172 (2006).

¶ 25 Here, the court heard extensive testimony and properly considered the evidence in light of *Eckert* and its progeny. Our review of the record reveals that the trial court's

determination to grant Joy's petition for removal was not against the manifest weight of the evidence.

¶ 26 First, considering the *Eckert* factors, we agree with the trial court's finding that the proposed move will enhance the quality of life for both Kayla and Joy. Before moving to Michigan, Joy was attempting to raise three girls in her parent's townhouse with insufficient living space. She was forced to rely on state aid for a short period of time and obtained state medical insurance for her children. Upon accepting the new position and moving to Michigan, Joy was able to rent a four-bedroom single family home. Her increased income also allowed her to provide food for her children and financial security. We conclude that Joy's ability to live with a sense of financial stability directly enhances her life and provides an indirect benefit to Kayla. See *Ford*, 368 Ill. App. 3d 172.

¶ 27 Further, neither Joy nor Steve acted in bad faith in seeking or challenging the removal of Kayla to Michigan. Specifically, Steve testified that he opposed removal because he felt there were adequate employment opportunities for Joy in Illinois and he wanted Kayla to continue to have close relationships with his family. Joy, on the other hand, sought to relocate to Michigan to pursue employment that provided financial stability for her family, with a significant increase in annual salary and medical benefits.

¶ 28 Additionally, the record indicates that Joy has shown cooperation in the past by not interfering with Steve visitation and by fostering a close relationship between Kayla and Steve. Joy has also continued to support a healthy and loving relationship between Steve and her older daughters.

¶ 29 We also agree with the trial court's evaluation of the fourth and fifth *Eckert* factors

regarding visitation. In this case, the proposed visitation schedule is realistic and reasonable and preserves Steve's visitation rights to the greatest extent possible. Steven and Joy have agreed to meet for the visitation exchange, cutting the travel time for both parents in half. While the move will not allow for Wednesday evening visitation, it still allows Kayla to continue biweekly visitation with her father. Moreover, the agreed visitation arrangement gives Steve an additional week with Kayla in the summer. As the trial court noted, Steve and Kayla will still be able to enjoy weekend trips to the zoo during the school year and boating on the river during the summer.

¶ 30 Steve contends that the trial court improperly concluded that the Monroe schools were comparable to the New Lenox schools and failed to consider the loss of close contact with Kalya's friends and family in New Lenox. The evidence does not support either of these contentions.

¶ 31 First, Joy testified that although she lived in Monroe, Kayla would most likely attend the Ida school district, a nearby school district with superior academic marks than those of the Monroe school district. Since both Taylor and Sophia currently attend school in Ida, the trial court did not err in comparing the New Lenox schools to the Ida schools.

¶ 32 Second, the trial court considered the loss of family and friends and determined that the loss would be minimal, given that Steve would have visitation with Kayla every other weekend. Kayla will still enjoy the weekend with her friends in Steve's neighborhood and will be able to have evening meals with her grandparents. The court recognized the importance of Steve's Wednesday visits, but found that Kalya and Steve would still be able to maintain a close relationship with the 4½-hour drive. The evidence in the record supports

that finding.

¶ 33 Overall, the testimony at the hearing indicated that the primary reason for Joy's move was to provide her and her children a chance to improve their lives. The trial court did not fail to consider the evidence in light of the *Eckert* factors; the court's decision to grant Joy's petition for removal was not against the manifest weight of the evidence.

¶ 34

CONCLUSION

¶ 35

The judgment of the circuit court of Will County is affirmed.

¶ 36

Affirmed.