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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
ANTHONY ARCHER,)	of Du Page County.
)	
Petitioner-Appellant,)	
)	
and)	No. 11-D-1792
)	
DORIS ARCHER,)	Honorable
)	Neal W. Cerne
Respondent-Appellee.)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Zenoff and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's order granting custody of the minor child to the mother is affirmed.

¶ 2 Anthony Archer appeals the trial court's order granting custody of his minor child to his ex-wife, appellee, Doris Archer. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Anthony and Doris Archer married in October 2005. They had one child, Giovanni (born March 2008). After living in two different apartments, the parties moved in with Anthony's mother. She owned a four-bedroom, two bathroom home in Darien, Illinois.

¶ 5 In May 2010, the parties separated. Doris moved into a Westmont apartment with Giovanni. Anthony helped with the move, transporting Giovanni's crib and dresser to the new apartment. Anthony, who earned just over \$30,000 per year, provided approximately \$16,000 in financial assistance to Doris and Giovanni in the 15 months following the separation.

¶ 6 Then, in August 2011, Anthony petitioned for dissolution of marriage. Anthony sought sole custody of Giovanni.

¶ 7 In September 2011, Doris filed a response, wherein she alleged that Anthony was not Giovanni's biological father. Doris filed an accompanying petition pursuant to Supreme Court Rule 215 (eff. March 28, 2011), requesting that Anthony be ordered to submit to DNA testing.

¶ 8 In October 2011, Anthony moved to strike the Rule 215 petition, arguing that it was time-barred pursuant to section 8(a)(3) of the Parentage Act. 750 ILCS 45/8(a)(3) (West 2010) (action to declare *non*-existence of the parent and child relationship brought under section 7(b) of the Parentage Act shall be barred if not brought within two years after the petitioner obtains knowledge of the relevant facts). Anthony noted, among other facts, that he lived with Doris as her husband from 2005 until 2010; he was present at Giovanni's 2008 birth; he is named the father on Giovanni's birth certificate; he gave Giovanni the middle name "Anthony;" he took Giovanni to medical appointments, bathed him, fed him, purchased clothing for him, organized parties for him, and, in general, attended to his daily needs; and, he was never once told that he may not be Giovanni's biological father.

¶ 9 In October 2011, Doris responded to the motion to strike, stating that the biological father was Brett Bartosik. She moved to join Bartosik as a party to the case, attaching DNA test reports

showing the probability of Bartosik's paternity to exceed 99.99 percent. Ultimately, Bartosik did not become a party to the divorce proceedings, and the record does not reveal much about him.

¶ 10 In February 2012, after several intermediate pleadings, the parties submitted to an agreed order stating that Anthony was the presumed natural father. The agreed order was signed by the parties' attorneys. In April 2012, the trial court entered an order finding that "Anthony is the natural father of [Giovanni]." The court then appointed a guardian *ad litem* (GAL), directing her to issue a report regarding her observations of the parties' living conditions. The court also ordered that Giovanni continue living with Doris for the remainder of the proceedings, and it set a visitation schedule for Anthony.

¶ 11 In August 2012, the case proceeded to trial. On the issue of custody, the parties testified to the respective living conditions, material provisions, health, and emotional support that each would be able to offer to Giovanni.

¶ 12 Doris, who appeared *pro se*, testified that she and Giovanni currently live in a downtown Chicago condominium owned by her beau of nearly two years, Michael Cott.¹ Giovanni has his own bedroom and play area. Doris takes Giovanni to a private preschool located on Ohio Street. She works across the street from the preschool and checks on Giovanni throughout the day. Her financial affidavit shows net earnings of approximately \$2,200 per month. She has demonstrated steady employment, staying at her previous job for nearly 10 years. Through her work, she provides medical, dental, vision, and prescription insurance for herself, Anthony, and Giovanni. Despite

¹ Though not submitted in the evidence portion of the trial, Doris informed the court in closing argument that, as of that date, she was approximately three months pregnant.

Anthony's bank statements to the contrary, Doris denied having received financial support from Anthony during their initial separation period.

¶ 13 Doris testified that Giovanni has asthma. She feeds him a gluten-free, organic diet, which she believes helps with his breathing. She informed Anthony of Giovanni's new diet, but Anthony does not follow it. Anthony has not asked to go to any of Giovanni's medical or dental appointments, nor has he asked to visit Giovanni's school.

¶ 14 Doris believes that she has always been Giovanni's primary care giver. She and Giovanni participate in many activities together. She takes him to gymnastics class, library club, and volunteer sessions at the Children's Hunger Fund. Anthony did not have contact with Giovanni during the nearly one-and-one-half years that Doris sought to establish that Anthony was not Giovanni's biological father, nor did he contribute financial support during that time. Now, in Doris's view, Giovanni is unfamiliar with Anthony. Giovanni comes home from visits with Anthony agitated and upset. Additionally, he has started hitting himself, going to the bathroom in his pants, and having nightmares.

¶ 15 In contrast to Doris's testimony, Anthony believes himself to have been Giovanni's primary care giver during the time that they lived together. During that time, Anthony purchased Giovanni's food, clothing, and toys. He was involved in Giovanni's toilet training. Anthony testified that, if he were awarded custody, they would live in his mother's home. Giovanni would have his own room and a large backyard in which to play. Additionally, there are several parks nearby. Members of Anthony's extended family live nearby, and, they, too, would be a part of Giovanni's daily life.

¶ 16 Anthony believed that, if Doris were awarded custody, she would not facilitate his relationship with Giovanni. For example, Doris had previously moved to establish that Anthony was

not Giovanni's biological father. Also in support of his belief that Doris would not facilitate the father-child relationship, Anthony stated that, when the parties first separated, Doris controlled the visitation schedule and he, Anthony, had little input. Doris took Giovanni to Puerto Rico and Canada without first informing Anthony. Prior to the trial court's February 2012 visitation order, Doris denied Anthony visitation on Thanksgiving 2010 and 2011, Christmas Eve and Christmas Day 2011, and Father's Day 2011. Following the April 2012 visitation order, Doris often suggested changes in the pick-up location. Additionally, Doris did not keep Anthony informed regarding Giovanni's medical appointments.

¶ 17 During cross-examination, Doris was able to elicit from Anthony certain admissions concerning finances, health, and safety. Anthony conceded that he did not provide financial assistance to Doris and Giovanni during the time he was defending his paternity. However, he explained that, during that time, he allocated his resources to legal bills. As to health, Anthony first denied being told about Giovanni's special diet. He does not know what a gluten-free diet is. He gives Giovanni sandwiches. However, when Doris specifically asked whether she told him not to give Giovanni bread, he answered, "You might have mentioned it. I am not sure." Finally, as to safety, Anthony admitted that he had once been brought to court on a charge of driving under the influence.

¶ 18 Anthony then called three witnesses to testify to past incidents wherein Doris appeared intoxicated: Edward Archer (Anthony's father); Judy Archer (Anthony's aunt); and James Vlcek (a family friend). Edward testified to three separate incidents occurring at social events where Doris acted intoxicated. According to Edward, Doris slurred her words and "acted rowdy" on the dance floor.

¶ 19 Judy testified that, prior to the separation, she had been “friendly” with Doris. She had called Doris once or twice per week. Often, Doris would report that she was going out with friends for a “girls night.” Judy once watched Giovanni while Doris went out with friends. When Doris returned, she smelled of alcohol and appeared unsteady. She declined Judy’s invitation to stay the night. Instead, she put Giovanni in the car and drove home. Despite her concern, Judy did not call the police.

¶ 20 Vlcek testified that, in 2009, while visiting Anthony’s home, he saw Doris act intoxicated on more than one occasion. He observed Anthony hold Doris’s hair while she vomited. On another occasion, Doris, smelling of alcohol, stumbled down the stairs with Giovanni in her arms. Vlcek believed that Doris then put Giovanni in the car and drove away.

¶ 21 During cross-examination, Doris sought to elicit from these witnesses that they themselves had engaged in improper conduct. Edward and Vlcek, in particular, initially answered evasively with statements such as “I might have [].” However, the court ordered the witnesses to answer the questions, explaining that it spoke to their credibility and motive to testify against Doris. Edward then admitted that he had recently followed Doris’s car while she was driving. Vlcek all but admitted that he had called Doris a “b****” outside the courtroom doors.

¶ 22 The GAL, Chantelle Porter, testified that she was assigned to review the parties’ living conditions. She reviewed court documents, interviewed Giovanni’s nanny, and spoke with the parties. She spoke with Doris three times, once at her home. She observed Doris interact with Giovanni. She found their relationship to be loving. There were many hugs and kisses exchanged. Doris played games with Giovanni and she was able to redirect him when he got upset. Overall, Giovanni was well-behaved. When Porter asked Giovanni about Anthony, he put his head down and

refused to talk anymore. Porter did not meet with Cott. Porter spoke with Anthony two times, once at his home. She found his home safe and appropriate for a child. As with Doris's household, she did not meet with other adults living in Anthony's home.

¶ 23 On October 19, 2012, the trial court entered the written judgment for dissolution of marriage. In it, the court awarded sole custody to Doris, with visitation to Anthony each first, third, and fifth weekend as well as alternating holidays. The court anticipated an expansion of the visitation schedule in future years.

¶ 24 The trial court explained that there was no evidence to suggest that Giovanni did not have a good relationship with each parent. However, it found it noteworthy that, during the initial separation and prior to the institution of divorce proceedings, the parties themselves chose Doris as the primary custodian. Anthony helped Doris transport Giovanni's belongings and supplies to Doris's new apartment. For the next two years, Giovanni lived with Doris, and he became "familiar and comfortable" in her home. Additionally, Giovanni warmed to Doris's community, attending preschool, library club, and gymnastics. The court found that Anthony's living situation was equally safe and appropriate, but, the implication being, Giovanni simply was not as familiar with it.

¶ 25 The trial court discounted accusations that Doris had a drinking problem, noting that, during the initial separation period, Anthony allowed and even facilitated Giovanni's placement with Doris. The court observed Doris over the several days during which she appeared *pro se*, and it noted no physical or mental conditions that would adversely impact her ability to parent. However, the court also criticized Doris, finding it troubling that she denied having received support checks from Anthony during the initial separation period.

¶ 26 The trial court expressly rejected Anthony’s argument that Doris would not encourage a close and continuing relationship between Anthony and Giovanni. The court acknowledged that Doris had instituted an action to declare the non-existence of paternity as to Anthony. However, Doris did not institute the action until after Anthony petitioned for divorce and custody. During the previous period of separation, the parties had behaved in a relatively amicable manner, with Anthony visiting and providing financial support. Additionally, once the parties submitted to the agreed paternity order, they abided by the February 2012 visitation order. The court was not troubled by the parties’ minor modifications to its visitation order, such as change in pick-up location. In the court’s view, this did not indicate an unwillingness on Doris’s part to facilitate the father-child relationship. Rather, the court stated: “Anthony wants to strictly apply the terms of court orders to Doris, but wants flexibility when they are applied to him.” This appeal followed.

¶ 27

II. ANALYSIS

¶ 28 Anthony challenges the trial court’s custody determination. In making a custody determination, the paramount consideration is the best interests of the child. *In re Marriage of Diehl*, 221 Ill. App. 3d 410, 423 (1991). Section 602 of the Illinois Marriage and Dissolution of Marriage Act (Act) sets forth a non-exclusive list of best-interest factors that the trial court shall consider in making its custody determination, including: (1) the wishes of the child’s parent(s); (2) the wishes of the child; (3) the interaction and interrelationship of the child with his parent(s), siblings, and any other person who may significantly affect the child’s best interests; (4) the child’s adjustment to his or her home, school, and community; (5) the mental and physical health of the involved individuals; (6) the potential for violence or threat of violence; (7) the occurrence of ongoing or repeated abuse; (8) the willingness and ability of each parent to facilitate and encourage

a close and continuing relationship between the other parent and the child; (9) whether one of the parents is a sex offender; and (10) military obligations. 750 ILCS 5/602(a) (West 2010). The trial court must provide some indication in the record that it considered the various statutory best-interest factors, but it is not required to make specific findings of fact on any one point. *Diehl*, 221 Ill. App. 3d at 424. We give great deference to the trial court's custody determination, since it is in the superior position to assess the credibility, temperament, personality, and capabilities of the witnesses and of each prospective custodian. *Id.* The trial court's custody determination will not be disturbed on appeal unless there is a clear abuse of discretion or the decision was contrary to the manifest weight of the evidence. *Id.*

¶ 29 Although we have considered each point raised, Anthony's many arguments may be generally grouped as follows: (1) Doris's testimony was not credible, and, therefore, it cannot support a custody determination in her favor; (2) Anthony is able to provide Giovanni with a more appropriate living situation than Doris can provide; and, perhaps most compelling, (3) Doris will not facilitate the father-child relationship, as demonstrated by her earlier action to establish Anthony's non-paternity. Still, for the reasons set forth below, Anthony's arguments do not convince us to overturn the trial court's award of custody to Doris.

¶ 30 We first briefly address Anthony's credibility argument, because it has the potential to color the entire analysis. Anthony points to two instances wherein Doris was either untruthful or less than candid with the court. First, Doris denied that Anthony provided financial assistance during the initial separation period despite banking statements to the contrary. Second, Doris waited until closing arguments to disclose that she was pregnant with her second child.

¶ 31 As noted, we give great deference to the trial court's credibility determinations. *Diehl*, 221 Ill. App. 3d 424. And, here, the trial court *did* consider the financial discrepancy, stating that it was troubled by Doris's denial. Therefore, Anthony is not pointing out anything that the court failed to consider. Similarly, the court was not required to completely disregard Doris's testimony due to a lack of candor in disclosing her second pregnancy, the remaining term of which was six months. The trial court's credibility determinations will stand.

¶ 32 We next address Anthony's argument that he is able to provide Giovanni with a more appropriate living situation than Doris can provide. Anthony notes that he would provide Giovanni with a home in a family neighborhood. Extended family live nearby and would be willing to help care for Giovanni. Anthony contends that the evidence is insufficient to assure that Doris is able to provide Giovanni with a similarly appropriate environment. Particularly, Anthony complains that Doris has a drinking problem and that the record does not reveal much about Cott, with whom Giovanni will be living.

¶ 33 This argument implicates statutory factors three, four, and five, as set forth above. 750 ILCS 5/602(a) (West 2010). We disagree that an evaluation of these factors compels a finding in Anthony's favor. The trial court considered a fair amount of evidence concerning Giovanni's life with Doris. For example, the court noted that Giovanni lived with Doris beginning in 2010 and through the date of trial in 2012. He became "familiar and comfortable" in her home. Additionally, Giovanni established a routine with Doris, participating in his community, and attending preschool, library club, and gymnastics. The court discounted accusations that Doris had a drinking problem. The court was in the position to evaluate the credibility of Doris's accusers. Moreover, the court

reasoned that, prior to the escalation of interpersonal conflict brought out in the divorce proceedings, Anthony had allowed Giovanni to reside with Doris.

¶ 34 It is problematic that the record contains very little information about Cott, with whom Giovanni will be living. The third statutory factor sets forth that the trial court is to consider the interaction of the child with his parents, siblings, *and any other person with whom that child will be interacting*. 750 ILCS 5/602(a)(3) (West 2010). Still, we are not convinced that reversal or remand is required due to this shortcoming. There is also no evidence in the record to suggest that Cott is a *poor* influence. To the contrary, the GAL testified that Giovanni appeared happy in the home he shared with Cott. Anthony could have subpoenaed Cott; he was never denied the opportunity to do so.

¶ 35 The cases cited by Anthony at best show that testimony of a new spouse or partner is helpful and desirable to create a fuller picture of the child's best interests. They do not, however, show that such testimony is required; therefore, Anthony's cases on this point are inapposite. See *In re Marriage of Quindry*, 223 Ill. App. 3d 735 (1992) (particularly where the mother departed covertly from the marital home without telling the father where the child could be reached, the trial court did not err in drawing an adverse inference from the *new* husband's failure to testify); *Diehl*, 221 Ill. App. 3d 410 (court could properly consider the mother's cohabitation with another woman, because a cohabitation relationship, whether heterosexual or homosexual, is a proper factor to consider in making a custody determination).

¶ 36 Finally, we address Anthony's argument that Doris will not facilitate a relationship between Giovanni and him. Specifically, Anthony contends that "there is no evidence to support" the trial court's conclusion that Doris is willing and able to facilitate and encourage a close and nurturing

continuing relationship between Giovanni and him, and, to the contrary, her action to establish Anthony's non-paternity demonstrates the opposite. This argument implicates the eighth statutory factor, "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)(8) (West 2010). This factor supports the Act's purpose of securing the maximum involvement and cooperation of both parents regarding the physical, mental, moral, and emotional well-being of the child before and after the marriage. 750 ILCS 5/102(7) (West 2010). Indeed, the custodial parent has the duty to strengthen and nurture the relationship between the child and the non-custodial parent. *In re Marriage of Dobe*y, 258 Ill. App. 3d 874, 877 (1994).

¶ 37 The trial court addressed this factor, and we cannot agree that there is "no evidence" to support its position. The court stated that Doris did not institute the action to establish Anthony's non-paternity until after Anthony petitioned for divorce and custody. The court further noted that, during the previous period of separation, the parties had behaved in a relatively amicable manner, with Anthony visiting and providing financial support. Additionally, once the paternity issue was resolved,² the parties abided by the April 2012 visitation order.

² In her brief, Doris attempts to relitigate the merits of Anthony's paternity. This is not the proper forum; she never filed a cross-appeal on this point. Doris, to some extent, must realize this, as, during the pendency of this appeal, she filed a section 2-1401 petition (735 ILCS 5/2-1401 (West 2012)) in the trial court seeking to vacate orders declaring Anthony's paternity and hinting at seeking to vacate portions of the judgment of dissolution pertaining to Anthony's visitation (presumably because Anthony's visitation was predicated on his paternal status). In other words, it appears that Doris's ultimate goal is to seek modification of the judgment of dissolution as to visitation. This

¶ 38 However, even if this best-interest factor weighed in favor of Anthony, it would not, in itself, be reason to overturn the trial court’s custody determination. In making its custody determination, the trial court considered *all* the statutory factors. Most notably, the third and fourth statutory factors, the child’s relationship with the custodial parent and the child’s adjustment to his home, school, and community, greatly informed the court’s decision. If we were to reverse the court’s order, we would be ordering that Giovanni be removed from the custodial parent and community he has known for more than half of his young life. It is not our place to re-weigh the best-interest factors.

¶ 39 The court’s custodial determination that Giovanni remain with Doris, in light of all of the circumstances, cannot be said to be against the manifest weight of the evidence nor does it reflect an abuse of discretion.

¶ 40

III. CONCLUSION

issue is not before this court.

Also during the pendency of this appeal, Doris moved to “stay the appeal,” pending the resolution of her section 2-1401 petition (as well as two petitions to declare the paternity of Bartosik). Such a stay would only maintain the same custody and visitation orders herein affirmed by this court. A resolution of Anthony’s claims on appeal will not impact Doris’s ability to proceed on her section 2-1401 petition. See, *e.g.*, *Malek, III, v. Lederle Laboratories*, 152 Ill. App. 3d 493, 496-97 (1987) (plaintiff filed a section 2-1401 petition during her direct appeal and requested a stay of the trial court’s judgment; the appellate court denied the stay and affirmed the appeal; section 2-1401 proceedings continued in the trial court). For these reasons, we deny Doris’s motion for stay.

¶ 41 For the aforementioned reasons, we affirm the trial court's judgment.

¶ 42 Affirmed.