

2014 IL App (2d) 140291-U
No. 2-14-0291
Order filed July 29, 2014

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

In re MARRIAGE OF WILLIAM T. SCHROEDL,)	Appeal from the Circuit Court of McHenry County.
)	
Petitioner-Appellee,)	
)	
v.)	No. 12-DV-800
)	
AMY M. SCHROEDL,)	Honorable
)	Kevin G. Costello,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices McLaren and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* We affirmed the trial court's grant of father's petition to modify custody where the court's findings that there was a change in circumstances and that a modification was necessary to serve the best interests of the children were not against the manifest weight of the evidence.

¶ 2 The parties, William T. Schroedl and Amy M. Schroedl (n/k/a Amy M. Dailey), had three children during their marriage. Upon the dissolution of their marriage, they were awarded joint legal custody, and Amy acted as the primary residential parent. After Amy relocated with the children about one hour from William's residence, William filed a petition to modify custody. Following a four-day trial, the court granted William's petition. Amy appeals. Because the trial

court's findings—that there was a change in circumstances and that a change in custody was necessary to serve the best interests of the children—were not against the manifest weight of the evidence, we hold that the trial court did not abuse its discretion in granting William's petition to modify custody and awarding him sole custody.

¶ 3

I. BACKGROUND

¶ 4 The parties were married in April 1996 and had three children together. Joseph was born in November 1996, and the twins, William, Jr. (Billy) and Nicole, were born in December 2006. About the fall of 2008, Amy began working the day shift full time at Evanston NorthShore Hospital as a "CT tech." William worked the afternoon shift from 3:30 to 11:30 p.m. as a mechanic for the City of Chicago at O'Hare Airport. During the day while Amy was working, William usually cared for the children.

¶ 5 The parties, both *pro se*, obtained a judgment of dissolution in August 2010.¹ Incorporated in the judgment was a marital settlement agreement, which provided for joint legal custody. Amy and the children lived in the marital home in Chicago. William moved one mile away to his parents' home, which had been his childhood home since 1970. The children lived with Amy, and William had visitation with the children every other weekend, certain holidays and summer vacation time, and weekdays from 7 a.m. to 3 p.m. "if needed during the week." Because William and Joseph had become estranged during the dissolution proceedings, William did not exercise visitation with Joseph after the end of 2010.

¹ The judgment of dissolution was entered by the circuit court of Cook County in case No. 10-D-6847. During postdissolution proceedings, the case was transferred to McHenry County in August 2012, and docketed as case No. 12-DV-800.

¶ 6 By agreed order of July 1, 2011, William's weekday visitation was amended to "Monday – Friday 7:00 a.m. – 3:00 p.m. on days Amy [wa]s working or otherwise unavailable." Additionally, the agreed order gave each parent a right of first refusal whenever the other parent would be away from the children for more than four hours. The agreed order also directed that the parent exercising parenting time make the children available for a telephone call from the other parent between 6:30 and 7:30 p.m. each day.

¶ 7 In October 2011, Amy moved with the children from Chicago to Crystal Lake, Illinois, about 40 miles away. Amy did not tell William about her plan to move; he learned of the move after the fact from Amy's neighbor. Amy and the children moved in with Geoff Daniels, whom she married in November 2011. They lived in Geoff's four-bedroom townhouse with Geoff's two adult children and his two-year-old grandson. Initially, Joseph, and then later, the twins, slept in the semi-finished basement. By the time of trial, Geoff's adult children and grandson had moved out so that Billy and Nicole each had their own bedroom on the first floor of the townhouse.

¶ 8 William continued to exercise his parenting time with Billy and Nicole after the move. Amy drove the twins to William's house each weekday morning on her way to work. The twins spent the day with William until 3 p.m., when they went to a nearby Head Start preschool program and William went to work. Amy then picked up the children from preschool when she got off work. Joseph continued attending Lane Tech college prep high school in Chicago for a short time, but then transferred to the Crystal Lake Central High School. Given the one-hour travel time between the parties' homes, Amy and William soon agreed that, on William's weekends, the children would stay with him from Friday after school until Monday after school.

William's mother cared for the twins while William worked. William usually saw the twins every day and called them on weekends when he did not see them.

¶ 9 In August 2012, Amy enrolled Billy and Nicole in kindergarten in Crystal Lake. Around that time, William filed a petition in Cook County to modify custody and for a rule to show cause regarding, *inter alia*, alleged visitation interference. After the case was transferred to McHenry County, the trial court entered a default judgment against Amy and awarded William sole custody of the three children in November 2012. Because of William and Joseph's estrangement, however, Joseph remained with Amy. Billy and Nicole lived with William in his parents' house, where they had their own bedrooms. They began attending kindergarten in Chicago at the same school where they had attended Head Start. To accommodate the custody change, William began working the day shift, 6 a.m. to 2 p.m., and continued to do so. His mother cared for the twins before school. Although the default judgment reserved the issue of Amy's visitation, William allowed her to visit with the twins.

¶ 10 On January 8, 2013, the trial court vacated the default judgment and ordered that the original petition to modify custody be withdrawn. On the same date, William filed a petition to modify custody in McHenry County, in which he sought sole custody of the children. The court appointed J. Kevin McBride to serve as the guardian *ad litem* (GAL) (see 750 ILCS 5/506(a)(2) (West 2012)).

¶ 11 The case went to trial, spanning four days in February 2014. William was represented by counsel, and Amy proceeded *pro se*. At the time of trial, Billy and Nicole were 7 years old and in first grade, and Joseph was 17 years old and graduating from high school that spring. The parties stipulated that it was in Joseph's best interest to remain in Amy's custody.

¶ 12 The evidence showed that the twins were generally doing well socially, emotionally, and academically. They were attending first grade in Crystal Lake. The evidence also established that the parties' relationship with each other was quite volatile. They argued about financial matters and made allegations against each other regarding inappropriate discipline, corporal punishment, and child abuse, sometimes involving the police and the Department of Children and Family Services. William accused Geoff of inappropriate corporal punishment. Amy accused William of harassing and threatening her and filed at least two petitions for orders of protection, none of which resulted in a plenary order.

¶ 13 Amy testified that she thought it was in the children's best interests to move to Crystal Lake because their safety was in jeopardy due to "so many happenings" between her and William. After the move, things calmed down between the parties. Amy also believed that Crystal Lake had better schools and less crime than Chicago. She did not tell William or the children about her plan to move to Crystal Lake because William had been harassing, threatening, and following her. Amy said that whenever she tried to talk to William about the children, he turned the conversation to ask about her and what she was doing. She believed that communicating with William was futile. Amy chose the children's new doctor and dentist because she had always done so. She also chose a church and took the children to youth group there without consulting Bill. Amy did not tell William that she had enrolled Nicole in gymnastics in Crystal Lake because it did not infringe upon his parenting time. She denied the statement in the GAL's report that she told the children to keep secrets from William or from the GAL. She agreed that the children were honest, but she said that they could be influenced by William and were burdened by the divorce.

¶ 14 Joseph testified that he did not really talk to William and generally saw him only when the parties were exchanging the twins. Joseph said that whenever he and William tried to talk, William would keep asking about Amy, despite Joseph's efforts to change the subject. Joseph testified that he refused to go with his father when William was awarded custody in the default judgment. Joseph said that William came to his school counselor's office and started telling him that Amy had brainwashed Joseph and that Joseph was crazy. Joseph said that several times William had sat in the parking lot where Joseph worked and gave him a not "very welcoming stare." Joseph testified that William had physically abused him while the parties were married.

¶ 15 William testified that during the parties' arguments leading up to the divorce, Joseph would "jump in," and Amy would encourage Joseph to argue with William. William explained that Joseph grew to hate him and that they eventually stopped communicating at all. The last time William had visitation with Joseph was Thanksgiving 2010. Thereafter, "it fell apart," and he saw Joseph only "tangentially." Joseph stopped visiting William because he had to stay home to take care of Amy's six dogs. Through the middle of 2011, William attempted to call Joseph, but he responded with hostility, so William gave up. After the move, William saw Joseph only if he accompanied Amy to pick up the twins from William. However, Joseph attended William's father's funeral in July 2012. William attempted to reestablish a relationship with Joseph but did not think it would be in Joseph's best interests to push him. Even though the November 2012 default judgment awarded him custody of Joseph, William talked to Joseph but did not force his son to live with him. William testified that, after Amy started dating Geoff, she began improperly denying him visitation or telephone contact with the twins. He said that she left the twins with Joseph or nonfamily members in violation of his right of first refusal.

¶ 16 J. Kevin McBride, the GAL, opined that it would be in the twins' best interests to live with William. His written report was admitted into evidence. McBride testified that his biggest concern was Amy's "seeming thwarting of parental rights and [William's] visitation time." As an example, McBride explained that since 2010, Amy was supposed to make the children available for an evening telephone call from William within a specific time frame on days when he did not see them; yet, she often failed to do so. McBride testified that, when he asked Billy and Nicole if they knew what truth and lies were, they told him that keeping secrets was lying. They volunteered to McBride that they kept a secret about gymnastics from William and that there were certain things that they were not supposed to tell McBride. McBride was also concerned about Amy's failure to tell William, or even the children, about her plans to move and remarry.

¶ 17 McBride elaborated that his concern about Amy's ability to foster a relationship between the children and William was "almost reflected more in [Joseph] than in anything." He was troubled by the "venom that [Joseph] was spewing toward his dad." McBride found it noteworthy that Joseph used the same terminology as Amy in describing his relationship with William rather than describing it in an age-appropriate manner. He believed that Amy "allowed the deterioration in the relationship between [Joseph] and his father if not fostered it." McBride thought that, at the end of the parties' marriage, Amy used Joseph as her "foster confidant" and allowed her dislike for William to "spill[] over into" Joseph. McBride expressed fear that, when Joseph moved out of the house, the same thing would happen with the twins. Noting that there had been testimony that the twins were exhibiting some of the same behaviors that Joseph had exhibited, McBride testified that he was afraid that Amy would allow a similar deterioration in the twins' relationship with William.

¶ 18 McBride testified that he believed that William was “in a better position to foster an ongoing relationship” with Amy. He found it significant that when William had custody of the children for six weeks, he allowed Amy visitation even though he was not required to do so. McBride said that William had been the twins’ primary daytime caregiver since their birth and that living with William would be like going back home.

¶ 19 On March 11, 2014, the court entered a written order granting William’s petition for modification of custody and awarding him sole custody of Billy and Nicole. Based on the parties’ stipulation regarding Joseph’s best interests, the court awarded sole custody of him to Amy. The court found that it was clear that the parties could not cooperate to jointly parent because Amy had “acted as the sole custodian” virtually since the divorce. The court found that the “complete lack of communication” was a change of circumstances rendering the termination of joint custody in the children’s best interests. After considering the statutory factors regarding the twins’ best interests, the court awarded sole custody of the twins to William. Amy timely appeals.

¶ 20

II. ANALYSIS

¶ 21 Amy contends that the trial court’s order granting William’s petition to modify custody and awarding him sole custody of the twins was against the manifest weight of the evidence. Under the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/101 *et seq.* (West 2012)), custody proceedings are “ ‘guided by the overriding lodestar of the best interests of the child or children involved.’ ” *In re Marriage of Debra N. & Michael S.*, 2013 IL App (1st) 122145, ¶ 45 (quoting *In re A.W.J.*, 197 Ill. 2d 492, 497-98 (2001)). Section 610(b) of the Act permits modification of a custody order only if the trial court finds by clear and convincing evidence that both (1) a change in circumstances has occurred and (2) “the modification is

necessary to serve the best interest of the child.” 750 ILCS 610(b) (West 2012); *Debra N. & Michael S.*, 2013 IL App (1st) 122145, ¶ 47. Clear and convincing evidence is a higher burden of proof than preponderance of the evidence but not quite as high as the beyond-a-reasonable-doubt burden in criminal cases. *In re Marriage of Wechselberger*, 115 Ill. App. 3d 779, 786 (1983). The high burden of proof in section 610(b) reflects a legislative presumption in favor of a child’s current custodian to promote the stability and continuity of a child’s custodial and environmental relationship. *In re Marriage of Sussenbach*, 108 Ill. 2d 489, 499 (1985) (citing *Wechselberger*, 115 Ill. App. 3d at 786).

¶ 22 Section 602(a) of the Act (750 ILCS 602(a) (West 2012)) sets forth a nonexhaustive list of factors for the trial court to consider in determining the best interests of the child. *In re Marriage of Martins*, 269 Ill. App. 3d 380, 388 (1995). The factors include: (1) the parents’ wishes; (2) the children’s wishes; (3) the interaction and interrelationship of the children with parents, siblings, or other significant persons; (4) the children’s adjustment to home, school, and community; (5) the mental and physical health of all involved persons; (6) the physical violence or threat of physical violence, whether against the child or another; (7) the occurrence of ongoing or repeated abuse against the child or another; (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 either parent is a sex offender; and (10) whether a parent is being deployed as a member of the armed forces. 750 ILCS 602(a) (West 2012).

¶ 23 A trial court’s custody determination is afforded great deference because the trial court is in the best position to judge the witnesses’ credibility and assess the best interests of the child. *Debra N. & Michael S.*, 2013 IL App (1st) 122145, ¶ 45 (citing *In re Marriage of Bates*, 212 Ill. 2d 489, 516 (2004)). We will not reverse a trial court’s modification of custody unless the

decision is against the manifest weight of the evidence and an abuse of discretion. *Debra N. & Michael S.*, 2013 IL App (1st) 122145, ¶ 45 (citing *Bates*, 212 Ill. 2d at 515). In examining the evidence, we view it in the light most favorable to the appellee, and, if multiple inferences reasonably can be drawn, we accept those inferences that support the trial court's decision. *Debra N. & Michael S.*, 2013 IL App (1st) 122145, ¶ 45 (citing *Bates*, 212 Ill. 2d at 516). The trial court's decision is against the manifest weight of the evidence only where an opposite conclusion is clearly apparent. *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 100.

¶ 24 Here, the trial court found that, except for the eighth factor, the section 602(a) factors were either inapplicable or did not favor either party. The court found that the eighth factor—the willingness and ability of each parent to foster a close relationship with the other parent—weighed heavily in William's favor. Of primary significance to the court was Amy's involvement in the deterioration of William and Joseph's relationship. Amy argues that the court erred in concluding that she was responsible for alienating Joseph from William.

¶ 25 The court found that even if William's testimony—that Amy destroyed the relationship by involving Joseph in the divorce and influencing him to take her side—was not true, “at a minimum Amy has witnessed the deterioration of the relationship between [Joseph] and his father and has taken no steps to try and address it.” The court found that Amy appeared “content to write the relationship off.” The court was concerned by William's testimony that Billy had begun acting out, “which raises concerns that their relationship may be headed toward a similar pattern *** because, at least in part, of Amy's attitude toward William's relationship with the children.”

¶ 26 Viewing the evidence in the light most favorable to William (*Debra N. & Michael S.*, 2013 IL App (1st) 122145, ¶ 45), the court's conclusion that Amy, at a minimum, allowed

Joseph's alienation from William was not against the manifest weight of the evidence. William testified that he had been Joseph's primary daytime caregiver while Amy was working. He testified that he had enjoyed a close relationship with Joseph until Amy encouraged Joseph to side with her in the parties' marital disputes leading up to the divorce. Joseph testified that William had physically abused him, but the court found this testimony vague and incredible, and William denied having ever physically abused Joseph. McBride, the GAL, testified that Amy inappropriately had made Joseph her confidant during the divorce, noting how Joseph used the same terms and phrases to describe his relationship with William as Amy did. McBride testified that he was concerned that the alienation that Amy had allowed between Joseph and William was being repeated with the twins. William testified that Billy was "starting to show signs" of the same behavioral problems that Joseph had exhibited.

¶ 27 Not only did the court find that Amy allowed Joseph's alienation from William and that she appeared to be repeating that behavior with the twins, but it also found that Amy was unwilling to foster a relationship between William and the twins. The court reasoned that "Amy's moving the children a significant distance and putting them in new schools without William's input, or even knowledge, d[id] not demonstrate a willingness to facilitate a close relationship between William and the children, but rather [wa]s the antithesis of same." The court further found that Amy did not cooperate in making the children available for phone visitation with William and instructed the children to keep secrets from him.

¶ 28 Again, viewing the evidence in the light most favorable to William, the court's findings were not against the manifest weight of the evidence. William testified that Amy interfered with his visitation and telephone contact with the twins after she moved. McBride was similarly concerned about Amy's thwarting William's parenting time with the twins. He was especially

bothered by Amy's failure to facilitate the twins' telephone contact with William, which should have been "pretty simple." Amy admits that she did not tell William about her move with the children to Crystal Lake. Although Amy asserted that William's abusive behavior rendered her communication attempts futile, the trial court was charged with weighing the evidence and drawing inferences therefrom. See *Debra N. & Michael S.*, 2013 IL App (1st) 122145, ¶ 45 ("If multiple inferences can be drawn from the evidence, a reviewing court will accept those inferences which support the court's order.").

¶ 29 In addition to finding that Amy was not willing to foster the twins' relationship with William, the court found that William was likely to facilitate Amy's relationship with the children. It was undisputed that, while he had custody under the default judgment, William initiated contact with Amy, offering her visitation and phone calls with the twins, even though he had no obligation to do so.

¶ 30 To the extent that Amy takes issue with the court not explaining its credibility findings, she offers no authority requiring such explanation. A custody decision "necessarily rests on the temperaments, personalities and capabilities of the parties, and the demeanor of the witnesses who testify at trial"—all of which the trial court is in the best position to evaluate. *In re Marriage of Felson*, 171 Ill. App. 3d 923, 926 (1988). Thus, we will not second guess the trial court's credibility findings.

¶ 31 Similarly unpersuasive is Amy's argument that the trial court failed to consider purportedly abusive text messages from William as evidence of his unwillingness to foster her relationship with the twins. The court not only addressed the exhibits but also explained its reasoning for discounting them. The court found that the text messages were one-sided and therefore lacked context, and that the texts' hostile tone was not atypical in a divorce case. Amy

cites *Shinall v. Carter*, 2012 IL App (3d) 110302, but that case is inapposite because there the abusive language was used in front of the child. *Shinall*, 2012 IL App (3d) 110302, ¶ 13. Here, there is no evidence that the children were privy to the text messages William sent to Amy.

¶ 32 Amy further contends that the trial court “cut off her exploration” about the cause of Joseph and William’s estrangement by improperly sustaining objections to questions she posed to Joseph during direct examination. Citing *In re Marriage of Kleiboeker*, 262 Ill. App. 3d 644 (1994), Amy maintains that, because the judgment of dissolution was entered without a hearing and with the parties acting *pro se*, the court here should have allowed questions about facts existing prior to the divorce but unknown to the court at the time of the divorce.

¶ 33 Initially, we note that Amy made no offer of proof regarding the testimony she hoped to elicit, thereby leaving us with nothing to do but speculate. See *Torres v. Midwest Development Co.*, 383 Ill. App. 3d 20, 26 (2008) (“Generally, when a trial court refuses evidence, no appealable issue remains unless a formal offer of proof is made.”). In any event, the problem with Amy’s reliance on *Kleiboeker* is that the four questions to which she directs our attention were not framed to elicit facts existing prior to the divorce but unknown to the court at the time of the divorce. Specifically, Amy urges that the trial court improperly sustained objections to her questioning Joseph about whether he thought he needed a father in his life and what he would like to see happen in their relationship. These two questions have no bearing on the cause of Joseph and William’s estrangement leading up to the divorce. Rather, they attempt to elicit testimony that is prospective in nature—Joseph’s hope for the future. Amy also directs our attention to her unsuccessful attempt to ask Joseph if he had any issues about the twins living with William. Again, this question is prospective and has no relevance to the cause of Joseph’s alienation from William. The final question that Amy claims was improperly excluded was how

the parties' dispute over the twins' custody affected Joseph's relationship with William. This question likewise has no relevance to the cause of Joseph's alienation from William, which the evidence showed was firmly entrenched by the end of 2010, long before William filed his petition to modify custody in 2012. Accordingly, the court did not improperly sustain objections to these questions.

¶ 34 Amy additionally argues that the trial court erred in using her move as a "key factor" in the change of custody. Amy quotes a portion of the trial court's statement from the end of its written order where the court found "that a change has occurred in the circumstances of the children and the parties (most notably but not limited to the move of the children to a different city with the resulting ramifications to William's parenting time)." Amy accurately notes that at the present time neither party can exercise weekday parenting time because the twins attend first grade all day—not because she moved. It is also true that the change in circumstances required by section 610(b) of the Act must be a change that adversely affects the children's best interests. *In re Marriage of Brudd*, 307 Ill. App. 3d 57, 60 (1999) ("[C]hanged conditions alone do not warrant a modification of custody without finding that such changes also affect the welfare of the minor.").

¶ 35 Nonetheless, reading the court's statement about the move in the context of its entire written decision reveals that the court did not find that the move, in and of itself, was the changed circumstance warranting modification of custody. In the analysis portion of its written order, the court stated, "[S]ince virtually the time of the Judgment of Dissolution Amy has acted as the sole custodian of the children. She has not consulted with William regarding major parenting decisions such as the move or the change in schools and in fact would not inform him until afterward, if at all." In light of this express reasoning, the court's concluding reference to

the change in circumstances being “most notably *but not limited to* the move of the children” (emphasis added), was simply shorthand to summarize its earlier discussion regarding Amy acting as if she were the children’s sole custodian in violation of the joint parenting order. The court noted that Amy’s behavior had been occurring “virtually” since the time the judgment of dissolution was entered. The court also listed specific examples of Amy’s failure to jointly parent following her “unilateral decisions to move and change the children’s schools”—such as her choosing the children’s church and doctors. There was also specific testimony from William and McBride about Amy thwarting William’s visitation since the move. Reviewing the court’s entire written decision in light of the evidence presented, we conclude that the court’s finding that there was a change in circumstances adversely affecting the children’s best interests, based on Amy’s failure to jointly parent since the dissolution, and specifically in relation to the move and its aftereffects, was not against the manifest weight of the evidence. See *Debra N. & Michael S.*, 2013 IL App (1st) 122145, ¶ 56 (“Where, as here, the record supports the circuit court’s finding that the custodial parent has made attempts to thwart the noncustodial parent’s efforts to visit and maintain a close relationship with the child, the court’s decision to modify the custody arrangement and transfer custody of the child to the noncustodial parent is not against the manifest weight of the evidence and will be upheld on appeal.”).

¶ 36 Because the trial court’s findings under section 610(b)—that there was a change of circumstances and that modification of custody was necessary to serve the children’s best interests—were not against the manifest weight of the evidence, the trial court did not abuse its discretion in granting William’s petition to modify custody and awarding him sole custody.

¶ 37 For the reasons stated, we affirm the decision of the circuit court of McHenry County.

¶ 38 Affirmed.