

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).

2014 IL App (3d) 130794

Order filed August 6, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT
A.D., 2014

JAIMIE L.,)	
)	Appeal from the Circuit Court
)	for the 14th Judicial Circuit,
Petitioner - Appellant)	Mercer County, Illinois,
)	
v.)	Appeal No. 3-13-0794
)	Circuit No. 12-AD-2
L.M.C. and MICHAEL C.,)	
)	
Respondents - Appellees)	The Honorable Gregory Chickris,
)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Justices Schmidt and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in finding that Jamie failed to prove by clear and convincing evidence that Michael was an unfit parent under the Illinois Adoption Act (750 ILCS 50/1(D) (West 2012)). Though Michael was derelict in taking steps to visit and support L.M.C. due to intervening factors, Jamie consciously placed barriers to Michael's ability to demonstrate a reasonable degree of interest in L.M.C.'s welfare.

¶ 2 **FACTS**

¶ 3 Jamie L. ("Jamie"), the petitioner, and Michael C. ("Michael"), the respondent, were living together when L.M.C. was born September 8, 2008. They separated in May 2009. The

parties continued a sporadic dating relationship. During that time Michael saw L.M.C. frequently. They interacted as a family and Michael made contributions to L.M.C.'s support.

¶ 4 Jamie and Michael permanently separated in March 2010. The parents privately agreed to a visiting schedule where Michael would have L.M.C. every other weekend. Due to Michael's suspended driver's license from August 2010 to February 2011 and the lack of a vehicle otherwise, Jamie took L.M.C. to Michael for these visits. The record does not state why this schedule was not followed during this time. However, L.M.C. visited Michael only once in each of the following months: April, June, September, November, and December. These visits occurred on or around special occasions. In 2011, L.M.C. visited Michael in February, April, and June. Michael testified that he purchased clothing and gifts for L.M.C. and provided Jamie with gas money. There were no court orders of any kind including child support and Jamie did not request any. Michael noted that he offered to give Jamie his income tax refund in April 2011, but it was refused.

¶ 5 In July 2011, Jamie started dating Mr. Luxmore. Mr. Luxmore was in the service and stationed in Georgia. Michael testified that visits with L.M.C. were scheduled for July and August, but did not occur because Jamie had made other plans. Michael's last visit with L.M.C. was for L.M.C.'s birthday in September 2011.

¶ 6 In October 2011, Jamie married Mr. Luxmore. She left Illinois to join him in Georgia in November 2011. Jamie refused to tell Michael the timing of her move nor would she inform him of their address in Georgia. When Michael attempted to contact L.M.C. with several phone calls and text messages, he received no response. Jamie conceded Michael called in 2011 and texted but those communications occurred at 2:00am and 3:00am. Neither parent followed up.

¶ 7 Around this time, Michael spoke with a National Guard attorney about asserting his parental rights. He did not follow through with that matter because of financial challenges. Additionally, Mr. Luxmore discussed adopting L.M.C. with a military lawyer. He tabled the idea due to his Afghanistan tour assignment. Michael was never consulted about a possible adoption.

¶ 8 Jamie returned to Illinois with L.M.C. for a visit in March 2012. She did not inform Michael of their visit. When Michael was made aware, his attempt to see L.M.C. was denied. Jamie had responded that their visit only included time for her family.

¶ 9 In the same month, Michael's sister visited Georgia. She met with Jamie to deliver presents from the family. The gift from Michael to L.M.C. had no identification or wrapping.

¶ 10 Jamie returned to Illinois permanently after the death of Mr. Luxmore during his Afghanistan tour in June 2012. Jamie failed to notify Michael of her return or afford him any opportunity to visit L.M.C. She cut communications with Michael's family. When Michael was made aware of the return, he sent several text messages and emails asking to talk with L.M.C. but received no response.

¶ 11 Jamie filed a petition for adoption of L.M.C. on July 9, 2013, claiming Michael was unfit because he lacked perseverance in his attempts to see L.M.C. and his fatherhood has been an exemplar of passivity and indifference. On July 29, 2013, in a separate Mercer County case, Michael filed a petition to determine the existence of the father-child relationship and for specific visitation rights for the father. That petition is still pending.

¶ 12 In this present case, the trial court held that though Michael was derelict in taking steps to visit his child, the evidence failed to establish any intention on his part to forego his parenting duties, relinquish all parental claims, and terminate custodial rights. The trial court further noted

that there were factors which intervened in Michael's steps to visit and support his child prior to and after each of Jamie and L.M.C.'s moves. Jamie's actions showed her disinterest in including Michael in her new life because she did not aid in facilitating his relationship with L.M.C. Jamie appeals the holding of the trial court.

¶ 13 ANALYSIS

¶ 14 Jamie argues that her actions did not rise to the level of intentional frustration as described by the court that would have prevented Michael from putting forth effort to visit or show interest in L.M.C. thus proving Michael to be unfit under section D (b) of the Adoption Act. (750 ILCS 501 D(b)). We disagree and affirm the trial court's ruling.

¶ 15 Great deference is given to the trial court's parental fitness findings because it has the best opportunity to view and evaluate the parties and their testimony; its finding will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006). A decision is against the manifest weight of the evidence where the opposite result is clearly evident from the record. *Id.* Factual comparisons to other cases are of little value because each case concerning parental fitness requires close analysis of its individual facts. *Id.* A finding of unfitness will stand if supported by any one of the statutory grounds set forth in section 1(D) of the Adoption Act. 750 ILCS 50/1(D) (West 2012); *Id.*

¶ 16 In determining fitness, courts consider a parent's conduct in the context of the circumstances in which it occurs, including any transportation difficulty, parent's poverty, conduct of others that hinders visitation, and motivation underlying the failure to visit. *In Re Daphnie E.* 368 Ill.App.3d 1052, 1064 (2006) (citing *In Re Adoption of Syck*, 138 Ill.2d 255, 278-79 (1990)). However, a parent is not fit merely because he had demonstrated some interest in or affection for his child. *Id.* If personal visits were somehow impractical, courts consider

whether a reasonable degree of concern was demonstrated through letters, telephone calls, and gifts to the child, taking into account the frequency and nature of those contacts. *Id.*

¶ 17 Here Jamie's contention rests on the court's finding that Michael maintained a reasonable degree of interest, concern, or responsibility as to the welfare of the child. (750 ILCS 50/1 (D)(b) (West 2012)). She argues that even before her move to Georgia, Michael was a disinterested father. His visits with L.M.C. totaled five times after their official break-up in 2010 and three times in 2011. After her move to Georgia, Michael's interest in L.M.C. was absent.

¶ 18 We disagree. It is not contested that Michael had transportation difficulties and was financially limited. Yet with the assistance of Jamie prior to her meeting Mr. Luxmore, those five visits to L.M.C. included Michael spending several special occasions with L.M.C. as well as purchasing gifts and clothing for L.M.C. Even after the move to Georgia, Michael called, texted, attempted to see L.M.C. and sent a Christmas gift by way of his sister to L.M.C. He testified to consulting a National Guard lawyer at the time of Jamie's move about his parental rights but could not follow through due to his financial limitations. Even with this present case pending, he filed a petition to determine the existence of the father-child relationship and for specific visitation rights as L.M.C.'s father. Thus Michael's actions were more than just some interest and affection for L.M.C. and far more than passivity and indifference.

¶ 19 We also take considerable note of the parallel between the reduced visitation of Michael with L.M.C. and the start of Jamie's relationship with Mr. Luxmore. There is nothing in the record to show any change in Michael's financial state or lack of access to a vehicle. So, transportation of L.M.C. to Michael would still have been necessary. Yet, in the months after she met Mr. Luxmore and prior to their move, Jamie cancelled two visits due to her schedule.

¶ 20 Jamie also did not discuss her moving schedule, failed to provide Michael with an address of her home in Georgia, and actively chose not to answer or return Michael's phone calls or text messages during and after her time in Georgia. Jamie's arguments that Michael could have tried to find out her address information by other means, that he should have called and texted at a more appropriate hour, and that it was not her responsibility to tell the father she was back in Illinois temporarily and later permanently in the aggregate show her conscious placement of barriers to Michael's access to L.M.C.

¶ 21 Illinois courts do not advocate lackadaisical parenting with complete reliance upon the custodial parent to foster the other parent's relationship with the child. However, that is not the situation in this case. It is clear from the manifest weight of the evidence that Michael did more than merely feign interest in and affection for L.M.C. He made an effort to remain a part of L.M.C.'s life and was essentially thwarted by Jamie at every turn.

¶ 22 CONCLUSION

¶ 23 Therefore, though Michael's efforts were limited and he was at times derelict due to intervening factors, Jamie consciously placed barriers which exacerbated Michael's limited ability to maintain a reasonable degree of interest, concern, and responsibility for L.M.C.'s welfare. For the aforementioned reasons, this court finds the decision is supported by the manifest weight of the evidence and we affirm the ruling of the trial court.

¶ 24 Affirmed.