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2014 IL App (3d) 140446-U

Order filed October 29, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

CURTIS HORTON, JR.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
)	Tazewell County, Illinois,
)	
Petitioner-Appellee,)	Appeal No. 3-14-0446
)	Circuit No. 08-F-265
v.)	
)	
TIFFANY D. JONES,)	The Honorable
)	Paul Gilfillan,
Respondent-Appellant.)	Judge, Presiding.
)	

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

ORDER

¶ 1 *Held:* The court did not abuse its discretion by finding a change in circumstances and modifying custody to award Curtis sole custody of the parties' minor son.

¶ 2 The trial court granted the petitioner's, Curtis Horton, Jr., petition to modify custody finding that there was a change in the circumstances. It awarded Curtis sole custody of his and the respondent's, Tiffany D. Jones, minor son. It found that the parties demonstrated an inability

to make the Joint Parenting Agreement (JPA) work, Tiffany lacked the honesty and credibility necessary for parenting jointly, and continuing with joint custody would be detrimental for the child. Tiffany appealed. For the reasons that follow, we affirm the trial court's ruling.

¶ 3

FACTS

¶ 4

On January 7, 2009, the trial court entered the original order as to custody and the corresponding JPA where the parties agreed to joint custody of their minor son.

¶ 5

On April 27, 2010, Curtis filed a petition for a temporary restraining order/preliminary injunction to prevent Tiffany from removing the child to the state of Georgia without court approval. After the grant of the temporary restraining order and several failed appearances by Tiffany at hearings on the matter, the trial court entered a permanent injunction preventing Tiffany from removing the child from the state of Illinois without further order of the court.

¶ 6

Curtis filed his petition to modify custody on November 21, 2012. Tiffany was then served with the petition and a case management conference was scheduled for December 21. After rescheduling at the request of Tiffany, she failed to appear. Following the trial court's instruction, Curtis set the matter for a default judgment hearing on March 25 and provided notice to Tiffany. On March 21, Curtis filed a motion for finding of default as Tiffany had failed to respond to the petition to modify custody, however, Tiffany appeared for the scheduled hearing and the parties were ordered to mediation.

¶ 7

On April 19, Curtis filed a motion to compel discovery against Tiffany for her failure to comply with the outstanding discovery requests and noticed it for hearing for April 26. Tiffany failed to appear. The trial court ordered Tiffany to file a response to the petition to modify custody within 7 days and set the matter for another hearing on default judgment on May 9.

¶ 8 On April 29, Curtis filed a second motion for finding of default with the court and notice was sent to Tiffany. Then on May 6, Curtis filed a petition for rule to show cause for Tiffany's failure to comply with prior court orders in this matter. That petition was set to be heard with the other pending motions on May 9. During this same time period, Tiffany sought and obtained an emergency order of protection against Curtis in a separate case in Madison County, which she subsequently voluntarily dismissed.

¶ 9 Tiffany appeared for the default judgment hearing and the trial court entered a family court order setting the next hearing date for June 3. Tiffany appeared at the hearing and the record notes that she stated her household had no bank accounts. The trial court set a July 8 court date for the purpose of discovery review. Tiffany failed to appear at that hearing and the court entered an interim order of protection requiring Tiffany to relinquish custody of the child to Curtis.

¶ 10 On July 15, Tiffany filed a motion asking for a new judge and argued that the interim order of protection was entered in error. On July 18, the order of protection was dismissed, but Curtis was awarded temporary custody of the parties' child.

¶ 11 The trial court entered a family court order on August 2 granting Tiffany specific time with the child and setting her oral motion to reconsider the temporary custody award for August 16. At the hearing, the court heard the sworn testimony of both parties and entered an order maintaining temporary custody with Curtis and setting a specific schedule for Tiffany to have the child.

¶ 12 On August 19, Curtis filed a motion to reconsider and an emergency petition for temporary relief alleging that Tiffany intentionally lied to the court during her proffer of evidence. After the August 19 hearing on the emergency petition, the trial court vacated the

August 16 order and ordered the child to attend school from Curtis' residence. On August 26, Judge Risinger recused himself and the case was reassigned to Judge Gilfillan.

¶ 13 Following Curtis' petition for appointment of a guardian *ad litem*, on November 1 the trial court appointed attorney Katherine Smith. On January 24, 2014, a case management order set a final pre-trial hearing for March 10, and a full day of trial for April 28. That order also confirmed that Tiffany had no witnesses to be presented at trial. At the final pre-trial hearing, the trial court entered an order requiring the guardian *ad litem* to file her report, and reaffirmed the April 28 trial date. On April 9, Katherine Smith filed her guardian *ad litem* report with the court in which she provided details regarding the minor's relationship with both parents, the parental involvement in his academic and extracurricular activities, and recommended that Curtis have sole custody of the minor.

¶ 14 During a full day of trial and an additional half day, Curtis presented several exhibits and testimony from multiple witnesses, including himself, in support of his position that he should have custody of the minor child. Tiffany was the only witness on her behalf and she presented no other evidence.

¶ 15 On May 9, the trial judge entered a written order granting Curtis sole custody of the minor. The order laid out the specific findings of fact from the hearing as well as the guardian *ad litem*'s report, noting that Curtis was more hands-on than Tiffany when it came to the child, and that Tiffany's lack of interaction was actually counterproductive to the child's best interests. The court also found that Tiffany had failed on one of the most important custody factors by not facilitating a good relationship between the child and Curtis. Tiffany appeals.

¶ 16

ANALYSIS

¶ 17 A trial court's ruling in custody matters will not be set aside unless it is shown that there was an abuse of discretion. *Caulkins v. Caulkins*, 68 Ill. App. 3d 284, 288 (1979). The trial court has abused its discretion when its judgment is clearly erroneous, contrary to the manifest weight of the evidence, or manifestly unjust. *Id.* Citing *Caulkins* with approval, the supreme court in *Sussenbach* also stated that "[o]nce the court concludes that a change in custody is necessary, great deference must be accorded that decision, since the trial court is in the best position to judge the credibility of the witnesses and determine the needs of the child." *In re Custody of Sussenbach*, 108 Ill. 2d 489, 499 (1985). We do not reweigh evidence; we do review whether the trial court abused its discretion in making its decision and we give its credibility findings great deference.

¶ 18 Tiffany, however, has not provided this court with any evidence, including the report of the proceedings, of error by the trial court. In the absence of a sufficiently complete record on appeal, it is presumed that the order entered by the trial court was in conformity with the law and that trial court had sufficient facts on which to base its determination. *In re Marriage of Abu-Hashim*, 2014 IL App (1st) 122997 (citing *Foutch v. O'Bryant*, 99 Ill.2d 389, 392 (1984)).

¶ 19 Based upon the trial court's findings laid out in its May 9 order, the guardian *ad litem* report, and the record, there is nothing before this court showing that the trial court abused its discretion in awarding sole custody to Curtis. In its thorough best interest analysis, the trial court found that Tiffany failed in her willingness and ability to facilitate and encourage a close and continuing relationship between Curtis and the child. 750 ILCS 5/602 (8) (West 2010). Tiffany's characterization of her sharing of parental information with Curtis about their child as being on a "need to know basis" was highlighted by her egregious failure to inform Curtis of the switch in the child's school in August 2013. Her admitted lack of interaction with the child while he was

