

NOTICE

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2014 IL App (4th) 140389-U

NO. 4-14-0389

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

September 26, 2014
Carla Bender
4th District Appellate
Court, IL

In re: MARRIAGE OF)	Appeal from
JOHN THOMAS JACKSON, JR.,)	Circuit Court of
Petitioner-Appellee,)	DeWitt County
and)	No. 09D63
RACHAEL MAE JACKSON, n/k/a RACHAEL M.)	
BARRETT,)	Honorable
Respondent-Appellant.)	William Hugh Finson,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Knecht and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's decision to deny mother's petition to move children out of state was not against the manifest weight of the evidence.

¶ 2 On August 5, 2013, Rachael Mae Jackson, n/k/a Rachael M. Barrett, filed a petition for leave to remove her and John Thomas Jackson's children from Illinois. John Thomas Jackson is referred to as both John and Tom throughout the record. However, we will refer to him as John. On December 16, 2013, the trial court denied Rachael's request to move the children out of state. On December 23, 2013, Rachael filed a motion asking the trial court to reconsider its decision. On April 15, 2014, the court denied Rachael's motion. Rachael appeals, arguing the court's denial of her motion to remove the children from Illinois is against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On August 5, 2013, Rachael filed a petition for leave to remove her minor children, K.J. (born November 4, 2008) and W.J. (born August 6, 2004), from Illinois. Rachael had custody of the children. John, the children's father, had specified visitation. Rachael alleged a change in circumstances had occurred which made removing the children from Illinois in their best interest. The petition stated a realistic and reasonable visitation order could be entered, allowing John to maintain his relationship with the children should removal be allowed.

¶ 5 On October 18, 2013, the guardian *ad litem* submitted his report to the trial court with regard to the removal petition, recommending Rachael be allowed to relocate to Pennsylvania with the children.

¶ 6 On December 16, 2013, the trial court held a hearing on Rachael's removal petition. Rachael testified she and John married in Ohio in 2003 and lived there for approximately two months before moving to New Castle, Pennsylvania, where they lived for about 1 1/2 years with Rachael's mother. W.J. was born in Pennsylvania. The family moved to Illinois in February 2005 because John wanted to be with his family.

¶ 7 John had at least five or six different jobs while living in Pennsylvania, including as a cook at a Golden Corral restaurant. After moving back to Illinois, John, Rachael, and their child stayed in Bloomington with John's mother for a day and with his brother for a year. They then got their own apartment in Normal, lived there for a year, and then moved to Clinton to live with John's aunt, whom John referred to as his "mother." They lived there together until 2009, when they separated. Before separating, K.J. was born. While living in Illinois, John worked at Walmart, Meijer, a gas station, and McDonald's. While they were married, the longest John held

a job was in Pennsylvania. Rachael testified she was currently unemployed but had worked a couple of months at a Casey's gas station.

¶ 8 When she left John, the children went with her. After that, John had custody of the children for 1 1/2 years pursuant to an order of protection. Rachael testified she was currently married to Craig Barrett, whom she married three years earlier. Craig worked at Servpro, making \$13.00 per hour. He had worked at Servpro for three years. Craig had lived with her and the children for about four years.

¶ 9 Craig actively participated in raising the children and in their social activities. Rachael stayed home with the children because she would not earn enough to pay for day care. John paid \$116 in child support every two weeks, which included an arrearage that had accumulated. Rachael testified she was able to support the children comfortably on Craig's income and John's child support payments. However, she testified she could provide more for the children if the family had more income.

¶ 10 Craig had a job offer at a lawn-care and home-improvement company in Pennsylvania, where he would make \$18 per hour. Rachael testified she would not need to get a job in Pennsylvania but could get one if she wanted. Rachael, Craig, and the children planned to live on their own. However, they would be living close to Rachael's mother, who lived in New Castle, Pennsylvania, where Craig's job would be. Rachael testified the children usually have daily contact with her mother through Skype or telephone calls. The children also saw Rachael's mother one week per summer. Rachael testified she could not afford to take the children to see her mother more than once per year, nor did they have the time to do so.

¶ 11 Rachael's mother also came to see her and the children for Christmas and sometimes birthdays. According to Rachael's testimony, her mother and the children love each other. If the family was living in Pennsylvania, the children would see their grandmother almost daily. Her mother was also available and willing to help provide and care for the children. However, as noted below, Rachael's mother is employed full time.

¶ 12 Rachael also stated she had some great-aunts, great-uncles, and cousins living in Pennsylvania. Some of the cousins were her age and some were her children's age. Her children socialized and spent time with these younger cousins when they went to Pennsylvania in the summer. Rachael testified neither she nor her husband had relatives in Illinois.

¶ 13 Rachael testified John saw the children every other weekend. John's aunt and some cousins live in Illinois. The children saw these cousins twice a week during her marriage to John. The children still interacted with these cousins, but Rachael did not know how often. She admitted the children got along as well with their cousins in Illinois as with their cousins in Pennsylvania.

¶ 14 If allowed to move to Pennsylvania, Rachael said she and John would be able to alternate Christmases and other long holiday breaks. John could also have the children for two weeks of their summer vacation. She wanted her children to be able to know and see their father. With her mother's help, she could afford to pay half of the cost of transporting the children for visits with John. However, her mother was not present to verify she would help pay for the cost of transporting the children.

¶ 15 According to Rachael's testimony, the children's relationship with their father was important and should be nurtured, fostered, and allowed to grow. She also testified John spends

a significant amount of time with the children, having them every other weekend until Tuesday. Further, she had no reason to believe John was not a good influence on the children or did not sincerely love them.

¶ 16 On cross-examination, Rachael admitted she did not know how the cost of living in Pennsylvania compared to Illinois or how much housing would cost there. She also stated, other than her mother and some older aunts and uncles, her relatives in Pennsylvania lived an hour from where she planned to reside.

¶ 17 Rachael stated she was pretty comfortable in Illinois with regard to her housing, her marriage, and the children's schools. Rachael also admitted the move to Pennsylvania would probably create a sense of upheaval for the children.

¶ 18 Rachael testified her mother works full-time as a secretary at Westminster College. She testified her mother has the financial ability to come to Illinois to see the children.

¶ 19 John testified he has visitation with the children every other weekend. On his visitation weekend, he picks up the children on Friday night and drops them off on Tuesday morning. Although his testimony was not entirely clear, it also appears he has the children for at least one night per week during the weeks without weekend visitation. He lives in a house in Clinton where each child has his and her own room.

¶ 20 According to John's testimony, he feared losing contact with his children if the removal petition was granted. He was working at McDonald's and made approximately \$1,200 to \$1,300 per month after deduction of child support. While he has a driver's license, he does not own a car. According to his testimony, he would not be able to meet Rachael halfway to Pennsylvania for visitation. He could only drive to Pennsylvania if he was able to borrow

someone's car. Since Rachael filed the removal petition, she had not contacted him to discuss visitation should the motion be allowed. John stated he and Rachael do not have a good track record with regard to communicating with each other.

¶ 21 In addition, John testified he loves the children and the children love him. He tries to be involved in the children's school as much as possible. He believed his relationship with the children would be "tremendously" affected if they moved to Pennsylvania. The children have a good relationship with his "mother" and cousins in Clinton. John testified his "mother" helps him out financially.

¶ 22 In making its decision, the trial court relied on our supreme court's opinions in *In re Marriage of Eckert*, 119 Ill. 2d 316, 518 N.E.2d 1041 (1988), and *In re Marriage of Collingbourne*, 204 Ill. 2d 498, 791 N.E.2d 532 (2003). The court made the following findings: (1) Rachael was not seeking the removal as a ruse intended to defeat or frustrate visitation; (2) Rachael considered New Castle, Pennsylvania, her home and wanted to move back; (3) John was concerned about maintaining his relationship with the children if they moved to Pennsylvania; (4) John's current visitation schedule with the children would not be feasible if the children were allowed to move; (5) if removal was allowed, a reasonable and realistic visitation schedule could not be reached as any visitation between John and the children would be very difficult because of John's and Rachael's financial circumstances; and (6) even making \$18 per hour, Craig and Rachael will not have much money because Rachael does not work outside the home.

¶ 23 The trial court then addressed whether it found the removal would enhance the general quality of life for both Rachael and the children. The court noted indirect benefits are sufficient pursuant to *Collingbourne*. The court found Craig's hourly income would increase to

\$18.00 per hour and the children would be able to develop good relationships with their maternal relatives. However, the court stated the children would also lose contact with their paternal relatives.

¶ 24 The trial court disagreed with Rachael's argument the children would have a more stable environment in Pennsylvania. According to the court:

"They have a good environment while they're here and they'll have the same environment, except they won't see their father as often, in Pennsylvania. They'll still be provided the same kind of home environment there as they do here. I don't really think there is going to be any enhancement of stability."

As a result of its analysis, the court denied Rachael's petition to remove the children.

¶ 25 On December 23, 2013, Rachael filed a motion for reconsideration. On April 15, 2014, the court held a hearing on the motion, which it denied.

¶ 26 This appeal followed.

¶ 27 **II. ANALYSIS**

¶ 28 Rachael appeals, arguing the trial court erred in denying her petition to remove the children from Illinois. Section 609(a) of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/609(a) (West 2012)) states:

"The court may grant leave, before or after judgment, 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. When such removal is permitted, the court may require the party removing such child or children from Illinois to give reasonable security guaranteeing the return of such children."

Our supreme court has held the integral issue in removal cases is whether the move is in the children's best interests. *Eckert*, 119 Ill. 2d at 325, 518 N.E.2d at 1044. No bright-line rule exists for making this determination. *Id.* at 326, 518 N.E.2d at 1045. Instead, a trial court must rule on a "case-by-case basis, depending, to a great extent, upon the circumstances of each case." *Id.*

¶ 29 In examining the evidence and circumstances of a case, trial courts should be guided by the Dissolution Act's policy in custody matters, which is to "secure the maximum involvement and cooperation of both parents regarding the physical, mental, moral and emotional well-being of the children during and after the litigation." *Id.* at 328, 518 N.E.2d at 1046. A custodial parent must first establish a valid and sincere reason for wanting to move to another jurisdiction. *Id.* Only then should a trial court consider the relevant factors in determining whether removal is in the child's best interest. *Id.*

¶ 30 The trial court in this case essentially found Rachael had a valid and sincere reason for wanting to move to Pennsylvania. The evidence presented supports this finding. As a result, the court looked at the circumstances in this case to determine whether removal was in the children's best interests. According to our supreme court, some relevant factors "which may aid a trial court in determining the best interests of the child" are as follows: (1) the likelihood the

proposed move would enhance the quality of life for both the custodial parent and the child; (2) the motives of the custodial parent in seeking removal; (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." *Id.* at 326-27, 518 N.E.2d at 1045-46. While listing these specific factors, the supreme court made it clear a trial court should consider "any and all relevant evidence." *Id.* at 326, 518 N.E.2d at 1045. The trial court must examine the specific circumstances of the case before it. *Id.*

¶ 31 Based on the evidence presented in a particular case, a trial court must decide whether the custodial parent seeking removal has met his or her burden of proving removal is in the best interests of the children. *Id.* "[W]hat is in the best interests of the child cannot be considered without assessing the best interests of the other members of the household in which the child resides, most particularly the custodial parent." *Collingbourne*, 204 Ill. 2d at 526, 791 N.E.2d at 547. "A trial court's determination of what is in the best interests of the child should not be reversed unless it is clearly against the manifest weight of the evidence and it appears that a manifest injustice has occurred." *Eckert*, 119 Ill. 2d at 328, 518 N.E.2d at 1046.

¶ 32 As for John's visitation rights if removal was allowed, Rachael failed to establish a realistic and reasonable visitation plan could be established or complied with by the parties.

Our supreme court has stated:

"A reasonable visitation schedule is one that will preserve and foster the child's relationship with the noncustodial parent. When a parent has assiduously exercised his or her visitation rights, 'a court should be loath to interfere with it by permitting removal of the

children for frivolous or unpersuasive reasons.' [Citations.]

However, if the best interests of the children would not be affected by a move to another State, the custodial parent should be free to move. Thus, if the noncustodial parent objects to the removal but has not exercised his or her visitation rights, this fact should be considered in determining whether to grant the custodial parent's desire to move." *Id.* at 327-28, 518 N.E.2d at 1046.

In this case, the evidence established John consistently exercised his visitation rights and had a good relationship with the children. Further, even if removal was allowed and the parties could agree on a reasonable visitation schedule, the parties clearly did not have the financial means to comply with that schedule. If Rachael was allowed to remove the children to Pennsylvania, it would be extremely difficult for the children's relationship with John to be fostered and preserved. This would not be in the children's best interests.

¶ 33 Rachael attempted to establish benefits of removal, such as the children would be able to establish a better relationship with their maternal grandmother and cousins and the family would have a better quality of life because her husband's pay would increase by \$5 per hour (from \$13.00 to \$18.00). As the trial court noted, the children's relationship with Rachael's mother and cousins would come at the expense of the children's relationships with their paternal relatives in central Illinois.

¶ 34 Further, while Rachael's husband would earn more money per hour, Rachael failed to establish how this pay increase would enhance the children's or her quality of life. Rachael provided little evidence regarding the cost of living in New Castle, Pennsylvania,

compared with the cost of living in central Illinois. Without this information, the trial court could not determine what effect a \$5 per hour pay raise would have on the family's quality of life. The trial court's decision to deny Rachael's removal petition in this case is clearly not against the manifest weight of the evidence.

¶ 35

III. CONCLUSION

¶ 36 For the reasons stated, we affirm the trial court's denial of Rachael's petition to remove the children from Illinois.

¶ 37 Affirmed.