2016 IL App (2d) 151204-U
No. 2-15-1204
Order filed June 9, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF MIRACLE STOKES,	)	Appeal from the Circuit Court
	)	of DuPage County.
Petitioner-Appellant,	)	
	)	
and	)	No. 12-D-1658
	)	
WINSTON J. STOKES,	)	Honorable
	)	Robert E. Douglas,
Respondent-Appellee.	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Burke and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court order granting respondent's petition to modify custody and awarding respondent sole custody of the parties' minor daughter was not against the manifest weight of the evidence.

¶ 2 Petitioner, Miracle Stokes, appeals *pro se* from the judgment of the circuit court of Du Page County granting the petition of respondent, Winston J. Stokes, to modify custody of the parties' minor child, P.S. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Petitioner and respondent married on February 23, 1992, in Fond du Lac, Wisconsin. Two children were born of the marriage, N.S. (now emancipated) and P.S., born on April 5,

2003.[1] The parties separated in 2005. Following the separation, P.S. resided with respondent in Wisconsin. In November 2011, respondent was involved in an automobile accident while P.S. was a passenger in the vehicle. As a result of the accident, respondent was arrested, convicted of driving under the influence, and ordered to serve 16 months in a treatment facility beginning on May 1, 2012. To allow P.S. to complete the school year, respondent arranged for P.S. to live with his brother during respondent's incarceration. However, in May 2012, prior to the completion of the school year, petitioner traveled to Wisconsin and took P.S. to Illinois.

¶ 5 On August 7, 2012, petitioner filed a petition for an order of protection. On August 8, 2012, petitioner filed a *pro se* petition for dissolution of marriage. The dissolution proceeding was consolidated with the proceeding involving the order of protection. Due to his incarceration, respondent was not present at the hearings involving either the order of protection or the petition for dissolution of marriage. On August 28, 2012, a plenary order of protection was entered by default. The order of protection prohibited respondent from having any contact with petitioner or P.S. until August 20, 2014. On September 19, 2012, petitioner filed a motion for default in the dissolution action, alleging that, although respondent was served with notice of the proceeding, he failed to file an appearance or otherwise respond. The trial court granted the motion for default, and a judgment of dissolution of marriage entered on September 26, 2012. The judgment of dissolution granted petitioner "sole care, custody, control and education of [P.S.]."

¶ 6 On July 30, 2014, petitioner filed a motion to extend the plenary order of protection. At the presentment of the motion on August 20, 2014, the court extended the order of protection until a hearing could be held. On September 24, 2014, respondent filed a motion to dismiss

[1] On the court's own motion, we refer to the parties' children by their initials.

petitioner's petition to extend the plenary order of protection. Also on September 24, 2014, respondent filed a "Verified Petition to Vacate Custody Judgment Contained in the Judgment for Dissolution of Marriage" (custody petition). Thereafter, petitioner retained counsel and a guardian *ad litem* (GAL) was appointed on the minor's behalf. The parties stipulated that the custody petition would be treated as a petition to modify custody pursuant to section 610 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/610 (West 2014)) with custody being determined in accordance with the best-interest standard set forth in section 602 of the Act (750 ILCS 5/602 (West 2014)). On November 20, 2014, the trial court granted respondent's motion to dismiss petitioner's motion to extend the plenary order of protection. Thereafter, respondent began visitation with P.S.

¶ 7 A hearing on the custody petition was held on various dates between October 6 and November 13, 2015. In conjunction with the hearing, the GAL prepared a report recommending that sole custody of P.S. be granted to respondent. The GAL testified regarding her findings at the hearing. Petitioner, respondent, and petitioner's fiancé also testified at the hearing. In a letter opinion dated November 29, 2015, the trial court found that it is in the best interest of the minor that respondent be awarded residential custody. On November 30, 2015, the trial court entered a written order granting respondent's petition to modify custody and awarding him sole custody of P.S. The court granted petitioner visitation in accordance with a schedule accompanying the order. On December 9, 2015, petitioner filed a *pro se* notice of appeal from the trial court's order and a motion to stay the custody transfer pending appeal.

¶ 8 II. ANALYSIS

¶ 9 On appeal, petitioner, acting *pro se*, argues that the trial court erred in finding that it is in the best interest of P.S. that sole custody be granted to respondent. Prior to discussing this issue,

we must address two preliminary matters.

¶ 10 First, we note that this case is designated as "accelerated" pursuant to Illinois Supreme Court Rule 311 (eff. Feb. 26, 2010) because it involves a matter affecting the best interests of a child. With respect to such cases, Illinois Supreme Court Rule 311(a)(5) provides in relevant part that, "[e]xcept for good cause shown, the appellate court shall issue its decision within 150 days after the filing of the notice of appeal." Here, petitioner filed her *pro se* notice of appeal on December 9, 2015. Thus, the 150-day period to issue our decision expired on May 9, 2016.[2] However, as a result of petitioner's request for an extension of time to file her brief, this case was not ready for disposition until May 25, 2016. Under these circumstances, we find good cause to issue our decision after the 150-day deadline. Second, we observe that respondent has not filed an appellee's brief. However, this does not meaningfully impede our review given that the record is simple and the issues can be decided without the aid of an appellee's brief. See *First Capital Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 11 Turning to the merits, we note that section 610(b) of the Act (750 ILCS 5/610(b) (West 2014)) allows for the modification of a prior custody judgment if: (1) there has been a change in circumstances and (2) modification is necessary to serve the best interest of the child. *In re Marriage of Debra N. and Michael S.*, 2013 IL App (1st) 122145, ¶ 47. A trial court's custody determination is afforded great deference because the trial court is in the best position to judge the credibility of the witnesses and assess the best interests of the minor. *In re Marriage of Sussenbach*, 108 Ill. 2d 489, 499 (1985). As such, we review a ruling modifying the custody of a

[2] The 150th day is actually May 7, 2016. However, as that date falls on a Saturday, the due date is extended to the following business day. See 5 ILCS 70/1.11 (West 2014).

child under the manifest-weight-of-the-evidence standard. *In re Marriage of Bates*, 212 Ill. 2d 489, 515 (2004). A 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.

¶ 12 In this case, petitioner's argument is limited to contesting the trial court's finding that it is in the best interest of P.S. that custody be placed with respondent. Section 602(a) of the Act (750 ILCS 5/602(a) (West 2014)) provides various factors for the court to consider in determining whether a custodial arrangement is in the minor's best interests. Those factors include: (1) the wishes of the child's parents as to custody; (2) the wishes of the child as to his or her custodian; (3) the interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interest; (4) the child's adjustment to his or her home, school, and community; (5) the mental and physical health of all individuals involved; and (6) 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) (West 2014).

¶ 13 Here, the trial court considered the factors set forth in section 602(a) of the Act and concluded that it would be in the best interest of P.S. to award sole custody to respondent. The court found that although both parents wished to be the residential custodian, P.S. expressed to the GAL her desire to reside with respondent. The court further determined that P.S.'s relationship with petitioner is "somewhat strained" and that the minor has a "better interaction" with respondent. The court also noted that P.S. has virtually no family in Illinois. In contrast, P.S.'s brother, with whom she enjoys a good relationship, resides in Wisconsin as does extended family members from both petitioner's and respondent's sides of the family. Additionally, the

court determined that while petitioner resides in a better school district than respondent, there was no evidence that the schools P.S. would attend in Wisconsin were inadequate to meet the minor's educational needs. Moreover, the court noted that P.S.'s ties to Wisconsin are greater than those to Illinois. In Wisconsin, P.S. has friends that she has known for years, whereas P.S. only recently moved to the school district she would attend in Illinois and reported that she has few friends there. The court also pointed out that petitioner suffers from asthma and this condition limits her ability to drive and engage in activities with P.S. Finally, the court concluded that respondent would be more likely to foster a relationship between P.S. and petitioner. In this regard, the court found that petitioner has made attempts to keep P.S. from respondent "at every turn," that she did not allow respondent's extended family to see P.S. during the time the plenary order of protection was in effect, and that she has taken no part in the visitation exchanges, leaving all of the logistics to respondent. After reviewing the record, we find that the trial court's findings have ample support in the record. Accordingly, we cannot say that the trial court's decision to grant respondent's petition to modify custody and to award respondent sole custody of P.S. is against the manifest weight of the evidence.

¶ 14 Despite the trial court's extensive findings, petitioner insists that the trial court's decision was improper. The gist of petitioner's argument is that the trial court should have assigned little weight to the GAL because of inconsistencies between her testimony and the testimony of the other witnesses. As noted above, the trial court is in the best position to judge the credibility of the witnesses. *Sussenbach*, 108 Ill. 2d at 499. In this case, the trial court cited the report and testimony of the GAL in making its best-interest finding. However, the court also rejected portions of the GAL's testimony when it determined that the GAL's testimony was not supported by the evidence. For instance, the court found that although the GAL testified that petitioner

suffered from depression, scant evidence was presented to substantiate this testimony. Given the trial court's role in weighing the evidence, we reject petitioner's claim that the alleged inconsistencies in the GAL's testimony compel a conclusion opposite to the one reached by the trial court.

¶ 15 III. CONCLUSION

¶ 16 For the reasons set forth above, we affirm the judgment of the circuit court of DuPage County, which granted respondent's petition to modify custody and awarded custody of P.S. to respondent.

¶ 17 Affirmed.