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2016 IL App (3d) 160175-U

Order filed December 21, 2016

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2016

ANTONIO ESCOBEDO VICTORIA,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
Petitioner-Appellee,	)	Rock Island County, Illinois,
	)	
v.	)	Appeal No. 3-16-0175
	)	Circuit No. 14-F-30
	)	
KATHIA VILLASENOR,	)	Honorable
	)	Frank R. Fuhr,
Respondent-Appellant.	)	Judge, Presiding.

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JUSTICE WRIGHT delivered the judgment of the court.  
Presiding Justice O'Brien and Justice Carter concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* The trial court's finding that visitation with the child's father was in the best interests of the child is not contrary to the manifest weight of the evidence.
- ¶ 2 Respondent, Kathia Villasenor, appeals from the trial court's order awarding visitation with the parties' minor child, A.S.V., to petitioner, Antonio Escobedo Victoria. Kathia argues the court's visitation award was contrary to the best interests of the child. We affirm.



with Kathia, and hospital security directed Antonio to leave. The Department of Children and Family Services (DCFS) initiated an inquiry and suggested that Antonio should receive counseling. Antonio agreed to participate in the DCFS counseling, and DCFS concluded its inquiry without making any affirmative findings against Antonio. Approximately one and a half weeks after the birth, Kathia permitted Antonio to see A.S.V. Thereafter, Antonio received sporadic visits with the child, which usually occurred when Kathia needed to run an errand.

¶ 7 Antonio initiated a relationship with Jessica Salinas after his relationship with Kathia ended. Antonio and Jessica later married, and in 2013, Jessica gave birth to V.V. Antonio was V.V.'s father, and he wanted V.V. and A.S.V. to have a relationship through visitation. Kathia was opposed to the two children participating in visitation.

¶ 8 In March 2013, Antonio's vehicle was burned by an unknown individual. An officer told Antonio the fire might have been gang related because there was graffiti on the side of the vehicle. At the time of the fire, Kathia was dating Hunter White. Antonio thought White was affiliated with a rival gang to the gang Antonio had previously belonged to. Antonio suspected White had started the vehicle fire. In May 2013, Antonio's house was burglarized and set on fire. Antonio again thought White was responsible, but the police were unable to identify a suspect. In spite of the fires, burglary, and his prior conviction, Antonio thought his living environment was not dangerous.

¶ 9 At the time of the hearing, Antonio was employed as an electrician apprentice. Antonio worked 5:30 a.m. to 6 p.m., six days per week. Antonio said his four sisters, who lived in the area, were available to provide care for A.S.V. while he was at work. At the time, Antonio was responsible for the care of V.V., as Jessica was in the military and stationed elsewhere. Antonio intended to visit Jessica as frequently as possible, and he was trying to get a job transfer to

California where Jessica was scheduled to be stationed after she completed basic training.

Antonio and Jessica intended to move back to Illinois after Jessica completed her three-year military commitment. Presently, Antonio lived in a one-bedroom apartment, and he was trying to find a home that would be suitable for two children.

¶ 10 Antonio wanted to have full custody of A.S.V., and he acknowledged that, at the time of the hearing, A.S.V. did not recognize him. Antonio offered to participate in any court-ordered program or prerequisite so long as he was afforded the opportunity to have a relationship with A.S.V. As an alternative to full custody, Antonio asked the court to award visitation during the week and on the weekend. Antonio suggested the visitations could begin with several short visits to allow A.S.V. to become familiar with him. Once A.S.V. became comfortable, then the visitation could evolve into shared parenting time. Antonio offered to pay for the transportation costs associated with the visitation.

¶ 11 Antonio thought A.S.V. did not recognize him as her father because Kathia had several previous boyfriends. Photographs of A.S.V. with one of Kathia's boyfriends had prompted Antonio to exchange some heated text messages with Kathia. Antonio said he lost his temper and acted inappropriately in response to the photographs. Antonio asked the court to monitor the parties' future communications through an intermediary website. Antonio also agreed that a family member could be appointed to facilitate the custody exchanges and avoid any negative interaction between Kathia and himself.

¶ 12 On cross-examination, counsel for Kathia admitted into evidence several Facebook and text messages which Antonio sent to Kathia between 2012 and 2014. The messages were profane, derogatory, and demeaning. In some of the messages, Antonio alleged he was not A.S.V.'s father.

¶ 13 Jessica testified that she and Antonio were married. Together, Jessica and Antonio had one child, V.V. Jessica also had a nine-year-old son from a prior relationship. Jessica said Antonio was “a great dad.” After Jessica and Antonio started dating, a court awarded custody of her nine-year-old son to the child’s father. When Jessica had visitation with her son, Antonio participated in the parenting duties and taught him to play softball. Jessica said her son and Antonio had a good relationship. Following the birth of V.V., in October 2012, Antonio became a stay-at-home parent. Antonio and V.V. had a very strong bond. Based on Antonio’s relationships with the children in Jessica’s life, Jessica felt Antonio would develop a strong bond with A.S.V. if he were given an opportunity.

¶ 14 Dana Victoria testified she was Antonio’s sister. Dana was employed as a registered nurse in a hospital emergency room. Dana trusted her children with Antonio, and she said Antonio was teaching her son how to play softball and soccer. Dana’s son had a close bond with Antonio. Dana noted Antonio readily developed positive bonds with children, and Kathia had prevented Antonio from developing a bond with A.S.V. Dana and her sisters assisted Antonio with caring for V.V. Dana was also unconcerned about Antonio’s prior conviction because she recognized that Antonio had changed from an uncaring child to a fully rehabilitated adult. Dana said Antonio had made efforts to visit with A.S.V. and provided Kathia with financial support. Overall, Dana thought Antonio would provide a positive influence in A.S.V.’s life, and she emphasized the importance of having Antonio involved as A.S.V.’s father.

¶ 15 David McNichols testified that Kathia was his fiancée and they had lived together since March 2014. McNichols and Kathia called A.S.V. “Sofia” or “Sophie.” A.S.V. was very attached to Kathia and it took A.S.V. nearly two months to warm up to McNichols. After one year of living with Kathia, A.S.V. started calling McNichols “[d]addy.” When Kathia received text

messages from Antonio, Kathia appeared scared and expressed a fear that Antonio might stop by the house. Following an August 2014 text message, McNichols called Antonio. Antonio spoke negatively about Kathia and warned McNichols to “watch [him]self” because Kathia might attempt to “trap” McNichols. The same month, McNichols was present when Antonio had a visit with A.S.V. A.S.V. did not recognize Antonio and did not respond to him when he called for her. Instead, A.S.V. ran to Kathia and stayed in her arms during the entire visit.

¶ 16 Edilberto Villasenor, Jr. testified he was Kathia’s brother. Edilberto was frequently around Kathia and noted A.S.V. was always playful. Edilberto heard A.S.V. call McNichols “[d]addy.” Edilberto thought McNichols and A.S.V. had a strong bond as McNichols supported A.S.V. emotionally and financially. Edilberto also noted A.S.V. was a shy child, and she often appeared scared or nervous around people she did not know.

¶ 17 Kathia testified she was employed as a personal banker, but at the time of the hearing, she was on maternity leave. Kathia lived in a house in Rock Island with McNichols, A.S.V., and her son. Kathia started dating Antonio in October 2011. Antonio told Kathia he had been involved in a gang-related shooting which resulted in a death. Kathia thought Antonio had shown no remorse for the murder.

¶ 18 When Kathia learned she was pregnant, she called Antonio, and she heard Antonio cry. Kathia then moved into Antonio’s house. Kathia and Antonio lived together for two weeks. During this time, Antonio showed little interest in assisting Kathia or participating in the pregnancy. Eventually, Antonio asked Kathia to move out of the house. Antonio told Kathia he was overwhelmed and did not want the responsibility to care for Kathia and an infant. Kathia said her communications with Antonio were never good and Antonio only called to insult her or

claim he was not A.S.V.'s father. Antonio often told Kathia to commit suicide as she had ruined his life.

¶ 19 The night after A.S.V. was born, Antonio visited Kathia at the hospital. Antonio became enraged while looking through Kathia's cellular phone and threatened to "beat the shit out of" Kathia. Kathia snuck out of the hospital room and contacted security who directed Antonio to leave the hospital. Before her discharge, a woman from the hospital questioned Kathia about the incident, and a DCFS investigator interviewed Kathia at her home.

¶ 20 When A.S.V. was seven or eight months old, Kathia began calling A.S.V. "Sophie" or "Sophia." Antonio showed occasional interest in A.S.V., and he saw A.S.V. two or three times in 2012, and on her birthday in 2013. In total, Kathia estimated Antonio had seen A.S.V. approximately 10 times. Antonio last saw A.S.V. in August 2014. Kathia said Antonio had provided no financial support, and when Kathia initiated an action for child support, Antonio sent so many derogatory text messages that Kathia withdrew the suit. Due to Antonio's numerous insulting text messages, Kathia changed her cellular phone number.

¶ 21 Kathia did not trust Antonio with A.S.V. and opposed any visitation because she thought Antonio did not have good intentions and he was incapable of being a good father. Kathia felt the instant proceedings were initiated in retribution for Kathia's attempt to get child support. In contrast, Kathia was committed to caring for her family. Kathia had an amazing relationship with McNichols, who helped care and provide for A.S.V.

¶ 22 In a written order, the court found: Antonio sincerely desired to establish a father-child relationship with A.S.V., and the best interest factors favor allowing Antonio to have visitation with A.S.V. The court ordered both parties not to engage in demeaning, insulting, or harassing communication and imposed a visitation schedule that started with supervised day time visitation

every other weekend. After five months, Antonio was to have unsupervised visitation with A.S.V. on alternating Wednesday evenings and every other weekend from Friday at 7 p.m. until Sunday at 7 p.m. On March 8, 2015, the court’s opinion was reduced to a judgment and order. In the judgment, the court found: Antonio was a fit and proper person to have visitation with A.S.V. and he sincerely desired to establish a father-child relationship; and it was in the best interests of A.S.V. to award Antonio visitation in order to establish a father-child relationship. Kathia appeals from the judgment.

¶ 23 ANALYSIS

¶ 24 Kathia argues the trial court erred by finding visitation between Antonio and A.S.V. was in the best interests of the child. Antonio urges this court to affirm the trial court’s ruling since the order was not contrary to the manifest weight of the evidence.

¶ 25 Initially, we note the parties dispute the applicable standard of review. Kathia argues we review the trial court’s best interest finding to determine if it was contrary to the manifest weight of the evidence. *In re Marriage of Bush*, 170 Ill. App. 3d 523, 529 (1988). Antonio argues the trial court’s decision will not be reversed unless it was the result of a “clear abuse of discretion.” *In re Marriage of Willis*, 234 Ill. App. 3d 156, 161 (1992). In *In re Parentage of J.W.*, 2013 IL 114817, ¶ 55, our supreme court stated “[a] trial court’s determination as to the best interests of the child will not be reversed on appeal unless it is clearly against the manifest weight of the evidence and it appears that a manifest injustice has occurred.” Therefore, we review the court’s ruling to determine if it was contrary to the manifest weight of the evidence.

¶ 26 The Parentage Act provides a statutory scheme for determining paternity and establishing visitation. 750 ILCS 45/1 *et seq.* (West 2014). Following the establishment of paternity, the Parentage Act vests the court with discretion to enter an order for visitation with the noncustodial

parent. 750 ILCS 45/14(a)(1) (West 2014). The best interests of the child are determinative of whether visitation with the biological father is warranted. *J.W.*, 2013 IL 114817, ¶ 40.

Interpreting section 14(a)(1) of the Parentage Act, our supreme court found that the trial court had discretion to award visitation, so long as it found visitation was in the best interests of the child. *Id.* ¶ 50. Section 14(a)(1) of the Parentage Act “contemplates a hearing where the court has the flexibility to consider whether, and to what extent, the biological father may now exercise visitation rights with respect to the child.” *Id.* (citing 750 ILCS 45/14(a)(1) (West 2010)). The best interest factors outlined in section 602 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/602 (West 2014)) best promote the legislative intent of the Parentage Act. *J.W.*, 2013 IL 114817, ¶ 51. The section 602 best interest factors include: “(1) the wishes of the child’s parent(s); (2) the wishes of the child; (3) the interaction and interrelationship of the child with the parent(s), siblings, and any other person who may significantly affect the child’s best interests; (4) the child’s adjustment to his or her home, school, and community; (5) the mental and physical health of the involved individuals; (6) the potential for violence or threat of violence; (7) the occurrence of ongoing or repeated abuse; (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 one of the parents is a sex offender; and (10) military obligations.” *Id.* (citing 750 ILCS 5/602(a) (West 2010)).

¶ 27           After reviewing the evidence, we conclude the court’s well-reasoned opinion and findings were not contrary to the manifest weight of the evidence. The law presumes, absent any indication of abuse, “that the maximum involvement and cooperation of both parents regarding the physical, mental, moral, and emotional well-being of their child is in the best interest of the child.” 750 LCS 5/602(c) (West 2014). In the present case, we find this presumption was

unrebutted. The record establishes Antonio's ongoing and strong desire to have a relationship with A.S.V. Testimony from Dana and Jessica indicated Antonio has developed strong relationships with V.V. and other children when he has been afforded the opportunity. Antonio's prior limited visitation with A.S.V. restricted his ability to form a similar bond with A.S.V. Testimony from Dana and Jessica, regarding Antonio's current living situation and interaction with children showed any issues of violence are part of Antonio's past. Presently, Antonio's testimony established that he was focused on providing and caring for his family.

¶ 28 The court's visitation schedule also reflected the court's consideration of the best interest factors. First, the court ordered incremental visitation to allow A.S.V. to develop a relationship with Antonio. Second, the court ordered the parties not to engage in any demeaning or harassing communications which had inhibited prior visitations. Finally, the order specifically directed the parties' to bring an action to modify the visitation, as necessary, to fit the circumstances of the parties and best interests of the child. Therefore, we find the court's order was crafted to further the best interests of the child.

¶ 29 In coming to this conclusion, we acknowledge that evidence was presented regarding *potential* gang activity related to the 2013 burning of Antonio's vehicle and home. We note these incidents occurred approximately one year before Antonio filed the parentage action and nearly three years before the judgment was entered. Viewing these incidents in conjunction with the remainder of the evidence found in the record, we cannot say the trial court's best interest finding was contrary to the manifest weight of the evidence.

¶ 30 CONCLUSION

¶ 31 The judgment of the trial court of Rock Island County is affirmed.

¶ 32 Affirmed.