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2016 IL App (4th) 160033-U

NO. 4-16-0033

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
June 8, 2016
Carla Bender
4th District Appellate
Court, IL

In re: the Marriage of)	Appeal from
KRISTEN HUMMEL KLAASEN,)	Circuit Court of
Petitioner-Appellee and)	Mason County
Cross-Appellant,)	No. 05D17
and)	
KENNETH WILLIAM KLAASEN,)	Honorable
Respondent-Appellant and)	Alan D. Tucker,
Cross-Appellee.)	Judge Presiding.
)	

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Turner and Pope concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed as modified, finding the trial court did not err by granting joint custody, and remanded for the entry of a new joint-custody order.

¶ 2 In February 2005, petitioner, Kristen Hummel Turner, f/k/a Kristen Hummel Klaasen, filed a petition for dissolution of marriage. In March 2005, respondent, Kenneth William Klaasen, filed a response to the petition for dissolution of marriage. In November 2005, the trial court entered a judgment. The parties stipulated to a partial marital settlement agreement but did not resolve custody of their triplets, Ethan, Lannah, and Kylie. The court found the best interest of the children would be served by awarding sole custody of the children to Kenneth. Kristen was awarded visitation per a visitation schedule. Kristen filed a motion to reconsider. The court denied Kristen's motion and she filed an appeal. Following the appeal, Kenneth and Kristen engaged in mediation, which led to a modification order. The joint-

parenting agreement (Agreement) stated the parties would share joint legal custody, and Kenneth would serve as custodial parent and have the final say on all issues except visitation.

¶ 3 In March 2014, Kristen filed a petition to modify custody, alleging changes in the circumstances relied on by the trial court in the initial custody agreement. Kristen sought temporary and permanent residential custody of Ethan, Lannah, and Kylie. In June 2014, Kenneth responded to Kristen's petition, denying the allegations and requesting the court award him sole custody of Ethan, Lannah, and Kylie. In January 2015, the court entered a temporary joint-parenting order awarding Kristen and Kenneth equal parenting time and responsibility. In September 2015, following additional evaluations by an appointed guardian *ad litem* (GAL) for the children, a final custody order was entered. The final order was a modification of the original May 2006 Agreement granting Kristen and Kenneth equal parenting time and decision-making responsibility.

¶ 4 In October 2015, Kristen and Kenneth filed motions to reconsider, each requesting they be granted sole custody. In December 2015, the trial court denied these motions. This appeal and cross-appeal followed.

¶ 5 I. BACKGROUND

¶ 6 Kristen and Kenneth were married in May 2001, in Tazewell County, Illinois. In January 2004, Kristen and Kenneth had triplets—Ethan, Lannah, and Kylie. In February 2005, Kristen filed a petition for dissolution of marriage. In March 2005, Kenneth filed his response. In November 2005, the trial court entered an order. The parties had entered into a partial marital settlement agreement disposing of all issues except custody of the triplets. After determining it was in the best interest of the triplets, the court awarded Kenneth sole custody. The court also ordered Kristen to pay \$411 in child support every two weeks. In November 2005, Kristen filed

a motion to reconsider. The trial court denied her motion. She filed a notice of appeal (No. 4-06-0053). In May 2006, a modification order was entered as a result of mediation between Kristen and Kenneth. The order stated the parents would share joint legal custody of Ethan, Lannah, and Kylie. Kristen also agreed to withdraw her appeal. The Agreement outlined the rights and responsibilities of the parents, including (1) for Kenneth to serve as the residential parent and primary physical custodian, (2) regular and reasonable visitation for Kristen, and (3) sharing the decision-making process between the two of them. Kenneth retained ultimate authority in the event of any dispute except visitation.

¶ 7 Both parents remarried. Kenneth's household included his wife, Jennifer; Jennifer's four older sons from a previous relationship; Kenneth's daughter, born to Jennifer; four dogs; and a cat. Kristen's household included her husband, Chad Turner; and a son, born to Chad.

¶ 8 In March 2014, Kristen filed a petition to modify custody, alleging changes had occurred in the circumstances relied on by the trial court in the initial custody agreement. Kristen sought temporary and permanent residential custody of the triplets. Kristen alleged the children wished to stay with her and not Kenneth. Kristen further alleged the living environment at Kenneth's home was unstable and volatile, and Kenneth could not provide "the attention, care[,] and love [the children need] on a daily basis." Kristen alleged additional violations of the Agreement had occurred. In June 2014, Kenneth responded to Kristen's petition, denying the allegations and requesting the court award him sole custody of Ethan, Lannah, and Kylie.

¶ 9 The trial court requested reports from a GAL appointed to represent the interests of the children. The GAL prepared two reports. In her initial report, the GAL interviewed Kristen, Kenneth, Chad Turner (Kristen's new husband), Jennifer Klaasen (Kenneth's new wife),

Curt Keller (a therapist who interviewed the triplets), and the triplets. After interviewing each of the above individuals, the GAL provided her overall conclusions. The GAL concluded the triplets did not want to move because they liked their school and friends in Manito, Illinois. The triplets, according to the GAL, loved both parents and had bonds with each stepparent but wished they could spend more time with Kristen. The GAL also detailed the communication disputes between Kristen and Kenneth. The GAL report discussed failed attempts to communicate between both parties. The GAL noted Kenneth has not always facilitated scheduling flexibility. The GAL determined, from her own interview, the triplets often feel anxious about upsetting each parent and being unable to communicate with each parent about their anxiety. The GAL did not know if Kristen would be a "better facilitator if the children resided with her" and felt Kristen did not take advantage of opportunities to be more "directly involved with the children ***". Her resentment of being asked to participate in activities she has not chosen, or activities that affect her visiting time, [was] obvious." In summary, the GAL recommended no change be made in the custody arrangement.

¶ 10 In November 2014, the GAL filed her report of "final recommendations" following "[f]ive full and partial days of testimony and the presentation of evidence." Based on the testimony and evidence, the GAL found Kenneth had not "effectively facilitated [the triplets'] relationship with their mother, Kristen Turner, as *** contemplated by the [Agreement]." The GAL found Kenneth exhibited a pattern of conduct "unnecessarily limit[ing]" Kristen's parental involvement beyond what was agreed to in the Agreement. The GAL concluded, based on the evidence and Kristen's willingness "to be intimately involved with her children [and] her willingness to initiate and facilitate communication in *** difficult situation[s]," the best interest of the children lay with Kristen having sole custody of the triplets.

¶ 11 In December 2014, Kristen filed written closing arguments, seeking full custody. She argued Kenneth had "treated Kristen as nothing more than a marginal, court ordered player in the lives of their children." Kristen also alleged Kenneth violated the Agreement on numerous occasions. Kenneth filed his own written closing argument the same month. Kenneth alleged the best interest of the triplets was to remain with him in the stable environment established in Manito.

¶ 12 In January 2015, the trial court entered a temporary joint-parenting order awarding Kristen and Kenneth equal parenting time and responsibility, *i.e.*, the triplets alternated weekly between the parents' households. The court noted the wishes of the parents as well as the children. The parents pleaded for sole custody, or in the alternative, joint custody of the children. The triplets stated they did not want to leave their school or friends and loved both their parents and stepparents. The triplets wanted to spend more time with Kristen and for her to have greater involvement in their lives. The court also noted Kenneth's failure to understand "noncustodial [parent] does not mean non-parent." The triplets' relationship with "their parents and siblings and *** step-parents and half-brothers and sisters" was an important factor in the court's decision. The court also noted the triplets were well-adjusted to their current home, school, and community. The joint-parenting order modified the May 2006 Agreement. The modification ordered the parents to have "equal time" divided into alternating, one-week intervals spent at Kenneth's and Kristen's homes. The court also terminated Kristen's \$822 per month child-support obligation. The court emphasized the dual nature of this modification. In particular, the court hoped the Agreement would facilitate cooperation and communication between Kenneth and Kristen. The court noted, "[Kristen and Kenneth had] done a remarkable job with these children." Although Kenneth cared for the children "under extremely difficult

circumstances when the children were very young," Kristen had since stabilized and the children would benefit from the love of two parents. The court ended by noting neither Kenneth nor Kristen had "won or lost," and instead, it was the triplets who won by having "terrific" and cooperative parents.

¶ 13 In the written temporary joint-parenting order, the trial court terminated the provision in the original Agreement allowing Kenneth to have the "final say" on any major issues. Decision-making, per the court order, was the dual responsibility of Kenneth and Kristen. The court also called Kenneth and Kristen for a review hearing in June 2015 for entry of a final order.

¶ 14 In July 2015, the GAL filed a supplemental report following the implementation of the temporary joint-parenting order. The GAL interviewed Kristen, Kenneth, and the triplets. According to the GAL, Kristen believed alternating full weeks had worked because it was more of a "constant" and she was able to "be there for the kids." Kristen reported communication and meetings were not perfect. The GAL reported, in sum, Kristen felt Kenneth's attitude had not changed and he still did not solicit her opinion. Kristen further felt Kenneth continued to push participation in the Manito school "in an effort to solidify the [triplets'] involvement in Manito and preclude them from developing relationships in Pekin."

¶ 15 The GAL reported Kenneth felt the children wanted the "week on/week off" schedule and agreed to continue the process. Kenneth reported communication was "a work in progress." Kenneth also admitted pushing activities in Manito instead of Pekin because Pekin "is not [the triplets'] community." Kenneth did state, if the activity was not available in Manito, he would suggest looking to Pekin. This was the case when the two girls wanted to enroll in cheer camp, which was only available in Pekin.

¶ 16 The GAL finally detailed her interviews with the triplets. The triplets explained the alternating-week schedule worked for them and they did not want to "go back to the way it was." They enjoyed spending more time with their mother and the situation "felt more equal." The triplets still recognized the tension between their parents but felt they could communicate with them.

¶ 17 The GAL summarized her findings and provided a recommendation to the trial court. The GAL also noted the triplets love each parent and do not feel pressured to choose one parent over the other. Any apparent tension, according to the GAL, was unnecessary. The GAL opined the court should allow the triplets to continue to "explore their full potential in both communities."

¶ 18 In September 2015, the trial court issued a final custody order. The court ordered Kenneth and Kristen to "co-parent" the triplets in accordance with the May 2006 Agreement, as modified. The court ordered the week-to-week alternating schedule to continue. The court went further and awarded Kenneth sole decision-making authority for education and extracurricular activities beginning in the 2015-16 school year. It awarded Kristen sole decision-making authority for medical and religious decisions beginning in the 2016-17 school year. The court ordered this decision-making authority to alternate between the parties on these matters at the end of every school year thereafter.

¶ 19 Both parties filed motions to reconsider. In December 2015, the trial court denied both motions to reconsider and left the September order in effect. This appeal and cross-appeal followed.

¶ 20 II. ANALYSIS

¶ 21 On appeal, Kristen argues the trial court erred by not awarding her sole custody.

Kenneth cross-appeals, arguing the trial court erred by granting joint custody and should award sole custody to him. Both parties argue the best interest of the triplets is in the sole custody of either Kristen or Kenneth.

¶ 22 A. Standard of Review

¶ 23 Section 610 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/101-802 (West 2014)) governs the procedure of modifying a joint-custody order. "In the case of joint custody, if the parties agree to a termination of a joint custody arrangement, the court shall so terminate the joint custody and make any modification which is in the child's best interest." 750 ILCS 5/610(b) (West 2014). When both parties file motions to modify, "it would be pointless and redundant to require the parties to prove by other clear and convincing evidence" a modification is needed. *In re Marriage of Lasky*, 176 Ill. 2d 75, 81, 678 N.E.2d 1035, 1038 (1997). A change of circumstances is obvious when "both parties seek to terminate joint custody and stipulate *** a change in circumstances has occurred." *Id.* " 'Once the trial court has determined modification is required by clear and convincing evidence, the reviewing court will not disturb that decision unless it is contrary to the manifest weight of the evidence.' " *In re Marriage of Rogers*, 2015 IL App (4th) 140765, ¶ 62, 25 N.E.3d 1213 (quoting *In re Marriage of Oros*, 256 Ill. App. 3d 167, 168, 627 N.E.2d 1246, 1248 (1994)). A judgment is against the manifest weight of the evidence when "the opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based upon the evidence." (Internal quotation marks omitted.) *In re Marriage of Lonvick*, 2013 IL App (2d) 120865, ¶ 33, 995 N.E.2d 1007.

¶ 24 B. Best Interest of the Triplets

¶ 25 Kenneth and Kristen filed petitions to modify the May 2006 Agreement. As a

result, they were not required to show a change of circumstances had occurred by clear and convincing evidence. *Lasky*, 176 Ill. 2d at 81, 678 N.E.2d at 1038. Kenneth and Kristen argue the facts establish they each should have sole custody because it is in the triplets' best interest.

¶ 26 A trial court shall terminate or modify the joint-custody arrangement dependent on the children's best interest. 750 ILCS 5/610(b) (West 2014). According to section 602(a) of the Act, in determining what is in the best interest of the children, a court shall consider all relevant factors, including:

"(1) the wishes of the child[ren]'s parent or parents as to [their] custody;

(2) the wishes of the child[ren] as to [their] custody;

(3) the interaction and interrelationship of the child[ren] with [their] parents, [their] siblings[,] and any other person who may significantly affect the child[ren]'s best interest;

(4) the child[ren]'s adjustment to [their] home, school[,] and community;

(5) the mental and physical health of all individuals involved;

(6) the physical violence or threat of physical violence by the child[ren]'s potential custodian, whether directed against the child[ren] or directed against another person;

(7) the occurrence of ongoing or repeated abuse as defined in Section 103 of the [Illinois Domestic Violence Act of 1986], whether directed against the child[ren] or directed against another

person;

(8) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child[ren];

(9) whether one of the parents is a sex offender; and

(10) the terms of a parent's military family-care plan that a parent must complete before deployment if a parent is a member of the United States Armed Forces who is being deployed." 750 ILCS 5/602(a) (West 2014).

¶ 27 After reviewing the best-interest factors, the trial court determined a modification of the May 2006 Agreement was in the children's best interest. The court awarded joint custody of the children with residential custody to alternate from week to week. This decision was not against the manifest weight of the evidence. On appeal, Kristen and Kenneth argue the facts presented favored one of them having sole custody of the children. We disagree.

¶ 28 A trial court is not required to make a specific finding regarding each factor listed in section 602(a) of the Act as long as evidence was presented from which the court could consider the factors prior to making its decision. *In re Marriage of Hefer*, 282 Ill. App. 3d 73, 79, 667 N.E.2d 1094, 1099 (1996). The trial court is in the best position to determine the credibility of the witnesses (including the GAL) and parties, sift through the facts presented, and determine the best interest of the children. *Lonvick*, 2013 IL App (2d) 120865, ¶ 33, 995 N.E.2d 1007. Out of the 10 best interest factors, Nos. 1, 2, 3, 4, and 8 are applicable to the current facts.

¶ 29 1. *Wishes of Kenneth and Kristen*

¶ 30 If both parents file for sole custody, it weighs in favor of neither parent. *In re Marriage of Young*, 2015 IL App (3d) 150553, ¶ 13, 47 N.E.3d 1111.

¶ 31 Both Kristen and Kenneth filed petitions to modify the Agreement and sought sole custody for themselves. As a result, the wishes of the parents favor neither parent.

¶ 32 *2. Wishes of the Children*

¶ 33 The wishes of the children, *if mature*, are given considerable weight if based on sound reasoning. *In re Marriage of Leff*, 148 Ill. App. 3d 792, 810, 499 N.E.2d 1042, 1054 (1986).

¶ 34 The triplets, now 12, expressed a desire to see both parents for an equal amount of time. In recognition of the triplets' wishes, the court awarded joint custody and ordered residential custody to alternate between Kenneth and Kristin from week to week. This factor weighs in favor of the trial court's decision.

¶ 35 *3. Interaction and Interrelationship*

¶ 36 The children have formed strong bonds with both sides of the family. On Kenneth's side, they have four stepbrothers and a half-sister, as well as paternal grandparents with whom they are all very close. Testimony also indicated they love their stepmother and get along with her very well. On Kristen's side, the children indicated they have strong bonds with their mother and stepfather. The triplets voiced their desire to spend equal amounts of time with both sides of the family, and the trial court properly granted them the opportunity. This factor weighs in favor of joint custody.

¶ 37 *4. Adjustment to Home, School, and Community*

¶ 38 "Stability for a child is a major consideration with both an initial award of custody and with a modification of custody ***." *In re Marriage of Ricketts*, 329 Ill. App. 3d 173, 180, 768 N.E.2d 834, 839 (2002).

¶ 39 The triplets' have meaningful involvement within the community of Manito. The triplets were involved in Girl Scouts as well as numerous athletic activities. There are activities available in Pekin that are not available in Manito. The trial court recognized the children were willing to be flexible to assimilate into the Pekin community. As a result, the trial court ordered the children be allowed to develop connections in Pekin. This factor weighs in favor of the court's decision to award joint custody.

¶ 40 *5. Willingness of the Parent To Foster Relationships*

¶ 41 "[J]oint custody can succeed only where the parties have an ability to cooperate effectively and consistently with each other towards the best interest of the child." *Id.* at 178-79, 768 N.E.2d at 838. An order modifying custody was not against the manifest weight of the evidence where the mother obstructed the father's relationship with the child and deprived the father of substantial parenting time. *Id.* at 181-82, 768 N.E.2d at 840-41.

¶ 42 There was testimony by Kristen and the GAL regarding Kenneth's "noncustodial, nonparent" attitude. In particular, it was shown Kenneth had a hard time including Kristen in the decision-making process. Kenneth accused Kristen of misrepresenting facts and name-calling. Testimony and evidence showed Kristen and Kenneth did work together to schedule visitation outside the normal scheduled times. Kenneth reassured the trial court he understood the distinction between "noncustodial parent" and "nonparent" and was working toward becoming more inclusive. The evidence showed the parents can work together, and according to the GAL, any animosity still in existence was "unnecessary." The court recognized the children would be

better with the love and care of both parents. To facilitate this relationship, the court ordered alternating decision-making responsibility from year to year and alternating residential custody from week to week. This was after the temporary joint-parenting order allowed joint decision-making. The court believed, by alternating decision-making responsibility and residential custody, it would require the parents to facilitate an amicable relationship between them for the best interest of the triplets. This decision showed the trial court's concern for both families and the children, but we conclude it subverts the stability the triplets enjoyed, from January 2015 to December 2015, under the temporary joint-parenting order. The court's decision to modify the May 2006 Agreement and to order a new joint-custody order was not against the manifest weight of the evidence. However, alternating decision-making responsibility will not serve the best interest of the children. It would add uncertainty and anxiety to the equation because the triplets would not know for the next six to seven years where they might attend school in alternating years and in which activities they may participate.

¶ 43 It is unusual for a court to order or maintain a joint-custody arrangement when both parents prefer to be sole custodians. But what forcefully strikes us in this case is that, while joint custody may not be ideal for the parents, it is in the best interest of the children.

¶ 44 The triplets have shown resilience and maturity, as well as a basic understanding of diplomacy. The triplets are active, well adjusted, healthy, and have two loving families. That need not change.

¶ 45 We have chosen not to focus on the strife or the tension between Kenneth and Kristen, or to cast blame on either parent. Instead, we have considered that, despite the strife, they have raised three remarkable children who will have happy and meaningful junior high and high school years with the help of both parents.

¶ 46 We conclude alternating residential custody should occur and joint-decision making shall remain in place other than for school attendance. The children shall remain in Manito for school. We believe the parents have the ability, and should have the strong incentive, to improve their communication so the best interest of the children will be assured, and joint decision-making can be meaningful.

¶ 47 III. CONCLUSION

¶ 48 We affirm the order of joint custody. We strike the requirement of yearly alternating decision-making and require joint decision-making other than as to school attendance. We remand for preparation of a joint-parenting agreement that conforms to the terms of the January 2015 temporary order, which includes joint decision-making, alternating weekly residential custody, continued placement in Manito schools, and the entry of a joint-custody order reflective of this decision.

¶ 49 Affirmed as modified; cause remanded with directions.