

NOTICE
Decision filed 10/21/16. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2016 IL App (5th) 160206-U

NO. 5-16-0206

IN THE

APPELLATE COURT OF ILLINOIS

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

FIFTH DISTRICT

CULLEN DACE,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Williamson County.
)	
v.)	No. 14-F-124
)	
KRISTIN THETFORD,)	Honorable
)	Carolyn B. Smoot,
Defendant-Appellant.)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Presiding Justice Schwarm and Justice Goldenhersh concurred in the judgment.

ORDER

- ¶ 1 *Held:* Trial court did not err in awarding Father the majority of parenting time as well as the sole decision making responsibilities for the parties’ minor daughter.
- ¶ 2 Plaintiff, Cullen Dace (Father), brought a petition in Jackson County to establish custody, visitation and support against defendant, Kristin Thetford (Mother). On June 6, 2014, the case was transferred to Williamson County. After several days of hearings in November and December 2015, the court issued its decision on January 12, 2016, giving Father all decision making and parenting responsibilities for the parties’ minor daughter E.D. Mother appeals the decision contending the court erred in awarding Father the

majority of parenting time and in appointing him sole decision maker concerning their daughter's education, healthcare, religious training and extracurricular activities.

¶ 3 The evidence reveals that Mother and Father began dating in 2008 and moved in together in 2009. Mother's son from a different relationship also moved in with them. Mother and Father subsequently had their own child, E.D., who was born on December 17, 2010. While the parties were engaged and resided together for five years, Mother and Father never married. Their relationship ended when Mother decided to move to another town, Morton, Illinois, some two hours away from Father's house. Mother informed Father of her decision to move via text message from Morton on April 29, 2014. Several days later, Father filed for custody of the parties' daughter, and on May 2, Father changed the locks on the house. Father notified Mother of his decision that same day via text message.

¶ 4 Mother claimed she moved to Morton with both of her children because of the quality of the schools as well as the opportunity for better employment for her. The move did not go smoothly for Mother, however. Better employment never materialized, and the residence she chose had mold issues. Given that Mother had no support structure or family in Morton, she decided to move in with her parents in Creal Springs. Unfortunately, other family members were also staying there making the house rather crowded. She attempted to find other housing nearby, but these places also had issues. By the time of the hearings, Mother had moved six times. She was now residing in a house in Du Quoin owned by her new boyfriend. Mother claimed the boyfriend still resided at his parents' house nearby and only spent the night with her in his house a few

nights a week. Mother had also secured part-time employment with the post office shortly before the hearings.

¶ 5 After considering all of the testimony and other evidence presented at the hearings, the court determined that it was in the child's best interest for Father to be awarded the majority of the parenting time and to be the sole decision maker regarding her education, healthcare, religious training and extra-curricular activities. The court specifically noted that Mother's testimony about her actions did not match reality and she did not offer a stable environment for her daughter. Additionally, Mother had denied Father time with their child for almost six months prior to the entry of a temporary visitation order, and then once entered, she was incapable of following the order pertaining to such items as phone communication and disclosure of new addresses. Father, on the other hand, was employed full-time for several years with the same business, owned his own home in which he resided for many years, and had been involved in the care of his daughter until Mother chose to leave.

¶ 6 Mother argues on appeal that the court erred in giving Father all decision making and parenting time. She contends that the court is not to consider conduct of a parent that does not affect that parent's relationship to the child. She further asserts that the court did not base its decision on any findings regarding Mother's inability to parent or her relationship to her daughter.

¶ 7 We initially note that custody and visitation for children born out of wedlock is controlled by the Illinois Parentage Act of 1984 (Act) (750 ILCS 45/1 *et seq.* (West 2014)). The Act provides that in matters of determining custody and visitation, the

relevant standards of the Illinois Marriage and Dissolution of Marriage Act (IMDMA) are to apply. 750 ILCS 45/14(a)(1) (West 2014).

¶ 8 We also note that the parties, through their respective attorneys, have agreed to utilize any and all applicable laws which came into effect after January 1, 2016, of the IMDMA. Here, as previously noted, the hearings were held in November and December 2015. On December 21, the court conducted a conference call with the parties and the guardian *ad litem*. During the call, the court announced it would be utilizing the new provisions of the IMDMA absent objection by the attorneys or the guardian *ad litem*. The court explained that it was in the best interest of the child and of the parties to proceed under the new law given that the purpose of the new law was to encourage strong and healthy relationships and to promote the healthy development of children. No objection was presented at any time regarding usage of the new statute. The court's ruling was entered January 12, 2016. This court has previously held that, with respect to the award of maintenance, when the hearings were held before the effective date of the new spousal maintenance law and the only item pending was the entry of the court's ruling, the old law should apply. See *In re Marriage of Cole*, 2016 IL App (5th) 150224, 58 N.E.3d 1286 (rights of the parties should be determined by the facts of the case, not by the timing of the final order). We did not address this situation where the parties have agreed to follow the new law. We see no reason why the parties cannot choose to be governed by the newer law under these circumstances, especially when the purpose of the new statute is designed to protect the best interest of the child.

¶ 9 To determine what is in a minor child's best interest with respect to the allocation of parental responsibilities in decision making, section 602.5 of the IMDMA lists 15 nonexclusive factors for consideration. See 750 ILCS 5/602.5 (West Supp. 2015). The court here went through all 15 factors in making its determination. The court specifically noted that the minor child is comfortable with both parents, and that clearly, both parents love their daughter. The court concluded, however, that Mother does not provide the minor child with the stability she needs. In determining what is in the minor child's best interest with respect to allocation of parental responsibilities in parenting time, section 602.7 lists 17 nonexclusive factors for consideration. See 750 ILCS 5/602.7 (West Supp. 2015). Again, the court considered all 17 factors, and again noted that one of the main reasons for the court's decision favoring Father was the matter of stability. After reviewing each factor of the statute, the court awarded Father the sole decision making responsibility pertaining to the child. The court repeatedly mentioned Mother's lack of ability to provide a stable environment for her daughter, and Father's consistency in providing such an environment. The court also voiced concern over Mother's lack of credibility. The court specifically noted it would have reached that same ruling even without information contained in the guardian *ad litem*'s report. The court's written order was entered on March 18, 2016.

¶ 10 We acknowledge that the trial court is in the best position to judge the credibility of the witnesses and determine the needs of the child. It is not our position as an appellate court to try the case *de novo*. Accordingly, we will not disturb the trial court's decision unless it is against the manifest weight of the evidence. *In re Marriage of*

Lonvick, 2013 IL App (2d) 120865, ¶ 33, 995 N.E.2d 1007. The ruling of the trial court therefore should be affirmed if there is any basis to support the court's findings. *In re Marriage of Ricketts*, 329 Ill. App. 3d 173, 177, 768 N.E.2d 834, 837 (2002).

¶ 11 Here, there was ample evidence to support the court's finding that it was in the minor child's best interest that Father be the sole decision maker regarding her education, healthcare, religious training and extracurricular activities, and that Father be given the majority of parenting time. Father presented evidence of his involvement in the minor child's care as well as his ability to provide her with a stable environment. Mother, on the other hand, provided little opportunity for E.D. to adjust to home, school or community while in her care. From 2014 until the time of the hearings, Mother had moved to three different communities. Also important is the issue of Mother's credibility. Examples revealing Mother's altered view of reality include Mother's claims that she would not have had to move in with her mother under such crowded conditions if she and her children had not been kicked out of Father's home without any warning or notice. Mother ignores the fact that several days before Father changed the locks on the house, she took the children to Morton without notice, signed a lease for a new apartment, and then texted Father that she was moving. Additionally, there were multiple instances where Mother refused to openly and honestly communicate with Father. She often withheld information from him, and repeatedly obstructed phone contact between Father and E.D., all demonstrating an inability to co-parent for the benefit of her daughter. In essence, Mother placed her own interests and desires above the needs of the minor child whereas, the evidence also showed a willingness in Father and the ability to

facilitate and encourage a close and continuing relationship between Mother and E.D. We conclude that the court's judgment was not against the manifest weight of the evidence in this instance.

¶ 12 While we affirm the judgment of the court with respect to the award of decision making and parenting time, we must nonetheless remand this cause for further proceedings. During the pendency of this cause in August of 2015, the primary custody of Mother's son was awarded to his father based on a change of circumstances. On review, this court determined that the changes were not significant enough to justify the change in custody, and reversed the trial court's decision, thereby awarding primary custody back to Mother. See *Lirely v. Thetford*, 2016 IL App (5th) 150492-U. We mention this only because the court here, in an effort to ensure that Mother's children were able to spend time together, awarded Mother the same visitation schedule with E.D. that she enjoyed with her son, as set forth in the August 2015 decision. The court's order regarding E.D. was entered before this court reversed the order of custody in *Lirely*.

¶ 13 In light of the fact that the trial court here linked Mother's visitation schedule with E.D. to the visitation order that was reversed by this court in *Lirely*, we believe it best to remand this cause to the trial court to fashion a new visitation schedule to accommodate the best interests of all parties, and to ensure that Mother's children are provided with sufficient opportunities to be together in order to maximize the best interests of the children.

¶ 14 For the aforementioned reasons, we affirm the judgment of the circuit court of Williamson County, but remand for further consideration of the schedule of parenting

time for Mother with her daughter, and to ensure that both of Mother's children are provided with sufficient opportunities to be together.

¶ 15 Affirmed and remanded for further proceedings.