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2017 IL App (3d) 170059-U

Order filed June 20, 2017

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2017

KYLE JOURDAN	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
Petitioner-Appellee,	)	Rock Island County, Illinois.
	)	
v.	)	Appeal No. 3-17-0059
	)	Circuit No. 08-F-23
CHIOMA EZEUGWU,	)	
	)	Honorable
Respondent-Appellant.	)	Walter D. Braud,
	)	Judge, Presiding.

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JUSTICE O'BRIEN delivered the judgment of the court.  
Justices Lytton and McDade concurred in the judgment.

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**ORDER**

¶ 1 *Held:* The denial of a mother's petition to modify child custody was affirmed on appeal because there was no abuse of discretion in the circuit court's finding that there had not been a change of circumstances that warranted a change of custody.

¶ 2 The respondent mother, Chioma Ezeugwu, appealed from a judgment denying her petition to modify custody of the child that she shared with petitioner father, Kyle Jourdan.

FACTS

¶ 3

¶ 4 On January 14, 2008, petitioner father, Kyle Jourdan, filed a petition to establish paternity, custody, and visitation with regard to K.J., who was born August 10, 2007. The father requested that paternity be established, that he have physical custody of K.J., and that respondent mother, Chioma Ezeugwu, be given visitation. On April 2, 2008, the court entered an agreed order establishing child custody, visitation and child support. The agreement provided that the parties would share custody of K.J., that she would reside with the mother, and that the father would have visitation three weekends a month and every Tuesday. The father was ordered to pay \$200 per month in child support and 50% of child care costs.

¶ 5 On April 12, 2010, the circuit court entered an order modifying custody, finding that it was in the best interest of K.J. to award sole custody to the father. The father's child support obligation was terminated. The mother was granted visitation every other weekend and one day during the week. In a subsequent order, an exhibit was attached that delineated the holiday schedule. The mother filed a notice of appeal, and the circuit court's order was affirmed. *Jourdan v. Ezeugwu*, No. 3-1-0384, modified upon denial of rehearing (2010) (unpublished order under Supreme Court Rule 23). The mother was ordered to pay child support to the father in the amount of \$52.25 per week.

¶ 6 Over the next several years, there were a number of filings and orders in the case. Relevant to this appeal, on December 5, 2013, the circuit court entered an order addressing various cross-petitions pending between the parties. Child support to the father was increased and there were modifications to the visitation schedule. With respect to holidays, Halloween and St. Patrick's Day were removed from the holiday list. A provision to include Valentine's Day was crossed out in the order. President's Day, Columbus Day, and Veterans Day were added to

the holiday schedule. The mother filed a motion to vacate, arguing that the child support arrearage was overstated by \$74.28 and the holiday order should have included St. Patrick's Day, Halloween, and Valentine's Day. On April 1, 2014, the mother's motion to vacate was denied on the basis that the order was consistent with the May 29, 2013, transcript.

¶ 7 On September 4, 2015, on an order for a petition for a rule to show cause, the mother was found not to be in contempt of court, but her failure to comply with an earlier requirement to use Family Wizard was found to be without compelling cause or justification. The mother was ordered to pay \$750 of the father's legal fees pursuant to section 508(b) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/508(b) (West 2014)) due to the mother's failure to use Family Wizard as ordered by the court. The mother filed a motion to reconsider before the written order was filed, which the circuit court considered as her objections to the written order. Thereafter, the mother filed a motion to reconsider on April 15, 2016, which purported to challenge the 2015 Family Wizard rule to show cause order and a different April 2016 rule to show cause order. On September 2, 2016, the Family Wizard motion to reconsider was denied as untimely. The remainder of the motion to reconsider was denied on November 2, 2016. Also on November 2, 2016, the circuit court entered an order allowing for a trial on the mother's pending August 12, 2013, petition to modify custody. The trial was set for May 1 and 2, 2017.

¶ 8 Thereafter, on December 15, 2016, the mother filed a motion to explain the April 1, 2014, order. The circuit court, on January 5, 2017, considered that motion, and a motion to reconsider the November 2, 2016, denial of the motion to reconsider. The circuit court found that there were actually no motions to rule on, dismissed both motions, and stated that the order was final. The mother filed a notice of appeal. However, the following day, January 6, 2017, the circuit court entered another order acknowledging that the mother's petition to modify custody was still

pending. Thus, the circuit court struck the mother's notice of appeal. The order of January 6, 2017, further specified that all pending matters had to be set for a hearing within 60 days. The mother filed a notice of hearing for January 18, 2017, although it stated that the hearing was regarding the April 1, 2014, order.

¶ 9 A few hours prior to the hearing on January 18, 2017, the mother filed a motion for substitution of judge for cause. That motion was not raised nor addressed at the hearing; it was denied on February 17, 2017. While the circuit court did not address the motion to substitute filed that day, it did review prior motions to substitute and noted a pattern of filing such motions to delay proceedings. The mother never filed a motion to continue. On January 18, 2017, both parties were present in the circuit court. The circuit court went through the record, attempting to determine which motions were still pending. It denied several motions at the beginning of the hearing, including a motion for drug testing, a motion to quash, and several motions to reconsider old orders. The circuit court determined that the mother's 2013 petition to modify custody, along with a later motion regarding visitation, were the only pending motions. The cause proceeded to a hearing and the mother was asked to specifically testify and argue with respect to those issues. After the hearing, the circuit court entered an order maintaining custody with the father and making some modifications to visitation, including allowing the mother to have K.J. on Halloween. The circuit court then found that all matters before the court were resolved and the order was final. The mother filed a notice of appeal.

¶ 10 ANALYSIS

¶ 11 This appeal arises in the context of a custody dispute. The notice of appeal indicates that the mother is appealing the January 18, 2017, order, but the mother also seems to be appealing the orders entered on December 5, 2013, April 1, 2014, and September 2, 2016. She is also

challenging the fine imposed against her in the written order filed September 4, 2015. The father contends that any appeal of the prior orders is untimely and the January 18, 2017, order was not against the manifest weight of the evidence or an abuse of discretion.

¶ 12 The filing of a timely notice of appeal is jurisdictional. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994). Illinois Supreme Court Rule 303 (eff. Jan. 1, 2015) requires that a notice of appeal be filed within 30 days after entry of a final judgment or within 30 days after entry of an order disposing of a timely filed post-trial motion. See *In re Marriage of Hillinger*, 146 Ill. App. 3d 549, 552 (1986). The mother did not file a timely appeal of the orders entered on December 5, 2013, April 1, 2014, or September 2, 2016, so this court does not have jurisdiction to review her contentions of error with respect to those orders. We only have jurisdiction to consider the appeal of the order entered January 18, 2017.

¶ 13 The mother argues that the January 18, 2017, order was not fair and did not allow her to prepare for a trial. On January 5, 2017, the trial court stated all pending matters had been resolved. The next day the trial court judge recognized that the mother's 2013 petition to modify custody was still pending and entered an order setting all remaining motions for a hearing, including the mother's 2013 petition to modify custody. The mother acknowledges receipt of this order entered January 6, 2017. At the hearing, the trial court was very clear regarding the purpose of the hearing and gave the mother sufficient time to present her arguments regarding a change in circumstance that would warrant a change in custody. The mother fully participated in the hearing and presented evidence in the form of testimony that: (1) the minor recently had received a number of Cs and had not gotten those grades before; (2) the minor had a history of tardies at school; (3) the father had been arrested for assault; (4) the mother was no longer a full-

time student; and (5) the minor would soon have a half-sibling. The father also testified on those subjects.

¶ 14 The party seeking a modification of custody must show by a preponderance of the evidence that there has been a change in the circumstances of the child or either or both parties having custody and the modification is necessary to serve the best interest of the child. 750 ILCS 5/610.5(b) (West 2016). We will not reverse a circuit court's decision regarding the modification of custody unless the decision was against the manifest weight of the evidence or an abuse of discretion. *In re Marriage of Debra N. & Michael S.*, 2013 IL App (1st) 122145, ¶ 45.

¶ 15 The circuit court found that a modification of custody was not in the best interests of K.J. The mother actually makes no argument in her appellate briefs that the child support and/or visitation were not in the best interest of K.J.; her arguments were limited to procedural issues. After a review of the record, we find that the procedure utilized in the circuit court did not deny the mother due process. The circuit court found that the petition to modify custody had already been pending for more than three years and the case was ripe, with a voluminous amount of discovery. The mother did not file a motion to continue the January 18, 2017, hearing and did not argue the motion to substitute. To the extent that the mother is contending that her pregnancy was a basis for a continuance, that is not supported by the record. The mother actually noticed up the hearing date on January 18, 2017, and she indicates in her appellate reply brief that she did not deliver her baby until March 1, 2017. We affirm the denial of the mother's petition to modify custody, finding that the circuit court's conclusion was not against the manifest weight of the evidence or an abuse of discretion.

¶ 16 CONCLUSION

¶ 17 The judgment of the circuit court of Rock Island County is affirmed.

¶ 18

Affirmed.