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2017 IL App (3d) 170110-U

Order filed December 13, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

<i>In re</i> J.T.)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
(Zachary U.,)	Peoria County, Illinois.
)	
Petitioner-Appellee,)	Appeal No. 3-17-0110
)	Circuit No. 13-F-376
v.)	
)	
Abbey T., n/k/a Abbey D.,)	The Honorable
)	David A. Brown,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Carter and O'Brien concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's denial of mother's petition for relocation from Peoria to North Carolina was not against the manifest weight of the evidence where child spent close to half his time with father, who lives in Peoria, most of child's extended family is located in or near Peoria, and child is thriving in Peoria.
- ¶ 2 Respondent Abbey T., n/k/a Abbey D., filed a petition for relocation, seeking to relocate her son, J.T., from Peoria to Jacksonville, North Carolina. Petitioner Zachary U., J.T.'s father, opposed the petition. After hearing two days of testimony, the trial court denied the petition,

finding that relocation would not be in J.T.'s best interests. Abbey appeals the trial court's denial of her petition. We affirm.

¶ 3

FACTS

¶ 4

Abbey gave birth to J.T. on January 16, 2013. Soon thereafter, Zachary took a paternity test, which showed that he was J.T.'s father. On June 7, 2013, Zachary filed a petition to establish the existence of a father-child relationship. One month later, Abbey and Zachary entered a Parenting Agreement, which gave custody of J.T. to Abbey but provided that she and Zachary would co-parent J.T. and would both be involved in decisions related to him. The trial court entered a final order on custody, visitation and all child-related issues that gave Zachary overnight visitation with J.T. at least three times per week and one weekend every other week. The agreement provided that the parties spend alternate holidays with J.T. and each have two non-consecutive weeks with him each summer.

¶ 5

In February 2016, Abbey filed a notice of intent to relocate from Peoria to Jacksonville, North Carolina. On March 1, 2016, Abbey filed her petition to relocate. Zachary objected to the petition, and a two-day hearing was held.

¶ 6

At the hearing, Abbey testified that she is a registered nurse and works overnight shifts at St. Francis Hospital in Peoria from 7:00 p.m. to 7:00 a.m. three nights per week. Zachary has visitation with J.T. on the nights she works. Abbey owns a house in Peoria, where she lives with J.T.

¶ 7

Abbey described J.T. as “[v]ery warm”, “very loving”, “always happy and eager and outgoing.” Abbey plays with him, takes him to the zoo, takes him to the pool, and takes him on walks and runs. She and J.T. like to visit family and friends who live two hours or less from Peoria.

¶ 8 In May 2013, Abbey met Kyle D. She and Kyle were engaged in August 2015 and married one year later. At the time of the hearing, Abbey was pregnant with Kyle’s child. Kyle lives in Jacksonville, North Carolina. Abbey and Kyle have never resided together.

¶ 9 Abbey believes that relocating J.T. to North Carolina would be in his best interests because he would “have two parents or two parental figures * * * in the same household at all times.” It would also help her financially to have two incomes contributing to one household. She intends to work in North Carolina and has applied for a North Carolina nursing license but had not yet applied to any jobs there at the time of the hearing.

¶ 10 Abbey visited preschools near Kyle’s house in North Carolina and found them comparable to the preschool J.T. attends in Peoria. J.T. is on the waiting list for two preschool programs in North Carolina. Abbey testified that the elementary school in Kyle’s neighborhood is one of the best in the area with “phenomenal” test scores. She is not worried about J.T. adjusting to a new community because he is very outgoing. She also said she will have a support system in North Carolina because Kyle has “several acquaintances and friends” there. Abbey has an extensive support system in Peoria, including a neighbor, a babysitter, her parents, her in-laws, Zachary, his parents, as well as extended family and friends.

¶ 11 Abbey testified that a plane trip from Peoria to Jacksonville could take up to seven hours door-to-door, consisting of a two-and-a-half hour drive from Peoria to Midway Airport in Chicago, a two-hour flight to Raleigh-Durham, and a two-hour drive from Raleigh to Jacksonville. J.T. would need to be accompanied on the flights by an adult.

¶ 12 Abbey agreed that J.T. currently spends close to half of his time with Zachary and sees him every week. She agreed that Zachary has been very consistent in exercising his time and parental responsibilities with J.T. She also agreed that Zachary has a great relationship with J.T.

due in large part to the amount of time they spend together. She believes that Zachary is “a very involved father.”

¶ 13 Abbey proposed a visitation schedule if she were allowed to relocate J.T. to North Carolina. The schedule gave Zachary visitation with J.T. for the majority of the summer, several extended weekends throughout the year, and one week at spring break. The schedule would require J.T. to travel 10 times each year, which could cost up to \$10,000. She agreed that the extended weekends would give Zachary as little as a day-and-a-half to spend with J.T. She admitted that she would resist the visitation schedule if Zachary proposed it to her. Abbey testified that if removal was not allowed, she would continue to reside in Peoria with J.T. and live separately from her husband, Kyle.

¶ 14 Kyle D. is a gunnery sergeant in the United States Marine Corps. He enlisted in 2002 and has re-enlisted three more times since then. He plans to retire from the Marine Corps in September 2022 and move back to Illinois to be closer to family. He has been stationed in Camp Lejeune, North Carolina since April 2016, and expects to remain there until at least 2019. He believes it is “highly unlikely” that he will be moved from his current position and that he will “more than likely” remain in Camp Lejeune, North Carolina until 2022. He admitted that he has “minor control” over whether he stays in North Carolina after his current assignment ends in 2019.

¶ 15 Kyle is currently on his fifth assignment in the Marine Corps. His prior assignments have been in California, Illinois and Florida. Kyle rents a house in Jacksonville, North Carolina, which he chose because it is located two blocks from “one of the best” schools “in the area.”

¶ 16 Kyle met J.T. in May 2013 on his first date with Abbey. He described his relationship with J.T. as “pretty solid.” Kyle plays baseball, football and other games with J.T. He described

Abbey's relationship with J.T. as "very good," and described Abbey as "very loving" and "very caring."

¶ 17 Lisa T. provides day care to J.T. Lisa described J.T. as "a happy, go-lucky kid, pretty outgoing, well-adjusted, normal, wonderful little boy." She described J.T.'s relationship with both Abbey and Zachary as "[v]ery positive." She believes J.T. is "pretty adaptable to new situations" and "fairly adjustable to new environments and new people." Rebecca M., J.T.'s babysitter, described J.T. as adventurous, independent, friendly, energetic and well-behaved.

¶ 18 Abbey's parents live about an hour from Peoria and see J.T. at least once every two weeks and sometimes as often as twice a week. Abbey's mother described J.T. as very outgoing, sweet and adventurous. He has participated in swim lessons, soccer lessons and a running club.

¶ 19 Zachary is an engineering technician employed by the Illinois Department of Transportation. He has a 14-year-old son, Ethan, from a prior marriage, who visits him regularly. Zachary is engaged to Erin M., who has two sons, Caden, who is 10 years old, and Isaac, who is 6 years old. Erin and her sons have lived with Zachary since July 2014. Erin is a caregiver to J.T. and helps support Zachary in raising him.

¶ 20 Zachary described Abbey as a "great mom" and thought she made good choices with respect to J.T., except for her decision to file a petition to relocate. Zachary does not believe that Abbey is J.T.'s primary caretaker because there have been months when he has spent more time with J.T. than she has. J.T. tells Caden, Isaac and Erin that he loves them and has bonded with Caden and Isaac like brothers.

¶ 21 Zachary objects to Abbey's petition for removal because he wants to continue the "day-to-day relationship" he currently has with J.T. He thinks it could be "pretty devastating" for J.T. to move 1,000 miles away from his father and other people he loves. Zachary believes he would

lose the bond he has with J.T. and “a lot of parenting time” if the relocation were allowed. Zachary’s parents and son would also lose time with J.T. Zachary cherishes his parenting time with J.T. and takes as much as he can get.

¶ 22 Zachary disagreed with Abbey’s proposed visitation plan for J.T. because he thinks it hinders J.T.’s relationships with “everybody he knows,” including himself, both sets of grandparents, siblings, and Erin. Zachary also does not think the plan is workable because too much time and money would be spent on traveling.

¶ 23 Zachary has attended some of J.T.’s swimming lessons, soccer lessons and running events. Zachary’s parents live two hours from Peoria and see J.T. about twice a month. J.T. has spent extended periods of up to five days at a time with Zachary’s parents. Zachary has a brother and sister who live within three hours of Peoria and see J.T. regularly.

¶ 24 Erin M. testified that her son Isaac and J.T. are “best friends” and “inseparable.” She said that “[t]hey love each other.” She has participated in many activities with J.T., including swimming and visiting parks and museums. She testified that she and Zachary intend to marry in October 2017.

¶ 25 Scott F., Zachary’s friend, sees J.T. two to three times a month. He described Zachary as “a very good father” and “very loving and patient.” He described J.T. as “very well-behaved.” Scott described J.T.’s and Erin’s relationship as “close” and said that J.T. is also close to Ethan and looks up to him. J.T. also enjoys spending time and playing with Isaac.

¶ 26 At the close of the evidence, the trial court examined each of the statutory factors and found: (1) the reasons for Abbey wanting to move (to start her family with her new husband) and Zachary’s reasons for objecting (so he can continue to be a daily presence in J.T.’s life) are both legitimate; (2) both parents have “outstanding” relationships with J.T.; (3) both parents have

In determining whether relocation is in the best interests of the child, section 609.2 of the Illinois Marriage and Dissolution of Marriage Act (Act) sets forth the factors the court must consider:

- “(1) the circumstances and reasons for the intended relocation;
- (2) the reasons, if any, why a parent is objecting to the intended relocation;
- (3) the history and quality of each parent’s relationship with the child and specifically whether a parent has substantially failed or refused to exercise the parental responsibilities allocated to him or her under the parenting plan or allocation judgment;
- (4) the educational opportunities for the child at the existing location and at the proposed new location;
- (5) the presence or absence of extended family at the existing location and at the proposed new location;
- (6) the anticipated impact of the relocation on the child;
- (7) whether the court will be able to fashion a reasonable allocation of parental responsibilities if relocation occurs;
- (8) the wishes of the child, taking into account the child’s maturity and ability to express reasoned and independent preferences as to relocation;
- (9) possible arrangements for the exercise of parental responsibilities appropriate to the parents’ resources and circumstances and the developmental level of the child;
- (10) minimization of the impairment to a parent-child relationship caused by a parent’s relocation; and

(11) any other relevant factors bearing on the child's best interests.”

750 ILCS 5/609.2(g) (West 2016).

¶ 31 A trial court's determination of what is in the best interests of the child should not be reversed unless it is clearly against the manifest weight of the evidence and it appears that a manifest injustice has occurred. *Eckert*, 119 Ill. 2d at 328. A trial court's decision is contrary to the manifest weight of the evidence where the opposite conclusion is clearly evident or where its findings are unreasonable arbitrary, and not based upon any evidence. *In re Marriage of Matchen*, 372 Ill. App. 3d 937, 946 (2007).

¶ 32 The trial court is in the best position to assess and evaluate the parties' temperaments, personalities, and capabilities. *Id.* The presumption in favor of the result reached by the trial court in relocation cases “is always strong and compelling.” *Id.* A reviewing court may not overturn a judgment merely because it might disagree with the decision or might have come to a different conclusion if it were the trier of fact. *Id.* It is not the function of a court of review to reweigh the evidence. *In re Marriage of Elliott*, 279 Ill. App. 3d 1061, 1065-66 (1996).

¶ 33 Here, the trial court conducted a thorough hearing and heard extensive testimony from both parents and other witnesses on whether removal was in J.T.'s best interests. The court issued its decision applying the Act's section 609.2 factors and concluded that removal was not in J.T.'s best interests. We do not find the trial court's decision to be against the manifest weight of the evidence.

¶ 34 First, the court found that the first two section 609.2 factors did not weigh in either party's favor because both had “legitimate” motives in seeking and opposing relocation. We agree. Abbey has good reason to want to relocate so that she can live with her new husband,

baby and J.T. as a family unit. On the other hand, Zachary has good reason to object to the relocation because it will prevent him from the frequent contact he currently enjoys with his son.

¶ 35 We also agree with the trial court's determination that the third and fourth factors are neutral. The evidence presented at the hearing showed that both parents have been actively involved in parenting J.T. and that the educational opportunities for J.T. are about the same in both Peoria and Jacksonville.

¶ 36 We also find no error in the trial court's determination that the fifth factor weighs against relocation. Almost all of J.T.'s extended family, including a half-brother, two step-brothers, both sets of grandparents, aunts and uncles, are located within a few hours of Peoria and have regular contact with J.T. J.T.'s frequent contact with extended family members would not be possible if he relocated to North Carolina, where he has no extended family.

¶ 37 The court found that the sixth factor "slightly favors" relocation because there was consistent testimony that J.T. is an "adaptable" child and presumably would be able to adjust to relocation. Under the deferential standard of review, we find no error. Although Zachary testified that he thought relocation would be "devastating" to J.T., several other individuals, including two of J.T.'s caregivers, described J.T. as "outgoing" and "adaptable," as evidenced by his ability to adjust to both Abbey's and Zachary's households on a regular basis.

¶ 38 With respect to the seventh factor, the court found that it could fashion a reasonable allocation of parental responsibilities between the parties and thought the parties had already done that themselves. However, with respect to the ninth factor, the court did not think it was possible to create a visitation schedule that would allow Zachary the level of involvement he currently enjoys with J.T., so that factor weighed against relocation. Both of these findings are supported by the evidence.

¶ 39 When considering whether relocation is in a child’s best interests, the court can consider if relocation will impair the noncustodial parent’s involvement with the child. See *Eckert*, 119 Ill. 2d at 328. One of the purposes of the Act is to “continue existing parent-child relationships, and secure the maximum involvement and cooperation of parents.” 750 ILCS 5/102(7)(D) (West 2014).

¶ 40 Here, the evidence showed that Zachary has visitation with J.T. several times a week, which would not continue if J.T. relocated nearly 1,000 miles away. Instead, J.T. would see Zachary much less frequently and in bigger blocks of time. The evidence also showed that visitation would be difficult because a trip from Jacksonville, North Carolina to Peoria could take as long as seven hours, with a lengthy car ride from Jacksonville to Raleigh, a flight from Raleigh to Chicago, and a substantial drive from Chicago to Peoria. Such a lengthy trip would leave Zachary very little time to spend with J.T. on the three-day weekends proposed by Abbey.

¶ 41 The court found that the eighth factor was neutral because J.T. was too young to express his wishes, and the tenth factor slightly weighed against relocation because there is always “some impact” when a child moves away from a parent. These findings are not against the manifest weight of the evidence.

¶ 42 The court ultimately determined that relocation was not in J.T.’s best interests because J.T. is thriving where he is. Stability and continuity are in the best interests of the child. *In re Custody of G.L.*, 2017 IL App (1st) 163171, ¶ 46. A move to North Carolina would require J.T. to leave his familiar surroundings and his close family relationships with members of his immediate and extended family. Under these circumstances, where more factors weighed against relocation than in favor of it, the trial court’s decision to deny Abbey’s petition was not against the manifest weight of the evidence. See *In re Marriage of Hansel*, 366 Ill. App. 3d 752,

757 (2006) (where majority of factors weighed against relocation, trial court's decision was not against manifest weight of evidence).

¶ 43

CONCLUSION

¶ 44

The judgment of the circuit court of Peoria County is affirmed.

¶ 45

Affirmed.