2017 IL App (3d) 170205-U

Order filed August 10, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

S.G.,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
Petitioner-Appellant,	)	Rock Island County, Illinois.
	)	
v.	)	Appeal No. 3-17-0205
	)	Circuit No. 16-OP-957
A.G.,	)	
	)	Honorable Kathleen E. Mesich,
Respondent-Appellee.	)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Presiding Justice Holdridge and Justice O'Brien concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's denial of petitioner's request for a civil no contact order was not against the manifest weight of the evidence.

¶ 2 Petitioner, S.G., filed a verified petition requesting the Rock Island County circuit court to issue a civil no contact order on behalf of the minor, Au.G., and against respondent, A.G., following allegations of nonconsensual sexual conduct or nonconsensual sexual penetration. Following a hearing, the court denied petitioner's request, finding she failed to prove by a preponderance of the evidence that respondent sexually abused Au.G. We affirm.

¶ 3 FACTS

¶ 4 On October 31, 2016, petitioner, Au.G.'s mother, filed a verified petition for civil no contact order against respondent, Au.G.'s father, on behalf of their three-year-old daughter, Au.G. The petition alleged, in part, that respondent contacted her by telephone on October 22, 2016, regarding inappropriate comments Au.G. was saying about "privates." According to her petition, respondent "tr[ied] to imply he thought [her] boyfriend was being inappropriate with [her] daughter." Two days later, petitioner asked Au.G. whether anyone had shown her their privates and Au.G. answered that respondent "let her go up and down up and down" and then demonstrated by placing her finger in her mouth and moving it "in and out."

¶ 5 Both parties appeared before the trial court on October 31, 2016, and an emergency civil no contact order was entered. At a November 14, 2016, hearing, the court's previous order was modified to allow the father restricted visitation with supervision at his expense. On November 23, 2016, petitioner filed a motion to suspend respondent's visitation with Au.G. Following a December 16, 2016, hearing, the court denied petitioner's motion to suspend visitation. On December 22, 2016, the court conducted a hearing on the verified petition for civil no contact order. The following evidence was elicited during the December 2016 hearings.

¶ 6 Petitioner testified she was Au.G's mother and had previously been married to respondent. She and respondent divorced in January 2015 and she was awarded primary physical custody of Au.G. Au.G. was visiting respondent at his home in Davenport, Iowa, the weekend of October 22, 2016, when he text messaged petitioner and later called her to ask who Au.G. had been around "because she was making some allegations and saying some inappropriate things." The text messages introduced into evidence show that respondent's messages asked "[w]ho in the hell has [Au.G.] been around" because he "was putting her in her

pajamas and [he] changed into shorts and she said can I see your privates and go up and [d]ow[n]." He then asked petitioner, "[s]o where in the f*** is she getting that." Petitioner responded, "Has she said anything else? You better not be trying to make this out like I have anything to do with this because I will freak out. I have absolutely no idea where any of that would come from." During a follow-up telephone conversation, petitioner recalled respondent stating that Au.G. "was asking if she could go up and down, up and down, and he stated that she was motioning toward his private parts and asked to pull his pants down, asked if he wanted her to pull her pants down." Petitioner stated she could hear Au.G. in the background during the conversation and that respondent was making these comments to her in front of Au.G.

¶ 7 Au.G. returned home to petitioner on Sunday morning and they went to the pumpkin patch. On Monday, Au.G. went to preschool and petitioner went to work. On Monday night, petitioner finally asked Au.G. "who has ever talked to her about privates and she said Daddy." She also asked Au.G. if anyone had ever "shown her their privates or if anybody ha[d] ever touched her privates, and she said Daddy." According to petitioner, Au.G. then disclosed to her that "Daddy had put—pulled his pants down and had put his privates in her mouth." The following day, petitioner reported the alleged abuse to the Davenport, Iowa, police department. From there, the Iowa Department of Human Services and the Illinois Department of Children and Family Services (DCFS) were contacted. On October 26, 2016, respondent text messaged petitioner and told her he was going to be moving November 6, 2016.

¶ 8 Petitioner testified that her boyfriend, Brian, would sometimes stay overnight at her house. Brian had a three-year-old son, Braden, who would also stay overnight. She had never left Au.G. alone with Brian. She recalled that one month before the allegations at issue, she observed Braden and Au.G. with their pants down "showing each other their bottoms and

laughing." Following this incident, petitioner and Brian sat down with the children and "discussed that privates are your privates; you don't show them to other people."

¶ 9 Petitioner stated that she began noticing changes in Au.G.'s behavior in September 2016, which was after she began dating Brian. In particular, she reported Au.G. was not eating as much, she began to urinate on the floor when she got into trouble, she no longer wanted to lie in her own bed but wanted to lie with petitioner, and she started crying when petitioner dropped her off at respondent's house for the weekend or when respondent's father, Oppah, picked her up for the weekend.

¶ 10 Alexander Skinner-Walsh testified as an expert witness. She held a Master of Science degree in clinical counseling psychology and a Bachelor's degree in psychology. At the time of the hearing, she was employed by Life Connections as a therapist. This was her first professional position since graduating college, although she completed two internships while obtaining her master's degree. She had engaged in one assessment and five therapy sessions with Au.G. During one of the sessions, Au.G. told her that "Daddy pulls his pants down and makes it go in and out." When she asked Au.G. what goes in and out, Au.G. responded "his private part." Au.G. also "gestured with her finger in her mouth, made her pointer finger go in and out of her mouth." When asked whether she believed Au.G.'s report of abuse, Skinner-Walsh responded that she did, but she noted it was her job "to always believe [her] client because [her] job is to support them."

¶ 11 Skinner-Walsh did not believe Au.G. had been coached. She noted that Au.G. became "very distraught" and "changed the subject fast" following her disclosure. On cross-examination, Skinner-Walsh testified that S.G. was "the primary person who ha[d] reported ***

the allegations made involving [Au.G.] and her father." She had not spoken to respondent regarding the allegations.

¶ 12 Dr. Barbara Harre also testified as an expert witness. She has run the Child Protective Response Center since 2006 and had testified in more than 50 physical and sexual abuse cases. Harre completed a medical assessment of Au.G. on November 15, 2016. Her consultation report reflecting her assessment was admitted into evidence. Harre stated that it was common practice to interview the parent who brings a child in for an assessment. The information provided by the parent is then included in the assessment. While she does not necessarily believe everything a parent tells her, she stated that "[i]t possibly could" have a bearing on the outcome of her assessment.

¶ 13 Harre first spoke to petitioner. During that interview, petitioner spontaneously stated that she "did not believe that her boyfriend could do such a thing." Harre did not find this comment odd however. Petitioner also told Harre that Au.G. and Braden would sometimes sleep in the same bed as her and Brian. Petitioner did not tell Harre about sexual contact between Au.G. and Braden.

¶ 14 After speaking to petitioner, Harre interviewed Au.G. by herself. According to Harre, during the interview, Au.G. disclosed that "she had been involved in multiple interactions with her dad involving penile to oral interaction, penile to anal—or to intragluteal interaction, digital to anal area interaction, and penile to genital interaction." Harre testified that while Au.G. "was talking about the *** oral genital contact, she pursed her lips and she indicated like this (gesturing) when she was talking about the penis going in her mouth." Au.G. also told her "that one time she physically got ill and puked, and then she demonstrated, you know, puking." Harre

stated that Au.G. identified her father by his name. Au.G. also told her she had witnessed her father "pee on the floor" following one interaction.

¶ 15 Harre did not see any evidence of physical trauma during her examination of Au.G., but she stated that was not uncommon given the elapsed time since her last contact. Harre found it unusual that Au.G. refused to allow Harre to manipulate her genital tissues herself and instead manipulated them on her own with Harre's guidance. Harre testified that Au.G. demonstrated contact of a rubbing nature between her buttocks and her father's penis, as well as contact between his penis and her clitoral area. When asked whether she thought Au.G. had been coached, Harre stated she "did not have a sense of coaching because her answers were very, you know, prompt. There was no hesitation."

¶ 16 Michele Mattox, a forensic interviewer, also testified as an expert witness. She had conducted approximately 841 forensic interviews. At the time of the hearing, she was employed by the Child Response Protection Center. On October 26, 2016, Mattox interviewed Au.G. at the request of the Davenport police department.

¶ 17 Mattox stated that Au.G. referred to genitalia as "privates" and the buttocks as "booty." Mattox spoke to Au.G. about good and bad touches, like kisses, hugs, and tickles. At that point, Au.G. told her "Braden tickles her on her booty." Later, Mattox asked if anyone "ever touched [her] and [she] didn't like it." Au.G. then brought up Braden's name. Au.G. identified Braden as her brother. Au.G. told Mattox that Braden touched her "booty" and her "private." Later during the interview, Au.G. told Mattox that she had seen "big people" without their clothes on, specifically her "daddy." Au.G. then stated that daddy put his privates in her mouth and "would go up and down." Au.G. then put her finger in her mouth and demonstrated by moving her finger in an out. Shortly thereafter, Au.G. indicated that the act made her sick and she made a

"puking, coughing" noise. When Mattox asked her where this happened, she responded "daddy's room" at nighttime. Au.G. denied that daddy ever touched her "private parts." Au.G. was unable to state her daddy's' name but was able to state her mother's name. In Mattox's opinion, Au.G. had not been coached. Mattox was concerned that Au.G. had been sexually abused.

¶ 18 A copy of the video and audio-recorded interview between Mattox and Au.G. was admitted into evidence. During the interview, Au.G. refers to both male and female genitalia as "privates." Approximately 24 minutes into the interview, Mattox asked Au.G. if anyone has ever shown her their privates. Au.G. responds that a girl has, but she did not provide a name. Mattox then asked Au.G. whether a boy has ever showed her his "privates," Au.G. responded "daddy." When asked "what does he do with his private," she stated it "goes up and down." Au.G. then put her finger in her mouth and demonstrated moving her finger in and out of her mouth. Au.G. stated this happened one time. She then said, "private makes me sick." When asked how it makes her sick, Au.G. made gagging sounds. Later in the interview, Mattox asks "how many times has daddy's private gone in your mouth in his bed, one time or more than one time?" Au.G. responded "more than one time."

¶ 19 Maureen Hammes testified that she was a detective with the Davenport police department. For the last nine years, she has been assigned to child abuse and sex abuse cases. Hammes viewed a copy of the video and audio-recorded interview between Mattox and Au.G. After viewing the video, she contacted respondent and asked him to come in to the police station for an interview. Hammes met with A.G. on October 27, 2016. Respondent told her that Au.G. was at his house when she made some alarming comments prompting him to call petitioner. Hammes was critical that respondent did not display a stronger reaction after being told that

Au.G. had identified him as the perpetrator. She was also critical of respondent's mother accompanying him to the interview. Hammes acknowledged that she had not spoken to petitioner's boyfriend, Brian, and did not explore any other angles because Au.G. stated her "daddy is the one that did this to her."

¶ 20 Respondent testified that he was Au.G.'s father and was previously married to petitioner Following their divorce, he and petitioner reconciled for some time, finally splitting for good in June 2016. At the time of the hearings, respondent was employed full time at a bowling alley in Moline.

¶ 21 The weekend of October 16, 2016, respondent and Au.G. were in Chicago when she told him that Braden pulled her pants down and that the two of them were sleeping in the same bed. According to respondent, when he approached petitioner about this, she told him the children had "done it to each other" and that they had been disciplined for doing so.

¶ 22 Au.G. was visiting respondent again the weekend of October 23, 2016. That evening, as he was lying beside her in bed trying to settle her down, "she started asking [him] about privates." According to respondent, Au.G. then pointed below his waist and asked if those were his privates. He said yes. She then asked if she had privates. Respondent told Au.G. that she does, but "only mommy and daddy are allowed to see yours." Au.G. then asked if she could see respondent's privates and "go up and down up and down." When he asked her where she had heard that, Au.G. grabbed her stuffed animal and turned her back to him. At that point, respondent became concerned and text messaged petitioner. Shortly thereafter, he called petitioner to discuss Au.G.'s comments over the telephone. Following the telephone conversation, they then had a video call and petitioner talked to Au.G. The next morning,

respondent dropped Au.G. off with petitioner as planned. Au.G. was cheerful and excited to go to the pumpkin patch with petitioner.

¶ 23 On the morning of October 26, 2016, respondent notified petitioner via text message of his intent to move to Pennsylvania in early November 2016. She did not respond to the text message. Later that day, he received a call from Detective Maureen Hammes. She wanted him to meet her at the police station to discuss allegations which had been made. The next day, respondent and his mother, who had flown in from Pennsylvania, went to the police station. His mother was a caseworker in Pennsylvania and he thought it would be helpful to have her with him for support. During the meeting, he reiterated what had happened the night of October 23, 2016. Respondent submitted to a deoxyribonucleic acid (DNA) swab, but he declined to take a polygraph upon the advice of his attorney.

¶ 24 Respondent denied sexually abusing Au.G. According to respondent, he and petitioner's relationship had been "rocky" and there had been "many cases of vindictiveness on her end to do something just to spite me." For example, he noted on one occasion while they were living in Florida and petitioner was seven months pregnant with Au.G., they got into a fight and she took their cat and drove back to Illinois in the middle of the night.

¶ 25 At the close of the evidence, the trial court took the matter under advisement and entered an order for extension of the civil no contact order pending its decision.

¶ 26 On March 15, 2017, the trial court entered its decision in the matter, denying the verified petition for civil no contact and vacating the emergency no contact order then in place. In its order, the court summarized the testimony elicited during the hearings. It also noted that at a hearing two days before, respondent had produced a letter from DCFS indicating that DCFS had determined the report of abuse to be "unfounded," meaning that DCFS found no credible

evidence of child abuse or neglect during its investigation. In its order, the court specifically found as follows:

> "Court finds Father's testimony to be credible. He is the person who brought the alleged conduct to Mother's attention and appeared distraught on the stand. He admitted, after hearing A[u].G. speak of alleged sexual conduct on October 22, 2016[,] that he and his daughter had a discussion about 'privates.' A[u].G.'s tender age of 3 years is also a factor in the Court's conclusion. When A[u].G. was asked by her [m]other] the next day who had spoken to her about 'privates' and A[u].G. answered 'Daddy', it is possible she could have mentioned [f]ather in the context of her discussion with him the night before.
>
> For the foregoing reasons and after taking into consideration all the relevant factors, findings, the testimony and credibility of the witnesses, the pleadings and having reviewed all exhibits and all other evidence the court FINDS [m]other has not established by a preponderance of the evidence that [f]ather sexually abused his daughter."

¶ 27 This appeal followed.

¶ 28 ANALYSIS

¶ 29 On appeal, petitioner asserts the trial court's decisions to deny the plenary civil no contact order was contrary to the manifest weight of the evidence.

¶ 30 The Civil No Contact Order Act (740 ILCS 22/101 to 22/302 (West 2016)) provides a civil remedy to victims of sexual assault. 740 ILCS 22/102 (West 2016). The Act protects, in part, "any victim of non-consensual sexual conduct or non-consensual sexual penetration" and a petition under the Act may be filed "by a person on behalf of a minor child *** who is a victim of non-consensual sexual conduct or non-consensual sexual penetration." 740 ILCS 22/201 (West 2016). The person petitioning the court for a civil no contact order must prove the allegations contained in the verified petition by a preponderance of the evidence. 740 ILCS 22/204 (West 2016). "A 'preponderance of the evidence' means that the evidence presented renders a fact more likely than not." *J.M. v. Briseno*, 2011 IL App (1st) 091073, ¶ 41 (citing *People v. Brown*, 229 Ill. 2d 374, 385 (2008)).

¶ 31 We review a trial court's denial of a request for a civil no contact order under the manifest weight of the evidence standard. *Id*. ¶ 39. "Under the manifest weight standard, we give deference to the trial court as the finder of fact because it is in the best position to observe the conduct and demeanor of the parties and witnesses." *Best v. Best*, 223 Ill. 2d 342, 350 (2006). "A reviewing court will not substitute its judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn." *Id*. at 350-51. In other words, a trial court's findings of fact are not against the manifest weight of the evidence merely because the record might support a contrary decision or if we disagree with the court's findings. *Bernstein & Grazian, P.C. v. Grazian & Volpe, P.C.*, 402 Ill. App. 3d 961, 976 (2010). Rather, "[a] finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." *Best*, 223 Ill. 2d at 350.

¶ 32 Here, petitioner essentially urges this court to reweigh the evidence and find in her favor. For support, she relies on *In re Marriage of Gilbert*, 355 Ill. App. 3d 104 (2004). In *Gilbert*, the ex-wife brought an *ex parte* petition for an order of protection against the ex-husband on behalf of their two minor children based on allegations that the ex-husband sexually abused their four-year-old daughter. *Id*. at 106. Specifically, it alleged that the child informed the ex-wife her father's penis had touched her "private parts." *Id*. During a hearing on the matter, the ex-wife testified the child told her without any prior prompting or questioning that " 'daddy's private parts touched my private parts today.' " *Id*. Following the disclosure, the child was interviewed by the assistant director of the Children's Advocacy Center, who had conducted 1000 interviews of allegedly abused children, 300 of which involved a child under the age of four. *Id*. at 108. During the interview, the child disclosed that her father took off her clothes and then took off his underwear and " 'put his private on [her] bottom and stuck it through [her] legs, and put it here on my private.' " *Id*. at 108-09. When she asked if anything came out of his privates, the child responded, " 'Let's not talk about it. It's yucky.' " *Id*. at 109. The child later demonstrated what transpired between her and her father on anatomically correct dolls. *Id*. In addition, during a supervised visit with her father, an employee of the organization appointed to supervise the visits testified that the child told her she was afraid of her father. *Id*. at 120. During one visit, the employee also overheard the child ask her father, " '[W]hy did you do that?' " and " 'Why did you touch me when you weren't supposed to?' " *Id*. at 109. Following the hearing, the trial court found the ex-wife proved her petition by a preponderance of the evidence and it issued a plenary order of protection. *Id*. at 110.

¶ 33 The appellate court affirmed the trial court's judgment. In particular, it noted the trial court had observed the assistant director of the Child Advocacy Center as she testified about the

disclosures the child had made to her and the demonstrations she had performed to illustrate the conduct. *Id*. at 114. It also noted, "[[p]erhaps the most compelling testimony [was that of the employee supervising the visits] who observed [the child] confronting [her father] with respect to the allegations of abuse." The court found it "difficult to imagine that a four year old would confront her father over deeds that never happened." *Id*.

¶ 34 On appeal, petitioner points out that the *Gilbert* court "gave immense weight to the testimony of the assistant director of the Child Advocacy Center because of the number of interviews that she had previously conducted." Accordingly, petitioner asserts that "tremendous weight" should have been given to Mattox's testimony because she, too, had conducted a large number of interviews and had "extensive experience in conducting medical assessments of sexually abused children." In addition, petitioner notes that similar to the minor child in *Gilbert* who was able to use anatomically correct dolls to demonstrate her father's actions, Au.G. was able to point to the genital area on an anatomical drawing of an adult male to show where the "private" was and to then describe her father's actions and demonstrate by putting her finger in her mouth.

¶ 35 While we agree that there are some similarities between the facts in *Gilbert* and in the instant case, we find *Gilbert* distinguishable. Notably, in this case we are tasked with determining whether the trial court's *denial* of the petition for civil no contact order was against the manifest weight of the evidence whereas the *Gilbert* court had to determine whether the trial court's *grant* of a petition for an order of protection was against the manifest weight of the evidence. As noted, we may not substitute our judgment for that of the trial court merely because a different conclusion is possible. *Best*, 223 Ill. 2d at 350. Instead, we may find a trial

court's judgment to be against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *Id.*

¶ 36 Based on our review of the record, we find the trial court's denial of petitioner's petition for civil no contact order was not against the manifest weight of the evidence. In reaching this determination, we are particularly mindful of the fact that the trial court had the opportunity to hear and see the witnesses and, as such, it was in a superior position to weigh the evidence and determine the credibility of the witnesses. In that regard, the trial court explicitly found respondent's testimony to be credible. In particular, it assigned great weight to the fact that respondent was the person who brought the alleged conduct to petitioner's attention and the fact that respondent appeared distraught during his testimony. The record supports this finding.

¶ 37 As noted, respondent testified that one week prior to the incident at issue, Au.G. disclosed to him that Braden had pulled her pants down and that the two of them slept in the same bed. The following Saturday, Au.G. began making inappropriate comments to respondent and he immediately contacted petitioner by text message, then a follow-up telephone conversation, and finally a video call during which petitioner saw and spoke to Au.G. The evidence further shows that Au.G. returned to petitioner on Sunday morning and that she was cheerful and excited to go to the pumpkin patch. Further, petitioner did not broach the subject with Au.G. until Monday evening, when she asked Au.G. "who has ever talked to her about privates" and Au.G. responded "Daddy." The record clearly shows that two days before, respondent did indeed speak to Au.G. about her privates. We further note that while not exactly contradictory, there is some discourse in the testimony of the experts in this case. For example, Dr. Harre testified that Au.G. disclosed multiple instances and forms of inappropriate sexual contact, including "penile to oral interaction, penile to anal—or to intragluteal interaction, digital

to anal area interaction, and penile to genital interaction." On the other hand, Mattox testified—and the video of the interview shows—that Au.G. denied her father ever touching her "privates."

¶ 38 The trial court considered all of the evidence before it and specifically found respondent's testimony to be credible. In light of the record before us and our deferential standard of review, we cannot say the trial court's judgment in this case was against the manifest weight of the evidence.

¶ 39 CONCLUSION

¶ 40 For the foregoing reasons, we affirm the judgment of the circuit court of Rock Island County.

¶ 41 Affirmed.