

NOTICE

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FILED

January 19, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 160611-U

NO. 4-16-0611

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

| | | |
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| In re: MARRIAGE OF |) | Appeal from |
| DEBORAH L. MAIN, f/k/a DEBORAH L. OLESEN, |) | Circuit Court of |
| Petitioner-Appellant, |) | Livingston County |
| v. |) | No. 15D97 |
| ERIC S. OLESEN, |) | |
| Respondent-Appellee. |) | Honorable |
| |) | Robert M. Travers, |
| |) | Judge Presiding. |

JUSTICE KNECHT delivered the judgment of the court.
Justices Harris and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, finding the trial court’s decision to deny the mother’s request to relocate to South Carolina with her minor children was not against the manifest weight of the evidence.

¶ 2 Following an August 2016 hearing, the trial court denied petitioner Deborah L. Main’s request to relocate to South Carolina with her and respondent Eric S. Olesen’s two minor children. Deborah appeals, arguing the court's decision was against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Deborah and Eric have three children: (1) Evan Olesen (born December 31, 1995), now an adult; (2) C.O. (born April 20, 1999); and (3) G.O. (born March 26, 2002). In

February 2007, the parties divorced. As part of the divorce, the parties entered into a joint parenting agreement, which provided the minor children were to reside with Deborah and Eric was to have specified visitation.

¶ 5 In December 2015, Deborah filed a petition under section 609 of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/609 (West 2014)), requesting leave to remove C.O. and G.O. from Illinois. In her petition, Deborah alleged (1) in 2011, she married Walter Main; (2) in September 2015, Walter relocated to South Carolina for employment; (3) she desired to remove the minors from Illinois and relocate to South Carolina; and (4) the removal was in the minors' best interests as it would maintain the family unit and substantially increase the family's income.

¶ 6 On January 1, 2016, Public Act 99-90 repealed section 609 of the Dissolution Act (750 ILCS 5/609 (West 2014)) and replaced it with section 609.2 of the Dissolution Act (750 ILCS 5/609.2 (West Supp. 2015)). Section 609.2 now provides the procedure by which a parent may seek to "relocate" with a child. That same month, Deborah filed a notice to relocate as required by section 609.2(c) of the Dissolution Act (750 ILCS 5/609.2(c) (West Supp. 2015)), and Eric filed an objection to relocation. Following court-ordered mediation that resulted in no agreement by the parties, the trial court set the matter for a hearing.

¶ 7 On August 1, 2016, the trial court held a hearing on Deborah's petition. The court heard testimony from Deborah, Eric, and the minors' guardian *ad litem* (GAL). In addition, numerous exhibits were admitted into evidence highlighting the parties' financial conditions, Walter's financial condition, Walter's health, available housing, and information regarding Pontiac High School and Hampshire High School. The following is a summary of the testimony

elicited and evidence presented.

¶ 8 Following the 2007 divorce, Deborah and her three sons resided in the Chicago suburbs. They initially lived in Romeoville but later moved to Des Plaines, where Deborah met Walter. Approximately six months after meeting, Deborah, Walter, and Deborah's three sons moved to Pontiac, as Walter, who was a chiropractor, had a business in Bloomington. In 2011, approximately 1 1/2 years after moving to Pontiac, Deborah and Walter were married.

¶ 9 In Pontiac, the minors resided in a four-bedroom home, where each had separate bedrooms. Deborah was employed as a business analyst, making \$85,000 a year with possible bonuses. C.O. was an upcoming senior and G.O. was an upcoming freshman at Pontiac High School. Since living in Pontiac, Deborah and the minors had made numerous trips to state parks, festivals, the Illinois State Fair, and the Chicago area. Deborah's parents, her brother Eric, and Eric's extended family lived in the Chicago suburbs. The minors had a good relationship with Eric.

¶ 10 In school, the minors' grades were D's and F's during the year, but by year's end, they raised those grades to B's and C's, with an occasional D. The minors' grades reflected their failure to complete homework or turn it in a timely manner. Deborah encouraged the minors to complete their homework and communicated with the minors' teachers; however, she maintained it was ultimately the minors' responsibility to complete their work.

¶ 11 Deborah characterized the relationship between the minors and Walter as having rough spots. She indicated conflict specifically arose when C.O. did not do his schoolwork. Deborah was aware of a reported incident between Walter and C.O., but she did not recall whether Walter threw C.O. to the ground. While in college, Evan was not allowed to continue to

live in the Pontiac residence due to his behavior, which Deborah initially testified was Walter's decision but later indicated was a mutual decision. Evan moved in with Eric.

¶ 12 Walter's business later failed, and he sought new employment in Illinois, which was ultimately fruitless. Eventually, Walter found employment in Cheraw, South Carolina, where he began working in September 2015. Walter made \$36,000 a year. Deborah testified she intended to move to South Carolina because of Walter's employment. Deborah further testified she intended to move to South Carolina regardless of the trial court's ruling. Deborah's employment allowed her to work remotely from South Carolina.

¶ 13 Walter was renting a three-bedroom home in South Carolina, which Deborah was in the process of moving into. Walter rented the property based on an oral lease. Deborah testified the home would serve as temporary housing until she sold her home in Pontiac. The minors would be required to share a bedroom in the rental home. Deborah acknowledged neither she nor Walter had family in South Carolina. Deborah asserted her parents planned on moving to South Carolina and other members of her extended family expressed an interest in visiting.

¶ 14 Based on her research and a personal visit to Cheraw High School, Deborah concluded Pontiac High School and Cheraw High School were similar, with Cheraw having a higher college preparedness ranking and higher graduation rate. Deborah did not provide the trial court with the evidence supporting this conclusion. Deborah further did not compare Cheraw High School and Hampshire High School, the school the minors would attend if they lived with Eric.

¶ 15 Deborah was aware the minors expressed a desire to remain in Illinois. Deborah believed it was in the minors' best interests to move to South Carolina. Deborah expressed

concern with whether G.O. would remain in Boy Scouts if he lived with Eric as Eric had limited involvement in his scouting. She also believed the scout troop in Cheraw was more active than the Pontiac troop. In regard to C.O., she noted Eric did not attend his sporting events. Deborah also believed, as both the minors were history buffs, South Carolina and the southeast would offer more to spark their interest than Illinois.

¶ 16 In June 2016, Walter was diagnosed with colorectal cancer. At the time of the hearing, he was undergoing treatment and continued to work. Walter was scheduled to receive chemotherapy and radiation until August 19, 2016, with surgery to remove his lower colon and rectum six to eight weeks thereafter. Following surgery, Walter would be unable to work for approximately six to eight weeks. Deborah hoped Walter would be back to normal by the holidays of 2016.

¶ 17 Deborah proposed, if her petition was granted, Eric be given visitation during (1) the summer, except for two weeks in July; (2) winter break, except for alternating Christmas/Christmas Eve; and (3) spring break, except for one weekend. Under her proposal, transportation costs would be divided evenly.

¶ 18 Eric, who lives in Pingree Grove, Illinois, had visitation with the minors every other weekend, part of the summer, and part of Christmas break. Eric acknowledged the minors had a close relationship with Deborah, and Deborah played a more active role in G.O.'s scouting. Eric and his wife, a former school teacher, assisted the minors with their schoolwork when they visited. Eric believed granting Deborah's petition would be detrimental to the minors' relationship with him, their brother Evan, and their relatives who lived in the area. Eric also believed the distance would weaken the minors' support system. Eric expressed concern with

whether Deborah would be too busy caring for Walter to adequately care for the minors.

¶ 19 Eric was living in a three-bedroom duplex with his wife, father, and Evan. If the minors resided with Eric, they would share a loft measuring 13 by 15 feet, which they currently shared when visiting. Eric had a roughly comparable income with Deborah. Hampshire High School, the school the minors would attend if they lived with Eric, had a higher graduation rate than Cheraw and Pontiac, a higher readiness for the next level than Pontiac, and a higher college readiness than Pontiac. Eric intended to continue to encourage and assist G.O. with scouting. Eric believed, if he had more time with the minors, he could help them become better students. Eric further described the community where he lived and the outdoor activities available.

¶ 20 Eric proposed, in the event the trial court granted Deborah's petition, he be awarded visitation during (1) the summer, except for two weeks; (2) winter break; and (3) spring break.

¶ 21 The GAL opined it would be in the minors' best interests to deny Deborah's petition. The GAL testified, based on his conversations with the minors, neither minor desired to relocate to South Carolina. The minors characterized Walter as a "control freak." C.O. described an incident where Walter grabbed him and knocked him to the floor. In the event Deborah moved to South Carolina, the minors expressed a desire to reside with Eric and maintain relationships with both Deborah's and Eric's extended family. The GAL found allowing Deborah to relocate with the minors would make it difficult for Eric to assist with the minors' schoolwork. The GAL acknowledged allowing Deborah to relocate with the minors would not destroy the relationship between Eric and the minors.

¶ 22 In its oral pronouncement of its decision, the trial court went through each of the

statutory best-interests factors in section 609.2 of the Dissolution Act (750 ILCS 5/609.2 (West Supp. 2015)). After weighing the evidence and taking the statutory factors into consideration, the court found allowing Deborah to relocate to South Carolina with the minors would not be in the minors' best interests. The court denied Deborah's petition.

¶ 23 This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 On appeal, Deborah argues the trial court's decision to deny her request to relocate to South Carolina with the minors was against the manifest weight of the evidence.

¶ 26 A trial court's decision to permit or refuse to permit a parent to relocate with a child will be reversed only where it is against the manifest weight of the evidence. See *In re Marriage of Eckert*, 119 Ill. 2d 316, 328, 518 N.E.2d 1041, 1046 (1988); 750 ILCS 5/609.2 (West Supp. 2015). A 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, or not based on the evidence presented. *Best v. Best*, 223 Ill. 2d 342, 350, 860 N.E.2d 240, 245 (2006).

¶ 27 Section 609.2(g) of the Dissolution Act (750 ILCS 5/609.2(g) (West Supp. 2015)) directs a decision to permit or to refuse to permit a parent to relocate with a child be made based on the child's best interests. Section 609.2(g) provides 11 best-interest factors a trial court must consider in making that decision:

- “(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 between all parents if the 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. *Id.*

¶ 28 In reaching its decision, the trial court applied the best-interests factors set forth in section 609.2(g) of the Dissolution Act (750 ILCS 5/609.2(g) (West Supp. 2015)). While Deborah acknowledges section 609.2 is applicable to her request to relocate with the minors, she does not address or present any argument relating to the 11 best-interests factors contained therein. Rather, she highlights and presents argument evaluating the court's ruling under five factors our supreme court set forth to evaluate a petition for leave to remove a child under section 609 of the Dissolution Act (750 ILCS 5/609 (West 2014) (repealed by Public Act 99-90 (eff. Jan. 1, 2016))). See *Eckert*, 119 Ill. 2d at 326-27, 518 N.E.2d at 1045-46. As the trial court properly concluded, the factors set forth in section 609.2(g) govern whether relocation is in the minors' best interests, and thus, whether the petition should have been granted or denied. Regardless, as the best-interests factors set forth in section 609.2(g) are similar to the *Eckert* factors, and section 609.2(g)(11) directs trial courts to consider any other relevant factors bearing on a child's best interests, we will address the bases of Deborah's claim as to why the trial court's decision was against the manifest weight of the evidence. 750 ILCS 5/609.2(g) (West Supp. 2015).

¶ 29 In support of her claim, Deborah asserts the trial court failed to give any consideration to her quality of life. She contends her quality of life would be enhanced by allowing her to live with her ailing husband, who had been part of her household for a substantial period of time. While we recognize a court can find a minor's life is enhanced where a custodial parent remarries and moves them out of state to live with their new spouse, any enhancement in the quality of life of the custodial parent does not automatically translate into an improvement in the quality of life for the child, nor are such benefits always sufficient to warrant relocation. *In*

re Marriage of Collingbourne, 204 Ill. 2d 498, 528, 791 N.E.2d 532, 548 (2003). We understand Deborah's reasonable desire to be with her ailing husband. However, that desire and any enhancement to her life by fulfilling that desire do not demonstrate the minors' best interests would be served by allowing her to relocate with the minors. The evidence demonstrated the (1) minors, both high school students, desired to stay in Illinois; (2) minors' biological father, with whom they had a close relationship, lived in Illinois; (3) minors' older brother lived in Illinois; (4) minors had a significant amount of extended family living in Illinois; (5) minors had a more comfortable and stable living situation in Illinois; and (6) schools in both states were relatively comparable. Any enhancement in Deborah's quality of life does not confer a benefit on the minors sufficient to warrant relocation.

¶ 30 Deborah further suggests the trial court erroneously concluded any possible visitation schedule would impair the parent-child relationship with Eric. She contends the effect relocation would have on visitation would be minimal and a reasonable visitation schedule could be worked out, as evident by the similarity amongst the proposed visitation schedules. The court found, although it could in theory minimize any impairment of the parent-child relationship by "giving big clumps of visitation," it could not do so "to any great extent." At the time of the hearing, the minors visited with Eric every other weekend. If the petition had been granted, the minors' visitation with Eric would be less frequent but for longer periods. While in certain situations longer, uninterrupted periods of visitation may foster a more meaningful relationship between a parent and a child (*Id.*, at 534, 791 N.E.2d at 551), we cannot say the court's conclusion with respect to this factor, given the previous visitation schedule and the minors' educational and extracurricular needs, is manifestly erroneous.

¶ 31 Deborah has failed to demonstrate the trial court's decision to deny her request to relocate with the minors was against the manifest weight of the evidence.

¶ 32 III. CONCLUSION

¶ 33 We affirm the trial court's judgment.

¶ 34 Affirmed.