2017 IL App (4th) 160669-U

NO. 4-16-0669

FILED
June 15, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

| | | |
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| KRISTEN M. HALL, | ) | Appeal from |
| Petitioner-Appellant, | ) | Circuit Court of |
| v. | ) | Macon County |
| PATRICK J. DELATTE, | ) | No. 13F111 |
| Respondent-Appellee. | ) | |
| | ) | Honorable |
| | ) | James R. Coryell, |
| | ) | Judge Presiding. |

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Pope and Knecht concurred in the judgment.

**ORDER**

¶ 1 *Held*: The appellate court affirmed, finding the trial court did not err in awarding respondent (1) the majority of parenting time and (2) decision-making authority for his daughter's health care, education, and extracurricular activities.

¶ 2 In November 2015, respondent, Patrick J. Delatte, filed a petition for modification of custody against petitioner, Kristen M. Hall. In September 2016, the trial court granted Patrick the decision-making authority for his daughter's health care, education, and extracurricular activities, as well the majority of parenting time.

¶ 3 On appeal, Kristen argues the trial court erred in (1) adopting Patrick's proposed parenting plan and (2) awarding Patrick decision-making authority for D.D.'s health care, education, and extracurricular activities. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In March 2013, Kristen filed a petition to determine the child/parentage

relationship with regard to her daughter, D.D., born in 2011. In his response to the petition, Patrick admitted being D.D.'s biological father. Patrick also stated he and Kristen had never been married.

¶ 6 In September 2013, the trial court conducted a hearing on all pending matters. Patrick's attorney stated the parties had worked out all parenting issues except for child support, tax exemptions, health insurance, and day care expenses. Kristen testified she lived in Maryville, Illinois, and worked as an account executive for ClinLab Diagnostic Laboratory (ClinLab) in Creve Coeur, Missouri. At the time of the hearing, Kristen was interviewing for a new job and planning to relocate to Macon County. The parties had reached an agreement in mediation, whereby Kristen would have sole custody of D.D., subject to Patrick's right of reasonable visitation. The parties also agreed to discuss all major decisions relating to D.D. Patrick testified he worked as an agent for American Family Insurance.

¶ 7 The trial court made its ruling on financial issues and set Patrick's child-support obligation at $681.87 per month. The court also noted a written order was to be filed and the agreement as to visitation could be memorialized in that order. No written order was ever filed.

¶ 8 In October 2015, Patrick filed a petition to determine parental issues. Therein, Patrick claimed it was in D.D.'s best interests that she be placed in his custody. In November 2015, Kristen filed a motion to dismiss, claiming the trial court's September 2013 order rendered her the custodial parent as a matter of law. Also in November 2015, Patrick filed a petition for modification of child custody. In December 2015, the court enjoined Kristen from moving out of Illinois.

¶ 9 In July 2016, the trial court conducted a hearing. Patrick testified he was 30 years old and engaged to Alyssa Colee. He stated he takes D.D. to her medical appointments and to

school. He stated he was a member of the Decatur zoo and the children's museum and they "go there quite frequently." Patrick stated he was still employed with American Family Insurance. Patrick stated the parties never entered an order regarding parenting time because they reunited. D.D. had missed days of school because Kristen was staying in St. Louis. Patrick also testified Kristen failed to let him know about one of D.D.'s doctor's appointments.

¶ 10 Kristen testified she and Patrick lived together in Decatur when D.D. was born. While Kristen was finishing college, she and D.D. moved in with her parents until May 2013, when she and D.D. moved to Maryville, Illinois. In Maryville, Kristen worked for ClinLab until November 2013, when she moved back to Decatur after reuniting with Patrick. They got engaged and lived together until March 2014. She and D.D. then moved to a home in Decatur, and Kristen began working as a sales representative for Novo Nordisk. In October 2015, she moved to Edwardsville, Illinois. At the time of the hearing, Kristen worked as a senior territory manager for Allergan Pharmaceuticals.

¶ 11 Kristen stated D.D. was enrolled in kindergarten in Edwardsville. D.D. was also involved in gymnastics, tennis, swimming, and ballet. Kristen had been in a relationship with Byron Gruber from July 2015 until May 2016. She left him after he "got very, very drunk," and he stated he was going to retaliate by ruining her life. Gruber allegedly called Kristen's employer and reported she was using drugs, which Kristen denied.

¶ 12 The trial court considered the report of the guardian *ad litem* (GAL). The report noted the lack of effective communication between the parties and stated Kristen had failed to provide Patrick with her address and information about D.D.'s activities in Edwardsville. The GAL stated she contacted Gruber by phone, and Gruber claimed Kristen stole drugs from her employer and had "serious anger and stress issues."

¶ 13 The GAL concluded Kristen was unwilling to put D.D.'s needs first and does not encourage, and even hinders, the relationship between D.D. and Patrick. The GAL opined Patrick should have the majority of parenting time, stating, in part, as follows:

> "Kristen appears to have done everything in her power to curtail the relationship between Patrick and [D.D.] She is the common factor in all of the negative stories I have heard from various individuals, and the stories I have heard all have the same underlying tone. It is unfortunate, because both Patrick and Alyssa have repeatedly told me that it is their desire and wishes to work together with Kristen to raise [D.D.], but it appears that this will never be able to happen. [D.D.] has a lot of family available to her in Decatur should an emergency occur, contrary to the Glen Carbon area where she has none. Patrick is in a stable relationship with a stable job. It is in the best interests of [D.D.] that she reside a majority of the time with Patrick, and that Kristen have visitation every other weekend from Friday after school to Sunday at 5."

The GAL also opined it was in D.D.'s best interests that Patrick have the sole decision-making authority with regard to her education, health care, and extracurricular activities.

¶ 14 Following arguments, the trial court found both Kristen and Patrick were "fit and proper persons" to have custody of D.D. However, the court noted how "they relate to each other is another story," and that "adversely impacts the child." The court stated Kristen did not set forth a parenting plan and had not completed a transparenting course. The court adopted Patrick's parenting plan and made him the primary residential parent. The court also gave

Patrick the decision-making authority over D.D.'s education, health care, and extracurricular activities. This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 A. Initial Determination or Modification

¶ 17 Kristen argues the trial court's decision failed to acknowledge this was a modification proceeding and not an initial determination. Thus, Kristen contends the court erred in failing to require a substantial change in circumstances to warrant a modification pursuant to section 610.5 of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/610.5 (West Supp. 2015)).

¶ 18 In September 2013, the trial court held a hearing on all pending matters. The court made its ruling on financial issues and set Patrick's child-support obligation at $681.87 per month. The court also noted a written order was to be filed and the agreement as to visitation could be memorialized in that order. No written order was ever filed.

¶ 19 Illinois Supreme Court Rule 272 (eff. Nov. 1, 1990) provides, in part, as follows:

> "If at the time of announcing final judgment the judge requires the submission of a form of written judgment to be signed by the judge or if a circuit court rule requires the prevailing party to submit a draft order, the clerk shall make a notation to that effect and the judgment becomes final only when the signed judgment is filed."

Rule 272 has been interpreted to mean "proceedings are in a state of abeyance until written judgment is filed and bare announcement of final judgment cannot be enforced." *In re Marriage of Gurin*, 212 Ill. App. 3d 806, 812, 571 N.E.2d 857, 861 (1991). When a trial judge directs a

written order to be prepared, "the judge's oral announcement of his decision and the reasons therefor have no effect and the judgment is not the act of the court until it is signed or approved and entered of record." *In re Marriage of Dwan*, 108 Ill. App. 3d 808, 815, 439 N.E.2d 1005, 1010 (1982).

¶ 20 Section 610.5 of the Dissolution Act deals with the modification of orders allocating parental decision-making responsibilities and requires a finding of a substantial change in circumstances. 750 ILCS 5/610.5(c) (West Supp. 2015). Here, however, there was no written order entered. Thus, there was no final judgment to modify. This conclusion is bolstered by the interactions between the trial court and counsel. At the July 2016 hearing, the court noted "there's never been a written order regarding parenting—regarding custody, so we have nothing." Kristen's counsel stated the court was correct. At the August 2016 hearing, the court stated the proceeding was to determine parenting time because "[w]e haven't really had a custody order in place in this case." Kristen's counsel agreed, and the court stated the proceeding was "not a modification, there's never been an order." Kristen's counsel again stated "[t]here has never been an order entered." As there was no written order to modify, the court correctly applied the best-interests standard utilized in initial determinations of parental responsibilities. See 750 ILCS 5/602.5(a) (West Supp. 2015).

¶ 21 B. Parenting Time

¶ 22 Kristen argues the trial court's award of the majority of parenting time to Patrick was against the manifest weight of the evidence. We disagree.

¶ 23 Since the parties were never married, the Illinois Parentage Act of 2015 (Parentage Act) (750 ILCS 46/101 to 905 (West Supp. 2015)) governed the proceedings in this case. Section 802(a) of the Parentage Act (750 ILCS 46/802(a) (West Supp. 2015)) states the

issue of parenting time is governed by the relevant provisions of the Dissolution Act.

¶ 24 Section 602.7(a) of the Dissolution Act (750 ILCS 5/602.7(a) (West Supp. 2015)) states the trial "court shall allocate parenting time according to the child's best interests." Section 602.7(b) (750 ILCS 5/602.7(b) (West Supp. 2015)) sets forth several factors the court is to consider when determining the child's best interests for purposes of allocating parenting time, including, *inter alia*, the wishes of the parents and the child; the amount of time each parent spent performing caretaking functions in the 24 months preceding the filing of the petition for allocation of parental responsibilities; the interrelationship between the child and his or her parents and siblings; the child's adjustment to his or her home, school, and community; the child's needs; the distance between the parents' residences; the willingness and ability of each parent to place the needs of the child above his or her own needs; the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child; and whether a restriction on parenting time is appropriate.

¶ 25 Kristen argues the trial court erred in relying on the GAL's report. This court has noted the "GAL acts under the control and direction of the court as the child's representative" and "is the 'eyes and ears' of the court. [Citation.]" *In re Marriage of Wycoff*, 266 Ill. App. 3d 408, 415-16, 639 N.E.2d 897, 904 (1994). The trial court should consider and give some weight to the GAL's recommendations (*Wycoff*, 266 Ill. App. 3d at 416, 639 N.E.2d at 904); however, the court is not bound by such recommendations (*Taylor v. Starkey*, 20 Ill. App. 3d 630, 634, 314 N.E.2d 620, 623 (1974)). The trial court is also in the best position to judge the credibility of witnesses, and its decision as to parenting time will not be overturned on appeal unless it is against the manifest weight of the evidence. *In re Marriage of Young*, 2015 IL App (3d) 150553, ¶ 12, 47 N.E.3d 1111.

¶ 26 The GAL indicated she met with Kristen, Patrick, and D.D. in making her report. She also conducted interviews with Colee and Gruber. In her conversations with Patrick, the GAL found there had been "absolutely no effective communication" between the parties, Patrick felt left out of all the decisions Kristen made for D.D., and Kristen withheld information about D.D.'s activities in Edwardsville. The GAL reviewed text messages that showed Patrick "was being stone-walled" by Kristen, and she was "very controlling." The GAL noted Kristen's "lack of consideration of Patrick as a father" by having D.D.'s ears pierced without telling him, leaving the state when D.D. was supposed to be with her without telling him, and having D.D. tested for a blood disorder without allowing him to attend the appointment or telling him the results. The GAL included a lengthy recitation of her phone conversation with Gruber, who stated Kristen was stealing from her employer and injecting herself with drugs, had "serious anger and stress issues," and physically threatened him.

¶ 27 In analyzing the issue of parenting time, the GAL noted D.D. had a "wonderful relationship" with all of the parties and her needs were being addressed. The GAL stated Kristen resided in Glen Carbon, Illinois, and, considering her travel for her job and lack of family in the area, the two-hour distance from Decatur was a "major concern" if D.D. should have an emergency. Based on her "extensive interviews and review of documents," the GAL opined Kristen was unwilling to put D.D.'s needs first, did not encourage a relationship between Patrick and D.D., and "is the common factor in all of the negative stories."

¶ 28 In its ruling, the trial court noted it considered witness testimony, the exhibits, and the GAL's report. The court stated the text messages showed Kristen "has a bit of a temper and is demanding and wants her way." Further, she "unilaterally moves," and she refused to tell Patrick where she was, "which is pretty adverse." In referencing the GAL report, the court

discounted some of the information provided by Gruber as that of a "spurned boyfriend." The court also noted Kristen did not submit a parenting plan and had not completed a transparenting course, which the court concluded "didn't suit her convenience."

¶ 29 As the trial court heard the testimony of the witnesses and considered the GAL's report, it was in the best position to judge the credibility of those witnesses and weigh the evidence. Kristen did not call the GAL to testify. See 750 ILCS 5/506(a)(2) (West Supp. 2015) (stating the GAL "may be called as a witness for purposes of cross-examination regarding the [GAL's] report or recommendations"). GALs "review or consider all kinds of information regarding the child, both admissible and inadmissible at trial" (*In re Marriage of Karonis*, 296 Ill. App. 3d 86, 91, 693 N.E.2d 1282, 1286 (1998)), and if Kristen disagreed with the GAL's findings and conclusions, she could have call her to testify and cross-examined her. We find the court did not err in considering the GAL's report.

¶ 30 The trial court found Kristen and Patrick were fit and proper persons to have custody, had good relationships with D.D., and were committed to D.D.'s well-being. However, the court noted Kristen had not presented a parenting plan and had not completed a transparenting course. The GAL's report indicated Kristen has been unwilling to place D.D.'s needs above her own and was unwilling to facilitate and encourage a close and continuing relationship between D.D. and Patrick. The court noted how Kristen and Patrick relate to each other "adversely impacts the child." On the other hand, the evidence indicated Patrick has a steady job, is in a steady relationship, and has family in the Decatur area to help with D.D. in case of an emergency. We find the court's decision to award Patrick the majority of parenting time was not against the manifest weight of the evidence.

¶ 31 C. Health Care, Education, and Extracurricular Activities

¶ 32 Kristen argues the trial court's award of decision-making authority for D.D.'s health care, education, and extracurricular activities in favor of Patrick was against the manifest weight of the evidence. We disagree.

¶ 33 Section 602.5(a) of the Dissolution Act (750 ILCS 5/602.5(a) (West Supp. 2015)) requires the trial court to allocate decision-making responsibilities according to the child's best interests. Section 602.5(b) of the Dissolution Act permits the court to allocate to one or both of the parents the decision-making responsibility for significant issues affecting the child and lists those significant issues, without limitation, as ones involving education, health, religion, and extracurricular activities. 750 ILCS 5/602.5(b) (West Supp. 2015).

> "In determining the child's best interests for purposes of allocating significant decision-making responsibilities, the court shall consider all relevant factors, including, without limitation, the following:
>
> (1) the wishes of the child, taking into account the child's maturity and ability to express reasoned and independent preferences as to decision-making;
>
> (2) the child's adjustment to his or her home, school, and community;
>
> (3) the mental and physical health of all individuals involved;
>
> (4) the ability of the parents to cooperate to make decisions, or the level of conflict between the

parties that may affect their ability to share decision-making;

(5) the level of each parent's participation in past significant decision-making with respect to the child;

(6) any prior agreement or course of conduct between the parents relating to decision-making with respect to the child;

(7) the wishes of the parents;

(8) the child's needs;

(9) the distance between the parents' residences, the cost and difficulty of transporting the child, each parent's and the child's daily schedules, and the ability of the parents to cooperate in the arrangement;

(10) whether a restriction on decision-making is appropriate under Section 603.10;

(11) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child;

(12) the physical violence or threat of physical violence by the child's parent directed

against the child;

(13) the occurrence of abuse against the child or other member of the child's household;

(14) whether one of the parents is a sex offender, and if so, the exact nature of the offense and what, if any, treatment in which the parent has successfully participated; and

(15) any other factor that the court expressly finds to be relevant." 750 ILCS 5/602.5(c) (West Supp. 2015).

¶ 34 "On appeal, we give great deference to the trial court's best-interests findings because that court had a better position than we do to observe the temperaments and personalities of the parties and assess the credibility of witnesses." (Internal quotation marks omitted.) *In re B.B.*, 2011 IL App (4th) 110521, ¶ 32, 960 N.E.2d 646. "[A] reviewing court will not reverse a trial court's custody determination unless it (1) is against the manifest weight of the evidence, (2) is manifestly unjust, or (3) results from a clear abuse of discretion." *B.B.*, 2011 IL App (4th) 110521, ¶ 32, 960 N.E.2d 646.

¶ 35 In the case *sub judice*, the trial court awarded Patrick the decision-making authority with respect to D.D.'s health care, education, and extracurricular activities. As Patrick received the majority of parenting time, and given the distance between the parties' residences, it was in D.D.'s best interests that Patrick have the decision-making authority with respect to these significant issues. Moreover, the court was to consider the ability of the parents to cooperate in making decisions and the willingness of the parents to facilitate and encourage a close

relationship. On the health factor, the GAL noted Kristen had not communicated with Patrick on D.D.'s health-care issues and a lack of cooperation existed between the parties. We find the court's decision regarding the allocation of parental responsibilities on these three issues was not against the manifest weight of the evidence, manifestly unjust, or an abuse of discretion.

¶ 36 III. CONCLUSION

¶ 37 For the reasons stated, we affirm the trial court's judgment.

¶ 38 Affirmed.