2017 IL App (4th) 160776-U

NO. 4-16-0776

FILED
March 17, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

DANIEL CARMODY,	)	Appeal from
Petitioner-Appellee,	)	Circuit Court of
v.	)	McLean County
MARGARET ARCHAMBAULT,	)	No. 12F224
Respondent-Appellant.	)	
	)	Honorable
	)	Lee Ann S. Hill,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Appleton and Pope concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's decision to deny respondent's petition to relocate to California with her and petitioner's child was not against the manifest weight of the evidence.

¶ 2 Petitioner, Daniel Carmody (Dan), and respondent, Margaret Archambault (Meg), had an on-again, off-again dating relationship that resulted in Meg's giving birth to a daughter, B.C. (born May 10, 2011). The parties were never married. In September 2014, the trial court entered an agreed parenting order, granting Meg sole custody of B.C. Both parties lived in McLean County, Illinois.

¶ 3 In September 2016, Meg filed a petition to relocate, requesting the trial court to allow her and B.C. to move to the Los Angeles area with Meg's new fiancé. The court appointed a guardian *ad litem*, who recommended that the court deny Meg's petition to relocate. After hearings in September and October 2016, the court denied the petition. Meg appeals, arguing that

the court's decision was against the manifest weight of the evidence. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 On May 10, 2011, Meg gave birth to Dan's child, B.C. Although the parties dated for three years, they never married and ended their relationship in August 2013.

¶ 6 In September 2014, the trial court entered an agreed parenting order, which awarded Meg sole custody of B.C., subject to Dan's reasonable visitation.

¶ 7 A. Meg's Petition To Relocate

¶ 8 In March 2016, Meg filed a petition to relocate. In it, she explained that she was engaged to be married to Mathew Taylor, who worked as an assistant equipment manager for the St. Louis Rams of the National Football League. The Rams were relocating to Los Angeles and asked Taylor to continue working for the team in California, offering him a raise from $37,000 a year to $60,000. In her petition, Meg asked to move with B.C. and join Taylor in the Los Angeles area.

¶ 9 In April 2016, Meg filed a new proposed parenting plan to apply if the trial court granted her petition to relocate. As part of that plan, Meg proposed that each parent would have permission to telephone the child "at reasonable times and hours." In addition, Dan would be entitled to weekly Skype sessions with B.C. (Skype provides video-chat and voice-call services.) As to visitation, Meg proposed that B.C. would visit Dan in Illinois for three weeks during B.C.'s summer break, including Father's Day. When B.C. became able to fly independently, the visitation period would increase to four weeks.

¶ 10 The proposed parenting plan stated further that B.C. would visit Dan for one week over Christmas break, but that week would encompass Christmas and Christmas Eve only every other year. Meg agreed to pay for the transportation costs for B.C. to visit Dan over summer and

Christmas breaks. In addition, Meg proposed that once B.C. was old enough to travel alone, she would visit Dan over spring break as well, with Dan paying those transportation costs.

¶ 11 B. The Guardian *ad Litem*'s Report

¶ 12 In July 2016, the trial court appointed a guardian *ad litem* (GAL) to investigate and report whether relocation was in B.C.'s best interests. In September 2016, prior to the hearings on Meg's petition to relocate, the GAL filed his report.

¶ 13 The GAL's report noted that Dan's driver's license had been suspended since 2011 because of multiple convictions for driving under the influence but that Dan planned to have his license reinstated in the near future. In April 2014, Dan was convicted of child endangerment because of his intoxication and received conditional discharge, which successfully terminated in February 2016. The GAL reported that Dan had not drunk alcohol since April 2014 and regularly attended Alcoholics Anonymous meetings. At the time of the report, Dan was dating Darlene Piper, who filed petitions for a protective order against Meg in 2014 and 2015.

¶ 14 The GAL reported that B.C. had a "very positive relationship" with both parents despite the parents' contentious relationship with each other. The GAL described Dan as the "fun parent" and Meg as more "task-oriented," possibly stemming from the fact that Meg had primary custody, meaning that B.C. was with Meg during the weekdays when B.C. attended school. But the GAL explained that the strained relationship between the parties had affected both parents' ability to maintain their relationships with B.C. and would be the most difficult challenge in determining B.C.'s best interests moving forward.

¶ 15 The GAL noted that Taylor's employment with the Rams was unique because of the limited employment opportunities in his particular field. Taylor worked for the Rams since 1999, surviving six coaching changes during that time, so his employment was stable. Meg had

training as a sign-language interpreter but had not yet secured a job in California, although she had interviewed for some. Further, Meg had not worked in Illinois during the summer of 2016, claiming that the only available sign-language interpretation was on a free-lance basis, requiring a 16-week commitment. Meg argued that she could not accept such a commitment, given the possibility that she might imminently move to California.

¶ 16 Meg and Taylor had already signed a one-year lease for a condominium in Thousand Oaks, California, where Meg planned to join Taylor if the court granted her petition to relocate. Meg had visited Thousand Oaks and toured the local elementary school and the neighborhood around the condominium. The school was highly rated and the neighborhood housed several amenities, including parks and pools. The GAL found no reason to believe "that the reasons behind [Meg's] intended move were anything but genuine and sincere."

¶ 17 The GAL noted that neither Meg nor Taylor had significant family ties in Southern California. The nearest close relative was Meg's sister in Gilbert, Arizona—a seven-hour drive from Thousand Oaks. On the other hand, Meg, Dan, and Taylor all had significant family ties in Illinois and in the Bloomington, Illinois, area, in particular.

¶ 18 The GAL explained that the long-term stability of Meg and Taylor's relationship was difficult to determine. The GAL reported that Meg and Taylor were engaged after a six-month courtship and had not set a wedding date. Meg stated that she and Taylor planned to keep their finances separate in California. Meg and Taylor had never lived together, and Taylor had no children of his own. Meg reported that if the relationship with Taylor were to end, she would remain in California with B.C. to avoid upending B.C.'s life.

¶ 19 As to Dan's struggles with alcohol, the GAL reported that Dan had improved his parenting and decision-making since April 2014. The GAL commended Dan for securing "solid"

employment as a marketing manager for Allied Health Group and for putting B.C.'s needs before his own.

¶ 20 The GAL reported further that the relocation would mean a "dramatic decrease" in the contact Dan would have with B.C. while B.C. was at an impressionable age. Even the limited amount of contact Dan was allowed in the September 2014 parenting order would be unsustainable under the planned move. Meg's proposed visitation schedule would fall "far short" of the contact needed to develop a strong relationship between Dan and B.C. The proposed visitation would result in Dan's going months without physical contact with B.C.

¶ 21 The GAL expressed reservations as to Meg's ability to foster an ongoing relationship between Dan and B.C. Meg's proposed parenting plan provided for weekly telephone calls or Skype sessions between Dan and B.C. But the GAL noted that Meg had repeatedly denied Dan his allotted weekly call under the September 2014 parenting plan. The GAL had "some doubt" that Meg would cooperate in facilitating weekly contact between Dan and B.C.

¶ 22 The GAL concluded that Meg's petition to relocate was not in the best interests of B.C. The GAL recommended that, if the trial court were to disagree and grant the petition, the court should award Dan additional parenting time above that contained in Meg's proposed parenting plan.

¶ 23 C. The September and October 2016 Hearings

¶ 24 At hearings in September and October 2016 on Meg's petition to relocate, Meg presented testimony that she had been offered a full-time position in California with a certain service and that she and Taylor had set a wedding date for July 2017.

¶ 25 D. The Trial Court's Ruling

¶ 26 In October 2016, the trial court determined that Meg had not met her burden to

prove that relocation was in B.C.'s best interests. The court gave an extensive oral decision denying Meg's petition to relocate, as will be discussed in the analysis below.

¶ 27 This appeal followed.

¶ 28 II. ANALYSIS

¶ 29 Meg argues that the trial court's decision to deny her petition to relocate was against the manifest weight of the evidence. We disagree.

¶ 30 A. Lack of an Appellee Brief

¶ 31 Dan has failed to file an appellee brief. Without an appellee's brief, "if the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief, the court of review should decide the merits of the appeal." *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133, 345 N.E.2d 493, 495 (1976). In this case, because the record and issues are simple, we choose to decide the case on its merits.

¶ 32 B. Statutory Language and the Standard of Review

¶ 33 The Illinois Parentage Act of 2015 provides that "[i]n determining *** relocation, *** the court shall apply the relevant standard of the Illinois Marriage and Dissolution of Marriage Act [(Dissolution Act)]." 750 ILCS 46/802 (West Supp. 2015) (see Pub. Act 99-85, § 802 (eff. Jan. 1, 2016) (2015 Ill. Legis. Serv. 1001, 1018 (West)). Section 600(g) of the Dissolution Act defines "relocation," in relevant part, as the following:

> "[A] change of residence from the child's current primary residence to a residence outside the borders of this State that is more than 25 miles from the current primary residence, as measured by an Internet mapping service." 750 ILCS 5/600(g)(3) (West Supp. 2015) (section as amended by Pub. Act. 99-90, § 5-15 (eff. Jan. 1,

2016) (2015 Ill. Legis. Serv. 1103, 1145 (West)).

Effective January 1, 2016, section 609.2(g)(1) to (11) of the Dissolution Act provides that, when a trial court receives a petition for permission to relocate, the court shall determine whether relocation is in the child's best interests, after considering the following factors:

"(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." 750 ILCS 5/609.2(g)(1) to (11) (West Supp. 2015).

The party seeking relocation has the burden to establish, by a preponderance of the evidence, that relocation is in the best interests of the child. *In re Parentage of Rogan M.*, 2014 IL App (1st) 141214, ¶ 8, 19 N.E.3d 140.

¶ 34 Although section 609.2(g)(1) to (11) is recent, many of the same factors have long been considered by our courts, and certain principles from our prior cases still apply. "The court should consider the proposed move in terms of likelihood for enhancing the general quality of life for both the custodial parent and the children." *In re Marriage of Eckert*, 119 Ill. 2d 316, 326-27, 518 N.E.2d 1041, 1045 (1988). "A trial court *must* carefully consider the benefits which will flow to the children from the custodial parent's remarriage." (Emphasis in original.) *In re Marriage of Eaton*, 269 Ill. App. 3d 507, 514, 646 N.E.2d 635, 641 (1995).

¶ 35 A trial court's decision whether relocation is in a child's best interests will be reversed only if the decision is against the manifest weight of the evidence. *Eckert*, 119 Ill. 2d at 328, 518 N.E.2d at 1046. "A judgment is against the manifest weight of the evidence only when the findings appear to be unreasonable, arbitrary, or not based on evidence, or when an opposite conclusion is apparent." *Vaughn v. City of Carbondale*, 2016 IL 119181, ¶ 23, 50 N.E.3d 643.

¶ 36 C. This Case

¶ 37 In this case, the trial court relied heavily on the GAL's report to reach its decision. After the conclusion of the September and October 2016 hearings on Meg's petition to relocate, the trial court gave an oral decision, in which it addressed each of the section 609.2(g) factors. Because the court's analysis and evaluation were so helpful, we describe its decision extensively

herein.

¶ 38 As to the first factor—the circumstances and reasons for the proposed relocation—the trial court found that Meg and Taylor's relationship was sincere. But the court also noted that a "strong part" of Meg's motivation in moving was to not "have to deal with [Dan] anymore."

¶ 39 As to the second factor—the reasons for the parent's objecting to relocation—the trial court found that Dan had no "ulterior motive" to object other than wanting a close relationship with B.C.

¶ 40 As to the third factor—the history and quality of each parent's relationship with the child—the trial court found that Dan had "some deficits" prior to April 2014 when he was drinking. But the court found that since 2014, Dan had improved his parenting skills and behavior, while taking every opportunity to be with B.C.

¶ 41 As to factor four—educational opportunities—the trial court found that the schools in Chatham were comparable to the schools in Thousand Oaks. The court noted that Meg touted the quality of the Chatham schools when she previously relocated from Bloomington to Chatham.

¶ 42 As to the presence or absence of extended family, the trial court found that, currently, B.C. did not have any extended family in the Los Angeles area. Further, based on the parenting order proposed by Meg, B.C. would have very little opportunity to develop relationships with her extended family on Dan's side.

¶ 43 As to factor six—the impact on the child—the trial court found that the move would have a positive impact on B.C., at least in a transitive way. The court believed that the move would have a positive impact on Meg's life because she would be with her fiancé and liv-

ing a lifestyle that she would enjoy. That positive benefit would have a positive impact on B.C. as well.

¶ 44 As to the impairment to the parent-child relationship, the trial court found that the proposed move would have a "huge impairment" on Dan and B.C.'s relationship. The court did not find credible Meg's statements that she would pay for transportation for B.C. to visit Dan. The court relied on Meg's refusals to facilitate Dan's visitation under the prior parenting plan to support its decision that facilitating transportation from California to Illinois might prove difficult.

¶ 45 Ultimately, the trial court concluded that Meg had not met her burden to prove that the relocation was in B.C.'s best interests. As a result, the court denied Meg's petition to relocate.

¶ 46 We conclude that the trial court's decision was not against the manifest weight of the evidence. As we described, both the GAL and the court provided a comprehensive and careful analysis of the proposed relocation. The court properly applied the section 609.2(g) factors. The court determined that B.C. would reap some benefits from moving to California. But the court concluded that those benefits would be outweighed by the negative effects the move would have on B.C.'s relationship with Dan and the rest of her family in Illinois, especially considering the difficulty Meg and Dan had in maintaining communication while living relatively close to each other.

¶ 47 Meg's main argument is that the trial court failed to give due consideration to the positive effect relocation would have on Meg and how an improvement to Meg's life would necessarily improve B.C.'s life, as well. Meg is correct that "[t]he court should consider the proposed move in terms of likelihood for enhancing the general quality of life for both the custodial

parent and the children." *Eckert*, 119 Ill. 2d at 326-27, 518 N.E.2d at 1045. But in this case, the court did just that. The court took into account the benefits that moving to California would provide Meg and B.C.—mainly, increased financial opportunity for Meg and Taylor, which would directly benefit B.C. The court then balanced those positives against the countervailing drawbacks. First, the court was not convinced that Meg had yet secured stable employment in California. Second, Taylor and Meg's relationship was relatively young, and they had agreed to keep their finances separate for the time being. Those caveats diminished the positive financial benefits presented by relocation, in addition to the interplay of the other factors considered by the court.

¶ 48 In sum, the trial court acknowledged and considered the benefits of relocation. It weighed those benefits against the other factors enumerated in section 609.2(g). In the end, the court concluded that relocating would severely diminish Dan's ability to have a strong, loving relationship with B.C.

¶ 49 This is arguably a close case, which underscores the deferential nature of our review. The trial court had discretion to evaluate the facts, apply the section 609.2(g) factors, and reach a decision. The trial court listened to the testimony and then reasonably and carefully applied the facts to the applicable law. The court's decision was not "unreasonable, arbitrary, or not based on evidence." *Vaughn*, 2016 IL 119181, ¶ 23, 50 N.E.3d 643. That is, the trial court's decision was not against the manifest weight of the evidence. We therefore affirm.

¶ 50 We commend the trial court for its detailed order and evaluation of the facts and law in this case. The court's placing its reasoning on the record was very helpful to this court's task on review.

¶ 51 III. CONCLUSION

¶ 52 For the foregoing reasons, we affirm the trial court's judgment.

¶ 53 Affirmed.