

NOTICE

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FILED

April 13, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 160877-U
NO. 4-16-0877

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

IRA C. DAVIS,)	Appeal from
Petitioner-Appellee,)	Circuit Court of
v.)	Macon County
DOMINGA MALAGA,)	No. 15F160
Respondent-Appellant.)	
)	Honorable
)	James R. Coryell,
)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Steigmann and Appleton concurred in the judgment.

ORDER

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

¶ 2 In April 2015, petitioner, Ira C. Davis, filed a *pro se* petition for custody of his daughter against respondent, Dominga Malaga. In October 2015, the trial court granted Ira the decision-making authority for his daughter’s medical concerns and extracurricular activities, as well as the majority of parenting time.

¶ 3 On appeal, Dominga argues the trial court erred in awarding Ira (1) decision-making authority for A.M.’s medical and extracurricular activities and (2) the majority of parenting time. We affirm.

¶ 4 I. BACKGROUND

¶ 5 On April 10, 2015, Ira filed a *pro se* petition for custody of his daughter, A.M.,

born in 2010, claiming it was in A.M.'s best interests that permanent care, custody, and control of her be awarded to Ira because Dominga "cannot reasonably be expected to help my daughter with her homework" because Dominga does not speak fluent English and cannot read English. Ira also stated he has to talk with teachers and go to meetings, and "the mom is [an] illegal immigrant and may be deported any day." Ira stated he kept A.M. five days per week at the time.

¶ 6 On April 24, 2015, Dominga filed an emergency order of protection against Ira, alleging he harassed and threatened her and her husband. Dominga also alleged A.M.'s stepsister engaged in sexual abuse of A.M. while in Ira's care. In May 2015, the trial court consolidated the two cases. In July 2015, the court allowed Ira to have supervised visitation.

¶ 7 In August 2015, Ira, through his attorney, filed a petition for modification of the previous visitation order, alleging Dominga had attempted to frustrate his visitation. In December 2015, the trial court issued an agreed order. Therein, the court awarded Dominga the temporary sole care, custody, and education of A.M. during the pendency of the proceedings, subject to Ira's right of reasonable visitation.

¶ 8 In October 2015, the trial court conducted a bench trial. Stephanie Heger, A.M.'s prekindergarten teacher, testified A.M.'s "was a very bright child." Heger interacted with Ira at least once a week and found him to be interested in his daughter's progress. Ira and Dominga would both come in at times, and Ira would have to translate for her.

¶ 9 Marley Reed, a supervisor at Youth Advocate, testified Ira had supervised visits with A.M. from July 2015 to September 2015. She found Ira and A.M. had a loving relationship. Reed had no concerns about A.M. being left with Ira on a continuous basis.

¶ 10 Ira testified he was 50 years old and married to Sandra. In 2011, Ira obtained his

associate's degree, and in 2014 he was attempting to obtain his bachelor's degree. At the time of the hearing, Ira was not working. His wife worked as an inspector at Aramark. Ira stated there had never been an indicated finding by the Department of Children and Family Services (DCFS). In 2011, Ira found out he was A.M.'s father, and he moved Dominga and A.M. from Macomb to Decatur, where he lived. He stated he has a "good relationship" with A.M. and has been active in her schooling. Ira stated Dominga leaves A.M. home alone, cannot speak English, and would not be able to help A.M. with her homework. Ira stated Dominga does not have a vehicle or a driver's license. He also believed she was in the country illegally. Ira stated Dominga had been jailed for 30 days by immigration services in 2012 or 2013, after he reported she kicked A.M. On cross-examination, Ira testified he was \$1,621 in arrears on his child support.

¶ 11 Called as an adverse witness, Dominga testified through an interpreter. She stated she was 39 years old and had been living in the United States illegally for 9 years. She left four children in Mexico, all of them 14 years old or younger, to escape domestic violence. Dominga stated she did not have a driver's license and does not drive. She can read and write English "a little bit." She is married, and her husband is also illegally in the United States.

¶ 12 On direct examination, Dominga testified she lives in an apartment with her husband and nine-month-old son. Dominga stated A.M. has a "beautiful relationship" with her husband. Dominga stated she was in the application process to obtain legal status.

¶ 13 Following the testimony, the trial court issued the parenting order. The court ordered A.M.'s health and extracurricular decisions to be Ira's responsibility, while decisions as to A.M.'s education would be a joint responsibility of the parents. The court ordered A.M. to live with Ira, subject to Dominga's designated parenting times.

¶ 14 In its written order, the trial court noted the guardian *ad litem*'s report indicated

both parties have a good relationship with A.M., who was doing well in school and “a bright happy child.” The court found the “controlling factor” was Dominga’s efforts to keep Ira from having any type of relationship with A.M. The court found Dominga had caused Ira to be arrested and filed unfounded DCFS complaints and unsupported orders of protection against him. Thus, the court granted Ira the majority of parenting time. This appeal followed.

¶ 15

II. ANALYSIS

¶ 16

A. Lack of an Appellee’s Brief

¶ 17

Initially, we note Ira has not filed a brief in this case. A reviewing court is not compelled to serve as an advocate for the appellee and is not required to search the record for the purpose of sustaining the trial court’s judgment. However, 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 should decide the merits of the appeal. On the other hand, if the appellant’s brief demonstrates *prima facie* reversible error and the contentions in the brief find support in the record, the trial court’s judgment may be reversed. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133, 345 N.E.2d 493, 495 (1976).

¶ 18

B. Medical Concerns and Extracurricular Activities

¶ 19

Dominga argues the trial court’s award of decision-making authority for A.M.’s medical concerns and extracurricular activities in favor of Ira was against the manifest weight of the evidence. We disagree.

¶ 20

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. In determining custodial matters, the trial court is required to apply the relevant standards found in the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act). 750 ILCS

46/802(a) (West Supp. 2015). 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 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).

¶ 21 “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.

¶ 22 In the case *sub judice*, the trial court awarded Ira the decision-making authority with respect to A.M.’s health concerns and extracurricular activities. As Ira received the majority of parenting time, it was in A.M.’s best interests that Ira 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. Here, the court specifically found the “controlling factor” to be Dominga’s efforts to keep Ira from having any type of relationship with A.M., which weighs against Dominga having decision-making authority on these two issues. The best-interest factors also require consideration of the child’s needs and any difficulty in transporting the child. The

evidence indicated Dominga has no car, no driver's license, and speaks only a limited amount of English. We find the court's decision regarding the allocation of parental responsibilities on these two issues was not against the manifest weight of the evidence, manifestly unjust, or an abuse of discretion.

¶ 23 C. Parenting Time

¶ 24 Dominga argues the trial court's award of the majority of parenting time to Ira was against the manifest weight of the evidence. We disagree.

¶ 25 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. 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; whether a restriction on parenting time is appropriate; and any physical violence by a parent against the child or a member of the child's household. 750 ILCS 5/602.7(b) (West Supp. 2015).

¶ 26 In its ruling, the trial court noted Dominga had spent the majority of time with A.M., which it stated would ordinarily tend to favor her in the allocation of parenting time.

However, as stated, the court relied on the “controlling factor” that Dominga engaged in efforts to keep Ira from having any type of relationship with A.M. Thus, the court granted Ira the majority of parenting time.

¶ 27 In her report, the guardian *ad litem* believed Dominga “tried hard to interfere” with the relationship between A.M. and Ira and “does not encourage a relationship” between them. The report questioned Dominga’s credibility and noted her repeated accusations against Ira, “all in an attempt to keep [A.M.] from Ira.” The report indicated both parties reside in the same school district, and Ira stated he would not move A.M. out of her current school. Ira had A.M. at least five days per week and was very active in her school, and the report stated A.M. has “a phenomenal relationship” with her father and his wife. The guardian *ad litem* was not able to ascertain any relationship between A.M. and her stepfather due to the language barrier. We find the trial court’s decision to award Ira the majority of parenting time was not against the manifest weight of the evidence.

¶ 28 III. CONCLUSION

¶ 29 For the reasons stated, we affirm the trial court’s judgment.

¶ 30 Affirmed.