2018 IL App (2d) 180562-U
No. 2-18-0562
Order filed November 30, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

JAMES D. LANGAN,	)	Appeal from the Circuit Court
	)	of McHenry County.
Petitioner-Appellee,	)	
	)	
v.	)	No. 17-FA-313
	)	
JENNIFER L. FROST,	)	Honorable
	)	Mary H. Nader,
Respondent-Appellant.	)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Hutchinson and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's allocation of significant parenting time, including unsupervised and overnight visitation, to father of eight-month-old child, despite father's past abusive behavior toward mother, was not against the manifest weight of the evidence. Affirmed.

¶ 2 Respondent appeals from the circuit court's allocation of parenting time to petitioner, with whom she was involved before their child was born. Citing section 602.7(b)(14) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/602.7(b)(14) (West 2018))), respondent maintains that the trial court erred in awarding unsupervised and overnight visitation with the eight-month-old child in light of petitioner's past and, she claims, continuing

abusive conduct toward respondent. Respondent further argues that the case should be reassigned to a new judge. We disagree and, for the reasons that follow, affirm the judgment of the trial court.

¶ 3 I. BACKGROUND

¶ 4 The parties met through a dating website and began an on-again-off-again relationship in December 2016. On January 25, 2017, respondent became pregnant. In July 2017, the parties broke up for the last time. On August 19, 2017, as the police watched, petitioner removed a tracking device he had placed under respondent's car at some unspecified time. On September 25, 2017, the McHenry County circuit court granted respondent a two-year order of protection from petitioner.

¶ 5 The parties' child was born on October 13, 2017. Petitioner filed a petition to establish a father/child relationship. The circuit court held a hearing in June 2018. Respondent testified that their relationship had been mostly "horrible," due to petitioner's controlling and manipulative behavior. She pointed out that the order of protection characterized petitioner's conduct as "abusive," although she had never seen him be physically violent with anyone. She also identified three incidents of stalking that she claimed occurred after the order of protection was entered. Concerned that petitioner would use his parenting time and the child transfers as a means of continuing to stalk and harass her, she proposed a parenting plan that would allow petitioner to visit their child in a supervised setting for the first three months, twice a week for one hour each visit; then to have full-day Saturday visits; and, eventually, to have overnight visits when the child was three years old. She further advised the court that she was still breast feeding and that petitioner had never spent time alone with the eight-month-old child.

¶ 6 Petitioner did not deny placing the tracking device under respondent's car but refuted the allegations of stalking after the order of protection was entered. He requested that the child spend the entirety of every weekend with him, as well as Tuesday evenings.

¶ 7 The trial court determined that petitioner would have parenting time with the parties' child every Tuesday from 4:30 p.m. until 8:30 p.m., every other weekend from 4:30 p.m. on Friday until 7:30 p.m. on Sunday, all day Saturday on alternate weekends, and two one-week vacation periods per year. The court also addressed the problem of transferring the child with an active order of protection in place. The court's usual practice under such circumstances was to have transfers occur at the police department, where the court has "an exception to the order of protection *** for the purposes of child exchange because everything is recorded at the police department." Respondent, however, testified that the police department was "absolutely not" responsible enough to oversee the exchanges and stated that she did not want to be present at the exchanges. The court ordered respondent to designate a third party to transport the child to the police department and effect the exchange with petitioner.

¶ 8 II. ANALYSIS

¶ 9 A. Allocation of Parenting Time

¶ 10 The parties disagree as to the appropriate standard of review: respondent maintains that review is *de novo*; petitioner, abuse of discretion. Neither party is correct.

¶ 11 Respondent cites *Best v. Best*, 358 Ill. App. 3d 1046, 1053 (2005), for the proposition that "a court reviews *de novo* 'whether the acts of which the petitioner has presented evidence fall within the [Domestic Violence] Act's definition of abuse.' " In *Best*, however, we decided an order-of-protection case, not an allocation-of-parenting-time case. Furthermore, we noted in *Best* that whether the evidence fell within the statutory definition of abuse was not the issue in

the case; rather, the issue was whether the trial court's entry of an order of protection comported with the standard dictated by the Act: the preponderance of the evidence. *Best*, 358 Ill. App. 3d at 1053 (citing 750 ILCS 60/205(a) (West 2002)). "When a trial court makes a finding of fact by the preponderance of the evidence, a reviewing court defers to the trial court, and so decides only whether the finding is against the manifest weight of the evidence." *Id*. Therefore, we concluded, manifest-weight-of-the-evidence review was proper in an order-of-protection case. *Id*. at 1054.

¶ 12 The issue in this case is also not a question of statutory interpretation. Rather, the issue is whether the trial court correctly allocated parenting time under all relevant factors for determining the child's best interests and, in particular, the statutory factor, "the occurrence of abuse against the child or other member of the child's household." 750 ILCS 5/602.7(b)(14) (West 2018). "A trial court's determination as to the best interests of the child will not be reversed on appeal unless it is clearly against the manifest weight of the evidence and it appears that a manifest injustice has occurred. [Citation.] A judgment is against the manifest weight of the evidence only when the opposite conclusion is clearly apparent." *In re Parentage of J.W.*, 2013 IL 114817, ¶ 55. We accordingly apply the manifest weight of the evidence standard to our review in this case.

¶ 13 Under such review, the trial court's decision is accorded "great deference" because "the trial court is in a superior position to judge the credibility of witnesses and determine the needs of the child." *In re Marriage of Craig*, 326 Ill. App. 3d 1127, 1129 (2002). "A reviewing court may not substitute its judgment for that of the fact finder" (*In re Marriage of Anderson*, 409 Ill. App. 3d 191, 199 (2011)), and "[w]here the evidence permits multiple reasonable inferences, the

reviewing court we will accept those inferences that support the court's order." *In re Marriage of Bates*, 212 Ill. 2d 489, 516 (2004).

¶ 14 Respondent challenges the trial court's allocation of parenting time to petitioner. The trial court determined that petitioner would have parenting time with the parties' child every Tuesday from 4:30 p.m. until 8:30 p.m., every other weekend from 4:30 p.m. on Friday until 7:30 p.m. on Sunday, all day Saturday on alternate weekends, and two one-week vacation periods per year. Holidays were allocated equally between the parents. Respondent's parenting plan had proposed that petitioner visit their child in a supervised setting for the first three months, twice a week for one hour each visit; full day Saturday visits would then be permitted; overnight visits would be allowed after the child was three years old. She proposed the restricted visiting schedule because petitioner had never spent time alone with the eight-month-old child, she was still breastfeeding, and she feared that petitioner would use his parenting time, and the logistics involved with transferring the child, "as a means to continue to stalk and harass her."

¶ 15 In determining the best interests of the child, courts are to consider a non-exclusive list of relevant factors set forth in the Act. Here, at the conclusion of the hearing on the Petition to Establish a Father/Child Relationship filed by petitioner, the trial court addressed each of the statutory best interest factors. Respondent focuses on the court's finding on the fourteenth factor, "the occurrence of abuse against the child or other member of the child's household." 750 ILCS 5/602.7(b)(14) (West 2018). With respect to this factor, the trial court found that "(t)here was no testimony as to that." According to respondent, the trial court ignored the "presence of abuse" evidenced by the protection order entered against petitioner, as well as her allegations of continuing stalking and harassment. We disagree.

¶ 16 The evidence showed that nearly all of the incidents of stalking and harassment claimed by respondent occurred prior to the entry of the order of protection two months before the child was born. At the hearing, respondent identified three additional incidents of stalking that allegedly occurred after the order of protection was entered. The court found that petitioner had successfully "refuted" each of the claimed incidents and that respondent's credibility had been damaged, expressly stating that it found the three allegations "to be not true." Taken in the context of these findings, the trial court's comment that "there was no testimony" of abuse reasonably infers a finding that there was no "credible or relevant testimony" regarding the occurrence of abuse against respondent. Such a finding is not against the manifest weight of the evidence.

¶ 17 The trial court also considered the statutory factor of "whether a restriction on parenting time is appropriate." 750 ILCS 5/602.7(b)(10) (West 2018). During the hearing, respondent's counsel argued that petitioner's "pattern of behavior" with respondent contributed to the serious endangerment of the child because "the child could also be used as a tool to cause harm to [respondent] or to control her." The court characterized counsel's argument as speculation, to which counsel agreed.

¶ 18 Absent a finding that visitation would seriously endanger the child's physical, mental, moral, or emotional health, requirements that visitation be supervised and prohibitions on overnight visitation are improper restrictions on visitation. 750 ILCS 5/602.7(b), 602.7(b)(11) (West 2018); *In re Marriage of Lee*, 246 Ill. App. 3d 628, 645 (1993). The trial court did not make a finding of serious endangerment in the present case and, accordingly, rejected respondent's proposed parenting plan, which would have improperly restricted petitioner's visitation by requiring supervised visitation and prohibiting overnight visitation.

¶ 19 Finally, we note that an underlying purpose of the Act is to "acknowledge that the determination of children's best interests, and the allocation of parenting time and significant decision-making responsibilities, are among the paramount responsibilities of our system of justice;" to that end, the Act recognizes "children's right to a strong and healthy relationship with parents, and parents' concomitant right and responsibility to create and maintain such relationships." 750 ILCS 5/102(7), 102(7)(A) (West 2018). Illinois courts have held that it is in the best interests of the child to have a healthy and close relationship with both parents. See *In re Marriage of Eckert*, 119 Ill. 2d 316, 327 (1988) (deciding a removal petition and observing that one purpose of the Act is to "secure the maximum involvement and cooperation of both parents regarding the physical, mental, moral and emotional well-being of the children during and after the litigation"). Thus, "[w]hen a relationship creates a child, and then that relationship ends, it is important that both parents continue to participate to the fullest in the child's life." *In re P.D.*, 2017 IL App (2d) 170355, ¶ 57 (Hutchinson, J., specially concurring). Accordingly, "[a] reasonable visitation schedule is one that will preserve and foster the child's relationship with the noncustodial parent." *Eckert*, 119 Ill. 2d at 327.

¶ 20 Here, the trial court's visitation schedule recognizes the importance of both parents' involvement in their child's upbringing, and the court's judgment is not against the manifest weight of the evidence. Therefore, we affirm the trial court's judgment and its allocation of parenting time.

¶ 21 B. Reassignment to New Judge

¶ 22 Respondent's contention that the matter should be reassigned to a new judge presumes that the case will be remanded. As there will be no remand, there is no need for reassignment.

¶ 23 We further note that the trial judge's remarks cited by respondent do not, in our opinion, " 'display a deep-seated favoritism or antagonism that would make fair judgment impossible.' " *Eychaner v. Gross*, 202 Ill. 2d 228, 281 (2002) quoting *Liteky v. United States*, 510 U.S. 540, 555 (1994). Indeed, they appear to be based on respondent's credibility as a witness, " 'which is clearly within the purview of the trial court. [Citation omitted.]' " *Eychaner*, 202 Ill. 2d at 281.

¶ 24 We also find unpersuasive respondent's arguments that the trial judge: (1) placed an unfair burden upon her by requiring her to provide a third party for the child exchanges; and (2) showed "antagonism" towards her by stating that it was respondent who requested not to be present for the exchanges. The record reveals that respondent rejected the court's proposal that the exchanges take place at the police department because she did not trust the police to oversee them. She also did not want to see or have contact with petitioner. We fail to see how entering an order that conforms to respondent's wishes can be characterized as unfairly burdensome or antagonistic.

¶ 25 III. CONCLUSION

¶ 26 For these reasons, the judgment of the circuit court of McHenry County is affirmed.

¶ 27 Affirmed.