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2018 IL App (3d) 170184-U

Order filed January 4, 2018

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2018

<i>In re</i> MARRIAGE OF	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
ROBERT G. BAUMGARDNER,	)	Henry County, Illinois.
	)	
Petitioner-Appellant,	)	
	)	Appeal No. 3-17-0184
and	)	Circuit No. 10-MR-88
	)	
PAMELA S. BAUMGARDNER,	)	
	)	The Honorable
Respondent-Appellee.	)	Gregory G. Chickris,
	)	Judge, presiding.

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JUSTICE McDADE delivered the judgment of the court.  
Presiding Justice Carter and Justice Lytton concurred in the judgment.

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**ORDER**

¶ 1 *Held:* The circuit court did not err when it found that no substantial change in circumstances had occurred and when it denied the petition to modify allocation of parental responsibilities.

¶ 2 The petitioner, Robert G. Baumgardner, filed a motion to modify allocation of parental responsibilities regarding S.B., the daughter whom he had with the respondent, Pamela S.

Baumgardner. After a hearing, the circuit court denied the petition, finding that no substantial

change in circumstances had occurred because the parties still could not communicate and there was no evidence to suggest that S.B. was adversely affected by the inability to communicate. On appeal, Robert argues that the court erred when it denied his petition. We affirm.

¶ 3

### FACTS

¶ 4

Pamela and Robert married in August 1990 in Illinois. They had three children together, the youngest two of whom were E.B. (born December 28, 1997) and S.B. (born May 28, 2003). The parties divorced in Ohio in 2008. As a part of the dissolution judgment, the parties agreed to joint custody of their children. The parties alternated two-week periods having the children. At some point, both parties moved back to Illinois. The Ohio dissolution judgment was registered in Illinois in 2010.

¶ 5

The record indicates that the parties failed to communicate effectively for years, culminating in the circuit court granting a petition to modify custody filed by Pamela, which she had filed in 2013. The court's 2014 order found that the parties could no longer communicate effectively to continue the joint parenting arrangement and that Robert and E.B. did not get along and had a minimal relationship. Accordingly, the court granted Pamela sole custody of both children. However, the court allowed the alternating two-week schedule with S.B. to continue because she did not appear to be adversely affected by the parties' inability to communicate.

¶ 6

On December 21, 2015, Robert filed a petition to modify allocation of parental responsibilities, which he later amended on May 17, 2016. He alleged, *inter alia*, that Pamela had failed to notify him of S.B.'s "medical care, routine or otherwise" and that she had S.B.'s school block his access to the "Skyward" notification and information access system. Robert sought the transfer of parental responsibilities to him.

¶ 7 The circuit court held a hearing on the petition on February 16, 2017. Several witnesses testified regarding S.B.'s medical and educational circumstances. Brian Hofer, the principal of S.B.'s middle school in 2014, testified that a meeting was held on June 9, 2014, regarding Robert's access to "Skyward," which Hofer described as "our student information services that houses everything from grade books, their grades, to lunch accounts, to just all the student information, all the addresses, phone numbers, that type of thing." Also in attendance at the meeting were Pamela, E.B.'s high school principal, and Scott Kuffel, the school superintendent. Hofer testified that Pamela requested at the meeting that Robert's Skyward access be removed. On cross-examination, Hofer clarified that Pamela was merely requesting that Robert not have Skyward access through her account.

¶ 8 Kuffel testified that Pamela requested at the meeting "that she be the sole adult to have access to Skyward and that [Robert] not have access to Skyward." He also stated that in most situations, parents who are separated have different Skyward accounts for their child or children. Kuffel stated that he made the decision to remove Robert's access to Skyward. However, after discussing the matter later with counsel, Robert was granted full access once again.

¶ 9 Pamela testified that she "did not want [Robert] off of Skyward. I just wanted the teachers to call me first."

¶ 10 Regarding S.B.'s medical care, Pamela testified that she would let Robert know via email when S.B. went to the doctor. An email was introduced into evidence from one month prior to the hearing in which Pamela told Robert that "[S.B.] went to the doctor today for her yearly checkup." No other information was provided in the email. A similar email was also introduced into evidence from July 2015. After receiving that email, Robert had asked how the appointment went, but Pamela did not respond.

¶ 11 During Pamela’s testimony, the court specifically found that Pamela “doesn’t communicate” with Robert and that she did not even deny that fact.

¶ 12 Pamela also testified that because Robert provides health insurance for S.B., he receives receipts and explanations of benefits such that he knows the identity of her doctors. Robert admitted that he receives explanations of benefits and that they sometimes provide the names of her doctors.

¶ 13 Robert testified that if he were allocated the parental responsibilities regarding S.B., he would notify Pamela of the dates, times, and results of medical appointments. He would also notify her of every school activity, including extracurriculars, and would try to consult with her regarding the scheduling of those activities. Robert added that S.B. was a A to A+ student.

¶ 14 At the close of the hearing, the court found that no substantial change in circumstances had occurred. The court stated that the parties still did not get along, but it was not causing any problems for S.B. Also, the court noted that Robert had Skyward access at the time of the hearing.

¶ 15 Robert appealed.

¶ 16 ANALYSIS

¶ 17 On appeal, Robert argues that the circuit court erred when it denied his petition to modify allocation of parental responsibilities. Specifically, he claims that it was error to find that no change in circumstances had occurred because the parties still could not communicate; if that were a valid finding, then no matter what negative actions Pamela took, there could never be a change in circumstances.

¶ 18 In relevant part, section 610.5(c) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/610.5(c) (West 2016)) provides:

“[T]he court shall modify a parenting plan or allocation judgment when necessary to serve the child’s best interests if the court finds, by a preponderance of the evidence, that on the basis of facts that have arisen since the entry of the existing parenting plan or allocation judgment or were not anticipated therein, a substantial change has occurred in the circumstances of the child or of either parent and that a modification is necessary to serve the child’s best interests.” *Id.*

When determining the child’s best interest, the court should consider all relevant factors, including the extensive lists of factors contained in sections 602.5(c) and 602.7(b). 750 ILCS 5/602.5(c), 602.7(b) (West 2016). We will not disturb a circuit court’s modification decision unless it was against the manifest weight of the evidence. *In re Marriage of Bates*, 212 Ill. 2d 489, 515 (2004). In that regard, we note:

“The trial court is in the best position to review the evidence and to weigh the credibility of the witnesses. [Citation.] In determining whether a judgment is contrary to the manifest weight of the evidence, the reviewing court views the evidence in the light most favorable to the appellee. [Citation.] Where the evidence permits multiple reasonable inferences, the reviewing court will accept those inferences that support the court’s order. [Citation.]” *Id.* at 515-16.

¶ 19 Our review of the record reveals no error in the circuit court’s decision. Evidence presented at the hearing indicated that the parties continued to fail to communicate regarding

S.B. However, the flaw in Robert’s argument is that no matter what deficiencies in Pamela’s actions he may have proven, he provided no evidence to show that S.B. was adversely affected by the situation. See *In re Marriage of Fuesting*, 228 Ill. App. 3d 339, 344 (1992) (holding that “[c]hanged conditions, in itself, is not sufficient to warrant a modification in custody without a finding that such changed conditions affect the welfare of the child”). Here, Robert testified that S.B. was excelling in school, and there was no evidence presented to show that she was suffering any negative impacts from the parties’ behavior, including in the medical and educational realms.<sup>1</sup> Under these circumstances, we hold that the circuit court did not err when it denied Robert’s petition to modify allocation of parental responsibilities. See *id.*

¶ 20

#### CONCLUSION

¶ 21

The judgment of the circuit court of Henry County is affirmed.

¶ 22

Affirmed.

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<sup>1</sup> It is noteworthy that despite Robert’s complaints regarding Pamela not sharing S.B.’s medical and educational information, it was shown at the hearing that Robert had access to that information by virtue of providing health insurance for S.B. and having Skyward access.