2018 IL App (4th) 170660-U

NO. 4-17-0660

FILED
January 22, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re MARRIAGE OF	)	Appeal from
CURTIS GERARD KUHN,	)	Circuit Court of
Petitioner-Appellee,	)	Morgan County
and	)	No. 13D88
VIRGINIA CLAIRE KUHN, now known as VIRIGINIA	)	
CLAIRE RAWLINGS,	)	Honorable
Respondent-Appellant.	)	Jeffery E. Tobin,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Harris and Justice DeArmond concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's order allocating all significant decision-making responsibilities to petitioner, modifying the parenting plan, and denying respondent's request to relocate the children to Indiana is not against the manifest weight of the evidence.

¶ 2 In July 2017, the Morgan County circuit court held a three-day hearing on (1) respondent's June 2016 petition seeking to modify the allocation of significant decision-making responsibilities, (2) respondent's September 2016 petition seeking to relocate the parties' children to Indiana, and (3) petitioner's February 2017 petition to modify the allocation of parenting time. After the hearing, the parties filed written closing arguments. On August 8, 2017, the court entered a written order, which, *inter alia*, allocated the significant decision-making responsibilities to petitioner, implemented a new parenting plan, and denied respondent's request to relocate the children to Indiana.

¶ 3 Respondent appeals, asserting the circuit court erred in its evaluation of the best

interests factors for relocation (750 ILCS 5/609.2 (g) (West 2016)), especially the factor regarding the educational opportunities at the existing location and the proposed new location. The National Association of the Deaf filed an *amicus curiae* brief in support of respondent's position. We affirm.

¶ 4 I. BACKGROUND

¶ 5 The parties were married in June 2000 and had four children, Corbin (born in 2007) and triplets Celine, Covina, and Clodia (born in 2011). The parties are both deaf and communicate using American Sign Language (ASL). During the marriage, they resided in a home on Webster Street in Jacksonville, Illinois.

¶ 6 In July 2013, petitioner filed his petition for the dissolution of the parties' marriage. On August 8, 2013, the circuit court entered a judgment of dissolution of marriage, incorporating the parties' marital settlement agreement and parenting agreement. Under the marital settlement agreement, respondent received sole possession of the marital residence on Webster Street and the children's primary residence was with respondent. The parenting agreement provided the parties were to make major decisions jointly. If they could not reach a consensus, the final decisions were to be made by petitioner. In February 2014, the court approved the parties' amended joint parenting agreement, which addressed parenting time.

¶ 7 Since 2014, respondent has lived with George Andrew Spurlin, who is deaf. Respondent and Spurlin have a one-year-old son, Harrison, who is also deaf. In March 2017, Spurlin moved to Indiana and took a job in food services at the Indiana School for the Deaf (Indiana School). Respondent and Spurlin intended to enroll Harrison in the Indiana School's toddler program in the fall. Respondent does not work and receives social security benefits for her and the four children. Respondent grew up in Atlanta, Georgia, and her family still resides

there.

¶ 8 Petitioner is an alumnus of the Illinois School for the Deaf (Illinois School) and had worked there for 16 years as a staff development specialist. Petitioner is a triplet, and his triplet brothers, Chris and Craig, also work at the Illinois School, as do their wives. Chris's and Craig's families live in Jacksonville, Illinois. Petitioner also has about 50 family members who live in Quincy, Illinois. Petitioner has a close family that gets together monthly. Since October 2014, he has lived with Laci Kennedy. She has a son, Brady Gillis, who was eight at the time of the hearing. Kennedy had worked at the Illinois School for 13 years. Petitioner and Kennedy are engaged and planned to move into the Webster Street home in August 2017.

¶ 9 The four children's only primary residence has been the Webster Street home and the only school they have attended is the Illinois School. Corbin has been at the Illinois School for seven years, and the girls for three years. All four children have friends at the Illinois School. Corbin is deaf and cannot speak. He had just finished third grade, and his last individualized education plan indicated he was being instructed in reading and language at the first-grade level. Corbin had not been making one year of progress for each year of instruction. Additionally, Corbin has a secondary learning disability that causes him difficulty with processing language and expressing himself. Celine is also deaf. She was five years old but demonstrated skills half her age. Corbin and Celine communicate with ASL and can use cued speech. Clodia and Covina are hard of hearing and can speak. Spoken English is Clodia and Covina's primary means of communication, but they can use ASL to communicate with the deaf. Their skills were around six months ahead of Celine's.

¶ 10 In June 2016, respondent filed a petition for modification of the joint parenting agreement, seeking to obtain decision-making responsibilities and reduce petitioner's control

over decision-making responsibilities. That same month respondent filed a notice of intent to relocate the children out of state, and petitioner objected. On September 1, 2016, respondent filed her petition for modification of the joint parenting agreement, seeking significant decision-making responsibilities, leave to relocate the children to Indiana, partition the marital residence, and other relief. Petitioner later purchased respondent's interest in the marital residence. In December 2016, respondent filed a motion for leave to take the children to visit the Indiana School and visit a pediatric otolaryngologist in Indianapolis, Indiana. After a February 2017 hearing, the circuit court denied respondent's request. In its written order, the court noted that, under the joint parenting agreement, petitioner had decision-making authority when the parties' did not agree and petitioner had made the final decision denying respondent's requests.

¶ 11 In February 2017, petitioner filed a petition to modify allocation of parental responsibilities and support, requesting the circuit court grant him the majority of the parenting time and terminate his child support obligation. The next month, respondent filed a motion to stay elective medical treatment, requesting the circuit court stay the Covina's and Celine's cochlear implant surgeries until the court ruled on the relocation request. After a March 27, 2017, hearing, the court denied respondent's motion to stay the children's surgery. In July 2017, petitioner filed a petition for rule to show cause why respondent should not be held in indirect civil contempt for preventing the cochlear implant surgeries.

¶ 12 On July 14, 2017, the circuit court commenced the hearing on three petitions to modify the parenting agreement, namely respondent's June 2016 petition, respondent's September 2016 petition, and petitioner's February 2017 petition. Respondent testified on her own behalf and presented the testimony of (1) Fara Harper, a teacher at the Illinois School; (2) Brice Lowe, a 1996 graduate of the Illinois School and parent of four deaf children; (3) Kelly

Lowe, Brice's wife; (4) Candace Sexton-Ruiz, an ASL professor at Lone Star College and parent of a deaf child; (5) Bob Dramin, ASL professor at Indiana University, Purdue University, substitute teacher at the Indiana School, and parent of two deaf children; (6) Ariella Dramin, former student of both the Illinois and Indiana Schools; and (7) Spurlin. Petitioner testified on his own behalf and presented the testimony of (1) Allison Guidish, an educator at the Illinois School; (2) Kate Van Valey, a preschool educator at the Illinois School; (3) Sarah Dobson, an educator at the Illinois School; (4) Megan Scott, speech language pathologist at the Illinois School; (5) Angelia Kuhn, principal at the Illinois School and petitioner's sister-in-law; and (6) Kennedy. The evidence presented at the hearing is extensive, and the parties are familiar with it. Thus, only a brief summary of the evidence follows.

¶ 13 Respondent seeks relocation to Indiana, so the children can attend the Indiana School. Her complaint about the Illinois School is its use of cued speech all day. ASL is a separate language from English. Previously, the theory with deaf education was to develop a strong first language, ASL, and then acquire a second language, English, through print. Cued speech is a visual representation of English. It allows the deaf the opportunity to practice English in its spoken form before having them read and write in English. Cued speech had been a method of communication at the Illinois School for seven years. It started as a small pilot program and gradually increased over the years.

¶ 14 Respondent presented the testimony of four parents, whose children attended the Illinois School and then attended different schools for the deaf, and one former student of the Illinois School, who recently graduated from the Indiana School. The testimony indicated the children's communication skills vastly improved once they left the Illinois School and went to a school where they were taught using ASL. The children, who had attended the Illinois School,

were all deaf. The testimony also indicated the Indiana School had advanced courses in high school and more extracurricular activities than the Illinois School. Ariella, a former Illinois School student, testified most of the teachers at the Illinois School were hearing and tended to communicate with spoken English and cued speech. As a result, she felt excluded at the Illinois School because of that. Additionally, Harper, a deaf teacher at the Illinois School, did not like cued speech for deaf children because the deaf do not know what words sound like. According to Harper, the kids who do well with cued speech have some hearing. Respondent's witnesses also testified about the importance of having deaf role models for deaf children and the strong deaf community at the Indiana School.

¶ 15 Petitioner presented the testimony of Angela, the principal at the Illinois School and a proponent of cued speech. She had not observed any regression with the use of cued speech at the Illinois School and some students made significant gains. Angela testified the use of ASL only would negatively impact students' reading and writing skills. Guidish, a teacher at the Illinois School, testified cued speech was beneficial for the parties' daughters and instruction in ASL would be detrimental to them.

¶ 16 Petitioner also presented testimony about his involvement with the children's education, extracurricular activities, and medical needs. He was in frequent contact with the children's teachers, observed their classes, attended the meetings for their individualized education plans and other school functions, hired a tutor for Corbin, and worked with the children at home on what they are learning in school. Petitioner also organized sports teams and coached those teams. He was usually the parent, who took the children to the doctor, and testified about respondent's interference with Celine's and Covina's cochlear implant surgeries, which caused a delay in the surgeries. Petitioner's witnesses did admit respondent attended most

meetings for the children's individualized education plans and school functions. Respondent also advocated for mainstreaming Covina and Clodia and Corbin in math and raised concerns about cued speech. She also filed a due process complaint against the Illinois School, which resulted in additional ASL time for Corbin. Additionally, respondent did attend the children's extracurricular activities.

¶ 17 On August 8, 2017, the circuit court entered an order modifying the dissolution judgment and the second joint parenting agreement. The court gave petitioner the significant decision-making responsibilities, adopted a new parenting plan, and denied respondent's request to relocate the children to Indiana. The order also addressed petitioner's rule to show case, prohibiting respondent from being present at Covina's and Celine's cochlear implant surgeries and follow-up appointments. Petitioner's child support obligation was also terminated.

¶ 18 On August 28, 2017, respondent filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 303 (eff. July 1, 2017). Accordingly, this court has jurisdiction under Illinois Supreme Rule 301 (eff. Feb. 1, 1994).

¶ 19 II. ANALYSIS

¶ 20 Respondent contends the circuit court erred by denying her request to relocate the parties' children to Indiana. She contends the court's best interests finding on relocation was against the manifest weight of the evidence. Petitioner contends the case is primarily about a modification of parental decision making and parenting time. The record demonstrates the circuit court addressed three petitions filed by the parties at the July 2017 hearing, specifically respondent's June 2016 petition seeking to modify the allocation of significant decision-making responsibilities, respondent's September 2016 petition seeking to relocate the parties' children to Indiana, and petitioner's February 2017 petition to modify the allocation of parenting time.

Thus, multiple statutory provisions were involved in the court's judgment.

¶ 21 Initially, section 610.5(c) of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/610.5(c) (West Supp. 2015)) allows a court to modify a parenting plan when a preponderance of the evidence demonstrates that, on the basis of the facts that have arisen since the entry of the existing parenting plan, a substantial change in circumstances has occurred and a modification is necessary to serve the children's best interests. This court gives great deference to a circuit court's findings regarding the children's best interests because that court has the better position to observe the parties' temperaments and personalities and assess the witnesses' credibility. *In re Marriage of Stopher*, 328 Ill. App. 3d 1037, 1041, 767 N.E.2d 925, 928 (2002). This court will not reverse a circuit court's determination of what is in the children's best interests "unless it is clearly against the manifest weight of the evidence and it appears that a manifest injustice has occurred." *In re Marriage of Eckert*, 119 Ill. 2d 316, 328, 518 N.E.2d 1041, 1046 (1988). "A decision is against the manifest weight of the evidence where the opposite conclusion is clearly evident or where the court's findings are unreasonable, arbitrary, and not based on any of the evidence." *In re Marriage of Bhati*, 397 Ill. App. 3d 53, 61, 920 N.E.2d 1147, 1153 (2009).

¶ 22 Section 602.5 of the Dissolution Act (750 ILCS 5/602.5 (West 2016)) addresses the allocation of significant decision-making responsibilities and sets forth a nonexclusive list of factors to consider in determining the children's best interests for the purpose of allocating significant decision-making responsibilities. The factors applicable to this case are the following: (1) the children's wishes, taking into account their maturity and ability to express reasoned and independent preferences as to decision-making; (2) the children's adjustment to their home, school, and community; (3) the mental and physical health of all individuals

involved; (4) the parents' ability to cooperate to make decisions, or the level of conflict between the parents 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 children; (6) any prior agreement or course of conduct between the parents relating to decision-making with respect to the children; (7) the parents' wishes of the parents; (8) the children's needs; (9) the distance between the parents' residences, the cost and difficulty of transporting the children, each parent's and the children's daily schedules, and the ability of the parents to cooperate in the arrangement; and (10) each parent's willingness and ability to facilitate and encourage a close and continuing relationship between the other parent and the children. 750 ILCS 5/602.5(c)(1)-(c)(9), (c)(11) (West 2016).

¶ 23 Next, section 602.7 of the Dissolution Act (750 ILCS 5/602.7 (West 2016)) concerns parenting time and, like section 602.5, provides a nonexclusive list of factors to consider in determining the children's best interests for the purpose of allocating parenting time. Those factors applicable to this case are the following: (1) each parent's wishes; (2) the children's wishes, taking into account their maturity and ability to express reasoned and independent preferences as to parenting time; (3) the amount of time each parent spent performing caretaking functions with respect to the children in the 24 months preceding the petition; (4) any prior agreement or course of conduct between the parents relating to caretaking functions with respect to the children; (5) the interaction and interrelationship of the children with their parents and siblings and with any other person who may significantly affect the children's best interests; (6) the children's adjustment to their home, school, and community; (7) the mental and physical health of all individuals involved; (8) the children's needs; (9) the distance between the parents' residences, the cost and difficulty of transporting the children, each

parent's and the children's daily schedules, and the ability of the parents to cooperate in the arrangement; (10) the willingness and ability of each parent to place the needs of the children ahead of his or her own needs; and (11) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the children. 750 ILCS 5/602.7(b)(1) to (b)(9), (b)(12), (b)(13) (West 2016).

¶ 24 Last, section 609.2 of the Dissolution Act (750 ILCS 5/609.2 (West 2016)) addresses a parent's relocation. It provides "[a] parent's relocation constitutes a substantial change in circumstances for purposes of Section 610.5." 750 ILCS 5/609.2(a) (West 2016). Section 609.2(g) of the Dissolution Act (750 ILCS 5/609.2(g) (West 2016)) also contains a nonexclusive list of factors to consider in determining the children's best interests when a parent has relocated. Those factors are the following:

> "(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[ren] 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[ren] 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[ren];
>
> (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[ren], taking into account the child[ren]'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[ren];

(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[ren]'s best interests." 750 ILCS 5/609.2(g) (West 2016).

¶ 25 Respondent contends the main issue of concern in this case is the children's educational needs. A great deal of the evidence was focused on the children's education and the difference between the Illinois and Indiana schools. However, petitioner also filed a petition to modify, seeking to have sole decision-making responsibilities and a majority of the parenting time. He raised issues related to the children's medical treatment and respondent's confrontational incidents. As explained, multiple statutory provisions were at issue in this case, and the educational opportunities for the children at their current school and the proposed school (750 ILCS 5/609.2(g)(4) (West 2016)) was only one of many factors the court had to consider. None of the best interests factors are controlling, and "the weight to be accorded each factor will vary depending on the facts of the case." *Bhati*, 397 Ill. App. 3d at 61 (addressing the best interest factors for removal under a prior version of the statute (750 ILCS 5/609(a) (West 2006)).

¶ 26 Several of the statutory factors are neutral or cancel each other, as the parties had

equal parenting time under the previous plan and have valid reasons supporting their positions. The other factors favor petitioner. The children's adjustment to their home, school, and community and the presence of extended family in the Jacksonville area indisputably favor the children living in Jacksonville with petitioner. The evidence at trial also showed the children had expressed a desire to live with petitioner. As to meeting the children's needs, petitioner was more involved in the children's day-to-day schooling, extracurricular activities, and medical needs. Respondent had interfered with Clodia's and Celine's cochlear implant surgeries that were recommended by their doctor. Evidence was also presented the children had a closer relationship with petitioner than respondent. Petitioner worked at the Illinois school and saw the children during the school day. Relocation would impact the children's ability to see petitioner as frequently as they did in Illinois.

¶ 27 Specifically, as to the children's educational opportunities, this case involves four children with significant and different educational needs. Even if the circuit court made some erroneous findings in addressing this factor, it is not clearly evident on the evidence presented at the hearing that this factor favors relocation to Indiana. The strongest case for moving the children to Indiana for educational purposes was for Corbin, who is profoundly deaf and behind a grade level in the Illinois School. Respondent presented evidence that did raise some serious concerns about Corbin's education at the Illinois School with cued speech being used all day. However, the Indiana School's teaching in ASL only is detrimental to Covina and Clodia, who hear and speak. Thus, the educational opportunities for the children do not clearly favor Indiana.

¶ 28 Based on the evidence at the July 2017 hearing, we do not find the circuit court's best interests finding was against the manifest weight of the evidence.

¶ 29 III. CONCLUSION

¶ 30 For the reasons stated, we affirm the Morgan County circuit court's judgment.

¶ 31 Affirmed.