

NOTICE

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FILED

February 2, 2018
Carla Bender
4th District Appellate
Court, IL

2018 IL App (4th) 170675-U

No. 4-17-0675

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

PATRICK POWERS,)	Appeal from
Petitioner-Appellant,)	Circuit Court of
v.)	Sangamon County
KATELYN LEWIS,)	No. 16F654
Respondent-Appellee.)	
)	Honorable
)	Jack D. Davis II,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Harris and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the petitioner father failed to show the trial court committed error when allocating parental decision-making responsibilities and parenting time.

¶ 2 Petitioner father, Patrick Powers, appeals from the trial court’s order allocating parental decision-making responsibilities and parenting time concerning his child, R.L. (born September 18, 2016). On appeal, Patrick argues the trial court erred by awarding respondent-mother, Katelyn Lewis, (1) temporary parental decision-making responsibilities pending mediation and/or a decision by the court as to any disagreement regarding R.L.’s education, medical treatment, and extracurricular activities; and (2) the majority of the available parenting time. We disagree and affirm.

¶ 3 I. BACKGROUND

¶ 4 In October 2016, Patrick filed a petition to determine the existence of a father-child relationship with R.L. Katelyn filed a response to Patrick's petition, denying such a relationship existed and requesting deoxyribonucleic acid (DNA) testing. The trial court ordered Patrick to submit to DNA testing. In November 2016, DNA results established Patrick was R.L.'s biological father.

¶ 5 In May 2017, the trial court held a trial on various disputed issues, including the proper allocation of parental decision-making responsibilities and parenting time. The court heard testimony from multiple witnesses, including Patrick, Katelyn, Patrick's mother, Katelyn's father, Patrick's aunt, Katelyn's sister-in-law, and two of Patrick's close friends. The court also received into evidence exhibits relating to the parties' financials as well as copies of text message conversations between the parties. The following is a summary of the evidence presented.

¶ 6 In September 2015, Patrick and Katelyn began a romantic relationship. In December 2015, their relationship ended. On January 7, 2016, Katelyn learned she was pregnant. Throughout Katelyn's pregnancy, Patrick and his family presumed Patrick was the father of the child. Katelyn acknowledged she did not indicate otherwise to Patrick or his family. Katelyn testified she questioned fatherhood only when discussing it with a friend.

¶ 7 Patrick was enthusiastic about the idea of being a father. He began working longer hours to be eligible for health insurance for the child. Patrick purchased the necessary items to care for a child, including clothes, a stroller, and a high chair. He attended parenting classes. Patrick sold his truck to purchase a more child-friendly vehicle. He moved from Taylorville to Mechanicsburg, where Katelyn was then living with her parents, to better coparent.

¶ 8 Early on in the pregnancy, Patrick and Katelyn had an amicable relationship and communicated regularly. Katelyn would notify Patrick of doctor's appointments, and Patrick made an effort to attend those appointments. Patrick would ask to be updated on what occurred during the doctor's appointments he could not attend. Katelyn was impressed with Patrick's proactive approach. She told Patrick he would be the first person to see their child, she would place his name on the birth certificate, and their child would have his last name.

¶ 9 As the pregnancy progressed, the relationship between Patrick and Katelyn splintered and communication broke down. Katelyn reported on at least two occasions Patrick went to her home uninvited. During doctor's appointments, Katelyn would ask Patrick to leave the room at times.

¶ 10 Toward the end of the pregnancy, Katelyn began having issues with high blood pressure, passing out, and anxiety. Katelyn testified Patrick's presence caused her stress and panic attacks as he repeatedly indicated they were going to court after the child was born. She also indicated her doctor expressed concern with her panic attacks and instructed she notify Patrick of the birth only after it occurred.

¶ 11 Katelyn informed Patrick she was not comfortable with him being in the delivery room because he caused her to have high blood pressure. After leaving a 38-week doctor's appointment, Patrick and Katelyn's sister-in-law had a verbal disagreement in Katelyn's presence about his desire to be present in the delivery room. Katelyn's sister-in-law told Patrick he should respect Katelyn's wishes, to which Patrick indicated it was a matter between him and Katelyn and no one would be present in the delivery room if he could not be.

¶ 12 Approximately a week before R.L.'s birth, Katelyn informed Patrick by text

message she would not allow him to be present in the delivery room because of her blood pressure and the affect it may have on the child. Patrick responded, "I'll be in there." Katelyn responded, "Absolutely not." Patrick responded, "We will just have to agree to disagree on that." Katelyn later informed Patrick by text message he could be present in the waiting room if he wished. Patrick maintained he needed to be in the delivery room because he had questions for the doctor, to which Katelyn indicated the issue was not up for discussion. Patrick responded by questioning whether Katelyn was looking out for their child's best interests. Following Patrick's comment, Katelyn effectively halted communication. She did not inform him of the date or time she was scheduled to be induced.

¶ 13 After Katelyn stopped responding to his text messages, Patrick called the hospital and indicated he was the father of Katelyn's son and indicated "there was an issue on what time that we were supposed to be there." Hospital staff reportedly disclosed the information.

¶ 14 Patrick, his mother, and his aunt went to the hospital the day Katelyn was scheduled to be induced. They arrived before Katelyn. After Katelyn and her sister-in-law arrived at the hospital, Katelyn saw Patrick in the main lobby area. She began shaking, crying, and could barely talk. Katelyn and her sister-in-law left to find another entrance to the hospital. After entering the hospital through another entrance, Katelyn and her sister-in-law proceeded to the labor and delivery floor. Once there, they observed Patrick and his family in the waiting room. At Katelyn's request, a nurse directed Patrick and his family to exit the hospital, which they did. Induction was delayed due to Katelyn's high blood pressure.

¶ 15 In the days that followed Patrick attempted to contact Katelyn to find out if she had given birth. He texted her cell phone once a day, called her cell phone once a day, and called

her parents' home phone once a day. Patrick received no response. Patrick continued to attempt to contact Katelyn until he was served with an emergency order of protection. Katelyn testified she sought an emergency order of protection because she felt stalked when she saw Patrick at the hospital.

¶ 16 Patrick first saw a photograph of R.L. a week after he was born, which a friend shared from social media. He was devastated and frustrated with the fact he could not see his son. Katelyn testified at some point, presumably after Patrick filed his October 2016 petition to determine the existence of a father-child relationship, Patrick told her "the judge was in his pocket and that he knew he would be granted full custody because [she was] an unfit mother." Patrick denied making such a comment.

¶ 17 On an occasion in early November 2016, Katelyn went to Patrick's residence intoxicated. Katelyn, who was admittedly a recovering alcoholic, testified she did not recall why she went to Patrick's residence because at that time she was a "binge blackout drinker." Patrick testified Katelyn wanted to discuss their relationship. Patrick ended the conversation, and Katelyn left. Later that month, DNA results showed Patrick was R.L.'s biological father.

¶ 18 After receiving the DNA results, Katelyn allowed Patrick to see R.L. for the first time. Katelyn testified she did not request DNA testing to prevent Patrick from seeing his son. Katelyn unilaterally allocated time for allowing visitation. Patrick initially visited with R.L. once to twice a week for a couple of hours. Katelyn gradually increased visitation to include time on weekends. Up until approximately a month before trial, Katelyn did not allow overnight visitation, with the exception of one occasion in December 2016. On that occasion, Katelyn was to pick up R.L. after a scheduled visitation with Patrick. Katelyn allowed R.L. to stay the night

with Patrick because she became intoxicated. At the time of trial, Katelyn allowed overnight visitation on Wednesdays and every other weekend.

¶ 19 After DNA results established Patrick was the biological father of R.L., Katelyn and Patrick began communicating again by text message. They discussed R.L.'s daily routine, doctor's appointments, and transportation for visitation. Patrick testified he "[a]bsolutely" believed he and Katelyn could continue to communicate with each other concerning R.L.'s welfare.

¶ 20 Since R.L.'s birth, Katelyn had been R.L.'s primary caregiver. Katelyn provided for R.L.'s needs, and they did different activities together. Katelyn interacted well with R.L. R.L. bonded with Katelyn's parents. Katelyn's boyfriend temporarily lived with Katelyn, R.L., and Katelyn's parents. Katelyn's boyfriend recently purchased a home in Athens. Katelyn intended to move into that home with her boyfriend and R.L. R.L. would have his own room at the new home. Katelyn was unemployed and received state assistance. She was expected to begin a full-time employment in June 2017. Katelyn secured day care with a licensed caregiver in Athens. Katelyn attended Alcoholics Anonymous meetings, was involved in the program, and had been sober for five months. Multiple witnesses testified to smelling cigarette smoke on R.L. after he left Katelyn's care. Katelyn indicated she and her father smoked cigarettes, but they did not do so around R.L. Multiple witnesses testified R.L. had a persistent cough. Katelyn indicated she addressed the cough with R.L.'s doctor, who stated it was a cold.

¶ 21 Patrick provided for R.L.'s needs, and they did different activities together. Patrick interacted well with R.L. Patrick lived alone, and his residence had a separate room for R.L. Patrick was employed full-time and had secured a licensed caregiver to care for R.L. He

was willing to modify his work schedule to have more time with R.L. Patrick occasionally smoked cigarettes, but he did not do so around R.L. Patrick admitted making mistakes with R.L.'s feeding schedule, which may have caused R.L. to be sick. Patrick attended Alcoholics Anonymous after being arrested for driving under the influence of alcohol in March 2014. Patrick maintained he did not have an issue with alcohol and attended Alcoholics Anonymous because his employer at the time required he do so.

¶ 22 Katelyn acknowledged Patrick would take advice given to benefit R.L. She also believed he was trying to do what was best for R.L. Patrick testified he believed Katelyn intentionally alienated him from R.L., which, if continued, would hamper his son's mental health.

¶ 23 In June 2017, after considering the evidence presented and the written arguments of counsel, the trial court gave a lengthy and detailed oral pronouncement of its decisions. Based on its evaluation, the court allocated joint parental decision-making with respect to education, medical, extracurricular activities, and religious training. In the event of a disagreement relating to education, medical, or extracurricular activities, the court allocated temporary parental decision-making to Katelyn pending mediation and/or a decision by the court. As to parenting time, the court allocated parenting time to Patrick from Wednesdays at 5 p.m. to Friday at 8 a.m. and every other week from Thursday at 5 p.m. to Monday at 8 a.m. The court further scheduled parenting time for summers and holidays.

¶ 24 In July 2017, Patrick filed a motion to reconsider. Following an August 2017 hearing, the trial court denied Patrick's motion to reconsider.

¶ 25 This appeal followed.

¶ 26

II. ANALYSIS

¶ 27 On appeal, Patrick argues the trial court erred by awarding Katelyn (1) temporary parental decision-making responsibilities pending mediation and/or a decision by the court as to any disagreement regarding R.L.’s education, medical treatment, and extracurricular activities; and (2) the majority of the available parenting time.

¶ 28 A. Temporary Parental Decision-Making Responsibilities

¶ 29 Patrick argues the trial court erred by awarding Katelyn with temporary parental decision-making responsibilities pending mediation and/or a decision by the court as to any disagreement regarding R.L.’s education, medical treatment, and extracurricular activities. He asserts “the court repeatedly ignored the documented conflict history *** and made no effort in its decision to deal with repeated conduct by [Katelyn] to severely limit the father-child relationship.” Patrick cites Katelyn’s (1) decision to bar him from the delivery room, (2) decision to bar him from the hospital, (3) failure to notify him of R.L.’s birth, (4) request for DNA testing, (5) decision to deny him visitation until she received DNA test results, and (6) unilateral control of the visitation schedule.

¶ 30 Section 602.5(a) of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/602.5(a) (West 2016)) provides “[t]he [trial] court shall allocate decision-making responsibilities according to the child’s best interests.” When determining the child’s best interests for the purposes of allocating decision-making responsibilities, the court is required to consider all relevant statutory factors, including, *inter alia*, (1) “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”; and (2) “the willingness and ability of each parent

to facilitate and encourage a close and continuing relationship between the other parent and the child.” 750 ILCS 5/602.5(c)(4), (c)(11) (West 2016)). On review, we presume the trial court considered all relevant statutory factors—the trial court is not required to make an explicit finding or reference to each factor, nor is it required to explicitly mention every piece of evidence it considers in reaching its decision. See *In re Custody of G.L.*, 2017 IL App (1st) 163171, ¶ 43, 80 N.E.3d 636; *Young v. Herman*, 2018 IL App (4th) 170001, ¶ 68.

¶ 31 As Katelyn asserts, Patrick does not point to anything in the record supporting his argument the trial court failed to consider all relevant factors. In fact, we find the record affirmatively refutes Patrick’s argument suggesting the court ignored the parties’ conflict history and Katelyn’s alleged efforts to limit the father-child relationship. The court began its oral pronouncement of its decision by noting it was a difficult case due to the conflict history between the parties. It stated:

“It’s a difficult history that the parties have. The history between the parties is such that there has been conflict, but there’s also been rays of hope that have shown through to the top of the evidence and the testimony that gives this [c]ourt reassurance and some confidence—in fact, a great degree of confidence or level of confidence that is relatively high—that the parties will be able to set aside the history that has developed between them, the bad times in the history, and get past it to realize that they have a common bond that they have elected to bring into this world together that will keep them bonded as parents of young [R.L.] for

an awfully long time, until you folks are gone off this earth and [R.L.] lives on to have his own children and those children have their children.”

The court found the parties showed a willingness to set aside any conflict history and cooperate for the benefit of their child as evidenced by (1) the parties’ text message conversations concerning R.L.’s welfare, (2) Patrick’s testimony indicating he believed the parties could communicate for the benefit of their child, and (3) Katelyn’s testimony indicating she respected Patrick’s proactive parenting. Similarly, the court found the recent communication and cooperation demonstrated Patrick and Katelyn would facilitate and encourage a close and continuing relationship between each parent and R.L. We find the record shows the court considered the parties’ conflict history and any efforts by Katelyn to purportedly limit the father-child relationship. Moreover, having reviewed the entirety of the record, we cannot find the trial court’s allocation of parental decision-making responsibilities was against the manifest weight of the evidence or an abuse of its discretion.

¶ 32 C. Parenting Time

¶ 33 Patrick argues the trial court erred when it awarded Katelyn the majority of the available parenting time. He asserts the evidence showed a fifty-fifty parenting time schedule was in R.L.’s best interests as it would increase his involvement with his son. Patrick cites the fact he was willing to modify his work schedule to increase time with R.L. and notes any difficulty in a fifty-fifty parenting time schedule was due to Katelyn’s decision to move a distance of 35 miles away. Patrick also suggests, without citation to any supporting authority, the

court's rejection of a fifty-fifty parenting time schedule was improperly based in part on its speculation such a schedule might become unworkable in the future.

¶ 34 Section 602.7(a) of the Dissolution Act (750 ILCS 5/602.7(a) (West 2016)) provides “[t]he [trial] court shall allocate parenting time according to the child’s best interests.” When determining the child’s best interests for the purposes of allocating parenting time, the court is required to consider all relevant statutory factors, including the wishes of each parent seeking parenting time. 750 ILCS 5/602.7(a), (b)(1) (West 2016). The list of statutory factors is not exclusive—the court may consider any additional factor it finds to be relevant. 750 ILCS 5/602.7(b)(17) (West 2016).

¶ 35 For the purposes of allocating parenting time, Patrick does not dispute the trial court considered all relevant statutory factors in determining an allocation that best served R.L.’s interests. Instead, he asserts the evidence showed a fifty-fifty parenting time schedule would better serve R.L.’s interests. This court affords great deference to the trial court’s best interest findings because that court is in a better position to assess the credibility of the witnesses. *In re Marriage of Marsh*, 343 Ill. App. 3d 1235, 1239-40, 799 N.E.2d 1037, 1041 (2003). The court was aware of the fact Patrick was willing to modify his work schedule to increase visitation. The court was also aware of Katelyn’s decision to move to a new residence. In fact, it noted any hurdle with the distance between residences could be resolved by picking an equal distance point for parenting time exchanges. Patrick does not address the other relevant factors the court considered in allocating parenting time. Having reviewed the entirety of the record, we cannot find the trial court’s allocation of parenting time was against the manifest weight of the evidence or an abuse of its discretion.

¶ 36 We also note the record does not support Patrick's suggestion the trial court rejected a fifty-fifty parenting time schedule based on its speculation such a schedule might become unworkable in the future. In addressing the wishes of each parent, the court acknowledged Patrick requested fifty-fifty parenting time. The court noted fifty-fifty parenting time was generally disfavored as it provided an element of instability and confusion in a child's life as he or she gets older. See *In re Marriage of Perez*, 2015 IL App (3d) 140876, ¶ 33, 29 N.E.3d 1217. The court made clear, however, whether a fifty-fifty parenting time schedule was appropriate depended on the particular facts of each case. The court rejected such a schedule in this case after it concluded it would not be in R.L.'s best interests under the circumstances presented. Patrick has failed to show the court committed error in its allocation of parenting timing.

¶ 37

III. CONCLUSION

¶ 38 We affirm the trial court's judgment.

¶ 39 Affirmed.