2018 IL App (4th) 170735-U

NOS. 4-17-0735, 4-17-0736 cons.

FILED
June 27, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court
v.	)	of Adams County
EDDIE LOUPIN,	)	No. 15CF275
Defendant-Appellant.	)	
----------	)	
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Plaintiff-Appellee,	)	
v.	)	Honorable
CHRISTOPHER LOUPIN,	)	Michael L. Atterberry,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The language in section 10-5(a)(3) of the child-abduction statute (720 ILCS 5/10-5(a)(3) (West 2014)) stating "[i]f an adjudication of paternity has been completed and the father has been assigned support obligations or visitation rights, such a paternity order should, for the purposes of this Section, be considered a valid court order granting custody to the mother[,]" does not create a unconstitutional presumption.

(2) Defendants have failed to clearly establish the child-abduction statute's treatment of a Nebraska adjudication of paternity and of support obligations as a "valid court order granting custody to the mother" violates the full faith and credit clause of the United States Constitution.

(3) By not citing relevant authority and developing their legal argument, defendants have forfeited their claim the child-abduction statute's treatment of the child support order as a custodial order for the purpose of that statute violates their rights to due process.

(4) Defendants failed to cite any relevant legal authority to support their claim the mother's repeated waiver of child support should result in their acquittal for child abduction and aiding and abetting child abduction.

(5) Defendants failed to establish their convictions, based on a violation of section 10-5(b)(3) of the child-abduction statute (720 ILCS 5/10-5(b)(3) (West 2014)), violate the father's rights to equal protection under the law.

¶ 2 Defendant, Christopher Loupin, fathered two children, C.A.L. (born March 27, 2013) and C.M.L. (born January 31, 2014) with Ashlee Fielding. Christopher and Fielding did not marry. Orders by a Nebraska court adjudicated Christopher the father of the children and assigned him support obligations. In March or April 2015, Fielding moved to Illinois with her children. On May 22, 2015, the Quincy police department was contacted regarding an alleged child abduction. After midnight on May 23, 2015, Christopher and defendant Eddie Loupin, Christopher's father, were found with the children in Missouri. Defendants were arrested.

¶ 3 After a bench trial, the trial court found Christopher guilty of child abduction (720 ILCS 5/10-5(b)(1) (West 2014)) and Eddie guilty of aiding or abetting child abduction (720 ILCS 5/10-7(a) (West 2014)). Christopher was sentenced to 180 days in the Adams County jail and two years' probation. Eddie was sentenced to two years' probation. Defendants appeal, asserting their convictions violated the United States and Illinois constitutions, and Fielding's conduct in waiving child support estopped the State from prosecuting them. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In July 2017, the State filed its third amended information against Christopher and Eddie. In counts I and II, the State alleged Christopher committed child abduction in that:

"he intentionally violated the terms of a valid court order, an Order

For Support, issued on March 5, 2015[,] in the District Court of

> Thayer County, Nebraska, Case No. C1 14 51, which court order assigned a support obligation against Christopher Loupin for the benefit of C.A.L. [and C.M.L., children] under the age of 18 years, and which court order is recognized under 720 ILCS 5/10-5(a)(3) as having assigned custody of C.A.L. [and C.M.L.] to the Mother, Ashlee Fielding, in that he intentionally detained C.A.L. [and C.M.L.], without the consent of Ashlee Fielding, in violation of Chapter 720, Act 5, Section 10-5(b)(1) of the Illinois Compiled Statutes."

In counts III and IV, the State asserted Eddie committed aiding or abetting child abduction by aiding Christopher in his commission of child abduction of C.A.L. and C.M.L.

¶ 6 In August 2017, the trial court held a bench trial. The parties stipulated to the following evidence: Christopher and Fielding never married. They began dating in 2011 or 2012. At the time of C.A.L.'s birth in March 2013, Fielding and C.A.L. resided with Fielding's father in Nebraska. In July 2013, Fielding moved into her own apartment. She and C.A.L. resided there. Fielding began receiving public assistance. As a result of Fielding's application for assistance, the State of Nebraska, when C.A.L. was approximately five months old, filed for child support from Christopher. Pursuant to that order, Fielding believed Christopher made only one payment.

¶ 7 According to the stipulation, Fielding and Christopher resumed dating in September 2013. Around that time, Fielding learned she was pregnant with C.M.L. Fielding and C.A.L. moved in with Christopher, residing in a home Eddie owned. During the following winter, the three moved into Eddie's basement. C.M.L. was born on January 31, 2014. In

Fielding's affidavit attached to and incorporated into the stipulation, Fielding stated she would testify she, Christopher, and their children moved into a house in Deshler, Nebraska, in August 2014. They shared the rent obligation, although Christopher did not consistently reside in the home. They "would break up for periods of time and [Christopher] would just leave for periods of time." Between August 2014 and March 2015, Christopher resided in the house approximately two months. Fielding made all of the rent payments.

¶ 8 The parties further agreed in the stipulation, in March 2015, the State of Nebraska secured a child-support order with respect to C.M.L. In proceedings in Thayer County Nebraska, Christopher was found to be the father of C.A.L. and C.M.L. In those same proceedings, an order of support against Christopher was issued for the benefit of the two children. The amount of child support was calculated based upon "two children with custody with the mother." The parties agreed, under Nebraska law, the support order was not a child-custody order. The order shows Christopher "was present telephonically prior to hearing."

¶ 9 According to the affidavit, Fielding, in March 2015, moved with her children to Quincy, Illinois. Fielding intended to go to school at the community college, and her mother agreed to help with the children. According to the stipulation, Fielding would testify Christopher informed her he planned to visit Quincy, Illinois, over the weekend of May 22, 2015. He indicated he wanted to spend time with his children before entering residential substance-abuse treatment. Christopher contacted Fielding on his arrival, around 7:30 p.m. on May 22, 2015. Christopher was staying in room 111 at the Stoney Creek Inn in Quincy. Fielding and her children went to the inn and picked up Christopher. Together, they ran errands. They returned to the hotel room at 9:30 p.m. A short time later, Fielding left the room to retrieve her children's

pacifiers from her vehicle. Fielding was unable to find the pacifiers. She walked back to the hotel, where she saw Eddie at the front desk. Eddie appeared to be checking out of the hotel. Eddie told her Christopher and the children were "long gone." Fielding returned to Christopher's hotel room. Christopher and the children were not present. Fielding did not give Christopher permission to leave with the children. While Fielding looked for her children, Eddie drove his company truck from the hotel parking lot. Fielding immediately contacted the Quincy police department.

¶ 10 According to the stipulation, Kathi Rosenkoetter, a desk attendant with Stoney Creek Inn, would testify Eddie paid for two rooms, rooms 111 and 115, on May 22, 2015. Both faced the rear of the hotel. Rosenkoetter was present when Fielding discovered the children were missing. Rosenkoetter checked room 115 and found the window screen had been removed. She reported the children had not left through the front door of the hotel. Kyle Hatch, an officer with the Quincy police department, would testify he "pinged" Eddie's cellular phone. Dispatch advised Officer Hatch the last ping was off a tower in Shelbina, Missouri. On May 23, 2015, near midnight, T.B. Ritter, a trooper with the Missouri Highway Patrol, observed the Loupin Roofing truck. Trooper Ritter initiated a stop of the vehicle. Eddie was driving. In the front passenger seat was Lee Fowler. The children and Christopher were in the rear seat of the vehicle. At 3 a.m., the children were returned to Fielding's custody.

¶ 11 In addition to the stipulated evidence, defendants asked the trial court to consider the evidence admitted during the July 2017 hearing on defendants' first motion to dismiss. The State agreed. At that hearing, three witnesses testified: Fielding, Christopher's mother Christina Loupin, and Christopher.

¶ 12 According to Fielding, at some point after C.A.L. was born, she, Christopher, and the children lived in a house owned by Eddie. They did not pay rent. Christopher was working at that time, and he purchased food and clothing. "At times" Christopher assisted in childcare. When she resided with Christopher, Fielding waived child-support payments.

¶ 13 Fielding testified from August to October 2014, she, Christopher, and their children lived in a house owned by Eddie and Christina. From October 2014 until she moved to Quincy, Christopher "was there off and on." He did not have access to the home unless Fielding gave him permission. During that latter time, Christopher provided no support for the children. He did not see the children regularly. Christopher was drinking during this time period, and Fielding would, at times, refused to allow him into the home due to his intoxication. Fielding continued to pay the rent and utilities. In March 2015, Fielding informed Christopher she and the children were moving to Illinois. They tried to reconcile for a two-week period. Fielding at no point said she was not going to Illinois and would stay in Nebraska. When Fielding left for Illinois, she took the younger child from the babysitter at Christopher's house and left.

¶ 14 Fielding reported she moved to Illinois in March or April 2015. Fielding enrolled in John Wood Community College and was attending at the time of her testimony. Between March 2015 and May 22, 2015, Christopher had not seen his children.

¶ 15 Fielding further testified regarding another instance in which Christopher had taken his children. Fielding had her vehicle packed and ready to move to Illinois. Christopher told Fielding he wanted to take the children to Eddie's house to see him before they left. When Fielding arrived at Eddie's house, they would not let Fielding have the children. Fielding explained the following: "To get my one daughter back, I told them I was going to bring a diaper

bag and I just wanted to see them. So I went to his dad's house, brought a diaper bag with me, and he went to the kitchen to grab something for the girls. And I picked them both up and tried to leave with them. I had to set one of them down to open the door, so I could only get [C.A.L.] out." Fielding then had physical custody of C.A.L. for three days. Fielding sent text messages to Christina under the pretext of trading children. Fielding was able to get C.M.L. while C.M.L. was at a babysitter. Law-enforcement officials accompanied Fielding.

¶ 16 Christina testified she and Eddie purchased a house for Fielding, Christopher, and the girls to live in. They resided in the house until April 2015. Christopher did not live there in December 2014. In January 2014, Christopher moved back in. According to Christina, Fielding stated she would not leave for Illinois. This pronouncement occurred during the time when Christopher had C.M.L. and would not let Fielding see her. During that same period of time, Fielding would not let Christopher see C.A.L. Fielding messaged Christina, stating, "I'm not leaving. I'm not leaving. I'm not leaving."

¶ 17 According to Christopher, the family "basically lived together the whole time besides like three months *** since they were first all born." He testified Fielding lived in an apartment by herself for only three months. Christopher's grandmother died in early December 2014. He "went on a binger." During that time, Fielding would not let him see the children. This caused him to get drunk, which "made him forget." Christopher moved back in with Fielding in January 2015, where he resided until his incarceration.

¶ 18 At the conclusion of the trial, the trial court found the State proved Christopher guilty of counts I and II of the third amended information. The court found Eddie guilty of aiding and abetting child abduction as charged in counts III and IV. The court sentenced Christopher to

180 days' incarceration and two years' probation. The court sentenced Eddie to two years' probation.

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 Two sections of the child-abduction statute were listed in the charges against Christopher: sections 10-5(b)(1) and 10-5(a)(3) of the Criminal Code of 2012 (720 ILCS 5/10-5(a)(3), (b)(1) (West 2014)). Section 10-5(b)(1), the section of the child-abduction statute of which Christopher was convicted, provides an individual commits child abduction when he or she "[i]ntentionally violates any terms of a valid court order granting sole or joint custody, care, or possession to another by concealing or detaining the child or removing the child from the jurisdiction of the court." 720 ILCS 5/10-5(b)(1) (West 2014). Section 10-5(a)(3) (720 ILCS 5/10-5(a)(3) (West 2014)), also mentioned in the charge against Christopher, provides in relevant part: "If an adjudication of paternity has been completed and the father has been assigned support obligations or visitation rights, such a paternity order should, for the purposes of this Section, be considered a valid court order granting custody to the mother."

¶ 22 On appeal, defendant makes multiple constitutional challenges to section 10-5(a)(3)'s pronouncement an order of paternity granting support obligations may be the basis for a child-abduction conviction. Defendant further maintains his conviction is unconstitutional as it violates his right to equal protection under the law. We review challenges to the constitutionality of a statute *de novo*. *People v. Woodrum*, 223 Ill. 2d 286, 307, 860 N.E.2d 259, 274 (2006). Statutes are presumed constitutional; the party challenging that presumption has the burden of clearly establishing a constitutional violation. *People v. Chairez*, 2018 IL 121417, ¶ 15.

¶ 23 A. Presumption

¶ 24 Defendants begin their challenge to subsection (a)(3) by stating the subsection creates a presumption the order for child support is a custodial order. Defendants distinguish between permissive and mandatory presumptions and cite Illinois law holding mandatory presumptions are *per se* unconstitutional when they shift the burden of persuasion to a defendant as they relieve the State of its burden of proving each element beyond a reasonable doubt. *People v. Pomykala*, 203 Ill. 2d 198, 203-04, 784 N.E.2d 784, 788 (2003). Defendants focus on the word "should" and seem to concede the presumption is permissive, meaning the presumption permits but does not mandate the fact finder infer the existence of an ultimate fact upon proof of the predicate fact and is not *per se* unconstitutional. See *id.* at 203.

¶ 25 We disagree with defendant's conclusion subsection (a)(3)'s language in the charge against Christopher creates a "presumption." Our supreme court defines a presumption as "a legal device that either permits or requires the trier of fact to assume the existence of an ultimate fact, after establishing certain predicate facts." *Woodrum*, 223 Ill. 2d at 308. Proof of a paternity adjudication granting child support to the mother does not permit or require the trier of fact to assume the existence of "a valid court order" in subsection (b)(1). The paternity adjudication is, by itself, proof of the ultimate fact. No assumption is necessary.

¶ 26 B. Full Faith and Credit Clause

¶ 27 Defendants next contend to treat the Nebraskan order for child support as a custodial order violates the full faith and credit clause of the United States Constitution (U.S. Const., art. IV, § 1). Defendant argues Nebraska law, including *Coleman v. Kahler*, 766 N.W.2d 142 (Neb. Ct. App. 2009), demonstrates child support and custody issues are separate and

distinct issues. Defendant concludes it is, therefore, unconstitutional to use the child-support order as a basis for his child-abduction conviction.

¶ 28 We do not find defendant's argument convincing. Defendant has, at best, established in the context of *family law*, Nebraska treats custodial orders and support orders as distinct matters. For example, in the cases upon which defendant relies, the Nebraskan courts were addressing family-law issues such as custody (see, *e.g.*, *Pathammavong v. Pathammavong*, 679 N.W.2d 749, 755 (Neb. 2004)) and removal (see, *e.g.*, *Brown v. Brown*, 621 N.W.2d 70, 78 (Neb. 2000); *Coleman*, 766 N.W.2d at 147) while observing custodial issues and support issues are separate and distinct matters.

¶ 29 Subsection (a)(3) is not part of a family-law statute. Subsection (a)(3) does not authorize an Illinois family court to use the Nebraska paternity adjudication and support order as custody determination for a family-law dispute, such as in a suit for joint custody. Instead, subsection (a)(3) is part of a *criminal statute*. Its language expressly limits itself, authorizing the treatment of a support order accompanying a parentage order as a custodial order *only* in the context of the child-abduction offense. See 720 ILCS 5/10-5(a)(3) (West 2014) ("If an adjudication of paternity has been completed and the father has been assigned support obligations or visitation rights, such a paternity order should, *for the purposes of this Section*, be considered a valid court order granting custody to the mother." (Emphasis added.)) Defendants cite no authority showing Nebraska law is adverse to the prosecution of an individual who drives to another state, uses false pretenses to obtain access to his children for whom he had no court order establishing custodial rights, brings an individual to aid in the endeavor, takes the children from a hotel window at night, and begins driving the children to another state. Defendants have

not clearly established subsection (a)(3) is a violation of the full faith and credit clause.

¶ 30 C. Due Process

¶ 31 Defendants next argue they were denied due process. Defendants contend, before any court declared Christopher not a custodial parent, he was entitled an opportunity to be heard. Defendants maintain the "only opportunity" Christopher had "was a telephone call from a local authority in Nebraska" confirming he was agreeable to setting an amount for child support. Defendants conclude when Illinois imparted a "custodial order" on the child-support order without any notice the Nebraska order could be treated as a custodial order, they were denied due process.

¶ 32 We reiterate our holding section 10-5(a)(3) does not make a custodial determination. A father who has been found to be the father by a paternity adjudication and has been ordered to pay child support may face criminal prosecution for taking a child from his or her mother's custody. We find no denial of due process in this circumstance.

¶ 33 D. Forfeiture

¶ 34 Defendants next maintain the child-support order must not be treated as a custodial order because Fielding routinely waived support. Defendants cite one case to support their claim the doctrine of equitable estoppel applies in the enforcement of child-support orders. See *In re Marriage of Matzen*, 69 Ill. App. 3d 69, 72, 387 N.E.2d 14, 16 (1979).

¶ 35 Defendants' argument related to this ground does not explain, with any relevant legal support, their contention Fielding's conduct forecloses the State's criminal prosecution of defendant. Defendants forfeited this argument. Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017) ("Points not argued are waived and shall not be raised in the reply brief, in oral argument, or on

petition for rehearing."); *Vancura v. Katris*, 238 Ill. 2d 352, 370, 939 N.E.2d 328, 340 (2010) ("An issue that is merely listed or included in a vague allegation of error is not argued and will not satisfy the requirements of the rule.").

¶ 36 E. Equal Protection

¶ 37 Defendants next argue their convictions are unconstitutional because subsection (b)(1) violates their rights to equal protection under the law. Defendants rely on *People v. Morrison*, 223 Ill. App. 3d 176, 584 N.E.2d 509 (1991), as establishing the "instant statute" is unconstitutional as applied to Christopher and thus Eddie. Defendants contend the "instant statute" criminalizes a father whose parentage has been established if there is no custodial order entered by the trial court, but it criminalizes a mother only if she abandoned or relinquished custody of the child from an unadjudicated father who provided care in her absence. Defendants further emphasize the following language from *Morrison*: "Once an unwed father complies with the statutory procedure of legally establishing his biological relationship with the child, he cannot be convicted under the statute." *Id.* at 181.

¶ 38 Defendants' reliance on *Morrison* is misplaced. The conviction in *Morrison* was for violation of subsection (b)(3) of the child abduction statute, not subsection (b)(1) of which defendant was convicted. In *Morrison*, the father and mother were never married but they resided together for 4 1/2 years. *Id.* at 177. Their shared child was two years old and he resided with both parents since his birth. The father financially supported the son the entire time. Neither the mother nor the father instituted paternity proceedings. When the mother decided to end the relationship and move out of their shared residence, she took their son. The father then found the mother and their son and took him. The parents disputed whether the father stated the mother

would never see the child again or whether he was taking their son for the weekend. The police arrested the father. He was convicted of child abduction, violating *subsection (b)(3)* of the child-abduction statute. *Id.* On appeal, the father's conviction was overturned as the Third District found "the application of the child-abduction statute under these facts would deprive the defendant of equal protection of the law." *Id.* at 181.

¶ 39 As it does now, the 1989 version of subsection (b)(3) in *Morrison* punished the intentional removal from a child without the mother's consent if the person was a putative father *and the child's paternity had not been established*. See *id.* at 178 (citing Ill. Rev. Stat. 1989, ch. 38, ¶ 10-5(b)(3)). The Third District concluded subsection (b)(3) was not facially unconstitutional: "The State's failure to grant the same measure of recognition of legal parentage at birth to an unwed father as that accorded an unwed mother is based merely upon the biological reality that motherhood is obviously more apparent and therefore more easily established." *Id.* at 180. The Third District then made the statement on which defendants rely: "Once an unwed father complies with the statutory procedure of legally establishing his biological relationship with the child, he cannot be convicted under the statute." *Id.* at 181. We note the Third District overturned the father's conviction upon concluding the facts and circumstances surrounding the child's taking was not envisioned by the legislature as grounds for a child-abduction conviction and upon finding the father provided uninterrupted financial and emotional support since the child's birth and the parents lived as if they were lawfully married.

¶ 40 We find the language in *Morrison* indicates the Third District did not hold a father whose biological relationship has been established may never be convicted of child abduction. Its holding is limited to subsection (b)(3) and the facts there. The entire case discusses subsection

(b)(3)—not the statute as a whole. In addition, the sentence highlighted by defendants reflects the language of the subsection of the statute at that time, which limited its application to fathers whose paternity had not been established. See Ill. Rev. Stat. 1989, ch. 38, ¶ 10-5(b)(3) (permitting a conviction for child abduction of an individual who "[i]ntentionally conceals, detains[,] or removes the child without the consent of the mother or lawful custodian of the child if the person is a putative father" and has not established paternity of the child).

¶ 41 By relying solely on arguments related to subsection (b)(3) and a 1912 Iowa case involving a divorcing married couple (see *State v. Dewey*, 155 Iowa 469 (1912)), defendant has not clearly established subsection (b)(1) unconstitutionally violates his right to equal protection under the law.

¶ 42 III. CONCLUSION

¶ 43 We affirm the trial court's judgment.

¶ 44 Affirmed.