2018 IL App (4th) 180239-U

NO. 4-18-0239

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
September 28, 2018
Carla Bender
4th District Appellate
Court, IL

In re THE VISITATION OF WY. N. and WA. N., Minors	)	Appeal from the Circuit Court of Piatt County
(Sharon N., Petitioner-Appellant, v. Angela N., Respondent-Appellee).	)	No. 15F2 Honorable Richard Lee Broch Jr., Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Justices Knecht and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held*: The decision to deny the grandmother's petition for visitation is not against the manifest weight of the evidence; it is not clearly evident, from the evidence in the record, that lack of visitation with the grandmother was causing the children any harm.

¶ 2 Petitioner, Sharon N., appeals a judgment of the Piatt County circuit court denying her petition for visitation with her grandchildren, Wy. N. and Wa. N. At the close of petitioner's evidence, the court granted a motion by respondent, Angela N., the children's mother, for a judgment in her favor. See 735 ILCS 5/2-1110 (West 2016). Petitioner appeals. We affirm the judgment because we do not find it to be against the manifest weight of the evidence.

¶ 3 I. BACKGROUND

¶ 4 Respondent and Joshua N. married in October 2005. Their first child, Wy. N., was born on September 12, 2007. Their second child, Wa. N., was born on November 18, 2010.

¶ 5 On May 22, 2014, Joshua died.

¶ 6 On January 20, 2015, pursuant to section 607(a-3) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/607(a-3) (West 2014)) (a section repealed by Public Act 99-90 (eff. Jan. 1, 2016)), petitioner, the paternal grandmother, petitioned for visitation with Wy. N. and Wa. N.

¶ 7 On February 1 and March 27, 2018, the trial court held an evidentiary hearing on the petition.

¶ 8 In the hearing, petitioner testified that she saw Wy. N. almost every day during the first two years of his life. She picked him up from preschool and watched him until his parents returned home. In 2012, she saw Wy. N. and Wa. N. probably every weekend. In 2013, when the boys were attending Metamorphosis School, in Monticello, Illinois, she picked them up every day after school and brought them to her house, where they stayed until Joshua picked them up after work. The boys slept over at her house several nights a week. She fed them, read to them, played with them, and took them to the park. This close relationship between her and the boys continued until Joshua's death.

¶ 9 On cross-examination, petitioner testified at the time of Joshua's death, he, respondent, and the two boys lived on a farm in Monticello and that, upon Joshua's death, the farm passed into a trust, of which she, petitioner, was the sole trustee. Other than the land, the trust had in it about $300,000 in cash, which was supposed to be used for the benefit of Wa. N. and Wy. N. Petitioner had not spent any of the $300,000 on the boys yet—apparently, one of the points of contention between herself and respondent—but she had not been asked to do so, and she had college funds set up for them. Petitioner admitted that, on the advice of her attorney, she had served a notice of eviction on respondent (that is, to evict her from the farm) and that, in a

hearing in the eviction case, she stated (also on the advice of her attorney) that the eviction proceeding was an attempt to pressure respondent to allow her to have visitation with the children. She further admitted that she and respondent were embroiled in additional litigation over a house in Champaign, Illinois.

¶ 10 Petitioner called as a witness a licensed clinical psychologist, Judy Osgood, who opined that, given the close relationship the children had with petitioner until their father's death, it would be emotionally harmful to the children to deprive them of visitation with petitioner. According to Osgood, the grief the children suffered at the loss of their father would be aggravated by the confusion and the weakening of family identity they would feel at the inexplicable loss of their grandmother, too. The deprivation might make them reluctant to form human relationships in the future, for fear of loving and losing.

¶ 11 On cross-examination, however, Osgood admitted that she never interviewed either Wy. N. or Wa .N., and she agreed it would be a good idea for a mental health professional to do so. She further admitted that an "extreme level of conflict" between respondent and petitioner would be an important factor to consider in deciding whether visitation between petitioner and the children would be "constructive."

¶ 12 The guardian *ad litem*, Suzanne Wells, who had interviewed Wy. N. and Wa. N. separately, recommended denying the petition for visitation.

¶ 13 After petitioner rested, respondent moved for a judgment in her favor (see 735 ILCS 5/2-1110 (West 2016)), and the trial court granted the motion for the following reasons.

¶ 14 Petitioner had presented no evidence that respondent was anything other than a fit parent. Although Osgood opined that being deprived of visitation with respondent would be harmful to the children, the trial court thought that Osgood's testimony fell apart on cross-

examination when she admitted that (1) she had never interviewed the children and (2) such an interview would be a good idea.

¶ 15 The guardian *ad litem*, by contrast, had interviewed the children and had filed reports of her interviews. The trial court noted:

> "With regard to [Wy. N.], the first report indicates that [Wy. N.] seems to fear his grandmother and reacting negatively to the stress around him. Just doesn't want to go with her. When asked if he wanted to see his grandmother, the younger child, [Wa. N.], indicated no. And then he did not have much by way of memory of her due to his young age."

¶ 16 Not only had the children expressed to the guardian *ad litem* a lack of interest in visiting respondent, but, by all indications, the children seemed to be doing fine without such visitation. No resulting harm was evident. The trial court observed:

> "[According to] [t]he [guardian *ad litem*'s] report and whatever testimony was given, the boys were doing well in school, seemed to be happy, the[y] were thriving with respect to extracurricular school activities and exhibited no symptoms of being hurt by the fact they were not able to see their grandmother in this case."

¶ 17 In view of the acrimonious relationship between respondent and petitioner, the trial court was concerned that visitation with respondent would be detrimental to Wa. N. and Wy. N.:

> "There are problems, deep problems, that exist between the petitioner and the respondent in this case[,] which are still not resolved.

> The [c]ourt finds that that would be highly probable to spill over and be very uncomfortable with regard to these boys going back and forth in order see the grandparent."

Therefore, the court granted respondent's motion for judgment at the conclusion of petitioner's case.

¶ 18 This appeal followed.

¶ 19 II. ANALYSIS

¶ 20 During the pendency of the proceedings below, the legislature repealed section 607 of the Act (750 ILCS 5/607 (West 2014)) and replaced it with section 602.9 (750 ILCS 5/602.9 (West 2016)). See Public Act 99-90 (eff. Jan. 1, 2016). On March 27, 2018, when the trial court entered its judgment, section 602.9 (750 ILCS 5/602.9 (West 2016)) was in effect. "In the absence of a general saving clause or a saving clause within the repealing act, the effect of the repeal of a statute is to destroy the effectiveness of the repealed act *in futuro* and to divest the right to proceed under the statute, which, except as to proceedings past and closed, is considered as if it had never existed." (Internal quotation marks omitted.) *Isenstein v. Rosewell*, 106 Ill. 2d 301, 310 (1985). Therefore, the statute applicable to this case is section 602.9, which in subsection (c)(1)(A) provides as follows:

> "(c) Visitation by grandparents ***.
>
> (1) Grandparents, great-grandparents, step-parents, and siblings of a minor child who is one year old or older may bring a petition for visitation and electronic communication under this [s]ection if there is an unreasonable denial of visitation by a parent that causes undue mental,

physical, or emotional harm to the child and if at least one of the following conditions exists:

(A) the child's other parent is deceased ***." 750 ILCS 5/602.9(c)(1)(A) (West 2016).

¶ 21 At the close of petitioner's evidence, the trial court found those statutory conditions to be unproven. Because the court, as the trier of fact, weighed and evaluated the evidence at the close of petitioner's case, the question for us, on appeal, is whether the court's decision is against the manifest weight of the evidence. See *Barnes v. Michalski*, 399 Ill. App. 3d 254, 264 (2010). A decision is against the manifest weight of the evidence "only if it is unreasonable, arbitrary, or not based on any evidence or only if the opposite conclusion is clearly evident from the evidence in the record." *Id.* at 264-65.

¶ 22 The opposite conclusion in this case would be a conclusion that not visiting respondent is "caus[ing] undue mental, physical, or emotional harm" to Wy. N. and Wa. N. 750 ILCS 5/602.9(c)(1) (West 2016). The evidence does not demand such a conclusion. See *Michalski*, 399 Ill. App. 3d at 264-65. One could reasonably conclude, from the evidence, that Wy. N. and Wa. N. are suffering no "mental, physical, or emotional harm" at all from the lack of visitation with respondent. 750 ILCS 5/602.9(c)(1) (West 2016). Not only did they tell the guardian *ad litem* they would prefer not to visit her, but it is a defensible view of the evidence that visiting respondent would inject unnecessary stress into their lives, given the tension between petitioner and respondent. We cannot say the court's decision is against the manifest weight of the evidence.

¶ 23 III. CONCLUSION

¶ 24 For the foregoing reasons, we affirm the trial court's judgment.

¶ 25 Affirmed.