

NOTICE

Decision filed 12/21/18. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2018 IL App (5th) 180197-U
NO. 5-18-0197
IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

GERALD L. SOURS JR.,)	Appeal from the
)	Circuit Court of
Petitioner-Appellant,)	Fayette County.
)	
v.)	No. 17-F-40
)	
MEGHANN SUMMERS,)	Honorable
)	Kevin S. Parker,
Respondent-Appellee.)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Justices Welch and Chapman concurred in the judgment.

ORDER

¶ 1 *Held:* Dismissal of petition for visitation by a nonparent affirmed where a finding that any unreasonable denial of visitation is harmful to the children's mental, physical, or emotional health would have been against the manifest weight of the evidence.

¶ 2 The petitioner, Gerald L. Sours Jr., appeals the November 14, 2017, order of the circuit court of Fayette County that dismissed his petition for visitation by a nonparent. For the following reasons, we affirm.

¶ 3

FACTS

¶ 4 On June 13, 2017, the petitioner, Gerald L. Sours Jr. (Jerry), filed in the circuit court, *pro se*, a petition for visitation by a nonparent, pursuant to section 602.9 of the

Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/602.9 (West 2016)).

The underlying case was consolidated below with a related case that is irrelevant to this appeal. Jerry's petition alleged that he is the grandfather of three children and that the custodial parent of the children—respondent Meghann Summers—has not allowed Jerry reasonable visitation with the children. Accordingly, the petition requested that the circuit court order a reasonable visitation schedule between Jerry and the children.

¶ 5 A hearing on the petition was conducted on November 14, 2017. Both parties appeared at the hearing *pro se*.¹ At the hearing, Jacob Tedrick testified that he is the father of the subject children in this case and that he and Meghann commenced a relationship approximately 10 years ago. Jacob testified that Jerry was present when the children were born and Meghann considered Jerry to be the children's grandfather. He added that Meghann bought Jerry gifts and gave them to him as the grandfather.

¶ 6 Jacob testified further that “[Jerry] was the one that had the kids most of the time anyways [sic]. I mean, he watched the kids all the time. Anytime we went somewhere, he was the one with the kids.” Jacob explained that Jerry lived next door to him and Meghann and took care of the kids because he and Meghann were “strung out.” He noted that, on an occasion when he and Meghann were arrested, one of the children was with Jerry. Jacob testified that, although he was incarcerated when Meghann went to Tennessee, he learned that Meghann left the children with Jerry while she was gone. He further testified that there were times when he and Meghann were separated that he was

¹At the end of a previous hearing in the unrelated consolidated case, the circuit court discussed the upcoming hearing on Jerry's petition, reviewed section 602.9 of the Act in detail, and advised the parties to consult attorneys.

not allowed to see the children but Meghann stayed in contact with Jerry and allowed him to continue seeing the children during that time.

¶ 7 Jacob testified that the children rode the school bus from Jerry's house because he and Meghann were "strung out." He denied that Jerry was ever strung out with them. He recalled that Jerry accompanied one of the children to school trips with the school's approval and the children were always safe and cared for when they were with Jerry. Jacob testified that Jerry never indicated that he would take the children away from Meghann and he approves of Jerry having visitation with the children.

¶ 8 On cross-examination, when asked if Jerry was his father when he and Meghann's relationship commenced in 2008, he replied, "Yeah, pretty much." Jacob testified that his mother had been in a relationship with Randy Hayes for approximately 15 years. He explained that Jerry was a "friend of the family" and his mother and Jerry were never in a physical relationship other than a one-night stand. He admitted that a DNA test to establish Jerry's paternity was never completed, but indicated that Jerry signed the birth certificate as his father.

¶ 9 Upon questioning by the circuit court whether Jerry was his biological father, Jacob replied in the affirmative. The circuit court asked, "How do you know that?" Jacob responded, "Because he is. He's my father. He's been there for me, he's my father, he signed my birth certificate, he's my father." Jacob testified further that other people were tested to determine paternity, but Jerry was not tested because he "[d]idn't have to because he was the last one." Jacob stated that Jerry had never been adjudicated by a court to be his father. He further stated that he was not aware of a voluntary

acknowledgement of paternity that was ever signed by his mother and Jerry. Nor was he aware of any administrative finding by the Department of Human Services that Jerry was his father.

¶ 10 The circuit court asked Jacob upon what facts he based his belief that Jerry is his father. He replied:

“Because he’s been there for me ever since I got out of prison. He’s took [*sic*] care of my kids, he’s done everything. We was [*sic*] strung out. Me and Meghann was [*sic*] both strung out, and that’s the reason why he had the kids all the time. He was the grandpa. [One of the children] calls him grandpa. They all did. I mean, he’s been there the whole time.”

¶ 11 Jacob continued: “He’s my father. He was the last one that it could have been. He signed my birth certificate. He’s my father. He takes care of me.” On cross-examination, Jacob testified that he was “not exactly for sure on the date” that Jerry signed his birth certificate.

¶ 12 Glemma Sours (Jerry’s mother) testified that Jacob and Meghann shared Thanksgiving with their family two or three times and that Meghann treated Jerry as the children’s grandfather. When asked if Jacob is her grandson, Glemma replied, “Yes. I accept him as my grandson. Yes, I do.” Glemma indicated that she had spoken to Jacob’s mother, Lisa, but never talked to her about Jerry being Jacob’s father, although Lisa refers to Jerry as Jacob’s father.

¶ 13 Glemma testified that Jerry has a close relationship with the children, that he is called “Papa Jerry,” and when Jacob and Meghann broke up, Jerry had contact with the

children most of the time. She stated that Meghann's mother allowed Jerry to spend time with the children after Meghann moved to Tennessee. Glemma recalled Jerry going trick-or-treating with the children and spending Thanksgiving and Christmas with them. Glemma testified that Meghann's mother allowed Jerry to see the children until Jacob was released from jail, at which time the visits ceased. Glemma speculated this was because Meghann's mother did not want the children to be around Jacob.

¶ 14 Petitioner's Exhibit 1 was introduced, which Glemma identified as a five-generation photograph of her mother, herself, Jerry, Jacob, and one of the children. She testified that Meghann was present when the photograph was taken and did not object to it in any way. When asked if "it would affect the children in any way to keep them separated from their family," Glemma opined that "it affects any child in any form if they *** have been used to being around family members and then they are pulled away from them. That affects any child, I think. Because I think children need family. Both sides." She added, "I don't care how bad the family is. As long as they're not being harmful to the child or anything, them children [sic] don't know any better. Them children [sic], they love—all they care about is being around their family and getting love."

¶ 15 Glemma acknowledged that she had only been around the youngest child "a couple of times since he was born." She explained, however, that this was because he was the baby and was not with the other children when they came to visit. She stated that she considered Meghann a part of the family. When asked by the circuit court whether she has any personal knowledge of whether Jerry is Jacob's biological father, Glemma replied, "Personal knowledge, no. I wasn't there at the conception." She testified that

she was not present when Jacob was born and did not know about him at first. She could not recall when she found out about him and she has no knowledge why Jacob never changed his last name. She indicated that “[i]f Jerry said Jake was his son then he’s our grandson.”

¶ 16 Sue Dunaway testified that she has known Jerry for 25 or 30 years, that he has been her employee for over 15 years, and that she “pretty much know[s] everything about [Jerry].” Sue testified that she learned from Meghann’s mother that Jerry was Jacob’s father and, as far as she knew, Jerry was the children’s grandfather. Sue stated that on the occasion when Jerry was remodeling her bathroom—which took approximately one month—Meghann dropped the children off at her house “a total of, maybe, seven times.” Sue added that she also knew Meghann because her stepdaughter babysat Meghann’s children. Sue testified that Meghann’s mother called Jerry to watch one of the children when Jacob and Meghann “were in trouble.” She recalled several times when Jerry had to leave work to pick the child up from school and to attend school trips with him.

¶ 17 Sue was aware of Jacob and Meghann “getting in trouble and [Meghann] leaving.” During that time, Meghann’s mother called Jerry to watch one of the children and Jerry brought the child to work with him “four or five times.” She also knew that the child lived with Jerry for awhile because Jerry was required to close the store and pick the child up at 4:30. Sue indicated that “I don’t know what’s changed here.” She explained that Meghann was always happy for Jerry to watch the children and not apprehensive. She testified that Jerry has a very loving and close relationship with the children and he does “a wonderful job, as a parent would. And [he is] a grandparent.”

¶ 18 Debbie Sapp testified that she knows Meghann, Jerry, and the children because she manages the trailer park where they all lived. Debbie testified that Meghann and Jerry lived across from each other at the trailer park. During that time, Debbie witnessed Meghann refer to Jerry as “Papa Jerry” and she saw Jerry with the children “[q]uite often.” In any given week she saw the children with Jerry more times than not. Sue recalled when Meghann and Jacob were arrested and during that time Jerry had the children. She further recalled when Meghann went to Tennessee in November 2014 and left two of the three children with Jerry and left the other child with Meghann’s mother.

¶ 19 Debbie testified that Jerry once worked for her boss as a maintenance worker. During that time, she recalled seeing Jerry at work with the children because he had to take care of them. She further recalled Meghann coming and going when Jerry had the children. Debbie believed that the children were well cared for when they were with Jerry and she would feel confident leaving her own children with him.

¶ 20 Lisa Tedrick testified that she is Jacob’s mother, that Jerry is Jacob’s father, that she has known Jerry for 45 years or more, and that Jerry signed a voluntary acknowledgment of paternity regarding Jacob. When asked how she knows Jerry is Jacob’s father, she replied, “I just believe he is.” She indicated that she has other children who have different fathers and that all of her children have her last name rather than their fathers’ last names. Lisa testified that Jerry has been involved in the children’s lives since they were born and that he went to the hospital when they were born. Lisa recalled Jerry’s being present at the hospital when the youngest child was born and only immediate parents and grandparents were allowed in the room. Lisa testified that, before

the underlying litigation ensued, Meghann always referred to Jerry as the children's grandfather. Lisa described Jerry as "a very good grandfather" who had a good relationship with the children.

¶ 21 Lisa testified that, when Jacob was born, there was a question as to who the father was. Accordingly, she had three men DNA tested for paternity. When asked why Jerry was never tested she replied, "Because he's always right there. It didn't matter, really. Truthfully, it didn't matter. He was his dad." She added, "He acts like a father[.] [H]e takes care of Jacob[.]" Lisa testified that she never pursued child support because "Jerry just helped me all the time." When asked when Jerry signed the acknowledgement of paternity and birth certificate, Lisa responded, "A couple years, maybe, I don't know. *** [I]t's [sic] within the last two years." Lisa was unresponsive to the question of why the acknowledgement of paternity was not signed until after court proceedings involving the children commenced.

¶ 22 When the circuit court asked Lisa where the voluntary acknowledgement of paternity was signed, she indicated that it was signed at the courthouse in Effingham. She stated that there was not a court proceeding to establish Jerry's paternity of Jacob, but they "just signed papers." She informed the circuit court that she has a copy of the voluntary acknowledgment of paternity at home. She denied knowing if an administrative order existed from the Department of Human Services establishing Jerry as Jacob's father. Nor did she have a copy of Jacob's birth certificate with her.

¶ 23 Jerry testified that during the last eight or nine years that Jacob and Meghann were together, Meghann accepted him as the children's grandfather. He stated that Meghann

attended family functions and invited him to the hospital when the children were born. Jerry testified that he was involved in the children's lives from day one. He added that he fed them, babysat them, took care of them, took them to and from school, took them to movies and carnivals, spent holidays with them, and received birthday cards and Christmas gifts as a grandfather.

¶ 24 Jerry testified that when Meghann went to Tennessee, he and Meghann's mother worked together to take care of the children and when Meghann's mother had difficulty with one of the children, she allowed the child to live with Jerry for two weeks until she found out that Jacob was being released from prison and would be living with Jerry. At that point, she took the child back to her home and told Jerry that Jacob could not be around the children. Jerry testified, "I've always been there for the children. I've never done them children [sic] wrong, and she knows that. She *** let me have them in their care. I was always their grandfather and I always have been and I always will be and I will never give up and they will see me one day."

¶ 25 Photographs depicting various interactions between Jerry and the children were admitted into evidence. Jerry testified, "[T]he only thing I can say is I'm their grandfather. I love those children more than anything. I have never hurt those children, never done them harm." He added, "I'm their grandfather, plain and simple. I am their grandfather and they have always acknowledged that. All their lives, up until this point *** . *** I don't want to be taken out of their lives, I think it's wrong to do that to them ***."

¶ 26 At the conclusion of Jerry's testimony, the circuit court inquired of him as follows:

"Q. Mr. Sours, where is Jacob's birth certificate?

A. Over there in one of those files, I think.

Q. Are you in any[]way making this a part of your evidence?

A. I can, if you want it.

Q. It's your petition; I'm not telling you to or not to, I'm just asking you, is your name on the birth certificate?

A. Yes.

Q. When was your name placed on the birth certificate?

A. Sometime during all of these court proceedings.

* * *

Q. You indicated that the two of you signed a Voluntary Acknowledgement of Paternity. Where was that done?

A. In Effingham.

Q. When was that done?

A. Over this last couple of years. I can't remember the exact date. I don't know the date.

Q. Do you know what happened to that? Do you have a copy of that?

A. I don't remember. I don't remember if they gave me one or not. I just know we signed those papers and it had to be sent off to Springfield, you know what I mean? I remember signing a voluntary acknowledgement, yes."

¶ 27 At the conclusion of the evidence, the circuit court acknowledged that Jerry had established and maintained a close relationship with the children and that the evidence showed that Meghann and Jacob were not married, not living together, and had not lived together since the proceedings commenced. The circuit court further noted that parentage between Jacob and the children had been established in the separate underlying consolidated case. However, the court indicated that there must be a finding of standing through evidence that Jerry is the biological father of Jacob before any rights for nonparent visitation would attach, pursuant to section 602.9. The court stated that, before it could even consider whether there has been an unreasonable denial of visitation by Meghann and whether the unreasonable denial has a harmful effect on the emotional or psychological well-being of the children, Jerry must establish that he is the children's grandfather and he failed to do so. Accordingly, the circuit court dismissed Jerry's petition for a lack of standing. After the circuit court denied his motion to reconsider, Jerry filed a timely notice of appeal. Additional facts will be added as necessary in the remainder of this order.

¶ 28

ANALYSIS

¶ 29 At the outset, we reiterate that both parties were *pro se* below and note that Jerry is represented by counsel on appeal, Meghann is not represented on appeal nor did she file an appellee brief, and the case is nonoral. Concerning the absence of an appellee brief, our supreme court has held that a reviewing court should not be compelled to serve as the appellee's advocate, nor be expected to explore the record to sustain the judgment of the circuit court. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill.

2d 128, 133 (1976). However, it may do so if justice requires. See *id.* Moreover, “if the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee’s brief, the court of review should decide the merits of the appeal.” *Id.* We consider the appeal on that basis.

¶ 30 The issues on appeal are (1) whether Jerry proved that he is Jacob’s father by executing a voluntary acknowledgment of paternity and (2) whether the circuit court improperly interpreted section 602.9 of the Act. 750 ILCS 5/602.9 (West 2016).

¶ 31 Although the circuit court dismissed Jerry’s petition after finding a lack of standing and Jerry’s issues on appeal challenge that finding, we note that we may affirm the circuit court’s ruling on any basis supported by the record. See *In re Marriage of Heindl*, 2014 IL App (2d) 130198, ¶ 31. Here, we affirm the circuit court’s dismissal of the petition as a result of Jerry’s failure to satisfy a requirement of the Act. Pursuant to section 602.9, “[t]he burden is on the [petitioner] to prove that the parent’s actions and decisions regarding visitation will cause undue harm to the child[ren]’s mental, physical, or emotional health.” 750 ILCS 5/602.9(b)(4) (West 2016).

¶ 32 In this case, we decline to answer the legal questions of whether Jerry established that he is Jacob’s father by signing the voluntary acknowledgment of paternity and whether the circuit court misinterpreted section 602.9 because, even assuming, *arguendo*, that the circuit court would have found that Jerry was Jacob’s father, had the circuit court further found that any unreasonable denial of visitation with the children caused the children undue mental, physical, or emotional harm, such a finding would have been against the manifest weight of the evidence.

¶ 33 As the Illinois Supreme Court stated in *Flynn v. Henkel*, 227 Ill. 2d 176, 181 (2007), “The presumption *** that a fit parent’s denial of a grandparent’s visitation is not harmful to the child’s mental, physical, or emotional health is the embodiment of the fundamental right of parents to make decisions concerning the care, custody, and control of their children which is protected by the fourteenth amendment.” The Illinois Supreme Court observed in *Flynn* that, although the grandmother testified that the child “loves her and that he hugs her and holds her when he sees her, she did not present any evidence to show that denial of visitation with her would result in harm to [his] mental, physical, or emotional health.” *Id.* at 184. In reversing both courts below, the Illinois Supreme Court held that neither the denial of grandparent visitation “nor a child’s ‘never knowing a grandparent who loved him and who did not undermine the child’s relationship with his mother’ *** is ‘harm’ that will rebut the presumption *** that a fit parent’s denial of a grandparent’s visitation is not harmful to the child’s mental, physical, or emotional health.” *Id.*

¶ 34 Here, as in *Flynn*, Jerry failed to present evidence that the denial of visitation with him was harmful to the children’s mental, physical, or emotional health. Jerry’s mother opined that “it affects any child in any form if they *** have been used to being around family members and then they are pulled away from them. That affects any child, I think. Because I think children need family. Both sides.” We find this testimony to be a mere opinion not based on specific facts that demonstrate an actual danger of harm and insufficient to establish the harm required to overcome the presumption in section 602.9.

¶ 35 Indeed, no evidence of any type of harm to the children resulting from the lack of visitation was presented. The bulk of the testimony was centered on Jerry's attempt to prove that he was the children's grandfather. There was evidence, and the circuit court acknowledged, that Jerry had maintained a close relationship with the children. However, as established in *Flynn*, the children's lack of a close, loving relationship with Jerry is not enough to rebut the presumption that Meghann's denial of visitation is not causing harm to the children mentally, physically, or emotionally. See *id.* Accordingly, even assuming, *arguendo*, that the circuit court would have found Jerry to have standing, any finding that Jerry overcame the presumption that Meghann's denial of visitation was not harmful to the children mentally, physically, or emotionally would have been against the manifest weight of the evidence. For these reasons, we affirm the circuit court's dismissal of Jerry's petition.

¶ 36

CONCLUSION

¶ 37 For the foregoing reasons, we affirm the November 14, 2017, order of the circuit court of Fayette County.

¶ 38 Affirmed.