2019 IL App (1st) 191031-U

SIXTH DIVISION
October 4, 2019

No. 1-19-1031

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re MARRIAGE OF	)	
	)	Appeal from the Circuit Court
COLLEEN JORDAN,	)	of Cook County,
	)	
Petitioner-Appellee,	)	
	)	No. 14 D 10344
and	)	
	)	
JUSTIN SPRATT,	)	Honorable
	)	Timothy Murphy,
Respondent-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE MIKVA delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

O R D E R

¶ 1 *Held*: Where the respondent father failed to show that the circuit court's decision to allow the minor children to relocate with their petitioner mother from Illinois to California was based on error or was against the manifest weight of the evidence, the judgment of the circuit court is affirmed.

¶ 2 Respondent Justin Spratt appeals from a decision of the circuit court allowing petitioner Colleen Jordan to relocate the parties' two minor children from Illinois to California. On appeal, Mr. Spratt argues that the circuit court erred by allowing the relocation because (1) Ms. Jordan did not have the "equal" parenting time required to file a relocation petition, (2) Ms. Jordan

failed to satisfy the notice requirements for relocation of the minor children, and (3) the court's determination that relocation to California was in the best interests of the minor children was against the manifest weight of the evidence. For the following reasons, we reject each of these arguments and affirm the judgment of the circuit court.

¶ 3 I. BACKGROUND

¶ 4 Mr. Spratt and Ms. Jordan were married on March 11, 2006, and during their marriage had two children, Erin and Odin. An agreed judgment for dissolution of marriage was entered on April 7, 2015, granting the parties joint custody of the minor children and setting visitation for each party, generally, at "5 days on 5 days off."

¶ 5 On March 24, 2017, Ms. Jordan filed, *pro se*, a notice of motion indicating she would present a petition on April 3, 2017 "seeking permission to relocate." That motion does not appear in the record. On April 17, 2017, the court entered an order noting that Ms. Jordan sought to relocate the minor children from Illinois to California and that Mr. Spratt objected to the relocation. The court dismissed Ms. Jordan's motion without prejudice. The court stated that if Ms. Jordan wanted to refile her petition to relocate, "it should only be after she [had] submitted [to] Mr. Spratt a written parenting proposal" and "secured a definite employment with specific terms such as salary, location, and start date."

¶ 6 On December 11, 2017, Mr. Spratt petitioned for sole custody of the minor children, stating that Ms. Jordan had moved to Sacramento California on August 12, 2017, that the minor children had lived with Mr. Spratt "for the vast majority of the time since the Dissolution of Marriage," and that Mr. Spratt was a "fit and proper person to have the sole care, custody, control and education of the parties' minor children." Mr. Spratt also requested that Ms. Jordan

be required to pay child support.

¶ 7 On March 19, 2018, Ms. Jordan filed a second motion to relocate the minor children to California. Ms. Jordan asserted that she had relocated to California, secured employment there with higher pay, and wished to relocate the minor children to California "to be able to provide a higher standard of living" for them. Ms. Jordan said that it was in the children's best interests to relocate because she was "able to have the flexibility to work from home and be available to care" for them. She also said that the "majority" of the help Mr. Spratt received for the children's care was from Ms. Jordan's immediate relatives, and that her family was also seeking to relocate to California in the near future so Mr. Spratt would no longer be able to rely on their help. Ms. Jordan stated that Mr. Spratt "lack[ed] the resources to be able to upkeep with any school immunization vaccinations and ensur[e] the minor children receive their annual checkups with their primary doctors." And Ms. Jordan also stated that the minor children would receive better education in California and would have "more outdoor recreational activities to choose from, such as; hiking, boating and camping." Finally, Ms. Jordan said that the relocation would not affect Mr. Spratt's parenting time because she would "accommodate the minor children to be able to have parenting time with [him]."

¶ 8 On August 21, 2018, the court set a hearing for Ms. Jordan's relocation motion and Mr. Spratt's petition for sole custody, to be held on October 29 and 30, 2018. No transcript from that hearing is included in the record on appeal.

¶ 9 On October 30, 2018, the court entered an agreed order of continuance directing the parties to submit written closing arguments on November 9, 2018, "following today's conclusion of relocation motion hearing." In that order, the court also noted that Mr. Spratt had withdrawn

his motion for sole custody. The written closing arguments are not part of the record on appeal.

¶ 10 On January 15, 2019, the circuit court entered a very detailed 17-page written order allowing Ms. Jordan's motion to relocate to California with the minor children. In it, the court first noted that both parties were represented by counsel at the hearing on the matter, which was held on October 29 and 30, 2018, with written closing arguments presented to the court on November 9, 2018.

¶ 11 According to the court's order, three witnesses testified at the hearing: Ms. Jordan, Mr. Spratt, and Ms. Jordan's adult daughter, Amber Jordan. After recounting this testimony and the other evidence presented, the circuit court then went through the factors it was legally required to consider in making its determination on the relocation pursuant to section 609.2(g) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/609.2(g) (West 2016)).

¶ 12 In considering all of these factors, the court found that Ms. Jordan's reasons for the move to California—"significant opportunity to secure employment as a nurse at a substantially greater income level, along [with] affordable housing, activities and education for the children, and her new ability to spend substantial parenting time with her children"—were "both compelling and in the best interests of the children." The court felt that Mr. Spratt's objections did not outweigh the benefits of the move to the children. Although both parents had been substantially involved in the children's lives, the evidence relating to their vaccinations and healthcare led the court to believe that it was in their best interests for Ms. Jordan to have sole authority to make such decisions in the future. The schools the children would attend in California were, in the court's view, "at least equal to, and probably superior" to the children's school in Chicago. The children would also have more extended family in California. Ms. Jordan's family, especially Amber, had

already been "an integral part of the children's lives," while Mr. Spratt had no family in the Chicago-land area. Ms. Jordan "afford[ed] the children a more stable and secure living environment" and "the children w[ould] be living in an area that is more peaceful and affords them great outside activity and educational opportunity," such that the court anticipated "a smooth transition would occur if the move was granted and [the children] were living with their mother and sister, [Amber]." Despite the "somewhat problematic" distance between Illinois and California, Ms. Jordan testified to her "willingness to facilitate a schedule and to even help financially if [Mr. Spratt] were to visit should her petition be granted." The court was confident that it could "fashion a reasonable allocation of parental responsibilities if the relocation occur[ed]." Finally, the court found that Ms. Jordan "clearly notified" Mr. Spratt of her desire to relocate the children, filed a prior petition, took the steps she was directed to take when that petition was denied, and had kept Mr. Spratt apprised of that progression.

¶ 13 Based on all of this, the court concluded that it was in the best interests of Erin and Odin to relocate with their mother from Illinois to California. The court instructed the parties to prepare and submit proposed parenting-time schedules for its consideration within 30 days.

¶ 14 On February 1, 2019, Mr. Spratt's counsel filed a motion to withdraw from representation. Then, on February 14, 2019, Mr. Spratt filed a *pro se* motion to reconsider the relocation of the minor children to California. In it, Mr. Spratt argued that Ms. Jordan had testified falsely at the hearing and that his attempt to introduce rebuttal evidence had been objected to and those objections sustained. Mr. Spratt also argued that the court erred when it approved relocation without having a new parenting plan to consider and insisted that Ms. Jordan had failed to comply with the notice requirement for filing a motion to relocate.

¶ 15 On April 26, 2019, the circuit court denied Mr. Spratt's motion to reconsider in an eight-page written order. In it, the court noted that Mr. Spratt's motion contained 78 paragraphs, including "much argument which the court [had] read and reviewed several times, and heard argument relative thereto on March 19, 2019." The court then analyzed each paragraph in the motion, specifically noting that certain paragraphs, in part, were "recitals and d[id] not allege any error," included arguments that could have been made in closing at the hearing, raised legal arguments without citing any supporting authority, contained arguments that could have been made at trial, contained "numerous claimed 'facts' that were not testified to nor introduced into evidence at the time of trial," made claims that were "simply erroneous and completely without basis," or otherwise included evidence or argument that Mr. Spratt failed to introduce at trial. The court again directed the parties to exchange and tender proposed parenting-time plans on or before May 30, 2019, and set the case for argument related to those plans on June 11, 2019.

¶ 16 On May 21, 2019, Mr. Spratt filed a notice of appeal from the circuit court's judgments of January 15 and April 26, 2019.

¶ 17 On June 5, 2019, Ms. Jordan filed in this court a motion to dismiss that appeal arguing that because the circuit court's orders of January 15 and April 26, 2019, "did not settle the substantial issue of the parties' parenting schedule," neither was a final judgment and the case was thus not appealable. Ms. Jordan asked us to dismiss the appeal for a lack of jurisdiction.

¶ 18 On June 17, 2019, we entered an order directing Mr. Spratt to file an amended notice of appeal within 30 days of the circuit's court order setting a parenting-time schedule. We subsequently denied Ms. Jordan's motion to dismiss on June 25, 2019, citing our June 17, 2019, order.

¶ 19 On June 21, 2019, the circuit court entered an order modifying the parties' parenting-time schedule and child support obligations based on the children's relocation to California. This appeal followed.

¶ 20 II. JURISDICTION

¶ 21 Mr. Spratt timely filed an amended notice of appeal on June 28, 2019, seeking reversal of the circuit court's order allowing Ms. Jordan's motion to relocate. That order became appealable as of right as a modification of an allocation of parental responsibilities judgment when it was incorporated into the modified parenting schedule entered by the court on June 21, 2019. This court has jurisdiction pursuant to Illinois Supreme Court Rule 304(b)(6) (eff. March 8, 2016).

¶ 22 III. ANALYSIS

¶ 23 Mr. Spratt argues on appeal that the circuit court erred by allowing Ms. Jordan to relocate the minor children from Illinois to California. Relocation is governed by section 609.2 of the Act (750 ILCS 5/609.2 (West 2016)). That section provides that "[a] parent who has been allocated a majority of parenting time or either parent who has been allocated equal parenting time may seek to relocate with a child." 750 ILCS 5/609.2(b) (West 2016).

¶ 24 Mr. Spratt first argues that Ms. Jordan did not have "equal" parenting time, except "on paper" because she never exercised the parental responsibilities allocated to her under the parenting plan. The circuit court in this case found that "both parents have been substantially involved in the children's lives," but did not make any finding that Ms. Jordan fully exercised her right to equal parenting time. However, section 609.2(b) of the Act only requires that a parent who seeks relocation has been "*allocated* a majority of parenting time" or "*allocated* equal parenting time." (Emphases added.) 750 ILCS 5/609.2(b) (West 2016). Ms. Jordan was

allocated equal parenting time in the April 2015 judgment for dissolution of marriage, and that allocation of parenting time was not modified until she was allocated the majority of parenting time on June 21, 2019. Nothing in the statute states that the parent who seeks relocation must be exercising the parenting time allocated to them, and Mr. Spratt has not cited any authority suggesting otherwise. We therefore conclude that Ms. Jordan had standing to file her petition seeking to relocate the minor children, regardless of whether she was taking advantage of her allocated equal parenting time.

¶ 25 Mr. Spratt also argues that Ms. Jordan failed to satisfy the Act's notice requirements. Section 609.2 states that a parent seeking relocation "must provide written notice of the relocation to the other parent" and the notice "must provide at least 60 days' written notice before the relocation." 750 ILCS 5/609.2(c), (d) (West 2016). If the non-relocating parent objects, "the parent seeking relocation must file a petition seeking permission to relocate." 750 ILCS 5/609.2(f) (West 2016).

¶ 26 Here, although the record on appeal contains no written notice other than Ms. Jordan's petitions, it is clear that she first filed a petition to relocate the children on March 23, 2017. This was the petition that the circuit court denied on April 17, 2017. Mr. Spratt knew at that time that Ms. Jordan wanted to relocate the children. Ms. Jordan then filed her second petition to relocate on March 19, 2018, and that motion was not granted until January 15, 2019. The entire process from when Ms. Jordan first sought to relocate the children to when her petition was granted lasted well over 60 days. And in its 17-page written order granting Ms. Jordan's petition, the circuit court specifically stated that "the evidence herein indicates that [Ms. Jordan] clearly notified [Mr. Spratt] of her desire to relocate the children; that she filed a petition to do so which

was heard by [the previous judge on the case]; that she then took steps to comply with [that judge's] conditions, advising [Mr. Spratt] as those steps progressed." Based on the record, it is clear that even if Ms. Jordan did not strictly comply with the notice requirements of section 609.2, Mr. Spratt had actual notice that she sought to relocate with the children more than 60 days before the actual relocation.

¶ 27 Moreover, even if Ms. Jordan had failed to comply with the notice requirements of section 609.2, that is simply a factor that the court considers when deciding whether a relocation is being made in good faith. 750 ILCS 5/609.2(d) (West 2016). The failure to give notice does not prohibit the court from considering a petition to relocate. And the circuit court explicitly considered the requirements of section 609.2 when it granted Ms. Jordan's relocation petition and considered Mr. Spratt's notice argument when it denied his motion to reconsider.

¶ 28 Mr. Spratt also takes issue with Ms. Jordan's failure to submit a parenting plan before filing her second petition to relocate, as the circuit court's order denying her initial petition to relocate instructed her to do. Mr. Spratt made this same argument in his motion to reconsider the relocation. In denying that motion, the circuit court stated: "This claim is simply erroneous and completely without basis." The court then detailed the parties' submissions in 2018 regarding their proposed parenting plans. "Generally, we presume that a trial court knows the law and follows it accordingly." *In re Custody of G.L.*, 2017 IL App (1st) 163171, ¶ 43. Here the court clearly considered Mr. Spratt's argument and found it lacked merit, and Mr. Spratt does not point us to anything in the record suggesting that the court did not know or follow the law or misunderstood the record in this case.

¶ 29 Finally, Mr. Spratt argues that the circuit court's determination that relocation to

California was in the best interests of the minor children was against the manifest weight of the evidence. "The party seeking judicial approval of [a] proposed relocation must establish by a preponderance of the evidence that the relocation is in the child's best interests." *In re Marriage of Kavchak*, 2018 IL App (2d) 170853, ¶ 65. Section 609.2(g) lists 11 factors a "court shall consider" when determining whether a relocation is in a child's best interests:

"(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 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 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;

(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, taking into account the child'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;

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

¶ 30 Our supreme court has stated that "a best interests determination cannot be reduced to a simple bright-line test and *** a ruling on the best interests of a child must be made on a case-by-case basis, depending, to a great extent, upon the circumstances of each case." (Internal quotation marks omitted.) *In re Marriage of Fatkin*, 2019 IL 123602, ¶ 32. And on appeal, "[a] reviewing court does not reweigh the competing considerations. Rather, it reviews the circuit court's decision deferentially." *Kavchak*, 2018 IL App (2d) 170853, ¶ 65. The supreme court has "also stressed that [a] trial court's determination of what is in the best interests of the child should not be reversed unless it is clearly against the manifest weight of the evidence and it appears that a manifest injustice has occurred." (Internal quotation marks omitted.) *Fatkin*, 2019 IL 123602, ¶ 32. "Such deference is appropriate because [t]he trier of fact had significant opportunity to observe both parents and the child and, thus, is able to assess and evaluate their temperaments, personalities, and capabilities." (Internal quotation marks omitted.) *Id.* "Accordingly, [t]he presumption in favor of the result reached by the trial court is always strong and compelling in this type of case." (Internal quotation marks omitted.) *Id.* A court's decision is against the manifest weight of the evidence only where the opposite conclusion is clearly apparently or where its findings are unreasonable, arbitrary, or not based on the evidence presented. *Kavchak*, 2018 IL App (2d) 170853, ¶ 32.

¶ 31 We see no basis on which we could find that the court's judgment here was against the manifest weight of the evidence. The record reflects the court's careful consideration of the

parties' opposing views and detailed description of the evidence. There is no transcript or an acceptable substitute such as a bystander's report or agreed statement of facts (see Ill. S. Ct. R. 323 (eff. July 1, 2017)) from the hearing that resulted in the court's determination that it was in the children's best interests to relocate to California. The "appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with the law and had a sufficient factual basis." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). "Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Id.* at 392.

¶ 32 As the court's detailed opinion makes clear, Ms. Jordan, Ms. Jordan's adult daughter Amber, and Mr. Spratt testified at the best interests hearing on October 29 and 30, 2018. And, in its 17-page written order allowing Ms. Jordan to relocate the children, the court detailed their testimony, listed each factor in section 609.2(g), then presented the evidence in support of and its reasoning with respect to each factor, before concluding that it was in the children's best interests to relocate to California with Ms. Jordan. Mr. Spratt now asks us to reweigh the evidence, something we are not at liberty to do on appeal. *Kavchak*, 2018 IL App (2d) 170853, ¶ 65. The evidence Mr. Spratt cites to in his appellate brief was the same evidence that the circuit court considered either in the hearing or in reviewing Mr. Spratt's motion to reconsider. As the circuit court noted, Mr. Spratt's motion to reconsider contained "numerous claimed 'facts' that were not testified to nor introduced into evidence at the time of trial." To the extent that Mr. Spratt is relying on "evidence" that was not presented at the hearing, we agree with the circuit court that we cannot consider it. Without the transcript, we have no basis on which to disagree with the

circuit court's weighing of the evidence that was presented at the hearing and the circuit court's carefully supported conclusion that allowing this move was in the children's best interests.

¶ 33 It is unfortunate when two parents who previously shared joint custody of their minor children cannot agree on a location where they can both live and spend time with their children. However, when they cannot, the circuit court must decide what is in the children's best interests. It is clear to us that the court in this case took great care with this decision and gave great consideration to the evidence presented by both sides. Based on the court's order and the record before us, we cannot say that its decision was against the manifest weight of the evidence.

¶ 34 IV. CONCLUSION

¶ 35 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 36 Affirmed.