2019 IL App (3d) 190062-U

Order filed May 22, 2019

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2019

In re MARRIAGE OF	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
CASSANDRA TAYLOR,	)	Rock Island County, Illinois.
	)	
Petitioner-Appellant,	)	Appeal No. 3-19-0062
	)	Circuit No. 18-D-88
and	)	
	)	
DANIEL TAYLOR,	)	Honorable
	)	James G. Conway Jr.,
Respondent-Appellee.	)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Carter and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: A trial court order allocating parenting time in dissolution proceedings was upheld as not against the manifest weight of the evidence because it maximized parenting time with both parents and was in the best interests of the children. The trial court's decision to allocate the parents' joint-decision making authority with respect to religion was also upheld as not against the manifest weight of the evidence.

¶ 2 The appellant wife, Cassandra Taylor, appealed from a trial court order entered in dissolution proceedings, challenging portions of the order that allocated parenting time and decision-making authority with respect to the parties' three minor children.

¶ 3 FACTS

¶ 4 The wife filed a petition for dissolution of marriage from the appellee husband, Daniel Taylor, on March 7, 2018. The petition alleged that the parties were married in 2009 and three children were born of the marriage, 5-year-old twins and a 3-year-old boy. The trial court held a trial to determine contested issues, relevant to this appeal: parenting time and decision-making authority with respect to the children's religious activities. Since there was no appeal of the trial court's property disposition, we will limit our review of the evidence with respect to the two disputed issues.

¶ 5 Maria Peterson, the wife's sister, testified that she would see the wife and the children two or three times a month during the summer and during holidays and special occasions. Peterson testified that during those times, she observed the wife taking care of the children by playing with them, preparing them meals, and providing anything they needed. When she visited over the last Fourth of July, she testified that the husband was either out in the garage, also known as his man cave, or next door at his cousin's house. He did join the family later in the evening and set off fireworks for the children. Peterson acknowledged that the dissolution proceedings were pending at the time and matters were tense between the husband and the wife.

¶ 6 Lauren Schluensen, a preschool teacher, testified that she knew the wife from church and from the day care where she worked. She had known the wife for three years. Schluensen testified that, over the last three years, she had observed the wife bringing the children to church every other weekend and dropping them off at Sunday school. She had also seen the wife with

the children at other church activities, including Awana, a church picnic, and summerfest. Schluensen had seen the husband at church services a few times.

¶ 7 The wife's father, Milo Shepard, testified that he saw the wife two or three times a month. He described the wife's relationship with the children as good, and testified that she planned outings with them when they were out of school and did things with them most of the day. He testified that the husband has been more aggressive toward him and his wife since the divorce was filed.

¶ 8 The wife testified that she was a teacher and she planned to continue in her employment. During the school year, she would get the children up by 6:30 a.m., get them fed and dressed. She would then leave with the youngest child and take him to preschool. The husband would take the twins to school. The wife would pick up all three children after school, around 3:20 p.m. When they arrived home, the children were allowed a half hour on their iPads. If it was nice out, she would go outside with them. Otherwise, she played games with them. Then, the wife testified that she prepared dinner, still in charge of the children. They played more games after dinner until bedtime. During the summer, she testified that she was the parent that got the children ready for the day, but they did more activities outside of the house, like museums, libraries, the zoo, and the farmers market.

¶ 9 The wife testified that she was the parent who took the children to the doctor, and she stayed home with the children when they were sick. She testified that, when not a work, the husband spent a lot of time in the man cave watching sporting events. Sometimes, he was gone in the evenings. However, he assisted with the twins' bedtime routine. The wife testified that she was concerned that the husband's drinking alcohol caused him to miss opportunities to spend time with the children. She testified that he started drinking more about a year after the twins

were born and he spent more time in the man cave. He drank progressively more and spent more time away. She estimated that in the two years preceding the filing of the dissolution petition, she spent 95% of her time outside of work caretaking the children. She also estimated that the husband performed about 10% of the caretaking activities for the children. He did stay home with the twins for the first year of their life, and he took good care of them. She testified to a number of confrontations between herself and the husband since the divorce filing, and she believed that their communication difficulties would continue even when they no longer lived in the same house.

¶ 10 The wife filed proposed parenting plans that gave the husband every-other weekend visitation, but ended before church on Sunday morning. Originally, the wife had proposed that the husband would still take the children to school on weekdays, but at the hearing the wife proposed more limited exchanges, limited to after school on Friday, Sunday morning, and Wednesday night after school.

¶ 11 The wife asked for sole decision-making in the area of religion. She testified that she had attended Heritage Wesleyan Church since 2007 and that she believed she had more faith in organized religion. She was the one who took the children to Awana, volunteer activities, and get-togethers with the church. She testified that the husband had attended church services less than five times during the entire marriage.

¶ 12 The husband sought 50/50 parenting time, a week-on, week-off schedule. Since the wife wanted less contact, the husband testified that he was agreeable to the switches taking place at school on Mondays. The husband acknowledged that he and the wife had difficulty communicating, but he hoped that would get better and they could communicate regarding the children after they no longer lived in the same home. He also attends Heritage Wesleyan Church,

and he had no problem with the children attending that church. However, he wanted joint decision-making with respect to religion and wanted to be able to input his opinion if the wife changed her mind and wanted the children to follow a different religion. The husband testified that he took the twins to school in the morning and that he helped with the children in the morning before school. He took care of the twins during the 2012-13 school year, providing their care during the day and working part time at Menards in the evenings. The husband testified that the wife picks up the children from school and he arrives home around 3:50 p.m., while they are still on their iPads. Depending on the night, one of the children often has an activity that they take turns attending. Otherwise, they would each have one or two of the children either inside or outside. Recently, the husband testified that he has been leaving the home out of frustration and driving around in the car. During the summer, the husband testified that he would sleep in two or three times a week and leave the children in the wife's care on those days. But the wife would also leave the house and leave the husband in charge about twice a week over the last two summers. The husband testified that both parents participated in the bedtime routine. Prior to the divorce filing, they would take turns with the youngest child, and they always traded off with the twins. The husband acknowledged that he drank beer every day before the divorce was filed, although it did not interfere with his care of the children. He has stopped drinking to take better care of his children.

¶ 13 James Taylor testified that he was the husband's cousin and he had lived in the house next door for almost seven years. He has almost weekly interaction with the children, plus family events. He testified that he was with the husband and at least one of his children two or three time a week. He testified that he would see the husband outside playing with his children, that the husband was hands-on with the children and provided caretaking functions for the children.

Taylor testified that the husband was a good father, who disciplined his children by redirecting them. The husband always had projects planned for the children to do. Taylor testified that the wife was also a good parent. Taylor testified that the husband would drink beer with him about twice a week, but he had not seen the husband drink since the divorce started several months earlier.

¶ 14 The trial court's order indicated that the parties agreed to joint and equal responsibility in the decision-making regarding education, extracurricular activities, and health care, with some qualifiers not relevant to this appeal. With respect to decision-making authority for religion, the trial court found that both parents practiced the same religion and attended the same church. There was no conflict, and the trial court found it was in the children's best interests that both parents enjoyed joint and equal decision-making responsibility for their religious training. The trial court specifically addressed the factors applicable for determining parenting time in section 602.7(b) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/602.7(b) (West 2016)). After considering the relevant factors, the trial court determined that a 50/50 rotating schedule was not in the best interests of the children and a more traditional "visitational" schedule was justified. The trial court allocated parenting time by placing the children in the husband's physical care every-other weekend from 3:45 p.m. on Friday until 3:45 p.m. on Monday, from 3:45 p.m. on Wednesday to 3:45 p.m. on Friday during week one, and overnight on Wednesday during week two. Under this schedule, all pickups during the school year could be made at the school. The wife's holiday schedule was adopted by the court. The husband was ordered to pay child support and half of the children's health insurance premium. Both parties filed motions to reconsider, which the court ruled upon, although not on issues relevant to this appeal.

¶ 15 ANALYSIS

¶ 16 The wife appealed, arguing that the trial court's denial of the husband's request for 50/50 shared parenting time, but then awarded 43% of the parenting time to the husband, was against the manifest weight of the evidence. The wife also argues that the trial court's decision to award the parties joint decision-making authority for matters related to the children's religious upbringing was against the manifest weight of the evidence. The husband contends that the trial court's order awarding the wife the majority of parenting time and awarding him reasonable and liberal parenting time, and awarding the parties joint decision-making responsibility for religious decisions, was not against the manifest weight of the evidence.

¶ 17 We will not overturn the trial court's decision regarding parenting time or decision-making authority unless the court abused its considerable discretion or its decision is against the manifest weight of the evidence. *In re Marriage of Whitehead,* 2018 IL App (5th) 170380, ¶ 15. The relative credibility of witnesses is a matter left to the trier of fact. *Id.* ¶ 21.

¶ 18 The allocation of parenting time is governed by section 602.7 of the Act. It provides that the trial court shall allocate parenting time according to the children's best interests. 750 ILCS 5/602.7(a) (West 2016). In determining the best interests of the children, the trial court shall consider all relevant factors, including the factors delineated in section 602.7(b):

> "(1) the wishes of each parent seeking parenting time;
>
> (2) the wishes of the child, taking into account the child's maturity and ability to express reasoned and independent preferences as to parenting time;
>
> (3) the amount of time each parent spent performing caretaking functions with respect to the child in the 24 months preceding the filing of any petition for allocation of parental responsibilities or, if the child is under 2 years of age, since the child's birth;

(4) any prior agreement or course of conduct between the parents relating to caretaking functions with respect to the child;

(5) the interaction and interrelationship of the child with his or her parents and siblings and with any other person who may significantly affect the child's best interests;

(6) the child's adjustment to his or her home, school, and community;

(7) the mental and physical health of all individuals involved;

(8) the child's needs;

(9) the distance between the parents' residences, the cost and difficulty of transporting the child, each parent's and the child's daily schedules, and the ability of the parents to cooperate in the arrangement;

(10) whether a restriction on parenting time is appropriate;

(11) the physical violence or threat of physical violence by the child's parent directed against the child or other member of the child's household;

(12) the willingness and ability of each parent to place the needs of the child ahead of his or her own needs;

(13) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child;

(14) the occurrence of abuse against the child or other member of the child's household;

(15) whether one of the parents is a convicted sex offender or lives with a convicted sex offender and, if so, the exact nature of the offense and what if any treatment the offender has successfully participated in; the parties are entitled to a hearing on the issues raised in this paragraph (15);

(16) the terms of a parent's military family-care plan that a parent must complete before deployment if a parent is a member of the United States Armed Forces who is being deployed; and

(17) any other factor that the court expressly finds to be relevant." *Id.* § 602.7(b).

¶ 19 The trial court's written order makes specific findings with respect to the relevant factors. The trial court noted the wife's parenting plan, which awarded her the "lion's share" of the parenting time, and the husband's parenting plan, which sought equal time for both parents. See *id.* § 602.7(b)(1). The trial court considered the parenting time spent by each parent caretaking in the 24 months prior to the filing of the petition. The trial court noted that much of the wife's testimony focused on the time frame since the filing, when the parties were living together "while at matrimonial war." However, while the court found that the husband provided caretaking efforts during the relevant time frame, it acknowledged that the wife did more caretaking and that factor (*id.* § 602.7(b)(3)) favored the wife. While the court found that the wife was historically the primary caregiver, the husband's experience and performance in taking care of the infant twins during the 2012-2013 school year justified a greater amount of residential parenting time than the wife wanted him to receive. See *id.* § 602.7(b)(4). The court found that both parents were caring and loving parents and that the three children were bonded to both extended families. *Id.* § 602.7(b)(5), (6).

¶ 20 The factor that, arguably, was the most contested was the consideration of the children's needs, *id.* § 602.7(b)(8). The court found that the children needed quality time with both parents, but concluded that a rotating schedule would not be best due to the young ages of the children. Also, an equal parenting plan was not in the best interests of the children because the parents had not demonstrated that they could communicate to the degree necessary to effectuate such a plan.

The court noted that, while there was evidence of the husband's drinking, there was no credible evidence that the children were harmed due to the husband being under the influence of alcohol. Thus, the court designated the wife the custodian for purposed of section 606.10 of the Act (750 ILCS 5/606.10 (West 2016)) and placed the children in the wife's physical care at all times not scheduled. The court then scheduled the children to be placed in the husband's care every other weekend, from 3:45 p.m. on Friday until 3:45 p.m. on Monday, overnight Wednesday and Thursday during week one, and overnight Wednesday during week two. The trial court stated that all pick-ups would be by the receiving parent at the children's school. The trial court also entered a holiday schedule, which is not challenged on appeal.

¶ 21 The wife contends that the trial court's rejection of an equal parenting time schedule was inconsistent with its order of a visitation schedule that awarded each parent close to equal parenting time. She cites caselaw that indicates that equal parenting schedules are disfavored in Illinois. See *In re Marriage of Swanson*, 275 Ill. App. 3d 519 (1995); *In re Marriage of Perez*, 2015 IL App (3d) 140876. We agree with the basic tenant of *Swanson* (discussing physical custody rather than parenting time because the case was decided under the pre-2016 Illinois Marriage and Dissolution of Marriage Act), which was that the scheduling of parenting time should be in the best interests of the children and not simply to equalize the time the children spend with each parent. *Swanson*, 275 Ill. App. 3d at 524. The particular custody plan in *Swanson* required the children to spend the first half of the month with mom and the last half of the month with dad. The *Swanson* court did not favor that alternating custody schedule due to the ages of the children and that parent's inability to communicate. *Id.*

¶ 22 Conversely, in *Perez*, we affirmed a 50/50 shared parenting schedule, finding it was not an abuse of discretion. *Perez*, 2015 IL App (3d) 140876, ¶ 33 (also decided prior to January 1,

2016). The schedule in *Perez* was a modified every-other weekend schedule with extensions that worked with the parties' work schedules and maximized the involvement of both parents. *Id.* ¶ 32.

¶ 23 The trial court in the instant case rejected the husband's weekly rotating parenting schedule, finding that it was too disruptive to the children. The trial court also rejected the wife's proposed every-other weekend schedule, finding that it did not provide the husband enough parenting time and it did not allow the husband to ever have a full weekend with his children. Like the trial court in *Perez*, we find that the trial court was not attempting to equalize the division of physical custody, but rather was attempting to fashion a schedule that would allow the maximum involvement of both parents, while minimizing the transfers of the three children. The trial court's reference to a more traditional-style visitation schedule did not imply that the husband's time should be more limited. There was ample testimony that both parents were involved in caretaking to a certain extent, obviously impacted more recently by the deteriorating relationship between the parties. The trial court's schedule allowed each parent to have two weekends a month with the children and limited the parent's interaction with each other by allowing for the exchanges to be made at school, rather than on the weekend. Each parent was given substantial quality time with the children. It is clear that the trial court considered the statutory factors contained in section 602.7(b) of the Act and fashioned a schedule that was in the best interests of the children. We find that the trial court's parenting schedule was not against the manifest weight of the evidence.

¶ 24 The allocation of parental decision-making responsibilities is governed by section 602.5 of the Act (750 ILCS 5/602.5 (West 2016)). Like parenting time, decision-making responsibilities are to be allocated in accordance with the children's best interests, considering

many of the same factors. *Id.* § 602.5(a), (c). With respect to religion, section 602.5(b)(3) provides that the court shall allocate to one or both of the parents the significant decision-making responsibility for religion, subject to the following provisions:

> "(A) The court shall allocate decision-making responsibility for the child's religious upbringing in accordance with any express or implied agreement between the parents.
>
> (B) The court shall consider evidence of the parents' past conduct as to the child's religious upbringing in allocating decision-making responsibilities consistent with demonstrated past conduct in the absence of an express or implied agreement between the parents.
>
> (C) The court shall not allocate any aspect of the child's religious upbringing if it determines that the parents do not or did not have an express or implied agreement for such religious upbringing or that there is insufficient evidence to demonstrate a course of conduct regarding the child's religious upbringing that could serve as a basis for any such order." *Id.* § 602.5(b)(3).

¶ 25 The wife requested sole-decision making authority based upon subsection (B), contending that she was the parent that took the children to church and participated in their religious upbringing, while the husband had minimally participated throughout the parties' marriage.

¶ 26 The facts indicated that both parents and the children attended the same church and there was an implied agreement that the children would continue at the same church and be raised in that faith. The trial court acknowledged that, while the wife's past conduct indicated that she was the one who usually took the children to church and church events, the husband occasionally attended the same church and did not object to those activities or to the children being raised in

the beliefs of that denomination. The husband sought joint-decision making authority regarding any future religious decisions, similar to the past decisions and other major decision in the children's lives. We find that the decision allocating joint decision-making authority with respect to religion was not against the manifest weight of the evidence.

¶ 27 CONCLUSION

¶ 28 The judgment of the circuit court of Rock Island County is affirmed.

¶ 29 Affirmed.