2019 IL App (4th) 190101-U

NO. 4-19-0101

FILED
July 16, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re MARRIAGE OF JILL E. MCDONALD, Petitioner-Appellant, and JOEL C. MCDONALD, Respondent-Appellee.	) Appeal from the) Circuit Court of) Champaign County) No. 09D587)) Honorable) Randall B. Rosenbaum,) Judge Presiding.

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

ORDER

¶ 1 *Held*: Denying petitioner's request to suspend overnight parenting time was not an abuse of discretion.

¶ 2 Petitioner, Jill McDonald, appeals from a decision of the Champaign County circuit court on her petition to restrict the parenting time of respondent, Joel McDonald. See 750 ILCS 5/603.10 (West 2018). Although the court granted her petition by requiring respondent to take various corrective measures, such as abstaining from alcohol 24 hours before and during visitations and undergoing counseling, the court declined to suspend overnight parenting time. It is from that aspect of the court's decision that petitioner appeals, the continuation of overnight parenting time. We find no abuse of discretion in that respect, and, therefore, we affirm the judgment.

¶ 3 I. BACKGROUND

¶ 4 The parties, who divorced in February 2011, have two children: R.M., age 9, and K.M., age 8. A marital settlement agreement, incorporated into the judgment of dissolution of marriage, gave petitioner sole decision-making authority over the children and gave respondent parenting time. His parenting time was every Wednesday from 5 to 7:30 p.m. and every other weekend from Friday at 5 p.m. until Sunday at 5 p.m. Holidays and summer vacations were addressed separately.

¶ 5 On July 11, 2018, petitioner filed a petition to restrict respondent's parenting time. From August to December 2018, the trial court heard evidence on the petition. On January 22, 2019, the court entered a written decision.

¶ 6 The trial court found that petitioner had proven, by a preponderance of the evidence, that respondent had "engaged in conduct that seriously endanger[ed] the children's mental and physical health and that significantly impair[ed] the children's emotional development." Because respondent does not contest that finding—he has not appealed—it is unnecessary to recount all the evidence undergirding that finding; the trial court, in its 16-page decision, did an admirable job of describing and evaluating the evidence. In short, the evidence tended to show that when respondent consumed alcohol, he became angry, obstreperous, and verbally abusive. Although there appears to be no evidence he ever became physically violent, his abrasive behavior, which might have been merely annoying to an adult, caused significant emotional distress to his children, as Judy Osgood, a psychologist, opined in her testimony.

¶ 7 Therefore, the trial court found serious endangerment of the children (*id.* § 603.10(a)) and ordered respondent to do the following:

> "(a) To not consume alcohol or any drug (for which he does not have a prescription), within 24 hours of his parenting time and during his parenting time.

(b) To comply with any prescription by a physician, including taking the meds as required and not in conjunction with alcohol.

(c) To enroll and complete a [p]arenting [e]ducation class (such as Children First) within 45 days of this [o]rder and to provide proof of completion to this [c]ourt.

(d) To engage in counseling with a licensed psychologist or other professional to work on his issues as outlined in this [o]pinion. A copy of this [o]pinion is to be provided to said counselor to enable him/her to understand the issues. Should the counselor want to engage the children in counseling, that may be done. The counselor and Dr. Osgood should coordinate their efforts.

(e) Due to a lack of appropriate communication, both parties shall communicate exclusively through TalkingParents.com, or a similar program, for all non-emergency matters regarding the children. Each party shall create an account within 14 days of this [o]rder."

¶ 8 II. ANALYSIS

¶ 9 In her brief on appeal, petitioner does not contend that the trial court should have eliminated or cut back on parenting time during the day. Nor does she contend that the court should have required that parenting time be supervised. We do not mean to imply that petitioner ought to have made those contentions; we merely wish to emphasize that the ultimate issue in this appeal is quite narrow. Petitioner's only dissatisfaction with the remedy the court awarded is this: the court, in her words, "fail[ed] to suspend overnight parenting time." Accordingly, in the conclusion of her brief, petitioner writes: "This [c]ourt should find that the trial court abused its discretion and remand with direction that [respondent's] overnight parenting time be suspended

until such time as the case is reviewed and [Judy Osgood, a psychologist,] finds it in the best interest of the children to resume overnight parenting time." See *In re Marriage of Mayes*, 2018 IL App (4th) 180149, ¶ 57 ("It has generally been stated a court's decisions on visitation or parenting time issues will not be overturned on appeal unless the court abused its discretion or a manifest injustice has been done to the child or parent."). That is the only relief which petitioner requests from us: to suspend overnight parenting time.

¶ 10 In its 17-page decision, the trial court explains why it denied petitioner's request to suspend overnight parenting time:

> "[Petitioner] is requesting that [respondent] not have overnight visits and that he complete counseling. The former is not appropriate[,] but the latter is. There was testimony that [respondent] was waking the girls at night to prevent bedwetting. This was not unreasonable since [petitioner] stated she did not tell him details of the [anti-bed-wetting] meds and simply put them in the girls' bags. He said that he only woke the girls for a short time and has not since. There was one other incident at night where the girls could not sleep and K.M. spilled hot tea on herself. There was limited testimony that [respondent] would sleep a lot in the mornings and be unable to care for the girls[,] but that was contradicted by the girls' statements that he would leave early in the morning to go to IGA and get food. There are no other serious allegations of misconduct that occurred at night. Therefore, the [c]ourt does not find it appropriate to deny [respondent] overnights in order to protect the girls."

¶ 11 We are unable to characterize the trial court's decision in that respect as arbitrary or clearly illogical. See *State Farm v. Leverton*, 314 Ill. App. 3d 1080, 1083 (2000) (" 'Abuse of

discretion' means clearly against logic; the question is not whether the appellate court agrees with the circuit court, but whether the circuit court acted arbitrarily, without employing conscientious judgment ***."). Rather, logic appears to be on the court's side. Nothing remotely pernicious ever happened at night, as far as we can see from the record. It was not abusive to get the children up once in the middle of the night and have them go to the bathroom in an attempt to prevent them from wetting the bed. K.M.'s spilling hot tea on herself one night was an accident, nothing more. And not every reasonable trier of fact would have to believe that respondent spent mornings in bed if, on his own initiative, he rose early in the morning to go grocery shopping.

¶ 12 The trial court's decision in this case easily passes the test of reasonableness. It is a considered decision, and we lack any grounds for gainsaying it. We commend the court for its careful and conscientious work.

¶ 13 III. CONCLUSION

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

¶ 15 Affirmed.