2024 IL App (4th) 230881-U

NO. 4-23-0881

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
February 22, 2024
Carla Bender
4th District Appellate
Court, IL

HAILEY M.,	)	Appeal from the
Petitioner-Appellant,	)	Circuit Court of
v.	)	Macoupin County
CHRISTIAN A.,	)	No. 22FA43
Respondent-Appellee.	)	
	)	Honorable
	)	Kenneth R. Deihl,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Turner and Justice Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court's order allocating transportation time and costs relating to the minor children.

¶ 2 Petitioner, Hailey M., and respondent, Christian A., had two children, K.A. (a son, born September 2016) and P.A. (a daughter, born April 2018). In November 2022, the parties entered into a parenting agreement after successfully completing mediation. Under that plan, the parties had roughly equal parenting time and Hailey had decision-making authority over education. Subsequently, Hailey moved about 30 minutes away from Christian and enrolled the children in a new school.

¶ 3 In August 2023, the trial court conducted an evidentiary hearing regarding (1) where the children would attend school that fall and (2) transportation arrangements for dropping the children off at school. Later that month, the court issued an order directing that the children would continue attending Hailey's preferred school, which was located near her

residence. The court outlined the transportation issues and ordered the parties to submit proposed plans to resolve those issues, which the parties did.

¶ 4 In September 2023, the trial court entered an order adopting Christian's proposed transportation recommendations, which required Hailey to pay Christian $150 per month for gas and transportation expenses to drive the children to and from school during his parenting time.

¶ 5 Hailey appeals, arguing the trial court's order was against the manifest weight of the evidence. We disagree and affirm the court's judgment.

¶ 6 I. BACKGROUND

¶ 7 A. Procedural History

¶ 8 In August 2022, Hailey *pro se* filed a petition for support. Subsequently, the parties filed proposed parenting plans, and in October 2022, the trial court ordered the couple to participate in mediation.

¶ 9 In November 2022, after the parties successfully completed mediation, the trial court approved the agreed parenting plan. The parenting plan set forth a 50/50 parenting time schedule. The children would stay with Hailey on Mondays and Tuesdays and with Christian on Wednesdays and Thursdays. The parents would then alternate weekends, which included Friday, Saturday, and Sunday. Under the plan, Hailey had final decision-making authority over education. The parties both lived in Virden, Illinois, which was listed as the children's residence for the purpose of school enrollment. The parenting plan also provided that a relocation of one of the parents would constitute a change in circumstances for the purposes of allocating parenting time. However, notice was required only if the relocation was more than 50 miles from the current residence.

¶ 10 In December 2022, Christian *pro se* filed a motion to prevent Hailey from changing

the children's school district. The motion alleged that Hailey sent an email, which was attached to the motion, to Christian a week prior, informing him that she was (1) moving 23 miles away to Springfield, Illinois, and (2) enrolling the children in the Pleasant Plains school district. Christian objected to the move because (1) Hailey did not provide him with 60 days' notice, (2) the children were doing well in the North Mac school district, and (3) he believed it was in the children's best interests to attend schools in the Virden area so they could continue their ties to the community. Christian also asserted that the move would cause transportation issues for him because he was currently working as a police officer in Gillespie, Illinois.

¶ 11 Later that month, the trial court conducted a hearing on the motion, at which Hailey and Christian both appeared *pro se*. The court questioned the parties extensively about the agreed parenting plan, how and why Hailey decided to move, and how the move would affect the parties' parenting time. Christian explained that although Hailey only moved 23 miles away, it was a 30- to 40-minute drive from his home and work. Hailey explained that she worked in Springfield and had been commuting 40 minutes from Virden; however, her new residence would be much closer to her job, which offered flexibility in her schedule to drop off and pick up the children, flexibility that Christian did not have. Hailey stated that she was willing to provide all of the transportation for the next 30 days or assist by providing money to help pay for gas.

¶ 12 The trial court indicated that it reviewed the parenting plan and believed that, even though Hailey moved less than 50 miles, she was still required to provide 60 days' notice and file a motion if Christian objected, neither of which she did. The court recognized that Hailey did not believe notice was appropriate given safety concerns she had about her current residence in Virden. The court took the matter under advisement.

¶ 13 The next day, on December 28, 2022, the trial court issued a written order

summarizing the parties' arguments and relevant factual information. Relevant to this appeal, the court wrote the following:

> "All be it [*sic*] reluctantly, the Court will allow an 'experimental relocation' for the period through the end of the children's school year (approximately June 1, 2023). The Court appoints attorney Ian Murphy as guardian *ad litem* [(GAL)] for the children. Mr. Murphy is directed to interview the parents, children, school and day care authorities and anyone else he deems appropriate in determining the best interests of the children. Mr. Murphy is also granted authority to make recommendations to the Court to modify the existing parenting time schedule before the next court date. Mr. Murphy is to submit an Order for entry regarding his charge and authority. His recommendations shall be filed within 45 days. A subsequent updated report is due on or before April 15, 2023. All transportation for [Christian's] parenting time in the meantime shall be provided by [Hailey] until further order of the Court. Child exchanges shall occur in front of the Virden Police Department. This matter is set for further review on April 26, 2023, at 10:00 AM."

¶ 14 B. Subsequent Proceedings

¶ 15 In January 2023, Christian, through counsel, filed a petition for rule to show cause, alleging Hailey had withheld parenting time without any justification. In February 2023, the GAL filed his report, in which he concluded that the children should continue to attend school in the Pleasant Plains school district through the end of the semester.

¶ 16 In March 2023, the trial court conducted a hearing on Christian's petition and the GAL's report. The court ordered Christian to have seven days of make-up parenting time and continued the case for an evidentiary hearing on the issue of where the children should attend

school the next year.

¶ 17 Thereafter, the parties filed motions relating to various issues. Relevant to this appeal, Hailey sought a change in transportation arrangements due to her having given birth and the fact that, as a practical matter, the parties had been successfully providing transportation during their own parenting time.

¶ 18 In early August 2023, the GAL filed a supplemental report, recommending that the children continue to attend school in the Springfield area. The GAL did not make a recommendation about transportation.

¶ 19 C. The Proceedings Relating to Transportation

¶ 20 1. *The Evidentiary Hearing*

¶ 21 Also in early August 2023, the trial court conducted an evidentiary hearing on the issue of whether the children should return to attending the North Mac schools in Virden or continue in the Pleasant Plains school district near Springfield. Christian and Hailey were the only two witnesses who testified. At the conclusion of the evidentiary hearing, the court took the matter under advisement.

¶ 22 2. *The Trial Court's Ruling Regarding School Location*

¶ 23 Later that same month, the trial court issued a written order (via docket entry) in which it wrote the following:

> "This Court has *** considered all the evidence presented, the credibility of the witnesses, including their demeanor and manner of testifying, the exhibits that were received into evidence, stipulations, arguments, applicable case law and statutory law, and the relevant portions of the Illinois Marriage and Dissolution Act. The Court has also considered the weight and quality of evidence presented, drawn

reasonable inferences where appropriate, and applied the requisite standards and burdens of proof. Further, the Court has reviewed the transcript of proceedings conducted on 8/3/23, and this Court has presided over the entire family case proceeding from its inception.

The issue is: Where is it in the best interests of the children to attend school, this fall?

Each parent desires them to attend school in their respective school district. Currently they have their own pre-arranged parenting time schedule. Their schedule has the children with Mother on Mondays and Tuesdays and every other weekend. That weekend includes a Friday. Such a schedule allows both parents to have nearly an equal amount of time per month including a nearly equal number of school days. The children will be in first grade and kindergarten, respectively, this fall.

Mother resides near Farmingdale, Sangamon County, Illinois with her fianc[é] and newborn. Mother's new work schedule is from 8 AM until 5 PM weekdays. Her fianc[é] is a police officer on shift work. His shift starts at 5:00 PM and ends at 5:00 AM. He is sometimes available to assist with the children's transportation. Mother doesn't have a support family, but her fianc[é]'s family can provide some support.

Father resides in Virden, Macoupin County, Illinois with his significant other. He has extensive family support but not always for the regular transportation needs of the children. He is a police officer and works for Gillespie Police Department. He is on shift work as well working from 6:30 PM until 6:30 AM.

The Farmingdale Elementary School does not offer before and after school

programs.

The GAL interviewed the children. The eldest child prefers to continue attending Farmingdale Elementary School. The youngest child desires to live closer to her father but did not indicate a school preference.

Neither parent wants the children to live in separate households. The GAL recommends that the children attend Farmingdale Elementary School. Given the transportation issues involved, the GAL could not voice an opinion but advised that mother said that the children have/could take the school bus from Mother's house to Farmingdale on her parenting time days.

No matter what the Court does about the school issue, there is the overriding issue of transportation. Neither parent has a backup driver. Missing school 14 times in one semester because of their transportation issues is simply unacceptable. But if the parents persist in sticking with their current parenting time schedule, transportation will always be a potential issue. Ultimately, this Court can't fix their transportation issues.

Furthermore, Mother's new mandatory work schedule has her working every day until 5 PM instead of getting off at 3 PM as she did last semester, so that creates additional problems. Even on her parenting time days, the children can't go into the school until 7:54 AM. They will finish at 3 PM. She works in Springfield and can't possibly take them to school or be home to meet the children when they get off the bus. Though no evidence was presented on the topic, presumably on her parenting time days her fianc[é] or his family will get them to the bus and meet the bus in the afternoon.

Father also has scheduling issues. He lives 30 minutes from work. He's subject to overtime on demand. On a perfect day, he finishes his shift at 6:30 AM, hurries home to pick up the children from his family or significant other, travels 45 minutes to get them to Farmingdale on time. Out of 5 consecutive weeks, Father would have 2 or 3 weeks in which he must make the run from Gillespie to Farmingdale and do so in 2 or 3 consecutive days. If all went well, he'd get home at 9 AM and sleep until 2 PM, then rush to Farmingdale to pick up the children, return them to his home, and maybe have 2 hours with them before he must rush back to work. Not a lot of quality time with the children. If, however they attend North Mac Schools, he could be home around 7 AM, take them to school, pick them up at 3 PM, return them to his family or significant other, spend a couple hours with them, and leave no later than 6 PM for work.

Conversely, Mother's work schedule doesn't permit her to drive to Virden. Neither parent has a workable transportation schedule.

Another unworkable option is for the parents to meet halfway. Their work schedules make it impossible for the Court to order a mid-way option. Alternatively, one parent could have the primary parenting time and the other has weekend or alternating weekend parenting time. Again, conflicting work schedules impede crafting a reasonable, workable parenting time schedule.

Mother chooses to live near her work. Her police officer fianc[é] who is the father of her newborn must for conditions of employment reside close to Springfield. Likewise, the father, also a police officer, must reside close to his employer. Thus, neither party can move closer to the other.

All things considered, GAL has spent an inordinate amount of time talking with the parents and children. He is a respected GAL, the Court heard nothing that would sway it from his recommendation, and so the Court concurs with GAL's recommendation. The children will attend Farmingdale Elementary School this fall. The Court will leave alone the existing parenting time schedule. However, the parents are ordered to submit their respective proposals for curing the transportation issues. Their proposals must be filed with the clerk by noon on Monday, August 28, 2023. The Court reserves the right to still deal with the transportation issues.

***

The issue of the children's best interests and school will be an ongoing matter. Either party may petition for further hearing if substantial changes occur."

¶ 24 3. *Proceedings Regarding Allocation of Transportation Costs*

¶ 25 Hailey timely filed her transportation proposal, in which she wrote the following:

"[Christian's] work schedule alternates every week. One week he has Monday, Tuesday, and Friday off and the alternate weeks he has Wednesday and Thursday off. I work Monday-Friday. I'm proposing that [Christian] continues getting [the children] every other weekend but only keeps them one day during the week on a day that he has off to ensure the children make it to school on time. [Christian] had them the night of 8/20 and they were tardy to their first day of school, 8/21. I understand that this would forfeit the 50/50 schedule[.] However, I believe this is the only fix to the transportation issue that won't affect mine or [Christian's] employment and will also ensure the children have a good attendance record. To compensate for lost time, [Christian] could have the children more

frequently during their Spring, Summer, and Christmas break."

¶ 26 After receiving an extension of time, Christian, through counsel, submitted a proposal asserting the following:

> "As a new proposal regarding the transportation of the parties' minor children to and from school, [Christian] proposes that he continue to provide the transportation necessary for the children to get to and from school during his parenting days. In exchange for this accommodation on his part, he requests that [Hailey] be required to pay him the sum of $150.00 per month to offset and compensate his significant additional expenses for fuel and vehicle maintenance. This proposal would allow [Hailey] and her fiancé to keep their jobs without inconvenience, while still assuring that the children are able to attend school in the Farmingdale School District. It would also assure that neither party is punished by losing parenting time with their minor children."

¶ 27 In September 2023, the trial court made a docket entry in which it wrote as follows: "This Court has considered the facts of the case and considered both parents[']transportation proposals[.] For good cause shown, the Court adopts the [Christian's] proposal."

¶ 28 In October 2023, the trial court entered a written order. "That the Petitioner, [Hailey], shall pay the Respondent, [Christian], the sum of $150.00 per month in order to off-set and compensate him for his additional expenses for fuel and vehicle maintenance as a result of his additional transportation requirements."

¶ 29 This appeal followed.

¶ 30 II. ANALYSIS

¶ 31 Hailey appeals, arguing the trial court's order was against the manifest weight of

the evidence. We disagree and affirm.

¶ 32 We initially note that Christian has not filed a brief in this appeal. A reviewing court will not act as an advocate for a party who fails to file an appellate brief. *Diane P. v. M.R.*, 2016 IL App (3d) 150312, ¶ 9, 55 N.E.3d 208. However, when the record is clear and the claimed errors can be decided without the aid of an appellate brief, a reviewing court should decide the appeal on the merits. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133, 345 N.E.2d 493, 495 (1976). Because those criteria apply here, this court will proceed to the merits of this case.

¶ 33 A. The Applicable Law

¶ 34 The Illinois Supreme Court "has explained that a best interests determination 'cannot be reduced to a simple bright-line test' and that 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.' " *In re Marriage of Fatkin*, 2019 IL 123602, ¶ 32, 129 N.E.3d 1230 (quoting *In re Marriage of Eckert*, 119 Ill. 2d 316, 326, 518 N.E.2d 1041, 1045 (1988)).

¶ 35 "In child custody cases, there is a strong and compelling presumption in favor of the result reached by the trial court because it is in a superior position to evaluate the evidence and determine the best interests of the child." *Young v. Herman*, 2018 IL App (4th) 170001, ¶ 64, 92 N.E.3d 1070. A trial court's best-interests determination will not be reversed unless it is against the manifest weight of the evidence. *Fatkin*, 2019 IL 123602, ¶ 32.

¶ 36 Determining the allocation of parenting time and decision-making requires the trial court to consider the credibility of the testimony, weigh the evidence, and exercise its discretion to determine the best interests of the child. See *In re Custody of Sussenbach*, 108 Ill. 2d 489, 499, 485 N.E.2d 367, 371 (1985) ("[T]he trial court is in the best position to judge the credibility of the

witnesses and determine the needs of the child.").

¶ 37 "Under the manifest weight standard, an appellate court will affirm the trial court's ruling if there is any basis in the record to support the trial court's findings." *In re Custody of G.L.*, 2017 IL App (1st) 163171, ¶ 24, 80 N.E.3d 636; see *Jameson v. Williams*, 2020 IL App (3d) 200048, ¶ 47, 165 N.E.3d 501 ("A decision is against the manifest weight of the evidence when an opposite conclusion is apparent or when the court's findings appear to be unreasonable, arbitrary, or not based on evidence."). "It is well settled that a reviewing court's function is not to reweigh the evidence or assess witness credibility and set aside the circuit court's decision simply because a different conclusion may have been drawn from the evidence." *Jameson*, 2020 IL App (3d) 200048, ¶ 51.

¶ 38 B. This Case

¶ 39 Hailey essentially argues that the trial court erred by ordering her to pay for transportation costs because (1) she did not violate the parenting agreement by moving and (2) she was not required to give statutory notice to Christian because she moved less than 50 miles away. We disagree.

¶ 40 To begin, the issues of relocation and which school the children should attend are not before us on appeal. Whatever the trial court said about Hailey's complying or failing to comply with the parenting plan, the court, *in fact*, ruled in Hailey's favor on both the issue of relocation and school choice. Because the court (1) allowed Hailey to change her residence to Springfield and (2) ordered the children to attend Hailey's school of choice, Hailey received her requested relief on those issues and cannot raise them on appeal. Accordingly, any findings by the trial court pertaining to notice or the parenting agreement are irrelevant to the only issue before us—namely, whether the trial court's order regarding transportation was against the manifest

weight of the evidence.

¶ 41 We earlier set forth in detail the trial court's findings relating to the education issue. Although the court did not make a determination about transportation in that order, the court extensively detailed the parties' positions and the problems transportation presented before ordering the parties to submit proposed solutions. Based on this record, we conclude that the trial court recognized the unique circumstances of this family and made a well-reasoned decision in what it considered to be in the children's best interests. In particular, we note that Hailey's proposed solution would have altered Christian's parenting time, while Christian's solution maintained the status quo. The only change was the court's requiring Hailey to pay for travel expenses, something she had earlier offered to do, albeit temporarily.

¶ 42 Accordingly, we affirm the trial court's judgment.

¶ 43 III. CONCLUSION

¶ 44 For the reasons stated, we affirm the trial court's judgment.

¶ 45 Affirmed.