2011 IL App (1st) 111383-U
No. 1-11-1383

FIFTH DIVISION
December 1, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re Marriage of:	)	Appeal from the
	)	Circuit Court of
JOAN MINICK,	)	Cook County.
	)	
Petitioner-Appellant,	)	
v.	)	No. 06 D 11753
	)	
JAMES LATZKE,	)	Honorable
	)	Thomas Kelley,
Respondent-Appellee.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Epstein and Justice McBride concurred in the judgment.

O R D E R

HELD: The trial court's findings that it was in the best interest of M.L., the parties' minor daughter, that respondent, her father, be awarded sole custody was not against the manifest weight of the evidence. The trial court's additional findings that respondent should not be held responsible for an alleged loan petitioner's brother made to him, and that petitioner should be required to pay the remaining fees and costs due to the *guardian ad litem* and 604(b) expert witness assigned to the case, were not against the manifest weight of the evidence.

¶ 1 Petitioner, Joan Minick, appeals from a dissolution of marriage judgment granting respondent, James Latzke, sole custody of the parties' minor daughter, M.L. On appeal, petitioner contends: (1) the trial court erred in determining--after considering the factors enumerated in section 604(a) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/604(a) (West 2008))--that it was in M.L.'s best interest that respondent be awarded sole custody; (2) the trial court erred in determining petitioner should be responsible for any money due Thomas Minick, petitioner's brother, relative to the lawsuit filed against respondent in the State of Georgia; and (3) the trial court erred in determining petitioner should be responsible for 65% of the *guardian ad litem* attorney's fees and Dr. Grossman's section 604(b) expert witness fees. For the reasons that follow, we affirm the trial court's judgment.

¶ 2 BACKGROUND

¶ 3 On June 22, 2005, petitioner, Joan Minick, filed a petition for dissolution of marriage against respondent, James Latzke.

¶ 4 The court conducted a hearing to determine the custody of the parties' minor daughter, M.L. Thomas Minick, petitioner's brother, testified that at M.L.'s baptism in November 2005, he saw respondent shake M.L. multiple times. Thomas admitted on cross-examination that neither he nor petitioner contacted the

police to report the incident. Thomas testified he was concerned with respondent's lack of engagement and willingness to do things for M.L. Thomas said he saw respondent on different occasions refuse to feed M.L. and refuse to take her to the bathroom. Thomas said that petitioner was a supportive and attentive parent, and that petitioner had told him respondent had physically abused her in the past. Thomas testified that he had loaned his sister money several times over the past 20 to 25 years, and that he has a promissary note for $500,000 secured by certain assets that petitioner signed in January 2009. Thomas also testified that he has a lawsuit pending against respondent in Georgia. The complaint was admitted into evidence.

¶ 5 Vickie Pasley, M.L.'s *guardian ad litem*, testified she was appointed in February 2008 after visitation issues arose between the parties. Pasley visited with both parents. Respondent told Pasley he wanted to spend more time with M.L., and, upon her recommendation, visitation was increased in May 2008. Pasley said that although petitioner told her she was concerned respondent caused some bruising on M.L., Pasley did not see or feel any bruising after seeing M.L. Pasley testified that based on the parties' past behavior, respondent would be better able to comply with court order relating to M.L. and be better able to foster a relationship with the other parent. Pasley admitted she

did not think it was relevant to speak with petitioner's brother about what happened at M.L.'s baptism or to speak with petitioner's domestic violence advocate, even though allegations of past physical abuse had been raised.

¶ 6 Dr. Gail Grossman, a clinical psychologist assigned by the court as a 604(b) evaluator, testified the couple was not capable of joint legal custody. Accordingly, she recommended one of the parties be granted sole custody by the court. Dr. Grossman noted petitioner showed signs of obsessive-compulsive disorder and tends to be very emotional, while respondent is angry, irritable, negative and churlish and exhibits signs of Asperger's syndrome. Dr. Grossman testified both parents denied any psychological problems and tried to present themselves in an overly positive light. Dr. Grossman noted respondent had a shorter fuse than most men she has dealt with, and that even having a civil discussion was difficult for a while.

¶ 7 Dr. Grossman noted petitioner had raised allegations that respondent sexually abused M.L. Dr. Grossman said that although she did not believe M.L. was sexually abused by her father, she did not feel petitioner maliciously or deliberately manufactured the claims. Dr. Grossman explained petitioner's belief was based on a misunderstanding of normal child development. Dr Grossman said she felt petitioner would be able to move on from the abuse

allegations.

¶ 8 Because of M.L.'s attachment to petitioner, and because petitioner was already adequately providing for M.L.'s needs, Dr. Grossman recommended petitioner be assigned sole custody of M.L. Dr. Grossman expressed concern that if respondent were assigned sole custody, M.L. might not receive certain services she needs to assist with her language and physical deficits. Dr. Grossman testified it was difficult for respondent to understand that although he did not think M.L. needed leg braces, he still needed to participate in the doctor's prescription for leg braces. Dr. Grossman said it was also difficult for respondent to address M.L.'s language problems, even though M.L. had some significant communication issues. Because respondent had expressed a reluctance to allow M.L. to be placed in a special pre-school program to address her developmental delays, Dr. Grossman noted a court order requiring him to do so would be necessary. Dr. Grossman testified she did not believe either parent presented a danger to M.L. by serving as the custodial parent. Dr. Grossman's written report and evaluation were also entered into evidence.

¶ 9 Jan Russell, a Chicago Police Department domestic abuse advocate, testified that in a heated custody case where a victim of abuse is trying to break away from an abuser, the victim may

need to dissociate and not say anything positive about the abuser. Russell said she had not met with either party or read Dr. Grossman's report. Russell testified that in order for an order of protection to be entered, the court must make a finding that abuse occurred under the Illinois Domestic Violence Act. Russell said she was unaware of any circumstance under which an innocent person had agreed to an order of protection.

¶ 10 James Latzke Jr., respondent's son from a previous marriage who was 32 at the time of the hearing, testified that his father was not abusive and was a good father while James grew up. James testified that when he was contacted by petitioner by telephone several times in 2007 and asked if respondent hade ever physically abused him or his mother, James told petitioner neither he nor his mother ever felt uncomfortable or had any concerns of physical abuse. He admitted on cross-examination, however, that he told petitioner during one telephone conversation that respondent had once tried to physically abuse his mother but she had stopped it.

¶ 11 Petitioner testified her brother, Thomas Minick, lent her around $500,000. She said her brother had also filed a lawsuit in Georgia to recover money loaned to respondent. Petitioner testified that her concerns that respondent may have sexually abused M.L. stemmed from her daughter pointing at her vaginal

area and saying "Daddy hurt," as well as respondent asking about M.L.'s sexuality when the minor was only six months old. Petitioner testified she has accepted Dr. Grossman's conclusion that respondent is neither sexually abusive nor a danger to M.L.

¶ 12 Alice Pappas, a friend of petitioner for 23 years, testified she had met respondent 10 to 20 times. Pappas said petitioner had told her respondent had hit petitioner on more than one occasion.

¶ 13 Respondent testified petitioner previously obtained an order of protection against him in 2008, which he agreed to. Respondent said petitioner contacted him several times after the order was entered. Respondent denied shaking M.L. during her baptism. Respondent also denied an incident where petitioner alleged respondent sprained M.L.'s wrist during a time when the parties exchanged custody at the Forest Park police station. Hospital records documenting an injury to M.L.'s wrist were admitted at the hearing to reconsider the trial court's order.

¶ 14 Respondent testified regarding several pictures that were taken during the fall of 2007, summer of 2008 and fall of 2008 while M.L. was in respondent's custody. Respondent testified the photographs showed M.L. wearing her leg braces on those occasions. The photographs were admitted into evidence. Respondent testified he would enroll M.L. in kindergarten in

September 2010 if he was granted custody. Respondent testified he had contact with the school district, including having M.L. participate in pre-school screening. Respondent said he was also planning on having M.L. evaluated by the La Grange Area Department of Special Education, and, based on the results, determine what was best for M.L.'s education moving forward.

¶ 15 Following the trial, the trial court determined it was in M.L.'s best interest that respondent be assigned sole custody. The court also determined it was in M.L.'s best interest that the parents share approximately equal parenting time with M.L. The trial court also denied petitioner's motion to reconsider the custody finding. Petitioner appeals.

¶ 16 ANALYSIS

¶ 17 I. Custody Determination

¶ 18 Petitioner contends the trial court erred in awarding respondent custody of the parties' minor daughter. Specifically, petitioner contends the relevant factors considered by a court in determining what is in the best interest of the child, as outlined in section 602(a) of the Act, indicate it was in M.L.'s best interest that petitioner be awarded custody.

¶ 19 Section 602(a) of the Act requires a court to determine custody in accordance with the child's best interests by

considering all of the relevant factors, including the 10 factors explicitly listed in the section. 750 ILCS 5/602(a) (West 2008). Those factors include:

> "(1) the wishes of the child's parent or parents as to his custody;
>
> (2) the wishes of the child as to his custodian;
>
> (3) the interaction and interrelationship of the child with his parent;
>
> (4) the child's adjustment to his home, school and community;
>
> (5) the mental and physical health of all individuals involved;
>
> (6) the physical violence or threat of physical violence by the child's potential custodian, whether directed against the child or directed against another person;
>
> (7) the occurrence of ongoing or repeated abuse as defined in Section 103 of the Illinois Domestic Violence Act of 1986, whether directed against the child or directed against another person;
>
> (8) the willingness and ability of each

> parent to facilitate and encourage a close and continuing relationship between the other parent and the child;
>
> (9) whether one of the parents is a sex offender; and
>
> (10) 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." 750 ILCS 5/602(a) (West 2008).

¶ 20 We give great deference to a trial court's best-interests finding because the court is in a superior position " 'to observe the temperaments and personalities of the parties and assess the credibility of the witnesses.' " *In re Marriage of Marsh*, 343 Ill. App. 3d 1235, 1239-40 (2003) (quoting *In re Marriage of Stopher*, 328 Ill. App. 3d 1037, 1041 (2002)). We will not reverse the trial court's custody determination unless it (1) is manifestly unjust, (2) is against the manifest weight of the evidence, or (3) is a clear abuse of discretion. *In re Marriage of Marsh*, 343 Ill. App. 3d at 1040.

¶ 21 Here, the trial court specifically addressed each of the factors in detail in determining respondent should be awarded sole custody of M.L.

¶ 22 With regards to the wishes of the child's parents as to custody, the court noted both parties were seeking sole custody at the time the hearing was conducted. The court noted that although petitioner clearly loved M.L. dearly, the court felt petitioner was more concerned with limiting respondent's parenting time with M.L. and restricting the father/child relationship more than what was truly in M.L.'s best interest. With regards to the wishes of the child, the court noted M.L.–-who was four at the time of the hearing–-was too young to express her wishes.

¶ 23 With regard to M.L.'s interaction and interrelationship with her parents, the court noted that petitioner had been M.L.'s primary caretaker since birth and that M.L. was slightly more attached to petitioner, according to Dr. Grossman. The court noted, however, that petitioner's claim that respondent spent little time caring for M.L. prior to the parties' separation was rebutted by the evidence presented at the hearing. The court also noted the evidence reflected that petitioner "infantilizes" M.L. and does not have a good grasp of normal childhood development, while respondent treats M.L. in a manner that is appropriate for her age and is comfortable in setting limits and boundaries for M.L. Accordingly, the court determined that even though M.L. was slightly more attached to petitioner and

petitioner had acted as M.L.'s primary caretaker, the statutory factor favored respondent.

¶ 24 With regards to M.L's adjustment to her home, school and community, the court noted M.L. had lived in petitioner's residence since birth and had never stayed overnight at respondent's home. However, the court noted M.L. was not enrolled in school near petitioner's home and there was no evidence M.L. had any friends near petitioner's home. The court found the statutory factor "slightly" favored petitioner.

¶ 25 With regards to the mental and physical health of all individuals involved, the court noted both parties agreed M.L. was developmentally delayed in both speech and language. The court also noted M.L. must wear leg braces to remedy toe walking. In support of its finding that this factor did not favor either party, the court recognized that while Dr. Grossman's report indicated petitioner's psychological profile was "within normal limits," Dr. Grossman noted that petitioner's behavior suggested she might be covering up significant symptoms. Dr. Grossman's report also indicated respondent presented as "angry, irritable, negative, churlish, rigid and inflexible." Dr. Grossman noted, however, that respondent's psychological profile was within normal limits.

¶ 26 Noting petitioner's claims of past physical abuse by

respondent was the most significant issue raised by petitioner in the custody proceedings, the court found their was no credible evidence presented to indicate petitioner was ever physically abused by respondent. The court also found that based on the evidence presented, petitioner's initial allegations that M.L. was sexually abused by respondent were unfounded. The court noted Dr. Grossman, who was appointed by the court in March 2009 after the second allegation of abuse, found their was no evidence of either sexual or physical abuse of any kind against M.L.

¶ 27 Although the trial court recognized a one year plenary order of protection had previously been entered against respondent after petitioner raised an allegation of physical abuse, the court noted it was reasonable to assume respondent might have agreed to the order to "placate" his wife even though the allegations were false. The court also noted the trial court that entered the order had never made a finding that abuse had actually occurred. In support of its conclusion, the court noted petitioner continued to contact respondent and invite him to her house after the order was entered, indicating she was not afraid of respondent. While Dr. Grossman's report suggested both parties were engaged in an extremely volatile and negative relationship during their marriage, Dr. Grossman testified she did not think there were any endangerment issues presented by

either parent serving as the custodial guardian.

¶ 28 With regards to the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and M.L., the court noted the statutory factor favored respondent. In support, the court noted the evidence presented made clear that petitioner was not capable of facilitating a relationship between respondent and M.L. The court noted the evidence was clear that petitioner had refused to communicate with respondent about M.L.'s activities, preschool enrollment, assessment or medical appointments. The court noted that petitioner had never willingly increased respondent's parenting time with M.L., and that petitioner had continued to deny respondent overnight visitation. The court also noted petitioner had refused to allow respondent his court ordered parenting time on January 9, 2010.

¶ 29 While the trial court recognized Dr. Grossman's report indicated petitioner should be appointed sole custody because M.L. was slightly more attached to her than respondent, the court disagreed with Dr. Grossman's conclusion based on the belief that petitioner was not fully meeting M.L.'s needs. In support, the court noted Dr. Grossman herself implied that it was a close decision and testified "it is not an easy call to make, [but] somebody has to be named the residential parent and they have to

share time." After considering all of the factors enumerated in section 602(a)--mixed with Dr. Grossman's report and testimony, and Vickie Pasley's testimony–-the court determined it was in M.L.'s best interest that respondent be awarded sole custody.

¶ 30 After reviewing the record in this case, we find the manifest weight of the evidence supported the trial court's detailed and well-reasoned custody findings regarding what was in M.L.'s best interests. Although Dr. Grossman's report ultimately recommended petitioner be granted sole custody of M.L., she also noted in her trial testimony that if petitioner was found incapable of facilitating a relationship with respondent, that she would recommend respondent receive custody. Moreover, although the testimony of experts and psychologists are relevant to the trial court's determination of custody, their opinions are not binding on the court. *In re Marriage of Bailey*, 130 Ill. App. 3d 158, 160-61 (1985).

¶ 31 The court clearly determined respondent–-not petitioner–-was in the best position to ensure M.L. maintains a relationship with the other parent and receives the medical and educational services she needs. Based on the record before us, we cannot say the court's custody determination was against the manifest weight of the evidence, manifestly unjust, or the result of an abuse of discretion. See *In re Marriage of Marsh*, 343 Ill. App. 3d at

1040. Accordingly, we affirm the trial court's custody determination.

¶ 32 II. Costs and Fees

¶ 33 Petitioner contends the trial court erred in requiring her to pay the total costs of Dr. Grossman's services and the balance of the fee due to Vickie Pasley as part of the judgment for dissolution of marriage. Specifically, petitioner contends the trial court erred here because petitioner has limited resources to pay the costs and fees, petitioner's claims of child sexual abuse on respondent's part were not malicious or irrational, and respondent was the party responsible for the escalation in fees.

¶ 34 Vicki Pasley, the *guardian ad litem* assigned to represent M.L. in the proceedings, was owed $21,147.24 in fees. Respondent had already paid Pasley $11,946.72, leaving a balance due of $9,200.52. Dr. Grossman was paid a total of $12,500 for her 604(b) evaluation and for her testimony at the hearing. Petitioner paid all of Dr. Grossman's fees and sought a 50% reimbursement from respondent for those fees.

¶ 35 Based on petitioner's "false allegations of sexual abuse and the financial ability of the parties," the trial court found petitioner should be responsible for the remaining fees due to Pasley. The court also found petitioner should not be reimbursed for any of Dr. Grossman's fees since a substantial amount of Dr.

Grossman's time and testimony dealt with the unfounded allegations of sexual abuse. This amounted to petitioner being responsible for 65% and respondent for 35% of Pasley's and Dr. Grossman's fees.

¶ 36 Section 506(b) of the Act provides "any order approving the [*guardian ad litem's*] fees shall require payment by either or both parents, any other party or source, or from the marital estate or the child's separate estate." 750 ILCS 5/506(b) (West 2008). A trial court's attorney's fee award under section 506 is reviewed for an abuse of discretion. *McClelland v. McClelland*, 231 Ill. App. 3d 214, 228 (1992).

¶ 37 In *McClelland*, the wife in a dissolution of marriage proceeding contended the trial court erred in apportioning the attorney's fees due to a court appointed *guardian ad litem*. The court directed the wife to pay two-thirds of the fees. In affirming the trial court decision, the court noted the parties' relative ability to pay the fees was about equal. The court also noted the apportionment was reasonable because the wife had caused a substantial portion of the post-decree custody litigation. *McClellan*, 231 Ill. App. 3d at 229. In particular, the court recognized the wife had brought charges of sexual abuse and satanic cult practices against her ex-husband without presenting evidence to substantiate the charges. The court held

that as a result of the wife's actions and pleadings, the *guardian ad litem* had to expend a great amount of time in defending the minor's welfare in the action. *Id*.

¶ 38 Here, the record reflects both petitioner and respondent were unemployed and only had their respective residences and retirement accounts as assets. Therefore, their relative ability to pay the fees was about equal. Moreover, similar to *McClellan*, the trial court determined petitioner's actions in raising unfounded and unsupported sexual abuse claims against respondent caused the *guardian ad litem* assigned to the case to expend a great amount of time in defending M.L.'s best interests in the dissolution proceedings. Although we recognize Dr. Grossman noted that she did not feel petitioner's belief that respondent sexually assaulted M.L. was malicious or deliberately manufactured, we cannot say–-based on our review of the record–-that the trial court abused its discretion in determining the unsubstantiated allegations of sexual abuse raised by petitioner caused additional *guardian ad litem* fees that petitioner should ultimately be responsible for. See *McClellan*, 231 Ill. App. 3d at 229.

¶ 39 With regards to the trial court's refusal to require respondent to reimburse petitioner for 50% of Dr. Grossman's fees, we note this court has previously held it is within a trial

court's "inherent plenary powers to enter orders necessary for the benefit of the minor children," including an order requiring a party to pay section 604(b) expert witness fees. *In re Marriage of Peterson*, 319 Ill. App. 3d 325, 334 (2001). Because we have already determined the trial court did not abuse its discretion in determining petitioner's unsubstantiated claims of sexual abuse increased the fees and costs associated with M.L.'s custody determination, we find the court did not err in refusing to require respondent to reimburse petitioner for 50% of Dr Grossman's fees as a 604(b) expert witness.

¶ 40 III. Loan Amount

¶ 41 Petitioner contends the trial court erred in determining petitioner was responsible for any loans Thomas Minich, petitioner's brother, made to the parties during their marriage. Specifically, petitioner contends the trial court erred in determining petitioner was liable to repay a $100,000 loan that Thomas allegedly made to respondent, which was also the subject of a separately-pending action in Georgia.

¶ 42 In the dissolution of marriage judgment, the trial court noted Thomas Minick had filed a lawsuit in Georgia against respondent, alleging he loaned respondent $100,000 in cash over four different dates. Thomas alleged in the lawsuit that respondent had failed to repay the loans. Respondent denied that

the loans were made, and the parties agreed during the hearing that there was no documentation supporting the alleged loans. The court held that because there was no credible evidence that Thomas ever loaned the respondent any money, the lawsuit filed in Georgia amounted to harassment. Accordingly, the court held petitioner would be held responsible, and hold respondent harmless of liability, for any money due to Thomas based on the lawsuit filed in Georgia.

¶ 43 In a dissolution proceeding: " 'it is well settled that [under section 503 of the Act] marital debts as well as marital assets must be distributed equitably.' " *In re Marriage of Davis*, 292 Ill. App. 3d 808, 807 (1997), quoting *In re Marriage of Lees*, 224 Ill. App. 3d 691, 693 (1992).

¶ 44 Here, there was no documentation–-besides the lawsuit filed in Georgia--produced during the hearing to establish Thomas ever made a $100,000 loan to respondent. Moreover, even assuming such a loan existed, nothing in the record suggests it would not have been considered a marital debt under section 503. As the trial court noted in reaching its decision, respondent denied the existence of such a loan, and both parties agreed during the hearing that there was no documentation supporting the existence of the alleged loan. The lack of any documentation to support the loan is particularly troublesome here considering the loan

was allegedly made to respondent by petitioner's brother. Accordingly, we find the trial court's finding that respondent should not be held responsible for the alleged $100,000 loan was not against the manifest weight of the evidence. See *In re Marriage of Marcello*, 247 Ill. App. 3d 304, 315 (1993) ("Review of the record reveals that no documentation was produced to establish that Cynthia's father had in fact loaned the parties this sum of money.").

¶ 45 CONCLUSION

¶ 46 We affirm the trial court's judgment.

¶ 47 Affirmed.