2011 IL App (3d) 100548-U
(Consolidated with 2011 IL App (3d) 110172-U)

Order filed November 23, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

In Re MARRIAGE OF MARY ELLEN GRIFFIN ,	) Appeal from the Circuit Court) of the 12th Judicial Circuit,) Will County, Illinois,
Petitioner-Appellant,	)
and	) Appeal Nos. 3-10-0548 and 3-11-0172) Circuit No. 05-D-1726
KEVIN GRIFFIN,	) Honorable) Dinah L. Archambeault,
Respondent-Appellee.	) Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Lytton and McDade concurred in the judgment.

ORDER

¶ 1 *Held*: The denial of a mother's petition to modify the parenting time that her child had with the child's father was upheld on appeal because the trial court's conclusion that the modification was not in the child's best interest was not an abuse of discretion.

¶ 2 Kevin and Mary Ellen Griffin divorced in 2007 after 10 years of marriage. As part of the dissolution of marriage proceedings, the parties entered into a stipulation whereby the parties agreed to joint custody of the only child borne of the marriage, A.G. The parties also agreed that

Mary Ellen would be the primary residential parent, but that the visitation schedule would allow each parent equal parenting time with A.G. In August 2008, Mary Ellen filed a petition to modify parenting time. The trial court denied the petition, and Mary Ellen appealed. We affirm.

¶ 3 FACTS

¶ 4 Kevin and Mary Ellen Griffin were married on September 27, 1987. During their marriage, on March 24, 1999, their only child, A.G., was born. On October 12, 2005, Mary Ellen filed a petition for dissolution of marriage. On July 13, 2006, the parties entered into a stipulation which granted Kevin and Mary Ellen joint custody of A.G. and made Mary Ellen the primary residential parent. The stipulation provided liberal visitation to Kevin, which was based upon his work schedule. The visitation schedule involved different days of the week, during different weeks, that repeated every four weeks. The end result was that A.G. spent about 50 percent of her time with each parent.

¶ 5 On August 27, 2008, Mary Ellen filed a petition to modify parenting time, requesting a modification of visitation to reflect the best interest of A.G. The petition sought a visitation schedule that allowed Kevin parenting time every other weekend.

¶ 6 While the petition was pending, the parties cooperated to change the visitation schedule. The visitation schedule that started in September or October 2009 was a weekly rotation, with A.G. spending alternating weeks with each parent, from Wednesday to Wednesday.

¶ 7 At the trial on the petition, the testimony established that Kevin and Mary Ellen both still resided in the same homes that they had resided when the judgment for dissolution of marriage was entered. Mary Ellen resided in Crete, Illinois, and Kevin resided about 22 miles away in

Lowell, Indiana. Kevin had been and was still employed as a registered pharmacist in Dyer, Indiana.

¶ 8 The testimony also established that A.G. attended St. Liborius Catholic School in Steger, Illinois, which was about 2.5 miles from Mary Ellen's home and about 25 miles from Kevin's home. A.G. was a good student. The drive from Kevin's house to St. Liborius took about 35 minutes. However, although A.G. had been late to school on five occasions between August 2009 and January 2010, all of those occurred while A.G. was staying with Mary Ellen.

¶ 9 Mary Ellen testified that she did not like the visitation schedule because she felt that A.G. was too unsettled and was moved back and forth too much. Even though the new visitation schedule (beginning in fall of 2009) was more consistent, Mary Ellen still felt that A.G. moved around too much. On A.G.'s school emergency contact form, Mary Ellen listed herself and Kevin as A.G.'s parents, and listed her boyfriend as the first emergency contact. Mary Ellen listed her boyfriend as A.G.'s stepfather.

¶ 10 The appointed guardian ad litem (GAL), Joseph Glimco, recommended that a modification of the visitation schedule was necessary in order to serve the best interest of A.G. Before making his recommendation, Glimco met with each of the parents, with A.G., with A.G.'s teacher and principal, and he had a telephone interview with A.G.'s therapist, Dyann Bockstahler. Glimco recommended that Kevin have visitation during alternate weekends and one evening each week. Glimco testified that A.G. wanted to be at Mary Ellen's home because more of her friends lived near there. However, there was no indication that A.G. was missing any activities because of the visitation schedule. Glimco testified that he did not believe that A.G. was coached by either parent, but that she was very sensitive to Mary Ellen's wish to

change visitation and Kevin's wish that his time with A.G. not decrease. Glimco testified that A.G. preferred the every-other weekend visitation schedule that he was recommending.

¶ 11 Bockstahler, a social worker, testified that she had been A.G.'s therapist since September 2005. She testified that A.G. wanted the visitation schedule changed to every other weekend with Kevin, which was Bockstahler's recommendation to the trial court.

¶ 12 A.G. was questioned by the trial court in an *in camera* interview. A.G. told the court that she wanted to spend weekends with her father. A.G.'s reasons were that most of her friends were near her mother's home and she could sleep later on school days. A.G. did tell the court that both of her parents were good about letting her telephone the other parent, and she said that her best friend came over to her father's house about once a week in the summer. She also talked about her pets at her mother's house.

¶ 13 The trial court denied Mary Ellen's petition to modify parenting time. The trial court considered the pleadings and arguments, the testimony, the *in camera* interview, the GAL's report, the credibility of the witnesses, and the applicable law. The trial court specifically addressed each of the factors listed in section 602(a) of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/602(a) (West 2008)) to determine the best interest of a minor child. The trial court considered both parents' wishes regarding the visitation schedule and determined that the current schedule was more consistent with the parties' intent to equally share parenting time with A.G. The trial court found that A.G. did express a dislike for the alternating week visitation schedule because she wished to be near her friends and sleep later on school days. The trial court found that A.G. loved and had a good relationship with both of her parents and wished to please both of her parents. The trial court thought it was possible that

A.G.'s alternating weekend schedule idea came from her mother rather then from friends. A.G. had friends and relatives near both parents' homes, but her school and her best friend were near her mother's home. Additionally, the trial court found that Mary Ellen had taken some actions that the trial court considered contrary to facilitating and encouraging a close and continuing relationship between Kevin and A.G.

¶ 14 Mary Ellen filed a motion for reconsideration, which the trial court denied. In conjunction with that motion, Mary Ellen also filed a motion to obtain a transcript of A.G.'s *in camera* interview, which the trial court also denied. Mary Ellen appealed, challenging the denial of her petition to modify visitation, the denial of her motion to reconsider, and the denial of her motion to obtain a transcript of the *in camera* interview.

¶ 15 ANALYSIS

¶ 16 Section 607(c) of the Marriage Act provides:

¶ 17 "The court may modify an order granting or denying visitation rights of a parent whenever modification would serve the best interest of the child; but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral or emotional health." 750 ILCS 5/607(c) (West 2008).

¶ 18 Matters of child visitation rest largely within the discretion of the trial court. *In re Marriage of Manhoff*, 377 Ill. App. 3d 671 (2007). A trial court abuses its discretion only when its ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would take the view adopted by the trial court. *In re Marriage of Lindman*, 356 Ill. App. 3d 462 (2005).

¶ 19 Section 602 of the Marriage Act, which lists several factors to be considered when

determining the best interest of a child, should be applied by a court when determining if a petition to modify visitation should be granted. See *DeBilio v. Rodgers*, 337 Ill. App. 3d 614 (2002). Those factors are:

> "(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 or parents, his siblings and any other person who may significantly affect the child's best interest;
>
> (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 [750 ILCS 60/103], 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 (West 2008).

¶ 20 In this case, the trial court specifically considered all of the applicable factors in section 602 of the Marriage Act. Mary Ellen argues that the trial court erred by ignoring or giving too

little weight to the testimony and recommendations of Glimco and Bockstahler. Mary Ellen also argues that the trial court erred by giving insufficient weight to A.G.'s expressed preference. The trial court acknowledged both parents' wishes, and acknowledged the wishes of A.G. and the reasons for her expressed preference. The trial court also noted that A.G. had a good relationship with both parents, and she was doing well in school. There was no evidence that the visitation schedule was the reason she no longer participated in extracurricular activities. The trial court found that Mary Ellen was less credible and less willing to facilitate and encourage a close and continuing relationship between Kevin and A.G. The trial court's conclusion was based on: (1) Mary Ellen listing her boyfriend as the first emergency contact for A.G., and listing him as A.G.'s stepfather; (2) A.G.'s language in expressing her visitation preference was consistent with a conversation between A.G. and Mary Ellen, rather than A.G. getting the idea from a friend. The trial court's conclusion based upon the emergency contact form is a little troubling. Mary Ellen listed Kevin as A.G.'s father; Kevin did not need to be listed as an emergency contact. However, listing the boyfriend as A.G.'s stepfather was, at the very least, misleading. The trial court also noted that Mary Ellen did not include Kevin in A.G.'s ongoing counseling; in fact, Kevin only learned of the ongoing counseling during the current litigation.

¶ 21 A review of the trial court's decision reveals that it did not abuse its discretion in denying Mary Ellen's petition for modification. Considering all of the evidence before the trial court, in cannot be said that the trial court's ruling was arbitrary, fanciful, or unreasonable, or that no reasonable person would take the view adopted by the trial court. The original visitation schedule, rotating days over a four week period, was most likely no longer in A.G.'s best interest. The visitation schedule that the parties agreed to after the filing of the petition to modify,

alternating weeks, still allowed both parents equal parenting time while limiting A.G's travel and giving her some stability. A.G.'s stated preference to visit her father on alternating weekends, which was repeated to and recommended by her therapist and the GAL, was essentially based upon two reasons: wanting to see friends and wanting to sleep later before school. While both reasons have some merit, A.G. was only 10 years old. There are other changes that could be made that would allow both parents equal parenting time while addressing A.G.'s concerns about time with her friends and adequate sleep.

¶ 22 Mary Ellen argues that section 604(a) of the Marriage Act (750 ILCS 5/604(a) (West 2008)) mandates that an *in camera* interview be made a part of the record instantaneously and that she had a right to access it prior to her appeal. Kevin argues that the trial court complied with section 604(a) because an instantaneous record was made of the *in camera* interview. Kevin further argues that the trial court did not err by having the interview transcribed and impounded, but denying without prejudice Mary Ellen's motion to obtain the transcript. Alternatively, any error was harmless because the transcript was available for Mary Ellen's appeal.

¶ 23 Section 604(a) Marriage Act provides:

> "The court may interview the child in chambers to ascertain the child's wishes as to his custodian and as to visitation. Counsel shall be present at the interview unless otherwise agreed upon by the parties. The court shall cause a court reporter to be present who shall make a complete record of the interview instantaneously to be part of the record in the case." 750 ILCS 5/604(a) (West 2008).

¶ 24 The purpose of the *in camera* interview is to allow a trial court to question a child in a

custody dispute, without the pressures of open court. *In re Marriage of Hindenburg*, 227 Ill. App. 3d 228 (1992). The requirement that the interview be recorded is to allow a reviewing court to determine if the trial court abused its discretion. See *Gingrey v. Lamer*, 315 Ill. App. 3d 486 (2000) (the absence of a transcript of an *in camera* interview is prejudicial because it provides no means of determining whether the trial court's decision was an abuse of discretion).

¶ 25 In this case, an electronic recording of the *in camera* interview was made instantaneously, and, in fact, a transcript of the *in camera* interview was made prior to the denial of Mary Ellen's motion to reconsider. We find that the trial court substantially complied with section 604(a) of the Marriage Act. In any event, Mary Ellen was not prejudiced by the denial of her motion to obtain a transcript of the *in camera* interview. The same judge that conducted the *in camera* interview issued the written decision, and she accurately set forth the material elements of A.G.'s *in camera* interview. More importantly, the transcript was included on appeal so that we could determine whether the trial court abused its discretion.

CONCLUSION

¶ 26 The judgment of the circuit court of Will County is affirmed.

¶ 27 Affirmed.