2011 IL App (3d) 100571-U

Order filed October 17, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

JOSEPH J. MULAY and RITA M. MULAY,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Petitioners-Appellants,	)	Peoria County, Illinois.
	)	
	)	Appeal No. 3-10-0571
v.	)	Circuit No. 05-F-698
	)	
KATHERINE STESSMAN and	)	
MICHAEL STESSMAN,	)	Honorable
	)	Jerelyn D. Maher,
Respondents-Appellees.	)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice Carter and Justice O'Brien concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's order denying a petition for grandparent visitation was not against the manifest weight of the evidence.

¶ 2 The petitioners, Joseph and Rita Mulay, appeal from the circuit court's order entered by directed finding, denying their petition for grandparent visitation. 750 ILCS 5/607 (West 2004). We find that the circuit court's finding was not against the manifest weight of the evidence and, for that reason, we affirm.

¶ 3 We first note that the respondents have not filed an appellee's brief. Because the record is clear and the issue may be decided without the aid of an appellee's brief, we are able to decide the appeal on its merits. *First Capitol Mortgage Corp. v. Talandis Construction Corp.* 63 Ill. 2d 128 (1976).

¶ 4 Katherine Stessman is the natural mother of two children, Joey M. and Jacob M. At the time of the filing of the initial petition, the children were ages 5 and 2, respectively. By the time the order was entered from which this appeal was taken, the children were ages 10 and 7. Katherine was married to James Mulay, who was the natural father of the two minors. James was the son of the petitioners. On May 19, 2003, James was killed. Subsequently, in July 2005, Katherine married Michael Stessman. In April 2006, Michael adopted the two minors. The record indicates that the petitioners enjoyed contact with their grandchildren up until approximately June 2005. At that time, Katherine began to limit the petitioners' contact with the children. Shortly thereafter, Michael told the petitioners that they were not welcome at the Stessman home and could only see the children at their baseball games. On July 7, 2005, the petitioners filed the first of what would eventually be followed by four amended petitions seeking a court order granting them visitation with their grandchildren. After a substantial amount of motion practice, the circuit court found that the statute permitting grandparent visitation was facially unconstitutional and dismissed the petition. Our supreme court granted the petitioners' direct appeal, allowed the Illinois Attorney General to intervene, and issued an opinion vacating and remanding the circuit court's order. The supreme court found that the circuit court was in error in finding that the grandparent visitation statute was unconstitutional without first addressing the non-constitutional ground for dismissal raised in Katherine's motion

to dismiss. *Mulay v. Mulay*, 225 Ill. 2d 601 (2007). The matter was remanded to the circuit court, where it went through another three years of motion practice, most of which addressed several interim attorney fee petitions. At some point during the proceedings, the Stessmans, along with the two children, moved to Clive, Iowa, a suburb of Des Moines.

¶ 5 On June 29, 2010, a week shy of the five-year anniversary of the filing of the original petition seeking court ordered grandparent visitation, an evidentiary hearing was held. The Stessmens appeared at the hearing *pro se*. The evidence presented by the petitioners at the hearing was as follows:

¶ 6 Joseph J. Mulay, the petitioners' son and brother of the children's deceased father, testified that the petitioners provided extensive daycare to the two children when their father was alive because both parents worked. Joseph also testified that things changed after his brother's death, and the Stessman's gradually reduced the petitioners' contact with the children.

¶ 7 Mary Ann Mulay, Joseph's wife, corroborated her husband's testimony. She also testified to the older child's reaction to seeing his father in the casket at the visitation and that, during Christmas 2003, she observed Katherine appearing to be intoxicated.

¶ 8 Cynthia Scime, the school secretary at the children's school, testified that the children were very happy when they were with their grandparents and talked frequently about their grandparents' farm.

¶ 9 The petitioners each testified that they were very involved in providing child care to the two boys when their son was alive.

¶ 10 Dr. Phillip Helding, a child psychiatrist, testified that it was his opinion, to a reasonable degree of medical certainty, that the children, hypothetically, suffered harm by not having

contact with their paternal grandparents. Dr. Helding based his opinion primarily upon his understanding that the petitioners had spent a great deal of time with the children prior to their father's death, while their parents both worked. On cross-examination by Michael Stessman, Dr. Helding admitted that he had never spoken with either of the children, or the Stessmans, prior to rendering his opinion. Neither had he read any of the reports generated by the court-appointed guardian *ad litem* (GAL), nor the social workers' reports generated in the adoption proceedings. Dr. Helding's opinion was based solely upon conversations with the petitioners and a review of the amended petitions.

¶ 11 Following the close of the petitioners' evidence, the Stessmans moved for a directed verdict. The court considered the motion and granted it the following day. The petitioners appealed that ruling to this court.

¶ 12 This matter is controlled by the provisions of the grandparent visitation statute which allows grandparents to file a petition with the circuit court seeking an order of visitation with the minors if the minors are the children of the son or daughter of the grandparents and that son or daughter is deceased. 750 ILCS 5/607(a--5) (West 2004). The statute further provides:

> "(3) In making a determination under this subsection (a-5), there is a rebuttable presumption that a fit parent's actions and decisions regarding grandparent, great-grandparent, or sibling visitation are not harmful to the child's mental, physical, or emotional health. The burden is on the party filing the petition under this Section to prove that the parent's actions and decisions regarding visitation

> times are harmful to the child's mental, physical, or emotional health." 750 ILCS 5/607(a--5)(3) (West 2004).

¶ 13 In *Flynn v. Henkel*, 227 Ill. 2d 176 (2007), our supreme court explained the standard of review for appeals taken from an order of the circuit court denying a grandparent visitation petition as follows:

> "The presumption established in section 607(a–5)(3) that a fit parent's denial of a grandparent's visitation is not harmful to the child's mental, physical, or emotional health is the embodiment of the fundamental right of parents to make decisions concerning the care, custody, and control of their children which is protected by the fourteenth amendment. See *Wickham v. Byrne*, 199 Ill. 2d 309 (2002). Section 607(a–5)(3) places the burden on the party filing the petition to prove that the parent's actions and decisions regarding visitation times are harmful to the child's mental, physical, or emotional health. A trial court's determination that a fit parent's decision regarding whether grandparent visitation is or is not harmful to the child's mental, physical, or emotional health will not be disturbed on review unless it is contrary to the manifest weight of the evidence. See *In re Gwynne P. v. Detra W.*, 215 Ill. 2d 340, 354 (2005)." *Flynn*, 227 Ill. 2d at 181.

¶ 14 Moreover, it is presumed that "a fit parent's decision to deny or limit [grandparent] visitation is in the child's best interest." *Wickham*, 199 Ill. 2d at 318. Further, generalizations

that grandparent visitation is beneficial to a child is not sufficient to rebut the presumption that a fit parent's decision regarding grandparent visitation is in the child's best interest. *Lulay v. Lulay*, 193 Ill. 2d 455, 478 (2000).

¶ 15 Here, the trial court determined that the petitioners had failed to rebut the presumption that, as fit parents, the Stessmans' denial of a grandparent's visitation was not harmful to their children's mental, physical, or emotional health. The court recognized that Dr. Helding's expert testimony was at least some evidence, albeit completely hypothetical in nature, that the children suffered harm by not being able to visit with their paternal grandparents. However, the court determined that the testimony was methodologically unsound and based upon mere speculation. The court held, therefore, that Dr. Helding's testimony was of such little weight that it could not overcome the statutory presumption.

¶ 16 As we have noted, a trial court's determination that a fit parent's decision regarding whether grandparent visitation is or is not harmful to the child's mental, physical, or emotional health will not be disturbed on review unless it is contrary to the manifest weight of the evidence. *Flynn*, 227 Ill. 2d at 181. In determining whether a judgment is contrary to the manifest weight of the evidence, the reviewing court views the evidence in the light most favorable to the appellee. *In re Marriage of Bates*, 212 Ill. 2d 489, 516 (2004). Where the evidence permits multiple reasonable inferences, the reviewing court will accept those that support the trial court's order. *Id.* In child custody and visitation matters, the trial court is afforded particular deference and need not accept expert opinion testimony even if the testimony is not countered by the opinion of another expert. *In re Marriage of Petraitis*, 263 Ill. App. 3d 1022, 1032 (1993). Courts must also be mindful that, in child custody and visitation matters,

"psychiatric expert opinions are only as valid as the bases and reasons supporting them." *In re C.B.*, 248 Ill. App. 3d 168, 176 (1993) (quoting *In re Violetta B.*, 210 Ill. App. 3d 521, 535 (1991).

¶ 17 Here, viewing the evidence in the light most favorable to the appellees, we cannot say that the trial court's decision to find that the petitioners had failed to overcome the statutory presumption that the Stessmans' decision to terminate visitation with their paternal grandparents was not harmful to the children's physical, mental, or emotional health. The petitioners presented no direct evidence concerning the children's health. Certainly a lack of any evidence regarding the children's health does nothing to overcome the statutory presumption that the children have not been harmed by their parent's decision regarding visitation with their grandparents. Moreover, the Stessmans' point at the hearing was well-taken that Dr. Helding had not consulted any of the reports generated by the GAL in the instant matter or the social workers in the adoption proceedings. If any negative reports concerning the children's health existed, it would be a reasonable inference that such reports would have been produced by the petitioners at the hearing. Given the record before the trial court, we cannot say that it was against the manifest weight of the evidence for the trial court to continue the statutory presumption that the children's health had not been harmed.

¶ 18 Finally, the trial court's determination to give little, if any, weight to Dr. Helding's hypothetical opinion cannot be said to be against the manifest weight of the evidence. As the trial court noted, Dr. Helding's opinion that the children has suffered harm from their parent's decision regarding their grandparents was rendered with little more than a cursory examination of the circumstances. Dr. Helding did not interview the children and was unaware of any of the facts

concerning their emotional or mental health. As such, his testimony amounted to little more than a generalization that grandchildren who spend time with their grandchildren when their parents are at work will miss those grandparents when they are not around. Thus, it cannot be said that the trial court's decision to deny the petition was against the manifest weight of the evidence.

¶ 19 In reviewing a trial court's custody or visitation determination, we must always be mindful that, while we may have weighed the evidence differently, or reached a different conclusion, we must affirm the trial court's decision unless the evidence clearly supports the opposite conclusion. *In re Faith B.*, 356 Ill. App. 3d 315, 324 (2005). Here, given the paucity of the record presented by the petitioners in their case in chief, we are constrained by the record into affirming the trial court.

¶ 20 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 21 Affirmed.