

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

NO. 4-10-0984

Order Filed 4/19/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: N.R.B., a Minor,)	Appeal from
JACOB R. CROSIAR,)	Circuit Court of
Petitioner-Appellant,)	Livingston County
v.)	No. 09F63
FELICIA A. BILLINGS,)	
Respondent-Appellee.)	Honorable
)	Robert M. Travers,
)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.

Justices Steigmann and McCullough concurred in the judgment.

ORDER

Held: The trial court's decision in parentage action to award sole custody of N.R.B. to mother was not against the manifest weight of the evidence or an abuse of the court's discretion.

Following three days of hearings on the petition to determine the existence of the father-and-child relationship filed by petitioner, Jacob R. Crosiar, the trial court awarded sole custody of the parties' minor child, N.R.B. (born August 11, 2009), to respondent, Felicia A. Billings, subject to Jacob's visitation rights. Jacob appeals, arguing the court's child-custody determination was against the manifest weight of the

evidence and an abuse of the court's discretion. We affirm.

I. BACKGROUND

In October 2009, Jacob filed a petition to determine the existence of the father-and-child relationship, requesting the trial court (1) make a finding establishing his paternity of N.R.B., (2) award him sole custody of N.R.B., and (3) order Felicia to pay child support.

In December 2009, the trial court found Jacob to be the father of N.R.B. after a voluntary acknowledgment of paternity executed by both parties. On the same day, the court entered a temporary order granting Jacob visitation and ordering him to pay child support.

In March 2010, the parties attended mediation and executed a partial memorandum of agreement establishing a visitation schedule. However, the parties were unable to reach an agreement regarding custody. On July 19, 2010, September 21, 2010, and November 4, 2010, hearings were held on the issue of custody.

At the July 19, 2010, hearing, Felicia testified as follows. She testified she was 19 years old and was living in Pontiac, Illinois, with Roy Ashman, the father of her sister's child. She had lived at her current residence for approximately

two months. She was searching for housing through public assistance and, if she could not find housing in Pontiac, she would move to her grandmother's residence in McLeansboro, Illinois.

Shortly after N.R.B. was born in August 2009, Felicia moved from her parents' residence into her grandmother's residence in McLeansboro. While living with her grandmother, Felicia was involved in a relationship with Brad Walsh. Felicia admitted Walsh regularly used marijuana.

After approximately 1 1/2 months, Felicia moved back into her parents' residence. She testified she lived at her parents' residence for approximately four months but was unable to continue living there because her parents divorced. Felicia's mother was living with Felicia's sister. Felicia did not have a relationship with her father. She decided to move in with her friend, Alyssa Adkins. She lived with Adkins for approximately four months until she moved in with Ashman for approximately one month.

She next lived in an apartment with her friend, Dionna Burgess, for approximately three months. Burgess moved out and Felicia was unable to afford rent by herself. She moved in with Tyler Ross at his mother's residence. Felicia was involved in a

sexual relationship with Ross, who was 16 years old. She lived with him for approximately 1 1/2 months. Additionally, Felicia testified she was currently three months pregnant, but was then uncertain who was the father because she was having sex with both Ross and Alex Hobart when she got pregnant. Because her relationship with Ross ended, she moved back into Ashman's residence at her current address.

Felicia testified she last used cannabis when she was 15 years old. Additionally, she testified the last time she consumed alcohol was before her pregnancy with N.R.B. She acknowledged she regularly smoked during both pregnancies.

She testified she was currently unemployed because she was fired from Wal-Mart for stealing a customer's gift card. She further testified she had been unemployed for approximately five months and had no immediate plans to search for employment. She testified she refused a job offer because she was pregnant and did not trust anyone to watch N.R.B. while she was at work. She admitted she had made no further effort to find employment.

At the September 21, 2010, hearing, Felicia testified as follows. Between the July 19, 2010, and September 21, 2010, hearings, she moved back into Ross's residence because she was pregnant with his child, and they were trying to make their

relationship work. The relationship ended, and Felicia moved in with her grandparents in Odell, Illinois. Her current plan was to continue living with her grandparents until she could afford her own apartment.

She testified her grandmother, grandfather, and great-grandmother lived at her grandparents' residence and all three smoked in the house. She further testified she was attending general-equivalency-diploma classes, had applied for employment, and quit smoking approximately two weeks before the hearing because she had a high-risk pregnancy. She admitted she had seven sexual relationships since N.R.B. was born.

Jacob testified he was 22 years old. He testified he lived with his mother in a four-bedroom house, and N.R.B. had her own bedroom. He testified after Felicia moved to McLeansboro, N.R.B. lived with him for a few weeks until he was forced to relinquish custody when Felicia moved back into her parents' residence.

Jacob had been employed for seven months, working the night shift at Alcast in Peoria, Illinois. He testified he had a close relationship with his family, and his mother actively helped him take care of N.R.B. He further testified he occasionally took antianxiety medication but was not diagnosed

with a mental condition. Additionally, he testified he quit smoking approximately five months before the hearing. He testified his mother smoked but not in N.R.B.'s presence.

He next testified regarding his opinion of Felicia as a mother. He expressed concern about her ability to provide financial support and a stable residence for N.R.B. He also expressed concern regarding Felicia partying when it was not his weekend with N.R.B. Additionally, he worried about Felicia's ability to care for N.R.B. because she was constantly on her phone.

On cross-examination, he admitted Felicia never denied him visitation with N.R.B. He testified Felicia did not physically mistreat N.R.B., but he witnessed N.R.B. being exposed to cigarette smoke. He further testified he witnessed Felicia purchasing marijuana before her first pregnancy. He admitted having sexual relationships with three females, including Burgess, a witness in the case.

He further admitted he was arrested for battery when he was 18 years old because he had a sexual relationship with his underage stepsister. He admitted his police record stated he was "gang affiliated" because he belonged to the national socialist organization when he was 18 years old. He explained the national

socialist organization was a political party, and the members protested against various issues, such as illegal immigration. He testified he was no longer affiliated with the organization or its members.

Next, Erin Crosiar, Jacob's mother, testified she had a loving relationship with N.R.B. and would care for her when Jacob was unavailable. She described a positive relationship between Jacob and N.R.B.

After Jacob's counsel rested, Felicia, acting pro se, called her grandmother, Theresa Schott, to the stand. Schott described her home as a large four-bedroom residence where N.R.B. had her own room and playroom. She testified she never observed Felicia using illegal drugs, drinking alcohol, or mistreating N.R.B.

On cross-examination, Schott acknowledged Felicia had only lived with her for approximately one month. However, she testified Felicia could continue living with her until N.R.B. graduated from high school.

At the November 4, 2010, hearing, Jacob's counsel called Burgess as an additional witness, and she testified as follows. She lived in the same household as Felicia and N.R.B. for two months when N.R.B. was approximately six months old.

She testified during the time they lived together, Felicia rarely gave N.R.B. a bath, and N.R.B. frequently wore dirty clothes and smelled like vomit. She testified Felicia would frequently leave dirty bottles lying around the apartment, and she observed Felicia rinse out the dirty bottles and use them again. She observed Felicia would not regularly use baby wipes when changing N.R.B.'s diapers, and N.R.B. would occasionally have diaper rash. She testified when N.R.B. was sick with bronchitis, she frequently reminded Felicia to give N.R.B. her medication. Occasionally, Felicia would not give N.R.B. the medication even after Burgess's reminder.

Burgess testified she purchased a crib for N.R.B., but Felicia would instead have N.R.B. sleep with her. Burgess testified she did not remember any problems caused from N.R.B. sleeping with Felicia. However, when asked whether she remembered making a statement regarding N.R.B. sleeping with Felicia, falling off the couch, and hitting her head on the floor, she recalled making the statement and testified it was accurate. She also observed Felicia putting N.R.B. on the floor in the morning and then going back to sleep while N.R.B. was left to play on the floor unsupervised.

She testified Felicia frequently smoked in N.R.B.'s

presence and frequently left trash on the apartment floor, including cigarette butts, leftover food, wrappers, and toothpicks. She testified Felicia would consume alcohol during the weekends and also smoked marijuana during the time they lived together. She testified she previously stated Jacob should be awarded custody of N.R.B. Most of the testimony elicited from Burgess was in the form of brief answers to leading questions by Jacob's counsel.

On cross-examination, Burgess acknowledged she was fighting with Felicia when she talked with Jacob's counsel regarding Felicia's fitness as a parent. At the time of the hearing, she would not say custody should be awarded to Jacob, and she would not say Felicia was a bad mother.

Felicia then called her mother, Michelle Billings, to the stand. She testified Felicia struggled raising N.R.B. in the beginning, but she currently gave N.R.B. the care she needed. Additionally, she testified she never observed Felicia using illegal drugs or consuming alcohol in N.R.B.'s presence. She further testified she never felt N.R.B. was unsafe in Felicia's care. She testified Felicia should have custody of N.R.B. because N.R.B. had lived with Felicia since birth.

On cross-examination, she acknowledged Felicia lived

with her for only a few months after returning from McLeansboro. While Felicia lived in McLeansboro, she visited and noticed Felicia was struggling with raising a child and attending school. Because Felicia was struggling, she convinced Felicia to let N.R.B. return home to live with her, and N.R.B. lived with her for approximately two months. She testified she never had a conflict with Jacob, and she believed he should be involved in N.R.B.'s life.

Kayla Carroll testified Felicia struggled with raising a child in the beginning, but she believed Felicia had changed. She had an opportunity to observe Felicia's interactions with N.R.B. because she was frequently present at the apartment when Felicia and Burgess lived together. She testified she never observed Felicia drink alcohol in N.R.B.'s presence or leave N.R.B. in her boyfriend's care while she partied.

On cross-examination, she acknowledged she never lived with Felicia. She testified she observed Felicia using marijuana when N.R.B. was a few months old, but it was not in N.R.B.'s presence.

After hearing closing arguments, the trial court awarded sole custody of N.R.B. to Felicia subject to visitation rights for Jacob. In making its decision, the court stated it

did not believe either party was a good parent, and it was forced to "pick the better of the bad choices." The court noted Felicia was the focus of the proceedings because she did not have a good opportunity to concentrate on Jacob's failings since she represented herself.

In discussing the statutory factors for determining custody, the trial court believed the wishes of the parents regarding custody was "a tie" because they both wanted custody. Additionally, the court stated the child's relationship with the parents was a "toss up" because the testimony did not suggest either parent was not "getting along with the child." However, the court stated it heard testimony regarding Felicia being "unconcerned or neglectful of the child at various times." The court also expressed concern regarding the lack of stability in N.R.B.'s life.

The trial court also noted both parties "have done pretty well" at facilitating and encouraging a close relationship between the other parent and N.R.B., and "there hasn't been too much interference with [Jacob's] visitation rights." The court further noted both parties were sex offenders.

In considering other relevant factors, the trial court noted Felicia was selfish and smoked during both pregnancies

despite the potential health risks to the babies. The court stated it did not believe Felicia had quit smoking or using illegal drugs. Further, the court noted Felicia was unemployed because she stole a gift card.

Regarding Jacob, the trial court noted "due to a lack of resources and counsel, [Felicia] hasn't had a good chance to focus on father's behavior." However, the court noted Jacob admitted he was a member of the national socialist party when he was 18 years old. The court stated the purpose behind the group was to pronounce "hate against everyone with the exception of *** some pureblood people that might be someplace." The court stated it did not believe Jacob had "expelled all those thoughts out of [his] mind."

In finding for Felicia, the trial court explained she had a chance to grow out of her selfishness, and the court could put requirements on her, including daily drug testing. The court also explained joint custody was inappropriate, but it could not prevent or order supervised visitation without a showing of serious endangerment.

This appeal followed.

II. ANALYSIS

On appeal, Jacob argues the trial court erred when it

awarded sole custody of N.R.B. to Felicia.

A trial court's custody determination should not be disturbed on appeal unless the decision was against the manifest weight of the evidence or unless the court abused its discretion. In re Marriage of Craig, 326 Ill. App. 3d 1127, 1129, 762 N.E.2d 1201, 1203 (2002). A court's decision is against the manifest weight of the evidence when an opposite conclusion is apparent or the findings were unreasonable, arbitrary, or not based on the evidence. In re Marriage of Hefer, 282 Ill. App. 3d 73, 80, 667 N.E.2d 1094, 1100 (1996). "Great deference must be accorded to [the court's] decision since the trial court is in a superior position to judge the credibility of witnesses and determine the needs of the child." Craig, 326 Ill. App. 3d at 1129, 762 N.E.2d at 1203.

Section 602(a) of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) provides the relevant factors for determining custody in the best interest of the child are as follows:

- "(1) the wishes of the child's parent or
parents ***;
- (2) the wishes of the child ***;
- (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, 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; and

(9) whether one of the parents is a sex

offender." 750 ILCS 5/602(a) (West 2008).

In this case, the trial court addressed each statutory factor in section 602(a) of the Dissolution Act when it made the custody determination. The court first considered the parents' wishes regarding custody and noted both parents wanted custody of N.R.B. As to the second factor, N.R.B.'s custody preference, the court found N.R.B. was unable to express her preference because of her young age.

As for the third factor--the interaction of the child and her parents, siblings, and any other person who may significantly affect the child's best interests--the court noted the evidence did not suggest either party was unable to get along with N.R.B. However, the court noted Felicia was "unconcerned or neglectful of the child at various times," and in the past, she was willing to let others accept responsibility for N.R.B.'s care. Additionally, the court expressed concern for the lack of stability in N.R.B.'s life and the large number of strangers coming in and out of her life.

As to the fourth factor--the child's adjustment to her home, school, and community--the court found this was a "nonfactor at this *** point" but noted lack of stability was previously addressed.

As to the fifth factor--the mental and physical health of the parties and child--the trial court found no problems with the mental or physical health of any of the individuals involved.

The trial court next considered the sixth factor of physical violence or threat of physical violence by the child's potential custodian, whether directed against the child or another person. The court found no evidence of such a threat by either parent.

As to the seventh factor--the occurrence of ongoing or repeated abuse--the trial court found no evidence of any type of ongoing or repeated abuse.

The trial court also considered the eighth factor--the willingness and ability of each parent to facilitate and encourage a close and continuing relationship with the other parent. The court noted both parties have "done pretty well" with regard to this factor. Additionally, the court noted "there hasn't been too much interference with the father's visitation rights."

As to the ninth factor--whether one of the parents is a sex offender--the trial court noted both parents were sex offenders. The court expressed concern regarding Jacob being a sex offender and N.R.B. being female.

Additionally, the trial court considered other relevant factors in making its custody determination. In particular, the court noted Felicia (1) was selfish, (2) smoked during both pregnancies despite the potential harmful effects to the babies, (3) was more than likely using illegal drugs, and (4) was unemployed because she stole a gift card.

Additionally, the court noted Jacob (1) committed two sex offenses, (2) was a member of the national socialist party, a group pronouncing hate toward everyone, and (3) was living at his mother's residence when he was admittedly a member of the national socialist party. Although Jacob argues the evidence presented did not suggest he currently associated with the national socialist party or its members, the court believed Jacob had not expelled those beliefs.

The trial court was faced with the unpleasant and unfortunate dilemma of awarding custody to a parent with major deficits. Both mother and father displayed poor judgment and a lack of responsibility. The one glimmer of hope was they apparently cooperated as to visitation. The court aptly described both parents: the mother is neglectful, selfish, and soon to be burdened with a second child; the father is a "multiple sex offender with leanings or at least past membership

in the National Socialist Party." The court also doubted the credibility of every witness. Faced with this dilemma, the trial judge explained his reasoning, candidly evaluated the parties, and made a decision. We commend him for his patience and effort.

After observing the witness testimony and considering all the relevant statutory factors, the trial court awarded custody of N.R.B. to Felicia, believing she had a chance to grow and mature, and perhaps benefit from the support of her family. The court explained it could put requirements on Felicia, including daily drug testing, to ensure Felicia was providing proper care of N.R.B.

We find the trial court did not abuse its discretion in awarding custody to Felicia, and we cannot say its decision was against the manifest weight of the evidence.

III. CONCLUSION

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

Affirmed.