

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).

2011 Ill. App. (4th) 110157-U

Filed 7/12/11

NO. 4-11-0157

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: A.A. a Minor,	)	Appeal from
KRISTOFFER R. BORN,	)	Circuit Court of
Petitioner-Appellant,	)	McLean County
v.	)	No. 09F363
BROOKE M. ARNOLD,	)	
Respondent-Appellee.	)	Honorable
	)	David W. Butler,
	)	Judge Presiding.

---

JUSTICE STEIGMANN delivered the judgment of the court.  
Justices Turner and Pope concurred in the judgment.

**ORDER**

¶ 1 *Held:* The Appellate Court affirmed, concluding that the trial court's finding that it was in the child's best interest to award sole custody to the mother was not against the manifest weight of the evidence.

¶ 2 In November 2009, petitioner, Kristoffer R. Born (Kris), filed a petition to establish custody, child support, and a visitation schedule, seeking sole custody of his daughter, A.A. (born May 12, 2009). In February 2011, the trial court rejected Kris's petition, awarding respondent, Brooke M. Arnold (Brooke), A.A.'s mother, sole custody of A.A.

¶ 3 Kris appeals, arguing that the trial court's decision to award Brooke sole custody of A.A. was against the manifest weight of the evidence. We disagree and affirm.

¶ 4

## I. BACKGROUND

¶ 5

### A. The First Months of A.A.'s Life

¶ 6 Kris began dating Brooke in July 2008, and in May 2009, A.A. was born of that relationship. Shortly thereafter, Brooke and 10-week-old A.A. began living with Kris in his Bloomington, Illinois, home. However, in November 2009, Brooke moved out with A.A. to live with her aunt following an altercation she had with Kris's grandmother. Brooke did not contact Kris until two weeks later when she and A.A. moved into her parents' home in Mackinaw, Illinois.

¶ 7 In November 2009, Kris filed a petition to establish custody, child support, and a visitation schedule. Kris sought sole custody of A.A., who at that time was approximately six months old. In January 2010, the trial court ordered the parties to engage in mediation. In February 2010, following an unsuccessful attempt at mediation, Kris renewed his request for sole custody of A.A. Shortly thereafter, the court entered a temporary visitation schedule, granting Kris visitation, in part, (1) every Wednesday at 6 p.m. through Thursday at 6 p.m. and (2) alternative weekends. In July 2010, Brooke filed her response to Kris's petition. At that point, A.A. was approximately 14 months old.

¶ 8

### B. The Custody Hearing

¶ 9 In December 2010, the trial court conducted a two-day hearing on Kris's custody petition. The parties presented their respective versions of the circumstances of this case through the evidence at that two-day hearing.

¶ 10

#### 1. *Kris's Version*

¶ 11 Kris, a college graduate and finance director for a car dealership, presented evidence that he owned a six-bedroom home in Bloomington, Illinois, that he purchased in

anticipation of starting a family. In July 2009, Brooke moved into that home with A.A. While they were living together, Brooke acted as A.A.'s primary caretaker, as she had recently been fired from her job and Kris worked long hours.

¶ 12 In November 2009, Kris's mother and grandmother traveled to Bloomington from Florida to visit A.A. At some point during the visit, Brooke and Kris's grandmother had a physical and verbal altercation. Several hours later, the police arrived and observed that Kris's grandmother had "what appeared to be a red hand print on the side of her face." (Brooke was later acquitted of the charges arising out of the incident.) Following this incident, Brooke left with A.A. to live with her aunt. Brooke contacted Kris two weeks later, allowing Kris only limited visitation. At that point, Brooke had moved into her parents' home.

¶ 13 In October 2010, Kris left his job for another position as a finance director with a different car dealership so that he would have more time to spend with A.A.

¶ 14 As part of his case, Kris presented evidence that Brooke had (1) told him that she could not become pregnant; (2) physically and verbally attacked him; (3) took measures to interfere with his relationship with A.A.; (4) manipulated the details of bruises she found on A.A. to facilitate a Department of Children and Family Services (DCFS) investigation, which was later abandoned as unfounded; (5) difficulty keeping a job; and (6) been dishonest about the reasons why she had lost her previous jobs on subsequent job applications. Several of Kris's witnesses also testified that he cared for and loved A.A., was an involved father, and had detailed plans with a child-care provider to take care of and teach A.A. when he was at work.

¶ 15 *2. Brooke's Version*

¶ 16 Brooke, a full-time college student, presented evidence that when she became

pregnant, Kris attempted to persuade her to have an abortion, presenting her with a list of the advantages and disadvantages of having a child. Brooke also rejected Kris's (1) version of (a) the altercation with his grandmother, explaining that she never struck Kris's grandmother and his family were the aggressors, and (b) the events that led to the DCFS investigation, asserting that the doctor contacted DCFS, not her, and (2) characterization of her as a liar.

¶ 17 Brooke explained that she had a complicated and difficult pregnancy. In fact, A.A. was born five weeks premature and required special monitoring. Brooke, not Kris, (1) trained to read A.A.'s heart and lung monitor and (2) completed infant/toddler cardio-pulmonary resuscitation (CPR) training, which the hospital required before it would release A.A. from its care. (A.A. has some ongoing health problems, which require written caretaker notes to properly address.)

¶ 18 Brooke has consistently acted as A.A.'s primary caretaker. When Brooke is not available to care for A.A., members of her family provide for A.A., rather than a babysitter.

¶ 19 Brooke also presented evidence that (1) she has always tried to accommodate Kris' schedule when scheduling visitation and (2) Kris had made threats about taking A.A. if Brooke filed for child support. Brooke's family and friends testified that she is an attentive and caring mother who loves A.A. a great deal.

¶ 20 C. The Trial Court's Findings

¶ 21 In February 2011, the trial court awarded Brooke sole custody of A.A. In doing so, the court considered the statutory factors under section 602(a) of the Marriage and Dissolution of Marriage Act (750 ILCS 5/602(a) (West 2010)) and found that three of those factors did not apply and five of those factors did not "significantly favor either party." As to the remaining factor related to "the child's adjustment to h[er] home, school and community," however, the court found

that this factor weighed in favor of Brooke because "[A.A.] has lived with Brooke all of her life." The court noted that "[i]f Kris were to become the custodial parent, [A.A.] would have to change homes, pediatrician, daily routine and primary day[-]care provider."

¶ 22 This appeal followed.

¶ 23 II. ANALYSIS

¶ 24 Kris argues that the trial court's decision to award Brooke sole custody of A.A. was against the manifest weight of the evidence. We disagree.

¶ 25 A. Determining Custody and the Standard of Review

¶ 26 The trial court's custody determination must always be made according to the best-interest-of-the-child standard. 750 ILCS 5/602(a) (West 2010). Section 602(a) of the Act lists the factors that the court must consider when making that determination. 750 ILCS 5/602(a) (West 2010). Specifically, section 602(a) states, as follows:

"The court shall determine custody in accordance with the best interest of the child. The court shall consider all relevant factors including:

(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, 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)(1) through (a)(10) (West 2010).

¶ 27 A trial court has broad discretion in making custody determinations, and we will reverse that determination only when it is against the manifest weight of the evidence. *In re A.S.*, 394 Ill. App. 3d 204, 212, 916 N.E.2d 123, 131 (2009). " 'A finding of fact \*\*\* is against the

manifest weight of the evidence [when], upon review of all the evidence in the light most favorable to the prevailing party, an opposite conclusion is clearly apparent or the fact finder's finding is palpably erroneous and wholly unwarranted, is clearly the result of passion or prejudice, or appears to be arbitrary and unsubstantiated by the evidence.' " *In re Guardianship of K.R.J.*, 405 Ill. App. 3d 527, 536, 942 N.E.2d 598, 605 (2010), quoting *Joel R. v. Board of Education of Mannheim School District 83*, 292 Ill. App. 3d 607, 613, 686 N.E.2d 650, 655 (1997).

¶ 28 B. The Trial Court's Custody Determination in This Case

¶ 29 Here, the trial court awarded Brooke sole custody of A.A., finding that three of the custody factors under the Act did not apply and five of them did not "significantly favor either party." As to the remaining factor, however, "the child's adjustment to h[er] home, school and community," the court found as follows:

"The Court has considered all of the \*\*\* factors that are applicable to the parties. \*\*\* The child loves both parents and has a close bond with each. Both parties are good parents.

[A.A.'s] adjustment to her home, school[,] and community \*\*\* favors Brooke. [A.A.] is approximately [21] months old. She has lived with Brooke all of her life and has lived at Brooke's parents' home for all but [4] months of her life. Under the visitation arrangement that has been in effect since November 2009, [A.A.] has spent approximately [70%] of her time with Brooke and [30%] of with Kris. While living with Brooke, [A.A.] has had

regular play time with [other] children who are her age. Brooke has a large extended family in the area. If Kris were to become the custodial parent, [A.A.] would have to change homes, pediatrician, daily routine and primary daycare provider. \*\*\* Brooke has been the primary caretaker for [A.A.] both when the parties lived together and when they lived separately."

¶ 30 The record in this case shows that the trial court's judgment is fully supported by the record. It is clear from the court's written order that the court viewed that custody weighed in favor of Brooke because it would be in A.A.'s best interest to remain with her primary caregiver. Given the evidence presented by the parties--which the court was in a superior position to evaluate--we conclude that the court's decision to award Brooke sole custody of A.A. was not against the manifest weight of that evidence.

¶ 31 III. CONCLUSION

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

¶ 33 Affirmed.