2013 IL App (5th) 110578-U

NO. 5-11-0578

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

CLAYTON SHAFFER,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Clinton County.
	)	
v.	)	No. 11-F-19
	)	
TIFFANY HOOD,	)	Honorable
	)	William J. Becker,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.
Justices Chapman and Cates concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court properly denied the plaintiff's petition for visitation.

¶ 2 The plaintiff, Clayton Shaffer, appeals *pro se* the judgment of the circuit court of Clinton County denying his petition for visitation with his minor children. Shaffer argues that the circuit court erred in denying him visitation absent a finding that visitation would endanger seriously the children's physical, mental, moral, or emotional health. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 On April 15, 2011, Shaffer, an inmate in the Illinois Department of Corrections, filed a *pro se* petition for visitation pursuant to section 607(a) of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/607(a) (West 2010)). Shaffer alleged that he and the respondent, Tiffany Hood, are the parents of M.N.S., who was born on August 5, 2001, and M.A.S., who was born on April 11, 2003. He alleged that he had

not seen his children since 2009 because Hood refused to bring them for visitation. Shaffer sought an order granting him regular visitation at his place of confinement.

¶ 5 A hearing on Shaffer's petition was held on September 22, 2011. Both parties appeared *pro se* and were questioned by the court. Shaffer testified that he and Hood had lived together for over five years, but were never married. They had separated in October 2003. Shaffer testified that from the time the parties separated until 2004 he saw the children once or twice a month, and from 2004 to 2005 he saw the children once or twice a week. Shaffer was arrested on August 16, 2008, and has been in prison since 2009. He is scheduled to be released in 2020. Shaffer testified that he last saw his children on February 25, 2005. When asked why he had not seen his children between 2005 and 2008, Shaffer responded that he had been "locked up" for a little over two years during that period and that Hood would not let the children see him. Shaffer also testified that he writes both children once a week but that Hood does not let them write to him.

¶ 6 When the court inquired as to how Shaffer proposed to have the children brought to the prison for visitation, Shaffer testified that his mother visited him in prison once or twice a month and that he would ask her to bring the children.

¶ 7 Hood agreed with Shaffer's testimony regarding how often he saw the children. She opposed visitation because she did not believe the children should be required to go to a correctional facility. Hood stated that her youngest child does not know Shaffer. She also stated that the children are aware that Shaffer is in prison and that he wants to see them, but they have been ambivalent about seeing him.

¶ 8 The circuit court denied Shaffer's petition for visitation, effectively finding that visitation would not be in the best interests of the children. The court stated that Shaffer had not seen the older child since 2005 and has had little contact with the younger child. Shaffer's motion to reconsider was denied. Shaffer appeals.

¶ 9 ANALYSIS

¶ 10 On appeal, Shaffer argues that the trial court erred in denying his petition for visitation. Citing section 607(a) of the Marriage Act, he contends that a court must find that visitation would endanger seriously the child's physical, mental, moral, or emotional health before it can deny a noncustodial parent visitation rights, and that the court in this case failed to make the requisite finding.

¶ 11 Section 607(a) of the Marriage Act provides in pertinent part:

> "A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral or emotional health." 750 ILCS 5/607(a) (West 2010).

¶ 12 Our supreme court recently addressed whether the "best interests" standard or the more stringent "serious endangerment" standard applies when a court denies an unmarried father visitation rights with his child. In *In re Parentage of J.W.*, 2013 IL 114817, the putative father filed a petition pursuant to section 14(a)(1) of the Illinois Parentage Act of 1984 (Parentage Act) (750 ILCS 45/14(a)(1) (West 2010)) seeking a finding of paternity as well as joint custody and visitation rights. The circuit court found that he was the minor's father, but denied visitation, finding that he had failed to demonstrate that visitation was in the child's best interests. *Id.* ¶¶ 9, 28.

¶ 13 On appeal, the father argued that he was entitled to visitation pursuant to section 607(a) of the Marriage Act absent a finding of serious endangerment. Our supreme court held that in a proceeding to determine visitation privileges under section 14(a)(1) of the Parentage Act, the petitioner must show that visitation is in the best interests of the child pursuant to section 602 of the Marriage Act (750 ILCS 5/602 (West 2010)). The court rejected the petitioner's argument that section 14(a)(1) incorporated the provisions of section 607(a) of the Marriage Act, finding that the more stringent standard in section 607(a) is

based upon a legislative presumption that in a postdissolution setting, it is "in the child's best interests to maintain a continued, meaningful relationship with both parents after the dissolution" and that this presumption "reflects a legislative recognition of the need to protect the preexisting parent-child bond that presumably developed prior to the divorce or separation of the two parents." *Id*. ¶¶ 45-47. The court explained that:

> "Given the myriad relationships that may evolve outside the parameters of a dissolution proceeding, the General Assembly could not have predetermined with such broad strokes that the presumptive entitlement to reasonable visitation absent 'serious endangerment' is in a child's best interests in every parentage action, without giving the court the flexibility to consider the facts and circumstances of each case." *Id*. ¶ 50.

¶ 14 As noted above, Shaffer brought his *pro se* petition for visitation pursuant to section 607(a) of the Marriage Act rather than section 14(a)(1) of the Parentage Act. Given our supreme court's reasoning in *J.W.*, we conclude that an unmarried father cannot avail himself of the more stringent standard set forth in section 607(a) by bringing a petition for visitation pursuant to that section rather than the Parentage Act. Moreover, section 9(a) of the Parentage Act provides that the provisions of the Parentage Act apply to any civil action where parentage is at issue. 750 ILCS 45/9(a) (West 2010). In *Kapp v. Alexander*, 218 Ill. App. 3d 412 (1991), the court held as follows:

> "In our view 'parentage is at issue' whenever a parent and child relationship is the basis for some 'right, privilege, duty or obligation' [citation], but such a relationship has not been established (or presumed) as provided for in the Parentage Act. Simply because no party disputes biological parentage is not a sufficient basis for concluding that a case is not one where 'parentage is at issue.' " *Kapp*, 218 Ill. App. 3d at 416-17.

¶ 15 In the present case, Shaffer testified that he and Hood were never married, and there

is no indication in the record that parentage has been established in accordance with the Parentage Act. Consequently, parentage is at issue notwithstanding the parties' agreement that Shaffer is the children's father, and the "serious endangerment" standard in section 607(a) of the Marriage Act does not apply. Accordingly, the circuit court properly applied the "best interests" standard, and its decision is not against the manifest weight of the evidence.

¶ 16 For the foregoing reasons, the judgment of the circuit court of Clinton County is affirmed.

¶ 17 Affirmed.