

No. 1-11-0685

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE CUSTODY OF:)	
NAOMI TRAVIS,)	
)	
Minor-Appellee,)	Appeal from the
)	Circuit Court of
)	Cook County.
)	
JENNIFER NIMELY,)	
)	
Petitioner-Appellant,)	98 D 57422
)	
v.)	
)	The Honorable
THEODORE TRAVIS,)	David Delgado,
)	Judge Presiding.
Respondent-Appellee.)	
)	

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Fitzgerald Smith and Sterba concurred in the judgment.

ORDER

HELD: (1) The grant of a petition to modify custody to joint custody, with the father as

residential custodian, was not against the manifest weight of the evidence or an abuse of discretion where the evidence at the hearing indicated that the minor significantly improved in her schoolwork while in the custody of her father, her father provided a more stable environment, and the minor indicated she wished to spend more time with her father. However, the matter was remanded with directions for the court to modify its joint custody judgment to state its specific findings of fact in support of its modification of custody pursuant to section 610(b) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/610 (West 2008)). (2) The court's consideration of home study reports was proper pursuant to section 605 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/605 (West 2008)). (3) The trial court did not abuse its discretion in denying the mother's motion for a continuance to obtain an attorney where more than 18 months had passed from the date of service of the petition in contravention of Supreme Court Rule 922 (Ill. S. Ct. R. 922 (eff. July 1, 2006)), the mother had caused some of the delay, she had indicated she would represent herself and answered ready on the date of the hearing, and she had nearly two years to obtain an attorney.

¶1 BACKGROUND

¶2 The following facts are from the record and the bystander's report:

¶3 The minor, Naomi T., was born on June 7, 1998. Petitioner-appellant, Jennifer Nimely, is Naomi's natural mother. On December 30, 1998, respondent-appellee, Theodore Travis, was found to be the child's father. On March 30, 1999, an order of support was entered, requiring Travis to make weekly payments for support of the minor. Nimely retained custody of Naomi.

¶4 On November 22, 2008, Travis filed an emergency motion for temporary custody, which was heard on November 26, 2008. On that same date, Travis filed a petition to modify custody and for parenting time. Travis' petition alleged that changes in circumstances warranted awarding custody of Naomi to him. Specifically, the petition alleged the following: that Naomi received the grade of "F" in the second semester of the 2007-2008 school year in math, reading and vocabulary; that Nimely's home had no hot water or telephone service and that her home was

No. 1-11-0685

in foreclosure; Nimely had no income; and that Naomi had witnessed acts of violence between Nimely and her boyfriend. On November 26, 2008, the court entered a continuance and ordered Nimely to turn over all documents evidencing employment and that her gas had been restored by December 1, 2008.

¶5 On December 1, 2008, the court entered an agreed order indicating that Nimely's gas service had been restored and that Nimely presented proof of employment. The parties agreed to an alternating parenting schedule where Naomi would reside with Nimely from Tuesday after school to Friday before school and then reside with Travis from Friday after school to Tuesday before school. On December 29, 2008, Nimely filed a motion seeking to vacate the December 1, 2008, order. On January 14, 2009, the circuit court ordered mediation to address custody and visitation. On March 25, 2009, the case was before the court for status regarding mediation and visitation. Travis reported visitation was proceeding well. Nimely did not appear in court.

¶6 On May 26, 2009, the court appointed the Office of the Public Guardian to represent Naomi. On September 25, 2009, the court referred the parties to the Office of Adoption and Child Custody Advocacy for a general study of custody and visitation and ordered that the report should be sent to the court and all attorneys of record prior to the hearing.

¶7 On December 1, 2009, Naomi's school principal reported to the Office of Adoption and Child Custody Advocacy that Naomi had achieved a "mastery of standards" in reading, math, and science, and exceeded standards in social studies. The principal also reported that "Naomi is working up to her academic capacity," and that she "[r]eceives tutoring from [her]

No. 1-11-0685

stepmother." The report also stated that Naomi is "well kept and cared for," and "has good behavior. She is well[-]manner[ed] and cheerful."

¶8 The caseworker assigned to conduct the investigation reported on December 3, 2009, that she interviewed Travis. The caseworker had also contacted Nimely, who stated she was at work. The caseworker left her contact information, but Nimely did not follow up.

¶9 On a status hearing on December 4, 2009, Travis' home study report was tendered to the court. On that same date, the court entered an order continuing the case to allow Nimely a final opportunity to participate in the home study and ordering Nimely to contact the caseworker, Michelle Dolan. The hearing was continued to February 17, 2010, then April 5, 2010, and then September 9, 2010.

¶10 The hearing on the petition was held on September 9, 2010. All parties answered ready. Nimely indicated she would be representing herself and answered ready. The court first reviewed the home study reports which were admitted into evidence. The home study report of Travis indicated that Travis was employed full-time, working from 8 a.m. to 4:30 p.m. and spent time after work helping Naomi with her studies. Travis reported that Nimely did not provide Naomi with proper support and guidance and that Naomi was struggling in school. Travis showed the caseworker an assignment of Naomi's which was reportedly checked by Nimely. The caseworker stated that she found the assignment was "inadequate, incomplete and very poorly done." Travis also reported that approximately 2-3 months prior, Nimely's boyfriend threw a chair and a phone and also kicked a bucket. The bucket allegedly struck Naomi and Nimely called the police, who removed the boyfriend from Nimely's home. Travis' live-in

No. 1-11-0685

fiancé, Latasha Petty, reported that she was a schoolteacher and taught math and social studies to 6th, 7th, and 8th graders. Petty prepared breakfast for Naomi daily while in the custody of Travis. Travis took Naomi to school every day. Naomi's homework was completed and checked every day by Travis and Petty.

¶11 The caseworker interviewed Naomi, who indicated that she would like to stay "more" with her father. She described Travis as "nice," "making her laugh all the time," and "helping her a lot with her homework." Naomi also indicated that she "really, really likes Latasha" and "has a lot of fun with Latasha." The caseworker reported that Naomi appeared to be a "most charming, sweet[-]natured young lady," and that she, Travis and Petty "seemed to share an easy, loving relationship." The caseworker concluded that Travis "seems to be providing Naomi with a loving, responsible and stimulating environment."

¶12 Naomi described Nimely to the caseworker by saying "sometimes she can be mean" and that she "liked to yell at her [] a lot." Naomi also stated that Nimely's boyfriend is also "mean sometimes." Naomi corroborated that Nimely's boyfriend threw a bucket, which hit Naomi in the arm. She also stated that Nimely's boyfriend threw the phone against the wall. Naomi further corroborated that the police came to the residence to remove the boyfriend when he would not leave. However, the boyfriend returned. Naomi further indicated that Nimely tried to break her boyfriend's car windows. Naomi indicated that Nimely told her not to tell anyone what happened.

¶13 The home study report for Nimely indicated that she lived with her fiancé, Aron Cooks. Nimely worked four days a week from 11 a.m. to 7 p.m. Cook's five-year-old son

No. 1-11-0685

sometimes stayed in the home. Cooks admitted to being arrested twice for disorderly conduct and battery. After school, Naomi stayed with Nimely's sister until 8 p.m. Nimely would pick up Naomi at 8 p.m. Nimely stated that on the days she did not work, she would check Naomi's homework. Naomi stated that she and Cooks "get along fine." However, the caseworker reported that she was concerned about the physical altercation between Nimely and Cooks that resulted in Naomi being hit in the arm with a bucket. The caseworker believed that Petty played a much greater role in raising Naomi than Cooks.

¶14 After reviewing the home study reports, the trial court conducted the hearing. Nimely testified that when the home study report was done she worked four days a week but at the time of the hearing had a different job and worked six days a week. Nimely admitted that prior to November 2008 her gas service was shut off and there was no heat or hot water, but stated that her gas service was subsequently restored. Nimely admitted that Travis had been spending more time with Naomi since December 1, 2008. Nimely also admitted that her home study report was not completed until January 21, 2010, after the order was entered by the court providing her with one last chance to participate. Nimely stated that she wanted Travis to provide support for Naomi, but Travis had turned the case into a custody dispute.

¶15 Petty testified that she and Travis both help Naomi with her homework, and that Naomi would sometimes call Petty and Travis from Nimely's residence to ask them for help with her homework. Both Petty and Travis worked with Naomi to improve her reading and math skills, and Naomi showed substantial improvement. Petty observed poor schoolwork by Naomi while Naomi was at her mother's home. Petty also believed Naomi could be exposed to further

violence if there were more domestic disputes at Nimely's home.

¶16 The hearing continued the next day on September 10, 2010. Counsel for Travis indicated she would call Travis to testify. Nimely then made an oral motion for a continuance to obtain counsel. The trial court denied Nimely's motion and indicated it would make its ruling based on the testimony of the previous witnesses and the home study reports.

¶17 On October 15, 2010, the court entered a joint custody judgment stating that it found that a substantial change in circumstance existed and that the child's best interest was to change custody of Naomi to joint custody. The bystander's report also indicated that the court found that Naomi's school performance indicated she was receiving a benefit from staying with Travis. The court further found Petty was a favorable influence on Naomi, whereas Cooks was not a strong influence and there was domestic violence in Nimely's home. The court found that it was in Naomi's best interest to change custody to joint custody, with Travis as the primary custodial parent. The court found it was in Naomi's best interest to live with Travis during the school week and for Nimely to have visitation on alternating weekends and one weekday every other week. The court denied Nimely's motion to reconsider. Nimely appealed.

¶18 ANALYSIS

¶19 I. The Manifest Weight of the Evidence Supports the Judgment of the Trial Court.

¶20 First, Nimely argues that since she and Travis were never married and there was no prior custody judgment, section 610 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/101 *et seq.* (West 2008), is inapplicable. See (750 ILCS 5/610 (West 2008) However, under section 14(a)(2) of the Illinois Parentage Act of 1984 (750 ILCS 45/1 *et seq.*

No. 1-11-0685

(West 2008)), "the establishment of a support obligation or of visitation rights in one parent shall be considered a judgment granting custody to the other parent." 750 ILCS 45/14(a)(2) (West 2008). Here, the establishment of Travis' support obligations on March 30, 1999, constituted a judgment granting custody of Naomi to Nimely.

¶21 Travis properly brought his petition to modify custody and for parenting time pursuant to section 610(b) of the Illinois Marriage and Dissolution of Marriage Act, which governs modifications of custody over two years after a custody judgment. See 750 ILCS 5/610(b) (West 2008). Regarding modifications of custody, section 610(b) provides the following, in pertinent part:

"(b) The court shall not modify a prior custody judgment unless it finds by clear and convincing evidence, upon the basis of facts that have arisen since the prior judgment or that were unknown to the court at the time of entry of the prior judgment, that a change has occurred in the circumstances of the child or his custodian, or in the case of a joint custody arrangement that a change has occurred in the circumstances of the child or either or both parties having custody, and that the modification is necessary to serve the best interest of the child. *** The court shall state in its decision specific findings of fact in support of its modification or termination of joint custody if either parent opposes the modification or termination." 750 ILCS 5/610(b) (West 2008).

¶22 Section 602 of the Act provides the following mandatory factors to consider in determining the custody of a child:

"Sec. 602. Best Interest of Child. (a) The court shall determine custody in

No. 1-11-0685

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 [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.

* * *

(c) Unless the court finds the occurrence of ongoing abuse as defined in Section 103 of the Illinois Domestic Violence Act of 1986 [750 ILCS 60/103], the court shall presume that the maximum involvement and cooperation of both parents regarding the physical, mental, moral, and emotional well-being of their child is in the best interest of the child. There shall be no presumption in favor of or against joint custody." 750 ILCS 5/602 (West 2008).

¶23 Nimely argues that Travis failed to sustain his burden of proof of clear and convincing evidence of a change in circumstance under section 610(b) and that modification of custody was in Naomi's best interest under section 602. However, we find that the trial court's determination that there was a change in circumstances warranting a change in custody and that the best interest of Naomi was a change to joint custody, with Travis as the custodial parent, was not against the manifest weight of the evidence or an abuse of discretion. Here, the evidence adduced at the hearing showed that Naomi's schoolwork was substandard while she was in the care and sole custody of Nimely, but that her schoolwork vastly improved once she began residing with Travis under the temporary joint custody order. While Travis spent time with Naomi after school, while in the custody of Nimely, Naomi would not be picked up until 8 p.m. in the evenings. Travis was employed and provided a stable environment. Nimely's gas service had been shut off in 2008 and Naomi was subjected to living for a time without heat or hot water. The evidence also showed that Travis' fiancé, Latasha Petty, was a strong positive influence on Naomi, and that she also assisted her with her schoolwork. Meanwhile, Nimely and

No. 1-11-0685

her live-in fiancé subjected Naomi to domestic disputes and Naomi was hit in the arm during one of their altercations. Naomi herself indicated a desire to spend more time with her father. All the evidence indicated Naomi was happy, well-adjusted, and thriving in the custody of her father.

¶24 Although Nimely claims the court gave undue weight to solely her school performance, the record indicates the trial court considered all the evidence of other factors under section 602, which in this case included: the wishes of Naomi; the interaction and interrelationship of Naomi with her parents and other persons who may significantly affect her best interest; Naomi's adjustment to the home, school and community; the mental and physical health of all individuals involved; and the physical violence or threat of physical violence while in the custody of Nimely. See 750 ILCS 5/602(a)(2), (3), (4), (5), and (6) (West 2008). Thus, the record here sufficiently indicates that the trial court considered the statutory factors under section 602 concerning Naomi's best interest. The trial court is not required to make specific findings for each factor so long as the record reflects that evidence of the factors was considered by the trial court before making its decision. *In re Diehl*, 221 Ill. App. 3d 410, 424 (1991), *cert. denied*, 144 Ill. 2d 632 (1992) (citing *In re Marriage of Lombaer*, 200 Ill. App. 3d 712, 723 (1990); *In re Marriage of Slavenas*, 139 Ill. App. 3d 581, 585 (1985)). In this case the bystander's report indicates there was evidence before the court regarding other factors under section 602. As Nimely herself concedes, the trial court stated at the close of the proceedings that he considered each factor under section 602. Thus, Nimely's contention is without merit.

¶25 We underscore the fact that there was strong evidence in this case establishing the

No. 1-11-0685

fact that Travis provided a much more stable home environment for Naomi. The stability of the environment is an important factor in determining a child's best interest. *In re Marriage of Dunn*, 208 Ill. App. 3d 1033, 1041 (citing *In re Marriage of Pease*, 106 Ill. App. 3d 617, 620 (1982)). See, e.g., *In re Marriage of Dunn*, 208 Ill. App. 3d 1033 (1991) (holding that the trial court's decision to modify custody was not against the manifest weight of the evidence or an abuse of discretion based on its finding that the petitioner was not providing a good home environment or proper adult supervision for the minor and that the minor may indeed be adversely affected by continued exposure to the petitioner's lifestyle); *In re Richmond*, 171 Ill. App. 3d 506 (1988) (holding that the trial court's modification order granting ex-husband and ex-wife joint custody was not against the manifest weight of the evidence when the son's emotional problems, bed-wetting and nightmares disappeared after living with ex-husband).

¶26 Notwithstanding, Nimely argues that section 610(b) creates a presumption in favor of the present custodian and maintains that a parent "need only be mentally and morally fit." We have long recognized that "[c]learly section 610(b) creates a presumption in favor of the present custodian, thus promoting the important factors of stability and continuity in the child's life." *In re Friedman*, 100 Ill. App. 3d 794, 803 (1981) (citing *In re Custody of Harne*, 77 Ill. 2d 414 (1979)). "But once a trial court has determined that the presumption has been overcome in the light of the factors set out in the statute we will disturb that determination on review only where the trial court's decision was contrary to the manifest weight of the evidence or amounted to an abuse of its discretion." *In re Friedman*, 100 Ill. App. 3d at 803 (citing *In re Custody of LaMarca*, 78 Ill. App. 3d 26 (1979); *Caulkins v. Caulkins*, 68 Ill. App. 3d 284 (1979)). It is not

No. 1-11-0685

our task to try the case *de novo*. *In re Marriage of Dunn*, 208 Ill. App. 3d 1033, 1040 (1991) (citing *In re Custody of Sussenbach*, 108 Ill. 2d 489, 499 (1985)). "Once the trial court concludes that a change in custody is necessary, great deference must be accorded that decision, since the trial court is in the best position to judge the credibility of the witnesses and determine the needs of the child." *In re Marriage of Dunn*, 208 Ill. App. 3d at 1040 (citing *In re Custody of Sussenbach*, 108 Ill. 2d at 499). Thus, we accord the trial court deference in holding that the trial court's judgment that the necessity of a change in custody was proven by clear and convincing evidence, and that joint custody was in Naomi's best interest, was not against the manifest weight of the evidence or an abuse of discretion.

¶27 Nimely also argues that the trial court should not have considered the wishes of Naomi. However, the statute specifically enumerates the wishes of the minor as one of the factors to consider. See 750 ILCS 5/602(a)(2) (West 2008).

¶28 Nimely further contends that "[t]he [d]efendant presented no evidence at the hearing to establish that [Naomi's] present environment seriously endangered her." However, proving a child's endangerment is required only in circumstances where a modification of custody is sought within two years of a custody judgment under section 610(a). 750 ILCS 5/610(a) (West 2008). There is no requirement that endangerment be shown under section 610(b). Thus, the bulk of Nimely's arguments on appeal are not well-grounded.

¶29 We do, however, find merit in Nimely's contention that the trial court erred in not making specific findings of fact in its judgment pursuant to section 610. Section 610(b) of the Act requires that the court "state in its decision specific findings of fact in support of its

No. 1-11-0685

modification or termination of joint custody if either parent opposes the modification or termination." 750 ILCS 5/610(b) (West 2008). See also *Department of Public Aid ex rel. Davis v. Brewer*, 183 Ill. 2d 540, 555 (1998) (quoting 750 ILCS 5/610(b) (West 1996)) (holding that section 610(b) "requires the court to 'state in its decision specific findings of fact in support of its modification *** if either parent opposes the modification.' ").

¶30 Here, the joint custody judgment does not include specific findings of fact. The joint custody judgment merely includes a handwritten paragraph in the preamble stating:

"Whereas, the Court heard the testimony of Petitioner as an adverse witness & finds a substantial change in circumstance & child's best interest exist to change custody of the child to joint custody[.]"

¶31 The bystander's report summarizes the court's findings, but the statute is explicit in requiring specific findings of fact in the court's decision. Thus, we remand with directions that the court modify the judgment to include its specific findings of fact in support of its modification of custody.

¶32 II. Nimely Forfeited Any Objection to the Home Study Report, and The Trial Court Did Not Abuse Its Discretion In Considering the Report.

¶33 Nimely argues that the home study report was erroneously entered into evidence and must be given very little weight. Nimely asserts that if the home study report was admitted into evidence and relied on by the trial court, the testimony of the caseworker who prepared the report was required to lay a proper foundation and Nimely should have been given the opportunity to cross-examine the caseworker. Nimely further maintains the home study report

No. 1-11-0685

contains inadmissible hearsay which should not have been relied on by the trial court.

¶34 We note that Nimely failed to object to the admission of the report into evidence at trial and in her motion for reconsideration. Nimely maintains that she failed to object because she did not realize the report had been entered into evidence until the bystander's report was certified. We note that the rule of waiver is a limitation on the parties, and not on the reviewing court. *In re Marriage of Kostusik*, 361 Ill. App. 3d 103, 114 (2005) (citing *In re Madison H.*, 215 Ill. 2d 364, 371 (2005)). Also, because this is a matter affecting child custody, we decline to apply the rule of waiver and will consider this issue. See *In re Marriage of Kostusik*, 361 Ill. App. 3d at 114 (citing *In re Madison H.*, 215 Ill. 2d at 371). See also *Godwin v. Godwin*, 104 Ill. App. 3d 790, 793 (1982) (holding that in a case as serious and delicate as a child-custody proceeding, the waiver rule should not be strictly enforced (citing *In re Marriage of Swift*, 76 Ill. App. 3d 154, 157 (1979))). Thus, we consider the merits of the issue.

¶35 However, we determine the trial court did not err in considering the home study report. As the court noted, the home study report was created pursuant to section 605 of the Act (750 ILCS 5/605 (West 2008)) and therefore could be admitted into evidence without the need for further foundational evidentiary requirements. Section 605(a) provides:

"In contested custody proceedings, and in other custody proceedings if a parent or the child's custodian so requests, the court may order an investigation and report concerning custodial arrangements for the child. The investigation and report may be made by a child welfare agency approved by the Department of Children and Family Services ***.
750 ILCS 5/605(a) (West 2008).

No. 1-11-0685

Subsection 605(b) provides that "[i]n preparing his report concerning a child, the investigator may consult any person who may have information about the child and his potential custodial arrangements." 750 ILCS 5/605(b) (West 2008). Section 605(c) specifically provides that "[t]he court may examine and consider the investigator's report in determining custody." 750 ILCS 5/605(c) (West 2008). Thus, Nimely's contention that the trial court should not have relied on the report is without merit.

¶36 Further, Nimely's argument that she was deprived of the opportunity to cross-examine the caseworker is belied by the statute itself, which specifically provides for full access to the investigator's file, as well as the right to call the investigator for cross-examination. The plain language of the Act provides, in relevant part:

"(c) The investigator shall make available to counsel, and to any party not represented by counsel, the investigator's file of underlying data, reports, and the complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (b) of this Section, and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator, or any person whom he has consulted, as a court's witness, for cross-examination." 750 ILCS 5/605(c) (West 2008).

¶37 Thus, Nimely could have called the caseworker as a witness at trial. There is no indication anywhere in the record that she made any effort to call the caseworker as a witness. Therefore, even considering the merits, Nimely's contentions have no basis.

¶38 III. The Trial Court Did Not Abuse Its Discretion

in Denying Nimely's Motion For a Continuance.

¶39 The determination of whether to grant a request for a continuance is a question within the trial court's sound discretion, and its decision will not be disturbed absent a manifest abuse of that discretion. *In re Knoche*, 322 Ill. App. 3d 297, 308 (2001) (citing *In re Marriage of Miller*, 273 Ill. App. 3d 64, 67 (1995)). An abuse of discretion occurs only where no reasonable person would take the position adopted by the trial court. *In re Knoche*, 322 Ill. App. 3d at 308 (citing *McKenzie Dredging Co. v. Deneen River Co.*, 249 Ill. App. 3d 694, 700 (1993)).

¶40 We note also that our Supreme Court Rules require that all child custody proceedings under the Illinois Marriage and Dissolution of Marriage Act "shall be resolved within 18 months from the date of service of the petition or complaint to final order." Ill. S. Ct. R. 922 (eff. July 1, 2006). The custody proceeding in this case was brought and held pursuant to section 610 of the Illinois Marriage and Dissolution of Marriage Act, and thus was subject to the 18-month deadline of Supreme Court Rule 922. The Comment of the Special Supreme Court Committee on Child Custody Issues further provides that "[w]ritten findings are required if the deadline is not met, and extensions of the time limit may only be granted for good cause shown, on written finding by the trial court." Ill. S. Ct. R. 922 (eff. July 1, 2006), Comment.

¶41 Here, the hearing occurred nearly two years after the petition due to several continuances, and there was no good cause shown by Nimely for a further continuance. The petition to modify custody was filed on November 22, 2008. The hearing was held on the petition on September 9, 2010, which was almost two years after service of the petition, and beyond the deadline established by Supreme Court Rule 922. We note that part of the delay in

1-11-0685

this case was caused by Nimely's delay in responding to the caseworker and her delay in participating in the home study.

¶42 Nimely did not show good cause for her request for a continuance to obtain an attorney. On the date of the hearing, Nimely indicated that she was representing herself and answered ready for the hearing. Nimely had nearly two years to obtain counsel but did not do so. To further delay the proceedings in determining Naomi's custody would not have been in Naomi's best interest. See also *In re Powers*, 94 Ill. App. 3d 646 (1981) (affirming the denial of a continuance where it was not in the child's best interests). We hold that the trial court did not abuse its discretion in denying Nimely's motion for a continuance.

¶43 CONCLUSION

¶44 The manifest weight of the evidence in this case supports the determination of the court to award custody to Travis. Nimely forfeited any objection to the court's consideration of the home study report, but in any event we hold that the court properly considered the report under section 605 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/605 (West 2008)). The trial court also did not abuse its discretion in denying Nimely's motion for a continuance where more than 18 months had passed from the date of service of the petition in contravention of Supreme Court Rule 922 (Ill. S. Ct. R. 922 (eff. July 1, 2006)), Nimely had caused some of the delay, she had indicated she would represent herself and answered ready on the date of the hearing, and she had nearly two years to obtain an attorney. We hold that the trial court's judgment granting Travis joint custody with Travis as the residential parent was not against the manifest weight of the evidence or an abuse of discretion. From the facts adduced at

1-11-0685

trial, granting joint custody with Travis as the primary residential custodian was clearly in the best interests of Naomi. However, section 610(b) of the Act requires the court to state in its decision specific findings of fact in support of its modification, and here the court did not include specific findings of fact in its joint custody judgment. Therefore, we affirm the judgment of the trial court, but remand with directions for the court to modify its joint custody judgment to state its specific findings of fact in support of its modification of custody.

¶45 Affirmed and remanded with directions.