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2011 IL App. (3d) 110557-U

Order filed December 16, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT
A.D., 2011

IN re MARRIAGE OF)	Appeal from the Circuit Court
ADOLF J. WALTERS,)	of the 10th Judicial Circuit
)	Tazewell County, Illinois
Petitioner-Appellant,)	
)	Appeal No. 3-11-0557
v.)	Circuit No. 10 D 446
)	
CARRIE J. WALTERS,)	The Honorable
)	Jerelyn D. Maher,
Respondent-Appellee.)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Justices Wright and Lytton concurred in the judgment.

ORDER

- ¶ 1 Held: A trial court's custody determination is not against the manifest weight of the evidence or an abuse of discretion where the record (1) reveals the trial court considered the enumerated factors in section 602(a) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/602(a) (West 2010)), and (2) contains evidence supporting the trial court's decision.
- ¶ 2 Petitioner, Adolf J. Walters, appeals from the trial court's order awarding sole custody of the parties' son to respondent, Carrie J. Walters. We affirm.

¶ 3

FACTS

¶ 4 Adolf and Carrie were married on July 23, 2003. One child, Adolf Paul Gavin Walters (Gavin), was born as a result of the marriage. The parties separated in 2010. Adolf's amended petition for dissolution of marriage was filed on August 24, 2010, and a response was filed. It cannot be determined from the record provided to us in this appeal whether the marriage has been dissolved.

¶ 5 Both parties filed separate petitions for sole custody of Gavin. Gavin was three years old at the time. The following evidence was adduced at the hearing on the parties' custody motions.

¶ 6 At the time of Gavin's birth, the parties resided in Washington, Illinois (the Washington home). The parties resided together at the Washington home until sometime in 2010. Carrie subsequently moved in with her sister and Adolf remained at the Washington home. Carrie currently resides with her parents. Adolf currently resides at the Washington home. In late 2010, Adolf's girlfriend, Lori Brady, moved in to the Washington home with Adolf. Sometime thereafter, Lori became pregnant with Adolf's child.

¶ 7 Prior to the parties' separation, Carrie was Gavin's primary caretaker. Adolf worked full-time in order to "pay the bills." Carrie worked part-time selling books. After the parties separated, Carrie also started cleaning houses. At the time of the hearing, Carrie had obtained an assistant manager position at Burger King.

¶ 8 Both parties acknowledge that their marriage was tempestuous. Both parties have had orders of protection entered against the other. Both parties testified to instances of physical violence against the other. Carrie testified that Adolf would get angry with Carrie. On separate occasions, Adolf allegedly threw furniture, grabbed Carrie by the throat, struck Carrie,

brandished a firearm, threatened Carrie, and punched several holes in the wall. Likewise, Adolf testified that Carrie would become angry with him. On separate occasions, Carrie allegedly grabbed Adolf's ear, threatened to kill Lori, slapped Adolf, broke into the Washington home, and refused to let Adolf leave.

¶ 9 In June 2010, Carrie posted several emotional statements on Facebook, one of which was: "I give up, fuck it all, I'm out." The parties separated a month later. The parties' briefs are unclear as to how exactly they shared custody of Gavin after separating. It appears that Carrie would have custody for half of the week and Adolf would have custody the remainder of the week. What is clear, however, is that when Adolf had custody, Gavin stayed with him at the Washington home and when Carrie had custody, Gavin stayed with her at Carrie's parents' home. The parties decided to pick up and drop off Gavin at Adolf's mother's house as opposed to the Washington home because there was "too much hostility."

¶ 10 In the summer of 2010, Carrie befriended Edward Mandrell. Carrie alleges the two are merely friends and have not engaged in any type of sexual relationship. Edward is a registered sex offender as a result of having sex with his 13 year old sister when he was 17 years old. Adolf does not want Edward to be in Gavin's presence. Carrie has never left Gavin alone with Edward. Edward has only seen Gavin on one occasion.

¶ 11 Adolf testified that Gavin had a great relationship with Lori. While Adolf testified that he has seen Carrie get frustrated with Gavin, he cannot "say anything bad about her and her parenting skills, except for my concern of lack of being there." Adolf also testified that he believes Carrie's care for Gavin is "good." Adolf believes, however, that Carrie allows Gavin to watch too much television. Adolf also believes that Carrie's relationship with her parents is

unstable.

¶ 12 Carrie testified that Adolf has used several racial slurs and does not like Gavin being subjected to such language. Adolf denies making any racial slurs. Carrie believes she is a good mother. Carrie is concerned that Adolf allows Gavin to call Lori "mom."

¶ 13 Upon the conclusion of the hearing, the trial court awarded sole custody to Carrie. Adolf appeals.

¶ 14 ANALYSIS

¶ 15 Adolf challenges the trial court's custody determination in favor of Carrie. Because the trial court properly considered the enumerated factors in section 602(a) of the Illinois Marriage and Dissolution of Marriage Act (Act), its custody determination was not against the manifest weight of the evidence, manifestly unjust, or an abuse of discretion.

¶ 16 On appeal, we give great deference to the trial court's best-interests findings because that court was in a better position than we "to 'observe the temperaments and personalities of the parties and assess the credibility of witnesses.'" *In re Marriage of Marsh*, 343 Ill. App. 3d 1235, 1239-40 (2003), quoting *In re Marriage of Stopher*, 328 Ill. App. 3d 1037, 1041 (2002). "Thus, a reviewing court will not reverse a trial court's custody determination unless it (1) is against the manifest weight of the evidence, (2) is manifestly unjust, or (3) results from a clear abuse of discretion. *Marsh*, 343 Ill. App. 3d at 1240, 799 N.E.2d at 1041." *In re B.B. & K.B.*, 2011 IL App (4th) 110521 ¶ 32. Moreover, this court will not substitute its judgment for the trial court's and will find an abuse of discretion only when the trial court " 'acted arbitrarily without conscientious judgment or, in view of all the circumstances, exceeded the bounds of reason and ignored recognized principles of law so that substantial injustice resulted.'" *Marsh*, 343 Ill. App.

3d at 1240, quoting *In re Marriage of Suriano*, 324 Ill. App. 3d 839, 846 (2001).

¶ 17 Section 602(a) of the Act provides a trial court shall consider all relevant factors when determining the best interests of a child, including the factors specifically set forth by the Act.

These factors are:

- (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 sibling 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 ***
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 2010).

¶ 18 Here, the trial court expressly considered and weighed all nine factors.¹ Specifically, the court: (1) found that both parents sought sole custody of Gavin so this factor "actually favors neither parent", (2) found that Gavin is three and therefore has not expressed a preference as to who he wishes to live with, (3) found that Gavin interacts well with both his parents, his grandparents and Lori, so this factor "doesn't really favor one party or the other", (4) found that Gavin has adjusted well to his home and community with both parents so this factor "doesn't, again, favor strongly one party or the other", (5 & 6) noted "some evidence" of Carrie's depression and "emotional aspects of a violence issue to be borne by both [parties], more so by Adolf", (7) noted both parties had some anger issues, however, on at least two occasions Adolf physically struck Carrie and also brandished a gun, so this factor "does weigh slightly in favor, on behalf of Carrie", (8) acknowledged both parties placed blame on the other, but more importantly, noted its "grave concern" for the fact that Adolf allows Gavin to call Lori "mom," so this factor "weighs in favor of the mother", (9) noted that neither parent is a sex offender.

¶ 19 The trial court also took into consideration the additional facts that Carrie would

¹ Section 602(a) actually contains ten factors but the tenth factor (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) is not relevant to this appeal. See 750 ILCS 5/602(a) (West 2010).

occasionally stay out late drinking alcohol and would not always make the best choice of friends, as evidenced by her friendship with a registered sex offender.² The court, however, found that Adolf's personality cannot be described as anything other than "selfish." The court also found it troubling that Adolf impregnated Lori before Gavin's family situation was settled.

¶ 20 The trial court considered the enumerated factors in section 602(a) as well as the other relevant factors prior to awarding Carrie sole custody. In doing so, the court expressly stated that it did not consider the evidence in a vacuum, but instead listened and looked at the demeanor of all the witnesses. Despite significant concerns with both parties, the court determined that Carrie was better suited to have sole custody of Gavin. Upon our careful review of the record, we cannot say that the court's custody determination was against the manifest weight of the evidence, manifestly unjust, or the result of an abuse of discretion.

¶ 21 The record contains evidence supporting the trial court's judgment. While Adolf disagrees, we note that the basis for his disagreement is grounded in challenges to the court's credibility determinations and to the weight given to the evidence. Such determinations fall within the exclusive province of the trial court. *Hoffman v. Altamore*, 352 Ill. App. 3d 246, 253 (2004). We will not reweigh the evidence or substitute our judgment for that of the trial court. *In re Rodney T.*, 352 Ill. App. 3d 496, 503 (2004).

¶ 22 Finally, we reject Adolf's assertion that the trial court abused its discretion in not awarding joint custody. " 'Since joint custody requires extensive contact and intensive communication, it cannot work between belligerent parents.' " *In re Marriage of McCoy*, 272 Ill.

² We note that Carrie has never left Gavin alone with Edward Mandrell. Moreover, Edward has only seen Gavin on one occasion.

App. 3d 125, 130 (1995), quoting *In re Marriage of Drummond*, 156 Ill. App. 3d 672, 679 (1987). The *Drummond* court noted that joint-custody orders are usually unworkable and should rarely be entered. *Drummond*, 156 Ill. App. 3d at 679. The record establishes that the parties repeatedly exhibited hostility, including physical confrontations, and were unable to cooperate in matters involving Gavin. Joint custody is entirely inappropriate under these facts.

¶ 23 For the foregoing reasons, we affirm the trial court's judgment.

¶ 24 Affirmed.