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2011 IL App (3d) 100684–U

Order filed October 19, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

IN RE MARRIAGE OF	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
KEVIN MARONEY,	)	Will County, Illinois,
	)	
Petitioner-Appellee,	)	
	)	Appeal No. 3–10–0684
v.	)	Circuit No. 04–D–1909
	)	
MADHUMITA CHATTERJEE,	)	Honorable
	)	Bennett J. Braun,
Respondent-Appellant.	)	Judge, Presiding

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Schmidt and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court did not err in denying mother's request to modify visitation to allow her unsupervised visitation with her daughter as mother failed to carry her burden to establish that unsupervised visitation was in child's best interests.

¶ 2 Respondent Madhumita Chatterjee petitioned for unsupervised visitation with her daughter, who was in sole custody of petitioner Kevin Maroney. The trial court denied her petition. She appealed. We affirm.

¶ 3 **FACTS**

¶ 4 Petitioner Kevin Maroney and respondent Madhumita Chatterjee were married in December 1994 and divorced in May 1998. They remarried in November 1999 and their daughter was born in September 2001. In November 2004, Chatterjee accused Maroney of sexually abusing the child. An order of protection issued against Maroney in December 2004, and Chatterjee was awarded temporary custody of the child. An investigation by the Department of Children and Family Services (DCFS) ultimately determined the sexual abuse charge to be voluntarily unfounded. Maroney was found not guilty of aggravated criminal sexual abuse following a bench trial. In early 2005, Chatterjee filed a petition to remove the child from Illinois and moved to Ohio to pursue employment opportunities, without the trial court deciding the motion. In Ohio, Chatterjee started her daughter in a treatment program for sexual abuse victims. During this period of time, Daniel Hynan, whom the trial court appointed to perform a custody evaluation, informed the court that he was "extremely concerned that such services can be damaging to any child who did not actually experience sexual abuse." Hynan noted that both the DCFS investigation and a criminal trial found Maroney not guilty of abusing his daughter. Also during this period, the trial court ordered that Chatterjee allow telephone contact between Maroney and his daughter, and to set up appointments for her with Hynan, both of which Chatterjee refused to do. Hynan ultimately was unable to submit a custody evaluation due to "a lack of positive contact" between Maroney and his daughter and the child's increasing negative behavior toward her father.

¶ 5 In July 2006, the trial court granted Maroney supervised visits with the child. In May 2007, a bifurcated judgment for dissolution of marriage order was entered, and the plenary order of protection issued against Maroney was terminated. A number of motions and correspondence during this period indicate that Chatterjee was uncooperative in producing the child for the custody

evaluation appointments and for scheduled visitation. In August 2007, the appointed visitation supervisor withdrew from the case, submitting a letter detailing her observations that Chatterjee was attempting to poison and impede the relationship between Maroney and his daughter. In September 2007, a guardian *ad litem* (GAL) was appointed. The GAL recommended Robert Galtzer-Levy as a therapist for the child, and Chatterjee again refused to regularly present the child for the scheduled therapy sessions. The GAL also filed an emergency motion to return the child to Illinois. In September 2008, Chatterjee moved to North Carolina to pursue employment opportunities, contrary to the trial court's order which required that she remain with the child in Ohio pending determination of her petition to remove.

¶ 6 Galatzer-Levy evaluated the child and issued a report in November 2008. The parties stipulated that Galatzer-Levy's opinions would be admissible as a custody evaluation. He diagnosed Chatterjee and her daughter with a shared psychotic disorder in which both believed that the child was sexually abused by Maroney. Galatzer-Levy recommended that the child receive immediate inpatient psychiatric treatment. He also opined that Chatterjee suffered from a severe psychopathology and had indoctrinated her daughter. Following submission of Galatzer-Levy's report, the trial court ordered the child returned to Illinois to receive psychiatric treatment, issued an order of protection against Chatterjee, and granted Maroney immediate possession of his daughter. On December 1, 2008, the child was removed from her school in North Carolina, returned to Illinois, and hospitalized for psychiatric treatment for three weeks. After her release, in January 2009, the child moved in with her father. The trial court ordered supervised visits between the child and Chatterjee. She filed a motion to modify supervised visitation, which the trial court heard and denied.

¶ 7 The trial court appointed Mary Gardner to conduct a custody evaluation and she issued a report with a number of recommendations, including that Maroney and Chatterjee work toward establishing "50-50 shared parenting," and that joint custody eventually be granted. While opining that there was parental alienation of Maroney by Chatterjee, Gardner stated it was not possible to determine if Chatterjee and her daughter shared a delusion about sexual abuse. Gardner also noted that the child was not diagnosed with a psychotic disorder during her inpatient treatment. In July 2009, an agreed order was entered which provided, in part, that supervised visitation would continue with the parties working toward a goal of unsupervised visitation. The parenting agreement stated that visitation should continue to be supervised "until further Order of Court." Chatterjee agreed to "withdraw with prejudice" the allegations of abuse she made against Maroney and agreed that Maroney be granted sole custody. The parties also agreed that the GAL continue in the case. The order stated the trial court received a custody evaluation and that "at this time, the minor child's emotional and psychological condition remains at risk, and unsupervised visitation between [Chatterjee] and the child would present a substantial endangerment to the child's emotional and psychological health." The parties also agreed to a visitation schedule and child support payments.

¶ 8 In March 2010, Chatterjee moved to modify visitation, arguing that it would be in the child's best interests to have unsupervised visitation, and that there was no evidence of a substantial danger to her by modifying visitation. A hearing took place on the motion. Chatterjee and Maroney testified. The GAL testified that she was concerned about terminating supervision because of Chatterjee's erratic behavior, which the GAL believed presented safety concerns for the child. While acknowledging Chatterjee's efforts in improving her parenting skills, the GAL remained concerned for the child's emotional and mental welfare. The GAL also expressed concern that Chatterjee was

a flight risk, particularly in light of her unauthorized removals of the minor to Ohio and North Carolina. The GAL noted that Chatterjee had not exercised all the visitation opportunities granted in the parenting agreement. The GAL informed the court that both the visitation supervisor and the child's therapist recommended that visitation remain supervised. They further recommended that if Chatterjee did not regularly exercise her visitation periods, they should be restricted.

¶ 9 The trial court denied Chatterjee's motion to modify visitation, finding that Chatterjee had not met her burden of proof. The trial court expressed concern that if visitation was unsupervised, Chatterjee would flee with the child or engage in inappropriate conduct. The trial court ordered that the issue be reviewed in six months. The trial court further found that modification of the visitation schedule was not in the child's best interests. Chatterjee moved for reconsideration, which was heard and denied. She appealed.

¶ 10 **ANALYSIS**

¶ 11 On appeal, Chatterjee argues that the trial court erred in denying her motion to modify visitation. She contends that supervised visitation is improper because the GAL failed to demonstrate any evidence of serious endangerment to the child and that it would be in her daughter's best interests to allow unsupervised and increased visitation.

¶ 12 We note that Maroney has not filed a response brief. However, because the record is simple and the issues may be determined without the aid of appellee's brief, we will decide the merits of the appeal. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 13 Section 502(a) of the Illinois Marriage and Dissolution of Marriage Act provides that parties in a dissolution action may "enter into a written or oral agreement containing provisions for *** support, custody and visitation of their children." 750 ILCS 5/502(a) (West 2010). The agreement

must be set forth in the judgment, unless it provides otherwise, and "the parties shall be ordered to perform under such terms." 750 ILCS 5/502(d) (West 2010). When the agreement's provisions are incorporated into the judgment of dissolution, the agreement merges in the judgment and is binding on the parties as if the trial court had made the determination. *In re Marriage of Morris*, 147 Ill. App. 3d 380, 389 (1986). An agreement between parents demonstrates that a custody decision is in the child's best interests. *In re Marriage of Boehmer*, 371 Ill. App. 3d 1154, 1159 (2007). " 'In a more or less amicable dissolution, the parents' natural desire to do what is best for their children gives any agreement about custody great weight as an indicator of what is in the best interest of the children.' " *Boehmer*, 371 Ill. App. 3d at 1159-60 (quoting *In re Marriage of Herron*, 74 Ill. App. 3d 748, 751 (1979). We will not reverse a trial court's custody determination unless it is manifestly erroneous or an abuse of discretion. *In re Marriage of Diehl*, 221 Ill. App. 3d 410, 424 (1991).

¶ 14 Chatterjee maintains that she is entitled to unsupervised visitation since the court-ordered term of 180 days of supervised visitation has been completed without any behavior or events that would require the continuation of supervised visitation. As noted by the trial court, Chatterjee misconstrues the provisions of the parenting agreement, which provided that visitation was reviewable after 180 days. The agreement does not state that once 180 days passed, visitation would be unsupervised. The trial court stated that Chatterjee also misconstrued her burden, which she argued requires Maroney or the GAL to offer evidence that unsupervised visitation would not be in the child's best interests. The parenting agreement provides that "at this time, the minor child's emotional and psychological condition remains at risk, and unsupervised visitation between [Chatterjee] and the child would present a substantial endangerment to the child's emotional and psychological health." To support her request for unsupervised visitation, Chatterjee was required to show that there would

be no risk to her daughter's emotional and psychological health if her motion was granted. *In re Marriage of Olsen*, 124 Ill 2d 19, 23 (1988) (when parenting agreement becomes part of judgment of dissolution, trial court is authorized to enforce its terms). She failed to do so. Both the trial court and the GAL expressed concerns with Chatterjee's inappropriate and erratic behavior. The GAL opined that Chatterjee's behavior posed safety risks to the child. The record establishes that Chatterjee acted to alienate her daughter from Maroney. She offered no evidence that she would not again engage in alienating or inappropriate behavior. Both the trial court and the GAL considered that Chatterjee was a flight risk if allowed unsupervised visitation, pointing to her removal of the child to Ohio and North Carolina without court approval. The trial court did not err when it found that Chatterjee did not satisfy her burden that unsupervised visitation would not seriously endanger her daughter. The trial court also denied Chatterjee's request to modify the visitation schedule. The GAL testified that Chatterjee failed to exercise the visitation she was currently afforded under the parenting agreement. The child's visitation supervisor and therapist each believed that if Chatterjee continued to fail to fully exercise her visitation rights, visitation should be further restricted. We find that the trial court's denial of Chatterjee's motion to modify was not manifestly erroneous or an abuse of its discretion. Accordingly, we affirm the denial.

¶ 15 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 16 Affirmed.