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2011 IL App (3d) 110424-UB

Order filed on September 29, 2011
Modified Upon Denial of Rehearing November 3, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
ROBERT LEE COULTER,)	of the 12th Judicial Circuit,
)	Will County, Illinois,
Petitioner-Appellant,)	
)	Appeal No. 3-11-0424
and)	Circuit No. 05-D-266
)	
AMY ELEANOR TRINIDAD,)	Honorable
)	Bennett J. Braun,
Respondent-Appellee.)	Judge, Presiding.

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

ORDER

- ¶ 1 *Held:* It was an abuse of discretion for the trial court to deny petitioner's request for a preliminary injunction barring removal of the couple's minor children, pending a hearing on respondent's request to remove the children from the state of Illinois.
- ¶ 2 Petitioner, Robert Lee Coulter, and respondent, Amy Eleanor Trinidad, were divorced on May 8, 2008. Pursuant to a joint parenting agreement, respondent received physical custody of the couple's children. On March 3, 2011, petitioner requested a preliminary injunction to enjoin respondent from removing the couple's minor children from the state of Illinois pending a

hearing on respondent's request to remove the children to the state of California. The trial court denied the petition. Petitioner appeals, arguing that the trial court's denial of a preliminary injunction was an abuse of discretion. We reverse.

¶ 3

FACTS

¶ 4 Following the filing of a petition for dissolution of marriage, petitioner and respondent entered into a joint parenting agreement. Pursuant to the agreement, respondent maintained primary custody of the children subject to petitioner's parenting time, which consisted of alternate weekends, as well as one weeknight every other week. The agreement also contained a provision that allowed respondent to remove the children from the state of Illinois, without any objection from petitioner, at any time after 36 months from the entry of judgment in the case. The trial court entered judgment dissolving petitioner and respondent's marriage on May 8, 2008.

¶ 5 On March 3, 2011, petitioner filed an emergency petition for a preliminary injunction to enjoin respondent from removing the couple's minor children from the state of Illinois, pending a hearing on whether the removal was in the best interest of the children. At a hearing on the petition, respondent testified that she was engaged to a man from California and that she intended to move to California with the children. At the time of the hearing, respondent did not have firm plans for the move; however, she stated that she could live with family members upon her arrival in California.

¶ 6 Petitioner and respondent both testified that while living in Illinois, the children were able to spend a significant amount of time with petitioner. Respondent testified that petitioner regularly exercised visitation for 10 days out of every 30. Petitioner testified that with his

parenting time, as well as time spent with the children at extracurricular activities, he was able to spend 40% of the year with his children. Petitioner further stated that he no longer agreed with the joint parenting agreement and that he wanted his children to stay in Illinois.

¶ 7 On June 13, 2011, petitioner's request for a preliminary injunction was denied by the trial court. On June 17, 2011, the trial court set a hearing on respondent's petition for permanent removal for October 17, 2011. Petitioner appeals the trial court's denial of a preliminary injunction.

¶ 8 ANALYSIS

¶ 9 Petitioner contends that the trial court abused its discretion when it did not grant a preliminary injunction prohibiting respondent from removing the couple's minor children from the state of Illinois pending the trial court's determination of respondent's request for permanent removal. Pursuant to section 501(a)(2) of the Illinois Marriage and Dissolution of Marriage Act (Act), either party in a marriage case may move for a preliminary injunction to enjoin a party from removing a child from the state of Illinois. 750 ILCS 5/501(a)(2) (West 2010).

Preliminary injunctions are designed to preserve the status quo pending resolution of the merits of the case. *In re Marriage of Slomka and Lenehan-Slomka*, 397 Ill. App. 3d 137 (2009). The decision to grant or deny injunctive relief is within the discretion of the trial court and will not be disturbed absent an abuse of discretion. *Id.*

¶ 10 Under Illinois law, a custodial parent who wishes to remove his or her minor children from the state must obtain leave of court by demonstrating that removal is in the best interest of the children. 750 ILCS 5/609(a) (West 2010). Our supreme court has specifically held that section 609 of the Act requires court approval where minor children subject to the jurisdiction of

the court are to be removed permanently from the state. *Fisher v. Waldrop*, 221 Ill. 2d 102 (2006). This requirement exists even when an agreement has been entered whereby both parties previously consented to removal. *In re Marriage of Boehmer*, 371 Ill. App. 3d 1154 (2007).

¶ 11 In this case, a grant of a preliminary injunction to petitioner would preserve the status quo pending resolution of respondent's request to remove the minor children from the state of Illinois. In effect, the preliminary injunction would do no more than prohibit respondent from an act which she is already lawfully prevented from doing. Further, based on our review of the record and the law, we believe that petitioner has demonstrated: (1) a clearly ascertainable right in need of protection; (2) irreparable injury that will occur without the injunction; (3) no adequate remedy at law; and (4) a probability that he will succeed on the merits of the case. See *In re Marriage of Jawad and Whalen*, 326 Ill. App. 3d 141 (2001). Therefore, we believe that the trial court abused its discretion when it denied petitioner's request for a preliminary injunction.

¶ 12

CONCLUSION

¶ 13 The judgment of the circuit court of Will County is reversed and the matter is remanded to the trial court for further proceedings consistent with this Order.

¶ 14 Reversed and remanded.