

NOTICE

Decision filed 10/28/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2011 IL App (5th) 100621-U
NO. 5-10-0621
IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

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).

<i>In re</i> MARRIAGE OF)	Appeal from the
JENNIFER HOWARD,)	Circuit Court of
)	Jackson County.
Plaintiff-Appellee,)	
v.)	No. 09-D-103
DONALD L. HOWARD,)	Honorable
)	Christy Solverson,
Defendant-Appellant.)	Judge, presiding.

JUSTICE SPOMER delivered the judgment of the court.
Justices Goldenhersh and Donovan concurred in the judgment.

ORDER

- ¶1 *Held:* Visitation order was not against the manifest weight of the evidence, where the trial court found it was not in the children's best interests for their father to have overnight midweek visitation during the school year.
- ¶2 The defendant, Donald L. Howard (Don), appeals the portion of the October 12, 2010, judgment of the dissolution of the parties' marriage, which denied his request for overnight visitation on Thursday nights with the parties' children during the school year. For the following reasons, we affirm.

¶3 FACTS

¶4 The plaintiff, Jennifer Howard, filed a petition for the dissolution of her marriage to Don on June 22, 2009. A hearing was conducted on March 24, 2010, to resolve the remaining issues not previously agreed to by the parties, which included, *inter alia*, Don's visitation schedule with the children. Pursuant to a joint custody and parenting agreement,

Jennifer was established as the residential parent. At the hearing, both parties testified that their seven-year-old daughter had been undergoing therapy to address problems she had encountered since the parties separated. The parties' son was four years of age at the time of the hearing. Jennifer testified that while the children are with her, they have friends over to play and they see Jennifer's parents frequently. Jennifer agreed that she had encouraged and never objected to Don's family having relationships with the children.

¶ 5 Jennifer opined that the current visitation schedule was not in the children's best interest. She specified that the children were back and forth too much and that they had complained to her about the schedule. Jennifer explained that her daughter had experienced confusion because of the schedule and had forgotten things needed for school at Don's house. Jennifer emphasized the children's need for a consistent routine during the school week. She conceded that the current visitation schedule was established in mediation, but qualified that she felt pressured into agreeing to it. Jennifer elaborated that the schedule had been set by Don in the fall (of 2009) and forced upon her without her input. She noted that she began objecting to the schedule in late October or early November 2009, but Don made no effort to change the schedule.

¶ 6 Don testified that he and Jennifer separated in May 2009 and that the current visitation schedule was established in September 2009 and included every Tuesday from after school until 5:30 p.m., every Thursday overnight, and every other weekend. Don stated his desire to continue Thursday overnight visitation during the school year and opined that the current schedule was in the children's best interest because it allowed him to spend more time with them and to be more involved with their bedtime routine and his daughter's schoolwork.

¶ 7 Regarding relationships with family and friends, Don testified that Jennifer's parents are very active and involved in the children's lives and that he still has a good relationship with them. In contrast, the children have very little contact with Don's family. Don

explained that his parents had not seen the children since his daughter's third birthday. He added that he has never invited any of the children's friends over to play when they are visiting him, but noted that the children sometimes see friends when he takes them to play at the park.

¶ 8 Don denied that the children ever complained to him about the current visitation schedule, but he acknowledged that Jennifer had been objecting to Thursday overnight visitation. Don agreed that the children need a stable schedule and asserted that the current schedule was stable and had been in place since September 2009. Don conceded that his daughter occasionally left items at his house that she needed for school, but on those occasions he took the items either to Jennifer's house or to the school. He explained that his house is only six miles from Jennifer's house and less than a quarter of a mile from the school.

¶ 9 At the conclusion of the hearing, the circuit court commended Don for being a father with such an interest in his children's lives and noted the difficulty in its decision that Thursday overnight visits were not in the best interest of the children. The same was memorialized in the judgment of the dissolution of the parties' marriage, which was filed on October 12, 2010. The circuit court based its decision on the testimony regarding the parties' daughter attending counseling, as well as the age of the children, and pointed out that the situation could change when the children get older. In addition, the court emphasized the need for consistent routines during the school week. The every-other-weekend visitation arrangement during the school year was maintained and Don's Tuesday visitation time was increased from after school to 7 p.m., to allow Don more time to have dinner with the children and to be involved with his daughter's schoolwork. Don filed a timely notice of appeal.

¶ 10

ANALYSIS

¶ 11 Don appeals the circuit court's decision to deny Thursday overnight visitation. "Generally, the party seeking to increase or otherwise modify visitation rights originally granted by the dissolution decree ** bears the burden of showing such alteration is in the best interests of the child." *In re Marriage of Tiskos*, 161 Ill. App. 3d 302, 309-10 (1987). "A reviewing court will not set aside the trial court's ordered visitation arrangements unless they are against the manifest weight of the evidence, [are] manifestly unjust, or resulted from a clear abuse of discretion." *In re Marriage of Ludwinski*, 329 Ill. App. 3d 1149, 1153 (2002). The same holds true in cases where the evidence is closely balanced. See *Hallock v. Wear*, 194 Ill. App. 3d 894, 907 (1990). "A judgment is against the manifest weight of the evidence when the opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based upon the evidence." *In re Marriage of Ricketts*, 329 Ill. App. 3d 173, 181-82 (2002).

¶ 12 In this case, Don challenges the circuit court's specified reasons for its decision relative to the children's age and the fact that the parties' daughter attends counseling. However, "we may affirm the trial court on any basis appearing in the record. [Citation.] It is the judgment and not what else may have been said by the trial court that is on appeal to a court of review." *In re Marriage of T.H.*, 255 Ill. App. 3d 247, 259 (1993). Although Don wishes to maintain Thursday overnight visitation, we find the circuit court's decision to the contrary reasonable and based on the evidence. Jennifer testified that the children had complained to her about the schedule and that the parties' daughter had experienced confusion and had forgotten things needed for school due to the schedule. Jennifer added that the children are back and forth too much and are in need of a consistent routine during the school week. Although Don opined that the current schedule was in the children's best interest, the same standard of review applies even if the evidence is closely balanced. See

Hallock, 194 Ill. App. 3d at 907. We find that the circuit court's decision regarding the visitation schedule was not unreasonable or arbitrary, nor was the opposite conclusion apparent. Accordingly, the circuit court's decision was not against the manifest weight of the evidence.

¶ 13

CONCLUSION

¶ 14 For the foregoing reasons, we affirm the judgment of the circuit court of Jackson County.

¶ 15 Affirmed.