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2012 IL App (3d) 110690-U

Order filed February 8, 2012

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IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

RONALD SALIER,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
Petitioner-Appellant,	)	Rock Island County, Illinois
	)	
v.	)	Appeal No. 3-11-0690
	)	Circuit No. 10-F-556
JENNIFER McCHURCH,	)	
	)	Honorable
Respondent-Appellee.	)	Frank R. Fuhr,
	)	Judge, Presiding.

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JUSTICE CARTER delivered the judgment of the court.  
Presiding Justice Schmidt and Justice McDade concurred in the judgment.

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**ORDER**

¶ 1 *Held:* In a case involving a petition for modification of custody, the appellate court held that the circuit court's denial of the petition was not against the manifest weight of the evidence.

¶ 2 The petitioner, Ronald Salier, filed a petition for modification of custody regarding Makenna Salier, the daughter whom Ronald had with the respondent, Jennifer McChurch. After a hearing, the circuit court denied the petition. On appeal, Ronald challenges the court's denial of the petition, arguing that the court erred: (1) by applying an incorrect legal standard; and (2) when it found that no change in circumstances had occurred and that modification was not in

Makenna's best interest. We affirm.

¶ 3

### FACTS

¶ 4 Ronald and Jennifer began dating in December 2007. Over the next three years, they had an on-again, off-again relationship. Makenna was born to the parties on February 27, 2009. On August 26, 2010, the parties entered into an agreed parenting order whereby they would have joint custody, but Makenna would reside primarily with Jennifer. Ronald was given visitation.

¶ 5 On February 7, 2011, Ronald filed a petition for modification of custody. Ronald sought sole custody of Makenna based on what he alleged were changed circumstances that seriously endangered Makenna's "physical, mental, moral and emotional health." Ronald alleged, *inter alia*, that: (1) Jennifer had been residing in her mother's home with her three children and several extended family members were also living there; (2) the bedroom of Jennifer's children was unkempt and unsanitary; (3) Jennifer frequently left her children with her sister, Julie Jewell, while she stayed overnight at her boyfriend's residence or out-of-town; (4) Jennifer "routinely" left her children to fend for themselves; (5) Jennifer failed to keep a "healthy and clean home"; (6) Jennifer verbally and physically abused her two oldest daughters in Makenna's presence; (7) Jennifer had allowed her brother, Jason McChurch, to care for her children, despite Jason's extensive criminal record; (8) Jennifer had allowed the father of her other two children, Curtis Peters, to be present with and/or care for Makenna, despite Curtis's extensive criminal record; (9) Jennifer's oldest daughter had been arrested for aggravated battery of a police officer in January 2011; (10) in late January 2011, Makenna had a bruise on her buttocks that "appear[ed] to have been caused by a blunt instrument and occurred while Makenna Salier was in [Jennifer's] care"; and (11) Jennifer "frequently use[d] foul and offensive language in front of Makenna." Ronald

also alleged that an incident occurred on January 22, 2011, when Jennifer left her children with Julie Jewell, in which Jason was allowed to leave the Jewell residence with Jennifer's children. Later that night, Jason threatened bodily harm to Julie and her boyfriend.

¶ 6 In July and August 2011, the circuit court held a hearing on Ronald's petition. Ronald testified that he lived in Geneseo and was a master sergeant with the Illinois State Police. He worked a rotating schedule of four days on and four days off for three weeks, then five days on and three days off for three weeks. When work conflicted with his visitation with Makenna, his mother would watch Makenna and Ronald's two other children.

¶ 7 Ronald stated that Jennifer moved in with him around April or May 2009, and moved out in December 2009. Jennifer moved back in with him in May 2010 after the house she was renting flooded. She moved out again in August 2010. They resumed their on-again, off-again relationship in October 2010, but ended it in December 2010.

¶ 8 With regard to Jennifer's parenting ability, Ronald testified that Makenna was filthy when he would get her for visitation. He claimed she was always tired and hungry, and that she only had a routine when she was in his care. He claimed that Jennifer was aggressive, used profane language regularly, and did not keep a clean living environment. Several witnesses testified that Ronald was a good father and that Makenna was happy around him.

¶ 9 Ronald presented numerous witnesses to support his allegation that it was not in Makenna's best interest to remain in Jennifer's custody. Several witnesses testified that Jennifer left rental properties in poor condition upon moving out. In particular, a residence Jennifer was renting in Geneseo in 2010 was left with substantial amounts of garbage and other items after the residence flooded.

¶ 10 Testimony was elicited that Jennifer had left her three daughters, Anastasia, Alexis, and Makenna, without adult supervision, and that Anastasia was disrespectful and unruly. Jennifer exercised poor judgment in her choice of caretakers for Makenna. Several witnesses testified that Jennifer had left Makenna in the care of family members who had criminal backgrounds or were otherwise unsuitable caretakers. These individuals included Jason McChurch, Curtis Peters, Belinda Wendell, Ashley Hessell, and Brad Hessell. Jason, Jennifer's brother, had a criminal history including aggravated battery and burglary, and had orders of protection against him in the past. Curtis, the father of Anastasia and Alexis, had a criminal history including aggravated battery and drug offenses. Curtis had just been released from jail and stated that he saw his children every other weekend before he was taken into custody. Testimony was also elicited regarding an incident that occurred on January 5, 2011, in which police responded to a residence regarding a possible battery committed by Curtis. Curtis became aggressive and had to be restrained. Anastasia came out of the residence and began hitting an officer around the head as he restrained Curtis. Twelve-year-old Anastasia was arrested for aggravated battery of a police officer, but Jennifer testified that the charge was reduced.

¶ 11 Belinda, Jennifer's mother, had Jennifer and Jason removed from her care for a time when they were children. Testimony was elicited that alleged Belinda used drugs and was verbally and physically abusive toward her children, which Belinda and others denied. In addition, Ronald claimed that Ashley Hessell was not a suitable caretaker because she had alcohol and drug issues and had a criminal record. Ronald claimed that Brad Hessell was not a suitable caretaker because he had a criminal history including aggravated battery and burglary.

¶ 12 A former friend of Jennifer, Maria Possin, testified on behalf of Ronald. She testified

that she witnessed Jennifer "smack" Anastasia and Alexis in the face and use profanity in the presence of, and sometimes directed at, her children. She claimed that Jennifer had left her children in the care of Jason and Curtis. Maria admitted that she had entrusted the care of her children to Jennifer on several occasions in the past, but would not do so now.

¶ 13 Ronald claimed that he had no knowledge of the criminal backgrounds of Jennifer's family members until January 2011. Jennifer disputed that claim, alleging that when they started dating, she told Ronald that she was not sure how her family would respond to him, given their criminal backgrounds. She also alleged that Ronald involved her in a temporary custody hearing he had for one of his children, in which the criminal backgrounds came out.

¶ 14 The parties both presented evidence regarding two incidents that involved Makenna and police responses. The first incident occurred on January 22, 2011. Julie Harrod (formerly Jewell), Jennifer's sister, testified that she was watching Jennifer's children that night. Around 11:00 p.m., Jennifer's children refused Julie's requests to quiet down. Her boyfriend, James, went in to try to calm Jennifer's children. Twelve-year-old Anastasia became furious when James said he would take Makenna. Anastasia began yelling; James told Anastasia she could leave if she did not like the situation. Anastasia called Curtis on her cell phone. Julie called Jennifer, who was in Chicago with her boyfriend. The police were also called and responded to the scene. Belinda came with Jason and his wife, Christen, who took Jennifer's children back to Belinda's house. The police were called a second time that night because Jason allegedly left a "death threat" on Julie's cell phone.

¶ 15 The police officer who responded to Julie's residence that night testified that Jason told him an altercation occurred between Jason and James in which James threw objects at him and

nearly pushed him down the stairs. No charges were filed against Jason. Jason said before leaving the residence that he would take matters into his own hands.

¶ 16 Ronald testified he requested a welfare check on Makenna on the following day. The police officer who conducted the welfare check said that Makenna was with another child in the living room of the residence in the presence of Jason and Curtis.<sup>1</sup> The residence was orderly and there was no apparent danger. Another officer, Patrick Robinson, testified that he went to the residence later that day because a caseworker from the Department of Children and Family Services had been called and sent to the residence to inquire as to its suitability for children. Jason was threatening the caseworker and Robinson was dispatched to allow the caseworker to complete his inquiry.<sup>2</sup>

¶ 17 The second incident occurred on June 21, 2011. The Moline police responded to a call that Ashley had choked Alexis at Jennifer's residence. Ashley watched Makenna that day until Jennifer returned from work at 5:00 p.m. Ashley went out for dinner with her fiancé that night and was not sure if she would come back that night or the next morning. Ashley was going to

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<sup>1</sup> Belinda testified that she did not stay at her house the previous night with Jennifer's children because she could not handle the stress of the situation.

<sup>2</sup> Robinson also testified that he responded to the scene of an incident in 2006 in which Curtis was stopped by police for driving without a license. During the stop, Curtis was disruptive and was arrested. Jennifer came out of the apartment building where the stop occurred and also was disruptive. She was arrested and taken to the police station. Robinson believed Jennifer was charged; Jennifer claimed that she was never arrested nor was she ever charged with any crime in connection with this incident.

watch Makenna again the next morning when Jennifer was scheduled to work. Ashley did come back and had been drinking. An argument ensued between Ashley and Alexis; Ashley refused to leave as Jennifer requested. Jennifer denied that any physical contact occurred between Ashley and Alexis.

¶ 18 Jennifer testified that her current retail position at a mall had a flexible schedule in which she worked when Ronald had visitation with Makenna. She alleged that she allowed Ronald to have more visitation than the agreed parenting order required. At times when she was unable to care for Makenna, Jennifer planned on having her mother, Belinda, care for Makenna. She stated she had moved four times since Makenna's birth.

¶ 19 Jennifer presented numerous witnesses to respond to Ronald's allegations. Several witnesses testified that Jennifer's residences have been clean and orderly. Jennifer testified that the condition of the Geneseo residence was due to the flood, and elaborated that at the time that Ronald's witnesses saw the residence, she was no longer living there and was in the process of moving in with Ronald. She presented photographs of her current residence, which showed the presence of many of the items shown in the pictures of the Geneseo residence presented by Ronald that were taken just after the flood.

¶ 20 Jennifer denied leaving her daughters without adult supervision. She claimed that she had never left Makenna in Jason's sole care; she would allow Jason's wife, Christen, to watch Makenna. Jason testified that Jennifer had left only Anastasia and Alexis in his care, but said that he had watched Makenna at Ronald's behest on two occasions. Christen testified that on one occasion, she had watched Makenna and Ronald's son while Jennifer and Ronald went out for dinner. Christen admitted that she obtained an order of protection against Jason in 2006, but

stated that Jason had since been diagnosed as bipolar, which is currently controlled by medication. Christen stated that she had three children and had entrusted their care to Jennifer in the past.

¶ 21 Jennifer stated that Curtis was only allowed to see their children when Curtis's wife was present, and denied that Curtis saw his children, Anastasia and Alexis, as often as Curtis claimed. Curtis denied Jennifer's claims that he had hit her in the past, and Jennifer testified that she obtained an order of protection against Curtis in 2008.

¶ 22 Belinda testified that she had watched Ronald's son a few times in the past, at Ronald's behest. Jason testified that Belinda had "totally changed" and was a different person now than she was when he was a child. He continued to have a relationship with her at present.

¶ 23 Jennifer testified that Ashley had lived with her and Ronald in the past. Brad testified that he had lived with Jennifer in the past and had watched Jennifer's children for her. He stated he was divorced and had a son that stays with him at times. Brad testified that he watched Makenna and Ronald's two children one time while Jennifer and Ronald went to an event.

¶ 24 Jennifer claimed that she had watched Ronald's children hundreds of times between 2007 and 2010.

¶ 25 On August 25, 2011, the circuit court issued a written order denying Ronald's petition for modification. The court assessed the evidence under the standard for modification found in section 610(b) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/610(b) (West 2010)) and cases interpreting the statute. In recounting the facts and Ronald's main allegations, the court noted that "[i]t appears from all of the testimony that [Ronald] was very familiar with [Jennifer], her interaction with her children, and her various family members prior

to the filing of this petition." The court found that Jennifer's relatively unstable housing situation was mostly due to the on-again, off-again relationship she had with Ronald, which included her moving in with him several times. Further, the court believed that any poor condition Jennifer may have left rental properties in upon moving out did not serve as proof that modification was warranted. The court also found that Ronald was well aware of Jennifer's extended family, noting in particular that "members of her extended family often babysat his other children as well as Makenna and her two older siblings." In addition, the court noted that an agreed order was entered on March 20, 2011, which prohibited either party from using Curtis Peters, Jason McChurch, Anastasia Peters, or Alexis Peters as caretakers for Makenna.

¶ 26 The court also said it was concerned about the January 22, 2011, incident that occurred at Julie's house, as well as the incident involving the Moline police. The court also stated that any psychological issues that Jennifer's oldest daughter, Anastasia, had did not serve as proof that Jennifer was incapable of properly parenting Makenna.

¶ 27 The court found that both Ronald and Jennifer presented evidence that they could provide a nurturing and stable environment for Makenna, and that Ronald failed to establish that a change in circumstances had occurred or that it was in the best interest of Makenna to modify custody. Accordingly, the court denied Ronald's petition. Ronald appealed.

¶ 28 ANALYSIS

¶ 29 On appeal, Ronald challenges the court's denial of the petition, arguing that the court erred: (1) by applying an incorrect legal standard; and (2) when it found that no change in circumstances had occurred and that modification was not in Makenna's best interest.

¶ 30 In relevant part, section 610 of the Act provides:

"(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." 750 ILCS 5/610(b) (West 2010).

¶ 31 Section 610(b) reflects a policy that favors stability and the finality of custody judgments, and contains a presumption in favor of maintaining the current custodial arrangement. *In re Marriage of R.S.*, 286 Ill. App. 3d 1046, 1051 (1996). "Changed conditions alone will not justify a modification of custody unless such conditions adversely affect the welfare of the child." *Marriage of R.S.*, 286 Ill. App. 3d at 1051. The circuit court must determine custody in relation to what is in the child's best interest, and must consider all relevant factors such as the interaction between the child and her parents, including other people who may significantly affect the child's best interest; and the mental and physical health of all people involved. 750 ILCS 5/602 (West 2010). We accord great deference to the circuit court's judgment because it is in a superior position to observe witness demeanor and to assess witness credibility. *In re Custody of Sussenbach*, 108 Ill. 2d 489, 499 (1985). We will not disturb a circuit court's custody determination unless it is against the manifest weight of the evidence. *Department of Public Aid ex rel. Davis v. Brewer*, 183 Ill. 2d 540, 557 (1998).

¶ 32 In his first argument, Ronald alleges that the circuit court "misconstrued the law and applied the wrong legal standard" in reaching its decision. Ronald claims that the court erred when it "rul[ed] it could not consider facts known by [Ronald] when the agreed custody order was entered." Our review of the record reveals no such error.

¶ 33 In its written order, the circuit court noted that Ronald filed his petition to modify less than six months after the parties entered into a joint parenting agreement. In referencing Ronald's prior knowledge of the situation, the court was indicating that it found it significant that Ronald knew of the situation when he entered into the agreed parenting order but was claiming less than six months later that the same circumstances now entitled him to custody of Makenna. There is no indication from the record that the court either refused to allow, or refused to consider, any evidence relevant to the modification issue. Our review of the record reveals that the court considered the evidence in light of the statute and appropriate case law. Ronald's argument in this regard is without merit.

¶ 34 In his second argument, Ronald argues that the circuit court erred when it found that no change in circumstances occurred and that modification was not in Makenna's best interest.

¶ 35 In its order, the circuit court discussed the evidence presented at the hearing and noted Ronald's allegations in support of his petition. The court found that Ronald "was very familiar with Ms. McChurch, her interaction with her children, and her various family members prior to the filing of this petition." With regard to the instability of Jennifer's living situation, the court found that it was mainly due to the on-again, off-again relationship she had with Ronald and her moving in with him several times. The court also found that Ronald was familiar with Jennifer's extended family, as "members of her extended family often babysat his other children as well as

Makenna and her two older siblings." The court noted that it was concerned about the events that required police intervention, but also found that Jennifer could provide a stable and nurturing environment for Makenna.

¶ 36 Despite Ronald's protestations regarding the caregivers Jennifer has chosen at times for Makenna, as the circuit court noted, Ronald himself has used some of those caregivers not only for Makenna, but also for his son. It is also noteworthy that Ronald has entrusted Jennifer to watch his other two children during their three-year, on-again, off-again relationship. Moreover, as the court noted, in March 2011, the parties agreed that Curtis Peters, Jason McChurch, Anastasia Peters, and Alexis Peters would not be used as caregivers for Makenna, and there is no indication from the record that Jennifer has failed to comply with that order.

¶ 37 Most of the evidence presented in this case was conflicting. The circuit court found that the evidence presented did not establish either that a change in circumstances occurred or that it was in Makenna's best interest to award custody to Ronald. The court's order reflects a careful consideration of the evidence in light of the appropriate legal standard. Under these circumstances, we cannot say that the court's judgment was against the manifest weight of the evidence.

¶ 38 CONCLUSION

¶ 39 The judgment of the circuit court of Rock Island County is affirmed.

¶ 40 Affirmed.