

NOTICE  
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2012 IL App (4th) 111060-U

Filed 4/18/12

NO. 4-11-1060

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

RACHAEL ALWOOD,	)	Appeal from
Petitioner-Appellant,	)	Circuit Court of
v.	)	Macon County
JEREMY LARGENT,	)	No. 03F326
Respondent-Appellee.	)	
	)	Honorable
	)	Thomas G. Little,
	)	Judge Presiding.

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PRESIDING JUSTICE TURNER delivered the judgment of the court.  
Justices Steigmann and Pope concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where a substantial change in circumstances had occurred such that a modification of custody was necessary to serve the best interests of the minor child, the trial court's decision to modify custody was not against the manifest weight of the evidence.

¶ 2 In February 2011, respondent, Jeremy Largent, filed a petition to modify the custody of his minor son from petitioner, Rachael Alwood. In October 2011, the trial court found a substantial change in circumstances had occurred and transferred custody from Rachael to Jeremy.

¶ 3 On appeal, Rachael argues the trial court's modification of custody was against the manifest weight of the evidence. We affirm.

¶ 4 I. BACKGROUND

¶ 5 Rachael and Jeremy had one child together, Trey, born in December 2002.

Rachael had custody of Trey from his birth until October 2010. She lives with her paramour, William Weaver. Rachael has two other children besides Trey. Jeremy lives with his wife, Kelly Largent.

¶ 6 In August 2005, Jeremy filed a petition to define visitation with Trey, and the parties were ordered to mediate the visitation issues. In July 2007, the mediator determined there was no realistic likelihood that a mediated agreement could be achieved. In August 2007, the parties entered into a stipulation for visitation.

¶ 7 In January 2011, Rachael filed a motion to amend the visitation schedule. In February 2011, Jeremy filed a petition to modify custody and other relief. He claimed it was in the best interest of the minor child that custody be transferred from Rachael to Jeremy, subject to Rachael's right of reasonable visitation. Jeremy also asked the trial court to order Rachael to contribute to the partial support and maintenance of the minor child. In August 2011, the court entered an agreed temporary order granting temporary legal custody of Trey to Jeremy. Rachael was allowed temporary visitation.

¶ 8 In September 2011, the trial court held a hearing on the petition to modify custody. Called as an adverse witness, Rachael testified she shared her residence in Oreana with Weaver. Rachael testified to an incident in 2007 where Weaver damaged her property by hitting her vehicle with his fist. She stated three children were in the car at the time. Weaver was placed on conditional discharge as a result of the incident. Around the time of Easter 2008, Weaver kicked Trey while they were "playing around wrestling." Rachael asked Weaver to leave.

¶ 9 Rachael stated she was diagnosed with impulse-control disorder. She started

counseling and began taking medication. In October 2010, Rachael struck her three-year-old daughter, Abigayle, in the face. Rachael said she was under a lot of stress at work and "life in general." Moreover, Abigayle persisted in wearing her "summer pajamas," when Rachael stated she needed to wear her warmer ones. Rachael did not take Abigayle to the doctor but put ice on the injured area and slept with her. She was later arrested for domestic battery.

¶ 10 Sandy Fisher, a second-grade teacher at Warrensburg-Latham, testified Trey was in her class. At first, he was "a little timid, although he settled into the classroom very quickly." She stated he was a "very good student" and did not give her any trouble.

¶ 11 Sara Pierce, a third-grade teacher at Warrensburg-Latham, testified Trey is a "very sweet kid" who seems "eager to please." At times, Trey would fail to complete his homework. Jeremy and his wife talked with Pierce to work out the problems.

¶ 12 Adrian Bird, a licensed clinical social worker, testified she received a referral to see Trey in January 2011 regarding allegations of abuse by Rachael and Weaver, "some eating concerns," and helping him to adjust to a new custodial environment. She stated Trey loves and wants to see his mother. Bird stated Trey is "very confused" about the situation regarding his parents and visitation. Trey indicated he likes Kelly and he "idolizes his dad." His biggest complaint was he wanted to see him more. Bird also stated Trey likes Weaver. Trey does not like the yelling that goes on between Rachael and Weaver or seeing his siblings get in trouble. Bird diagnosed Trey with adjustment disorder with anxiety and depressed mood. Bird recommended Trey have visits with Rachael.

¶ 13 Angelique Maxwell, an investigator with the Department of Children and Family Services (DCFS), testified she became involved in October 2010 after a call about an injury to

Abigayle's eye and face. She stated Trey was present when the injury occurred. During an interview with Rachael and Weaver, she learned of the incident where he kicked Trey in the stomach area.

¶ 14 Maxwell stated Rachael and Weaver obtained a mental-health evaluation. It was determined Rachael had impulse-control disorder. Both of them started services. Rachael was indicated for cuts, welts, and bruises, and both Rachael and Weaver were indicated for substantial risk because of ongoing fighting in the home. Maxwell found Jeremy's home to be "clean" and "neat." Trey was initially quiet and reserved during interviews but transformed into "a whole different kid." Maxwell found the changes in Trey were for the better. Maxwell opined it would "do more harm to Trey to send him back with his mother" because he is healthy, happy, and "seems very well taken care of where he's at right now."

¶ 15 On cross-examination, Maxwell testified Rachael's home was clean and safe. Trey had lived with his mother from December 2002 until October 2010. Maxwell stated Jeremy was absent from Trey's early life because he did not get along with Rachael and decided to stay away from her.

¶ 16 Colleen Mack, a program manager for outpatient therapy at Heritage Behavioral Health Center, testified she evaluated Weaver and confirmed the evaluation as to Rachael. She stated Rachael was diagnosed with impulse-control disorder, which is an "inability to control your impulses in regards to thoughts, behaviors, or actions." Rachael followed up on a treatment plan but was not able to engage in therapy services because of facility budget cuts.

¶ 17 Weaver had to undergo two evaluations because he was not forthcoming with certain information in the first meeting, including that he had kicked Trey and Rachael had hit

her daughter. Weaver was diagnosed with adjustment disorder with a depressed mood. Weaver attended the treatment plan but he discontinued treatment after one session because he discovered DCFS would not be paying for it and he did not want to bill his insurance.

¶ 18 John Hemingway testified he had two children with Rachael—Dominic and Abigayle, both of whom live with Rachael. He recalled a time when they had a verbal confrontation and Rachael threw "a large lemonade" at him. Another verbal confrontation occurred at "World of Power Sports" and involved Rachael getting into her truck and coming at Hemingway before he got out of the way. At some point, Rachael became involved with Weaver. She called Hemingway after Weaver kicked Trey and told him to get Weaver out of her house. When Hemingway arrived, Weaver had already left. Hemingway later helped move a refrigerator into Rachael's house because Weaver had removed several appliances after she threw him out. Weaver moved back in the next day. Hemingway was again called after Weaver knocked Rachael down and "choked her in front of the children." Hemingway arrived to find her upset and her neck red. Hemingway testified he called DCFS regarding the substantial bruise on Abigayle's face.

¶ 19 Jeremy testified he has been married to Kelly for nine years. He works as a utility operator at Archer Daniels Midland. Kelly was then unemployed. Jeremy sought a modification of custody because of the violence he learned about in the last year and for Trey's health.

¶ 20 On cross-examination, Jeremy stated he works seven days of first shift, seven days of second shift, and seven days of third shift. Trey is with Kelly "a lot" because of Jeremy's work schedule.

¶ 21 Kelly Largent testified she helps Trey with his homework and prepares all of his

meals. When Trey returns from unsupervised visitations, he "locks himself in his room," "refuses to eat," and "doesn't want to talk."

¶ 22 Lindsay Lyon, a child-welfare specialist, testified she created a service plan providing Rachael with supervised visits and parenting education. The supervisor for the visits was Danelle Binkley. During one visit, Binkley called Lyon to pick up the kids because she and Rachael had an argument and Rachael left. Lyon stated Rachael was agitated and yelled at Trey. During a certain time period, Trey stated he did not want to visit his mom because he was frightened due to the yelling. Shortly thereafter, Rachael began taking medication. Lyon then observed "a drastic difference" in her, finding her "more open," "much more caring," and "involved." During visits, Rachael began interacting with the children "in very appropriate ways."

¶ 23 Lyon stated Trey is "very happy with his mother" and "enjoys spending time with her." At one point, Trey stated he wanted to live with his mom and noted he was not able to spend a lot of time with his dad. At the time of the hearing, Trey indicated he wanted to spend time with both of his parents. Lyon believed Trey would be safe in Rachael's home.

¶ 24 William Weaver testified that in 2007 he and Rachael had a verbal altercation. He "lost [his] temper" and hit her vehicle. He paid a fine and served a term of probation. As to the incident with Trey, Weaver stated Trey kept kicking him in the leg one morning. Weaver told him, "if you keep kicking me, I'm going to kick you back, see how it feels." Weaver ended up kicking Trey in the side. Weaver then left the residence. After a few days, he and Rachael reconciled.

¶ 25 Marilyn Stevens, a clinical social worker, testified she believed Rachael had the

skills to keep her children safe. She thought the children liked Weaver.

¶ 26 Rachael testified she would most often yell at the kids when she got angry. She is "a lot better" in dealing with the children since taking medication and working with Stevens. Rachael works from 5 a.m. to 1:30 p.m. at Decatur Memorial Hospital coffee shop. She had visitation with Trey every other weekend and Monday evenings. She stated Weaver never hit or choked her.

¶ 27 In October 2011, the trial court entered its written order on the petition to modify custody. The court found Jeremy had proved by clear and convincing evidence that a substantial change in circumstances had occurred such that a modification of custody was necessary to serve the best interest of the child. The court placed custody with Jeremy, subject to Rachael's right of reasonable visitation. This appeal followed.

¶ 28 **II. ANALYSIS**

¶ 29 Rachael argues the trial court's findings that a change in circumstances had occurred and modification of custody was necessary to serve the child's best interests was against the manifest weight of the evidence. We disagree.

¶ 30 Section 610(b) of the Illinois Marriage and Dissolution of Marriage Act states, in part, as follows:

"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 the 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 Since stability is important in the lives of children, a strong presumption exists in favor of maintaining the status quo in custody arrangements. *In re Marriage of Davis*, 341 Ill. App. 3d 356, 359, 792 N.E.2d 391, 394 (2003); see also *In re Marriage of Spent*, 342 Ill. App. 3d 643, 652, 796 N.E.2d 191, 199 (2003) (noting "stability and continuity are major considerations in custody decisions"). "However, the overarching purpose of the Act is to promote the best interest of the children; therefore, once custody is before the court, it has broad discretion to modify custody in the child's best interests." *Davis*, 341 Ill. App. 3d at 359, 792 N.E.2d at 394.

¶ 32 In determining whether there has been a change in circumstances, "the trial court must look at the totality of the circumstances." *Davis*, 341 Ill. App. 3d at 359, 792 N.E.2d at 394. "A custody determination inevitably rests on the parties' temperaments, personalities, and capabilities, and the witnesses' demeanor." *Spent*, 342 Ill. App. 3d at 652, 796 N.E.2d at 199. A reviewing court accords great deference to the trial court's custody decision since it is in the best position to observe the temperaments and personalities of the parties and assess the credibility of the witnesses. *Spent*, 342 Ill. App. 3d at 652, 796 N.E.2d at 199. "[O]nce a trial court has determined that the presumption in favor of the present custodian has been overcome, we are not to disturb that determination unless it is against the manifest weight of the evidence, is manifestly unjust, or results from a clear abuse of discretion." *Spent*, 342 Ill. App. 3d at 652, 796 N.E.2d at

199.

¶ 33 In the case *sub judice*, the trial court found Jeremy had proved by clear and convincing evidence that a substantial change in circumstances had occurred such that a modification of custody was necessary to serve Trey's best interests. Rachael argues no change in circumstances had occurred and her slapping of Abigayle's face and Weaver's kicking of Trey were isolated events. However, the evidence presented showed a history of violent acts involving Rachael.

¶ 34 Hemingway testified Rachael once threw a lemonade at him after a verbal confrontation. On another occasion, he stated she tried to run him down with her vehicle. In June or July 2007, Weaver became angry and struck Rachael's vehicle with his fist when Trey and other children were inside. In October or November 2008, Rachael called Hemingway to say Weaver knocked her down and choked her in front of the children. As a result of the violence in this case, Weaver would leave or move out before reconciling with Rachael.

¶ 35 Rachael argues Trey's life has not gone well since he started living with his father, claiming he has not done well at school and was acting out at home. However, Fisher stated Trey was a "very good student" and did not give her any trouble. Pierce stated Trey failed to finish his homework on several occasions, which was common for third graders, but she talked with Jeremy and Kelly to rectify the problems.

¶ 36 Rachael also argues it was not in Trey's best interests to change custody, claiming he rarely gets to see his dad and spends most of his time with his stepmom. Although Jeremy does work certain shifts that make it difficult to spend time with Trey during the school year, it does provide him a better opportunity during the summer. Moreover, the evidence indicates

Kelly has taken an active and positive role in Trey's life.

¶ 37 The evidence in this case shows Trey was living in, at times, a violent household prior to being removed from Rachael's custody in October 2010. Since then, Rachael has been diagnosed with impulse-control disorder. Weaver also has anger-management issues. On the weekend of Easter 2011, Rachael had an argument with her sister, yelled at the children, and then left the house. Lyon said Trey was frightened by his mother's actions and did not want to visit with her anymore. Although Rachael has attended counseling, taken prescribed medication, and apparently improved her parenting skills, it cannot be denied Trey was living in a chaotic household when he was in Rachael's custody full-time.

¶ 38 Since living with his father, Maxwell found Trey to be "a whole different kid" and the changes in his life have been for the better. Although Trey was having some issues at school with regard to reading and math, he was receiving extra attention from Jeremy, Kelly, and his teachers to help him progress. It appears the stable lifestyle in his father's custody has helped produce a healthy and happy young boy. Moreover, Maxwell believed it would "do more harm to Trey to send him back to his mother." Although it is clear Trey loves his mother and visitations with her should continue, it is also clear a change had to be made. A review of the evidence in this case indicates the trial court's finding of a change in circumstances and that a modification of custody was necessary to serve Trey's best interests was not against the manifest weight of the evidence or a clear abuse of discretion.

¶ 39 III. CONCLUSION

¶ 40 For the reasons stated, we affirm the trial court's judgment.

¶ 41 Affirmed.