

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).

2013 IL App (3d) 130006-U

Order filed May 31, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

LEONARD ROBINSON,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Petitioner-Appellee,)	Will County, Illinois,
)	
v.)	Appeal No. 3-13-0006
)	Circuit No. 10-F-701
)	
JOYCE HENDERSON,)	Honorable
)	Matthew G. Bertani,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Lytton and O'Brien concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's order granting primary residential custody of the couple's minor child to petitioner was not against the manifest weight of the evidence.
- ¶ 2 Respondent, Joyce Henderson, appeals from an order of the circuit court awarding primary residential custody of the parties' minor child, Dana Henderson, to the petitioner,

Leonard Robinson. On appeal, Joyce maintains that the trial court erred in its custody determination. For the following reasons, we affirm the judgment of the circuit court.

¶ 3

FACTS

¶ 4 On July 7, 2010, Leonard filed a petition to establish a parent-child relationship with Dana Henderson, who was born March 1, 2010. The petition was filed shortly after Leonard learned that the Illinois Department of Children and Family Services (DCFS) had taken action against Joyce, an action which was subsequently dismissed. Leonard was found to be the father, and the matter proceeded to a custody determination pursuant to the Illinois Parentage Act of 1984. 750 ILCS 45/1 *et seq.* (West 2008).

¶ 5 The record contains extensive testimony regarding the position of each party, the most relevant points of which are summarized here. Leonard testified to his volatile relationship with Joyce over an eight-year period. Much of his testimony regarded Joyce's alleged abuse of alcohol and instances of violent behavior. Leonard testified that he lives with his brother, Kenneth Robinson, in a four-bedroom house in Bolingbrook, Illinois. He testified that one of the bedrooms would be exclusively for Dana. Leonard has another nine-year-old daughter, Ariana Robinson, who interacts well with Dana. Leonard also testified that he, his mother, and four sisters live in the Bolingbrook area and would help with the care of Dana while Leonard is at work as a truck owner-operator.

¶ 6 Akiva Carlson, testifying for Leonard, stated that he had been Joyce's boyfriend for approximately two years. He testified to obtaining an order of protection against her that was still in effect at the time of the hearing in the instant matter. The order of protection arose after

an incident at Carlson's house where Joyce became violent, exposed herself to Carlson's mother, and had to be retrained and transported by ambulance to a hospital for evaluation.

¶ 7 Carlson also testified that on June 29, 2010, he and Joyce became embroiled in an argument at his house after he asked her to collect her belongings and leave. When she refused, he called the police. After the police arrived, according to Carlson's testimony, he went inside to gather more of her belongings. When he returned, Joyce was gone, and three-month-old Dana had been left in a car seat in Carlson's driveway. The police asked Carlson to take the child into his custody, but he declined. At that point, DCFS was called and took the child into its custody. Carlson testified that he found an empty alcohol bottle nearby and that he was of the opinion that Joyce has a problem with alcohol.

¶ 8 Yvonne Robinson, Leonard's sister, testified that when Joyce left Dana in Carlson's driveway, Leonard called her and asked her to pick up Dana at the Maywood police station. Leonard picked up the child from Yvonne's home the next day after he got off work.

¶ 9 Kenneth Robinson, Leonard's brother and a member of the United States Martial Service, testified that Leonard and his daughter live in his house in Bolingbrook. He also testified that Leonard and his children have a large family support group in the Bolingbrook area that can and will help with Dana.

¶ 10 Erica Dragonmir, another of Leonard's sisters, testified that she had often observed Joyce being intoxicated.

¶ 11 Willa Mary Robinson, Leonard's mother, testified that she provides da ycare and would be able to care for Dana while Leonard is away at work.

¶ 12 Florine Poe, Joyce's mother, testified on her behalf. She testified that Joyce lives with her in Bolingbrook, along with three other children of Joyce. Florine testified that Joyce and Dana share a bedroom, and Joyce's three other children share another bedroom. Florine further testified that, in the past, her sons had lived in her house, which made it necessary for Joyce's children to sleep on the floor. She testified, however, that this had not happened in a long while. Florine admitted that she did not know if Joyce was currently employed and, although Joyce has lived with her for eight years, she did not know how often she had been employed.

¶ 13 Joyce testified that she had moved from her mother's home during the pendency of the hearing¹ to a three-bedroom house several blocks from her mother's house. She lives there with Dana and her three sons. She testified that she and Leonard broke up shortly after she became pregnant with Dana. She maintained that Leonard knew of the pregnancy but professed no interest in the child. She further testified that she never drank alcohol in the presence of the children. She denied that she left Dana in Carlson's driveway and denied being intoxicated during that event. She also testified that she was found not guilty on the child endangerment charge.

¶ 14 The trial court issued a written order of joint custody with Leonard as the primary residential custodial parent. The court indicated that it considered all the relevant statutory factors and found that it was in the best interest of Dana that Leonard be made primary residential custodian. The court noted that the factors were closely balanced, with five of the statutory factors having a neutral impact. The court found that Dana would have a significantly greater amount of interactions with siblings and family members if she was placed in Leonard's

¹ Joyce testified on a date approximately one month after her mother testified.

custody than she would with Joyce. The court noted a lack of family interaction in Joyce's family, particularly noting that, although Joyce lived with her mother for eight years, her mother had little knowledge of her work or daily activities. Regarding the mental and physical health of the involved parties, the court noted that there was some evidence of Joyce's mental instability and possible alcohol abuse sufficient to tip the scale on this factor in Leonard's favor. Regarding possible physical or emotional danger to the child, the court noted that, while she was found not guilty of child endangerment, the facts in evidence in the instant matter suggested some degree of danger for Dana should she be placed in Joyce's custody. The court also found that Joyce would not be able to facilitate and encourage a close and continuing relationship with Leonard and that Leonard has a decidedly negative attitude toward Joyce.

¶ 15 In addition to the statutorily enumerated factors, the trial court also opined that, based upon Joyce's work history, she would be unlikely to be able to maintain the rent payments on the house she had moved to during the pendency of the hearing. The court also had some concerns that, if she had to move back in with her mother, the children might end up with inadequate living space.

¶ 16 Based upon these determinations, the trial court ordered that Leonard be given primary residential custody of Dana. Joyce filed this timely appeal.

¶ 17 ANALYSIS

¶ 18 Initially, we note that Leonard has not filed an appellee's brief. However, we will decide the merits of this appeal based upon the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976). Joyce maintains that the trial court erred in awarding primary residential custody of Dana to Leonard. Specifically, she maintains

that the trial court misinterpreted the evidence and did not give proper weight or consideration to the evidence in her favor.

¶ 19 In determining custody, the paramount issue is the best interest of the children, and the trial court is required to consider all relevant factors, including, but not limited to, those listed in section 602 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/602 (West 2008)). In *re* Marriage of Seitzinger, 333 Ill. App. 3d 103 (2002). Since the trial court is in a better position than a reviewing court to observe the parties and assess the credibility of the parties and other witnesses, the reviewing court must afford great deference to the trial court's best interest findings. *Seitzinger*, 333 Ill. App. 3d at 106. Thus, the trial court's factual findings will not be disturbed on appeal unless they are against the manifest weight of the evidence or constitute a clear abuse of discretion. *Id.*

¶ 20 In the instant matter, the trial court weighed the statutory factors and determined that it was in the best interest of Dana that Leonard have primary residential custody. The court noted that most of the statutory factors had no relevance or were balanced in favor of neither party. The trial court found only two of the statutory factors to be significant: (1) the physical and mental health of all parties, including the physical and mental well being of the child; and (2) the interaction and interrelationships of Dana with parents, siblings, and any other persons who might significantly impact her best interest.

¶ 21 On the first factor, the physical and mental health of all parties and the safety of the child, the trial court expressed some concern about Joyce's mental stability and possible alcohol abuse. There was sufficient testimony, which the trial court found to be credible, that Joyce had emotional outbursts and alcohol issues to establish that she posed a possible problem. Also of note, the incident which gave rise to the charge of child endangerment, although Joyce was found not guilty following a trial, established that Joyce's lack of emotional stability or good judgment caused an event that necessitated the calling of

DCF& to take Dana into emergency custody. Based upon the record and the trial court's credibility determinations, we cannot say that the court's factual findings on this factor were against the manifest weight of the evidence.

¶ 22 The second factor which the trial court found to be significant was the interrelationship between Leonard and his family, particularly as to how it might enhance Dana's best interest. The court noted that Leonard's living environment and his number and quality of his family contacts would enure to the benefit of Dana. The court also observed that Joyce's living arrangements and family interactions were somewhat less stable than those of Leonard's. While these observations were disputed by Joyce, we cannot say that the trial court's conclusions were against the manifest weight of the evidence.

¶ 23 Joyce also argues that the trial court erred in not expressly considering the age and gender of the child, the fact that she is successfully parenting her three other children, and the fact that the child was initially in Joyce's custody. *In re Marriage of Wycoff*, 266 Ill. App. 3d 408, 409 (1994). Ultimately, Joyce's argument is that the trial court did not give greater weight to the factors which she believed weighed more heavily in her favor. While Joyce may argue that these factors should have weighed more in her favor, the trial court chose to weigh those factors differently, and its decision to do so was not against the manifest weight of the evidence.

¶ 24 Based upon the totality of the record, we find that the trial court's custody determination was not against the manifest weight of the evidence, nor did it constitute an abuse of discretion.

¶ 27 CONCLUSION

¶ 28 For the foregoing reasons, the judgment of the circuit court of Will County, granting primary residential custody of the parties' minor child to the appellee, is affirmed.

¶ 29 Affirmed.

