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2014 IL App (3d) 140291-U

Order filed August 19, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2014

JEREMY H.,	)	Appeal from the Circuit Court
	)	of the 13th Judicial Circuit
Petitioner-Appellant,	)	Grundy County, Illinois,
	)	
v.	)	Appeal No. 3-14-0291
	)	Circuit No. 13-F-8
JENNIFER L.	)	
	)	Honorable
Respondent-Appellee	)	Sheldon R. Sobol
	)	Judge, Presiding.

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

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**ORDER**

¶ 1 *Held:* Trial court's award of residential custody to mother was not against the manifest weight of the evidence where statutory factors did not balance in favor of either parent but the trial court found they tipped slightly for the mother.

¶ 2 Parents who established shared parenting agreement could not agree on where their kindergarten-aged child should attend school. Both parents sought residential custody, which the trial court awarded to the mother. The father appealed. We affirm.

¶ 3 **FACTS**

¶ 4 T.H., the minor child, was born August 28, 2008. His parents, Jeremy H. and Jennifer L., never married. For the two months prior to T.H.'s birth, Jeremy and Jennifer lived in Peotone with Jennifer's mother in her single-family home. When T.H. was five months old, Jeremy and Jennifer moved with T.H. to an apartment in Morris. Jennifer moved back to Peotone after one year. Jeremy and Jennifer established a shared parenting arrangement for T.H. He spent four days per week with Jennifer and three with Jeremy for the first three or four months after Jennifer moved out. For the two years before trial, T.H. resided with Jeremy four days each week and with Jennifer three days. Although the parties had made custody, visitation and other co-parenting decisions without assistance from the court, they could not agree on where T.H. should live to attend school.

¶ 5 Jeremy filed a petition to declare a father and child relationship and the trial court granted his petition. Jennifer filed a petition for permanent custody and Jeremy sought to "Determine Temporary Schooling." Both petitions were heard at an August 2013 hearing. Jeremy testified he lived in the same apartment he had lived in with Jennifer and had lived there for four years. His fiancée, Abby Helland, shared the apartment. He and Abby had been engaged for approximately one year. They put their wedding on hold during the custody proceedings, as custody was their primary concern. T.H. had known Abby since he was two years old and they enjoyed a loving relationship. She woke T.H. up in the morning and got him ready for preschool. She worked from 10 a.m. to 6 p.m. in Morris and was able to drop T.H. off at preschool. Jeremy's father lived in a downstairs apartment and came up every morning to help with the morning routine. Jeremy was available to pick T.H. up after school and spend the afternoon with him.

¶ 6           Jeremy described daily life in the Morris apartment. T.H. had his own bedroom in the apartment. They had an afterschool and nighttime ritual. Every Friday they took a trip to the library and then had family movie night. He, Abby and T.H. spent time with his extended family, including his mom and two brothers who lived nearby. There were a number of neighborhood children who came over to play ball with T.H. and Jeremy, and T.H. has made friends. Jeremy made T.H.'s doctor's appointment and notified Jennifer of them. She attended the appointments when they were a couple, but went to only one appointment after they split up. Jeremy referenced an appointment Jennifer made for T.H. which he found out about because the office called him. He was able to attend the appointment, where T.H. was diagnosed with asthma. Jeremy also has asthma and he and Jennifer agreed T.H. should see Jeremy's asthma doctor.

¶ 7           Jeremy had investigated the Morris school district, which he described as one of the best in the state. He spoke to the school principal about the situation and the school was prepared to enroll T.H. Jeremy explored volunteer opportunities and was ready to be involved. He praised Jennifer's parenting abilities and acknowledged she loved and cared for T.H. and T.H. loved Jennifer. He was willing to work with Jennifer regarding co-parenting issues, including visitation. For example, Jeremy planned a birthday party for T.H. at the local minor league ballpark and invited Jennifer and her mother.

¶ 8           Jeremy worked at a funeral home as custodian maintenance for the previous year. His work hours were 6 a.m. to 2 p.m., with an infrequent Saturday morning shift. He also attended Joliet Junior College (JJC), studying criminal justice, and anticipated graduating the following spring. He had no specific post-graduation plans. He would like to attend Lewis University and continue studying criminal justice. Jeremy wanted to work in

juvenile probations and be involved with kids. He had also taken the necessary tests to become a corrections officer, but did not receive any job offers.

¶ 9 Jennifer testified that she and T.H. lived with her mother in a single-family home her mother owned. Jennifer had lived there for 14 years, not including the one-year period she lived with Jeremy and T.H. in Morris. Jennifer described that T.H. was comfortable at his grandmother's home and that they had regular morning and evening routines. T.H. loved to play in the yard and they enjoyed watching movies and doing craft projects together. Jennifer investigated recreational activities in the area and several were available for T.H. She believed her home was a more stable place for T.H., noting there were not as many visitors coming in and out keeping T.H. from his routine. She acknowledged that her mother's boyfriend lived with them on the weekends and that T.H. was comfortable with him.

¶ 10 Jennifer had made arrangements at the Peotone schools for T.H. to attend kindergarten there. She attended Peotone schools and had a positive experience there. T.H. would attend with friends he knew from daycare and from playdates with Jennifer's friend's children. T.H. would take a bus from school to daycare and would attend daycare two to three hours a day for four or five days per week, depending on her work schedule. Jennifer worked at Walmart as a department manager. She worked from 8 a.m. to 4 or 5 p.m. Her schedule included two weekends a month, with two days off during the corresponding week when T.H. would not have to go to daycare. On occasion, Jennifer worked later and her mother would pick T.H. up from daycare.

¶ 11 Jennifer mentioned several examples illustrating what she described as Jeremy's attempts to minimize her role in T.H.'s life. She mentioned Jeremy's claims that he alone took T.H. to the doctor and testified that she took T.H. to the health department for all his

checkups through age four and Jeremy was not always available to attend. She also felt Jeremy acted negatively about her need to send T.H. to daycare, an opportunity she believed would benefit T.H. since he was familiar with the daycare and its other students, he would get his homework done there, and would increase his socialization skills. Jennifer was willing to work with Jeremy regarding visitation and was amenable to liberal visitation as could be worked out with Jeremy's schedule were she awarded residential custody.

¶ 12 Kathleen L., Jennifer's mother, testified that she owned a single family home in which she lived with Jennifer and T.H. She described that the home is in a quiet neighborhood with retirees on both sides of the house and daycare across the street. She would sometimes pick T.H. up from daycare when Jennifer could not be there by 6 p.m. She also took T.H. to the Saturday custody exchange at 4 p.m. because Jennifer was still at work. Kathleen took T.H. to her church on Sundays.

¶ 13 Because the parties wanted a ruling in order to immediately enroll T.H. in school, the trial court issued an oral ruling. It found that the statutory factors did not favor either side. It noted there was a slight benefit to Jeremy that he did not have to enroll T.H. in afterschool daycare but clarified that Jennifer's use of daycare was not a disadvantage to her and it provided socialization opportunities for T.H. The trial court pointed to the parties' work schedules, determining that Jeremy's was likely to change as he would be pursuing a new career, while Jennifer's schedule was set. The trial court also pointed to Kathleen's single family home where T.H. had his own room compared to Jeremy's rented apartment that was "less solid." The trial court further pointed to Jeremy and Abby's engagement, finding it "a bit unsettling" that they had not set a date for their wedding.

¶ 14 After discussing the above points and the other relevant statutory factors, the trial court stated, “It’s ever so small that the balances in this case tip in favor of placing the child for living purposes with [Jennifer].” The trial court awarded residential custody to Jennifer and suggested a visitation schedule but left it to the parties to work out. Jeremy brought a motion to reconsider, which the trial court heard and denied. The trial court again stated that the “evidence tips ever so slightly in favor of [Jennifer] in this case.” Jeremy appealed.

¶ 15 ANALYSIS

¶ 16 On appeal, Jeremy challenges the trial court’s award of residential custody to Jennifer, arguing the statutory factors do not support the custody decision. He asserts that T.H. benefits from greater interaction and interrelationships while in his custody and was better adjusted to his life in Morris. He challenges the trial court’s findings that Jennifer’s home was more stable and that his lack of a set wedding date was “unsettling.” Jeremy also argues the trial court improperly considered his future work schedule where there was no supporting evidence.

¶ 17 A trial court decides custody based on the best interest of the child. 750 ILCS 5/2-602(a) (West 2012). In making a custody determination, a trial court must consider the a number of statutory factors, including, in relevant part: (1) the wishes of the child’s parents regarding custody; (2) the child’s wishes regarding custody; (3) the child’s interaction and interrelationship with his parents and other persons who may “significantly affect” his best interest; (4) the adjustment of the child to his home, school and community; (5) the mental and physical health of the involved parties; (6) physical violence by potential custodian; (7) ongoing or repeated abuse; and (8) each parent’s

willingness and ability to facilitate and encourage a close and continuing relationship between the child and other parent. 750 ILCS 5/2-602(a) (West 2012).

¶ 18 In determining custody, the primary consideration is the child's best interest. *Hall v. Hall*, 226 Ill. App. 3d 686, 689 (1991) (citing *In re Marriage of Dell*, 191 Ill. App. 3d 652, 657 (1989)). A determination of custody rests on the parties' temperaments, personalities, and capabilities, as well as the trial court's assessment of the witnesses' demeanors. *In re Marriage of Spent*, 342 Ill. App. 3d 643, 652 (2003). There is a strong and compelling presumption that the trial court is in the best position to observe the parties and witnesses and we afford great deference to its custody determination. *Spent*, 342 Ill. App. 3d at 652. We will not reverse a trial court's custody determination unless it is against the manifest weight of the evidence. *Hall*, 226 Ill. App. 3d at 689.

¶ 19 As expressed by the trial court and the attorneys for both parties, Jeremy and Jennifer have done an amazing job navigating their co-parenting responsibilities. We commend them for their ability to make T.H.'s best interest their primary concern. It is because of Jeremy and Jennifer's dedication to their son that the trial court was faced with two parents for whom the statutory factors favored both. The trial court, in its initial ruling granting residential custody to Jennifer and in its subsequent ruling denying Jeremy's motion to reconsider, found that the balance tipped "slightly" in Jennifer's favor. We find its determination was not against the manifest weight of the evidence.

¶ 20 In making its ruling, the trial court stated that the evidence was close and did not favor either parent over the other parent. It discussed the applicable statutory factors as follows. Both Jeremy and Jennifer sought residential custody of T.H. and he was too young to express a desire to live with either parent. Jeremy's and Jennifer's extended families were involved in T.H.'s life. He lived with his maternal grandmother in Peotone

and saw his paternal grandfather daily when in Morris, and frequently saw Jeremy's mother and brothers who lived nearby. In light of the parties' shared custody arrangement, T.H. was adjusted to his home, school and community in both Morris and Peotone. He attended preschool or daycare and had friends in each community. While noting the benefit to T.H. from Jeremy's ability to pick him up after school, the trial court emphasized that the benefit did not overshadow the socialization benefit T.H. was afforded at daycare, a benefit that will be furthered as the children T.H. knows from daycare will attend the same Peotone schools. Neither Jeremy nor Jennifer suffered from any mental or physical health issues. There was no risk of abuse inherent in either environment and there was no issue with physical violence. The trial court also found there were no significant disputes between Jeremy and Jennifer.

¶ 21 Jeremy challenges several statutory findings by the trial court. As discussed above, the trial court found the statutory factors did not weigh in favor of Jeremy or Jennifer but tipped slightly in Jennifer's favor. Because the trial court's decision was based on evidence that was close but clearly favored neither party, we cannot say its determination was against the manifest weight of the evidence. The trial court was in a better position to observe the parties and witnesses. Each of its findings was supported by the testimony presented. In light of our deference to the trial court's determination regarding custody, we will not overturn its award of residential custody to Jennifer. Accordingly, we affirm its custody determination.

¶ 22 For the foregoing reasons, the judgment of the circuit court of Grundy County is affirmed.

¶ 23 Affirmed.