

2015 IL App (1st) 151163-U  
No. 1-15-1163  
September 29, 2015

SECOND DIVISION

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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DENNIS CISNEROS,	)	Appeal from the Circuit Court
	)	Of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 11 D 080119
	)	
KAYLA POCIUS,	)	The Honorable
	)	Pamela Loza,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE NEVILLE delivered the judgment of the court.  
Presiding Justice Pierce and Justice Hyman concurred in the judgment.

**ORDER**

¶ 1 *Held:* When the appellant fails to provide a record of the evidence presented to the trial court, the appellate court must accept the trial court's factual findings and affirm any rulings based on those findings.

¶ 2 Kayla Pocius appeals from an order granting custody of three of her children to Dennis Cisneros, the father of the children. We find that in the absence of a transcript or bystander's

report for the evidentiary hearings the trial court held, we have no basis for reversing the trial court's judgment. Therefore, we affirm.

¶ 3

### BACKGROUND

¶ 4

In paternity proceedings, Kayla admitted that Dennis was the father of N.C., born September 12, 2004, E.C., born August 14, 2006, and M.C., born July 12, 2007. On January 18, 2012, Dennis filed a motion for custody of the three children. The trial court ordered Dr. Kerry Smith to perform a home custody study to evaluate the parties and make a recommendation to the court.

¶ 5

Dr. Smith submitted her report to the court on May 13, 2014. She informed the court about Dennis's past legal troubles. He pled guilty to a charge of selling cocaine, and he had two convictions for driving under the influence of alcohol, one from 1999 and the other from 2005. Dennis completed two years of undergraduate courses and continued to pursue a bachelor's degree at Northeastern Illinois University. He shared a home with Graciela Manzanares and her son from a prior relationship. Manzanares held a master's degree in teaching and worked as a sixth grade teacher.

¶ 6

Dr. Smith reported that Kayla lived with David Ayoub, the father of Kayla's youngest child, D.A. Kayla also had a daughter almost four years older than N.C. Dr. Smith found the three Cisneros children lively, talkative and well-behaved. Dr. Smith reported that during the home visit, "[Kayla] seemed overwhelmed, anxious and somewhat defensive, and frequently explained that it was tough having five children. She reported that she yells at the children often, and has difficulty accomplishing things around the home because of the demands of

parenting. The children did not seem to listen to their mother, and [E.C and M.C.] actively disobeyed [Kayla's] instructions to stay inside when they accompanied the evaluator out of the house." Dr. Smith thought that the children seemed more comfortable in the home Dennis shared with Manzanares.

¶ 7 Dr. Smith discussed all of the factors listed as relevant to custody determinations under section 602(a) of the Illinois Marriage and Dissolution of Marriage Act. 750 ILCS 5/602(a) (West 2014); see 750 ILCS 45/14(a)(1) (West 2014) (making the same factors apply to parentage cases). Dr. Smith recommended that the children "should reside primarily with their father, but have ample time with their mother."

¶ 8 The trial court heard evidence on Dennis's petition for custody. At the conclusion of the hearing, the trial court entered an order dated March 24, 2015, summarizing the evidence and applying section 602(a) factors to the evidence. The court acknowledged that "Kayla has been the children's primary caretaker since their birth. The children are bonded to her and she has provided for them, cared for them when they were sick, taken them to school and sought out the appropriate health care providers when she thought that they had medical, psychological or mental health issues." However, the court concluded:

"The reality is that Dennis has progressed with his life, educationally and personally[,] while Kayla is stuck [with] little education, 5 children and no job. She is completely dependent on her boyfriend David Ayoub for her subsistence. While she is trying to do the best she can, she told the evaluator that she is overwhelmed and stressed. Her condition is apparent and has spread to the

children. [E.C. and M.C.] show signs of anxiety in her house, [where] they are nervous and not well behaved. [N.C.] is in a special school placement. [N.C., E.C. and M.C.] all present with more consistency and appear to be more settled and productive in their father's home. It is tranquil and they have a place to read, study and play.

\* \* \*

THEREFORE the court finds that \*\*\* DENNIS CISNEROS is a fit and proper person to have the sole care, custody, control and education of the three minor children \*\*\* and that it is in the best interest of these children that [Dennis] be granted their sole care, custody, control and education [citation] and shall have the sole authority to make all decisions regarding the children's welfare after consultation with Kayla."

¶ 9 The court set a date in June 2015 for the transfer of custody, in an order that set a detailed schedule for Kayla's visits, and awarded Kayla payments for past child support. Kayla now appeals. She presented the common law record as the record on appeal. She did not present transcripts for any of the hearings.

¶ 10 ANALYSIS

¶ 11 We apply the principles stated in *In re Marriage of Dobby*, 258 Ill. App. 3d 874, 876 (1994):

"In determining custody, the trial court should consider all relevant factors, including those listed in section 602 of the Act [citation], and decide what custodial

order serves the best interest of the child. The court has broad discretion in making this determination, and this court will afford great deference to the trial court's determination in recognition of that court's far superior position for evaluating the parents, child, and all other evidence. Accordingly, this court will not disturb the trial court's ruling on appeal unless it is against the manifest weight of the evidence or the trial court abused its discretion."

¶ 12 When the appellant has not provided a record of the evidence presented to the trial court, this court must presume that the evidence supported the trial court's findings of fact and that the order conformed with the law. *In re Marriage of Iqbal*, 2014 IL App (2d) 131306, ¶ 51. We note that Dr. Smith's report supports the trial court's judgment. We cannot find, on this partial record, that the trial court's findings are against the manifest weight of the evidence or that the trial court abused its discretion. Accordingly, we affirm the trial court's judgment.

¶ 13 Affirmed.