2015 IL App (2d) 140671-U
No. 2-14-0671
Order filed March 16, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF CASSANDRA BLONDIN, Petitioner-Appellee, and NATHANIEL BLONDIN, Respondent-Appellant.	))))))))))	Appeal from the Circuit Court of Winnebago County. No. 11-D-1407 Honorable Joseph J. Bruce, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Burke and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's custody judgment was not against the manifest weight of the evidence, and the court properly denied respondent's motion for a new trial.

¶ 2 Respondent, Nathaniel Blondin, appeals from a final custody judgment concerning the parties' two children in favor of petitioner, Cassandra Blondin. On appeal, respondent contends that (1) the trial court's custody decision was against the manifest weight of the evidence, and that (2) the court should have ordered a new trial based on newly discovered evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The parties were married in December 2009. Their two sons, J.B. and W.B., were ages 3 and 1½ at the time. During the marriage, the family lived with respondent's parents in their home. The parties separated in September 2011 and petitioner and the children moved in with her parents. The parties soon filed for dissolution and each sought sole custody of the children.

¶ 5 At hearings concerning the children's custody, petitioner testified that she was generally the more active, primary caregiver. Specifically, petitioner testified that she was more engaged than respondent when it came to the children's supervision, education, routine medical appointments, discipline, potty training, and meal preparation. Petitioner also testified that there was an incident where respondent had grabbed her and slapped her in front of the children. Concerning a scratch mark on W.B.'s back, petitioner testified that the mark was the result of respondent striking W.B. with a pair of jeans as punishment.

¶ 6 Respondent testified that when the children were young, petitioner was not at home often enough to have been their primary caregiver. Respondent denied striking petitioner and testified that the mark on W.B.'s back was the result of an accident wherein W.B. slipped and was scratched by respondent's jeans.

¶ 7 The trial court granted petitioner sole custody and found that she was the children's more active, primary parent. The court also noted respondent's use of violence against petitioner and W.B., and that respondent failed to "take parental responsibility" for the children. Next, the court found that the minors were adjusted to both of the parties' homes; however, the children were also adjusted to their school, which was near petitioner's residence. The court also noted the escalating animosity of respondent's mother, Lois, which was interfering with the parties' parenting of the children.

¶ 8 Finally, the court found that joint custody was not feasible. The court noted that pickups and drop offs between the parties for visitation had become acrimonious and unworkable. This problem was exacerbated by respondent, whom the court found often agreed to certain details concerning visitation but would later refuse to abide by the agreement. The court concluded that it was in the children's best interests to award sole custody to petitioner and established a visitation schedule for respondent.

¶ 9 After the trial court entered its ruling, respondent filed a petition to enjoin the children's removal. In an affidavit accompanying the petition, respondent alleged that, within days of the custody judgment, petitioner threatened that she would remove the children to another state (without specificity). Respondent also filed a motion to reconsider, which alleged that the trial court made numerous factual errors in deciding the case and that petitioner's intent to remove the children constituted "newly discovered evidence" warranting a new custody hearing. The court denied respondent's motion and found that petitioner's alleged post-hearing statement did not qualify as newly discovered evidence. The record reflects that no action was taken on the injunction request.

¶ 10 Respondent timely filed a notice of appeal.

¶ 11 II. ANALYSIS

¶ 12 Respondent first contends that the trial court's custody award was both contrary to and not based on the evidence presented. Specifically, respondent argues that: he was the children's "primary parent" and not petitioner; he did not fail to supervise the children on two occasions because there was no opinion testimony specifically stating that discipline was warranted; there was limited evidence regarding petitioner's parenting; and petitioner's testimony was not credible. After reviewing the record, we disagree with respondent.

¶ 13 In reviewing a custody determination under the Act, we are mindful that the trial court was in the best position to review the evidence and to weigh the credibility of the witnesses, and we will not disturb the trial court's custody decision unless it was against the manifest weight of the evidence. *In re Marriage of Bates*, 212 Ill. 2d 489, 515 (2004). "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." *Best v. Best*, 223 Ill. 2d 342, 350 (2006). Under this highly deferential standard of review, we will not retry the case (*Bates*, 212 Ill. 2d at 515) and in cases where the evidence clearly favors neither party, we are compelled to affirm the trial court's custody order as the *opposite* conclusion is not clearly evident (*In re Marriage of Pool*, 118 Ill. App. 3d 1035, 1039 (1983)).

¶ 14 Before turning to the merits, we note that the statement of facts in respondent's brief is highly argumentative (*cf.* Ill. S. Ct. R. 341(h)(6) (eff. Feb. 6, 2013)) and that, with respect to this issue, respondent's opening brief cites only two cases, which are limited to the "standard of review" section and do not directly pertain to his argument (*cf.* Ill. S. Ct. R. 341(h)(7)). Supreme court rules concerning appellate briefs are not mere suggestions, and it is within our discretion to strike a brief and dismiss the appeal for failure to comply with those rules. *Parkway Band and Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 10. Although we determine that resolving the matters concerning the children in this case takes precedence over respondent's lack of compliance, we admonish respondent that future noncompliance with our supreme court's rules will not be tolerated.

¶ 15 On the merits, respondent's custody arguments essentially ask us to retry the case, which we will not do. See *Bates*, 212 Ill. 2d at 516. Here, the trial court considered all of the statutory factors under section 602(a) of the Marriage and Dissolution of Marriage Act (the Act) (750

ILCS 5/602(a) (West 2012)) including the parents' wishes, the relationships between the parents and the children, the children's adjustment to their home and school, the parents' availability to the children, and the parents' living arrangements. The trial court carefully weighed those factors, and came to the conclusion that it was in the children's best interests to award sole custody to petitioner. Although the trial court was not required to make specific best-interests findings (see *In re Marriage of Diehl*, 221 Ill. App. 3d 410, 424 (1991)), we determine that the trial court's findings were properly based on and consistent with the evidence presented below. We therefore decline to disturb the trial court's custody judgment awarding petitioner sole custody.

¶ 16 Before moving on, we note that the appendices to respondent's brief include several dozen screenshots of text messages between the parties. The text messages appear to have been admitted in the trial court; however, they were not properly included as certified exhibits in the record on appeal. *Cf.* Ill. S. Ct. R. 321 (eff. Feb. 1, 1994). Attachments to briefs that are not included in the record are not properly before this court and will not be considered. *McGee v. State Farm Fire & Casualty Co.*, 315 Ill. App. 3d 673, 679 (2000). Nevertheless, even if these exhibits had been properly included in the record, our disposition of this issue would remain the same.

¶ 17 Next, we address respondent's contention that the trial court should have granted his posttrial motion for a new hearing. In his posttrial motion, respondent alleged that petitioner made a general statement about the children's removal and had, at the time of the hearing, "concealed" evidence of her intent to remove the children. We review the trial court's denial of posttrial motion for an abuse of discretion. *In re Marriage of Bohnsack*, 2012 IL App (2d) 110250, ¶ 8. "A trial court abuses its discretion when its ruling is arbitrary, fanciful, or

unreasonable, or where no reasonable person would take the view adopted by the trial court." *In re Marriage of Lindman*, 356 Ill. App. 3d 462, 467 (2005).

¶ 18 With respect to this issue, respondent primarily relies on our decision in *In re Marriage of Wolff*, 355 Ill. App. 3d 403 (2005). In *Wolff*, we held that the trial court did not abuse its discretion in granting a motion for a new trial where, at a postjudgment evidentiary hearing, the custodial parent admitted to signing a lease on a farmhouse in Quincy, Illinois, some 300 miles away from where the parties had lived, prior to the entry of the dissolution judgment. *Id*. at 406-10. In other words, in *Wolff*, we affirmed the trial court's decision to, in its discretion, grant a new custody trial based on newly discovered evidence.

¶ 19 We affirm the trial court's denial of respondent's motion for a new hearing on the ground that it was insufficient absent factual support. At best, respondent's posthearing motion made the nonspecific conclusory allegation that petitioner made a statement concerning the children's removal. Even taken as true that petitioner made such a statement, the statement alone is insufficient. In *Wolff*, we stated that in order to warrant a new trial, the movant "must demonstrate that the [newly discovered] evidence is *so conclusive* that it would probably change the trial result ***." (Emphasis added.) *Wolff*, 355 Ill. App. 3d at 409. Here, respondent's allegation concerning petitioner's statement failed to meet that burden. The trial court, therefore, did not abuse its discretion in denying respondent's posthearing motion.

¶ 20 Before concluding, we note that pursuant to Supreme Court Rule 311(a)(5) (eff. Feb. 26, 2010) we are required in all child custody cases to issue our decision within 150 days from the filing of the notice of appeal "[e]xcept for good cause shown." Respondent filed his notice of appeal on June 7, 2014. Thereafter, the parties sought an extension of time to file the record on appeal, sought numerous extensions to file their briefs, and filed each brief in the case *instanter*.

Although respondent's reply brief was not received until December 2, 2014, respondent was entitled to a fair and full opportunity to develop and present his position. We believe that, under the circumstances of the present case, a 150-day time limit should be subordinate to the justice this case deserves and that good cause has been shown.

¶ 21 III. CONCLUSION

¶ 22 For the reasons stated, we affirm the judgment of the Circuit Court of Winnebago County.

¶ 23 Affirmed.