2015 IL App (3d) 140313-U

Order filed April 3, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

In re MARRIAGE OF	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
NEVADA J. GOWAN, n/k/a	)	Whiteside County, Illinois,
NEVADA J. LEMKE,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-14-0313
	)	Circuit No. 11-D-92
and	)	
	)	
JOSHUA P. GOWAN,	)	Honorable
	)	John L. Hauptman,
Respondent-Appellant.	)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Carter and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's removal order was not against the manifest weight of the evidence.

¶ 2 Joshua P. Gowan appeals from the trial court's order that granted the removal petition of Nevada J. Gowan, n/k/a Nevada J. Lemke. On appeal, Joshua argues that: (1) removal is not in the best interests of the children; and (2) removal interferes with Joshua's visitation rights. We affirm.

¶ 3 FACTS

¶ 4 On April 8, 2006, Joshua and Nevada were married. After three years of marriage, Nevada filed a petition for dissolution of marriage, and thereafter, the court entered a judgment for dissolution of marriage. The judgment incorporated the parties' marital property agreement. The agreement provided that the parties shall have joint custody of their two daughters and named Nevada as the residential custodial parent.

¶ 5 On March 28, 2013, Nevada filed a petition for leave to remove the parties' children to Iowa. At the hearing on the petition, Nevada testified that she worked at Ashford University in Clinton, Iowa. At the time of the hearing, Nevada lived in a three bedroom apartment above an auto parts store in Morrison, Illinois. The apartment had been remodeled but did not have a yard.

¶ 6 Nevada stated that she was engaged to marry John Lemke. Lemke had four children from a prior marriage and lived in Le Claire, Iowa. As a result of Nevada's relationship with Lemke, the parties' children had grown very close to the Lemke children. Nevada was also pregnant with a child that was due in September 2013.

¶ 7 If the court granted the removal petition, Nevada intended to move into Lemke's three-bedroom home in Le Claire. Nevada and Lemke intended to convert the family room into a fourth bedroom for the parties' children. The home had a yard, was located in a safe family neighborhood, and was approximately two blocks from the school. During Nevada's visits to Le Claire, the parties' children seemed happy and played outside with their new friends until 8 or 8:30 p.m. Nevada helped Lemke with the cleaning, cooking, grocery shopping, and laundry. Nevada also noted that the Le Claire schools offered a variety of extracurricular activities for the children, and she compared the academic progress report with the Morrison school that the parties' children had attended.

¶ 8 Nevada acknowledged that the move might affect some of Joshua's weekday visitations, but she would work to establish an amicable visitation schedule. Nevada said that Joshua's father would have an opportunity to interact with the children during Joshua's weekend visitations.

¶ 9 Nevada stated that she paid $500 per month in rent and incurred additional expenses for utilities. Moving to Lemke's residence in Le Claire would eliminate these expenses and reduce other expenses associated with maintaining two households.

¶ 10 Lemke testified that he was engaged to marry Nevada and lived in a three bedroom home in Le Claire. Lemke shared the home with his four children. The children called Nevada "mom" and referred to the parties' children as their siblings. Lemke felt that he had a very good relationship with the parties' children.

¶ 11 Lemke also testified that he was a student at Palmer College of Chiropractic, and his sources of income were cost-of-living student loans and child support payments. Lemke intended to open a chiropractic practice in Le Claire after his November 2014 graduation.

¶ 12 Joshua testified that he and Nevada had an existing, agreed visitation schedule. On weekdays during the summer, Joshua picked the children up around 2:45 p.m. and had the children until 5 or 8 p.m., depending on whether Joshua had extended visitation that week. During the school year, the pickup time was approximately 3:30 p.m.

¶ 13 Joshua stated that he frequently attended the children's extracurricular activities and coached some of their athletic teams. Joshua's father and grandparents were an important part of the children's lives. Joshua often took the children to his father's house where they played and rode all-terrain vehicles. Joshua's grandparents, the children's great grandparents, also occasionally provided day care for the children. Joshua stated that Le Claire, Iowa was

approximately 45 minutes from Morrison, Illinois, but 10 minutes from his place of employment in East Moline, Illinois.

¶ 14 The trial court considered the best interests factors described in *In re Marriage of Eckert*, 119 Ill. 2d 316 (1988), and concluded that the evidence supported a finding that removal would be in the best interests of the children. The trial court specifically found that the move to Le Claire would improve the children's quality of life, enhance the children's living environment, and foster relationships with the children's step-siblings. The court modified the judgment for dissolution of marriage and ordered a new visitation schedule. The new schedule provided Joshua with visitation: (1) every other weekend; (2) Monday, Wednesday, and Friday from 3:30 until 8 p.m. during the week prior to a weekend visitation; (3) Tuesday and Thursday from 3:30 until 8 p.m. during the weeks that Nevada has weekend visitation; and (4) every other week during the children's summer break.

¶ 15 ANALYSIS

¶ 16 Joshua argues that removal is not in the best interests of the children because: (1) no evidence was presented that the move would enhance the children's quality of life; and (2) the move would interfere with his visitation and the visitation of his family.

¶ 17 Section 609 of the Illinois Marriage and Dissolution of Marriage Act governs the removal of children from this state. 750 ILCS 5/609 (West 2012). Under section 609, a court may grant a party leave to remove any of the minor children from Illinois whenever such a move is in the best interests of the children. 750 ILCS 5/609(a) (West 2012). The party seeking removal has the burden to prove that removal is in the best interests of the children. 750 ILCS 5/609(a) (West 2012). A best interest determination "cannot be reduced to a simple bright-line test," and "must be made on a case-by-case basis, depending, to a great extent, upon the circumstances of each

case." *Eckert*, 119 Ill. 2d at 326. A trial court's determination of the best interests of the children will not be reversed unless the decision is clearly against the manifest weight of the evidence. *In re Marriage of Collingbourne*, 204 Ill. 2d 498, 535 (2003). Such deference to the trial court is necessary because the fact finder had a " 'significant opportunity to observe both parents and the child and, thus, is able to assess and evaluate their temperaments, personalities and capabilities.' " *Eckert*, 119 Ill. 2d at 330 (quoting *Gallagher v. Gallagher*, 60 Ill. App. 3d 26, 31 (1978)).

¶ 18 To determine the best interests of the children in a removal proceeding, the trial court should consider several factors that include: (1) whether the proposed move will enhance the quality of life for both the custodial parent and the children; (2) the custodial parent's motives in seeking the removal; (3) the noncustodial parent's motives in resisting the removal; (4) the proposed move's likely effect on the noncustodial parent's visitation rights; and (5) whether a realistic and reasonable visitation schedule for the noncustodial parent can be worked out. *Eckert*, 119 Ill. 2d at 326-28. These factors are not exclusive and no individual factor is controlling. *In re Marriage of Hansel*, 366 Ill. App. 3d 752, 756 (2006).

¶ 19 In the instant case, there is no indication that the removal order was against the manifest weight of the evidence. Evidence of the first *Eckert* factor supported the trial court's finding that the removal would enhance the quality of life for the parties' children. Specifically, the Le Claire home was more conducive to raising children as it was near a school, located in a family neighborhood, and had a yard. The children also had developed friendships in the community. Although the parties' children would be required to share the Le Claire home with Lemke's four children and an infant, the evidence established that the parties' children had bonded with Lemke's children.

¶ 20 Joshua argues that the second *Eckert* factor, Nevada's motivations, weighs against removal. Joshua contends that the move would benefit Nevada at the children's expense. Nevada testified that the move to Le Claire would reduce her living expenses. The resulting cost savings could be redirected for the benefit of the children. Additionally, Nevada's desire to cohabitate with her fiancé provides an opportunity for the children to bond with their future step-siblings in a house and location that is more conducive to raising children. Therefore, Nevada's motivations do not weigh against removal. There also was no indication in the record that Joshua's motivation in opposing removal, the third *Eckert* factor, required reversal.

¶ 21 Joshua argues that the fourth and fifth *Eckert* factors weighed against removal because the driving distance would limit the amount of time Joshua could spend with the children. While we agree that the move would require additional transportation time, the added distance was not so onerous as to prevent the creation of a reasonable visitation schedule. In contrast to Joshua's cited cases, the 45 minute drive from Morrison to Le Claire does not weigh strongly against removal. Compare with *Hansel*, 366 Ill. App. 3d 752 (removal of the children from Illinois to North Carolina was not in the best interests of the children, in part, because removal would drastically affect father's visitation); *In re Marriage of Elliott*, 279 Ill. App. 3d 1061 (1996) (removal of the children from Illinois to Ohio was not in the best interests of the children); *In re Marriage of Coss*, 247 Ill. App. 3d 51 (1993) (trial court's finding that removal of the child from Illinois to South Carolina was not in the best interests of the child). Instead, the court considered the commute and ordered a revised visitation schedule that provided Joshua with alternating weekend visitations during the school year and alternating, week-long visitations during the summer.

¶ 22 The evidence regarding the *Eckert* factors does not weigh against removal and was not contrary to the best interests of the parties' children. Therefore, the trial court's removal order was not against the manifest weight of the evidence.

¶ 23 CONCLUSION

¶ 24 The judgment of the circuit court of Henry County is affirmed.

¶ 25 Affirmed.