2015 IL App (3d) 140709-U

Order filed February 6, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

In re MARRIAGE OF	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
CHRISTINA J. LAMANO,	)	Peoria County, Illinois.
	)	
Petitioner-Appellant,	)	
	)	
and	)	Appeal No. 3-14-0709
	)	Circuit Nos. 13-F-854
JEREMY H. LAMANO, SR.,	)	14-D-60
	)	
Respondent-Appellee.	)	Honorable Mark E. Gilles,
	)	Jude, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Carter and Lytton concurred in the judgment.

ORDER

¶ 1 *Held*: Where the trial court first granted petitioner emergency temporary custody, section 610 of the Illinois Marriage and Dissolution of Marriage Act did not operate to bar the trial court from awarding respondent sole custody of the parties' minor child following a subsequent hearing in the dissolution proceedings. The trial court's finding that it was in the minor's best interest for respondent to have sole custody was not against the manifest weight of the evidence.

¶ 2 Petitioner, Christina Lamano, filed a petition in the Peoria County circuit court seeking, *inter alia*, emergency temporary custody of the minor child, L.L. (D.O.B. 9/21/06).

¶ 3 The trial court awarded petitioner temporary custody with respondent, Jeremy Lamano, to have supervised visitation. The court further appointed a guardian *ad litem* and directed the parties to cooperate fully.

¶ 4 Petitioner subsequently filed a petition for dissolution of marriage, which the trial court consolidated with the earlier cause. The court heard testimony and argument in regard to the child custody issues on July 30, 2014, as well as on August 13, August 25, August 27, and September 10.

¶ 5 On September 10, the trial court awarded respondent sole custody of the minor child with petitioner to have supervised visitation, and ordered petitioner to undergo a psychological evaluation.

¶ 6 Petitioner appeals, arguing that the trial court's September 10 order constituted an improper modification of a previous custody order in violation of section 610 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/610 (West 2012)). Petitioner further contends the trial court's determination that it was in the minor child's best interest for respondent to have sole custody was against the manifest weight of the evidence.

¶ 7 We affirm.

¶ 8 BACKGROUND

¶ 9 On December 5, 2013, petitioner, acting *pro se*, filed a pleading entitled "petition for emergency temporary child custody order, temporary child support order with medical insurance, temporary maintenance/alimony pendente, temporary order for debt allocations." The petition alleged, *inter alia*, that respondent had removed petitioner and the minor child from the medical insurance provided through his employer, that respondent exhibited signs of relapse into alcohol abuse, that respondent had grown progressively irrational and aggressive toward petitioner and

the minor child, that respondent exhibited signs of mental illness or instability, and that both parties wanted a divorce. The petition went on to request a temporary custody order for sole custody in regard to the minor child subject to visitation with respondent.

¶ 10 On December 23, 2013, by agreement of the parties, the trial court granted petitioner sole temporary custody, sole possession of the marital residence, and ordered respondent to pay $400 per week in child support. At petitioner's request, the trial court ordered supervised visitation between respondent and the minor child over respondent's objection.

¶ 11 Petitioner subsequently filed a petition for dissolution of marriage on February 10, 2014. The circuit court joined that case (case No. 14-D-60) with petitioner's previous action (case No. 13-F-854) and, on March 5, 2014, entered an order for supervised visitation to continue at the Crittenton Center. Per that same order, the court also ordered the parties to mediation on child custody and visitation issues.

¶ 12 The parties met for mediation review on March 26, 2014. From the record, it appears that was unsuccessful and the court ordered a second mediation appointment. The second attempt at mediation also failed, and the court set the matter for hearing on custody and visitation issues.

¶ 13 On July 30, 2014, the parties presented testimony and argument. We note that the parties presented evidence on the same issues at additional hearings on August 13, August 25, and August 27, 2014. We further note that neither party set forth in their brief a cogent statement of facts detailing the substance of those hearings, nor did petitioner provide this court with any corresponding citation to the record for her various allegations regarding the trial court's impropriety. The following is a condensed version of events based upon our review of the trial transcripts.

¶ 14 Petitioner testified on her on behalf and presented no other witnesses. Throughout the course of the hearings, she attempted to testify about financial matters, including child support, the parties' vehicles, the marital residence, and her cell phone bill. The trial court admonished her repeatedly to limit her testimony to those facts relevant to child custody. Petitioner ultimately testified that respondent: (1) huffed chemicals to get high; (2) shot and killed L.L.'s cat; (3) had an obsession with guns and attempted to give L.L. a BB gun; (4) was diagnosed with some type of personality disorder as a child; and (5) beat L.L. by holding him up against the top bunk of the minor child's bed.

¶ 15 Respondent denied huffing chemicals and ever being diagnosed with a personality disorder or mental illness. He did enjoy guns and it was a hobby of his, but he had sold all his guns to buy a bow for hunting. As of the date of the August 13 hearing, respondent did not own any guns. As for the cat, respondent admitted that the cat had been shot and killed, but stated it was an accident. Respondent had reached out to grab a gun that was falling over and he accidentally grabbed the trigger, shooting the cat in the jaw. Respondent denied ever beating L.L. or being rough with him, testifying that the only means of punishment used was to take away the child's video games. Respondent further testified to the good relationship that he had with his son.

¶ 16 Respondent's roommate, David Wiseman, also testified. Wiseman stated that he rented the home, and respondent rented an upstairs room from him for $300 per month. A woman currently occupied the second upstairs room, but there had been a discussion about her moving out so that L.L. could have the second bedroom in the event respondent got custody. The guardian *ad litem* recommended at the close of evidence that supervised visits for respondent were no longer necessary. The visits between L.L. and respondent were excellent. The guardian

ad litem also expressed concern regarding petitioner's ability to facilitate a relationship between respondent and L.L. She opined that respondent should receive custody of the minor child.

¶ 17 At the conclusion of this evidence, the court, per a status order, changed respondent's visitation to unsupervised alternating weekends. It then took the matter under advisement and scheduled a hearing for August 25, 2014, to issue its ruling.

¶ 18 Before the trial court could issue said ruling, petitioner filed a motion entitled "notice of default and request for hearing." The motion alleged that respondent had failed to file a response to either case No. 13-F-854 regarding temporary custody and maintenance issues, or to case No. 14-D-60 regarding dissolution. Petitioner requested the court find respondent in default, dissolve the marriage, and grant all of the requests contained within her petition. The court allowed respondent leave to file a response to the dissolution petition in open court on August 25, 2014.

¶ 19 The petitioner contemporaneously filed a petition for order of protection, which, while mentioned, does not physically appear in the record.

¶ 20 Also at the August 25 hearing, the trial court addressed the filing of the petition for order of protection and, on its own motion, consolidated the order of protection case with the dissolution case. The court withheld issuing a ruling on either issue, and ordered that the minor be interviewed by the guardian *ad litem* as soon as possible. The court further expressed its concern to petitioner about the child being used as a pawn to effectuate success in the divorce case.

¶ 21 The parties returned to court on August 27, 2014, wherein petitioner testified as to the matters alleged in her petition for order of protection. She stated that upon L.L. returning home from a weekend with his father, he appeared upset and acted differently. The child hid in the closet with his hands over his ears rocking back and forth. While bathing him that evening,

petitioner observed bruises on the child's arm and a scratch on his buttocks. According to petitioner, L.L. stated "daddy did it" when she asked him how he got the bruises.

¶ 22 Respondent denied any incident of a physical nature that would have caused L.L.'s bruising. Respondent also testified that he first observed the bruise on the child's arm on Saturday while they were at the park playing on the monkey bars.

¶ 23 The trial court reserved ruling on the issues, and set a new hearing date in order to allow the guardian *ad litem* time to interview the child prior to issuing her opinion with respect to the order of protection.

¶ 24 On September 10, 2014, the guardian *ad litem* testified as to her meeting with the minor child. She stated that based upon her observations, respondent and the minor were bonded and had a good rapport. When she asked the child about the bruises petitioner allegedly noticed, he said he could not remember how he had gotten them and that he had a good time during the visit with his father. The guardian *ad litem* recommended that the trial court deny the petition for an order of protection and stood by her earlier recommendation that respondent be awarded sole custody.

¶ 25 The trial court then outlined the best interest factors of section 602 of the Act (750 ILCS 5/602 (West 2012)) and applied them to the facts of the case. The court noted that the child's adjustment to his home, school, and community weighed in favor of the petitioner, given that he could continue to attend the same school and live in the same neighborhood as his friends. However, it found that the factor regarding interaction and relationship of the child with his parents weighed heavily in respondent's favor. The court went on to state that petitioner significantly and seriously negatively affected the interaction and interrelationship of the child with respondent, and did so on a constant and disturbing basis.

¶ 26 The court further expressed concern regarding petitioner's mental health. Despite petitioner's allegations regarding respondent's mental health, the court was more concerned by petitioner's interaction with her son, her reaction toward the child's visitation with respondent, and her inability to follow the court's direction on several matters. The trial court then ordered petitioner to undergo a psychological evaluation.

¶ 27 Finally, the court emphasized the importance of the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child. It believed respondent could do so given the opportunity, but that petitioner was unwilling and unable.

¶ 28 The court then granted sole custody of the minor child to respondent, with respondent to have supervised visitation at a time and day agreed upon by the parties.

¶ 29 Petitioner appeals.

¶ 30 ANALYSIS

¶ 31 As an initial matter, we note that we have spent a significant amount of time attempting to untangle petitioner's arguments. Her brief is, for all intents and purposes, unintelligible. Respondent's brief does little to illuminate the issues, and cites to no authority to support his argument, aside from a citation to a case for the purposes of highlighting this court's standard of review. Neither party complied fully with Illinois Supreme Court Rule 341 (eff. Feb. 6, 2013).

¶ 32 That being said, we find that petitioner's argument boils down to one key issue: whether the trial court erroneously granted respondent sole custody in light of section 610 of the Act (750 ILCS 5/610 (West 2012)).

¶ 33 Section 610 provides in pertinent part:

> "(a) Unless by stipulation of the parties or except as provided in subsection (a-5), no motion to modify a custody judgment may be made earlier than 2 years after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe the child's present environment may endanger seriously his physical, mental, moral or emotional health." 750 ILCS 5/610(a) (West 2012).

¶ 34 Petitioner specifically contends that after the trial court granted her motion for custody and child support on December 23, 2013, section 610 prohibited the trial court from modifying the child support order in favor of respondent less than a year later. We disagree, and find that the December 23 order was not a final "custody judgment" as contemplated by the statute, thus section 610 does not apply.

¶ 35 The record unequivocally demonstrates that petitioner requested an emergency temporary custody order, and that is what the trial court granted. The parties may have agreed to the terms, but doing so did not function to transform a temporary order into a permanent one. As the Fourth District pointed out in *Doyle v. Doyle*, 62 Ill. App. 3d 786, 788 (1978), *overruled on other grounds*, *In re Custody of Harne*, 77 Ill. 2d 414, 419-20, (1979), the term "custody judgment" in the statute refers to final rather than temporary orders of custody. The rationale is clear—the effective use of temporary custody orders would be greatly reduced if they could only be vacated or modified in conformity with the stringent requirements of section 610. *Id.*

¶ 36 That same rationale is at work here. The trial court, when faced with an emergency petition for temporary custody alleging both respondent's physical abuse and unstable mental state, erred on the side of caution by granting petitioner temporary custody. The appointment of

the guardian *ad litem* to represent the minor's interest bolsters the argument that the order was temporary in nature. Petitioner would have custody until such time a more thorough, in-depth review of the parties' circumstances could be performed, and a final order regarding custody and visitation could be entered in the dissolution proceedings.

¶ 37 We accordingly find that given the temporary nature of the December 23 order, the two-year bar for modification of custody set forth in section 610 is inapplicable. The trial court did not err in awarding respondent custody of the minor child on September 10, 2014.

¶ 38 Petitioner also appears to make a sweeping, generalized argument that the trial court erred in finding it was in L.L.'s best interest for respondent to have sole custody. In the interest of thoroughness, we address any allegations that the trial court's grant of custody in favor of respondent was against the manifest weight of the evidence.

¶ 39 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 those listed in section 602 of the Act. *In re Marriage of Seitzinger*, 333 Ill. App. 3d 103, 108 (2002). "In cases regarding custody, a strong presumption favors the result reached by the trial court and the court is vested with great discretion due to its superior opportunity to observe and evaluate witnesses when determining the best interests of the child." *Id.* (citing *In re Marriage of Dobey*, 258 Ill. App. 3d 874, 876 (1994)). 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.*

¶ 40 As we noted above, the trial court methodically considered the best interest factors of section 602, finding more factors than not weighed in favor of respondent. Petitioner contends the trial court ignored respondent's obsession with guns, childhood mental illness diagnosis, and history of alcohol and drug abuse. To the contrary, the record reflects that the trial court, over

the course of five separate hearings, took all the facts and circumstances of the case into consideration. That the trial court gave less weight to those alleged issues does not translate into an abuse of discretion where it is up to the trial court to make a determination as to the parties' credibility and temperament. *In re Marriage of Diehl*, 221 Ill. App. 3d 410, 424 (1991); see also *In re Marriage of Anderson*, 409 Ill. App. 3d 191, 199 (2001) ("[I]t is well established that the credibility of the witnesses and weight to be given to their testimony is for the trier of fact to decide, and a reviewing court may not substitute its judgment for that of the fact finder.").

¶ 41 The trial court voiced particular concern in regard to the petitioner's unwillingness to facilitate a close and continuing relationship between the respondent and L.L. That the court placed greater weight on this factor is not unreasonable nor does it constitute a clear abuse of discretion where the record demonstrates the court relied on the reports regarding respondent's supervised visitation at the Crittenton Center and the opinion of the guardian *ad litem*.

¶ 42 We accordingly find that the trial court's best interest determination in awarding custody to respondent was not against the manifest weight of the evidence.

¶ 43 Finally, the trial court noted that petitioner's testimony and demeanor on the stand raised some questions as to her mental health. It, therefore, ordered her to undergo a psychological evaluation. Petitioner argues that the court's order for a psychological evaluation without cause or pleadings deprived her of due process.

¶ 44 First, a *sua sponte* order for such an evaluation would likely fall squarely within the trial court's purview for determining custody and visitation issues where there is some question as to a parent's mental health and/or stability. However, it is unnecessary for us to reach the merits of this issue; petitioner's failure to cite to any authority to support her argument effectively waives it. *Zawadzka v. Catholic Bishop of Chicago*, 337 Ill. App. 3d 66, 75 (2003); Ill. S. Ct. R.

341(h)(7) (eff. Feb. 6, 2013). We, again, acknowledge that petitioner is *pro se*, but the rules of procedure apply to her all the same. See *People v. Vilces*, 321 Ill. App. 3d 937, 940 (" '[a] *pro se* litigant must comply with the rules of procedure required of attorneys, and a court will not apply a more lenient standard to *pro se* litigants.' ").

¶ 45 We accordingly find petitioner waived any due process argument.

¶ 46 CONCLUSION

¶ 47 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 48 Affirmed.