2015 IL App (3d) 140885-U

Order filed March 6, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

In re MARRIAGE OF	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
DEBRA ATTAR,	)	Will County, Illinois.
	)	
Petitioner-Appellee,	)	
	)	
and	)	Appeal No. 3-14-0885
	)	Circuit No. 13-D-1478
JEFFREY ATTAR,	)	
	)	
Respondent-Appellant.	)	Honorable Dinah L. Archambeault,
	)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Presiding Justice McDade and Justice O'Brien concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm entry of a joint custody order entered without a formal evidentiary hearing.

¶ 2 Respondent, Jeffrey Attar, and petitioner, Debra Attar, had three children during their marriage. Debra filed a petition for dissolution of marring in August of 2013. Jeffrey and Debra disagreed on the issue of child custody.

¶ 3 The trial court entered a joint custody order without a formal evidentiary hearing. The court did so after a pretrial conference during which the court heard not only from the parties' counsel, but also the guardian *ad litem*. Husband appeals. We affirm.

¶ 4 BACKGROUND

¶ 5 Jeffrey and Debra married on November 5, 1994. They had three children during the marriage. J.A. is 16 years old. K.A. is 15 years old. A.A. is 12 years old. Debra filed a petition for dissolution of marriage in August of 2013, requesting temporary and permanent custody of the minor children. On September 10, 2013, the court ordered the parties to attend mediation, finding that the parties did not agree on custody and visitation. Ten days later, Jeffrey filed a counterpetition for dissolution of marriage; he requested temporary and permanent custody of the children.

¶ 6 In April of 2014, Debra filed a motion to appoint an evaluator pursuant to section 5/604(b) of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/604(b) (West 2014)), alleging that the parties had yet to resolve the issue of residential custody. The court appointed Dr. Marc Drummond as an evaluator and Nancy Donlon as the guardian *ad litem* (GAL). In May of 2014, the parties presented an agreed order to the court, which set forth a parenting agreement for the summer of 2014. The court entered such order establishing temporary child custody.

¶ 7 After the summer of 2014, the parties had yet to reach a permanent child custody agreement. The court set the matter for status for October 15, 2014. Prior to the status hearing, Debra filed a notice of motion for October 15, 2014, stating that counsel "shall then and there present the attached Joint Parenting Agreement." No such attachment or motion appears in the record. Debra also filed a notice of motion to continue trial. That motion appears in the record.

¶ 8 The court conducted a status hearing on October 15, 2014. Initially, both Jeffrey and Debra appeared in court. Debra's counsel stated that he had filed a motion to enter the joint parenting agreement. The proposed agreement provided the parties with joint custody of the children and almost equal parenting time. The children would have Debra's address for school enrollment purposes. The proposed agreement also stated:

> "[T]he parents agree that the children shall continue to attend District 210 (Lincoln Way East High School) and District 157 (Hickory Creek Middle School) schools. The parents further agree that in the event that one of the parents moves outside of District 201 and/or District 157, as long as the youngest minor child attends District 157 or District 210, and the other parent remains in District 210 and District 157, the children's address will be the address of the parent who lives in either District 157 or District 210."

¶ 9 Jeffrey's counsel objected to the parenting agreement due to Jeffrey's concerns about financial consequences that would result from the proposed agreement. Specifically, counsel represented that Jeffrey was not sure whether he would be able to afford to live in the current school district. Counsel further stated that he was not opposed to having a pretrial to try to resolve the whole case. The GAL stated that the proposed agreement contained a clause requiring the children to remain in the current school district; it was important to each parent that the children remain in district. The GAL furthered stated that the parents could jointly parent the children and also suggested that the court conduct a pretrial. The court then stated that it would conduct a pretrial that morning. At that time, Jeffrey's counsel stated that Jeffrey had to leave to

take his child to a doctor's appointment. Counsel represented that he knew to which sections of the proposed agreement Jeffrey objected. The conference was held off the record.

¶ 10 After the pretrial conference, the hearing went back on the record. The court stated that it added language into the proposed agreement, pursuant to Jeffrey's request, that the parents refrain from drinking alcohol in excess in front of the children. The court declined to amend the provision regarding Jeffrey's visitation on his off week; Jeffrey wished to return the children on Thursday morning as opposed to Wednesday morning. The court found that it was in the best interests of the children for Jeffrey to return the children on Wednesday morning. Further, the court found that the parties were capable of joint parenting based on the representations by Debra's counsel, Jeffrey's counsel, and the GAL. The court rejected Jeffrey's argument concerning his financial ability to remain in the same school district. The court found that the parties were adamant that the children remain in the same school district. Jeffrey's counsel objected to the terms of the order.

¶ 11 Ultimately, the court entered the previously titled joint parenting agreement and order as a custody judgment pursuant to section 602.1(c) of the Marriage Act (750 ILCS 5/602.1 (West 2014)). The court stated:

> "Having held a pretrial, being familiar with this case, finding that it's in the best interest of these children to do so, taking into account the ability of the parents to cooperate effectively and consistently – – consistently in matters that directly affect the joint parenting of the child, the residential interest section of each parent and the other factors that I just mentioned, therefore, over your objection I'm going to enter a custody judgment."

¶ 12 Jeffrey appeals. We affirm.

¶ 13 ANALYSIS

¶ 14 Jeffrey argues that the trial court erred in granting joint custody without first conducting an evidentiary hearing.

¶ 15 We will not disturb a trial court's custody determination unless such determination is against the manifest weight of the evidence, manifestly unjust, or the result of a clear abuse of discretion. *In re Marriage of Diehl*, 221 Ill. App. 3d 410, 424 (1991); *In re Marriage of Deem*, 328 Ill. App. 3d 453, 455 (2002). We will consider the entire record before us. *Diehl*, 221 Ill. App. at 424.

¶ 16 The trial court may award joint custody pursuant to section 602.1(b), which states:

> "(b) Upon the application of either or both parents, or upon its own motion, the court shall consider an award of joint custody. Joint custody means custody determined pursuant to a Joint Parenting Agreement or a Joint Parenting Order. In such cases, the court shall initially request the parents to produce a Joint Parenting Agreement. *** In the event the parents fail to produce a Joint Parenting Agreement, the court may enter an appropriate Joint Parenting Order under the standards of Section 602 which shall specify and contain the same elements as a Joint Parenting Agreement, or it may award sole custody under the standards of Sections 602, 607, and 608." 750 ILCS 5/602.1(b) (West 2014).

¶ 17 The trial court can award joint custody:

> "[If] it determines that joint custody would be in the best interests of the child, taking into account the following:
>
> (1) the ability of the parents to cooperate effectively and consistently in matters that directly affect the joint parenting of the child. 'Ability of the parents to cooperate' means the parents' capacity to substantially comply with a Joint Parenting Order. The court shall not consider the inability of the parents to cooperate effectively and consistently in matters that do not directly affect the joint parenting of the child;
>
> (2) the residential circumstances of each parent; and
>
> (3) all other factors which may be relevant to the best interest of the child." 750 ILCS 5/602.1(c) (West 2014).

¶ 18 Jeffrey argues that "the court cannot consider all the relevant factors without an evidentiary hearing, when one is requested as here." We find Jeffrey waived the argument by failing to cite authority for this proposition. *Southwestern Illinois Development Authority v. Vollman*, 235 Ill. App. 3d 32, 38 (1992) ("A reviewing court is entitled to have the issues clearly defined and presented with relevant authority cited. It may deem waived issues which are not sufficiently or properly presented."); Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013).

¶ 19 Moreover, section 602.1 does not require that the court conduct an evidentiary hearing prior to entering a custody judgment. Instead, it provides factors for the trial court to consider in making a joint custody determination. When determining custody, the court is not required to make specific findings for each factor but, rather, there must be some indication on the record that the court considered the enumerated factors. *Diehl*, 221 Ill. App. 3d at 424.

¶ 20 Based on the record, we find that the court considered the factors enumerated in section 602.1(c) of the Marriage Act. During the pretrial conference, the GAL stated that the parents can jointly parent the children, despite Jeffrey's financial concerns. Furthermore, the court found that both attorneys agreed that the parties were capable of joint parenting. At the time of the hearing, the parties established that they resided in the same school district. The court stated that the parties, pursuant to representation, and the GAL wanted the children to remain in the same school district for the next four years. Finally, the court found that the custody judgment was in the best interests of the children. The court based its judgment on the representations made at the pretrial and its familiarity with the case. That is, even though there was no formal evidentiary hearing, the court was well aware of relevant facts.

¶ 21 Jeffrey objected to the financial consequences of the judgment; the court had yet to determine maintenance or child support. Specifically, Jeffrey objected to provision 1.1, which stated:

> "The parents shall have joint custody of the minor children. The parents agree that the children will have [Debra's] current address for purposes of school enrollment and the parties agree that the children shall continue to attend District 210 (Lincoln Way East High School) and District 157 (Hickory Creek Middle School) schools. The parents further agree that in the event that one of the parents move outside of District 210 and/or District 157, as long as the youngest minor attends District 157 or District 210, and the other parent remains in District 210 and District 157, the

children's address will be the address of the parent who lives in either District 157 or District 210."

¶ 22 Jeffrey alerted the court to his concerns about living in the current school district. The court considered Jeffrey's objections when entering the custody judgment. Here, as with any child custody case, there is a possibility that either parent will relocate. The law does not require that the court refrain from entering a child custody judgment until such time that a parent determines whether or not he will move. *In re Faith B.*, 216 Ill. 2d 1, 11 (2005) (the court ought to deal with matters involving child custody as quickly as is reasonably possible). If a change in residence occurs, Jeffrey may file a petition to modify child custody based on changed circumstances. 750 ILCS 5/610(b) (West 2014).

¶ 23 After conducting a pretrial hearing and considering Jeffrey's objections, the court entered a custody judgment that was in the best interests of the minor children. The court's determination was not against the manifest weight of the evidence.

¶ 24 Alternatively, Jeffrey argues that the court violated his due process rights. Debra argues that the court did not violate due process; the court conducted a pretrial hearing. A parent's right to make decisions concerning the care, custody, and control of their children is a fundamental right protected under the fourteenth amendment. *Wickham v. Byrne*, 199 Ill. 2d 309, 316 (citing *Troxel v. Granville*, 530 U.S. 57, 66 (2000)). The fourteenth amendment of the United States Constitution provides that no state shall deprive a person life, liberty, or property without due process of law. U.S. Const., amend. XIV, § 1. We review *de novo*, issues concerning whether the court deprived a party due process rights. *Girot v. Keith*, 212 Ill. 2d 372, 379 (2004).

¶ 25 We find that the court did not violate Jeffrey's due process rights. Also, the court did not deprive Jeffrey of his fundamental right to parent his children. The custody judgment provided

Jeffrey and Debra with joint custody and almost equal parenting time. The court conducted a pretrial conference and heard evidence concerning child custody. Jeffrey's counsel agreed to a pretrial conference and stated an objection to the provision concerning the child staying in the current school district. His "objection" was simply that he did not agree to this in light of financial uncertainties occasioned by the fact that the trial court had yet to determine his maintenance and child support obligations. After hearing Jeffrey's objection, considering the GAL and counsels' representations, and relying on its familiarity with the case, the court entered a custody judgment granting Debra and Jeffrey joint custody. The court did not deny Jeffrey's right to due process.

¶ 26 CONCLUSION

¶ 27 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 28 Affirmed.