

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).

2015 IL App (3d) 150230-U

Order filed August 13, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

BROOKE A.,)	Appeal from the Circuit Court
)	of the 9th Judicial Circuit,
Petitioner-Appellant,)	Knox County, Illinois.
)	
v.)	Appeal No. 3-15-0230
)	Circuit No. 13-F-80
)	
JEREMIAH S.,)	Honorable
)	James R. Standard,
Respondent-Appellee.)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* Trial court did not err in granting custody of two-year-old to father where mother withheld visitation from father and demonstrated an unwillingness to encourage a relationship between father and child.

¶ 2 Petitioner Brooke A. and respondent Jeremiah S. are the parents of a child, T.S., who was born in November 2012. They both sought custody of T.S. Following a trial, the court entered an order granting custody of T.S. to Jeremiah, subject to visitation by

Brooke. Brooke appeals, arguing that the trial court's order is against the manifest weight of the evidence. We affirm.

¶ 3

FACTS

¶ 4

Brooke A. and Jeremiah S. had a child together, T.S., in November 2012. In February 2013, Jeremiah moved out of Brooke's home. In May 2013, Brooke filed a complaint for child support. One month later, Jeremiah filed a petition for visitation, alleging that Brooke had not allowed him to visit T.S. Jeremiah later filed an amended petition for custody and visitation of T.S. The parties were ordered to mediate but were unable to reach an agreement.

¶ 5

In July 2013, Jeremiah filed a petition for temporarily relief, seeking visitation with T.S. Jeremiah alleged in the petition that since February 15, 2013, Brooke had allowed him only four brief visits with T.S. In November 2013, Brooke filed a motion seeking an order of inspection of Jeremiah's home, as well as the home of Jeremiah's girlfriend/ex-wife, Christine, where Jeremiah might take T.S. Thereafter, Jeremiah filed an emergency motion for visitation, asserting that he had been "consistently and repeatedly denied visitation since February 2013."

¶ 6

Following a hearing, the trial court entered an order granting Jeremiah's motion for temporary visitation and denying Brooke's motion for inspection. The order allowed Jeremiah to have visitation with T.S. from 9:00 a.m. to 5:00 p.m. every other Saturday beginning in December 2013. In February 2014, the court entered an agreed order granting Jeremiah temporary visitation with T.S. every other weekend from Saturday at 9:00 a.m. to Sunday at 5:00 p.m., and every Tuesday from 5:00 p.m. to 8:00 p.m.

¶ 7

A custody trial took place on various dates from July to November 2014. The evidence at trial established that both Brooke and Jeremiah are journeyman linemen. They met at work and began a romantic relationship in 2009, when Jeremiah was married. Jeremiah's wife,

Christine, and Jeremiah had a daughter, C.S, who was born in 2004. In 2010, Jeremiah divorced Christine. After the divorce, Jeremiah stayed with a friend for a few months. After that, he and Brooke moved in together. Brooke has a son, Rylee, from a prior relationship, who was nine years old in 2010.

¶ 8 From 2010 to February 2013, Jeremiah primarily lived with Brooke but moved out twice when he and Brooke were not getting along. In mid-February 2013, when T.S. was three months old, Jeremiah moved out of Brooke's home permanently. In March 2013, Jeremiah reunited with Christine, and in June 2014, he moved back in with Christine and C.S.

¶ 9 Jeremiah testified that he has moved four times since his divorce from Christine in 2010. Brooke testified that Jeremiah moved 10 times from 2010 to 2013. Brooke has lived in the same house since 2010. Brooke's house is just a few blocks from Christine's home.

¶ 10 According to Brooke, Jeremiah was not very interested in T.S. the first few months of his life. From December 2012 to March 2013, T.S. had several doctor's appointments that Jeremiah was aware of but did not attend. Brooke testified that Jeremiah rarely held T.S., never bathed him, and changed his diapers only a few times while they were living together.

¶ 11 Brooke's mother, who stayed with Brooke and Jeremiah after T.S. was born, also testified that Jeremiah appeared disinterested in T.S. She said Jeremiah held T.S. for only five minutes at a time and only when Brooke insisted that he do so. She never observed Jeremiah bathe T.S. or change his diapers.

¶ 12 Jeremiah testified that he regularly held and fed T.S. during the first few months of his life. He testified that he began requesting to see T.S. within a week of moving out of Brooke's house by sending Brooke text messages. He said he sent text messages to Brooke about twice a month for several months. Brooke either did not respond or refused to let him see T.S.

¶ 13 Jeremiah met Brooke at Lake Storey to visit with T.S. twice in July 2013. Brooke also brought T.S. to his office “a couple times.” Brooke told Jeremiah that he could come to her house to see T.S., but he was uncomfortable doing that. He wanted to visit T.S. somewhere else.

¶ 14 Since the court granted Jeremiah visitation with T.S. in December 2013, he has consistently exercised his visitation rights. He admitted that he has missed some Tuesday night visitations because of work responsibilities. He tried to reschedule those visits with Brooke, but she refused.

¶ 15 Jeremiah testified that Brooke “followed” him and Christine several times. The first time was to a basketball game in Lombard in 2013. He said that Brooke stood in the doorway of the gym, staring at him and Christine “trying to be intimidating” and then sat down directly behind them. Brooke came to another basketball game a few weeks later. Christine believed that Brooke attended the basketball games to “see if she could stir up something.”

¶ 16 Jeremiah was terminated from a job in 2011 or 2012 after he was involved in a physical fight with the foreman. He was out of work for approximately six months after that. In 2014, Jeremiah became a business representative for journeyman linemen and works in an office approximately 48 hours a week. Brooke has never been terminated from a job but is laid off when work is slow. She has been laid off for several months at a time.

¶ 17 After Jeremiah and Christine divorced, he exercised regular visitation with C.S. He and Christine always worked out visitation issues on their own. Jeremiah does not believe that Brooke would do so or allow continuing contact with him and his family if she were awarded custody of T.S. because “[s]he hasn’t so far.”

¶ 18 On one occasion, Jeremiah went to Brooke's home to pick up T.S. with Christine and C.S. in his car. Brooke refused to give T.S. to Jeremiah, telling him that he had to pick up T.S. alone. Jeremiah did not return alone to pick up T.S.

¶ 19 Jeremiah testified that he once looked at Brooke's Facebook account and saw a picture of T.S. with a caption underneath, asking "Where's my daddy?" One of Jeremiah's friends also testified to seeing this post. Brooke denied posting that on her Facebook page.

¶ 20 Christine testified that when T.S. visits, Jeremiah takes care of him, and she helps. She testified that Jeremiah and T.S. "have a very strong bond." C.S. also loves T.S. and says so "incessantly." C.S. plays with T.S. and enjoys helping him. Christine described Jeremiah as a "good dad" who is "very involved."

¶ 21 Christine testified to several "incidents" with Brooke. In April 2013, while she was at Hy-Vee, Brooke followed her around the store, repeatedly yelling, "Christian whore." On two other occasions, Brooke drove by while she was walking and yelled things at her.

¶ 22 Brooke testified that T.S. has been in her continuous care and custody since he was born, except for periods when he was visiting Jeremiah. At the end of February 2013, Jeremiah asked to see T.S., so she set a time for him to come to her house, but Jeremiah "never showed up." She refused to allow Jeremiah to see T.S. outside of her home when T.S. was an infant because she was breastfeeding T.S. and Jeremiah had never cared for T.S. on his own.

¶ 23 Brooke testified that Jeremiah did not ask to see T.S. from March to May 2013, or August to October 2013. She initiated Jeremiah's first meeting with T.S. at Lake Storey in July 2013. Jeremiah initiated the second meeting.

¶ 24 Brooke testified that she would have no problem keeping Jeremiah informed of T.S.'s educational progress, medical appointments and extracurricular events if she were awarded

custody. She believes that Jeremiah would do the same for her. She admitted that she did not inform Jeremiah of T.S.'s doctor's appointments for approximately one year but said she did inform him of T.S.'s 15-month and 18-month doctor's appointments, and called him in July 2013, when she took T.S. to the emergency room.

¶ 25 Brooke testified that she saw Christine at Hy-Vee on April 7, 2013, while she was grocery shopping. Christine told her that she and Jeremiah were back together and were sleeping with each other again. Brooke responded by calling Christine a "Christian whore." She denied following Christine, yelling at her, or calling her names any other time.

¶ 26 Brooke testified that she attended a basketball game in December 2013, with her mother and other relatives to watch her cousin's daughter play. She saw Christine and Jeremiah there but did not try to intimidate them and did not sit directly behind them.

¶ 27 Brooke attended another basketball game at the same location with family members the following month. Christine and Jeremiah were there as well. When Jeremiah exited the gym, Brooke and her mother were waiting in the hall. Jeremiah, who was holding T.S., approached Brooke and her mother and said, "You fucking cunt." Brooke's uncle testified that he heard Jeremiah call Brooke and her mother, "Two fucking cunts."

¶ 28 On Christmas morning 2013, Brooke sent Jeremiah a picture of T.S. opening his presents, along with a text message that said, "Merry Christmas Dad." In February 2014, Jeremiah requested overnight visits with T.S., and Brooke agreed.

¶ 29 Brooke testified that she made a record of every time she saw Jeremiah and Christine in 2013 and included specific details about those events after Christine started making accusations against her. Brooke denied stalking or "keeping tabs" on Jeremiah and Christine.

¶ 30 Many friends and family members, who have observed Brooke with her children, testified that Brooke is an attentive mother who takes good care of Rylee and T.S. They said that Rylee and T.S. are very close. Parents and teachers at Rylee’s school described Rylee as a good student and Brooke as an active and involved parent.

¶ 31 Several friends testified on Jeremiah’s behalf, describing him as a “good[,]” responsible man, an “attentive” parent, and a “conscientious, patient, [and] respectful dad.” Jeremiah’s brother testified that Jeremiah is “very good” with T.S. He feeds him, changes him, and picks him up when he cries. He also testified that C.S. and T.S. interact very well.

¶ 32 In March 2015, the trial court entered an order. The court stated that although T.S. has been in the primary care of Brooke since she and Jeremiah separated, both parties are attentive to T.S.’s needs and have demonstrated their ability to care for T.S. The court found that the parties’ willingness and ability to facilitate and encourage a close and continuing relationship with the other parent is “pivotal” to a custody determination and found that Brooke’s conduct sought to diminish Jeremiah’s relationship with T.S., stating:

“On the whole, mother’s conduct demonstrates unwillingness, and perhaps the inability on her part to facilitate and encourage a close and continuing relationship between father and the child. Mother’s attitude is one of resentment and vindictiveness. The Court had an opportunity over several days of testimony, to observe mother’s conduct and demeanor both on the witness stand and in the courtroom. In material respects, the Court has found mother’s credibility to be lacking.”

¶ 33 ANALYSIS

¶ 34

In determining custody, the primary consideration is the best interest and welfare of the child involved. *In re Marriage of Lonvick*, 2013 IL App (2d) 120865, ¶ 32. Under section 602 of the Illinois Marriage and Dissolution of Marriage Act (Act), the court is to consider all relevant factors, including the following, in determining the best interest of the child:

- “(1) the wishes of the child’s parent or parents as to his custody;
- (2) the wishes of the child as to his custodian;
- (3) the interaction and interrelationship of the child with his parent or parents, his siblings and any other person who may significantly affect the child’s best interest;
- (4) the child’s adjustment to his home, school and community;
- (5) the mental and physical health of all individuals involved;
- (6) the physical violence or threat of physical violence by the child’s potential custodian, whether directed against the child or directed against another person;
- (7) the occurrence of ongoing or repeated abuse *** whether directed against the child or directed against another person;
- (8) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child; [and]
- (9) whether one of the parents is a sex offender[.]” 750 ILCS 5/602 (West 2012).

In addition to the factors above, a court may also consider which parent has been the primary caregiver of the child since the parties’ separation. See *Shinall v. Carter*, 2012 IL App (3d) 110302, ¶ 41.

¶ 35 When many of the statutory factors are inapplicable or do not favor either party in a custody dispute, it is proper for the court to focus on the willingness of each parent to facilitate a relationship between the minor and the other parent. See *id.* A custodial parent’s denial of visitation to the noncustodial parent evidences an unwillingness to encourage a close and continuing relationship between the child and the noncustodial parent. See *In re Marriage of Debra N.*, 2013 IL App (1st) 122145, ¶ 56; *In re Marriage of Spent*, 342 Ill. App. 3d 643, 652-53 (2003). A parent making disparaging and inappropriate comments about the other parent in the presence of a child does not facilitate a relationship between the minor and the other parent. See *Shinall*, 2012 IL App (3d) 110302, ¶ 41; *In re B.B.*, 2011 IL App (4th) 110521, ¶ 33.

¶ 36 Where the other section 602 factors do not strongly favor either party, a trial court’s award of custody to the parent who the trial court believes is more likely to encourage a close relationship with the child and the other parent is not against the manifest weight of the evidence. See *Shinall*, 2012 IL App (3d) 110302, ¶¶ 41-42; see also *Debra N.*, 2013 IL App (1st) 122145, ¶ 56 (affirming modification of custody to father where mother attempted to thwart father’s efforts to visit and maintain a close relationship with child); *Spent*, 342 Ill. App. 3d at 652-53 (affirming trial court’s decision to award custody to father where mother “willfully failed to foster a close and continuing relationship between the child and her father” by denying father visitation and telephone contact with child).

¶ 37 A trial court’s custody determination is afforded great deference and entitled to “great weight” because the trial court is in the best position to judge the credibility of the witnesses and determine the best interest of the child. *Lonvick*, 2013 IL App (2d) 120865, ¶¶ 33, 39. We will not disturb a trial court’s custody determination unless it is against the manifest weight of the evidence. *Id.*

¶ 38 A judgment is against the manifest weight of the evidence only when the opposite conclusion is apparent or where the trial court's findings are unreasonable, arbitrary or not based on the evidence. *Id.* In determining if a judgment is contrary to the manifest weight of the evidence, we must review the evidence in the light most favorable to the appellee. *Debra N.*, 2013 IL App (1st) 122145, ¶ 45.

¶ 39 Here, the trial considered the evidence presented and determined that most of the section 602 factors either favored neither party or were inapplicable. The court found that the "pivotal" factor in this case was the willingness and ability of each parent to facilitate a close and continuing relationship between the other parent and T.S. The court concluded that Brooke's conduct, including her resistance to visitation by Jeremiah, her insistence on inspecting Jeremiah's and Christine's homes, her failure to notify Jeremiah of T.S.'s medical appointments, and her Facebook postings portraying Jeremiah as an absentee father, sought "to diminish and minimize [Jeremiah]'s meaningful interaction with and participation in [T.S.]'s life."

¶ 40 Neither parent in this case is without fault. At a basketball game, Jeremiah made a vulgar and inappropriate remark to Brooke in front of T.S. However, that isolated incident did not cause Brooke to doubt that Jeremiah would communicate and cooperate with her if he were awarded custody of T.S. Jeremiah, on the other hand, did not believe that Brooke would work with him to make sure that he and his family had ongoing contact with T.S. if she were awarded custody of T.S., stating that "[s]he hasn't so far."

¶ 41 Brooke withheld meaningful visitation from Jeremiah for nearly ten months and only allowed him regular visitation after she was ordered by the court to do so. Since then, Brooke has continued to limit Jeremiah's contact with T.S. by refusing to reschedule visits that conflict with Jeremiah's work schedule and prohibiting Jeremiah from picking up T.S. when Christine

was in his car. Brooke's conduct demonstrates her unwillingness to facilitate a close and continuing relationship between T.S. and his father. See *Debra N.*, 2013 IL App (1st) 122145, ¶ 56; *Spent*, 342 Ill. App. 3d at 652-53.

¶ 42 In light of the evidence presented in this case, the trial court's decision to grant custody to Jeremiah was not against the manifest weight of the evidence. See *Shinall*, 2012 IL App (3d) 110302, ¶¶ 41-42. We affirm the trial court's decision to award Jeremiah custody of T.S.

¶ 43 CONCLUSION

¶ 44 The judgment of the circuit court of Knox County is affirmed.

¶ 45 Affirmed.