2015 IL App (4th) 150081-U

NO. 4-15-0081

FILED
June 24, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: MARRIAGE OF	)	Appeal from
LORI A. BUSHERT, n/k/a LORI A. VANLANEN	)	Circuit Court of
Petitioner-Appellant,	)	Macon County
v.	)	No. 10D309
BRUCE E. BUSHERT,	)	
Respondent-Appellee.	)	Honorable
	)	James R. Coryell,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Pope and Justice Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in denying petitioner's petition to remove the minors to the state of Wisconsin.

¶ 2 In 2012, petitioner obtained dissolution of marriage from respondent. Part of the dissolution included an agreed custody judgment and joint parenting agreement. The agreed custody judgment placed primary care of the children with petitioner. In 2014, petitioner filed a petition for removal of the children to Wisconsin. A hearing was held on the petition in 2015, and the petition was denied.

¶ 3 Petitioner appeals, arguing her life would be improved by moving to Wisconsin with her new husband and, therefore, the lives of the remaining minor children would also be improved.

¶ 4 I. BACKGROUND

¶ 5 Lori VanLanen, formerly known as Lori Bushert, married Bruce Bushert on January 8, 1989. Three daughters were born during that marriage. Alysa, born April 22, 1997, Jillian, born November 30, 2003, and Naomi, born March 2, 2008.

¶ 6 Lori filed a petition for dissolution of marriage in June 2010. An agreed custody judgment and joint parenting agreement, together with the judgment for dissolution of marriage, was entered on December 4, 2012. The agreed custody judgment placed primary care of the children with Lori. It also included the statement "[I]t is currently in the best interest of the children to remain in the State of Illinois." Once Alysa graduated from high school, Lori filed a petition for removal of the minor children to Wisconsin on July 25, 2014.

¶ 7 Lori participated in a commitment ceremony with her new husband, Robert VanLanen, in October 2012. Robert bought a home in Wisconsin for the couple and Lori's girls in May 2012. The couple was married in late December 2012.

¶ 8 A hearing was held on the petition for removal on January 16, 2015. Lori was the first witness. She testified she was originally from Wisconsin and her extended family still lives there. Her husband, Robert, also a native of Wisconsin, has a job there and bought a home near both Lori's and his extended families. Lori worked part-time in Bruce's business during their marriage but has been a stay-at-home mom since 2011 and would continue to be a stay-at-home mom if she moved to Wisconsin.

¶ 9 Lori admitted on cross-examination she stated her intention if the petition for removal was denied. She would sell her home because it is too big and costly, and then move somewhere in the northern most portion of Illinois to be as close to her husband as she could get.

Lori stated she understood this was how the law worked.

¶ 10 Bruce and Lori had agreed during their marriage Lori would be the primary caretaker of the children and Bruce would concentrate on building his business. This involved long hours at work and some overnight travel. Lori took care of the children, including school and extracurricular activities and medical and dental appointments, some of which Bruce missed due to work obligations. After the parties separated, they lived in houses within a few blocks of each other in the same subdivision in Maroa, Illinois. Bruce had every-other-weekend visitation as well as visitation mid-week. Bruce exercised his visitation regularly although he did miss some visits and the girls stayed with his mother, their grandmother, in Sullivan, Illinois, or spent some time at his home with him and his girlfriend.

¶ 11 Evidence indicated Jillian and Naomi did well in school and had friends there and in their neighborhood. The school district they attended was a good one and the district in Wisconsin they would attend if they moved was rated slightly better.

¶ 12 Lori stated the girls have always made trips at least once per month to Wisconsin during the school year and two to four times per month in the summer to visit her family. It is about a five hour drive from their home in Maroa to West De Pere, Wisconsin, near Green Bay. Once the parties separated, it was always Lori's intention to move to Wisconsin after Alysa graduated from high school and she made this intention clear. She claimed the language in the agreed custody judgment about it "currently" being in the best interest of the girls to live in Illinois was included so Alysa would not have to change high schools. Alysa has now graduated and lives in California with Lori's sister.

¶ 13 Lori contends it is now in the best interest of the minor girls to live in Wisconsin

with Lori and her husband, Robert, in a house comparable to where they live now, going to schools comparable to where they attend now, and living close to extended family. In Lori's proposed visitation schedule, Bruce would no longer have mid-week visitation but his weekend visitations could continue and he would have longer periods of time in the summer months.

¶ 14 The girls did not testify in court nor did the trial court conduct *in camera* examinations of them. There was a guardian ad litem appointed, and he conducted interviews of the girls. Jillian, 10 years old at the time, expressed her desire to remain in Maroa where she has friends and her father was close by. She stated she has a few cousins in Wisconsin but has no friends there. Naomi, six years old at the time, did not express any preference. The guardian ad litem recommended the court deny the petition for removal. He found the girls had lived in Maroa their entire lives, attended the same schools, had the same friends and both parents lived near each other. He found Lori's quality of life would be enhanced by moving to Wisconsin to live with her husband, but the girls' quality of life would not be enhanced other than their mother being happier. He noted Lori signed the agreed custody judgment stating it was in the best interest of the girls to live in Illinois even though Robert already bought a house in Wisconsin and she had participated in a commitment ceremony. She knew she wanted to move to Wisconsin and planned a wedding later the same month as the dissolution judgment was entered. Her desire to move to Wisconsin was formulated when she agreed it was in the girls' best interest to live in Illinois.

¶ 15 The trial court found Lori failed to establish removal of the minors to Wisconsin was in their best interest. The proposed move would enhance Lori's quality of life, but not the girls'. The girls lived in the Decatur area their entire lives. They were excellent students, well-

adjusted, had numerous friends and their paternal grandmother lived a short distance away in Sullivan as did a paternal uncle. Bruce worked long hours in his business to provide a good life style for the family. He was not involved in many of the day-to-day routine matters involving the children as Lori was, but he was involved in as many of their after-school activities as he could fit in. There was an agreed joint custody order with both parties participating actively in the children's lives. The parties and the children lived a short distance from each other in the same small suburban community. While Lori introduced evidence she claimed showed the schools the girls would be attending were better than Maroa-Forsyth schools, she eventually admitted Maroa-Forsyth schools were good, too.

¶ 16 The trial court took under consideration the report from the guardian ad litem. His conclusion was the girls wanted to stay where they were with their friends. They complained of the long periods of time in the car traveling to the area of Wisconsin where Lori wished to relocate, which is over 300 miles from Maroa. The girls were concerned about having their lives disrupted by the move. The court noted the girls were young enough their expressions of preference were not to be given a great deal of weight but should not be ignored.

¶ 17 The trial court noted the date of Lori's new husband acquiring their home in Wisconsin in May 2012. Lori participated in a commitment ceremony with him in October 2012. She signed the joint parenting agreement in November 2012, obtained a dissolution of marriage including that agreement in early December 2012 and remarried in late December 2012. She filed her petition to remove in July 2014.

¶ 18 The trial court noted Lori was not attempting to thwart Bruce's visitation by filing this petition nor was Bruce motivated by anything other than a desire to spend time with his

children in resisting the removal. The court noted visitation would be difficult and would involve the children spending long hours in cars.

¶ 19 The trial court denied the petition to remove. Lori also sought to terminate the joint custody arrangement because she argued the parties could not properly communicate with each other. The court found the parties used unfortunate language with each other, but they kept the children out of their disagreements. The court denied this petition also.

¶ 20 Bruce filed a motion seeking a change of custody, but the trial court found the evidence did not show any change in circumstances at this time and denied the petition.

¶ 21 This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 Lori appeals only the denial of her petition for removal. She argues it is against the manifest weight of the evidence. Lori contends the trial court did not consider the improvement in her quality of life would result in improvement of the quality of life for the children. She also presented a reasonable and realistic visitation schedule with reduced travel time. Lori argues the court improperly punished her for her choice to remarry and relocate to Wisconsin and improperly commented at the end of the hearing the court was "somewhat taken aback" by her position she may relocate to northern Illinois if her petition is denied.

¶ 24 The standard of review in removal cases is whether the trial court's determination is against the manifest weight of the evidence and, therefore, an abuse of the court's discretion. *In re Marriage of Davis*, 229 Ill. App. 3d 653, 660-61, 594 N.E.2d 734, 739 (1992).

¶ 25 The landmark case in the removal area is *In re Marriage of Eckert*, 119 Ill. 2d 316, 518 N.E.2d 1041 (1988). That case set forth factors a court should consider in a removal

case: (1) the likelihood of the proposed move in enhancing the quality of life for both the custodial parent and the children; (2) the motives of the custodial parent in seeking the move; (3) the motives of the noncustodial parent in resisting the move; (4) the visitation rights of the noncustodial parent; and (5) whether a realistic and reasonable visitation schedule can be reached if the move is allowed. *Eckert*, 119 Ill. 2d at 326-27, 518 N.E.2d at 1045-46.

¶ 26 The evidence in this case is the minors' lives would not be directly enhanced by a move to Wisconsin as there was not much difference in the schools there compared to Maroa. The house they live in is just as spacious as the one in Wisconsin. The neighborhood in Maroa is just as nice as the one in Wisconsin. The parks, zoos, concert halls and other amenities of life would be much the same as what was offered in the vicinity of Maroa. Lori would be a stay-at-home mom in Wisconsin as her new husband had a good job with a good salary, just as she is a stay-at-home mom in Maroa.

¶ 27 A court can find children's lives are enhanced where their custodial parent remarries and moves them out of state to live with their new spouse. *In re Marriage of Collingbourne*, 204 Ill. 2d 498, 525-26, 791 N.E.2d 532, 547 (2003). Lori will be happier if she can live with her new husband, and she argues the minors will be happier if their custodial parent, their mother, is happier. She contends it is in their best interest to move to Wisconsin with Lori's husband.

¶ 28 However, "[a] custodial parent must prove more than his or her own desire to live with a new spouse to prove that a child's best interests will be served by removal." *In re Marriage of Berk*, 215 Ill. App. 3d 459, 466, 574 N.E.2d 1364, 1369 (1991). Each case must be decided on its own set of facts. In this case, Lori has failed to prove the minors' best interests

will be served by removal. Jillian was only 10 at the time and her preference is not given a lot of weight. She told the guardian ad litem she did not want to move and she had good friends in Maroa. Lori's evidence was the girls had some cousins in the area of Wisconsin where they would live, but she did not prove they had friends in Wisconsin, despite spending many weekends there and some weeks in the summer months.

¶ 29 Bruce had a close relationship to the minors and, despite Lori's attempt to formulate a reasonable visitation for him, it would not be the same as it would not include the mid-week visitation he now gets. While she attempted to give him longer visitation in the summer months, with Bruce's work schedule, it would not benefit him and he would miss the opportunity to leave work to see the minors participate in activities in the Maroa area occurring at other than specified visitation times.

¶ 30 While some deference should be given a custodial parent's determination it is in the child's best interests for the custodial parent to remarry and relocate to a different state (*In re Marriage of Eaton*, 269 Ill. App. 3d 507, 515-16, 646 N.E.2d 635, 642 (1995)), it is not the deciding factor. Only about 18 months before filing this petition, Lori agreed with Bruce it was in the minors' best interest to live in Illinois near both parents. Lori agreed to this determination, despite her plans to remarry and the fact her husband-to-be bought a house for them in Wisconsin and she participated in a commitment ceremony. She argues this language was in the agreement to benefit Alysa and her desire to finish high school in Maroa. Both parties stated this language was the result of much negotiation at the time. It would have been possible for Lori to negotiate for the language covering her desire to remarry and move to Wisconsin with the minors. There was no indication she attempted to gain this language in the agreement. The trial

court did not punish her for her desire to move to Wisconsin with her husband. The court simply took into account the facts of the case, and the timing of several events.

¶ 31 A court's decision is contrary to the manifest weight of the evidence where the opposite conclusion is clearly evident or where its findings are unreasonable, arbitrary and not based on any of the evidence. *Maple v. Gustafson*, 151 Ill. 2d 445, 454, 603 N.E.2d 508, 512-13 (1992). In this case, the opposite conclusion, granting the removal petition, is not clearly evident. There is no evidence either parent sought to frustrate the other parent in either defeating or frustrating visitation or in resisting removal. An attempt was made to suggest a reasonable and realistic visitation schedule but that would involve increased travel for the minors and result in less usable visitation for Bruce. The evidence did not indicate a likelihood of an enhancement of the quality of life for either minor.

¶ 32 III. CONCLUSION

¶ 33 We affirm the trial court's judgment.

¶ 34 Affirmed.