2015 IL App (4th) 150493-U

NO. 4-15-0493

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

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: MARRIAGE OF	)	Appeal from
ERICA N. SCHREACKE,	)	Circuit Court of
Petitioner-Appellant,	)	Adams County
v.	)	No. 08D215
SHAWN W. SCHREACKE,	)	
Respondent-Appellee.	)	Honorable
	)	Mark A. Drummond,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Turner and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's judgment terminating joint custody.

¶ 2 In October 1998, petitioner, Erica Schreacke, and respondent, Shawn Schreacke, were married. The marriage produced two daughters. In July 2008, the trial court dissolved the parties' marriage. As part of its judgment, the court entered an agreed custody order that awarded Erica primary physical custody of the parties' children, subject to Shawn's reasonable visitation.

¶ 3 In February 2014, Shawn filed a petition for change of custody. Following hearings in August 2014 and May 2015, the trial court—relying, in part, on reports provided by the Department of Children and Family Services (DCFS)—granted Shawn's petition and awarded him sole custody of the parties' children, subject to Erica's reasonable visitation.

¶ 4 Erica appeals, arguing that (1) the trial court erred by admitting the DCFS reports

as substantive evidence, (2) the court erred by denying Erica's request for an evaluation under section 604.5 of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/604.5 (West 2014)), and (3) the court's decision to terminate joint custody and grant Shawn physical custody was against the manifest weight of the evidence. We disagree and therefore affirm.

¶ 5 I. BACKGROUND

¶ 6 In October 1998, Erica and Shawn were married in Adams County. The marriage produced two daughters: Em. S. (born August 3, 2002) and El. S. (born January 22, 2005). In July 2008, the trial court dissolved the marriage, subject to an agreed judgment, which awarded the parties joint custody of Em. S. and El. S., with Erica granted primary physical custody, subject to Shawn's reasonable visitation.

¶ 7 After the dissolution, both parties filed multiple pleadings accusing the other of violating the terms of the agreed judgment. On April 26, 2012, Shawn filed a petition for sanctions, alleging that Erica (1) refused to send Em. S. to Shawn's visitations and (2) made unsubstantiated allegations against Shawn to DCFS. On May 14, 2012, Erica filed a petition for rule to show cause, claiming that Shawn (1) made poor medical decisions for the children; (2) watched Em. S. showering; and (3) deleted contact information from and turned off the children's phones.

¶ 8 In May 2012, the trial court held a hearing to address the parties' filings. The court held both parties in contempt and noted that "[t]his is a high maintenance case" that called for "extreme measures." The court entered a new visitation schedule "that has no permutations, that does not involve any what we call holiday visitation, that it is the same every week, week in, week out, with absolutely no variation." The court admonished the parties to "think long and hard before involving the police [or] DCFS in their children's lives" because "a court may decide

that the person who's repeatedly calling these agencies [does] not have the children's best interest in mind." In the court's June 2012 order codifying the outcome of the hearing, the court noted that "these parties have shown an extraordinary inability to cooperate or get along which requires extraordinary measures."

¶ 9 In February 2014, Shawn filed a petition for change of custody, alleging that (1) Erica had denied him court-ordered visitation on several occasions; (2) Erica made an unfounded report to DCFS, claiming that he abused Em. S. and El. S.; (3) Erica talked disparagingly about him in the children's presence; (4) Erica had attempted to alienate the children against him; (5) maintaining the joint custody order would endanger Em. S. and El. S.; and (6) granting Shawn custody would further the best interest of the children.

¶ 10 In April 2014, Shawn filed a petition for evaluation under section 604.5 of the Marriage Act (750 ILCS 5/604.5 (West 2014)). Specifically, Shawn sought to have Em. S. and El.S. evaluated by Dr. Frank Froman to determine their best interest with regard to custody and visitation. Later that month, the trial court entered a written order directing Dr. Jim Prow to conduct an evaluation and investigation under sections 604.5 and 605, respectively, of the Marriage Act. (The parties acknowledge on the record that the section 604.5 evaluation was never conducted because Dr. Prow "didn't want any part of it, for whatever reason.")

¶ 11 In July 2014, the trial court appointed a guardian *ad litem* (GAL) to represent Em. S. and El. S. In August 2014, after interviewing the children, the GAL filed a report, in which his sole recommendation was that the trial court order an evaluation pursuant to section 604.5 of the Marriage Act.

¶ 12 On August 15, 2014, the trial court held a hearing on Shawn's petition for change of custody. Prior to the presentation of evidence or argument, the GAL reiterated his recom-

mendation that the court order Dr. Froman to conduct an evaluation pursuant to section 604.5 of the Marriage Act. Erica agreed with the GAL and moved for a continuance so Dr. Froman could complete the evaluation. Shawn argued that Erica was using the evaluation to delay the hearing on Shawn's petition to change custody. The court denied Erica's motion to continue and reserved ruling on the motion for a 604.5 evaluation until the end of the hearing.

¶ 13 Thereafter, Shawn testified that since the trial court changed visitation in May 2012, Erica had denied him court-ordered visitation on 14 occasions. She also refused to allow Shawn to enter her property to pick up the children for visitation. Instead, the parties met at a public place to exchange the children. Also since May 2012, DCFS initiated three investigations of Shawn for possible abuse and neglect of El. S. and Em. S. None of those three investigations led to any charges or action against Shawn, although one of the investigations resulted in an indicated finding. Shawn testified further that he had a good relationship with his daughters when Erica and her father were not around. However, when Erica or her father were in the daughters' presence, the daughters distanced themselves from Shawn. When the children were visiting Shawn, Erica would call them and interfere with the visitation. After the phone calls, the children's "demeanor change[d]" and they were "distant" from Shawn. Shawn opined that if the children remained in Erica's custody, they would make false claims of abuse against him.

¶ 14 Erica testified that she did not make the reports to DCFS. She stated further that most of the occasions when Shawn missed his visitation were agreed upon by the parties. On another occasion, DCFS was investigating Shawn, and the girls did not feel comfortable staying with him. Erica stated that she encouraged her daughters to have a good relationship with their father. She testified that she did not allow Shawn to come on her property to pick up the children because he had once forced his way into her home and pushed the front door into her face.

¶ 15 At the conclusion of the hearing, the trial court granted the GAL's motion for Dr. Froman to conduct a section 604.5 evaluation. The court stayed the proceedings for Dr. Froman to complete his evaluation. The court noted that "the report of the guardian *ad litem* shows the most interference I've ever seen in a case with a guardian's duties, including coaching." The court ordered that while waiting for the section 604.5 evaluation, Shawn would have physical custody of the children, subject to Erica's reasonable visitation. The court stated further that it would request and review reports made to DCFS about the parties.

¶ 16 On August 22, 2014, the trial court entered two written orders. The first codified the court's oral pronouncement that Dr. Froman should conduct a section 604.5 evaluation. The order stated further that the GAL should wait to schedule that evaluation until the court had received the DCFS reports. In addition, the order reasserted that Shawn would have physical custody of the children, subject to Erica's reasonable visitation, until the court reached a decision on Shawn's petition for change of custody. The second order required DCFS to provide the court with any records concerning alleged abuse of the parties' children. The order stated, "Pursuant to 325 ILCS 5/11.1(8) access to the records will be limited to an in-camera inspection by the court only, unless the court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then pending before it." The court received those reports on January 20, 2015.

¶ 17 On February 11, 2015, the trial court entered an order stating that the parties had entered all their respective evidence on the issue of custody. The order also asserted, "The parties further stipulated that the court could consider the reports made to [DCFS]." (The order did not explain how or when the parties made that stipulation.) As to the section 604.5 evaluation, the order explained as follows:

"After reviewing the reports the court is reconsidering the decision to have the evaluation by Dr. Froman. The court requests that that parties and the GAL review the redacted reports and will entertain arguments for and against yet another evaluation in this case. While the court believes that counseling may be appropriate in this case, the court does not believe it is in the best interests of these children to go through what would be yet another round of interviews."

¶ 18 On March 2, 2015, the trial court entered an order reversing its earlier decision to order a 604.5 evaluation by Dr. Froman. The court explained that it was not in the children's best interest to participate in another evaluation because the children had participated in so many already. The court explained further that after reading DCFS' reports, the court did not need the opinion of an evaluator to decide Shawn's petition to change custody. The court noted that it would reconsider its decision if the GAL filed an objection within 14 days. The court continued the proceedings for an additional hearing, at which the parties could make arguments about DCFS' reports.

¶ 19 In May 2015, Erica filed a motion *in limine* seeking to bar "disclosure" of the DCFS reports because she had not been afforded an opportunity to cross-examine the reporters, as guaranteed by section 10 of the Abused and Neglected Child Reporting Act (Child Reporting Act) (325 ILCS 5/10 (West 2014)).

¶ 20 Later that month, the court held a hearing at which the parties could make argument concerning the DCFS reports. During that hearing, the following exchange occurred:

"[THE COURT]: So I will turn to you first, Mr. Larson

[(Erica's counsel)]. Any evidence you wish to present, arguments to be made concerning the DCFS reports?

[ERICA'S COUNSEL]: Judge, the DCFS reports, concerning those reports, I did file a motion in limine dealing with those reports. It was really twofold. One was so that they would not be released to third parties. The other is having the court rely [on] and consider the DCFS reports and hearsay statements contained therein for purposes of determining whether or not there was a change in custody.

So I know the court has indicated it has reviewed the reports, and I believe that would be for the purpose of determining whether they would have, I guess, potential use in the proceedings as opposed to the court taking them as evidence in the proceedings.

[THE COURT]: No, I am taking them as evidence. The parties agreed to that. The parties stipulated to that.

* * *

With regard to the DCFS reports, in my order of February 11th, 2015, second paragraph, first line, quote, The parties further stipulated that the court could consider the reports made to [DCFS], period. There was no motion to reconsider that order, no motion stating that that was incorrect, and so that is the status right now.

Do you disagree with that, [Erica's counsel]?

[ERICA'S COUNSEL]: Well, judge, I think—I guess, as far as the court could consider the reports. I think first what was done was for the court to receive those reports, for the court to then review the reports and determine if there's any—I guess, if there's any usefulness in those, and then the court provided redacted copies of those reports to us, and I think there was also, at one of the case management conferences, a statement that if there were going to be further requests for evidentiary hearing, that—and/or evaluations, because that was another issue that was somewhat unsettled at the time, that any and all experts or counselors would have to review those DCFS reports.

So, I guess, maybe from the side of the respondent, how the court would consider that, if it would just consider it straight as evidence without any further testimony from the actual reporters was the only issue that I had.

[THE COURT]: Yes. I mean, if that was a problem, it should have been brought up before today.

* * *

Accordingly, the court sets this matter for any further evidence addressing the evidence the court has since received by agreement of the parties, being the complete DCFS file. [Thirty] days has gone by. No motion to reconsider was filed on that. No motion to clarify that. As far as I'm concerned, the DCFS reports

> are coming in. I don't think I could have made it any clearer on this, and the bottom line is that both parties have had contact with DCFS."

¶ 21 In addition, Jerry Walker, a therapist, testified at the hearing that he had been counseling Em. S. and El. S. since August 2014. He stated that Em. S. and El. S. were upset and distressed after the trial court granted Shawn temporary physical custody in August 2014. Walker testified further that the children "adamantly state that they would prefer to be placed with their mother."

¶ 22 After the close of evidence, the trial court ruled that the petition for change of custody had been proved by clear and convincing evidence. The court noted that the parties had been in and out of court since the dissolution agreement was entered. The court stated that it had never seen "this level of animosity, this level of manipulation, and this level of alienation" in a dissolution of marriage case. The court found there was a "total failure *** on the mother's side to show a willingness and ability to facilitate a close and continuing relationship between the other parent and the child." The court stated further that "[t]he father is not perfect *** but the court's concerns of the father pale in significance to the court's concerns for the mother."

¶ 23 In reaching its decision, the trial court relied on the following additional facts: (1) Erica's desire for custody was tainted by her desire to "get back at" Shawn; (2) the desires of the children had been manipulated by Erica; (3) Erica enlisted her father to interfere with the joint custody arrangement in this case; (4) the court had concerns about Erica's mental health; (5) Erica's "total failure" to facilitate a relationship between the children and Shawn; and (6) at times Erica's finding the proceedings funny.

¶ 24 The trial court also summarized the contents of the DCFS reports. On three occa-

sions, DCFS investigated allegations that Shawn abused Em. S. and El. S. Two of the investigations were declared unfounded by DCFS, while one resulted in an indicated finding. The court explained that Erica and her father interfered with the DCFS investigations. The court found that "[t]he children do absolutely fine when they are not under the influence of their mother, and that when they're with [Shawn], everything goes fine until they're reminded of the controversy."

¶ 25 The trial court later entered a written order finding that Shawn had proved his petition for change of custody by clear and convincing evidence. The court terminated joint custody and awarded Shawn permanent custody, subject to Erica's reasonable visitation.

¶ 26 This appeal followed.

¶ 27 II. ANALYSIS

¶ 28 Erica argues that (1) the trial court erred by admitting the DCFS reports as substantive evidence, (2) the court erred by denying Erica's request for an evaluation under section 604.5 of the Marriage Act, and (3) the court's decision to terminate joint custody and grant Shawn physical custody was against the manifest weight of the evidence. We address Erica's claims in turn.

¶ 29 A. The Trial Court's Decision To Admit the DCFS Reports as Substantive Evidence

¶ 30 Erica argues that the trial court erred by admitting the DCFS reports as substantive evidence. In support of that argument, Erica claims that (1) the parties did not stipulate to admitting the reports; and (2) even if the parties did so stipulate, public policy prohibits them from doing so. We disagree with Erica on both points.

¶ 31 1. *Whether the Parties Stipulated To Admitting the Reports*

¶ 32 The trial court's February 11, 2015, order stated, "The parties further stipulated that the court could consider the reports made to [DCFS]." Neither party filed a motion to recon-

sider or clarify that order. At the May 12, 2015, hearing, the court explained that the effect of its order was to admit the DCFS reports as substantive evidence. In addition, the court stated that Erica should have filed a motion to clarify if she was unsure of the order's meaning.

¶ 33 Erica contends that the trial court misinterpreted the intent of the parties by admitting the DCFS reports as substantive evidence. The record does not contain the language used by the parties when they agreed to the stipulation contained in the court's order. The record contains only the court's written order stating that the parties agreed that the court could "consider" the DCFS reports. In the absence of a record establishing the basis for the trial court's determination, we must presume that the court's decision has a sufficient legal and factual basis. *Webster v. Hartman*, 195 Ill. 2d 426, 749 N.E.2d 958 (2001).

¶ 34 In this case, the trial court confirmed that its order of February 11, 2015, memorialized the parties' stipulation to have the DCFS reports admitted as substantive evidence. Erica argues that the word "consider" is vague and that the only reasonable interpretation of the order is that it granted limited *in camera* review of the DCFS reports. We explicitly deem Erica's interpretation of the word "consider" as utterly without merit.

¶ 35 2. *Whether the Parties' Stipulation Violated Public Policy*

¶ 36 Erica argues that section 10 of the Child Reporting Act (325 ILCS 5/10 (West 2014)) prohibited the parties from stipulating to introducing the DCFS reports as substantive evidence. Specifically, Erica contends that such a stipulation would violate public policy because section 10 requires live testimony from the makers of the DCFS reports.

¶ 37 Section 10 provides, in pertinent part, as follows:

> "Any person who makes a report under this Act *shall* testify fully in any judicial proceeding or administrative hearing result-

ing from such report, as to any evidence of abuse or neglect, or the cause thereof." (Emphasis added.) 325 ILCS 5/10 (West 2014).

Erica claims that the "shall" language in section 10 means that the parties cannot stipulate to admitting the reports without testimony.

¶ 38 "Individuals may waive substantive rules of law, statutory right[s] and even constitutional rights." *Smith v. Freeman*, 232 Ill. 2d 218, 228, 902 N.E.2d 1069, 1074 (2009). "[S]tipulations are generally favored, as they promote the efficient disposition of cases, simplify issues, and reduce the expense of litigation." *In re Commitment of Walker*, 2014 IL App (2d) 130372, ¶ 35, 19 N.E.3d 205. "Stipulations will be enforced unless unreasonable, procured by fraud, or violative of public policy." *Id.*

¶ 39 We conclude that the parties' decision to stipulate to admitting the DCFS reports as substantive evidence functioned also as a stipulation that the requirements of section 10 need not be complied with. That stipulation was not against public policy. We conclude that Erica's argument to the contrary is groundless and does not warrant further discussion.

¶ 40 B. Trial Court's Denial of Erica's Request for an Evaluation Under Section 604.5

¶ 41 Erica argues that the trial court erred by denying her request for an evaluation under section 604.5 of the Marriage Act (750 ILCS 5/604.5 (West 2014)). We disagree.

¶ 42 1. *Statutory Language and Standard of Review*

¶ 43 Section 604.5 of the Marriage Act provides, as follows:

"In a proceeding for custody, visitation, or removal of a child from Illinois, upon notice and motion made within a reasonable time before trial, the court may order an evaluation concerning the best interest of the child as it relates to custody, visitation, or

> removal. The motion may be made by a party, a parent, the child's custodian, the attorney for the child, the child's guardian ad litem, or the child's representative." 750 ILCS 5/604.5 (West 2014).

The determination whether an evaluator should be appointed under section 604.5 is within the broad discretion of the trial court, and we review the court's decision for abuse of that discretion. *In re Marriage of Iqbal*, 2014 IL App (2d) 131306, ¶ 44, 11 N.E.3d 1. An abuse of discretion occurs only when the trial court's decision is arbitrary, fanciful, or unreasonable or where no reasonable person would take the view adopted by the trial court. *Shoup v. Gore*, 2014 IL App (4th) 130911, ¶ 8, 14 N.E.3d 11.

¶ 44 2. *The Trial Court's Denial of the Request in This Case*

¶ 45 In this case, the trial court explained its decision to deny the section 604.5 evaluation by stating in its March 2015 written order that the children had been through enough evaluations and that it was not in their best interest to be evaluated again. In addition, the court asserted that it did not need an additional opinion from a health professional to make its decision on the ultimate issue of whether custody should be changed. In that respect, the court found sufficient the evidence introduced by the parties along with the DCFS reports. The court stated further that it would reconsider its decision to deny a section 604.5 evaluation if the GAL objected within 14 days. The GAL did not object, and the court adhered to its decision.

¶ 46 Rather than being "arbitrary, fanciful, or unreasonable," we find the trial court's decision reasonable and rational. In reaching its decision, the court considered the harmful effect another evaluation would have on the children, balanced against the benefit a section 604.5 evaluation would provide the court in reaching its decision. The court also gave weight to the opinion of the GAL and offered to reconsider its decision should the GAL so request. In light of

those circumstances, we conclude that the court did not abuse its discretion by denying the request for a section 604.5 evaluation.

¶ 47 C. Trial Court's Decision To Terminate Joint Custody

¶ 48 Erica argues that the trial court's decision to terminate joint custody and grant Shawn physical custody was against the manifest weight of the evidence. We disagree.

¶ 49 1. *Statutory Language and Standard of Review*

¶ 50 Section 610(b) of the Marriage Act provides, as follows:

> "The court shall not modify a prior custody judgment unless it finds by clear and convincing evidence, upon the basis of facts that have arisen since the prior judgment or that were unknown to the court at the time of entry of the prior judgment *** in the case of a joint custody arrangement that a change has occurred in the circumstances of the child or either or both parties having custody, and that the modification is necessary to serve the best interest of the child." 750 ILCS 5/610(b) (West 2014).

¶ 51 Under the plain language of the statute, the party seeking modification must prove by clear and convincing evidence that (1) a change has occurred in the circumstances of the child or either or both parties having custody and (2) the modification is necessary to serve the best interest of the child. A reviewing court will not disturb a trial court's decision to modify custody unless that decision is contrary to the manifest weight of the evidence. *In re Marriage of Rogers*, 2015 IL App (4th) 140765, ¶ 62, 25 N.E.3d 1213.

¶ 52 2. *The Decision To Modify Custody in This Case*

¶ 53 In this case, the trial court found that Shawn had proved—by clear and convincing

evidence—that terminating joint custody was in the best interest of the parties' children. We conclude that the court's decision was not contrary to the manifest weight of the evidence.

¶ 54 Shawn points to the following evidence to support the trial court's decision that joint custody should be terminated because of a change in circumstances: Erica (1) called the police when Shawn entered Erica's driveway to facilitate visitation; (2) desired to move the children to Oklahoma; (3) interfered with visitation, causing the children to miss a planned vacation with Shawn; and (4) made unfounded reports to DCFS, claiming that Shawn had abused the children.

¶ 55 Shawn also cites the following additional facts in support of the trial court's ruling: the court (1) found that Erica's desire for custody was "tainted by her desire to somehow get back at the father;" (2) found that Erica had demonstrated an inability to parent by enlisting her father to interfere in the joint custody arrangement; (3) found that Erica's employment situation was unstable; and (4) had concerns about the mental health of Erica.

¶ 56 Erica argues that the trial court's decision was against the manifest weight of the evidence because (1) one of the DCFS investigations against Shawn resulted in an indicated finding; (2) no professional opinion was introduced to support the claim that Erica was alienating the children from Shawn; (3) the children expressed a preference for being placed with Erica; (4) the children were thriving in the custody of Erica; and (5) Shawn prevented Erica from having phone contact with the children.

¶ 57 Erica's arguments are not persuasive. The trial court considered the DCFS reports and found that Erica and her father had interfered in the investigations. In addition, the court determined that it did not need a professional opinion to conclude that Erica had been alienating the children from Shawn. The court found further that, although the children expressed a preference

to be placed with Erica, Erica had manipulated the children's desires. As to Shawn's failures to abide by the agreed judgment, the court found that although Shawn was "not perfect," he was in a better position than Erica to provide for the children's best interest.

¶ 58 We conclude that the trial court's decision was not against the manifest weight of the evidence.

¶ 59 III. CONCLUSION

¶ 60 For the foregoing reasons, we affirm the trial court's judgment.

¶ 61 Affirmed.