2015 IL App (5th) 150029-U

NO. 5-15-0029

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
MARK A. HAWLEY,	)	Marion County.
	)	
Petitioner-Appellee,	)	
	)	
and	)	No. 13-D-149
	)	
SHAWN MARIE HAWLEY,	)	Honorable
	)	Daniel E. Hartigan,
Respondent-Appellant.	)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Justices Welch and Chapman concurred in the judgment.

ORDER

¶ 1 *Held*: In this marriage dissolution proceeding, the trial court did not abuse its discretion in awarding petitioner sole care and custody of the couple's minor child subject to certain visitation rights for respondent where the evidence supported a finding that it would be in the best interests of the child to reside solely with petitioner.

¶ 2 In this marriage dissolution proceeding between petitioner, Mark A. Hawley, and respondent, Shawn Marie Hawley, respondent appeals the trial court's judgment as it pertains to child custody and visitation. We affirm.

¶ 3 BACKGROUND

¶ 4 The parties were married on September 30, 2006. This was petitioner's first marriage, while this was respondent's sixth marriage. On May 28, 2007, a child by the name of Jordan Marie Hawley was born to the marriage.

¶ 5 On September 4, 2013, petitioner filed a petition for dissolution of marriage. On the same date, petitioner also filed a petition for temporary relief requesting that he be awarded temporary care and custody of Jordan subject to the reasonable visitation rights of respondent as the court deemed appropriate. On September 16, 2013, respondent filed an answer to petitioner's petition for dissolution of marriage.

¶ 6 On October 31, 2013, the trial court entered an agreed temporary order that granted the parties temporary joint custody of Jordan and set forth certain periods of physical custody for each parent due to their conflicting work schedules. This arrangement remained in effect until March 13, 2014, at which time the court entered a judgment of dissolution of marriage on the grounds of irreconcilable differences resolving all non-child-related issues.

¶ 7 On April 25, 2014, a bench trial was conducted to settle the unresolved issues of the parties' dissolution of marriage, which included custody of Jordan, child support, visitation, and maintenance of health insurance. At the time of trial, petitioner was 38 years old, respondent was 41 years old, and Jordan was 6 years old.

¶ 8 Both parties worked at the Murray Center in Centralia, Illinois, at the time of the proceeding. Petitioner worked from approximately 6 a.m. until 2 p.m., while respondent worked from approximately 10 p.m. until 6 a.m. The parties' days off from work

fluctuated and never coincided.

¶ 9 Two specific incidents of physical violence involving respondent were introduced at trial. The first incident, which was not witnessed by Jordan, occurred in June 2012 after the parties began arguing about household chores to be performed. Respondent allegedly attacked petitioner while petitioner was taking a shower, leaving marks on his face and neck. The trial court observed photographic exhibits of the marks on petitioner's face and neck that resulted from this incident.

¶ 10 The second incident, which was witnessed by Jordan, occurred on Labor Day in 2013 and involved respondent and the paternal grandparents. The parties dispute who instigated what transpired that day, but a basic summary of the incident is as follows.

¶ 11 Respondent arrived at the paternal grandparents' home to pick up Jordan in the early afternoon of Labor Day 2013. At some point after the paternal grandmother answered the front door and let respondent into her house, respondent and the grandmother began arguing. The grandmother told respondent to leave her home and that Jordan would be out shortly.

¶ 12 After the grandmother shut the front door, respondent swung the door back open and walked back into the house. The parties dispute whether respondent then shoved the grandmother, at which time the paternal grandfather stepped in to direct respondent out of the house. In response, respondent began "smacking" at the grandfather, which resulted in significant injuries to his face and other parts of his body. At trial respondent claimed she "started smacking" at the grandfather because he was choking her. Following this incident, respondent sought an emergency order of protection against the grandfather for

herself and Jordan, but later dropped the order before going through with it. The trial court observed photographic exhibits of the grandfather's injuries.

¶ 13 In addition to these two specific incidents, petitioner also testified that respondent has exhibited other forms of outbursts in the presence of Jordan. Referring to respondent, petitioner stated "[s]he has thrown items, shoes, cookware. She's slammed doors, she's kicked, and she's yelled and pushed." When asked how Jordan reacts when these outbursts occur, petitioner replied, "Jordan becomes frightened."

¶ 14 On May 29, 2014, the trial court entered an order granting petitioner sole custody of Jordan subject to certain visitation privileges for respondent. The court also ordered respondent to pay child support in the amount of $792 per month starting June 1, 2014, and ordered respondent to provide health insurance coverage for Jordan through her employment at the Murray Center.

¶ 15 On June 27, 2014, respondent filed a "motion to reconsider, and to vacate and/or modify order" regarding the issues of child custody, visitation, child support, and apportionment of a tax exemption. On September 2, 2014, the trial court entered an order addressing respondent's posttrial motion. The court denied respondent's request to reconsider the prior custody ruling, but granted respondent's requests concerning visitation, child support, and the tax exemption.

¶ 16 On December 29, 2014, a final judgment of dissolution of marriage was entered. It provided that petitioner was awarded sole custody of Jordan for the reasons set forth in the trial court's May 29, 2014, order. The final judgment also provided certain visitation rights for respondent. On January 20, 2015, respondent timely filed a notice of appeal.

¶ 17 DISCUSSION

¶ 18 Respondent raises two issues on appeal. First, respondent argues the trial court abused its discretion in granting petitioner sole custody. Second, respondent argues the trial court abused its discretion with regard to its visitation award to respondent, alleging the visitation rights awarded to her were not reasonable as required by section 607(a) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/607(a) (West 2012)).

¶ 19 Petitioner contends the trial court did not abuse its discretion in awarding him sole custody of Jordan, as it properly concluded it would be in the best interests of Jordan that she reside with petitioner. Petitioner also contends the trial court determined a proper visitation arrangement that would create a stable environment for Jordan and allow Jordan to maintain a positive relationship with respondent. For the following reasons, we agree with petitioner.

¶ 20 I. Custody

¶ 21 A reviewing court will not reverse a trial court's custody determination unless it (1) is against the manifest weight of the evidence, (2) is manifestly unjust, or (3) results from a clear abuse of discretion. *In re Marriage of Marsh*, 343 Ill. App. 3d 1235, 1240, 799 N.E.2d 1037, 1041 (2003). A reviewing court will not substitute its discretion for that of the trial court and will find an abuse of discretion only where the trial court " 'acted arbitrarily without conscientious judgment or, in view of all the circumstances, exceeded the bounds of reason and ignored recognized principles of law so that substantial injustice resulted.' " *Marsh*, 343 Ill. App. 3d at 1240, 799 N.E.2d at 1041 (quoting *In re Marriage of Suriano*, 324 Ill. App. 3d 839, 846, 756 N.E.2d 382, 388

(2001)).

¶ 22 The trial court looks to the best interests of the child when determining custody. In reviewing a custody determination, we are mindful that the trial court's best-interest findings are given great deference since the trial court is in a better position to " 'observe the temperaments and personalities of the parties and assess the credibility of witnesses.' " *Marsh*, 343 Ill. App. 3d at 1240, 799 N.E.2d at 1041 (quoting *In re Marriage of Stopher*, 328 Ill. App. 3d 1037, 1041, 767 N.E.2d 925, 928 (2002)).

¶ 23 The statutory best-interest factors are outlined in section 602(a) of the Illinois Marriage and Dissolution of Marriage Act (Act), which provides in relevant part:

> "(a) The court shall determine custody in accordance with the best interest of the child. The court shall consider all relevant factors including:
>
> (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 as defined in

Section 103 of the Illinois Domestic Violence Act of 1986, 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;

(9) whether one of the parents is a sex offender; and

(10) the terms of a parent's military family-care plan that a parent must complete before deployment if a parent is a member of the United States Armed Forces who is being deployed." 750 ILCS 5/602(a) (West 2012).

¶ 24 Here, the trial court's May 29, 2014, order indicates factors (1), (2), (5), (7), (9), and (10) under section 602(a) of the Act are irrelevant to this case, as there was no evidence or testimony presented that focused on these factors other than each parent seeking custody of Jordan. Therefore, these factors were not considered by the trial court in making its custody determination.

¶ 25 The remaining factors (3), (4), (6), and (8) under section 602(a) of the Act are relevant to the instant case and were considered by the trial court in awarding petitioner sole custody. Respondent alleges the trial court abused its discretion in its findings regarding these factors. Accordingly, we now address those factors to determine whether the trial court abused its discretion in granting petitioner sole custody.

¶ 26 A. Factor (3)

¶ 27 Section 602(a)(3) of the Act provides that in deciding custody under the best

interest of the child standard, the court shall consider "the interaction and interrelationship of the child with [her] parent or parents, [her] siblings and any other person who may significantly affect the child's best interest." 750 ILCS 5/602(a)(3) (West 2012). In the instant case, the trial court found this factor favors petitioner. We agree.

¶ 28 While the court found that Jordan has a good relationship with both parents, it noted "there are other people who are involved in Jordan's life that have had a significant impact and the paternal grandparents have had a very active role in Jordan's life." The court found that Jordan has a "very close" relationship with her paternal grandparents, as evidenced by her spending three nights a week at the paternal grandparents' home since the parties' separation and the paternal grandparents' willingness to help Jordan get ready for school on days petitioner worked after the parties' separation.

¶ 29 In addition to Jordan's close relationship with her paternal grandparents, the record also indicates Jordan has a special relationship with her cousin Kyra on petitioner's side of the family. Jordan has been friends with Kyra since she was a baby, and the two see each other at least once a week.

¶ 30 In contrast to the relationships Jordan has developed on petitioner's side of the family, there was little evidence presented of Jordan's interaction with respondent's family. The court made a specific finding on this fact, noting "[respondent's] family involvement in Jordan's life was minimal at best." After careful review of the record, we find no abuse of discretion regarding the trial court's finding as it pertains to factor (3).

¶ 31 B. Factor (4)

¶ 32 Section 602(a)(4) provides that in deciding custody under the best interest of the child standard, the court shall consider "the child's adjustment to [her] home, school and community." 750 ILCS 5/602(a)(4) (West 2012). The trial court found this factor favors petitioner. We agree.

¶ 33 The court indicated that stability for Jordan was a very important consideration in its decision to award petitioner sole custody. The court noted that Jordan has lived in the same home her entire life, Jordan will be attending the same private school, and Jordan's paternal grandparents are "available to watch her as they have done since her birth."

¶ 34 In contrast, the record indicates respondent purchased a new home shortly before trial and respondent's new boyfriend, Michael Carroll, moved into the home. Based on this fact alone, we find Jordan would have a significant adjustment moving into a new home with respondent and respondent's new boyfriend.

¶ 35 Moreover, the court found that respondent has a prior history of going in and out of relationships as evidenced by respondent's six marriages and respondent's relationship with her new boyfriend. The court noted it was concerned about respondent's stability in relationships and the effect it will have on Jordan. For these reasons, we find no abuse of discretion regarding the trial court's finding as it pertains to factor (4).

¶ 36 C. Factor (6)

¶ 37 Section 602(a)(6) provides that in deciding custody under the best interest of the child standard, the court shall consider "the physical violence or threat of physical violence by the child's potential custodian, whether directed against the child or directed

against another person." 750 ILCS 5/602(a)(6) (West 2012). The trial court found this factor favors petitioner. We agree.

¶ 38 As noted above, there were two specific incidents of respondent's physical violence introduced at trial. The first incident occurred in June 2012 and involved petitioner. The second incident occurred on Labor Day in 2013 and involved the paternal grandfather. At trial, the court observed the testimony and picture exhibits of petitioner after he was "scratched up" by respondent in the June 2012 incident. The court also observed the pictures of the paternal grandfather after the 2013 Labor Day incident, and noted that "it looked like he had been attacked by [respondent]."

¶ 39 The court found that the picture exhibits together with respondent's testimony "gives the court serious concerns about [respondent's] temperament and stability." The court further noted that respondent's testimony was less credible regarding these incidents and the issue of custody after it observed the picture exhibits entered into evidence.

¶ 40 We find no abuse of discretion regarding factor (6), as the trial court's findings and concerns were clearly supported by the evidence.

¶ 41 D. Factor (8)

¶ 42 Respondent alleges the trial court abused its discretion in finding the eighth factor favored neither party, asserting the evidence adduced at trial indicates this factor "heavily" favored respondent. We disagree.

¶ 43 Section 602(a)(8) provides that in deciding custody under the best interest of the child standard, the court shall consider "the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and

the child." 750 ILCS 5/602(a)(8) (West 2012).

¶ 44 At trial, petitioner testified that he wants Jordan and respondent to maintain a relationship and expressed the importance of Jordan's relationship with her mother. Petitioner further explained he has seen people negatively affected from unhealthy interaction with their parents, and that he did not want this to happen to Jordan.

¶ 45 Respondent asserts petitioner's self-serving testimony is the only evidence that favors petitioner regarding factor (8). Respondent alleges petitioner's "actions do not match his words," and that there are concerns about petitioner facilitating and encouraging a relationship between Jordan and respondent moving forward.

¶ 46 Respondent supports this argument by pointing to three separate incidents: (1) harassing text messages sent from petitioner to respondent in May 2013 that resulted in petitioner receiving a 15-day suspension from work, (2) petitioner's failure to notify respondent where Jordan was on Labor Day 2013, and (3) petitioner's failure to "work" with respondent in exchanging Jordan on Halloween 2013.

¶ 47 While these three specific examples in isolation favor respondent, respondent fails to recognize certain instances that favor petitioner, such as petitioner's willingness to communicate with respondent regarding Jordan's schoolwork and Jordan's behavior at school. Furthermore, respondent's physical assault of petitioner and the paternal grandfather cannot be ignored. Given that there are several incidents supporting each party's position, the trial court did not abuse its discretion in finding factor (8) favored neither party.

¶ 48 E. Joint Custody

¶ 49 Respondent next alleges the trial court abused its discretion in denying her request for an award of joint custody.

¶ 50 Section 602.1(c) of the Act provides that joint custody may be awarded if the court determines it would be in the best interests of the child. 750 ILCS 5/602.1(c) (West 2012). Because joint custody requires extensive contact and intensive communication, it cannot work between belligerent parents. *In re Marriage of Drummond*, 156 Ill. App. 3d 672, 679, 509 N.E.2d 707, 712-13 (1987).

¶ 51 For the reasons stated above concerning factors (3), (4), and (6) under section 602(a) of the Act, the court found it would be in the best interests of Jordan to award sole custody to petitioner. In particular, we find respondent's violent attacks on petitioner and the paternal grandfather negate any implication of joint custody. Accordingly, the trial court did not abuse its discretion in denying respondent's request for joint custody.

¶ 52 II. Visitation

¶ 53 Respondent argues the trial court awarded her inadequate visitation and, as such, abused its discretion with regard to its visitation award. Respondent further asserts the visitation award was not reasonable as required by section 607(a) of the Act (750 ILCS 5/607(a) (West 2012)).

¶ 54 Section 607(a) of the Act details the visitation rights of a parent not granted custody of their child and provides, in relevant part:

> "A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the

child's physical, mental, moral or emotional health." 750 ILCS 5/607(a) (West 2012).

¶ 55 A reasonable visitation schedule is one that will preserve and foster the child's relationship with the noncustodial parent. *In re Marriage of Gibbs*, 268 Ill. App. 3d 962, 968, 645 N.E.2d 507, 513 (1994). The trial court is vested with wide discretion in resolving visitation issues, and a reviewing court will not interfere with the trial court's determination unless the trial court has abused its discretion or where manifest injustice has been done to the child or parent. *In re Marriage of Minix*, 344 Ill. App. 3d 801, 803, 801 N.E.2d 1201, 1203 (2003).

¶ 56 In the instant case, the trial court awarded respondent visitation rights in its initial order on May 29, 2014. On June 27, 2014, respondent filed a "motion to reconsider, and to vacate and/or modify order," alleging in part that the trial court erred in the amount of visitation it awarded. On September 2, 2014, the court entered an order in response to respondent's motion and granted additional visitation rights to respondent.

¶ 57 In its final judgment of dissolution of marriage order, the trial court awarded respondent visitation as follows:

"A. Alternate weekends from Friday after school, or 5:00 p.m. when the child is not in school, until Sunday at 5:00 p.m.

B. Alternate holidays from 8:00 a.m. until 8:00 p.m., except July 4th which shall be until 10:00 p.m., as follows:

i. In even numbered years, New Year's Day, Memorial Day, Labor Day and Christmas Eve.

ii. In odd numbered years, Easter Sunday, July 4th, Thanksgiving, and Christmas Day.

iii. The child shall be with the respondent every Mother's Day and with the petitioner every Father's Day.

C. Every Tuesday evening from after school, or 5:00 p.m. when the child is not in school, until 8:00 p.m.

D. One-half of the child's Christmas Break from school, being the first half in even numbered years and the second half in odd numbered years, subject to the holiday visits set forth above.

E. Two weeks during the summer. Respondent shall notify the petitioner by May 15 of each year which weeks she intends to exercise said summer visits.

F. One additional overnight visit per month (not a weekend or holiday) to be taken when she is off work at Murray Center and petitioner is working as the parties have done in the past. Respondent must notify petitioner by the 5th day of every month of the day she chooses hereunder."

¶ 58 Respondent claims this award is inadequate because it is "substantially less" than what petitioner proposed during his testimony on direct examination. Respondent further argues the award is not reasonable because her work schedule will prevent her from exercising visitation during most weekends.

¶ 59 After careful review of the record before us, we cannot say the trial court abused its discretion regarding its visitation award. We find the visitation schedule gives Jordan stability while also preserving her relationship with respondent. In addition to alternate

weekends and holidays, respondent will also see Jordan every Tuesday, 50% of each Christmas break, two weeks in the summer, and one additional night every month.

¶ 60 The court considered the evidence and arguments of the parties on two separate occasions to arrive at a proper visitation arrangement for respondent that was in the best interest of the child. With this is mind, we find the visitation schedule is reasonable.

¶ 61 CONCLUSION

¶ 62 For the reasons stated herein, we affirm the judgment of the circuit court of Marion County.

¶ 63 Affirmed.