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2016 IL App (3d) 150566-U

Order filed July 11, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2016

MOLLY ANN MONGE,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Petitioner-Appellee,	)	Peoria County, Illinois.
	)	
v.	)	Appeal No. 3-15-0566
	)	Circuit No. 10 F 1029
TIMOTHY M. COURI,	)	
	)	The Honorable
Respondent-Appellant.	)	Katherine Gorman,
	)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Justices Carter and Lytton concurred in the judgment.

ORDER

¶ 1 *Held*: Where opposing parties have conflicting interpretations of a term in the trial court's original order and the trial court issues an incorporated order that makes specifications regarding contested term, the trial court does not err in making the specifications because it was an exercise of its inherent authority to clarify its intent and not a modification.

¶ 2 This case involves a dispute between petitioner, Molly Ann Monge, and respondent, Timothy M. Couri, over their respective visitation and custodial rights of minor, M.M. On

December 30, 2015, the trial court entered an order clarifying its original Custody/Joint Parenting Order from September 10, 2013. Couri appeals arguing the clarification was actually a modification of the original order. He asserts that the court erred in making the modification without an evidentiary hearing to substantiate whether the change would be in the best interest of the child pursuant to section 610 (a) of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act). 750 ILCS § 5/1-1 et seq. (West 2014). We affirm.

¶ 3 FACTS

¶ 4 On August 2, 2013, after a series of custody hearings, the trial court made an oral ruling regarding Monge and Couri's shared custody and visitation of M.M. It awarded the parents joint custody, designated Monge as the residential custodian, and outlined custody and visitation time for both parties with respect to weeks, weekends, holidays, and summer vacation including the stair step decrease in Couri's parenting time that was employed under the couple's previous arrangement. The court then asked Monge's counsel, Mr. McCarthy, to draft an order reflecting its oral ruling. McCarthy asked the court for clarification of its oral explanation of Couri's allotted five (5) weeks of custody and visitation during the summer. The court responded, "[w]ell, seven days at a time. And if there is an instance where it's gonna extended [sic] on a weekend on either end, I would hope that the two of you could work that out."

¶ 5 On August 29 the parties appeared before the court for entry of the order incorporating its August 2 ruling. Despite the court asking only McCarthy to submit an order, both parties submitted drafts reflecting their understanding of the court's ruling on the terms of their custody and visitation of M.M. The court selected McCarthy's order stating it "capture[d] the spirit of [its] ruling more closely."

¶ 6 With respect to the shared time with M.M., the order stated:

"The parties agree to share the time with [M.M.] on a reasonable basis including, [M.M.'s] birthday on March 8, 2013 in alternate years and alternate Christmas Eve, Christmas Day, New Years Day, New Years Eve, Easter, Memorial Day, Fourth of July, Labor Day, Veteran's Day, and Thanksgiving. [M.M.] shall be with [Monge] for Mother's Day and with [Couri] for Father's Day each year for the entire weekend. [Couri] shall have [M.M.] half of Christmas vacation and all of Spring Break/Easter vacation in alternate years. After [M.M.] has started grade school, when a holiday falls on a weekend when [Couri] has [M.M.], he shall have [M.M.] the entire weekend from Friday p.m. until Monday p.m."

"If there is a conflict between the regular schedule and the holiday schedule, the holiday schedule shall take precedence."

"[Couri] shall have [M.M.] with him for five (5) weeks in the summer time in seven (7) day segments in June, July, and August to coincide with his weekend visits. He shall advise [Monge] of his five (5) week/seven (7) day increments no later than April 1 of each year."

¶ 7 The court entered the selected order on September 10. Couri appealed arguing that the trial court erred in designating Monge as the custodial parent and in implementing the decrease in his parenting time prior to the filing of the custody order. On February 7, 2014, this court, in a split decision, affirmed the trial court's order finding that it was not an abuse of its discretion. Couri's petition for rehearing was denied on May 5.

¶ 8 On June 5, Monge, whose attorney had drafted the challenged order, filed a petition in the circuit court for modification of the order pursuant to section 607(c) of the Marriage Act. 750

ILCS § 5/607(c) (West 2014). In count I of the petition, Monge argued the "order is not in [M.M.'s] best interest. It should be modified to provide for a more equitable summer distribution of time between the parties *** which would include a prohibition against [Couri] linking his seven (7) day visitation periods with his weekends, Father's Day, and Fourth of July."

¶ 9 Couri moved to dismiss the petition on June 6, arguing that the trial court lacked jurisdiction to hear it since the appellate court mandate had not issued and the parties still had until June 19 to seek the supreme court's review of the appellate court's ruling. On June 11, the trial court granted Couri's motion. It then scheduled a hearing on the peition to modify for June 20.

¶ 10 On June 12 Couri petitioned for leave to appeal to the Illinois Supreme Court and on June 17 he filed a second motion to dismiss Monge's petition for modification with a hearing date set for June 20. On June 19 both Monge and Couri filed notices of cancellation of their respective hearings, Monge for her petition for modification and Couri for his second motion to dismiss Monge's petition for modification.

¶ 11 On July 11 the Illinois Supreme Court denied Couri's petition for leave to appeal. After a series of motions noticing cancellations and rescheduling of hearings, a nonsubstantive amendment to his petition to modify, and a motion for a continuance, Couri filed a motion to dismiss Monge's petition for modification arguing that the pleading failed to state a claim for which relief could granted. He stated that her petition is governed by section 610 of the Marriage Act per section 602 and not section 607(c) and she has failed to show any endangering environmental changes warranting the modification.

¶ 12 A hearing was scheduled for September 3 on the pending issues and motions. On August 27 Monge filed a notice of a settlement conference scheduled for September 2. The record is

devoid of documentation referencing this conference. A hearing on all pending issues and motions was again scheduled for November 10.

¶ 13 On September 23 Monge filed a motion to clarify. She requested that the court clarify paragraph 3(c) of the order describing Couri's summertime parenting schedule to the extent that it established the parties will both have "reasonable time with [M.M.]." She suggested that the order be changed to state, in relevant part, that:

> "Father shall have [the minor] with him for five (5) non-consecutive weeks in the summertime in seven (7) day increments in June, July, and August. Each of the five (5) weeks of vacation would include, not in addition to, three (3) of the Father's normal visitation weekend days."

¶ 14 On September 24 Couri also filed a motion for clarification. He requested the court clarify the same term in the order. He stated that:

> "The clear and unambiguous language of [Couri's] five-week visitation in the summer with [the minor] allows him to have his weekly visit [sic] summer visitations along with his alternate regular weekend visitations for a total of ten (10) days consecutively. That was the clear meaning of the Court's adjudication of the issue on August 29, 2013 [sic]."

¶ 15 Couri filed a motion to dismiss Monge's motion to clarify. He argued that her motion was an attempt to modify the order under the guise of clarification and repeats the arguments made in his motion to dismiss Monge's petition for modification pursuant to section 610 of the Marriage Act.

¶ 16 At the hearing, Monge dismissed her petition to modify the order and Couri dismissed his petition to clarify the order. The trial court then heard arguments regarding Monge's motion to

clarify along with various other matters not included in this appeal. Notwithstanding his counsel, Ms. Nair's, insistence for a hearing at a later time, the court also heard Couri's motion to dismiss Monge's motion to clarify. The evidence submitted and testimony presented focused on financial matters and not on any change in M.M.'s environment. McCarthy argued specifically "the track record in this case is horrible. And whatever you call it, whether you call it modification or clarification or using common sense to resolve the issues that these folks can't resolve, we need an order that resolves this issue concerning the holidays and summer time." His argument in the end acknowledged Monge's dismissal of her motion to modify but focused on a need for clarification of the order under the court's inherent authority.

¶ 17 Nair argued that because the order had been tested on appeal, it would be an inappropriate modification if there were any rephrasing. She further asserted that Couri had dismissed his motion to clarify and then cited section 610 of the Marriage Act requiring a negative change in the child's environment for an order such as the one before the court to be modified within two years of its entry. She again requested an evidentiary hearing on the matter because even if the court were to accept Monge's best interest argument it still would have to make findings of facts for any change. In light of the court's question regarding her feeling of basic closure for the visitation matter between the parties, Nair stated "that closure on the question of next summer" was not "within the contemplation of the law" and that there was no "mechanism to move ahead on the motion to clarify at that point."

¶ 18 After taking the matter under advisement and continuing the case, the trial court conducted the continued proceeding for clarification on December 5, 2014, and presented its oral ruling. It detailed the timeline and legal proceedings that had brought the matter to that point and outlined the continuous and contentious history of the parties. It then went on to discuss the

authority under *In re Marriage of Harnack v. Fanady*, 2014 IL App (1st) 121424, to clarify the order noting a reasoned overwhelming consensus that the order needed to be clarified based on previous disagreements between the parties, between counsel, and between party and counsel about the summer schedule. The court stated that:

> "[D]uring [its] ruling [it] certainly did suggest that is [sic] a weekend hooked up with your time, Mr. Couri, that that would be an acceptable thing to happen. [Its] intention, though inartfully stated, was to provide that there might be one or two weekends that that occurred, that Mr. Couri could hook up one of his weekends. It most certainly was not my intention to deprive [M.M] and Ms. Monge from weekend time every single weekend, save one during the summer in Glen Ellyn.
>
> And I would note that before the summer started the parties came asking for [the court's] help, but then a petition for leave to appeal to the Supreme Court was filed. That was ultimately denied, but the schedule [the court] believe[s] as submitted by Mr. Couri was used. So [the court will] clarify the summer visitation schedule… And [it will] tell all of you that it is not all of your fault; [the court is] partially to blame for [its] inartful explanations during [its] ruling. And [it] hope[s] that this clears up any scheduling problems that the parties have from here on out."

¶ 19 On December 30, 2014, the trial court's ruling was incorporated into the original order. To clarify paragraph 3(c) of the order, the ruling to be incorporated stated the following, in pertinent part,:

> "1. Regarding custodial time over the summers:

a) Beginning with May 2015: When [M.M.] gets out of school, that first weekend is Father's weekend. He shall have the weekend and a week. [M.M.] will be returned on Monday and will stay with [Monge] for an entire week.

b) The following weekend shall be [Couri'] weekend. He shall have [M.M.] for the weekend and the following week.

c) [Couri's] other 3 weeks of custodial time shall be established in 7-day increments running Monday to Monday.

d) [Couri] shall advise [Monge] by April 1st of each year of his custodial time for the upcoming summer.

2. The holiday schedule trumps the summer schedule. Summer schedule trumps the regular schedule."

The order continues to break down the holiday and spring break visitation and custody schedule. It also addresses the financial issues that were before the court but are not a part of this appeal.

¶ 20 On January 23, 2015, Couri moved for reconsideration and the court denied his motion on July 24. Couri timely appealed.

¶ 21 ANALYSIS

¶ 22 As a primary matter, we note that although the record notes a flurry of motions filed and then voluntarily dismissed, the hearing and order at issue in this matter were with regard to Monge's motion to clarify and Couri's motion to dismiss her motion to clarify. No motion to modify was pending at the time of the hearing. Therefore, section 610 of the Marriage Act is inapplicable. See 750 ILCS 5/610(a) (West 2014) (noting its application only to motions to modify).

¶ 23 Now here on appeal, Couri argues that the trial court erred in incorporating its December 4, 2014, ruling and subsequent December 30, 2014, order into the original order. He claims that it was an improper modification of the original order in reliance on inapplicable case law, *Fanady*, at the insistence of Monge during the hearing and in her motion to clarify. According to Couri, the original order is subject to the requirements of section 610 and not section 607 of the Marriage Act as cited by Monge in her motion for modification. He argues that unlike section 607, section 610 necessitates an evidentiary hearing with findings of fact showing M.M.'s environment had become endangered in order for a modification to occur within two years of the entry of an order. Couri asserts that such a hearing did not occur and therefore the modification was improper.

¶ 24 Monge counters that the trial court's ruling incorporated into the original order was proper as it clarified and did not modify it. She argues that her motion to clarify mentioned change only once but ultimately did not seek to substantively change the order. She argues that she moved for the court to clarify its original order to show that she and Couri would both receive reasonable time with M.M. over the summer. She wanted the court to further clarify that Couri could not combine the allotted summer timeframe with his regular parenting weekends and holiday schedule. She asserts that the trial court's recognition of the need for clarification was rooted in the parties' numerous court proceedings about the holiday and spring break visitation schedules even though the original order addressed those issues as did Couri's later dismissed motion to clarify. She states that both parties were on the same page with the need for clarification and that the trial court did not err in making the clarification under the authority of *Fanady* to preclude further litigation and based on its original intent because its intent carries great weight.

¶ 25 To clarify is to make something easier to understand. http://www.merriam-webster.com/dictionary/clarify (last visited May 11, 2016). To modify is to change some parts of something while not changing other parts. http://www.merriam-webster.com/dictionary/modify (last visited May 11, 2016). In terms of legal proceedings, when being asked to clarify an order, a trial court is directed to its original *intent* and is being asked to *remember* not revisit its original judgment. *In re Marriage of Breslow*, 306 Ill. App. 3d 41, 55 (1999). A motion for modification of a judgment, however, directs the court to revisit the merits of the case suggesting its decision "was at least partially wrong." *Id*.

¶ 26 Here, the original order stated in pertinent part that Couri "shall have [M.M.] with him for five (5) weeks in the summer time in seven (7) day segments in June, July, and August to *coincide* with his weekend visits. He shall advise [Monge] of his five (5) week/seven (7) day increments no later than April 1 of each year." The court stated during the original order's oral ruling at the request of McCarthy that "*if* there is *an instance* where [the seven day week is] gonna extended [sic] on a weekend on either end, [it] would hope that [Monge and Couri] could work that out." The court clearly noted its understanding that Couri's five summer weeks and his regular weekend visitations could adjoin as well as overlap. It further noted that it did not intend for those adjoinings to be a regular or consistent occurrence such that Couri would be able to lump all of his visitation periods together and preclude Monge from any significant summer time with M.M. outside of the Glen Ellyn weekend.

¶ 27 Clearly the intent of the court was to clarify, not modify its earlier order, as the clarified order appears to say the same thing. Couri would still get his five summer weeks with M.M. in June, July, and August running in seven day increments, which were clarified to be from Monday to Monday. Taking into consideration its understanding that some of the weeks would

adjoin with Couri's regularly scheduled weekends with M.M., the court specified the two of Couri's weeks. One is set to begin immediately following the end of the school term and adjoins the conclusion of one of Couri's regularly scheduled weekends. The next is scheduled about a week later and is also tacked to one of Couri's regularly scheduled weekends. The remaining three of Couri's five weeks would be limited to seven days, be selected by Couri and have to be provided to Monge by April 1st just as originally ordered.

¶ 28 One could argue that this is a change, and thus technically a modification of the order, because Couri's previous flexibility with all five weeks has been abridged. However, it is clear that the court is simply further clarifying its original order by expressly providing its intent to allow only some summer visitation weeks to adjoin some regularly scheduled weekends and not all.

¶ 29 Moreover, we find *Fanady*, 2014 IL App (1st) 121421, ¶ 67, persuasive and agree with Monge and the court that it had the authority to make the arguable change, as it was further clarification of its intent. In *Fanady*, the court *sua sponte* remanded and charged the trial court with clarifying the contested source of the shares to be distributed pursuant to its grant of dissolution of marriage. *Id*., ¶ 66. The court found that the trial court has the authority to make such a clarification because of the conflicting interpretations of the term regarding the shares' distribution in the dissolution. *Id*. This finding was despite the fact that such a clarification would mean that it would be adding information to the original order to specify the location of the shares' source. Similarly, the trial court here has the inherent authority to clarify the term regarding Couri's summer visitation schedule with M.M. in its original order because of Monge and Couri's conflicting interpretations of it. Therefore, the court did not err in issuing the incorporated ruling and specifying which two of Couri's summer visitation weeks could be

extended by his regularly scheduled weekends from seven days to ten days. Therefore, we find the court's incorporated order proper as it was a clarification of its intent in the original order and not a modification.

¶ 30 CONCLUSION

¶ 31 The judgment of the circuit court of Peoria County is affirmed.

¶ 32 Affirmed.