2017 IL App (2d) 160884-U
No. 2-16-0884
Order filed February 24, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

LANIYA R. ALLEN,	)	Appeal from the Circuit Court
	)	of Lake County.
Petitioner-Appellee,	)	
	)	
v.	)	No. 15-F-1037
	)	
DERRICK D. EDWARDS,	)	Honorable
	)	Charles W. Smith,
Respondent-Appellant.	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Burke and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly construed the dissolution decree, issued in Georgia and registered in Illinois, as permitting petitioner to relocate with the parties' two children to the country of Bahrain.

¶ 2 Respondent, Derrick Edwards, appeals the judgment of the trial court granting petitioner, Laniya Allen's, petition to enforce a Georgia dissolution judgment that the court had registered in Illinois. The court construed the judgment as permitting petitioner to relocate with the parties' two children to the country of Bahrain. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 At all times relevant here, the parties were on active duty in the United States Navy. In July 2008, a Maryland court entered a judgment dissolving the parties' marriage. The judgment gave the parties "joint legal and shared physical custody" of their two minor children. The Maryland judgment was subsequently registered in Georgia. On July 11, 2014, the Georgia court issued a "Final Order" which incorporated an attached "Parenting Plan B" (together, "the 2014 judgment"). The 2014 judgment recited that the parties agreed to joint legal custody, with petitioner having primary physical custody and respondent having visitation. At the time the judgment was entered, petitioner was stationed in Illinois and respondent was stationed in Maryland. In the "Parenting Plan B" appeared a section entitled "VI. Additional Provisions," which provided in relevant part:

> "1. THE FATHER SHALL BE ALLOWED ADDITIONAL VISITATION WHEN AGREED UPON BETWEEN THE PARTIES.
>
> 2. IN THE EVENT THE MOTHER IS DEPLOYED FOR A PERIOD GREATER THAN FOUR WEEKS TO A STATION WHERE SHE IS UNABLE TO TAKE THE MINOR CHILDREN, THE FATHER SHALL HAVE PHYSICAL CUSTODY OF THE CHILDREN. MOTHER SHALL ENSURE HER FAMILY CARE PLAN ALLOWS FOR SUCH.
>
> 3. THE PARENTS AGREE [THAT] THE CHILDREN'S PASSPORTS SHALL BE IN THE POSSESSION OF THE PARENT WHO HAS PHYSICAL CUSTODY OF THE CHILDREN FOR A PERIOD OF SEVEN CONSECUTIVE DAYS OR MORE."

¶ 5 In December 2015, petitioner filed two pleadings. The first was a petition pursuant to section 305 of the Uniform Child-Custody Jurisdiction and Enforcement Act (Uniform Custody

Act) (750 ILCS 36/305 (West 2016)) to register the 2014 judgment in Illinois. Petitioner noted that the parties were still stationed in Illinois and Maryland, respectively.

¶ 6 The second pleading filed by petitioner was a motion to modify custody. Petitioner stated that she had received "Permanent Change of Station (PCS) orders to Bahrain." The Navy was permitting the parties' children to live with petitioner in Bahrain during her reassignment. Petitioner asked the court to modify the 2014 judgment to permit her to relocate to Bahrain with the children. Petitioner was *pro se* when she filed the two pleadings.

¶ 7 The trial court, noting that respondent had no objection, entered an order registering the 2014 judgment in Illinois. The trial court set the motion to modify for a hearing.

¶ 8 In January 2016, respondent filed a motion for appointment of a guardian *ad litem* for the children. The trial court granted the motion and appointed attorney Patricia L. Cornell as guardian.

¶ 9 In March 2016, petitioner, now represented by counsel, withdrew the motion to modify and filed a petition to enforce the 2014 judgment. Petitioner stated she was "set to deploy to Bahrain in June, 2016 for a tour of two (2) years." Petitioner contended that, since the Navy was permitting her to bring her children with her for the tour, the transfer-of-custody language in Parenting Plan B did not require her to relinquish custody to respondent during the tour. Petitioner asked the court to direct respondent to sign passport paperwork for the children.

¶ 10 On April 12, 2016, Cornell filed her report with the court. Cornell opined that the 2014 judgment permitted petitioner to take the children to Bahrain. Cornell pointed to a June 13, 2014, hearing in Georgia court where the parties discussed with the court the terms of their agreement regarding custody and visitation. Cornell submitted that these comments clarified the meaning of the transfer-of-custody language in Parenting Plan B. Cornell recommended "that

the children be allowed to travel to Bahrain with [petitioner] as anticipated in the [2014 judgment] *** with [respondent] having as much time with the children as possible."

¶ 11 A transcript of the June 13, 2014, hearing was included with the submissions below. In that transcript, the parties had the following discussion with the trial court about the transfer-of-custody language in Parenting Plan B:

> "MR. HAMMOND [respondent's attorney]: There were some changes in the amendments we were doing to [Parenting Plan B]. And I think there [were] a couple of things we wanted to put on the record because we're—
>
> MR. DAVISON [petitioner's attorney]: One of them was what happens when someone goes overseas. And Shawn [respondent's attorney] and I had a conversation about this and where we ended up was if someone goes to a place in this world where they cannot take the children, a deployment, for instance—
>
> THE COURT: Uh-huh.
>
> MR. DAVISON: —that the children will go to the other parent. I mean, that's—that's the obvious thing to say. But we were also—we were trying to deal with some other issues about, you know, what if you go to some place else that you can take children. And we ended up with that issue, that's just an issue for another day. I mean, that would have to be a custody modification issue. So I put that language in the parenting plan.
>
> MR. HAMMOND: And my only comment on that is—is trying to use the same language for the Navy as you do for the Army. You know, I would say deployment or non-accompanied tour or any training that exceeds four weeks in length. Like in the Army here at Fort Gordon, you go to the field for two weeks ***

THE COURT: I would agree with that. I try to set a limit on—

MR. HAMMOND: Right. But Bill [petitioner's attorney] and I have used the same language and I would just say four weeks or longer, kids go to dad. You know, mom's looking at projected sea duty coming up. You know, if she goes out and it's longer than four weeks, kids go to dad. And I think it's the same language you use for the Army.

* * *

MR. DAVISON: And what do you propose as far as the language? *** I put in [Parenting Plan B] unable to take minor children, you know, to the deployment station where she's unable to take the minor children, and that may not be specific enough.

MR. HAMMOND: And I would do—I would want to add to that if it's longer than a four-week period of time. So, I mean, it's important that the lawyer understand the language as well. And, sir [addressing respondent], I understand you want to have this in Navy terms, but me and Mr. Davison and the Judge use a specific set of language that we use for the Army.

MR. EDWARDS [respondent]: No, I don't necessarily want it in Navy terms. I just want to get clear on the standard. There's a distinction between deployment. Deployment is aboard ship or aircraft. That's definitely—but you can't take the kids. However, we also have overseas duty where you can take your kids. So I want that issue to be addressed.

MR. HAMMOND: Well, if she goes to Korea on a company tour she should be able to take the kids with her. And that's been the policy of this Circuit. I'm not going to

speak for Your Honor, but that is a policy of this Circuit. If she goes to Germany and she's—

THE COURT: Normally, I mean, and with Naval assignments I'm not familiar where those might necessarily be. But normally it's Army that we're talking about and normally it would be a question of Korea or Japan or—

MR. HAMMOND: Italy.

THE COURT: —Germany or Italy. And normally if it's [a] tour that the children could go on, like if it's a 12-month tour, 18-month tour, or a 24-month tour, then normally we allow that still with *** visitation with the non-custodial parent. But if somebody gets assigned to go to Afghanistan then that's [an] unaccompanied tour and custody would automatically transfer.

But let's assume that she gets sent to a training that she's going to be out of town for two weeks. That would not constitute transfer of custody, is what they're saying. Okay.

MR. DAVISON: I don't think he—I don't think—I think we understand, your [*sic*] know, short term. I think what you were asking about is the—

MR. EDWARDS: My concern is say she gets based in Japan so now based upon her military duties I cannot see my kids because it doesn't state when I can see my kids because I'm in the States and she's in Japan.

MR. HAMMOND: Judge—

THE COURT: Well, you have *** visitation, which is you get summers and then holiday visitation.

MR. HAMMOND: I would say dad needs to understand that there's no difference in them being in Japan than being in Ft. Lewis, Washington. It's just a little extended plane flight.

THE COURT: Is dad in Washington now?

MR. HAMMOND: No, dad's in Maryland. But I'm saying that there's no difference between mom in Japan or mom being in Ft. Lewis, Washington, you know.

THE COURT: Does she have any anticipated tours of duty that she's been notified of at this time?

MR. EDWARDS: Ma'am, as I gave to the guardian, she has to—her job requires her to go out to sea or overseas, whereas my job is almost surely—

THE COURT: If she goes out to sea for more [than] two weeks custody transfers. Okay.

MR. HAMMOND: Four weeks. We said four weeks.

THE COURT: Or four weeks. Well, four weeks. If she goes out to sea for longer than that. But if she gets reassigned to a military base where she is not going to be out to sea a period of time, you know, I don't know what the likelihood of that [is]—that's what doesn't constitute a change of custody. It's really the four weeks—being longer than a four-week event that she would be unavailable [that] would automatically transfer custody, or if she's going to a normal place where it's an accompanied tour and children are allowed that it would not be.

And it would be the same thing if you had the children with you and you had to go somewhere. Does that make any sense?

MR. EDWARDS: Yes, ma'am.

THE COURT: Okay."

¶ 12 In April 2016, respondent filed both a response to the petition to enforce and a "Petition for Modification of Parental Responsibilities." In his response, respondent argued that petitioner's transfer to Bahrain was not a "deployment" but rather a "Permanent Change of Duty Station." Therefore, according to respondent, the transfer-of-custody language allowing petitioner to retain custody of the children in certain cases of "deployment" did not apply. For this position, respondent relied on definitions of "deployment" in federal law and Navy manuals.

¶ 13 In his petition, respondent claimed that petitioner's transfer to Bahrain would constitute a change in circumstances warranting a modification of his parenting time. See 750 ILCS 5/610.5(a) (West 2016) (allowing for modification of parenting time "at any time *** upon a showing of changed circumstances that necessitates modification to serve the best interests of the child."); 750 ILCS 5/609.2(a) (West 2016) ("A parent's relocation constitutes a substantial change in circumstances for purposes of Section 610.5."). Respondent asked the court to grant him "the majority of parenting time," terminate his child support obligation, and order petitioner to pay him child support instead.

¶ 14 The trial court held a hearing on the outstanding petitions. The court noted that it prepared for the hearing by reviewing the transcript of the June 13, 2014, Georgia proceeding that Cornell had referenced. Respondent objected that use of the transcript was barred by the parole evidence rule because the 2014 judgment was "clear on [its] face" as to whether petitioner could take the children to Bahrain. According to respondent, petitioner would retain custody only in certain cases of "deployment," but here petitioner was being "transferred" or "relocated" not "deployed." Respondent concluded that custody should transfer to him while petitioner was in Bahrain.

¶ 15 The trial court disagreed with respondent's interpretation of the 2014 judgment. Construing the judgment in light of the June 13, 2014, hearing, the court held that petitioner was permitted to take the children with her when she relocated to Bahrain. Petitioner informed the court that she was leaving for Bahrain on June 6 and that the children would be finished with school on May 31. The court directed that respondent would have summer visitation with the children before they joined petitioner in Bahrain. Finally, addressing respondent's petition for modification of parental responsibilities, the court determined that petitioner's relocation would not constitute changed circumstance warranting a modification.

¶ 16 Respondent filed a motion to reconsider, which the trial court denied. Respondent followed with this timely appeal.

¶ 17 II. ANALYSIS

¶ 18 Respondent appeals the trial court's grant of petitioner's request to enforce the 2014 judgment by permitting her to retain custody of the children in her military transfer to Bahrain. Respondent does not, we note, appeal the denial of his petition to modify parental responsibilities.

¶ 19 Respondent presents his two arguments on appeal in the following order. First, he claims that the trial court erroneously construed the 2014 judgment as permitting petitioner to retain custody of the children in relocating to Bahrain. Second, he contends that the court had no authority to allow petitioner to relocate with the children because she did not file a motion to relocate pursuant to section 609.2 of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/609.2 (West 2016)).

¶ 20 We begin by noting that, though the 2014 judgment was entered under Georgia law, we apply Illinois law to petitioner's action to enforce that judgment. Without objection by

respondent, the 2014 judgment was registered in Illinois pursuant to section 305 of the Uniform Custody Act (750 ILCS 36/305 (West 2016)). Section 306 of the Uniform Custody Act (750 ILCS 36/306 (West 2016)) states:

> "(a) A court of this State may grant any relief normally available *under the law of this State* to enforce a registered child-custody determination made by a court of another state.
>
> (b) A court of this State shall recognize and enforce, but may not modify, except in accordance with Article 2 [750 ILCS 36/201 *et seq.* (West 2016)], a registered child-custody determination of a court of another state." (Emphasis added.)

By the dictate of section 306(a), we apply Illinois law to this action to enforce the 2014 judgment. Under Illinois law, a provision in a marriage settlement agreement permitting relocation under the circumstances dispenses with the need to file a motion to relocate pursuant to section 609.2 of the Marriage Act (750 ILCS 5/609.2 (West 2016)). See *In re Marriage of Coulter and Trinidad*, 2012 IL 113474 (2012), ¶ 22 (the respondent was not required to move for removal to California where the parties' joint parenting agreement, incorporated into the dissolution judgment, allowed removal to California under the circumstances). Thus, we begin with respondent's first contention, which is that the 2014 judgment does not permit petitioner to retain custody of the children in relocating to Bahrain. If the judgment does permit her to relocate with the children, then petitioner was not required to file a motion to relocate pursuant to section 609.2 of the Marriage Act.

¶ 21 The relevant language in the 2014 judgment is: "In the event the mother is deployed for a period greater than four weeks to a station where she is unable to take the minor children, the father shall have physical custody of the children." Respondent's position is that petitioner's

transfer to Bahrain was not a "deployment" but rather a "relocation" or "reassignment." Here respondent draws on definitions of "deployment" in federal and Georgia statutes.

¶ 22 On respondent's interpretation, the transfer-of-custody language provides no guidance on what should occur with the children except in cases that meet the specialized definition of deployment that respondent proposes. He says: "The issue of what happens when [petitioner] moves to a permanent duty station [not a deployment, according to respondent] half way around the globe to Bahrain has not been addressed ***." Thus, according to respondent, since the 2014 judgment does not permit petitioner to retain custody in these circumstances, she was required to file a motion to relocate pursuant to section 609.2 of the Marriage Act.

¶ 23 We reject respondent's interpretation of the 2014 judgment. A judgment is to be construed like other written instruments, with the goal of ascertaining the trial court's intent. *Fieldcrest Builders, Inc. v. Antonucci*, 311 Ill. App. 3d 597, 605 (1999). Generally, the intent of the court is determined by the language in the order entered, but where the language of the order is ambiguous, it should be interpreted in the context of the record and the situation that existed at the time of its rendition. *In re Marriage of Heasley*, 2014 IL App (2d) 130937, ¶ 28. The relevant sources include pleadings, motions and issues before the court, the transcript of proceedings before the court, and arguments of counsel. *Id.*

¶ 24 "Deployed" is not formally defined in the 2014 judgment, nor is its meaning otherwise discernible from its language. Accordingly, we consider the term ambiguous and turn to the discussion at the June 13, 2014, hearing. We see from that discussion that the court and the parties were not concerned with limiting the transfer-of-custody provision to any particular technical definition of military reassignment. At the beginning of the discussion, counsel for petitioner noted that he and opposing counsel had agreed on language that "if someone goes to a

place in this world where they cannot take the children, *a deployment, for instance* *** the children will go to the other parent." (Emphasis added.). Counsel for respondent agreed in reply that the transfer-of-custody provision was meant to apply to "any deployment *or non-accompanied tour or any training* that exceeds four weeks in length." (Emphasis added.). Thus, the counsels were in agreement that the transfer-of-custody provision was meant to cover any transfer, of which deployment was one instance. Later in the discussion, respondent (addressing the court directly) noted that "deployment" was technically an assignment "aboard ship or aircraft" where the children would not be permitted. Respondent distinguished deployment from "overseas duty where you can take your kids." Respondent (still speaking directly to the court) wanted "that issue" (presumably, that distinction) "addressed." Speaking to respondent's concern, the trial court remarked that it understood the proposed language to mean that custody would not transfer to respondent if petitioner was "reassigned to a military base where she is not going to be out to sea a period of time." The court further observed: "[I]t's *really the four weeks*—being longer than *a four-week event* that she would be unavailable [that] would automatically transfer custody, or if she's going to a normal place that's an accompanied tour and children are allowed that it would not be." (Emphasis added.) These remarks show that the court's concern was not with the technical character of the transfer in military terms but with its duration and with whether the Navy would permit the children to accompany petitioner. The court understood "deployed" in the transfer-of-custody provision to be a proxy term for any kind of transfer from petitioner's current station. Thus, the court's understanding was consistent with that of both counsels.

¶ 25 Since the discussions at the June 13, 2014, hearing have clarified for us that the court and the parties intended "deployed" to denote any kind of transfer or relocation, the statutory definitions of "deployment" that respondent cites are irrelevant.

¶ 26 Moreover, as respondent does not dispute, the Navy is permitting petitioner to bring the children with her on her reassignment to Bahrain. Accordingly, under the language of the 2014 judgment, petitioner shall retain custody of the children.

¶ 27 Since the 2014 judgment permits petitioner to relocate to Bahrain with the children, petitioner was not required to file a motion to relocate under section 609.2 of the Marriage Act. See *Coulter and Trinidad*, 2012 IL 113474 (2012), ¶ 22.

¶ 28 Accordingly, the trial court did not err in granting the petition to enforce the 2014 judgment and thereby permitting petitioner to retain custody of the children in relocating to Bahrain.

¶ 29 III. CONCLUSION

¶ 30 For the foregoing reasons, we affirm the judgment of the circuit court of Lake County.

¶ 31 Affirmed.