2017 IL App (5th) 170288-U

NO. 5-17-0288

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re ESTATE OF M.C. and E.C., Minors	)	Appeal from the
	)	Circuit Court of
(Lindell B. and Carol B.,	)	Effingham County.
	)	
Petitioners-Appellees,	)	
	)	
v.	)	Nos. 15-P-41, 15-P-42
	)	
Jared L. C.,	)	Honorable
	)	James J. Eder,
Respondent-Appellant).	)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Goldenhersh and Chapman concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly granted plenary guardianship to the grandparents of two minor children.

¶ 2 The circuit court of Effingham County granted plenary guardianship of two minors, M.C. and E.C., to petitioners, Lindell B. and Carol B., while denying the motion to vacate the guardianship and immediately return custody of the children filed by the children's natural father, Jared L. C. (father). Petitioners are the maternal grandfather and step-grandmother (grandparents) respectively of the two minors. The father appeals the court's decision. We affirm.

¶ 3 The children's natural parents were married in December 2010. They lived in Texas until the parents separated in May 2012, when the mother moved back to Illinois with the children. The marriage was dissolved in February 2014, and the mother was awarded sole custody of the children. The issue of the father's visitation was reserved. On May 5, 2015, the mother died in an automobile accident. The children were then five and six years old.

¶ 4 On May 7, 2015, the grandparents filed two separate probate actions for each of the minor children requesting they be appointed as co-guardians for the child. On May 8, 2015, the grandparents filed emergency petitions for temporary guardianship of the minor children. The children had been slightly injured in the automobile accident, and the grandparents sought temporary guardianship to ensure the children received necessary medical care and treatment. The grandparents were awarded temporary guardianship on May 11, 2015. The maternal grandmother, Deidre G., had executed an entry of appearance and consented to the appointment of the grandparents as co-guardians for each of the children.

¶ 5 In their original petitions, as well as the emergency petitions, the grandparents alleged that the father's whereabouts were unknown. While the grandparents believed that the father was either in Texas or California, they did not have the father's phone number or address. From the time that the mother moved from Texas with the children in 2012, until the time of her death, the father had visited his children only once, for two days in 2013, while they were visiting with their maternal grandmother in Texas. After the accident, the grandparents contacted the maternal grandmother, Deidre, to inform her

that the mother had died. The grandparents did not have a telephone number or address for the father. Deidre offered to contact the father to let him know about the accident. On May 5, 2015, the father called the home of the grandparents and spoke with Carol, who was involved with family and friends stopping by to pay their respects. During that brief conversation, Carol did not ask the father for a telephone number or address where he could be contacted. When the grandparents later spoke to the father via telephone on May 12, 2015, they were able to obtain an address for the father, who gave them only a post office box in California.

¶ 6 On May 21, 2015, the father filed a motion to vacate the guardianship orders and requested immediate and permanent custody, care, and control of the minor children. After numerous delays, as the court noted, "largely occasioned by [father]," the court conducted a consolidated three-day hearing in January of 2016 on the issue of standing. On January 25, 2016, the court concluded that the grandparents had standing to proceed to hearing on their petition for appointment of co-guardians. The court found that the grandparents had rebutted the statutory presumption that the father was willing and able to make and carry out day-to-day child care decisions concerning his minor children by a preponderance of the evidence. The court specifically noted that the father had visited with his children only once during a three-year period prior to the death of the minors' mother, and that the father had not visited at all with the children immediately following the mother's death, until some six months later for a weekend visit arranged by the father's mother. The next time the father visited with his children was when he came back to Illinois for the January 2016 evidentiary hearing. The court also noted that the

father had only called to speak to the minors some 20 times during the 7 months after the mother's death. The court found the father's various explanations and/or rationalizations for his limited contact and communication with his children over the last 3½ years to be less than convincing. In fact, the court specifically stated that the father's testimony at the hearing was frequently evasive, inconsistent, and/or inaccurate, and therefore not credible on many matters. While the father's desire for his children to live with him in California was genuine, the court concluded that the father's willingness and ability to provide day-to-day parenting for the children was cast into doubt by the father's lack of action to take on the responsibility of being a parent. The court also found that the father had a long history of questionable conduct, including repeated alcohol abuse, sporadic employment, financial irresponsibility, and lack of residential stability. While acknowledging that the father had taken some steps to improve his situation, according to the court, there was significant progress still to be made.

¶ 7 In June 2017, after numerous additional delays, once again largely occasioned by the father, the court held a best interests hearing on the petitions for guardianship. On July 20, 2017, the court again concluded that the father was still not ready, willing, and able to make and carry out day-to-day child care decisions for his minor children. The trial court therefore found that the evidence offered by the grandparents had overcome the father's presumptive superior rights, and concluded that it was in the best interests of the minor children that their grandparents be awarded guardianship. Accordingly, the court granted plenary guardianship of the children to the grandparents. In so doing, the court specifically noted that despite serious concerns expressed in its earlier ruling

pertaining to the very limited time father had spent with his children during the 3½ years prior to the hearing on standing, the father failed to see his children for another nine months after that hearing. The father had only seen his children for a two-day visit when the grandparents took the children to California for the purpose of visiting with their father, and then not again for another six months until the father returned to Illinois for the June 2017 hearing. The father had made no other request for visitation. More importantly, no requests for visitation had been denied by the grandparents. The court determined that there was no reasonable explanation offered for the father's lack of effort to spend more time with his children while the case was pending. The court also noted that the father had changed his residence twice, and his employment once, since the January 2016 hearing. As opposed to the grandparents, who had a very close and caring relationship with the children for more than two years, the father had very little interaction and interrelationship with either of the minors for more than five years. The court further found that the grandparents were able to provide, and had provided, a safe and nurturing environment for the children, while the father's ability and willingness to do so was still in question. The court also determined that the grandparents had repeatedly demonstrated their willingness and ability to place the needs of the children ahead of the needs of their own, and that the children were very well-adjusted to their home, school, and community in Illinois.

¶ 8 The father argues on appeal that the court erred in finding that the grandparents had standing to seek guardianship of the minor children. He also contends that the court erred in awarding plenary guardianship to the grandparents after finding that they had

overcome the presumption that the father had the superior rights to his children. Lastly, the father asserts that the court erred in failing to award him a reasonable schedule of parenting time. The father points out that his situation has changed in that he now has a good job that he has held for more than a year, and that he has moved into a three-bedroom duplex with his mother, who can help with child care while he is at work. He claims to have learned much about parenting from staying at his sister's house, helping her with her children, and that his children are excited to see him whenever he visits with them. The father also testified that he moved to California in February 2014 and hired an attorney in January 2015 to get visitation, but it was not until May of 2015 that his attorney mailed the motion to modify visitation to establish a formal visitation schedule with his children. The father further explained that he, too, was in an automobile accident in June 2012 and suffered serious injuries, including a broken neck. While he received a settlement of $19,000 as a result of that accident, he used most of the money to pay medical bills for a second accident that occurred in October 2012, when he was struck by a car as a pedestrian and sustained another broken neck. During the times he was recuperating, he could not work or visit with the children. The evidence revealed that from May 2012, when the mother returned to Illinois, and the June 2017 hearing, the father saw the children a total of 11 days, when he was in Illinois for court hearings and 8 days of visitation, with 2 of those 8 days being in California.

¶ 9 Analysis

¶ 10 When reviewing a trial court's ruling after an evidentiary hearing to determine whether a petitioner has standing under the probate act to proceed on a petition for

guardianship of a minor, generally the standard of review is *de novo*. *In re Guardianship of K.R.J.*, 405 Ill. App. 3d 527, 535, 942 N.E.2d 598, 604 (2010). If the court also heard evidence and made factual findings, the factual findings are reviewed under a manifest-weight-of-the-evidence standard. *In re Guardianship of K.R.J.*, 405 Ill. App. 3d at 535-36, 942 N.E.2d at 604-05. As for the guardianship proceeding itself, the best interests and welfare of the minor is the determining question. *In re Marriage of Russell*, 169 Ill. App. 3d 97, 102, 523 N.E.2d 193, 197 (1988). A guardianship determination will not be disturbed unless the trial court clearly abused its discretion or its decision is against the manifest weight of the evidence. *In re Marriage of Russell*, 169 Ill. App. 3d at 102-03, 523 N.E.2d at 197. There is a strong presumption in favor of the court's ruling because it alone had the opportunity to observe the parents and children and evaluate all temperaments, personalities, and capabilities. *In re Marriage of Russell*, 169 Ill. App. 3d at 103, 523 N.E.2d at 198.

¶ 11 The appointment of a guardian of a minor is governed by sections 11-1 through 11-18 of the Probate Act of 1975 (755 ILCS 5/11-1 through 11-18 (West 2014)). Upon the filing of a petition for the appointment of a guardian, the court may appoint a guardian only as the court finds the appointment to be in the best interest of the minor. 755 ILCS 5/11-5(a) (West 2014). The court lacks jurisdiction to proceed on a petition for appointment of a guardian of a minor, however, if the court finds that the minor has a living parent, whose whereabouts are known, and who is willing and able to make and carry out day-to-day child care decisions concerning the minor. There is a rebuttable presumption that the parent of the minor is willing and able to make and carry out day-to-

day child care decisions concerning the minor, but the presumption may be rebutted by a preponderance of the evidence. 755 ILCS 5/11-5(b) (West 2014). Willingness to make and carry out day-to-day child care decisions for minors is the knowing acceptance of the responsibility of making and carrying out the day-to-day child care decisions, while the ability to do so is the capability of providing day-to-day child care. The unwillingness and inability to make decisions regarding child care as demonstrated by relinquishments of responsibility and lack of commitment throughout a minor's life rebuts the statutory presumption in favor of a parent. *In re A.W.*, 2013 IL App (5th) 130104, ¶ 17, 994 N.E.2d 726.

¶ 12 The evidence here reveals that the father has not followed through on much of anything for his children for many years. He certainly has not put his children's needs before his own. Since May of 2012, the father has only seen his children six times, with two of those times being the father's presence in Illinois for evidentiary hearings. The grandparents have never denied any requests from the father or his mother or their attorneys to visit with the children. In fact, the grandparents took the children to California for a visitation with the father. Additionally, the father often missed scheduled calls with the children and generally has not been involved in their lives. The father has also exhibited a reluctance to communicate directly with the grandparents about the children and has relied on his mother to serve as a liaison. As the court noted, the father's "attitude has been combative, not conciliatory." The father has made many excuses and accusations for the lack of his involvement in the life of his children. The record establishes that it is the father who has not made the effort to establish and

facilitate a close and continuing relationship with his children. The father often claimed it was a matter of financial inability to visit with his children, yet his family members all testified that they would have given him financial assistance to see his children if he had asked. The father's lack of commitment to his children rebutted the presumption that he was willing and able to make and carry out the day-to-day decisions regarding the care of his children. Therefore, we agree with the trial court that the grandparents rebutted the statutory presumption, by a preponderance of the evidence.

¶ 13 Further, the trial court was correct when it found that the best interests of the children required granting plenary guardianship of the children to the grandparents. As the court noted, it was well aware and respectful of the superior rights doctrine. The court was also mindful, however, of the court's primary obligation to insure that the best interests of the children were achieved. Given that the father had not yet demonstrated that he fully understood and appreciated his statutory obligations, whereas the grandparents had offered and provided the children with the stable and nurturing environment they required, the trial court properly awarded plenary guardianship to the grandparents. The children have thrived while living with their grandparents and are well-adjusted to their home, school, and community.

¶ 14 We also note that the trial court has broad discretion in determining visitation rights of a nonresidential parent with the best interest of the child being of primary concern. *In re Marriage of Seitzinger*, 333 Ill. App. 3d 103, 112, 775 N.E.2d 282, 289 (2002). The court awarded the father six weeks of visitation with his children during the summer recess from school, one week during the winter recess from school, three

weekends during the fall and spring semesters each, and at such other times when the father and the grandparents can agree, with the requests for visitation not to be unreasonably refused. In addition, the father was awarded telephone contact no less than once a week. Given the distance between the father and the grandparents, and the fact that the children are in school, the visitation schedule, at this point in time, appears to be in the best interests of the children.

¶ 15 For the foregoing reasons, we affirm the judgment of the circuit court of Effingham County.

¶ 16 Affirmed.