

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2018 IL App (3d) 170034-U

Order filed September 19, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

ZACHARY McINTIRE,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
Petitioner-Appellee,)	Peoria County, Illinois,
)	
v.)	Appeal No. 3-17-0034
)	Circuit No. 08-F-234
NATASHA JOHNSON, n/k/a NATASHA)	
LACY,)	Honorable
)	David A. Brown,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Lytton and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's denial of the respondent's petition for relocation was not against the manifest weight of the evidence.

¶ 2 Natasha Johnson, now known as Natasha Lacy, appeals from the trial court's judgment denying her petition to relocate her daughter, M.J. (born October 2007), that she shares with Zachary McIntire. On appeal, Natasha argues that the court's denial of her petition for relocation was against the manifest weight of the evidence and resulted in a manifest injustice. Zachary argues that the court's decision was proper under the circumstances of this case.

FACTS

¶ 3

¶ 4 In 2009, the trial court awarded Natasha sole custody of M.J. and Zachary was awarded visitation every other weekend, on specific holidays, and Father's Day every year. Zachary was ordered to pay Natasha \$58 biweekly beginning in October 2008 and \$696 in back child support.

¶ 5 In January 2016, Natasha filed a petition for relocation to move M.J. to Colorado at the end of the 2015-16 academic school year. Natasha stated that her husband, Kipp Lacy, had an offer for full-time employment in his profession that paid more than his current employment, was losing his current employment, and provided the primary financial support for her and M.J. Natasha argued that it was in M.J.'s best interest to move with her, Kipp, and M.J.'s two half-siblings to Colorado. Natasha alleged that Colorado's school system was superior to Chillicothe schools because it had smaller classes, better student-teacher ratio, and more opportunities for advanced classes and extracurricular activities. Natasha stated that she would promote and foster a good relationship between M.J. and Zachary by telephone and letters, offer an extended summer visitation that would be equal or more time than Zachary was currently spending with M.J., share the cost of visitation, and provide regular contact with Zachary's family. However, Natasha stated that Zachary currently did not exercise his full visitation rights and that he only saw M.J. for up to six hours on Sundays, failed to pay court ordered child support since January 2013, and he owed \$6,387.03 in back child support. Zachary objected the petition, arguing that it was not in M.J.'s best interest to move to Colorado.

¶ 6 In May 2016, the guardian *ad litem* (GAL) filed his initial report. The GAL reported that Zachary believed that M.J. was doing well in school, happy, and well adjusted. Zachary admitted that he currently only utilized his allocated parenting time on Sundays for six hours. Zachary believed that Natasha only wanted to move to Colorado because marijuana was legal. Zachary

showed the GAL a Facebook post by Natasha that corroborated this belief. Zachary believed that Natasha had mental health issues, domestic violence took place in her home, and she had driver's license problems. Zachary wanted things to remain the same. He believed that M.J. turned out well, she loved living in Illinois, and 90% of her family lived in Illinois. Natasha told the GAL that she already applied for a medical marijuana license in Colorado due to her fibromyalgia. Natasha said that it is harder to get the license in Illinois and that was part of the reason why she chose Colorado. The GAL stated that it seemed that the primary basis for the move, as admitted by Natasha, was superior healthcare and legalized marijuana. The GAL also made note that Zachary communicated to M.J. about the relocation and took her to speak with a lawyer. The GAL believed that the statutory factors weighed in favor of denying Natasha's petition to relocate. Thereafter, the GAL filed his supplemental report. At that time, the GAL had confronted the parties about allegations that they made against each other and interviewed Kipp. Regarding nonpayment of child support, Zachary told the GAL that he and Natasha had entered into an agreement. The GAL renewed his recommendation to deny.

¶ 7 In July 2016, Natasha filed a motion for emergency temporary removal. Natasha stated that the Colorado school that she wished M.J. to attend was starting its academic year soon. Attached to her motion was information on the Colorado school, an email from Kipp's employer stating that he was laid off from his construction job as of May 2016 due to economic downturn, a copy of Kipp's paystub from his new employment in Colorado, and an online brochure for the apartment complex where Natasha secured housing. At the time Natasha filed this motion, Natasha and M.J. were residing in Peoria with Natasha's mother while Kipp and the two other children relocated to Aurora, Colorado. She stated that Kipp relocated for work purposes because he "was unable to secure another union position in this area and *** unable to work any other

position in the State of Illinois because of union rules.” Kipp secured employment with Advanced Concrete of Colorado and Natasha secured employment with Cost Cutters in Colorado as a cosmetologist. Natasha alleged that this familial separation was detrimental to their emotional and mental well-being and caused the family financial hardship.

¶ 8 The matter proceeded to numerous hearings. Natasha and Zachary testified regarding their respective positions put forth in their filings and interviews with the GAL.

¶ 9 The GAL testified that he filed a supplemental report to allow Natasha to explain her side of this matter. The GAL explained that his original recommendation for the court to deny removal still stood, but he felt that it was a closer case after the second interviews. The GAL had concerns that Kipp did not thoroughly look for work in Illinois or surrounding states and that Colorado was a default due to legalization of marijuana. The GAL stated his recommendation was based on the statutory best interest factors and that no one factor predominately outweighed the others. Additionally, the GAL reviewed and considered “voluminous material” provided by the parties. The GAL was concerned about Natasha’s mental health and said he had serious concerns about her credibility. At one point, Natasha stated she went to Colorado without a job for 40 to 50 or 60 days to get a license for medical marijuana while leaving M.J. at home in Illinois with Kipp. However, Kipp did not even realize that Natasha was gone during that time.

¶ 10 The GAL believed that Zachary had legitimate concerns about the relocation due to Natasha’s motive to move, lack of stability between Kipp and Natasha, and Natasha’s mental health. The GAL stated that Natasha was self-medicating her mental health issues with marijuana “despite multiple suicide attempts” and that Natasha thought that “the grass [was] greener in Colorado, [but] it [could] be a recipe for disaster on a number of levels.” Last, the GAL voiced his concerns over the sustainability of living in Colorado. He noted that the cost of living is

higher and that they would be “living on borrowed means.” He believed this would cause further financial hardship and additional stress to Natasha and Kipp’s relationship.

¶ 11 The trial court went on to address the statutory factors. The court questioned Natasha’s financial motivations for moving. The court found that the financial information provided did not appear any better in Colorado than it did in central Illinois, assuming that Kipp could find a job in Illinois. Additionally, the court found that the decision to move to Colorado was made before there was any financial motivation because the petition to relocate was filed in January 2016 and Kipp was laid off from work in May 2016. In rebuttal, Natasha argued that Zachary usurped the proceedings with allegations that her motive to move was for marijuana, but then she proceeded to argue that marijuana was a legitimate reason to move to Colorado. The court noted that because it could not parse out the real motivation for moving (largely because of the inconsistent testimony), this factor favored denying removal. However, the court did not believe that Natasha’s intent to move was to interfere with Zachary’s relationship with M.J. The court found that Zachary objected the petition to relocate because he did not want to miss out on his weekly visitation time and he did not believe the move was in M.J.’s best interest. The court believed that the evidence demonstrated that M.J. and Zachary had a good relationship. However, again, the court noted that it questioned Zachary’s motivation for objecting due to inconsistent testimony and found that the visitation history favored removal.

¶ 12 The trial court also reviewed the educational opportunities for M.J. The court determined that M.J. could be successful in Illinois or Colorado, but Colorado test scores were better than Illinois. However, the trial court noted that M.J. would have no extended family in Colorado, which provided lack of a support network and no contingency plan in case of an emergency. The majority of M.J.’s family lived in central Illinois. The court provided a hypothetical that if Kipp

was at work and Natasha had a mental health episode, who would take care M.J.? There would be no extended family that would provide a sense of familiarity and comfort to M.J. The court went on to note that before Natasha filed the petition in this case, she was separated from Kipp for six months and moved out as a result of a situation where the police were involved. Natasha moved back in with Kipp sometime in December 2015 and filed the petition to relocate in January 2016. Natasha testified that her relationship with Kipp had been patched up. The court believed that a family support network would be important, especially considering the historically unstable relationship between Kipp and Natasha and Natasha's mental health issues. The court believed that this factor favored denial.

¶ 13 The trial court considered the impact the move would have on M.J. The court believed that some positive changes would potentially be better schools and maybe a healthier mom. However, Kipp could experience more layoffs and the relationship between Natasha and Kipp could worsen. The court also discussed M.J.'s wishes. The GAL reported that M.J. did not have a preference. The court believed that this was an eight-year-old way of saying that she did not want to choose between her mother and her father. These appeared to be neutral factors.

¶ 14 The trial court emphasized credibility issues with both Natasha and Zachary. The court stated that it was left to make a determination based on circumstantial evidence and testimony that does not make sense. The court found Kipp to be the most credible, but then Natasha testified that Kipp "doesn't remember a thing"—undermining his credibility. The court noted that Natasha made numerous denials regarding marijuana but then later defended those actions. The court also noted that Zachary was not credible regarding why he was not paying child support and his involvement in criminal cases. The court gave great weight to the GAL's report because of these credibility issues. The court stated that Natasha had the burden to prove that it

was in M.J.’s best interest to move to Colorado and that she failed to meet that burden. The court noted that there was simply insufficient evidence due to the numerous credibility issues presented. The court denied Natasha’s petition for relocation. This appeal followed.

¶ 15

ANALYSIS

¶ 16

The issue on appeal is whether the trial court erred when it denied Natasha’s petition to relocate. Zachary argues that relocation was not in the best interest of M.J. and the court’s decision to deny relocation was supported by the evidence and credibility determinations.

¶ 17

A parent who is assigned the majority of parenting time may seek to relocate with the child. 750 ILCS 5/609.2(b) (West 2016). The parent must file a petition to relocate when the other parent objects to the move. 750 ILCS 5/609.2(f) (West 2016). In determining a petition to relocate, the trial court considers the following factors:

“(1) the circumstances and reasons for the intended relocation;

(2) the reasons, if any, why a parent is objecting to the intended relocation;

(3) the history and quality of each parent’s relationship with the child and specifically whether a parent has substantially failed or refused to exercise the parental responsibilities allocated to him or her under the parenting plan or allocation judgment;

(4) the educational opportunities for the child at the existing location and at the proposed new location;

(5) the presence or absence of extended family at the existing location and at the proposed new location;

(6) the anticipated impact of the relocation on the child;

(7) whether the court will be able to fashion a reasonable allocation of parental

responsibilities between all parents if the relocation occurs;

(8) the wishes of the child, taking into account the child's maturity and ability to express reasoned and independent preferences as to relocation;

(9) possible arrangements for the exercise of parental responsibilities appropriate to the parents' resources and circumstances and the developmental level of the child;

(10) minimization of the impairment to a parent-child relationship caused by a parent's relocation; and

(11) any other relevant factors bearing on the child's best interests." 750 ILCS 5/609.2(g) (1)-(11) (West 2016).

¶ 18 The parent seeking to relocate bears the burden of proving the move would be in the child's best interest. *In re P.D.*, 2017 IL App (2d) 170355, ¶ 30. Our supreme court has held, "[a] determination of the best interests of the child cannot be reduced to a simple bright-line test, but rather must be made on a case-by-case basis, depending, to a great extent, upon the circumstances of each case." *In re Marriage of Eckert*, 119 Ill. 2d 316, 326 (1988). A trial court's determination regarding the best interest of a child subject to a removal petition will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re Marriage of Coulter*, 2012 IL App (3d) 100973, ¶ 25. A trial court's decision is against the manifest weight of the evidence where the opposite conclusion is clearly apparent or where the ruling is unreasonably arbitrary or not based on the evidence. *In re Marriage of Kendra*, 351 Ill. App. 3d 826, 829 (2004). It is well settled that reviewing courts must grant great deference to a trial court's relocation decision, as the trial court is in the best position to consider all relevant facts and observe the credibility of the parties. *P.D.*, 2017 IL App (2d) 170355, ¶ 18. There is a strong

and compelling presumption in favor of the results reached by the trial court in a removal case. *In re Marriage of Dorfman*, 2011 IL App (3d) 110099, ¶ 46; see *In re R.M.F.*, 275 Ill. App. 3d 43, 48 (1995) (“[t]he presumption in favor of the trial court’s decision is compelling in such cases and should not be disturbed merely because we might arrive at a different conclusion.”).

¶ 19 Our review of the record reveals that the trial court heard extensive testimony and thoroughly considered the circumstances of this case. It is also notable that the parties do not disagree with the court’s assessment that the testimony presented was contradictory, confusing, and unhelpful. Nevertheless, the record demonstrates that the court considered the statutory factors. First, Natasha’s motivation for moving was unclear. She initially argued that her motivation was financial, but when confronted about the marijuana allegations, argued that marijuana was a legitimate basis to move as well. Additionally, Zachary’s testimony regarding nonpayment of child support and reasons for his objection were also unclear. We agree with the court that these inconsistencies and credibility issues demonstrated that Natasha’s motivation for moving favored denying removal and Zachary’s basis for his objection favored granting removal. Also, the history and nature of Zachary’s parenting time favored removal. The record demonstrates that Zachary was awarded visitation every other weekend, on specific holidays, and Father’s Day every year. However, he usually only exercised this right every Sunday for six hours. The record demonstrates that M.J. had a good relationship with both Natasha and Zachary.

¶ 20 The trial court also discussed at length the absence of extended family in Colorado. This is problematic considering the history of Natasha and Kipp’s relationship and Natasha’s mental health issues. This factor clearly favored denial of the petition to relocate. The court also determined that M.J. could be successful in Illinois or Colorado, but Colorado had better test scores. Additionally, the move could have a positive or negative impact on M.J., which depends

largely on her mother's health, Kipp and Natasha's relationship, and the family's financials. M.J. also did not vocalize a preference in this case. These are neutral factors. It is evident that the move would put a strain on Zachary's parenting time with M.J. Although Natasha stated that she would facilitate a relationship between Zachary and M.J. through the telephone and letters, it is unlike the six hours Zachary spends with M.J. in person every Sunday.

¶ 21 It is evident that the trial court's decision to deny Natasha's petition for relocation is supported by the record in this case. Natasha had the burden to prove, by a preponderance of the evidence, that it was in M.J.'s best interest to relocate. As the court noted, Natasha failed to meet that burden due to credibility issues, which resulted in a lack of sufficient evidence to support her petition. We reiterate that the trial court was in the best position to observe the parties and assess their personalities and capabilities. *P.D.*, 2017 IL App (2d) 170355, ¶ 18. We cannot say that an opposite conclusion is clearly apparent or the determination was objectively unreasonable, arbitrary, or contrary to the facts established in the record. As such, the trial court's decision was not against the manifest weight of the evidence.

¶ 22 CONCLUSION

¶ 23 For the foregoing reasons, we affirm the judgment of the circuit court of Peoria County.

¶ 24 Affirmed.