

NOTICE

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2019 IL App (4th) 180625-U

NO. 4-18-0625

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

February 8, 2019

Carla Bender

4th District Appellate Court, IL

<i>In re</i> MARRIAGE OF GREGORY C. REEP,)	Appeal from the
Petitioner-Appellee,)	Circuit Court of
and)	Sangamon County
LEIGH A. REEP,)	No. 17D804
Respondent-Appellant.)	
)	The Honorable
)	Jack D. Davis, II
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.

Justices Knecht and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court’s allocation of parenting time was not against the manifest weight of the evidence.

¶ 2 In December 2017, Gregory C. Reep filed a petition for dissolution of marriage. 750 ILCS 5/401(a) (West 2016). Gregory and his wife, Leigh A. Reep, were married in February 2013, and they had two children: D.R. (born March 2013) and J.R. (born November 2014). In June 2018, the trial court conducted a hearing on Gregory’s petition for dissolution of marriage. Ultimately, the trial court concluded that it was in the best interest of the children “to allocate the majority of parenting time to Greg, subject to Leigh’s parenting time.” Leigh appeals, arguing that the trial court’s allocation of parenting time was against the manifest weight of the evidence. We disagree and affirm.

¶ 3 I. BACKGROUND

¶ 4

A. Procedural History

¶ 5 On December 11, 2017, Gregory filed a petition for dissolution of marriage. 750 ILCS 5/401(a) (West 2016). On December 18, 2017, Leigh filed for an order of protection against Gregory. The trial court granted an *ex parte* emergency order of protection that same day.

¶ 6 In January 2018, the trial court conducted an evidentiary hearing on Leigh’s petition for an order of protection. Both Gregory and Leigh were present and represented by counsel. The trial court vacated the emergency order of protection and denied Leigh’s request for an order of protection, concluding that there was not “sufficient and credible evidence to support the entry of an Order of Protection. The allegations of the Petition are uncorroborated and not subject to cross-examination and are not sufficient to support a finding of abuse.” The court ordered “that the status quo concerning parenting time that was in effect prior to the entry of the emergency order is reinstated.” See P. André Katz and Erin B. Bodendorfer, *The New and Improved Illinois Marriage and Dissolution of Marriage Act*, 103 Ill. B.J. 30, 34 (2015) (“Family law will no longer be a winner-take-all litigation process. Courts will no longer award ‘custody’ or ‘visitation’ under the new statute ***. Rather, courts will allocate ‘parental responsibilities’ (formerly custody) and ‘parenting time’ (formerly visitation).”).

¶ 7

B. The Hearing on the Petition for Dissolution of Marriage

¶ 8 On June 18, 2018, the trial court conducted a hearing on Gregory’s petition for dissolution of marriage. Gregory stated that he married Leigh in February 2013 and they had two children together. He noted that he filed for divorce and that his wife petitioned for an order of protection shortly thereafter.

¶ 9

Gregory stated that after Leigh’s petition for an order of protection was denied, he

and Leigh reached an agreement regarding parenting time. Pursuant to this agreement, he would have the children from Sunday evening through Friday evening while Leigh would have the children from Friday evening until Sunday evening. The parties agreed that Leigh could pick the children up on Thursdays, pending work schedules. Gregory testified that the children were accustomed to this schedule.

¶ 10 Gregory stated that he worked as a cook at a hotel in Springfield. He noted that although his work schedule fluctuated, his parents are able to watch the children when he was unavailable. He stated that he lived in a two-bedroom duplex with D.R. and J.R. He stated that Leigh moved out of the home in April 2016.

¶ 11 Gregory acknowledged that there had been “incidents of violence” between him and his wife. He stated that in May 2015, he had an argument with his wife that turned physical. He stated that his wife “sustained some bruising” but that he “had no visible injuries.” He further testified that his wife had “held [him] up in the kitchen of our house *** with a knife.” On cross examination, Gregory described the incident as follows:

“Mrs. Reep and I, during that day, were having a very heated, verbal argument. There were times where Mrs. Reep would shove me, and I would also push her in return. There were times when I tried to walk away, and it was right before this incident I was attempting to walk away from Ms. Reep. She was following me. I turned to turn around [*sic*] and in a very abrupt and sudden manner, my arm was loose and came across and struck her on the back.”

¶ 12 Gregory also discussed an incident in which he broke D.R.’s glasses. On cross-examination, Gregory testified as follows:

“MR. VINCENT [(Leigh’s attorney)]: How did [D.R.’s] glasses get broke?

A. With the girls being at the age they are, [J.R.] always wants something that [D.R.] has. With her having glasses, they occasionally fight over the glasses even when she had the older pair. She currently has plastic frames, and the girls have fought over them numerous times as well. [D.R.] was bad-mouthing. She was giving lip. Using inappropriate language. I gave her a gentle tap on the cheek because she was sassing off and back talking. I warned her numerous times to please stop. Upon that time, after that the lens popped out of the frame. I went to try to put the lens back into the frame, and when I did the side of the frame snapped.

* * *

Q. Sir, do you recognize these glasses?

A. I do.

Q. Are [these] the glasses that [D.R.] was wearing when you smacked the side of her face for bad-mouthing?

A. Yes.

Q. And you believe that the glasses were poorly constructed and that’s what caused them to break when you hit the face of your daughter?

A. Around the edge of the lenses, yes.

Q. Now, the other side is not damaged, correct?

A. Correct.

* * *

Q. Can you show me any defects or problems with these glasses other than the part that's broken post you striking your daughter?

A. I cannot show you. My belief is that the damage in this area here was due to the wear and the way the girls had been fighting with the glasses with each of them pulling on each side. It is my belief they weakened one of the sides of the frames.

* * *

Q. So the action [of] hitting your daughter, at a minimum, did knock the glasses off of her?

A. Knocked the lens out [of] the frame.

* * *

Q. You agree that [it] would take a pretty good hit on the side of these glasses, whether it be the left or right side, for that lens to pop out, correct?

A. Correct.”

¶ 13 Gregory also testified about Leigh's photos that purported to show mild bruising on J.R.'s legs and back. Gregory agreed that the photos showed bruises, but he stated that he had no idea when those pictures were taken. He further testified that he did not see any bruises on his children during his parenting time.

¶ 14 Gregory testified that the kids wanted to live with him rather than with Leigh. He stated that the children told him that Leigh had spanked them with a spoon. He further testified that Leigh had attempted to kill herself on two occasions. Gregory stated that on the first attempt, she tried to suffocate herself with a towel, and he took her to the hospital. On the second suicide attempt, she attempted to strangle herself with the sash from her wedding dress. Gregory

stated that he had to give her “resuscitation to bring her back” because she “was starting to turn blue and was not breathing.” Gregory testified that Leigh was pregnant during each suicide attempt.

¶ 15 Nannette Reep, Gregory’s mother, testified that she had never seen Gregory hit his children. She stated that the kids wanted to live with Gregory and that she had no concerns with the kids living with their father. She further stated that Leigh had anger problems.

¶ 16 Charles Tindle stated that he was the property manager for a trailer park where Gregory and Leigh used to live. He testified that in October 2017, he heard some “loud talking” while he was sitting on his porch. He stated that he looked up and saw that “Leigh Ann was pushed up against the front of her car and Greg had his hand around her throat.” Tindle stated that he “saw that with my own eyes. I stood up and then Greg seen me and he turned Leigh Ann loose.”

¶ 17 Nathan Diamond, Leigh’s then-current boyfriend, stated that Leigh lived with him and his five-year-old son. Diamond noted that he had two other children, ages 13 and 10, who resided with him every other weekend. He stated that his children and Leigh’s children got along very well. He also stated that he was aware of Leigh’s past mental health issues but that he had not seen anything that would resemble depression. He further stated that he was not concerned with leaving his children alone with Leigh. Diamond noted that he was employed as a support person for the mentally handicapped. He further stated that in the event that the court granted Leigh primary custody, they had arranged for a babysitter to watch the children when both he and Leigh are working.

¶ 18 Stephanie Conner testified that she had been Leigh’s friend since grade school. She stated that in April 2016, the door to her house was unlocked and that Gregory let himself in.

She stated that Gregory screamed at Leigh and “had his hand raised when I came and told him [that] he needed to get out of my house.” She stated that D.R. was hiding her face and J.R. was crying during this incident.

¶ 19 Conner also testified about the May 2015 incident when Gregory struck Leigh in the back. She noted that Leigh had a “hellacious bruise [and an] open wound on her back in the form of a hand print.” Conner noted that she took pictures of the bruise, which the trial court admitted into evidence. Conner also stated that Gregory admitted to hitting Leigh because Leigh wanted to leave the house.

¶ 20 Leigh’s mother, Sally Miller, stated that she confronted Gregory after seeing Leigh’s bruises. Miller testified that Gregory said he was surprised about the bruises because “he didn’t think he hit her that hard.” She further stated that her daughter had no mental health issues.

¶ 21 Leigh testified that she lived with her current boyfriend, Diamond, and his son. She stated that J.R. and D.R. lived with her on the weekends. She further stated that Diamond’s two other children lived there every other weekend. She noted that when all five children were in the house, the boys had one bedroom and the girls had another. Leigh explained that she worked at a pharmacy in Lincoln and her normal work schedule was 9 a.m. until 6 p.m. on weekdays and every other Saturday from 9 a.m. until 1 p.m.

¶ 22 Leigh testified that Gregory hit her in the back in May 2015. In pertinent part, she stated as follows:

“I was supposed to meet my friend, Stephanie, for lunch ***. *** Gregory told me I was not allowed to leave. I told him he could not stop me from leaving my home. *** Gregory and I were arguing about it. I turned around to walk

away *** to walk upstairs to get ready because I was supposed to meet her. *** I heard footsteps, and my back hurt, and I fell. I do remember hitting the table. I don't remember much after that. I remember being on the floor. When I got up, my back felt like it was on fire. At that point, I looked up and he was sitting next to me on the floor crying saying he didn't mean to hit me as hard as he did. He didn't think he hit me that hard. I grabbed *** a butcher knife on the kitchen table. I grabbed it and I told him to stay away from me. I went upstairs at that point, got dressed, looked at my phone. There were a bunch of text messages and a bunch of missed calls. I was coming downstairs and he asked where I was going and I said I was going to meet Stephanie for lunch; that I was late and I was going to meet her for lunch. But my back was turned to him, and I was struck.”

¶ 23 Leigh stated that on April 20, 2016, she noticed D.R. was wearing her old glasses. Leigh testified that D.R. said that Gregory had smacked her and broke her glasses. Leigh stated that Gregory admitted to doing this but later changed his story.

¶ 24 Leigh testified that on June 1, 2018, she was giving J.R. a bath when she discovered bruises on her back. She stated that she later discovered bruises on J.R.'s leg. Leigh stated that she confronted Gregory about the bruises, but he denied ever seeing J.R. with bruises and he no idea where they came from. The trial court later admitted the pictures purporting to show slight bruising on J.R.'s back and legs into evidence.

¶ 25 Leigh also discussed her two suicide attempts. She noted that she was pregnant during both attempts and suffering from extreme nausea. Describing her first attempt, Leigh testified as follows:

“And so I was in the bathroom and I was dry heaving, and I just didn’t want to throw up anymore and there was a towel on the floor and dumb as I was, I like held the towel to my face. So I was sitting up against the wall next to my toilet. So I was sitting next to the wall and my toilet is to my right. And I’m holding like a wadded towel to my face. At that point, Gregory had walked in cause I had been in the bathroom for awhile and he asked me what I was doing and I told him that I didn’t -- I told him I didn’t want to be pregnant anymore because I was tired of throwing up, to which he called my mom who lived next door. And my mom took me to the hospital.”

¶ 26 On cross-examination, Leigh admitted to smoking marijuana while she was pregnant with D.R. Leigh further stated that she never contacted the Department of Children and Family Services (DCFS) or the police regarding the alleged abuse until Gregory filed for divorce. Leigh stated that she no longer felt depressed or suicidal and denied that she had a history of mental illness. Leigh noted that Gregory revived her from her second suicide attempt.

¶ 27 Leigh also testified about her prior agreement with Gregory regarding allocation of parenting time:

“MR. RANKIN [(Gregory’s attorney)]: So [from] June 2017 on, my client had five days a week [with D.R. and J.R.]?”

A. Yes, we had agreed that we were waiting for me to find childcare in Lincoln.

Q. And then from June 17 through December of 2017, it was the same schedule?

A. That is correct except for times where I couldn't see the kids because Gregory would not meet me half-way or there were many times in which he expected me to make the full drive. There were times that I couldn't, and so I couldn't see my kids, unfortunately, because he was not willing to meet me half-way.

* * *

Q. Mr. Reep filed for divorce in December of 2017. You also filed for an order of protection in December of 2017 seeking to restrict or remove his parenting time, correct?

A. Correct.

Q. We had a hearing on that. I'm sure you remember that.

A. Clearly.

Q. After that hearing, you agreed to and entered with this court an order that my client would have five days per week and you would have weekends, correct?

A. I didn't agree to that. That was the ruling that was made.

Q. I believe you and I sat in a room in the back and the judge, after we had talked, signed the order?

A. After the ruling was made, yes, and I had added Thursdays.

Q. And that's by agreement with my client, correct?

A. Did I have a choice? Yes.

* * *

Q. And the schedule, as we sit here today, is currently that my client has five days a week and you have weekends, correct?

A. Yes, we're still going off of the ruling made in January of this year, yes.

Q. So essentially you've had the same schedule for about right at a year now, correct?

A. As of June 24th, a year, yes."

¶ 28 C. The Trial Court's Ruling

¶ 29 In July 2017, the trial court issued a detailed written order in which it found that it was in the best interests of the children "to allocate the majority of parenting time to Greg, subject to Leigh's parenting time." In making this determination, the trial court explicitly considered each factor required by the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/602.7 (West 2016)). The court concluded that the parties' previous parenting agreement and Leigh's mental health weighed in favor of Gregory. *Id.* § 602.7(b)(4), (7). Likewise, although the court noted its concern with Gregory's violence against both Leigh and D.R., it concluded that a restriction on his parenting time was not appropriate.

¶ 30 This appeal followed.

¶ 31 II. ANALYSIS

¶ 32 Leigh appeals, arguing that the trial court's allocation of parenting time was against the manifest weight of the evidence. We disagree.

¶ 33 A. The Applicable Law

¶ 34 Section 602.7(a) of the Act requires that the trial court allocate parenting time in accordance with the best interests of the child. *Id.* § 602.7(a). In making that determination, the

trial court shall consider the following factors:

- “(1) the wishes of each parent seeking parenting time;
- (2) the wishes of the child, taking into account the child’s maturity and ability to express reasoned and independent preferences as to parenting time;
- (3) the amount of time each parent spent performing caretaking functions with respect to the child in the 24 months preceding the filing of any petition for allocation of parental responsibilities or, if the child is under 2 years of age, since the child’s birth;
- (4) *any prior agreement or course of conduct between the parents relating to caretaking functions with respect to the child;*
- (5) the interaction and interrelationship of the child with his or her parents and siblings and with any other person who may significantly affect the child’s best interests;
- (6) the child’s adjustment to his or her home, school, and community;
- (7) *the mental and physical health of all individuals involved;*
- (8) the child’s needs;
- (9) the distance between the parents’ residences, the cost and difficulty of transporting the child, each parent’s and the child’s daily schedules, and the ability of the parents to cooperate in the arrangement;
- (10) whether a restriction on parenting time is appropriate;
- (11) *the physical violence or threat of physical violence by the child’s parent directed against the child or other member of the child’s household;*

(12) the willingness and ability of each parent to place the needs of the child ahead of his or her own needs;

(13) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child;

(14) *the occurrence of abuse against the child or other member of the child's household;*

* * *

(17) [and] any other factor that the court expressly finds to be relevant.”

(Emphases added.) *Id.* § 602.7(b).

¶ 35 The appellate court will not reverse the trial court's parenting time determination unless it (1) is against the manifest weight of the evidence or (2) results from a clear abuse of discretion. *In re Marriage of Perez*, 2015 IL App (3d) 140876, ¶ 24, 29 N.E.3d 1217. A determination is against the manifest weight of the evidence only if an opposite conclusion is apparent or if the findings are unreasonable, arbitrary, or not based on the evidence. *In re Marriage of Whitehead*, 2018 IL App (5th) 170380, ¶ 21, 97 N.E.3d 566. A trial court abuses its discretion only when no reasonable person would take the view adopted by the court. *In re Marriage of Patel*, 2013 IL App (1st) 112571, ¶ 67, 993 N.E.2d 1062.

¶ 36 Trial courts are vested with wide discretion when determining the allocation of parenting time. *In re Marriage of Danielle Fatkin and Todd Fatkin*, 2019 IL 123602, ¶ 32; *In re Marriage of Mayes*, 2018 IL App (4th) 180149, ¶ 57, 109 N.E.3d 942. “[W]e give great deference to the trial court's best-interests findings because that court had a better position than we do ‘to observe the temperaments and personalities of the parties and assess the credibility of witnesses.’ ” (Internal quotation marks omitted.) *In re B.B.*, 2011 IL App (4th) 110521, ¶ 32, 960

N.E.2d 646 (quoting *In re Marriage of Marsh*, 343 Ill. App. 3d 1235, 1239-40, 799 N.E.2d 1037, 1041 (2003)). When the evidence supports multiple inferences, the appellate court accepts those inferences that support the trial court's order. *In re Custody of G.L.*, 2017 IL App (1st) 163171, ¶ 24, 80 N.E.3d 636. The appellate court may affirm the trial court's ruling for any reason provided by the record. *Id.*

¶ 37

B. This Case

¶ 38 We start by noting our grave concern regarding Gregory's actions. He admitted in open court to slapping his daughter in the face and knocking the lenses out of her glasses. His explanation for how Leigh received bruises on her back is preposterous. Simply put, this court is concerned about Gregory's temper and his ability to watch his children. However, physical violence and abuse are only two factors for the trial court to consider. 750 ILCS 5/602.7(b)(11), (14) (West 2016)). To that point, although the trial court was concerned about Gregory's actions, the court noted that (1) the incident with the glasses appeared to be an isolated incident, (2) Leigh and Gregory had been cooperating since their separation, and (3) Leigh did not seek an order of protection until after Gregory filed for divorce. Moreover, as the trial court noted, it is quite possible that Leigh also engaged in physical violence with Gregory and used excessive corporal punishment against the children. Accordingly, these two factors do not clearly weigh in favor of granting the majority of parenting time to Leigh. See *id.*

¶ 39

Turning to the seventh factor, the mental health of all individuals involved, the trial court concluded that this factor weighed in favor of granting the majority of parenting time to Gregory. *Id.* § 602.7(b)(7). The court noted that Leigh's two suicide attempts while she was pregnant raised "concerns about [her] stability and also is an indication of her willingness to place her needs ahead of the child's." *Id.* This was an appropriate factor for the trial court to

consider.

¶ 40 The trial court also concluded that the fourth factor, any prior agreement or course of conduct between the parents relating to caretaking functions with respect to the child, weighed in favor of Gregory. *Id.* § 602.7(b)(4). The record is clear that Leigh and Gregory agreed in June 2017 that he would have a majority of the parenting time. *Id.* The trial court concluded that this prior conduct “balances in favor of allocating Greg the majority of parenting time.” Notwithstanding Leigh’s argument on appeal, this was a proper factor for the trial court to consider. *Id.*

¶ 41 In essence, the trial court was in the unenviable position of allocating parenting time between an abusive father and a mother who had twice engaged in suicidal behavior. After the court carefully considered each of the statutory factors, it ultimately granted Gregory a majority of the parenting time. The trial court, rather than this court, was in the superior position to judge the credibility of the witnesses and to observe the temperaments and personalities of the parties. *In re B.B.*, 2011 IL App (4th) 110521, ¶ 32. Further, the trial court has broad discretion in allocating parenting time. *In re Marriage of Mayes*, 2018 IL App (4th) 180149, ¶ 57. For the reasons stated above, we conclude that the trial court’s allocation of parenting time was not an abuse of discretion nor was it against the manifest weight of the evidence.

¶ 42 III. CONCLUSION

¶ 43 For the reasons stated, we affirm the trial court’s judgment. We commend the trial court for its detailed order, which this court found most helpful.

¶ 44 Affirmed.