

No. 1-14-1768

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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<i>In re: G.A.K., a minor,</i>	)	Appeal from the Circuit Court
	)	of Cook County.
(Kerry Knee,	)	
	)	
Petitioner-Appellee,	)	No. 12 D 080856 consolidated
	)	with 12 D 10357
v.	)	
	)	Honorable Pamela Loza,
Mark Aguilar	)	Judge Presiding
	)	
Respondent-Appellant.)	)	

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PRESIDING JUSTICE SIMON delivered the judgment of the court.  
Justices Pierce and Liu concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The judgment of the trial court is affirmed where the appellant-father failed to demonstrate that the trial court's decision to grant sole custody of the child to the mother with the right to move the child from Illinois to Canada was against the manifest weight of the evidence.
- ¶ 2 Following a bench trial, the trial court ruled that Petitioner Kerry Knee, G.A.K.'s mother, was entitled to full custody of the child. The trial court also determined that petitioner was

entitled to remove the child from Illinois and move him to Canada. On appeal, Respondent Mark Aguilar, G.A.K.'s father, argues that the trial court's custody and removal determinations were against the manifest weight of the evidence. We affirm.

¶ 3

### BACKGROUND

¶ 4

Because the trial transcript was not made part of the record on appeal, the facts set forth below come from the common law record and the findings of fact made by the trial court in its judgment order. Petitioner Kerry Knee is the mother of G.A.K., a minor. Respondent Mark Aguilar is G.A.K.'s father. Knee filed a petition in the Circuit Court of Cook County seeking full custody of G.A.K. and later filed a petition seeking to remove the child to Canada. The trial court took the issues together and held a thirteen day bench trial, hearing testimony from a number of witnesses. In a 21 page order, the trial court granted petitioner full custody with the right to remove G.A.K. to Canada. The trial court also set a visitation schedule and set forth the parties' respective financial obligations for supporting the child, neither of which are at issue here. Respondent appeals the trial court's decision as it pertains to custody and removal arguing that both of those rulings were against the manifest weight of the evidence.

¶ 5

Petitioner and Respondent met at an event in 2008 and began to date shortly thereafter. After dating for about nine months, petitioner found out that she was pregnant. The parties moved in together, but never married and their relationship ended approximately five months after G.A.K. was born. Petitioner assumed the primary care of G.A.K. after the parties' relationship ended. Leading up to trial, Respondent had visitation with G.A.K. every other weekend and for a period on alternating Wednesdays.

¶ 6

Respondent is a construction contractor and has a degree in construction management. He

lives in a three unit building in Pilsen which he owns. Respondent earns some money in rental income from tenants in that building which was apparently his only stream of income at the time of trial. His adjusted gross income in 2011 was \$7,086 and his gross income in 2013 was \$28,000. Respondent has an older sister who has two grown children and all three of them live in the Chicagoland area. Respondent's mother lives in Mattoon, Illinois which is three hours from Chicago. Respondent's mother visits often and has a close relationship with G.A.K. Respondent has friends in the Chicago area that have children around the same age as G.A.K. and G.A.K. enjoys spending time with them.

¶ 7 Petitioner was the CEO of Flirty Girl Fitness, a fitness and social club for women. She is a Canadian citizen and, at the time of trial, was in America on a work visa. Her visa was set to expire in July 2014 and apparently cannot be extended any further. Petitioner's employment was initially lucrative, but her compensation has consistently been in decline over the past few years. Petitioner has a degree in geophysics and an M.B.A. She has one sister who lives in Toronto that has a son similar in age to G.A.K. Petitioner's parents live in Moncton, Canada, just outside Toronto, and have visited Chicago often. The trial court found that G.A.K. was well-bonded with his maternal grandparents.

¶ 8 Respondent paid \$500 per month in child support and all the payments were apparently made on time. Respondent did not contribute to the cost of childcare. G.A.K. had health insurance through petitioner's employment, but respondent attended G.A.K.'s doctor visits and made the co-pays. G.A.K. attends Nettlehorst preschool in Lincoln Park which costs approximately \$1100 per month, the cost of which is paid by petitioner's parents. The trial court found that both parties engaged in constructive activities during their respective time

with G.A.K. and that each party has living quarters that are suitable for the child.

¶ 9

## ANALYSIS

¶ 10

### *Record on Appeal*

¶ 11 Throughout his brief, respondent cites to the trial transcript and the supplemental record to support his contentions. However, the transcript was not made part of the record on appeal and there is no supplemental record. The Illinois Supreme Court Rules require that both the statement of facts and the argument section of briefs submitted to this Court contain appropriate references to the pages of the record on appeal that support the points raised. Ill. Sup. Ct. R. 341(h)(6-7). Here, more importantly, the information is simply not part of the record on appeal. The appellant bears the burden of presenting a sufficiently complete record of the trial court proceedings and we resolve any doubts that arise from an incomplete record against the appellant. *In re Marriage of Holtorf*, 397 Ill.App.3d 805, 811 (2010). In the absence of a complete record, a reviewing court must presume that the trial court acted correctly and in conformity with the law. *CitiMortgage, Inc. v. Moran*, 2014 IL App (1st) 132430, ¶ 41. Respondent has supplied the common law record so we turn to the merits of the appeal based on the evidence that is properly before us.

¶ 12

### *Custody Determination*

¶ 13 The primary consideration in any custody dispute is the best interests of the child. *In re Marriage of Eckersall*, 2014 IL App (1st) 132223, ¶ 25. In making a custody determination, the trial court is required to consider all relevant factors including: (1) the wishes of the child's parent or parents as to his custody; (2) the wishes of the child as to his custodian; (3) the interaction and interrelationship of the child with his parent or parents, his siblings and any other person who may

No. 1-14-1768

significantly affect the child's best interest; (4) the child's adjustment to his home, school and community; (5) the mental and physical health of all individuals involved; (6) the physical violence or threat of physical violence by the child's potential custodian, whether directed against the child or directed against another person; (7) the occurrence of ongoing or repeated abuse as defined in Section 103 of the Illinois Domestic Violence Act of 1986, whether directed against the child or directed against another person; (8) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child; (9) whether one of the parents is a sex offender; and (10) the terms of a parent's military family-care plan that a parent must complete before deployment if a parent is a member of the United States Armed Forces who is being deployed. 750 ILCS 5/602(a).

¶ 14 In a child custody case, because of the delicacy and difficulty involved, wide discretion is given to the trial court's decision. *Gallagher v. Gallagher*, 60 Ill.App.3d 26, 30 (1978); *In re Marriage of Felson*, 171 Ill.App.3d 923, 926-27 (1988). We can only reverse a trial court's custody decision if we conclude that the order is manifestly erroneous or that it results in a manifest injustice. *In re Marriage of Willis*, 234 Ill.App.3d 156, 161 (1992). A trial court's custody determination must be given great deference because the trial judge has had the opportunity to observe the witnesses as they testified and is in a far superior position to determine the best interests of the child. *In re Marriage of Quindry*, 223 Ill.App.3d 735, 737 (1992). There is a strong and compelling presumption that the trial court's custody determination is correct. *Willis*, 234 Ill.App.3d at 161.

¶ 15 Respondent argues that the trial judge's custody determination is against the manifest weight of the evidence. Respondent relies primarily upon evidence that is purportedly in the trial

No. 1-14-1768

transcript or in a supplemental record. However, none of that information is currently before the Court. In its order, the trial court addressed each of the factors the legislature has instructed trial courts to assess when making a custody determination. It appears that the trial court carefully balanced the evidence as the 23 page order it issued details the relationship each parent has with G.A.K. and assesses the benefits that would be offered to G.A.K. by each parent. The trial judge ultimately concluded, after hearing from a number of live witnesses during a thirteen day trial, that the best interests of G.A.K. were served by petitioner having full custody. There is no record evidence that would demonstrate that any of the individual determinations made by the trial judge were against the manifest weight of the evidence or that the final custody determination results in a manifest injustice.

¶ 16

*Removal Determination*

¶ 17 As with a custody determination, the determination as to whether a parent is entitled to remove a child from Illinois should focus on the best interests of the child. *In re Marriage of Matchen*, 372 Ill.App.3d 937, 945 (2007). Whether removing the child from Illinois is in the child's best interest depends on all relevant evidence as the determination of the child's best interests cannot be reduced to a simple bright-line test. *In re Marriage of Eckert*, 119 Ill.2d 316, 327 (1988). Rather, the removal determination must be made on a case by case basis depending upon the circumstances of each case. *Id.* The Illinois Supreme Court has set forth certain factors that are helpful in guiding the trial court's analysis on the question of the removal of a minor child. Those factors include, but the analysis is not limited to: the likelihood of enhancing the general quality of life for both the custodial parent and children; the motives of the custodial parent seeking to move; the motives of the noncustodial parent in resisting removal; the visitation rights

No. 1-14-1768

of the noncustodial parent; and whether a realistic and reasonable visitation schedule can be reached if the move is allowed. *Id.* at 326-27.

¶ 18 The trial court's determination of what is in best interests of a child should not be reversed unless it is clearly against the manifest weight of evidence and it appears that a manifest injustice has occurred. *In re Marriage of Kincaid*, 2012 IL App (3d) 110511, ¶ 40. The burden of proof is on the custodial parent to establish that removing the child from Illinois is in the child's best interests. 750 ILCS 5/609(a). The trial court is in the best position to assess and evaluate the parties' temperaments, personalities, and capabilities, and the presumption in favor of the result reached by the trial court is always strong and compelling in a removal case. *Matchen*, 372 Ill.App.3d at 946.

¶ 19 Respondent argues that the trial judge's removal determination is against the manifest weight of the evidence. Respondent relies primarily upon evidence that is purportedly in the trial transcript or in a supplemental record. However, none of that information is currently before the Court. Respondent bases many of his arguments on the premise that petitioner did not prove certain things or produce evidence of certain circumstances that the trial court should have considered. But, in the absence of record evidence to the contrary, we must presume that the trial court acted correctly and in conformity with the law.

¶ 20 In its order, the trial court addressed, among other things, each of the factors the Illinois Supreme Court has instructed trial courts to use to guide their analysis when making removal determinations. The trial court found that petitioner would be able to provide G.A.K. with the lifestyle that he is accustomed to living and that the request for removal was based on legitimate financial and immigration grounds, not a ploy to deny respondent visitation. The trial court also

No. 1-14-1768

found that, during the parties' relationship, petitioner told respondent that she wanted to raise G.A.K. in Canada and the parties had agreed that respondent could get a job in Canada. The trial court noted that respondent's motives for contesting removal were understandable, but that he had made no showing that he could feasibly support G.A.K. While the trial court recognized that there would be an impact on visitation, it also acknowledged that petitioner had proposed an amount of visitation time that demonstrated her desire that a meaningful father-son relationship be maintained. The trial court also reasoned that a long, uninterrupted period of visitation during summers, along with holidays and electronic communication, would still enable respondent and G.A.K. to foster a meaningful father-son relationship. There is no record evidence that would demonstrate that any of the individual determinations made by the trial judge were against the manifest weight of the evidence or that the final removal determination results in a manifest injustice.

¶ 21

#### CONCLUSION

¶ 22 Accordingly, we affirm the judgment of the Circuit Court of Cook County.

¶ 23 Affirmed.