

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).

2014 IL App (3d) 130580-U

Order filed June 11, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

CHRISTINA CHRISTENSEN-WILLIAMS,)	Appeal from the Circuit Court
)	of the 13th Judicial Circuit,
Petitioner-Appellant,)	Grundy County, Illinois,
)	
v.)	Appeal No. 3-13-0580
)	Circuit No. 04-F-21
)	
CASEY RAKES,)	Honorable
)	Sheldon R. Sobol,
Respondent-Appellee.)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice Lytton and Justice Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly considered relevant factors occurring after the filing of the petition for removal. The trial court's denial of removal was not against the manifest weight of the evidence.

¶ 2 The petitioner-appellant, Christina Christensen-Williams, appeals from the trial court's denial of her petition for leave to remove her minor child, Sean, from this state to reside in Oklahoma. The respondent-appellee, Casey Rakes, Sean's biological father, opposed the request for removal. On appeal, Christina argues that: (1) the trial court erred by failing to consider

factors relevant to Sean's best interest that occurred subsequent to the filing of her petition for removal; and (2) the trial court's finding that removal would not be in Sean's best interest was against the manifest weight of the evidence. We affirm.

¶ 3

FACTS

¶ 4

In 2003, Christina and Casey dated during a break in Christina's relationship with her current husband, John Williams. During the time that Christina and Casey dated, Christina became pregnant with Sean. Sean was born on November 21, 2003. On November 23, 2003, the parties executed a voluntary acknowledgement of paternity, certifying that Casey was Sean's biological father.

¶ 5

Prior to Sean's birth, Christina resumed her relationship with John, and they married in the summer of 2004. Sean resided with Christina and John, while Casey exercised fairly consistent and regular visitation with Sean. In May of 2012, Casey discovered that Christina and John intended to move to Oklahoma and questioned Christina about the move. At that point, Christina did not allow Casey to have any further visitation with Sean.

¶ 6

On June 13, 2012, Casey filed a petition to restrain the removal of Sean from Illinois. In response, on July 13, 2012, Christina filed a petition for the removal of Sean to Oklahoma "where his stepfather w[ould] be obtaining employment within the next month." On July 19, 2012, the court restrained either party from removing Sean from Illinois until further order of the court and ordered that Casey be allowed to resume visitation with Sean. The court also appointed a guardian *ad litem* (GAL) to investigate whether removal would be in Sean's best interest.

¶ 7

The GAL began his investigation in mid-August of 2012. In his report, the GAL recommended that Christina's request for removal be denied. The report indicated that the

parties disputed how Casey learned of the Christina's intent to move Sean to Oklahoma.

Christina claimed that she informed Casey of the possibility of a move to Oklahoma in early spring of 2012. Casey indicated that in mid-May of 2012 he learned of Christina's intention to move Sean out of state via one of John's Facebook posts. In a subsequent Facebook post, in late May or early June, John indicated that he and Christina listed their house for sale and started packing for their move to Oklahoma.

¶ 8 According to what Casey told the GAL, Sean changed from being upset and unhappy over the potential move to being distant with Casey and reluctant to have visitation with him. Casey noticed the change in Sean following the six-week period that Christina did not allow him to have contact with Sean. Casey indicated when visitation resumed, Sean would no longer look at or speak with him. Sean had also developed separation anxiety and home sickness for Christina, which he had never experienced in the past.

¶ 9 In his interview, Sean informed the GAL that he would be beginning the third grade and spoke of his friends and activities easily. When discussing his parents, Sean became tense and, at times, even upset. Sean indicated that he did not want to go with Casey for his weekend visit. Sean indicated that he knew that Casey was "kind of a jerk," and Sean "kind of hate[d] him." Sean indicated that Casey had lied to him about being there for him, taking care of him his whole life, and changing his diapers when he was a baby. Sean acknowledged that he had not hated Casey early in the year but that was before he knew he was supposed to hate Casey. He also indicated that everything his mom said was true. Sean indicated that he was looking forward to moving to Oklahoma because it would be "a good challenge" and he would still be able to see his friends and family in Illinois often.

¶ 10 At the start of the GAL's investigation in mid-August, John did not have a job in Oklahoma, and Christina had no intent to work outside the home. Christina indicated that the move to Oklahoma was based on her and John's desire to move closer to her extended family and to take advantage of the region's recreational activities. In September of 2012, Christina expressed her frustration with Casey to the GAL, indicating that it was unfair that Casey was "doing this to our family." She described Casey as a liar and manipulator and referred to Sean as her child. Throughout his investigation, the GAL perceived Christina as believing that Sean was not Casey's child, other than biologically, and Casey should not have any say in whether she and her family move to Oklahoma.

¶ 11 At the hearing on the removal issue, the GAL testified that the parties had disagreed as to the consistency of Casey's visitation history with Sean. Christina's recollection repeatedly changed. The GAL opined that the move would not substantially enhance Sean's general quality of life with respect to the area in Oklahoma, available extended family, schools, and friendships. The GAL did not give the financial impact of the removal a great deal of consideration because, at the time of his investigation, John had not yet found a job. When John took the job in Oklahoma there was no urgency in securing a position because John's severance package did not expire until the following year. The GAL believed that John would have had many job opportunities based on information from Christina. The GAL acknowledged that John's job in Oklahoma pays over \$100,000 with benefits and Casey provides little or no assistance in supporting Sean. The GAL's recommendation against the removal was not changed by John securing a well-paid position in Oklahoma. The GAL believed the circumstances of John's employment were suspicious in that John and Christina wanted to move to Oklahoma, and they

made efforts toward that end. The GAL was concerned with John "taking the employment to justify the removal in the midst of the removal proceeding."

¶ 12 John testified that Sean lived with him and Christina, and Sean called him dad. John's testimony indicated that he was the major father-figure and provider in Sean's life. Casey exercised regular visitation with Sean, with the exception of a period of time between 2006 and 2009 where visits became seldom and sporadic. Since 2009, Casey had been consistent in maintaining visitation with Sean twice per month.

¶ 13 John had worked for the same company in Illinois for 13 years as a critical systems technician. In 2011, John learned that he would be laid off. In anticipation of the layoff, John applied to four jobs in Illinois. After his local job search proved unsuccessful, John expanded his search to Colorado, North Carolina, and Oklahoma. In June 2012, John's company confirmed that he would be laid off on August 24, 2012. John received a 42-week severance package that was to expire in July of 2013. Between August and October 2012, John was offered a position with Conoco Phillips in Oklahoma as a critical systems technician. Although John knew that the court could deny removal of Sean to Oklahoma, he took the job because he was not working and wanted to provide for his family. If Christina's petition for removal was denied, the family intended to relocate Christina and Sean to southern Illinois to reduce the drive time from Illinois to Oklahoma from nine hours to four hours. Since December 9, 2012, John has lived in Oklahoma and Christina and Sean continued to reside in Sycamore, Illinois.

¶ 14 Christina testified that after Sean was born Casey had visitation with Sean two to four times per week, with occasional weekend visits. When Sean was three, the parties moved Casey's visits to the weekends. According to Christina, there was no consistency as to the frequency of the visits. At some point between 2007 and 2009, Casey only saw Sean three times

in a 12-month period because Casey was depressed over the break-up of his long-term relationship. Since 2011, Casey has had regular visitation with Sean, with Sean staying with Casey for extended periods of time. In May 2012, Sean stayed with Casey for over two weeks. When Christina received the paperwork objecting to the removal of Sean, she called Casey and requested that he return Sean.

¶ 15 Christina testified that she had wanted to move to Oklahoma for a long time. The thought of going forward with a move to Oklahoma arose in January 2012, with the announcement of the layoffs at John's company. Christina and John intended to move to Oklahoma prior to John getting a job in Oklahoma. Since they had wished to move to Oklahoma, John looked for jobs there.

¶ 16 Casey testified that during the first four years of Sean's life, he had Sean three or four days per week until 6 p.m. Once Sean started school, Casey was only able to see Sean on the weekends. He saw Sean three weekends per month. In 2008 or 2009, Casey went into a depression for about a year, but at no point did his visitations with Sean cease. For the past few years Casey had enjoyed regular and consistent visits with Sean for 14 or 15 days per month, including up to three weekends per month.

¶ 17 In determining whether the move to Oklahoma would be in Sean's best interest, the trial court found that the move would enhance Christina's quality of life. The court noted, however, that "to consider th[at] factor merely in the present time would serve to encourage those seeking removal to split a household (one spouse move from Illinois to establish employment and residence in another state) before leave for removal has been obtained from a court." The court further noted that "a reward could be obtained ([by] moving to a location for personal reasons), without demonstrating the move was in the best interests of the child and then claim[ing] [the]

new employment as the reason which justifies the move." The trial court noted that John did not have his position in Oklahoma when the litigation began, John accepted the position with 10 months of severance pay remaining, and Christina failed to provide sufficient evidence that John had been "pressured to find a job" at the time he took the job in Oklahoma. The court found that Christina and John were predisposed to moving to Oklahoma under the pretext of employment availability.

¶ 18 The court also found that Sean's extended family, with whom Sean was most familiar, resided in Illinois, with the exception of John. These family members included Sean's paternal grandmother, older stepsiblings and half siblings from John and Christina's prior relationships, and Sean's two stepbrothers, who are the sons of Casey's wife. There was no evidence presented as to the quality of the community or schools in Oklahoma compared to those in Illinois.

¶ 19 The court additionally found that the move would impede Casey's visitation. The court noted when Sean had previously not seen Casey for a six-week period Sean was negatively affected in that he became introverted and withdrawn from Casey. The court found that if removal to Oklahoma were allowed, the time between Casey's visits would exceed six weeks, which would cause the "void" to widen between Casey and Sean. The court additionally found that the move would be detrimental to the nature and quality of Sean and Casey's relationship and that a consistent visitation schedule was not realistic due to the distance and expense of travel.

¶ 20 The trial court concluded that Christina failed to meet her burden of proof that a move to Oklahoma was in Sean's best interest and denied her petition for removal. Christina appealed.

¶ 21 ANALYSIS

¶ 22 On appeal, Christina argues that the trial court erred in failing to consider evidence of

John's employment in Oklahoma following the filing of her petition for removal. She additionally contends that the trial court's denial of removal was against the manifest weight of the evidence. We will not disturb a circuit court's removal decision unless it was against the manifest weight of the evidence. *In re Marriage of Eckert*, 119 Ill. 2d 316 (1988).

¶ 23 Pursuant to the Illinois Marriage and Dissolution of Marriage Act:

"The court may grant leave, before or after judgment, to any party having custody of any minor child or children to remove such child or children from Illinois whenever such approval is in the best interests of such child or children. The burden of proving that such removal is in the best interests of such child or children is on the party seeking the removal." 750 ILCS 5/609(a) (West 2012).

"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." *Eckert*, 119 Ill. 2d at 326.

¶ 24 While not exclusive, consideration of the following factors may aid the court in determining whether removal is the best interest of a child: (1) whether the move would enhance the general quality of life of both the custodial parent and the child; (2) whether the custodial parent's motivation to move is intended to defeat or frustrate the noncustodial parent's visitation rights; (3) the motivation of the noncustodial parent for challenging removal; (4) the effect of the move on visitation rights of the noncustodial parent; (5) potential harm that might result to the child as a result of the move; and (6) whether a realistic and reasonable visitation schedule can exist if the court allows the move. *Eckert*, 119 Ill. 2d 316; *In re Marriage of Smith*, 172 Ill. 2d 312 (1996). A reasonable visitation schedule is defined as one that will preserve and foster the child's relationship with the noncustodial parent. *Eckert*, 119 Ill. 2d 316. The weight given to

each factor will vary according to the facts of each case. *Smith*, 172 Ill. 2d 312.

¶ 25 I. Relevant Evidence Following the Filing of the Removal Petition

¶ 26 We disagree with Christina's claim that the trial court "refused to consider events occurring after the filing of [the] petition for removal." The record shows that the trial court properly considered events following the filing of the petition for removal. In its order denying removal, the trial court specifically noted that John did not have the job in Oklahoma when the petition for removal was filed and that he accepted the job with 10 months of severance pay remaining. While the trial court chose to give John's new job little weight, our review of the record indicates the trial court did, in fact, consider John's job in balancing the *Eckert* factors. Therefore, the record refutes Christina's claim that the trial court failed to properly consider all relevant factors.

¶ 27 II. Denial of Removal

¶ 28 Christina additionally claims that the trial court's denial of her request for removal was against the manifest weight of the evidence. In determining whether removal is in a child's best interest, the *Eckert* factors must be balanced and considered in relation to all other relevant evidence. *Shinall v. Carter*, 2012 IL App (3d) 110302. When a parent has diligently exercised their right to visitation, a court should be reluctant to interfere with those rights by allowing removal for unpersuasive or inadequate reasons. *Eckert*, 119 Ill. 2d 316.

¶ 29 Here, the evidence indicated that John and Christina wished to move to Oklahoma. John accepted the job in Oklahoma in furtherance of that desire. The mere desire of Christina and John to reside in Oklahoma was insufficient to show that the move was in Sean's best interest. See *id.* (because of a child's interest in maintaining significant contact with both parents, the mere desire of the custodial parent to move to another state, without more, is insufficient to show

that the move would be in the child's best interest). While John testified that he applied for a job in locations other than Oklahoma, the evidence showed that John and Christina were in the process of moving to Oklahoma prior to John securing a job there. However, there is insufficient evidence to prove that a move to Oklahoma would be in Sean's best interest, especially in light of the drastic adverse effect the removal would have on visitation between Sean and Casey and their relationship. There was no indication of whether the schools and community in Oklahoma were better or similar to those Sean was accustomed to in Illinois. There was also no information as to Sean's relationships with extended family in Oklahoma. Instead, the record showed that Sean would be leaving behind his close friends and extended family in Illinois.

¶ 30 Therefore, in balancing of the *Eckert* factors, the trial court's finding that Christina failed meet her burden of proof that removal was in Sean's best interest was not against the manifest weight of the evidence. Consequently, we affirm the trial court's order denying removal.

CONCLUSION

¶ 31 The judgment of the circuit court of Grundy County is affirmed.

¶ 32 Affirmed.