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2014 IL App (3d) 140111-U

Order filed December 11, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
MADHUMITA CHATTERJEE,)	Will County, Illinois.
)	
Petitioner-Appellant,)	
)	Appeal No. 3-14-0111
and)	Circuit No. 04-D-1909
)	
KEVIN MARONEY,)	
)	The Honorable
Respondent-Appellee.)	Brian E. Barrett,
)	Judge, presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices McDade and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* In a case involving a mother's petition to modify visitation, the circuit court found that it was not in the best interest of the child to allow unsupervised visitation. The appellate court affirmed the circuit court's judgment.

¶ 2 The petitioner, Madhumita Chatterjee, filed a petition to modify visitation with the child she had with the respondent, Kevin Maroney. After a hearing, the circuit court denied the petition, and Madhumita appealed. On appeal, Madhumita argues that the circuit court erred

when it denied her petition to modify visitation because it applied an incorrect legal standard and because it incorrectly found that serious danger would result to the child if Madhumita was granted unsupervised visitation. We affirm.

¶ 3

FACTS

¶ 4

This is the second time this case has come before this court for review of a petition for modification of visitation. In 2011, we affirmed the circuit court's denial of Madhumita's petition for modification of visitation. *In re Marriage of Maroney*, 2011 IL App (3d) 100684-U, ¶ 14. We set out the facts of this case leading up to that appeal in that decision, and, for the purposes of this appeal, we will recount only the facts from that time period that are necessary to the disposition of the instant appeal.

¶ 5

Madhumita and Kevin married in 1994 and divorced in 1998. They got remarried in 1999 and had a daughter together in 2001. Madhumita was given temporary custody of the child in 2004 after allegations arose that Kevin had sexually abused the child. Kevin was later charged with aggravated criminal sexual abuse in connection with those allegations, but he was acquitted of that charge in 2005. Also in 2005, Madhumita moved with the child to Ohio during the pendency of a petition to remove she had filed in the circuit court. She also started the child in a treatment program for victims of sexual abuse—a decision that was strongly questioned by a court-appointed custody evaluator. Madhumita and Kevin obtained a bifurcated judgment of dissolution of marriage in 2007.

¶ 6

The record in this case details the significant problems Madhumita and Kevin have had in cooperating with regard to their parenting of the child and to facilitating visitation between the child and the other parent. Among other things, in 2007, the visitation supervisor withdrew from the case and submitted a letter in which she claimed that she observed Madhumita attempt to

poison and impede the child's relationship with Kevin. In 2008, Madhumita defied a court order to remain in Ohio with the child during pending removal proceedings, as she moved with the child to North Carolina.

¶ 7 In November 2008, Dr. Robert Galatzer-Levy evaluated the child and diagnosed her and Madhumita with a shared psychotic disorder in that both believed the child had been sexually abused by Kevin. Dr. Galatzer-Levy also believed that Madhumita suffered from a severe psychopathology and that she had indoctrinated the child. He recommended that the child undergo immediate inpatient psychiatric treatment, and in December 2008, the child was hospitalized in Illinois for three weeks of psychiatric treatment. Kevin was given temporary custody of the child, and Madhumita was given supervised visitation.

¶ 8 In 2009, the circuit court entered an agreed order that provided, in relevant part, that Kevin would be given sole custody and that supervised visitation between Madhumita and the child would continue, with the goal of working toward unsupervised visitation. In the order, the court found that unsupervised visitation between Madhumita and the child posed substantial emotional and psychological risks to the child.

¶ 9 A significant number of motions have been filed in this case since the 2009 agreed order, including a petition for modification of custody filed by Madhumita in 2010. That petition was denied; the court in part expressed concern that Madhumita would flee with the child or engage in inappropriate behavior if visitations were unsupervised. In 2011, this court affirmed the denial of that petition. *Maroney*, 2011 IL App (3d) 100684-U, ¶ 14.

¶ 10 During her attempts to obtain unsupervised visitation, Madhumita was granted permission to obtain another expert's evaluation, and Dr. Syed Ali completed the psychiatric evaluation in December 2012. Dr. Ali concluded that Madhumita did not suffer from any

psychiatric diagnoses, which was in accord with the conclusions of two other psychiatrists. Accordingly, Dr. Ali stated that Madhumita *per se* met the grounds for having unsupervised visitation with the child. However, Dr. Ali qualified that conclusion, stating that unsupervised visitation was not currently appropriate due to concerns with the child's emotional state and the interactions Madhumita had with the child. As such, Dr. Ali recommended that Madhumita and the child meet with a separate, independent therapist on a weekly basis for three to four months—and then spaced out at the therapist's discretion—in order to work on the quality of their relationship and their interactions. Thus, Dr. Ali stated that "[a] period of 6 months seems appropriate before re-evaluating whether Unsupervised Visitation would be appropriate."

¶ 11 On January 15, 2013, Madhumita filed another petition for modification of visitation in which she requested unsupervised visitation with the child. In May and June 2013, the circuit court held a hearing on Madhumita's petition. Dr. Ali's deposition was read in part into evidence.¹ Dr. Ali reviewed numerous documents from the case, including the evaluation performed by Dr. Galatzer-Levy in 2008 that identified concerns of "maternal indoctrination" and the need for the child to undergo psychiatric care. He opined that there was no psychological reason why Madhumita should not be allowed to have unsupervised visitation with the child. He did not believe Madhumita posed any danger to the child. However, he acknowledged that the child "had some concerns and fears" regarding visitation with Madhumita, and that based in large part on the child's concerns, he believed that unsupervised visitation would not be appropriate at this time. He noted that the child had "increasing concerns about the conversations and deceptive activities" that had occurred during visitation with Madhumita. The

¹ Madhumita and Kevin also testified at the hearing, although most of their testimony concerned whether they were working toward unsupervised visitation, as required by the 2009 agreed order.

child had told Dr. Ali that even in the presence of the supervisor, Madhumita would make comments that would make the child "feel badly." An example was that Madhumita showed a bill for the visitation supervisor to the child, which made the child feel guilty and distressed. The child had relayed concerns to Dr. Ali that such behavior would escalate if visitation were unsupervised. At the close of the hearing, the court took the matter under advisement.

¶ 12 On August 8, 2013, the circuit court announced its decision on the petition to modify visitation. At the outset, the court noted that there had been previous findings of parental alienation by Madhumita; and that Madhumita, Kevin, and the child all have had significant mental health needs. The court also noted the previous visitation orders entered in the case, which resulted in periods of no visitation, limited visitation, and supervised visitation, between Madhumita and the child. Next, the court recited the legal standard for modification set forth in section 607(c) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/607(c) (West 2012)), and then stated that the burden of proof was on Madhumita. The court stated that it considered "this as a best interest for the child and to determine whether there is still a serious endangerment that exists."

¶ 13 Next, the court recounted the history of therapist involvement in the case, including that Dr. Galatzer-Levy had recommended the supervised visitation schedule. After the court allowed Madhumita to be evaluated by another therapist, Dr. Ali, the court noted that it had admonished Madhumita that Dr. Ali was required to consider Dr. Galatzer-Levy's findings while familiarizing himself with the case's history. The court acknowledged that Dr. Ali's report was thorough, but that it made "minimal, if any, reference to Dr. Galatzer-Levy's report, opinion or necessity to have the supervised visitation."

¶ 14 Proceeding to the best-interest consideration, the court noted that in Dr. Ali's report, the child expressed a desire to be with Madhumita, but certain statements regarding Madhumita's behavior troubled the court. The child had said that both Madhumita and the visitation supervisor engaged in inappropriate behavior, so unsupervised visitation would be no different. An example of the inappropriate behavior was that Madhumita and the supervisor had asked the child if Kevin yelled at her and that she should call them but not tell Kevin about the call. The child also reported that the supervisor would not attempt to correct comments by Madhumita that were considered hurtful by the child. The child also expressed a fear that such comments could escalate without supervision. The examples, and others contained in Dr. Ali's report, convinced the court that the child was "exhibiting emotional strain." The court did not want to place the child into the position of having to "combat these situations" on her own, especially given the risk of escalation. Thus, the court found that Madhumita failed in her burden to prove that unsupervised visitation was in the child's best interest, and therefore, the court denied Madhumita's petition. After her motion for reconsideration was denied, Madhumita appealed.

¶ 15 ANALYSIS

¶ 16 On appeal, Madhumita argues that the circuit court erred when it denied her petition to modify visitation. Specifically, Madhumita contends that the court applied an incorrect legal standard, and that it erred when it found that serious danger would result to the child if Madhumita was granted unsupervised visitation.

¶ 17 Initially, we note that Kevin has not filed an appellee's brief with this court. However, under the principles of *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976), we will address the merits of the appeal because we deem the record in this case to be simple and the claimed errors to be easily decided without the aid of an appellee's brief.

¶ 18 Pursuant to section 607(a) of the Act, a non-custodial parent is entitled to reasonable visitation rights with his or her child "unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral or emotional health." 750 ILCS 5/607(a) (West 2012). The Act also provides that the circuit court may modify a visitation order if that modification serves the child's best interest, "but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral or emotional health." 750 ILCS 5/607(c) (West 2012). We will not disturb a circuit court's decision on the modification of visitation unless it is against the manifest weight of the evidence. *Sarchet v. Ziegler*, 278 Ill. App. 3d 460, 462 (1996).

¶ 19 With regard to Madhumita's claim that the circuit court applied an incorrect legal standard—a claim that was largely undeveloped in her brief—we acknowledge that there has been confusion at times regarding the difference between modification and restriction in section 607(c). See *In re Marriage of Chehaiber*, 394 Ill. App. 3d 690, 692-98 (2009) (discussing the difference between modification and restriction in section 607(c) and concluding that while they can overlap, the distinguishing factor between the two is the purpose for the change sought). The petition filed in this case sought a modification of the visitation between Madhumita and the child, which had already been set at supervised visitation. Madhumita's petition requested unsupervised visitation. Under the circumstances of this case, as the circuit court noted, the burden of proof was on Madhumita to show that unsupervised visitation was in the child's best interest. See *id.* (stating that "the difference between a modification and a restriction in section 607(c) is that a modification looks at the child's best interests directly, while a restriction looks at the suitability of the parent whose visitation would be curtailed"); see also *Sarchet*, 278 Ill. App. 3d at 462 ("[t]he party seeking the modification has the burden of showing that the modification

is in the best interest of the child"). Accordingly, we reject Madhumita's argument that the court applied an incorrect legal standard.

¶ 20 Furthermore, our review of the record reveals no error in the circuit court's ruling that unsupervised visitation with Madhumita was against the child's best interest. In arriving at its decision, the court noted the significant history of the case leading up to the agreed order that set the visitation between Madhumita and the child as supervised, including Dr. Galatzer-Levy's evaluation. The court then discussed Dr. Ali's evaluation in depth. The court concluded that the potential for emotional and psychological harm to the child via unsupervised visitation with Madhumita was too great to allow at the time. Given the history of the case, the evidence presented regarding the continuing questions regarding the interaction between Madhumita and the child, and Dr. Ali's conclusion that unsupervised visitation was not appropriate at the time, we hold that the circuit court's factual findings were not against the manifest weight of the evidence. See *Sarchet*, 278 Ill. App. 3d at 462. Accordingly, we hold that the court did not err when it denied Madhumita's petition for modification of visitation.

¶ 21 CONCLUSION

¶ 22 The judgment of the circuit court of Will County is affirmed.

¶ 23 Affirmed.