2011 IL App (2d) 111240-U

SECOND DIVISION
November 1, 2011

No. 1-11-1240

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CLAUDIA S. L.,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellant,	)	Cook County.
	)	
v.	)	No. 03 D 9200
	)	
STEVEN L.,	)	Honorable
	)	Leida J. Gonzalez-Santiago,
Respondent-Appellee.	)	Judge Presiding.

O R D E R

PRESIDING JUSTICE QUINN delivered the judgment of the court.
Justices Cunningham and Harris concurred in the judgment.

¶ *1* *HELD:* The trial court did not abuse its discretion by awarding sole custody of minor child to respondent father or violate either the Illinois Marriage and Dissolution of Marriage Act or Illinois Supreme Court Rules by failing to expedite the custody proceedings. Further, there is no evidence that trial court engaged in improper *ex parte* communications with respondent or respondent's attorney.

¶ 2 Petitioner, Claudia L., appeals *pro se* from an order of the circuit court of Cook County granting sole custody of the parties' minor son to her former husband, respondent Steven L.

On appeal, petitioner alleges that the trial court: (1) abused its discretion in awarding sole custody custody to respondent; (2) violated section 606(a) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/606(a) (West 2008)) (Act) (West 2008) and Illinois Supreme Court Rule 900 *et seq.*, (Ill. S.Ct.R. 900, *et seq*. (eff. July 1, 2006)), by failing to expedite the child custody proceedings; (3) deprived her of a right to appeal the custody order by waiting 3½ years to enter a judgment for dissolution of marriage after issuing the final parenting order; and (4) engaged in improper *ex parte* communications with respondent. For the reasons set forth below, we affirm.

¶ 3 Petitioner filed a petition for dissolution of marriage in August 2003. The petition stated that one child, Kevin, was born during the marriage on January 18, 2000, and requested that petitioner be granted custody and that respondent be granted reasonable visitation. Respondent filed an answer and a counter-petition for dissolution of marriage in which he requested sole custody of Kevin, or in the alternative, joint custody. In a supplemental answer, respondent asked the court to grant petitioner's petition and to award joint custody of Kevin to the parties. On October 3, 2003, after the parties were unable to reach an agreement on custody, respondent filed a motion to appoint a child's representative. On January 14, 2004, the trial court appointed John Rokacz as attorney for the minor child.

¶ 4 On March 24, 2004, petitioner left the marital home and she and Kevin moved in with her parents in Homewood, Illinois. The next day, respondent filed an emergency petition for temporary custody, which the trial court denied. The trial court subsequently entered a series of temporary parenting orders, permitting respondent to spend time with Kevin. On March 29,

2004, petitioner filed a petition for an evaluation of the parties, pursuant to 750 ILCS 5/604(b) (West 2008), for the purpose of making a custody recommendation. The trial court granted that petition and appointed Dr. Phyillis Amabile, M.D., to perform the evaluation. Dr. Amabile issued a report on September 8, 2004, recommending that petitioner be given sole custody of Kevin, that his primary residence be with her, and that respondent be given visitation on weekends and for 2 to 3 hours on Tuesday evenings.

¶ 5 On July 7, 2005, respondent again filed an emergency petition for temporary custody of Kevin, alleging that on June 30, 2005, he noticed a large bruise on Kevin's arm and that Kevin told him that while he was playing, petitioner's father became enraged, grabbed his arm and dragged him up to his room where he had to remain for the rest of the day. Respondent alleged that Kevin had previously been physically abused by petitioner's father and was in danger while residing with petitioner in her parent's house. Respondent attached photos of Kevin showing a bruised left arm. Petitioner contended that the bruise was a reaction to an inoculation shot. In response, the trial court issued an order terminating John Rokacz's appointment as Kevin's child representative and appointing Ralla Klepak as child representative. On August 9, 2005, in response to a motion filed by Klepak, the trial court appointed Dr. Leslie Star to conduct a section 604(b) evaluation. The court stated that Dr. Star should consult with Dr. Amabile, conduct standardized tests on all of the parties, and engage the maternal grandparents in the evaluation in making a recommendation as to custody and parenting time.

¶ 6 On March 21, 2006, Klepak filed a motion to add petitioner's parents as third party respondents on the grounds that Kevin lives in their home with his mother, that respondent has

alleged that petitioner's father physically abused Kevin, and that petitioner's mother has written defamatory letters to Chicago-Kent Law School, where Klepak and Dr. Star are adjunct faculty members and to the Illinois Attorney Registration and Disciplinary Commission (ARDC), in an effort to intimidate and manipulate those involved in determining the issue of custody of Kevin. The trial court granted the motion.

¶ 7 On May 8, 2006, respondent filed another emergency petition for transfer of custody pending the section 604(b) evaluation, asserting that Kevin's living arrangements were detrimental to his physical and emotional well-being, citing alleged physical abuse of Kevin by petitioner's father and the letters petitioner's parents had sent to the ARDC and Chicago-Kent Law School. On June 12, 2006, the court awarded respondent temporary custody of Kevin and awarded petitioner the same visitation rights that respondent had under the previous order.

¶ 8 On March 7, 2007, Dr. Star submitted her completed section 604(b) evaluation, recommending that the court consider awarding the parties joint custody, with respondent being appointed residential parent and a recommendation that petitioner be granted parenting time every other weekend and every Friday after school until 8 p.m.

¶ 9 A seven-day custody trial commenced on March 19, 2007, during which several witnesses testified, including petitioner, respondent and, petitioner's father. On November 13, 2007, the trial court entered a final parenting order designating respondent as the primary and sole residential parent of Kevin. Petitioner was granted residential parenting time on alternating weekends, dinner visits on Fridays from 3 p.m. until 7p.m., and on Tuesdays from 5:30 until 7:30 p.m. during the summer. On December 6, 2007, petitioner filed a notice of appeal of the

final parenting order requesting that this court vacate the order and remand for further proceedings on the merits. On April 25, 2008, this court dismissed that appeal for lack of jurisdiction. Further proceedings were held in the matter and on March 31, 2011, the trial court entered a judgment of dissolution of marriage, which included as an exhibit, the November 13, 2007 final parenting order. On April 29, 2011, petitioner filed a notice of appeal from the March 31, 2011 order, asking this court to reverse the final parenting order.

¶ 10 On appeal, petitioner first contends that the trial court abused its discretion in awarding sole custody to respondent. Petitioner asserts that rather than basing its decision on Kevin's best interests, the trial court awarded custody to respondent because her parents had written letters to the ARDC and to Chicago-Kent College of Law complaining about the child representative and other attorneys in the case.

¶ 11 The trial court should consider all relevant factors, including those listed in section 602 of the Illinois Marriage and Dissolution of Marriage Act when making child custody determinations and decide what custodial order serves the child's best interest. *In re Marriage of Petraitis*, 263 Ill. App. 3d 1022, 1031 (1993). A custody determination inevitably rests on the parties' temperaments, personalities, and capabilities, and the witnesses' demeanor. *Id.* Because the trial court is in a far better position to "observe the temperaments and personalities of the parties and assess the credibility of the witnesses," the reviewing court affords great deference to the trial court's best interests findings. *Id.* Therefore, the trial judge's custody determination will not be overturned on review unless that determination is against the manifest weight of the evidence. *Id.* "Manifest weight" has been defined as weight that is clearly evident, clear, plain,

and indisputable. *Id.*

¶ 12 Section 602(a) of the Act delineates factors a court should consider in evaluating the best interest of a child as follows:

> (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 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 (West 2008).

¶ 13 Petitioner contends that the trial judge failed to state on the record which of the

aforementioned factors influenced her decision to award sole custody to respondent, and therefore, "one could safely infer" that her decision was based on her parents' letters to the ARDC and other institutions. In this regard, respondent contends, and we agree, that not only did the court hear extensive testimony from petitioner, respondent, petitioner's father, and others, and observe the parties' demeanor, but also that there is no requirement that the court enumerate all of its specific findings. See *In re Koca*, 264 Ill. App. 3d 291, 294 (1993). Examining the evidence presented regarding the relevant factors listed above, we do not find that the trial court abused its discretion in awarding respondent sole custody of Kevin. First we note that several of the section 602(a) factors are not relevant in this case, as neither parent is a sex offender nor a member of the armed services. In addition, it is evident that both parties wanted custody of their son, with respondent requesting sole custody and petitioner requesting either joint custody with her being the residential parent or sole custody. Further, as to the minor child's wishes as regarding his custodian, the evidence presented by both child representatives indicates that he wants both of his parents in his life and does not care with whom he lives.

¶ 14 With regard to the other factors, we note that Kevin has been living primarily with respondent since June 12, 2006, and the evidence suggests that he has adjusted well to his home, school, and community. Dr. Star's report stated that Kevin "has made a good adjustment to his father's playing the role of residential parent," that he "does well at school, engages with peers[,] and attends reasonable activities." Further, both parents and the minor child appear to be psychologically sound and stable and in good physical health. Although petitioner asserted that Kevin had lost weight and stopped growing, a subsequent medical exam showed that those

claims were unfounded. Further, there is no evidence that physical violence or the threat of physical violence is an issue in this case. Nor is there any evidence of an ongoing threat of violence. Respondent did file an emergency petition on July 7, 2005, claiming that while caring for Kevin, petitioner's father grabbed Kevin by his arm, dragged him upstairs, and locked him in his room for the remainder of the day resulting in a large bruise on his arm that lasted for days. Petitioner contended that the bruise was a reaction to an inoculation and ultimately there was a finding of no abuse. In addition, petitioner filed a petition for an order of protection against respondent in 2003, however, the court found that both parties were acting childishly and ordered them to "act[]in a manner that is in the best interest of the child."

¶ 15 There are two section 602 factors that are relevant in this case. First, section 602(a)(3) of the Act requires the court to consider "the interaction and interrelationship of the child with his parent or parents, his siblings and any other person who may significantly affect the child's best interest." 750 ILCS 5/602(a)(3) (West 2008). The record indicates that petitioner and respondent each have a healthy and positive relationship with their son. However, evidence presented during the trial suggested that Kevin's interactions and relationship with petitioner's parents, in whose home petitioner resides and intends to remain until she remarries, could be problematic. First, we note that the report of child representative Klepak describes the environment in the home as "toxic." In making that determination, Klepak cited her courtroom observation of respondent, petitioner, and petitioner's parents, the statements of petitioner's parents in court and their involvement in delaying a follow-up forensic investigation, petitioner's parents' expressed attitudes about respondent and his family, their "aggressive and unrelenting

involvement" in their daughter's marital dissolution proceeding, and their actions concerning professionals servicing the parties and their minor child.

¶ 16 Further, we note that at trial, petitioner's father testified that he does not like respondent because he "destroyed" and "lied" to petitioner and does not like respondent's mother. He stated that respondent was not a good father and that he could not say anything positive about respondent other than that he had a job. It is reasonable to assume that this hostility from petitioner's father toward respondent would become apparent to the minor child if petitioner was given sole custody.

¶ 17 Petitioner contends that the trial court erroneously considered letters that she and her parents wrote to the ARDC and Chicago-Kent College of Law complaining about the child representative and other attorneys in the case. Although petitioner did not include the letters in the record on appeal, the testimony at trial indicates that petitioner wrote a letter to the ARDC stating that the child representative did not notice that Kevin failed to thrive, lost weight, and stopped growing, accusations that were subsequently proven unfounded. Petitioner's mother also wrote a letter to the ARDC complaining about four attorneys involved in the divorce proceeding and wrote a letter to the dean of the Chicago-Kent College of Law, where the child representative and Dr. Star serve as adjunct faculty, asking that their employment be terminated and alleging that the child representative was guilty of corruption, extortion and felonious acts. Petitioner's father wrote a letter to the ARDC complaining about the child representative and asserting that the trial was a sham because the trial judge met *ex parte* with respondent's attorney to resolve the case. While there is no evidence, as petitioner asserts, that these letters were the

sole or even a primary factor in the court's custody determination, we do not find that it would be improper for the court to take those letters into consideration, as they offer insight about the atmosphere, attitudes, and actions in the household of petitioner's parents, where Kevin would likely be residing for the foreseeable future.

¶ 18 Further, in deciding custody under the best-interest-of-the-child standard, the court shall consider "the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child." 750 ILCS 5/602(a)(8) (West 2008). The record indicates that while respondent was willing to facilitate and encourage a close and continuing relationship between petitioner and Kevin, petitioner was not willing to do the same with regard to respondent. In her closing argument, Klepak, the child representative, stated that "[t]here is a history of cooperativeness to share his parenting time with Claudia" but conversely, there is "a history of Claudia unilaterally returning Kevin to Steven capriciously late and then testifying that they had an oral agreement to do so, notwithstanding *** written orders, letters, and the like, defining said times." Klepak also stated that "Claudia missed no opportunity to demean, insult, deprecate, negate, and minimize Steven as a parent, husband and human being." Similarly, Dr. Star noted in her report that "one notable difference in Mr. Ludwig's having assumed the role of primary parent is his willingness to foster and maintain a positive relationship between Mrs. Ludwig and Kevin, arranging for both parents to accompany Kevin" to various important events, having Claudia put Kevin to bed on the nights she has dinner visits with him, and maintaining pictures of Claudia in the home.

¶ 19 Based on the aforementioned evidence, particularly the testimony regarding the

relationship between respondent and petitioner's parents and petitioner's unwillingness to facilitate and encourage a close and continuing relationship between the respondent and Kevin, coupled with the evidence showing that Kevin has adjusted well since he began living primarily with respondent in 2006, we cannot say that the determination of the trial judge was against the manifest weight of the evidence, or that the court abused its discretion in awarding sole custody to respondent. Instead, we find that the lengthy proceedings of the trial court involving numerous witnesses and extensive findings of fact, resulted in a careful and well reasoned decision intended to further the best interests of the child. Therefore, we affirm the trial court's final parenting order.

¶ 20 Next, petitioner contends that the trial court violated section 606(a) of the Act (750 ILCS 5/606(a)(West 2008)) and Illinois Supreme Court Rule 900 *et seq*. (Ill. S.Ct.R. 900, *et seq*. (eff. July 1, 2006)) by delaying the custody trial for four years from the date when she filed her petition for dissolution of marriage. In particular, Rule 922 provides, in part, "All child custody proceedings under this rule in the trial court shall be resolved within 18 months from the date of service of the petition or complaint to final order." Petitioner contends that by waiting four years from the date she filed her petition for dissolution of marriage until a custody trial was conducted, the trial court violated that rule. However, Rule 900 *et seq*. did not become effective until July 1, 2006, three years after petitioner filed her petition for dissolution of marriage and therefore, was not applicable to this case. Further, we note that the trial court did commence the custody hearing in March 2007, within a year of the effective date of Rule 900 *et seq*.

¶ 21 Petitioner also contends that the trial court denied her an opportunity to appeal by issuing

the final parenting order on November 13, 2007 but waiting until February 26, 2010, 3½ years later, to enter an appealable judgment of dissolution of marriage. We note that after the November 13, 2007 order was entered, petitioner filed a notice of appeal on December 6, 2007. However, this court issued an order on April 25, 2008, dismissing that appeal for lack of jurisdiction because, at that time, a custody judgment was not immediately appealable.[1] However, petitioner was not completely precluded from appealing the trial court's final parenting order, as she could have requested an appeal pursuant to Supreme Court Rule 306(a)(5) (Ill. S.Ct.R. 306(a)(5), which has permitted appeals from interlocutory orders affecting the care and custody of an unemancipated minor since at least 1993. To do so, petitioner would have had to file her appeal 14 days from the date that order was entered, which she failed to do. See Rule 306(b)(1). Therefore, we reject petitioner's argument that the trial court denied her the ability to appeal the June 12, 2006 custody judgment until after it entered the February 26, 2010 judgment for dissolution of marriage.

¶ 22 Lastly, petitioner alleges that the trial court engaged in improper *ex parte* communications with respondent in violation of Supreme Court Rule 63(A)(4), which provides, in part, that "A judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties ***." (Ill. S. Ct. R. 63(A)(4) (eff. April 16, 2007)). Specifically, petitioner notes that in its order for judgment of dissolution of marriage, the trial court awarded respondent various items of personal property

[1] Illinois Supreme Court Rule 304(b)(6) (Ill. S.Ct.R. 304(b)(6) (eff. February 26, 2010), which makes a custody judgment immediately appealable, was not effective until February 26, 2010.

including pictures of Kevin, family movies, and a crystal stemware set that petitioner had in her possession. Petitioner asserts that because there had been no trial testimony regarding those items, the trial court must have been informed that she had them through *ex parte* communications with respondent and asks that all future proceedings in this case be assigned to a different judge.

¶ 23 Contrary to petitioner's assertion, there is no evidence that the trial judge engaged in any *ex parte* communications in this case. The record shows that at trial, the parties agreed to exchange lists of personal property each party claimed the other party had in his or her possession. Further, in his written final arguments, respondent requested that the trial court award him the personal items set forth in Exhibit 19. Petitioner failed to include Exhibit 19 in the record on appeal. While petitioner wants this court to infer that because the trial court awarded personal items to respondent, it necessarily follows that *ex parte* communications occurred, it is equally plausible that the court made that determination based on the Exhibit 19. It is the appellant's burden to provide a complete record to support a claim of error and any doubts that may arise form the incompleteness of the record will be resolved against appellant. *Foutch v. O' Bryant*, 99 Ill. 2d 389, 391-92 (1984). Because petitioner has failed to provide a complete record, we will presume that the trial court acted in conformity with the law and did not engage in *ex parte* communications with respondent regarding personal items but rather, made her determination based on information in the record.

¶ 24 Petitioner also asserts that the trial court engaged in *ex parte* communications before issuing an order on March 31, 2011, which stated, in part, that: (1) a hearing on respondent's

petition for contribution to his attorney's fees would be held on August 12, 2011; (2) both parties must present a current 13.3 financial disclosure statement and evidence of current and 2010 income; and (3) child support would be determined at the hearing. Petitioner contends that there was no discussion regarding financial disclosure statements or redetermination of child support during the March 31, 2011 hearing, and therefore, the provisions in the order must have been discussed *ex parte* between the trial court and respondent's attorney, who drafted the order. We disagree. The transcript from the March 31, 2011 hearing shows that petitioner's attorney was present in court. The court noted that petitioner's counsel had an objection to the draft order that was attached to the proposed judgment of dissolution of marriage and that the objection had been addressed and resolved. Petitioner's counsel agreed that no outstanding objection remained and the order was entered with no outstanding objections. Therefore, the record clearly belies petitioner's assertion that the trial judge engaged in any *ex parte* communications with respondent or his attorney.

¶ 25 For the foregoing reasons, we affirm the circuit court.

¶ 26 Affirmed.