FIRST DIVISION
August 24, 2015

No. 1-15-1042

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re MARRIAGE OF:	)	Appeal from the Circuit Court
	)	of Cook County.
CINDY E. ROMERO,	)	
	)	
Petitioner-Appellant,	)	
	)	
and	)	No. 13 D 9980
	)	
HUGO QUEZADA,	)	Honorable
	)	Jeanne Cleveland Bernstein,
Respondent-Appellee.	)	Judge Presiding

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

ORDER

¶ 1 ***Held:*** Based on the testimony presented at trial, the trial court's decision to award sole custody of the parties' son to his father, and granting certain visitation rights for the mother, was neither an abuse of discretion nor against the manifest weight of the evidence.

¶ 2 The petitioner, Cindy E. Romero, appeals from the order of the trial court granting sole custody of her son, N.J., to her ex-husband, respondent Hugo Quezada. Because we cannot find

that the trial court's decision was an abuse of discretion or against the manifest weight of the evidence, we affirm.

¶ 3 The parties married in 2009, and their son N.J. was born in 2011. In 2013, Romero filed for divorce, requesting, among other things, that the court award her sole custody of N.J. Romero's petition for dissolution of marriage asserted that she was "a fit and proper person to have the sole care, custody, control and education of [N.J.]." Quezada never filed any counter-petition in which he requested any particular type of custody. However, in his answer to the petition, Quezada stated: "the parties are each fit and proper persons to have the joint care, custody, and education of the minor child." There was a similar exchange in the pleadings regarding Romero's petition for temporary relief.

¶ 4 The court sent the parties to Focus on Children, a mediation service, to resolve their differences. A mediation status report initially indicated that the parties had agreed that Romero would remain the residential parent, with Quezada having visitation every other weekend and two weekday evenings. Additionally, the mediation report indicated that the parties had agreed to joint decision-making, including for healthcare, education, and religious training of N.J. However, Romero withdrew from the tentative agreement and demanded sole custody of N.J. The case proceeded to a brief bench trial on October 29, 2014.

¶ 5 The only witnesses at the trial were the parties. At the time of trial, N.J. was three years old and was living with Romero. Romero admitted that she had agreed to joint custody during mediation but did not agree to the "terms of this mediated agreement." She also testified that she had understood, and desired, that Quezada's visitation would be restricted to occur only at her own home, which was a restriction not expressed in the mediation report. The trial court expressed some frustration at Romero's position on this point, explaining that such a "restriction

was not allowed under the statute." Romero was unemployed and her monthly income was about $587, $350 of which came from Quezada and the remainder was from food stamps. She had only recently started looking for work.

¶ 6 Quezada testified that about two weeks after the mediation, Romero told him that his two-day-a-week visitation schedule was too generous and that she would demand sole custody. Until the trial, he was unable to take N.J. out of Romero's home for his own visitation time. Quezada, a Marine veteran, worked in the trucking industry and was the only parent working during the marriage. Both parties lived in the same buildings as their respective parents, who were N.J.'s grandparents. The grandparents provided significant care for N.J., such as when Quezada was working.

¶ 7 Some of the testimony at trial focused on a few petty disputes between the parties, all of which was of relatively recent vintage. Romero relies strongly on this testimony, arguing that it demonstrates Quezada's unfitness. The parties fought over matters regarding N.J.'s care and upbringing, such as whether and when to take N.J. to the doctor, which bottle he should use, and whether someone forgot to pack necessary items for a visit by N.J. There was also testimony regarding physical confrontations between the parties. Romero testified that after a dispute regarding whether N.J. was too ill to go trick-or-treating on Halloween, Quezada "choked me when I was going to walk away," by grabbing her jacket. On further questioning by the trial judge, Romero clarified that she was not actually choked, "[b]ut since I was wearing a jacket and a sweater, it was like all at once." Quezada denied this incident occurred in the manner Romero suggested; he claims he merely grabbed her elbow. Romero characterizes this as an example of Quezada's "violent temper."

¶ 8 Romero testified to another incident where Quezada "leaned over" and bit her after a dispute regarding her demand for sole custody, causing her to feel pain and cry. Quezada claimed not to recall this incident.

¶ 9 A month after the trial, the trial court issued a written decision: (1) awarding Quezada sole custody of N.J.; (2) granting parenting time to to Romero; and (3) resolving various property, child support and spousal maintenance issues. The court determined that the negative incidents to which Romero testified were not dispositive, finding that they "reflect[ed] Hugo's rudeness toward Cindy and not toward the child." The court stated that Romero's testimony was "confusing at times" and the trial was necessitated by Romero's insistence that Quezada only have visitation with N.J. in Romero's home, which "is not permitted under the statute" and that "[t]here was never any reason other than Cindy's insistence that such visitation should be restricted." With respect to domestic violence, the court found there was no evidence of any violence toward the child, and that Romero's testimony related to incidents that were "situational and not indicative of long term abuse." In particular, the court found that Romero "[fell] down" with respect to the statutory test regarding the ability of each parent to cooperate with the other, and that her "unreasonable insistence on 'her way or the highway' concerns the court."

¶ 10 The court stated that "[s]adly, this is not a case where the parents have been able to achieve a modicum of cooperation, not to mention the 'high level of cooperation' necessary for joint parenting." Although finding that both parties were "stable, loving parents," the court determined that after weighing the statutory factors, Quezada was best suited to be the legal custodian of N.J. The court, however, granted Romero parenting time with N.J. on alternate weekends from Thursday morning to Monday evening, coordinating with the weekends on which Quezada had to work due to his rotating schedule. Accordingly, the court's schedule

placed N.J. with Romero five out of every fourteen days, or about 36% of the time. The court also granted Romero visitation on Tuesdays from 5:00 p.m. to 7:00 p.m., for three consecutive weeks during the summer, and on various holidays.

¶ 11 Romero appealed, and the appeal was accelerated under Supreme Court Rule 311(a) (eff. Feb. 26, 2010). In child custody appeals, we must issue our decision within 150 days of the filing of the notice of appeal, except for good cause shown. Ill. S. Ct. R. 311(a)(5) (eff. Feb.26, 2010). Romero filed her amended notice of appeal on April 15, 2015. The last brief was filed on July 30, 2015. Accordingly, our decision is timely.

¶ 12 On appeal, Romero contends that the trial court erred in granting sole custody to Quezada. She requests that we simply vacate the decision below and remand for an entirely new trial, or, in the alternative, reverse outright and grant her sole custody. Section 602(a) of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/602(a) (West 2014)) states that "[t]he court shall determine custody in accordance with the best interest of the child" based on ten "relevant factors." Six of those factors are relevant to this case. They are:

> (1) the wishes of the child's parent or parents as to his custody;
>
> ***
>
> (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;
>
> ***
>
> (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; [and]
>
> (8) 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) (West 2014).

¶ 13 We give great deference to a trial court's custody decision, since that court "is in the best position to judge the credibility of the witnesses and determine the needs of the child." *In re Custody of Sussenbach*, 108 Ill. 2d 489, 499 (1985). A trial court's decision on custody will stand on appeal unless it is against the manifest weight of the evidence. *Id.*

¶ 14 In the court below, Romero sought sole custody. In this court, she maintains this request and does not specifically request joint custody, which would be a level of custody closer to the trial court's preference. However, she prominently addresses the issue of joint custody in one context. She argues that granting Quezada sole custody was improper because, among other things, Quezada himself agreed to joint custody. This, she contends, further illustrates error because the trial court improperly gave Quezada a windfall of custody more generous than he had even requested. She primarily supports this argument by citing to Quezada's answer to the petition for dissolution of marriage. See *supra* ¶ 4. Quezada did testify that he believed joint custody was in N.J.'s best interests. Even in light of this testimony, we do not read Quezada's

answer as judicially admitting or stipulating to joint custody. His answer does not request joint custody. Instead, it merely sets forth his opinion that *either* parent would be fit to have custody.

¶ 15 Nonetheless, because Romero focuses on Quezada's alleged stipulation to joint custody, we will briefly address whether that remedy would have been viable here. Joint custody requires "the ability of the parents to cooperate effectively and consistently in matters that directly affect the joint parenting of the child" (750 ILCS 5/602.1(c)(1) (West 2012)). Joint custody is rarely appropriate, as it "requires an unusual level of cooperation and communication from both parents." *In re Marriage of Swanson*, 275 Ill. App. 3d 519, 524 (1995). "[U]nless parents have an unusual capacity to cooperate, substantial disagreement shall arise, ultimately resulting in harm to the child." *In re Marriage of Drummond*, 156 Ill. App. 3d 672, 680 (1987). "[W]e view joint custody as most extraordinary and counsel skepticism when trial courts hear promises from newly divorcing parents that they can surmount the manifest difficulties of a joint-custody order." *In re Marriage of Dobey*, 258 Ill. App. 3d 874, 877 (1994).

¶ 16 Romero's attacks on Quezada do not advance the case for joint custody, which requires that cooperative parenting be possible. Romero paints a consistently negative picture not only of Quezada's parenting skills, but also, more importantly, of both parents' rapport with each other. In light of the manifest disagreements between the parties over everyday issues, the trial court did not err by not implementing a joint custody arrangement.

¶ 17 Similarly, the trial court's decision to grant Quezada sole custody is consistent with the evidence presented. Romero strenuously argues that the custody decision was baseless and simply retaliatory because she demanded a trial on the issue. At one point, the trial judge did indicate that Romero's withdrawal from the mediation agreement over custody and demand for trial was the "crux" of the case. However, we do not believe that comment demonstrates that the

trial judge was punishing Romero for exercising her right to a trial. The parties had very little in the way of assets, money, or income, so almost no trial time was devoted to division of property or financial matters. Similarly, the parties did not dispute other common issues such as the child's religious upbringing or educational goals. Viewed in light of the case history and the evidence, the judge's comment simply highlights that custody was the main issue being tried.

¶ 18 Romero points out that the trial judge frequently interrupted testimony to ask questions of the parties, an action which she characterizes as demonstrative of some sort of impatience or bias. However, the record does not bear out that characterization. Romero's testimony, in particular, often ran off the track because she was evasive and clearly confused. As noted above, custody was the main issue being tried and the court was trying to obtain Romero's explanation why she wanted sole custody, a frustration compounded by Romero's lack of precise understanding of the different types of custody and the legal limitations precluding some custody scenarios. The trial court's questioning technique, while arguably brusque, was a reasonable approach to rein in Romero and to extract useful and precise testimony from her.

¶ 19 In her brief before this court, Romero also includes a police report of an incident where N.J. was found outside Quezada's home wearing pajamas. Romero asks us to take judicial notice of this report. While this incident is of concern, we cannot consider it because it occurred after the notice of appeal was filed and therefore was never considered by the court below. We cannot consider events occurring after the notice of appeal was filed. See *Cygnar v. Martin-Trigona*, 26 Ill. App. 3d 291, 293 (1975). Additionally, as we have repeatedly stated, it is improper to include materials in appellate briefs that were not included in the record below. *McGee v. State Farm Fire & Casualty Co.*, 315 Ill. App. 3d 673, 679 (2000).

¶ 20 After hearing the testimony and viewing the evidence, the court issued a very detailed order. The court properly considered the enumerated factors in section 602(a) of the Marriage Act as well as other relevant factors. The court had to decide who should receive sole custody, considering the parties could not work together. Indeed, this is one of the most challenging tasks a trial court faces. And since it is the trial court that has had the opportunity to hear the testimony firsthand, to observe the demeanor of the witnesses and assess their credibility, we are obliged to give its custody decision significant deference. We do not find that the incidents on which Romero relies demonstrate that the trial court's custody decision was either an abuse of discretion or against the manifest weight of the evidence. This is particularly true in light of the fact that the visitation schedule actually places N.J. with Romero about 36% of the time. Accordingly, we must reject Romero's challenge to the custody order.

¶ 21 Affirmed.