2017 IL App (1st) 162261-U

THIRD DIVISION
April 26, 2017

No. 1-16-2261

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE MARRIAGE OF NANCY WAGNER,	)	Appeal from the
	)	Circuit Court of
	)	Cook County.
Petitioner-Appellee,	)	
	)	
v.	)	No. 11 D 5412
	)	
	)	
MARK WAGNER,	)	The Honorable
	)	Mary S. Trew
Respondent-Appellant.	)	Judge, presiding.
	)	

JUSTICE LAVIN delivered the judgment of the court.
Justices Pucinski and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in restricting respondent father's visitation when the court's reasoning was set forth on the record and was amply supported by the evidence. In addition, the trial court did not err in its determination that the minor child would attend boarding school with respondent paying all cost and expenses for the first-year. Affirmed.

¶ 2 This appeal arises from a dissolution of marriage proceeding between petitioner Nancy Wagner and respondent Mark Wagner. On appeal, respondent contends that the trial court erred

in restricting his parenting time and contact with the minor child. Respondent also contends the trial court erred in its determination that the minor child should attend boarding school, ordering respondent to pay all cost and expenses for the first year. We affirm.

¶ 3 BACKGROUND

¶ 4 We recite only those facts necessary to understand the issues raised on appeal. During their marriage, petitioner and respondent had one child, M.W. The family resided in Evanston, Illinois, but also maintained a "country" home in Franklin Grove, Illinois. On June 8, 2011, divorce proceedings commenced with respondent taking up permanent residence in the Franklin Grove home. Thereafter, the parties agreed on joint custody of M.W. with petitioner having primary residential placement in Evanston and respondent having liberal parenting time. While each party agreed to waive maintenance, respondent was ordered to pay petitioner child support. The parties also agreed to equally divide the values of all retirement funds, and in doing so, the trial court ordered petitioner to transfer $72,067.48 to an Individual Retirement Account (IRA) in respondent's name.

¶ 5 On September 8, 2015, petitioner filed an emergency petition for return of the minor child and to suspend parenting time after respondent failed to return M.W. to petitioner after respondent's scheduled weekend. M.W. allegedly locked himself in his bedroom to avoid attending his freshman orientation at Evanston Township High School (ETHS). Petitioner specifically contended that respondent had been leading M.W. to believe that there would be a change in custody, even though respondent had never petitioned for one, such that M.W. would live with respondent in Franklin Grove and not attend ETHS. Petitioner also alleged that respondent continuously alienated M.W. from petitioner and his peers, and police officers

needed to be called on several occasions to enforce the custody judgment and to intervene when M.W. refused to attend school.

¶ 6 After a lengthy hearing, the trial court determined that under section 607(a) of the Illinois Marriage and Dissolution of Marriage Act (the Act), petitioner proved by a preponderance of the evidence that contact with respondent would endanger M.W.'s welfare. 750 ILCS 5/607(a) (West 2014)[1]. In making its determination, the trial court referenced M.W.'s 604(b) report and noted the following:

> "Through conversations with [M.W.] [his clinical psychologist] Dr. Grossman observed that [respondent] and [M.W.] spent all of their time together with very few peer interactions with [respondent's] complete attention devoted to [M.W.] at all times. This enmeshed dynamic seem[ed] to have skewed [M.W.]'s perception of what a normal amount of attention [was] from his parents, and, as such, he [felt] neglected by his mother when she engage[ed] in normal activities of daily living. Dr. Grossman expressed concern that [M.W.] [was] not developing age-typical levels of autonomy, independence, and individuation from his parents, particularly [respondent], and, if proper intervention [was] not implemented with [M.W.] in this regard, this dynamic could negatively impact his social emotional development for years to come. *** [Respondent] ha[d] quite overtly expressed to [M.W.] that [petitioner] wanted the divorce, ha[d] broken up their family, and, as such, [M.W.] should live with him full time in Franklin Grove."

The court also noted Dorothy Johnson, M.W.'s guardian ad litem, expressed concern that M.W. had been caught in the middle of his parents' divorce and brought into "an unhealthy alignment of father verses mother." M.W.'s evaluator, Dr. Wilner, concurred and observed that it was alarming that M.W. was involved in no extracurricular activities and had very few friends. Dr.

[1] This section has since been appealed and amended by P.A. 99-90, § 5-20, eff. Jan. 1, 2016.

Wilner also believed that respondent had been using M.W. "as a conduit of influence" to put pressure on petitioner to reconcile the marriage and receive more parenting time.

¶ 7 Furthermore, in its ruling, the trial court directly observed that respondent had engaged in a "systematic campaign with [M.W.] to interfere with and undermine not only the boy's relationship with [petitioner] but his entire life." Respondent's "goal [was] to obtain custody through whatever means possible which, in this case, includ[ed] insidious means of emotional manipulation of both [M.W.] and [petitioner]." Thus, the trial court suspended parenting time with respondent, including electronic communication, until such time that M.W. was back in ETHS. The court also suggested the possibility of sending M.W. to boarding school at the next status hearing, the cost of which to be born entirely by respondent.

¶ 8 On August 22, 2016, a hearing was held to determine M.W.'s school placement and respondent's motion to lift the restriction on parenting time. It was stipulated at the onset that M.W. had not attended ETHS since the prior hearing a year ago. Petitioner testified that she considered several educational options for M.W., including boarding school and a therapeutic day school. Wayland Academy presented as the best fit for M.W. because it had an excellent academic reputation with a 100 percent rate of its students attending college after graduation. It also had extracurricular activities that appealed to M.W., who had positive things to say about the academy when he visited. Wayland Academy would cost $18,000 a year with financial aid. Petitioner reached out to respondent over email about tuition and his consent for the court-appointed family therapist, Gwen Waldman, to share information about M.W with Wayland Academy, but respondent never replied. On cross-examination, petitioner testified that for the past school year M.W. only attended ETHS once when he was escorted by security guards, but had attended his weekly therapy sessions with Waldman and doctor's appointments without

protest. Petitioner tried everything she could to influence M.W. to attend ETHS, including contacting the police who recommended M.W. receive a psychiatric evaluation. He was then put in a partial hospitalization program and transferred to the alternative school Compass, which he attended for three weeks. Petitioner stayed in touch with ETHS staff throughout the process and they encouraged M.W. to go to class when he occasionally attended meetings. Petitioner planned to continue reunification sessions with M.W. and Waldman over Skype.

¶ 9 Respondent testified that he only looked into Wayland Academy by means of an internet search, but did not believe M.W. would be successful at the academy. Since having his parenting rights restricted, respondent only had one supervised meeting with M.W. He thought it was in M.W.'s best interest to attend ETHS. He did not have the finances to pay for boarding school other than his IRA because he only worked a part-time job and did contract work for a few companies. He did, however, believe his income would improve as he was interviewing for new jobs. On cross-examination, respondent acknowledged that he did try to encourage M.W. to attend ETHS to no avail. Respondent believed if given the chance now M.W. would attend ETHS, but respondent had no evidence to support his claim. He borrowed money every month from his IRA to pay personal expenses. He did not complete the financial aid forms petitioner requested for Wayland Academy.

¶ 10 Thereafter, the trial court ruled that M.W. would attend Wayland Academy for a period of one-year to be reviewed in the Spring 2017, ordering respondent to pay the $18,000 tuition. Further, the trial court reserved ruling on respondent's motion to lift the restriction on parenting time until reviewing a report from M.W.'s psychiatrist Waldman. Respondent appealed.

¶ 11 ANALYSIS

¶ 12 Respondent contends that the trial court erred in restricting respondent's parenting time and contact with the minor child. Under section 607(a) of the Act, "[a] parent not granted custody of the child is entitled to reasonable visitation rights 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 2014). "The courts of this State have been reluctant to deny visitation rights because of the principle that parents have a natural or inherent right of access to their children, and because sound public policy encourages the maintenance of strong family relationships, even in post-divorce situations; only extreme circumstances allow courts to deprive a parent of visitation." *In re Marriage of Diehl*, 221 Ill. App. 3d 410, 429 (1991). The court, however, "may modify an order granting or denying visitation rights of a parent whenever modification would serve the best interest of the child." 750 ILCS 5/607(c) (West 2014). The custodial parent bears the burden of proving by a preponderance of the evidence that visitation with the noncustodial parent would seriously endanger the child. *In re Marriage of Anderson*, 130 Ill. App. 3d 684, 688 (1985). The trial court is vested with wide discretion in resolving visitation issues, and this court will not interfere with the lower court's determination unless an abuse of discretion occurred, or where manifest injustice has been done to the child or parent. *Id.*

¶ 13 Based on the record before us, we cannot say the trial court abused its discretion in temporarily restricting respondent's parenting time with M.W. In making its determination, the trial court noted M.W.'s 604(b) report, where his clinical psychologist cautioned that if proper intervention was not taken, M.W.'s dynamic with respondent could negatively impact M.W.'s social and emotional development for years to come. In addition, M.W.'s evaluator expressed concern that M.W. had few friends, failed to join extracurricular activities, and was used by respondent "as a conduit of influence" to pressure petitioner. The trial court further observed

that respondent had engaged in a "systematic campaign with [M.W.] to interfere with and undermine not only the boy's relationship with [petitioner] but his entire life," as well as respondent's use of "insidious means of emotional manipulation of both [M.W.] and [petitioner]." See *In re Marriage of Marshall*, 278 Ill. App. 3d 1071, 1078-79 ("[d]eterminations of credibility, the weight to be given testimony and reasonable inferences to be drawn from the evidence are the province of the trier of fact"). The record is clear that even a year later M.W. was still experiencing developmental difficulties, including refusing to attend ETHS. The trial court allowed it was the longest it had ever restricted parenting time, but it did not see any alternative because it had to "remove that influence that was seriously endangering [M.W.]." Therefore, we find it entirely reasonable that the trial court felt a temporary restriction of respondent's parenting time was in M.W.'s best interest, as well as holding the stay until the court was able to confer with M.W.'s psychiatrist. See *In re Marriage of Ashby*, 193 Ill. App. 3d 366, 378 (1990) (termination of father's visitation rights was not an abuse of the trial court's discretion when the abuse was a direct attack upon the child that "seriously endanger[ed] the child's physical, mental, moral or emotional health"); *In re Marriage of Johnson*, 100 Ill. App. 3d 767, 789 (1981) (the reviewing court affirmed the trial court's restriction on parenting time where the record reflected the trial court's concern that the father posed a danger to the child).

¶ 14 Furthermore, we disagree with respondent's suggestion that the trial court did not have subject-matter jurisdiction to order M.W. to attend Wayland Academy. Under the custody judgment, the parties agreed that:

> "they shall consult with one another with respect to all educational issues and that these decisions shall be made upon the careful consideration of both parents' views, and with respect to educational decisions, in careful consideration of the views and opinions of the

> child's educators. The parties agree that [M.W.] is currently enrolled in the Evanston Public School District and no plans exist to change his enrollment at this time. In the event [petitioner] moves from Evanston, [petitioner] will decide where [M.W.] will attend school. In the event [respondent] does not agree with any educational decision, [respondent] can request mediation *** It is understood by the parties that [petitioner] has the right to implement an educational decision pending mediation and/or a Court's review." Further, "in the event that the parties are unable to agree as to an important decision affecting *** specific educational issues as defied herein, this dispute must be first submitted to a mediation for resolution and then may be submitted to a Court of competent jurisdiction."

¶ 15 Thus, under the custody judgment, the parties contemplated the possibility of M.W. developing educational issues which the trial court may ultimately need to resolve. Petitioner essentially filed the underlying petition to restrict respondent's visitation when M.W. refused to return home to avoid attending his freshman orientation at ETHS. The record suggests that respondent lead M.W. to believe that he would soon be living with respondent and attending school in Franklin Grove. Therefore, M.W.'s school placement was effectively at issue in the underlying petition regardless of whether petitioner specifically asked for this relief. See *Sarkissian v. Chicago Board of Education*, 201 Ill.2d 95, 102 (2002) (our supreme court has determined that "the character of [a] pleading is determined from its content, not its label"). Both parties were given notice at the initial hearing that M.W.'s school placement would be at issue during the subsequent hearing, and thus, respondent was given a fair opportunity to present his objections and argument to the trial court. *Cf. In re Custody of Ayala*, 344 Ill. App. 3d 574, 585 (2003) (the reviewing court found that the order violated the respondent mother's due

process rights because she had no notice that custody would be considered or decided at the hearing); *Ligon v. Williams*, 264 Ill. App. 3d 701, 707 (1994) (the trial court erred in deciding custody issues when the plaintiff mother was not even notified about the hearing after she petitioned the court to find a parent-child relationship between the child and the defendant and to order defendant to pay child support). Furthermore, respondent fails to provide us with additional argument as to why petitioner was obligated to file a separate order to modify M.W.'s school placement and we need not consider this matter further. See Ill. Sup. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (argument portion of brief shall contain the contentions of the appellant and the reasons therefore, with citation of the authorities and the pages of the record relied on, and points not argued are waived); *Sakellariadis v. Campbell*, 391 Ill. App. 3d 795, 804 (2009) (this court has held that the failure to elaborate on an argument or cite persuasive and relevant authority results in waiver of that argument).

¶ 16 Moreover, the real question here is what is in M.W.'s best interest. The trial court presided over the parties' marital dissolution and custody proceeding from the inception, and thus, had firsthand knowledge of the controversy between the parties and M.W. And although respondent argues a formal mediation needed to take place before the trial court could intervene, the record suggests this was an impossibility given the complete breakdown of communication amongst the parties. Respondent refused to answer petitioner's emails regarding boarding school and did not take the time to extensively research Wayland Academy or other possible alternatives. The trial court could not ideally stand by while M.W. continued to fall further behind in school, as well as emotionally and developmentally. Petitioner testified that M.W. was open to attending Wayland Academy and the record suggests that ETHS, as well as the affiliated alternative schools, were no longer an option. Therefore, the trial court needed to act in M.W.'s

best interest. See *In re Marriage of Bates*, 212 Ill. 2d 489, 515 (2004) (the trial court's decision is entitled to great deference because it is in the best position to assess both witness credibility and the minor's best interest); *In re Marriage of Davis*, 341 Ill. App. 3d 356, 359 (2003) (granting the trial court broad discretion to modify a custody judgment in the child's best interests).

¶ 17 Respondent finally contends that the trial court abused its discretion by ordering respondent to pay the full cost of M.W.'s first-year tuition without considering petitioner's ability to pay. Section 505 of the Act requires the court to set the minimum amount of child support for one child at 20% of the noncustodial parent's net income, unless the court finds reason to deviate from this figure. 750 ILCS 5/505(a)(1) (West 2014). Under section 505(a)(2.5), in its discretion the trial court "may order either or both parents owing a duty of support to a child of the marriage to contribute to the following expenses, if determined by the court to be reasonable: (a) health needs not covered by insurance; (b) child care; (c) education; and (d) extracurricular activities." 750 ILCS 5/505(a)(2.5) (West 2014). "A trial court enjoys broad discretion in determining the modification of child support, and we will not overturn its decision unless there is an abuse of discretion." *McClure v. Haisha*, 2016 IL App (2d) 150291, ¶ 20.

¶ 18 Here, the trial court determined that M.W. was in crisis and attending boarding school was in his best interest. Contrary to respondent's assertion, the record suggests that the trial court did in fact consider petitioner's finances at the hearing before making its determination. Respondent also called petitioner as a witness and chose not to delve further into her finances. Respondent testified that although he worked a part-time job he was interviewing for higher paying opportunities. He also used his IRA to pay his expenses and the fund contained enough money to cover M.W.'s first-year tuition. Accordingly, the trial court's finding was not

unreasonable. See *In re Marriage of Bussey*, 108 Ill. 2d 286, 297 (1985) (the supreme court declined to accept the argument that a child is only entitled to receive support for his "shown needs" and "suffer because the custodial parent has a limited income").

¶ 19 CONCLUSION

¶ 20 Based on the foregoing, we affirm the judgment of the circuit court of Cook County.