2012 Ill. App. (2d) 110956-U
No. 2-11-0956
Order filed March 23, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF DEBRA CONLEY,	)	Appeal from the Circuit Court
	)	of Kane County.
Petitioner-Appellee,	)	
	)	
and	)	No. 09-D-207
	)	
JOHN CONLEY,	)	Honorable
	)	Robert L. Janes,
Respondent-Appellant.	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Zenoff and Schostok concurred in the judgment.

ORDER

Held: The trial court's order granting petition to remove minor from the state was not contrary to the manifest weight of the evidence.

¶1 Respondent, John Conley, appeals an order of the circuit court of Kane County granting the request of petitioner, Debra Conley, to remove the parties' minor child from the state and move to Maryland. Respondent contends that the trial court's decision is contrary to the manifest weight of the evidence. We disagree and affirm.

¶2 Before proceeding to the merits, we must address two preliminary matters. First, respondent moves to supplement the record, and we have received no objection from petitioner. That motion

is granted. Second, petitioner requests that we strike respondent's brief and dismiss this appeal for failure to comply with Illinois Supreme Court Rule 341(e)(6) (eff. July 1, 2008), which sets forth the contents of the statement-of-facts section of an appellant's brief. Rules of waiver and forfeiture are the prerogative of the court; they do not vest the parties with substantive rights. *City of Wyoming v. Liquor Control Comm'n of Illinois*, 48 Ill. App. 3d 404, 407-08 (1977) (holding that provisions of Rule 341 are not limitations on jurisdiction but an "admonition to the parties"); see also *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 504-05 (2002). While respondent's statement of facts did omit some pertinent material, given the small size of the record in this case, it did not significantly hinder our ability to conduct meaningful review. Consequently, we decline to apply the waiver rule and will address the merits of this appeal.

¶3 The marriage between petitioner and respondent was dissolved on May 5, 2010. One child had been born of the marriage. By agreement of the parties, they shared joint custody of the minor, with petitioner serving as the residential parent. Respondent was awarded visitation every Monday overnight, every other Sunday, and Thursday afternoon and evening, as well as certain holidays.

¶4 On July 3, 2010, petitioner remarried, but continued to reside in Illinois. Petitioner's new husband is a Marine stationed at Fort Meade, Maryland. On October 20, 2010, petitioner filed the petition at issue in this case. The trial court appointed a *guardian ad litem* (GAL), who, after conducting an investigation, recommended against granting the petition. The parties are aware of the facts, and additional facts will be discussed below as necessary to resolve this appeal.

¶5 Whether such a petition should be granted depends upon the best interests of the child or children involved. *In re Marriage of Parr*, 345 Ill. App. 3d 371, 376 (2003). The factors set forth by our supreme court in *In re Marriage of Eckert*, 119 Ill. 2d 316, 326-27 (1988), are relevant to

making this assessment. Those factors are: (1) the extent to which the proposed move will benefit the "general quality of life" of the child and custodial parent; (2) whether the custodial parent's motive in seeking the move is to defeat or frustrate visitation; (3) "the motives of the noncustodial parent in resisting the removal"; (4) the effect the proposed move will have on the noncustodial parent's visitation rights; and (5) whether a reasonable and realistic visitation schedule can be set. *Id*. This list is not exclusive. *In re Marriage of Collingbourne*, 204 Ill. 2d 498, 523 (2003). Accordingly, while taking these factors into account, a court is to make the evaluation in light of the totality of the circumstances. *In re Marriage of Matchen*, 372 Ill. App. 3d 937, 951 (2007). We will disturb the decision of a trial court regarding the best interests of a minor only where the decision "is clearly against the manifest weight of the evidence and it appears that a manifest injustice has occurred." *Eckert*, 119 Ill. 2d at 328. A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly evident. *Matchen*, 372 Ill. App. 3d at 946.

¶6 We will first consider the *Eckert* factors in turn, beginning with the effect the move will have upon petitioner's and the minor's quality of life (*Eckert*, 119 Ill. 2d at 326-27). Petitioner testified that after the dissolution of the parties' marriage, she could not afford to maintain a place to live. Therefore, she and the minor resided with petitioner's mother. Because the house has only three bedrooms, petitioner and the minor share one room. This causes difficulties because the two have different sleeping schedules. Moreover, there is a lack of privacy. The room is cluttered with the minor's toys. If allowed to move, they would reside in a home on Fort Meade. The minor would have her own room. Further, the community they would live in has several amenities including a swimming pool and exercise room. The minor would be able to participate in extracurricular activities, which she cannot do now because petitioner cannot afford them. Moreover, in Maryland,

petitioner would not have to work and would be able to devote more time to the minor. The parties presented conflicting evidence regarding the quality of the schools in Maryland and Illinois. Conflicts in the evidence are for the trial court to resolve. *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 666-67 (2008). Moreover, even if the trial court were to find evidence about the schools inconclusive, there was considerable evidence of other ways in which the move would better the lives of petitioner and the minor. Having reviewed the record, there is substantial evidence that both the minor and petitioner will have a significantly enhanced quality of life following the move.

¶7 The trial court found that the second and third factors (the respective motives of the parties) were not at issue in this case. See *Eckert*, 119 Ill. App. 3d at 327. Indeed, it appears to us that neither party has an improper motive and that both wish what is best for their daughter. We therefore agree that these factors have no bearing upon this case.

¶8 The fourth factor concerns the effect the move will have on the noncustodial parent's visitation rights. *Eckert*, 119 Ill. App. 3d at 327. Respondent also discusses the effect the move will have on the minor's relationship with members of his family. We find this perfectly appropriate, as this analysis requires an evaluation of all of the circumstances (*Matchen*, 372 Ill. App. 3d at 951), and any effect upon respondent's visitation rights will impact his family's relationship with the minor as well. Respondent contends that "the trial court failed to give proper weight to how the move would affect the extended family dynamic of both parties." We note here that matters of weight are primarily for the trial court, and reviewing courts typically do not reweigh evidence. *In re Marriage of Pfeiffer*, 237 Ill. App. 3d 510, 513 (1992) ("It is not the function of this court to reweigh the evidence or assess the credibility of testimony and set aside the trial court's determination merely because a different conclusion could have been drawn from the evidence.").

Respondent continues, "[The minor] has several young cousins, with [*sic*] whom she sees almost weekly, her paternal grandfather lives across the street from [respondent], and other family members reside in the same subdivision." The visitation schedule proposed by petitioner consists of a week at Christmas, a week at Thanksgiving, a week at spring break, seven weeks in the summer, and President's Day weekend. There was testimony that this would result in slightly more visitation than the current schedule that is in place. This schedule certainly provides considerable opportunities for visitation between the minor, respondent, and respondent's family. The chief effect of the new schedule is to decrease the frequency of visitation and increase its duration. As frequency and duration both result in increased visitation, we cannot say that an increase in one and a decrease in the other has an adverse impact upon respondent's visitation rights. In other words, this factor does not militate in favor of holding the trial court's decision to be contrary to the manifest weight of the evidence.

¶9 The final factor set forth in *Eckert*, 119 Ill. 2d at 327, is whether a reasonable, realistic visitation schedule can be set. Respondent asserts, "Again, the trial court fails to consider the work schedule of [respondent] during the summer months." Presumably, he is here alluding to the fact that summer is a busy time for him when he works more hours. However, there was evidence in the record that his work schedule also interfered with the established visitation schedule. Specifically, respondent was to have visitation on Thursdays from after school until 8 p.m. However, he worked until 7 p.m. on Thursdays. By agreement, the parties modified the schedule to allow the minor to remain with respondent overnight on Thursday. He exercised this option over half the time over the summer of 2010. Hence, while respondent's work schedule might conflict with the proposed

visitation schedule at times, it also conflicted with the existing one. As such, we cannot say that the potential for conflict renders the proposed schedule unreasonable or unrealistic.

¶10 Going beyond *Eckert*, we note the GAL's recommendation against granting the petition. The GAL believed that there had already been a significant number of changes in the minor's life, and further changes in such a short time would not be good. In the course of her investigation, the GAL interviewed petitioner, respondent, the minor's therapist, the minor's teacher, the minor's social worker, petitioner's new husband, and the minor's maternal grandmother. An opinion is, of course, only as valid as the reasons supporting it. See *In re Violetta B.*, 210 Ill. App. 3d 521, 535 (1991). Here, there were factors underlying the GAL's opinion that removal was not in the minor's best interests such that the trial court could have reasonably concluded that her recommendation was not entitled to significant weight. The GAL acknowledged that she had only been involved in two cases—including this one—concerning the removal of a minor from the state. She did not visit the minor's household. She did not know why the minor no longer participated in extracurricular activities and assumed it was because petitioner planned on moving, when, in fact, it was because petitioner could not afford them. The GAL testified inconsistently about the relationship between the minor and her older half-sister, stating that they were not very close, but separating them would be "devastating" to the minor due to their blood relationship. She never spoke with or observed the minor, which is contrary to the statute authorizing the appointment of a GAL (750 ILCS 5/506(a)(2) (West 2010)). According to the GAL, the reason she did not speak with the minor was that, because of her age, the minor could not tell the GAL what was in her best interests. Furthermore, the GAL did not believe it was in the minor's best interests for the GAL to interject herself into the minor's life, as it would cause anxiety. However, after testifying that it was not in the minor's best interest

to be interviewed, the GAL interviewed her twice. In short, the trial court could have reasonably concluded that the evidence it was presented with was more compelling than the GAL's recommendation. Indeed, we note that the GAL's *recommendation* is just that, not a binding decree (see 750 ILCS 5/506(a)(2) (West 2010)).

¶11 In light of the forgoing, we cannot conclude that the trial court's decision is contrary to the manifest weight of the evidence, much less that a manifest injustice occurred. *Eckert*, 119 Ill. 2d at 328. We therefore affirm its judgment.

¶12 Affirmed.