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No. 3--09--0174  
(Consolidated with No. 3--09--0183)

Order filed February 9, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2011

|                        |   |                               |
|------------------------|---|-------------------------------|
| WILLIAM L. COGLIANESE, | ) | Appeal from the Circuit Court |
|                        | ) | of the 21st Judicial Circuit, |
| Petitioner-Appellant,  | ) | Kankakee County, Illinois,    |
|                        | ) |                               |
| v.                     | ) |                               |
|                        | ) |                               |
| DENISE KALINOWSKI,     | ) |                               |
|                        | ) |                               |
| Respondent-Appellee,   | ) | No. 04--F--150                |
|                        | ) |                               |
| and                    | ) |                               |
|                        | ) |                               |
| SANDRA SWEENEY,        | ) | Honorable                     |
|                        | ) | Michael D. Kramer,            |
| Respondent.            | ) | Judge, Presiding.             |

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PRESIDING JUSTICE CARTER delivered the judgment of the court.

Justices Schmidt and Wright concurred in the judgment.

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**ORDER**

*Held:* The trial court's denial of the father's petition for change of custody was not against the manifest weight of the evidence.

The petitioner, William L. Coglianese, and the respondent,

Denise Kalinowski, had a son together, Lucas. In 2005, the trial court gave sole custody of five-year-old Lucas to Denise. In 2007, William filed a petition to modify custody, which the trial court denied after granting Denise's motion for a directed finding. On appeal, William argues that the trial court erred in denying his petition. We affirm.

#### FACTS

Denise and William had one child together in the course of their relationship and eventually litigated the custody of Lucas. On January 28, 2005, the trial court awarded sole custody of Lucas to Denise subject to William's visitation.

On October 1, 2007, William filed a petition to modify custody. William alleged that: (1) Lucas had red and swollen bites or lesions and lice; (2) Denise repeatedly refused to allow him his week-long visitations; (3) Lucas wished to live with William; (4) Denise was not compliant with visitation and telephone contact; (5) Denise drank and drove with Lucas in the vehicle; (6) Denise did not provide proper clothing for Lucas; (7) Denise did not send clothing with Lucas for weekend visitation; (8) Denise left Lucas in the care of a minor under the age of 16; (9) Denise had been intoxicated in front of Lucas on numerous occasions; (10) Denise used car seats that were inappropriate for Lucas' age; and (11) Denise provided an environment that was detrimental to Lucas' emotional, mental, and

physical well-being.

On May 6, 2008, a hearing on the petition to modify custody took place. Denise testified that she lived with Lucas and her 14-year-old son, Jeremy, and 2-year-old daughter, Zoe. Her three children are half-siblings as they each had different fathers.

Denise testified that she denied William's visitation from July 23, 2005, until September 20, 2005, because she "made an error in judgment." During that time period, on August 15, 2005, she had told police that William abducted Lucas although William had sent Denise a written request for visitation and filed it with the court. In September 2005, she made a false report to emergency room personnel, police, and the Department of Children and Family Services (DCFS) that Lucas had been bitten by pet scorpions in William's home. She continued to deny William's visitation after DCFS determined that the report was unfounded. Denise admitted to denying two of William's requests for week-long visitation because she was concerned that Lucas would miss school.

On one occasion, Denise thought that Lucas's complaint of an itchy and burning head was due to a dry scalp. When William took Lucas to the emergency room, it was determined that he had lice.

Denise admitted that her older son, Jeremy, would push Lucas. Lucas rode in a vehicle driven by Jeremy, who was 14 years old at the time, after Denise gave him permission to drive.

Denise also admitted that although the custody order stated that Lucas should not be left alone with anyone under the age of 16, she allowed Jeremy to watch Lucas. On two or three occasions she left Lucas alone with Zoe for approximately 10 minutes. In October of 2005, DCFS placed Denise on a safety plan for leaving her children alone. Since the safety plan had been implemented, Denise continued to leave Lucas alone with Zoe and Jeremy.

Denise smoked in the car with Lucas present and spoke disparagingly of William in Lucas' presence on at least 10 occasions, both of which violated the custody order. Denise was unaware that her live-in boyfriend, David Koffman (Dave), the father of Zoe, was a convicted felon. Denise testified that Dave no longer resided with her.

Denise testified that on one occasion she, Dave, Jeremy, and Lucas were playing with BB guns and Dave unintentionally shot Lucas in the foot. Denise told police that Lucas had not been shot. Denise testified that she never restricted Lucas from speaking with William on the telephone but that she had taken away the cellular telephone that William bought for Lucas because he could use the home telephone.

Before allowing Lucas to testify, the trial court ordered that the guardian *ad litem* (GAL), Sandra Sweeney, interview him. Lucas told Sweeney that Jeremy beat him and described an incident in which Jeremy placed his foot on top of Lucas's stomach but did

not press down. He also said that Denise had slapped him with two fingers on the top of his hand but did not hit him on the face or with a belt. He could not remember the last time Denise had hit him. Denise had left him alone with Zoe, but he did not know for how long or the last time it happened. Sweeney indicated in her report that Lucas had written a letter to the judge requesting to live with William, but Sweeney did not believe that he wrote the letter without being instructed to do so by William.

In interviewing William, Sweeney went through each allegation of his petition to modify custody. Sweeney noted that Denise had not withheld William's week-long visitation since 2005 and visitation had improved since 2005. William could not provide any specific details as to when Denise had been drinking and driving with Lucas in the car or when she had been drinking in Lucas' presence. After observing a large television, stereo system, toys, clothes, and many pets in Lucas' bedroom at William's home, Sweeney noted that Lucas "definitely does not want for anything at [William's] house materially."

Sweeney interviewed Denise. Denise explained that she had left Lucas home with Zoe for 10 minutes and notified the neighbor to watch over Lucas while he did his homework and Zoe napped. Denise explained that she began drinking alcohol excessively in 2005 during the original custody litigation but she recognized

the problem, stopped drinking, and began going to church. Denise allowed Jeremy to drive to the storage facility across the street and Lucas got into the car with Jeremy. Denise regretted the decision to allow Jeremy to drive and acknowledged that it would not happen again. Denise did not send nice clothes to William's home for Lucas because the clothes did not get returned to her.

After Sweeney overheard Lucas speaking to William on the telephone, Sweeney opined that Lucas was "used to getting his way with Dad and can whine masterfully when he need[ed] to get his way." Sweeney also noted that on March 20, 2008, a domestic disturbance occurred at William's home between William, his live-in girlfriend, and her adult son, which involved a knife. Sweeney reported that as of May 8, 2008, William was delinquent \$9,232 in child support. Sweeney recommended that custody remain with Denise.

On September 19, 2008, the trial court held the remainder of the hearing on the petition to modify custody. Lucas testified that Dave hurt Lucas by grabbing him by the neck and throwing him on the floor. Dave shoved his finger into Lucas' nose and would "beat on [him]." Lucas testified that Dave woke him up by threatening to shoot him with a BB gun. On one occasion, Dave shot him in the foot with a BB gun.

Lucas testified that Jeremy pushed his head into the arm of a chair, pushed him onto the ground, kicked him in the rib, and

stomped on his stomach. Lucas rode alone in a car driven by Jeremy on two or three occasions. Denise hurt Lucas by pulling his hair, smacking his mouth or hand with two fingers, and stomping on his foot. He testified that Denise used to hurt him but now she just yells at him. Denise allowed her friend to interfere with Lucas' telephone conversations with William and throw away Lucas' gifts from William. Denise drank alcohol when she was pregnant with Zoe, but she had stopped drinking. Denise and Jeremy unplugged the telephone when Lucas was speaking to William and prevented him from listening to William's messages.

Lucas explained that he wanted to live with William because Jeremy beat him and Denise yelled at him everyday. At William's house Lucas felt he was treated "very nice" and no one hurt him. Lucas felt that he got along well with William because they always say nice things to each other.

William testified that since the January 28, 2005, custody order Denise violated his visitation rights numerous times. He also testified that Lucas' personal hygiene was lacking. William attempted to show Sweeney documents, reports, and photographs of Lucas regarding allegations of abuse and interference with visitation, but Sweeney would not review the paperwork. Sweeney also would not review Dave's criminal history or the order of protection that Denise obtained against Dave. William testified that Sweeney reported information inaccurately and did not

include relevant information. Specifically, Sweeney did not include information in her report regarding Dave hitting Lucas, shooting him with a BB gun, or pushing Denise into the wall. The report failed to mention that drugs were referred to in the order of protection that Denise had obtained against Dave. Sweeney also did not include in her report any reference to photographs that William attempted to show her, which portrayed Lucas with cuts, black eyes, and swollen jaw.

William testified that he was behind in child support because he is a truck driver and is laid off seasonally. William makes payments from every paycheck when he is working. In the past year he was laid off for 5½ months as opposed to the usual period of time of 4 months. William believed there was "some kind of mix up" because his child support payments went through Illinois, where Denise resided, and Indiana, where he resided. Also, for a period of time, he sent payments directly to Denise, and he believed the payment was not deducted from the child support balance. William would have had a larger tax return to be paid toward child support, but Denise refused to sign a waiver of her right to claim Lucas as dependent, despite being unemployed, because she allowed Dave to claim Lucas as a dependent on his tax return.

At the close of William's evidence, Denise motioned for a directed finding. The court found that Denise had "faced some



problems and perhaps made some bad choices" but she "ha[d] worked to correct them as best she [could]." The court found that the evidence toward Denise showed "everyday type problems" such as problems with siblings who do not always get along and who get rough with each other, lice, and problems with new relationships. The court found that the evidence toward Lucas showed no effects on him and noted:

"The child appears respectful, he does well in school, he behaves appropriately in the presence of adults and the Court believe[s] that he's got his situation pretty well figured out. He knows very well how to please his father and he knows what his dad likes to hear. And he very clearly stated every time asked that he wants to live with his dad. The Court sees a connection between [Lucas']

behavior and the lifestyle he leads at his father's house." The court found that Lucas' testimony of abuse showed signs of being "rehearsed" in that he used words and phrases a child would not normally use and he "clearly had an agenda to present."

The trial court stated that it was "dismaying" that Denise told Lucas to lie to health professionals and police and that "[i]t may be necessary to monitor Jeremy more closely." The court found it "distressing" that Denise hindered visits and telephone calls between Lucas and William. The court also noted that it was "distressing" that William was behind with his child

support, meanwhile "[p]roviding [Lucas] with essentially his own Toys-R-Us" and doing various activities that cost a lot of money.

The trial court granted the motion for directed finding and denied William's petition to modify custody. William filed a motion to reconsider, which the trial court denied. William appealed.

#### ANALYSIS

William contends that the trial court erred by denying his petition to modify custody. Specifically, he argues that the trial court erred because: (1) the evidence showed that a change in circumstances occurred and a modification of custody would serve Lucas' best interest; (2) the trial court gave improper consideration to the credibility of the witnesses; and (3) the trial court gave improper consideration to the GAL report because the GAL's investigation and report were incomplete.

Initially, we note that no appellee's brief has been filed. However, we may reach the merits of the case because the record is simple and the claimed errors are such that the court can objectively decide them under the appropriate standard of review without the aid of an appellee's brief. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128 (1976).

The Illinois Marriage and Dissolution of Marriage Act provides that custody may be modified only if the court finds by clear and convincing evidence, upon the basis of facts that have

arisen since the prior judgment or that were unknown to the court at the time of the entry of the prior judgment, that a change in circumstances has occurred and that a modification of custody is necessary to serve the best interest of the child. 750 ILCS 5/610(b) (West 2008). The factors the court is to consider in evaluating the best interest of the child include: (1) the parents' wishes; (2) the child's wishes; (3) the child's interactions with parents, siblings, and others who may affect the child's best interest; (4) the child's adjustment to home, school, and community; (5) the mental and physical health of all individuals involved; (6) physical violence, or the threat of physical violence, by the child's custodian, whether directed against the child or another person; (7) ongoing or repeated abuse, whether directed against the child or another person; (8) the willingness of each parent to facilitate the relationship between the other parent and the child; and (9) whether one parent is a sex offender. 750 ILCS 5/602(a) (West 2008).

We review a trial court's judgment regarding a petition to modify custody for whether the court's decision was against the manifest weight of the evidence. *In re Marriage of De Bates*, 212 Ill. 2d 489 (2004). In determining whether a decision is against the manifest weight of the evidence, we view the evidence in the light most favorable to the appellee. *De Bates*, 212 Ill. 2d 489. Where the evidence permits multiple reasonable inferences, a

reviewing court will accept those inferences that support the court order. *De Bates*, 212 Ill. 2d 489. A custody determination is afforded great deference because the trial court is in a superior position to judge the credibility of witnesses and determine the best interests of the child. *De Bates*, 212 Ill. 2d 489.

In this case, the evidence showed that Denise had a less than ideal relationship with Dave but she no longer had a relationship with him and no longer resided with him. Denise admitted to abusing alcohol in the past but has since remedied the situation. Denise also admitted to making poor decisions regarding Jeremy driving underage and leaving Lucas alone and acknowledged that she would not make those kinds of decisions in the future.

We give great deference to the trial court's credibility and best interest determinations. The court did not place significant weight on Lucas' desire to live with William because the court found that Lucas' desire was linked to the lifestyle that he had with William. The court also gave little weight to Lucas' testimony regarding his interactions with Denise and Jeremy because the testimony was reflective of his clear agenda to live with William. Also, we give deference to the trial court's determination that there was no real threat of physical violence in Denise's home.

The court did not improperly consider the GAL report. The court discussed its decision in relation to the testimony of the parties and other witnesses and the statutory requirements for a change in custody. Additionally, the same information contained in the report was discussed at length during the testimony of the parties, witnesses, and Lucas. Consequently, the court was able to glean the same information contained in the report from the testimony. Thus, we need not consider William's contentions regarding the court's improper consideration of the GAL report.

Under these circumstances, we hold that it was not against the manifest weight of the evidence for the trial court to grant Denise's motion for directed verdict and deny William's petition for modification of custody. In viewing the evidence in a light most favorable to Denise, we rule that William failed to show by clear and convincing evidence that there had been a change in circumstances or that modification of custody was necessary to serve Lucas' best interest. We agree with the trial court's assessment that Denise's hindrance of telephone calls and visitation between William and Lucas is distressing. She should, instead, better facilitate the relationship between Lucas and his father. Nonetheless, based on the facts of this case, we affirm the denial of the William's petition to modify custody.

#### CONCLUSION

For the foregoing reasons, we affirm the judgment of the

Kankakee County circuit court denying William's petition for modification of custody.

Affirmed.