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No. 2011 IL App (3d) 100904-U

Order filed September 21, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT
A.D., 2011

| | | |
|-----------------------|---|-------------------------------|
| HEIDI L. BROWN, |) | Appeal from the Circuit Court |
| |) | of the 14th Judicial Circuit, |
| Petitioner-Appellant, |) | Rock Island County, Illinois, |
| |) | |
| v. |) | Appeal No. 3-10-0904 |
| |) | Circuit No. 10-OP-216 |
| JESUS PATRICIO, |) | |
| |) | Honorable |
| Respondent-Appellee. |) | Lori L. Lefstein |
| |) | Judge, Presiding. |

JUSTICE WRIGHT delivered the judgment of the court.
Presiding Justice Carter and Justice O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's denial of petitioner's verified petition requesting the court to issue a civil no contact order was not against the manifest weight of the evidence. The trial court's order is affirmed.

¶ 2 Petitioner, Heidi L. Brown, filed a verified petition requesting the court to issue a civil no contact order on behalf of the minor, Angelica P., and against respondent, Jesus Patricio.

Following an evidentiary hearing, the trial court denied petitioner's request. We affirm.

¶ 3 **FACTS**

¶ 4 On April 15, 2010, petitioner filed a verified petition for civil no contact order on behalf of the minor child, Angelica P., and against respondent. According to the petition, petitioner and respondent are Angelica's natural mother and father. Petitioner requested a civil no contact order because Angelica told petitioner on April 12, 2010, that respondent performed oral sex on Angelica. On April 16, 2010, petitioner appeared before the court on the petition and received an *ex parte* emergency no contact order.

¶ 5 On May 12, 2010, both petitioner and respondent appeared in court with counsel. Petitioner's attorney called Angelica as the first witness. Angelica testified that she was seven years old and attended second grade. Petitioner's attorney asked her if anything unusual happened this year. Angelica responded, "Like" while shaking her head no. Then, Angelica said, "No." Angelica said that she knew why she was in court and said, "We're her to like, um, kind of like see who I am going to live with."

¶ 6 Angelica said that she lived with petitioner for the previous one and one-half months and that prior to that time, she lived with respondent. When asked about unusual events, she said, "what my dad did to me." However, Angelica could not recall when this happened but believed it was after Christmas and occurred in her room. Angelica said that she shared a room with Isabelle, her 10-year-old stepsister, and explained the girls slept in bunk beds which were located against the wall of the room. During the night, respondent came into the room. She woke up and found respondent's hand on her "private" and shortly thereafter respondent placed his mouth on her "private" after he moved to the end of the bunk bed. At that point, Isabelle rolled over in her bed, causing a creaking sound. According to Angelica's account, she told respondent that Isabelle would wake up and see what was happening in the mirror, but respondent said, "no, she

can't." Angelica described Isabella as a light sleeper. She said that respondent touched her again with his mouth, and he left because either "someone called him or he just left the room." She said that nothing else ever happened between respondent on that night or any other night.

¶ 7 During cross-examination, respondent's attorney asked her if she accused her brother of doing the same thing two years ago. She responded, "Yes – No," but went on to say that "[i]t was a totally different thing." She denied having a problem with lying and Angelica did not remember accusing petitioner of putting something in her private four years ago. When asked why she waited until April to say something to petitioner, Angelica said that she and petitioner "were watching this sexual abuse thing" and petitioner asked her if anything happened to her "like touching problems." Consequently, she told petitioner what happened but did not say anything earlier because she was scared.

¶ 8 Petitioner's counsel called Anouar Darif, petitioner's boyfriend. Darif stated that he dated petitioner for approximately three years and acknowledged being married to petitioner's mother. He testified that he recalled Angelica being at his house with petitioner in January or February 2010, watching a show on child molestation. He stated that petitioner and Angelica had a discussion about the show. Then, they left the room and when petitioner returned to the living room, she was crying. Later, when questioned by counsel if this occurred in April, he stated, "yes."

¶ 9 Darif recalled another incident prior to this where Angelica made allegations of molestation and stated that Angelica originally accused respondent, then she accused respondent's wife and finally accused petitioner.

¶ 10 Petitioner testified she was Angelica's mother. On April 11, 2010, petitioner was

watching the news which included a story about priests and about five minutes into the program Angelica heard the “word sexual abuse” and left the room. Shortly thereafter, Angelica returned and asked petitioner to follow her into Darif’s room. Petitioner said that after telling Darif about her conversation with Angelica, she called her mother, who recommended that petitioner should contact the police. Petitioner and Angelica went to the police station that night. On cross-examination, petitioner agreed that DCFS investigated the current allegation and concluded Angelica’s claims against respondent were unfounded. Petitioner said that respondent had a friend in DCFS.

¶ 11 Petitioner explained that the incident with Angelica’s brother occurred in 2008 when her son was 9 or 10 years old. Petitioner said she believed that her son molested Angelica, saying “I believe that he was a child and didn’t know any better and has been taught and has gone through counseling and has learned.”

¶ 12 Petitioner also described an incident when Angelica was four years old and told petitioner that respondent “put a toy inside her.” Petitioner indicated Angelica’s speech was difficult to understand and that Angelica was “still wavering as far as her talking.” After stating that respondent put a toy inside her, Angelica told petitioner that it was respondent’s wife or maybe somebody at school. According to petitioner, the school concluded that “it must have been me [petitioner] putting baby powder on her.” She said that Angelica never accused her of molestation.

¶ 13 Respondent’s attorney called Heather Blancke, the DCFS investigator who reviewed the allegations made by Angelica in this case. Blancke testified she had 10 years experience as a DCFS investigator and followed standard procedures when investigating Angelica’s most recent

complaint.

¶ 14 Prior to investigating this case, she also investigated allegations made by Angelica in 2008 where Angelica claimed her brother was touching her inappropriately. Blancke said those allegations were determined to also be unfounded. She went on to say that there was some inappropriate behavior occurring but DCFS did not indicate the brother for sexual abuse.

¶ 15 Blancke stated that DCFS also investigated allegations made by Angelica in 2006 where she claimed that both petitioner and respondent were placing some kind of toy inside her vagina. DCFS also determined that allegation was unfounded. She explained that an unfounded report means “[i]t’s a conclusion that we do not have enough credible evidence to suggest that it did occur.” Blancke went on to say that issues with Angelica’s credibility and lack of any kind of corroboration was the basis for unfounding the allegations.

¶ 16 Regarding the most recent report concerning respondent, Blancke interviewed Angelica at the Advocacy Center. A detective and a representative from the State’s Attorney office observed this interview. Blancke testified that the State’s Attorney office did not prosecute respondent after observing the interview. Based on the interview and her investigation, DCFS was going to deem this allegation against respondent as unfounded.

¶ 17 Blancke explained that during the investigation, she met weekly with Angelica and observed the children in respondent’s house as part of a safety plan. On one occasion, she met with Angelica at school where Angelica stated that she missed respondent and expressed concerns that he was going to jail. Blancke said that she told Angelica that respondent was not going to jail because she knew the State’s Attorney was not going to prosecute respondent.

¶ 18 Subsequent to this conversation, she learned that one of the detectives received a

telephone call from petitioner. During the call, petitioner reported that Angelica told petitioner that Blancke informed Angelica that respondent was going to prison for six years “regardless of whether he did it or not.” Later, Blancke confronted Angelica about this inaccurate statement and their prior conversation. At that time, Angelica insisted that Blancke previously told her that respondent was going to prison. Blancke said that Angelica’s “credibility at that point was questionable” and that she continued to have problems with Angelica’s credibility thereafter. Blancke stated that “all we have in this investigation is her statement. There’s no corroborating evidence.”

¶ 19 Blancke told the court that she visited respondent’s home and that she did not have any safety concerns related to a decision to return Angelica to respondent. Blancke stated that she intended to recommend counseling for Angelica to address “all the issues that are going on” between petitioner’s home and respondent’s home. She elaborated by saying there was conflict between the parties.

¶ 20 Isabelle P., Angelica’s 10-year-old half-sister, stated that she lived with respondent and her mother. She explained that she shared a bedroom with Angelica and that they slept in bunk beds. Isabelle said that she slept on the top bunk, and Angelica slept on the bottom bunk. Isabelle told the court that the bunk beds were “a little bit against the wall” and that there were poles at the ends of the beds. She explained to the court that the beds had plastic covers on them and that the beds make a lot of noise when someone sits on them or turns over on the bed. Isabelle said that she wakes up easily if there is noise in the room. She did not recall a time in January or February 2010 where respondent came into the bedroom during the night and she woke up. However, Isabelle did not think she would wake up if respondent sat on Angelica’s

bunk. Following Isabelle's testimony, respondent rested.

¶ 21 The court asked if the parties wished to make any argument. Respondent's counsel asked if the court ruled in respondent's favor, could the parties exchange visitation at Bethany Home. Petitioner's counsel replied that depending on the court's ruling, he was agreeable to that arrangement.

¶ 22 During the discussion regarding visitation exchange, respondent interjected with a concern that Angelica was late for school every day since she had been living with petitioner. Respondent also noted that he had not seen Angelica "since this happened" and understood and respected the rules but wanted her to be at school on time because it was important to him. The court inquired from petitioner regarding school attendance. Petitioner stated that she had a hard time getting Angelica to school and that Angelica was only one or two minutes late. The court stated that Angelica needed to be at school before the bell rings. Respondent also expressed concerns that Angelica had been tired and that a teacher indicated to him that she was falling asleep in class. After this discussion, the court took the matter under advisement.

¶ 23 On June 14, 2010, the court issued a written opinion and order which set forth the procedural background and a summary of the evidence presented to the court. The court then stated that it had concerns regarding Angelica's credibility since Angelica previously accused four different people, including petitioner and respondent, of sexually abusing her, but DCFS found insufficient evidence to conclude that she had been abused. The court was concerned with the fact that most seven-year-old children are not familiar with the term "sexual abuse" but that Angelica used that term raising the "question of whether someone had coached her prior to testifying." Further, the court observed that petitioner may have prompted Angelica's statement

in this case and also noted that Heather Blancke had reservations about Angelica's credibility.

¶ 24 The court went on to say that other factors cast doubt on Angelica's allegations. The court stated that it was questionable that respondent would abuse Angelica in a room shared with another child who is a light sleeper, that Angelica's bed has a plastic cover which created noise when touched, and that the position of the beds made Angelica's description of respondent's actions difficult. Further, according to the testimony of Heather Blancke, a great deal of conflict existed between petitioner and respondent and that it was possible that the strained relationship had taken "its toll on Angelica." Based upon these reasons, the court found that petitioner had not established that Angelica's version of the events was more probable than not. Therefore, the trial court denied petitioner's request for a civil no contact order.

¶ 25 On July 14, 2010, petitioner filed a motion to set aside/vacate judgment and supporting affidavits. In the motion, petitioner claimed that the court erred in its understanding of the facts, that the court violated petitioner's due process rights, and that DCFS was biased and therefore denied Angelica of her victim's rights. On that same date, petitioner filed a motion for mistrial claiming that petitioner's due process rights were violated because respondent did not testify and that the court considered unsworn statements from respondent at the conclusion of the hearing, thereby prejudicing petitioner. Petitioner also filed a motion to reconsider the court's denial of the verified petition for no contact order claiming that the court erred in its decision and judgment.

¶ 26 According to the minute entry of September 8, 2010, the court conducted a hearing on petitioner's pending posttrial motions and took the matter under advisement. The record on appeal does not contain a report of these proceedings.

¶ 27 On October 29, 2010, the clerk filed a consultation report from Barbara Harre, M.D., certified in general pediatrics and child abuse and neglect, at the request of petitioner.

According to the report, Harre completed a medical assessment of Angelica on August 20, 2010, at the request of petitioner. Based upon the examination, Harre found that the genital exam did not reveal any structural concerns or indications of clinical infection. Angelica did not report any current inappropriate sexual or genital contact. Accordingly, the medical assessment did not reveal “any objective evidence of current inappropriate contacts with this child [Angelica] to support the initiation of another investigation by the DCFS and appropriate law enforcement agency.”

¶ 28 On November 5, 2010, the trial court entered an order denying petitioner’s pending motions. On November 29, 2010, petitioner filed a timely notice of appeal.

¶ 29 ANALYSIS

¶ 30 On appeal, petitioner claims that the trial court erred because it misstated facts, omitted relevant factors, and considered improper factors including perjured testimony. Petitioner also claims that petitioner received ineffective assistance of counsel, that Angelica P.’s due process rights were violated due to DCFS’ bias, prejudice and lack of assistance, and that the trial court erred in allowing respondent to address the court without being sworn as a witness. Finally, petitioner argues that overall procedural errors at the trial level resulted in plain error.

¶ 31 Respondent argues that the trial court’s findings and opinion were not against the manifest weight of the evidence, that petitioner’s contentions of plain error and ineffective assistance of counsel are not relevant to this appeal, and that petitioner’s brief on appeal is unsupported by appropriate citations to legal authority in support of her request for reversal.

¶ 32 In a request for a civil no contact order, petitioner bears the burden of proving the allegations contained in a verified petition by a preponderance of the evidence. 740 ILCS 22/204 (West 2010). When deciding whether the trial court correctly denied a request for a civil no contact order, we review the trial court's findings by applying a manifest weight of the evidence standard. *J.M. v. Briseno*, 2011 IL App (1st) 091073, ¶ 39. “A finding is against the manifest weight of the evidence when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence.” *Vancura v. Katris*, 238 Ill. 2d 352, 385–86 (2010) (citing *Eychaner v. Gross*, 202 Ill. 2d 228, 252 (2002)).

¶ 33 This court must give deference to the trial court’s findings because it is in the best position to observe the conduct and demeanor of the parties and the witnesses. *Best v. Best*, 223 Ill. 2d 342, 350 (2006) (citing *In re D.F.*, 201 Ill. 2d 476, 498-99 (2002)). It is well established that determinations by the trier of fact as to the credibility of parties are given great deference. *In re Marriage of McHenry*, 292 Ill. App. 3d 634, 641 (1997) (citing *In re Marriage of Blitstein*, 212 Ill. App. 3d 124, 132 (1991). “A reviewing court must not substitute its judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn.” *Best v. Best*, 223 Ill. 2d at 350-351. There is a strong and compelling presumption that the trial court has made the proper decision. *In re Marriage of McHenry*, 292 Ill. App. 3d at 641.

¶ 34 Contrary to petitioner’s claim on appeal that the court did not properly consider relevant testimony, the court’s order in this case included a detailed summary of the evidence presented by each witness at trial. In this case, it is clear from the record that the court carefully considered *all* the evidence presented before reaching a conclusion regarding the credibility of

the minor. For example, the court considered the undisputed fact that Angelica made other allegations of sexual abuse against her brother, respondent, and respondent's wife on previous occasions which were determined to be unfounded. The court noted that the investigator of this claim did not find Angelica to be credible concerning the circumstances of this incident involving respondent. Further, petitioner did not offer any physical evidence consistent with sexual abuse. In addition, the court observed that another child, who was present during the purported incident of sexual abuse, testified before the court that she did not see or hear anything consistent with Angelica's report in spite of being a light sleeper at times. The court also considered the friction between the parties as a contributing factor for Angelica to fabricate this complaint.

¶ 35 After carefully detailing the evidence, the court made multiple findings regarding Angelica's credibility and found that petitioner had not established that Angelica's version of the events was more probable than not. Therefore, the court denied the request to extend the emergency civil no contact order. Based on this record, we conclude that the trial court properly denied the verified petition for civil no contact order and conclude the court's findings of fact were not against the manifest weight of the evidence.

¶ 36 Further, we conclude the record does not support petitioner's other contentions on appeal. Petitioner contends that she was denied effective assistance of counsel. However, the right to effective assistance of counsel does not exist in a civil proceeding with the exception of an involuntary commitment proceeding. *Coleman v. Akpakpan*, 402 Ill. App. 3d 822, 829 (2010) (citing *Kalabogias v. Georgou*, 254 Ill. App. 3d 740, 750 (1993)); See *In re Carmody*, 274 Ill. App. 3d 46, 56-57 (1995).

¶ 37 Petitioner also claims that Angelica was denied her due process rights because of a pre-existing bias against Angelica on the part of DCFS. However, it is clear from this record that the court made her own independent determination of Angelica’s credibility based on Angelica’s testimony before the court, as well as the testimony of the other witnesses. In addition, petitioner fails to cite any case law authority in support of this contention concerning a violation of Angelica’s due process rights.

¶ 38 Next, petitioner claims that the court considered unsworn testimony from respondent, thereby prejudicing petitioner. The record shows that the only unsworn statements made by respondent occurred when the court and the attorneys were discussing a suitable place for a visitation exchange, and the discussion addressed another issue related to Angelica’s undisputed, recent tardiness at school. We note that this informal discussion did not pertain to the allegations contained in the verified petition. Moreover, petitioner has not established on appeal that the trial court considered the information regarding the minor’s tardiness at school before deciding to deny the request for a no contact order set out in the verified petition.

¶ 39 Finally, petitioner invokes the plain error doctrine claiming that as a result of a combination of the multiple errors, reversal in this case is warranted. Although a plain error theory may apply in certain circumstances, plain error should be “applied in civil cases only where the act complained of was a prejudicial error so egregious that it deprived the complaining party of a fair trial and substantially impaired the integrity of the judicial process.” *Wilbourn v. Cavalenes*, 398 Ill. App. 3d 837, 855-856 (2010) (quoting *In re Marriage of Saheb and Khazal*, 377 Ill. App. 3d 615, 627 (2007) (quoting *Lange v. Freund*, 367 Ill. App. 3d 641, 649 (2006); *Gillespie v. Chrysler Motors Corporation*, 135 Ill. 2d 363, 377 (1990)). (Internal quotations

omitted). Given that we have concluded error did not occur, plain error does not exist in this case or warrant the reversal of the court's decision.

¶ 40

CONCLUSION

¶ 41 The judgment of the circuit court of Rock Island County is affirmed.

¶ 42 Affirmed.