2011 IL App (3d) 110350-U

Order filed September 26, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

In the Matter of ERIC HRITZ, Petitioner-Appellee, v. AMANDA HRITZ, Respondent-Appellant.	))))))))))	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois, Appeal No. 3–11–0350 Circuit No. 11–OP–546 Honorable Robert P. Brumund, Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Presiding Justice Carter and Justice Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion when it admitted certain evidence, and it did not err in finding that respondent had abused her minor daughter or in ordering supervised visitation.

¶ 2 A plenary order of protection was issued against respondent, Amanda Hritz, after the trial court found that she had abused her minor daughter. Respondent appeals, arguing that the trial court abused its discretion by permitting certain evidence and that it erred in: (1) finding that respondent abused her daughter; and (2) in ordering supervised visitation. We affirm.

¶ 3 FACTS

¶ 4 On December 9, 2010, an agreed custody order was entered whereby respondent and petitioner, Eric Hritz, would share joint custody of their minor child, with respondent being the primary residential parent. Petitioner filed for, and was granted, an emergency order of protection against respondent on behalf of their minor child on March 30, 2011. Thereafter, respondent filed an emergency motion to vacate, reopen, and/or modify the emergency order of protection.

¶ 5 At a hearing on the emergency motion, respondent's sister, Jessica Barfell, testified that she had witnessed respondent harm her minor child. Barfell became concerned about the child in July of 2010. At that time she confronted respondent about her parenting style. After the confrontation, respondent asked Barfell to temporarily care for the child for two weeks. At the end of the two weeks, Barfell returned the child to respondent along with a four page advisory document entitled "Elizabeth's Guidelines." The document was admitted into evidence after Barfell testified that she recognized the document and was the author. Petitioner's attorney never referred to the contents of the document.

¶ 6 At some point after Barfell had taken temporary custody of the child, she and her family moved into respondent's basement. While living with respondent, Barfell witnessed respondent abuse the child. On a Saturday night at 8 p.m., Barfell saw respondent yank the child out of bed and spank her. On another occasion, Barfell witnessed respondent pull the child out of bed in the morning and spank her "pretty strongly" to wake her up. Respondent then rushed the child out the door without breakfast so that she could get her to a babysitter. At another time, Barfell heard respondent spank the child on three separate occasions all within 20 to 30 minutes of each

other. Aside from the physical abuse, Barfell witnessed the minor child act afraid and cower whenever she asked respondent for anything.

¶ 7 Respondent testified that she has never pulled or yanked her child out of bed. Further, she never witnessed the child cower when asking for something. Respondent admitted that she had spanked the child in order to instill discipline, but claimed that she never used much force. As a result of allegations of child abuse and neglect, respondent took the child to a quick care clinic. The examination did not result in the doctors contacting the police or the Department of Children and Family Services.

¶ 8 The trial court found that respondent had abused the minor child and granted a plenary order of protection against respondent. Respondent was granted supervised visitation after the trial court found that she had or was likely to: (1) abuse or endanger the minor child during visitation; (2) improperly conceal or detain the minor child; or (3) act in a manner that is not in the best interest of the minor child. Respondent appeals.

¶ 9 ANALYSIS

¶ 10 Respondent first contends that the trial court abused its discretion when it permitted petitioner to enter into evidence a document entitled, "Elizabeth's Guidelines." Respondent argues that a proper foundation had not been laid for the document, which respondent alleges contained hearsay. The admissibility of evidence at trial is a matter within the sound discretion of the trial court, and the court's decision will not be overturned absent a clear abuse of discretion. *People v. Adkins*, 239 Ill. 2d 1 (2010).

¶ 11 Pursuant to Illinois Rules of Evidence 901(a), the requirement of authentication as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that

the matter in question is what its proponent claims it to be. Ill. R. Evid. 901(a) (eff. Jan. 1, 2011). Here, petitioner's counsel solicited testimony from the author of "Elizabeth's Guidelines" that included her recognition of the document and her statement that she was the author. This evidence was sufficient for the trial court to determine that the document was what petitioner claimed.

¶ 12 We find it unnecessary to discuss further requirements of admissibility, as the guidelines were admitted for a nonhearsay purpose. A document is hearsay only if it is admitted for the truth of its contents. *People v. Hanson*, 238 Ill. 2d 74 (2010). Here, petitioner's attorney did not present the guidelines for their truth. He merely presented them to show that they had been created. He did not, in fact, ever refer to their contents. Since the document was admitted for a nonhearsay purpose and because sufficient evidence supported a finding that the document was what petitioner claimed it to be, we do not find that the trial court abused its discretion.

¶ 13 Respondent next argues that the trial court erred in finding that she had abused her minor child. A finding of abuse by a trial court, pursuant to a plenary order of protection, must be made by a preponderance of the evidence. *Best v. Best*, 223 Ill. 2d 342 (2006). When a trial court makes a finding by a preponderance of the evidence, that finding will be reversed only if it is against the manifest weight of the evidence. *Id*. A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented. *Id*. Under the manifest weight standard, we give deference to the trial court because it was in the best position to observe the conduct and demeanor of the parties and witnesses. *Id*.

¶ 14 Here, the trial court's finding of abuse was not against the manifest weight of the

evidence. Petitioner presented evidence that respondent's sister had witnessed respondent: (1) pull the minor child out of bed and spank her to wake her up; (2) yank the minor child out of bed at 8 p.m.; and (3) spank the minor child three separate times within a span of 20 to 30 minutes. Petitioner also presented evidence that the minor child expressed fear towards respondent on several occasions.

¶ 15 While it is true that most of the evidence presented by petitioner was challenged by respondent's trial testimony, the conflicting accounts of the events only resulted in the trial becoming a credibility contest. As such, the trial court was in the best position to observe the conduct and demeanor of the parties. It is clear from its ruling that the trial court believed petitioner's witnesses more than it believed respondent's. Because there was evidence in the record that could amount to abuse, and because we give great deference to the trial court as the trier of fact, we conclude that it was not error for the trial court to find that respondent abused her minor child.

¶ 16 Finally, respondent argues that the trial court erred in ordering supervised visitation. Pursuant to section 214(b)(7) of the Illinois Domestic Violence Act of 1986, the trial court has the right to deny or restrict respondent's visitation with a minor child if it finds that respondent has done or is likely to: (1) abuse or endanger the minor child during visitation; (2) improperly conceal or detain the minor child; or (3) act in a manner that is not in the best interest of the minor child. 750 ILCS 60/214(b)(7) (West 2010). Here, the trial court specifically found that respondent had or was likely to do all of the above. The petitioner presented sufficient evidence supporting this finding. Therefore, the trial court did not err in determining that supervised visitation was appropriate.

¶ 17 CONCLUSION

¶ 18 The judgment of the circuit court of Will County is affirmed.

¶ 19 Affirmed.