2014 IL App (3d) 130524-U

Order filed October 28, 2014

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2014

In re MARRIAGE OF	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
NICHOLE METROPULOS,	)	Will County, Illinois.
	)	
Petitioner-Appellee,	)	
	)	Appeal No. 3-13-0524
v.	)	Circuit No. 02-D-868
	)	
KURTIS GORE,	)	
	)	Honorable Robert Brumund,
Respondent-Appellant.	)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Holdridge and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's decision allowing mother's petition to remove the parties' minor child to the state of Florida was not against the manifest weight of the evidence.

¶ 2 The parties, petitioner Nichole Metropulos and respondent Kurtis Gore, married in 1999 and had one son, J.G., born in 2001. In 2004, the court entered a judgment of dissolution of marriage, which incorporated a joint parenting agreement naming Nichole as J.G.'s residential parent. After an evidentiary hearing, the trial court allowed Nichole's request to remove J.G.

from the State of Illinois in 2013 to accept a new employment opportunity in the State of Florida. Kurtis appeals. We affirm.

¶ 3 BACKGROUND

¶ 4 Kurtis and Nichole were married in 1999 and one child, J.G., was born on August 14, 2001. In 2004, the court entered a judgment dissolving the marriage. The court approved the parties' joint parenting agreement naming Nichole the principal residential parent and granting Kurtis standard visitation on alternate weekends, specific holidays, and two non-consecutive weeks during the summer.[1]

¶ 5 Nearly six years later, Nichole filed a petition to terminate the original joint parenting agreement on January 21, 2010. Nichole's petition requested sole custody of J.G. and alleged Kurtis refused to cooperate with Nichole to address parenting issues involving their son. The petition also alleged Kurtis engaged in a "pattern of harassment" against Nichole, and claimed J.G. had been experiencing physical and mental anxiety symptoms, requiring medical attention, due in part to Kurtis' behavior toward Nichole. Kurtis denied the allegations and filed a separate petition to reduce child support on March 5, 2010.

¶ 6 On June 10, 2010, Nichole filed an "Emergency Motion," asking the court to immediately suspend visitation and order psychological examinations for the parties and the minor, pursuant to section 604(b) of the Illinois Marriage and Dissolution of Marriage Act (the Act). 750 ILCS 5/604(b) (West 2010). Nichole alleged J.G. recently "suffered a broken leg while in Kurtis' care, when operating a dirt bike without proper safety gear." On September 17,

[1] There were several postjudgment petitions and orders entered in this case, and the record shows a long contentious and litigious process. The court issued several arrest warrants against Kurtis due to his failure to appear on various rules to show cause. However, we only address the postjudgment pleadings relevant to the issue at bar.

2010, the court ordered Dr. Kathleen O'Brien to conduct psychological examinations on both parties and their minor son.

¶ 7 On October 20, 2010, the court found Kurtis in indirect criminal contempt of court for failure to pay child support, sentenced Kurtis to an "indeterminate period" in the Will County jail, but stayed issuance of the jail mittimus until December 8, 2010, pending payment by Kurtis of $2,000 toward the $8,101 arrearage. The court continued the hearing on Nichole's petition to terminate joint parenting to December 8, 2010, and also scheduled Kurtis' motion to modify support for a hearing on that date. When Kurtis failed to appear in court on December 8, 2010, the court issued an arrest warrant for failure to purge his earlier sentence for contempt.

¶ 8 On November 2, 2012, Nichole filed a "Petition for Leave to Remove Minor Child," asking the court to allow J.G. to move with her to Florida in order for Nichole to accept a promotion through her current employer. On November 9, 2012, Nichole filed an "Emergency Amended Petition to Remove Minor Child to the State of Florida," claiming she risked losing her new position if she was unable to relocate within six weeks. The court denied the emergency petition, but ordered Dr. O'Brien to further address the issue of J.G.'s removal to Florida.

¶ 9 The court held the removal hearing on April 8, 2013. Nichole testified that she and J.G. lived in a four-bedroom home in New Lenox, Illinois, until January 2013, when she sold that home for $347,500. Nichole stated she hoped to relocate to Parkland, Florida, for employment purposes.

¶ 10 Regarding the change of job position, Nichole testified she had completed less than two years of college courses, but had received additional training through her employment. From 2007 to the present, Nichole worked for the Brown Forman Company, a large international distributor of liquor, as an "on-premise Illinois state manager" for the Chicago metro area. In

October 2012, Nichole's superiors at work informed her about an "on-premise south Florida state manager" position becoming available in Florida, and the benefits it could provide for future promotion within the company. Nichole accepted the Florida position on November 15, 2012. The company informed Nichole they would like her to relocate permanently to Florida by the end of April 2013. Additionally, although Nichole's Florida base pay increased only a small percentage, to $124,200, she had better fringe benefits and the potential for substantially higher bonuses.

¶ 11 After the sale of her home in January 2013 and in anticipation of the impending move, Nichole and J.G. resided in Nichole's father's home. Nichole stated she wanted to live in Parkland, Florida, 10 minutes away from Nichole's mother's residence. Parkland was about the same size as New Lenox, with comparable schools to the New Lenox school district. However, Parkland offered a wider range of extracurricular activities for Nichole and J.G.

¶ 12 According to Nichole, J.G. was in fifth grade, a "straight A" student, with lots of friends in Illinois. Nichole testified that J.G. was close to Nichole's mother and visited with her three to six times each year. Nichole's brother and sister also live in Florida and J.G. was close to them as well.

¶ 13 Nichole stated Kurtis did not exercise his court-ordered two weeks of non-consecutive summer visitation since the parties divorced and indicated the longest period of time J.G. and Kurtis spent together was a weekend. In addition, Kurtis recently failed to exercise his scheduled face-to-face visitation with J.G. for 23 months, from December 2010 through November 2012, and had fallen behind in his current child support payments.

¶ 14 Nichole suggested she would pay the expenses for J.G. to return to visit Kurtis for three non-consecutive weeks of vacation in summer, half of Christmas break each year, alternate

spring breaks, and every other month when J.G. had a scheduled long weekend. Nichole also agreed Kurtis could come to Florida to visit J.G. one weekend every month, at Kurtis' own expense.

¶ 15 Nichole's father, Nicholas Metropulos, testified that Nichole and J.G. currently resided with him in Illinois. Nicholas said he had a great relationship with J.G., helped care for him and spent lots of time with him doing activities such as fishing, building things, and hanging out. Nicholas planned to sell his house and move to Florida in the near future, and was presently fixing up his house to list it for sale. However, Nicholas said he may delay his move if the court denied Nichole's request to relocate with J.G.

¶ 16 In Nichole's case-in-chief, Kurtis testified he currently lived with and cared for his 80-year-old mother who was seriously ill. Kurtis had two brothers, Mike and Doug, and a sister, Lisa. Doug lived six miles from Kurtis' home and his sister lived in Wisconsin, visiting approximately four weekends each year. Kurtis' father, who was seriously ill, lived near the Wisconsin-Illinois border and Kurtis tried to see his father once per month. Kurtis stated his father had not seen J.G. since November 1, 2012. Kurtis stated his family members visited with J.G. during Kurtis' scheduled visitation times, but did not have contact with J.G. any other time.

¶ 17 Kurtis admitted he did not exercise any of his extended summer visitation from December 2010 through November 2012, due to an outstanding arrest warrant, but spoke to his son daily by telephone. Kurtis objected to Nichole and J.G. moving to Florida because his visitation would be curtailed if Nichole moved that far away. Kurtis testified he loved his son and would not be able to attend his son's sporting events or be there if J.G. suffered a sports injury. Kurtis said he and Nichole had a strained relationship and rarely spoke to each other.

¶ 18 The court also considered a court-ordered report prepared by Dr. O'Brien, dated February 26, 2013. In her report, Dr. O'Brien said J.G.'s emotional and physical attachment to his mother was much stronger than to his father. Dr. O'Brien personally observed Kurtis and J.G. together, and noted that Kurtis did not "really listen to [J.G.'s] wishes" about wanting to move to Florida and seemed "unable to take in what [J.G.] shares about how disappointed he will be if he and his mother cannot move." Dr. O'Brien also noted that, based on the letter from J.G.'s therapist, Dr. Chicvara, J.G. had been diagnosed with an anxiety disorder, but was making progress on this issue. J.G.'s therapist supported J.G.'s move to Florida.

¶ 19 In Dr. O'Brien's opinion, the move would not disrupt the current relationship between Kurtis and J.G. However, Dr. O'Brien felt that if the court prevented the move to Florida based on Kurtis' objection, J.G. would begin to resent his father and their relationship could "further erode." Consequently, Dr. O'Brien opined the court should allow the request to remove the minor to Florida.

¶ 20 On May 31, 2013, after taking the matter under advisement, the trial court made specific findings in open court granting Nichole's petition for removal. The court's written order, entered on June 13, 2013, included the following findings: (1) the proposed move to Florida "will directly enhance the life of both [Nichole] and [J.G.], in that [Nichole's] new employment in Florida will increase the likelihood of advancement within the company which will likely result in increased income to her;" (2) the climate in Florida "will allow both mother and son to enjoy certain extra-curricular activities year-round, and [J.G] will be closer to his maternal grandmother and maternal uncle and cousins in which he has a strong relationship;" (3) "no evidence exists showing any ill motive on the part of [Nichole] to defeat or destroy the father/son relationship;" (4) Kurtis "seems to be motivated in objecting to removal for the reason that he

does not want to lose touch with his son after regaining visitation with him following a two year absence;" (5) "if removal is allowed, a positive and reasonable visitation schedule can be afforded to [Kurtis];" and (6) "no evidence exists that removing [J.G.] to the State of Florida will directly harm [J.G.], in fact, the psychological opinion as provided by Dr. Kathleen O'Brien, seems to suggest that denial of removal would cause resentment and erode the father/son relationship." The court order provided extensive visitation for Kurtis in Illinois, as well as daily, liberal telephone visitation, and determined Nichole would pay all of the expenses for J.G. to visit Illinois, and Kurtis would pay the expenses if he traveled to Florida to visit J.G.

¶ 21 Kurtis filed a timely notice of appeal.

¶ 22 ANALYSIS

¶ 23 On appeal, Kurtis argues the trial court's decision allowing Nichole to remove J.G. to Florida was against the manifest weight of the evidence. Nichole submits that evidence showed it was in the best interests of J.G. to allow him to move to Florida and, therefore, that decision was not against the manifest weight of the evidence.

¶ 24 This court will not disturb the circuit court's best interests determination "unless it is clearly against the manifest weight of the evidence and it appears that a manifest injustice has occurred." *In re Marriage of Coulter*, 2012 IL App (3d) 100973, ¶ 25, quoting *In re Marriage of Eckert*, 119 Ill. 2d 316, 328 (1988); *In re Marriage of Dorfman*, 2011 IL App (3d) 110099, ¶ 46. A judgment is determined to be against the manifest weight of the evidence when the opposite conclusion is clearly apparent or when the trial court's findings are unreasonable, arbitrary or not based on the evidence. *Dorfman*, 2011 IL App (3d) at ¶ 46.

¶ 25 Section 609(a) of the Act provides:

> "The court may grant leave, before or after judgment, to any party having custody of any minor child or children to remove such child or children from Illinois whenever such approval is in the best interests of such child or children. The burden of proving that such removal is in the best interests of such child or children is on the party seeking the removal." 750 ILCS 5/609(a) (West 2012).

¶ 26 Our supreme court has identified several factors that the circuit court should consider in assessing the child's best interests: (1) whether the move will enhance the quality of life for the custodial parent and for the child; (2) whether the custodial parent is motivated by a desire to hinder or defeat the noncustodial parent's visitation rights; (3) the noncustodial parent's motives for challenging removal; (4) the effect the move would have on the noncustodial parent's visitation rights; and (5) whether the move would still allow for a reasonable and realistic visitation schedule for the noncustodial parent. *Eckert*, 119 Ill. 2d at 326-27; *Dorfman*, 2011 IL App (3d) at ¶ 47.

¶ 27 When reviewing a ruling on the best interests of the child in a removal action, we look to the specific circumstances of each individual case. *Eckert*, 119 Ill. 2d at 326; *Dorfman*, 2011 IL App (3d) at ¶ 46. Reviewing courts grant great deference to the trial court's removal decision, since the trial court is in the best position to observe the parties and assess their temperaments, personalities and capabilities. *In re Marriage of Collingbourne*, 204 Ill. 2d 498, 522 (2003), citing *Eckert*, 119 Ill. 2d at 330.

¶ 28 In the case at bar, the court properly considered and balanced the *Eckert* factors. The court found the proposed move would directly enhance the life of both Nichole and J.G. In

addition, the court found Nichole's new employment in Florida would increase the likelihood of advancement within the company and increased income. The court noted the Florida climate would allow both Nichole and J.G. to enjoy extracurricular activities year-round. The court also considered that J.G. had a close relationship with his maternal grandmother and other maternal relatives who resided in Florida. The court found the evidence did not show any improper or ill motive on Nichole's part to destroy the father/son relationship.

¶ 29 With respect to the impact the move would have on Kurtis' relationship with J.G., the court noted Kurtis did not want to lose touch with his son after recently regaining visitation with him "following a two year absence." However, the court determined that Kurtis could be given a reasonable visitation schedule if removal occurred. Further, the court observed the psychological opinion provided by Dr. Kathleen O'Brien indicated that removal was in J.G.'s best interests and denial of removal could cause resentment and erode the father/son relationship. Based on the evidence, we conclude that the trial court's decision, finding that removal of the minor to Florida was in J.G.'s best interest, was not against the manifest weight of the evidence.

¶ 30 CONCLUSION

¶ 31 For the foregoing reasons, we affirm the decision of the trial court granting Nichole leave to remove J.G. to Florida.

¶ 32 Affirmed.