

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2014 IL App (3d) 140451-U

Order filed October 29, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

ERIN PURDY,)	Appeal from the Circuit Court
)	of the 14th Judicial Circuit,
)	Rock Island County, Illinois,
Plaintiff-Appellant,)	
)	Appeal No. 3-14-0451
v.)	Circuit No. 09-F-465; 13-OP-515
)	
TREVOR J. GANNON,)	Honorable
)	Clarence M. Darrow,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices McDade and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's order of visitation supervised by the defendant's sister rather than a child protective agency was not against the manifest weight of the evidence or an abuse of discretion; the trial court's order denying plaintiff's petition for a plenary order of protection was not against the manifest weight of the evidence.

¶ 2 Erin Purdy and Trevor Gannon are the mother and father, respectively, of E.G, born February 8, 2009. The proceedings in the instant appeal began with Purdy's filing of a complaint seeking child support from Gannon filed on September 8, 2009. An order of support was entered on October 8, 2009. On January 6, 2010, Gannon filed a petition to establish visitation and on

April 9, 2010, the court entered an agreed order granting Gannon unsupervised visitation on alternating weekends and during Christmas and Thanksgiving. The order also required Gannon to attend anger management classes.

¶ 3 On April 1, 2013, Gannon filed a petition to modify visitation seeking visitation on all holidays in addition to Christmas and Thanksgiving. On that same day, Gannon filed a petition for rule to show cause alleging that Purdy was guilty of contempt for interfering with the existing visitation schedule. On May 10, 2013, Gannon filed an amended petition to modify visitation again seeking visitation in addition to that provided in the agreed order entered April 9, 2010. On June 19, 2013, Purdy filed a response to the petition to modify visitation asking the court to deny the petition. At the same time, she filed a motion to increase Gannon's child support obligation. On June 23, 2013, Purdy filed an amended response to Gannon's petition to modify visitation in which she sought certain limitations and restrictions upon Gannon's visitation such as refraining from taking the child out of state during visitation, and refraining from using alcohol, drugs or smoking during periods of visitation. In a response to the rule to show cause regarding her alleged interference with Gannon's visitation rights, Purdy alleged that she denied Gannon's visitation because she believed the child was being physically abused by Gannon.

¶ 4 On July 19, 2013, Purdy filed a petition seeking an order of protection against Gannon. The order of protection filing was consolidated with the support/visitation matter. On July 26, 2013, the court entered a temporary order calling for supervised visitation each Sunday from 9 a.m. to 6 p.m. Gannon's sister, Tiffany Abbott, was designated to supervise his visitation.

¶ 5 On August 6, 2013, Purdy filed a motion to suspend visitation alleging that the Iowa Department of Human Services (IDHS) advised her that Gannon should not have unsupervised

visitation due to allegations of sexual abuse. On August 8, 2013, the court entered an order suspending Gannon's visitation pending the outcome of the IDHS investigation.

¶ 6 On December 18, 2013, Gannon filed a petition seeking to resume visitation in which he maintained that a significant period of time (90 days) had passed without any further investigation by IDHS. On January 31, 2014, Purdy filed a petition to increase child support and modify visitation in which she alleged that on August 15, 2013, IDHS had issued a "founded" report of possible child sexual abuse of E.G. She asked the court to continue the suspension of Gannon's visitation rights until he underwent sex offender counseling, or, in the alternative, resume supervised visitation but only by the Illinois Department of Children and Family Services (DCFS) or other appropriate service agency.

¶ 7 On May 14, 2014, a hearing was held on Gannon's motion to resume visitation, Purdy's motion to modify visitation, and Purdy's petition for a plenary order of protection. Following testimony from several witnesses, the court ordered visitation every Sunday from 9 a.m. to 6 p.m. under supervision of Tiffany Abbott. The court required Abbott to agree to supervise visitation and submit to the personal jurisdiction of the court and to the possibility of citation for contempt should she fail to properly supervise Gannon's visitation. Abbott agreed to those conditions. The court then denied the petition for an order of protection, finding that Purdy had failed to meet the requisite burden of proof for granting an order of protection.

¶ 8 On May 22, 2014, Purdy filed a motion to reconsider the appointment of Abbott as the visitation supervisor and a motion to stay the court's visitation order pending the outcome of the instant appeal. The court denied both motions. On June 2, 2014, Purdy filed a timely notice of appeal challenging the court's visitation order and its order denying her petition for an order of protection.

¶ 9

FACTS

¶ 10

The following is a recitation of relevant facts as presented at the May 14, 2014, hearing and addressed by the trial court on the record immediately following the hearing.

¶ 11

Linda Corbin testified that she was employed by the IDHS as a child abuse assessment investigator. On July 18, 2013, she was assigned to investigate whether E.G. had been the subject of abuse. Her investigation resulted in a "founded" report against Gannon for sexual abuse/indecent contact with a child. Her conclusion was based upon her observation of an interview of the child during which the child told an investigator that Gannon had touched his penis with his hand and with a knife. Corbin believed that the child's statements were credible. Corbin also contacted the Bettendorf, Iowa police department and was informed that Gannon had failed a polygraph test regarding the sexual abuse of E.G.

¶ 12

In response to a query from the court, Corbin opined that supervised visitation would be acceptable based upon the current status of the investigation. She gave no opinion as to whether the supervision should be limited to social service agencies and not members of Gannon's family.

¶ 13

Michelle Maddox testified that she was employed by the Child Response Center as a forensic interviewer. She conducted a 30 minute interview of E.G. In the interview, E.G. stated that Gannon had touched the boy's penis with his hand. He also said that Gannon touched his penis with a knife. He later said that Gannon had only touched his penis with his hand and not with a knife and that only his daddy touched his penis. Maddox further testified that E.G. asked Corbin to tell his daddy not to touch his penis. Maddox observed that the child engaged in "a lot of avoidant behavior" during the interview. Maddox opined that this avoidant behavior gave credence to the child's statements. Maddox also opined that she did not believe the child had been coached prior to the interview.

¶ 14 Purdy testified that Gannon had a history of violent behavior toward her. She also testified that Gannon had made statements to her about E.G. of a sexual nature. She also testified that, when Gannon had unsupervised visitation with E.G. at age two, the child would return home and act out, have nightmares, and regress in potty training. She claimed that in November 2012, E.G. refused to go to a visitation with Gannon. Purdy also testified that, on February 15, 2013, she took the child to the doctor for a checkup. When the doctor slid down E.G.'s pants, the child "freaked out and started screaming." This testimony was not corroborated by medical records or testimony.

¶ 15 Purdy also testified that, on July 12, 2013, the child told her that his father had abused him. Purdy also testified that on July 14, 2013, when E.G. returned from his visitation he was "distant" and scared. When dressing the child for bed that night, he did not want Purdy to see him naked because "his daddy had hurt his penis." Purdy testified that E.G. also said that Gannon told him not to tell his mother or he would be taken away from her. Purdy further testified that, in her opinion, Gannon should have no visitation with the child, but if he does have supervised visitation it should not be supervised by a member of Gannon's family.

¶ 16 Judith Woodin, Purdy's mother, testified to observing the child's actions prior to and after visitation with Gannon. Her testimony corroborated Purdy's testimony.

¶ 17 Christine Shanks testified that she was a speech pathologist and E.G. was one of her clients. Shanks testified that, following a session with the child on July 15, 2013, she filed a report of possible child abuse with the IDHS. The court sustained a hearsay objection regarding the content of the report.

¶ 18 Gannon testified that he had never touched his son in any inappropriate manner. He acknowledged that he did not attend anger management classes as ordered by the court. He

denied telling E.G. not to tell his mother about anything. Regarding the IDHS investigation, Gannon acknowledged being contacted briefly by Corbin, but he never made any attempt to contact her after she gave him her business card. He agreed to submit to a polygraph test administered by the Iowa Department of Criminal Investigation. He testified that when asked if he had sexually assaulted his son he became extremely angry and furious at hearing the question. He admitted receiving a copy of an IDHS report indicating a "founded" allegation of sexual abuse. He also acknowledged that he did nothing to challenge or appeal that finding. He testified that he believed Purdy was trying to prevent him from having any relationship with his son.

¶ 19 Karlie Miracle, Gannon's girlfriend, Trinay Vickery, Gannon's sister, and Debbie Gannon, his mother, each testified that they had observed Gannon's interactions with the child on several occasions. Each testified that they had never observed inappropriate behavior by Gannon toward the child. Each also testified that E.G. loved his father and always appeared happy to see him.

¶ 20 The court conducted an *in camera* interview of the child in the presence of counsel for both parties. Each attorney was allowed to submit questions prior, and, with a minor exception, all questions were addressed to the child by the court. A transcript of the proceeding was contained in the record on appeal. After reviewing the transcript of the interview, we find the trial judge's summary of the interview to be accurate:

Court: "I don't want to sell the child short because he's obviously just being what a four-year old is, perplexed as to why he's plucked into a room with some strangers and drilled with a series of questions to which he gave many inconsistent answers.

Sometimes he'd say yes. Sometimes he'd say no to the very same question. So to the

extent the interview - - Well, it was an extensive interview, but it was not a clean interview for purposes of drawing many conclusions other than the fact that, well, the child - - The child had said at least on one occasion contrary answers to the question presented as to whether father touched him."

¶ 21 Tiffany Abbott testified that she is Gannon's sister and works as a radiology technician at a gastroenterology office. She testified that on two separate occasions she was able to hear a conversation between Gannon and Purdy in which Purdy loudly and angrily stated that neither Gannon nor anyone in his family would ever be able to see "her child." Abbot also testified that Gannon had an appropriate and happy relationship with his son and she never witnessed any inappropriate behavior or contact.

¶ 22 In response to the court's questioning, Abbott testified that during the first period where she had been appointed as the supervisor of visitation, she had not left the presence of Gannon and the child. She also testified that other adults were generally present during Gannon's supervised visitation. Also in response to the court's questions, Abbott agreed that she would be in constant visual sight of Gannon and E.G. during all future supervised visitation. The court addressed several questions to the issue of whether Abbott would need restroom breaks during supervised visitation and how Abbott would be able to supervise visitation and accommodate such breaks. Abbott assured the court that such breaks would be kept to a minimum and that, if necessary, she would make sure adult supervision would be available during such breaks. Abbott assured the court that she had no desire to see any harm befall E.G., even at the hands of her brother. The court indicated that, given Abbott's willingness to undertake supervision of Gannon's visitation, her assurances that her vigilance would be constant, and her willingness to submit directly to the court's contempt powers should she shirk those responsibilities, it would be

in the best interest of the child to have visitation in the more comfortable environment of a home than in the sterile environment if the visitation was supervised at an agency facility.

¶ 23 Following the close of evidence the court issued a ruling from the bench. The court found that Purdy had failed to establish that Gannon had sexually abused the child. The court noted the testimony and findings of investigators Corbin and Maddox. The court further noted, however, that Corbin's opinion that abuse occurred was based partly upon hearsay that Gannon had failed a polygraph test. The court discounted the weight of the polygraph due to the general unreliability of polygraph evidence.

¶ 24 The court then focused on the statements of the child, both in the Maddox interview and the *in camera* proceeding. Pointing out the inconsistencies in the child's statements, the court observed:

"So we'll talk about the child. He is five years old now. He tells multiple people that daddy's touch him with a knife on his penis. And then in actuality he just turned four on the date these alleged instances occurred. He turned four shortly before the first abuse report. He behaves oddly with the doctor and mom and then says he wasn't touched, then he says he was, both in video and in testimony in chambers, and then he immediately directs his attention elsewhere off topic. *** The child also says that he's touched by a knife that dad obtained from a knife store. He recants on that. ***

Between the court's observations of the child, his maturity, and age, it's not clear that the report of his touching was based in reality and or if it occurred that it was sexual and improper, *i.e.*, it's not clear that if touching had occurred, it wasn't related to a routine change of clothes, washing, *et cetera*."

¶ 25 Based upon the record presented, the court denied the petition for an order of protection and imposed supervised visitation on one day per week (Sunday), with no overnight visitation. The court accepted Abbott's written and oral agreement that she be bound by the court to carry out the task of supervising visitation. This appeal followed.

¶ 26 ANALYSIS

¶ 27 On appeal, Purdy first challenges the trial court's order granting Gannon one day of supervised visitation. Her objection comes in two parts. First, she maintains that it was error to permit any visitation. Second, she argues that, if supervised visitation was appropriate, it was error for the court to choose Gannon's sister, Tiffany Abbot, to supervise the visitation. Rather, she maintains, the court's only appropriate course was to require visitation to be supervised by a social service agency.

¶ 28 The circuit court has continuing jurisdiction to modify a visitation order included in a judgment entered under the Parentage Act (750 ILCS 45/16 (West 2012)) and any such modification shall be in accordance with the relevant factors specified in the Illinois Marriage and Dissolution of Marriage Act (Marriage Act). 750 ILCS 5/101 *et seq.* Section 607(a) of the Marriage Act provides that "[a] parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral or emotional health. 750 ILCS 5/607(a) (West 2012) see *In re Marriage of Ashby*, 193 Ill. App. 3d 366, 370 (1990). In turn, the Marriage Act provides that a modification of an existing visitation order must serve the best interest of the child. 750 ILCS 5/607(c) (West 2012). There is a strong public policy in favor of preserving the parent child relationship and the burden is upon the parent seeking restriction of visitation rights to prove that the current visitation arrangement endangers the welfare of the child. *In re Marriage of Diehl*,

221 Ill. App. 3d 410, 429 (1991). The requirement necessary to prove endangerment under the Marriage Act has been described as "onerous, stringent, and rigorous." *Id.*

¶ 29 A party seeking to deny or restrict the noncustodial parent's visitation has the burden to prove by a preponderance of the evidence that that the existing visitation schedule would seriously endanger the child. *Diehl*, 221 Ill. App. 3d at 428-29. A reviewing court will not reverse the circuit court's decision concerning modification of visitation unless it is against the manifest weight of the evidence or an abuse of discretion. *Heldebrandt v. Heldebrandt*, 251 Ill. App. 3d 950, 954 (1993). A decision is against the manifest weight of the evidence only when the opposite conclusion is clearly apparent. *In re Parentage of J.W.*, 2013 IL 114817, ¶ 55. An abuse of discretion occurs only when no reasonable person would take the view adopted by the court. *In re Marriage of Levinson*, 2013 IL App (1st) 121696, ¶ 34.

¶ 30 Purdy contends that the circuit court denial of her petition to terminate visitation, or in the alternative, order visitation supervised only by someone other than a member of Gannon's family was against the manifest weight of the evidence and an abuse of discretion. She specifically maintains that the testimony of investigators Corbin and Maddox conclusively proved that Gannon had sexually abused the child, and combined with testimony from Purdy and her family members, established that Gannon should have no contact with the child, or should only have contact with the child under the supervision of a neutral party.

¶ 31 The circuit court found that the evidence as presented failed to establish, by a preponderance of the evidence, the continued visitation *under the current supervised restrictions* would seriously endanger the child. The court carefully considered the testimony of Corbin and Maddox and gave it considerable weight. In weighing Corbin's testimony, the court noted that the polygraph results played a significant role in her opinion that abuse had occurred. The court

held, in contrast, that the hearsay and reliability factors involving the polygraph test caused it to give less weight to that factor than Corbin. In addition, Corbin testified that her observation of Maddox's interview of the child lead her to conclude that he had, in fact, been sexually abused by Gannon. The trial court viewed the same interview, and combined with its own interview of the child, had serious doubts as to whether the alleged abuse, in fact, occurred.

¶ 32 A trial court is in a unique position to observe witnesses, evaluate and weigh evidence to determine what is in the best interest of the child. *In re Marriage of Seitzinger*, 333 Ill. App. 3d 103, 106 (2002). Here, we cannot say that the trial court's decision to continue supervised visitation was against the manifest weight of the evidence or an abuse of discretion. The order which Purdy sought to modify was already extremely restrictive. Gannon was permitted visitation only one day per week, with no overnight visitation, and under supervision by his sister, Tiffany Abbott. Purdy's argument was that even this limited visitation should be denied based, almost entirely, on an allegation that Gannon had sexually abused the child. While this is, of course, a serious allegation, the trial court carefully weighed the evidence and concluded that the allegation of abuse had not been proven by a preponderance of the evidence. The court acknowledged the testimony of Corbin and Maddox, but based upon its own independent review of the evidence and the *in camera* interview, the court could not determine whether any abuse had occurred. Given the "onerous" burden of proof imposed upon the moving party and the conflicting nature of this record, we cannot say that the opposite conclusion is clearly apparent or that no reasonable person could take the same position adopted by the court.

¶ 33 As to Purdy's contention that the circuit court erred in allowing Abbott to supervise visitation, we note that in the revised order at issue in the appeal, the court took great steps to insure that Abbott would undertake the obligations of supervision seriously and under threat of

contempt. We also note that Purdy presented no evidence, other than her personal animosity toward Abbott, that Abbott would not appropriately supervise Gannon's visitation. Also of note is the fact that, when asked whether it would be appropriate for Abbott to supervise visitation, Corbin expressed no opinion. In allowing Abbott to supervise visitation rather than a social service agency, the court found that it would be in the child's best interest to visit in the more familiar and comfortable environment of Gannon's home rather than the unfamiliar and sterile environment of an agency location. Under these circumstances, we cannot say that the trial court abused its discretion in allowing Gannon's visitation to be supervised by Abbott, particularly when the court took great steps to ensure that Abbott would carry out her responsibilities diligently.

¶ 34 Purdy next maintains that the circuit court erred in denying her petition for an order of protection. The Illinois Domestic Violence Act provides that protective orders may be entered against persons who have abused a minor child in his or her care. 750 ILCS 60/201(b)(i) (West 2012); *In re T.H.*, 354 Ill. App. 3d 301 (2004). The trial court's order granting or denying an order of protection will not be overturned on appeal unless it is against the manifest weight of the evidence. *Best v. Best*, 223 Ill. 2d 342, 349 (2006).

¶ 35 At issue here is whether the trial court properly found that Purdy had failed to establish that an act of abuse had occurred. While there is no "onerous" burden of proof as exists in the serious endangerment requirements of the Marriage Act (see *In re T.H.*, 354 Ill. App. 3d at 306), the movant must still establish by a preponderance of the evidence that an act of abuse occurred. Here, the trial court held that the preponderance of the evidence failed to establish that an act of abuse had occurred. While the trial court did not expressly note that the evidence should be considered without reference to the serious endangerment criteria articulated in the Marriage

Act, our review of the record leads us to conclude that the trial court held that the evidence did not establish, by a preponderance of the evidence, that Gannon had abused the child. Given the conflicting nature of the evidence, we cannot say that the conclusion opposite that reached by the trial court was clearly apparent from this record. We, therefore, affirm the court's denial of the petition for an order of protection.

¶ 36 In affirming the trial court's denial of the protective order we are cognizant of the fact that the supervised visitation order entered by the circuit court and affirmed herein, was fashioned in such a manner as to protect the child from any potential abuse while at the same time fostering his best interest in having some appropriate contact with his father.

¶ 37 CONCLUSION

¶ 38 For the foregoing reasons, we affirm the order of the circuit court of Rock Island County denying the petition to modify visitation and the order denying the granting of a protective order.

¶ 39 Affirmed.