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2016 IL App (3d) 170041-U

Order filed May 31, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

In re MARRIAGE OF	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Audra L. G.,	)	Will County, Illinois.
	)	
Petitioner-Appellee,	)	Appeal No. 3-17-0041
	)	Circuit No. 11-D-1660
and	)	
	)	
Daniel T. G.,	)	Honorable
	)	Dinah L. Archambeault,
Respondent-Appellant.	)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Carter and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Trial court did not err in modifying the allocation judgment and ordering the parents to share parenting time equally.
(2) Trial court's decision allocating joint decision-making responsibilities to both parents for education and extra-curricular activities and allocating sole decision-making responsibilities to mother on religious issues was not against the manifest weight of the evidence.
(3) Trial court did not err in ordering that payment of child support be shared by the parties based on the statutory guideline amount without conducting a hearing.

¶ 2 Respondent, Daniel G., appeals from the trial court's order allocating shared parenting time and joint decision-making responsibilities of his children to both Daniel and petitioner, Audra G. On appeal, he argues that the trial court abused its discretion by (1) allocating shared joint parenting time between the parties, (2) allocating shared decision-making responsibilities for education and extra-curricular activities to both parents, (3) allocating sole decision-making responsibilities for religious issues to petitioner, and (4) directing the parties to share child support obligations without conducting an evidentiary hearing. We affirm.

¶ 3 FACTS

¶ 4 Daniel and Audra were married in May of 1994 and have three children together. Their oldest daughter, T.G., is emancipated, and they have two minor children: A.G., born in November of 2002, and M.G., born in March of 2005.

¶ 5 In October of 2012, the trial court entered a judgment dissolving the marriage, which incorporated a marital settlement agreement and joint parenting order. Daniel and Audra were awarded joint custody of the minor children. The order designated Audra as the residential parent and awarded Daniel parenting time on three unspecified days every other week.

¶ 6 In August of 2014, Audra filed a petition to establish a specific parenting time schedule. The parties agreed to a schedule, and Daniel was awarded parenting time on alternating weekends. Four months later, Daniel filed a petition to modify custody. See 750 ILCS 5/602.5, 602.7 (West Supp. 2015) (now referred to as a petition to modify the allocation of parental rights and responsibilities: parenting time and decision-making).

¶ 7 On motion of the parties, the trial court appointed Dr. Mary K. Gardner as the custody evaluator. Prior to trial, Dr. Gardner submitted her 36-page custody evaluation. She found that both parents loved their children deeply but that some of Audra's conduct had alienated the

children from Daniel. She recommended that the trial court grant equal parenting time to the parties, that transfers be initiated and terminated at school or curbside, and that the parties have as little contact with each other as possible. She also recommended that Daniel be awarded residential custody and sole decision-making responsibilities.

¶ 8 At trial, Daniel appeared through counsel and Audra appeared *pro se*. Gardner testified that she considered the factors contained in the statute (750 ILCS 5/602 (West 2014)), which was in effect at the time she tendered her evaluation, as well as the factors contained in the revised sections that became effective on January 1, 2016 (750 ILCS 5/602.5, 602.7, 603.10 (West Supp. 2015)). She testified that although Audra's comments and actions tended to alienate the children from their father, the children were not "formally alienated as the children are not refusing contact." Gardner believed that psychologically the children were in a healthy relationship with Daniel and that the alienations issues could be quickly remedied. She testified that refusal of contact is a progression of alienation. But she hoped that the parties' conduct would improve.

¶ 9 Gardner further testified that during her evaluation of Daniel, Daniel's wife and the children, the children interacted freely and comfortably with Daniel. They were friendly with Daniel's wife, and they joked and played games. They interacted well with one another. No one demonstrated any reserved or awkward behavior. During her observations and the home visit, she noticed an even "give and take" within the family unit. The children related to Daniel and his wife in a familiar way and appeared relaxed and comfortable in their surroundings. She noted that the children did not call Daniel by his first name; they referred to him as "Dad."

¶ 10 Garnder also testified that A.G.'s and M.G.'s child behavior scores did not show any significant problems. The children were not significantly clinically affected by any of the variable measures on the test, such as depression, anxiety, or behavior problems. She further

hypothesized that any lack of bonding when the children were younger was affected by Daniel's absence due to his employment as a commercial pilot.

¶ 11 During A.G.'s interview, she told Gardner that she did not have a close relationship with her father when she was younger because he was always working as a pilot. She also said that he "yells a lot." M.G. also told Gardner that his father yells at him sometimes. Gardner noted that both children seem to lack emotion when describing their allegedly strained relationships with Daniel. Both of them called him "Dan" rather than "Dad" during her interviews. It was Gardner's belief that the children had been coached by Audra to tell negative stories about Daniel. She believed that Audra also told the children to call him "Dan."

¶ 12 When asked about religious issues, M.G. reported to Gardner that Daniel said negative things about his mother. For example, M.G. claimed that Daniel said she was praising the devil and practicing witchcraft. Also, Daniel told Gardner that he does not allow crystals in his house because they are against his religious beliefs. Gardner admitted that religion was a complicated issue between the two households.

¶ 13 Gardner also spoke with Audra's husband, Matt L. He told her that his daughter, Jackie, had been recently evicted from Audra and Matt's home because she refused to do her homework and was disrespectful and rebellious.

¶ 14 On the topic of health care issues, Gardner testified that Audra would go out of her way to marginalize Dan's involvement with the children by canceling dentist appointments that Daniel had scheduled and by refusing to approve counseling. When the children's counselor refused to write a letter stating that Daniel should not have any involvement, Audra removed the children from the counselor's office and refused to seek further counseling support. Based on her

interviews and evaluations, Gardner recommended the trial court grant equal parenting time to the parties using a two-day, two-day, three-day schedule.

¶ 15 The trial court entered an order reallocating parenting time and parental decision-making responsibilities. After enumerating and discussing the 17 factors in section 602.7(b) of the Act, the court ordered that (1) the allocation of parenting time be shared 50/50 as recommended by Dr. Gardner, (2) the allocation of decision-making on issues of education and extra-curricular activities be shared jointly by the parties, (3) the allocation of decision-making on issues of health care be awarded to Daniel, and (4) the allocation of decision-making on issues of religion be made by Audra. The trial court also determined that child support "shall be determined by taking the appropriate statutory guideline amount and applying said percentage to the net income of each party, and then subtracting the lesser amount; thus, the Party making the most money will pay the Party making the less money after subtracting the lesser earning Party's percentage." By agreement, the setting of the amount of child support and other financial issues were reserved for a later hearing.

¶ 16 The trial court denied Daniel's motion to reconsider. In its order denying the motion, the court stated that the allocation of decision-making responsibilities of education and extra-curricular activities could be modified on notice and motion.

¶ 17 ANALYSIS

¶ 18 I. Allocation of 50/50 Parenting Time

¶ 19 On appeal, Daniel first claims that the trial court's allocation of 50/50 joint parenting time is against the manifest weight of the evidence.

¶ 20 The Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/101 *et seq.* (West 2014)) states that it shall be liberally construed and applied to promote its underlying

purposes, which includes ensuring predictable decision-making for the care of children and for the allocation of parenting time, recognizing the right of children to a healthy relationship with parents, and acknowledging that the determination of children's best interests and the allocation of parenting time and significant decision-making responsibilities are among the paramount responsibilities of our system of justice. See 750 ILCS 5/102 (West Supp. 2015). In accordance with that purpose, the statute requires the trial court to allocate parenting time according to the child's best interests. 750 ILCS 5/602 .7(a) (West Supp. 2015).

¶ 21 Section 602.7 of the Act provides that in determining the child's best interests for the purpose of allocating parenting time, courts must consider several factors, including: (1) the wishes of the parent; (2) the wishes of the child; (3) the amount of time each parent spent performing caretaking functions with respect to the child in the 24 months preceding the filing of the petition; (4) any prior agreement or course of conduct between the parents; (5) the interaction and interrelationship of the child with his or her parents and siblings or any other significant person; (6) the child's adjustment to home, school, and community; (7) the mental and physical health of all involved; (8) the child's needs; (9) the distance between the parents' residences, the cost of transporting, the families' daily schedules, and the ability of the parents to cooperate; (10) whether a restriction on parenting time is appropriate; (11) physical violence or threat of physical violence; (12) the willingness and ability of each parent to place the needs of the child ahead of his or her own needs; (13) the willingness of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child; (14) the occurrence of abuse against the child or other members of the household; (15) whether one of the parents is a convicted sex offender; (16) the terms of a parent's military family-care plan; and (17) any other factor that the court expressly finds to be relevant. 750 ILCS 5/602.7(b) (West Supp. 2015).

¶ 22 Under the Act, "[p]arenting time may be modified at any time, without a showing of serious endangerment, upon a showing of changed circumstances that necessitates modification to serve the best interests of the child." 750 ILCS 5/610.5(a) (West Supp. 2015). The trial court has broad discretion in fashioning a custody decree in the best interests of a child. *Davis v. Davis,* 63 Ill. App. 3d 465, 469-70 (1978). A strong presumption favors the result reached by the trial court because of the trial court's superior opportunity to observe and evaluate witnesses when determining the best interests of the child. *Shinall v. Carter,* 2012 IL App (3d) 110302, ¶ 30. Therefore, we will not disturb a trial court's custody award unless the court abused its discretion or its factual determinations are against the manifest weight of the evidence. *Id.*

¶ 23 In this case, both parties demonstrated that they were involved in the children's lives and had healthy relationships with them. Audra had been the primary caregiver since the children were born, and Daniel had moved back to the area and was once again significantly involved in their lives. Each parent wished to maintain his or her level of involvement. Moreover, Dr. Gardner testified that the children needed a healthy relationship with both parents. The trial court's 50/50 shared parenting time schedule is similar to the previous every-other-weekend schedule with the addition of a few more overnight visits for Daniel and the extension of Daniel's visits on alternating weekends. The schedule allows both parents to consistently interact with the children and have overnight parenting time on a weekly basis. It also permits each party to equally share in the responsibility of getting the children to and from school and establishes a predictable parenting schedule. Thus, the court's finding that it was in the best interests of the children to maintain maximum involvement of both parties was not against the manifest weight of the evidence.

¶ 24 Daniel claims that the trial court erred in awarding equal parenting time under the joint custody order because equal parenting time is disfavored under Illinois law, citing section 603.10 of the Act (750 ILCS 5/603.10 (West Supp. 2015)).

¶ 25 Section 603.10(a) provides "if the court finds by a preponderance of the evidence that a parent engaged in any conduct that seriously endangered the child's mental, moral, or physical health or that significantly impaired the child's emotional development, the court shall enter orders as necessary to protect the child," including, but not limited to, reducing or eliminating parenting time. 750 ILCS 5/603.10(a) (West Supp. 2015). A reading of the plain language of the statute indicates that section 603.10(a) neither mandates nor precludes equal parenting time in a joint custody situation. See *In re Parentage of Rocca,* 408 Ill. App. 3d 956, 964-65 (2011) (courts read a statute to effectuate the legislature's intent and, to do so, look first to the plain language of the statute). It simply permits the reduction of parenting time if the evidence shows that a parent's conduct has significantly impaired the child's mental, moral or physical health. The evidence here did not demonstrate significant impairment. While equal parenting time is not required in joint custody situations, the court's equal parenting schedule was not prohibited by the statute.

¶ 26 Daniel also cites *Davis v. Davis,* 63 Ill. App. 3d 465, 470 (1978), in support of his contention that Illinois law disfavors alternating or rotating custody arrangements in favor of stability and consistency. We find our case distinguishable from *Davis*.

¶ 27 In *Davis,* the appellate court held that where the minor children demonstrated feelings of insecurity and divided loyalty due to overriding hostility between the parents, an order providing for physical custody of the children to shift every four months was an abuse of discretion. *Davis*, 63 Ill. App. 3d at 469-70. Here, the parties live in close proximity to one another and the

children are able to maintain the same school, doctor, dentist and friends. Also, the evidence showed that A.G. and M.G. do not exhibit feelings of insecurity and that they interacted comfortably and freely with both parents during Dr. Garner's observations.

¶ 28 We acknowledge that courts have traditionally viewed 50/50 shared parenting schedules with caution. See *In re Marriage of Hacker,* 239 Ill. App. 3d 658, 661 (1992) (remanding for the joint custody order to give some permanency to the physical custody of the children). However, on the facts of this case, the trial court did not abuse its discretion in establishing the 50/50 shared parenting schedule. Daniel and Audra are both capable and loving parents, they live in close proximity to one another, the children have strong and interactive relationships with both parents, and psychological evaluations indicate that A.G. or M.G. would not suffer significant mental or emotionally harm under the 50/50 shared parenting schedule. Therefore, the trial court's finding that the 50/50 shared parenting schedule was in the best interests of A.G. and M.G. was not against manifest weight of the evidence.

¶ 29 II. Allocation of Joint Decision-Making Responsibilities

¶ 30 Daniel argues that the trial court's allocation of shared decision-making authority on issues affecting education and extra-curricular activities and sole decision-making authority to Audra on issues affecting religion is contrary to the manifest weight of the evidence and not in the children's best interests.

¶ 31 The Act permits the court to allocate to one or both of the parents the decision-making responsibility for significant issues affecting the child as to education, health, religion, and extracurricular activities. 750 ILCS 5/602.5(b) (West Supp. 2015). As mentioned, a court has the authority to modify a parenting plan if it is necessary to serve the child's best interests. 750 ILCS 5/610.5(c) (West Supp. 2015). To determine the child's best interests for purposes of

allocating significant decision-making responsibilities, the court should consider all relevant factors, including: (1) the wishes of the child; (2) the wishes of the parents; (3) the child's adjustment to home, school, and community; (4) the mental and physical health of all individuals involved; (5) the ability of the parents to cooperate to make decisions; (6) the level of each parent's participation in past decision-making about the child; (7) any prior agreement or course of conduct between the parents regarding decision-making; (8) the child's needs; (9) the distance between the parents' residences; (10) whether a restriction on decision-making is appropriate under section 603.10; (11) the willingness and ability of each parent to facilitate and encourage a relationship with the other parent; (12) the physical violence or threat of physical violence; (13) the occurrence of abuse against the child or other member of the household; (14) whether one parent is a sex offender or resides with a sex offender; and (15) any other factor that the court expressly finds to be relevant. 750 ILCS 5/602.5(c) (West Supp. 2015).

¶ 32 A trial court's determination regarding parental decision-making responsibilities, like its determination of custody under the previous versions of the Act, is given great deference because that court is in a superior position to judge the credibility of the witnesses and determine the best interests of the child. *In re Marriage of Lonvik*, 2013 IL App (2d) 120865, ¶ 33. We will not reverse that determination on appeal unless it is clearly against the manifest weight of the evidence and it appears a manifest injustice has occurred. *In re Parentage of J.W.*, 2013 IL 114817, ¶ 55. A judgment is against the manifest weight of the evidence only when the opposite conclusion is clearly apparent. *Id.*

¶ 33 Here, the trial court examined each of 15 factors under section 602.5(c) and made a best-interests determination after weighing each one. The court found both parents wished to have sole decision-making responsibility but that the children did not have a preference. It found that

counseling was recommended and was in place. It noted, however, that Audra continued to cancel doctor and dentist appointments that Daniel had scheduled. The court also found that both parents actively participated in the children's lives and that Daniel would participate more if Audra would allow his participation. Specifically, the trial court noted the level of conflict between the parents but found that, based on the assessment of the parties during the proceedings, their ability to cooperate could improve moving forward. The close living arrangements was another factor that the court believed favored a joint decision-making arrangement. Also, both parents are transporting the children to and from school, helping with homework, and facilitating the children's participation in extra-curricular activities after school. Thus, the court found that both parents needed to be involved in decisions about educational and extra-curricular activities. Based on the visitation schedule in which both Daniel and Audra will have the children a substantial amount, we cannot say that the opposite conclusion is clearly apparent. Given the new parenting time schedule, the trial court's decision to allocate shared decision-making responsibilities on issues affecting education and extra-curricular activities was not manifestly unjust.

¶ 34 Also, we find the trial court did not err in finding the relevant best-interests factors favored Audra as to the allocation of parental decision-making authority on issues affecting religion. The court thoroughly considered the factors set forth in the current law. See 750 ILCS 5/602.5(c) (West Supp. 2015). The court stated that the children needed consistency and that the parents' ability to cooperate needed to improve. The evidence indicated Audra has been the primary caregiver since the children were young and had made most of the decisions affecting religious issues. The trial court also considered the lack of tolerance exhibited by Daniel regarding the children's religious preferences. Dr. Gardner noted that issues surrounding religion

are complicated and typically cause tension between Audra and Daniel and the children. Thus, we find the court's decision to allocate sole decision-making responsibility to Audra on religious issues was not against the manifest weight of the evidence.

¶ 35 III. Child Support

¶ 36 Next, Daniel argues that the trial court erred in awarding child support. He claims the court abused its discretion in awarding support based on the statutory guidelines without conducting an evidentiary hearing.

¶ 37 In Illinois, the support of a child is the joint and several obligation of both parents. *In re Marriage of Turk*, 2014 IL 116730, ¶ 14. The standards governing court awarded child support are set forth in section 505 of the Act. See 750 ILCS 5/505 *et seq*. (West 2014). The statutory guidelines for determining the amount of child support is a percentage formula based on the number of children to be supported and the supporting party's net income. 750 ILCS 5/505(a)(1) (West 2014). Where there are two minor children, as there are here, the guideline award is 28% of the party's net income. 750 ILCS 5/505(a)(1) (West 2014). A court is required to apply this formula unless it determines that a deviation from the guidelines is appropriate. 750 ILCS 5/505(a)(2) (West 2014). If the trial court deviates from the guideline amount, it must consider at least one of five factors under section 505(a)(2), state the amount that would have been required under the guidelines, and state its reasons for deviating from the guidelines. 750 ILCS 5/505(a)(2) (West 2010); see *In re Marriage of Berberet,* 2012 IL App (4th) 110749, ¶ 37.

¶ 38 Also, Illinois law does not confine the obligation to pay child support to noncustodial parents. *Turk*, 2014 IL 116730, ¶ 17. A noncustodial parent may receive child support from a custodial parent where there is equal parenting time and a disparity in income. *Id.*

¶ 39 In this case, the trial court followed the statutory guidelines in awarding child support and the record does not show that the court abused its discretion by not deviating from the guideline amount. Daniel argues that the court was required to conduct a separate evidentiary hearing on the issue of child support. However, nothing in the statute requires the court to conduct a second hearing for the sole purpose of determining child support when the court determines that a deviation from the statutory guideline is not appropriate. As stated in *Turk*, the child support statute does not confine the obligation to pay child support to one parent or the noncustodial parent. In the case of shared custody, the obligation to support may be divided equally between the parents. See *Turk*, 2014 IL 116730, ¶ 17.

¶ 40 Daniel claims that because both parties have equal parenting time, the court should have reserved the issue. However, the court did reserve the issue; it reserved the issue of child support and other financial issues to allow the parties to update their financial statements to calculate the appropriate amount each parent should pay.

¶ 41 Daniel's claim that he was deprived an evidentiary hearing suggests that he requested a hearing on the issue of support in his motion to modify custody or that the issue of child support was raised during the allocation proceedings. A review of the record indicates that neither of those scenarios is true. First, Daniel's motion for modification of allocation of parenting rights and responsibilities did not ask the court to modify child support. Second, at the conclusion of the hearing on the allocation of parenting time and responsibilities, the trial court mentioned child support and determined that support should be based on the appropriate statutory guideline percentage. The court then reserved ruling on setting a specific amount of support. Both parties agreed that a hearing on the issue at a later date would be appropriate. Daniel did not request an evidentiary hearing on the issue of child support at that time. See *In re Marriage of Shedbalkar*,

95 Ill. App. 3d 136, 142 (1981) (court unwilling to hold that trial court abused its discretion in award of support where parties invited the court to determine matters on the pleadings and the evidence heard throughout the proceedings). Thus, we find no abuse of discretion in the trial court's decision to set the appropriate statutory guideline percentage for child support, while reserving the amount to be paid by both parents, without first conducting an evidentiary hearing.

¶ 42 IV. Motion to Reconsider

¶ 43 Last, Daniel contends that the trial court erred in denying his motion to reconsider the order modifying the allocation of parental rights and responsibilities. He contends that the trial court misapplied the facts to the best-interests factors in section 602.7 and 602.5 of the Act and failed to consider Audra's attempts to alienate the children.

¶ 44 The point of a motion to reconsider "is to bring to the trial court's attention newly discovered evidence not available at the time of the first hearing, changes in the law, or errors in the previous application of existing law to the facts at hand." *River Village I, LLC v. Central Insurance Cos.,* 396 Ill. App. 3d 480, 492 (2009). Generally, a trial court's decision to grant or deny a motion to reconsider will not be reversed absent an abuse of discretion. *General Motors Acceptance Corp. v. Stoval,* 374 Ill. App. 3d 1064, 1078 (2007). However, if the motion was based only on the trial court's application or purported misapplication of existing law, rather than on new facts or legal theories not presented at trial, a reviewing court reviews *de novo* the trial court's decision to grant or deny the motion. *Bank of America, N.A. v. Ebro Foods, Inc.,* 409 Ill. App. 3d 704, 709 (2011).

¶ 45 Here, Daniel's argument that the trial court misapplied the best-interests factors hinges on his underlying contention that the trial court failed to consider all of the facts presented at trial. We have discussed the court's evaluation of the best-interests factors and have determined that

the court's finding was not against the manifest weight of the evidence. Accordingly, we find no abuse of discretion in the trial court's decision to deny Daniel's motion to reconsider the same facts.

¶ 46 CONCLUSION

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

¶ 48 Affirmed.