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2018 IL App (3d) 170852-U

Order filed May 21, 2018

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2018

MICHAEL BLODGETT,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
Petitioner-Appellee,	)	Rock Island County, Illinois
	)	
and	)	Appeal No. 3-17-0852
	)	Circuit No. 12-F-370
RIANNE BRINKER,	)	
	)	Honorable
Respondent-Appellant.	)	Mark A. VandeWiele
	)	Judge, Presiding

JUSTICE O'BRIEN delivered the judgment of the court.
Justice McDade concurred in the judgment.
Justice Holdridge dissented from the judgment.

ORDER

¶ 1 *Held*: Trial court erred in granting father's motion to relocate where the statutory factors do not establish relocation was in child's best interest.

¶ 2 Petitioner Michael Blodgett sought to remove to Mississippi the daughter, B.B., he shared with respondent Rianne Brinker. She objected, and after a hearing, the trial court found it

was in the child's best interest to relocate with her father. It granted Blodgett's petition to relocate. Brinker appealed.

¶ 3 FACTS

¶ 4 Petitioner Michael Blodgett and Rianne Brinker had a child together, B.B., who was born October 28, 2009. In June 2012, Blodgett filed a petition to establish a parent/child relationship, and for custody, visitation and child support. B.B. was living with Brinker and Blodgett sought full custody. The trial court ordered DNA testing to establish paternity. In September 2012, Blodgett petitioned for emergency relief, asserting that Brinker was in jail and B.B. was with her grandmother. Blodgett sought the temporary care, custody and control of B.B. On September 18, 2012, Blodgett again moved for emergency relief, asserting that the DNA test results established him as B.B.'s father, that Brinker was still in jail and that B.B. was still with her grandmother. The court entered an order providing a temporary parenting time schedule for Blodgett.

¶ 5 The trial court entered an opinion on custody issues in February 2013. It noted that there was domestic violence in Blodgett and Brinker's relationship that was instigated by both parties and that Brinker once sought treatment for her injuries at the hospital but refused to press charges. Blodgett claimed he was defending himself. The court found both parents were fit but the best interest of the child were served by placing custody with Brinker. The custody order included a provision that if Brinker was arrested again, custody would temporarily transfer to Blodgett.

¶ 6 Blodgett filed a motion for temporary relief in March 2015, alleging Brinker was arrested on January 21, 2015, and was in custody in Iowa on a probation revocation. She also had a pending theft case in Illinois. On March 23, 2015, the court modified custody, granting temporary custody to Blodgett, and suspending his child support obligation. In August 2015,

Brinker petitioned to modify custody, arguing she had been released from jail, her Illinois case was settled, and she was employed and had housing. In November 2015, the court found there had been a change in circumstances which was Brinker's criminal conduct and that it was in B.B.'s best interest for Blodgett to retain custody.

¶ 7 In June 2016, Blodgett filed a petition to relocate B.B. to Mississippi. A hearing took place. Blodgett testified. He sought to relocate for better financial stability for himself and his family. His in-laws bought a 20-acre plot of land there and they offered him a chance to be involved in the family cattle business. He, his wife and B.B. would live rent-free with his in-laws in exchange for his work on the farm. The house was a three-bedroom house and would also be occupied by his wife's grandmother. They were working on adding a fourth bedroom. He would also be paid $500 a week for his help. His in-laws were currently paying him to ready their house in Moline for sale. Before that, he had work at a steel company until he was laid off. The move would allow him to save substantially, as he would not have expenses for daycare, utilities, rent or food. The savings would benefit his retirement and B.B.'s future.

¶ 8 He looked into the public elementary school B.B. would attend but did not have any details on the school. He anticipated the move would have benefits for his educational pursuits, with a trade school and university in the general area. He wanted to be a weatherman. He did not believe B.B. would have any problems adjusting to life in Mississippi. He acknowledged both his and Brinker's extended families were in the Quad Cities area but said it would not be a problem for B.B. to see them. She could spend the summers with her mother and use Facetime or Skype to communicate. In his view, the move would not be an obstacle to B.B.'s relationship with Brinker. On cross-examination. Blodgett was unclear of his address in Mississippi. He admitted he had no documentation regarding the school B.B. would attend but he was aware of

the negative rankings of Mississippi schools. He assumed extracurricular activities were available at the school or in the area.

¶ 9 Brinker testified. She lived in Silvis, with her two other children, her boyfriend, and his two children on the weekends. She had her son every other week for a week. He and B.B. got along well and loved each other. She had been employed at a staffing agency for a year. B.B. was doing well in school and enjoyed extracurricular activities such as soccer. She was concerned about the move in part because B.B.'s extended family was in the Quad Cities area and it would be an adjustment for her to be away from them. She researched the public school B.B. would attend in Mississippi and was concerned about its academics, rural nature, and the racial makeup of the student body. She was willing to accept the majority of parenting time if relocation was denied and Blodgett still chose to move.

¶ 10 The trial court denied Blodgett's petition to relocate, finding it was not in B.B.'s best interest to relocate. It considered Blodgett's plan to be vague, with insufficient information about the school and raising concerns about what information was presented. The court also considered that the parties' families were all located in the Quad Cities area, with only Blodgett's in-laws in Mississippi. In May 2017, Brinker sought to enjoin Blodgett from taking B.B. to Mississippi when he moved there. She also petitioned to modify parenting time, arguing she was entitled to more time with B.B. when Blodgett was staying in Mississippi. By agreement, the parties determined that B.B. would spend two two-week periods with Blodgett in Mississippi over the summer and otherwise stay with Brinker.

¶ 11 In June 2017, Blodgett filed another petition to relocate. A hearing took place. The court took judicial notice of its prior ruling on the first petition to relocate and that Blodgett had moved to Mississippi. Blodgett testified. He was working at a steel company in Mississippi as a

fabricator/machine operator. He was a temporary employee making $12 hour, which would decrease to $11 per hour once he was hired permanently. He would also receive bonuses which would raise his pay to approximately $17 per hour. He was aware of the bonus program because he had asked the company. He had not been rolled over after the typical 90-day probationary period because of his absences to attend court. His temporary status was extended for 30 days. He worked 40-hours per week on second shift from 2 to 10 p.m., He also made $150 a week from his father-in-law for helping with the 8-head of cattle and other chores at the farm. He earned approximately $2,520 per month and had expenses of $709. His only expenses were clothes, the cost of dinners out, and a car payment and insurance. The $2,000 monthly surplus was used for savings, expenses, B.B. and her schooling. He hoped to enroll her in a private Baptist school that cost about $450 per month. He liked the school because it had outstanding academics, lots of extracurricular options, and was religious-based.

¶ 12 On cross-examination, Blodgett acknowledged differences in his financial affidavits, with varying expenses and income, and that his paycheck stubs indicated he worked only a 32-hour week. On redirect, he admitted that his base pay at his last job in the Quad Cities he made $23.03 per hour. He believed the opportunities in Mississippi were better even with the lesser pay. He did not have any information on the academic rankings of the Christian school. He had not investigated the availability of extracurricular activities for B.B.

¶ 13 Brinker testified. She was a recruiter at a staffing agency making nearly $33,000 annually and had just been promoted, which included an increase of commission pay. She worked 8 a.m. to 4 p.m., Monday through Friday, and prepared B.B. for school and was available for her after school. She had concerns with enrolling B.B. in the Christian school. Neither Blodgett or Brinker were raised in the faith of that of the Christian school. Brinker testified that she took B.B. to

Catholic Mass on average twice a year and that B.B. did not have any other religious training and did not read the Bible. While she did not object to religious education she did not want it pushed on B.B. She also objected to the use of corporal punishment that is allowed at this school. She felt this would be a big adjustment for B.B.

¶ 14 The trial court granted Blodgett's petition to relocate. It considered that Blodgett lacked a plan at the time of the first petition to relocate but now had a plan. The court found that the net cost of living was important and it would be lower in Mississippi. Blodgett would be earning less but the bonus would bring his wages in line with what he was making in the Quad Cities. In addition, his expenses would be less. The court surmised Blodgett was not the family "money manager" and that resulted in his being unsure about the financial numbers he submitted. Although B.B. had significant family contacts in the Quad Cities, electronic means were available to communicate. The court concluded it was in B.B.'s best interest to relocate and instructed the parties to work out a parenting time schedule. The relocation order included Illinois Supreme Court Rule 304(a) language. Brinker appealed.

¶ 15 ANALYSIS

¶ 16 The issue on appeal is whether the trial court erred when it granted Blodgett's motion to relocate. Brinker argues relocation was not in B.B.'s best interest and the trial court's decision to allow relocation was not supported by the evidence.

¶ 17 A parent who is assigned the majority of parenting time may seek to relocate with the child. 750 ILCS 5/609.2(b) (West 2016). The parent must file a petition to relocate when the other parent objects to the move, fails to sign the required notice or if the parents cannot agree on a modified parenting plan. 750 ILCS 5/609.2(f) (West 2016). In determining a petition to relocate, the court considers the following factors:

"(1) the circumstances and reasons for the intended relocation;

(2) the reasons, if any, why a parent is objecting to the intended relocation;

(3) the history and quality of each parent's relationship with the child and specifically whether a parent has substantially failed or refused to exercise the parental responsibilities allocated to him or her under the parenting plan or allocation judgment;

(4) the educational opportunities for the child at the existing location and at the proposed new location;

(5) the presence or absence of extended family at the existing location and at the proposed new location;

(6) the anticipated impact of the relocation on the child;

(7) whether the court will be able to fashion a reasonable allocation of parental responsibilities between all parents if the relocation occurs;

(8) the wishes of the child, taking into account the child's maturity and ability to express reasoned and independent preferences as to relocation;

(9) possible arrangements for the exercise of parental responsibilities appropriate to the parents' resources and circumstances and the developmental level of the child;

(10) minimization of the impairment to a parent-child relationship caused by a parent's relocation; and

(11) any other relevant factors bearing on the child's best interests." 750 ILCS 5/609.2(g) (1)-(11) (West 2016).

¶ 18 The parent seeking to relocate bears the burden of proving the move would be in the child's best interest. *In re Parentage of P.D.*, 2017 IL App (2d) 170355, ¶ 30. We will not

reverse a trial court's determination as to whether relocation was in a child's best interest unless it was against the manifest weight of the evidence. *Id.*, ¶ 18.

¶ 19 In determining relocation was in B.B.'s best interest, the trial court made several findings. It considered that the net cost of living was important, Blodgett was earning less in pay but the bonuses evened out the lower salary, and he had lower expenses. He was also getting paid to have help his in-laws on their farm. The court noted Blodgett lacked a plan when he first petitioned to relocate but that he had a plan in place this time. The trial court surmised that Blodgett was not the money manager in his household, which explained why he was "unsure on the numbers." The court announced its familiarity with the Silvis schools and found the education factor neutral, as B.B. would be attending a new school regardless of court's decision. The court applauded Blodgett and Brinker for their ability to work together for B.B.'s benefit and anticipated that they would continue to cooperate in the future. While acknowledging the significant family B.B. had in the Quad Cities area, the court recognized "it is an electronic age" and that electronic means would allow B.B. to maintain contact.

¶ 20 Our conclusions after reviewing the record do not align with the trial court's findings. We begin with Blodgett's reason to move. The trial court was satisfied with Blodgett's plan to reduce his cost of living and better himself financially. Blodgett had previously told the court that he was going to participate in his in-laws' family business. That opportunity did not come about and Blodgett obtained employment in the same field in which he had worked in the Quad Cities. The Mississippi job, however, was for less pay. At his last job in the Quad Cities, Blodgett earned more than $23 per hour and could earn as much as $27 when substituting in a different position. The trial court found that with Blodgett's hourly pay of $11 plus the $6 per hour bonus pay would match his Quad Cities pay. In our view, a difference of $5 per hour and as much as $10

per hour is substantial and does not equate to similar pay, even factoring in cost of living differences between Mississippi and Illinois. Significantly, the trial court based its comparison on the assumption that Blodgett would be offered permanent employment. He testified that although the 90-day probationary period had passed and he remained a temporary employee, he was granted a 30-day extension because of his absences due to court attendance in this matter. Blodgett said he asked around about the bonus system to determine what it entailed. He did not provide any documentation supporting his claims of permanent employment or the bonus program. The employment documentation he did offer, his pay check stubs, revealed that he worked 32 hours per week, not the 40 hours he claimed.

¶ 21 The next factor concerns Brinker's reasons for opposing the relocation. She raised concerns about the difficulty for B.B. in transitioning from a school in Moline to a predominately white, Bible-based, small, rural, and private school in Mississippi. While Brinker was not opposed to religion or religious education, she was worried about B.B. attending a Christian school. B.B. had not been raised as a Baptist or in any faith and was not familiar with the Bible, on which the school's curriculum was based. Brinker also worried about separating B.B. from her extended family in the Quad Cities, including her half-siblings and her paternal grandmother, who regularly participated in B.B.'s life. The only family B.B. had in Mississippi was her father, stepmother and her step-grandparents. The move would require B.B. to shift from living with her mother and siblings to living with her father, stepmother, and her parents. Both Blodgett and Brinker testified to B.B.'s ability to adapt, however, as Brinker's objections indicate, B.B. would be relocating into a new family structure, housing, school, and culture. We consider Brinker's objections weigh against relocation.

¶ 22 As to the third factor, we note that Blodgett moved to Mississippi before he filed the second petition to relocate, leaving B.B. with Brinker. We also note Brinker was unable to exercise her parental responsibilities during the period she was in jail.

¶ 23 The fourth factor addresses educational opportunities. As discussed above, B.B.'s new school would be significantly different from the school she attended in Moline or the one she would attend in Silvis. Blodgett did not provide any ratings on the school's academics, although he testified that he heard they were good. There was no information presented regarding Silvis schools either, although the court noted it was familiar with them.

¶ 24 Next is the presence or absence of extended family at both locations. Both Blodgett's and Brinker's extended families lived in the Quad Cities area. Blodgett's in-laws were the only extended family B.B. had in Mississippi. In addition to being separated from Brinker's extended family, the relocation would cause B.B. to miss out on her regular visits with Blodgett's mother. Also weighting this factor against relocation was that, per Blodgett's testimony, he worked 8 hours each day and then worked an additional 2 to 3 hours on the farm. During that time, B.B. would be in the care of her step-grandmother and her stepmother, but not with her father.

¶ 25 The next factor, the impact on B.B., was discussed briefly above as objections to the move. The relocation involved moving her from Northwestern Illinois to rural Mississippi, to an unfamiliar home with unfamiliar people, and to a new school with an unfamiliar curriculum. In addition, although Blodgett testified he was interested in allowing B.B. to pursue extracurricular activities, he failed to offer any information on what activities would be available to her. He explained the school had some activities. Soccer, which B.B. played and enjoyed, was not listed as an option. In the Quad Cities, B.B. was involved tumbling and dance, in addition to soccer. The lack of possible activities for B.B. also negatively impacts her and weighs against relocation.

¶ 26 The trial court and the parties agreed they could arrange parenting time between them. Nevertheless, the move prevents Brinker from exercising her parental responsibilities on a daily and physical basis. She testified she would often have B.B. at the last minute for an activity that was not during her parenting time, opportunities she would no longer have if B.B. relocated. The electronic communication which the trial court found would allow B.B. to stay connected with Brinker and other family members cannot replace their lifelong regular participation in B.B.'s life.

¶ 27 In considering the record as a whole, we find that the relocation was not in B.B.'s best interest. The move necessitated tremendous changes for B.B. in every aspect of her life, requiring her to adjust to a new school, family structure, religion, and extracurricular activities. In return, Blodgett testified about the financial advantages for him, and ultimately B.B., and the trial court found that he demonstrated a "business plan." Blodgett's testimony, however, was lacking in facts and support. He had no documentation from his employer regarding his status and his information on pay and bonuses was vague. The numbers Blodgett offered in his financial affidavits and testimony were inconsistent, which the trial court dismissed on its assumption that Blodgett did not handle the household finances. Even were we to credit Blodgett's financial plan, we do not consider that it outweighs the other factors that negatively impact B.B. We find the trial court erred in finding that relocation was in B.B.'s best interest.

¶ 28 CONCLUSION

¶ 29 For the foregoing reasons, the judgment of the circuit court of Rock Island County is reversed and the cause remanded.

¶ 30 Reversed and remanded.

¶ 31 JUSTICE HOLDRIDGE, dissenting.

¶ 32 I respectfully dissent. A trial court's determination regarding the best interest of a child subject to a removal petition will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re. M.J.*, 314 Ill. App. 3d 649, 655 (2000). A trial court's decision is against the manifest weight of the evidence where the opposite conclusion is clearly apparent, or the determination is objectively unreasonable, arbitrary, or contrary to the facts established in the record. *Id*. It is well-settled that reviewing courts must grant great deference to a trial court's relocation decision, as the trial court is in the best position to consider all relevant facts and observe the credibility of the parties. *In re P.D.*, 2017 IL App. (2) 170355, ¶ 18. "There is a strong and compelling presumption in favor of the results reached by the trial court in a removal case." *In re Marriage of Dorfman*, 2011 Il App. (3d) 110099, ¶ 52. In the instant matter, when viewing the facts contained in the record under the appropriate standard of review, I would find that the decision reached by the trial court was not against the manifest weight of the evidence. I would, therefore, affirm the trial court's decision.