2014 IL App (4th) 130446-U

NO. 4-13-0446

FILED
February 21, 2014
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: MARRIAGE OF	)	Appeal from
GABRIELA BECKMAN,	)	Circuit Court of
Petitioner-Appellant,	)	McLean County
and	)	No. 13F28
ERNEST BECKMAN,	)	
Respondent-Appellee,	)	
	)	Honorable
	)	William A. Yoder,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Turner and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in denying petitioner's motion to dismiss respondent's motion to modify custody.

¶ 2 Petitioner, Gabriela Beckman, appeals from the trial court's April 2013 denial of her motion to dismiss respondent Ernest Beckman's petition to modify custody of their daughter, A.B., arguing the court should have transferred the case to Florida based on *forum non conveniens*. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In March 1996, Ernest and Gabriela were married. The couple had one child, A.B. (born January 15, 1998). In June 1999, a judgment of dissolution of marriage was entered in Madison County, Illinois. As part of that judgment, Gabriela was awarded sole custody of A.B.

Ernest currently pays $1,984 per month to Gabriela for child support. The court ordered those payments to continue to be deposited into a trust account pending the outcome of the custody case.

¶ 5 For approximately eight years prior to the instant case, A.B. lived with Gabriela in Florida. (The report of the Illinois guardian *ad litem* (GAL) suggests Gabriela never filed a petition for removal pursuant to section 207 of the Uniform Child-Custody Jurisdiction and Enforcement Act (Act) (750 ILCS 36/207 (West 2012)). Gabriela and A.B. briefly moved to California in 2012 so Gabriela could attend college, but they returned to Florida a short period of time later. (This move occurred within the six-month period prior to the filing of the petition for the order of protection.) At the time of this case, Gabriela resided with A.B. in Sanford, Florida (Seminole County). Ernest resides in Bloomington, Illinois (McLean County). Ernest had minimal contact with A.B. following her move to Florida.

¶ 6 On December 31, 2012, Gabriela was arrested for cruelty toward a child and aggravated abuse in Seminole County (case No. 13-12-CFA). According to the arrest report, during an argument Gabriela struck A.B., threw a glass at her, grabbed A.B.'s face and slammed her head against a wall, and threatened to kill A.B. while holding a knife.

¶ 7 On January, 3, 2013, the Florida Department of Family Services (DFS) opened an investigation and a GAL was appointed to represent A.B.'s interests. That same day, a Seminole County trial court held a shelter-care hearing and placed A.B.'s care and custody with DFS. DFS, in turn, placed A.B. in a foster home.

¶ 8 On January 10, 2013, DFS declined to proceed with a dependency hearing and the case was dismissed. According to the report prepared by Helan Ogar, the GAL appointed in

Illinois, at that point, A.B. had to be released to a parent. However, the underlying criminal case was still pending and contact between Gabriela and A.B. was prohibited. As a result, Myraida Ruiz, the case manager, and Jennifer Brumer, the case manager supervisor for the Children's Home Society in Florida, contacted Ernest and indicated A.B. would be released to him upon his arrival in Florida.

¶ 9 On January 11, 2013, the Children's Home Society released A.B. to Ernest's custody; they returned to Bloomington later that day.

¶ 10 On January 14, 2013, Ernest filed a petition in McLean County, Illinois, for an emergency order of protection against Gabriela, naming himself and A.B. as the protected parties. According to the petition, Gabriela had repeatedly contacted Ernest and stated she was "in Illinois, coming to take [A.B.] and have [Ernest] arrested." The petition further stated A.B. was "very scared" and did not want to have contact with Gabriela. The order issued that same day (Beckman v. Beckman, McLean County case No. 13-OP-14). The order was extended several times during the pendency of this case. The most recent extension reflected in the record was until July 12, 2013, when a hearing on a plenary order of protection was set to be held.

¶ 11 On January 15, 2013, Ernest filed a petition to modify custody (McLean County case No. 13-F-28). (The record does not suggest Ernest intended to seek custody of A.B. prior to this filing.)

¶ 12 On January 17, 2013, Seminole County prosecutors filed a "No Information" in case No. 13-12-CFA and dismissed the criminal charges against Gabriela. The Seminole County no-contact order was also dropped. However, the McLean County order of protection prohibited unsupervised contact between Gabriela and A.B. Thereafter, the State charged Gabriela with

violating the McLean County order of protection (McLean County case No. 13-CM-649). A no-contact order was entered in that case, barring Gabriela from contact with A.B.

¶ 13 On February 7, 2013, Gabriela filed a motion to dismiss Ernest's motion to modify custody, arguing, *inter alia*, the case should be transferred to Florida on *forum non conveniens* grounds.

¶ 14 On April 19, 2013, Gabriela filed a motion to dismiss the order of protection, arguing the trial court lacked subject-matter jurisdiction to issue the original order and any extensions were therefore void.

¶ 15 On April 26, 2013, the trial court held a hearing on Gabriela's motions to dismiss. During that hearing, Gabriela argued, *inter alia*, the case should be transferred to Florida because (1) the charges against her were dropped, (2) other than a short period of time when she lived in California, A.B. had lived in Florida for the last eight years, (3) travel to Illinois would be a hardship on Gabriela, (4) Ernest has superior financial resources, (5) all the evidence and witnesses are in Florida, and (6) the Seminole County court is already familiar with the abuse allegations. Ernest argued against transferring the case to Florida because (1) A.B., the primary witness in the abuse case, now resides in Illinois; (2) a substantial amount of evidence is present in Illinois; (3) the $1,984 monthly child support paid by Ernest would help cover Gabriela's cost of transportation to Illinois for any hearings; (4) Gabriela did not furnish a financial affidavit, so her income and assets are unknown; and (5) concern for A.B.'s safety favors Illinois retaining jurisdiction. Ernest noted if the court relinquished jurisdiction, it would lose the power to extend the order of protection and sole custody of A.B. would be returned to Gabriela. At the conclusion of the hearing, the court denied both of Gabriela's motions.

¶ 16 On May 31, 2013, Gabriela filed a petition for leave to appeal with this court pursuant to Illinois Supreme Court Rule 306(a)(3) (eff. Feb. 16, 2011).

¶ 17 On June 7, 2013, we allowed Gabriela's petition.

¶ 18 This appeal followed.

¶ 19 II. ANALYSIS

¶ 20 On appeal, Gabriela argues the trial court should have transferred the case to Florida pursuant to the inconvenient forum provision of the Act (750 ILCS 36/207 (West 2012)).

¶ 21 Gabriela also asks this court to extend our jurisdiction and take up the question of whether the trial court had subject-matter jurisdiction to issue the emergency order of protection (case No. 13-OP-14.). However, Gabriela's petition for leave was filed pursuant to Illinois Supreme Court Rule 306(a)(2) (eff. Feb. 16, 2011). Rule 306 provides for interlocutory appeals of certain orders with permission of the appellate court. Rule 306(a)(2) specifically states a party may petition for leave to appeal "an order of the circuit court allowing or denying a motion to dismiss on the grounds of *forum non conveniens*." Ill. S. Ct. R. 306(a)(2) (eff. Feb. 16, 2011). Moreover, the prayer for relief contained in Gabriela's petition states she is appealing only "the decision of the Circuit Court [of] McLean County, Illinois[,] entered in open court on April 26, 2013, that denied her Motion to Dismiss the Petition to Modify Custody filed by Ernest Beckman on *forum non conveniens* grounds." Thus, Gabriela petitioned this court for leave to appeal *only* the trial court's April 2013 denial of her motion to dismiss the petition to modify custody, and not its January 2013 ruling regarding the order of protection. As a result, we decline Gabriela's invitation to expand our jurisdiction and will instead address only the properly raised *forum non*

conveniens issue (case No. 13-F-28). For the reasons that follow, we find the trial court did not err in declining to transfer the case to Florida.

¶ 22 We note the parties and the Illinois GAL appear to agree the trial court had exclusive, continuing jurisdiction to modify the custody order pursuant to section 202 of the Act because a party to the action had remained in the state. 750 ILCS 36/202(a)(2) (West 2012) (a court of this State which has made an initial child-custody determination has exclusive, continuing jurisdiction until a court determines the child and the child's parents do not reside in the state). Here, Ernest remained in Illinois. Thus, the issue was whether the court should relinquish jurisdiction to Florida.

¶ 23 "*Forum non conveniens* is an equitable doctrine founded in considerations of fundamental fairness and the sensible and effective administration of justice." *Langenhorst v. Norfolk Southern Ry. Co.*, 219 Ill. 2d 430, 441, 848 N.E.2d 927, 934 (2006). The doctrine permits a trial court to transfer a case when "trial in another forum 'would better serve the ends of justice.' " *Langenhorst*, 219 Ill. 2d at 441, 848 N.E.2d at 934 (quoting *Vinson v. Allstate*, 144 Ill. 2d 306, 310, 579 N.E.2d 857, 859 (1991)). The party asking for the dismissal bears the burden to show the relevant factors strongly favor transfer. *Vivas v. Boeing Co.*, 392 Ill. App. 3d 644, 656, 911 N.E.2d 1057, 1068 (2009).

¶ 24 "A trial court is afforded considerable discretion in ruling on a *forum non conveniens* motion." *Langenhorst*, 219 Ill. 2d at 441, 848 N.E.2d at 934. An appellate court will reverse a trial court's decision only if the "defendants have shown that the circuit court abused its discretion in balancing the relevant factors." *Langenhorst*, 219 Ill. 2d at 442, 848 N.E.2d at 934. "A circuit court abuses its discretion in balancing the relevant factors only where no reasonable

person would take the view adopted by the circuit court." *Langenhorst*, 219 Ill. 2d at 442, 848 N.E.2d at 934. Thus, the issue is not what decision we would have reached, but rather whether the trial court found what no reasonable person could find.

¶ 25 Section 207 of the Act (750 ILCS 36/207 (West 2012)) provides the following regarding a *forum non conveniens* challenge:

> "(a) A court of this State which has jurisdiction under this Act to make a child-custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.
>
> (b) Before determining whether it is an inconvenient forum, a court of this State shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:
>
> (1) whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;
>
> (2) the length of time the child has resided outside this State;

(3) the distance between the court in this State and the court in the state that would assume jurisdiction;

(4) the relative financial circumstances of the parties;

(5) any agreement of the parties as to which state should assume jurisdiction;

(6) the nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

(7) the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

(8) the familiarity of the court of each state with the facts and issues in the pending litigation."

¶ 26 After hearing arguments from the parties, the trial court weighed the above factors as follows:

"The Court believes that there's substantial evidence in both Illinois and Florida as outlined in my previous comments, and if you go through the factors, as pretty much each party has done in this case, if you start at Number 2, the length of time the child has resided outside the state, certainly she has resided in Florida for a number of

years, and so that factor probably would favor jurisdiction—this Court surrendering jurisdiction to Florida.

The distance between the jurisdictions is a significant distance. I think that that factor doesn't favor either party, or it's unclear which party that factor would favor.

The relative financial circumstances of the parties, the Court has very limited information on that. Certainly the Court is aware of the amount of child support being paid by the Respondent to the Petitioner, which would indicate the Respondent's income to be significant, but it has very little, if any, evidence of income from the Petitioner.

The Court is going to assume that the Petitioner's income is not equal to that of the Respondent, but that particular factor, I think, is subject to equalization by court order, and so the Court is going to put very little weight on the financial circumstances of the parties as to which forum is convenient.

Number 5 indicates an agreement of the parties. Obviously we have none here. They each want the matter resolved in their local jurisdiction.

The nature and location of the evidence required to resolve the pending litigation, including testimony of the child. Until you get to that last proviso, the nature and location of the evidence required

to resolve the pending litigation, as I previously indicated, I believe that that is pretty equally split between the two jurisdictions.

When you include the testimony of the child, the child currently resides in Illinois. The parties have—Petitioner's counsel has proposed a rather interesting proposal to the Court that would, as he put forth, leave temporary custody, emergency custody, with the Respondent. Nonetheless the minor, under any scenario, if the Court were to follow that scenario, the child would remain in Illinois, pending further hearing on this matter and further litigation. As a result of that particular factor, I think that that allegation supports Illinois as a jurisdiction.

The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence, there is no easy answer to this one. I know what my court schedule is and I know that I have significant availability of court time in the upcoming weeks. This, as I've said before in this matter on the record, we're dealing with an issue that is of the utmost importance to both parties. There is nothing I can think of that is more important than a parent's relationship and time with their child, and I know that this Court can address these issues in a very timely fashion, a matter of weeks as opposed to a matter of months. I cannot obviously speak for the Florida court on that.

Factor 8 is the familiarity of the court of each state with the facts and issues in the pending litigation. I know that I have a firm familiarity with the facts and issues in this matter. I can only assume that the Florida court is equally knowledgeable and familiar with the facts and issues of pending litigation, although it's been a number of weeks, if not months, since there has been any action in the Florida matter.

* * *

So the majority of the factors that I've just gone over are equally divided, and so the one that I've not addressed yet is whether domestic violence has occurred and is likely to continue in the future and which state would best protect the parties and the child.

This is, as I mentioned earlier, one of those difficult situations where we have two parents that live in two different states. We have one parent who has had allegations of domestic violence perpetrated on the minor or directed at the minor, which is why we're in Illinois right now addressing both an Order of Protection and a modification of custody potentially.

The Court believes that the one factor in this situation that tips the scale is the best interests of the minor, the protection of the minor. We have two adults who are the parents of a minor, and we

have a young person that needs to be protected until the Court can make a determination.

This court believes that, based upon the foregoing factors, all of the evidence that has been presented, the consideration of each of these statutory factors, that Illinois is the best state to retain jurisdiction in this matter, protect the minor from potential domestic violence. For all these reasons, the Court is not going to decline to exercise its jurisdiction.

The motion to dismiss will be denied."

¶ 27 In this case, it is clear the trial court thoroughly weighed and considered the statutory factors. Although this is a close case, given the standard of review and the deference it affords the court's decision, we cannot reverse simply because we might have weighed the factors differently. Here, Gabriela argued all the evidence and witnesses are in Florida. However, section 111 of the Act provides for individuals living in another state to be deposed or to testify by telephone or other electronic means. See 750 ILCS 36/111 (a), (b) (West 2012). Moreover, the primary witness to the alleged abuse, A.B., is already in Illinois. Thus, if the case were transferred, *both* A.B. and Ernest would have to travel to Florida instead of just Gabriela to Illinois. Gabriela also argued traveling to Illinois would be a financial hardship. However, as the court noted, she did not submit a financial affidavit showing her assets or income.

¶ 28 While A.B. has resided primarily in Florida for the eight years preceding this case, the trial court found protecting A.B. from potential harm strongly favored Illinois retaining jurisdiction. (We note the court found the residency factor favored Gabriela.) "The mere fact

that the circuit court gave greater weight to some of the factors, that, in addition to bearing on the convenience of the forum, may also as an ancillary matter bear on the best interests of the child, does not constitute an abuse of discretion." *In re Marriage of Horgan*, 366 Ill. App. 3d 180, 186, 851 N.E.2d 209, 213-14 (2006) (noting the best interests of the child are always paramount in such proceedings).

¶ 29 While Gabriela argues no threat of harm existed because the charges against her were dropped, the Illinois GAL's report, which the trial court considered, opined "the domestic violence did occur." That opinion was based on the GAL's interview and observations of A.B. Moreover, the report pointed out "nothing is in place to protect the child if the case were returned to Florida." While the Seminole County prosecutor did not proceed with the charges against Gabriela, we have no way of knowing whether the fact A.B. was no longer residing with Gabriela in Florida contributed to that decision. We note, shortly after A.B. was living in Illinois, the Florida GAL petitioned to be removed from the case on those grounds.

¶ 30 Following our review of the record, we are unable to say a reasonable person could not have taken the view adopted by the trial court. Accordingly, we find the court did not abuse its discretion in denying Gabriela's motion.

¶ 31 III. CONCLUSION

¶ 32 For the reasons stated, we affirm the trial court's decision.

¶ 33 Affirmed.