2016 IL App (5th) 160028-U

NO. 5-16-0028

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
MICHAEL STEVENSON,	)	Williamson County.
	)	
Petitioner-Appellant,	)	
	)	
and	)	No. 13-D-321
	)	
AMY STEVENSON,	)	Honorable
	)	Brian D. Lewis,
Respondent-Appellee.	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Goldenhersh and Chapman concurred in the judgment.

ORDER

¶ 1 *Held*: The order of the circuit court is reversed and remanded with directions to strike paragraph 10 of the judgment of dissolution of marriage, and for the inclusion of a provision prohibiting Amy from allowing unsupervised interaction between Quentin Turner and the parties' two minor children.

¶ 2 This matter involves the dissolution of marriage and issues pertaining to the custody, visitation, and support of the parties' two daughters, Abagail S., born January 17, 2012, and Allyssa S., born June 24, 2013.

¶ 3 On November 22, 2013, the circuit court awarded Michael Stevenson (Michael) temporary custody of the parties' two daughters, at the time, 5 months and 22 months old. In addition, the court awarded Amy Stevenson (Amy) reasonable visitation at times and locations agreeable between the parties.

¶ 4 On July 18, 2014, the parties entered into a temporary agreement whereby Amy's visitation was to occur at the maternal grandmother's home in Herrin, Illinois, and that Amy was not allowed to remove the minor children from Illinois.

¶ 5 On February 10, 2015, the court revised its previous order to include supervised visitation between Amy and the minor children at the maternal grandmother's home.

¶ 6 On August 12 and August 14, 2015, the circuit court held a second-stage hearing regarding the custody determination of the parties' minor children.

¶ 7 On September 25, 2015, the circuit court ruled on the basis of the evidence, and the involvement of the paternal grandparents, that it was in the best interest of the minor children to grant Michael primary physical custody. Additionally, the court included the following provision:

> "Because of the unique facts particular to this case, should the current involvement with the grandparents alter, change or cease, for whatever reason, the Respondent is granted leave to file a Petition to Modify, should said change occur within two years of this ruling."

¶ 8 On December 21, 2015, the circuit court entered a judgment of dissolution of marriage and granted Michael sole primary physical custody of Abagail S. and Allyssa S. The order included the above provision, which allowed Amy leave to file a petition to

modify if any change to the paternal grandparents' current involvement occurred within two years of the judgment.[1] The court awarded Amy liberal visitation and detailed her weekend, weekday, holiday, and summer visitation schedules. Michael timely filed a notice of appeal on January 22, 2016.

¶ 9 Michael's first contention on appeal is that the circuit court abused its discretion by granting Amy the ability to file a petition to modify custody within two years, as it was not in compliance with section 610(a) of the Illinois Marriage and Dissolution of Marriage Act (Act), which provides in pertinent part:

> "(a) Unless by stipulation of the parties or except as provided in subsection (a-5), no motion to modify a custody judgment may be made earlier than 2 years after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe the child's present environment may endanger seriously his physical, mental, moral or emotional health.
>
> (a-5) A motion to modify a custody judgment may be made at any time by a party who has been informed of the existence of facts requiring notice to be given under Section 609.5." 750 ILCS 5/610(a), (a-5) (West 2012).[2]

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[1]To date, Amy has not filed a petition to modify.

[2]Effective January 1, 2016, section 610 of the Act was repealed. The new provisions pursuant to section 610.5 took effect on January 1, 2016 (750 ILCS 5/610.5 (West Supp. 2015)), before the appellant filed notice of appeal on January 22, 2016, and his brief on April 21, 2016. The appellant did not brief the new language in sections

¶ 10 The central question on appeal as it pertains to the first issue is the proper interpretation of section 610(a) of the Act. We conduct *de novo* review when resolving an issue of statutory construction. *Department of Public Aid ex rel. Davis v. Brewer*, 183 Ill. 2d 540, 554 (1998).

¶ 11 The circuit court's order would allow Amy leave to file a motion to modify the circuit court's judgment earlier than two years after its date. However, sections 610(a) and (a-5) of the Act establish a process for modification petitions filed within two years of the last custody judgment. *Brewer*, 183 Ill. 2d at 554. In particular, section 610(a) provides that absent agreement by the parties, "no motion to modify a custody judgment may be made earlier than 2 years after its date." 750 ILCS 5/610(a) (West 2012). However, under limited circumstances, the court "may" permit a motion for modification to be made "on the basis of affidavits that there is reason to believe the child's present environment may endanger seriously his or her physical, mental, moral or emotional health." 750 ILCS 5/610(a) (West 2012). Moreover, under section 610(a-5), a motion to modify earlier than two years is allowed where a party has been informed of the existence of facts pertaining to section 609.5 of the Act (750 ILCS 5/609.5 (West 2012)), which discusses the "notification of remarriage or residency with a sex offender." Based on the record, we find that the court's order granting leave to file a motion to modify earlier than

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610.5(a) and (b), and his arguments are framed solely in terms of the law that was in effect at the time of the circuit court's ruling. We, too, cite the old version of the law herein.

two years after the date failed to adhere to those requirements pursuant to the Act. In particular, section 610(a) has been construed to operate as a "safety valve" for emergency situations, allowing consideration of a petition for modification of child custody where a child's welfare is at serious risk, only serving a function for those cases which satisfy the initial procedural prerequisite that there is "reason to believe" the child's present environment may seriously endanger him or her. *Brewer*, 183 Ill. 2d at 555. Section 610(a) does not provide the court authority to grant leave to modify custody within two years prior to a motion to modify or prior to the submission of affidavits or allegations of serious endangerment. Thus, we find that the court erred in granting Amy leave to file a petition to modify within two years of the judgment, if she so wished, without first submitting affidavits which establish a "reason to believe" that the children's present environment seriously endangered their physical, mental, moral, or emotional health.

¶ 12 Next, Michael argues that the circuit court abused its discretion by failing to make a specific finding and then including a provision prohibiting Amy from having the minor children in the presence of Quentin Turner (Turner), a convicted sex offender. An appeal regarding a court's determination of child custody will not be disturbed unless it constitutes an abuse of discretion. *Shinall v. Carter*, 2012 IL App (3d) 110302, ¶ 30. Based on the record, ample evidence supports Michael's concerns that harm could possibly come to his minor daughters in the presence of Turner−the man who forcibly raped Amy, was incarcerated for 10 years following a statutory rape conviction, and is the biological father of Amy's oldest child, Anthony. Although it appears on the record

that Turner resides in Michigan,[3] Amy testified that she desired to have custody of her daughters to have more freedom to leave the state with her children to travel to Michigan to visit family at her discretion. Amy testified that shortly after Turner was released from prison, she allowed him to visit her home and spend time with Anthony, as well as unsupervised visits between Turner and Anthony outside the home. Additionally, on December 26, 2013, Amy testified that she invited Turner to spend the day with her family, which included Anthony, as well as Abagail S. and Allyssa S., while the minor children visited Michigan for the week. Moreover, Amy testified that she became friends with Turner following his release from prison.

¶ 13 Based on the record, we find that the circuit court abused its discretion in failing to include a provision in the court's judgment prohibiting Amy from leaving the minor children alone with Turner without her direct supervision. First, the record does not support whether Amy has in fact received a court order which would allow Turner supervised or unsupervised visitation with Anthony. We find this fact troubling, as it tends to show Amy's inability to make sound judgments for not only herself, but her three minor children, given the severity of Turner's crime against Amy when she was 13 years old.

¶ 14 Next, although Turner lives in Michigan, Amy testified that she wishes to remain living in Illinois while Anthony finishes high school, but to have the freedom to take her

[3]The record provides that Amy moved to Michigan in November 2013, after Turner, then a Golden Corral manager, offered her a job as a waitress.

children to Michigan to visit. Given that Turner is the father of Anthony and that Amy wishes to frequent Michigan, it is very likely that Turner would have interactions with Abagail S. and Allyssa S., potentially subjecting the minor children to an unsafe environment. Moreover, we find it important to note that "[i]t is unlawful for a parent or guardian of a minor to knowingly leave that minor in the custody or control of a child sex offender, or allow the child sex offender unsupervised access to the minor." 720 ILCS 5/12-21.6-5(b) (West 2012). Thus, we recognize that there is a possibility that Amy could, some day in the future, leave her daughters alone with Turner. The record supports this conclusion given the fact that Amy testified to her cordial and friendly relationship with Turner, and that she did not express concern with Turner's presence around her daughters. Therefore, we find it is in the best interest of the parties' two minor daughters to have the judgment of dissolution of marriage modified to include a provision prohibiting Amy from leaving the two minor children with Turner, unsupervised.

¶ 15 For the foregoing reasons, we reverse and remand with directions for the circuit court to strike paragraph 10 of the judgment of dissolution of marriage, and for the inclusion of a provision prohibiting Amy from allowing unsupervised interaction between Turner and the two minor children.

¶ 16 Reversed and remanded with directions.