2022 IL App (4th) 210619-U

NO. 4-21-0619

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
March 11, 2022
Carla Bender
4th District Appellate
Court, IL

BROOKE CAGWIN,	)	Appeal from
Petitioner-Appellee,	)	Circuit Court of
v.	)	Sangamon County
SEAN SHEA,	)	No. 21F279
Respondent-Appellant.	)	
	)	Honorable
	)	Colleen R. Lawless,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Knecht and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding the trial court did not abuse its discretion in denying respondent's emergency petition for return of the minor child.

¶ 2 Respondent, Sean Shea, appeals from an interlocutory order of the trial court denying his emergency petition for return of the minor child pursuant to section 502 of the Illinois Parentage Act of 2015 (Parentage Act) (750 ILCS 46/502 (West 2020)). In the petition, Sean sought injunctive relief ordering petitioner, Brooke Cagwin, to return the parties' minor child from Wisconsin to Illinois.

¶ 3 On appeal, Sean argues the trial court erred in denying his emergency petition for return of the minor child. Specifically, Sean asserts the court abused its discretion when it (1) relied solely on factors set forth in section 502 of the Parentage Act (750 ILCS 46/502 (West

2020)) and ignored the common law injunction factors and (2) conflated the issues of injunction and removal. We affirm.

¶ 4 I. BACKGROUND

¶ 5 On August 31, 2021, Brooke filed a petition to establish parentage. In the petition, Brooke alleged Sean was the father of the minor child, B.S. (born February 20, 2017). Brooke also filed a proposed parenting plan wherein she listed her address as Wisconsin.

¶ 6 On September 8, 2021, Sean filed an emergency petition for return of the minor child. In the petition, Sean asserted that he and Brooke lived together with B.S. until they separated in March 2021. Sean alleged that on or about September 1, 2021, he found out Brooke had relocated with B.S. to Beloit, Wisconsin. Sean sought injunctive relief ordering Brooke to return B.S. to Illinois.

¶ 7 On September 20, 2021, Brooke filed a motion to relocate and answer to the emergency petition for return of the minor child. On September 30, 2021, Sean filed a petition for temporary relief asking the trial court to set a parenting time schedule for the parties that was consistent with the best interests of the minor child.

¶ 8 On October 4, 2021, the trial court held a hearing on Sean's emergency petition to return the minor child and his petition for temporary relief. During the hearing, both Sean and Brooke offered testimony and exhibits containing text messages sent between the parties, which were admitted into evidence.

¶ 9 Brooke and Sean lived together with B.S. in Springfield, Illinois, until March 2021. Brooke testified that when the parties lived together, she served as the primary caregiver for B.S. and worked two part-time jobs. Sean worked and provided for the family. Brooke testified Sean played with B.S. and occasionally helped with other tasks related to B.S. Sean

testified he helped with B.S.'s basic needs and often cared for B.S. on his own when Brooke worked part-time. Sean took B.S. to some therapy appointments and attended some of B.S.'s doctor appointments with Brooke.

¶ 10 Both Sean and Brooke testified that while they lived together, two incidents occurred where Sean left B.S. home alone without supervision. Brooke testified the first incident occurred when Sean had to leave to umpire a baseball game and she was still at work. Sean sent Brooke a text message saying he left B.S. sleeping in the home. As to the second incident, Brooke testified she observed from the security camera at the parties' residence that Sean left for work while she was on her way home from work, leaving B.S. alone. Sean testified that on the first occasion, he saw Brooke's vehicle coming down the street before he left and on the second occasion, he knew Brooke was on her way home.

¶ 11 In March 2021, Brooke sent Sean a text message telling him she wanted to end their relationship. Brooke and B.S. then moved in with her mother in New Berlin, Illinois. When Brooke's mother moved to Georgia, Brooke and B.S. moved in with her sister in Loami, Illinois. At that time, Brooke worked part-time for Cagwin Cattle Services and cleaned offices. Brooke also babysat her niece. Brooke stated that, because she made her own schedule, she was able to both care for B.S. and work.

¶ 12 Sean maintained full-time employment in rental property management and construction. Sean typically worked Monday through Friday, 8 a.m. to 4 p.m., and occasional weekends. Sean also worked as a baseball umpire. Sean's umpiring schedule was set a few months in advance and only took place during baseball season. Sean's games were generally scheduled Monday through Friday starting at 4:30 p.m. and weekends anywhere from 10 a.m. to 8 p.m.

¶ 13 After Brooke and B.S. moved out of the parties' shared residence, neither party went to court to establish a parenting time schedule. Sean testified Brooke assured him they would work out a visitation schedule. The parties tried to set up a schedule where Sean spent time with B.S. about two or three times a week. Brooke testified, "We were trying to agree on a schedule Tuesdays and Thursdays, yes." At the time, Sean's umpiring schedule limited his visitation with B.S. Sean testified he was "fairly happy" with the amount of time he was able to see B.S. Sean also testified the parties planned to come up with a more consistent schedule including overnights, after B.S. started school. The parties usually communicated via text message. Brooke also testified Sean gave her money for B.S. from time to time.

¶ 14 On April 19, 2021, Brooke sent Sean a text message advising him she was currently dating someone. Brooke told Sean "[B.S.] is your business, so anything and everything involving him you should know about" and that she wanted to be upfront and honest about everything and everyone involved. On June 6, 2021, Brooke notified Sean that she planned to take B.S. up north to introduce him to her boyfriend, Eric Lee. Brooke testified she started dating Eric in February 2021.

¶ 15 Brooke testified that in June or July 2021, she suggested the parties try to set up a more consistent schedule because the inconsistent schedule was starting to cause tension. Around the end of August 2021, Brooke and B.S. moved in with Eric in Wisconsin. On August 24, 2021, after not receiving a response from Brooke for four days, Sean texted Brooke, "Can I have [B.S.] today or do I need to call a lawyer and drag you to court?" The parties argued, and Sean expressed that he thought they had an agreed schedule for him to see B.S. on Tuesdays and Thursdays. Sean then asked Brooke if, as they had previously discussed, B.S. was in preschool

in New Berlin. He also informed her that New Berlin had started the day before. Brooke responded, "No shit he is in New Berlin."

¶ 16 On August 30, 2021, Sean texted Brooke and asked if he could pick B.S. up from school. In response, Brooke informed Sean that she and B.S. had officially moved to Wisconsin and B.S. would be starting school in Wisconsin that week. In explaining her relocation to Sean, Brooke expressed her frustration with Illinois schools, including the mask mandate due to COVID-19. Brooke testified B.S. suffers from sensory processing disorder which made wearing a mask almost impossible for him. As to the Wisconsin school, Brooke told Sean, "The teachers and program [are] amazing and I think he will really benefit from it." Sean expressed his disapproval of the relocation.

¶ 17 Brooke testified she lied to Sean about B.S.'s school enrollment because she was "a little worried" and "wasn't quite sure how [she] was going to tell him that [they] were moving yet." Brooke cited an order of protection issued against Sean by an ex-girlfriend as her reason for worrying about his reaction.

¶ 18 In September 2021, Sean told Brooke he planned to retain an attorney. From August 28, 2021, until September 25, 2021, Brooke refused to allow Sean to see B.S., despite Sean's repeated requests. Brooke testified she was concerned that without a court order in place, Sean might take B.S. and refuse to return him. Sean testified that since the separation in March 2021, he had no overnight visits with B.S.

¶ 19 Brooke testified that although she and B.S. lived with Eric in Wisconsin, that was not her main reason for moving to Wisconsin. Brooke cited the lack of a mask mandate as an additional reason for moving to Wisconsin. Brooke acknowledged never speaking with New Berlin schools about a mask exemption for B.S. After the move to Wisconsin, Brooke

maintained her employment with Cagwin Cattle Services and found additional part-time employment in Wisconsin. Brooke testified that since moving, her emotional health had improved and she was "a lot happier, less stress." Brooke stated, "I know that I have someone that is going to come home on a nightly basis and be there and help me with parenting stuff." Brooke also testified that B.S. was "doing well all around."

¶ 20 After hearing the evidence and closing arguments, the trial court denied Sean's emergency petition to return the minor child and set up a temporary parenting time schedule which afforded Sean "every other weekend extended time on Saturdays as well as Sundays for, we're going to have three weekends that he does that, and then we will convert it to overnights." In ruling on Sean's petition, the court stated,

> "I've had the opportunity to review the evidence as well as assess the credibility of the witnesses. We're set here on the motion for injunctive relief pursuant to section 502. I have considered the factors and the evidence presented, the first factor being the extent of previous involvement with the child by the party seeking to stop or enjoin the relocation or to have the minor child returned to the state of Illinois.
>
> The evidence that came in was that very clearly mom was the primary caregiver. Dad was not as involved and had limited hours of parenting time per month since the end of March of 2021 when the parties separated. His schedule consisted mostly of a couple of hours per night on Tuesday and Thursday or some extended time over the weekend, but it did not include any

overnights. It similarly did not include any consistent schedule. That was based on his work and other employment opportunities.

I also considered the involvement of dad and what his caretaking functions were in the past. It's important to note that I believe [Brooke] when she stated that dad left the child on two separate occasions. I understand that [Sean] testified. I did not find him to be entirely credible. He did admit, to his credibility, I guess, that he did leave the minor child on two separate occasions."

¶ 21 Further, the court found parentage was established where both parties admitted Sean was the legal and biological father of the child. As to the impact on the financial, physical, and emotional health of the party being enjoined or the party being ordered to return the child to the state, the court found "the evidence presented suggest[ed] that mom as well as the child, they [were] doing well in Beloit." Ultimately, the court stated, "I do not believe the factors support and the evidence when considering that in light of the factors support returning the minor child to this state."

¶ 22 This appeal followed.

¶ 23 II. ANALYSIS

¶ 24 On appeal, Sean argues the trial court erred in denying his emergency petition for return of the minor child. In his opening brief, Sean asserts the trial court abused its discretion when it (1) relied solely on factors set forth in section 502 of the Parentage Act (750 ILCS 46/502 (West 2020)) and ignored the common law injunction factors pursuant to section 11-102

of the Code of Civil Procedure (Civil Code) (735 ILCS 5/11-102 (West 2020)) and (2) conflated the issues of injunction and removal.

¶ 25 Brooke disagrees and argues (1) Sean forfeited his argument regarding the common law injunction factors when he failed to raise the issue before the trial court; (2) assuming, *arguendo*, Sean did not forfeit his argument, Sean failed to establish the common law injunction factors by a preponderance of the evidence; (3) the trial court did not abuse its discretion in determining the factors set forth in section 502 of the Parentage Act did not warrant injunctive relief; and (4) the trial court did not conflate the issues of injunction and removal. In response to Brooke's contention of forfeiture, Sean, in his reply brief, argues he did not forfeit this issue where the common law factors and the factors in the Parentage Act are "one and the same" and should be construed together as though they are one statute.

¶ 26 As a threshold matter, we find Sean did not forfeit his argument asserting the trial court failed to consider common law factors for injunctive relief. While during the hearing Sean argued he was entitled to injunctive relief pursuant to the Parentage Act, the Parentage Act incorporates the Civil Code. Specifically, section 502(b) of the Parentage Act states, "A *** preliminary injunction under this Act shall be governed by the relevant provisions of Part 1 of Article XI of the Code of Civil Procedure." 750 ILCS 46/502(b) (West 2020). Thus, where the Parentage Act, under which Sean sought relief, specifically directs the trial court to consider relevant portions of the Civil Code (735 ILCS 5/11-102 (West 2020)), when determining whether injunctive relief is appropriate, we decline to find forfeiture. We now turn to whether the trial court considered the relevant factors in denying Sean's emergency petition for return of the minor child.

¶ 27 A. Injunctive Relief

¶ 28 "A preliminary injunction is issued to preserve the *status quo* until the trial judge considers the merits of plaintiff's claim." *Weitekamp v. Lane*, 250 Ill. App. 3d 1017, 1022, 620 N.E.2d 454, 458 (1993). To obtain a preliminary injunction, the party seeking the injunction "must establish by a preponderance of the evidence that (1) he has a certain and clearly ascertainable right which needs protection; (2) he has no adequate remedy at law; (3) irreparable injury will occur without the injunction; and (4) he has a reasonable likelihood of success on the merits." *Id.* "The failure to establish any one of these elements requires the denial of the preliminary injunction." *Yellow Cab Co., Inc. v. Production Workers Union of Chicago & Vicinity, Local 707*, 92 Ill. App. 3d 355, 356, 416 N.E.2d 48, 50 (1980).

¶ 29 "In addition, the trial court must balance the equities or relative inconvenience to the parties and determine thereby whether a greater burden will be imposed on the defendant by granting the injunction than on the plaintiff by denying it." *In re Marriage of Schwartz*, 131 Ill. App. 3d 351, 354, 475 N.E.2d 1077, 1080 (1985). The grant or denial of injunctive relief is reviewed for an abuse of discretion. *In re Marriage of Joerger*, 221 Ill. App. 3d 400, 405, 581 N.E.2d 1219, 1223-24 (1991). A reviewing court will only disturb the trial court's decision if its findings were contrary to the manifest weight of the evidence. *Id.*

¶ 30 In *Fisher v. Waldrop*, 221 Ill. 2d 102, 117, 849 N.E.2d 334, 342 (2006), the Illinois Supreme Court determined a noncustodial parent seeking an injunction pursuant to section 13.5 of the Parentage Act (750 ILCS 45/13.5 (West 2004) (current version at 750 ILCS 46/502(a) (West 2020)), bears the burden of establishing that he "has no adequate remedy at law and will suffer irreparable harm without injunctive relief [citation], paying specific but not exclusive attention to the factors listed in section 13.5 of the Parentage Act (750 ILCS 45/13.5(a) (West 2004) [((current version at 750 ILCS 46/502(a) (West 2020))])."

¶ 31 Section 502(a) of the Parentage Act (750 ILCS 46/502(a) (West 2020)), provides,

> "When deciding whether to enjoin relocation of a child, or to order a party to return the child to this State, the court shall consider factors including, but not limited to:
>
> (1) the extent of previous involvement with the child by the party seeking to enjoin relocation or to have the absent party return the child to this State;
>
> (2) the likelihood that parentage will be established; and
>
> (3) the impact on the financial, physical, and emotional health of the party being enjoined from relocating the child or the party being ordered to return the child to this State."

¶ 32 Here, when addressing Sean's right to injunctive relief, the trial court, along with the attorneys for both parties, mentioned only the factors in the Parentage Act. However, we find that does not mean the trial court was not mindful of the common law injunction factors and their application when considering injunctive relief pursuant to the Parentage Act. Section 502 of the Parentage Act specifically states a trial court "shall consider factors including, but not limited to," the factors in the Parentage Act. It further directs that any preliminary injunctive relief provided under the Parentage Act shall be governed by the relevant provisions of part 1 of article XI of the Civil Code (735 ILCS 5/11-102 (West 2020)). 750 ILCS 46/502(a), (b) (West 2020). Where the court and counsel specifically referenced the Parentage Act, it is not a stretch to believe the court was aware that any preliminary injunction under the Parentage Act shall be governed by the relevant provisions of part 1 of article XI of the Civil Code. Ultimately, "a trial

court is presumed to know the law and apply it properly." *People v. Phillips*, 392 Ill. App. 3d 243, 265, 911 N.E.2d 462, 483 (2009).

¶ 33 In determining whether the trial court properly denied Sean injunctive relief, we find instructive the framework in *Fisher*, 221 Ill. 2d at 117, where the supreme court discussed the need to consider the factors in the Parentage Act and also specifically referenced two common law factors. Here, we review whether Sean (1) was entitled to injunctive relief under the factors in the Parentage Act, (2) established he had no adequate remedy at law, and (3) established he would suffer irreparable harm without injunctive relief.

¶ 34 1. *Parentage Act*

¶ 35 In addition to the instruction provided by *Fisher*, we note that, when we look to the factors articulated in the Parentage Act, they reflect a consideration of the first and fourth common law factors. Where the first and fourth common law factors state generally what the court must consider, the factors in the Parentage Act refine and narrow that consideration to the unique circumstances surrounding a request to enter an injunction requiring return of a minor child to Illinois. Under the first and fourth common law factors, the petitioner must establish he has a certain and clearly ascertainable right in need of protection and that he has a reasonable likelihood of success on the merits. Both whether Sean has a clearly ascertainable right in need of protection and his likelihood of success on the merits are informed by the court's consideration of the extent of Sean's previous involvement with B.S. and the likelihood that parentage will be established and whether the petition to relocate will be allowed. Thus, we turn to the factors outlined in the Parentage Act.

¶ 36 a. First Factor of the Parentage Act

¶ 37 The first factor under the Parentage Act requires the trial court to consider the previous involvement with the child of the party seeking return of the child. 750 ILCS 46/502(a)(1) (West 2020). As previously indicated, we believe this factor under the Parentage Act speaks to the common law factors of whether Sean has a clearly ascertainable right in need of protection and his likelihood of success on the merits.

¶ 38 Sean argues his previous involvement with B.S. stretched back nearly five years, long before the parties separated. Specifically, Sean provides that prior to the parties' separation, he had a daily presence in B.S.'s life where he provided care for B.S. while Brooke worked, occasionally took B.S. to appointments, and played with B.S. After the parties' separation, Sean continued his presence in B.S.'s life where he spent time with B.S. on a weekly basis and provided Brooke and B.S. with financial support. Moreover, Sean argues he did not need to be B.S.'s primary caregiver to show adequate previous involvement.

¶ 39 While the trial court found Brooke to be B.S.'s primary caregiver, the court also took into consideration both Brooke's and Sean's testimony as to Sean's previous involvement with B.S. Specifically, the court addressed Sean's involvement prior to and after the parties' separation. Since the parties' separation, the court noted Sean's limited hours of parenting time and lack of overnight visits, finding such was mainly due to his work and other employment opportunities. The court also considered Sean's involvement with B.S. prior to the separation. The court addressed the two instances where Sean left B.S. home alone without supervision. The court found Sean's testimony about the incidents was not "entirely credible."

¶ 40 We find the trial court sufficiently considered Sean's previous involvement with B.S. where it considered both Sean's involvement prior to and after the parties' separation. Even though Sean established he maintained a presence in B.S.'s life before and after the parties'

separation, the court, when considering the evidence overall, properly assessed his level of involvement. Based on the record, the trial court did not abuse its discretion when it determined Sean's involvement was limited and weighed this factor in Brooke's favor.

¶ 41 b. Second Factor of the Parentage Act

¶ 42 The second factor requires the trial court to consider the likelihood that parentage will be established. 750 ILCS 46/502(a)(2) (West 2020). Again, this factor refines and narrows the common law factors of whether Sean has a clearly ascertainable right in need of protection and his likelihood of success on the merits. As recognized by the court, Sean's parentage is not in dispute. Here, the court recognized that where parentage was uncontested, this factor weighed in Sean's favor regarding Sean's likelihood of success on the merits and how such a determination afforded Sean certain rights. Thus, the court properly weighed this factor.

¶ 43 c. Third Factor of the Parentage Act

¶ 44 The third factor under the Parentage Act requires the trial court to consider the impact on the financial, physical, and emotional health of the party being enjoined from relocating the child or the party being ordered to return the child to this State. 750 ILCS 46/502(a)(3) (West 2020).

¶ 45 Sean argues the trial court's assessment that Brooke's financial, physical, and emotional health would be negatively impacted by returning to Illinois is arbitrary and against the manifest weight of the evidence. Specifically, Sean asserts Brooke's desire to live with her boyfriend does not outweigh the fact that Brooke still had a place to live, stable employment, and education for B.S. available to her if she returned to Illinois. Moreover, Sean argues the trial court abused its discretion when it only weighed Brooke's interests when it should have weighed Brooke's interests against his interests. Sean's argument relies on the premise that the court

must balance the equities when analyzing the impact on the financial, physical, and emotional health of the party being ordered to return the child.

¶ 46 Brooke argues the trial court's finding that the third factor weighed in her favor was not against the manifest weight of the evidence and thus was not an abuse of discretion. Brooke testified that since moving to Wisconsin her emotional health had improved and she was "a lot happier, less stress." Brooke noted the daily help provided by her new partner contributed to her improved emotional and mental health. Brooke also testified B.S. was "doing well all around." Further, Brooke provided she was able to maintain her employment with Cagwin Cattle Services and found additional part-time work in Wisconsin.

¶ 47 Brooke argues, to the extent the trial court should have considered this factor while also balancing the equities, Sean's position that the inconvenience to him far outweighed the inconvenience to Brooke was not supported where the trial court set up a temporary parenting time schedule awarding Sean more parenting time than he enjoyed before the court's order. Brooke asserts that, when comparing the inconvenience to both parties, the inconvenience to her would be greater than to Sean.

¶ 48 Here, the court properly weighed this factor. We find the trial court sufficiently considered, as required by the Parentage Act, the financial, physical, and emotional health impacts to Brooke in determining whether to grant Sean's preliminary injunction. The court specifically noted the evidence showed Brooke and B.S. were doing well in Wisconsin. Further, the record shows the court also considered the potential effect the relocation would have on Sean where it set up a temporary parenting time schedule awarding Sean parenting time every other weekend with the goal of moving to overnight visits. Accordingly, we find the trial court did not

abuse its discretion where it analyzed the relevant factors under section 502(a) of the Parentage Act and determined they weighed in Brooke's favor.

¶ 49 2. *No Adequate Remedy at Law*

¶ 50 Sean next argues that, while it is true a full determination of B.S.'s best interests will be undertaken when Brooke's motion to relocate is decided, he has no adequate remedy at law other than an injunction to halt the relocation of his child. "A legal remedy is inadequate where damages are difficult to calculate at the time of the hearing." *Marriage of Joerger*, 221 Ill. App. 3d at 406.

¶ 51 Brooke argues Sean has an adequate remedy at law besides injunctive relief where he can still challenge her petition to relocate. Moreover, Brooke argues Sean's right as a parent to the companionship, care, custody, and management of B.S. was not impacted by the court denying injunctive relief because the court set up a temporary parenting time schedule awarding Sean regular and consistent parenting time with B.S. until further issues were resolved.

¶ 52 Based on the record, we find Sean failed to prove he had no adequate remedy at law. Even with the denial of injunctive relief, Sean still has the opportunity to challenge Brooke's petition to relocate. He also has the ability to continue his presence in B.S.'s life. Specifically, the trial court set up a parenting time schedule that awarded Sean consistent parenting time that eventually incorporated overnight visits. This dispute does not involve a situation where it is difficult for the trial court to fashion a remedy to rectify any damage caused by prior restrictions on Sean's parenting time with B.S. Thus, we find Sean failed to establish by a preponderance of the evidence that he has no adequate remedy at law.

¶ 53 3. *Irreparable Injury*

¶ 54 Last, Sean asserts he would suffer irreparable harm without the preliminary injunction. Sean argues his injury is irreparable as he is being denied the right to continue being a regular and consistent part of B.S.'s life. Further, Sean argues that, in denying the preliminary injunction, the trial court effectively ruled in favor of Brooke on the issue of relocation and prejudiced him in any future proceedings where he might challenge relocation or seek an expansion of the temporary parenting time schedule. Sean argues the court should have granted the preliminary injunction to maintain the status quo until further proceedings. Moreover, Sean argues the court's failure to require Brooke to remain in Illinois until there could be a fair and full hearing on relocation unjustly rewarded Brooke for relocating to Wisconsin with B.S. without informing Sean.

¶ 55 Brooke argues Sean failed to establish he will suffer irreparable injury without a preliminary injunction. Brooke asserts Sean did not suffer any injury where, in denying Sean injunctive relief, the trial court awarded Sean more regular and consistent parenting time than he had when the parties lived in Illinois. Further, Brooke argues Sean's assertion that he will be prejudiced in future proceedings by the trial court's denial of injunctive relief is mere speculation. Last, Brooke argues any benefit conferred on her in moving to Wisconsin is not in and of itself an injury to Sean.

¶ 56 We find Sean failed to establish by a preponderance of the evidence that he would suffer irreparable injury without the injunction. We agree with Brooke that the trial court in denying Sean a preliminary injunction did not deny him the right to be an integral part of B.S.'s life where the court entered an order awarding Sean regular and consistent parenting time. The temporary parenting time schedule ensured Sean remained a consistent presence in B.S.'s life

where it awarded Sean parenting time with B.S. every other weekend with eventual overnight visits.

¶ 57 Moreover, we disagree with Sean's assertion that the court's denial of his petition for injunctive relief will prejudice him in future proceedings. Sean's contention that the trial court implicitly ruled that the status quo was B.S. living in Wisconsin with Brooke, thereby already deciding the issue of relocation in Brooke's favor before a hearing on Brooke's motion to relocate, is unfounded. The denial of Sean's emergency petition for injunctive relief did not determine the outcome of Brooke's motion to relocate.

¶ 58 "[T]he injunction hearing is not the equivalent of the best-interests hearing, and a circuit court's order denying an injunction is not tantamount to an order granting leave to remove." *Fisher*, 221 Ill. 2d at 119. Here, the trial court reviewed the evidence presented in conjunction with the factors in the Parentage Act to determine Sean was not entitled to injunctive relief. The court did not make a best interests determination as to B.S. Thus, Sean still has an opportunity to fully litigate the best interests of B.S. when the court hears Brooke's motion to relocate. Moreover, the supreme court has held, "It is not impossible that a circuit court could conclude that a noncustodial parent was not entitled to an injunction but also ultimately determine that the custodial parent's proposed removal of the child would not be in the child's best interests." *Id.*

¶ 59 Further, we disagree with Sean where he argues the trial court's denial of injunctive relief unjustly rewards Brooke for moving to Wisconsin. In support of his argument Sean cites *In re Marriage of Prusak*, 2020 IL App (3d) 190688, ¶ 39, 156 N.E.3d 529, where the reviewing court determined a parent should not be allowed to benefit from a preemptive decision

to relocate without establishing that such relocation is in the parent's and the children's best interests.

¶ 60 In *Prusak*, the parties divorced in 2012, and at that time, the trial court allocated parenting time and responsibility. *Prusak*, 2020 IL App (3d) 190688, ¶ 3. In 2019, the mother filed a motion to relocate with the parties' children to Indiana. *Id.* ¶ 4. Subsequent to filing her motion to relocate, the mother moved out of state without the children. *Id.* ¶ 5. After initially denying the motion to relocate, the trial court on reconsideration granted the motion. *Id.* ¶ 24. However, the appellate court reversed the trial court's decision, finding the mother should not be allowed to benefit from her preemptive decision to move when she failed to establish relocating was in her or the children's best interests. *Id.* ¶ 39. We find *Prusak* distinguishable.

¶ 61 Here, as previously stated, Sean's emergency petition for the return of the minor child was before the trial court, not Brooke's motion to relocate. Therefore, Brooke was not required to provide a best interests analysis like in *Prusak*, and the court was not required to make a best interests determination. Also, in reversing the trial court in *Prusak*, the appellate court found the trial court improperly relied on proffered but unproven allegations. We have no such circumstances here. Moreover, the trial court did not just consider Brooke's interests in denying injunctive relief. The court looked at both Brooke's interests and Sean's previous involvement with B.S. The court also ordered a temporary parenting time schedule awarding Sean parenting time pending determination on relocation. Based on the evidence, the trial court properly found Sean would not suffer irreparable injury without the injunction.

¶ 62 Accordingly, we find the trial court did not abuse its discretion when it denied Sean's emergency petition for return of the minor child.

¶ 63 B. Conflation of Injunction and Removal

¶ 64 Last, Sean argues the trial court conflated the issues of injunction and removal. Specifically, Sean asserts that at the hearing on his emergency petition to return the minor child, the court gave almost exclusive attention to the best interests of Brooke and B.S. while failing to consider his right to injunctive relief. In support of his argument, Sean cites to *Fisher*, 221 Ill. 2d at 122, where the supreme court remanded because the trial court conflated the issues of injunction and removal.

¶ 65 In *Fisher*, the father filed a motion for a preliminary injunction pursuant to section 13.5 of the Parentage Act (750 ILCS 45/13.5(a) (West 2004) (current version at 750 ILCS 46/502(a) (West 2020))). In ruling on the father's injunction, the trial court "focused almost exclusively on the child's best interests." *Id.* at 119. The supreme court found "[t]he court essentially proceeded as if [the mother] had filed for leave to remove, but with the critical difference of placing the burden on [the father] of proving that removal would not be in [the minor's] best interests." *Id.* Ultimately, the supreme court remanded, stating, "[I]t appears that the circuit court conflated the issues of injunction and removal." *Id.* at 122. We find *Fisher* distinguishable.

¶ 66 Here, the trial court based its denial of Sean's petition for injunctive relief on the evidence presented at the hearing in conjunction with the appropriate factors. The trial court did not perform a best interests analysis nor did it rule on Brooke's motion for relocation. In reaching its decision, the court considered both Sean's prior involvement in B.S.'s life and Sean's future involvement in B.S.'s life where it ordered a temporary parenting time schedule awarding Sean consistent parenting time. Based on the record, it is apparent the trial court only ruled on Sean's requests for injunctive and temporary relief.

¶ 67 Accordingly, we find the trial court did not abuse its discretion where it did not conflate the issues of injunction and removal.

¶ 68 III. CONCLUSION

¶ 69 For the foregoing reasons, we affirm the trial court's judgment.

¶ 70 Affirmed.