

2012 IL App (2d) 121081-U
No. 2-12-1081
Order filed February 4, 2013

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
YVONNE J. GLAB, n/k/a YVONNE)	of McHenry County.
NORTON,)	
)	
Petitioner-Counter Respondent)	
Appellant,)	
)	
and)	No. 10-DV-1047
)	
TIMOTHY W. GLAB,)	
)	Honorable
Respondent-Counter Petitioner)	Gerald M. Zopp,
Appellee.)	Judge, Presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices Jorgensen and Schostok concurred in the judgment.

ORDER

Held: Judgment of the circuit court awarding sole custody of the parties' three minor children to the father affirmed where there was sufficient evidence to support its finding.

¶ 1 Petitioner-counter respondent, Yvonne J. Glab, n/k/a Yvonne Norton, appeals from the judgment of the circuit court of McHenry County awarding sole custody of the parties' three minor children to respondent-counter petitioner, Timothy W. Glab. Yvonne contends on appeal that the

decision to award Timothy sole custody of the children was against the manifest weight of the evidence. We affirm.

¶ 2

BACKGROUND

¶ 3 We have thoroughly read the record and because the parties are familiar with the facts we will recite only those facts which we find relevant to the disposition of the issue on appeal. Yvonne and Timothy were married on February 14, 2003. They have three children, Meier, who was born on August 2, 2001, Myles, who was born on July 30, 2003, and River, who was born on January 11, 2006. Yvonne has two other children from a prior relationship: Aarika, who was age 25 at the time of the proceedings, and Cody, who was in high school at the time of the proceedings. Yvonne filed a petition for dissolution of marriage on September 29, 2010. Timothy counter-petitioned for dissolution of marriage on November 15, 2010. The trial court awarded sole custody of all three children to Timothy, subject to reasonable visitation by Yvonne.

¶ 4

ANALYSIS

¶ 5 The sole issue on appeal is whether the trial court's award of custody of the children to Timothy should be reversed because a finding that such custody was in the children's best interest was against the manifest weight of the evidence.

¶ 6 "One of the most difficult tasks of trial courts is determining which parent in a failed marriage will have custody of the children." *In re Marriage of Wright*, 212 Ill. App. 3d 392, 395 (1991). Section 602(a) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/602(a) (West 2010)), requires the trial judge to determine custody in accordance with the best interests of the child. That is the court's paramount consideration in child custody cases. *In re Marriage of Petraitis*, 263 Ill. App. 3d 1022, 1030 (1993). While the best interests of the child is

clearly the applicable standard for the trial court, that standard is “illusive and difficult to define, making it subject to varying interpretations and opinions.” *Id.* at 1030.

¶ 7 The Act, however, does list several factors which the judge is to consider in determining the best interests of the child. They are, in relevant part: “(1) the wishes of the child’s parent or parents as to his custody; (2) the wishes of the child as to his custodian; (3) the interaction and interrelationship of the child with his parent or parents, his siblings and any other person who may significantly affect the child’s best interests; (4) the child’s adjustment to his home, school and community; (5) the mental and physical health of all individuals involved; (6) the physical violence or threat of physical violence by the child’s potential custodian, whether directed against the child or directed against another person; (7) the occurrence of ongoing abuse ***; (8) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child, and (9) whether one of the parents is a sex offender.” 750 ILCS 5/602(a) (West 2010). The factors enumerated in section 602(a) are not exclusive. *In re Marriage of Martins*, 269 Ill. App. 3d 380, 388-89 (1995).

¶ 8 A decision regarding child custody will not be disturbed on appeal unless it is against the manifest weight of the evidence or manifestly unjust. *Petrattis*, 263 Ill. App. 3d at 1031. A judgment is against the manifest weight of the evidence when the opposite conclusion is apparent or when the findings of the trial court are unreasonable, arbitrary, or not based on the evidence. *In re Marriage of Karonis*, 296 Ill. App. 3d 86, 88 (1998). In determining whether a judgment is contrary to the manifest weight of the evidence, the reviewing court views the evidence in the light most favorable to the appellee. *In re Marriage of Divelbiss*, 308 Ill. App. 3d 198, 206 (1999). “Where the evidence permits multiple reasonable inferences, the reviewing court will accept those

inferences that support the court's order." *Id.* at 206-07. The judgment will not be disturbed on appeal "if there is any basis to support the trial court's findings." *Id.* at 207. There is a strong and compelling presumption in favor of the trial court's determination. *In re Marriage of Diehl*, 221 Ill. App. 3d 410, 424 (1991). The trial court is in the best position to decide the custody issue because the judge is the one who observes the parties involved and the demeanor of the witnesses and hears and resolves conflicts in the testimony. *Karonis*, 296 Ill. App. 3d at 88. A custody determination necessarily depends on the temperaments, personalities, and capabilities of the parties involved, and the trial court is in the best position to evaluate those traits. *In re Marriage of Wolff*, 355 Ill. App. 3d 403, 413 (2005).

¶9 We initially note that the trial court did not provide specific findings of fact. While the better course would have been to provide specific findings of fact and would have assisted this court on review, "the trial court is not required to make specific findings for each factor as long as the record reflects that evidence of the factors was considered by the trial court before making its decisions." See *In re Marriage of Diehl*, 221 Ill. App. 3d 410, 424 (1991). Here, the court stated in its written judgment for dissolution that it considered all of the evidence in light of the factors set forth in section 602(a) of the Act in awarding sole custody of the children to Timothy, and the record indicates that the trial court took into consideration all the relevant factors under section 602(a) in determining whether the best interests of the children would be served by awarding custody to Timothy.

¶10 Yvonne acknowledges that both she and Timothy are fit parents who clearly love their children and are involved in their lives. Both participate in the children's academic and spiritual life, attend the children's extra-curricular activities, and are concerned about their health. Additionally,

Yvonne states that both parties have family who interact with and have relationships with the children. That said, Yvonne asserts that the scale should tip in her favor because she has been the primary caretaker of the children during the marriage and during the dissolution proceedings. She maintains that Illinois case law suggests that courts must place great weight in favor of the parent who had the primary responsibility over the care of the children during the marriage. In support, she cites *In re Marriage of Lovejoy*, 84 Ill. App. 3d 53 (1980); *In re Custody of Switalla*, 87 Ill. App. 3d 168 (1980); and *In re Marriage of Bush*, 170 Ill. App. 3d 523 (1988).

¶ 11 There is not a presumption in favor of the existing custodian when making an initial custody determination, as there is in modification of custody cases. *In re Marriage of Hefer*, 282 Ill. App. 3d 73, 78 (1996). While it may be an important factor, it is but one of the factors the trial court weighs in awarding custody. The amount of weight to be given to each of the custody factors is a decision to be made by the trial court, not the reviewing court, and the reviewing court will not reweigh the applicable factors on appeal. See *In re Marriage of Pfeiffer*, 237 Ill. App. 3d 510, 513 (1992).

¶ 12 In *Switalla*, the manifest weight of the evidence supported the trial court's finding to award custody to the mother who had the primary responsibility over the children because she had primary care of the children's school work, speech therapy (all of the children had speech impediments which have been successfully treated), cultural development (she played word games with the children and enrolled them in music lessons), and medical treatment (one of the children was being treated for partial hearing loss). *Switalla*, 87 Ill. App. 3d at 174. In *Lovejoy*, the evidence supported the trial court's decision in part because the three daughters, two of whom were adolescents, would benefit from being with their mother. *Lovejoy*, 84 Ill. App. 3d at 56. In *Bush*, the mother was the primary

caretaker. However, we found the trial court's award of custody to the mother was against the manifest weight of evidence because the record overwhelmingly supported the father's evidence of his extensive involvement and close relationship with the parties' son. *Bush*, 170 Ill. App. 3d at 529. Moreover, while it was not a deciding factor in our decision to reverse the trial court's decision, we observed that the mother's intent to engage in full-time employment coupled with raising her family in a household of no fewer than five, and often times as many as nine, children being present would leave her little time to devote to the couple's son. Plus, our examination of the record revealed that, in rendering its decision, the trial court relied heavily on the social worker's conclusion that the child's need for maternal nurturing had not ended. We believed that the trial court's reliance on this factor was an improper imposition of the "tender years" doctrine, which was no longer a judicial presumption. *Id.* at 529-30. Here, the trial court was aware that the children had resided with Yvonne and weighed this evidence against the other applicable factors in making its determination. We will not reweigh the applicable factors on appeal.

¶ 13 Yvonne contends that the trial judge should have accepted the recommendation of the guardian *ad litem* (GAL) that it was in the children's best interest to award custody to her. The GAL's recommendations are not controlling. *Prince v. Herrera*, 261 Ill. App. 3d 606, 615 (1994). A recommendation concerning the custody of a child is just that, a recommendation. *Id.* at 615-16. A trial court is free to evaluate the evidence presented and accept or reject the recommendation in whole or in part. *Id.* at 616. There is evidence in the record to support the belief that the GAL's opinion was unpersuasive. Other than interviewing the parties and the children, the GAL interviewed only Aarika, Yvonne's adult daughter, and he did not interview the paternal grandparents or Julie, Timothy's sister, as Timothy had requested. The GAL did not investigate the

concerns of Timothy and his sister-in-law about the mental health of Yvonne and whether it adversely affected her parenting. See *In re Marriage of Bates*, 212 Ill. 2d 489, 514-15 (2004) (the proper weight given the report of child's representative may be influenced by many factors, including the existence of any bias or tendency to favor one gender of parent over other, and cross-examination is likely to affect court's assessment of worth of recommendations).

¶ 14 As to the interaction and interrelationship of the children with the parents and the willingness of each parent to facilitate and encourage a close and continuing relationship between the other parent and the children, Yvonne contends that Timothy belittled her efforts at being a homemaker and blamed her for parenting issues. She further points out that Timothy's family's testimony about her parenting of the children "was even more negative" during the trial. Yvonne acknowledges that the children's adjustment to their home, school, and the community of McHenry favors Timothy, as he was awarded the marital home and plans to continue to reside there. However, she maintains that this factor should not overwhelmingly favor him because evidence introduced at trial indicated that Timothy may lose the marital home due to financial problems and, at the hearing to reduce to writing the various oral findings the court had made regarding the judgment of dissolution, Yvonne told the trial court that she was moving into a new home a few blocks from the marital home.

¶ 15 Our careful review of the record reveals that this was a bitterly fought divorce, with conflicting testimony, and allegations of parental unfitness on each side. However, there is sufficient evidence to support the trial court's decision. Yvonne testified at trial that she was living in a three-bedroom apartment in Lakemoor and that she intended to move, for the second time in two years, to Crystal Lake. On the other hand, Timothy was awarded the marital home where the children had lived the last five to six years. The home was close to the maternal grandparents, the children would

be attending the same schools, and would be involved in the same extra-curricular activities as during the marriage. Evidence bearing on the stability of the children's environment is obviously relevant. See *Petratis*, 263 Ill. App. 3d at 1034 (a child's adjustment to his school and community is only one of the factors which the judge must consider in determining custody according to the best interest of the child). The trial court was aware that Timothy had financial problems with the marital residence and awarded Timothy custody of the children regardless. In rendering its custody determination, we can infer that the trial court weighed the continuity and stability of staying in the marital home that the children had lived in most of their lives against the uncertainty and instability of moving to a new home if Yvonne was awarded custody and moved to Crystal Lake. During the trial, the court did not have any evidence that Yvonne was moving to McHenry, as she mentioned this to the court at the hearing to reduce to writing the various oral findings the court had made regarding the judgment of dissolution, including custody, after the proofs were closed, and Yvonne never requested that the trial court reopen the case in order to allow her to introduce evidence of her move. We note, however, that custody rulings are never completely "final" and Yvonne could petition the court in the future for a change in custody if circumstances warrant it. See *In re Marriage of Smithson*, 407 Ill. App. 3d 597, 600 (2011) (modification of custody order is warranted only if there has been a change of circumstances and modification is necessary to serve best interests of child).

¶ 16 In sum, we do not find that the trial court failed to properly evaluate the evidence. Its job was to weigh all the evidence bearing on the children's best interest to determine which parent would probably provide the better environment. The judge, having considered the statutory factors in light of the evidence presented and having possessed a superior vantage point for evaluating the

temperaments, personalities, and capabilities of the parents and the children, decided that it was in the children's best interest that custody be awarded to Timothy. We cannot say that the trial court's decision to award custody of the children to their father was against the manifest weight of the evidence.

¶ 17

CONCLUSION

¶ 18 For the foregoing reasons, the judgment of the circuit court of McHenry County is affirmed.

¶ 19 Affirmed.