

NOTICE  
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2011 IL App (4th) 110238-U

Filed 7/18/11

NO. 4-11-0238

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: the Marriage of	)	Appeal from
MICHAEL C. BANDY,	)	Circuit Court of
Petitioner-Appellee,	)	Greene County
and	)	No. 10D40
JENNIFER L. BANDY, n/k/a JENNIFER L. POTTER,	)	
Respondent-Appellant.	)	Honorable
	)	James W. Day,
	)	Judge Presiding.

JUSTICE McCULLOUGH delivered the judgment of the court.  
Justices Steigmann and Pope concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The trial court’s decision to award sole custody of the child to the father was not against the manifest weight of the evidence or an abuse of the court’s discretion.
- ¶ 2 On February 15, 2011, the trial court entered an order granting petitioner, Michael C. Bandy, and respondent, Jennifer L. Bandy, now known as Jennifer L. Potter, a dissolution of marriage. The court also awarded sole custody of their minor son, Charles L. Bandy (September 10, 2009), to Michael subject to Jennifer's visitation rights. Jennifer appeals, claiming the court's decision granting custody to Michael was against the manifest weight of the evidence and/or an abuse of its discretion. We affirm.
- ¶ 3 The parties are aware of the facts of this case and the evidence presented to the trial court during their divorce proceedings. We discuss that evidence only to the extent necessary to put the parties' arguments in context.

¶ 4 On June 3, 2010, Michael filed a petition for dissolution of marriage with the trial court. On June 16, 2010, the court entered an order granting Jennifer temporary custody of Charles. The court heard testimony on one day in December 2010 and one day in January 2011. In pertinent part, the testimony showed the following.

¶ 5 The couple had been married less than one year when Michael filed his petition for dissolution of marriage. Both Michael and Jennifer were unemployed. Michael claimed he was unable to work due to injuries from a 2002 car accident, and he was awaiting a decision on a disability claim he had filed. Michael testified his disabilities included 75% hearing loss in one ear and 85% in the other, a shattered hip, a loss of cartilage in both knees, and injuries to both shoulders, one of which was surgically repaired while the other still required surgery. Jennifer was diagnosed with attention deficit hyperactivity disorder (ADHD) as a child, but she no longer took medicine to control it. Michael lived with his mother, while Jennifer had recently moved out of her mother's house. Michael claimed Jennifer was living with another man, but Jennifer denied that accusation. The court allowed Michael to present evidence from Jennifer's Facebook account that tended to show she was romantically involved with another man.

¶ 6 Michael's testimony focused on Jennifer's alleged treatment of Charles and her daughter from a previous relationship, her interaction with Michael, and her interaction with family members. According to Michael, when he would pick Charles up for visitations, the child was consistently skinnier than when he had last seen him, and he was often dirty. He went so far as to weigh Charles at the time he picked him up and then again before returning him to Jennifer. Michael claimed Charles would gain weight on the weekends he was with him but would lose it all in the roughly two weeks between visitations. Michael felt Jennifer was not feeding Charles

adequately. Michael also claimed their son would frequently have unexplained injuries or sores, such as scratches, bites, and bald spots. In addition, Michael claimed Jennifer did not allow him access to Charles' medical card, which meant he could not take the child to the hospital in the event he was sick, and she intentionally failed to inform him of the time and place of Charles' medical appointments, so he could not attend. Michael also claimed Jennifer had a cell phone but refused to give him the number, instead insisting he contact her through her mother's home phone. Jennifer denied she had a cell phone but evidence was introduced by Michael to the contrary.

¶ 7 Michael further cited incidents where Jennifer would lose her temper and yell at or hit her daughter, though he never claimed she had struck Charles. Michael testified he thought these outbursts might be due to Jennifer's ADHD, but no corroborating testimony was offered. He also claimed to be the primary caregiver in the household when they were together, and Jennifer was not interested in taking care of Charles or her own daughter most of the time. He claimed to have a very good relationship with both children, which he argued showed that he was a responsible and loving parent.

¶ 8 Finally, Michael claimed Jennifer's family was dysfunctional, and it would not be healthy for their child to be around her family members. Michael claimed Jennifer's family members were constantly arguing amongst themselves and were frequently involved in lawsuits filed against each other. In fact, Michael testified that while he and Jennifer were married, Jennifer's mother had sued for custody of Jennifer's daughter but was unsuccessful. In addition, Jennifer's twin sister was diagnosed with schizophrenia, which made Michael wary of Charles being left alone in her care. Michael offered the testimony of others in support of some of his

claims. Jennifer denied all of Michael's accusations pertaining to her and offered rebuttal testimony from other parties as well. Specifically, Jennifer offered testimony from a teacher in a home-based-education program, who stated Charles appeared healthy and well cared for on her visits.

¶ 9 Jennifer's testimony focused on Michael's disability, as well as his alleged failure to cooperate with her in parenting Charles both before and after their separation. Jennifer's first argument was, if Michael was too disabled to work then he was too disabled to care for a young child. She pointed to the amount of activity involved in raising a child and claimed Michael was physically incapable of providing adequate care due to his injuries. Jennifer claimed Michael would frequently have to rest when interacting with Charles and would refuse to care for him, claiming he was too sore. This meant Jennifer would often be solely responsible for caring for Charles, as well as her daughter.

¶ 10 Jennifer also claimed Michael's actions showed he was unwilling to cooperate with her in raising Charles. According to Jennifer, Michael filed a police report claiming she had kidnapped their child, though he knew Charles was at her mother's house when he made the complaint. Jennifer also claimed Michael maliciously filed a complaint with the Department of Children and Family Services and a petition for a temporary restraining order against her. She claimed all of these actions were taken by Michael simply to harass her and showed he was uncooperative and did not support her relationship with Charles. Michael admitted filing the complaints and the restraining order; however, he denied any of his actions were intended to harass Jennifer.

¶ 11 Finally, Jennifer argued, in determining the best interests of Charles, the trial court

had to consider her custody of the child under the temporary custody order as a factor in favor of her maintaining custody. Jennifer claimed Charles was accustomed to being cared for by her, had a half-sister he was attached to, and was enrolled in a Head Start program in the community. In her opinion, all of these factors showed Charles was comfortable with her and should not be uprooted. Jennifer offered third-party testimony in support of some of her claims. Michael denied Jennifer's claims against him and offered rebuttal testimony.

¶ 12 On February 15, 2011, the trial court issued a written judgment awarding custody of Charles to Michael, subject to Jennifer's visitation rights. The court stated it had considered all the relevant factors under section 602(a) of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/602(a) (West 2010)) in reaching its decision. Though the court did not offer an in-depth discussion of the factors, it specifically stated Michael "is disabled, though not to the extent that he is unable to care for the child of the parties." That was the only specific finding of the court pertaining to the factors listed under section 602(a) of the Dissolution Act.

¶ 13 On appeal, Jennifer argues the trial court failed to properly consider all of the relevant statutory factors contained in section 602(a) of the Dissolution Act. We disagree.

¶ 14 Child custody determinations must be made in accordance with the child's best interests. 750 ILCS 5/602(a) (West 2010). The trial court must consider all relevant factors, including:

"(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 interest;

(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 or repeated abuse \*\*\*, whether directed against the child or directed against another person;

(8) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child;

(9) whether one of the parents is a sex offender; and

(10) the terms of a parent's military family-care plan that a parent must complete before deployment if a parent is a member of the United States Armed Forces who is being deployed. " 750 ILCS 5/602(a) (West 2010).

¶ 15

The trial court's best-interest findings are entitled to great deference because it is

in a better position than a reviewing court "to observe the temperaments and personalities of the parties and assess the credibility of witnesses." *In re Marriage of Stopher*, 328 Ill. App. 3d 1037, 1041, 767 N.E.2d 925, 928-29 (2002). "A reviewing court will not overturn a trial court's custody determination unless it is against the manifest weight of the evidence, is manifestly unjust, or results from a clear abuse of discretion." *Stopher*, 328 Ill. App. 3d at 1041, 767 N.E.2d at 929.

¶ 16 A trial court abuses its discretion only when it " 'acted arbitrarily without conscientious judgment or, in view of all the circumstances, exceeded the bounds of reason and ignored recognized principles of law so that substantial injustice resulted.' " *In re Marriage of Marsh*, 343 Ill. App. 3d 1235, 1240, 799 N.E.2d 1037, 1041 (2003) (quoting *In re Marriage of Suriano*, 324 Ill. App. 3d 839, 846, 756 N.E.2d 382, 388 (2001)). Also, "[f]indings are against the manifest weight of the evidence when the correctness of an opposite finding is clearly evident." *Marsh*, 343 Ill. App. 3d at 1241, 799 N.E.2d at 1042. We will affirm the trial court if there is any basis to support the court's judgment. *In re Marriage of Divelbiss*, 308 Ill. App. 3d 198, 207, 719 N.E.2d 375, 381 (1999).

¶ 17 In the instant case, the trial court heard conflicting testimony relevant to several of the factors listed under section 602(a) of the Dissolution Act. The court was in the best position to assess the credibility of the witnesses as well as the testimony and evidence presented by both sides. Though the court did not discuss the statutory factors it considered in depth, it did state that it had taken them into account to the extent they were applicable. Further, the court explicitly found Michael was not disabled to the extent he was unable to care for the child; therefore, we do not find Jennifer's main argument persuasive.

¶ 18 Jennifer's arguments on appeal require one to take the point of view that her testimony was true and conflicting testimony was false. We decline the invitation to do so. The trial court could reasonably have found the testimony of Michael and his witnesses more persuasive than that of Jennifer and her witnesses. The court may also have not found Jennifer to be a credible witness, as some evidence in the record suggests she was not entirely truthful in some of her testimony. What is clear, is the court, after considering all the evidence and all the factors, found it would be in the child's best interest for Michael to have sole custody.

¶ 19 Jennifer has failed to show the trial court's decision to award custody of Charles to Michael was against the manifest weight of the evidence or was an abuse of discretion. Thus, we affirm the trial court's judgment.

¶ 20 Affirmed.