

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2014 IL App (3d) 130666-U

Order filed February 7, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

MOLLY ANN MONGE,)	Appeal from the Circuit Court
)	of the 10 th Judicial Circuit
Plaintiff/Counter-Defendant)	Peoria County, Illinois
Appellee,)	
v.)	Appeal No. 3-13-0666
)	Circuit No. 10-F-1029
TIMOTHY M. COURI,)	
)	Honorable,
Defendant/Counter-Plaintiff)	Katherine S. Gorman,
Appellant.)	Judge, Presiding.

PRESIDING JUSTICE LYTTON delivered the judgment of the court
Justice Schmidt concurred in the judgment.
Justice Holdridge dissented.

ORDER

- ¶ 1 *Held:* Sufficient evidence supported trial court's joint parenting order awarding residential custody to the mother.
- ¶ 2 Defendant, Timothy M. Couri (Tim), appeals from an order of the trial court awarding residential custody of his three-year-old daughter, Madelyn, to plaintiff, Molly Monge, and reducing his parenting time to every other weekend. We affirm.

¶ 3 Tim and Molly are the parents of Madelyn Monge, born on March 8, 2010. The couple was involved in a four-year relationship but never married. Both Tim and Molly were raised in Peoria. Tim now lives in Dunlap, near Peoria, and has been employed by Caterpillar for sixteen years. Molly lives in Chicago. At the time of Madelyn's birth, Molly was employed by the Chicago Mercantile Exchange (CME Group) as a financial analyst.

¶ 4 In November 2010, Molly filed a petition to establish the existence of a father/child relationship requesting sole custody of Madelyn, with reasonable rights of visitation in Tim. On April 14, 2011, Tim filed a counter-petition, seeking full custody and child support. The trial court set the matter for trial and entered a stipulated order for an investigation for child custody appointing Dr. Ted Chapin to conduct interviews and submit a report to the parties.

¶ 5 On May 5, 2012, Molly married Timothy Schleeter (Schleeter), and the couple moved to Glen Ellyn, a suburb of Chicago. On August 6, 2012, Tim filed a motion for protective order. In the motion, he alleged that since Molly's marriage to Schleeter, Molly had "consistently advised Madelyn that Plaintiff's husband's name is 'Daddy T.' " Tim alleged that when Molly called to speak with Madelyn on the weeks that she did not have visitation, she asked Madelyn if she wanted to talk to 'Daddy T.' Tim further alleged that on July 29, 2012, during his visitation, Madelyn told Tim "not once but several times" that he was not her daddy and that 'Daddy T' was her daddy. The trial court granted the motion and entered an order in which the parties agreed that Molly could refer to her husband as 'Daddy T.'" and that she would refer to Tim as Madelyn's father.

¶ 6 On January 30, 2013, Tim filed a petition for criminal contempt in which he alleged that during a previous week that Molly had visitation with Madelyn, Molly devised a plan to "circumvent this Court's authority for the sole purpose of not having to return Madelyn to

Peoria." Tim alleged that in an attempt to keep Madelyn, Molly exposed Madelyn to a strong antibiotic medication, "which she did not need thereby compromising her immune system for some future medical necessity." Tim claimed that Molly's conduct was a willful and wanton disregard for the safety of Madelyn and that she should be held in contempt of court. The petition remained pending until trial.

¶ 7 The trial court conducted a four-day custody trial beginning on July 8, 2013. The testimony revealed that since Madelyn's birth, or shortly thereafter, the parties alternated custodial weeks with her. Each parent had Madelyn for seven consecutive days, with the exchange on Sundays at 3 p.m.

¶ 8 Tim worked primarily from home as a dealer strategy representative. During the weeks he had Madelyn, a nanny assisted Tim with household chores and caring for Madelyn. Molly continued to work for the CME Group until she married Schleeter. She then quit her job to stay at home with Madelyn.

¶ 9 Both parents testified about the favorable living conditions in their homes, the interaction Madelyn has with their families and the close relationships she shares with her grandparents, as well as their intentions for Madelyn to attend pre-school in Glen Ellyn or Peoria in September. They also testified that Madelyn is very active in both communities in ballet, swimming, library time, play dates and church activities. Several witnesses testified to Madelyn's close and loving relationship with Molly and with Tim.

¶ 10 Tim was first called as an adverse witness. He testified that he had refused to provide Molly with the name of the nanny/assistant who had been working in his house since April of 2013 because he did not believe it was part of her job description "to deal with all of this drama." He also admitted that he prepared more than 600 pages of detailed spreadsheets and notes

regarding Madelyn's activities with him, including the amount of time and the percentage of time in each location. Examples from his notes for one day included:

"Woke up at 7:00 o'clock, singing good morning to her, and then morning prayers, changed her diaper, fed her at 7:35 a.m."

"Prepared dinner at 4:50, stories from 5:20 to 5:32.

"Played on the floor with toys between 6:08 and 6:12."

¶ 11 Tim also testified that Molly physically attacked him six times. He testified to one specific event that happened in the waiting room of a doctor's office where Molly forcefully took papers out of his hand in Madelyn's presence. He admitted that he did not call law enforcement for help after any of the attacks.

¶ 12 Molly testified that she married Schleeter in 2012. Shortly after the wedding, they moved from her condo in Chicago to a five-bedroom home in Glen Ellyn. According to Molly's testimony, the Glen Ellyn community has a nice park district with activities for children and the school Madelyn would attend is just around the corner from her house. Molly denied allegations that she struck Tim. She stated that Tim never filed any pleadings related to the alleged attacks.

¶ 13 Molly further testified that in January 2013, during her week to have Madelyn, she noticed that Madelyn had a cold and persistent cough. She sent a text message to Tim on Tuesday and another one to him on Thursday expressing her concern. Madelyn's condition continued to worsen. On Saturday, Molly took Madelyn to a prompt care clinic. A doctor examined her and diagnosed her with a viral infection, an upper respiratory infection and a middle ear infection. The doctor prescribed medication, including antibiotics and steroids, and indicated that she would like to see Madelyn in two days. That same day, Molly sent Tim a text explaining to him that the doctor wanted to see Molly in two days and stating that she would like

to keep her for the appointment. She testified that she offered Tim makeup days the following week. On Sunday, January 13, Tim told Molly that his mother was going to be in Chicago and would pick up Madelyn. Tim's mother arrived at Molly's home around 3:45 that afternoon and took Madelyn back to Peoria.

¶ 14 Tim testified that when Madelyn arrived home that evening he had her examined by his brother and physician, Dr. Dan Couri, to determine if she was ill. She was again examined the next day by Tim's cousin and pediatrician, Dr. Gene Couri. Both doctors testified at trial. Dr. Dan Couri testified that he examined Madelyn at approximately 7 p.m. or 8 p.m. on Sunday, January 13. His examination revealed that Madelyn had a viral upper respiratory infection. He noted that Madelyn had a small amount of fluid behind one ear and some nasal congestion. Dr. Gene Couri testified that he examined Madelyn the next day and found "no evidence of any infection, with the exception that she had fluid in her ear, which could have been a recent viral infection, but it did not look infected at the time I saw her."

¶ 15 In Tim's case in chief, he testified that he almost always honored Molly's requests to spend time with Madelyn when Madelyn was staying at his house; he honored her requests "95 out of 102 times." He further testified that Molly's father had an open invitation to come to his house to spend time with Madelyn and, according to Tim, he visited at least once a week.

¶ 16 Dr. Chapin examined the parties and Madelyn and Schleeter. He issued an initial report on August 29, 2011, and two revised reports, dated January 16, 2012, and June 6, 2013. In all three reports, Dr. Chapin recommended that the one week on and one week off arrangement remain in place until Madelyn reached kindergarten. At trial, Dr. Chapin stated that his recommendations for custody had not changed; that it was still his opinion that the best situation

for Madelyn was to be raised with two involved parents making decisions in her life, and he continued to recommend split physical custody.

¶ 17 In Dr. Chapin's June 2013 report, he found that Tim had no significant psychological problems and that his treatment with his therapist was successfully addressing issues related to his interpersonally imposing behavior and his "tedious focus on detail." By contrast, he found that Molly had "some tendencies for problems with obsessive-compulsiveness," as well as interpersonal sensitivity and phobias. He concluded that Molly's individual counseling appeared insufficient because it did not address her histrionic characteristics and aggressive tendencies. In support of his assessment, Dr. Chapin noted that Molly's counselor delayed his response to Dr. Chapin's request for a telephone interview until he could speak with Molly.

¶ 18 Dr. Chapin believed that Madelyn was well adjusted and had no behavior problems. He noted that she was generally positive and had a strong attachment to both parents, as well as an attachment to Schleeter. Dr. Chapin was concerned about Madelyn voicing negative characterizations of her father. He was also concerned that Molly and Schleeter did not seem to differentiate between the role of a stepfather and a father. He opined that this lack of awareness, which he attributed more to naivety than to intentional interference, could undermine Tim's relationship with Madelyn. He noted that it was also problematic that the three adults in Madelyn's life (Tim, Molly and Schleeter) had not been able to establish a more amicable and supportive relationship with each other. He opined that given Madelyn's impressionable age she needed as much time with both parents as possible. He concluded that her immediate and long term interests were best served by the establishment of joint legal custody, with continuation of every other week parenting schedule. Dr. Chapin noted that when Madelyn became school aged, the parenting schedule should be modified to accommodate her needs.

¶ 19 Mr. Roger Mrazek was Molly's therapist from September 2011 until September 2012. In his evidence deposition, he described his sessions with Molly as constructive. He offered the opinion that during counseling Molly was open, candid, verbal and very responsive. He did not qualify Molly as defensive or argumentative. Mrazek stated that Molly progressed through the sessions until they were terminated in September of 2012. He also had a session with her in May of 2013, prior to his telephone interview with Dr. Chapin.

¶ 20 By way of an offer of proof, Tim's counsel presented several audio tapes and transcripts of the tapes depicting Madelyn talking to her father and other Couri family members. The offer of proof revealed that Madelyn repeated several negative comments about Tim that she heard from Molly. The offer of proof was allowed, but the tapes and transcripts were not admitted.¹

¶ 21 The trial court found that a joint custody award would be in Madelyn's best interest. The court then designated Molly as the residential parent and awarded Tim parenting time every other weekend. In reaching its decision, the court noted that Tim and Molly wanted what was best for Madelyn, that Madelyn had a strong bond with Molly and Tim, as well as their extended family and friends, and that Madelyn had strong social ties to community activities in both Peoria and Glen Ellyn. The court considered Dr. Chapin's testimony but "did not find it helpful or compelling."

¶ 22 The court found the willingness and ability of each parent to facility and encourage a close and continuing relationship between the other parent and child to be the dispositive factor. The trial court noted that the emails back and forth by both parties were discourteous and unacceptable. The court found that both parties were disrespectful toward one another and

¹ The trial court sustained Molly's hearsay objection to the admission of the tapes and the transcripts prior to trial.

lacked consideration for the other person. The court found that Tim's petition for indirect criminal contempt was a good example of the lack of trust he had for Molly. It found that Tim's actions on January 13 and 14, 2013, were an overreaction to Molly's conduct and caused unnecessary turmoil in Madelyn's life that she did not deserve. As a result, the court denied Tim's petition for contempt.

¶ 23 Finally, the court mentioned the tape recordings that were previously excluded. The court stated that it understood Tim's motives for recording his daughter, specifically stating that any suggestion that Tim is not Madelyn's father was counterproductive, but discouraged any future attempts by Tim to record Madelyn's comments. The court noted that it did not approve of Molly's behavior at times either, specifically condoning Molly's texts and emails reminding Tim that Madelyn's last name was Monge, not Couri. However, the court concluded that overall Molly exhibited a more cooperative behavior that favored awarding her physical custody of Madelyn.

¶ 24 In its oral pronouncement at the end of trial, the court stated that the reduction in parenting time would be implemented in phases. It then outlined the following procedure:

"We're going to finish out the week. Okay? And then she'll go back with you [Molly]. And then we'll do one more week, she'll go back with you [Tim]. Then we'll do six days, back to Molly, five days, until we're Friday to Monday every other weekend."

The court also awarded Tim five weeks in the summer in seven-day segments to coincide with his weekend visits.

¶ 25 The trial court requested that Molly's attorney draft an order and submit it for approval. The final order, submitted to the court and signed on September 10, 2013, provided:

"Father shall have Madelyn six (6) days the week of August 12-August 18; five (5) days the week of August 27-September 1; four (4) days the week of September 11-15; three (3) days the week of September 26-29 and alternate weekends thereafter from Friday at 3:00 p.m. to Monday at 3:00 p.m. When Madelyn starts Kindergarten, the return time shall be 3:00 p.m. on Sunday."

¶ 26

ANALYSIS

¶ 27 Tim first argues that that the trial court erred in designating Molly as the residential parent in the joint parenting agreement and reducing his parenting time to every other weekend. He claims that, in reaching its decision, the trial court erred in finding that he was unable to facilitate and encourage a close and continuing relationship between Molly and Madelyn.

¶ 28 In cases regarding custody, a strong presumption favors the result reached by the trial court and the court is vested with great discretion due to its superior opportunity to observe and evaluate witnesses when determining the best interests of the child. *In re Marriage of Dobey*, 258 Ill. App. 3d 874 (1994). Therefore, the trial court's ruling will not be disturbed unless it is against the manifest weight of the evidence or an abuse of discretion. *Id.* at 876. A judgment is against the manifest weight of the evidence when an opposite conclusion is clearly apparent or the findings appear to be unreasonable, arbitrary or not based on the evidence. *In re Marriage of Hefer*, 282 Ill. App. 3d 73 (1996).

¶ 29 In determining custody, the trial court should consider all relevant factors, including those listed in section 602(a) of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/602(a) (West 2012)), and decide what custodial arrangement serves the best interests of the child. *In re Marriage of Dobey*, 258 Ill. App. 3d at 876.

Regardless of whether the parents have ever been married, the trial court shall consider all relevant factors, including, in pertinent 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 relationship 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 as defined in Section 103 of the Illinois Domestic Violence Act of 1986, whether directed against the child or directed against another person; [and]
 - (8) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child[.]"
- 750 ILCS 5/602(a) (West 2012).

¶ 30 Here, the record supports the trial court's award of residential custody to Molly. The court considered the evidence in its proper context and determined that most of the relevant factors did not favor either party or were not applicable. The trial court properly focused on the eighth factor: the willingness of each parent to facilitate a relationship between Madelyn and the other parent. The court found that Molly would be more likely to support a close relationship between Madelyn and Tim in light of Tim's inability to trust Molly and his insecurity regarding

Schleeter's role as Madelyn's step-father. The trial court additionally noted that Tim placed Madelyn in an unacceptable position by recording her comments and attempting to use those words against Molly at the custody trial.

¶ 31 Essentially, the case was close, as indicated by the trial court, and the evidence did not strongly favor either party. Although the record could support a finding that Tim was more likely to encourage Madelyn's relationship with Molly based on Dr. Chapin's testimony that Molly was more competitive and aggressive and Molly's decision to encourage Madelyn to call Schleeter "Daddy T," we must defer to the trial court's findings. As such, we affirm the trial court's decision to enter a joint parenting order and award Molly residential custody.

¶ 32 In support of his argument that the trial court's decision should be overturned, Tim asserts that the trial court improperly relied on evidence that he filed a petition for adjudication for indirect criminal contempt against Molly, erred in mentioning the tape recordings of Madelyn that had been previously excluded, and disregarded evidence which demonstrated that Molly was the parent who would not facilitate a close and continuing relationship. The issues Tim raises are only a few the trial court had to consider. His arguments ask us to reweigh the evidence, which we cannot do. See *In re Marriage of Pfeiffer*, 237 Ill. App. 3d 510 (1992) (it is not the function of this court to reweigh the evidence). We find the evidence was sufficient to support the court's finding that the eighth factor weighed in favor of Molly.

¶ 33 Tim also claims that the trial court erred as a matter of law in implementing the decrease in his parenting time prior to the entry of the final custody order on September 10, 2013, under Illinois Supreme Court Rule 272 (Ill. S. Ct. R. 272 (eff. Nov. 1, 1990)). He argues that the premature enforcement of the August 2, 2013, ruling prior to entry of the final order deprived

him of two weeks with his daughter and requests 14 days of makeup time to correct the court's error.

¶ 34 The purpose of Illinois Supreme Court Rule 272 is "to eliminate confusion as to the finality of judgments [citation] and resolve questions of timeliness of appeals where there is an oral announcement of judgment from the bench. [Citation.] In the time between the announcement of the judgment and the entry of the contemplated written and signed formal order, a party may not enforce the judgment, attack the judgment by motion, or appeal from the judgment. [Citation.]" *Northern Illinois Gas Co. v. Martam Construction Co.*, 240 Ill. App. 3d 988, 991 (1993). Thus, Supreme Court Rule 272 primarily establishes the timeliness of appeals and whether jurisdiction has been transferred from the trial court to the appellate court. The remedy the rule provides is for the dismissal of untimely filed appeals. See Ill S. Ct. R. 272 (eff. Nov. 1, 1990). The appeal in this case was not untimely, and Tim has failed to provide any statutory or case law authority to support his contention that rule allows us to grant relief where the trial court erroneously enforced a visitation schedule.

¶ 35 Even if Illinois Supreme Court Rule 272 permitted us to do so, the trial court's decision to phase out Tim's parenting time was not erroneous. See *In re Marriage of Spent*, 342 Ill. App. 3d 643 (2003) (reviewing court affords great deference to trial court's best interests finding). Here, the trial court determined that it was in the best interests of Madelyn to implement the decrease in Tim's parenting time gradually beginning on August 2, 2013, to minimize any adverse impact. We cannot say that this decision was against the manifest weight of the evidence.

¶ 36

CONCLUSION

¶ 37 The judgment of the circuit court of Peoria County is affirmed.

¶ 38 Affirmed.

¶ 39 JUSTICE HOLDRIDGE, dissenting.

¶ 40 I dissent. The trial court's ruling terminating the 50/50 shared parenting arrangement and severely restricting the father's time with his daughter was a clear abuse of the court's discretion. I would, therefore, reverse the ruling of the trial court and remand the matter with instruction to reinstate the 50/50 parenting arrangement.

¶ 41 The majority characterizes the evidence as "close" and "not strongly favor[ing] either party." I must respectfully disagree. As the majority points out, Dr. Theodore Chapin was appointed by the court to issue a child custody/visitation report. 750 ILCS 5/605 (West 2012). Dr. Chapin opined that the current 50/50 parenting arrangement should remain in effect. He further opined that the child was strongly attached to both parents and to change the equal parenting arrangement would risk great harm to the child. I find it particularly compelling that Dr. Chapin advised against every-other-weekend visitation as Madelyn could not tolerate significant time apart from either parent. Dr. Chapin also observed Molly was competitive and aggressive, particularly in encouraging Madelyn to call Schleeter "Daddy T." His findings and conclusions were not challenged or rebutted by any other evidence.

¶ 42 A report proffered under section 605 is evidence and the expert opinions contained therein must be accorded some weight by the court. *Heldebrandt v. Heldebrandt*, 251 Ill. App. 3d 950, 956 (1993). While the trial court is to be accorded deference in weighing evidence, particularly competing opinion testimony, here there was nothing in the record to weigh against Dr. Chapin's expert opinion. The record established that Dr. Chapin was a licensed clinical psychologist with over 27 years experience in child custody and visitation matters. Given Dr. Chapin's *vitae* and experience, as well as the lack of any challenge to his report, the trial court's conclusion that it "did not find [the report] helpful or compelling" is arbitrary, capricious, and completely unsupported by the record.

¶ 43 The record is overwhelming in supporting the opposite conclusion from that reached by

the trial court. The evidence supported only one conclusion: that the 50/50 shared parenting arrangement was clearly in the best interest of the child and should have been maintained. Additionally, the evidence established that Molly was the party who was combative and unwilling to facilitate and encourage a close and continuing relationship between Madelyn and her father. The trial court's ruling was against the manifest weight of the evidence and a clear abuse of discretion. I would, therefore, reverse the judgment of the trial court and remand for entry of an order reinstating the 50/50 arrangement in place prior to judgment at issue herein.