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2015 IL App (5th) 140453-U

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).

NO. 5-14-0453

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

<i>In re</i> MARRIAGE OF)	Appeal from the
)	Circuit Court of
SHONDA L. SOULON, n/k/a)	Marion County.
Shonda L. Crank,)	
)	
Petitioner-Appellant,)	
)	
and)	No. 04-D-108
)	
JASON M. SOULON,)	Honorable
)	Daniel E. Hartigan,
Respondent-Appellee.)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Welch and Moore concurred in the judgment.

ORDER

¶ 1 *Held:* Where the parties agreed to an order that included removal of a child from Illinois, the court had subject matter jurisdiction to approve that agreement without a formal pleading seeking removal. Where Shonda provided no proof that she was coerced or misled into entering into the agreement, the allegations provide no basis to void the agreement.

¶ 2 The court granted Shonda and Jason Soulon a dissolution of marriage in January 2004. There were two children born during the marriage—a boy in March 2000 and a girl in January 2002. The court's judgment incorporated a joint parenting agreement. Shonda

and Jason shared legal custody of the children. The court awarded Shonda primary physical custody of the children. The visitation schedule awarded Jason regular visitation. Approximately five years later, Jason moved to Missouri. According to Jason, the parties verbally agreed to a modified visitation schedule because he now lived about 300 miles from Shonda and the children.

¶ 3 In late November 2013, Shonda filed a petition to modify visitation and child support. She alleged that there had been a substantial change of circumstances since the 2004 judgment in that Jason moved to Belton, Missouri, a distance of approximately 300 miles from Shonda's home in Salem. She claimed that the original visitation schedule did not take into account the extended travel time required now for visitation. She also sought increased weekly child support because Jason's income and the needs of her children had increased.

¶ 4 Jason responded to Shonda's petition by filing his counterpetition to modify custody and support. He asked the court to award him sole custody of the children, or alternatively joint custody with primary physical custody. In support, he listed numerous health, safety, hygiene, and parenting issues concerning Shonda and the children which he argued warranted a change in physical custody. He alleged issues regarding both children involving hygiene, and the need for medical and counseling appointments, that Shonda either ignored or took a lengthy time to address. Jason alleged that he found a loaded rifle with no safety in Shonda's dining room that was accessible to the children. He alleged that Shonda had a short temper and had difficulty in maintaining steady

employment. He alleged that Shonda suffered from depression and slept hours in the middle of the day, leaving the children unsupervised. He alleged that he had trouble in arranging visitation and that Shonda was inflexible regarding schedule changes, and in allowing family members to pick up the children. He alleged that Shonda spoke poorly about him and about his family to their children, and that she attempted to place her children in the middle of visitation issues, directing the children to photograph Jason's living arrangements and grilling the children on these issues upon their return. Jason alleged that Shonda made communication with his children difficult. He alleged that Shonda would not answer or return his calls. Jason alleged that Shonda would not allow the children to engage in private conversations with him. Jason alleged that he had a good and stable job. He alleged that the schools in Belton, Missouri, were good, and that the children would have more extracurricular opportunities in Belton than they had in Salem. Finally, Jason alleged that the children had family and friends in the Belton area.

¶ 5 Shonda and Jason participated in mediation but were unable to reach resolution. The case was scheduled for hearing in late May 2014. Before the hearing began, the judge conducted *in camera* interviews with both children in the presence of the attorneys. After the interviews, Shonda and Jason engaged in a lengthy settlement discussion. The parties reached an agreement. The attorneys announced the agreement to the court. Shonda and Jason agreed to maintain joint legal custody. Jason would have primary physical custody of his son, and Shonda would have primary physical custody of their daughter. The court asked Shonda if she agreed to these custody and visitation

arrangements. Shonda answered yes. The trial court approved the negotiated agreement on the issues of custody, removal, and visitation.

¶ 6 On June 5, 2014, Shonda, represented by a new attorney, filed a motion to vacate the court's May 29 approval of the parties' negotiated agreement. The basis for Shonda's motion was that she was very displeased by the legal representation she received during the May 29 negotiation and agreement. On July 21, Shonda filed a motion asking the court to *sua sponte* declare its May 29 order void for lack of subject matter jurisdiction. On August 8, the court called Shonda's second motion for hearing—the motion seeking a declaration that the May 29 order was void for lack of subject matter jurisdiction. The court denied the motion. The court found that all case law cited by Shonda was distinguishable. The court stated that that the parties entered into a stipulated custody agreement, and noted that the State of Illinois favored stipulated custody agreements unless contrary to the best interests of the child. Shonda did not introduce evidence that the change of residential custody to Jason was not in their son's best interests. The court concluded its order by stating that Shonda's "change of heart" did not void a valid stipulated order. Shonda filed a motion to reconsider that denial on August 15 and argued the same points of law. On August 29, 2014, the court denied Shonda's motion to reconsider, and denied her June 5, 2014, motion to vacate the May 29 order.

¶ 7 Shonda appeals to this court arguing that the court erroneously ordered removal of one child from the State of Illinois without a formal removal petition. Shonda contends that the trial court lacked subject matter jurisdiction to approve the agreement authorizing

removal because there was no removal petition before the court. Further, Shonda claims that she only agreed to the new custody and visitation agreement under duress, coercion, and misrepresentation by her attorney, and that the court should therefore void the agreement as not being the product of her free will.

¶ 8 Subject Matter Jurisdiction

¶ 9 All courts must have subject matter jurisdiction to decide a controversy. *Ligon v. Williams*, 264 Ill. App. 3d 701, 707, 637 N.E.2d 633, 638 (1994). Without subject matter jurisdiction, any judgment entered would be void. *Id.*

¶ 10 Shonda does not dispute that the trial court maintained jurisdiction to decide custody and visitation as she and Jason both filed petitions seeking modification of the original joint parenting agreement. She takes issue with the court's approval of the agreement that Jason could remove their son from Illinois, and claims that the trial court lacked subject matter jurisdiction to make this decision because the parties did not have a removal petition filed.

¶ 11 Shonda argues that case law supports this theory. She cites *In re Marriage of Boehmer*, 371 Ill. App. 3d 1154, 864 N.E.2d 327 (2007), as authority. We disagree with Shonda's assertion and find that *In re Marriage of Boehmer* is supportive of Jason's position regarding the court's authority to approve the agreement.

¶ 12 In *In re Marriage of Boehmer*, the parties entered into an agreement by which the father agreed to allow the mother to remove the child to Louisiana. *Id.* at 1155, 864 N.E.2d at 329. The parties did not seek court approval. *Id.* Subsequently, the father

filed a petition for injunctive relief to preclude removal of their child to Louisiana. *Id.* at 1155-56, 864 N.E.2d at 329. The mother responded asking the court to enter an order approving the agreement. *Id.* at 1156, 864 N.E.2d at 329. The trial court entered an order approving the agreement with some modifications. *Id.* at 1156-57, 864 N.E.2d at 330. On appeal, the appellate court reversed the trial court's order because the father had contested the removal before the court approved the agreement. *Id.* at 1160-61, 864 N.E.2d at 333.

¶ 13 The Illinois Marriage and Dissolution of Marriage Act (Act) promotes "amicable settlement of disputes" by "written or oral agreement containing provisions for *** custody and visitation of their children." 750 ILCS 5/502(a) (West 2012). Parties may also make agreed modifications to the original marital settlement agreement unless the trial court determines that the agreement provisions are unconscionable. *In re Marriage of Adamson*, 308 Ill. App. 3d 759, 765, 721 N.E.2d 166, 173 (1999). While the court is not required to accept parties' agreements concerning custody, visitation, and support, "the plain language of section 502 does not prohibit the court from accepting agreements as to these matters without further inquiry." *In re Marriage of Boehmer*, 371 Ill. App. 3d at 1158, 864 N.E.2d at 331.

¶ 14 Removal of a child from the state requires a determination of the best interests of the child. 750 ILCS 5/609 (West 2012); *Fisher v. Waldrop*, 221 Ill. 2d 102, 115, 849 N.E.2d 334, 342 (2006). When parents agree to the removal of a child, section 609 of the Act does not require a hearing regarding the best interest factors. *In re Marriage of*

Boehmer, 371 Ill. App. 3d at 1160, 864 N.E.2d at 332. The parental agreement itself evidences that a decision is in the child's best interests. *Id.*

¶ 15 Shonda's argument that the trial court erred in approving the parties' agreement because Jason had not filed a petition seeking removal is not supported by law. Postdecree settlement agreements are promoted by the courts. Because the parties here agreed to removal of their child, there was an unrefuted presumption that removal was in the child's best interests. By seeking court approval for the stipulated agreement, the parties invoked the trial court's subject matter jurisdiction. *Ligon*, 264 Ill. App. 3d at 707, 637 N.E.2d at 638.

¶ 16 Duress, Coercion, Fraudulent Misrepresentation, and Unconscionability

¶ 17 Shonda further argues that we should vacate the agreed order because she claims that her trial attorney lied to her and forced her to enter into the agreement. Although settlements between the parties are favored, section 502(b) of the Act allows courts to void the settlements if the court finds fraud, duress, coercion, and the violation of any rule of law, public policy, or morals. *In re Marriage of Moran*, 136 Ill. App. 3d 331, 336, 483 N.E.2d 580, 583-84 (1985); *In re Marriage of Foster*, 115 Ill. App. 3d 969, 971, 451 N.E.2d 915, 917-18 (1983); *Reininger v. Reininger*, 67 Ill. App. 3d 21, 23, 384 N.E.2d 546, 548 (1978).

¶ 18 Shonda argues that the facts of this care are similar to *In re Marriage of Moran*. We disagree. In *In re Marriage of Moran*, the appellate court reviewed evidentiary documents, as well as the transcript of the hearing at which the trial court approved the

agreement, and found support for the wife's claims. The appellate court specifically pointed to statements made by the trial judge that were false, misleading, and coercive. *In re Marriage of Moran*, 136 Ill. App. 3d at 338, 483 N.E.2d at 585. Furthermore, the record supported the wife's disapproval of the settlement at the hearing to which her attorney instructed her on the record to answer either yes or no, and to not "cause a fuss." *Id.*

¶ 19 Here, the trial court approved the settlement agreement on the day the parties negotiated the agreement. At a hearing approving the agreement, the court addressed Jason and Shonda individually. The following took place:

"THE COURT: Okay. So I'll go to Shonda. You've heard the terms of the agreement. Is that what you've agree to, ma'am?

MS. CRANK: Yes.

THE COURT: And is it your intent to abide by the terms of this agreement to the best of your ability, ma'am?

MS. CRANK: Yes.

THE COURT: And was the agreement stated correctly to the best of your knowledge and belief, ma'am?

MS. CRANK: Yes.

THE COURT: Okay. And you are satisfied with the services of your attorney ***?

MS. CRANK: Yes."

This excerpt appears to evidence both her accordance with the agreement and her satisfaction with her attorney's representation at the time of the hearing. We have thoroughly reviewed the record and find no support for Shonda's claims that she was in anyway misled or coerced into entering the agreement.

¶ 20

CONCLUSION

¶ 21 For the foregoing reasons, we affirm the judgment of the circuit court of Marion County.

¶ 22 Affirmed.