2020 IL App (1st) 190766-U

FIFTH DIVISION
DECEMBER 18, 2020

No. 1-19-0766

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re CUSTODY OF C.J.,	)	Appeal from the
	)	Circuit Court of
(CHARLIE JOHNSON,	)	Cook County.
	)	
Petitioner-Appellee,	)	
	)	No. 12 D 80482
v.	)	
	)	
LORESSA BURKETT,	)	Honorable
	)	James Kaplan,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Delort and Justice Hoffman concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court did not abuse its discretion in awarding attorney fees to petitioner-appellee in action regarding allocation of parental responsibilities. The record is insufficient to review respondent-appellant's remaining contentions of error.

¶ 2 This appeal arises out of an order allocating parental responsibilities as to the minor child, C.J., who was born to petitioner-appellee Charlie Johnson and respondent-appellant Loressa Burkett in 2004. Following the entry of judgment for allocation of parental responsibilities, in which the circuit court of Cook County awarded primary residential custody to Mr. Johnson, the

parties filed competing motions for attorney fees. On March 14, 2019, the court ordered Ms. Burkett and her attorney to pay Mr. Johnson's attorney fees in the amount of $20,225 after finding that Ms. Burkett and her counsel perpetrated a fraud on the court and delayed the proceedings. On appeal, Ms. Burkett argues that (1) the court's finding of fraud was against the manifest weight of the evidence; (2) the fees awarded were in excess of the statutorily allowed amount; and (3) the court failed to provide a hearing on the motion for fees. For the reasons that follow, we affirm the judgment of the circuit court of Cook County.

¶ 3 BACKGROUND

¶ 4 The minor child, C.J., was born in 2004 to Mr. Johnson and Ms. Burkett, who were never married. The trial court initially entered a joint parenting and custody judgment in January 2013, awarding joint custody of the child to the parties, but naming Ms. Burkett the primary parent. Years of motion practice ensued, including motions to modify the residential placement and motions for child support and modification of child support. One regular point of contention between the parties was where C.J. should attend school.

¶ 5 On January 26, 2016, Mr. Johnson filed a motion to allocate parenting time and modify the joint parenting agreement. While that motion was pending, on August 14, 2017, Mr. Johnson filed an emergency motion to modify C.J.'s primary residential placement. In the emergency motion, Mr. Johnson alleged that Ms. Burkett changed C.J.'s school enrollment without Mr. Johnson's consent, in contravention of the court's previous orders.

¶ 6 The court entered an order on that motion finding that C.J. had been enrolled in Matteson School District 162 since kindergarten, but that he no longer resided in that district. The court further found that Ms. Burkett had falsified documents for the prior 2016-2017 school year to reflect that C.J. remained a resident of that school district in order to avoid paying out-of-district

tuition to School District 162. Because of this false representation, the court concluded that Ms. Burkett lacked "significant credibility." Ultimately, the court held that C.J. should continue in the Matteson School District and the parties would equally share the cost of the out-of-district tuition.

¶ 7 The underlying petition to modify the allocation of parental responsibilities proceeded slowly to trial, with an *in camera* interview with C.J. taking place on July 26, 2016, and a home study conducted on December 13, 2016. Trial was scheduled for May 21 to May 22, 2018. The final order entered prior to the commencement of trial allowed Ms. Burkett to introduce "evidence regarding Homewood Flossmoor High School" if she provided written proof that she was a "legal resident residing within the cachment [sic] area of the high school."

¶ 8 On May 21, 2018, the court heard motions *in limine*, but that hearing was not transcribed. Trial began the next day and continued one month later on June 25 and 27, 2018, with both parties represented by counsel. During opening statements on May 22, Ms. Burkett stated that she had signed a lease for a residence within the Homewood-Flossmoor high school district "yesterday." Trial began with testimony from Mr. Johnson's wife.

¶ 9 On June 25, 2018, following the conclusion of Mr. Johnson's wife's testimony, Mr. Johnson argued a motion *in limine* to bar Ms. Burkett from introducing any evidence with regard to the Homewood-Flossmoor high school district because she failed to indicate that she was moving to that district prior to the close of discovery on April 30, 2018. As a result, the court was unable to conduct a supplemental home study or to hear testimony from "witnesses of the Homewood Flossmoor school district." The court denied the motion on the basis that it wanted to "get the best possible result" for C.J.

¶ 10 Mr. Johnson moved to introduce the December 2016 home study by the Department of Adoption and Family Supportive Services (DAFSS) into evidence, but Ms. Burkett objected on

hearsay grounds. The court then allowed Margaret LaRaviere, the director of the DAFSS, to testify to authenticate the home study as a business record. The court also called C.J. as a witness for a second *in camera* interview.

¶ 11 Ms. Burkett testified at trial that she had obtained a lease for an apartment in the Homewood-Flossmoor high school district, but was unable to present the original lease at trial, nor did she present evidence of a security deposit for the apartment. She further testified that she was still living in the townhome she owned in Country Club Hills, had not hired movers, had not transferred her utilities, had not updated her driver's license, and had not obtained tenants to rent her current home. She further admitted that neither she nor C.J. had visited Homewood-Flossmoor High School, they did not attend any open houses, and she had not applied to prove residence in the district, as required by the school's regulations.

¶ 12 Ultimately, the court granted Mr. Johnson's motion to allocate parenting time and made Mr. Johnson the primary residential parent.

¶ 13 The parties filed competing motions for attorney fees. In Mr. Johnson's motion, he alleged that Ms. Burkett had delayed trial by, *inter alia*, frivolously objecting to the introduction of the home study, and failing to present any evidence to demonstrate her *bona fide* intention to enroll C.J. at Homewood-Flossmoor High School. As to the latter argument, Mr. Johnson argued that Ms. Burkett perpetrated a fraud on the court by causing the court to rely on her assertion that she would be moving to the Homewood-Flossmoor high school district when she had no intention or proof of doing so.

¶ 14 On February 4, 2019, the court granted Mr. Johnson's motion for attorney fees and denied Ms. Burkett's competing motion. The court allowed Mr. Johnson to amend his petition to "add the amount of fees."

¶ 15 On March 14, 2019, the court entered an order indicating that the matter was before the court for entry of "allocation judgment, for hearing on the petitioner's petition for support, and for prove-up on petitioner's amended petition for attorney's fees *** due notice having been given, the child representative, parties and their respective counsels present, and the court being advised." In its order, the court agreed with Mr. Johnson that Ms. Burkett and her counsel perpetrated a fraud on the court and that the fees Mr. Johnson requested were a "direct and proximate result of that fraud." The court found that Ms. Burkett and her counsel knew that Ms. Burkett did not reside in the Homewood-Flossmoor high school district nor did she have any intention of moving to that district. The court further found that Ms. Burkett intentionally delayed and prolonged the trial by waiting until the eve of trial before representing to the court that she resided in the catchment district for Homewood-Flossmoor and ultimately failing to provide any credible evidence in support of that representation. According to the court, this was a knowing and intentional deception on the part of Ms. Burkett and her counsel. To that end, the court ordered Ms. Burkett and her counsel to equally share the payment of $20,225 in attorney fees to Mr. Johnson's counsel. Those fees encompassed all work done by counsel beginning on April 30, 2018 and ending on December 4, 2019. Ms. Burkett appealed on April 11, 2019.

¶ 16 ANALYSIS

¶ 17 We note that we have jurisdiction to review this matter, as Ms. Burkett timely appealed. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); Ill. S. Ct. R. 303 (eff. July 1, 2017).

¶ 18 On appeal, Ms. Burkett challenges only the court's fee award.[1] The trial court awarded fees to Mr. Johnson pursuant to subsection 508(b) of the Illinois Marriage and Dissolution of

[1] Mr. Johnson has not filed a brief, but we nevertheless address the merits of this appeal, as the record is simple and the issues are such that we can resolve them easily without the aid of

Marriage Act (the Act). 750 ILCS 5/508(b) (West 2018). Subsection 508(b) provides, in relevant part: "If at any time a court finds that a hearing under this Section was precipitated or conducted for any improper purpose, the court shall allocate fees and costs of all parties for the hearing to the party or counsel found to have acted improperly. Improper purposes include, but are not limited to, harassment, unnecessary delay, or other acts needlessly increasing the cost of litigation." *Id.*

¶ 19 Here, Ms. Burkett initially argues that the trial court's findings that she needlessly delayed the proceedings and perpetrated a fraud on the court are against the manifest weight of the evidence. In the first place, we review a trial court's decision to award fees for an abuse of discretion, and *not* under a manifest weight of the evidence standard. *In re Marriage of Schneider*, 214 Ill. 2d 152, 174 (2005). "A trial court abuses its discretion only where no reasonable person would take the view adopted by the trial court." *Id.*

¶ 20 The evidence more than supports the trial court's findings of delay and fraud by Ms. Burkett, specifically as it relates to her representation that she intended to move to the Homewood-Flossmoor high school district. Ms. Burkett did not inform the court or Mr. Johnson of her intention to move within the Homewood-Flossmoor high school district until the eve of trial, precluding the opportunity to conduct a home study or other investigation into her living arrangement. Then, at trial, she testified that she had signed a lease for an apartment within the school district's boundaries, but failed to provide an original lease, or otherwise prove her *bona fide* intention to move to the school district. Under these circumstances, we cannot say the court abused its discretion in finding Ms. Burkett incredible and concluding that she had no intention of moving to the school district as she claimed in her testimony, but instead misled the court in order

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an appellee's brief. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

to delay the proceedings. The trial court, having heard the testimony of the witnesses, is in the best position to judge their credibility, and we will not second-guess that judgment on appeal. *Racky v. Belfor USA Group, Inc.*, 2017 IL App (1st) 153446, ¶ 107.

¶ 21 Ms. Burkett next argues that the fees awarded by the court exceeded the statutorily allowed amount. According to Ms. Burkett, the Act and the specific subsection in question, permit only the fees that Mr. Johnson incurred *on the day of the hearing* to be awarded under this subsection, and the court's award of fees for work performed in preparation for the hearing was erroneous. It is sufficient to note that Ms. Burkett provides no analysis or argument to support this self-serving crabbed interpretation, and we reject it. See *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 11151, ¶ 12 ("Mere contentions, without argument or citation to authority, do not merit consideration on appeal.").

¶ 22 Finally, Ms. Burkett maintains that the court failed to hold a hearing on the competing fee petitions. Subsection 508(a) of the Act explicitly provides that the court may award attorney fees "after due notice and a hearing." 750 ILCS 5/508(a) (West 2018). Here, Ms. Burkett contends that she requested a hearing on February 4, 2019, but the court did not permit testimony, exhibits, or argument. Fatal to this allegation is the fact that there is neither a transcript nor a bystander's report of the court proceedings on February 4. As the appellant, it was Ms. Burkett's burden to provide a complete record on appeal to support her claims of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391 (1984). In the absence of a complete record, we must presume that the court's order conformed to the law. *Id.* We are unable to evaluate the adequacy of the trial court's hearing without a record of the proceeding on the day in question. Therefore, we reject Ms. Burkett's challenge to the award of attorney fees on this basis.

¶ 23 CONCLUSION

¶ 24 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 25 Affirmed.