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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
WENDY PLENTY FERGUSON,)	of Du Page County.
)	
Petitioner-Appellee)	
)	No. 2012-D-2094
and)	
)	
CHRISTOPHER FERGUSON,)	Honorable
)	Elizabeth Sexton,
Respondent-Appellant.)	Judge, Presiding.

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

ORDER

- ¶ 1 *Held:* The trial court's decision to grant mother's amended motion for relocation of parties' two children to Indiana was not against the manifest weight of the evidence.
- ¶ 2 Respondent, Christopher Ferguson, appeals the trial court's order allowing petitioner, Wendy Plenty Ferguson, to relocate the parties' two children to Fishers, Indiana, which is near Indianapolis. Wendy, who was unemployed, sought relocation to move into the home of her brother, James, and his wife, Nicole. Upon relocation, she planned to obtain employment or apply to law school. We affirm.

¶ 3

I. BACKGROUND

¶ 4 The parties were married on September 16, 2006. C.F., a son, was born in 2008, and K.F., a daughter, was born in 2010. Wendy petitioned for dissolution of marriage on October 4, 2012, and a judgment was entered on March 14, 2014.

¶ 5 During the dissolution proceedings, the parties entered into a joint parenting agreement on October 24, 2013. The parties agreed to joint custody, with Wendy as the residential parent. Christopher had parenting time on alternate weekends and overnight on Wednesdays. The holidays and birthdays were divided. The parties increased Christopher's parenting time to three weekends per month.

¶ 6

A. The Motion for Relocation

¶ 7 On July 2, 2018, Wendy filed an amended motion for relocation of the children, who were then nine and seven years old, pursuant to section 609.2 of the Illinois Marriage and Dissolution of Marriage Act (Act). 750 ILCS 5/609.2 (West 2018). The motion asserted that, as the primary caregiver, Wendy enjoyed a loving, positive relationship with the children and was very involved in their school and extracurricular activities. The motion argued that it was in the children's best interests to relocate to Fishers, Indiana, where positive educational and extracurricular opportunities would be available. Wendy planned to enroll the children in Geist Elementary School, which the U.S. Department of Education designated as a prestigious "Blue Ribbon School." According to Wendy, the schools that the children would attend in Fishers were rated much higher than those they would attend in Lombard.

¶ 8 When she filed the relocation motion, Wendy was unemployed and without income for living expenses, including the mortgage on the former marital residence. Wendy had sought employment in Illinois since losing her job in March 2018, but was unsuccessful. James and

Nicole had offered to let Wendy and the children move into their large six-bedroom home with a fenced-in yard, at no cost. James and Nicole offered to help with the children as needed, also at no cost.

¶ 9 Wendy's aunt and uncle, Beatrice and Lewis, resided about a 15-minute drive from James and Nicole and had very close relationships with the children. Beatrice and Lewis were retired and had offered to help with the children as needed, free of cost. In contrast, the parties did not have immediate family living in Illinois.

¶ 10 The motion stated that Wendy "hope[d] to attend" Indiana University's Robert H. McKinney School of Law in Indianapolis. She initially had planned to enroll in fall 2018, but at the hearing admitted that the admission deadline had passed. Despite missing the deadline, Wendy planned to apply in the future. A law degree would advance her career, but even if she were denied admission to the school, Wendy wished to relocate and seek employment in the Indianapolis area.

¶ 11 The motion alleged that the relocation would place the children in an environment where they would flourish. The neighborhood had minimal crime and many children in the area. The schools and extracurricular activities were superior. C.F. and K.F. could continue their participation in football and cheerleading, respectively. The children would be closer to extended family who could provide quality childcare at no cost.

¶ 12 The motion also alleged that parenting responsibilities and parenting time could be reasonably allocated after the relocation because Wendy could still involve Christopher in the decision-making process. Moreover, the distance was not so far that Christopher's relationship with the children would be impaired.

¶ 13

B. The Hearing

¶ 14 At the hearing on the motion for relocation, the guardian *ad litem* (GAL) testified that he had reviewed the pleadings, interviewed the parties, interviewed the children twice, and interviewed James. The GAL recommended denying relocation primarily because of the disruption to Christopher's relationships with the children.

¶ 15 According to the GAL, Christopher had been regularly and consistently exercising his allotted parenting time. Sometimes he missed weekdays but asked for makeup time. The children had enjoyed a "quality relationship" with Christopher for the past three or four years.

¶ 16 The GAL confirmed Wendy's aspiration to attend law school and to move the children into James' home. Wendy suffered a job loss "through no fault of her own," and relocation would allow her to live free of charge in a large home in a nice community.

¶ 17 The GAL opined that relocation was a good opportunity for Wendy and the children but would diminish the quality and consistency of Christopher's relationship with the children. Christopher expressed the importance of being involved in their lives, especially C.F.'s participation in football. Wendy confirmed to the GAL that Christopher had always been involved and exercised his time very consistently. Christopher often transported the children to their activities but was less involved when the activities did not coincide with his parenting time, in part because he traveled a great deal for work.

¶ 18 The GAL interviewed the children's therapist who reported that, at times, C.F. was physically and verbally aggressive toward his sister, and K.F. "got under his skin." However, the behavior was not unusual, and the children were "the sweetest kids you'll ever meet." Their relationship with each parent was very good. The therapist was confident that, although the parties occasionally were confrontational toward each other, they could work together in the best interests of the children.

¶ 19 The GAL confirmed that the educational opportunities in Fishers were superior to the children's current schools. He testified to the various awards and systems used to rate them. The children also would benefit from Wendy's family in the Indianapolis area. Wendy viewed relocation there as a compromise, as Christopher would continue to reside in Illinois while most of the parties' two families resided in Alabama.

¶ 20 The GAL believed that Wendy would have an appropriate support system if she was working or attending law school in the Indianapolis area. He believed that Wendy did not have any similar type of support system for the children in Illinois. The GAL testified that, despite the discord between the parties, Wendy promotes a positive relationship between Christopher and the children.

¶ 21 The children confirmed to the GAL that Christopher was less involved with the children outside his designated parenting time. They reported that Christopher lets them play video games "a lot" at his home, which the GAL suspected was "too much."

¶ 22 Wendy testified that she filed a claim for wrongful termination against her employer when she lost her job in March 2018. Wendy did not receive severance pay and was denied unemployment compensation because her former employer had objected. Wendy had been earning approximately \$58,000 per year but did not have any income since her March 2018 termination. Christopher pays Wendy \$1,331 for child support every two weeks. After losing her job, Wendy withdrew money from her retirement account to support herself and the children. The account had a value of \$100,000, but that was the only asset she had. In June 2018, Wendy sold some belongings from her home to raise money.

¶ 23 Wendy testified that she applied for jobs in Illinois but had not received any interviews. Wendy only applied for one or two jobs in Indiana but stated that there were additional

opportunities there. The GAL did not compare Wendy's job prospects in Illinois and Indiana. Wendy conceded that she had not yet applied to any law schools in Indiana at the time of the hearing, but she intended to do so. Her recent job loss and child-related duties caused her to miss the application deadline. Wendy testified that she had wished to attend law school since 2002. She had been admitted to Northern Illinois Law School and could attend tuition-free, but she did not enroll because she could not manage child care and other logistical considerations.

¶ 24 In Lombard, the children were sharing a bedroom in a 1,300-square-foot home. The mortgage payment was about approximately \$2,000 per month, and Wendy was behind in her payments at the time of the hearing.

¶ 25 The GAL testified that, in Fishers, Wendy could arrange a support system that she did not currently have. James testified that he would not charge Wendy to live in his home, where the children would have separate bedrooms. The GAL doubted that James would evict Wendy and the children from his home and added that it would be financially advantageous for Wendy to move there. Photographs of the home were admitted into evidence.

¶ 26 James and Nicole had been married and living in Fishers for two years and did not have any children. They jointly own the home and reside together. James has known the children since their birth, and in the past few years, they have visited the home 10 to 12 times. James reported that the children "love" Nicole. James was employed at Butler University with flexible work hours. The GAL testified that James and Nicole "both when they were available, would make themselves available to help out with the children" at no cost to Wendy.

¶ 27 Wendy testified that she was comfortable with James caring for the children. Wendy's Uncle Lewis and Aunt Beatrice were also available in the Indianapolis area to provide child care at no cost. Lewis and Beatrice were in their 60's and were retired. They have grandchildren in

the area who about the same age as C.F. and K.F. The children know and are familiar with Wendy's aunt and uncle.

¶ 28 During the 2017-2018 school year, the children were enrolled in a before- and after-school childcare program, which Wendy paid for. Christopher admitted that he did not make any financial contributions to this expense.

¶ 29 The children reported to the GAL that they wanted to move with Wendy to Indiana. They told the GAL that they were excited about moving to Fishers and about having their own bedrooms, but they occasionally cried or appeared upset when asked how they felt about spending less time with their father.

¶ 30 The children were described as excellent students. Wendy opined that the children could adjust to their new school in Fishers, which was superior to their current school. The Geist school offered a dedicated gifted program for students like C.F., who currently was pulled from his regular classes for gifted classes. The Geist school is about one mile east of James' home. Wendy had already enrolled the children, and classes would begin the week after the hearing.

¶ 31 The children were involved in football and cheerleading in Illinois, but Wendy testified that Fishers additionally offered activities like tumbling, piano, and competitive swimming. Wendy testified that she had already enrolled the children in extracurricular activities in Fishers and claimed that Christopher was not interested in discussing it.

¶ 32 Wendy testified that the children have close relationships with all of her extended family who live in Alabama. Wendy stated that she did not ask for relocation to Alabama because she did not want the children to live so far from Christopher. However, the move to Fishers would bring the children closer to their family in Alabama, which would make visits there easier.

¶ 33 In 2018, rather than spending his two weeks of summer parenting time with the children, Christopher left them in Alabama with his parents. Wendy accused Christopher of leaving his children with his parents multiple times, rather than spending time with them himself.

¶ 34 Wendy testified that she would facilitate Skype and telephone contact between the children and Christopher and that she would do her best to promote their relationships. She would try to co-parent with Christopher after the move.

¶ 35 C. The Judgment

¶ 36 On August 6, 2018, the trial court granted the motion to relocate and commented on each factor set forth in section 609.2 of the Act. First, the court agreed with the GAL that Wendy had no bad intent in seeking relocation. Wendy lost her job and believed she was wrongly terminated. By moving to Indiana, she hoped to attend law school and obtain employment there. Wendy testified to three job opportunities and, although the law school application deadline for 2018 had passed, she planned to apply in the future. The court emphasized that Wendy's extended family could provide support in Fishers, which was important because, once she resumed working, Christopher would be her only support system in Illinois. The court also noted that she had the opportunity to live cost-free in a great neighborhood with very good schools in Fishers.

¶ 37 Second, Christopher's objection was that his involvement with the children would be restricted by relocation. The court observed "acrimony" between the parties and believed they were uncooperative and did not communicate well, which influenced Christopher's objection.

¶ 38 Third, each parent had a very good relationship with the children. The parties mostly agreed that Christopher had consistently exercised his parenting time, which had been increased by agreement to accommodate his traveling schedule for work. Further, Wendy is the primary

caretaker and was exercising the primary parental allocation in medical, educational, and extracurricular events. In contrast, in his information intake form, Christopher could not name teachers and some doctors, which the court found to be “very telling.” The court credited Christopher’s testimony that, for four months of the year, he drives the children to football and cheer practice, watches the practices and attends the games on the weekends. Although the parent-child relationships are good, the therapist reported some “acting out” by the children. The court believed that acrimony between the parents was hurting the children.

¶ 39 Fourth, the court found that Fishers presented better educational opportunities for the children. The children were very good students and involved in extracurricular activities that they could continue in Fishers.

¶ 40 Fifth, neither party has family residing in Illinois, but they maintain contact with their families in Alabama. Although Christopher had been granted two weeks of summer parenting time in 2018, he left the children with his parents in Alabama instead. In contrast, relocation to Fishers would bring Wendy closer to her brother and sister-in-law and her aunt and uncle, plus the children would be a bit closer to extended family in Alabama. The court credited Wendy’s testimony that she wished to move all the way to Alabama but chose Fishers to facilitate parenting time for Christopher.

¶ 41 Sixth, the anticipated impact of relocation on the children was positive. The children were currently sharing a bedroom in a home that Wendy could not afford. Regardless of her employment prospects in Fishers, Wendy would have a cost-free home, with a bedroom for each child. The children also expressed a desire for more extracurricular activities that could be facilitated by cost-free childcare in Fishers. Attending law school in the Chicago area would be more inconvenient.

¶ 42 Seventh, the court found that it could reasonably allocate parental responsibilities upon relocation. Although the GAL opined that maintaining the current level Christopher's parenting time would be impossible after relocation, the court found that Wendy was "at least 85% responsible for parental responsibility," which would not be affected by relocation.

¶ 43 Eighth, the court noted that the children said they approved of the relocation, despite the necessary adjustment to seeing their father less often. The court did not give the factor a great deal of weight.

¶ 44 Ninth, as to possible arrangements for exercising parental responsibilities appropriate to the parents' resources and circumstances and the developmental level of the children, the court discounted the GAL's concern that Wendy's employment prospects were speculative. The court found her to be articulate and smart and capable of finding a job in either location.

¶ 45 Tenth, the court acknowledged that the GAL opined that relocation would impair Christopher's relationship with the children and that the impairment could not be minimized. The court also noted the GAL's opinion that it would be impossible to schedule parenting time in Fishers that could replicate Christopher's current schedule with the children.

¶ 46 The court found by a preponderance of the evidence that relocation was in the children's best interests. Relocation would afford the children a support system, including before and after school, that Wendy did not have in Illinois. The court believed parenting time could be fairly allocated because the distance was merely "a three-hour drive or a one-hour flight." The court found that the children spending less time with Christopher effectively would be offset by the increased time spent with Wendy's extended family.

¶ 47 The court commented that, after relocation, Wendy could afford to enroll the children in more activities because transportation arrangements would be easier to make and she would have

no housing costs. The court found that, with their own bedrooms, better schools, and Wendy enforcing rules more consistently than Christopher did, the children's home environment would be more stable and have a positive effect on their behavior. Christopher conceded that the children probably played video games too often during his parenting time.

¶ 48 On August 21, 2018, the trial court followed up with a written order scheduling parenting time and permitting Wendy to enroll the children at the Geist school. Christopher's parenting schedule was alternating weekends from 6 p.m. Friday to 7 p.m. Sunday. Until Wendy became employed, all of Christopher's parenting time would occur in Illinois. Once Wendy became employed, Christopher's parenting time would alternate between Illinois and Indiana. Christopher was specifically granted six weekends of parenting time in Illinois when the children were on break during the school year and four weeks during summer recess. The court also granted Christopher contact with the children via telephone and Skype at least four times per week. The parties were to continue to alternate holidays as set forth in the joint custody agreement of October 24, 2013. The children would be exchanged in Lafayette, Indiana, which is about two-thirds of the way from Lombard to Fishers.

¶ 49 Christopher filed a motion to reconsider, which was heard and denied on January 7, 2019. He reiterated his argument that Wendy had not sustained her burden of proof, which the court deemed to be an issue that had been decided at the evidentiary hearing. In the alternative, Christopher asked to modify the judgment so that he would continue to have parenting time in Illinois after Wendy obtained employment. The court restated its ruling that Christopher's parenting time would occur in Illinois until Wendy enrolled in school or obtained employment. The court left open the possibility of revisiting the arrangement once Wendy enrolled or resumed working. Christopher filed a timely notice of appeal on January 28, 2019.

¶ 50

II. ANALYSIS

¶ 51 Christopher appeals the relocation order, arguing that it is against the manifest weight of the evidence. Generally, Christopher argues that Wendy's career plans are too speculative and that the court gave too little or too much weight to the factors set forth in section 609.2 of the Act. He concludes that relocation drastically reduces the quality of his parenting time and is not in the children's best interests.

¶ 52 Section 609.2 codifies the factors a trial court must consider when ruling on a petition for relocation. The court must decide whether relocation is appropriate based upon the best interests of the child in light of the following 11 factors: "(1) the circumstances and reasons for the intended relocation; (2) the reasons, if any, why a parent is objecting to the intended relocation; (3) the history and quality of each parent's relationship with the child and specifically whether a parent has substantially failed or refused to exercise the parental responsibilities allocated to him or her under the parenting plan or allocation judgment; (4) the educational opportunities for the child at the existing location and at the proposed new location; (5) the presence or absence of extended family at the existing location and at the proposed new location; (6) the anticipated impact of the relocation on the child; (7) whether the court will be able to fashion a reasonable allocation of parental responsibilities between all parents if the relocation occurs; (8) the wishes of the child, taking into account the child's maturity and ability to express reasoned and independent preferences as to relocation; (9) possible arrangements for the exercise of parental responsibilities appropriate to the parents' resources and circumstances and the developmental level of the child; (10) minimization of the impairment to a parent-child relationship caused by a parent's relocation; and (11) any other relevant factors bearing on the child's best interests." 750 ILCS 5/609.2(g) (West 2018).

¶ 53 The party seeking judicial approval of the proposed relocation must establish by a preponderance of the evidence that the relocation is in the child's best interests. See *In re Marriage of Eckert*, 119 Ill. 2d 316, 325 (1988); see also *In re Marriage of Collingbourne*, 204 Ill. 2d 498, 521 (2003) (the best interests of the child is the "paramount question" that must be considered in a removal action). In deciding whether relocation is in the child's best interests, a trial court should hear "any and all relevant evidence." *Eckert*, 119 Ill. 2d at 326. A determination of the child's best interests cannot be reduced to a simple bright-line test, but must be made on a case-by-case basis, depending on the unique circumstances. *Eckert*, 119 Ill. 2d at 326.

¶ 54 A reviewing court reviews the trial court's decision deferentially and does not reweigh the competing considerations. The presumption in favor of the result reached by the trial court is always strong and compelling in relocation cases. *Eckert*, 119 Ill. 2d at 330. Deferential review is appropriate because the trial court can observe the parents and, if applicable, the children, and therefore can assess and evaluate their temperaments, personalities, and capabilities. *Eckert*, 119 Ill. 2d at 330.

¶ 55 Accordingly, a trial court's determination of what is in the best interests of a child should not be reversed unless it is against the manifest weight of the evidence. *Eckert*, 119 Ill. 2d at 328. A decision is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent or where its findings are unreasonable, arbitrary, or not based on the evidence presented. *Best v. Best*, 223 Ill. 2d 342, 350 (2006).

¶ 56 As Christopher points out, Wendy had no specific employment or education prospects in Illinois or Indiana, and his parenting time would be impaired. However, the trial court heard

ample evidence that relocation would benefit the children. The court then fashioned a reasonable parenting time schedule.

¶ 57 Each parent has a very good relationship with the children, and neither party has family in Illinois. So the reasons given for relocation were principally economic and educational. The primary factor weighing against it was the disruption to Christopher's parenting time.

¶ 58 Wendy testified that she was behind on her mortgage and was draining her retirement savings to finance her living expenses. She could not afford to continue living in her home, and James testified that Wendy and the children could live cost-free in a large home with him and Nicole. Wendy's aunt and uncle also lived in the area and offered to assist with caring for the children at no cost. Christopher conceded that the schools in Fishers were superior. Further, the reduction in living expenses would allow the children to take part in more extracurricular activities. In contrast, the court heard evidence that the children played too many video games during Christopher's parenting time.

¶ 59 The children indicated a desire to relocate but expressed mixed emotions and said they would miss spending time with their father. The GAL recommended against relocation mostly because of the disruption to Christopher's parenting time. However, the GAL acknowledged the many benefits of relocation, and the new residence was only a three-hour car ride or one-hour flight from Christopher's home. Therefore, the court could fashion a reasonable parenting time schedule.

¶ 60 The competing factors make this a close case, and any relocation necessarily impacts parenting time. However, as set forth above, the trial court specifically addressed each factor in section 609.2(g) of the Act, considered the totality of the circumstances, and granted Wendy's motion for relocation. In light of the "strong and compelling" presumption favoring this result

(see *Eckert*, 119 Ill. 2d at 330), we defer to the trial court's decision and conclude that it is not against the manifest weight of the evidence. We cannot say that the opposite conclusion is clearly apparent or that the court's findings are unreasonable, arbitrary, or not based on the evidence presented.

¶ 61

III. CONCLUSION

¶ 62 For the reasons stated, we affirm the relocation order entered by the circuit court of Du Page County.

¶ 63 Affirmed.