Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

FILED
Apr 13 2010, 8:57 am
CLERK
of the supreme court, court of appeals and tax court

APPELLANT PRO SE:

N.G.
Fort Wayne, Indiana

APPELLEE PRO SE:

E.L.
Fort Wayne, Indiana

IN THE
COURT OF APPEALS OF INDIANA

N.G.,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 02A03-0907-CV-331
	)	
E.L.,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Charles F. Pratt, Judge
Cause No. 02D07-0407-DR-296

April 13, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Following the trial court's order dissolving the marriage of N.G. ("Father") and E.L.[1] ("Mother") and awarding custody of the couple's minor child, B.G., to Mother, Father appeals the trial court's denial of his motion to correct error. For our review, Father raises four issues, which we consolidate and restate as whether the trial court abused its discretion when it denied his motion to correct error. Concluding the trial court did not abuse its discretion because the evidence supports the trial court's order granting custody to Mother, we affirm.

Facts and Procedural History

Father and Mother were married on March 23, 1999. B.G. was born on December 25, 2002. Father was born in Leningrad, Soviet Union (now St. Petersburg, Russia), and Mother was born in the Ukraine. Both Father and Mother are now U.S. citizens[2], although Mother is apparently also an Israeli citizen, having emigrated there when she was eighteen years old. Mother's parents continue to reside in Israel.

On September 23, 2003, the police responded to a 911 call from the family home. Mother claimed Father had battered her and her father, and the responding officers noticed bruises on Mother and her father. Father was arrested and charged with battery; however, a jury acquitted Father of the charges. On July 2, 2004, Father filed a petition for dissolution of his marriage to Mother.

---

[1] Both N.G. and E.L. acted pro se in this appeal.

[2] Mother obtained her U.S. citizenship after the trial court's orders but before she filed her appellee's brief.

On August 26, 2004, the trial court entered its provisional orders granting sole legal and primary physical custody of B.G. to Mother. In the midst of this contentious proceeding, the trial court issued mutual orders preventing Mother and Father from abusing, harassing, or disturbing the peace of each other. After an extensive period of discovery, attempts at mediation, changes in attorneys, and numerous continuances, the trial court held several evidentiary hearings between August 16 and December 6, 2007.

On April 4, 2008, the trial court issued its dissolution decree, including extensive and detailed findings of fact and conclusions of law. The trial court granted custody of B.G. to Mother and granted Father parenting time in excess of that recommended by the Indiana Parenting Time Guidelines. Because of Mother's Israeli citizenship and the fact her parents reside in Israel, the trial court's order prohibits Mother from removing B.G. from the United States without Father's express agreement or a court order. As an additional precaution, the trial court ordered Father to hold B.G.'s passport. Following the trial court's dissolution decree, Mother indicated she was unable to find B.G.'s passport.

On May 2, 2008, Father filed a motion to correct error. On February 26, 2009, the trial court held a hearing on the motion to correct error and several other motions filed by Father, and issued a combined order denying the motion to correct error on May 26, 2009. In its May 26, 2009, order the trial court authorized Father to secure a duplicate passport for B.G. The trial court also ordered Mother and Father to register with the Children's Passport Issuance Alert Program, and to notify the Israeli consulate of the trial court's order

prohibiting B.G.'s travel outside of the United States without Father's express agreement or a court order. Father now appeals.

Discussion and Decision

I. Standard of Review

We review the trial court's denial of a motion to correct error for an abuse of discretion. In re A.T., 889 N.E.2d 365, 367 (Ind. Ct. App. 2008), trans denied. An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances or if the trial court has misinterpreted the law. Id.

II. Custody of the Child

Essentially, Father challenges the trial court's decision to grant custody of B.G. to Mother. In so doing, Father lays out an extensive list of alleged factual errors in the trial court's dissolution decree. We review custody decisions with a preference for granting latitude and deference to trial court judges in family matters. Kirk v. Kirk, 770 N.E.2d 304, 307 (Ind. 2002). In so doing, we will not re-weigh the evidence or judge the credibility of the witnesses. Pawlik v. Pawlik, 823 N.E.2d 328, 330 (Ind. Ct. App. 2005), trans. denied. The trial court can observe the parties' conduct and demeanor and listen to their testimony; the value of such close proximity cannot be overstated in the matter of deciding custody, where the trial court is "called upon to make Solomon-like decisions in complex and sensitive matters." Id. at 329-30. Therefore, we will set aside the trial court's judgment only when it is clearly against the logic and effect of the facts and circumstances before the trial court. Liddy v. Liddy, 881 N.E.2d 62, 68 (Ind. Ct. App. 2008), trans. denied.

Father's motion to correct error and appellate brief are essentially lists of alleged factual errors in the trial court's dissolution order. The trial court issued extensive findings of fact and conclusions of law in reaching its decision to grant Mother custody of B.G. The trial court's findings of fact are supported by evidence in the record, which the trial court also notes in its findings. To the extent Father argues the evidence should be construed differently, his argument amounts to a request that we reweigh the facts and judge the credibility of the witnesses, which we will not do. Pawlik, 823 N.E.2d at 330. In addition, the trial court's decision to grant custody of B.G. to Mother is supported by its findings. Father does not argue the trial court improperly failed to consider the required statutory factors in reaching its custody decision,[3] and our review of the trial court's order demonstrates the trial court adequately considered the best interests of B.G. in granting custody to Mother.

This appears to be a situation where custody could properly have been granted to either parent, and the trial court was forced to choose one suitable parent over the other. The trial court's, and apparently Father's, primary concern with granting custody of B.G. to Mother is the fear that Mother would abscond with B.G. to Israel. However, the trial court ordered several safeguards to prevent this occurrence. In short, we find no reason to reverse

[3] In determining the best interests of the child, the trial court shall consider all relevant factors including: (1) the age and sex of the child; (2) wishes of the child's parents; (3) wishes of the child; (4) interaction and relationship between the child and the child's parents, siblings, and other significant persons; (5) the child's adjustment to home, school, and the community; (6) the mental and physical health of all individuals involved; and (7) evidence of a pattern of domestic or family violence. Ind. Code § 31-17-2-8. The trial court is not limited to consideration of the statutory factors, but may consider all relevant factors bearing upon the best interests of the child. In re Marriage of Saunders, 496 N.E.2d 419, 421 (Ind. Ct. App. 1986).

the trial court's order granting custody of B.G. to Mother. Therefore, the trial court did not abuse its discretion when it denied Father's motion to correct error.

Conclusion

The trial court's custody decision was not against the logic and effect of the facts and circumstances before the trial court. Therefore, the trial court did not abuse its discretion when it granted custody of B.G. to Mother or when it denied Father's motion to correct error.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.