

03/29/2016 "See News Release 018 for any Concurrences and/or Dissents."

SUPREME COURT OF LOUISIANA

NO. 16-CJ-0526

DANIEL THOMAS MARKSBURY

VERSUS

JESSICA MARIE MARKSBURY

On Writ of Certiorari to the Court of Appeal, Fourth Circuit, Parish of Orleans

WEIMER, J., dissents from denial of rehearing.

I would grant the respondent's application for rehearing. While it is true that La. R.S. 9:335(B)(3) supplies a presumption "that all major decisions made by the domiciliary parent are in the best interest of the child," the statute also provides that "[a]ll major decisions made by the domiciliary parent concerning the child shall be subject to review by the court upon motion of the other party." Nothing that has been presented to this court indicates that the trial court, in hearing the testimony, weighing the evidence, and assessing the credibility of the witnesses who appeared before the trial judge live and in person, did not apply that presumption and simply conclude that the weight of the evidence was to the contrary.¹ To date, we do not have before us a complete record of the proceedings below. Thus, there is nothing before us to indicate that the trial judge did not adhere to the duty to follow and apply the law.

Based on the limited record before us, I would defer to the trial court's great

¹ A review of the limited transcript excerpts this court has been provided reveals the application of the father appears to overstate certain facts and leave out others. Indeed, the limited transcript excerpts indicate that Mr. Marksbury's sole basis for refusing to cooperate with procuring a passport for the child was his belief that travel to Mexico is too dangerous, despite his admission that he took the child on a Disney cruise in 2011 which went to Mexico for one day, where they visited a beach resort and swam and rafted.

discretion in weighing the evidence and arriving at a determination that is in the best interest of the child. While there is certainly a presumption in favor of the domiciliary parent's decision, that presumption is not irrebutable. Moreover, affording a litigant the opportunity to be heard, for the first time, on rehearing, after a decision has been rendered, does not comport with the principles embodied in the due process clause. See La. Const. art. I, § 2.