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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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ROBERT E. NOLAN, III,	)	Appeal from the Circuit Court
	)	of Kane County.
Petitioner-Appellee,	)	
	)	
v.	)	No. 06—F—193
	)	
BRIENNA PETERS,	)	Honorable
	)	John A. Noverini,
Respondent-Appellant.	)	Judge, Presiding.

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JUSTICE BOWMAN delivered the judgment of the court.  
Justices Schostok and Birkett concurred in the judgment.

**ORDER**

*Held:* The trial court's improper limit on cross-examination of the guardian ad litem was harmless error.

Although the trial court did not specify the change in circumstances, the record disclosed that the child's medical diagnoses established a change in circumstances.

While the trial court's finding that there was a change in circumstances was not against the manifest weight of the evidence, the determination that a change in custody was in the best interest of the child was an abuse of discretion.

Respondent, Brienna Peters, appeals the circuit court order dated November 23, 2010, which granted the petition to modify custody filed by petitioner, Robert E. Nolan, III, and awarded Robert sole custody of the minor child, Aiden Richard-Jason Peters Nolan. We reverse.

## I. BACKGROUND

Aiden was born on March 5, 2006, to Brienna and Robert. The couple were never married and on April 11, 2006, Robert filed a petition for temporary relief in order to establish visitation rights. On July 27, 2006, the trial court entered an order that custody “shall remain status quo with mother,” and granted Robert’s request for visitation and entered a visitation schedule. The court also granted Brienna’s petition for child support. The court order stated that the visitation order would be reviewed on September 1, 2006. On that date, the court stated that Robert shall have overnight visitation with Aiden on certain weekends in September. The matter was then continued to November 2. On November 2, the court ordered that Robert have alternating weekend visitation with Aiden and entered a holiday visitation schedule. In May 2007, Robert petitioned the court for changes to the couple’s visitation schedule for the 2007 holidays, which was granted. No other orders were ever entered pertaining to custody of Aiden.

On March 27, 2009, Robert filed his petition to modify child custody, pursuant to section 16 of the Illinois Parentage Act of 1984 (750 ILCS 45/16 (West 2008)), which incorporates the guidelines for custody modification contained in section 610 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/610 (West 2008)). Robert’s motion alleged several facts that supported a change in circumstances necessitating a change in custody, including several incidents of Aiden being ill or showing injuries such as a black eye and gashes. Robert alleged that at times Brienna neglected to seek medical assistance for Aiden and neglected to supervise the child to prevent injuries. When Robert contacted the Department of Children and Family Services (DCFS), he was told that an inspection of Brienna’s home demonstrated “environmental issues” and that another inspection would be performed. Robert alleged that Brienna’s living conditions included

piles of laundry, overflowing garbage, beer cans in the kitchen and bathroom, and unclean conditions throughout the house.

The court appointed Dan O’Connell as guardian *ad litem* in September 2009. On February 18, 2009, Brienna moved to have O’Connell disqualified, stating that O’Connell’s wife had retained the firm representing Brienna to represent her in O’Connell’s divorce proceedings. Brienna further stated that previously O’Connell represented Brienna’s mother in her divorce from Brienna’s father, Todd Peters. Brienna resided with Todd, and O’Connell had spoken with Todd in the course of his five-month-long investigation. O’Connell was also seeking fees from Brienna’s mother. Based on these facts, Brienna argued that a conflict of interest existed between O’Connell and Brienna’s attorney and her parents. The trial court denied this motion on March 1, 2010, and ordered O’Connell to file his report.

The matter proceeded to trial on October 25, 2010. O’Connell testified for Robert that, among other things, he performed two at-home visits of both parental homes, observed Aiden, interviewed members of the household, and physicians, and reviewed Aiden’s records. He observed that Aiden had developmental delays, which caused him to fall “like a tree” without bracing himself. Doctors suspected that Aiden, who was four years old at the time of trial, may be autistic. He was not yet potty trained and had boils under his diaper. Aiden suffered from several methicillin-resistant staphylococcus aureus (MRSA) infections over the past year. O’Connell reported that Todd had a bout with MRSA before Aiden.

O’Connell described his first surprise visit to Brienna’s home, a two-bedroom apartment in St. Charles. The apartment was generally “very cluttered,” the bathrooms showed signs of “being dirty and having been dirty for quite a while.” The bathroom vanity was not secured, and there was

a rust remover in the cabinet, which he noted was an ingestion hazard. The handrail on the stairs was not properly secured to the wall. The apartment did not have a dining room and there was no high chair in the house. The kitchen counter was cluttered with medicines, vitamins, other items, and Todd's electronic recording equipment. The home lacked food that was appropriate for a small child but instead had soda, beer, lunch meat, and frozen meals. Photographs from the first home visit were admitted into evidence, along with O'Connell's report. O'Connell testified that there had been approximately six incidents reported to him by Robert in which Aiden fell or had been hurt at Brienna's apartment. Robert reported that Aiden had never been injured at his home. Brienna's bedroom was also cluttered and had very little open space on the floor. Brienna and Aiden slept in the same bed. Richard, Brienna's brother, occupied the second bedroom, and that room was locked whenever O'Connell visited the home. Todd slept on the living room couch.

O'Connell performed a second surprise visit on Brienna, finding an unsecured cabinet with cleansers containing dangerous chemicals. However, he observed a better variety of food in the home, including yogurt containers and a crock-pot with a pot roast. O'Connell questioned whether "things were prettied up" because some items appeared unopened or untouched, like the yogurt in the refrigerator, and the crock-pot did not have a base on the counter. The bathrooms were still not clean on this visit. The handrail was repaired. The toilet on the first floor had been replaced and according to Brienna, the kitchen sink was also being replaced. Some of Aiden's toys appeared dirty or dusty. However, O'Connell acknowledged that the level of clutter had been cleaned up between the two visits.

O'Connell's first visit to Robert's home was announced. Robert's home was a two-bedroom ranch and was kept very neat and clean. The living room contained Aiden's toys in two plastic bins.

The grandparents' bedroom was orderly and clean. Robert's bedroom had both Robert's bed and a small child's bed for Aiden. There was a changing table in Robert's room as well. The bathroom was clean and tidy with child safety locks on the cabinets. The refrigerator contained appropriate food, including fruits, vegetables, eggs, and milk. Aiden had a high chair at the kitchen table, where the family ate meals. O'Connell ate dinner with the family.

O'Connell's second visit to Robert's home was unannounced. Robert's parents were present. Aiden and Robert were not at home. O'Connell observed that the home was again clean and orderly. Some dirty clothes were out because they were about to do laundry. There were a few toys on the living room floor. Child locks were not attached to the cabinet in the kitchen. Otherwise the home was in the same condition. There was a child's potty training seat in the bathroom because Robert and his parents were trying to potty train Aiden. O'Connell stated that Brienna's home did not have a potty training seat.

In addition to his visits, O'Connell reviewed a police report on a domestic call to Brienna's home, which indicated that the apartment was cluttered and generally unclean but nothing was outwardly dangerous to Aiden. He also reviewed a DCFS report which indicated that the home was cluttered and that Richard's room contained beer cans and drug paraphernalia.

O'Connell recommended that custody be changed from Brienna to Robert because the parties had such a difficult time communicating with each other, making joint custody inappropriate. He recommended that Brienna have unsupervised visitation with Aiden. O'Connell based his recommendation on the fact that both parents reported that they rarely talked and when they did, it was very contentious. O'Connell stated that both parents acknowledged that Robert exercised his visitation rights and never refused extra time with Aiden. Robert also had a driver's license and

Brienna did not. O'Connell determined from his interviews that Brienna had some motor skill delays and had attempted to drive but would get too anxious. O'Connell considered Brienna's inability to drive as limiting her employment opportunities and affecting Aiden in that she may not be able to drive him to school. With all things being equal, O'Connell stated that it was a "point against Mom being the custodial parent, because she can't drive."

O'Connell also testified that it was reported to him that Brienna's mother lived with a sex offender and has babysat for Aiden in the past. However, no one had informed O'Connell whether the sex offender had any contact with Aiden or was ever present when Aiden was with his maternal grandmother. He had no knowledge of the alleged offender's name or relationship.

O'Connell admitted that Aiden was very comfortable with both parents and grandparents. Brienna expressed to O'Connell her desire to continue as custodial parent, that Aiden was doing well in his specialized school program, had been doing well with his doctors, and that she had always taken care of him. Brienna felt that Robert was not really involved, that his mother was the main caregiver in Robert's home, and that Robert did not attend school meetings or doctor visits. Robert would not attend some meetings or doctor visits because of his work schedule. O'Connell acknowledged that Aiden's teachers and therapists believed Aiden was doing well and that Brienna was properly supporting him. He also admitted that Brienna was cooperative and responsive to O'Connell's questions and was always compliant with his requests regarding Aiden's well-being, such as taking him to see a dentist because Robert reported concerns regarding his front teeth, which were fine.

Regarding visitation with Brienna, O'Connell's concerns regarding MRSA were the lack of cleanliness of Brienna's home, and that Todd, who also had MRSA, used the same bathroom and

slept on the couch. The bathroom vanity also needed a lock. If Brienna were to clean the home properly, including the bathroom and the couch, and add a child lock, O'Connell would not have a problem with a week-long visit with Brienna. O'Connell admitted that Aiden's developmental delays were not caused by his environment, but were organic. He also admitted that no doctor had suggested that Aiden was not being fed properly.

O'Connell admitted he spent significantly more time at the father's home and less time at the mother's home. He also acknowledged that Robert's home had an unsecure cabinet in the kitchen. He admitted that he did not take any photographs of Brienna with Aiden while he took several with Aiden and Robert and Robert's parents. O'Connell admitted that Brienna had repairs done based on his comments from his first visit and had tidied up the apartment. He admitted that he did not ask Brienna when the last time she had cleaned or vacuumed even though he concluded that her apartment was not "recently" vacuumed or cleaned like he described Robert's home. O'Connell admitted that Aiden and Robert were not present during his second visit. He admitted that Brienna reported that Robert used drugs in the past. O'Connell questioned Robert about this, and Robert reported that he had not used drugs in a "long time." O'Connell did not request any drug testing and did not know if Robert had ever been tested for drug use. He admitted that Brienna never had a driver's license, and that Robert was aware of this when they originally agreed to custody. O'Connell admitted that Brienna's lack of a driver's license had not impacted Aiden's health and safety as of the day of trial. O'Connell further agreed that the main caregiver of Aiden in Robert's home would be his mother.

During cross-examination of O'Connell, counsel for Brienna questioned O'Connell as follow which resulted in a sustained objection:

“Q. Was there a motion to disqualify you as the guardian ad litem filed in this case?”

A. There was.

Q. And that was filed by Hoscheit, McGuirk, McCracken & Cuscaden who were the attorneys of record at that time, correct?

A. I believe it was signed by Mr. Wallace, who was then at the firm of Hoscheit, McGuirk.

Q. Okay. And one of the issues raised was that at that time your wife was being represented by Hoscheit, McGuirk, correct?

A. That was one of the issues raised by the motion.

Q. And did you previously represent--

[Counsel for Robert]: Judge, objection. We had the motion, and this Court already made a finding on that motion, which was that you denied it.

[Counsel for Brienna]: Judge, it goes to the bias of the witness. I think for the record, I’m entitled to ask him about it.

[Counsel for Robert]: And in that motion, that’s what you considered at the time.

[Counsel for Brienna]: And with all due respect to [counsel for Robert] and the Court, you may not be the final person deciding this case, and I think I’m entitled to make a record.

THE COURT: Well, was there a record made?

[Counsel for Brienna]: No, there was not a court reporter at that time.

THE COURT: Was there--

[Counsel for Robert]: Yes.

THE COURT: --an order?

THE WITNESS: There's an order, your Honor. Paragraph 1 says respondent's motion to disqualify and other relief is denied, dated March 1, 2010.

[Counsel for Brienna]: Judge, I'm not asking the Court to disqualify Mr. O'Connell, I'm—I'm entitled to cross-examine him regarding his investigation and his potential bias in this case, whether any exists. The Court can give it the appropriate weight, but I don't think that I can be precluded from asking about it.

\* \* \*

THE COURT: Oh, they brought a motion to disqualify. That's right. I remember now. Okay. Let me just read this.

I'll sustain it. Next question."

Counsel for Brienna then questioned O'Connell as to whether he made his recommendation in favor of Robert before or after the ruling on the motion to disqualify. O'Connell testified that he informed the court during the hearing on the motion that he was going to be recommending that Robert get custody but that his written report did not get issued until after the motion was ruled upon.

O'Connell further admitted on cross-examination that Brienna was compliant with all of his requests and had a close, loving relationship with Aiden. He agreed that the primary caregiver if Robert was given custody would be Robert's mother, not Robert. Upon viewing photographs of alleged injuries on Aiden, O'Connell drew the conclusion that because all of Aiden's alleged injuries occurred in Brienna's home, it was due to the clutter of her home. He did not see the events that led to the minor bruise and minor scratch depicted in the photographs.

Robert Bryant, a DCFS investigator, visited Brienna's home on February 7, 2009, after a complaint of environmental neglect was reported. Aiden had a bruise to his right upper eyelid when Bryant visited the home. Brienna's bedroom had an excessive amount of clothing cluttering the room. Brienna stated that Aiden tripped in the bedroom and hit his eye on the wire wastebasket in the room. Richard's bedroom contained beer cans and three marijuana pipes. The remainder of the apartment was appropriate for Aiden. Brienna was unaware of the condition of Richard's room. Bryant recommended that Brienna clean up her bedroom and install a lock on Richard's bedroom door to prevent Aiden from entering the room. Bryant returned on February 8, and the beer cans and pipes were gone, the lock was installed, and Brienna's room was cleaned. He returned for a surprise visit on April 9, and determined the home was still appropriate for Aiden. The case was closed as Bryant had no safety concerns about the condition of the home for Aiden.

Robert Nolan, III, testified that he was working for a construction company, making \$481 per week. His hours were normally between 7 a.m. and 8 a.m. until 3 or 4 p.m. He also had about a 45 minute commute both ways, depending on the location of the job site. Robert described November 12, 2007, as a day when Aiden was ill and had a gash on his face. Brienna told him that Aiden fell out of bed and hit his face on the bedframe. Robert took him to the doctor, who gave Aiden an antibiotic shot. He also described August 22, 2008, a day that Robert went to pick up Aiden for his weekend visit. Brienna asked if Robert would take her to the bank, and Robert refused because it was 6 p.m., Aiden had not eaten yet, and Robert had an hour commute home. Brienna threw a shoe at Robert, but it struck Aiden as Robert held him. Next, Robert identified photographs that he took on January 11, 2009. The photos show a bruise near Aiden's right eye. Brienna told him that Aiden fell and hit his face on a stair at the home of a family friend. Another photo, dated

February 7, 2009, showed a bruise on Aiden's right eyelid and a small scratch next to it. Brienna told him Aiden fell but did not describe how. Another photo taken by Robert on August 7, 2009, showed a minor scratch above Aiden's right eye, after another fall at Brienna's home. A photo taken by Robert dated August 21, 2009, showed three minor scratches on Aiden's face. Brienna explained that Aiden accidentally scraped her fingernails as he walked towards her arms. A photo dated October 17, 2009, depicted a bruise to Aiden's right temple area; Brienna told Robert that Aiden fell and hit his face on the floor. A photo dated February 21, 2010, showed a bruise above Aiden's right eye. Robert could not recall how Brienna explained this injury occurred.

Robert was aware that Aiden had had some neurological testing but that the doctors were reluctant to label him autistic this early. The doctors thought if he was autistic, it was a very mild case or possibly Asperger's syndrome. He found out about Aiden's MRSA infections after Aiden had several outbreaks. Brienna did not tell him about the diagnosis initially. Robert and his parents tested negative for the MRSA bacteria. The doctor told Robert the infections would be helped if Aiden was out of diapers. Robert has been trying to potty train Aiden and reported some success but he did not think that Brienna was helping to potty train Aiden in her home. Robert testified that he did not believe Brienna facilitated his relationship with Aiden, although he admitted that she has given him more visitation at times. They have fought about medical care of Aiden but not about educational matters.

Robert admitted he had smoked marijuana and tried other drugs in the past but not since Aiden was born. He has passed drug tests for employment in 2001, 2002, 2003 or 2004, and in 2007. He also was on active duty in the U.S. Army from 1997 through 1999, and passed several drug tests during that period though he admitted using drugs during leaves. He admitted he has used

ecstasy, mushrooms, crystal meth, and cocaine. Robert also admitted using goldenseal to help him pass drug tests because it was known to clear the system of marijuana. He denied drinking to excess since Aiden was born.

Robert testified that there was a comparable school program for Aiden in the school district of his community. Robert's parents would likely be responsible for taking Aiden to and from school. He believed that a change in custody was necessary because he did not think that Aiden was thriving in Brienna's home due to the condition of the home. Robert was concerned about Aiden's recurrent MRSA infections and the presence of drugs and alcohol in the home. In the future, he hoped to move out on his own, but he intended to stay within the McHenry community, near his parents.

Pamela Nolan, Robert's mother, testified that she observed Robert care for Aiden, including preparing his breakfast, changing his diapers, playing with him, and potty training him. Pamela also cared for Aiden while Robert was at work. Pamela suffered from chronic obstructive pulmonary disease (COPD) and diabetes and was on medications for those diseases. Previously, she had stents put into her heart and recently had a bout of pneumonia. However, she did not believe her medical condition prevented her from caring for Aiden. She admitted that she often lost her inhaler around the house.

Robert Nolan, II, testified that he assisted in caring for Aiden when Robert was at work. He was currently retired and in good health. He has observed Robert care for Aiden, including playing and reading with Aiden and changing his diapers.

Dr. Dennis Murphy, Aiden's pediatrician, testified that he knew Brienna and believed he may have once spoken to Robert on the phone. Brienna was the parent who brought Aiden to his office. Dr. Murphy described Aiden's medical history of developmental delays, which may be caused by

autism or Asperger's syndrome, and MRSA infections. He believed that Aiden had been treated for MRSA four to six times and stated that MRSA recurrences were not unusual. He could not surmise the cause of Aiden's MRSA and thought once he was out of diapers, the infections may not recur because the skin under the diaper had previously been the site of infection. Dr. Murphy believed that Aiden was progressing in his current environment and that there was nothing more that Brienna could do that she was not already doing. He believed that Brienna understood Aiden's prognoses and treatments and was mentally and physically capable of giving Aiden the care he needed.

Brienna testified that a typical day with Aiden included waking him up, changing his diaper, dressing him, feeding him, and getting him on the school bus just before 8 a.m. He attended an early childhood program for special needs children, where he received speech, occupational, and physical therapy. She reported that Aiden was progressing well in his program. While Aiden was in school, Brienna did her housecleaning and laundry. She had her G.E.D. and was looking into taking classes at the community college. She was unemployed and hoped to obtain employment after taking some classes. She did not have a driver's license but could walk or take a bus to work. However, she was not working because Aiden needed her at home and babysitters or day care were expensive. Brienna testified that Aiden's delays affected his walk and that he was afraid of certain sounds, such as the vacuum or remote-control cars or anything that made a buzzing noise. When Aiden was at home, Brienna watched Elmo with him, read books, or played outside. Aiden played with many of the children who lived in the apartment complex. Brienna cleaned the bathtub by spraying it with a bleach cleaner after each use to help prevent MRSA recurrences. She provided Aiden the necessary medications for his MRSA. Brienna also testified that she was working on potty training Aiden because the doctor advised being out of diapers would help him.

Brienna and Aiden resided with her father Todd, whom Brienna trusted with Aiden. Todd did not usually have to care for Aiden as Brienna was home, but he would drive them places when she needed to take Aiden to the store or to the doctor. Brienna acknowledged that her mother, Gail, used to live with Brienna's grandmother and uncle. She acknowledged that her uncle was a sex offender. However, Gail had moved out of that residence over a year ago and Aiden was never left in the care of her grandmother or uncle. She also denied using drugs other than marijuana before Aiden was born.

Regarding O'Connell's visits, Brienna testified that she was making a pot roast and had the base to the crock pot in the house. She also had a potty training seat for Aiden in the bathroom vanity, which she used to train him. O'Connell never asked her about potty training. She explained Aiden's injuries as having occurred during his normal activities that resulted in various falls. Aiden was an active boy, who ran around and liked to play.

Todd Peters testified that he had a MRSA infection in March 2009. He had one bout with MRSA before. He did not know how he got the illness. He spent time with Aiden frequently, playing football with him, reading books to him, and teaching him the alphabet. Todd also played the guitar for Aiden. He believed that Aiden's skills were improving with his school program. He was also helping Aiden with potty training, and he believed Aiden was starting to catch on. Todd testified that he was not aware of Richard's marijuana usage until the DCFS worker told him. Todd threw out everything from Richard's room after that. He does not use or condone the use of drugs in his home. Patricia Valvis, Brienna's neighbor, testified that she has known Brienna for several months. Valvis had two children, ages two and three. Her children and Aiden often played together in the front of the building. She noticed Aiden was delayed, and Brienna explained his situation.

Valvis noticed a lot of improvement in Aiden's ability to recall the names of the other children and his ability to interact positively with the kids. She described Brienna as a loving and caring mother. Brienna interacted well with Aiden. Valvis testified that she knew Aiden had MRSA and that she allowed her children to play in Aiden's residence. She testified that the apartment complex's pool also had MRSA.

Tiffany Leonard, another neighbor of Brienna's, testified that she had two children, ages three and nine months, and that her three-year-old often played with Aiden. The mothers in the apartment complex often planned activities, such as zoo trips and art projects, and Aiden was accepted by the children. Despite his delays, Aiden interacted and got along well with the children. Brienna also interacted well with Aiden and was very good at supervising him.

After four days of testimony and evidence, the trial court took the matter under advisement and scheduled a status date on November 19, 2010. On that date, the trial court issued a letter to the attorneys summarizing its findings. The letter stated that it "sets forth the findings and Judgment Order that the Court will enter. The evidence heard by the Court is summarized in this ruling and to the extent that the facts are in dispute, this ruling constitutes findings of fact." The letter continued that section 610 of the Act provided that it make certain findings when considering a petition to modify custody and that it must find by clear and convincing evidence that a change has occurred in the circumstances warranting a modification in custody for the child's best interest.

The letter continued that O'Connell presented a written report to the court dated April 12, 2010, which found both parties to be fit and proper parents. However, he recommended that it was in Aiden's best interest to be awarded sole custody. The parties lacked the ability to cooperate for successful joint parenting. O'Connell recommended that Robert should solicit and consider

Brienna's input on important parenting decisions and that Brienna should have regular, unsupervised visitation with Aiden. The court agreed with O'Connell that the parties did not have the ability to cooperate to effectively parent Aiden and that a joint custody order would not be in his best interest. The court then went through the factors set forth in section 602 of the Act, making the following findings. Both parents desired custody of Aiden. Brienna had been the primary caretaker of Aiden but Robert had always exercised his visitation rights. Aiden had a good relationship with both parents and grandparents. Aiden was well-adjusted at both parents' residences, at his school, and in the larger community. Aiden played with neighbor children in Brienna's apartment complex, was involved in a school program to help with his developmental delays, and was doing well in that program.

Regarding Aiden's mental and physical health, the trial court noted that his developmental delays were the primary issue. Because of these delays, O'Connell felt that Aiden would benefit from a stable, clean, uncluttered home. O'Connell reported that Brienna's apartment was "cramped, cluttered and not well set up for Aiden" and in need of a "deep" cleaning. Aiden shared a bedroom with Brienna, the apartment did not have a dining area, and Aiden did not have a high chair. O'Connell reported that the clutter contributed to Aiden's falls and because of his disabilities, he could not catch himself to prevent injuries. The court noted that O'Connell reported that Robert's home was much more suitable for Aiden. Robert resided with his parents in a two-bedroom ranch home in McHenry. The home was very neat, clean, and uncluttered. Pamela was the primary caregiver for Aiden. O'Connell believed the deciding factor for a custody determination in this case was the living situation in both residences, and that this factor weighed heavily in favor of Robert. Another factor weighing in favor of Robert was Brienna's withholding of medical information

regarding Aiden from Robert, specifically her failure to advise Robert of Aiden's MRSA diagnosis for over one year. Brienna had shown a lack of desire to encourage a close relationship between Robert and Aiden.

Based on these factual findings, the court awarded sole custody of Aiden to Robert, with Brienna having visitation rights. The court also ordered that Brienna provide a clean and uncluttered apartment for Aiden and a bed for Aiden. The court ordered that O'Connell inspect the premises and on occasion perform unannounced visits of the premises to ensure compliance and to ensure that Richard's bedroom was locked to prevent entry by Aiden. The court ordered that Robert's attorney prepare an order consistent with the court's opinion and present it to the court on November 23. The November 23 order embodied the court's orders but did not recite the court's factual findings and reasoning contained in the court's opinion/letter. Brienna timely appealed.

## II. ANALYSIS

On appeal, Brienna argues: (1) that she was deprived of her right to procedural due process when the trial court refused to allow her to cross-examine O'Connell regarding the factual basis underlying his recommendation; and (2) the judgment order was facially deficient in complying with the requirements of section 610(b) of the Act, in spite of the intention of the judge's letter. Enmeshed in these arguments, Brienna also argues that the court's determination to change custody was an abuse of discretion or against the manifest weight of the evidence. We will address each argument in turn.

We first consider Brienna's argument that she was improperly restricted in cross-examining O'Connell regarding potential bias. The scope of cross-examination is within the discretion of the trial court and will not be disturbed absent an abuse of that discretion. *Achanzar v. Ravenswood*

*Hospital*, 326 Ill. App. 3d 944, 950 (2001). The scope of cross-examination is limited to the subject of direct examination and any permissible matter that affects the witness’s credibility. *People v. Blue*, 205 Ill. 2d 1, 13 (2001). The trial court “should afford a defendant the widest latitude to establish the witness’ bias or hostile motivation.” *Id.* at 14. However, the improper denial of one’s constitutional right to cross-examine a witness regarding bias does not always mandate reversal, but may be found to be harmless error. *People v. Kliner*, 185 Ill. 2d 81, 134 (1998). In this case, we agree that the court improperly limited Brienna’s counsel from cross-examining O’Connell regarding potential bias, but we find that error was harmless given the fact that the same trial court judge presided over the earlier motion to disqualify O’Connell. The motion to disqualify thoroughly raised the same issues, and the trial court specifically stated that it remembered that motion when it decided to sustain the objection. Accordingly, while specific questions were not allowed on cross-examination, it appears from the record that the trial court was adequately apprised of O’Connell’s business contacts with Brienna’s family and counsel when it considered O’Connell’s report and testimony.

Moving on, we consider Brienna’s argument that the trial court’s order failed to comply with the written requirements of section 610(b) and that the trial court’s order to change custody was against the manifest weight of the evidence or an abuse of discretion. On the former point, we disagree; on the latter, we agree with Brienna. Section 610(b) of the Act provides:

“The court shall not modify a prior custody judgment unless it finds by clear and convincing evidence, upon the basis of facts that have arisen since the prior judgment or that were unknown to the court at the time of entry of the prior judgment, that a change has occurred in the circumstances of the child or his custodian, or in the case of a joint custody

arrangement that a change has occurred in the circumstances of the child or either or both parties having custody, and that modification is necessary to serve the best interest of the child. \*\*\* The court shall state in its decision specific findings of fact in support of its modification or termination of joint custody if either parent opposes the modification or termination.” 750 ILCS 5/610(b) (West 2008).

We reject Brienna’s argument that the trial court did not comply with the section 610(b) requirement that the court make specific findings. Brienna argues that because the written order, drafted by counsel, failed to embody the court’s findings, the order was deficient. We disagree because the trial court’s specific findings were contained in its written letter to the attorneys, made part of the record, and noted that it was to be made part of the ultimate written court order. We find the opinion letter to be just as sufficient as if the court had orally stated its findings and drafted a less-than-specific order. See *In re Custody of Pfaff*, 250 Ill. App. 3d 265, 267 (1993) (“specific findings need not be contained in the written order when they are mentioned orally by the judge at the time he makes his decision”). Even in the written letter/opinion, the trial court did not clearly articulate the change of circumstances but the overall record indicates that it deemed Aiden’s diagnoses of developmental delays and MRSA infections as a change since the parties originally agreed upon custody. See *In re Custody of Sussenbach*, 108 Ill. 2d 489, 497 (1985) (despite trial court’s failure to specify changes in circumstances, the record sufficiently established a change in circumstances occurred and reviewing courts were able to evaluate change in custody decision). Here, we have a written opinion by the trial court; it was simply not rewritten into a form court order in its entirety. We also have the entire record, which thoroughly discussed the circumstances at

issue. We therefore find that the court's opinion letter, along with the record, sufficiently satisfied the requirements of section 610(b).

In the end, we agree with Brienna that the trial court's order to change custody was an abuse of discretion because Robert failed to prove by clear and convincing evidence that a custody change was in Aiden's best interests. Determining where custody should lie in a particular case is a matter which rests within the sound discretion of the trial court. *Sussenbach*, 108 Ill. 2d at 498. Under section 610(b), the court must find by clear and convincing evidence that a change in custody is necessary to serve the best interest of the child. *Id.* at 499. Once the court concludes that a change in custody is necessary, great deference is accorded to that decision, since the trial court is in the best position to judge the credibility of the witnesses and determine the needs of the child. *Id.* However, section 610(b) has an underlying policy favoring finality of child custody orders and creates a presumption in favor of the present custody order in order to promote stability and continuity in the child's custodial and environmental relationships. *In re Marriage of Nolte*, 241 Ill. App. 3d 320, 325 (1993). Changed conditions alone do not warrant modification of the custody arrangement without a finding that such changes affect the welfare of the child. *Id.* at 325-26. Once the trial court has made its determination, that decision will not be disturbed on appeal unless the trial court abused its discretion or the decision is contrary to the manifest weight of the evidence. *Id.* at 326.

As we stated, the trial court did not clearly articulate the change of circumstances but the overall order and record indicated that it deemed Aiden's diagnoses of developmental delays and MRSA infections as a change since the parties originally agreed upon custody. This finding was not against the manifest weight of the evidence as the parties agreed that Aiden showed developmental delays, had testing that indicated possible autism, and had recurrent MRSA infections since the

original custody order. However, a change in circumstances alone does not warrant a change in custody. See *Nolte*, 241 Ill. App. 3d at 325-26. Here, the trial court considered the best interest factors of section 602 of the Act, determining that the cleaner state of Robert's home and Brienna's failure to advise Robert of Aiden's MRSA diagnosis as favoring Robert and outweighing the remaining factors. The remaining factors included that Brienna had been Aiden's primary caregiver since his birth; that Brienna had Aiden in an established educational program in which he was thriving in; and that Brienna desired to continue as Aiden's primary caregiver.

We do not agree that the record supported the trial court's findings related to the factors it found favoring Robert. First, there was no testimony to support O'Connell's conclusion that the condition of Brienna's home caused Aiden harm by contributing to his MRSA infections. There was no evidence of the cause or source of Aiden's MRSA infections. O'Connell concluded that Aiden contracted MRSA from Todd, who had a bout with MRSA in 2009, but there was no medical evidence to support that. There also was no medical evidence to support O'Connell's conclusion that Brienna's failure to clean the bathroom caused or exacerbated Aiden's infections. In fact, Aiden's physician testified that it was not uncommon to have recurrent bouts with MRSA once infected. Moreover, the photographs do not depict uninhabitable or dangerous living conditions as O'Connell suggested. Even on Bryant's initial visit, he determined that most of the home was safe for Aiden, including the bathroom, kitchen, and living room. Regarding Brienna's failure to advise Robert of Aiden's MRSA diagnosis, we note that Brienna did not fail to get proper treatment for Aiden and provided Robert with the medicines when he picked up Aiden. There was no allegation or evidence that Brienna's failure to specifically advise Robert that Aiden's infection was caused by MRSA adversely affected Aiden's health or the health of anyone in Robert's home.

O’Connell’s opinion that the clutter caused Aiden injuries was also unsupported. O’Connell admitted that Brienna had complied with his recommendations on his second visit, namely that the apartment had been “tidied up,” that the handrail was repaired, and that better food options were available. On every visit, O’Connell reported that Richard’s room was locked. Bryant had reported that Brienna complied with his recommendations within 24 hours, and he deemed the home safe for Aiden. While there was evidence that Aiden had fallen at Brienna’s home and at the home of a family friend, there was nothing to suggest that such falls were out of the ordinary or were more frequent or more severe due to the clutter. Significantly, there was only evidence of a few falls over the course of more than one year. The photos depicted minor bruising and scrapes but nothing requiring medical attention. The circumstances described surrounding those falls did not indicate abuse or neglect. Several of the injuries were explained by incidents that did not even involve Brienna’s clutter—falling on a stair at a family friend’s home, accidentally scraping his face on Brienna’s fingernails when walking into her arms, and falling out of bed and scraping his face on the frame. Moreover, Aiden’s doctors, teachers, and neighbors all agreed that Brienna adequately cared for and attended to Aiden’s medical and educational needs and that she adequately supervised him while he played outside.

Thus, we find the record was devoid of any evidence that the condition of Brienna’s residence or the couple’s hostile relationship somehow adversely affected Aiden’s welfare. See *Nolte*, 241 Ill. App. 3d at 330 (reversal of custody change where there was no evidence that the mother’s new residence with a man affected the children’s well-being, even though the father was more financially stable; thus the best interest of the children was to remain living with the mother). “Continuity in lifestyle and environment is important to the healthy and normal development of

children.” *Id.* Considering that Brienna has been Aiden’s primary caregiver since his birth and that he has been thriving in his individualized educational program in Brienna’s community, it would be in Aiden’s best interests to continue living with Brienna, given there has been no evidence that remaining in Brienna’s care would pose present or future harm to him. Therefore, we find that the trial court’s determination that it was in Aiden’s best interest to change custody was against the manifest weight of the evidence, and thus the trial court abused its discretion in granting Robert’s petition for modification of custody.

### III. CONCLUSION

We reverse the judgment of the circuit court of Kane County.

Reversed.