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2011 IL App (3d) 110298-U

Order filed November 18, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

<i>In re</i> MARRIAGE OF KARINE E. CHRISTAKES,	) Appeal from the Circuit Court
	) of the 12th Judicial Circuit,
Petitioner-Appellant,	) Will County, Illinois,
)
	) Appeal Nos. 3-11-0298, 3-11-0280, and
and	) 3-11-0445
	) Circuit Nos. 05-D-1702, 06-OP-1520, and
	) 08-OP-1404
)
GERALD SCHUTZIUS,	) Honorable
	) Dinah L. Archambeault,
Respondent-Appellee.	) Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Presiding Justice Carter and Justice Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's modification of custody was not against the manifest weight of the evidence; its factual findings in the order of March 18, 2011, were supported by the evidence presented; the court had statutory authority to appoint a temporary custodian to care for the children during the pendency of this case; the court did not abuse its discretion when it refused to discharge the guardian *ad litem*; the court did not abuse its discretion when it required the parties to pay the 604(b) evaluator's fees; and remand of the case to another trial judge is not warranted.

¶ 2 Petitioner, Karine Christakes, appeals from (1) the denial of a 2008 order of protection against her former husband, Gerald Schutzius, (2) the denial of her motion to reinstate visitation with their two daughters, and (3) the modification of custody judgment that awarded custody of their daughters to Gerald. On appeal, Karine raises nine issues: (1) the trial court's decision to grant Gerald's petition to modify child custody was contrary to the manifest weight of the evidence; (2) the court's factual finding in the order of March 18, 2011, that Karine coached the children to accuse Gerald of sexually abusing them is contrary to the manifest weight of the evidence; (3) the appointment of Gerald's sister as caregiver was without statutory authority; (4) the court abused its discretion when it denied Karine's repeated motions to discharge the guardian *ad litem*; (5) the court abused its discretion when the parties were ordered to pay the section 604(b) evaluator double the sum agreed upon in their written contract; (6) the court abused its discretion by awarding Gerald temporary sole custody of the children without first conducting a hearing; (7) the court repeatedly abused its discretion by denying Karine's visitation rights for most of the last three years; (8) the court abused its discretion when it denied Karine's motion to discharge the 604(b) evaluator; and (9) the case should be reassigned to a new trial judge. We affirm.

¶ 3 **FACTS**

¶ 4 On November 30, 2005, the marriage between Gerald and Karine was dissolved. Two children were born to the parties during their marriage: Kal., born on August 12, 2003, and Kyr., born on December 1, 2004. The dissolution judgment awarded sole custody of both children to Karine. However, the parties agreed that Gerald would have liberal visitation. On August 9, 2006, the court ordered that Gerald have overnight visitation every other weekend.

¶ 5 On November 12, 2006, Karine took Kal. to the emergency room. Kal. had previously complained of a burning sensation, and she had a rash in her genital area. Nurse Jennifer Schnell reported that Kal. allegedly said "[d]addy touches me with a stick in my butt." Schnell testified at trial that the rash could be a sign of sexual abuse or poor hygiene. However, such a rash was not uncommon in young girls. The examining physician also reported that Kal. was red and irritated from her vagina to her anus, which was a sign of possible sexual abuse or the result of poor hygiene.

¶ 6 On December 9, 2006, Karine took Kyr. to the hospital because she observed a severe rash on her genital area. Nurse Nicole Schiever observed that Kyr.'s vaginal area was red and inflamed. This prompted her to conduct a sexual assault examination, the results of which were turned over to the Tinley Park police department. The examination did not reveal evidence of trauma or penetration. Although Schiever was unable to confirm or deny that Kyr. had been sexually abused, she called the Department of Children and Family Services (DCFS) abuse hotline.

¶ 7 After Kyr.'s December 2006 examination, a Tinley Park police detective interviewed Gerald. Gerald purportedly admitted to the detective that he had slept in the same bed as Kyr. On the night in question, Kal. and Kyr. were sleeping in the same bed in an upstairs bedroom when Gerald heard Kyr. crying. Upon further investigation, Gerald observed that Kyr. had vomited in the bed. He then changed the sheets and returned Kal. to the bed. However, he slept with Kyr. on a futon in another room because she was sick.

¶ 8 Following the start of the DCFS and police investigations, the court entered an agreed order that permitted Gerald to only have supervised visitation until the results of the sexual

assault examinations were returned. In January 2007, DCFS reported that the sexual abuse allegations against Gerald were unfounded, but the agreed supervised visitation order remained in effect.

¶ 9 Karine alleged that after Gerald's February 20, 2007, supervised visit, Kyr. complained that her buttocks hurt, and Karine noticed that Kyr. had excessive redness on her genital area. Karine then took Kyr. to the hospital, where another sexual assault examination was conducted. The examining nurse reported that Kyr. had a rash and redness around her vagina. The nurse turned the results of her examination over to the Tinley Park police department.

¶ 10 On March 13, 2007, Karine filed a petition to suspend Gerald's visitation. Karine purportedly withheld visitation until Gerald responded to her petition in April 2007. During this period, Karine alleged that Kal. and Kyr. made numerous allegations of sexual abuse and engaged in oversexualized behavior. This behavior was noted by several of Karine's friends and family members.

¶ 11 In June 2007, Gerald filed a petition for rule to show cause for visitation interference. The case was continued for status, and a Rule 215 evaluator was appointed to assess Gerald's propensity for sexual abuse. Ill. S. Ct. R. 215 (eff. July 1, 2002). On October 26, 2007, Gerald's attorney informed the court that Gerald's 215 evaluation had been completed. The evaluation indicated that Gerald had no inclination toward sexual abuse.

¶ 12 Kyr.'s sexual assault examination results were returned at the end of November 2007. In response, the court appointed Angela Henderson guardian *ad litem* for the girls. On December 14, 2007, Karine filed a petition for the removal of Henderson as guardian *ad litem*. Karine's motion alleged that Henderson seemed disinterested in her version of events and had

already made an assessment of the case. On the same date, Gerald filed a petition for modification of custody. Gerald's petition alleged that there had been significant changes in circumstances of the parties which necessitated a modification of custody. In particular, Gerald alleged that DCFS made four unfounded investigations into Karine's allegations of sexual abuse, she refused to allow Gerald visitation, and the State contemplated filing charges against Karine for the unfounded allegations and repeated sexual assault examinations.

¶ 13 At the hearing on March 12, 2008, Henderson informed the court that she had been unable to complete her report because she had not had access to the children. Karine alleged that Henderson misinformed the court when she stated that the deoxyribonucleic acid (DNA) test results established that Gerald was not the donor of the DNA. The court later dismissed Karine's petition to remove Henderson and reinstated Gerald's supervised visitation.

¶ 14 At Henderson's request, the court appointed Dr. Gail Grossman as a section 604(b) evaluator to evaluate the parties and their children and to advise the court. 750 ILCS 5/604(b) (West 2010). Karine responded to Henderson's request by stating "I don't agree with anything that she does."

¶ 15 On April 23, 2008, the court ordered Karine to make the children available for Henderson to interview on April 26, 2008. However, when Henderson arrived at Karine's home to meet with the children, she discovered that the home was deserted. The court then issued a citation to have Karine appear in court with the children in two days.

¶ 16 On May 1, 2008, Karine's attorney filed a motion to withdraw because she had been unable to contact her client. Henderson further informed the court that she spoke to Karine's first husband, who stated that Karine took her youngest son from her first marriage, Kal., and Kyr. to

either Tennessee or southern Illinois. Karine's employer told Henderson that she was away on business without a specified return date.

¶ 17 The court found Karine in indirect civil contempt for failing to make the girls available for evaluation. Karine's sentence was stayed until May 12, 2008, to allow Karine to purge the finding by producing the girls to be interviewed by Henderson. At the hearing, Gerald expressed concern that Karine had blocked his telephone conversations with the girls and she often took them to the emergency room, where several sexual assault examinations were performed. Henderson similarly informed the court that she had concerns about leaving the girls in Karine's care, as she had learned from a Tinley Park police detective that Karine had pushed for more unusual and sensitive tests after the initial sexual assault exam came back negative. The doctors allegedly reported to DCFS that they did not feel comfortable performing these more invasive tests, but did them based on Karine's repeated requests. At the close of the hearing, the court granted temporary custody to Gerald, issued a borderless warrant for Karine's arrest, and terminated Gerald's child support obligation.

¶ 18 In July 2008, Gerald hired a private detective, who located Karine in Indiana. Gerald and the private detective then went to Karine's location and conducted surveillance on her home. Karine alleged that Gerald and the private detective chased her at a high rate of speed as she left her home with Kal. and Kyr. Karine was eventually stopped by the police. Indiana Child Protective Services conducted a short investigation into the incident, and the children were released to Gerald.

¶ 19 On August 6, 2008, Karine filed emergency petitions for immediate turnover of the children, an order of protection, and a motion to disqualify Henderson. The motion to disqualify

Henderson alleged a conflict of interest resulting from Henderson's representation of Karine's three older boys as well as Kal. and Kyr.

¶ 20 At the hearing, forensic biologist Katherine Sullivan testified. Sullivan stated that DNA from three unrelated males was found on Kyr., but she was not able to exclude Gerald as a possible donor of the DNA. However, she reported that 40% of the white male population in Illinois share the same line of DNA as that found on Kyr.'s vaginal swab. The court continued the matter for a hearing on the appointment of a temporary custodian.

¶ 21 Additionally, in August 2008, Henderson requested the court appoint DCFS to supervise Karine's visitation. Karine's first supervised visitation was scheduled at the Kankakee DCFS office for September 5, 2008. During the girls' visit with Karine, the supervisor heard Kyr. say " [d]addy hurt my butt. [PaPa] is going to shoot [d]addy, but [d]addy is good now. Now [d]addy doesn't hurt my butt anymore." It was reported that both of the children said that they were afraid to leave the visit because they were afraid of their father. After the visit, the supervisor made a DCFS hotline call.

¶ 22 Karine alleged that on September 6, 2008, DCFS caseworker Judy Morris instituted a safety plan without Karine's consent. Morris placed the children with Gerald's sister, Mary Kubacki. On September 8, 2008, the court ordered the parties to contact the 604(b) evaluator and arrange for an appointment and to have no contact with the children except as part of the 604(b) evaluation. The court continued the case to September 15, 2008, for status on the appointment "of an individual to have possession of the children pending DCFS investigation."

¶ 23 On September 12, 2008, DCFS reported that the allegation of abuse against Gerald was unfounded. Around this time, Karine alleged that she entered into a contract to pay Grossman

\$4,000 for her half of the 604(b) evaluation.

¶ 24 On September 15, 2008, the court heard arguments on the appointment of a temporary custodian. In its September 30, 2008, written order, the court appointed Kubacki as "caregiver" and granted Karine and Gerald supervised visitation.

¶ 25 In the beginning of December 2008, Grossman purportedly made a DCFS hotline call in response to the girls' allegation that Karine was putting her fingers deep inside them to check to see if they were okay. Gerald responded with a motion to suspend Karine's visitation because Karine had purportedly initiated another sexual abuse investigation and had the girls undergo another sexual assault examination in November 2008. The court continued the motion, but denied both parties visitation. Later in December 2008, the court instituted telephone visitation between the parties and the girls. On January 9, 2009, the court granted Gerald visitation.

¶ 26 On January 14, 2009, Karine filed an emergency motion to terminate Gerald's visitation, reinstate her visitation, remove Kubacki as caregiver, discharge Henderson as guardian *ad litem*, and discharge the section 604(b) evaluator. The court denied the motion. On February 3, 2009, the court ordered the parties to pay an additional \$4,000 each to Grossman. Grossman had previously notified Karine by letter that the case was taking more time and resources than anticipated and would cost twice as much as she had originally estimated.

¶ 27 On March 30, 2009, Grossman requested to be discharged from the case. Grossman testified that Karine was late for appointments, made irrational demands, caused a disturbance in the lobby of her building, and was nearly impossible to work with. As a result, she had been able to complete only 75% of her evaluation of Gerald and 25% of her evaluation of Karine. At the close of the hearing, the court granted Grossman's motion and found that Karine had not

cooperated with Grossman.

¶ 28 On May 13, 2009, Karine filed another motion to disqualify Henderson. In response, the court reviewed the statutory role of the guardian *ad litem*. The court reasoned that the proper remedy for possible guardian *ad litem* bias was cross-examination. See 750 ILCS 5/506 (West 2010). Thereafter, the trial began on Gerald's petition to modify custody. Hearings were held intermittently on the petition until the court issued its decision in April 2011.

¶ 29 During the trial, forensic scientist Sarah Owen testified that she had analyzed the evidence from Kal.'s sexual assault examination. Owen found one sperm cell, but she did not find seminal fluid. Forensic scientist Michelle Thomas stated that the sperm extraction conducted by Owen failed to yield DNA. Thomas further stated that a sperm cell should never be found on a young girl, but she had read articles that indicated that sperm cells could be transferred through the laundry. However, there was no way for her to determine if this type of transfer happened in the present case.

¶ 30 At trial, Gerald called Grossman to testify. Grossman stated that she felt Karine had sabotaged her own interview by refusing to sign releases, failing to cooperate, trying to control the process, and stating that the information Grossman sought was irrelevant. Grossman recalled that Karine had one or two sexual assault examinations performed on the children before she began her evaluation. During the evaluation process, Karine had two additional sexual assault examinations done. Additionally, Grossman noted that Karine admitted to routinely checking the girls' genitals after Gerald's visitation. Karine purportedly showed Kal. and Kyr. a naked baby picture of her son to determine if they could identify his penis. Karine told Grossman that she continued to believe that Gerald was abusing the girls. Thus, she would continue to have the

girls examined for sexual abuse, and she also told Grossman that she would not hesitate to remove the children from Illinois.

¶ 31 Grossman further testified about her appointments with Kal. and Kyr. Kal. purportedly told Grossman that "mom wants me to say that I don't want dad to hurt me. He doesn't but she's worried." Kal. also said that Karine made her claim that Gerald was sexually abusing her because Karine did not like Gerald. Kal. further told Grossman that Gerald had not told her to say anything. Kyr. told Grossman that she did not remember being instructed by either parent to make a coached statement. Grossman concluded, after 75% of Gerald's evaluation, that he had not sexually abused either girl. After completing part of the 604(b) evaluation, Grossman was leaning towards recommending to the court that Gerald receive custody of the girls.

¶ 32 The DCFS investigator testified that the agency had conducted five investigations into purported sexual abuse by Gerald. All of the investigations were unfounded. The investigator reported that the children denied being abused by Gerald. Additionally, one investigation was conducted into allegations that Karine had sexually abused the children. This investigation was also unfounded. No evidence was found that Gerald ever sexually abused the children, but DCFS found that the children had been taught to make the allegations.

¶ 33 During the trial, Karine called nurse Schiever to testify. However, on the afternoon of Schiever's scheduled testimony, Karine and her attorney were late to court. After waiting 20 minutes, the court excused Schiever. Schiever appeared later in the proceedings under subpoena, and the trial court excused her because Karine's subpoena had not been validly executed. Nevertheless, Schiever agreed to testify. Schiever testified that she examined Kyr. in December 2006 and was on duty on November 29, 2008, when Karine brought Kal. and Kyr. to the hospital

after they purportedly made allegations of sexual abuse. Schiever stated that she gathered evidence from the girls under the supervision of a physician and transferred it to the police.

¶ 34 Further testimony established that in September 2009, Kyr. was having lower abdomen pains and trouble with bedwetting. In response, Kubacki and Gerald took her to see a doctor, who conducted a urine analysis. While Kubacki and Gerald awaited the test results, Kyr.'s condition worsened. The doctor recommended that Kyr. be taken to the emergency room. At the hospital, Kyr.'s sugar levels were reportedly very high. Kyr. was then admitted to the hospital intensive care unit for insulin treatment. While Kyr. was hospitalized, neither Gerald nor Henderson notified Karine. Henderson alleged that she and Gerald did not have Karine's contact information and therefore could not notify Karine of Kyr.'s illness. During the pendency of this case, Kyr. was diagnosed with Type 1 diabetes and Kal. was diagnosed with a thyroid condition.

¶ 35 In January 2010, DCFS notified Karine that it had expunged the allegations against her of substantial risk of physical injury, mental and emotional impairment, and sexual penetration. Two months later, the court granted Karine therapeutic visitation. In September 2010, the court found that Karine was no longer a flight risk and unsupervised visits could recommence. In December 2010, the court vacated and expunged any findings or implied findings of abuse by Karine. On January 20, 2011, the court entered an order that permitted Karine to have overnight visitation and shared parenting time.

¶ 36 Despite the parties' progress, Henderson appeared before the court on February 14, 2011, to report that one child had indicated that Gerald wished Karine was dead. In response, Karine took the children at 3 a.m. to the Matteson police department. DCFS then opened an

investigation in Kendall County, where the children were living with Kubacki. A victim sensitive interview was conducted on February 17, 2011. During the interview, Kyr. said that she was not inappropriately touched by her father but her mother had made her make the allegations. Kyr. said that if she did not repeat the allegations against her father, Karine would become angry. Kyr. specifically instructed the interviewer not to tell Karine that she made her make the statements. Kal. was more reserved, but nodded when asked if her mother told her to make the allegations against her father. Further, Kal. admitted to the interviewer that she did not recall ever being sexually abused. At the end of the interview, DCFS took the children from Karine and returned them to Kubacki's custody.

¶ 37 On March 18, 2011, the court found that Karine had not proved the allegations in her 2008 request for an order of protection by a preponderance of the evidence. The court specifically noted that Karine's testimony was not credible and the girls' statements of abuse were the result of Karine's coaching. Further, there was no evidence from witness testimony or documents that Gerald had abused the girls prior to the filing of the petition. Karine appealed the denial of the order of protection.

¶ 38 On April 13, 2011, the court granted Gerald's petition to modify custody. The court found that a substantial change in circumstances related to the children's needs had occurred. The court noted that there was insufficient evidence that Gerald had sexually abused his daughters, despite multiple sexual assault examinations and DCFS investigations. The court found that the testifying witnesses were credible, but that Karine had coached the girls to allege that Gerald had abused them. Finally, the court found Gerald's testimony denying that he abused the children was credible, while Karine's testimony alleging that Gerald abused the girls was not

credible. The court considered each of the section 602 best interest factors in rendering its decision. The court noted that one girl expressed a desire to live with Gerald while the other had no opinion. Additionally, Gerald had complied with all court orders and provided Karine visitation, while Karine fled the state to prevent Gerald from exercising visitation. The order maintained Kubacki as caregiver of the children. Karine responded with a motion to reinstate her visitation, and the case was continued.

¶ 39 On June 1, 2011, the court held a hearing on the visitation issue. Henderson noted that the children loved their mother, but she recommended that Karine be allowed restrictive visitation because the actions that took place throughout the course of the case had not been resolved. Brenda Karales, a Kendall County assistant State's Attorney, reported to Henderson that a Kendall County sheriff's deputy called DCFS to report mental abuse on the part of Karine after the victim sensitive interview. However, Karales recommended that charges not be filed against Karine. The court concluded that Karine handled the children's medical and education issues well, but found that Karine told the girls that Gerald sexually abused them. Consequently, unsupervised visitation would endanger the girls' mental and emotional health. Nevertheless, the court felt that visitation with Karine was important because both girls wanted to see their mother. Therefore, the court urged the parties to come up with a plan for supervised visitation. Karine appeals the court's decision on her 2008 request for an order of protection, her petition to reinstate visitation, and Gerald's petition for modification of custody.

¶ 40

ANALYSIS

¶ 41

I. Final Child Custody Determination

¶ 42 Karine contends that the court's custody modification was against the manifest weight of

the evidence. In particular, she alleges that Gerald failed to prove by clear and convincing evidence that the girls were adversely affected by their removal to Indiana. Karine further asserts that the court failed to consider the evidence of sexual abuse, including the DNA found in the sexual assault examination, which could not exclude Gerald as a possible donor. Moreover, she notes that the girls were healthy and well cared for while residing with her prior to July 2008. In contrast, Karine argues that Kal. developed a thyroid problem and Kyr. was diagnosed with Type 1 diabetes while in Gerald and Kubacki's care.

¶ 43 A petition for modification of custody filed more than two years from the entry of a custody judgment is governed by section 610(b) of the Illinois Marriage and Dissolution of Marriage Act (Act). 750 ILCS 5/610(b) (West 2010). A court may only modify a prior custody judgment if it finds by clear and convincing evidence that a change in circumstances has occurred which requires modification to serve the best interests of the children. *Id.* The circumstances of the noncustodial parent are irrelevant until the court determines that the circumstances of the custodial parent or of the children have changed. *In re Marriage of Andersen*, 236 Ill. App. 3d 679 (1992).

¶ 44 A court should consider all of the factors listed in section 602 of the Act when deciding if a change in custody is in the best interests of the children. 750 ILCS 5/602 (West 2010); see also *In re Marriage of Spent*, 342 Ill. App. 3d 643 (2003). However, the custody determination inevitably rests on the parties' temperaments, personalities, and capabilities, and the witnesses' demeanor. *In re Marriage of Felson*, 171 Ill. App. 3d 923 (1988). Consequently, the trial court's best interest decision is afforded great deference because it is in a far better position to observe the parties' temperaments and personalities and to assess the credibility of the witnesses. *In re*

Marriage of Stopher, 328 Ill. App. 3d 1037 (2002).

¶ 45 On appeal, the standard of review for the modification of custody is whether the judgment was against the manifest weight of the evidence or constituted an abuse of discretion. *In re Marriage of McGillicuddy and Hare*, 315 Ill. App. 3d 939 (2000). In determining whether a trial court's decision was against the manifest weight of the evidence, the reviewing court views the evidence in the light most favorable to the appellee. *In re Marriage of Bates*, 212 Ill. 2d 489 (2004). "Where the evidence permits multiple reasonable inferences, the reviewing court will accept those inferences that support the court's order." *Id.* at 516. Furthermore, we will not substitute our judgment for the trial court's unless the opposite conclusion is clearly evident. *Nemeth v. Banhalmi*, 125 Ill. App. 3d 938 (1984).

¶ 46 The DNA and testimony regarding the forensic evidence was of an inconclusive nature. Although the forensic scientists testified that male DNA and a sperm cell was found in the sexual assault examinations, they noted that there was not enough DNA to determine the donor. One forensic scientist further noted that the discovered sperm cell could have been the result of nonsexual contact. Although Gerald could not be specifically excluded as the DNA donor, we note that the DNA found was common to 40% of the white male population in Illinois. Furthermore, testimony from the medical personnel that examined the girls indicated that their symptoms may have been the result of poor hygiene instead of sexual abuse.

¶ 47 Evidence from multiple witnesses indicated that the girls stated that Karine had coached them to accuse Gerald of sexual abuse. Grossman noted that the girls tried to protest their mother's belief that Gerald had sexually abused them, but eventually relented in order to please Karine. We also note that each of the DCFS investigations into the alleged sexual abuse by

Gerald were unfounded and that Grossman completed 75% of her evaluation of Gerald and determined that he did not show signs of exhibiting inclination toward sexual abuse.

¶ 48 We further note that the evidence regarding the girls' home lives with each party and subsequent medical treatment posed questions of fact for the trial court to decide. As a court of review, we do not have the benefit of observing the parties and their witnesses testify regarding these factually driven issues. Nevertheless, we note that the trial court considered these factors, as well as the section 602 best interest factors, in modifying the custody order. Of the factors, we note that the trial court considered that Gerald was more likely to foster a continued relationship between the girls and Karine, whereas Karine had previously blocked Gerald's visitation by removing the girls from the state. Therefore, we find that the evidence does not support the opposite conclusion and any conflicts and credibility issues were best left to the trier of fact. The trial court's custody modification decision was not against the manifest weight of the evidence.

¶ 49 II. Factual Findings of the March 18, 2011, Order

¶ 50 Next, Karine argues that the trial court erred in denying her 2008 order of protection on March 18, 2011. In particular, Karine asserts the finding that she coached the girls to make sexual abuse allegations is against the manifest weight of the evidence. Karine contends that the court vacated and expunged any finding of abuse in December 2010 and it heard no evidence after that date upon which it could find that she had coached the girls.

¶ 51 We review a trial court's factual finding under the manifest weight of the evidence standard. *In re Guardianship of K.R.J.*, 405 Ill. App. 3d 527 (2010). A trial court's finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if

the finding itself is unreasonable, arbitrary, or not based upon the evidence presented. *Id.*

¶ 52 We are unpersuaded by Karine's argument. Karine's argument overlooks the evidence from the February 2011 victim sensitive interview. On the videotaped recording of the interview, Kyr. states that her mother told her to say that her father sexually abused her. Further, she instructs the interviewer not to tell Karine of the admission or she will become angry. Additionally, Kal. reveals during the interview that she did not recall ever being sexually abused. Finally, Karine's citation to the court's order of December 7, 2010, which vacated any finding or implied finding of abuse by Karine, is not relevant to this issue, which is focused on the coaching allegations. Therefore, the trial court's finding was based on the evidence presented.

¶ 53 III. Appointment of Caregiver

¶ 54 Karine argues that the appointment of Kubacki as caregiver of the children was without statutory authority. She asserts that the court's actions were void because they were taken outside of the parameters of the Act.

¶ 55 Initially, we note that the term "caregiver" is a misnomer. The court awarded temporary custody to Kubacki on September 30, 2008. Factually, the temporary custody award was prompted by the DCFS investigations into both parents.

¶ 56 A trial court has jurisdiction to modify a child custody determination in custody proceedings. See 750 ILCS 36/201 (West 2010). The order of September 30, 2008, was a child custody determination because it was a judgment for temporary legal and physical custody with respect to the children. 750 ILCS 36/102(4) (West 2010). Kubacki was statutorily recognized as a "[p]erson acting as a parent" which is defined as a "person, other than a parent, who *** has physical custody of the child" and "has been awarded legal custody by a court or claims a right

to legal custody under the law of this State." 750 ILCS 36/102(13) (West 2010).

¶ 57 We also note that the court stated in its order of September 8, 2008, that the case was continued for "[s]tatus on appointment of an individual to have possession of the children pending DCFS investigation." In light of the repeated sexual abuse allegations, pendency of the section 604(b) evaluation, and DCFS involvement, the appointment of Kubacki as custodian was necessary. Therefore, we find that the court's award of temporary custody was based in the Act.

¶ 58 IV. Motions to Discharge Guardian *Ad Litem*

¶ 59 Next, Karine argues that the court abused its discretion when it denied her motions to discharge Henderson as guardian *ad litem*. Karine contends that Henderson misinformed the court about the results of the DNA analysis and provided other false information to the court on several occasions.

¶ 60 A court shall at its discretion or upon the request of a party entitled to petition for custody appoint an attorney to serve as guardian *ad litem*. 750 ILCS 5/601(f) (West 2010); see also 750 ILCS 5/506(a) (West 2010). The guardian *ad litem* then shall testify or submit a written report to the court with her recommendations in accordance with the best interests of the children. 750 ILCS 5/506(a)(2) (West 2010). Section 506 further requires that the guardian *ad litem* investigate the facts of the case and interview the children and the parties. *Id.* However, the appointment of a guardian *ad litem* in a custody proceeding is subject to the sound discretion of the trial court. *In re Custody of Roberts*, 107 Ill. App. 3d 913 (1982).

¶ 61 The guiding principle of the appointment of a guardian *ad litem* is to act in the best interests of the children. *In re Griesmeyer*, 302 Ill. App. 3d 905 (1998). The duty of the guardian *ad litem* is " 'to call the rights of the minor to the attention of the court, to present their

interests and claim for them such protection as under the law they are entitled.' " *Griesmeyer*, 302 Ill. App. 3d at 914 (quoting *Rom v. Gephart*, 30 Ill. App. 2d 199, 208 (1961)). The decision of whether a guardian *ad litem* acted in the best interests of the children encompasses a myriad of factors and must be decided on a case-by-case basis. *Id.*

¶ 62 Here, Henderson investigated the alleged incidents of abuse, interviewed the parties, and filed several reports with the court. The deficiencies in Henderson's representation of the children were likely the result of blocked interviews and confrontations with Karine. Any bias was best resolved through cross-examination of Henderson. See 750 ILCS 5/605(b) (West 2010). Both parties cross-examined Henderson at the various points in the case when she testified. Thus, we find that the court did not abuse its discretion when it denied Karine's repeated motions to discharge Henderson as guardian *ad litem*.

¶ 63 V. Payment of 604(b) Evaluator

¶ 64 Karine contends that the court abused its discretion when it ordered her to pay Grossman double the sum agreed to in her written agreement. Karine characterizes this issue as a contract dispute and argues that one party to a contract cannot unilaterally alter the contract's terms.

¶ 65 However, we find that the court's order to pay an additional \$4,000 was not based in contract, but was the result of the court's inherent power to appoint an expert witness to act on behalf of the children. *In re Marriage of Petersen*, 319 Ill. App. 3d 325 (2001). Although the Act does not specifically authorize the court to impose fees, the court had the inherent power to enter an order that was necessary for the benefit of the children. *Matter of Azevedo's Estate*, 115 Ill. App. 3d 260 (1983).

¶ 66 We review the trial court's award of fees for an abuse of discretion. *In re Adoption of*

Kindgren, 184 Ill. App. 3d 661 (1989). A trial court abuses its discretion if it acts arbitrarily without the employment of conscientious judgment, or exceeded the bounds of reason and ignored recognized principles of law so that substantial prejudice resulted. *TIG Insurance. Co. v. Canel*, 389 Ill. App. 3d 366 (2009).

¶ 67 In the present case, Grossman was appointed at Henderson's request. The court agreed with Henderson that a section 604(b) evaluator was needed to protect the best interests of the children. Thus, the court had the inherent plenary power to appoint Grossman and to order the parties to pay her fees. We find that the court's appointment of Grossman was in the best interests of the children. Grossman's subsequent request and the court's imposition of additional fees on the parties was necessitated to cover Grossman's efforts to complete the 604(b) evaluation.

¶ 68 VI. Issues Rendered Moot

¶ 69 Karine raises three issues which have been rendered moot by either our holdings in the remaining issues, or the temporary nature of the trial court's rulings.

¶ 70 First, she argues that the court abused its discretion when it awarded temporary sole custody of the children to Gerald. A temporary custody order, by its very nature, is not a final, appealable order. *In re Marriage of Kostusik*, 361 Ill. App. 3d 103 (2005). The temporary order was superseded by the court's final custody modification. *Id.* Thus, the temporary custody issue is rendered moot.

¶ 71 Second, Karine argues that the court abused its discretion by denying her visitation rights for most of the period between 2008 and 2011. Specifically, she alleges that the court entered orders prohibiting her from contacting the children in May 2008, December 2008 and March

2011 without first conducting a hearing. See 750 ILCS 5/607 (West 2010). This issue has also been rendered moot by the passage of time and the entry of the final modification of custody order. See *Moseley v. Goldstone*, 89 Ill. App. 3d 360 (1980).

¶ 72 Third, Karine argues that the court abused its discretion when it denied her motion to discharge Grossman. Section 604(b) of the Act permits a court to seek the advice of a professional. 750 ILCS 5/604(b) (West 2010). However, the advice must be in writing and made available to counsel, and counsel may examine the professional as a witness. *Id.* On March 20, 2009, the court heard testimony on Grossman's request to be discharged. Grossman was subject to examination by the parties at this time. After considering Grossman's testimony that she was no longer able to finish her evaluation, the court granted her motion to withdraw. This issue has been rendered moot as a result of Grossman's voluntary withdrawal. Moreover, any issues with Grossman's testimony or evaluation were available for cross-examination on March 20, 2009, and when Gerald called her as his expert witness in the modification of custody trial.

¶ 73 VI. Reassignment to New Judge

¶ 74 Finally, Karine requests that we assign this case to a new trial judge on remand. Supreme Court Rule 366(a)(5) permits a reviewing court, in its discretion, to make any order or grant any relief that a particular case may require. See, e.g., *In re Marriage of Smoller*, 218 Ill. App. 3d 340 (1991) (change of venue allowed as a result of possible trial court bias); see also Ill. S. Ct. R. 366 (eff. Feb. 1, 1994). Karine points to several purported examples of the court's bias. Among them, the court allegedly permitted Gerald and Henderson to not contact Karine when Kyr. was hospitalized. The court excused sexual assault nurse Schiever from testifying without notice to

Karine or her attorney and then told her she did not have to testify when she was recalled at a later date. Also, the court abated Gerald's child support obligations without notice to Karine.

¶ 75 We decline Karine's request on two grounds. First, a trial judge is presumed to be impartial, and the burden of overcoming this presumption is on the party making the charge of prejudice. *Petersen*, 319 Ill. App. 3d 325. Allegedly erroneous findings and rulings are insufficient reasons to conclude that the court has a bias for or against a litigant. *Eychaner v. Gross*, 202 Ill. 2d 228 (2002). Here, Karine's bias allegations are predominantly based on unfavorable rulings. Inevitably, conflicting evidence is presented and credibility determinations arise, which result in unfavorable rulings. The rulings Karine cites were at most unfavorable and not the result of clear bias on behalf of the trial judge. Therefore, we find that Karine did not overcome the presumption that the trial judge acted impartially.

¶ 76 Second, our review of the other eight issues does not require remand of the case. Therefore, this issue is rendered moot.

¶ 77 **CONCLUSION**

¶ 78 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 79 Affirmed.