

pregnant with Goedelmann's child, Willmont moved in with Goedelmann at his house. Their relationship was off and on again. Willmont moved out of Goedelmann's house shortly thereafter, but they soon made up and she moved back in. However, she again moved out about a month later. Willmont testified that both times she had moved because Goedelmann told her he no longer wanted to be in a relationship with her and that he was in love with someone else.

¶ 5 The parties' son, Shane Goedelmann (Shane), was born in February 2009. They reconciled their relationship and resumed living together in Goedelmann's house shortly after Shane's birth until sometime in April 2009. Willmont testified that the reason she and Shane moved out of Goedelmann's house was because he once again told her that he no longer wanted to be in a relationship. The parties later reconciled. Willmont and Shane lived with Goedelmann from approximately the end of May 2009 until their next breakup on July 27, 2009. The last time the parties lived together in Goedelmann's house was from August 2009 until November 8, 2009, which was also the day the parties were both charged with battery, arising from an argument they had that night.

¶ 6 In April 2009, Willmont was admitted to Gateway Hospital due to an alleged suicide attempt after Goedelmann told her that he did not love her or want to be in a relationship any longer. Goedelmann allegedly saw Willmont cut her arm with a knife and called 9-1-1. Willmont testified that she was not suicidal; she merely scratched her arm with a knife because she was distraught over the fact that although Goedelmann told her he did not love her anymore he would not let her leave his house and take Shane with her. Willmont was released from Gateway Hospital a few days after she was admitted. She claims she was diagnosed as "being in an addictive relationship." Goedelmann contends that the medical records reflected that Willmont actually received a "rule out bipolar" diagnosis. There was also evidence that Willmont had previously been hospitalized at a mental facility for a

previous suicide attempt from an overdose of pills. Willmont claims, however, that she never attempted suicide but that her sister-in-law lied when she told police that Willmont had tried to commit suicide by overdosing on pills. The police showed up where Willmont worked and told her they needed to take her to the hospital because of the overdose report, to make sure everything was fine. She claims she went to the hospital, had some blood drawn, and was later released because nothing toxic was found in her system.

¶ 7 The parties also had instances of alleged domestic violence, which caused them to obtain mutual orders of protection against each other. Specifically, on the night of November 8, 2009, the two allegedly got into a physical altercation. The stories differ. Willmont testified that they had gotten into an argument after Goedelmann had come home late from a bar. She stated that Goedelmann got out of bed, pushed her against the closed door, and punched her in the face. Goedelmann, on the other hand, testified that it was Willmont who had hit him while he lay in bed, so he had called the police. Although it seems that both were charged with domestic battery, the charges were later dismissed, and their subsequent orders of protection against each other were later resolved by a mutual restraining order. However, the parties chose to ignore the restraining order after attending mediation in March 2010.

¶ 8 Once the parties were no longer residing together, they were eventually able to work out a visitation schedule through a temporary custody order. Goedelmann had visitation with Shane: "Every Monday from 9:00 a.m. until 6:00 p.m. on [Goedelmann's] days off. Alternate weekends from Friday at 9:00 a.m. until Sunday at 6:00 p.m. Every other Tuesday and Wednesday from 9:00 a.m. on Tuesday until 6:00 p.m. on Wednesday. Every other Thursday from 9:00 a.m. until 6:00 p.m." Yet, it appears that Willmont was charged with several instances of visitation interference.

¶ 9 The first centered around one of Shane's pediatrician appointments, scheduled for

December 21, 2009. Although it was Goedelmann's day for visitation, Willmont still wanted to meet at the pediatrician's office so that she could be at Shane's appointment as well. Goedelmann testified that he told Willmont that she could not go because the court ordered that they stay at least 100 feet away from each other. Willmont showed up anyway and admitted that she was charged with visitation interference as a result. Willmont's next visitation interference charge occurred on Christmas Day, 2009. Although Shane was scheduled to be with his father that day, Willmont asked Goedelmann if they could switch days so that he would have Shane for Christmas Eve instead (as that was when his family usually celebrated the holiday), and she could spend Shane's first Christmas with him on Christmas Day. Goedelmann refused to switch days and so Willmont kept Shane with her on Christmas Day. She was later charged with, and pled guilty to, visitation interference. The last incident occurred on October 5, 2010, when Willmont refused to allow Goedelmann to keep Shane. Goedelmann believes this was because he was going to a birthday party later that evening for his other son, Evan, and Willmont knew his ex-wife would be there. (Testimony was introduced that Willmont does not like Goedelmann's ex-wife, whether due to jealousy or for some other reason.) Again, it appears Willmont was charged with visitation interference.

¶ 10 There have also been allegations of child abuse. Willmont testified that she believed Goedelmann was abusing Shane during his visitation with him. She based her belief on the fact that after Shane was returned to her, she noticed suspicious bruising on his back and inner thighs. She also stated that Shane sometimes came back to her with unusually red cheeks, like he had been smacked, and that he came back with a black eye once. So Willmont began taking pictures of Shane before he went to his father's house and once he returned to her. She posted some of these pictures on her Facebook page, expressing her fear of abuse and her overall frustration with the justice system. She testified that she wished she

could keep Shane away from his father because she wanted the bruising to stop.

¶ 11 During her testimony, Willmont recalled several instances while the parties were still living together that also made her concerned that Goedelmann was abusing Shane. Willmont recalled that when she found out that she was pregnant, Goedelmann initially wanted her to consider having an abortion, saying that he was too old to have a child and it was embarrassing. In fact, Willmont's sister testified that when she came over to see Shane shortly after he was born, Goedelmann had referred to his son as the "little bastard" twice before she asked him to stop doing so. Another instance occurred when Shane was just a few weeks old. Willmont testified that she had left him with Goedelmann for a couple hours so that she could go visit her family. Willmont testified that when she returned, Shane was hoarse from crying because Goedelmann had refused to pick him up, as he feared Shane would become spoiled if held and consoled as a small infant. Willmont also testified that Goedelmann often woke Shane up while he was asleep by making loud, strange noises and grabbing him. One time, Willmont made a video recording of Goedelmann waking Shane up. Willmont further testified that on November 6, 2009, she heard a loud slap coming from the room where Goedelmann was dressing Shane. Willmont testified that when she asked Goedelmann if he had slapped Shane, he had answered "yes," but would not tell her why. Willmont's mother also testified that once, when Shane was about three months old, she heard a loud slapping noise coming from the room where Goedelmann was giving Shane a bath. She then stated that she heard Willmont ask Goedelmann if he had just slapped the baby, and he responded that he had.

¶ 12 Goedelmann had, in fact, been reported to the Department of Child and Family Services (DCFS) six times, but of the three investigations conducted, all allegations of abuse were deemed unfounded. He explained that Shane got bruises because he was a toddler and tended to fall down when attempting to walk around. Goedelmann also testified that one

time while he was getting Shane into his car seat, the car door accidentally hit Shane in the head, leaving him with a red mark and a bruise. Regarding the redness of Shane's cheeks, Goedelmann stated that he believed Shane made his cheeks red because he rubbed his face on his sheets when he slept. Goedelmann testified that he had watched Shane one time while he slept and saw him doing this.

¶ 13 At one time, Goedelmann also suspected that Willmont was abusing Shane or, at the very least, was negligent in caring for him. During the summer of 2009, Goedelmann filed an order of protection against Willmont, alleging abuse, because when he had gotten Shane for visitation, he had flea bites all over him. Basically, Goedelmann believed that the house where Willmont and Shane had been staying was an unsanitary environment, unfit for a child.

¶ 14 Each party also has a child from a previous marriage. Goedelmann has a teenage son, Evan. Goedelmann maintains an amicable relationship with Evan's mother and has visitation with Evan when he is not working. Evan apparently also has a good relationship with Shane, as Goedelmann typically has both boys at his house when he is not working. Goedelmann has lived in the same house for a number of years and maintains a steady job. Goedelmann testified that when he has Shane at his house, he keeps him on a schedule so that he takes regular naps and maintains a consistent bedtime routine. He cooks for his boys and keeps the house clean. He testified that he tries to keep Shane engaged and that they play together nearly all day long. Goedelmann also testified that he wants to raise Shane in a clean, healthy, stable, and safe environment; he also wants him to get baptized someday and attend a Christian church.

¶ 15 Willmont also has a teenage son, Justin, from her former marriage to Gary Schultz. According to the record, she only sees Justin, who lives with his paternal grandparents, several times a year at best and speaks with him on the telephone occasionally. Despite their

limited interaction, Justin testified that he enjoyed seeing his mom. Shortly before trial in this case, Willmont moved into her own apartment. She testified that it was clean, spacious, and in a good neighborhood. After she moved out of Goedelmann's house, Willmont moved in with her ex-boyfriend and friend, James Dillow, for a time. She also lived with her parents. Willmont previously worked part-time as a seamstress before she was let go. At the time of trial, she worked for her family's roofing business, when the weather permitted.

¶ 16 About a year into the circuit court proceedings, the parties agreed to a court-ordered custody evaluation. The evaluation was conducted by Donya L. Adkerson (Adkerson), M.A., licensed clinical professional counselor. Her report of findings was based on her review of relevant records, formal testing of each parent, three in-person interviews with each parent, an in-person interview with Willmont's mother, Kay Carter, and her observations of Shane's interaction with each parent, separately. Overall, Adkerson summed up the parties' relationship as "volatile."

¶ 17 During her interviews with Willmont, Adkerson learned that she had lost custodial rights to her other son, Justin, when he was a toddler. However, Adkerson reported that Willmont believed she lost her rights "because her ex-husband and his attorney secretly switched papers from ones she had reviewed and agreed to, resulting in her rights being terminated through trickery." Further, Willmont told Adkerson that Justin's father, Gary Schultz, and his attorney "admitted in open court in Clinton County that they secretly switched papers but the judge refused to do anything about it." Willmont also informed Adkerson that although she did not raise Justin, they remained close. When Adkerson requested an interview with Justin, Willmont told her that Justin "didn't want to be involved" with the custody evaluation. Adkerson interviewed Willmont's mother as well but reported that she had "extremely limited knowledge, information, or insight regarding her daughter's life functioning. She raised no concerns regarding [Goedelmann's] car[e] of Shane but made

general comments that she disliked how he treated [Willmont] ***."

¶ 18 Regarding Willmont's hospitalization at Gateway, Adkerson reported that the medical records showed that Willmont refused to participate in group therapy and refused medication and was noted as showing positive for symptoms of mania, including mood swings, inappropriate laughter, and anger outbursts.

¶ 19 Additionally, Willmont informed Adkerson that she believed Goedelmann's son, Evan, posed a danger to Shane, recalling how one time back in November 2009, she had witnessed Evan "forcibly shaking Shane." When Adkerson asked her what she did about it, Willmont replied that she said nothing to Evan or Goedelmann, fearing that Goedelmann would get angry. Willmont also told Adkerson that Goedelmann was an alcoholic, but was unable to provide her with any substantive details or evidence. When asked about her own alcohol consumption, Willmont initially told Adkerson that she did not even drink beer. Yet, when Adkerson further inquired, Willmont admitted that she occasionally drank other types of alcoholic beverages, just not beer. Adkerson noted that she believed Willmont, at first, was "intentionally trying to create a false impression that she did not drink."

¶ 20 Regarding the domestic violence incident between the parties on November 8, 2009, Adkerson indicated in her report that "information from both parties makes it clear that the altercation was initiated by [Willmont]." It appears that Adkerson based her conclusion on Willmont's own handwritten notes of a subsequent altercation, provided to Adkerson as part of her document review for the custody evaluation, which "indicate[d] [Willmont] initiated the physical aggression and note[s] she punched [Goedelmann] in the eye, giving him a black eye, in April 2009 *** [and] that [Goedelmann] grabbed her and pushed her into a closet after she had initially grabbed him."

¶ 21 As part of the custody evaluation, Adkerson observed how Shane interacted with his mother. She noted that Willmont properly intervened when Shane attempted to engage in

behavior that was potentially dangerous, "such as attempting to play with an electric fan." However, Adkerson also noted that "Shane made repeated efforts to pull away from his mother and to leave the room *** and would attempt to get away from [Willmont] when she picked him up."

¶ 22 During her interviews with Goedelmann, Adkerson learned that he maintains regular visitation with his older son, Evan, and noted that he maintained a "cooperative co-parenting relationship with Evan's mother." Adkerson commented in her report that Goedelmann's coparenting relationship with his ex-wife appeared to be "a source of great contention between [Willmont] and [Goedelmann], with [Willmont] displaying pathological jealousy toward the ex-wife." Adkerson's report also noted Goedelmann's accounts of Willmont's numerous attempts to reconcile their romantic relationship. For example, he said that she would call him or contact him on the nights he had Shane, so that she could tell Shane good-night, but then would also tell him that she loved him and wanted their family back together. Goedelmann also told Adkerson that he had caught Willmont "covertly" following him in her vehicle and that she would call him throughout the day. Adkerson also noted that she asked Willmont, during an interview, whether she wanted to reconcile with Goedelmann. Her report indicates that Willmont "eventually indicat[ed] she did want to reconcile and live with [Goedelmann] again."

¶ 23 Adkerson reviewed the DCFS records regarding Willmont's allegations that Goedelmann was physically abusing Shane. Based on her review of the records, she noted that the investigation summary stated that not only was the "report unfounded," but there was a statement indicating, "Worker believes that this is a false report." Adkerson further noted that the investigative summary stated that the DCFS worker had investigated a previous report which was also unfounded, finding that Shane displayed no physical injuries and that all the people interviewed by the DCFS worker said that Goedelmann was "a very

levelheaded and patient man." During one of her interviews with Goedelmann, however, Adkerson learned that through his 20 years' employment with his current employer, there was an incident where he was required to go to anger management counseling due to his "angry verbal outburst toward a co-worker." He reported that he attended seven counseling sessions, after which his counselor informed his employer that no further treatment was necessary.

¶ 24 Adkerson further noted in her report that Willmont continued to believe DCFS was ignoring evidence of Shane's physical abuse, stating that Shane repeatedly came home with "handprint bruises." Adkerson then viewed the photographs and a video that Willmont had taken of Shane, which Willmont believed clearly indicated Goedelmann's physical abuse of Shane. Adkerson observed that the photographs depicted:

"bruises on elbow and knee areas, red marks which appeared to be *** bug bites, small bruises on Shane's shins, one small bruise on the child's torso, Shane with dirt on his neck, many photos of Shane with reddish cheeks (which appeared to this evaluator to be wind or cold reactions), a tiny scratch mark on an [unidentifiable] body part, and small bruises in a line at the base of his spine."

Adkerson concluded, "Although this evaluator is not an expert in the assessment of medical evidence of child abuse, none of the photographs of Shane appeared to be handprints or beyond small bruising common among toddler children who are in the process of learning to walk." She also noted that although Willmont recalled an instance where Shane's doctor diagnosed him as "abused" and another doctor had told her that Shane could not have gotten certain bruises simply by falling from learning to walk, Willmont was unable to produce documentation of either claimed physician report for Adkerson to review.

¶ 25 Adkerson also viewed the video that Willmont took of Goedelmann waking Shane while he was sleeping. Willmont told Adkerson that Goedelmann would yell at Shane to

"intentionally frighten him and wake him up" for no reason. Adkerson, to the contrary, observed: "[T]he video *** showed Shane cuddled in his father's arms asleep. [Goedelmann] did wake the child with silly noises, engaging in rather goofy but apparently affectionate play. At no time did the child appear distressed, rather he responded to his father with positive facial expressions." Based on her overall observations, Adkerson indicated that she did not find Willmont to be a "credible reporter."

¶ 26 Adkerson also observed Goedelmann and Shane together. She noted that Shane appeared "far more compliant and calm" with his father than he had been with his mother and made no effort to get away from Goedelmann.

¶ 27 Adkerson further reported that neither party had any physical health issues that would preclude or significantly interfere with custodial parenting. Adkerson conducted formal intellectual testing on both of the parties, finding that "[o]verall intellectual functioning was within the average range for both." Each party also took the Minnesota Multiphasic Personality Inventory-2 test (MMPI-2), which is a psychological test used by mental health professionals to diagnose and assess mental disorders. Adkerson reported that the Willmont's responses on the MMPI-2 indicated that:

"[Willmont] was using excessive repression and denial in an unsophisticated attempt to create a very favorable impression of herself. Although some level of defensiveness is normal in personality testing done for child custody evaluations, [Willmont] exhibited extreme defensiveness, attempting to maintain a facade of adequacy and control while admitting no problems or weaknesses. Her MMPI-2 validity scales suggest a serious lack of personal insight or understanding of her own behavior with the possibility of serious psychological disturbance. Given the strong 'fake good' skew to her testing approach, clinical scales were within normal limits but do not represent a valid test profile."

Adkerson ultimately concluded that Willmont had a "poor prognosis for psychological intervention." Regarding Goedelmann's MMPI-2 test results, Adkerson reported as follows:

"[Goedelmann] also produced a within normal limits clinical profile, however his validity scales indicated a valid test profile. Testing suggests that he lacks insight and may have a tendency to repress or deny problems or unfavorable traits. Overall he is psychologically well-adjusted and capable of dealing with problems in his daily life."

In sum, Adkerson found that Goedelmann's MMPI-2 test results showed nothing that would indicate a problem with his custodial parenting.

¶ 28 The last test Adkerson administered to the parties was the Ackerman-Schoendorf Scales for Parent Evaluation of Custody Test - Short Form (ASPECT-SF), which aids the evaluator in determining parental fitness for custody. Adkerson reported that the ASPECT-SF "results in a Parental Custody Index score for each parent which compares relative parenting fitness between the parents as well as to a normative sample of parents." Goedelmann scored at the fiftieth percentile compared to the normative sample, whereas Willmont scored below the first percentile compared to the normative sample of parents. Based on these results, Adkerson deduced that Goedelmann was "significantly better suited to serve as the primary custodial parent" of Shane.

¶ 29 Regarding Willmont, Adkerson summed up her observations as follows:

"[Willmont] was given to much hyperbole in her statements, was unrealistic in her self-assessments, denied documented facts if they reflected negatively on her, and was quick to blame others for all problems in her life. She offers no acknowledgments of problems leading to loss of her parental rights with Justin and denies documented problems such as self-injuring and prior suicide attempts, providing no evidence that any such problems have been resolved. Further, it appears

that either [Willmont] is maliciously and vindictively fabricating accounts of abuse by [Goedelmann] and his son Evan, or [Willmont] suffers from a delusional disorder which causes her to believe that such abuse is occurring despite a lack of objective evidence found by those who are trained investigators of abuse. It is a particular concern that if [Willmont] genuinely believes abuse to her son to be true, she is actively attempting to return Shane to living full time with [Goedelmann] as she attempts reconciliation, demonstrating willingness to place Shane in harm's way in order to be with a man she desires. In this [Willmont] clearly places the well being of her son behind her own wishes."

¶ 30 Ultimately, Adkerson recommended that sole legal custody be awarded to Goedelmann, finding that Willmont's "impaired judgment and poor assessment of reality makes it unwise to place her in a decision making role for the child." Despite the fact that Goedelmann was supportive of sharing parenting time with Willmont so that Shane would be able to maintain a close relationship with his mother, Adkerson advised that it was in Shane's best interest for Willmont to have relatively limited visitation. Therefore, Adkerson recommended that Willmont only be allowed visitation one day a week, provided that "her functioning is relatively stable and her home is a safe environment." Adkerson reasoned that should Willmont engage in mental health treatment, increased visitation for her with Shane could be considered.

¶ 31 After a bench trial, the circuit court issued its order, dated February 17, 2011, whereby it awarded Goedelmann sole custody of Shane and allowed Willmont to have weekly visitation with Shane from Wednesday night at 6 p.m. until Sunday night at 6 p.m. one week, and then from Wednesday night at 6 p.m. until Thursday night at 6 p.m. the second week, to alternate in the succeeding weeks. Regarding holidays, the circuit court ruled that during odd-numbered years, Willmont would have visitation from 9 a.m. until

7 p.m. on Easter, the Fourth of July, Thanksgiving Day, and Christmas Day, and during even-numbered years, New Year's Day, Memorial Day, Labor Day, and Christmas Eve (with Goedelmann having Shane on the holidays not assigned to Willmont during that year). In addition, Willmont was allowed visitation with Shane on every Mother's Day, from 9 a.m. until 7 p.m., and Goedelmann was allowed to have Shane on every Father's Day from 9 a.m. until 7 p.m. As for a vacation visitation, the circuit court allowed Willmont to have two weeks of vacation visitation during the summer months or as otherwise agreed, provided that she gave Goedelmann 30 days' written notice. The parties were also ordered to pay their own attorney fees. Willmont filed a motion to reconsider, or in the alternative, motion for new trial, which was denied. This appeal followed.

¶ 32

ANALYSIS

¶ 33 On appeal, Willmont raises the issue of whether the circuit court abused its discretion and erred in awarding Goedelmann sole custody of Shane based on all relevant best-interest factors set forth in section 602(a) of the Illinois Marriage and Dissolution of Marriage Act (the Act) (750 ILCS 5/602(a) (West 2010)). In particular, she argues that the circuit court erred by placing undue weight on a few factors and did not consider all relevant factors. Willmont further argues that the circuit court placed undue weight on its finding that Goedelmann's situation was "more stable and secure" than hers, which, she believes, is not a determinative factor to be weighed pursuant to the Act. Additionally, Willmont argues that the circuit court erred in placing undue weight on Adkerson's custody evaluation and also erred by not requiring Adkerson's direct testimony. Willmont also appeals the circuit court's ruling granting Goedelmann's motion to bar photographs into evidence. Lastly, she appeals the circuit court's decision not to award her request for attorney fees.

¶ 34

Child Custody

¶ 35 When reviewing a child custody determination on appeal, the judgment of the circuit

court will not be disturbed unless the award was found to be against the manifest weight of the evidence or the circuit court clearly abused its discretion. *In re Marriage of Archibald*, 363 Ill. App. 3d 725, 738 (2006). We give the circuit court's determination wide latitude and deference because it was "in a better position to evaluate the credibility of the witnesses and the needs of the child." *In re Marriage of Dafoe*, 324 Ill. App. 3d 254, 259-60 (2001). "'A finding is against the manifest weight of the evidence when the opposite conclusion is clearly evident.'" *In re P.M.C.*, 387 Ill. App. 3d 1145, 1149 (2009) (quoting *In re D.L.*, 326 Ill. App. 3d 262, 270 (2001)). The circuit court "abuses its discretion when it acts arbitrarily without conscientious judgment or, in view of all the circumstances, exceeds the bounds of reason and ignores recognized principles of law so that substantial injustice results." *In re Marriage of Archibald*, 363 Ill. App. 3d at 739.

¶ 36 Section 602 of the Act requires courts to determine custody according to the best-interest-of-the-child standard. 750 ILCS 5/602 (West 2010). When deciding a child's best interests, the Act requires the circuit court to consider all relevant factors, including those enumerated in section 602(a) (*In re A.S.*, 394 Ill. App. 3d 204, 213 (2009)), which provides:

"(a) The court shall determine custody in accordance with the best interest of the child. The court shall consider all relevant factors including:

- (1) the wishes of the child's parent or parents as to his custody;
- (2) the wishes of the child as to his custodian;
- (3) the interaction and interrelationship of the child with his parent or parents, his siblings and any other person who may significantly affect the child's best interest;
- (4) the child's adjustment to his home, school and community;
- (5) the mental and physical health of all individuals involved;

(6) the physical violence or threat of physical violence by the child's potential custodian, whether directed against the child or directed against another person;

(7) the occurrence of ongoing or repeated abuse as defined in Section 103 of the Illinois Domestic Violence Act of 1986 [(750 ILCS 60/103 (West 2010))], whether directed against the child or directed against another person;

(8) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child;

(9) whether one of the parents is a sex offender; and

(10) the terms of a parent's military family-care plan that a parent must complete before deployment if a parent is a member of the United States Armed Forces who is being deployed." 750 ILCS 5/602(a) (West 2010).

Although the circuit court thoroughly discussed its rationale behind granting Goedelmann sole custody of Shane and made extensive findings of fact, it did not specifically enumerate each statutory factor. However, "[t]he [circuit] court is not required to make specific findings regarding each section 602 factor as long as evidence was presented from which the court could consider the factors prior to making its decision." *In re Marriage of Hefer*, 282 Ill. App. 3d 73, 79 (1996). Accordingly, we will only review the factors specifically at issue on appeal.

¶ 37 Willmont argues that the circuit court's award of sole custody of Shane to Goedelmann was against the manifest weight of the evidence. She contends that the circuit court erred when considering "the wishes of the child's parents as to custody," in that it failed to give deference to the fact that Shane had resided with her "from day one," or testimony which showed that Goedelmann "was not very involved with [having a baby] and he wanted [her] to have an abortion," and that he had previously referred to Shane as "the little bastard."

Clearly, both parents wanted custody of Shane. In its order, the circuit court noted Goedelmann's reference to Shane as "the little bastard" and found that a child born out of wedlock, such as Shane, technically fit that definition. However, the circuit court also explained that while it did "not condone such remarks," it was "persuaded again based upon the demeanor of the witnesses while testifying that such references were not intended to be harmful and [were] of no significant consequence." Willmont offers nothing to substantiate her assertion that deference should be given to the parent with whom the child has resided on a daily basis. Even with a legal basis, such deference would be clearly outweighed by the best-interest findings made by the circuit court that Goedelmann was able to provide Shane with a more stable environment than Willmont. Further, the record also shows that Goedelmann had maintained regular and frequent visitation with Shane after Willmont moved out of Goedelmann's house for the last time. Thus, this is not a situation where a custody award has been granted to a parent who has not played an active part in that child's life prior to the legal proceedings.

¶ 38 The circuit court considered "the mental and physical health of all individuals involved." Although the circuit court noted that Willmont had "adequately explained [her] alleged suicide attempts," it remained "satisfied that [Willmont] d[id] have significant emotional and psychological issues." The circuit court recounted the multiple orders of protection Willmont obtained, her instances of visitation interference, and her multiple unfounded reports to DCFS, alleging that Goedelmann had physically abused Shane. Additionally, the circuit court made much of the photographs Willmont took of Shane before and after his visits with Goedelmann, finding that she "seemed almost obsessively concerned about abuse of Shane by [Goedelmann]." The circuit court further found that Willmont's "Facebook pictures and commentary suggest[ed] excessive and un[due] concern over Shane's treatment by [Goedelmann]." Continuing, the circuit court found that Willmont failed to

adequately explain her "references concerning conspiracies by the other court and attorneys to keep Shane from her," which the circuit court believed to be "outside the realm of possibility." There were no concerns raised about Goedelmann's mental health or the physical health of either party.

¶ 39 Willmont argues that the circuit court erred in its assessment of her mental health. Regarding her hospitalizations for her two alleged suicide attempts, Willmont asserts that "[n]o medical professionals testified as to [her] diagnosis *** and no [medical] records were submitted into evidence." However, we find this argument to be of little consequence, as the circuit court clearly stated in its order that it believed Willmont had adequately explained her alleged suicide attempts. Willmont further argues that the circuit court's finding that she had "significant emotional and psychological issues" is without medically documented substantiation. Further, she points out that Adkerson's clinical tests, performed as part of the custody evaluation, were admittedly "invalid." Lastly, Willmont notes that Goedelmann never testified that he believed she had any mental issues which might interfere with her parenting of Shane. Rather, she notes that Goedelmann believed she should not have custody "because she is not telling the whole truth about a lot of the times that stuff happens." Even without a formal medical diagnosis or other medical documentation, the circuit court is allowed to assess the fitness of each parent based on the facts, testimony, and its own determination as to the credibility of the witnesses and parties. Given the circuit court's assessment of Willmont, we find no abuse of discretion in its finding that her questionable actions and behavior could negatively affect the stability in Shane's life if she were to be awarded custody, and that it would therefore not be in Shane's best interest.

¶ 40 Also at issue on appeal are the circuit court's findings regarding the "the physical violence or threat of physical violence by the child's potential custodian, whether directed against the child or directed against another," and "the occurrence of ongoing or repeated

abuse as defined in Section 103 of the Illinois Domestic Violence Act of 1986" (750 ILCS 60/103 (West 2010)). Willmont contends that despite the "unfounded" rulings made by DCFS as part of its investigations into the allegations that Goedelmann physically abused Shane, her testimony at trial "alluded to several incidents of uncommon bruising and very red cheeks on [Shane's] face," which she believes Goedelmann failed to adequately explain. In addition to her own testimony, Willmont offered testimony from her mother that she heard Goedelmann slap Shane when he was only three months old. There was also testimony from James Dillow, where he recalled that Shane often came home from his visitation with Goedelmann with "unusual bruising," and once came home with a black eye.

¶ 41 As the custody evaluator, Adkerson was the only testifying witness who had seen all of the photographs that Willmont took of Shane. Adkerson testified that it did not appear to her as though Shane had been physically abused. However, Willmont contends that Adkerson admitted that she was "not an expert in the assessment of medical evidence of child abuse." As such, Willmont asserts that the circuit court improperly gave more weight to Adkerson's opinion than the testimony offered by Willmont, her mother, and James Dillow regarding Goedelmann's propensity for future physical violence.

¶ 42 Regarding Willmont's mother's testimony that she had heard Goedelmann slap Shane when he was just three months old, the circuit court's order specifically stated that it "had the opportunity to observe the witness's character and demeanor and manner while testifying and is satisfied that no significant weight should be given to that alleged incident." The circuit court order also stated that it had the opportunity to view some photographs of Shane and found "nothing *** to suggest that the child was terrified, harmed or otherwise unhappy when with either parent." Further, the circuit court stated that it was "satisfied that no one did or intended to do any harm to Shane." Again, the circuit court is in the best position to assess witness credibility, and thus, it was not an abuse of discretion for it to give little

weight to the testimony offered in Willmont's favor. Further, nothing in the circuit court's order discusses Adkerson's opinion of whether Shane was physically abused, and therefore, one would be hard-pressed to argue that the circuit court relied heavily upon such opinion.

¶ 43 In addition, Willmont offers a "best interest" factor she believes is critical to the determination of custody, even though it is not a statutory factor, which is the parents' work habits and time availability. In other words, she asserts that the court must look at the amount of time the potential custodian of the child will be able to devote to raising the child, citing the case *In re Marriage of Leopando*, 106 Ill. App. 3d 444, 449-50 (1982), in support. In the *Leopando* case, the appellate court reversed the circuit court's award of custody to the father as being against the manifest weight of the evidence, finding that the father had not been involved in the child's upbringing and "lacked knowledge concerning [the child's] daily educational, religious, social and physical activities, was ignorant of the child's personal habits, and anticipated separation from [the child] for long periods of each day," due to his active medical practice. *Id.* at 449-50. Willmont asserts that this matter is akin to the *Leopando* case because Goedelmann also works for long periods, sometimes 14 hours a day. Therefore, she points out that some days Goedelmann will not actually be with his son but, instead, will need to hire a babysitter. On the other hand, Willmont states that her work hours are not as long, which will thereby allow her to devote more of her time to raising Shane than Goedelmann will be able to do.

¶ 44 Unlike the *Leopando* case, here, Goedelmann has been actively involved with raising Shane. However, because he works shifts, some days he must work long hours, but other days he does not work at all. The parties previously arranged visitation so that each parent spent approximately half of the week with Shane. Testimony given at trial described how Goedelmann spent time caring for and playing with Shane when he was with him. Therefore, it was not an abuse of discretion for the circuit court to find that it was in Shane's

best interest to award Goedelmann sole custody, despite Goedelmann's long work hours. Goedelmann is not a virtual stranger to Shane, nor was Willmont the only one who parented and raised Shane before the custody determination. Thus, *Leopando* is distinguishable. "[T]here is today no inflexible rule which requires that custody of children, especially of tender age, be vested in the mother. Equality of the sexes has entered this field. The fact that a mother is fit is only one facet of the situation and, standing by itself, it does not authorize a denial of custody to the father, when this appears necessary because of other considerations." *Marcus v. Marcus*, 24 Ill. App. 3d 401, 407 (1974).

¶ 45 We further do not find that the circuit court erred by placing undue weight on the fact that it found Goedelmann's situation to be "more stable and secure" than Willmont's and, thus, in Shane's best interest. Willmont argues that "stability," whether that be employment or financial earnings, should not be a determinative factor, yet it appeared to play a large part in the circuit court's decision to award sole custody of Shane to Goedelmann. However, in reading the circuit court's order in full, it is clear from the context that the reason it found Goedelmann would be able to provide a more stable environment was not merely due to the fact that he maintained a steady job or had lived in the same house for a number of years. Rather, as Goedelmann points out, the court believed that Willmont's questionable past actions and behavior, as discussed previously in this order, made for a less stable and secure environment for Shane than with Goedelmann. Accordingly, we find that the circuit court did not place undue weight on a few statutory factors to determine the best interest of the child, nor did it abuse its discretion in its consideration of the relevant statutory factors. Lastly, we do not find that the circuit court improperly gave consideration to nondeterminative factors.

¶ 46 Donya Adkerson

¶ 47 Next, Willmont argues that the circuit court erred in placing undue weight on

Adkerson's testimony and custody evaluation because: (1) the circuit court is not bound to follow the recommendations of expert witnesses, (2) Goedelmann did not lay an adequate foundation to establish that the information upon which Adkerson based her opinion as to custody was reliable, and (3) he failed to properly qualify Adkerson as an expert witness. Further, she argues that the circuit court erred by not requiring Adkerson's direct testimony.

¶ 48 First, as to Willmont's assertion that the circuit court placed undue weight on Adkerson's custody evaluation, we find otherwise. Reviewing the circuit court's order, it is clear that it did not agree with a large part of Adkerson's custody evaluation report. Whereas Adkerson voiced strong concern regarding Willmont's fitness as a parent, thereby recommending she be allowed perhaps one day per week of visitation with Shane, the circuit court stated that it "believe[d] either [party] would be a fit and proper person to have custody of Shane" and, instead, awarded Willmont significantly more visitation.

¶ 49 During the trial, the circuit court allowed Adkerson's custody evaluation report to be entered into evidence in lieu of her direct testimony. Willmont made an objection, but it was not as to improper foundation to qualify Adkerson as an expert witness. Rather, her counsel objected on the grounds that the report (and possibly Adkerson's *curriculum vitae*) did not constitute the "best evidence," because it was not her live testimony. Yet, the "best evidence" rule does not pertain to live testimony versus a written report. Instead, "[t]he best evidence rule expresses a preference for the original of documentary evidence when the contents of the documentary evidence are sought to be proved." *Village Discount Outlet v. Department of Employment Security*, 384 Ill. App. 3d 522, 526 (2008). Failure to make a particular objection regarding an evidentiary ruling at trial forfeits the right to later make that objection on appeal. *Guski v. Raja*, 409 Ill. App. 3d 686, 695 (2011). Because we find that a "best evidence" objection is too dissimilar to the issues Willmont now wishes to raise on appeal of whether there was adequate foundation to establish Adkerson's opinions regarding

of *LaGrange v. Lowrey*, 375 Ill. App. 3d 181, 202 (2007)), we find that the circuit court's ruling was not an abuse of discretion (*Davis v. Kraff*, 405 Ill. App. 3d 20, 28 (2010)), as it did allow for some pertinent photographs to be admitted into evidence. As stated, Willmont posted these photographs on her Facebook page with accompanying comments regarding her concern that Shane was being mistreated. Therefore, we find that Willmont was not prejudiced by the ruling, as the circuit court was still able to view an exemplar group of photographs which she believed constituted evidence that Goedelmann was physically abusing Shane.

¶ 53

Attorney Fees

¶ 54 The final issue on appeal is whether the circuit court erred in ruling that the parties shall pay their own attorney fees. Willmont contends that she should have been awarded attorney fees pursuant to section 17 of the Illinois Parentage Act of 1984 (750 ILCS 45/17 (West 2010)), which authorizes the circuit court to award some or all of the movant's attorney fees and costs after considering the factors specified in section 508 of the Marriage Act (750 ILCS 5/508 (West 2010)). She asserts that her financial affidavit and testimony regarding her income and expenses showed her inability to pay attorney fees. She further asserts that testimony at trial showed that Goedelmann's income was "nearly seven times greater" than her own, thereby demonstrating their disparity of incomes and his ability to pay all or part of her attorney fees.

¶ 55 Opposing, Goedelmann argues that Willmont should not have been awarded attorney fees for her failure to specifically plead for them and for her failure to timely file her financial affidavit. Rather than complying with the circuit court's local rules, which requires financial affidavits to be filed not less than 14 days prior to the hearing, Goedelmann argues that Willmont did not file her affidavit until the second day of the bench trial. However, when Goedelmann made this objection during trial, the circuit court ruled to admit it and

consider testimony, over his objection. Goedelmann also asserts that much of Willmont's testimony regarding her income and expenses was inaccurate.

¶ 56 "The propriety of an award of attorney fees is dependent upon a showing by the party seeking the award of an inability to pay and a demonstration of the ability of the other party to do so." *In re Keon C.*, 344 Ill. App. 3d 1137, 1146 (2003). However, a ruling regarding attorney fees will not be disturbed upon review absent a finding that the circuit court abused its discretion. *Id.* Further, the circuit court need not make specific findings of fact regarding the parties' inability or ability to pay, when ruling on an award of attorney fees. See *Rattray v. Rattray*, 43 Ill. App. 3d 853, 856 (1976). Although evidence was admitted to establish that Willmont earned less income than Goedelmann, there was also evidence which put into question whether she had accurately reported all of her earned income. It was also unclear whether Willmont actually owned any property exceeding \$300 in value, as she testified she had not understood the question on the financial affidavit and therefore had answered "none." In addition, there was evidence showing that some of her claimed expenses were inaccurate. There was also evidence that Willmont had previously been able to pay some of her attorney fees. Considering this evidence, coupled with the fact that Goedelmann's income, while more than Willmont's, was not substantial, and that he was awarded no maintenance, adequately supports our finding that the circuit court did not abuse its discretion in declining Willmont's request for attorney fees.

¶ 57 In sum, we find the judgment of the circuit court is not against the manifest weight of the evidence. Both parties sought sole custody of Shane, not joint custody. Moreover, it was clear from the record that the parties did not have an amicable relationship nor did they seem to agree upon most issues regarding Shane's care, so an award of sole custody was likely the best option. Although the circuit court found that either parent would be "fit," it had to pick one parent. For reasons sufficiently explained in its order, the circuit court chose

Goedelmann. Upon review, we do not find it erred in doing so, as it carefully considered the appropriate statutory factors and was in the best position to evaluate the credibility of the witnesses during trial. We will not disturb its ruling, as the circuit court kept Shane's best interest in mind the entire time, as clearly indicated by its admonishment to the parties at the close of trial:

"For the parties, whichever way I decide is going to upset one or maybe both of you. The only thing I can ask or suggest to you is that after you get over what you don't like that you try to keep Shane's best interest at stake. If the two of you use him to fight with one another, probably the only thing I can say with reasonable certainty is that it will probably turn out bad for you, *** and it will probably turn out bad for him and cause him to have problems in school and the like. When you sit here and you do juvenile court and you see the people whose cases you handle in a divorce case that got ugly and that use the kid as a bargaining chip, years later they come back as being involved in the juvenile system, and a lot of times they go on to be involved in the adult criminal system. So whatever happens try not to do that. Good luck to you."

¶ 58

CONCLUSION

¶ 59 For the foregoing reasons, the circuit court's judgment is affirmed.

¶ 60 Affirmed.