



More than two years later, on September 13, 2009, Maria filed a petition to remove the children from Illinois. On October 15, 2009, Timothy filed a petition to modify custody. On May 18, 2010, and August 3, 2010, the circuit court heard the following evidence on the parties' petitions.

Timothy testified that Maria, who was born and raised in Mexico City, Mexico, left the marital home on October 4, 2006, the day she received her two-year United States residency card, and they were thereafter divorced in July 2007. Timothy testified that since the divorce, he had exercised all of his allotted visitation with the boys. Timothy testified that he had taken the boys to the zoo, the pool and lake, local carnivals, and parades.

Timothy testified that since the divorce, Maria had refused to speak to him, refused to provide him with her phone number, and communicated with him only through her use of notes. Timothy testified that although he was notified subsequently by his insurance carrier that Skylar and Zylar had received various medical services from the hospital, ambulance, and radiologists in 2007 and 2008, Maria had not notified him of that medical treatment. Timothy testified that he encouraged Maria to call his home when the boys stayed with him, but she generally refused to do so. Timothy testified that in the previous two years, Maria had called twice to check on the boys' well-being. Timothy testified that although Maria had left the boys with him for 10 days in August 2009 and in July 2010, she had at no time called to check on them during either 10-day period.

Timothy testified that he potty-trained the boys and that the boys did not urinate in their clothes during visits. Timothy testified, however, that Maria continued to use disposable training pants, and when the boys arrived for visits, their training pants were soaked in urine. Timothy also testified that on occasions, Maria had sent the boys to him wearing clothes, including shoes, that were too small.

Timothy testified that in preparing the boys for their return to Maria, he does not tell

them they are returning to Maria because they become very upset. Timothy testified that the boys have started to complain of a stomach ache on Sunday mornings prior to returning to Maria. Timothy testified that Maria showed the boys no affection.

Timothy acknowledged that he pled guilty to battery and was sentenced to a one-year probation period in January 2009 for an altercation with his brother-in-law. Timothy testified that no punches were thrown, and the children were not present. Timothy explained that after the initial battery arrest and after his brother-in-law had obtained an order of protection, he went to his sister's home to apologize and no one answered the door but that when he returned home, the police arrived. Timothy testified that, as a result, he was also charged with violating the order of protection.

Evelyn Doris Pavolko, Timothy's mother, testified that she lived within a mile of Timothy's home and that the boys visited her often during Timothy's visitation, usually spending one night in her home. Evelyn testified that she and Timothy potty-trained the boys and that they were fully potty-trained during Timothy's visitation days. Evelyn testified that Maria nevertheless sent the boys in disposable training pants. Evelyn testified that when she and Timothy received the boys for visitation, she changed them into underwear. Evelyn testified that Maria did not show loving affection to the boys.

Maria testified that she was 35 years old and that she moved to the United States five years ago, after meeting Timothy through a dating service on the Internet. Maria testified that she had acquired a visitor's visa that allowed her to stay in the United States for six months and that when she married Timothy in 2006, she petitioned immigration services for permanent residence, which would have been effective for 10 years. After she and Timothy met with immigration officials, she received a two-year temporary residence card. Maria testified that about one month after receiving this card, she separated from Timothy and moved to a shelter in Hillsboro for nine months. Maria testified that she later moved to the

Montgomery County Housing Authority, where she lived at the time of the hearing.

Maria testified that in August 2008, Eduardo, her 14-year-old son from a previous relationship, came to live with her. Maria testified that she met her current husband through the Internet in March 2009, telecommunicated with him until they met in person in May 2009, and married him in August 2009.

Maria acknowledged that she had blocked Timothy from access to her telephone number for more than a year. Although she also acknowledged that she was court-ordered to provide Timothy with the name of a third party he could contact, Maria asserted that she could not find anyone to act in that role.

Maria testified that she loved the boys, cared for them, attended to their healthcare needs, and arranged speech therapy for them when she recognized the need for it. Maria acknowledged that the boys had a close and loving relationship with Timothy and Evelyn. Maria also acknowledged an incident where she took Skylar, who was vomiting, to the emergency room, notified Evelyn of the situation, and after Timothy and Evelyn arrived but before Skylar was examined, she left the hospital. Maria testified, however, that she telephoned the hospital 4½ hours later to check on Skylar. Maria admitted that she used disposable training pants for the boys although they were potty-trained.

Robert Evans, Maria's current husband, testified that he lived in a three-bedroom home in Clarksville, Tennessee. Robert testified that he previously surrendered his parental rights concerning his 15-year-old daughter, who did not live with him but lived near his Clarksville home and visited periodically. Robert testified that he could provide a room for Zylar and Skylar and another for Eduardo in his home. Robert acknowledged that Timothy and Zylar and Skylar have a good relationship and that the boys frequently request visitation with Timothy.

Eileen Oakley testified that she had provided daycare services for the then-four-year-

old Zylar and Skylar for the previous two years. Eileen testified that she had dealt with only Maria, who paid her and who brought the children to her from 7:45 a.m. until 4:30 p.m., four to five days a week. Eileen testified that the boys arrived clean and appropriately dressed. Eileen testified that Maria had at times instructed her regarding the boys' medication and had arranged for a speech therapist to assist the boys. Eileen acknowledged that although she thought that the boys were potty-trained, Maria continued to dress them in disposable training pants.

Bobbi Jo Compagni, a 36-year-old homemaker and mother of three children, testified that she lived approximately eight blocks from Timothy. Bobbi testified that she had known Timothy for approximately 20 years, that her husband worked with Timothy, and that she and Maria had become good friends during Timothy and Maria's marriage. Bobbi testified that after the divorce, she remained friends with Maria, visiting her approximately once a week until 2009. Bobbi testified that when she visited Maria after the divorce, oftentimes the twins' diapers were soaked in urine, Maria did not change them regularly, and Maria ignored them while watching television.

Bobbi testified that in March 2009, Maria mentioned that her temporary residence card was about to expire and that she would be deported unless she remarried. Bobbi testified that in August 2009, after Maria returned from her wedding to Robert in Tennessee, she was socializing in Bobbi's home. Bobbi testified that Maria left to pick up the boys from her 10-day absence. Bobbi testified that when Maria and the boys returned, the boys were crying, saying that they wanted Timothy and Evelyn, and Maria at no time tried to comfort them. Bobbi testified that she had never witnessed Maria hold, hug, kiss, or show affection to the boys.

Bobbi testified that on September 13, 2009, Maria and Eduardo again stopped by Bobbi's home for a cookout, prior to picking up the boys from Timothy. Bobbi testified that

when Maria returned to Bobbi's home with the boys, they were crying and screaming. Bobbi testified that while Zylar was crying on the ground, Eduardo poked him repeatedly and forcefully on the nose, and Maria did not react or request Eduardo to stop. Bobbi testified that on that day, Eduardo also forcefully threw a ball at a fence, and it ricocheted and knocked Zylar down. Bobbi testified that she saw Eduardo hit and torment the boys, causing them to cry, yet Eduardo showed no signs of remorse, and Maria did not discipline Eduardo or comfort the twins.

Bobbi testified that Maria told her that day that her new husband's home was small and not very clean. Bobbi testified that on the same date, Zylar also accidentally dropped his strawberry soda pop and that it splashed on him and on Maria. Bobbi testified that Maria began to clean herself but showed no incentive to help Zylar, who was crying. Bobbi testified that she cleaned Zylar. Bobbi described Maria's parenting as "not very loving." Bobbi testified that she had observed Timothy caring for the boys and believed that their best interest would be served if Timothy had custody.

Timothy offered into evidence video footage of incidents (dated September 13, 2009, October 4, 2009, January 1, 2010, January 4, 2010, January 10, 2010, and February 15, 2010) wherein the boys, with no obvious provocation, inconsolably begin to cry and ask to stay with Timothy and Evelyn, upon being returned to Maria. The video footage also reveal incidents (dated October 1, 2009, December 13, 2009, January 4, 2010, and February 7, 2010) wherein the boys are being returned to Timothy, appear to be unaffected by the exchange, and are running to and happy to see Timothy and Evelyn.

On August 31, 2010, the circuit court entered a detailed and comprehensive order modifying custody. The circuit court found that Maria's relationship with the twins, her remarriage to Robert, her desire to move to Tennessee with him, her immigration status, her unwillingness to facilitate and encourage a close and continuing relationship between

Timothy and the twins, and Eduardo's relationship with the twins all constituted changes in circumstances that necessitated a modification of custody. After thoroughly reviewing the best interest factors as set forth in section 602(a) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/602(a) (West 2008)), the circuit court concluded that Timothy had proven by clear and convincing evidence that awarding him sole custody was in the children's best interest. After the circuit court denied her posttrial motion, Maria timely filed a notice of appeal.

## ANALYSIS

### Child Custody

"The standard of review for modification of a child custody order after a dissolution judgment becomes final is whether the modification is against the manifest weight of the evidence or constitutes an abuse of discretion." *In re Marriage of McGillicuddy*, 315 Ill. App. 3d 939, 942 (2000). A finding is against the manifest weight of the evidence when a finding opposite to that reached by the trial court is clearly evident. *In re Marriage of Knoche*, 322 Ill. App. 3d 297, 307 (2001). "In determining whether a judgment is contrary to the manifest weight of the evidence, the reviewing court views the evidence in the light most favorable to the appellee." *In re Marriage of Ricketts*, 329 Ill. App. 3d 173, 177 (2002). "We will affirm the trial court's ruling if there is any basis to support the trial court's findings." *In re Marriage of Ricketts*, 329 Ill. App. 3d at 177. "The trial court's custody determination is afforded 'great deference' because the trial court is in a superior position to judge the credibility of the witnesses and determine the best interests of the child." *In re Marriage of Ricketts*, 329 Ill. App. 3d at 177. A trial court abuses its discretion when no reasonable person would agree with its adopted position. *Schwartz v. Cortelloni*, 177 Ill. 2d 166, 176 (1997).

Section 610 of the Illinois Marriage and Dissolution of Marriage Act states the

following, *inter alia*, regarding the modification of custody:

"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 \*\*\* and that the 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).

Considering Maria's remarriage, her petition to remove the children to Tennessee, her lack of communication with Timothy, her immigration status, and Eduardo's relationship with the twins, Maria does not dispute that a change has occurred in her and the boys' circumstances. Maria argues that Timothy failed to prove that a custody modification was necessary to serve Skylar's and Zylar's best interests. See 750 ILCS 5/610(b) (West 2008); *In re Marriage of R.S.*, 286 Ill. App. 3d 1046, 1051 (1996) ("Changed conditions alone will not justify a modification of custody unless such conditions adversely affect the welfare of the child.").

To determine custody in accordance with the best interest of the child, the court shall consider the following relevant factors:

- "(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 \*\*\*;

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

(9) whether one of the parents is a sex offender." 750 ILCS 5/602(a) (West 2008).

In the present case, Timothy sufficiently proved that a modification was necessary to serve Skylar and Zylar's best interest. Although both Timothy and Maria wanted custody of the boys, the circuit court made comprehensive findings regarding Skylar's and Zylar's best interest. The circuit court found that Timothy was very involved and loving, had not missed a visitation or any additional time offered by Maria, and enjoyed taking the boys to the zoo, pools, lakes, carnivals, and parades. Although the court considered the evidence that Timothy had been charged with a battery and received probation due to an altercation with his brother-in-law, the court noted that the issue did not involve any significant physical violence and did not occur in front of the children. The circuit court found that Evelyn, who lived approximately one mile from Timothy's home, also enjoyed a close and loving relationship with the children.

The court noted that several witnesses testified to Maria's lack of motherly affection toward the boys. The court also considered Timothy's testimony that Maria rarely if ever called to check on the children during his visitation time. The court characterized as "significant" the video recordings in evidence, showing that when the children returned to Timothy from Maria, they appeared happy and glad to see their father. The videos reveal a different reaction upon their return to Maria, in that the children become extremely upset,

cry, and scream. The court characterized Maria's response to the boys' reaction as "lack[ing] of empathy and support for her children."

The circuit court characterized Bobbi's testimony as credible. Bobbi testified that when she visited Maria after the divorce, the twins' diapers/disposable training pants were often urine-soaked, Maria did not change them regularly, and Maria often ignored them. Bobbi further testified regarding Maria's indifference to the children's emotional distress in August 2009 and to the incidents that occurred on September 13, 2009. It was Bobbi's opinion that awarding Timothy sole custody would serve the twins' best interest.

The circuit court found that Timothy often received the children in clothing that did not fit and in urine-soaked disposable training pants, despite the fact that they were potty-trained and had very few accidents. The court considered the relationship of the twins with their half-brother, Eduardo, including Bobbi's testimony that she had observed Eduardo "torment[ing]" the twins without repercussions from Maria. The court noted that the evidence clearly indicated that Robert had not spent much time with the twins.

When considering the children's adjustment to their home, school, and community, the court noted that the children had always lived in Montgomery County and that Timothy's large, extended family lived nearby. The court found that Maria sought to move to Tennessee, where the twins had no other relatives.

The court found that Maria had blocked Timothy from calling her cell phone, had failed to notify Timothy of the children's medical care and hospitalizations, and had violated a court order by failing to provide a third party for Timothy to contact. The court concluded that ample evidence showed that Maria was unwilling to facilitate and encourage a close and continuing relationship between Timothy and the twins.

We have reviewed the record, including the circuit court's thorough analysis and order. Like the circuit court, we conclude that Timothy sufficiently demonstrated that the

circuit court's modification was necessary to serve Skylar and Zylar's best interest. The circuit court's order awarding Timothy sole custody was not against the manifest weight of the evidence, nor did it constitute an abuse of discretion.

#### CONCLUSION

For the foregoing reasons, we affirm the judgment of the circuit court of Montgomery County.

Affirmed.