

reasonable and liberal visitation. Neither the parenting agreement nor the final judgment of dissolution included a set schedule of visitation or any provision for child support. At the time of the divorce, both parents lived in Benton, Illinois.

On March 10, 2007, Patti married Michael Butler, a resident of Harrisburg, Illinois. On July 19, 2007, the parties filed a stipulated order in which they agreed that Patti was allowed to remove Carson, who was then 10 years old, from the Benton school district and enroll him in the Harrisburg school district for the beginning of the 2007-2008 school year. By July 2007, Brandon was 18 years old and had graduated from high school, so his residency was not at issue in Patti's petition to remove Carson. The parties agreed to continue to share joint legal custody of Carson, but they added a visitation schedule whereby Carson would be with his father on alternating weekends and at additional times set out in the visitation schedule.

On May 20, 2010, Patti filed a petition to establish child support. On June 16, 2010, Jeff filed a petition requesting that the court order Patti to help pay for Brandon's college education. At that time, Brandon was a full-time student at Southern Illinois University at Carbondale, Illinois. On June 18, 2010, Patti filed a counterpetition seeking payments from Jeff for Brandon's college expenses. The parties proceeded to mediate the issues of child support, custody, and visitation. On July 7, 2010, the mediator filed a report stating that the mediation had terminated without an agreement and recommending the appointment of a child representative/guardian *ad litem*.

On July 9, 2010, Jeff filed a petition to modify the judgment of dissolution of marriage, alleging that changes had occurred such that a modification of custody was necessary to serve Carson's best interests.

On July 23, 2010, the parties filed a stipulated order that Jeff was to begin paying \$322.08 monthly child support beginning in August 2010. On July 29, 2010, Jeff filed an

amended petition to modify the judgment of dissolution with the same factual allegations as the original petition, but it also included Jeff's affidavit as an attachment. See Ill. S. Ct. R. 902(a) (eff. July 1, 2006) and 750 ILCS 36/209 (West 2004). Patti filed responsive pleadings to the original and amended pleadings requesting the court deny Jeff's petition to modify custody.

On July 30, 2010, Patti filed a motion for the appointment of a guardian *ad litem* for Carson, and on August 24, 2010, attorney James E. Ford was appointed as the guardian *ad litem*. On October 6, 2010, the parties filed an agreed order under which each of them consented to pay certain costs for Brandon's college education. On October 21, 2010, Jeff filed a motion requesting the court to conduct an *in camera* interview with Carson during the upcoming trial. The trial court did not rule on the motion for an *in camera* interview before the trial commenced.

On November 15, 2010, the first day of the evidentiary hearing on Jeff's amended petition to modify custody, the guardian *ad litem* filed his report. In that report, Mr. Ford noted that he had met with Carson on three separate occasions—once at his office and once at each parent's home. He observed that Carson appeared to be "highly intelligent" and "mature for his age." Mr. Ford stated that Carson wanted to live with his father for the following reasons:

"[H]e felt that Benton is his home and he has other family members, including his grandmother and his dad's brothers, who live in Benton. He emphasized that he had no other family in Harrisburg other than his mother. He added that his brother, Brandon, visits Benton more often and [stated that] residing in Benton would give him a greater opportunity to visit with Brandon. He also indicated that he and his step-father, Mike Butler, have had a strained relationship and this has placed a strain on his living in Harrisburg with his mother. Carson denied that his dad talked him

into living with him and [stated] that this is his decision and that he had been considering it for some time."

Mr. Ford also interviewed Jeff, Brandon, Patti, and her husband Mike. Mr. Ford noted that Jeff criticized Patti "for being negative in her attitude toward him" but "grudgingly admitted that Patti is a good mother to Carson." Mr. Ford stated that Jeff "minimized several failed personal relationships since his divorce from Patti and maintained that he is now more stable." Mr. Ford found the homes of both parents suitable for Carson's needs. Mr. Ford noted that Patti was "critical" of Jeff and indicated that she did not believe he was stable or responsible enough to be Carson's primary residential parent. Patti stated that Jeff had never been required to oversee Carson's homework or discipline "to any great extent" and had not put enough emphasis on Carson's education but that he had been able to "make life fun for Carson" and put too much emphasis on sports. Although Patti acknowledged Carson's stated desire to live with Jeff, she did not believe the move would be in Carson's best interest.

The guardian *ad litem* reported that he met with Brandon, who indicated that his relationship with Patti's husband Mike "was not very good." Brandon told Mr. Ford that he did not visit at Harrisburg "except on rare occasions for family gatherings," because he had never lived in Harrisburg and most of his friends live in Benton, so he "naturally" came to Benton more often. In recounting his interview with Brandon, Mr. Ford stated as follows:

"He believes that Carson should be allowed to live with his dad for the same reasons that Carson gave me. Some of what Brandon told me about his mother troubled me because he used the exact same phrases and language that Jeff used when Jeff described what he believed to be Patti's shortcomings."

Mr. Ford noted, "[Mike] seemed hurt by the accusations by Carson that he had not been treated fairly by him and he denied any problems with Carson prior to the filing of the petition to change the residential parent." Mr. Ford explained: "I am concerned about further

strain on [Mike and Carson's] relationship if Carson's request is not granted. I am not concerned about potential violence between Carson and Mike Butler. There is absolutely no indication that the strain would result in physical altercations."

The guardian *ad litem*'s recommendation is as follows:

"My recommendation [of] granting the modification comes with some reservations. I feel that the allegations against Patti and Mike Butler have been exaggerated. I am troubled by Jeff's need to criticize Patti and to try to make Mike Butler out to be an evil step-father when I don't believe that to be the case. I feel that this case has put a strain on Carson and Patti's relationship, which was excellent prior to its initiation. If all things were equal and if the minor child was ambivalent to changing residences, then I would be recommending that things stay the way they are. Don't fix it if it isn't broken. But the overriding aspect here is that Carson strongly desires to live with his father. Carson also loves his mother very much and expressed a desire for her not to be hurt by his decision. He seemed to look at the decision not as a rejection of his mother, but as a positive decision to live with his father because he felt it was best for him. I find it compelling that he has maintained a consistent desire in his wanting to live with Jeff since June 2010 and I find no overriding reason not to grant that request."

Neither party called Mr. Ford to testify.

EVIDENTIARY HEARING

The trial court conducted an evidentiary hearing on November 15 and 17, 2010. The substance of the relevant evidence presented follows. Laura Batts testified that she married Jeff on October 23, 2010. She and her 5-year-old son, Logan, live with Jeff in Benton, where she and Jeff work at the Dairy Queen restaurant. The Batts family has run the Benton Dairy Queen for more than 40 years, and Jeff is currently the owner/operator in conjunction

with his mother, Donna Cooksey. Jeff took over his brother's share of the business in July 2009. Laura testified that Jeff is a wonderful father and stepfather.

Jeff testified that, at the time of the dissolution of his marriage to Patti, he was employed at a local radio station and that he changed jobs and eventually worked as a realtor in Marion, Illinois, for almost three years. His employment as a realtor ended at the end of 2007 when the "real estate market crashed," after which he went to Nashville, Tennessee, where he stayed with a friend about half of each week for about four months. He explained that he had "saved up quite a bit of money," so he did not have to work. In June 2008, he obtained his license to work as a certified personal trainer. He testified that he took over the family Dairy Queen business in July 2009, that he was "solidly attached" to that business, and that he planned to run it until he retires. He noted that his hours at the Dairy Queen are very flexible, which allows him to be available anytime for Carson and Brandon. Jeff testified that, in addition to running the Dairy Queen, he also does motivational speaking and continues to work as a personal trainer.

Jeff testified that, after his divorce from Patti, although she was the primary residential parent for the boys, he saw them both almost every day before Brandon moved to Carbondale and Carson moved to Harrisburg. He said that both he and Patti are crazy about their sons, so they cooperated in parenting their sons. Jeff testified that he lived in Benton the entire time after the divorce, except for short periods of time when he stayed part-time in Nashville or with Laura at her residence in O'Fallon before she moved to Benton. He testified that, even when he was spending lots of time in Nashville and O'Fallon, he continued to maintain his schedule of visitation with Carson.

Jeff testified that almost all of his extended family lives in Benton and that, when Carson is in Benton, he sees them regularly, especially Brandon and Jeff's mother, Donna, who is like a "third parent" to both Brandon and Carson. Carson sometimes gets to see his

cousins and Jeff's brother, Jim, when he is home from St. Louis. Jeff testified that Carson is a "very popular child" with friends in Benton, DuQuoin, Marion, and Harrisburg. Carson went to school from kindergarten through the fourth grade in Benton, where he received all A's. He said that Carson had changed since the divorce, in that he was a child then and was a young man of 14 at the time of the hearing. Jeff explained that Carson had a "better idea of what it's like living in Harrisburg" and that he was "old enough to express his likes and dislikes" about his situation and his desires for the future. Jeff testified that, in the two years before the hearing, his relationship with Carson changed for the positive, in that they have "a father/son bond" of which he is very proud. He described his sons as the joy of his life.

Jeff said that he stayed in contact with Carson on an almost daily basis via emails, texts, telephone calls, and visits. He testified that he and Carson like to go to sporting events, play sports, and work out together. Jeff noted that Carson loves baseball and basketball and that he has an indoor batting cage and a lighted basketball court that Carson uses. Jeff testified that he expects Carson to remain an A student and that Carson has rules to follow and chores to do at his home.

Jeff testified that his relationship with Carson changed after Carson moved to Harrisburg. Due to the 90-minute round trip between Harrisburg and Benton, Jeff could not spend as much time with Carson. Jeff stated that his relationship with Patti, particularly their communication and ability to cooperate, had deteriorated in the three years before the hearing. Jeff did not believe that Carson was very close to his stepfather because they did not have much in common.

Donna testified that she is Carson's grandmother and is very close to him, spending as much time as she can with him almost every time he comes to Benton to stay with his father. She described Jeff as a very good, supportive father. When Carson was born, Jeff and Patti were living in Benton, and Donna saw Carson almost every day. She continued to

see him almost every day until he moved to Harrisburg. She testified that Carson told her in May 2010 that he wanted to move back to Benton to live with his father and that he told her the same thing several times later. When Carson is in Benton, he sees his brother Brandon when he comes home from college. When he is in Benton, Carson also sees her other son, a great-granddaughter, and "whoever's around."

Brandon testified that he was 21 years old and a student at Southern Illinois University and had lived in Carbondale the previous four years. In the year before the hearing, Brandon had visited with Jeff in Benton much more than with Patti in Harrisburg. Brandon noted that Carson and Mike did "not talk to each other that much," and he felt that it was an "awkward relationship." During Carson's visits with Jeff, Carson and Brandon "hang around" and talk "constantly." Brandon talks to Carson every day, whether by email or texts or seeing him in person. Brandon described Carson as his best friend and noted that even though he did not see Carson as much after his move to Harrisburg, their relationship had not changed and they were still just as close. Brandon testified that Jeff's house is "a lot more open" and a "lot easier place to be" than Patti's house, but he thought Patti was a "great mom." Brandon testified that Carson had been telling him for nine months to a year before the hearing that he wanted to move to Benton to live with Jeff. Brandon said that, over the previous few years, Carson and Patti's relationship had slowly deteriorated, in that they were "not as good of friends and they just butt heads constantly." Brandon felt that Jeff's relationship with Carson was "great" because, although Jeff is Carson's father, they were also "good friends" and able to have a "good time." Brandon said that Jeff always encouraged both boys to get good grades and disciplined them as needed, which was not very often.

Patti testified that she lives in Harrisburg with Carson and Mike and Mike's son, Dylan, who is one year older than Carson and who resides with them half of the time; the other half of the time, Dylan resides with his mother. Mike's parents and his sister and her

husband also live in Harrisburg, and Patti's mother lives in Energy, Illinois. Patti testified that Mike's parents have accepted Carson as one of their grandchildren and make no difference between him and their natural grandchildren. She described Mike and Carson's relationship as "a wonderful, respectful stepfather/son relationship," and she noted that Mike understood his role as a stepfather. She explained that they have rules that both Carson and Dylan are expected to follow in their home, but she said that Carson typically followed the rules, and she did not have to discipline him very often.

Patti has been a speech therapist for the Williamson County school system since 1991. She testified that Carson has always been a "top student" and that his grades did not drop after he moved to Harrisburg. She felt that Carson had "flourished" since the move, and she described him as a "great, happy, confident kid." She described her relationship with Jeff as "not good" and recounted one incident in which he had called her names, Mike had to intervene, and Jeff had threatened Mike. Jeff acknowledged the incident but denied calling Patti names or threatening Mike. She testified that, at the time of the divorce, Jeff "was unemployed," so she chose not to pursue an order for child support. She described Jeff's job history as "sporadic" and said that because he was so often either self-employed or unemployed, it was not worth incurring legal fees to pursue child support. She acknowledged that, initially, Jeff voluntarily paid her money every month, but she also stated that he stopped doing so after she and Mike got engaged in the spring of 2006. After that, Jeff would occasionally send her money if she sent him receipts for the boys' expenses, but she finally became frustrated and decided to file a request for monthly child support.

Patti testified that she is "a more stable parent" than Jeff, that she was the parent who fulfilled his day-to-day needs, and that she made sure Carson got his homework done on time. She testified that Carson first told her he wanted to live with Jeff after spending 2½ days with Jeff in June 2010, and she acknowledged talking to Carson about six times since

then about his wish to live with his father. She denied that she tried to convince Carson to tell the court anything other than the truth. She admitted telling Carson that Jeff often made "flippant" decisions, such as his decisions to divorce her and to request the custody of Carson. Patti testified that, although she knows that Jeff is basically a good father, he loves both of their sons, and she testified that, although he wants them both to succeed, he is not stable enough in his employment, residences, or relationships for a move to Benton to be in Carson's best interests.

Mike testified that Carson and Dylan get along very well. Mike felt that he and Carson had a very good relationship until June 2010 and that it had been very distant since then. Mike has lived in Harrisburg his entire life and has been employed at the Illinois Youth Center in Harrisburg for 12 years as an educator. He has held civic-service positions and used to coach youth baseball and soccer. According to Mike, Carson has a very good relationship with Mike's parents and sister, who live in Harrisburg. Mike's father picks Carson up after school most days. Mike, Patti, Carson, and Dylan attend church with Mike's parents.

At the close of Patti's evidence, the trial judge stated that he knew he was being asked to interview Carson. The court agreed with Jeff's attorney that both attorneys would be present in chambers during the interview. The court explained that its inquiry would be strictly limited to custodial and visitation preferences, stating that the details about what did or did not happen were prohibited. Jeff's attorney told the judge that Jeff preferred to have the interview with Carson conducted after the presentation of his rebuttal evidence, and the judge agreed to that procedure.

In rebuttal, Jeff denied much of Patti and Mike's testimony about various incidents the parties recalled differently. Relevant to our inquiry is Jeff's testimony that he had never been unemployed or without an income since his divorce from Patti and that he encouraged

Carson and Brandon's relationship with Patti. Jeff testified that Carson's complaints about Patti had become more frequent and that Carson sometimes said that he did not want to return to Harrisburg after a visit with Jeff.

After Jeff's rebuttal testimony and before Carson's *in camera* interview, Jeff's attorney requested to call Carson as a witness in rebuttal. Patti's attorney objected on the ground that Carson had not been disclosed as a witness in pretrial discovery. The judge stated that he had already told the parties that he would conduct an *in camera* interview with Carson and noted that neither party had asked any questions about the scope of that interview. The court denied Jeff's request to call Carson as a rebuttal witness, stating as follows:

"THE COURT: *** I have a real concern in this case with cross[-]accusations and innuendos that this kid, who is going to come in and tell me exactly what I know he is going to tell me, has been prepped. Okay. That's based upon what I have heard in this courtroom and based upon my observations. One of the things I do as a trial judge is look around and watch people and watch what's said, even what's not said on the record. So I have a real concern about that. So I am not going to do that. So.

[Jeff's attorney]: Okay.

THE COURT: All right. Anything else?

[Jeff's attorney]: I have nothing further then."

Patti and Mike testified in surrebuttal, and Jeff testified again in response to their surrebuttal, with each of them recounting various incidents they recalled and denying the other side's version. After the parties concluded their testimony, the trial court conducted the *in camera* interview with Carson.

In chambers, the judge asked Carson where he would live if he were to choose, and Carson responded that he would live with his father and Laura, "no doubt about it." Carson stated that, when he first moved to Harrisburg, he and Dylan got into an argument. Carson

said that his mother had told him "anytime" he wanted to move back to Benton, he could. Carson stated that, after the argument with Dylan, he told his mother that he wanted to move back to Benton but, "of course," she told him "it was not the right time." Carson explained that, after he initially told his mother he wanted to move back, when she did not allow him to move, he decided to "make do" and he "enjoyed it." He said that, since moving into the new house, he and Mike "have not been getting along so great" and that by mid-2010, things with his stepfather "started to spiral down even more." He felt that he was only unhappy at his home in Harrisburg and that he was happy at school and with his friends. Carson acknowledged that he gets along with his stepbrothers at both households. Carson said that he told his mother for the second time in June 2010 that he wanted to move back to Benton and that she again said it was not the right time. Carson said that, when he first moved to Harrisburg, it was easier not seeing his father as often as before the move, but then, as he got older, he wanted to spend more time with his father and talk to him more.

TRIAL COURT'S ORDER

After taking the case under advisement, the trial court issued its decision on December 1, 2010. The pertinent portions of that order are as follows:

"In the case at bar, the parties recognize that this matter is controlled by 750 ILCS 5/610(b) [(West 2008)] and its stringent requirements for establishing a basis to modify an existing custody arrangement. The statute requires clear and convincing evidence that a change has occurred in the circumstances of the child or his custodian and that modification is necessary to serve the best interest of the child. The custody modification statute 'reflects an underlying policy favoring the finality of child custody judgments and creating a presumption in favor of the present custody so as to promote stability and continuity in the child's custodial and environmental relationships.' *In Re Marriage of Fuesting*, 228 Ill. App. 3d 339, 344, 591 N.E.2d

960, 963 (Fifth District 1992).)

During the trial, the parties presented the usual allegations of verbal misconduct by the other parent over the years in the presence of the child found in most custody cases. This evidence is considered by this court as *de minimis* as it relates to the question of whether custody of the child should be changed. In addition, Respondent alleged, but did not prove, that Carson's relationship with his stepfather had deteriorated over the last few years causing him unhappiness in his home life and affecting his best interests. In fact, the evidence established that Carson is an exceptional child who has always excelled in the classroom, athletically, socially and personally since the divorce of his parents.

In this case, the only substantial evidence that aids Respondent's request for a change of custody is the strong expressed desire of Carson to live with him. This fact is acknowledged by both parties, the court-appointed guardian ad litem in his report, and the court itself. Carson's preference is considered by the court to be sincere, although the timing of his vocal pronouncement for the change is concerning as it was made immediately after his mother took his father to court requesting a formal award of child support after six years.

The court notes that the guardian ad litem recommends that the change of custody be granted because, in essence, all things being equal the teenager's request should be honored. While his conclusion is arguably compelling, especially as it relates to the choices his parents could personally make, this court is constricted by the law, specifically 750 ILCS 5/610(b). By virtue of that statute and case law, Respondent's burden of proof is clear and convincing evidence of a substantial change in circumstances of the child or his mother and that a change of custody to serve his best interests is necessary. By this test, Respondent has fallen short of the mark and,

therefore, the court declines to change the present custody arrangement."

ANALYSIS

On appeal, Jeff argues that the trial court's order is against the manifest weight of the evidence because he presented clear and convincing evidence that there had been a substantial change in circumstances since the parties' dissolution and that the custody modification is necessary to serve Carson's best interests. We begin our analysis with the statute governing the issue of child custody modification—section 610(b) of the Illinois Marriage and Dissolution of Marriage Act (Act):

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

The standard of review for custody modification judgments is the manifest weight of the evidence. *In re Marriage of Bates*, 212 Ill. 2d 489, 515 (2004).

"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. [Citation.] Where the evidence permits multiple reasonable inferences, the reviewing court will accept those inferences that support the court's order. [Citation.] A custody determination, in particular, 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 Bates*, 212 Ill. 2d at 516 (quoting *In re Marriage of Gustavson*, 247 Ill. App. 3d 797, 801 (1993)).

Section 610(b) precludes custody modifications unless the court finds clear and convincing evidence both that a change has occurred since the prior judgment and that the modification is necessary to serve the child's best interest. 750 ILCS 5/610(b) (West 2008). "The clear-and-convincing-evidence standard requires more proof than a preponderance-of-the-evidence standard, but it does not require the degree of proof necessary to convict a person of a crime." *In re Marriage of Knoche*, 322 Ill. App. 3d 297, 306 (2001). Additionally, section 610(b) "raises a presumption in favor of the present custodian." *In re Marriage of Andersen*, 236 Ill. App. 3d 679, 681 (1992). This presumption is based on the underlying policy that favors the finality of child custody judgments in order "to promote stability and continuity in the child's custodial and environmental relationships." *In re Marriage of Nolte*, 241 Ill. App. 3d 320, 325 (1993).

We first consider Jeff's argument that he established a substantial change of circumstances by clear and convincing evidence. Jeff argues that, since 2007, Carson has not been able to spend as much time with Jeff, his brother, his grandmother, and other extended family members living in or visiting Benton. He contends that Carson is unhappy living with his stepfather and that his relationships with his mother and stepfather have deteriorated since his move to Harrisburg. Jeff argues that the most significant change is Carson's strongly expressed desire to live with his father. The guardian *ad litem* also found that change most significant.

Patti argues that the manifest weight of the evidence shows that there has not been a substantial change in the circumstances within the meaning of section 610(b) of the Act (750 ILCS 5/610(b) (West 2008)). She points out the evidence that Carson has continued to excel

academically and socially and that Carson and Jeff have maintained almost daily contact since the move to Harrisburg. She notes Jeff's testimony that he has never gone more than 24 hours without speaking to Carson in Carson's entire life and Brandon's testimony that his relationship with Carson has not changed since the move.

The trial court found that Jeff did not sustain his burden of proof. We find that the manifest weight of the evidence supports the court's determination that there has not been a substantial change in circumstances since the entry of the judgment of dissolution of marriage. We have thoroughly recounted the relevant evidence. The evidence, when viewed in the light most favorable to the current custodian, Patti, shows a young man with a strong desire to live with his father, who feels that his relationship with his stepfather is somewhat strained but who has thrived on every other level since his move to Harrisburg. He has family that actively participates in his life in both Benton and Harrisburg. He has stepparents in both towns who appear to love and support him and his parents. The trial court found, and we agree, that the evidence shows that Carson "is an exceptional child who has always excelled in the classroom, athletically, socially and personally since the divorce" and since his move to Harrisburg. His relationships with his father, brother, and paternal grandmother have not deteriorated since his move to Harrisburg. In fact, Jeff testified that his relationship with Carson became more positive after Carson moved to Harrisburg. Brandon testified that he and Carson are still best friends and very close even though they live in separate towns. Since 2007, Carson has been able to maintain almost daily contact with his father and brother and continues to see his father's extended family frequently.

The trial court recognized that Carson strongly expressed his desire to live with his father and found his desire to live with his father to be "the only substantial evidence" supporting Jeff's request to change custody. The court found Carson's desire to be sincere but "the timing of his vocal pronouncement for the change" to be concerning. Viewed in the

light most favorable to Patti, we cannot say that Carson's stated preference, standing alone, is a sufficient change in circumstances to support a change in custody.

Moreover, even if we were to find a significant change in circumstances, we would not reverse the trial court's order because the manifest weight of the evidence does not show that changing custody is in Carson's best interest. The factors for the court to consider in determining custody are listed in section 602 of the Act (750 ILCS 5/602 (West 2008)). The factors that are relevant in this case are as follows: the wishes of the parents and Carson regarding custody; Carson's interaction and interrelationship with others; his adjustment to his home, school, and community; the mental and physical health of all involved; and the willingness of each parent to facilitate and encourage a close and continuing relationship between Carson and his other parent. 750 ILCS 5/602(a) (West 2008). In its consideration of these factors, the court is not to consider "conduct of a present or proposed custodian that does not affect" the child's relationship with that parent. 750 ILCS 5/602(b) (West 2008).

Applying the best-interest factors, we initially note the trial court's finding that the evidence of the parties' "usual allegations of verbal misconduct" was *de minimis*. We have reviewed that evidence and agree with the trial court that it is not significant enough to affect Carson's best interest. Of great significance is the evidence that, although Carson strongly expressed his desire to live with his father, he acknowledged that he was happy in all areas of his life except at home. Patti testified that Carson had flourished since his move and described him as a "great, happy, confident kid." Despite the discord between Patti and Jeff, Carson has maintained a very close relationship with Jeff. Patti and Mike have stable employment, close family ties, and a stable home life. Patti has always been Carson's primary caretaker and the parent who has had to deal with the day-to-day discipline, chores, homework, and other parenting responsibilities. Brandon testified that Jeff is Carson's father but also a "good friend" with whom Carson can have a "good time." Jeff encourages Carson

to maintain excellent grades in school, but he described his activities with Carson as primarily involving sports and other leisure activities. Jeff testified that he is "solidly attached" to his current employment in the family business, but he has a history of frequently changing jobs.

Jeff argues that the trial court did not give sufficient weight to Carson's wishes, asserting that the court's *in camera* interview of Carson should have been more expansive. As part of that argument, he contends that the trial court abused its discretion by denying his request to call Carson as a witness. Before the trial, Jeff filed a motion requesting the court to conduct an *in camera* interview with Carson, but he did not seek a ruling on that motion before the trial or as it commenced. After both Jeff and Patti had presented their evidence, the court brought up the subject of Carson's *in camera* interview. Both parties agreed that their attorneys would be present in chambers during that interview. When the court explained that its inquiry would be strictly limited to Carson's custodial and visitation preferences, neither party asked to question Carson or expand the scope of the court's inquiry. Jeff's attorney told the court that Jeff preferred that the court interview Carson after the presentation of rebuttal evidence. Finally, after Jeff testified in rebuttal, for the first time his attorney stated that she wanted to call Carson as a witness. Patti's attorney objected, noting that Carson had not been listed as a potential witness during discovery. The trial court denied the request to call Carson as a witness, stating that it had been observing the witnesses and the parties throughout the proceedings and noting its concerns with the parties' accusations and innuendos against each other. Jeff did not request to make an offer of proof, did not ask if his attorney could question Carson during the court's *in camera* interview, and did not propose any additional line of inquiry for the judge.

Based upon this procedural posture, Jeff's argument fails. The Act provides that the court "*may* interview the child in chambers to ascertain the child's wishes as to his custodian

and as to visitation." (Emphasis added.) 750 ILCS 5/604(a) (West 2008). The legislature's choice of the word "may" in this statute "indicates that the choice of whether or not to conduct an interview is a matter within the discretion of the trial court." *In re Marriage of Padiak*, 101 Ill. App. 3d 306, 315 (1981). Clearly, the court had the discretion to decide that Carson would not testify as a witness or during an in-chambers interview but exercised that discretion to allow the in-chambers interview. "It has been held that there is no absolute right to present a child's testimony during a custody proceeding, and, when that testimony is presented, it is left to the trial court's discretion whether to receive it from the witness stand or *in camera*." *In re Marriage of Willis*, 234 Ill. App. 3d 156, 159 (1992).

Here, Jeff requested to call Carson as a live witness, evidently in addition to the in-chambers interview the parties had agreed would occur after rebuttal. The parties' attorneys were allowed to be present during the *in camera* interview, a procedure that provides an "added protection" to the litigants and permits the trial court "to exercise considerable discretion in setting the scope of the interview in order to best determine the child's intelligence, understanding, and basis for any preference for a custodian." *Id.* Since Jeff did not make an offer of proof or request an opportunity to question Carson during the in-chambers interview and did not ask the court to expand its line of inquiry during the interview, we have no way of knowing what additional testimony would have been presented. Thus, we find no abuse of discretion in the court's refusal to allow Carson to testify.

Based upon the totality of the evidence, we find that the trial court's order denying Jeff's petition to modify custody is not against the manifest weight of the evidence.

CONCLUSION

For all the reasons stated, we affirm the trial court's order denying Jeff's petition to modify the custody of the parties' minor son.

Affirmed.