

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2012 IL App (4th) 111057-U

Filed 3/30/12

NO. 4-11-1057

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

OLIVIA M. SCHWEERS, f/k/a OLIVIA M.)	Appeal from
KAUFFMAN,)	Circuit Court of
Petitioner-Appellant,)	McLean County
v.)	No. 10F57
MICHAEL D. McCLURE,)	
Respondent-Appellee.)	Honorable
)	Charles G. Reynard,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Turner and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's decision awarding sole custody of the parties' minor child to respondent was not against the manifest weight of the evidence.

¶ 2 Petitioner, Olivia M. Schweers, appeals an order of the trial court granting sole custody of the parties' child, Emma (born January 2, 2008), to respondent, Michael D. McClure, and denying Olivia's petition for removal. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The parties dated in high school and lived together after graduation but were never married. The parties split up after Emma's birth.

¶ 5 On April 13, 2010, an initial support order was entered requiring Michael to pay child support to Olivia for Emma.

¶ 6 On December 16, 2010, Michael filed a petition for joint custody of Emma with

Olivia.

¶ 7 On February 23, 2011, Olivia filed a petition for removal requesting she be allowed to remove Emma from Illinois to South Carolina. Olivia's husband, Matthew Schweers, an ensign in the United States Navy, was relocated to Charleston.

¶ 8 In July 2011 and August 2011, the trial court held hearings on Olivia's petition for removal and Michael's petition for custody.

¶ 9 During the custody hearing, Kent Smith, Michael's stepfather, testified he and his wife, Michael's mother, had cared for Emma "about every day" since Emma's birth. Kent testified Olivia's parents are not active grandparents with regard to Emma. Kent also testified for approximately the past 2 1/2 years Emma came to their home and they provided day care for her while respondent and Olivia were working. Kent testified he did not observe "a normal mother-daughter bond" between Olivia and Emma during that time period and felt "she wasn't being the mother that we would like to see [and] that her maternal instincts were lacking." Kent also testified Emma did not appear to be happy when Olivia came to pick her up. Emma made statements she "didn't want to go; it wasn't time for her to go yet" when Olivia came to pick her up. Kent testified sometimes she ran to hide in the closet. Kent also testified Emma regularly cried when Olivia came to pick her up. According to Kent, Emma did not have that same reaction when Michael came to pick her up.

¶ 10 Kent also testified he and his wife were still providing day care for Emma after Michael and Olivia split up. While it appeared to be a "50/50 split" as to who had Emma, Kent testified he observed Olivia "was not cooperative" when Michael requested time beyond that 50/50 split. According to Kent, since the beginning of the instant litigation, Olivia had reduced

Michael's parenting time with Emma.

¶ 11 Kristi Smith, Michael's mother, testified she and her husband provided day care for Emma from the time she was eight weeks old. Kristi testified they cared for Emma from approximately "7 and 7:30 in the morning until 5 or 6 in the evening and sometimes later." Kristi testified she and Emma have a "great relationship." When Olivia picks her up, Emma does not want to leave. On the other hand, Kristi testified Emma is happy when Michael comes to pick her up. Kristi testified Emma "loves her dad" and has a "nurturing, caring, [and] loving relationship" with him. Kristi expressed her concerns with Olivia's relationship with Emma and felt Emma was not bonding with Olivia. She also testified Olivia had been irresponsible in regard to meeting Emma's medical needs. Kristi cited instances where Olivia told her she made doctor's appointments for Emma only to later cancel them or not take Emma at all. Kristi also stated there were occasions where Kristi took Emma to the doctor's office after Olivia said she had scheduled an appointment only to find no appointment had been made.

¶ 12 Kristi testified she and Olivia have developed a relationship and Kristi has been "somewhat of a surrogate mother for her." She testified about a telephone conversation she and Olivia had regarding Olivia's concerns regarding the move to South Carolina. Kristi testified:

"[Olivia's] concerns were she didn't feel like the military life was going to—was cut out for her. She wasn't happy with where she was or what she was doing in her life. She wasn't sure she made the right decision when she got married to Matt. And I asked her at that time why don't you get a divorce or, you know, an annulment. I don't know how long she had been married. And she said, [']well, I can't

do that to Matt; it's too late for that.[']

And I said [']so you just want to go and move to South Carolina where you have no family and friends and you can't just pick up and call one of us to come and get Emma, you know, to watch her for the day or keep her overnight; you're going to be so far away; we're not going to be a phone call away anymore, because you have nobody out there[']. And she just—she said, [']I know.['] And she said she [']couldn't talk to anyone in her family about that, because they [were] all mad at her and hated her and none of them were speaking to her at that time.[']"

¶ 13 Kristi also testified there was period of time when Olivia kept Emma away from her and Kent as well as Michael.

¶ 14 Michael, Emma's father, testified he was currently working for Peterbilt from approximately 8 a.m. to anywhere from 2:30 until 5 p.m., Monday through Friday. Michael testified he and Olivia separated in the Fall of 2008. He currently resides with his fiancée, Megan Westerfield, and her son, Wyatt. Megan testified she was supportive of Michael having custody of Emma. Michael testified Olivia called him after her honeymoon and expressed her concerns and doubts about her marriage to Matthew.

¶ 15 Michael testified they split the visitation time evenly from the time they separated until Olivia relocated to Champaign in August 2010. However, Michael also testified he felt Olivia was using Emma as a tool against him after Olivia received the discovery requests. He testified on several occasions in addition to those following the discovery requests, Olivia

withheld Emma from him because Olivia was upset with him. Michael also testified on approximately three to five other occasions Olivia threatened to keep Emma from their next visit if Michael did not drive Emma back to Champaign following his visit with her.

¶ 16 Michael also testified to an incident where Olivia sent Michael a text asking him for help. Michael testified Olivia was acting "really weird" and told him she had taken several pain pills. Michael testified he had no reason to doubt what Olivia had told him. Michael explained he observed Olivia "itching and shaking" and "her eyes weren't open very far." According to Michael, "she just looked drugged." Michael initially testified he found a bottle of Oxycontin in Olivia's house. However, on rebuttal he testified Olivia told him she had taken Oxycodone or Percodan.

¶ 17 Michael testified Emma has had seven cavities within the last seven months. While Olivia asked Michael to pay half of the \$3,400 dental bill, Michael testified Olivia never provided him with a bill. Michael testified Olivia told him Emma needed root canals, caps, and fillings. Michael took Emma to another dentist, who told respondent Emma had five cavities and root canals and caps were unnecessary.

¶ 18 Michael testified at the end of nearly every visit, once he tells Emma her mother is coming to pick her up, Emma will "tear up" and "sometimes she hides." Michael testified the most recent incident occurred two weeks prior to the hearing. On that occasion, Michael "had to chase her down" and there was "a lot of crying and screaming" once he got Emma to Olivia's car. He testified Emma held onto his neck and would not let go. Olivia had to pull Emma off his neck to get her into the car. According to Michael, Emma acts that way approximately 75 to 90% of the time.

¶ 19 Michael also testified he has concerns regarding the frequency with which Olivia has other people watch Emma during her parenting time. Michael testified Olivia frequently solicits people to watch Emma by posting babysitting requests on Facebook. Michael also testified the birthday cake Olivia provided for Emma's first birthday party read, "Happy F'ing Birthday, Emma." A picture of the cake was posted on the Internet.

¶ 20 Kaley Smith, Michael's sister, testified Emma and Michael have a close relationship and Emma is very affectionate toward Michael. Conversely, Kaley testified she has not observed a strong bond between Olivia and Emma. She testified there were instances when Olivia would "get babysitters all the time and go out and just leave Emma with whoever she could" instead of spending time with Emma. Kaley testified in other instances Olivia asked Kaley or her mother, Kristi, to care for Emma, which they always did. When Olivia came to pick Emma up, Emma would be "[f]ighting, putting up a fight, not wanting to put her shoes on, put her coat on, running, crying, reluctan[t]." According to Kaley, Emma would "run down the hallway to my parents' bedroom [and hide] under the bed." Kaley testified she observed more than 40 such instances. Kaley also testified Olivia frequently used her Facebook page to solicit people to watch Emma when she wanted to go out drinking.

¶ 21 Matthew Schweers, Olivia's husband, testified he is an ensign in the United States Navy. Matthew testified he studied physics and engineering at the University of Illinois and graduated with a bachelor's degree in May 2011. He received his commission, and his first assignment will be in Charleston, South Carolina, at the Naval Weapons Station. That assignment will last at least a year and three months. Thereafter, Matthew will be assigned to a submarine on a submarine base and could be deployed anywhere from three to nine months at a

time. In the event of a lengthy deployment, Matthew indicated Olivia could stay in Charleston or possibly return to Illinois. Matthew testified he has a close relationship with Emma, and they "spend a lot of time together" and play and read books.

¶ 22 Matthew and Olivia have another child together, two-year-old Caroline. Matthew testified to an incident that occurred approximately 18 months prior to the hearing. He picked up Caroline because he thought Olivia was in no condition to care for her as a result of postpartum depression. He kept Caroline for a week. When asked about their relationship, Matthew testified "we have two different personalities, so there have been disagreements between us, but we—over time we, like any marriage, we learn to communicate better. It's an evolving process. I'd say we started off great, and we've just had normal marriage things going on." Matthew described his commitment to the marriage as "[r]ock solid, 100 percent. I love her. I'm not going anywhere."

¶ 23 Kimberly Matlock, Olivia's mother, testified she has a close relationship with Olivia. Kimberly testified "Olivia was really just cut out to be a mom" and "loves being a mom." Kimberly described Emma as "just such a loving child. She's never at a lack for telling you that she loves you. It's probably her favorite thing to say is that she loves you. She's very, very intelligent, very kind. She's very loving to her little sister." Kimberly also testified Caroline is very fond of Emma. "[I]f Emma is not with them at the time, you can't say Emma's name around Caroline because then Caroline is just looking everywhere for Emma, wants Emma to be there. As soon as she sees Emma coming, even if they've been out of the same room, it's always [']Emma, Emma, Emma.['] I mean, they are very, very close."

¶ 24 As to Matthew, Kimberly testified to the following:

"He's a godsend for Olivia and for her family. He's very

respectful. He loves Emma with all his heart. He treats Emma no differently than he treats Caroline even though Emma is not his biological daughter. When they are together there's never any favoritism or differences that he shows one toward the other. He's a great father, he's a great husband. He's taken on responsibility with not one complaint for his family. It's a great thing to see, especially in today's world, to see a guy like that."

¶ 25 Jack Matlock, Olivia's stepfather, testified Emma and Olivia visit his home "probably once a week." As to Olivia's parenting, he testified she is "very patient with Emma, she's very kind with Emma. It's a very loving relationship. I often hear Emma say [']I love you, Mom,['] you know and I've never, ever, and I'm talking the entire time Emma's been born, heard Olivia say a cross word to Emma." Jack also testified Matthew "is a very patient individual, very kind and considerate towards Emma. He treats Emma the same way that he does Caroline. He treats them as equals, and so I would say that he is demonstrating that he has an affection for Emma." Jack testified each time he has babysat, Emma always asks "where did mom go, when will mom be back?" According to Jack's testimony, he babysat "about six times, maybe eight maximum" over the last three years. Jack also testified he felt Emma and Caroline had bonded. He stated he babysat Caroline more frequently because Emma has "usually been with her father." When he babysits Caroline by herself she always asks "where's Emma, where did Emma go today, is Emma going to be back tonight with mom?"

¶ 26 John Kauffman, Olivia's father, testified he sees Olivia two or three times per week and speaks to her on the phone or texts her every day. According to John's testimony, every time

he sees Olivia he also sees Emma. He testified Olivia and Emma have a “very loving daughter and mother bond.” John also testified Olivia and Matthew have a very close and loving relationship.

¶ 27 Olivia testified she has a very strong bond with Emma. According to Olivia's testimony,

"[Emma] loves to come and cuddle up with me, and we're always together. She's always right next to me. She always wants to be doing what mommy is doing. If I have any work to do on the computer, she has a little laptop, and she'll put it next to me on the desk and she wants to work like mommy does. We're always playing and coloring. She just always comes to me if she has a question or, you know, with learning new things. She's only three, it's always—you know, she always says, [']mommy, I love you,['] I mean, all the time."

¶ 28 Olivia also testified she and Michael did not have the greatest relationship. According to Olivia, Michael "was controlling and both mentally and physically abusive towards me through the duration of our relationship." She stated Michael called her a number of names and would not allow her to "hang out with friends." Olivia also recalled two occasions in 2005, during high school, where Michael was physically abusive toward her. Olivia testified Michael "punched out the rear driver's side window" of her vehicle. Another incident involved Michael striking some compact discs (CDs) Olivia was holding. When he struck the CDs, they hit Olivia's face. Olivia testified her nose was bleeding and her lip was split. Olivia did not call the

police.

¶ 29 Olivia testified she and Michael moved in together after high school. According to Olivia, Michael continued to be emotionally and physically abusive toward her. Olivia testified there were occasions where Michael threw things at her, choked her against the wall, and pushed her down on the ground and kicked her. Olivia did not call the police on any of these occasions.

¶ 30 Olivia testified she began dating Matthew in October 2008, approximately a month after she broke up with Michael. Caroline was born in September 2009, prior to her marriage to Matthew. They married in October 2010. According to Olivia's testimony, living with Matthew is "like night and day" from living with Michael. She testified her husband "is amazing" and has "complete respect" for her and her children. Olivia admitted talking with Kristi about her relationship with Matthew. However, Olivia denied expressing any doubts about her marriage to Matthew.

¶ 31 Olivia testified Emma remained in Illinois when Matthew moved to South Carolina. According to Olivia's testimony, on the day of the move Emma was asking, "where everybody was going." Her paternal grandparents, Kent and Kristi, picked Emma up that day. Olivia acknowledged Emma has a very close relationship with Michael and his parents, who have provided a very good support system. However, she testified neither Michael nor any of his witnesses have spent more than an hour in her home observing her interactions with Emma.

¶ 32 Olivia also denied she changed visitation dates in reaction to receiving the discovery requests. Olivia testified to occasions where Michael worked all day on a Friday and rather than have Emma go with Michael on Thursday, Olivia "just thought it would be a benefit for [Emma] to just stay with [her] for those twelve hours as opposed to her going elsewhere."

She offered Michael extra visitation time when she needed a babysitter. Olivia admitted telling Michael he would lose future visits unless he dropped Emma off in Champaign after his visits, because she was transporting to visitation. Thereafter, the parties switched and Michael picked Emma up for visitation and Olivia retrieved Emma after visitation.

¶ 33 Olivia testified Michael's mother took Emma to the doctor for "wellness visits" while Olivia was working. While Olivia admitted the Department of Children and Family Services conducted an investigation in September 2010, she denied there ever being a time when she neglected Emma's health. Olivia testified that investigation ended with a determination the allegations were unfounded. Olivia testified she believed Emma's dental issues were a result of Michael's mother, Kristi, allowing Emma soda.

¶ 34 Olivia testified she had medical insurance through her employer for Emma at the time she was born. A few months after Emma was born, Michael obtained a new job and had the opportunity to add Emma to his insurance at an additional cost. Olivia testified toward the middle to the end of 2008 Michael's insurance did not cover Emma any longer. Olivia stated Michael told her he could not afford to continue to cover Emma. Olivia testified she then signed Emma up for the "All Kids" health insurance program through the State of Illinois. However, that insurance did not continue to cover Emma after April 2009. Olivia had started working a second part-time job and was sent a rejection letter stating she was making too much money to qualify for the program. Olivia was not able to obtain insurance for Emma through work. Olivia testified Emma did not have health insurance from April 2009 through October 2010, when Olivia and Matthew got married. Emma was then covered through Matthew's employer. While Michael was working full time during this period, Olivia testified she could not remember

notifying Michael she had lost her health insurance for Emma. According to Olivia, "I don't recall how that happened, how that played out. I don't remember."

¶ 35 Olivia also testified regarding the incident involving the cake for Emma's first birthday. Olivia admitted her sister baked and decorated a cake for the party. The cake was decorated to read "Happy F'ing Birthday, Emma." However, Olivia testified that cake was not the one given to Emma. Emma was given her own cake, and the other one was just for the adults. Olivia also admitted soliciting babysitters on her Facebook page. However, she maintained only friends and family had access to it.

¶ 36 Olivia denied ever overdosing on pain pills. She testified she was suffering from postpartum depression and explained that issue was resolved after taking antidepressants.

¶ 37 Olivia testified to a conversation with Michael about an incident involving his girlfriend, Megan. According to Olivia, Michael found Megan lying on the floor, unconscious. Michael told her Megan had been threatening to commit suicide. However, Megan testified she inadvertently mixed Kahlua with Mucinex, Ibuprofen, and an antibiotic. According to Megan, "they reacted and it knocked me out basically unconscious."

¶ 38 At the conclusion of the evidence, the trial court gave the parties seven days to file additional argument and authority and seven days thereafter to respond to one another's argument.

¶ 39 On November 3, 2011, Michael filed a seconded amended petition for custody, requesting he be awarded sole custody of Emma.

¶ 40 On November 10, 2011, the trial court entered its written order awarding sole custody of Emma to Michael and denying Olivia's petition for removal. Specifically, the trial

court stated it had considered factors relating to custody and found the following:

"a. The wishes of the parents are competing in this case and, thus do not meaningfully guide the Court in resolving the contest.

b. The wishes of the three year old are not before the Court; nor would they be helpful to the Court.

c. The interaction and interrelationship of the child with her parents, her siblings and any person who may significantly affect the child's best interests. It appears that Emma has a very positive relationship with both parents as well as with 'step-siblings.' The Court finds that Emma's relationship with her paternal grandparents and other local relatives favors the Respondent's position in this matter. Both the Respondent and the Petitioner have relied extensively on Kent and Kristi Smith, the Respondent's step-father and biological mother for Emma's caretaking needs from the time of her birth to very near the present. While Emma's maternal grandparents, Kimberly Matlock and John Kaufmann, testified and appeared to be sincerely supportive of their daughter's position in the matter, their relationship to Emma was considerably more remote and less engaged than the relationship of the child and her paternal grandparents and family.

d. Emma's adjustment to her home and community appears to be closely balanced between the parties. However, this factor

slightly favors the home and community of the Respondent because Emma has spent quantitatively and qualitatively more time with Respondent and Respondent's family over most of Emma's life, until the point in time that the Petitioner began to restrict the Respondent's access to their daughter.

e. The mental and physical health of all individuals involved, when considered, produces interesting observations. Emma, by all accounts, is a bright, loving, healthy, well-adjusted girl. Her mother has experienced emotional problems at different points in time, including self-destructive behaviors which may have been most recently related to post-partum depression experiences. Several instances related to this observation are concededly disputed by the Petitioner, but the credible testimony, as observed by the Court, is supportive of the notion that the Petitioner's emotional stability and judgment have been problematic at various times. Emma's father has not been immune to behavioral problems and the evidence supports the observation that he has been irresponsible and immature at times. This analysis only slightly favors the Respondent's claim for Emma's custody.

f. The physical violence or threat of physical violence by the Respondent, to the extent that he has allegedly been abusive to the Petitioner, which is disputed to a significant extent, and to the extent

that he was concededly abusive to his current fiancée, is a factor which favors the Petitioner's claim for Emma's custody.

g. The Respondent, with the obvious assistance of his parents, has demonstrated a slightly greater willingness and ability to facilitate and encourage a close and continuing relationship between the Petitioner and Emma. There is no evidence that Respondent has ever withheld access of Emma from her mother, whereas it is undisputed that the Petitioner has curtailed access of Respondent and Emma to each other, particularly since the time he filed his Petition for Custody. The Petitioner denied retributive motivations, but admitted a diminution of paternal access because, among other reasons, Petitioner claimed Respondent was not being 'friendly to me' and she was not 'comfortable.' However, she conceded that she unilaterally changed the access schedule in late May, 2011, but denied any timing connection with receipt of discovery materials around that time. Her denial and demeanor in this regard was [*sic*] not credible.

h. An additional factor, not specifically associated with the statutory list of factors, is related to the quality of Petitioner's judgment in April, 2009 when she allowed the 'All Kids' insurance coverage to be dropped and thereafter permitted Emma to be without health insurance coverage until October, 2010. Her testimony, when

asked whether she notified the Respondent regarding the lapse of the 'All Kids' coverage, was: 'I don't recall ... uh ... how that happened.'

This lapse of custodial responsibility is very troubling to the Court."

¶ 41 This appeal followed.

¶ 42 II. ANALYSIS

¶ 43 On appeal, Olivia argues the trial court erred in (1) granting sole custody of Emma to Michael and (2) denying her petition for removal. Specifically, Olivia contends the court's custody and removal decisions are against the manifest weight of the evidence.

¶ 44 A. Custody

¶ 45 Olivia argues the decision of the trial court to award Michael sole custody of Emma was against the manifest weight of the evidence. We disagree.

¶ 46 "In cases regarding custody, a strong presumption favors the result reached by the trial court." *In re Marriage of Seitzinger*, 333 Ill. App. 3d 103, 108, 775 N.E.2d 282, 286 (2002). The trial court's best-interest findings are entitled to great deference because it is in a better position than a reviewing court "to observe the temperaments and personalities of the parties and assess the credibility of witnesses." *In re Marriage of Stopher*, 328 Ill. App. 3d 1037, 1041, 767 N.E.2d 925, 928 (2002). "A reviewing court will not overturn a trial court's custody determination unless it is against the manifest weight of the evidence, is manifestly unjust, or results from a clear abuse of discretion." *Stopher*, 328 Ill. App. 3d at 1041, 767 N.E.2d at 929. A trial court abuses its discretion only when it " 'acted arbitrarily without conscientious judgment or, in view of all the circumstances, exceeded the bounds of reason and ignored recognized principles of law so that substantial injustice resulted.' " *In re Marriage of Marsh*, 343 Ill. App.

3d 1235, 1240, 799 N.E.2d 1037, 1041 (2003). "Findings are against the manifest weight of the evidence when the correctness of an opposite finding is clearly evident." *Marsh*, 343 Ill. App. 3d at 1241, 799 N.E.2d at 1042. Thus, we will affirm the trial court if there is any basis to support the court's judgement. *In re Marriage of Divelbiss*, 308 Ill. App. 3d 198, 207, 719 N.E.2d 375, 381 (1999).

¶ 47 Section 602(a) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/602(a) (West 2010)) provides the relevant factors for determining custody in the best interest of child are as follows:

- "(1) the wishes of the child's parent or parents as to his custody;
- (2) the wishes of the child ***;
- (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) 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, 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).

¶ 48 In her initial brief on appeal, Olivia challenges the trial court's decision only as to the third, fourth, fifth, and eighth factors. Thus, we will confine our review to those factors.

¶ 49 Plaintiff first argues the trial court erred in granting custody of Emma to Michael because its section 602(a)(3) finding was erroneous where (1) the court erred by referring to Emma's "step-siblings" in its order where Caroline is her half-sibling, (2) the court did not acknowledge the significant relationship between Emma and Caroline, and (3) the court placed undue weight on Emma's relationship with her paternal grandparents and did not give sufficient

weight to Emma's nuclear families.

¶ 50 In this case, the trial court stated Emma has very strong relationships with Olivia, Michael, and Caroline. While the court referenced Emma's "step-siblings," the court heard undisputed testimony Emma and Caroline were half-siblings. However, the court's mischaracterization in this regard does not render the court's order manifestly erroneous. The court heard a variety of evidence regarding Emma and Caroline's sibling relationship. Kimberly testified Emma "is very loving to her little sister" and the girls are "very, very close." Further, Jack testified the girls hug and kiss each other. Olivia testified the girls frequently say " I love you' " to one another. However, simply because the trial court did not restate such evidence in its order does not mean it failed to consider their relationship.

¶ 51 Further, Olivia cites *In re Marriage of Deckard*, 246 Ill. App. 3d 427, 434, 615 N.E.2d 1327, 1333 (1993), for the proposition "[a] custody order which separates children is usually not in their best interests." However, Olivia does not cite authority for the explicit proposition that half-siblings can *never* be separated. While a child's relationship with a half-sibling is a relevant factor in the court's determination of custody, it is not singularly determinative of custody. If it were, simply having another child would effectively trump all of the other section 602 factors.

¶ 52 Further, Olivia argues the trial court placed too much emphasis on the relationship Emma had with her grandparents. However, evidence was presented to show Kent and Kristi's extensive role in caring for Emma on both parties' behalf. Kristi testified she and her husband had provided day care for Emma from the time she was eight weeks old. Conversely, the evidence presented did not show a similar undertaking on the part of Kimberly and John. The

role of the grandparents in this case is relevant as it formed a support system for the parties. Kent and Kristi continue to play an important role in Emma's care. The court heard the evidence regarding Emma's relationships with her parents and caretakers and found those relationships favored Michael. We cannot say the court's finding in this regard was manifestly erroneous.

¶ 53 Olivia next argues the trial court's finding regarding section 602(a)(4) of the Act was erroneous where (1) Olivia presented evidence of how Michael's home life negatively affects Emma and (2) there was no reliable evidence to suggest Olivia had limited Michael's visits with Emma. However, the court found this factor favored Michael because the evidence presented showed Emma had spent "quantitatively and qualitatively" more of her life with Michael and his family. The court heard the evidence Olivia presented regarding what she considered a negative home life. However, the court weighed the evidence presented by the parties regarding each parent's home life and its effect on Emma and found this factor favored Michael. We cannot say the court erred in its finding.

¶ 54 Further, Olivia argues no reliable evidence was presented to suggest Olivia had limited Michael's visits with Emma. However, Michael testified Olivia threatened to keep Michael from seeing Emma if Olivia did not get her way, and Olivia admitted such in regard to the transportation issue. Kent testified he observed Olivia "was not cooperative" when Michael requested additional time with Emma. Kent also testified Olivia has reduced Michael's parenting time with Emma since the beginning of the custody case. Kristi testified there was a period of time when Olivia kept Emma away from Kristi and Kent as well as Michael. Michael testified after Olivia received the discovery requests, he felt Olivia was using Emma as a tool against him. He testified there had been several other occasions, other than those following the discovery

requests, where Olivia withheld Emma from him because Olivia was upset with him. Olivia, on the other hand, testified she did not limit Michael's visits with Emma in all of these regards. The court heard the competing testimony and chose to believe Michael and his witnesses. The trial court is in a better position to make credibility determinations than we are. We will not substitute our judgment for that of the trial court in the area of witness credibility.

¶ 55 Olivia also argues the trial court erred in its section 602(a)(5) finding where it failed to consider (1) the March 2010 incident regarding Megan's alleged drug overdose and (2) Michael's change in testimony regarding Olivia's alleged drug overdose.

¶ 56 In this case, the trial court heard testimony regarding Megan's alleged drug overdose. Simply because the court did not specifically cite this incident in its order does not mean it failed to consider it in weighing the evidence. The court also heard testimony regarding Olivia's alleged drug overdose, which the court also did not specifically reference in its order. The court did reference Olivia's alleged emotional problems, which it noted Olivia disputed. However, the court stated the *credible* testimony indicated Olivia has endured emotional instability and poor judgment at times. Olivia also argues Michael's testimony regarding her alleged overdose was unreliable because he changed his testimony on rebuttal. Michael initially testified he believed Olivia had overdosed on Oxycontin. On rebuttal, however, Michael testified Olivia told him she had taken Oxycodone or Percodan. Michael testified he believed it was Oxycodone because when he looked up Percodan "it said Oxycodone." The trial court heard Michael's testimony and chose to believe his version of events. We will not disturb the court's credibility determinations.

¶ 57 Finally, Olivia argues the trial court's finding regarding section 602(a)(8) of the Act

was erroneous where Michael presented no evidence he has encouraged a close and continuing relationship between Olivia and Emma. However, the trial court phrased its findings on this factor in terms of Olivia's unwillingness to facilitate and encourage Emma's relationship with Michael. As previously stated, various witnesses testified Olivia had curtailed Michael's access to Emma. While Olivia denied withholding access to Emma from Michael, the court specifically found her denial not to be credible. Thus, regardless of the amount of positive evidence presented with regard to Michael, sufficient evidence was presented to show Olivia on occasion had impeded Michael and Emma's access to one another.

¶ 58 We note Olivia cites various examples and argues Michael's witnesses were untruthful such that the custody award was unjust. Olivia's argument requires us to view her witnesses' testimony as true and consider the conflicting testimony as false. However, as previously stated, the credibility of witness testimony is best left to the trial court, which can make credibility determinations and weigh inconsistencies. Here, the court heard competing testimony from the witnesses concerning their observations regarding the care of Emma. In fact, there was some inconsistency among the witnesses' testimony. However, the court considered the inconsistencies along with all the testimony and resolved those issues in Michael's favor. Credibility is left to the trial court as it has a superior vantage point that cannot be reproduced in the cold record. *In re Marriage of Diehl*, 221 Ill. App. 3d 410, 424, 582 N.E.2d 281, 291 (1991). Based upon the evidence presented on each of the relevant factors, we cannot say the trial court's determination granting respondent sole custody was "manifestly unjust," or that it "exceeded the bounds of reason and ignored recognized principles of law so that a substantial injustice resulted." *Marsh*, 343 Ill. App. 3d at 1240, 799 N.E.2d at 1041. The court could reasonably have found the

testimony of Michael and his witnesses more persuasive than that of Olivia and her witnesses.

¶ 59 Further, the factors Olivia argues on appeal are just a few of the many the trial court had to consider. The court issued a detailed order indicating it considered all of the evidence presented. After considering the evidence and all of the factors, the court found it would be in Emma's best interest for Michael to have sole custody. The evidence presented did not so overwhelmingly favor Olivia as to warrant reversal of the trial court's custody determination, *i.e.*, the opposite conclusion is not clearly evident. Accordingly, we affirm the trial court's judgment.

¶ 60 **B. Removal**

¶ 61 Olivia argues the trial court erred in denying her petition for removal where the court's decision was against the manifest weight of the evidence. Because we affirm the custody order, we do not reach the issue of removal.

¶ 62 **III. CONCLUSION**

¶ 63 For the reasons stated, we affirm the trial court's judgment.

¶ 64 Affirmed.