



visitation, tax deduction, and name change. Anne responded with a motion to dismiss. On April 2, 2004, a visitation order was entered. On February 18, 2011, a new agreed child support order was entered raising Christopher's required child support to \$102 per week.

¶ 5 On February 22, 2011, Christopher filed a petition for custody arguing that there had been a change in circumstances which warranted a modification of custody. Anne responded by filing an answer to Christopher's petition for custody and counterpetition for modification of visitation. On May 16, 2011, Christopher filed his answer to Anne's counterpetition for modification of visitation.

¶ 6 The court heard evidence regarding the petitions on both August 3, 2011, and August 12, 2011. During Christopher's case in chief, Anne, Brandon Sudholt, Mark Litteken, Megan Detmer, Jennifer Streaker, and Linda Detmer all were called to testify. A transcript and recorded video of Allison Netemeyer's testimony were also brought in as evidence, and Christopher also testified on his own behalf. Anne called Meg Billhartz, Brenda Strate, and Melissa Solice as witnesses, as well as testifying herself. Testimony was as follows.

¶ 7 Anne testified that Corrine lived with her, her husband, and Corrine's three younger siblings. She testified that Corrine had eye problems and that Christopher had taken her to the eye doctor to get glasses. Since then Anne had moved her to another eye doctor because Corrine was having a hard time reading and the doctor had put her in vision therapy to work on focusing her eyes. Anne also testified that Corrine had dental problems and that Christopher had taken her to the dentist. Furthermore, Anne explained that Corrine had a learning disability and had an Individual Education Program in place at school for her. Corrine had trouble with reading comprehension and focusing. Anne testified that Christopher did bring up the fact that one of his sons had been diagnosed with attention deficit disorder and that he would like for Corrine to be tested, but she did not go forth with having the test done. Anne testified that Corrine had been receiving poor grades in school

throughout the last year. She testified that Christopher approached her about getting Corrine a tutor and that she thought it would be better just to wait and see how she did in the next grade before proceeding with tutoring. Anne testified that Christopher hired a tutor for Corrine and Corrine attended tutoring during Christopher's visitation hours. She testified that she spent an additional amount of time on Corrine's homework with her after Corrine began receiving poor marks. Anne also testified that Corrine was placed on a modified grading scale that meant her grades were curved up. Anne concluded that she thought it would be difficult on Corrine to move away from her school and the area in which she grew up.

¶ 8 The testimony of Allison Netemeyer was allowed in as evidence as well. Allison was Corrine's tutor who was hired by Christopher. Allison testified that Corrine was having problems in math, reading, and spelling. She spends approximately two hours a week with Corrine. Allison testified that Corrine had made progress while in tutoring but was still not at a third-grade level of achievement by the end of the summer. Allison further testified that she thinks that Corrine has a retention problem and would definitely benefit from additional tutoring.

¶ 9 Next, Meg Billhartz testified. Meg is a special education teacher at Corrine's school. She was one of Corrine's teachers for the past two years. Meg testified that she spends about 30 minutes a day with Corrine. She explained that Corrine had difficulty and struggled with certain concepts but had been improving somewhat. Meg testified that Corrine was placed in an Individual Education Program because of her difficulties and her grade scale was modified. She also testified that without the modified grading scale Corrine would be receiving Ds or Fs in the core classes. Meg explained that standardized testing shows that Corrine has the potential to perform near her age level but is not reaching this potential at the current time. She agreed with the court that the test was similar in nature to an IQ test.

¶ 10 Christopher also testified as a witness. He testified that he was Corrine's father and that he lived with his wife Megan and their three other children. Christopher testified that he had been involved in Corrine's life since birth. Christopher is a local delivery truck driver with hours usually from 8 a.m. to 4:30 p.m., and he is also a voluntary fireman. Christopher testified that he noticed that Corrine was having trouble with her eyes and that he confronted Anne about the situation. He testified that Anne told him that she would look into it but never did, so Christopher took Corrine to eye doctor. Christopher testified that in the last year he also noticed that Corrine's grades were drastically worse than before. He testified that due to Corrine's poor performance, he suggested to Anne that Corrine get a tutor. After that, Christopher obtained Allison Netemeyer as a tutor for Corrine. The tutoring was done during Christopher's visitation time. Furthermore, Christopher testified that Corrine had some dental issues and that he also took her to the dentist so that they could be resolved. Christopher testified that he has a child with attention deficit disorder and that he discussed with Anne having Corrine tested for this disability. He testified that Anne did not have Corrine tested and he could not have her tested because he was not the custodial parent. Christopher testified that he was requesting custody of Corrine and hoped to be able to help her better succeed in life.

¶ 11 Furthermore, friends, family, and acquaintances of both Christopher and Anne testified that Corrine was happy, well cared for by her parents, and well-adjusted with her siblings in both homes.

¶ 12 On August 15, 2011, the circuit court entered a temporary order awarding temporary custody to Christopher and stating that "the court is generally persuaded that the educational needs of the minor child are paramount and that modification of custody is necessary." On August 26, 2011, the court entered a final order finding by clear and convincing evidence that based upon the evidence, Corrine's educational, health, medical, dental, and optical

needs were better served by awarding custody to Christopher. In the order, the court first noted that both parties had stable living conditions and that the past moves were not a basis for a modification of custody. The court explained that it considered the testimony of all of the witnesses and that the most important factor in its decision was Corrine's education. Furthermore, the court concluded based upon its observations and the testimony of the witnesses that Christopher and his wife Megan were the most interested in providing the best education possible for Corrine, who has learning disabilities. The court also noted that Christopher was more proactive regarding Corrine's medical, optical, and dental needs as well.

¶ 13 On September 1, 2011, Christopher filed a motion for the entry of a revised visitation order. On September 15, 2011, Anne filed a response. On September 23, 2011, Anne also filed a motion for reconsideration of the circuit court's August 26 order. On September 26, 2011, the circuit court denied Anne's motion for reconsideration and entered a visitation order. Anne filed this timely appeal.

¶ 14 ANALYSIS

¶ 15 On appeal, Anne argues that the circuit court erred in awarding sole custody of Corrine to Christopher because a substantial change in circumstances had not occurred to necessitate a modification of custody. In response, Christopher argues that the circuit court did not abuse its discretion in modifying the custody of Corrine and that the court properly concluded that clear and convincing evidence was presented to warrant the modification.

¶ 16 The standard of review for a modification of a child custody order is whether the modification is against the manifest weight of the evidence. *In re Marriage of Bates*, 212 Ill. 2d 489, 515 (2004). A finding is only against the manifest weight of the evidence when an opposite finding is clearly evident. *In re Custody of T.W.*, 365 Ill. App. 3d 1075, 1084 (2006). "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 Divelbiss*, 308 Ill. App. 3d 198, 206 (1999). "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." *Id.* at 207. Thus, "[w]e 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 173, 177 (2002).

¶ 17 The modification of custody judgments is governed by section 610 of the Illinois Marriage and Dissolution of Marriage Act, which includes, *inter alia*, the following pertinent provision:

"(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 the 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. \*\*\* In the case of joint custody, if the parties agree to a termination of a joint custody arrangement, the court shall so terminate the joint custody and make any modification which is in the child's best interest. 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).

Moreover, the circuit court has to find clear and convincing evidence that a change in circumstances has occurred and that modification of custody is in the child's best interest. 750 ILCS 5/610(b) (West 2008).

¶ 18 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 of 1986 \*\*\*;
- (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).

"Changed conditions alone will not justify a modification of custody unless such conditions adversely affect the welfare of the child." *In re Marriage of R.S.*, 286 Ill. App. 3d 1046, 1051 (1996).

¶ 19 In the instant case, the circuit court held that this case was centered on Corrine's educational, medical, dental, and optical needs. Most importantly the court concentrated on the fact that Corrine's grades had begun to deteriorate. This change in circumstances adversely affects Corrine so that a modification of custody must be evaluated. The circuit court noted at the conclusion of the arguments that it thought that both parents were fit but that it had serious concerns about Corrine's education.

¶ 20 The court noted that Corrine's report card clearly showed that she was having difficulty in the core subjects. Furthermore, the court heard that Christopher took Corrine on his own to tutoring, while Anne testified that she would rather wait and see how Corrine did next year. Corrine has made positive progression since entering tutoring, and Allison testified that Corrine would benefit from additional tutoring. The court held that it observed the character, manner, and demeanor of the witnesses and found that Christopher and his wife, Megan, took a more proactive approach to Corrine's education. The court noted that Anne was interested but was not interested in taking the actions necessary to ensure that Corrine succeeds in school.

¶ 21 The court also held that Christopher was more proactive as well in regards to Corrine's medical needs. The court found that Christopher was active in taking Corrine for eye and dental appointments as necessary. The court was careful to note that it was not finding that Anne did not care for Corrine's needs but simply that Christopher was more willing to take care of the needs in a more efficient manner.

¶ 22 The circuit court found clear and convincing evidence that a modification of custody was necessary. The court made it clear that this was not an easy decision, but it was in the best position to hear the witnesses and made the necessary decision. We find that the circuit court's decision was not against the manifest weight of the evidence, nor did it constitute an abuse of discretion.

¶ 23 **CONCLUSION**

¶ 24 For the foregoing reasons, we affirm the circuit court's award of sole custody to Corrine's father, Christopher.

¶ 25 Affirmed.