



On August 17, 2009, Matthew filed a petition seeking temporary custody of the children. He alleged in the petition that Patricia had been hospitalized after an apparent suicide attempt. Temporary custody was granted to Matthew, by stipulation of the parties, in an order entered 10 days later.

¶ 5 A hearing was conducted on June 23, 2011, June 30, 2011, and July 19, 2011, at which testimony and evidence relevant to the issues on appeal was as follows. Max Beem testified that he is employed full time with the National Guard and that he has known Matthew for approximately 11 years. Beem testified that when he was the sergeant over a platoon of which Matthew was a member, he investigated an incident between Matthew and another soldier. Beem learned that there had been a verbal altercation which resulted in Matthew striking the other soldier. Because Matthew should have immediately informed his chain of command of the incident and failed to do so, Beem wrote him up in a counseling statement and assigned him corrective tasks. A memorandum written by Beem and prepared for Patricia which summarized the details of the counseling statement was admitted into evidence, over objection.

¶ 6 Roberta Hinman testified that she is a licensed clinical social worker in the private practice of mental health. After lengthy testimony regarding her curriculum vitae, Hinman was tendered as an expert. Hinman testified that she first came into contact with Patricia on August 17, 2009, when Patricia requested therapy services. Hinman learned that Patricia had taken some pills during a severely depressed state earlier that month. Hinman determined that it was not an actual suicide attempt, but a parasuicidal gesture, which she described as an act Patricia took against herself without a suicidal intent. Hinman diagnosed Patricia with dysthymic disorder, major depression, posttraumatic stress disorder (PTSD), and borderline traits. Hinman testified that Patricia has dramatically improved. Specifically, she no longer meets the criteria for major depression or dysthymic disorder and her PTSD is well under

control. Hinman emphasized that Patricia is not at risk of repeating the parasuicidal gesture and she is absolutely capable of being an effective and appropriate parent. Hinman explained that she and Patricia consistently discuss healthy parenting skills and she is aware of many instances where Patricia has disciplined the children appropriately.

¶ 7 Hinman testified that she met with the parties' children on November 3, 2010, after an incident that resulted in the temporary removal of the children from Matthew's home. When Hinman met with the children, she observed symptoms which indicated trauma in both of them. Hinman testified that she learned of allegations that both children had been physically abused by Matthew both before and after the parties separated. Hinman did not testify to the specifics of the alleged abuse. Hinman, being a mandated reporter, sent a detailed report to the Department of Children and Family Services (Department). Hinman opined that Patricia is the more appropriate custodial parent for the children. She reiterated that she has absolutely no concerns that Patricia's earlier diagnoses would impact her ability to be an effective parent.

¶ 8 Ashley Johnson testified that she is Patricia's sister-in-law. Johnson recalled that the children were with Matthew when Patricia was hospitalized after overdosing. Johnson emphasized that since the hospitalization, Patricia has attended counseling for two years and is doing very well. Johnson has no concerns about Patricia's ability to care for the children. She visits with them every other weekend. During those visits, Johnson observes that Patricia interacts well with the children and disciplines them appropriately. Johnson has never heard Patricia yell at the children, curse, or call them names. She described Patricia as an involved parent who attends the children's school activities and plays games with them. Johnson testified that she has observed Matthew interact negatively with the children. She witnessed Matthew intimidate the children, curse at them, and call them names. She also observed Matthew belittle and yell at Patricia on several occasions. Johnson opined that

Patricia is the more appropriate custodial parent.

¶ 9 Diane Woods testified that she is employed by the Department as a child protection supervisor. Woods explained that in November 2010, the Department received a report of suspected abuse regarding Matthew and the children. Thelma Clark was the investigator assigned to the case. Woods testified that after the investigation, she met with Clark to review the evidence, and together they determined that the report was indicated, meaning that credible evidence exists that abuse did occur, with Matthew as the perpetrator of that abuse. The investigative file of the case was admitted into evidence, over Matthew's counsel's objection that Clark was not present to authenticate and testify to the contents of the report.

¶ 10 Patricia testified that Matthew was verbally, emotionally, and sometimes physically abusive to her during their marriage. She specified that Matthew called her names nearly every day, choked her, pushed her, and hit her. Patricia recalled an occasion when Matthew was punching her in the head and yelling at her, which the children overheard from downstairs. When asked about Matthew's relationship with the children, Patricia responded that she typically arrived home from work one hour after Matthew and there were many times Matthew left when she arrived because he was fed up with the children. Patricia recalled other times while she was cooking dinner she asked Matthew to assist S.M. with her homework and Matthew yelled and snapped at S.M., so Patricia ended up helping her instead. Patricia also spoke of an occasion when the family was in a vehicle, A.M. was sick and coughing, and Matthew, who was driving, continually shouted at A.M. and eventually turned around and smacked him. Patricia reported another incident in the kitchen when Matthew picked A.M. up by his neck and a few occasions when he smacked S.M. when he got irritated with her.

¶ 11 Patricia obtained an emergency order of protection against Matthew after they separated on March 12, 2008, and she was granted temporary custody of the children. Upon

advice from her attorney, the order of protection was subsequently dropped so Matthew's job would not be jeopardized. Patricia maintained temporary custody of the children until August 2009, when she was hospitalized for five days after overdosing on pain medication. Patricia averred that she is currently taking medication for depression and she still sees her therapist regularly. She stated that she has benefitted from therapy and the conditions leading to the overdose have been eliminated. She added that she learned her lesson, she knows that her children need her, and she has no desire to end her life.

¶ 12 Patricia acknowledged that S.M. sometimes talks back to her, but not frequently. She conceded that S.M. scratched her in 2009 but she had not done it since that time. Patricia testified that since Matthew obtained temporary custody in August 2009, the children have informed her that they want to live with her because Matthew frequently yells at them, does not spend time with them, is always on the computer, and blames S.M. for his breakup with his girlfriend, April Williams. Patricia added that S.M. wanted to run away several times and she told her not to. Patricia noted a specific occasion of concern when A.M. was missing on Friday, May 27, 2011. Patricia was scheduled to pick the children up at 4 p.m. that day and it was then that she learned that A.M. had been missing since 10 that morning. Patricia was uncertain whether Matthew had been at home that day or working, but S.M. was supposed to be watching A.M. Patricia located A.M. after driving around to his friends' homes. Patricia noted that if awarded custody, she has a babysitter in place to watch the children while she is at work.

¶ 13 Patricia testified that she lives in a three-bedroom apartment where the children have their own bedrooms, furnished with beds, dressers, toys, and clothing. Patricia works at Huck's full time and plans to attend college for a one-year medical coding course of study. Patricia testified that she faithfully exercises her visitation with the children. During that time they play board games, go to the movies, go swimming, have picnics, go to the park,

watch television, go out to eat, and play video games together. Patricia also attends the children's school-related activities. Patricia acknowledged that she resides in the Flora school district and the children would have to switch school districts if she were granted custody. She noted, however, that the children currently have friends in Flora because they attended school there when Patricia had temporary custody and when the family lived in Flora during the parties' marriage. She agreed that the children's grades had improved at the Cisne school district, but she explained that S.M. had performed well in Flora as well, but experienced a decline when she was in the fourth grade because of the divorce.

¶ 14 Patricia opined that she should be awarded custody because she always takes care of the children and meets their needs. During the marriage she was the primary caretaker who cooked for them, bathed them, read them stories, got them ready for bed, woke them in the morning, and helped them get ready for school. She testified that she never says bad things to the children about Matthew and if granted custody she would do her best to encourage them to have a relationship with him.

¶ 15 Angela Owens testified that she is a child welfare specialist employed by the Department. Owens met with Matthew and the children in December 2010, after Matthew was indicated for the risk of harm by physical abuse and for an environment injurious to the welfare of the children. Owens agreed that she is aware of and discussed with Matthew the incident which led to the investigation by the Department. She developed a service plan for the family, in which one risk factor to correct was that Matthew's lack of capacity to parent posed an immediate or continuing threat to the children's well-being. A second risk factor was Matthew's lack of impulse or anger control. Owens qualified that the factors are matched as closely as possible to the behavior which brought about the investigation, in an effort to set goals for the family. Owens referred the family to therapy, in accordance with the goals of the service plan.

¶ 16 Owens testified that she met with Matthew and the children once per week for the first 45 days and twice per month thereafter. She reported that the house was always clean and the children regularly denied the occurrence of any maltreatment. The only complaint Owens received from S.M. was that Matthew yelled at her. Owens testified that the permanency goal for the family was to stay intact and Matthew progressed satisfactorily in correcting the conditions to achieve that goal. Owens added that Matthew exceeds the minimum parenting standards by providing a safe home with plenty of food, meeting the children's medical and dental needs, and being involved in the children's education and extracurricular activities. Accordingly, Owens opined that Matthew is an appropriate custodian of the children. She noted that she had not spent enough time with Patricia to facilitate an opinion regarding her ability to parent.

¶ 17 Susan Feltman testified that she is a family therapist. She received a referral from the Department and worked with Matthew and the children once per week for three months. Feltman was aware that the referral was based on an indicated report of abuse, based on an incident between Matthew and S.M. Feltman reported that the therapy went fairly well. Feltman described Matthew as a good parent who is consistent with the children. She noted that the house was always very clean and that Matthew always supported S.M. in all of her extracurricular activities. Feltman was unable to facilitate an opinion regarding Patricia's parenting skills because she never met her.

¶ 18 Joyce Carson testified that she is the superintendent of the Cisne school district where the children had attended for two years, and the principal of the middle school where the oldest child, S.M., attends. Carson testified that S.M.'s grades had improved since moving into the district. She specified that S.M. is an A-B student, with an occasional C, and that she is in good standing. Carson described S.M. as very successful and well-adjusted. She noted that S.M. is involved in band, cheerleading, softball, track, and volleyball. Carson

added that S.M. is beyond her years in maturity, in comparison to other students her age. Regarding A.M., Carson testified that he had just completed the second grade. She described him as social, active, friendly, and well-adjusted. To Carson's knowledge, A.M. had no discipline problems at school. Carson was unfamiliar with A.M.'s grades, however. Carson testified that she had seen the parties at school functions and both appeared to be involved in the children's lives.

¶ 19 April Williams testified that she and Matthew have a son together. She resided with Matthew and the children from August 2009 to August 2010, then moved out because there was too much conflict between their children. During the time they lived together, Williams observed that S.M. and A.M. were temperamental after returning from visits with Patricia. She specified that they were crying, angry, and screaming at Matthew that everything was his fault. Williams noted that things had improved since Matthew and S.M. participated in counseling. Williams described Matthew as a typical parent who provides for the children's needs and disciplines them by withholding privileges. Williams testified that she never observed Matthew treat S.M. or A.M. inappropriately. She never knew of him to curse at them or strike them. She had only witnessed him raise his voice to them. Williams noted, however, that Matthew struck her daughter in July 2010 when the children were outside playing.

¶ 20 Chris McCarthy testified that he is Matthew's brother. Chris visits with Matthew and the children twice a month and has observed them playing in the yard. Chris described Matthew's relationship with the children as "pretty good." He elaborated that he has never witnessed Matthew discipline the children inappropriately nor has he ever seen Matthew get angry with the children. Chris opined that Matthew is "pretty good father" and he has no concerns about Matthew caring for the children properly.

¶ 21 Jacqueline Ausbrook testified that she is engaged to Matthew's brother. She stated



that she visits with Matthew and the children several times per year. Ausbrook opined that Matthew is a very good father. She has observed them playing basketball, catch, and other outdoor games. She noted that the children are always well-behaved around her and she never had the opportunity to observe Matthew discipline them.

¶ 22 Matthew testified that he has been employed by the Department of Corrections since March 2001 and he works Tuesday through Saturday from 7 a.m. through 3 p.m. Matthew is also employed by the Illinois Army National Guard, working a two-week period in the summer and one weekend per month. Matthew testified that he resides with S.M. and A.M. in Cisne. He reported that their home is always clean and the neighborhood is safe and quiet. Matthew opined that the children's grades would drop drastically if they moved back to the Flora school district. He noted that the classes in Cisne are smaller, allowing for more student-teacher interaction. On cross-examination, Matthew could not provide the actual student-teacher ratio of either school. Matthew noted his concern that S.M. would be drawn into drug activity if she moved to Flora. He admitted that there is also drug activity in Cisne, but he opined that the risk is lower there because it is a smaller community where the parents are more involved. Matthew testified that S.M.'s involvement in extracurricular activities year-round has been very beneficial to her. He added that he kept Patricia updated on S.M.'s activity schedule, as well as the children's grades and school programs. He testified that when the children lived with Patricia he was always "in the dark" about their activities and grades. Matthew agreed that the Flora school district has all of the activities available in which S.M. had participated at Cisne.

¶ 23 Matthew asserted that S.M. is a challenging child to raise. He believes that Patricia tells S.M. things which interfere with his ability to raise her correctly. In particular, Matthew testified that S.M. regularly tells him that he abandoned her and that she learned that information from Patricia. Matthew denied ever speaking negatively about Patricia to the

children. He acknowledged hitting S.M., and described himself as "upset" when that occurred, but he denied that he was "angry." When asked about the frequency of his arguments with S.M. during a week, Matthew replied, "Sometimes just two, sometimes none." He asserted that on "very rare occasions" they have more than two arguments per week. Matthew attributed the majority of the fault of the arguments to S.M. He added that S.M. sometimes has anger issues, but he denied having his own anger issues.

¶ 24 Matthew testified that he benefitted from therapy and he feels capable of dealing with S.M., in spite of the challenges. He explained that he gives S.M. rewards and consequences. He warns her that she will lose privileges as a result of any negative behavior and rewards her when her behavior is positive. Matthew questioned Patricia's ability to handle S.M., opining that S.M. "will walk all over her." He did note, however, that S.M. has matured significantly over the past couple of years. In particular, S.M. became certified in CPR and watches A.M. while Matthew is at work. Matthew denied that A.M. had been missing on May 27, 2011, since 10 a.m., but rather since 1 p.m. or 2 p.m. When Matthew arrived home from work that day at approximately 3:40 p.m., S.M. did not know where A.M. was. Matthew added that A.M. did not have his cell phone turned on so they went looking for him. Patricia was informed of the situation when she arrived to pick up the children, and A.M. was eventually found at the home of one of his friends. Since that time, A.M. knows he can no longer go anywhere without S.M.'s knowledge. Matthew testified that he leaves for work at 5:40 a.m. and the children set their alarms to wake up and get ready for school. Matthew reported that the children are well adjusted to the community in Cisne and both are doing well in school there, with no attendance problems.

¶ 25 Matthew admitted that a single occasion of physical abuse occurred between him and Patricia during the marriage when Patricia was choking him and pushing him up against a wall and he shoved her off of him. He denied ever choking or hitting Patricia. He also

denied ever being abusive to the children or yelling at them. On cross-examination he admitted that he has smacked S.M. and A.M., but he always did so with an open hand to the buttocks or hand. He denied ever abusing April Williams' daughter, but admitted to striking her "a little bit higher in the back just above the butt area." He emphasized that it was not intended to be abusive, but to "tell her to knock the crap off" because she had sprayed him with a water hose.

¶ 26 The trial judge held an *in camera* interview of the children, in the presence of the counsel of the parties, as well as the guardian *ad litem* and court reporter. At the interview, A.M., who was nine years old and going into the third grade, informed the trial judge that when he gets in trouble at Patricia's house, he has to sit in time out for five minutes. When he gets in trouble at Matthew's house he gets his phone taken away. A.M. stated that Matthew yells at him but Patricia does not. A.M. reported that Matthew is on the computer frequently, specifying that "he's on facebook and then never stops." According to A.M., when Matthew is on the computer and A.M. tries to get his attention by telling him something more than once, Matthew yells at him.

¶ 27 A.M. informed the trial judge that he feels safe at Patricia's house but not at Matthew's house because of the October incident when Matthew and S.M. got into an argument. He averred that he wants to live with Patricia because Matthew "will hit me and hurt me, my dad will, and he'll slap people across the face." He reported that Matthew gets angry a lot and "he gets angry by yelling and slapping" both him and S.M. He added that Matthew hit him on the face, arm, and back. In contrast, A.M. said that Patricia "just hits me on the butt." A.M. agreed that he knows the difference between the truth and a lie, and he had told the truth at the interview. He denied that anyone had told him what to say during the interview.

¶ 28 S.M., who was going into seventh grade, informed the trial judge that she and Matthew had an argument that very morning. She had friends over at the house, and when

Matthew came into her room he asked her something twice. She stated, "I was a little upset with my dad," so her friend responded for her both times, after which Matthew took her iPod and removed the keyboard from the computer in her room and threw it down. S.M. reported that when Patricia corrects her, she does not yell, but says to stop or not to do that again. In contrast, S.M. noted that she feels as if Matthew yells at her all the time. She reported that both parents remove privileges to discipline her, but she and Matthew argue every week and Matthew hit her as well as A.M., the last time which resulted in the Department's investigation. S.M. said that Patricia has never hit her. She admitted that she and Patricia used to fight a little but not as much as her and Matthew.

¶ 29 When questioned about school in Cisne, S.M. replied that "it's okay." She agreed that she had participated in various activities there and had especially enjoyed track. She pointed out that while she was participating in track, A.M. rode his bike by himself or was sometimes at home or with friends. S.M. recalled two occasions when she and A.M. got into a fight, resulting in A.M. running off. Regarding school in Flora, S.M. noted that all of her best friends are there. She was in the band when she attended fourth grade there, but had not yet participated in sports because those opportunities began in sixth grade. When asked what she liked about living at Matthew's house, S.M. responded that she can be with her friends most of the time. Regarding Patricia's house, S.M. asserted that Patricia takes better care of her than Matthew does and she feels safer at Patricia's house than at Matthew's.

¶ 30 S.M. stated that she watches A.M. while Matthew is at work. She reported that when Matthew gets home from work "he just sits there on the computer" or sometimes watches television. She added that "he sometimes makes dinner" but if not, she tries to find something to eat or she gets something if she has any money. According to S.M., Matthew returns to the computer or television after dinner. S.M. averred that Patricia cooks more than Matthew does. When asked whether she likes her living situation, she replied in the negative

and emphasized that she wants to live with Patricia because Patricia cares for her better than Matthew does. In particular, when S.M. is sick, Patricia brings her the things she needs and Matthew makes her get them for herself. S.M. added that Matthew yells at her, even when she is very sick. S.M. also noted that Patricia would be there for her and A.M. when they go to school. She was questioned whether anyone told her what to say at the interview, which she denied.

¶ 31 At the conclusion of the hearing, the guardian *ad litem* recommended that the children live with Patricia, based on Matthew's violence and anger issues. On August 1, 2011, the trial court entered an order that, *inter alia*, granted sole custody of the children to Patricia. Matthew filed a timely notice of appeal. Additional facts will be provided in our discussion of the issues on appeal.

¶ 32

#### ANALYSIS

¶ 33 The issues Matthew raises on appeal may be summarized as follows: whether he is entitled to a new hearing because the trial court rendered its custody decision based on inadmissible evidence. A child custody decision will not be overturned on appeal unless it is against the manifest weight of the evidence. *In re Marriage of Petraitis*, 263 Ill. App. 3d 1022, 1031 (1993). A judgment is considered to be contrary to the manifest weight of the evidence when the opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based upon the evidence. *In re Marriage of Karonis*, 296 Ill. App. 3d 86, 88 (1998). "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." *Id.* "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.

¶ 34 Section 602 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/602 (West 2010)) enumerates the factors for the trial court to consider prior to making a custody ruling. In applying these factors to the case at bar, obviously both parents desire custody of the children (750 ILCS 5/602(a)(1) (West 2010)). Both children expressed a desire to live with Patricia (750 ILCS 5/602(a)(2) (West 2010)).

¶ 35 The trial judge found and the evidence shows that the children interact better with Patricia than with Matthew (750 ILCS 5/602(a)(3) (West 2010)). Although Patricia acknowledged that S.M. talks back to her, she noted that it is not frequent. In contrast, testimony established that Matthew and S.M. argue regularly, notwithstanding the therapy they participated in. The guardian *ad litem* described Matthew and S.M. as "oil and water." Moreover, S.M. stated that Patricia never raises her voice to discipline her but that Matthew yells at her regularly. A.M. stated the same. In addition, S.M. pointed out that Patricia cares for her and A.M. better than Matthew, cooks more, and is more attentive when she is sick. Testimony shows that both parents attend the children's extracurricular activities. However, both children stated that Matthew spends significant amounts of time on the computer and watching television. Ashley Johnson testified that she witnessed Matthew intimidate the children, curse at them, and call them names but has never observed such behavior from Patricia. She testified that Patricia plays games with the children and is involved in their lives. There is evidence to call into question the adequacy of A.M.'s supervision while Matthew had temporary custody, given that A.M. wandered off and nobody knew of his whereabouts for several hours and he occasionally rides his bicycle by himself during S.M.'s track meets.

¶ 36 The next factor is the children's adjustment to their home, school, and community (750 ILCS 5/602(a)(4) (West 2010)). It is apparent that the children would thrive at either

Cisne or Flora school district. S.M. has equal opportunities at both schools to participate in the activities she loves, and her grades have been good at both, with the exception of when her parents separated while she was in Flora. However, S.M. stated that her best friends are in Flora, and both children stated that they feel safer at Patricia's house than Matthew's.

¶ 37 Also relevant is the mental and physical health of all individuals involved (750 ILCS 5/602(a)(5) (West 2010)). To that regard, there were indeed past concerns with Patricia's parasuicidal gesture and hospitalization. However, several individuals testified that those issues are no longer a concern because Patricia has participated in counseling for over two years, takes medication for her depression, and is no longer experiencing the circumstances that led to her hospitalization. Patricia testified that she no longer wants to end her life, that she has learned her lesson, and that she now realizes how much the children need her. Her therapist has absolutely no concerns about Patricia's parenting ability. There is no evidence to indicate that any of Patricia's past obstacles have any bearing on her current ability to parent effectively. The record is teeming with evidence of concern, however, with regard to Matthew's emotional stability and anger issues, which will be discussed in greater detail below.

¶ 38 Another factor relevant is the willingness and ability of each parent to facilitate a close relationship between the other parent and the children (750 ILCS 5/602(a)(8) (West 2010)). There is no cause for concern in this regard, as there is no evidence to indicate that either parent would discourage a relationship with the other.

¶ 39 The final factor pertinent to our analysis is the physical violence or threat thereof by the children's potential custodian, whether directed against the children or another person (750 ILCS 5/602(a)(6) (West 2010)), which is the central factor around which all of Matthew's issues revolve. Matthew challenges the admission of the Department's indicated report, which found the existence of credible evidence that he had physically abused the

children. Matthew makes much of the fact that the trial court referenced various sections of the indicated report in its order granting custody to Patricia. He contends that the report was inadmissible hearsay because the investigator was not present to authenticate it and, but for its admission, the trial court would have had no additional evidence upon which to base its decision. We disagree.

¶ 40 We note that "[a] reviewing court may affirm the trial court's judgment on any basis which appears in the record, regardless of the basis relied upon by the [trial] court." *Gambino v. Boulevard Mortgage Corp.*, 398 Ill. App. 3d 21, 54 (2009). We decline to rule on the admissibility of the contents of the indicated report because any error in its admission was harmless as there is ample other evidence in the record to show that Matthew's issues with anger and physical violence have been ongoing.

¶ 41 Max Beem testified that he reprimanded Matthew following a physical altercation between Matthew and another soldier. As with the indicated report, Matthew challenges the admissibility of this testimony as well as that of the corresponding memo which summarized the corrective measures taken. Matthew contends that this evidence is inadmissible because it is irrelevant, the conduct occurred outside the presence of the children, and it is hearsay. We note that the trial court made no mention in its order of either Beem's testimony or the memo.

¶ 42 Despite Matthew's claim to the contrary, we find Beem's testimony indeed relevant, given that physical violence against other people is one of the best-interest factors the trial court is instructed to consider in a custody determination. See 750 ILCS 5/602(a)(6) (West 2010). Matthew also contends that Beem's testimony is inadmissible because the incident occurred outside the presence of the children. We find this argument without merit because the Act was amended in 1989 to eliminate the requirement that the children must witness the physical violence against the other person. See 750 ILCS Ann. 5/602, Historical and



Statutory Notes, at 473 (Smith-Hurd 1993). Matthew next argues that Beem's testimony and memo are inadmissible hearsay. As with the Department's indicated report, we decline to rule on the hearsay issue of Beem's testimony and memo because any error in their admission was harmless because additional evidence exemplifying Matthew's violent tendencies is abundant.

¶ 43 When Roberta Hinman met with the children on November 3, 2010, she observed symptoms of trauma in both of them and learned that both had been abused by Matthew. She subsequently sent a report to the Department. Although Diane Woods was not the investigator of the case, she was the supervisor who reviewed the evidence and, together with the investigator, determined that the report of abuse was indicated. Patricia testified that Matthew choked her, pushed her, and hit her during the marriage and that Matthew smacked both children and picked A.M. up by his neck. Angela Owens testified that, in developing a service plan, risk factors included Matthew's threat to the children's well-being and his lack of impulse or anger control. April Williams testified that Matthew struck her daughter, to which Matthew admitted. Matthew also admitted to hitting S.M. and A.M.

¶ 44 S.M. informed the trial judge at the *in camera* interview that Matthew hit her and A.M., but Patricia does not. A.M. stated a preference to live with Patricia because Matthew "will hit me and hurt me \*\*\* and he'll slap people across the face." He indicated that Matthew hit him on the face, arm, and back and that "he gets angry by yelling and slapping" him and S.M. In contrast, A.M. stated that Patricia "just hits me on the butt."

¶ 45 Matthew contends that the sole purpose of the *in camera* interview is to ascertain the wishes of the children regarding custody (see 750 ILCS 5/602(a)(1) (West 2010)) and the questions of the interview should be limited to that sole purpose. We disagree. The attorneys of both parties were present for the interview, and they participated by submitting questions for the trial judge to ask the children. At no time during the interview did

Matthew's counsel object to the scope of the inquiry. Accordingly, Matthew's challenges on appeal are waived. See *In re Marriage of Ford*, 91 Ill. App. 3d 1066, 1071 (1980).

¶ 46 Waiver notwithstanding, however, we assert the basic premise that "[t]he scope of inquiry of an *in camera* interview is \*\*\* a matter largely within the trial court's discretion." *In re Marriage of Willis*, 234 Ill. App. 3d 156, 159 (1992). The Act "does not limit the trial judge to questioning the [children] directly as to where [they wish] to live." *In re Marriage of Ford*, 91 Ill. App. 3d at 1071. As this court previously held:

"Factual situations are bound to vary widely as will the personalities of the children being interviewed. Basic to an intelligent election by a child would be an understanding of the necessity, background and basis for a decision. Before a judge can properly weigh an election he must satisfy himself that the child is making it while possessed of the understanding that his age, intelligence, knowledge and experience will permit him to assimilate. The court's obligation to determine such factors operates to expand the scope of the court's inquiry." *Fohr v. Fohr*, 75 Ill. App. 3d 575, 579 (1979).

Accordingly, it was not improper for the trial judge to ask additional questions to get a feel for the reasons behind the children's stated desire to live with Patricia.

¶ 47 In viewing the evidence in a light most favorable to Patricia (see *In re Marriage of Ricketts*, 329 Ill. App. 3d at 177), we cannot say that an opposite conclusion is apparent or that the findings appear to be unreasonable, arbitrary, or not based upon the evidence. See *In re Marriage of Karonis*, 296 Ill. App. 3d at 88. The trial court's decision was not against the manifest weight of the evidence because there is a basis in the record to support it. See *In re Marriage of Ricketts*, 329 Ill. App. 3d at 177.

¶ 48 **CONCLUSION**

¶ 49 For the foregoing reasons, we affirm the August 1, 2011, order of the circuit court of

Clay County that, *inter alia*, granted sole custody of the children to Patricia.

¶ 50 Affirmed.