



County, Las Vegas, Nevada. The parties lived in Plainfield, Illinois, at the time. They moved to Belleville a year and half later so Scott could be closer to his other daughter from a prior marriage, Madison. The parties had signed a prenuptial agreement which stated that the parties would move back to the Chicago area at some point. However, they never did so. One child, Payton, was born of Scott and Deana's marriage. Payton was born in March 2007. Deana had no other children. The parties stayed in St. Clair County until they separated and Deana moved out of the marital home in September 2009 and back to her parents' home in Justice, Illinois, which is outside of Chicago.

¶ 5 During their marriage, Scott was employed by the Illinois State Police. He held various positions within that agency, including a position in the motorcycle division, the crime scene investigation division, and the air operations division. Scott and his father also started a home inspection business called Wetzco Enterprises, LLC, which Deana assisted with prior to the parties' separation. The business no longer exists. Scott is currently employed in the air operations division with the Illinois State Police. During their marriage, Deana was, at first, a dispatcher. Then she stayed home and cared for Payton when she was born. She then attended cosmetology school, which took under a year to complete, and worked at a salon for a short period of time. Deana is currently employed by the village of Riverside.

¶ 6 The parties attended mediation on January 8, 2010. A mediation order was filed on the same day. At that time, the parties reached an agreement with respect to their various marital debts, including joint credit cards, a condominium in Florida, and the marital home. Scott agreed to take responsibility for the debts and assets associated with Wetzco Enterprises, LLC. The parties also agreed to sell the marital home and split the proceeds. The parties also reached a temporary custody agreement

wherein they agreed to share equal time with Payton for two weeks at a time.

¶ 7 On August 25, 2011, a hearing was held to resolve remaining issues for the dissolution, the bulk of which related to the custody of Payton. Both parties had members of their family testify at the hearing. Scott's family members testified that they would get together more than once during the week. Payton was close to her two cousins, one of whom was born weeks apart from Payton. The familial bonds were strong. Scott's fiancée was a teacher and her hours for work afforded her the ability to care for Payton when Scott was at work. Further, as a teacher, she had summers off and could therefore care for Payton all day. Scott's family also testified to the various activities that Scott had Payton participate in. He coached her soccer team, had her attend events at the YMCA, and also, when the parties had not yet separated, signed Payton up for swimming lessons with her cousin. Scott testified that his other daughter, Madison, and Payton were very close. Scott also had Payton attend preschool.

¶ 8 Scott testified that, during their marriage, Deana suffered from depression and was taking medication for it. He further testified that she stopped taking medication for it after meeting with a counselor. Deana testified that through the help and guidance of her counselor, she determined that she no longer needed to take medication. She further testified that the couple's marriage had made her depressed and that she had gotten better over time. The guardian *ad litem* also reported that Deana had suffered from depression during the marriage, but the guardian *ad litem* was not concerned about her ability to parent Payton.

¶ 9 Deana's family testified that the extended family would gather together once a month for various family functions, as her family did not live in the same city as she and Payton. There were children in Deana's extended family close to Payton's age

who Payton could play with at these functions. Deana's parents testified that Deana and Payton lived with them and they were able to care for Payton when Deana was at work. Deana's father was planning to retire soon so he would have even more time to spend with Payton. Deana testified that she is very involved in activities with Payton, including bike riding, playing kickball, swinging, and shopping. Deana also had Payton attend preschool two times a week.

¶ 10 Deana testified that Payton had referred to Scott's fiancée as "mom." Also, per the temporary custody agreement, Payton was to talk on the phone to whichever parent she was not with at least once a day. Deana testified that Payton would often call right before having to go somewhere and would have to get off the phone abruptly. The call times were very limited. Deana testified that she felt as though Scott was pushing her out of Payton's life and replacing her with his fiancée.

¶ 11 The guardian *ad litem* reported and testified that both parents were good and loving parents. She testified that Scott, however, was less likely to continue to foster the relationship between Payton and Deana. She reported that he often spoke disparagingly of Deana and was not flexible with custody time. She also found that the phone calls between Payton and Deana were short and often cut off because Payton would call right before she would have to go participate in an activity or eat dinner. Conversely, the guardian *ad litem* determined that Deana had made efforts to make sure Scott was an important part of Payton's life and consistently tried to facilitate a relationship between Scott and Payton by making sure that anytime Payton wished to call Scott, she was given the ability to do so. Further, the guardian *ad litem* found that Deana was flexible when it came to custody time. Even though Deana had suffered from depression, the guardian *ad litem* did not find any reason to suspect that Deana's parenting abilities were affected. Therefore, the guardian *ad litem*

recommended that Deana be given primary residential custody of Payton.

¶ 12 With respect to Scott's financial status, he admitted that his financial affidavits did not accurately reflect what he actually made. He made \$300 more than what he had provided in his affidavits. Further, he withheld more than he needed to on his taxes so his income did not appear to be as much as it actually was. He further failed to include any information about the amount of overtime he was paid. He admitted all of this information while on cross-examination at the hearing. The evidence indicated that Scott made nearly twice as much as Deana did per year.

¶ 13 The court ordered a judgment of dissolution on September 7, 2011. In that judgment, the court found that it was in the best interest of the child that Deana be the primary custodial parent with Scott being granted custody every other weekend, every odd-numbered Thanksgiving, from December 26 until the day before school on odd-numbered years, every spring break, and for two weeks in June and July and from the beginning of August until one week before school begins. The judgment further ordered that Scott maintain primary hospitalization and group medical insurance for Payton. The court ordered that Scott be awarded a tax exemption for Payton in odd-numbered years. The court determined that Scott should pay \$900, or 20% of his net income, in child support each month according to the guidelines set forth in section 505 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/505 (West 2010)).

¶ 14 As far as property division and debts, the court ordered that the condominium located in Florida belonging to Scott and Deana would be awarded to Scott. Scott was ordered responsible for the parties' joint credit card and also for Deana's cosmetology school debt, which totaled approximately \$7,000 at the time of the order. Each party was ordered to pay one-half of the guardian *ad litem* fees. Scott

was ordered to pay \$3,000 in attorney fees to Deana. The total amount of Deana's attorney fees left due out of \$16,943.89 was \$8,221.89.

¶ 15 On October 4, 2011, Scott filed a motion to reconsider and vacate. On January 20, 2012, the court entered an order denying the motion to reconsider and vacate. In that order, the court stated:

"The award of primary residential custody to Respondent/Counter-Petitioner is consistent with and substantiated by the manifest weight of the evidence. The evidence clearly shows that the parties anticipated Respondent would return to the Chicago area if the marriage dissolved. While Petitioner/Counter-Respondent has a strong support system of family members and is a good and loving Father, the Respondent/Counter-Petitioner is a good and loving Mother with a strong support system of family members as well. The Guardian Ad Litem recommended that it was in the best interest of the child that Respondent/Counter-Petitioner receive primary residential custody and the Court concurred, and continues to concur.

It is impossible to equally divide the time shared by the minor child with each parent in this proceeding, and the visitation schedule awarded maximizes the child's time with the nonresidential parent and is in the child's best interest. The Court is comfortable that the visitation provided the Petitioner/Counter-Respondent is in the best interest of the minor child and supported by the manifest weight of the evidence."

The circuit court further determined that the debt allocation, amount of child support, attorney fees award, and tax exemption were not against the manifest weight of the evidence given the parties' relative income and ability to pay. This appeal followed.

¶ 16

#### ANALYSIS

¶ 17 Scott contends that the trial court erred when it granted primary custody to

Deana, ordered him to pay \$900 in child support per month, allocated the parties' debts, granted attorney fees from Scott to Deana, and granted Scott the child tax exemption for odd-numbered years only. We address each issue in turn.

¶ 18

### Custody

¶ 19

The trial court has broad discretion in making custody determinations, and this court will not reverse those decisions unless they are against the manifest weight of the evidence or the trial court abused its discretion. *In re Marriage of Smithson*, 407 Ill. App. 3d 597 (2011). In a child custody determination, the "circuit court's finding is against the manifest weight of the evidence when a finding opposite to that reached by the circuit court is evident." *In re Marriage of Archibald*, 363 Ill. App. 3d 725, 739 (2006). Further, "[t]he circuit court abuses its discretion when it acts arbitrarily without conscientious judgment or, in view of all the circumstances, exceeds the bounds of reason and ignores recognized principles of law so that substantial injustice results." *Id.* The circuit court must make custody determinations that are in the best interest of the child. 750 ILCS 5/602(a) (West 2010). The section 602 factors relevant to this appeal are: the interaction and interrelationship of the child with her parent or parents, her siblings, and any other person who may significantly affect the child's best interest; the child's adjustment to her home, school, and community; the mental and physical health of all individuals involved; and the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child. 750 ILCS 5/602(a) (West 2010). A circuit court need not enumerate all of its specific findings and reasoning with respect to child custody determinations but must give some indication that such factors were considered. *In re Koca*, 264 Ill. App. 3d 291, 294 (1993).

¶ 20

A great deal of testimony and other evidence was presented by both Deana and

Scott with respect to the section 602 factor of the interaction of the child with family and friends who could affect her best interest. As previously noted, Scott presented testimony that Payton spent a significant amount of time with Scott's extended family. Her two cousins were close to her age, and they would participate in various planned activities together. Further, Payton's older sister, Madison, was also considerably involved in Payton's life. Scott's fiancée also became greatly involved in Payton's life, where she would take care of Payton while Scott was at work. Scott's parents would provide care for Payton if needed, and they were close to Payton. Deana agreed that, prior to the separation, she, Scott, and Payton would get together with Scott's family on a weekly basis.

¶ 21 Deana presented testimony that prior to their separation, her parents would visit at least once a month and stay for a weekend or longer. Though her extended family did not get together as much as Scott's family, they would still celebrate birthdays and holidays together. Deana indicated that Payton had cousins close to her age who she would play with at family activities. Once Deana moved out of the marital home, she lived with her parents, and both her parents had developed a strong bond with Payton as a result. Her father was going to retire soon and her mother did not work full-time, so when Deana worked, Payton would be well cared for by Deana's parents.

¶ 22 As the circuit court stated in its order, there would be no way to equally divide the time shared by the minor child with each parent. Both parents are good parents, and each is very involved in Payton's life. However, the guardian *ad litem* indicated that Deana would be better about facilitating the relationship between Scott and Payton, per section 602, as Scott had said disparaging and disrespectful remarks about Deana. Scott argues that Deana's depression should not be ignored. However,

the guardian *ad litem* knew of the depression and still determined that Deana would be the better choice for primary custodial parent. The court stated that it had reviewed the section 602 factors. An opposite conclusion is not evident as both parties are good, involved parents. Therefore, the court's custody determination was not against the manifest weight of the evidence.

¶ 23

#### Child Support

¶ 24

A trial court's determination of net income and awarding child support will not be overturned absent an abuse of discretion. *In re Marriage of Bradley*, 2011 IL App (4th) 110392, ¶ 42. The court must analyze the factors set forth in section 505(a) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/505(a) (West 2010)) to determine the amount of child support a parent must pay. The minimum amount for one child is 20% of the parent's income, along with various deductions from that income. 750 ILCS 5/505(a) (West 2010).

¶ 25

Scott argues that 20% of his net income is \$718.14 per month. However, he arrived at that figure based on outdated and incorrect financial information. At the hearing, he admitted that he made approximately \$300 more per month than he disclosed on his financial affidavit. He further admitted that he withheld more in federal taxes. He also failed to disclose that he made extra money as a result of working overtime. The record indicates that the circuit court considered the information presented at the hearing, as well as the financial affidavits provided by the parties, and determined that, based on Scott's actual net income, his child support payment would be \$900. There is evidence, which Scott even agreed with at the hearing, that he made more money than he indicated in his affidavits, and the court's determination was not against the manifest weight of the evidence. Therefore, we cannot agree with Scott that the circuit court abused its discretion when it arrived at

that figure.

¶ 26

#### Debt Allocation

¶ 27

We will not disturb the circuit court's allocation of debt or property absent an abuse of discretion. *In re Marriage of Awan*, 388 Ill. App. 3d 204, 214 (2009). Marital debts and assets must be distributed equitably. *In re Marriage of Davis*, 292 Ill. App. 3d 802, 807 (1997). Equitable distribution of property does not have to be equal among the parties. *Kic v. Bianucci*, 2011 IL App (1st) 100622, ¶ 32. The same holds true for debts. *Awan*, 388 Ill. App. 3d at 212-13.

¶ 28

Here, the court noted that there was a vast disparity in the parties' incomes. Contrary to Scott's contention, he was not allocated all of the marital debt. In fact, Deana's testimony at the hearing revealed that Scott used a portion of Deana's proceeds from the sale of the marital home to pay debts from the marriage. Further, the court ordered that, instead of Scott having to cover all of the guardian *ad litem* fees, he was to cover the debt from Deana's cosmetology school instead. Contrary to Scott's contention, the cosmetology debt at the time of the order was approximately \$7,000 and not \$10,000. The evidence indicated that Scott's income was nearly double Deana's, and he was able to pay more of the debt than Deana. Further, Scott has a pension and Deana does not. Scott also has the ability to work overtime and make time-and-a-half pay for doing so. Therefore, the court distributed the marital debts and assets equitably and did not abuse its discretion.

¶ 29

#### Attorney Fees

¶ 30

The allowance of attorney fees and the amount awarded is within the sound discretion of the trial court, and we will not disturb those determinations absent an abuse of discretion. *In re Marriage of Streur*, 2011 IL App (1st) 082326, ¶ 36. Where the record shows that the party receiving attorney fees could afford to pay

them yet would exhaust a large portion of her assets in doing so, the court does not abuse its discretion when it orders the other spouse to contribute to paying attorney fees. *Awan*, 388 Ill. App. 3d at 215.

¶ 31 In this case, as indicated above, the court noted that there was a disparity between Scott's income and Deana's. The record indicates that, in the previous year, Deana did not make any money but only recently began working and obtaining an income. Even so, that income is much less than Scott's income. Scott was ordered to pay only a portion of the attorney fees, \$3,000, and not the total remaining amount. The circuit court made it clear that it had considered the relative ability of each party to pay as well as their financial situations. The decision to award attorney fees was therefore not an abuse of discretion.

¶ 32 Tax Exemptions

¶ 33 The trial court has the discretion to allocate the tax dependency of the noncustodial parent, and we will not disturb that decision absent an abuse of discretion or unless the factual predicate is against the manifest weight of the evidence. *In re Marriage of Parr*, 345 Ill. App. 3d 371, 380 (2003).

¶ 34 Scott argues that he should be awarded the tax exemption because he is contributing \$900 for child support. He argues that Deana will have few expenses as a result of the amount of money he is contributing in child support.

¶ 35 Section 152(e) of the Internal Revenue Code creates a presumption that the custodial parent is entitled to claim the child as a tax exemption. 26 U.S.C. § 152(e) (2008). However, the court may modify such an award. *Stockton v. Oldenburg*, 305 Ill. App. 3d 897, 901-02 (1999). With that being said, "simply paying that amount [of child support] does not automatically entitle the noncustodial parent to an income tax exemption for the child." *Id.* at 902. *Stockton* is exactly on point with this

situation. In *Stockton*, the noncustodial parent argued that because he was paying more than 50% of the child's expenses through his child support payment, he should be entitled to the tax exemption every year rather than alternating years. *Id.* at 901. The Fourth District found that the circuit court did not abuse its discretion when it ordered alternating tax exemptions because the custodial parent contributes time, energy, and emotional support, as well as certain expenses that cannot be reduced to a financial figure. *Id.* at 901-02.

¶ 36 We agree with the reasoning in *Stockton*. In her financial affidavit, Deana listed Payton's expenses as \$1,628.69 per month. However, this number does not take into account the amount of time and energy it takes to care for a child as the custodial parent. Payton's needs are more than a financial figure, and as the custodial parent, Deana must provide for those needs. The circuit court was in the best position to ascertain the allocation of the tax exemption, and we cannot find that it abused its discretion in doing so.

¶ 37 CONCLUSION

¶ 38 For the foregoing reasons, the judgment of the circuit court of St. Clair County is affirmed.

¶ 39 Affirmed.