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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> MARRIAGE OF:	)	
	)	Appeal from the Circuit Court
	)	of Du Page County.
JEFF BINGHAM,	)	
	)	
Petitioner-Appellee,	)	
	)	
and	)	No. 11-D-0413
	)	
SHONAGH VARJAN,	)	
	)	Honorable
Respondent-Appellant.	)	Timothy J. McJoynt,
	)	Judge, Presiding.

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JUSTICE HUTCHINSON delivered the judgment of the court.  
Presiding Justice Burke and Justice McLaren concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The trial court's determination to award petitioner sole custody of the minor was not against the manifest weight of the evidence. Further, the trial court did not abuse its discretion in denying respondent's request that both parties be subject to a Rule 604(b) evaluation. Thus, we affirmed.
- ¶ 2 On April 26, 2012, following seven years of marriage, the trial court entered an order dissolving the marriage between petitioner, Jeff Bingham, and respondent, Shonagh Varjan. The trial court awarded petitioner sole custody of the parties' minor child, who was six years of age at

the time of dissolution, with respondent being awarded visitation. On appeal, respondent contends that (1) the trial court's determination awarding petitioner sole custody of the minor was against the manifest weight of the evidence and (2) the trial court erred in denying her request that both parties be subject to an evaluation pursuant to section 604(b) of the Marriage and Dissolution of Marriage Act (the Act) (750 ILCS 5/604(b) (West 2010)). We affirm.

¶ 3 I. Background

¶ 4 The parties were married on September 17, 2004. The minor was born on October 20, 2004. Petitioner filed his petition for dissolution of marriage on February 23, 2011.

¶ 5 A bench trial commenced on January 17, 2012. Petitioner first called Juli Gumina, the court-appointed guardian *ad litem*. Gumina testified that, subsequent to her appointment, the parties were required to undergo a drug test; petitioner's test was negative, whereas respondent testified positive for cocaine. Gumina testified that she asked respondent whether she had used illegal drugs within the past five years, and respondent answered that she had not. Gumina testified that she reviewed documents from Dr. Ira Goodman, respondent's physician. Goodman's records reflected that respondent tested positive for marijuana twice in 2010. Gumina testified that, between March 2011 and "through the fall," respondent did not appear to have taken any steps to address her substance use, such as completing a detoxification program. Gumina testified that, in 2008, respondent was being treated by a different physician, who "made several notes in his records" that respondent was seeking out pain medication, and overused her medication. That doctor's notes reflected that he stopped treating respondent because he felt that she was attempting to abuse prescribed medications.

¶ 6 Gumina testified that, during her investigation, she had conversations with both petitioner and respondent and that "very rarely did the stories match." Gumina testified that she reviewed text messages between petitioner and respondent in which respondent told petitioner that she was selling

her prescription drugs, but respondent later denied to Gumina doing so. Gumina testified that, between the fall of 2010 and March 2011, and while the minor lived with respondent, the minor was tardy for school approximately five times. Gumina testified that she asked the minor “what time do you have breakfast at mom’s house,” and the minor responded “at lunchtime.” Gumina testified that, while the parties were living together, she believed that petitioner “took more of the role in the morning,” while respondent played “more of a role” in the afternoon by picking up the minor from school. Gumina acknowledged that, while she has attended various seminars and was certified to be a guardian *ad litem*, she had no training in addiction or pharmacology.

¶ 7 Petitioner next called respondent as an adverse witness. Respondent testified that she was currently living in Aurora with the minor, along with her son and daughter from a prior marriage, ages 18 and 16, respectively. Respondent admitted that she sent text messages to petitioner indicating that she was selling her prescription drugs for gas money. Respondent testified that petitioner left in February 2012. Respondent described her relationship with petitioner in recent months as “[u]ntrusting, game playing, emotional, and cruelty [sic].” Respondent testified that she had been employed with the company Advantage Sales and Marketing since the previous July.

¶ 8 Delores Bingham, petitioner’s mother, testified on petitioner’s behalf. Delores testified that the minor is her grandson, that she has been “[v]ery much” involved in the minor’s life since his birth, and that she babysits the minor. Delores testified that respondent has been involved with Alcoholics Anonymous for 14 years, and that Delores also had a history of drug addiction but had been clean and sober for 34 years.

¶ 9 Petitioner next called Stephanie Bingham, petitioner’s niece. Stephanie testified that, in March 2008, respondent sent her a text asking to sell her prescription drugs. Stephanie testified that she observed respondent use cocaine in either October or November 2007.

¶ 10 Petitioner testified next on his own behalf. Petitioner testified that he and respondent do not “communicate very well, we disagree on morals and values and how we should raise our son.” Petitioner testified that he had been attending Alcoholics Anonymous (AA) meetings since October 1997 and had not used alcohol or drugs since then. Petitioner acknowledged that he was taking Ambien, a prescription medication to help him fall asleep, and that he takes that medication in accordance with the prescribed dosage. Petitioner testified that he currently lived in a town home near neighbors who have children around the same age as the minor. Petitioner testified that the minor has adjusted well to petitioner’s new residence. Petitioner testified regarding an incident in 2007 when he and respondent had a “heated conversation” after respondent acknowledged trying to buy marijuana. Petitioner testified that he was “on high doses of steroids” at the time and was “very excitable.” Petitioner testified that respondent slapped him across the face, he picked up the phone to call the police, and respondent slapped him again. Petitioner testified that he “strongly held her arm as I held her to the bed waiting for the police to arrive.” Petitioner testified that he was taking steroids, which were prescribed by a physician at the Dryer Medical Clinic in Aurora, to treat inflammation from poison ivy that had “spread [to] over 40 percent” of his body, but that he stopped taking the steroids after that incident.

¶ 11 Petitioner called Michele Sahs, respondent’s sister, as a witness. Michele testified regarding an email she sent petitioner on May 6, 2008. In the email, which was admitted into evidence, Michele wrote to petitioner:

“I really think [respondent] has a huge problem, and as a former addict, you have to see the signs. \*\*\* She told me and my mother \*\*\* about her Vicoden addiction. \*\*\* She called me

on Saturday freaking out saying I had to come to the house \*\*\* because she was going to the hospital and she was going to die.”

According to the email, respondent wrote to Sahs “I’m an addict. I’m an addict. I’m an addict.” The email concluded “[y]ou don’t deserve it, her kids deserve a mom who is sane [and] who can be counted on.” Sahs testified that, at the time the email was written, she did not know the severity of respondent’s injuries that necessitated prescription drugs.

¶ 12 The trial court admitted Gumina’s guardian *ad litem* report into evidence. In her report, Gumina listed the following concerns regarding respondent: she had addiction issues that she has not addressed; she is “highly emotional and reactionary”; she does not take responsibility for her own bad behavior; she does believe in structured rules; she perceives herself as a victim; she lies; and she speaks negatively about petitioner and Delores in the minor’s presence. Gumina’s concerns regarding petitioner were that he was punitive against respondent; had a tendency to exaggerate; and did not communicate well with respondent. Gumina recommended that petitioner should be awarded sole custody based upon the parties’ inability to communicate with each other.

¶ 13 Respondent opened her case by introducing into evidence the results of her drug tests taken during pretrial proceedings, which reflected that she tested negative for drugs except for her prescription medications. Respondent called Kelley Bastian, who has known respondent since August 2010 and whose son attended the same school as the minor. Bastian testified that the minor and her son “play a lot together.” Bastian testified that she has never seen drugs in respondent’s home.

¶ 14 Respondent called Lynette Payne as a witness. Payne testified that she has known respondent since high school and has continued her relationship with respondent. Payne testified she has visited

respondent's home frequently throughout the years and that she believes respondent to be a good mother.

¶ 15 Respondent next called her father, Paul Sahs, as a witness. Paul testified regarding an incident in 2008 in which respondent asked him to post bail for petitioner after petitioner and respondent had an altercation. Respondent next called Anthony Parello, who testified that he was "best friends" with respondent's oldest son. Parello testified that he spent time at respondent's home and described the home as "spotless." Parello admitted that he witnessed respondent take prescription drugs "maybe a couple [of] times."

¶ 16 Respondent next called her mother, Georgia Render, as a witness. Render testified that she was concerned about her daughter using Oxycontin, but that respondent had only used that narcotic for three weeks. Respondent next called Renee Susan Vanden Houten, who testified that she had known respondent since childhood and that respondent was "a good homemaker."

¶ 17 Respondent next called her daughter as a witness. Respondent's daughter testified that she witnessed an argument between petitioner and respondent in May 2008 during which petitioner grabbed respondent by her mouth "and like restrained her and pushed her down the stairs." During cross-examination, respondent's daughter testified that petitioner and respondent were fighting about medicine and because "[petitioner] wouldn't give her the right amount."

¶ 18 Respondent next called her older son as a witness. Respondent's son testified that he and the minor "have a really good relationship" and that the minor "idolizes him." Respondent's son testified that petitioner and respondent would argue "a lot." Respondent's son testified regarding an instance where, while he was in his room, he heard petitioner and respondent arguing, "heard the screaming \*\*\* and then I heard a couple of thuds." Respondent's son testified that he exited the

bedroom and saw respondent “on the bottom of the stairs right on the landing” while petitioner was standing at the top of the stairs. Respondent’s son testified that respondent was hospitalized after that incident.

¶ 19 Respondent testified on her own behalf. Respondent testified that she worked a part-time job through Advantage Sales and was hired to work in the Chef’s Kitchen at Jewel. Respondent testified that in February 2007 she and petitioner had an argument and that petitioner pushed her down on the bed and she sprained her finger and wrist. Respondent testified that in May 2008 she was prescribed two kinds of Oxycontin, with one kind being a fast release and the other being a slow release. Respondent testified that she and petitioner argued over disbursement of the medicine. Respondent testified that she asked petitioner for medication, but petitioner refused to give her medication and asserted that she did not need it. Respondent testified that she called the police and petitioner threw the phone across the room. Respondent testified that, as she attempted to go downstairs, petitioner pushed her up against the wall, covered her mouth, and threw her down the stairs. Respondent testified that, in August 2009, she and petitioner had another argument. During this argument, petitioner pushed her onto a bed, jumped on top of her and hurt her shoulder and nose.

¶ 20 Dr. Phillip Holding testified last on respondent’s behalf. Holding testified that he was board certified by the American Board of Neurology and Psychiatry in general psychiatry. Holding testified that he had been practicing medicine for approximately 30 years. Holding testified that he met with respondent either four or five times and conducted a substance use and abuse assessment, which included a detailed history of respondent’s exposure to substance use as well as any patterns of misuse and indications of dependency. Holding testified that respondent “does not warrant” a diagnosis as a drug addict.

¶ 21 The trial court admitted Holding's report into evidence. The report reflected that respondent had used cocaine approximately 10-15 times throughout her life, and most recently in December 2010, as well as using marijuana during her first marriage that ended in 2004. The report noted that petitioner was currently prescribed Kadian, Norco, Valium, Felexeril, Amoxicillin, and Promethazine.

¶ 22 Holding opined that respondent "quite clearly has rather severe ADHD, [c]ombined [t]ype," and that, while being a childhood disorder, the disorder had "in her case persisted into adulthood." Holding found that, although respondent was not suffering from depression or mood disorder at the time, she had "undoubtedly experienced significant episodes of dysphoria over her lifetime." Holding further found that respondent's psychological profile "is certainly one that would place an individual at high risk for becoming involved with alcohol and drugs." Holding found respondent had used alcohol, marijuana, and cocaine on a recreational basis and that "[i]t does appear" that she went through a period of time adjusting to chronic pain where her use of opiates "was inappropriate and caused some degree of impairment." Holding, however, concluded "[t]hat period seems to have resolved" and that her pain has been effectively managed for "the past year or longer." Holding further concluded that respondent did not have any current issues with prescription drugs that "should result in any limitation being placed on her regarding access to her child, or resuming full custody of her child."

¶ 23 The trial court entered its opinion and order dissolving the parties' marriage on April 26, 2012. The trial court's order found that the guardian *ad litem* "did her due diligence" and the trial court "afforded her testimony great weight." The trial court further found that respondent's testimony regarding her drug use was "overall quite inconsistent" and that her "credibility [was] at play." The trial court noted that the guardian *ad litem* found that joint custody would not work and

recommended that petitioner have sole custody—with respondent having liberal visitation—because petitioner was more likely to “facilitate a relationship with [the minor] and [respondent] than the other way around.” The trial court further noted that the guardian *ad litem* found that, although petitioner was a former drug user, he had been sober for “some time” and was the “best bet” for the minor. The trial court agreed with that analysis, finding that “the child’s best interest is to be protected with the parent least likely to misuse drugs.” The trial court’s order further assessed the credibility of the other witnesses at trial.

¶ 24 The trial court’s order noted that the trial testimony reflected “at least three prior fights” between petitioner and respondent. The trial court concluded that “[t]he basic reason for the conflicts was denial of prescription drug access by [petitioner] to the anger of [respondent].” The trial court concluded that “it would appear [petitioner] may have been a bit controlling in some of these conflicts[,] but he has also testified to an appropriate purpose too—to stop [drug] misuse by [respondent];” and that the May 2008 altercation made respondent “quite irrational.” The trial court further found that the altercations resulted from “bad parenting” and that respondent was unable to avoid that activity due to her need for drugs. The trial court noted that “this is all probative” when determining custody and also concluded that respondent’s testimony regarding an alleged punching incident between her and petitioner in June 2011 “was not corroborated and not believed.”

¶ 25 The trial court’s order noted that the minor expressed to a counselor his desire to see and be with respondent, but the trial court noted that the minor was in respondent’s possession at that time and the trial court should consider “a young child’s desire to please the parent he is with.” The trial court’s order further noted that respondent’s recent drug tests came back clean except for prescription drugs, which led “to the conclusion that she still suffers from pain from an old accident and this can and does affect her parenting abilities.” The trial court concluded that there was not

enough evidence to conclude that respondent was a drug addict, but that misuse of legal prescribed drugs was not good parenting conduct.

¶ 26 The trial court's order noted that Delores was the minor's primary caretaker during the day when the minor was with petitioner. The trial court noted that the guardian *ad litem* testified that Delores "was an appropriate person" with the minor and that Delores testified credibly about her closeness to the minor as well as petitioner's parenting skills. The trial court further found that petitioner's regular attendance at AA meetings since October 1997 was "significant due to duration," but noted that petitioner was "by no means perfect."

¶ 27 The trial court noted that the minor was currently in school in Aurora near respondent's house and that petitioner planned to have the minor attend school in Wheaton. The trial court noted that the guardian *ad litem* approved of both schools, that changing schools would not be harmful to the minor, and that "[b]oth situations appear to be good for the child." After considering the foregoing, the trial court concluded that it was unable to make a "cooperation finding" as required to award joint custody and awarded petitioner "sole care, control[,] and custody of [the minor]" subject to visitation for respondent. Thereafter, on October 4, 2012, we granted petitioner's motion for leave to file a late notice of appeal.

¶ 28 II. Discussion

¶ 29 Before addressing the merits, we first address the timeliness of our disposition. Illinois Supreme Court Rule 311(a)(5) (eff. Feb. 26, 2010) provides that, in appeals from final orders in child custody cases, "[e]xcept for good cause shown, the appellate court shall issue its decision within 150 days after the filing of the notice of appeal \*\*\* ." In this case, we granted respondent leave to file her late notice of appeal on October 4, 2012; 150 days have passed since that date. However, we believe that good cause has been shown. Pursuant to respondent's motions, we extended the time

frame for her counsel to file the record on appeal and the briefs due to a serious family illness. As a result, respondent's initial brief was not filed until March 15, 2013, and her reply brief was not filed until April 22, 2013.

¶ 30

A. Child Custody

¶ 31 Respondent's first contention on appeal is that the trial court erred in awarding petitioner sole custody "when the evidence revealed that it was clearly apparent that it was in the best interests of the [minor] to be in [respondent's] custody." Respondent raises several arguments in support of this contention, including that she had extensive parenting experience; petitioner admitted to abusing alcohol in the past; that petitioner did not dispute respondent's evidence that she had overcome her misuse of pain medication; and "there was no significant evidence that [respondent's] minimal use of marijuana and cocaine ever interfered with her relationship with the [minor] or her ability to parent him." Respondent further argues that petitioner was misusing his prescription sleep medication.

¶ 32 Section 602(a) of the Act provides that a court "shall determine custody in accordance with the best interest of the child." 750 ILCS 5/602(a) (West 2010). The factors to be considered in determining the child's best interest are:

- "(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 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, 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;

\*\*\*

(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).

A trial court is not required to make a finding regarding each statutory factor so long as evidence was presented from which the trial court could consider the factors before making a determination. *In re Marriage of Hefer*, 282 Ill. App. 3d 73, 78 (1996). With respect to child custody, a trial court’s decision is afforded “ ‘great deference’ ” because it is in a superior position to judge the credibility of the witnesses and determine the best interests of the child. *In re Marriage of Divelbiss*, 308 Ill. App. 3d 198, 207 (1999) (quoting *In re Marriage of Gustavson*, 247 Ill. App. 3d 797, 801 (1993)). As a result, a trial court’s determination with respect to child-custody matters will not be overturned unless it was against the manifest weight of the evidence. *In re Marriage of Archibald*, 363 Ill. App. 3d 735, 738 (2006). A judgment is against the manifest weight of the evidence when an opposite conclusion was apparent or when the findings appear to unreasonable, arbitrary, or not based on the evidence. *Id.* at 738-39. Further, “it is well settled that in cases regarding custody, there is a strong

and compelling presumption in favor of the result reached by the trial court.” *In re Marriage of Willis*, 234 Ill. App. 3d 156, 161 (1992).

¶ 33 In this case, the trial court’s determination to award petitioner sole custody was not against the manifest weight of the evidence. Initially, we note that respondent’s assertion that petitioner abused his prescribed sleeping medication is not supported by the record on appeal. The only testimony elicited at trial was petitioner’s testimony that he used Ambien because he had difficulties falling asleep and that he had the prescription automatically refilled and shipped to the house he shared with respondent. Petitioner further testified he followed the prescribed recommended dosage allowance. The record is devoid of any evidence to support respondent’s assertion of abuse.

¶ 34 Moreover, the trial court’s order reflects that it properly considered the statutory factors enumerated in section 602 of the Act. Specifically, the trial court order reflected that it considered the minor’s statement regarding his desire to see and be with respondent, the minor’s interactions with respondent’s children from her prior marriage, and the minor’s interaction with Delores. 750 ILCS 5/602(a)(2), (3) (West 2010). The trial court found that either school situation, *i.e.*, attending to school in Wheaton if petitioner was granted custody or remaining in school in Aurora, appeared “to be good” for the minor and that the guardian *ad litem* approved both schools. 750 ILCS 5/602(a)(4) (West 2010).

¶ 35 The trial court made further determinations with respect to the parties and their credibility, concluding that respondent’s testimony regarding her drug use was “quite inconsistent” and put “her credibility at play here.” The trial court acknowledged the history of physical altercations between petitioner and respondent, concluding that respondent was unable to control her need for prescription drugs at those times. 750 ILCS 5/602(a)(6) (West 2010). Finally, the trial court adopted the guardian

*ad litem*'s finding that petitioner was more likely to facilitate a relationship with the minor and respondent. 750 ILCS 5/602(a)(8) (West 2010).

¶ 36 In sum, the trial court's order reflects that the trial court carefully considered the evidence and afforded significant weight to the guardian *ad litem*'s testimony that petitioner should be awarded sole custody. Because the trial court was in the better position to evaluate the evidence and the credibility of the witnesses, "we are unable to say that its decision was against the manifest weight of the evidence." See *Willis*, 234 Ill. App. 3d at 162. Further, while we recognize that respondent put forth considerable testimony regarding her parenting skills, which favors her argument that she should have been awarded custody, "[w]here the evidence before the trial court did not clearly favor either party, the reviewing court cannot say that the trial court's decision to place permanent custody of the child with one of the parents was against the manifest weight of the evidence." See *Prince v. Herrera*, 261 Ill. App. 3d 606, 613 (1994).

¶ 37 In reaching our determination, we note that we are not persuaded by respondent's argument that the trial court erred in concluding that respondent was more likely to relapse and that the trial court "should not have permitted that improper conclusion to outweigh" respondent's parenting experience and employment history. The record reflects that, while Holding concluded that respondent did not currently have any issues with improperly using prescriptions drugs, his report also noted respondent's history with ADHD and related psychological issues and concluded that respondent's psychological profile placed her at a high risk of becoming involved with drugs and alcohol. Section 602(a)(5) the Act directs the trial court to consider the mental health of all individuals involved (750 ILCS 5/602(a)(5) (West 2010)), and we find no error in the trial court considering, as one factor, a medical opinion concerning respondent's likelihood of relapsing to drug use due to her psychological profile.

¶ 38

B. 604(b) Evaluation

¶ 39 Respondent next contends that the trial court erred in denying her motion to appoint an evaluator to evaluate both parties pursuant to section 604(b) of the Act (see 750 ILCS 5/604(b) (West 2010)). In support of this contention, respondent argues that no reasonable person would have declined to appoint an evaluator in light of petitioner's history of "alcoholism, rage, insomnia, and misusing his sleeping pills at the time of trial."

¶ 40 Respondent's argument is not persuasive. Section 604(b) of the Act provides that "[t]he court may seek the advice of professional personnel, whether or not employed by the court on a regular basis." 750 ILCS 5/604(b) (West 2010). Whether to conduct a section 604 evaluation is a matter for the trial court's discretion. See *In re Marriage of Wanstreet*, 364 Ill. App. 3d 729, 733 (2006) (discussing a trial court's discretion with respect to section 604(a) of the Act). An abuse of discretion occurs when no reasonable person would take the position adopted by the trial court. *In re Marriage of Nord*, 402 Ill. App. 3d 288, 292 (2010).

¶ 41 Here, the trial court's determination to deny respondent's motion for both parties to be subject to a 604(b) evaluation did not constitute to an abuse of discretion. In denying respondent's motion, the trial court concluded:

"[T]here is a GAL. The [GAL has] done a nice job. There is a trial date set. \*\*\* I think the [c]ourt's going to be apprised with enough evidence to make this determination at the trial date." (R.170).

We see no abuse in the trial court's discretion. In denying the motion, the trial court noted that guardian *ad litem* was doing a "nice job" and that, since a trial date had already been set, the trial court would have enough evidence to make a determination with respect to custody. A comment by

the court in retrospect does not establish that the decision to forego evaluations was an abuse of discretion.

¶ 42

III. Conclusion

¶ 43 For the foregoing reasons, we affirm the judgment of the circuit court of Du Page County.

¶ 44 Affirmed.