

2013 IL App (2d) 121002-U
No. 2-12-1002
Order filed April 22, 2013

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> MARRIAGE OF VICTORIA CSEREP,)	Appeal from the Circuit Court of Winnebago County.
)	
Petitioner-Appellant,)	
)	
and)	No. 08-D-432
)	
SCOTT CSEREP,)	Honorable
)	Gwyn Gulley,
Respondent-Appellee.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Presiding Justice Burke and Justice Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held:* (1) Trial court’s grant of father’s petition to modify custody of the parties’ minor child was not against the manifest weight of the evidence; evidence supported court’s finding that father met his burden of proving by clear and convincing evidence a change in circumstances and that it was in the minor’s best interest that custody be modified; and (2) appellate court would dismiss portion of appeal challenging visitation provision in “Co-parenting Agreement” where mother’s notice of appeal was filed prior to the agreement being submitted to the court and the record is devoid of any evidence that the court entered an order approving the visitation arrangement.

¶ 2 Petitioner, Victoria Cserep, appeals from the judgment of the circuit court of Winnebago County granting the motion of respondent, Scott Cserep, to modify custody of the parties' minor child, A.C. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The parties were married in 2001. A.C., the only child of the marriage, was born in 2004. On April 14, 2008, Victoria filed in the circuit court of Winnebago County a petition for dissolution of marriage. The parties entered into a marital settlement agreement on June 30, 2008, and a judgment for dissolution of marriage incorporating that agreement was entered by the trial court on July 25, 2008. Pursuant to the judgment of dissolution, the parties were awarded joint legal custody of A.C., with Victoria having primary physical custody "subject to reasonable and seasonable visitation" by Scott. Scott was also required to pay child support.

¶ 5 On June 7, 2011, Scott filed a petition to modify custody, claiming a substantial change in circumstances seriously endangering the mental, physical, or moral well-being of A.C. Scott raised three principal allegations in support of his petition. First, he alleged that A.C. had been diagnosed with severe allergies to cat and dog dander and that Victoria has jeopardized A.C.'s physical well-being by refusing to abide by the recommendation of A.C.'s pediatric allergist that all pets be removed from the child's home environment. Second, Scott alleged that Victoria has allowed A.C. to miss an excessive number of school days. Third, Scott alleged that Victoria has expressed beliefs that she and A.C. suffer from a variety of medical maladies. Scott requested the court to transfer primary physical custody of A.C. from Victoria to him.

¶ 6 A trial on the petition to modify custody commenced on June 29, 2012. At the trial, Scott testified that upon the recommendation of A.C.'s pediatrician, he took the minor to see Dr. Charles Frey, an allergist, in February 2011. Dr. Frey determined that A.C. is allergic to cats and dogs. He prescribed medication and recommended that any animals be removed from A.C.'s home

environment as soon as possible. Scott testified that he communicated Dr. Frey's recommendation to Victoria by e-mail.

¶ 7 Scott learned that in April 2011, Victoria took A.C. to another allergist, Dr. Howard Zeitz. Dr. Zeitz noted that previous testing demonstrated allergies to multiple substances, including cat and dog danger. Dr. Zeitz diagnosed A.C. with asthma and allergic rhinitis. Dr. Zeitz's treatment notes indicate that Victoria has a dog and multiple cats. He stated that Victoria was told by another physician (Dr. Mohidden) to find a new home for her pets, but that she "is not willing to do this and wants to know what other options are available." Dr. Zeitz determined that A.C. was a good candidate for immunotherapy (allergy shots) and noted that Victoria "is agreeable," but that further skin testing was required before treatment. Dr. Zeitz stated that as long as A.C. is compliant with her immunotherapy treatment, it would be "acceptable" for any pets to remain in the home. Scott testified that he contacted Dr. Zeitz after learning of the recommended treatment and cancelled the allergy shots.

¶ 8 Scott testified that because of A.C.'s asthma, she was prescribed an "asthma action plan" and an inhaler, which she was instructed to use prior to gym class and any outdoor activities, including recess. In August 2011, Scott contacted the nurse at A.C.'s school to provide her a copy of the asthma action plan and to determine if the nurse had one of A.C.'s inhalers at school. The nurse told Scott that she did not have an inhaler, so Scott contacted Victoria and asked her to drop one off at the school. Victoria told Scott that she would drop off the inhaler, but commented that A.C. "has not needed her rescue inhaler since last spring during the major allergy season of first buds." Scott testified that Victoria's remark was inconsistent with A.C.'s asthma action plan and the doctor's instructions.

¶ 9 Scott also testified about A.C.'s school absences. Scott testified that, during the 2009-10 academic year, when A.C. was in kindergarten, she missed 25 days of school. Scott further testified that during the 2010-11 academic year, when A.C. was in first grade, she missed 15½ days of school and was tardy 3 days. Scott stated that he and Victoria were issued a "truancy letter" because A.C. was absent or tardy more than 10% of the attendance days in the first quarter of the 2010-11 academic year. Scott testified that A.C. was absent from school 17 days during the 2011-12 academic year, when she was in second grade.

¶ 10 Scott testified that he was "motivated" to file the petition to modify custody in June 2011 because A.C. was not improving. He stated that despite taking medication, she wheezed every night and "rattle[d]" when she spoke. He also stated that Victoria did not comply with Dr. Frey's recommendation that any pets be removed from A.C.'s home environment. In this regard, Scott testified that after he filed his petition, he observed a cat in the window of Victoria's residence when he went to exercise visitation with A.C.

¶ 11 On cross-examination, Scott testified that by August 2011, Victoria had removed her animals from her home. Scott acknowledged that he also had pets at one time. He testified, however, that he found new homes for the pets prior to the doctor's recommendation that animals be removed from A.C.'s home environment. Scott acknowledged that a change in custody would require A.C. to attend school in a different district.

¶ 12 Victoria testified that A.C. began exhibiting allergy symptoms when she was three or four years old. At that time, Dr. Omengan, A.C.'s pediatrician, administered an allergy test. A.C. was diagnosed with allergies to various substances, including animal dander, grass, weeds, and pollen and was eventually prescribed medication. Victoria testified, however, that Dr. Omengan never

indicated that A.C. was “severely allergic” to anything and the minor did not exhibit any allergy symptoms. Victoria stated that she was not aware of A.C.’s appointment with Dr. Frey until after it occurred when she received an e-mail from Scott in February or March 2011. In the e-mail, Scott informed her about Dr. Frey’s recommendation that any pets be removed from A.C.’s home environment. Victoria acknowledged that she was initially hesitant to remove the animals from the home. She explained that, since she and Scott had always had pets, A.C. was attached to them. Victoria stated that she “wanted to make sure it was something that was actually causing [A.C.] issues” and that she was “trying to see if there was an alternative instead of breaking up [A.C. and the pets].” As such, Victoria sought a second opinion from Dr. Zeitz.

¶ 13 Victoria testified that Dr. Zeitz performed a skin panel and determined that A.C. was allergic to various substances. Dr. Zeitz thought A.C. would be a good candidate for immunotherapy, which would allow the pets to remain in the home. Victoria considered immunotherapy for A.C., but after discussing the treatment with the minor, she decided against it and the allergy shots were never scheduled. Instead, Victoria had her fiancé take A.C. to a different allergist (Dr. Drapkin) to determine “if there was another option or if [she] should just get rid of [her] pets.” Victoria testified that the pets were removed from her home by mid-August 2011. The pets were given to relatives and friends. Victoria admitted that one of the cats later returned to her home for two nights. She stated, however, that A.C. was staying with respondent at that time. Victoria also acknowledged that every “once in a while,” A.C. goes to visit one of the pets placed with Victoria’s friend.

¶ 14 Victoria acknowledged that A.C.’s school absences have been “excessive.” She testified that during the 2011-12 academic year, A.C. missed 17 days of school, approximately 10% of the total number of school days. Victoria noted, however, that there were no absences during the fourth

quarter of the 2011-12 school year. She also testified that A.C. had about the same number of absences during the 2010-11 academic year and that A.C. missed 25 days of school during the 2009-10 school year. Victoria attributed these absences to illnesses and doctor's appointments. She explained that A.C. "never stayed home without a fever" and that A.C. missed at least one week of school in 2009 because she contracted the swine flu. Victoria also testified that A.C. is prone to bronchitis and missed some days because of that condition. In addition, Victoria acknowledged that one absence occurred because A.C. missed the school bus and Victoria's car would not start. Victoria opined, however, that A.C.'s good grades "make up" for her excessive absences.

¶ 15 Victoria testified that Scott has been taking A.C. to speak with a counselor because A.C. had been diagnosed with separation anxiety. Victoria admitted that she herself has "a variety of health issues," including depression, anxiety, migraine headaches, and fibromyalgia. Victoria further testified that she was recently diagnosed with TMJ (temporomandibular joint disorder). She added, however, that these conditions are under control as a result of medication and counseling.

¶ 16 Michael Sefton, Victoria's fiancé, testified that at one time, he and Victoria had three cats and a dog in their home. Sefton testified that two of the cats were placed with Victoria's mother in June 2011, the third cat was placed with one of petitioner's friends at about the same time, and the dog was placed with Sefton's mother in August 2011. Sefton stated that one of the cats placed with Victoria's mother was returned because it was not adjusting well. Sefton stated that a few days after the cat was returned, a new home was found for the animal with the friend who had taken one of the cats.

¶ 17 Gerald Shelton testified that he was appointed as A.C.'s guardian *ad litem*. Shelton interviewed the parties, the minor, and others and prepared a report recommending that physical

custody of A.C. be transferred from Victoria to Scott. Shelton stated that several concerns prompted his recommendation. Initially, Shelton cited the number of A.C.'s absences from school. Shelton acknowledged the anomaly of the fourth quarter of second grade, when A.C. did not have any absences, but stated:

“I guess I would say if you’ve got a child that has illnesses as prevalent as apparently [A.C.] had to have a whole semester—or a whole quarter go where she wasn’t sick and missing school at all, that would be very odd because that’s not been the case for her anytime she’s been in school.

And what it suggests to me is that because of the recommendation I had made that perhaps what was happening is it was going to be important for her to not miss school and it also suggests that she probably didn’t need to miss as much school as she did, in my opinion, during the time up till [*sic*] that last quarter of this last school year.”

Shelton added that some of the reasons Victoria provided for A.C.'s absences from school were not “legitimate.” He learned, for instance, that A.C. missed school to stay home on Victoria’s birthday and to accompany Victoria to Victoria’s doctor’s appointment.

¶ 18 Shelton also cited the issues with A.C.'s allergies. Shelton testified that his investigation showed that A.C. had allergy and respiratory problems at an early age and was on medication by the time she was 4½ years old. Shelton opined that these conditions were a likely reason A.C. missed so much school prior to the pets being removed from her home environment. Shelton pointed out that as early as February 2011, a doctor recommended that any pets be removed from A.C.'s home environment as they were the source of A.C.'s allergic reactions. Yet, Victoria was “resistan[t] to the removal of the pets when it became obvious that this was something that needed to be done.”

Shelton noted that it took Victoria about six months before the pets were removed from the home. Shelton stated that “[w]hen a parent has a resistance to what appears to be quite clear medical evidence as to something that’s causing a health problem for the child, that, to me, indicates a real problem in decision making on behalf of the parent with regard to the child.”

¶ 19 Shelton testified that A.C.’s counselor felt that Victoria “didn’t seem to be doing what was necessary to avoid the allergy issues for [A.C].” The counselor also told Shelton that therapy is appropriate for A.C. because the minor “[i]s getting bombarded by [Victoria] to not tell things to the therapist or to [Scott].” In addition, the counselor was concerned over the fact that A.C. expressed to her a need to take care of Victoria. The counselor told Shelton that Scott can provide for A.C. “[i]n an emotional way, in a healthy emotional way.”

¶ 20 On cross-examination, Shelton testified that A.C. voiced a preference to reside with Victoria. He added, however, that he spoke to the counselor about A.C.’s preference, and the counselor indicated that she was unable to say that this preference represented A.C.’s “genuine feelings.” The counselor explained that A.C. does not want to hurt Victoria. Shelton also testified on cross-examination that he learned that A.C. had missed school on Victoria’s birthday from Scott. He acknowledged that Victoria indicated that this was a coincidence and that A.C. just happened to be sick on her birthday. Following Shelton’s testimony, the court continued the matter for closing arguments and a decision.

¶ 21 On August 17, 2012, following closing arguments, the court orally announced its decision to award sole custody of the minor to Scott. After the court ruled, Scott’s attorney asked the court to immediately enter an order modifying custody because A.C. was scheduled to start school the following week. Counsel stated that he would later “follow-up with [a] co-parenting agreement and

modify visitation.” The trial court agreed and entered a written order awarding sole physical custody of A.C. to Scott “subject to a co-parenting and visitation schedule to be submitted.” The same order terminated Scott’s obligation to pay child support to Victoria.

¶ 22 On September 11, 2012, Victoria’s attorney filed a motion to withdraw and a petition for fees. The motion was granted the same day and a judgment for attorney fees was entered against Victoria. On September 14, 2012, Victoria filed a *pro se* notice of appeal from the order entered by the trial court on August 17, 2012.

¶ 23 Meanwhile, the parties appeared in court on November 1, 2012. At that time, a “Co-parenting Agreement” signed by the parties was submitted to the court. Pursuant to an exhibit attached to the agreement, Victoria was provided parenting time with A.C. every other weekend from Friday at 5 p.m. until Sunday at 7 p.m., every Wednesday from 5 p.m. until 8 p.m., on Mother’s Day, on certain holidays, and for half of A.C.’s winter vacation. In addition, petitioner had the option to take A.C. on vacation for 7 to 10 days per calendar year. The agreement also allowed visitation at other times by agreement of the parties. On January 7, 2013, attorney Tina Long Rippey filed an appearance on petitioner’s behalf.

¶ 24 II. ANALYSIS

¶ 25 On appeal, Victoria raises two principal issues. First, she argues that the trial court erred in granting Scott’s petition to modify custody. Second, Victoria contends that the trial court abused its discretion and failed to account for the best interests of the minor when it “authorized the bare minimum visitation to [petitioner] in the co-parenting and visitation schedule.” Prior to discussing the merits of these issues, we must address as a preliminary matter, the timeliness of this decision.

¶ 26 A. Timeliness of Our Decision

¶ 27 This case is designated as “accelerated” pursuant to Illinois Supreme Court Rule 311 (eff. Feb. 26, 2010) because it involves a matter affecting the best interests of a child. With respect to such cases, Illinois Supreme Court Rule 311(a)(5) (eff. Feb. 26, 2010) provides in relevant part that, “[e]xcept for good cause shown, the appellate court shall issue its decision within 150 days after the filing of the notice of appeal.” Here, Victoria filed her *pro se* notice of appeal on September 14, 2012. Thus, the 150-day period to issue our decision expired on February 11, 2013. However, we have good cause for issuing our decision after the 150-day deadline. Significantly, Victoria’s docketing statement was devoid of any facts, including a special caption, that would indicate that the appeal was to be accelerated. See Illinois Supreme Court Rule 311(a)(1) (eff. Feb. 26, 2010) (requiring docketing statement to contain a “special caption” indicating that the appeal involves a question of child custody). Once we became aware that this case involved the custody of a child, we entered an order accelerating the matter. Under such circumstances, there is good cause to issue this decision after the 150-day deadline. Accordingly, we now turn to the merits of the appeal.

¶ 28 B. Petition to Modify Custody

¶ 29 Victoria argues that the trial court erred in granting Scott’s petition for a change of custody. We have jurisdiction over orders effectuating a modification of custody pursuant to Illinois Supreme Court Rule 304(b)(6) (eff. Feb. 26, 2010).

¶ 30 To promote the stability and continuity of a child’s custodial and environmental relationship, there is a legislative presumption in favor of a child’s current custodian. *In re Marriage of Sussenbach*, 108 Ill. 2d 489, 499 (1985), quoting *In re Marriage of Wechselberger*, 115 Ill. App. 3d 779, 786 (1983). However, section 610(b) of the Illinois Marriage and Dissolution of Marriage Act

(Act) (750 ILCS 5/610(b) (West 2012)) permits a modification of custody in certain limited circumstances. The statute provides in relevant part:

“(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. *** 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 2012).

Accordingly, modification of custody is warranted only if the trial court finds by clear and convincing evidence that both: (1) a change in circumstances has occurred and (2) modification of the prior custody order is necessary to serve the best interests of the minor. 750 ILCS 610(b) (West 2012); *In re Marriage of Debra N. and Michael S.*, 2013 IL App (1st) 122145, ¶ 47.

¶ 31 A trial court’s custody determination is afforded great deference because the trial court is in the best position to judge the credibility of the witnesses and assess the best interests of the minor. *Sussenbach*, 108 Ill. 2d at 499. As such, we review a ruling modifying the custody of a child under the manifest-weight-of-the-evidence standard. *In re Marriage of Bates*, 212 Ill.2d 489, 515 (2004). 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. *Bates*, 212 Ill. 2d at 516. Where the evidence permits multiple reasonable inferences, the reviewing court will accept those inferences

that support the court's order. *Bates*, 212 Ill. 2d at 516. A decision is against the manifest weight of the evidence only where an opposite conclusion is clearly apparent. *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 100.

¶ 32 Victoria initially argues that the trial court erred when it decided that Scott had met his burden of proving a change in circumstances. Victoria's argument is twofold. First, she claims that the trial court failed to make specific findings of fact as to a change in circumstances as required by section 610(b) of the Act (750 ILCS 5/610(b) (West 2012)). Second, Victoria argues that, assuming that the trial court's decision was in conformance with the requirements of section 610(b), Scott failed to prove by clear and convincing evidence that a change in circumstances occurred. Scott responds that section 610(b) of the Act does not require more detail than was supplied by the trial court. To the extent that more detailed findings are required, however, Scott asserts that the trial court made clear in its oral ruling that a change in circumstances was warranted given the evidence surrounding the status of A.C.'s medical care and school absences following the finalization of the parties' divorce.

¶ 33 When Victoria and Scott divorced in 2008, the parties were awarded joint custody of A.C. Scott subsequently sought to modify that custody arrangement. Victoria opposed the modification. In such cases, the trial court is required to "state in its decision specific findings of fact in support of its modification or termination of joint custody." 750 ILCS 5/610(b) (West 2012). The purpose of the specific findings requirement is to allow a court of review to determine the basis for the modification, as without such findings, the reviewing court "would be left to speculate on the grounds relied upon by the trial judge." *In re Custody of Harne*, 77 Ill. 2d 414, 421 (1979) (interpreting earlier version of section 610(b)); see also *Vollmer v. Mattox*, 137 Ill. App. 3d 1, 5

(1985). In *In re Marriage of Oliver*, 155 Ill.App.3d 181 (1987), the court addressed the sufficiency of the trial court's findings under section 610(b) of the Act, and that case is instructive.

¶ 34 In *Oliver*, the trial court entered an order changing the custody of the child from the father to the mother. The order recited that the trial court had considered “all relevant factors in determining child custody, including those enumerated in [the statute].” However, there were no findings based upon clear and convincing evidence that a change had occurred in the circumstances of the child or his custodian. Additionally, there were no “specific findings of fact in support of its modification.” The *Oliver* court concluded that, while a reference to the factors enumerated in the statute “would not be inappropriate, they may not, in the absence of a consideration of a change of circumstances as provided in section 610(b), serve as a justification for a change in custody.” *Oliver*, 155 Ill. App. 3d at 184. As such, the *Oliver* court remanded the matter to the trial court to make specific findings of fact in conformance with section 610(b) of the Act. *Oliver*, 155 Ill. App. 3d at 184-85.

¶ 35 In reaching this conclusion, the *Oliver* court discussed *Vollmer*, 137 Ill. App. 3d 1, and *Sussenbach*, 108 Ill. 2d 489. *Oliver*, 155 Ill. App. 3d at 183-84. The *Oliver* court observed that, in *Vollmer*, “the trial court found a transfer of custody to be in the best interest of the child but ‘the court did not elaborate upon the reasons for the court's decision to change the custody [of the minor].’ The order in the *Vollmer* case did not even recite the conclusionary statement from the statute that ‘a change has occurred in the circumstances of the child or his custodian.’ ” *Oliver*, 155 Ill. App. 3d at 184. As such, the *Vollmer* court remanded the case for the trial court to make explicit findings to support the change in custody it had made. *Oliver*, 155 Ill. App. 3d at 184. Conversely, in *Sussenbach*, which was decided three months after *Vollmer*, the trial court made extensive written

findings to show the change in circumstances that required a modification of custody, but did not recite from those facts the conclusion that a change had occurred in the circumstances of the child or his custodian. *Oliver*, 155 Ill. App. 3d at 184. The supreme court held that this omission was not controlling for the trial court's findings, "when taken together, are sufficient to show that a change in circumstances had occurred." *Oliver*, 155 Ill. App. 3d at 184.

¶ 36 Unlike in *Vollmer* and *Oliver*, the trial court in this case explained its decision. The trial court stated that "[A.C.] has two parents that care for her; both are involved in her life. However, in order to modify custody there's need to be a substantial change in circumstances [*sic*]. Which I feel that the defendant, Mr. Cserep, has met his burden by clear and convincing evidence." Immediately thereafter, the court found that it is in the best interests of A.C. that sole custody be transferred to Scott. The court then made additional remarks, including the following:

"I'm concerned with the number of [school] absences as noted by the guardian *ad litem*. I am concerned with the mom not getting the child up to go to school and having her home from school on her birthday, and just the child happened to be sick on that particular day.

But more importantly I'm also concerned about the physical and mental health of the minor child, where she's had respiratory problems and allergies because of pets. I'm concerned with the number of hospitals—or the hoops that the mother is willing to go through to keep the pets, even to subject the minor to shots. And I believe that there was evidence presented that she was still allowing contact by taking the minor to visit with her friend who has the cats.

Also, I'm concerned with the minor being seven years old and feeling that she needs to care for her mother because her mom has health problems. That's understandable that she

cares about her mother, but you know she's seven years old and I think that that's placing a big burden on a young child."

Like the supreme court found in *Sussenbach*, 108 Ill. 2d at 498, we conclude that the trial court's remarks, "when taken together," are sufficient to conform with the factual finding requirement of section 610(b). We note that the trial court's findings correlate with the changes in circumstances alleged in Scott's petition to modify. Victoria acknowledges the foregoing remarks, but suggests that given their timing, after the trial court announced its best interests finding, "[a]ny attempt to draw conclusions from the balance of the court's statement would be speculation." However, Victoria does not direct us to any requirement, statutory or otherwise, that the specific findings of fact required by section 610(b) be made in any particular order. More important, as noted above, when the trial court's comments are read as a whole, they satisfy the requirements of section 610(b). Accordingly, we reject Victoria's claim that the trial court's finding that Scott proved by clear and convincing evidence a change in circumstances is not supported by any specific findings of fact.

¶37 Victoria argues that even if the trial court's findings were adequate to satisfy the requirements of section 610(b), Scott failed to prove a change of circumstances by clear and convincing evidence. The clear-and-convincing-evidence standard requires more proof than the preponderance-of-the-evidence standard, but it does not require the degree of proof necessary to convict a person of a crime. *In re Marriage of Knoche*, 322 Ill. App. 3d 297, 306 (2001). Based on this standard, we disagree with Victoria's position.

¶38 Victoria essentially claims that the changes in circumstances alleged by Scott are not changes at all as they existed at the time the judgment of dissolution was entered in 2008. Victoria contends, for instance, that prior to the parties' divorce, A.C. had been diagnosed with allergies and had been

prescribed medication for the treatment of this condition. She also asserts that A.C. lived with pets since she was born. Victoria's argument ignores evidence that the severity of A.C.'s allergies increased following the divorce. This prompted Scott to seek treatment from an allergist who advised that any pets be removed from A.C.'s home environment. Scott informed Victoria of the doctor's advice. However, Victoria was hesitant to remove the animals from her home and did not completely remove them until six months after Dr. Frey's recommendation, while she attempted to find an alternate solution.

¶ 39 Victoria also insists that "the issue about school absences is a result of the pets and allergies that already existed in 2008 when the original custody order was entered." Again, Victoria ignores evidence that the severity of A.C.'s allergies increased after the divorce. Moreover, the court heard testimony from the guardian *ad litem*, who characterized some of A.C.'s absences from school as not "legitimate." He noted, for instance, that A.C. missed school on Victoria's birthday and to accompany her to a doctor's appointment. Based on the foregoing evidence, and given the trial court's role in assessing the evidence, we cannot say that the trial court's finding that Scott proved by clear and convincing evidence a change in circumstances had occurred since entry of the prior judgment is against the manifest weight of the evidence.

¶ 40 Victoria next argues that the trial court's finding that it was in A.C.'s best interests to award custody to Scott is against the manifest weight of the evidence. Again, we disagree. Section 602(a) of the Act (750 ILCS 5/602(a) (West 2012)) provides various factors for the court to consider in determining whether a custodial arrangement is in the child's best interests. Those factors include: (1) the wishes of the child's parents as to 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; and (6) 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 2012).

¶ 41 In this case, the trial court considered the factors set forth in section 602(a) of the Act and concluded that it would be in the best interests of the minor to modify the custody arrangement. We cannot say that this conclusion is against the manifest weight of the evidence. The court focused on the education and health needs of the minor. The court determined that the current custody situation “jeopardized” A.C.’s educational and health needs. The court emphasized the number of A.C.’s school absences. The court voiced concern with the fact that A.C. was absent from school on Victoria’s birthday and Victoria’s explanation that A.C. “just happened to be sick on that particular day.” The court also cited A.C.’s allergy and respiratory problems. The court indicated that Victoria placed her wishes over the needs of the child. The court noted that Victoria was hesitant to remove her pets from the home and was willing to subject A.C. to allergy shots so as not to have to remove the animals. The court also noted that there was evidence that Victoria was still allowing contact between A.C. and the pets by taking her to visit the woman who took Victoria’s cats. In addition, the court considered evidence that Victoria was “coaching” A.C. and was not facilitating a close and continuing relationship between A.C. and Scott.

¶ 42 In sum, a conclusion opposite to that reached by the trial court is not clearly apparent. Therefore, we affirm that portion of the trial court’s judgment granting Scott’s petition to modify custody.

¶ 43 C. Visitation

¶ 44 Victoria next argues that the trial court abused its discretion and failed to account for the best interests of the child when it “authorized the bare minimum visitation to [her] in the co-parenting and visitation schedule.” Scott contends that the issue of visitation is moot because the parties entered into a co-parenting arrangement pursuant to which they both agreed to a specific visitation schedule. We conclude that we lack jurisdiction to consider the propriety of the visitation arrangement.

¶ 45 “Every final judgment of a circuit court in a civil case is appealable as of right.” Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994). An appeal is initiated by filing a notice of appeal. Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994). Illinois Supreme Court Rule 303(b)(2) (eff. June 4, 2008) requires a notice of appeal to “specify the judgment or part thereof or other orders appealed from.” In this case, Victoria’s *pro se* notice of appeal indicates that she is appealing from the order entered by the trial court on August 17, 2012. Specifically, Victoria seeks reversal of “the trial court’s decision regarding awarding sole physical custody of her child to SCOTT *** and terminating his child support obligation.” Nowhere in Victoria’s notice of appeal did she indicate that she was appealing from a decision regarding the terms of the visitation arrangement. Indeed, the “Co-parenting Agreement” setting forth the terms of visitation was not even submitted to the trial court until November 1, 2012, well after Victoria filed her notice of appeal. We note further that a court is not bound by agreements relating to the support, custody, and visitation of children (750 ILCS 5/502(b) (West 2012)) and the parties to a dissolution proceeding may not enter into an agreement that affects the interest of their children without obtaining the approval of the court (*In re Marriage of Duffy*, 307 Ill. App. 3d 257, 260 (1999)). Here, the record is devoid of any evidence that the trial court approved the “Co-parenting Agreement.” The agreement, although signed by both

parties, was not signed by the court. In addition, while the parties appeared before the court on November 1, 2012, to submit the “Co-parenting Agreement,” there is no indication in the common law record that the court approved the agreement at that time and a transcript of the proceedings on the date has not been provided to this court. As this court has previously noted, it is impossible for a notice of appeal to perfect an appeal from an order that is not yet in existence. *In re Marriage of Ward*, 267 Ill. App. 3d 35, 40-41 (1994). Accordingly, we dismiss that portion of Victoria’s appeal challenging the visitation arrangement.

¶ 46

III. CONCLUSION

¶ 47 For the reasons set forth above, we affirm the judgment of the circuit court of Winnebago County granting Scott’s petition to modify custody. We dismiss the portion of the appeal challenging the visitation arrangement.

¶ 48 Affirmed in part and dismissed in part.