

custody of the children, or, in the alternative, to set temporary visitation, including holiday visitation. William alleged Katherine (1) had not allowed him overnight visitation with the children and (2) failed to facilitate and encourage a relationship between the children and William.

¶ 6 On December 19, 2011, Katherine filed an emergency motion for restricted visitation. Katherine alleged that William moved from the marital residence in July 2011, and the children had remained in her care. According to Katherine, the parties agreed William would have "daytime visitation" with the children but William had recently requested overnight visitation. Citing a report prepared on December 15, 2011, by clinical psychologist Dr. Judy Osgood, Katherine alleged "having overnight visitation of the children would seriously endanger the best interest and health of the children based upon the Respondent's continued alcoholism and potential risk of sexual abuse due to the Respondent's blurring of role boundaries with Sophia and Penny."

¶ 7 On December 20, 2011, the trial court entered an agreed order (1) granting Katherine temporary custody of the children and (2) providing William supervised overnight visitation with the children. William was not to consume alcohol for eight hours prior to visitation or during visitation and Katherine agreed to withdraw her request for an order of protection against William filed on December 13, 2011 (case No. 11-OP-613).

¶ 8 On April 18, 2012, the trial court appointed Diana Lenik as a limited guardian *ad litem* for the child-custody issue. Lenik spoke with eight-year-old Penelope, William, and Katherine, and the children's paternal and maternal grandmothers. Lenik considered approximately 90 pages of materials provided to her by the parties, including various e-mails

between William and Katherine, and reports by two clinical psychologists and a counselor. In her report filed on May 30, 2012, Lenik found joint parenting not feasible between the parties. Katherine had raised concerns in approximately May 2011 about Sophia exhibiting behaviors that were possibly indicative of sexual abuse by William. However, Lenik believed Katherine's concerns were "exaggerated." Katherine sought counseling for Penelope and Sophia with Joanna Kling, a licensed clinical professional counselor, in approximately June 2011. William moved from the marital home in July 2011. On September 16, 2011, Katherine e-mailed William, stating her intention "that the children not ever stay[]over night with you until they are old enough to care for themselves." Lenik noted in her report that on November 11, 2011, Kling advised William that the girls (1) appeared to be doing fine, (2) appeared " 'bright, sensitive and verbal,' " (3) were able to express their feelings, and (4) spoke positively of the time they spent with William. Kling attributed the concerning behaviors to the changes the girls were experiencing in their family life.

¶ 9 According to Lenik, Katherine next sought counseling for Penelope and Sophia with Dr. Osgood. Dr. Osgood diagnosed "serious endangerment" by William. According to Lenik, "[a]t no time *** did anyone say [William] committed any outright acts of sex abuse, but Dr. Osgood believed that the acts described created a blurring of roles and boundaries, and could *lead to sexual abuse.*" (Emphasis in original.) Lenik noted that Dr. Osgood did not speak with William and did not observe William with the children.

¶ 10 Lenik reported that William sought a review of Dr. Osgood's report by Dr. Helen Appleton, also a clinical psychologist. Dr. Appleton opined that highly contentious custody evaluations can produce a range of symptoms in children that can mimic those of sexual abuse,

such as excessive masturbation.

¶ 11 Lenik characterized the supervised overnight visitation agreed to in December 2011 as "a short[-]term safeguard[] *** that ended with no apparent bad result." Katherine admitted to Lenik that the concerning behaviors she observed in Penelope and Sophia had lessened.

¶ 12 Lenik next expressed concern regarding Katherine's mental health, stating:
"I am not a psychologist, of course; and cannot diagnose a mental illness or personality disorder. But the lengths that she is going to alienate the children from their father and his family seem symptomatic of something beyond just the normal hostility between divorcing couples."

¶ 13 Referring to six of the factors set forth in section 602 of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/602 (West 2010)), Lenik found the third factor (the interaction and interrelationship of the children with their parents, their siblings, and any other person who may significantly affect the children's best interest) did not favor either parent as (1) Katherine's parents characterized William and his father as alcoholics and (2) William's parents characterized Katherine as controlling, as evidenced by Katherine's refusal to allow William's family to see the children.

¶ 14 Lenik noted two factors favored Katherine. Those were (1) the fourth factor (the children's adjustment to home, school and community), as the children participated in age-appropriate activities and the girls were doing very well at school while in their mother's custody; and (2) the seventh factor (the occurrence of ongoing or repeated abuse, whether directed against

the children or directed against another person), as Katherine reported William stalked her and entered the family home without permission.

¶ 15 Lenik noted three factors favored William. Those were: (1) the fifth factor (the mental and physical health of all individuals involved), as Katherine demonstrated behaviors "symptomatic of something beyond just the normal hostility between divorcing couples"; (2) the sixth factor (the physical violence or threat of physical violence by the child's potential custodian, whether directed against the child or directed against another person), as William reported Katherine scratched him on four occasions and slapped him twice; and (3) the eighth factor (the willingness and ability of the parent to facilitate and encourage a close continuing relationship between the children and the other parent), which Lenik found overwhelmingly favored William as Katherine was either unable or unwilling to foster the children's relationship with their father. Accordingly, Lenik recommended that William receive custody of the minor children.

¶ 16 On June 12, 2012, the trial court entered an agreed order (1) removing the visitation restrictions identified in the December 2011 order and (2) providing for alternating weeks of visitation with each parent through the summer.

¶ 17 Beginning on January 4, 2013, and continuing on January 7, 2013, February 12, 2013, and February 19, 2013, the trial court conducted a trial on custody of the children. Katherine testified on her own behalf and presented the testimony of (1) Margaret Daily, Katherine's best friend; (2) Linda Seaman, Katherine's mother; (3) William Seaman, Katherine's father; and (4) William, as an adverse witness. William testified on his own behalf and presented the testimony of (1) Susan Anderson, William's younger sister; (2) Catherine Ezard, William's older sister; (3) Diana Lenik, the limited guardian *ad litem*; (4) Timothy Evans, a friend of

William's; (5) William E. Sheridan, William's father; (6) Joan Sheridan, William's mother; and (7) Kelli Kropman, a family friend. We summarize the specific trial evidence which we deem most pertinent to our decision.

¶ 18 Katherine testified that she works 20 hours each week as a credentialing assistant for Health Alliance Medical Plans and takes one or two courses at Parkland Community College. Her mother babysits the children. Katherine described the various activities she engaged in as the children's primary caretaker and activities she enjoyed with the children.

¶ 19 Katherine testified that in approximately June 2010, the parties began engaging in physical altercations. William drank excessively and was arrested in July 2010 for driving under the influence of alcohol (DUI). William moved from the marital residence in July 2011.

¶ 20 Katherine testified about two orders of protection she requested against William. On July 25, 2011, Katherine filed a petition for an emergency order of protection against William (case No. 11-OP-361). Katherine attached to the petition six pages detailing alleged acts committed by William from April 2010 to July 24, 2011. Katherine requested William be denied visitation because of his alleged abusive and harassing behaviors. The trial court denied Katherine's request for an emergency order of protection and set the plenary order of protection hearing for August 15, 2011. On August 15, 2011, the court granted Katherine's motion to withdraw her request for an order of protection against William.

¶ 21 With William's emergency motion seeking temporary custody or visitation set for hearing on December 20, 2011, Katherine filed a second petition for an emergency order of protection against William (case No. 11-OP-613) on December 13, 2011. Katherine detailed alleged acts committed by William from August 22, 2011, to December 13, 2011. Katherine

sought to reserve the issue of William's visitation with the children. The trial court denied Katherine's request for an emergency order of protection and set the plenary order of protection hearing for January 3, 2012. On December 20, 2011, the trial entered an agreed order (1) granting Katherine temporary custody of the four children and (2) providing William supervised overnight visitation with the children. Katherine agreed to withdraw her request for an order of protection against William.

¶ 22 In regard to the allegations of sexual abuse, Katherine testified that she did not believe William currently abused the children but that he had done so in the past. Further, she did not believe it appropriate for a father to take his six- and eight-year-old daughters to the doctor, or into a public restroom. She did not believe the children should have overnight visitation with William until they could care for themselves. Katherine did not find it acceptable for six-year-old Sophia to climb into William's bed in the middle of the night.

¶ 23 Katherine testified that in approximately May 2011, she observed four-year-old Sophia exhibiting behaviors that were possibly indicative of sexual abuse. She sought counseling for Sophia with Kling in approximately June 2011, and for Penelope in July 2011, after William moved from the marital home. In approximately November 2011, Katherine sought counseling for Sophia and Penelope with Dr. Osgood. According to Katherine, the girls "needed a different kind of help." Based on Dr. Osgood's recommendation that William not have overnight visitation with the children, Katherine filed her emergency motion for restricted visitation on December 19, 2011.

¶ 24 Margaret Daily testified that she is Katherine's best friend and the children's godmother. Margaret lives in Chicago and visited William and Katherine approximately every

other month, over a weekend, for the six years before the parties separated. She characterized Katherine as patient and encouraging with the children. She had observed William and Katherine drink alcohol.

¶ 25 Linda Seaman testified that she is Katherine's mother. She taught middle and high school students for more than 20 years, retiring in 2005. She began babysitting for one-year-old Sophia after she retired and continues to provide care for the children approximately 30 hours each week. She reported smelling alcohol on William's breath when he came home from work, beginning in 2008. Seaman suspected the children had been sexually abused by William. Sophia showed Seaman a picture she drew of William with an enormous penis and she heard one of the girls ask the other to lay on top of her.

¶ 26 William Seaman testified that he is Katherine's father. He has not had a conversation with William since July 2011. William Seaman was present when William returned the children to Katherine on December 10, 2011. William told William Seaman he could "go straight to hell."

¶ 27 William testified that he was in his tenth year teaching fifth grade at Westview Elementary School in Champaign. William described the various activities he engaged in while caring for the children and activities he enjoyed with the children.

¶ 28 William admitted telling Katherine she should never speak to him and addressing an envelope to Katherine as "child bearer of my four children." Further, William cut out a picture of Katherine, wrote the word "slut" across the picture, and enclosed the picture in an envelope he gave to Katherine. William denied he wrote checks to Katherine as "Katherine Shit," suggesting he simply used a different style of handwriting when he wrote her name.

¶ 29 William admitted drinking alcohol throughout the marriage. He drinks approximately three times per week, consuming three to four beers. He works as a bartender approximately 14 hours per month. William was arrested for DUI in 1998 or 1999. A jury found William not guilty. William testified he was arrested for DUI again in July 2010. He pled guilty and was sentenced to 18 months of supervision. As a condition of his supervision, William was not to consume alcohol, but he admitted he continued to drink. William admitted that Katherine asked him to stop drinking because it was affecting the family but he advised Katherine that if he stopped drinking for her, he would hate her every day of his life.

¶ 30 Susan Anderson and Catherine Ezard both testified that they are William's sisters. They reported multiple occasions where Katherine telephoned them stating she was in her garage drinking and smoking. Susan and Catherine characterized Katherine's speech over the telephone as slurred and nonsensical. Susan and Catherine testified that Katherine did not allow them to change the children's diapers, get them drinks, or take them from their carseats.

¶ 31 Lenik testified that she was appointed as a limited guardian *ad litem* in the present case. Lenik is an attorney with experience in family and criminal law, including cases involving juvenile abuse and neglect, and sexually violent persons. Lenik spoke with Kling, who opined she did not see any signs of sexual abuse in the children. According to Lenik, Katherine exhibited a level of hatred for William that "went beyond what one normally sees in these cases." As a result, Lenik did not think Katherine would be able to facilitate a relationship between William and the children.

¶ 32 Timothy Evans testified that he has known William since elementary school and is a friend. Timothy observed Katherine call William a "dumbass" in front of the children, and

the children joined Katherine in referring to William as a "dumbass." Timothy testified he visited William and Katherine in their home approximately once a month and they drank alcohol. He last observed Katherine intoxicated in approximately 2010.

¶ 33 William E. Sheridan testified he is William's father. William moved to his parents' home in approximately July 2011. William's children visit on Wednesdays and every other weekend. There are three bedrooms upstairs, one for the girls, one for the boys, and a bedroom for William. According to William E. Sheridan, the children enjoy spending time with their father. William E. Sheridan testified he observed Katherine become angry, "yelling and screaming," when he and William were using a stump grinder in the yard and later, when William could not find Samuel's pacifier.

¶ 34 Joan Sheridan testified she is William's mother. She works as a registered nurse, on an as needed basis. She testified that the children always seem happy to see their father and spend time with him. William has lived in his parents' home since July 2011. He prepares the children's meals, cleans their space in the home, and does the children's laundry. Joan offered to babysit for the children many times but Katherine ignored her offers. William and Katherine spent most holidays with Katherine's family. Joan suggested to Katherine that the families alternate holidays but Katherine refused as her grandmothers were elderly.

¶ 35 Kelli Kroppman testified that she is a friend of William's family. In the fall of 2011, she accompanied William to the marital home for William to pick up some of his things. One of the children answered the door, and Katherine shut the door without speaking to William. William knocked on the door a second time, a child answered the door, and Katherine shut the door, again without speaking to William.

¶ 36 On April 17, 2013, the trial court issued a detailed, 25-page written order, awarding sole custody of the minor children to William. The court characterized its decision as "excruciatingly difficult," stating Katherine "obviously loves her children and has devoted a large part of her life to these children." The court explained its decision, stating, in part:

"The Court believes that Respondent also loves the children and has also been very active in the children's lives. He also has substantial family support and the ability to be flexible in time spent with the children in light of his position as a school teacher. Most importantly, the Court seriously believes that if Respondent is not awarded custody and if Petitioner is allowed to make all important life decisions, this father will have a difficult time ever maintaining a decent continuing relationship with these children. The Petitioner has made it painfully obvious to the Court the extent she would go, both by her words, her actions, and her medieval philosophy regarding the role of the father in these children's lives, to limit the father's involvement with these children and downgrade the father's status with the children."

¶ 37 This appeal followed.

¶ 38 II. ANALYSIS

¶ 39 Katherine argues the decision of the trial court to award William sole custody of the children was against the manifest weight of the evidence. We disagree.

¶ 40 "In cases regarding custody, a strong presumption favors the result reached by the

trial court." *In re Marriage of Seitzinger*, 333 Ill. App. 3d 103, 108, 775 N.E.2d 282, 286 (2002). The trial court's best-interest findings are entitled to great deference because it is in a better position than a reviewing court "to observe the temperaments and personalities of the parties and assess the credibility of witnesses." *In re Marriage of Stopher*, 328 Ill. App. 3d 1037, 1041, 767 N.E.2d 925, 928 (2002). "A reviewing court will not overturn a trial court's custody determination unless it is against the manifest weight of the evidence, is manifestly unjust, or results from a clear abuse of discretion." *Stopher*, 328 Ill. App. 3d at 1041, 767 N.E.2d at 929. A trial court abuses its discretion only when it "acted arbitrarily without conscientious judgment or, in view of all the circumstances, exceeded the bounds of reason and ignored recognized principles of law so that substantial injustice resulted." *In re Marriage of Marsh*, 343 Ill. App. 3d 1235, 1240, 799 N.E.2d 1037, 1041 (2003) (quoting *In re Marriage of Suriano*, 324 Ill. App. 3d 839, 846, 756 N.E.2d 382, 388 (2001)). "Findings are against the manifest weight of the evidence when the correctness of an opposite finding is clearly evident." *Marsh*, 343 Ill. App. 3d at 1241, 799 N.E.2d at 1042. Thus, we will affirm the trial court if there is any basis to support the court's judgment. *In re Marriage of Divelbiss*, 308 Ill. App. 3d 198, 207, 719 N.E.2d 375, 381 (1999).

¶ 41 In deciding custody of minor children, a trial court is to consider the best interests of the children. 750 ILCS 5/602(a) (West 2010). Section 602(a) of the Dissolution Act provides the following factors a court must consider in its custody determination:

- "(1) the wishes of the child's parent or parents as to his custody;
- (2) the wishes of the child ***;
- (3) the interaction and interrelationship of the child with his

parent or parents, his siblings[,] and any other person who may significantly affect the child's best interest;

(4) the child's adjustment to his home, school[,] and community;

(5) the mental and physical health of all individuals involved;

(6) the physical violence or threat of physical violence by the child's potential custodian, whether directed against the child or directed against another person;

(7) the occurrence of ongoing or repeated abuse as defined in Section 103 of the Illinois Domestic Violence Act of 1986, 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;

(9) whether one of the parents is a sex offender; and

(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).

facilitate a relationship between Katherine and the children. Specifically, Katherine argues the court should have focused more on William's behavior and attitude in determining "the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and child." 750 ILCS 5/602(a)(8) (West 2010).

¶ 43 In ordering that sole custody of the children be awarded to William, the trial court placed significant emphasis on the eighth best interest factor contained in section 602(a): "the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and child." 750 ILCS 5/602(a)(8) (West 2010). The court first detailed multiple acts of name-calling, inappropriate gesturing, and property damage by William against Katherine and her parents. Although the court expressed concern, it characterized William's behavior as juvenile and "not dissimilar to the usual bickering and hostility that this Court frequently sees when a marriage breaks down." Of much greater concern to the court were Katherine's (1) acts "in keeping the children away from [William] and his family" and (2) "ideas and beliefs about [William] and his proper role as father of her children." Specifically, the court noted Katherine (1) misused the Illinois Domestic Violence Act of 1986 (Domestic Violence Act) (750 ILCS 60/101 to 305 (West 2010)) to deny William visitation; (2) alleged William sexually abused the children, resulting in restricted visitation; (3) pursued additional counseling for Penelope and Sophia with Osgood after Kling attributed the girls' concerning behaviors to the changes they were experiencing in their family life, and not sexual abuse; (4) believed that William had sexually abused Penelope and Sophia; (5) held various "medieval attitudes or beliefs" concerning parental roles; (6) sent multiple e-mails to William demonstrating her unwavering desire to control the children and also, William's visitation with the children; (7)

limited the time the children spent with William's family; (8) displayed an abnormal level of hatred for William; and (9) made comments to William that evinced "her disdain for his role as a father."

¶ 44 In essence, Katherine's argument before this court is a request to reweigh the evidence, which we cannot do. *In re Marriage of Pfeiffer*, 237 Ill. App. 3d 510, 513, 604 N.E.2d 1069, 1071 (1992). Our review does not involve reweighing the evidence to reach a different result. In this case, the trial court expressed concerns about both William's and Katherine's willingness to facilitate a relationship between the other parent and the children. The court detailed multiple specific acts by each parent, characterizing William's behavior as not unlike "the usual bickering and hostility" seen by the court in divorce proceedings. However, Katherine's behavior evoked "much more substantial" concerns by the court, as Katherine affirmatively sought to restrict or terminate William's visitation with the children. Thus, we find the evidence was sufficient to support the trial court's finding that this factor strongly weighed in favor of William.

¶ 45 In a related argument, Katherine asserts the trial court erred in finding her unwilling to facilitate a relationship between William and the children. In support of her claim, Katherine argues she (1) did not misuse the Domestic Violence Act to deny William visitation, (2) voluntarily agreed to week-to-week visitation in the summer, (3) sought to expand William's visitation, and (4) had the children call William every day and twice a day on holidays.

¶ 46 We first address Katherine's argument that she did not misuse the Domestic Violence Act to deny William visitation. The primary purpose of the Domestic Violence Act is to aid victims of domestic violence and to prevent further violence. 750 ILCS 60/102 (West

2010); *Wilson v. Jackson*, 312 Ill. App. 3d 1156, 1163, 728 N.E.2d 832, 838 (2000). Obtaining an order of protection is not the proper procedure for resolving child custody or visitation issues. Those issues should be resolved under the Dissolution Act. *Wilson*, 312 Ill. App. 3d at 1164, 728 N.E.2d at 838-39 (citing *In re Marriage of Gordon*, 233 Ill. App. 3d 617, 648, 599 N.E.2d 1151, 1172 (1992)).

¶ 47 In *Wilson*, the Third District Appellate Court found the petitioner's primary purpose in seeking an order of protection was to obtain visitation and custody of his child rather than to prevent abuse. The appellate court vacated the order of protection granted by the trial court due to the petitioner's misuse of the Domestic Violence Act, as well as insufficient evidence of abuse. *Wilson*, 312 Ill. App. 3d at 1164-65, 728 N.E.2d at 839.

¶ 48 In this case, Katherine filed a petition for an emergency order of protection against William (case No. 11-OP-361) on July 25, 2011, approximately one week after William moved from the marital residence. Katherine attached to the petition six pages detailing alleged acts committed by William from April 2010 to July 24, 2011. For example, Katherine alleged William (1) used "a sickenly [*sic*] sweet tone of voice," (2) slammed a sliding glass door, causing the door to fall onto the deck, and (3) asked her father not to mow the parties' lawn. Katherine requested William be denied visitation with the children because of his alleged abusive and harassing behaviors. The trial court denied Katherine's request for an emergency order of protection and set the plenary order of protection hearing for August 15, 2011. On August 15, 2011, the court granted Katherine's motion to withdraw her request for an order of protection against William.

¶ 49 Next, with William's emergency motion seeking temporary custody or visitation

set for hearing on December 20, 2011, Katherine filed a second petition for an emergency order of protection against William (case No. 11-OP-613) on December 13, 2011. Katherine detailed alleged acts committed by William from August 22, 2011, to December 13, 2011, including he (1) was an alcoholic, (2) sent Katherine's mother a birthday card, and (3) "threatened that he could break in to the house any time he wanted to." Katherine sought to reserve the issue of William's visitation with the children until further hearing. The trial court again denied Katherine's request for an emergency order of protection and set the plenary order of protection hearing for January 3, 2012. On December 20, 2011, the trial entered an agreed order (1) granting Katherine temporary custody of the children and (2) providing William supervised overnight visitation with the children. Katherine agreed to withdraw her request for an order of protection against William.

¶ 50 Based on this record, we conclude the trial court's finding of an "obvious misuse of the Domestic Violence Act" by Katherine to deny William visitation was not against the manifest weight of the evidence. The court found Katherine's primary purpose in seeking two orders of protection against William was to secure temporary custody of the children and deny William visitation, rather than to prevent abuse. The court noted Katherine's use of the Domestic Violence Act "to gain an advantage in the D case" and further, "[b]oth order of protection proceedings were dismissed without any emergency or plenary orders being entered." The Domestic Violence Act is not the appropriate vehicle for resolving child custody or visitation issues. The court's finding that Katherine misused the Domestic Violence Act for the purpose of attempting to deny William visitation was not against the manifest weight of the evidence.

¶ 51 The remainder of Katherine's argument is yet another request for this court to

reweigh the evidence, which we cannot do. In further support of her claim that the trial court erred in finding her unwilling to facilitate a relationship between William and the children, Katherine argues she (1) voluntarily agreed to week-to-week visitation in the summer, (2) sought to expand William's visitation, and (3) had the children call William every day and twice a day on holidays. The factors Katherine argues are just a few of the many the trial court had to consider. "It is not the function of this court to reweigh the evidence or assess the credibility of testimony and set aside the trial court's determination merely because a different conclusion could have been drawn from the evidence." *Pfeiffer*, 237 Ill. App. 3d at 513, 604 N.E.2d at 1071. We find the evidence was sufficient to support the court's finding that the eighth best interest factor strongly weighed in favor of William.

¶ 52 Katherine next argues the trial court erred in refusing to consider Dr. Osgood's report as a basis for Katherine's conduct in seeking restrictive visitation of the children. We find no error where the court clearly understood and considered Katherine's argument that she filed her emergency motion for restrictive visitation based on Dr. Osgood's report.

¶ 53 Katherine first referenced Dr. Osgood's report in her motion filed on December 19, 2011. Katherine stated she received a report from Dr. Osgood on December 16, 2011, in which Dr. Osgood opined that "having overnight visitation of the children would seriously endanger the best interest and health of the children based upon the Respondent's continued alcoholism and potential risk of sexual abuse due to the Respondent's blurring of role boundaries with Sophia and Penny."

¶ 54 Over William's objection, the trial court allowed Katherine to testify at trial regarding the concerning behaviors she observed in Penelope and Sophia "for the limited purpose

of showing concerns on her part and why she acted the way she did" in filing the emergency motion for restricted visitation. However, the court did not allow Katherine's counsel to read from Dr. Osgood's report as he questioned Katherine. Katherine's counsel made an offer of proof, reading statements made by Dr. Osgood in her report.

¶ 55 Katherine argues the court's refusal to allow Katherine to testify as to Dr. Osgood's recommendations and findings was error as the testimony would substantiate Katherine's actions in seeking restrictive visitation. In fact, the record contains multiple references to Dr. Osgood's recommendations and findings.

¶ 56 As discussed above, the trial court had before it Katherine's emergency motion for restricted visitation in which Katherine stated Dr. Osgood's opinion that "having overnight visitation of the children would seriously endanger the best interest and health of the children based upon the Respondent's continued alcoholism and potential risk of sexual abuse due to the Respondent's blurring of role boundaries with Sophia and Penny."

¶ 57 Further, the limited guardian *ad litem* discussed Dr. Osgood's report in her report filed on May 30, 2012. After Joanna Kling attributed the concerning behaviors to the changes the girls were experiencing in their family life, and not sexual abuse, Katherine sought counseling with Dr. Osgood. Dr. Osgood diagnosed " 'serious endangerment' " by William. Lenik stressed that "[a]t no time *** did anyone say he committed any outright acts of sex abuse, but Dr. Osgood believed that the acts described created a blurring of roles and boundaries, and could *lead* to sexual abuse." (Emphasis in original.) Lenik went on to characterize the "behavior changes" Katherine observed in Sophia as "of legitimate importance."

¶ 58 Further, the following colloquy occurred between Katherine's counsel and Lenik

at trial:

"MR. MARTINKUS [(Katherine's attorney)]: I'm going to hand you what's been marked as Petitioner's exhibit 10, which is a copy of Judy Osgood's report that I think is what you've referred to earlier. Correct?

MS. LENIK: Yes.

MR. MARTINKUS: That's something you've seen and looked at when you arrived at your conclusions. True?

MS. LENIK: Yes.

MR. MARTINKUS: Could you turn to page 2, please.

MS. LENIK: Sure.

MR. MARTINKUS: Do you see that section that says, assessment results?

MS. LENIK: Yes.

MR. MARTINKUS: The fourth line down –

MS. LENIK: – yes –

MR. MARTINKUS: – do you see the word, the – sentence, "both Sophia and Penny disclosed incidents with their father, indicative of inappropriate physical and sexual boundaries with their father.

MS. LENIK: Yes.

MR. MARTINKUS: You don't fault my client, do you, for

investigating this particular issue, do you?

MS. LENIK: I don't fault her for investigating it. I — the fault that I give has to do with her jumping to the conclusion without it being — without saying, why are they doing these things, jumping to the conclusion that they must be doing these things because he did something to them.

MR. MARTINKUS: Well, do you have the report still in front of you?

MS. LENIK: Yes.

MR. MARTINKUS: Can you look toward page 6, recommendations.

MS. LENIK: Yes.

MR. MARTINKUS: These aren't her jumping to conclusions. The recommendations of Dr. Osgood are 'due to concerns surrounding risk of sexual abuse, along with alcoholism with father, Tim Sheridan, it is strongly recommended that the children are protected with the following visitation restrictions. It is strongly recommended that overnight visitation is precluded with Tim Sheridan and his four children?'

MS. LENIK: Yes.

MR. MARTINKUS: And you don't blame my client for trying to follow her recommendations, do you?

MS. LENIK: No.

MR. MARTINKUS: And, 'Tim Sheridan does not bathe the

children or change their clothes during visits.' Once again, you're not faulting my client for trying to comport with these recommendations. Right?

MS. LENIK: No.

MR. MARTINKUS: And 'Tim Sheridan agrees to refrain from alcohol at all times while the children are in his care.' Again, you don't have any fault with my client for trying, to in fact, impose that, do you?

MS. LENIK: No. I think they should do that anyway."

¶ 59 In its written order awarding sole custody of the children to William, the trial court expressed concern as to "the extent that Petitioner went to avoid giving Respondent standard visitation during the period when it was obvious to the Court that she would certainly be awarded temporary custody." The court detailed the evidence presented, including the findings and recommendations by Dr. Osgood, stating:

"Aside from the two withdrawn orders of protection, the Petitioner first took the children to Joanna Kling for counseling shortly after the parties separated because of her suspicions of sexual abuse by Respondent. The children were seen by Ms. Kling from July of 2011 until November of 2011. Once she discovered that Ms. Kling would not make a finding of sexual abuse, she then in November of 2011 took the children to Dr. Osgood. Each girl had 7 visits with Dr. Osgood. The Petitioner received Dr. Osgood's written

report on December 15, 2011. It is interesting to note that Dr. Osgood did not make a finding of sexual abuse of the girls by Respondent. She only found that the girls were [at] 'a risk of sexual abuse and a risk of harm with their father [because of] his apparent engagement in inappropriate, blurred boundaries with his daughters ***.' She strongly recommended that the father not have overnight visitation and not be allowed to bathe or change the children's clothes during visits. The Respondent was then forced to obtain a report from Dr. Appleton in Springfield that was highly critical of Dr. Osgood's report."

The court summarized its concern in this regard as "mainly related to taking the children to another counselor when the original counselor, Ms. Kling, did not give the Petitioner the opinion she wanted in her attempt to restrict Respondent's visitation." Contrary to Katherine's argument, the record clearly shows the trial court considered Dr. Osgood's report as a basis for Katherine's conduct in seeking restrictive visitation of the children. The court found Katherine affirmatively sought a report that would have the effect of restricting William's visitation with the children. Therefore, we reject Katherine's contention that the court failed to consider Dr. Osgood's report as the catalyst for Katherine's filing of an emergency motion for restricted visitation.

¶ 60 Katherine next argues the trial court erred in permitting the guardian *ad litem* to offer opinion testimony regarding the alleged sexual abuse of Penelope and Sophia and Katherine's mental health. Because the parties agree that the opinion testimony regarding sexual abuse was irrelevant, we do not address that portion of the issue further.

¶ 61 Section 506(a)(2) of the Dissolution Act authorizes a trial court to appoint a guardian *ad litem* in custody proceedings, stating:

"The guardian *ad litem* shall testify or submit a written report to the court regarding his or her recommendations in accordance with the best interest of the child. The report shall be made available to all parties. The guardian *ad litem* may be called as a witness for purposes of cross-examination regarding the guardian *ad litem*'s report or recommendations. The guardian *ad litem* shall investigate the facts of the case and interview the child and the parties." 750 ILCS 5/506(a)(2) (West 2010).

Lenik filed her written report on May 30, 2012, in part expressing concern regarding Katherine's mental health, stating:

"I am not a psychologist, of course; and cannot diagnose a mental illness or personality disorder. But the lengths that she is going to alienate the children from their father and his family seem symptomatic of something beyond just the normal hostility between divorcing couples.

After describing the behavior changes she saw in the child Sophi[a] (which were of legitimate importance), the first thing she thought of to describe her husband's 'hatred' was that after visits he puts the children's things by the garbage can instead of by the door — when I questioned the meaning of this, she said it's the

'symbolism' and it's an 'intentional act.'

This paranoia was also indicated by her saying that his coming into her house and opening the blinds was a subtle threat — I can see there being legitimate concerns if notes were left or if he waited, but merely opening the blinds seems completely innocuous.

There was nothing similar about the father so I feel this factor favors him."

¶ 62 At trial, Lenik testified regarding her report filed on May 30, 2012, and her recommendations. Lenik reiterated her concerns regarding Katherine's mental health, referencing the remarks Katherine made to Lenik which Lenik characterized as "paranoia."

¶ 63 In its written order, the trial court also expressed concern regarding Katherine's mental health. However, the court noted "no professional testimony was presented" and, therefore, "the Court did not strongly consider as a factor in its custody decision its concerns in this regard." The court found the fifth statutory factor (750 ILCS 5/602(a)(5) (West 2010)), only slightly favored William.

¶ 64 We do not find Katherine's argument persuasive. Section 506(a)(2) of the Dissolution Act required Lenik to testify or submit a written report to the court regarding her recommendations in accordance with the best interest of the children. Further, section 506(a)(2) provides for a party to call the guardian *ad litem* as a witness "for purposes of cross-examination regarding the guardian *ad litem's* report or recommendations." 750 ILCS 5/506(a)(2) (West 2010). In this case, William called Lenik as a witness and Katherine was provided the

opportunity to cross-examine Lenik regarding her report and recommendations. Lenik testified regarding the contents of her report, as provided for by section 506(a)(2) of the Dissolution Act. Thus, the trial court did not err in permitting the guardian *ad litem* to testify regarding the contents of her report, as provided for by section 506(a)(2) of the Dissolution Act.

¶ 65 Katherine next argues the trial court erred in failing to assess the situation from the perspective of the children. Katherine characterizes the court's decision as "fundamentally wrong" and, in support of her argument, details William's bad behavior.

¶ 66 Katherine argues the trial court should have awarded her custody of the children because she had been the primary caretaker and the children had lived with her since the parties' separation. She claims that in the interests of stability and continuity, custody of the children would be better with her. She relies upon the "absence of change" definition of stability as a basis for her argument. See *In re Marriage of Wycoff*, 266 Ill. App. 3d 408, 410, 639 N.E.2d 897, 900 (1994)) (" 'Stability' is also used in the sense of continuity, the absence of change.") Indeed, many child-development experts believe interrupting a child's bonded, loving, and continuous relationship with one parent permanently harms the child. *Wycoff*, 266 Ill. App. 3d at 410, 639 N.E.2d at 900. However, there is another definition of "stability." "Some decisions suggest that 'stability' is achieved when a child is moved from a home where there is turmoil to one where there is quiet." *Wycoff*, 266 Ill. App.3d at 410, 639 N.E.2d at 900.

¶ 67 Here, although the trial court acknowledged a potentially difficult transition for the children lay ahead, it also noted its concern regarding Katherine's conduct, stating:

"Most importantly, the Court seriously believes that if Respondent is not awarded custody and if Petitioner is allowed to make all

important life decisions, this father will have a difficult time ever maintaining a decent continuing relationship with these children.

The Petitioner has made it painfully obvious to the Court the extent she would go, both by her words, her actions, and her medieval philosophy regarding the role of the father in these children's lives, to limit the father's involvement with these children and downgrade the father's status with the children."

¶ 68 Our review concerns whether the trial court's decision to grant sole custody to William was in the children's best interest. Ultimately, we conclude that the trial court's decision to award sole custody of the children to William is not against the manifest weight of the evidence. See *In re Marriage of Debra N. and Michael S.*, 2013 IL App (1st) 122145, ¶ 56 ("Where, as here, the record supports the circuit court's finding that the custodial parent has made attempts to thwart the noncustodial parent's efforts to visit and maintain a close relationship with the child, the court's decision to modify the custody arrangement and transfer custody of the child to the noncustodial parent is not against the manifest weight of the evidence."). The court heard the testimony and viewed the evidence, issuing a very detailed order. The court properly considered the enumerated factors in section 602(a) of the Dissolution Act as well as other relevant factors. The court found both William and Katherine sincerely love their children and sought sole custody of the children. The court had to decide who should receive sole custody considering the parties could not work together. Indeed, this is one of the most challenging tasks a trial court faces. And since it is the trial court that has had the opportunity to hear the testimony firsthand, to observe the demeanor of the witnesses and assess their credibility, we are

obliged to give its custody decision significant deference. We cannot say the court's decision to award sole custody of the children to William was against the manifest weight of the evidence. Accordingly, we reject Katherine's argument to the contrary.

¶ 69

III. CONCLUSION

¶ 70

For the reasons stated, we affirm the trial court's judgment.

¶ 71

Affirmed.