



parties were never married. In November 2002, the parties entered into a joint parenting and visitation agreement whereby the parties had joint legal custody of the children and Sara had primary physical custody. The agreement was approved by the court.

¶ 5 On April 19, 2006, Michael Sr. petitioned to modify custody. On November 2, 2007, the court denied his petition to terminate joint custody and to change the children's primary physical custodian.

¶ 6 On December 5, 2011, Michael Sr. requested an emergency order of protection for Michael Jr. and Nicholas against Sara. In the petition, Michael Sr. described the events that led to the request for the order of protection. He alleged that on December 1, 2011, the boys came home from school. Nicholas and his mother got into an argument about his bicycle. Sara hit Nicholas twice with a belt, once on the left shoulder and once on the left knee. Nicholas then grabbed Sara and told her to "get away from him." Sara hit Nicholas 10 to 15 times across the face with an open hand, then squeezed his face until it hurt. Nicholas then had to stand against the kitchen wall for one hour. The next day Nicholas went to school and told another student about the incident. A teacher overheard and took Nicholas to the office to speak with the teacher, the principal, and the school social worker. The school called Michael Sr. and asked him to pick Nicholas up because they would not allow him to go home with Sara. Michael Sr. then received a call from the Department of Children and Family Services (the Department) requesting to meet with the boys. On December 3, 2011, the boys were interviewed by someone from the Department, and Michael Sr. was "strongly advised that a[n]order of protection be put in place" until the matter was settled or a custody hearing took place. The Department employee told him that Sara's "radical behavior" put the boys' safety and well-being at risk. On December 5,

2011, Michael Sr. filed the petition for an emergency order of protection.

¶ 7 On December 15, 2011, Michael Sr. filed a petition for temporary relief requesting temporary care, custody, control, and education of the minor children. The same day, Michael Sr. filed a petition for modification of child custody. He alleged that it was in the best interests of the minor children for him to have sole legal custody and primary physical custody. On December 22, 2011, the trial court entered a temporary order of protection ordering Sara to stay at least 300 feet from the children except during supervised visitation. The order expired on January 27, 2012.

¶ 8 On January 27, 2012, the trial court awarded temporary custody of the minor children to Michael Sr. The court dismissed the order of protection. Sara was granted visitation. The court set the case for a telephone status case management conference. A guardian *ad litem* was appointed.

¶ 9 On July 30, 2012, the guardian *ad litem* filed her report. She met with the minor boys at Michael Sr.'s home in Trenton. Both boys individually and separately told her that they wanted to move to their father's home and attend school in the Wesclin school district. She reported that the boys appeared comfortable in Michael Sr.'s home and that the home was more than appropriate to meet their needs. The guardian *ad litem* also visited the boys at Sara's house. She noted that Sara moved to the house in Highland in 2011 from Breese following her breakup with her boyfriend. She noted that the breakup of that relationship, caused primarily because of his drinking, was a major reason for relocating. The guardian *ad litem* found Sara's home to be appropriate. The boys again expressed a desire to live with Michael Sr. in Trenton.

¶ 10 The guardian *ad litem* wrote in her report that the boys stated that Sara had been paying more attention to them since the December 2011 incident that was

investigated by the Department. Sara told the guardian *ad litem* that she hit Nicholas across the face with an open hand one time because he would not follow her orders. Nicholas claimed that she hit him numerous times and yelled at him. The guardian *ad litem* noted that Sara and Nicholas gave "completely different" reports.

¶ 11 The guardian *ad litem* stated that, in her opinion, the parents do not have the ability to make major decisions jointly and that their communication had broken down even further after the December 2011 incident. She noted that Sara quit her job of six years as a day shift nurse and began working for a company that provided temporary nurses for different medical providers. Since she changed jobs, Sara worked 12-hour night shifts. The guardian *ad litem* recommended that, in the best interests of the boys, primary physical custody be given to Michael with flexible and liberal visitation to Sara.

¶ 12 On July 30, 2012, the court conducted a hearing on Michael Sr.'s petition for modification of child custody. Michael Sr. testified that after Nicholas moved to Highland it took him a while to adapt. He stated that Nicholas had a hard time adjusting to the school in Highland. When he first started there he complained to Michael Sr. that the other students were making fun of him and were not nice.

¶ 13 Michael Sr. testified that the family of his wife, Angela, lives in Trenton. He stated that the boys saw Angela's nieces and nephews "all the time." He stated that the boys were excited to go to the Wesclin school district. He said that this would be the first time they went to school with relatives, and it would help ease the transition. Angela testified that the boys interact with her nieces and nephews almost every day.

¶ 14 Michael Sr. testified that Nicholas has had some behavioral problems. He stated that the best way to address these issues was to let him know that he had

parental support and then explain to him how he is supposed to act. Angela described Nicholas's behavior as that of a child screaming for attention, be it positive or negative attention. She stated that she felt the best way to deal with his problems was to give him the attention he needed. She stated that they tried "[t]o teach him how to go through life in a positive manner knowing that there's going to be letdowns but it's like you have to have some goals and aspirations set for him."

¶ 15 Michael Sr. testified that Michael Jr. is a very good student, is a laid back child, is very attentive in school, and loves band. Angela testified that Michael Jr. was a great child. She stated that he "is very very laid back."

¶ 16 Michael Sr. testified that the children have a good relationship with Angela. He stated that the boys look up to her. He stated that Angela loved the boys. Michael testified that he and Angela have a son and that Angela never gave preferential treatment to her biological son.

¶ 17 Michael Sr. testified that as a father, he is an active participant in his boys' lives. He explained that they hunt and fish together, that he helped coach Nicholas's baseball team the previous summer, and that he planned to help with his soccer team in the fall.

¶ 18 Michael Sr. testified that Sara initially set up counseling for Nicholas and he was resistant to it. He admitted that part of his resistance was that "it makes a parent feel like they're not doing something right when they can't help their kids the way you need to." He stated that after Nicholas started counseling his behavior improved and that he realized it had been a mistake not to agree to it earlier. Michael Sr. testified that Nicholas had temporarily stopped counseling at his doctor's suggestion.

¶ 19 Michael Sr. testified that Nicholas did not have anger management problems in his home. He stated that he taught the boys to act with integrity and to treat people

with respect. He testified that Nicholas did need counseling for some of his behaviors, but that his behavior drastically improved once he began living with Michael Sr. Michael Sr. characterized how he disciplined the children as setting consequences for doing something wrong. He stated that he tried to "grab their attention in a way without being physical or—or mentally overstressed to them." He stated that taking away their electronics was an effective consequence.

¶ 20 Sara testified that Michael Jr. and Nicholas lived with her until December 2011. She testified that when Michael Jr. was in sixth grade his grades began to lag. She suggested that he go to The Learning Center, but Michael Sr. objected, saying that the boy was just lazy and needed someone to light "a fire under his butt." Eventually Michael Jr. completed a program at the Center, his grades improved, and he did not require as much time to complete his homework. Sara stated that she never really had behavior issues with Michael Jr.

¶ 21 Sara testified that Nicholas was a bright young man, but had always been hyperactive. She stated that Nicholas has had disciplinary problems for a while and had issues at both Breese and Highland schools. Sara testified that the disciplinary problems manifest themselves in physical activities and semiviolent types of behavior.

¶ 22 Sara testified that Michael Sr. allowed the boys to play M-rated video games. She stated that she was concerned about this because after researching M-rated video games and speaking to Nicholas's counselor about them, she learned that this type of game made children somewhat immune to violent behaviors. She said she spoke to Michael Sr. about prohibiting Nicholas from playing the games, but he did not take it seriously. He denied ever discussing it with Sara. Sara testified that the video games are especially harmful to Nicholas because of his anger issues and his inability

to adapt to situations. She said that he can be explosive, that he tears things up, throws things, and once pulled a knife on his brother during a disagreement.

¶ 23 Sara testified that there was a recent incident where Nicholas bullied another boy. She stated that Nicholas and a friend pelted the boy with rocks. The boy threw a stick back and ran home. Nicholas chased the boy, tackled him, and the boys got into a fight. Sara took Nicholas to speak with an eyewitness. Nicholas claimed the witness was lying. Later a police officer stopped by their house and spoke to Nicholas. He admitted his involvement in the incident. Sara said that she spoke to Michael Sr. about the incident and that his concern was that Nicholas would have a reputation in Highland with the police department over normal boy behavior that had been blown out of proportion.

¶ 24 Sara testified that she went to see Dr. Ross Green speak and was currently reading his book. Based on what she had learned from the book she had been trying different techniques with Nicholas. Because he has a hard time transitioning, she sometimes gives him time to himself to calm down and readjust. For example, when he raises his voice to her she has him go to his room to calm down and allows him to come out when he is ready to talk. If he is being loud and discourteous, she does not acknowledge his behavior.

¶ 25 Sara testified that Michael Jr. told her he wants to live with his father because "they get to do more there." She stated that Nicholas threatened her that he was going to go live with his father and that he plays the parents off each other. Sara admitted that Michael Sr. is a great father. However, she asserted that Michael Sr. encouraged Nicholas to act disrespectfully toward her in her home. Sara stated that she does not believe it is in the best interests of the boys to live with Michael Sr. "because when the big things come about, when they really need help with something, Mike is always

hesitant, unwilling really to participate initially. And then when we continue and argue about it then they still go, then he sees later that maybe that wasn't so bad, you know, such as with the learning clinic." She stated that she is the best parent to push for action on the big parenting issues. She summed her philosophy up as being a parent first and a friend second even if it upsets the children.

¶ 26 Sara testified that at the time of the hearing she had left the job with the company that provided temporary nurses and was working full-time days at Christian Northeast. She stated that she works from 7 a.m. until 7 p.m. In the morning she wakes Michael Jr. up before she leaves, and the boys get ready and eat breakfast on their own. She calls them as she walks into work to be sure that "they are off and going." The boys walk to school or get a ride from one of her friends. She typically arrives home between 8 and 8:30 p.m. The boys eat supper at Michael's house on the days Sara works. He picks them up from school, and she picks them up from his house on her way home from work.

¶ 27 Michael Sr. testified that he was agreeable to having joint legal custody with Sara. He said that he felt he and Sara had the ability to make major decisions about the boys together. Sara stated that she believed that she and Michael had the ability to coparent and maintain joint legal custody even though they do not always agree. She stated that she felt that when it came to major issues such as counseling and school she and Michael Sr. had the ability to work together.

¶ 28 The guardian *ad litem* testified. She explained that she has had a long history with this family as she was the guardian *ad litem* involved in the 2007 proceedings. The guardian *ad litem* expressed concerns about this case. She was concerned that Michael Sr. was initially reluctant to put Nicholas in counseling. She felt that Nicholas has done better in counseling with structure. She also had concerns about

Sara's decision to uproot her children and to change jobs to one with longer shifts.

¶ 29 The guardian *ad litem* stated that she believed that the boys are old enough to voice an opinion about where they wish to reside, but that they should not be the ultimate decision makers. She testified that she thought Michael Sr. should have primary physical custody of the boys because there are issues with Nicholas that Sara "doesn't have the control that maybe needs to be" and Michael Sr. "does have better control at his house over some things than mom does." The guardian *ad litem* felt Sara had lost control of the boys. She stated that she has never seen the parents work well together. The guardian *ad litem* testified that she did not believe they had the ability to coparent because they had different parenting philosophies.

¶ 30 The trial court took the matter under advisement. The court stressed that the decision about primary physical custody would be based on what was best for the children going forward, and that "[i]t's not punishment or a justification for having done something in the past." The court further stated that its decision would be based on the evidence and that the children would not get to decide.

¶ 31 On August 3, 2012, the court found that there had been a change in circumstances of the boys and the parents. It determined that at this point in their lives, the boys' best interest would be served by being in the primary care of Michael Sr. The court found "[t]he home situation at the father's is more structured, there is more family and friend contact, and the father appears to be better able to deal with disciplinary/conduct issues involving Nicholas than the mother."

¶ 32 The court found that the changes in the circumstances were that Sara had moved from Breese to Highland to get away from her ex-boyfriend, who had been abusive and had a drinking problem, that the boys had changed schools because of

that move, that Sara had obtained different employment, and that Nicholas had behavioral issues that resulted in a physical confrontation with Sara. In determining the best interests of the children, the court considered the wishes of the children as to their custodian, the interaction and interrelationship of the children with their parents, siblings, and other people who significantly affect the children's best interests, the children's adjustment to their home, school, and community, and the threat of physical violence. The court noted that it was impressed with the investigation and recommendations of the guardian *ad litem*.

¶ 33 The court held that the parents should continue with joint legal custody. Sara was awarded visitation. The court stated that the order was not final and appealable until a final visitation order was in place. On November 9, 2012, the court entered the supplemental joint parenting order and visitation order. Sara filed a timely notice of appeal.

¶ 34 ANALYSIS

¶ 35 Sara argues that the trial court erred by awarding temporary physical custody of the children to Michael Sr. on January 27, 2012, based solely upon a petition for modification of child custody filed December 15, 2011. "Temporary custody orders are provisional in nature and are superseded by the final decree, which disposes of the cause on the merits." *In re Marriage of Stone*, 164 Ill. App. 3d 1046, 1050 (1987). Because the January 27, 2012, temporary order was superseded by the court's final custody modification, the temporary custody issue is rendered moot.

¶ 36 Sara next argues that there was no change in circumstances, so the trial court's order dated August 3, 2012, transferring primary residential custody of the children to Michael Sr. was against the manifest weight of the evidence and an abuse of discretion. "The standard of review of custody modification judgments is the

manifest weight of the evidence." *In re Marriage of Bates*, 212 Ill. 2d 489, 515 (2004). Custody determinations are accorded great deference because the trial court is in the best position to review the evidence, to judge the credibility of the witnesses, and to determine the best interests of the children. *Id.* at 515-16.

¶ 37 Section 610(b) of the Illinois Marriage and Dissolution of Marriage Act (the Act) (750 ILCS 5/610(b) (West 2010) allows for the modification of a child custody order under certain circumstances. It provides in pertinent part:

"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 the 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." 750 ILCS 5/610(b) (West 2010).

¶ 38 "Accordingly, modification of a custody order is warranted only if there has been: (1) a change of circumstances and (2) modification is necessary to serve the best interests of the child." *In re Marriage of Debra N. & Michael S.*, 2013 IL App (1st) 122145, ¶ 47.

¶ 39 "When determining if there has been a change in circumstances, the trial court must look at the totality of the circumstances." *In re Marriage of Davis*, 341 Ill. App. 3d 356, 359 (2003). "The change in circumstances must directly affect the needs of the child." *Id.* Sometimes the differences between the needs of a small child and the needs of that same child as an adolescent are sufficient to constitute a change in circumstances. *Id.* at 360. The inherent instability of the custody agreement can also create a situation where modification is in the child's best interest, even if it is difficult

to pinpoint a change in circumstances. *Id.*

¶ 40 In the instant case, the trial court found a change in circumstances. The court stated that the changes were that Sara moved her residence from Breese to Highland in an effort to move away from her ex-boyfriend, that the boys had to change school districts because of the move, that Sara changed employment, and that Nicholas had behavioral issues that resulted in a physical confrontation with Sara. Sara's decision to move to Highland had a direct impact on the boys. The move necessitated that the boys make new friends and learn to navigate the rules and customs of a new school. Sara testified that Nicholas had trouble adapting to situations. Because of this personality trait, the move impacted Nicholas more than it might have impacted another child. Michael Sr. testified that Nicholas had difficulty adjusting to the move and to the school in Highland.

¶ 41 Sara's change of jobs impacted the boys. Her new job required her to work longer shifts. She had to leave the house at 6 a.m., just as the boys were getting up. They had to get up, prepare for school, and eat breakfast on their own. She would not return home until between 8 and 8:30 p.m. On the days she worked, Michael Sr. would pick the boys up from school and feed them supper. As a result of her job requirements, Sara was at work during most of the waking hours the boys were not in school.

¶ 42 Sara testified that Nicholas had always been a hyperactive child. As he grew older his behavior became more difficult for Sara to control. Sara stated that Nicholas had anger issues. She described situations where Nicholas had pulled a steak knife on his brother, bullied a neighbor, threw things and tore items, and got into an argument with her that culminated in her hitting Nicholas with an open hand across his face. Michael Sr. denied that Nicholas exhibited this type of behavior in his home.

The guardian *ad litem* testified that Michael had better control at his house than Sara had at her house. Nicholas's need for discipline and control changed as he grew from a small child into a preteen.

¶ 43 The trial court's decision that there had been a change in circumstances was not against the manifest weight of the evidence. The court next examined whether modification was necessary to serve the best interests of the children. Section 602(a) of the Act directs the trial court to consider the following factors in determining custody in accordance with the best interests of the children:

- "(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 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; and
- (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).

¶ 44 The court specified four factors it felt were relevant to its decision.

¶ 45 The court considered the wishes of the boys as to their custodian. Both boys stated on more than one occasion that they wished to reside with Michael Sr. Sara admitted that the boys expressed a preference to live with Michael Sr. The guardian *ad litem* wrote in her report that the boys told her when she interviewed them at Michael's house and when she interviewed them at Sara's house that they wished to live with Michael Sr. The court noted "[t]his court is not one to let minor children decide their residence based on their whim but notes the continued statement made by the boys with respect to this issue both to the court in a prior proceeding, to the parents, and to the GAL."

¶ 46 The court considered the boys' interaction and interrelationship with their parents, their siblings, and any other people who significantly affect their best interests. The court found that Michael Sr. and Angela both testified that the boys were treated well in their new family and that they interacted well with Angela and their half-sibling. Michael Sr. testified that the boys had a good relationship with Angela and that she loved them. He stated that Angela treats the boys the same as she treats her son. Michael Sr. testified that the boys interacted with Angela's family frequently and had formed bonds with her nieces and nephews. Angela stated that the boys interacted with their cousins by marriage daily.

¶ 47 The court considered the boys' adjustment to their home, school, and community. The court stated it "was of the opinion from the testimony that the boys were more connected to family, friends, and activities in Trenton than in Highland." Sara testified that she moved to Highland to get away from her ex-boyfriend. She stated that she chose Highland because Michael Sr. had relatives there and her father resides there. Sara admitted that the boys rarely see her father. Michael Sr. testified

that Nicholas had difficulty adjusting to his school in Highland. He testified that both boys were excited to attend school in the Wesclin school district and to attend school with their cousins. He stated that Angela's nieces and nephews all live in Trenton and that the boys were around them constantly. He stated that they spend time together at the pool and zoo. Angela also testified that the boys were with her nieces and nephews almost daily. Angela testified that she does not differentiate between her son and the boys and that they always do things together as a family.

¶ 48 The court also considered the threat of physical violence. The court noted the testimony about the December 2011 incident where Sara slapped Nicholas. It stated that it "doesn't necessarily believe Nicholas is in danger of being physically harmed by mother; however, the evidence suggests to the court that Nicholas's behavior would be better controlled by the father than the mother." The guardian *ad litem* testified that Michael Sr. dealt better with Nicholas's behavioral issues than Sara did. Sara testified as to numerous behavioral problems with Nicholas at her house. Michael Sr. testified that Nicholas did not have anger management problems at his house and that his behavioral issues had improved drastically since he had been living with Michael Sr.

¶ 49 The court stated that in making its decision, the overriding consideration was the best interests of the children. It stated that after having reviewed the file, the guardian *ad litem*'s report, and the evidence and exhibits offered, it felt that at this point in their lives, the boys' best interests would be served by being in the primary custody of Michael Sr. It went on to state that the home situation at Michael Sr.'s was more structured, there was more family and friend contact, and Michael Sr. was better able to deal with Nicholas's disciplinary/conduct issues. It stated "[w]hile the boys may have needed their mother more earlier now they need their father."

¶ 50 "A custody determination inevitably rests on the parties' temperaments, personalities, and capabilities, and the witnesses' demeanor." *In re Marriage of Spent*, 342 Ill. App. 3d 643, 652 (2003). Having had a superior opportunity to observe the witnesses, evaluate the evidence, and consider the needs of the boys, the trial court was in a better position than this court to determine Michael Jr.'s and Nicholas's best interests. There was a sufficient showing of changed circumstances affecting the best interests of the children to justify a change in custody. We find the record in the present case supports the trial court's findings and, therefore, its judgment was not against the manifest weight of the evidence.

¶ 51 CONCLUSION

¶ 52 For the foregoing reasons, the judgment of the circuit court of Clinton County is affirmed.

¶ 53 Affirmed.