



December 7, 2010, Forrest filed a verified petition for an emergency order of protection against John, which the circuit court granted. The order, *inter alia*, forbid John from coming near J.L. An additional emergency order of protection was entered against Allison on December 27, 2010, which forbid her from allowing any form of contact between J.L. and John. The orders of protection were subsequently extended several times and the terms were modified to, *inter alia*, allow interaction between John and J.L. between 8 a.m. and 8 p.m.

¶ 5 On February 4, 2011, Forrest filed a petition to modify custody. A hearing on the petition spanning 3 months and encompassing 11 days began on August 7, 2012, and concluded on November 15, 2012. Testimony was also presented at the hearing regarding whether plenary orders of protection should be entered. The circuit court vacated the emergency orders of protection on November 15, 2012. Although that ruling is not being challenged on appeal, we will briefly discuss the details surrounding the emergency orders of protection because those events are relevant to our review of the best-interest factors in consideration of the custody issue on appeal. Evidence and testimony at the hearing regarding the emergency orders of protection is summarized as follows.

¶ 6 There were two domestic incidents between Allison and John with police involvement, neither of which J.L. was home to witness. Officer testimony shows that no arrests were made on either occasion because there was no evidence that any crimes were committed. The first incident occurred on November 12, 2010, when Allison called 9-1-1 and reported that John was drunk and had shoved her several times. John received a black eye during the incident, but testimony was inconsistent regarding the exact cause of the injury. Police arrived and John voluntarily left so he and Allison could be separated for the night. A second incident occurred on November 24, 2010, when police were dispatched to Allison and John's residence after receiving information that John brought a loaded gun into the bedroom during an argument with Allison and chambered a round. Upon arrival, police

noted that the house was quiet and Allison and John were in separate rooms. The officer on the scene testified that John had been drinking. A loaded nine-millimeter Baretta with a chambered round was recovered from the bedroom, and John voluntarily went to the home of Allison's brother to spend the night. J.L. was at the home of Allison's parents during the incident. Accordingly, Allison went to her parents' home, where she stayed with J.L. for three days. Allison's father, Russell Lash, testified that Allison asked him to change the locks on the doors to her residence before she and J.L. returned because she was afraid that John would harm them. Allison denied this and stated that her father changed the locks by his own accord.

¶ 7 Forrest testified that Allison called him on December 6, 2010, and told him to leave work right away to pick up J.L. from her parents' home because they were refusing to allow her to take J.L. home with her. Forrest soon learned the details about the 9-1-1 calls. Accordingly, he took J.L. home with him and filed the verified petition for an order of protection against John the following day.

¶ 8 Allison testified that although she consumed alcohol a couple of times per week in 2010, she never did so in J.L.'s presence and she had not drunk anything at all since December 31, 2010. Two of her friends confirmed that they drank and became intoxicated with Allison on a regular basis, but no alcohol was ever consumed when children were present. The record shows that Allison was recently diagnosed with attention deficit hyperactivity disorder (ADHD) and began taking medication for it. As a result, she became more organized and clear, and enrolled in college. Allison reported that there had been no domestic issues between her and John since November 2010, that she was not afraid of John, and that he had no anger issues toward her or J.L. She added that John always remained in complete compliance with the order of protection.

¶ 9 John confirmed that there had been no domestic violence between him and Allison

since November 2010. He added that they had no problems in their relationship after ceasing contact with Allison's mother, that there had been no firearms in the home since November 2010, and that he had consumed no alcohol since May 2, 2011. He described his life with Allison and J.L. as great. John attended college full time in a surgical technologist program, which was almost complete by the time of the hearing. John testified that he never violated the orders of protection in any way. As mentioned above, the circuit court vacated the emergency orders of protection at the conclusion of the hearing on November 15, 2012.

¶ 10 Turning to the issue of custody, because testimony to that regard is so voluminous, rather than delineating the testimony of each individual witness, key witnesses are highlighted and testimony of others is condensed as follows. The record reflects that in 2006, Forrest was arrested and subsequently pled guilty to disorderly conduct following an altercation involving one of Allison's former boyfriends. J.L. witnessed both the altercation and the arrest. Forrest testified that he never struck Allison. However, Gary Satterlee, chief of police at the Hillsboro police department, testified that on June 25, 2006, he responded to a domestic violence call at Allison and Forrest's residence. Satterlee noted that when he arrived he observed swelling and bruising on Allison. Additional testimony shows past discord between Forrest and Allison's parents. Michelle Blackburn was retained as Allison's attorney from 2002 through 2010. Blackburn testified that Allison and her mother, Pat Lash, had concerns regarding Forrest and Allison's relationship, Forrest providing for J.L., his potential to kidnap J.L., and his physically punishing J.L. Evidence shows, however, that any past differences between Forrest and Allison's family were resolved in the interest of making J.L. the primary concern.

¶ 11 The record reflects that Allison broke all contact with her family after the emergency orders of protection were entered. Subsequently, her family only saw J.L. when Forrest arranged it during his scheduled visitation time. Allison's brother testified that he witnessed

Allison disparaging her family to J.L. He described Allison as a short-tempered, obstinate person who puts John's needs above J.L.'s. Allison's father, Russell Lash, testified that Allison and J.L. lived with him and his wife, Pat, for the first five years after J.L. was born. During that time, Russell and Pat spent extensive amounts of time caring for J.L. They prepared his meals, played ball with him, took him to various activities, helped him with his homework, and took care of him when Allison went out to socialize and when she attended college in the evenings. Multiple witnesses attested to the same. Russell testified that Pat took J.L. to school every day until the disagreements over J.L.'s well-being began and Allison no longer allowed them to see J.L.

¶ 12 Russell noted that Allison had an unstable work history, specifying that she had approximately nine jobs during the first five years of J.L.'s life and was never employed longer than three months. Russell testified that after Allison and J.L. moved out of his home, they lived in a rental home which he and Pat owned. Allison never paid rent and Russell assumed responsibility for all of the maintenance on the rental home. Russell added that Allison survived on child support and a Link card and he and Pat assisted her with utilities, car repairs, cell phone bills, and groceries. Russell reported that Allison met John in March 2010, after which she went out more while J.L. stayed with him and Pat. He stated that Allison drank alcohol "pretty frequently," including at home in J.L.'s presence, which Russell witnessed on two or three occasions. Russell opined that Forrest should have custody of J.L. because, in addition to being an excellent father, he has a good job and a stable life.

¶ 13 Allison's mother, Pat Lash, testified that Allison became pregnant with J.L. while she was in high school. Allison later attended college, which Pat and Russell paid for, but she did not receive an associate's degree as originally planned. She did, however, become licensed as a certified nursing assistant. Pat reported that she was J.L.'s primary caretaker for the first 8½ years of his life. She made sure that he had his bath, that he was fed and

clothed, and that he had everything he needed for school. She read stories to him at night, tucked him in, drove him to activities, and taught him right from wrong. Pat and Russell also paid for J.L.'s dental care which was not covered by Forrest's insurance. In addition to caring for J.L., Pat and Russell paid for J.L. to attend preschool.

¶ 14 Pat testified that she and Russell provided all of J.L.'s financial needs and Allison never gave them any child support money to contribute. Pat averred that she always wanted Allison to take more responsibility as J.L.'s mother, but Allison's primary concerns were being with her friends, drinking, and finding men. Pat testified that Allison and J.L. moved to the rental home in June or July 2006, during which time Allison drank profusely. Pat specified that there was always beer in Allison's refrigerator and she went out at least two nights per week to drink with her friends while Pat and Russell cared for J.L. By the time John Covington entered the picture, J.L.'s overnight stays at Pat and Russell's home increased to three or four nights per week.

¶ 15 Pat testified that Allison regularly used profanity in J.L.'s presence and Allison and John called Forrest names in front of J.L. Pat corroborated Russell's testimony concerning Allison's shaky employment history. She testified that in May 2009 she and Russell spent \$22,000 to convert the garage of the rental home into a beauty salon so Allison could do hair, but by summer 2010 Allison was down to approximately three clients per week. Pat recited a list of nine places where Allison had been employed, but noted that other than the salon, Allison maintained no job longer than three months. Pat testified that Allison was never able to pay her own bills or to support J.L.

¶ 16 Pat estimated that Allison had 20 or 30 boyfriends over the years, 9 of whom Pat called by name and many of whom spent the night while J.L. was home, which Pat discovered when she picked J.L. up to take him to school. Allison, in turn, denied ever having overnight guests while J.L. was present. Pat testified that she and Russell continued

taking care of J.L. until December 27, 2010, when Allison severed all ties with them. According to Pat, J.L. had always been a big part of their family and they missed him terribly. She noted that she loves Allison very much but she prefers that Forrest have custody of J.L. because he would provide a safe, stable home for him.

¶ 17 Allison's sister, Jennifer Marcolini, testified that she continued visiting Allison and J.L. after Allison broke contact with the rest of the family, up until about a year before the trial when Allison also severed ties with her. Jennifer only saw J.L. two or three times after that when Forrest brought him to her parents' house to visit. In spite of the family division, Jennifer testified that Allison is a good mother who would never do anything to harm J.L.

¶ 18 Several of Forrest's supervisors and coworkers described Forrest as dependable, respectable, mild-mannered, and easygoing. The record reflects that Forrest has a stellar work ethic and solid employment history. Multiple friends, neighbors, and family members testified about Forrest's home life with J.L. They all reported that Forrest plays with J.L., interacts positively with him, and disciplines him appropriately. They testified that the home is always clean and family-oriented, and J.L. gets along well with his stepmother, Sandra Lipe, who was described as a pleasant person. Witnesses saw J.L. as a happy, energetic, well-behaved child and Forrest as an excellent father. No problems were ever witnessed, nor any stress, arguing, or shouting among Forrest, J.L., and Sandra.

¶ 19 Four of J.L.'s teachers described J.L. as a good student and a happy, fun-loving child with a good sense of humor. None of them ever observed anything about J.L. to cause them concern. The teachers emphasized that both Forrest and Allison were actively involved in J.L.'s education. Both were parent volunteers, attended parent-teacher conferences, were involved with J.L.'s homework, and attended school functions.

¶ 20 Multiple witnesses, including friends, in-laws, and neighbors testified on behalf of Allison and John, stating that they are good parents to J.L., that they all interact very well,

that John loves J.L. like his own son, and that no fear was ever witnessed in J.L. toward John. Many witnesses stated that J.L. is a happy boy who is always clean and dressed appropriately, and Allison's home is always neat and tidy. Allison's landlord testified that the rent is always paid on time. Many denied ever seeing Allison drink alcohol. Many others had never witnessed any violence, alcohol abuse, or foul temper in John.

¶ 21 John's mother, Becky Paneck, testified that she had not witnessed any violence out of John, nor had she seen him drink alcohol. She admitted that he has a temper, but she had only seen him express it verbally. Becky had seen tremendous improvements in John's life over the past two years. She noted that he had matured, attended college, and was more relaxed than he had been in the past. She testified that Allison is a good mother and a truthful person. She added that J.L. has a good relationship with his little sister. Becky testified that she payed \$70,000 to \$80,000 in attorney fees for Allison, that she provided \$300 to \$400 per month for gasoline for John, that she had purchased groceries and baby items for them, and that she paid off their credit cards with the equity she received after selling a house. She qualified that there was an agreement that John and Allison would repay her for the attorney fees.

¶ 22 Jason Manthei testified that he is a physician's assistant employed by Gillespie Family Practice. Both Allison and J.L. are Manthei's patients. Over the years, Manthei saw J.L. approximately 10 or 15 times and had never seen anything of concern. He described J.L. as a well-adjusted, nice child, who has always seemed well-cared for. Manthei confirmed that Allison was diagnosed with ADHD in February 2012 and is taking Ritalin to treat it.

¶ 23 John Covington testified that he met Allison on April 4, 2010, moved in with her later that month, and married her on June 18, 2010. John stayed in Allison's home until the gun incident on November 24, 2010, after which the orders of protection were entered and he only stayed as the orders permitted. John recently obtained an associates degree in surgical

technology, graduated *summa cum laude*, and became employed full time at a hospital making \$14 per hour. Benefits of his job include, *inter alia*, health insurance and dental benefits. John was unemployed throughout his course of study because his externships required a minimum of 40 hours per week. Before graduating, he survived on unemployment benefits, a small stipend from educational grants, and help from his parents.

¶ 24 John denied that he ever physically disciplined J.L. He tries to be a role model, provider, and mentor for him. He described their relationship as one of a father and son. They play soccer, baseball, golf, and football and John assists with coaching J.L.'s teams. In addition, John attends parent-teacher conferences and helps J.L. with his homework. John testified that J.L. calls him dad and hugs him. John admitted that he got a DUI in 2008. He told custody evaluator Donya Adkerson that he had been a binge drinker since high school. He also conceded that he took antidepressants from December 2010 until he was diagnosed with ADHD three months before the trial and began taking Ritalin. He added that Allison had also taken antidepressants, but discontinued doing so when she became pregnant with their daughter, who was born on September 14, 2011.

¶ 25 Allison testified that she and John separated a few times between May 2010 and December 2010. She filed for divorce in August 2010 but subsequently withdrew the petition. She currently resides in a rented two-bedroom apartment in Litchfield, where J.L. attends school and is in the fifth grade. At the time of the trial, Allison was unemployed. She was attending college with one semester plus two additional years remaining to receive a bachelor's degree in criminal justice. Allison's 2009, 2010, and 2011 income tax returns were admitted into evidence. Pursuant to those, Allison testified that she earned no income in 2009, but lost \$668. Additionally, she earned no income in 2010, but John earned \$11,863 that year. In 2011, Allison earned \$10,400 for house cleaning services.

¶ 26 Allison testified that she had been on the state medical card approximately 10 years.

She, John, J.L., and her daughter were all using the medical card at the time of the trial. She testified that she was currently pregnant, with a due date of May 8, 2013. In addition, she had used a Link card for groceries since about 2006, with the exception of six or seven months. Allison testified, pursuant to an affidavit of assets and liabilities for 2011, that her total monthly household income was \$1,004, which consisted of food stamps, John's unemployment benefits, and child support from Forrest. Monthly 2011 expenses for her and J.L. alone totaled \$1,799, not counting John's expenses. Allison testified that John's mother assists them financially to make up the difference. Despite the expenses exceeding their income, bank statements were entered into evidence showing that between December 2010 and April 2011, Allison and John spent \$937 in restaurants, \$695 in department stores, and \$97 for a hotel.

¶ 27 An additional affidavit of assets and liabilities for 2012 was introduced into evidence. Pursuant to the affidavit, Allison testified that her total household income was \$2,702, which consisted of child support, food stamps, and \$1,767 of which was John's income from employment that he no longer had at the time of the trial. Allison was unemployed during that time period. The household monthly expenses for 2012 totaled \$2,991. In spite of the expenses outweighing the income, Allison testified that within the last year she and John purchased two automobiles which cost \$17,000 and \$26,000. She later testified that the second vehicle cost \$29,000. Since the last financial affidavit, John had obtained employment at a hospital earning \$14 per hour. Accordingly, Allison asserted that food stamps and the medical card would be discontinued and health insurance would be obtained through John's employer. Allison added that they no longer had any credit card debt since John's mother paid it off and that her rent, utilities, car payments, and insurance premiums were always paid on time.

¶ 28 Allison reported that J.L. is on the honor roll and has no behavior issues. She

described herself as a good mother who does everything she can for her children without trying to manipulate or control them. She testified that she and J.L. have a wonderful relationship and J.L. and his little sister love each other and play together frequently. She added that she and John have a good, faith-based marriage, and their relationship has grown and become stronger. Although Allison has no desire to have a relationship with her mother, she allows J.L. to speak to her after ball games. Other witnesses attested to the same. Moreover, Allison stated that she has no problem with Forrest allowing J.L. to go to her mother's home on his time. Allison opined that it is in J.L.'s best interest for her to have custody because he is happy, he wants to stay with her, he has lived with her his whole life, and she feels she has a stable home for him.

¶ 29 Forrest testified that he has always been an integral part of J.L.'s life, but Allison had been consistently uncooperative with that. Forrest was required to file petitions to establish paternity, to have J.L.'s last name changed, and to allow J.L. to attend his wedding in Mexico. Forrest owns a three-bedroom home in Coffeen and has resided there since 2005. He married his wife, Sandra, in April 2010 and they have a son who was nine months old at the time of the trial. J.L. and his little brother each has his own room, their back yard has a swing and a tree house, and Forrest's parents, grandmother, and great uncles live nearby. Forrest reported that J.L. gets along well with Sandra and his little brother.

¶ 30 Forrest received an associate's degree in political science in 2005, a bachelor's degree in political science with a minor in business administration in 2008, and two additional associate's degrees from the Air Force in logistics management and contracts management, and he is currently pursuing a master's degree in public administration and labor relations, with a grade point average of 3.75. He has been employed with the Illinois Department of Corrections (IDOC) for nine years and is a correctional officer where he works from 7 a.m. until 3 p.m. He lives 10 minutes from work and is home by 3:10 p.m. every day, about the

same time that J.L. would get home from school. Forrest added that he is guaranteed to continue working days. In addition to the IDOC, Forrest is employed by the Air National Guard and has been for seven years. Forrest attested to the earlier mentioned deployments, during which he did not get to visit J.L. Forrest requested that Allison allow him to make up the missed visits, but she refused.

¶ 31 Forrest testified that he is not on public assistance, but he admitted that Pat and Russell paid approximately \$14,000 of his attorney fees. He testified that he would not need child support from Allison if he were granted custody. Moreover, Forrest provides health insurance for J.L. through his employment and has always given Allison the latest insurance cards. He testified that Allison had not been cooperative in sharing J.L.'s medical information with him and legal intervention was required for him to obtain needed information from the doctors because Allison has sole custody of J.L.

¶ 32 Forrest testified that he has a good relationship with J.L. When Forrest and J.L. are together, they go to the gym where Forrest is a member and they play basketball and swim. They also ride bikes and play catch, flashlight tag, soccer, football, golf, tennis, video games, laser tag, and they go to the batting cages and to museums. Forrest testified that J.L. would be required to switch school districts if he were granted custody of him. However, he noted that all of the sports J.L. is currently involved in are also available in Coffeen where he lives. Forrest added that J.L. still has friends in Coffeen and spends time with them occasionally during his visits. Forrest opined that if he were granted custody, J.L. would have no problems reestablishing relationships with his old friends and they would all attend the same junior high school.

¶ 33 Forrest testified that he filed the petition for custody because he does not trust Allison's judgment. He stated that she has been with abusive men in the past and he expressed concerns about her parenting skills. Forrest agreed that Allison's parents cared for

J.L. extensively in the past and Forrest picked J.L. up from their house many times when he had visitation. Forrest also attested to Allison's work history and he knew of nothing that would inhibit her ability to obtain and maintain employment. Forrest confirmed that Allison had called him names numerous times in front of J.L., and she makes racial slurs and degrading comments about Mexico. He denied ever speaking negatively about Allison to J.L. because doing so would hurt J.L.

¶ 34 Forrest testified that if he were granted custody he would cooperate and give Allison extra time with J.L. and he would continue to facilitate a close relationship between J.L. and his entire family. He opined that he should be given custody because he would give J.L. more safety and stability. He testified that he and his wife, Sandra, have a loving marriage, there has never been any domestic violence between them, they have never separated, the police have never been called, no loaded guns have ever been in their home, and neither one of them abuse alcohol or drugs. He stated that he has not moved J.L. from place to place and he has not hurt J.L. by keeping him apart from other members of his family. Forrest emphasized the importance of J.L. having access to all of his family and, if granted custody, he would continue to allow Allison's family to see J.L. Forrest also pointed out that he had always provided economic stability for J.L. and would continue doing so. Education and work ethic are important in Forrest's home and he wants to instill the same values in J.L. Sandra also has a college degree and is employed at a restaurant as a service manager. Forrest emphasized that he has always cooperated with Allison in the past and always wanted what is best for J.L., not what is best for himself.

¶ 35 Dr. Helen Appleton testified that she conducted an initial child custody evaluation with the parties. Interviews with the parties and J.L. commenced on June 14, 2011, and concluded on August 20, 2011. The record reflects that a report was sent to the circuit court on August 26, 2011. Dr. Appleton testified that her initial impression favored Forrest over

Allison with regard to stability. However, Dr. Appleton submitted a subsequent addendum to the initial report which gave equal weight to both parties regarding stability, after gathering new information that Allison had remained stable in her household, in her relationship, and by abstaining from alcohol over an extended period of time. However, Dr. Appleton qualified that the addendum with regard to the factor of stability in no way altered her ultimate recommendation to the court to grant custody to Forrest, as outlined in the initial report and disclosed by Forrest's counsel during oral argument.

¶ 36 J.L. made the following statements in an *in camera* interview. He stated that he understands the difference between lying and telling the truth and he knew to speak to the judge truthfully. He is 10 years old and in the fifth grade in Litchfield. He likes school and wants to go to a good college and get a good education. He lives with his mom, his one-year-old sister, and his dog, and he visits his dad, stepmother, and seven-month-old brother in Coffeen.

¶ 37 At Allison's home, J.L. watches movies with his family, plays Nerf guns with his friends, goes bowling, bike riding, and swimming, and plays with his sister, whom he loves. He also has friends over to spend the night. J.L. stated that he gets along with John very well. While John is at Allison's house during the hours allowed by the orders of protection, he and J.L. practice sports together, play video games, and go fishing. J.L. is sad when John leaves at night because he wants him to stay. J.L. told the judge that Allison supports his sports and cooks steak, hamburgers, baked potatoes, and chicken for dinner. Family members J.L. interacts with while at Allison's include John's mother, whom he referred to as "Grandma Becky," her husband, and J.L.'s cousins from Missouri. J.L. had never seen Allison or John drink alcohol, nor had he ever witnessed any violence between them.

¶ 38 While at Forrest's home, J.L. goes swimming and to the movies and visits Pat and Russell, his three cousins, and their families. J.L. noted that his visits with Forrest interfere

with his football schedule in Litchfield and he does not participate in sports while with Forrest. J.L. stated that he does not see his stepmother or little brother very often because when he comes to visit, they are gone to visit her family and come home very late. J.L. reported that he once got very angry with his stepmother because she once told him to text John to say hello during the time the order of protection forbid such contact. According to J.L., Forrest does all of the cooking during his visits. They have pizza, chicken patties, and pizza rolls. J.L. once saw Forrest and his wife drink alcohol at his uncle's house. He had never witnessed any violence between them.

¶ 39 J.L. stated that his mom and dad both told him that he would likely be speaking to a judge, but neither told him what to say. J.L. emphasized that he does not want to live with Forrest because J.L. currently plays sports in Litchfield, he goes to church there, and he would lose all of his friends if he had to live with Forrest. He said he would be "so happy" if he gets to stay with Allison.

¶ 40 Sandra Lipe testified that she is Forrest's wife. She is employed at a restaurant and sometimes works when J.L. comes to visit. On those occasions she gets home by 9:30 p.m. However, she has three-hour breaks in the middle of her workdays, during which she goes home and visits with Forrest and J.L. When Sandra is off work and J.L. is visiting, she, Forrest, J.L., and the baby all spend time together. Sandra testified that she and J.L. have a very good relationship and that J.L. gets along well with his little brother. She averred that she and Forrest both cook J.L.'s favorites when he is there, including steak tacos, quesadillas, crepes, and grilled cheese. Sandra testified that she takes her infant son to her uncle's house once or twice per year when their family gets together, so on those occasions she does not get to see J.L. when he visits.

¶ 41 Sandra testified that she and Forrest have a good marriage. They have never been separated, have never had any domestic violence, and have never called for police

intervention. Sandra admitted that she once told J.L. to call John to say hi. Although it was when the orders of protection were in effect, Sandra testified that she was not thinking about that at the time, that she and J.L. joke back and forth frequently, and that she was only joking.

¶ 42 On January 29, 2013, the circuit court entered an order denying Forrest's petition to modify custody. Forrest filed a timely notice of appeal. Additional facts will be provided as needed in the analysis of the issues on appeal.

¶ 43 ANALYSIS

¶ 44 Forrest raises the following issues on appeal, which are restated as follows: (1) whether the circuit court erred in denying his petition to modify custody and (2) whether the circuit court erred in allowing undisclosed testimony, thereby violating the rules of discovery. "The standard of review for modification of a child custody order after a dissolution judgment becomes final is whether the modification is against the manifest weight of the evidence or constitutes an abuse of discretion." *In re Marriage of McGillicuddy*, 315 Ill. App. 3d 939, 942 (2000). "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." *In re Marriage of Ricketts*, 329 Ill. App. 3d 173, 177 (2002). "We will affirm the trial court's ruling if there is any basis to support the trial court's findings." *Id.* "The trial court's custody determination is afforded 'great deference' because the trial court is in a superior position to judge the credibility of the witnesses and determine the best interests of the child." *Id.* Moreover, in order to promote finality in custody determinations, there is a presumption in favor of the custodial parent in cases involving a petition for a modification of custody. *In re Marriage of Gargus*, 97 Ill. App. 3d 598, 606 (1981).

¶ 45 Section 610 of the Illinois Marriage and Dissolution of Marriage Act (Act) states the following, *inter alia*, regarding the modification of custody:

"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 \*\*\* that a change has occurred in the circumstances of the child or his custodian \*\*\* and that the modification is necessary to serve the best interest of the child." 750 ILCS 5/610(b) (West 2012).

¶ 46 In this case, there were changes of circumstances since the original agreed custody order was entered when Allison and John got married and issues of alcohol, domestic violence, and instability ensued. Additional changes include Allison's relocating her residence and J.L. switching school districts. Although the requirement for a change in circumstances is satisfied in this case, the test regarding custody modification is twofold, the second application being that the modification must serve J.L.'s best interests. See 750 ILCS 5/610(b) (West 2012). Section 602 of the Act enumerates the best-interest factors for the trial court to consider prior to ruling on a petition for a modification of custody. 750 ILCS 5/602 (West 2012). A discussion of each of the relevant factors is as follows.

¶ 47 *I. Best-Interest Factors Favoring Neither Parent*

¶ 48 The first relevant factor is the wishes of the parents as to J.L.'s custody (750 ILCS 5/602(a)(1) (West 2012)). Obviously both parents desire custody of J.L. Accordingly, this factor favors neither party.

¶ 49 The next factor to consider is the interaction and interrelationship of J.L. with his parents, siblings, and any other person who may affect his best interest (750 ILCS 5/602(a)(3) (West 2012)). The circuit court found this factor to favor Allison because J.L. has lived with her his whole life and has spent less time with Forrest due to his work schedule and military deployments. We disagree with the circuit court's determination. Forrest's employment is of no consequence to his interaction and relationship with J.L. Evidence shows that J.L. has positive interaction and interrelationship with both parents, both stepparents, and both siblings. Moreover, J.L. has exposure to extended family members

who enrich his life while in the care of both parents. We find this factor to favor neither party because there is no evidence of any negative interaction between J.L. and either parent.

¶ 50 An additional factor we find to favor neither party is the physical violence or threat thereof by the potential custodian, whether directed against the child or another person (750 ILCS 5/602(a)(6) (West 2012)). In this case, J.L. told the judge that he never witnessed any violence by either of his parents. However, others testified that J.L. witnessed a single episode of violence by Forrest in 2006 involving Allison and her former boyfriend. We find this has no bearing on J.L.'s best interest for Forrest to have custody. It was an isolated incident and there are no signs of any threat of physical violence by Forrest toward J.L. or anyone else. Similarly, this factor does not affect J.L.'s best interest for Allison to have custody. Despite the past violence between Allison and John and the orders of protection that followed, the Act specifies that the physical violence or threat thereof be by *the potential custodian* (750 ILCS 5/602(a)(6) (West 2012)), who is Allison in this case. The orders of protection were entered because John was deemed a threat. We find no evidence that Allison has been violent toward J.L. or any other person, with the exception of the refuted testimony of one witness that Allison gave John a black eye. Accordingly, we find this factor favors neither party. Similarly, the factor of ongoing or repeated abuse favors neither party because it is not applicable here. Any episodes of violence were isolated and do not fit the definition of ongoing or repeated abuse as provided in section 103 of the Illinois Domestic Violence Act of 1986 (750 ILCS 60/103(1) (West 2012)), pursuant to the Act (750 ILCS 5/602(a)(7) (West 2012)).

¶ 51 *II. Best-Interest Factors Favoring Allison*

¶ 52 The factor of J.L.'s preference favors Allison because at the *in camera* interview, J.L. expressed a clear desire to live with her (750 ILCS 5/602(a)(2) (West 2012)). We also find the factor of J.L.'s adjustment to his home, school, and community (750 ILCS 5/602(a)(4)

(West 2012)) to favor Allison. J.L. is doing well in school in Litchfield and making As and Bs. Moreover, he informed the judge that all of his friends are in Litchfield and he participates in sports and attends church there. His life has been in Litchfield for the last two years and he is obviously very well-adjusted to living there.

¶ 53 *III. Best-Interest Factors Favoring Forrest*

¶ 54 The factor of the mental and physical health of all individuals involved (750 ILCS 5/602(a)(5) (West 2012)) favors Forrest. To that regard, alcohol abuse has been problematic for Allison and John. In addition to the episodes of domestic violence involving alcohol, both Allison and John have been required to take antidepressants, and both have been diagnosed with ADHD and have taken medication to control it. Although improvement has been noted with Allison and John since the custody proceedings began, we find this factor to favor Forrest because there is no evidence that he has any issues with alcohol or mental instability, past or present.

¶ 55 An additional factor favoring Forrest is the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and J.L. (750 ILCS 5/602(a)(8) (West 2012)). Allison has been uncooperative with Forrest's attempts to be an integral part of J.L.'s life. Forrest was required to file petitions to establish paternity, to have J.L.'s last name changed, and to allow J.L. to attend his wedding in Mexico. Moreover, witnesses overheard Allison speaking negatively about Forrest, calling him names, and degrading his nationality in J.L.'s presence. Such behavior is not conducive to encouraging J.L. to have a close relationship with Forrest, and it certainly has the potential to have a negative effect on J.L. Nothing in the record suggests that Forrest has done anything to discourage a close relationship between J.L. and Allison, nor is there any evidence that Forrest ever disparaged Allison in front of J.L. For these reasons, we find this factor to favor Forrest.

¶ 56 Although we have exhausted the list of section 602(a) factors (750 ILCS 5/602(a) (West 2012)) applicable here, we emphasize that "[t]he factors enumerated in section 602(a) are not an exclusive list of factors." *In re Marriage of Diehl*, 221 Ill. App. 3d 410, 424 (1991). As such, there are two additional factors we find worthy of discussion, both of which favor Forrest having custody of J.L. We find relevant the factor of the overall life stability of the custodial parent because this necessarily impacts J.L. Allison has displayed a pattern of instability that encompassed many years and manifested in multiple facets of her life. She has been in and out of several relationships and has been involved in alcohol abuse, domestic violence, separations from John, unstable employment, various changes in education and career goals, and financial mismanagement. Testimony shows that Allison's family members were J.L.'s primary caretakers and that Allison began consistently caring for J.L. only after the orders of protection were entered and she severed ties with her family. Indeed, the custody litigation itself, which has undoubtedly adversely affected J.L., was precipitated by Allison's lifestyle of instability.

¶ 57 We note that Allison and John have made improvements over the last couple of years in their lifestyle stability. However, the noted improvement began after the custody proceedings commenced, a circumstance which naturally brings out the best behavior in parents. Moreover, the improved stability between Allison and John occurred under the terms of the orders of protection and under the watchful eye of the circuit court. Additionally, the improvement does not erase history and the events which transpired up until the day Forrest filed the petition to modify custody. In contrast to Allison, testimony reflects that Forrest is stable across the board, from employment and financial management to relationships and parenting. Accordingly, this factor favors Forrest over Allison.

¶ 58 A final factor worthy of mention and favoring Forrest is the recommendations of two custody evaluators, Dr. Helen Appleton and Donya Adkerson, who were hired by Allison and

Forrest, respectively. As discussed at oral argument, both evaluators recommended that Forrest have custody, which we find difficult to disregard as the circuit court did.

¶ 59 As a final note, we are mindful that J.L. is a mature, well-rounded individual who is succeeding in many areas of his life. As such, we have given due consideration to his preference to live with Allison and note that his successful adjustment to his home, school, and community supports that preference. However, these factors are but two of many others. In light of a thorough review of all the testimony and evidence in this case, the factors favoring Forrest significantly outweigh those favoring Allison. Accordingly, we find the circuit court's decision was against the manifest weight of the evidence, we reverse the January 29, 2013, order that denied Forrest's petition to modify custody, and we remand with directions for the circuit court to enter an order granting the petition. Because we reverse on the first issue raised by Forrest, it is unnecessary to address the second issue.

¶ 60 CONCLUSION

¶ 61 For the foregoing reasons, the January 29, 2013, order is reversed and remanded with directions for the circuit court to enter an order granting Forrest's petition to modify custody.

¶ 62 Reversed and remanded with directions.