

the following reasons, we affirm.

¶ 3

FACTS

¶ 4 The parties, Erika and James, have two boys together, L.C. and T.C. A divorce decree dissolving the parties' marriage was entered in Nye County, Nevada, on September 3, 2010. Pursuant to the divorce decree, the parties were granted joint custody of the boys, with James being the primary physical custodian. On May 11, 2012, Erika filed, *inter alia*, a petition to register the divorce decree as a foreign judgment in the circuit court of St. Clair County and an emergency petition for a temporary restraining order and injunctive relief in which Erika requested immediate temporary physical custody of the boys and an injunction forbidding James from removing the boys from the State of Illinois. The same date, the circuit court entered an order granting the emergency petition. On November 9, 2012, James filed a motion for return of custody. An order appointing a guardian *ad litem* (GAL) was entered on November 13, 2012, and Erika filed a petition to modify custody on December 3, 2012. A temporary agreed order was entered on January 2, 2013, wherein the parties agreed, *inter alia*, that Erika would have temporary primary physical custody of the boys.

¶ 5 On April 15, 2013, and May 10, 2013, a hearing was conducted and testimony was as follows. Erika testified that she and James are both in the Air Force. The parties met in Japan, where they were both stationed. Erika gave birth to their son, L.C., on November 21, 2004. In September 2005, James was stationed in Idaho while Erika remained in Japan with L.C. Erika explained that the parties were unable to seek a joint-spouse assignment because James was still married to someone else when he received his assignment. In March 2006, Erika received a new duty station in Utah. By that time, the parties were married, and Erika gave birth to their second son, T.C., on June 4, 2006. James was stationed with Erika in Utah in the summer of 2006.

¶ 6 Erika testified that James was deployed in May 2008 and was scheduled to return in September 2008 but he returned a month early because Erika was sexually assaulted. James remained in Utah until December 2008, when he deployed to Texas for physician assistant (PA) training while the boys were left in Erika's care in Utah. By that time, the parties were separated. Erika testified that while the sexual assault trial was pending, she began receiving threats from the perpetrator. Accordingly, she and the boys moved to on-base housing and switched vehicles. James was stationed in Las Vegas, Nevada, a year later in December 2009. Soon thereafter, with Erika's consent, the boys moved to Las Vegas with James. James subsequently filed for divorce and the parties agreed to joint custody, with James being the primary residential custodian. Erika noted that, given the threats she had received and the emotional effects of the sexual assault, the best option at the time was for the boys to live with James in Las Vegas. Meanwhile, Erika was required to remain in Utah because she was on administrative hold due to the trial, but she was able to drive to Las Vegas multiple times to visit the boys while they were there. At some point, Erika discovered that L.C. had been expelled from daycare in Las Vegas, due to behavioral problems.

¶ 7 Erika testified that, pursuant to the divorce decree, the parties had joint custody and she was granted full access to the boys' academic records. The divorce decree also required James to obtain written consent from Erika and to acquire judicial permission prior to moving the boys out of Nevada, if he ever desired to do so. Sometime later, James informed Erika that he was assigned to Scott Air Force Base in O'Fallon, Illinois, and that he and the boys were moving there. Erika emphasized that, notwithstanding the requirements of the divorce decree, James obtained neither her written consent nor permission from the court prior to moving to O'Fallon with the boys in January 2011. For the first month after the move, the boys stayed with James's parents in Missouri and were

enrolled in school there, after which they moved to and attended school in O'Fallon. Erika noted that, despite the directive of the divorce decree, she did not have access to the school records. She conceded on cross-examination that she made no attempt to contact the school in O'Fallon until she actually moved there in April 2012.

¶ 8 Erika testified that she was deployed for six months from May 2011 to November 2011, during which her contact with the boys was very sporadic. Erika explained that James instructed her to call at certain times and when she did, the boys were unavailable. Erika was able to make telephone contact with the boys through James's girlfriend, Jessica, who also sent Erika pictures of the boys and updated her about their progress in school. Erika testified that she rarely had face-to-face contact with James regarding the boys because the communication was always hostile. She added that James did not like to discuss anything with her about the boys because he felt that he was the sole custodian and could make all of the parenting decisions without her input.

¶ 9 Erika married Kale Wenzel on February 29, 2012. She testified that her communication with the boys continued to be sporadic. She repeatedly called and texted James, but he refused to return her calls. He texted her and told her to stop calling. Erika was not always aware of the boys' whereabouts because when James was sent away for temporary duty assignments, he would either take them to his parents' house or allow Jessica to take them to her family's home without informing Erika. Erika testified that James told her that it did not matter because she was not there.

¶ 10 Erika recalled a particular incident in early April 2012 when Jessica notified her that the boys were not in school. After multiple attempts to contact James, he acknowledged that the boys were at his parents' home because he was away on a temporary duty assignment in Texas. Erika asked James to give her his mother's phone number so she could contact the boys, but James refused. Erika was eventually stationed at Scott Air

Force Base in April 2012, after which she met with the boys' teachers, principal, and school social worker and became familiar with the boys' academic history. She also exercised visitation with the boys every other weekend, but was denied one of the scheduled weekends when James informed her that the neighbor kids invited the boys for a sleepover. Erika requested visitation time through the week, but James responded that he was paying for after-school care and he did not want to waste the money.

¶ 11 Erika testified that she learned from Jessica that James was scheduled to deploy to Afghanistan in May 2012. Prior to James's departure, Erika informed him that she wished to keep the boys until he returned. James replied that the boys could stay with her if she established a residence before he left. Erika and Kale obtained a home in the boys' school district, only a couple of miles from James's residence. When the time came for James to leave, he sent the following text message to Erika, which was read at the hearing:

"So this is what is going to happen with the boys. You can have them as long as they are in school now and in the fall, and my parents will have them for the summer, or I'll given [*sic*] them to my parents when I leave, and you can have them for six weeks in the summer as our agreement states."

James also sent the following separate text message, which was also read at the hearing:

"I talked to them and don't feel that the boys are ready to be with you for the whole time I will be gone. I understand that you are their mom, but that doesn't mean that is what is best for the boys by default. My mom will be here for the boys when I leave next week. You can work with them to get your visitation with them as outlined in our agreement."

¶ 12 Erika testified that the divorce decree grants her six weeks of visitation in the summer, but that was not what her intentions were regarding custody while James was deployed. Her preference was for the boys to stay with her to promote stability.

Moreover, Erika wanted to put L.C. in counseling, as recommended by the school social worker due to some problem behavior he was exhibiting at school. Erika noted that she was required to get the counseling referral through L.C.'s pediatrician, but James cancelled the appointment Erika had made with the pediatrician and scheduled a new appointment, which resulted in Erika being unable to obtain the referral. Erika suspected that James had influence over the pediatrician because they worked at the same facility. Accordingly, she changed pediatricians and eventually obtained the referral.

¶ 13 Erika testified that James did not want L.C. in counseling and he continued to be adamant that the boys stay with his parents during his deployment. Accordingly, on May 11, 2012, Erika filed the emergency petition for a temporary restraining order and injunctive relief in which she requested immediate temporary physical custody of the boys and an injunction forbidding James from removing the boys from Illinois, which the circuit court granted on the same day.

¶ 14 Erika testified that the boys have adjusted well to living in her home since May 2012 when they moved in. Erika works Monday through Friday: from 7:30 a.m. to 4:30 p.m. on Tuesdays and Thursdays, and 8:30 a.m. to 4:30 p.m. on Mondays, Wednesdays, and Fridays, which allows her to help the boys with their homework after school. Erika is off work on weekends, during which the family spends time together in a variety of activities and attends church on Sundays. During the summer of 2012, Erika, Kale, and the boys went boating, fishing, swimming, and visited museums and the zoo. At the summer's end, Erika enrolled the boys in school and they began participating in taekwondo and soccer. To Erika's knowledge, the boys never participated in sports or extracurricular activities while in James's care. At the time of the hearing, the boys were in the first and second grade and Erika was meeting regularly with their teachers. Erika had used various behavior modification techniques at home to reward the boys for positive behavior, which

resulted in improvements in the boys' behavior and emotional health.

¶ 15 Erika testified that, pursuant to a temporary agreed order entered on January 2, 2013, James was granted, *inter alia*, visitation every other weekend from Friday evening through Tuesday at the beginning of school, and every Monday from after school through Tuesday at the beginning of school. Since the temporary agreed order was entered, Erika learned that L.C. began reverting to certain problem behaviors that he had in the previous school year. Erika noted in particular that after long weekends with James, L.C. was receiving zeros on his behavior sheets and the teachers reported meltdowns in the mornings right after he arrived at school. Erika testified that, despite L.C.'s behavior issues, he and his brother are very good students and she and Kale are dedicated to homework time with them.

¶ 16 Erika testified that she and Kale have a daughter together who was born in February 2013. She attested that the boys love their baby sister very much and are close to her. Kale has a flexible schedule which allows him to assist in caring for the boys. He drops them off and picks them up from school and helps them with their homework. Erika updates James on the boys' academic progress by sending him copies of school-related information. She also facilitates James's relationship with the boys by allowing them to talk to him anytime he calls, keeping him informed about the boys' activities, allowing him extra visitation days, and arranging Skype communication between them at James's request when he is deployed. Erika testified that in the couple of weeks preceding the hearing, James had been more receptive to face-to-face conversations. Because of this, Erika requested joint custody, with herself as the primary residential custodian. She testified that the boys would have a stable home with her because she is on a special-duty assignment at Scott Air Force Base, which makes her nondeployable until she gets out of the Air Force in May 2014. In addition to her request to be the primary residential

custodian, Erika requested that she be allowed to claim one of the boys as a tax exemption.

¶ 17 Kale Wenzel testified that he is married to Erika and they have a daughter together who was 3½ months old at the time of the hearing. Kale has a part-time job and takes online classes. Because his schedule is flexible, he is able to care for the baby while Erika is at work during the day. Kale also fixes the boys breakfast through the week, assists them in getting ready in the morning, takes them to school, and picks them up in the afternoon. On days when the boys do not have homework, Kale takes them and the baby to the park after school. Other days they go home, have a snack, and work on homework. Kale testified that Erika helps the boys with their homework when she gets home from work, then the boys play with toys or with their baby sister until the family has dinner, after which the boys watch television or play video games or board games with the family, and Erika reads to them and tucks them in every night at bedtime. In addition, Erika prepares the boys' backpacks at night for the next day at school. On weekends, the family goes to the park, swimming, or to the science museum. The boys also have soccer games on Saturdays, as well as practice one day per week, all of which both Kale and Erika attend. The family occasionally travels to Wisconsin to visit Kale's parents.

¶ 18 Kale testified that T.C. transitioned very smoothly into Erika's custody. However, he described L.C.'s transition as "a little shaky" in the beginning. He explained that L.C. got upset and cried over little things, such as when he missed a word while practicing spelling. Kale noted, however, that things are much better now and both boys seem very happy. He testified that the boys each had the option of having his own bedroom, but they wanted to share a room, so they each have a bed, as well as their books, toys, and clothes in their upstairs bedroom. The basement serves as an additional play area for the boys. Kale stated that there is a fort, bean bag chairs, a television, video games, and toys in the basement, as well as L.C.'s pet lizard. Kale described Erika as an excellent mother, and he

reported that the boys love their baby sister very much. He stated that, if Erika remains the primary physical custodian, he will be able to continue helping with the boys.

¶ 19 James testified that he is a medical officer in the Air Force. He applied for PA training in late 2007 while he and Erika were still married and was deployed to Iraq from May 2008 to August 2008. James was originally scheduled to return in September 2008, but his chain of command worked through the Red Cross to get him back sooner because Erika had been sexually assaulted. James testified that he and Erika only stayed together for three to four months after he returned because they had experienced past marital problems. They separated in December 2008, when James went to San Antonio for 12 months for the classroom portion of his PA training. James had two separate weeks of leave during that 12 months, which he spent with the boys in Utah. He finished training in San Antonio in December 2009. He testified that Erika had contacted him in late November 2009 and told him that she needed him to have physical custody of the boys because they were having problems in daycare and they were too much for her to handle while she was dealing with the sexual assault trial. Accordingly, James took the boys to Las Vegas with him in December 2009, where he completed 12 months of hospital clinicals for his PA training. James attested that Erika visited the boys in Las Vegas three times during the 12 months that they were there, and she took them back to Utah once for a visit.

¶ 20 When James arrived in Las Vegas, he placed the boys in home daycare because the on-base daycare was full. He averred that both boys were "having problems" and they went through two or three home daycares, but L.C.'s behavior was more problematic than T.C.'s because L.C. was disruptive, talking back, throwing toys, having angry fits, and scratching and pushing other children. James noted that those were the same types of problems L.C. had in daycare in Utah before the parties separated. James was aware that

Erika had taken the boys to the pediatrician in Utah on multiple occasions to discuss the issues, but the pediatrician could not pinpoint the cause of the problems. James noted that, as opposed to L.C.'s behavioral problems, T.C. had what James opined to be developmental delays. T.C. was 3½ years of age when they arrived in Las Vegas, but he was not yet potty trained and he was exhibiting what James interpreted as delays in his speech. James testified that he spoke with Erika on a regular basis concerning the health and welfare of the boys. He stated that the boys saw a counselor every other weekend during the 12-month stay in Las Vegas, and he made Erika aware of that but she expressed no interest. On cross-examination, however, James admitted that Erika attended the counseling sessions with the boys once or twice when she was visiting in Las Vegas and she spoke with the counselor on the phone on occasion.

¶ 21 James testified that L.C. was enrolled in preschool in Las Vegas and an individualized educational plan (IEP) was initiated there in March 2010 due to his ongoing behavioral problems. The goals of the IEP were implemented at school and at home, and James testified that he worked with L.C. every night after dinner to help correct his behavior. He also averred that he made Erika aware of the IEP. Erika attested that she participated in the IEP meeting by telephone. James testified that when the parties divorced in September 2010, Erika agreed to allow him to be the primary residential custodian. James noted that the visitation schedule was outlined in the divorce decree, but he "pretty much gave Erika an open door policy" to see the boys whenever she had time. However, James testified that on Christmas 2010, Erika requested to spend Christmas with the boys at James's parents' house. He informed her that she could see the boys around that time but he felt it inappropriate for her to be at his parents' house since the parties were divorced. Erika testified on rebuttal that she never asked James if she could stay at his parents' house for Christmas that year. Rather, she wanted to stay in the city nearby and

see the boys in between their visit with James and his parents. Erika added that she requested to fly the boys to visit with her on occasion or for James to meet her halfway, but he never accommodated her. Accordingly, Erika always had to drive to see the boys.

¶ 22 Around the time of the divorce, James found out that he would be stationed at Scott Air Force Base upon completion of PA training in January 2011. He testified that he notified Erika of the move, but she did not object. On cross-examination, James acknowledged the requirements of the divorce decree, and that he did not receive prior written consent from Erika nor prior approval from the court as mandated by the decree. James and the boys arrived in O'Fallon on January 7, 2011. James testified that L.C.'s behavior problems continued, as did T.C.'s delays in speech and potty training. Accordingly, both boys were enrolled in IEPs once they were established in school. James testified that Erika was aware of the IEPs. However, he admitted on cross-examination that he did not tell her that he signed authorizations for the IEP evaluations, nor did he inform her about the IEP meetings. In fact, James testified that he never told Erika about the IEPs directly, but he placed copies of the IEP paperwork into grocery bags, along with other information regarding the boys, and gave it all to Erika in bundles when she came to visit. Erika testified on rebuttal that although James always gave her bags of information, she never saw any IEP paperwork in the bags, nor did James ever have any conversations with her regarding the IEPs. Nor did he provide any information regarding their school registration or their report cards. Erika stated that she was unaware of the IEPs until she arrived in O'Fallon in April 2012 and became involved with the boys' school.

¶ 23 Petitioner's exhibit number five was introduced, which was a registration form for L.C. to attend school in O'Fallon, which James had filled out. On the form, he falsely designated his former girlfriend, Jessica Combs, as a guardian of L.C. Also on the form,

James falsely indicated that Erika was prohibited by court order from being in contact with L.C., in spite of the divorce decree granting Erika joint custody with full access to the boys' academic records. Petitioner's exhibit number six was also introduced, which was T.C.'s school registration form. James admitted that he did not even fill out or sign T.C.'s form, but Jessica did. James further conceded on cross-examination that Megan Buck, the social worker at the boys' school, recommended that both boys participate in outside counseling, but James did not comply with the recommendation. The record reflects that when Erika settled in O'Fallon she took both boys to counseling upon Ms. Buck's recommendation.

¶ 24 James testified that Erika came to visit the boys in O'Fallon three or four times between January 2011 and April 2012, and he never denied her visitation with the boys. He also denied ever keeping Erika from talking to the boys on the telephone, but he qualified that there were times when she called and they were unavailable. James reported that Erika's communication with the boys was sporadic because she had no regular time to call them. He added that she repeatedly called, but rarely left voice messages. James indicated that there were times when Erika called him during his workday while he was seeing patients and he neither answered nor returned the calls because she left no voice messages. James admitted on cross-examination that if the boys were playing a video game when Erika called, "if they chose not to or if they weren't ready to I didn't force them." He also spoke of an occasion when he was on call and needed to keep his phone available, so Erika was not allowed to speak to the boys. A text message was introduced in which Erika requested to speak with the boys before they went to bed. James replied that they had friends over at the moment. He testified that he could not recall whether the boys called Erika later that night. Additional text messages were presented, in which Erika asked about the boys, but James did not recall responding to her.

¶ 25 On cross-examination, James testified that, despite his "open door policy" on visitation, after Erika arrived in O'Fallon in April 2012 until he left for deployment one month later, he gave her only one weekend of visitation because he wanted to maximize his own weekend time with the boys before he left. He explained that Erika "didn't necessarily like the response but I think she kind of understood." Erika also attempted to spend some time with the boys after school through the week when James was at work. She told James that she missed the boys and asked if she could pick them up from school and visit with them in the afternoons. James testified that he responded that their after-school care was paid through the end of the school year, the money was nonrefundable, and staying in after-school care was less disruptive to their normal routine.

¶ 26 James testified that in January 2012, he discovered that he would be deployed to Afghanistan, but he did not inform Erika. Rather, his girlfriend did in February 2012. James acknowledged that he told Erika that when he deployed, his mother would come to O'Fallon to stay with the boys the last couple of weeks of the school year, that they would stay at his parents' house for the summer, and that his parents would allow her to visit them whenever she wanted. When school resumed in the fall, the boys were to stay with Erika until James returned. Contrary to Erika's testimony, James stated that she had access to his parents' telephone numbers. James testified that he arranged for his mother to stay with the boys because Erika's date of arrival in O'Fallon was uncertain. James testified that he did not know until early April that Erika would be arriving the following week. However, a text message introduced on cross-examination revealed that James knew on February 27, 2012, that Erika would arrive in O'Fallon in early April. The record also reflects that Erika attempted to meet with James before he deployed, to discuss custody of the boys while he was away. James denied that she made the request, but a text message in the record reflects that she did, in fact, make the request.

¶ 27 After the circuit court entered the May 11, 2012, order granting Erika's emergency petition for temporary custody, James informed Erika that, per the order, he would bring the boys to her on May 13, 2012. James then deployed the following day. He returned on October 18, 2012, after which he visited with the boys every other weekend through Thanksgiving, then in December 2012, overnight visitation on Wednesday nights was added. James also contacted the boys' school to review their records. He acknowledged that L.C.'s behavior had improved and continued to do so. James told the court that he and Erika are capable of joint parenting, that both parties have been cordial, and that they have managed to communicate about the boys.

¶ 28 James testified that he owns a three-bedroom home in O'Fallon that he purchased when he arrived there in February 2011. James's fiancée, Emily Wood, testified that she moved in with him in January 2013. Emily works on the weekends when the boys are there for visitation, but she spends time with them when she gets home from work, and she helps James by taking the boys to school, picking them up, and assisting them with their homework. James's neighbor, Jeff Robinson, who has children the boys' age, also helps by taking the boys to school and picking them up. James explained that his work schedule has required assistance with the boys since 2009 but he has always managed to obtain the help that he needs. Emily testified that L.C. is currently showing a lot of anger and that T.C., who was potty trained before James left on deployment, is now wetting his pants again.

¶ 29 Megan Buck testified that she is a school social worker employed by the O'Fallon school district. Megan began working with L.C. in the fall of 2011 when he was in the first grade because he was hiding from the teacher, throwing things, and refusing to do his work. Behavioral goals were established for L.C. on November 14, 2011, and his progress was monitored daily by the school. L.C. was determined to have an emotional

disability, and an IEP was developed for him in March 2012. Megan reported that prior to the IEP, L.C. drew violent pictures in a journal, after which she advised James that L.C. should receive counseling outside of school. To Megan's knowledge, James never obtained counseling for L.C. Megan added that James did not seem very concerned about the pictures in the journal and, in fact, chuckled when he saw the pictures. Megan noted that James became more concerned as the school year moved forward. Megan testified that L.C.'s behavior was sporadic between November 14, 2011, and the end of the school year on May 21, 2012. L.C. did not meet the goals on 24 days during that time frame. Some improvement occurred between February 25, 2012, and April 6, 2012, when L.C. made his goals on all of the days except one. The last day that L.C. failed to meet his goals that school year was May 9, 2012.

¶ 30 Megan observed significant progress in L.C.'s behavior when Erika had custody the following school year. Upon Megan's recommendation, Erika took both of the boys to counseling. Between August 2013 and Christmas break, L.C. met his behavioral goals on all except two days. Megan also noted positive changes in the boys' affect since the previous school year. She noticed in particular that L.C. seems happy to be at school now and smiles more, in comparison to the last year when he wore his coat over his face, had his head down, and looked like he did not want to be there. Megan testified that after Christmas break, between January 7, 2013, and the hearing on April 15, 2013, she watched L.C. regress to some of his earlier problematic behavior and he failed to meet his goals on seven days during that time frame. Megan conceded that there are multiple factors which could contribute to L.C.'s backslide, and she could not identify the exact cause.

¶ 31 Elaine Lechien, the GAL, testified pursuant to her report that was filed on April 12, 2013, and admitted into evidence. Lechien recommended that joint custody continue, so long as the parties could begin having face-to-face communications regarding the boys,

with Erika being granted primary residential custody. Lechien testified that her recommendation was based on the fact that the boys were doing better in school and had improved their behavior this school year as opposed to last year. Lechien observed that the parties had a lack of communication for most of the time following their divorce, but based on the testimony at the hearing, she felt as if they were now more willing to work together. Lechien emphasized the importance of the parties cooperating. She noted that since both boys still have IEPs, it would take the effort of both parties to get the boys through their issues. Lechien also advised that visitation should be more free, especially since the parties now live close to one another.

¶ 32 On June 12, 2013, the circuit court entered an order, finding several substantial changes of circumstances that had occurred since the entry of the divorce decree, and finding it in the best interest of the boys to grant Erika's petition for a modification of custody. The circuit court also ordered each of the parties to claim one of the boys as an exemption and tax credit for state and federal income tax purposes. James filed a timely notice of appeal. Additional facts are added in the analysis of the issues on appeal.

¶ 33 ANALYSIS

¶ 34 James raises the following issues on appeal, which we have restated as follows: (1) whether the circuit court erred by granting Erika's emergency petition for temporary custody, (2) whether the circuit court erred by granting Erika's petition for a modification of custody, and (3) whether the circuit court erred by modifying the tax exemptions by allowing Erika to claim one of the boys as a tax dependent every year.

¶ 35 I. *Temporary Custody*

¶ 36 The first issue on appeal is whether the circuit court erred by granting Erika's emergency petition for temporary custody in its order entered on May 11, 2012. James cites several reasons why it was improper for the circuit court to enter this order.

However, this issue is moot. The June 12, 2013, order granting Erika's motion for a modification of custody superceded the May 11, 2012, order that granted temporary custody to Erika. Moreover, on January 2, 2013, James agreed that Erika should have temporary primary physical custody of the boys, and the same was reflected in a temporary agreed order entered that day. In doing so, James acquiesced to the very issue he now attempts to challenge on appeal as improper. We find this issue is moot. "A reviewing court will decide only actual controversies in which the interests or rights of the parties can be granted effectual relief." *In re Marriage of Petersen*, 319 Ill. App. 3d 325, 334-35 (2001). "An appeal becomes moot when a court can no longer effect the relief originally sought by an appellant or when the substantial question involved in the trial no longer exists." *Id.* at 335. "When a case is moot, a court's decision on the merits cannot afford either party relief and any decision is merely an advisory opinion." *Id.* Accordingly, we decline to address the merits of this argument.

¶ 37

II. *Modification of Custody*

¶ 38 The second issue on appeal is whether the circuit court erred by granting Erika's petition for a modification of custody. "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.*

¶ 39 Section 610 of the Illinois Marriage and Dissolution of Marriage 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).

¶ 40 *A. Substantial Change of Circumstances*

¶ 41 In this case, the circuit court found, and we agree, that several substantial changes of circumstances have occurred since the divorce decree was entered in 2010. These changes are that the parties now reside in the same school district, Erika is stationed at Scott Air Force Base on controlled orders with no possibility of deployment, and she plans to get out of the Air Force in the spring of 2014. In contrast, James intends to remain on active duty, his future assignments are speculative, and he is subject to deployments and temporary duty assignments.

¶ 42 Regarding the boys' education, the boys are subject to IEPs, James failed to enroll them in counseling as recommended by Megan Buck, he chuckled in reaction to violent drawings in L.C.'s journal, and he failed to communicate with Ms. Buck outside the IEP meetings. In contrast, Erika enrolled the boys in counseling, met regularly with the school social worker, and went to the school to observe L.C. in the classroom setting. As noted by the circuit court, James advised Erika via text message in May 2012 that T.C. did not have an IEP when in fact he did have a current IEP.

¶ 43 Other substantial changes in circumstances include Erika's marriage to Kale, with whom the boys have a close and loving relationship, and the birth of the boys' sister, who the boys love and have a close bond with. In addition, James has a live-in fiancée, Emily

Wood, who the circuit court noted is the third girlfriend/fiancée that James has had living in his home with the boys since the parties' separation, which the circuit court found as a factor to promote an unstable living situation for the boys.

¶ 44 Additional changes in circumstances include James's resistance to communicating with Erika regarding the boys' custody during his deployment, the boys' IEPs, and other issues regarding parenting, as well as his attempts to make unilateral decisions on behalf of the boys without including Erika. James also hindered Erika's contact and visitation with the boys between the entry of the divorce decree in September 2010 and May 2012. Based on the foregoing, we find it was not against the manifest weight of the evidence for the circuit court to find that substantial changes of circumstances had occurred since the divorce decree was entered.

¶ 45

B. Best-Interest Factors

¶ 46 In addition to finding substantial changes in circumstances, the circuit court found the modification of custody to be in the boys' best interest. We agree. The boys have thrived in Erika's home, and they have a close and loving relationship with Erika, Kale, and their baby sister, all of whom significantly impact their best interest (750 ILCS 5/602(a)(3) (West 2012)). While the boys have a positive relationship with James, they have not spent as much time with James's fiancée, Emily, who described her relationship with the boys as "comfortable." Moreover, the boys have been able to maintain their current school district while living with Erika, and they have become involved in the community with extracurricular activities including soccer, taekwondo, and church. In contrast, there is evidence that the boys were never involved in extracurricular activities while in James's custody (750 ILCS 5/602(a)(4) (West 2012)). Moreover, L.C.'s emotional disability has improved while in Erika's care, per his school reports, the testimony of Megan Buck, and even the testimony of James (750 ILCS 5/602(a)(5) (West 2012)).

¶ 47 As previously mentioned, James has not communicated with Erika about the boys and has been unwilling to cooperate and facilitate a close relationship between Erika and the boys, as exemplified by evidence in the record. James has made unilateral decisions on behalf of the boys and went so far as to falsely advise the boys' school district that Erika was prohibited by court order from receiving information regarding the boys and that his former girlfriend, Jessica Combs, was their guardian. In contrast, the record reflects that Erika has shown a willingness to facilitate a relationship between James and the boys, including allowing James to talk to the boys on the phone whenever he wanted, arranging regular communication on Skype while James was away, attempting to communicate with James to make joint decisions regarding the boys, and giving James extra visitation while the litigation was pending (750 ILCS 5/602(a)(8) (West 2012)). Taking these factors into consideration, we find it was not against the manifest weight of the evidence for the circuit court to find it in the boys' best interest to grant Erika's petition for a modification of custody.

¶ 48 *C. Guardian Ad Litem Recommendation*

¶ 49 In addition to considering the substantial changes in circumstances and best-interest factors, we note that the GAL recommended a change of custody, specifically, for the parties to have joint custody, with Erika as the primary residential custodian. This recommendation came after the GAL met with the parties, the boys, their stepfather Kale Wenzel, James's fiancée Emily Wood, the school social worker, principal, school psychologist, and the boys' counselor. The GAL also reviewed the boys' academic records and testified that the boys are doing better this year than last with regard to their IEPs and their social and behavioral issues and that the boys are doing better since being in the primary custody of Erika. As pointed out by the circuit court, the recommendation of the GAL is based on the best interests of the boys.

¶ 50 In viewing the above evidence in a light most favorable to Erika as the appellee, we find there is ample evidence in the record to support the circuit court's decision to grant her petition for a modification of custody. See *In re Marriage of Ricketts*, 329 Ill. App. 3d at 177. Accordingly, the circuit court's decision was not against the manifest weight of the evidence. See *id.*

¶ 51

III. *Modification of Tax Exemptions*

¶ 52 The final issue on appeal is whether the circuit court erred by modifying the tax exemptions to allow Erika to claim one of the boys as a tax dependent every year. Erika contends that James waived this issue. We agree. "To preserve an issue for appeal, a party must raise the issue in a post-trial motion or object at trial." *Neal v. Nimmagadda*, 279 Ill. App. 3d 834, 846 (1996). James neither objected to Erika's request to claim one of the boys as a tax exemption at the trial, nor did he raise it in his motion to reconsider or at the hearing on the motion to reconsider. Accordingly, the issue is waived.

¶ 53

CONCLUSION

¶ 54 For the foregoing reasons, we affirm the June 12, 2013, order of the circuit court of St. Clair County that granted Erika's motion for a modification of custody and modified the tax exemptions to allow Erika to claim one of the boys as a tax dependent every year.

¶ 55 Affirmed.