

NOTICE
Decision filed 08/11/14. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2014 IL App (5th) 140109-U

NO. 5-14-0109

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

<i>In re</i> MARRIAGE OF)	Appeal from the
)	Circuit Court of
ANGELA GROSHANS,)	Madison County.
)	
Petitioner-Appellant,)	
)	
and)	No. 10-D-599
)	
ANDREW GROSHANS,)	Honorable
)	Dean E. Sweet,
Respondent-Appellee.)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Goldenhersh and Schwarm concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court did not err in awarding sole legal custody of the parties' minor child to Father.

¶ 2 Petitioner, Angela Groshans (Mother), appeals following a judgment of dissolution of marriage entered by the circuit court of Madison County. The circuit court granted custody of the parties' minor daughter to respondent, Andrew Groshans (Father).
We affirm.

¶ 3 Mother and Father were married in 2005, and their daughter was born in 2007. Mother petitioned, and Father counterpetitioned, for dissolution of their marriage in 2010.

Each sought sole custody of the child. At the time of the filing of the petitions, Mother was employed as a nurse at Alton Mental Health Center and Father was unemployed.

¶ 4 During the pendency of the proceedings, which ultimately lasted several years, Mother filed several orders of protection against Father, including two on behalf of the parties' daughter alleging sexual abuse against the daughter by Father. All of the petitions for orders of protection against Father, however, were ultimately dismissed for "insufficient evidence." At one point, the parties were ordered to undergo a psychological custody evaluation. The psychologist, after noting numerous issues which both parties needed to address, opined that Mother should have custody of the child, as she had been the primary caretaker. The guardian *ad litem* also recommended that Mother be awarded custody, but noted that both parties spent a great deal of time trying to provoke each other, and that they had numerous problems with visitation exchanges, often leading to fighting in the presence of the child. The guardian *ad litem* recommended that the parties have as little contact with each other as possible. She also expressed concern that the child was overtreated and overmedicated at the hands of her Mother, and that Father was overly concerned with perceived problems regarding Mother's mental health and state of mind, particularly as it affected their daughter.

¶ 5 The court held two days of hearings in March of 2012 on the issue of custody and then took the matter under advisement. Before the court issued its custody decision, however, Mother petitioned, both in May and July of 2012, for emergency orders of protection against Father on the grounds of sexual abuse against their daughter. Father was never charged, and in fact, charges for false reporting were considered against

Mother. The circuit court terminated the temporary order of protection and restored Father's visitation. In August of 2012, Father petitioned for an order of protection for himself and on behalf of the child after Mother forced her way into Father's home and carried the child outside to her van. Father blocked her from entering the driver's side of the vehicle while calling the police. Mother ultimately was arrested and removed in handcuffs. Father also filed a motion to reopen evidence, which the court allowed. After additional hearings, the last one of which was held in August of 2013, the court issued its judgment of dissolution, ultimately granting Father sole and exclusive custody of the parties' daughter. By this point, Mother had moved in with her boyfriend. She admitted that she and her boyfriend smoked and lived with a dog in spite of her daughter's asthma, allergies, and ear infections. Mother also had taken a leave of absence from her work as of May 2012. By January of 2013, she still had not returned to work. Father, who lived with his mother and stepfather, was now working full time as an accountant, and his parents helped watch the child when needed. The guardian *ad litem* changed her position and believed the child was healthier living with Father. She noted that Mother's concerns about the child's health were no longer supported by medical records. She also expressed concern over Mother's criticisms of Father in front of their daughter and opined that custody should be awarded to Father. The court agreed, after finding that it was in the best interests of the child that she be placed in the sole and exclusive custody of Father. The child was doing well in school and was healthy and adjusted to Father's home and the community. Mother, on the other hand, had not fostered a close relationship between the child and her father, and in fact, her actions were often confrontational. Even though

Father had overreacted himself in the past, the court concluded he was far more stable and responsible than Mother at this point. Consequently it was in the best interests of the child that she be placed in the sole and exclusive custody of her Father.

¶ 6 We initially note that, in matters of child custody, we will not disturb the trial court's ruling unless it is against the manifest weight of the evidence or the trial court abused its discretion. *In re Marriage of Dobby*, 258 Ill. App. 3d 874, 876, 629 N.E.2d 812, 814 (1994). We accord great deference to the trial court's findings pertaining to the best interests of the child because the trial court is in a far better position than this court to observe and assess temperaments, personalities, and credibility. *In re Marriage of Marsh*, 343 Ill. App. 3d 1235, 1239-40, 799 N.E.2d 1037, 1041 (2003).

¶ 7 Mother first contends on appeal that the court erred in granting Father's motion to reopen evidence. While acknowledging that the granting of a motion to reopen proofs is within the sound discretion of the trial court and should not be disturbed on appeal absent a clear abuse of discretion (*In re Marriage of Sawicki*, 346 Ill. App. 3d 1107, 1120, 806 N.E.2d 701, 711 (2004)), we note that Mother did not object to the reopening of evidence at trial. Mother therefore has waived her claim of error. An issue not presented to or considered by the trial court may not be raised for the first time on appeal. *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 85. Moreover, the trial court even noted that while it was Father's motion to reopen, both parties had additional information to present that they wanted the court to consider. Mother cannot acquiesce in and participate in the reopening of evidence and then complain about the trial court's granting

of Father's motion on appeal just because the result is not what she wanted.

¶ 8 Mother next finds fault with the court sustaining Father's objection to an unsolicited comment made by one of the minor child's treating physicians during his deposition. We agree with Father that the court's ruling was within the court's discretion.

A determination regarding the admissibility of evidence is within the sound discretion of the trial court, and we, as a reviewing court, will not reverse that decision absent a clear abuse of the trial court's discretion. *In re Marriage of Agers*, 2013 IL App (5th) 120375,

¶ 14. More importantly, the stricken comment was of no import. The doctor commented at the end of the deposition, without being asked any question, that the child, early in her life, had been unwell. Other evidence of record revealed that the parties' daughter had been seen by numerous doctors early in her life and had been treated for several conditions. That same evidence also revealed that children suffering from similar problems at an early age often outgrew them and that the parties' child was now healthy.

There was no error.

¶ 9 For her third point on appeal, Mother contends the court erred in awarding temporary custody to Father predicated on improper findings made by the court pertaining to Father's request for an order of protection against Mother. During the hearing on the order of protection filed by Father, the court determined that Mother posed a threat to her daughter and to Father and therefore awarded custody to Father and denied Mother visitation. Mother believes that finding was an abuse of the court's discretion because the court failed to make any findings as to the best interest of the child and failed

to find that Mother had abused the child. As Father points out, when a temporary order awarding custody of a minor child is superseded by a permanent order granting custody, the question whether the temporary order was proper is moot. *In re Marriage of Slavenas*, 139 Ill. App. 3d 581, 587, 487 N.E.2d 739, 743 (1985).

¶ 10 The remaining points of contention presented by Mother on appeal all pertain to the trial court's ultimate decision to award Father sole custody of the parties' daughter. In reaching that decision, the court made several decisions pertaining to Mother's credibility with which she takes issue. Unfortunately for Mother, we see no reversible error under the circumstances presented. The court observed both parties numerous times over several years. Neither parent, in dealing with each other over the years, has acted with the child's best interests in mind. It is indeed unfortunate that the parties cannot work together, and perhaps once this custody issue is resolved, they can move on with their lives and finally do what is best for their daughter. Clearly, the court was faced with a difficult decision choosing basically between the lesser of two evils. Nevertheless, based on all the evidence before it, the court ultimately decided that, at this point in time, Father would better foster a closer relationship between the child and her Mother than would Mother with Father and that it was in the best interests of the child for the child to live with Father. Father's home life was stable in a good community. He had full-time employment, and his parents were able to take care of the child when needed. Mother, on the other hand, in spite of all her daughter's perceived medical issues, chose to live in an environment where both pets and smoking were present on a daily basis. Mother had numerous issues of her own to handle and had left her employment, postponing her return

to the work force several times. Even the guardian *ad litem* who originally suggested that Mother be awarded sole custody changed her recommendation in favor of Father. Under the circumstances presented, recognizing that the trial court was in the best position to evaluate the credibility of the parties and to determine what is in the best interests of the child, we cannot say the court erred in awarding sole custody to Father.

¶ 11 For the foregoing reasons, we affirm the judgment of the circuit court of Madison County.

¶ 12 Affirmed.