2015 IL App (2d) 140780-U
No. 2-14-0780
Order filed March 30, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re PARENTAGE OF L.S.R., a Minor	)	Appeal from the Circuit Court
	)	of Du Page County.
	)	
	)	No. 13-F-163
	)	
	)	Honorable
(Jay Rastall, Petitioner-Appellee v. Barbara	)	Neal W. Cerne,
Kroushl, Respondent-Appellant).	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Burke and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Trial court properly reviewed petitioner's "Petition for Modification of Custody and Removal of Minor Child" as an initial custody determination rather than a modification of custody as no judgment awarding custody of the minor to respondent existed at the time petitioner sought custody of the minor; (2) trial court did not abuse its discretion in granting petitioner's "Motion to Clarify Proper Statutory Grounds for Trial Proceedings" on the day of trial; (3) trial court's determination that it was in the minor's best interest that petitioner be granted custody was not against the manifest weight of the evidence; and (4) trial court's finding that it was in the minor's best interest that petitioner be allowed to remove the child from Illinois to the United Kingdom was not against the manifest weight of the evidence.

¶ 2 Respondent, Barbara Kroushl, appeals the judgment of the circuit court of Du Page County awarding custody of the minor, L.S.R., to petitioner, Jay Rastall, and allowing petitioner

to remove the minor from Illinois to the United Kingdom. For the reasons set forth below, we affirm.

¶ 3 I. BACKGROUND

¶ 4 In November 2010, petitioner filed in the circuit court of Kane County a "Verified Petition to Establish Parentage and Custody" and a "Verified Petition for Temporary and Permanent Custody and Removal." The petitions, docketed as case number 10-F-735, alleged that the parties had one child, L.S.R., who was born in October 2005. On December 14, 2010, respondent filed a "Counter-Petition for Temporary and Permanent Custody, Child Support, Contribution to Child Care and Educational Expenses, and Other Relief." On May 19, 2011, petitioner was ordered to pay temporary child support to respondent in the amount of $1,006 per month. On October 20, 2011, an order was entered in Kane County voluntarily dismissing all petitions filed in case number 10-F-735. On November 1, 2011, respondent filed a motion to vacate in part the order of October 20, 2011. On December 13, 2011, respondent's motion was granted and the child support order of May 19, 2011, was reinstated. On December 19, 2012, petitioner filed a motion to transfer venue from Kane County to Du Page County. The matter was transferred to Du Page County on February 13, 2013.

¶ 5 On April 29, 2013, petitioner filed in Du Page County a "Motion for Judgment of Parentage and Parenting Time." On May 7, 2013, Judge Dudgeon entered an order providing in relevant part:

> "This matter comes before the Court for presentation of Petitioner's Petition for Judgment of Parentage and Parenting Time. The Court, having taken judicial notice of the pleadings filed by the parties in Kane County, no. 10 F 735, orders as follows:

1) The Pleadings filed in Kane County, no. 10 F 735 admit the issue of the parentage of [L.S.R.]. Petitioner admits in his pleadings that he is the biological father of [L.S.R.], and Respondent acknowledges in her pleadings that the Petitioner is the biological father of [L.S.R.].

2) Therefore, the issue of the paternity of [L.S.R.] is hereby resolved. [Petitioner] is declared to be the biological father of [L.S.R.], born October 19, 2005."

With respect to the issue of parenting time, the matter was continued to June 13, 2013. On that date, the trial court granted petitioner's motion for parenting time by default because respondent failed to appear at the proceeding. The June 13, 2013, order provides in relevant part that petitioner "shall be entitled to 7 consecutive weeks of visitation to take place in the UK, said weeks to be selected by the petitioner and to take place during the minor child's summer vacation."

¶ 6 On June 25, 2013, respondent filed a motion to vacate the June 13, 2013, order, granting petitioner parenting time in the United Kingdom. On August 8, 2013, the trial court entered the following order:

"1) The Motion to Vacate the Order of 5/7/13 [*sic*] is granted in part and denied in part as follows:

--The [petitioner] will continue to have parenting time with the minor child for the summer of 2013 until August 20 when he will return the child to the United States.

--The visitation for any summer, beginning 2014 and forward is vacated."

On September 16, 2013, petitioner filed a "Petition for Modification of Custody and Removal of Minor Child."

¶ 7 The case was set for trial before Judge Cerne. On June 10, 2014, the day before the commencement of trial, petitioner filed a "Motion *in limine* to Clarify the Proper Statutory Grounds for Trial Proceedings" (Motion to Clarify). In the Motion to Clarify, petitioner asserted that because the trial court vacated the May 7, 2013, order, no judgment of parentage was ever entered in this case. Relying on section 14(a)(2) of the Parentage Act of 1984 (Parentage Act) (750 ILCS 45/14(a)(2) (West 2012)), petitioner further asserted that given the lack of a parentage judgment, there can be no judgment granting custody of L.S.R. to respondent. As such, petitioner reasoned that the case should be conducted as an initial custody determination under section 602 of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/602 (West 2012)) and not as a modification of custody pursuant to section 610 of the Marriage Act (750 ILCS 5/610 (West 2012)).

¶ 8 Judge Cerne heard arguments in relation to the Motion to Clarify on the day of trial. Following the parties' presentations, the court granted the Motion to Clarify. The court remarked:

> "I'm going to grant [petitioner's] motion, that is a—I guess I'm not sure if I granting [*sic*] or denying it, but I believe that this is a determination of custody. It is not a modification of custody. And the reason I'm saying that is that I agree, there has not been a judgment of parentage entered in this matter.
>
> * * *
>
> In my mind, a judgment of parentage would contain who's the father and establishing [*sic*] child support. We don't have that. We had a temporary child support order back in 2010 [*sic*], but when the parentage was ordered, which would be

considered—which would be considered a final order in 2013, it didn't contain anything about child support.

So theoretically there was no child support order. If that parenting order was a final order, then it didn't contain anything relative to child support, which I don't think is tolerable.

So I think this—I don't think you could say that any of these orders were a judgment of parentage as contemplated by the statute."

The court's written order provides:

"[Petitioner's] Motion *in Limine* to Clarify Proper Statutory Grounds for Trial Proceedings is granted and section 602 factors shall apply for an initial custody determination. The legal standard that shall apply is a preponderance of the evidence and best interests of the minor child. While [respondent] is presumed to be the custodial parent of the child, no legal presumption is created causing a higher burden or different legal standard."

¶ 9 At trial, petitioner testified on his own behalf and presented the testimony of (1) Kathleen Kenny, the guardian *ad litem*; (2) Josiah P., one of respondent's sons; (3) Wendy Bakkum, L.S.R.'s preschool teacher; (4) Dr. Robert Shapiro, the section 604.5 custody evaluator hired by respondent (see 750 ILCS 5/604.5 (West 2012)); (5) Polly Spaul, petitioner's partner; and (6) Ellen Whitlock, a friend of petitioner. Respondent testified on her own behalf and presented the testimony of (1) petitioner (as an adverse witness); (2) Linnea MacDonald, a friend of respondent; (3) Joshua P., one of respondent's sons; and (4) Ashley S., Joshua's girlfriend. The following is a synopsis of the evidence presented at the trial.

¶ 10 Petitioner is a citizen of the United Kingdom. At the time of trial, petitioner was 67 years old and had no health issues. Petitioner previously worked for IBM, but has since retired, and receives an annual pension of about $80,000. Petitioner volunteers two days a week for "Citizen's Advice," a group that provides free advice to the public on a variety of topics. He also acts as an independent visitor for his country's foster-care program. Petitioner met Spaul in the mid sixties and began cohabitating with her around 1970. Before retiring in 2005, Spaul worked as a school teacher. Since the late seventies, petitioner and Spaul have resided in a four-bedroom, three bathroom townhome in Beckenham, Kent, England, a suburb of London. Petitioner and Spaul never married, and Spaul does not have any children of her own. However, petitioner has one other child, an adult daughter, Zoe. Zoe was raised by her mother in New Zealand, and petitioner had little contact with Zoe until she was 18. Petitioner also has family in the United Kingdom, including his mother, his sister, and his sister's children.

¶ 11 Respondent is a citizen of the United States. At the time of trial, respondent was 45 years old and in good health. Respondent has been employed in various fields, including tourism, massage therapy, reflexology, cranial sacral therapy, and reiki yoga. At the time of trial, she worked as a hypnotherapist. Respondent testified that she typically charges $150 per hour for her services. Because she does not have a set work schedule and must occasionally travel to clients' homes, respondent relies on babysitters to watch L.S.R. She resides in a two-bedroom home in Naperville, Illinois. Respondent has three other sons, none of whom resided with her at the time of trial. Respondent's parents reside in South Carolina with C.K., one of respondent's sons.

¶ 12 Petitioner and respondent were never married to each other. They initially met in October 2004, when petitioner answered an advertisement on a website known as

"surromoms.com." The parties' first face-to-face encounter was in Costa Rica late in January 2005, at which time L.S.R. was conceived. During the pregnancy, respondent and petitioner had regular contact by telephone and email. In the spring of 2005, petitioner and Spaul visited respondent in Costa Rica, where respondent was then residing. L.S.R. was born on October 19, 2005, in Costa Rica. Petitioner was not present for the birth and was notified by respondent's midwife shortly after. Respondent and L.S.R. left Costa Rica in December 2005, and settled in North Aurora, Illinois.

¶ 13 Respondent initially resided in a two flat on Riverview Street in North Aurora. Between September 2006 and December 2006, respondent, L.S.R., and C.K. lived in petitioner's residence in the United Kingdom. When respondent returned to the United States, she resided in a townhome on Lynn Court in North Aurora. In February 2009, respondent moved out of the Lynn Court residence and back into the two flat on Riverview Street. Respondent and L.S.R. remained at the Riverview residence until August 2012, when the house was sold. At that time, respondent moved to Naperville. In November 2012, respondent began living in her current residence on Tenth Avenue in Naperville.

¶ 14 In North Aurora, L.S.R. attended preschool at Polka Dot Dragon for two years. He then attended Goodwin School. When respondent moved to Naperville, she enrolled L.S.R. in first grade at Beebe Elementary School. At some point, respondent removed L.S.R. from Beebe and began home schooling him. Respondent told Kenny, the guardian *ad litem*, that she decided to home school L.S.R. because Beebe had not meet state standards. Respondent eventually re-enrolled L.S.R. in public school, and he finished second grade at Mill Street Elementary School in Naperville. L.S.R. was promoted to third grade at Mill Street Elementary.

¶ 15 Kenny met with the parties and the minor on multiple occasions. In addition, she visited respondent's home, interviewed other individuals and reviewed various documents, including correspondence between the parties and L.S.R.'s school records. She authored a report of her findings. Kenny's principal concerns involved the minor's schooling situation, his lack of social interaction outside the home, and the absence of stability with respondent. Kenny noted that L.S.R.'s public school records showed "excessive absences." In addition, Kenny's review of the minor's home schooling records suggested that L.S.R. was not meeting the minimum requirements provided by statute. Kenny noted, for instance, that respondent was not covering certain subjects, the home schooling records did not correspond with the amount of time respondent indicated she had been instructing L.S.R., and there were several days each month were no home schooling time was logged at all. L.S.R. told Kenny that he spent more time playing video games than on home schooling assignments. Eventually, Kenny and respondent discussed re-enrolling L.S.R. in public school. Since then, L.S.R. began attending public school again and is doing well.

¶ 16 L.S.R. told Kenny that he rarely leaves respondent's home. He also related that respondent is frequently sick and he has to take care of her. L.S.R. stated that he has only one friend in the United States. L.S.R. acknowledged he has three brothers, but indicated that he does not spend a lot of time with them. L.S.R. reported that he has many friends in the United Kingdom. L.S.R.'s activities with petitioner included going on nature walks, playing tennis and golf, and attending cultural institutions. L.S.R. told Kenny that he always wondered why he could not spend more time with petitioner, but that when he asks respondent about it, she becomes angry.

¶ 17 Kenny found that petitioner has provided a more stable home environment than respondent, who has changed residences various times. She also felt that petitioner would be more inclined to ensure that L.S.R. attends school and forms relationship with his peers. Kenny also felt that petitioner would be more likely to provide L.S.R. with a healthy life and ensure that L.S.R. engages in physical activities outside the home instead of playing video games. Based on her time with L.S.R., Kenny also concluded that L.S.R. wanted to live and spend more time with petitioner. Ultimately, Kenny recommended that L.S.R. reside primarily with petitioner in the United Kingdom. She recommended that respondent have parenting time with the minor during school breaks and that respondent be allowed to visit the minor in the United Kingdom.

¶ 18 Dr. Shapiro testified that, as part of his evaluation, he interviewed petitioner, respondent, and the minor separately. He also interviewed the minor with each parent and with petitioner and Spaul. In addition, Dr. Shapiro reviewed the court file, school records, correspondence between the parties, and Kenny's report.

¶ 19 Dr. Shapiro found that L.S.R. has a very positive relationship with petitioner and Spaul. Based on his observations of the interactions between petitioner and L.S.R., Dr. Shapiro described their relationship as close, well bonded, connected, familiar, and playful. He added that the same holds true of the relationship between L.S.R. and Spaul. Dr. Shapiro found that petitioner and the minor engage in various physical activities, including swimming, tennis, and biking. Petitioner and the minor also go to museums and the theater. In addition, L.S.R. visits friends and petitioner's extended family in the United Kingdom. L.S.R. expressed a desire to spend more time with petitioner, but stated that he would be open to living in the United Kingdom only if his mother and friends could go with him.

¶ 20 Dr. Shapiro also found that respondent and L.S.R. have a positive relationship. In fact, he felt that L.S.R. was more playful with respondent than with petitioner. Dr. Shapiro attributed this to the fact that L.S.R. was more familiar with respondent than petitioner. L.S.R. told Dr. Shapiro that he and respondent play board games and engage in music-related activities. L.S.R. initially told Dr. Shapiro that he has only one friend in the United States. During later interviews, however, L.S.R. indicated he had many school friends in Illinois. L.S.R. told Dr. Shapiro that respondent arranges play dates for him. However, Dr. Shapiro found that the play dates were often part of babysitting arrangements. Dr. Shapiro also noted that L.S.R. did not refer to respondent's other children as his brothers, but rather as "mom's other children." Upon further inquiry, L.S.R. indicated that he rarely saw his siblings.

¶ 21 Dr. Shapiro noted that the parties bicker in the e-mail correspondence he reviewed. Nevertheless, he found that, overall, they tend to cooperate, and L.S.R. seems to be relatively unaffected by the conflict. Dr. Shapiro was not aware of either parent having any long-term physical disability and therefore had no concerns about the health of either parent. He acknowledged that petitioner and Spaul are in their sixties, but found that their ages did not affect their ability to parent the minor. Moreover, psychological testing did not reveal any significant issues with either parent.

¶ 22 Dr. Shapiro ultimately recommended that it was in the minor's best interest that petitioner be granted custodial care. Dr. Shapiro described L.S.R. as "a pretty intact kid psychologically" and felt that he could handle a move to the United Kingdom. Dr. Shapiro acknowledged that there would be a "certain trauma" for L.S.R. not having respondent in his life, but noted that the minor has developed many friendships in the United Kingdom. He also pointed out that L.S.R. did not have a close relationship with any of his siblings, so a move overseas would not remove

him from a close family network. Dr. Shapiro recommended that if custody were awarded to petitioner, respondent should be allowed parenting time in accordance with the recommendations of the guardian *ad litem*.

¶ 23 Dr. Shapiro admitted that since Kenny became involved in the case, certain issues have been addressed by respondent. For instance, L.S.R. began seeing his siblings more frequently, he began attending public school, and he seems to be more physically active when spending time with respondent. Dr. Shapiro conceded that these changes made his ultimate recommendation "more cautious," but stated that they were not enough to override it.

¶ 24 On July 15, 2014, the trial court entered its order. After reviewing the evidence presented at trial in accordance with sections 602, 602.1, and 609 of the Marriage Act (750 ILCS 5/602, 602.1, 609 (West 2012)), the court awarded custody of L.S.R. to petitioner and allowed petitioner to remove the minor from Illinois to England. The court granted respondent four consecutive weeks of parenting time in Illinois during the summer as well as visitation in the United Kingdom upon reasonable notice to petitioner. The court ordered petitioner to pay the minor's travel costs and accompany him until 13 years of age when traveling to and from the United States. In addition, the court declined to impose a child-support obligation on respondent given that she will have to pay for her travel to the United Kingdom to visit L.S.R. On August 12, 2014, respondent filed a notice of appeal.

¶ 25 II. ANALYSIS

¶ 26 On appeal, respondent raises three principal arguments. First, respondent asserts that the trial court erred in granting petitioner's Motion to Clarify on the day of trial. Second, respondent contends that the trial court erred in modifying custody from respondent to petitioner absent a

substantial change in circumstances. Third, respondent argues that the trial court erred in allowing the permanent removal of L.S.R. from Illinois to the United Kingdom.

¶ 27 Before addressing respondent's arguments, we discuss the timeliness of our disposition. Illinois Supreme Court Rule 311(a)(5) (eff. Feb. 26, 2010) provides that, in appeals from final orders in child custody cases, "[e]xcept for good cause shown, the appellate court shall issue its decision within 150 days after the filing of the notice of appeal." In this case, respondent filed her notice of appeal on August 12, 2014. Therefore, our decision was due on January 9, 2015. However, on September 29, 2014, respondent filed a motion for an extension of time to file her opening brief. On October 15, 2014, we granted that motion and set a new briefing schedule pursuant to which respondent's opening brief was due on November 14, 2014, petitioner's brief was due on December 5, 2014, and respondent's reply brief was due on December 12, 2014. On October 24, 2014, petitioner's attorney filed a motion for leave to withdraw as counsel of record. We granted that motion on November 10, 2014, and allowed petitioner 21 days to file his appearance or that of new counsel. On November 19, 2014, respondent filed a motion to file her opening brief in excess of the page limit. We granted respondent's motion on December 17, 2014, and again revised the briefing schedule. Pursuant to the revised briefing schedule, petitioner's brief was due on December 30, 2014, and respondent's reply brief was due on January 6, 2015. We did not receive a response from petitioner regarding our November 10, 2014, order. As a result, on December 18, 2014, on our own motion, we entered an order notifying petitioner that he had until December 30, 2014, to file his brief, and that his failure to do so would permit this court to decide the appeal on the basis of respondent's brief alone. We mailed the order to petitioner at his address in the United Kingdom. As of January 15, 2015, we had not received a response from petitioner, and the case was then submitted to this court for

disposition. Given the delays occasioned by the extensions of time and the withdrawal of petitioner's counsel, we believe good cause has been shown for this order not being filed within the 150-day limit.

¶ 28 As the foregoing procedural review suggests, petitioner has not filed an appellee's brief. In *First Capital Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976), the supreme court explained the options available to a reviewing court under such circumstances:

> "We do not feel that a court of review should be compelled to serve as an advocate for the appellee or that it should be required to search the record for the purpose of sustaining the judgment of the trial court. It may, however, if justice requires, do so. Also, it seems that if the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief, the court of review should decide the merits of the appeal. In other cases if the appellant's brief demonstrates *prima facie* reversible error and the contentions of the brief find support in the record the judgment of the trial court may be reversed." *First Capitol Mortgage Corp.*, 63 Ill. 2d at 133.

Thus, in the absence of an appellee's brief, a reviewing court has three options: (1) the court may decide the case if it determines that justice so requires; (2) the court may decide the merits of the case if the record is simple and the issues can be easily decided without the aid of an appellee's brief; or (3) the court may reverse the trial court when the appellant's brief demonstrates *prima facie* reversible error that is supported by the record. *First Capitol Mortgage Corp.*, 63 Ill. 2d at 133; see also *Thomas v. Koe*, 395 Ill. App. 3d 570, 577 (discussing the three discretionary options an appellate court may exercise in the absence of an appellee's brief). While it is not our duty to serve as an advocate for appellee, we find that the interests of justice dictate that we

should determine the merits of the appeal as the welfare of a child is at stake. *In re Marriage of Kutinac*, 182 Ill. App. 3d 377, 379 (1989). With these preliminary matters resolved, we now turn to the merits.

¶ 29 A. Motion to Clarify

¶ 30 Respondent first challenges the trial court's ruling on petitioner's Motion to Clarify. As noted above, on September 16, 2013, petitioner filed a "Petition for Modification of Custody and Removal of Minor Child." On June 10, 2014, petitioner filed the Motion to Clarify in which he asserted that neither a judgment of parentage nor a judgment granting custody of L.S.R. to respondent was ever entered in this cause. As a result, he reasoned that this matter should be conducted as an initial custody determination under section 602 of the Marriage Act (750 ILCS 5/602 (West 2012)) and not as a modification of custody pursuant to section 610 of the Marriage Act (750 ILCS 5/602 (West 2012)). On the day of trial, following arguments by the parties, the trial court granted the Motion to Clarify. The court agreed with petitioner that no judgment of parentage had been entered in this cause. As a result, the court stated that it would review petitioner's petition as an initial custody determination pursuant to the factors set forth in section 602 of the Marriage Act. The court also found that while respondent is presumed to be the custodial parent of the child, no legal presumption is created causing a higher burden or different legal standard. As a result, the court stated that the applicable legal standard was "a preponderance of the evidence and best interests of the minor child."

¶ 31 Respondent argues that the trial court erred in granting the Motion to Clarify. Respondent cites two principal reasons in support of her position. First, she disputes the trial court's finding that no judgment of parentage had been entered in this cause. According to respondent, a judgment of parentage granting her custody of L.S.R. was entered prior to when

petitioner sought custody of the minor. As a result, she reasons that petitioner's request for custody should have been reviewed not as an initial custody judgment but as a modification of custody. Second, respondent argues that the trial court abused its discretion in granting the Motion to Clarify on the day of trial because it resulted in prejudice to her. We address each contention in turn.

¶ 32 In support of her claim that a judgment of parentage had been entered in this cause, respondent first directs us to a "Parental Responsibility Agreement" (PRA) signed by the parties in the United Kingdom in July 2009. The PRA is a one-page, pre-printed form with spaces to designate (1) the minor's full name, gender, date of birth, and date of 18th birthday; (2) the mother's name and address; and (3) the father's name and address. Below the spaces for the foregoing information is the following statement: "We declare that we are the mother and father of the above child and we agree that the child's father shall have parental responsibility for the child (in addition to the mother having parental responsibility)." Below the declaration are spaces for the parties to sign and date the document as well as a space for a witness to certify that the document was signed in his or her presence. In this case, the parties' signatures were witnessed by an officer of the local court who is authorized to administer oaths. It was registered in the United Kingdom with the Principal Registry of the Family Division on July 7, 2009. Petitioner attached a copy of the PRA to his September 16, 2013, petition.

¶ 33 Respondent contends that the PRA constitutes a judgment of parentage pursuant to section 14(a)(2) of the Parentage Act (750 ILCS 45/14(a)(2) (West 2012)). That provision states:

> "If a judgment of parentage contains no explicit award of custody, the establishment of a support obligation or of visitation rights in one parent shall be

> considered a judgment granting custody to the other parent. If the parentage judgment contains no such provisions, custody shall be presumed to be with the mother; however, the presumption shall not apply if the father has had physical custody for at least 6 months prior to the date that the mother seeks to enforce custodial rights." 750 ILCS 45/14(a)(2) (West 2012).

Respondent asserts that by signing the PRA, petitioner acknowledged that he was L.S.R.'s father and assumed all rights, powers, and responsibilities for L.S.R. Respondent then states, "[a]bsent any designation of custody, this [PRA] should have been deemed a judgment of parentage by the trial court granting custody of L.S.R. to [respondent] pursuant to Section 14(a)(2) of the Parentage Act." As such, she reasons that petitioner was required to seek a modification of custody. We disagree.

¶ 34 First, it is not clear to us that the PRA constitutes a "judgment" of parentage for purposes of section 14(a)(2) of the Parentage Act. "[A] 'judgment' is 'a court's official decision with respect to the rights and obligations of parties to a lawsuit.' " *In re B.B.*, 2011 IL App (4th) 110521, ¶ 24 (quoting *Apollo Real Estate Investment Fund, IV, L.P. v. Gelber*, 398 Ill. App. 3d 773, 779 (2009)). In this case, the parties voluntarily executed the PRA to memorialize their intent that petitioner have "parental responsibility" with respect to the minor. However, there is no evidence that the parties presented the PRA to a court for approval and respondent does not cite any authority that the PRA otherwise constitutes an official determination by a court with respect to the rights and obligations of the parties in relation to the parentage of L.S.R. In fact, involvement with court officials appears limited to the ministerial acts of witnessing the parties' signatures and registering the document with the Principal Registry of the Family Division.

¶ 35 Assuming, *arguendo*, the PRA constitutes a judgment of parentage under Illinois law, we would still find unpersuasive respondent's position that the trial court should have treated petitioner's September 2013 petition as one for a modification of custody. Although respondent's argument is not entirely clear, we interpret it as follows. The PRA is a judgment of parentage. The PRA does not contain an explicit award of custody. Under British law, the PRA provides for the establishment of a support obligation or visitation rights in petitioner. Thus, under the first sentence of section 14(a)(2) of the Parentage Act (750 ILCS 45/14(a)(2) (West 2012)), the PRA constitutes a judgment granting custody to respondent.

¶ 36 We agree that the PRA does not contain an explicit award of custody. Thus, under the first sentence of section 14(a)(2), the PRA will be considered a judgment granting custody to respondent only if it establishes a support obligation or visitation rights in petitioner. See *In re B.B.*, 2011 IL App (4th) 110521, ¶ 24 (construing section 14(a)(2) and finding that "[t]he first sentence of section 14(a)(2) expressly states visitation rights or a support obligation in one parent contained in a *parentage judgment* must be treated as a custody judgment in favor of the other parent." (Emphasis in original.)). In this case, we find no language in the PRA expressly establishing a support obligation or visitation rights in petitioner. Moreover, the only authority that respondent cites in support of her claim that it does is the definition of "parental responsibility" under the Children Act 1989, a statute enacted by the British parliament. The Children Act 1989 defines "parental responsibility" as "all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property." Children Act 1989, ch. 41, part I, § 3(1) (U.K.). However, respondent does not direct us to any authority interpreting this definition so as to include a support obligation or visitation rights. In fact, the statute expressly states that whether or not an individual has parental

responsibility for a child does not affect "any obligation which he may have in relation to the child" and explicitly references "a statutory duty to maintain the child" as one of these obligations. Children Act 1989, ch. 41, part I, § 3(4)(a) (U.K.); see also The Children Act 1989 Guidance and Regulations, Volume 1, ¶ 2.6 (2008). Thus, it is not clear to us that the definition of "parental responsibility" under British law encompasses a support obligation or visitation rights. Accordingly, even if we consider the PRA a judgment of parentage, the absence of an express support obligation or visitation rights in the PRA compels us to conclude that it is not a judgment granting custody to respondent for purposes of section 14(a)(2) of the Parentage Act.

¶ 37 Alternatively, respondent argues that the May 19, 2011, and the December 13, 2011, orders entered in Kane County constitute a judgment of parentage.[1] As noted earlier, the May 19, 2011, order required petitioner to pay temporary child support to respondent in the amount of $1,006 per month.[2] That support obligation was voluntarily dismissed, but reinstated by the order of December 13, 2011. The entirety of respondent's explanation why these orders

[1] In her brief, respondent refers to an order entered in Kane County on May 18, 2011. We are unable to find any order entered on that date and presume that respondent is referring to the order entered on May 19, 2011.

[2] Respondent disputes whether the child-support order entered on May 19, 2011, was a temporary order of support, claiming that the order "does not [so] acknowledge." In fact, the preamble to the May 19, 2011, order recognizes that it related to respondent's petition "for temp relief and attorney fees." Under these circumstances, we disagree with respondent's suggestion that the May 19, 2011, order was not a temporary child-support order. The order entered on December 13, 2011, merely reinstated the temporary child-support order entered on May 19, 2011.

constitute a judgment of parentage consists of the following two sentences: "Absent an explicit award of custody, the establishment of [petitioner's] child support obligation to [respondent] in the May 19, 2011 and December 13, 2011 court orders amounted to a judgment granting custody to [respondent] pursuant to [section 14(a)(2) of the Parentage Act]. This is further supported by the fact that no petition regarding custody of the minor child was pending on December 13, 2011 nor filed by [petitioner] until September 6, 2013 [*sic*], at which time [petitioner] conceded this issue by filing for a modification of custody." Again, respondent's argument is not entirely clear. In many respects, it parallels the reasons she advanced in support of her claim that the PRA constituted a judgment of parentage, and we interpret it as follows. The May 19 and December 13, 2011, orders constitute a judgment of parentage. Although the orders do not contain an explicit award of custody, they provide for a support obligation in petitioner. Thus, in accordance with the first sentence of section 14(a)(2) of the Parentage Act (750 ILCS 45/14(a)(2) (West 2012)), the orders constitute a judgment granting custody to respondent.

¶ 38 Initially, we disagree with the notion that the May 13 and December 13, 2011, orders constitute a judgment of parentage. We do not find, and respondent does not direct us to, any language in these orders declaring petitioner to be the father of L.S.R. See *J.S.A. v. M.H.*, 224 Ill. 2d 182, 204 (2007) (noting that, in enacting the Parentage Act, the legislature intended to establish a statutory scheme whereby a court determines who is the parent of the child in the eyes of the law). Absent a finding of parentage, we fail to see how these two orders can constitute a judgment of parentage.

¶ 39 At this juncture, we note that Judge Dudgeon entered an order on May 7, 2013, declaring petitioner to be the biological father of L.S.R. In ruling on the Motion to Clarify, Judge Cerne, who also decided the custody and removal issues, determined that the May 7, 2013, order did not

constitute a judgment of parentage because it did not establish child support. Respondent does not challenge this finding on appeal. We mention the May 7, 2013, order, to make clear that, even if we consider that order a judgment of parentage, it does not also constitute "a judgment granting custody" of L.S.R. to respondent under section 14(a)(2) of the Parentage Act. In this regard, we note that the May 7, 2013, order did not contain an explicit award of custody. See 750 ILCS 45/14(a)(2) (West 2012). As such, the May 7, 2013, order could be treated as a judgment granting custody to respondent only if it also established a support obligation or visitation rights in petitioner. See 750 ILCS 45/14(a)(2) (West 2012); *In re B.B.*, 2011 IL App (4th) 110521, ¶ 24 ("The first sentence of section 14(a)(2) expressly states visitation rights or a support obligation in one parent contained in a *parentage judgment* must be treated as a custody judgment in favor of the other parent.") (Emphasis in original.). However, the May 7, 2013, order did not contain any provision related to support or visitation.[3] As such, it did not constitute a judgment awarding custody to respondent. 750 ILCS 45/14(a)(2) (West 2012); *In re B.B.*, 2011 IL App (4th) 110521, ¶24. Moreover, the entry of the temporary child-support orders in Kane County on May 19, 2011, and December 13, 2011, do not change this result. Those orders preceded entry of the May 7, 2013, judgment of parentage and therefore were not part of the parentage judgment. See *In re B.B.*, 2011 IL App (4th) 110521, ¶ 26 ("[S]ection 14(a)(2) of the

[3] As pointed out by the court in *In re B.B.*, 2011 IL App (4th) 110521, ¶ 26, the court should have at least reserved the issue of child support as such is required by section 14(a)(1) of the Parentage Act (750 ILCS 45/14(a)(1) (West 2012) ("The judgment [of parentage] shall contain or explicitly reserve provisions concerning any duty and amount of child support.")).

Parentage Act expressly applies to parentage judgments and does not address temporary child-support orders entered before the parentage judgment.").[4]

¶ 40 Respondent further argues that petitioner's September 2013 pleading should be considered a petition for modification because it is so labeled and it references section 610 of the

[4] In her brief, respondent references *In re Parentage of M.M.W.*, 296 Ill. App. 3d 877 (1998). In that case, the reviewing court found that the trial court should have treated the respondent's petition to transfer custody as a request to modify custody under section 610 of the Marriage Act instead of an initial custody determination under section 602 of the Marriage Act, reasoning that "a support obligation and visitation rights were established in the respondent as of April 28, 1994, along with a prior judgment of parentage on January 11, 1994." *In re Parentage of M.M.W.*, 296 Ill. App. 3d at 884-85. In the present case, the May 7, 2013, order declaring petitioner the father of L.S.R. was entered *after* the child-support orders cited by respondent. Thus, this case is factually distinguishable from *In re Parentage of M.M.W.*, and respondent does not provide a detailed explanation of why the holding in that case would apply here. Indeed, we note that although the *M.M.W.* court cited to section 14(a)(2) of the Parentage Act, it did not analyze the statute. Parenthetically, we note that there is an inconsistency in *In re Parentage of M.M.W.* While the passage cited above indicates that the judgment of parentage was entered on January 11, *1994*, the opinion's statement of facts references January 11, *1995*, as the date the judgment of parentage was entered. See *In re Parentage of M.M.W.*, 296 Ill. App. 3d at 880 ("On January 11, 1995, the trial court entered an order establishing the respondent's paternity."). Thus, it is not clear whether the basis for the court's holding remains valid or whether the court would have reached the same result if the judgment of parentage had been entered after the order for support.

Marriage Act (750 ILCS 5/610 (West 2012)), which governs custody modifications. However, it is a filing's substance, not its title, which determines its character. See *In re Marriage of Hall*, 404 Ill. App. 3d 160, 165-66 (2010). In this case, there was nothing to modify since a custody judgment did not exist when petitioner sought custody of L.S.R. See *In re B.B.*, 2011 IL App (4th) 110521, ¶ 26. Accordingly, the trial court properly treated claimant's September 2013 petition as one for an initial custody determination.

¶ 41 Respondent next claims that the trial court abused its discretion in granting the Motion to Clarify. Respondent equates the Motion to Clarify as a motion granting petitioner leave to amend his pleadings on the day of trial, and we will analyze it as such. Illinois has a liberal policy of allowing amendment of pleadings. 735 ILCS 5/2-616(a) (West 2012) ("At any time before final judgments amendments may be allowed on just and reasonable terms."); *Steenes v. MAC Property Management, LLC*, 2014 IL App (1st) 120719, ¶ 38. Nevertheless, this right is not unlimited. *Steenes v. MAC Property Management, LLC*, 2014 IL App (1st) 120719, ¶ 38. In determining whether to allow a pleading to be amended, a court considers (1) whether the proposed amendment will cure the defective pleading; (2) whether the proposed amendment would surprise or prejudice the opposing party; (3) whether the proposed amendment is timely; and (4) whether the movant had previous opportunities to amend the pleading. *In re Marriage of D.T.W.*, 2011 IL App (1st) 111225, ¶ 107; *Estate of Strocchia v. City of Chicago*, 284 Ill. App. 3d 891, 899 (1996). We review a trial court's decision whether to grant leave to amend a pleading for an abuse of discretion. *In re Marriage of D.T.W.*, 2011 IL App (1st) 111225, ¶ 107. An abuse of discretion occurs when no reasonable person would agree with the court's decision. *1515 North Wells, L.P. v. 1513 North Wells, L.L.C.*, 392 Ill. App. 3d 863, 870 (2009).

¶ 42 Respondent contends that the trial court's ruling on the Motion to Clarify constituted an abuse of discretion because it resulted in prejudice to her. She cites three reasons in support of this claim. First, she asserts that the proposed amendment "constituted a request to change the burden of proof from clear and convincing evidence to the much lesser standard of preponderance of the evidence." Second, she asserts that she was prejudiced by the timing of the amendment because "it changed the issues before the court, eliminated [petitioner's] need to establish a substantial change in circumstances by clear and convincing evidence, and changed the evidence [she] would be required to refute at trial without any time to prepare for same." Third, she claims that by allowing petitioner to amend his petition, the trial court "erroneously eliminated the statutory presumption favoring [her] as L.S.R.'s present custodian."

¶ 43 All of respondent's allegations of prejudice are premised on the existence of a judgment of parentage granting custody to her at the time petitioner filed his request for custody. As we discuss above, no such judgment existed. As a result, we fail to see how respondent was surprised or prejudiced by the Motion to Clarify.

¶ 44 Moreover, respondent does not indicate how the issues changed or what evidence she was "required to refute at trial without time to prepare for same." To be sure, the existence of a change in circumstances is not at issue in an initial custody determination; however, the best interest of the minor would remain. Compare 750 ILCS 5/602 (West 2012) ("The court shall determine custody in accordance with the best interest of the child") with 750 ILCS 5/610(b) (West 2012) ("The court shall not modify a prior custody judgment unless it finds by clear and convincing evidence *** 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.") (Emphasis added.); see also *In re Marriage of Hefer*, 282 Ill. App. 3d 73, 79 (1996) (noting that

an initial award of custody under section 602 of the Marriage Act is decided on the basis of the best interest of the child); *In re Marriage of Debra N.*, 2013 IL App (1st) 122145, ¶¶ 46-47 (noting that, under section 610(b) of the Marriage Act, modification of custody is warranted only if there has been a change of circumstances and modification is in the minor's best interest). Thus, there was actually less evidence for respondent to "refute" in an initial custody determination proceeding than in a proceeding for the modification of custody. We also point out that respondent does not suggest that she requested additional time to prepare for the case in light of the court's ruling on the Motion to Clarify. Under these circumstances, we find the trial court did not abuse its discretion in granting the Motion to Clarify.

¶ 45 II. Change in Circumstances

¶ 46 Respondent next argues that the trial court erred in modifying custody from her to petitioner absent a substantial change in circumstances as required by section 610(b) of the Marriage Act (750 ILCS 5/610(b) (West 2012)). However, we have found a custody judgment had not been entered in this case. Thus, section 610(b) of the Marriage Act, which relates to the *modification* of custody, does not apply here, and we find no reversible error occurred on this basis. See *In re B.B.*, 2011 IL App (4th) 110521, ¶ 29.

¶ 47 III. Minor's Best Interest

¶ 48 Next, respondent challenges the trial court's finding that it is in L.S.R.'s best interest that custody be awarded to petitioner. Respondent initially asserts that the trial court's award of custody to petitioner was in error because the court failed to analyze the best-interest factors in terms of a modification. As noted above, however, a custody judgment in this case had not been entered prior to the custody determination at issue. Under these circumstances, the court was not

required to analyze the best-interest factors in terms of a modification. See *In re B.B.*, 2011 IL App (4th) 110521, ¶ 29.

¶ 49 The Parentage Act provides that custody shall be determined in accordance with the relevant provisions of the Marriage Act. 750 ILCS 45/14(a)(1) (West 2012). Section 602(a) of the Marriage Act (750 ILCS 5/602(a) (West 2012)) requires courts to determine custody in accordance with the best interest of the minor and considering all relevant factors, including the 10 factors enumerated therein. In custody proceedings, the trial court is vested with wide discretion and great deference because it is in a superior position to evaluate the testimony of the witnesses and assign weight to the evidence. *In re Marriage of Iqbal*, 2014 IL App (2d) 131306, ¶ 55; *In re Custody of T.W.*, 365 Ill. App. 3d 1075, 1084 (2006). Accordingly, we will not reverse a custody determination on appeal unless it is clearly against the manifest weight of the evidence and it appears that a manifest injustice has occurred. *In re Marriage of Iqbal*, 2014 IL App (2d) 131306, ¶ 55. A judgment is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *In re Parentage of J.W.*, 2013 IL 114817, ¶ 55.

¶ 50 In the present case, the trial court entered its written order on July 15, 2014. In its order, the court noted that it had considered the evidence and testimony presented by the parties in light of the relevant statutory provisions at issue, including section 602 of the Marriage Act (750 ILCS 5/602 (West 2012)). After considering the best-interest factors individually, the court ultimately concluded that it was in the minor's best interest that custody be awarded to petitioner. Our review of the relevant best-interest factors in light of the evidence presented at trial supports the court's finding that custody with petitioner is in L.S.R.'s best interest.

¶ 51 The first best-interest factor concerns the wishes of the child's parents as to his custody. 750 ILCS 5/602(a)(1) (West 2012). The trial court determined that both petitioner and

respondent have expressed their desire to have custody of L.S.R. Respondent does not dispute this finding. Accordingly, this factor does not favor either parent.

¶ 52 The second best-interest factor concerns the wishes of the child as to his custodian. 750 ILCS 5/602(a)(2) (West 2012). The trial court, citing the testimony of Kenny, found that L.S.R. expressed a preference to reside with petitioner in the United Kingdom because he has more friends there and he participates in more activities there. Respondent does not dispute Kenny's testimony on this point. Instead, she contends that the trial court "completely discounted" Dr. Shapiro's testimony that L.S.R. was open to moving to the United Kingdom only if respondent and his friends could move with him. However, as the trier of fact, the trial court was vested with evaluating the testimony of the witnesses and assigning weight to the evidence. *In re Marriage of Iqbal*, 2014 IL App (2d) 131306, ¶ 55; *In re Custody of T.W.*, 365 Ill. App. 3d 1075, 1084 (2006). Here, the trial court opted to give more weight to Kenny's testimony. We cannot say that the trial court erred in doing so. Indeed, although Dr. Shapiro testified that L.S.R. never told him that he wanted to live with petitioner, the minor did indicate that he wanted to spend more time with petitioner. Moreover, Dr. Shapiro found that L.S.R. has a very positive relationship with petitioner and Spaul. In addition, Dr. Shapiro noted that L.S.R. has many friends in the United Kingdom, participates in many activities there, and has an extended family there. We also note that, in light of evidence that respondent would become angry when L.S.R. asked about spending more time with petitioner, the minor may have been afraid to tell Dr. Shapiro that he wanted to live with petitioner in the United Kingdom. Given this evidence, the trial court could properly find that this factor favors petitioner.

¶ 53 The third best-interest factor is the interaction and interrelationship of the child with his parents, siblings, and any other person who may significantly affect the child's best interest. 750

ILCS 602(a)(3) (West 2012). The trial court found that the interaction between petitioner and L.S.R. is better than the interaction between respondent and the minor. In reaching this conclusion, the trial court relied principally on its finding that petitioner and Spaul are "very involved" with L.S.R. and understand his developmental needs whereas respondent "does little" with L.S.R. and seems to lack an understanding of the minor's developmental needs. However, the record clearly establishes that L.S.R. has a close and loving relationship with both of his parents. Moreover, we are unaware of any evidence that L.S.R. interacts better or has a healthier relationship with petitioner and Spaul than with respondent and her family. To be sure, the evidence suggests that petitioner engages in a wider variety of activities with L.S.R. and does so more frequently than does respondent. Nevertheless, the trial court pointed to no evidence to show that the either the relationship between respondent and L.S.R. or their interactions are unhealthy. Accordingly, this factor favors neither party.

¶ 54 The fourth best-interest factor relates to the child's adjustment to his home, school, and community. The trial court found that L.S.R.'s attachment to his school and community in Illinois is weak. The evidence of record supports the trial court's finding. L.S.R. was born in Costa Rica. When he was an infant, respondent moved to a residence on Riverview Street in North Aurora, Illinois, where he and respondent resided for about eight months. Respondent then moved to the United Kingdom, where she, L.S.R., and C.K. resided with petitioner and Spaul. Three months later, respondent moved back to the United States and resided at two different locations in North Aurora. In August 2012, respondent moved to Naperville, where she also resided in two different locations. Prior to the involvement of the guardian *ad litem*, L.S.R. had only one friend in Illinois, he rarely left respondent's residence, and he spent most of his free time playing video games. L.S.R.'s learning environment also changed frequently. Between

kindergarten and second grade, he attended three different elementary schools and was home schooled. Kenny became concerned because the home schooling records did not correspond with the amount of time respondent indicated she had been instructing L.S.R. As a result of Kenny's concerns, respondent eventually re-enrolled L.S.R. in public school. L.S.R. finished second grade at Mill Elementary School and was promoted to third grade. We acknowledge that, more recently, respondent's living situation has stabilized, L.S.R. has been more active outside the home, and he socializes more frequently with friends. However, without Kenny's intervention, it is unclear whether respondent would have instituted any changes. Therefore, the trial court could properly find that the fourth best-interest factor favors petitioner.

¶ 55 The fifth best-interest factor pertains to the mental and physical health of all parties involved. The trial court observed respondent in court and determined that she did not exhibit any physical or mental conditions that would adversely impact her ability to parent. Similarly, the court found no evidence that would support any claim of a physical or mental condition that would adversely impact petitioner's ability to parent. Accordingly, this factor favors neither party.

¶ 56 The trial court also found that each party is willing and able to facilitate and encourage a close and continuing relationship between the minor and the other parent. In support of this finding, the court noted that petitioner has visited L.S.R. in Illinois on numerous occasions, respondent has traveled with L.S.R. to the United Kingdom, and the parties have attempted video conferencing on the internet. Respondent urges that her efforts to facilitate a relationship between L.S.R. and petitioner "far exceeded" petitioner's efforts at facilitating a relationship between her and the minor. We disagree. The evidence shows that both parties were aware of the importance of the other parent's role in the minor's life. In this regard, petitioner hosted

respondent and L.S.R. in the United Kingdom on several occasions. Similarly, respondent was generous in allowing petitioner to frequently visit L.S.R. in Illinois. There were a few disagreements between the parties over visits and webcam sessions. Overall, however, the record establishes that both parties were aware of the significance of the other parent's role in the minor's life and therefore demonstrated cooperation in facilitating a relationship between L.S.R. and the other parent. Moreover, petitioner testified that if he were to be awarded custody of L.S.R., he would maintain contact with respondent through webcams, telephone, and visits in the United States and in England. Accordingly, this factor does not favor either party.[5]

¶ 57 As the foregoing analysis indicates, of the relevant best-interest factors, four favor neither party, two favor petitioner, and none favor respondent. We also note that both Kenny (the guardian *ad litem*) and Dr. Shapiro (the section 604.5 evaluator) ultimately recommended custody with petitioner served the best interest of the minor. Because more best-interest factors favor petitioner and in light of the opinions of the guardian *ad litem* and the section 604.5 evaluator, it was not against the manifest weight of the evidence for the trial court to conclude that the an award of custody to petitioner served the best-interest of L.S.R.[6]

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[5] The remaining best-interest factors are not applicable in this case.

[6] In its order, the trial court also discusses respondent's "past efforts at parenting." Respondent argues that it was improper for the trial court to consider this information. However, section 602(a) of the Marriage Act (750 ILCS 5/602(a) (West 2012)) allows the court to consider "*all* relevant factors." (Emphasis added.). See *In re Marriage of Martins*, 269 Ill. App. 3d 380, 389 (1995). Respondent does not explain why this information was irrelevant. In any event, even if it was improper to consider respondent's past efforts at parenting, the other evidence of record was sufficient to establish that the best interest of the minor would be served by placing

¶ 58 IV. Removal

¶ 59 Finally, respondent contends that the trial court erred in allowing the permanent removal of L.S.R. from Illinois to the United Kingdom. In this regard, respondent's argument is two-fold. First, she claims that the trial court did not separately consider whether granting petitioner leave to remove L.S.R. from Illinois to the United Kingdom was in the minor's best interest as evidenced by the court's failure to evaluate the factors set forth in *In re Marriage of Eckert*, 119 Ill. 2d 316 (1988). Second, she contends that application of the *Eckert* factors demonstrate that removal was not in L.S.R.'s best interest and therefore the trial court's decision was against the manifest weight of the evidence.

¶ 60 The paramount consideration in a removal case is the best interest of the minor. *In re Marriage of Repond*, 349 Ill. App. 3d 910, 916 (2004). Section 609 of the Marriage Act (750 ILCS 5/609 (West 2012)) governs petitions for removal. Section 609 of the Marriage Act is applicable to unmarried parties pursuant to section 14(a)(1) of the Parentage Act (750 ILCS 45/14(a)(1) (West 2012)). Section 609 of the Marriage Act provides in relevant part that "[t]he court may grant leave *** to any party having custody of any minor child *** to remove such child *** from Illinois whenever such approval is in the best interests of such child." 750 ILCS 5/609(a) (West 2012). The burden of proving that such removal is in the child's best interest is on the party seeking the removal. 750 ILCS 5/609(a) (West 2012).

¶ 61 The determination of a minor's best interest must be made on a case-by-case basis, with consideration given to the circumstances of each case. *In re Marriage of Matchen*, 372 Ill. App. 3d 937, 945 (2007). Nevertheless, there are certain factors a trial court should consider in determining whether removal is in the minor's best interest. *In re Marriage of Matchen*, 372 Ill.

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custody with petitioner. See *In re Marriage of Padiak*, 101 Ill. App. 3d 306, 316 (1981).

App. 3d 937, 945 (2007). These factors, first developed in *In re Marriage of Eckert*, 119 Ill. 2d 316 (1988), include: (1) the likelihood that the proposed move will enhance the general quality of life for both the custodial parent and the minor; (2) whether the proposed move is a ruse designed to frustrate or defeat the noncustodial parent's visitation; (3) the noncustodial parent's motives in resisting removal; (4) the removal's effect on the noncustodial parent's visitation rights; and (5) whether a reasonable visitation schedule can be worked out. *In re Marriage of Collingbourne*, 204 Ill. 2d 498, 522-23 (2003); *In re Marriage of Eckert*, 119 Ill. 2d 316, 326-27 (1988). We will not reverse a trial court's ruling on a petition for removal unless it is against the manifest weight of the evidence. *In re Marriage of Guthrie*, 392 Ill. App. 3d 169, 174 (2009). A judgment is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *In re Parentage of J.W.*, 2013 IL 114817, ¶ 55.

¶ 62 Respondent first claims that the trial court did not separately consider whether granting petitioner leave to remove L.S.R. from Illinois to the United Kingdom was in the minor's best interest as evidenced by its failure to evaluate the factors set forth in *In re Marriage of Eckert*, 119 Ill. 2d 316 (1988). While the trial court must consider the *Eckert* factors when making a removal determination, there is no requirement that a trial court make specific findings regarding them. *In re Marriage of Branham*, 248 Ill. App. 3d 898, 902 (1993) ("Neither the [Marriage] Act nor *Eckert* requires a recital by the circuit court of findings in regard to the factors discussed in *Eckert*."). Here, the trial court did not expressly mention *Eckert* in its written order. However, petitioner raised the *Eckert* factors in his petition for removal, there was evidence before the court related to the *Eckert* factors, and the trial court's written order specifies that the findings contained therein were made in accordance with the relevant provisions of the Marriage Act, including section 609 (750 ILCS 5/609 (West 2012)), which relates to removal. Thus, while

the better practice would have been for the trial court to specifically address the *Eckert* factors, it is apparent that the court did consider those factors prior to making the removal determination. We now turn to the *Eckert* factors.

¶ 63 The first *Eckert* factor is the likelihood that the proposed move will enhance the general quality of life for both the custodial parent and the minor. Respondent asserts that there is no evidence that L.S.R.'s move to the United Kingdom will enhance the quality of his life. However, the trial court expressly found in its written order that the United Kingdom would offer a more stable, fulfilling experience for L.S.R. The evidence supports this finding. While residing with respondent in Illinois, L.S.R. frequently changed residences and schools. Further, when the guardian *ad litem* first became involved in this case, L.S.R.'s activities while living with respondent consisted mainly of doing schoolwork and playing video games. L.S.R. indicated that he had few friends at that time and that he rarely left respondent's home. The minor also indicated that respondent is frequently sick and he has to take care of her. In contrast, petitioner and Spaul have lived in the same residence for more than 30 years. L.S.R. indicated that he has many friends in the United Kingdom. L.S.R. is more physically active in the United Kingdom, engaging in a variety of activities, including swimming, tennis, golf, biking, and nature walks. Petitioner also takes L.S.R. to cultural institutions, such as museums and the theater. Likewise, the evidence establishes that the proposed move will enhance the general quality of life of petitioner. Petitioner traveled to the United States to visit L.S.R. at least 38 times, with each trip lasting several weeks. Although petitioner is retired and does not have any work responsibilities, he has a partner and other family in the United Kingdom. Furthermore, he is engaged in volunteer work and other activities. Petitioner indicated that his frequent visits to the United States have disrupted petitioner's commitments in the United Kingdom. L.S.R's

residency in the United Kingdom would diminish these disruptions as it would decrease petitioner's need to travel to the United States. Thus, the evidence shows that the proposed move would enhance the quality of life of both the custodial parent and the minor. Thus, the first *Eckert* factor supports removal.

¶ 64 We consider the second and third *Eckert* factor together. Respondent does not contend, and the record does not establish, that the proposed move is a ruse designed to frustrate or defeat visitation with her. Likewise, we find no evidence that respondent was motivated by any improper purpose in resisting the removal. As respondent points out, she is concerned about the impact the proposed move will have on L.S.R. given their close relationship and the fact that he has lived in Illinois for the majority of his life. We therefore conclude that neither the second nor the third factor weighs for or against removal.

¶ 65 We also consider the fourth and fifth *Eckert* factors together. Those two factors concern the removal's effect on the noncustodial parent's visitation rights and whether a reasonable visitation schedule can be worked out. A reasonable visitation schedule is one that will preserve and foster the child's relationship with the noncustodial parent. *In re Marriage of Gibbs*, 268 Ill. App. 3d 962, 968 (1994). In this case, the court granted respondent visitation with L.S.R. in Illinois for four consecutive weeks each summer. The court also allowed respondent to visit L.S.R. in the United Kingdom upon reasonable notice to petitioner. Obviously, this arrangement significantly reduces the amount of time respondent has with L.S.R. However, when examined in light of the unique facts of this case, we find that it is reasonable. See *In re Marriage of Matchen*, 372 Ill. App. 3d 937, 945 (2007) (noting that removal determinations must be made on a case-by-case basis in light of the circumstances of each case). Significantly, as the trial court pointed out, the minor was conceived with full knowledge that the parties resided on two

continents thousands of miles apart. Given the distance between respondent's residence in Illinois and petitioner's home in the United Kingdom, the court's removal determination was bound to affect L.S.R.'s relationship with one of his parents. We note, however, that a substantial reduction in the noncustodial parent's visitation time may be reasonable where the party requesting removal has established that the removal will actually enhance the quality of the minor's life. See *In re Marriage of Davis*, 229 Ill. App. 3d 653, 665 (1992) (holding that a 35% reduction in noncustodial parent's visitation time was unreasonable where there was an inadequate showing by the parent requesting removal that the move will enhance the child's quality of life). As discussed above, the evidence in this case clearly establishes that the removal will enhance the quality of L.S.R.'s life. In light of these circumstances, and given the finding that removal will enhance L.S.R.'s life, we conclude that the visitation schedule crafted by the trial court is reasonable.

¶ 66 Respondent complains that it will be difficult for her to travel to the United Kingdom because of the cost of the airfare. However, the trial court considered respondent's financial situation by not awarding child support. Furthermore, it ordered petitioner to pay for the minor's travel costs and to accompany the minor to the United States until he turns 13 years of age. Overall, the application of the *Eckert* factors weigh in favor of removal. Accordingly, the trial court's decision to grant the removal petition is not against the manifest weight of the evidence.

¶ 67 III. CONCLUSION

¶ 68 For the reasons set forth above, we affirm the judgment of the circuit court of Du Page County awarding custody of L.S.R. to petitioner and allowing petitioner to remove the minor from Illinois to the United Kingdom.

¶ 69 Affirmed.