2015 IL App (2d) 150696-U
No. 2-15-0696
Order filed December 7, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re PARENTAGE OF E.U.	)	Appeal from the Circuit Court
	)	of Du Page County.
	)	
	)	No. 12-F-285
	)	
	)	Honorable
(Karl Urban, Plaintiff-Appellee, v. Barbara	)	Linda E. Davenport,
Kum, Defendant-Appellant).	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Burke and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in granting petitioner's motion to reconsider, as its finding that it was in E.U.'s best interest for petitioner to be awarded sole custody was not contrary to the manifest weight of the evidence.

¶ 2 E.U. is the minor daughter of petitioner Karl Urban and respondent Barbara Kum. Barbara appeals from an order granting Karl sole custody of E.U. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 E.U. was born on July 24, 2008. Karl and Barbara, who were never married, parented without court intervention until Karl filed a petition for joint custody on May 4, 2012. During

this time, E.U. resided primarily with Barbara. On December 10, 2012, the trial court entered a temporary order granting Karl parenting time for two full days and nights per week. The parties subsequently entered a Shared Parenting Judgment on September 13, 2013, thereby agreeing to approximately equal amounts of parenting time.

¶ 5 On May 29, 2014, Karl filed a petition seeking sole custody of E.U. Karl alleged that the Department of Child and Family Services (DCFS) had conducted an investigation into reports that he sexually abused E.U., but had determined the accusations to be unfounded. Karl added allegations that Barbara had coached E.U. into making the accusations and subjected E.U. to "a multitude of physical examinations, including a full vaginal internal examination, all of which came back normal." Karl simultaneously filed motions requesting that Dr. Robert Shapiro be appointed as an impartial medical examiner, pursuant to Illinois Supreme Court Rule 215 (eff. March 28, 2011), and be ordered to testify regarding E.U.'s best interest, pursuant to section 604.5 of the Illinois Marriage and Dissolution of Marriage Act (the Marriage Act) (750 ILCS 5/604.5 (West 2014)). The trial court subsequently ordered Dr. Shapiro to conduct evaluations regarding the issues of custody and possible abuse.

¶ 6 Dr. Shapiro delivered his written report via facsimile to the parties and the trial court on September 23, 2014. Shapiro concluded, *inter alia*, that there was no convincing evidence that E.U. had been sexually abused; it had been abusive for Barbara to subject E.U. to multiple DCFS investigations and physical examinations; Karl was more psychologically stable than Barbara, who likely had an anxiety disorder; and Karl should be granted sole custody of E.U. Karl filed an amended petition for sole custody of E.U. on October 14, 2014, incorporating Shapiro's conclusions.

¶ 7 The parties proceeded to a three-day bench trial on Karl's amended petition, commencing on December 10, 2014. Karl's first witness was Dr. Shapiro, whom the trial court found qualified to testify as an expert. After testifying regarding his conclusions as stated in Karl's amended petition, Shapiro noted that, at the time of trial, E.U. had undergone four DCFS investigations, had "undergone at least three to four different vaginal exams and anal exams," and had seen two different therapists. Shapiro opined that Barbara was not willing to "let go" of her belief that E.U. had been sexually abused, and it would be unhealthy for E.U. to grow up believing she had been sexually abused "when there's no evidence that that had happened." Shapiro accordingly concluded that it would be in E.U.'s best interest if Karl were granted sole custody.

¶ 8 Barbara testified that the first DCFS investigation was initiated following an incident on August 31, 2013. She was applying cream to a rash on E.U.'s inner thigh when E.U. pulled away. Barbara asked if anyone had touched E.U.'s genitals and E.U. denied that anyone had touched her inappropriately. Barbara then firmly asked the same question a second time, at which point E.U. replied, "Daddy." Barbara immediately called the police and reported E.U.'s disclosure.

¶ 9 Kimberly Grant, a child protection investigator with DCFS, testified regarding her investigation into the first alleged incident. According to Grant, E.U. did not know the difference between a "good touch" and a "bad touch." E.U. made no disclosures of sexual abuse and stated that she was not afraid of her father. The incident was deemed "unfounded" following Grant's investigation.

¶ 10 Barbara testified that the second DCFS investigation, which resulted in an indicated finding of sexual abuse[1], was initiated after E.U. spent Thanksgiving 2013 in Monmouth with Karl and his parents. Barbara told E.U.'s pediatrician that E.U. said Karl had "inserted his finger down there." The pediatrician performed vaginal and anal examinations on E.U., the results of which were normal.

¶ 11 Judy Guenseth, a forensic interviewer and executive director of the Knox County Child Advocacy Center, conducted a 24-minute interview of E.U. on December 23, 2013. Guenseth testified that E.U. disclosed having been touched and penetrated by Karl. Specifically, E.U. said that Karl touched her "butt," adding that it hurt because Karl had forgotten to cut his fingernails. When Guenseth later asked what part of Karl's body touched her "butt," E.U. pointed to the penis area on an anatomical drawing. On cross-examination, Guenseth stated that she found no inconsistency in these responses. Guenseth also admitted that she did not ask E.U. any questions with respect to the difference between a truth and a lie, or between fantasy and reality. Although E.U. had no pets in reality, she claimed during the interview that she had a cat named "Rainbow" and a dog named "Sparks." The trial court admitted a video recording of Guenseth's interview into evidence and played the recording in the courtroom.

¶ 12 Dolores Fisher, a licensed social worker, was engaged by the parties pursuant to a September 2013 court order directing them to cooperate in scheduling an appointment for E.U. with a sexual behavior specialist. Fisher interviewed E.U. on approximately six occasions between October 2013 and March 2014. She also conducted individual intake interviews with Barbara and Karl. After learning of the allegations of sexual abuse, Fisher felt inclined to conduct a forensic evaluation, which involved fact-finding, rather than provide therapy. She

[1] Karl appealed the indicated finding; the appeal was not yet resolved at the time of trial.

believed E.U. made a credible disclosure of sexual abuse against Karl, although E.U. recanted her allegations during a later session. On cross-examination, Fisher admitted that she destroyed her notes from the interviews and prepared her written report three months after the last interview. The written report also lacked specific dates regarding E.U.'s purported allegations. On those bases, the trial court did not allow Fisher's report into evidence. The trial court did, however, allow Fisher's testimony to stand.

¶ 13 Testimony regarding the third DCFS report was provided by Sharon Dorfman, a licensed social worker and child protection investigator with the State of Illinois. Dorfman called Barbara and explained that she needed to speak with E.U. because of a recent hotline call. Barbara angrily responded that she did not want to speak with anyone from DCFS and she would not allow Dorfman to speak with E.U. Dorfman was able to speak with E.U. after going to Barbara's apartment and explaining the necessity for the conversation. E.U. said she had explained to her mother that she had never been abused. Barbara later explained to Dorfman that her most-recent call involved prior allegations of sexual abuse, and DCFS had done nothing to help her. Dorfman told Barbara that she needed to stop reporting allegations that had already been investigated. The report was deemed "unfounded" following Dorfman's investigation.

¶ 14 The record reflects that the fourth DCFS investigation was initiated after Barbara relayed information to a therapist specializing in sexual abuse. Barbara admitted that she sought the counseling for herself, although she had not been a victim of sexual abuse. The fourth DCFS investigation remained ongoing at the time of trial.

¶ 15 Also pertinent to this appeal, Karl testified that he had undertaken an extensive remodeling project in his home, which rendered the only bathroom inoperable until E.U. was about four years old. During this time, he provided a bucket for E.U. that was modified with a

training seat. He testified that this was comparable to a "training potty," and described the situation as "kind of like camping." Karl also testified that he worked as a stagehand. He often worked nights and would not get home until 2 a.m.

¶ 16 The trial court issued a letter opinion on December 26, 2014. The trial court found that Barbara had seriously endangered E.U.'s physical and mental health by subjecting her to multiple DCFS investigations and medical examinations. The trial court also found that Karl's touching of E.U. was "in the normal and routine care of the child and was not inappropriate or sexual in any way." However, the trial court did not conclude that a modification of custody was in E.U.'s best interest, finding in pertinent part:

> "The Court cannot find a change of custody is in the best interests of the child at this time due to the erratic work schedule of Karl and his cavalier explanations of his home remodeling projects and 'camping' theory for lack of a functioning toilet. He testified that his home is 'fine' now, but the Court cannot discount the issues while his young daughter was residing with him. He testified he has looked into different nannies that can care for the child while he is working, but he cannot be personally available under his current work schedule to get the child up for school, be there when she returns or even guarantee he will be home while she is asleep. There was no evidence Barbara does not properly care for the child while she is [*sic*] her care other than her constant probing of possible sexual abuse by the [*sic*] Karl. Since his schedule is so unpredictable, the Court cannot find a change in custody will be in the child's best interests at this time."

¶ 17 The trial court entered an order denying Karl's amended petition for sole custody of E.U. on December 29, 2014. On January 26, 2015, Karl filed a motion to reconsider the trial court's ruling. Therein, Karl argued that the trial court "erred in its application of the facts of this matter

to existing law." He also asserted that Barbara had engaged a new therapist for E.U., and a new DCFS investigation into Karl's sexual abuse had been initiated.

¶ 18 The trial court conducted a hearing on the motion to reconsider on June 11, 2015. The trial court stated that it was granting the motion for three reasons. First, it had "failed to give the appropriate weight necessary to the testimony and opinion of Dr. Robert Shapiro," noting Shaprio's opinion that Barbara's conduct would continue to be harmful to E.U. Second, it had erred with regard its understanding of the circumstances surrounding Karl's remodeling project. Third, it had erred in finding that modification of custody was not in the best interest of E.U. Accordingly, the trial court entered an order granting Karl sole custody of E.U. The trial court also ordered that E.U. have no further contact with her newly engaged therapist. Barbara filed a timely notice of appeal.

¶ 19 II. ANALYSIS

¶ 20 Barbara's primary contention on appeal is that the trial court erred in ruling that it was in E.U.'s best interest for Karl to be granted sole custody. In support, Barbara first challenges the trial court's rulings on the admissibility of the reports and opinions offered by Dr. Shapiro, Guenseth and Fisher. She goes on to argue that the trial court failed to properly weigh the evidence. We disagree. The trial court's initial ruling notwithstanding, its finding that it was in E.U.'s best interest for Karl to have sole custody was not against the manifest weight of the evidence. We therefore affirm.

¶ 21 Barbara first argues that the trial court erred by allowing Dr. Shapiro's report into evidence. As noted, Shapiro was appointed as an impartial medical examiner pursuant to Illinois Supreme Court Rule 215 (eff. March 28, 2011). He was also ordered to evaluate E.U.'s best interest pursuant to section 604.5 of the Marriage Act. 750 ILCS 5/604.5 (West 2014). Shapiro

was required to deliver or mail his report to the parties' respective attorneys within 21 days after his completion of the examination and evaluation, or within any extensions or modifications granted by the trial court; otherwise, his report and testimony were not to be received into evidence. See Ill. S. Ct. R. 215(c) (eff. March 28, 2011); see also 750 ILCS 5/604.5(d) (West 2014). Barbara acknowledges that Shapiro timely delivered his report via facsimile on September 23, 2014. However, it was revealed at the outset of the trial that Shapiro had mistakenly omitted two of the report's 28 pages from his original submission. Barbara argues that, because Shapiro failed to deliver his *complete* report within 21 days, the entire report should have been barred from evidence.

¶ 22 The record reflects, however, that Barbara's counsel registered no objections to Dr. Shapiro's report during the trial. Karl's counsel discussed the two-page omission from Shapiro's report before calling him to testify and noted that she would tender a corrected document at the appropriate time. In response, Barbara's counsel stated that he had reviewed the additional pages and registered no objection. After Shapiro later identified the missing pages of his report, Karl's counsel offered the corrected version into evidence. Once again, Barbara's counsel answered that he had no objection. Thus, Barbara forfeited any argument pertaining to the two-page omission from Shapiro's original submission. See *Huang v. Brenson*, 2014 IL App (1st) 123231, ¶ 22 ("Failure to raise an issue in the trial court generally results in forfeiture of that issue on appeal.").

¶ 23 We acknowledge that forfeiture "is a limitation on the parties, not the reviewing court, and we will relax the forfeiture rule to address a plain error affecting the fundamental fairness of a proceeding, maintain a uniform body of precedent, and reach a just result." *In re Tamera W.*, 2012 IL App (2d) 111131, ¶ 30. We hold, however, that a relaxation of the forfeiture rule is not

appropriate here. Barbara's counsel had an opportunity to review the two missing pages, which contained summary information that was restated in other portions of Shapiro's 28-page report. Thus, the fundamental fairness of the proceeding was not affected.

¶ 24 Barbara next argues that the trial court erroneously applied Illinois Supreme Court Rule 213 (eff. Jan. 1, 2007) in two instances. The first instance occurred when Barbara's counsel objected to Dr. Shapiro's opinion testimony on the basis that Shapiro was not disclosed as an expert witness pursuant to Illinois Supreme Court Rule 213(f) (eff. Jan. 1, 2007). The trial court overruled this objection, noting that Barbara had failed to issue any written interrogatories requesting the "specifics of what [Shapiro] would be testifying to." The second instance occurred when Barbara's counsel asked forensic interviewer Judy Guenseth if she had formed any opinion as to whether E.U. had been coached during her video-recorded interview on December 23, 2013. This time, Karl's counsel objected on the basis that Barbara had not tendered Guenseth as an expert witness. The trial court sustained the objection, commenting that Barbara had an "affirmative obligation to tender the opinion of a witness that would be your independent expert witness."

¶ 25 The admission of evidence pursuant to Illinois Supreme Court Rule 213 is within the sound discretion of the trial court, and the trial court's ruling will not be disturbed absent an abuse of discretion. *Kovera v. Envirite of Illinois, Inc.*, 2015 IL App (1st) 133049, ¶ 59. "An abuse of discretion occurs only when the trial court's ruling is arbitrary, fanciful or unreasonable, or no reasonable person could find as the trial court did." *In re Marriage of Dowd*, 2013 IL App (3d) 120140, ¶ 21. While Rule 213 disclosure requirements are subject to strict compliance, the failure to comply with Rule 213 does not automatically require the exclusion of the non-complying party's witnesses or testimony. *Kovera*, 2015 IL App (1st) 133049, ¶ 59. In

determining whether the exclusion of a witness or testimony is a proper sanction for nondisclosure, the court "must consider" the following factors: (1) the surprise to the adverse party; (2) the prejudicial effect of the testimony; (3) the nature of the testimony; (4) the diligence of the adverse party; (5) the timely objection to the testimony; and (6) the good faith of the party calling the witness. *Sullivan v. Edward Hospital*, 209 Ill. 2d 100, 109 (2004).

¶ 26 We first note that, although the trial court appointed Dr. Shapiro to conduct evaluations regarding the issues of custody and possible abuse, Karl was nonetheless required to comply with the Illinois Supreme Court Rules governing the disclosure of Shapiro as an expert witness. See 750 ILCS 5/604.5(c) (West 2014) and Ill. S. Ct. R. 215(a) (eff. March 28, 2011) (both stating that the party calling the appointed witness to testify must comply with the Illinois Supreme Court Rules regarding disclosure of opinion witnesses). Rule 213(f) provides for the disclosure of information pertaining to independent and controlled expert witnesses, and states that the obligation to disclose such information is triggered "[u]pon written interrogatory ***." Ill. S. Ct. R. 213(f) (eff. Jan. 1, 2007).

¶ 27 The record reflects that neither party in this case issued written interrogatories requesting the identities and opinions of the other party's opinion witnesses. Hence, neither party triggered the other party's obligation to disclose the identities and opinions of its expert witnesses. See Ill. S. Ct. R. 213(f) (eff. Jan. 1, 2007). Accordingly, the trial court was correct to overrule Barbara's objection to Shapiro's opinions on the basis that Barbara failed to issue a written interrogatory requesting such disclosures. However, the trial court erred when it barred Guenseth's opinion regarding whether E.U. had been coached on the basis of its mistaken belief that Barbara had an "affirmative obligation to tender the opinion of a witness that would be [her] independent expert witness."

¶ 28 We agree, however, with Karl's position that the trial court's error did not affect the outcome of the case. See *Kovera*, 2015 IL App (1st) 133049, ¶ 55 (noting, "a party is not entitled to reversal based upon the trial court's evidentiary rulings unless the error substantially prejudiced the aggrieved party and affected the outcome of the case"). On re-direct examination, Barbara's counsel asked Guenseth, "[d]id it appear to you that [E.U.] was reciting what she had been told to say?" Without any objection from Karl's counsel, Guenseth answered she saw no such indications. Therefore, Barbara effectively elicited Guenseth's opinion that E.U. had not been coached during their interview.

¶ 29 We take this opportunity to remind the parties and trial court that Rule 213 "is intended to be a shield to prevent unfair surprise but not a sword to prevent the admission of relevant evidence on the basis of technicalities." Ill. S. Ct. R. 213(k), Committee Comments (revised March 28, 2002); see also *Sullivan*, 209 Ill. 2d at 111 ("The purpose behind Rule 213 is to avoid surprise and to discourage tactical gamesmanship."). Although neither party issued written interrogatories in this case, the record reflects that each party was aware of the witnesses who would be called at trial and the substance of their testimony; hence, there was no danger of either party being unfairly surprised. Regardless, the parties repeatedly attempted to use Rule 213 to prevent the admission of relevant evidence. The trial court effectively encouraged such tactics when it erroneously ruled that the parties had an affirmative obligation to tender the substance of the opinion testimony to be elicited during trial. Thus, the purpose of Rule 213 was undermined in this case.

¶ 30 Barbara's next argument is that the trial court erred in barring social worker Dolores Fisher's report from evidence on the basis of its finding that the report was unreliable. Barbara asserts that the reliability of Fisher's report was not a factor to be considered by the trial court in

deciding whether to admit the report into evidence. Rather, Barbara cites Illinois Rule of Evidence 402 in support of her assertion that the report was admissible because it contained relevant evidence. See Ill. R. Evid. 402 (eff. Jan. 1, 2011) (providing that all relevant evidence is admissible, except as otherwise provided by law).

¶ 31 "Evidentiary rulings are within the sound discretion of the trial court and will not be overturned absent an abuse of discretion." *In re Tasha L.-I.*, 383 Ill. App. 3d 45, 53 (2008). As noted above, the trial court excluded Fisher's report after Fisher admitted that she destroyed her notes from her interviews, prepared her report three months after her last interview, and failed to provide specific dates regarding E.U.'s purported allegations. In its letter opinion, the trial court further noted that Fisher was ordered to provide therapy for E.U., but "took it upon herself to conduct a forensic evaluation instead." Under these circumstances, we find no abuse of discretion in the trial court's decision to exclude Fisher's report. Moreover, we note that the trial court allowed Fisher to testify regarding her opinion that E.U. made a credible disclosure of sexual abuse against Karl. Thus, the trial court's exclusion of Fisher's report did not affect the outcome of the case. See *Kovera*, 2015 IL App (1st) 133049, ¶ 55.

¶ 32 This brings us to Barbara's argument that, in granting Karl's motion to reconsider, the trial court failed to properly weigh the evidence regarding E.U.'s best interest. "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." *In re Marriage of Ricketts*, 329 Ill. App. 3d 173, 177 (2002). Accordingly, a reviewing court will not disturb a custody determination unless it is against the manifest weight of the evidence. *In re Marriage of Lonvick*, 2013 IL App (2d) 120865, ¶ 33. "A judgment is against the manifest

weight of the evidence only when the opposite conclusion is clearly apparent." *In re Parentage of J.W.*, 2013 IL 114817, ¶ 55.

¶ 33 The primary consideration in determining custody is the best interest and welfare of the children involved. *Lonvick*, 2013 IL App (2d) 120865, ¶ 33. Section 602 of the Marriage Act sets forth a non-exhaustive list of 10 factors that the trial court is to consider in rendering such determination. 750 ILCS 5/602(a) (West 2014); see also *In re Marriage of Martins*, 269 Ill. App. 3d 380, 388-89 (1995). These factors include the wishes of the child as to his or her custodian, the mental and physical health of all individuals involved, the occurrence of ongoing abuse, and the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child. 750 ILCS 5/602(a) (West 2014).

¶ 34 This trial centered, in large part, on the trial court's consideration of Dr. Shapiro's report and testimony. Shapiro summarized the facts surrounding the four separate DCFS investigations that had been initiated at the time he prepared his report. This included a consideration of the second investigation, which resulted in an indicated finding of sexual abuse. Shapiro noted that a "close review" of the DCFS records pertaining to the second investigation revealed a "number of inconsistencies." Although the video recording of Guenseth's interview was not given to Shapiro until after he issued his report, Shapiro testified at trial that the video only "verified and solidified" his opinion that Karl had not abused E.U. He said the video showed E.U.'s inability to accurately report information, adding, "what [E.U.] did report during that video wasn't tantamount to abuse anyway."

¶ 35 As noted, Dr. Shapiro concluded that there was no convincing evidence that E.U. had been sexually abused. He also concluded that Karl was more psychologically stable than Barbara, and that Barbara likely had an anxiety disorder. Shapiro believed it had been abusive

for Barbara to subject E.U. to multiple DCFS investigations and physical examinations, and he predicted that Barbara would continue to believe that E.U. had been sexually abused. For these reasons, Shapiro concluded that Karl should be granted sole custody of E.U. The trial court accepted Shapiro's conclusions in its letter opinion, finding that Karl had not touched E.U. inappropriately and Barbara had seriously endangered E.U.'s physical and mental health by subjecting her to multiple DCFS investigations and medical examinations. However, the trial court found that Karl's "erratic work schedule" and "cavalier explanations of his home remodeling projects" outweighed Shapiro's recommendation that it was in E.U.'s best interest for Karl to have full custody.

¶ 36 In his motion to reconsider, Karl first argued that the trial court erred "in its application of the facts of this case to existing law." He took issue with the trial court's rulings regarding his "erratic work schedule" and "cavalier explanations of his home remodeling projects." He asserted that his home remodeling project had been completed since 2012, and any hardships involved with having "sitter care" during his work schedule were "far outweighed" by the "ongoing endangerment" that E.U. continued to experience from Barbara under the custody arrangement from the Shared Parenting Judgment. To that end, Karl asserted that a new DCFS investigation into Karl's sexual abuse had been initiated, just as Dr. Shapiro had predicted. He also noted that the trial court's letter opinion did not include an analysis of the factors set forth in the Marriage Act for consideration of a child's best interest. 750 ILCS 5/602(a) (2014). Karl discussed the relevant factors and argued that the evidence submitted during trial supported a modification of custody.

¶ 37 "The intended purpose of a motion to reconsider is to bring to the court's attention newly discovered evidence, changes in the law, or errors in the court's previous application of the

existing law." *In re Marriage of Epting*, 2012 IL App (1st) 113727, ¶ 41. A trial court's decision to grant or deny a motion to reconsider will generally not be reversed absent an abuse of discretion. *In re Marriage of Heinrich*, 2014 IL App (2d) 121333, ¶ 55. However, where the motion was based on the trial court's application or purported misapplication of existing law, a reviewing court reviews *de novo* the trial court's decision to grant or deny the motion. *Id*. Karl's motion to reconsider in this case alleged both newly discovered evidence and errors in the trial court's application of existing law. Regardless, we conclude that the trial court did not err under either applicable standard of review.

¶ 38 In granting Karl's motion to reconsider, the trial court most notably determined that it had "failed to give the appropriate weight necessary to the testimony and opinion of Dr. Robert Shapiro." Barbara argues that Shapiro's opinions were outweighed by Guenseth's and Fisher's conclusions that E.U. made a credible disclosure of sexual abuse against Karl. We disagree.

¶ 39 Dr. Shapiro held a doctoral degree in psychology and estimated that he had conducted over 600 custody evaluations in his career. He had a similar amount of experience conducting independent mental health examinations. Shapiro conducted two individual interviews of E.U., in addition to one interview with E.U. and Barbara together, and another with E.U. and Karl together. He also conducted multiple individual interviews of Barbara and Karl, including psychological testing of both. After speaking with nine collateral contacts, Shapiro detailed his conclusions in a 28-page written report.

¶ 40 Guenseth, on the other hand, interviewed E.U. for only 24 minutes. Although Fisher interviewed E.U. approximately six times, the shortcomings of her conclusions cannot be overlooked. Hence, given Dr. Shapiro's qualifications and the depth of his analysis, we believe the evidence supported the trial court's initial findings that Karl had not sexually abused E.U.,

and that Barbara had seriously endangered E.U.'s physical and mental health by subjecting her to multiple DCFS investigations and medical examinations. We therefore conclude that the trial court's finding that it was in E.U.'s best interest for Karl to be awarded sole custody was not against the manifest weight of the evidence.

¶ 41 In addition to her primary contention that the trial court's custody determination was against the manifest weight of the evidence, Barbara contends that the trial court abused its discretion by terminating E.U.'s relationship with her newly engaged therapist, Christine DiGangi. Barbara asserts that that this constituted an improper *sua sponte* decision regarding a matter that was not justiciable in the first instance. We disagree.

¶ 42 As noted, Karl argued in his motion to reconsider that Barbara's engagement of DiGangi led to a new DCFS investigation into his purported sexual abuse. Karl further argued that it would be in E.U.'s best interest to deprive Barbara of her authority to engage counselors for E.U. Thus, the trial court did not *sua sponte* terminate E.U.'s relationship with DiGangi. Moreover, a "justiciable matter" is "a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests." *In re Marriage of Baniak*, 2011 IL App (1st) 092017, ¶ 15. E.U.'s continuing relationship with DiGangi was a justiciable matter in this case, as a controversy clearly existed regarding the authority to control E.U.'s health care decisions. The trial court resolved this controversy by awarding Karl sole custody, thereby granting Karl the right to make decisions regarding E.U.'s upbringing, education, health care, and religious training. See *In re Marriage of Deem*, 328 Ill. App. 3d 453, 456 (2002); see also 750 ILCS 5/608 (West 2014). Accordingly, we reject Barbara's contention that the trial court erred when it ordered the termination of E.U.'s therapeutic relationship with DiGangi.

¶ 43 Finally, Barbara contends that the trial court demonstrated extreme bias and prejudicial conduct against her. She points to several contentious exchanges between her counsel and the trial court, asserting that the trial court "exercised a high degree of favoritism" toward Karl's counsel. However, Barbara requests only that the case be assigned to different judge on remand. Because we are not remanding the case, we need not address this contention.

¶ 44 III. CONCLUSION

¶ 45 For the reasons stated, we affirm the judgment of the circuit court of Du Page County.

¶ 46 Affirmed.