2015 IL App (4th) 140835-U

NO. 4-14-0835

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
February 5, 2015
Carla Bender
4th District Appellate
Court, IL

JONATHAN R. PATE,	)	Appeal from
Petitioner-Appellant,	)	Circuit Court of
v.	)	McLean County
NICOLE L. SOCHOTSKY,	)	No. 11F250
Respondent-Appellee.	)	
	)	Honorable
	)	Matthew Fitton,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Presiding Justice Pope and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's decision granting the residential parent permission to remove the child to Florida is against the manifest weight of the evidence, and therefore the decision is reversed.

¶ 2 Petitioner, Jonathan R. Pate, and respondent, Nicole L. Sochotsky, are the parents of a three-year-old boy, K.P. (born March 3, 2011), who has always resided with respondent. The parties, who were never married to each other, ended their relationship before K.P. was born, but, at petitioner's request, the trial court adjudicated him to be K.P.'s father and granted him visitation rights. (Pate is designated as the "petitioner" because he initiated this case, McLean County case No. 11-F-250, by filing a petition for an adjudication of paternity. As we will discuss, however, Sochotsky is the party who subsequently filed a petition for removal. Paradoxically, however, she is designated as the "respondent" because she was the respondent as to the petition for an adjudication of paternity.)

¶ 3 Respondent married John E. Hansen, and about six months later, filed a petition to remove K.P. to Florida, where Hansen had accepted a new job. Petitioner objected to the proposed removal. After hearing the evidence, the court granted the petition to remove K.P. to Florida. Petitioner appeals.

¶ 4 We reverse the trial court's judgment because we find it to be against the manifest weight of the evidence.

¶ 5 I. BACKGROUND

¶ 6 A. The Visitation Schedule at the Time of the Hearing

¶ 7 In August 2014, at the time of the hearing on the petition for removal, the court-ordered visitation schedule was as follows. Petitioner had visitation every other Thursday through Sunday from 6 p.m. to 6 p.m. The parties shared holidays, K.P.'s birthday, and Halloween, and petitioner had K.P. on Father's Day.

¶ 8 B. K.P.'s Relatives in Central Illinois

¶ 9 Petitioner lives in Bloomington, Illinois, and works for State Farm Insurance Company (State Farm) in the underwriting department. His parents, as well as his brothers and sisters and their wives and children, also live in Bloomington. In all, 29 of K.P.'s family members on his father's side live in central Illinois. K.P.'s maternal grandparents also live in central Illinois.

¶ 10 It is undisputed that petitioner has diligently exercised his visitation rights. It also is undisputed that K.P. has close ties with his paternal grandparents and with his aunts and uncles and their children. The Pates appear to be a closely knit family. The many members of this family, whom K.P. names and recognizes, get together regularly at petitioner's parents' house in

Bloomington for cookouts and games. During visitations, petitioner brings K.P. to these family gatherings.

¶ 11 Respondent has no friends or family in Florida. Petitioner has a grandfather in Florida, whom he sees once a year and who lives five hours away from Jacksonville, Florida.

¶ 12 C. State Farm Offers Hansen a Promotion in Florida

¶ 13 When Hansen and respondent married in May 2013, he was a telemarketer in the quote-and-bind department of State Farm in Bloomington. He telephoned people, gave them quotes for State Farm automobile insurance, and tried to persuade them to switch to State Farm.

¶ 14 One day, a supervisor approached Hansen and asked him if he would like to be a manager in State Farm's call center in Jacksonville, Florida. Believing that his chances of promotion would be better in Florida than in the Bloomington headquarters, where there were more people competing for positions, Hansen accepted the offer and entered into a one-year contract with State Farm, whereupon he and respondent sold their house in Bloomington. State Farm had offered to buy the house if Hansen and respondent could not sell it. Because they succeeded in selling it on their own, State Farm paid Hansen a bonus of $9,200 in addition to his relocation expenses.

¶ 15 This transfer to Florida was a promotion, an elevation to management, with a switch from hourly earnings to a salary. The gross increase in Hansen's pay was $18,000 per year, not counting management bonuses. Within a year after his move to Florida, State Farm promoted him again, putting him in charge of Internet support, with a further gross increase of $2,000 per year in his pay.

¶ 16 Hansen was in the MG1 pay grade. His goal was to move up to the MG3 pay grade, in which the maximum salary would be $130,000 a year. The opportunity for further promotions was a significant factor in his decision to take the job.

¶ 17 An additional benefit, Hansen testified, was that the hours in Jacksonville, Florida, were more conducive to family life. While he and respondent lived in Bloomington, their work schedules were such that they did not get to see each other much. Respondent worked four days one week and five days the next week. She reported to work at 10 p.m. and got home at 7 a.m. She would sleep from 7:30 a.m. to 3:30 p.m. and take care of K.P. until she went to work again at 10 p.m. Hansen worked from 11:45 a.m. to 8 p.m., so he would take care of K.P. at night. These alternate work schedules minimized the amount of time K.P. needed to be in day care, but respondent and Hansen got to see each other only one hour a day, between 8:30 and 9:30 p.m. Hansen testified that his work schedule in Florida would be more flexible.

¶ 18 Hansen also testified that, because of his greater earnings in Florida, respondent would need to work only part-time if she were allowed to join him there.

¶ 19 Respondent testified that, with Hansen's salary, she would not need to immediately seek employment in Florida, so she could stay home for a time with K.P.

¶ 20 D. Respondent Remains in Danville for the Time Being, To Await the Decision on Her Petition for Removal

¶ 21 In November 2013, Hansen accepted the promotion, and he and respondent sold their house in Bloomington and bought a house in St. Johns County, Florida. Respondent stayed behind in Illinois for the time being and moved in with her parents in Danville, Illinois, in a two-bedroom house her parents were renting. By September 8, 2014, her parents had to move out of this rental house because the owner wanted to convert it back into offices.

¶ 22 Respondent is a registered nurse specializing in geriatric rehabilitation. She has no experience in a hospital or surgical setting. Within five days after moving to Danville, she found a job at Heritage Manor, which paid her a gross income of $47,500 a year. She was working three 12-hour shifts at Heritage Manor, from 6 a.m. to 6:30 p.m., as well as every third weekend. This work schedule enabled her to spend three days during the week with K.P. Her mother took care of him the other two days.

¶ 23 Respondent testified that, as of the time of the hearing (August 2014), she had not yet applied for any jobs in Florida. She thought it would be premature to do so before the trial court granted her petition for removal. Nevertheless, she presented documentation of jobs available in the vicinity of Jacksonville, Florida, that she considered herself qualified to fill. She believed she would be able to find a daytime job as a registered nurse in geriatrics that paid an amount equal to or greater than her earnings in Danville.

¶ 24 E. The Family Expenses Compared to Hansen's Income

¶ 25 Respondent's financial affidavit reported monthly expenses totaling $3,667. When cross-examining Hansen, however, petitioner's attorney elicited additional monthly expenses totaling $1,145, which were omitted in respondent's financial affidavit: $100 for utilities, Hansen's car payment of $450, $225 for groceries, $100 for clothing, $240 for fuel, and $30 for Hansen's entertainment. When these additional expenses were added to the expenses in respondent's financial affidavit, the total was $4,812 in monthly expenses ($3,667 + $1,145).

¶ 26 By comparison, Hansen's net monthly earnings in Florida were $2,232.

¶ 27 F. Respondent's Testimony Regarding
Public Schools in St. Johns County, Florida

¶ 28 Respondent testified: "When we moved down there [to Florida], we told the real estate agent that we would not live anywhere other than Saint Johns County because they are

rated as the number one—number two school in the entire state." When respondent offered a document (petitioner's exhibit No. 5) purporting to show the rankings of some Florida public schools, including St. Johns County, and some Illinois public schools, including Bloomington, petitioner objected on the ground of hearsay and relevance. The trial court overruled the objection because the ranking of St. Johns County schools was "a factor for [respondent] as to why they chose a home where they chose it." The court stated it would not regard the document as evidence that St. Johns County schools were in fact better than Bloomington schools but that, instead, it would regard the document only as evidence of respondent's and Hansen's motivation to buy a house in St. Johns County.

¶ 29 G. The Trial Court's Rationale for Granting the Petition for Removal

¶ 30 The evidentiary hearing on the petition for removal took two days: August 4 and 22, 2014. At the conclusion of the evidence, after hearing arguments, the trial court addressed the parties from the bench, parsing through the factors in *In re Marriage of Eckert*, 119 Ill. 2d 316, 326-27 (1988), and announcing the decision it had reached on the basis of those factors.

¶ 31 The *Eckert* factors come from the following paragraph in that case:

> "In deciding whether removal is in the child's best interest, a trial court should hear any and all relevant evidence. [Citation.] *** There are *** several factors which may aid a trial court in determining the best interests of the child. The court should consider the proposed move in terms of likelihood for enhancing the general quality of life for both the custodial parent and the children. [Citations.] The court should also consider the motives of the custodial parent in seeking the move to determine whether

> the removal is merely a ruse intended to defeat or frustrate visitation. [Citations.] Similarly, the court should consider the motives of the noncustodial parent in resisting the removal. [Citation.] *** [T]he visitation rights of the noncustodial parent should be carefully considered. [Citations.] Another factor is whether, in a given case, a realistic and reasonable visitation schedule can be reached if the move is allowed. [Citation.]" *Id.*

We now will recount the trial court's discussion of these *Eckert* factors.

¶ 32 1. *The Likelihood That the Move Would Enhance the Quality of Life for Both Respondent and K.P.*

¶ 33 a. Time To Spend With K.P.

¶ 34 The trial court found that Hansen's new job in Florida would increase the family's income, enabling respondent to spend more time at home with K.P. The court said:

> "As far as the improved financial situation, I do believe that not only from the financial statements that have been made exhibits and have been referenced, but the testimony as well, as to possible bonuses, but also moving from management from a level one managing to a level three, the increase in pay is rather significant. *** [Hansen has] moved from a job in the Bloomington/Normal area, corporate headquarters, [to] a new center in Jacksonville, where he's in management. That's—by all accounts, that's improving his financial situation. Also in improving the money issue, this does allow his mother to be selective in selecting a new job. It allows her to be home more

with [K.P.], where she's perhaps not forced to work the hours that she worked in Danville, or worked when her current husband, [K.P.'s] stepfather, was working at State Farm for an hourly rate in the call center. She worked—testimony was that she worked nights at a hospital in the Danville area. While the money was perhaps *** very acceptable ***, her quality of time with [K.P.] suffered."

¶ 35 b. Schools

¶ 36 The trial court found that the public schools in St. Johns County, Florida, were probably superior to the public schools in Danville, Illinois. The court said:

"[W]e did hear testimony about the school system in St. Johns County. [Respondent's attorney] provided us with information obtained off the internet. No one from St. Johns County came to testify. I received information to the quality of schools in Bloomington/Normal. The Court does not question the credibility and competence of the Bloomington school system. But if [K.P.] was to live in Illinois, he would be going to school in Danville. This is not a crack at Danville, but Danville, from the Appellate Court's own knowledge, in dealing with parents in the Danville school system, who weren't involved in a civil case, the Danville schools are under—have been taken under [*sic*] by the state of Illinois because of poor financial showing, and poor test scores. Again, that's not a mark against the Danville schools. But if we're

just talking about the St. Johns school system and Danville, where [K.P.] lives, then based on the testimony of [respondent], which was uncontradicted, I believe, that the St. Johns County school probably exceeds that of Danville."

¶ 37 c. Cultural and Extracurricular Activities

¶ 38 The trial court compared the cultural activities in Jacksonville, Florida, to those in Bloomington, Illinois (instead of Danville), and seemed to find them to be roughly equivalent, although the court noted that the warmer climate in Florida was perhaps more conducive to outdoor activities during the winter. The court said:

"The cultural extracurricular activities, he has that option in both places. There are different types of extracurricular activities. I believe Florida will give him more opportunity perhaps to be outside more during the year, in the winter. He also has cultural options here in central Illinois, in the Bloomington/Normal area, which his father has provided for him, but I believe that he has options in both places."

¶ 39 d. Housing

¶ 40 The trial court described the house and neighborhood in St. Johns County, Florida, as follows:

"The new home as—in [petitioner's] home, [K.P.] would have his own room, it's a newer home. The testimony and the exhibits showed a neighborhood with parks and pools, less traffic, a ball field, and children his own age. And given his relatives in

Bloomington/Normal he is fortunate, against that he's got children his own age in both places."

¶ 41 In sum, the trial court found that the move to Jacksonville, Florida, likely would enhance the general quality of life for both respondent and K.P.—but the court said it was making this finding "with concern" ("I wouldn't say reluctance, but with concern").

¶ 42 2. *The Motives of Respondent in Seeking To Move*

¶ 43 The trial court found that the proposed removal was not a ruse by respondent to interfere with visitation. Instead, the court found that respondent wanted to move to Jacksonville, Florida, because her husband had moved there in order to advance his career at State Farm—and leading the life of a single parent was difficult, especially when one was married.

¶ 44 3. *The Motives of Petitioner in Opposing the Proposed Move*

¶ 45 The trial court found that petitioner's motives in opposing the proposed move were "incredibly pure." He had no intention to "derail" respondent and Hansen or to take revenge on them. Instead, quite understandably, he did not want his three-year-old son to be a thousand miles away.

¶ 46 4. *Visitation*

¶ 47 Visitations would have to be longer but less frequent if K.P. were removed to Florida. Nevertheless, the trial court reasoned, if that were a sufficient reason to deny a proposed removal, removal cases would be mostly "ceremonial." The court believed a reasonable and realistic visitation schedule was possible, and all in all, the court concluded that the *Eckert* factors weighed in favor of granting the petition for removal.

¶ 48 The trial court recommended, but did not order, that a relative fly with K.P. to Illinois and back, since K.P. was only three years old. The court was of the opinion that respondent, as the party requesting removal, should pay the lion's share of the travel costs.

¶ 49 H. The New Visitation Schedule

¶ 50 After granting the petition to remove K.P. to Florida, the trial court modified the visitation schedule. The court granted petitioner six weeks of visitation in the summer, in increments of no more than two weeks; spring break; a week during the Christmas season; and four days over Thanksgiving. The court allotted 2/3 of the transportation expenses to respondent and the remaining 1/3 to petitioner.

¶ 51 The new schedule reduced petitioner's total visitation time by 32%.

¶ 52 II. ANALYSIS

¶ 53 Section 14(a)(1) of the Illinois Parentage Act of 1984 (750 ILCS 45/14(a)(1) (West 2012)) provides that, "[i]n determining *** removal ***, the court shall apply the relevant standards of the Illinois Marriage and Dissolution of Marriage Act [(Dissolution Act) (750 ILCS 5/101 to 802 (West 2012))], including Section 609 [(750 ILCS 5/609 (West 2012))]." Under section 609(a) of the Dissolution Act (750 ILCS 5/609(a) (West 2012)), a custodial parent has to obtain the trial court's permission before removing a child from Illinois, and whether the court grants such permission should depend entirely on the child's best interest. Section 609(a) provides, in part:

> "(a) The court may grant leave, before or after judgment, to any parent having custody of any minor child or children to remove such child or children from Illinois whenever such approval is in the best interests of such child or children. The

> burden of proving that such removal is in the best interests of such child or children is on the party seeking removal." 750 ILCS 5/609(a) (West 2012).

Thus, if removing the child from Illinois would be in the child's best interest, the court should grant the petition, and, by the same token, if removing the child from Illinois would be against the child's best interest, the court should deny the petition. The parent petitioning to remove the child from Illinois has the burden of proving, by a preponderance of the evidence, that the removal would be in the child's best interest. See *In re Parentage of Rogan M.*, 2014 IL App (1st) 141214, ¶ 5 (except to the extent that legislation requires otherwise, the standard of proof in a civil case is a preponderance of the evidence).

¶ 54 As we said, the supreme court has suggested five questions a trial court should consider when deciding whether the petitioning parent has met his or her burden of proof. First, would the removal likely improve the quality of life of both the child and the petitioning parent? Second, what are the parent's motives in requesting the removal: is the request in good faith, or is it a ruse to interfere with visitation? Third, what are the other parent's motives in opposing the removal? Fourth, what effect would the removal have on visitation? Fifth, could a realistic and reasonable visitation schedule be worked out? *Eckert*, 119 Ill. 2d at 326-27. "[T]he weight to be given each factor will vary according to the facts of each case." *In re Marriage of Smith*, 172 Ill. 2d 312, 321 (1996).

¶ 55 We do not reweigh the competing considerations. *In re Marriage of Pfeiffer*, 237 Ill. App. 3d 510, 513 (1992). Instead, we review the trial court's decision deferentially, and unless we find the decision to be against the manifest weight of the evidence or clearly unjust, we let the decision stand. *Eckert*, 119 Ill. 2d at 328. The decision is against the manifest weight

of the evidence only if the evidence "clearly" calls for a conclusion opposite to that which the trial court reached or only if the factual findings on which the decision depends are clearly, plainly, and indisputably erroneous. *Wakeland v. City of Urbana*, 333 Ill. App. 3d 1131, 1139 (2002).

¶ 56 With this deferential standard of review in mind, we consider the questions from *Eckert* and the trial court's answers to those questions.

¶ 57 A. Would the Removal Likely Improve the Quality of Life For Both K.P. and Respondent?

¶ 58 1. *Leisure Time To Spend With K.P.*

¶ 59 The trial court reasoned that Hansen's increased earnings in Florida would enable respondent to spend more time with K.P. because she could give up her job "work[ing] nights at a hospital in the Danville area" and she could be more selective when finding a job in Florida.

¶ 60 We have a couple of difficulties with that reasoning. First, it is in part factually incorrect. Respondent did not work nights in Danville. Instead, she worked three 12-hours shifts, from 6 a.m. to 6:30 p.m., as well as every other weekend. This work schedule allowed her to spend three days a week with K.P.

¶ 61 Second, it is unknown what job respondent would have in Florida, let alone what her work schedule and earnings would be. One thing is clear: she would have to work in Florida, considering that the monthly expenses of the household would be roughly double the amount of Hansen's net monthly income (we say "roughly" because, as respondent observes, some savings would result from combining two households, and Hansen could receive management bonuses in some unspecified amounts—but, then, 2/3 of the airfare for two persons on repeated trips to and from Illinois have not been taken into account, either). It would be unreasonable to count on Hansen's being promoted from MG1 to MG3, just as it would be

unreasonable to count on respondent's having any particular work schedule or earnings in Florida before she has even applied for any jobs there. Until respondent is at least offered a job in Florida, it is a matter of speculation whether that job will allow her to spend more time with K.P. than the three days a week she spends with him in Danville—or whether the household income will be greater in Florida than in Illinois.

¶ 62 2. *Taking Judicial Notice of the Quality of Schools*

¶ 63 Respondent testified, without objection by petitioner: "When we moved down there [to Florida], we told the real estate agent that we would not live anywhere other than Saint Johns County because they are rated as the number one—number two school in the entire state." She also presented petitioner's exhibit No. 5, a printout from the Internet, which stated that St. Johns County had the second-best public schools in Florida, with a rank score of 0.789, and that Bloomington School District 87, by comparison, had a rank score of 0.544 (the exhibit appears to say nothing about Danville public schools). Petitioner objected to petitioner's exhibit No. 5 on the ground of hearsay, and in response, the court said it would consider the exhibit not for its truth but merely to explain why respondent and Hansen decided to buy a house in St. Johns County. Subsequently, when explaining its decision, the court took judicial notice that the poor academic performance of Danville schools had induced the state of Illinois to take them over. Then the court said: "But if we're just talking about the St. Johns school system and Danville, where [K.P.] lives, then based on the testimony of [respondent], which was uncontradicted, I believe, that the St. Johns County school probably exceeds that of Danville."

¶ 64 Petitioner argues the trial court abused its discretion by "taking judicial notice of the condition or quality of the Danville schools" and by relying on hearsay evidence that St. Johns County had good public schools. When we look at the points and authorities and the

statement of issues in petitioner's brief, we see no mention of the erroneous taking of judicial notice or the erroneous consideration of hearsay. Nevertheless, reviewing courts have declined to regard an issue as forfeited if the issue was sufficiently argued in the argument section of the brief, even if the issue was omitted from the points and authorities and the statement of issues. *Collins v. Westlake Community Hospital*, 57 Ill. 2d 388, 391-92 (1974); *United Community Bank v. Prairie State Bank & Trust*, 2012 IL App (4th) 110973; ¶ 62; *People v. Robinson*, 163 Ill. App. 3d 754, 775 n.2 (1987). Therefore, we will consider petitioner's arguments that the trial court erroneously took judicial notice and erroneously considered hearsay.

¶ 65 A court may take judicial notice of matters commonly known within its jurisdiction. *Cook County Department of Environmental Control v. Tomar Industries, Division of Polk Brothers*, 29 Ill. App. 3d 751, 754 (1975). We doubt it is commonly known among ordinary people in McLean County that the state of Illinois has taken over the public schools in Danville, which is located in Vermilion County.

¶ 66 Alternatively, a court may take judicial notice of public records. *Dietz v. Property Tax Appeal Board*, 191 Ill. App. 3d 468, 477 (1989). The trial court did not identify any particular public record containing the information that the state of Illinois had taken over Danville schools. Thus, we conclude that the court abused its discretion by taking judicial notice that the state of Illinois had taken over Danville schools. See *Silberman v. Washington National Insurance Co.*, 329 Ill. App. 448, 453 (1946).

¶ 67 Having received no admissible evidence regarding Danville schools, the trial court was unable to compare Danville schools to the schools in St. Johns County. A further problem is that the court received no admissible evidence about the schools in St. Johns County, either. It was inadmissible hearsay that the schools in St. Johns County were rated second in the

state of Florida. Insomuch as the court regarded petitioner's exhibit No. 5 as substantive evidence of the quality of schools in St. Johns County, the court contradicted its earlier ruling—a correct ruling—that the exhibit was inadmissible for its truth.

¶ 68 The argument might be made, however, that respondent testified, without objection, that the schools in St. Johns County were rated second in Florida and that hearsay to which no objection is made should be given its natural probative value. See *Jackson v. Board of Review of the Department of Labor*, 105 Ill. 2d 501, 508 (1985); *Rodriguez v. Frankie's Beef/Pasta & Catering*, 2012 IL App (1st) 113155, ¶ 14. To be precise, though, her testimony was as follows: "When we moved down there [to Florida], we told the real estate agent that we would not live anywhere other than Saint Johns County because they are rated as the number one—number two school in the entire state." This is a sentence in which the presence or absence of a comma affects the meaning. There is no comma between "County" and "because." It follows that the phrase "because they are rated as the number one—number two school in the entire state" was what respondent and Hansen had told the realtor, not what they were telling the court. Hence, there was no occasion for a hearsay objection to that sentence: the phrase "they are rated as the number one—number two school in the entire state" was offered not for its truth but, rather, as an account of what respondent and Hansen had told the realtor. In short, the record appears to contain no admissible evidence of the quality of public schools in St. Johns County, and the court abused its discretion by regarding either respondent's testimony or petitioner's exhibit No. 5 as such evidence.

¶ 69 3. *Housing*

¶ 70 The trial court described the house and neighborhood in St. Johns County as follows: "[K.P] would have his own room, it's a newer home. The testimony and the exhibits showed a neighborhood with parks and pools, less traffic, a ball field, and children his own age."

¶ 71 We have no reason to suppose, however, that Danville or Bloomington lacks such houses and neighborhoods. It would have been useless to compare the house in St. Johns County to the house respondent presently was sharing with her parents in Danville, because, as she testified, she and her parents had to move out of that house within two weeks.

¶ 72 B. Respondent's Motivation in Moving

¶ 73 The trial court found no bad faith in respondent's request to remove K.P. to Florida. The court found the request to be honest and not "merely a ruse intended to defeat or frustrate visitation." *Eckert*, 119 Ill. 2d at 327. Because we cannot say that inference is unreasonable, we defer to it. *Nemeth v. Banhalmi*, 125 Ill. App. 3d 938, 963 (1984). State Farm approached Hansen and offered him a managerial job in Florida, and he accepted the offer. That is understandable. Respondent wanted to move to Florida to join her husband. That also is understandable.

¶ 74 C. Petitioner's Motives in Opposing the Removal

¶ 75 The trial court found that petitioner's opposition to the proposed move was honest and in good faith. That finding is not against the manifest weight of the evidence.

¶ 76 D. The Effect of the Move on Visitation:
Whether a Reasonable and Realistic Visitation Schedule
Can Be Worked Out

¶ 77 The move to Florida will reduce the frequency of visitation. It also will reduce the amount of visitation by 32%. Before the move, petitioner had 88.25 days of visitation per year. After the move, he will have 60 days of visitation per year. .

¶ 78 In *In re Marriage of Davis*, 229 Ill. App. 3d 653, 665 (1992), we held that if a noncustodial parent had diligently exercised his visitation rights, a 35% reduction in visitation was unreasonable "where there ha[d] been an inadequate showing by the custodial parent that the move [would] enhance the quality of the child's life." We do not mean to suggest that the present case is just like *Davis*. "[R]arely will the facts and circumstances in two separate removal cases be comparable. Reviewing courts and trial courts alike should take care to review the particular facts of each removal case, as one case is likely distinguishable from the next." *In re Marriage of Johnson*, 352 Ill. App. 3d 605, 616 (2004). We can derive from *Davis* the principle, however, that if the removal of a child would reduce visitation by roughly one third and if—as in the present case—the noncustodial parent has diligently exercised his or her visitation rights, the requesting party must prove that the removal would actually enhance the quality of the child's life. That principle has special force in the present case, considering K.P.'s close ties to 29 family members in central Illinois. Even the trial court had "concern" about its finding that the move to Florida would enhance the quality of K.P.'s life. In our review of the record, it is clearly evident to us that respondent failed to carry her burden of proof in that respect. We find no evidence, as opposed to speculation, that moving K.P. to Florida would likely enhance the quality of his life.

¶ 79 III. CONCLUSION

¶ 80 For the foregoing reasons, we reverse the trial court's judgment.

¶ 81 Reversed.