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2015 IL App (4th) 141076-U

NO. 4-14-1076

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

May 6, 2015
Carla Bender
4th District Appellate
Court, IL

In re: T.R.M., a Minor,)	Appeal from
RYAN WILSON,)	Circuit Court of
Petitioner-Appellee,)	Champaign County
v.)	No. 05F120
MEAGAN MILLER,)	
Respondent-Appellant.)	Honorable
)	Holly F. Clemons,
)	Judge Presiding.

PRESIDING JUSTICE POPE delivered the judgment of the court.
Justices Knecht and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's denial of respondent's petition for removal of the child to California is reversed as it is against the manifest weight of the evidence.

¶ 2 On November 20, 2014, the trial court denied respondent Meagan Miller's petition to remove her son, T.R.M., to the State of California. Respondent appeals, arguing (1) the trial court's decision was against the manifest weight of the evidence, and (2) the trial court erred in considering Dr. Helen Appleton's letter dated May 15, 2014. We reverse because the trial court's decision was against the manifest weight of the evidence.

¶ 3 I. BACKGROUND

¶ 4 T.R.M. was born on December 4, 2004. His father is Ryan Wilson. Ryan and Meagan were never married to each other. In a prior appeal, we affirmed the trial court's

November 19, 2012, order, which found any further contact between Ryan and T.R.M. would seriously endanger T.R.M. The court suspended all contact between T.R.M. and Ryan for approximately 13 months, setting the matter for review on December 16, 2013. *In re Custody of T.R.M.*, 2013 IL App (4th) 121159-U (filed May 17, 2013). (The trial court had temporarily suspended contact between Ryan and T.R.M. on January 27, 2012. Thus, by court order, Ryan has had no contact with T.R.M. since January 27, 2012.) On August 14, 2013, Meagan filed a petition for leave to remove T.R.M. to the State of California. At a status hearing on September 25, 2013, the original trial judge, Judge Arnold Blockman, recused himself and the case was assigned to Judge Holly F. Clemons.

¶ 5 The parties are familiar with the facts in this case and, in our previous order, we set out the facts in great detail. We recount some of those facts only to give context to the issues in this appeal.

¶ 6 During the contentious litigation in this case, Judge Blockman appointed a neutral third party, Trevor Kendrick, to supervise the visits between Ryan and T.R.M. Kendrick is a marriage and family therapist with a Master's degree in marriage, family, and child counseling. T.R.M. was resistant to visiting Ryan. During a visit in December 2010, T.R.M. was playing with Play-Doh at a table in the food court at the mall. He looked up at Ryan and said, "remember that time you touched my you-know?"

¶ 7 When Kendrick asked him what "you-know" was, T.R.M. said Ryan had touched his privates and licked them. T.R.M. told Kendrick he wanted to tell the mall security officer about it. Kendrick told T.R.M. she would tell the appropriate person and he did not need to tell the mall security guard. Kendrick called a report in to the Illinois Department of Children and

Family Services hotline, as she was mandated to do. At the end of the visit, Ryan whispered into T.R.M.'s ear. T.R.M. later told Kendrick Ryan called him a "dumb ass." From January to October 2011, Gurnee police were investigating Ryan for allegedly sexually abusing T.R.M. and no visitation took place during this period. In October 2011, supervised visitation was reinstated by agreement, with Kendrick supervising.

¶ 8 During the supervised visitations, Ryan engaged in bizarre behavior. He told T.R.M. it was T.R.M.'s grandfather who had sexually abused T.R.M., and T.R.M. should say so. Ryan attempted to begin an altercation with T.R.M.'s grandfather when T.R.M. was present. Ryan admittedly pulled a chair out abruptly while walking, in an attempt to trip Kendrick. While walking behind Kendrick, Ryan, in a singing voice, said, "I'm not The Man, Trevor; I'm not The Man." Then he flexed his biceps, slapped them, and said, "but these are."

¶ 9 After the visit where Ryan behaved so oddly, T.R.M. told Kendrick Ryan said bad things about Kendrick while they were on a carousel ride. He also called T.R.M.'s mom a "bitch" and told T.R.M. his grandfather had sexually abused him. Kendrick described T.R.M. as "very shaken and confused" following the carousel ride.

¶ 10 Prior to the start of the visit, T.R.M. volunteered to Kendrick he wished he had a gun so he could kill "The Man" so he would not be able to lick T.R.M.'s privates again. T.R.M. referred to Ryan as "The Man." T.R.M. also told Kendrick his mother and the judge must not believe him (that Ryan licked his privates) or they "wouldn't make him come visit."

¶ 11 Following this visit, Kendrick sent a letter to the parties' lawyers. In the letter, Kendrick set forth guidelines for future visits and told the lawyers if Ryan did not follow the guidelines, she would stop the visits. The guidelines were as follows: no (1) discussion of court-

related proceedings in any way; (2) negative comments about Meagan or family members; (3) prompting of T.R.M. to say anything about the issues related to the court proceedings; (4) disparaging comments to T.R.M. about the visit supervisor or to the visit supervisor directly; (5) bullying, threatening, or harassing behavior; (6) comments to Meagan or any family member during drop-off or pickup; and (7) family members or friends of Ryan are to attend the visits.

¶ 12 The next visit took place in November 2011. At one point, Kendrick could not see either Ryan or T.R.M. in a play area of the mall. She found them in a tunnel under the slide. After the visit, T.R.M. told Kendrick "The Man" kissed him on the lips under the slide and "the last time he did that he was wearing lipstick." T.R.M. reported Ryan also told him, "remember to tell people Papaw's The Man." Kendrick noticed T.R.M. was anxious, stressed, and confused.

¶ 13 At a scheduled visit in December 2011, despite being encouraged by Kendrick, Meagan, and Meagan's father, T.R.M. absolutely refused to walk into the mall for his visit.

¶ 14 When Kendrick went into the mall to explain the problem to Ryan, Ryan accused Meagan's mother of coaching T.R.M. and accused the grandparents of severely beating T.R.M. Kendrick stated to Ryan she never observed evidence of coaching or beatings. Kendrick tried to explain to Ryan the need to give T.R.M. space and consider T.R.M.'s feelings. Ryan responded he did not care about T.R.M.'s feelings because in his opinion, these were not T.R.M.'s feelings, but the result of coaching.

¶ 15 Kendrick asked Ryan to stay inside while she went out to talk to T.R.M. Unbeknownst to her, Ryan followed her out of the mall and grabbed the hat off T.R.M.'s head. Kendrick said T.R.M. was petrified and ran behind Meagan.

¶ 16 Kendrick ended the visit and told Meagan to take T.R.M. to the car. Ryan then

"went off" verbally on Meagan's father and taunted him to hit Ryan, which the grandfather declined to do.

¶ 17 At both January 2012 visits, T.R.M. refused to get out of the car. Ryan accused the Millers of beating T.R.M. and said he did not care about T.R.M.'s feelings when Kendrick tried to explain to him T.R.M. would not get out of the car. Ryan criticized Kendrick, telling her she was not any good at her job, accused her of lying on the witness stand, and told her she really ought to think about a different career.

¶ 18 Kendrick testified she has been supervising visits for two years in this case and was concerned about the emotional abuse T.R.M. suffers with Ryan during the visits. Ryan degrades Meagan, T.R.M.'s family, and Kendrick during visits, talks about court issues, and rarely asks T.R.M. about himself. Ryan failed to respect boundaries with T.R.M. by picking him up after T.R.M. said he did not want to be picked up, and by kissing T.R.M. more when T.R.M. had pulled back from a kiss.

¶ 19 During his testimony in the visitation-restriction hearing, Ryan admitted receiving the visitation protocol Kendrick sent to his attorney. After reading the first two guidelines, he never read the rest of it. Ryan admitted T.R.M. had asked him on at least two occasions, including an unsupervised visit, whether Ryan remembered touching and licking T.R.M.'s privates. Ryan also admitted saying in a strong voice, "No, you don't say that," to make clear to T.R.M. he should not talk about it.

¶ 20 On November 19, 2012, the trial court suspended all contact following Ryan's testimony, stating:

"[Ryan's] conduct is obviously evidence of poor parenting skill,

demonstrates a lack of self-control and is obviously inappropriate. The concern of this Court is that although such conduct is quite common in adversarial custody and visitation battles, it's unusual to have such direct evidence in that regard. Indeed, if Petitioner is unable to refrain from such comments and questioning while his visitation is being monitored and supervised, what would he do in an unsupervised setting.

* * *

There's no question that the activities of the—of Mr. Wilson are totally inappropriate. I don't know what world he thinks he's in. There's some psychological problems there that seriously need to be addressed."

¶ 21 We affirmed the trial court's November 19, 2012, finding that further contact between Ryan and T.R.M. would seriously endanger T.R.M. and affirmed the order denying visitation and all contact until further review on December 6, 2013. *T.R.M.*, 2013 IL App (4th) 121159-U.

¶ 22 On August 4, 2013, Meagan filed a petition for leave to remove T.R.M. to the State of California. The petition alleged the following. Meagan's parents retired and moved to California in June 2013. Meagan and T.R.M., then eight years old, have always lived with Meagan's parents. Meagan's parents provide emotional and financial support for Meagan and T.R.M. As a result of T.R.M.'s severe emotional and psychological problems, Meagan must homeschool him and is unable to work a full-time job as a result. Since T.R.M. started "visiting"

his grandparents in California, he appeared more relaxed. After refusing to sleep alone in Illinois because of his expressed fear his father would come in and take him, he was sleeping in his own bed at his grandparent's home. Meagan grew up in California and has friends who continue to reside there. If, after the December 2013 review, the court found it in T.R.M.'s best interest to reinstate visitation with Ryan, Meagan would fully cooperate with implementing visitation.

¶ 23 On October 14, 2013, the trial court (Judge Holly Clemons) appointed Holly Jordan to serve as limited guardian *ad litem* (LGAL). Jordan filed her report on June 30, 2014. In that report, Jordan noted the court had earlier asked for a psychological evaluation of Ryan, which had never been produced.

¶ 24 Jordan recommended a new evaluation of the entire situation be conducted by an independent expert. "I think that this would best be done in California, as a move back to Illinois at this time could further destabilize [T.R.M.] at a perilous time in his life." Jordan also expressed her belief (as well as Dr. Helen Appleton's belief) Meagan and her parents have alienated T.R.M. from Ryan and have convinced him Ryan sexually abused him.

¶ 25 Meagan filed a motion to strike Jordan's report on the basis she exceeded her authority by forwarding Dr. Appleton's reports to T.R.M.'s treating psychologist in California and was acting as a litigator and advocate, rather than as an LGAL. On July 17, 2014, the trial court denied the motion to strike. We note the LGAL did not appear at any of the subsequent hearings on removal.

¶ 26 On August 4, 2014, the trial court began the removal hearing. Dr. Judy Osgood, T.R.M.'s longtime psychologist, testified first. Ryan, acting as a self-represented litigant, continuously interrupted Dr. Osgood's testimony, making statements like, "[T.R.M.] has been

beaten and molested by this family" and "Dr. Osgood's been lied to." With regard to Trevor Kendrick, Ryan made repeated statements such as, "We've proven she's lied under oath twice, collaborated with [Meagan] and then turned in videos of her abusing the child."

¶ 27 Meagan's attorney made numerous objections to Ryan's continuous ramblings, all of which were sustained. When recounting the testimony below, we include only some of Ryan's interjections to demonstrate his behavior during the trial.

¶ 28 Dr. Osgood continued her contact with Meagan and T.R.M. after their move to California to ease T.R.M.'s transition to a new therapist. She prepared three reports. The January 6, 2014, report related the current status and psychological assessment of T.R.M. The March 10, 2014, report concerned the care and treatment of T.R.M. The June 16, 2014, report was a clinical report on T.R.M. Her reports were admitted as evidence.

¶ 29 Dr. Osgood met with T.R.M. 88 times. She had 65 play-therapy sessions with him in her office and 23 home visits. T.R.M. was four years old in 2009, when Dr. Osgood began seeing him for stress and anxiety surrounding visits with Ryan in Gurnee, where Ryan lived. T.R.M. made disclosures of physical and sexual abuse by Ryan. He also reported his father said Dr. Osgood was a "stupid fucking ass bitch." During home visits, Dr. Osgood saw no evidence Meagan or her parents used profanity or coached T.R.M. She saw no evidence they were trying to alienate T.R.M. from Ryan.

¶ 30 Following Meagan's move to California, Dr. Osgood conferred with Dr. Erica Holterman, a licensed clinical psychologist, and Dr. Elizabeth Roberts, a psychiatrist, both of whom were treating T.R.M.

¶ 31 To establish the foundation for her forthcoming opinion, Dr. Osgood recounted

several disclosures T.R.M. made to her. During a session on July 17, 2009, when T.R.M. was 3½ years old, he told Osgood a bruise on his leg occurred after Ryan knocked him down in the bathtub because he was crying about his mother. On July 20, 2009, T.R.M. told Dr. Osgood The Man was going to "cut my privates with scissors."

¶ 32 On July 30, 2009, T.R.M. told Dr. Osgood "you're a bitch. The Man says that about you, a retarded stupid ass. He hits me, the stupid ass, with a paddle. I don't want to see [T]he [M]an." T.R.M. was very anxious, distressed and agitated during the session. In her opinion, T.R.M. was very credible.

¶ 33 On August 31, 2009, T.R.M. told Osgood he had been sleeping and woke up to find Ryan touching his privates under his clothes.

¶ 34 Dr. Osgood learned T.R.M. began touching his dog's private parts after these visits to Ryan. She felt he was reenacting what happened to him, which is a symptom of post-traumatic stress disorder (PTSD). Dr. Osgood talked to T.R.M.'s preschool teachers at Parkland College, who told her T.R.M. expressed fear and dislike of his father, whom he called "[T]he [M]an." He did not demonstrate fear of Meagan or his maternal grandparents. T.R.M. told his teachers "[T]he [M]an" pees in his face and he was afraid to go to The Man's house because his father told him he was going to cut T.R.M.'s penis off.

¶ 35 Following receipt of this information, Dr. Osgood recommended supervised visitation because of the profanity, threats, emotional and sexual abuse, and PTSD. At this time, Dr. Osgood suggested Trevor Kendrick, who worked with children and their caregivers at Cunningham Children's Home, supervise the visits. According to Dr. Osgood, Kendrick had experience supervising visits between children and parents where there had been allegations of

abuse, neglect, and mistreatment. Kendrick's goal was to help the child and repair the relationship between the child and his parent. Kendrick was knowledgeable, very experienced, and professional. She was a neutral third party.

¶ 36 Kendrick supervised 32 visits between T.R.M. and Ryan. In October 2011, she contacted Dr. Osgood and expressed concerns with problems occurring during the visits. (At this point in Dr. Osgood's testimony, Ryan interjected, in part, "It's common knowledge that Trevor was out to get me *** it's like a witch hunt for Trevor.") Kendrick reported Ryan would talk to T.R.M. about court matters and would tell T.R.M. his mother and grandfather were the pedophiles. (At this point, Ryan interjected again, as follows: "I object to that *** because we've proven Trevor's lied under oath several times.")

¶ 37 Dr. Osgood became concerned the visits were another form of abuse to T.R.M. She suggested Kendrick put goals and guidelines in writing and send them to both attorneys. Dr. Osgood saw this as another opportunity for Ryan to correct his behavior and ultimately improve his relationship. (As recounted above, however, Ryan refused to read the guidelines his lawyer passed on to him.) Dr. Osgood observed increased anxiety and profanity from T.R.M., he was acting out, engaging in sexually inappropriate behavior, and was aggressive.

¶ 38 Kendrick reported to Dr. Osgood Ryan did not respect T.R.M.'s personal space. Ryan climbed in a tube in the children's play area and kissed T.R.M. on the lips, he told T.R.M. his mother lied and had taken T.R.M. from him. Kendrick reported Ryan would whisper in T.R.M.'s ear and she confronted Ryan and told him that was inappropriate for a supervised visit. Kendrick reported T.R.M. witnessed Ryan verbally assault Meagan and chase her out into the parking lot. T.R.M. appeared visibly upset by this. Dr. Osgood related T.R.M.'s anxiety

increased as supervised visits continued. There was no progress with respect to the goal of improving T.R.M.'s relationship with Ryan. Ryan accused T.R.M. of lying and this was very destructive to their relationship and anxiety-producing to T.R.M. Dr. Osgood felt Ryan was coaching T.R.M. to blame someone else when saying these things to T.R.M. during supervised visits. (At this point, Ryan again interjected, "Object *** and we already know Ms. Kendrick has exaggerated grossly and not been truthful.") Dr. Osgood felt these visits with Ryan were very detrimental to T.R.M. Ryan was using visits to continue to emotionally abuse, intimidate, and harass T.R.M., Meagan, and the grandparents. A child would not feel safe with someone acting like Ryan.

¶ 39 By January 2012, T.R.M. was refusing to visit with Ryan. He would not get out of the car for his visits. Dr. Osgood felt this was T.R.M.'s attempt to have some control and ability to protect himself.

¶ 40 Dr. Osgood received a letter from the LGAL and reviewed Dr. Appleton's report from 2010. She noted Ryan was present at Dr. Appleton's office (in the waiting room) when Dr. Appleton completed her sex-abuse interview of T.R.M. Dr. Osgood opined this is contrary to her training; there should be lots of distance from the alleged perpetrator when interviewing a child so the child feels safe to disclose. A child would know he would have to face his perpetrator after the interview if the perpetrator is out in the waiting room. (At this point, Ryan interjected, "[I]n honor of safety, I want to get that garbage [can] and throw that right over here, so I don't have to puke on Martinkus (Meagan's counsel).") Dr. Osgood recounted Dr. Appleton interviewed T.R.M. on a second occasion. Again, Ryan was in the office. Dr. Appleton's notes reflect T.R.M. asked where his father was.

¶ 41 Dr. Osgood went to Dr. Appleton's office in April 2012 to support T.R.M. in a visit with Ryan. (Actually, it appears this meeting was to assist Dr. Appleton with an updated evaluation for the trial court.) T.R.M. refused to get out of the car; he was emotionally paralyzed. Between late 2011 through November 2012, T.R.M.'s condition was deteriorating. He was angry and aggressive and was having difficulties interacting with other children. T.R.M. articulated to Dr. Osgood his fear Ryan would hurt his mother, his grandparents, and Dr. Osgood. He was very anxious and felt very unsafe.

¶ 42 T.R.M. exposed himself on the school bus one day and made threats to other children. Dr. Osgood testified children who engage in these behaviors "have almost 100% of the time experienced some type of significant abuse." T.R.M. felt like no one was protecting him from Ryan, no one could keep him safe. In Dr. Osgood's opinion, T.R.M.'s continued difficulties were the direct result of the continued abuse and intimidation by Ryan during the supervised visits. She believed it was in T.R.M.'s best interest to cut off all contact with Ryan in November 2012.

¶ 43 T.R.M. told Dr. Osgood he did not want to live, he did not care if he was hit by a car, he would not have to see his dad anymore. He felt hopeless, was very, very disturbed, and became very depressed. T.R.M.'s behaviors were consistent with PTSD. In spite of Kendrick being present at visits, the abuse continued. T.R.M. felt like it would never stop and was on the brink of being suicidal. He came to a point where he was just terrified to have any further visits because of the ongoing and repeated emotional and psychological abuse and never feeling safe. Dr. Osgood stated T.R.M. came to this feeling on his own. His alienation was due to Ryan's behaviors, it had its foundation in facts. The term "parental alienation," as used in family cases,

applies when a child unreasonably rejects visitation with a parent without foundation for it. Dr. Osgood, contrary to Dr. Appleton, found no evidence anyone was trying to encourage T.R.M. to believe he was a victim of sexual abuse. Ryan did not demonstrate an ability to empathize with T.R.M. and does not assume any responsibility for his behavior and its impact on T.R.M.

¶ 44 Dr. Osgood, similarly to Judge Blockman, worried if Ryan conducts himself this way during supervised visits, "what on earth is he doing with his son when no one's around?" Ryan suffered from a lack of control over his behavior and his impulses.

¶ 45 Because Ryan denies his behavior is even a problem, nothing prevents him from continuing this behavior in the future. Dr. Osgood concluded Ryan was the one engaging in alienating behavior. When trying to convince T.R.M. his mother is to blame and his grandfather is a pedophile and by calling Meagan a bitch, Ryan was engaging in alienating behaviors. Dr. Osgood expressed her opinion it was critical to T.R.M.'s improvement he not be exposed to Ryan's conduct.

¶ 46 Dr. Osgood stated:

"My opinion is that—that [T.R.M.] reached a point where he became so anxious and so depressed, that he was suicidal. That he—he articulated his desire and feelings that he—he wanted to die so he didn't have to go through this anymore. That his behavior, his limitations, in terms of his functioning and off-settings, difficulties at school difficulties with peers, his aggression, that he reached a point where it—it was intolerable for him.

And—and that if he continued to experience that abuse and intimidation and harassment that he was experiencing with his father, that it was—it was really frightening to even think about what might happen to him."

Dr. Osgood went on to state, in her opinion, it was in T.R.M.'s best interest to stay in California. If T.R.M. was required to return to Illinois, he would severely deteriorate immediately in all areas of functioning. Ryan objected to Dr. Osgood's opinions because they were all based "solely on the testimony of Trevor Kendrick. I have proven that she's lied under oath on two occasions. And in reality, she didn't lie under oath, she grossly exaggerated which I've proven that to be a fact. *** I want her to know she was lied to about everything. That we can prove it. We can prove it." Judge Clemons repeatedly admonished Ryan (to no avail) to stop making statements and that it would be necessary for him to impeach Dr. Osgood with evidence during the proceeding.

¶ 47 When Ryan questioned Dr. Osgood about why she had never met with him, she said she had reason to believe any communication she might have with Ryan would be used by him against T.R.M. Under those circumstances, she would not have communications with Ryan. In response to a question from Ryan, Dr. Osgood stated T.R.M.'s overall behavior when with Meagan and his grandparents "was not indicative of a child who was anxious or fearful, being pressured or being coached, being intimidated in any way." Dr. Osgood testified she had no reason to believe Meagan's father had not wanted T.R.M. to have a relationship with Ryan. She stated T.R.M.'s acting out was consistent with symptoms of PTSD, but not consistent with parental alienation. Victims of parental alienation do not present with anxiety, depression, and

the aggression that children who are being abused or traumatized present. As Dr. Osgood explained, there is a qualitative difference between PTSD and parental alienation. To this answer, Ryan responded, "there's no denying that [T.R.M.] has been profusely abused, so he would then have the same symptoms as a child that is being currently abused by, in this case, [Meagan] and her family." The trial court sustained an objection by Meagan's lawyer. Dr. Osgood agreed with Ryan that T.R.M.'s behavior and emotional problems were consistent with child abuse.

¶ 48 Ryan asked Dr. Osgood if T.R.M.'s worsened emotional state resulted from not seeing Ryan. Dr. Osgood answered:

"It was not my impression because he hadn't seen you. It was my impression that [T.R.M.] continued to experience on-going, relentless psychological and emotional abuse by you during the supervised visits, which were—resulted in his condition deteriorating."

¶ 49 The trial court repeatedly admonished Ryan to stop his running commentary and to ask questions. The court's many admonishments had no effect on Ryan's behavior during the proceeding.

¶ 50 On August 5, 2014, the removal hearing continued. Dr. Osgood testified in the last couple months, *i.e.*, June and July, T.R.M. had made significant progress.

¶ 51 Thereafter, Meagan introduced the video deposition of Dr. Elizabeth Roberts, a board-certified child psychiatrist since 1999. Dr. Roberts specialized in taking care of abused children going through divorce or a custody battle.

¶ 52 Dr. Roberts first met T.R.M. on March 18, 2014, prior to reading Dr. Osgood's report. T.R.M. was nine years old at the time and was extremely fearful, very guarded, agitated, and frightened by the whole process. T.R.M. told her in later sessions his father calls him "bitch" and says "fuck" to him and licks his genitals. Dr. Roberts diagnosed T.R.M. with PTSD, a condition marked by the following symptoms: a history of abuse where the victim re-experiences that abuse in nightmares and flashbacks, is very fearful of the perpetrator of abuse and will avoid abuse at all costs, is easily irritated, hypervigilant, easily startled, has difficulty concentrating and anger outbursts. Her opinion is T.R.M.'s PTSD was caused by sexual acts and verbal abuse by his father. Dr. Roberts also testified if T.R.M. was required to return to Illinois, it would create great psychiatric, psychological trauma for him. He would likely return to his old behaviors before moving to California, *i.e.*, constipation, retreating and hiding in his room, violence, and self-mutilation. T.R.M. is better now than when he first came to California. Anytime Illinois or Ryan is mentioned, T.R.M. becomes extremely agitated, very upset, tearful, and anxious. In her opinion, it is in T.R.M.'s best interest not to see Ryan. Further, it is her opinion T.R.M. should not be returned to Illinois. He is fearful his father would show up at his door at any moment. He would be afraid to leave the house. Moving to Illinois would be a great hardship on T.R.M. In Dr. Robert's opinion, leaving T.R.M. in California in peace and quiet with his mother and grandparents is in T.R.M.'s best interest.

¶ 53 On cross-examination, Dr. Roberts explained parental alienation does not have symptoms of PTSD like hypervigilance, flashbacks, and nightmares. Dr. Roberts, who has worked with children for 40 years, indicated T.R.M. had been improving over the last three months. In response to questions from Ryan, she said T.R.M. has not indicated any interest in

seeing Ryan, she believes T.R.M. has been abused verbally and sexually, and it is not possible his condition is parental alienation.

¶ 54 Meagan next presented the June 23, 2014, video deposition of Dr. Erika Holterman, a licensed clinical psychologist, who was also treating T.R.M. in California. She began seeing T.R.M. in October 2013 on a weekly basis. T.R.M. was nervous, anxious, and unsure whether he could trust her. T.R.M. told her when he acted out he felt like Ryan was in his head and this made him angry. Dr. Holterman tried to give him skills to manage his physical distress.

¶ 55 T.R.M., during a session in January 2014, became aggressive and destructive, to the point Dr. Holterman warned him she would call 9-1-1 if he could not be safe. T.R.M. told her he wanted her to call 9-1-1- so he could tell the police about the thing Ryan did to him so they could put Ryan in jail. When a deputy from the Psychiatric Emergency Response Team arrived, T.R.M., now calm, told the deputy Ryan had touched and licked him "down there" and pointed to his private parts. According to Dr. Holterman, T.R.M. was very angry about it and wanted Ryan arrested. At a session in March 2014, T.R.M. reported being very angry with Meagan for making him see Ryan and have visits with him. Dr. Holterman testified T.R.M.'s behavior, irritability, and lack of concentration, are consistent with PTSD. T.R.M. confided he is afraid of Ryan and does not want to see his father again. Dr. Holterman felt T.R.M. does not have the necessary coping skills to manage seeing Ryan. In her opinion, seeing Ryan would negatively impact his treatment and functioning. She further stated T.R.M. should not be required to see Ryan and traveling to Illinois would be very difficult for T.R.M. He was very afraid Dr. Holterman was going to make him see his dad again. She had no reason to think

T.R.M. suffers from parental alienation.

¶ 56 Ryan asked Dr. Holterman at least twice, "Are you aware I've been diagnosed with PTSD?" Meagan's objections to these questions were sustained. During his cross-examination, Ryan also stated, "I'm acting out guys. I'm sorry. I've been traumatized."

¶ 57 On August 6, 2014, at the continued hearing, the trial court took judicial notice of all previous orders and findings in the court file. On September 25, 2014, Meagan testified her parents retired and moved to San Diego. They are her financial and emotional support. Meagan homeschools T.R.M. because he was acting out in public school. For the last several months, Dr. Roberts, rather than Dr. Holterman, was seeing T.R.M. once a week for an hour. Dr. Roberts had more experience in treating PTSD. T.R.M. feels safe with Dr. Roberts and indicates a desire to go back each week to see her. He was having fewer outbursts and was much happier. Meagan testified it was in T.R.M.'s best interest to remain in California because he feels safer in California and has many activities he loves.

¶ 58 In response to Ryan's question as to whether T.R.M.'s behavior "had gotten a lot better since you started drugging him," Meagan stated T.R.M.'s behavior had improved since he started taking prescription medication. Meagan testified the California homeschool program was much more structured than the Illinois homeschool program.

¶ 59 In response to Ryan's question about employment Meagan has had, Meagan testified she worked at Danvers Sales Marketing for a couple of years, as well as several other places. In response, Ryan interjected, "I mean, she's 37 and has never worked." Ryan repeatedly asked if Meagan was molested and whether she has contact with her biological father. The trial court sustained objections to those questions. At the conclusion of Meagan's case, the court

asked Ryan whether he objected to Meagan's exhibits. Ryan stated, "We know that everything Dr. Roberts was told by [Meagan] was false." The exhibits were admitted.

¶ 60 Ryan's first witness was Dr. Appleton. Ryan attempted to elicit opinions from Dr. Appleton about whether T.R.M. suffered from parental alienation. Every objection was sustained. In response, Ryan stated, "I wish I was an attorney so I could trick you with my attorney skills." He asked about the "epic abuse" and the "beat down" T.R.M. was receiving from his maternal family. Again, objections to these questions were sustained. Dr. Appleton had not seen T.R.M. since 2012 but had spoken to the LGAL. Based on reports the LGAL showed her, Dr. Appleton felt T.R.M.'s psychological condition had worsened. (The last time Dr. Appleton saw T.R.M. in 2012, he refused to get out of the car to come into her office.) At one point, Ryan stated, "I've been asking the same question here for like three or four hours, so don't ... I don't want you to think that I'm trying to waste everyone's time." His rambling commentary, unimpeded by the trial court's admonishments to stop, caused the court to threaten Ryan with contempt. Essentially, Dr. Appleton never testified to any opinions except the one noted above. In fact, she only answered one or two questions, other than questions relating to her credentials, because Ryan could not lay a proper foundation.

¶ 61 The hearing continued on October 16, 2014, where Ryan called himself as a witness. After stating his name, Ryan said, "The respondent (Meagan) is behind 100% of everything that's happened." The trial court sustained counsel's objection. Ryan also stated, "This is a case that is solely based on the fact Jim and Linda Miller have been planning on waiting for Jim's mother to die so they can get their inheritance to have some money and move to California." The court sustained counsel's objection. Ryan told Judge Clemons, "You've been

tricked as was Judge Blockman." Ryan stated repeatedly he had not seen T.R.M. since 2010. However, as noted above, Ryan had 32 supervised visits, many of which occurred in 2011.

¶ 62 Ryan repeatedly said things such as, "Like I said, they're trying to trick you with a stratagem that was successful on Judge Blockman," "Nobody knew that he had switched schools which I think is very relevant because of the trick that they successfully implemented on Judge Blockman." The trial court sustained counsel's objections to most of Ryan's statements. Ryan testified, "[T.R.M.] and I have a great relationship. We've always had a great loving relationship." After the court sustained another objection, Ryan said, "Ha Ha—you've got tricked. My entire case is you get tricked. My entire case is it's not me. It's them. I have my entire case in one sentence." Ryan called no other witnesses.

¶ 63 Megan's counsel argued, in part, Ryan has an inexplicable inability to control himself. Counsel pointed out most removal cases involve indirect benefits to a child that accrue as a result of direct benefits to the moving parent. However, removal in this case involved direct benefits to T.R.M. himself. During counsel's argument, Judge Clemons remarked to Ryan:

"It's clear time and time again that you have not been able to control yourself *** in this courtroom despite repeated admonitions from this court."

Ryan responded, "Your honor, my only rebuttal is duh. Duh, your honor. My son's life is over. He's going to be a rapist."

¶ 64 Megan's counsel pointed out no testimony at the removal hearing supported any of Ryan's claims. The trial court expressed displeasure with Megan moving before the petition for removal was filed and felt it was disingenuous for her to claim in her petition she was

"visiting" her parents in California. In response, Meagan's lawyer pointed out there was no visitation order in effect at the time Meagan moved.

¶ 65 During Ryan's rambling closing argument, he said T.R.M. never made an allegation about him to Dr. Roberts. "He (T.R.M.) came in there because he loves me so much and he knows what's going on. He could not sell ... you know, sell me out. He never says dad did this. He always says Ryan. *** Dr. Roberts never met with [T.R.M.]. *** If there's one thing I've proven is that I did not commit this abuse. *** Judge Blockman's 2012 memorandum is completely incompetent." Ryan's argument included many statements based on things not in evidence. Despite repeated statements during the trial he had not seen T.R.M. since 2010 (which statements were contradicted by the evidence), during his closing argument Ryan stated the last time he had seen T.R.M. was September 12, 2012. Then he said he had not seen T.R.M. since the "weekend of the 12th of 2009."

¶ 66 The trial court took the matter under advisement and scheduled its ruling for November 20, 2014. On that date, the court denied the petition for removal, stating, "Respondent and her parents have very likely engaged in making disparaging and inappropriate comments about [Ryan] that have caused severe and irreparable damage to [T.R.M.'s] psyche. *** Clearly, very clearly, this court finds that [Meagan] has used the removal as a ruse to defeat and frustrate visitation." The court found use of the term "visiting" in the petition for removal reflected poorly on Meagan's credibility. Further, the court looked at the motives of the noncustodial parent in resisting removal and found Ryan fought removal out of love for his son and not solely to frustrate Meagan's plans.

¶ 67 In applying the *Eckert* factors (*In re Marriage of Eckert*, 119 Ill. 2d 316, 326-27,

518 N.E.2d 1041, 1045-46 (1988)), the trial court felt it had to carefully consider the noncustodial parent's visitation rights. "Indeed, the Illinois Supreme Court indicated in *Eckert* that it is in the best interests of a child to have a *healthy* and close relationship with both parents, as well as other family members." (Emphasis added.) While Ryan had not visited with T.R.M. for years, the court found if T.R.M. was allowed to remain in California, no reasonable visitation schedule would be feasible. The court found the move by Meagan and her parents was a calculated move to "further sabotage" T.R.M.'s relationship with his father. The court recognized T.R.M.'s mental-health condition was complex and a move back to Illinois would be very difficult for T.R.M. The court also recognized Ryan's behavior during the court proceedings was bizarre and inappropriate at times. The court stated no visitation would be implemented until Ryan fully complied with Judge Blockman's order of November 2012.

¶ 68 This appeal followed.

¶ 69 II. ANALYSIS

¶ 70 We initially note Ryan, as appellee, has not filed a brief in this appeal. "[I]f 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." *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133, 345 N.E.2d 493, 495 (1976). While the record is lengthy, it is not complex. Thus, we will decide the merits of this appeal.

¶ 71 We address our standard of review first. In a removal case, we should affirm the trial court's decision unless it is against the manifest weight of the evidence. *In re Marriage of Tedrick*, 2015 IL App (4th) 140773, ¶ 51, 25 N.E.3d 1233. The trial court's decision is against

the manifest weight of the evidence if the evidence clearly calls for a conclusion opposite of that reached by the trial court. *Id.*

¶ 72 Section 14(a)(1) of the Illinois Parentage Act (750 ILCS 45/14(a)(1) (West 2012)) provides, "[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 needs to obtain the trial court's permission before permanently removing a child from Illinois. 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 the removal." 750 ILCS 5/609(a) (West 2012).

¶ 73 Thus, if removing the child from Illinois would be in the child's best interest, the court should grant the petition, and, concomitantly, 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, removal would be in the child's best interest. See *In re Parentage of Rogan M.*, 2014 IL App

(1st) 141214, ¶ 5, 19 N.E.3d 140 (except to the extent that legislation requires otherwise, the standard of proof in a civil case is a preponderance of the evidence).

¶ 74 The supreme court has suggested five questions to consider when deciding whether the petitioning parent has met his or her burden of proof, and these questions are nonexclusive. 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 parents' 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? *In re Marriage of Collingbourne*, 204 Ill. 2d 498, 522-23, 791 N.E.2d 532, 545 (2003). "[T]he weight to be given each factor will vary according to the facts of each case." (Internal quotation marks omitted.) *Id.* at 523, 791 N.E.2d at 546.

¶ 75 As to the first question, would removal benefit the child and the petitioning parent, there is undisputed evidence T.R.M. feels safer and more secure in California. All three of T.R.M.'s treating doctors, Osgood, Holterman, and Roberts, testified it was in T.R.M.'s best interest to remain in California. He was mentally and emotionally fragile and had no desire to see or talk to Ryan. The very idea he had to talk to a psychologist in California set him off because he was afraid they were working toward the goal of sending him back to Illinois to visit with Ryan. His reaction to this scenario was terror. Living in California at a safe distance from Ryan is a direct benefit to T.R.M.

¶ 76 Because Meagan must homeschool T.R.M., she is in need of the financial support of her parents. She is also in need of her parents' emotional support. They retired and moved to

California. Staying with them provides substantial benefits to Meagan and T.R.M. Taking care of T.R.M. is exhausting and demanding. Sixty-five office visits with Judy Osgood and 23 home visits are, to say the least, an inconvenient burden. The family's privacy has been intruded upon and they have willingly allowed this in the hopes they can help T.R.M. In California, they have weekly visits with Dr. Roberts, T.R.M. is homeschooled, prescription medications need to be obtained and administered, T.R.M.'s difficult behaviors need to be dealt with, and on and on. Life with T.R.M. is not easy and no evidence was introduced by anyone that indicated Meagan and her parents have chosen to drive T.R.M. to the conduct he exhibits. The evidence points elsewhere.

¶ 77 T.R.M. has disclosed Ryan's inappropriate conduct. Trevor Kendrick witnessed many instances of inappropriate and bizarre behavior by Ryan. The trial court observed and the record indeed reflects inappropriate and bizarre behavior by Ryan throughout the lengthy, multi-day proceedings. It is clear he has no self-control. He cannot curb his behavior even when his relationship with the son he professes to love is at stake. The manifest weight of the evidence supports a finding T.R.M. and Meagan will both greatly benefit by being allowed to remain in California.

¶ 78 Second, we look to the motive of the parent in requesting the removal. The trial court found Meagan's move to California was an attempt to sabotage visitation with Ryan. Judy Osgood saw T.R.M. a total of 88 times. On 23 occasions, she was in his home. She never once saw any evidence of coaching of T.R.M. or disparagement of Ryan by Meagan or her parents. Trevor Kendrick, the child counselor who supervised visitation 32 times, saw no evidence of coaching or disparagement by Meagan or her parents. This was also true of Drs. Holterman and

Roberts. A young child who is coached might be expected to slip up—to say "Mommy says Ryan is bad" or "Pa Pa said Ryan touched my privates." Not one of the four professionals noted above ever reported such a statement by T.R.M. In contrast, T.R.M. told Kendrick Ryan said to him, "Remember to tell people that Pa Pa is the man." This is clear evidence of coaching by Ryan.

¶ 79 From the age of 3½ to the age of 9, T.R.M. has been consistent in reporting Ryan's behavior to anyone who would listen. Ryan's bizarre behavior during supervised visitation was witnessed by Trevor Kendrick on numerous occasions. Despite her efforts to set guidelines on Ryan's behavior, he defied those guidelines and continued to harass and verbally abuse T.R.M. during visitations. In fact, he exhibited total disdain for Kendrick's guidelines by refusing even to read them. The trial court's finding Meagan's request for removal was a ruse to sabotage visitation between Ryan and T.R.M. is without foundation in the evidence. It was undisputed Meagan's parents retired and moved to California. They were Meagan's sole financial support. They were helpful with T.R.M. and a strong source of emotional support for Meagan. Furthermore, there was no ongoing visitation to sabotage. On November 19, 2012, Judge Blockman ordered there be no contact between T.R.M. and Ryan for at least 13 months and until further review. In fact, Judge Blockman, on January 27, 2012, had suspended all visitation between T.R.M. and Ryan because Ryan had failed to comply with an earlier order conditioning continued visitation on Ryan (1) completing a parenting class; (2) refraining from making negative comments about Megan when he was with T.R.M.; and (3) refraining from discussing custody issues with T.R.M., or making other inappropriate comments to T.R.M. during supervised visitations. Judge Blockman's November 19, 2012, order, of which the trial court

took judicial notice, stated the following:

"Ms. Kendrick testified on cross-examination that for almost [two] years during every visitation [p]etitioner has been emotionally abusive to the child, has continuously denigrated his mother and her family on [*sic*] front of the child, has repeatedly discussed court issues with the child, does not respect the child's boundaries, and rarely asks about the child's life."

¶ 80 At the review hearing scheduled by Judge Blockman for December 16, 2013, Judge Blockman expected Ryan to have had a psychological evaluation. Further, the evaluation needed to opine Ryan was capable of visiting T.R.M. without engaging in behaviors that are psychologically damaging to T.R.M. Ryan presented no evidence to this effect at the removal hearing. The LGAL's report also recognized Ryan had not produced a psychological evaluation of himself.

¶ 81 Judge Clemons' order denying removal indicated no visitation would ever take place until Ryan complied with Judge Blockman's orders. By denying removal, the trial court put Ryan in charge of determining where Meagan and T.R.M. live, even though he showed no inclination to change his behavior and produced no evidence of compliance with Judge Blockman's orders. Thus, Meagan and T.R.M. would be made to live in Illinois until T.R.M. turned 18, even though visitation was not foreseeable because of Ryan's own conduct. The court's finding Meagan was attempting to sabotage visitation is against the manifest weight of the evidence, especially where, by court order, no visitation was allowed.

¶ 82 The third factor the court examines is the noncustodial parent's motives in

resisting removal. The trial court found Ryan had aggressively fought removal as a result of his love for his son and not solely to frustrate Meagan's plan for his own gain. While we accept Ryan loves T.R.M., his inability to control his behavior is harmful to T.R.M. Ryan tried to get witnesses to talk about *his* PTSD, to testify to the impact the proceedings were having on *him*. Even when T.R.M. was dissolving psychologically in front of him during visitations, he stated he was no longer concerned with T.R.M.'s feelings. True unconditional love for a child results in a parent putting the child's health and well-being above all else. It takes selflessness on the part of a parent to achieve healing for this child. Unfortunately, it appears Ryan is incapable of selflessness. While our supreme court in *Eckert* recognized the importance of a healthy and close relationship with both parents, the evidence overwhelmingly showed T.R.M. and Ryan do not have a healthy relationship.

¶ 83 The fourth factor we consider is the impact of removal on visitation. In denying removal, the trial court expressed concern Ryan will never achieve visitation because of the distance California is from Illinois. However, Ryan has no visitation now, so removal, in fact, does not impact visitation whatsoever. Ryan has had no visitation since January 2012, over three years to date, and appears no closer to obtaining visitation in the future.

¶ 84 The last factor, whether a realistic and reasonable visitation schedule could be worked out, is basically irrelevant at this time. Every treating psychologist and psychiatrist has stated contact with Ryan would be seriously detrimental to T.R.M. Even Dr. Appleton, who was not a treating psychologist but a court-appointed evaluator in the earlier proceedings, reported Ryan engaged in behaviors that did not facilitate his relationship with T.R.M. She called his behavior inappropriate and distressing to T.R.M. She considered Ryan's statements to T.R.M.

