

NOTICE

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2015 IL App (4th) 150118-U

NO. 4-15-0118

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

June 19, 2015

Carla Bender

4th District Appellate
Court, IL

In re: H.M., a Minor,
ROBERT NAGEL,
Petitioner-Appellant,
v.
SHEA MORRIS,
Respondent-Appellee.

) Appeal from
) Circuit Court of
) Champaign County
) No. 12F757
)
) Honorable
) Arnold F. Blockman,
) Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Turner and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the trial court's judgment awarding sole custody of the parties' minor child to respondent was not against the manifest weight of the evidence.

¶ 2 Petitioner, Robert "Robbie" Nagel, appeals from the Champaign County circuit court's March 2014 judgment awarding sole custody of the parties' minor child, H.M., to respondent, Shea Morris. On appeal, Robbie argues the court's ruling was an abuse of discretion and against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 H.M. was born on August 28, 2009, to Robbie Nagel and Shea Morris. Robbie and Shea were never married and have not resided together since H.M. was born. On May 29, 2010, Robbie signed a voluntary acknowledgement of paternity, acknowledging he was H.M.'s biological father. H.M. suffers from a condition known as arthrogryposis multiplex congenita,

which is characterized by congenital joint contractures and muscle atrophy. The disease limits H.M.'s ability to walk and use her hands and requires extensive care and treatment, including surgeries, intensive therapies, and serial casting of her feet. As a result of her condition, H.M. has fallen and broken her arm five times.

¶ 5 A. Procedural Background

¶ 6 In December 2012, Robbie filed a petition to establish custody and visitation with regard to H.M. Robbie amended his petition in January 2014, and Shea was served with the petition on February 7, 2014. On February 12, 2014, Robbie filed a petition for an *ex parte* emergency order of protection. In the petition, Robbie sought temporary possession of H.M. and restriction of Shea's visitation. The trial court granted the emergency order of protection with regard to Robbie, but refused to grant an order regarding temporary custody of H.M. The next day, Robbie filed a petition for temporary custody. We note that both parties were under the impression, and represented to the court during the custody hearings, that Robbie was given physical possession of H.M. as part of the emergency order of protection. The parties also represented that in spite of the emergency order of protection, H.M. remained in Shea's care because Shea refused to allow Robbie to see H.M. while the emergency order was in effect.

¶ 7 On February 25, 2014, the trial court held a hearing on Robbie's petition for temporary custody. At the hearing, the court granted Robbie temporary visitation and vacated the emergency order of protection. At a status hearing in April 2014, the trial court appointed James M. Mullady to serve as limited guardian *ad litem* (LGAL). In June 2014, Shea filed her own petition for temporary and permanent child custody.

¶ 8 B. The Custody Hearings

¶ 9 Both Robbie and Shea presented extensive testimony at multiple hearings, starting in July 2014 and concluding in December 2014. The following is a summary of the evidence adduced at those hearings.

¶ 10 *1. Robbie's Evidence*

¶ 11 When H.M. was born, Robbie lived in a one-bedroom apartment in Urbana for approximately one year. In the fall of 2010, Robbie moved to Crystal Lake, Illinois, to teach German at a high school. He, Shea, and H.M. all looked at apartments in the area, but Shea decided at the last minute she did not want to move in together. During the time Robbie lived in Crystal Lake, he estimated he went to visit H.M. approximately three times per month. When Robbie moved back to Urbana from Crystal Lake, he moved into a "rooming house" with people he had known for approximately three years. Once Robbie moved back to Urbana, he spent the majority of the time he was not working with H.M.

¶ 12 Robbie testified, from the time H.M. was born until approximately 2013, he had significant involvement in H.M.'s life. He and H.M. would go to parks, the library, and the nature center. Prior to Shea being served with the petition for custody, Robbie saw H.M. approximately five days per week when Shea would ask him to come over to read H.M. a story and put her to bed.

¶ 13 Robbie and his girlfriend, Natalie Uhl, moved into a three-bedroom home in May 2014. Since that time, Robbie has constructed therapy stairs to help H.M. practice walking. Robbie and Natalie have modified doorknobs, light switches, and faucets in their new home to accommodate H.M.'s condition, and they put a sliding door on the bathroom so H.M. can open and close it herself. Robbie also plans to make several modifications to accommodate H.M.'s

needs, including installing a low sink and toilet. There is a big yard at the new house, where H.M. helps with the garden.

¶ 14 Natalie testified Robbie and H.M. have a very close relationship, and Robbie is very affectionate with H.M. Robbie works full-time at Busey Bank and has flexibility with his job that allows him to take H.M. to school every morning and take time off when she is sick. Robbie is a former German teacher and helps H.M. work on assignments for the dual-language program at her school. He also takes H.M. to the nature center in Urbana almost every weekend so H.M. can see the snakes (her favorite animal).

¶ 15 Natalie, a professor at Parkland College, also likes to take H.M. to the Orpheum Children's Science Museum because H.M. has shown an interest in caring for animals. Natalie and H.M. spend a lot of time together, looking at books and playing games. H.M. has a very close relationship with and looks up to Natalie. When Robbie calls Shea to speak with H.M., H.M. consistently asks to talk to Natalie. In May 2014, Natalie helped H.M. make a Mother's Day card and purchased a small gift for H.M. to take to Shea.

¶ 16 Robbie's father, Richard Nagel, testified his entire family has a close relationship with H.M. When H.M. comes to visit them at their home in the west suburbs of Chicago, Richard does art and science projects with her and they make up stories about snakes and dinosaurs. Robbie's mother, Sue Nagel, is a teacher's aide for disabled elementary school children and brings home art projects to do with H.M. Robbie's sister, Beth, drives to her parent's house just to visit with H.M., and they put on hats and sunglasses and play "dress up." Richard testified there is an open offer for Shea to stay at their house when H.M. has any appointments in Chicago, but Shea has not stayed with them since 2013.

¶ 17 Robbie has attended several of H.M.'s surgeries in the past few years and has attended appointments in Chicago and Philadelphia. When Shea has not been able to attend these appointments, Robbie has made sure to provide her with all the information relating to H.M.'s care. Since March 2013, Robbie has attended H.M.'s occupational therapy sessions every week. In addition, Robbie was going to H.M.'s school every morning to help her "settle in," but he currently goes only on Tuesdays and Thursdays because Shea complained to the teacher and asked if he was allowed to be there.

¶ 18 Robbie testified he wants to set up and pay for several different therapies that have been recommended for H.M., but Shea has declined. He has been in contact with an owner of a therapeutic horse farm, and he also wants H.M. to have in-home therapy to learn to brush her teeth and get dressed—things that are not addressed in a school or normal therapy setting. Robbie believes H.M. would benefit from counseling and has spoken with Shea about this, but Shea indicated H.M. was "fine."

¶ 19 Robbie was voluntarily paying \$350 in child support every month until January 2014. Robbie testified he amended his petition for custody of H.M. that same month because he became increasingly concerned about H.M.'s safety and welfare. He explained H.M. has broken her arms several times while in Shea's care, and Shea was cancelling and missing several of H.M.'s therapy appointments so she could go to yoga and fitness classes. One night, she just fell asleep and did not want to take H.M. to therapy because "she had wet hair." Shea did tell Robbie about the cancellations, although usually after the fact. Sometimes, she would tell him at the last minute, forcing him to rearrange his schedule to get H.M. to her appointments.

¶ 20 Prior to registering H.M. for kindergarten, Robbie signed H.M. up for a physical, which Shea cancelled. Shea testified she cancelled the appointment because Robbie has never

been involved in H.M.'s care and she wanted to take H.M. to the appointment. Shea rescheduled the appointment and did not tell Robbie the time or date, but then missed the appointment, claiming she was preparing court documents.

¶ 21 Robbie testified he has not been at every doctor's appointment for H.M. because Shea has not told him about every appointment, and even for appointments she does tell him about, she does not schedule the appointments around his work schedule. If Robbie has not been at one of H.M.'s doctor's appointments, it is because he had to work and could not take off.

¶ 22 On three different occasions, Shea has told Robbie she would not allow him to take H.M. to visit his family in Arizona, and she has never let H.M. stay with Robbie for more than a week. Robbie testified he tries to text Shea a day ahead of time to coordinate a time when he can talk to H.M., but Shea only lets him talk to her about half of the time. Robbie and Natalie helped H.M. make a card for Shea's birthday, but Shea would not let Robbie spend a few extra hours with H.M. on his birthday. Shea initially told Robbie she would be out of town and failed to call when her plans fell through.

¶ 23 When H.M. broke her arm for the fifth time, in August 2014, Robbie offered to take a week off work to stay with her, but Shea never responded to his text messages. Robbie bought elbow pads to protect H.M.'s arms from sudden, severe impacts. Robbie now makes H.M. wear the elbow pads when she is with him, and doctors and therapists have not discouraged him from doing so. However, Shea does not make H.M. wear the elbow pads because she wants her to look like other kids.

¶ 24 Robbie testified Shea refuses to share important medical information with him. He explained H.M. had pneumonia and Shea never responded to his text messages asking how she was doing. In addition, Robbie noticed bruises on H.M.'s legs, which Shea later told him

were a result of H.M. receiving a Polio vaccination. Robbie consistently tells Shea about doctor's visits he has attended, but Shea either fails to respond, or she responds weeks later about visits she has attended.

¶ 25 In November 2012, Shea posted comment on a blog stating H.M. does so much "extra stuff" when she is with her father. In the fall of 2013, Shea told Robbie she was having a hard time getting H.M. to do her stretches, prompting Robbie, Shea, and H.M. to make a "progress poster" to hang in H.M.'s room at Shea's house, where she was primarily living at the time. The poster was intended to give H.M. some incentive to work on her stretches, but after a while, Robbie stopped noticing progress when he would come over to take care of H.M. In addition, Robbie had H.M. for an entire week during the summer of 2014, and he noticed improvement in her stretches. However, when H.M. went back to Shea's, her progress was "slower."

¶ 26 Robbie testified he was very concerned when Shea took H.M. to Hawaii over the holidays in 2012 with a man (Tommy Henderson) she met at a yoga retreat. He told Shea he thought it was "ridiculous" and asked her not to take H.M. because she would not be with her family and did not know Tommy. He testified he expressed his concern regarding the Hawaii trip to his parents, Shea's mother, Shea's friend, Jim Wilson, and Shea's landlord, Alfred Hubler. Shea has also taken H.M. to a nudist colony in Colorado with Hubler and to Nevada to visit a man named "Allen."

¶ 27 Robbie also expressed concern with Shea's living arrangements because H.M.'s room does not have a lock, and the roommates at the rooming house change frequently. When questioned about her roommates, Shea did not know either of their last names, nor had she

looked into their backgrounds. Robbie also expressed concern with Hubler, whom Shea had said described his personal sex life to her.

¶ 28 On February 7, 2014, after Shea was served with the petition for custody, Shea called Robbie and was arguing about him having no rights to H.M. When Shea arrived at his house, she got out of the car and confronted him near H.M.'s car door. Shea would not allow him to get H.M. out of the car, even though they had agreed it was his night. When Robbie reached to open the door, Shea pushed the door and struck Robbie in the face with a closed hand.

¶ 29 Robbie testified the incident led him to file a petition for an *ex parte* emergency order of protection against Shea. On February 12, 2014, the trial court granted his emergency order of protection and, according to him, awarded him physical possession of H.M. However, he did not see H.M. again until he agreed to dismiss the order of protection. He testified he dismissed the order of protection so he could set up a temporary visitation order under the recommendation of his attorney. The temporary visitation order awarded Robbie visitation on Tuesdays and every other weekend.

¶ 30 Approximately one week after filing the order of protection, Robbie contacted the Department of Children and Family Services regarding concerns he had with Shea leaving H.M. alone at her mother's house in Morton. Robbie testified he had told Shea it was unsafe for H.M. to be there after a domestic violence incident where Shea's sister threatened to commit suicide, but Shea continued to disregard his concerns and leave H.M. alone there.

¶ 31 In April 2014, while filling out a school registration form, Shea did not list Robbie as H.M.'s father, and in July 2014, while at a doctor's appointment in Philadelphia, Shea told Robbie he "[didn't] have a case in hell," and she called him an "abuser" in front of H.M. Robbie explained Shea has screamed at him and made disparaging statements about him in front

of H.M. on several occasions. She has called him "pathetic," a "loser," a "deadbeat," and "a sorry excuse for a parent." Robbie also testified to an incident where Shea kicked him in the groin.

¶ 32 Natalie testified she has witnessed Shea screaming at Robbie in front of H.M. on multiple occasions. Because she and Robbie do not feel safe around Shea, Natalie has videotaped several custody exchanges with her iPhone where Shea called Robbie an "abuser" and Natalie a "crazy" and "pathetic woman." These videos were not entered into evidence.

¶ 33 *2. Shea's Evidence*

¶ 34 Shea testified she has a job with the University of Illinois designing websites, where she sets her own hours. She is also enrolled at Lakeview Nursing School in Danville, Illinois. For the first six months of H.M.'s life, Shea lived with her mother in Morton, Illinois. During these first six months, Robbie drove to Morton to visit H.M. one time. At all other times, Shea drove to Urbana so Robbie could see H.M. When H.M. was six months old, Shea and H.M. moved into a rooming house next door to Robbie, where they continue to reside to this day. Robbie has lived at five different locations since H.M.'s birth.

¶ 35 Shea rents two of the four rooms in the rooming house. The other two rooms are rented by two University of Illinois students. They all share the common space, including the living room and the kitchen. According to Shea, the living situation is very family-oriented; everyone cooks dinner together, shares meals, and shares conversations. On cross-examination, Shea admitted she does not know the last names of any of her roommates. However, Robbie has met the majority of her roommates and never expressed any concern about her living arrangements prior to trial. Shea further testified her landlord, Hubler, has an informal interview process with potential tenants and has discussed possible tenants with her. Robbie has never

expressed any concerns to Shea regarding Hubler. In fact, Robbie used to live with and work for him.

¶ 36 Shea testified H.M. has resided with her for the majority of her life and has never resided with Robbie. Shea is the one who has been responsible for meeting all of H.M.'s everyday needs and for coordinating and getting H.M. to all of her medical appointments for her entire life. During the first few years of H.M.'s life, Shea and Robbie had no issues with visitation arrangements. In the fall of 2012, Shea started to take classes and the parties entered into a structured visitation schedule, whereby H.M. would stay with Robbie for portions of the weekend and the occasional weeknight.

¶ 37 When H.M. was three months old, she required serial casting for her feet. Shea took H.M. to Shriners Hospitals for Children in Chicago, Illinois, every week for 10 weeks, sometimes more than once per week. Of these appointments, Robbie attended one, and only because Shea was too ill to travel. H.M. was treated in Chicago for approximately one year, and Shea kept Robbie informed of all the appointments. Shea testified she never told Robbie he could not go to H.M.'s appointments or that she did not want him there.

¶ 38 While H.M. was being treated in Chicago, Shea would stay with Robbie's parents, but Robbie never joined them. In 2011, H.M. began treatment in St. Louis. Shea estimated there were at least 15 treatments in St. Louis, and Robbie attended 2 or 3 times. Since 2012, H.M. has been treated at the Shriners Hospitals for Children in Philadelphia. In the past, the treatments have been three or four times per year, but they are currently only twice per year. Shea testified she has flown to Philadelphia 37 times for approximately 118 doctor's appointments between 2011 and 2014. Of the 37 visits, Robbie has attended 5, and of the 118 appointments, he has

attended 24. In December 2013, Shea took H.M. to a doctor in Los Angeles for a second opinion. Robbie did not attend.

¶ 39 Shea testified an organization called Miracle Flights pays for the majority of each airline flight to doctor's appointments, leaving her to pay \$50 total for both herself and H.M. Shea is also responsible for car rentals, food, and miscellaneous other travel expenses. Robbie has never paid for any of these expenses other than one flight to Philadelphia. Following the trip, Robbie sent Shea an e-mail telling her he no longer wants to be her "fallback person in case of emergency." Shea testified there has never been an issue where Robbie wanted to go to an appointment instead of her, and he has only asked to get a ticket through Miracle Flights once, and the organization got him a ticket. On cross-examination, Robbie testified he is not concerned that Shea has never paid for any of his flights because he can pay for them himself; "it is just that she has never offered."

¶ 40 The first time H.M. broke her arm was when she was three months old. Robbie was aware H.M. had broken her arm, but he did not come visit her in the hospital. The second time H.M. broke her arm was in December 2013 in the airport coming back from seeing a doctor in Los Angeles. Shea and H.M. were only in the hospital for a few hours and were able to catch the last flight home to Chicago, but Robbie did not visit H.M. at any point while her arm was broken.

¶ 41 Since Robbie filed his amended petition for custody, H.M. has broken her arm three times. In February 2014, H.M. broke her arm while she was at Shea's mother's house in Morton. Neither Shea nor Robbie visited H.M. in the hospital, but both visited with her after Shea's mother drove H.M. back to Urbana. In April 2014, H.M. broke her arm while at day care.

Both Shea and Robert visited H.M. in the hospital. In August 2014, H.M. broke her arm when she got excited about cupcakes and fell.

¶ 42 Shea testified she has missed approximately 15 to 20 of H.M.'s 80 therapy appointments. She explained she missed these appointments for a variety of reasons, including because she was at a different appointment for H.M., because of weather, because of scheduling conflicts with the therapist, because of sickness, and because H.M. recently broke her arm and just "wasn't up for doing therapy." Shea testified she has never just decided for no reason to not take H.M. to the doctor.

¶ 43 In November 2010, Shea wrote an e-mail to Robbie's mother, explaining she gets depressed during winter, and it is great Robbie had been coming often to see H.M. because she gets some time off and H.M. is happy to spend time with her father. Shea explained she told Robbie's mother it was "great" because it was something that was out of the ordinary at that time. Shea also explained she began meeting with a counselor once a week in 2010, but she did not require any medication and was not disabled in any way by any kind of depression. Robbie had never expressed any concerns, nor had he indicated he was fearful for H.M.'s safety because of any issues with depression prior to trial. Shea explained her depression is not an ongoing concern, but rather, was the result of H.M. having two to three therapies every week. She was traveling to Chicago and St. Louis for doctor's appointments and was "taking care of a pretty severely disabled child by [her]self."

¶ 44 Jonah Weisskopf, Robbie's former roommate, testified on Shea's behalf. He explained he and his wife, Kate, are friends with Shea and have helped her pay for a portion of the litigation. Jonah testified Shea and H.M. have a special relationship. H.M.'s room is filled with little activity stations, a play area, pictures, arts and crafts, crayons, little gel toys, and iPad

games. Everything in H.M.'s room is brought down to her level. Shea and H.M. constantly go to yoga together, eat outside, and interact with others at the farmer's market.

¶ 45 Jonah testified he has witnessed H.M. fall multiple times. He estimated he has witnessed her fall at least once every other week. On one occasion, while Robbie was living with them at the rooming house, H.M. fell and hit her nose, and Robbie responded by saying, "she falls all of the time." Jonah also testified there was never a lock on Robbie's door when he lived in the rooming house with them. In November 2013, Shea went over to the rooming house and told Jonah she needed to grab something of H.M.'s, and the next thing Jonah knew, Robbie was calling the police to report Shea for trespassing.

¶ 46 In the summer of 2012, Shea took H.M. camping in Colorado for two days with Hubler, his wife and daughter, and other renters. Shea testified she would not call the campsite a "nudist colony." She explained there are hot springs where clothing is optional, but clothing is required at the campsite itself and in the communal pavilion where people eat food. Shea did not see anything wrong with taking H.M. there but did not know if she would take her again. Shea also took H.M. to Nevada in the summer of 2011 and around Christmas in 2012 to visit her friend, Allan Day. H.M. had met Allan before, and they would watch movies and go on walks.

¶ 47 In December 2012, Shea took H.M. on a vacation to Hawaii following multiple casting appointments to visit her friend, Tommy Henderson. Shea met Tommy at The LEAF, a family festival in North Carolina. Thereafter, she spoke with Tommy frequently via telephone and e-mail. Shea testified, prior to the Hawaii trip, Robbie had asked for a name, address, and contact information, which she provided. He never indicated he thought H.M. would be endangered by going to Hawaii. While in Hawaii, Tommy watched H.M. for 30-minute time periods while Shea hiked and swam in the ocean.

¶ 48 Starting around the time Robbie starting dating Natalie in 2013, Robbie began to verbally abuse Shea regarding her parenting and what she was doing right or wrong. On cross-examination, Robbie admitted sending Shea texts saying things such as: "you better not call me an abuser any more, because you have not heard the last of it," and, "You're not a poor single mother, you're a scheming gold-digger who likes to bang old men." Knowing Shea grew up without a father, Robbie sent her a text saying, "you are jealous that your daughter has a father that loves her, something you never had."

¶ 49 Shea testified she would never let Robbie take H.M. to visit his family in Arizona because he had been lying to her about where H.M. was while she was in his care. She explained she felt bad for Robbie's family, but she would not allow her daughter to go to Arizona with someone who would not communicate with her. Shea also testified there have been several instances where she has not felt safe around Robbie. At one point, she sent a text message to Robbie, telling him she was going to deny him visitation rights if he continued to be verbally abusive in front of H.M.

¶ 50 On February 12, 2014, Robbie filed an emergency order of protection against Shea. Shea testified the incident leading up to Robbie's filing for an order of protection happened on a Friday, but his petition was not filed until nearly a week later. Shea explained she was dropping H.M. off at Robbie's house on Friday (February 7, 2014) and Robbie started arguing with her near the passenger door about how she needed his help caring for H.M. Shea testified Robbie grabbed hold of both of her arms and pushed her away from H.M.'s door. Shea stated she fought her arms free and left with H.M.

¶ 51 The following Monday, Robbie had agreed to get H.M. ready for a doctor's appointment while Shea was in class, but he decided at the last minute he was going to take H.M.

to the appointment. Robbie would not allow H.M. to leave with Shea, so she called the police. Once the police arrived, Robbie relinquished custody of H.M. and drove separately to the appointment. Robbie filed his petition for an *ex parte* order of protection two days later (February 12, 2014).

¶ 52 Shea also testified Natalie started videotaping their custody exchanges starting in February 2014. Shea asked Natalie to stop videotaping several times, but Natalie indicated she was allowed to videotape because they were in a public place. This led Shea to call Robbie and Natalie "crazy." In April 2014, while filling out a school registration form, Shea did not list Robbie as H.M.'s father. Initially, she stated she did not have her phone at the time, but she later testified she filled out the form during a time where she was feeling "a lot of harassment and abuse from Robbie."

¶ 53 Shea denied ever telling Robbie he did not "have a case in hell." She further testified there has not been an occasion where she was yelling that Robbie was not also yelling. She explained she wants H.M. to talk to Robbie when she is not with him and encourages H.M. to talk openly about Robbie and Natalie and their dog.

¶ 54 C. The Report of the LGAL

¶ 55 Mullady met with both Robbie and Shea and filed his LGAL report with the trial court on July 23, 2014. In the report, Mullady expressed his opinion that Shea should be granted sole custody of H.M. He further indicated Shea's living situation "seems a bit unorthodox," but "both of the parties lived a rather bohemian life style." The report stated Robbie was concerned about his daughter's safety, and he cited four instances which he believed "rose to the level of serious endangerment," including two falls, a broken arm, and a situation at Shea's mother's house where Shea's sister was wielding a knife.

¶ 56 In addition, Mullady noted: "There was a very troubling Order of Protection case filed by [Robbie] against [Shea]. *** Within 13 days, and by agreement of the parties and their counsel, the Emergency Order of Protection was vacated. While the court can review the file and reach its own conclusions, it is inconceivable to me how, under the facts as I know them, [Robbie] could file a Petition seeking an order of protection against [Shea]. It is obvious, that the amount of care the child takes is considerable. It is also clear that [Shea] has devoted her life to taking care of her daughter."

¶ 57 The report then analyzed the best interests of H.M. pursuant to the factors enumerated in section 602(a) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/602(a) (West 2012)).

"(1) The wishes of the parents. Both parents wish to have custody of their daughter. This factor favors neither parent.

(2) The wishes of the child. Given the age and medical condition of this child, this factor is not relevant.

(3) The interaction and interrelationships with parents, siblings and others. In order to successfully raise this child and deal with the child's medical issues, I believe that any and all available family members have been involved to some extent or another. However, no one has been involved to the extent that the child's mother has been involved. This child requires care 24 hours a day seven days a week. [Shea], with assistance from [Robbie], as well as her family, has done a much better job than

most could ever do in such a difficult, demanding and trying situation. This factor clearly favors the mother.

(4) The child's adjustment to home, school and community.

The child is doing as well as the child possibly can. I believe it would be difficult to uproot this child from the only caregiver the child has ever known. This factor strongly favors the mother.

(5) The mental and physical health of all individuals concerned. I do not *[sic]* believe that either parent has any mental or physical disabilities. This factor is not relevant[.]

(6) The physical violence or threat of physical violence in the occurrence of ongoing or repeated abuse. While [Robbie] did obtain an Emergency Order of Protection citing physical violence by [Shea], I do not believe [Shea] to be a violent person and do not believe that this factor is relevant.

(7) The willingness and ability of each parent to facilitate and encourage *** close and continuing relations between the other parent and the child. I believe [Shea] has done an excellent job of facilitating a positive relationship between the child and [Robbie]. I do not have any sense of confidence that [Robbie] has or would do the same. I believe this factor favors the mother."

¶ 58 Mullady concluded his report by expressing his belief that custody should be awarded to Shea, whom he believed has put "and will continue to put the needs of her child above her own needs." He explained:

"While [Robbie] has been involved in assisting [Shea] with the care of the child, he has taken the position of watching what has been going on and then criticizing [Shea] whenever anything did not go according to plan. There is no doubt in my mind that he loves his daughter and has certainly helped with her care, but his level of involvement cannot even begin to rise to the level provided by [Shea]."

¶ 59 D. The Trial Court's Determination

¶ 60 On January 9, 2015, the trial court rendered its opinion. Working through the statutory factors, the court explained several of them were a "draw." It stated it is clear both parents sincerely love H.M. and both want custody for what they believe to be appropriate reasons. Based on H.M.'s age, the court did not consider the wishes of the child. With regard to the mental and physical health of the parties, the court did not find evidence of any problems. Regarding physical violence and abuse, the court stated, "in spite of some evidence presented to the contrary, I don't find either party to be—I think there's been a lot of yelling and screaming going on. I don't find that to be a substantial problem."

¶ 61 The trial court then found Shea has been the primary custodial parent for H.M. for her entire life and is "[in]credibly dedicated" to taking care of her. It noted Robbie has been an involved parent, but Shea has been primarily involved in finding both doctors and appropriate treatments for H.M.'s condition. Along similar lines, the court found the factor of adjustment to home, school, and community weighed in Shea's favor. Comparing the present accommodations, Robbie "clearly has a better living situation and accommodating situation right

now." However, Shea and H.M. have been living at the same residence for 4 1/2 years, while Robbie has lived in five different residences over the course of H.M.'s life.

¶ 62 The trial court also found Shea more willing and likely to facilitate and encourage a relationship between Robbie and H.M. It noted Robbie seemed to spend a "tremendous" amount of time criticizing everything Shea did with H.M., from missing doctor's appointments to attributing all broken bones to Shea's care and living arrangements. In this regard, it agreed with Mullady's LGAL report, which indicated a lack of confidence in Robbie's willingness or ability to facilitate a relationship with Shea. The court also noted the videotaping during the visitation transfers was "disturbing" and not the appropriate way to promote a relationship with the other party, even if Robbie believed H.M.'s safety was in danger, which he did not find credible.

¶ 63 The trial court found the factor concerning the interaction and interrelationship between H.M. and other persons favored Robbie. It noted Robbie's parents have been very supportive and have a "good relationship" with H.M. It also noted Natalie has a good relationship with H.M., stating, "She's someone that the court would feel comfortable being around this child on a substantial basis."

¶ 64 The trial court also explained it had some "generalized concerns" with regard to Shea. It noted, she "certainly has some unconventional ideas about life and living," which favors an award of custody to Robbie, but ultimately, Shea's lifestyle has not impaired her ability to properly care for H.M.

¶ 65 Finally, the trial court noted it had a "real concern" with what it felt was "a real abuse of the order of protection process." It noted the petition for custody had originally been filed in December 2012, but Shea was not served until February 7, 2014. Only five days later, Robbie filed his petition for an emergency order of protection, asking for temporary possession

of H.M. and a restriction of Shea's visitation. The court found this to be a clear attempt to obtain an advantage in a custody case and a "clear abuse of the order of protection process."

¶ 66 The trial court concluded as follows:

"I simply put everything into the hat. I simply considered everything. I think there's no question that both these parents truly love this child. There's no question that I think either parent can do a more than adequate job of taking care of this child, and as I think I indicated to the parties when they were both here last time, I think it's sad that so much money had to be spent on this[.] ***

The court then has carefully weighed all the statutory factors, all the non-statutory factors. The court finds it is in the best interests of the minor child that her custody be awarded to [Shea]."

¶ 67 On January 15, 2015, the trial court entered a written order awarding Shea permanent sole care, custody, and control of H.M.

¶ 68 This appeal followed.

¶ 69 II. ANALYSIS

¶ 70 On appeal, Robbie argues the trial court erred in granting sole custody to Shea because the record demonstrates Shea has gone to great lengths to interfere with and destroy H.M.'s relationship with Robbie. Specifically, Robbie alleges the trial court's ruling was an abuse of discretion and against the manifest weight of the evidence because (1) Shea left H.M., a child with significant physical difficulties, alone with men neither she, nor Robbie, knew well; (2) the record is replete with Shea's efforts to interfere with H.M.'s close relationship with Robbie; (3) Shea's living situation is not an appropriate environment for a young, disabled girl;

(4) the record demonstrates H.M. has a great relationship with Robbie's family and a nonexistent relationship with Shea's family; (5) Robbie is the only parent who has shown a willingness to dedicate time and attention to H.M.'s physical disabilities; (6) there is evidence of ongoing or repeated violence on the part of Shea, as demonstrated by the emergency order of protection Robbie took out against Shea in February 2014; (7) Shea is not the primary custodian of H.M. and has gone to great lengths to keep Robbie from spending time with H.M.; and (8) the court improperly relied on the LGAL's written report.

¶ 71 Shea argues the trial court did not abuse its discretion or rule against the manifest weight of the evidence by awarding her custody. She contends the court considered all relevant statutory and nonstatutory factors in this balanced custody case between two good parents. Shea further argues Robbie is essentially asking this court to reweigh the evidence; something we have made very clear we cannot do. For the following reasons, we agree with Shea.

¶ 72 A. Standard of Review

¶ 73 "In cases regarding custody, a strong presumption favors the result reached by the trial court ***." *In re Marriage of Seitzinger*, 333 Ill. App. 3d 103, 108, 775 N.E.2d 282, 286 (2002). A trial court's best-interests findings are entitled to great deference because the trial court is in the best position "to observe the temperaments and personalities of the parties and assess the credibility of witnesses." *In re Marriage of Stopher*, 328 Ill. App. 3d 1037, 1041, 767 N.E.2d 925, 928 (2002). Accordingly, we will not overturn a trial court's custody determination unless it (1) is against the manifest weight of the evidence; (2) is manifestly unjust; or (3) results from a clear abuse of discretion. *Id.*, 767 N.E.2d at 929. A trial court abuses its discretion only where it " 'act[s] arbitrarily without conscientious judgment or, in view of all the circumstances, exceed[s] the bounds of reason and ignore[s] recognized principles of law so that substantial

injustice result[s].' " *In re Marriage of Marsh*, 343 Ill. App. 3d 1235, 1240, 799 N.E.2d 1037, 1041 (2003) (quoting *In re Marriage of Suriano*, 324 Ill. App. 3d 839, 846, 756 N.E.2d 382, 388 (2001)). "Findings are against the manifest weight of the evidence when the correctness of an opposite finding is clearly evident." *Id.* at 1241, 799 N.E.2d at 1042. Thus, "[w]here the evidence permits multiple reasonable inferences, the reviewing court will accept those inferences that support the court's order. [Citation.] We will affirm the trial court if there is any basis to support the trial court's findings." *In re Marriage of Divelbiss*, 308 Ill. App. 3d 198, 206-07, 719 N.E.2d 375, 381 (1999).

¶ 74

B. H.M.'s Best Interests

¶ 75

Section 602(a) of the Act provides the following factors a trial court must consider in making its custody determination:

"(1) the wishes of the child's parent or parents as to his custody;

(2) the wishes of the child ***;

(3) the interaction and interrelationship of the child with his parent or parents, his siblings[,] and any other person who may significantly affect the child's best interest;

(4) the child's adjustment to his home, school[,] and community;

(5) the mental and physical health of all individuals involved;

(6) the physical violence or threat of physical violence by the child's potential custodian, whether directed against the child or directed against another person;

(7) the occurrence of ongoing or repeated abuse as defined in Section 103 of the Illinois Domestic Violence Act of 1986, whether directed against the child or directed against another person;

(8) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child;

(9) whether one of the parents is a sex offender; and

(10) the terms of a parent's military family-care plan that a parent must complete before deployment if a parent is a member of the United States Armed Forces who is being deployed."

750 ILCS 5/602(a) (West 2012).

¶ 76 In the present case, the trial court methodically considered the applicable factors set forth in section 602(a) of the Act before awarding custody to Shea. It first found both parents loved H.M. and wanted custody for what they felt were appropriate reasons. It then stated based on H.M.'s age, her wishes with regard to custody amounted to a "draw."

¶ 77 On appeal, Robbie makes several arguments as to how the trial court's ruling under each of the remaining factors was an abuse of discretion and against the manifest weight of the evidence. We conclude these arguments amount to nothing more than an attempt to have this court reweigh the evidence presented below, which we cannot do. *In re Marriage of Pfeiffer*,

237 Ill. App. 3d 510, 513, 604 N.E.2d 1069, 1071 (1992) ("It is not the function of this court to reweigh the evidence or assess the credibility of testimony and set aside the trial court's determination merely because a different conclusion could have been drawn from the evidence.").

¶ 78 Robbie argues the trial court did not give enough weight to the fact H.M. has a great relationship with his family. However, the record fails to support this contention, as the court spent a considerable amount of time discussing how Robbie "has more family support" than Shea. The court noted H.M.'s "good relationship" with her grandparents and stated Natalie appeared to be "someone that the court would feel comfortable being around this child on a substantial basis."

¶ 79 In considering the mental and physical health of the parties, Robbie insists the trial court failed to consider Shea's history of depression. However, Shea's testimony at trial, which the court found credible, was that she was not currently disabled in any way by any kind of depression. Shea explained she met with a counselor once a week in 2010 because H.M. was having two to three therapies every week and she was "taking care of a pretty severely disabled child by [her]self," but her depression is not an ongoing concern.

¶ 80 Robbie also contends Shea lacks the willingness and ability to dedicate the time necessary to attend to H.M.'s daily needs, but this contention is contradicted by the record. Aside from a November 2012 blog post where Shea mentioned H.M. does "extra stuff" when she is with Robbie, the record is replete with evidence that Shea has dedicated her life to taking care of her child. While juggling work and nursing school, Shea has flown to Philadelphia 37 times for over 100 doctor's appointments, driven to Chicago and St. Louis on multiple occasions, and

flown to Los Angeles for a second opinion. Robbie, by his own admission, has attended less than half of these appointments.

¶ 81 Although Shea has missed multiple therapy appointments, she has also attended at least 60 therapy appointments and testified she has never just for no reason missed H.M.'s therapy. Robbie spends a significant amount of time criticizing Shea's living situation and her "proclivity for travel to be with older men," yet the trial court explicitly noted it had some "generalized concerns" with Shea in this regard. Further, as the trial court noted, prior to May 2014, Robbie's living situation appears to have been quite similar to Shea's. The court ultimately found Shea's lifestyle has not interfered with her parenting abilities, and she is "[in]credibly dedicated" to taking care of H.M. This determination was not against the manifest weight of the evidence. Moreover, we find it extremely troubling Robbie attempts to "blame" Shea for H.M.'s broken arms, despite the fact the parties agree they have a severely disabled child who has trouble walking and falls often.

¶ 82 Robbie argues Shea has gone to great lengths to interfere with his relationship with H.M., yet the record indicates Robbie has similarly interfered with Shea's relationship with H.M. In addition to Natalie videotaping custody exchanges, which the trial court found "disturbing," Robbie filed a petition for an *ex parte* emergency order of protection only five days after serving Shea with his petition for custody. In that petition, Robbie sought temporary possession of H.M. and a restriction of Shea's visitation.

¶ 83 The LGAL in this case stated, "There was a very troubling Order of Protection case filed by [Robbie] against [Shea]. *** While the court can review the file and reach its own conclusions, it is inconceivable to me how, under the facts as I know them, [Robbie] could file a Petition seeking an order of protection against [Shea]." After reviewing the evidence, the trial

court found Robbie's actions in obtaining the emergency order to be an attempt to obtain an advantage in a custody case and a "clear abuse of the order of protection process." Despite Robbie's argument to the contrary, this ruling was not against the manifest weight of the evidence.

¶ 84 Robbie also argues Shea is physically violent and "can't seem to be able to control herself." In support of this argument, he points to testimony in the record where he claims Shea kicked him in the groin and frequently screamed at both himself and Natalie in front of H.M. However, Shea testified there was never an occasion where she was yelling that Robbie was not also yelling. Analyzing this factor under the Act, the trial court stated, "in spite of some evidence presented to the contrary, I don't find either party to be—I think there's been a lot of yelling and screaming going on. I don't find that to be a substantial problem." The trial court's finding in this regard is given great deference, because it was in the best position to assess the credibility of the witnesses. Accordingly, the court's ruling on this factor is not against the manifest weight of the evidence.

¶ 85 Finally, Robbie contends the trial court erred when it found Shea was H.M.'s primary custodian. He claims Shea should not be rewarded for her successful efforts to keep him from spending time with H.M. during the pendency of the litigation. While there is evidence to support his contention, the trial court considered all of the evidence before it and concluded H.M. has lived with Shea for "essentially" her entire life. It is well established "[a]n important consideration in determining custody under the best-interest-of-the-child standard is stability of environment, *i.e.*, consideration of which parent has been caring for the child." *In re Marriage of Hefer*, 282 Ill. App. 3d 73, 77, 667 N.E.2d 1094, 1097 (1996). "[T]here is no justification for

ignoring the bond which has developed between the child and the primary physical custodian ***." *In re Marriage of Wycoff*, 266 Ill. App. 3d 408, 412, 639 N.E.2d 897, 902 (1994).

¶ 86 The trial court's finding in this regard is supported by the record. Shea has been primarily responsible for finding doctors, scheduling therapy appointments, and traveling to these appointments since H.M. was born. During the first six months of H.M.'s life, Robbie only drove to Morton to visit her one time. While he lived in Crystal Lake for a year, he only saw H.M. approximately three days per month, or once every two to three weekends. Even when Robbie moved back to Urbana and would see H.M. five days per week, he testified this was because Shea would ask him to come over to read H.M. a story or put her to bed. While it appears Robbie loves his daughter and has been significantly involved in her life for the past few years, there is a substantial amount of evidence in the record supporting the trial court's finding in favor of Shea. As the court stated, it carefully weighed all statutory and nonstatutory factors. It "simply considered everything." This finding was not against the manifest weight of the evidence.

¶ 87 C. The LGAL'S Report

¶ 88 As a final matter, we note Robbie asserts the trial court erred when it relied upon the LGAL's report because the LGAL is not an expert and did not hear any of the evidence presented at any of the custody hearings. We disagree. Section 506(a)(2) of the Act explicitly authorizes a trial court to appoint a guardian *ad litem* in custody proceedings. Section 506(a)(2) states, in relevant part:

"The guardian ad litem shall testify or submit a written report to the court regarding his or her recommendations in accordance with the best interest of the child. The report shall be made available to

all parties. The guardian ad litem may be called as a witness for purposes of cross-examination regarding the guardian ad litem's report or recommendations. The guardian ad litem shall investigate the facts of the case and interview the child and the parties." 750 ILCS 5/506(a)(2) (West 2012).

¶ 89 Thus, section 506(a)(2) required Mullady to submit a written report to the court with his recommendations in accordance with his opinion regarding the best interests of H.M. In addition to its consideration of other relevant factors, the trial court stated it "considered the non-statutory factor of the investigation and report of the [LGAL]." In doing so, the court recognized Mullady was not an expert, but it stated his report was "just one other factor that the court can consider of a non-statutory nature." Accordingly, we find no abuse of discretion in the trial court's consideration of the LGAL's written report.

¶ 90 III. CONCLUSION

¶ 91 Given the significant amount of evidence presented at the custody hearings and the trial court's meticulous application of that evidence to the relevant statutory and nonstatutory factors, we conclude the court's award of sole custody to Shea was neither against the manifest weight of the evidence nor a clear abuse of discretion. For these reasons, we affirm the trial court's judgment.

¶ 92 Affirmed.