2015 IL App (4th) 150427-U

NO. 4-15-0427

FILED
October 28, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: MARRIAGE OF KRISTA L. SLAVISH, n/k/a KRISTA L. GRAY,	)	Appeal from
Petitioner-Appellant,	)	Circuit Court of
and	)	McLean County
KYLE N. SLAVISH,	)	No. 11D594
Respondent-Appellee.	)	Honorable
	)	Charles G. Reynard,
	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: The trial court's denial of the petition to remove the parties' minor children from Illinois to Florida was against the manifest weight of the evidence.

¶ 2 In June 2014, petitioner, Krista L. Slavish, n/k/a Krista L. Gray (Krista), filed a petition for leave to remove her two minor children, born to her and her former husband, respondent, Kyle N. Slavish, from Illinois to Florida.

¶ 3 Krista appeals the trial court's denial of her removal petition, arguing the court's judgment removal was not in the minors' best interests was against the manifest weight of the evidence. We reverse and remand with directions.

¶ 4 I. BACKGROUND

¶ 5 As the parties are familiar with the facts, we recite them here only as necessary for the resolution of the issues raised on appeal.

¶ 6 On August 19, 2006, Krista and Kyle were married. During the marriage, the parties had two boys, M.S. (born March 18, 2008) and G.S. (born April 16, 2009).

¶ 7 On April 27, 2012, the parties' marriage was dissolved by the entry of a judgment for dissolution of marriage. That judgment incorporated a joint-parenting agreement designating Krista as the minors' primary residential custodian.

¶ 8 Following the entry of the divorce decree, Krista moved with the children to Hudson, Illinois, and M.S. began attending kindergarten at Hudson Elementary School. At the time, Krista worked for Country Insurance, earning $63,000 annually.

¶ 9 In May 2013, Krista began dating William Mohl. Mohl has a son, H.M. In December 2013, Krista and Mohl began discussing marriage. In March 2014, Krista and the children moved into Mohl's home in Bloomington, Illinois. Mohl proposed to Krista on May 7, 2014. Their anticipated wedding date is November 28, 2015, in Florida.

¶ 10 Prior to June 2014, Mohl worked as an assistant baseball coach at Illinois State University (ISU) making $55,000 annually. In the spring of 2014, Mark Kingston, the then head baseball coach for ISU, interviewed for the head coaching position at the University of South Florida (USF). Kingston accepted the position. Mohl had worked with Kingston since 2001. Kingston offered Mohl a coaching job with him at USF. Mohl accepted the position and moved to Odessa, Florida, on June 9, 2014. Mohl earns $70,000 annually at USF.

¶ 11 On June 12, 2014, Krista filed a petition for leave to remove M.S. and G.S. from Illinois to Florida.

¶ 12 On July 9, 2014, Kyle filed a counterpetition to modify custody, requesting he be awarded sole custody of the children.

¶ 13 Krista applied for a number of positions in Florida. She eventually accepted a position with Apollo Retail Specialists earning $60,000 annually. On August 10, 2014, Krista moved to Odessa, Florida.

¶ 14 On August 12, 2014, the trial court entered an agreed order designating Kyle the temporary primary residential parent. As stated in the order, placement with Kyle was to be without prejudice, *i.e.*, it was not to be used against Krista. Kyle resides in Normal, Illinois, in a home he purchased in 2013. He is employed as an actuary by State Farm with an adjusted gross income in 2013 of $132,961. M.S. and G.S. attend Fairview Elementary School in Normal.

¶ 15 At the hearing on the removal petition, Krista testified she was the boys' primary caregiver. She was responsible for getting the boys to and from school as well as taking them to doctor visits. As a result of her new job, Krista now has an opportunity to work from home without using her personal time if one of the boys is sick. In her old position, she was never allowed to be gone. While she could work from home, she would still have had to use a vacation day to do so. Her new employer also allows her to leave work to attend school activities. Krista testified everyone in her department has young children. As a result, they are very understanding about scheduling issues that can come up involving kids. Krista also testified it was difficult to get a raise at her prior job. Unlike her Illinois job, her position in Florida affords her an opportunity for advancement. In Illinois, she was unable to advance because she lacked a certified public accountant certification. However, she hopes to be promoted to the position of controller in her new job when the current controller is promoted out of that position. While

Krista's salary was reduced by $3,000 as a result of the move, she believed a controller makes approximately $75,000 annually.

¶ 16 According to Krista's testimony, the home they were renting in Florida was in a very new, upscale, and safe community with soccer fields and playgrounds strictly for use by the children in the neighborhood. She characterized the neighborhood as very "kid-friendly" and noted there were several other children in the area within the same age bracket as G.S. and M.S. Krista testified her support system in Florida consists of the wives of the other coaches. Krista also testified the children would have the chance to attend better schools in Florida than in Illinois. According to Krista, the Odessa school had a more favorable teacher-to-student ratio and the standardized test scores were higher than at the school the boys currently attend. On cross-examination, however, Krista admitted not having visited the school in Odessa or speaking with any teachers or administrators. Instead, Krista based her opinion on information she obtained from the Internet.

¶ 17 M.S.'s teacher, Julie Duff, testified he got along with his classmates, did not display any emotional issues, and was making good academic progress in school. She testified she has observed a bond between M.S. and Kyle, noting M.S. is always very excited to see Kyle and goes up and hugs him. Duff also testified M.S. has not expressed any sadness about missing Krista or about her being gone.

¶ 18 G.S.'s teacher, Michelle Schaber, testified he was excelling academically, was very respectful, and did not display any behavioral issues. G.S. is "always eager to learn and do what's right in class." Schaber testified she had no reservations about G.S.'s home life with his father. However, Schaber testified on November 17, 2014, she observed a welt under G.S.'s eye.

When she talked to G.S. about it, G.S. told her M.S. hit him when they had been playing rough and Mohl showed him how to make a fist. Schaber explained because she is a mandated reporter, she notified the Department of Children Services (DCFS) about the incident.

¶ 19 Mohl testified the coaching position in Florida was a better opportunity for him than if he were to remain in Illinois. Mohl has a son, H.M., who was three years old at the time of the hearing. Mohl explained H.M's. mother had passed away. Mohl testified H.M. considers Krista's children to be his brothers. According to Mohl, H.M., M.S., and G.S. would have more opportunities available to them as a result of his employment with USF. Mohl disputed he encouraged G.S. to fight.

¶ 20 Kyle testified up until the August 2014 agreed custody order, Krista was the residential parent of G.S. and M.S. When he took over full-time care of the children, Kyle was concerned about how the change would affect the boys. Kyle testified he "stepped up his game" and started to get more actively involved in their lives. He started reading books about being a single father. He also tried to enroll the boys in therapy but was unsuccessful. Kyle testified he eats at the table with the boys at supper time. He also helps them with their homework. Almost all of Kyle's family lives in the Midwest. He considers his family to be G.S.'s and M.S.'s support system. However, neither the boys' paternal nor their maternal grandparents live in the Bloomington area.

¶ 21 Joseph Foley, the minors' guardian *ad litem* (GAL) for the proceedings, recommended the trial court grant Krista's removal petition. According to the GAL's testimony, the children expressed how much they missed Krista each time he visited with them without any prompting. The GAL testified he considered the DCFS report but did not afford it any weight

and did not find it relevant. The GAL thought the issue was a "red herring," that the boys loved each other and got along well, and if anything, G.S. was advised on how to stand up for himself. After talking with everyone involved, the GAL determined the report was a nonissue. The GAL believed if removal were granted, Krista would do a better job making sure the boys maintain a continued relationship with Kyle than Kyle would do regarding Krista if removal were denied. The GAL opined it would be in the best interests of the children if removal were granted.

¶ 22 According to Krista's proposed visitation schedule, Kyle would have the boys for eight weeks in the summer. In addition, they would spend spring break as well as the Thanksgiving holiday with Kyle. Krista proposed the winter break would be divided between the parties. Father's Day and Mother's Day would be spent with Kyle and Krista respectively.

¶ 23 During closing argument, Kyle's counsel argued, *inter alia*, the importance of the DCFS report with regard to the fact Mohl was going to be the children's stepfather. While counsel clarified she was not asking the court to make a finding of abuse, she wanted the court to consider the incident in the context of removal. Counsel also emphasized the fact the children would have no extended family in Florida to assist when Krista needs help. According to counsel, it was not in the minors' best interests "to be uprooted from their extended families and from the school where they are thriving."

¶ 24 On May, 1, 2015, the trial court issued its written order denying Krista's petition, finding removal was not in the children's best interests.

¶ 25 This appeal followed.

¶ 26 II. ANALYSIS

¶ 27 On appeal, Krista argues the trial court's denial of her petition for removal was

against the manifest weight of the evidence. Specifically, Krista contends (1) the court erred by relying on improper factors; (2) the children's quality of life would be substantially improved by the move; (3) the move was not a ruse designed to frustrate visitation; (4) the court erred in finding a reasonable visitation schedule could not be achieved; and (5) the court failed to give proper weight to the GAL's recommendation to grant the removal petition.

¶ 28 A. Standard of Review and Removal Framework

¶ 29 Section 609 of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) governs the removal of children from Illinois. 750 ILCS 5/609 (West 2012). Under section 609, a trial court may grant a parent leave to remove a minor from Illinois whenever such a move is in the child's best interests. 750 ILCS 5/609(a) (West 2012). The party seeking removal has the burden to prove removal is in the best interests of the child. 750 ILCS 5/609(a) (West 2012).

¶ 30 A trial court's determination of the best interests of the children will not be reversed unless the decision is clearly against the manifest weight of the evidence. *In re Marriage of Eckert*, 119 Ill. 2d 316, 328, 518 N.E.2d 1041, 1046 (1988). "A judgment is against the manifest weight of the evidence when the opposite conclusion is clearly apparent or when the trial court's findings are unreasonable, arbitrary or not based on the evidence." *In re Marriage of Dorfman*, 2011 IL App (3d) 110099, ¶ 46, 956 N.E.2d 1040. Such deference is given to the trial court because it " 'had significant opportunity to observe both parents *** and, thus, is able to assess and evaluate their temperaments, personalities, and capabilities.' " *Eckert*, 119 Ill. 2d at 330, 518 N.E.2d at 1047 (quoting *Gallagher v. Gallagher*, 60 Ill. App. 3d 26, 31, 376 N.E.2d 279, 283 (1978)).

¶ 31 While all relevant evidence should be considered, the supreme court identified five

factors which should be considered in determining whether removal is in a child's best interests. *Eckert*, 119 Ill.2d at 326-27, 518 N.E.2d at 1045-46. Those factors are as follows: (1) whether the proposed move will enhance the quality of life for both the custodial parent and the child, (2) whether the proposed move is a ruse designed to frustrate or defeat the noncustodial parent's visitation, (3) the motives of the noncustodial parent in resisting removal, (4) the visitation rights of the noncustodial parent, and (5) whether a reasonable visitation schedule can be achieved if the move is allowed. *Eckert*, 119 Ill. 2d at 326-27, 518 N.E.2d at 1045-46.

¶ 32 These five "*Eckert* factors" are not exclusive but are to be considered and balanced in determining whether removal is in the child's best interests. *In re Marriage of Collingbourne*, 204 Ill. 2d 498, 523, 791 N.E.2d 532, 545-46 (2003); see also *In re Marriage of Smith*, 172 Ill. 2d 312, 321, 665 N.E.2d 1209, 1213 (1996). As such, no individual factor is controlling, and the weight accorded each factor will depend on the case's facts. *Collingbourne*, 204 Ill. 2d at 523, 791 N.E.2d at 546; *Smith*, 172 Ill. 2d at 321, 665 N.E.2d at 1213. In other words, a best interests determination "cannot be reduced to a simple bright-line test," and "must be made on a case-by-case basis, depending, to a great extent, upon the circumstances of each case." *Eckert*, 119 Ill. 2d at 326, 518 N.E.2d at 1045. "We defer to the trial court for factual findings and credibility assessments because it is in the best position to make such findings" and "[w]e will not reweigh evidence or reassess witness credibility on appeal." (Internal quotation marks omitted.) *In re April C.*, 345 Ill. App. 3d 872, 889, 803 N.E.2d 933, 947 (2004).

¶ 33 B. Factors Relied on by the Trial Court

¶ 34 Krista argues the trial court erred when it relied on improper factors in denying her removal petition. Specifically, Krista contends it was reversible error for the court to use factors

for determining child custody issues in addition to applying the *Eckert* factors in deciding the removal case. We agree.

¶ 35 In its order, the trial court stated, "The 'best interests of the child' is the standard for determining the removal issue." The court then incorrectly stated section 609 of the Dissolution Act references the best interest factors set forth in section 602 relating to child custody determinations. While both sections use the "best interest" phrase, section 609 does not reference section 602. Compare 750 ILCS 5/609 (West 2012) (a court "may grant leave *** to any party having custody of any minor child *** to remove such child *** from Illinois whenever such approval is in the best interests of such child") with 750 ILCS 5/602 (West 2012) ("court shall determine custody in accordance with the best interest of the child"). After listing the 10 section 602 best interest factors, the court stated, "[t]here are five *additional factors* that are to be considered in determining whether granting the Respondent's Petition is in the child's best interest." (Emphasis added.) The court then listed the five *Eckert* removal factors as additional considerations in the analysis. The court stated it had "considered all of the foregoing factors in relation to the evidence presented." The court proceeded to analyze the case in the context of 6 of the 10 section 602 factors. Thereafter, the court presented its findings regarding the five *Eckert* removal factors.

¶ 36 With regard to the section 602 custody factors, the trial court's order stated the following:

> "**a. the wishes of the child's parent or parent as to his custody[:]**
>
> The wishes of the parents are opposing with respect to the removal

issue, and the Court does not find this factor as having a meaningful influence on the determination of the best interests of the children.

b. the wishes of the child as to his custodian[:]

There is very little evidence indicative of the children's wishes as to custodian or as to the removal issue. For example, the [GAL] observed that the boys missed their mother and wanted to have more contact with her. This observation appeared to have a significant impact upon the GAL's recommendation. [Kyle] suggests that if the boys had been residing with their mother in Florida they would certainly be missing their father in much the same way. In light of the fact that both parties have concluded that the other is a good parent, *** the Court is persuaded that both parents are profoundly important to the boys, that their wishes more probably than not are to spend as much time as possible with both parents, and that, therefore, this factor does not favor either regarding the removal issue.

c. 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[:]

[M.S.] and [G.S.] appear to have very positive relationships with both parents, with other family members, as well as a good relationship with Billy Mohl and his son, [H.M.], notwithstanding the incident in which the elder Mr. Mohl's judgment has been questioned. The boys

also have positive relations with their peers in the Bloomington-Normal community. In the absence of further information about similar relationships with persons in Florida, this factor appears to favor [Kyle's] position on the removal issue, but not with great weight.

d. the child's adjustment to his home, school[,] and community[:]

There is considerable evidence concerning the children's adjustment to their home, school[,] and community. The boys are doing quite well in their current school placement. Both boys were described are being well-liked, with many friends, and as well-behaved and respectful. [M.S.] was also described as having temper issues prior to [Krista's] departure, but has improved significantly since being in [Kyle's] home. The Court cautions against any inference that [Krista] was a less effective parent, that she was somehow the cause of [M.S.'s] prior difficulties, or that [Kyle] is to be accredited for [M.S.'s] improvements. Indeed, [Krista] may be correct in her assessment that the 'back and forth' nature of the parenting time arrangements prior to her departure may have contributed to [M.S.'s] problems.

e. the mental and physical heath of all individuals involved[:]

No evidence was presented with specific regard to this issue.

f. the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child[:]

The litigation suggests a regrettable measure of acrimony between the parents. While [Krista] complains [Kyle] is willing to communicate only in writing, [Kyle] apprehends that [Krista] has and is questioning his veracity and understandably wants to maintain a documentary record to prevent such accusations in the future. While [Kyle] complains [Krista] does not recognize his much improved parenting commitment, [Krista] views his motivation for 'stepping up his game' as merely a litigation tactic. Mutual distrust is the reality. This reality has compromised both of their capacities to respond to the others' needs for a close and continuing relationship with the children. Neither party is favored by this analysis, though the Court is mindful of arguments both parties have made concerning this factor. This factor represents the most significant challenge to the parties in demonstrating their purported commitment to the best interests of these boys."

¶ 37 In this case, the trial court's analysis of the removal case using factors reserved for child custody determinations was manifestly erroneous. As stated by the Second District

appellate court in *In re Marriage of Gratz*, 193 Ill. App. 3d 142, 150, 548 N.E.2d 1325, 1330 (1989):

> "It was manifestly erroneous for the trial judge to consider the [section 602 custody] factors with regard to the petition for removal. The evidence [considered by the court] was clearly relevant with regard to [the] petition to modify custody. The Act, however, clearly distinguishes between petitions for removal and petitions to modify custody [citations], and a removal petition is not a custody matter. [Citations.] ***. The trial court erred by considering and relying upon such evidence in ruling on the removal petition."

¶ 38 In reversing the trial court's denial of the removal petition, the appellate court in *Gratz* found the trial court had improperly considered evidence the father was the more suitable custodian for the minor and that Waukegan was a better place for the child to live than Arizona. *Gratz*, 193 Ill. App. 3d at 150, 548 N.E.2d at 1330. According to the appellate court, such evidence was only relevant to custody and irrelevant with regard to the removal petition. *Gratz*, 193 Ill. App. 3d at 150-51, 548 N.E.2d at 1330. The appellate court held, "[t]he trial court should have focused instead on whether [the minor's] best interests would be served by living with his mother, the custodial parent, in Illinois or moving with her to Arizona." *Gratz*, 193 Ill. App. 3d at 151, 548 N.E.2d at 1330.

¶ 39 Indeed, there is a difference between a custody award under section 602 and removal under section 609. *In re Marriage of Taylor*, 202 Ill. App. 3d 740, 744, 559 N.E.2d 1150, 1154 (1990) ("[a] judge is required to hear two different types of evidence and must be

careful not to allow evidence proper for one petition to impact upon the decision as to the other petition"). "Section 609 of the Act requires a determination that *the move* is in the best interest of the child." (Emphasis in original.) *In re Marriage of Hefer*, 282 Ill. App. 3d 73, 79, 667 N.E.2d 1094, 1098 (1996). "A custodial parent seeking judicial approval to remove children from Illinois has the burden of proving the move, considering its possible impact on visitation and other relevant factors, is in the best interests of the children." *In re Marriage of Eaton*, 269 Ill. App. 3d 507, 511, 646 N.E.2d 635, 639 (1995). "An order denying a petition for leave to remove is not similar to an award of custody, where stability is all important." *In re Marriage of Shaddle*, 317 Ill. App. 3d 428, 432, 740 N.E.2d 525, 529 (2000).

¶ 40 Moreover, the trial court's characterization of the five *Eckert* factors as "additional factors" to be considered alongside the section 602 best interest factors was incorrect in the context of this removal case. As stated, in *Eckert*, our supreme court set forth the five factors for consideration in removal cases. *Eckert*, 119 Ill. 2d at 326-27, 518 N.E.2d at 1045-46. The supreme court did not suggest these factors were merely an additional consideration. Indeed, since the supreme court's decision in *Eckert*, those factors comprise the accepted standard for analyzing child removal cases.

¶ 41 Kyle concedes, "[h]ad the [trial] court confined its analysis to the section 602 best interest factors exclusively, petitioner's claim of error would be appropriate." According to Kyle, no error occurred because the court "carefully analyzed each of the *Eckert* factors, balanced them, and determined that removal should be denied." However, we cannot say the court's analysis of the section 602 factors was harmless, especially considering the fact the court made a specific finding the third custody factor weighed in Kyle's favor. Further, the court devoted

approximately 5 pages of its 15-page order to a discussion of the section 602 factors. Moreover, the court's discussion of the *Eckert* factors does not begin until the bottom of page seven of the order. In fact, the court spent approximately as much space in its order analyzing the section 602 factors as it did discussing the *Eckert* factors. The court's use of the custody factors in analyzing Krista's removal petition was manifestly erroneous.

¶ 42 C. The First *Eckert* Factor

¶ 43 The trial court also erred in its findings with regard to the first *Eckert* factor, *i.e.*, the likelihood the move will enhance the general quality of life for the custodial parent and child (*Eckert*, 119 Ill. 2d at 326-27, 518 N.E.2d at 1045). The court found, in part, the following:

> "The Court observes that the proposed move apparently benefits [Krista] and her fiancé due to Mr. Mohl's career opportunity as well as [Krista] finding employment deemed to be better than the employment in which she was engaged in Bloomington-Normal. The inference permitted by the case authorities is that such a benefit to [Krista] is also an indirect benefit to [M.S.] and [G.S.]. While the Court is mindful of this inference, it is also clear that the boys are currently placed in a positive environment, one in which M.S.'s quality of life has been enhanced by virtue of his temperament issues having been resolved. The inherent risk in relocation, one of not knowing what circumstances vis-à-vis home, school and community will obtain in Florida, seems to outweigh the indirect benefit to the boys by virtue of their mother's desire to be married again. The fact

that she is not yet married and is depending on Mr. Mohl's non-enforceable promise to marry her, thus creating a dependency of the boys on the same bare promise, is also a matter of at least slight concern to the Court."

¶ 44 Krista argues, *inter alia*, the trial court (1) ignored the evidence showing her work life had improved, (2) ignored the increase to the household income, (3) improperly emphasized a concern she was not married, and (4) did not properly consider the benefits the children would experience from the move. We agree.

¶ 45 " 'The best interests of children cannot be fully understood without also considering the best interests of the custodial parent.' " *Collingbourne*, 204 Ill. 2d at 528, 791 N.E.2d at 548 (quoting *Eaton*, 269 Ill. App. 3d at 516, 646 N.E.2d at 642). It is uncontradicted Krista's quality of life improved as a result of the move. Krista has been primarily in charge of the boys lives on a day-to-day basis. She was responsible with getting the boys to and from school and taking them to their doctor appointments. By comparison, Kyle admitted he refused to take more than his three personal days off a year to take care of the boys when they were sick. Krista now has the ability to work from home if the boys are sick or otherwise homebound. Krista testified her new job would also allow her the flexibility to attend school activities and help out in the classroom and with field trips. While her new employment paid her a slightly lower salary than the one she left, Krista's testimony indicated her new job provides her with an opportunity for advancement unavailable to her in Illinois. Although her salary decreased by $3,000, the family's overall combined income increased as a result of the move.

¶ 46 The trial court's concern Krista was not yet married is unfounded. There was no

evidence presented to suggest the couple's wedding, set for November 28, 2015, would not take place. Up until the time she left for Florida, Krista was the primary residential custodian and primary caregiver for the children. The evidence demonstrated Krista and Mohl had been living as a family with the children and operating as a family unit. The evidence further indicated G.S. and M.S. treated Mohl's son, H.M., as if he were already their brother.

¶ 47 The trial court also found "the superiority of the Florida community and school over the current circumstances" unpersuasive. However, the evidence showed the school in Florida had better teacher-to-student ratios, higher standardized test scores, and more resources available than the school the boys currently attend. Further, the area where Krista resides in Florida is conducive to raising children. It is a "kid-friendly" community with playgrounds and parks nearby. Krista testified children are constantly riding their bikes and playing in the neighborhood. In addition, several of the local children are similar in age to G.S. and M.S. While the court emphasized its concern about "the inherent risk in relocation" and the uncertainty for the boys in Florida, "adjustment is part of any move." See *In re Mariage of Parr*, 345 Ill. App. 3d 371, 379, 802 N.E.2d 393, 400 (2003) (citing *In re Marriage of Ludwinski*, 312 Ill. App. 3d 495, 504, 727 N.E.2d 419, 427 (2000)). Removal would rarely be allowed if courts looked only at the adjustment period. *Parr*, 345 Ill. App. 3d at 378, 802 N.E.2d at 399.

¶ 48 The evidence presented indicates the children will benefit directly and indirectly from Krista's enhanced the quality of life as a result of the move. The trial court's findings to the contrary are against the manifest weight of the evidence.

¶ 49 D. The Fourth and Fifth *Eckert* Factors

¶ 50 We next consider the closely related fourth and fifth *Eckert* factors together, *i.e.*, the effect removal would have on Kyle's visitation rights and whether a reasonable visitation schedule could be reached if the move to Florida were allowed.

¶ 51 Regarding the fourth factor, the trial court found the following:

> "[Kyle] has enjoyed a substantial quantity and quality of parenting time with his children, both prior to and subsequent to [Krista's] departure. The frequency of contact he has had with [M.S.] and [G.S.], before and after the temporary custody order, would be unachievable if authority for removal is granted."

As to the fifth factor, the court found:

> "While [Krista's] proposal for [Kyle's] visitation appears to accomplish a significant quantitative measure of contact between [Kyle] and the boys, it falls short of sufficing to be a *reasonable* and *realistic* visitation schedule, in light of the abundant contact the children have had with the father over the last nine months. The Court's review of the authorities suggests that [Krista's] proposal for visitation could, theoretically, be regarded as reasonable and realistic. However, the specific context of this case is one wherein the boys have established a particularly close relationship with their father and they have experienced enhancements in the quality of their lives as a result of the arrangements made by their parents. To expect that an allowance of removal and a visitation plan such as [Krista] has

> proposed to in any way replicate what has been achieved in the past nine months is neither realistic nor reasonable." (Emphases in original.)

¶ 52 While " 'any removal will have some effect on visitation, *** the real question is whether a visitation schedule that is both reasonable and realistic can be created. It need not be perfect.' " *Parr*, 345 Ill. App. 3d at 379, 802 N.E.2d at 400 (quoting *Eaton*, 269 Ill. App. 3d at 515, 646 N.E.2d at 642). "The quality of a relationship need not be adversely affected just because that relationship becomes a long-distance one." *Parr*, 345 Ill. App. 3d at 379, 802 N.E.2d at 400 (citing *Ludwinski*, 312 Ill. App. 3d at 504, 727 N.E.2d at 427). "Close relationships can continue and even be enhanced when effort is expended to establish a reasonable visitation schedule." *Ludwinski*, 312 Ill. App. 3d at 504-05, 727 N.E.2d at 427 (citing *Eaton*, 269 Ill. App. 3d at 515, 646 N.E.2d at 642). A reasonable visitation schedule is "one that will preserve and foster the child's relationship with the noncustodial parent." *In re Marriage of Gibbs*, 268 Ill. App. 3d 962, 968, 645 N.E.2d 507, 513 (1994).

¶ 53 In this case, the trial court's comments erroneously suggest there is no reasonable and realistic visitation schedule possible because nothing could replicate the abundant contact Kyle had during the prior nine months. It is true Kyle had custody of the children since August 2014, *i.e.*, the nine months preceding the removal hearing. However, that period was created when, on her attorney's advice, Krista left for Florida prior to the hearing. As part of the move, she entered into an agreement Kyle would be the primary residential parent in Illinois. However, the agreed order giving Kyle temporary custody of the children was "to be without prejudice." The court's comments demonstrate it improperly held it against Krista. Indeed, the court's order

specifically referenced the "frequency of contact [Kyle] has had with [M.S.] and [G.S.], before and after the temporary custody order" in rejecting her proposed visitation schedule. Doing so was error.

¶ 54 The trial court's order notwithstanding, the record reflects, prior to Krista leaving for Florida, Kyle had the boys on alternating weekends, as well as Monday to Wednesday one week, and an overnight visit on Thursday the following week. Although Krista's proposed visitation schedule would appear to approach the pure number of days Kyle had with them under the prior arrangement, the interval between visits under the new schedule would become dramatically increased. Instead of seeing the boys on alternating weekends, Kyle would see them for just eight weeks in the summer and then not again until Thanksgiving under Krista's proposed schedule. While the parties would split the boys' winter vacation, Kyle would not see them again until summer. Thus, the frequency of Kyle's visitation with his children would be dramatically curtailed. See *In re Marriage of Lange*, 307 Ill. App. 3d 303, 313-14, 717 N.E.2d 507, 515 (1999) (quoting *In re Marriage of Clark*, 246 Ill. App. 3d 479, 483, 616 N.E.2d 2, 5 (1993) ("[e]ven if a plan were submitted that preserved the actual number of visitation days, we cannot ignore the fact that the interval between these visits would be drastically changed")). In other words, Krista's proposed schedule would not appear "to preserve and foster" Kyle's preexisting relationship with the boys. See *Gibbs*, 268 Ill. App. 3d at 968, 645 N.E.2d at 513.

¶ 55 We believe a suitable visitation schedule could be structured on remand to accommodate Kyle's visitation rights. For example, Krista could reasonably propose a schedule affording Kyle more frequent visitations during the year. The record reflects the children's grandmother was able to accompany the children on flights from Illinois to Florida to visit

Krista. She testified it would be convenient to fly to Florida from, among other places, Bloomington, Illinois, which is near to Kyle's home in Normal. Further, evidence of Kyle's income indicates he is capable of traveling to, or flying the boys back from, Florida on a more regular basis than was contemplated by Krista's original proposal. Moreover, Krista has indicated a willingness and, as a result of the family's increased income, the ability to share in the children's travel costs. As such, we are confident a reasonable schedule preserving Kyle's visitation rights is achievable.

¶ 56 E. The GAL's Recommendation

¶ 57 Finally, Krista argues the trial court erred in failing to give proper weight to the GAL's recommendation of removal. While the court noted in its order the GAL's "recommendations and services in this case have been exemplary," the court did not reference the GAL's recommendation removal would be in the boys best interests or explain why it declined to accept it. Here, the GAL met with the boys on more than one occasion. Each time he visited with them, the children expressed how much they missed Krista. The GAL also opined, if removal were granted, Krista would do a better job making sure the boys maintain a continued relationship with Kyle than Kyle would do regarding Krista if removal were denied.

¶ 58 While we recognize the GAL's recommendation is just that, a recommendation, under the circumstances of this case, it was worthy of at least some weight. See *In re Marriage of Smith*, 2013 IL App (5th) 130349, ¶ 15, 3 N.E.3d 281 (strongly encouraging the trial court on remand "to seriously consider the thorough report of the [GAL] and his recommendations for a reasonable visitation schedule in fashioning a new workable arrangement for the parties"). We would encourage the same of the trial court in this case on remand.

¶ 59 III. CONCLUSION

¶ 60 For the reasons stated, we reverse the trial court's denial of Krista's petition for removal and remand for the limited purpose of setting a visitation schedule. See *Parr*, 345 Ill. App. 3d at 381, 802 N.E.2d at 402.

¶ 61 Reversed and remanded with directions.