

NOTICE
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2015 IL App (5th) 140440-U

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

NO. 5-14-0440

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

<i>In re</i> MARRIAGE OF)	Appeal from the
)	Circuit Court of
TERRENCE J. SCHEIBAL,)	Madison County.
)	
Petitioner-Appellee,)	
)	
and)	No. 08-D-293
)	
SHERYL A. SCHEIBAL,)	Honorable
)	Keith Jensen,
Respondent-Appellant.)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Justices Stewart and Schwarm concurred in the judgment.

ORDER

¶ 1 *Held:* Modification of custody affirmed where circuit court's findings that a substantial change of circumstances had occurred and the modification was in the best interest of the children was not against the manifest weight of the evidence.

¶ 2 The respondent, Sheryl A. Scheibal (Sheryl), appeals the August 6, 2014, order of the circuit court of Madison County that found a substantial change of circumstances had occurred and a modification of custody in favor of the petitioner, Terrence J. Scheibal (Terry), was in the best interest of the parties' children. For the following reasons, we

affirm.

¶ 3

FACTS

¶ 4 At the outset, we note that this is an expedited appeal, pursuant to Illinois Supreme Court Rule 311(a) (eff. Feb. 26, 2010). The deadline for the filing of this disposition was February 1, 2015. However, the deadline was not met for good cause. Sheryl filed a motion for extension of time to file her appellant brief. The motion was granted, thereby resulting in delayed schedules for briefing and oral argument, which was not heard until February 5, 2015. Accordingly, the disposition was filed as soon as possible after oral argument.

¶ 5 We now turn to the facts. The parties were married on April 19, 1997. A daughter, J.K.S., was born to the parties on July 2, 1999, and a son, J.T.S., on October 17, 2001. On January 10, 2011, a judgment of dissolution of the parties' marriage was entered as well as a parenting order that, *inter alia*, granted joint custody of the children to the parties and designated Sheryl as the primary residential custodian. On April 16, 2013, Terry filed a petition for a modification of custody, in which he alleged several substantial changes of circumstances had occurred and that it would be in the children's best interest for him to have sole custody. A mediation order was entered on July 1, 2013, but resulted in an unsuccessful mediation. On July 31, 2013, an order was entered appointing a guardian *ad litem* (GAL). The GAL's report and recommendation were filed on April 14, 2014, and parties stipulated to the contents of the report, in lieu of testimony by the GAL.

¶ 6 The hearing on the petition for modification of custody was conducted on July 16,

2014, at which the following testimony and evidence was adduced. Sheryl testified that she has been employed in food services at Southern Illinois University in Edwardsville since November 2012. She works 40 hours per week during the spring and fall semesters and is off during the summer. Sheryl testified that she is scheduled to work Monday through Thursday from 12:30 p.m. through 8:30 p.m. and Saturday from 9 a.m. until 5 p.m. Her days off are Friday and Sunday.

¶ 7 At the time of the hearing, the children were 15 and 12 years old. On the evenings when Sheryl works, the children's routine is to come home from school, lock the doors, close the curtains, do their homework, and eat dinner. Sheryl arrives home from work by 8:40 p.m. While Sheryl is working on Saturdays, the children participate in activities or go to their grandparents' home. Sheryl testified that her girlfriends or her parents transport the children to their Saturday activities. She admitted that she never asks Terry to transport the children, nor does she ever inform him about any activities they have. She added that she never allows Terry extra visitation time while she is working, due to animosity between the parties. She refuses anytime Terry requests additional visitation and insists on rigid adherence to the visitation order because of past conflict regarding visitation. She denied that Terry gives her any additional time with the children.

¶ 8 Sheryl claimed that Terry had abused her and the children in the past by calling the police multiple times and creating emotional distress for them. She stated that Terry had called the police over nine times, but denied that the reason for those calls was because she would not turn the children over to Terry for his scheduled visitation time. She claimed no charges were ever filed against her, but conceded on cross-examination

that she was once charged with misdemeanor visitation interference. The charge was later dropped. She admitted that she refers to Terry as "daddy cop caller" while in the children's presence. She also confessed to calling Terry's wife's daughter and granddaughter "crack head" and "crack baby."

¶ 9 Sheryl testified that J.T.S. was on a ball team Terry was coaching. She admitted that she refused to take J.T.S. to any of the scheduled games and practices and a court order was entered requiring her to do so. She stated her reason for refusal was that Terry had an "abusive coaching manner," by being loud, obnoxious, and degrading to the self-esteem of the players. Sheryl acknowledged, however, that Terry has coached children's sports teams for years and has never been removed as a coach. Regarding J.K.S. playing softball, Sheryl testified that she received an email from one of the coaches, advising her of the game and practice schedule and offering to give J.K.S. a ride anytime Sheryl could not bring her. Sheryl did not take J.K.S. to any of the games or practices, nor did she take the coach up on his offer to transport J.K.S.

¶ 10 Sheryl conceded that, despite the court order awarding joint custody, she and Terry cannot work together to jointly parent the children. She admitted that she never informs Terry when the children have medical appointments, even for major procedures, because she pays for all of the health insurance and she is angry at Terry for calling the police on her. J.T.S. had a tonsillectomy and adenoidectomy and Sheryl stated that she never informed Terry about the surgery. On another occasion, J.K.S. had a biopsy, about which Sheryl did not advise Terry. On the date the stitches were to be removed, Terry and his wife, Kathy, took J.K.S. to the appointment. Sheryl admitted that she went to the

doctor's office while Terry, Kathy, and the children were present, and cancelled the appointment. Sheryl described the encounter at the doctor's office as "a shameful, shameful situation" and reported that Kathy called her derogatory names in front of the children during the confrontation. Sheryl rescheduled the appointment and later took J.K.S. to have the stitches removed. In comparison, on an occasion during Terry's scheduled visitation when J.K.S. suffered a concussion while playing volleyball, Kathy texted Sheryl, informed her of what happened, and invited her to their house to see how J.K.S. was doing. Sheryl declined.

¶ 11 In addition to not informing Terry about medical procedures for the children, Sheryl testified that she took the children to Disney World in 2011 or 2012 but she did not tell Terry because "it was on my time." Despite the lack of communication between the parties, Sheryl reported that the children are both healthy and doing well in school.

¶ 12 Sheryl confessed that, prior to the hearing, she sat down with the children and read the interrogatories to them. She described the children as intelligent and explained that they should know when there is a problem. Sheryl stated that her relationship with the children is good, with the exception of an occasional "tiff" with J.K.S. She testified that Terry called the police on March 9, 2014, after an incident between herself and J.K.S., and stated that he did so because "he's mean and vicious and all of a sudden he wants to pull up and go nuts." She denied that Terry called the police because he received a phone call from J.K.S. informing him that Sheryl was hurting her by bending her fingers back and poking at her. Sheryl acknowledged that J.K.S. told the police that Sheryl had hurt her, but no charges were ever filed, nor did the Department of Children and Family

Services (DCFS) get involved.

¶ 13 Sheryl testified that she changed the locks on an occasion in December 2013 and sent the children's grandmother to pick them up after school. She noted that the children had no idea they were coming home to a locked house, nor did they know in advance that their grandmother was picking them up. She denied locking the children out of the house, but stated the locks were changed to keep Terry out of the house. She added that the children went to live with Terry for 2½ weeks "until things [got] straightened out because of this police abuse and harassment." She testified that she attempted to call the children during that time but the cell phones were blocked.

¶ 14 Sheryl testified that Terry is allowed to call the children while they are in her care, "but they don't want him to." She reported that Terry blocks the cell phones while the children are with him and "yells at them if they are found and caught talking to me." She testified further that the children are allowed to text Terry while they are with her.

¶ 15 She denied inventorying the children's rooms when they go to Terry's house, and she denied that she forbids the children to take things from her house to Terry's house. She further denied not allowing the children to take showers at her house and telling them they were "supposed to use their father's water."

¶ 16 Sheryl testified that she "keeps visitation of [the children's] friends at Terry's place separate." She explained that if friends visit with the parties' children at Terry's house, she prefers them not to visit at her house because the parents complain to her about Terry and she does not want to "get pulled into this stuff."

¶ 17 At the conclusion of her testimony, Sheryl stated that, despite the order granting

joint custody, the parties were never able to work together to parent the children and nothing has changed since the order was entered. Sheryl does not anticipate that things will improve. She intends to "continue to follow the rules," but she opined that court-ordered counseling for her and Terry would not be beneficial because Terry "always thinks he is right." Sheryl did state that she would attempt to work toward getting along better with Terry.

¶ 18 Mark Lask testified that he is employed as an officer for the Edwardsville police department. He recalled being dispatched to Sheryl's home in March 2014 to check the welfare of J.K.S., after Terry advised the police that he received a text message from J.K.S. informing him that Sheryl had hit her and bent her fingers back. Upon arrival at the home, Sheryl informed Lask that she and J.K.S. had a disagreement over the phone and remote control and "it was just a big misunderstanding with everything that she texted to [Terry]." Lask learned from J.K.S. that she and Sheryl had a disagreement about a picture posted on social media. When Sheryl came into the room, she told J.K.S. to turn off the television, attempted to pry the remote control from her hand, and bent her fingers back in the process. Lask testified that J.K.S. alleged that, after the television was turned off, Sheryl sat down next to her and began to poke her with her index finger in the arm and called her derogatory names. Lask also spoke with J.T.S., but he had been downstairs playing video games and did not witness anything. Before Lask left the residence, an agreement was reached for J.K.S. to stay with Terry for the evening and to return to Sheryl's home after school the following day. Lask neither filed charges nor referred the case to DCFS.

¶ 19 Joann Lesemann testified that she is Sheryl's mother. Joann recalled that in December 2013, Sheryl called her, informed her that she had changed the locks, and asked her to pick the children up at the house after school and transport them to Terry's home. Joann testified that she had the key and the children were allowed to go into the house to retrieve their personal belongings before going to Terry's house, but she did not recall what they took. Joann noted that the children were in good health, clean, and well-dressed. Joann testified that, when Sheryl and Terry first divorced, they were getting along "so-so" with regard to their joint parenting agreement. She added that they did communicate in the beginning, but not well.

¶ 20 Kathryn Scheibal (Kathy) testified that she and Terry were married in October 2012. She first became acquainted with Sheryl when she and Terry began dating, about six months after Sheryl and Terry separated. Kathy testified that she has a very nurturing relationship with both children. She specified that the children come to her, talk to her, ask her questions, confide in her, hug her, sit with her, and play games with her. She further described her relationship with the children as "easy going" and "comfortable."

¶ 21 Kathy testified that she worked for 35 years as a legal assistant, retired in December 2013, and is now home full-time. Accordingly, she transports the children as needed if Terry is working. She explained that Terry has a construction job and can work many hours, depending on the shift. There are also occasions when Terry is laid off. Kathy added that if Terry is working and the kids come home from school, she is there to care for them. She also attends all of the children's games and practices, regardless of whether it is Terry or Sheryl's time with them. She testified that when Sheryl has the

children, they miss "probably half" of their games and practices. Kathy reported that, when Sheryl does accompany the kids to games and practices, "the kids do not look at us." She stated that they sometimes say hello to her and Terry, but they do not come to see or talk to them during the games. Kathy testified that, at a couple of J.K.S.'s volleyball games, she observed Sheryl's hand on J.T.S.'s leg, "holding him in place so he does not come to us."

¶ 22 Kathy recalled when J.K.S. had an appointment to have stitches removed. Although it was not Terry's visitation time, he and Kathy had J.K.S. because Sheryl had refused to pick her up from her ball game the night before. Kathy stated that J.K.S. notified them of her appointment. They arrived at the doctor's office early and were in the hallway waiting for the office to open, when "Sheryl came bursting around the corner, went straight up to [J.K.S.] and said, '[W]hatever possessed you to come here[?] I told you this appointment was cancelled.' " Kathy testified that, in fact, the appointment was not cancelled, and after the doctor's office opened, Sheryl went in, shut the door, and tried to prevent Terry from getting in. Kathy explained that "she slammed her body up against the door[,] preventing Terry from opening the door." When Terry made it into the office, "Sheryl immediately went up to the reception desk and demanded that the appointment be rescheduled." Kathy testified that J.K.S. was "mortified." They never saw the doctor that day because they were told the appointment was cancelled. J.K.S. left with Terry and Kathy and got her stitches out at a later time when she was with Sheryl. Kathy reported that she and Terry did not know that J.K.S. had a biopsy until they read the interrogatories, two or three days before the hearing.

¶ 23 Despite Sheryl's lack of communication regarding medical issues with the children, Kathy testified that when J.K.S. received a concussion in the fall of 2013, Kathy immediately texted Sheryl to inform her of the injury and told her that if she wanted to come by to see J.K.S., she was welcome, but Sheryl never did.

¶ 24 Kathy testified that Terry attempted to jointly parent with Sheryl and to promote relationships with both sides of the family. For example, when Sheryl's parents had an anniversary celebration, Terry and Kathy were willing to take J.K.S., who wanted to attend. Kathy stated that other attempts at cooperation included Terry texting Sheryl to try to drop off clothing for the children, with no response from Sheryl. On another occasion, Kathy had some items to drop off for one of the children and she was driving near Sheryl's home, but Sheryl refused to allow her to drop them off. Rather, Sheryl required Kathy to meet her at Moto Mart on the other side of town. Kathy explained that "we are not allowed in [Sheryl's] neighborhood," "[b]ut Sheryl will come to our house unannounced, wait out in front of the street and have [J.T.S.] come up to the door, bang on the door and say he wants his clothes." Kathy stated that the parties live no more than two miles apart, but Moto Mart is a 15-mile round trip. Kathy indicated that, notwithstanding the difference in the distance, every time there is an exchange, it has to happen at Moto Mart. She acknowledged that Moto Mart was the designated point that that parties agreed upon for exchanges.

¶ 25 Kathy recalled the occasion when Sheryl changed the locks and Joann drove the children to her and Terry's home. Neither she nor Terry were home at the time, but one of the children called Terry to inform him that they were there and they let themselves in

with their key. Kathy learned that the children arrived with no personal belongings, but only their backpacks from school.

¶ 26 Kathy testified that the children are both on the honor roll, are active in sports, and function very well. She observed, however, that the children's relationship with their mother is "very much deteriorating" and Terry's issues with Sheryl escalated after Kathy and Terry got married. Kathy elaborated that, before she and Terry were married, Sheryl and Terry worked out the visitation schedule much more smoothly and did not have any issues of "this is my weekend" or "this is your weekend." Kathy opined that Sheryl and Terry no longer have the capacity to cooperate or to jointly parent.

¶ 27 Terry testified that he lives in a four-bedroom home and the children have their own rooms when they visit. He asserted that he and Sheryl entered a joint parenting agreement and joint custody was granted in April 2011. He understood joint custody to mean that they would have equal say in what went on with the children and that he and Sheryl would communicate about what was best for the children. Terry tries to cooperate with Sheryl and to jointly parent with her, but she does not reciprocate his efforts. For example, as established in earlier testimony, Sheryl never contacts Terry about any medical procedures for the children. Terry testified that Sheryl did not tell him when J.T.S. had his tonsils and adenoids removed. Terry found out about the surgery when he had visitation the next day and J.T.S. "could barely walk to the truck." Terry had no clue if the child had any prescriptions and Sheryl did not send any. Nor was Terry prepared to care for J.T.S. under the circumstances, so he was required to go out and purchase all of the items necessary to do so.

¶ 28 Regarding the day J.K.S. was scheduled to have her stitches removed, Terry corroborated Kathy's testimony that Sheryl was supposed to pick her up the night before after her ball game, but failed to do so. He learned from J.K.S. that she had a doctor's appointment the next day and he told her he would take her. They arrived to the appointment before the doctor's office opened. Terry testified that Sheryl came around the corner, got right in J.K.S.'s face and asked her, "Whatever possessed you to show up here? I told you this appointment was cancelled." Terry reported that Sheryl "started reaming me out about it," saying, "How dare you. You have [no] right to bring [J.K.S.] here." He further stated that Sheryl asked Kathy, "Why don't you go take care of your crack head daughter and her crack baby[?]" Terry testified that when the nurse opened the office door, Sheryl went in right away. When Terry followed, Sheryl grabbed the door, pulled it shut, and would not let him in. Terry testified that when he got in, Sheryl continued asking them what they were doing there, telling them they had no right to be there, calling Terry names, and getting in Kathy's face to disparage her daughter and grandchild. This occurred in the presence of both of the parties' children, as well as other patients in the doctor's office. Terry testified that Sheryl left when the nurse threatened to call the police. J.K.S. never got her stitches out that day. Terry did not know that J.K.S. had a biopsy until he read it in the interrogatories. He did not know that the biopsy was benign until hearing it in Sheryl's testimony.

¶ 29 Terry testified that, in addition to not informing him about medical procedures, Sheryl does not contact him if anything is going on at school. He noted that Sheryl did contact him prior to J.T.S.'s Christmas program in 2012, but she asked him not to attend.

Terry testified that Sheryl also refuses to cooperate with the children's sports schedules. If she is unable to transport the children to a sports activity, she does not contact him. Terry explained that J.T.S. missed almost every practice last year, and when he missed three games, Terry later discovered that Sheryl had been in Florida with the children and he had no clue they were even gone. According to Terry, Sheryl takes trips "all the time" and never advises him where they are. Terry denied Sheryl's claims that he has an abusive coaching style, but being in charge of 14 boys, he admitted to being a strict coach. He denied ever being reprimanded by the league or being asked to step down, and he is renewed as a coach every year.

¶ 30 Terry testified that there was an oversight on the parenting order regarding visitation on Memorial Day and Labor Day and although he tried to work out those days with Sheryl, she never cooperated and always asked him for a court order. When Sheryl's family has special or unforeseen events, such as anniversary celebrations, graduations, or funerals, Terry always allows and encourages the children to attend those events when they occur during his visitation time. In contrast, if there is ever a special event with Terry's family while Sheryl has the children, Terry contacts Sheryl and asks if the children can attend, but Sheryl always refuses and refers Terry to the visitation schedule in the court order, even when the children express a desire to go.

¶ 31 Terry testified that the court order requires the children to be exchanged at Moto Mart, but makes no specification regarding the children's personal belongings. Terry agreed that the children forget things regularly, but he is not allowed in Sheryl's neighborhood to drop things off. Accordingly, he is required to drive to Moto Mart to

exchange belongings, which is seven to eight miles away, in comparison to Sheryl's home, which is only two miles away. Terry testified that if the children need anything for sports, "I have to normally have two pairs of everything *** because if [Sheryl] has it at her house she doesn't allow it to come to our house." The same is true regarding items needed for homework and school projects. Terry reported that items necessary for school only come to his house directly from the school and "[i]f it has anything to do from Sheryl's house [*sic*], no."

¶ 32 With regard to the day Sheryl changed her locks, Terry did not know the locks were being changed, nor did he know that the children would be dropped off at his house that day. He learned from J.K.S. that afternoon that they were at his house. The children had a key and were able to let themselves in. When Terry came home from work, he learned that the children had none of their personal belongings. All they had was the clothes on their backs and their book bags from school. Terry testified that the children were not able to get back into Sheryl's house to get their things because they "were told they were not allowed." They were dropped off at Terry's house on December 13, 2013, and stayed with him for nearly three weeks, until after Christmas, and to Terry's knowledge, Sheryl had no contact with them throughout that time. One weekend was during Sheryl's scheduled weekend with the children. Terry testified that he texted Sheryl to see if she wanted to be with them that weekend, but he received no response.

¶ 33 Terry recognized that he and Sheryl's divorce was "very contentious," but he indicated that things had considerably worsened. He stated that the only remaining communication between him and Sheryl is "maybe snide comments when she goes by at

a sporting event or something like that." He reported that their communication broke down after he and Kathy got married and after Kathy developed a close relationship with the children. Terry testified that the children are so close with Kathy that, at times, they share things with her before sharing them with him. He stated that Sheryl is now "totally contemptuous and will not agree to anything" and "the texts go unanswered."

¶ 34 The parties attempted to mediate the issues, but according to Terry, Sheryl refused to participate. He conceded that his calling the police increased the emotional climate of situations, but he qualified that he used the police as a last recourse to obtain his visitation with the children, to avoid taking the time to obtain judicial intervention. He reported that Sheryl turned the children over to him for visitation each time the police were involved. Terry did acknowledge the GAL's statement that he was partially responsible for the lack of communication between the parties. He admitted to enrolling J.T.S. in baseball without first discussing it with Sheryl, but cited the parenting order requiring notice of such to be given to the other parent within 24 hours. Terry further conceded that, as head coach of J.T.S.'s team, there were occasions when he changed practice schedules at the last minute and other occasions when practices would end a bit later than scheduled. Terry denied Sheryl's allegations that he blocks the children's communication with Sheryl. He testified that they can contact her at any time. He once punished J.K.S. for being disrespectful to him, by shutting her phone off for two or three weeks, but he clarified that the punishment had nothing to do with Sheryl.

¶ 35 Despite the conflict between the parties, Terry testified that both children are thriving. J.K.S. is on the honor roll and J.T.S. does well, with the exception of his grades

temporarily falling in math and science, which Terry attributed to J.T.S. failing to do his homework while Sheryl was not home. Terry conceded, however, that those were interim grades and with extra credit, J.T.S. made no final grade below a B. Terry added that both children are thriving emotionally as well as academically.

¶ 36 Terry testified that, if granted custody, he would continue to try to work with Sheryl. He recognizes that Sheryl's family is the children's family, and the children are entitled and encouraged to do everything they would like to with them. Terry further emphasized that, if granted custody, he would most certainly keep Sheryl up-to-date on any medical appointments the children have.

¶ 37 The GAL's report reflects that communication between the parties is minimal and negatively impacts the children. Problems noted include J.K.S.'s attempts to play softball. The report states that Sheryl decided that, since Terry registered J.K.S. to play, she would not be allowed to play on those weeks Sheryl was caring for the children. The GAL reported that this caused substantial problems for J.K.S. because she is extremely athletic and looks forward to playing softball. Moreover, Sheryl's refusal to take the children to their activities or not allowing them to stay for a period of time after ball games has been considerably problematic for the children.

¶ 38 An additional dilemma occurred with J.K.S.'s confirmation in the Lutheran church. Sheryl attempted to change J.K.S.'s confirmation date because it was scheduled during Terry's weekend with the children and a large gathering of Terry's extended family was planned after the service. The children have a close relationship with Terry's family and they were "extremely distressed" over Sheryl's attempt to postpone the confirmation.

¶ 39 In addition, the GAL emphasized the "extremely inappropriate behavior" to which the children were exposed when J.K.S. was scheduled to have her stitches removed. He pointed out that the animosity between the parties is also reflected in the pleadings filed. Specifically, the petition to modify custody cites the inability to communicate and Sheryl's attempts at alienation as reasons why custody should be modified. Moreover, Terry being required to file an emergency motion to obtain court approval for J.K.S. to play summer softball shows the "absolute inability of these parties to cooperate for the benefit of the children on even the simplest occasions."

¶ 40 On a positive note, the GAL reported that both parties provide "extremely adequate living accommodations for the children" and there is no doubt that they are comfortable in the homes of both parties. Kathy's daughter, Meagan, who has a child of her own, lives primarily with her grandmother but also spends a substantial amount of time at Terry and Kathy's home. Although the children are not extremely close with Meagan, the GAL opined that, contrary to Sheryl's allegations, they had no particular problems with her.

¶ 41 The GAL noted that J.K.S. and J.T.S. have a normal sibling relationship. They bicker at times, but get along well for the most part. J.K.S. is protective of J.T.S. and J.T.S. feels extremely close to J.K.S. Both children are involved in extracurricular activities, but J.K.S. takes her athletic endeavors very seriously. J.T.S. is not as intense as J.K.S. in playing sports, but has benefited from playing baseball on Terry's team. The GAL pointed out that both children try to downplay the stress created by their parents, but one of the children stated, "My parents act like children with their useless

arguments." The GAL opined that, despite the children's positive adjustment, the stress created by the parties "continues to take a toll on both of them."

¶ 42 The GAL reported that both parties love the children, but the animosity between them has "taken precedence over their love and affection for the children." He noted that this is especially evident in the actions and words of Sheryl over the last several months. The children love Sheryl, but both were very specific with the GAL regarding the problems they encounter while in her custody. The children questioned why Terry is not allowed to pick them up at Sheryl's house and they were even more confused as to why, if they forget homework or school books at Sheryl's house, they are not allowed to return to Sheryl's house to pick up those items, but are required to travel to Moto Mart to retrieve them, which is some distance away from both parties.

¶ 43 While the GAL noted that there are times when Terry criticizes Sheryl in the presence of the children, both children pointed out to the GAL that Sheryl goes to "great lengths" to criticize Terry, Kathy, and Kathy's daughter. The children are also mindful of the times when Terry has cooperated with Sheryl in making visitation adjustments for the children, and they are equally aware of Sheryl's "absolute refusal" to provide Terry with the same courtesies.

¶ 44 The GAL reported that, in his interviews with Sheryl, she focused on rigid adherence to the court order relative to visitation and does not believe there is any room to deviate from that order unless it benefits her. Sheryl alleged that Terry "kidnapped" the children on several occasions, but the GAL found no evidence to support those allegations. The GAL agreed that Terry may have sometimes rushed to call the police

and there were occasions when he refused to contact Sheryl over seemingly minor issues and attempt to work through those issues without police or court intervention. However, the GAL noted "ample evidence" of Sheryl's attempts to interfere with visitation, thereby giving merit to Terry's concerns.

¶ 45 The GAL reported that "circumstances have become substantially worse over the last several months." He noted that Sheryl had locked the children out of the house, had her mother transport them to Terry without adequate clothing or supplies, and informed Terry that the children would remain with him until a final court hearing occurred because she was tired of his constant calls to the police. Terry provided for the children through and beyond Christmas. After the children returned to school, Sheryl demanded their return and Terry complied. The GAL stated that the situation caused the children to feel like "pawns" in Sheryl's efforts to create problems.

¶ 46 A further example of deteriorating circumstances noted by the GAL is that the relationship between J.K.S. and Sheryl has been "strained tremendously" by Sheryl's actions which confused and upset the children. The GAL reported that summer was approaching and it appeared that Sheryl intended to once again interfere with the children's summer activity schedules. The children informed the GAL that they want to actively participate in athletics and they want Terry to make the decisions in that regard.

¶ 47 The GAL concluded that Sheryl is not interested in promoting a relationship between Terry and the children and cited evidence that she "has taken actions to diminish that relationship." He opined that "there is little if any possibility for communication and reconciliation between the parties as it relates to the children." After an exhaustive

recitation of the best interest factors in section 602 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/602 (West 2012)), the GAL recommended, *inter alia*, that the sole care, custody, control, and education of the children be awarded to Terry.

¶ 48 At the conclusion of the hearing, the circuit court considered the provisions relative to modification of custody in section 610 of the Act (750 ILCS 5/610 (West 2012)) and enumerated the best interest factors in section 602 of the Act (750 ILCS 5/602 (West 2012)). The circuit court acknowledged that joint custody is favored and should only be modified if it is found by clear and convincing evidence that it is not working. The circuit court further acknowledged that there is a strong presumption that custody should remain with the primary residential custodian unless there is clear and convincing evidence that it is in the best interest of the children that custody be modified. After considering all of these principles, the circuit court concluded that a substantial change of circumstances had occurred and that it was in the children's best interest to modify custody in favor of Terry. These findings were memorialized in writing in an order entered on August 6, 2014, that granted Terry's petition to modify custody and awarded sole custody to Terry. Sheryl filed a timely notice of appeal. Additional facts will be provided as necessary in our analysis of the issue on appeal.

¶ 49

ANALYSIS

¶ 50 The sole issue on appeal is whether the circuit court erred by granting Terry's petition for a modification of custody. "The standard of review for modification of a child custody order after a dissolution judgment becomes final is whether the

modification is against the manifest weight of the evidence or constitutes an abuse of discretion." *In re Marriage of McGillicuddy*, 315 Ill. App. 3d 939, 942 (2000). "In determining whether a judgment is contrary to the manifest weight of the evidence, the reviewing court views the evidence in the light most favorable to the appellee." *In re Marriage of Ricketts*, 329 Ill. App. 3d 173, 177 (2002). "We will affirm the trial court's ruling if there is any basis to support the trial court's findings." *Id.* "The trial court's custody determination is afforded 'great deference' because the trial court is in a superior position to judge the credibility of the witnesses and determine the best interests of the child." *Id.*

¶ 51 Section 610 of the Act states the following, *inter alia*, regarding the modification of custody:

"The court shall not modify a prior custody judgment unless it finds by clear and convincing evidence, upon the basis of facts that have arisen since the prior judgment *** that a change has occurred in the circumstances of the child or his custodian *** and that the modification is necessary to serve the best interest of the child." 750 ILCS 5/610(b) (West 2012).

¶ 52 I. Substantial Change of Circumstances

¶ 53 In this case, evidence of a substantial change of circumstances since the prior order was entered is exhibited in Terry and Kathy's testimony, as well as in the findings and report of the GAL. Terry testified that although the divorce was contentious, things have considerably worsened. He added that his communication with Sheryl broke down after he and Kathy got married and after Kathy developed a close relationship with the

children. Terry testified that Sheryl is now "totally contemptuous and will not agree to anything" and "the texts go unanswered." He further testified that the extent of their communication is an occasional snide comment from Sheryl at ball games.

¶ 54 In addition to Terry's testimony that circumstances had worsened, Kathy confirmed that the children's relationship with Sheryl is deteriorating and Terry's issues with Sheryl have escalated since Kathy and Terry got married. Kathy noted in particular that before she and Terry were married, the parties worked out the visitation schedule much more smoothly and they now no longer have the capacity to cooperate or to jointly parent.

¶ 55 The GAL's report is replete with evidence of a substantial change in circumstances. He reported that "circumstances have become substantially worse over the last several months" and pointed out that the children were locked out of the house and sent to live with Terry over Christmas break with insufficient clothing and necessities. He further noted a substantial breakdown in the relationship between Sheryl and J.K.S., which he attributed to Sheryl's actions.

¶ 56 The only evidence in the record suggesting that a substantial change in circumstances did not occur is Sheryl's testimony that the parties were never able to work together to parent the children and nothing has changed in that regard since the original order was entered. Sheryl's mother, Joann, testified that when the parties first divorced, they got along "so-so" and that they communicated at first, but not well. This, along with other testimony and evidence in the record, shows that the parties' relationship, while not warm and wonderful immediately after the divorce, was still significantly better than it

was at the time of the hearing. We are also mindful that a substantial change of circumstances for the purposes of a modification of custody is not solely limited to the parents. Section 610 provides that the court should look to see if a substantial change "has occurred in the circumstances of *the child or his custodian.*" (Emphasis added.) 750 ILCS 5/610(b) (West 2012). In this case, testimony, as well as the GAL's report, establishes that, in addition to a decline in communication between the parties, the relationship between the children and Sheryl has declined since the initial custody order was entered, thereby creating a substantial change of circumstances sufficient to satisfy the requirements of the Act.

¶ 57 As stated earlier, we defer to the circuit court, which "is in a superior position to judge the credibility of the witnesses." *In re Marriage of Ricketts*, 329 Ill. App. 3d at 177. The circuit court found clear and convincing evidence that a substantial change in circumstances had occurred, and we find evidence in the record to support that finding. Accordingly, the circuit court's finding to this regard was not against the manifest weight of the evidence. See *In re Marriage of McGillicuddy*, 315 Ill. App. 3d at 942.

¶ 58 **II. Best Interest Factors**

¶ 59 Pursuant to section 610 of the Act, in addition to finding that a substantial change of circumstances has occurred, the circuit court must find that it is in the best interest of the children for a modification of custody to be granted. 750 ILCS 5/610(b) (West 2012). Factors relevant to the best interest of the children are enumerated in section 602 of the Act. 750 ILCS 5/602 (West 2012). In this case, Sheryl argues that the circuit court failed to specifically find that a modification of custody was necessary to serve the best interests

of the children. We disagree.

¶ 60 The circuit court specified at the conclusion of the hearing that the Act requires a finding by clear and convincing evidence that a substantial change of circumstances has occurred. The circuit court further acknowledged that even if a substantial change of circumstances is found, there is a very strong presumption that custody should remain with the primary physical custodian unless there is clear and convincing evidence that it is in the best interest of the children for a modification of custody to be granted. See *In re Marriage of Wycoff*, 266 Ill. App. 3d 408, 412-13 (1994) (stability is a best interest factor under section 602 and presumption favoring present custodian recognizes such). Applying those principles, the circuit court stated that it had considered the factors of sections 602 and 610. It further specifically listed the section 602 best interest factors before announcing its ruling. Moreover, when the order was entered on August 6, 2014, the circuit court reiterated in writing that it had considered the factors in section 610 as well as the companion factors in section 602 and went on to enumerate the best interest factors one by one in its written order. This belies Sheryl's claim that the circuit court failed to explicitly find that a modification was in the best interests of the children.

¶ 61 A review of the record supports the circuit court's finding regarding the best interests of the children. Both parties desire custody of the children (750 ILCS 5/602(a)(1) (West 2012)). Accordingly, this factor favors neither parent. The record establishes that the children love both of their parents, but the GAL's report shows that the children feel that they should reside with Terry because he would make decisions with them in mind, as opposed to Sheryl, who does not consider their wishes when she

makes parenting decisions (750 ILCS 5/602(a)(2) (West 2012)). Therefore, this factor favors Terry.

¶ 62 Regarding the interaction and relationship of the children with their parents, siblings, or others who significantly affect their best interest (750 ILCS 5/602(a)(3) (West 2012)), evidence indicates that the children are extremely close with Terry, and the GAL noted that they "expressed a desire for a close relationship with Sheryl." However, the record reflects that Sheryl's relationship with the children has deteriorated due to her interfering with their athletic schedules as well as her rigid adherence to the visitation order and the elaborate measures she has taken to exclude Terry from important aspects of the children's lives. Testimony also highlights the close relationship the children have with Kathy. Moreover, the GAL observed that the children are close with their cousins, aunts, and uncles in Terry's extended family. The GAL further noted that the children are close to Sheryl's parents, but they are not nearly as involved as Terry's relatives. The GAL also observed that the children, while not extremely close to Kathy's daughter, Meagan, did not express having any relational strain as indicated by Sheryl. Based on this evidence, we find this factor favors Terry over Sheryl.

¶ 63 Regarding the children's adjustment to their home, school, and community (750 ILCS 5/602(a)(4) (West 2012)), the record shows that both parties provide a comfortable home for the children. The parties reside in the same school district, but testimony indicates that Sheryl has interfered with schoolwork by not allowing any items from her home to go to Terry's home. Moreover, Sheryl's rigid adherence to the order has resulted in her "not allowing" Terry or Kathy into her neighborhood. While the visitation order

incorporates the agreement of the parties to exchange the children at Moto Mart, the order does not specify anything regarding forgotten personal items, which Terry indicated occurs regularly. Every time this happens, Sheryl insists on meeting at Moto Mart to give the children these items, despite the obvious inconvenience of a greater distance for the parties to do so. The circuit court observed, and we agree, that there should be some free exchange back and forth so the parties are not required to seek judicial intervention every time a minor exchange is needed. The children are both involved in extracurricular community activities such as athletics and church. The record reflects that Sheryl has interfered regularly with these activities, despite the resulting distress to the children, who are eager to participate in these activities. Sheryl has also forbidden her children to have friends visit at her home if those friends have visited at Terry's home. The GAL pointed out that Sheryl's actions have resulted in the children not being able to feel comfortable at Sheryl's home and has hindered their ability to function effectively in the community. In contrast, Terry encourages their active involvement in community activities. The GAL emphasized that the children became even more comfortable in Terry's home since December 2013, when Sheryl changed the locks of her home and sent the children to live with him over Christmas break. For these reasons, we find this factor favors Terry.

¶ 64 In considering the physical and mental health of all individuals involved, there is no indication of any physical ailments that would affect the ability of either party to effectively parent the children. The GAL's report states that Sheryl "has become so consumed with her hatred of [Terry] and his actions that she has taken actions herself which have caused substantial stress for the children." The GAL provided an example of

when the children returned to Sheryl's home after Christmas break, they found that their rooms had been ransacked by Sheryl for no apparent reason. As observed by the GAL, while there is no evidence of any professional diagnosis of a psychological condition, Sheryl's actions are questionable at best and have caused obvious emotional stress to the children. For these reasons, we find this factor favors Terry.

¶ 65 The willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent the children (750 ILCS 5/602(a)(8) (West 2012)) clearly favors Terry. The record shows that both parties have, in the past, acted in ways that do not promote a close relationship between the children and the other parent. The GAL reported that there are times when Terry criticizes Sheryl while in the children's presence and that he has at times rushed to call the police before attempting to communicate with Sheryl and resolve small issues as they arise. Terry conceded that a lack of communication between the parties has been attributable to him in the past. As the GAL opined, "there is ample room for improvement by both parents with regard to this factor." However, while Terry has not always promoted a close relationship between the children and Sheryl, the record reflects that he has been flexible at times and has allowed the children to attend events with Sheryl during his scheduled visitation. In contrast, the behavior exhibited by Sheryl indicates a desire to damage the relationship between the children and Terry. The record shows that Sheryl has interfered with Terry's visitation in the past, has not informed him of the children's major medical procedures, has taken the children on vacation without informing Terry, and has been completely unwavering from the requirements of the visitation order unless it benefits her in some

way. Based on the evidence, we find this factor favors Terry.

¶ 66 We find the remaining factors of section 602 inapplicable to this case. Because the evidence supports the circuit court's finding that most of the applicable best interest factors in section 602 favor Terry, it was not against the manifest weight of the evidence for the circuit court to find a modification of custody to be in the best interest of the children.

¶ 67

CONCLUSION

¶ 68 For the foregoing reasons, the August 6, 2014, order of the circuit court of Madison County, that granted Terry's motion for a modification of custody, is affirmed.

¶ 69 Affirmed.