2015 IL App (5th) 150040-U

NO. 5-15-0040

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
SHARLA K. WOODLAND,	)	St. Clair County.
	)	
Petitioner-Appellant,	)	
	)	
and	)	No. 12-D-569
	)	
BRANDON L. WOODLAND,	)	Honorable
	)	Randall W. Kelley,
Respondent-Appellee.	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justice Stewart concurred in the judgment.
Presiding Justice Cates dissented.

ORDER

¶ 1 *Held*: Where the trial court was not required to terminate the parties' joint custody arrangement pursuant to 750 ILCS 5/610(b) (West 2014), the trial court's order finding that maintaining joint custody was in the best interests of the child was not against the manifest weight of the evidence and is affirmed.

¶ 2 The petitioner, Sharla K. Woodland (Sharla), appeals a custody judgment entered by the circuit court of St. Clair County that maintained the parties' joint custody arrangement. For the following reasons, we affirm.

¶ 3 Sharla and the respondent, Brandon L. Woodland (Brandon), were married on

November 19, 2004, and separated in February 2012. On June 28, 2012, the parties entered into an agreed judgment dissolving the marriage, which included an agreement to 50/50 shared custody of five-year-old S.W., with each party having the child for alternate one-week periods. The parties also entered into a joint parenting agreement for S.W., which established joint custody and Sharla's home as the primary residence. On May 7, 2013, Sharla filed a petition to modify the joint parenting agreement, arguing that a change in circumstances occurred to warrant modification of the joint parenting agreement, citing S.W.'s adjustment, health care, and behavior issues. The petition requested that Brandon's "visitation" (secondary custody) be modified to every other weekend and alternate holiday periods. On June 28, 2013, Brandon filed a response, denying a change in circumstances and requesting that the petition be dismissed.

¶ 4 On February 19, 2014, Brandon filed a motion to set aside custody judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2014)). The motion sought to set aside the June 28, 2012, joint parenting agreement, noting that "[t]he parties attempted mediation in August 2013 without resolution of the custody and visitation issues, indicating that the parties cannot agree on terms of custody and visitation which provide the parties maximum involvement regarding the physical, mental, moral, and emotional well-being of their child pursuant to section 602(c) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/602(c)), contrary to the provisions of a Joint Parenting Agreement as required by 750 ILCS 5/602.1." The motion asserted that Sharla had no intention to abide by the agreement at the time it was made, or that it was entered into without a mutual understanding "as evidenced by the

pleadings of Petitioner, so as to make the Joint Parenting Agreement invalid." The motion requested that the joint parenting agreement be set aside and the issues of custody and visitation be determined *de novo*. That same day, Brandon filed a motion for custody evaluation, asserting that "[t]he actions of petitioner *** indicate that joint custody by the parties is not viable and that sole custody by Respondent and reasonable visitation by Petitioner are in the best interests of the child."

¶ 5 On April 15, 2014, the parties entered into an agreed order appointing Dr. Daniel Cuneo to perform a psychological custody evaluation, and on August 28, 2014, Dr. Cuneo submitted his custody evaluation to the court.[1] In the interim, on June 23, 2014, the parties' motions regarding S.W.'s temporary visitation schedule were resolved by an agreed order.

¶ 6 On July 29, 2014, Sharla filed a petition to modify custody, seeking sole custody of S.W. The petition alleged that there was a substantial change in circumstances warranting the modification, again citing the child's adjustment, health care, and behavior issues. The petition also alleged that Brandon interfered with S.W.'s health care, restricted S.W.'s phone and other contact with Sharla, and failed to cooperate in joint parenting. The petition stated that the parties' attempted mediation failed, and the alternating week visitation schedule is not in the best interest of the child. The petition

[1]Dr. Cuneo reported that both parents would be good custodial parents and that S.W. appeared to be suffering no ill psychological effects from the current arrangement. The report recommended that joint custody be maintained.

requested that Sharla be granted sole custody with visitation modified so that Brandon had visitation every other weekend; that the parties alternate holidays; and, that each party be granted two uninterrupted weeks of summer vacation.

¶ 7 On November 5, 2014, Brandon filed a motion to dismiss the petition to modify custody, stating that Sharla's petition alleges matters previously alleged in her May 7, 2013, petition to modify the joint parenting agreement, and that her filing of the current petition "serves to withdraw or render moot" her petition to modify the joint parenting agreement. The motion also argued that this petition failed to allege facts demonstrating a change in circumstances that would justify modification of custody. That same day, Brandon filed his position statement pursuant to 20th Judicial Cir. Ct. R. 8.03 (Jan. 2, 2008). The statement noted that if the trial court should find Sharla's petition to modify custody sufficient to proceed on a review of the custody arrangement, the court should refer to his previously filed motion to set aside the custody judgment. The statement proposed, however, that several of Dr. Cuneo's recommendations, including his recommendation that joint custody be maintained, be adopted by the trial court. Brandon also submitted an "amended joint parenting agreement," incorporating proposed modifications to the visitation schedule. In the alternative, Brandon requested that he be awarded sole custody of S.W. if the trial court determined that joint custody was not in the best interests of the child. Finally, also that same day, Brandon filed a motion to modify the holiday visitation set forward in the joint parenting agreement, requesting that the court make permanent the times and exchange provisions of the temporary visitation set forth in the June 23, 2014, agreed order. Sharla's December 17, 2014, position

statement (20th Judicial Cir. Ct. R. 8.03 (Jan. 2, 2008)) proposed that she be awarded sole custody and that Brandon's visitation be reduced from the visitation schedule set forth in the judgment.

¶ 8 The following relevant evidence was adduced from the trial held on December 19, 2014. The court first addressed Brandon's motion to dismiss Sharla's petition to modify custody. Sharla's counsel noted that the custody statute requires that "if the parties agree to termination of a custody arrangement the court shall so terminate the joint custody and make any modification which is in the best interest of the child." He argued that pursuant to Illinois case law, cross-petitions for sole custody amount to an agreement to terminate joint custody; therefore, as Brandon filed a motion to set aside the joint parenting agreement and Sharla thereafter filed a motion requesting termination of joint custody, the parties had agreed to terminate joint custody and the court must proceed with modification. He also noted that when the parties agree to terminate joint custody, the courts apply a lower standard to the petitioner's evidence; therefore, "there is no need for clear and convincing evidence. The court is bound under the statute to terminate joint custody and move forward on a hearing on the best interest of the child." Sharla's counsel also noted that Illinois case law sets forth a presumption in favor of the primary caregiver as the custodial parent when a court terminates joint custody.

¶ 9 Brandon's counsel responded that his motion to set aside the joint parenting agreement requested that the judgment be set aside, not a termination of joint custody; he noted that the motion asserted that Sharla's allegations were in bad faith, and asked for *de novo* review. Brandon's counsel told the court that "all those prior pleadings regarding

the motion to modify visitation [are] moot, and we have filed our position statement embracing Dr. Cuneo's recommendation and asking the court for joint custody to be continued." He reiterated that the standard of proof is on Sharla to show a substantial change in circumstances by clear and convincing evidence.

¶ 10 The court informed the parties that if it were simply examining the titles of the petitions, perhaps Sharla's argument would succeed, "but as indicated here, that's not [Brandon]'s position." The judge denied the motion to dismiss and held reservation of any ruling on the requisite standard of proof until he had heard the testimony, noting that "no matter what some people say, I can decide as a result of this to maintain joint custody if I think that's what's best for your kids [*sic*]."

¶ 11 The trial proceeded with Sharla's witnesses, with Brandon Woodland called first as a hostile witness. He testified that he is in the Air Force Reserves and works one day each month in that capacity; his full-time work is at Avala Marketing Group, from 7 or 8 a.m. to 4 p.m. Brandon stated that he began dating his current wife, Pilar, in the fall of 2012, and they married on April 15, 2013. Pilar has two children, one of which resides with Brandon and Pilar. Brandon described his marriage as "good" and noted that he and Pilar try not to argue in front of the children, but admitted that one night, after an argument, he and S.W. went to stay at a friend's house.

¶ 12 Brandon testified that he lives in the Shiloh school district, which is not the school district where S.W. currently attends school. He stated that he has custody of S.W. every other week, exchanging custody with Sharla on Mondays after school. On his mornings with S.W., she gets up between 6 and 6:15 a.m.; Brandon then drops her off at the

"latchkey program" at school. He then picks S.W. up on his way home from work and helps her with her homework or takes her to an activity, if one is scheduled; he agreed that Pilar generally does not help S.W. with her homework.

¶ 13 In regards to limiting Sharla's phone contact with S.W. while he has custody, Brandon admitted to "issues" in the past, as he wanted to limit Sharla to calling S.W. every other day, depending on whether she saw S.W. that day. He felt that this complied with the joint parenting agreement's provision that provided for the noncustodial parent to be able to communicate with the child by phone "at all reasonable times." He stated that the issues were resolved two or three months ago, and Sharla now speaks to S.W. daily.

¶ 14 Brandon testified that the parties had an open communication at the time of the divorce. In regards to any deterioration with his communication with Sharla, he stated that "[w]e're not best friends, but we're both [S.W.]'s parents, so we do communicate on that matter" and that he thought that the current visitation schedule "works very well," as both parents are active in her life. He stated that he believed that the week on/week off visitation is in her best interests.

¶ 15 Sharla Woodland testified that she is currently engaged to Stephen "Paul" Juenger (Paul) and that they have one child together. Sharla stated that S.W. loves having a little sister, and that S.W. has a good relationship with both her sister and Paul. Sharla agreed that she and Brandon had a good relationship at the time that they entered into the joint parenting agreement, but it changed when Brandon began his relationship with Pilar. She noted that they attempted mediation to resolve some of the issues, but it was unsuccessful.

¶ 16 Sharla noted that S.W. attended Shiloh school for kindergarten, but has been in Central School district for the first and second grades. She testified that S.W. has had delays which required occupational, physical, and speech therapy. Sharla stated that she felt that S.W. has focus issues, and is "overly sensitive," but disagrees with Brandon's opinion that S.W. has issues with lying. She noted that S.W. saw a counselor for "some amount of months" but that it has been discontinued.

¶ 17 Sharla testified that S.W. continues to have physical problems. She noted that she and Brandon disagree on the choice of S.W.'s primary care physician, that Brandon did not want S.W. to see a GI specialist for her acid reflux issues, and that they disagreed on whether S.W. needed to see a children's gynecological doctor and whether to continue with her booster vaccines. Sharla testified on one occasion when S.W. saw the doctor, Sharla paid the copay and Brandon got upset, telling her "don't fucking do that again, do you understand" in front of the hospital staff. On another occasion, S.W. fell off playground equipment, and the parties could not agree on scheduling S.W.'s follow-up appointment for a dislocated elbow. Sharla also stated that she has had problems getting updated health insurance information from Brandon in order to submit medical bills.

¶ 18 Sharla testified that she has had issues getting in contact with S.W. when she is at her father's house, and believed that S.W. was not allowed to return her calls. She stated that Brandon restricted her communication with S.W. to every other day; Sharla believed that this was in response to an incident where Brandon enrolled S.W. in his school district, and Sharla disenrolled her there and enrolled her in the school district in which she lived. Sharla noted that it was a "recurring issue" that has not been fully rectified,

and that being unable to call her daughter "puts a wedge between [her and her daughter]," affecting their relationship.

¶ 19 The parties have also had issues with S.W.'s extracurricular activities. Prior to their mediation, Brandon signed S.W. up for soccer and signed himself up to be a coach, Sharla testified that he did not tell her of his intentions in advance, but instead notified her after the fact by an email that stated the times and dates of the practices and games. She testified that she felt that this was an attempt to monopolize time with S.W., and stated that she would not have had a problem with it had Brandon discussed it with her beforehand, but that the absence of such a discussion was not "in line with the co-parenting agreement." An email chain submitted into evidence reflects that Sharla disenrolled S.W. from soccer, telling Brandon that S.W. was not interested in playing, and that they needed to agree on such things prior to him enrolling S.W. in anything. Brandon replied that he would reenroll S.W., and she could attend only on his weeks. Sharla testified that she opposed S.W. playing soccer every other week because she wanted S.W. to be committed to her extracurricular activities. The parties also disagreed about S.W.'s summer camp plans in July 2013.

¶ 20 Sharla testified about other contentious matters, such as which party would hold S.W.'s passport and the transfer of S.W.'s clothing and toys back and forth from the parties' respective homes. The parties both admittedly have traveled out of state with S.W. and given very little notice of the trip to the other party. Sharla also noted that despite the parties having a right of first refusal on caring for S.W. in their joint parenting agreement, she suspects that the father has had a babysitter for S.W. "a lot," though she

could not name specific instances.

¶ 21 Sharla testified that she does not believe that they can discuss and agree on major decisions involving S.W. Sharla stated that she felt bullied by Brandon and that it affects her ability to coparent with him. She agreed that S.W. loved both her and her father and was doing well under the current week on/week off schedule, but "would argue that [S.W.]'s not doing well and not doing as well as she could," that she does not get everything she needs, and that the inconsistencies in her home life affect her well-being. Sharla testified that she wants custody of S.W., with Brandon to have visitation every other weekend and every Wednesday evening.

¶ 22 Pilar Woodland testified that she married Brandon in April 2013. She agreed that they have discussed divorce during the 20 months that they have been married, but that it is not a possibility today; she stated that it is a good marriage and that they work on their issues. She testified that she sometimes picks S.W. up from school and that she has helped S.W. with her homework "several times," but that Brandon is in charge of discipline. In regards to the parties' issues with telephone communication, Pilar testified that she discussed the issue with Sharla in person. Pilar sent an email to Sharla on October 14, 2014, stating that "calling [S.W.] every day should not be an issue anymore. [Brandon] wants to set the timer for now, but hopefully that will dissolve with time also."

¶ 23 Cassy Shelton testified that she is the special education coordinator for Central School in O'Fallon, where S.W. is in second grade. S.W. had a speech IEP, which was terminated in December 2014 after the speech therapist concluded that S.W. had met her speech goals. She agreed that she has seen both parents at school functions, but has seen

S.W.'s mother more often than her father. Shelton related an incident where, at an informal meeting with Sharla, Paul, and Brandon, a discussion of S.W.'s progress was postponed because Brandon would not proceed with the meeting without his wife present. The informal meeting was rescheduled with all four parent figures present. She testified that at the formal IEP meeting in December 2013, only Brandon and Sharla attended at Brandon's request.

¶ 24 Stephen "Paul" Juenger testified that he is engaged to Sharla, with whom he has a daughter, and that they are planning to marry in the spring of 2015. He stated that he has a great relationship with S.W., and that he taught her how to swim and how to ride a bike without training wheels. Paul agreed that he helps S.W. with her homework, and that he and Sharla alternate reading bedtime stories every night. He noted that Sharla takes care of S.W.'s healthcare issues, but that they both attend all appointments if possible.

¶ 25 Paul testified that there have been occasions where S.W., while with her father, has called to tell Sharla that "she wanted to be with us." He stated that he does not think that S.W.'s visitation schedule is working, because every week there is a one-to-two night period of adjustment, and that the different rules and expectations in each home "feels like she's almost leading two different lives." Paul also testified as to problems with getting back S.W.'s clothes and toys, and with communicating with her while she is at her father's house. He stated that Brandon has requested that Paul not visit S.W. by himself at the school. Paul also related an incident where he witnessed Brandon tell Sharla "I hope you die a slow and painful death" while arguing with Sharla about soccer; Paul believed that S.W. overheard this argument.

¶ 26 After Paul's testimony, Brandon's counsel moved for a directed finding that Sharla failed to present clear and convincing evidence of a substantial change in circumstances since the time that the parties entered the joint parenting agreement. In response, Sharla's counsel argued that when two opposing parties request termination of joint custody−noting that case law does not say that "[the request] had to be in any certain format"−the court must do so. The court responded that "none of these cases" supported the conclusion that the court is required to terminate joint custody in this situation, to which Sharla's counsel stated that the focus of his argument is that the standard to apply to this evidence is "best interest only," not "clear and convincing." Brandon's counsel reiterated that his motion was not to terminate joint custody, but to set aside the entire judgment because Sharla entered into it by mistake or fraud, but "that's no longer on the table." The court denied the motion for a directed finding.

¶ 27 Thereafter, Brandon Woodland testified on his own behalf. He testified when the parties entered the custody agreement, he had wanted S.W. to have a mom and dad that were both very active in her life, and that he had actually separated from active duty in order to keep the schedule going and stay in the area for her. He agreed that even in light of the differences of opinion that he had with Sharla during the marriage about raising S.W., he "absolutely" intended on pursuing the joint parenting agreement and working out the differences. He testified that Sharla should be equally involved in raising S.W.; he "would never want to take the mother of my daughter away from her."

¶ 28 In regards to the agreement, Brandon stated that at the time it was made, there was no discussion as to what Sharla's role as "primary residential custodian parent" meant,

and that he assumed the parenting decisions would be equal, and understood that "primary" meant where S.W. would be enrolled in school.

¶ 29 In response to Sharla's testimony, Brandon testified that he signed S.W. up for soccer because she had played soccer before and had told him that she wanted to play again. He agreed that S.W. was disappointed when she learned that she would not be participating in soccer. Regarding the phone calls, he testified that Sharla's calls were a "progressing thing" and that he wanted to have "set times" for phone calls. He agreed that S.W. has called Sharla requesting to come back to her and Paul's house, but that S.W. does not do that anymore; the occasions where S.W. made those requests were in response to being in trouble for something at his house, and she was "trying to play mom verse dad type of thing." Brandon also noted that the incident with S.W. being enrolled in his school district was a miscommunication, as S.W. had attended school in his district during the previous year; he had reenrolled her before the parties had concluded that S.W. would attend in Sharla's school district for the next year.

¶ 30 Brandon testified that he wanted to keep the alternating weekly custody schedule, but that the agreement needed more specificity. He agreed that his proposed amendments to the joint parenting agreement, submitted to the court in light of Dr. Cuneo's recommendations, added necessary structure to the coparenting agreement by suggesting that Sharla would make the initial decisions regarding the medical and educational needs of S.W., subject to notifying him in advance if implementing the decisions. After closing arguments, the court told the parties that "[y]ou're really good people and you love your kid, and whatever happens here *** continue to try to mend fences or whatever it takes

just to consistently and on a daily basis keep her interests up here and everybody else's down here."

¶ 31 On December 22, 2014, the trial court entered an order denying Sharla's petition to modify the June 28, 2012, joint parenting agreement and her petition to modify custody, finding that neither was in the best interests of the child. The court granted Brandon's motion to modify visitation in part, finding it to be in the best interests of the child. The court permanently incorporated both the holiday schedule set forth in the joint parenting agreement and the exchange times and locations set forth in the June 23, 2014, order. Sharla appeals, arguing that the trial court erred by refusing to terminate joint custody where both parties agreed to its termination; or in the alternative, by refusing to modify custody and terminate joint custody as against the manifest weight of the evidence; and, that the trial court erred in refusing to modify visitation, as against the manifest weight of the evidence.

¶ 32 Sharla first argues that while the parties did not explicitly agree to terminate joint custody, the combination of the various pleadings and positions of the parties in this case nevertheless constitutes the equivalent of both parties expressing a desire to terminate joint custody, thus triggering the court's duty to terminate joint custody pursuant to the custody statute.

¶ 33 Section 610(b) of the Illinois Marriage and Dissolution of Marriage Act provides:

> "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 or that were unknown to the court at the time of entry of the prior

> judgment, that a change has occurred in the circumstances of the child or his custodian, or in the case of a joint custody arrangement that a change has occurred in the circumstances of the child or either or both parties having custody, and that the modification is necessary to serve the best interest of the child. *** In the case of joint custody, if the parties agree to a termination of a joint custody arrangement, the court shall so terminate the joint custody and make any modification which is in the child's best interest." 750 ILCS 5/610(b) (West 2012).

¶ 34 Therefore, Sharla argues, the court was required to terminate custody and proceed under a best-interest-of-the-child analysis to determine S.W.'s custodian. She asserts that Brandon "put on no evidence in furtherance of a request for sole custody and is bound by his strategic decision wherein he sought to maintain joint and shared custody," and, as a result, "sole custody should be awarded to mother."

¶ 35 In support of her assertion, Sharla cites to the Illinois Supreme Court's opinion in *In re Marriage of Lasky*, 176 Ill. 2d 75 (1997), and several appellate court cases applying its reasoning. In *Lasky*, the court held that stipulations by both parents that they no longer wish to be joint custodians itself constitutes a "change in circumstances," and a custody modification should thereafter be made in accordance with the child's best interests; the court noted that "it would be pointless and redundant to require the parties to prove by other clear and convincing evidence the same element that their agreement makes manifest." *Lasky*, 176 Ill. 2d at 81. Thus, Sharla is correct in her assertion that where an agreement to terminate joint custody exists, her burden to demonstrate "clear

and convincing evidence" of a change in circumstances is waived and the court, in making its custody determination, may proceed to weigh the evidence under the best-interest-of-the-child standard.

¶ 36 However, we find less convincing Sharla's assertion that the parties in the instant case have, in fact, agreed to a termination of joint custody. Again, Sharla correctly notes that the parties need no formal stipulation or agreement to terminate joint custody; our courts have found that it is sufficient to have, for example, cross-petitions to modify custody, or one party's petition followed by the other's answer, where both seek sole custody. *In re Marriage of Ricketts*, 329 Ill. App. 3d 173, 178 (2002); *In re Marriage of Melton*, 288 Ill. App. 3d 1084, 1087 (1997). She also cites *In re Marriage of Wycoff*, 266 Ill. App. 3d 408 (1994), for the proposition that joint custody can succeed only where the parties have an ability to cooperate effectively; when such cooperation no longer exists, joint custody should be readily terminated. *Wycoff*, 266 Ill. App. 3d at 412.

¶ 37 However, we find these cases distinguishable from the facts before us, because in the cases cited above, all of the petitioners and respondents specifically requested either sole custody of the child (*Ricketts*, 329 Ill. App. 3d at 178) or termination of joint custody in their pleadings (*Melton*, 288 Ill. App. 3d at 1087). Here, neither Brandon's motion to set aside the joint parenting agreement nor his motion for custody evaluation requests such action by the court. While Brandon's pleadings in the former reference the parties' inability to agree on custody terms and in the latter assert that "the Petitioner's assertions with regard to the current litigation indicate that joint custody by the parties is not viable and that sole custody by Respondent and reasonable visitation by Petitioner are in the

best interest of the child," neither motion prays that the court terminate joint custody or award him sole custody as the means to the end; rather, his statements referencing any such action appear to be assertions made in light of Sharla's previous motions. Moreover, Brandon's testimony at trial clearly reflected that he was not interested in terminating joint custody. While he acknowledged that the joint parenting agreement as written was not working, he unequivocally requested that the joint custody not be terminated and asserted a willingness to improve the parties' joint parenting skills. We cannot and will not expand the reasoning of prior case law to include the facts of this case where the best interests of a child are at stake. See, *e.g.*, *In re Marriage of Smithson*, 407 Ill. App. 3d 597, 601-02 (2011) (wherein the Fourth District appellate court refused to find that testimony by the respondent at the hearing on the petitioner's motion to modify custody amounted to an admission that joint custody was not working, and therefore, the court would not consider it to be a stipulation that the respondent no longer desired joint custody).

¶ 38 In the alternative, Sharla argues that the trial court's decision was against the manifest weight of the evidence, as she has demonstrated by clear and convincing evidence that a change in circumstances necessitates termination of joint custody. She notes that "the trial court's decision minimizes the ever-increasing rift between the parties, who do not get along well enough to jointly parent under a Joint Parenting Agreement."

¶ 39 As noted above, in an action for the modification of child custody, section 610(b) requires that the court find by "clear and convincing evidence" that a change of

circumstances has occurred and that modification is in the best interest of the child. 750 ILCS 5/610(b) (West 2014). This statute creates a presumption in favor of a current custody agreement so as to promote stability and continuity in the child's custodial and environmental relationships. *In re Marriage of Gustavson*, 247 Ill. App. 3d 797, 801 (1993). On appeal, the trial court's custody determination is afforded great deference because it is in a superior position to judge the credibility of the witnesses and determine the best interests of the child. *Gustavson*, 247 Ill. App. 3d at 801. The trial court's custody determination will not be disturbed on appeal unless there is a clear abuse of discretion or the decision was contrary to the manifest weight of the evidence. *Gustavson*, 247 Ill. App. 3d at 801.

¶ 40 Here, the trial court's finding that a continuation of joint custody was in S.W.'s best interests was not against the manifest weight of the evidence. Section 602.1(c) of the Act provides that joint custody is properly ordered if it would be in the best interests of the child, taking into account "the ability of the parents to cooperate effectively and consistently in matters that directly affect the joint parenting of the child"; notably, "[a]bility of the parents to cooperate" means "the parents' capacity to substantially comply with a Joint Parenting Order," and not the "inability of the parents to cooperate effectively and consistently in matters that do not directly affect the joint parenting of the child." 750 ILCS 5/602.1(c) (West 2012). The evidence presented demonstrates that the parties clearly love and are willing and able to provide a stable home for their child, and we do not disagree that the current alternating week schedule will continue to have an impact on S.W.'s routines. However, Sharla's assertions regarding the change in

circumstances, while stated in terms of her relationship with S.W., appear to largely be a consequence of the parties' acrimonious relationship and not either parent's ability to comply with the joint parenting order. While a previous mediation session failed, Dr. Cuneo's psychological custody evaluation found that the arrangement had no ill effects on S.W., and recommended that joint custody be continued. Brandon has expressed his willingness to cooperate with Sharla in the future. As such, we find that the trial court's decision was not against the manifest weight of the evidence.

¶ 41 Finally, Sharla asserts that the trial court erred in refusing to modify visitation, stating that the shared custody "is not a reasonable schedule of visitation" where it minimizes S.W.'s ability to interact with her peers in her mother's neighborhood and at her school. Again, we note that these assertions are contrary to the findings of both the custody evaluation and the trial court's determination after hearing the testimony in this case. We also note that the evidence before us is factually distinguishable from the case cited by Sharla, wherein the trial court was required on remand from the appellate court to modify a shared custody arrangement involving a child who was rotated every three months between his parents' residences in different cities. See *In re Marriage of Oros*, 256 Ill. App 3d 167, 170 (1994). Therefore, we cannot find that the trial court's refusal to modify visitation was against the manifest weight of the evidence.

¶ 42 We affirm the custody determination of the trial court as set forth in its December 22, 2014, written order.

¶ 43 Affirmed.

¶ 44 PRESIDING JUSTICE CATES, dissenting.

¶ 45 As noted by the majority, section 610(b) of the Illinois Marriage and Dissolution of Marriage Act (the Act) provides that 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 or that were unknown to the court at the time of entry of the prior judgment, that a change has occurred in the circumstances of the child or his custodian, or in the case of a joint custody arrangement that a change has occurred in the circumstances of the child or either or both parties having custody, and that the modification is necessary to serve the best interest of the child." 750 ILCS 5/610(b) (West 2012).

¶ 46 After a full evidentiary hearing on December 19, 2014, the court, quite laudably, admonished the parents that they should "continue to mend fences or whatever it takes just to consistently [*sic*] and on a daily basis keep [the child's] interests up here and everybody else's down here." The court obviously believed that this was a case where the parents' relationship had deteriorated, but it was in the best interests of the child that the parties work together for the benefit of their daughter.

¶ 47 On December 22, 2014, the court issued its written order. In that order, the court denied the mother's motion to modify custody and her motion to modify the joint parenting agreement, finding them not to be in the *best interests* of the child. This was not the standard to be applied, and the court made no factual findings in its denial of the petitions. The issue was whether the mother had proved, by clear and convincing evidence, that a "change has occurred in the circumstances of the child or either or both

parties having custody." 750 ILCS 5/610(b) (West 2012).

¶ 48 The December 22, 2014, order went on to grant the father's motion to modify the visitation schedule, again finding that it was in the *best interests* of the minor child. The court made no findings that the father had proved a "change has occurred in the circumstances of the child or either or both parties having custody" as required by section 610(b) of the Act.

¶ 49 Therefore, I would remand this case in order for the court to identify those factors that were relevant to and provided the factual basis for the court's decision to deny mother's petitions and grant father's petition to modify, as the initial threshold was whether there had been a "change [that] has occurred in the circumstances of the child or either or both parties having custody" that required the modification. 750 ILCS 5/610(b) (West 2012). Upon remand, the trial court may very well arrive at the same conclusions, and I cannot say that the court's rulings are against the manifest weight of the evidence. The lack of any factual basis simply does not allow me to reach the "best interests" conclusions entered by the trial court.