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2015 IL App (5th) 150062-U

NOTICE
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NO. 5-15-0062

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

<i>In re</i> MARRIAGE OF)	Appeal from the
)	Circuit Court of
NICK COWSER,)	Williamson County.
)	
Petitioner-Appellant,)	
)	
and)	No. 11-D-58
)	
STEPHANIE COWSER,)	
n/k/a Stephanie Quinn,)	Honorable
)	Brian D. Lewis,
Respondent-Appellee.)	Judge, presiding.

JUSTICE SCHWARM delivered the judgment of the court.
Justices Welch and Chapman concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's denial of the petitioner's request that he be given residential custody of the parties' minor daughter was not an abuse of discretion and was not against the manifest weight of the evidence.

¶ 2 BACKGROUND

¶ 3 A.C. was born on December 14, 2007. Her parents, the petitioner, Nick Cowser, and the respondent, Stephanie Quinn, began living together in 2005 or 2006 and were married in May 2009. Before problems in their marriage arose, the parties resided at Nick's home in Carterville with A.C. and Stephanie's older daughter, Mackenzie.

Mackenzie was born on August 22, 2004, and her father, Cale Sullivan, and Stephanie were married from 2002 through 2006.

¶ 4 In November 2010, Nick and Stephanie separated, and Stephanie, Mackenzie, and A.C. moved out of the marital residence. In January 2011, Nick was arrested for domestic battery following an incident that occurred at the home while Stephanie and the girls were visiting one evening. Nick apparently got upset when Stephanie was sending and receiving text messages while the family was watching a movie together, and following a "heated argument," he pushed her to the ground and twisted her arm behind her back. After Stephanie later appeared in court and stated that she was not afraid of Nick, the no-contact restrictions of his bond were vacated. Nick later pleaded guilty to a reduced charge of simple battery and was sentenced to a 12-month term of court supervision, which he successfully completed. He later claimed that the incident resulting in his arrest stemmed from his belief that Stephanie was having an affair during a time in which "he understood that they were trying to work it out to stay together."

¶ 5 In February 2011, Nick filed a petition for dissolution of marriage. In conjunction with the petition for dissolution, the parties jointly filed a marital-settlement agreement and a joint-parenting agreement. Pursuant to the terms of the joint-parenting agreement, the parties agreed to share joint custody of A.C., and Stephanie was designated A.C.'s primary residential parent. The agreement provided that the parties would jointly make all major decisions regarding A.C.'s education, extracurricular activities, non-emergency health care, and religious upbringing, but Stephanie was given final say on the major decisions upon which she and Nick could not agree. The agreement granted the parties

equal parenting time, with alternating weekdays, weekends, and holidays. The agreement provided that the parties could, "by mutual agreement, vary the parenting[-]time schedule." We note that the marital-settlement agreement included acknowledgments that both parties were "fit and proper persons to have custody of [A.C.]" and that Stephanie would have "primary care of the minor."

¶ 6 In March 2011, the trial court entered a judgment of dissolution of marriage incorporating the parties' marital-settlement and joint-parenting agreements. Later that year, Stephanie married Michael Quinn and purchased a house in her hometown of Thompsonville. She and Quinn lived there together for two or three months before separating.

¶ 7 In 2012, Stephanie started dating Matt Tally, and he subsequently moved in with her, A.C., and Mackenzie. Stephanie also began taking classes at Rend Lake College (RLC). While attending RLC, Stephanie received financial assistance and worked a part-time job. At some point in 2012, Stephanie opened a home-based dog-breeding business called Majestic Kennels, which sometimes fostered stray or rescued dogs.

¶ 8 In June 2013, Nick took A.C. to Disney World after Stephanie agreed to allow him the five additional visitation days that he needed to do so. When A.C. started kindergarten in August 2013, the parties agreed to modify Nick's visitation schedule to better accommodate A.C.'s school schedule.

¶ 9 In October 2013, Nick filed a petition to modify the judgment of dissolution of marriage, asserting, among other things, that Stephanie's operation of her home-based dog-breeding business was detrimental to A.C.'s mental and physical health. Nick

alleged, among other things, that A.C. had been left "unsupervised with potentially harmful dogs and in unsanitary conditions." Further complaining that Stephanie had "consistently failed to demonstrate sufficient maturity and ability to adequately care for [A.C.]," Nick maintained that granting him temporary exclusive custody of A.C. was in the child's best interests under the circumstances.

¶ 10 In December 2013, after Stephanie denied Nick's allegations in a filed response to his petition to modify, the trial court ordered the parties to attempt to resolve their differences through an appointed mediator. In February 2014, the mediator reported that the parties had met with her on two separate occasions but had been unable to reach a settlement. Thereafter, the trial court set a hearing date on Nick's petition to modify, and Nick filed a motion for the appointment of a guardian *ad litem* (GAL) to assist the court "with making ultimate determinations of modification of residential custody and visitation." Without objection, the trial court subsequently entered an order appointing a GAL for A.C.

¶ 11 In May 2014, Stephanie graduated from RLC with an associate's degree in criminal justice. She was also hired by the Illinois Department of Corrections (DOC) and was given a start-date of June 16, 2014, for orientation and training. When Nick later learned that Stephanie's training would require her to be in Springfield for six weeks and that she had made arrangements for her mother to watch A.C. in her absence, Nick successfully petitioned the trial court for temporary residential custody during Stephanie's training period.

¶ 12 In June 2014, the GAL submitted a lengthy and detailed report with the trial court. The report included information obtained from numerous sources and specifically addressed Nick's stated concerns regarding A.C.'s well-being.

¶ 13 In her report, the GAL noted, among other things, that Nick and Stephanie have "extremely different personalities and parenting styles" and that there were pros and cons associated with each. The GAL further noted that "Stephanie's hostility towards Nick is as strong, if not stronger, than his hostility towards her, and some of her actions have indicated that she is not at all willing to encourage and facilitate [A.C.'s] relationship with [Nick]." The GAL reported that most of Nick's concerns and complaints about Stephanie were "echoed and confirmed" by Sullivan, "who was much better informed about the circumstances and happenings at Stephanie's home through his own observations and experience, and information he obtained from [Mackenzie]."

¶ 14 The GAL reported that "[t]he Carterville community where Nick lives is quite different from Thompsonville" and has "new, highly rated schools with a variety of activities." She noted, however, that A.C. "doesn't have the playmates at [Nick's] that she has at [Stephanie's]" and that A.C. was "certainly well-adjusted" to her present environment. The GAL indicated that while Thompsonville was a "close-knit" community where "everybody knows everybody or is related to everybody," the town's "educational, cultural, and economic opportunities are limited." Noting that Mackenzie and A.C. have a close relationship and have always lived together, the GAL emphasized that "it is very important that [the girls] be able to maintain a strong bond with each other."

¶ 15 The GAL expressed concerns that Stephanie's employment with DOC could severely limit "her quality time with her children." Opining that Nick was "more capable of providing a stable, secure, healthy[,] and calm home life for [A.C.]," the GAL ultimately recommended that Nick be given primary physical custody of the child. The GAL concluded her report with the following admonishment: "Both parents should try very hard to be cooperative with each other and should at least try to be cordial to one another for the sake of their child."

¶ 16 In October 2014, the cause proceeded to a hearing on Nick's petition to modify. At the outset, the trial court took judicial notice of the GAL's June 2014 report, and the parties agreed to share the costs of her services. Thereafter, the following evidence was adduced.

¶ 17 Nick testified that he was 35 years old and had lived at his home in Carterville since 2007. Nick is employed as a mail carrier for the United States Postal Service and resides with his girlfriend, Laura Potts, who does accounting work for mental health agencies. Nick's parents and brother live nearby, and Nick and A.C. visit his parents on the weekends. A.C. also has a good relationship with Nick's eight-year-old niece. A.C. is Nick's only child, and he pays Stephanie approximately \$625 per month in child support.

¶ 18 Stephanie testified that she was 32 years old and that she, Tally, A.C., and Mackenzie reside at her house in Thompsonville. Stephanie is employed as a correctional officer at Menard Correctional Center but hopes to transfer to Big Muddy or Pinckneyville, both of which are closer to her home. Stephanie indicated that she

presently works day-shifts as part of her 18-month probationary training period and commutes over an hour "one way." Tally is a delivery driver for an alcohol distributor in Mt. Vernon. Stephanie's parents and numerous other family members live in Thompsonville, and Sullivan's house is very close to hers.

¶ 19 Nick testified that Stephanie had numerous dogs living in her house and that A.C. had sustained minor injuries playing with the kenneled puppies. Nick complained of dog feces on Stephanie's front porch, and he worried about the cleanliness of her home. Nick and Potts both testified that A.C. had bouts with fleas and lice and that Nick's house had to be treated by an exterminator.

¶ 20 Stephanie acknowledged that A.C. had twice contracted lice during her kindergarten school year. Stephanie testified that there had never been "any behavioral issues with the dogs that were in [her] care" and that A.C. plays "very rough" with puppies. Stephanie indicated that the presence of dog feces on her front porch was a "rare occasion" that had coincided with her cleaning of her dog cages. She further indicated that the front door of her home was seldom used. Stephanie testified that she had closed down Majestic Kennels when she started working for DOC and that the only dogs she presently had were "two outside dogs."

¶ 21 Nick testified that he has concerns regarding A.C.'s hygiene, and he indicated that she was often filthy and smelly when he picks her up for visitation. Potts testified that it sometimes appeared "[l]ike [A.C.] hadn't had a bath in a week or days." Nick acknowledged that the hygiene issues had gotten better over time. Stephanie testified that Nick believed that A.C. "shouldn't get dirty."

¶ 22 Nick testified that he also has concerns regarding A.C.'s clothing, and he presented evidence that A.C. had sometimes worn clothes, including underwear, that were several sizes too big. Stephanie testified that A.C. liked to play "dress-up" and wear Mackenzie's clothes. Stephanie further stated that A.C. had plenty of clothes her own size. Nick acknowledged that the clothing problems had gotten better.

¶ 23 Nick complained that Stephanie allows A.C. to do "whatever" without thinking of the potential consequences. Referencing a Facebook posting in which Stephanie had stated that A.C. had "rolled" her four-wheeler four times, Nick indicated that he feared that A.C. was going to get hurt doing something dangerous while in Stephanie's care. He also presented a photograph of A.C. and Mackenzie sitting on four-wheelers without helmets and a photograph of A.C. on the back of Quinn's motorcycle without a helmet.

¶ 24 Stephanie testified that neither A.C. nor Mackenzie are allowed to ride their four-wheelers without wearing jeans and a helmet and that the picture of the girls without helmets had been taken the day that they got their four-wheelers. She acknowledged that Quinn had taken A.C. on a brief motorcycle ride around the neighborhood without a helmet. She further acknowledged that A.C. had wrecked her four-wheeler on multiple occasions while learning to ride it. Stephanie testified that A.C. had never gotten hurt riding her four-wheeler, however, and that A.C.'s riding is always supervised. Stephanie stated that A.C. loves riding and enjoys going on "trail rides." Stephanie further stated that A.C. was a member of the Mt. Vernon Dirt Riders. Stephanie indicated that Nick objects to A.C. participating in activities such as riding four-wheelers, because he thinks

A.C. "should only do girly things." Stephanie stated that she was "not going to wrap [A.C.] in bubble wrap and not let her play and be herself."

¶ 25 Nick introduced numerous Facebook posts in which Stephanie and her friends had discussed her personal life. In some of the posts, Nick was referred to in derogatory terms, and in several others, Stephanie's consumption of alcoholic beverages was discussed. Stephanie testified that she "used to have a glass of wine every night," but she now only consumes alcohol a few times a year. Stephanie testified that Nick calls her derogatory names in A.C.'s presence and can be verbally abusive.

¶ 26 Nick complained that Stephanie sometimes interfered with his efforts to speak with A.C. over the telephone, but he acknowledged that Stephanie complied with the majority of his text requests that he and A.C. be allowed to speak. The parties seemingly agreed that text messaging was the best way for them to communicate with each other. Noting that Stephanie had recently given A.C. a cell phone, Nick testified that he was "not sure it[] [was] appropriate for a six-year-old to have a cell phone." He acknowledged, however, that A.C. had called him rather frequently since she got her own phone. He also agreed that a "specified phone time" for him and A.C. to talk might prove beneficial. Nick denied calling Stephanie derogatory names in A.C.'s presence.

¶ 27 Nick indicated that he and Stephanie sometimes had difficulties cooperating on simple matters such as the scheduling of A.C.'s dental appointments. Nick suggested that Stephanie tries to exclude him from A.C.'s activities and that her "favorite response" to his inquiries is, "It's none of your business." Nick testified that he does not believe that Stephanie has attempted to facilitate a positive relationship between him and A.C. Nick

testified that when making arrangements with respect to matters such as visitation, he generally communicates with Tally, who he described as his "primary contact." Nick testified that Tally "seems like an alright guy." Nick acknowledged that A.C. and Mackenzie have grown up together and have a "normal big sister/little sister relationship." He further acknowledged that A.C. is "perfectly well-behaved at [his] house."

¶ 28 Nick testified that he does not always know where A.C. is staying while Stephanie is at work and that he feared that the situation will get worse once Stephanie's day-shifts end. Nick works from 7:30 a.m. to 3:30 p.m., Monday through Friday, and Potts works similar hours. During the summer, babysitters come to Nick's home to care for A.C. while he and Potts are at work. When A.C. stays with Nick, she has her own room, and she and Potts get along fine. Potts acknowledged, however, that A.C. "doesn't listen to [her] a lot." Nick believed that if he were given residential custody of A.C., she would have more structure and stability. Nick also stated that the schools in Carterville are substantially better than those in Thompsonville and that A.C. would be afforded better opportunities if she were to reside with him.

¶ 29 Nick testified that he feared that if he were not made primary custodial parent, Stephanie will continue to exclude him from A.C.'s life. Nick stated that despite the parties' past animosity, he believed that it was important that Stephanie and A.C. have a good mother-daughter relationship and that he would work to nurture such a relationship. Nick testified that regardless of how the trial court ruled on the issue of residential custody, reasonable modifications in the parties' visitation schedule would be beneficial.

¶ 30 Stephanie indicated that A.C. and Tally have a good relationship and that A.C. has lots of friends in Thompsonville. Stephanie stated that "[h]alf the town is [her] family" and that she has daily interactions with family members. Stephanie testified that A.C. does well in school and that she helps A.C. with her homework every night. Stephanie indicated that she was in the best position to be A.C.'s primary residential parent. Stephanie stated that she wanted to "keep things the way they are" and that A.C. needed to be with her sister. Stephanie also acknowledged that A.C. needed "her dad in her life." Stephanie testified that she would like to the parties' joint-parenting agreement to remain in effect.

¶ 31 A.C.'s principal, John Robinson, testified that A.C. does well in school and is rarely absent. Robinson stated that there have no issues at school regarding A.C.'s clothing, hygiene, or behavior. Robinson indicated that Stephanie always attends A.C.'s school functions and is active at the school.

¶ 32 Stephanie's neighbor, Donna Steel, testified that Stephanie plays outside with A.C. and Mackenzie anytime "the sun's out." Steel stated that Stephanie and Tally set appropriate standards and boundaries for the girls and are attentive to their needs. Steel testified that she had been a foster parent with the Department of Children and Family Services for 13 years and had never observed any signs of abuse or neglect with respect to Stephanie's care of the girls. Steel described A.C. and Mackenzie as "happy," "bright," and "energetic."

¶ 33 Steven Kalaher testified that he was the chief of the Thompsonville police department and was also a DOC correctional officer. Kalaher testified that he lived

across the street from Stephanie for four or five months in 2013 and had observed her and the girls on a "daily basis." Stephanie and the girls rode four-wheelers, played ball, and generally did things that "most families do." When the girls rode their four-wheelers, they wore helmets and were properly supervised. Kalaher testified that Stephanie had done an internship with the Thompsonville police department while she was attending classes at RLC and that they had discussed her possible employment opportunities with DOC. Kalaher described Stephanie as a very good and loving mother and stated that she had family at her house about "every other day."

¶ 34 Stephanie's best friend, Crystal Duncan, testified that she watches A.C. and Mackenzie two or three days a week while Stephanie works. Duncan stated that she helps the girls get ready for school in mornings and stays with them after school until Stephanie gets home. Crystal indicated that Stephanie's house is clean and family-oriented and was in the same condition when Stephanie was running Majestic Kennels. Crystal and her daughter often stayed at Stephanie's for long periods of time when Stephanie was running Majestic Kennels, and neither of them had ever had a problem with fleas. Crystal indicated that A.C. and Mackenzie were always properly bathed and dressed. Crystal testified that Stephanie was a good parent who enjoyed doing various activities with the girls.

¶ 35 Stephanie's cousin, Melinda Martin, testified that she grew up with Stephanie and lives within walking distance of her house. Martin described Stephanie's home as "clean" and "[c]omfortable," and she indicated that it was the same when Stephanie was operating her dog-breeding business. Martin opined that that Stephanie is a very clean

person and an excellent mom. Martin stated that Stephanie and Tally have a loving, stable relationship, that Tally gets along well with Mackenzie and A.C., and that both girls love him. Martin testified that Nick is either silent or rude during her interactions with him. Martin acknowledged that at some point, Tally had moved out of Stephanie's house for a brief period of time.

¶ 36 After the parties presented their cases, the trial court clarified that the issues before it were "primary residential custody" and "modification of visitation." The trial court then took the matter under advisement.

¶ 37 In November 2014, the trial court entered a written order denying Nick's request that he be made A.C.'s primary residential parent. The court also modified the parties' visitation schedule to allow Nick three one-week visitations during the summer, half of A.C.'s spring and Christmas break days, and "any other and further visitations as the parties may agree." Noting, among other things, that A.C. "may not be attending the best school" and "may be engaging in activities which her father does not think appropriate," the court concluded that A.C. was "a happy, active child, growing up in a very small town in southern Illinois" and "will be happier remaining in this environment, at this time." The court noted that Stephanie was no longer operating her dog-breeding business and that during the past year, she had "apparently, addressed some of the issues raised by [Nick]." The court also expressed concerns regarding the "relationship and interplay" between Nick, A.C., and Potts, stating that there was "a great uncertainty as to the success of this relationship, if [A.C.] were to reside with [Nick] on a full[-]time basis."

¶ 38 The trial court acknowledged that its decision was against the recommendation of the GAL. The court authorized the GAL to "continue in her role," however, and conditioned its custody determination on Stephanie's compliance with its orders that A.C. bathe or shower on a daily basis, that A.C. wear clean "age and size appropriate" clothing, and that Stephanie "not have indoor dogs" or "engage in raising puppies or dogs, or taking in rescues or strays, without further order of court." The court further authorized the GAL to "make unscheduled, pop-in visits" to determine whether Stephanie was complying with the "additional orders of the court." The trial court concluded its written order with the following admonishments:

"[Stephanie] shall keep [Nick] advised of her work schedule, and any changes thereto. If her schedule changes, obviously, the visitation schedule may also need to be modified. The parties are encouraged to communicate, on a civil basis, regarding visitation, doctor visits, school[,] and extra-curricular activities."

¶ 39 In December 2014, Nick filed a motion to reconsider, alleging that Stephanie was "now working second shift with her employment with DOC," which required her to be at work from 3 p.m until 11 p.m. The motion asserted that "[t]hese hours further ensure that [A.C.] will now spend further extended periods of time with individuals other than either parent." Nick therefore asked the trial court to reconsider its prior order and award him residential custody of A.C.

¶ 40 In January 2015, the trial court denied Nick's motion to reconsider. Notably, the court indicated that Stephanie's alleged shift change might warrant a modification of the

parties' visitation schedule but did not warrant reconsideration of its custody determination. In February 2015, Nick filed a timely notice of appeal.

¶ 41

DISCUSSION

¶ 42 Nick argues that the trial court erred in denying his request that he be made A.C.'s primary residential parent. He further argues that the trial court erred in denying his motion to reconsider the request in light of the evidence regarding Stephanie's present work schedule. We disagree.

¶ 43 "When deciding issues pertaining to custody, the trial court has broad discretion, and its judgment is afforded great deference because the trial court is in a superior position to judge the credibility of witnesses and determine the best interests of the child." (Internal quotation marks omitted.) *In re Marriage of Debra N.*, 2013 IL App (1st) 122145, ¶ 45. The trial court is also in the best position to evaluate factors such as the temperaments, personalities, and capabilities of the parties. *In re Marriage of D.T.W.*, 2011 IL App (1st) 111225, ¶ 81. "Accordingly, a reviewing court will not disturb a trial court's decision to modify the terms of a custody agreement unless its decision is against the manifest weight of the evidence and constitutes an abuse of discretion." *Debra N.*, 2013 IL App (1st) 122145, ¶ 45.

¶ 44 "A finding is against the manifest weight of the evidence when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence." *Vancura v. Katris*, 238 Ill. 2d 352, 374 (2010). "In determining whether a judgment is contrary to the manifest weight of the evidence, the evidence will be reviewed in the light most favorable to the appellee," and "[i]f multiple inferences can

be drawn from the evidence, a reviewing court will accept those inferences which support the court's order." *Debra N.*, 2013 IL App (1st) 122145, ¶ 45. "It is well established that an abuse of discretion will be found only where no reasonable person would take the view adopted by the trial court." *In re Marriage of Smith*, 2012 IL App (2d) 110522, ¶ 46.

¶ 45 In pertinent part, section 610(b) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/101 *et seq.* (West 2014)) provides as follows with respect to joint-custody arrangements:

"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 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 2014).

¶ 46 To modify an existing joint-custody order, a petitioner must therefore establish by clear and convincing evidence that a change in circumstances has occurred *and* that a modification is necessary. *In re Marriage of Smithson*, 407 Ill. App. 3d 597, 600 (2011). The change in circumstances must therefore be material to the child's best interests. *In re Marriage of Rogers*, 2015 IL App (4th) 140765, ¶ 57; *In re Marriage of Nolte*, 241 Ill. App. 3d 320, 325-26 (1993). "In other words, '[c]hanged conditions alone do not warrant modification in custody without a finding that such changes affect the welfare of the child.'" *Rogers*, 2015 IL App (4th) 140765, ¶ 57 (quoting *In re Marriage of Nolte*, 241

Ill. App. 3d at 325-26). "Custody cannot be modified unless there is a material change in the circumstances of the child related to the child's best interests and unless the evidence establishes either that the custodial parent is unfit or that the change in conditions is directly related to the child's needs." *Nolte*, 241 Ill. App. 3d at 326.

¶ 47 "Section 610(b) reflects an underlying policy favoring finality of child custody judgments and creating a presumption in favor of the present custody so as to promote stability and continuity in the child's custodial and environmental relationships." *Id.* at 325. The statute thus recognizes "the importance of stability in a child's life and the belief that finality is more important than determining which parent is truly the better custodian." *In re Marriage of Oros*, 256 Ill. App. 3d 167, 169 (1994); see also *In re Marriage of Wycoff*, 266 Ill. App. 3d 408, 410 (1994) ("By creating a presumption in favor of the present custodian, the legislature in section 610 has sought to promote a stability and continuity in the child's custodial and environmental relationships which is not to be lightly overturned.").

¶ 48 "The law is well settled that clear and convincing evidence requires a high level of certainty." *In re Marriage of Wechselberger*, 115 Ill. App. 3d 779, 786 (1983). "Clear and convincing evidence is considered to be more than a preponderance while not quite approaching the degree of proof necessary to convict a person of a criminal offense." *Id.*

¶ 49 Here, Nick maintains that he sufficiently demonstrated several changes in circumstances that warranted the granting of his request that he be given primary residential custody of A.C. He specifically references the evidence that Stephanie's new job with DOC is time-demanding, that she has been in at least two significant

relationships since the parties' divorce, that her operation of Majestic Kennels ostensibly resulted in health and hygiene issues, and that she allows A.C. to engage in potentially dangerous activities such as riding four-wheelers. To establish that modification was in A.C.'s best interest, however, Nick was required to demonstrate that these changes were material to her general welfare, which he failed to do.

¶ 50 Stephanie testified that although A.C. had repeatedly rolled her four-wheeler while learning to ride it, she has never been injured riding it. Kalaher also corroborated Stephanie's testimony that when A.C. rides her four-wheeler, she always wears a helmet and is always supervised. Notably, the trial court expressed no concerns regarding A.C.'s four-wheeler riding and could have reasonably inferred that A.C. is in no more relative danger than any other active child her age.

¶ 51 With respect to Stephanie's dog-breeding business, the evidence established that while issues that one would expect to encounter when kenneling dogs sometimes arose, A.C. was never living in squalor or exposed to potentially dangerous dogs as Nick suggested in his petition to modify. Moreover, as the trial court noted, Stephanie is no longer operating Majestic Kennels, and she is now prohibited from owning indoor dogs or opening another kennel without the court's approval.

¶ 52 Stephanie acknowledged that her relationship with Quinn was short-lived and that they are "technically" still married. She testified that she intended to formally dissolve the marriage, however, and that she ended her relationship with Quinn because she "found out that he was sleeping with one of [her] friends." Stephanie and Tally have been together for two years, and the trial court heard testimony that Tally was a

responsible caregiver who has a positive, loving relationship with A.C. There was no evidence suggesting that Stephanie's changes in relationships have had any negative effects on the child.

¶ 53 It is undisputed that Stephanie has a lengthy commute to Menard, but it is further undisputed that she earns substantially more money as a correctional officer than she did as a dog-breeder. Tally or Duncan care for A.C. while Stephanie works, and as the trial court noted, "she has extensive family and friends in Thompsonville." There was no evidence before the trial court that Stephanie's job at DOC has negatively impacted A.C.'s needs or general welfare.

¶ 54 Nick emphasizes that the trial court's custody determination was contrary to the recommendation of the GAL, but the court was not required to accept her opinion. *In re Marriage of Petraitis*, 263 Ill. App. 3d 1022, 1031 (1993). Moreover, although the GAL interviewed Martin when preparing her report, she had not spoken with any of Stephanie's other character witnesses. We note that in its written order, the trial court specifically referenced Steel's and Kalaher's testimony as evidence that Stephanie is "actively involved" with A.C. and is "a concerned and good parent." We further note that the GAL indicated that her opinion was significantly influenced by information that she had obtained from Sullivan, but he did not testify at the hearing and thus was not subject to cross-examination. In any event, "[a] recommendation concerning the custody of a child is only that, a recommendation, and by its very nature is incapable of being binding on a trial court." *In re Marriage of Felson*, 171 Ill. App. 3d 923, 928 (1988).

¶ 55 On appeal, Nick relies on *In re Marriage of Valter*, 191 Ill. App. 3d 584 (1989), and *In re Marriage of Rogers*, 2015 IL App (4th) 140765, in support of his claim that he sufficiently demonstrated changes in circumstances warranting a modification of custody. Those cases, however, involved situations nothing like the one presented here.

¶ 56 In *Valter*, changes in circumstances warranting a change in the minor's residential custody were found where, among other things, the custodial father's recent marriage to his fourth wife resulted in a total of seven children living in the household; the father acknowledged alcohol dependency that had apparently been previously "hidden" from the court; and the father admitted that he "did not have much time for his family or sleep." *Valter*, 191 Ill. App. 3d at 586-89. There was also evidence that the minor's relationship with his new stepmother and stepsiblings was strained, that the minor had grown fearful of his father, and that "based on sound reasoning," the minor wanted to live with his mother. *Id.* at 587, 590-91. While living with his father, the minor also experienced an "academic slide" that was attributed to "parental feuding." *Id.* at 587. It was further noted, that during the minor's summer-long visits with his mother, he was "quite happy." *Id.* "As the end of each summer approached, however," the minor would become "physically ill," cry, refuse to eat, and at one point, "suggested that he may run away." *Id.*

¶ 57 In *Rogers*, the minor's custody was transferred from the mother to the father after a series of events revealed, among other things, that the mother had "unquestionably serious mental-health issues" that she refused to acknowledge or address. *Rogers*, 2015 IL App (4th) 140765, ¶¶ 62-63. The events included psychotic episodes during which the

mother exhibited schizophrenic symptoms such as hallucinations and delusions. *Id.* ¶¶ 25-26, 33, 41, 62. During one such episode, the mother left the four-year-old minor alone in a parked car at 2 a.m., believing that he was being attended to by "invisible people." *Id.* ¶¶ 24-26. During another episode, the police were called after the mother pounded on a neighbor's door in the middle of the night claiming that "she had seen someone get killed." *Id.* ¶¶ 31-33. The trial court heard evidence that the mother kept a loaded handgun in her townhouse and had once carried it with her when she "walked around the outside of the townhouse after she thought she heard a noise." *Id.* ¶ 17. The trial court also heard evidence that the mother and her second husband once had an argument that resulted in the accidental firing of a bullet that "could have gone through the floor into [the minor's] room." *Id.* ¶¶ 15-17. Excessive alcohol consumption by the mother was also indicated, and for a time, she "operated an unlicensed day care business out of her home." *Id.* ¶¶ 15, 21, 35, 40. On one occasion, she was found " 'passed out' on a couch," while the three- and five-year-old children in her care were left to fend for themselves. *Id.* ¶ 36. When affirming the trial court's custody determination, the reviewing court noted that, "[i]n addition to [her] mental-health issues, the evidence disclosed instances of danger, neglect, and poor judgment that could have resulted in harm to [the minor], but fortunately did not." *Id.* ¶ 63. The court further found it "most worrisome" that the mother had never sought mental-health treatment, despite her "repeated psychiatric hospitalizations." *Id.* ¶¶ 53, 62.

¶ 58 Here, the evidence before the trial court established that, unlike the minor in *Valter, A.C.* is happy and well-adjusted living in her present situation. Moreover, while

Stephanie is, as the trial court observed, "obviously much more of a free spirit" than Nick, she cannot fairly be compared to the minor's mother in *Rogers*.

¶ 59 As previously stated, there is an "underlying policy favoring finality of child custody judgments and creating a presumption in favor of the present custody so as to promote stability and continuity in the child's custodial and environmental relationships." *Nolte*, 241 Ill. App. 3d at 325. "Continuity in lifestyle and environment is important to the healthy and normal development of children" (*id.* at 330), and "is not to be lightly overturned" (*Wycoff*, 266 Ill. App. 3d at 410). Here, the trial court's judgment reflects these considerations, and we reject Nick's contention that the court erred in denying his request that he be made A.C.'s residential custodian. We further reject his argument that the court should have granted his motion to reconsider in light of the evidence regarding Stephanie's current work schedule.

¶ 60 "The purpose of a motion to reconsider 'is to bring to the trial court's attention newly discovered evidence not available at the time of the first hearing, changes in the law, or errors in the previous application of existing law to the facts at hand.' " *In re Marriage of Heinrich*, 2014 IL App (2d) 121333, ¶ 55 (quoting *River Village I, LLC v. Central Insurance Cos.*, 396 Ill. App. 3d 480, 492 (2009)). "Generally, a trial court's decision to grant or deny a motion to reconsider will not be reversed absent an abuse of discretion." *Id.*

¶ 61 At the hearing on his motion to modify custody, Nick testified that he does not always know where A.C. is staying while Stephanie is at work and that he feared that the situation will worsen once Stephanie's day-shifts end. In her report, the GAL expressed

concerns that although "Stephanie would certainly have family and friends who would help her with child care," working a second or third shift would severely limit Stephanie's "quality time" with A.C. In its written order, in an apparent response to these contentions, the trial court stated, "If [Stephanie's] schedule changes, obviously, the visitation schedule may also need to be modified." When subsequently denying Nick's motion to reconsider, the trial court reiterated that Stephanie's alleged shift change might warrant a modification of the parties' visitation schedule but did not warrant reconsideration of its custody determination.

¶ 62 We find no abuse of discretion in the trial court's denial of Nick's motion to reconsider. Although changes in a custodial parent's residence or employment are relevant factors in determining a minor's best interests, they are not controlling unless they adversely affect the minor's welfare. *Nolte*, 241 Ill. App. 3d at 330. As previously stated, "[c]ustody cannot be modified unless there is a material change in the circumstances of the child related to the child's best interests and unless the evidence establishes either that the custodial parent is unfit or that the change in conditions is directly related to the child's needs." *Id.* at 326.

¶ 63 We also note that A.C.'s recent acquisition of a cell phone would seemingly resolve Nick's complaints that he does not always know where A.C. is staying while Stephanie is at work and that Stephanie sometimes interferes with his efforts to speak with A.C. over the phone. We further note that given that the trial court conditioned its custody determination on Stephanie's adherence to its "additional orders" and further directed the GAL to "continue in her role," the court will likely be advised if Stephanie's

work schedule warrants a modification of the parties' visitation schedule. Under the circumstances, we find no abuse of discretion in the trial court's judgment. See *Rogers*, 2015 IL App (4th) 140765, ¶ 64 (commending the trial court for "persisting with [the] case to ensure that a just and proper result was ultimately reached"); *In re Marriage of Oertel*, 216 Ill. App. 3d 806, 816, 817 (1991) (finding that the trial court "correctly assessed the course of action that would be in [the minor daughter's] best interests" when it "expressly conditioned [the father's] physical possession of [the minor] on his continued residence with his parents").

¶ 64 Lastly, keeping in mind that "joint custody can succeed only where the parties have an ability to cooperate effectively and consistently with each other toward the children's best interests" (*In re Marriage of Sobol*, 342 Ill. App. 3d 623, 632 (2003)), we admonish the parties that they would be well advised to follow the GAL's recommendation that they be "cooperative" and "cordial to one another for the sake of their child."

¶ 65 CONCLUSION

¶ 66 For the foregoing reasons, the trial court's judgment is hereby affirmed.

¶ 67 Affirmed.