

No. 1-15-0681

**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).

IN THE APPELLATE COURT  
OF ILLINOIS  
FIRST JUDICIAL DISTRICT

<i>In re</i> MARRIAGE OF	)	
	)	
AMY SKIDELSKY,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellee,	)	Cook County.
	)	
and	)	No. 14 D 8661
	)	
ALLON SKIDELSKY,	)	Honorable
	)	Regina Scannicchio,
Respondent-Appellant.	)	Judge Presiding.

JUSTICE PALMER delivered the judgment of the court.  
Justices Reyes and Lampkin concurred in the judgment.

**ORDER**

¶1 *Held:* The trial court did not err in granting petitioner's motion for exclusive possession of the marital residence.

¶2 Petitioner, Amy Skidelsky, and respondent, Allon Skidelsky, filed counter-petitions for dissolution of their marriage. During the proceedings, Amy filed a petition for exclusive possession of the marital residence, which the trial court granted. Allon appeals the trial court's interlocutory order pursuant to Illinois Supreme Court Rule 307 (eff. Feb. 26, 2010), arguing that

the trial court incorrectly interpreted the term "jeopardized" in section 701 of the Illinois Dissolution of Marriage Act (the Act), 750 ILCS 5/701 (West 2012), and that Amy failed to establish that the mental or physical well-being of the children was being jeopardized. For the reasons set forth below, we affirm.

¶3

### BACKGROUND

¶4 The parties were married in 2006, and two children were born to the couple: E.W.S. in 2008, and S.W.S. in 2010. On October 2, 2014, Amy filed a petition for dissolution of marriage, and on October 31, 2014, Allon filed a counter-petition. At the time, the parties lived together with their children in the marital residence in Chicago, Illinois.

¶5 On October 3, 2014, Amy filed an emergency verified petition for temporary and permanent custody of the minor children, to set parenting schedule, and for other relief. Amy alleged that Allon made video recordings of her on numerous occasions. The trial court entered an agreed order that same day which set parenting time, prohibited the parties from disparaging each other in the presence of the children, and prohibited them from recording or photographing the other party without their consent. Amy also filed a motion to appoint a child representative and a motion for an Illinois Supreme Court Rule 604(b) (eff. Feb. 6, 2013) evaluation, both of which the trial court granted.

¶6 Allon filed a motion on October 9, 2014, for the minor children to undergo counseling, along with a motion for temporary and permanent custody of the children. On November 6, 2014, Allon filed a motion for a mental examination of Amy pursuant to Illinois Supreme Court Rule 215 (eff. Mar. 28, 2011), alleging that she had been diagnosed with a mental illness and the prescription medicine she was taking caused her to be irrational, irritable, and unable to care for the children at night. Along with that, Allon filed an emergency motion to have another adult

present during Amy's overnight parenting time. In addition, also on November 6, 2014, Amy filed a petition for rule to show cause in which she alleged that Allon failed to abide by the October 3 order in that he continued to video record her on several occasions.

¶7 On November 17, 2014, Amy filed a verified petition for exclusive possession of the marital residence pursuant to section 701 of the Act, alleging that her and the children's physical and mental well-being were jeopardized by Allon's presence in the marital home.<sup>1</sup> Amy alleged that Allon repeatedly made video recordings of her in contravention of the October 3 order. She detailed multiple dates in October and November 2014 when Allon allegedly recorded her on his cellular telephone in front of one or both of the children. For example, Amy alleged that Allon recorded her while she was making dinner one night and stated "don't forget it is all on tape"; he tailgated her while she drove and recorded her driving; he told her that she was "sick" and "crazy" while she was reading to E.W.S and began recording her; and on another occasion, when E.W.S whispered in Amy's ear, he started video recording and stated, "Are you talking about your Aba? That's not nice." In addition, Amy also alleged that Allon verbally and physically intimidated and harassed her on multiple occasions in October and November 2014. For example, she alleged that Allon chased her down the stairs in their home on three occasions; he told her that he was going to "keep controlling her"; he told their children that "[y]our mommy is a very bad person and she is going to pay"; he told Amy that he "will get back at" her; he refused to give her the children's passports; he attempted to force food in her mouth in front of the

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<sup>1</sup> Section 701 provides:

"Marital residence—Order granting possession to spouse. Where there is on file a verified complaint or verified petition seeking temporary eviction from the marital residence, the court may, during the pendency of the proceeding, only in cases where the physical or mental well being of either spouse or their children is jeopardized by occupancy of the marital residence by both spouses, and only upon due notice and full hearing, unless waived by the court on good cause shown, enter orders of injunction, mandatory or restraining, granting the exclusive possession of the marital residence to either spouse, by eviction from, or restoration of, the marital residence, until the final determination of the cause. No such order shall in any manner affect any estate in homestead property of either party." 750 ILCS 5/701 (West 2012).

children on one occasion; he told her that "[e]verybody knows about you"; he once lunged at her and screamed, "[t]wo to three years, whatever it takes you're going down"; and he once entered the master bathroom while Amy and the children were bathing and refused to leave. Amy also alleged that she moved out of the parties' master bedroom and onto the top floor of the residence, but Allon entered her bedroom at night on several occasions, stating that he needed to access the hot tub on the deck outside. She alleged that she had a new lock installed on the door, but Allon had the lock changed and continued to enter the room.

¶8 In his response to her motion for exclusive possession of the marital residence, Allon denied most of Amy's allegations. Allon conceded that he made video recordings of Amy, but he argued that he made them in order to protect himself from Amy's abusive behavior and in an effort to stop this behavior. He alleged that she spit in his face and called him disparaging names while the children were in the house, she called him "scum of the earth," and she stated that she "wished he would die" in front of E.W.S. In response to Amy's allegation that he entered the master bathroom and refused to leave, Allon explained that he was surprised to find them there and he left immediately. He also alleged that he entered Amy's room and replaced the lock because that was the only access to the deck, the hot tub had a leak that required attention, and he offered her a key. Additionally, Allon maintained that he was the children's primary caretaker at night because of the medication Amy was taking, and that Amy was not their primary caregiver during the day because she had the assistance of a nanny.

¶9 The trial court entered an order on December 12, 2014, setting forth a modified parenting schedule in which the parties were given parenting time on alternating weekends, and the non-parenting parent was to vacate the marital residence during those weekends until 7 p.m. on Sundays. The party who did not have weekend parenting time was given parenting time on

Monday and Tuesday mornings until the children went to school and evenings from 5 p.m. until bedtime, while the other parent was given parenting time Wednesday and Thursday mornings and evenings.

¶10 On January 13, 2015, Amy filed a second petition for rule to show cause, alleging that Allon had again been videotaping and photographing her in December 2014 and January 2015. On February 23, 2015, the trial court entered an order which required Allon to immediately turn over all videos and photographs, prohibited Allon from showing the videos and photographs to third parties, ordered Allon to instruct the Rule 604(b) expert not to view any photographs or videos Allon gave him, and ordered Allon to comply with the October 3 order not to photograph or record Amy. The order indicated that Amy agreed to withdraw her second petition for rule to show cause.

¶11 The trial court conducted a hearing beginning on February 25, 2015, on Amy's motion for exclusive possession of the marital residence and motion to set parenting schedule, and Allon's motion for mental examination of petitioner. The court heard testimony from the parties and Amy's brother, Adam Winick, and Allon's sister, Tamar Miller.

¶12 Allon testified that he was 44 years of age and has his own law firm, which he started the same year their first child was born. He reported a monthly income of over \$50,000 and he managed several rental properties. He testified that, before the divorce proceedings were initiated, it was common for him to come home after 6:00 p.m., and in the past two years, he infrequently would come home after 8 p.m. He conceded that he worked long hours in 2008 when he started his law firm and would sometimes come home at 10:00 p.m. He testified that he is in control of his work schedule and spending time with the children is his priority. Regarding the care of his children, Allon testified that he assists with homework, attends parent-teacher

conferences, occasionally takes the children to school or picks them up, prepares their meals, handles their bedtime routines, and has purchased clothing, toiletries, and medications for them. Amy arranged all of the play dates and birthday parties for the children. Allon testified that he was concerned with having Amy care for the children alone at night and he has primarily been responsible for attending to the children at night because of the medication Amy takes, which he indicated makes her behavior "very erratic, impulsive."

¶13 Allon testified that he first made a video recording of Amy on September 5, 2014, and he believed he recorded her twice on September 27, 2014. He admitted that these recordings occurred in front of their children. He explained that by recording Amy, he was trying to "diffuse the situation and in many instances get away from her for fear she might strike me, for fear that the kids are hearing some terrible names, words coming out of their mom's mouth." Allon testified that he believed he had Amy's implied consent to record her because he "warned her that she's going to be recorded." When questioned about one of the recordings from September 27, Allon testified that the video showed Amy running into the master bedroom closet while wearing only underwear and a shirt. He testified that he could not recall if he stated in the video, "I'll stop recording if you stop yelling." He did not believe it was harassing to take this video. He also admitted that he recorded Amy at least four times after the entry of the October 3 order prohibiting such conduct. He recorded Amy on October 31 in the master bathroom while one child was in the bathtub and the other child was in the shower. He testified that it was possible that he told Amy "you're berating me" in the video. He testified that in another video, S.W.S. is off camera in the bathtub and can be heard saying "I see daddy's booby." Allon explained that he did not have a shirt on at the time and this was his daughter's attempt to diffuse the situation. He testified that it was "awful" that their child watched the two of them arguing.

¶14 Allon also admitted that he took photographs of Amy after entry of the October 3 order, including one on December 15 of Amy sitting on the couch because she was present during his parenting time. He testified that he took the children skating later that day and returned home at 6:30 p.m., and Amy again engaged with the children. Allon repeatedly asked her to leave, and she eventually left after twenty minutes. Allon testified that S.W.S. became upset as a result of the exchange between the parties. Allon testified that he intends to follow the court's orders not to take any more videos or photographs. In addition, he indicated that, since entry of the October 3 order, he has not yelled at Amy, lunged at her, or blocked her entry into a room, and has never struck her. He testified that Amy has called him disparaging names such as "scumbag" and "f\*\*\* loser," and "f\*\*\* piece of s\*\*\*," and she has frequently interfered with his parenting time.

¶15 Allon affirmed that in his motion for the children to attend counseling, he alleged that the children's moods and behaviors had changed during the divorce proceedings and it was in their best interests to receive counseling. He testified that he filed the motion because the children occasionally seemed sad and confused and they saw Amy "calling me terrible names and screaming at me." He agreed that the situation at home was stressful and confusing for the children, but he maintained that it was not "severe." Allon testified that he has not noticed a change in the children's sleeping or eating habits. Regarding the bed-wetting issue, Allon opined that E.W.S. was not wetting the bed because of tension in the home, but because he was attempting to wean her off of pull-up diapers at night. Allon testified that he did not believe that the cohabitation arrangement seriously jeopardized the children's mental health or well-being and that the stress could be minimized by a few modifications to the current parenting schedule order. Allon suggested that, to reduce tension in the house, his parenting weekdays should begin after school, instead of at 5:00 p.m. On weekday mornings, the non-parenting parent should

remain in their room until 8 a.m. He also recommended that on the weekend, the non-parenting parent should have to stay out of the home until 9 p.m. on Sunday, instead of 7 p.m., as the children would already be asleep by 9 p.m.

¶16 Amy testified that she often cared for the children at night, alone, as Allon was at work, and she disagreed with Allon's testimony that he was primarily responsible for the children at night. She denied that her mental health ever impacted her ability to care for the children at night. She acknowledged that she was given a prescription in 2010 for hydrocodone following an emergency cesarean-section. She indicated that she was prescribed this for "a couple of years." She testified that she also takes Ambien because it is hard to sleep. Regarding her care of the children, Amy testified that she usually transports the children to and from school and their activities, she is involved at their school, and she handles their bedtime routine. She has primarily not worked outside of the home since having their oldest child.

¶17 Amy testified that in Allon's video recording of her from September 27, 2014, she "looked hysterical. I'm in a bra and underwear. \*\*\* And I'm getting dressed in a bathroom, and I flew into my closet and shut the door. And I was like [*sic*] saying get away from me. You can see Allon's hand opening up the door and [*sic*] just to keep videotaping me." She testified that it was "very disturbing, harassing, violating—It went on for so long." Amy also testified that on October 24, 2014, she was making dinner when Allon started calling her "nicknames. And he said to me, goodnight sweetie, don't forget, it's all on video, or it's all on tape." The children were present when this occurred. She also recalled the video recording Allon made on October 31, 2014, because it was Halloween and Allon insisted on having the children.

¶18 Regarding her allegations that Allon also took photographs of her, Amy testified that on November 11, 2014, she was in the master bathroom with the children because she usually takes



a bath with them at night. She testified that Allon insisted on entering the bathroom and she believed he took a picture and then left and called his attorney to ask if she was allowed to be in the bathroom. Amy testified that on December 15, 2014, she came downstairs in the morning to get coffee and sat on the couch, where E.W.S. was also sitting, and Allon started taking photographs of Amy. Amy testified that she was not trying to interfere with Allon's parenting time; she understood "parenting time" to mean that Allon would get the children ready for school, but not that she was prohibited from physically being in the same space.

¶19 With respect to the incident after the children returned home from ice skating with Allon at 6:30 p.m. in the evening, Amy testified that she was eating dinner at the kitchen table when they came home and Allon "just went crazy," telling her that it was his parenting time and she was "not supposed to be here." She testified that the children "wanted to see me. They wanted to say hi to their mother." She testified that S.W.S. started crying, the children looked stressed and scared, and they later came up to her room and put their hands under the door.

¶20 Regarding whether the situation between the parties was adversely affecting the children, Amy testified that E.W.S. started wetting the bed every night. Amy testified that E.W.S. had an accident the night before because the situation in the house was "very disruptive" and there was "push and pull with the parents"; she usually does not wet the bed when she is alone with one of the parents. In addition, Amy testified that S.W.S. started having 45 minute temper tantrums at bedtime, which she had not done for two years, and she started biting her nails.

¶21 Amy admitted to being responsible for some of the tension in the house and to calling Allon names. She indicated that she tries to shield the children, but she could not do so for another year. Amy opined that Allon's proposal for the parties to continue living together but implement changes to the parenting schedule would not be good for the children and the changes

were unrealistic as the children were witnessing too much friction in the household. She testified that she believed the best arrangement was for her to remain in the home, for the parties to alternate weekends, and for Allon to have parenting time on Wednesday nights. She agreed that Allon is a good dad and cares for the children. She believed it was best for the children to stay in the same house as much as possible, especially during the school week.

¶22 Winick testified that he saw Amy and the children weekly and that he has not noticed any ill effects on the children or Amy since divorce proceedings began. However, he did not believe it was healthy for Amy or the children for the parties to continue cohabitating.

¶23 Miller testified that, after the hearing concluded for the day on February 27, 2015, Amy's father asked Miller if he could talk to her, and she followed him out of the courtroom. However, she heard Amy yell, "don't talk to those disgusting people." Miller testified that after the court admonished the parties and their families following this incident, she left the courtroom with her brothers and Amy came out and yelled at them, stating that they were "abused as children and that we've ruined her life."<sup>2</sup>

¶24 Following this testimony, the parties presented closing arguments.<sup>3</sup> Amy's counsel argued that the evidence established that the mental well-being of the children was jeopardized by cohabitation of the marital residence, that Amy presented more credible testimony, and that Amy's proposed temporary parenting schedule was best for the children. The children's

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<sup>2</sup> We note that Allon presented an emergency petition for an order of protection alleging that Amy's behavior was harassing and intimidating. The trial court found the petition was not emergent and entered and continued it.

<sup>3</sup> We note that, during the course of the hearing, Amy's counsel made an oral motion for the trial court to rule on the petition for exclusive possession without hearing further evidence, asserting that the court could curtail the hearing for good cause shown pursuant to section 701. The trial court held that, although it wanted to separate the parties for the sake of the children, there was insufficient evidence at that point to grant the petition under the "good cause shown" standard advocated by counsel. The trial court indicated that the environment was "harmful" and "toxic" to the children, but it wanted a complete record. The trial court also denied Allon's motion for a directed finding. In addition, Amy's counsel presented a motion *in limine* to exclude the testimony of Allon's proposed expert psychologist, Dr. Mark Goldstein, in support of his motion for a mental examination of Amy. The trial court denied the motion, but Dr. Goldstein was never called to testify. Amy's counsel admitted into evidence the records from Allon's office building showing his keycard entries and exits.

representative opined that there was sufficient evidence to show "risk and jeopardy and injury" to the children as they witnessed mean and disrespectful behavior between the parties, the oldest child was wetting the bed again, and the children were in therapy. He suggested that it would be appropriate for Amy to be allowed to stay in the residence as she has been the children's primary caregiver. Allon's attorney asserted that Amy failed to establish "jeopardy" under section 701 and that the court was required to balance the hardships, which favored Allon remaining in the house because he did not have time to set up suitable alternate housing. In the alternative, counsel urged the court to adopt a "birdnesting" arrangement.

¶25 The trial court issued a written order on March 9, 2015, granting Amy's petition for exclusive possession. The court held that Allon admitted to video recording Amy on several occasions, despite the October 3, 2014, order prohibiting such conduct, that Allon downplayed any wrongdoing, and that he believed he had the right to do so.<sup>4</sup> The trial court observed that the testimony focused on the incident when Allon recorded Amy and drove her into the master bedroom closet in her underwear and the incident when Amy was giving S.W.S. a bath and the parties were arguing and their daughter tried to diffuse the situation. The court held that Allon testified that he did not believe the children were in jeopardy and he minimized concerns regarding their oldest child's bed-wetting, but, inconsistently, he filed a motion to place the children in counseling. The trial court held that Allon also minimized the number of hours he worked as his office records showed he worked long hours, and he also minimized Amy's role in caring for the children. In addition, the trial court concluded that Allon "provided no credible testimony regarding his concern" that Amy was unable to care for the children at night due to the medication she was taking. On the other hand, the trial court held that Amy's testimony was

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<sup>4</sup> Although the videos were not admitted into evidence, the trial court indicated that neither the parties nor the child representative sought to do so, and the trial court accepted the testimony regarding the videos.

"credible albeit emotionally charged at times." The trial court found that she testified credibly that Allon recorded her on several occasions, that this made her feel humiliated and harassed, and that this occurred in front of the children. The trial court observed that Amy admitted that she has contributed to the tension by arguing and name calling. The trial court noted that Amy testified that recording her in front of the children was detrimental to their well-being and she believed their oldest child's bed-wetting was caused by the conflict between the parties. The trial court indicated that it felt the tension between the parties and was concerned about the well-being of the children if they were exposed to this on a daily basis. The trial court also held that Amy has been the primary caregiver for the children.

¶26 Based upon these findings, the trial court ultimately concluded that the continued occupancy of the marital home by both parties "places the children at risk and jeopardizes the mental well-being of the minor children." In construing the term "jeopardize" in section 701, the trial court cited *In re Marriage of Engst*, 214 IL App (4th) 131078, and *In re Marriage of Levinson*, 2012 IL App (1st) 11256. The trial court held that it should use the plain and obvious dictionary definition of jeopardize, *i.e.*, "to 'expose to danger or risk," and that "risk" was "the possibility that something bad or unpleasant (such as injury or a loss) will happen or someone or something that may cause something bad or unpleasant to happen." The trial court determined that, although the parties' relationship was not violent, it was volatile and harmful to the children; Allon's actions were antagonistic to Amy, and "the resulting conflict between the parties [is] harmful to the mental and emotional health of the minor children." Accordingly, the trial court ordered that the children remain at the marital residence with Amy, the parties were given parenting time on alternating weekends, and Allon was given parenting time on Thursday nights. The trial court also denied Allon's Rule 215 motion for a mental examination of Amy.

¶27 Allon timely filed a notice of interlocutory appeal pursuant to Illinois Supreme Court Rule 307 (eff. Feb. 26, 2010) challenging the trial court's decision to grant the petition for exclusive possession.

¶28 ANALYSIS

¶29 Although Allon urges that *de novo* review is appropriate on appeal in this case, it is well-settled that this court reviews a trial court's grant of a petition for exclusive possession pursuant to section 701 under a manifest weight of the evidence standard. *Levinson*, 2012 IL App (1st) 112567, ¶ 33. "A judgment is against the manifest weight of the evidence when the opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence." *Id.* (citing *In re Marriage of Karonis*, 296 Ill. App. 3d 86, 88 (1998)).

¶30 That said, issues of statutory construction present questions of law which are subject to *de novo* review on appeal. *Solon v. Midwest Medical Records Association, Inc.*, 236 Ill. 2d 433, 439 (2010). Our primary objective when interpreting the language of a statute is to give effect to the legislature's intent. *Engst*, 2014 IL App (4th) 131078, ¶ 25. "[W]here the statutory language is clear and unambiguous, its plain meaning will be given effect." *Levinson*, 2012 IL App (1st) 112567, ¶ 34 (citing *People v. Ramirez*, 214 Ill.2d 176, 179 (2005)). A provision must be viewed in conjunction with other relevant portions of the statute and in the context of the purposes the legislature hoped to achieve in enacting it. *Levinson*, 2012 IL App (1st) 112567, ¶ 34 (quoting *In re Detention of Lieberman*, 201 Ill. 2d 300, 308 (2002)).

¶31 As noted, section 701 "sets forth the circumstances under which a trial court may grant a request for exclusive possession of the marital residence" pending final resolution of the case. *Engst*, 2014 IL App (4th) 131078, ¶ 23. This section provides in pertinent part:

"Marital residence—Order granting possession to spouse. Where there is on file a

verified complaint or verified petition seeking temporary eviction from the marital residence, the court may, during the pendency of the proceeding, *only in cases where the physical or mental well being of either spouse or their children is jeopardized by occupancy of the marital residence by both spouses*, and only upon due notice and full hearing, unless waived by the court on good cause shown, enter orders of injunction, mandatory or restraining, granting the exclusive possession of the marital residence to either spouse \*\*\*." (Emphasis added.) 750 ILCS 5/701 (West 2012).

¶32 Accordingly, a court "has the authority to grant exclusive possession if (1) a party has filed a verified petition seeking exclusive possession of the marital residence, and (2) the physical or mental well-being of either spouse or their children is jeopardized by the occupancy of the marital residence by both spouses." *Levinson*, 2012 IL App (1st) 112567, ¶ 34 (citing 750 ILCS 5/701 (West 2012)).

¶33 On appeal, Allon argues that the trial court defined the term "jeopardize" in section 701 too broadly in holding that merely a risk of some future harm was sufficient. According to Allon, a party must show "exposure to or imminence of death, loss, or injury," and, as it is a form of injunctive relief, the party must establish an imminent risk of irreparable harm and that there is no adequate remedy at law. Allon additionally maintains that the trial court misread *Levinson* and that *Levinson* set forth a narrower interpretation of "jeopardize" than that in *Engst*, thereby imposing a higher threshold for exclusive possession in the First District. Allon also contends that the standard in section 701 is higher than the showing of "abuse" required to obtain an order of protection providing for exclusive possession under the Illinois Domestic Violence Act of 1986. 750 ILCS 60/103, 60/214(b)(2) (West 2012)).

¶34 Amy responds that the trial court correctly applied the law and its decision was not based

on speculative future harm, but on actual evidence of current harm and jeopardy to the children. Amy argues that Allon's proposed interpretation of "jeopardize" does not follow the law and that *Engst* and *Levinson* are not in conflict, but are simply distinguishable on their facts. She contends that the present case involves behavior similar to the behavior supporting the finding of jeopardy in *Engst*.

¶35 We begin with an examination of *Levinson* and *Engst*. The *Levinson* court observed that only a few cases have construed section 701 and none have defined "jeopardize" or "well-being," but these cases "suggest that section 701 imposes a high bar for exclusive possession." *Levinson*, 2012 IL App (1st) 112567, ¶ 36. The *Levinson* court reasoned that this comported with the purposes of the Act, *i.e.*, "to 'mitigate the potential harm to the spouses and their children by the process of legal dissolution of marriage,' and 'secure the maximum involvement and cooperation of both parents regarding the physical, mental, and emotional well-being of the children during and after litigation.'" *Id.* (quoting 750 ILCS 5/102(4), (7) (West 2010); *In re Marriage of Wade*, 408 Ill. App. 3d 775, 780 (2011)). In *Levinson*, the wife testified that the parties' "birdnesting" arrangement<sup>5</sup> was jeopardizing the mental and emotional well being of the children as it caused stress. *Levinson*, 2012 IL App (1st) 112567, ¶ 43. However, in reversing the trial court's decision to grant the wife's petition, the appellate court concluded that the "stress" experienced by the wife and the children due to the "birdnesting" arrangement was insufficient to support granting exclusive possession under section 701. *Id.* ¶ 44. The court relied on the testimony of the court-appointed Rule 604(b) evaluator, who testified that he disagreed with the wife's assessment and "declined to characterize the circumstances as dangerous to the children." *Id.* ¶ 43. The court also disregarded the wife's reference to an alleged physical altercation with her husband that the wife

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<sup>5</sup>A "birdnesting" schedule is when "each party occupies the marital residence during his or her parenting time, but vacates it during the other's parenting time." *Levinson*, 2012 IL App (1st) 112567, ¶ 6.

had included in a prior emergency petition for exclusive possession because that petition had been voluntarily dismissed. *Id.*

¶36 In *Engst*, the wife petitioned for exclusive possession pursuant to section 701 and she testified that her husband was verbally aggressive toward her, that he criticized and swore at her and called her names in front of their children, and that he engaged in odd behaviors such as using "baby talk" and whispered about things she had done of which he disapproved. *Engst*, 2014 IL App (4th) 131078, ¶ 9. The wife admitted that she also used derogatory language and profanity toward her husband and that both parties had recorded each other on their cellular telephones. *Id.* ¶ 10. She also alleged that he had been physically aggressive in blocking her access to a doorway. *Id.* ¶ 8. The trial court granted exclusive possession of the marital home to the wife upon finding that the wife's testimony was credible and that the children were "suffering in their current situation and were hurt by their parents' frequent arguing." *Id.* ¶ 12. On appeal, the husband characterized the situation as " 'typical' for that of a divorcing family' " and he asserted that the evidence was insufficient to support granting exclusive possession. *Id.* ¶ 22.

¶37 In construing the term "jeopardize," the Fourth District in *Engst* held that, "[g]iven its plain and ordinary meaning, the word 'jeopardize' means 'to expose to danger or risk' " *Engst*, 2014 IL App (4th) 131078, ¶ 25 (quoting Merriam–Webster's Collegiate Dictionary 627 (10th ed. 2000)). The court observed that under section 701, a court may grant exclusive possession "upon a showing that 'the physical *or* mental well being of either spouse or their children is jeopardized' " and that "[a] lack of physical violence or abuse between the parties does not warrant reversal of the trial court's decision where the evidence otherwise shows a spouse or child's mental well-being was being adversely affected." *Id.* ¶ 34. In affirming the trial court's decision, the appellate court found that the children were being exposed to a "highly negative"



situation and were suffering and hurt by the frequent arguing. *Id.* ¶ 26. As such, "there was sufficient evidence from which it could have found the mental health of either [the wife] or the children was 'jeopardized' by both spouses' occupancy of the marital residence." *Id.* In ruling, the court cited: (1) the wife's testimony that the husband had been physically and verbally aggressive and that she felt afraid, antagonized, and uncomfortable; (2) some of the behavior occurred in front of the children; (3) the husband admitted that some of the behavior had occurred; and (4) the wife's testimony that their youngest child would cry and both children expressed that they did not like it when their parents argued. *Id.* ¶ 27. The court also indicated that the trial court had found the wife's testimony more credible and that the husband had denied any negative impact on the children. *Id.*

¶38 In addition, the *Engst* court distinguished *Levinson* on its facts. *Id.* ¶ 32.

"[U]nlike in *Levinson*, the parties in this case resided in the marital home together on a full-time basis. Next, in the case at bar, we find no indication from the record that the trial court applied an incorrect standard or an overly expansive definition of 'jeopardize.' Further, the evidence presented in this case involved more serious concerns than the 'stress' alleged in *Levinson*. Here, [the wife] testified that [the husband] was physically and verbally aggressive toward her, she felt intimidated and bullied by his behavior, and the children witnessed the parties' conflicts. Finally, in *Levinson*, the wife's testimony regarding the children's well-being was contradicted by the testimony of a court-appointed evaluator. In this instance, [the wife's] testimony was not similarly contradicted." *Engst*, 2014 IL App (4th) 131078, ¶ 32.

¶39 Turning to the case at bar, we conclude that the trial court did not erroneously interpret the term "jeopardize" in section 701 of the Act. When a term is not defined by statute, "[i]t is

entirely appropriate to employ the dictionary as a resource to ascertain the meaning of undefined terms." *Price v. Philip Morris, Inc.*, 219 Ill. 2d 182, 243 (2005). Here, the trial court relied on the dictionary in defining "jeopardize" to mean "to expose to danger or risk." Merriam–Webster's Collegiate Dictionary 628 (10th ed. 2000). Similarly, the *Engst* court relied on the term's "plain and ordinary meaning" set forth in the dictionary. *Engst*, 2014 IL App (4th) 131078, ¶ 25 (quoting Merriam–Webster's Collegiate Dictionary 627 (10th ed. 2000)). The *Levinson* court did not offer a new or conflicting definition of "jeopardize"; it merely observed that section 701 imposes a "high bar" to obtain exclusive possession, and held that the "stress" experienced by the wife and children in *Levinson* were insufficient to meet this threshold. *Levinson*, 2012 IL App (1st) 112567, ¶ 36. As such, we find no error here in the trial court's interpretation of the term "jeopardize" for purposes of section 701. Accordingly, and as the *Levinson* and *Engst* courts held, exclusive possession pursuant to section 701 may be granted upon a showing that "(1) a party has filed a verified petition seeking exclusive possession of the marital residence, and (2) the physical or mental well-being of either spouse or their children is jeopardized by the occupancy of the marital residence by both spouses" (*Levinson*, 2012 IL App (1st) 112567, ¶ 34); jeopardy to the physical *or* mental well-being of either spouse or their children is sufficient and the presence of physical abuse is not required (*Engst*, 2014 IL App (4th) 131078, ¶ 34).

¶40 Following this reasoning, we find no conflict between this district's decision in *Levinson* and the Fourth District's decision in *Engst*. Rather, these cases are simply distinguishable on their facts. In similar fashion, we also conclude that the present circumstances are distinct from those in *Levinson* and are analogous to the facts in *Engst*. In *Levinson*, the wife testified that she and the children experienced stress. In the present case and in *Engst*, the concerns were more severe and the behavior occurred in front of the children. The testimony here demonstrated that Allon

repeatedly recorded and photographed Amy and made antagonistic and derogatory comments to her in front of the children, and Amy also admitted to contributing to the arguments and name calling in front of the children. Amy testified that the effects of this environment on the children manifested in various ways, namely, the youngest child regressed to temper tantrums and biting her nails, the oldest child experienced bed-wetting issues, the children became upset during their parents' antagonistic interactions, and they also became upset when they could not see Amy during Allon's parenting time even though she was present in the house. Indeed, in one instance, their youngest child sought to intervene between the parties by making a remark during their argument while Allon was video recording Amy. Moreover, despite Allon's claim that the parties' interactions were not significantly impacting the children, we note that he did, in fact, file a motion for the children to be placed in counseling.

¶41 In further contrast to the instant case and to *Engst*, the parties in *Levinson* had adopted a "birdnesting" arrangement and were therefore not present in the marital home at the same time. Additionally, the court-appointed evaluator in *Levinson* specifically contradicted the wife's testimony regarding whether the physical or mental well-being of the children was being jeopardized. In the present case and in *Engst*, no such contradictory testimony was presented. Although Allon disagreed with Amy's testimony that their oldest daughter's bed-wetting issue was related to the divorce proceedings and living arrangement, " 'where there is conflicting testimony, the determination of the witnesses' credibility is for the trier of fact.' " *Engst*, 2014 IL App (4th) 131078, ¶ 35 (quoting *In re Marriage of Hofstetter*, 102 Ill. App. 3d 392, 396 (1981)). Here, the trial court found Amy's testimony more credible. The record reflects no error in that finding. In fact, the children's representative in this case, Rosenberg, argued that the children's

mental well-being was jeopardized and it was in their best interests that the parties not cohabitate any longer.

¶42 Additionally, we disagree with Allon's assertion that a showing of "jeopardy" under section 701 requires that the movant must establish "something more" than the standard set forth in the Illinois Domestic Violence Act for obtaining an order of protection that grants exclusive possession (750 ILCS 60/214(b)(2) (West 2012). The statutory language in section 701 does not refer to the standard for an order of protection under the Illinois Domestic Violence Act.

¶43 Considering the testimony discussed above, we reject Allon's contention that there was no evidence in this case that the children's mental well-being was jeopardized. To the contrary, the evidence indicated that the children reverted to bed-wetting and tantrums, in addition to crying and becoming upset when witnessing the interactions between the parties. The trial court found that the mental well-being of the children was jeopardized by both parents' occupancy of the marital residence. On this record, the opposite conclusion is not clearly apparent. Accordingly, the trial court's decision to grant Amy's petition for exclusive possession of the marital residence was not against the manifest weight of the evidence.

¶44 **CONCLUSION**

¶45 For the reasons stated, we affirm the trial court's judgment granting the petition for exclusive possession.

¶46 Affirmed.