FOURTH DIVISION
September 8, 2016

Nos. 1-16-0791 & 1-16-0793 (cons.)

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re FORMER MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
MICHAEL GRICKI,	)	Cook County.
	)	
Petitioner-Appellant,	)	
	)	
and	)	No. 11 D 5208
	)	
ANESSIA GRICKI,	)	
	)	
Respondent-Appellee.	)	Honorable
	)	Mark J. Lopez,
(Victoria Onorato, Intervenor-Appellant.)	)	Judge Presiding.

PRESIDING JUSTICE ELLIS delivered the judgment of the court.
Justices McBride and Howse concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court's grant of petition to remove minor child from Illinois to Florida was not against manifest weight of evidence. Father forfeited claim that guardian *ad litem* exceeded authority at removal hearing. Grandmother forfeited claim that trial court erred in denying her petition to intervene in custody proceedings.

¶ 2 This case involves two consolidated appeals. In the first, case number 1-16-0793, appellant Michael Gricki (Michael) appeals from the trial court's grant of a petition for removal of his seven-year-old son, T.G., filed by his ex-wife, appellee Anessia Gricki (Anessia). Specifically, the trial court granted Anessia, who had sole custody of T.G., permission to move with T.G. from Berwyn, Illinois to Florida. Michael contends that the trial court erred in granting

the removal petition because the trial court applied the incorrect legal standard to the question of whether removal should have been granted, and that the trial court's decision was against the manifest weight of the evidence. Michael also contends that the guardian *ad litem* (GAL) appointed by the court exceeded his authority in filing various pleadings and participating as an advocate during the removal hearing.

¶ 3 We disagree. Even though the trial court did not expressly apply the updated standard governing removal petitions, the record shows that the trial court considered the same facts that would have been considered under that standard anyway. And there was ample evidence to justify the trial court's decision under that new standard.

¶ 4 We also hold that Michael has forfeited his challenge to the GAL's activities during the removal hearing, as he failed to register any objection to the GAL's cross-examination of witnesses or testimony. The only time Michael objected to the GAL's conduct was when he moved to strike the GAL's response to Michael's petition to allow visitation for his mother (T.G.'s grandmother). But we do not have jurisdiction to reach the court's order denying Michael's motion to strike and denying his mother visitation, where Michael appealed only from the court's order granting T.G.'s removal.

¶ 5 In the second appeal, case number 1-16-0791, appellant Victoria Onorato (Victoria), Michael's mother and T.G.'s grandmother, contends that the trial court abused its discretion in denying her motion to intervene in the proceedings, which she filed after the trial court had granted the removal petition. We reject her claim, as she raises an entirely different basis for intervention than what she asserted in the trial court. We find that Victoria has forfeited any claim that she was entitled to intervene in the case. We affirm the trial court's judgment in full.

¶ 6 I. BACKGROUND

¶ 7 Michael and Anessia married on February 14, 2008, while Anessia was pregnant with T.G. T.G. was born on September 8, 2008. Michael petitioned for dissolution of marriage in 2011. Michael and Anessia divorced on February 18, 2014.

¶ 8 A. Initial Custody Proceedings

¶ 9 Before the judgment for dissolution of marriage was entered, the trial court appointed Dr. Mary Gardner to evaluate the issue of T.G.'s custody pursuant to section 604(b) of the Illinois Marriage and Dissolution of Marriage Act (the Act) (750 ILCS 5/604(b) (West 2012)).

¶ 10 Gardner completed her section 604(b) report on December 9, 2013. She noted that, soon after Michael and Anessia separated, Anessia petitioned to remove T.G. to Florida. That petition was denied, but Michael took T.G. and his possessions out of their house so that Anessia would not leave the state with T.G. Anessia said that she was without any contact with T.G. for 11 days; Michael said it was 4 or 5 days. Gardner believed that this would have been "quite traumatic for 2-year-old [T.G.]"

¶ 11 Gardner also cited several occasions on which Michael had told the police and the Department of Child and Family Services (DCFS) that Anessia had abused T.G. The agencies never pursued these claims of abuse or uncovered corroborating evidence supporting the claims. But, in her discussions with Gardner, Anessia admitted to spanking T.G. with a paddle.

¶ 12 Gardner opined that Michael had "an extremely negative view of Anessia and her role as a parent." Gardner noted that, at the end of visitation periods, Michael told T.G. that he had to return him to Anessia "or he will get in trouble with the judge." He also told T.G. to call Anessia and say that he wanted to stay with Michael.

¶ 13 Gardner also noted that Anessia had contributed to the negative situation by filing a petition to remove T.G. to Florida, which showed "a lack of appreciation of how important

Michael's relationship to [T.G.] is." She also noted that Anessia had admitted using corporal punishment.

¶ 14 Gardner highlighted T.G.'s problems at school, which included outbursts and threats to harm and kill teachers. Michael had not responded to the school's attempts to contact him about these problems. Michael also told Gardner that T.G. did not have mental health problems and did not need counseling. Michael also said that T.G.'s behavior at school was likely "because he was sad that he could not see his father."

¶ 15 Gardner concluded that T.G. was becoming alienated from Anessia due to Michael's behavior:

> "Alienation behavior was observed in [T.G.], as he is rejecting of his mother for unjustified reasons. Michael has engaged in alienation tactics, such as apologizing to [T.G.] when he has to return him to [Anessia], allowing and encouraging [T.G.] to have strong negative feelings towards his mother and engaging in a campaign of denigration towards her. Children who are alienated suffer psychological damage as a result which goes far beyond the disruption of the relationship with the target parent."

¶ 16 Gardner recommended that Anessia be awarded custody of T.G. She recommended that Michael attend therapy to deal with his alienating behaviors, and to submit to random drug and alcohol tests. Gardner also recommended that Anessia cease "any and all corporal punishment and threat[s] of corporal punishment."

¶ 17 On February 18, 2014, the court entered a judgment for dissolution of marriage and marriage settlement agreement (JDM/MSA) that awarded Anessia custody of T.G. Michael was given visitation on Wednesdays from 3 to 7 p.m., and every other weekend from Friday at 7 p.m. until Sunday at 7 p.m.

¶ 18 The court ordered Michael to "attend weekly therapy sessions with a counselor of his choice who is trained in *** parental alienation or a counselor substantially similar." The court also required Michael to provide his therapist with a copy of Gardner's 604(b) report.

¶ 19 The court ordered both parties to avoid denigrating one another in front of T.G. and discussing any court proceedings in front of him. The court also precluded both parties from using corporal punishment.

¶ 20 Anessia filed a motion to suspend visitation in June 2014, alleging that Michael had been engaging in alienating behavior. The court entered an order reaffirming the requirements of the JDM/MSA, as well as appointing David Goldman as GAL for T.G.

¶ 21 On July 11, 2014, the court ordered that Michael's visitation be between Michael and T.G. alone. The court specifically ordered that neither Victoria (Michael's mother) nor Anessia's mother be present during visitation or when picking up or dropping off T.G. for visitation.

¶ 22 On October 17, 2014, Anessia filed an emergency motion to terminate Michael's visitation, alleging that T.G.'s behavior toward her had gotten worse. She alleged that, after picking T.G. up from one of his visits with Michael, T.G. said that she was not his mother, that he hated her, that he wanted to "hurt her dead," that "she shouldn't have changed *** how much daddy gets to see him," and that "when he gets old enough he's going to tell the judge he wants to live with daddy." She also claimed that T.G. had threatened to stab another child at school and that T.G. fled from her father while he was taking T.G. to school one morning. Anessia said that T.G. had also threatened his therapist.

¶ 23 In response to the motion, the court ordered that Michael's visitation be supervised by an independent organization whose fees Michael would be responsible for paying. Shortly before

the proceedings on Anessia's petition to remove T.G., the court allowed Michael to have limited unsupervised visitation.

¶ 24 On April 29, 2015, Anessia filed a motion seeking a temporary restraining order that would prevent T.G. from viewing videos that Victoria had prepared for him and preclude Victoria from posting negative comments about Anessia on Facebook. The motion alleged that Victoria had begun to record videos of herself that Michael would show to T.G. during visitation "where she says 'hi' and plays with his toys." Anessia also claimed that Victoria had posted comments and articles on Facebook that alleged that T.G. had been abused.

¶ 25 In response to the motion, the court ordered Victoria to remove any personal or identifying information from her Facebook posts. The court also ordered that any videos created by Victoria should first be shown to the GAL.

¶ 26 B. Removal Petition

¶ 27 On April 16, 2015, Anessia filed a petition seeking to remove T.G. from Illinois and relocate to Florida. The hearing on Anessia's petition was conducted over several days, beginning July 13, 2015. T.G. was six years old at the time Anessia filed the petition; he is currently seven years old.

¶ 28 Anessia testified that she wanted to move to Dade City, Florida with T.G. permanently. She believed that the move would be in her and T.G.'s best interests because she had "close and extended family in Florida" that could provide her and T.G. with "financial and emotional support." Specifically, Anessia had "three sisters, aunts, uncles, nieces, nephews, [and] cousins" in Florida. Anessia testified that one of her sisters had three children aged 6, 8, and 13. When Anessia and T.G. had gone to Florida in the past, he played with his cousins and "enjoyed his time with them."

¶ 29 Her only relatives in Illinois were her parents, and her parents planned to move back to Florida regardless of whether she and T.G. moved there as well. At the time of the hearing, Anessia's parents lived with her, supported her financially and emotionally, and took care of T.G. while she was at work. Anessia testified that her parents paid half of her $875 monthly rent.

¶ 30 Anessia testified that, if she moved to Florida, she and T.G. would live with her parents and continue to support her and help her with T.G. She planned to purchase a home with her parents, using money her parents had saved for a downpayment. She and her parents had not put any money down for a home at the time of the hearing; the extent of their search consisted of looking at homes online. One home that she had looked at cost $159,000; she was not sure how much taxes and homeowner's insurance would cost.

¶ 31 Anessia said that, if she and her parents could not buy a home, she could stay with her sister in Dade City. If she stayed with her sister, she and T.G. would have to sleep in the living room of her sister's house.

¶ 32 Anessia testified that, at the time of the hearing, she was employed as a case processing analyst with a company called Tech-Pro. In this position, she reviewed H-2A visa certifications for foreign agricultural workers. Anessia said that she made about $73,000 per year. At the time of the hearing, she had $3,200 in savings.

¶ 33 Anessia planned to become a self-employed H-2A agent in Florida. While this job would be "in the same arena" as her current position, she would be preparing the H-2A certifications for employers rather than reviewing them. She testified that she would work from home as an H-2A agent.

¶ 34 Anessia testified that, in order to start her business preparing the certifications, she would "start a website" and "advertise with the Florida State Workforce Agency." Anessia

acknowledged that, when she first started her own business, she would not be making any money. She also acknowledged that she had never run her own business and had never been self-employed before. She said that she would seek the advice of two friends who had started businesses in Florida: one ran a massage business and the other had a bridal shop.

¶ 35 Anessia testified that she had signed a noncompetition clause with her current employer. But she said that the clause would not stop her from running her H-2A business in Florida because the human resources department at her company said it would not. She also said that other analysts had left to run the same type of business in the past. She had not read the clause since she signed it in August 2011.

¶ 36 Anessia said that, if her plan to be self-employed did not work out, she would continue to review H-2A applications in Florida. She testified that she could seek a job with the Florida State Workforce Agency or Central Florida Career Source. She had not had any conversations with either of these two agencies.

¶ 37 Anessia also testified that she wanted to go back to school. She had an associate's degree in general studies at the time of the hearing and wanted to obtain a bachelor's degree in psychology. She had been accepted to the University of South Florida.

¶ 38 Anessia said she did not apply to any schools in Illinois "[m]ainly" because of the cost. Anessia had looked into applying to the University of Illinois at Chicago but it cost about $16,500 for two semesters, whereas the University of South Florida cost about $6,500 for two semesters. Anessia testified that her mother or sister could watch T.G. while she attended classes. On cross-examination, Anessia testified that she got good grades in college but she did not apply for any scholarships to any schools in Illinois. She said that she was eligible for one scholarship

at an Indiana school that would give her $3,000 for one semester. She did not apply for that scholarship because she did not have the means or time to travel to Indiana.

¶ 39 Anessia testified that T.G. acted "[a]ggressively" and "very defiant" toward her. She said that this behavior began in June 2013, when T.G. was around five years old. Anessia told Michael about T.G.'s issues, but Michael did not respond. Anessia said that T.G. became "much more accepting and warm" toward her after he began to have supervised visitation with Michael.

¶ 40 Anessia testified that T.G. had been admitted to an inpatient program in early 2015 after he ran into Anessia's room with a knife. T.G. stayed in the hospital for about a week and a half. T.G. attended therapy with Dr. Connie Bernt twice a week to deal with his aggression. Anessia said that Michael had only been present for one of T.G.'s therapy sessions in February 2014.

¶ 41 Anessia testified that she planned to continue sending T.G. to therapy if they moved to Florida. Anessia planned to enroll T.G. in equine therapy (*i.e.*, therapy with horses) in Florida. She thought equine therapy would let T.G. "open up more instead of just one-on-one therapy with the therapist." There was an equine therapy center located in Dade City itself. Anessia said that she had not enrolled him in equine therapy in Illinois because the closest place for equine therapy was one hour away from her, there was a wait list to go there, and it was "very expensive." Anessia had discussed equine therapy with Dr. Bernt; Bernt told Anessia that "it could work."

¶ 42 Anessia said that she also looked into individual therapy for T.G. in Florida, but the therapists she had contacted had either been on vacation or were not accepting new patients.

¶ 43 At the time of the hearing, T.G. attended Havlicek Elementary School in Berwyn. Anessia testified that T.G. did not have many friends at school because most of them spoke Spanish. Anessia said that T.G. played with "[o]nly one" child in the neighborhood and that T.G.

did not see her "very often at all." Anessia said that she had never invited any of T.G.'s friends over to her house.

¶ 44 Anessia said that a rating she found of Havlicek online said that it was a "failing school." At the time of the hearing, T.G. was scheduled to attend Havlicek in the fall. On cross-examination, Anessia acknowledged that she had control over where T.G. went to school in Illinois.

¶ 45 Anessia looked into a charter school in Dade City called Academy at the Farm, which she thought would be better for T.G. T.G. had not been accepted to Academy at the Farm, and the school had a wait list for admission. She did not know how long it could take before T.G. would be accepted to that school.

¶ 46 At the time of the hearing, T.G. was not participating in any extracurricular activities or sports. He briefly attended karate classes in March 2014, but Anessia took him out of those classes. Anessia acknowledged that T.G. had expressed an interest in playing soccer, but she had not enrolled him in soccer. Anessia said that she had not enrolled him in any activities in part because Michael had complained that he did not want them to interfere with his parenting time. She also said that she did not have the money for extracurricular activities. When asked to explain that in light of her $73,000 per year salary, she said that, after deductions for taxes, insurance, and attorney fees, she did not "have any extra money."

¶ 47 Anessia proposed that, if she and T.G. moved to Florida, Michael would initially continue supervised visitation with T.G. Michael could visit twice a month, on Saturdays and Sundays for eight hours. Michael's current visitation was three hours on Wednesday and Saturday.

¶ 48 Anessia acknowledged that Michael would have to fly to Florida to see T.G. She estimated the cost to travel would be approximately $600 per visit, which included a $250 plane ticket, a $150 hotel for the weekend, and a $100 to $120 rental car. She agreed that she did not factor in the cost of the supervisor for Michael's visits, which Michael would have to cover. She also did not factor in the cost of food or of entertainment for T.G.

¶ 49 Anessia said that, if Michael could not afford to travel to Florida, she would waive child support payments, including the payment of child support arrearages, for "a year or two." Michael's monthly child support obligation was $250; his arrearage payments were $42.75 biweekly. She said that, if Michael worked on the weekends, he could have visitation with T.G. for a longer period of time during the summer or during T.G.'s Christmas vacation or spring break.

¶ 50 Dr. Michael Fields, a clinical and forensic psychologist, testified as an expert in that field. Fields testified that he began seeing Anessia once a week in April 2015. He said that Anessia's main issues were the conflict with Michael over custody of T.G. and the behaviors that T.G. had exhibited toward her. Anessia told Fields that Michael had been "doing whatever he [could] to alienate [T.G.] from her, destroy or damage the relationship of mother and son." Anessia told Fields that Michael told T.G. that he did not have to listen to Anessia. She also told Fields that Michael bought T.G. toys and gave him "what he wants," so that it was difficult for her to set limits when T.G. was with her. Fields acknowledged that he had never met Michael or T.G.

¶ 51 Fields had diagnosed Anessia with mild, situation-based depression. He believed that this depression would improve if she moved to Florida with T.G.

¶ 52 Fields opined that Anessia and T.G. moving to Florida would be "the appropriate thing to do at this point in time." Fields said that Anessia would be "more comfortable" in Florida, that

she could continue her education there, and that more of her family would be close to her. Fields also noted that, even if Anessia did not go to Florida, her parents were going to move there. According to Fields, this would require Anessia to put T.G. into day care, to potentially work fewer hours, and to be "completely alone."

¶ 53 Dr. Bernt testified that she is a licensed clinical psychologist and a certified school social worker.[1] Bernt began seeing T.G. in September 2013, when he was six years old. Anessia brought T.G. to see Bernt because she was concerned with his behavior, his tantrums, and the fact that he had threatened other children at school.

¶ 54 Bernt used play therapy to treat T.G., which involved her observing T.G. and asking him questions while T.G. played. Bernt testified that, when she first began treating T.G., he was "very bullying and demeaning" toward her, and he called her names and threatened her if he did not get to do what he wanted. She testified that T.G. tried to hit her twice and told her that if she crossed a "barrier" he made, she would be electrocuted and killed. He also displayed very destructive and angry behavior toward a mother doll that Bernt had him play with. Bernt testified that she had never seen a child act so negatively toward one parent.

[1] The record on appeal does not contain a transcript of the direct examination of Dr. Bernt at the removal hearing. But the parties agree that her testimony mirrors testimony she gave at a hearing several months earlier, which is included in the record. Moreover, the circuit court detailed the testimony of Dr. Bernt at length, and its recitation of her testimony is consistent in every material way with the parties' description of her testimony. For these reasons, we will consider Dr. Bernt's direct examination testimony at the prior hearing as her direct examination testimony at the removal hearing.

¶ 55 Bernt diagnosed T.G. with oppositional defiant disorder. The symptoms of that disorder included defiance toward authority, argumentativeness, anger, throwing temper tantrums, and blaming others for his or her behavior. T.G. displayed all of these symptoms.

¶ 56 Bernt also believed that T.G. was "very alienated from his mother." She believed that T.G. was somehow "getting the notion that he can only love one parent" from some source in his environment. Bernt testified that T.G. called Anessia "evil," said that he wanted to stay with Michael, and said that a person could only love one parent, all of which were comments that Bernt believed to show T.G.'s alienation from Anessia. When Bernt asked T.G. why he could only love one parent, he yelled at her and kicked a filing cabinet. Bernt acknowledged that alienation is not a disorder contained in the Diagnostic and Statistical Manual (DSM-5).

¶ 57 Bernt testified about several meetings she had with Michael. At the first meeting, Michael told Bernt that T.G. did not need therapy. When Bernt suggested to Michael that the custody battle between him and Anessia was detrimental to T.G., Michael said that "he was going to fight for more visits anyway."

¶ 58 At another meeting in June 2015, Michael told Bernt that Anessia's father had grabbed T.G.'s wrist and that Anessia's father was a convicted felon. Bernt said that she was not concerned about T.G. being abused, and Michael responded that Bernt would "wait until [T.G.] was hurt or killed before [she] reported anything."

¶ 59 Bernt and Michael discussed setting limits for T.G. Michael told Bernt that he had taken away snacks from T.G. as a punishment, which Bernt did not agree with doing. In response, Michael "became defensive" and said what he did was right for T.G.

¶ 60 Michael also told Bernt that he used timeouts to discipline T.G. Bernt also watched a video in which Michael tried to get T.G. to do his homework. Bernt told Michael that T.G. could be very defiant, but Michael did not agree.

¶ 61 Bernt believed that it would be in T.G.'s best interest to move to Florida with Anessia.

¶ 62 Fernando Angel Arce, the supervisor for Michael's visitation with T.G., testified that he began supervising them in November 2014. Arce testified that, when Michael arrives to pick up T.G., T.G. is excited and runs to him. T.G. displayed affection toward Michael and told Michael that he missed him.

¶ 63 Arce testified that T.G. did not act out toward Michael. Arce said that T.G. sometimes did not want to do his homework, but he would eventually do it. Arce also said that T.G. typically listened to Michael. He had never seen Michael hit T.G. Arce said that T.G. and Michael played video games together, but that they were not violent.

¶ 64 Arce testified that T.G. would act up on the way back to Anessia's house. T.G. would speak loudly, kick the seats in the car, and say that he did not want to go home. Arce testified that, on one occasion, T.G. said he did not want to go home and "just took off running."

¶ 65 Michael paid Arce for supervising his visits. Arce charged $60 per hour, and Michael visited with T.G. six hours per week.

¶ 66 Dr. Frederick Yapelli, a clinical psychologist, testified that he provided therapy to Michael. Yapelli was assigned to provide Michael with anger-management techniques. Yapelli noted that, while Michael was still angry regarding the custody issues, Michael had progressed and become warmer, calmer, and "easier to deal with." Yapelli believed that Michael accepted the diagnosis of oppositional defiant disorder that Dr. Bernt had given T.G.

¶ 67 Yapelli also addressed the issue of alienation with Michael. Yapelli told Michael that he "should never say anything negative about" Anessia and should not buy things for T.G. that alienate him from Anessia. Yapelli testified that Michael understood "that he has to be very careful about any kind of thing that might be interpreted or lead to an alienation concern."

¶ 68 Yapelli said that he had been involved with divorces where a child has some negative feelings toward a parent, but he had never "really seen" parental alienation. Yapelli testified that parental alienation was not a diagnosis recognized in the DSM-5. Yapelli estimated that he had worked with about 100 divorced couples and about 60 of those couples had some alienation issues.

¶ 69 Yapelli asked to see Michael and T.G. together in order to observe their interactions, but he was denied permission to do that.

¶ 70 Michael testified that he opposed T.G. moving to Florida. Michael believed that T.G. needed stability in his life and that T.G. would be "very, very sad" if he got to spend even less time with him.

¶ 71 Michael also testified that T.G. would miss his friends at school if he moved. On cross-examination, Michael named two of T.G.'s friends as children named Myra and Thaddeus. He added that T.G. had listed eight or nine other friends in his journal.

¶ 72 Michael had visitation with T.G. from 4 p.m. to 7 p.m. on Wednesdays and from 12 p.m. to 3 p.m. on Saturdays. Michael testified that he helped T.G. with his homework and took him to the park to play. T.G. liked playing baseball and Frisbee in the park. Michael said that he had only missed visits with T.G. when the supervisor was not available.

¶ 73 Michael said that he initially had unsupervised visitation with T.G., but that the visitation became supervised pursuant to a court order.

¶ 74 Michael testified that, in the past month or two before the hearing, he had noticed T.G.'s behavior getting worse during his visits. Michael said that T.G. said that Michael could not tell him what to do, that Michael was "a bad dad," that Michael was an "idiot." T.G. refused to do his homework or eat his dinner. T.G. had also had tantrums where he threw pillows. When he had to discipline T.G., Michael used timeouts.

¶ 75 Michael also testified that T.G.'s behavior at school had deteriorated. The school had reported that T.G. had called other children names, ran out of class without permission, left school grounds during recess, and threatened to blow up the school on more than one occasion. Michael said that T.G. was suspended for leaving the school. Michael did not believe that going to a different school would be in T.G.'s best interests because T.G. had friends at school and the school's administrators were aware of T.G.'s behavioral problems.

¶ 76 On cross-examination by the GAL, Michael acknowledged that T.G. had been having problems at school for a long time. When asked why he thought T.G. was having problems, Michael said that "[a] lot would have to do with his age," noting that T.G. was still "very young." He added that T.G. is "very upset" about the family "not being together," about Michael and Anessia being divorced, and about not seeing Michael often.

¶ 77 Michael testified that T.G. also expressed a desire to see Michael's mother and stepfather, whom the court prohibited from contacting T.G. When T.G. said he wanted to see them, Michael explained that he could not see them but that they could hopefully see each other again soon.

¶ 78 Michael said that he first heard of T.G. having problems in school two weeks before the hearing. He said that he did not receive any information about T.G. from Anessia. Michael testified that he learned that T.G. had been diagnosed with oppositional defiant disorder only

after subpoenaing T.G.'s medical records. Michael denied believing that there was nothing wrong with T.G.

¶ 79 Michael testified that he made $15,000 per year working as a security guard. He said that, even if Anessia waived child support payments, he could not afford to travel to Florida to visit T.G. twice a month. Michael paid $230 per month in child support and $92.63 per month in arrearages for medical and school expenses for T.G. Michael also paid $60 per hour for the supervisor for his visitation with T.G.

¶ 80 Michael also said that having to visit T.G. in Florida would hinder his search for a second job and his ability to further his education. Michael testified that he had applied for many other positions but had not gotten a second job. Michael had a general equivalency diploma (GED) but he had not gone to college.

¶ 81 Michael testified that he could not maintain the visitation schedule proposed by Anessia if she and T.G. moved to Florida. Michael worked 12-hour shifts on Friday and Saturday night and an 8-hour shift on Sunday night. Michael said that he was unable to change his schedule to free up his weekends.

¶ 82 Michael testified that his mother and stepfather were not allowed to see T.G. Michael did not speak to his biological father, but T.G. had mentioned seeing him on "a couple of occasions."

¶ 83 David Goldman, the GAL, testified that he had been appointed to this case in early 2014. Goldman said that he was not initially in favor of removal. But he noted that T.G.'s behavior had become significantly worse and "that he is headed very much so in the wrong direction." Because of this deterioration, Goldman was in favor of T.G. and Anessia moving to Florida. He said that the move was "probably as good a thing to do as anything else, because the current situation *** is not working for this child at all."

¶ 84 On March 9, 2016, the trial court granted Anessia's petition for removal. After summarizing the testimony of the witnesses, the court cited several portions of Dr. Gardner's 604(b) report, noting that the court had to see if "anything ha[d] changed" regarding Michael's behavior.

¶ 85 The court noted that, as part of the marital settlement agreement, Michael was required to attend therapy and to give his therapist a copy of the 604(b) report. The court found that Michael had failed to comply with that requirement by not beginning therapy until December 2014 and not giving Dr. Yapelli a copy of the report.

¶ 86 The court also found that Michael continued to take the position that T.G. "has no problems and any problems he has [are] because of" Anessia. The court noted that it was only at the end of his testimony that he acknowledged that T.G. had issues requiring professional help and that Michael "still maintain[ed] that there [was] no way to determine whether [they are] caused by [Anessia] or not."

¶ 87 The court noted that Michael's mother and stepfather had been prohibited from seeing T.G. The court wrote, "Neither the paternal grandmother nor the paternal stepfather testified at trial to rebut any of the suggestions that they are openly hostile toward Anessia which is conveyed to T.G. and only adds to T.G's behavioral issues."

¶ 88 The court then made several express credibility determinations. The court found both Dr. Bernt and Anessia to be credible and gave their testimony "great weight." The court noted that Bernt's testimony was entitled to great weight because of "the amount of time she ha[d] spent with T.G. speaking with him and observing his behavior." The court also found Dr. Fields to be credible, although it did not offer an explanation for that finding.

¶ 89 The court found Arce and Dr. Yapelli to be credible but gave "little weight" to their testimony. With respect to Arce, the court explained that it was "quite reasonable to believe that Michael is on his best behavior when his conduct and comments to his child are being supervised by a third party." And with respect to Yapelli, the court noted that his testimony was based on "the self-reporting of Michael" and that Yapelli lacked "background information he was provided, such as the 604(b) evaluation prepared by Dr. Gardner, which Michael was required to tender to his therapist and failed to ***."

¶ 90 Finally, the court found that Michael was not credible. Acknowledging that Michael loved T.G., the court found that he did "not appreciate how his open hostility for his ex-wife negatively affects his son's emotional well-being." The court noted that Michael had "done little" to improve his relationship with Anessia or to acknowledge that his conduct may have caused T.G.'s behavioral issues. While the court recognized that Michael acknowledged T.G.'s issues "near the end of his testimony," the court stressed that, until that point, Michael had "been consistent throughout these proceedings *** that his son had no problems, didn't need counseling and can be remedied simply with more parenting time with himself." And the court pointed out that, while Michael testified that he learned of T.G.'s behavioral issues "two or three weeks before his testimony," he also "acknowledged that Anessia told him about [T.G.'s] behavior in 2013."

¶ 91 After making these credibility determinations, the court then turned to the question of whether removing T.G. to Florida would be in T.G.'s best interest, relying on the five factors laid out by the Illinois Supreme Court in *In re Marriage of Eckert*, 119 Ill. 2d 316, 326-27 (1988): (1) the likelihood that the move will enhance the custodial parent's and child's quality of life; (2) the custodial parent's motives in seeking to move; (3) the noncustodial parent's motives is resisting

the removal; (4) the effect of removal on the noncustodial parent's visitation rights; and (5) whether a reasonable visitation schedule can be reached if removal is permitted.

¶ 92 The court found that T.G. and Anessia would have a better quality of life in Florida. The court found that the "significantly greater maternal family support network in Florida" would be particularly helpful for Anessia and T.G. because of T.G.'s emotional issues. And the court noted that, even if Anessia did not move, her parents were leaving for Florida anyway, meaning that Anessia and T.G. would lose out on their "parenting and financial assistance."

¶ 93 Along with the additional support of her family, the court found that Anessia and T.G. would have an improved quality of life in Florida because Anessia could further her education for less money in Florida, Anessia's proposed self-employment would "allow her a more flexible work schedule to accommodate T.G.'s daily needs," T.G. would be transferring from his "poorly performing school in Berwyn" to a "highly rated school in Florida," and Anessia could "explor[e] horse therapy for [T.G.'s] emotional well-being."

¶ 94 Next, the court turned to Anessia's motive in seeking to remove T.G. The court found her motives to be "sincere," citing her desire to have more family around T.G., her plan to move T.G. to a better school, and her plans to become self-employed.

¶ 95 The court also found Anessia's motives in seeking removal as a sincere attempt to remove T.G. from an environment in which Michael and Victoria "refus[ed] to foster a healthy relationship with Anessia." The court found that Michael had maintained that T.G. did not need therapy even though T.G. had engaged in "extreme conduct" such as threatening to blow up his school twice. The court noted that Victoria and her husband were "openly hostile in attempting to prejudice T.G. against" Anessia and that "the record [was] silent as to Michael taking any steps to limit contact or protect T.G. from such negative interactions with his mother and

stepfather." And the court noted that T.G.'s hostility toward Anessia had improved since Michael's visitation became supervised and Victoria had been prohibited from contacting T.G.

¶ 96 By contrast, the court found that Michael's motives in objecting to T.G.'s removal were "not genuine" and were not based on a desire to enhance T.G.'s quality of life. The court acknowledged that Michael and T.G. were bonded to each other and that removal would disrupt their relationship. But the court found that Michael had "done nothing" to improve his relationship with Anessia and that it was "unclear whether he believes that T.G. has any emotional problems that require counseling." The court again credited the improvements to T.G.'s behavior to the fact that Michael's visitation became supervised and the fact that Victoria and her husband were prohibited from contacting T.G. And the court questioned Michael's commitment to helping T.G. resolve his emotional issues because he refused to acknowledge that "it serves his son's well-being to foster a healthy relationship with Anessia."

¶ 97 Turning to the effect of removal on Michael's parenting rights, the court acknowledged that the move would have a "negative impact on Michael's parenting time." But the court also noted that Michael had "parenting time that he [did] not exercise, which he claims is either due to the cost involved and/or his inability to get off work."

¶ 98 Finally, the court considered whether a reasonable visitation could be reached if T.G. and Anessia moved to Florida. The court found that Michael had not "made any good faith attempt to seriously consider Anessia's proposed visitation schedule." The court noted that Michael insisted that the weekend visitation proposal would not work even if Anessia agreed to waive child support and arrearage payments. The court also noted that the new proposal would give Michael more visitation time than he received at the time, and that Michael had not "offered any proposal of his own."

¶ 99 Based on those findings, the court granted Anessia's petition to remove T.G. to Florida.

¶ 100 The court entered an amended order granting Anessia's petition on March 21, 2016. The substance of the court's findings in the amended order remained the same. The court further ordered that Anessia could relocate immediately, that Michael was excused from paying child support for two years in order to visit T.G. in Florida, and that there was no just reason to delay appeal of the order.

¶ 101 C. Victoria's Motion to Intervene

¶ 102 On January 25, 2016, after the hearing on the removal petition had concluded but before the court had ruled on it, Victoria filed a motion seeking to intervene in the case "pursuant to the Illinois Code of Civil Procedure, 735 ILCS 5/2-406." Victoria noted that she was T.G.'s paternal grandmother, and that the court had "entered orders which have directly impacted her life."

¶ 103 The court held a hearing on Victoria's motion on March 11, 2016, after its initial grant of the removal petition had been entered, but before the court had entered its amended version of that order.

¶ 104 Victoria's counsel stated that Victoria would "like to try and reestablish some kind of connection with" T.G. She also noted that the removal order referred to Victoria several times but that Victoria had not been heard in the case. Victoria's counsel said that Victoria had also not had an opportunity to speak to the GAL or Dr. Gardner. She also noted that, because of the order prohibiting Victoria from contacting T.G., she had to leave her house every time Michael had visitation, as Michael lived with Victoria.

¶ 105 The court noted that it had discretion in deciding whether a party may be joined in an action under section 2-406 of the Code of Civil Procedure (735 ILCS 5/2-406 (West 2016)). The court said that Victoria's testimony "may have been helpful" in deciding the removal petition,

but that that proceeding had already concluded. The court also noted that any visitation Victoria used to have was during Michael's visitation time; she did not have an independent right to visitation. Thus, the court stated, "[L]et's sort of right the ship with Michael *** and perhaps [then] they [can] resume whatever *** relationship they had ***." The court denied Victoria's motion to intervene.

¶ 106 Michael appealed from the trial court's March 21, 2016 grant of Anessia's petition to remove T.G. in case number 1-16-0793. Victoria appealed from the trial court's denial of her motion to intervene in case number 1-16-0791. We consolidated those two appeals.

¶ 107 II. ANALYSIS

¶ 108 A. Parties' Statements of Facts

¶ 109 Before reaching the merits of this appeal, we must address the parties' statements of fact contained in their respective briefs. Illinois Supreme Court Rule 341(h)(6) (eff. Jan. 1, 2016) requires the parties' briefs to contain a statement of facts containing "the facts necessary to an understanding of the case, stated *accurately and fairly* without argument or comment." (Emphasis added.) Both sides complain about the other's statements of fact, alleging that they are not fair representations of the record.

¶ 110 Both sides have failed to adhere to Rule 341(h)(6). Both briefs omit important facts that do not support the parties' respective arguments. For example, Michael and Victoria's summary of Dr. Gardner's report omits any reference to Gardner's discussion of the incident in which Michael took T.G. from Anessia's home without telling her. And the discussion of Angel Arce's testimony in Anessia's brief makes no mention of his testimony that favored Michael; it simply says that Arce was paid $60 per hour and that Arce had seen Michael show videos of Victoria to T.G.

¶ 111 A one-sided presentation of the facts places an unnecessary burden on this court and engenders mistrust in the legal system. Nor does it do the parties any favors—we will certainly not look any more favorably on an argument supported with a skewed version of the record than one with a balanced presentation of the facts. Both parties are hereby admonished to accurately represent the record in any future proceedings in this court. In our discretion, we decline to impose sanctions on either party. Ill. S. Ct. R. 375(a) (eff. Feb. 1, 1994).

¶ 112 We now turn to the merits.

¶ 113 B. Removal

¶ 114 Michael argues that the trial court's grant of Anessia's removal petition should be reversed because the trial court applied the incorrect legal standard in assessing the petition. He notes that the legislature passed Public Act 99-90 (eff. Jan. 1, 2016) (adding 750 ILCS 5/609.2), which added 11 factors that a court must consider when ruling on a petition to allow a parent to relocate with a child, before the trial court ruled on Anessia's petition on March 21, 2016. Defendant argues that these 11 factors replaced the 5 factors the Illinois Supreme Court enumerated for consideration of a removal petition in *In re Marriage of Eckert*, 119 Ill. 2d 316, 326-27 (1988). Defendant argues that the trial court's order should be vacated for this reason alone.

¶ 115 We agree that the factors set out in section 609.2(g) of the Illinois Marriage and Dissolution of Marriage Act (the Act) (750 ILCS 5/609.2(g) (West 2016)) should have governed the trial court's consideration of Anessia's petition for removing T.G. to Florida. Public Act 99-90 became effective on January 1, 2016, before the trial court entered its order granting Anessia's petition. And according to section 801(b) of the Act (750 ILCS 5/801(b) (West 2016)), an amendment to the Act "applies to all pending actions and proceedings commenced prior to its

effective date with respect to issues on which a judgment has not been entered." See *In re Marriage of Smith*, 162 Ill. App. 3d 792, 795 (1987) (noting that, while section 801 refers to applicability of the Act as a whole, "it has been held that this section applies to amendments as well"). Because the trial court had not yet entered judgment on the issue of T.G.'s relocation when section 609.2 was added to the Act, the new provision applied to the case.

¶ 116 But we disagree with Michael that the trial court's application of the incorrect legal standard alone necessitates reversal. This court has held that, even when a trial court applies an incorrect standard, we may affirm the trial court's judgment if it would have been the same under the correct standard. See, *e.g.*, *Doe v. University of Chicago Medical Center*, 2015 IL App (1st) 133735, ¶ 50 (considering correctness of trial court's ultimate conclusion on motion because, "even if the trial court employed an incorrect standard, *** we may affirm the trial court's ruling *** as long as a sufficient basis appears in the record"); *People v. English*, 2013 IL App (4th) 120044, ¶ 14 ("[E]ven if the trial court did apply the incorrect standard in evaluating defendant's *** motion, we will affirm the denial if we find that the result would have been the same had the trial court applied the correct standard."). Thus, we must determine whether, under the correct standard laid out in section 609.2, the trial court's decision was correct.

¶ 117 When reviewing a trial court's decision on a petition to relocate a child out of the state, we apply a manifest-weight-of-the-evidence standard of review. *Eckert*, 119 Ill. 2d at 328. A finding is against the manifest weight of the evidence if the opposite conclusion is clearly evident or the finding itself is unreasonable, arbitrary, or not based on the evidence presented. *Best v. Best*, 223 Ill. 2d 342, 350 (2006).

¶ 118 When considering a trial court's decision on a removal petition, we must be mindful that "[t]he circuit court had the best opportunity to observe the parties and assess their personalities

and capabilities." *In re Marriage of Guthrie*, 392 Ill. App. 3d 169, 174 (2009). Thus, we defer to the trial court's credibility determinations. *In re Marriage of Stahl*, 348 Ill. App. 3d 602, 613 (2004). And even if we could reach a different conclusion by rebalancing the factors considered by the trial court, it is not our place to do so. See *In re Marriage of Pfeiffer*, 237 Ill. App. 3d 510, 513 (1992) (when considering removal, "[i]t is not the function of this court to *** set aside the trial court's determination merely because a different conclusion could have been drawn from the evidence").

¶ 119 Section 609.2(g) states that a decision to permit or to refuse to permit a parent to relocate should be made "in accordance with the child's best interests." 750 ILCS 5/609.2(g) (West 2016). It lists 11 factors that the trial court must consider in making that determination:

> "(1) the circumstances and reasons for the intended relocation;
>
> (2) the reasons, if any, why a parent is objecting to the intended relocation;
>
> (3) the history and quality of each parent's relationship with the child and specifically whether a parent has substantially failed or refused to exercise the parental responsibilities allocated to him or her under the parenting plan or allocation judgment;
>
> (4) the educational opportunities for the child at the existing location and at the proposed new location;
>
> (5) the presence or absence of extended family at the existing location and at the proposed new location;
>
> (6) the anticipated impact of the relocation on the child;
>
> (7) whether the court will be able to fashion a reasonable allocation of parental responsibilities between all parents if the relocation occurs;

(8) the wishes of the child, taking into account the child's maturity and ability to express reasoned and independent preferences as to relocation;

(9) possible arrangements for the exercise of parental responsibilities appropriate to the parents' resources and circumstances and the developmental level of the child;

(10) minimization of the impairment to a parent-child relationship caused by a parent's relocation; and

(11) any other relevant factors bearing on the child's best interests." *Id.*

We discuss each of these factors in turn.

¶ 120 1. Circumstances and Reasons for Relocation

¶ 121 The trial court considered the circumstances and reasons for Anessia's relocation plan, finding her reasons to be "sincere." The court noted that Anessia wanted to be closer to her family, particularly her parents, who could help her take care of T.G. and offer her financial support as they did in Illinois. The court also believed that Anessia wanted to relocate in order to further her education, as she had been accepted to the University of South Florida, and to pursue the possibility of self-employment, which would give her more flexible schedule to spend time with T.G.

¶ 122 The trial court's conclusion regarding Anessia's reasons for relocation was based largely on its finding that Anessia was credible and sincere. We defer to that finding (*Stahl*, 348 Ill. App. 3d at 613) and see nothing in the record to conclude that the trial court's credibility determination was unreasonable or not based on the evidence.

¶ 123 Michael contends that the trial court overemphasized "the importance of the support to be provided by Anessia's family." We disagree. Anessia testified that her parents provided her with

critical support in raising T.G., watching T.G. when she could not. And she testified that her parents paid nearly half of her rent, giving her significant financial support.

¶ 124 Critically, Anessia's parents were moving to Florida regardless of whether Anessia and T.G. accompanied them. Thus, if removal were denied, Anessia would be left not only having to pay double the rent she currently paid, but also having to pay for daycare for T.G. This substantial increase in costs would directly impact T.G., as it would place further strain on his family's finances. Nor does it appear that Michael could help bear the additional cost of supporting T.G.; he had already fallen behind on paying T.G.'s medical and education expenses and expressed concern about his ability to afford trips to Florida to visit T.G.

¶ 125 Michael also argues that the record undermines the notion that Anessia was sincere in her motives because she did not attempt to apply to any universities in Illinois and she engaged in "consistent motion practice *** seeking to limit Michael's involvement with T.G." But Anessia explained that she did not apply to schools in Illinois because they were cost-prohibitive. And the motions that she filed, as best we can tell, appeared to be based on her genuine concern that Michael and Victoria were attempting to alienate T.G. from her.

¶ 126 Moreover, Michael has made no argument that the trial court erred in granting any of the motions that he claims show Anessia's insidious motives. He has thus forfeited any claim that those motions were improper, or that the trial court's rulings on them were incorrect. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); *People v. Myers*, 386 Ill. App. 3d 860, 863 (2008) (points not raised on appeal are forfeited).

¶ 127 The trial court was better-positioned to assess the sincerity and merit of these motions and to assess Anessia's credibility at the hearing. We decline to second-guess the court's determination that Anessia's reasons for seeking relocation were sincere.

¶ 128 2. Reasons for Objecting to Relocation

¶ 129 The trial court also considered Michael's reasons for objecting to removal, expressly stating that they were "not genuine." The court reached that conclusion largely because Michael had not made efforts to foster a better relationship with Anessia.

¶ 130 That conclusion is supported by the record. The highly contentious nature of Michael and Anessia's relationship appeared to be fueling T.G.'s behavioral problems. Yet, at the hearing on the removal petition, Michael testified that he still had no contact with Anessia. And Dr. Bernt opined that T.G.'s highly negative behavior toward T.G. was likely the result of things that Michael had told him. The trial court was reasonable in concluding that Michael had not recognized the problem that his conflict with Anessia posed for T.G.'s mental health.

¶ 131 Michael contends that the trial court improperly found that he was doing nothing to improve his relationship with Anessia because he was attending therapy. While Dr. Yapelli, Michael's therapist, testified that Michael understood not to say negative things about Anessia in T.G.'s presence, Yapelli did not mention anything that Michael did to try to improve his relationship with Anessia. Even if Michael had stopped denigrating Anessia in front of T.G., the trial court could conclude that Michael did not take active steps to reach out to Anessia and improve their relationship.

¶ 132 Michael also testified that he thought staying would be in T.G.'s best interests because it would provide stability in his life. But the record indicates that T.G. was not improving. He was getting into trouble at school, making violent threats to teachers and students. The status quo did not appear to be helping T.G. Thus, the trial court was reasonable in discounting Michael's stability rationale.

¶ 133 3. History and Quality of Parents' Relationship with Child

¶ 134 The third factor listed in section 609.2(g) is "the history and quality of each parent's relationship with the child and specifically whether a parent has substantially failed or refused to exercise the parental responsibilities allocated to him or her under the parenting plan or allocation judgment." 750 ILCS 5/609.2(g)(3) (West 2016).

¶ 135 The court found that T.G. would benefit from Anessia's self-employment in Florida, as it would give her a more flexible schedule to attend to T.G. The court also found that Anessia's family could provide an important support network for T.G. in Florida. Clearly, the trial court considered Anessia's relationship with T.G. to be a positive one. The record supports that finding, as Anessia actively pursued attempts to improve T.G.'s well-being, including taking him to therapy. Anessia also testified that T.G. had begun to warm up to her since his visits with Michael became supervised.

¶ 136 Michael argues that the trial court erred in finding that Anessia and T.G. had a positive relationship, as Anessia admitted to using corporal punishment on T.G. It is true that, at the time Dr. Gardner filed her section 604(b) report, Anessia was spanking T.G. with a paddle. But since the JDM/MSA ordered Anessia to cease using corporal punishment in February 2014, there were no indications that Anessia had used any corporal punishment on T.G. Dr. Bernt had no concerns with T.G. being abused. Thus, the trial court could reasonably conclude that Anessia had improved her parenting skills by ceasing any corporal punishment.

¶ 137 With respect to Michael and T.G.'s relationship, the court found that they had a "good but limited relationship with one another." But the court also found that Michael had fostered T.G.'s negative behavior by disparaging Anessia around T.G. and that Michael had "ignored court orders that there would be no contact between T.G. and the paternal grandmother and her husband." Furthermore, the court expressed skepticism regarding Michael's recognition of

T.G.'s mental problems, citing Michael's belief that T.G. would improve simply if he had more time with Michael.

¶ 138 Michael contends that the trial court made several factual errors in its rulings regarding Michael's compliance with his responsibilities under the JDM/MSA. Michael notes that the trial court erred in finding that Michael had not complied with the requirement that he attend therapy, when the record shows that he began therapy within 30 days of the entry of the JDM/MSA. Michael also contends that the trial court incorrectly found that he failed to deliver a copy of Dr. Gardner's 604(b) report to his therapist as required by the JDM/MSA and that Michael's visitation had been suspended for 12 months. Taking the last alleged error first, we agree with Anessia that it is highly likely that the trial court meant to write "supervised" rather than "suspended" when discussing Michael's visitation, as that one-word change would make the sentence factually correct. In any event, even if we accepted Michael's argument that these factual findings were in error, these points were not the major points of emphasis in the trial court's consideration of this factor. The most critical points were T.G.'s strong relationship with Anessia and Michael's behavior in alienating their son from their mother. Overall, we find that this factor weighs in favor of removal.

¶ 139 4. Educational Opportunities

¶ 140 The next factor is the educational opportunities available to the child at his current location and the proposed new location. 750 ILCS 5/609.2(g)(4) (West 2016).

¶ 141 This factor played a large part in the trial court's decision, as the trial court noted that T.G.'s school in Berwyn was poorly rated, whereas the school in which Anessia planned to enroll him in Florida was highly rated.

¶ 142 Michael contends that the trial court's findings regarding T.G.'s education were "based on speculation" because T.G. had not been accepted to the school in which Anessia planned to enroll him, and there was a wait list for admission to that school. But Michael ignores the fact that *any* plan prior to the trial court's grant of the removal petition would have been speculative. Anessia could not simply enroll T.G. in a school in Florida without having any idea whether they could move there.

¶ 143 And in any event, the record shows that Anessia had a backup plan other than the school with the waitlist. She had also looked into two other schools—"Wesley Chapel Elementary [and] Sand Pines Elementary"—in case T.G. was waitlisted. Anessia testified that these two schools were also "A schools." The trial court's finding that T.G. would have better educational opportunities in Florida was not against the manifest weight of the evidence.

¶ 144 Nor did the trial court err in concluding that the school that T.G. attended in Illinois was not meeting his needs. While Michael testified that T.G. should continue attending school in Berwyn because of the faculty's familiarity with T.G.'s behavioral problems, the record shows that T.G.'s behavior at school was not improving. He repeatedly threatened teachers, bullied other students, and left school without permission. Thus, it was not unreasonable for the trial court to conclude that T.G.'s behavioral problems were not being properly addressed at his school in Illinois.

¶ 145 5. Presence or Absence of Extended Family

¶ 146 The fifth factor is the presence or absence of extended family at the child's current location and proposed new location. 750 ILCS 5/609.2(g)(5) (West 2016).

¶ 147 This factor also weighed heavily in the court's decision to grant Anessia's removal petition. The court stressed the importance of having Anessia's extended family around T.G. if

they went to Florida. Particularly, the court noted that Anessia's sister had three young children with whom T.G. could develop relationships, something he did not have available to him in Illinois.

¶ 148 Moreover, the record showed that T.G.'s maternal grandparents were leaving Illinois regardless of whether Anessia and T.G. did. So if T.G. were to remain in Illinois, he would have no contact with his extended family on his mother's side. And the record shows that he would have limited contact with his extended family on Michael's side, as the court prohibited Victoria and her husband from having contact with T.G.

¶ 149 The trial court did not err in concluding that the presence of additional extended family in Florida weighed in favor of removal.

¶ 150 6. Anticipated Impact of Relocation

¶ 151 The next factor is the anticipated impact of the relocation on the child. 750 ILCS 5/609.2(g)(6) (West 2016).

¶ 152 The trial court found that T.G.'s relocation to Florida was likely to have a positive impact on him. The court found that T.G. would have an improved family network in Florida, that he would have improved educational opportunities in Florida, and that Anessia could explore using equine therapy to improve T.G.'s "emotional well-being."

¶ 153 The trial court also considered the possibility that moving to Florida would impact T.G. and Michael's relationship. The court acknowledged that T.G. and Michael were bonded to one another, but also found that Michael's "refusal to foster a healthy relationship with Anessia" was not helping T.G.'s emotional issues.

¶ 154 Reviewing the record of the removal hearing, we find that there was sufficient evidence to support the trial court's findings that moving to Florida might positively impact T.G. The

evidence shows that T.G. was struggling to control his behavior in Illinois and that the enhanced family network and educational opportunities in Florida may have a positive impact on his psychological issues.

¶ 155 The evidence also showed that T.G. and Michael were very close to one another, and that Michael was taking steps, however slight, to avoid alienating T.G. from Anessia. Certainly, T.G.'s moving to Florida and being further away from his father would have some detrimental impact on him. But simply because there was evidence supporting Michael's case against removal does not mean that the trial court's finding was against the manifest weight of the evidence. See *Scalise v. Board of Trustees of Westchester Firemen's Pension Fund*, 264 Ill. App. 3d 1029, 1035 (1993) (finding may not be against manifest weight of evidence even if there is "some evidence" contradicting it).

¶ 156 7. Reasonable Allocation of Parental Responsibilities

¶ 157 The seventh factor is whether the court will be able to fashion a reasonable allocation of parental responsibilities between all parents if the relocation occurs. 750 ILCS 5/609.2(g)(7) (West 2016).

¶ 158 The trial court acknowledged that "removal will certainly disrupt the relationship between Michael and T.G." But the court also found that Michael had not made "any good faith attempt to seriously consider Anessia's proposed visitation schedule." The court found that a reasonable visitation schedule could be reached in light of Anessia's offer to suspend Michael's obligation to suspend child support and his outstanding arrearages. The court's amended removal order suspended Michael's child support obligations for two years but required that he continue to pay $92 per month in arrearages.

¶ 159 Anessia proposed that Michael could visit T.G. in Florida two weekends of every month. She estimated the total cost of these trips to be over $1,000 per month.

¶ 160 Michael testified that he could not afford to make the trips, as he earned only $15,000 per year in gross salary. He also said that his weekend work schedule was inflexible. Thus, Michael said that visiting T.G. in Florida was unworkable.

¶ 161 The evidence at the hearing supports Michael's claim that he would not be able to see T.G. as much in Florida as he could in Illinois. The forbearance of child support payments would not nearly cover the cost of him traveling to Florida twice a month. Moreover, while Anessia suggested that Michael's visitation could eventually become unsupervised, thus eliminating Michael's obligation to pay $60 per hour for a supervisor, Michael would at least initially have to keep paying for a supervisor.

¶ 162 But we also note that, at the time of the removal hearing, Michael had very limited parental responsibilities. He saw T.G. only twice a week for a few hours. And the record showed that Michael had only recently become interested in T.G.'s problems at school. Thus, it was not unreasonable for the trial court to place limited weight on the fact that Michael may not have been able to exercise his parental responsibilities as fully as he did in Illinois.

¶ 163 8. Wishes of the Child

¶ 164 The eighth factor is "the wishes of the child, taking into account the child's maturity and ability to express reasoned and independent preferences as to relocation." 750 ILCS 5/609.2(g)(8) (West 2016).

¶ 165 T.G.'s wishes did not appear to factor into the court's decision. But T.G. was only six years old at the time of the hearing. And the record indicates that T.G. had significant emotional and behavioral problems, so much so that he threatened to kill teachers and blow up his school. It

would be unreasonable to conclude that a child of T.G.'s age, with T.G.'s issues, could make a reasoned decision regarding his relocation. We note that Michael makes no argument that the trial court should have considered T.G.'s wishes. We do not consider this factor to be relevant to T.G.'s relocation.

¶ 166 9. Possible Arrangements for Exercise of Parental Responsibilities

¶ 167 We have already discussed most of the parties' relevant arguments regarding the ninth factor—possible arrangements for the exercise of parental responsibilities (750 ILCS 5/609.2(g)(9) (West 2016))—in our above discussion of the ability to fashion a reasonable allocation of parental responsibilities. We find that this factor weighs against removal, as Michael would not be able to afford frequent visitation with T.G. in Florida.

¶ 168 10. Minimization of Impairment to Parent-Child Relationship

¶ 169 The tenth factor is the minimization of the impairment to a parent-child relationship caused by a parent's relocation. 750 ILCS 5/609.2(g)(10) (West 2016).

¶ 170 As we have already discussed above in the context of the seventh and ninth factors, T.G.'s relationship with Michael would be impaired by T.G. relocating to Florida. Michael would not be able to exercise the same level of visitation in Florida that he did in Illinois.

¶ 171 But the record shows that the trial court made efforts to minimize that impact by suspending Michael's obligation to pay child support for two years. And, as the court recognized in its written findings, the visitation schedule that Anessia proposed in Florida would give Michael more time per visitation than his visitation schedule in Illinois. Michael would be able to visit T.G. for 32 hours each month in Florida, whereas he only got about 24 hours per month with T.G. in Illinois.

¶ 172 Thus, it appears that the trial court made some efforts to minimize the impact of the move on Michael's relationship with T.G. We also note that Michael's relationship with T.G. in Illinois was fairly limited, as Michael only saw T.G. for a few hours twice a week, and their visits were supervised.

¶ 173 11. Any Other Factors

¶ 174 The trial court also considered the fact that T.G. would be able to continue his therapy in Florida. More specifically, the trial court noted that T.G. and Anessia could explore equine therapy in Florida more easily than in Illinois. Given T.G.'s lack of progress and resistance to therapy with Dr. Bernt, the opportunity to try a different type of therapy in a new setting was not an unreasonable factor to consider in support of relocation.

¶ 175 Michael places heavy emphasis on the fact that Anessia's employment situation would be far more uncertain in Florida than in Illinois. Anessia testified that she earned $73,000 per year in Illinois and that she planned to become self-employed in Florida. Michael argues that Anessia's ability to start her own business was limited as she had no experience in doing so.

¶ 176 We acknowledge that there was some uncertainty surrounding Anessia's ability to earn as much in Florida as she did in Illinois. But Anessia did not want to become self-employed simply because she wanted to earn more. She also testified that the ability to work from home would give her more time to attend to T.G.'s needs.

¶ 177 And it was not as though Anessia planned to start a business in an entirely foreign line of work. At the time of the hearing, she reviewed H-2A visa certifications for foreign agricultural workers. She testified that, in this position, she informed employers about the deficiencies in their certifications so that they could remedy them. In Florida, Anessia planned to prepare H-2A visa certifications, which would entail her filling out the certifications for employers. Because

she already knew what information was necessary to complete the certifications, it is not unreasonable to conclude that she could complete them herself. And even if her plan to start her own business failed, her backup plan was to find a job reviewing the certifications in Florida.

¶ 178 Moreover, Anessia had been accepted to University of South Florida to study psychology. Even if her immediate employment plans did not work out, having a bachelor's degree rather than an associate's degree would likely improve her future job prospects. Thus, while there was some uncertainty regarding Anessia's ability to become gainfully employed in Florida, that concern is not so great as to outweigh other factors supporting removal.

¶ 179 12. Summary

¶ 180 As shown above, the trial court considered the relevant factors for an analysis of a removal petition under section 609.2(g), several of which weighed in favor of removal. Thus, the trial court's finding that removal would be in T.G.'s best interest was not against the manifest weight of the evidence.

¶ 181 The impact of the move on Michael and T.G.'s relationship and the uncertainty regarding Anessia's employment and T.G.'s schooling in Florida were not so great as to override the benefits of an improved maternal family network for T.G., the likelihood of improved educational opportunities for T.G. and Anessia, and Anessia's plan to improve her work-life balance in Florida. We affirm the trial court's grant of the removal petition.

¶ 182 C. Participation of GAL

¶ 183 Next, Michael contends that the GAL, David Goldman, exceeded his authority in that position.

¶ 184 In any proceedings involving the custody of a minor or dependent child, the circuit court may, on its own motion or on the motion of any party, appoint an attorney to serve as a GAL. 750 ILCS 5/506(a) (West 2016). Section 506(a)(2) of the Act explains the role of a GAL:

> "The [GAL] shall testify or submit a written report to the court regarding his or her recommendations in accordance with the best interest of the child. The report shall be made available to all parties. The [GAL] may be called as a witness for purposes of cross-examination regarding the [GAL's] report or recommendations. The [GAL] shall investigate the facts of the case and interview the child and the parties." 750 ILCS 5/506(a)(2) (West 2016).

¶ 185 Michael contends that Goldman exceeded his authority as GAL in this case by "act[ing] more like a child's representative by advocating." He points out that section 506(a)(3) of the Act allows for the appointment of a child's representative, whose duty is to "advocate what the child representative finds to be in the best interests of the child after reviewing the facts and circumstances of the case." 750 ILCS 5/506(a)(3) (West 2016). According to Michael, only a child's representative can advocate for a child by making substantive filings; a GAL can only make recommendations to the court. And Michael claims that Goldman advocated for T.G. in this case by filing pleadings, calling a witness at a hearing that occurred prior to the removal hearing, cross-examining the witnesses at the removal hearing, and calling himself as a witness at the removal hearing.

¶ 186 Anessia claims that Michael has forfeited this argument by failing to object to the GAL's actions at any time except when Michael moved to strike the GAL's response to Michael's petition to allow Victoria to have supervised visitation with T.G.

¶ 187 In order to preserve a claim on appeal, a party must make a contemporaneous objection to the allegedly improper action. *Wodziak v. Kash*, 278 Ill. App. 3d 901, 914 (1996). Here, Michael made no objection to the GAL's actions during the removal hearing, including the GAL's cross-examination of witnesses or his own testimony. Michael has thus forfeited any claim with respect to the GAL's conduct at the removal hearing. See *Hardy v. Cordero*, 399 Ill. App. 3d 1126, 1135 (2010) (party forfeited objection to testimony by failing to object to it at trial); *Beltz v. Griffin*, 244 Ill. App. 3d 490, 495 (1993) (party forfeited challenge to evidence elicited during cross-examination when she did not object during cross-examination).

¶ 188 Michael contends that his motion to strike the GAL's response to his petition for visitation by Victoria was sufficient to preserve all of his claims on appeal. We disagree. Michael's motion to strike only objected to the GAL's "Response to Motion to order the supervised visits with Paternal Grandparents." Nothing in that motion made any reference to the GAL's participation in the removal proceedings, or any other proceedings. Nor could it, as the removal hearing had not yet occurred.

¶ 189 With regard to the specificity of Michael's objection, we find *In re Marriage of Shelton*, 217 Ill. App. 3d 26 (1991), persuasive. In *Shelton*, the ex-husband argued that the trial court erred in letting his ex-wife testify regarding her new husband's employment at the hearing on the ex-wife's petition to remove her children. *Id.* at 33. While the ex-husband raised a hearsay objection to the ex-wife's testimony regarding her new husband's salary, he did not make a similar objection to her testimony regarding where he was employed. *Id.* On appeal, the court found that, because of this lack of an objection to the ex-wife's "specific testimony," the ex-husband had forfeited his challenge to that testimony. *Id.*

¶ 190 In this case, Michael made no objection to the GAL's allegedly improper conduct at any point during the removal hearing, which spanned several days. His only objection to the GAL at all came in reference to a specific pleading that was filed before the removal hearing even occurred. Michael's forfeiture in this case is far more glaring than the ex-husband's in *Shelton*. The purpose of forfeiture rules is "to encourage parties to raise issues in the trial court, thus ensuring both that the trial court is given an opportunity to correct any errors prior to appeal and that a party does not obtain a reversal through his or her own inaction." *1010 Lake Shore Association v. Deutsche Bank Naional Trust Co.*, 2015 IL 118372, ¶ 14. Had Michael properly raised this issue below, the circuit court and opposing counsel could have considered it. Michael should not now be permitted to seek reversal based on his own inaction. We decline to reach the issue of whether the GAL's conduct at the removal hearing was improper.

¶ 191 And even had Michael properly preserved this issue for review, he has not explained, nor do we see, how this allegedly improper participation impacted the outcome of the removal hearing in any way. Michael fails to allege that the GAL elicited any evidence damaging to his case when the GAL cross-examined the various witnesses at the hearing. And reviewing the circuit court's order granting removal, it does not appear that the trial court relied heavily on the GAL's testimony; the court did not even make an explicit credibility finding as to the GAL, something it did for every other witness who testified. We do not see how the GAL's participation, even if erroneous, prejudiced Michael in any meaningful way.

¶ 192 The only allegedly unauthorized conduct that Michael properly objected to below was the GAL's filing of a response to Michael's petition to allow Victoria to have visitation with T.G. The trial court denied Michael's motion to strike the GAL's response, as well as Michael's petition for Victoria to have visitation. But the trial court's denial of Michael's motion to strike is

not before us; we lack jurisdiction to review it. Illinois Supreme Court Rule 303(b)(2) (eff. Jan. 1, 2015) requires a notice of appeal to "specify the judgment or part thereof or other orders appealed from." A notice of appeal confers jurisdiction on this court to consider only the judgments or parts thereof specified in the notice of appeal. *In re Marriage of Goldberg*, 282 Ill. App. 3d 997, 1001 (1996). We construe a notice of appeal liberally. *Id.* at 1035.

¶ 193 Michael's notice of appeal said that he was appealing:

> "[F]rom the following orders entered in this matter[:]
>
> 1. The March 29, 2016 order granting [Anessia's] Petition for Removal of the Parties' Minor Child to Florida; and
>
> 2. The March 21, 2016 order amending the aforesaid March 9, 2016 order denying [Michael's] Emergency Motion to Stay Pending Appeal and Granting [Anessia's] Emergency Motion to Relocate Immediately.
>
> By this appeal, [Michael] will ask the Appellate Court to reverse each of the aforesaid orders. Specifically [Michael] will request that the Appellate Court enter an order denying the Petition for Removal or Relocation of the Parties' Minor Child and/or to remand the matter to the trial court for further proceedings relative to the order and in accordance with the mandate of this Honorable Court."

Even construing that notice of appeal liberally, Michael made no mention of the order denying his motion to strike, or the order denying his motion to allow Victoria visitation.

¶ 194 Even if a notice of appeal does not list a certain judgment or order, we still have jurisdiction over it where the judgment or order is a step in the procedural progression leading to a final judgment or order. *Longo v. Globe Auto Recycling, Inc.*, 318 Ill. App. 3d 1028, 1034 (2001). But we do not find the order denying the motion to strike to be a step in the procedural

progression leading to the trial court's permitting Anessia to remove T.G. to Florida. Michael's motion to strike was not directed to a pleading relating to the removal petition; it related to a pleading directed at Michael's *separate* request to allow his mother to see T.G. The GAL's response to Michael's request for his mother's visitation could not possibly have had an impact on the court's ruling on Anessia's removal petition, since that pleading was not directed toward Anessia's petition.

¶ 195 We find *In re Estate of York*, 2015 IL App (1st) 132830, to be persuasive regarding our jurisdiction. In *York*, this court held that it lacked jurisdiction to consider an order denying a motion to strike an affidavit supporting a motion to dismiss, when the court dismissed the complaint for failure to state a proper claim, an inquiry to which the affidavit would have been irrelevant. *Id.* ¶¶ 43-44. Because the trial court could not, and did not, consider the affidavit in concluding that the complaint failed to state a claim, we held that a motion to strike that affidavit "could not have been a step in the procedural progression leading to the *** dismissal." *Id.* ¶ 44.

¶ 196 Similarly, the denial of Michael's motion to strike the GAL's response could not have been a step in the procedural progression leading to the trial court's grant of the removal petition. The GAL's response dealt solely with the issue of whether Victoria should be allowed some supervised visitation rights, not whether Anessia should have been permitted to remove T.G. to Florida. That motion played no role in the procedural progression leading to T.G.'s removal.

¶ 197 Although not critical to our conclusion, we also note that Michael recognizes that the removal proceedings were distinct from the rest of the case. In the jurisdictional statement contained in his brief to this court, he notes that the order granting Anessia's removal petition "finally resolved all proceedings as to a *separate branch* of the controversy between the parties, the ability of Anessia to relocate T.G. to Florida." (Emphasis added.) Because removal was a

question separate and apart from the other issues in the case, we fail to see how the denial of Michael's motion to strike the GAL's response to an entirely different petition could be considered a step in the procedural progression leading to T.G.'s removal.

¶ 198 Because we lack jurisdiction over the motion to strike, we may not consider Michael's argument that the GAL lacked the authority to file a responsive pleading in this case. While we acknowledge that neither party has raised a question as to our jurisdiction, we have a duty to consider our jurisdiction *sua sponte*. *In re Marriage of Mackin*, 391 Ill. App. 3d 518, 519 (2009).

¶ 199 D. Intervention

¶ 200 Finally, Victoria contends that the trial court erred in denying her petition to intervene in the proceedings. She contends that, pursuant to section 2-408(a)(2) of the Code of Civil Procedure (735 ILCS 5/2-408(a)(2) (West 2016)), she had a right to intervene in the proceedings because her interests were not adequately represented in the proceedings and she was bound by an order or judgment in the case. Alternatively, she claims that the trial court erred in denying her request for permissive intervention because, pursuant to section 2-408(b)(2) of the Code of Civil Procedure (735 ILCS 5/2-408(b)(2) (West 2016)), her claim had common questions of law and fact with the underlying custody dispute.

¶ 201 Anessia notes that, in the trial court, Victoria did not move for intervention pursuant to section 2-408. Instead, Victoria's motion for leave to intervene said that she sought intervention "pursuant to Illinois Code of Civil Procedure, 735 ILCS 5/2-406." Section 2-406 of the Code of Civil Procedure (735 ILCS 5/2-406 (West 2016)) provides that a court may direct other parties to be brought into a proceeding where "a complete determination of a controversy cannot be had without the presence of [the] other part[y]." That section deals with necessary parties to a lawsuit, an issue which typically becomes relevant when a defendant seeks to bar prosecution of

the case in the absence of a necessary third party. See, *e.g.*, *Application of Busse*, 183 Ill. App. 3d 682, 685–86 (1989). But Victoria does not argue to us that she was a necessary party to the divorce action and in fact disavows any reliance on section 2-406, asserting on appeal that section 2-408 was the appropriate vehicle for intervention.

¶ 202 The problem is that Victoria never made any mention of section 2-408 in the circuit court, not even at the hearing on her motion, when the court expressly recited the language of section 2-406 in its ruling; Victoria's counsel did not interject and request to decide the case pursuant to section 2-408. We are again confronted with the situation where a party failed to present the trial court or opposing counsel with a legal argument and now seeks reversal based on that failure. We once again must find that this argument has been forfeited. See *1010 Lake Shore Association*, 2015 IL 118372, ¶ 14; *Mabry v. Boler*, 2012 IL App (1st) 111464, ¶ 25 (claims raised for first time on appeal are forfeited).

¶ 203 But we stress that our conclusion that Victoria has forfeited this argument does not permanently foreclose Victoria's ability to seek visitation from T.G. in the future. The trial court left open the possibility that it would consider Victoria's visitation request at a later date when it said, "[L]et's sort of right the ship with Michael *** and perhaps [then] they [can] resume whatever *** relationship they had ***." Nothing we have said here forecloses Victoria from properly seeking to assert her request for visitation of her grandchild. See 750 ILCS 5/602.9(b)(1), (c)(1) (West 2016) (stating that "appropriate person," including grandparent, "may bring an action in circuit court by petition in *** any *** proceeding that involves parental responsibilities or visitation issues regarding the child, requesting visitation with the child pursuant to this Section.").

¶ 204 III. CONCLUSION

¶ 205 For the reasons stated, we affirm the trial court's judgment.

¶ 206 Affirmed.