2016 IL App (2d) 150814-U
No. 2-15-0814
Order filed January 20, 2016

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re PARENTAGE OF E.L., a Minor	)	Appeal from the Circuit Court
	)	of McHenry County.
	)	
	)	No. 12-FA-176
	)	
	)	Honorable
(Edward L., Petitioner-Appellant, v.	)	James S. Cowlin,
Ruth W., Respondent-Appellee).	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices McLaren and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's judgments awarding respondent sole custody of the parties' son and granting her petition for removal to Colorado were not against the manifest weight of the evidence.

¶ 2 Petitioner, Edward L., appeals the judgments of the trial court awarding respondent, Ruth W., sole custody of the parties' minor son, E.L., and permitting removal of the child to Colorado. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Procedural Overview

¶ 5 The parties have never married. They were residing in Illinois when their sole child, E.L., was born in November 2010. In May 2012, the parties and E.L. traveled to Colorado to visit their families and for respondent to repossess a mobile home she owned. Several days later, on May 28, petitioner returned to Illinois while respondent remained in Colorado with E.L. to finish the legal proceedings relating to the mobile home. Shortly later, communication between the parties deteriorated and petitioner suspected that respondent intended to remain permanently in Colorado with E.L. On June 5, he filed an action seeking a judgment of paternity, sole custody of E.L., and child support from respondent. Later in June, petitioner filed in Illinois for an emergency order of protection, alleging that respondent was refusing to return to the state with E.L. Petitioner also alleged that respondent's excessive alcohol use was placing E.L. at risk. On June 22, the trial court in this action issued the requested order, directing respondent to relinquish E.L. to petitioner. Through a writ of assistance issued by a Colorado court, petitioner served the order of protection on respondent in Colorado, and she relinquished E.L. to petitioner. Two days later, the trial court vacated the order of protection because petitioner's paternity was not established. At the court's direction, E.L. was returned to respondent's custody in Colorado. The court also directed the parties to submit to DNA testing.

¶ 6 On August 16, 2012, based on the DNA testing results, petitioner was adjudged the father of E.L. On August 24, he filed a petition for an injunctive order for the return of E.L. to Illinois. On September 14, respondent filed multiple motions. She sought custody of E.L., leave to remove him to Colorado, and child support. Respondent also requested that petitioner's visitation with E.L. be denied or restricted because of his 1995 conviction in Colorado for attempted criminal sexual assault of a child. The conviction stemmed from petitioner's sexual

relationship with an underage female. Respondent claimed she was unaware of the conviction until she became pregnant with E.L.

¶ 7 On September 25, 2012, the trial court held a hearing on petitioner's motion for injunctive relief. The issue presented at the hearing was whether respondent was required to seek leave of court before removing E.L. to Colorado. Petitioner suggested that the removal occurred when respondent formed the intent to remain permanently in Colorado with E.L. after the parties traveled there in May 2012. According to respondent, since there was no parentage action then pending, she was not required to seek leave of court to remain in Colorado. Rather, it was petitioner who had to initiate proceedings for the return of E.L. by utilizing section 13.5 of the Parentage Act (750 ILCS 45/13.5 (West 2014)). Section 13.5 permits the noncustodial parent in a parentage action to seek an injunction against removal pending determination of the issues of custody and visitation. The court agreed with respondent that she was not required to seek leave of court to remain in Colorado. Therefore, the court proceeded to determine whether, under section 13.5, respondent must return E.L. to Illinois pending the court's decision on custody and visitation. The court denied petitioner's petition, permitting respondent to remain in Colorado. The court entered its written judgment to that effect on October 12, 2012. Petitioner did not file an appeal from that order until August 2015, after the underlying proceedings were concluded. Respondent continued to reside in Colorado during the pendency of the matter.

¶ 8 In December 2012, the court entered the first of a series of interim orders granting petitioner visitation in Colorado. These orders allowed him approximately 10 days of visitation per month. The visitation did not occur on the same dates each month. For these visits, respondent would fly E.L. to Illinois and petitioner would drive him back to Colorado.

¶ 9 In March 2013, the court ordered temporary child support to respondent and appointed Dr. Sol Rappaport to submit a recommendation on custody and removal. Rappaport submitted a written report recommending that the court grant respondent sole custody of E.L. but deny her request for removal.

¶ 10 In late 2014 and early 2015, the court held a trial on the issues of custody, removal, child support, and visitation. The court granted respondent sole custody of E.L. and, contrary to Rappaport's recommendation, also granted her request for removal. Petitioner was granted visitation and ordered to pay child support.

¶ 11 B. Evidence at Trial

¶ 12 We organize the evidence at trial by topic.

¶ 13 1. The parties' backgrounds

¶ 14 Both parties were born and raised in Colorado. Their parents currently reside in Colorado. Five of respondent's six siblings, and petitioner's only sibling, a sister, live in Colorado as well.

¶ 15 Petitioner served in the United States Air Force from 1990 until his honorable discharge in 1999. He also served in the Colorado Air National Guard, from which he was honorably discharged in 1998. In 1995, petitioner was convicted in Colorado of attempted criminal sexual assault of a child. Petitioner explained at trial that the conviction stemmed from his sexual relationship with a 14-year-old girl when he was 30 years old. Petitioner testified that he broke off the relationship when he discovered the girl was underage. Petitioner was sentenced to seven days in jail and two years of probation. He was required to register as a sex offender until the requirement terminated in 2004.

¶ 16 Alice Miller testified that she became petitioner's probation officer when he moved from Colorado to Illinois. Miller stated that petitioner complied with all terms of his probation.

¶ 17 Gary Dec, a clinical psychologist, testified that, from 1995 to 1997, he counseled petitioner in connection with his criminal matter. Dec no longer had his files from that period, but recalled that the therapy was terminated when it appeared that petitioner had achieved his goals and attained maximum benefit from the sessions. At the conclusion of the therapy, which spanned 31 sessions in all, Dec had no reason to believe that petitioner presented a danger to children.

¶ 18 Petitioner introduced into evidence a letter written by Dec in June 1995 to petitioner's attorney in the criminal case. In the letter, Dec noted that petitioner had undergone several sessions with Dec. In Dec's assessment, petitioner's "impaired judgment in allowing a relationship with the minor female" was due to a "lifelong pattern of lowered self esteem" combined with recent "deep depression" caused by "a failed marriage and frustrating job situations." These conditions "resulted in feelings of inferiority toward adult females and *** made it difficult for him to formulate or continue a positive relationship with an adult female, and made him vulnerable to developing a relationship with a minor." Petitioner "perceived the minor at that time as very demonstrative and affectionate toward him, boosting his self esteem and resulting in blurred boundaries between adult and child." Dec found that, with recent changes in petitioner's life, including new employment, his "depression has resolved." Petitioner was committed to further therapy so as "to better understand and manage [his] issues," and had scheduled follow-up sessions with Dec.

¶ 19 Petitioner introduced a second letter from Dec, written in December 2012 to petitioner's attorney in the present case. Dec wrote that, from his recollection of petitioner's treatment in the

1990s, petitioner had "gained understanding of how the relationship [with the minor female] started and developed." The therapy "was successfully concluded by mutual agreement that [petitioner] had achieved the goals set forth at the outset of the treatment."

¶ 20 Dec testified that petitioner consulted him two years ago in connection with the present case. Petitioner said he was going through a difficult custody battle and wanted some support. Dec perceived that petitioner was experiencing "reactive depression" from the stress of the litigation. Dec did not believe, however, that petitioner was having difficulty controlling his emotions. After 14 sessions, the therapy was concluded because petitioner was "coping better." Though the purpose of the therapy was not to revisit petitioner's psychological issues related to the 1995 sex offense, Dec reviewed that history as part of the new therapy. Dec saw no evidence during the new sessions that petitioner needed additional therapy regarding the sex offense.

¶ 21 Petitioner also placed into evidence an October 2012 psychosexual assessment conducted by clinical psychologist Anne Krick. According to the report, petitioner's attorney in the present case advised him to undergo the assessment in order to forestall a claim by respondent that petitioner was a danger to minors and so should not have custody of E.L. In conducting the evaluation, Krick interviewed petitioner about his sexual past and preferences and administered several psychologist tests to determine the presence of general psychological disorders and, more particularly, sexual disorders. The tests included the Minnesota Multiphasic Personality Inventory-2 (MMPI-2), the Multiphasic Sex Inventory II Profile, the Abel Assessment for Sexual Interest, the Bumby Cognitive Distortion Scale, the Wilson Sexual Fantasy Questionnaire, the Sexual Adjustment Inventory, and the Static-99 Risk Assessment. Krick's conclusion from the tests was that petitioner's "interest in Adult and Adolescent Females is similar to that of most adult males in the United States." There was "no evidence to suggest that [petitioner] has a

sexual interest in Grade School or Pre-School age boys or girls." Petitioner demonstrated "a good intellectual understanding of healthy boundaries between adults and children." He displayed "good coping strategies to allow him to adapt and regulate his emotions and feelings to negative social occurrences." On risk assessment scales, petitioner was at a low risk to reoffend. Krick noted that, though petitioner's answers suggested "an inability or difficulty in responding openly and honesty," the test results could be deemed accurate. Krick testified at trial consistently with her report. According to Krick's report, petitioner stated that the relationship with the underage girl lasted six months before he terminated it.

¶ 22 2. The beginning of the parties' relationship and the birth of E.L.

¶ 23 In the late 1990s, following his discharge from the military, petitioner moved to Illinois. There he met Diane Whittlinger, with whom he would have a sporadic relationship for the next several years. Petitioner resided with Whittlinger in her home from 1998 to 2008, when he moved to Denver with the hope of starting a business in the insurance industry. In February 2009, while respondent was also residing in Colorado, the parties met through an online dating service and began a dating relationship. Unable to find work in Colorado, petitioner moved back to Illinois for better employment prospects. Petitioner resided with Whittlinger upon his return. Later, respondent agreed to join petitioner in Illinois because he promised to leave Whittlinger and "make a life" with respondent. Respondent moved to Illinois in September 2009. The parties resided together in a rented home in Bartlett. Petitioner found work as a welder and respondent was employed as a gas station attendant. Respondent claimed that, during this time, petitioner "hopp[ed] back and forth" between her and Whittlinger. Petitioner acknowledged that the parties' relationship turned a "little rocky" but attributed it to respondent's alcohol use. In

February 2010, respondent returned to Colorado. After the lease in Bartlett ended, petitioner moved back in with Whittlinger.

¶ 24 The parties continued to have contact. Petitioner would visit respondent in Colorado. He testified that he fell in love with her. He wanted to find work in Colorado and move back. In March 2010, the parties learned that respondent was pregnant with E.L. Both were surprised because petitioner believed he was sterile. Petitioner had added doubt as to his paternity because of his belief that respondent was promiscuous. In December 2010, petitioner employed a private lab for DNA testing, and the results were positive for his paternity of E.L.

¶ 25 After the pregnancy was discovered, the parties agreed that respondent should rejoin petitioner in Illinois. Petitioner had recently been offered employment at Terra Cotta Industries in Crystal Lake. Respondent testified that petitioner agreed to give her "a thousand dollars of out-money in case things didn't go well once again." When respondent relocated to Illinois in July 2010, petitioner moved out of Whittlinger's house and resided with respondent. Initially, they lived with one of petitioner's friends in Schaumburg. After E.L. was born in November 2010, the parties moved to a rented home in Algonquin. They lived in Illinois together until May 2012.

¶ 26 3. The parties' life in Illinois

¶ 27 When respondent moved to Illinois, the parties agreed that petitioner would be the breadwinner while respondent stayed home and cared for E.L. Petitioner began at Terra Cotta as a maintenance technician and was later promoted to maintenance manager. His shift was 4 p.m. to 12 a.m. Petitioner testified that he worked five days a week at Terra Cotta plus overtime of one or two Saturdays per month, while respondent claimed he worked six days a week because of mandatory overtime. In addition to his work at Terra Cotta, petitioner was being trained in the

insurance industry at Ardent Restoration in Schaumburg. The parties gave conflicting accounts of the time petitioner spent at Ardent. According to petitioner, he spent one to three mornings per week at Ardent. He always came home for lunch with respondent and E.L. before leaving for Terra Cotta. According to respondent, however, petitioner would spend five or six mornings a week at Ardent. He would leave by 10 a.m. and return around 2 p.m., spending some time with E.L. before leaving for Terra Cotta. According to respondent, petitioner worked these hours at Terra Cotta and Ardent from the time she was pregnant with E.L. until the parties began living apart in May 2012.

¶ 28 Respondent testified that, since petitioner "wasn't there" at home because of his work schedule, she was the principal caregiver for E.L. Petitioner testified that he took vacation time when E.L. was born and helped respondent with the care of E.L. because she was "exhausted." Petitioner assisted with feeding, bathing, and changing diapers. After he returned to work, petitioner continued to help with the care of E.L. when he was available.

¶ 29 The parties testified to discontent and volatility in the relationship during their time in Illinois, both the 2009-2010 period and the 2010-2012 period. Petitioner testified that he became concerned with respondent's excessive alcohol use. He put into evidence text messages from 2011 and 2012 in which respondent admitted to drinking in the evenings and petitioner admonished her not to drink while caring for E.L. Petitioner testified that he also had several conversations with respondent about her drinking. Some of these conversations escalated into fights. Petitioner denied that he ever physically attacked respondent, but claimed she attacked him. On one occasion in January or February 2010, petitioner brought up the subject of respondent's drinking. Respondent told petitioner that it was none of his business and punched

him, giving him a black eye. Petitioner pushed respondent away and called the police. When they arrived, respondent yelled at the police from a back room.

¶ 30 Petitioner testified that, at least three nights a week for the final six months (December 2011 to May 2012) of the parties' second stint together in Illinois, he would return home from work to find respondent asleep on the bed next to E.L., who was lying uncovered and had a saturated diaper. Petitioner knew that respondent had passed out from alcohol because of the smell in the room and the empty liquor bottles and beer cans in the home. Petitioner testified that, during this six-month period, he had numerous conversations with respondent about her drinking, but respondent never agreed to reduce her drinking or seek treatment. During one conversation on February 22, 2012, respondent asked petitioner "what happens if I say you did something to your son and I called the police?" Petitioner responded by calling the police himself and telling them what respondent said. Because of his "background" (namely his criminal conviction) petitioner wanted to create a record of respondent's threat.

¶ 31 Respondent acknowledged that the parties had arguments. To her mind, petitioner's mention of her drinking during these arguments was a distraction from the crux of the relationship problem, which was her disappointment over petitioner's failure to keep the promises he made when she came back to Illinois in July 2010. She felt that petitioner was losing interest in her. He had declined her suggestion of relationship counseling and was phoning and texting Whittlinger several times a week. As respondent had no income and received no money from petitioner to purchase items for herself, she went on public assistance. Petitioner never gave her the "out-money" that he promised. Respondent had no friends or extended family in Illinois and felt "trapped."

¶ 32 Respondent testified that petitioner was violent toward her. Respondent weighed 145 pounds while petitioner was 210 pounds, was on steroids, and would "go into roid rages and black out and not even remember what happened." Petitioner would shove respondent and sweep out her legs. At times, respondent had to use her martial arts training to defend herself.

¶ 33 Respondent admitted that she drank when petitioner was going back and forth between her and Whittlinger. She only drank "to get [her] buzz on" and did not get "sloshed." She did not drink while pregnant with E.L. or while breastfeeding him. She denied that petitioner would come home to find her intoxicated while E.L. was in her care. Respondent testified that she takes her job as a mother seriously.

¶ 34 4. The parties' separation

¶ 35 In May 2012, the parties traveled with E.L. to Colorado. The parties' testimony was in agreement that the trip had a two-fold purpose. First, respondent needed to repossess a mobile home from its occupant, who had agreed to purchase the home from her but failed to make payments. Second, the parties would attend the high school graduations of their respective nieces.

¶ 36 The parties' testimony was in agreement that the matter with the mobile home took longer than they expected. They disagreed, however, over how petitioner reacted to the news. According to petitioner, it did not irritate him. He returned to Illinois on May 28, 2012, while respondent remained with E.L. in Colorado. Petitioner left with the understanding that respondent would remain in Colorado for another week as she concluded her matter with the mobile home and visited family. According to petitioner, respondent's attitude toward him changed a few days after he returned to Illinois. When he called to check on her and E.L., respondent complained that he was calling too much and that he did not need to know her

whereabouts. Suspecting that respondent had no intent of returning to Illinois, petitioner filed his paternity action on June 5, 2012.

¶ 37 Petitioner further testified that it was his opinion that respondent intended all along to remain in Colorado with E.L. Petitioner had continually asked respondent to sign a voluntary acknowledgement of paternity (VAP) of E.L., but she said she would do so only if petitioner did everything she asked. Respondent also threatened to flee with E.L. if petitioner sued to establish paternity. Respondent never signed a VAP even after the positive DNA results in December 2010. Petitioner placed into evidence text messages from October and November 2011 in which petitioner claimed that respondent was holding the VAP "hostage" and in which respondent threatened to flee with E.L.

¶ 38 To further support his assertion that respondent had previously planned to flee with E.L., petitioner called Algonquin police officer Patricia Miller. She testified that, on February 14, 2012, she was dispatched to a restaurant in Algonquin in response to a report of a missing, possibly intoxicated adult. When she arrived she spoke to respondent, who was the subject of the dispatch. Miller observed that respondent was not intoxicated. Respondent told Miller that "she didn't like living in Illinois and wanted to move back to her home town in Colorado, and that was a big long cause of conflict between her and [petitioner] regarding their living status."

¶ 39 Petitioner noted, that, after he filed his paternity action in early June 2010, he continued to communicate with respondent by cell phone and asked her numerous times to return to Illinois. She refused. Petitioner knew that respondent would be staying at her father's home for a week after petitioner left for Illinois, but did not know where she would be staying afterwards. Petitioner introduced a series of text messages that the parties exchanged during this period. On September 15, 2012, petitioner asked, "What is the address our son is living at [*sic*] be specific."

Respondent answered, "Ask our lawyers." Petitioner contacted respondent's family members in Colorado to learn where she and E.L. were living. Petitioner did not believe that the nature of his queries would have made them or respondent fearful. He believed that respondent "knew what she was doing," namely, hiding E.L. because she did not want petitioner to be part of E.L.'s life. Petitioner did not know until September 25, 2012, the date of the first court-ordered visitation, where respondent was living.

¶ 40 Respondent offered a different account of petitioner's departure for Illinois on May 28, 2012. According to her, when she told petitioner that the court proceedings necessary to repossess mobile home would take longer than expected, petitioner "spazzed out." Before he left for Illinois, he told respondent that she no longer had a home in Illinois. Respondent denied that she had any prior intent of remaining in Colorado. When she left for Colorado with petitioner and E.L., she brought only a suitcase of clothes and a diaper bag. The remainder of her possessions, including her dog and laptop computer, she left in Illinois. Her dog was in a boarding kennel, for which she incurred daily charges. Respondent remained in Colorado because petitioner told her she was no longer welcome in his home.

¶ 41 5. The parties' mutual orders for protection

¶ 42 Respondent testified that, after petitioner left for Illinois, she stayed at her father's house for a week while he was on vacation. Afterward, she stayed at her brother's home for two weeks. Respondent next went to a battered women's shelter. She claimed that petitioner "was fully aware of all these." At other points in her testimony, however, respondent suggested that petitioner knew only that she was living in Boulder and that, while she permitted petitioner daily phone contact with E.L., she did not provide him her location out of fear that he would come and take E.L.

¶ 43 Respondent explained that she went to the battered women's shelter because, after petitioner left Colorado, he began calling or texting her "daily, all day long." Petitioner "flipped his lid on a daily basis." He harassed and threatened her. He "staked out" her brother's house and also went to her elderly father's home, which "freaked [him] out." As the situation was stressful for her family and she herself did not feel safe, respondent decided to stay at the shelter.

¶ 44 Respondent testified that she also decided to file for an emergency order of protection in Colorado. On the return date for the order, she saw petitioner in the courthouse and "freaked out." When she left in her car to return to the shelter, she noticed that someone was following her. She became "even more freaked out." Because residents of the shelter were not permitted to disclose its location, respondent did not want her pursuer following her back to the shelter. She succeeded in eluding the pursuer.

¶ 45 In fact, the one who pursued respondent on that date was Jeffrey Zoerb, a private investigator whom petitioner hired in late June 2012 to learn respondent's and E.L.'s location. Zoerb testified that his initial address checks for respondent's family and friends did not yield respondent's or E.L.'s locations. Zoerb did learn, however, that respondent had obtained an order of protection in Colorado. On the return date for the order, Zoerb waited in the courthouse parking lot for respondent to depart. She emerged from the courthouse with E.L. and quickly entered her car. Zoerb could see that she did not secure him properly in his seat. She drove four or five blocks before stopping to secure E.L. properly. When she drove off again Zoerb continued to pursue. Respondent began driving 10 to 15 miles above the speed limit, disobeying traffic signals and weaving in and out of traffic without signaling. Zoerb followed respondent for about 15 minutes before losing her.

¶ 46 On June 22, 2012, the trial court in this proceeding issued an emergency order of protection directing respondent to relinquish E.L. to petitioner. Petitioner obtained a writ of assistance to effect service of the order upon respondent in Colorado. A hearing in Colorado was set for July 16. Zoerb, who had not yet found out where respondent and E.L. were living, was waiting again in the parking lot. When respondent exited the courthouse, she did not have E.L. She ran to her car and drove off. Zoerb pursued as respondent drove 100 miles per hour on a 75-m.p.h. interstate highway. While he drove, Zoerb called the police, who joined in the pursuit and cornered respondent in an empty parking lot. The police then served respondent with the order of protection. Petitioner provided the police an address for E.L., but dispatch later notified Zoerb that the address did not exist. Following a hunch that E.L. might be with respondent's friend Johanna Beeman, Zoerb immediately drove to Beeman's house. When she opened the door, Zoerb saw E.L. and notified the police. Respondent arrived and began yelling profanities. She threatened Zoerb and the police stepped between them. The police took E.L. and placed him with petitioner's sister Leanne Larson, who then met petitioner in Nebraska and gave him E.L. On July 18, 2012, the trial court in this case dissolved petitioner's order of protection and ordered him to return E.L. to respondent.

¶ 47 6. Petitioner's contact with E.L. before and after the court's orders on visitation

¶ 48 beginning December 2012

¶ 49 Petitioner testified that, despite his numerous requests, respondent did not allow him contact with E.L., except by court order, between May 28 and December 12, 2012, the date on which the court issued the first of its orders providing for regular visitation. Whittlinger, however, recalled an occasion in September 2012 when respondent voluntarily offered to meet petitioner at a restaurant so that he could see E.L.

¶ 50 Petitioner acknowledged that respondent has complied with the court's orders on visitation, which grant him approximately 10 days per month. He also acknowledged occasions where respondent gave him extra days of visitation.

¶ 51 Respondent also permits petitioner phone contact with E.L., which is not ordered by the court. Petitioner testified that he phones E.L. every evening, but respondent's mood determines whether she will allow him to speak with E.L. Petitioner estimated that respondent permits phone contact in 14 out of 20 calls. Respondent, however, testified that she permits petitioner daily phone contact with petitioner and also allows Skype calls. She also grants petitioner extra days "basically whenever he has asked."

¶ 52 Initially in her testimony, respondent opined that petitioner should have visitation as E.L.'s father but that the visits should be supervised because he is a "convicted child molester" and therefore a "threat." She maintained this despite her Facebook postings and text messages praising petitioner as a father. Respondent claimed that she was unaware of petitioner's criminal conviction before she became pregnant with E.L. Later in her testimony, respondent "changed her mind" on visitation and affirmed that she did not believe that petitioner should be supervised during visits. She believes that a child should have the involvement of both parents.

¶ 53 The parties explained that visitation is effected by respondent flying with E.L. to Illinois and petitioner driving him back to Colorado at the end of the visitation period. The parties split the travel costs. Respondent testified that she frequently flies Spirit airlines because of its lower prices. Respondent also prefers mid-week flights because they are cheaper. As Spirit does not offer a return flight until the next day, respondent must spend the night. To save money, she sleeps in the airport. Respondent does not drive E.L. to visits because she does not believe her

current car could manage the trip to Illinois. She attempted it once before but her car broke down on the way.

¶ 54 Each party accused the other of not providing their travel itineraries for visitation. In August 2014, the court directed the parties to provide that information. Respondent said the reason she did not provide her flight information until ordered by the court is that she did not want petitioner "knowing her every move," because it "freaks [her] out."

¶ 55 7. The parties' current living situations

¶ 56 Petitioner testified that he still works second shift, 4 p.m. to 12 a.m., at Terra Cotta as a maintenance manager. He no longer is in training at Ardent. His gross income in 2013 was $52,152. Petitioner currently lives with Whittlinger in her condominium in South Elgin. They are romantically involved but not married. Whittlinger is in charge of shipping and receiving at SKF International in Elgin and works 6 a.m. to 2:30 p.m. When petitioner is unavailable, Whittlinger cares for E.L. and assists in visitation exchanges. Petitioner does not pay Whittlinger rent but contributes toward household expenses. He does not contribute as much as before because of the costs of this litigation.

¶ 57 Whittlinger's home is 1300 to 1400 square feet and E.L. has his own bedroom for visitations. Petitioner described the many recreational and educational activities in which he and Whittlinger engage E.L. during visits. According to Whittlinger, petitioner is patient and loving with E.L., who adores him in return. Whittlinger testified that if petitioner were granted custody of E.L., he would reside with Whittlinger and petitioner in her home. She is willing to marry petitioner if it would benefit E.L.

¶ 58 Petitioner's sister, Leanne Larsen, agreed with Whittlinger that petitioner loves E.L. and is patient and encouraging toward him. Both Larsen and Whittlinger testified that E.L. has difficulty parting from petitioner at the end of visitation.

¶ 59 Respondent testified that for the past two years she has resided in Lakewood, Colorado, in the home of a friend, John Nielson. The house is approximately 2000 square feet. Respondent, Nielson, and E.L. each have their own bedrooms. Nielson works for an airline and is gone several days a week. Respondent used to pay Nielson $100 per month for rent but has not done so for several months. When he is available, Nielson babysits E.L. Respondent and Nielson have no plans to marry.

¶ 60 Respondent described her financial situation in Colorado. When she decided to remain there in 2012, she applied for public assistance. She received food stamps as well cash payments through the Temporary Assistance to Needy Families (TANF) program. As a condition of receiving TANF support, respondent volunteered with Habitat for Humanity (HFH) for about 28 hours a month. During this time, she utilized subsidized daycare for E.L. After several months, respondent received a public grant that paid her to work at HFH. The grant lasted ten weeks, after which respondent applied for a position with HFH but was rejected. When respondent began receiving child support in March 2013, her TANF support terminated and her food stamp benefit was reduced from $362 to $139 per month, which she was still receiving as of trial.

¶ 61 Respondent testified that she has worked various jobs in Colorado since May 2012. For several years she has been registered with Labor Ready, a temporary employment agency that pays her $8 to $10 per hour depending on the job. Jobs with Labor Ready have been "spotty." The most respondent has worked through the agency in a month is two weeks. In 2013, she worked only one day for Labor Ready, earning $58. Respondent estimated that so far this year

(November 2014) she has earned about $1,000 from Labor Ready. Her last job for them was a construction cleanup job two weeks ago. Respondent believes that the arrangement with Labor Ready provides her the flexibility she needs for doctor's appointments and visitation exchanges.

¶ 62 Respondent testified to other periodic employment. In the summer of 2014, she worked short-term jobs for construction and landscaping companies. These paid between $10 and $13 per hour. She also does housecleaning for a friend once a week, for which she is paid $13 per hour. Respondent has also worked for her neighbor, Jesse Owens, who owns a company called Handyman Services. He pays her $15 an hour. She has worked only a couple of days for him, but he says he will give her work when she returns to Colorado. She hopes to work for him five days per week, but it will depend on what he can afford.

¶ 63 Respondent noted that her total wages in 2012 were less than $250 and in 2014 were approximately $4,000. The latter figure did not include cash payments, which she does not report as income.

¶ 64 Respondent claimed that her visitation obligations have hampered her job search. Moreover, her daycare subsidy has terminated because she has not been working consistently. It is not worthwhile for her to pay for daycare in order to work a minimum wage job through Labor Ready. Consequently, she is forced to work those jobs only when Nielson is available to watch E.L.

¶ 65 Respondent testified to the family support she has received. Each year, her father gives her birthday and Christmas gifts that total $4,000. He has also paid her litigation expenses. Her sister helps her find cheap airfares for visitations and occasionally takes her to the airport.

¶ 66 Respondent testified that she engages E.L. in various recreational and educational activities. They go to museums and aquariums, go on boat trips, and ride bikes at Boulder's bike park (the largest of its kind in the nation, according to respondent).

¶ 67 Respondent testified that E.L. has a close relationship with Nielson, who is patient and generous. Respondent and E.L. enjoy spending time with her father. They also visit Johanna Beeman, who has been respondent's close friend since grade school and is also E.L.'s godmother. Beeman lives an hour away in Denver. Respondent and Beeman talk on the phone frequently and get together about once a month. Beeman's mother has "adopted" E.L. as a grandchild. Beeman described respondent as a calm and attentive parent.

¶ 68 Respondent testified that petitioner's sister and parents live about 20 minutes from Nielson's home. Respondent has offered numerous times to take E.L. to see them, but they have declined because they do not care for respondent. Respondent noted that petitioner's parents prefer Whittlinger over respondent.

¶ 69 8. The parties' positions on custody, removal, and visitation

¶ 70 Though petitioner acknowledged that respondent was a "wonderful mother" to E.L. while they lived together, he believed that he should have sole custody of E.L. Petitioner was concerned not only about respondent's excessive drinking but also her illicit drug use. On one occasion while they lived in Illinois, petitioner observed respondent use marijuana. This was the only time he saw her use that drug. Petitioner also testified that, during a conversation with Larson in which the parties shared the news of the pregnancy, respondent admitted that she used illicit drugs during the pregnancy. She did not identify which drugs. Petitioner is also concerned because respondent has several friends who use drugs, including Beeman who uses medical marijuana but does not appear to need it medicinally.

¶ 71 Larson testified that when the parties informed her that respondent was pregnant with E.L., Larson told respondent that she was aware of respondent's drug use. Larson asked respondent if she was using drugs during her pregnancy, and respondent replied that she did not know.

¶ 72 Also worrisome to petitioner is that respondent "likes men" and recently posted a profile of herself on websites called "NAKID Social Sports in Denver" and "Denver Responsible Hedonists." Petitioner also recalled that several days ago respondent mentioned that she was going to play volleyball at "the club" during petitioner's visitation. Petitioner knew which club respondent was referring to, and presumed that she intended to play naked volleyball, which the club sponsors. Petitioner admitted on cross-examination that it was he who introduced respondent and Whittlinger to that club.

¶ 73 On the issue of removal, petitioner acknowledged that he has family in Colorado but none in Illinois. He opposes removal because he fears that respondent, given her prior efforts to keep him from E.L., will fail to keep him informed about E.L. and fail to encourage a close relationship between him and E.L. Petitioner noted that respondent began calling E.L. "Max" instead of his birth name. Respondent told petitioner that she was calling E.L. that name after the "Max" who owns the club that features naked volleyball. Respondent also registered E.L. as "Max" at his daycare center in Colorado. The trial court subsequently directed respondent to register E.L. by his birth name at the center. Respondent testified that, though she does not like E.L.'s birth name and was bullied by petitioner into agreeing to it, she refers to E.L. both by his birth name and by "Max," the nickname she gave him. She claimed that the nickname comes from a character in the movie "Gladiator" and not from the owner of a club. She stated that she has complied with the court's order to register E.L. by his birth name at the daycare center.

¶ 74 Petitioner called respondent to testify about her September 2014 conviction in Colorado for Driving While Ability Impaired (DWAI), a misdemeanor. Respondent stated that she went to a Colorado state park on the evening of June 14, 2014, to night fish. At the time, E.L. was in Illinois visiting petitioner. Respondent brought to the park a pint of vodka and two beers. Over the course of the evening she drank all the vodka except for an amount that she spilled. She also drank one and a half beers. She slept in her truck and drank more beer the next morning. At about 11 a.m. she became involved in an argument with two men. The argument began when one of the men refused to let respondent play Frisbee with him. She called him a "f'king jerk." The man reciprocated with profanity and the two yelled at each other. A second man intervened and began yelling at respondent. She told the second man that his friend was a "f'ing [dick]." There was a young man present whom respondent assumed was the son of the first man. Respondent acknowledged that she might have told this young man that his father was a "dick." According to respondent, she was "under the influence" of alcohol, having had a beer, but was not "intoxicated."

¶ 75 Respondent testified that her next action was to drive her car to the ranger station to tell her side of story. When she arrived, the ranger summoned the police, who then arrested respondent.

¶ 76 Respondent was charged with driving under the influence, harassment, and DWAI. She pled guilty to DWAI and the remaining charges were dismissed. According to respondent, DWAI is driving with a blood alcohol concentration of .05 to .08. Respondent asserted, however, that the police never tested her blood. She was sentenced to two years of probation. As conditions of probation, she is not permitted to consume alcohol and her car is fitted with an

ignition interlock device. Respondent expressed regret at trial over the many poor decisions that led to her arrest and claimed that the experience was an "eye opener" for her. She has never had any other alcohol-related driving charge.

¶ 77 Respondent, who also asked for sole custody, characterized petitioner as volatile, verbally abusive, controlling, and dishonest. She is concerned that petitioner's poor treatment of women will influence E.L. On the issue of removal, she testified that she has no friends or family in Illinois and no support structure there. She is also concerned about the parties' safety if they live in the same state, "just because everything is so volatile." Petitioner "freaks her out."

¶ 78 Regarding visitation, respondent testified that she recognizes the value for petitioner's involvement in E.L.'s life. She intends to enroll E.L. in preschool the following fall and is amenable to liberal visitation scheduled around E.L.'s schooling. She is also willing to grant petitioner additional visitation when she can manage.

¶ 79 9. Rappaport's Custody Recommendation

¶ 80 Rappaport, the court-appointed custody evaluator, submitted a written report but did not testify at trial. He recommended that the court grant respondent sole custody of E.L. but deny her request for removal.

¶ 81 Rappaport noted that petitioner expressed concern over respondent's drug and alcohol use, her association with drug users, her promiscuity, and her attempts to alienate him from E.L. Respondent in turn expressed concern over petitioner's use of alcohol and drugs (marijuana and steroids) and his problems with anger management. She also emphasized to Rappaport that petitioner is a convicted sex offender. Both parties reported to Rappaport a history of physical fights between them.

¶ 82 Rappaport administered the parties several psychological tests. Respondent had elevations for paranoia, anxiety, and psychopathic deviance. The latter, Rappaport noted, is found in people who "often have difficulty following societal rules and may exhibit antisocial behavior." Testing also suggested that respondent "may have an alcohol or other substance abuse related problem." Petitioner's results were mostly within normal ranges, but the high level of defensiveness shown in his answers called some of the results into question.

¶ 83 As for the parties' history of physical altercations, Rappaport found "no clear indication that one was more of the instigator than the other." There was also "no clear evidence that one party has more problems with drinking than the other," and also "no clear indication that either party drank to such an extent as to place [E.L.] at risk." Rappaport found that petitioner's sex offense "[did] not inherently mean that his son is at a risk of being sexually abused by him, especially since the [victim] was a post-pubescent female." The conviction was not directly related to petitioner's current fitness as a parent, Rappaport concluded.

¶ 84 Rappaport observed that both parents had a positive relationship with E.L. Rappaport found validity in petitioner's concern that respondent undervalued his relationship with E.L. Respondent admitted to Rappaport that she has made disparaging remarks about petitioner in front of E.L. and has told him not to listen to petitioner. Rappaport saw no indication in his observations of parent-child interaction that petitioner was alienated from E.L., but Rappaport was concerned that respondent "has little to no respect for [petitioner] and sees little value in him as a father." While there was mutual dislike between the parties and each had the potential not to support the other's relationship with E.L., Rappaport was "more concerned about [respondent] doing this than [petitioner]." In Rappaport's assessment, respondent's desire to keep E.L. from petitioner was a combination of concern (misguided, in Rappaport's view) over petitioner's prior

sex offense and her general dislike for him. Respondent's "greatest weakness as a parent" is her not wanting E.L. "to be significantly involved with his father."

¶ 85 In explaining his custody recommendation, Rappaport applied the nonexclusive list of relevant custody factors set forth in section 602(a) of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/602(a) (West 2014)). The listed factors are: (1) the wishes of the child's parent(s); (2) the wishes of the child; (3) the interaction and interrelationship of the child with the parent(s), siblings, and any other person who may significantly affect the child's best interests; (4) the child's adjustment to his or her home, school, and community; (5) the mental and physical health of the involved individuals; (6) the potential for violence or threat of violence; (7) the occurrence of ongoing or repeated abuse; (8) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child; (9) whether one of the parents is a sex offender; and (10) military obligations. 750 ILCS 5/602(a) (West 2014).

¶ 86 Rappaport found factors (1) and (2) to be neutral as both parties wanted custody and E.L. was too young to express a preference. Factor (3) favored respondent because she was E.L.'s primary caregiver since birth. Factor (4) also favored respondent because E.L. was well adjusted to his current environment. Factor (5) favored petitioner "slightly" because of respondent's impulsiveness and failure to show good judgment about what she says to E.L. about petitioner. Factor (6) was neutral because the parties were equally responsible for their past physical altercations. Factor (7) neutral or inapplicable. Factor (8) "clearly" favored petitioner because there were "significant concerns about [respondent's] attempt to undermine the relationship between [E.L.] and his father." Under factor (9), Rappaport gave petitioner's sex offense "little

weight" because, though it was of concern, it did not inherently mean that petitioner posed a danger to E.L. Factor (10) was inapplicable.

¶ 87 Rappaport found factors (3) and (4) the "most compelling." While Rappaport believed these factors swung the balance in favor of respondent, he realized that a court could see it otherwise depending on what it deemed most important for E.L.:

> "If the court believes that it is most important for the child to have an ongoing positive relationship with both parents, then it would be recommended that the child reside primarily with his father and spend a significant amount of time with his mother. If the court determines it is more important that the child have the continuity of being with a caregiver who has been his main caregiver throughout the course of his life and that he be with a caregiver whom he has come to rely on to meet his needs, then it is recommended that he reside primarily with his mother but spend a significant amount of time with his [father]."

¶ 88 Rappaport recommended against removal to Colorado. He applied the factors from In *re Marriage of Collingborne*, 204 Ill. 2d 498, 522-23 (2003) and *In re Marriage of Eckert*, 119 Ill. 2d 316, 326-28 (1988), which are: (1) the likelihood that the proposed move would enhance the general quality of life for both the custodial parent and the child; (2) the motives of the custodial parent in seeking removal, namely whether the proposed move is merely a ruse intended to defeat or frustrate the noncustodial parent's visitation; (3) the motives of the noncustodial parent in opposing removal; (4) the outcome that would foster a healthy and close relationship between the child and both parents, given a careful consideration of the visitation rights of the noncustodial parent; and (5) whether a realistic and reasonable visitation schedule can be arranged if removal is allowed.

¶ 89 Rappaport found as follows. Factor (1) favored petitioner as respondent "does not have steady employment in Colorado, and there is no clear reason why she needs to live there other than she has a place to stay and cannot afford to live on her own." Rappaport recognized that respondent and E.L. both benefit from having a free or inexpensive place to live, but he believed that factor (1) was outweighed by other considerations. Rappaport seemed to believe that factors (2) and (3) favored petitioner as his reason for opposing removal was the legitimate one of wanting to maintain his relationship with E.L., while respondent had the mixed motives of wanting to keep petitioner away from E.L. and wanting to remain in Colorado because she prefers it there and has family and friends there. Factor (4) favored petitioner because exercising his visitation rights "will be difficult, especially as the child enters school age." Finally, factor (5) also favored petitioner as there was no possibility of a reasonable and realistic visitation schedule if respondent remained in Colorado.

¶ 90 C. The Trial Court's Decision

¶ 91 In its written memorandum, the trial court found that the best interests of E.L. would be served by granting respondent sole custody and by allowing removal to Colorado. Applying section 602(a) of the Marriage Act on the matter of custody, the court agreed with Rappaport that factors (3) and (4) favored respondent because she was E.L.'s primary caretaker since his birth (factor (3)) and that E.L. was well adjusted to home and community (factor (4)). The court also agreed with Rappaport that factor (8) favored petitioner because

> "[r]espondent affirmatively tried to keep [petitioner] away from the child by failing to disclose where she and the child were living in Colorado. [Respondent] also chose to start calling him Max instead of any form of his birth name. This appears to have been a reaction to her dislike of [petitioner]."

¶ 92 The court further agreed with Rappaport that factors (1), (2), (6), (7), and (10) were either neutral or inapplicable. The court also concurred with Rappaport on factor (9) concerning petitioner's sex offense conviction. The court found "credible evidence," specifically Krick's and Elliot's testimony, that petitioner "presents no risk to his son."

¶ 93 The court disagreed with Rappaport that factor (5), which concerns the mental and physical health of the involved individuals, favored petitioner slightly. The court found that the factor was neutral in the custody analysis. As to removal, however, the court found that considerations of mental health actually favored respondent:

> "The Court is convinced that [respondent] felt trapped and under the control of [petitioner] while they resided together in Illinois. The stress of the living situation led to inappropriate behavior by both parties including the physical fighting, drinking and calling of police on each other when they believed it was to their respective benefit. [Respondent] also acted irrationally after she and the child remained in Colorado when she refused to tell [petitioner] where she and the child were living. The evidence presented after the proofs were re-opened show [respondent] committed an alcohol violation in June, 2014. [She] pled guilty in a reduced charge and was placed on probation. *** The evidence shows substantial compliance with the Colorado sentencing order. *** Rappaport recommended custody to [respondent] but also recommended she reside in Illinois with the minor. Removal is addressed [later in the court's written opinion] but the Court finds that forcing [respondent] to reside in Illinois as a condition of custody may jeopardize the mental health of the parties and the child. This is not in the best interest of the child. Overall the mental and physical health of the parties has improved since the fall of 2012."

Summarizing, the court found that the two factors, (3) and (4), that favored respondent outweighed the one factor, (8), that favored petitioner.

¶ 94 On the issue of removal, the court agreed with Rappaport that factors (2) and (3) of the *Collingborne/Eckert* factors favored petitioner because, while his resistance to removal was sincere, respondent's motives for wanting removal were suspect given her initial attempts to hide E.L.'s location from petitioner. The court disagreed with Rappaport, however, on the remaining three factors:

> "[Respondent] has no family, friends or other connections to Illinois. But for her time with [petitioner], [respondent] has lived in Colorado. The child, [petitioner], and [respondent] have family in Colorado in the vicinity of where [respondent] and the child reside. The child has a greater opportunity to visit with the paternal side of his family by residing in Colorado. This is true whether [respondent] makes him available to paternal relatives or whether [petitioner] does so when in Colorado. [Respondent] has limited work history in Colorado but her employment opportunities are more favorable in Colorado than Illinois. The child was approximately 18 months of age when he left Illinois. Due to age, the child's preference is not a factor. However, the Court finds he has lived in his present environment for approximately 3 years and is well adjusted to his present community. A court can consider a change of environment in determining the best interest of a minor. [Citation.] The child's acclimation to his present environment weighs in favor of his remaining in Colorado. The Court concludes that the general quality of life of child and mother are enhanced in Colorado."

Notably, the court found that, while respondent "initially tried to hide [E.L.'s] location in Colorado from [petitioner]," the parties "worked out a reasonable and realistic visitation schedule allowing meaningful involvement by [petitioner] in the child's life."

¶ 95 The court instituted a visitation schedule allowing petitioner the following visitation in Illinois: six weeks over the summer, every Christmas through New Year's Day, every spring break, and every other Easter and Thanksgiving. The court also allowed petitioner three weekends of visitation per year in Colorado.

¶ 96 Petitioner filed this timely appeal.

¶ 97 II. ANALYSIS

¶ 98 A. Jurisdiction

¶ 99 We attend first to a jurisdictional question raised by respondent. Part of petitioner's appeal challenges the trial court's determination that respondent was not required to seek leave to remove E.L. from Illinois when she formed the intent to remain permanently in Colorado. Petitioner first brought the issue before the trial court in his August 2012 petition to enjoin the return of E.L. to Illinois. The court denied the petition. As an initial matter, the court agreed with respondent that, because there was no parentage action then pending, she was not required to obtain leave to remain with E.L. in Colorado. Rather, if petitioner desired to secure the return of E.L. pending adjudication of the underlying issues, he had to take the affirmative action of seeking an injunction for that purpose under section 13.5 of the Parentage Act (750 ILCS 45/13.5 (West 2014)). Section 13.5 permits the noncustodial parent in a parentage action to seek an injunction against removal pending determination of the issues of custody and visitation.

¶ 100 The court then applied the standards of section 13.5 to petitioner's petition and denied it. Thus, respondent was permitted to remain in Colorado with E.L. pending judgment on custody,

removal, and visitation. The trial court entered its order on October 22, 2012. Petitioner took no immediate appeal from the order.

¶ 101 Respondent contends that, since the October 22 order was an order denying an injunction and therefore was immediately appealable under Supreme Court Rule 307(a) (eff. Feb. 26, 2010)), petitioner waived his challenge to the order by failing to appeal it within 30 days. We disagree. Rule 307(a) lists several types of interlocutory orders, including those concerning injunctions, from which "[a]n appeal may be taken to the Appellate Court" within 30 days of entry of the interlocutory order. Ill. S. Ct. R. 307(a) (eff. Feb. 26, 2010). In *Salsitz v. Kreiss*, 198 Ill. 2d 1, 11-12 (2001), our supreme court held that "may" as used in Rule 307(a) indicates that an immediate appeal from an interlocutory order is permissible rather than mandatory. Thus, "the party has the option of waiting until after final judgment has been entered to seek review of the circuit court's interlocutory order." *Id.* at 11.

¶ 102 Respondent cites two cases, *Williams v. Nagel*, 251 Ill. App. 3d 176, 179 (1993), and *Robert A. Besner Co. v. Lit America, Inc.*, 214 Ill. App. 3d 619, 626 (1991). These cases do hold, as she represents, that an appeal under Rule 307(a) from an interlocutory order must be taken within 30 days or the right to appeal is lost. *Williams* was decided by the Fourth District Appellate Court and *Robert A. Besner* by the First District. This district later disagreed with their holdings on that jurisdictional question. See *Anderson v. Financial Matters, Inc.*, 285 Ill. App. 3d 123, 135-36 (1996). In the appellate court opinion in *Salsitz*, the First District Appellate Court recognized the disagreement but sided against our decision in *Anderson*. See *Salsitz v. Kreiss*, 311 Ill. App. 3d 590, 593 (1999). The supreme court reversed the appellate court on the issue, thereby resolving the disagreement among appellate districts.

¶ 103 Under the supreme court's decision in *Salsitz*, petitioner's failure to file an appeal within 30 days of the denial of his petition for an injunction was not a forfeiture of his challenge to that judgment. At trial, petitioner renewed his contention that respondent's removal of E.L. to Colorado without leave of court was improper. In its memorandum decision, the trial court again rejected that position. Petitioner raises the matter on appeal, and we proceed to address its merits.

¶ 104 Petitioner cites *In re R.B.P.*, 393 Ill. App. 3d 967 (2009), a case decided by the Third District Appellate Court, and our decision in *Hedrich v. Mack*, 2015 IL App (2d) 141126, which cited *R.B.P.* with approval. Both cases were parentage actions. The respondent in *R.B.P.* moved from Illinois to Arizona with the parties' child prior to the petitioner's commencement of the parentage action. The petitioner argued that the respondent was required to obtain leave of court before removing the child from the jurisdiction. The appellate court disagreed. The court held that, where the parties are unmarried and there is no order of custody or pending parentage action, the custodial parent need not obtain leave of court before removing the parties' child from the jurisdiction. *Id.* at 974. In that situation, the noncustodial parent's only recourse for securing return of the child pending adjudication of custody and visitation is an injunction under section 13.5. *Id.* In deciding whether to enter such an injunction, the trial court must consider, but is not limited to, the following factors:

> "(1) the extent of previous involvement with the child by the party seeking to enjoin removal;
>
> (2) the likelihood that parentage will be established; and
>
> (3) the impact on the financial, physical, and emotional health of the party being enjoined from removing the child." 750 ILCS 45/13.5 (West 2014).

¶ 105 At the time respondent decided to remain in Colorado permanently, the parties were unmarried and there was no custody order or pending parentage action. Therefore, under *R.B.P.* and our decision in *Hedrich* approving of *R.B.P.*, respondent was not required to seek leave to remain with E.L. in Colorado. Rather, petitioner had the burden of seeking an injunction under section 13.5 compelling E.L.'s return pending adjudication of the underlying issues.

¶ 106 Petitioner, however, suggests that it should make no difference that his parentage suit and judgment of paternity did not exist when respondent decide to remain permanently in Colorado. According to him, it is enough that both existed by the time of the *hearing* on his section 13.5 petition in September 2012. He claims his position "stands to reason." However, he offers no analytical support for it. We adhere, therefore, to our decision in *Hedrich*.

¶ 107 We note that petitioner's only contention here is that respondent needed preclearance for removing E.L. to Colorado. He does not make the alternative argument that, regardless of the need for preclearance, the factors set forth in section 13.5 weighed in favor of returning E.L. to Illinois pending adjudication of the underlying issues.

¶ 108 Of course, the practical consequence of our resolution here is that respondent was within her rights to remain with E.L. in Colorado from May 2012 onward through the pendency of this litigation. Thus, for purposes of custody and removal, we may consider the time that E.L. lived in Colorado and his adjustment to that environment.

¶ 109 B. Custody

¶ 110 Petitioner contends that it was error to award sole custody of E.L. to respondent rather than to him.

¶ 111 Custody under the Parentage Act is determined according to the standards of the Marriage Act, specifically section 602(a) (750 ILCS 5/602(a) (West 2014)). 750 ILCS

45/14(a)(1) (West 2014). Section 602(a) requires the court to consider all relevant factors, including ten enumerated factors. 750 ILCS 5/602(a) (West 2014). The ten listed factors are: (1) the wishes of the child's parent(s); (2) the wishes of the child; (3) the interaction and interrelationship of the child with the parent(s), siblings, and any other person who may significantly affect the child's best interests; (4) the child's adjustment to his or her home, school, and community; (5) the mental and physical health of the involved individuals; (6) the potential for violence or threat of violence; (7) the occurrence of ongoing or repeated abuse; (8) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child; (9) whether one of the parents is a sex offender; and (10) military obligations. 750 ILCS 5/602(a) (West 2014). The overarching criterion is the best interests of the child. *Id.* A trial court's determination regarding custody is given great deference because the court is in a superior position to judge the credibility of the witnesses and, consequently, to determine the best interests of the child. *In re Marriage of Iqbal & Khan*, 2014 IL App (2d) 131306, ¶ 55. "A trial court's determination as to the best interests of the child will not be reversed on appeal unless it is clearly against the manifest weight of the evidence and it appears that a manifest injustice has occurred." *In re Parentage of J.W.*, 2013 IL 114817, ¶ 55. "A judgment is against the manifest weight of the evidence only when the opposite conclusion is clearly apparent." *Id.* In determining whether a judgment is contrary to the manifest weight of the evidence, the evidence is reviewed in the light most favorable to the appellee. *In re Marriage of Debra N. and Michael S.*, 2013 IL App (1st) 122145, ¶ 45. If multiple inferences can be drawn from the evidence, a reviewing court will accept those inferences which support the trial court's order. *Id.*

¶ 112 The trial court found that factors (3) and (4), which favored respondent, outweighed the one factor that favored petitioner, factor (8). Petitioner contends that the court's findings on these factors were erroneous and that it improperly balanced them. We disagree.

¶ 113 On factor (3), petitioner first contends that it was "unjust" for the trial court to consider the time that E.L. spent with respondent in Colorado since May 2012. Here petitioner reasserts his position that respondent was obligated to seek leave to remove E.L. from Illinois before electing to remain permanently in Colorado with E.L. We addressed this issue above (*supra* ¶¶ 98-108) and held that respondent was not required to obtain permission to remove E.L. Consequently, it was appropriate for the court to consider E.L.'s acclimation to life in Colorado since May 2012.

¶ 114 Further on factor (3), petitioner remarks that respondent "delayed litigation as she refused to pay Dr. Rappaport her share of the evaluator's fee." Petitioner does not specify how this fact relates to factor (3) or any other aspect of the best-interests inquiry. See 750 ILCS 5/602(b) (West 2014) ("The court shall not consider conduct of a present or proposed custodian that does not affect his relationship to the child.").

¶ 115 Petitioner also claims that the court gave insufficient consideration to his testimony that respondent drank excessively during their residence together in Illinois in the two periods 2009-2010 and 2010-2012, and to respondent's conviction in September 2014 for DWAI. This evidence is of concern, but we consider it only in the manner that our deferential standard of review permits. Our function as a reviewing court is to ensure that the trial court weighed all relevant factors. We are not to weigh the evidence as if deciding the matter in the first instance. See *In re Marriage of Pfeiffer*, 237 Ill. App. 3d 510, 513 (1992) ("It is not the function of this court to reweigh the evidence or assess the credibility of testimony and set aside the trial court's

determination merely because a different conclusion could have been drawn from the evidence."). The trial court did consider the evidence of respondent's drinking. For instance, the court found that, during their residence together in Illinois, the turmoil in the parties' relationship led not just respondent but also petitioner to drink Along these lines, Rappaport, the court-appointed custody evaluator, found that neither party had more of an alcohol problem than the other, and that neither drank to the extent of placing E.L. at risk.

¶ 116 The court also mentioned respondent's alcohol-related offense in September 2014. We have no reason to doubt that the court appreciated the full significance of respondent's serious lapse in judgment. The court found mitigation in the fact that E.L. was not present at the time. Respondent expressed regret for the many poor decisions she made that day, including her profanity-laced verbal assault on the two men at the park. She testified that this was her only conviction for an alcohol-related driving offense, and petitioner did not present evidence to the contrary.

¶ 117 Of course, petitioner himself has a criminal past involving a sexual relationship with a 14-year-old girl when he was 30 years old. Given the age of the conviction and the opinion of therapists that petitioner presented no risk to children, the trial court gave the conviction "little weight." The court likewise could have reasonably found that respondent's behavior in September 2014 was an isolated incident that did not manifest an ongoing risk to E.L.

¶ 118 We do also recognize petitioner's testimony that he observed respondent use marijuana on one occasion and that she admitted to him that she used drugs (which she did not specify to him) during her pregnancy. Rappaport noted, however, that both parties tested negative for illegal drugs. Respondent's scores on psychological tests did suggest an alcohol or other substance abuse problem. Nonetheless, Rappaport recommended that respondent have sole

custody of E.L. Nor was the trial court dissuaded by petitioner's testimony or Rappaport's findings from awarding respondent sole custody. With the record unclear that respondent has a drug problem, the trial court was not in error.

¶ 119 Lastly on factor (3), petitioner asserts that respondent "did not present any evidence as to [E.L.'s] interaction with others in Colorado except that he gets along well with her friend [Nielson] and that he sees her friend [Beeman] once a month." Petitioner claims there is no "real interaction" between E.L. and respondent's family. Petitioner completely ignores respondent's testimony that part of what she and E.L. enjoy about living in Colorado is seeing respondent's father. Petitioner has no basis on which to criticize that family interaction as not "real."

¶ 120 Next, petitioner addresses factor (4), which considers the child's adjustment to home, school, and community. On this factor, the court found that respondent and E.L. have resided in Colorado since May 2012 and that E.L. is "enrolled in a daycare/preschool program, and the evidence suggests he is doing well." Petitioner claims that, contrary to this finding, E.L. has not consistently attended daycare and is not enrolled in preschool. Petitioner is correct on both points. The court obviously meant, however, that the institution was either a preschool or a daycare or had aspects of both. Moreover, the fact that respondent uses the daycare principally for childcare when she is working, and that her work and E.L.'s attendance are both sporadic, does not mean that E.L. is not well adjusted to the program. In any event, a child who is not yet of school age may still become adjusted to his environment. Respondent testified that she and E.L. take advantage of many educational and recreational offerings in Colorado, including visiting museums and riding bikes at Boulder's bike park.

¶ 121 Petitioner finds it significant, however, that respondent did not testify "about any friend, neighborhood child, activity program, park district program, or extra-curricular activity."

Respondent, he claims, did not identify any "scheduled and consistent activities" for E.L. While the structure that petitioner has in view may facilitate a child's adjustment to his community, it is not necessary in all cases. The lack of structure in E.L.'s life may well reflect his young age—four years—at the time of trial. Moreover, though respondent did not identify any relationships that E.L. has with other children, she did testify to his relationships with adults. She mentioned that he is close particularly with Nielson, and also with Beeman, who is E.L.'s godmother, and Beeman's mother, who has "adopted" E.L.

¶ 122 Finally, on factor (8), petitioner claims that respondent is unwilling to foster a close and continuing relationship between him and E.L. The trial court found that this factor favored petitioner but that it was outweighed by other considerations. Petitioner gives foremost emphasis to respondent's months-long concealment of her location from petitioner once she decided to stay in Colorado after the family's trip there in May 2012. The trial court recognized this "irrational" behavior by respondent and seemed to attribute it to her share of the mutual antagonism that the parties developed during their residence together in Illinois. The court further noted that, despite respondent's initial interference with petitioner's relationship with E.L., the parties were able to cooperate in the visitation that was allowed petitioner starting in December 2012. The court evidently saw this as significant improvement in respondent's willingness to accommodate petitioner's efforts to maintain a relationship with E.L.

¶ 123 Petitioner asserts, however, that respondent was responsible "for the implementation of a court order to provide flight information to [petitioner]." Actually, each party accused the other of withholding travel information. The trial court's order directs both parties to provide such information and does not identify which party's conduct created the need for the order.

¶ 124 As further evidence of interference, petitioner notes that respondent referred to E.L. as "Max" and registered him by that name at the daycare center. The trial court took due note of this behavior, attributing it to respondent's dislike for petitioner. Petitioner also refers to respondent's admission to Rappaport that she speaks derogatively about petitioner in E.L.'s presence, and to Rappaport's conclusion that respondent sees no worth in petitioner as a father. Such attitude and conduct are certainly not salutary, and the trial court did not condone them. Rather, having thoughtfully balancing the custody factors, the court believed that the predominant considerations were two-fold. First, respondent was E.L.'s primary caregiver from birth. While there is no longer in Illinois a presumption in favor of the mother as custodian (*In re Marriage of Bush*, 170 Ill. App. 3d 523, 529–30 (1988)), it remains "appropriate to consider which parent has been the primary caretaker of the children" (*In re Marriage of Hefer*, 282 Ill. App. 3d 73, 77 (1996)). Second, E.L. was thriving in Colorado, where he lived uninterruptedly since May 2012. A reviewing cannot reverse a custody decision just because another conclusion may be drawn from the evidence. See *Pfeiffer*, 237 Ill. App. 3d at 513.

¶ 125 Petitioner attempts to draw factual parallels between this case and *In re Marriage of Debra N.*, 2013 IL App (1st) 122145. Such comparisons are rarely availing, as "each [custody] case stands on its own facts" (*Breedlove v. Breedlove*, 5 Ill. App. 3d 774, 776 (1972)).

¶ 126 In *Debra N.*, the trial court originally granted the parties, Michael and Dehra, joint custody of their daughter, Aubrey. Subsequently, Michael moved for modification, seeking sole custody based on Debra's persistent attempts to undermine his relationship with Aubrey. The court-appointed custody evaluator recommended cessation of joint custody because of conflict between the parties, but suggested that Debra be given sole custody, primarily because she had a

closer relationship with Aubrey than Michael did. In his testimony, Michael identified several ways in which Debra sought to frustrate his relationship with Aubrey, including:

> "visitation interference, transition problems, ***, Debra moving 39 miles away when he moved to Arlington Heights to be closer to his daughter, Debra seeking removal to Texas, Debra's refusal to permit extra parenting time during school breaks, Debra's failure to include Michael's name on registration forms, Debra's failure to identify Michael as one of Aubrey's emergency contacts, Debra's attempts to alienate Aubrey from him, Debra's efforts to preempt Michael's plans with his daughter, disagreements over Aubrey's extracurricular activities and her participating [in] summer camps, ***, and [obtaining] *** orders of protection [against Michael]." *Id.* ¶ 25.

¶ 127 The trial court awarded Michael sole custody, agreeing with him that Debra engaged in continual efforts to alienate him from Aubrey. The court identified some of her objectionable conduct:

> " 'Debra continues to interfere with Michael's relationship with Aubrey. Debra has engaged in a pattern of interference and manipulation of Michael's relationship and [Aubrey's] school activities, Michael's parenting schedule, vacation and holiday visitation. The Court finds that Debra has engaged in a pattern of action designed to diminish or eliminate Michael's ability to be a fully engaged and active parent. Debra has manipulated the terms of the JPA [Joint Parenting Agreement] as well as engaged in a pattern of conduct designed to harass Michael, to limit his parenting time, summer, vacation and holiday time with Aubrey, and to potentially alienate Aubrey from a healthy relationship with her father and his family. Debra has taken on the role of gatekeeper as to Aubrey's schedule, and if not expressly written into the JPA, Debra refuses additional parenting time for Michael. Although Debra has more time

> with Aubrey than does Michael, she is inflexible about allowing Michael additional time. Debra refused to provide Michael with more than a few hours over Winter break. The fact that Aubrey has not yet been alienated does not mean the Court should ignore Debra's actions.' " *Id.* ¶ 39.

The appellate court affirmed, finding sufficient evidence that Debra "made attempts to thwart [Michael's] efforts to visit and maintain a close relationship with the child." *Id.* ¶ 56.

¶ 128 *Debra N.* is distinguishable. While some of respondent's actions resemble those of the mother in that case, respondent's conduct was not nearly as severe overall. For instance, there were no ongoing efforts to frustrate petitioner's visitation, even though respondent had formally concealed her location from petitioner.

¶ 129 In conclusion, while perhaps a different trial court might have awarded petitioner sole custody of E.L., we cannot say it was a manifest injustice (*J.W.*, 2013 IL 114817, ¶ 55) for the trial court to rule in favor of respondent.

¶ 130 C. Removal

¶ 131 Removal petitions under the Parentage Act are judged by the standards provided in the Marriage Act. 750 ILCS 45/14(a)(1) (West 2014). Section 609(a) of the Marriage Act provides that the court may permit a custodial parent to remove a child from Illinois if it is in the best interests of the child. 750 ILCS 5/609(a) (West 2014). The burden of proof on this standard rests with the party seeking removal. *Id.*

¶ 132 Removal petitions are decided according to the following factors: (1) the likelihood that the proposed move would enhance the general quality of life for both the custodial parent and the child; (2) the motives of the custodial parent in seeking removal, namely whether the proposed move is merely a ruse intended to defeat or frustrate the noncustodial parent's visitation; (3) the

motives of the noncustodial parent in opposing removal; (4) the outcome that would foster a healthy and close relationship between the child and both parents, given a careful consideration of the visitation rights of the noncustodial parent; and (5) whether a realistic and reasonable visitation schedule can be arranged if removal is allowed. *Collingborne*, 204 Ill. 2d at 522–23; *Eckert*, 119 Ill.2d at 326–28. The paramount consideration is whether the move is in the best interests of the child. *Collingborne*, 204 Ill. 2d at 525. "A determination of the best interests of the child cannot be reduced to a simple bright-line test, but rather must be made on a case-by-case basis, depending, to a great extent, upon the circumstances of each case." *Eckert*, 119 Ill. 2d at 326. "A trial court's determination of what is in the best interests of the child should not be reversed unless it is clearly against the manifest weight of the evidence and it appears that a manifest injustice has occurred." *Id.* at 328.

¶ 133 The trial court found that factors (2) and (3) favored petitioner, that factors (1), (4), and (5) favored respondent, and that the overall balance favored respondent. Petitioner's individual challenges on appeal concern all five factors.

¶ 134 On factor (1), petitioner contends that there is insufficient proof that respondent's remaining in Colorado will enhance the quality of life for her and E.L. First, he notes that respondent has not had steady employment in Colorado. The trial court recognized this, but found that respondent has better employment prospects in Colorado than in Illinois. This finding has adequate support, as respondent testified that for several years she has been registered with a temporary employment agency, which had last given her work about two weeks prior to trial. Respondent also noted that she has worked for her neighbor, who has offered her additional work on her return to Colorado. She blamed the sporadic nature of her work on the parties' varying visitation schedule, and testified that she hoped to work more consistently once these

proceedings are concluded. Petitioner also asserts, we note, that respondent "does not have a home to call her own." This rings hollow because petitioner himself lives in a friend's home.

¶ 135 Second, petitioner minimizes respondent's support network in Colorado. He claims that respondent provided "no testimony that she and [E.L.] spent any time whatsoever with her family or that [E.L.] even saw her family in the past two years he lived there." Petitioner simply ignores respondent's testimony that she and E.L. spend time with her father. We admonish petitioner that we expect parties before us to represent the record fully and accurately. We note that respondent also testified that her sister helps with visitation by finding cheap flights and taking her to the airport on occasion. Additionally, Colorado is home not just to respondent's family but petitioner's as well.

¶ 136 Respondent also has the support of friends in Colorado. Respondent is good friends with Nielson, her roommate, and with Beeman.

¶ 137 Petitioner's final point on factor (1) is that E.L.'s involvement with the community in Colorado is minimal. We addressed this issue above in discussing custody factor (4) (the child's adjustment to home, school, and community). *Supra* ¶¶ 120-21. Our discussion there applies equally here.

¶ 138 As he did with the issue of custody, petitioner cites removal cases for factual comparisons. As "[e]ach removal case is *sui generis*" (*In re Marriage of Demaret*, 2012 IL App (1st) 111916, ¶ 60), such comparisons are usually fruitless for the proponent.

¶ 139 On factor (1), petitioner cites *In re Marriage of Stahl*, 348 Ill. App. 3d 602 (2004), where the appellate court affirmed the trial court's denial of the mother, Lisa Stahl's, petition for removal of the parties' two children from Geneva, Illinois, to Cedarburg, Wisconsin. At the time of the hearing, Stahl ran a business with Allen Hansen. The business had an office in Grafton,

Wisconsin, and, formerly, an office in Geneva. Hanson lived in Grafton and operated the Grafton office. Stahl testified that she recently closed the Geneva office when she and Hansen decided to consolidate the business. Stahl testified that she wanted to move to Cedarburg in order to marry Hansen and run the business with him. She and her children would reside with Hansen and his children from a prior marriage. Stahl claimed that the move to Cedarburg would benefit the children because the schools there are better than the Geneva schools, she would have more disposable income to spend on the children because she would share expenses with Hansen, and she would have more time to spend with the children. *Id.* at 605.

¶ 140 The appellate court agreed with the trial court that removal would not be in the best interests of the children. The court noted that Stahl could identify only a negligible difference between the schools in Geneva and those in Cedarburg. Also, while Stahl's residing with Hansen might give her more disposable income to spend on her children, the record was not clear how her children would be impacted by living with Hansen and his children. Thus, the record was "mixed as to whether a move to Wisconsin would enhance [the children's] lives." *Id.* at 612. Much clearer was the detrimental impact that the move would have on the children's relationship with their father, Carl DeLeo, who resided in Woodridge and was enjoying considerable time with the children because of the limited hours he worked. His time with the children would be significantly diminished if removal were allowed. The appellate court agreed that, on balance, the removal factors favored DeLeo. *Id.* at 612-13.

¶ 141 Petitioner contends that the evidence of enhancement was weaker in this case than in *Stahl*. We disagree. In *Stahl*, the appellate court found it unclear what effect Stahl's residence with Hansen and his children from a prior marriage would have on the parties' children. In this case, the benefits to E.L. of living in Colorado where respondent's family and friends reside were

demonstrated. By contrast, respondent has no friends or family—no support system—in Illinois. Likewise, respondent has employment history in Colorado and the possibility of future work with her neighbor, but in Illinois she has no known employment prospects. Accordingly, there are significant factual differences between this case and *Stahl*.

¶ 142 Petitioner's next contention concerns factors (2) and (3)—the motives of the parties in proposing and opposing removal, respectively. On these factors, the trial court found that, while petitioner's motives in resisting removal were sincere, respondent's motives were suspect as manifested by her concealment of her location for months after she remained in Colorado. A further indicium of respondent's negative attitude toward petitioner was her use of a nickname in place of E.L.'s birth name. Moreover, Rappaport found that respondent saw no real value in petitioner as a father. Hence the trial court was justified in finding that factors (2) and (3) weighed against respondent.

¶ 143 Petitioner's contention, however, appears to be that factors (2) and (3) weighed *more* against respondent than the court found. The court found it in respondent's favor that she complied with court-ordered visitation. Petitioner suggests that respondent was in fact not cooperative, as the record "shows numerous court orders required to just set the monthly visitation." The orders reflect that visitation was set on a month-by-month basis. Petitioner does not elaborate on his insinuation that the lack of a more fixed visitation schedule was respondent's fault. He also notes that the trial court "has been called upon to order [respondent] to provide flight information." As noted above (*supra* ¶ 123), the parties made reciprocal accusations that the other was failing to provide travel information, and the order to which petitioner refers directs both parties to provide such information. Also, the order does not single out any party for blame. We hold that the court gave appropriate weigh to factors (2) and (3).

¶ 144 Finally, on factors (4) and (5)—which together are concerned with the potential impact of removal on the nonmovant's relationship with the child—petitioner contends that respondent cannot be counted on to foster a healthy and close relationship between petitioner and E.L. He asserts that, "[a]side from the court ordered visitation, there is little to nothing else that [respondent] does to help maintain a healthy relationship between [petitioner and E.L.]." The trial court mentioned several indicia of respondent's dislike for petitioner, but concluded, nonetheless, that petitioner could still maintain a close relationship with E.L. despite removal to Colorado. Foremost in the court's mind, apparently, was that respondent, despite her negativity toward petitioner, has complied with court-ordered visitation. She also has, we note, allowed petitioner fairly regular phone contact with E.L. as well as Skype calls, neither of which were ordered by the trial court. Her circumstances not permitting her to drive to Illinois for visitation, she endures the hardship of sleeping overnight in the airport in order avoid lodging costs. We cannot ignore these marks of earnestness. Respondent also testified that she is open, in the event of removal, to a liberal visitation schedule and is willing to grant extra visitation where manageable. It was the trial court's province to judge the credibility of her testimony. *In re D.F.*, 201 Ill. 2d 476, 499 (2002). We will not upset that determination.

¶ 145 Petitioner further contends that his relationship with E.L. will inevitably suffer because of the distance. There is no denying that petitioner is spending less time with E.L. than he did when they lived together in Illinois. This diminished time, though understandably of vital concern to petitioner, is but one consideration under a court's removal analysis:

> "[I]f removal is denied every time a noncustodial parent's visitation would be modified to less frequent but longer periods, removal would likely only be granted in two unique situations. The first would be when both parents live on the Illinois border and the

> custodial parent seeks removal to move across the border. For example, when the parents both live in Quincy and the custodial parent wants to move to Hannibal, Missouri. The other situation would be when parents possess significant wealth and few time restraints that would allow for frequent travel.
>
> This interpretation is against the intent of the General Assembly, which allowed removal from Illinois upon a proper showing the move is in the child's best interest. 750 ILCS 5/609(a) (West 2004)." *Ford v. Marteness*, 368 Ill. App. 3d 172, 178 (2006).

¶ 146 We note that this case is unlike those where the distance is merely a prospect. Petitioner has lived apart from E.L. since May 2012. In judging the potential impact of distance, it is fair to consider the impact that the distance has had so far. Since December 2012, petitioner has had regular contact with E.L. consisting of monthly 10-day visits plus frequent phone contact and also Skype contact. In his February 2014 report, Rappaport found that E.L. had a positive relationship with both parents and was not alienated from petitioner. The trial court determined that petitioner and E.L. have "a close and loving relationship," despite the distance.

¶ 147 "Removal cases are difficult for courts to decide." *Ford*, 368 Ill. App. 3d at 180. "No matter the outcome, one party's life will likely be affected detrimentally." *Id.* A reviewing court cannot act as if it were deciding the case as an initial matter; its role is limited to deciding whether the trial court's decision produced a manifest injustice. Here the trial court considered all relevant factors, observed that some weighed in favor of petitioner and some against him, and found that the predominant factor was that "the general quality of life of child and mother are enhanced in Colorado." We understand petitioner's disappointment, but we cannot say the decision was a glaring injustice.

¶ 148 We are not persuaded otherwise by *Demaret*, 2012 IL App (1st) 111916, which petitioner cites. In *Demaret*, the appellate court affirmed the denial of the mother's petition to remove the parties' children to New Jersey. Notably, *Demaret* reminds us, as does the *Ford* case, that a child's diminished time with the nonmovant parent—an almost inevitable result of removal—is not the only factor bearing on the best interests of the child:

> "We acknowledge that reduced visitation by the noncustodial parent may be an unavoidable consequence whenever a removal petition is allowed. In granting a removal petition, the trial judge may conclude that the improvement in the quality of life for the children tips the best interests scale in favor of removal even if it means that the noncustodial parent will have less visitation time, a decision by the trier of fact that would be entitled to substantial deference." *Id.* ¶ 60.

The court immediately added that the trial court's decision in that case *lacked* a finding that the inevitable diminished contact with the nonmovant parent was outweighed by the enhanced quality of life that removal would bring. *Id.* In this case, by contrast, the trial court indeed made such a finding.

¶ 149 We also recognize that, in granting removal, the court ruled against Rappaport's recommendation. "Although it is within the court's discretion to seek independent expert advice, it is well settled that a court is not bound to abide by the opinions or implement the recommendations of its court appointed expert." *Debra N.*, 2013 IL App (1st) 122145, ¶ 52. The trial court justified its decision in favor of removal with express findings and a considered analysis.

¶ 150 We hold that the decision granting removal to Colorado was not against the manifest weight of the evidence.

¶ 151 III. CONCLUSION

¶ 152 For the foregoing reasons, we affirm the judgment of the circuit court of McHenry County.