2018 IL App (2d) 180373-U
No. 2-18-0373
Order filed September 18, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF FRED STEEN, Petitioner-Appellee, and MARLA STEEN, Respondent-Appellant.	)))))))))	Appeal from the Circuit Court of Du Page County. No. 15-D-0262 Honorable John W. Demling, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Schostok and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court erred in denying respondent's petition to relocate to Ohio with the parties' daughter. Reversed and remanded.

¶ 2 In 2016, respondent, Marla Steen, and petitioner, Fred Steen, divorced. Presently, Marla appeals the trial court's order denying her petition to relocate the parties' daughter, C.S., to Ohio. Although she raises multiple issues, we find dispositive her contentions that the trial court's order was contrary to the manifest weight of the evidence and that the court misapplied the law. We reverse the court's denial of the petition, and we remand for modification of the allocation of parental responsibilities in light of relocation.

¶ 3 I. BACKGROUND

¶ 4 We note first that Fred has not filed an appearance or a brief on appeal. However, an appellee's failure to file a responsive brief does not bar review of the case. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131 (1976). If we can decide the issues by referring to the record and without the aid of an appellee's brief, "the court of review should decide the merits of the appeal." *Id.* at 133. Here, the record on appeal contains the relevant hearing transcripts and common law record to allow our review of the court's decision. The record reflects the following.

¶ 5 A. Parties' Background and Dissolution

¶ 6 Fred grew up in Ohio and has known Marla since they were three years old. His mother, sister, half-brother, uncle, aunt, and cousins still live in Ohio. Before his relationship with Marla, Fred lived with a woman named Sonya and their three children in Detroit. He moved that family to Chicago after a job change in 2008. By November 2010, however, he left them in Chicago and relocated to be with Marla in Ohio.

¶ 7 Marla was also born and raised in Ohio and lived there most of her adult life. She has numerous extended family members and friends there. Marla started working for her employer (first, General Electric (GE) and, then, "Current, Powered by GE") in 2012. At that time, she and Fred were married (they married July 7, 2012) and were living in Ohio. Marla moved to Chicago with Fred in July 2013, in part, because Fred's children were there. Marla was able to continue her employment with Current in Chicago by arranging an exception to work from home remotely, while traveling to Cleveland approximately quarterly. A former supervisor, who is no longer with the company, approved Marla's remote working arrangement.

¶ 8 On February 6, 2015, around two years after moving to Chicago, Fred filed for divorce. In 2015, during the dissolution proceedings, Marla petitioned to remove C.S. (born September 26, 2013) from Illinois to Ohio, but the petition was denied. The parties' dissolution was entered in 2016. The incorporated parenting settlement agreement provided that the parties would share joint decisionmaking authority for all major decisions involving C.S., however, it assigned Marla responsibility as C.S.'s primary caretaker (C.S. was one year old at the time, and was age 4½ at the time of these proceedings). Further, Marla, who earned around $100,000 annually, was responsible for the majority of C.S.'s expenses, minus child support. Marla was to provide C.S.'s primary residence and her health insurance, as well as pay 60% of any uncovered healthcare expenses and 100% of all extracurricular activities, day care, after-school care, and other school expenses through high school. The parties' joint credit card debt was apparently all assigned to Marla, and she testified that the debt, plus the cost of attorney fees, required her to declare bankruptcy and, therefore, that she no longer had any savings. Fred was originally assigned a specific amount of child support, but he later moved to modify it, and it was reduced to $429 monthly. Fred was unemployed at various times, including at the time of the 2016 dissolution and from around March 2017 to March 2018 (he was ill for a period); Marla testified that he owed approximately $400 in child support. Fred had, however, voluntarily contributed to C.S.'s extracurricular activities and uncovered medical expenses; for example, he once paid Marla $188 for Tamiflu when C.S. was ill.

¶ 9 Pursuant to the parenting agreement, Fred has been entitled to parenting time on alternating weekends from 8 a.m. Friday to 8 p.m. Monday and on every Wednesday from 5:30 p.m. to 8 p.m. Approximately one year after the divorce, C.S. would become anxious and cry when Fred picked her up for his overnight visitations. The parties worked together and arranged

for C.S. to eliminate her overnights with Fred for a period. They later worked together again to somewhat successfully re-institute the overnights closer to these proceedings. Fred, however, unilaterally stopped exercising the Monday visitation time.

¶ 10 B. Petition to Relocate

¶ 11 Marla testified that, in January 2018, she was encouraged to apply for a promotion. The position, if she received it, would require her to move to Cleveland, but it represented a salary increase and opened up bonus potential, for which she previously was not eligible. In addition, having lived most of her life in Ohio, Marla recalled that the cost of living in the Cleveland area is lower than in Chicago. Therefore, Marla applied for the position, figuring that she had nothing to lose: if she received the position, she would apply to the court for permission to relocate to Ohio with C.S. If she did not receive an offer, things would remain the same. However, Marla had no intention of simply walking away from the stable position she had held and that had supported her and C.S. for years.

¶ 12 On January 31, 2018, Marla received an offer letter. The letter notified her that she was selected for the position; however, it also stated that the offer was contingent on her relocation to Cleveland and, "if you are unable to relocate by [a certain date], your existing role will be eliminated." Until this point, Marla had *not* been told that, if she received an offer, her existing position would be eliminated. When asked at trial why she even applied for the position, knowing it required relocation, Marla explained, "Well, I applied for it because I expected that I would still have my job. I didn't have anything to lose in my mind. And I had an opportunity that I worked very hard for that I felt like I deserved and I wanted to apply for." Further, "I am trying to make a better life for my family and for [C.S.]" and "my job has put a lot of pressure on me over the past several years to be in Cleveland." When asked why she had not applied for jobs

in Chicago, she explained, "because I had a job that was stable and I had no reason to look for another job." Further, she explained that, other than the digital team that she was already on, there was no other area within Current that pertained to her skill set and technical digital background. Moreover:

> "COUNSEL: Then why not make some attempt to look for a job within this geographical location?
>
> MARLA: I mean, I have worked very hard at my job. I have worked very hard. I have a stable job. I have money vested—although I did. Why would I walk away from something that has been stable, has been a stable source of income for me for years? That is what—that is the income that I use to support my child.
>
> COUNSEL: Well, the current position, the old position that you had at Current, nobody made you walk away from that job, did they?
>
> MARLA: And I had no plans to walk away from that job. I didn't know that job was going away."

¶ 13 Marla's testimony that she did not know, when she applied for the promotion, that her old job would be eliminated, is confirmed by her current supervisor, Jennifer Walsh, who testified that she never previously communicated to Marla that her existing position would be eliminated. Walsh testified that she has supervised Marla for around five years. She confirmed that, in 2015, either she or a former supervisor probably requested, but did not require, Marla to relocate back to Ohio. Walsh confirmed that, in 2017, she in fact requested, but not require, that Marla move to Ohio. Except for Marla, no one on Walsh's team has worked remotely, and Walsh wants the team to all be present in Cleveland. Indeed, Walsh explained that she has always wanted Marla's position to be in Cleveland, but that she continued to allow the exception arranged by a prior

supervisor because Marla is a good employee: "She's strong at her job. She's smart. She has the potential to advance in this company." The position that Marla has held has involved her receiving direction from supervisors on tactical and technical web projects that were "back end" and primarily online. The new role requires Marla to be the person issuing directions and to lead web strategy by collaborating with the company's teams and partners located in Cleveland, where the company has hundreds of employees. Walsh explained that Marla's old position will be modified and re-posted as a Cleveland position and, if Marla does not take the promotion, she will be out of work (she can apply for her old job again, but it, too, will now be in Cleveland). Indeed, at one point, the guardian *ad litem* (GAL), Daniel Walker, e-mailed Walsh and asked, "If Marla does not move to Cleveland [for the new position], will she lose her job that she currently has?" Walsh replied, "Yes, Marla will lose her current job with GE." Walsh further explained:

"COUNSEL: [Marla's old position], has it been eliminated then as we sit here today?

WALSH: With Marla's acceptance of this new role and moving to Cleveland, it will.

COUNSEL: Okay. So has it been—as we stand here today—or sit here today, though, has it been eliminated or not?

WALSH: Yes.

COUNSEL: Okay. And then when is the—when is that job going to be reposted?

WALSH: In April sometime.

COUNSEL: April of 2018?

WALSH: Correct.

COUNSEL: Okay. And the reason that position was eliminated was because Marla accepted this new position, is that correct?

WALSH: There's an opportunity for me to restructure, yes."

¶ 14 Walsh explained that, although the deadline set forth in the offer letter had passed and Marla had not reported to Cleveland, she had not yet lost her job because "we're compassionate people. Marla is fit for the job and we understand the situation she's in, but she's the right candidate so we've made an extension[.]" However, Walsh explained that no further extensions would be granted. "[W]e're already a quarter into this year, and I don't have someone fully in this role, and I need to get somebody in this role connecting in with folks on the team and starting to drive the business." She continued, "*** quite frankly, I can't—I can't keep waiting any longer. *** without somebody fully in this role, and I have a business to run, and I have goals that I have to meet, and I just can't continue to not have this position filled." Walsh explained why Marla's old job would be eliminated and reposted as a Cleveland-based position: "I found it much more effective having folks in the office working together and problems are solved faster when relationships can be built face to face and questions can be answered in the minute of a hallway conversation versus a planned 30-minute conversation four days later because you're trying to schedule a meeting." Walsh testified that, if Marla does not take the new job offer, she would be eligible to apply for her old job after it is reposted and only "if she wants to move to Cleveland." Thus, as of January 31, 2018, Marla's only job opportunities with her employer were based in Cleveland.

¶ 15 Marla did *not* immediately accept the position upon receipt of the January 31, 2018, offer letter. Instead, the next day, on February 1, 2018, she filed and served upon Fred a notice of her intent to relocate. On February 5, 2018, pursuant to section 609.2 of the Illinois Marriage and

Dissolution of Marriage Act (Act) (750 ILCS 5/609.2 (West 2016)), she filed a petition to relocate and, on February 9, 2018, she appeared *pro se* before the court to present the petition. Fred was present at the hearing with counsel. Marla requested an expedited hearing, explaining that her offer letter required her to relocate by March 12, 2018, but the court gave Fred time to respond to the petition.

¶ 16 Almost one month after receiving her offer letter, on February 26, 2018, Marla re-appeared before the court through counsel to present an amended petition. She asked the court for permission to accept the position and for the appointment of a GAL. Fred was also represented by counsel at the hearing. The court repeatedly told Marla that she did not need its permission to accept the position. Specifically, the following exchanges occurred between the court and Marla's counsel:

"COUNSEL: Your Honor, in my amended complaint I'm asking for two forms of relief, the ability for this woman to accept the position and to temporarily on an interim basis without prejudice—

COURT: She doesn't need a court order to accept the position.

COUNSEL: Right.

COURT: That—she can accept the position and elect to take that position right away.

***

COUNSEL: So this is what we would ask for, your Honor.

COURT: Go ahead.

COUNSEL: That [Marla] be allowed to accept the position today; ***.

COURT: Look, she can accept any position she wants. That's not my issue.

COUNSEL: Uh-huh.

COURT: And I, certainly, can't and won't enter a court order saying she can or can't—

COUNSEL: Sure.

COURT: —accept a position. She can certainly accept any position she wants. That's her right and I have nothing—no issues with respect to that. That's not an issue that I have to decide."

Marla apparently accepted the position that day.

¶ 17 At trial on the petition to relocate, Marla further testified that she proposed a schedule with Fred that might commence with her bringing C.S. to Illinois one weekend per month and Fred coming to Ohio one weekend per month; over time, the arrangement could hopefully also evolve such that they could meet halfway in Indiana, possibly at the rest stop where she and Fred used to exchange his older children during their visitation exchanges between Chicago and Ohio. Although Fred's Wednesday evening times with C.S. would need to be eliminated, perhaps C.S. could spend more long weekends with Fred and, when she was not with him during the week, Fred could telephone or they could use Facetime, Skype, or similar technology to communicate. Marla acknowledged that such technology does not replace in-person contact; however, she suggested that, if relocation were allowed, such technology could nevertheless be used to maintain a weekly presence and connection. Marla explained that, although Fred does not presently telephone or use such technology with C.S., C.S. *does* use such technology to maintain a close relationship with her family in Ohio and with her maternal grandmother and grandfather in Florida. Indeed, her grandmother goes to the library and checks out books and reads to her, they have story time, they do flash cards with numbers and letters, and C.S. "calls them all the

time. She knows how to work that thing better than a lot of adults." Marla testified that she would like to work with Fred to facilitate frequent contact with C.S. Nevertheless, Marla testified that Fred has refused to discuss parenting options with her, if she were to move to Ohio, which makes difficult presenting to the court any concrete plans and suggestions. In sum, Marla reiterated that losing her job would have a devastating impact on her and C.S. If that occurred, she would probably seek unemployment and would likely, in the interim, lose their apartment. In Ohio, however, the cost of living was lower and her income would be higher. With greater financial stability, she could afford preschool, and she has a stronger support system in Ohio. Marla testified that, if relocation were denied, she would not move to Ohio.

¶ 18 Fred testified at the hearing that he had rekindled his relationship with Sonya and was living with her and their two younger children in Elmhurst. C.S. has a close relationship with her half-siblings (a 15-year-old girl and 11-year-old boy who still live with Fred, and a 23-year-old daughter who visits); however, there was no evidence of C.S. having any contact with them outside of Fred's visitation periods. Fred and Sonya married in February 2018, after Marla notified him of her intent to relocate. Apparently, Sonya then added C.S. to her health insurance. Fred testified that he had just started a new job, apparently the week of trial, that would pay him $45,000 annually and that he had also added C.S. to his health insurance. He testified that any deficit in child support would be withheld from his future paychecks. Fred represented that his new position required him to work from 8 a.m. to 5 p.m., Monday through Friday, and that he would not be able to leave work early on a Friday to drive to Ohio.

¶ 19 Further, Fred explained that, in the past, traveling from Ohio to see his three older children in Chicago had caused a strain on his relationship with his oldest child because he could not be present during the week for extracurricular activities and, further, that the travel had been

a financial burden. Fred testified that he has no issue with Marla's family in Ohio, that he wanted to be clear that they are "beautiful people" who have treated C.S., him, and his other children well, that he has never interfered with their relationship with C.S., and that "C.S. still has a strong bond with them, even though she lives in Chicago." Having previously experienced the challenges of visiting and maintaining a relationship with out-of-state children, however, Fred was objecting to the petition to relocate because he has a close bond with C.S. and he wishes to maintain that relationship and have frequent, quality contact with her. Fred testified that relocating C.S. would cause "irreparable harm" because he could not continue to be actively involved in her life.

¶ 20 Walker, the GAL, recommended that the court deny the petition to relocate. When first asked the bases for his recommendation, Walker explained that Fred is very active in C.S.'s life and that Fred has other children in Illinois who are close to C.S. Walker then added that there are "heritage and cultural differences" between the parties and with C.S., which "I think is a whole dimension that needs to be addressed."

¶ 21 Walker was then asked whether he considered the 11 factors set forth in section 609.2(g) of the Act (750 ILCS 5/609.2(g) (West 2016)), and he testified to his application of each as follows:

750 ILCS 5/609.2(g) Factors	**GAL's Findings**
1. Circumstances and reason for relocation	Favors Fred. The need to relocate is "self-inflicted" by Marla. She "manipulated" the situation to move. Walker said that he is "very troubled" by the circumstances and manner under which this all occurred, in that Marla *knew* when she accepted the new job that her old job would go away and she did not first give the court or Fred notice. He said that giving notice first "would have been the proper way to do it so we weren't all caught up in this box of if Ms. Steen loses her job." He opined that the fact that her old job was disappearing "only came about because of the acceptance of the job by Ms. Steen."
2. Reasons for objecting to	Fred has good motives for objecting. He values his relationship with

relocation	C.S,. and relocation complicates the quality and quantity of time with her.
3. History and quality of each parent's relationship with child and whether a parent has substantially failed or refused to exercise the parental responsibilities allocated under the parenting judgment	Favors Marla. She has been the primary custodian.
4. Educational opportunities at each location	Not investigated. C.S. is not in school.
5. Presence or absence of extended family at each location	Slightly favors Fred, "but not by a whole bunch." C.S. has a very close relationship with Fred's children in Illinois.
6. Anticipated impact of the relocation on the *child*	Favors Fred. Relocation will disrupt his relationship with C.S. and her relationship with family members in Illinois.
7. Whether the court will be able to fashion a reasonable allocation of parental responsibilities between all if relocation occurs	Neutral. Parties have shown that they can communicate about visitation and parenting time, but they do not communicate a "whole bunch."
8. Wishes of the child	N/A – too young to be a factor.
9. Possible arrangements for the exercise of parental responsibilities appropriate to the parents' resources and circumstances and developmental level of the child	Favors Fred. Relocation will require travel time, which cuts into the visitation time and would impact Fred's financial resources.
10. Minimization of the impairment to the parent-child relationship caused by relocation	Favors Fred. The impairment to Fred's relationship with C.S. if relocation were allowed cannot really be minimized. It would have a solid impact on his relationship with C.S.
11. Any other relevant factors bearing on the child's best interests	Favors Marla. A parent's happiness impacts the child, and Marla is trying to better her life which has "real good indirect benefits" to the child.

¶ 22 C. Court's Ruling on the Petition to Relocate

¶ 23 On March 29, 2018, the trial court denied Marla's petition to relocate. The court noted that it found Walker's recommendations and findings sound. Further, the court made its own findings with respect to the section 609.2(g) factors:

750 ILCS 5/609.2(g) Factors	**Trial Court's Findings**
1. Circumstances and reason for relocation	Favors Fred. Marla has chosen to pursue professional advancement at the expense of C.S.'s relationship with Fred.
2. Reasons for objecting to	Fred has good motives for objecting. He wants to maintain a frequent

relocation	and close relationship with C.S. However, the court noted that Fred either does not understand, or he minimizes, the impact that his refusal to accede to relocation is having on Marla. The court recognizes the hardship that the decision created for Marla, but "[Fred] seems to minimize that, which is of some concern to the court."
3. History and quality of each parent's relationship with child and whether a parent has substantially failed or refuse to exercise parental responsibilities allocated under the parenting judgment	Did not explicitly find that this factor weighed in either parent's favor. Noted that Fred's recent visitation time was limited, but that it was limited by agreement of the parties when C.S. had an issue with overnights with him. Visitation still remained frequent. If relocation occurred, however, "[Fred] would lose being able to attend doctor's visits, school visits, extracurricular activities." The parties would be less able to modify parenting time to address the child's best interests when they are five hours apart. However, the child is "highly bonded with her mother."
4. Educational opportunities at each location	Not expressly mentioned.
5. Presence or absence of extended family at each location	Did not explicitly find that this factor weighed in either parent's favor. The court noted the existence of extended family in both states. The court found it difficult to rate whether relationship with half-siblings (Illinois) or aunts, uncles, and cousins (Ohio) is more important. But a five-hour distance between the two makes it difficult for both families to maintain a relationship.
6. Anticipated impact of the relocation on the *child*	Not specifically mentioned (although possibly implied in other findings).
7. Whether court will be able to fashion a reasonable allocation of parental responsibilities between all if relocation occurs	Favors Fred. The court found that 100% of the benefit of relocation goes to Marla and more than 50% of burden goes to Fred. Fred's time with C.S. on weekends would be reduced due to driving. Five hours is not an abusive amount of travel time for a child, but it also is not conducive to her best interest. C.S.'s tender age would mitigate in favor of shorter, more frequent visits, as opposed to longer visits of more limited time. The arrangements presented did not meet the needs of the child or the parent.
8. Wishes of the child	N/A –too young to be a factor.
9. Possible arrangements for exercise of parental responsibilities appropriate to the parents' resources and circumstances and developmental level of the child	Favors Fred. He would incur the burden and expense of the travel time.
10. Minimization of the impairment to the parent-child relationship caused by relocation	Favors Fred. Relocation would certainly impair the parent-child relationship. Marla proposes technology to minimize that, but the court concurred with the special concurrence in *In re P.D.*, 2017 IL App (2d) 170355, ¶ 59, that a four-year-old child has little patience for, or understanding of, technology and electronic communications.
11. Any other relevant factors bearing on the child's best interests	Favors Marla in that professionally and personally, relocation would "significantly" benefit her and indirectly benefit the child. The court analogized Marla's situation to one where a parent re-marries, knowing that his or her new spouse, who provides financial support, lives in another state or is transferring. However, the court found that

	Marla is considering her own professional advancement over the relationship between C.S. and Fred. The court further noted that it believed Walker's opinion was well-founded based upon the factors and case law.

¶ 24 In announcing its ruling denying the petition, the court stated further:

"In January of 2018, [Marla] had conversations with a supervisor at Current who advised her of an upcoming opening in the Cleveland office and encouraged her to apply. [Marla] did apply for that position, knowing that she would have to relocate to Ohio and knowing that [Fred] would object to the relocation. With the full knowledge that the job required relocation and knowledge that [Fred] objected to the relocation, [Marla] applied for the position. [Marla] received an offer. [Marla] asserted that this offer was the first time that she was aware of the plan to eliminate her present position.

[Marla] accepted the offer with no contingency with respect to any Court approval of the relocation of her daughter. It appears that, if [Marla] does not report to work on March 30th, 2018, the job offer will be rescinded, and her present role will be eliminated.

Does that mean she will not have a job? Quite possibly. However, her employer does recognize her value to the company.

Ms. Walsh in her testimony stated, 'There is only one person right now that has her skill set. If she is not here, our web properties will go stagnant.' In response to the questions if there are other qualified candidates, Ms. Walsh's answer was 'No.' It also is not clear as to her ability to apply for and the nature of the particular job that will replace hers.

Finally, it should be noted that, at least since July 2017, [Marla] has known that her employer would prefer her to be in Ohio. She also testified that it was her desire to

advance professionally. Notwithstanding this fact, she made no attempt to locate other jobs in this geographic area.

The fact that [Marla] may or is even likely to lose her job is certainly troubling. And the loss of her income will clearly have a negative impact on her and the parties' daughter. But indeed, this problem is occurring as a result of her own decision, based primarily on her desire to advance professionally. Her decision was made to pursue her own professional advancement at the expense of the child's relationship with her father."

¶ 25 In addition, the court noted that "certainly, this child is highly bonded with her mother. And she has spent most of the time with her mother. There is no question of that. The suggestion that the mother could simply remove herself, move to Ohio, and allow the child to stay with her father and her father's family on a relatively full-time basis, in effect swap the type of parenting time they have now, is certainly not in the child's best interest. And the Court recognizes that." The court noted that this was not a case where the parties were intentionally trying to interfere or throw up roadblocks to each other. Nevertheless, it denied Marla's petition.

¶ 26 D. Court's Ruling on the Motion to Reconsider

¶ 27 Marla moved the court to reconsider. On May 15, 2018, the trial court denied the motion. In doing so, it commented that:

"I recognize the concern and emotion and, quite frankly, if this were a case based upon emotion or what I believe is fair, there very well may be a different ruling, but I'm not granted that option. What I have to do is follow what the case law is and follow what the statute is as it relates to relocation.

***

There is no question in this case that from the very beginning [Marla] has wanted to move to Ohio. She wanted to move to Ohio in the underlying divorce case. *** She's always wanted to move to Ohio to work for this company to advance her career ***.

Should she be able to have the right to do so? You know, I don't necessarily agree with that underlying concept; however, the issue of whether a child is allowed to relocate is another issue and there are other factors at play and rights of many parties, including that child and both of the parties with respect to that.

Again, this was a situation, unfortunately, of [Marla's] own making. Did she recognize the ultimate ramifications of what would happen? Probably not. But there is no question that she was the one that put into motion the events which she now says requires her to move and achieve the goal that she's always wanted to achieve since the beginning of this case, which is to move to Ohio and work for this company in Ohio.

She accepted a job. She accepted before—she placed no contingency on the acceptance of that job upon being able to relocate with her child to Ohio. She could have said to the company I'd love to take that job, but I would have to determine first whether a Court will allow me to relocate. Had she done that, we very well might not be in this position. We might be in the position where she would be—have her old job and still telecommute from Illinois to Ohio. We don't know because, you know, those facts now don't exist any longer.

But she put into action those—she put into place those actions which requires us to deal with these very difficult decisions at this point in time and to, in some way or another, affect the rights and responsibilities that both of these parties have as parents to their minor child."

¶ 28 The court repeated that the decision was difficult. It noted that it also had not been presented with very workable proposals for modifying parental responsibilities between all parties if relocation were to occur. Further, it noted the financial burden of travel and the time involved.

¶ 29 Finally, the court commented that there was "no question" that removal would directly benefit Marla and "I think it is an indirect benefit to the minor child under the existing case law." However, the court noted that this court's decision in *P.D.*, 2017 IL App (2d) 170355, interpreting the relocation statute, suggested that indirect benefits to the child should not be considered. "Now do I think indirect benefits should be able to be considered? I actually do think that indirect benefits should be able to be considered, but *P.D.* seems to suggest otherwise." Marla's counsel noted that this court's decision in *In re Marriage of Kavchak*, 2018 IL App (2d) 170853, ¶¶ 88-89, interpreted *P.D.* as having said otherwise. Fred's counsel noted that the *Kavchak* decision was unpublished.[1]

¶ 30 Marla appeals. On June 20, 2018, we granted Marla's motion for a conditional stay, permitting her to take C.S. to Ohio, but ordering that she must return C.S. on alternate weekends for visitation with Fred at her expense and that she must make all reasonable accommodations for Fred to visit Ohio.

¶ 31 II. ANALYSIS

¶ 32 For the following reasons, we find compelling and dispositive Marla's arguments that the trial court's ruling was contrary to the manifest weight of the evidence and that the court misapplied the law.

[1] This court released *Kavchak* for publication the same day, but, apparently, after, the hearing on the motion to reconsider.

¶ 33 In 2016, the General Assembly enacted section 609.2 of the Act, codifying the factors a court must consider when ruling on a petition for relocation. 750 ILCS 5/609.2 (West 2016). By and large, our supreme court had previously developed these factors through case law, holding that, in making a best-interest determination, the factors must be considered and balanced by the trial court, with no one factor controlling. See *In re Marriage of Collingbourne*, 204 Ill. 2d 498, 523 (2003); *In re Marriage of Eckert*, 119 Ill. 2d 316, 326–28 (1988). In deciding whether relocation is in the child's best interests, the trial court must consider the following 11 factors:

"(1) the circumstances and reasons for the intended relocation;

(2) the reasons, if any, why a parent is objecting to the intended relocation;

(3) the history and quality of each parent's relationship with the child and specifically whether a parent has substantially failed or refused to exercise the parental responsibilities allocated to him or her under the parenting plan or allocation judgment;

(4) the educational opportunities for the child at the existing location and at the proposed new location;

(5) the presence or absence of extended family at the existing location and at the proposed new location;

(6) the anticipated impact of the relocation on the child;

(7) whether the court will be able to fashion a reasonable allocation of parental responsibilities between all parents if the relocation occurs;

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

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

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

(11) any other relevant factors bearing on the child's best interests." 750 ILCS 5/609.2(g) (West 2016).

¶ 34 The party seeking judicial approval of the proposed relocation must establish by a preponderance of the evidence that the relocation is in the child's best interests. See *Eckert*, 119 Ill. 2d at 325. A determination of the child's best interests 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. *Id.* at 326. A trial court's determination of what is in the child's best interests should not be reversed unless it is contrary to the manifest weight of the evidence. *Id.* at 328. A court's decision is contrary to the manifest weight of the evidence only where the opposite conclusion is clearly apparent or where its findings are unreasonable, arbitrary, or not based on the evidence presented. *Best v. Best*, 223 Ill. 2d 342, 350 (2006). Here, the trial court's findings were both contrary to the manifest weight of the evidence and resulted from misapplication of law. We address each in turn.

¶ 35 A. Manifest Weight of the Evidence

¶ 36 The trial court's factual findings here, which also relied upon Walker's findings, were contrary to the manifest weight of the evidence in that at least five critical findings were simply not based on the evidence or were contradicted by the evidence.

¶ 37 First, the trial court and Walker heavily faulted Marla for allegedly: (1) applying for the promotion, which got the ball rolling and ultimately put the parties "in a box" where she would lose her existing position; and (2) for accepting the position without contingency and without prior notice to Fred or the court. These findings are factually incorrect.

¶ 38 Indeed, Walker was "very troubled" by the alleged "box" that Marla put the parties in by manipulating and accepting the position, knowing it would require her to move, without first notifying the court or Fred. This recollection of the facts appears to be a fundamental reason for his recommendation that the petition be denied. When asked at the hearing if his opinion would change if he knew that Marla did *not* accept the position until the last possible day before she would potentially lose the new job opportunity, he replied that that was not his understanding of the facts. Rather, his understanding was that Marla "accepted the job before she gave notice of the relocation." The problem is that this recollection is erroneous. It is totally incorrect. Marla did *not* immediately accept the position. Indeed, she did not accept it until almost one month later, after both the court and Fred had clear notice of the situation, and at a time when both her old and new positions were in jeopardy. To be fair, Walker had not yet been appointed and was not present at the hearings where Marla informed the court and Fred of her intent to relocate and asked permission to accept the position. Nevertheless, he apparently did not review the proceedings that occurred prior to his appointment and, thus, improperly assigned fault to Marla for something that did not happen.

¶ 39 The trial court compounded the error when it effectively agreed with Walker, finding that Marla accepted the offer "with no contingency with respect to any Court approval of the relocation of her daughter." It appears to have believed that Marla failed to notify Walsh that her acceptance was contingent on whether the court would allow her to relocate. Indeed, this finding has no basis in the record, both because the court repeatedly told Marla that she could accept the offer without court permission and because the record makes clear that Walsh was well aware of Marla's situation and that she could not relocate to Cleveland with C.S. absent court approval.

¶ 40 Second, both the court and Walker incorrectly determined that Marla's position was eliminated only because she accepted the new one, essentially faulting her for the elimination of her old job. Again, this is contrary to the evidence. The evidence is uncontroverted that the decision to eliminate Marla's old position was one made by Walsh, not Marla, and that Marla did *not* know about this possibility before she applied for the promotion. The evidence reflects that: (1) the offer letter stated that the offer was contingent on her relocation to Cleveland within six weeks of the letter and, "if you are unable to relocate by this date, your existing role will be eliminated," and, thus, the pronouncement that the position was being eliminated was made prior to acceptance; (2) the evidence is uncontroverted that, when she applied for the position, Marla did not know that the company planned to eliminate her position upon extending her an offer; and (3) Walsh, via e-mail and in her deposition, made clear that Marla's old job is being eliminated, slightly modified, and will be re-posted as a Cleveland-based position, regardless of whether Marla accepts the new position and relocates. We note that the trial court made no findings that either Marla or Walsh were not credible.

¶ 41 Third, in its ruling, the court erroneously questioned whether Marla would lose her job upon denial of the relocation, commenting that it was "quite *possibl[e]*" (emphasis added) (before again faulting Marla for this possibility). It noted that Walsh had acknowledged Marla's value to the company and stated that it was unclear as to Marla's ability to apply for and the nature of the particular job that would replace hers. The court appears to be implying that the remainder of Walsh's testimony, which was perfectly clear that Marla's old position was being eliminated and re-posted in Cleveland, that she could apply for it if she wished to move to Cleveland and if she did not take the new position she would otherwise be out of a job, amounted to mere bluffing. Indeed, our review of the record reflects that the evidence was clearly

uncontroverted that Marla would not "possibly" lose her job, but *would* lose her job. Indeed, when Walker asked Walsh, "If Marla does not move to Cleveland [for the new position], will she lose her job that she currently has?" She replied, "Yes, Marla will lose her current job with GE. As an external candidate, she will join the total pool of applicants for any role. She will not have access to GE's internal-only job positions or employee job consideration process." Thus, the court's findings were erroneous, reflect only hopeful speculation, and do not reflect a review of Walsh's entire testimony in its full context.

¶ 42 Fourth, when Walker was first asked the basis for his recommendation that the petition be denied, he noted that there are "heritage and cultural differences" between the parties and with C.S., which "I think is a whole dimension that needs to be addressed." Walker did not further recognize that Fred (who is apparently African-American, while Marla is Caucasian) has family in Ohio. There was some testimony that Fred's relationship with his mother is estranged, but Marla testified that C.S. has somewhat of a relationship with her paternal grandmother, who loves her, and that Fred has other family in Ohio as well. Thus, there seems to be no basis for Walker's implication that if Marla were to relocate with C.S., she would lack exposure to her African-American heritage and culture. Further, Marla testified that she would encourage C.S.'s relationship with Fred and his family, and Fred testified that Marla's family had treated him, C.S., and his family very well. Thus, to the extent that the court relied upon Walker's testimony, and to the extent that testimony implied that C.S. would lack exposure and access to Fred's family and heritage, that finding is not supported by the record.

¶ 43 Fifth, the trial court found that the proposed arrangements for re-allocating parental responsibilities were not very workable, in part rejecting the suggestion that Fred could work to maintain a relationship during the week with C.S. by using technology. The court stated that the

four-year-old child will not have patience for technology such as Facetime or Skype. Indeed, in making this finding, the trial court relied on the special concurrence in *P.D.*, 2017 IL App (2d) 170355, ¶ 59, which spoke in general terms about a child's ability or inclination to use technology. Here, there is ample, uncontradicted evidence that C.S. is not the average child portrayed in *P.D.*'s special concurrence, as Marla testified that C.S. uses technology, such as Facetime, Skype, and the telephone, to maintain a close relationship with her family in Ohio and her maternal grandparents in Florida. Her grandmother goes to the library and checks out books and reads to her, they have story time, they do flash cards with numbers and letters, and C.S. "calls them all the time. She knows how to work that thing better than a lot of adults." Thus, as to C.S., her ability to use technology and her ability to enjoy a relationship with relatives by using that technology is unrebutted and is contrary to the court's finding in this regard.

¶ 44 In sum, the court here excessively weighed against Marla various factors based on findings that were unsupported by the record. The evidence, as a whole, reflects that Marla was encouraged to apply for the position and did so, not knowing that, if she received it, her old position would be eliminated. She immediately notified the court and Fred of the situation and requested permission before accepting the position. Her supervisor's testimony makes clear that she values Marla as an employee, but also that she sees an opportunity to re-structure and to have her entire team in Cleveland. The evidence showed this to be *her* decision, not Marla's. Marla has been the primary source of support for C.S., both as caretaker and financially. C.S. is highly bonded to Marla, and the court continued to find it in C.S.'s best interest to remain in Marla's primary care. Yet, the court's focus on assigning blame to Marla for applying for the position and thereafter jeopardizing her Chicago-based position, based on a misrecollection of facts, resulted in it missing the forest for the trees. It considered heavily the inconvenience to Fred and

the unfortunate impact relocation might have on his relationship with C.S., to the exclusion of the practical effect of its ruling: a child whose mother and main source of support would be rendered unemployed. It cannot be emphasized enough that for years, Marla has been the primary source of financial stability for C.S. The court, however, focused primarily on the reasons for Marla's request to relocate, and either minimally acknowledged or entirely ignored the impact Marla's unemployment would have on C.S., and the evidence reflecting Marla's willingness to work with Fred to foster his and his family's relationship with C.S.; the support system that Marla and C.S. have in Ohio; and the fact that Fred could maintain a schedule with C.S. similar to the one he already had and could utilize C.S.'s technological abilities, not to exactly replicate the existing arrangment, but to supplement their weekly relationship. The court also apparently did not consider that Fred had just accepted an employment position that would require him to be at work from 8 a.m. to 5 p.m. from Monday through Friday, which would reduce his time with C.S. under the current arrangement *even if she stayed in Illinois*. Further, the court assigned 50% of the burden of relocation to Fred, assuming that to be the case financially and due to the travel. However, Fred proposed no alternatives, other than rejecting the petition outright, and refused to discuss potential arrangements with Marla. Thus, Marla's proposals for reallocating parental responsibilities were, by necessity, somewhat vague and not necessarily supportive of the court's 100%-benefit to 50%-burden assessment.

¶ 45 We note again, critically, that the court found that C.S.'s best interests continues to lie with Marla as primary caretaker. Further, Fred never moved to modify the allocation of parental responsibilities to become primary caretaker. As such, the court's ruling, in practice, could result in the primary caretaker being unemployed and responsible for all expenses, with no motion by

Fred to modify the allocation of responsibilities. In sum, the court's decision was contrary to the manifest weight of the evidence.

¶ 46 B. Misapplication of Law

¶ 47 In addition to findings not supported by the evidence, the court appears to have misapplied the law. We review *de novo* questions of law. See, *e.g.*, *In re Marriage of Rogers*, 213 Ill. 2d 129, 136 (2004).

¶ 48 The trial court commented in its ruling that it would possibly hold differently if it were not bound by the statutory factors and case law, most notably this court's decision in *P.D.* The court further noted that, although there was "no question" that removal would directly benefit Marla and "I think it is an indirect benefit to the minor child under the existing case law," the court interpreted our decision in *P.D.* as holding that indirect benefits to the child should not be considered. "Now do I think indirect benefits should be able to be considered? I actually do think that indirect benefits should be able to be considered, but *P.D.* seems to suggest otherwise."

¶ 49 The trial court read *P.D.* too narrowly. As explained in this court's decision in *Kavchak*, 2018 IL App (2d) 170853, ¶¶ 87-89, the relocation statute does not prohibit consideration of the indirect benefits that flow to the child from the benefits of relocation to the parent, nor did *P.D.* stand for such a proposition.

¶ 50 In *Kavchak*, (a case, we note, with facts similar to those here), this court addressed the petitioner's interpretation of *P.D.* as having held that, because considering the improvement to the quality of the relocating parent's life is not a factor under section 609.2(g), a trial court may not consider whether relocation would benefit the parent, in essence, indirectly benefiting the child. *Kavchak*, 2018 IL App (2d) 170853, ¶ 86. We rejected this position, noting that, in *P.D.*,

we simply recognized that, in enacting section 609.2 of the Act, the legislature "intended to emphasize the child's best interests over those of the custodial parent," (*P.D.*, 2017 IL App (2d) 170355, ¶ 36) and, further, that "nothing in *P.D.* prohibits a court from considering an enhancement to the custodial parent's quality of life." *Kavchak*, 2018 IL App (2d) 170853, ¶¶ 88-89. In fact, we held, in deciding a motion to relocate, section 609.2(g)(11) (750 ILCS 5/609.2(g)(11) (West 2016)) *directs* the court to consider "any other relevant factors bearing on the child's best interests." *Id.* at ¶ 88. Therefore, we concluded, nothing in the statute prohibits a court from considering "an enhancement to the custodial parent's quality of life under section 609.2(g)(11), as long as the court is satisfied that it has a bearing on the child's best interests." *Id.* at ¶ 89.

¶ 51 Here, the trial court *acknowledged* that relocation would benefit Marla personally and professionally, which *would* indirectly benefit C.S. However, the court expressed that it did not think that those indirect benefits could be considered, given the decision in *P.D.* As noted in *Kavchak*, this is simply an erroneous interpretation of *P.D.*, which resulted in an erroneous application of the statutory factors, in that the court apparently did not weigh those benefits favorably into its balancing equation. This error, here, was particularly notable, as the court expressed that it might rule differently if it could do so based on fairness and if not constrained by the factors and *P.D.* We note that, to the extent that the court seemed to suggest there was no room for "emotion," fairness, or, it would seem, discretion, in considering and applying the statutory factors, that implication is incorrect. There is no required rigid application of the factors and, instead, courts are to consider, weigh, and balance the factors as appropriate to the child's best interests. See, *e.g.*, *Eckert*, 119 Ill. 2d at 326 (a best-interests determination cannot be reduced to a simple bright-line test; instead it must be made on a case-by-case basis,

depending to a great extent upon the circumstances of each case). In any event, the court here did not properly apply the law, as consideration of the benefits to Marla, and resulting benefits to C.S. (*e.g.*, a happy parent with a nearby support system, an increased income, health insurance, and greater financial stability), when considered along with the other factors as discussed above, warrants granting the relocation petition.

¶ 52 Therefore, while we certainly do not take lightly the impact that relocation might have on C.S.'s relationship with Fred, considering the court's misapplication of case law and the evidence as a whole, we reverse the denial of the petition to relocate and remand for a modified order allocating parental responsibilities in light of relocation. Frankly, all relocations impact a child's relationship with the non-relocating party. As the trial court and court in *P.D.* noted, relocation decisions are extremely difficult. We acknowledge that Fred loves C.S., and his desire to retain a close, frequent relationship with her is, of course, laudable. However, this case does not present a particularly unusual or unworkable relocation situation that demands denial of relocation. Indeed, it is a move to Ohio, the five-hour distance of which is no different than various moves could be *within* Illinois. Given that the record is clear that both parents love C.S. and want what is in her best interest, we encourage them to work together and with the court to equitably reallocate parental responsibilities in light of Marla's relocation to Ohio with C.S.

¶ 53 C. Temporary Orders

¶ 54 In her final argument, Marla asserts that the trial court mistakenly believed that section 609.2 did not specifically allow for temporary relocation and, therefore, it had no authority to enter a temporary order, without prejudice to a subsequent final adjudication of the case. Marla asserts that, if we remand the case to the trial court, this issue is relevant, as the court on remand may need to enter a temporary order pending final adjudication.

¶ 55 As pointed out in Marla's brief, section 603 of the Act permits a court to enter a temporary allocution of parental responsibilities in the child's best interests, prior to entry of a final allocution judgment. 750 ILCS 5/603 (West 2016). We presume that, in light of our June 20, 2018, order, granting Marla's motion for a conditional stay, which permitted her to take C.S. to Ohio, but ordered that she must return C.S. on alternate weekends for visitation with Fred at her expense and that she must make all reasonable accommodations for Fred to visit Ohio, the parties have, in effect, been operating under a temporary allocution of parental responsibilities arrangement. Nevertheless, to the extent that the trial court on remand is tasked with modifying the arrangement, pending a final allocution judgment, the court is directed to consider section 603 as authority for such orders.

¶ 56 III. CONCLUSION

¶ 57 For the reasons stated, we reverse the judgment of the circuit court of Du Page County and remand for modification of the allocation of parental responsibilities in light of relocation.

¶ 58 Reversed and remanded.