2018 IL App (3d) 170384-U

Order filed February 21, 2018

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2018

ALANA J.,	)	Appeal from the Circuit Court
	)	of the 13th Judicial Circuit,
Petitioner-Appellee,	)	La Salle County, Illinois,
	)	
v.	)	Appeal No. 3-17-0384
	)	Circuit No. 16-F-17
	)	
JAMES J.,	)	Honorable
	)	Michelle A. Vescogni,
Respondent-Appellant.	)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Justices O'Brien and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's allocation of parental responsibilities, designation of the children's residence for school purposes, and refusal to award a right of first refusal to provide child care to respondent were not against the manifest weight of the evidence. The circuit court did not err in allowing petitioner's rebuttal witnesses to testify.

¶ 2 Petitioner, Alana J., filed a petition to establish paternity against respondent, James J. Respondent appeals the court's order as to allocation of parental responsibilities, arguing that the court erred in (1) granting the majority of the parenting time to petitioner, (2) designating

petitioner's address as the children's address for school purposes, (3) failing to grant respondent a right of first refusal to provide child care, and (4) allowing petitioner's rebuttal witnesses to testify. We affirm.

¶ 3 FACTS

¶ 4 Petitioner filed a petition to establish paternity alleging that she was the mother of two children, L.J. and F.J., and that respondent was their father. The petition requested that the court determine the existence of the father and child relationship with both children, grant sole custody of the children to petitioner, grant visitation to respondent, and order respondent to pay child support to petitioner. Respondent filed a response to the petition admitting that he was the children's father. The court entered an order stating that respondent was determined to be the biological father of L.J. and F.J. The matter proceeded to a hearing on the issues of allocation of parental responsibilities and parenting time.

¶ 5 At the hearing, petitioner testified that she and respondent began cohabitating in the summer of 2007. The parties lived in Florida at that time. F.J. was born approximately one year later. The parties and F.J. moved to North Carolina in 2009. Five months later, the parties moved to Marseilles, Illinois. L.J. was born in 2010. Petitioner's romantic relationship with respondent ended in the fall of 2012, but they lived together with the children until the fall of 2013.

¶ 6 Petitioner testified that she was a stay-at-home mom when she lived with respondent. Petitioner performed most of the child care at that time. She assigned chores to the children, dressed them in the morning, and toilet-trained them. Petitioner did approximately 75% of the cooking. Both petitioner and respondent disciplined the children. When F.J. was born, petitioner and respondent both took her to her doctor's appointments. Approximately one year later,

petitioner obtained her driver's license. After that, petitioner took the children to most of their doctor's appointments alone. Petitioner took L.J. to all his doctor's appointments by herself.

¶ 7 Petitioner testified that, in the fall of 2013, she and the children moved to her grandfather's house, which was half of a mile away from their previous residence. The residence had six bedrooms. Petitioner's three sisters, one of her sister's boyfriends, and one of her sister's two children also lived at the residence. There were three adult pit bulls and one puppy also living at the residence. The dogs did not like strangers, and they were kept upstairs. Petitioner did not want the children exposed to the dogs because of the children's allergies. Photographs of the house as it appeared on one occasion while petitioner and the children were living there were admitted into evidence as one of respondent's exhibits. The photographs showed that the house was messy. While petitioner lived at her grandfather's house, she attended nursing school and worked as a certified nursing assistant.

¶ 8 After petitioner moved out of the house she shared with respondent, only petitioner disciplined the children. Respondent's visits with the children were inconsistent. Petitioner stated that respondent saw the children, on average, three to five times per month. Respondent had overnight visits with the children approximately three or four times per month. From December 2013 through April 2014, respondent had no overnight visits with the children. He still saw the children sporadically during that time. Petitioner told respondent he had not had an overnight visit with the children in four months and that she was keeping track of when he had the children. After that, respondent began having overnight visits with the children three to five times a month. Respondent saw the children, at most, once or twice a week. This pattern continued the entire time that petitioner and respondent were living separately. There were a few occasions when petitioner went out of town and respondent had the children for longer periods of

time. Petitioner stated that during the summer of 2016, respondent had the children for multiple weeks, but the weeks were never consecutive. Petitioner stated that she and respondent had never split custody of the children; she was always the children's primary caretaker.

¶ 9 Petitioner testified that, in the fall of 2016, she and the children moved to Earlville. Petitioner told respondent she was moving to Earlville over the phone approximately one week before she moved. Respondent hung up on her. Petitioner had previously told respondent that she would try to remain in Marseilles after she graduated from nursing school, but she might move somewhere else in the area. When petitioner moved to Earlville, the children had been attending school in Marseilles for approximately three weeks. The children were currently doing well at their school in Earlville. F.J. was in third grade and L.J. was in first grade.

¶ 10 Petitioner testified that she currently prepared the children's meals, decided when they went to bed and woke up, and cared for them when they were ill. Petitioner drove the children to school every day. The children walked to their babysitter's house when school ended at 3 p.m. Petitioner's friend babysat the children on Mondays and Wednesdays at her home. Petitioner's sister, who was living with roommates, babysat the children on Tuesdays and Thursdays either at her own home or petitioner's home. Petitioner picked up the children at approximately 5:40 p.m. on Mondays, Tuesdays, and Wednesdays. On Thursdays, petitioner worked late and did not arrive home until approximately 7:40 p.m. Petitioner did not work on Fridays, so she was able to pick the children up from school. Either petitioner or a babysitter helped F.J. with her homework.

¶ 11 Over the years, petitioner attended most of the children's parent-teacher conferences alone, but respondent went to a few. Petitioner did not recall whether she told respondent when the parent-teacher conferences were going to occur. The school sent notices about parent-teacher conferences home with the children and also posted it on the school's website.

¶ 12 Petitioner testified that when L.J. was in kindergarten, he received several detentions due to behavioral problems. Petitioner worked with the school to develop a plan regarding L.J.'s behavioral problems. Respondent was not involved in that process. Petitioner did not believe respondent had notice of the meetings. When L.J. began attending first grade in Earlville, petitioner brought the behavior plan and accompanying documents to the school. She also spoke with the counselor, the principal, and L.J.'s teacher about his behavior.

¶ 13 Around the time L.J. was having behavioral problems, F.J. was having problems completing her homework. Petitioner stated that the problems lasted only a few months. At that time, petitioner was working second shift at a nursing home. In late December 2015, petitioner switched to third shift so that she could be home in the evenings with F.J.

¶ 14 In January 2016, petitioner and respondent were both present at a meeting with F.J.'s teacher regarding F.J.'s homework. Petitioner stated that respondent "pretty much spent the entire time talking down about [petitioner's] parenting and why [F.J.] wasn't getting her homework done because [petitioner] was such a terrible mother instead of finding a solution to the problem." Respondent also "alluded to the fact that he help[ed F.J.] with her homework on a regular basis," which petitioner stated was untrue.

¶ 15 Petitioner acknowledged that she and respondent had communication problems and that part of the problem was that she did not communicate with him. Petitioner stated that she made decisions on behalf of the children without respondent's input "[b]ased on years of his disinterest." Petitioner stated that she did not communicate with respondent regarding how L.J. behaved while he was in respondent's care. Petitioner explained: "Speaking with [respondent] is usually not a good avenue to follow. Any conversation usually develops in[to] him yelling at me and calling me names. So I've chosen to do it as little as possible." Petitioner testified that almost

every conversation with respondent "lasting more than two minutes" would "evolve[] into [respondent] insulting [petitioner's] parenting and calling [her] vulgar names." Petitioner stated that she had never thrown things at respondent in the children's presence, but she had yelled at him. Petitioner stated that there was an incident a couple months before the hearing where she quickly drove away from respondent's house because he was yelling at her and chasing her vehicle.

¶ 16 Respondent testified that he was self-employed at a moving company. His hours varied depending on the moving job. He lived in a rental house in Seneca, Illinois, with his wife, Annalicia, their son, and Annalicia's two children from a previous relationship. If L.J. and F.J. used respondent's address for school purposes, they would go to school in Seneca. The Seneca schools were only two to four blocks from the house respondent was renting. Respondent testified that if the children lived with him, he would be able to take them to and pick them up from school three to four times per week. Respondent's wife was available during the times he was not. Photographs of respondent's residence were introduced into evidence.

¶ 17 Respondent previously lived with petitioner in a house in Marseilles. Respondent stated that he ended the relationship with petitioner in October 2011, but they continued to live together with the children until the fall of 2013. One day when respondent returned home, the children were gone and he learned petitioner was moving out. Petitioner had not told respondent earlier that she was moving out with the children.

¶ 18 Respondent testified that after petitioner moved out, he had the children approximately half the time. Respondent stated that when he worked outside the state for a three month period, he saw the children when he was home between jobs. Respondent testified that he had the children half the time during the summer. Later in his testimony, respondent said petitioner had

the children only a couple weeks each summer and he had them the remainder of the time. When the children were not with respondent, he called them at least five times per week. As soon as petitioner filed the parentage lawsuit seeking sole custody, she began restricting respondent's time with the children to alternating weekends. Petitioner refused to switch weekends with respondent to accommodate his work schedule. However, petitioner did sometimes ask respondent to watch the children on weekends when she was unavailable. Respondent had not initiated court proceedings himself because he saw his children very frequently before petitioner filed her paternity petition.

¶ 19 On one occasion, in August or September 2014, respondent called petitioner and asked if he could take the children to Seneca Cruise Night. Petitioner agreed. Respondent picked the children up. While he was backing out of the driveway, petitioner ran out of the house "yelling and screaming" and threw two handfuls of rocks at the vehicle. Respondent stopped the vehicle and called the police. When the officers arrived, they told respondent that he had "no rights as a father" because there had been no court proceedings. Petitioner told the officers that respondent was not allowed to leave with the children, and the officers told respondent that he could not leave with the children because there was no custody agreement. Eventually, petitioner allowed the children to leave with respondent.

¶ 20 Respondent took photographs of petitioner's grandfather's house one day while petitioner and the children were living there. Respondent had arrived at the house to pick up the children. Petitioner was not home. Other adults were home, but they were not supervising the children. The house had not been cleaned. The children's bedroom was "filthy." The photographs were admitted into evidence. Respondent stated that when he lived with petitioner, their house looked

similar to the photographs of petitioner's grandfather's house. Respondent testified that he did most of the cleaning when he and petitioner lived together.

¶ 21 Respondent testified that he did most of the cooking when he lived with petitioner. Petitioner did not discipline the children. Instead, she would ignore them "until she got fed up with the situation" and then would yell at the children to get away from her. Respondent disciplined the children by talking to them, giving them time-outs, taking away their favorite toys, or giving them an early bedtime.

¶ 22 Petitioner never told respondent about L.J.'s detentions and behavioral problems at school. Respondent learned about it from his grandmother. Petitioner had not placed respondent on the contact lists to receive e-mail updates from the children's teachers. Respondent said that if he had custody of the children, he would tell petitioner about any behavioral problems at school. When respondent learned about L.J.'s behavioral problems, he set up a meeting at the school and called petitioner to tell her about the meeting and to discuss L.J.'s issues. Petitioner was upset that respondent set up a meeting without her.

¶ 23 Around the same time he spoke with L.J.'s teacher, respondent spoke with F.J.'s teacher. Respondent learned that F.J. was not completing her homework and petitioner was not signing F.J.'s homework on the days that F.J. was in petitioner's care. Petitioner had never told respondent that there were any issues with F.J. finishing her homework. Respondent stated that he helped the children with homework whenever they were in his care.

¶ 24 Respondent acknowledged that L.J.'s behavior at school had improved since he started attending school in Earlville. Respondent stated: "Since [L.J.] switched to Earlville schools, a couple of his triggers have been removed, and it was him feeding off the energy of other children

at the school, in Marseilles school. And now that he doesn't have them [*sic*] triggers, I believe he has—he's enjoying it more."

¶ 25 Respondent testified that he had the children every Father's Day, Mother's Day, and Easter since they separated. Respondent also had the children on Halloween and Christmas Eve. Petitioner told respondent that Mother's Day was her day, and she did not want her children around. Respondent had last seen his children four days before the hearing. He tried to call them twice since, but petitioner did not answer the telephone.

¶ 26 Respondent testified that petitioner had been aggressive toward him in the past by yelling at him, cursing at him, punching him in the side of his face, punching his vehicle windows and throwing rocks at his vehicle while the children were in the vehicle. Respondent stated that he had been verbally aggressive toward petitioner in response to her behavior. When asked if he and petitioner could both do better regarding arguing in front of the children, respondent stated: "Not both of us. I refuse to argue in front of the children. I will walk away and do it in a separate room or in—but the other party does feel the need to constantly bicker and argue and fight and degrade me in front of the children." Respondent said that he never degraded petitioner in front of the children. Respondent stated: "Just about every time [petitioner] sees my face she has something negative to say to my children about me."

¶ 27 Kevin Barry testified that he had been friends with petitioner and respondent for approximately 10 years. Barry lived with petitioner and respondent in Florida for about 10 months. During that time, respondent did most of the cooking and petitioner did the laundry. Barry and respondent did most of the cleaning. Barry also lived with petitioner and respondent for approximately two months in 2010 while they were living in Marseilles. During that time, respondent prepared most of the meals and did most of the cleaning. Petitioner did the laundry.

Barry also saw respondent change the children's diapers. Barry said that petitioner probably changed diapers a lot more than respondent. Sometimes petitioner became easily frustrated with the children. Barry saw both petitioner and respondent play with the children. Barry could not remember respondent ever acting inappropriately toward the children.

¶ 28 Barry stated that the children generally had good behavior around respondent. Over the past two years, the children seemed unhappy with their living situation with petitioner. Petitioner was not always attentive toward the children. Respondent was usually attentive. Barry observed respondent and petitioner have "regular arguments" on occasion. Petitioner hit respondent on one occasion. Respondent then yelled at her for approximately 10 seconds and then went outside to smoke a cigarette. Barry could not remember if the children were home at that time. Barry said that if the children were at home, they would have been asleep. Barry testified that in 2015, based on his observations, the children spent about half the time with petitioner and half the time with respondent.

¶ 29 Carol J., respondent's grandmother, testified that she used to see F.J. and L.J. frequently. She had not seen them as often since the court proceedings started. After petitioner and respondent separated, petitioner asked Carol to care for the children on several occasions. Carol recalled an occasion where petitioner asked her to watch the children. Carol asked petitioner if she had asked respondent first, and petitioner said no but he would not take them anyway. Carol agreed to watch the children. Carol then called respondent, and respondent took the children.

¶ 30 When petitioner, respondent, and F.J. moved back to Illinois, they stayed with Carol for several months. Petitioner took care of F.J. Carol visited petitioner and respondent on several occasions after they moved out of her house. Carol usually saw petitioner taking care of the children because respondent was at work. Petitioner and respondent's residence was not clean.

Carol saw petitioner clean on one occasion before a birthday party. She also saw respondent clean on several occasions. Carol never saw petitioner cook, but she saw respondent cook. Carol had never heard respondent or petitioner yell at the children. Carol said that when she was present, petitioner treated the children very well.

¶ 31 Carol stated that she was at respondent's residence on November 6, 2016. When petitioner arrived at the house to pick up the children, she began "hollering" at them. Respondent told petitioner to wait in the vehicle, which she did. L.J. approached Carol with tears in his eyes and said he did not want to go home with petitioner. F.J. then came into the room and laid her head on Annalicia's lap and said she did not want to go. Carol had never heard L.J. express a preference as to where he wanted to live before that, but she had heard F.J. say she wanted to live with respondent. Carol and Annalicia told the children they had to go with petitioner, and the children went out to the vehicle. Respondent went outside to talk with petitioner. Carol heard yelling. Petitioner then "stomped on the gas pedal, spun gravel, and hit the car that was sitting in the driveway."

¶ 32 Carol had observed respondent playing outside with the children, reading to them, and helping them with homework. The children acted happy when they were with respondent. Carol observed respondent discipline the children by having them sit down for a time out. Carol learned about L.J.'s behavioral problems at school from one of the school secretaries. She told respondent. Respondent was unaware of the problems.

¶ 33 Petitioner called her sister, Elizabeth J., and her boyfriend, Kevin Stewart, as rebuttal witnesses over respondent's objection. Elizabeth and Stewart had lived with petitioner and the children in petitioner's grandfather's house. Elizabeth and Stewart testified regarding their observations as to the frequency of respondent's visits with the children during that time.

¶ 34 After taking the matter under advisement, the court found that during the time the parties resided together, they were both active in the children's lives. The court found that after they separated, respondent's "parenting time with the children was not necessarily consistent; however, he did see the children as the parties agreed." The court found that petitioner moved to Earlville in the fall of 2016 without first consulting respondent. The court noted that F.J. was in third grade and L.J. was in first grade. The court found that L.J. had had anger issues, but his behavior had gotten better since he started school in Earlville. The court noted petitioner's testimony that the children were doing well in school in Earlville. The court found that petitioner had restricted respondent's parenting time with the children since she filed the paternity case. The court noted that the parties had problems communicating with one another. The court ordered that the parties jointly make decisions related to the children's education and healthcare.

¶ 35 Prior to making its ruling as to parenting time, the court discussed the relevant statutory factors. The court found that both parties wished to have a majority of parenting time with the children. The court stated that "[n]o evidence ha[d] been presented as to the preferences of the children with respect to their desired parenting schedule." The court noted that the parties presented conflicting testimony as to the amount of time they spent with the children performing caretaking functions, but found that petitioner "attended to caretaking functions more than [respondent] did in the 24 months preceding the filing of the petition to establish paternity." The court noted that petitioner's sister was a significant part of the children's lives. The court also noted that respondent's mother, wife, and stepchildren were a significant part of the children's lives.

¶ 36 The court found that the children formerly attended school in Marseilles, and they currently attended school in Earlville. The court noted that the children had never attended

school in Seneca. The court stated that both parties testified that the children were doing well in school. The court found that the children "seem[ed] to be well adjusted to the homes of each parent." The court found that the parties lived relatively close to one another and there was minimal cost and no difficulty transporting the children. The court noted: "Each party works part time, arguably, and has the ability to spend a lot of time with the children." The court found that both parties had been at fault in failing to facilitate and encourage a close and continuing relationship between the children and the other parent.

¶ 37 The court also found it relevant that respondent complained of things like petitioner's messy home, but testified that the house always looked that way when they lived together. The court also noted respondent's testimony regarding the incident where the police told him that he had no rights to the children as their father when petitioner refused to let him see the children on Seneca Cruise Night in 2014. The court noted that respondent never sought court intervention after that incident. The court also found it relevant that petitioner did not confer with respondent about her intent to move the children to Earlville and change schools, had not been agreeable to switch weekends with respondent, and had not allowed respondent to see the children more than every other weekend during the pendency of the proceedings.

¶ 38 Regarding parenting time, the court ordered that the parties alternate weeks with the children in the summer. During the school year, respondent would have parenting time with the children on alternating weekends from after school on Thursday until 5 p.m. on Sunday. Respondent would also have visitation every Tuesday from after school until 7 p.m. On weeks when respondent did not have weekend parenting time, he would have the children on Thursday evenings from after school until 7 p.m. Petitioner would have parenting time with the children during the school year at all times that respondent did not have parenting time. Petitioner's

address would be designated for school purposes. The court also included a holiday schedule in its written order.

¶ 39 The court ordered: "I have not provided for a right of first refusal because I specifically find that it's consistent with the best interest of the children that the right of first refusal not be awarded."

¶ 40 ANALYSIS

¶ 41 I. Allocation of Parenting Time

¶ 42 Respondent contends that the court's allocation of parenting time was not in the best interests of the children because, on the whole, the statutory factors set forth in section 602.7(b) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/602.7(b) (West 2016)) favor awarding him the majority of the parenting time.

¶ 43 The circuit court is to allocate parenting time according to the best interest of the child. *Id.* § 602.7(a). Section 602.7(b) of the Act (*id.* § 602.7(b)) lists 16 factors the circuit court must consider in determining the child's best interests and provides that the court must also consider "any other factor that the court expressly finds to be relevant."

¶ 44 On appeal, we "afford[] great deference to the trial court's best interest findings because that court is in a far better position than are we to 'observe the temperaments and personalities of the parties and assess the credibility of witnesses.' " *In re Marriage of Marsh*, 343 Ill. App. 3d 1235, 1239-40 (2003) (quoting *In re Marriage of Stopher*, 328 Ill. App. 3d 1037, 1041 (2002)). "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 when an opposite conclusion is apparent or when the

findings appear to be unreasonable, arbitrary or not based upon the evidence." *In re Marriage of Hefer*, 282 Ill. App. 3d 73, 80 (1996).

¶ 45 Here, the circuit court's allocation of parenting time was not against the manifest weight of the evidence. The circuit court awarded the parties equal parenting time during the summer, but awarded petitioner the majority of parenting time during the school year. The court's oral pronouncement of its order showed that it considered the relevant statutory factors in making its determination. The court considered, *inter alia*, that both parties wished to have the majority of parenting time, the children were well-adjusted to both parents' homes, the parties lived relatively close to each other, and both parents had failed to establish a close and continuing relationship between the children and the other parent.

¶ 46 The court also found that the children had adjusted well to their new school in Earlville. This finding was supported by petitioner's testimony that the children were doing well at their new school and respondent's testimony that L.J.'s behavior had improved since he switched schools. The court also noted that the children had never attended school in Seneca, where respondent resided.

¶ 47 Significantly, the court considered that petitioner had attended to the majority of the caretaking functions for the children in the 24 months prior to filing her petition. We note petitioner's testimony that the children had resided with petitioner since she moved out of the home she shared with respondent and that she had always been their primary caretaker. While respondent testified that he had the children approximately half the time before petitioner filed the petition in the instant case, petitioner testified that respondent spent significantly less time with the children. As conflicting testimony was presented on this issue, we defer to the circuit court's factual finding "because that court is in a far better position than are we to 'observe the

temperaments and personalities of the parties and assess the credibility of witnesses.' " *Marsh*, 343 Ill. App. 3d at 1239-40 (quoting *Stopher*, 328 Ill. App. 3d at 1041).

¶ 48 Under these circumstances, the circuit court's finding that it was in the best interest of the children to award the majority of parenting time during the school year to petitioner was not "unreasonable, arbitrary or not based upon the evidence." *Hefer*, 282 Ill. App. 3d at 80.

¶ 49 Respondent contends that the circuit court failed to consider Carol's testimony regarding an occasion on which both children stated that they wanted to live with respondent and her testimony that F.J. had stated on previous occasions that she wanted to live with respondent. However, the fact that the children said they did not want to go home with petitioner on that particular day was not necessarily an expression of what they wished the parenting-time schedule to be. We acknowledge Carol's testimony that F.J. had said on prior occasions that she wanted to live with her father. However, even considering Carol's relatively vague testimony as to where F.J. said she wished to live, the circuit court's award of parenting time was not against the manifest weight of the evidence in light of the factors discussed above.

¶ 50 Respondent also argues that he should have the majority of the parenting time because the children have a babysitter after school when they are in petitioner's care whereas respondent or his wife could be home with the children after school. Under the parenting-time schedule awarded by the circuit court, the children will be at a babysitter's house after school only on Mondays and Wednesdays for approximately 2½ hours per day. The approximately five hours per week the children will spend at a babysitter's house under the court's parenting-time schedule does not render the court's order unreasonable, arbitrary, or not based on the evidence.

¶ 51 Respondent also notes that while he presented photographs of his home, petitioner presented no evidence regarding her current home. Respondent notes that petitioner's previous

home was messy and unkempt. However, the circuit court found it significant that respondent complained of petitioner's messy home but testified that the home he formerly shared with petitioner and the children was similarly messy. This suggests that the circuit court found respondent's testimony regarding his concerns about petitioner's messy home lacked credibility.

¶ 52 We reject respondent's reliance on *In re Custody of G.L.*, 2017 IL App (1st) 163171. In *G.L.*, the appellate court found that the court's order awarding the majority of parenting time to the father rather than the mother was not against the manifest weight of the evidence. *Id.* ¶¶ 45, 46. In *G.L.*, the mother had been the custodial parent, there was evidence that the child had adjusted to his home and community where the mother lived, there was conflicting testimony as to which party had performed the majority of the caretaking activities, and there was evidence regarding the mother's unwillingness to encourage a close relationship between the father and child. *Id.* Although *G.L.* shares some factual similarities with the instant case, there are also significant factual differences. In *G.L.*, unlike in the instant case, the parties lived three hours apart, there was evidence that the schools where the father lived ranked significantly higher than the schools where the mother lived, and there was evidence that it would be easier for the mother to find work where the father lived than for the father to find work where the mother lived. *Id.* ¶ 11. Also, respondent ignores the deferential standard of review applied when reviewing allocation of parenting time. The fact that the circuit court in this case weighed similar facts differently than the court in *G.L.* does not render the circuit court's decision in this case "unreasonable, arbitrary or not based upon the evidence." *Hefer*, 282 Ill. App. 3d at 80.

¶ 53 II. Designation of Schools

¶ 54 Respondent argues that the circuit court's designation of petitioner's residence as the children's residence for school attendance was not in the best interests of the children. In support

of his argument, respondent notes that petitioner previously failed to keep him apprised of the children's parent-teacher conferences and other school meetings, respondent made sure the children did their homework when they were in his care, his home was only a few blocks from the Seneca schools, and he or his wife would be home to care for the children after school.

¶ 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." *J.W.*, 2013 IL 114817, ¶ 55.

¶ 56 Here, the circuit court's designation of petitioner's address as the children's address for school purposes was not against the manifest weight of the evidence. As petitioner was awarded the majority of parenting time during the school year, it was logical that her address would be used for school purposes. While F.J. had problems completing her homework for a few months when she was in second grade, petitioner testified that she changed her work schedule so that she could be home with F.J. after school and that there had not been problems since that time. Petitioner testified that the children were doing well in Earlville schools, and respondent testified that L.J.'s behavior had improved since he began attending school in Earlville. We also note, as did the circuit court, that the children have never attended school in Seneca, the town where respondent lives.

¶ 57 III. Right of First Refusal

¶ 58 Respondent argues that the court erred in failing to award him a right of first refusal to care for the children. Section 602.3(a) of the Act (750 ILCS 5/602.3(a) (West 2016)) provides that "the court may consider, consistent with the best interests of the child as defined in Section 602.7, whether to award to one or both of the parties the right of first refusal to provide child care for the minor child or children during the other parent's normal parenting time." We will not

reverse the circuit court's determination as to the best interests of the children "unless it is clearly against the manifest weight of the evidence and it appears that a manifest injustice has occurred." *J.W.*, 2013 IL 114817, ¶ 55.

¶ 59 Here, the court's determination that it was not in the best interest of the children to award a right of first refusal for child care to respondent was not against the manifest weight of the evidence. The evidence presented at the hearing showed that the parties did not communicate well. Respondent testified that petitioner asked other people to watch the children without first asking respondent if he was available. Petitioner testified that she tried to communicate with respondent as little as possible because it often led to arguments in which respondent criticized her parenting decisions, yelled at her, and called her vulgar names. Given the parties' history of failing to communicate effectively, the court's decision not to grant a right of first refusal to respondent was not "unreasonable, arbitrary or not based upon the evidence." *Hefer*, 282 Ill. App. 3d at 80.

¶ 60 IV. Improper Rebuttal Witnesses

¶ 61 Finally, respondent argues that the circuit court erred in allowing Elizabeth and Stewart to testify as rebuttal witnesses because the witnesses had not been disclosed in discovery and their testimony was not proper rebuttal testimony. Respondent makes no specific argument as to how he was prejudiced by the substance of the testimony of the rebuttal witnesses. Rather, respondent contends that Elizabeth and Stewart testifying as rebuttal witnesses rather than in petitioner's case-in-chief surprised him and "prejudiced his ability to adequately prepare for trial and present his evidence." Respondent does not argue that the testimony of the improper rebuttal witnesses warrants a new hearing, but rather requests only that we strike the testimony of the rebuttal witnesses from the record.

¶ 62 We find that the circuit court was within its discretion in allowing the rebuttal witnesses to testify, and we decline to strike their testimony from the record. We note, however, that it appears that the rebuttal witnesses' testimony had little, if any, effect on the outcome of this case. We have not relied on the testimony of the rebuttal witnesses in reviewing this case, and the circuit court never mentioned the testimony of the rebuttal witnesses in delivering its ruling.

¶ 63 CONCLUSION

¶ 64 The judgment of the circuit court of La Salle County is affirmed.

¶ 65 Affirmed.