2019 IL App (2d) 190098-U
No. 2-19-0098
Order filed July 2, 2019

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re PARENTAGE of C.A.C., a minor	)	Appeal from the Circuit Court
	)	of Du Page County.
	)	
	)	No. 16-F-525
	)	
	)	Honorable
(Robert G. Domino, Petitioner-Appellant, v.	)	Thomas A. Else,
Adelaide E. Carroll, Respondent-Appellee).	)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Presiding Justice Birkett and Justice Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in limiting the testimony of petitioner's rebuttal witness, nor were its allocations of parenting time and parental decision-making responsibility against the manifest weight of the evidence. Therefore, we affirmed.

¶ 2 Petitioner, Robert G. Domino, appeals from the trial court's decision allocating parenting time and parental decision-making responsibility for his daughter, C.A.C. (C.C.). He argues that the court erred in three ways: (1) excluding the testimony of his rebuttal witness; (2) allocating the majority of parenting time to respondent, Adelaide E. Carroll, who is C.C.'s mother; and (3) primarily allocating decision-making responsibility to respondent. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Petitioner and respondent had a brief relationship but were never married. Respondent gave birth to C.C. on August 12, 2015, and she and petitioner lived together after C.C.'s birth for approximately three weeks. In late October or early November 2015, the parties separated, and petitioner moved to his parents' residence.

¶ 5 Petitioner filed a petition to determine the existence of parent-child relationship on December 9, 2015. Therein, he stated that he had signed a voluntary acknowledgement of paternity (VAP) for C.C. He also stated that on November 30, 2015, respondent had obtained an *ex parte* emergency order of protection against him.[1] Thereafter, he rescinded his VAP and sought a DNA test to confirm paternity. Petitioner filed a paternity action in December 2016, and genetic testing showed a 99.99% probability that he was C.C.'s father.

¶ 6 On July 19, 2016, the court entered an agreed order that set petitioner's parenting schedule and ordered mediation. On October 3, 2016, petitioner moved to modify the July 2016 agreed order. He also included a petition for rule to show cause. He alleged that respondent restricted his parenting time with C.C. and that she improperly sought to alter the July 2016 agreed order. He alleged that between November 2015 and early February 2016, he had no contact with C.C. because respondent refused to allow his parenting time; and from February 2016 to June 2016, she only allowed him limited parenting time. He continued that on or about June 4, 2016, respondent again refused him parenting time. The court again ordered the parties to attend mediation.

¶ 7 Following mediation, the parties agreed to a two-phase parenting schedule on October 25, 2016. For the first phase, petitioner was to meet respondent at the Wheaton Public Library, and

[1] Respondent voluntarily dismissed the order of protection on January 4, 2016.

only respondent was to be present during petitioner's parenting time. The parties could change the location by mutual agreement. The second phase, beginning December 5, 2016, and extending into January 2017, provided petitioner slightly longer parenting sessions, and petitioner would pick up and drop off C.C. at respondent's home.

¶ 8 In a motion for a temporary parenting order on November 22, 2016, petitioner alleged that respondent cut short all but one of his parenting sessions since their October mediation. Approximately a week thereafter, the court appointed Darran Barhaugh as C.C.'s guardian *ad litem* (GAL).

¶ 9 In a December 19, 2016, motion, petitioner alleged that respondent had cut short or caused him to miss all but one parenting session up to December 2, 2016. He also alleged that respondent restricted his parenting sessions after the appointment of the GAL. On December 22, the court ordered the parties to adhere to the mediated October 25 parenting agreement; that respondent drop off C.C. at petitioner's residence; and that petitioner drop off C.C. at respondent's residence when his parenting time was over. The parties were not to enter each other's residence, and they were not to have unrelated third parties present at pick ups or drop offs.

¶ 10 The parties continued with extensive motion practice. Petitioner alone filed four motions for rule to show cause, and respondent moved at various times to restrict his parenting time, to enforce parenting time, for rule to show cause, and for indirect civil contempt. Petitioner also moved on January 22, 2018, to modify parenting time and the allocation of parental responsibilities.

¶ 11 A. Trial

¶ 12 On May 23, 2018, the case proceeded to trial. As a preliminary matter, the parties jointly moved to exclude witnesses. The court granted the motion, stating that anyone who would testify other than the parties had to wait outside the courtroom. "Both parties are required to control their own witnesses. If a witness remains in the courtroom in contravention of this order, that witnesses [*sic*] testimony will be barred."

¶ 13 Officer Michael Hilton testified as follows. On April 17, 2017, he was called to the Oakbrook Terrace police department for a child custody exchange between petitioner and respondent, but the exchange did not take place. He had observed several of their exchanges before; some days the exchanges were amicable and other days there were problems. He described some of their exchanges, including one where respondent did not want to administer a medication that petitioner provided for C.C. He also described several dates in which an exchange was scheduled but did not occur.

¶ 14 Carla Aloisio was a hair dresser who lived with petitioner and her three children, and she testified as follows. She met petitioner in August 2016, and they had been in a relationship since then. They began living together in early 2017, and in December 2017 they became engaged. They were hoping to marry in the fall of 2018, but "parenting time" with C.C. was holding up their marriage ceremony.

¶ 15 During the afternoon of November 10, 2016, she went to the Wheaton Library with her friend, Jean Cesario. She went to the library because that was where petitioner was having visitation with C.C., and she wanted to observe their encounters for herself. Petitioner did not know that she was at the library. She and Jean sat about 50 feet from the play area, and they could see petitioner but not C.C. Then, they saw respondent standing near their table holding

C.C. Respondent screamed at them and asked them if they were stalking her and if they were "spies."

¶ 16 Carla described petitioner's relationship with C.C. as "loving" and "emotional towards her." C.C. and petitioner's rapport had strengthened "tremendously." He changed and bathed her, read her books, and played with her outside. She never observed petitioner lash out at respondent or anyone in her family. Carla also had a good relationship with C.C.; she treated C.C. like one of her own children.

¶ 17 She and petitioner provided C.C. treatment for athlete's foot during the summer of 2017. Later in the year, C.C. would often come to their home sick. C.C. had allergies to peanuts and eggs, and there was a dispute between the parties whether C.C. had an allergy to dogs. Carla never observed C.C. have an allergic reaction to petitioner's dog.

¶ 18 Petitioner called respondent as an adverse witness, and she testified as follows. She was 34 years old and currently resided with Adam Connor. Adam was the father of her youngest child born February 14, 2018. Respondent had first met petitioner in September 2011, and they started an "on-again off-again" relationship that winter. She conceived C.C. in November 2014 with petitioner, and she had very little contact with petitioner during the pregnancy. Petitioner had not been allowed at the hospital for C.C.'s birth, and she did not allow him parenting time alone with C.C. after her birth. On November 30, 2015, she sought an order of protection against petitioner that included C.C. as a protected party. She dismissed the order of protection on January 4, 2016.

¶ 19 Respondent testified to various doctor visits and reports for C.C., and many reports were admitted into evidence as exhibits. C.C. had various ailments over time, including hives, a runny nose, and vomiting. In January 2018, respondent responded to petitioner's medical concerns by

saying that C.C. "is fine. You continue to cause issues with the doctor. I will not be responding to your hypochondriac actions. The doctor's office is beyond annoyed with your calls and lies." She had tried to put aside her differences with petitioner to make decisions in C.C.'s best interests.

¶ 20 C.C. was not in preschool at the time of trial, but respondent had enrolled her in a pre-K program three days a week. Respondent also took her to gymnastics, dance class, T-ball, and church programs at St. Patrick's church. C.C. had been baptized Catholic. Respondent did not object to petitioner signing C.C. up for activities during his parenting time; in fact, she hoped that he would.

¶ 21 Respondent was willing to provide petitioner with makeup parenting sessions. Prior to receiving C.C.'s allergist's report, her objection to some of his parenting sessions had been the presence of petitioner's dog. She was not aware that, on January 12, 2018, petitioner had attempted to get an *ex parte* emergency order of protection against her for medical neglect. Until she received a call from the Department of Children and Family Services (DCFS), she had not known that DCFS had been contacted for medical neglect. DCFS did not take any action against her because it concluded that the allegations were unfounded.

¶ 22 Petitioner testified as follows. He was 48 years old. He and respondent had lived together for approximately three weeks after C.C.'s birth. While they lived together, he did "everything" for C.C., including changing her, putting her to sleep, and waking up in the night to feed her. They broke up because he "just didn't think the environment was good for [C.C.] anymore." That is, respondent had placed too many parenting restrictions on him.

¶ 23 On November 30, 2015, petitioner was served with an order of protection, but he had never harmed respondent or C.C. Respondent later withdrew the order of protection. Petitioner

ended up giving respondent money for attorney fees, participating in counseling, and taking a parenting class. He did not believe that counseling and a parenting class were necessary, but he participated in order to see C.C.

¶ 24 In June 2016, he took C.C. to his parents' house. Respondent picked C.C. up from his parents' house, and she was not happy. She told the GAL that she did not like that his parents had pills lying around. Thereafter, the location for his parenting time returned back to respondent's residence.

¶ 25 After mediation with respondent in October 2016, his visitation location switched to Wheaton Public Library. Visitation was scheduled for a few hours in the children's section of the library. Respondent would sit in a chair while he and C.C. played. He never received the full parenting time because respondent usually ended the sessions after an hour. On November 10, 2016, Carla and one of her friends were present at the library during his parenting time. He had not invited them; they had just showed up.

¶ 26 In December 2016, the GAL visited him at his parents' home, and after his visit, he was allowed to have overnight parenting time with C.C. there. He had to cancel his parenting time four or five times, and he notified respondent of his cancellations. He requested makeup parenting time, but makeup time never happened. Petitioner moved out of his parents' home by April 2017, and he moved in with Carla, his fiancé.

¶ 27 Since early 2017, he had never observed C.C. have bouts of diarrhea or vomiting. C.C. did not have negative reactions to food he served her. She did have eczema. During his May 8, 2017, parenting time, C.C. was "severely stuffed up and congested." He took her to urgent care. Also that month, he took C.C. to a doctor other than her primary care physician for a case of athlete's foot. In the fall of 2017, C.C. had more health issues, including that she had irritation to

her private parts. She was later diagnosed with labial adhesions, and he notified respondent of C.C.'s labial adhesions.

¶ 28 He sought an emergency order of protection in January 2018 because he "just wanted someone to help" with C.C.'s medical condition. He did not believe that respondent was providing C.C. the care that she needed and was denying that C.C. had certain medical symptoms. He was "left in the dark" about C.C.'s medical treatment, and respondent did not accept C.C.'s medication that he tried to give her. After contacting the police about possible medical neglect, the police contacted DCFS. A DCFS investigation followed, and the allegations of medical neglect against respondent were determined to be unfounded.

¶ 29 On February 4, 2018, C.C. was crying and seemed to be in pain. She had redness and irritation "down there." He wanted to take her to emergency care but respondent objected. In subsequent parenting sessions, he would apply prescribed cream to C.C. for her labial adhesions.

¶ 30 Respondent did not tell him that she enrolled C.C. in preschool at St. Patrick's. He hired a private investigator to follow respondent, whose investigation confirmed C.C.'s attendance at preschool. He had no objection to C.C. being raised Catholic.

¶ 31 Barhaugh, the GAL, testified next as follows. He was an attorney who conducted an investigation of this case, which entailed meeting with both parties and their significant others and conducting home visits. He had met C.C. but had not interviewed her individually because she was too young. He confirmed that petitioner and Carla had a dog at their house, and there was a dispute between the parties whether C.C. was allergic to dogs. Each party had their own allergy tests conducted. The tests showed that C.C. had either no or minimal allergy to dogs.

¶ 32 He did not believe that it had been reasonable for petitioner to contact the police in January 2018 over C.C.'s labial adhesions. He did not believe C.C.'s medical condition had

constituted an emergency. He generally did not believe that it had been appropriate for petitioner to call the police on several occasions for a wellness check. Neither party should have been contacting the police, absent an emergency.

¶ 33 Barhaugh testified that C.C. was a well-adjusted, "happy, healthy little girl," despite the issues between her parents. Respondent's communications with petitioner were often agitated in tone; petitioner's sometimes were as well, but overall he was less accusatory and more "even keel" in his communications with respondent. They did not like each other, and many of their issues "boil[ed] down to the lack of trust." C.C., however, did not seem to be affected by her parents' conduct.

¶ 34 Barhaugh believed it was in C.C.'s best interest for respondent to remain the primary parent for purposes of parenting time. She had been the primary parent since C.C.'s birth, and he gave more weight to statutory factors concerning C.C.'s stability than he did to other factors. He also believed that petitioner should receive reasonable and liberal parenting time.

¶ 35 As for decision-making responsibilities, Barhaugh was fearful that the parents would not share with each other all pertinent information. Therefore, he recommended that the court order the parents to discuss any major decision or change. There were no known issues or disagreements on religion or education. He recommended that C.C. go to school in respondent's district.

¶ 36 Moreover, because of all the medical issues between the parties, he recommended that respondent be in charge of making sure C.C. went to her routine medical appointments. He recommended that respondent be in charge of scheduling C.C.'s routine medical appointments and making general medical decisions, but he also recommended that petitioner have the right to go to C.C.'s routine appointments. He further recommended that third parties should not be

present at C.C.'s medical appointments and that any major medical decisions or issues should be decided jointly.

¶ 37 After the close of petitioner's and respondent's cases-in-chief, petitioner sought to call Patricia Samolinski. Respondent presented the court with a motion *in limine*, seeking to bar Patricia's testimony. Respondent argued that Carla had shared trial testimony with Patricia in violation of the court's prior order excluding witnesses, because sharing messages about trial testimony was effectively the same as sitting in the courtroom and listening to trial. Petitioner responded that "at best" Carla indicated that respondent "had lied on the stand," which would not reshape Patricia's rebuttal testimony.

¶ 38 The parties and the court conducted a *voir dire* of Patricia. The court asked Patricia if she was told that respondent lied on the stand, and she responded "I can't recall specifically." She later answered that she had told someone else that respondent lied on the stand. The court asked her, if she told someone else that respondent had lied on the stand but she was not present to hear her testimony, how did she know she lied? Patricia responded by trying to reference respondent's deposition testimony.

¶ 39 The court found that Patricia lacked credibility and that its motion to exclude had been *de facto* violated. It believed that Patricia had been indoctrinated, and it limited her testimony to rebuttal of respondent's testimony from her case-in-chief. The court allowed petitioner to make an offer of proof as to Patricia's testimony. Petitioner's counsel provided that, if Patricia were to testify, she would have testified to the following: she and respondent had been best friends until July 2018, and she was C.C.'s godmother; respondent expressed discomfort with petitioner having overnight parenting time; she babysat C.C. while respondent did other activities, such as going tanning or getting her nails done; respondent did not want to use the prescribed cream to

treat C.C.'s labial adhesions; respondent did not plan to tell petitioner that she enrolled C.C. in preschool; respondent told her she lied in her deposition about C.C.'s preschool; and respondent and Adam had problems with their relationship.

¶ 40 After hearing the offer of proof, the court stood on its order to limit Patricia's testimony to rebuttal of respondent's case-in-chief. Petitioner declined to question Patricia, and the parties moved to closing arguments.

¶ 41 B. Trial Court Orders

¶ 42 On September 20, 2018, the trial court delivered its memorandum opinion and order. The order addressed numerous pleadings and motions, including, in relevant part, petitioner's January 2018 motion for modification of parenting time and decision making.[2] We summarize the order as follows.

¶ 43 The court began by remarking that this case "has exceeded the bounds of what most lawyers would term contentious." The parties had "an abiding hatred for each other which their attorneys tacitly admit. This court makes the following rulings and observations with this unpleasant fact in mind, and with a view to facilitate *** the best interest of the child."

¶ 44 The court first addressed allocation of parental decision-making. It found that petitioner was C.C.'s biological father, and it recited the best interest factors for allocation of parental decision-making responsibility under section 602.5(c) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/602.5(c) (West 2016)). The 602.5 factors were as follows:

"(1) the wishes of the child, taking into account the child's maturity and ability to

[2] The court also addressed petitioner's petitions for rule to show cause and motion to modify child support; and respondent's petition for enforcement of allocated parenting time, petitions for rule to show cause, and motion to modify child support.

express reasoned and independent preferences as to decision-making;

(2) the child's adjustment to his or her home, school, and community;

(3) the mental and physical health of all individuals involved;

(4) the ability of the parents to cooperate to make decisions, or the level of conflict between the parties that may affect their ability to share decision-making;

(5) the level of each parent's participation in past significant decision-making with respect to the child;

(6) any prior agreement or course of conduct between the parents relating to decision-making with respect to the child;

(7) the wishes of the parents;

(8) the child's needs;

(9) the distance between the parents' residences, the cost and difficulty of transporting the child, each parent's and the child's daily schedules, and the ability of the parents to cooperate in the arrangement;

(10) whether a restriction on decision-making is appropriate under Section 603.10;

(11) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child;

(12) the physical violence or threat of physical violence by the child's parent directed against the child;

(13) the occurrence of abuse against the child or other member of the child's household;

(14) whether one of the parents is a sex offender, and if so, the exact nature of the offense and what, if any, treatment in which the parent has successfully participated; and

(15) any other factor that the court expressly finds to be relevant." *Id.*

¶ 45 Factor 1 was not applicable because C.C. was too young to express any meaningful preferences. Factor 2 favored respondent because C.C. had resided with respondent since her birth, and the GAL testified that C.C. was well-adjusted to her environment. Factor 3 was of little consequence because both parties had no mental or physical health issues and C.C. was in good health at the time of trial.

¶ 46 Factor 4 did not favor either party. The court noted that "[n]either party appears to be interested in cooperating with the other and the level of conflict between the parties is extreme, and will probably continue to be so." Factor 5 favored respondent, as she had made the most significant decisions for C.C. over her first three years, especially regarding her health and education.

¶ 47 Factors 6, 7, 8, and 9 were "neutral" or did not favor either party. The court continued that a factor 10 restriction was not appropriate in this case. Factor 11 was neutral because neither parent was willing to facilitate or encourage a relationship between C.C. and the other parent, "much less one that is close and continuous." Factors 12, 13, and 14 were not applicable.

¶ 48 Pursuant to factor 15, the court also found the following conduct relevant to its decision. Respondent had "consistently endeavored" to provide C.C. with appropriate educational opportunities, including enrolling C.C. in a parochial school without consulting petitioner. The court did not believe that respondent acted with any "animus" in not consulting petitioner. The court, however, found petitioner's reaction significant: He hired a private investigator to follow respondent to prove that C.C. was attending preschool, and he took "significant umbrage" to the

fact that he had not been consulted, despite having no objection to the choice of school. This, "along with other examples," indicated to the court that petitioner cared more about his control over the situation than about C.C.'s best interests. The court granted respondent "one hundred percent of decision making with respect to education," except that she was to advise petitioner of the school C.C. attended and of any school activities he may attend, and she would share access to C.C.'s grades.

¶ 49 The court continued that health care was "by far the most litigated issue in this case." It found that both parties had "contacted the primary care physician of the child so many times that the doctor has threatened to cease treatment of the child." Both parties accused the other of failing to provide proper medical care or follow medical instructions. Yet, the medical records revealed that C.C. had minor physical ailments that had since resolved. The court granted respondent primary authority with respect to medical decisions, and she was to advise petitioner of medical decisions beyond those for routine-checkups or illnesses. Petitioner would have the right to obtain a second opinion at his expense.

¶ 50 Religion was the least contentious issue. Both parties were Catholic and agreed to raise C.C. as Catholic. Therefore, the court granted joint decision making on religious issues.

¶ 51 The court then turned to allocation of parenting time. It considered the best interest factors under section 602.7 (750 ILCS 5/602.7 (West 2016)):

> "(1) the wishes of each parent seeking parenting time;
>
> (2) the wishes of the child, taking into account the child's maturity and ability to express reasoned and independent preferences as to parenting time;

(3) the amount of time each parent spent performing caretaking functions with respect to the child in the 24 months preceding the filing of any petition for allocation of parental responsibilities or, if the child is under 2 years of age, since the child's birth;

(4) any prior agreement or course of conduct between the parents relating to caretaking functions with respect to the child;

(5) the interaction and interrelationship of the child with his or her parents and siblings and with any other person who may significantly affect the child's best interests;

(6) the child's adjustment to his or her home, school, and community;

(7) the mental and physical health of all individuals involved;

(8) the child's needs;

(9) the distance between the parents' residences, the cost and difficulty of transporting the child, each parent's and the child's daily schedules, and the ability of the parents to cooperate in the arrangement;

(10) whether a restriction on parenting time is appropriate;

(11) the physical violence or threat of physical violence by the child's parent directed against the child or other member of the child's household;

(12) the willingness and ability of each parent to place the needs of the child ahead of his or her own needs;

(13) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child;

(14) the occurrence of abuse against the child or other member of the child's household;

(15) whether one of the parents is a convicted sex offender or lives with a convicted sex offender and, if so, the exact nature of the offense and what if any treatment the offender has successfully participated in; the parties are entitled to a hearing on the issues raised in this paragraph (15);

(16) the terms of a parent's military family-care plan that a parent must complete before deployment if a parent is a member of the United States Armed Forces who is being deployed; and

(17) any other factor that the court expressly finds to be relevant." *Id.*

¶ 52 The court found as follows. Factors 1 and 2 were neutral. Factor 3 favored respondent because she primarily had provided care to C.C. since birth. Factor 4 was neutral because the parties had entered into multiple agreements, and each party contended that the other violated the agreements. Factors 5 though 16 were neutral, not applicable, or were answered in the negative. For factor 12 in particular (the willingness the parents to place the needs of the child ahead of their own needs), the court stated that both parties were heavily invested in "winning" and considered their own interests ahead of C.C.'s best interests.

¶ 53 As for other relevant factors, the court found that C.C. was thriving in her current environment, and it saw no reason to radically uproot C.C. to a new home. C.C. had a good relationship with both parents, "despite their extremely poor relationship with the other."

¶ 54 The court therefore designated respondent as the residential parent. It provided petitioner specified parenting time, including every other weekend from Friday at noon until Monday morning. All pick ups and drop offs were to occur at the Bartlett police station and without the presence of third parties.

¶ 55 The parties filed several post trial motions. Respondent moved to reconsider, modify, and/or clarify the court's decision. Petitioner filed separate motions to clarify the court's ruling and to reconsider. Petitioner also filed a petition to modify child support.

¶ 56 The court ruled on the post trial motions on January 7, 2019. The court denied petitioner's motion to reconsider because the motion only advanced arguments the court had already considered and rejected. The court also clarified that petitioner's various petitions for rule to show cause were denied. Addressing respondent's motion to reconsider, modify, and/or clarify, the court ruled in relevant part that the motion was denied without prejudice or was already resolved in its ruling on petitioner's motion to clarify.

¶ 57 Petitioner timely appealed.

¶ 58 II. ANALYSIS

¶ 59 Petitioner makes three arguments on appeal: (1) the trial court abused its discretion in excluding petitioner's rebuttal witness testimony; (2) the court's decision to award respondent the majority of parenting time was against the manifest weight of the evidence; and (3) the court's allocation of parental decision-making responsibility was manifestly unjust. We address each argument in turn.

¶ 60 A. Rebuttal Testimony

¶ 61 Petitioner first argues that the court abused its discretion by barring Patricia's testimony because: (1) the trial court's order excluding witnesses was unclear; and (2) the trial court's decision to bar her testimony was unduly harsh and prejudicial. Regarding the order to exclude witnesses, petitioner argues that the trial court's order did not preclude discussion of trial testimony; it only excluded witnesses from the courtroom. He argues that Carla's message to Patricia prior to Patricia's testimony was innocuous and would not shape her testimony. He

concludes that because the order's scope was unclear, and because Patricia did not violate any clear order, the court abused its discretion in barring her testimony. He compares the trial court's ruling in this case to the witness sanctions reversed in *In re H.S.H.*, 322 Ill. App. 3d 892 (2001).

¶ 62 Petitioner continues that, even if the court's order was violated, the trial court's sanction was unduly harsh and prejudicial. He argues that Patricia's testimony was important to rebut respondent's "incomplete and false testimony," in particular her testimony concerning parenting time around C.C.'s birth, respondent's intent to limit petitioner's parenting time, and respondent's relationship with Adam.

¶ 63 Respondent responds that the court did not actually bar Patricia from testifying. Rather, it allowed her to testify but limited her testimony to rebuttal of evidence that respondent presented in her case-in-chief. Under such limitation, petitioner elected not to question Patricia.

¶ 64 We hold that the trial court did not abuse its discretion in limiting Patricia's rebuttal testimony. The admission of rebuttal evidence lies within the sound discretion of the trial court. *Klingelhoets v. Charlton-Perrin*, 2013 IL App (1st) 112512, ¶ 50. Rebuttal evidence is admissible if it tends to explain, repel, or contradict the evidence of a witness, and a plaintiff has the right to introduce evidence in rebuttal if a defendant presents an affirmative matter in its case-in-chief. *Chapman v. Hubbard Woods Motors, Inc.*, 351 Ill. App. 3d 99, 106 (2004). A trial court also possesses the discretion to exclude witnesses from the courtroom during a trial. *In re H.S.H.*, 322 Ill. App. 3d at 896. The purpose of such an order is to discourage fabrication and prevent a witness from shaping testimony to conform to testimony of other witnesses. *Smith v. City of Chicago*, 299 Ill. App. 3d 1048, 1053 (1998); see Ill. R. Evid. 615 (eff. Jan. 1. 2011) ("At the request of a party the court shall order witnesses excluded *so that they cannot hear the testimony of other witnesses*." (Emphasis added.)). An abuse of discretion occurs when a ruling

is arbitrary, fanciful, or unreasonable. *Tanna Farms, L.L.C. v. Golfvisions Management, Inc.*, 2018 IL App (2d) 170904, ¶ 11.

¶ 65 While petitioner frames the issue on appeal as the exclusion of a witness, we cannot ignore the procedural posture of the underlying proceedings, that is, petitioner seeking to call Patricia in rebuttal following respondent's case-in-chief. This posture distinguishes this case from *In re H.S.H.*, 322 Ill. App. 3d at 897-99, where we held that the trial court abused its discretion when it excluded two State witnesses from the State's case-in-chief. *Id.* Unlike in *In re H.S.H.*, the court here did not exclude Patricia from testifying during petitioner's case-in-chief. Moreover, it did not bar her rebuttal testimony; it limited it.

¶ 66 Here, the testimony petitioner sought to rebut was testimony that he introduced in his case-in-chief. Petitioner called respondent as an adverse witness in his case-in-chief, and he could have called Patricia to contradict her testimony at that time. He chose not to. See *Gabrenas v. R.D. Werner Co., Inc.*, 116 Ill App. 3d 276, 284 (1983) ("[W]here testimony offered in rebuttal might have been introduced in plaintiff's case in chief, its admission in rebuttal is a decision committed to the discretion of the trial judge."). In other words, the trial court already had discretion to limit Patricia's testimony to rebuttal of respondent's case-in-chief, regardless of its order to exclude witnesses. See *Rodriguez v. City of Chicago*, 21 Ill. App. 3d 623, 627 (1974) (trial court has discretion to admit testimony in rebuttal which more properly should have been in plaintiff's case-in-chief). While the trial court based its decision to limit Patricia's rebuttal testimony on a "*de facto* violation" of its order to exclude witnesses, we can only speculate how it would have handled such a violation during petitioner's case-in-chief.

¶ 67 In addition, we disagree that limiting Patricia's testimony was unduly harsh or prejudiced petitioner. The trial lasted over a week with extensive testimony and cross-examination of the

parties and witnesses. The court heard petitioner's offer of proof, including that Patricia would testify to respondent's discomfort with petitioner's overnight parenting time, her decision to enroll C.C. in preschool without telling petitioner, and her relationship problems with Adam. However, the court found that she lacked credibility and that she had been indoctrinated. It was the trial court's role to assess Patricia's credibility. See *In re Marriage of Pfeiffer*, 237 Ill. App. 3d 510, 513 (1992) (explaining it is not the function of the appellate court to reweigh the evidence or assess the credibility of testimony). The court had already heard ample evidence, including that respondent limited petitioner's parenting time and enrolled C.C. in preschool without telling petitioner. Accordingly, the trial court did not abuse its discretion in limiting Patricia's rebuttal testimony.

¶ 68 B. Allocation of Parenting Time

¶ 69 Petitioner next argues that the trial court's order allocating the majority of parenting time to respondent was against the manifest weight of the evidence. First, he argues that the trial court's determination that factor 3 favored respondent was not based on the evidence. He argues that for the first few weeks of C.C.'s life, he and respondent lived together, and during that time he fed, bathed, and cared for C.C. He argues that respondent moved for an order of protection and strategically limited his time with C.C. For similar reasons, petitioner argues that the court's finding on factor 4 should have favored him.

¶ 70 Turning to factor 8, petitioner argues that the court should have found that the factor favored him. In support, he contends that he took C.C. to the doctor to treat her athlete's foot and took her to urgent care when she was in pain. He reached out to both of C.C.'s doctors and respondent to make sure C.C.'s medical checkups went well. On factor 9, petitioner argues the

evidence favored him, contrasting his willingness to cooperate with respondent with her efforts to withhold his parenting time.

¶ 71 Next, petitioner argues that factors 12 and 13 should have been resolved in his favor. He argues that, unlike respondent, he demonstrated a commitment to C.C.'s needs by communicating with her about C.C., inviting her to doctor appointments, and never withholding parenting time. Petitioner focuses on respondent's actions, including that she did not allow him to attend C.C.'s doctor visits and that she lied to him about what the doctors told her. Petitioner argues that, in contrast to respondent, there was no evidence presented that he failed to facilitate a relationship between C.C. and respondent.

¶ 72 In addition, petitioner argues that the court erred when it ordered that all pick ups and drop offs must be made at the Bartlett police station and without the presence of third parties. He argues that the court was first required to make a finding that he engaged in conduct that seriously endangered the child's mental, moral, or physical healthy, and it failed to do so. He contends that exchanging C.C. at the police department was an improper restriction on his parenting time.

¶ 73 Respondent responds that the trial court did not err in allocating the majority of parenting time to her. She argues that the parties in this case disagreed a lot, and their accounts of the same events varied "like night and day." Thus, credibility was paramount. Respondent argues that Barhaugh's testimony alone supported the trial court's parenting time decision. He testified that the parties disagreed over C.C.'s medical conditions and treatments and that petitioner continued to take C.C. to other doctors against Barhaugh's recommendations. He further testified that petitioner unnecessarily involved the police in matters, including filing a criminal complaint

against her for visitation interference and unreasonably filing an additional complaint with the police that resulted in a DCFS investigation against respondent.

¶ 74 We hold that the trial court's allocation of parenting time was not against the manifest weight of the evidence. Under the Act, the court shall allocate parenting time according to the child's best interests. 750 ILCS 5/602.7(a) (West 2016). The Act sets forth 17 nonexclusive factors for a court to consider in evaluating the child's best interests, and the court may consider any other factor it finds relevant. 750 ILCS 5/602.7(b)(1)-(17) (West 2016); see *supra* ¶ 51. The trial court is not required to make an explicit finding or reference to each factor. *In re Custody of G.L.*, 2017 IL App (1st) 163171, ¶ 43. A trial court's best interests findings are accorded great deference because the trial judge is in a better position to observe the temperaments of the parties and assess the credibility of the witnesses. *In re Marriage of Whitehead & Newcomb-Whitehead*, 2018 IL App (5th) 170380, ¶ 21. We will not overturn a trial court's allocation of parenting time unless it is against the manifest weight of the evidence. *Id.* A judgment is against the manifest weight of the evidence only if the opposite conclusion is apparent or the findings are unreasonable, arbitrary, or not based on the evidence. *Id.*

¶ 75 Turning to the specific factors petitioner challenges, the court reasonably concluded that factor 3 (the amount of time each parent spent performing caretaking functions) favored respondent. Respondent primarily cared for C.C. since her birth, which amounts to several years of primary caretaking, compared to petitioner's argument that he provided constant care for C.C. for a few weeks. The record also supported that factor 4 (prior agreements between the parties) was neutral. While petitioner points to respondent's order of protection and efforts to restrict his parenting time, he also filed for an order of protection and took C.C. to a doctor other than her primary physician against respondent's wishes and the GAL's recommendation.

¶ 76 The evidence further supported that factor 8 (the child's needs) was neutral. While respondent contends that he took more initiative for C.C.'s medical issues, her medical needs were not her only needs. Respondent was C.C.'s primary caretaker and enrolled her in school and extracurricular activities. Moreover, C.C.'s ailments were minor and had resolved by the time of trial.

¶ 77 On factor 9 (the distance between the parents' residence and the ability to cooperate in the parenting arrangement), petitioner challenges only the latter part of the factor, namely, the ability of the parents to cooperate in the parenting arrangement. He contends he was the sole party who demonstrated the ability to cooperate. Yet, the court's general finding was that neither party seemed interested in cooperating with each other and that the level of conflict between them was extreme. This finding was supported by the evidence, including both parties filing for orders of protection against the other, petitioner's police complaints leading to a DCFS referral against respondent, and continuous disagreement over C.C.'s medical care.

¶ 78 Next, the court reasonably concluded that factors 12 (the willingness and ability of each parent to place C.C.'s needs ahead of their own) and 13 (the willingness and ability of each parent to facilitate a relationship between C.C. and the other parent) were neutral. Petitioner contends that the court erred in finding that both parties were heavily invested in winning and considered themselves before C.C.'s best interests. We are mindful, however, that the trial court was in the best position to observe the witnesses and assess their credibility, and we will not substitute our judgment for that of the trial court. While petitioner undoubtedly provided for C.C.'s medical care, the court also considered that C.C.'s medical issues were minor and that petitioner had involved the police and DCFS over these minor issues. In addition, there was little to no evidence that either party affirmatively facilitated or encouraged a relationship between the

other and C.C. At best, the record supported that petitioner did less to frustrate such a relationship, not more to encourage, and the record supported the trial court's conclusion that the parties were in conflict and did not like each other.

¶ 79 As an additional relevant factor, the court found that C.C. was thriving in her current environment with respondent, and it saw no reason to uproot her to a new home. It found C.C. had a good relationship with both parents despite their poor relationship with each other. This factor further supported the court's allocation of the majority of parenting time to respondent. Accordingly, the court's allocation of parenting time was not against the manifest weight of the evidence.

¶ 80 Lastly, the trial court did not abuse its discretion in ordering pick ups and drop offs at the Bartlett police station without third parties present. Prior exchanges had occurred at a police station, and petitioner does not explain how an exchange at the police station actually restricts his parenting time. Third parties had caused issues between the parties in the past, and limiting their presence would help assure smoother exchanges. Moreover, petitioner cites no authority that the court was required to find that a parent engaged in conduct that endangered a child before it could set an exchange location. Rather, he simply cites a provision that *if* a court finds a parent engaged in such conduct, it shall enter orders necessary to protect the child. That provision is not relevant here.

¶ 81 C. Allocation of Parental Decision-Making Responsibilities

¶ 82 Petitioner lastly argues that the trial court's allocation of parental decision-making responsibilities was against the manifest weight of the evidence. First, he argues that factor 2 should not have been found in respondent's favor because the evidence supported that he also provided a good home for C.C., and therefore a change in C.C.'s residence would not be

destabilizing. He argues that factor 4 should have favored him because he tried to cooperate with respondent, whereas respondent restricted his time with C.C. and demonstrated an inability to communicate or cooperate with him. On factor 5, he argues that the evidence did not favor respondent because she deprived him of opportunities to participate in making parental decisions, and she further failed to provide needed medical care for C.C. Finally, petitioner argues that factors 9 and 11 should have favored him based on the totality of the evidence.

¶ 83 Similar to her response to petitioner's argument over parenting time, respondent emphasizes deference to the trial court's credibility determinations and cites the GAL's testimony.

¶ 84 We hold that the trial court's allocation of parental decision-making responsibilities was not against the manifest weight of the evidence. Similar to section 602.7's allocation of parenting time, section 602.5 of the Act provides that the court shall allocate decision-making responsibilities in accordance with the child's best interests. 750 ILCS 5/602.5(a) (West 2016). The Act provides 15 nonexclusive factors for the court to consider, and the court may consider any other factor it finds relevant. 750 ILCS 5/602.5(c)(1)-(15) (West 2016); see *supra* ¶ 44. We will not disturb a trial court's allocation of parental decision-making responsibilities unless it is against the manifest weight of the evidence. *Young v. Herman*, 2018 IL App (4th) 170001, ¶ 64.

¶ 85 The evidence supported that factor 2 (the child's adjustment to home) was in respondent's favor. C.C. had primarily lived with respondent since birth, and the GAL testified that C.C. was a happy and healthy young girl. Regardless of whether petitioner would also provide a good home, C.C. was adjusted to her current home, and it was reasonable for the court to infer that change was more destabilizing than continuity. For factor 4 (the ability to cooperate and the level of conflict between the parties), the evidence did not favor either party. As we

discussed *supra*, the trial court found high levels of conflict between the parties. Moreover, we cannot substitute our credibility assessments for those of the trial court.

¶ 86 The evidence also supported that factor 5 (the level of each parent's participation in past significant decision-making responsibility) favored respondent. Petitioner emphasizes his medical decisions for C.C., but respondent also made medical decisions, and all medical decisions involved minor ailments, like athlete's foot. Beyond medical decisions, respondent also made significant educational and religious decisions for C.C. Finally, the evidence supported that factors 9 (the distance between the parties and ability cooperate in the parenting arrangements) and 11 (willingness of each parent to facilitate and encourage a relationship between C.C. and the other parent) were neutral. The evidence supporting these conclusions was the same as for factors 9 and 13 for parenting time allocation. See *supra* ¶¶ 77-78.

¶ 87 III. CONCLUSION

¶ 88 For the reasons stated, we affirm the judgment of the Du Page County circuit court.

¶ 89 Affirmed.