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2019 IL App (5th) 170435-U

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

NO. 5-17-0435

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

| | | |
|-----------------------|---|--------------------|
| JOSHUA P. LEE, |) | Appeal from the |
| |) | Circuit Court of |
| Petitioner-Appellant, |) | Madison County. |
| |) | |
| v. |) | No. 10-F-740 |
| |) | |
| MICHELLE DOUGLAS, |) | Honorable |
| |) | Thomas W. Chapman, |
| Respondent-Appellee. |) | Judge, presiding. |

JUSTICE WELCH delivered the judgment of the court.
Presiding Justice Overstreet and Justice Moore concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's order denying the petitioner's petition to modify custody is affirmed where its determination that the mother's behavior did not rise to the level of parental alienation, and, therefore, the father failed to establish that a change of circumstances had occurred which would justify a modification of the custody agreement, was not against the manifest weight of the evidence.

¶ 2 The petitioner, Joshua P. Lee (Joshua), appeals the order of the circuit court of Madison County denying his petition to modify the custody arrangement of T.L., the minor child, who primarily resided with the respondent, Michelle Douglas (Michelle).
For the following reasons, we affirm the decision of the circuit court.

¶ 3 On January 19, 2010, T.L. was born to Joshua and Michelle in Granite City, Illinois. Joshua, Michelle, and T.L. cohabited until October of 2010, when Michelle left to live with her parents in Union, Missouri. Michelle took T.L. to live with her. On November 19, 2010, Joshua filed petitions in Madison County seeking the establishment of the father-child relationship; an order requiring the return of T.L. to Illinois; and an order granting him temporary sole custody and temporary child support.

¶ 4 On April 27, 2011, the parties were ordered to attend mediation. On June 16, 2011, the trial court issued an order granting Joshua weekly visitation with T.L. On October 12, 2011, the court entered an order noting that the parties were continuing to mediate; however, on December 7, 2011, the parties informed the court that they required a special setting. The parties stated that they had completed discovery and were ready to proceed on May 25, 2012, to resolve all of the outstanding issues.

¶ 5 A hearing was held on May 25, 2012, and the trial court entered an order stating that the "parties have reached an agreement on all issues." The court ordered that the parties would have joint legal custody of T.L., Michelle would be the primary residential custodian, and she would be allowed to live in Missouri with T.L. Joshua was granted visitation every other weekend and four weeks of annual vacation time. The parties split holidays. Both parties were ordered to "comply with all doctor orders regarding the minor's allergies (*i.e.* carpeting and smoking) and her diet (*i.e.* her weight)" and to keep the other informed of all child care providers.

¶ 6 On May 8, 2013, the trial court entered an order noting that the parties agreed to modify the custodial times to accommodate T.L.'s special education schooling, medical

appointments, and therapy sessions. Michelle was ordered to provide copies of T.L.'s school calendar to Joshua, and the parties were ordered to cooperate in sharing T.L.'s school and medical records. Joshua was ordered to "notify mother of names of babysitters as previously ordered."

¶ 7 On August 1, 2013, Joshua filed a petition to show cause as to why Michelle had failed or refused to allow Joshua his visitation time as detailed in the May 8, 2013, order. Joshua alleged that he was denied visitation with T.L. on the weekend of May 31-June 2, 2013, and on June 14-16, 2013, which was Father's Day weekend. He requested compensatory visitation time with T.L., which was granted in a September 30, 2013, court order. Also on August 1, 2013, Michelle's attorney filed a petition to withdraw her representation, and on August 26, 2013, Michelle proceeded *pro se*.

¶ 8 On November 25, 2013, the parties entered into a joint parenting agreement. The agreement established joint custody of T.L. and that joint decisions were to be made in all important matters. T.L.'s primary residence was to be with Michelle in Missouri. They established a visitation schedule that allowed Joshua physical custody every other weekend and four weeks of annual vacation time with T.L. T.L. would be with Michelle on Easter Sunday, Christmas Day, Mother's Day, and Michelle's birthday; T.L. would be with Joshua on Thanksgiving Day, Christmas Eve, Father's Day, and Joshua's birthday. The parties would alternate all other holidays and T.L.'s birthday. Joshua agreed to pay \$88 per week in child support and \$3120 in retroactive child support. The agreement was signed by the trial court, Joshua, Joshua's attorney, and Michelle. The court entered a

separate order that day stating that, "all pending matters have been resolved[,] see joint parenting agreement."

¶ 9 On July 1, 2015, Joshua's visitation was temporarily suspended by the trial court's order, "based on allegations of abuse." According to the record, T.L. was interviewed by the Glen Carbon Police Department and the Department of Children and Family Services on July 30, 2015.

¶ 10 On August 31, 2015, Michelle filed a motion to have the Madison County circuit court release its jurisdiction over the case and transfer it to the 20th Judicial Circuit court, Franklin County, Missouri. Michelle asserted that Madison County circuit court was an inconvenient forum and that T.L. had no significant ties to Illinois.

¶ 11 A status hearing was held on September 2, 2015. At that hearing, Joshua filed a petition for change of custody, arguing that Michelle was emotionally and mentally abusing T.L. He also alleged that she was practicing parental alienation by accusing Joshua of sexually abusing T.L.; by telling the trial court that he may have physically and/or sexually abused T.L.; by accusing him of having an unclean house "and other distractions that have led to [him] losing vital visitation time"; and by attempting to obstruct any type of visitation. Joshua requested that the court award him custody of T.L.

¶ 12 In its September 2, 2015, written order, the trial court temporarily reinstated Joshua's visitation on a restricted basis. Joshua was granted visitation with T.L. every other weekend, beginning on September 11, 2015. The court stated that "the child is to reside at [Joshua's] mother's home during these visitations." The court included the contact information for Joshua's mother, Dottie Lee. The court also reminded Joshua that

T.L. "has multiple allergies which must be taken seriously" and that he was to make sure that T.L. "*has no contact*" with his cat. (Emphasis in original.) Finally, the court ordered Michelle to provide Joshua's attorney with all the pleadings and petitions that she had filed in Missouri.

¶ 13 On September 30, 2015, Joshua filed a petition for adjudication of indirect civil contempt, alleging that on September 11, 2015, the day that his visitation with T.L. was to resume, Michelle refused to allow Joshua his visitation. Joshua requested that the court order Michelle to comply with its September 2, 2015, order.

¶ 14 On October 8, 2015, Michelle filed a petition advising the trial court that she had filed for an order of protection from Joshua in Franklin County, Missouri. On October 13, 2015, a copy of the full order of child protection was filed with the Madison County circuit court.

¶ 15 On October 21, 2015, Joshua filed a second petition for adjudication of indirect civil contempt, alleging that on September 25, 2015, and again on October 9, 2015, Michelle did not allow Joshua visitation with T.L. That same day, after a hearing before the trial court, Michelle was found in contempt of court for failure to follow the September 2, 2015, order. The court stated that she may purge herself of the contempt order by following the September 2, 2015, order and allowing Joshua to visit T.L. The court ordered that visitation was to resume on October 23, 2015.

¶ 16 On February 8, 2016, Joshua filed a third petition for adjudication of indirect civil contempt, alleging that Michelle had not allowed Joshua visitation with T.L. over

Christmas break. That same day, he filed a petition to reduce his child support payments, alleging that he had surgery and was unable to work.

¶ 17 The record reflects that on May 11, 2016, a copy of a hearing notice sent to Michelle from the Franklin County circuit court was filed. Michelle was required to appear at a hearing on May 23, 2016, on her order of protection case in Missouri.

¶ 18 On July 12, 2016, the trial court found that it "had and continues to have both personal and subject matter jurisdiction over [T.L.] and therefore these proceedings shall continue."

¶ 19 On July 20, 2016, the trial court handwrote into a case management conference setting order that "[Joshua] may resume visitations at his residence, on current schedule" and that "child support resumes immediately." It also noted that "issues of retroactive [child support] and reduction to be heard at next hearing."

¶ 20 On September 26, 2016, a full day trial setting was established for a hearing on all remaining issues in the case for January 30, 2017. The trial court subsequently appointed Angela Potter Donohoo to serve as guardian *ad litem* (GAL) for T.L.

¶ 21 The GAL presented her findings and recommendation to the trial court in her report on January 30, 2017. She reported her observations based upon the statutory factors in section 602.7 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/602.7 (West 2016)).¹

¹The GAL uses the factors in section 602.7 of the Act, which replaced section 602(a) on January 1, 2016, modifying it by adding additional factors. See 750 ILCS 5/602.7 (West 2016); 750 ILCS 5/602(a) (West 2014). As the petition to modify custody was filed on September 2, 2015, the previous version of the statute (*i.e.*, section 602(a)) is the applicable statute here.

¶ 22 The GAL noted that Michelle was on disability and lived with her parents, her son (T.L.'s half-brother), and T.L. in Union, Missouri. Joshua worked at Oxifresh and lived with his fiancée, Laura, in Glen Carbon, Illinois. She observed that T.L., who had just turned seven years old at the time of the report, was "talkative, cheerful, and friendly."

¶ 23 The GAL considered the wishes of the child, taking into account her maturity and ability to express reasoned and independent preferences as to decision-making and parenting time. She reported that T.L. is close with her mother and family. T.L. stated that she missed her mother when she was with her father but did not miss her father when she was with her mother; she noted that she was allowed to communicate with either parent but did not talk to her father when she was with her mother. T.L. told the GAL that she enjoyed being at her father's house and playing outside there but stated that she was not close to Laura. The GAL also noted that "it was clear that [T.L.] had been 'coached' by her father as to some answers," noting that, when T.L. was asked if she was supposed to tell the GAL anything, "she wanted to make sure she told me that she eats her vegetables."

¶ 24 The GAL considered the wishes of each parent. She reported that each parent wanted the majority of parenting time, noting that Joshua told her that he would have T.L. participate in physical activities and give her appropriate nutrition, while Michelle believed that Joshua had not been involved in T.L.'s life other than his parenting time and that he would ignore T.L.'s medical directives.

¶ 25 The GAL considered the amount of time each parent spent performing caretaking functions and decision-making with respect to T.L. in the 24 months preceding Joshua's

petition. She found that Michelle performed the majority of caretaking functions and made all of the decisions. Joshua claimed that Michelle failed to keep him informed, and he was forced to obtain information for himself; however, Michelle denied this and claimed that Joshua failed to actively participate in T.L.'s life. The GAL opined that neither parent was being completely forthcoming with her, noting that "Joshua had not been too motivated to get T.L.'s school records until I inquired" and that he did not have any of her medical records; meanwhile, "Michelle couldn't provide anything to show she had given him the information." She found that there was no reason that both parties should not have access to the information. She also noted that, though Joshua "repeatedly talked about the distance," she saw "no legitimate reason why he wouldn't be able to make a parent-teacher conference."

¶ 26 The GAL considered the interaction and interrelationship of the child with her parents and siblings and any other person who may significantly affect the child's best interests. She reported that T.L. has friends at her mother's house and is close with her mother, her grandparents, and her father but is not close with Laura. Laura, however, claimed that she was close to T.L. and that she called her "Mommy Laura" until Michelle put a stop to it. However, she noted that Laura called T.L. "chunky monkey," a nickname the GAL found "insulting and completely inappropriate." Both Joshua and Laura expressed concern about T.L.'s weight and indicated that they engage in activities with her but that Michelle does not. T.L. indicated that she plays with her mother, and Michelle agreed.

¶ 27 In regard to the child's adjustment to her home, school, and community, the GAL found that T.L. was an average first-grade student and enjoyed school. She was not involved in any activities but wanted to ice skate. Michelle claimed that T.L. was starting cheerleading soon and that she was not previously involved in activities because Joshua would not let her participate on his weekends with her.

¶ 28 In regard to the mental and physical health of all individuals involved, the GAL reported that Michelle had surgery for cervical cancer but was not currently going through chemotherapy or radiation, that Joshua did not have any health issues, and that Laura had multiple sclerosis (MS). T.L. had mental and physical health issues, such as extensive allergies, asthma, pervasive developmental disorder (PDD), and adjustment disorder with anxiety. However, she noted that none of the diagnoses were recent, though T.L. took a daily allergy medicine and had an emergency inhaler. T.L. did not routinely see a doctor or therapist for her PDD.

¶ 29 The GAL stated that Joshua and Laura had a cat; according to them, T.L. did not have an adverse reaction to it. However, according to Michelle, T.L. returned home on many occasions with rashes and breakouts from her exposure to allergens. Both parents claimed to feed T.L. a well-balanced diet, though the GAL was skeptical that Michelle was adhering to a nutrition plan created for T.L. by a dietician.

¶ 30 The GAL reported that the parents had a difference of opinion regarding the child's needs. Michelle believed that Joshua was not involved enough to meet T.L.'s needs and that he ignored her allergies. Joshua believed that T.L.'s allergies were exaggerated and expressed concern about her nutrition and activity level while at

Michelle's house. Joshua also denied that T.L. gained 15 pounds at his house over Christmas break, as Michelle claimed. The GAL concluded that there was a question as to the extent of T.L.'s allergies and PDD, as there was not a continuation of treatment, but that she had not "seen anything credible" demonstrating that T.L.'s needs were not being met while in Michelle's care.

¶ 31 The GAL considered any prior agreement or course of conduct between the parents relating to caretaking functions. She reported that, though Michelle and Joshua have joint custody, they do not coparent or make any decisions jointly. She opined that, "Joshua does not make a legitimate effort and it seems as though Michelle doesn't make a legitimate effort to keep him informed/involved."

¶ 32 The GAL reported that, in regard to the distance between the parents' residences, Joshua and Michelle lived too far apart to coordinate a joint physical arrangement.

¶ 33 The GAL found that "neither parent has done an exemplary job" in their willingness and ability to facilitate a close relationship between the child and the other parent. T.L. had a phone and could call either parent, but Michelle admitted that she did not instruct T.L. to call Joshua. Meanwhile, Joshua wanted "nothing to do" with Michelle, and "would not even consider" attending Michelle's birthday party, to which he and Laura were invited. The GAL found this, specifically, to be "harsh."

¶ 34 In regard to the occurrence of abuse against the child, the GAL reported that Michelle alleged that Joshua physically abused T.L. but that there was no physical evidence or criminal charge against him. She noted that "[Michelle] has somewhat

backed off of her position and claims that she wasn't convinced, only concerned" and that Joshua denied any abuse.

¶ 35 The GAL found that neither parent was a sex offender but noted that Laura had a prior conviction for home invasion.

¶ 36 Pursuant to the catchall factor of "any other factor the court expressly finds to be relevant," the GAL found that the parties had a long history of conflict and that Joshua and Laura seemed less open to moving forward, noting, "Joshua's resentment towards Michelle was more apparent than Michelle's toward Joshua." She stated that Michelle was not blameless but appeared to be taking steps in the right direction.

¶ 37 In her recommendation, the GAL stated that both parents needed to stop playing the "blame game;" specifically, Michelle needed to keep Joshua informed, and Joshua needed to take an active role in T.L.'s life and stop blaming Michelle for his lack of involvement. She opined that Joshua was capable of setting up his own parent-teacher conferences, "even if it means taking a few hours off of work." She noted that Joshua wanted primary custody but that "an occasional two-hour drive pales in comparison to the obligation and time primary parenting would require." She questioned the extent of T.L.'s diagnoses and felt that Joshua's concerns were legitimate. The GAL concluded that T.L. needed follow-up appointments with medical providers to adequately assess her current mental and physical health, noting that, "*the parties need to take the initiative to do this, specifically, Joshua.*" (Emphasis in original.) Therefore, she recommended that the parties share joint decision-making responsibilities for health, education, and religion, but that Michelle have primary decision-making for T.L.'s extracurricular activities. She

also recommended that Michelle retain primary parenting time but that the parties alternate custodial weeks during the summer.

¶ 38 After a number of continuances, a hearing was held on Joshua's petition to modify custody on August 15, 2017.

¶ 39 Joshua testified that, when Michelle left in November 2010, she left him a "Dear John" letter stating that their relationship was not working and to not try and find her. He stated that it took him until around March of 2011 to locate Michelle and T.L. However, he agreed that his grandmother and mother knew that Michelle was living with her parents. He testified that he had great difficulty coordinating visitation with Michelle and that he "had visitation denied so many times it's hard to really keep track of an exact day." He agreed, however, that visitation weekends were often switched to accommodate his work schedule.

¶ 40 The GAL testified about her report and recommendation, reiterating that T.L. wanted to live with her mother and that it was not in her best interest to live with Joshua full-time, though she felt that he should be granted more visitation time in the summer. She did not believe that T.L. was being intentionally kept away from Joshua.

¶ 41 Joshua presented evidence that, in 2013, Michelle had accused him of sexually assaulting T.L. and exposing her to pornography, and she had filed for an order of protection based on the incident. He also introduced evidence showing that the Missouri Department of Social Services had investigated the claims and found no evidence of abuse or neglect. The GAL was asked about the allegations; she testified that she did not believe that T.L. was sexually abused. Michelle testified that she was not accusing

Joshua of the conduct, but, rather, of being responsible for the conduct, because "it was happening with visits at his house." She filed for the order of protection to be dismissed approximately two months later. She also noted that Joshua was granted makeup weekends for those he missed while the order of protection was in place.

¶ 42 Joshua also introduced evidence relating to Michelle's July 2015 assertions that Joshua was exposing T.L. to allergens and was physically abusing her. Regarding the allergens, the GAL testified that she was aware of the incident and that T.L. was going to be retested for her allergies. She noted that, though the record supports that T.L. had allergies, she had not seen evidence specifically demonstrating that T.L. had a severe allergic reaction to a cat. She agreed that Michelle "could exaggerate or maybe overembellish" and that, if she were Michelle's attorney, she would not have advised pursuing an order of protection against Joshua for this reason. However, she also noted that she believed that there was merit to Michelle's concerns about Joshua's attitude towards T.L.'s allergies. Joshua testified that he did not believe that T.L. had allergies but that he purchased a pet allergen vacuum and had professional cleaners come to his home "to appease the court" and to prove that he was "trying to do everything [he could]" to make his home acceptable for T.L.

¶ 43 Regarding the October 21, 2015, order finding Michelle in contempt of court for failing to allow Joshua his visitation, Michelle testified that she did not allow Joshua his visitation time because she misunderstood the trial court's order and thought that the visitation was supposed to be supervised, as opposed to restricted, and that Dottie had to be present whenever Joshua picked up or dropped off T.L. When she again disallowed

visitation in December, after the entry of the contempt order, it was because, while she had since learned that Dottie did not have to be there for T.L.'s pick up or drop off, she remained under the impression that Dottie had to be present for T.L.'s visits with Joshua, when, in fact, the restriction was only that the visits must occur at Dottie's house because there was not a cat present. She stated that this misunderstanding was not corrected until she had again denied Joshua his visitation over Christmas break because Dottie was not going to be home.

¶ 44 Regarding the physical abuse, the GAL agreed that she did not believe that the allegations had merit. Joshua introduced a summary of T.L.'s interview with the Madison County Child Advocacy Center (CAC), where the interviewer reported that T.L.'s answers appeared rehearsed; he also introduced a report stating that the Glen Carbon Police Department closed the case after interviewing him. Michelle also testified regarding the incident; she stated that she reported Joshua to the St. Louis County police, and later, the Glen Carbon police, after T.L. told her that Joshua was playing the "choke slam" game with her. She testified that she did not learn that it was a wrestling move until after they went through the CAC interview.

¶ 45 Joshua testified that, since the GAL got involved, visitation had been regular and Michelle was "playing nicey nice"; he was concerned that the situation would revert to "chaos" after the trial court ruled on his petition. He testified that he felt that he could raise T.L. better than Michelle and noted that he lived in a better school district. He disagreed with the GAL's conclusion that it was in T.L.'s best interest to allow Michelle to retain primary parenting time. Michelle stated that T.L. was "[her] life," that she made

sure T.L. got a good education, and that, while she may be "overzealous," she was only trying to protect her daughter.

¶ 46 On August 16, 2017, the trial court denied Joshua's petition to modify custody. It concluded that, after considering all of the statutory factors, a change in circumstances had not been shown and that modification of custody was not necessary to protect T.L.'s best interest. It found that the wishes of the parents cancelled each other out, and the wishes of the child were to stay with Michelle, though the factor was given little weight due to T.L.'s age. It determined that T.L. had a close relationship with both parents but was especially close to Michelle, who was her primary caregiver. It noted that, in regard to adjustment to home, school, and community, the factor favored denial because, although Joshua was in a better school district, the GAL stated that T.L.'s "entire world" was in Missouri. In regards to the physical and mental health issues, the trial court found that there was no basis in Michelle's sexual abuse allegations but that the GAL believed that there was basis for concern regarding T.L.'s allergies, which were the grounds for several of Michelle's court filings, and that Michelle was not mentally ill.

¶ 47 Regarding the parties' willingness to foster and encourage T.L.'s relationship with the other parent, the trial court determined that "this factor strongly favors *grant* of the motion." (Emphasis in original.) It noted that "[Michelle's] attitude towards [Joshua] borders on parental alienation," and, while some of her actions "have admittedly received some judicial endorsement," it felt that her actions "have ranged from the unnecessary to the product of unreality." However, it noted that her actions failed to rise to the level of parental alienation, as the parties frequently discussed T.L., and she continued to have a

good relationship with her father. It warned, however, that "if the mother persists in needless custody/visitation/OP filings against [Joshua] *** modification of primary allocation of parenting time will be rendered necessary." It concluded that, "the GAL's strongly held position (taken by the court in a proper balancing of the evidence as to all relevant factors) that the mother should continue to have the primary allocation of parenting time is important to the outcome—that modification is *** denied."

¶ 48 On September 18, 2017, Joshua filed a motion to reconsider, arguing that he demonstrated by clear and convincing evidence that a custody change was in T.L.'s best interest. Specifically, he asserted that the trial court failed to attribute the appropriate weight to the statutory factor of "willingness and ability of each party to foster and encourage the child's relationship with the other parent," and listed examples of Michelle's alleged attempts to alienate him from T.L. Joshua again requested that he be granted primary parenting time.

¶ 49 A hearing was held on the motion on October 12, 2017. At the hearing, the trial court reiterated that parental alienation had not occurred because Joshua continued to have a good relationship with his daughter and that testimony adduced at the hearing reflected that "the parents have actually been cooperating" in the last few years. It also noted that the GAL, who "doesn't have a dog in the fight," recommended that T.L. remain in Michelle's primary custody. The court denied Joshua's motion.

¶ 50 On appeal, Joshua asserts that the trial court erred in denying his petition to modify custody. Specifically, he argues that the court erred in finding the following factors in favor of the mother: the interaction with persons who affect the child's best

interests; her adjustment to home, school, and community; and the parties' physical and mental health issues. He states that his principal argument is that the court failed to attribute the appropriate weight to the factor it found in his favor, (8) the willingness and ability of each party to foster and encourage the child's relationship with the other parent. In support of this argument, he points to evidence of Michelle's history of abuse allegations, order of protection filings, and refusals to allow visitation.

¶ 51 Section 610(b) of the Act governs actions for modification of child custody judgments. 750 ILCS 5/610(b) (West 2014). It provides that:

"(b) The court shall not modify a prior custody judgment unless it finds by clear and convincing evidence, upon the basis of facts that have arisen since the prior judgment or that were unknown to the court at the time of entry of the prior judgment, that a change has occurred in the circumstances of the child or [her] custodian, or in the case of a joint custody arrangement that a change has occurred in the circumstances of the child or either or both parties having custody, and that the modification is necessary to serve the best interest of the child." *Id.*

There is a legislative presumption in favor of the current custody arrangement. *In re Marriage of Fuesting*, 228 Ill. App. 3d 339, 344 (1992). The paramount issue in all matters concerning custody is the child's welfare; changed conditions, in itself, is not sufficient to warrant a modification in custody without a finding that such changed conditions affect the welfare of the child. *Id.*

¶ 52 A trial court's determination of modification of child custody rests largely within its discretion, and we will not disturb its decision on appeal unless it is against the manifest weight of the evidence. *In re Marriage of Bates*, 212 Ill. 2d 489, 516 (2004). This is because the trial court is in the best position to review the evidence and weigh the credibility of the witnesses. *Id.* "Against the manifest weight of the evidence" has been

interpreted to mean that the opposite conclusion is apparent or that the finding is unreasonable, arbitrary, or not grounded in the evidence. *In re Marriage of Hefer*, 282 Ill. App. 3d 73, 80 (1996). In determining whether a judgment is contrary to the manifest weight of the evidence, the evidence is viewed in the light most favorable to the appellee. *Bates*, 212 Ill. 2d at 516.

¶ 53 Section 602(a) provides that the trial court shall allocate parenting time in accordance with the best interests of the child and consider all relevant factors, including: (1) the wishes of the child's parent or parents as to her custody; (2) the wishes of the child as to her custodian; (3) the interaction and interrelationship of the child with her parent or parents, her siblings, and any other person who may significantly affect the child's best interest; (4) the child's adjustment to her home, school, and community; (5) the mental and physical health of all individuals involved; (6) the physical violence or threat of physical violence by the child's potential custodian, whether directed against the child or against another person; (7) the occurrence of ongoing or repeated abuse as defined in section 103 of the Illinois Domestic Violence Act of 1986, whether directed against the child or against another person; (8) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child; (9) whether one of the parents is a sex offender; and (10) 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. 750 ILCS 5/602(a) (West 2014).

¶ 54 In this case, we cannot say that the trial court's decision to deny modification of custody was against the manifest weight of the evidence. Viewing the evidence in the light most favorable to Michelle, the trial court could reasonably find that Joshua did not prove changed circumstances since the last judgment (the November 25, 2013, joint parenting agreement) had affected T.L.'s welfare.

¶ 55 In regard to the third factor, the interaction and interrelationship of the child with her parent or parents, her siblings, and any other person who may significantly affect the child's best interest, the evidence demonstrated that T.L. has an especially close relationship with Michelle, who has been her primary caregiver for most of her life. T.L. is also close with her maternal grandmother. She has a good relationship with Joshua but does not feel close to Laura; moreover, the GAL expressed genuine concern over Laura's inappropriate nickname for T.L. T.L. also stated that she was allowed to communicate with either parent, but did not talk to her father when she was with her mother. While Joshua argues that his relationship with T.L. suffered due to Michelle's move to Missouri, we note that the GAL explicitly found that Joshua was not putting forth a "legitimate effort" to be a part of T.L.'s daily life. The trial court properly concluded that this factor weighed in favor of Michelle.

¶ 56 In regard to the fourth factor, child's adjustment to her home, school, and community, the evidence reflected that T.L.'s "entire world" was in Missouri with her mother and grandmother. Joshua again points out that, had Michelle not moved to Missouri with T.L., her community could have been with him in Illinois. Regardless, the fact remains that T.L. currently lives in Missouri, is content in her home of the last six

years, and is doing well at her current school. Therefore, the trial court's determination that this factor weighed in favor of Michelle was not against the manifest weight of the evidence.

¶ 57 In regard to the fifth factor, the mental and physical health of all individuals involved, the trial court noted that the GAL believed that there was basis for Michelle's court filings regarding T.L.'s allergies but that there was no basis in Michelle's sexual abuse allegations. However, the GAL also concluded, and the trial court agreed, that Michelle was not mentally ill. It appears the most of the health issues are T.L.'s, and the GAL recommended that the parties have joint decision-making in this area. The court's determination that this factor was neutral was not against the manifest weight of the evidence.

¶ 58 In regard to the eighth factor, the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child, the trial court concluded that the factor "strongly" weighed in favor of Joshua. Nevertheless, Joshua asserts that the trial court failed to properly consider the evidence supporting his position that Michelle attempted to alienate him from T.L. In support of his contention, he cites *In re Marriage of Wendy L.D.*, 2017 IL App (1st) 160098, and *In re Marriage of Debra N.*, 2013 IL App (1st) 122145. However, these cases are easily distinguishable from the case before us, as in both instances the appellate court affirmed the custody determination of the trial court, whereas here, Joshua seeks a reversal of the trial court's judgment. As previously noted, reversal of a trial court's determination is a

difficult bar to overcome and cannot be disturbed unless the opposite conclusion is apparent. See *Hefer*, 282 Ill. App. 3d at 80.

¶ 59 Joshua reiterates the evidence supporting his allegation of Michelle's attempted parental alienation: the May 2013 sexual abuse allegation; the July 2015 physical abuse allegation; the May 2016 attempt to transfer jurisdiction; and the multiple refusals to allow visitation.

¶ 60 There was some mitigating evidence presented on this issue; for example, in her testimony, Michelle attempted to walk back her abuse allegations and explained that she misunderstood the order regarding restricted visitation. However, the trial court clearly considered all of this evidence in making its determination, found the factor in Joshua's favor, and warned that if Michelle persisted in "needless *** filings" that "modification of primary allocation of parenting time will be rendered necessary." Moreover, the trial court was in the best position to evaluate the witnesses' credibility. See *Bates*, 212 Ill. 3d at 515. It explicitly credited the GAL's report and testimony, concluding that "the GAL's strongly held position *** that the mother should continue to have the primary allocation of parenting time" influenced its decision. It also noted at the October 12, 2017, hearing that the parties had been recently cooperating. Thus, even though this one factor weighed heavily in favor of Joshua, we cannot say that, when balancing all of the factors, its determination to maintain the current custody arrangement was against the manifest weight of the evidence.

¶ 61 As previously noted, there is a presumption in favor of the current custody arrangement. *Fuesting*, 228 Ill. App. 3d at 344. Upon the balance of the factors set out

in section 602(a) of the Act (750 ILCS 5/602(a) (West 2014)), the trial court determined that modification was not necessary to serve T.L.'s best interest. We find that this decision is not against the manifest weight of the evidence. For the foregoing reasons, we affirm the decision of the circuit court denying Joshua's petition for change of custody.

¶ 62 Affirmed.