

¶ 2 Respondent Anthony M. appeals the judgment of the circuit court granting petitioner Danette H.B.'s motion to restore the status quo by returning Prince M., the minor child, to her custody. On appeal, Anthony argues: (1) the circuit court's decision to grant custody of Prince to Danette was against the manifest weight of the evidence; and (2) the circuit court erred by granting Danette's motion for sanctions. We affirm.

¶ 3 Danette and Anthony had a relationship which ultimately led to Prince's birth on June 6, 2006. Anthony filed a voluntary acknowledgement of paternity for Prince. Danette and Anthony were never married and did not reside together, but Anthony paid voluntary child support and provided financial assistance to Danette for household expenses for a period of time. Danette also had another daughter, Ashley, from a previous relationship, who was older than Prince. Although Danette had custody of Prince, Anthony visited Prince often.

¶ 4 In October 2007, Danette filed a petition to establish a child support obligation and asked that Anthony be ordered to provide health insurance for Prince.

¶ 5 On October 3, 2008, Anthony filed a motion to seek sole custody of Prince, alleging that Danette was interfering with his ability to visit and bond with Prince, and that she was raising Prince in an inappropriate environment. Anthony requested temporary custody of Prince and requested that, after a home study was completed, permanent custody should be awarded to Anthony.

¶ 6 On October 31, 2008, Danette filed a motion to strike Anthony's motion seeking sole custody, arguing that the petition failed to comply with the court rules.

¶ 7 In December 2008, the circuit court entered an order giving Anthony 14 days to amend his motion for custody. The record does not contain any further reference to Anthony's 2008 motion for custody.

¶ 8 On December 5, 2008, an agreed order was entered by the court granting Anthony visitation with Prince on alternating weekends, beginning on Friday evening and ending on Monday morning with pick-up and drop-off occurring at Prince's daycare.

¶ 9 On February 17, 2009, Danette filed a petition for an order of protection from Anthony on behalf of herself, Prince, and Ashley. She alleged that on February 15, 2009, "[Anthony] telephoned me at 6:12 p.m. and threatened to harm me and my child if I did not come get the child. Since then, he has abducted my son and will not answer any phone calls, texts, and would not answer [the] police either." The circuit court granted an emergency order of protection the same day, and ordered law enforcement to assist in the turnover of Prince.

¶ 10 On February 18, 2009, the court entered an order, finding that Anthony was "holding and concealing" Prince illegally, that Danette had legal custody of Prince, and ordering that Prince was to be "immediately" returned to Danette, and the police or sheriff's department were to assist Danette in obtaining Prince.

¶ 11 On February 19, 2009, the court entered an order that during the pendency of the matter, or until further ordered by the court, Danette was to retain physical, residential and legal custody of Prince. Anthony was awarded visitation every other weekend, starting Thursday at 6:30 p.m. through Sunday at 6:30 p.m. Drop-off and pick-up was to take place at the South Holland police station. The court also vacated the February 17 emergency order of protection.

¶ 12 In April 2009, Anthony's visitation with Prince was expanded to every other week, beginning with Anthony picking up Prince Wednesday evening after school, and dropping Prince off at 8:30 p.m. on Sunday at the police station. On the off weeks, Anthony was to pick up Prince from school Tuesday evening and drop him off at school Wednesday morning.

¶ 13 In January 2010, Anthony made a report of "beat marks" on Prince's legs by his mother. Anthony took Prince to the emergency room at Advocate Christ Medical Center. According to the emergency department documentation report, dated January 15, 2010, Anthony took Prince to the emergency room:

"[F]or evaluation of alleged abuse. The father alleges that the patient was injured by the boys [*sic*] mother while visiting with her over the holidays. He states that he believes she struck him with a belt on his legs and believes there are belt marks on his left leg. he [*sic*] states that the boy c/o pain in the leg but did not specifically claim being struck."

The physical exam revealed a "1x2 cm discoloration on the [] left [] leg, not obviously a bruise and appears old, no acute soft tissue injury." The nursing assessment portion of the report indicated that "father wants [the Department of Children and Family Services] contacted[;] suspects abuse by [Prince's] mother."

¶ 14 In March 2010, Danette received a letter from the Department of Children and Family Services (DCFS) stating that she had been previously notified that DCFS was investigating a report of suspected child abuse or neglect and "[a]fter a thorough evaluation, we have determined the report to be 'unfounded.' This means that credible evidence of child abuse or neglect has not been found."

¶ 15 In July 2010, the trial court appointed the Cook County Public Guardian to represent Prince.

¶ 16 In October 2010, the court entered a written order, stating that Prince would continue to reside with Danette, "no one will physically punish the child and this is a condition of child

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living with mother," and that Prince was safe in either home. The court also ordered Prince to participate in therapy. The court entered a separate order on the same day, giving Anthony visitation with Prince every other week, Wednesday through Sunday. On the off-week, Anthony was granted visitation with Prince from Tuesday after daycare through Wednesday morning. The court ordered that Prince's Sunday returns to Danette would be at the police station.

¶ 17 On November 12, 2010, the court entered an order stating that Danette should be present at all times when Ashley was in the presence of Prince, that Ashley was not allowed to discipline Prince, and that if Ashley did discipline Prince, Prince would be removed from his mother's home. The court further set the case for hearing on January 11, 2011, on two issues, both involving daycare payments.

¶ 18 On November 25, 2010, Anthony again took Prince to the emergency room at Advocate Christ Medical Center. According to the emergency department documentation report, dated November 25, 2010, Anthony took Prince in for an evaluation of two marks on Prince's lower back. Prince, who was four years old at the time, told Anthony that the marks were from a "brown belt that mother hit him with when she was upset." The report also said that there was a "history of abuse in past per dad. Child is with him half [of] the time. He says per court order if [Prince] is injured by his mother, mother is to be incarcerated. He has copy of the court order." As for the physical exam, the report reflects that Prince had "one horizontal mark on the lower back[,] 3 inches long[,] less than 1/2 inch wide. No localized tenderness but child says his back hurts. Rest of exam normal. No other injuries." A nurse's note indicates that the nurse called the Oak Lawn police department to make a report for possible abuse. The nurse's assessment stated:

"[Prince] brought in with c/o welts to back. Dad states [Prince] was here in ER back in January [*sic*] for [Prince] 'being hit by mother's belt on legs.' Dad states dcfs [*sic*] came out to their house, went to court and dad states [Prince] was with his mother this week, picked [Prince] up on Tuesday night and noticed this morning 'welts on his back.' Dad states [Prince] told him his mother hit him with a belt. [Prince] states to staff that 'mom hit me with a belt.' Upon assessment [Prince] appears to have 2 old marks on back. No open sores or scabs noted."

¶ 19 On January 11, 2011, the court entered an order stating that an "emergency intervention" was set for hearing on January 12, 2011, allowing Anthony to appoint or direct "any person he believes to be a trustworthy and reliable person to pick up child," and that the issues that were to be heard that day pursuant to the November 11, 2010, court order were not heard because Danette failed to appear.

¶ 20 On January 13, 2011, the circuit court entered a written temporary custody order, which stated, in part:

"This matter coming to be heard on temporary custody of the parties [*sic*] minor child, [Prince], both parties, counsel for respondent, and the child's representative being present in court, the court being fully advised in the premises, and after hearing:

The court hereby finds:

[] Based on the child's statements, as well as prior home study interventions, allegations, observations, and orders, there is a

substantial risk of injury to the child in the mother's care, and the 604(b) report by Dr. Star is needed to make further determinations."

The court ordered that Prince would be in the "temporary custody" of Anthony "pending further order of the court after receipt of the 604(b) report by Dr. Star," that both parties should enroll in individual counseling, and that Danette's visitation with Prince should be supervised at a facility. No transcript of the hearing that resulted in the January 13, 2011, custody order is included in the record on appeal.

¶ 21 The same day, the court also entered an order allowing Danette to have supervised visitation with Prince at the Branch Family Institute.

¶ 22 In February 2011, Danette received a letter from DCFS stating that she had been previously notified that DCFS was investigating a report of suspected child abuse or neglect and "[a]fter a thorough evaluation, we have determined the report to be 'unfounded.' This means that credible evidence of child abuse or neglect has not been found."

¶ 23 In March 2011, Danette filed a motion for an evidentiary hearing "regarding allegations made by [Anthony as to] abuse/whippings to minor child" alleging a lack of factual evidence to support the allegations of abuse. Danette also filed a motion for the immediate return of Prince.

¶ 24 On March 21, 2011, the court entered an order which stated, in pertinent part, that Anthony "shall initiate a call every day at 6 p.m. except visitation day to [Danette] so that [Prince] may talk with the mom."

¶ 25 The record contains a copy of Dr. Star's 604(b) evaluation, which was completed in May 2012.¹ Under recommendations, Dr. Star wrote:

¹ Page 24 of Dr. Star's report is not included in the record on appeal.

"[Danette]'s low frustration tolerance and her trouble inhibiting the expression of impulses has contributed to current problems; however, it seems unlikely that she regularly abused [Prince] or that she abused him at all. She may have used corporal punishment in that she struck him in the past, but neither hospital reports nor DCFS records presented any strong claim of the physical abuse of this child. Unfortunately what does emerge as probable is that [Anthony] has and continues to undermine [Prince]'s relationship with his mother by coaching him to say things about her and by molding negative feelings toward her. While [Anthony] may have the best of intentions, his directing the child to say his mother struck him, his failing to help [Prince] prepare for phone calls by suggesting topics of conversation or 'talking them up' and his neglecting them entirely can chip away at [Prince]'s self-esteem, cause loyalty conflicts and impair reality testing if not curtailed.

These very strong-willed, determined and misguided parents require a parenting coordinator, someone to monitor both parents's [*sic*] interactions with [Prince] and suggest a reasonable and ever-expanding parenting time for [Danette]. ***

This examiner recommends that [Danette] no longer have supervised parenting time with her son; however, her parenting time should expand gradually. ***

[Danette] will need to respect everyone's time by showing up, coming on time and working cooperatively with everyone concerned. [Anthony] will need to learn ways to help [Prince] adjust to his mother's visits and phone calls and learn not to undermine or report negatively to the child about his mother, by word or action."

¶ 26 Dr. Star administered tests to both Danette and Anthony, the results representing "hypotheses about individuals to confirm or challenge through personal observation or collateral information." The personality test results for Danette, including the MMPI-2 and the PSI, suggested: "a definite tendency toward overactivity and unrealistic self-appraisal"; "accelerated speech, thought processes and motor activity, seeking out risk, excitement or danger and having impulses to do something harmful or shocking"; she "feels resentful when others make demands on her and believes others have treated her unfairly"; "she may exhibit both verbal and physical aggression, may use aggression to dominate and control people, may enjoy intimidating others, may have a history of behavioral problems in school and may have a history of arrests"; and "she experiences a significant degree of distress outside of the parent-child relationship." The test results for Anthony, including the MMPI-2 and the PSI, suggested "he answered test items in a manner too guarded to cooperate in self-appraisal"; and "he experiences a significant degree of stress outside of the parent-child relationship."

¶ 27 Dr. Star noted that Prince seemed well-attached to both parents, but said that he feared his mother and "worried that she would beat him again if she had unsupervised time with him." However, in her observations of Prince with Danette, Dr. Star said that Prince "showed no fear and appeared quite comfortable with and loving toward" Danette.

¶ 28 As to the mental and physical health of the parties, Dr. Star wrote that Danette was "her own worst enemy. Because she cannot recognize her own limitations, she views her assertiveness, strength and ability to stand up for herself and speak her mind as assets, while others experience her as excitable, intimidating, irritable and erratic." Dr. Star also noted that Danette "can behave quite pleasantly" when she does not feel confronted, but also that "her short fuse lies very close to the surface, and she feels prepared to vigorously defend her point of view, right or wrong." As to Anthony, Dr. Star observed that although Danette's "behaviors have been observed in a variety of settings and corroborated to some extent via test results, [Anthony]'s test results present an equivocal picture due to his high level of defensiveness, suggesting there may be more to know about him."

¶ 29 In the section titled "Violence or a Threat of Violence," Dr. Star wrote:

"In the present matter it appears that [Danette] has used physical punishment in the past as judged from her statement to this examiner that she 'thumped' [Prince] for misbehavior (flicked him in the head with her forefinger). Ms. Tobolski said [Danette] admitted that she had used a belt on [Prince], but not to cause any injury. [Danette] did not admit to this examiner that she struck [Prince] with a belt. [Prince] himself said his mother hit him with a belt. The examiner will discuss this more in the next section of this report.

[Anthony] took [Prince] to the hospital twice alleging [Danette]'s abuse. When he took [Prince] to Christ Hospital on 1-15-10, medical staff reported on 'a 1x2 discoloration on medial left

distal leg, not obviously a bruise and appears to be old. No acute soft tissue injury.' The attending physician with an illegible name said as follows: 'No clear answer that discoloration is actual bruising or that it was from actual abuse.' DCFS unfounded this case.

On 11-25-10 ***, [Anthony] took [Prince] to Christ Hospital ER, claiming bruising on [Prince]'s lower back. He also called the police. The intake worker wrote that [Anthony] claimed a history of abuse. The intake worker described one horizontal mark on [Prince]'s lower back three inches long and less than one-half inch wide. The attending physician, Dr. O'Leary, described the mark as follows: 'Two brown marks on lower back. Prince states his mother hit him on his back with a brown belt sometime within the past two weeks.' DCFS unfounded this case.

Although [Anthony] said that he had [Prince] most of the time during most of his life, he never reported any suspected abuse before these two incidents.

The material this examiner reviewed regarding the alleged physical abuse of [Prince] does not corroborate [Anthony]'s claims that [Danette] physically abused [Prince]."

¶ 30 In the next section, titled "Willingness and Ability of Each Parent to Foster and Maintain a Positive Relationship Between the Children and the Other Parent," Dr. Star said:

"This examiner reviewed the DCFS reports regarding the two allegations of physical abuse. While [Prince] may have originally said what [Anthony] reported that he said about his mother whipping him, during the first investigation in January 2010, he later told a worker that his mother did not whip him with a belt, and he did not feel afraid of her. He said [Anthony] told him that one of the investigators, Ms. Simpson, could arrange it so that he stayed with his dad. [Prince] denied being whipped.

During the course of the investigation initiated 11-25-10, [Prince] again recanted his allegations about his mother ***, saying that he did not want to say that his mother hit him with a belt, but his father wanted him to lie. At the school when interviewed ***, [Prince] said he did not mean to tell the police and doctor that his mother 'whooped' him with a belt. His father made him say this.

This examiner asked [Anthony] why he thought [Prince] said these things. [Anthony] said that because [Danette]'s aunt works for DCFS, workers in his case probably twisted the story or coerced [Prince] to recant. While possible, this examiner finds [Anthony]'s explanation implausible. When this examiner asked [Prince] why he came to the office to see her, he said, 'To tell you all the things my mother does.' This represents a very unusual remark for a child when asked that question and in conjunction

with the DCFS information, lends credence to the notion that [Anthony] has coached and continues to coach [Prince] for his own benefits. Unfortunately [Anthony]'s actions call into question the credibility of [Prince]'s current statements about [Danette]'s treatment of him.

Suggestibility, defined as 'the degree to which children's encoding, storage, retrieval and reporting events can be influenced by a range of social and psychological factors' [citation], can occur in subtle or obvious, direct ways. *** While coaching and indoctrination probably occur more frequently than this examiner can corroborate, the notion that [Anthony] prepared [Prince] during two hospital/DCFS evaluations and prepared him to speak to this examiner could alone be enough to make clear to [Prince] what he should and should not say to other authorities.

Anthony submitted his 'phone log,' detailing calls from [Prince] to his mother from 7-15-11 through 3-27-12, documenting his version of fifty-four entries. Fifty four entries across an [] eight month period suggests that [Anthony] does not call [Danette] daily as directed by the Court. More than fifteen times [Anthony] did not have [Prince] call because he fell asleep, or [Anthony] went out. About the same number of times [Anthony] reported that [Danette] did not answer her phone. Several times [Anthony] hung

up because [Prince] told him his mother made him mad or sad."

(Emphasis in original.)

The remainder of the section is contained in page 24 of Dr. Star's report which was not included in the record on appeal. Ultimately, Dr. Star recommended that Danette "no longer have supervised parenting with her son; however, her parenting time should expand gradually."

¶ 31 In July 2012, Danette filed a petition for sanctions and for other relief. In the petition, Danette alleged that she was "a fit and proper person to have the sole legal residential custody, control and education of [Prince] and it is in [Prince]'s best interest that custody so be awarded." Ultimately, Danette requested that the circuit court set the matter for hearing, vacate the January 2011 temporary custody order, and restore the status quo by granting Danette custody of Prince. Danette also requested that the court order Anthony to pay her attorney fees, supervised visitations fees, the fee for the 604(b) evaluation, and fees incurred by the Public Guardian.

¶ 32 In support of her petition, Danette attached a letter dated December 20, 2010, from Cheri Tobolski, a therapist who worked with Prince, Danette, and Anthony. Tobolski explained that, at the time of the letter, she had conducted three sessions with Prince and Danette; parts of the sessions were individually with Prince and parts were with Prince and Danette together. Anthony had brought Prince in for one session at that time. Tobolski concluded that "[Prince] appears to be attached to both parents and interacts positively with both of them. Each parent has expressed love and concern for their child. Prince is a very likeable, bright young child who is playful, friendly and well adaptive to his living circumstances." Danette also attached the 604(b) evaluation.

¶ 33 In October 2012, before the custody hearing began, the Public Guardian filed a motion for a supplement to the 604(b) evaluation, explaining that Dr. Star had made a recommendation

regarding visits but no recommendation regarding custody. The circuit court granted the Public Guardian's motion, however no supplemental report is included in the record on appeal.

¶ 34 The circuit conducted a custody hearing beginning in December 2012, which included testimony on December 5, 6, 7, and 10, 2012;² and February 14, 15, 19, 20, and 22. The record on appeal does not include the transcripts from December 7, February 13, February 20, and contains only a partial transcript of the proceedings on December 22. Danette presented nine witnesses. Renee Thomas, Danette's material aunt, testified. Thomas's testimony is not included in the record on appeal, but according to the circuit court order:

"Renee testified that [Danette] was a hard-working mother, who in her opinion was too lenient with her children, as opposed to being violent. Renee testified about one time in particular when [Prince] was at her house visiting Renee. *** [Danette] came to pick [Prince] up and arrived before he could finish his pancakes. [Prince] was upset that he was leaving, so he began kicking and screaming. Upon witnessing [Prince]'s tantrum, [Danette] just politely picked [Prince] up and put him in the car seat, while he was kicking and fighting her the entire time. When she put [Prince] in the car, he screamed, 'I'm going to tell my dad on you, my dad is gonna get you!!' [Danette]'s only response was 'Now [Prince], when you stop screaming you can have the pancakes.' At

² On December 10, 2012, the court entered a written order, awarding Danette with a three-hour unsupervised visitation with Prince, beginning December 21, 2012.

that point, [Danette] just sat there until he calmed down, and then she handed him a pancake, and they drove away.

Renee's testimony also directly impeached [Anthony]'s statements in Dr. Star's 604(b) evaluation [citation] when [Anthony] stated that 'they had had intercourse only once.' According to Renee's testimony [Danette] and [Anthony] were in a long-standing and serious relationship, inasmuch as [Anthony] expressed his intentions to purchase a house for [Danette] and his intentions to marry her."

¶ 35 Sandra H., Danette's mother, testified that she met Anthony when he and Danette were dating and said that Anthony had asked Danette to marry him. After Prince was born, Sandra provided Danette with financial assistance for Prince. Sandra said Danette was a "very caring, very responsible" mother to Prince and Ashley, and Sandra had no concerns about Danette's children living with Danette or about Danette being abusive or a danger to her children. Sandra never saw Danette spank Prince and did not have concerns about Danette physically harming Prince. Danette never had issues with smoking or drinking. At the time of trial, Sandra lived in California and had for the past 13 years, but flew in to visit about five times each year. She was "very upset" because, since Anthony had been given temporary custody Prince, she did not get to see Prince "anymore." Sandra explained she no longer was able to play with Prince or take Prince anywhere.

¶ 36 Ashley H., Danette's 19-year-old daughter from a previous relationship, also testified at the trial. Her testimony is not included in the record on appeal, but according to the circuit court order:

"Ashley testified that [Danette] is a very hard-working and protective mother, who never used physical punishment with [Prince]. Ashley also testified that in her opinion, if anything, her mother was too permissive with [Prince], using long talks and lectures as her way of instructing [Prince]. Ashley's testimony also demonstrated that [Anthony] was a manipulator who misled her, her mother and their family about his intentions for [Danette]. In particular, Ashley was the only other witness to the December 6, 2006, Delois Magee shooting incident. [Anthony] completely minimized the shooting incident and his relationship with [Danette] in his explanation about the incident to Dr. Star [citation]. Perhaps most pertinent is that Ashley's testimony illustrates the emotional damage that has been done to [Prince], the damage to the mother-child relationship, since [Prince] has lived with his father. According to Ashley [Prince] has developed a lack of respect for his mother, inasmuch as he does not listen to her and he disrespects her by calling her by her first name."

¶ 37 Tawana H., Danette's sister, also testified at trial. Her testimony is not included in the record on appeal, but according to the circuit court order:

"Tawana and [Danette] were very close, growing up as the only siblings in their nuclear family. Tawana's testimony illustrates the fact that [Danette] was never physical with her children. That [Prince] would sometime misbehave to the point that she believed

a spanking would be appropriate, but [Danette] would lecture [Prince] instead. According to Tawana, after the parties broke-up, Tawana and other family members would have to occasionally assist [Danette] with money for childcare, and to support [Danette] financially, because there were times when [Anthony] failed to provide the financial support. Tawana testified specifically about one time in particular, around June 2008, she sat with [Danette] at [Danette]'s residence while [Danette] waited all day for [Anthony] to come bring her some money. However, [Anthony] never showed, and they later found out that [Anthony] had gone out of town. Most importantly Tawana's testimony demonstrates that prior to the modification of custody [Danette] very much fostered the relationship between [Prince] and his father; Tawana lived very close to [Anthony]'s place of employment, and [Anthony] had carte blanche to come visit his son at any time at her residence too."

¶ 38 The parties entered stipulations for two different witnesses. First, the parties stipulated that, if called, Kim Fernandez would testify that she had been close friends with Danette for "a number of years" and had observed Danette as a mother to Ashley and Prince. Fernandez never observed Danette being "in any way inappropriate with her children" or harming her children. She never knew Danette to use spanking as a means of discipline. Fernandez knew Anthony as the "boyfriend of her best friend" and as Prince's father. Fernandez never saw Danette abuse drugs or alcohol. Fernandez planned a trip to Las Vegas for Thanksgiving weekend in

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November 2010 and encouraged Danette to join. The trip was planned "well in advance" and Danette's plane ticket was booked at least two weeks prior to the trip. Prince was never going to go on the trip. Fernandez would also testify that she would trust Danette with Fernandez's own child. Fernandez's opinions are based on her personal observations and had never lived with Danette.

¶ 39 The parties also stipulated that, if called, Aneita Williams Jackson would testify that she had been friends with Danette for over 30 years and that Jackson is Ashley's godmother. She had never known Danette to use illegal drugs or abuse alcohol. Jackson never knew Danette to spank Ashley and, as far as Jackson knew, "Danette did not believe in spanking children and did not spank [Prince] as a means of discipline or otherwise." Jackson would testify that Danette was "tough," a "go-getter," was the "pride of their group of their church," and "has always been a strong single mother to her children." Jackson never saw any signs of abuse, physical harm, bruises, or unexplained injuries to Prince. Jackson would say that "Danette always seemed very focused on giving her children the best of everything more than what she had as a child." Jackson knows Anthony as Prince's father and her observation of Anthony and Danette at Danette's baby shower indicated that they were in a relationship. The parties further stipulated that Jackson's opinions were based on her personal observations and Jackson never lived with Danette after Prince was born.

¶ 40 Sarah Stier testified that she taught Prince when he was in the four-year-old preschool classroom for the 2010-2011 school year at Penny Lane School. Stier said that Prince was a "typical" four-year-old and that Danette was an involved mother. "She wanted to know what was going on. She called. She would check on [Prince] whether talking to us, his teachers, or talking to him." Stier testified that, as a teacher, she was mandated to report any suspected child

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abuse based on seeing bruises on a child or based on the child's behavior, such as being "standoffish" or having a fear of being alone. She never had any concerns about Prince being abused and never observed injuries on Prince that would have led her to believe he was being physically harmed by someone. Prince never told Stier anything about being hit by either parent. Stier did not notice any changes in Prince's behavior when he moved in with his father. Stier once observed Prince speaking to his mother on the phone after he had moved in with Anthony. Stier said that Prince listened to what his mother asked him, responded to questions, and said "I miss you Mommy, I love you Mommy." Stier never saw Prince's behavior change when he was on the phone with his mother. Stier also testified that when Anthony started dropping Prince off in the morning, he would ask how Prince was doing.

¶ 41 RaShawn Fitzgerald testified that she was the visitation supervisor for Danette and Prince's supervised visits at E.M. Branch & Associates (Branch), the facility that was appointed to host the supervised visits, beginning on July 7, 2012. Supervised visitation between Danette and Prince began in March 2011 and between March 2011 and the time of trial, Danette had approximately 60 supervised visits with Prince at Branch. Fitzgerald testified about an incident on July 14, 2012, at a scheduled visit, where Prince reached into Danette's purse. Danette told Prince, "[t]hat's mommy's stuff. You don't go into mommy's stuff," and pinched Prince on the behind. In Fitzgerald's opinion it was a "normal mother-child interaction." Although Prince was upset at first, he then apologized to Danette and did not seem harmed by the pinch. Fitzgerald also testified about another incident that same visit, where Prince slipped and fell while he was showing Danette his ability to do a handstand. Prince reinjured a scab he already had on his left elbow, but Danette asked for a first aid kit and tended to Prince's wound.

¶ 42 Nikia Thompson, a licensed clinical social worker at Branch, testified that she was the reunification therapist that worked with Danette and Prince at Branch. She began reunification therapy with Danette on September 8, 2012 and had known Danette, Anthony, and Prince for approximately one year prior to beginning therapy. Thompson said that Danette and Prince have a "great relationship," explaining that Prince "comes in excited to see his mother. He's excited to play games. He's excited to start the process." Thompson said that, based on her observations, Danette did things that would foster a positive relationship between Anthony and Prince. Thompson described each of the nine sessions she had with Danette in Prince in some detail. For example, she described a session on October 13, 2012, when Danette asked Prince why he was afraid to stay with her. Prince responded that Danette might "whup [him] again." Danette asked Prince when did she "whup" him and he responded, "when I was two." Danette said she used to put Prince in time outs when he misbehaved. After this conversation, Danette and Prince played a card game together and then Prince sang made up songs to his mother, singing "I love mommy. I love daddy." Thompson also testified about a session on October 17, 2012. At the beginning of the session, Prince laid on top of a large sheet of paper and Danette traced Prince's body on the paper. Prince was instructed to write his feelings inside the outline. Danette drew a broken heart to show Prince that was how she felt and Prince began to cry. Danette started to cry and told Prince that she loved him "very much." Prince said he was angry and sad, then drew a broken heart and went under a table, beginning to cry again. Danette kept telling Prince that she loved him and it was not his fault. Thompson asked Danette to step out of the room because the session had become "a bit heavy" and Thompson wanted to give Prince the opportunity to share his feelings with her. Prince told Thompson he was "mad at mommy," but when Danette came back into the room, Prince got upset again and said, "Mommy, you left." Danette asked how

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Prince was doing and Prince said he was "happy now. I love you, mommy." At the end of the session, Prince became angry and upset again because he did not want to leave, lying down on the floor, crying and stalling. After about five minutes, Thompson was able to get Prince out of the room. Thompson testified that she knew Prince was "fearful" but she was not sure whether Prince was fearful of his mother or of transitioning away from Branch, which had been part of his life for some time. Thompson explained:

"[Prince] is conflicted about a lot of things that [have] transpired with the court case, with everything that's going on with him, and he doesn't know—based on my observation, he doesn't know how to feel.

So he has been going back and forth with I love my mommy, I'm mad at my mommy, that kind of thing, because he doesn't know how to feel and he—you know, he's being told things and then maybe [making] his own observation. All of this is making him very stressed out, and that's what I'm experiencing from the beginning."

Thompson also said that Prince was "seriously suffering," and further testified:

"Because [Prince] is so conflicted with going to his mom's house, he's conflicted with being save [*sic*] in visitation, not—he talks about or makes reference to being whooped and he talks about that a lot and he says he does not want to go to his mom's house, but then in other interactions he states—you know, he asks a lot of questions about going and then he'll—he doesn't want to

leave when it's time to leave. So there are a lot of conflicting factors that are happening with the sessions."

¶ 43 Thompson was concerned that Prince was being coached to say certain things. For example, during Prince's initial visit, Thompson asked Prince how he felt about his mother and Prince responded that he had three mommies. When Thompson asked Prince who his other two mommies were, Prince said he could not tell her because he would get in trouble. More recently, in November 2012, Prince said he had to call Anthony's wife "mommy or she will get mad." Thompson also said that Prince's ability to lie and manipulate was further along than it should be for a child his age. Ultimately, Thompson did not think supervised visitation between Danette and Prince was necessary any longer and recommended a "slow progression."

¶ 44 Danette testified that she met Anthony in 1999 but they did not start dating until 2004 or 2005. Prince was born in June 2006. Danette considered her relationship with Anthony over after an incident in December 2006 where Danette drove to Anthony's house on a night they had plans after he failed to show up. While there, another woman, DeLois McGee, went after Danette with a knife and then fired two gunshots at Danette. In 2006 and 2007, Anthony paid \$160 per week in child support. Anthony did not have court-ordered visitation with Prince at the time but Danette let Anthony come over whenever he wanted to visit. Once the child support case began, the court ordered a visitation schedule for Anthony. Danette described an incident that occurred on February 16, 2009, when Anthony had Prince but wanted Danette to pick up Prince earlier than scheduled. Danette refused because she had plans. Anthony did not bring Prince back at the scheduled time so she called him multiple times, but he did not answer. Eventually, Danette called the police and met the police at Anthony's house. No one would open the door at Anthony's house, so Danette filed a police report. Prince was not returned to Danette

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after that night for a week and a half. Danette said that, as a result, the court entered an order on February 19, 2009, which stated, in part, "during the pendency of these matter[s] or until further order of Court, Danette [] shall retain custody" of Prince. The order also changed the drop-off/pick-up location from Danette's home to the South Holland police station. Danette also filed police reports in July 2009 and December 2009 when Anthony failed to show up to pick up Prince. In early 2010, Prince attended school at Family Life Christian Center. Danette said she was involved in Prince's schooling: she would go to the school, go on field trips with the school, attend play dates and pool days, and participated in cookie sales and bake sales. At some point, Danette moved from South Holland, Illinois, to Oak Lawn, Illinois, so she enrolled Prince at Penny Lane in Oak Lawn. Danette was also involved with Prince's schooling at Penny Lane. She communicated with the teachers "all the time."³

¶ 45 The Public Guardian called one witness, Kristin Insalata, the assistant teacher at Penny Lane. Her testimony is not included in the record on appeal, but according to the circuit court order:

"Kristin was called to testify by the [Public Guardian] with the purpose of eliciting testimony about a 'melt-down' [Prince] had on January 29, 2011, soon after [Anthony] was awarded temporary custody. It was clear from counsel's questioning that the goal was to insinuate that a mere telephone call from [Danette] caused [Prince] to violently react. However, clearly that was not borne

³ Danette testified on December 5 and 6, 2012. There was no indication in the December 6 transcript that her testimony was completed and the transcript from December 7, 2012, was not included in the record on appeal.

out by the teacher's testimony [which] once again demonstrated that [Danette] was a loving and concerned mother and that when [Prince] was in his mother's custody, attending Penny Lane, [Prince] was well-adjusted and closely bonded to his mother. And any isolated incidence of misbehavior did not negate those facts. The logical conclusion about the supposed 'melt-down' in January 2011 was that [Prince] missed his mother, [Prince] was aware of the conflict between his parents, [Prince]'s schedule and home life and routine was abruptly ripped from him, and he was reacting to that trauma. What is actually poignant about the 'melt-down,' was [Anthony]'s reaction to the situation. Rather than trying to find a way to ease [Prince]'s transition, he went to court and got an order prohibiting [Danette] from even telephone contact with the minor child."

¶ 46 Anthony called his third wife, Karona Mason, to testify. Her testimony is not included in the record on appeal, but according to the circuit court order:

"When Karona was asked on the stand what date she got married- she could not answer the question; she got confused and flustered. According to both [Anthony] and Karona they maintained separate residences for the majority of their marriage."

¶ 47 Anthony testified that he met Danette in 1996 or 1997. He saw her a few times that year for job training, and then did not see her again until May 2005. They went on a date a week or two later, but he ended the relationship in September 2005 in part because he felt Danette was

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raising her daughter, Ashley, "too loosely." Danette told Anthony she was pregnant in November 2005. Anthony stayed involved during Danette's pregnancy. He drove her back and forth and helped her out financially. The week Prince was born, Anthony began paying Danette \$150 per week in child support and placed Prince on his health insurance because Danette did not have health insurance. For the first six months of Prince's life, Anthony saw Prince just about every day at Danette's. Beginning in 2007, Anthony had Prince overnight every other weekend pursuant to a court order. Early on, Anthony had concerns about the way Danette cared for Prince because Danette left Ashley to watch Prince while Danette would be gone for significant amounts of time. Contact between Anthony and Danette was minimal from June 2007 through June 2008. Anthony said he was always "very respectful" to Danette in conversation but has "always gotten grief back." In December 2008, Anthony was awarded visitation with Prince every other weekend from Friday evening through Monday morning. In February 2009, Anthony kept Prince for one week because Danette failed to pick up Prince. Then, on February 19, 2009, the court entered an order granting Anthony visitation with Prince every other weekend beginning at 6:30 p.m. on Thursday through 6:30 p.m. on Sunday. At this point in the trial, the following exchange occurred:

"ANTHONY'S COUNSEL: And what are the concerns that you've had that made you want to file a motion for custody?"

DANETTE'S COUNSEL: Objection, your Honor. Facts not in evidence. He never made any—he never gave any testimony about filing a motion for custody. And in fact, he never did file a motion for custody.

THE COURT: Counsel, I don't remember him testifying...

ANTHONY'S COUNSEL: Okay. That's fine. I'll
withdraw the question, your Honor."

Anthony believed that he should have custody of Prince because he provided a "more stable home." Anthony defined a stable home as "children and husband and wife. *** Having a way to educate your children instead of reprimanding them with two tools and belts or whatever you may use. *** [Y]ou being the one who is there with them instead of leaving them with other people." In November 2010, around Thanksgiving, Anthony said he was giving Prince a bath and when he rubbed Prince's back, Prince started "jumping and said, Daddy, stop. I told my mommy and this brown belt..." When Prince mentioned the belt, Anthony took Prince into another room to examine him under brighter lights and saw an "enormously large" welt on Prince's back. Anthony was concerned because previously, in January 2010, Anthony had seen welts or bruises on Prince's legs. Anthony did not call DCFS after the January 2010 incident. Because of the mark on Prince's back, Anthony took Prince to an urgent care facility and then to the emergency room. The doctors examined Prince then asked Anthony to step out of the room. When they asked Anthony back into the room, the doctors informed Anthony that they were going to call the police. The doctor asked Anthony if he had caused the injury and, when Anthony denied it, the doctor said, "I kind of know you didn't because your son told me something." Anthony did not call DCFS. Neither Anthony nor his wife ever physically disciplined Prince. Instead, when Prince misbehaves, Anthony puts him in a time out.

¶ 48 Anthony testified that when he received temporary custody of Prince in January 2011, he had several concerns. Anthony said Prince was behind in school because Prince would try to read a book from the back and "then he would try to read the words going the wrong direction instead of starting forward like no one had been working with him." Prince could not write the

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alphabet or his name properly. Anthony took Prince to tutors at Anthony's church and the tutors said Prince was behind academically. Anthony worked with Prince on academics "pretty much every night" for 30 to 45 minutes. After Prince finished the 2010-2011 school year at Penny Lane, Anthony enrolled Prince in a summer camp with academics and then kindergarten for fall 2011 school year at St. John De LaSalle. Prince finished kindergarten at Loomis, a Chicago International Chartered School, where he presently attended school. By the end of the 2011-2012 school year, Prince was "on point" because Anthony had worked with Prince. In January 2011, Anthony was also concerned because Prince would rock back and forth a lot. Anthony described several incidences where Prince was rocking, usually before or after Prince had a supervised visitation with Danette. Anthony described how he would help Prince calm down, by holding him or offering Prince treats. When Anthony received temporary custody of Prince, he also said that Prince would bite his thumb and was generally just "really quiet." Now Prince is "more jovial" and "more boisterous." In January 2011, Anthony was also concerned because Prince did not want to be left alone and could not fall asleep unless Anthony stayed with him. Now Prince is able to fall asleep by himself and sleeps through the night. It took "months" to get to that point. In January 2011, Anthony was also concerned because Prince's nose was running constantly and Prince was undernourished. When Anthony took Prince to an urgent care facility in January or February 2011 because of Prince's runny nose, the physician and nurse told Anthony to make sure Prince was eating a "proper diet" and that he was "small for his age." Now Prince is no longer undernourished. Prince eats two or three times a day and will have two servings at dinner.

¶ 49 Anthony described an incident in February or March 2011, where a teacher from Penny Lane called and told Anthony that Prince was throwing chairs and "just acting out tremendously

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in the classroom." Anthony had never seen Prince act in such a way. Anthony asked the teacher what might have triggered the episode and the teacher said that Prince had been taken out of the classroom to talk to his mother on the phone. Anthony had not been aware that Danette was calling Prince at school. Anthony believed he deserved custody of Prince because he had been caring for Prince for the last two-and-a-half years, he has a stable job, he is in a "good bible based church" that he is raising Prince in, and Prince feels safe around him. Anthony said he wanted Prince to have a relationship with Danette but he did not think such a relationship was possible at present because "of all of the incidents that we have had that occurred, that brought this all about, the things that happened in the supervised visitation. If that's happening, how we going to go unsupervised?" Anthony did not trust Danette to have unsupervised visitation with Prince. Anthony was also concerned about Prince's bruises and the brown belt.

¶ 50 On cross-examination, Anthony maintained that, in February 2009, Danette refused to pick up Prince. Anthony was shown the police report Danette filed on February 16, 2009, which said that Anthony "refused to return [Prince] to [Danette] as stated he was going *** to go to court about the matter, the mother." Anthony said he had been at work when the police called him that night. The police report said that Anthony "stated he was on the way to Indianapolis and would not disclose whereabouts of victim." Anthony said that Danette had refused to pick up Prince at the "opportune" or "proper" time to allow Anthony to do everything that he needed to. When asked about whether he allowed phone contact between Danette and Prince after receiving temporary custody of Prince, Anthony said no one had mentioned telephone contact. He explained, "I work 12, 13 hours a day. I just wasn't able to *** just hand him a phone and say call your mom. By the time I got home, sometimes he was asleep or I had to help him with his homework and then put him to sleep." Anthony testified that he would follow a court order.

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It was pointed out that, at some point, the court entered an order that Danette was to have daily telephone contact with Prince. Anthony had presented Dr. Star with telephone records and, over eight months, there were about 54 calls between Danette and Prince. Anthony explained that he did follow the court order because "I may have had to have Prince call from one of my kids' phones or whomever he was with." When presented with the fact that, in the 604(b) report, Dr. Star said Anthony did not allow Prince to call Danette every day, Anthony testified that he allowed Prince to call Danette every day and that Dr. Star's report contained a mistake. Anthony recalled Dr. Star saying that it was important for Anthony to facilitate the phone calls between Danette and Prince. Anthony said if there was a problem with the phone calls, it was because he was not at home. Anthony also admitted that, prior to January 2011, Prince had spent many nights sleeping at Anthony's. In regard to the testing administered by Dr. Star, Anthony denied having information he did not want to share with Dr. Star. Although Dr. Star specifically asked about Anthony's criminal history, Anthony did not tell Dr. Star that he had a 1999 arrest for aggravated assault and "fire arms" or a 2001 arrest for domestic battery against his second wife. He did not mention his incarcerated brother, Norman, to whom Anthony sends money every month, or that Anthony's son Martez had been arrested for identity theft while Martez was in college. Anthony did not tell Dr. Star that another son, DeAndre, father to Little DeAndre, was arrested for a drug charge in 2007 or that DeAndre had a 2009 felony conviction for manufacturing and delivery. Anthony did not mention DeAndre's criminal history to the Public Guardian either. In regard to DeAndre, Anthony said that DeAndre "is of age and for me to know everything that he does is kind of hard because I work 12, 13 hours a day so I don't have—the stuff that you are telling me is something that's really new to me." Anthony is close to

DeAndre and sees both DeAndre and Little DeAndre often, but maintained he did not know about DeAndre's criminal history.

¶ 51 Anthony was aware that Prince recanted his story to DCFS about his mother beating him during both DCFS investigations. Anthony explained that it was "a long time before they even came out to interview him after those incidents." Anthony was aware that Prince said Anthony told Prince to lie. Anthony maintained he had been telling the truth about what Prince told him and about the marks on Prince's legs. Anthony said Prince lied when Prince recanted.

¶ 52 On June 4, 2013, the circuit court entered a thorough 23-page written custody order, awarding Danette sole custody of Prince and ordering reunification therapy to begin immediately. The court noted:

"The Court had the opportunity to review the testimony of the parties, as well as all the witnesses, [weigh] their credibility, evaluate their temperament, personality and capabilities, review the exhibits admitted into evidence and consider the written closing arguments and memoranda of counsels. The court determined custody in accordance with the best interest of the child and considered all relevant factors as outlined in [section 602 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/602) (West 2010)], to the extent the evidence was introduced to each factor, and relevant case law in its determination.

The Court also considered the weight and quality of the evidence presented, drew reasonable inferences where appropriate,

and applied the requisite standards and burdens of proof. The fact that particular testimony or exhibits are not referred to herein does not mean that the evidence was not considered by the Court."

The circuit court explained that the "key to this case hinges on the credibility of the witnesses and Anthony's testimony can only be described as completely incredible, from beginning to end." The court carefully addressed the testimony of each witness presented and discussed each point of Anthony's testimony that it found to be not credible, explaining the evidence the court found to be credible and contrary to Anthony's position. The court again noted the applicable statute was section 602 of the Act, then went through each factor and explained its application of the trial evidence to that factor. Ultimately, the court explained:

"In this case, the deciding 602 factor is which parent can best foster a relationship between the other parent and the minor child. The Appellate Court has made it clear that 'a pattern of interference and manipulation' designed to diminish the other parent's ability to be a fully engaged parent is in and of itself enough of a reason to modify custody. Over the last two (2) years, [nay] the last six (6) years, [Anthony] has proven that he is incapable of fostering a relationship between [Danette] and [Prince]. The evidence showed that [Anthony] engaged in a calculated ruse to thwart [Danette] of her right to be a parent."

¶ 53 On appeal, only Anthony and the Public Guardian have filed briefs. Initially, the Public Guardian argues that the appeal should be dismissed because Anthony failed to comply with the

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requirements of Illinois Supreme Court Rules 321, 323, and 341. See Ill. S. Ct. Rs. 321 (eff. Feb. 1, 1994), 323 (eff. Dec. 13, 2005), 341 (eff. July 1, 2008).

¶ 54 Supreme Court Rule 321 requires that the record on appeal include "the entire original common law record, unless the parties stipulate for, or the trial court, after notice and hearing, or the reviewing court, orders less." Ill. S. Ct. R. 321 (eff. Feb. 1, 1994). The rule also requires that the common law record contain "any documentary exhibits offered and filed by any party." *Id.* Supreme Court Rule 323 provides that the report of proceedings "shall include all the evidence pertinent to the issues on appeal," but allows for a bystander's report or an agreed statement of facts if no verbatim transcript is available. Ill. S. Ct. R. 323(a), (c), (d) (eff. Dec. 13, 2005). Finally, Supreme Court Rule 341(h)(6) requires that the "Statement of Facts" section of the appellate brief "contain the facts necessary to an understanding of the case, *** with appropriate reference to the pages of the record on appeal." Ill. S. Ct. R. 341(h)(6) (eff. July 1, 2008).

¶ 55 The Public Guardian argues that Anthony failed to comply with the requirements because he failed to file the exhibits from the trial and all the trial transcripts in the record on appeal, and because his opening appellate brief does not contain a sufficient statement of facts or proper citations to the record. Anthony responds that the transcripts that included the Anthony and Danette's testimony were provided in the record on appeal. He also claims that the court's 2013 custody order is a "judicial 'bystander's report,' " without any citation to authority in support of this conclusion. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008) (the argument section of the appellant's brief "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities *** relied on").

¶ 56 It has long been recognized that the appellant has the burden to present a sufficiently complete record on appeal to support his claim of error and, "in the absence of such a record on

appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

¶ 57 We agree with the Public Guardian that the record on appeal is incomplete. The court's 2013 custody judgment refers to multiple exhibits that were admitted during the custody hearing; however, as the Public Guardian points out, none of the exhibits were included with the record on appeal. Anthony indicates that the transcripts from December 7 and 10, 2012, and February 13, 20, and 22, 2013, were not included in the record on appeal due to financial limitations. Moreover, in addition to providing a minimal statement of facts and insufficient citations to the record on appeal, Anthony fails to cite relevant authority in support of his arguments in his brief, as required by Rule 341(h)(7). However, where the merits of a party's appeal may be analyzed without reference to the omitted materials, the failure to include them in the record does not preclude review. *Walker v. Iowa Marine Repair Corp.*, 132 Ill. App. 3d 621, 625-26 (1985). Here, we find that Anthony's contentions may be analyzed without the omitted materials and, with the principles of *Foutch* in mind, we shall address them.

¶ 58 Anthony first contends that the circuit court's 2013 order awarding Danette full custody of Prince was against the manifest weight of the evidence, arguing that the court failed to apply section 610 of the Act (750 ILCS 5/610 (West 2010)), as it was required to do.

¶ 59 Section 610 of the Act governs the modification of a custody judgment. 750 ILCS 5/610 (West 2010). It provides:

"The court shall not modify a prior custody judgment unless it finds, 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 his custodian and that the modification is necessary to serve the best interest of the child."

750 ILCS 5/610(b) (West 2010).

¶ 60 In determining custody, the primary consideration is the best interest and welfare of the child. *Prince v. Herrera*, 261 Ill. App. 3d 606, 611 (1994). The factors in determining the best interest of the child are governed by section 602 of the Act, which provides, in pertinent part:

"(a) The court shall determine custody in accordance with the best interest of the child. The court shall consider all relevant factors including:

(1) the wishes of the child's parent or parents as to his custody;

(2) the wishes of the child as to his custodian;

(3) the interaction and interrelationship of the child with his parent or parents, his siblings and any other person who may significantly affect the child's best interest;

(4) the child's adjustment to his home, school and community;

(6) the physical violence or threat of physical violence by the child's potential custodian, whether directed against the child or directed against another person;

(7) the occurrence of ongoing or repeated abuse
***, whether directed against the child or directed 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." 750 ILCS 5/602(a)
(West 2010).

"The custodial decision rests on temperaments, personalities and capabilities of the parties." *Prince*, 261 Ill. App. 3d at 612. The circuit court is in the best position to evaluate these factors. *Id.* In addition, the circuit court is in the best position to decide custody issues because the judge is the one who observes the parties involved and the demeanor of the witnesses, and hears and resolves conflicts in the testimony. *In re Marriage of Petraitis*, 263 Ill. App. 3d 1022, 1031 (1993). Therefore, the circuit court has broad discretion in making a custody determination and the court's decision will not be disturbed on review unless it is against the manifest weight of the evidence. *Prince*, 261 Ill. App. 3d at 612. "Against the manifest weight of the evidence" means that the opposite conclusion is apparent or that the finding is unreasonable, arbitrary, or not grounded on the evidence. *In re C.S.*, 383 Ill. App. 3d 449, 451 (2008).

¶ 61 Anthony first argues that the circuit court should have applied section 610 in the present case because, "[u]nder Illinois law, a temporary custody order entered after a hearing, and in force for nearly two years, is recognized as a permanent custody order, for purposes of modifications of custody judgments under section 610 of the [Act]." The Public Guardian responds that the order entered on June 4, 2013, was not a modification of a previous custody order because the 2011 custody order was temporary. We agree.

¶ 62 The term "prior custody judgment" as used in section 610 refers to a final custody order rather than a temporary custody order. *Doyle v. Doyle*, 62 Ill. App. 3d 786, 788 (1978), *overruled on other grounds*, *In re Custody of Harne*, 77 Ill. 2d 414, 419-20 (1979). As the Fourth District observed in *Doyle*, "[t]he effective use of temporary custody orders would be greatly reduced if they could only be vacated or modified in conformity with the stringent requirements of section 610." *Doyle*, 62 Ill. App. 3d at 788.

¶ 63 However, we first note that Anthony did not make this argument in the circuit court below. Arguments not raised before the circuit court are forfeited and cannot be raised for the first time on appeal. *Mabry v. Boler*, 2012 IL App (1st) 111464, ¶ 15. Forfeiture aside, Anthony cites only one case in support of his argument, *In re Marriage of Kondos*, 109 Ill. App. 3d 615 (1982). We find *Kondos* to be distinguishable from the instant case. In *Kondos*, the petitioner filed for divorce from the respondent when she was three-and-a-half months pregnant with their minor son. *Id.* at 615. The circuit court entered a judgment for divorce in 1977, in which it also found both parents were "fit and proper persons to have custody" of the minor. *Id.* at 616. In December 1978, the respondent filed a petition to modify the custody provision in the divorce judgment, alleging that the petitioner had moved the minor to Oregon without permission. *Id.* In July 1979, the court entered an order that the joint custody provision of the divorce judgment was to be maintained and held that the order "was final and that there was no just reason to delay its enforcement or appeal." *Id.* The court subsequently conducted a hearing and, in July 1981, the court awarded joint custody to the petitioner and the respondent in accordance with the divorce judgment. *Id.* at 617. Both parties appealed. *Id.* at 615.

¶ 64 On appeal, the respondent argued that the court erred in modifying the final custody judgment from July 1979 without making findings pursuant to section 610 of the Act. *Id.* at 617.

The petitioner argued that section 610 was inapplicable because the July 1979 was a temporary ruling on custody. *Id.* at 617-18. The reviewing court first noted that "[a]n order is temporary or final according to its substance, not its form." *Id.* at 618. The court concluded that the July 1979 order was final, explaining that it believed the circuit court order was final, "following a full evidentiary hearing on that issue." *Id.* The court also reasoned that "[t]he finality of the order is further evidenced by the fact that almost two years elapsed before the trial court reconsidered its award of custody." *Id.*

¶ 65 In contrast, in the present case the circuit court explicitly stated in its January 2011 order that the matter was "coming to be heard on the temporary custody" of Prince and ordered that Prince "shall be in the temporary custody of Anthony ***, pending further order of the court, after receipt of the 604(b) report by Dr. Starr [*sic*]." The court never indicated that the order was final. We note that the 604(b) report of Dr. Star was not completed until May 2012. Furthermore, the record demonstrates that the issue of Prince's custody was constantly litigated from the entry of the January 2011 order until the hearing began in December 2012. As early as March 2011, Danette filed a motion for the immediate return of Prince. Anthony argues, without citation to the record, that the language in Danette's motion to restore the status quo "clearly identifies the pleading as a motion seeking reconsideration and/or modification of the 2011 Temporary Custody Order." First, we note that a review of Danette's motion to restore the status quo never requests that the court "modify" or "reconsider" the January 2011 custody order; rather, Danette requested the court to enter an order "vacating" the January 2011 custody order "and or enter an Order restoring the status quo ante and granting Danette residential custody of the minor child." Moreover, even if Danette had asked to "modify" the January 2011 custody order, that would not alter the 2011 custody order's status as temporary. Based on the substance

of the 2011 custody order and the subsequent actions of the parties, we find that the 2011 custody order was temporary. Accordingly, section 610 of the Act is inapplicable.

¶ 66 From our review of the record, we find that the circuit court properly based its decision on the best interests of Prince. In its order, the circuit court stated that it "determined custody in accordance with the best interest of the child and considered all relevant factors" pursuant to section 602 of the Act, then went through each of the section 602 factors, outlining the evidence in support of the factor and its reasoning of how the evidence applied. In regard to section 602(a)(8), the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child, the court stated that it believed "this is one of the most important factor[s] that this Court considered in this cause. [Anthony] has proven that he has a complete inability to foster a relationship between [Danette] and [Prince]." Upon our review of the record, we cannot find that the circuit court's findings were against the manifest weight of the evidence.

¶ 67 Anthony argues that the court made erroneous findings of fact, specifically its findings that a hearing was not conducted before the court granted temporary custody of Prince to Anthony and that Anthony never filed a motion for full custody of Prince, and that the court improperly acted as a court of review in regard to the 2011 custody judgment. We find the few and isolated comments made by the trial judge do not control the decision to award custody to Danette. In addition, Anthony argues that the circuit court did not give any weight to the evidence favorable to Anthony and ignored all evidence unfavorable to Danette. However, in its order the court specifically noted said that it "considered the weight and quality of the evidence presented, drew reasonable inferences where appropriate, and applied the requisite standards and burdens of proof. The fact that particular testimony or exhibits are not referred to herein does

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not mean that the evidence was not considered." The circuit court heard all of the trial evidence, observed the demeanor of the witnesses, and was in the best position make determinations about the personalities and temperaments of the parties involved.

¶ 68 Finally, in his opening brief, Anthony contends that the trial court erred in granting Danette's Rule 137 motion for sanctions. However, as the Public Guardian noted, and as Anthony conceded in his reply brief, the circuit court's June 4, 2013 order did not specify the dollar amount that Anthony was ordered to pay. An order is not final if it establishes liability but does not fix the amount. *Lamar Whiteco Outdoor Corp. v. City of West Chicago*, 395 Ill. App. 3d 501, 515 (2009). When a circuit court has not entered a final order determining the amount of attorney fees and costs, issues relating to such an award are not ripe for review. *Id.* Accordingly, we lack jurisdiction to consider the portion of the circuit court's June 4, 2013, order granting sanctions against Anthony without specifying an amount.

¶ 69 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 70 Affirmed.