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2014 IL App (3d) 130977-U

Order filed May 9, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
BRADLEY STONE,)	of the 10th Judicial Circuit
)	Peoria County, Illinois
Petitioner-Appellee,)	
)	Appeal No. 3-13-0977
v.)	Circuit No. 11-D-543
)	
LYNETTE PELLEGRINI-STONE,)	Honorable
)	Katherine Gorman,
Respondent-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE LYTTON delivered the judgment of the court.
Justices Carter and McDade concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court did not err in granting custody of children to father and ordering that mother have supervised visitation where mother made many unfounded allegations of abuse against father. Guardian *ad litem* for children did not exceed his authority by investigating abuse allegations, preparing reports and providing testimony in court.

¶ 2 In August 2011, petitioner Bradley W. Stone filed a petition for dissolution of marriage against respondent Lynette Pellegrini-Stone. Both parties sought custody of their four children. Following a trial, the court granted Brad sole custody of the children and granted Lynette supervised visitation. Lynette appeals, arguing that the trial court erred in (1) granting Brad sole

custody of the children, (2) granting her supervised visitation, and (3) allowing the guardian *ad litem* to “exceed his authority.” We affirm.

¶ 3 Brad and Lynette married in 1996. They had four children during their marriage: Lyndsay, Ryan, Sean and Liam. In August 2011, when the children were 11, 9, 7 and 4 years of age respectively, Bradley filed a petition for dissolution for marriage. He also filed a petition for exclusive possession of the marital residence, requesting that he be allowed to continue to reside in the marital home and have custody of all of the children.

¶ 4 A few days after Brad filed for divorce, Lynette threw a dish at him, and he called the police. Lynette was arrested for domestic battery. Brad filed a petition for an emergency order of protection against Lynette. Jason Netzley was appointed guardian *ad litem* for the children. The trial court granted Brad's petition for an emergency order of protection against Lynette. Thereafter, Lynette filed a petition to rehear or vacate the order of protection, with an affidavit attached thereto. The affidavit alleged in part that "on at least two recent occasions [Brad] pinned our oldest daughter on the bed, getting on top of her and using his left hand to pin her upper shoulder down, straddling her to pin her legs down, and using his right hand to pull down her pants."

¶ 5 On September 7, 2011, the trial court entered an order modifying the temporary order of protection against Lynette to allow her supervised visitation with the children. One month later, the trial court entered a mutual restraining order replacing the order of protection. The restraining order provided Brad with temporary custody of the children and granted Lynette unsupervised visitation with them.

¶ 6 On December 10, 2011, Lynette filed a police report against Brad, alleging that he caused bruising to Lyndsay's arms and forehead by shaking her, throwing her against a wall and headbutting her. Netzley went to the police department and spoke to Brad and Ryan, who both

said that Brad held on to Lyndsay's arms or shoulders to try to calm her down while Lyndsay shook, jerked and tried to pull away from him. Brad left the police station with the boys, and Lynette left with Lyndsay. Lynette then took Lyndsay to the emergency room. Lyndsay spent two days in the hospital undergoing a variety of tests, which all came back normal. No criminal charges were filed against Brad. DCFS investigated the abuse allegations against Brad and deemed them unfounded.

¶ 7 As a result of Lyndsay's alleged injuries, Lynette filed a petition for a temporary order of protection against Brad. The trial court granted Lynette's petition, and Lynette was granted temporary custody of all of the children. At a hearing on December 21, 2011, the court vacated the order of protection and ordered Lynette to return the children to Brad's custody. At the appointed location, Lyndsay and Ryan refused to leave with Brad. Lyndsay called the police, claiming that Brad injured her arm by trying to drag her to his car. The police responded, as well as Netzley. No charges were filed against Brad.

¶ 8 On January 11, 2012, the trial court entered an order allowing Lyndsay and Ryan to temporarily reside with Lynette and granting Brad supervised visitation with them. On February 23, 2012, Brad was given temporary custody of all four children for approximately one week. In March 2012, Lynette had liberal visitation with the children. In April, the trial court ruled that the children be split into pairs for visitation. A custody trial was scheduled for July.

¶ 9 Ten days before the custody trial was to begin, Lynette filed a police report, alleging that Brad choked Liam. The police investigated and found no evidence supporting the allegations. DCFS also investigated and determined that the allegations were unfounded. When Netzley talked to Liam about the allegations, Liam admitted he lied. Just two months earlier, Liam told Netzley, "Mommy wants me to say daddy does bad things to me, but he doesn't and I love daddy."

¶ 10 Netzley filed a report shortly before the custody trial began. In that report, he stated that Lynette's contact with her children has "negatively impacted" them and "has resulted in harm" to them. According to Netzley, "the children have turned against one another and have been exposed to a constant mantra that Brad does bad things to them."

¶ 11 Netzley's report indicated that when he first met the children, they told him that Lynette hurt them, especially when Brad was gone. The children reported incidents when Lynette "pummeled" Ryan in the stomach, backhanded Lyndsay in the face causing her to bleed, hit Liam with a flyswatter, and hit Sean in the face causing his nose and mouth to bleed. Later, the children, especially Ryan and Lyndsay, made excuses for their mother's behavior and claimed that Brad was the abusive parent.

¶ 12 Netzley's report recounts several instances of bad behavior on Lynette's part. First, on the night of Lynette's arrest, Lynette instructed the children to lie to the police, telling them that Brad hits them. She also screamed at the children to "Run!" and told them that Brad was going to kidnap them and take them away from her. On another occasion "Lynette slipped a neighbor child a cellular phone to give to Lyndsay," at school. Finally, Lynette was asked to leave Sylvan Learning Center, where Ryan was receiving help, "because of her combative nature."

¶ 13 Netzley spoke to Karen Greene, a domestic violence counselor, and two of Lynette's visitation supervisors, Chaille Karl and Amy Bleichner. They reported that Lynette becomes very emotional at visitation exchanges, causing the children to cry and become upset, as well. Both Karl and Bleichner shared concerns with Netzley that "Lynette will try to poison the children against Brad if she has custody."

¶ 14 Netzley concluded that if Lynette were granted custody of the children, they would "not have a relationship with their father" because the "behavior observed in Lynette during the divorce proceedings is not likely to stop." Netzley opined: "If history teaches us anything, there

will be an abuse allegation made against Brad once the children are in Lynette's care, regardless of who the custodial parent is."

¶ 15 Prior to the scheduled custody trial, Lynette filed a motion *in limine* seeking appointment of a new guardian *ad litem*, claiming that Netzley could be called as a witness and, therefore, should not be allowed to continue as the children's GAL. The trial court dismissed the motion.

¶ 16 The custody trial began on July 23, 2012. Amy Bleichner testified that she supervised two visits between Lynette and her children in the fall of 2011. During the first visit, Lynette made disparaging remarks about Brad in front of the children. During the second visit, Lynette spent large amounts of time on the phone away from the children. After that, Bleichner decided to stop supervising visitation between Lynette and the children. She thought that Lynette was "putting the kids in the middle" and saying inappropriate comments in their presence.

¶ 17 Chaille Karl testified that she supervised Lynette's visitation with her children twice in September 2011. During the first visit, they went to a park and a restaurant. According to Karl, Lynette interacted with the children "off and on." When they left the restaurant, Lynette "had kind of an episode in the car where she started ranting and *** using the 'F' word[.]" Karl found Lynette's behavior "shocking." A couple of other times that night, Lynette had outbursts and appeared "very agitated and angry." After Karl dropped off the children, Lynette called Brad a "fucker" over and over again.

¶ 18 Karl described her second supervised visit with Lynette and the children as "terrible." She said that Lynette drove erratically with the children in the vehicle and was "mean and aggressive" towards her. Karl decided to stop supervising visitation for Lynette because she became "a little afraid of her." Karl was concerned that Lynette was not mentally stable, and she "didn't want to be involved anymore."

¶ 19 Brad testified that prior to July 2011, he and his children had fun together and had "a very good relationship." He described Lynette as a loving and caring mother who can be aggressive and volatile at times. He witnessed her grab and shake the children but never hit them. He admitted that he "swatted the [children] on the butt" and spanked Ryan and Sean with a belt after they hung Liam off of a balcony. Now, he punishes them by taking things away from them or putting them in time-outs. He believes he has encouraged the children's relationship with Lynette by allowing her extra visitation time and dismissing the order of protection against her.

¶ 20 Brad testified that his relationship with his children changed as soon as Lynette was granted unsupervised visitation with them. At that point, he saw hatred from the children toward him. They said things like, "You got mommy arrested," and became more defiant.

¶ 21 Brad testified that his relationship with his two oldest children has suffered tremendously since they began living with Lynette. They have both filed police reports against him, making false allegations, and have been "indoctrinated" to hate him. Brad believes it is in Sean and Liam's best interests for him to have custody of them, explaining "the only way that they will have a relationship with both parents is if I have them."

¶ 22 Dr. Channing Petrak testified that she is a pediatrician who specializes in child abuse. She examined Lyndsay on December 11, 2011. Lyndsay told her that her father grabbed her by the shoulder/collarbone area, shook her, and slammed her against a wall. Petrak's physical examination of Lyndsay revealed faint bruising on her forehead, bruising on her upper arms and an abrasion near one of her elbows. Petrak found those bruises to be consistent with the events Lyndsay described and consistent with abuse. It was Petrak's opinion that a parent commits abuse whenever he causes bruising to a child. Petrak admitted that DCFS does not always agree with her findings of abuse.

¶ 23 Dr. Steven A. Hamon performed psychological evaluations of Brad, Lynette and the children. Hamon's evaluation of Lyndsay showed "a very strong negative regard for dad's actions as compared to those of her mother." It also showed that "Lyndsay was experiencing alienation from her father." Hamon's evaluation of Ryan also revealed that he "was experiencing alienation from his father." Hamon's evaluation of Sean showed no alienation from either parent. He rated both parents "about equally" in the areas of competence, supportiveness, consistency, and possessing admirable character traits. Hamon's evaluation of Liam showed no alienation and indicated that "he relates to each of his parents with a sense of emotional closeness, age-appropriate dependency and feelings of safety."

¶ 24 Hamon concluded that "neither Bradley W. Stone nor Lynette Pellegrini-Stone emerges as a viable sole custodian." He recommended that if Brad were granted sole custody, he be required to provide "proof of a relative or paid professional to be a housekeeper/nanny for the children at least 5 days per week when they are with him." Hamon "strongly recommended" that Lynette be evaluated by a clinical psychologist or psychiatrist as a prerequisite to being granted sole custody of the children.

¶ 25 The trial was continued until March 2013. In the meantime, in August 2012, Lynette filed a police report against Brad, alleging that he physically assaulted Ryan during a visitation exchange. DCFS investigated the incident and determined that the allegation was unfounded. In December 2012, Lynette filed an emergency order of protection against Brad, alleging that he sexually assaulted Liam by fondling him. The trial court granted the emergency order of protection and prohibited Brad from having contact with any of his children. The order of protection was later vacated, and a police and DCFS investigation revealed that the allegations were unfounded. When Netzley spoke to Liam about the allegations, he admitted he lied.

¶ 26 In February 2012, Lynette filed a police report against Brad, alleging that he pushed her, pulled her hair and accosted Liam at a visitation exchange. The police and DCFS investigated and determined that the allegations were unfounded.

¶ 27 Less than a week before the trial was set to resume, Lynette filed a motion to strike Netzley's report, claiming that it (1) exceeded a GAL's authority to investigate, interview and recommend, (2) contained inadmissible evidence, and (3) invaded the purview of the trier of fact by making credibility determinations. A few days later, Netzley filed a supplemental report, in which he stated that events that had transpired since his prior report, including Lynette filing several more police reports against Brad, "have only served to reinforce the previous recommendation made to the Court – that Brad Stone be granted custody of the children." Before the trial resumed, the court denied Lynette's motion to strike Netzley's report, finding that Netzley "did his job" by being "the eyes and ears of the Court."

¶ 28 The custody trial resumed on March 11, 2013, with several days of testimony. Karla Janicke testified that she is the co-director of Sylvan Learning Center in Peoria. Brad enrolled Ryan there for help with math in the fall of 2011. According to Janicke, Ryan was "thriving" at Sylvan. On September 20, 2011, Lynette had a meeting with the center's co-director that lasted over two hours. At that meeting, Lynette "became combative and argumentative." According to Janicke, Lynette was "red faced" and screaming. After Lynette left the building, Janicke felt the need to lock the front doors for the safety of herself and her staff.

¶ 29 Anne Marie Danner testified that she is Liam's kindergarten teacher. She described an incident in December 2012, when Lynette was outside the school waiting for Liam. When Danner opened her classroom door, Lynette walked toward her and into her classroom, pointing in her face and saying, "I am not going to have my ex-husband accost my child kicking and

screaming." Lynette's behavior made Danner uncomfortable because she thought that Lynette was "a little bit aggressive."

¶ 30 Kathleen Griffith testified that she met Lynette and Brad in 2009, when she began teaching horseback riding lessons to Lyndsay. As time went on, Griffith began giving lessons to Lynette, Ryan and Sean and became well acquainted with the entire family. She was never concerned for the children's safety when they were with Brad. She was concerned by Lynette's behavior on one occasion when Lynette yelled at Lyndsay during a lesson, threatening to "yank her off the horse" if she did not listen to Griffith.

¶ 31 Kate Smart testified that she met Lynette five or six years ago at a homeschooling function. She described an incident in January or February 2013, when the Stone children were at her house. Brad came to her house and accused her of kidnapping his children. She found that to be "very threatening." She also testified that Liam told her that Brad sticks his hand down Liam's pants "at night when they are in bed together."

¶ 32 Elizabeth Pullen testified that she has known Lynette for six or seven years and has observed her with her children. She had no concerns about Lynette being granted custody of the children. She said she would be concerned if Brad were granted custody because "he would be way to[o] intense of a dad."

¶ 33 Carla Fisher testified that she is an expert in domestic violence and its psychological effects. Lynette hired Fisher to perform a domestic violence evaluation of her and paid her \$10,000. Fisher spent ten hours with Lynette and determined that she had "some isolated symptoms of posttraumatic stress disorder that were mostly resolved."

¶ 34 Shawn Bay testified that he is a police officer for the City of Elmwood. He was called to Lynette's house on July 13, 2002. When he arrived, Bay spoke to Lynette and Liam. Liam told him that his father grabbed him by the neck. Bay saw no evidence of bruising on Liam's neck.

¶ 35 Lynette testified that prior to August 2011, she was the primary caretaker of the children and homeschooled them. She said there were "a lot of problems" whenever she left the children with Brad for extended periods of time. On one occasion, Lyndsay called her and said Brad was getting very physically aggressive, so Lynette returned home earlier than she intended. According to Lynette, Brad was in the habit of flicking the children in the head. He also spanked them with his hand and a belt. Lynette testified that she punished the children by putting them to work or making them go to their rooms. She spanked the children when they were younger but stopped doing so around the age of five.

¶ 36 Since July 2012, Lyndsay and Ryan have been in her custody at all times with the exception of two days in February 2013, when Brad had all four children. Lynette testified that she wants custody of all of her children with very flexible visitation for Brad. She testified that she would facilitate a relationship between Brad and the children. She said that she has "absolutely not" coached the children into making false allegations against Brad.

¶ 37 Netzley testified that soon after he became involved in the case, he observed "a lot of emotion from Lynette" at the visitation exchanges that "would be amplified by the children, and there would be crying, and it would escalate." He described Lynette's behavior as "dramatic," "unnecessary and harmful to the children."

¶ 38 Netzley testified that every time Lynette made an allegation against Brad, he investigated it and determined that "it didn't happen." He described Lynette's allegations as "improper." He testified that over time, Ryan and Lyndsay have "developed a way of speaking" about Brad. They call him "an abuser" and use "very adult sentences describing their father in a negative fashion."

¶ 39 Netzley recommended that Brad be made the sole custodian of all four children and also recommended a "deprogramming period *** to remove the indoctrination of hate *** Lynette

has caused directly or indirectly." He recommended that Lynette receive supervised visitation or limited contact with the children during that time. He also thought that counseling was essential for all of the children, especially the older two to address their "alienation" issues. Netzley believes that "all of them being with Brad is the best thing that could happen to them." He opined: "If Lynette is given sole custody of all the children, as a practical matter, Brad will never have a relationship with them."

¶ 40 After reviewing the evidence, the trial court addressed each relevant statutory factor and the testimony presented. With respect to the first factor, the wishes of the child's parents, the court acknowledged that "Lynette desires primary custody of all four children" and that while Brad initially desired custody of all four children, "[h]e now has concerns about the older two children and has requested custody of Sean and Liam."

¶ 41 With respect to the second factor, the wishes of his children, the court found that Lyndsay and Ryan want to live with their mother, Sean wants to live with his father, and Liam wants his parents back together. The court noted: "[A]t the outset of these proceedings, all four children wanted their parents together or reunited or they wanted to live with Brad. There's more to come on that observation."

¶ 42 Regarding the third factor, the interaction and relationship of the child with parents, siblings and anyone else, the court found that "before these proceedings were initiated, all four children had a meaningful relationship with both parents." The evidence showed that both parents were caring and involved with the children. However, "[t]he relationship between the Stone children has been severely and adversely affected by these proceedings." The court found that "this adversarial system has not served those Stone children well nor, unfortunately, has it resulted in a cooperative effort between [the parents]."

¶ 43 In analyzing the fourth factor, the court found that the children have adjusted to attending public school and "are doing relatively well." The court had no concerns about the cleanliness or safety of either parent's home.

¶ 44 With respect to the fifth factor, the physical and mental health of all involved, the court found that "all four Stone children are healthy." The court noted that Brad's psychological report indicated "that he may struggle with custody of all four children and need some help." Lynette's psychological report indicated that she "needs to be evaluated by a clinical psychologist." The court also noted that "the evidence most certainly suggests that Mrs. Stone has struggled with emotional outbursts at most inappropriate times that have adversely affected [her] children throughout the time these proceedings have gone on."

¶ 45 In considering the next factor, whether there has been physical violence or a threat of physical violence by the children's potential custodian, the court noted that "from the beginning of this case, there have been many allegations of physical violence," which were investigated by the police and DCFS and "found to be without merit." The court considered the children's description of Lynette's behavior to Netzley and also considered Brad's admission that he used a belt to spank Ryan and Sean. The court found Kate Smart's testimony about Liam's allegations of sexual abuse by Brad "less than credible." The court described Fisher's testimony as not helpful or compelling.

¶ 46 The court determined that the most important factor in this case was the willingness and ability of each parent to facilitate and encourage a relationship between the other parent and children. The court stated:

"Ms. Stone testified that, of course, she would facilitate and encourage her children to have a relationship with Brad. Yet, throughout these proceedings, her behavior and conduct flies in the face of that statement. Ms. Stone has

attempted to manipulate and influence the Stone children from the time Brad related to her that a divorce was coming. Rather than consider her children and how it might affect them, she yelled disparaging remarks about her husband throughout these proceedings.

And it's a bad situation. There is no question about it. It's a bad situation. At every turn it has been made worse by emotional outbursts, and it's been made worse for your children. The evidence suggests, Ms. Stone, you've gone out of your way to portray Brad Stone as a bad father. To anyone who does not *** agree with you, you have attempted to intimidate or manipulate.

The manipulation of the children has caused lasting damage, and I can only imagine what it must be like for them.

In contrast, Mr. Stone has tried to facilitate a relationship with Ms. Stone. There is no evidence to suggest that he has tried to circumvent this process. There is no evidence to suggest that he has tried to manipulate things when they did not go his way. In fact, the evidence indicates that while the children were in Brad's care, their relationship with Lynette though compromised did not result in the children hating Ms. Stone. They love both their parents.

During these proceedings, I note that when Ms. Stone is given any latitude, the situation deteriorates."

¶ 47 The court found the testimony of Karl and Bleichner to be very compelling since they both chose to stop supervising Lynette's visitation with her children after only two visits. The court also found Janicke's testimony credible and helpful, stating that "[t]he incident at Sylvan speaks volumes." The court further explained: "The record is replete with instances of Ms.

Stone ratcheting up the situation in front of the children, time after time at visitation exchanges." The court also mentioned Lynette sneaking a cell phone into the children's school and expressed its belief that Lynette was using the phone to manipulate her children.

¶ 48 The court concluded that it was in the best interests of all four children for Brad to be granted sole custody of them. The court found that Lynette's "manipulative, conniving, divisive behavior *** seriously endangers all four children's mental, moral and emotional health." Therefore, the court ordered supervised visitation for Lynette. The court further ordered that the children receive counseling and that Lynette receive a psychological evaluation and undergo appropriate treatment before being allowed unsupervised visitation with the children.

¶ 49 I. Custody

¶ 50 Lynette argues that the trial court's order granting sole custody to Brad was not supported by the evidence. She contends that the trial court improperly disregarded the wishes of herself, Brad and the children, as well as the evidence showing that Brad was physically violent to her and the children. She argues that the trial court improperly based its custody decision solely on which party was willing to facilitate and encourage a close and continuing relationship between the other parent and the children.

¶ 51 We will not disturb a custody determination unless it is against the manifest weight of the evidence. *In re Marriage of Lonvick*, 2013 IL App (2d) 120865, ¶ 33. "A judgment is against the manifest weight of the evidence when the opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based upon the evidence." *In re Marriage of Ricketts*, 329 Ill. App. 3d 173, 181-82 (2002).

¶ 52 In determining custody, the primary consideration is the best interests and welfare of the children involved. *Lonvick*, 2013 IL App (2d) 120865, ¶ 33. "The trial court's custody determination is afforded 'great deference' because the trial court is in a superior position to

judge the credibility of the witnesses and determine the best interests of the child." *Ricketts*, 329 Ill. App. 3d at 177 (quoting *In re Marriage of Gustavson*, 247 Ill. App. 3d 797, 801 (1993)).

¶ 53 Under section 602(a) of the Illinois Marriage and Dissolution of Marriage Act, the court is to consider all relevant factors, including "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)(8) (West 2012). When considering each party's willingness to facilitate a continuing relationship between the children and the other parent, it is appropriate for the court to consider the existence of alienating behavior by either parent. See *In re Marriage of D.T.W. & S.L.W.*, 2011 IL App (1st) 111225, ¶ 89.

¶ 54 When the record shows that one parent has made attempts to thwart the other parent's efforts to maintain a close relationship with the children, the trial court's decision to grant custody to the non-offending parent is not against the manifest weight of the evidence. See *In re Marriage of Debra N. & Michael S.*, 2013 IL App (1st) 122145, ¶ 56 (affirming trial court's transfer of custody from mother to father where trial court found that mother engaged in "a pattern of interference or manipulation" designed to diminish or eliminate the father's ability "to be a fully engaged and active parent"); *D.T.W.*, 2011 IL App (1st) 111225, ¶¶ 87-102 (affirming father's award of sole custody of children where trial court found that mother "embarked upon an unstoppable and relentless pattern of conduct for over two years to alienate the children from their father"); *Ricketts*, 329 Ill. App. 3d at 179-80 (affirming transfer of custody to father where mother interfered with father's visitation schedule, failed to facilitate a calm and positive environment for the child at visitation exchanges, and made derogatory remarks about father in the child's presence); *Mullins v. Mullins*, 142 Ill. App. 3d 57, 73-80 (1986) (affirming transfer of custody to father where trial court found that mother "had engaged in a self-serving scheme to *** destroy the children's relationship with him" by attempting to thwart father's visitation of the

children, making false claims of sexual abuse, brainwashing and turning the children against father, and depriving the children of father's last name).

¶ 55 Unfounded allegations of abuse made by one parent can be grounds for granting custody to the other parent. *In re Marriage of Hartman*, 252 Ill. App. 3d 481, 485 (1993); see also *Lonvick*, 2013 IL App (2d) 120865, ¶ 36 (affirming trial court's award of sole custody to father where mother's allegations of abuse and physical violence by father were "not credible"); *Mullins*, 142 Ill. App. 3d at 77-78 (affirming modification of custody from mother to father where mother "deliberately used allegations she knew to be false to denigrate [father] -- both publicly and in the eyes of the children -- and to destroy his relationship with them").

¶ 56 One of the underlying purposes of the Act is to "secure the maximum involvement and cooperation of both parents regarding the physical, mental moral and emotional well-being of the children during and after the litigation." 750 ILCS 5/102(7) (West 2012). Where one parent is willing to encourage a close and continuing relationship between the children and the other parent and affords the best possibility of securing the maximum involvement and cooperation of both parents, a trial court's decision to grant sole custody to that parent is not against the manifest weight of the evidence. See *D.T.W.*, 2011 IL App (1st) 111225, ¶ 102.

¶ 57 In this case, contrary to Lynette's contention, the trial court considered all of the relevant statutory factors. The court concluded that Lynette engaged in a pattern of manipulative behavior in order to destroy her children's relationship with their father by becoming overly emotional at visitation exchanges, making disparaging remarks about Brad in the children's presence, encouraging the children to say bad things about Brad, alienating the children from Brad, and making false allegations of physical and sexual abuse against him. From December 2011 to July 2013, Lynette filed six police reports and petitions for orders of protection against

Brad, claiming both physical and sexual abuse. All of those allegations were investigated by the police and DCFS and determined to be unfounded.

¶ 58 In contrast to Lynette's manipulative, harmful and alienating behavior, the trial court determined that Brad has tried to and would continue to facilitate a positive relationship between the children and Lynette. The court found "no evidence to suggest that he has tried to manipulate things when they did not go his way." Based on the evidence presented, the trial court's order granting sole custody of the children to Brad was not against the manifest weight of the evidence.

¶ 59 II. Supervised Visitation

¶ 60 Lynette also argues that the trial court abused its discretion in ordering that she have supervised visitation with her children. She claims that she has a right to reasonable visitation with her children.

¶ 61 Section 607(a) of the Act provides that "a parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds after a hearing, that visitation would endanger seriously the child's physical, mental, moral or emotional health." 750 ILCS 5/607(a) (West 2012). The trial court has broad discretion in fashioning the terms of visitation, and those terms will not be overturned absent proof that the court has abused its discretion. *In re Marriage of Engelkens*, 354 Ill. App. 3d 790, 792 (2004). "An abuse of discretion exists where no reasonable person would agree with the position of the trial court." *Brax v. Kennedy*, 363 Ill. App. 3d 343, 355 (2005).

¶ 62 Here, the trial court found that Lynette's "manipulative, conniving, divisive behavior *** seriously endangers all four children's mental, moral and emotional health." That conclusion is supported by the testimony of Brad and Netzley, who both stated that Brad's relationship with his children deteriorated significantly as soon as Lynette was granted unsupervised visitation. The

court's conclusion is further supported by the psychological evaluations of the children, which revealed that Lyndsay and Ryan, who spent most of their time with Lynette, were alienated from Brad. In light of the evidence presented, the trial court's decision to grant Lynette supervised visitation with the children was not an abuse of discretion.

¶ 63

III. Guardian *Ad Litem*

¶ 64

Lynette also argues that her rights were violated because Netzley exceeded his authority as a guardian *ad litem* by including hearsay statements in his reports, "insert[ing] himself into an active police investigation of abuse," and "passing judgment on the character and credibility of the parties."

¶ 65

Section 506 of the Act provides that in proceedings involving the custody of minor children, the court may appoint an attorney to serve as a guardian *ad litem*, or GAL. 750 ILCS 5/506(a)(2) (West 2012). The Act describes the duties of the GAL as follows:

"The guardian *ad litem* shall testify or submit a written report to the court regarding his or her recommendations in accordance with the best interest of the child. The report shall be made available to all parties. The guardian *ad litem* may be called as a witness for purposes of cross-examination regarding the guardian *ad litem*'s report or recommendations. The guardian *ad litem* shall investigate the facts of the case and interview the child and the parties." 750 ILCS 5/506(a)(2) (West 2012).

¶ 66

The guardian *ad litem* acts as a witness who is empowered to advocate for the children's best interest through written reports and recommendations. *Vlastelica v. Brend*, 2011 IL App (1st) 102587, ¶ 22. "The duty of the guardian *ad litem* is 'to call the rights of the minor to the attention of the court, to present their interests and claim for them such protection as under the law they are entitled.' " *In re Griesmeyer*, 302 Ill. App. 3d 905, 914 (1998) (quoting *Rom v.*

Gephart, 30 Ill. App. 2d 199, 208 (1961)). "A GAL is the 'eyes and ears' of the court." *In re Marriage of Wycoff*, 266 Ill. App. 3d 408, 415 (1994) (quoting Chambers, *The Ambiguous Role of the Lawyer Representing the Minor in Domestic Relations Litigation*, 70 Ill. B. J. 510, 511 (1982)). "The imperative and guiding principal by which a guardian *ad litem* operates is to act in the best interests of the minor." *Griesmeyer*, 302 Ill. App. 3d at 914.

¶ 67 In discharging their duties, guardians *ad litem* "will review or consider all kinds of information regarding the child, both admissible and inadmissible at trial." *In re Marriage of Karonis*, 296 Ill. App. 3d 86, 91 (1998). "Such information assists the GAL in determining the existence of problems that might cause the child psychological or physical harm." *Id.* A GAL may rely on hearsay statements and make them known to the court. See *Wycoff*, 266 Ill. App. 3d at 416.

¶ 68 A party is not prejudiced when the guardian *ad litem* reviews information that may be inadmissible at trial because the guardian *ad litem* is subject to cross examination regarding how much weight he placed on any source of evidence. See *Karonis*, 296 Ill. App. 3d at 90-91. A party is denied procedural due process only if it is not allowed to cross-examine the guardian *ad litem*. *In re Marriage of Saheb*, 377 Ill. App. 3d 615, 626 (2007).

¶ 69 On two separate occasions, Lynette attempted to remove Netzley as the guardian *ad litem* and/or have his reports stricken. Both times, the court refused. The second time, the court explained that Netzley was doing exactly what he was supposed to be doing: acting as "the eyes and ears of the court." See *Wycoff*, 266 Ill. App. 3d at 415.

¶ 70 Contrary to Lynette's assertion, a guardian *ad litem* is not prohibited from considering inadmissible evidence, such as hearsay, and including it in his report. See *Karonis*, 296 Ill. App. 3d at 91; *Wycoff*, 266 Ill. App. 3d at 416. The proper way for such evidence to be challenged is through cross-examination of the GAL. See *Karonis*, 296 Ill. App. 3d at 90. Here, Lynette's

counsel thoroughly cross-examined Netzley regarding his reports and recommendations. Lynette's rights were not violated by Netzley's reports or testimony. See *Saheb*, 377 Ill. App. 3d at 626.

¶ 71 Additionally, a guardian *ad litem* is not precluded from investigating allegations of abuse, as Lynette contends. In fact, the Act requires that a guardian *ad litem* do so. Section 506 of the Act states: "The guardian *ad litem* shall investigate the facts of the case and interview the child and the parties." 750 ILCS 5/506(a)(2) (West 2012). Since a guardian *ad litem* is empowered to protect the best interests of a minor, when allegations of abuse arise, it is well within the purview of the guardian *ad litem* to investigate to determine if abuse actually occurred.

¶ 72 Finally, the Act does not prohibit a guardian *ad litem* from making credibility determinations. Section 506 of the Act requires a guardian *ad litem* to make a report regarding his or her recommendations in accordance with the best interest of the child. See 750 ILCS 5/506(a)(2) (West 2012). Such a report will almost certainly contain the opinions of the GAL, including credibility determinations of the children and parents involved. A court is not bound by the recommendations of the guardian *ad litem*. *Taylor v. Starkey*, 20 Ill. App. 3d 630, 634 (1974). Thus, a guardian *ad litem* does not exceed the scope of his authority by judging the statements of the parties and making credibility determinations.

¶ 73 The judgment of the circuit court of Peoria County is affirmed.

¶ 74 Affirmed.