

NOTICE
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2014 IL App (5th) 130006-U

NO. 5-13-0006

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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

<i>In re</i> ESTATE OF ELVIRA (VERA) SVOBODA,)	Appeal from the
Deceased)	Circuit Court of
)	Madison County.
(Scott A. Broshar,)	
)	
Petitioner-Appellee,)	
)	
v.)	No. 03-P-50
)	
Donald Joseph Svoboda and Daniel Lee Svoboda,)	
Executors for the Estate of Elvira (Vera) Svoboda,)	
Deceased,)	
)	
Respondents-Appellants,)	
)	
and)	
)	
E. Christy Svoboda, Guardian and Next Friend of)	
David Fulton Svoboda,)	Honorable
)	Stephen A. Stobbs,
Respondents).)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Presiding Justice Welch and Justice Schwarm concurred in the judgment.

ORDER

¶ 1 *Held:* Court's finding that adult adoptee was the biological son of the testator's predeceased son was not against the manifest weight of the evidence.

¶ 2 The decedent, Elvira Mae (Vera) Svoboda, devised specified portions of her estate to each of her sons. One of her sons, David William Svoboda, died before Vera. She did not amend her will. The petitioner, Scott A. Broshar, alleged that he was the biological son of David William Svoboda. The petitioner was adopted as a baby and did not discover the identity of his biological parents until after both were deceased. Thus, the evidence available to prove paternity consisted primarily of testimony related to the relationship between David William Svoboda and the petitioner's birth mother. The trial court found that the petitioner met his burden of proving his allegation by clear and convincing evidence. The executors appeal, arguing that (1) the court's ruling was against the manifest weight of the evidence, (2) the court erred in drawing a negative inference from the fact that the executors did not agree to provide DNA evidence, and (3) the court erred by considering the physical resemblance between the petitioner and a photograph of David Svoboda in his high school yearbook. We affirm.

¶ 3 Vera Svoboda had four sons—David William Svoboda, Dennis Svoboda, Donald Svoboda, and Daniel Svoboda. In 1984, she executed a will dividing her estate equally among her four sons. In 1989, Vera executed a codicil to her will dividing her estate as follows: one-seventh to Dennis Svoboda and two-sevenths to each of her remaining sons. David William Svoboda died in 1996, leaving behind a minor son, David Fulton Svoboda. Vera did not execute a new will or codicil.

¶ 4 Vera Svoboda died in January 2003 and her will was admitted to probate. Donald and Daniel Svoboda were appointed as executors in accordance with a provision of the 1989 codicil. They listed Vera's three surviving sons and David Fulton Svoboda as heirs.

See 755 ILCS 5/4-11(a) (West 2002) (providing that when a legacy lapses due to the legatee's death before the testator, if the legatee is a descendant of the testator, the legacy is to be divided among the legatee's heirs *per stirpes*). The court entered an order finding heirship, also naming the three surviving sons and David Fulton Svoboda as Vera Svoboda's heirs.

¶ 5 In November 2004, the plaintiff, Scott A. Broshar, filed a petition to amend heirship, alleging that he was the biological son of David William Svoboda. Initially, the trial court granted a motion for summary judgment filed by the executors. In reaching this result, the court assumed for the sake of argument that the petitioner was the biological child of David William Svoboda. The court found that because the petitioner's adoption as a baby severed the parent-child relationship between him and his biological parents, he was not entitled to inherit from Vera through David William Svoboda. *In re Estate of Svoboda*, No. 5-06-0622 (Sept. 12, 2008), order at 3 (unpublished order under Supreme Court Rule 23).

¶ 6 On appeal from that ruling, this court found that under the applicable probate provisions in effect when Vera executed both her will and the codicil, adopted children were deemed to be heirs of both their adoptive and biological relatives. *In re Estate of Svoboda*, No. 5-06-0622, order at 6. We therefore reversed the trial court's ruling and remanded the matter to allow the court to make a determination as to the petitioner's paternity. *In re Estate of Svoboda*, No. 5-06-0622, order at 7.

¶ 7 On remand, the court held a hearing to determine whether David William Svoboda was the petitioner's biological father. As noted previously, both David Svoboda and the

petitioner's biological mother, Brenda Justice, died before the petitioner learned their identities. Brenda Justice disappeared in 1972, and her remains were found in Wyoming in the 1980s. David William Svoboda died in 1996. The petitioner hired a private investigator to find his biological parents in 1999. Thus, the evidence at the hearing in this matter consisted primarily of the testimony of David's brother and Brenda's two sisters regarding their memories of the relationship between David and Brenda.

¶ 8 Dennis Svoboda testified that he was close to his brother David when they were growing up. Asked by counsel for the executors if David told him about "the girls he dated" in high school, Dennis replied: "Well, in the traditional sense, David didn't date anyone. He would try to seduce gals and bring them home or whatever." Dennis testified, however, that David did tell him about his "conquests." Counsel then asked if Dennis "knew David to date Brenda Justice." Dennis replied, "I would have to say yes."

¶ 9 Dennis testified that David and Brenda were in the same high school class and they dated during David's "first senior year." Dennis explained that David had two senior years because he was held back after his first senior year. He specified that David's first senior year was the 1966-67 school year (after which Brenda graduated and had her baby), and his second senior year was the 1967-68 school year (after which David graduated).

¶ 10 Counsel then asked Dennis how he knew that Brenda and David were dating during this time. Dennis replied: "Well again, the operative word is dating. To my knowledge, they never went to a restaurant or a movie together, but after school, they would walk along the street and he would see her to her door." Dennis stated that he saw

David walking Brenda home approximately two to three times a week. In addition, Dennis testified that Brenda often picked David up from the local pool hall so they could spend time together. He explained that he and David and other Edwardsville High School boys regularly spent time at the pool hall waiting for their girlfriends to call them to arrange to meet. During this time, David often told Dennis that he had to leave because Brenda had called him to say she was going to pick him up in her car.

¶ 11 Dennis testified that he only had one or two conversations with David about Brenda. He recalled one discussion, which occurred in December 1966. According to Dennis, David was angry and "distraught" because Brenda went out with another boy. Dennis did not know the name of the other boy, but stated that he was a student at Southern Illinois University. Dennis also related an incident which took place in February of 1967. He testified that David got into a fight with another boy who was angry because David had "cheated on Brenda" with another girl and boasted about doing so. Dennis explained that the other boy "thought that Dave was dragging Brenda's name through the dirt because they were supposed to be dating and so serious." He opined that the reason the other boy was so angry about David's behavior was that he was also dating Brenda "on the sly."

¶ 12 Dennis testified that Brenda and David dated at least from December of 1966 to February of 1967, but he stated, "how much earlier than that they started dating and how much later after that, I couldn't say for sure." Asked whether Brenda was David's "exclusive girlfriend" during this time, Dennis responded, "Now we're into [the]

semantics of girlfriend." He stated that David "went out chasing other girls and seducing other girls as often as he could always," including during the time he was dating Brenda.

¶ 13 Dennis further testified that David never told him that he had fathered a child with Brenda Justice. He stated that until the instant litigation began, he had no reason to believe that David had fathered a child in high school at all.

¶ 14 Under questioning by the petitioner's attorney, Dennis admitted that he tried to contact Brenda's sister, Sally Justice, because he heard from a high school classmate named Kirk Myers that David and Brenda may have had a baby together. Dennis acknowledged that he contacted Sally in the summer of 2004, several months before the petitioner filed his petition. Asked whether David's "seductions" included sexual intercourse, Dennis first stated, "Seduce is such a formal word." He then responded to the question, stating that he did not know the answer because David never told him.

¶ 15 Kirk Myers testified that he was close friends with David Svoboda in high school. He also knew Brenda Justice in high school, and testified that he "was the person who probably was crazy over her the most." He did not remember David and Brenda dating in high school, but he "heard many years later that he may have dated her."

¶ 16 Myers testified that sometime during the 1980s, a coworker at a construction site told him that Brenda Justice had a baby when they were in high school. The coworker also told him that Brenda's remains were found somewhere out west. Myers further testified that Dennis Svoboda came into a bar Myers owned on the Great River Road sometime between 2002 and 2005. Myers recalled that he related the story he heard about Brenda to Dennis at that time. He could not remember whether Dennis asked him

who the father of the baby was. Myers testified that he believed he asked Dennis who the father was. He denied telling Dennis that David was the baby's father.

¶ 17 The evidence deposition of Brenda's younger sister, Sally Justice, was admitted into evidence. Sally was three years younger than Brenda. She was 14 years old at the time the events at issue took place. Sally testified that Brenda dated only one boy in high school—David Svoboda. She further testified that Brenda began dating David in August or September of 1966 and stopped dating him in June 1967 when she moved to Iowa to have her baby. During this time, Sally spent a great deal of time with the couple. She explained that Brenda frequently told their mother that she was taking Sally to visit their grandfather in a nursing home. Instead, however, Brenda brought Sally with her, picked David up at the pool hall, and dropped Sally off at the nursing home. Sally then spent time visiting with their grandfather while David and Brenda left to spend time alone together.

¶ 18 Sally testified that this sequence of events took place "a couple of times" per week. In addition, she testified that Brenda and David sometimes brought her along to activities. She remembered a time they took her to a root beer stand and another time they brought her to a party at the Svoboda home, but did not remember any other specific instances. She testified that when she saw them together, David and Brenda were always very affectionate and demonstrative. She further testified that David and Brenda wanted to be together as much as possible during this time.

¶ 19 Sally described learning that her sister was pregnant in the spring of 1967. She testified that one day, Brenda seemed skittish and uncomfortable. She told Sally that

their parents had told her she had to tell Sally something. At this point, Brenda turned away from Sally and wrote a note. She then handed Sally the note. Sally testified that the note said: "Brenda and Dave did a bad thing. Brenda is sick for nine months." Sally immediately understood this to mean that Brenda was pregnant. She explained that Brenda was starting to look pregnant by this time.

¶ 20 Sally testified that her parents arranged for Brenda to stay in Iowa City, Iowa, to have her baby. Their older sister, Patricia Phelan, lived in Iowa City with her husband. Patricia and her husband rented an apartment in a duplex. When the other half of the duplex became available, the family arranged for Brenda to rent it. She moved into that apartment in June 1967, after graduating from high school.

¶ 21 Sally testified that Brenda told her that David visited her in Iowa City while she was pregnant. According to Sally, David told Brenda that he wanted to marry her and raise the baby together, but Brenda wanted to place the baby for adoption instead. Sally testified that the baby was born on September 8, 1967, and placed for adoption immediately. She testified that Brenda remained in Iowa City after this time and did not resume her relationship with David.

¶ 22 Sally testified that she saw David Svoboda one more time after the birth of Brenda's baby. She explained that she was renting a house in Edwardsville with friends in the spring of 1971 when David came to a party at the house. Sally testified that David was tearful and told her that he loved and missed Brenda and wanted to marry her and raise their baby together. That was the last time Sally saw him. We note that Dennis

Svoboda was asked to address aspects of Sally's deposition testimony. He testified that David did not visit Edwardsville during the spring of 1971.

¶ 23 Sally also testified about how she learned that petitioner Scott Broshar was Brenda's biological child. Sally explained that she was initially contacted by a private detective in approximately 2000 or 2001. Subsequently, either Sally contacted Scott or he contacted her. They had some contact with each other over the years, but not a lot.

¶ 24 Sally further testified that Dennis Svoboda called her and asked her if she "knew the whereabouts of the baby that his brother had with Brenda Justice." She told Scott Broshar that Dennis was looking for him.

¶ 25 Brenda's older sister, Patricia Phelan, also testified in a deposition that was entered into evidence. She testified that she was close to both of her sisters, but Brenda did not tell her who she was dating in high school. She explained that this was because she married and left home when Brenda was only 15. She testified, however, that Brenda did tell her in the spring of 1967 that she was pregnant and that David Svoboda was the father. Patricia further testified that she saw Brenda every day when Brenda lived in Iowa City. She confirmed Sally's testimony that David visited Brenda one time while she was pregnant.

¶ 26 Daniel Svoboda testified that he was 13 years younger than his brother, David, and had no recollection of the events of 1966 and 1967 because of his youth. He testified that neither David nor anyone else in the family told him that David had fathered a child in high school. David Fulton Svoboda and his mother, Christy Svoboda, both likewise testified that David William Svoboda never told them that he had another child.

¶ 27 The executors offered into evidence a copy of portions of the Edwardsville High School yearbook from 1967. The copy included pages of the yearbook containing photographs of Brenda Justice and David William Svoboda. Additional evidence included the petitioner's adoption file and the final adoption decree. The adoption file included a background history of Baby Boy Justice and a verification of live birth. The background history named the father of Baby Boy Justice as David Svoboda; however, both the verification of live birth and final adoption decree listed the father as "unknown."

¶ 28 At the end of the hearing, the court took the matter under advisement. Before closing, the court noted: "And obviously we don't have DNA evidence. You know, that's sort of the elephant in the room, isn't it?" The court then stated that DNA evidence "would be determinative, obviously," and would "sure answer [the question] real quick." Petitioner's counsel noted that his client would be willing to pay for DNA testing, but the court told the parties, "I'll have to rely on the evidence that's been presented," which would "take a little while."

¶ 29 Subsequently, the court entered a detailed written order finding the petitioner to be the biological son of David William Svoboda and, therefore, an heir of Vera Svoboda. The court expressly found the testimony of Sally Justice and Patricia Phelan to be credible. By contrast, the court found the testimony of Dennis Svoboda and Kirk Myers not to be credible, pointing to the conflicts in their testimony and their "vague recollections of the relationship between David Svoboda and Brenda Justice." The court

also pointed out that Brenda named David as the father in the background history in the adoption file.

¶ 30 At the end of the order, the court stated as follows: "Finally, this Court also notes that the Petitioner offered to take and pay for a DNA test, which was refused, and that the admitted high school year book picture of David Svoboda, offered by Respondents as Exhibit 13, portrays a striking likeness between Petitioner and David Svoboda, particularly with regard to eye structure."

¶ 31 The court amended its earlier order finding heirship to include the petitioner as Vera Svoboda's grandson. This appeal followed.

¶ 32 The executors first argue that the court's findings were against the manifest weight of the evidence. We disagree.

¶ 33 In proceedings on a petition to establish heirship, the burden of proof is on the party claiming to be an heir. *In re Estate of Severson*, 107 Ill. App. 3d 634, 636, 437 N.E.2d 430, 432 (1982). An out-of-wedlock child seeking to establish that he is an heir must prove paternity by clear and convincing evidence. 755 ILCS 5/2-2(h) (West 2002); *In re Estate of Lukas*, 155 Ill. App. 3d 512, 520, 508 N.E.2d 368, 374 (1987). As with other factual findings, we will reverse a trial court's finding of paternity only if it is against the manifest weight of the evidence. *In re Estate of Hutchins*, 120 Ill. App. 3d 1084, 1087, 458 N.E.2d 1356, 1358 (1984). A finding " 'is not against the manifest weight of the evidence merely because there is sufficient evidence to support a contrary judgment.' " *O'Leary v. America Online, Inc.*, 2014 IL App (5th) 130050, ¶ 7, 6 N.E.3d 872 (quoting *Watkins v. American Service Insurance Co.*, 260 Ill. App. 3d 1054, 1062,

631 N.E.2d 1349, 1355 (1994)). A finding is against the manifest weight of the evidence if it is apparent to the reviewing court that the opposite conclusion from the one reached by the trial court is correct. *In re Estate of Lukas*, 155 Ill. App. 3d at 521, 508 N.E.2d at 374.

¶ 34 We note at the outset that the instant case involves an unusual set of facts. As we will discuss, each of the cases cited by the parties involves the allegations of an out-of-wedlock child who was not placed for adoption. In each case, the petitioner had at least some interaction with the decedent alleged to be the biological parent before the decedent died. Here, there was no opportunity for David Svoboda to interact with the petitioner. In addition, because both David Svoboda and Brenda Justice were deceased, their relationship had to be established through the testimony of their siblings. We have set out that testimony in detail, and we find that it supports the trial court's conclusion.

¶ 35 There was no question that Brenda Justice was the petitioner's birth mother, and the testimony of both Sally Justice and Dennis Svoboda supports a finding that Brenda and David were involved in a serious dating relationship that included sexual relations when Brenda became pregnant. Sally testified that they dated exclusively throughout Brenda's senior year of high school and that they were very demonstrative and affectionate. Although Dennis testified that the relationship was not exclusive—testimony the trial court expressly found not to be credible—several aspects of his testimony supported Sally's account. For example, he testified that he saw David walking Brenda home from school two to three times per week and that she regularly picked him up from the pool hall. Further, he admitted that he knew David and Brenda were dating for at

least two months during the relevant time frame (at least from December 1966 to February 1967). Moreover, although Dennis attempted to downplay the seriousness of David and Brenda's relationship, his testimony that David "seduced" his high school girlfriends lends additional support to the court's finding. The word "seduce" is ordinarily understood to refer to a sexual conquest.

¶ 36 Additional evidence also supports the court's conclusion. Brenda named David Svoboda as her baby's father on the background history. Both of her sisters testified that Brenda told them that he was the baby's father. Kirk Myers testified that he heard a rumor that Brenda had a baby in high school. Although he did not specifically testify that he heard that David was the father, he testified that he related the rumor to Dennis Svoboda and that he believed he asked Dennis whether David was the father. Dennis admitted that he contacted Sally Justice to inquire about the possibility that David had a child with Brenda. According to Sally, Dennis asked her where he could find the child of his brother and Brenda Justice. We find that this evidence, considered as a whole, supports the trial court's conclusion that the petitioner proved paternity by clear and convincing evidence.

¶ 37 The crux of the executors' argument to the contrary is their contention that no other cases exist in which evidence that is "as conflicted" as the evidence in this case met the clear and convincing evidence standard. In support of this argument, they cite *In re Estate of Ragen*, 79 Ill. App. 3d 8, 398 N.E.2d 198 (1979); *Morelli v. Battelli*, 68 Ill. App. 3d 410, 386 N.E.2d 328 (1979); and *In re Estate of Lukas*, 155 Ill. App. 3d 512, 508 N.E.2d 368 (1987). They argue that "[f]rom these cases it is clear that where there is

contradictory testimony, *** the court[s] [have] found that the evidence did not meet the statutory requirement of being 'clear and convincing.' "

¶ 38 There are three problems with this argument. First, it overstates the burden of proof by clear and convincing evidence. The clear and convincing standard is "more than a preponderance" but not quite "the degree of proof necessary to convict a person of a criminal offense." *In re Estate of Ragen*, 79 Ill. App. 3d at 14, 398 N.E.2d at 203 (citing *People v. Ralls*, 23 Ill. App. 3d 96, 318 N.E.2d 703 (1974)). Even the much higher standard of proof beyond a reasonable doubt does not require that there be *no* conflict in the evidence.

¶ 39 Second, it was the role of the trial court to assess the credibility of the witnesses and resolve any conflicts in their testimony. *O'Leary*, 2014 IL App (5th) 130050 at ¶ 7, 6 N.E.3d 872 (citing *Eychaner v. Gross*, 202 Ill. 2d 228, 251, 779 N.E.2d 1115, 1130 (2002)). The executors emphasize that Sally Justice and Patricia Phelan did not testify in person. They argue, therefore, that we should not give deference to the court's finding that their testimony was credible. This is so because the court did not have the opportunity to observe their demeanor as they testified. See *People v. Valle*, 405 Ill. App. 3d 46, 57, 939 N.E.2d 10, 19 (2010) (quoting *Addison Insurance Co. v. Fay*, 232 Ill. 2d 446, 453, 905 N.E.2d 747, 752 (2009)). This argument correctly states the law. We reiterate, however, that the court based its credibility determinations on the inconsistencies in the testimony of Dennis Svoboda and Kirk Myers and the vagueness of their recollections, flaws it did not find present in the deposition testimony of Sally Justice and Patricia Phelan.

¶ 40 As discussed at length earlier, Dennis contradicted himself multiple times in attempting to characterize the relationship between his brother and Brenda Justice. First he said that they dated. Then he said that his brother did not date anyone in high school; he only seduced girls. Then he said that "seduce" was too formal a word. In addition, Dennis offered contradictory testimony regarding his knowledge that David may have fathered a baby with Brenda. First, he testified that he had no reason to believe this was the case until the petitioner filed his petition to amend heirship. Then, he acknowledged that he called Sally to inquire about whether David and Brenda had a child before the petition was filed. He testified that he heard that they may have had a child from Kirk Myers, something Myers specifically denied. The testimony of Sally Justice and Patricia Phelan was not similarly riddled with inconsistencies. Although it is true that the court did not have the opportunity to observe the demeanor of these two witnesses as they testified, we find ample support in the record for the court's credibility determinations.

¶ 41 The third problem with the executors' argument is that the cases they cited do not support their position. In *In re Estate of Ragen*, the trial court initially entered an order finding a petitioner to be the daughter of the decedent " 'by a preponderance of evidence, which is clear and convincing.' " *In re Estate of Ragen*, 79 Ill. App. 3d at 12, 398 N.E.2d at 201. Subsequently, the court entered an amended order in which it omitted the phrase "which is clear and convincing." *In re Estate of Ragen*, 79 Ill. App. 3d at 12, 398 N.E.2d at 201-02. The executors of the estate appealed, arguing that the trial court applied the wrong standard of proof. *In re Estate of Ragen*, 79 Ill. App. 3d at 12, 398 N.E.2d at 202.

¶ 42 The parties agreed on appeal that clear and convincing evidence was the correct standard. *In re Estate of Ragen*, 79 Ill. App. 3d at 13, 398 N.E.2d at 202. The petitioner argued that the order could be affirmed nevertheless because the evidence in the record demonstrated paternity by clear and convincing evidence. The appeals court rejected this argument, explaining that accepting it would require the court to "reweigh the evidence in light of the higher standard." *In re Estate of Ragen*, 79 Ill. App. 3d at 14, 398 N.E.2d at 203. The court specifically declined to reweigh the evidence and remanded the matter to the trial court to make that determination. *In re Estate of Ragen*, 79 Ill. App. 3d at 14, 398 N.E.2d at 203. Thus, the opinion does not even address what type of evidence is sufficient to meet the clear and convincing standard.

¶ 43 In *Morelli*, a petition to amend heirship alleged that the decedent was the biological father of the petitioner. *Morelli*, 68 Ill. App. 3d at 411, 386 N.E.2d at 328. Several witnesses, including the petitioner and his mother, testified that the decedent was the petitioner's father. *Morelli*, 68 Ill. App. 3d at 412-14, 386 N.E.2d at 330-31. Three of these witnesses testified that they remembered one occasion on which the decedent referred to the petitioner as his son. *Morelli*, 68 Ill. App. 3d at 412-13, 386 N.E.2d at 330. Additional witnesses contradicted this claim, however. *Morelli*, 68 Ill. App. 3d at 413-15, 386 N.E.2d at 331-32. One witness testified that the decedent told him that he had numerous "foster children." These "foster children" were people he tried to help, and he referred to them as his sons even though they were not. *Morelli*, 68 Ill. App. 3d at 414-15, 386 N.E.2d at 331-32.

¶ 44 The trial court found that the petitioner did not prove paternity by clear and convincing evidence. *Morelli*, 68 Ill. App. 3d at 415, 386 N.E.2d at 332. The appellate court did not discuss the discrepancies in the testimony in any detail; instead, the court simply noted that it was the role of the trial court to assess the credibility of the witnesses and to draw inferences and conclusions from the conflicting evidence. *Morelli*, 68 Ill. App. 3d at 415, 386 N.E.2d at 332. The appellate court emphasized that the scope of its review was narrow because appellate review is limited to determining whether the finding of the trial court was against the manifest weight of the evidence. *Morelli*, 68 Ill. App. 3d at 411-12, 386 N.E.2d at 330. Applying this standard, the court found that the trial court's conclusion was supported by evidence in the record. *Morelli*, 68 Ill. App. 3d at 415, 386 N.E.2d at 332.

¶ 45 Here, by contrast, the trial court weighed the conflicting evidence, assessed the credibility of witnesses, and found that the petitioner was the biological child of the decedent's son by clear and convincing evidence. We have already found this conclusion to be supported by the evidence, and nothing in *Morelli* requires us to reach a different result.

¶ 46 *In re Estate of Lukas* likewise involved an appeal from a trial court's finding that a petitioner failed to prove paternity by clear and convincing evidence. *In re Estate of Lukas*, 155 Ill. App. 3d at 514, 508 N.E.2d at 369-70. There, the petitioner argued on appeal that this ruling was against the manifest weight of the evidence because "uncontested facts" supported a finding of paternity. *In re Estate of Lukas*, 155 Ill. App. 3d at 521, 508 N.E.2d at 374. The court noted in response to this argument that the facts

were *not* uncontested. *In re Estate of Lukas*, 155 Ill. App. 3d at 521, 508 N.E.2d at 374. The court emphasized that the credibility of witnesses was "crucial" to the determination of paternity and that it was "the trial court's duty" to decide which witnesses were credible. *In re Estate of Lukas*, 155 Ill. App. 3d at 521-22, 508 N.E.2d at 374-75. The court then discussed at length the conflicts in the evidence and the trial court's credibility determinations (*In re Estate of Lukas*, 155 Ill. App. 3d at 522-24, 508 N.E.2d at 375-76) before concluding that the trial court's finding was not against the manifest weight of the evidence (*In re Estate of Lukas*, 155 Ill. App. 3d at 525, 508 N.E.2d at 377).

¶ 47 Thus, both *In re Estate of Lukas* and *Morelli* remind us that we must give deference to the trial court's credibility determinations. Neither stands for the proposition that we cannot uphold a trial court's finding under the clear and convincing standard where the evidence is "as conflicted" as it is in this case. It is also worth noting that the evidence here is not as conflicted as the evidence in *Morelli* and *In re Estate of Lukas*. As previously discussed, there was ample evidence that David Svoboda was involved in a dating relationship with Brenda Justice when she became pregnant with the petitioner. The only evidence that anyone other than David could have been the father of Brenda's baby was the testimony of Dennis Svoboda that Brenda went out with an unnamed Southern Illinois University student, testimony the court expressly found not to be credible. We reject the executors' contention that the evidence in this case was too conflicted to meet the standard of clear and convincing proof.

¶ 48 The executors also contend that various pieces of evidence supporting the court's conclusion were flawed for one reason or another. As we have repeatedly emphasized, it

was the province of the trial court to assess the credibility of witnesses and determine what inferences should be drawn from the evidence presented. As such, we need not discuss each of these contentions in much detail. We will, however, address briefly their contention that documentary evidence contradicts the testimony that David Svoboda was the father of Brenda's baby.

¶ 49 At issue here are the background history of Baby Boy Justice, the verification of live birth, and the final adoption decree. As previously noted, the background history names David Svoboda as the baby's father. The executors, however, point to an apparent misspelling of the name Svoboda, which appears on the first page of the document as "Svoboad," although the name is spelled correctly on the second page of the document. In addition, they point out that some of the information Brenda gave about the father was not correct. For example, she said that his ethnicity was Bohemian and that he was a carpenter who had only a tenth-grade education. She also reported that his weight was 125 pounds. The executors introduced evidence that David Svoboda was not of Bohemian descent, never worked as a carpenter, and had completed eleventh grade at the time Brenda provided this information. In addition, they provided evidence that he listed his weight at 150 pounds in military records from the same time. We do not believe these minor inconsistencies and errors lead to the conclusion that Brenda was giving information about someone other than David Svoboda.

¶ 50 In addition, as the executors emphasize, both the verification of live birth and final adoption decree list the father of Baby Boy Justice as "unknown." We agree with the trial court that this is not significant enough to warrant a different conclusion from the one

reached by the trial court. It is possible that Brenda simply did not supply information when those documents were completed. In sum, we conclude that the evidence supports the court's conclusion that the petitioner met his burden of proving paternity by clear and convincing evidence.

¶ 51 The executors next contend that the court erred by drawing a negative inference from the fact that they did not offer to submit DNA evidence. We need not discuss the parties' legal contentions regarding the propriety of such an inference because we do not believe the record supports the executors' claim.

¶ 52 As noted earlier, the court raised the subject of DNA evidence at the close of the hearing. The court expressed some frustration at the fact that DNA evidence was not available because such evidence would make the court's decision far easier. However, the court specifically stated that it did not believe it had the authority to order the executors to provide DNA evidence and told the parties it would have to decide the case on the basis of the evidence presented.

¶ 53 As the executors acknowledge, there is a presumption that when a trial judge acts as the trier of fact, the judge considers only competent evidence. *People v. Williams*, 246 Ill. App. 3d 1025, 1033, 617 N.E.2d 87, 93 (1993). Here, the court stated prior to issuing its decision that it could not consider DNA evidence. In light of this statement, we do not believe that the brief statement at the end of the order is sufficient to overcome the presumption. Thus, even assuming it was improper to draw any inferences from the fact that the executors declined to provide DNA evidence—an issue we do not decide—we find

that the record does not support the executors' contention that the court actually drew this inference.

¶ 54 Finally, the executors contend that the court erred in considering the physical resemblance between the petitioner and the yearbook picture of David William Svoboda. We first note that it is not clear from the court's parenthetical observation whether the court considered the likeness at all in rendering its decision. As mentioned earlier, however, the copy of portions of David and Brenda's yearbook was offered into evidence *by the executors*. They argue in this appeal that they offered it for the limited purpose of demonstrating that Brenda was in the same high school class as David and would, therefore, have known that David had completed eleventh grade when she provided the information for the background history of Baby Boy Justice. Although that appears to be the reason they chose to offer the exhibit into evidence, they never requested that the court consider the exhibit for a limited purpose. Thus, assuming the court erred in considering the yearbook picture, the error was invited.

¶ 55 We conclude that the court's determination that David William Svoboda was the biological father of the petitioner was supported by the evidence. We therefore affirm the order of the trial court finding him to be an heir of Vera Svoboda.

¶ 56 Affirmed.