

should be supervised outside the safety of their home," (3) that the court's findings that she had consistently attempted to alienate Dean from the minor children and that Dean had the willingness and ability to facilitate and encourage a close and continuing relationship between her and the minor children and she had neither the willingness nor ability to reciprocate are contrary to the manifest weight of the evidence, (4) that the court erred, as a matter of law, in considering the parties' financial disparity alone in making the custody determination, and (5) that the court's factual finding that a subsequent marriage and stability of environment weigh in favor of Dean are contrary to the manifest weight of the evidence. For the reasons that follow, we affirm.

¶ 3 The parties had two children, Courtney, born November 7, 2002, and Hannah, born March 2, 2006. On January 31, 2007, an agreed order was entered in the trial court. Pursuant to the agreed order, Danielle and Dean were awarded joint legal custody of Courtney and Hannah, with neither party being named primary custodial parent. The January 2007 order provided that Danielle shall have physical custody of the children during the school year and on alternative weekends during the summer. The order further provided that Dean shall have physical custody for a full 62 days in the summer and on alternative weekends during the school year. The parties were required to alternate physical custody on Martin Luther King, Jr. Day, Presidents' Day, Casimir Pulaski Day, Memorial Day, Labor Day, Columbus Day, and Veterans Day. Dean had physical custody on odd-numbered years for Halloween and from the day the children are out of school for Christmas break until December 26. He had physical custody on even-numbered years for spring break, Easter break, Thanksgiving break, and Christmas break from December 26 until the day before they returned to school. Danielle had physical custody on even-numbered years for Halloween and Christmas break and on odd-numbered years for the girls' holiday breaks. Danielle had physical custody on Mother's Day weekend, and Dean had physical custody on Father's Day

weekend.

¶ 4 On October 14, 2011, Danielle filed a petition for modification of the January 2007 agreed order, requesting, in pertinent part, that joint custody be terminated and sole custody of the minor children be awarded to her. On November 2, 2011, Dean filed a counterpetition for modification of custody, requesting, in pertinent part, that he be named the primary custodial parent of the parties' minor children or, alternatively, that joint custody be terminated and he be awarded sole custody of the children. On June 14, 2012, the parties entered into a stipulation consenting to a termination of joint custody.

¶ 5 The following evidence was presented during the two-day bench trial concerning the custody modification. At the time of trial, Danielle was 26 years old and lived in Watseka, Illinois. She was married to Matt Moser, and they have two children, Zach, age 2½, and Samantha, age 1½. She was employed as an outpatient analyst at Iroquois Memorial Hospital and worked Monday through Friday, 8:30 a.m. to 5 p.m. She also worked as a CNA at the hospital's nursing home facilities on an on-call basis.

¶ 6 Danielle, Matt, and the children lived in a five-bedroom home with approximately 2,000 square feet. Zach and Samantha each had their own room, and Courtney and Hannah shared a room. The house was located in a residential neighborhood of Watseka, population approximately 5,000. The residence was approximately two to three blocks from a park and one block from the train tracks. Hannah and Courtney frequently played at the park, and they had both ridden their bicycles there unsupervised. They rode their bicycles on the sidewalk and were taught to look both ways before crossing a street. They have also ridden their bicycles to the library, which was two blocks from the residence. Courtney had also ridden her bicycle and walked to school unsupervised. The girls were allowed to walk home from school, unsupervised, on warm days.

¶ 7 Courtney and Hannah both attended public school in Watseka. Courtney had recently

finished third grade, and she was doing very well in school. She had developed friendships with other children in her class, and she frequently played with them outside of school. She participated in Girl Scouts, soccer, and cheerleading. Hannah recently finished kindergarten. She had developed friendships with other children in her class and also played with them outside of school. She participated in Girl Scouts, attended dance class through a dance studio in town, and participated in soccer and cheerleading.

¶ 8 Danielle testified that it was in the girls' best interests to have a good relationship with their father, and she had never attempted to harm that relationship. Courtney and Hannah had a good relationship with their younger siblings and with Matt. They had daily contact with their grandparents, who lived three to four miles from their residence. They also had a loving relationship with Danielle's brother, Chris, who lived with their grandparents.

¶ 9 Courtney and Hannah were in good health and had a pediatrician in Watseka. Their last visit to the pediatrician resulted from injuries that occurred during a camping trip with Dean. Courtney had burn blisters on her feet because she had walked through the campfire, and Hannah had a burn and a tick bite on her arm. Courtney and Hannah had medical insurance through the State of Illinois's Medicaid program. Danielle's employer provided insurance to its employees, but Danielle could not afford the insurance.

¶ 10 In her petition for modification, Danielle requested that Dean's time with the children during the summer be reduced because Courtney and Hannah were happy in Watseka, they had developed friendships there, and they were involved in activities there. Courtney and Hannah missed out on several activities offered through the park district during the summer because they spend the majority of their summer with Dean. Danielle noted that Dean rarely called the girls when they were at Danielle's house, and they rarely called him. She denied consciously preventing the girls from talking to Dean on the telephone. She admitted that there was a lack of communication between her and Dean concerning the girls. She believed

that it would not be in the children's best interests to live with Dean during the school year, and such an arrangement would "devastate them." She testified that Dean and Jenny did not provide her with much information concerning the girls' activities in Iola. She testified that leaving work before 5 p.m. every other Friday for the court-ordered exchange created a scheduling problem with some of her coworkers.

¶ 11 Danielle testified that she had received two speeding tickets while driving distracted with the minor children in the vehicle. During the first incident, the two youngest children were crying in the backseat as she was driving them home. Zach was upset because he could not reach his blanket, and Danielle reached over to get it for him. She received a ticket for driving 63 miles per hour in a 55-mile-per-hour zone. During the second incident, she was distracted and looking in the rearview mirror at the girls in the backseat. She received a ticket for driving 93 miles per hour in a 65-mile-per-hour zone. She explained that she did not realize she was driving that fast.

¶ 12 On cross-examination, Danielle admitted that Hannah's kindergarten teacher had expressed concern that Hannah sometimes appeared quiet and sad, and that this occurred around the time that Danielle filed her petition for modification. Danielle had discussed the court proceedings with the children, telling them that the court would determine where they should live. She told the girls that the trial court forced the custody schedule because she did not want them blaming her or Dean.

¶ 13 Danielle was frequently asked to work as a CNA on the midnight shift from 11 p.m. until 7 a.m. or second shift from 2:45 p.m. until 11 p.m., and she sometimes worked the day shift on weekends. Her pay stubs reflected that she frequently worked over 80 hours in two weeks.

¶ 14 Kathy Kramer, Danielle's mother, testified that she regularly spends time with Courtney and Hannah. She opined that Courtney and Hannah had a good relationship with

Danielle and Matt. She described Matt's relationship with the girls as easygoing and comfortable. She was aware that Danielle had allowed the girls to ride their bicycles around town unsupervised, and this started when Hannah was five and Courtney was eight. She was not concerned that the girls were unsupervised when walking or riding their bicycles in town. Christopher Kramer, Danielle's brother, testified that he had a good relationship with Courtney and Hannah. He opined that his parents had a loving relationship with the girls, and that Danielle's abilities as a mother were "very solid." He had no safety concerns with the girls walking or riding their bicycles in town unsupervised. He had observed the girls riding their bicycles and believed that they were very careful when crossing the street. He believed that the girls had a good relationship with their younger siblings.

¶ 15 Christine Lundquist, Courtney's third-grade teacher, testified that Courtney was doing well academically and had received straight A's in the last quarter. Christine noted that Courtney had friends in her class and participated in school-sponsored activities. She opined that both Danielle and Dean were good parents to Courtney. She had telephone contact with Dean throughout the school year, and he had attended a school-related conference in the spring. She opined that Courtney was well adjusted to the school system in Watseka.

¶ 16 Dawn Castongue, Danielle's friend and coworker, testified that she has worked with Danielle for approximately two years. She testified that Danielle, Matt, and the girls interacted "like any other normal family." They appeared to love one another, and the girls listened to Matt. She believed that Danielle was a "fine mother."

¶ 17 Marnie Henderson, Danielle's friend, testified that she had observed Danielle's relationship with the girls. She believed that Danielle was a good mother and the girls had a good relationship with Matt.

¶ 18 Melinda Matthews, Danielle's friend, testified that she has known Danielle for four years. She had observed interactions between Danielle, Matt, and the girls, and she opined

that Danielle was a "very good mother." She also believed that Matt was a good stepfather and that the girls loved him.

¶ 19 James Kramer, Danielle's father, testified that he worked nights and usually visited with his grandchildren during the weekends. He believed that Danielle was a great mother, and that Courtney and Hannah had a really good relationship with their younger siblings and Matt.

¶ 20 Matthew Moser, Danielle's husband, testified that he married Danielle on March 14, 2009. He was currently employed as a manager at Burger King, but he was taking online college courses to obtain his bachelor's degree in science and technology. He planned to eventually obtain employment as a computer programmer and a graphic arts designer in Chicago. His work schedule at Burger King was 6 p.m. until 1 a.m. He cared for the children during the day when Danielle worked. He would pick the children up from school and take them to their various activities. He had a good relationship with the girls, and they would watch movies, play in the park, play games, read together, and go to the library. He loved Courtney and Hannah and hoped that they felt the same about him.

¶ 21 Matt believed that he was more involved in the girls' lives than Dean, but he believed that his role as stepfather should be less significant than Dean's role as a father. He opined that Danielle was a great mother, and she worked hard to provide for the children. She treated all the children equally and did not play favorites. Courtney and Hannah had a close relationship with their younger siblings. He described his marriage to Danielle as a "very good marriage" and explained that they do things together as a family.

¶ 22 Tracy Bryant, Dean's friend and the secretary at Dean's church, testified that she has known Dean since he was a little kid. Jenny, Dean's wife, had two children from a previous relationship, and Dean and Jenny also had a child together. Dean and Jenny attended church on a regular basis, and they always took the children, including Courtney and Hannah when

they were in town. She opined that Dean was a really good father. She had observed Dean and Jenny interacting with all the children and opined that Hannah and Courtney were not treated any differently. Courtney and Hannah both appeared happy to be around their father. She opined that Dean and Jenny were very loving people, and they were very affectionate and "hands-on" with all the children. She also opined that Courtney and Hannah were well adjusted and that Dean and Jenny had a solid relationship.

¶ 23 Jenny McKinney, Dean's wife, testified that she was 39 years old and that she married Dean on November 23, 2005. She has three biological children, Tyler, age 13; Madison, age 11; and Jackson, age 5. Tyler and Madison were from a previous relationship, and Jackson was from her current marriage with Dean. She testified that the five children acted like "traditional siblings" and that they all had their good and bad moments. She testified that she had a different relationship with each child, but did not treat them differently.

¶ 24 Jenny has a bachelor's degree in speech communication with a specialization in public relations. She was employed by the Illinois Manufacturing Extension Center through Illinois State University, but she worked from home. She earned approximately \$73,000 to \$75,000 annually. As part of her employment, she was required to travel, and she would be on the road approximately three days per week. Her travel for work usually brought her within 20 miles of Watseka, and she would frequently pick up the girls for Dean's weekend. Dean was a stay-at-home father, but he also worked for the Village of Iola doing road maintenance work. He also did mechanical-engineering work on an as-needed basis.

¶ 25 Jenny had belonged to the Calvary Apostolic Tabernacle church for approximately five years, and the entire family regularly attended church services. The children were also involved in activities through the church, such as Christmas programs, youth groups, fall flings, and church summer camp. Hannah was involved in summer T-ball, tumbling, competitive cheerleading, and 4-H. Courtney was involved in 4-H. Dean was an active

father and would participate in the girls' activities, watch Hannah's T-ball games, and play with them outside of their activities. He had also taken the girls camping and fishing. Jenny testified that Dean was an engaging, loving, and caring father.

¶ 26 They lived in a five-bedroom house located in a rural setting in Iola, Illinois. Their residence was located on a dead-end street in the middle of a 40-acre field and was situated on 7 acres. Madison and Hannah shared a bedroom and Courtney had her own bedroom. They pastured two horses on the property, which all the children shared. They also had hogs, three or four outdoor cats, and chickens. Hannah had a cat. Courtney had a toad, a tortoise, and a pig. Courtney also had three aquariums containing tadpoles, a baby snapping turtle, and a little bullfrog. The family also had four dogs.

¶ 27 Jenny testified that the girls were given responsibilities at the house. They were responsible for feeding and watering the animals, cleaning their rooms, and bringing their dirty laundry to the laundry room. Jenny testified that Hannah and Courtney called her mom, but she did not require that. She opined that the girls were always excited to see Dean. She believed that the girls adapted pretty well to moving during the summer.

¶ 28 Danielle frequently refused to cooperate and switch weekends with Dean as necessary for the girls to attend various functions. Danielle would not give Dean or Jenny information on the girls' activities in Watseka. Jenny testified that it was typical for her or Dean to let Danielle know about the girls' activities in Iola. She testified that the exchanges were smoother when it was just her and Danielle, and that she was willing to continue doing the exchanges as long as her work schedule allowed.

¶ 29 Jenny testified that if Dean was awarded custody of the children, they would attend school at North Clay Elementary in Louisville, Illinois, which was approximately 9 to 11 miles from Iola. They would attend school with the same children who participated in 4-H and attended church.

¶ 30 The trial court conducted an *in camera* interview of Courtney and Hannah. Courtney stated that during the summer, she liked to visit her friends' homes, play farm with her half-brother Jackson, chase chickens, play with her brothers and sisters, and swim in the pool. She stated that she sometimes really got along with her brothers and sisters, but sometimes she did not "really care for them." Hannah said that she loved to swim during the summer, and she liked to play with her baby dolls when she was visiting her father. They both liked to play with their animals. Courtney did not like doing chores at her father's house. When asked what they liked to do at their mother's home, Courtney said that she liked to paint with Hannah, "mess around" with her half-brother Zach, and wrestle with her dogs. Hannah said that her favorite thing to do at her mother's was to swim and "sleep over at grandma's house." They did not go to church when they were at their mother's house, but they attended church with their father. Courtney enjoyed going to church because they played games and sang songs.

¶ 31 The testimony of nine witnesses on behalf of Dean was presented by stipulation. It was stipulated that Reverend Mike Durre would testify that he has known Dean since Dean was a baby, and he has known Jenny for 25 years. Jenny and Dean were very involved in his church, and they usually attended church services twice per week. They frequently volunteered their time to help out the church. They bring the children to church with them, and the children appeared to enjoy church.

¶ 32 Melanie McKinney, Dean's mother, lived approximately three to four blocks from Dean and Jenny, and approximately three times a week Dean, Jenny, and the children were at her house. She tried to see Courtney and Hannah whenever they were at Dean's house. Dean was a great father, and the children were all very affectionate toward him. Dean was very patient with the children. The children acted "just like any other brother and sisters," and Dean and Jenny were great about keeping custody issues from the kids. Dean and Jenny

treated the children the same and showed no favoritism.

¶ 33 Eleanor Bailey, Jenny's mother, had observed numerous interactions between the children. On one occasion, Eleanor took the girls on a golf cart ride and Hannah lost a flip-flop that she had brought from her mother's house. Hannah was really upset because she was fearful her mother would get angry if she did not find it. Eleanor believed that the children were all treated equally and acted like biological siblings. The children liked to go fishing and play in the pond while at Eleanor's house.

¶ 34 Jennifer Starwalt, Dean's friend since high school, had given Hannah and Courtney horse riding lessons. Hannah and Courtney enjoyed the lessons and were both good with the horses. Dean and Jenny watched the lessons and encouraged the girls. She had also been to Dean's house when Courtney and Hannah were visiting, and she observed Courtney and Hannah playing with the other children.

¶ 35 Jonie Pierson has been friends with Dean and Jenny for approximately four to five years. She has two daughters, one was Courtney's age and the other was closer to Hannah's age. They were all friends and liked to play together. She opined that Dean was a good father and spent a lot of time with his children. Jonie was a teacher at North Clay Elementary, and she described the school as a small but good school. Her children also attended North Clay Elementary.

¶ 36 Eric Bailey, Dean's brother-in-law, had observed several interactions between Dean, Jenny, and the children. He opined that Dean and Jenny had a good relationship and that Dean was a very conscientious father.

¶ 37 Lori McKinney, Dean's cousin's wife, has known Dean for approximately 16 to 17 years. She had observed Courtney and Hannah with their siblings and noted that they all played together and appeared excited to see one another. Dean was conscious of spending as much time with Courtney and Hannah as possible when they were in town.

¶ 38 Stephanie Smith, Dean's childhood friend, went to the same church as Dean. She noted that Dean's family was heavily involved in the church and the children would sing during the church services. The children would also go on youth outings, and they appeared to fit in with the other children in the church. She opined that Dean and Jenny's family was the "best blended family that she has ever seen" and that all the children are treated equally. She noted that Jenny and Dean were very family oriented.

¶ 39 Dean McKinney testified that he was 29 years old and was married to Jenny. He did not graduate high school, but he obtained his GED. He worked for the Village of Iola doing road maintenance. He would also occasionally do construction work and welding repair on an as-needed basis. He controlled his work schedule. Jenny and Dean decided that it was best for the family for him not to have full-time employment.

¶ 40 Dean testified that he was a protective parent and would not let his children leave the residence unsupervised or be left inside the residence unsupervised. Hannah was five and Courtney was eight when he discovered that Danielle allowed the girls to walk and ride their bicycles in town unsupervised. He believed that it was unsafe for them to be unsupervised in town, and he expressed his concerns to Danielle. At his house, the girls frequently rode their bicycles around the yard and down the driveway, but they were never unsupervised.

¶ 41 Dean did not discuss custody or the court proceedings with the girls unless they questioned him about it. He had never said anything negative about Danielle to the girls. Courtney and Hannah called Jenny mom, but they were not required to call her that.

¶ 42 Dean did not want the girls reading the Harry Potter books because they involved wizardry and witchcraft. If asked, he would not allow the girls to watch the Wizard of Oz for the same reason. He had a hard time contacting the girls by telephone when they were at Danielle's house. He usually left a voicemail message, but he rarely got a return call. He would never interfere in the girls' ability to talk to their mother. He testified that he would

cooperate with Danielle if he was awarded custody and that he wanted the girls to love her. He would also be flexible with visitation if awarded custody. Dean had problems in the past with Danielle meeting the required 5 p.m. court-ordered custody exchange. Danielle said that work prevented her from dropping the girls off at 5 p.m.

¶ 43 Dean kept Danielle informed about the girls' activities in Iola and gave her schedules for the activities. Danielle had only attended two of the girls' events in Iola, but Dean acknowledged that she would have to drive six hours round-trip to make these events. Danielle would not give him information about the girls' activities in Watseka. She also listed Courtney's last name as Kramer (instead of Kramer-McKinney) on Courtney's school registration form. Pursuant to the January 2007 agreed order, Dean took the necessary steps to legally change the girls' last names from Kramer to Kramer-McKinney. He had the new birth certificates "for awhile" before Danielle received copies. During a March 2012 rule-to-show cause hearing, Danielle was ordered to give him a copy of the girls' Medicaid card, and she complied with this order.

¶ 44 Danielle Moser was recalled as an adverse witness. She admitted that she listed Matt Moser as Hannah's father on Hannah's 2010-2011 school registration form. She did not put Dean's name anywhere on the form and explained that she did not have "a very good reason" for failing to list Dean as Hannah's father. She did not list Dean as an emergency contact for the children because he was three hours from the school. She did not authorize the school to release information about Hannah to Dean until after the show-cause hearing in March 2012. After the March hearing, she sent a letter to the school authorizing the school to list Dean as Hannah's father and giving them his phone number and address. She listed Hannah's name as Hannah Kramer instead of Hannah Kramer-McKinney on the school registration forms. She explained that she listed Hannah's last name as Kramer because she did not have any legal documentation indicating that Dean had taken the necessary steps to have her name

changed. She admitted that a birth certificate was not required to list Matt as Hannah's father at the time of registration, but the school requested a birth certificate in order to list Hannah's name as Hannah Kramer-McKinney.

¶ 45 Danielle admitted that she refused to sign the IRS forms allowing Dean to have a tax exemption in 2006 and 2007 for Hannah despite a court order allowing him this exemption. She explained that she did not sign the IRS form as requested because she thought the presented tax forms allowed Dean to have the exemption for all future years. She also refused to give Dean the medical card for the girls' health insurance until after the March 2012 show-cause hearing. She explained that a public aid office employee had told her that she was not allowed to give the medical cards to anyone, including the children's biological father, or she would risk losing the coverage on the basis of fraud.

¶ 46 Danielle explained that she took the girls out of school and brought them to court for the March 2012 show-cause hearing because she thought the judge might want to talk to them. She also admitted that she had discussed the court proceedings with the children. She told the girls that she was angry that Dean took them out of state without her permission and without discussing it with her.

¶ 47 Danielle requested that her boss write a letter to Dean stating that she was required to work the hours of 8:30 a.m. and 5 p.m. and that it was necessary that she be present during those hours to carry out her job. She requested her boss write the letter because Dean was upset that she was unable to leave work every other Friday for the court-ordered exchange.

¶ 48 Danielle usually put important school and activity information in the girls' bags before they went to Dean's house. She admitted that the information had occasionally been placed in the bags approximately three months after an event. She admitted that decisions regarding the children's education and medical care were not made jointly between her and Dean.

¶ 49 After hearing all of the evidence, the trial court awarded sole custody of the parties'

minor children to Dean. The court explained that the *in camera* interview of the girls had failed to elicit any substantive information regarding their wishes as to custody. The court noted that the girls appeared happy, well adjusted, and lucky to have parents who obviously loved them very much. The court found that Danielle was not entitled to the presumption in favor of a custody award as the primary physical custodian because the January 2007 agreed order specified that neither party was named primary custodian and the children spent approximately equal time with Danielle and Dean. Therefore, the court concluded that it would determine whether modification of the January 2007 order was in the girls' best interest pursuant to sections 610(b) and 602(a) of the Illinois Marriage and Dissolution of Marriage Act (the Act) (750 ILCS 5/610(b), 602(a) (West 2010)).

¶ 50 The trial court found that the following best-interest factors were "a wash": the wishes of the parents as to custody; the wishes of the children as to custody; the interaction and interrelationship of the children with their parents, siblings, and any other person who may significantly affect the children's best interests; and the mental and physical health of all individuals involved. The court found that the following best-interest factors were not applicable: the physical violence or threat of physical violence by the children's potential custodian, the occurrence of ongoing or repeated abuse, and whether one of the parents was a sex offender.

¶ 51 The trial court found that the girls were well adjusted in their present school environment and determined that this factor weighed in favor of Danielle. However, the court expressed concern that Danielle allowed the girls to ride their bicycles unsupervised through town and noted that six- and nine-year-old children should be supervised outside the safety of their own home. Further, the court concluded that the most significant best-interest factor in this case was the parent's willingness to facilitate and encourage a close and continuing relationship between the other parent and the children. The court found that this

factor "overwhelmingly" favored Dean because the evidence indicated that Danielle had consistently attempted to alienate Dean from the girls. The court further found that Dean had the willingness and ability to facilitate and encourage a close and continuing relationship between Danielle and the girls, and Danielle had neither the willingness nor ability to reciprocate. The court explained that Danielle listing Matt as the girls' father on their school registration forms and then admitting that she did not have a good reason for her actions "[spoke] volumes." Last, the court noted that a subsequent marriage and stability of environment were important considerations regarding a custody modification, and the court concluded that this factor weighed heavily in favor of Dean. The court explained that the most impressive witness in the case was Jenny and that her testimony was persuasive. Consequently, the court found that it was in the girls' best interests that the January 2007 agreed order be modified and sole custody of Courtney and Hannah be awarded to Dean. Danielle appeals.

¶ 52 Danielle first argues that the trial court's finding that she was not entitled to the presumption of an award of custody in favor of her as the children's primary custodian was in error.

¶ 53 Section 610(b) of the Act reflects a legislative presumption in favor of custody being awarded to the primary physical custodian in custody-modification proceedings. 750 ILCS 5/610(b) (West 2010); *In re Marriage of Wycoff*, 266 Ill. App. 3d 408, 411 (1994). Specifically, section 610(b) of the Act (750 ILCS 5/610(b) (West 2010)) provides the following:

"The court shall not modify a prior custody judgment unless it finds by clear and convincing evidence, upon the basis of facts that have arisen since the prior judgment or that were unknown to the court at the time of entry of the prior judgment, that a change has occurred in the circumstances of the child or his custodian, or in the case

of a joint custody arrangement that a change has occurred in the circumstances of the child or either or both parties having custody, and that the modification is necessary to serve the best interest of the child. *** In the case of joint custody, if the parties agree to a termination of a joint custody arrangement, the court shall so terminate the joint custody and make any modification which is in the child's best interest."

"The purpose of this presumption is to promote stability and continuity in the child's custodial and environmental relationships." *In re Marriage of Kartholl*, 143 Ill. App. 3d 228, 233 (1986).

¶ 54 Danielle cites *In re Marriage of Wycoff*, 266 Ill. App. 3d 408 (1994), in support of her argument that she was entitled to the custodial-parent presumption because she was the primary physical custodian of the parties' minor children. In *In re Marriage of Wycoff*, 266 Ill. App. 3d at 408-09, the parties' joint custody agreement named the mother as the physical custodian of the parties' minor child; however, the trial court terminated the parties' joint custody and awarded sole custody to the father. The Fourth District reversed the award of sole custody to the father because the evidence did not overcome the strong presumption in favor of the primary physical custodian. *Id.* at 417. The court noted that the custodial-parent presumption applied in situations where joint custody was terminated because stability and continuity were in the minor child's best interest. *Id.* at 411-12. However, the court explained that "[t]here may be some joint custody cases where there is no primary physical custodian, where the child spends approximately equal time with each parent, but such cases are unusual." *Id.* at 411.

¶ 55 In contrast, the Third District in *In re Marriage of McGillicuddy*, 315 Ill. App. 3d 939, 943 (2000), did not apply the custodial-parent presumption in favor of the mother. The court concluded that *In re Marriage of McGillicuddy* was factually distinguishable from *In re Marriage of Wycoff* because the terms of the joint parenting agreement in *In re Marriage of*

McGillicuddy provided for reconsideration of the residential parent in the event that the mother moved from the county where she was residing. *Id.* Consequently, the court concluded that the mother waived the custodial-parent presumption by agreeing to those terms. *Id.*

¶ 56 In this case, Danielle argued that she was entitled to the custodial-parent presumption because she was the *de facto* primary custodian of the minor children. Specifically, Danielle argues that she was the *de facto* primary custodian because she had physical custody of the children the majority of the time. Therefore, she argued that *In re Marriage of Wycoff* was applicable and the custodial-parent presumption should be applied in favor of her as the custodial parent. The trial court disagreed and concluded that the custodial-parent presumption was not applicable. The court explained that *In re Marriage of Wycoff* was distinguishable because the January 2007 agreed order specifically stated that neither party was named primary custodial parent. The court further explained that the case was one of the "unusual" cases discussed in *In re Marriage of Wycoff*, where there is no primary physical custodian and where the children spend approximately equal time with each parent. Consequently, the court concluded that it would evaluate the best-interest factors set forth in section 610(b) of the Act (750 ILCS 5/610(b) (West 2010)) when determining whether custody should be modified. Following a careful review of the record, we agree with the trial court's reasoning and conclusion. Accordingly, we find that Danielle was not entitled to the custodial-parent presumption.

¶ 57 Danielle next argues that the trial court erred, as a matter of law, when it stated that six- and nine-year-old children should be supervised outside the safety of their home. Alternatively, Danielle argues that the trial court's finding that it was inappropriate or dangerous for Courtney and Hannah to be riding their bicycles and walking in town unsupervised is contrary to the manifest weight of the evidence.

¶ 58 In the trial court's written docket entry, the court expressed concern with the fact that Danielle allowed the girls to ride their bicycles unsupervised through town. The court explained that common sense indicated that six- and nine-year-old children should be supervised outside the safety of their own home because "[s]ex offenders abound; as do nut-jobs, wackos and evil doers." Following a review of the record, we do not believe that the court held that, as a matter of law, six- and nine-year-olds should be supervised outside the safety of their home. Evidence was presented that Courtney and Hannah were allowed to walk and ride their bicycles, which included crossing the street, several blocks in town unsupervised. The trial court merely considered this evidence in determining whether a custody modification was in the best interests of the minor children. Accordingly, the court did not err in expressing its concern that the minor children were unsupervised when riding their bicycles in town.

¶ 59 Danielle also argues that the trial court's findings that Danielle had consistently attempted to alienate Dean from the minor children and that Dean had the willingness and ability to facilitate and encourage a close and continuing relationship between Danielle and the minor children and Danielle had neither the willingness nor ability to reciprocate are contrary to the manifest weight of the evidence.

¶ 60 Section 602(a)(8) of the Act (750 ILCS 5/602(a)(8) (West 2010)) instructs the court to consider the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child when awarding custody under the best-interest-of-the-child standard. The trial court's factual findings with regard to a change of custody will not be disturbed unless they are against the manifest weight of the evidence. *In re Marriage of Melton*, 288 Ill. App. 3d 1084, 1088 (1997). The trial court is in the best position to judge the credibility of the witnesses and determine the needs of the minor children. *Id.*

¶ 61 Here, evidence was presented that Danielle listed Matt's name as the children's father on school registration forms, failed to provide Dean with information concerning the girls' school activities, failed to list the girls' correct last name on their school registration forms, and failed to facilitate contact with Dean and the girls by telephone. After hearing all of the evidence, the trial court concluded that this factor "overwhelmingly" favored Dean and that the evidence indicated that Danielle had consistently attempted to alienate Dean from the girls. The court further concluded that Dean had the willingness and ability to facilitate and encourage a close and continuing relationship between Danielle and the girls, and Danielle had neither the willingness nor ability to reciprocate. The court found it significant that Danielle admitted that she did not have a good reason for listing Matt as the girls' father on the school forms. The record clearly supports the trial court's findings. Danielle argues that her actions did not have an adverse effect on the children's relationship with their father and therefore should not be considered in the custody determination. However, we note that the statute does not require actual harm from a parent's unwillingness or inability to facilitate and encourage a close and continuing relationship between the other parent and children to be proven before this factor can be considered. Sufficient evidence was presented that Danielle refused to cooperate with Dean and attempted to alienate Dean from the girls. Accordingly, we conclude that the trial court's findings on this factor were not against the manifest weight of the evidence.

¶ 62 Additionally, Danielle argues that the court erred, as a matter of law, in considering the parties' financial disparity alone in making the custody determination.

¶ 63 Mere financial disparity between the parties is insufficient to justify an award of custody. *In re Marriage of Fahy*, 208 Ill. App. 3d 677, 695 (1991). However, the trial court may consider the relative economic positions of the parties as a factor in determining the best interests of the children. *Id.*

¶ 64 In this case, the trial court did not base its custody decision on the financial disparity of the parties alone. Instead, it was one of many factors that the court considered under the best-interest-of-the-child standard. The court's written order clearly identified the best-interest factors, *i.e.*, the children's adjustment to their home, school, and community and the willingness of each parent to facilitate and encourage a close and continuing relationship between the other parent and the children, that it considered significant in making the custody decision. Accordingly, we do not find that the court erred in considering the financial disparity of the parties as one of the factors to determine the best interests of the children.

¶ 65 Last, Danielle argues that the trial court's factual finding that a subsequent marriage and stability of environment weigh in favor of Dean is contrary to the manifest weight of the evidence and that the court wrongly considered this custody determination to be a "contest" between Jenny and Danielle.

¶ 66 In the trial court's written docket entry, the court noted that a subsequent marriage and stability of environment were important considerations in custody modifications and that these factors weighed heavily in favor of Dean. The court noted that it found Jenny to be the most "impressive witness" in the case and that it had written in its trial notes that it wanted to give the children to Jenny. The court further stated that it carefully observed the demeanor and weighed the credibility of all the witnesses and the parties. The decision as to which party shall be awarded custody of the parties' minor children rests on the temperaments, personalities, and capabilities of the parties and the demeanor of the witnesses who testify at trial. *In re Marriage of Felson*, 171 Ill. App. 3d 923, 926 (1988). The trial court is in the best position to evaluate these considerations. *Id.* In this case, the trial court had the opportunity to observe the witnesses and weigh their credibility. After carefully reviewing the record, we do not believe that the trial court's finding on this factor was contrary to the manifest weight of the evidence.

¶ 67 For the foregoing reasons, the judgment of the circuit court of Clay County is hereby affirmed.

¶ 68 Affirmed.