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2014 IL App (4th) 130733-U

NO. 4-13-0733

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

January 21, 2014

Carla Bender

4th District Appellate

Court, IL

In re: MARRIAGE OF SHELLEY JO GROVE, n/k/a)	Appeal from
SHELLEY JO HICKS,)	Circuit Court of
Petitioner-Appellee,)	Livingston County
and)	No. 10D103
MICHAEL E. GROVE,)	
Respondent-Appellant.)	Honorable
)	Robert M. Travers,
)	Judge Presiding.

PRESIDING JUSTICE APPLETON delivered the judgment of the court.
Justices Knecht and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The termination of joint custody and the award of sole custody to petitioner are affirmed because the record contains evidence to support the trial court's findings that (1) a change had occurred in the circumstances of the parents, namely, their failure to cooperate with each other in the upbringing of the children and (2) it was in the best interest of the children to terminate joint custody and to make petitioner the residential custodian, with reasonable visitation for respondent.

¶ 2 Respondent, Michael E. Grove, appeals from an order in which the trial court terminated a joint parenting agreement and awarded sole custody of the children to petitioner, Shelley Jo Hicks, with reasonable visitation rights for respondent. Because the trial court's findings are not against the manifest weight of the evidence, we affirm the judgment.

¶ 3 I. BACKGROUND

¶ 4 A. The Joint Parenting Agreement

¶ 5 In June 2010, the parties entered into a joint parenting agreement.

¶ 6 In September 2010, the trial court entered an amended judgment of dissolution of marriage, which approved and adopted the joint parenting agreement.

¶ 7 *1. Custody and Visitation*

¶ 8 In the joint parenting agreement, the parties agreed they would have joint legal custody of the two children, A.G. (born July 11, 2000) and H.G. (born January 16, 2003), and that "[n]either parent [would] be designated the primary physical or residential parent."

¶ 9 The children would spend an equal amount of time with each parent. Petitioner would have the children from Monday at 8 a.m. to Wednesday at 8 a.m., and respondent would have them from Wednesday at 8 a.m. to Friday at 8 a.m. The children would spend a weekend with one parent and the next weekend with the other parent, and whichever parent did not have the children during the weekend would have them from Sunday at 10:30 a.m. to Monday at 8 a.m.

¶ 10 There also were provisions regarding holidays, Mother's Day, Father's Day, birthdays, and summer break from school.

¶ 11 *2. Changes in the Schedule*

¶ 12 The parties were permitted to agree to changes in the schedule. In fact, the joint parenting agreement "encouraged [them] to mutually agree to change this schedule to meet the needs of [their] children first, and themselves secondly."

¶ 13 *3. Support and Insurance*

¶ 14 The agreement provided no child support but made each party responsible for certain expenses. (Afterward, the trial court ordered petitioner to pay child support when she

stopped sending the children to a private school.) Petitioner was to keep health insurance on the children through her employment. To the extent the insurance did not pay for the children's health, dental, orthodontic, or optical expenses, she was to pay those expenses out of her own pocket.

¶ 15 Neither party was to "cause any cosmetic, elective or extraordinary health, dental, orthodontic or optical expense to be incurred for the benefit of the minor children without first consulting with the other party except in the case of an emergency."

¶ 16 *4. Education*

¶ 17 At the time the parties entered into the joint parenting agreement, both children were attending a private school, Pontiac Christian School. It was agreed that the children would continue attending that school until the cost became too burdensome. Respondent was to pay "\$1,000.00 of any and all costs of [their] attendance at Pontiac Christian School," and petitioner was "responsible for the remainder of said costs."

¶ 18 The parties were to "cooperate on decisions as to where [the children should] attend school."

¶ 19 *B. The Petition To Terminate the Joint Parenting Agreement*

¶ 20 In September 2012, petitioner filed a verified petition to terminate the joint parenting agreement and to award physical custody of the children to her, subject to reasonable visitation for respondent. In her petition, she gave essentially four reasons for this proposed change.

¶ 21 First, she claimed the joint parenting agreement had proved to be unworkable because of "a total lack of communication between the parties."

¶ 22 Second, she alleged the children had expressed a desire to live with her.

¶ 23 Third, she believed that splitting the children's time equally between the parents had been "disruptive" to the children and against their best interest, forcing them to travel back and forth several times a week.

¶ 24 Fourth, she was concerned that "the ongoing emotional verbal issues of [respondent] toward the children [were] not in the children's best interests." She alleged she had withheld information from respondent in order to keep him from being confrontational toward the children. Specifically, she alleged she had put the children "in counseling" without notifying respondent and that her reason for keeping this fact from him was the children's concern that he would "take certain actions against [them]." The "certain actions" are unspecified.

¶ 25 C. The Evidentiary Hearing

¶ 26 In April and May 2013, the trial court held a hearing on the petition to terminate the joint parenting agreement. Without unnecessarily lengthening this order with an exhaustive summary of the evidence, we note that the following topics emerged in the hearing.

¶ 27 *1. The Parties' Agreement That They
Do Not Communicate Well With Each Other*

¶ 28 Petitioner's attorney asked respondent: "[H]ow would you describe the line of communication between you and Shelley?" He answered: "It's not very good at all."

¶ 29 On cross-examination, respondent's attorney asked him:

"Q. You say that communication has been poor between you and mother?

A. Yes.

Q. But you do communicate, you communicate by e-mail?

A. E-mails or text.

* * *

Q. But she doesn't, for whatever reason, she doesn't want to talk to you on the telephone?

A. Right."

Respondent added: "Sometimes she doesn't answer the e-mails that I send her or the texts."

¶ 30 In her own testimony, petitioner agreed "the lines of communication between [her] and [respondent]" were "not good." According to her, it was "very difficult to talk with him" regarding the children because whenever she tried doing so, he would turn the conversation into "an argument about something that [she] did or [something that she] said." He would end up saying it was her fault for breaking up the family and that they "wouldn't be in this situation if [she] hadn't wanted a divorce"—which, petitioner noted, was hardly "the issue at this point," but rather the issue should have been "raising [their] children."

¶ 31 Because she "refuse[d] to be yelled at," petitioner insisted on communicating with respondent exclusively by e-mail. And in fact it was because of this perceived tendency of his to verbally go on the attack that she had decided to divorce him. She had "some issues with [him] in terms of his personality." She could not remember the last time she spoke with him.

¶ 32 *2. Refusal To Deviate From the Visitation Schedule*

¶ 33 Respondent testified that although he had never refused a request by petitioner to temporarily change the visitation schedule, she had refused requests by him to do so. Petitioner's attorney asked him:

"Q. When [did petitioner refuse to change the visitation

schedule]?

A. I got a stack of them [(e-mails)] that say, no, I won't change. I don't know the dates.

Q. When is the last time?

A. Probably last October.

Q. What was the circumstances [*sic*] then, if you know?

A. Cookout at my cousin's house."

¶ 34 *3. Disagreement Over an Optical Expense*

¶ 35 Respondent testified that petitioner had presented him with a bill from a company called "All About Eyes" and that he had refused to pay it. (Incidentally, it is unclear why petitioner presented him with this bill, considering that, under article II.2 of the joint parenting agreement, optical expenses would seem to be her sole responsibility—unless she meant to request a change in the joint parenting agreement. Under article I.9, the parties "may, by mutual agreement, change the terms of this agreement.") Respondent refused to pay this bill because, first, petitioner had not consulted him ahead of time and, second, he thought the extras in the bill were extravagant, considering that the glasses were merely reading glasses.

¶ 36 Petitioner's attorney asked him:

"Q. Did you refuse to pay that bill?

A. Yeah.

Q. Why was that?

A. Because in the joint parenting agreement it states that no debt is to occur without consulting the other party; and when

[H.G.] got her glasses back in December, I told Shelley that this was the last time that I was paying that if she didn't want to consult with me. And she didn't consult with me on [A.G.'s] eyes, and then she sent this bill with the girls to give to me.

Q. And you refused to pay it?

A. Yeah, she didn't consult with me.

Q. And you continue to refuse to pay it?

A. Yeah.

Q. And you got the bill, didn't want to pay it?

A. Yeah, she didn't consult with me about it.

Q. Did you indicate that you felt the bill was wrong because they had some type of special lenses and it was too expensive?

* * *

A. They're reading glasses. She don't need to have tinted lenses which is \$100, I think, extra. She got the most expensive frames off the shelf, the most expensive lenses. And Shelley's not just going to hand me bills and say I've got to pay them without consulting with me first. That's what our agreement—That's what it states in our agreement."

¶ 37

*4. Withholding From Respondent the Fact That
A.G. Was Undergoing Anger-Management Counseling*

¶ 38

Petitioner testified that at some point after the divorce, she had A.G. undergo

anger-management counseling. The reason was that A.G. had threatened her and had made aggressive gestures at her. Petitioner did not inform respondent of this counseling while it was underway. She waited until the counseling was over to tell him.

¶ 39 Respondent testified that until he read the petition to terminate the joint parenting agreement, he was unaware A.G. had undergone any form of counseling. In his own experience with A.G., he perceived no need for her to undergo anger-management counseling.

¶ 40 *5. Dispute Over School Lunches*

¶ 41 Respondent's attorney asked him:

"Q. Have you ever received any complaints about food from the mother?

A. Yes.

Q. In what way?

A. In one of her petitions that she stated that I was starving the kids, that I didn't have enough food for their lunches for school.

Q. Before she filed her petition, did you ever receive any complaints from her about food at all?

A. No."

It is unclear to which "petition" respondent is referring in this context.

¶ 42 *6. Change From Private School to Public School*

¶ 43 Respondent testified he had received an e-mail from petitioner informing him of her decision that the children would no longer be attending Pontiac Christian School; they would be attending the public schools instead. Her stated reason was that she could no longer afford to

send them to the private school. In his testimony, respondent cast doubt on this reason, claiming that petitioner's income had actually gone up. Although he had been prepared to make his required contribution of \$1,000 toward the children's private education, his income was considerably smaller than petitioner's income, and he could not afford to pay the full tuition. In his testimony, he did not dispute petitioner's "right to discontinue paying the tuition at Pontiac Christian School," but he seemed to criticize her for presenting the decision to him as a *fait accompli*. "I had no say in it," he remarked.

¶ 44 The children now attend the public school in Pontiac.

¶ 45 7. "*Withholding" the Children From Their Mother
 When They Encountered Her During His Time*

¶ 46 Petitioner was aggrieved because respondent had "withheld" the children from her "at athletic events." According to her testimony, one such incident occurred during a volleyball tournament "at St. Mary's" in January or February 2011. She testified:

"They were with their dad that weekend, and it was [a] Friday/Saturday tournament; and after the game, we went up, my mom and dad and I went to up [*sic*] to tell [A.G.], good game, and give her a hug and everything, and I watched as she was told she had to go. And it happened at the grocery store when I saw them coming across the parking lot and they were pulled between cars by their dad ***."

¶ 47 On cross-examination, respondent's attorney asked petitioner if she had discussed the volleyball incident with respondent. She answered:

"A. No, I did not, because I'm always wrong if I try to talk

to him.

Q. Well, obviously, this upset you?

A. It did upset me.

Q. Did you communicate in any fashion with Mike about this incident?

A. No, I did not.

Q. You didn't text him or e-mail him or anything?

A. No.

Q. So, this upsetting event that occurred, you, for whatever reason, decided not to discuss it or communicate with Mike about it?

A. I didn't discuss it with him, because it's common behavior at everything we're at."

¶ 48 As for the grocery-store incident, which, petitioner testified, happened in December 2011, respondent's attorney likewise asked her:

"Q. So, the incident in the parking lot at the grocery store was extremely upsetting to you as well?

A. It was, and the girls both came home and said that to me.

Q. I take it that you did not communicate with Mike about that incident—

A. No, I—Sir, I don't know what good it would do to try to talk to him about it."

¶ 49

8. *The Parents' Respective Residences*

¶ 50 Petitioner has a house in Pontiac, five blocks from the public schools. The children each have a bedroom in her house, and once a week the children's friends come over and spend the night.

¶ 51 Respondent's house, the marital residence, is in Odell, 15 miles from Pontiac. In his house, the children share a bedroom. They have no friends in Odell. Their friends have always been in Pontiac.

¶ 52

9. *The In Camera Interviews of the Children*

¶ 53 The trial court interviewed each of the children *in camera*, with only the court reporter and the attorneys present. The court first interviewed H.G., 10 years old, and then A.G., 12 years old (2 months away from her thirteenth birthday).

¶ 54

a. H.G.

¶ 55 The trial court asked H.G. to compare the routine at her father's house with the routine at her mother's house. She answered that her father allowed her and A.G. to "go to bed at whatever time" whereas her mother insisted they go to bed at 9 p.m. Also, at her father's they sometimes ate supper around 8 p.m., whereas at their mother's they customarily ate supper around 5 p.m. The court asked H.G.:

"Q. Well, do you like one of those schedules better than the other?"

A. Yeah.

Q. Which one do you prefer?

A. My mom's.

Q. All right. The routine?

A. Yeah.

Q. Does it ever affect you at school?

A. Yeah. When I'm at dad's and at school I'm always tired."

¶ 56 The trial court asked H.G.: "Do you think you spend the right amount of time with your dad or could it be a little more or a little less?" She answered:

"A. Little less.

Q. How come?

A. Because he's always yelling and stuff.

Q. Is there a special thing that he always yells about?

A. Not usually; it's like different stuff every time.

Q. Is he trying to get things done or maybe get you into bed or get food done or something?

A. I don't know; I try to block it out.

Q. Is he a little short of temper?

A. Yes.

* * *

Q. How about your mom? Little bit more time, little bit less time with her?

A. Little bit more time.

Q. Is that because you do more things with your mom or—

A. We like, we have the same routine; like we get up at a certain time and we go to bed at a certain time. So, it's like the same every night; and we won't be, like, tired one night and then, like, not tired the next night."

¶ 57 The trial court asked H.G.:

"Q. Is there anything, any one thing, if you could, that you would change about your mom?

(The witness indicates negatively.)

Q. How about your dad?

(The witness indicates affirmatively.)

A. What would that be?

Q. His short temper; he has a very short temper."

¶ 58 b. A.G.

¶ 59 During its *in camera* interview of A.G., the trial court asked her:

"Q. Do you remember, I think it was probably a year ago, maybe longer, that you were videotaped by your dad?

A. Yes.

Q. How long ago was that?

A. Probably when all this stuff started.

Q. And can you tell me a little bit about how that happened or why it happened?

A. He, after school, he took us individually into the garage;

and he didn't, and I asked him why he was taking [H.G.] in the garage. He didn't answer me. And then he, after [H.G.] was done, he came in and got me; and he started videotaping me and asking me, why are you doing this and why do you want to live with your mother all the time and do you want to live with your mother all the time.

Q. Had you been talking to him about that when it happened?

A. No.

Q. All right. So, just something that he brought up?

A. Yeah.

Q. Did you ever see the videotape?

A. No.

Q. Did it upset you?

A. A little bit.

Q. How about [H.G.], what was her reaction?

A. Um, she really didn't tell me what happened, what she said because she didn't want to get in trouble.

Q. Are you afraid of your mother?

A. No.

Q. Just pretty much the way it is?

A. I want to spend like weekdays with her and then go to

of "failures" of one kind or another. The court said:

"I would have liked to have heard about their successes. Here are the things that we've actually cooperated on, these are the things we agreed on, this is a nice structure we have for our children as far as going to bed, going to school, when they're going to get homework, how we're going to set up structure for the children on; and it's nonexistent. I didn't hear that and it doesn't exist.

We have two parents independent of each other bound by an agreement that they no longer honor. They're not cooperating effectively. That's the problem with the joint parenting agreement."

¶ 63 Joint parenting, the trial court explained, "require[d] the parties to actually discuss important issues and make joint decisions[:] in other words, talk to each other." In the court's view, texting and e-mailing were inadequate substitutes for talking. The court asked rhetorically:

"So, should these people have ever had joint parenting? No. Would it have been approved by the Court if someone would have come in and told me at that time, Judge, we want to be joint parents, but we're only texting and e-mailing at this particular point. And as father pointed out, he couldn't remember the last time he had actually spoke to the mother. It was sometime before the separation. No."

¶ 64 Having found, by clear and convincing evidence, that "a change ha[d] occurred in

the circumstances of the parents," namely, "their failure to cooperate," the trial court then asked:

"Is modification in the best interest of the children? In other words, do we need to make changes for the best interest of the children? Yes, we do. If I were to say to you, after what I just said, that I still think joint parenting is just a great idea, okay, I would prove to you that I am the most foolish person in the room. All right? So, having laid out this problem, the lack of cooperation, and the failure to commit to the joint parenting, we're going to have to end the joint parenting. So, the joint parenting is gone, okay, no more joint parenting."

¶ 65 The next question was what custodial arrangement should replace joint custody. The trial court parsed through the factors in section 602(a) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/602(a) (West 2012)), finding that two of the factors favored custody with petitioner and that the remaining factors favored (or disfavored) both parents equally or were factually inapplicable. The two factors favoring petitioner were the children's wishes as to their custodian (750 ILCS 5/602(a)(2) (West 2012)) and the children's adjustment to their home, school, and community (750 ILCS 5/602(a)(4) (West 2012)).

¶ 66 As for the children's wishes, the trial court said:

"If I didn't have a strong back, I would slough the whole thing off on the kids; and I would say, everything I'm going to do is based upon what the children told me in the interview and it would probably hold up; but, as the attorneys know, the children are not

subject to cross[-]examination. *** [T]hey're children, okay, and for that reason their judgment is somewhat suspect on these matters. But the children *** spoke consistently that they believed a reduction in time with father was appropriate; and they gave the reasons for that. They did both use the term, block it out, in reference to what they referred to as yelling, short temper of father; but that's; I don't know, that's an argument we've always had in here, it's a male and female argument I guess as to when somebody's angry or when somebody's upset. But the wishes of the children are clear and they have expressed and they favor mother."

¶ 67 As for the children's adjustment to their home, school, and community, the trial court said:

"In this instance, the children are better adjusted to the home of the mother, the school here in Pontiac, and the community here in Pontiac. Statements were made about the children getting a little bit older, wanting a little bit more contact socially with people here in this area, and that being prevented by staying with father. That sounds accurate, that sounds consistent with things we are hearing in other cases; and children tend to go that way as they age."

So, the court concluded that, on balance, the factors in section 602(a) "favor[ed] custody with [the] mother."

¶ 68 Because "the split possession of the children" was "not working" and because the children appeared to be "growing more attached or involved in" petitioner's family and home and in the school in Pontiac, the trial court ordered a change in the custodial arrangements so that petitioner's residence would be their home base and they would visit respondent. Henceforth, there would be "alternating weekend visitation with [the] father," and in addition, he would have the children every Wednesday "from after school until 8 p.m." Otherwise, visitation would proceed as stipulated in the joint parenting agreement (*e.g.*, holidays, birthdays, Mother's Day, and Father's Day).

¶ 69 On August 8, 2013, the trial court followed up with a written order, setting forth the visitation rights with more specificity and also discontinuing petitioner's child support obligation and awarding her child support in the amount of \$100 a week, retroactive to May 24, 2013 (in this appeal, respondent does not contest the child support).

¶ 70

II. ANALYSIS

¶ 71

A. The Termination of Joint Legal Custody

¶ 72 To modify a custody judgment, the trial court must make two findings by clear and convincing evidence: (1) a change has occurred, and (2) the modification would be in the child's best interest. 750 ILCS 5/610(b) (West 2012). The first sentence of section 610(b) provides:

"(b) The court shall not modify a prior custody judgment unless it finds by clear and convincing evidence, upon the basis of facts that have arisen since the prior judgment or that were unknown to the court at the time of entry of the prior judgment,

that a change has occurred in the circumstances of the child or 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." *Id.*

¶ 73 One change in circumstances is a lack of cooperation by parents who, at an earlier time, entered into a joint parenting agreement. In the implementation of the agreement, they have failed to cooperate with each other in the upbringing of their children. They originally showed mutual cooperation by entering into the joint parenting agreement, but afterward their cooperative relationship fell apart—thus the change in circumstances. We have held that the change clause in section 610(b) "allows a trial court to terminate the joint custody arrangement (but not necessarily the custody of the primary physical custodian) whenever it has become apparent that the parents cannot cooperate in the best interest of the child." *In re Marriage of Wycoff*, 266 Ill. App. 3d 408, 412 (1994). We reasoned: "If it is accepted that joint custody can only succeed where the parents have an ability 'to cooperate effectively and consistently with each other towards the best interest of the child' (750 ILCS 5/602.1(c)(1) (West 1992)), then joint custody should be readily terminated when such cooperation no longer exists." *Id.*

¶ 74 What does it mean, though, for parents to fail to cooperate with each other toward the best interest of the child? Case law associates "cooperation" with "communication." "Joint custody requires an unusual level of cooperation and communication from both parents." *In re Marriage of Swanson*, 275 Ill. App. 3d 519, 524 (1995). If, since the entry of the joint parenting order, the parents have displayed such animosity and distrust toward one another that they have

been unable to effectively communicate with one another regarding the upbringing of their children, they have failed to cooperate toward the best interest of their children. *In re Marriage of Bush*, 191 Ill. App. 3d 249, 263 (1989). In the evidentiary hearing in the present case, both parties admitted, under oath, that they did not communicate well with each other.

¶ 75 In addition to this gloss from case law, statutory law defines noncooperation by its definition of the phrase "ability of the parents to cooperate." Sections 602.1(c)(1) to (3) provide as follows:

"(c) The court may enter an order of joint custody if it determines that joint custody would be in the best interests of the child, taking into account the following:

(1) the ability of the parents to cooperate effectively and consistently in matters that directly affect the joint parenting of the child. *'Ability of the parents to cooperate' means the parents' capacity to substantially comply with a Joint Parenting Order.* The court shall not consider the inability of the parents to cooperate effectively and consistently in matters that do not directly affect the joint parenting of the child;

(2) The residential circumstances of each parent; and

(3) all other factors which may be relevant

to the best interest of the child." (Emphasis added.)

750 ILCS 5/602.1(c)(1) to (3) (West 2012).

Because cooperation is defined as the parents' mutual compliance with the joint parenting order (750 ILCS 5/602.1(c)(1) (West 2012)), they fail to cooperate if one of them commits, or both of them commit, a significant breach of the joint parenting order.

¶ 76 The joint parenting order does not require verbal communication. Respondent argues: "[T]he trial court either assumed or erroneously concluded that communication by the parties by electronic means equated to a failure to cooperate." We agree that, in this age of Facebook, Twitter, and cell phone texting, there is nothing wrong, *per se*, with communicating digitally. But one must consider the reason why digital communication had become the parties' exclusive mode of communication: petitioner perceived respondent as being so verbally confrontational and abrasive that she did not want to talk with him anymore or hear his voice; she was using electronic communication as a means of keeping him at a distance. So, the record contains some evidence that the parties do not get along well and consequently, as they admitted under oath, do not communicate well with one another. See *In re Marriage of Drummond*, 156 Ill. App. 3d 672, 679 (1987) ("Since joint custody requires extensive contact and intensive communication, it cannot work between belligerent parents.").

¶ 77 We should affirm the trial court's judgment if it has some support in the evidence. See *Gunthorp v. Golan*, 184 Ill. 2d 432, 438 (1998). On the question of evidentiary support, our standard of review is deferential. We will reverse the trial court's judgment only if it is against the manifest weight of the evidence. See *In re Marriage of Ricketts*, 329 Ill. App. 3d 173, 177 (2002). In deciding whether the judgment is against the manifest weight of the evidence, we

regard the evidence in the light most favorable to the appellee. *Id.* If reasonable persons could draw different inferences from the evidence, we will choose the inference that supports the judgment. *Id.*

¶ 78 In our review of the record, we find some evidence of what could be regarded as significant breaches of the joint parenting agreement. For example, in article VI.1, the joint parenting agreement requires that both parties "attempt to work together to avoid further disputes." The parties have not been working together to avoid further disputes. As we have noted, they both admitted under oath that their communication with one another had been poor. For example, how much time the children spent with one parent as opposed to another was a question respondent should have been discussing with petitioner instead of conducting videotaped interrogations of the children to use as ammunition against petitioner. That sort of outrageous conduct escalates disputes rather than defuses them. For another example, the first time respondent heard any expression of concern from petitioner regarding the amount of food he had been providing the children for their school lunches was in a court filing. Also, petitioner was upset with respondent for whisking the children away whenever she came on the scene during their time with him, but she believed it would be futile to try to talk with him about it. In fact, she dreaded talking with him.

¶ 79 Arguably, respondent's conduct in not allowing the children to talk with petitioner and her family during a volleyball tournament was a violation of article I.5, which entitled both parents to "participate" in "extracurricular activities," such as "sports." For a parent, "participation" would include coming up to the child and interacting with her after the game, *e.g.*, congratulating her on her performance.

¶ 80 Article III.3 required petitioner to consult with respondent before buying glasses for the children, but on two occasions she failed to do so.

¶ 81 So, we find some evidence that the parents have failed communicate with each other effectively and have failed to substantially comply with the joint parenting agreement. We agree it clearly would be against the children's best interest to keep them in the joint legal custody of parents who are unable to cooperate with one another in the upbringing of the children. Therefore, we uphold the trial court's decision to terminate the joint legal custody.

¶ 82 B. The Award of Sole Custody to Petitioner

¶ 83 Respondent challenges not only the termination of joint legal custody but also the award of sole custody to petitioner. He argues: "The only change in circumstances referenced by the trial court was its finding the parties could not cooperate with each other[,] which *** was erroneous." But, as we have explained, that finding has some support in the evidence, and therefore we uphold that finding. See *Ricketts*, 329 Ill. App. 3d at 177.

¶ 84 Alternatively, respondent argues that "even if the trial court properly found a change in circumstances by clear and convincing evidence, *** the evidence did not support a finding that modification of custody was necessary to serve the best interest of the children, which [petitioner] was also required to prove by clear and convincing evidence." See 750 ILCS 5/610(b) (West 2012).

¶ 85 Actually, there is evidentiary support for the trial court's finding that two of the factors in section 602(a) (750 ILCS 5/602(a) (West 2012)) favor making petitioner the residential custodian. In the *in camera* interviews, both children expressed a preference to live with their mother. See 750 ILCS 5/602(a)(2) (West 2012) ("the wishes of the child as to his custodian").

The children do not appear to have any improper reasons for this preference. The reasons they gave the court were legitimate: petitioner has a milder temper, life is more structured at her residence, and Pontiac is where the children's friends and schools are located. The children in this case are not extremely young; and in the transcript they come across as dispassionate and rational. See *In re Marriage of Apperson*, 215 Ill. App. 3d 378, 384 (1991) ("If children are of sufficient maturity, their choice in custody matters is an important element to be taken into account, but is not controlling or binding upon the court."). They denied that anyone had told them what to say. In the absence of any showing that their preference was coerced or based on improper reasons, the trial court was right to give weight to their preference. See *Wycoff*, 266 Ill. App. 3d at 415.

¶ 86 Citing *Apperson*, 215 Ill. App. 3d at 384, respondent argues: "[I]t is well-settled the wishes of children alone should not support modification of custody." But, as the trial court made clear in its remarks from the bench, it was not "slough[ing] the whole thing off on the kids." The children's preference was only one factor. The other factor was "the child's adjustment to his home, school and community." 750 ILCS 5/602(a)(4) (West 2012). Both children told the trial court, in so many words, that they were better adjusted to the regular schedule in their mother's residence than to the somewhat looser schedule in their father's residence. A looser schedule is fine perhaps during visitation, but apparently the children need more structure, more predictability, in their day-to-day lives. One thing is clear: the split residential custody was a bad idea from the start, and there is no going back to it. We have repeatedly criticized custody orders that equalize the time between parents; children need a single place they can call home. *In re Marriage of Deem*, 328 Ill. App. 3d 453, 456 (2002);

Swanson, 275 Ill. App. 3d at 524; *In re Marriage of Oros*, 256 Ill. App. 3d 167, 170 (1994); *In re Marriage of Hacker*, 239 Ill. App. 3d 658, 661 (1992). Petitioner's residence in Pontiac seems the most logical place to designate as home. Pontiac is where the children attend school, and it is where all their friends are. There they can go outside and ride bicycles with their friends, whereas in Odell visiting with friends is more difficult.

¶ 87

III. CONCLUSION

¶ 88

For the foregoing reasons, we affirm the trial court's judgment.

¶ 89

Affirmed.