

2015 IL App (2d) 140656-U  
No. 2-14-0656  
Order filed March 11, 2015

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> PARENTAGE OF M.A.R.R.,	)	Appeal from the Circuit Court
a Minor	)	of Du Page County.
	)	
	)	No. 13-F-454
	)	
(Kurt R., Petitioner-Appellee and	)	Honorable
Cross-Appellant, v. Andrea R., Respondent-	)	Linda E. Davenport
Appellant and Cross-Appellee).	)	Judge, Presiding.

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JUSTICE BIRKETT delivered the judgment of the court.  
Justices Hutchinson and Burke concurred in the judgment.

**ORDER**

¶ 1 *Held:* In mother’s appeal, we upheld the trial court’s order granting father sole custody of child and awarding mother 50% visitation. Also, we found that the court did not err in allowing the guardian *ad litem* to testify. However, we reversed the portion of the order terminating father’s obligation to pay child support once the child was enrolled in Kindergarten. In father’s appeal, we held that father waived any claim that mother’s lack of response to his petition was an admission of its allegations. We reversed sections of the judgment order that stripped father, as sole custodian, of his power to choose the child’s daycare facility, set medical appointments, and choose physicians, and we remanded for the trial court to make those changes awarding father such power. We modified the portion of the order requiring father to provide medical insurance for the child. We reversed the trial court’s child support order based upon a miscalculation, and we remanded for a new calculation. We affirmed the trial court’s ruling to require both parents to pay statutory child support, and we affirmed the portion of order allowing both parties to claim the child as a tax exemption in alternating years. As in mother’s appeal, we affirmed the portion of the order granting mother 50% visitation with

the child. However, we reversed the portion of order prohibiting father from possessing firearms and ammunition on his property until the child turned 18 years of age.

¶ 2 Andrea R., petitioner, appeals the trial court's judgment awarding respondent, Kurt R., sole custody of the parties' daughter, M.A.R.R., and establishing custody, visitation, child support and other related issues. Specifically, Andrea claims that the trial court erred in: (1) granting sole custody to Kurt; (2) giving both parents equal visitation time; (3) allowing the GAL to testify; and (4) ruling that Kurt's obligation to provide child support terminated when M.A.R.R. was enrolled in Kindergarten. On cross-appeal, Kurt argues: (1) Andrea's failure to respond to his petition for temporary and permanent custody was a judicial admission of all the allegations set forth in his petition; (2) the trial court erred in the judgment order when it failed to give him, as sole custodian, the power to choose M.A.R.R.'s child care facility, set medical appointments, and change physicians; (3) the judgment order should be modified with regard to his obligation to provide medical insurance for M.A.R.R.; (4) the portion of the judgment order pertaining to child support contained several errors; (5) the trial court erred in awarding the parties equal visitation time; and (6) the trial court erred in prohibiting him from possessing firearms and ammunition on his property. For the following reasons, we affirm in part, reverse in part, modify in part, and remand for further proceedings.

¶ 3 We initially note that this appeal was accelerated under Supreme Court Rule 311(a) (eff. Feb. 26, 2010). Pursuant to that rule, the appellate court must, except for good cause shown, issue its decision in an accelerated case within 150 days of the filing of the notice of appeal. Ill. S. Ct. R. 311(a)(5) (eff. Feb. 26, 2010). Andrea filed her notice of appeal on July 2, 2014, and Kurt filed his cross-appeal on July 14, 2014. Thereafter, several motions were filed by the parties, and the last brief in this case was filed after the 150 day period had expired. In addition,

the parties have both raised several issues on appeal. We find these reasons to constitute good cause for this decision to be issued after the time frame mandated in Supreme Court Rule 311(a) (eff. Feb. 26, 2010).

¶ 4

#### I. BACKGROUND

¶ 5 The record reflects that Andrea and Kurt, who were never married, resided together in Kurt's home from the summer of 2012 until July of 2013. On January 30, 2013, Andrea gave birth to the parties' daughter, M.A.R.R. On July 20, 2013, Andrea moved out of Kurt's home and took their daughter with her. She moved into an apartment with her mother, Stephanie Appelle-R., with whom she was still living at the time of trial.

¶ 6 On August 12, 2013, Kurt filed a petition to establish the father-child relationship pursuant to the Illinois Parentage Act of 1984 (750 ILCS 45/1 *et seq.* (West 2012)) (Parentage Act). On September 23, 2013, Andrea filed a response to the petition and asked that it be denied. On October 8, 2013, the parties were ordered to submit to DNA testing to determine parentage. On October 30, 2013, Kurt filed a petition to establish a visitation schedule with M.A.R.R., and Andrea requested 21 days to respond. On October 31, 2013, Kurt was declared to be the biological father of M.A.R.R. That same day, the trial court entered an order requiring Kurt to pay \$553 per month (or \$255.34 bi-weekly) in temporary child support for M.A.R.R.

¶ 7 On January 14, 2014, Andrea secured an ex-parte order of protection denying Kurt all visitation. Following a hearing, the ex-parte order of protection was dismissed, and Kurt was granted visitation with M.A.R.R. for the first time on February 5, 2014. On March 5, 2014, Kurt filed for temporary and permanent sole custody, child support, and other relief pursuant to the Parentage Act. 750 ILCS 45/1 *et seq.* (West 2012). Thereafter, Andrea also filed for sole

custody, and the case was set for trial on June 17, 2014. On June 12, 2014, Andrea filed a motion for substitution of judge for cause, which was denied on June 16, 2014.

¶ 8 On June 17, 2014, Kurt's counsel informed the court that along with other petitions, it was presenting Kurt's petition for temporary and permanent custody, child support, and other relief, which was filed on March 5, 2014. Kurt's counsel noted that no response to that petition had been filed. The court responded that it would treat the lack of response as a general denial, and asked Andrea's counsel if that was acceptable. Counsel answered in the affirmative.

¶ 9 At trial, Andrea testified that she had a high school education along with some college credits. She was divorced but had no children with her former husband. She has one child, M.A.R.R. Andrea had been working at Canon Solutions for two months prior to trial and earned approximately \$39,000 per year. She had health insurance available through her employer, and \$43 per pay period was deducted from her paycheck to cover the premiums for her and M.A.R.R. Andrea said that she lived in a two-bedroom apartment with her mother. There is a courtyard in the apartment complex with grass in the front and back of the building, a swimming pool and a playground. She does not pay rent, but she buys groceries and cooks meals. Andrea estimated that she spends \$100 per month on groceries.

¶ 10 Andrea testified that she was currently dating Douglas Nygren, whom she has known for eight years. He spends overnights at her home occasionally, but he sleeps on the couch. With regard to daycare, Andrea said that M.A.R.R. has attended Debbie's Daycare in Roselle since November 2013. She did not talk to Kurt about registering M.A.R.R. at that daycare before she did so. She did not list Kurt as the biological father or as an emergency contact at the daycare center until ordered by the court to do so. Although she was notified that Kurt requested

visitation with M.A.R.R. on the Friday before Father's Day, she did not allow Kurt to visit with M.A.R.R. on that day because it was not listed in the court order.

¶ 11 Andrea said that on February 26, 2014, she spoke to police officer Thomas Johns from the Schaumburg police department. When asked whether she admitted to Officer Johns that she and a friend posted an advertisement on Craig's List, Andrea's counsel objected on the basis of a pending criminal proceeding. In response, Andrea invoked her Fifth Amendment right against self incrimination and did not answer the question. Andrea said that she did have a conversation with the guardian *ad litem* appointed in this case regarding a posting on Craig's List, but she again invoked her Fifth Amendment right when asked if she admitted to the guardian that she posted an ad on Craig's List.

¶ 12 Andrea testified that Kurt spent every other weekend and one day during the week with his two other daughters that he had from a previous marriage. When Kurt's other daughters visited his home he had very little interaction with them. They would often watch television or play on the computer. Andrea would put videos on for the girls and she would sit down with them and watch the videos without Kurt. When she lived with Kurt he had a gun safe in his bedroom closet. He had gas masks, hazmat suits, cross bows, knives and throwing starts in the safe. The safe had a touch-padlock on it. Andrea said the touch-padlock would prevent the children from getting into the safe without a special code.

¶ 13 Andrea testified that on April 18, 2013 and June 2, 2013, Kurt told M.A.R.R.'s pediatrician that he did not want M.A.R.R. to be vaccinated. However, after Andrea left Kurt's home in July 2013 M.A.R.R. did receive vaccinations. On August 13, 2013, Andrea called the pediatrician's office to make an appointment for M.A.R.R. to be vaccinated. She told Kurt about the appointment. According to Andrea, the pediatrician's office called her back and told her that

Kurt had called the office and told them that M.A.R.R. could not be vaccinated because he was the primary insurance holder and he objected to the vaccinations. Andrea cancelled the appointment and rescheduled it for another time. At the time of trial M.A.R.R. was almost up to date on her vaccinations. M.A.R.R. was in a DCFS licensed in-home daycare, Debbie's Daycare, in Roselle, Illinois. Kurt had talked about placing M.A.R.R. in a different daycare facility in the future, but that daycare was not licensed by DCFS.

¶ 14 After she left Kurt's house in July 2013 Andrea took M.A.R.R. to see Kurt twice that month. After that he did not see the baby until February 2014. On January 4, 2014, Kurt called her several times throughout the day and into the evening. She ignored his phone calls. At 10:45 p.m. that evening, the doorbell rang. She was at home with her boyfriend, her mother and her mother's boyfriend. She was afraid Kurt was at the door, so she called the police. The police told her that an officer was at her door to do a well check and make sure that M.A.R.R. was okay. The doorbell woke up M.A.R.R., who had been sleeping.

¶ 15 After an agreed visitation schedule was in place Andrea refused to allow Kurt his visitation day in March 2014 because M.A.R.R. had a cold and the doctor said she should stay home and rest. Kurt refused to make up the visitation and told Andrea that he would instead be at their meeting place, a gas station, at 5:30 p.m. She told Kurt that he would be waiting there a long time because she was not meeting him to hand over M.A.R.R. to him. A few days later Kurt said that he would like to have M.A.R.R. for the entire weekend. Andrea said that she did not think one missed two-hour visitation entitled him to an entire weekend. Andrea offered to let him have M.A.R.R. for one night only. After the guardian got involved Kurt agreed to only one overnight visit. Andrea said the visit went very well and that M.A.R.R. came home happy.

¶ 16 Andrea testified that she was asking the court for sole custody because she had taken care of M.A.R.R. every day since her birth with little or no help from Kurt. She had stayed up with her all night when she was sick and teething. She gave birth to M.A.R.R. and took excellent care of herself while pregnant. She said that ever since she left Kurt she has tried to get him to see M.A.R.R. but he has declined every single time. She had invited Kurt to M.A.R.R.'s first birthday party, along with his two other daughters, but he declined. She believed that M.A.R.R. would be better off with her than Kurt because she was all that M.A.R.R. knew. Her family loved M.A.R.R. and she loved them. When asked if she were to get custody of M.A.R.R. whether she would encourage and foster a relationship between her and Kurt, Andrea answered that she had been trying to do that this entire time. If granted custody, she would allow Kurt to have visitation with M.A.R.R.

¶ 17 On cross-examination, Andrea testified that on January 17, 2014, she filed an order of protection against Kurt. The order prohibited Kurt from having contact with Andrea or M.A.R.R., and it was in effect on M.A.R.R.'s first birthday. With regard to vaccinations, Andrea admitted that although she left Kurt in July 2013, she signed forms at the pediatrician's office on September 5, 2013 and October 7, 2013, denying vaccinations for M.A.R.R.

¶ 18 With regard to Kurt owning guns, Andrea said that she knew since 2009 that Kurt owned guns. She said she had no problem with Kurt owning guns because she did not live with him at that time. However, she then admitted that she later lived with him until 2013.

¶ 19 The trial court asked Andrea if Kurt had not seen M.A.R.R. from the time she moved out in July 2013 until the visitation order was in effect in February 2014. Andrea said that she took M.A.R.R. to see Kurt twice, once on July 24, 2014 and then again on July 28, 2014. After that time he had not seen M.A.R.R. until February 2014. She admitted that Kurt filed a petition for

paternity and also requested visitation with M.A.R.R. three weeks after Andrea moved out of Kurt's home in July 2013.

¶ 20 On redirect examination, Andrea's counsel asked her about the time she denied vaccinations for M.A.R.R. on September 5, 2013. She explained that the doctor wanted to give M.A.R.R. four vaccinations at once, but Andrea wanted the vaccinations split up so she only agreed to two vaccinations at that appointment. On October 7, 2013, the same thing occurred and Andrea only allowed the pediatrician to give one of the two vaccines offered that day. She went back to the pediatrician on another occasion and had M.A.R.R. receive the other vaccine.

¶ 21 Andrea testified that on February 17, 2014, she pulled into the gas station that had been agreed upon as a meeting place to transfer M.A.R.R. between the parties. Kurt pulled up in his vehicle, took M.A.A.R. out of his truck and placed her in the car seat in Andrea's vehicle. After Kurt strapped her into the car seat M.A.R.R. began hysterically crying. Kurt slammed the car door and left. When Andrea got M.A.R.R. home and gave her a bath she saw that her hand was red and swollen and had scratches all over it. She contacted Kurt and he said that he noticed her hand, but he had also noticed that M.A.R.R.'s diaper rash was very bad and that Andrea should contact the day care provider.

¶ 22 On re-cross examination, Kurt's counsel asked Andrea if in response to Kurt's email telling her to contact the day care provider about M.A.R.R.'s diaper rash she told Kurt that if he continued to call her she was going to call the police for harassment. Andrea denied ever making that comment.

¶ 23 Kurt testified that he was 37 years of age, had a college degree and worked as a chief mechanical engineer at MGN Consulting where he earned \$76,500 per year. He currently had health insurance through his employer, but the company was discontinuing their group insurance



program as of July 1, 2014. Therefore, he had already established individual private coverage through a private HMO plan.

¶ 24 Kurt had known Andrea for five and a half years, and had a daughter with her, M.A.R.R., who was 16 ½ months old at the time of trial. He was divorced with two other daughters from a prior marriage, and he had routine visitation with those children. He currently resided at 1120 Hampton Harbor in Schaumburg. That home is a two-story condominium with attached garage, two bedrooms and one and a half baths. M.A.R.R. currently has her own bedroom at his home. When his two other daughters, ages eight and five, visit him, they sleep in bunk beds in M.A.R.R.'s room. The children have the master bedroom and he sleeps in the smaller bedroom. M.A.R.R. seems to recognize Kurt's other daughters and smiles when she sees them. His other daughters love M.A.R.R. very much. They read to her and play with her often. Ever since the court had granted Kurt visitation, his parents have been with him to see M.A.R.R., and M.A.R.R. seemed to enjoy spending time with Kurt's parents very much. Kurt said that he has a brother and sister, but his brother has not met M.A.R.R. because he has not spoken to him since before M.A.R.R. was born. According to Kurt, their estrangement stemmed from his sister-in-law's anger at him because she learned that his brother was having an affair and that Kurt knew about it but did not tell her. Kurt said there was a possibility to "mend things" but right now he and his brother only communicated through birthday and Christmas cards. However, his sister had met M.A.R.R. on five or six occasions.

¶ 25 When Kurt has visitation with M.A.R.R. he reads books to her, plays blocks with her and spends time with her outside. According to Kurt, he and Andrea are in agreement about Dr. Voight as M.A.R.R.'s current pediatrician. Dr. Voight is the pediatrician for Kurt's two older daughters and he has known her for seven years. He has no plans to change M.A.R.R.'s

pediatrician, but if he did he would first talk to Andrea about it, then he would check to see if the physician was in his HMO plan, and then he would review their credentials. He currently provides medical insurance for M.A.R.R. through his employer's plan, but when he switches to an individual HMO plan on July 1, 2014, M.A.R.R. will be covered on that plan as well. The HMO plan costs \$300 per child and \$40 for dental.

¶ 26 Kurt currently schedules M.A.R.R.'s doctor appointments because in the past insurance forms were improperly filed. He talked about one instance in which there was an \$800 charge and he could not submit any documents to the insurance company because he could not get any information on the charges from Andrea. It required Kurt's attorney to have a subpoena issued and obtain medical releases signed by Andrea in order to get the needed information. That entire process took seven months. When he sets the doctor appointments now he informs Andrea in advance of the appointments and Andrea had attended all but two of the doctor appointments that he has made for M.A.R.R. Andrea cancelled an appointment to get M.A.R.R. vaccinated in May 2014 because she thought the child was too sick at the time to be vaccinated. She did not inform Kurt of the cancellation. Andrea has also scheduled doctor appointments for M.A.R.R., however, she has never advised him of those appointments.

¶ 27 Kurt is currently listed as M.A.R.R.'s biological father with Dr. Voight's office. He gave the information to Dr. Voight's office and listed Andrea as the biological mother. Kurt testified about one occasion where Andrea requested access to the physician's parent portal. Kurt had never logged into the portal before, but he gave Andrea the password. According to Kurt, Andrea changed the information in the portal around so that his address and zip code were incorrectly listed. He said that M.A.R.R. was not up to date on her vaccinations yet, but she was

in the process of getting up to date. Kurt testified that he and Andrea were now in agreement on the issue of M.A.R.R. being vaccinated.

¶ 28 Kurt said that in December 2014 Andrea texted Kurt and told him that the daycare facility that she was using for M.A.R.R., Debbie's Daycare, was near the gas station that the parties used as a drop off point. He had not been informed of the name of the daycare until that point. He had requested records from the daycare, but the only thing he was able to get was the contract and the emergency contact information. No biological father was listed on those documents, and Andrea's mother was listed as an emergency contact. The people listed as authorized to pick up M.A.R.R. were Andrea's mother and father and Andrea's current boyfriend. Kurt was not listed. When Kurt went to Debbie's Daycare after the court ordered visitation for him he asked to see a copy of the authorization form and it was blank. Someone from the daycare handed him a pen and he wrote his name in the margins because there was no space for other names. He currently is listed as the second emergency contact, after Andrea's mother. Kurt said that if he were granted custody, he would keep M.A.R.R. at Debbie's Daycare. However, he said that he had an alternate sitter also, a woman named Pam Ziemer, who has watched his other two children for years. Ms. Ziemer's daycare is located about three miles from Debbie's Daycare.

¶ 29 Kurt said that he refers to Andrea as "mommy" in M.A.R.R.'s presence. In order to promote the mother-child relationship Kurt continues with phone calls to Andrea when he has overnight visits and keeps Andrea informed as to all appointments.

¶ 30 Kurt testified that other than a minor traffic ticket he has never been convicted of a criminal act. With regard to his gun collection, he said he owns 11 guns. He has four pistols, one shotgun, and the rest were rifles. He has a FOID card but not a concealed carry card. The

guns are kept in a safe in his bedroom, and the door to his bedroom has a key pad access code on it. He keeps his bedroom door locked when the children are around. Andrea has fired some of the guns before at a shooting range, and she was not bothered by him having guns in the house when she lived with him.

¶ 31 Kurt next identified his financial disclosure statement which was dated March 31, 2014. That statement indicated that he earned \$6,059 per month. With regard to monthly deductions, he listed \$1,084 in federal tax, \$295 in state tax, \$464 in social security, \$572 in health insurance premiums, and \$1,600 in prior support obligations that he was paying pursuant to a court order. He testified that the income listed on the financial affidavit was the same at the time of trial, but that his insurance premiums will be increasing. He also identified his 2013 tax return which indicated the he earned \$68,844 that year. Finally, he identified several paychecks from his employer dated between January and May 2014. Those paychecks indicated that Kurt was paying \$800.38 bi-weekly in child support. Kurt indicated that the child support was for his two daughters from his prior marriage as well as M.A.R.R. The financial affidavit, his 2013 tax returns, and his paychecks were all admitted into evidence.

¶ 32 According to Kurt, Andrea initially refused Kurt visitation with M.A.R.R. at his first court-ordered visitation because Kurt said she had to turn herself into the Schaumburg police department. Ultimately, the parties rescheduled the time to meet at the designated gas station and exchange M.A.R.R. Both Kurt and Andrea arrived early, but when Kurt tried to open Andrea's car door to retrieve M.A.R.R. he found it was locked. Andrea pointed at her watch and indicated that it was not yet 5:30 p.m. It was cold outside, but Kurt stood outside until exactly 5:30 p.m., and then Andrea got out of her car and handed M.A.R.R. over to him. Andrea introduced M.A.R.R. to him as "Kurt." At the next visitation, Andrea again made him wait until

exactly 5:30 p.m. to hand off M.A.R.R. When he got home with M.A.R.R. he noticed that she had scratches on her hand, but they did not look serious. Later Andrea contacted him and told him that he had scratched M.A.R.R.'s hand and hurt her. A few days later, Andrea contacted the Department of Children and Family Services (DCFS). DCFS then contacted him and he gave DCFS a statement. Kurt said that ultimately DCFS determined that the claim was unfounded.

¶ 33 On his third visitation, Andrea approached Kurt's truck at the gas station. She claimed that Kurt had scratched M.A.R.R.'s hand. Kurt denied ever scratching the child's hand, and then he took M.A.R.R. back to his home. Five minutes after he returned home the police came to his door for a well check. The police stayed about 20 minutes and left. After another visitation, when Kurt dropped M.A.R.R. off to Andrea and was pulling away, Andrea approached his truck with M.A.R.R. in her arms which blocked him from backing up out of the parking space. Andrea was complaining that M.A.R.R. had a strange smell about her, like she had been sprayed with perfume or she smelled like curry. Kurt said that he was blocking traffic so he asked Andrea if he could leave. Andrea told Kurt that his eyes looked glazed and Kurt responded that that was Andrea's perception.

¶ 34 On cross-examination, Kurt said that he initially filed a petition for joint custody on August 12, 2013. At the time he filed for joint custody he thought the process would work out better than it had. When asked whether he had four children, he responded "not officially, no." He was then asked if he had a son named Lucas, and he said he was not named as Lucas' father on any paternity agreement or birth certificate, and that he did not see Lucas.

¶ 35 Kurt acknowledged a "refusal to vaccinate" document generated by the American Academy of Pediatrics that he signed on April 18, 2013, denying M.A.R.R. vaccinations. He also initialed a vaccine denial form on June 3, 2013. He believed that the chickenpox vaccine

was unnecessary. Instead of a vaccine, he believed in “chickenpox parties” where a child who has the virus intentionally exposes other children to the virus. Kurt admitted to signing a letter on March 11, 2013, denying M.A.R.R. vaccinations on religious grounds. He signed the letter “Reverend Kurt P. Rederer, MSD.” He said that he was a reverend with the Universal Life Church. When asked if only he and another individual were members of that church, Kurt answered “no.”

¶ 36 Kurt also admitted to sending an email to his family in October 2012 in which he said that he had problems with lying. With regard to his gun collection, Kurt said that he owned seven or eight semiautomatic rifles that he kept in a safe in his bedroom. Kurt believed that it was up to the parent to ensure that there was proper supervision when allowing a child to use a gun.

¶ 37 With regard to Andrea’s refusal to allow him to see M.A.R.R. on Father’s Day, Andrea’s counsel asked him why he waited until two days before trial to ask if he could see M.A.R.R. on Father’s Day. Kurt said that he assumed he would have visitation that day because he allowed Andrea to have M.A.R.R. on Mother’s Day in the agreed visitation order, even though Mother’s Day fell on his birthday. He did not think they needed court orders to exercise visitation on Father’s Day, which was unfortunate.

¶ 38 On the second day of trial, Andrea’s attorney made an oral motion *in limine* to bar the guardian *ad litem*’s (guardian’s) testimony on the ground that section 506 of the Illinois Marriage and Dissolution of Marriage Act (Act) provides that a guardian may be appointed to address the issues the court delineates, and the order appointing the guardian here did not have any boxes checked with regard to her duties. See 750 ILCS 5/506 (West 2012). In ruling on the objection, the trial court held that the fact no boxes were checked on the order form was not a fatal flaw

since the guardian had been involved in this case since December 2013, all the parties had participated with her, and no one had complained that another party needed to be compelled to participate with the guardian. Therefore, the court held, although the boxes in the order should have been checked, the failure to do so was an administrative and not substantive error.

¶ 39 Kim DiGiovanni, the guardian appointed in this case, testified that in the course of her investigation she had met with both Andrea and Kurt and had seen their residences. She met with Kurt's father in court but not independently, and she also met with Andrea's mother at her residence. On April 12, 2014, she met with Andrea and her mother when M.A.R.R. was with Kurt. During that conversation, Andrea's mother interjected repeatedly regarding her intense dislike of Kurt. She called him names, and said that she and Andrea would have conversations about Kurt while M.A.R.R. was in the home but sleeping. Specifically, Andrea and her mother talked about the fact that they believed Kurt was not paying enough financial support for M.A.R.R. Andrea's mother said that Kurt could "charm the skin off a snake" and she called him a deadbeat.

¶ 40 Although the guardian could not testify as to what Andrea said about a particular Craig's List posting because Andrea had asserted her Fifth Amendment right against self incrimination, she did testify that Kurt made her aware of a posting on Craig's List. What disturbed her the most about this posting was that it happened on a Tuesday, when Kurt had his two other daughters at his residence. On the day the posting occurred, there were over 100 text messages or phone calls to Kurt, and "potentially people showing up at his residence" which could have placed the two other children in harm's way.

¶ 41 The guardian said that she had access to Our Family Wizard and she had reviewed messages between Kurt and Andrea that they had sent each other over the last six months. She

considered several of the text messages to be disturbing. Specifically, on March 18, 2014, Andrea texted Kurt and part of the text read, “I hope you seek help for your apparent mental illness. You’re frightening me with your lack of concern for [M.A.R.R.] \*\*\*”. On that same day Andrea also texted Kurt and part of that text read, “I will make sure that her true, foremost daddy is aware of her condition, as your concern for her is so very overwhelming to me right now.” Another text from Andrea on the same day read, “You’re not contemplating suicide like you used to do, are you? It would always worry me when I had to talk you down from not putting a gun in your mouth. Remember that suicide forum your ex-wife found that can be probably traced to your computer? Do you still have the suicide note you wrote your brother? I’m worried, Kurt. Do you need me to call someone?”

¶ 42 The guardian testified that Andrea had contacted her about M.A.R.R. coming home from visitations with Kurt smelling like strong perfume. She noted that there were also many messages in Our Family Wizard about this issue. Specifically, on March 10, 2014, Andrea wrote, “I will take her to the hospital and advise the staff that you’re intentionally spraying cologne or perfume on an infant as this is what you are doing apparently.” The guardian then referred to several other emails from Andrea to Kurt where Andrea noted that Kurt’s eyes were glassy and she hoped he was not consuming alcohol for 12 hours prior to a visit per the court’s order, and another one referring to M.A.R.R.’s hand being red after a visit with Kurt where Andrea said that M.A.R.R. had suffered injuries while in Kurt’s care. The guardian also noted that on March 18, 2014, Andrea wrote, “[Y]ou are mentally abusing the baby by drilling in her head that you are her daddy when she willingly called someone else daddy because he has been in her life. That is wrong and not in her best interest. It’s cruel that you were absent from her



life for so long, and now you're expecting these things from an infant. How can you be so emotionally harmful to a child? It's very sad and the proper individuals will be advised of this."

¶ 43 With regard to the issue of M.A.R.R.'s hand being allegedly injured by Kurt, the guardian talked to the DCFS investigator and looked at a picture of M.A.R.R.'s hand that Andrea sent her. She also talked to Kurt about the incident. The guardian noted that the DCFS report came back that the claim was unfounded, and the picture indicated that although M.A.R.R.'s hand was red and had maybe a couple of scratches, she did not see any bruising.

¶ 44 The guardian said that she emailed Andrea about allowing Kurt to have visitation with M.A.R.R. on Father's Day. Andrea responded by saying "please talk to my attorney about that." The guardian then copied Andrea's response to her attorney, and he responded to the guardian the day after Father's Day.

¶ 45 When asked about her observations regarding each parent's parenting skills, the guardian said that she believed Andrea took very good care of M.A.R.R., and that both residences were clean. She said that after meeting with both Andrea and Kurt it was evident that they always had a difficult relationship. She noted there were seven police reports from the Schaumburg police department from March 2012 through January 2014. With regard to each parent's skills in promoting the parent-child relationship with the other parent, the guardian said that this was a pretty clear case and she did not think Andrea was capable of facilitating a relationship with Kurt at all.

¶ 46 The trial court then asked the guardian for her recommendation as to custody based upon her investigation and observation. Andrea's counsel objected and said that he had not seen a report from the guardian. The trial court overruled the objection, and noted that the guardian was not statutorily mandated to submit a written report. The guardian said that based upon her

investigation she would recommend that Kurt have sole custody of M.A.R.R. and for Andrea to have significant and liberal visitation with the child. With regard to visitation, the guardian said that she had drafted a parenting agreement giving Andrea visitation every other weekend for extended weekends and one night during the week when she did not have weekend overnight visitation, along with three weeks of summer and alternating holidays and Winter/Spring breaks.

¶ 47 On cross-examination, the guardian said that she was aware that Kurt had called the police on Andrea for a wellness check during these proceedings. She also noted that she was a party to the agreed order dated April 9, 2014, and that Father's Day was not listed as one of Kurt's visitation days on that order. She was aware of one incident in March 2014 where both parents were at the hospital with M.A.R.R. and they seemed to get along with each other. The guardian agreed that she had only been on My Family Wizard one time since May 27, 2014. After some discussion about other messages between the parties that were located on Our Family Wizard, it was discovered that the guardian was not able to access those messages because the parties did not copy her on them.

¶ 48 With regard to which parent should be responsible for the medical care of M.A.R.R., the guardian said, "[B]ased upon the issue with the chicken pox that I heard during the deposition and in court and based upon the vaccinations, I do believe that the mother, and I don't know if— I don't know how this would work, but mother making the medical decisions is something that I think would be in the child's best interest due to the vaccination issue."

¶ 49 Andrea's counsel then asked the guardian if Kurt had ever made any positive comments about Andrea, and the guardian replied that he had. Specifically, she said that Kurt told her on numerous occasions that he knew the mother should be involved in M.A.R.R.'s life. When asked whether she had ever contacted Kurt's brother or sister-in-law about why they do not

speak to each other, the guardian said that she did not, but that Kurt told her they had an argument about some infidelity that occurred between Kurt's brother and his wife, and that there were some accusations that Kurt drank too much.

¶ 50 Stephanie Appele-R., Andrea's mother, testified that she had been to Kurt's house every weekend and a few days during the week after M.A.R.R. was born and during the time that Andrea and Kurt lived together. When Kurt's two other daughters visited him she saw the children "constantly running around rampant, fighting and running amok" while Kurt smoked cigarettes and drank alcohol in the garage. Andrea would try to settle the girls down and get them to stop fighting, but most of the time it would not work. Stephanie said that after Andrea broke up with Kurt Stephanie hated him. She said she had seen guns in Kurt's house. He kept them in a safe, but he opened the safe up and showed them to Stephanie. The safe was located in Kurt's bedroom closet.

¶ 51 On cross-examination, Stephanie admitted that she had texted Kurt after Andrea moved out. In her texts she called Kurt a sperm donor and a deadbeat, useless piece of flesh. On redirect, Stephanie said that the texts referring to Kurt as a sperm donor and a deadbeat were incomplete. The trial court then ordered Andrea's counsel to read the texts from Stephanie's cell phone and admitted them into evidence. One text stated, "[I]t is rather interesting that you always seem to, quote, care about [M.A.R.R.] with encroaching court dates but not when the mother calls you needing help with the child's medicine. Your behavior is deplorable. There is no court ordered visitation in place even though it has been offered to you by her without a set court order. Your voicemails indicate you were intoxicated and report nonsensical content." Other texts written by Stephanie were also admitted into evidence. Specifically, one referred to Kurt as a hypocrite for having the police come to Stephanie's home late at night to check up on

M.A.R.R., and another one told Kurt to stop communicating with them and that Andrea would not respond to Kurt's immature, psychotic behavior. Stephanie then testified that she thought she could put aside her dislike to Kurt and help foster the family relationship.

¶ 52 Angel R., Andrea's father, also testified. He and his wife Stephanie were currently separated but their relationship was "friendly." He babysat for M.A.R.R. often, both at Kurt's home and at Stephanie's apartment. He believed that Andrea took good care of M.A.R.R. Angel had met Kurt many times and he had been to Kurt's house on several occasions. He saw several weapons at Kurt's house, specifically "AR-15s, AK-47s and Glocks." He said Kurt had a safe where he stored the guns. Angel thought that every weapon Kurt had was semiautomatic because Kurt told him they were, and that he also knew his weapons. He did not own any guns, but he was familiar with weapons because he had seen them on television many times. He saw the guns in Kurt's safe, but he also saw a gun laying on the garage floor on one occasion. He could not give the court a specific date as to when he saw the gun in the garage, but he said it was during the time when Andrea was living with Kurt.

¶ 53 Angel testified that when Andrea lived with Kurt Angel was concerned for M.A.R.R. because of "the weapons and the alcohol." He thought both Andrea and Kurt consumed too much alcohol. Specifically, he referred to an incident in June 2013 when Kurt and Andrea were going camping and he said they both had been drinking alcohol, and it was not a healthy situation. He had seen Kurt drink on several other occasions, but could not remember seeing him intoxicated other than that time. He had been to Kurt's home about ten times, and eight out of those ten times he had seen Kurt drinking. However, Angel then said that he had nothing bad to say about Kurt.

¶ 54 On cross-examination Angel said that he did not own any weapons, he did not have a FOID card, and he had never owned a weapon or fired one. However, he knew all about guns from reading books. The trial court then asked Angel if he knew whether Andrea has ever fired a weapon. He said that although she does not own a weapon she has a FOID card and he thought she had fired a weapon in the past.

¶ 55 After the court heard closing arguments, on June 26, 2014, the trial court entered a judgment order which incorporated a letter opinion in which the court set forth its findings. The trial court found that the parties lacked the requisite ability to jointly parent their child, and therefore awarded Kurt sole custody of M.A.R.R. In doing so, it noted that it had considered all relevant factors as set forth in section 602 of the Act. 750 ILCS 5/602 (West 2012). The court specifically noted that neither party offered any evidence that the child was not adjusted to her home, school and community. After reviewing the facts of the case, the court found that Andrea's mother was so biased as a witness to make her testimony incredible. It also found that Andrea's father's testimony about guns was incredible because he stated that his knowledge of guns came from watching a lot of television and he had never owned or fired a gun. With regard to Andrea, the court said that it did not doubt that she loved M.A.R.R., but that she failed to see the impact her palpable hatred for Kurt had, and will continue to have, on her child. It noted that Andrea's anger was evident at trial. It referred to her testimony that she failed to list Kurt as the father on the daycare registration form, handed the baby over to Kurt and told the baby "here's Kurt," and believed that Kurt was not entitled to visitation on Father's Day because it was not in the court order. The court also referred to the email threads that the guardian testified about, including the one where Andrea said she will "make sure that her *true for most daddy*" (emphasis added) (referring to her boyfriend) was aware of M.A.A.R.'s condition.

¶ 56 The court also found that although Andrea asserted that Kurt failed to see M.A.R.R. from July 2013 until February 2014, Kurt had no visitation rights until a hearing was set for January 22, 2014, and one week before the hearing Andrea secured an emergency ex-parte order of protection which denied him all visitation. It also found that Andrea's claim that M.A.R.R. was scratched when Kurt placed her in a car seat was not credible and was unsupported by any evidence other than her assertion. With regard to the parents' willingness and ability to facilitate and encourage a close and continuing relationship between the other parent and the child, the court found that Andrea was unable to do so at this time. It found that she had taken deliberate steps to impede Kurt's relationship with M.A.R.R. and if she were awarded sole custody Kurt's efforts to have any kind of meaningful relationship with M.A.R.R. would continue to be thwarted.

¶ 57 With regard to Kurt's gun collection, in its letter opinion the trial court noted that Kurt, Andrea and both of Andrea's parents testified that guns were kept in a locked safe in a closet and behind a locked door to Kurt's bedroom. Although Andrea's father testified that he once saw a gun in the garage, the court found that he had no specific information about this incident and no one else corroborated it. However, then the court found that it did "not wish to minimize the concern it has for the child's safety, and finds that it is not in the best interests of a child to have multiple guns and ammunition in a home." In the judgment order, the court ordered Kurt to remove all guns and ammunition from his home within 24 hours and ordered that guns were not permitted back into the home at any time until the child has attained the age of 18.

¶ 58 The court then turned to the issue of vaccinations. In its letter opinion it said that it was concerned with both parents' decisions in the child's early life to not vaccinate her. However, it noted that Andrea changed her mind and began the immunizations after she moved out of Kurt's

home and the court agreed with that decision. Therefore, the court found that requiring Andrea to be responsible for scheduling the child's medical, dental and optical appointments was in the best interests of the child. In addition to this provision, the judgment order also ordered that neither Kurt nor Andrea shall change the child's current treating pediatrician, dentist and eye-care providers, and the child shall be vaccinated in accordance with all federal and state guidelines.

¶ 59 Although the court awarded sole custody to Kurt, with regard to visitation, the court split the daily visitation time equally between the parties. Holidays and vacation times were split equally as well.

¶ 60 Regarding child support, the court made the following findings in its letter opinion:

“The current schedule calls for equal parenting time, so guideline support from each parent is warranted. Guideline child support from Andrea to Kurt would be \$533 per month and guideline child support from Kurt to Andrea would be \$941 per month. Therefore, the court finds a basis to deviate and to order Kurt to pay Andrea the sum of \$408 per month as and for his contribution to child support.”

¶ 61 In the judgment order, after noting that Kurt was obligated to pay Andrea \$408 per month for child support, the trial court ruled that “[o]nce the child is enrolled in Kindergarten Andrea shall pay guideline support to Kurt and he will have no further obligation to pay support.” Kurt was allowed to claim M.A.R.R. as a dependent in all even numbered years, and Andrea was allowed to claim her as a depending in all odd numbered years.

¶ 62 As for health insurance, Kurt was ordered to pay health insurance for M.A.R.R. through his employer. With regard to daycare, the court ordered that M.A.R.R. shall remain in Debbie's Daycare and if that facility was not available, then whichever parent had the child that parent

shall utilize a licensed daycare facility if a family member is not available. Also, if one parent used another facility or family member, that parent shall assume the sole costs of that child care.

¶ 63

## II. ANALYSIS

¶ 64 On appeal, Andrea claims that the trial court erred in: (1) granting sole custody to Kurt; (2) giving both parents equal visitation time; (3) allowing the GAL to testify; and (4) ruling that Kurt's obligation to provide child support terminated when M.A.R.R. was enrolled in Kindergarten. Kurt cross-appeals, and argues: (1) Andrea's failure to respond to his petition for temporary and permanent custody was a judicial admission of all the allegations set forth in his petition; (2) the trial court erred in the judgment order when it failed to give him, as sole custodian, the power to choose M.A.R.R.'s child care facility, set medical appointments, and change physicians; (3) the judgment order should be modified with regard to his obligation to provide medical insurance for M.A.R.R.; (4) the portion of the judgment order pertaining to child support contained several errors; (5) the trial court erred in awarding the parties equal visitation time; and (6) the trial court erred in prohibiting him from possessing firearms on his property.

¶ 65

### A. Record on Appeal

¶ 66 We initially note that in his reply brief as cross-appellant, Kurt, acting *pro se* on appeal, argues that although Andrea refers to a "trial transcript" throughout her memorandum of law and reply memorandum of law, the trial transcripts were not timely filed and therefore there is no report of proceedings in this court. Accordingly, Kurt requests this court to strike all assertions and arguments associated with Andrea's references to a "trial transcript."

¶ 67 Illinois Supreme Court Rules 321 and 324 require that an appellant provide a complete record on appeal, including a bound and certified copy of the report of proceedings. See Ill. S. Ct. R. 321 (eff. Feb. 1, 1994); R. 324 (eff. May 30, 2008). It is well settled that "[a]n appellant



has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with the law and had a sufficient factual basis.” *Foutch v. O’Bryant*, 99 Ill. 2d 389, 391-92 (1984). “Any doubts which may arise from the incompleteness of the record will be resolved against the appellant.” *Id.* at 392.

¶ 68 Here, the official electronic record in this case consists of one common law record and one impounded common law record. The “hard” record also consists of one envelope of exhibits. However, we note that two electronic reports of proceedings have been prepared in this case and were certified by clerk of the circuit court. Nevertheless, it has not been made a part of the official record because Andrea’s counsel has failed to move this court to supplement the record. As Kurt points out, it is the appellant’s responsibility to provide a complete record on appeal, and any arguments not supported by the record can be forfeited. However, we note that as cross-appellant, Kurt also had the duty to provide a complete record on appeal to support his claims of error, and he has not done so. *Id.* (cross-appellant also bears the burden of providing a sufficiently complete record to support his claim of error). Since the reports of proceedings have been certified on appeal, and the parties do not appear to be in dispute about the contents of the trial transcripts, we find that it would not be in M.A.R.R.’s best interest to forfeit both parents’ issues on appeal. Therefore, on this court’s own motion we order that the electronic record on appeal be supplemented to include the certified reports of proceedings.

¶ 69 **B. Andrea’s Appeal**

¶ 70 Again, on appeal Andrea argues that the trial court erred in: (1) granting sole custody to Kurt; (2) giving both parents equal visitation time; (3) allowing the GAL to testify without

having prepared a written report; and (4) ruling that Kurt's obligation to provide child support terminated when M.A.R.R. was enrolled in Kindergarten. We will address each claim in turn.

¶ 71

1. Sole Custody

¶ 72 Andrea first argues that the trial court erred in granting sole custody to Kurt when all the factors in section 602 of the Act favored a custody determination in her favor. 750 ILCS 5/602 (West 2012).

¶ 73 When making a custody determination, a trial court shall determine custody in accordance with the best interest of the child by considering all relevant factors, including: (1) the wishes of the child's parents as to custody; (2) the wishes of the child as to her custodian; (3) the interaction and interrelationship of the child with her parents, siblings and any other person who may significantly affect the child's best interest; (4) the child's adjustment to her home, school and community; (5) the mental and physical health of all individuals involved; (6) the physical violence or threat of physical violence by the child's potential custodian, whether directed against the child or directed against another person; (7) the occurrence of ongoing or repeated abuse, whether directed against the child or another person; (8) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child; (9) whether one of the parents is a sex offender; (10) the terms of a parent's military family-care plan, if applicable. 750 ILCS 5/602(a) (West 2012). A trial court's determination regarding custody is given great deference because that court is in a superior position to judge the credibility of the witnesses and determine the best interests of the child. *In re Marriage of Lonvick*, 2013 IL App (2d) 120865, ¶ 33. We will not disturb a trial court's custody decision unless it is against the manifest weight of the evidence. *In re Marriage of Iqbal*, 2014 IL App (2d) 131306, ¶ 55. A judgment is against the manifest weight of the

evidence when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary or not based upon the evidence.” *Lonvick*, 2013 IL App (2d) 120865, ¶ 33.

¶ 74 After carefully reviewing the factors in section 602 of the Act we have determined that the trial court’s order granting sole custody to Kurt was not against the manifest weight of the evidence. In its letter opinion, which was incorporated into the judgment, the court made specific findings as to why granting sole custody to Kurt was in M.A.R.R.’s best interest. The court noted that there was no doubt that Andrea loved M.A.R.R., but that Andrea failed to see the impact her palpable hatred for Kurt had, and will continue to have, on M.A.R.R. When reviewing the interaction of the child between her parents, siblings and others, the court also pointed to Andrea’s mother’s hatred for Kurt, and it found the rest of her testimony to be incredible based upon her extreme bias against Kurt.

¶ 75 Andrea argues that the fourth factor, the child’s adjustment to her home, school and community, favors her because she decided to put M.A.R.R. in a DCFS licensed day care. We fail to see how her decision to put M.A.R.R. in Debbie’s Daycare is relevant to a custody determination. In its letter opinion the trial court noted that neither party offered any evidence that the child was not adjusted to her home, school and community. The undisputed facts are that M.A.R.R. lived with both parents for the first six months of her life until Andrea moved out of Kurt’s home and took M.A.R.R. with her. Although Kurt did not see M.A.R.R. from July 2013 until February 2014, Kurt had no visitation rights to M.A.R.R. until February 2014.

¶ 76 Andrea also claims that the fifth factor, the mental and physical health of all individuals involved, favors her because while there was no expert testimony of Kurt’s mental health, “his panic room, gun collection, reverend of a non-existent religious cult, and irrational letter on

vaccines” indicates that he has mental health issues and is a risk to M.A.R.R. We are not persuaded. First, Kurt did not testify that he had a “panic room.” Second, the fact that he legally collected guns has no bearing on his mental health status. Third, there was no testimony that Kurt was a reverend of a “non-existent cult.” When Andrea’s counsel asked Kurt if he and another individual were the only members of the Universal Life church Kurt answered “no.” Fourth, the letter that Kurt signed stating that he did not wish to have M.A.R.R. vaccinated does not put his mental health into question.

¶ 77 Andrea also claims that Kurt’s gun collection and religious beliefs present a threat of physical harm to M.A.R.R. The record is devoid of any evidence to support this assertion. We agree with the trial court that the only testimony offered about physical violence was Andrea’s claim that Kurt scratched M.A.R.R.’s hand. The court found Andrea’s testimony that M.A.R.R. was injured while in Kurt’s care was not credible or supported by any evidence other than her assertion, and we agree with that finding.

¶ 78 Finally, Andrea argues that the trial court erred in granting Kurt sole custody because the eighth factor, “the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child” favors her. We strongly disagree. As the trial court correctly found, the evidence presented at trial indicated that Andrea was unable to foster any type of meaningful relationship between M.A.R.R. and Kurt, and she had taken deliberate steps to impede Kurt’s relationship with M.A.R.R. Even on appeal, Andrea continues to assert that Kurt was not entitled to visitation with M.A.R.R. on Father’s Day simply because he failed to secure that day in the temporary visitation order. As the court found, if Andrea were awarded sole custody, Kurt’s efforts to have any type of meaningful relationship

with M.A.R.R. would continue to be thwarted. For all these reasons, the trial court's decision to award Kurt sole custody is not against the manifest weight of the evidence.

¶ 79

## 2. Visitation

¶ 80 Next, Andrea argues that since Kurt had little time or no time with M.A.R.R. in the one year and seven months before trial, he should have been awarded similar time immediately after trial. Since we have held that the trial court did not err in granting Kurt sole custody, we will construe Andrea's argument to mean that the trial court erred with regard to the visitation schedule it ordered.

¶ 81 Pursuant to section 607 of the Act, a parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would seriously endanger the child's physical, mental, moral or emotional health. 750 ILCS 5/607(a) (West 2012). The trial court is vested with wide discretion in resolving visitation issues, and this court will not interfere with the trial court's determination unless an abuse of discretion occurred or where manifest injustice has been done to the child or parent. *In re Marriage of Minx*, 344 Ill. App. 3d 801, 803 (2003).

¶ 82 In its letter opinion, the trial court noted that it heard no evidence that would rise to the burden set forth in section 607 of the Act, *i.e.*, that visitation between Andrea and M.A.R.R. would seriously endanger the child's physical, mental, moral or emotional health. 750 ILCS 5/607 (West 2012). Therefore, it found that reasonable visitation with Andrea was in M.A.R.R.'s best interest.

¶ 83 As the court found when determining custody, there is no doubt that Andrea loves her daughter very much. Also, the evidence presented at trial indicated that Andrea took very good care of M.A.R.R. and that she was also very loved by her grandparents. With that in mind, we

have reviewed the trial court's visitation schedule and find it to be very reasonable. In fact, the court awarded Andrea more visitation with M.A.R.R. than the guardian recommended in this case. For all these reasons, the trial court did not abuse its discretion and a manifest injustice was not done to Andrea and M.A.R.R. when the visitation schedule at issue allowed Andrea to see M.A.R.R. 50% of the time.

¶ 84 3. Guardian *ad litem*'s Testimony

¶ 85 Next, Andrea contends that she is entitled to a new trial because the trial court erred in allowing the guardian to testify when: (1) the trial court failed to delineate the guardian's scope in its written order appointing her; (2) the guardian did not submit a written report to the court; and (3) the guardian was biased and her testimony was based upon an incomplete investigation. Although she does not specify so in her brief, Andrea raised the first issue below in an oral motion *in limine*.

¶ 86 A ruling on a motion *in limine* rests within the sound discretion of the trial court and will not be reversed absent an abuse of that discretion. *In re Estate of Mankowski*, 2014 IL App (2d) 140154, ¶ 57.

¶ 87 Section 506(a) of the Act pertains to the duties of a guardian and provides, in pertinent part:

“(a) Duties. In any proceedings involving the support, custody, visitation, education, parentage, property interest, or general welfare of a minor or dependent child, the court may, on its own motion or that of any party, appoint an attorney to serve in one of the following capacities to address the issues the court delineates:

\*\*\*

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

¶ 88 The record reflects that on the second day of trial, Andrea's attorney made an oral motion *in limine* to bar the guardian's testimony on the ground that section 506 of the Act provides that a guardian may be appointed to address the issues the court delineates, and the order appointing the guardian here did not have any boxes checked with regard to her duties. See 750 ILCS 5/506 (West 2012). In ruling on the objection, the trial court held that the fact no boxes were checked on the order form was not a fatal flaw since the guardian had been involved in this case since December 2013, all the parties had participated with her, and no one had complained that another party needed to be compelled to participate with the guardian. Therefore, the court held, although the boxes in the order should have been checked, the failure to do so was an administrative and not substantive error.

¶ 89 We have reviewed the order appointing the guardian and note that there were unchecked boxes on that form regarding whether: (1) the guardian was required to make a written report to the court; (2) the guardian was required to render an opinion regarding custody, visitation or removal; and (3) if the court wished to list any additional issues it wanted the guardian to address. We agree with the trial court that its failure to check these boxes was an administrative

and not substantive error. Here, both parties had moved for sole custody of M.A.R.R. and they were well aware that the purpose of the guardian's investigation was to give the court a recommendation regarding custody and visitation. Accordingly, the trial court did not abuse its discretion in denying Andrea's motion *in limine* on this ground.

¶ 90 We also find that Andrea is not entitled to a new trial because the GAL did not file a written report. Section 506(a) of the Act specifically states that a GAL shall testify *or* submit a written report to the court regarding her recommendations in accordance with the best interests of the child. 750 ILCS 5/506(a) (West 2012). Andrea argues, however, that when the trial court appointed the GAL it stated that the GAL would submit a written report.

¶ 91 We are not persuaded. Even if the trial court stated that the guardian would file a written report, it is clear that she was not statutorily mandated to do so. 750 ILCS 5/506(a) (West 2012). The trial court found no error on this point, and we agree that no error occurred.

¶ 92 Andrea also argues that the GAL should not have been allowed to testify because she was biased when she did not read all the emails in Our Family Wizard between the parties. She also claims that the GAL's testimony was based upon an incomplete investigation because the GAL did not: (1) contact M.A.R.R.'s daycare provider; (2) meet with M.A.R.R., or (3) observe the child's interactions with either parent.

¶ 93 Again, we find no error. The record reflects that the guardian was unable to access all the emails between the parties because they failed to copy her on some communications. The guardian testified about the emails between the parties that she was able to read, and that testimony showed no evidence of bias. We likewise disagree with Andrea that the guardian's testimony was based on an incomplete investigation. Andrea does not explain how an interview with M.A.R.R.'s daycare provider could have aided the investigation here. Also, it was not



necessary for the guardian to observe M.A.R.R. and her interaction with her parents due to her very young age, and the fact that Kurt had been unable to visit with M.A.R.R. from July 2013 to February 2014, which very well may have affected M.A.R.R.'s interaction with him. The guardian has a statutory duty to ascertain and defend the child's best interests, and the evidence presented at trial indicated that she had properly performed that duty. See *In re Marriage of Karonis*, 296 Ill. App. 3d 86, 91 (1998) (public policy dictates that the guardian perform duties essential to the health and welfare of the child, and paramount among those duties is the responsibility to determine the best interests of the child).

¶ 94 4. Child Support

¶ 95 Andrea's last contention on appeal is that the trial court erred when, in ordering both parties to pay child support, the court ordered that Kurt's obligation to pay child support would terminate once M.A.R.R. was enrolled in Kindergarten. Andrea argues that the termination of child support at a future date constitutes a modification in child support which requires a substantial change in circumstances, and no evidence of a substantial change was presented at trial. See 750 ILCS 5/510 (West 2012).

¶ 96 Since Kurt has also argued on cross-appeal that the trial court erred in its determination of child support we will reserve Andrea's argument on appeal and address both parties' arguments regarding child support in the portion of this order addressing Kurt's cross-appeal.

¶ 97 C. Kurt's Cross-Appeal

¶ 98 On cross-appeal, Kurt argues: (1) Andrea's failure to respond to his petition for temporary and permanent custody was a judicial admission of all the allegations set forth in his petition; (2) the trial court erred in the judgment order when it failed to give him, as sole custodian, the power to choose M.A.R.R.'s child care facility, set medical appointments, and



¶ 104 We initially note that two types of custody have evolved in the law—physical and legal. Legal custody pertains to the responsibility for decisions regarding a child’s long-term health, welfare and education. Physical custody, on the other hand, involves control over a child’s home and daily activities. A court may award a parent sole or joint physical and/or legal custody. See Steven J. Seem, *The Impact of No Child Left Behind on Post-Divorce Custody Modification*, 2004 University of Chicago Legal Forum 625, 629.

¶ 105 First, we reject Andrea’s contention of waiver. Although Kurt testified at trial that he planned on continuing with Debbie’s Daycare, he did not testify that he would never remove M.A.R.R. from that facility under any circumstances. Therefore, we will address the merits of Kurt’s argument.

¶ 106 Here, both parties petitioned for “sole custody” of M.A.R.R., and Kurt’s petition was granted. It is clear from the letter opinion as well as the judgment order that the trial court did not award Andrea any type of custody over M.A.R.R., but instead granted her liberal visitation. As we held when reviewing Andrea’s issues on appeal, the trial court’s decision to grant Kurt sole custody was not against the manifest weight of the evidence. Accordingly, we find that the trial court erred in the judgment order when it required that M.A.R.R. remain in Debby’s Daycare, gave Andrea the power to “set” medical appointments, and gave neither party the power to change physicians. First, these provisions are unworkable—for example, if the price of Debbie’s Daycare went up prohibitively, or if one of M.A.R.R.’s physicians was no longer covered under Kurt’s insurance, the parties would have to come back into court to request changes. Second, and more important, the decision as to what type of daycare facility to place M.A.R.R. in, as well as setting medical appointments and choosing physicians, belongs to Kurt as the sole custodian of the parties’ daughter. Accordingly, we reverse the portions of the

judgment order: (1) ordering that M.A.R.R. remain at Debbie's Daycare; (2) granting Andrea the power to "set" medical appointments; and (3) prohibiting either party from changing M.A.R.R.'s current physicians. We also remand this cause for the trial court to modify the judgment order and grant Kurt, as the sole custodian, these powers.

¶ 107 We note that within this argument, Kurt discusses at length Andrea's initial refusal to vaccinate M.A.R.R. as well as his refusal to vaccinate the child. In support of his decision to refuse vaccinations, Kurt refers to the Illinois Administrative Code and portions of the Illinois Human Rights Act which pertain to the freedom from unlawful discrimination based upon religion. However, at trial Kurt specifically testified that he had changed his mind about refusing to vaccinate M.A.R.R. and that he was in agreement with Andrea about having her vaccinated. Accordingly, Kurt is estopped from claiming any error on this point and we will not disturb the portion of the judgment order mandating vaccinations. See *In re Stephen K.*, 373 Ill. App. 3d 7, 25 (2007) (a party is estopped from taking a position on appeal that is inconsistent with the position he took before the trial court).

¶ 108 3. Medical Insurance

¶ 109 Kurt also contends that the trial court erred in the judgment order when it ordered him to provide health insurance for M.A.R.R. through his employer. Specifically, he argues that at trial, he testified that he would be losing his employer-provided health insurance a few weeks after the trial. Therefore, Kurt requests that the order be modified to reflect that if he is unable to obtain insurance for dependents through his employer's plan, he shall be obligated to obtain insurance coverage for M.A.R.R. through an individual policy. We agree and order that upon remand, the trial court make the appropriate modification to the judgment order reflecting this change.

¶ 110 4. Child Support

¶ 111 With regard to child support, Kurt argues that the trial court erred in: (1) the calculation of statutory child support; (2) the deviation from statutory child support obligations; and (3) its decision to award Andrea the tax exemption for M.A.R.R. in alternating years.

¶ 112 Andrea also argues that the trial court erred in the child support order. Specifically, she contends the trial court erred when it held that Kurt's obligation to pay child support would terminate once M.A.R.R. was enrolled in Kindergarten.

¶ 113 Section 14(a)(1) of the Parentage Act (750 ILCS 45/14(a)(1) (West 2012) specifies that the trial court shall determine child support in accordance with section 505 of the Act (750 ILCS 5/505 (West 2012)). That section specifies that the court shall determine the minimum amount of support by using statutory guidelines, and the guideline statutory support for one child is 20% of the supporting party's net income. 750 ILCS 5/505(a)(1) (West 2012). A court is required to apply this formula unless it determines that a deviation from it is appropriate. In making such a determination, a court should be guided by the best interest of the child in light of one or more of the following relevant factors: (1) the financial resources and needs of the child; (2) the financial needs and resources of the child; (3) the standard of living the child would have enjoyed had the marriage not been dissolved; (4) the physical, mental, and emotional needs of the child; (5) the educational needs of the child; and (7) the financial resources and needs of the non-custodial parent. 750 ILCS 5/505(a)(2) (West 2012). A reviewing court will not disturb a trial court's order on child support unless the trial court abused its discretion. *In re Marriage of Singleteary*, 293 Ill. App. 3d 25, 36 (1997). An abuse of discretion occurs only when no reasonable person would take the view adopted by the trial court. *In re Marriage of Carpel*, 232 Ill.App.3d 806, 815 (1992).

¶ 114

a. Kurt's Claim of Miscalculation

¶ 115 Kurt argues that the trial court's finding that he owed Andrea \$408 per month in child support was in error. Specifically, he contends that the trial court arrived at that number by first finding that his support obligation was \$941 per month based on an incorrect calculation of his net income, and then it subtracted Andrea's support obligation to him (\$533) to arrive at his obligation of \$408 monthly. Therefore, he requests that the judgment order relating to child support be reversed and that he be issued a credit for his overpayment of child support retroactive to the date of judgment.

¶ 116 In response, Andrea argues that although Kurt was aware that M.A.R.R. was in daycare prior to trial he did not financially contribute to that expense. Therefore, she requests that Kurt submit to her payment for daycare expenses from November 2013 through April 2014.

¶ 117 We must initially point out that Andrea's claim for daycare expenses has been forfeited since she failed to raise it in her opening brief. Arguments not raised in an appellant's original brief are "waived and shall not be raised [for the first time] in the reply brief [or] in oral argument." Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). "The reply brief \* \* \* shall be confined strictly to replying to arguments presented in the brief of the appellee \* \* \*." Ill. S. Ct. R. 341(j) (eff. Feb. 6, 2013). Accordingly, we will not address this argument. We therefore turn to Kurt's claim of miscalculation.

¶ 118 "Net income" is defined as the total of all income from all sources, minus the following relevant deductions: (1) federal income tax; (2) state income tax; (3) social security payments; (4) dependent and individual health or hospitalization premiums; and (5) prior obligations of support or maintenance actually paid pursuant to a court order. 750 ILCS 5/503(a)(3) (West 2012).

¶ 119 We agree with Kurt that the trial court erred in its calculation of child support. In its letter opinion, the trial court held that since the current schedule called for equal parenting time, guideline support from each parent was warranted. Therefore, it ruled, each party was required to pay 20% of their net monthly income as child support. However, it is clear from Kurt's financial affidavit and his paychecks that the dollar amount set as his obligation, before setting off Andrea's obligation, \$941, was well above 20% of his net income.

¶ 120 Here, Kurt's financial affidavit as well as his testimony established that his income from all sources was \$6,059 per month. From that number we subtract the relevant statutory deductions: (1) \$1,084 (federal income tax); (2) \$295 (state income tax); (3) \$464 (social security); (4) \$572 (health insurance premiums)<sup>1</sup>; and (5) \$1,047.76 (court-ordered child support payment for his two daughters from a previous marriage)<sup>2</sup>. In doing so, we arrive at \$2,596.24 as his net monthly income. Twenty percent of that amount, the statutory guideline amount, is \$519.25 per month. Since the trial court erred in its calculation of guideline support, we reverse the trial court's order with regard to child support and we remand this cause for a new determination of child support in this case. Upon remand, Kurt shall provide evidence of any

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<sup>1</sup> In his brief, Kurt states that he currently pays \$631.97 per month in health insurance premiums. However, he only cites to his appendix as support for this amount. The page he refers to in his appendix appears to be an invoice for insurance premiums due on July 1, 2014. Although the bottom of the page references an "exhibit A," the exhibits on appeal do not contain this invoice.

<sup>2</sup> We arrived at this number by doubling Kurt's bi-weekly amount of child support for all three of his children ( $\$800.38 \times 2 = \$1,600.76$ ) and then subtracting the amount of monthly temporary child support he was paying for M.A.R.R. at the time of trial ( $\$1,600.76 - \$553 = \$1,047.76$ ).





¶ 126 Next, Kurt claims that the trial court abused its discretion in the judgment order when it allowed Andrea to claim M.A.R.R. as her dependent for tax purposes in all odd numbered years. As support for his contention, Kurt argues that pursuant to the Internal Revenue Code, to determine which person can claim a “qualifying child” as a dependent for tax purposes, a “tiebreaker” rule allows the parent who has the higher adjusted gross income for the year to claim the child as his or her dependent. See 26 U.S.C. §152(c)(4)(b)(ii). Since he has the higher adjusted gross income, Kurt argues that the trial court erred in allowing both he and Andrea to claim M.A.R.R. as a dependent in alternating years. Kurt also argues that this portion of the trial court’s order violates the supremacy clause of the United States Constitution (U.S. Const., art. VI) because it unconstitutionally supersedes federal law.

¶ 127 Section 152(e)(2)(A) of the Internal Revenue Code (Code) provides that the custodial parent is entitled to the deduction unless the custodial parent provides a written declaration that such custodial parent will not claim the child as a dependent for the tax year. 26 U.S.C. § 152(e)(2)(A) (2008). Also, a “tiebreaker” rule in that section states that if there is more than one parent claiming the “qualifying child,” the parent who has the higher adjusted gross income for the year can claim the child as his or her dependent. See 26 U.S.C. §152(c)(4)(b)(ii). However, section 152 of the Code does not deprive Illinois trial courts of the discretion to allocate the tax exemption for the child to the noncustodial parent and direct the custodial parent to sign a declaration that he or she will not claim the dependency exemption. *In re Marriage of McGarrity*, 191 Ill. App. 3d 501, 504 (1989). As with other child support issues, the standard of review is whether the allocation of the tax exemption amounted to an abuse of discretion. *Stockton v. Oldenburg*, 205 Ill. App. 3d 897 (1999).

¶ 128 We initially note that we will not address Kurt's argument that the trial court's order allowing Andrea to claim M.A.R.R. as a dependent for tax purposes in alternating years violates the supremacy clause of the United States Constitution because Kurt did not cite any authority to support this argument. Accordingly, he has forfeited this issue on appeal. See Supreme Court Rule 341(e)(7) (eff. Feb. 6, 2013).

¶ 129 Turning to the merits of this issue, we find no abuse of discretion in the trial court's decision to allow both parties to claim M.A.R.R. as a dependent for tax purposes in alternating years. Although Kurt was awarded sole custody here, the trial court awarded Andrea 50% visitation time and we have upheld that decision. Since the parties will each have M.A.R.R. the same amount of time, they will be sharing the costs that are usually only associated with the sole custodian, *i.e.*, purchasing groceries for the child, laundering her clothing, etcetera. In addition, the trial court ordered that the parties shall pay equally all medical co-pays and non-covered medical expenses, as well as equally dividing the cost of M.A.R.R.'s extracurricular activities. Although Kurt is also responsible for paying M.A.R.R.'s health insurance premiums, we do not find the trial court's decision to award the tax exemption to both parties in alternating years to be in error.

¶ 130 d. Andrea's Child Support Claim

¶ 131 The last issue on appeal regarding child support is Andrea's claim that the trial court abused its discretion in ordering that Kurt's obligation to pay child support ended when M.A.R.R. was enrolled in Kindergarten.

¶ 132 We agree. The random termination of Kurt's obligation to pay child support when M.A.R.R. was enrolled in Kindergarten was not supported by any evidence in the record. The trial court's order granting the parties equal time with M.A.R.R. had no time limitations attached

to it, and we can discern no logical reason why the trial court made this ruling. Accordingly, the trial court abused its discretion in limiting Kurt's obligation to pay child support to Andrea in the future, and we reverse that portion of the child support order and direct that it not be included in the new child support order fashioned upon remand.

¶ 133

5. Visitation

¶ 134 Turning back to Kurt's appeal, he next claims that the trial court erred in granting Andrea 50% visitation time with M.A.R.R.

¶ 135 We need not revisit this issue since we have held in Andrea's appeal that the trial court did not abuse its discretion in awarding Andrea 50% visitation time with M.A.R.R. See *In re Marriage of Minx*, 344 Ill. App. 3d at 803 (2003) (the trial court is vested with wide discretion in resolving visitation issues, and this court will not interfere with the trial court's determination unless an abuse of discretion occurred or where manifest injustice has been done to the child or parent).

¶ 136

6. Firearm & Ammunition Storage

¶ 137 Kurt's last argument is that the trial court erred when it ordered him to remove all guns and ammunition from his home within 24 hours and prohibited him from having guns brought back into his home until M.A.R.R. had attained the age of 18. In support of his contention, he claims: (1) there is no evidence in the record to justify this order; and (2) the order violates his second amendment right to bear arms. U.S. Const. Amend. II.

¶ 138 We need not address Kurt's constitutional issue because, based upon the evidence presented at trial, we hold that the trial court erred by inserting this clause into the judgment order. See *Mulay v. Mulay*, 225 Ill. 2d 601, 607 (2007) (as a general rule, courts will address constitutional issues only as a last resort, relying whenever possible on nonconstitutional grounds

to decide cases). In its letter opinion, the trial court noted that extensive testimony was given regarding Kurt's collection of guns. It acknowledged that Kurt, Andrea, and both of Andrea's parents testified that the guns were kept in a locked safe in a closet located behind a locked door to Kurt's bedroom. Although the court noted that Andrea's father testified that he thought he once saw a gun in the garage, it also said that the father had no specific information about the gun, and that no one else at trial corroborated that incident. Nevertheless, the court went on to find that it was not in the child's best interests to have multiple guns and ammunition in a home. Based upon the evidence presented at trial, as well as the trial court's own specific findings, it was not reasonable for the court to place such a restriction on Kurt's lawful possession of ammunition or guns without any evidence of danger to the child. Accordingly, we reverse the trial court's ruling on this issue and upon remand we order that it be stricken from the judgment order.

¶ 139

### III. CONCLUSION

¶ 140 With regard to Andrea's appeal, the portion of the judgment order granting Kurt sole custody and awarding Andrea 50% visitation with M.A.R.R. is affirmed. We reverse that portion of the judgment order terminating Kurt's obligation to pay child support once M.A.R.R. is enrolled in Kindergarten. As for Kurt's appeal, the portion of the judgment order stripping Kurt of his power, as sole custodian, to choose M.A.R.R.'s daycare, set medical appointments, and change physicians is reversed, and the cause is remanded for the trial court to award Kurt those specific powers. On remand, we also order the trial court to modify the clause regarding Kurt's obligation to provide medical insurance for M.A.R.R. The calculation of child support is reversed and remanded for recalculation. The trial court's ruling on deviation from child support, as well as its ruling on tax dependency status, is affirmed. The portion of the judgment

order prohibiting Kurt from possessing firearms and ammunitions on his property until M.A.R.R. turned 18 years of age is reversed.

¶ 141 Accordingly, the judgment of the circuit court of Du Page County is affirmed in part, reversed in part, modified in part, and remanded for further proceedings consistent with this disposition.

¶ 142 Affirmed in part, reversed in part, modified in part, and remanded.