2011 IL App (1st) 111407-U

FIFTH DIVISION
November 10, 2011

No. 1-11-1407

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE THE MARRIAGE OF:	)	Appeal from the
	)	Circuit Court of
S.P.,	)	Cook County, Illinois.
Petitioner-Appellee,	)	
	)	No. 08 D 10380
v.	)	
	)	Honorable
A.S.P.,	)	Nancy Katz,
Respondent-Appellant.	)	Judge Presiding.

JUSTICE JOSEPH GORDON delivered the judgment of the court.
Justice McBride and Justice Howse concurred in the judgment.

ORDER

HELD: In a dissolution of marriage action, the trial court did not abuse its discretion in awarding sole custody of the minor children to the father and in requiring that the mother's visitation with the children be supervised where there was testimony adduced at trial that the mother suffered from delusional disorder and that, as a result of her condition, she posed a risk to the emotional and physical well-being of the children. The trial court also did not abuse its discretion in barring the mother's untimely-disclosed expert witnesses where it had previously continued the trial at the mother's request and it issued an explicit finding that further continuance of the trial to allow the presentation of the mother's untimely experts would prejudice the children.

¶ 1 In this dissolution of marriage action, respondent A. S. P. (Ms. A.) appeals from a final child custody judgment awarding petitioner S. P. (Dr. S.) sole custody of the parties' two children with supervised visitation for Ms. A.

¶ 2 Dr. S. and Ms. A. were married on November 12, 2000, and they have two children: Elizabeth, currently nine years old, and Joseph, currently seven years old. On October 17, 2008, Ms. A. vacated the marital residence with the children and filed a petition for dissolution of marriage and for an order of protection against Dr. S., alleging that Dr. S. had committed various acts of physical and verbal abuse against Ms. A. and the children. On or about the same date that Ms. A. filed her petition, the Department of Child and Family Services (DCFS) began an investigation into a report that Dr. S. had abused Elizabeth, based on statements that Elizabeth made to a school counselor. On December 8, 2008, Ms. A. submitted a second report to DCFS containing additional allegations that Dr. S. had sexually abused Elizabeth. DCFS eventually concluded that both reports of abuse were "unfounded."

¶ 3 Subsequently, on May 19, 2009, psychiatrist Dr. Phyllis Amabile, whom the court appointed to give advice on the case pursuant to section 604(b) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/604(b) (West 2008)), issued a report on her findings. Dr. Amabile concluded that there was "considerable evidence" that Ms. A.'s allegations about Dr. S.'s abusive behavior, including sexual abuse of Elizabeth, were false. She stated that it was unlikely that Ms. A. maliciously fabricated the allegations but, rather, that she was likely to be "periodically delusional" and "in need of extensive mental health treatment."

¶ 4 Following a trial, the trial court found that Ms. A. had made false accusations of physical

and sexual abuse of the children by Dr. S. and coached the children to believe that they were abused, with no apparent insight into the emotional damage that her actions caused. The court further found that the evidence supported the conclusion that Ms. A. suffered from a delusional disorder that posed a possible risk to the children's physical safety and a definite risk to the children's emotional health and well-being. Accordingly, the court awarded sole custody of the children to Dr. S. and granted supervised visitation to Ms. A.

¶ 5 It is from this judgment that Ms. A. now appeals. For the reasons that follow, we affirm.

¶ 6 I. BACKGROUND

¶ 7 On October 17, 2008, Ms. A. filed a petition for dissolution of marriage and a petition for an order of protection against Dr. S. in the circuit court of DuPage County. In her petition for an order of protection, Ms. A. accused Dr. S. of both verbal and physical abuse toward the family. With regard to the former, Ms. A. asserted that Dr. S. berated her and swore at her on a daily basis in front of the children. She also stated that he made various threats against her and the children, stating that he would take their children out of Sunday School at church and keep the children from Ms. A.; he would take their children to India where Ms. A. would not see them again; he would kill Ms. A.'s entire family; and he would burn down the house with Ms. A and the children in it "so that no one will know we existed."

¶ 8 Ms. A. also alleged that Dr. S. committed various acts of physical violence and intimidation against both her and the children. She stated that he threw toys at her and at Elizabeth and that he had struck Ms. A. with a closed fist multiple times. Furthermore, she alleged that Elizabeth told her that Dr. S. hit her in the head, and when Ms. A. confronted Dr. S.

about this, Dr. S. said that he hit Elizabeth in the head because it would not leave marks. She also alleged that Elizabeth told her that Dr. S. had placed a pillow over her face and told her that he would kill her.

¶ 9 On October 27, 2008, upon Dr. S.'s motion, the court transferred venue in the dissolution of marriage action to the circuit court of Cook County, since the marital home was in Cook County and the court found that Ms. A. had not formed the intent to change her permanent abode at the time she filed the action. Two days later, Dr. S. filed his own petition for dissolution of marriage in the circuit court of Cook County, and the actions were subsequently consolidated. On November 5, 2008, in light of the pending DCFS investigation and the allegations made by Ms. A. in her petition for an order of protection, the trial court appointed a child representative and granted supervised visitation to Dr. S.

¶ 10 On January 5, 2009, Ms. A.'s attorneys withdrew from the case. On January 21, 2009, Ms. A., then acting *pro se*,[1] voluntarily withdrew her petition for an order of protection. Counsel from Ms. A.'s second law firm filed an appearance on behalf of Ms. A. on February 3, 2009.

¶ 11 Psychiatrist Dr. Phyllis Amabile conducted a custody and visitation evaluation of the family as a court-appointed evaluator pursuant to section 604(b) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/604(b) (West 2008)), and she issued a report of her findings dated May 19, 2009. This report was later introduced as an exhibit at trial. Dr. Amabile stated that as part of her evaluation, she conducted interviews of Dr. S., Ms. A., and both of the

[1] Ms. A. received a law degree from DePaul University in 2002, but she never took the bar exam and was never licensed to practice law.

children. She also conducted an observation session for each parent where she observed the parent interacting with the children. In addition, she reviewed DCFS documents concerning the two investigations of Dr. S., as well as various documents prepared by mental health professionals regarding the parents.

¶ 12 Dr. Amabile summarized the allegations of the parents concerning each other, beginning with Ms. A.'s allegations, as well as each parent's responses to the other parent's allegations. Ms. A. alleged that near the end of their cohabitation, Dr. S. was engaging in verbal and physical abuse of both her and the children. According to her, Dr. S. threatened to kill the children, to kill Ms. A.'s family, and to sell the children on the streets of India. Ms. A. alleged that in 2007, Elizabeth told her that Dr. S. was touching her "privates." When asked about these accusations by Dr. Amabile, Dr. S. admitted that there was some marital fighting and yelling near the end of their cohabitation, but he denied making the threats alleged by Ms. A. In addition, Dr. S. denied ever touching his daughter's "privates." He stated that he never had any pedophilic interests or activities.

¶ 13 Ms. A. also alleged that, in April 2008, she found a "porn collection" in Dr. S.'s den, including comic books depicting sex between children and men abusing women. She gave two of the comic books to the children's representative and threw away the rest. Dr. S. denied keeping a "porn collection" in his den. According to him, the materials that Ms. A. threw away were innocuous materials such as Charlie Brown books and Calvin & Hobbes books. He further stated that he had never seen the materials that Ms. A. allegedly found in his den. He told Dr. Amabile that he was a comic book collector and admitted that he might have ordered one or both

of the comic books based on reviews he had read online, but he said that he had never read them.

¶ 14 Dr. Amabile then summarized Dr. S.'s allegations regarding Ms. A. Dr. S. stated that in March 2004, after they had signed a contract to purchase the marital home, the sellers had a large house sale. After the house sale, Ms. A. feared that the house had been "bugged," either by the people who attended the house sale or by the previous owner, and she wanted to cancel the purchase, although it was not possible. In response, Ms. A. asserted that both she and her husband both feared that the house was "bugged" and wanted to cancel the purchase. She further stated that she stopped worrying after the house was thoroughly cleaned and electronically swept for bugs.

¶ 15 Dr. S. also alleged that, when the children were attending the Oak Brook Daycare Center, Ms. A. got the idea that another child had choked Elizabeth until she passed out and that paramedics had come to the school. Dr. S. stated that he called the school and they denied that anything like that had happened. Nevertheless, Dr. S. said, Ms. A. insisted that the children no longer attend that school. For her part, Ms. A. asserted that Elizabeth came home and complained about a boy in the class who was hitting other children and might have tried to choke her. She further stated that she and her husband decided together to remove the children from that school.

¶ 16 Dr. S. additionally alleged that Ms. A. had manipulated and coached the children. In particular, he alleged that Ms. A. induced Elizabeth to repeat various false accusations against him. Ms. A. denied this.

¶ 17 Dr. Amabile also conducted two interviews with Elizabeth and two interviews with

Joseph. When she questioned Elizabeth about all of the various allegations raised during the course of the investigation, Elizabeth "essentially denied all of them," stating that no grownup had ever touched her private parts or showed her their private parts, no grownup had ever hit her, nobody had ever hurt her body except Joseph when they were fighting, and no grownup ever scared her, said that they would hurt her or her mother, or said that they would kill her or her mother. Near the end of her second interview, Dr. Amabile told Elizabeth that she was puzzled because of the difference between what she said during the interviews and her prior statements about her father. Elizabeth told Dr. Amabile that she said that Dr. S. had been hitting and kicking her "because I thought Mom would get really mad" if Elizabeth did not say those things, even though they were not true. Elizabeth further said that, before Elizabeth would meet with Dr. Gail Grossman, who was appointed by the court as a private therapist for the children, or Paula Brown, who was Ms. A.'s therapist, her mother would remind her that her father had been hitting Elizabeth, kicking her, etc. Elizabeth stated that, while she believed her mother's statements at first, she eventually figured out that they were not true.

¶ 18 In his interviews with Dr. Amabile, Joseph stated that he did not recall either parent having a bad temper, yelling, saying mean things, or throwing things. He stated that no grownup had ever struck him, and nobody had ever touched his private parts, hurt him, scared him, or said that they would hurt or kill him, his mother, or Elizabeth.

¶ 19 Dr. Amabile also summarized the DCFS reports pertaining to the two investigations of possible abuse by Dr. S. During the first DCFS investigation, Elizabeth, Joseph, and Ms. A. were all interviewed. Elizabeth made no disclosures of her father ever threatening to harm her,

other than on one occasion when she "thought" that while she was sleeping, her father whispered in her ear that he would kill the family. She also said that he had heard her father tell her mother that he would kill the mother, but she could not remember when this occurred. The caseworker reported that Elizabeth was vague and appeared to have been coached. Joseph denied ever hearing his father threaten him, his mother, or his sister with harm, and he said that his father took good care of him. Finally, Ms. A. stated during her interview that when she notified Dr. S. that she wanted a divorce, Dr. S. threatened to kill her and Elizabeth if they tried to leave. However, she denied that Dr. S. had ever hit her.

¶ 20 On December 5, 2008, Ms. A. contacted DCFS again and left a voice message. When a DCFS representative contacted her, she stated a number of new allegations against Dr. S. that she had not disclosed during the prior investigation, including that Elizabeth told her that Dr. S. had danced naked in front of her, and that on July 4, 2008, while the family was watching fireworks, Dr. S. was standing behind Elizabeth, and Ms. A. thought she observed an erection on him. As noted, DCFS found the allegations of abuse to be "unfounded" in both cases.

¶ 21 Dr. Amabile summed up her conclusions as follows. With regard to Ms. A.'s strengths as a parent, Dr. Amabile said that Ms. A. loved her children deeply and was highly motivated to serve as their primary custodial parent. Ms. A.'s observed interactions with the children during the observation session were generally good. However, with regard to Ms. A.'s weaknesses as a parent, Dr. Amabile said, "There is considerable evidence that the many allegations [Ms. A.] has made about [Dr. S.]'s abusive, threatening behavior toward her and the children, including sexual abuse of Elizabeth, are false." According to her, Ms. A. demonstrated "poor insight" into

the emotional effect on the children of the turmoil in their lives during the past half year and the "host of bizarre allegations she made about [Dr. S.]." Dr. Amabile further stated:

> "Is [Ms. A.] periodically delusional, or is she lying about her husband and the alleged abuse? I concur with Dr. Grossman that it is more likely the former. More important than the etiology of the false allegations is this: [Ms. A.] very directly involved the children in the vicissitudes of her convictions, her emotions, and her courses of action, much to their detriment."

Dr. Amabile additionally opined that Ms. A. was "in need of extensive mental health treatment."

¶ 22 In light of the preceding conclusions, Dr. Amabile made the following recommendations to the court:

> "1. [Dr. S. and Ms. A.] should consult with one another prior to making any major child related decisions, and should consider one another's view in good faith. They should endeavor to make decisions together. If an impasse is reached in that process, however, [Dr. S.] should make the final decisions (sole custody).
>
> 2. I recommend an equal division of the children's time between the households, in order to preserve the children's relationships with both parents, and to sustain their close emotional ties with both."

Dr. Amabile also stated that Ms. A. was in need of long-term psychiatric care and monitoring by a board-certified physician with access to Dr. Amabile's report.

¶ 23 Following Dr. Amabile's report, on June 5, 2009, Dr. S. filed a motion seeking a mental health evaluation of Ms. A. and the transfer of custody of the children to him. On June 11, 2009,

Ms. A. filed a motion seeking to have Dr. Louis Krause appointed to conduct an evaluation of the children's best interests with regard to custody, visitation, and removal, pursuant to section 604.5 of the Act (705 ILCS 5/604.5 (West 2008)), which allows for such an appointment. The trial court ruled upon both of these motions on June 17, 2009, naming Dr. Krause as the section 604.5 evaluator and appointing Dr. Stephen Dinwiddie as Dr. S.'s expert to evaluate Ms. A.'s mental health and to determine whether she presented a serious threat of danger to the children.

¶ 24 On June 24, 2009, Dr. Dinwiddie issued a written report regarding his findings on these issues. As with Dr. Amabile's report, Dr. Dinwiddie's report was later admitted as an exhibit at trial. Dr. Dinwiddie diagnosed Ms. A. with delusional disorder, but he also stated, "The above diagnosis is contingent upon the assumption that the allegations [Ms. A.] has made are in fact untrue and unfounded." He did not make any explicit finding in his report as to whether the allegations were untrue.

¶ 25 Dr. Dinwiddie stated that delusional disorder is characterized by the presence of fixed, false beliefs with minimal insight into the implausibility of those beliefs. He stated that Ms. A.'s delusional disorder would be associated with an elevated risk of violence toward her children, but that the likelihood of such behavior could not be well assessed. He explained:

> "[W]hile in other psychotic disorders periods of exacerbation of illness generally will be announced by substantial and easily identified changes of behavior, and would thus signal heightened risk for violent behavior, in the case of Delusional Disorder, there is often little change in overt level of symptoms over time. There can be substantial change in the nature or intensity of delusional belief with little warning before such beliefs are

acted upon."

Thus, for instance, he stated that it was "conceivable" that, at some point in the future, unrealistic fears regarding the status of her children might prompt Ms. A. to perpetrate a "mercy killing" of one of her children, believing it to be preferable to the delusional prospect of long-term, severe suffering. However, Dr. Dinwiddie stated that this possibility had to be "[b]alanced" against the fact that Ms. A. had not acted in this manner and there was no evidence that she had even considered doing so.

¶ 26 Dr. Dinwiddie also cited a number of factors present in Ms. A. that would be associated with relatively lower risk of violent behavior. Under the heading of demographic factors, he stated that she was female, of high intelligence, of high education and socioeconomic status, and of somewhat older age. Under the heading of historical factors, he stated that she had no history of head trauma, neurological illness, being a victim of physical abuse as a child, previous violent behavior, previous threatening behavior, or prior contact with the mental health system. Finally, under the heading of diagnostic factors, he stated that she had no diagnosis of alcoholism or other addiction, and she had no diagnosis of a mood disorder.

¶ 27 Thus, Dr. Dinwiddie summed up his conclusions as follows:

> "In summary, [Ms. A.] does *not* have the characteristics most commonly associated with violence in general or violence to her children in particular. There is no evidence to suggest that, to date, [Ms. A.]'s delusional beliefs have in any way been associated with risk to the physical safety of her children. However, the nature of her psychiatric illness is such that she may unpredictably develop (and act upon) delusions,

> as she has in the past. It should be kept in mind that there is evidence to suggest that individuals with Delusional disorder are at heightened risk for acting in a violent manner ***." (Emphasis in original.)

¶ 28 On June 26, 2009, two days after Dr. Dinwiddie issued his report, the court held a status hearing. At that hearing, the trial court ordered that temporary custody of the children be immediately transferred to Dr. S. and that all of Ms. A.'s parenting time be professionally supervised. Since the entry of this order, the children have resided with Dr. S., and Ms. A. has been granted supervised visitation only.

¶ 29 Earlier, on March 12, 2009, Dr. S. had served Ms. A. with a request for production of documents and with interrogatories, seeking disclosure of the identity and testimony of the witnesses she planned to call at trial pursuant to Supreme Court Rule 213(f). Ms. A. did not tender her answer to these production requests and interrogatories until July 17, 2009, and the only witnesses she disclosed in her answer were the parties themselves.

¶ 30 On August 31, 2009, the trial court issued a trial order in which it set the case for trial on January 25, 2010. In that order, the court also set a deadline of November 24, 2009, for the parties to update their discovery disclosures, including asset disclosures and witness lists, and to tender all exhibits and motions in limine. The court's order provided that "Witnesses not identified on the witness list shall be barred."

¶ 31 On September 21, 2009, Dr. S. filed a motion to compel Ms. A. to comply with his requests for document production that he had served upon her on March 12, 2009. He alleged that, although Ms. A. provided a limited selection of documents to him on July 17, 2009, that

document production was incomplete, in that she refused to provide, among other things, various documents pertaining to financial accounts held solely in her name, as well as personal and family writings containing allegations of abuse against Dr. S. He stated that after receiving Ms. A.'s "incomplete" document disclosures on July 17, 2009, his counsel initiated a conference with Ms. A.'s counsel pursuant to Rule 201(k) (Ill. S. Ct. R. 201(k) (eff. July 1, 2002) (providing that parties shall make reasonable efforts to resolve differences over discovery)). Dr. S. also stated that, on July 23, 2009, his counsel sent a Rule 201(k) letter to counsel for Ms. A., requesting that she fully comply with Dr. S.'s document production request within 21 days. Nevertheless, he alleged, Ms. A. had failed to produce any documents beyond her initial and inadequate production on July 17, 2009.

¶ 32 Approximately a month before the discovery deadline, and before the court had ruled upon Dr. S.'s motion to compel, Ms. A. fired her second counsel, and the trial court granted her counsel's motion to withdraw on October 30, 2009. Counsel from Ms. A.'s third law firm filed an appearance on November 17, 2009. The following day, her counsel requested a continuance, stating that they were unprepared for the January 25, 2010, trial date. On November 23, 2009, the court granted Ms. A.'s motion to continue the trial date to April 28, 2010. Subsequently, on December 9, 2009, the court issued a trial order in which it moved the November 24, 2009, deadline for the parties to update their discovery disclosures and tender exhibits and motions in limine to April 15, 2010, nearly five months past the original deadline. In that trial order, the court again explicitly provided, "Witnesses not identified on the witness list shall be barred."

¶ 33 On January 27, 2010, the trial court ruled upon Dr. S.'s motion to compel Ms. A. to

comply with his March 12, 2009, document production requests. It entered a discovery order setting a deadline of February 1, 2010, for Ms. A. to tender all the requested documents, and it further ordered that, in the event of continued noncompliance after that deadline, she would incur a fine of $100 per day. As noted in the trial court's memorandum opinion and judgment for dissolution of marriage, Ms. A. failed to comply with the order and tender the documents by the February 1, 2010, deadline, and the fine began to run.

¶ 34 On February 16, 2010, counsel from Ms. A.'s third law firm withdrew, and new counsel substituted into the case.

¶ 35 On April 5, 2010, Dr. S. filed a motion to bar, in which he sought to bar Ms. A. from using any documentary evidence at trial that she had not previously tendered and from calling any lay or expert witnesses that she had not previously disclosed. In support of the latter, he stated that Ms. A. had not updated or supplemented her July 17, 2009, disclosure in which the only witnesses she identified were the parties themselves.

¶ 36 On April 26, 2010, the trial was continued to July 12, 2010, because of the unavailability of the trial judge on the previously set date of April 28, 2010. (This date was later moved to July 19, 2010, by trial court order of June 9, 2010.) However, the court did not further extend the already-extended discovery deadline of April 15, 2010.

¶ 37 On May 13, 2010, nearly six months after the court's original discovery deadline of November 24, 2009, and nearly a month after the court's extended discovery deadline of April 15, 2010, Ms. A.'s counsel filed witness disclosures pursuant to Rule 213, in which 34 potential witnesses were listed. These include five witnesses whose exclusion is specifically challenged in

this appeal: (1) Dr. Norman Chapman, Ms. A.'s forensic psychiatrist, (2) Dr. Krause, the section 604.5 evaluator appointed at Ms. A.'s request, (3) Andra Hersey, the school counselor at Elizabeth's school who made the first report of suspected abuse to DCFS, (4) Paula Brown, Ms. A.'s therapist, who interviewed the children and witnessed the children's allegations of abuse against Dr. S., and (5) Dr. Talat Ghaus, Ms. A.'s treating psychiatrist. Ms. A. identified these five people as expert witnesses. Although she disclosed Dr. Chapman's opinions, Ms. A. did not disclose the opinions that she intended to elicit from her other four experts, as required under Rule 213(f) (Ill. S. Ct. R. 213(f) (eff. Jan. 1, 2007)). Ms. A. also sought to call various witnesses to testify as to her interactions with her children, the children's relationship with their parents, Ms. A.'s parenting skills, and Ms. A.'s good standing in the community.

¶ 38 Following her submission of May 13, 2010, Ms. A. filed a motion on June 8, 2010, to extend discovery so as to allow Dr. Chapman and Dr. Krause to testify at trial. Ms. A stated that Dr. Chapman had prepared a report and was ready to present his report, be deposed by Dr. S., and testify at trial. (She did not, however, disclose the report at that time.) Ms. A. stated that Dr. Krause had not yet completed his report, since he had not yet had an opportunity to interview Dr. S. However, she asserted that Dr. Krause would be able to complete his report, present it, and be deposed by Dr. S. prior to the date of trial as long as Dr. S. cooperated with the interview process.

¶ 39 On June 15, 2010, Dr. S. filed a response to Ms. A.'s motion to extend discovery in which he asserted that it would be impossible for him to complete discovery on Dr. Chapman, Dr. Krause, or any of Ms. A.'s other untimely-disclosed experts prior to the trial date of July 12,

2010. He stated that Ms. A. would first have to disclose the experts' reports, which she had yet failed to do. He would need to subpoena her experts' records, wait for responses to those subpoenas, and then forward the records to his own expert witnesses for review and consultation. He would also have to depose Ms. A.'s experts, wait for the depositions to be transcribed, and allow his expert witnesses to review and analyze that testimony. Finally, he stated, he would have to develop a new trial strategy incorporating all of the newly discovered testimony and documentary evidence.

¶ 40 On June 17, 2010, the trial court held a hearing on Dr. S.'s motion to bar and on Ms. A.'s motion to extend discovery, whereupon it entered an order containing the following findings:

> "A) Respondent's answers to 213(f) + (g) interrogatories tendered May 13, 2010 are not in compliance with Supreme Court Rule 213.
>
> B) It is not in the children's best interests to delay the trial of the matter.
>
> C) Respondent's motion requesting the completion of Dr. Krause's evaluation and report is tardy and prejudicial and allowing the same would require the trial to be continued.
>
> D) The failure to disclose Dr. Chapman who has seen Respondent 34 times + was known to the Respondent as a potential witness is in contravention to the court's trial order + Rule 213.
>
> E) Allowing Dr. Chapman to testify, and allowing Dr. Chapman's report would require the continuance of the trial.
>
> G) As of this date Respondent has failed to tender a trial witness list, trial

exhibits, or her 13.3 financial disclosure."

Accordingly, the court barred Dr. Chapman and Dr. Krause from testifying at trial and further barred Ms. A. from introducing any opinion of Dr. Chapman or Dr. Krause at trial, although it reserved ruling on the remainder of Ms. A.'s proposed fact witnesses. The court also denied Ms. A.'s motion to extend discovery.

¶ 41 On June 30, 2010, the trial court entered an order in which it permitted Ms. A. to call James S. and Judith S., her parents, Robyn Strausser, the head of the children's program at her church, Dr. Amabile, the court-appointed 604(b) evaluator, and Dr. Dinwiddie, Dr. S.'s controlled expert. However, the court barred her from calling any of her untimely-disclosed experts as well as further fact witnesses. Moreover, as of June 30, 2010, Ms. A. had still not complied with the court's discovery order requiring her to tender all requested documents to Dr. S. by February 1, 2010, despite the imposition of a fine of $100 per day for her noncompliance past that date. Thus, the court barred her from referencing and using any documents which existed prior to February 2, 2010, and which had not been previously tendered in discovery pursuant to the prior order of the court.

¶ 42 Prior to trial, on July 13, 2010, Ms. A. filed a *pro se* motion seeking permission to represent herself because she did not believe that her attorneys were doing an adequate job representing her. The trial court entered an order on July 21, 2010, providing that Ms. A. would be able to represent herself, but her attorneys were to remain as backup counsel to answer Ms. A.'s questions and give advice at her request. The trial court subsequently permitted the backup counsel to formally withdraw from the case on the third day of trial.

¶ 43 The case proceeded to trial. As noted, Dr. Amabile's report was admitted into evidence at trial, although she did not testify. Dr. Dinwiddie's report was also admitted into evidence, and counsel for Dr. S. called him as a controlled expert witness.

¶ 44 Dr. Dinwiddie testified that he was a professor of psychiatry at the University of Chicago. He stated that he was appointed as an expert by the court to perform a psychiatric evaluation of Ms. A. to diagnose Ms. A. and produce an assessment of potential risk factors in her case.

¶ 45 Counsel for Dr. S. asked Dr. Dinwiddie whether he had an opinion regarding whether Ms. A. had any type of psychiatric diagnosis or illness. Dr. Dinwiddie replied, "In my opinion she suffers from a condition called delusional disorder." He defined a delusion as a firm, fixed, false belief that the individual could not be convinced was false. He stated that individuals afflicted with delusional disorder could often function well in society outside of the specifics of the delusion. However, he said, the "main concern" with such individuals would be that the delusion could cause them to behave in ways that others would consider completely irrational and therefore have a severe impact on their functioning.

¶ 46 Counsel for Dr. S. then asked Dr. Dinwiddie to provide examples of Ms. A.'s delusions. Dr. Dinwiddie stated that she believed that the former owners of the marital residence had bugged the house. With regard to Dr. S., she believed that he had attempted to run over Joseph with his car, that he had caused a former fiancee to die via lethal injection, and that he was a pedophile because of certain graphic novels that he possessed. Dr. Dinwiddie opined that all of these beliefs were delusional. He stated that he agreed with Dr. Amabile's conclusion that Ms.

A. was in need of long-term psychiatric care.

¶ 47 Dr. Dinwiddie then discussed his risk assessment of Ms. A. in regards to her interactions with the children:

"Q. In making your base assessment of [Ms. A.], what factors did you find were important in reaching your determination?

A. Okay.

Q. Higher or lower.

A. Right. And they cut in her case both ways. And I concentrated in that report on physical risk. So she had many characteristics that in the general population are associated with somewhat lower risk. And I can go through those if you want. But the one that stands out in terms of elevated risk, higher risk, is the presence of this psychotic illness.

Q. Why is that?

A. In general, presence of psychotic symptoms, all other things being equal, is associated with elevated risk of acting in a violent fashion, and of course that is mainly going to be – the people mainly at risk are going to be those who are physically near.

In the case of delusional disorder, the difficulty in further assessing, quantifying risk, is that the individuals may not have, by definition in fact, do not have insight into the nature of their beliefs. They act on them and believe that they are true, but they often realize that that is a belief not shared by others around them. And so they're going to be motivated to conceal the nature and the depth to which these beliefs are held.

> As a result, most of the factors that can be used to predict relatively higher short-term risks are not going to be present. So all we know is somebody who carries around with them delusions, is not disposed to talk about those delusions to anybody, is going to interpret circumstances in a very peculiar way and can react to such circumstances unpredictably."

Thus, he said, "there may be absolutely no way, no warning at all of her reaching certain conclusions and acting in a very dangerous, possibly lethal way."

¶ 48 Counsel for Dr. S. asked whether Ms. A. posed a risk to her children if she were allowed to be with them unsupervised. Dr. Dinwiddie answered in the affirmative. "It's difficult to quantify it because the disorder is difficult to study," he said, but there's ample evidence to suggest that it can absolutely occur." He also stated, "In addition to that, there's a different kind of risk and that is, of course, the risk – emotional risk to their well-being and to their development simply by exposure to her false beliefs."

¶ 49 Counsel for Dr. S. called Ms. A. as an adverse witness. Ms. A. testified that in October 2008, she spoke with Andra Hersey, a counselor at Elizabeth's school, who informed her that Elizabeth had made certain statements indicative of abuse by Dr. S. She additionally acknowledged her subsequent allegation that, on July 4, 2008, she saw Dr. S. rubbing his penis on Elizabeth while Elizabeth was watching fireworks. She admitted that, although this allegation was "very significant," she did not discuss it with Hersey in October 2008, because, she said, her attorney had told her not to question Hersey about her interactions with Elizabeth.

¶ 50 Ms. A. testified that she recalled making a phone call to the DCFS hotline, although she

could not recall precisely when. (Dr. Amabile's report establishes that such a phone call occurred in December 2008.) Counsel for Dr. S. asked her whether she alleged during that phone call that Dr. S. sexually abused Elizabeth. Ms. A. at first stated that she did not know. She then denied making such allegations. However, under further questioning by counsel for Dr. S., she admitted telling DCFS that he saw Dr. S. rubbing against Elizabeth and getting an erection. She also admitted telling DCFS that Elizabeth had informed her that Dr. S. touched her "down there."

¶ 51 Ms. A. stated that she told Dr. Dinwiddie in June 2009 that the only reason that she made this second DCFS report was that Elizabeth had described the things that had happened in detail to her. However, she also acknowledged that her allegation in the second DCFS report that Dr. S. had been rubbing against Elizabeth was purportedly based upon her personal observation.

¶ 52 Ms. A. testified that she believed that she had been "unjustly questioned" (in the words of Dr. S.'s counsel) ever since she made those allegations of abuse to DCFS. She further stated that she did not believe that she ought to be criticized for making those allegations. She testified that she believed that the allegations of abuse placed the children in an environment that was safe, and she did not know whether the making of these allegations had any negative impact on the children. Opposing counsel asked her whether she was aware that Dr. Amabile concluded that the abuse allegations were not in the best interest of the children and that the children had been coached. Ms. A. stated that she was not aware of these statements by Dr. Amabile. She finally stated that she believed that she had acted as a good mother should act in bringing forward her allegations of abuse, and if her children were to tell her of any further incidents of abuse, she

would report those as well.

¶ 53 Counsel for Dr. S. then called Dr. S. to the stand. Dr. S. testified that he was a physician with a private practice in internal medicine, and he had also been the chief medical officer at St. James Hospital since 2004. He stated that when he and Ms. A. married in 2000, he was a physician, while Ms. A. was not employed. Prior to the separation, Dr. S. would spend some time with the children before leaving the house between 8 and 9 a.m., and he would return from work between 5 and 6 p.m. The parties subsequently stipulated that, prior to their separation, Ms. A. was the primary caretaker of the children, while Dr. S. was working.

¶ 54 Dr. S. stated that in June 2009, after Dr. Amabile had issued her report, Dr. S. requested that the court transfer full-time custody of the children to him. He explained that Ms. A. had been acting "increasingly erratic" and appeared "withdrawn, somewhat disheveled." He was concerned about her behavior and actions. As a result of these concerns, Dr. Dinwiddie was appointed to evaluate Ms. A.

¶ 55 As a part of this evaluation, Dr. S. spoke to Dr. Dinwiddie about various instances of erratic behavior that Ms. A. had displayed in the past. For instance, when Elizabeth was in kindergarten, Ms. A. was concerned that one of Elizabeth's classmates was allegedly choking her and spitting on her. Dr. S. realized that the classmate was the daughter of one of his colleagues. When Dr. S. mentioned this to Ms. A., she became very upset, stating that he had been hiding that fact from her and accusing him of being a liar. The children were in the vicinity when this occurred. Dr. S. stated that he tried to defuse the situation, telling Ms. A. that she shouldn't call him a liar in front of the children, but she persisted.

¶ 56 Another incident occurred in 2006 or 2007, when, in his position as chief medical officer at St. James Hospital, Dr. S. interviewed a candidate for the position of colorectal surgeon. They had lunch together, and the candidate later left a message on Dr. S.'s home voice mail thanking him for lunch. Ms. A. heard this message and became very upset, saying that the caller was his "boyfriend," calling Dr. S. a liar, and accusing him of being gay. Dr. S. stated that the children were in the vicinity during at least part of this conversation.

¶ 57 Dr. S. stated that after his conversation with Dr. Dinwiddie and the events that led up to Dr. Dinwiddie's evaluation, he had abiding concerns about Ms. A.'s impact on the children, namely, that her changing beliefs, behaviors, and emotions attributable to her mental illness would continue to adversely affect the children, and that she would look to her interests over theirs. He expressed specific concern about her behavior in manipulating and coaching the children to corroborate her allegations of physical and sexual abuse. "[T]heir reality was distorted," he said. "They didn't know whether to – you know, they knew that things had happened, but they didn't really understand why their mom was telling them these things."

¶ 58 Nevertheless, he said, he recognized the importance of the children having a relationship with Ms. A. He testified that he did not say anything disparaging about Ms. A. or her family to the children or in front of the children. He also encouraged them to tell Ms. A. about their activities and to buy gifts for her on holidays. He stated that they had a daily phone call with Ms. A. in the evening or at night. "So," he concluded, "whatever I can do to facilitate our kids' relationship with [Ms. A.], I try to do."

¶ 59 Ms. A., acting *pro se*, testified on her own behalf in narrative form. She stated that she

met Dr. S. in 1998, while she was in law school. They became engaged five months after they started dating, and they were married on November 12, 2000. Both of them agreed that she would be a stay-at-home mother. She was pregnant with Elizabeth during her final year of law school. Although she completed law school and graduated, she never took the bar exam and was never licensed to practice law.

¶ 60 Ms. A. testified in detail regarding her allegations of increasing discord between her and Dr. S. in 2008, before she moved out with the children on October 17, 2008. She stated that, throughout their marriage, approximately every two weeks, Dr. S. would receive a brown box marked "comics" or "Amazon books." He would place these books in his den, which had floor-to-ceiling bookshelves. The children had access to this room. Ms. A. alleged that, on April 4, 2008, for the first time, she looked at his books and discovered depictions of naked boys, child sacrifice, and men having sex. She "went through the whole den" filling trash bags with books which she threw in the garbage. That evening, she said, when Dr. S. came home, the two of them got into a fight. Dr. S. allegedly swore at her and told her that those were his Harry Potter and Calvin & Hobbes books. He also allegedly threatened her, saying that he would throw her possessions away and also telling her, "I'm going to burn this house down, and no one will know that you existed." Ms. A. testified that Elizabeth was present and told her father, "Stop yelling at mommy."

¶ 61 Ms. A. also testified that in July 2008, while Ms. A. was cleaning Joseph's room, she got into another fight with Dr. S., who allegedly swore at her and physically blocked her from leaving the room. She stated that Elizabeth was crying and saying, "Stop yelling at mommy.

Let mommy out." Ms. A. testified that Dr. S. again blocked her from leaving the room during an argument in October 2008, saying, "I'll let you out of here when I feel like it." According to Ms. A., Dr. S. told her that he wished she were dead, and said, "You're crazy. I hate you. I hate your family. I know Muslims that can take you out, you useless, ungrateful bitch." Also in October 2008, Ms. A. testified, Dr. S. stated that he would take the children to his parents' home and sell them on the streets of Bombay, and Ms. A. would not see them again.

¶ 62 Ms. A. testified that on October 14, 2008, Elizabeth said to her, "Why does dad want to kill us?" At that point, she told the court, she thought that she and the kids needed to leave. As noted, she moved out with the children on October 17, 2008.

¶ 63 Ms. A. alleged that from January to June of 2009, Dr. S. repeatedly told her that he loved her and that he wanted to get back together with her. She stated that he told her that if she would withdraw her petition for an order of protection against him, they could go to marriage counseling together. She stated that she believed him until she received his motion for temporary custody of the children (which, as noted, was filed on June 5, 2009), at which point she realized that "all of our conversations were just in order to get the children."

¶ 64 Ms. A. also related the following incident, presumably as evidence of Dr. S.'s lack of parenting skills. On August 21, 2009, she received a call from Dr. S.'s cell phone. On the other end was Joseph, saying, "Mommy." She said hello. Then, Ms. A. testified, Dr. S. grabbed the phone from Joseph. The following colloquy then occurred:

> "THE COURT: How do you know if he grabbed the phone if you weren't there, [Ms. A.]?

MS. A.: I don't, your Honor.

THE COURT: Then why did you testify to it just now under oath?

MS. A.: I just was trying to say hello to my son.

THE COURT: That's not my question. Do you have an answer to my question?

MS. A.: No, your Honor. I think I just mentioned that he forgot to hang up."

Ms. A. then testified that while the phone was left on, she could hear the voices of Dr. S. and his friend Dan. They referred to themselves as "wasted" and their speech was slurred.

¶ 65 Ms. A. concluded her testimony by stating that she would wish to split parenting time equally with Dr. S., as per Dr. Amabile's suggestion in her report.

¶ 66 Ms. A. also called Robyn Strausser to the stand. Strausser identified herself as a close friend of Ms. A. and the early childhood ministry director at the Christ Church of Oak Brook. She became acquainted with Ms. A. five years previously because Ms. A. brought her children to Sunday School at the Christ Church of Oak Brook. Approximately two years previously, Ms. A. began working under Strausser in various children's programs at the church, although Strausser had very little contact with her in that role.

¶ 67 Strausser testified that she had never been contacted by any parent saying that Ms. A. was a danger, and she had received praise from parents about Ms. A. She further testified that she had not noticed any unusual behavior on the part of Ms. A. or any behavior that made her believe Ms. A. was mentally unstable. When Ms. A. was with her children, Strausser never observed any unusual conduct that might reflect negatively on Ms. A.'s mental stability.

¶ 68 On cross-examination, Strausser testified that Ms. A. had given her a document that she

represented was an order of protection against Dr. S. She stated that Ms. A. told her that Dr. S. was not allowed within 500 feet of the children. As a result, Strausser said, she changed the pickup records at the Christ Church of Oak Brook to reflect that Dr. S. was not allowed to pick up the children. Strausser testified that she was not aware that no order of protection was ever actually entered against Dr. S.

¶ 69 Ms. A.'s final witness was her mother, Judith S. Judith testified that the children's relationship with their mother was loving, warm, and affectionate. She stated that Ms. A. was a good mother, devoted to her children, and a positive role model. She had not noticed any unusual or bizarre behavior on Ms. A.'s part since her marriage to Dr. S., nor had she observed Ms. A. doing or saying anything that would cause her to think that she was mentally unstable. She had no concerns about Ms. A.'s mental state, her ability to care for her children, or her ability to provide a safe and stable environment for them.

¶ 70 Judith testified that, on several occasions, the children had said things about Dr. S. that caused her to be concerned. For instance, Judith said that in the fall of 2007, Elizabeth told Judith that her father hated her and wanted to kill her, and he would pinch her wrists and hit her on the head. Also in the fall of 2007, Elizabeth and Joseph were allegedly pulling each other's pants down. Judith said that when she told them to stop, they replied, "That's what we play with dad." On Joseph's birthday in 2008, he allegedly told Judith that his father blindfolded him and hit him on the head. Finally, Judith said, Elizabeth once told her that she saw her dad's "private" and saw him urinating. Judith testified that she did not hear Ms. A. telling the children that these incidents had occurred.

¶ 71 On April 15, 2011, the trial court entered a memorandum opinion on custody detailing its findings. In its opinion, the court stated that it had to assess the credibility of both parties in order to resolve factual disagreements and render a custody decision that would be in the best interest of the parties' children. The court found that Dr. S.'s testimony was "consistent and generally credible" on both direct and cross-examination, and he was "generally forthright." On the other hand, the court found that Ms. A. "was not a credible witness" and was repeatedly impeached in the course of her testimony. "In essence," the court said, "this Court was faced with the same question posed by Dr. Amabile – was [Ms. A.] periodically delusional or was she lying? This Court concludes that [Ms. A.] exhibited both behaviors. [Ms. A.] presented fixed false beliefs about [Dr. S.]'s behavior. However, [Ms. A.] made misrepresentations and evaded answering questions in spheres outside the area of her fixed false beliefs." As one example of Ms. A.'s lack of credibility, the court referenced Ms. A.'s testimony that Dr. S. grabbed the phone from Joseph, an assertion which she quickly backpedaled on when pressed, because she was clearly not present to know whether Dr. S. indeed grabbed the phone. "While a rather small issue at trial," the court stated, "this Court believes it is emblematic of the way that [Ms. A.] distorted and exaggerated facts and put the worst possible spin on [Dr. S.]'s behavior."

With regard to Ms. A.'s allegations of abuse against Dr. S., the court found,

> "There is convincing evidence that [Ms. A.] practiced and coached the children to repeat these allegations. DCFS, Dr. Amabile, and Dr. Grossman, the children's therapist, found no credence to the allegations or any evidence of sexual or physical abuse of the children by [Dr. S.]. They all found independent evidence of coaching of the children by [Ms.

A.]."

¶ 72 The trial court also commented on Ms. A.'s repeated failures to comply with discovery and trial orders. In particular, it noted that Ms. A. failed to timely tender her trial exhibits and expert reports. For example, the court stated, during the course of litigation, counsel for Dr. S. and the children's representative repeatedly requested that Ms. A. advise them as to whether she would be calling Dr. Chapman as an expert so that they could prepare for trial. Although Ms. A. had seen Dr. Chapman "numerous times" prior to the initial date set for trial, she did not tender any report or opinion of his before the first or even the second trial date. The court stated,

> "[Ms. A.]'s inadequate and tardy tendering of reports and opinions of experts and her failure to timely tender a witness list and exhibits were so highly prejudicial to [Dr. S.]'s counsels' and the child representative's ability to prepare for trial that this Court barred [Ms. A.]'s expert and several of her witnesses and exhibits."

¶ 73 In examining the best interests of the children, the court found that Ms. A.'s actions "show a significant deficiency in her parenting ability and judgment." In particular, the court stated that Ms. A.'s coaching of Elizabeth to report false accusations of threats, physical abuse, and sexual abuse by Dr. S. was "most egregious." The court also stated that Ms. A.'s actions "distorted the children's sense of reality and made them feel uncomfortable and unsafe in the presence of their father."

¶ 74 The court then observed that Dr. S. had been the primary caretaker of the children since June 2009. It found that he cared for the children well and was involved in every aspect of their lives, and it also found that the children were well adjusted to their current home, school, and

community.

¶ 75 Based upon these findings, the court held that it would be in the best interest of the children for Dr. S. to be awarded sole custody. It found that joint custody was not feasible "[g]iven the acrimony and lack of open channels of communication between the parties," and it also found that it would not be in the best interest of the children for Ms. A. to be awarded sole custody. With regard to the latter, it stated:

> "[Ms. A.] has been diagnosed as having a delusional disorder with jealous and persecutory subtypes. She has made false allegations of physical and sexual abuse of the children by [Dr. S.], coached them to believe that they were abused, and made them feel poor and unsafe with their father.
>
> The children love [Ms. A.] and she loves them. She is entitled to visitation with the minor children. However, this Court finds that unrestricted visitation between [Ms. A.] and the children would seriously endanger the children. Dr. Dinwiddie found an increased risk of physical harm to the children due to [Ms. A.]'s delusional disorder, although he was candid in his report that there is no way to scientifically assess the magnitude of the physical risk to the children. See Exh. 51. But the risk of serious endangerment to the emotional wellbeing of the children is clear-cut. [Ms. A.] has distorted the children's sense of reality with her false accusations and coaching, and she seems to have no insight into the emotional damage this has caused and can cause in the future."

¶ 76 Accordingly, the trial court awarded sole custody of the children to Dr. S. and ordered

that Ms. A.'s visitation with the children would be professionally supervised. The court also ordered that, before Ms. A. would be awarded unsupervised visitation, (1) she would have to be in regular treatment with a board certified psychologist with expertise in the area of delusional disorders and access to the reports of Dr. Amabile and Dr. Dinwiddie, and (2) she would have to be evaluated by a board certified psychiatrist selected by the court as to whether there was a continued risk of harm to the children if Ms. A. should have unsupervised visitation.

¶ 77 It is from this order that Ms. A. now appeals.

¶ 78 II. ANALYSIS

¶ 79 On appeal, Ms. A. raises four contentions of error. First, she contends that the trial court abused its discretion in barring her from calling all of her desired witnesses due to her failure to comply with witness disclosure deadlines. Second, she contends that, by barring her from calling these witnesses, the trial court deprived her of her fundamental liberty interest in the companionship, care, custody, and management of her children without due process of law. Third, she contends that the court's finding that unsupervised visitation would seriously endanger the children's physical and emotional health was against the manifest weight of the evidence. Fourth, she contends that the trial court abused its discretion by ruling that her visitation with the children had to be professionally supervised. As her relief, Ms. A. requests that this court reverse the trial court's ruling and order that the parties split parenting time equally with no supervision, or, in the alternative, remand the issue of parenting time to the trial court with instructions to grant Ms. A. more liberal, unsupervised visitation. We consider Ms. A.'s contentions in turn.

¶ 80 A. Trial Court's Decision to Bar Witnesses That Were Not Timely Disclosed

¶ 81 Ms. A.'s opening contention is that the trial court abused its discretion by barring her from presenting certain witnesses because she failed to make a timely pretrial disclosure of those witnesses as required by Rule 213 and by court order. In particular, she objects to the exclusion of testimony from five particular witnesses: (1) Dr. Chapman, Ms. A.'s forensic psychiatrist, (2) Dr. Krause, who was appointed by the court to conduct a psychological evaluation of Ms. A., (3) Hersey, a school counselor at Elizabeth's school to whom Elizabeth made allegations of abuse by her father, (4) Brown, Ms. A.'s therapist, who interviewed the children and witnessed the children's allegations of abuse against Dr. S., and (5) Dr. Ghaus, Ms. A.'s treating psychiatrist. Dr. S. contends that the trial court acted within the broad scope of its discretion given Ms. A.'s repeated failure to comply with discovery orders and the trial court's finding that allowing these witnesses to testify would require continuance of the case, which would not be in the interest of the children. We agree.

¶ 82 Under Supreme Court Rule 213(f), parties are required to disclose the identities of witnesses who will testify at trial, as well as the opinions of expert witnesses. Ill. S. Ct. R. 213(f) (eff. Jan. 1, 2007). Such disclosures must be made within 28 days after service of interrogatories. Ill. S. Ct. R. 213(d) (eff. Jan. 1, 2007). For an independent expert witness, a party must disclose "the subjects on which the witness will testify and the opinions the party expects to elicit." Ill. S. Ct. R. 213(f)(2) (eff. Jan. 1, 2007). For a controlled expert witness, a party must disclose the subject matter on which the witness will testify, the conclusions and opinions of the witness, the basis for those conclusions and opinions, the qualifications of the

witness, and any reports prepared by the witness about the case. Ill. S. Ct. R. 213(f)(3) (eff. Jan. 1, 2007).

¶ 83 Supreme Court Rule 219 authorizes the circuit court to impose sanctions, including barring witnesses from testifying at trial, when a party fails to make timely disclosures or otherwise fails to comply with the court's orders regarding discovery. Ill. S. Ct. R. 219 (eff. July 1, 2002); see *Nedzvekas v. Fung*, 374 Ill. App. 3d 618, 621 (2007) (trial court did not abuse its discretion in barring expert witnesses that party failed to disclose in a timely fashion); *In re Marriage of Daebel*, 404 Ill. App. 3d 473, 487-88 (2010) (where petitioner refused to sit for her deposition and then surprised respondent at trial with unexpected argument, trial court abused its discretion by not barring her testimony and barring her from presenting undisclosed defenses; trial court's final order, which was based largely upon petitioner's testimony, was vacated). In determining whether to impose Rule 219 sanctions, courts consider the following factors: "(1) the surprise to the adverse party; (2) the prejudicial effect of the proffered testimony or evidence; (3) the nature of the testimony or evidence; (4) the diligence of the adverse party in seeking discovery; (5) the timeliness of the adverse party's objection to the testimony or evidence; and (6) the good faith of the party offering the testimony or evidence." *Shimanovsky v. General Motors Corp.*, 181 Ill. 2d 112, 124 (1998). The decision to impose sanctions for a party's violation of a pretrial discovery order is committed to the trial court's sound discretion, and it will not be disturbed on appeal absent an abuse of discretion. *Id.* at 123; *Smith v. City of Chicago*, 299 Ill. App. 3d 1048, 1052 (1998). An abuse of discretion only occurs where no reasonable person would take the position taken by the trial court. *Brax v. Kennedy*, 363 Ill.

App. 3d 343, 355 (2005).

¶ 84 In this case, Dr. S. propounded his discovery requests pursuant to Rule 213(f) on March 12, 2009. Ms. A. did not tender her answers to his interrogatories until July 17, 2009, and the only witnesses that she identified were the parties themselves. On August 31, 2009, the trial court issued a trial order setting the case for trial on January 25, 2010, and it set a deadline for the parties to update their discovery disclosures, including witness lists, by November 24, 2009, specifically providing in its order that "Witnesses not identified on the witness list shall be barred." Approximately a month before the discovery deadline, counsel for Ms. A. requested a continuance. The trial court granted Ms. A.'s motion, delaying the trial until April 28, 2010, and moving the deadline for the parties to update their discovery disclosures to April 15, 2010. Once again the trial court warned that "Witnesses not identified on the witness list shall be barred." Through the course of the litigation, counsel for Dr. S. sent a total of five letters to counsel for Ms. A. seeking to gain her compliance with the court's discovery orders, in accordance with Rule 201(k) ("The parties shall facilitate discovery under these rules and shall make reasonable attempts to resolve differences over discovery"). Nevertheless, Ms. A. failed to tender any updated witness disclosures by the extended discovery deadline. It was not until May 13, 2010, nearly six months after the original discovery deadline and nearly a month after the passage of the last continued deadline of April 15, 2010, that Ms. A. finally tendered her witness disclosures, containing a total of 34 potential witnesses, including the five witnesses whose exclusion she objects to in this appeal. This left approximately two months before the July 12, 2010, date set for commencement of the trial, which was continued from the original date of

January 25, 2010. Moreover, even in that untimely disclosure, Ms. A. failed to identify any opinions of Dr. Krause, Dr. Ghaus, or Brown, all of whom she sought to call as controlled expert witnesses, or of Hersey, whom she sought to call as an independent expert witness.

¶ 85 Under the facts of this case, we cannot say that the trial court's decision to impose sanctions was so unreasonable as to constitute an abuse of discretion. As articulated by the trial court, if the trial court would have allowed Ms. A. to introduce her experts, it would most certainly have prejudiced the opposing party, in that it would have been impossible for him to adequately prepare for trial by the scheduled date of July 12, 2010. As noted in Dr. S.'s motion to bar, if these experts were to be allowed at trial, it would have required Ms. A. to disclose the experts' reports, if any, as well as disclose their opinions, which Ms. A. failed to do by April 15, 2010, or, for that matter, by June 17, 2010, when the trial court ruled upon Dr. S.'s motion to bar. It would also have required Dr. S. to subpoena the experts' records, take their depositions, and forward the resulting information to Dr. Amabile and Dr. Dinwiddie to enable them to review and analyze that information and possibly supplement their reports in response. Furthermore, given Ms. A.'s past dilatory conduct with respect to discovery compliance, it would not be unreasonable to anticipate additional delay in the completion of that discovery. Under these circumstances, the only way to allow Ms. A.'s experts to testify while avoiding undue prejudice to Dr. S. would have been to further delay the trial, which was already delayed for more than six months. We cannot second-guess the conclusion of the trial court that such a delay would have been prejudicial to the children, who were already whipsawed in the conflict raging between their parents, particularly given the fact that there was ample testimony showing at least one of

the parents to be actively engaging in extended efforts to involve the children in the course of this conflict. *Cf. In re Curtis B.*, 203 Ill. 2d 53, 55 (2002) (lack of permanency in a child's life can be harmful to the child's development).

¶ 86 Accordingly, the exercise of the trial court's discretion is not inconsistent with the guidelines offered by the *Shimanovsky* factors in determining whether and what Rule 219 sanctions to impose for discovery violations. As noted, these factors consist of the surprise to the adverse party, the prejudicial effect of the proffered testimony, the nature of the testimony, the diligence of the adverse party in seeking discovery, the timeliness of the adverse party's objection to the testimony, and the good faith of the party offering the testimony.

¶ 87 Regarding the surprise to the adverse party, Ms. A.'s untimely 34-witness disclosure would have come as a surprise to Dr. S., since it came nearly a month after the court's discovery deadline, which had already been extended at the request of her counsel, and the only witnesses that Ms. A. previously disclosed were the parties themselves. This surprise would have been exacerbated by the fact that Ms. A.'s untimely disclosure was incomplete, insofar as she failed to disclose any opinions of Dr. Krause, Dr. Ghaus, Brown, or Hersey, all of which she now argues would have been key witnesses on her behalf. In addition, although Ms. A. disclosed the opinions of Dr. Chapman, she did not submit his report even at the belated time of her June 8, 2010, motion to extend discovery. There is no indication in the record that Dr. S. had been sufficiently alerted to the expert opinions that Ms. A. sought to introduce at the eleventh hour so as to enable him and his counsel to prepare for such an eventuality prior to trial.

¶ 88 Regarding the element of prejudice, as noted, there was support for the trial court's

conclusion that if Ms. A.'s experts were allowed to testify, and if the trial date were not delayed, it would prejudice Dr. S., insofar as he would not have time to complete discovery and adjust his trial strategy in light of Ms. A.'s experts; but, on the other hand, if the trial date were delayed, it would prejudice the children by postponing the time at which a permanent custody order would be entered. This prejudice is magnified by the fact that Ms. A.'s experts, to the extent that they would have been called upon to discuss her psychological diagnosis, were centered on a highly material subject and could have necessitated significant adjustments in Dr. S.'s trial strategy.

¶ 89 No question is raised as to the diligence of Dr. S. in seeking this discovery. As noted, Dr. S. made his initial request for Rule 213(f) disclosures on March 12, 2009, over a year before the discovery deadline of April 15, 2010. Nor is any question raised as to the timeliness of Dr. S.'s objection to the introduction of Ms. A.'s untimely-disclosed witnesses. When Ms. A. had not disclosed any witnesses except the parties themselves by April 5, 2010, Dr. S. filed a motion to bar her from calling any undisclosed witnesses, citing the prejudice that would inure to him if Ms. A. were allowed to bring in new witnesses past the discovery deadline.

¶ 90 As for the good faith of the party offering the testimony or evidence, we note that Ms. A. does not offer any explanation or justification for her tardy submission on appeal, nor does any such explanation appear from the face of the record. On the contrary, it is apparent from the record that four out of the five witnesses whose exclusion Ms. A. now complains of, namely, Dr. Chapman, Dr. Krause, Brown, and Hersey, were known to Ms. A. well before the April 15, 2010, discovery deadline. (The record is silent as to when Dr. Ghaus, whom Ms. A. identified as her treating psychiatrist, began treating Ms. A.) Dr. Chapman, Ms. A.'s forensic psychiatrist,

was retained by Ms. A. no later than June 26, 2009, because on that date, the trial court ordered that the reports of Dr. Amabile and Dr. Dinwiddie could be disseminated to "Dr. Norman Chapman, [Ms. A.]'s forensic psychiatrist." Dr. Krause was appointed by the court as a custody evaluator on June 17, 2009, pursuant to Ms. A.'s request. Brown, Ms. A.'s therapist, was treating Ms. A. from at least October 28, 2008, through April 1, 2009, as stated in Dr. Amabile's report dated May 19, 2009. Finally, Hersey was the school counselor at Elizabeth's school who notified DCFS in October 2008 that Elizabeth had made allegations of abuse by her father. Ms. A.'s testimony at trial indicated that she spoke with Hersey about Elizabeth on October 21, 2008, and Hersey was also discussed in Dr. Amabile's May 19, 2009, report. Nevertheless, as noted, Ms. A. chose not to disclose any of these four witnesses until May 13, 2010, nearly a month after the extended discovery deadline, and even then, her disclosure was inadequate, since she failed to list the opinions she expected to elicit from her expert witnesses.

¶ 91 Only the third *Shimanovsky* factor, the nature of the testimony or evidence, arguably weighs in favor of Ms. A.'s contention that the trial court ought not have barred the witnesses at issue. Indeed, Ms. A. largely eschews mention of the other five factors in her brief, choosing instead to focus her arguments on this single factor. Ms. A. contends that the testimony of the barred witnesses should have been permitted because it would have been pertinent to the central issue of whether she suffered from delusional disorder, as well as the parenting strengths and weaknesses of the parties. In this regard, she cites section 602(a) of the Act, which provides that custody decisions are to be made "in accordance with the best interest of the child" and that, in making this determination, the court "shall consider all relevant factors." 750 ILCS 5/602 (West

2010). She contends that it was improper for the court to bar her witnesses because their testimony would have been highly relevant to the best interests determination.

¶ 92 However, nothing in section 602(a) states that discovery sanctions may not be imposed against a party in a child custody case who violates the court's orders despite repeated efforts by the opposing party and the court to ensure compliance. The case of *In re Marriage of A'Hearn*, 408 Ill. App. 3d 1091 (2011), cited by Ms. A. on this point, is distinguishable. *A'Hearn* concerns a father's petition to modify a joint custody agreement. *Id.* at 1092. When the father failed to produce his witness list by the court-ordered deadline, the court's sole attempt to compel compliance was to postpone the due date once. *Id.* at 1100. The court then sanctioned the father by barring him from calling any witnesses at trial. *Id.* at 1093. The court also found that the father could not prevail on his petition without witness testimony and dismissed his petition. *Id.* at 1093. On appeal, the *A'Hearn* court stated that "A sanction that results in the dismissal of litigation is considered drastic and should only be employed when all other enforcement efforts have failed." *Id.* at 1099. In light of this principle, the *A'Hearn* court found that the trial court's sanction was "too harsh of a sanction" since "the trial court imposed the harshest sanction available after insufficient enforcement efforts." *Id.* at 1100. The *A'Hearn* court further noted that it was not in the best interest of the child to have the custody petition denied pursuant to a discovery sanction rather than heard on the merits. *Id.* at 1100.

¶ 93 The decision in *A'Hearn* is inapposite. First, the sanction in this case is significantly less harsh than the sanction imposed upon the father in *A'Hearn*. As noted, the father in that case was not allowed to call any witnesses, leading to the outright dismissal of his petition. The

A'Hearn court's reversal of the trial court's decision was explicitly premised upon the extreme harshness of this sanction. *Id.* at 1099. By contrast, in the present case, although Ms. A. was not permitted to call her untimely-disclosed experts, she was still granted a trial on the merits. The court permitted Ms. A. to call several witnesses on her behalf, including her parents, her friend Strausser, and Dr. Amabile, the evaluator appointed by the court pursuant to section 604(b), even though Ms. A. had not disclosed any of these witnesses by the discovery deadline. (By contrast, the father in *A'Hearn* was specifically barred from calling the court-appointed 604(b) evaluator as a witness. *Id.* at 1100.) Moreover, Ms. A. testified at length on her own behalf and was also afforded the opportunity to cross-examine Dr. S.'s witnesses.

¶ 94 Second, in this case, the trial court made a specific finding that the delay necessitated by allowing Ms. A. to present her expert testimony would prejudice the children, a finding that was not unreasonable given the factual complexity of the case and the complexity of the testimony which Ms. A. sought to include at the last minute. As noted, Ms. A. listed a total of 34 witnesses in her untimely May 13, 2010, disclosure, including the five experts whose exclusion she now claims was improper. Moreover, such expert testimony would presumably have included testimony as to her psychological diagnosis and how such diagnosis might impact the children under her care. There is no indication in the *A'Hearn* decision that the facts involved were comparable in complexity or that the trial court made an explicit finding of prejudice to the children if the challenged witnesses were allowed to testify.

¶ 95 Third, the trial court in this case made multiple unsuccessful attempts to obtain Ms. A.'s compliance with discovery deadlines over many months, both with regard to witness disclosures

and with regard to document disclosures. Although the trial court originally set a deadline for the parties to exchange updated discovery by November 24, 2009, the court continued the trial and postponed the discovery deadline until April 15, 2010, at the request of Ms. A.'s counsel. The court clearly warned the parties on multiple occasions that witnesses that were not disclosed would be barred at trial. Nevertheless, Ms. A. failed to update or supplement her witness disclosures by that deadline. Moreover, the court found monetary sanctions to be ineffective in procuring Ms. A.'s compliance with discovery deadlines. As noted, Ms. A. failed to tender all of the documents sought by Dr. S. in his March 12, 2009, production request. Although the trial court entered an order on January 27, 2010, requiring her to comply with his request by February 1, 2010, or incur a fine of $100 per day past that deadline, Ms. A. still had not complied by June 30, 2010. Given the fact that Ms. A. had shown herself to be unresponsive to lesser sanctions, unlike the father in *A'Hearn*, we cannot say that the trial court abused its discretion in barring her untimely-disclosed witnesses.

¶ 96 The case of *In re Marriage of Booher*, 313 Ill. App. 3d 356 (2000), also cited by Ms. A. in this regard, is likewise readily distinguishable. In *Booher*, a dissolution of marriage case, the father failed to file a pretrial affidavit containing information about income, expenses, and property. *Id.* at 358. The father, who was proceeding *pro se*, explained to the trial court that he did not know how to get a form for the affidavit, and when he went to the county clerk in an attempt to get a form, the clerk informed him that he could discuss the affidavit on the date of trial. *Id.* at 358. Nevertheless, the trial court sanctioned the father by barring him from presenting any evidence whatsoever, not only with regard to issues of income, expenses, and

property, but also with regard to the best interests of the children. *Id.* at 358. On appeal, the *Booher* court found this to be an abuse of discretion. *Id.* at 359. In rendering this decision, the court found it significant that the father presented evidence that he made a good-faith effort to provide the information at issue, and it also noted that he had complied with all previous discovery requests. *Id.* at 361. In addition, the *Booher* court emphasized the mismatch between the scope of the violation and the scope of the sanction, stating:

> "A reasonable sanction for failure to comply with an order for discovery providing information on income, expenses, and property, when much of the information was already disclosed in previous discovery, would be one barring him from contradicting or going beyond the discovery materials provided *on those matters*; it would not bar *any* testimony regarding the marriage and, more important, the best interests of the children." (Emphasis in original.) *Id.* at 361.

By contrast, in the present case, the information that Ms. A. failed to provide in a timely fashion was directly pertinent to the issue of the best interests of the children, to the extent that her experts would have testified regarding the allegations of abuse against Dr. S., Ms. A.'s mental condition, and the risk, or lack thereof, that she posed to her children. Moreover, as discussed earlier, there is no evidence that Ms. A. made a good-faith effort to provide the information at issue by the discovery deadline, nor is it the case that Ms. A. complied with all previous discovery requests. Finally, as with respect to *A'Hearn*, the sanction in the present case is softer than the sanction imposed in *Booher*, since the trial court allowed Ms. A. to testify at length on her own behalf and call multiple witnesses in support of her position concerning the best

interests of the children.

¶ 97 Consequently, in light of the unfair surprise and prejudice that would have resulted to Dr. S. if Ms. A. had been allowed to call the challenged witnesses, as well as Dr. S.'s diligence in seeking discovery and his timely objection to the admission of testimony from those witnesses, we are unable to say that the trial court's decision to bar the witnesses at issue was so unreasonable as to constitute an abuse of discretion. See *Shimanovsky*, 181 Ill. 2d at 123-24.

¶ 98 B. Ms. A.'s Due Process Claim

¶ 99 Notwithstanding the foregoing, Ms. A. argues that, by barring her from calling the aforementioned witnesses, the trial court deprived her of her fundamental liberty interest in the companionship, care, custody, and management of her children without due process of law. Dr. S. argues that Ms. A. forfeited this argument by failing to raise it before the trial court, and, in any event, her right to due process was not violated. The standard of review for determining if a party's due process rights have been violated is *de novo*. *People v. Carini*, 357 Ill. App. 3d 103, 113 (2005).

¶ 100 It is well settled that a party that does not raise an issue in the trial court forfeits that issue and may not raise it for the first time on appeal. *In re Marriage of Culp*, 399 Ill. App. 3d 542, 549 (2010) (declining to consider argument that party failed to raise before the trial court). Indeed, our supreme court has recently emphasized the need for judicial restraint in this regard:

> "[W]e believe it appropriate to caution courts of review – particularly when constitutional issues are involved – that they are not free rangers riding about the legal landscape looking for law to make. Judicial restraint is a principle of review that the justices of the

> Supreme Court strive to observe. [Citation.] Our precedent counsels such adherence as well. We expect appellate panels to do the same." *People v. White*, 2011 IL 109,689, ¶153 (2011).

Thus, the *White* court explicitly found that it was inappropriate for the appellate court to address the defendant's constitutional contentions where the defendant's trial counsel chose not to raise such issues before the trial court. *Id.* at ¶153-54. Similarly, in this case, Ms. A. failed to make any due process objection at the trial level. Accordingly, in light of the White decision, we shall not reach the merits of this forfeited issue.

¶ 101 C. Trial Court's Finding of Endangerment

¶ 102 Ms. A. next contends that the court's finding that unsupervised visitation would seriously endanger the children's physical and emotional health was against the manifest weight of the evidence.

¶ 103 The factual findings of the trial court in connection with a custody determination will not be disturbed unless they are against the manifest weight of the evidence. *In re Marriage of Wolff*, 355 Ill. App. 3d 403, 413 (2005). A finding is against the manifest weight of the evidence only where an opposite conclusion is apparent or where the finding appears to be unreasonable, arbitrary, or not supported by the evidence. *Eychaner v. Gross*, 202 Ill. 2d 228, 252 (2002); see *Zaderaka v. Illinois Human Rights Com'n*, 131 Ill. 2d 172, 180 (1989) (reviewing court may not reweigh evidence under the manifest weight of the evidence standard). This is a deferential standard of review, and it "is grounded in the reality that the circuit court is in a superior position to observe the demeanor of the witnesses, determine and weigh their credibility, and resolve

conflicts in their testimony." *In re Marriage of Baumgartner*, 237 Ill. 2d 468, 486-87 (2010).

¶ 104 Section 607(a) of the Act provides that a noncustodial parent "is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral or emotional health." 750 ILCS 5/607(a) (West 2010). The custodial parent bears the burden of proving, by a preponderance of the evidence, that unsupervised visitation with the noncustodial parent would seriously endanger the child. *In re Marriage of Fields*, 283 Ill. App. 3d 894, 905 (1996). Based upon the facts as adduced at trial, we cannot say that the trial court's finding that Dr. S. demonstrated serious endangerment by a preponderance of the evidence was against the manifest weight of the evidence.

¶ 105 As a threshold matter, Ms. A. argues that the court was not entitled to rely upon Dr. Dinwiddie's diagnosis of delusional disorder, because, in his report, Dr. Dinwiddie explicitly made that diagnosis contingent upon the falsity of her allegations against Dr. S., and he did not render any opinion on that matter. However, at trial, Dr. Dinwiddie categorically opined that Ms. A. suffered from delusional disorder. Moreover, the fact that Dr. Dinwiddie did not render an opinion as to the truth or falsity of Ms. A.'s allegations in his report is not controlling in light of the other evidence adduced at trial that would support the trial court's finding that Ms. A.'s allegations were false and the product of delusions. Dr. Amabile stated in her report, which was admitted at trial, that both Elizabeth and Joseph denied the allegations of abuse, and Elizabeth stated that she had been coached by her mother to repeat statements about her father that were not true. Dr. Amabile concluded that there was "considerable evidence" that Ms. A.'s allegations regarding Dr. S. were false and that it was likely that she was "periodically

delusional." Moreover, the trial court had the opportunity to hear the testimony of Dr. S. and Ms. A. regarding the allegations that they made against each other, and it rendered a specific finding that Dr. S. was a credible witness, while Ms. A. was not. We must give substantial deference to the trial court's credibility determination with regard to in-court statements under the manifest weight of the evidence standard. *Baumgartner*, 237 Ill. 2d at 486-87 (trial court is in a superior position to observe witness demeanor and make credibility determinations). Thus, there was significant evidence supporting the trial court's finding that the bizarre accusations leveled by Ms. A. against Dr. S. were false and, therefore, pursuant to Dr. Dinwiddie's report and his trial testimony, Ms. A. suffered from delusional disorder.

¶ 106 Ms. A. next argues that there was nevertheless insufficient basis from which to conclude that she posed a risk of either physical or emotional harm to the children. We disagree. With regard to physical risk, Dr. Dinwiddie provided detailed testimony about the potential dangers posed to the children by Ms. A.'s delusional disorder. He stated that individuals with delusional disorder are at heightened risk for acting in a violent manner. Thus, he testified, because of Ms. A.'s disorder, "there may be absolutely no way, no warning at all of her reaching certain conclusions and acting in a very dangerous, possibly lethal way." Although Dr. Dinwiddie cited a number of factors connected with Ms. A. that would be associated with a relatively lower risk of violent behavior, he also stated that there was nevertheless "ample evidence" that violent behavior could "absolutely occur" due to her mental condition.

¶ 107 With regard to emotional risk, the court heard testimony from multiple parties about the negative impact that Ms. A.'s actions had upon the children. Dr. Amabile stated in her report

that Ms. A.'s actions "involv[ing] the children in the vicissitudes of her convictions, her emotions, and her courses of action" were detrimental to the children. She also stated that Ms. A. demonstrated "poor insight" into the emotional turmoil that she was inflicting upon them. Dr. Amabile's concerns were corroborated by Dr. S., whom, as noted, the court found to be a credible witness. Dr. S. testified, without objection, that Ms. A.'s actions in manipulating and coaching the children with regard to the false allegations of abuse both distorted their reality and caused them stress. Finally, Dr. Dinwiddie also warned of "emotional risk to [the children's] well-being and to their development simply by exposure to her false beliefs," although it was not a focal part of his testimony.

¶ 108 Thus, given the foregoing evidence to support the trial court's finding that Ms. A.'s condition posed a serious risk to the children's emotional and physical well-being, we cannot conclude that the trial court's finding was against the manifest weight of the evidence. See *Eychaner*, 202 Ill. 2d at 252 (finding is against the manifest weight of the evidence only where an opposite conclusion is apparent or where the finding appears to be unreasonable, arbitrary, or not supported by the evidence).

¶ 109 D. Trial Court's Order That Visitation Must Be Supervised

¶ 110 Ms. A.'s final contention is that the trial court abused its discretion by ruling that she was only entitled to supervised visitation. We disagree.

¶ 111 As has been discussed, section 607(a) of the Act provides that "[a] parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral or emotional

health." 750 ILCS 5/607(a) (West 2010). The trial court has broad discretion in fashioning the terms of visitation, and those terms will not be reversed on appeal absent an abuse of that discretion, which occurs only where no reasonable person would take the position adopted by the trial court. *In re Marriage of Saheb and Khazal*, 377 Ill. App. 3d 615, 621 (2007).

¶ 112 Ms. A.'s contention that the trial court abused its discretion in rendering its custody decision is largely contingent upon her previous argument that the trial court's finding that unsupervised visitation would seriously endanger the children was against the manifest weight of the evidence, and that, consequently, the trial court lacked any reasonable basis to restrict her visitation hours and require that they be supervised. However, for the reasons that have already been discussed, we reject the premise of this argument, since there was a sufficient evidentiary basis for the court's conclusion that unsupervised visitation posed risks to the children of both physical and emotional harm. Given this conclusion by the trial court, it was not unreasonable for the court to require that Ms. A.'s visitation with the children be supervised. In this regard, we note that the court provided that, if Ms. A. sought unsupervised visitation rights, she would have to be in regular treatment with a board certified psychologist with expertise in the area of delusional disorders, and she would have to be evaluated by a board certified psychiatrist selected by the court as to whether unsupervised visitation posed a continued risk of harm to the children. Thus, the court set forth a mechanism by which Ms. A. could be awarded unsupervised visitation if the threat posed by the disorder to the children's well-being were shown to no longer exist.

¶ 113 Ms. A. nevertheless points out that Dr. Amabile did not recommend that Dr. S. be

awarded full custody, nor did Dr. Amabile recommend that Ms. A. be restricted to supervised visitation only, but instead recommended that parenting time be split equally among the parents. However, Ms. A. presents no law indicating that Dr. Amabile's recommendations would be controlling in this regard, nor does our research disclose any such law. See *Saheb and Khazal*, 377 Ill. App. 3d at 628 (trial court's decision not to follow all of psychological evaluator's recommendations in custody case was not an abuse of discretion, since nothing in the applicable statute required the trial court to follow the evaluator's advice). Rather, as discussed, the trial court has broad discretion in fashioning the terms of visitation and will not be reversed absent an abuse of that discretion. For the reasons previously stated, we do not find such an abuse here.

¶ 114 Therefore, for the foregoing reasons, we affirm the judgment of the trial court.

¶ 115 Affirmed.