

FIRST DIVISION
January 15, 2016

No. 1-15-1766

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IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THOMAS E. H.,)	Appeal from the Circuit Court
)	of Cook County,
)	
Petitioner-Appellant,)	
)	No. 13 D 679059
v.)	
)	
HILLARY L. G.,)	Honorable
)	Pamela E. Loza,
)	Judge Presiding.
Respondent-Appellee.)	

PRESIDING JUSTICE LIU delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court's award of sole custody to child's mother was not against manifest weight of the evidence, where testimony at trial established that the child was doing well in his current school and his mother facilitated child's relationship with his natural father. Court's finding of indirect civil contempt was proper where father admitted violating a term included in the prior parenting time order, regardless of his claim that mother had also failed to comply with said order.

¶ 2 Petitioner Thomas H. and respondent Hillary G. are the natural parents of their minor son Caleb, who was born in September 2007. The parties were never married to each other, but Thomas signed a voluntary acknowledgment of paternity following Caleb's birth. Prior to March 2013, no court-ordered parenting agreement existed between the parties.

¶ 3 In March 2013, Thomas filed a petition for temporary and permanent custody of Caleb. For the next two years, the parties were involved in litigation regarding Caleb's custody and care. In May 2015, after a multiple-day trial, the trial court granted Hillary sole custody of Caleb and found Thomas in indirect civil contempt for failing to comply with its April 2013 court order. On appeal, Thomas contends that the court erred in: (1) granting Hillary sole custody of Caleb; and (2) finding Thomas in indirect civil contempt of court. For the following reasons, we affirm.

¶ 4 BACKGROUND

¶ 5 A. Procedural History

¶ 6 On March 13, 2013, Thomas filed several petitions, including: a petition for temporary and permanent custody of Caleb, an "Emergency Petition For Temporary Restraining Order, And Temporary And Permanent Injunction," a petition to preserve the status quo, and a petition to establish paternity. Thomas alleged that his emergency petition "should be heard without notice" to Hillary based on her alleged "threats" to enroll Caleb in another school, remove him from his father's care, and conceal him from his father. Thomas asked that the court adjudicate him the natural father and award him sole custody. In his petition for temporary and permanent sole custody, Thomas stated that he had been Caleb's primary caretaker "since his birth," providing 100% of the financial support for his son and a stable family home while Hillary did not.

¶ 7 The following day, on March 14, the court entered an emergency order (1) giving Thomas temporary custody of Caleb; (2) restraining Hillary from either removing Caleb from Tom Thumb Daycare or enrolling Caleb in another school; (3) enjoining her "from concealing the minor child from" Thomas; and (4) granting her visitation with Caleb "every other Thursday overnight, beginning 3/14/13," and "every other weekend beginning 3/21/13."

¶ 8 On April 1, 2013, Hillary filed an "Emergency Motion For Rehearing, Modification Or Vacation Of March 14, 2013 *Ex Parte* Order And For Such Other Relief." In her motion, Hillary

provided a summary of the pertinent facts that contrasted sharply from Thomas's account. She contended that she had been Caleb's primary caretaker since his birth, that Caleb had primarily resided with her through March 2013, and that she provided him with financial support. She further asserted that she had never threatened to remove him from Thomas's care or conceal him from Thomas; however, she wanted her son to be enrolled in the New Lenox, Illinois public school system, where she resides. Hillary also argued that she should have been provided notice of Thomas's petitions, absent any allegations of irreparable harm to Thomas or Caleb if such notice were provided. She requested that the court vacate its *ex parte* March 14 order, and rehear Thomas's petitions or return the parties to the status quo prior to the order.

¶ 9 On April 4, 2013, an agreed order was entered (April 2013 Order) which vacated the March 14, 2013 order and set a parenting schedule giving Thomas overnight custody on Mondays and Wednesdays and every other weekend starting Friday afternoon. The order further provided that: "Neither party shall enroll the child in any other extra-curricular activities unless agreed to by the parties in writing, email is sufficient." Despite this agreed order, the custody battle continued, with the parties filing a number of petitions throughout the remainder of 2013, 2014, and 2015. We will discuss the relevant procedural history to the extent necessary to understand the issues presented in this appeal.

¶ 10 Beginning in July 2013, the parties briefed their respective arguments as to why Caleb should attend school near each of them. Hillary argued that she should be awarded temporary and permanent custody, and that Caleb should be enrolled in the New Lenox public school system instead of St. Ann's Catholic School in Lansing, Illinois. Asserting that he should be awarded sole custody of their son, Thomas claimed it was in Caleb's best interests to attend St. Ann's, noting that Caleb had developed "many close and loving friends" at daycare and in his extracurricular activities; Thomas maintained that removing Caleb from Calumet City, Illinois

(where Thomas lived at that time), "would be detrimental to [Caleb's] mental health." Following a pre-trial conference, the trial court ordered that Caleb attend kindergarten in New Lenox and that the parties discuss his future schooling in mediation.

¶ 11 In August 2013, Hillary sought an order modifying the parenting schedule, explaining that the existing schedule required Caleb to wake up too early on Thomas's overnights. Thomas refused to agree to a modification, and moved for the appointment of a guardian *ad litem* (GAL) to represent Caleb after the parties failed to reach any agreement in mediation. The trial court appointed Michael Lew as the GAL.

¶ 12 The following spring, in April 2014, Hillary sought to hold Thomas in contempt for failing to comply with the section of the April 2013 Order prohibiting either parent from "enroll[ing] the child in any other extra-curricular activities unless agreed to by the parties in writing." She claimed that in early 2014, Thomas had enrolled Caleb in gymnastics and soccer without obtaining her consent. Thomas denied violating the order. Shortly after Hillary presented her motion, the trial court ordered a Rule 604(b) evaluation to be completed by Dr. Mary Ann Karstens on the issues of custody, residential parent designation, and the parenting schedule. Dr. Karstens completed the evaluation and made recommendations.

¶ 13 On August 8, 2014, Hillary moved for temporary custody and submitted a proposed temporary parenting order, incorporating the 604(b) recommendations. The proposed order granted Thomas and Hillary joint custody of Caleb and provided that the parties would not have to consult with one another about day-to-day routine decisions, "[e]xcept as to the issues of education, health care, religious training, and extracurricular activities." The proposed order also provided that Caleb's primary residence would be with Hillary, and that Thomas would have parenting time with Caleb every other weekend and two overnights during the week provided Thomas was staying in either Mokena or New Lenox. Additionally, according to the proposed

order, each parent would take turns sharing holidays and temporary modifications would be made in special circumstances. On August 13, 2014, the court awarded Hillary "temporary legal possession" of Caleb, with Caleb's primary residence to be with Hillary "on a temporary basis, without prejudice to a full hearing and until further order of court." The split of parenting time followed the schedule in Hillary's proposed order.

¶ 14 In January 2015, Hillary was granted leave to file a petition for sole custody of Caleb. She argued that she was fit and proper to have the sole care, custody and control of Caleb and that it was in Caleb's best interest that she be awarded permanent custody. In response, Thomas denied the majority of Hillary's substantive allegations, stated that he had previously provided Caleb with a stable and loving home, and alleged that Hillary had placed Caleb in a CCD class—an extracurricular activity—without Thomas's consent, in violation of the April 2013 Order.

¶ 15 B. Trial

¶ 16 A trial was held to determine which parent would have sole residential custody of Caleb. Trial testimony began in February 2015 and continued on multiple days into April 2015.

¶ 17 1. Thomas's testimony

¶ 18 Thomas testified that, at the time of the trial, he was employed by the Calumet City Public Works, and was living in both Calumet City (with his father) and Mokena (with his mother). Thomas had first enrolled Caleb in t-ball in the spring of 2012 and soccer in the spring of 2013. He testified that he had discussed the t-ball enrollment with Hillary before signing him up for the first season in 2012. Ultimately, Caleb participated in three seasons of t-ball; two in Calumet City and the most recent in New Lenox, and two years of soccer (four seasons), all in the Lansing park district. In addition, Thomas had enrolled Caleb in gymnastics classes at One World Gymnastics in Chicago Heights, Illinois at the "end of 2013, beginning of 2014." At the

time of trial, Caleb was not participating in any extracurricular activities besides gymnastics and "CCD or Faith Formation at St. Jude's in New Lenox."

¶ 19 Thomas agreed that the April 2013 Order was the first time a parenting schedule had been created for him and Hillary, aside from the temporary parenting schedule created as the result of his emergency *ex parte* motion. He also acknowledged the term in the April 2013 Order which required each parent to secure written consent from the other prior to enrolling Caleb in "any other extra-curricular activities." He claimed, however, that Caleb was already enrolled in soccer and t-ball at the time the order was entered, and he had understood "other extra-curricular activities" to mean "[s]ports other than what Caleb had previously been enrolled in."

¶ 20 According to Thomas's testimony, in the summer of 2013, he and Hillary had a talk about Caleb's participation in sports. In the spring of 2014, he emailed Hillary asking whether he could enroll Caleb in Lansing soccer again, explaining that he would ask to coach so he could set practices for his parenting nights. Thomas testified that Hillary had verbally agreed to Caleb being in soccer again, and that he sent her an email about it. In response to that email, Hillary said she "would be more than happy to consent to this. However, I think that I should get a sport in return. If Caleb plays soccer in Lansing, I would like him to play baseball in New Lenox." At the time of the email, the t-ball season in Calumet City was about to begin, but Caleb was not yet signed up. Hillary sent another email to Thomas, two days later, saying that she would "not agree to soccer in Lansing if [Thomas did] not agree to baseball in New Lenox." Thomas responded by saying that he wanted Caleb to play t-ball in Calumet City because it would be Caleb's "third and last year of T-ball, so [he thought] it would be nice for him to play with the kids he already knows." Thomas also asked the GAL whether it was okay for Caleb to play soccer in Lansing soccer during Thomas's parenting time. Lew told him that he could coach Caleb but that Hillary would not be required to bring Caleb to Saturday soccer games on her weekends.

¶ 21 On March 31, 2014, Thomas enrolled Caleb in Lansing soccer without Hillary's written approval. He received a letter from Hillary's attorneys but nonetheless kept Caleb enrolled in soccer. Hillary then enrolled Caleb in New Lenox t-ball without Thomas's knowledge. Thomas also admitted he had maintained Caleb's enrollment in gymnastics in Chicago Heights without Hillary's consent. He explained that unlike t-ball or soccer, gymnastics did not have a start or end date or season, and required monthly payments for continued enrollment. Despite knowing that Hillary did not consent to the gymnastics classes, Thomas had kept Caleb enrolled.

¶ 22 In regard to Caleb's schooling, Thomas explained that he wanted Caleb to go to St. Ann's "to have an opportunity" that he never had. When asked why it would be in Caleb's best interest for him to have sole custody, Thomas said he had always been "actively involved in Caleb's life" and tried to build his life around Caleb. Additionally, Thomas wanted to put Caleb "in an environment so maybe he can have an opportunity that [Thomas] didn't have." Notwithstanding, Thomas admitted that Caleb was doing well and "love[d] school" in New Lenox, and that he had done well in kindergarten.

¶ 23 Thomas testified that communicating with Hillary is difficult and agreed that he finds it best to ignore her at times. For example, on November 5, 2014, he did not make Caleb available to talk with Hillary when she had called. She then texted, asking Thomas to have Caleb call her, and he did not. He did not answer her calls because of "animosity" between them resulting from an interaction the week before. He acknowledged that his decision not to speak to Hillary impacted her ability to speak to Caleb. Thomas also admitted that Hillary had been at his home the night before he presented the March 2013 emergency petition in court without providing notice to her, and he had not raised any of his alleged concerns to her regarding her removal of Caleb from his care.

¶ 24 Thomas did not believe there was a workable parenting agreement that would allow with Caleb to continue school in New Lenox, despite his agreement that Caleb was doing well physically and had not had any disciplinary issues. If Caleb went to St. Ann's, Thomas would drop Caleb off at before-school care by 6:45 a.m. and then go to his job at 7 a.m.; St. Ann's did not begin until 7:45 a.m. Caleb would also be at an after-school care program at St. Ann's because school ends at 2:30 p.m. and most days Thomas would not pick up Caleb until 3:10 p.m. Thomas has no other family in Calumet City besides his father. Thomas agreed that he could stay at his mother's house (in Mokena) for his overnight parenting time if Caleb remains in the New Lenox school system, and acknowledged that Hillary has no family in Lansing or Calumet City for purposes of doing the same if Caleb went to St. Ann's school.

¶ 25 2. Hillary's testimony

¶ 26 Hillary testified that after she became pregnant, Thomas moved into her parents' house and stayed until February 2009, when he moved in with his mother in Mokena, and then returned to her parents' house in May 2009. Thomas subsequently moved in with his mother in Mokena again and finally with his father in Calumet City in May 2011. Hillary stated that she and Thomas figured out a schedule where the goal was for both to have equal parenting time. Each parent had two overnights during the week, alternated weekends, and shared Wednesdays. On the shared days, Hillary would usually go over to Thomas's home in Calumet City and they would "spend time together as a family." Hillary "thought it was important to have one day a week" to spend together.

¶ 27 Hillary testified that she had initially agreed with Caleb's enrollment in daycare in May 2011 because both she and Thomas agreed that Caleb needed "to learn socialization skills and to be with other kids." In addition, Hillary agreed to send Caleb to daycare close to Thomas's residence because she thought they both understood "that once Caleb started kindergarten, that

he would be going to New Lenox schools." They worked out a parenting schedule and Hillary said the only problem with the schedule was the drive between New Lenox and Calumet City.

¶ 28 Caleb began kindergarten in New Lenox in August 2013, pursuant to court order. After Caleb began school, Hillary became concerned about the April 2013 Order parenting schedule because it required her to drive to Calumet City and arrive by 6:30 a.m. to pick up Caleb, bring him back home, and get him ready to be on the school bus by 8 a.m. Typically, the drive back to New Lenox would take about 45 minutes. "Caleb was extremely tired. I just—it was a lot of transportation on Caleb's part, and it was just not—it was not good for him." The 6:30 a.m. pickup time from Thomas's had to do with Thomas's work schedule and had nothing to do with getting Caleb to school on time. During her parenting time, Caleb would sleep until 7 or 7:30 a.m. She discussed a possible schedule change with Thomas "[s]everal times" but Thomas objected. The schedule was not changed until the August 2014 court order, so for his entire kindergarten year, Caleb had to commute from Calumet City to New Lenox in the morning a few days each week in order to get to school.

¶ 29 After the August 2014 order was entered, Thomas was required to spend his overnight parenting time in Mokena, and Caleb no longer had to be in the car at 6:30 a.m. the following morning. Instead of a 45-minute drive from Calumet City to New Lenox, Caleb had a 15-minute ride from Mokena to Hillary's. Additionally, Caleb did not have to leave Thomas's mother's house until 7:45 a.m. on those mornings. After the schedule change, Caleb was less tired and "more energetic." Hillary believed the schedule at the time of trial with Thomas's overnights in Mokena were in Caleb's best interest. She did not have a problem with Thomas exercising his parenting time in Calumet City "as long as he is in Mokena or New Lenox during the week. It's more of a school night issue."

¶ 30 Hillary testified that Caleb was first enrolled in t-ball in 2012, which she and Thomas had agreed upon. However, Hillary said that she was not aware Thomas enrolled Caleb in soccer the following year until after it was done. She explained that the April 2013 Order provision about extracurricular activities was included because "Tom had enrolled Caleb in both T-ball and soccer without discussing it with me and without my knowledge." Since the entry of the April 2013 Order, Thomas enrolled Caleb in gymnastics at the end of 2013 without her approval and again enrolled him in soccer without her knowledge.

¶ 31 In regard to communication with Thomas, Hillary recounted a time when, after a disagreement at the dentist office, Hillary called and texted Thomas asking to talk to Caleb on a couple of different days and Thomas did not respond to her. She attempted to call Caleb to talk and Thomas did not have Caleb call Hillary back. She said this did not happen often but that she felt when Thomas was "frustrated or angry" with her that "he thinks it's easier just to ignore" her. Hillary denied ever threatening to conceal or take away Caleb from Thomas. She said if she were awarded sole custody, she would not "want anything to change. I want it to be the same. I want Tom to be involved. I want our decisions to be joint decisions." She did not think Thomas having sole custody was in Caleb's best interest because "I feel that if he was granted sole custody, that I would just be cut out of our son's life. I don't feel that he would communicate with me, as he hasn't throughout the past however many years."

¶ 32 3. Dr. Karstens' testimony

¶ 33 Dr. Mary Ann Karstens, the 604(b) evaluator and qualified expert witness, testified about her observations of Caleb. She said that he was "happy to see" both of his parents and "appears to be very close and attached" to each of them. She found that both parents had a healthy, happy relationship with Caleb. She further noted in her report:

"Both Hillary and [Thomas] were found to be competent and loving parents. In the past they were able to focus jointly on the best interest of Caleb. Both have played a significant role in his life. Measures should be taken to ensure that both parents have access to be actively involved and that a shared parenting agreement would best accomplish this objective."

¶ 34 While completing her report, Dr. Karstens testified that she made home visits to Hillary's parents' residence, where Hillary lived, and the homes of Thomas's mother and his father. At Hillary's family house, there "were a lot of people" but "nothing [was] lacking." At Thomas's mother's house, the only thing she found lacking was a "private bed for Caleb." As for Thomas's father's home, there was an "[a]ir ventilation" issue due to Thomas's father's smoking habit. Dr. Karstens explained that "there was a very, very strong smell of smoke."

¶ 35 According to Dr. Karstens, Caleb started becoming involved in athletics in 2011 and enjoyed baseball, soccer, and gymnastics. She said there was no reason he should not be involved in those sports. In regard to schooling, Dr. Karstens did not independently evaluate either the New Lenox public school system or St. Ann's; she said she would not compare a private and public school because it was like comparing "[a]pples and oranges." However, Dr. Karstens explained that her concern with Caleb going to St. Ann's was that it would require Caleb to attend before and after school care and "we prefer family members over day care." In addition, she highlighted how important sleep is to children and said "when I hear that a child is going into daycare at 6:00, 6:30 in the morning before 8th grade, I become uncomfortable because I am one of those people that is pushing parents to get—to encourage the whole household to shut down so kids get more sleep. It's an epidemic."

¶ 36 Dr. Karstens recommended awarding sole custody to Hillary because she felt Thomas would need "a little bit of coaching, guidance, [and] help in his willingness to share and encourage co-parenting with Hillary and Caleb." In addition, she noted that Caleb had more family members from both sides in close proximity to New Lenox, including Thomas's mother and brother, and Hillary's family. Caleb was close with his family, attended school with several cousins, and lived near them in New Lenox. The only family members Caleb had in Calumet City were Thomas and Thomas's father. Although keeping Caleb in the New Lenox school district was an important consideration, Dr. Karstens concluded that the biggest factor to consider was "[s]tability," something she believed Hillary's family household provided.

¶ 37 4. Michael Lew's testimony

¶ 38 Michael Lew, the GAL, testified that he thought both parents having "equal time in raising their son" was in Caleb's best interest. Explaining that one of the biggest factors he considers is "the ability of the custodial parent to enhance and improve the relationship between the child and the non-custodial parent," he concluded based on the testimony presented that "Hillary [wa]s in a better position to foster the love between father and son."

¶ 39 As to the schooling, Lew testified that he felt Caleb should remain in the New Lenox school system. He said he thought it was a "better school. By far, it has more money. The teachers are paid double what they're paid at St. Ann's" and he believed Caleb would receive a better education from the public school system in New Lenox. He did not personally visit St. Ann's but represented teachers in both the New Lenox school system and the Catholic Archdiocese of Chicago.

¶ 40 Lew ultimately recommended that each parent have Caleb for two overnights during the week and that they alternate weekends. In his opinion, the order then in place, pursuant to which Thomas would have overnight visitation when he was in Mokena, was "perfect." Under this

order, no one would be driving on expressways other than Thomas going to work, Caleb would get more sleep, and he would be better off.

¶ 41

C. Trial court's ruling

¶ 42 On May 18, 2015, the trial court entered a 21-page written order, granting Hillary the sole care, custody, control and education of Caleb. In coming to its decision, the court noted it had the opportunity to "review the pleadings, the stipulations entered into evidence, the exhibits admitted into evidence, the demeanor of the parties, reflect on the arguments of all counsel" and had applied the relevant statutes and case law. It further stated that because "particular testimony or exhibits are not referred to herein does not mean that the evidence was not considered."

¶ 43 The court first found Thomas in indirect civil contempt of court for "his failure to abide by" the April 2013 Order. The court noted, "[i]t is uncontroverted and admitted" by Thomas that despite the language of the April 2013 Order he "subsequently enrolled Caleb in gymnastics, soccer and T-Ball."

¶ 44 In making its custodial determination, the trial court explicitly spelled out its consideration of each of the required best interest factors. First, the court noted that both parties wanted custody of Caleb, that both are "good and loving parents" and that Caleb "is a well-rounded, athletic, happy child who loves both parents." As to Caleb's interactions and relationships, the court observed that Caleb had "very strong emotional ties" to both extended families, but that the majority of his family members live in the New Lenox area. The court expressed concern about Thomas's desire to move Caleb to a different school system near Calumet City as Caleb was "thriving in his current living situation." Most significantly, the court found that whereas Hillary "consistently demonstrated a willingness and desire to include [Thomas] in not only Caleb's life but his extended family's life," that "[Thomas's] actions have not been so forthright." Specifically, the court cited Thomas's filing of the *ex parte* emergency

temporary restraining order on an untrue basis, his insistence on enrolling Caleb in gymnastics over Hillary's objections, and his refusal to respond to Hillary's attempts to talk to Caleb when he was upset with her. Additionally, the court noted:

"[Thomas's] insistence that Caleb attend St. [Ann's] School to the exclusion of others is short sighted, impractical and not in the best interest of Caleb. It is nonsensical that Caleb awaken at 6-6:30 in the morning, be placed in day care when there is an excellent school literally in his backyard a school that he has already attended for 2 years, a school where he is excelling, a school where he is comfortable and a school where he has developed friends."

¶ 45 The trial court concluded that, although both Hillary and Thomas "are kind, loving and supportive parents," Hillary also went out of her way to "maintain and nurture [Thomas's] relationship with Caleb." In addition to awarding Hillary with the sole custody of Caleb, the court also noted that it is in Caleb's best interest "that both parents remain active and consistent in Caleb's life."

¶ 46 ANALYSIS

¶ 47 On appeal, Thomas argues, *pro se*, that the trial court erred in: (1) granting Hillary sole custody of Caleb; and (2) finding Thomas in indirect civil contempt for violating the April 4 Agreed Order. We first consider whether the trial court erred in its award of custody to Hillary.

¶ 48 A. Award Of Custody To Hillary

¶ 49 Thomas contends that the trial court erred in awarding sole custody of Caleb to Hillary, essentially arguing that the court did not correctly weigh the evidence presented at trial. We disagree.

¶ 50 Thomas filed his initial petition for temporary and permanent custody pursuant to both section 14 of the Illinois Parentage Act of 1984 (Parentage Act) (750 ILCS 45/14 (West 2012)) and sections 601, 602, and 603 of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/601, 602, 603 (West 2012)). Section 14 of the Parentage Act specifically provides that "[i]n determining custody, *** the court shall apply the relevant standards of the [Marriage Act]." 750 ILCS 45/14 (West 2012). Section 602(a) of the Marriage Act states that the court "shall determine custody in accordance with the best interest of the child." 750 ILCS 5/602(a) (West 2012). The factors to be considered by the court as relevant to the present case include: (1) the wishes of the child's parents; (2) the interaction and relationships of the child with his parents, siblings, and "any other person who may significantly affect the child's best interest"; (3) the child's adjustment to his home, school, and community; (4) the "willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child." *Id.*

¶ 51 "The trial court's custodial decision rests on temperaments, personalities and capabilities of the parties, and the trial judge is in the best position to evaluate these factors." *In re Marriage of D.T.W. and S.L.W.*, 2011 IL App (1st) 111225, ¶ 81. When a reviewing court considers a trial court's custody determination, " 'wide discretion is vested in the trial judge to an even greater degree than any ordinary appeal' because of the 'delicacy and difficulty of child custody cases.' " *In re Lakita B.*, 297 Ill. App. 3d 985, 994 (1st Dist. 1998) (quoting *In re D.L.*, 226 Ill. App. 3d 177, 185 (1992)). Therefore, a reviewing court will not disturb the trial court's custody determination unless it is against the manifest weight of the evidence. *Marriage of D.T.W.*, 2011 IL App (1st) 111225, ¶81. "A decision is against the manifest weight of the evidence where the opposite result is clearly evident from the record." *In re Gwynne P.*, 346 Ill. App. 3d 584, 590 (2004).

¶ 52 The trial court's award of sole custody to Hillary was not against the manifest weight of the evidence. To the contrary, in its 21-page order of judgment following the trial, the court explained its findings and referred to the extensive testimony that had been presented in court, noting that it had considered all the pleadings, exhibits, the "demeanor of the parties," and the arguments of counsel. As outlined above, the trial court explicitly considered each section 602(a) factor in its determination, citing the specific benefits of Caleb remaining in the New Lenox public school system and Hillary's exhibited willingness to foster Caleb's relationship with Thomas. Thomas has not identified a single factor which the trial court has allegedly misapplied but instead suggests that the court should have given different weight to the evidence presented. However, we will not set aside a judgment "merely because a different conclusion could have been drawn from the evidence." *In re Marriage of Pfeiffer*, 237 Ill. App. 3d 510, 513 (1992). We find the trial court's written opinion was thorough, thoughtful, and most importantly, was supported by the evidence presented at trial. Under these circumstances, we cannot find the trial court's award of sole custody to Hillary was against the manifest weight of the evidence.

¶ 53 B. Indirect Civil Contempt Finding

¶ 54 Thomas next claims that the trial court erred in finding him in indirect civil contempt for violating the April 2013 Order.

¶ 55 Indirect contempt is a contempt that is committed outside the court. *In re Marriage of Tatham*, 293 Ill. App. 3d 471, 480 (5th Dist. 1997). "Proof of willful disobedience of a court order is essential to any finding of indirect civil contempt." *In re Marriage of McCormick*, 2013 IL App (2d) 120100, ¶ 17. To prove indirect civil contempt, the petitioner must establish a violation occurred by the preponderance of the evidence. *Id.* Then, the alleged contemnor must show the violation was "not willful and contumacious" and that he had a valid excuse for not following the order. *Id.* Contumacious behavior occurs when a party behaves in a way that

results in " 'lessening the authority and dignity of the court.' (Internal quotation marks omitted.)" *Id.* (quoting *In re Marriage of Charous*, 368 Ill. App. 3d 99, 108 (2d Dist. 2006)). Whether a party is guilty of contempt is a question of fact for the trial court, and a trial court's determination will not be disturbed unless it is against the manifest weight of the evidence or the record reflects an abuse of discretion. *Marriage of McCormick*, 2013 IL App (2d) 120100, ¶ 17.

¶ 56 It is undisputed that the April 2013 Order provided that "[n]either party shall enroll the child in any other extra-curricular activities unless agreed to by the parties in writing." Initially, we agree with Thomas that he did not violate the order by signing Caleb up for t-ball in the spring of 2013, because Caleb was already enrolled in t-ball at the time the April 2013 Order was entered. The following year, Hillary enrolled Caleb in New Lenox t-ball.

¶ 57 Thomas next appears to argue that because Caleb was already enrolled in soccer at the time the order was entered, any subsequent enrollment of Caleb in soccer is not a violation. However, Thomas testified that Caleb participated in multiple seasons of soccer, seasons with a beginning and end date, and that Caleb played four seasons of soccer in the Lansing Park District. As Caleb's first time playing soccer was in the spring of 2013, before the order was entered, that necessarily means that Thomas enrolled Caleb in soccer for three subsequent seasons without Hillary's written consent. Thomas even testified that he enrolled Caleb in soccer in March 2014 without Hillary's written approval and maintained Caleb's enrollment despite receiving a letter from her attorneys expressing her disapproval. Moreover, Thomas testified that he signed Caleb up for gymnastics without Hillary being in agreement in late 2013 or early 2014, and continued Caleb's monthly enrollment despite knowing that Hillary was not in agreement with Caleb's participation. The evidence shows Thomas knowingly violated the April 2013 Order when he signed Caleb up for soccer seasons and gymnastics after it was entered, undermining the court's authority. Thomas has presented no valid excuse for his violations. Accordingly, there

was no abuse of discretion and the trial court's finding of contempt was not against the manifest weight of the evidence.

¶ 58 Thomas also argues that if he is found in indirect civil contempt of court, then Hillary was also in indirect civil contempt for enrolling Caleb in CCD classes and t-ball in New Lenox without Thomas's written consent. Thomas however does not cite any authority suggesting that Hillary's "unclean hands" would constitute a valid defense to the court's finding Thomas in contempt. Therefore, we decline to address this argument. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008) (the party's argument "shall contain the contentions of the [party] *** with citation of the authorities and pages of the record relied on"); *In re Marriage of Johnson*, 2011 IL App (1st) 102826, ¶ 25 (observing that "bare contentions that fail to cite any authority do not merit consideration on appeal).

¶ 59 CONCLUSION

¶ 60 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 61 Affirmed.