2017 IL App (1st) 161455-U

FIRST DIVISION
May 12, 2017

No. 1-16-1455

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re MARRIAGE OF JASON S., Petitioner-Appellee, and JULIE S., Respondent-Appellant.	))))))))))	Appeal from the Circuit Court of Cook County. No. 14 D 002113 Honorable Jeanne Cleveland Bernstein, Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

ORDER

¶ 1 ***Held:*** Following a trial in this divorce case, the circuit court restricted parenting time for the respondent mother to one weeknight and alternate weekends with no overnight parenting time. The mother challenges this finding and numerous evidentiary rulings. She claims judicial bias and cumulative error deprived her of a fair trial. She also contends the circuit court erred in its calculation of the maintenance award and improperly granted a two-year credit of maintenance payments to the petitioner father. We affirm in part, vacate in part, and remand in part with directions.

¶ 2 BACKGROUND

¶ 3 Petitioner Jason S. filed for a petition for dissolution of marriage from respondent Julie S. on March 10, 2014. On April 18, 2016, after a full trial, the circuit court entered a judgment for dissolution of marriage. The respondent appeals that order, raising no less than 19 separate points of error.

¶ 4 Jason and Julie were married in 2004 and have one child, J.M.S., born on October 14, 2007. After Jason moved out of the marital home, he filed a petition to set temporary parenting time. On March 20, 2015, the parties entered into an agreed order, stating that Julie would remain the primary residential parent of J.M.S., with Jason having parenting time for dinner on Tuesday evenings from 5:30 p.m. to 7:15 p.m., and overnight on Thursday evening beginning at 5:30 p.m., and every other weekend from 5:00 p.m. on Friday until Monday morning.

¶ 5 At the trial which commenced on January 19, 2016, the circuit court heard the following evidence relevant to this appeal. Jason testified that he is the senior director of testing services at Pearson VUE, where he has been employed for six years. His base salary is $187,901 per year and he is eligible for a discretionary bonus ranging from 15% to 30% of his salary. In 2015, he received a $43,370 bonus before taxes. The parties' marital home is located in Western Springs, Illinois. They also own a home in Monterey California, where they previously resided.

¶ 6 Jason stated that prior to the separation, Julie made all the financial decisions on behalf of the parties without any input from Jason. He was not permitted to spend money, except for reimbursable business expenses or holiday presents. Jason expressed his concern regarding Julie's mental health, including her anger and very strong need to be in control. He stated that Julie would yell at him in the presence of J.M.S. He was not allowed to take J.M.S. anywhere

outside the home without Julie. In November 2013 when Jason attempted to take J.M.S. to the library, Julie threatened to call the police if he did so.

¶ 7 Jason testified that Julie instituted food restrictions upon J.M.S. beginning when he was an infant. Julie would feed the child one ingredient at a time. Julie would only allow meals with a maximum of five "courses". A "course" was, for example, a pile of cashews followed by a course of carrot sticks. Once the parties separated, Julie sent Jason emails reminding him not to overfeed J.M.S. and on multiple instances fed the child less prior to or after Jason's parenting time because she was concerned J.M.S. was eating too much when he was with his father.

¶ 8 Jason testified regarding other developmental issues involving the child. He stated that the parties stopped using daytime diapers when J.M.S. started kindergarten, but Julie continued using nighttime diapers for J.M.S. until February 2015. Julie stopped breastfeeding J.M.S. when he was five years old. Julie kept J.M.S.'s hair length long for most of his life. As a result, Jason became concerned that the child's hair would create gender confusion that might be a barrier for social development. The parties could not reach an agreement to cut the child's hair.

¶ 9 J.M.S. attends public school and does very well academically. Julie would not give Jason access to J.M.S.'s homework folder provided by the school. He received the contents of the homework folder directly from the school, but only after a two-week delay. Julie did not consent to J.M.S. attending a school support group for children affected by divorce. Jason wanted the child to participate in sports at the school to develop more social skills, but Julie refused to consent. Julie thought an online math competition or chess team better suited the child's interests.

¶ 10 Jason stated that Julie inundated him with phone calls during the pendency of the case, including one particular weekend when he received more than 50 calls and 24 voicemails from

her. When Jason would attempt to call J.M.S. during Julie's parenting time, the calls went unanswered or were not returned. As a result, Jason stopped calling.

¶ 11 Jason also testified concerning the behavioral issues of the child. J.M.S. does not show respect to third parties, including his psychologist, Dr. Rob Siegel. The parties agreed that they would testify regarding Dr. Siegel's statements rather than having Dr. Siegel called as a witness. Dr. Siegel had concerns about the child's social development. When Jason picked up the child from Dr. Siegel's office, J.M.S. took a ball and threw it at Jason's face as hard as he could. J.M.S. does not have an age-appropriate way to deal with anger. He has difficulty using the terms, "please," "thank you," and "sorry." In another incident, the child threw a marshmallow at a museum docent and Jason encouraged J.M.S. to apologize for about 40 minutes.

¶ 12 Julie testified that prior to and during the marriage, she worked as a teacher in California, where the parties first met. After teaching, she worked as a math editor for standardized tests, earning between $50,000 and $55,000 per year. Julie had living expenses of about $16,205.05 per month while the case was pending and had no income or employment to offset her living expenses.

¶ 13 After J.M.S. was born, the parties agreed that Julie would stop working and would be a stay-at-home mother. She took care of the day-to-day tasks related to J.M.S. and his schooling. She used attachment parenting as a parenting philosophy, which she interpreted as "to support the child, not deny the child." Julie acknowledged that at least on one occasion, she would not allow Jason to leave the house with the child, and that she would have considered calling the police had he done so. Jason expressed concerns with attachment parenting and breastfeeding after the parties separated. He also raised concerns regarding co-sleeping.

¶ 14 Julie stated that the child usually slept in his own room, but later testified that J.M.S. recently had been requesting to sleep in her bed, which she allowed. She stated that she never initiated the co-sleeping between her and the child, although an email she sent to the child in December 2015 stated, "I wish I was there to take a nap with you." Julie did not consider that statement as initiating a nap with the child. Julie confirmed that over the last few months, J.M.S. slept in her bed with her overnight.

¶ 15 Julie expressed concerns to a social worker that Jason was overfeeding J.M.S. during his parenting time. Julie would modify the food that she fed the child as a result of what he ate at Jason's house. Julie acknowledged that she sent Jason emails criticizing the child's food intake. Julie started feeding the child meals in May 2014 and prior to that he was fed in courses. For example, Julie would count a sandwich as at least three courses. Each piece of bread was counted as a course and whatever was in the middle of the sandwich was also counted as a course. She did not believe J.M.S. was mature enough to make decisions about how often or how much food he should eat. Julie testified that she punished the child for stealing a treat while she was in the shower by making him stay in the bathroom with her while she showered for one week.

¶ 16 J.M.S. wore diapers at night until he was seven years old. He finally stopped using diapers in April 2015 at Jason's home. Jason wanted to transition the child out of diapers, but Julie agreed with J.M.S's pediatrician that the child should have been in charge of deciding when to stop using diapers. Dr. Siegel recommended to Julie that the child stop using diapers, but she did not believe that the child was ready to stop using diapers.

¶ 17 Julie stated that she did not share J.M.S.'s homework folder with Jason because he lost the child's homework during the prior year when J.M.S was in the second grade. She

acknowledged it was possible that she made more than 50 phone calls to Jason and left him 24 voicemails over the course of a weekend. Julie testified that the parties tried to encourage J.M.S. to cut his hair, but did not want to force him to cut it. J.M.S. began bathing himself when he was seven years old and prior to that was assisted by the parties. Julie agreed that the child had a problem with being polite both to strangers and at home. J.M.S. tries to hit Julie sometimes when he is upset.

¶ 18 The parties agreed Julie would undergo an evaluation under Illinois Supreme Court Rule 215 (eff. Mar. 28, 2011) to shed light on her mental state. Julie hired Dr. Mark Mosk as a controlled expert to prepare her for her Rule 215 evaluation. Julie believes she is a domestic violence victim based on emotional and financial abuse committed by Jason.

¶ 19 Dr. David Finn, a court-appointed psychologist, evaluated Julie under Rule 215. Dr. Finn provided a written report of his evaluation of Julie on July 8, 2015. He testified that Julie's use of diapers was "developmentally inappropriate for a boy of [J.M.S's] age and also something that had the potential certainly to have social issues for [him] as well." Dr. Finn stated that J.M.S. was able to bathe on his own. He stated that "apart from just the inappropriate nature of co-sleeping here with a child of this age," the continuation of co-sleeping represents "almost a complete unwillingness to be receptive from input from professionals as to the child's wellbeing and to continue to plunge ahead doing something that Julie has been told quite clearly is unhealthy for the child." Julie reported to Dr. Finn that she punished the child for eating a snack or dessert after breakfast by making him stay in the bathroom with her while she showered. Dr. Finn stated that the punishment reflected Julie's need to exercise control over the child related to food and that the punishment was not tailored to the child's needs.

¶ 20 Dr. Finn administered tests for measuring objective personality (MMPI-II-RF), anger expression (STAXI), and parenting stress inventory (PSI) to Julie. The personality test revealed Julie had elevated levels of multiple specific fears. The anger expression test reflected an elevated scale of "intense, angry feelings that are likely to be specific to situations as opposed to being a general state of being for Julie." The parenting stress results showed an elevated scale indicating that J.M.S's behavior was a source of stress in Julie's relationship with him and an overidentification with him.

¶ 21 Dr. Finn diagnosed Julie with a "parent-child relationship problem," after reviewing the reports of the parties, collateral materials, and the testing of Julie's mental status. Julie's behaviors that supported the diagnosis included the issues with J.M.S. regarding eating, independent activities with Jason, hair length, diapering, and showering. Dr. Finn stated that the adverse impact of the parent-child relationship problem could affect J.M.S.'s ability to form peer relationships and to function independently, in addition to affecting social, emotional, and academic development. According to Dr. Finn, Julie was not entirely able to put J.M.S.'s needs above her own. Further, the parent-child relationship problem adversely impacted Julie's ability to foster a relationship between Jason and J.M.S. Dr. Finn stated that the parent-child relationship problem impacted Julie's ability to create an environment where J.M.S. can develop to his full potential.

¶ 22 Dr. Kerry Smith, a clinical psychologist appointed by the court, completed an evaluation under section 604(b) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/604(b) (West 2014)). She interviewed the parties, conducted psychological testing, reviewed documents, and conducted a home visit with each of the parties. She also conducted an interview with Dr. Siegel, the child's therapist. Dr. Smith administered a Symptom Checklist-

90-R test (SCR-90-R) to Jason and Julie requesting them to reflect on 90 items during the past week.

¶ 23 Jason's results from the SCL-90-R were unremarkable. Julie's results from the same test indicated she was experiencing elevated levels of anxiety, suspicion, and mistrust. Dr. Smith agreed with most of Dr. Finn's findings. During the home visits, Dr. Smith noticed that Jason gave the child more leeway and independence than Julie. Dr. Smith testified that her main concern was that Julie was misreading J.M.S. and attributing more adult things to him.

¶ 24 Dr. Smith noted in her report that Julie would like to continue to make decisions for J.M.S. and to have him primarily reside with her. Jason had significant concerns about Julie's ability to parent J.M.S. She stated that it would be better for J.M.S. to spend either a majority of the time with him, or to have a relatively equal schedule of parenting time.

¶ 25 Dr. Smith recommended that Jason and Julie should have parenting time with J.M.S. on an equal basis. If splitting parenting time was not an option, Dr. Smith recommended that Jason have a majority of the parenting time. She explained that Jason "has a more realistic view of [J.M.S.] *** and I think he is more willing to follow recommendations and try new things." In addition, she believed Jason was better at fostering J.M.S.'s independence.

¶ 26 Dr. Smith also recommended that Jason take primary responsibility for medical decision-making, including nutrition and mental health. She stated that Julie should take primary responsibility for J.M.S.'s activities and summer camp, with input from Jason. She also stated that Julie would benefit from counseling to help her better understand some of the issues outlined in Dr. Finn's report, as well as parenting education to help her develop more age-appropriate expectations for J.M.S.'s behavior and development.

¶ 27 After trial, the circuit court entered a judgment for dissolution of marriage resolving issues including division of property and debt, apportionment of parental responsibilities, child support, visitation, dissipation, and contribution towards attorney fees. The court found that Julie presented herself as "bright and capable," but when she outlined her restrictions to employability, "it [was] clear that she is not really trying to find work." The court noted Jason's testimony that Julie could earn $75,000 in her previous occupation at his company, but "he did admit that he was basing that on a division that was actually being closed." The court found that Julie is capable of working and "needs to get a job." Applying the maintenance guidelines of the Act, the court awarded Julie three years and ten months of maintenance at the rate of $4,697.00 per month and credited Jason with two-years of payments made during the pendency of the case.

¶ 28 The circuit court considered sections 600, 602.5, and 603.10 of the Act (750 ILCS 5/600, 602.5, 603.10 (West 2014)) to allocate parental responsibilities according to the child's best interest. The court awarded Jason sole decision making in the areas of education, health, and extracurricular activities. The court limited parenting time for Julie to one night a week for dinner and alternate weekends Saturday from 8 a.m. to 6 p.m. and Sunday from 8 a.m. to 6 p.m. The court stated that it was "hesitant to award Julie overnight time with [J.M.S.], taking into consideration her obsession with him and her insistence on sleeping with him. The court strongly advises her to seek a mental evaluation and to seek intensive treatment." The court further stated that once Julie could show that she has successfully overcome her enmeshment with J.M.S., it would consider giving her more extensive time with the child.

¶ 29 The circuit court found Julie's testimony incredible and stated in support of its findings:

> "There were many instances testified to by the experts and Jason that [] Julie 'infantilizes' and 'spousalizes' the child. To wit: breast feeding to the middle of

> his fifth year, the use of diapers on a 7 year old, her assisting [J.M.S.] in showering and brushing his teeth, her indifference in teaching him basic manners such as saying 'Please, Thank you and Sorry,' [J.M.S.] throwing tantrums like a four year old, at the age of 7.
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> * * *
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> It appears to the court that Julie created an environment where [J.M.S's] basic needs were not met; he was not allowed to eat food when hungry, she hovered and lacked healthy boundaries. Most dangerous, she is so entrenched in her position, her thinking, and parenting philosophy, that she cannot consider, let alone accept, professional advice. Numerous professionals have suggested she get a mental health evaluation and independent treatment to address her issues."

¶ 30 This appeal followed.

¶ 31 ANALYSIS

¶ 32 Before addressing the merits of this appeal, we note two preliminary issues. On appeal, Julie argues, among other things, that the court erred when it restricted her parenting time. Because this appeal involves a child custody determination, Illinois Supreme Court Rule 311(a)(5) (eff. Feb. 26, 2010) requires that, except for good cause shown, the appellate court must issue its decision within 150 days of filing the notice of appeal. Under this rule, our decision was due on October 15, 2016. However, within 30 days after the judgment for dissolution of marriage, Jason filed his own motion to "clarify" the judgment in the circuit court. We determined, over Julie's objection, that we should stay proceedings on the appeal pending resolution of Jason's motion. During the pendency of this appeal, the parties filed status reports, supplemental briefs, and a motion to cite supplemental authority. Ultimately, the circuit court

resolved the motion to clarify and the appeal was not ready for disposition until March 15, 2017. We now issue our disposition.

¶ 33 We also note that Jason claims that Julie's opening brief violates Illinois Supreme Court Rule 341(h)(6) (Ill. S. R. 341(h)(6) (eff. July 1, 2008)) by intentionally omitting material facts and only stating the facts that she believes are favorable to her case. Rule 341(h)(6) requires a statement of the facts, with citation to the record, necessary for an understanding of the case. *Id*. This rule is not merely a suggestion, but is necessary for the proper and efficient administration of the courts. *In re Marriage of Kiferbaum*, 2014 IL App (1st) 130736, ¶ 20. The facts section in Julie's brief contains material omissions adverse to her position too numerous to enumerate here. We were nevertheless able to access those omitted portions in the record.

¶ 34 We also note Julie's failure to comply with Illinois Supreme Court Rules 342(a)(1) and (3) (eff. Jan. 1, 2005), which requires an appellant's brief to include "an appendix [and] a complete table of contents, with page references, of the record on appeal." Julie's appendix does not include a description of the exhibits attached, and the table of contents to the record on appeal provides no detail whatsoever as to the nature of the court orders entered or the names of the witnesses testifying, rendering it essentially useless.

¶ 35 We remind counsel, when unsure about how to prepare a formal brief, that it is better to seek clarification than forgiveness. When a brief fails to follow the requirements set forth in the Supreme Court Rules, we may dismiss the appeal. *Fender v. Town of Cicero*, 347 Ill. App. 3d 46, 51 (2004). Indeed, our supreme court's rules are not simply hortatory, but are mandatory and are to be scrupulously followed. *In re Marriage of Petrik*, 2012 IL App (2d) 110495, ¶ 38. We recognize, however, that striking a brief or dismissing an appeal is a particularly harsh sanction. *People v. Thomas*, 364 Ill. App. 3d 91, 97 (2006) (citing *In re Detention of Powell*, 217 Ill. 2d

123, 132 (2005)). Although Julie's deficient brief complicates, but does not completely frustrate, our review, we will consider the merits of the appeal.

¶ 36 On appeal, Julie asserts a host of errors with respect to various rulings of the circuit court. She first argues that the circuit court's decision to restrict her parenting time was against the manifest weight of the evidence. She also contends the court committed reversible error by permitting expert witnesses to testify to opinions that were previously undisclosed. She asserts the court improperly allowed Jason to offer inadmissible opinion evidence and hearsay. She contends that the cumulative effect of the court's errors and judicial bias prevented her from having a fair trial. In addition, she asserts the court applied an improper valuation of a previous residence when determining the division of marital assets. Finally, she argues the court erred when it reduced her maintenance by a period of 24 months and omitted Jason's cash bonus and annual retention bonus of shares of stock from the calculation of maintenance.

¶ 37 Parenting Time

¶ 38 Julie argues that the circuit court improperly restricted her parenting time. While the divorce proceedings were pending, Julie was the residential parent and had the majority of the parenting time. She contends that Jason sought joint custody in his petition for dissolution of marriage and never filed a pleading specifically seeking to restrict her parenting time. She asserts the court limited her overnight parenting time *sua sponte*. Julie argues Jason failed to prove by a preponderance of the evidence that overnight visitation would seriously endanger the child. She argues that the court did not properly apply the rules of evidence and relied on inadmissible evidence when determining parenting time.

¶ 39 Julie argues that a manifest weight of the evidence standard of review applies; however, she is not appealing from the denial of a petition to modify a custody judgment where such a

standard applies. See *In re Marriage of Cotton*, 103 Ill. 2d 346, 356 (1984) (standard of review for modification of custody judgment is the manifest weight of the evidence). Rather, this case involves review of the custody judgment itself. "Determining custody in a particular case is a matter which rests with the sound discretion of the trial court." *Department of Public Aid ex rel. Davis v. Brewer*, 183 Ill. 2d 540, 557 (1998). Accordingly, we apply a very deferential standard of review. Our supreme court has explained that "[a] custody determination, in particular, is afforded great deference because the trial court is in a superior position to judge the credibility of the witnesses and determine the best interests of the child." (Internal quotations marks omitted.) *In re Marriage of Bates*, 212 Ill. 2d 489, 516 (2004). A circuit court abuses its discretion when it acts arbitrarily, without conscientious judgment, or in view of all the circumstances exceeds the bounds of reason and ignores recognized principles of law, resulting in substantial injustice. *In re Marriage of Daebel*, 404 Ill. App. 3d 473, 486 (2010).

¶ 40 Section 602.7 of the Act, effective January 1, 2016, reflects the overhaul of the Act to replace "custody" and "visitation" with more neutral language concerning parental responsibilities and parenting time. Section 602.7 replaces the former statute's provisions regarding what were then designated as custodial parenting time and visitation. Under section 602.7, "[u]nless the parents present a mutually agreed written parenting plan and that plan is approved by the court, the court shall allocate parenting time." 750 ILCS 5/602.7(b) (West Supp. 2015). "The court shall allocate parenting time according to the child's best interests." 750 ILCS 5/602.7(a) (West Supp. 2015). Although the Act presumes both parents are fit, section 602.7 states that the court "shall not place any restrictions on parenting time *** unless it finds by a preponderance of the evidence that a parent's exercise of parenting time would seriously

endanger the child's physical, mental, moral, or emotional health." 750 ILCS 5/602.7(b) (West Supp. 2015).

¶ 41 "In determining the child's best interests for purposes of allocating parenting time, the court shall consider all relevant factors, including, without limitation, the following:

> (1) the wishes of each parent seeking parenting time;
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> (2) the wishes of the child, taking into account the child's maturity and ability to express reasoned and independent preferences as to parenting time;
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> (3) the amount of time each parent spent performing caretaking functions with respect to the child in the 24 months preceding the filing of any petition for allocation of parental responsibilities or, if the child is under 2 years of age, since the child's birth;
>
> (4) any prior agreement or course of conduct between the parents relating to caretaking functions with respect to the child;
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> (5) the interaction and interrelationship of the child with his or her parents and siblings and with any other person who may significantly affect the child's best interests;
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> (6) the child's adjustment to his or her home, school, and community;
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> (7) the mental and physical health of all individuals involved;
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> (8) the child's needs;
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> (9) the distance between the parents' residences, the cost and difficulty of transporting the child, each parent's and the child's daily schedules, and the ability of the parents to cooperate in the arrangement;
>
> (10) whether a restriction on parenting time is appropriate;

* * *

(12) the willingness and ability of each parent to place the needs of the child ahead of his or her own needs;

(13) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child;

* * *

(17) any other factor that the court expressly finds to be relevant." 750 ILCS 5/602.7(b) (West Supp. 2015).

¶ 42 A circuit court has authority to place restrictions on parenting time, which section 600(i) of the Act defines as "any limitation or condition placed on parenting time, including supervision." 750 ILCS 5/600(i) (West Supp. 2015). "After a hearing, if the court finds by a preponderance of the evidence that a parent engaged in any conduct that seriously endangered the child's mental, moral, or physical health or that significantly impaired the child's emotional development, the court shall enter orders as necessary to protect the child." 750 ILCS 5/603.10(a) (West Supp. 2015). If the preponderance standard is met, section 603.10(a)(1) authorizes the court to order "a reduction, elimination, or other adjustment of the parent's decision-making responsibilities or parenting time, or both decision-making responsibilities and parenting time." 750 ILCS 603.10(a)(1) (West Supp. 2015). Under section 603.10(a)(8), the court may order a parent to complete a treatment program "for other behavior that is the basis for restricting parental responsibilities under this Section." 750 ILCS 603.10(a)(8) (West Supp. 2015). Finally, section 603.10(a)(9) allows for a restriction of parenting time under "any other constraints or conditions that the court deems necessary to provide for the child's safety or welfare." 750 ILCS 603.10(a)(9) (West Supp. 2015).

¶ 43 Julie argues that there was no pending petition to restrict her parenting time and that she had no notice that her parenting time would be restricted. She contends the circuit court abruptly uprooted J.M.S. from his primary caretaker's home and then restricted him from spending the night there. She argues the restriction of her parenting time harmed the child.

¶ 44 In this case, Julie was represented by counsel, who presumably should have made her aware of the court's discretion in allocating parenting time. Even if Julie was not represented by counsel, she is presumed to know the law and ignorance of the law is no excuse. *People v. Lander*, 215 Ill. 2d 577, 588-89 (2005); *Jones v. Board of Education of the City of Chicago*, 2013 Ill. App (1st) 122437, ¶ 22.

¶ 45 The record does not make clear whether Jason attempted to amend his petition for dissolution to ask for sole parental responsibilities. Nevertheless, section 602.7 of the Act does not require a parent to *petition* to restrict parenting time. Section 602.7 states that if the parents do not present a mutually agreed written parenting plan, the circuit court "shall allocate parenting time." 750 ILCS 5/602.7(b) (West Supp. 2015). Here, using the statutory authority provided under section 603.10 of the Act, the court found by a preponderance of the evidence that a restriction of parenting time was required because "Julie's parenting seriously endangers the child's physical[,] mental and emotional health." *Id*.; 750 ILCS 5/603.10(a) (West Supp. 2015).

¶ 46 "[A] reviewing court may not reweigh the evidence or substitute its judgment for that of the trier of fact." (Internal quotation marks omitted.) *People v. Parcel of Property Commonly Known as 1945 North 31st Street, Decatur, Macon County, Illinois*, 217 Ill. 2d 481, 509 (2005). "A reviewing court may not overturn a judgment merely because the reviewing court might disagree with the judgment, or, had the reviewing court been the trier of fact, might have come to a different conclusion." *Id.* at 510. "Further, in a nonjury case, the judgment of the trial court

will be upheld if there is *any* evidence to support it." (Emphasis added.) *Brencick v. Spencer*, 188 Ill. App. 3d 217, 219 (1989).

¶ 47 In this case, the circuit court conducted a trial extending over nine days, heard witness testimony, and reviewed the documentary evidence presented. The court found Jason was a credible witness and that Julie was not a credible witness. We find the circuit court's decision to restrict Julie's parental time is amply supported by the evidence, which established serious areas of concern for the child's best interests, including nutrition, diapering, co-sleeping, bathing, hair length, disciplinary issues, behavioral issues, and social development, among others. These areas of concern affect the mental and physical health of the child, Julie's mental health, the child's needs, the willingness and ability of Julie to place the needs of the child ahead of her own needs, and the willingness of Julie to facilitate and encourage a close and continuing relationship between Jason and J.M.S. 750 ILCS 5/602.7(7), (8), (12), (13) (West Supp. 2015).

¶ 48 As to nutrition, Dr. Finn's report stated that: (1) Julie acknowledged engaging in restrictive food practices, and (2) Dr. Siegel reported statements from J.M.S. suggesting these practices continued to be in place. Julie acknowledged at trial that she modifies the food that she feeds J.M.S. as a result of what he ate at Jason's house and punished the child when he stole a treat.

¶ 49 Julie reported to Dr. Finn that she ceased using diapers for J.M.S. in the period immediately preceding her Rule 215 evaluation. Dr. Siegel recommended to Julie that J.M.S. stop using diapers, but at trial she stated she did not believe the child was ready to stop using diapers.

¶ 50 Julie testified that she continues the practice of overnight co-sleeping with J.M.S. Dr. Finn testified that Julie's sleeping with a child of this age represents a complete unwillingness to

accept advice as to the child's well-being. Julie had been told that sleeping with J.M.S. is unhealthy for the child, yet she continued to do so.

¶ 51 Julie also reported to Dr. Finn that she bathed J.M.S. until recently, but discontinued doing so on the advice of Dr. Siegel. Dr. Finn testified that Julie's refusal to have J.M.S.'s hair cut or have him participate in team sports demonstrated that Julie gave great weight to what she imagined were the child's wishes instead of considering his best interests or what his developmental growth should be. Dr. Finn noted in his testimony that he had copies of the pediatrician's notes, which included no notations for the behaviors Julie testified she had cleared with him, such as co-sleeping, nursing J.M.S. until age 5, wearing diapers at night, and food restrictions.

¶ 52 Julie acknowledged that J.M.S. has problems being polite both to strangers and at home. Dr. Siegel reported to Dr. Finn that J.M.S. is reluctant to invite friends to Julie's house because she does not leave them alone to play. Dr. Finn's testimony established that Julie's parent-child relationship problem adversely impacts J.M.S.'s ability to form peer relationships and to function independently, in addition to affecting social and academic development. Dr. Finn concluded that Julie is unable to put J.M.S.'s needs above her own.

¶ 53 The circuit court noted in its decision that Jason did not hold himself out to be the perfect parent and that he acknowledged shortfalls in parenting. As a single parent, Jason encouraged J.M.S. to develop, *i.e.*, shower on his own, brush his teeth without assistance, eat normal meals, and cease using diapers. The court concluded that Julie's "insistence and persistence in co-sleeping, keeping the child 'an infant' and her obsessive interference with Jason's parenting time all buttress the court's conclusion that Julie's relationship with her child creates an unhealthy relationship creating an unnatural comfort for Julie to [J.M.S.'s] detriment." The court expressed

its fear that "Julie's mental issues will continue to be damaging to the child and the court is going to limit her time with [J.M.S.] until such time as she receives the psychological help she desperately needs."

¶ 54 The circuit court was in a superior position to judge the credibility of the witnesses and determine the best interests of the child. We do not reweigh the evidence, but find the court properly reviewed and applied the statutory factors under the Act necessary to allocate parenting time to the parties. The evidence supported the court's decision to restrict Julie's parenting time. We find the court did not abuse its discretion when making its determination.

¶ 55 Evidentiary Issues

¶ 56 Julie argues the circuit court committed reversible error by relying on previously undisclosed opinion testimony from expert witnesses when deciding to restrict parenting time. Julie contends the court's reliance on this testimony was "blatantly prejudicial," and that it demonstrates "evidence of the court's bias" and "lack of neutrality in the proceeding." We address each of these arguments in turn.

¶ 57 Julie first challenges the testimony of the court-appointed independent witnesses, Dr. Finn and Dr. Smith. Illinois Supreme Court Rule 213(f) provides that, upon written interrogatory, the party must identify the subjects on which an independent expert witness "will testify and the opinions the party expects to elicit." Ill. S. Ct. R. 213(f)(2) (eff. Jan. 1, 2007). One of the purposes of Rule 213 is to avoid surprise. *Sullivan v. Edward Hospital*, 209 Ill. 2d 100, 109 (2004). Although an expert witness is not permitted to testify to opinions and conclusions not previously disclosed, the expert's trial testimony does not necessarily violate Rule 213 if it is "an elaboration on, or a logical corollary to, the original revealed opinion." *Spaetzel v. Dillon*, 393 Ill. App. 3d 806, 813 (2009) (citing *Brax v. Kennedy*, 363 Ill. App. 3d

343, 355 (2005)). "The admission of evidence pursuant to Rule 213 is within the sound discretion of the trial court, and the court's ruling will not be disturbed absent an abuse of that discretion." *Sullivan*, 209 Ill. 2d at 109 (citing *Susnis v. Radfar*, 317 Ill. App. 3d 817, 828 (2000)).

¶ 58 Although the circuit court appointed Dr. Finn and Dr. Smith to conduct a Rule 215 evaluation of Julie and section 604(b) interviews of both parties, each party was nonetheless required to comply with the Illinois Supreme Court Rules governing the disclosure of an expert witness before calling either to testify. See 750 ILCS 5/604.5(e) (West 2014) and Ill. S. Ct. R. 215(a) (eff. Mar. 28, 2011) (both stating that the party calling the appointed witness to testify must comply with the Illinois Supreme Court Rules regarding disclosure of opinion witnesses). But Rule 213(f) provides for the disclosure of information pertaining to independent witnesses and states that the obligation to disclose such information is only triggered "[u]pon written interrogatory ***." Ill. S. Ct. R. 213(f) (eff. Jan. 1, 2007).

¶ 59 The record reflects that neither party issued written interrogatories requesting the identities and opinions of the other party's opinion witnesses. Therefore, neither party triggered the other party's obligation to disclose the identities and opinions of the expert witnesses. Ill. S. Ct. R. 213(f) (eff. Jan. 1, 2007). Accordingly, Julie cannot now complain about undisclosed opinions when she failed to trigger the obligation to disclose by filing a written interrogatory. Even if Julie had filed the necessary written interrogatory, as discussed below, the testimony she challenges does not violate Rule 213(f).

¶ 60 Testimony of Dr. Finn

¶ 61 Julie contests numerous aspects of Dr. Finn's testimony. She argues he provided undisclosed opinions related to: (1) the disciplining of J.M.S.; (2) food and nutrition; (3) whether

Julie's employment status had any impact on her parenting; (3) the ability of Julie to encourage and foster a relationship between the child and Jason; (4) Julie's diagnosis and its impact upon a child's ability to form peer relationships and to function generally, and the impact on J.M.S.; and (5) Julie's hiring of Dr. Mosk to prepare her for the Rule 215 evaluation.

¶ 62 We have reviewed the report of proceedings concerning Julie's argument that Dr. Finn provided testimony "as to his undisclosed opinions related to the manner in which Julie disciplined J.M.S., as well as her philosophy on food and nutrition." Julie acknowledged in her opening brief that both of these issues were discussed in Dr. Finn's report. Indeed, the report specifically states that Julie "punished [J.M.S.] for a weeklong period by keeping him in the bathroom with her while she showered after she discovered he had eaten junk food after breakfast." Dr. Finn also stated in his report that he "did not find any data to support the need for dietary restrictions and did not observe any indication from [J.M.S.'s pediatrician that restrictions are necessary." Accordingly, Dr. Finn's testimony concerning these issues cannot be considered a surprise.

¶ 63 Furthermore, although Jason did not specifically state in his disclosures that Dr. Finn would testify as to the manner in which Julie disciplined J.M.S. and her philosophy on food and nutrition, an expert's testimony does not necessarily violate Rule 213 if it is "an elaboration on, or a logical corollary to, the originally revealed opinion." *Spaetzel*, 393 Ill. App. 3d at 813. Here, it is a logical corollary that Dr. Finn would testify that Julie's punishment of J.M.S. reflected her need to exercise control over him specific to the food issue, to the detriment of J.M.S. Accordingly, we find that Dr. Finn's testimony concerning Julie's disciplining of J.M.S. and the food restrictions she applied to him was consistent with Jason's disclosures, and we find

the circuit court did not abuse its discretion in admitting this evidence. *Sullivan*, 209 Ill. 2d at 109.

¶ 64 Julie argues Dr. Finn improperly testified regarding an undisclosed opinion as to whether Julie's employment status had any impact on her parenting and the parent-child relationship. Jason's counsel asked Dr. Finn, "Do you see any relationship between her employment status and the parent-child relationship problem that you diagnosed?" Julie's counsel objected on the basis of an undisclosed opinion and the circuit court sustained the objection. Thus, no Rule 213(f) violation occurred.

¶ 65 Julie next contends Dr. Finn improperly testified over objection regarding his opinion on Julie's ability to encourage and foster a relationship between the child and Jason, which is one of the factors the court considers in making a parenting time allocation. See 750 ILCS 5/602.7(b)(13) (West Supp. 2015). Jason's counsel asked Dr. Finn, "What impact, if any, does the parent-child relationship problem have on a parent or Julie's, in particular, ability to encourage or foster a relationship with the other parent?" Dr. Finn responded that "an examination of that best-interest factor was outside the scope of my evaluation," but "it could have an adverse impact on Julie's ability to foster a relationship *** between [J.M.S.] and Jason."

¶ 66 Dr. Finn's report, dated July 8, 2015, provided sufficient notice to Julie regarding the areas of his potential trial testimony. The report specifically stated that "Julie views [J.M.S.'s] father as a threat in part because he supports [J.M.S.'s] development in a manner that threatens her sense of identity." This statement is a logical corollary to Dr. Finn's opinion that Julie's parent-child relationship problem would have an adverse impact on Julie's ability to encourage

and foster a relationship between J.M.S. and Jason. We find the circuit court did not abuse its discretion in admitting this evidence. *Sullivan*, 209 Ill. 2d at 109.

¶ 67 Julie contends Dr. Finn was permitted to offer an undisclosed opinion of Julie's diagnosis of a parent-child relationship problem and its impact on a child's ability to form peer relationships and a child's ability to function generally. Julie did not object to his testimony and therefore, she forfeited this argument. "Failure to object to the evidence at trial forfeits the issue on appeal." *Jones v. Chicago Osteopathic Hospital*, 316 Ill. App. 3d 1121, 1132 (2000). Jason's counsel then asked Dr. Finn whether Julie's parent-child relationship problem impeded J.M.S.'s social, emotional, and academic development. Julie's counsel objected on the basis of "improper opinion," which the circuit court overruled. In his written report, Dr. Finn diagnosed Julie under the category of "Parent-Child Relationship Problem," stating "[t]he primary direction of this relationship problem is Julie's difficulty in facilitating [J.M.S.'s] normal and age-appropriate separation and individuation." He wrote that [J.M.S.'s] therapist found Julie's actions are impacting him, but are not yet causing significant impairment, and "[h]e is concerned, as I am, about the likelihood of ongoing problems for [J.M.S.] if Julie's issues are not accurately identified and treated." These statements logically follow Dr. Finn's opinion that Julie's parent-child relationship problem would impact upon J.M.S.'s social and emotional development. Dr. Finn's testimony on this issue did not constitute surprise. The circuit court did not abuse its discretion in admitting this evidence. *Sullivan*, 209 Ill. 2d at 109.

¶ 68 Julie also argues Dr. Finn improperly testified about whether he would have some concern knowing that a psychologist she hired prepared her for the Rule 215 evaluation. At the time of the alleged impermissible testimony, Dr. Finn was under cross-examination by counsel representing J.M.S.

¶ 69 Illinois Supreme Court Rule 213 provides, "[w]ithout making disclosure under this rule, however, a cross-examining party can elicit information, including opinions, from the witness." Ill. S. Ct. R. 213(g) (eff. Jan. 1, 2007). "Indeed, none of Rule 213's disclosure requirements applies to cross-examining an opposing party's opinion witness." *Maffett v. Bliss*, 329 Ill. App. 3d 562, 577 (2002). See also *Stapleton v. Moore*, 403 Ill. App. 3d 147, 156 (2010); *Skubak v. Lutheran General Healthcare Systems*, 339 Ill. App. 3d 30, 37 (2003). This court has explained:

> " 'If the cross-examiner, to use a cliché, must telegraph his punch, cross-examination would lose its effectiveness. If complete disclosure is the optimum, would it not be more in the spirit of full disclosure to require the 'cross-examiner' to submit his questions to the opponent's witnesses prior to trial? By eliminating the spontaneity, we would certainly avoid surprises. We may also be limiting the ability to ascertain the truth.' " *Maffett*, 329 Ill. App. 3d at 577 (quoting *Southern Illinois Airport Authority v. Smith*, 267 Ill. App. 3d 201, 206 (1994)).

Accordingly, the circuit court here did not err in allowing Dr. Finn's testimony regarding Julie's hiring of Dr. Mosk because he made the disputed statements on cross-examination.

¶ 70 Testimony of Dr. Smith

¶ 71 Julie also contests numerous aspects of Dr. Smith's testimony. She argues Dr. Smith provided undisclosed opinions related to: (1) her nutrition philosophy and how she fed J.M.S.; (2) her desire to have phone contact with J.M.S. while he stayed at Jason's house; (3) her hiring of Dr. Mosk to prepare her for the Rule 215 evaluation; (4) what concerns Dr. Smith might have if she took no action based on the recommendations in the experts' reports; (5) whether her assessment of Julie's ability to make decisions regarding J.M.S.'s extracurricular activities would

change if Julie did not follow a recommendation; and (6) Dr. Smith's recommendation if splitting parenting time was not an option.

¶ 72 The issues of Julie's nutrition philosophy and the methods and amounts of food she fed J.M.S. pervaded throughout the trial. On this topic, Dr. Smith's written report, dated November 9, 2015, stated, "[Julie] noted that she has an interest in nutrition, and thought it was better to encourage snacking as opposed to offering a big meal. She said her approach was based on research, and that [J.M.S.] was allowed to ask for more food. * * * [Julie] denied having a control issue with respect to food." Thus, whether Dr. Smith testified to her concerns about the way Julie fed J.M.S. was a logical corollary to the statements in her report. Julie cannot claim she was surprised regarding Dr. Smith's testimony on a subject matter covered extensively by the court-appointed experts before trial. We find no error. *Sullivan*, 209 Ill. 2d at 109.

¶ 73 Jason's counsel asked Dr. Smith how she would interpret Julie's need to speak to J.M.S. so frequently. The circuit court overruled Julie's objection to this question and allowed Dr. Smith to answer. Dr. Smith's report specifically states that Julie's "repeated phone calls are intrusive to [Jason's] parenting time with J.M.S." and that the "repeated phone calls convey a sense of distrust of [Jason]." Accordingly, Dr. Smith's opinion regarding whether Julie made too many phone calls to J.M.S. while he stayed with Jason was a logical corollary from the statements in her report. We find no abuse of discretion. *Sullivan*, 209 Ill. 2d at 109.

¶ 74 When Julie objected to questioning of Dr. Smith regarding her hiring of Dr. Mosk, the circuit court overruled the objection, stating:

> "I don't want to bring [Dr. Smith] back. So what I'll do is say I'm going to allow her to answer this. And I will allow additional questions about this with other witnesses so we don't have to call them back in rebuttal. And if it turns out that it

was not true, then I will disregard all of the testimony concerning that coaching. Will that work?"

Julie's counsel responded that he understood why the court overruled the objection, but stated that he would not withdraw the objection.

¶ 75 "Although it is within the court's discretion to seek independent expert advice, it is well settled that a court is not bound to abide by the opinions or implement the recommendations of its court appointed expert." *In re Marriage of Debra N. and Michael S.*, 2013 IL App (1st) 122145, ¶ 52. See also *In re Marriage of Saheb*, 377 Ill. App. 3d 615, 628 (2007) ("Nothing in section 604 requires the trial court to follow the advice of the 604(b) evaluator. Advice is simply that – advice."). The circuit court is the ultimate fact finder in a child custody case, not the expert witness. *In re Marriage of Saheb*, 377 Ill. App. 3d at 628. While testimony of psychologists and social workers is relevant to the determination of custody, their opinions are not binding on the court. *In re Marriage of Bailey*, 130 Ill. App. 3d 158, 160-61 (1985). It is within the court's discretion to decide whether evidence is relevant and admissible, and a court's determination on that issue will not be reversed absent a clear abuse of discretion. *Bates*, 212 Ill. 2d at 522.

¶ 76 In this case, the circuit court indicated it was willing to "disregard all of the testimony concerning that coaching" to avoid having to bring Dr. Smith back to testify in rebuttal. However, the judgment for dissolution of marriage stated that the court took this testimony into consideration when making its determination of parenting time.

¶ 77 We recognize the importance of compliance with the discovery rules. To prevent surprise or prejudice, and where demonstrated harm results to a party, we will not hesitate to grant relief. Here, however, Julie has not demonstrated any prejudice resulting from Dr. Smith's

testimony regarding Dr. Mosk. We find the circuit court did not act arbitrarily, without conscientious judgment, or in view of all the circumstances, exceeded the bounds of reason when it relied on this testimony in its judgment. *Daebel*, 404 Ill. App. 3d at 486. In sum, the court did not abuse its discretion. *Bates*, 212 Ill. 2d at 523.

¶ 78 Julie argues Dr. Smith improperly provided an undisclosed opinion regarding Julie's refusal to obtain further assessment and evaluation by a mental health professional. Dr. Smith testified that Julie's refusal "fits with her general process of things" and "if something doesn't fit within that, I think she tends to disregard it or not follow it." Dr. Smith's written report described Dr. Finn's Rule 215 evaluation, the psychological testing Julie completed as part of that evaluation, and the results from the tests. In her written report, Dr. Smith asked Julie whether she understood Dr. Finn's assessment of her. Julie responded that Dr. Finn found a relationship issue between her and J.M.S., but that "there were some misunderstandings in Dr. Finn's report." Accordingly, Julie's testimony regarding her refusal to obtain further assessment and evaluation by a mental health professional was a logical corollary to the statements in Dr. Smith's report. Julie cannot claim she was surprised by this line of questioning. We find no abuse of discretion. *Sullivan*, 209 Ill. 2d at 109.

¶ 79 Julie next contends that Jason asked Dr. Smith to give an undisclosed hypothetical opinion on whether her assessment of Julie's ability to make decisions regarding J.M.S.'s extracurricular activities would change if she did not follow a recommendation from J.M.S.'s therapist. Dr. Smith recommended in her written report that Julie be allowed to make decisions regarding J.M.S.'s extracurricular activities.

¶ 80 "An expert witness's answers to hypothetical questions are an acceptable basis for his or her expert opinion." *Iaccino v. Anderson*, 406 Ill. App. 3d 397, 407 (2010). "It remains for the

trier of fact to determine the facts and the inferences to be drawn therefrom." *Id*. (quoting *Geers v. Brichta*, 248 Ill. App. 3d 398, 407 (1993)). Furthermore, it is a logical corollary to the written report to have Dr. Smith expound upon her opinion that Julie be allowed to make decisions regarding J.M.S.'s extracurricular activities. In any event, Julie has not shown how the court permitting Dr. Smith to answer the question at issue prejudiced her. We find no abuse of discretion. *Sullivan*, 209 Ill. 2d at 109.

¶ 81 Julie argues Dr. Smith also provided an undisclosed opinion that Jason should have more parenting time if splitting parenting time 50-50 was not an option. Again, this testimony was elicited from a hypothetical question. Dr. Smith stated in her report that Jason and Julie should have equal parenting time. Dr. Smith is allowed to answer hypothetical questions related to her expert opinion regarding the allocation of parenting time. *Iaccino*, 406 Ill. App. 3d at 407. Dr. Smith's responses were a logical corollary to her conclusions from the written report. Julie has not demonstrated how this testimony prejudiced her. We find no abuse of discretion. *Sullivan*, 209 Ill. 2d at 109.

¶ 82 Testimony of Jason S.

¶ 83 Julie next argues that Jason offered inadmissible opinion and hearsay testimony regarding Julie's employability and mental state. She contends Jason improperly offered testimony concerning the employability of content editors in math, a position which Julie previously held. In addition, she claims Jason exceeded the scope of his opinion as to her mental state.

¶ 84 Supreme Court Rule 341(h)(7) governs the requirements for appellants' briefs. The rule states that the briefs shall include: "Argument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Ill. Sup.Ct. R. 341(h)(7) (eff. Feb. 6, 2013). Both an argument and citation to

relevant authority are required. She cites no authority, legal or otherwise, for her contention that Jason provided an expert opinion on her employability or that the opinion was based on hearsay. Indeed, Julie omitted any citation to Illinois Rule of Evidence 701 or 702 (eff. Jan. 1, 2011) or any case authority on the standards for determining whether Jason was providing expert opinion testimony or lay opinion testimony. Although the central issue is whether Jason improperly gave expert opinion testimony, Julie slights this issue and concentrates on the failure to disclose him as an expert under Rule 213(f), a matter hardly in dispute.

¶ 85 As our supreme court has stated, a "reviewing court is not simply a depository into which a party may dump the burden of argument and research." *People ex rel. Illinois Department of Labor v. E.R.H. Enterprises,* 2013 IL 115106, ¶ 56. We find that Julie has forfeited this argument by failing to cite authority in support of her position. Ill. Sup.Ct. R. 341(h)(7) (eff. Feb. 6, 2013); see also *Housing Authority of Champaign County v. Lyles,* 395 Ill. App. 3d 1036, 1040 (2009) (issue on appeal forfeited for failure to cite authority).

¶ 86 Julie does cite Rule 701 to argue that Jason provided inadmissible expert opinion regarding her mental health. Her claim, however, is meritless.

¶ 87 Illinois Rule of Evidence 701 (eff. Jan. 1, 2011) provides:

> "If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702."

¶ 88 Because Illinois Rule of Evidence 701 is modeled after its federal counterpart (Fed. R. Evid. 701), we may look to federal law and state decisions interpreting similar rules for guidance. See *People v. Thompson,* 2016 IL 118667, ¶ 40. "An opinion is rationally based on a witness's perception if the opinion is 'one that a layperson could normally form from observed facts.' " *People v. Gharrett,* 2016 IL App (4th) 140315, ¶ 72 (quoting Michael H. Graham, Graham's Handbook of Illinois Evidence § 701.1, at 618 (10th ed. 2010)); see also *U.S. v. Johnson,* 617 F.3d 286, 292 (4th Cir. 2010) (quoting *U.S. v. Perkins,* 470 F.3d 150, 155–56 (4th Cir. 2006) (noting that a key difference between lay opinion testimony and expert testimony under the Federal Rules of Evidence is that " 'lay opinion testimony *must* be based on personal knowledge.' " (Emphasis in original.)). The decision to admit lay opinion testimony rests within the sound discretion of the circuit court, and its decision will not be disturbed on appeal absent an abuse of that discretion. *Thompson,* 2016 IL 118667, ¶ 49.

¶ 89 Here, both parties agree that Illinois law allows lay persons to provide an opinion of mental condition if that opinion is based on personal knowledge and observation. "Nonexperts who have an opportunity to observe a person may give their opinions of mental condition or capacity based on facts observed, including conversations." *People v. Bleitner,* 189 Ill. App. 3d 971, 976 (1989). See also *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1069 (2006) (circuit court considered the testimony of nonexperts regarding their opportunity to observe the father and his capacity to parent); *In re T.J.*, 319 Ill. App. 3d 661, 670 (2001), *rev'd on other grounds*, 202 Ill. 2d 282 (2002) (nonexperts who have had an opportunity to observe a person may give their opinions of mental condition or capacity based on facts observed, and such lay opinions may overcome an expert opinion).

¶ 90 Julie argues that Jason exceeded the scope of the admissibility of his opinion and assessed the credibility of the experts. Jason, however, was not contesting the findings of the experts – he merely testified regarding his observations of Julie *in conjunction with* the experts' conclusions. In any event, the ultimate issue – the allocation of parenting time – was for the circuit court, not the experts or Jason, to decide. *Bleitner*, 189 Ill. App. 3d at 976. The court determines the credibility and weight to be given testimony concerning mental state. *Id*. See also *People v. Baez*, 241 Ill. 2d 44, 123 (2011); *People v. Bilyew*, 73 Ill. 2d 294, 301 (1978).

¶ 91 In this case, we find Jason's testimony was based on his personal knowledge and observations of Julie. *Bleitner*, 189 Ill. App. 3d at 976. The court determined the credibility and weight of Jason's testimony, stating that it was "not going to be usurped by him or anybody else in the courtroom" and that his testimony regarding the experts' reports "reinforced patterns of [Julie's] behavior" that he observed. The court followed the ruling in *Bleitner*. We find no abuse of discretion. *Thompson*, 2016 IL 118667, ¶ 49.

¶ 92 Cumulative Effect of the Alleged Errors

¶ 93 Julie next argues the cumulative effect of the circuit court's errors requires reversal of the judgment for dissolution of marriage. She claims the court exhibited a high degree of favoritism toward Jason over the course of the trial, as demonstrated by the admission of numerous undisclosed opinions, which we discussed above, and the barring of her expert, Dr. Mosk. She argues the court's questioning of her also illustrated the bias. She contends the court deprived her of procedural due process as it relates to fundamental fairness.

¶ 94 A trial judge is presumed to be impartial, and the burden of overcoming this presumption rests on the party making the charge of prejudice. *In re Marriage of O'Brien*, 2011 IL 109039, ¶ 31; *Eychaner v. Gross*, 202 Ill. 2d 228, 280 (2002). "To conclude that a judge is disqualified

because of prejudice is not, of course, a judgment to be lightly made." *Eychaner*, 202 Ill. 2d at 280 (quoting *People v. Vance*, 76 Ill. 2d 171, 179 (1979)). A trial judge's rulings alone are almost never a valid basis from which to claim judicial bias or partiality, and this includes the judge's allegedly erroneous findings and rulings. *Id.* Instead, the party claiming prejudice must present evidence of prejudicial trial conduct and evidence of the judge's personal bias, which can stem from an extrajudicial source. *Id.*

¶ 95 Here, Julie points to no extrajudicial source of the trial judge's alleged bias against her. To the contrary, Julie solely points to the trial judge's alleged erroneous rulings. In our view, those rulings did not originate from some bias against her. Furthermore, as discussed at length above, we found that the court's rulings were not erroneous.

¶ 96 Regarding Dr. Mosk, the record shows Julie did not comply with a court-ordered deadline for the disclosure of his opinions. Moreover, the level of credibility of Dr. Mosk is naturally affected by Julie's admission that she hired him to prepare for her Rule 215 evaluation. She has pointed to no extrajudicial source of the trial judge's alleged bias regarding the court's decision to bar Dr. Mosk from testifying at trial. Finally, Julie made no offer of proof of Dr. Mosk's proposed testimony and, therefore, her argument regarding the issue is forfeited. See *Schmitz v. Binette*, 368 Ill. App. 3d 447, 453 (2006) (A party that fails to make an offer of proof as to excluded testimony waives any claim that the testimony was improperly excluded); *Kim v. Mercedes-Benz, U.S.A., Inc.*, 353 Ill. App. 3d 444, 451 (2004) (same).

¶ 97 Turning to Julie's due process argument, "[t]he due process clause of the fourteenth amendment to the United States Constitution provides that no state shall 'deprive any person of life, liberty, or property, without due process of law.' " *In re D.T.*, 338 Ill. App. 3d 133 (2003), *rev'd on other grounds*, 212 Ill. 2d 347 (2004) (quoting U.S. Const., amend. XIV, § 1)). "The

fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.' " *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). Due process " 'is not a technical conception with a fixed content unrelated to time, place and circumstances.' " *Mathews*, 424 U.S. at 334 (quoting *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 367 U.S. 886, 895 (1961)). Rather, "due process is flexible and calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). Due process requires fundamental fairness and a court must consider the specific facts of each particular situation in assessing the competing interests. *Lassiter v. Department of Social Services*, 452 U.S. 18, 24–25 (1981). Contentions of due process violations are questions of law reviewed *de novo*. *In re Todd K.*, 371 Ill. App. 3d 539 (2007).

¶ 98 In this case, none of Julie's allegations of judicial bias or evidentiary rulings affected her right to a fair trial. After carefully reviewing the entire transcript of an especially contentious trial, we cannot find that the proceeding was in any way arbitrary or lacking in fundamental fairness. The actions of the trial judge were appropriate to her function as the trier of fact in this dispute. We can find no indication that she had pre-judged the merits of the case prior to hearing all the evidence. Nothing the court said or did was based on extrajudicial sources to support remanding this case for a new trial, and to a different judge. Furthermore, as to Julie's numerous claims of erroneous evidentiary rulings, our supreme court has held "[n]either an abuse of discretion nor an erroneous rule of law will support a reversal for a deprivation of procedural due process." *Tri-G, Inc. v. Burke, Bosselman & Weaver*, 222 Ill. 2d 218, 246 (2006). Due process does not require that the opportunity to be heard will be conducted entirely free from error. Julie was entitled to a fair trial, not a perfect one. See *People v. Herron*, 215 Ill. 2d 167, 177 (2005);

In re Marriage of Houston, 150 Ill. App. 3d 608, 612 (1986). Accordingly, we find that the circuit court's rulings and comments do not establish a due process violation.

¶ 99 Alleged Error of Marital Property Valuation

¶ 100 Julie argues the circuit court demonstrated further prejudice towards her by failing to use the fair market value standard for the property that the parties owned in Monterey, California. She contends that the court used Jason's higher appraisal value instead of using a fair market value standard under section 503(k) of the Act (750 ILCS 5/503(k) (West Supp. 2015)).

¶ 101 Julie cites no authority, legal or otherwise, for her contention that the circuit court improperly valued the California property. She quoted section 503(k), but omitted any case authority on the determination of the value of property based on the fair market value standard. We find that Julie has forfeited this argument by failing to cite authority in support of her position. Ill. Sup.Ct. R. 341(h)(7) (eff. Feb. 6, 2013); see also *Housing Authority of Champaign County v. Lyles*, 395 Ill. App. 3d 1036, 1040 (2009) (issue on appeal forfeited for failure to cite authority).

¶ 102 Forfeiture aside, section 503(k) specifically states that "[t]he date of valuation for the purposes of division of assets shall be the date of the trial." Julie submitted a November 6, 2015 appraisal, while Jason submitted a January 15, 2016 appraisal. Trial began on January 19, 2016 and continued through March 17, 2016. During that time, Julie did not submit another appraisal of the property. Jason's appraisal occurred closest to the trial date and that is the amount upon which the court used to determine the property value. The court's decision followed the requirements of section 503(k) and, therefore, we find no abuse of discretion. *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 661 (2008) ("decisions concerning the distribution of marital

property lie within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of that discretion").

¶ 103 Alleged Error of Maintenance Award Credit

¶ 104 Finally, Julie argues that the circuit court erred in awarding a two-year credit for maintenance payments to Jason. In addition, she contends the court improperly omitted Jason's cash bonus and annual retention bonus of shares of stock from the maintenance award.

¶ 105 In this case, the circuit court determined a maintenance award was appropriate after consideration of all the factors under section 504(a) of the Act (750 ILCS 5/504(a) (West Supp. 2015)). The court found Julie was entitled to maintenance at a rate of $4,697.00 per month for a period of one year, 10 months, awarding a two-year credit to Jason because she had "already received two years of maintenance during the pendency of the case." Julie argues the court improperly awarded the two-year credit because it never entered a temporary maintenance order during the pendency of the case.

¶ 106 When confronted with Julie's assertion on appeal that the two-year credit was not based on any evidence whatsoever, Jason was nonresponsive. The usual response to such an assertion is to cite the testimony or evidence which arguably supported the court's finding, providing the page in the record where it is to be found. Jason did not do so, but instead only presented general arguments about deference to a court's factual findings. After our careful, independent review of the record, we can find no testimony or other evidence that Julie received maintenance during the two-year period preceding the trial. Accordingly, we vacate the portion of the circuit court's judgment awarding a two-year credit to Jason for maintenance payments to Julie and find she is entitled to the full three years, 10 months' maintenance which the court initially calculated under section 504(b-1)(1)(B) of the Act ((750 ILCS 5/504(b-1)(1)(B) (West Supp. 2015)).

¶ 107 We also find that the court did not properly calculate the amount of maintenance based on Jason's combined gross income in accordance with section 504(b-1)(1)(A) of the Act ((750 ILCS 5/504(b-1)(1)(A) (West Supp. 2015)). Section 504(b-1)(1)(A) provides that maintenance "shall be calculated by taking 30% of the payor's gross income minus 20% of the payee's gross income." *Id.* The court calculated maintenance using Jason's 2015 "base income" of $187,901.97, without including a $43,370.29 discretionary bonus or a retention bonus of 1,145 shares of Pearson stock valued at $20,421.56 for tax purposes. Jason's disclosure statement listed his gross income at $221,769 as of November 18, 2015. The court stated in its written judgment for dissolution of marriage that "[a]dditional maintenance based on Jason's bonus and other income *** shall be determined by the court."

¶ 108 The maintenance award, however, appears to omit Jason's discretionary bonus and the shares of Pearson stock. Sections 504(b-2)(1) and (2) state that the circuit court "shall state its reasoning for awarding or not awarding maintenance and shall include references to each relevant factor set forth in subsection (a) of this Section" or "if the court deviates from otherwise applicable guidelines *** it shall state in its findings *** the reasoning for any variance from the guidelines." Here, the circuit court intended to follow the guidelines in section 504, but did not include in the judgment its reasoning for omitting Jason's discretionary bonus or stock distribution as part of the maintenance award. Accordingly, we remand this case for further proceedings to determine whether additional maintenance should be awarded reflecting Jason's bonus and stock distribution.

¶ 109 CONCLUSION

¶ 110 We affirm the circuit court's judgment as to parenting time. We find the circuit court did not abuse its discretion when making its evidentiary rulings at trial. We also find no evidence of

judicial bias or cumulative error, and conclude the circuit court conducted a fair trial. We vacate the court's award to Jason of a two-year credit for maintenance payments and find Julie is entitled to the full three years, 10 months' maintenance as calculated by the circuit court. Finally, we remand for further proceedings solely to determine whether Julie is entitled to additional maintenance that may include Jason's discretionary bonus and stock distribution.

¶ 111 Affirmed in part, vacated in part, and remanded in part, with directions.