No. 2—10—0978
Order filed April 25, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF MICHELLE JACKSON, Petitioner-Appellant, and RODNEY JACKSON, Respondent-Appellee.	))))))))))	Appeal from the Circuit Court of Ogle County. No. 06—D—222 Honorable Michael T. Mallon, Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Presiding Justice JORGENSEN and Justice BOWMAN concurred in the judgment.

ORDER

Held: In dissolution action, decision of the trial court to award respondent physical custody of his three biological children with petitioner was not against the manifest weight of the evidence.

I. INTRODUCTION

Petitioner, Michelle Jackson, appeals from the order of the trial court dissolving her marriage to respondent, Rodney Jackson, and awarding primary physical custody of their three biological children to respondent. Petitioner argues that the custody determination was against the manifest weight of the evidence. We disagree, and affirm.

We first note our disappointment with petitioner's briefing. In this case the reports of proceedings alone span 1,400 pages, all but a handful of which are devoted to the issue of custody. The 19-page statement of facts in appellant's opening brief amounts to little more than a thumbnail sketch of the relevant testimony. Its coverage is also markedly slanted in petitioner's favor. Her 519 pages of testimony are given 4 pages in her brief. While inadequate in itself, this allocation was proportionately more generous than the three-quarters of a page devoted to respondent's 200 pages of testimony. In one place, petitioner, in lieu of reciting respondent's testimony, writes that "[respondent] provided rather narrative testimony regarding the children's personalities, their schedule and routine, and his interaction with the children." "Narrative" or not, this testimony was admitted into evidence (and its admission is not challenged on appeal), was pertinent to the issues on appeal, and warranted greater attention than petitioner gave it. At 31 pages, petitioner's opening brief could have been expanded significantly and still fallen within the 50-page restriction, and if petitioner felt she needed additional length, we would have been quite amenable to a motion to relax the page limit. As the brief stands, its statement of facts hardly contains "the facts necessary to an understanding of the case." Ill S. Ct. R. 341 (h)(6) (eff. Sept. 1, 2006).

We are also disappointed that respondent did not step into the breach and augment petitioner's presentation, especially of his testimony. See Ill. S. Ct. R. 341(I) (appellee's brief need not contain a statement of facts "except to the extent that the presentation by the appellant is deemed unsatisfactory"). We do not appreciate having to mine the relevant facts from such a voluminous record with so little assistance from the parties. The quality of the briefing is especially regrettable given that this case has, and will continue to, profoundly impact not just the parties but their three children as well.

II. BACKGROUND

The parties were married on October 18, 1997. They have three biological children: Brielle, born June 7, 2000; Lauren, born November 30, 2003; and Bailey, born March 17, 2005. On December 12, 2006, petitioner filed a petition for dissolution of marriage. At the time, the parties resided with the children at the marital home in Rochelle. On December 15, 2006, petitioner separated from respondent when she left the marital home with the children and moved into the HOPE domestic violence shelter in Rochelle. On December 18, 2006, petitioner filed for an emergency order of protection from respondent. As part of the emergency relief, petitioner sought physical custody of their children and exclusive possession of the marital residence. The trial court issued an emergency order granting the requested relief. The court extended the order twice. In the meantime, petitioner filed a motion for temporary physical custody of the children and exclusive use of the marital residence. On March 8, 2007, the court granted the temporary relief and set a visitation schedule for respondent.

After respondent informed the court of his intent to seek temporary custody of the children, the court entered an order on June 20, 2007, appointing, by the parties' agreement, Dr. Jayne A. Braden to conduct a custody evaluation. See 750 ILCS 5/604(b) (West 2008) (in making a custody determination, "the court may seek the advice of professional personnel, whether or not employed by the court on a regular basis"). On May 8, 2008, while Dr. Braden's evaluation was still ongoing, respondent moved to disqualify her, alleging that petitioner "delayed and postponed the evaluation process" and that Dr. Braden's tolerance of the delays was "evidence of her bias toward [petitioner]." On July 24, 2008, Dr. Braden submitted her written custody evaluation recommending that respondent have physical custody of the children and that the parties have joint legal custody.

On August 6, 2008, respondent moved for temporary physical custody. The motion was heard on August 15, 18, and 19, 2008. Petitioner and respondent both testified, as did multiple other witnesses Dr. Braden's report was admitted into evidence, but she herself did not testify.

On September 5, 2008, the trial court entered an order granting respondent temporary custody of the children and setting a visitation schedule for petitioner.

On May 27, 2009, at the request of petitioner, the trial court appointed Dr. Mark Goldstein to conduct a custody evaluation. See 750 ILCS 5/604.5(a) (West 2008) (the trial court may, upon a motion made reasonably in advance of the hearing on the dissolution petition, "order an evaluation concerning the best interests of the child, as it relates to *** custody ," and "the requested evaluation may be in place of or in addition to an evaluation conducted under subsection (b) of Section 604"). Dr. Goldstein recommended that petitioner have physical custody of the children and the parties have joint legal custody.

Hearing on the dissolution petition was held on February 22, 23, and 24, 2010. The parties stipulated that the trial court could consider the evidence taken at the August 2008 temporary-custody hearing. On May 24, 2010, the trial court entered a judgment for dissolution of marriage granting respondent permanent physical custody of the children "subject to liberal reasonable and seasonable visitation by petitioner." The court gave the parties joint legal custody of the children.

The parties' arguments on appeal concern three distinct time periods: (1) from October 18, 1997, the date of marriage, to December 15, 2006, the date of separation; (2) from December 15, 2006, the date of separation, to September 5, 2008, the date respondent was given temporary physical custody of the children; and (3) from September 5, 2008, to the dissolution hearing. The August

2008 and February 2010 hearings presented overlapping and often redundant evidence as to these time spans. For the sake of clarity, we organize the evidence by the time period to which it relates.

A. *From October 18, 1997, the date of marriage, to December 15, 2006, the date of separation.*

Petitioner testified that she graduated from Northern Illinois University in 1987 and earned a Masters of Business Administration from Creighton University in 1995. Petitioner and respondent met in December 1995 while living in Nebraska. They married in October 1997 and settled in Omaha. In August 2000, two months after Brielle was born, petitioner quit her job at Mutual of Omaha because the parties agreed that petitioner would be a homemaker. In 2001, petitioner was offered employment at Millward Brown in Naperville. In April2001, she moved to Lisle with Brielle while respondent remained in Nebraska. Petitioner filed for divorce in November 2001 because respondent had not placed the Nebraska home for sale or "show[n] any signs that he was going to join [petitioner] and Brielle" in Nebraska. Petitioner had quit her job at Millward Brown in October 2001 and was living on savings. In June 2002, respondent moved to Illinois, and petitioner dismissed the divorce case. Respondent and petitioner later purchased a home in Rochelle. Petitioner resumed her role as a homemaker, while respondent was employed as an over-the-road trucker driver for United Van Lines.

Petitioner testified that, during respondent's employment with United Van Lines, he could receive driving assignments to any state in the country. According to petitioner, respondent was gone "90 percent of the time." He was away from home "anywhere from two days to two weeks at a time" and was home for only one or two days at a time. When Brielle was born, respondent "clearly defined" his and petitioner's roles by remarking that "men in his family don't do the

caretaking." While the family lived in Rochelle, petitioner was responsible for "99 percent" of the parenting of the children and was "nearly the sole caretaker." "Ninety-nine percent" of the time, petitioner alone cooked for the children and took them to school. She was exclusively responsible for getting the girls ready in the morning, changing their diapers, bathing them, doing laundry, shopping, helping the girls with their homework, arranging their medical and dental care, disciplining them, and getting them ready for bed and saying bedtime prayers with them.

Petitioner testified that, in March 2005, Brielle's physician told petitioner that her feet appeared to be turning inward. Petitioner did not inform respondent because "[a]t that time[,] respondent was not involved in medical care for the girls whatsoever."

Petitioner testified to a birthday party she held for Brielle at the Rochelle house in the summer of 2006. During the party, petitioner asked respondent to help, but he replied that he was "going to socialize with his parents." Petitioner had to ask some of the party guests to help her with the party. At the end of the party, respondent told petitioner that he was going to take Brielle and Lauren swimming at the hotel where respondent's sister was staying. Petitioner protested that Lauren could not swim. Respondent said petitioner "had no say in the matter" and told her to stay home with Bailey. Petitioner then "panicked and called the police." Petitioner testified that she regretted this action and has apologized to respondent.

Petitioner testified that she attended church weekly with the children, while respondent attended only on Christmas. Respondent "mocked" religion in front of the children. He also used racial slurs in their presence.

Petitioner arranged all extracurricular activities for the children. She enrolled them in gymnastics, dance, and T-ball. Respondent never was involved in arranging these activities and

attended them infrequently. Petitioner "pleaded and begged" respondent to help coach Brielle's T-ball team. Respondent agreed, but would talk on his cell phone most of the time he was on the field. Petitioner helped the children develop relationships with other children in the neighborhood. Brielle attended kindergarten at St. Paul Lutheran School and "did quite well" there. Petitioner was involved in the community in Rochelle and was part of the Mothers of Preschoolers (MOPS) group at Faith Lutheran Church.

Petitioner testified that, in July of 2006, respondent quit his job with United Van Lines and became a self-employed trucker. Respondent now worked daytime hours and was no longer gone overnight. Petitioner testified that, even with more time at home, respondent did not increase his involvement in the children's lives. Typically, he would leave the house at 6 a.m., while the children were still in bed. He would arrive home at 7 p.m. and would "greet the girls for ten minutes" but "wouldn't sit on the floor and play with them." Respondent would then go out to the garage or to a neighbor's house and drink alcohol until 10 or 11 p.m. Petitioner would eat dinner with the girls, and get them ready for bed, by herself. Petitioner testified that, when they were living together, respondent drank at least nine beers a night. Petitioner stated:

> "[Respondent's] parenting style, the way it is, is kind of *laissez faire*, where he starts becoming—talks to other people and becomes oblivious to the kids and then you add liquor onto that and he isn't the type of person that can stop at one or two drinks."

Petitioner testified that, from July 2006 to her separation from respondent in December 2006, respondent began to verbally and emotionally abuse her. Respondent would "ridicule and degrade" her in front of the children by calling her "crazy" and "cuckoo." Petitioner did not retaliate by verbally abusing respondent in front of the children. Upon switching jobs in July 2006, respondent

remarked to petitioner that there was "a new sheriff" in town and that he intended to make changes in the household. Complaining that petitioner drove too much, respondent began monitoring the odometer on her car. Respondent also monitored petitioner's cell phone usage and grocery bills. He began "cutting [her] off from everything." Without petitioner's permission, respondent cancelled the parties' joint credit card. He set up a new checking account in his name alone and began depositing his checks there rather than into the parties' joint checking account. On five or six occasions, respondent pulled the phone cord out of the wall while petitioner was speaking to friends or family. Respondent told petitioner that if she divorced him, we would get back at her "20 times worse."

Petitioner also testified that respondent would hide her car keys. Petitioner, however, variously described how often this occurred. She initially testified that, from July to December 2006, respondent hid her keys on a "daily basis." Later, when asked to clarify the frequency of the key-hiding, she said that "during one week it was almost daily." On continued questioning, petitioner retreated further still from her initial testimony and admitted that respondent actually hid her keys just once and, on five or six further occasions, only threatened to hide them. On the day respondent hid her keys, petitioner was preparing to take Brielle to school. Respondent waited until the "last minute" to tell petitioner where the keys were.

Petitioner testified that respondent never physically harmed or threatened to physically harm her or her children. Once, however, petitioner threatened to harm petitioner's brother. Respondent was frustrated by his attempts to get restitution from Phyllis Venti, petitioner's mother, after she had accidentally struck the parties' car. One night after drinking heavily, respondent told petitioner that he would not harm a woman but that he hired someone from Chicago to assault petitioner's brother.

Petitioner denied that, while the parties were living together, she charged the maximum on their joint credit card. Asked if she had put 22,000 miles on her car from June 2005 to July 2006, prior to the period where respondent began hiding or threatening to hide her keys, petitioner replied that she did not keep track of her mileage. Petitioner further denied ever becoming "out of control emotionally" during arguments with respondent.

Petitioner testified that, while in Rochelle, she received individual marriage counseling from Dr. Sharon Tilley. The parties also received couples counseling from Dr. Tilley, but respondent showed no interest in following Dr. Tilley's suggestions.

Petitioner testified that, after she filed for divorce in December 2006, she moved with the children into the HOPE domestic violence shelter in Rochelle because she was afraid how respondent would react when he was served with the divorce petition.

Respondent testified that he was not, as petitioner claimed, gone "90 percent" of the time while employed for United Van Lines. Respondent further testified that, once he became self-employed and was available "to share in the duties a lot more," petitioner began to "alienate" him from the children. Petitioner "would never let [him] have any interaction with [the children,]" but would say to them that they only needed "mommy." When respondent made suggestions about how to discipline the children, petitioner "wouldn't have anything to do with it." Respondent claimed, contrary to petitioner's testimony, that he cooked for the family. According to respondent, petitioner would cook only when her family visited. Respondent denied that petitioner ever did his laundry. Contrary to petitioner's claim that respondent would spend time most of the weekday evenings away from the children, respondent testified that, upon returning from work, he would prepare dinner, play

with the children, and then put them to bed. Afterwards, if petitioner was in a poor mood, respondent would go out to the garage and work on a car until petitioner went to bed.

Respondent testified that he was not, as petitioner claimed, reluctant to coach Brielle's T-ball team. Respondent claimed that he and petitioner both were involved in the children's extracurricular activities. Respondent said: "[H]er activities were different than mine. But, yeah, she did a lot. We both did. You know, I did what I could when she'd let me do what I do ***." Respondent also testified that, contrary to petitioner's claim, he did help with the children's homework.

Respondent acknowledged that he did hide petitioner's car keys on one occasion. He did so because petitioner was talking "nonsense ***, and it actually scared [him]." Petitioner seemed "undone," and respondent did not think she was fit to drive. Respondent took the keys to give petitioner a chance to "calm down" otherwise he was going to arrange transportation for her. Respondent testified that he never denied petitioner access to marital funds.

Respondent testified that he does not drink every day, never drinks until he gets drunk, and does not have a problem with alcohol. Respondent did not, as petitioner claimed, drink every night in the garage, but had a beer only "once in a while" while in the garage.

Respondent testified to tension between petitioner and his extended family. Initially, respondent's parents liked petitioner, but their opinion changed after she "alienated them" from the children. Petitioner "[didn't] like [respondent's] family at the house, especially if she [was] not there." In March 2005, as the day approached for Bailey's birth to be induced, petitioner told respondent that she did not want extended family members in the hospital with her. When respondent saw petitioner's extended family in the delivery room after Bailey was born, respondent invited his sister, Tracy, into the room. Upon seeing Tracy, petitioner began screaming

"uncontrollably," and security suggested that respondent leave. Subsequently, petitioner told respondent that she wanted to try to conceive a baby boy. Respondent, remembering the incident at the hospital, refused to have more children with petitioner.

According to respondent, though petitioner filed for divorce in December 2006, when the holidays were over she wanted to get back together with respondent. Respondent believed that petitioner filed for divorce just to avoid visiting respondent's extended family in Nebraska over Christmas, as respondent had planned for the family.

Phyllis Venti, petitioner's mother, testified that she lived in Chicago when petitioner and respondent resided in Rochelle. While respondent was employed as an over-the-road driver, he would be gone for up two weeks at a time, and Venti would go to Rochelle to help with the children. At times, respondent was present when Venti was there. Venti saw that respondent was "sarcastic" with petitioner and that he did not help her with the children. In the summer of 2006, Brielle had a birthday party at the Rochelle home. Respondent did not assist petitioner at all with the party.

Venti testified that petitioner has said that respondent is "more careless" with the children than is petitioner. When Venti was asked if she herself had any criticisms of respondent's parenting, Venti replied that she "wish[ed] he would have helped more." Venti also testified that, at petitioner's request, she has stopped smoking in the children's presence. Venti denied that her live-in boyfriend, Jules, does not like petitioner. Asked if Jules has ever forbade petitioner from coming to Venti's house, Venti said, "There was a misunderstanding awhile ago, and it was resolved and she is now very, very welcome."

Ruth Carter testified that she is a counselor at HOPE domestic violence shelter in Rochelle. She was assigned to petitioner when she came to HOPE for counseling in December 2005.

Petitioner reported to Carter that, shortly after petitioner and respondent were married, he began to verbally and emotionally abuse her. The abuse fluctuated during the marriage. Petitioner reported "putdowns," "abusive language," and "mind games." Petitioner claimed respondent called her a "retard," and a "moron" and said she was "stupid." Respondent would snatch petitioner's cell phone from her and wave it in front of her as he went through her call history. Carter considered this "an example of some of that intimidating type of behavior that goes along with the verbal and emotional abuse." Petitioner reported no physical abuse. Petitioner told Carter that she planned to enter the HOPE shelter when she filed for divorce because she feared that respondent would react violently.

Carter testified that she observed petitioner's parenting when she moved into the HOPE shelter with her children in December 2006. Petitioner is a "a very loving, nurturing parent." Carter had no concern over petitioner's emotional or mental well-being and does not consider her "hypersensitive."

Respondent called Kimberly Knight, who had met petitioner at the Rochelle MOPS group. Knight considered both petitioner and respondent her friends, and Knight's husband is friends with respondent. Knight testified that petitioner would not utilize the nursery during the MOPS sessions but would keep the children with her. Knight found this "unusual" since the aim of the MOPS program was to give the mothers a chance to socialize. Knight also noted that, during meetings of the Rochelle Girl Scout troop of which the parties' children were members, petitioner would remain at the meetings and "keep an eye on the [troop]." Knight did see any other parent do this. Knight testified that petitioner seemed to be a loving mother. Her only concerns about petitioner were that the children were "always clinging to her" and she was "overprotective" of them.

Petitioner called three witnesses, Karen Kelsheimer, Suzanne James, and Christine Wengelewski, all of whom had become friends with petitioner through the Rochelle MOPS group. Kelsheimer described petitioner as "a very friendly person who is obviously very concerned about her children and their well-being." Petitioner is very organized and logical in dealing with the children. Kelsheimer believed, however, that petitioner has "a propensity to keep the children close to her." Kelsheimer opined that petitioner possibly has been "overprotective" in an instance or two, but Kelshiemer was not specific. Kelsheimer testified that she has no doubt as to petitioner's parenting ability. Kelsheimer has never heard petitioner speak negatively about respondent in the children's presence.

Kelsheimer testified that she visited the parties' Rochelle home while they living there together. Whenever Kelsheimer was at the house, petitioner took exclusive care of the children. One exception was during Halloween several years ago when respondent took Brielle trick-or-treating while petitioner was pregnant with Brielle. Kelsheimer testified that she was also present at the Rochelle home for two birthday parties for Brielle. On neither occasion did respondent help with the party.

Kelsheimer testified that respondent has a "very good" relationship with the children. The children are mutually affectionate with him. Kelsheimer has no reason to doubt respondent's parenting ability.

James testified that petitioner is a "very conscientious, loving, [and] affectionate" parent. James had no doubt that petitioner can meet the children's needs. James testified that, in summer 2006, she attended a birthday party for Brielle at the parties' Rochelle house. Petitioner was very busy with the party, while respondent remained in the house with his family. James did not see

respondent with the children at all during the party, and James had n other opportunity to observe respondent with the children before the parties separated. Based on her later observations of respondent with the children, James believed that there is "definitely" an attachment between him and the children.

James testified that petitioner confided in her that she intended to file for divorce because respondent was emotionally and verbally abusive toward her. Petitioner recounted that, when petitioner and respondent were with his extended family, he would be "very sarcastic" and "very rude" to her. Petitioner planned to move with the children to the HOPE shelter because she "didn't know what to expect" from respondent once she filed for divorce. James stated that, in December 2006, she and Kelsheimer helped petitioner gather her belongings at the Rochelle house for her move to the HOPE shelter. Respondent was not present, and the women were fearful of how he would react if he returned while they were there.

Wengelewski testified that petitioner is "very friendly and outgoing and caring and honest." Petitioner is a "very good mother, very attentive to the kids[,] and very loving and caring" toward them. Wengelewski had no doubt of petitioner's parenting abilities. Wengelewski noted that petitioner would have only Bailey with her at the MOPS meetings. According to Wengelewski, it was common for mothers to keep their infants and small children with them during the meetings.

Wengelewski testified that petitioner told her of instances where respondent verbally demeaned her and kept her from leaving the house by taking her car keys. Petitioner told Wengelewski that respondent did not seem willing to change his conduct, and it seemed to Wengelewski that petitioner was "very afraid" of respondent.

B. *From December 15, 2006, the date of separation, to September 5, 2008, the date respondent was given temporary custody. During this time, petitioner had physical custody of the children and respondent had visitation.*

Petitioner testified that she and the children were at the HOPE shelter from December 15, 2006, to February 4, 2007, the date she moved with the children to Naperville. In August 2007, petitioner became employedas a teaching assistant at May Watts Elementary School in the Naperville public school district. (Petitioner worked there until August 2009, when she took another position as a secretary at Metea Valley High School in the Naperville public school district.). Petitioner explained that her intent in moving to Naperville was to secure a teaching position so that her work hours would coincide with the children's school hours. This schedule, petitioner noted, would afford her more time with the children than if she worked in the private sector in a position that applied her MBA. Petitioner acknowledged that Naperville is approximately 60 miles from Rochelle, where respondent continued to reside after the separation. Asked if she considered it a priority that respondent spend time with the children, petitioner answered that she believed the children "should spend as much time as possible with [respondent]." When asked why she selected Naperville, petitioner answered that Naperville's school district had more teaching positions than Rochelle. Naperville was attractive also because both its schools and the larger community were highly rated. Petitioner confessed that she did not look at all for employment in Rochelle before moving to Naperville.

Petitioner testified that Brielle attended a public elementary school in Naperville, and on work days Bailey and Lauren stayed in daycare at Kindercare. The children were involved in

various activities in Naperville including library classes and art classes. Brielle was in Girl Scouts and also in a support group for children of divorced parents.

Petitioner testified that, under the visitation schedule in place when she lived in Naperville, respondent had visitation every other weekend. Petitioner granted respondent additional visitation "90 to 99 percent" of the time he requested it, which was only "a couple times" and not "on a regular basis." When respondent did want to go beyond the visiting schedule, he would typically just announce, "at the last minute,' that he was taking the children. Petitioner denied that she granted respondent additional visitation only if he obtained a court order.

Petitioner recounted that, on Friday, November 30, 2007, Lauren's birthday, respondent phoned petitioner while driving on Interstate 88 and said he was coming to get Lauren from daycare. Later that day, Judy Dickman, the director of Kindercare, phoned petitioner and said that respondent was at Kindercare. Petitioner acknowledged that she told Dickman not to let respondent take Lauren, but denied that she told Dickman not to let respondent see Lauren. Petitioner further acknowledged that, prior to respondent's call, she had received an e-mail from him regarding visitation with Lauren. Petitioner could not recall when she received the e-mail or whether she replied to it.

Petitioner recalled that, on Thursday, May 15, 2008, respondent e-mailed her asking if he could have the children both that day and Friday. Respondent then introduced into evidence an e-mail exchange beginning with a message from respondent stamped 12:42 a.m. on Thursday May 15, 2008. (The exhibit, however, is apparently a note from petitioner into which the e-mail exchange was copied and pasted. Contrary to the date on respondent's message, petitioner wrote on the note that she received his message at 8 p.m. on Wednesday, May 14, 2008.) Respondent wrote:

"Michelle:

I would like to know if any or all of the girls would be available Thursday or Friday or both? I am not working so I thought it would be nice to spend this time with them. These nice spring days would be a good time to plant some more flowers that they all enjoy. I thought I could come and get them Thursday and bring them back Friday night or Saturday morning first thing. This would also get them out of daycare for a couple of days for some fun in the sun. Let me know if this is alright with you.

Rod"

In a message stamped 12:38 p.m. on May 15, 2008, petitioner wrote respondent that he could pick up Bailey and Lauren at Kindercare at 8 a.m. on Friday, May 16, 2008, but must return them at 4 p.m. the same day. Petitioner testified that, on Thursday, May 15, she was informed by Dickman that respondent, claiming to have permission from petitioner, took the children from Kindercare. Petitioner testified that respondent had done so without notice to or permission from petitioner. This created "chaos," according to petitioner. Petitioner then contacted respondent and told him to return the children at noon on Friday, May 16. Petitioner denied that this was a "penalty" for respondent acting, as she saw it, inappropriately. Petitioner agreed, however, that the return time was "a little arbitrary." The e-mail exchange also contains a message from petitioner stamped 7:23 a.m. on Friday, May 16, 2008, in which she stated that, as of the time she was writing the message, Bailey and Lauren were "still in [respondent's] possession without you having court orders for this visitation."

Petitioner testified that she and respondent made visitation exchanges at restaurants. According to petitioner, the exchanges where respondent returned the children after visitation were

difficult. During the exchanges, respondent would say that petitioner is "crazy" and a "mess" and would ask if she was taking her "meds." Respondent would also berate petitioner for working a low-paying job despite having a MBA. Respondent would sometimes delay the exchanges for up to an hour by keeping the children in his car or holding them in his arms. When petitioner would reach to take Bailey from respondent's arms, he would step back and feign that petitioner intended to hit him. Because of respondent's abusive behavior, petitioner routinely brought a friend to the exchanges.

Asked about respondent's reference to "meds," petitioner testified that she was last on medication 20 years ago. She had just graduated from college and gotten her first job, and she was nervous about her performance. She saw a social worker, who suggested Lithium. Petitioner took Lithium for less than a year and was never diagnosed with a mental condition.

Petitioner admitted that she occasionally was late in dropping off the children for visitation. She was sometimes as late as 15 minutes and, on one occasion, was 45 minutes late.

Petitioner testified that, once she moved to Naperville, she continued to be solely in charge of arranging medical and dental care for the children. She sought to keep respondent involved and informed regarding the children's health. She scheduled doctor's appointments around respondent's trucking schedule, but respondent attended none of the appointments. Petitioner noted that, in March 2007, Brielle failed an audio test at school. Petitioner did not believe that she informed respondent, but she was not sure. If she had not told him, it would have been because, traditionally, respondent trusted petitioner to arrange medical care for the children. Petitioner also noted that, in February 2008, Lauren developed an allergic reaction to an antibiotic. Petitioner took Lauren to the

emergency room that night but did not tell respondent about the situation until noon the next day. Petitioner did not inform respondent earlier because she was preoccupied

Petitioner testified to instances where she believed respondent withheld from her medical information about the children. In August 2008, petitioner observed, follwing the children's visitation with respondent, that Lauren had a burn on her leg. Respondent did not mention the burn during the exchange. Petitioner first found out from Lauren that she had been burned while riding respondent's all-terrain vehicle. Also, in July 2008, Lauren was the first to tell petitioner that she was treated for a urinary tract infection while in South Dakota with respondent. Petitioner subsequently asked respondent for information about the treatment, but he refused to share it. Petitioner was concerned about the medicine prescribed for Lauren because she is allergic to penicillin.

Petitioner also noted that she scheduled parent-teacher conferences around respondent's schedule and informed him of school activities such as ice cream socials.

Respondent testified that, while petitioner lived in Naperville, she withheld medical information about the children. For instance, when respondent asked petitioner to tell him which physicians the children were seeing, she replied that he had "to go through the court" to find out. After about a year, petitioner produced a business card listing a group of physicians but did not say which were treating the children. Respondent also noted that, contrary to her claim, petitioner did not inform him about the results of Lauren's allergic reaction until nine days later.

Respondent addressed petitioner's allegation of two instances in which he failed to share medical information about Lauren. Regarding Laurne's urinary tract infection, respondent testified that he told petitioner he had taken Lauren to a physician regarding the infection. Respondent told

petitioner that he did not yet know "the final deal" because he had not received the lab's final report. Respondent testified that he did not know what medicine Lauren was prescribed for the infection. Regarding Lauren's burn, respondent said that, when he returned the children after the visit, Lauren ran away from petitioner and, in the confusion, respondent forgot to tell petitioner about the burn. Respondent denied that there were any other occasions in which he failed to share with petitioner medical information about the children.

Regarding visitation, respondent stated that petitioner insisted his requests for extra visitation "had to go through the court." Regarding his attempt to pick up Lauren on her birthday, Friday, November 30, 2007, respondent noted that he was scheduled for visitation that weekend beginning Friday evening. Upon his lawyer's recommendation, respondent decided to send petitioner an e-mail stating his intent to pick up Lauren early on Friday. Petitioner did not respond. When respondent arrived at Kindercare, Dickman told him that he had to call petitioner for approval. Respondent did not end up getting Lauren until later on Friday, at the regularly scheduled time.

Respondent testified that, until he moved for temporary custody, visitation exchanges were cordial. Once respondent filed his motion, exchanges where respondent dropped off the children became "tense" and "ominous." The children did not want to leave respondent and would cling to him and cry. Petitioner brought to the exchanges as many as five companions, who would sometimes take notes during the exchanges and, on one occasion, opened respondent's car door and took the children from his arms. Respondent would occasionally make a "sarcastic" comment to relieve the tension, but not to get "a reaction from [petitioner]."

Respondent testified that, during visitation, he would involve the children in activities like

horseback riding, T-ball, baking, and crafts. Respondent confirmed that, though he was not able to attend one of the Brielle's parent-teacher conferences for the 2006-2007 school year, he did later speak with the teacher over the telephone.

Petitioner called Kelsheimer, James, and Nancy Galto to testify about the visitation exchanges they witnessed when petitioner was living in Naperville. Petitioner had asked them to attend the exchanges where respondent dropped off the children. Petitioner was not comfortable going alone and wanted witnesses to respondent's behavior. Kelsheimer was present at 5 or 6 exchanges, James 20 to 25 exchanges, and Galto 10 exchanges.

Galto, who became friends with petitioner through a church group, testified that many of the exchanges were "unpleasant." Respondent would always bring the children back late. Usually, respondent was around 30 minutes late, but on one occasion he was over an hour late. When respondent arrived, he would often prolong the exchange by keeping the children with him. He also made the children cry by suggesting that they did not want to go to petitioner. Respondent also appeared to take notes and videotape some of the exchanges. Respondent also would make rude and sarcastic comments about petitioner in front of the children, such as calling her a "crazy wife." On one occasion, when petitioner reached for Bailey, respondent asked if petitioner was going to hit him. On other occasions, the children appeared dirty and unkempt.

Kelsheimer testified that the exchanges were "uncomfortable" because petitioner and respondent would disparage each other. Respondent once asked petitioner whether she was taking her "medication."

James testified that respondent verbally harassed petitioner at most of the exchanges. Respondent would comment that he did not know how a person with a MBA could be on Medicaid.

He would also ask petitioner whether she was taking her "meds." Kelsheimer stated that the children's hair usually looked "unkempt" after visitation.

Dickman testified that she was the director of the Kindercare facility in Naperville that petitioner utilized for Bailey and Lauren while she was living in Naperville. Dickman described petitioner as a very concerned, nurturing, and conscientious parent. Bailey and Lauren were well-behaved in daycare and showed love and respect for petitioner. Dickman never heard the children speak negatively about petitioner or respondent. Dickman had contact with respondent two or three times. The children were always happy to see respondent and went to him without hesitation. Dickman recalled that, on one occasion in May 2008, respondent picked up the children and petitioner later told Dickman that he did not have permission. While he was at Kindercare on that occasion, respondent made a comment to Dickman suggesting that petitioner was taking medication for a mental health issue.

Judy Sterling testified that she was Brielle's second-grade teacher in Naperville for the 2006-2007 school year. Brielle was a "solid-average student." She was well-behaved student and showed no signs that she was having trouble adjusting to the divorce. Once, when assigned to write about someone she considered a hero, Brielle chose petitioner.

Sterling described petitioner as concerned and attentive, and Sterling had no concern about petitioner's parenting ability or mental soundness. Petitioner would frequently ask Sterling how Brielle was doing in school.

Sterling testified that there were two parent-teacher conferences during the 2006-2007 school year. Petitioner attended both, but respondent was present only for the fall conference. Sterling could not remember whether she conducted the spring conference with respondent by telephone.

Sterling noted that the school has special events like an open house, a fine arts fair, and an ice cream social. Respondent attended the ice cream social, the fine arts fair and, to the best of Sterling's recollection, the open house as well. Though Sterling did not have much contact with respondent, she had no reason to doubt his parenting ability.

Michael Hayes testified for respondent. Hayes and respondent both own trucking businesses and are "collaborators" in the industry. Hayes also considers respondent a good friend. Hayes witnessed respondent with the children during visitation. Respondent was "calm" with the children and had them "under control." The children were mutually affectionate with respondent. Hayes testified that he has been to respondent's Rochelle house after petitioner moved out, and the house was clean and organized. Hayes has never seen respondent drink alcohol.

C. *From September 5, 2008, when respondent was given temporary custody, to the February 2010 hearing on the dissolution petition. During this period, respondent had physical custody of the children and petitioner had visitation.)*

Petitioner testified on direct examination that she moved back to Rochelle in March 2009. In August 2009, petitioner began her current employment as a secretary at Metea Valley High School in the Naperville school district. Her job is 45 miles from her home, and her commute is "exactly" 45 minutes each way. Petitioner gave varying testimony on direct examination as to the time she leaves for work in the morning. (And she continued to contradict herself on cross-examination, as noted below.) Initially, she testified that she rises at 6 a.m. and leaves home at 6:45 a.m. Later on direct, she testified that she leaves for work a little after 7:30 a.m. Petitioner consistently testified on direct that her work hours are 8:20 a.m. to 3:50 p.m. Petitioner noted that, if she would receive custody of the children, she would wake them at 6 a.m. on work days.

Petitioner testified that, on work days during visitation, respondent wakes the children at 6 a.m. and leaves for work about 7:30 a.m. (Petitioner testified elsewhere on direct that respondent leaves for work at 7 a.m.). Therefore, petitioner noted, her morning schedule is essentially the same as respondent's.

However, her afternoon schedule, petitioner claimed, was better for the children than respondent's. Petitioner testified that, as a member of a teacher's union, she cannot be made to stay past 3:50 p.m. and is "always back in Rochelle at 4:30 [p.m.] and available" (Elsewhere on direct, however, petitioner stated that she returns home at 4:45 p.m.) According to petitioner, respondent's work schedule is very erratic. He hauls grain and, during harvest season, works long hours. The children's daycare, which normally closes at 5:30 p.m., will make exceptions for respondent and keep the children until he arrives, which may be as late as 7 or 8 p.m. since respondent often has to wait in line at grain elevators. Petitioner testified that, if the children lived with her, they would spend less time in daycare because her schedule coincides more with their school hours. According to petitioner, once respondent became self-employed he had no sick, personal, or vacation days. Petitioner, by contrast, gets two weeks of vacation time and two weeks of sick time.

Petitioner characterized respondent's daycare arrangement as "complicated." On school days, respondent takes the children at 7 a.m. to a home daycare run by Beverly Flanagan. The children eat breakfast at Flanagan's, and then she drives them to school. After school, the children take a bus back to Flanagan's. On Tuesdays, Thursdays, and Fridays, a babysitter, Kristin Goffinet, picks up the children from Flanagan's and watches them at respondent's house until he arrives home. On the remaining days, the children stay at Flanagan's until respondent arrives. On school vacation days, Goffinet arrives at respondent's home at 6 a.m. and watches the children all day.

Petitioner testified that respondent is insufficiently attentive to the children's needs. When the children are with respondent, Brielle takes on a parenting role and helps respondent with the other children. Brielle does not behave this way when the children are visiting petitioner. Also, on two occasions, once in August 2009 and again later that year, Lauren was home from school sick and respondent, unable to arrange daycare, took her with him in his truck as he did his deliveries. Respondent gave Lauren a cup in which to vomit and had her sit in the back of the cab and "draw the drapes and duck down so that he'd get through security clearance." Respondent did not call petitioner for help on these occasions though she had sick days she could have used..

Petitioner admitted that, just this past weekend, Brielle and Lauren vomited on Saturday night. Petitioner remained home most of Sunday but then drove with the children to pick up her mother and brother in Elmhurst so that they could attend the dissolution hearing. Petitioner initially testified that she went "straight back" after picking up her mother and brother and that the children were in the car for only two hours. Later, however, petitioner admitted that she made two stops during the trip and that the children were gone from home a total of six hours. Petitioner stressed, however, that the difference between that incident and respondent's incidents with Lauren was that Lauren was "actively throwing up in respondent's semi truck," while, in petitioner's case, Lauren had stopped throwing up "Saturday evening into Sunday morning."

Petitioner testified that, during visitation in July 2009, she witnessed Brielle hyperventilate. Brielle said that she had previously discussed the problem with respondent and that he called it "anxiety." Respondent had not informed petitioner about the problem. When petitioner mentioned Brielle's episode to respondent, he said that he had intended to wait until Brielle's next checkup to mention the issue to a doctor. Immediately after witnessing the attack in July 2009, petitioner

scheduled an appointment with a pediatrician. Petitioner informed respondent about the appointment, but respondent said it was "too far to drive" and did not attend. The pediatrician diagnosed Brielle with anxiety and recommended counseling. Petitioner scheduled an appointment with a counselor, but respondent has refused to bring Brielle to the appointment. Respondent has said that the episodes are just a "stage [Brielle is] going through" and that they are not "a problem." Respondent has told petitioner that Brielle's condition is "under control" and is "getting better." Petitioner acknowledged that Brielle has never claimed that her anxiety is related to respondent.

Petitioner noted that, before her separation from respondent, she was the exclusive arranger of medical care for the children. Petitioner felt that she still had that role given respondent's passivity and indifference about Brielle's anxiety.

Petitioner testified to other concerns she had about respondent's care of the children. She believes respondent disciplines too harshly. Once, when Brielle missed a homework assignment, respondent grounded her for two months. Petitioner also testified that, since the separation, respondent has had at least two girlfriends. Respondent tells the children that the girlfriends are his "friends," but he also kisses them in front of the children. This, in petitioner's view, "confuses" the children.

Petitioner noted that all three children currently attend St. Paul Lutheran School where Brielle attended kindergarten before petitioner moved with the children to Naperville. Petitioner acknowledged that Brielle earned all As and Bs this past academic year and is "doing well" in school. Petitioner has no "problem with [the children's] achievement *** in terms of education." She remarked, however, that Brielle has had "chronic problems with homework." Petitioner admitted that respondent "has come up to speed" on his involvement with the children, but she

emphasized that she has a "consistent history of being involved with the girls" where respondent's interest in the children began only during the custody dispute. Petitioner noted that, before the separation, she attended church weekly with the children, but respondent went only on Christmas and "mocked" religion in front of the children. The children have told petitioner that respondent recently began taking them to church.

Petitioner acknowledged that respondent's increased involvement with the children is a "good thing." She affirmed that, if she were given custody of the children, she would make efforts to keep respondent involved. She plans to remain in Rochelle and has signed a new lease on her apartment. She has looked for employment in Rochelle and the vicinity but has had no success.

Petitioner believes that respondent is unwilling to foster a close and continuing relationship between her and the children. Every week for the past 18 months petitioner has asked for additional time with the children. Respondent has granted about 20 of those requests and denied about 40. He denies requested visitation even when the children are with a babysitter or daycare provider. Respondent consistently offers no legitimate reason for denying visitation, but says, "Because I said so." Petitioner testified that she has never failed to ask for additional visitation with the children when she has the time available. Nor has she turned down respondent when he has offered additional visitation.

Petitioner acknowledged that, on Wednesday, January 13, 2010, she e-mailed respondent requesting visitation on January 14 from 4:30 p.m. to 7:30 p.m. so that she could celebrate her birthday with the children. Respondent wrote back saying that petitioner would have to return the kids at 7 p.m. or else keep them overnight, in which case he could meet her the next morning or she could "take [the children] directly to daycare." Petitioner admitted that she turned down the offer

of overnight visitation. Petitioner explained that respondent typically "would prohibit her" from using her preferred daycare. When asked if the e-mail response from respondent gave any indication that petitioner could not use her preferred daycare, petitioner simply repeated that respondent in the past had prohibited her from using the daycare during visitation.

Petitioner also phones the children daily, and they enjoy the daily contact. Respondent "excessively" regulates petitioner's phone time with the children. Petitioner is not allowed to speak with the children while they are eating or doing homework. She also cannot speak with them after 7 p.m., though their bedtime at respondent's house is 8 p.m. When petitioner speaks with the children, respondent consistently puts her on speaker phone so that she cannot have a natural conversation. Respondent "hovers" over the children and "tells them what to say." He also distracts them by playing video games or watching television. Respondent interferes in these ways during 90 percent of petitioner's phone calls with the children. Petitioner, by contrast, has never restricted when respondent may call the children when they are with her and has never interfered while respondent is speaking to the children. She stressed that this practice will not change if she is given custody of the children.

Petitioner testified that, when she asks respondent about the children's health, he says it is none of her business. Just this past weekend, the children told her that, the summer before, Lauren was bitten by another child while in South Dakota on vacation. Respondent had not told petitioner about it. This instance typified, petitioner claimed, respondent's lack of communication with her regarding the children's health. Petitioner noted that, though respondent is aware of her work schedule, he consistently schedules the children's medical appointments so that they conflict with

her work. By contrast, when petitioner had custody of the children, she scheduled medical appointments around respondent's trucking schedule.

According to petitioner, though Brielle has had problems with her homework, respondent has asked Flanagan, not petitioner, to help Brielle. He told Brielle's teacher that he does not consider petitioner part of Brielle's "educational team." Petitioner has always been willing to help Brielle, and respondent made this remark simply to malign and exclude her.

Petitioner testified that Lauren has expressed to her a strong preference to live with her. Brielle has not said who she wants to live with, but she has opined as to which parent is more experienced. (Petitioner did not say who Brielle believes is more experienced.)

Petitioner was cross-examined extensively regarding her claims that (1) she leaves the house at 6:45 a.m. or, as she later stated, 7:30 a.m., and (2) that she "always" returns home no later than 4:30 p.m. Respondent introduced into evidence records for the I-Pass transponder in the truck petitioner drives. (Respondent owns both the transponder and the truck but petitioner has had exclusive possession of both since the parties separated.) The records show dates and times petitioner passed the DeKalb toll plaza on Interstate 88. According to petitioner, it takes her an hour to get ready in the morning, and the DeKalb toll plaza is 15 to 20 minutes from her apartment in Rochelle. The records for September to December 2009 show multiple dates where petitioner passed the DeKalb toll plaza before 6 a.m. When asked whether, given her preparation time and the distance to the DeKalb toll, she would have had to rise at abut 4:30 a.m. to get to the DeKalb toll at 6 a.m., petitioner replied, "I hope not. I hope I don't get up that early." Petitioner then clarified that, when she testified on direct that she leaves at 6:45 a.m. (or 7:30 a.m.), she was speaking about her departure time for work at May Watts, her former employer. There, her work schedule was 8:20 a.m.

to 3:50 p.m. Petitioner stated that, since August 2009, she has worked at Metea Valley, where her hours are 7 a.m. to 3:30 p.m. Petitioner explained that, for the first few months of her employment at Metea Valley, she came in early to impress her employer. In January 2009, she began to leave later, at about 6 a.m., and this continues to be her departure time. Petitioner denied that her morning routine does, after all, require the children to get up earlier than respondent's morning routine. She acknowledged that, if she is granted custody of the children, she will "have to make some adjustments to their morning schedule." Petitioner emphasized that she is looking for work closer to Rochelle or at least work that starts later in the morning.

Although petitioner previously testified that she arrives home at 4:30 p.m. when leaving at 3:50 p.m., petitioner adhered to that arrival time even after clarifying that she leaves work at 3:30 p.m., not 3:50 p.m. Petitioner testified that she arrives at the daycare in Rochelle about 20 minutes after passing the DeKalb toll plaza. Regarding petitioner's claim that she always leaves work at 3:50 p.m. and is "always back in Rochelle at 4:30 p.m. and available," respondent introduced into evidence I-Pass records from fall 2009 showing some days where petitioner passed the DeKalb toll plaza after 4:00 p.m. and even as late as 7 p.m. Petitioner explained that she stays late for any part-time work the school has available such as tutoring.

Kristin Goffinet testified that, in summer 2009, she was hired by respondent to babysit the children. During the summer, she would arrive at respondent's home at 6 a.m. Usually, at least one of the children was out of bed when she arrived. She would help the children get dressed and prepare them breakfast. At noon, Goffinet would take the children to Flanagan's. Now that school is in session, Guffinet babysits the children on Tuesdays, Thursdays, and Fridays. Goffinet picks up the children at Flanagan's at about 3:45 p.m., takes them to respondent's house, and remains there

until he arrives home. Usually, respondent arrives home between 6 and 7 p.m., but occasionally he returns after 7 p.m. About once a week, Goffinet takes Brielle to afternoon or evening basketball games where she cheerleads. Goffinet picks up Brielle after the game if respondent is not yet home. Goffinet did not recall seeing Brielle take on a parenting role as to the other children. Goffinet also noted that respondent's home appears "reasonably clean."

Goffinet recalled that, on one occasion, respondent had her pick up Lauren at about 3:30 or 4 p.m. at some location other than his house. Goffinet thought it may have been a grain elevator. Lauren was sick that day and, instead of going to school, stayed with respondent while he was working.

Goffinet testified that petitioner has called respondent's house while Goffinet is babysitting. Respondent never harassed Goffinet during the calls, and Goffinet found nothing unusual about them. Goffinet believed that petitioner was simply a concerned parent calling to check up on her children. Respondent never told Goffinet not to let petitioner speak with the children.

Respondent testified next. He described his current work schedule. He "generally" leaves for work at 7 a.m. He was asked why, then, Goffinet arrived at his house at 6 a.m. during the summer. Respondent replied that he did not "run out the door as soon as [Goffinet] got there" but might have attended to some matters around the house before he left. As to the time he typically returns home (or picks up the children from Flanagan), respondent noted that his work schedule often fluctuates. Last summer, his work schedule was light and he worked only 40 days. On work days when he did not finish before noon, Goffinet took the children to Flanagan's. Now that school has started, respondent arrives home (or picks up the children at Flanagan's) between 4 and 5 p.m. Asked if Goffinet exaggerated in testifying that respondent arrives home between 6 and 7 p.m.,

respondent replied that "[r]ecently it's been probably about [4 p.m.] until [6 p.m.]." "Not very many times" he arrives home (or picks up the children) after 6 p.m. Occasionally, Flanagan will invite the children to stay for dinner, in which case they stay until about 7 p.m. Respondent "sometimes" is not available to take the children to activities (such as Brielle to cheerleading) and relies on Goffinet, Flanagan, or another parent to transport them. Respondent acknowledged that, as a grain hauler, his work becomes busier during the harvest season, which lasts about a month. During this time, he may work weekends (in which case he offers petitioner additional visitation). Also, during harvest season, he may have to wait in a long line to drop off his grain at the elevator. Respondent gets preferential treatment and is allowed to cut in line at the elevator if he "has something to do." Respondent stressed that the children "come first" at harvest time. Typically, his driving route takes him only 4 to 5 miles from the children's school. Respondent has the same holiday schedule as the Chicago Board of Trade, which follows the public school's holiday schedule.

Since getting custody of the children, respondent has offered petitioner visitation beyond what is required in the court order. About half the time, petitioner declines the offer. As for petitioner's requests for additional visitation, respondent noticed a "spike" in them when Dr. Goldstein was assigned to do a custody evaluation. Petitioner then began calling respondent "every day" to ask for visitation. Respondent declines petitioner's requests when there is a conflict, which is about 10 to 15 percent of cases When respondent does decline, he always attempts to suggest an alternative arrangement.

According to respondent, visitation exchanges have improved now that petitioner lives in Rochelle. Even now, however, there have been difficulties. The parties used to exchange outside in a restaurant parking lot, but petitioner was delaying exchanges by arriving late, waiting in the car

with the children for several minutes, and then walking them one at a time across the parking lot. Last summer, "[d]uring the custody evaluation," petitioner would make such remarks to the children as "is your heart broken like mommy's heart" and "[D]addy won't let you see mommy." Petitioner, with a "real sad" expression, would look at the children through respondent's car window. Respondent testified that exchanges have improved now that they take place inside the restaurant. Respondent noted, however, that petitioner has asked in front of the children to extend visitation. Petitioner has also prompted the children to ask respondent if they can spend another night with her. Respondent considered this practice "not good for anybody" and testified that it violated the understanding he thought he had with petitioner that they would not discuss visitation matters in front of the children.

Respondent testified that the children are all doing well in school and have friends in his neighborhood. Brielle is involved in volleyball and cheerleading, and all three children play baseball. Petitioner occasionally attends Brielle's volleyball games and occasionally offers to take Brielle to them. The children "love" respondent's family, and his mother attends the children's school events. According to respondent, Venti's boyfriend has currently banned the children from Venti's home and, in any event, Venti's neighborhood is not "nice."

Respondent noted that, after receiving custody of the children, he noticed that Brielle was having problems with "time-management and *** organization" in getting her homework done. There was an "adjustment period" after Brielle began living with respondent, but now she is prioritizing her homework. Regarding Brielle's anxiety, respondent testified that he learned about it only the day before petitioner first saw Brielle have an episode. Respondent was waiting for the "ideal time" to mention it to petitioner. Respondent did not attend the appointment petitioner

immediately scheduled for Brielle because the physician was not Brielle's regular physician. Since that time, respondent and petitioner took Brielle in for her physical. Respondent and petitioner together discussed the anxiety problem with the physician. The anxiety has since "leveled off." Respondent has not taken Brielle to a specialist because "[s]he's not hyperventilating. There's no anxiety."

Regarding the sick day Lauren spent in his truck, respondent explained that, though Lauren said she was "fine" that morning, he could not send her to school because she had thrown up within 24 hours. Respondent did not phone petitioner because, in reviewing his business records on his computer, he inadvertently called up the I-Pass records for his truck (which petitioner has driven since their separation) and noted that petitioner had already left for Naperville. Respondent anticipated working a "short day" and asked Lauren if she wanted to stay home with him or ride in the truck. Lauren opted to ride in the truck. Regarding Goffinet's testimony that Lauren was "sick" when Goffinet picked her up, respondent stressed that, when he phoned Goffinet, he told her that Lauren was with him, but not that she was sick.

Respondent testified that he has had one girlfriend, Kim, since his separation from petitioner. He has spent time with her in the children's presence. He did not recall kissing Kim in front of the children.

Respondent considers petitioner to be a "good mom." Respondent feels, however, as if petitioner is focused less on cooperating with him in rearing the children than on "building a case against [him]." If given permanent custody of the children, he will make every effort to keep petitioner involved in their lives. Respondent has no plans to leave Rochelle. He believes that, if petitioner is given custody of the children, she will "cut him out of the picture again," and the

children will not have a father in their lives. When petitioner moved to Naperville with the children, respondent "rarely" was given extra visitation.

Three expert witnesses, Dr. Braden, Dr. Goldstein, and Dr. Lyle Rossiter, testified at the February 2010 dissolution hearing. Dr. Braden's July 24, 2008, custody evaluation was admitted into evidence at the August 2008 temporary-custody hearing and, by stipulation, was considered again by the court in making its final custody determination. Dr. Goldstein's custody evaluation was admitted into evidence at the February 2010 dissolution hearing. No report from Dr. Rossiter was introduced into evidence.

First, we summarize Dr. Braden's report and testimony. Dr. Braden stated in her report that, as part of her data, she interviewed petitioner and respondent separately, interviewed the children once with petitioner alone and once with respondent alone, and interviewed the children together apart from their parents. Dr. Braden did not interview any other sources. Dr. Braden administered the Minnesota Multiphasic Personality Inventory—2 (MMPI - 2) and the Personality Assessment Inventory (PAI) to both petitioner and respondent. After listing her sources of data, Dr. Braden wrote: "Consultation with Dr. Robert Shapiro, Forensic Psychologist, was also obtained."

Dr. Braden wrote that both petitioner's and respondent's MMPI-2 results were of "marginal validity" because they attempted to place themselves "in an overly positive light and minimize fault and deny[] psychological problems." This suggested that both "may tend to deny problems, and not be very introspective or insightful about [their] behavior." Both were "likely [to] project an excessively positive self-image, be intolerant of other's failings[,] and possibly [be] somewhat arrogant." Regarding petitioner's MMPI—2 profile, Dr. Braden wrote:

> "Individuals with this level of defensiveness should tend to admit few psychological

problems. The resulting scales are likely to underrepresent her actual problems. Her defensiveness may be understood by her approach to test items with a view toward presenting herself as being serene in her approach toward life. Her high score on this scale suggests she would like to be viewed as having no problems or pressures. There was also significant elevation indicating a naive response set claiming goodness in all people."

As for petitioner's PAI results, Dr. Braden wrote:

"[S]he tends to portray herself as being exceptionally free from common shortcomings. As a result[,] she can be quite reluctant to admit minor faults, possibly not even to herself. She may be blindly uncritical of her behavior and insensitive to the negative consequences associated with her behavior. There may be a tendency to minimize the negative impact her behavior has on others and on her herself. Given the high level of defensiveness[,] the clinical scale profile potentially reflects considerable distortion and minimizing difficulties in several areas. Regardless of the cause, the test results are likely to be an invalid reflection of her experience. Despite the level of defensiveness, she reported [that] stress in the environment was a problem of greater intensity than is typical of defensive respondents."

Dr. Braden described respondent's MMPI—2 profile:

"His defensiveness may be better understood by noting his description of himself as being highly satisfied with his current life. Also, supportive of that defense is a naive response set finding goodness in all people.

Similar individuals tend to be optimistic and stress the positive sides of life. A tendency to deny or ignore problems other then [*sic*] face them directly may also be common. A limited range of cultural interests is indicated, as is a tendency to prefer stereotyped

masculine activities too [*sic*] literally [*sic*] or artistic pursuits. It's possible he may be somewhat tolerant [*sic*] and insensitive towards others. Typically outgoing and social[,] he is gregarious and enjoys attention. Similar individuals typically enter new relationships with an open and accepting attitude, this helps by projecting a positive attitude about life. He views his home life in a generally positive manner, reporting that it is pleasant and problem free. He reports strong emotional support from those close to him."

Dr. Braden described respondent's PAI profile:

"This individual produced a PAI profile indicating a tendency to present himself in a favorable light. The tendency to repress or deny stress or other internal consequences that may arise from such limitations is also indicated. In areas where functioning may be less than optimal, a tendency to minimize or be unaware of these problems is common."

Dr. Braden then related her general impressions of petitioner and respondent from her interviews. As to respondent, Dr. Braden wrote:

"[Respondent] was cooperative and generally forthright during this evaluation. His demeanor was almost casual during interview sessions. He appeared to respond candidly to questions even when the answers reflected negatively on him. This was apparent when asked about his tendency to be sarcastic and biting at times when interacting with [petitioner]. [Respondent's] characterizations and interactions with [petitioner] were dominated by his feelings that she was 'crazy.' He related he does have a tendency to be sarcastic and reports he does that to take the edge off of an uncomfortable situation. He verbalized recognizing how his sarcastic comments caused difficulty within the marriage."

Regarding her interviews with petitioner, Dr. Braden wrote:

"[Petitioner's] demeanor during the evaluation was controlled and deliberate. Her thought process was organized when information was presented in isolation. However, when information was compared to previously gathered data, there appeared to be consistent disorganization. On several occasions, when interacting with the Braden Counseling Center's support staff, she made repeated requests for longer sessions, with varying levels of intensity. When I asked her about this behavior, she denied all involvement. On one occasion after she received notice that [respondent] had completed his questionnaires, she phoned the Braden Counseling Center office and requested to speak to me. She repeatedly questioned me for approximately ten minutes about why she wasn't notified that [respondent] had completed the questionnaire. She also stated that if she had known his questionnaire was turned in, she would have turned hers in. Over two weeks later[,] her questionnaires were received at the Braden Counseling Center office. [Petitioner] was unable to see how she contributed to the difficulties in the marriage."

Dr. Braden described her observations of respondent's interaction with the children:

"During the visit with [respondent] and the children, all of the children responded to [respondent] in a warm, familiar fashion. He tended to their needs and was able to affectively [*sic*] resolve conflict. There was mild praise when conflicts were worked out between them. The children worked together to pick up the crayons and books."

Dr. Braden described petitioner's interaction with the children:

"[Petitioner] worked to engage the children in talking to me, working to get them to show me their math skills and talk about activities they were participating in. *** The children worked to help pick up the toys until they were just over half finished. The children then left

the room while [petitioner] continued to pick up the toys and gather up their things. It had snowed during their visit. The girls went outside with [petitioner][,] and she had difficulty getting them into the vehicle, working to corral them one at a time. [Respondent] reported [that] [petitioner] needed to have the girls strapped in strollers in order to keep them under control. She had difficulty getting them to listen to her."

Dr. Braden then described her private interview with Brielle. (Dr. Braden did not report having interviewed Lauren or Bailey.) Brielle reported that respondent has a girlfriend named Kim, who in Brielle's opinion spends too much time with him when he is with the children. Brielle also reported that respondent has taught her sisters to call Venti "granna smokey" and that Brielle did not like that nickname. Brielle further reported that respondent has told her that he gives petitioner " 'lots of money.' " Dr. Braden noted that Brielle "appeared careful *** not to present information that was significantly negative for either parent." Brielle voiced "little *** preference for one parent over another." While Brielle reported "some frustration about spending time with [respondent's] friend Kim, and name calling, she appeare[d] to miss spending time with [respondent]." Dr. Braden noted that Brielle was doing well in school in Naperville.

Under a section of her report titled "Substantiating Data," Dr. Braden focused mostly on petitioner and made a series of observations. Dr. Braden first noted multiple instances in the children's medical records where follow-up appointments for certain conditions were recommended but the records showed no indication that petitioner had arranged those visits. Dr. Braden also noted that, toward the end of the of the 2007-2008 school year, Brielle told petitioner that she was having difficulty seeing the blackboard at school. Petitioner initially told Dr. Braden that the teacher "didn't indicate that [Brielle's] vision was a problem." Later, upon further questioning by Dr. Braden,

petitioner reported that, actually, she had e-mailed the teacher about Brielle's complaint and that the teacher had not responded. Dr. Braden noted that, when she asked petitioner how respondent reacted to this information, petitioner admitted that she had not told respondent about Brielle's complaint.

Dr. Braden made several additional observations about petitioner. First, regarding petitioner's reasons for moving to Naperville, Dr. Braden wrote:

> "A letter from [petitioner's] attorney (2-20-07) indicated [petitioner] chose Naperville because she got a great deal on rent in a decent neighborhood and school district, is closer to her family for assistance[,] and has more job opportunities. On 5-01-08[,] I asked petitioner about the type of help she gets from her family. Her voice was stern and she informed me that she never said she moved to Naperville to get help from her family. When I related I had been given this information in the past[,] she flatly denied its truth. There was a significant level of agitation in her voice that was inconsistent with previous interviews."

Dr. Braden also addressed the occasion (referenced in petitioner's testimony) during summer 2006 when petitioner called the police on respondent and his sister:

> "A police report was filed on 6-17-06 after [petitioner] called the Sheriff's Department. She reported to me that [respondent] and his sister Tracy were planning to take the children swimming at the hotel where Tracy was staying. She related that they were verbally abusive to her. Tracy took Bailey, in her carrier, to the vehicle they were going to drive to the pool. [Petitioner] related that was the only reason she called the police. The police report indicated [petitioner] told the Deputy she was being verbally abused, but was not able to tell the Deputy what was said or how they were being abusive. The report

indicated she did not trust them with the children. Since she also did not want to go with them, she did not want them to go at all. Bailey and the carrier are not listed anywhere in the report. This is inconsistent with the information [petitioner] gave me."

Regarding petitioner's allowance of additional visitation to respondent, Dr. Braden wrote:

"[Petitioner] related her attorney told her to only allow visitation for [respondent] through court order. [Petitioner] was asked her [*sic*] if she was able to work with [respondent] to allow additional visitation with the girls. She hesitantly related she thought she could yet it appears she has difficulty encouraging the girls to spend time with [respondent]. The most recent incident is outlined in e-mails when [respondent] requested to spend Thursday and Friday, May 15 & 16, 2008 with the girls. Although [petitioner] notified [respondent] she received his request on Wednesday evening, she e-mailed her decision on Thursday and allowed him to only have the girls on Friday. When she found out he had picked up the girls from daycare Thursday, she requested he return them to the daycare center at noon on Friday. She cited he had no court order for this visitation."

As to the extracurricular activities in which the children were involved while living with petitioner, Dr. Braden wrote:

"[Petitioner] works to keep the girls involved in educational, artistic, and social activities. To her credit, their lives have been enriched by these experiences. *** The activity schedule she provided me with, however, is not consistent with the bedtime schedule she related she keeps for the girls. Based on the times she indicated the programs or activities end, she would not be able to get the children home and in bed at the times she gave."

In the section titled "Discussion," Dr. Braden shared her respective concerns about petitioner and respondent based on the data she collected. Regarding respondent, Dr. Braden wrote:

> "Concerns were raised about [respondent's] verbal and emotional abuse, his ability to provide nurturing support to the girls, excessive drinking[,] and history of not being involved in the [children's] medical care. ***
>
> [Respondent] admits he is sarcastic and antagonistic at times with [petitioner]. He also admits to calling her 'crazy,' saying 'cuckoo, cuckoo' to her and calling [Venti] 'granna smokey.' He admits to tape recording her, stating it causes her to be more reasonable and calm. These behaviors are not conducive to healthy interactions and are not good role model behaviors. Brielle has also verbalized her concerns about name calling to me. If his family interacts in this manner, these behaviors are similarly unhealthy. Brielle's comments to me that [respondent] has told her that he gives [petitioner] 'plenty of money' supports that [respondent] speaks to the children about things that are inappropriate and do not support their relationship with [petitioner].
>
> While [petitioner] reports excessive use of alcohol, I have seen no records or information regarding occupational problems or arrests that may provide external evidence that his [*sic*] occurred. The interactions between [respondent] and the girls that I have witnessed were warm, connected[,] and genuine. He can also be stern with them[,] and they listened while in the office."

As to petitioner, Dr. Braden wrote:

"Concerns were raised about [petitioner's] mental stability, her ability to facilitate and encourage a close and continuing relationship between [respondent] and the girls[,] and her ability to accurately assess situations.

* * *

[Petitioner] takes care of the children's routine medical appointments. She does not, however, share significant medical information with [respondent]. There are also notations of needed medical care for the children that I have found no evidence has taken place. While [petitioner] is diligent with routine care, specialized or unscheduled care seems to cause her difficulty. Some of the consults that were recommended would indicate a deficiency in the children[,] and her lack of follow-through is consistent with [respondent's] concern that she does not accept that her children may need help from anyone but her. Her investment in looking good may result in harm to the children.

There are multiple incidents listed where [petitioner] has attempted to portray herself as faultless and totally in control. These situations, however, include evidence, some that she provided herself, that she is greatly challenged by the stresses in her life. It is unclear whether she is intentionally working to deceive me or her thought process is so disorganized that she is unable to properly track events and information. Distorted and inaccurate perceptions may be compounding her challenges. As noted in her test results, she evidenced significant difficulties. It should be noted that it is common for custody participants to show elevations in their scores indicating an attempt to be seen as better than they likely are."

Dr. Braden concluded her discussion:

"While [respondent's] interactions and game playing with [petitioner], and their effects on the children, are problematic, the difficulties that [petitioner] experiences will cause greater difficulties for the children."

Based on her findings, Dr. Braden recommended that respondent have physical custody of the children. The primary reason was that petitioner has "difficulty with meeting the needs of the children in a comprehensive manner and [with] emotional functioning[,] in contrast to [respondent's] greater perceived ability to comprehend and meet the needs of the children." Dr. Braden recommended that petitioner seek counseling "to determine the best strategy to help her function in a more stable, secure manner," and that respondent seek counseling "to understand his sarcastic interactions and need to put others down." Each party would benefit, Dr. Braden noted, from increasing their understanding of how their behaviors affect the children.

In her testimony, Dr. Braden confirmed that she did interview all three children. She did not recall asking any of the children for their custodial preference, and she specifically recalled that Brielle never volunteered her preference. Dr. Braden noted that she has had no contact with petitioner or respondent since completing her evaluation in July 2008.

Dr. Braden affirmed that the fundamental reason for her recommending that respondent be given primary physical custody was that she had concerns over petitioner's "ability to report consistently and have data match other things she told [Dr. Braden]." There was "a lot of disorganization" in what petitioner told Dr. Braden. Asked what she meant in writing that petitioner has "difficulty with meeting the needs of the children in a comprehensive manner and [with] emotional functioning," Dr. Braden replied that petitioner had the children involved in "so many things that there was no consistent schedule" and that her purported bedtime for the children was

inconsistent with their activity schedule. Dr. Braden saw in petitioner a "continuous need to be seen as the one who's doing all these things." Petitioner felt "the need to be seen as this really great, really involved parent. But to too much of a degree." When visiting with respondent, the children had more "down time" because he did not plan as many activities.

Dr. Braden was extensively cross-examined. She was questioned, first, on her prior experience in doing custody evaluations. Dr. Braden testified that she is familiar with both the American Psychological Association's "Guidelines for Child Custody Evaluations in Family Proceedings" (APA standards) and the Association of Family and Conciliation Courts' "Model Standards of Practice for Child Custody Evaluation" (AFCC standards). She followed both sets of standards in conducting the evaluation in this case. Dr. Braden acknowledged that section 1.3 of the AFCC standards states:

> "Since child custody evaluation is a unique specialty area, anyone conducting child custody evaluations shall have obtained appropriate education and professional training prior to offering to perform or accepting an appointment to perform evaluations. Novice evaluators shall obtain supervision or consultation with another professional who meets the education, experience, and training requirements of this section. Evaluators who have fewer than two years of experience conducting custody evaluations are encouraged to continue receiving ongoing supervision or to arrange for consultation to be available and to utilize the services of a consultant when needed."

Dr. Braden testified that, as of the February 2010 hearing, she had done two or three custody evaluations. She could not recall, however, whether she had done an evaluation prior to the one in this case. She noted that, if she had done a prior evaluation, it was "possible" that she still had fewer

than two years of experience in custody evaluations when she conducted the one in this case. Dr. Braden also recognized that article II, section 4 of the APA standards encourages a custody evaluator to seek appropriate consultation in facing "complex issues that are outside [a psychologist's] scope of expertise." Dr. Braden noted that, as her written report indicated, she consulted with Dr. Robert Shapiro in preparing the evaluation. Dr. Braden shared with Dr. Shapiro "some" of the results of the psychological testing and they discussed her impressions of the case.

Dr. Braden recognized that section 1.3 of the AFCC standards further provides that, where a consultant is utilized, his or her "role in the evaluative process shall be briefly described." Dr. Braden believed that her bare notation, that "[c]onsultation with Dr. Robert Shapiro, Forensic Psychologist, was also obtained.," fulfilled this criterion.

Dr. Braden acknowledged that, on April 29, 2008, she received a letter from respondent's attorney accusing her of losing her "objectivity." In May 2008, she sent a letter to the trial court in response to the allegations. Dr. Braden initially testified that she was unsure whether she met with Dr. Shapiro before the April 2008 letter from respondent. After reviewing her notes, she concluded that she first consulted with Dr. Shapiro on June 26, 2008, after respondent's attorney wrote his letter. Dr. Braden added, however, that she would have met with Dr. Shapiro "either way, without or without the letter." She further acknowledged that her evaluation was completed only about a month after she consulted Dr. Shapiro. The consultation took place "after [she] had collected the majority of the data but before [she] had written the report."

Dr. Braden testified that it was "possible" that, at some point during her evaluation, respondent approached her and, in a threatening tone of voice, remarked that he was paying for her evaluation. Dr. Braden did positively affirm, however, that respondent approached her during the

evaluation process and said that if she did not recommend in his favor, he would find someone who would.

Dr. Braden was then questioned about her sources for the evaluation. She noted that section 11.1 of the AFCC standards states that evaluators "shall acknowledge the limits in the ability to discern the truthfulness of oral reports from the primary participants and so shall seek from collateral sources information that may serve either to confirm or to disconfirm oral reports, assertions, and allegations." Dr. Braden recognized that the APA standards contain a similar admonition. Dr. Braden admitted that though, at her request, petitioner and respondent each submitted a list of collateral contacts, she contacted none of them. Dr. Braden believed she complied with the AFCC and APA standards because, though she did not speak to anyone other than respondent, petitioner, and the children, she consulted records from a variety of sources including those of neutral third parties such as teachers and physicians. Dr. Braden believed she had enough data based on these documents and the interviews she conducted. Dr. Braden admitted that she did not visit either respondent's or petitioner's home.

Dr. Braden was cross-examined on further aspects of her methodology. She recognized that section 2.1 of the AFCC standards state that evaluators must become familiar with the criteria for determining custody within the relevant jurisdiction. Asked if she was able to recite the factors enumerated in section 602(a) of the Marriage and Dissolution Act (Act) (750 ILCS 5/602(a) (West 2008) (setting forth criteria for determining child custody)), Dr. Braden said she could not. Nor was she even able to say "what those factors pertain to." Dr. Braden stressed, however, that though her report may not have specified all custody factors under section 602(a), she considered all of them in conducting her evaluation. Dr. Braden acknowledged that she did not administer the Bricklin

Perceptual Scales to the children. Dr. Braden knew some custody evaluators who use the Bricklin test, but she did not consider it an "industry standard." Also, Dr. Shapiro did not suggest that she use the Bricklin Scales.

Finally, Dr. Braden was cross-examined as to her findings. She admitted that, subsequent to her evaluation, she received additional medical records confirming that, contrary to her report, petitioner had in fact made follow-up appointments for the children as to each of the medical issues Dr. Braden identified in her report. Therefore, the concerns she had about petitioner's ability to schedule nonroutine medical appointments were now "diminished." When Dr. Braden was asked whether petitioner's failure, as noted in the evaluation, to share medical information with respondent was "necessarily inconsistent with the nature of [the parties'] roles as parents in the marriage," Dr. Braden replied, "I think it's atypical." Dr. Braden agreed that the children are normal and well-behaved and that petitioner should receive some credit for this, given that she was for several years their primary caretaker. Dr. Braden explained that the difficulty she noted petitioner has in "encouraging the girls to spend time with [respondent]," stemmed from her frustration with the visitation exchanges, which Dr. Braden gathered were "very difficult." Regarding the May 2008 incident where respondent picked up the children from daycare without petitioner's permission, Dr. Braden agreed that it "would have been inappropriate for [respondent] to take the children without [petitioner] knowing that he was going to do that." Dr. Braden noted that, from what petitioner told her, respondent had to get a court order for additional visitation not just while the order of protection was in effect but the entire time petitioner had temporary custody of the children. Dr. Braden admitted that she has no documentary evidence confirming that petitioner imposed this condition on visitation.

Dr. Braden acknowledged that petitioner claimed respondent abused her during the marriage by (1) calling her "cuckoo" or "crazy"; (2) taking or threatening to take her car keys away; (3) cutting her off from funds; and (4) pulling the phone cord out of the wall while she was speaking on the phone. Dr. Braden opined that such behavior might be abusive depending on "the reasoning for the behaviors." As for the name-calling, Dr. Braden noted that respondent claimed it was done in jest, while petitioner claimed it was not. Also, respondent reported with, Dr. Braden believed, "some genuineness" that he considered petitioner's behavior at times to be "crazy" and nonsensical.

Dr. Braden testified that the factors that figured most in her final conclusion were petitioner's "mental health" and her lack of willingness to foster a close and continuing relationship between respondent and the children. See 750 ILCS 5/602(a)(5), 602(a)(8) (West 2008) (among the factors relevant to custody determination is the mental health of each parent, and "the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child"). By "mental health," she meant petitioner's "thought disorganization" and her "tendency to be more dramatic about things and the impact that [that tendency] would have over time on the children." These negatives of petitioner's outweighed respondent's negatives.

Dr. Braden was then asked how various actual or hypothetical circumstances would affect the conclusions in her report. She acknowledged that Brielle has developed anxiety since her evaluation. This raised "some concern" for Dr. Braden because it suggests "[s]omething is going on." Dr. Braden did not know the precise cause of the anxiety, but noted that such a condition is not atypical in children whose parents are divorcing, especially if the children are "getting pressure from one parent or another." Dr. Braden stated that, if she had known that a physician had recommended that Brielle see a specialist for her anxiety but that respondent failed to arrange it, this would be a

negative for respondent. It would not, however, change her conclusion that petitioner had (as Dr. Braden wrote) "difficulty with meeting the needs of the children in a comprehensive manner and [with] emotional functioning[,] in contrast to [respondent's] greater perceived ability to comprehend and meet the needs of the children." Dr. Braden noted that petitioner was too intent on making herself seem like "this really great, involved parent."

Dr. Braden agreed that, if, in the last 18 months, the children have been thriving in the care of respondent, whom Dr. Braden recommended as custodian, she would, of course, have no reason to change her recommendation. But it would not be "good" or "ideal" if, in that time, (1) the noncustodial parent is not allowed to have visitation with the children when the parent is available, but, instead, the custodial parent uses daycare providers or babysitters; or (2) the children are spending the "majority of their waking hours" with babysitters and daycare providers; or (3) the custodial parent leaves for work before the children are awake and does not return until an hour before their bedtime.

Petitioner, testifying in reference to Dr. Braden's report, denied that she failed to follow up on medical issues as Dr. Braden claimed. Petitioner denied that Dr. Braden asked her any questions about the children's medical issues. Regarding Brielle's alleged difficulty seeing the blackboard at school, petitioner explained that, one evening at dinner, Brielle first mentioned her difficulty. When petitioner followed up with Briellle the next day, she said she had no difficulty seeing the blackboard. Petitioner also disagreed with Dr. Braden's observation that she was unable to control the children during the interviews with Dr. Braden.

Petitioner called Dr. Lyle Rossiter, a forensic psychiatrist. Dr. Rossiter testified that he has 25 years of experience in doing custody evaluations. In August 2008, petitioner requested that he

evaluate her mental and emotional stability. Dr. Rossiter saw his evaluation as having the twofold object of determining whether petitioner had a diagnosable psychiatric disorder and whether she was mentally or emotionally unstable. In doing the evaluation, Dr. Rossiter interviewed petitioner, Ruth Carter (director the HOPE shelter in Rochelle), and Dr. Tilley (petitioner's psychotherapist from 2005 through 2007). Dr. Rossiter also considered Dr. Braden's report, Dr. Tilley's records, and letters of reference from various acquaintances of petitioner's. Dr. Rossiter did not speak with respondent or the children or observe petitioner interacting with the children. Dr. Rossiter did not have petitioner undergo the MMPI—2 or PAI because Dr. Braden had already administered them, and, moreover, Dr. Rossiter did not consider them helpful to his objectives. During the interview, Dr. Rossiter found petitioner to be candid, credible, and reliable. He disagreed with Dr. Braden that petitioner is defensive. Petitioner reported a history of "mental difficulties" in her family. She denied that she was taking prescription medication at the time of the interview. She reported past usage of prescription medicine, but Dr. Rossiter did not know the details.

Dr. Rossiter found, to a reasonable degree of medical certainty, that petitioner did not suffer from any psychiatric disorder and is not mentally or emotionally unstable. Petitioner did appear to suffer from the anxiety and stress typical of those involved in custody disputes. Dr. Rossiter acknowledged that petitioner reported having been called "crazy" or "cuckoo" by respondent. Petitioner was unable to surmise why respondent would call her those names and dismissed his behavior as harassment. Dr. Rossiter dd not interview respondent and so did not know what reasons respondent felt he had for making those remarks.

Dr. Rossiter was critical of Dr. Braden's report in two respects. First, she did not interview collateral sources, which Dr. Rossiter considered vital sources in a custody evaluation. Second, Dr.

Rossiter found it "unusual" that Dr. Braden included no substantial discussion of the factors under section 602(a) of the Act.

Next, there was Dr. Goldstein's report and testimony. Dr. Goldstein stated in his report that he administered petitioner and respondent each the MMPI—2, the Millon Clinical Multiaxial Inventory—3 (MCMI—3), the Parenting Alliance Measure (PAM), and the Parenting Stress Index (PSI). The results showed:

> "Neither parent appears to have any significant psychological disorder which would negatively impact their ability to function as the primary parent. [Respondent] did have a significantly elevated score on the Narcissistic scale of the MCMI—3, which reflects self-centeredness, grandiosity, and a sense of entitlement. [Petitioner] had borderline scores on the Hysteria and Histrionic scales[,] respectively[,] from the MMPI—2 and MCMI—3[,] which would indicate that she has a self-dramatizing quality to her personality structure. In addition, her mild elevation on the Compulsive scale would suggest some rigidity, and her mild elevation on the Psychopathic Deviate scale would suggest some immaturity. Although there may be some mental disorders in [petitioner's] family, there are no indications that she suffers from any psychological disorder."

Dr. Goldstein observed each party interact with the children. The children appeared "comfortable" with, and "bonded" and "attached" to, each party. Dr. Goldstein noted that, when the children interacted with respondent, Brielle "appeared to be a parental child, often helping her father and her younger siblings." Dr. Goldstein did not observe Brielle act like this when petitioner was with the children.

Dr. Goldstein noted that he administered the Bricklin Scales to Brielle and Lauren (but not to Bailey, because of her age). Brielle

> "rated her mother as the preferential parent on fourteen items, her father as the preferential parent on eight items, and the two parents as equal on the remaining ten items. She perceived her mother as significantly stronger in supportiveness, and somewhat stronger in follow-up consistency and admirable character traits. She perceived her father as somewhat stronger in competency."

Lauren

> "rated her mother as the preferential parent on twenty-two items, her father as the preferential parent on six items, and the parents as equal on the remaining items. She perceived her mother as significantly stronger in competency and in supportiveness. She perceived her mother as somewhat stronger in admirable character traits and perceived her parents as equal in follow-up consistency."

Dr. Goldstein also interviewed each child at least twice. Brielle was ambivalent as to where she would like to reside, while Lauren "clearly expressed a preference to reside with [petitioner]." Because of her age. Dr. Goldstein did not ask Bailey where she would like to reside. None of the children described "any significant problems with either parent" or "described any behavior which raised a red flag." Brielle told Dr. Goldstein that she had "anxiety during the [s]ummer." Brielle talked to both parents about it, but respondent was more helpful. She later saw a doctor, who "gave her tips that worked." Dr. Goldstein inferred from his observations that, while the children "appear to have positive attachments to both their mother and father," it is "clear that the children are more attached to their mother."

Dr. Goldstein wrote that he was concerned about respondent's work schedule. In one interview, Brielle reported that respondent takes the children to Flanagan's at 7 a.m. and returns between 4 p.m. and 8 p.m. In another interview, Brielle stated that petitioner usually picks up the children from daycare at 5 p.m. and that respondent typically does the same but has also picked them up as early as 4 p.m. and as late as 8 p.m. Lauren report that respondent is gone for work when she wakes up in the morning.

Dr. Goldstein interviewed the parties and described their concerns about each other. As for petitioner's concerns:

> "[P]etitioner cited that her husband does not promote a good relationship between her and the children and that he has misrepresented her to the children. She also indicated that he called her names, that he downgraded her in front of the children, and that he had a history of drinking beer on almost a daily basis. It was also her perception that he was not nurturing with the children, that he did not enhance the children's self-esteem[,] and that he exposed his girlfriend to the children. She also contends that he does not believe in equality for women, that he is not a good role model in that he makes racist comments, and that he had expectations that the children do their homework on their own without assistance. Finally she expressed concern that he drops the children off at 7:00 a.m. and does not pick them up until 5:30 [p.m.] or later from daycare. She also contends that he has to work weekends at times, and that he was minimally involved with the children in the past, including medical and dental appointments."

Dr. Goldstein commented on petitioner's concerns:

"There is no evidence to suggest that [respondent] called her names in front of the children, although he may have called her names directly to her. There was also no suggestion that he downgraded her in front of the children. This evaluator was unable to confirm whether his use of alcohol was a problem, although there is no indication of any substance dependence or abuse. Although [respondent] may not be the most nurturing individual, he appeared to be adequate in his nurturing ability with the children. It would appear that he is not overly complimentary with the children. It would also appear that he has exposed his girlfriend to the children, although this would not be uncommon given the length of time in which the divorce proceeding has existed. His psychological testing suggests that he may not believe in equality for women. This evaluator was unable to substantiate whether he made racist remarks in front of the children. He does expect the children to do homework on their own and checks it later. He also does drop off the children at 7:00 a.m. at the daycare, and may not pick up the children until as late as 8:00 p.m. However, he typically picks up the children earlier than this. In the past, [respondent] did appear to be somewhat involved with the children, although [petitioner] was clearly the primary parent.

[Petitioner] also indicated that [respondent] has failed to facilitate a relationship between her and the children, in that he has not allowed her additional time with the children. Based upon the information available to this evaluator, there appears to be some credence to support her contention."

Dr. Goldstein described respondent's concerns about petitioner:

"[Respondent] indicated that she stifles the children so that the children are scared of everything, that her mother [Venti] is an alcoholic and her brother has Bipolar Disorder, that [petitioner] was not allowed in her mother's home, that she is mentally unstable and that she does not want to share the children. Furthermore, it was his perception that she wants to win at any cost, that she attempts to appease the children with gifts, that she does not plan things out and that she has told the children to not go with him in the past. He also cited that she has talked to Brielle about him and that she rarely went to the children's athletic events. He also reported that she had seen several counselors in the past, that the bank had previously decreased her credit limit due to a large balance, that she was concerned about the ethnic mix in schools in Rochelle prior to the move there, and that she sent an itinerary to Brielle's teacher when Brielle was extremely young. Furthermore, he intimated that his wife was disorganized, resulting in the necessity of significant cleaning in the home after she left, that she had left sex toys in Bailey's closet, that she wanted the dog after she moved out, that she changed insurance because she did not want a co-pay, and that she would not provide him with medical records. He added that she did not attend the children's school awards, that she questioned Brielle as to where she would prefer to live, and that she did not take advantage of opportunities for additional time with the children."

Dr. Goldstein commented on respondent's concerns:

"[Petitioner] acknowledged that her mother is a recovering alcoholic and that her brother has experience depression. She denied that she is not allowed at her mother's home, indicating that she and her mother do communicate and see each other. She also noted that she has had issues with her mother's boyfriend. She denied that she is mentally unstable, and

the psychological test data did not suggest any significant psychological disorder. It would also appear that [petitioner] does not attend all of the children's activities.

She did appear to check various schools in Rochelle, but focused on strengths of education. She did appear to send a letter to Brielle's teacher regarding concerns about Brielle when Brielle was very young. At times, she appears to have been unable to spend additional time with the children due to her work. She also appears to have asked Brielle where she would prefer to live. She has brought the children some gifts, as has [respondent]. Furthermore, she has been involved in counseling, but neither therapist perceived her as having any significant psychological disorder. Finally, there is some evidence that her credit limit had been decreased in the past. The other concerns raised by [respondent] were either unsubstantiated or there was not enough data to either substantiate or unsubstantiate them."

Dr. Goldstein interviewed Marissa Cash, the officer manager for the children's dentist. Cash recalled that petitioner always brought the children to appointments and that the office has had no contact with respondent. Dr. Goldstein also interviewed Dr. Rebecca Turk, the children's pediatrician, who said that petitioner always brought the children to appointments.

Dr. Goldstein further reported that Flanagan, the daycare provider respondent uses, told Dr. Goldstein that respondent typically brings the children over at 7 a.m. but has brought them as early as 6:30 a.m. Eighty percent of the time, respondent picks up the children from Flanagan's between 4:30 and 5:30 p.m. but has come as late as 6:45 to 7 p.m. Flanagan denied that the children have ever spent the night at her house. Flanagan related that petitioner "doesn't like her" and that petitioner upsets the children by lingering at the daycare and by phoning them. Dr. Goldstein

interviewed several other sources including petitioner's pastor, the children's current and former teachers, and Dr. Tilley and other counselors petitioner has seen.

Dr. Goldstein recommended that petitioner have physical custody of the children. He reasoned:

> "The children appear to have positive attachments to both their mother and father. As previously stated, Brielle and particularly Lauren do appear to have a closer alliance with their mother. This is not surprising, given their gender, as well as the fact that [petitioner] served as a stay at home parent and as the primary parent during the children's lives until [respondent] was given temporary custody. Nonetheless, it appears that [respondent] has done a competent job of being the primary parent since taking over this role. Nonetheless, this evaluator is concerned that his work requires him to take the children to the home daycare at 6:30 - 7:00 a.m., necessitating that the children get up quite early. Furthermore, there appear to be times when the children are in the in-home daycare for a substantial period of time following school as well. Certainly, [petitioner's] schedule[,] which more closely corresponds with the children's school schedule[,] offers advantages to the children, in that the children could be with her rather than in the in-home daycare center.
>
> The children do appear to be stable in their current school. In addition, they also appear to be stable in their current home environment.
>
> [Petitioner] appears to be more likely to facilitate a relationship between the children and their father than vice-versa. It would appear that [respondent] has not been very forthcoming in offering additional time for the children to spend with their mother."

Dr. Goldstein expressed concern about respondent's "elevated level of narcissism" and tendency "to be controlling and domineering." Dr. Goldstein found it "quite probable that [respondent] would not see the need for the children's involvement with their mother."

In his testimony, Dr. Goldstein identified the noteworthy results of the psychological testing of petitioner and respondent. Petitioner's borderline scores on the histrionic scale suggested that she "tends to be somewhat dramatic in how she presents things ." This is not "atypical" in mothers, who tend "to be somewhat overprotective with their children." Her mildly elevated score on the compulsiveness scale suggested that she tends to be "pretty orderly, *** like[s] rules and regulations, [and is] somewhat rigid in the way [she does] things." Respondent also had a mild elevation on the compulsive scale and a borderline score on the histrionic scale. More significant in Dr. Goldstein's eyes was respondent's "pretty high elevation" on the narcissistic scale, which suggested that respondent has an "inflated perception of himself," is "somewhat grandiose in terms of how he sees himself," may "have a sense of entitlement," and "tends to focus more on himself than on others around him." Dr. Goldstein, however, found no "significant psychopathology" in either petitioner or respondent, and concluded that both parents have strengths and weaknesses.

Dr. Goldstein also explained his notation that Brielle took on a parenting role when with respondent and the other children:

> "It's not very common place [*sic*] for that to occur, but it does occur. What it suggests is two possibilities. Either, one, her father has provided some unconscious expectations that you help me out. And not conscious even necessarily, but unconscious, and that she has stepped forward to do so. Or she feels as the older child dad needs me to do this, to take on

this sort of motherly role with my younger siblings. This was not evident at all with [petitioner], though. So that was sort of a striking difference in the observations."

Dr. Goldstein also noted that, though Brielle complained of anxiety, she seemed emotionally healthy "overall."

Dr. Goldstein was also asked in his testimony to apply the factors under section 602(a). The factors Dr. Goldstein applied, and the only ones relevant here,[1] are:

"(1) the wishes of the child's parent or parents as to his custody;

(2) the wishes of the child as to his custodian;

(3) the interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interest;

(4) the child's adjustment to his home, school and community;

(5) the mental and physical health of all individuals involved;

* * *

(8) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child." 750 ILCS 5/602(a) (West 2008).

On factor (1), Dr. Goldstein noted that both parents wanted custody. On factor (2), Dr. Goldstein noted that Lauren expressed a clear preference to live with petitioner. Brielle equivocated,

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[1] At the dissolution hearing, petitioner's counsel appeared to elicit testimony in an attempt to establish factor (7), *i.e.*, the occurrence of abuse as defined in the section 103 of the Illinois Domestic Violence Act of 1986 [750 ILCS 60/103 (West 2008)]. Petitioner, however, does not contend on appeal that respondent's actions met the criteria of section 103.

but her demeanor and Bricklin scores indicate that she prefers to live with petitioner. Dr. Goldstein did not ask Bailey for her preference or administer her the Bricklin Scales. On factor (3), Dr. Goldstein concluded from his observations that the children have a stronger bond with petitioner than with respondent. The Bricklin scores, particularly Brielle's identification of petitioner as more supportive, corroborate this. Dr. Goldstein believed, therefore, that factor (3) favored petitioner. As for factor (4), Dr. Goldstein noted that the children are well adjusted to their school and community in Rochelle, where both parties reside. This factor would be neutral as long as neither party intended to remove the children from their current school and community. Dr. Goldstein believed it "important that the children remain where they're at." On factor (5), both parties were "relatively equal" as to their strengths and weaknesses, though Dr. Goldstein was concerned by respondent's elevated score on the narcissism scale. On factor (8), respondent's narcissistic tendency did not "bode well" for his willingness and ability to foster a close and continuing relationship between petitioner and the children. Dr. Goldstein also noted that the children reported occasions when petitioner was available to take the children and respondent rejected the offer. Dr. Goldstein noted, however, that he had no data to corroborate this claim by the children.

Dr. Goldstein opined that Dr. Braden's report failed in several respects to comply with the APA and AFCC standards. First, Dr. Braden made no "direct reference" to the section 602(a) factors, though Dr. Goldstein qualified that it would have been acceptable if Dr. Braden had utilized the factors, albeit without a specific reference. Second, Dr. Braden apparently made no use of collateral sources. Third, Dr. Braden did not describe how Dr. Shapiro was involved in the custody evaluation. Dr. Goldstein simply could not understand how Dr. Braden reached her conclusions based on the data.

Dr. Goldstein was cross-examined on his concerns regarding respondent's work schedule. Regarding his concern over how early respondent drops off the children, Dr. Goldstein agreed that, if it were shown that petitioner would have to drop off the children even earlier, it would weigh against her. Dr. Goldstein denied that petitioner ever told him that "she needs to awaken by 4:30 or 5:00 [a.m.] in the morning."

D. The trial court's award of physical custody to respondent.

Although the trial court's decision on respondent's motion for temporary custody is not challenged in this appeal, the evidence at that hearing was, by stipulation, made part of the record at the dissolution hearing. It is instructive, then, to note the trial court's comments on that evidence when it rendered its decision on respondent's motion. The trial court gave the following basis for its decision:

> "*** I have this 800-pound gorilla sitting in the room here, better known as Dr. Brayden's [*sic*] report, recommending [respondent]. And the multiple interviews that Dr. Braden had with [petitioner], and had with [respondent], I have to believe that [petitioner] expressed all [her] concerns.
>
> By the way, for the record, Naperville and Rochelle, I'm sure, are both great places to live.
>
> There's no dispute that [petitioner] has been the primary custodial nurturing parent of all three girls. And there's no dispute that [respondent] has been a good provider, and in some ways it is *** trying to be held against him that he spent 50 percent of the time *** on the road because he was earning 80 grand a year for—with United Van Lines. That's certainly not a—that, to me, is a good nurturing providing father.

Obviously, we are at a temporary hearing.

I certainly cannot defer my judgment to the evaluator alone, but I have considered all the testimony and not slept very well the last couple nights thinking about this case.

[Petitioner's counsel] uses the word that always makes me nervous in custody matters, and that is why risk the change? But I also think that [respondent's counsel's] argument is well-taken, regarding, well, we've had this temporary situation so I win.

*** [I]t is my opinion and belief , that if this report said—recommended [petitioner], [she] would be standing before me saying, Judge, the report says what the report is, why don't you just follow it?

I think that until it can be shown that Dr. Brayden's [*sic*] report is somehow defective, in considering all the testimony, both of [petitioner] and [respondent], I think on a temporary basis I have to grant the petition for temporary relief."

Following the February 2010 dissolution hearing, the trial court awarded respondent permanent physical custody of the children. The court reasoned:

"[F]or the record[,] I'll find that both parties are fit and proper persons to be quote, unquote, have [*sic*] the care, custody, control and education of the minor children. I think both parties have gone two extra miles in seeking to be awarded the custody.

It's clear from the reports that, even though there's been a lot of litigation, the children appear to be doing very well, at home and in school. I have considered all the factors in the best interests of the children. I guess for the record I will state that the factor [that] most weighs in my mind is how will, how do we keep both parents so actively involved in working for the bests interests of the children, and I believe that based upon all

the facts and testimony, I'm going to award physical custody to [respondent], subject to *** reasonable, seasonable and liberal visitation ***."

Petitioner filed this timely appeal.

II. ANALYSIS

Petitioner argues that it was error for the trial court to grant respondent physical custody of the children. Like her statement of facts, petitioner's argument section is wanting development. The only legal authorities she cites are section 602(a) and two cases, both on the standard of review. Though we understand that a custody determination is an intensely fact-bound inquiry for which there will be no factually identical precedent, case law still provides general principles and guidance, and we would have appreciated an effort by petitioner to bring some of it to our attention.

Another preliminary matter we address is the scope of this appeal. At some points in her brief, petitioner appears to attack both the September 5, 2008, order granting respondent temporary custody of the children and the May 24, 2010, granting respondent permanent physical custody. Petitioner's notice of appeal, however, specifies only the May 24, 2010, judgment, and she does not argue that the September 2008 judgment was a step in the procedural progression leading to the May 2010 judgment. See *Fitch v. McDermott, Will and Emery, LLP*, 401 Ill. App. 3d 1006, 1014 (2010) (noting exception to the rule that only judgments specified in the notice of appeal are properly before the reviewing court). Therefore, we consider only the May 2010 judgment granting respondent permanent physical custody of the children.

The trial court has broad discretion in determining the custody of minor children (*In re Marriage of Craig*, 326 Ill. App. 1127, 1129 (2002)), given the court's superior position to observe the temperaments, personalities, and capabilities of the parties (*In re Marriage of Petraitis*, 263 Ill.

App. 3d 1022, 1037 (1993)). We will not upset a custody determination unless it is against the manifest weight of the evidence or stems from a clear abuse of discretion. *In re Marriage of Archibald*, 363 Ill. App. 3d 725, 738 (2006). We reverse only where the trial court "acts arbitrarily without conscientious judgment or, in view of all the circumstances, exceeds the bounds of reason and ignores recognized principles of law so that substantial injustice results." *Id.* at 739. "There is a strong and compelling presumption in favor of the trial court's determination of custody." *Cooper v. Cooper*, 146 Ill. App. 3d 943, 951 (1986).

Petitioner attacks the trial court's decision in several respects, but her initial focus is Dr. Braden's evaluation and the court's reliance upon it. Petitioner appears to assume that the report was essential to the trial court's May 2010 decision on permanent custody, but we are not so sure. Certainly, on the issue of temporary custody, the report was, by the trial court's admission, foremost in its mind, but later at the dissolution hearing the court did not indicate whether and to what degree the report continued to influence it. The court did not have to find Dr. Braden's report compelling in order to grant custody to the parent Dr. Braden recommended. "The trial court is the ultimate fact finder in a child custody case, not the expert witness." *In re Marriage of Saheb and Khazal*, 377 Ill. App. 3d 615, 628 (2007). The trial court might have viewed Dr. Braden's report not as independently compelling but as corroboration for what the court determined of its own accord. There was, indeed, substantial corroboration for Dr. Braden's conclusions, particularly regarding certain of petitioner's personality traits, which appeared to manifest themselves not only in her interaction with respondent but also during her testimony at the dissolution hearing. We describe these below, but first we address petitioner's criticism of Dr. Braden's report.

First, petitioner questions Dr. Braden's qualifications and methodology. Here petitioner emphasizes the ways in which she believes Dr. Braden was out of compliance with the APA and AFCC standards regarding child custody evaluations. Petitioner claims that compliance with these standards is "imperative for an evaluator," but cites no authority for this. There did appear below to be an implied consensus among the parties and the witnesses that the standards carry some weight in the field, and respondent on appeal does not question their import. Nonetheless, we have found no published decision relying on the standards, and this is no surprise. The trial court, as ultimate fact-finder in a custody case, is not bound by the standards of professional organizations, or indeed by any criteria except the law of Illinois, in determining the weight to be given a custody evaluation. See *Marriage of Saheb and Khazal*, 377 Ill. App. 3d at 628. Of course, to the extent that the AFSS and APA standards are in accord with the legal principles that guide the trial court in custody determinations, they are relevant.

That said, we are not convinced that Dr. Braden's report fell as far short of the APA and AFCC standards as petitioner claims. Petitioner first asserts that Dr. Braden, contrary to the standards, failed to describe the extent to which she consulted Dr. Shapiro. As for the APA standards, they contain no requirement that the evaluator describe her interaction with the consultant. The AFCC standards do require the evaluator to "briefly describe[]" the consultant's role, but they contain no requirement that the description appear in the written report itself. Here, Dr. Braden testified that she shared with Dr. Shapiro some of the results of her psychological testing of the parties and that they discussed her impressions of the case. Petitioner appears not to have considered whether this testimony was adequate to meet the description requirement of the AFCC, and we have no reason to doubt it was.

Petitioner also finds it significant that Dr. Braden did not consult Dr. Shapiro until a month before she finished her evaluation, and only after "she was accused of bias by [respondent's attorney]." We do not read the APA or AFCC standards to require that the consultation occur by a certain point in the evaluation process. Notably, Dr. Braden was directly questioned about the timing of her consultation and stated that she would have consulted Dr. Shapiro even if respondent's attorney had not accused her of bias. It was for the trial court, as arbiter of witness credibility, to judge the truthfulness of this testimony. It was likewise for the trial court to determine whether Dr. Braden's recommendation was affected by respondent's remark to her that if she did not recommend in his favor, he would find someone who would.

Petitioner claims that Dr. Braden's methodology was suspect also because she did not interview collateral witnesses as required by the AFCC and APA standards. Though Dr. Braden's report arguably failed to meet the standards on this point, there was nonetheless an ample factual context for the court to determine custody. The parties testified extensively, and more than 10 witnesses exclusive of the parties' experts appeared at the evidentiary hearings and gave testimony on the personalities and capabilities of the parties.

Petitioner also asserts that Dr. Braden's report was outdated because, in the 18 months that passed between the completion of her report and the dissolution hearing, she did no follow-up interviews of the parties or the children. The parties, however, testified for hundreds of pages in the reports of proceedings of the dissolution hearing. This allowed the court a suitably contemporaneous impression of the parties.

Petitioner's final criticism of the form of Dr. Braden's analysis is that she did not mention the section 602(a) factors in her report. We note, however, that Dr. Goldstein likewise failed to

mention the factors. Neither report was rendered useless for this reason, however. The experts' discussion of the section 602(a) factors would have been advisory in any case, as it was ultimately the trial court's prerogative to apply the factors. Expert opinions in custody cases are helpful because they collect data that the court is unable to collect and make findings and recommendations in areas that are not within the court's expertise but are relevant to the custody determination. Applying the section 602(a) factors was not, of course, beyond the trial court's expertise.

Besides criticizing Dr. Braden's report in isolation, petitioner asserts that the report compares unfavorably to that of Dr. Goldstein, who not only was more experienced in custody evaluations but interviewed several collateral witnesses and produced a report that was (in petitioner's opinion) more thorough than Dr. Braden's. A trial court's decisional process on custody issues is not, however, a simple matter of weighing the reports of the experts and finding in accord with the weightier report. The trial court may find a report lacking in substance yet rule in favor of the recommended parent because the report's conclusions are substantiated by the other evidence at trial. As we explain below, regardless of the deficiencies in Dr. Braden's report, the remaining evidence supported her ultimate recommendation as well as some of her supporting findings.

Petitioner next attacks the substance of Dr. Braden's report. First, she notes that Dr. Braden admitted at the dissolution hearing that, contrary to her report, petitioner had not failed to arrange nonroutine medical care for the children in the various instances Dr. Braden listed in her report. Second, petitioner contends that Dr. Braden's concern over petitioner's mental health was undercut by the psychological of testing of petitioner by Dr. Goldstein and by her psychiatric evaluation by Dr. Rossiter, neither of which disclosed a mental disease or defect in petitioner.

Petitioner's substantive criticism of Dr. Braden's report dovetails with her general attack on the trial court's custody determination. The primary and paramount concern in a child custody case is the best interest and welfare of the child. *In re Marriage of Phillips*, 244 Ill. App. 3d 577, 584 (1993). Section 602(a) enumerates factors that the court "shall" consider in determining custody (750 ILCS 5/602(a) (West 2008)), but the list is nonexclusive (*In re Marriage of Martins*, 269 Ill. App. 3d 380, 389 (1995)). The section 602(a) factors relevant here are:

> "(1) the wishes of the child's parent or parents as to his custody;
>
> (2) the wishes of the child as to his custodian;
>
> (3) the interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interest;
>
> (4) the child's adjustment to his home, school and community;
>
> (5) the mental and physical health of all individuals involved;
>
> * * *
>
> (8) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child." 750 ILCS 5/602(a) (West 2008).

In its brief rationale for its decision, the trial court mentioned factor (1), finding it to be neutral between the parties. The court mentioned an additional factor, which "most weigh[ed]" in the court's mind. This factor was "how do we keep both parties so actively involved in working for the best interests of the children." We gather this was a reference to factor (8). The court mentioned no other factors. We will not reverse a trial court's decision for failure to state specific findings on each section 6026(a) factor as long it is evident that the court considered all the factors. See *In re*

Marriage of Stribling, 219 Ill. App. 3d 105, 107 (1991). It was enough that the court said it considered "the factors in the best interest of the children." See *id.* at 107-08 (trial court noted for the record that it considered the statutory criteria governing a custody decisions).

Regarding factor (8), on which the court placed most emphasis, petitioner claims the evidence weighed clearly in her favor. First, petitioner notes Dr. Goldstein's finding that respondent's high level of narcissism, as determined by psychological testing, would impair his willingness to encourage a close and continuing relationship between petitioner and the children. Second, petitioner point to what she regards as positive evidence of respondent's unwillingness to foster a good relationship between her and the children. Petitioner cites respondent's sarcastic and verbally abuse conduct toward her in the children's presence at visitation exchanges as well as his tape-recording of her during those exchanges. Petitioner observes that not only did Brielle, as noted by Dr. Braden, disapprove of respondent's "name calling," but so did Dr. Braden herself, who commented that respondent's behavior was "not conducive to healthy interactions and [was] not good role model behavior[]." Petitioner also asserts that respondent has unreasonably denied her additional visitation and restricted her telephone access to the children. Fourth, petitioner cites Brielle's anxiety, which apparently first arose while respondent had temporary custody of the children, and which, petitioner claims, is "indicative of the stress being placed on [her], arguably as a result of [respondent's] inability to facilitate [petitioner's] relationship with the children."

The trial court, we must assume, took note of all these considerations. As for Brielle's anxiety, petitioner can only speculate that it stemmed from respondent's behavior specifically. Dr. Goldstein, notably, did not opine as to its cause. Dr. Braden testified that anxiety in children of divorcing parents is not unusual, particularly if the children are being pressured by one or both

parents. Dr. Braden, however, did not opine as to which, if any, party was pressuring Brielle. Significantly, respondent, who has daily contact with Brielle, testified that the anxiety has subsided, and petitioner did not contradict this testimony..

As for the remaining points petitioner raises, they unquestionably highlight some undesirable conduct by respondent. No party in a custody case, however, is flawless. See *Cooper*, 146 Ill. App. 3d at 951 (noting that each party pointed "to instances of what he or she feels is improper conduct on the part of the other spouse," but that "[n]eedless to say, no parent is perfect"). It is quite apparent that the antagonism in this case is mutual and that each party, unfortunately, has striven to frustrate and irritate the other. For instance, petitioner and respondent have each accused the other of unreasonably denying additional visitation. Dr. Goldstein found evidence that respondent was culpable on this score. As for petitioner, she claims that there is no evidence that she "ever kept [respondent] from the children" or "ever interfered with *Court ordered* parenting time" (emphasis added). This, however, was just respondent's point; he testified that petitioner denied him visitation that was not court-ordered. Dr. Braden wrote in her report, and confirmed at trial, that petitioner stated during interviews that she had denied respondent visitation unless he had a further order of the court. At the dissolution hearing, petitioner denied that she had so restricted respondent's visitation, but failed to address why Dr. Braden wrote and testified that petitioner admitted to the restriction. The parties testified to two particular visitation incidents—on November 30, 2007, and May

15, 2008, respectively—that each thought showed the other acting unreasonably. In both cases, respondent bore some fault for attempting to take the children without waiting until he received permission from petitioner. The May 2008 incident showed petitioner, for no stated reason, denying

an apparently legitimate visitation request made, it seems, adequately in advance. As for the November 2007 incident, petitioner admitted that she received advance e-mail notice of respondent's intent to take Lauren. Even if respondent was presumptuous in coming to the daycare to take Lauren, petitioner reacted perhaps too harshly by barring him from picking up Lauren a few hours early on his visitation weekend. Neither party emerged spotless from these incidents, and in any case they do not demonstrate that respondent was manifestly more unreasonable regarding visitation than petitioner.

We note that the other evidence on visitation casts both parties in fairly much the same light. Each party has delayed visitation exchanges and acted inappropriately during the exchanges by increasing tensions and manipulating the children's emotions.

As to petitioner's claim that respondent has withheld the children's medical information from her, the accusation is mutual. Each party specified instances where the other delayed the disclosure of medical information. For instance, respondent claimed that he was not told of Lauren's hospitalization for an allergic reaction until nine days after the incident. Petitioner, for her part, claimed that respondent did not timely disclose Brielle's anxiety attacks. In these, as in many other examples, the accused party offered an explanation for the delay or simply denied that there was a delay. These were credibility determinations for which the trial court was far better suited than we to resolve. Notably, though petitioner is correct that Dr. Braden retracted her concerns about petitioner's ability to schedule nonroutine medical care for the children, petitioner does not challenge Dr. Braden's assertion that petitioner failed to share medical information with respondent. Specifically, Dr. Braden reported that petitioner did not tell respondent about Brielle's complaint that she was unable to see the blackboard at school.

Relevant not just to factor (8) but generally to petitioner's fitness as physical custodian of the children were some glaring reversals in her testimony at the custody hearings. For instance, at the temporary-custody hearing, petitioner initially testified that, during the last six months before their separation, respondent hid her car keys almost daily. Upon further questioning, petitioner progressively retreated from this claim, ultimately admitting that, though respondent threatened many times to hide her keys, he actually hid them only once.

Another instance was petitioner's striking attempt at the dissolution hearing to obfuscate her routine on work days. On direct examination, petitioner vacillated about her departure time, claiming 6:45 a.m. at one point and 7:30 a.m. at another. On cross-examination, petitioner was confronted with I-Pass records showing several days where she must have left her house well before 6 a.m. Petitioner then claimed, incredibly, that she was speaking on direct examination not about her current departure time but, rather, her departure time for a job she left six months ago. Petitioner then stated that, since February 2010, she has left her house at 6 a.m. on work days. Petitioner now strains her credibility with this court by citing only her testimony on direct examination regarding her departure times and asserting that she leaves for work at 6:45 a.m. In her argument section, petitioner, again without acknowledging her admissions on cross-examination, and without making any qualification, asserts that her schedule better "mirrors" the children's schedule than respondent's does—even though respondent testified without contradiction that he leaves for work at 7 a.m.

Petitioner's reversals in her testimony below may well exemplify what Dr. Braden saw as petitioner's difficulty maintaining consistency. Dr. Braden was unable to determine whether petitioner was "intentionally working to deceive *** or her thought process is so disorganized that she is unable to properly track events and information." Dr. Braden identified instances in her

interviews with petitioner where she was inexplicably inconsistent in her conduct and statements. Based on petitioner's demonstrated history of inconsistency, both in and out of court, the trial court may well have found her generally lacking credibility. Specifically relevant to factor (8), the court may well have not believed petitioner's claim that she would not move from Rochelle if given custody of the children. The court may well have remembered that, when previously given custody of the children, she moved 60 miles away from Rochelle to Naperville. Notably, petitioner admitted that she did not even attempt to look for employment in Rochelle before moving away. The trial court could have found the move to Naperville consistent with a seeming impulsive streak in petitioner, which may have also shown itself in petitioner's 2001 divorce filing. Petitioner's stated reason for filing—that respondent had not placed the Nebraska house up for sale—raises as many questions as petitioner's election thereafter to remain in the marriage and have two more children with respondent. Notably, petitioner never contradicted respondent's testimony that, after she filed the instant divorce petition in December 2006, she offered to back together with respondent.

Also pertinent to factor (8) is the animosity between petitioner and respondent's extended family, as witnessed in the March 2005 incident at the hospital after Bailey's birth and the summer 2006 incident at Brielle's birthday party.

We recognize, of course, that psychological testing revealed a high level of narcissism in respondent and that Dr. Goldstein specifically found that this trait did not "bode well" for respondent's willingness to encourage a good relationship between petitioner and the children. We think this was, at most, a counterbalance to petitioner's own negative traits and, as such, did not shift the manifest weight of the evidence against respondent. The same is true of the ironically similar occasions where the parties each transported the children while they were sick.

The evidence on the remaining section 602(a) factors does not overcome the compelling evidence under factor (8)----the factor singled-out by the trial court—that respondent was better suited to be primary physical custodian of the children. Factor (1), the wishes of the parents, is, of course, neutral here. Petitioner makes no argument on factors (2) and (3) (the wishes of the child, and his or her relationship with parents, siblings and other persons significant in the child's life). Factor (2) does, in fact, appear to favor petitioner. Dr. Braden made no finding as to the children's preference, but Dr. Goldstein, through psychological testing and interviews, found that Lauren has a strong preference, and Brielle a milder preference, for petitioner. (Dr. Goldstein did not attempt to learn Bailey's preference.) The child's preference, however, is not dispositive in a custody determination. *Cooper*, 146 Ill. App. 3d at 951. Factor (3) appears largely to be in equipoise. Dr. Goldstein concluded from his observations that the children have an emotional attachment to both parents but a stronger bond with petitioner. We think, however, that the difference in attachment was not so strong as to tip this factor in petitioner's favor—especially given the countervailing fact that there has been quarreling between petitioner and Venti's live-in boyfriend, Jules. At the temporary-custody hearing, Venti testified that Jules once barred petitioner from her home but that she has since been welcomed back. At the dissolution hearing, however, respondent testified that the children presently are banned from Venti's home. Petitioner did not challenge this testimony. Furthermore, respondent testified, without contradiction, that the children have a close relationship with his family and that his mother has attended school events for the children.

On factor (4), the evidence is clear that the children are well adjusted to their present home, school, and community. Respondent testified that the children are doing well academically, have friends in the neighborhood, and are involved in sports. Petitioner does not question this. Petitioner

and respondent both testified that Brielle has had difficulty with homework. Each blamed the other for it. Since there is no evidence to resolve the conflict, it is purely a credibility question, on which we defer to the trial court. Notably, from respondent's testimony it appears that the Brielle is no longer having the difficulty with homework.

That the children have been thriving in respondent's care seriously detracts from petitioner's argument that she would be the better custodian because she was essentially the sole caretaker for the children while the parties were living together. She claims that respondent was "disengaged in the day-to-day activities and upbringing of the children" and, until he sought physical custody of the children, showed "little or no little interest in their medical treatment or doctors' appointments." An important consideration in determining custody is whether one of the parents was the primary caregiver of the children during the marriage and whether placing the child with that parent would promote stability and continuity. See *In re Marriage of Lombauer*, 200 Ill. App. 3d 712, 723 (1990); *In re Marriage of Hefer*, 282 Ill. App. 73, 77 (1996). This consideration also applies, however, where a parent has been the primary caregiver during a period of temporary custody. See *In re Marriage of Wycoff*, 266 Ill. App. 3d 408, 414 (1994). At the time of the February 2010 dissolution hearing, the children had been with respondent for 16 months, and the trial court had to consider not just petitioner's role in the care and rearing of the children during the marriage but also respondent's role during the period of temporary custody. Petitioner admitted that respondent has "has come up to speed" on his involvement with the children.

It seems petitioner believes she is more deserving of custody because she was the primary caregiver for a longer period. We agree with the trial court's comment at the temporary-custody hearing that respondent should not be penalized for having been a good provider during the marriage

even if it meant long periods of separation from the family. Petitioner, however, also testified that respondent was effectively absent even when home, because he spent evenings in the garage or with friends and was generally uninterested in the children's lives. Petitioner described respondent's refusal to help at Lauren's birthday party in summer 2006 and his disengagement while coaching Brielle's T-ball team. Venti and other witnesses testified that, during the times they were at the parties' house, respondent was uninvolved with the children. The observations of these witnesses were, necessarily, limited. Respondent, we note, directly contradicted petitioner's testimony that he remained aloof from domestic tasks. He claimed that he cooked and did laundry. He further suggested that it was petitioner who never did such tasks. Also, in direct contradiction to petitioner's account of their evenings, respondent testified that he nightly made dinner and put the children to bed. Respondent also testified that he was involved in the children's activities and was not reluctant to coach Brielle's T-ball team. It was for the trial court to resolve such starkly opposed testimony. We are not prepared to agree with petitioner that evidence of respondent's past indifference to the children is so abundant that he is unqualified for (or somehow undeserving of) custody despite his undisputed success in caring for the children in the 14 months before the dissolution hearing.

On factor (5), petitioner argues, as we noted, that Dr. Braden's concerns about petitioner's mental health were revealed as groundless in light of Dr. Rossiter's psychiatric evaluation of petitioner. However, Dr. Braden observed negative traits in petitioner that are a legitimate concern whether or not a symptomatic of a mental defect. Respondent has negative traits of his own, but we cannot say, as a reviewing court, that his outweighed petitioner's to such an extent that the trial court's decision was a manifest injustice.

As our last point, we return, briefly, to the matter of the parties' work schedules. In recommending petitioner as physical custodian, Dr. Goldstein was concerned that, because respondent (on school days) typically drops off the children at Flanagan's at 6:30 to 7 a.m., the children must "get up quite early." As we noted, however, petitioner admitted that she has left for work much earlier than 6 a.m. and that her current departure time is 6 a.m. Regarding return times, respondent testified that he generally arrives home (or at Flanagan's) between 4 and 6 p.m. This was consistent with what Flanagan reported to Dr. Goldstein. Goffinet testified that respondent generally arrives home between 6 and 7 p.m. Whether petitioner generally arrives home earlier is, however, unclear. While she asserted unequivocally on direct examination that she never arrives home later than 4:30 p.m., she later admitted that I-Pass records showed that she must have arrived home later than this on multiple occasions.

Petitioner claimed that respondent works late during the harvest season, but her testimony was not substantiated by respondent or by any other witness with knowledge of respondent's daily schedule. Respondent did admit that he works weekends during the harvest season. Regarding vacation days, respondent testified that his holiday schedule mirrors that of the public schools. Though it might be presumed that petitioner, as a school employee, has summer vacations like the children, she testified at the dissolution hearing that she worked the entire past summer. Yet even if, as Dr. Goldstein found, petitioner's work schedule was better for the children, this was only one of a host of considerations for the trial court, and we cannot say the court gave it too little weight.

In closing, we note that, in rendering its decision granting respondent temporary custody, the trial court commented that the case was difficult to decide and that the court had not slept well. Even after several days of testimony at the dissolution hearing, it was no more obvious which parent would be the better custodian. It is, however, precisely because the evidence in the trial court was closely

balanced that we must affirm the court's decision. See *In re Marriage of Pool*, 118 Ill. App. 3d 1035, 1039 (1983) (where evidence in custody case "clearly favored neither party," the reviewing court was compelled to affirm the trial court's decision).

For the reasons provided above, we hold that the trial court did not error in granting respondent physical custody of the parties' children. Therefore, we affirm the judgment of the circuit court of Ogle County.

Affirmed.