2011 IL App (2d) 110595-U
No. 2—11—0595
Order filed November 23.2011

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

WILLIAM CISZON,	)	Appeal from the Circuit Court
	)	of McHenry County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 09—DV—1072
	)	
ILSA CISZON,	)	Honorable
	)	Michael J. Chmiel
Respondent-Appellant.	)	Judge, Presiding.

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

ORDER

Held: The trial court's order granting the parties a judgment for dissolution of marriage is affirmed on the following grounds: (1) the respondent forfeited any argument that the trial court violated a local court rule by proceeding to trial without mediation when she failed to make any objection below; (2) we lack jurisdiction to review the trial court's order restricting visitation during the pendency of the trial because it was not a final order; (3) the order granting the petitioner residential custody of the children was not against the manifest weight of the evidence; and (4) the denial of the respondent's request for maintenance was not an abuse of discretion.

¶ 1 Respondent, Ilsa Ciszon, ("Ilsa") appeals from a judgment of dissolution of marriage to petitioner, William Ciszon, ("William"). On appeal, Ilsa raises four issues: (1) the trial court erred in allowing this matter to proceed to trial without first proceeding to mandatory mediation pursuant

to local court rule; (2) the trial court erred in entering an order *sua sponte* restricting the parties' visitation during the pendency of the trial; (3) the award of residential placement of the children with William was against the manifest weight of the evidence; and (4) the trial court erred in determining that Ilsa should receive no maintenance. For the following reasons, we affirm.

¶ 2 I. FACTS

¶ 3 The record reflects that on October 28, 2009, William filed a verified petition for dissolution of marriage. At the time he filed the petition, William was 38 years old and Ilsa was 30 years sold. William sought joint custody of the parties' two sons, eight-year-old G.C, and seven-year-old G.C. At that time, the parties resided in the marital home with the children.

¶ 4 On November 10, 2009, Ilsa filed a petition for an emergency order of protection against William. In the petition, among other allegations, Ilsa alleged that William: (1) made repeated phone calls to her workplace and the children's day care provider; (2) removed her clothes from the master bedroom and placed them in garbage bags; (3) punched a hole in the bedroom wall; and (4) made comments to her about having sex with his girlfriend. The ex-parte petition was granted and an emergency order of protection was entered that day. The emergency order was set to expire on November 25, 2009.

¶ 5 The record does not contain any plenary order of protection entered after the emergency order expired. Instead, on November 25, 2009, an agreed order was entered giving Ilsa temporary exclusive possession of the martial residence. William agreed not to enter onto the property except for picking up and dropping off the children for visitation, and at those times he would remain outside the home. The parties were mutually restrained from harassing, bothering, following, demeaning or criticizing the other in the presence of the children. In the order, the trial court did not designate either party as residential parent but set forth specific visitation times for William.

William was also ordered to pay Ilsa $500 in "temporary support" on that day and an additional $500 within two weeks.

¶ 6 On December 30, 2009, Ilsa filed a motion for temporary relief requesting custody of the children and temporary maintenance from William. That same day Ilsa also filed a counter-petition for dissolution of marriage. On January 6, 2010, William filed a motion to compel the sale of the marital residence. A hearing was set for February 10, 2010 on Ilsa's motion for temporary relief

¶ 7 On January 29, 2010, William filed a response to Ilsa's motion for temporary relief. In his response, William denied that he had refused to provide Ilsa with adequate support and maintenance for herself and the children. He pointed out that he obeyed the previous court order to tender $1,000 to Ilsa in December 2009 as contribution toward the bills of the marital estate and for support for the minor children. He also noted that even by Ilsa's own admission in her financial affidavit, William had been paying the mortgage and the home equity loan on the marital residence. Further, William alleged that he was currently unable to meet his own financial obligations.

¶ 8 On March 8, 2010, a hearing was held on Ilsa's counter-petition for dissolution of marriage, and William's motion to compel the sale of the marital residence. Following the hearing, the trial court granted Ilsa leave to file her counter-petition. It also granted William's motion to compel the sale of the marital residence. Ilsa's motion for temporary relief was continued to April 15, 2010.

¶ 9 On March 12, 2010, Ilsa filed a counter-petition for dissolution of marriage. In her petition, she sought sole custody of the children. On March 25, 2010, Ilsa filed an second ex-parte petition for order of protection against William. Although not given notice of the petition, William's counsel learned of its filing and William was therefore present for the hearing on Ilsa's second petition for emergency order of protection.

¶ 10 The petition was heard by Judge Michael Chmiel, the same judge that presided over the instant dissolution proceedings. After a hearing, the trial court denied Ilsa's emergency petition. However, the trial court entered an order for William to stay 200 feet away from the marital property and that both parties shall send no more than five text messages or telephone calls to the other each day, and that those communications shall only pertain to the children. The order also allowed William to be at the marital property to pick up or drop off the children.

¶ 11 On April 15, 2010, the trial court entered an order stating that the parties shall cooperate in listing the marital residence. Although the trial court noted that the cause was also before the court on a motion for temporary relief, the order indicated that parties agreed to the following:

¶ 12 "2. If there are any refunds from the filing of the 2009 income tax refunds, William shall first be reimbursed the $200 the tax preparation fees paid and the balance thereof shall be divided equally between the parties."

¶ 13 No other mention was made to a ruling on Ilsa's motion for temporary relief. The matter was then set for pre-trial conference on May 19, 2010, which was then continued for status to July 13, 2010.

¶ 14 On July 7, 2010, Ilsa filed an amended motion for temporary relief. In the motion, she alleged that William had been paying the mortgage and utilities on the marital residence but had recently stopped paying the utilities. Therefore, Ilsa requested that William pay the mortgage and utilities for the marital property and contribute to the summer day care expenses for the children. In his response to Ilsa's amended motion for temporary relief, William alleged although there was no court order in place requiring him to pay support for Ilsa or the children, he has continued to pay the mortgage on the marital residence. Further, William requested that if the court entered an order for temporary maintenance, the amount that he is currently paying on the mortgage should be

factored into the amount for such maintenance. On July 13, 2010, after a hearing, the trial court ordered: (1) William to continue paying the mortgage, equity loan, taxes and property insurance until further order of court; and (2) both parties to pay half of any reasonable extracurricular expenses for each child.

¶ 15 A pre-trial conference was set for December 16, 2010. On that day, William filed an amended pre-trial conference memorandum. Under a section entitled "Contested Issues" William alleged, "[t]he parties disagree that the respondent will have residential custody of the parties' minor children, [G.C.] and [G.C.]." A pre-trial conference was held, but the transcripts from that hearing were not made part of the record. After the conference, the trial court entered an order stating, *inter alia*, that the trial will begin on January 4, 2011, and that the parties' counsel could present any written stipulations at that time.

¶ 16 On January 4, 2011, before the first witness was called, the following colloquy took place between the trial court and William's counsel:

¶ 17 "[WILLIAM'S COUNSEL]: We have a stipulation. We have an agreement on our exhibits. We have actually been working real hard on getting this ready, judge.

¶ 18 [THE COURT]: So the issue is residential parenthood?

¶ 19 [WILLIAM'S COUNSEL]: Yeah.

¶ 20 [THE COURT]: And is that the issue?

¶ 21 [WILLIAM'S COUNSEL]: That's one issue, your honor."

¶ 22 At trial, Ilsa testified that she worked in a sales position at Rogers and Hollands jewelry store. She said that her work schedule changed frequently and that she did not have any control over the changes. She could request certain days and hours to work, but she could not be guaranteed that

her requests would be granted. Further, although she is supposed to receive her schedule for the month during the first week of each month, even that schedule was subject to change.

¶ 23 Ilsa then testified at length regarding her work schedule and what days and times both she and William had custody of the children. Generally, Tuesdays after school William picks up the children from school and has them overnight until Wednesday morning. The children then go to school on Wednesday morning and they come home from school on Wednesday and stay with Ilsa. On Thursday mornings Ilsa takes the children to school, then William has the children on Thursday nights. Ilsa said that she allowed William to have the boys on Thursday nights even though it was not in the temporary order because he did not work on Fridays. William then takes the children to school on Friday, and he has them again after school on Friday until Saturday morning. On Saturdays, if Ilsa is off of work, the children stay with her. If she is working, her father watches the children, or her mother takes the children to her house overnight. When she has to work and her father is watching the children he comes to her house. However, Ilsa's mother also takes the children overnights at times when Ilsa is not working. On Sundays, William picks up the children from the marital residence if they have stayed with Ilsa, or he drives to Ilsa's mother's home and picks up the children there. The children then remain with William until around 5:30 pm on Sunday. At that time, William drives the children back to the marital residence, where Ilsa is home if she is not working, or Ilsa's father is at the home to watch the children. Ilsa then takes the children to school on Monday and they come back to stay with Ilsa after school on Monday night.

¶ 24 When asked if she was involved in a romantic relationship, Ilsa said that she had a boyfriend named Michael. According to Ilsa, Michael helped her with the children once in a while. She said that she has slept over at Michael's home and that Michael has slept overnight at the marital

residence. She admitted that Michael has slept at the house when the children were present. At the time of trial, the parties' children were eight and ten years' old.

¶ 25 When asked whether she thought it would be a problem if either of the boys were over at William's house and he had a girlfriend sleep over, Ilsa said that the children have been in that situation. She said that when she and William separated, William was dating a woman and that he and the children would sleep over at the woman's house.

¶ 26 When asked how frequently she and William have conversations that she would initiate regarding either one of the children, Ilsa said that she would only do so if something happened that was "horrible."

¶ 27 At the end of the first day of trial, the court said that it was entering the following order:

> "***I've put in this order that while a party had the residential overnight custody of a child or the children of the parties, the party shall not allow a residential overnight adult guest stay with the party unless the adult guest is related to the party like a grandparent until further order of court.
>
> I'm signing this order. I'll ask my court security officer to stamp it. *Both parties are so advised."*

¶ 28 On January 10, 2011, William filed a petition for indirect criminal contempt alleging that Ilsa had a male visitor sleep at the house overnight when the children were present, in violation of the trial court's January 4, 2011 order. On January 26, 2011, Ilsa filed a motion to vacate the January 4, 2011 order.

¶ 29 The trial resumed on February 22, 2011 without a contempt finding entered against Ilsa or an order vacating the January 4, 2011 order. While testifying, however, Ilsa admitted that her boyfriend stayed at the marital home on January 4, 2011, after the trial court entered its order

prohibiting unrelated overnight guests. According to Ilsa, she was unaware of the court's order because she did not receive a written copy of it when she left court that day. She maintained that she did not leave the courtroom knowing that her boyfriend could not sleep over when the boys were present, even though she admitted that the trial court made an oral pronouncement to this effect in court.

¶ 30 Ilsa testified that until the time the parties separated she was responsible for doing the children's homework with them, and William did none. Also, Ilsa attended all the parent-teacher conferences, while William did not. Ilsa testified that William did not know some of the children's former teacher's names.

¶ 31 Ilsa said that she allowed William to take the children on days that were not in the written temporary order. Specifically, she said she allowed William to take the children for a week to Florida when he won a trip at work to Disney World. However, she said that when she called the children in Florida one day she learned that one of the boys was not feeling well. When she asked William if she could speak to the child he told her that he could handle it and he hung up on her.

¶ 32 When asked about the children's schools, Ilsa said that she liked the schools that the children were attending. Further, if she was not able to stay in the house she would hope to keep the children in the same school district.

¶ 33 Ilsa again testified about her sales position with Rogers and Hollands jewelry store. She said that she was offered promotions to management positions at the store on two occasions and that she refused both offers. When asked to explain why she declined the promotions, Ilsa said that she had higher priorities than her career, and if she were in "corporate business" they would want her to focus more on the business than on her family. However, she also admitted that she never asked what the management positions paid, or what type of hours the positions required. Ilsa said that she

knew it would involve "more responsibility more hours, [and] more headaches" from other people in the company.

¶ 34 On direct examination, William testified that he was a salesman for Gary Lang Auto Group and that he had worked there for 15 years. When asked about this work schedule, William said that he works on Mondays from 8 a.m. to 9 p.m and on Tuesdays until 3 p.m. If he has a client after 3 p.m. he brings the children to his work and they do their homework at his desk. He works on Wednesdays from 9 a.m. to 9 p.m. and on early Thursday mornings. He has Fridays off, and he works 8:30 a.m. to 6 p.m. on Saturdays. He also works 6 p.m. to 1 a.m. intermittently at a bar as a part-time job.

¶ 35 William testified about an occasion where he won a trip at work to Disney World. Ilsa agreed that he could take the children for a week on that vacation. He provided Ilsa with an itinerary and said that he had no problem with her speaking to the children when they were on vacation. However, he stated that Ilsa called one evening to speak with the boys and one of them was experiencing constipation, a frequent problem. Ilsa wanted to speak to the child, but William wanted to handle the situation, so he told Ilsa that she could not speak to him at that time. However, the children were able to speak to Ilsa every day of their vacation.

¶ 36 William testified that he did homework with the children, both now and before he and Ilsa separated. He also cooks for them when they stay with him, and they play games together. He has been to the children's parent-teacher conferences and estimated that he has been to the boys' school on thirty to forty occasions. He said that he consulted with Ilsa on issues such as discipline, responsibilities, and education. However, he said that Ilsa did not consult with him on these issues. William said that he did not need a sitter when the children were with him because of the current visitation schedule with Ilsa. However, he said that he did not ever have other people watch his

children when they were with him, even for social reasons. He engaged in social activities only when he was not scheduled to be with the children.

¶ 37 On cross-examination, William admitted that he did not know several of the names of one of his son's former teachers. Also, he agreed that he missed a parent teacher conference in November 2010. However, he stated that he spoke to the teacher on the telephone. He could not name the last book that one of his sons was reading, but he said that he had forty or fifty books at his house for the boys to read.

¶ 38 With respect to the parties' income, both William and Ilsa stipulated to the admittance of petitioner's exhibit 33, which was William's 2010 year end pay stub showing a gross income of $89,943.47. They also stipulated to respondent's exhibit 2, which was Ilsa's 2010 year end pay stub which showed a gross income of $33,175.01.

¶ 39 In the trial court's memorandum opinion and judgment of dissolution of marriage it initially noted that after carefully reviewing the parties' testimony, along with their demeanor, the court found that William's testimony was generally credible though self-serving at times. However, the court found Ilsa's testimony to be "often less than credible, flippant, and self-serving."

¶ 40 In the section of the memorandum entitled, "Custody and Visitation" the court first noted that William and Ilsa had stipulated to joint custody. The court found that it was "challenged" to approve that stipulation "in that the parties are often at odds with each other and are found to have challenged communications." The court then noted that although Ilsa has served as the primary caretaker of the children, she has often and routinely deferred the caretaking function to her parents or others. The court went on to note that both William and Ilsa had allowed "romantic adult friends" to sleep over at their residence when the children were present. However, the court noted that when it learned about the parties having such overnight guests, it ordered that such contact for both

William and Ilsa stop until further order of the court. The court said that it entered this order because of fear about any confusion which might further befall the children as their parents sorted out the end of their marriage. The court then noted that notwithstanding this very clear directive, Ilsa was found to have violated this court order. The court said that it was concerned when a party was not able to follow a clear order of the court which involved her own children, and the failure to follow the order would be considered by the court in deciding parenting issues.

¶ 41 With regard to work, the court found that Ilsa worked in the retail industry and had schedules that she largely did not control. William, on the other hand, worked in the retail industry as well, but had a more certain schedule, which was specifically recognized by each party in open court. The court found that for social or work purposes, when Ilsa had residential custody of the children she often had one of her parents care for the children. The court found that William generally did not defer the children's care taking to others when they were in his custody.

¶ 42 The court then ruled that notwithstanding Ilsa's inability to follow a clear order of the court for the welfare of the children, the parties' agreement to joint custody would be respected and approved. It then found, *also notwithstanding Ilsa's inability to follow a court order*, that residential custody should be placed with William. The court made this finding primarily upon Ilsa's routine need to defer the care of the children to others, along with the relative uncertainty of her work schedule. The court also noted that a lesser factor involved the marital residence of the parties, which was awarded to William.[1] However, the court found that Ilsa should continue to have parenting time with the children without restrictions. It then went on to set out a visitation schedule.

[1] The trial court found that the marital residence should be awarded to William because the mortgages on the property were in his name alone and the property was worth about the same amount that was owed on the home. Ilsa does not contest the award of the marital residence to William on appeal.

¶ 43 With regard to maintenance, the court first listed the statutory factors that it was required to consider when making a decision concerning maintenance and then it made its findings. First, the court found that each party earned income, and both could earn more income through commissions. Second, no extraordinary needs were proven or argued by the parties. Third, it found that the present and future earning capacity of each party was found to be good. The court found it particularly noteworthy that Ilsa testified that she has had recent access to better paying positions which she had declined. Fourth, the court found that neither party was impaired with respect to present and future earning capacity. Fifth, it held that the parties do not need time to acquire education, training or employment, they are able to support themselves through appropriate employment, and are not precluded from employment to care for their children. Sixth, it found that the standard of living established during the marriage was moderate and within their respective means. Seventh, the duration of the marriage was "short to medium" since the parties were married nine years at the time of the filing of the petition. Eighth, the court found that Ilsa and William were relatively young and were in good physical and emotional condition. Ninth, the court held that it did not receive competent evidence to make findings on the tax consequences of property division upon the respective economic circumstances of the parties in this case. Tenth, the court held that it also did not receive competent evidence to find contributions and services by either party to the education, training, career or career potential, or license of the other party. Eleventh, the court noted that the parties had agreed that William would waive any claim to maintenance. The court held that for these reasons, Ilsa and William were able to support themselves and that no further maintenance was needed. It pointed out that William had been previously ordered to pay interim maintenance to Ilsa to provide her with the opportunity to adjust to life apart from William, but again, notwithstanding distinct opportunities to improve her position, Ilsa had elected to pass on such

opportunities. Ilsa's decision to pass up promotions at work suggested to the court that no further maintenance was needed. In addition, the court found that certain financial obligations to support the parties' children would be borne by William alone. Accordingly, the court held that while the interim maintenance did not need to be paid back to William, no further maintenance was warranted.

¶ 44 II. ANALYSIS

¶ 45 A. McHenry County Local Rule 18.03

¶ 46 On appeal, Ilsa first argues that the trial court erred in allowing this cause to proceed to trial in the absence of mandatory mediation as required under McHenry County Local Rule 18.03 (22nd Judicial Cir. Ct. R. 18.02). Specifically, Ilsa alleges that although residential placement of the children was a contested issue, the record is absent of: (1) any motions filed by either party seeking mediation; (2) a court order denying either party's request for mediation; or (3) an order finding either or both of the parties impaired, eliminating the need for mediation. Ilsa claims that once the trial court realized that residential placement was an issue, it had an obligation to order mediation and not proceed to trial until mediation had concluded.

¶ 47 In response, William argues that Ilsa has waived any alleged violation of a local rule 18.03 when she did not object to the trial court's alleged failure to require mediation either before or during trial. Additionally, William claims that if Ilsa had included in the record on appeal the transcripts of the pre-trial conference which took place on December 16, 2010, the record would accurately reflect that the parties discussed mediation at the conference and that Ilsa's counsel admitted that mediation would have been fruitless. William further alleges that he requested that Ilsa supplement the record with the transcripts of that hearing, but that Ilsa denied his request as untimely under Supreme Court Rule 323. See Ill. S. Ct. R. 323 (eff. December 13, 2005). As support for this allegation, William attached two exhibits to his brief on appeal: (1) a letter that his

counsel wrote to Ilsa's counsel requesting that Ilsa supplement the record to include the transcripts of the pre-trial conference; and (2) a letter from Ilsa's counsel refusing this request as outside the seven-day window in which to request that the appellant supplement the record under Supreme Court Rule 323 (eff. December 13, 2005).

¶ 48 McHenry County Local Rule 18.03 provides, in pertinent part:

> "(a) **Matters Subject to Mediation**. The designated family judge shall order mediation of any contested issue of parental responsibility, custody, visitation, or access to children arising in any action not otherwise determined to be ineligible pursuant to this program. This shall apply to dissolution of marriage and paternity cases involving the custody of child or visitation issues (whether or not the parties have been married).
>
> The parties may not proceed to a judicial hearing on contested issues including temporary relief arising in that case without leave of Court, or until the mediation process has been concluded and its outcome (with disclosures as to outcome being limited to what is set forth herein and as are consistent with the provisions of the Uniform Mediation Act) has been reported to the Court. Notwithstanding, the Court may enter an order for temporary child support or other adequate financial relief for good cause shown." 22nd Judicial Cir. Ct. R. 18.03(a).

¶ 49 Mediation shall not be required if the court determines an impairment exists. 22nd Judicial Cir. Ct. R. 18.03 (b). An "impairment" is defined as "any condition which hinders the ability of a party to negotiate safely, competently, and in good faith." 22nd Judicial Cir. Ct. R. 18.02(b).

¶ 50 It is well-settled law that questions not raised in the trial court cannot be argued for the first time on appeal. *Robidoux v. Oliphant*, 201 Ill. 2d 324, 344 (2002).

¶ 51 Here, Ilsa concedes that the record does not contain any motions filed by either party seeking mediation and that the trial court never entered an order with regard to mediation. Further, she does not contend that she ever objected to the case proceeding to trial without mediation. Therefore, she cannot complain on appeal, for the first time, that proceeding to trial violated a local court rule. See *In re Estate of Murphy*, 56 Ill. App. 3d 1037, 1039 (1978) (appellant's failure to bring to the trial court's attention a violation of a circuit court rule will serve as a waiver of appellant's contentions for purposes of appellate review). To address this argument on appeal would allow Ilsa to remain silent throughout the trial and, when she was unhappy with the results of her divorce proceedings, seek to "wipe the slate clean" on the basis of an alleged violation which she could have, and did not, complain. For these reasons, we find that Ilsa has forfeited any alleged error here.

¶ 52 Although we have found that Ilsa forfeited this issue by failing to object below to the trial court's alleged violation of local rule 18.03, we feel compelled to address the issue of Ilsa's refusal to supplement the record in this case. Although we do not take judicial notice of the exhibits attached to William's brief, we do note that nowhere in Ilsa's reply brief does she refute the allegations that William raised in the body of his brief that mediation was discussed and rejected at the pre-trial conference. In light of these allegations, and even if William's request to supplement the record was untimely under Supreme Court Rule 323, it was incumbent upon Ilsa to provide a complete record in order for this court to review her contentions on appeal. See *People v. Banks*, 378 Ill. App. 3d 856, 861 (2007) (the responsibility for preserving a sufficiently complete record of the proceedings before a trial court rests with the appellant). Her failure to do so cannot be condoned and may have served as a basis to affirm the trial court had she not already forfeited this issue by failing to object to the trial court about any alleged violation of a local court rule.

¶ 53 B. Order Restricting Visitation During Trial

¶ 54 Next, Ilsa argues that the trial court erred in entering, *sua sponte,* a court order during trial restricting the parties' visitation. Specifically, Ilsa refers to the order entered after the first day of trial on January 4, 2011, which provided that while a party has the residential overnight custody of the children, they shall not allow an overnight adult guest unless the guest is related to the parties.

¶ 55 Ilsa alleges that the statutory standard for restricting or denying visitation provides that a trial court may not restrict or deny a parent visitation unless it finds "that the visitation would endanger seriously the child's physical, mental, moral or emotional health." See 750 ILCS 5/607(a), (c) (West 2010). Ilsa contends that there was no testimony from either party that the children were in any type of danger from either party. Therefore, she argues that there was no basis for the trial court's *sua sponte* order.

¶ 56 In response, William contends that: (1) the preliminary order is not appealable as a final judgment, and Ilsa did not appeal the preliminary order as an interlocutory appeal; (2) the preliminary order did not affect the final judgment; (3) the preliminary order is now moot because the final judgment specifically gave Ilsa visitation time without restrictions; and, in the alternative (4) the trial court did not err in entering the preliminary order *sua sponte*.

¶ 57 Supreme Court Rule 301 provides, "[e]very final judgment of a circuit court in a civil case is appealable as of right." Ill. S. Ct. R. 301 (eff. February 1, 1994). An order is final if it "terminates the litigation between the parties on the merits or disposes of the right of the parties either on the entire controversy or on a *** separate part of it." *Village of Bellwood v. American National Bank and Trust Company of Chicago*, 2011 IL 093115, ¶ 14. Further, Supreme Court Rule 366 provides that any error of law *affecting the judgment or order appealed from* may be brought up for review." (Emphasis added) Ill. S. Ct. R. 366(b)(1)(i) (eff. February 1, 1994).

¶ 58 Here, Ilsa appeals the preliminary order under the final memorandum opinion and judgment for dissolution of marriage, which was entered on June 2, 2011. She did not file an interlocutory appeal. We agree with William that the trial court's order restricting the parties from having non-related overnight guests when the children resided with them during the pendency of the trial is not appealable as a final judgment. First, the trial court never ruled on William's petition for indirect criminal contempt for Ilsa's alleged violation of the court's January 4, 2001 order. Had the trial court done so, *and* imposed a sanction, that order would have been a final one subject to appeal. See *In re Marriage of Ruchala*, 208 Ill. App. 3d 971, 976 (1991) (contempt order is not appealable until trial court imposes a sanction). Second, the order regarding visitation did not terminate the litigation on the merits or dispose of the parties' rights in any fashion. Third, the order did not affect the final judgment. When awarding residential placement to William, the trial court specifically held that *notwithstanding* Ilsa's inability to follow a clear order of the trial court, it found that residential custody should be placed with William. Since the trial court's order restricting visitation during the pendency of the appeal was not a final judgment, we lack jurisdiction to review this issue. See *In re Marriage of Verdung*, 126 Ill. 2d 542, 553 (1989).

¶ 59 C. Residential Custody

¶ 60 Ilsa next argues that the trial court's order awarding residential placement of the children with William was against the manifest weight of the evidence. Specifically, Ilsa takes issue with the following findings that the trial court made in its memorandum opinion and judgment: (1) that she often deferred the care-taking function of the children to others; (2) that she had a boyfriend who spent the night while the children were with her; and (3) that she did not control her work schedule. She claims that it was error for the trial court to repeatedly admonish her for not following its "inappropriately entered *sua sponte* order of January 4, 2011" and when the court indicated that her

repeated violations should be considered when deciding parental issues. Finally, Ilsa contends that she proved that it was in the best interests of the children that residential custody should be placed with her.

¶ 61 The trial court must determine custody according to the best interests of the child. 750 ILCS 5/602(a) (West 2010). In making that determination, trial courts are to consider the following factors:

> "(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;
>
> (6) the physical violence or threat of physical violence by the child's potential custodian, whether directed at the child or directed against another person;
>
> (7) the occurrence of ongoing abuse as defined in Section 103 of the Illinois Domestic Violence Act of 1986, whether directed against the child or directed against another person;
>
> (8) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child;
>
> (9) whether one of the parents is a sex offender; and
>
> (10) the terms of a parent's military family-care plan that a parent must complete before deployment if a parent is a member of the United Sates Armed Forces who is being deployed." 750 ILCS 5/602 (a)(1),(2),(3),(4),(5),(6),(7),(8) (West 2010).

¶ 62 The trial court's findings as to the best interests of the children are entitled to great deference because the trial judge is in a better position than the appellate court to observe the temperaments and personalities of the parties and assess the credibility of witnesses. *In re Marriage of Stopher*, 328 Ill. App. 3d 1037, 1041 (2002). A reviewing court will not overturn a trial court's custody determination unless it is against the manifest weight of the evidence, is manifestly unjust, or results from a clear abuse of discretion. *Stockton v. Oldenburg*, 305 Ill. App. 3d 897, 906 (1999).

¶ 63 In support of her contention, Ilsa cites to the statutory factors that a trial court should consider when making custody determinations. See 750 ILCS 5/602(a) (West 2010). We will review the statutory factors upon which Ilsa relies. First, Ilsa claims that the third statutory factor, which instructs the court to consider "the interaction and interrelationship of the child with his parents, his siblings and any other person who may significantly affect the child's best interests," favors her. See 750 ILCS 5/602(3) (West 2010). Specifically, she refers to the close relationship that she shares with her parents, and argues that instead of this relationship being seen as beneficial, the trial court instead saw it as a "casting off" of the parties' children. Ilsa also points out that she has been the sole care giver of the children until the beginning of the divorce proceedings, and up until the time of the divorce she was solely responsible for helping the children with their homework and attending parent teacher conferences. Ilsa also notes that William testified that he did not know the names of some of the former teachers of one of the children, and he did not know what books the other child was reading. However, Ilsa then admits that this factor should not be given great weight since both children have a good relationship with both parents.

¶ 64 We are not persuaded. First, we disagree that the trial court did not view Ilsa's relationship with her parents, and the relationship between her parents and the children, as beneficial. Instead, the court noted its concern that Ilsa constantly deferred the care giving of her children to her parents

instead of taking on that role herself. A review of the record indicates that the trial court was not holding against Ilsa the fact that she needed her parents to help watch the children when she was working. Instead, the trial court found that Ilsa worked in an industry with work hours that were largely not in her control and when she was working *and when she was not working* she allowed her children to be primarily cared for by people other than herself. Further, it was clear from the record that Ilsa did not want to change her job in order to secure a more stable work schedule for her to benefit her children. Ilsa herself testified that the had been offered promotions twice at her employment, and rejected both offers without even making a perfunctory inquiry as to the salary or work schedules that those promotions might offer.

¶ 65 We also do not find that factor number three favors Ilsa because she was the primary care giver of the children and was the only parent that helped the children with homework and attended parent-teacher conferences before the divorce. To the contrary, William testified that he helped the children with their homework before the parties separated and that he helped the children with their homework every day of his visitation. He also testified that he had been to the children's school on 30 or 40 occasions. William also provided ample testimony regarding his close relationship with the children, including playing with them, cooking for them, and taking them on vacations. Again, even Ilsa admits that this factor should not be given great weight because both parents have good relationship with the children. For these reasons, we find that factor number three does not favor Ilsa.

¶ 66 Next, Ilsa refers to factor number four, "the children's adjustment to their home, school and community." 750 ILCS 5/602(a)(4) (West 2010). With regard to this factor, Ilsa states that through the time of trial the children were living with her and going to the same school where they performed well. She claims that William "was removed from the house via the first of two orders

of protection on or about November 10th 2009." Further, Ilsa contends that there is little information regarding where the parties will be living after the divorce. Therefore, she claims, if she were allowed to remain in the marital residence, this factor would provide additional support for awarding her residential custody of the children.

¶ 67 There are several problems with Ilsa's argument regarding factor number four. First, the fact that she resided in the marital home with the children during the dissolution proceedings does not affect the children's adjustment to their home, school and community. Although Ilsa claims that *if* she were allowed to remain in the marital residence this factor would provide additional support for awarding her residential custody of the children, nowhere in her briefs does she argue that the trial court erred in awarding William the marital residence. Therefore, we will not entertain her claim that *had* she received the marital home this factor would weigh in her favor. Second, Ilsa misstates the facts of this case when she claims that William was removed from the house "via the first of two orders of protection." The record reflects that William was removed from the marital house based on one ex-parte emergency order of protection to which William received no notice. Once ripe for a hearing, however, no plenary order of protection was entered and the trial court instead entered an order agreed upon by the parties. Further, although Ilsa filed a second ex-parte petition for order of protection, the trial judge that presided over the instant proceedings denied the petition. Therefore, a second order of protection was never entered against William. Finally, we disagree with Ilsa's contention that there is little information regarding where the parties will live after the divorce. At trial, Ilsa herself testified that if she was not able to remain in the marital residence, she hoped to keep the children in the same school district. For all these reaons, we find that factor number four does not favor Ilsa.

¶ 68 Ilsa next argues that the sixth factor, which directs the court to consider "the physical violence or threat of physical violence by the child's potential custodian, whether directed against the child or against another person," favors her instead of William. See 750 ILCS 5/602(a)(6) (West 2010). As support for this claim, Ilsa again misstates the facts of this case and says that she "filed two orders of protection" against William. Ilsa then refers to the allegations contained in both ex-parte *petitions* that she filed.

¶ 69 Again, we are not persuaded. First, although Ilsa was granted an emergency order of protection on the first ex-parte petition she filed, no plenary order of protection was entered. Instead, an agreed order was entered which mutually restrained both Ilsa and William from harassing, bothering, following, demeaning or criticizing the other in the presence of the children. Further, the same trial judge who presided over the instant action heard and denied Ilsa's second ex-parte petition for order of protection. Accordingly, we find that factor six favors neither William nor Ilsa.

¶ 70 Finally, Ilsa claims that factor number eight favors her. That factor directs the court to consider "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(8) (West 2010). As support for this claim, Ilsa contends that while William has not "behaved admirably," she has instead gone out of her way to accommodate William's work schedule. A review of the record, however, indicates that although Ilsa may have accommodated William's work schedule, neither party made a concerted effort to encourage a close relationship with the other parent and the children. Ilsa testified that William hung up on her on one occasion when he and the children were in Disney World and she asked William to speak to one of the boys who was not feeling well at the time. Further, although Ilsa allowed William to take the children on a trip to Disney World, she also

testified that she only initiates conversation with William regarding the children in extreme circumstances. In its order, the trial court specifically found that it was "challenged" to approve the party's stipulation to joint custody "in that the parties are often at odds with each other and are found to have challenged communications." We cannot say, then, that this factor favored Ilsa.

¶ 71 The only remaining finding to review with regard to residential custody is Ilsa's claim that the trial court held against her the fact that she spent the night with her boyfriend. First, as we have previously held, we have no jurisdiction to review the propriety of the trial court's order restricting the parties' overnight guests while the children were present because it was not a final order. Second, in its opinion, the trial court specifically held ". . . *notwithstanding* said factor involving the inability of [Ilsa] to follow a clear order of the court for the welfare of the children, the court finds that residential custody should be placed with [William]." We interpret the trial court's remarks to mean that even disregarding the fact that Ilsa violated a clear order of the court, ample evidence existed for the court to find that residential custody was best placed with William. We agree that regardless of Ilsa's violation of a court order, there was sufficient evidence to make this finding.

¶ 72 We have reviewed the trial court's findings on the issue of residential custody of the children and we do not find them to be against the manifest weight of the evidence, manifestly unjust or a clear abuse of discretion. As we have noted, the reason that the trial court's findings are given such deference is because the trial court, not the reviewing court, is in the best position to observe the temperaments and personalities of the parties and to assess their credibility. *In re Marriage of Stopher*, 328 Ill. App. 3d at 1041. In its memorandum opinion and judgment of dissolution of marriage, the court noted that after carefully reviewing her testimony and demeanor, it found Ilsa's testimony to be "often less than credible, flippant, and self-serving." Such a finding is entitled to great weight when determining whether the trial court erred in making its custody finding. For all

these reasons, we find that the trial court's ruling that William should be awarded residential custody of the children was not against the manifest weight of the evidence, manifestly unjust or a clear abuse of discretion.

¶ 73 D. Maintenance

¶ 74 Ilsa's final contention on appeal is that the trial court erred when it determined that she should receive no maintenance. Specifically, she argues that she was entitled to maintenance because: (1) she only earned about one-third that of William's income; (2) without maintenance she would have insufficient income to meet her reasonable needs; (3) William can afford to pay her 10 to 12 percent of his monthly income for maintenance; (4) William's earning capacity is much better than hers; (5) she only denied the promotions because she is a mother first and the promotions would have caused her to focus more on her job than on her children; (6) she can make as much money in her current position as she could with a promotion; (7) she cannot support herself through employment in the style of living she enjoyed during her marriage without maintenance; and (8) the trial court should have found that the marriage lasted 11 years not nine years, because the parties were married for 11 years at the time the judgment of dissolution was filed.

¶ 75 Section 504 of the Illinois Marriage and Dissolution of Marriage Act (Act) provides establishes 12 factors to consider when deciding whether to award maintenance:

> "(1) the income and property of each party, including marital property apportioned and non-marital property assigned to the party seeking maintenance;
>
> (2) the needs of each party;
>
> (3) the present and future earning capacity of each party;

(4) any impairment of the present and future earning capacity of the party seeking maintenance due to that party devoting time to domestic duties or having foregone or delayed education, training, employment, or career opportunities due to the marriage;

(5) the time necessary to enable the party seeking maintenance to acquire appropriate education, training and employment; and whether that party is able to support himself or herself through appropriate employment or is the custodian of a child making it appropriate that the custodian not seek employment;

(6) the standard of living established during the marriage;

(7) the duration of the marriage

(8) the age and physical and emotional condition of both parties;

(9) the tax consequences of the property division upon the respective economic circumstances of the parties;

(10) contributions and services by the party seeking maintenance to the education, training, career or career potential, or license of the other spouse;

(11) any valid agreement of the parties; and

(12) any other factor that the court expressly finds to be just and equitable." 750 ILCS 5/504(a) (West 2010).

¶ 76 The Act creates an affirmative duty on a spouse requesting maintenance to seek and accept appropriate employment. *In re Marriage of Seymore*, 206 Ill. App. 3d 506, 510 (1990). A spouse cannot use self-imposed poverty as a basis for claiming maintenance when she has the means of earning more income. *In re Marriage of Seymore*, 206 Ill. App. 3d at 510. In fact, the award of maintenance to a spouse capable of improving her income can be an abuse of discretion. *In re Marriage of Wisniewski* 107 Ill. App. 3d 711, 79 (1982).

¶ 77 A reviewing court will not disturb a maintenance award absent an abuse of discretion. *In re Marriage of O'Brien* 393 Ill. App. 3d 364, 382 (2009). Generally, a "trial court's determination as to the awarding of maintenance is presumed to be correct," and an abuse of discretion exists only where we can conclude that no reasonable person would take the view adopted by the trial court." *In re Marriage of Schneider*, 214 Ill. 2d 152, 173 (2005). The party challenging the maintenance determination has the burden to show an abuse of discretion. See *Schneider*, 214 Ill. 2d at 173.

¶ 78 Here, Ilsa has failed to establish an abuse of discretion. A review of the record reflects that the trial court properly exercised its discretion and considered all the evidence at trial, along with the factors enumerated in section 504 of the Act, in determining that Ilsa was not entitled to maintenance. Although William clearly earns more income than Ilsa, and may be able to afford to pay her maintenance, the court relied heavily on the fact that Ilsa chose to pass up two promotions at work as an indication that no further maintenance was needed. Ilsa's testimony that she only rejected the promotions because accepting either one of them would have required her to put work before parenting is contradicted by her own testimony that she did not even inquire whether a promotion would afford her a set schedule or extra income. The fact that Ilsa testified that she knew a managerial position would not have set hours or allow her to make more money based upon talking to others in those positions is insufficient evidence that she make a concerted effort to, at the very least, inquire about an opportunity to earn more money with more stable hours when she was offered promotions on two separate occasions. Again, we are reminded that the trial court specifically found Ilsa's testimony to often be less than credible, flippant, and self-serving.

¶ 79 We also reject Ilsa's contention that she cannot support herself through employment in the style of living she enjoyed during her marriage without maintenance. We agree with the trial court that Ilsa's present and future earning capacity is good. Based upon the fact that she has been offered

two promotions to management positions, it is clear that Ilsa is a valued worker who could support herself in the same style of living that she enjoyed during her marriage if she chose to do so. Finally, the trial court was not required to take into account the two years this case was pending when it found that the parties were married 9 years instead of 11 years when evaluating the length of marriage for maintenance purposes. Moreover, the difference between 9 and l1 years of marriage in this case would not alter the trial court's analysis. For all these reasons, we cannot say that the trial court's maintenance determination was an abuse of discretion.

¶ 80 III. CONCLUSION

¶ 81 Accordingly, the judgment of the circuit court of McHenry County is affirmed.

¶ 82 Affirmed.