

2014 IL App (2d) 140069-U
No. 2-14-0069
Order filed June 12, 2014

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

SAM P. PALUMBO)	Appeal from the Circuit Court
)	of Du Page County.
Petitioner-Appellant,)	
)	
v.)	No. 03-F-483
)	
KENDALL RUFF,)	Honorable
)	Thomas Dudgeon,
Respondent-Appellee.)	Judge, Presiding.

JUSTICE Spence delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* We affirmed the trial court's grant of the removal petition because the trial court's finding that it was in Sammy's best interests to continue living with Kendall, his primary caregiver for almost his entire life, who had to move to New Hampshire out of economic necessity, was not against the manifest weight of the evidence.

¶ 2 Petitioner, Sam P. Palumbo (Sam), appeals the trial court's order granting respondent's, Kendall Harris's¹ (Kendall), petition for permanent removal of their minor child, Sammy, from

¹ Formerly known as Kendall Ruff, respondent changed her name after marrying Clinton Harris.

Illinois to New Hampshire. He argues that the trial court's order granting permanent removal was against the manifest weight of the evidence. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Sammy was born November 8, 2002, to Sam and Kendall. Sam and Kendall were never married but had Sammy while dating. Sam later married Alyssa Palumbo in 2011, with whom he has one child, Joey Palumbo. Kendall married Clinton Harris in 2006, and together they have one child, Carson Harris.

¶ 5 In a December 10, 2003, agreed order, Sam agreed to pay child support for Sammy, and on the same day, he and Kendall entered into an agreed order to share joint custody of Sammy. The joint custody agreement gave residential custody of Sammy to Kendall and allowed Sam liberal visitation.

¶ 6 This case is born out of Kendall's January 31, 2013, motion to permanently remove Sammy to New Hampshire. Sam opposed the motion to remove and moved to strike the petition for removal, but the trial court denied his motion to strike on March 27, 2013. On March 27, the trial court also appointed Chuck Roberts as guardian *ad litem* for Sammy. His initial recommendation was against removal.

¶ 7 On November 5, 2013, after a trial, the court entered a memorandum opinion and order granting Kendall's petition to remove Sammy. We summarize the trial court's memorandum as follows.

¶ 8 The trial court made the following relevant factual findings. Kendall and Sam were never married, and neither parent had any significant assets at the time of Sammy's birth because of their young ages. Therefore, Sam's parents, Robert and Jackie Palumbo (the Palumbos), provided Sam and Kendall with significant emotional and financial support during Kendall's

pregnancy and for years afterward. They opened their home in Glen Ellyn to Kendall after learning that she was pregnant with Sammy, and in June 2002, they purchased a townhome across the street from their home for Kendall and Sam. They were deeply committed to their grandson and were a constant presence in his life. However, Sam's involvement was "more difficult to assess."

¶ 9 Kendall and Sam resided in the townhouse across the street from the Palumbos from the time of Sammy's birth in November 2002 until June 2003. In June 2003, Sam and Kendall separated, and Sam moved back in with his parents, with whom he lived until 2012. Kendall moved with Sammy in September 2003 to her father's home in Sugar Grove, Illinois. Before she and Sammy moved, Sammy would spend time at the Palumbo's home, but Sam never visited Sammy at their townhome across the street. It was unclear how much time Sam spent with Sammy during those few months or in the following nine years, as his work schedule required an early start to the day, an early bedtime, and work on Saturday mornings. The Palumbos handled almost all pick-up and drop-off duties over the nine year period with Sammy. The record did not establish how often Sammy was at the Palumbos, nor did it explain why Sam's parents almost exclusively handled Sammy's pick-up and drop-off from Kendall's home.

¶ 10 In July 2004, the Palumbos allowed Kendall to move back into the townhome across the street from them, and Kendall lived there with Sammy until the fall of 2006. During this time between July 2004 and June 2006, Kendall met Clinton Harris, married him, and she and Clinton had a son together, Carson. The record is unclear as to how often Sam visited Sammy during these years, although Kendall liberally allowed the Palumbos to see Sammy whenever they wished.

¶ 11 Kendall moved with Clinton, Carson, and Sammy to Aurora, where they lived until June 2010. While they resided in Aurora, the Palumbos would pick up Sammy every other weekend. In June 2010, Kendall, Clinton, Carson, and Sammy moved from Aurora to Sandwich, Illinois, where they lived until August 2013. Sam did not attend Sammy's parent teacher conferences when Sammy lived in Sandwich. Clinton developed a comfortable relationship with Sammy as his step-father. He coached his little league team for three years. Sammy called Clinton "Dad," although there was no evidence that Sammy did not regard Sam as his father or that Kendall and Clinton attempted to alienate Sammy from Sam.

¶ 12 The Palumbos took Sammy to Disney World on ten occasions. Sam accompanied them twice. The Palumbos were also very involved in Sammy's sporting pursuits, which he began in 2008. They almost always attended his organized sporting events. However, because of his work schedule, Sam was rarely able to attend. The Palumbos even paid for Sammy to attend the Chicago White Sox and Chicago Bulls camps twice, and the Chicago Bears pre-camp once.

¶ 13 In January 2011, Sam married his current wife, Alyssa, and in November 2012, he and Alyssa invited Kendall and Clinton over to their new home in Wheaton, Illinois. During the visit, Sam asked Kendall to allow Sammy to live with him and Alyssa, and this request took her by surprise. She did not agree to the request—she stated she could not envision living without Sammy—but she did say that it was something they could consider in the future.

¶ 14 Around the time that Sam requested that Sammy live with him and Alyssa, Clinton was informed that his current job in Illinois with Ace Hardware would be eliminated as part of a corporate reorganization that involved a reduction in force. Because he learned of an East coast position becoming available with Ace Hardware at the same time he found out his current job would end by January 1, 2013, he did not seek employment elsewhere. He applied to and was

offered a position as project manager in New Hampshire, which he accepted on November 15, 2012.

¶ 15 Although it was likely that Kendall knew about Clinton's job situation—the reorganization of his current company and the offer to transfer to the East coast—when she met with Sam and Alyssa on November 11, she made no mention of Clinton's job situation, nor did Clinton mention it. There was some debate whether Kendall and Clinton knew of the prospect and offer of employment on the East coast at the time of the meeting, but what was clear was that they had little time to accept or reject Ace Hardware's offer. Kendall supported Clinton's decision to take the job because of the economic stability it would provide, and she informed Sam of their decision to take the job and move to New Hampshire in December 2012.

¶ 16 Kendall moved to New Hampshire to join Clinton in March 2013, three months after Clinton moved there. She agreed with Sam to place Sammy in his care while the matter awaited trial. Sammy was living with Sam in Wheaton and was enrolled at St. James Catholic School where he was a member of the student council, but also where an older student had bullied him.²

¶ 17 The trial court then proceeded with its analysis as follows. Section 609 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/609 (West 2012)) governed Kendall's petition for removal. *In re Marriage of Eckert*, 119 Ill. 2d 316 (1988), set out several factors that a court should weigh in considering the best interests of the child when deciding whether to grant removal: the likelihood that removal would enhance the general quality of life for both the custodial parent and the child; the motives of the custodial parent for moving; the motives of the non-custodial parent in resisting removal; and whether a reasonable and realistic

² Since then, Sammy has been removed to New Hampshire, where he currently resides with Kendall and Clinton.

visitation schedule could be reached with respect to the current visitation rights of the non-custodial parent if the move is allowed. As stated in *In re Marriage of Collingbourne*, 204 Ill. 2d 498, 525 (2003), the paramount concern was the best interest of the child.

¶ 18 However, many of the *Eckert* factors did not help in this case. Neither party was “acting out of a motive to frustrate or to reduce the contact the other parent will have with Sammy in the future.” Both parties were acting “out of genuine love and concern for their son.” Kendall was willing to grant Sam significant parenting time and wanted him to remain an active part of Sammy’s life.

¶ 19 The record was mostly devoid of information about Antrim, New Hampshire, the Harris’s new home town. Sammy would attend a middle school near his stepbrother Carson’s elementary school, and the court could not say whether the community in New Hampshire would necessarily enhance Sammy’s quality of life.

¶ 20 The court disagreed with the guardian *ad litem*’s assessment that Kendall’s failure to discuss moving to New Hampshire before making the decision to do so should factor heavily against removal in this case. For one, Kendall could not have maintained her quality of life without the move—she had little choice in the matter. Her choice to move was not a choice of priorities but an act of necessity to maintain her family’s economic stability and her relationship with her husband. Moreover, a custodial parent’s desire to move or the benefits that a parent receives by moving are not determinative of whether to grant removal. The paramount consideration was Sammy’s best interests, which, in this case, was ultimately about who should be Sammy’s primary residential custodian: Sam in Illinois or Kendall in New Hampshire.

¶ 21 Much like the four *Eckert* factors, the trial court found the Act’s custody determination factors (750 ILCS 5/602 (West 2010)) of little value in this case. Both parents had, over the past

10 years, built a close relationship with Sammy and with one another; there was no reason to suspect this would discontinue whether removal was granted or denied. There was never any domestic or physical violence. Although Sammy had lived in Illinois his whole life, he had moved numerous times, changing his circle of friends with each move. He was doing well academically, but he had experienced some bullying at school. He had only lived at his home in Wheaton for three months. It was therefore unclear how well adjusted he was with his new surroundings.

¶ 22 The Palumbos had “been a constant presence in Sammy’s life, providing spiritual guidance when needed, nurturing his athletic talent and showering him with vacations and love.” Removal would necessarily create a void in both Sammy and the Palumbo’s lives, as both were devoted to each other. Therefore, this weighed heavily against removal.

¶ 23 However, the core of a removal case was not the relationship between the child and the grandparents but between the child and the parents. Unlike the relationship Sammy had with his grandparents, relatively less time was spent at trial illuminating his relationship with Sam, leaving more questions than answers. Whereas the court understood that Sam’s work schedule had an impact on his ability to spend time with Sammy, it nonetheless called into question the bond he had with his son. The record did not contain much information about the amount of time Sam spent with Sammy or what they would do together. The record actually contained more information about the time Sammy spent with Clinton than with Sam.

¶ 24 The court got the sense from the record that Sam spent little time alone with Sammy—usually the Palumbos were there as well—and that he deferred many of his parenting responsibilities to them. He rarely picked up or dropped off Sammy for visitation, and he rarely

attended his sporting events. Not until Kendall filed the petition for removal did Sam become a greater presence in Sammy's life.

¶ 25 On the other hand, Kendall had always been the more nurturing parent. She was the primary caregiver and more involved in Sammy's life, which the guardian *ad litem* conceded. Sammy had resided primarily with Kendall and Clinton for over half his life, and he was bonded to his brother, Carson. Since moving to New Hampshire, Kendall's nightly phone calls to Sammy had become very important to Sammy, suggesting a stronger parental bond with Kendall than with Sam.

¶ 26 Accordingly, Sammy's best interest was to preserve the bond with Kendall and to preserve the stability of Kendall's relationship with Clinton by allowing removal to New Hampshire. An important nexus existed between the well-being of the custodial parent and the child in that parent's care. Therefore, although "cases of this nature [were] difficult for both the families involved and for the court," the court granted Kendall's petition. In order to preserve Sammy's relationship with Sam and the Palumbos, the court ordered a minimum visitation schedule—in which Sammy was to spend six consecutive weeks during summer vacation, alternating Thanksgivings, one week during Christmas break, and every Spring break and Father's Day with Sam—that the parties were free to expand upon.

¶ 27 Petitioner timely appealed.

¶ 28 II. ANALYSIS

¶ 29 We review whether the trial court's ruling on a petition for removal was against the manifest weight of the evidence. *In re Marriage of Eckert*, 119 Ill. 2d at 328; *Shinall v. Carter*, 2012 IL App (3d) 110302, ¶ 30. Section 609(a) of the Act provides that the court may grant

leave to any party having custody of a minor child to remove the child from Illinois whenever such approval is in the child's best interests. 750 ILCS 5/609(a) (West 2014).

¶ 30 We proceed by addressing in turn Sam's arguments that the trial court did not properly weigh and consider certain factors relevant to removal, which if properly considered would have led to a denial of the petition for removal.

¶ 31 A. The Importance of Sammy's Relationship with Both Parents

¶ 32 Sam challenges the trial court's finding that Sammy's best interests are to continue residing with Kendall. He primarily focuses on testimony at trial that would tend to support that Sam was a positive presence in Sammy's life and that he was present more than the trial court's decision would tend to indicate.

¶ 33 Sam argues that he was not uninvolved in Sammy's life based on the testimony of Kendall; the guardian *ad litem*, Mr. Roberts; Robert Palumbo; and himself. First addressing Kendall's testimony, he contends that when she did not want to "admit a truth that may not support her decision to take Sam from Sammy," she would answer with " 'I assume.' " The types of questions and answers that Sam cites are similar to as follows: "Q. Did he continue, when he wasn't working, to exercise his parenting time, visitation with – with Sammy? A. I can only assume, I didn't see it." Nevertheless, Sam argues that Kendall "consistently testified that Sam was indeed very involved in Sammy's life." Kendall did testify to the following, as Sam highlights: that Sam always acknowledged paternity of Sammy; that she, Sam, and Sammy lived together as a family right after Sammy was born; that even after she and Sam separated, they would celebrate holidays and birthdays together with Sammy and the Palumbo family, noting that the "relationship was very amicable"; that during the two year period shortly after Sammy's birth when Kendall moved back into the Palumbo residence with Sammy—but not

with Sam—Sam saw Sammy on a daily basis; that Sam continued to have a good relationship with Sammy after she and Sammy moved to Aurora; and that she assumed that Sam continued with his parenting time after she moved to Sandwich with Clinton, Carson, and Sammy in 2010.

¶ 34 Turning to the guardian *ad litem* Robert’s testimony, Sam argues that Roberts found that Sam supported Kendall through her pregnancy with Sammy and that Sam’s acknowledgment of his parental role with Sammy, which began before Sammy was born, contributed to Robert’s recommendation against removal. Roberts also testified that, in general terms, Sam was involved and engaged as a father in Sammy’s life even when Sammy was living with Kendall and Clinton.

¶ 35 Sam next argues that the trial court mischaracterized some of his testimony. He testified that at no point was he uninvolved in Sammy’s life. He worked at Whole Foods Market, which required inconvenient hours—often early morning hours and sometimes evening shifts. He argues that, because he often had to get up at 4 a.m. for work, he would bring Sammy to his parents’ house down the street when he had overnight parenting duties in order that he would not disturb Sammy upon rising so early in the day. He characterizes this not as the actions of an “uncaring father” but as “one that had the utmost concern for his child.” He argues that, as he testified, he could not attend all of Sammy’s sporting games because of work scheduling conflicts; he had to choose between keeping his job and attending Sammy’s games. Moreover, he testified that he was motivated to buy his Wheaton residence for the separate bedroom that Sammy could use when he would stay overnight.

¶ 36 Sam counters the trial court’s statement in its order granting removal that he did not know the name of Sammy’s primary care physician. He points to his testimony that showed he knew that Dr. Cahill became Sammy’s primary physician after Dr. Moriarity. He argues that an

“uninvolved” father would not know the name of his child’s current doctor, much less the previous doctor’s name. He also testified that he accompanied Sammy to his yearly checkups when Sammy was seeing Dr. Cahill.

¶ 37 Sam further contests the findings that he was not present for Sammy’s sporting activities. He points to his testimony that he would “try to make [his] son’s sports activities as much as [he] could.” Sam claims that he enrolled Sammy in multiple baseball camps and the Bulls and Sox training academies, although he testified that “we” enrolled him, meaning him and the Palumbos. He twice accompanied Sammy and his parents on trips to Disney World, but he never took Sammy there on his own.

¶ 38 Sam next turns to the testimony of his father, Robert Palumbo, to support that he had a loving and involved relationship with Sammy. According to Robert’s testimony, Sam was present at Sammy’s first birthday at the Palumbo home, and major holidays such as Easter, Christmas, and Thanksgiving were celebrated at the Palumbo residence with Sam, Sammy, and Kendall present. He testified that Sam’s relationship with Sammy was “very positive, very loving. He was always – when he wasn’t working and we had events, Christmas, holidays, Sam was always there. He was always a very loving father.” Robert testified that he observed that both Sam and Kendall were “very strong in the co-parenting, even though they were maybe developing some differences between themselves personally. But they both were very attentive from what I observed.”

¶ 39 Robert Palumbo further testified that he facilitated exchanges of Sammy between Sam and Kendall for purposes of Sam’s visitation time. He testified that “[i]t was totally our responsibility to pick Sammy up for visitation and then make sure he was home in time.” Sam would accompany Robert to pick Sammy up when work permitted; Sam’s work schedule often

prevented him from being able to pick Sammy up and therefore Robert consistently drove to get Sammy for Sam's visitation time.

¶ 40 Robert also testified that Sam would attend Sammy's sporting events when work permitted. He testified that after Kendall and Sam ended their relationship, Sam wanted Kendall and Sammy to remain living close to him and to have a good place to live. When both Kendall and Sam had to work, Robert and his wife would look after Sammy. Both Sam and Kendall would come over after work to spend time with Sammy at the Palumbos. Robert testified that Sammy expressed his desire for Sam on several occasions—to live with Sam, to be a part of his life, and to see him more.

¶ 41 Sam also takes issue with the trial court's reasoning that Sam's work schedule affected his bond with Sammy. He argues no legal authority supports that a working parent is not bonded with his child merely because the parent must work to support the child—although Sam does not support his argument with legal authority of his own. Sam asks whether “Kendall is somehow better because she is female? Is Sam somehow less of a parent because he is male?” Sam further disagrees with the trial court that because Sammy enjoyed his nightly phone calls with Kendall while she lived in New Hampshire that he is more bonded to Kendall than to Sam. He argues that Sammy now speaks with him on a nightly basis, and therefore by the court's logic, the bond between Sam and Sammy is not stronger than between Sammy and Kendall. Finally, Sam argues that finding that Kendall was the primary caregiver was against the manifest weight of the evidence because she voluntarily left Sammy with Sam when she and Clinton moved to New Hampshire.

¶ 42

B. Kendall's Motives for Removal

¶ 43 Sam argues that Kendall's motives for petitioning for removal should have weighed against the trial court granting her removal petition. He characterizes her motives as "what looks like Kendall's attempt to erase Sam from Sammy's life." He argues that Kendall encourages Sammy to call Clinton "dad" and that Kendall sees no distinction between Sam and Clinton being addressed as "dad." At trial, Kendall was asked whether she remembered answering "yes" to the following question at her deposition: "Did you tell Sammy that Sam had an opportunity to have him but didn't want him?" She recalled giving that answer at her deposition, but no other context for the question was given at trial. When asked at trial whether she told Sammy that his dad did not want him, she denied ever telling Sammy his dad did not want him.

¶ 44 Ten days after Kendall and Sam met with their spouses and Sam asked whether Sammy could live with him and his wife, Robert Palumbo was driving Sammy. While riding in the car with the Palumbos, Sammy blurted out that his father never wanted him. Another time in the car he exclaimed that he hated his father, Sam. When asked why he said this, he explained that Kendall had shown him papers that Sam was trying to stop them from going to New Hampshire. Robert testified that on one other occasion, on February 15, 2013, the Palumbos were again in the car with Sammy when Sammy said that his mother told him that the judge would not take him away from her because she was not an alcoholic. Sam argues that no positive inferences can be made from these statements; the best inference is that Kendall was attempting to alienate Sammy from Sam.

¶ 45 C. Sammy's Relationship with Other Family Members

¶ 46 1. The Palumbos

¶ 47 Sam next argues that the trial court undervalued the importance of Sammy's relationship with his grandparents, the Palumbos. He acknowledges that the trial court found the Palumbos

were a constant presence in Sammy's life, but he argues that the trial court failed to make any findings as to how the void left in Sammy's life by his separation from the Palumbos in New Hampshire would be filled.

¶ 48 Sam argues that Sammy had a deep and strong bond with his grandparents, and that the Palumbos were involved in Sammy's life since his birth. Neither of these assertions were disputed in the trial court's order, and both were in fact recognized by the trial court. Therefore, although Sam spends time recounting the myriad ways the Palumbos were involved in Sammy's life in Illinois—from picking him up for Sam's parenting time, to attending his sporting activities, to taking him to Disney World ten times—it is unnecessary for us to recount those ways here in detail. The trial court found the Palumbos were involved significantly in Sammy's life and that Sammy loved the Palumbos as they loved him. Regardless, it found Sammy's best interests lied in living with Kendall because the focus of the trial court in its analysis was the relative relationship between Sammy and his parents, not Sammy and his grandparents.

¶ 49 Regarding “filling the void” that the Palumbos will leave in Sammy's life, Sam argues that Clinton's family will still be relatively far away from Sammy in New Hampshire. Kendall's family was not actively involved in her or Sammy's life, and she did not present any of her family members or their contact information to the guardian *ad litem*. Clinton told the guardian *ad litem* that he wanted to be close to his family but not too close. Thus, Sam argues, Sammy's removal to New Hampshire has “virtually left him without any extended family,” and this deprivation of a relationship with his grandparents demonstrates that the trial court's decision to grant removal was not in Sammy's best interests and was against the manifest weight of the evidence.

¶ 50

2. Step Parents and Step Siblings

¶ 51 Whereas the trial court emphasized Sammy's relationships with Clinton and his stepbrother, Carson, Sam argues that it ignored Sammy's relationships with his stepmother, Alyssa, and stepbrother, Joey, in Illinois. Sam directs us to the guardian *ad litem*'s testimony, where he answered "yes" to whether Alyssa appeared "genuinely interested in Sammy's life and well being," which included help with homework, taking care of physical needs, cooking, and cleaning for Sammy. The guardian *ad litem* could not say which stepparent was more active in Sammy's life.

¶ 52 D. Enhancement of Sammy and Kendall's Lives

¶ 53 Sam turns to the portion of the trial court's order where it admits that the record contains little to no information about Sammy's new home town in New Hampshire and consequently, it could not conclude that the community where Kendall and Sammy now reside will enhance Sammy's quality of life.

¶ 54 Sam does not directly argue that a move to New Hampshire would tend to decrease the quality of Sammy's life, nor does he argue that remaining in Illinois would tend to enhance his life relative to living in New Hampshire. Instead, he argues that, unlike in *Collingbourne* and *Eckert*, Kendall will not have a marked increase in her earning power in New Hampshire because she will no longer be working. He argues, generally, that Kendall worked while in Illinois and was therefore contributing to paying bills and expenses. She offered no testimony, however, that she would be working while living in New Hampshire.

¶ 55 The trial court found that Kendall could not have maintained her quality of life without a move to New Hampshire because Clinton, the primary breadwinner of the family, was about to be unemployed in Illinois. Sam disputes that this holding has a basis in the record. He asserts that Clinton had every opportunity to seek work in Illinois but deliberately chose not to. He

points to Clinton's evidence deposition, where he testified that he did not speak to his supervisors about whether a different position was available for him in Illinois. Based on this evidence and that Clinton had been in touch with Ace Hardware to discuss a position in New Hampshire as early as October 2012, Sam argues that it is easily inferred that Clinton had decided to take the position before November 15, 2012, the day in which he formally accepted Ace's offer of employment in New Hampshire. The guardian *ad litem* testified that Clinton's lack of effort to find employment in Illinois, if anything, bolstered his recommendation against removal, and it sounded to him as though the decision to move to New Hampshire was made "without real regard as to what was going to happen to Sammy."

¶ 56 Sam also points to Kendall testifying that she told Sam on December 2, 2012, that the decision to go out East had not yet been made, despite Clinton having accepted the position in November. Although Kendall testified at trial that she was not aware that Clinton's acceptance was consummated on November 15, 2012, she did testify that she had told Clinton she supported him and that they would stick together, meaning she would follow him to where he needed to be for employment. The guardian *ad litem* also testified that Kendall told him that regardless of the outcome of this litigation she was moving away from Illinois. Sam concludes from this that Kendall had set out to purposefully deceive him regarding her intentions to move to New Hampshire and take Sammy with her.

¶ 57 Based on the aforementioned evidence, Sam argues the trial court erred in finding that Kendall's move was born of economic necessity. He does not, however, offer testimony as to more specific economic ramifications, *e.g.*, how much Clinton will earn in New Hampshire compared to how much he had been earning in Illinois, the cost of living in New Hampshire versus Illinois, or how much income Kendall is sacrificing by leaving her part-time job in

Illinois. He also generally concludes that if, *arguendo*, economic necessity drove Kendall's move, it did not justify Sammy's because no evidence supported the standards set forth in *Collingbourne* (the likelihood of enhancements of quality of life for child and custodial parent) or *Eckert* (same). Because Sam does not offer more than general conclusions as to his alternative argument if economic necessity did indeed motivate Kendall's move, we deem that argument forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013).

¶ 58 E. Enhancement of Academic Atmosphere

¶ 59 Sam continues to argue that the trial court's order was against the manifest weight of the evidence because Kendall failed to provide evidence that Sammy's new school in New Hampshire would enhance his academic life. The guardian *ad litem* testified that Sammy was doing well academically at his school in Illinois, St. James, and that he was active in sports at the school. Robert Palumbo testified similarly. Sammy was a student council representative at St. James. Sam also characterized Kendall's testimony that bullying took place as "making a mountain out of mole hill" because she testified to one incident on the playground and Sam testified that he contacted the school to handle it.

¶ 60 Regarding Sammy's new school in New Hampshire, Kendall admitted at trial that she did not know much specific information about it, including its academic standing or student to faculty ratio. Sam argues that her inability to provide more specific information shows the move was not about Sammy and his best interests but rather was about Kendall and her interests.

¶ 61 F. Sammy's Adjustment to His New Community

¶ 62 Sam acknowledges the trial court's finding that, because Sammy had moved homes and schools many times within Illinois, the record was mixed on how well adjusted he was to his surroundings in Wheaton and how deeply connected he was to living in Illinois. He nevertheless

disputes that Sammy's recurring moves in Illinois form a justifiable basis for Sammy not being connected to his home in Illinois. Sam offers no more than a recap of the moves Sammy has made since being born and his own conclusion that the trial court's decision is "hardly equitable, and has no basis in law." He cites no authority to say why the trial court should not have considered Sammy's many moves in weighing his adjustment to his current community; he only concludes the trial court's consideration was in error. Therefore, we deem this argument forfeited under Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013).

¶ 63 G. Enhancement of Sammy's Living Situation

¶ 64 Sam asserts that Kendall failed to demonstrate at trial that Sammy's removal will lead to a significant improvement in Sammy's living situation, that he will continue with his religious education, or that he will continue to participate in the same sporting activities as he has been while residing in Illinois. In contrast, Sam and Alyssa testified to purchasing a larger home so that Sammy would be able to have his own room while living with them. If Sammy remained in Illinois, he could maintain his participation on his sports teams and at his sport camps. Sam further points to Kendall's testimony that she did not take Sammy to Catholic mass when he visited her in New Hampshire, but Sam would take Sammy to Catholic mass every weekend as far as she knew. Kendall has not raised Sammy as Catholic, but Sam has, regularly attending St. James in Glen Ellyn.

¶ 65 Sam also provides a litany of sports activities that Sammy has participated in while in Illinois. He does not, however, provide any reason why Sammy could not participate in like activities in New Hampshire; he focuses his argument only on the immediate deprivation of the current activities.

¶ 66 H. Sam's Conclusion

¶ 67 Sam finally attempts to tie together his arguments for why the trial court's order granting permanent removal was against the manifest weight of the evidence. His salient points are as follows: Sam was a loving and involved parent, and his work schedule does not undermine his devotion to Sammy but rather highlights it; Sammy was involved in his local community both religiously and by participating in various sports; Kendall and Clinton did not attempt to find employment in Illinois, and therefore are the cause of this litigation for removal; the trial court's finding that Kendall was the more nurturing parent should not factor into whether a removal petition should be granted; the trial court ignored the importance of Sammy's relationship with the Palumbos, his stepbrother Joey, and his stepmother Alyssa; the trial court ignored that Sam was the primary caregiver between the time Kendall moved to New Hampshire and the trial court's grant of removal; and that Kendall failed to meet her burden of showing that removal would enhance Sammy's life, that a reasonable parenting schedule could be met, and that her motives for removal were in line with Sammy's best interests.

¶ 68 Sam also encourages that we consider the following case law in reviewing the trial court's order. He cites *In re Marriage of Hansel*, 366 Ill. App. 3d 752 (2006), where we affirmed the circuit court's denial of a mother's petition to remove her daughter to North Carolina. One expert witness, whose testimony was unrefuted at trial, testified that removal of the teenage girl could be harmful because she had a close relationship with her father as well as her grandparents in Illinois, and research showed that adolescent girls with relatively absent fathers have greater social problems than girls with active fathers in their lives. *Id.* at 755. We held that "under the deferential standard of review, we [could] find no error." *Id.* at 756. Because the daughter would be leaving much behind and because she would be seeing much less

of her father, with whom she had a close relationship, the trial court's finding was not against the manifest weight of the evidence. *Id.* at 756-57.

¶ 69 Sam further cites *In re Marriage of Johnson*, 352 Ill. App. 3d 605 (2004), where we affirmed the circuit court's denial of a mother's petition to remove her children to Arizona. In particular, the children, if removed to Arizona, would see drastically less of their loving and involved father whose motives in resisting removal were pure, and therefore we could not say the circuit court order denying the petition for removal was against the manifest weight of the evidence. *Id.* at 613-14.

¶ 70 In *Shinall*, 2012 IL App (3d) 110302, we reversed the circuit court's grant of a mother's removal petition from Illinois to Colorado. In reversing the circuit court's decision because the evidence did not support its conclusions, we focused on the following: that the daughter, Ava, was only three years old at the time; that visitation would be trying for a three-year-old traveling between Colorado and Illinois; that the father had "assiduously exercised his visitation," and removal would significantly reduce the frequency and quality of visitation, which was, before removal, about half of the year, and would be reduced in quantity by at least half upon removal to Colorado; and that there was no evidence that the mother becoming a stay-at-home mother would be an improvement for Ava over daycare twice a week with her paternal grandmother and being able to see both of her parents regularly. *Id.* ¶¶ 47-49.

¶ 71 Next, in *In re Marriage of Smith*, 172 Ill. 2d 312 (1996), our supreme court affirmed the circuit court's denial of the mother's petition to remove the children. Relevant to the case in *Smith* was the fact that visitation between Newark, New Jersey, and Peoria, Illinois, would be difficult, and while the daughters were very close to their father in Illinois and his new family, at

least one daughter had a strained relationship with the mother. *Id.* at 324. Therefore, the circuit court did not err in denying the removal petition.

¶ 72 Finally, Sam cites *In re Marriage of Sale*, 347 Ill. App. 3d 1083 (2004), where we affirmed the circuit court’s denial of the mother’s removal petition. Salient to its decision, the *Sale* court cited a lack of evidence that the child’s life would be enhanced outside of Illinois (e.g., no evidence of better schools, more or better cultural or recreational activities, etc.), evidence that the child had a close relationship with extended family in Illinois, and removal would undermine the father’s visitation rights. *Id.* at 1129-30. Therefore, we could not say that the circuit court’s order was against the manifest weight of the evidence.

¶ 73 Sam argues that we should focus, as the various courts did in the cases he cited, on the facts that Sam was a loving father to Sammy and will be able to see him far less if Sammy is in New Hampshire; that he will miss his close relationship to the Palumbos; and that there was no evidence of an enhancement in Sammy’s life in New Hampshire, only evidence that Sammy will leave behind a school in which he is doing well and various sporting activities in which he excelled. Accordingly, he implores that we find the trial court’s decision allowing removal to be against the manifest weight of the evidence.

¶ 74 I. Our Resolution

¶ 75 We reject Sam’s arguments and affirm the trial court’s order granting removal for the following reasons. The best interest of the child is the paramount consideration in a removal action. *Collingbourne*, 204 Ill. 2d at 521. In determining “whether removal is in a child’s best interest, a trial court should hear any and all relevant evidence.” *Eckert*, 119 Ill. 2d at 326. Determining the best interest of a child requires a case-by-case determination of the circumstances and cannot be reduced to a bright-line test. *Id.* However, there are factors that

may aid a trial court in its determination: (1) the likelihood of the proposed move enhancing the general quality of life for both the custodial parent and the child; (2) the motives of the custodial parent in seeking the move; (3) the motives of the non-custodial parent in resisting removal; (4) the visitation rights of the noncustodial parent; and (5) whether a realistic and reasonable visitation schedule can be reached if the move is allowed. *Id.* at 326-27. We accord deference to the trial court's determination—reversing only for a decision against the manifest weight of the evidence—because the trier of fact sits in a far greater position to observe the parents and the child and thus evaluate their temperaments, personalities, and capabilities, and there is a strong presumption in favor of the trial court's findings in these types of cases. *Collingbourne*, 204 Ill. 2d at 522. Moreover, the *Eckert* factors are not exclusive nor is any one factor controlling; the weight assigned to relevant factors depends on the nature of the case at hand. *Id.* at 523.

¶ 76 Here, the trial court considered the *Eckert* factors in its memorandum and order, and it found most of the factors unhelpful. It found that the primary motivation of both parties in this litigation was love for Sammy; Kendall was willing to grant Sam significant parenting and visitation time, and she wanted him to remain an active part of Sammy's life; and although the record was incomplete as to the enhancement of Sammy's life in New Hampshire, Kendall had little choice but to move there because staying in Illinois would have been a dramatic decrease in her quality of life. In an admittedly difficult decision, the trial court granted removal because Kendall was the more nurturing parent with whom Sammy had consistently shared a closer bond, and his best interest was to maintain that close relationship with her.

¶ 77 In general, Sam's arguments are, at their best, a differing but not superior interpretation of the facts in this case. This is insufficient to say that the trial court's determination was against the manifest weight of the evidence, which requires that the opposite conclusion be clearly

evident, or that the finding be arbitrary, unreasonable, or not based on the evidence. *Kelly v. Orrico*, 2014 IL App (2d) 130002, ¶ 27; *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, ¶ 17.

¶ 78 First, addressing Sam's argument that he was a loving father and was bonded with Sammy, we note that the trial court did not find to the contrary. In fact, it found both parents loved Sammy and were acting out of genuine concern for him. The court questioned the relative bond between Sam and Sammy compared to Kendall and Sammy because, as is undisputed, Kendall was the primary caregiver for most of Sammy's life and Sam's work schedule prevented him from spending as much time with Sammy as he otherwise may have been able to spend. Testimony by Kendall and the guardian *ad litem* demonstrating that Sam had always acknowledged paternity, cared for Kendall during the pregnancy, and was engaged as a father figure in Sammy's life even after Kendall married Clinton are not facts that contradict the trial court's findings and show that the opposite conclusion is clearly evident. Sam makes much of the trial court's focus on his work schedule, arguing that his odd schedule tended to demonstrate his devotion to Sammy, not detract from it. The trial court's findings were far more pragmatic than Sam's arguments, however: Sam's job meant that he spent less time with Sammy than Kendall or even his own parents; it did not find that he did not love Sammy, only that he literally was less of a constant presence in Sammy's life than other parties. While Robert Palumbo did indeed testify that Sam was a loving father, he likewise testified that Kendall was a loving mother. Sam may question whether this decision was rendered because he is male, and Kendall is female, but the evidence supports the trial court's decision based on Kendall as the primary caregiver for the vast majority of Sammy's life, Sammy viewing Clinton as a father figure, and the loving relationship and close bond with Kendall that the trial court found and Sam does not

provide arguments against. Therefore, we cannot agree with Sam's rhetorical questions that imply the trial court's decision was capricious and unfounded in this case.

¶ 79 Next, regarding Kendall's motives, the evidence again supports the trial court's decision. Sam urges that we infer from the timing of when Kendall told Sam about the move to New Hampshire and the testimony by Robert Palumbo that Sammy blurted out that he hated his dad because he was trying to stop him from going to New Hampshire. The trial court addressed the timing, and found that Kendall and Clinton had little choice in the matter; Clinton was the primary breadwinner, he was losing his job, and a better opportunity opened up for him in New Hampshire within the same company. According to the court, economic necessity dictated the move, and Sam's arguments do not contradict this—they only suggest that Kendall and Clinton were not as open and honest with Sam about the changes occurring in their lives as would have been ideal from Sam's perspective. Moreover, it is understandable that Sammy would be upset about the move. This is not an easy transition for him, nor would it be for any child. However, the unprompted outburst of a child does not convince us that Kendall was operating to purposefully alienate Sammy from Sam. She was moving for financial reasons and to maintain her relationship with her husband, who had lost his job in Illinois, and she was agreeable to and encouraging of visitation both before and after removal.

¶ 80 Sam's emphasis on Sammy's relationship with the Palumbos, and the loss that Sammy will feel from their absence in New Hampshire, is well taken. The trial court also considered Sammy's relationship with the Palumbos. The trial court acknowledged that they had been constant presences in his life, nurturing him and providing him with guidance and love. However, the trial court properly found the core of this removal petition was about the relationships of the *parents* to Sammy, not the grandparents. This makes good sense, as parents,

not grandparents, are “responsible for the care, education, and support of the children.” *In re Marriage of Lindsey*, 158 Ill. App. 3d 769, 771 (1987). Grandparents are important—and the Palumbos appear to be excellent grandparents—but of paramount concern to the trial court was the superior relationship Sammy had with Kendall, his custodial parent who primarily raised, nurtured, and cared for him.

¶ 81 Moreover, the same basic logic applies to Sammy missing Alyssa and Joey, that is, they are secondary considerations to the parent-child relationship in this case, with the additional note that if Sammy remained in Illinois, he would likewise not see Clinton and Carson, rendering this argument a rhetorical wash.

¶ 82 We next address the arguments Sam makes that Sammy’s life will not be enhanced by removal. It is true, as Sam argues, that Kendall is giving up her job in Illinois without finding new employment before moving to New Hampshire. However, her job in Illinois was part-time, and Clinton is the spouse who provides the greater financial support. He lost his job in Illinois, and he has a new managerial position in New Hampshire. These facts are undisputed and contradict Sam’s argument that Kendall’s financial situation will not improve. Kendall’s financial stability is linked to Clinton’s, and it is not against the manifest weight of the evidence to find that a couple’s financial well-being is better when the primary money-maker has a full-time job than when he is unemployed. See *In re Marriage of Sale*, 347 Ill. App. 3d 1083, 1088 (2004) (economic security provided by new spouse is one factor to consider for an enhanced quality of life).

¶ 83 Sam disputes, however, that Kendall and Clinton could not have maintained their quality of life without a move to New Hampshire. He equates Clinton’s lack of job investigation in Illinois with a lack of necessity in taking a job in New Hampshire. While it certainly would have

been ideal that Sammy not be separated from either of his parents, the trial court had certain facts before it: Clinton found out he would lose his job, shortly thereafter he learned about the job in New Hampshire, he was then offered the job in New Hampshire, and he took it in order to continue providing for his family. Given the rapid progression of these events—the course of only a few months total—and the necessity that Clinton have a job somewhere, the trial court’s finding that the move to New Hampshire was prompted by economic necessity was not against the manifest weight of the evidence.

¶ 84 Regarding Sam’s remaining arguments—the particular enhancement of Sammy’s academic atmosphere, his adjustment to his new community, and his general living situation—we acknowledge that there is scant evidence as to what Sammy’s life will look like in New Hampshire. However, the enhancement of Sammy’s life is only one *Eckert* factor; no one factor controls, and the trial court is to consider any and all relevant evidence. The trial court chose to focus on the fundamental importance of Sammy’s relationship with Kendall and the economic necessity of her move. In this case, we cannot say this focus was against the manifest weight of the evidence. *Cf. Eckert*, 119 Ill. 2d at 329-30 (child’s exceptional relationship with father in Illinois weighed against removal). Moreover, regarding establishment of a realistic and reasonable visitation schedule, the trial court considered this *Eckert* factor in that it found that Sammy’s relationship with Sam and the Palumbos could be maintained by adopting Kendall’s proposed schedule, which included, at a minimum, six consecutive weeks over summer vacation, one week during Christmas and alternating Thanksgivings. The parties were free to expand on the visitation schedule, and Sam has not challenged the schedule as unrealistic or unreasonable on appeal.

¶ 85 Most of the cases Sam cites are not helpful because they are cases affirming a denial of a removal petition, which when viewed through the deferential lens of the manifest weight of the evidence standard, provide little clarity or guidance to our case in which the trial court granted the removal petition. See *In re Marriage of Smith*, 172 Ill. 2d at 312 (affirming denial of removal petition); *In re Marriage of Hansel*, 366 Ill. App. 3d at 756 (same); *In re Marriage of Johnson*, 352 Ill. App. 3d at 613-14 (same); *In re Marriage of Sale*, 347 Ill. App. 3d 1083 at 1130 (same). In the one case that reversed the grant of a removal petition, we focused on the young age of the child (only three years old) and the effect removal would have on visitation. *Shinall*, 2012 IL App (3d) 110302, ¶¶ 47-49. Sam made no substantive arguments regarding visitation, and Sammy is not a toddler but almost a teenager. Therefore, *Shinall* does not aid Sam here.

¶ 86 Simply, the trial court found it was best for Sammy to remain united with the parent who primarily raised him and with whom he had a stronger relationship. The record supports that Kendall was Sammy's primary caregiver, loved him very much, and Sammy was adjusted to living with her, Clinton, and Carson. His best interests therefore lie in continuing to live with Kendall and in having liberal visitation with Sam and the Palumbos.

¶ 87 III. CONCLUSION

¶ 88 For the aforementioned reasons, the Du Page County circuit court's grant of the removal petition is affirmed.

¶ 89 Affirmed.