2014 IL App (2d) 140376-U
No. 2-14-0376
Order filed October 16, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re PARENTAGE OF G.E. a/k/a G.O., a Minor	)	Appeal from the Circuit Court of Kane County.
	)	No. 11-F-718
(Michael N., Petitioner-Appellant, v. Nicole O. a/k/a Nicole E., Respondent-Appellee).	)	Honorable Kathryn D. Karayannis, Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Hutchinson and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: In parentage action, the trial court did not err in awarding respondent sole custody of the parties' child, G.E., granting respondent leave to remove G.E. from Illinois to Texas, and ordering petitioner to pay $5,000 as contribution toward respondent's attorney fees. Additionally, there was no appellate jurisdiction over the trial court's judgment awarding respondent child support retroactive to the child's date of birth.

¶ 2 Petitioner, Michael N., appeals the trial court's judgment on his petition for joint custody and visitation and on respondent Nicole O.'s petition for removal. The court's judgment (1) granted respondent sole custody of the parties' minor child, G.E.; (2) granted respondent's request to remove G.E. from Illinois to Texas; (3) established a visitation schedule between G.E.

and petitioner; (4) ordered petitioner to pay child support retroactive to G.E.'s date of birth; and (5) directed petitioner to make contribution toward respondent's attorney fees . Petitioner raises several claims of error. For the following reasons, we affirm.

¶ 3 This appeal was accelerated under Supreme Court Rule 311(a) (eff. Feb. 26, 2010). The appellate court must, except for good cause shown, issue its decision in an accelerated case within 150 days of the filing of the notice of appeal. Ill. S. Ct. R. 311(a)(5) (eff. Feb. 26, 2010). Petitioner's notice of appeal was filed on March 18, 2014. The 150 days expired on September 12, 2014. The following constitutes good cause for the delay: (1) on June 12, 2014, petitioner filed two motions, which this court, after allowing for the required response time, decided on June 25, 2014; (2) on June 19, 2014, respondent filed a motion to enlarge the time for filing her memorandum of law in lieu of brief, which this court, after allowing for the required response time, granted on July 2, and respondent filed her memorandum on the new due date of July 14, 2014; and (3) the record is voluminous (1137 pages of reports of proceeding) and the issues raised on appeal are many.

¶ 4 I. BACKGROUND

¶ 5 A. Pretrial Proceedings

¶ 6 G.E. was born on November 30, 2010, in Illinois. He is the biological son of petitioner and respondent, who have never married. In September 2011, petitioner filed a petition to establish parentage and for an award of joint legal custody and visitation. In her October 2011 answer to the petition, respondent denied having sufficient knowledge that petitioner was G.E.'s biological father and asked that petitioner be ordered to undergo paternity testing. Respondent also asked for sole legal custody of G.E. (Not until May 1, 2013, did the trial court adjudge

petitioner the biological father of G.E., but the court granted him visitation in the intervening period.)

¶ 7 (We note that, while this case did not proceed to trial until August 2013, nearly two years after petitioner's parentage petition was filed, the only transcript in the record apart from the trial transcripts is that of the June 24, 2013, hearing on petitioner's May 2013 "second motion to vacate" the court's order of July 2, 2012.)

¶ 8 In March 2012, the court appointed attorney James Jensen as guardian *ad litem* (GAL) to address the issues of custody and visitation. In May 2012, respondent filed a "response to petition for visitation" (we are not sure if this was a delayed response to the September 2011 parentage petition or a response to a later petition that is not in the court file). Respondent alleged as follows. She became pregnant in February 2010 when she and petitioner were residing together in Florida. In May 2010, she moved to Illinois to live with her mother, Carol O. Petitioner had two visits with G.E. in December 2010. Petitioner made no contact with respondent after December 2010 "until weeks after he had returned to Illinois, sometime in late August or September 2011." Respondent asked the court to deny petitioner visitation, and, in the alternative, to allow him supervised visitation in Texas where respondent was currently residing.

¶ 9 On May 15, 2012, the trial court entered an order granting petitioner daily visitation by video conference. The court set no ongoing schedule for in-person visits, but set specific dates in May and June for visitation in Illinois and Texas.

¶ 10 On July 2, GAL Jensen submitted a report on visitation, recommending that petitioner be granted "reasonable and liberal visitation" with G.E.

¶ 11 Also on July 2, the court entered an order addressing various matters. The order recited that the court had held a pretrial conference attended by the parties and GAL Jensen. The court's

order set several dates for visitation in July and ordered petitioner to pay child support of $109 per week and also to pay 50% of the uncovered medical and extracurricular expenses for G.E. One of petitioner's main points of contention in this appeal concerns the portion of the July 2 order that dealt with the issue of removal. The order specified:

> "3) The respondent is granted temporary removal of [G.E.], and this is entered without prejudice.
>
> * * *
>
> 6) This matter is continued for further status on August 14, 2012[,] and for GAL report regarding removal.
>
> 7) Respondent [is] granted leave to file a petition for removal, and shall keep the court apprised of her return to the State (if any) after she leaves in August."

¶ 12 The following day, July 3, respondent filed a "petition for temporary relief," requesting some of the same relief already granted in the July 2 order. She alleged that paternity testing showed petitioner to be G.E.'s biological father. She sought an order adjudicating parentage and granting her temporary custody of G.E. and temporary child support, including arrearages. Respondent also sought 50% contribution by petitioner toward health insurance, day care, and "uncovered medical and related expenses." Finally, respondent sought contribution toward her attorney fees .

¶ 13 On July 26, petitioner filed a motion to strike the petition for temporary relief as unsupported by affidavit. Also on that day, petitioner filed a "motion to vacate to [*sic*] portions of the order of July 2, 2012." Petitioner contended that respondent's failure to file a petition for removal as of July 26 had "seriously hampered the GAL's ability to make a proper report to the court [on removal] and prejudice[ed] petitioner." Petitioner believed that "[j]ustice would be

best served" by striking the portion of the July 2 order granting respondent leave to remove G.E., "until such time [as] a Petition for Removal may be adjudicated."

¶ 14 On August 2, respondent filed a petition to remove G.E. from Illinois. She alleged that she had been residing with G.E. "in the State of Texas exclusively since December 2011" and that she was now married and residing with her husband as well. Respondent further alleged that (1) she currently had "extensive family" in Texas and, moreover, her mother intended to move there once she sold her Illinois home, which was currently on the market; (2) she had other "significant ties" to Texas, "for example, [she] is registered at Austin Community College"; (3) "opportunities offered to [respondent] and her husband in Texas, including employment opportunities, have only strengthened her ties, as well as [G.E.'s] ties to the State of Texas"; (4) community resources in Texas "are at least similar to, or superior to Illinois"; and (5) petitioner made little contact with respondent after G.E. was born, provided little financial support, and failed to take full advantage of the visitation that the court offered him in Texas.

¶ 15 Several days later, on August 27, petitioner filed a "second motion for visitation," seeking a schedule of regular visitation with G.E. Also that day, respondent filed a "renotice of motion," indicating that he would present to the court on August 30, 2012, "a Motion to Vacate Portions of the Order of July 2, 2012." There is no report of proceedings for August 30, 2012. An order of that date continues the matter to October 5 for "the written GAL report regarding removal" and for "hearing" on October 18. The order also sets a 21-day response time for "the pending motions including removal, motion to vacate, [and] motion for visitation."

¶ 16 On October 4, GAL Jensen issued his report on removal. Jensen provided the following background, which was consistent with the evidence that would be adduced at trial in late 2013:

"The parties have one child, [G.E.], who was born on November 30, 2010[,] at Delnor Hospital, Geneva, Illinois. The parties were never married. They met in July of 2007[,] and in September 2007 moved together to Atlanta, Georgia[,] where they resided together until January of 2009. In January 2009[,] they moved together to Florida when [*sic*] they resided until May 2010.

[Respondent] became pregnant in March 2010. In May 2010, [respondent] returned to the State of Illinois to live with her mother. [Petitioner] moved back to Illinois in August of 2011. [Petitioner] has remained in Illinois since his return.

[Respondent] married in October of 2011. [She] and her husband have separated, as of several months ago, and it appears the marriage is heading toward dissolution. [Respondent's] husband has failed to return the GAL's phone calls.

[Respondent] and [G.E.] have been living in Texas since approximately December of 2011. [She] lives with her maternal aunt and uncle.

Both parties have competed high school or the equivalent. Neither party has a history of criminality. [Petitioner], however, received a DUI while living in Florida[,] for which he was convicted. The conviction was reported to Illinois[,] resulting in a revocation. [Petitioner] is presently going through the administrative process of obtaining back his license."

¶ 17 Jensen recommended that respondent not be granted removal from Illinois to Texas:

"I have considered the factors raised in [*In re Marriage of Eckert*, 119 Ill. 2d 316, 326-28 (1988)] and [*In re Marriage of Collingborne*, 204 Ill. 2d 498, 522-23 (2003)] and do not believe the minor child's best interests would be served by granting removal to the State of Texas.

> With regards to the proposed move enhancing the quality of life for both the custodial parent and child, it is unclear and uncertain that Texas offers any significant benefits. I have been provided no information that would suggest there are enhanced educational or employment opportunities in Texas that are not available in Illinois. There is also not a significant family presence in Texas.
>
> I do not believe [respondent's] motives in moving to Texas are improper. [Petitioner], however, did relocate himself from Florida to Illinois to be nearer his child.
>
> Whether or not a realistic and reasonable visitation schedule can be implemented is uncertain. From the onset of this case, I have recommended that virtual visitation be utilized frequently and liberally, not as a substitute for actual visitation, but as a means of developing 'face time' between father and child. Without pointing blame, I have received a large amount of emails from and between the parties suggesting continued problems with [S]kyping or other methods of virtual visitation."

¶ 18 Also on October 4, respondent filed a petition for interim costs and attorney fees and also a petition for a rule to show cause regarding petitioner's alleged child support arrearage.

¶ 19 The next hearing date was October 5. An order of that date granted respondent's motion under section 604(b) of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/604(b) (West 2012)) for appointment of a custody evaluator. The court retained the October 18 date previously set, designating it for hearing on respondent's petition for costs and attorney fees , her petition for a rule to show cause, and petitioner's petition for visitation. The court noted that a hearing on removal would be postponed until completion of the section 604(b) evaluation. The order did not mention petitioner's pending motion to vacate portions of the July 2 order. Petitioner suggests to us that the trial court "converted the previously set hearing on

removal to a hearing on [respondent's] petition for interim fees and petition for rule." We are unsure what petitioner means by this; perhaps, if a report of proceedings had been provided, we would understand.

¶ 20 The next two orders in the record, both dated October 18, granted petitioner's counsel leave to withdraw and allowed petitioner 21 days to obtain new counsel or file his appearance. The court also continued "the pending petition for rule [and] petition for interim fees" to November 14. Additionally, Dr. James Gioia was appointed as section 604(b) evaluator. The October 18 orders did not mention petitioner's pending motion to vacate portions of the July 2 order.

¶ 21 On November 5, petitioner's new counsel filed his appearance. The next day, petitioner filed a "motion to terminate temporary removal." Characterizing the July 2, 2012, order as an agreed order, petitioner alleged that he had agreed to removal only with the understanding that respondent "would be returning to Illinois when the GAL was due to issue his report relating to removal." Petitioner contended that neither he nor respondent "believed that the court's temporary removal order was 'open ended.' "

¶ 22 On November 14, the trial court granted respondent 14 days to respond to petitioner's November 6 motion to terminate removal. The court set the November 6 motion, and other pending motions, for "hearing or pretrial" on December 13.

¶ 23 The matter was continued for several more weeks while Dr. Gioia finished his report on custody and removal, which he submitted to the court on March 11, 2013. Gioia recommend joint custody and advised against removal. He made these observations:

"1. [Respondent] appears to have been the primary caretaker of [G.E.] and as such, [G.E.] appears to relate to her as the parent who is primarily responsible for meeting his day-to-day needs.

2. [Petitioner] appears to express a sincere desire to play an active role as a parent in [G.E.'s] life. His motivation appears to be deeply rooted insofar as he grew up without a biological father in his life.

3. [Respondent] appears to harbor a great deal of unresolved anger towards [petitioner] and, in this regard, appears to convey the anger in a passive-aggressive manner. Thus, awarding sole custody to [respondent] would appear to potentially preclude [petitioner's] involvement in [G.E.'s] life in the future."

¶ 24 Regarding removal, Gioia said:

"Insofar as [petitioner] and [G.E.] appear to have established a close emotional bond between each other, given the sincere desires of [petitioner's] extended family to remain involved in the child's life[,] and given the strong motivation and intent on the part of [petitioner] to be an involved father in his child's life, it is not recommended that removal occur at this time."

¶ 25 Also on March 15 petitioner filed a "motion for hearing *instanter*." Petitioner sought an immediate hearing on his November 6 motion to terminate temporary removal. He contended that respondent's removal of G.E. from the jurisdiction was in contravention of section 609 of the Marriage Act (750 ILCS 5/609 (West 2012)), because she had not filed a petition for temporary removal, and, moreover, she lacked standing to seek such removal as she had not been granted custody of G.E.

¶ 26 On March 15, the trial court entered an order denying the motion for hearing *instanter*. The order also, however, permitted respondent 21 days to respond to that motion and to other motions that petitioner had on file (evidently, the court believed that the March 15 motion's substantive attack on the temporary removal warranted a response even if an immediate hearing was not appropriate). The court set the motions for hearing on May 1.

¶ 27 In the interim, the case was transferred from the Honorable Robert Morrow to the Honorable Kathryn Karayannis.

¶ 28 In a May 1 order, the court adjudicated petitioner the biological father of G.E and set the matter for hearing on custody in July and for pretrial hearing later in May. The court also noted that "the previously filed Motion for Hearing *Instanter* was denied pursuant to the March 15, 2013, order."

¶ 29 On May 20, petitioner filed his "second motion to vacate order of July 2, 2012." The motion was in essence the same as the March 15 motion for hearing *instanter*.

¶ 30 GAL Jensen filed his follow-up report on May 28. Jensen reaffirmed his recommendations that respondent be granted physical custody of G.E. Jensen further recommended that the parties share legal custody of G.E. "regardless of whether permanent removal is granted." (The record contains no written record of Jensen's initial recommendation on custody.) On removal, Jensen stated: "I have previously recommended [in his October 4, 2013, report] against removal and continue to believe that a strict application of [section 609 of the Marriage Act] does not support a move to Texas." Jensen then added: "It must be noted, however, that from all accounts [G.E.] is doing well in his current residence."

¶ 31 On June 24, the trial court held a hearing on petitioner's May 20 "second" motion to vacate portions of the July 2, 2012, order. The witnesses were petitioner himself and Laureen

Anderson-Stepanek, who was petitioner's attorney when the July 2 order was entered. Anderson-Stepanek testified that the July 2, 2012, order stemmed from an agreement with opposing counsel that respondent be permitted to remain in Texas until August 14, the date of the status hearing on GAL Jensen's report on removal. Anderson-Stepanek never intended to agree to indefinite removal. Petitioner also testified that he did not intend by the July 2 order to permit respondent to remove G.E. indefinitely from Illinois.

¶ 32 The trial court denied the motion to vacate. The court noted that petitioner had cited "no statutory authority for vacating the order that is almost 11 months old." The court acknowledged that petitioner had filed several previous motions contesting the removal portions of the July 2, 2012, order and that none had come to hearing. The court said:

> "The Court is not going to guess with regard to why the prior motions were not heard, and I do not, frankly, believe it's relevant to inquire into all of these—there are so many reasons that motions may or may not have been heard, and they all may support what [petitioner's] position is, but they may not.
>
> You cannot legally be in a position to try to allow these orders to be opened up simply because everybody has a different opinion 11 months later about what was going on or what wasn't going on.
>
> ***
>
> It's clear to the Court that when the order was entered in July of 2012, it was contemplated that paternity would be established, but the Court notes that paternity was not established until very recently.
>
> It's also clear to the Court from the order that the parties knew that [respondent] intended at least for some period of time to remain out of the state of Illinois.

Paragraph 7 of the July 2nd of 2012 order indicates, 'Respondent granted leave to file a petition for removal and shall keep the Court apprised of her return to the state after she leaves in August.'

So it's clear that even in July the Court was thinking she was going, in August she was going to come back, and it's clear from the orders that she has come and gone several different times.

It's also clear that this removal that she was allowed to do, the leaving of the state that she was allowed to do[,] is a temporary order, and I don't think that there is any question about the fact that there is still a pending custody case. There is a pending petition to remove, and so those issues are not—have not been dealt with on a final basis."

¶ 33 2. Trial

¶ 34 The first day of trial was August 20, 2013. The court had a preliminary discussion with the parties over which issues were set for trial. Petitioner asserted that removal was not set for trial that day and that the court should proceed on custody and visitation alone. Petitioner wanted custody and visitation decided before removal, because petitioner saw visitation and removal as distinct issues. The court ruled that it would hear evidence on custody (along with visitation) and removal in a combined proceeding. The court remarked that it did not want a bifurcated proceeding in which each witness testified separately on custody and removal. Instead, each witness would testify on "both issues" in one sitting, but could be called in both cases-in-chief. At the close of the evidence, the court would determine the order in which to decide the issues.

¶ 35 The court then declared that it would "proceed with regard to the petition to establish custody," and allowed petitioner to present his case-in-chief first. Notwithstanding this remark, which seemed to imply that petitioner's case-in-chief would concern only custody, the parties presented evidence on *both* custody and removal in each case-in-chief.

¶ 36 Over several days in August, October and November 2013, the following evidence was adduced. In 2009, the parties met through their common employer and began a romantic relationship. That same year, the parties relocated to Georgia with their employer. Eventually, the parties moved to Florida where petitioner began to operate his own business franchise. Respondent became pregnant with G.E. in February 2010 while the parties were cohabitating in Florida. According to respondent, she and petitioner agreed they would relocate to Illinois to raise G.E. because the schools there were superior. They also agreed that, because Illinois healthcare was superior, respondent would relocate in time to give birth to G.E. in Illinois, with petitioner following her when able. Petitioner, however, testified that the parties agreed to raise G.E. in Florida where petitioner was building his own franchise.

¶ 37 In May 2010, respondent traveled to Illinois to visit her mother, Carol O., and, by the end of July 2010, she had moved all of her belongings from Florida to Carol's home. Respondent did not move back to Florida. According to petitioner, respondent told him in July 2010 that their relationship was over and that he should stop contacting her. Respondent claimed that, while she did tell petitioner not to contact her, she did not refuse to take his phone calls.

¶ 38 Petitioner testified that, after July 2010, he made occasional contact with respondent, but it was "difficult to communicate with her, and she basically told [him] not contact her anymore." Petitioner testified that he abided by her wishes.

¶ 39 After respondent moved to Illinois, petitioner provided her no monetary support for the pregnancy. In November 2010, respondent gave birth to G.E. but did not notify petitioner as they "hadn't been talking for some time." When petitioner heard about the birth through a former employer, he immediately flew to Illinois. For reasons unclear from the record, he was not permitted to see G.E. at the hospital. Petitioner returned to Florida without seeing G.E. at all. Respondent did, however, permit petitioner to see G.E. when he returned to Illinois in December 2010. That month, according to petitioner, he made the decision to relocate to Illinois so that G.E. would have a father in his life. He had, however, two obstacles to relocation: he was still on probation for a 2010 Florida conviction for driving under the influence, and he needed to wind up his business in Florida. Petitioner relocated to Illinois immediately upon the expiration of his probation in August 2011. As of this time, however, petitioner still had not provided respondent any monetary support for G.E. Also, except for one instance in May 2011, petitioner did not contact respondent between December 2010 and August 2011.

¶ 40 Once back in Illinois, petitioner contacted respondent and asked for visitation. Respondent resisted the requests. She testified that she was concerned over petitioner's DUI conviction. Petitioner filed his parentage petitioner in September 2011. The first court order for visitation was in July 2012. Prior to this, in April and May 2012, respondent did allow petitioner visitation with G.E.

¶ 41 In February 2012, respondent notified petitioner by e-mail that she had moved to Texas. Respondent testified that she had relocated to Texas in December 2011 and was still residing there at the time of trial. Respondent claimed that she had been planning "for a long time" to move to Texas. She was attracted to Texas because of its "higher education rate" and "lower crime rate." Also, several of her maternal relatives lived there. According to respondent, she

married Robert Fikar in October 2011. Fikar subsequently became employed with Federal Express (Fed Ex), and then sought and obtained a transfer to Texas. (On cross-examination, however, respondent stated that Fikar never worked for Fed Ex in Texas.) Respondent denied that she moved to Texas in order to frustrate petitioner's visitation.

¶ 42 In response to respondent's testimony that she married Fikar in Kane County and obtained a marriage license from the county, petitioner introduced into evidence a document from the Kane County clerk's office certifying that no record of marriage was found under respondent's name. In their testimony, respondent and Carol identified where the marriage and reception took place in Kane County and named the pastor who performed the marriage. When petitioner's counsel asked respondent why she did not call the pastor to testify, respondent replied that she had heard from Carol that petitioner's counsel had spoken to the pastor in order to verify that the marriage occurred. Respondent did not call the pastor to testify because she believed the phone call was "plenty of evidence" for petitioner.

¶ 43 Petitioner also spent considerable time at trial attempting to rebut respondent's claim that she relocated to Texas in December 2011, or least to show she was not thereafter as closely tied to Texas as she claimed. Petitioner adduced evidence that respondent continued to take G.E. to see an Illinois physician, Dr. Wildman, after her alleged move. Respondent saw Dr. Wildman on multiple occasions at the end of 2011 and throughout 2012. Respondent explained that Dr. Wildman was G.E.'s primary physician in 2012 but that she switched G.E. to a Texas physician in 2013.

¶ 44 Respondent testified that when she, Fikar, and G.E. relocated to Texas, they lived with respondent's uncle, Carol's brother. Respondent claimed that, since the move to Texas, she and Fikar have separated and she does not know his current whereabouts. In September 2012, Carol

sold her Illinois home and moved to Texas. Carol testified that she had planned to move Texas for several years because her father, sister, and brother lived there. As of trial, respondent and G.E. were residing with Carol in her Texas home. According to respondent, she and Carol reside 20 minutes to an hour from more than 25 relatives on Carol's side of the family. Respondent testified that her only remaining relatives in Illinois live in the Quad Cities area.

¶ 45 As for G.E.'s life in Texas, respondent testified that he enjoys visiting his relatives, some of whom are near his age, and that he is involved in activities such as dancing. According to respondent's research, Texas is "significantly more affordable" than Illinois. Respondent researched public and private schools and identified Sterling Classical School as the best option for respondent. Respondent also claimed that she has had much greater success finding jobs in Texas than in Illinois. Petitioner testified that, according to "data" he found, Illinois has better schools than Texas.

¶ 46 Respondent testified that, "sometime" in 2012, petitioner made his first financial contribution since she moved from Florida. Also, in July 2012, the court entered an order requiring that petitioner pay $109 per week as support. According to respondent, petitioner has not made all required payments.

¶ 47 The July 2012 order was also the first order for visitation in the case. Since that order, petitioner has had visitation with G.E. in Texas and Illinois. Petitioner testified that the visits have gone well, but the distance from Texas has made it difficult for him to maintain a bond with G.E. Respondent stated that, if granted removal, she would pay for G.E. to visit petitioner in Illinois eight times and that she would also welcome petitioner to visit G.E. in Texas.

¶ 48 GAL Jensen testified regarding his written recommendations in favor of joint custody and against removal. Jensen opined that removal would not enhance G.E.'s quality of life. He also

noted that visitation between Texas and Illinois would be financially burdensome. Jensen acknowledged that, subsequent to his October 2012 report noting that respondent has no "significant" family presence in Texas, Carol moved to Texas. Asked why he remarked in his May 2013, report that a "strict" application of the factors governing removal favored respondent's request, Jensen replied that he would have removed "strict" if he wrote the report again. He added that "[a]nybody can look at the same set of facts and perhaps come to slightly different conclusions here."

¶ 49 Dr. Gioia testified consistently with his own recommendations that custody be joint and that respondent be denied removal to Texas.

¶ 50 At the close of the evidence, the trial court bifurcated the closing arguments. First, petitioner made his closing argument on custody and visitation, and respondent replied. Then, respondent made her argument on removal, and petitioner replied.

¶ 51 3. The Trial Court's Decision

¶ 52 After taking the matter under advisement for several weeks, the court made an oral ruling on January 15, 2014. The court first addressed custody. The court granted respondent sole physical and legal custody of G.E. (notably, petitioner did not seek physical custody and requested only joint legal custody). In deciding custody, the court voiced several concerns about petitioner, including his lack of demonstrated interest in G.E. both during respondent's pregnancy and afterward, his failure to pay mandated child support, and his failure to abide by license restrictions stemming from his conviction for DUI.

¶ 53 After ruling on custody, the court said it would consider visitation in conjunction with removal.

¶ 54 On the issue of removal, the court rejected petitioner's position that respondent did not, as she claimed, relocate to Texas in December 2011. The court also found no merit in petitioner's suggestion that respondent was required to seek court leave of court to remove G.E. in December 2011. The court held that, since there was no paternity finding as of December 2011, respondent "was under no affirmative obligation to remain in the State of Illinois at that time." The court also found it significant that, when petitioner discovered in February 2012 that respondent had moved to Texas, he did not file a petition to enjoin the removal. Instead, petitioner visited G.E. in Texas. Moreover, in July 2012 petitioner entered into "an agreed order granting temporary removal to Illinois." The court commented about the July 2 order:

> "If [petitioner] was concerned that [respondent] was not living in Texas or that the conditions under which [G.E.] was living in Texas were bad, why would he ever agree to temporary removal? The Court order of July 2nd, 2012, does not provide for a hearing on August 14th, which was the next court date. It provided for status. And the order provided that [respondent] was to let the Court know if she was back in Illinois. I believe it said ['']if at all['] or ['']if any['] return to Illinois. Certainly, it was not contemplated that [respondent] would be returning [G.E.] in August.
>
> Moreover, the Court knows that while [petitioner] did file a petition to vacate the July 2nd, 2012, order regarding the paragraph pertaining to removal, that motion was not called to hearing until June of 2013. I understand from my personal knowledge of this case since I've been sitting in this courtroom since April of 2013 that [petitioner] did make concerted efforts to have that motion heard since I was here in April.
>
> But in any regard, there was—it was never called to hearing between July and June of 2013—July 2nd of 2012 and June of 2013, so for almost one year. I also note

> that the file will reflect that there were a considerable number of court dates during that almost one-year period."

¶ 55 Moving to the substance of the removal issue, the court applied the factors from *Collingborne*, 204 Ill. 2d at 522-23, and *Eckert*, 119 Ill. 2d at 326-28: (1) the likelihood that the proposed move would enhance the general quality of life for both the custodial parent and the child; (2) the motives of the custodial parent in seeking removal, namely whether the proposed move is a merely a ruse intended to defeat or frustrate the noncustodial parent's visitation; (3) the motives of the noncustodial parent in opposing removal; (4) the outcome that would foster a healthy and close relationship between the child and both parents, given a careful consideration of the visitation rights of the noncustodial parent; and (5) whether a realistic and reasonable visitation schedule can be arranged if removal is allowed.

¶ 56 On factors (1) and (2), the court acknowledged that there was "no compelling testimony that Texas offers better opportunities for [respondent] or [G.E.] in terms of employment and schooling than does Illinois." The court noted, however, that "based on the unique facts of this case," it would "assign[] neither negative nor positive weight to the job or school opportunities being similar."

¶ 57 The court made these further comments on factors (1) and (2) :

> "[Respondent] testified that she moved to Texas to join her husband, that she and her husband were initially living with her aunt and uncle, and thereafter she moved in with her mother. She testified that her husband was going to be employed in Texas and that she believed she would have better job and school opportunities.
>
> * * *

> Clearly, the move enhanced the general quality of life for both [respondent] and [G.E.] in that it allowed her to join her husband in a location where she had considerable family support. It cannot be forgotten that [respondent] was—had only recently turned 21 years of age at the time of the move. She was unemployed and was raising a child on her own.
>
> The appeal of joining her husband and the economic security and of having a large extended family to help her in raising [G.E.] and providing for her and [G.E.] would certainly be most appealing. *** There is a nexus between the quality of life of the custodial parent who has the burden and responsibility of child rearing and the quality of life of the child [who] is in that parent's care."

¶ 58 The court held, over petitioner's objection, that it would consider the time that G.E. spent in Texas since respondent moved there in December 2011:

> "The fact that the child was in Texas during that time and established connections to Texas simply cannot be ignored, despite [petitioner] suggesting it would be inappropriate for the Court to consider that time. The testimony supports the finding that the child is doing very well in Texas. According to the testimony of both parties, he is a happy, thriving, intelligent[,] and well-adjusted child."

¶ 59 The court reiterated the point:

> "The Court understands that [petitioner] believes it's improper for the Court to consider the time the child has spent in Texas in making the best-interest determination regarding removal. However, if the Court were to ignore the fact that the child has lived in Texas where he and the mother have the support of a loving and financially stable family and order them to return to Illinois where she would have to live with a different

set of relatives, have no job and means of support, the Court certainly would not be considering the child's best interests."

¶ 60 The court added that it could not "ignore the history of this child's life." The court explained:

"He was born to a single mother who raised him exclusively with the help of her mother, the child's maternal grandmother. [Petitioner] was absent from the child's life for almost one year. When [petitioner] did contact [respondent], he promised to start paying child support but did not.

Nor did he send gifts or cards to [G.E.]. He was working in Florida. He did not send one gift to the child. He did not send a video to the child. He did not start paying child support until well into the child's second year of life. When he did pay, it was not pursuant to the orders.

Even if [petitioner] is to be believed and [respondent] was not allowing him to see [G.E.], there is no explanation why he would not send cards, gifts, support to the child if he truly had an interest in connecting with this child and demonstrating to [respondent] that he was serious about being involved in the child's life."

¶ 61 On factor (3), the court again commented on petitioner's failure in the past to show interest in G.E.:

"[Petitioner] says he opposes removal because it will make a meaningful relationship with [G.E.] impossible and because he will miss him too much. Certainly while you may miss him more than you would if he were here and it is inevitable that you are going to miss some of his day-to-day activities, it will be no more than what is currently in place.

Some of these concerns might take a higher priority in the Court's mind had you demonstrated a desire to be more involved in [G.E.'s] life, but you did not. When you are not with [G.E.], you do not demonstrate that concern.

Of course, I want you to have a wonderful relationship with [G.E.], and the testimony is that you do. I believe [G.E.] has developed a meaningful relationship with you based on the visitation that has occurred ***. It is unclear to me why that would have to change, and I hope that it does not."

¶ 62 On factors (4) and (5), the court said:

"The Court believes that reasonable and realistic visitation can be set up while [G.E.] resides in Texas. The relationship between [G.E.] and [petitioner] is not going to change. It was a long-distance relationship, and it will remain a long-distance relationship. The quantity of time that father and child will have will not decrease. The Court believes that the quality of time the father has with the child will remain consistent.

That primarily will be up to you, Mr. Newell, to not change how you approach your child. And I am confident that you won't change how you approach your child."

¶ 63 The court acknowledged that its decision departed from Jensen's and Gioia's recommendations on removal:

"While neither recommends removal, the Court finds that [Jensen's] recommendation may have been based upon a misunderstanding regarding [respondent's] family ties to Texas. Furthermore, [Jensen] admitted during testimony that it was possible that one could look at the same factors and come up with a different conclusion than he had.

> While [Gioia] did not recommend removal, that recommendation was based largely on the fact that he believed [petitioner] was sincere in his desire to be involved in [G.E.'s] life and that [he] and [G.E.] had established a close emotional bond. The Court certainly does not deny that. I believe sincerely that [petitioner] wants to be in his child's life and that he has developed a close emotional bond with his child.
>
> Of course, if that were the only reason to deny removal, then it would certainly be denied most of the time, as one would not expect a noncustodial parent who has not established a bond with their child to contest removal. ***."

¶ 64 In addition to granting respondent sole custody and allowing her to remove G.E., the court ordered petitioner to pay child support retroactive to G.E.'s date of birth and to contribute $5,000 toward respondent's attorney fees . The court continued the matter for its judgment on visitation. Subsequently, on March 18, 2014, the court issued its written judgment, incorporating its oral rulings and setting forth a visitation schedule.

¶ 65 Petitioner timely appeals.

¶ 66 II. ANALYSIS

¶ 67 A. Jurisdiction over Child Support Judgment

¶ 68 At the outset, we address respondent's contention that we lack jurisdiction to address petitioner's challenge to the trial court's award of child support retroactive to G.E.'s date of birth. Respondent contends that jurisdiction is lacking because, while petitioner's notice of appeal specifies various aspects of the trial court's March 18, 2014, judgment, including its rulings on removal, custody, and contribution to attorney fees , the notice omits mention of the retroactive award of child support. We agree that we lack jurisdiction over the March 18 judgment in so far as it concerns the retroactive award of child support.

¶ 69 "The filing of a notice of appeal is the jurisdictional step that initiates appellate review." *In re Marriage of Micheli*, 2014 IL App (2d) 121245, ¶ 55. "Unless there is a properly filed notice of appeal, the appellate court lacks jurisdiction over the matter and is obliged to dismiss the appeal." *Id.* Supreme Court Rule 303(b)(2) (eff. May 30, 2008) states that a notice of appeal "shall specify the judgment or part thereof or other orders appealed from and the relief sought from the reviewing court." "When an appeal is taken from a part of a specified judgment, the appellate court acquires no jurisdiction to review other judgments or parts thereof not so specified or not fairly inferred from the notice as intended to be presented for review." *Alpha Gamma Rho Alumni v. People ex rel. Boylan*, 322 Ill. App. 3d 310, 313 (2001) (citing *Burtell v. First Charter Service Corp.*, 76 Ill. 2d 427, 434 (1979)).

¶ 70 The child support judgment is not specified in the notice of appeal. Also, an intention to appeal that judgment is not fairly inferable from the notice; on the contrary, since the notice specifies several parts of the March 18 judgment while omitting the child support award, we infer the very opposite intent.

¶ 71 Petitioner, however, directs us to these principles:

> "The purpose of the notice of appeal is to inform the prevailing party of the litigation that the losing party is seeking review by a higher court. [Citation.] As such, the notice of appeal is to be liberally construed and will confer jurisdiction when, considered as a whole, it fairly and adequately sets out the judgment complained of and the relief sought so that the prevailing party is advised of the nature of the appeal. [Citation.] Thus, as long as the substance of the notice is correct and the appellee suffers no prejudice, the absence of strict technical compliance with the form of the notice is not

fatal to a reviewing court's jurisdiction. [Citation.]." *In re Marriage of Kostusik*, 361 Ill. App. 3d 103, 155 (2005).

¶ 72 Petitioner applies these principles with this single assertion: "[T]here was no doubt that [respondent] was aware that [petitioner] sought review of the lower court's judgment in the instant case." Petitioner begs the question by not specifying what he means by "lower court's judgment." The question is not petitioner's intent to challenge the March 18 judgment in some respect, but whether, under *Bolyan* and *Burtell*, petitioner's specificity in his notice of appeal signaled an intent to forgo a challenge to what he left unspecified.

¶ 73 Petitioner also cites *Burke v. Burke*, 61 Ill. App. 3d 152 (1978), which is readily distinguishable. In *Burke*, the trial court entered an order on August 26, 1976, denying the defendant's motion for a change of venue. The defendant filed a notice of appeal identifying the August 26 order by date and specifying the range of paragraphs he was challenging. The plaintiff, however, claimed that the appellate court lacked jurisdiction because the notice of appeal did not specify the substance of the August 26 order. The court disagreed, holding that the plaintiff "knew or should have known the question of the denial of the change of venue was an issue before [the] court." *Id.* at 154.

¶ 74 The court did not elaborate, but we infer from its statement of facts that the only judgment entered in the case on August 26, 1979, was the judgment denying a change of venue (though it remains unclear why the defendant would then specify only certain paragraphs within the court's order of August 26). No other issue having been resolved that day, the plaintiff could not reasonably claim ignorance of which judgment was being challenged. In this case, by contrast, there were multiple issues decided on March 18, 2014, and petitioner's notice of appeal

was specific as to which aspects he was challenging. Respondent could reasonably conclude that petitioner's challenge to the March 18 judgment was limited.

¶ 75 We conclude, therefore, that we lack jurisdiction over the portion of the March 18, 2014, judgment ordering child support retroactive to the date of G.E.'s birth. We move to the merits of the issues over which we do have jurisdiction.

¶ 76 B. Delays in Adjudication

¶ 77 Petitioner makes several complaints about the timeliness of adjudication below. First, he claims that the delay in the resolution of his request for joint custody ran afoul of local rule 15.21(e) (16th Judicial Cir. Ct. R. 15.21(e) (Oct. 15, 2010)), which provides that "[a]ll custody trials shall be resolved within eighteenth (18) months from the date of service." As petitioner notes, his parentage petition seeking joint custody and visitation was filed and served in September 2011 yet was not brought to trial until October 2013. Petitioner overlooks, however, that local rule 15.21(e), in so far as it imposes an inflexible 18-month period for disposition of child custody claims, conflicts with Supreme Court Rule 922 (eff. July 1, 2006), which governs child custody proceedings under the Illinois Parentage Act of 1984 (Parentage Act) (750 ILCS 45 *et seq.* (West 2012)). See Ill. S. Ct. R. 921 (eff. July 1, 2006). Rule 922 provides:

> "All child custody proceedings under this rule in the trial court shall be resolved within 18 months from the date of service of the petition or complaint to final order. In the event this time limit is not met, the trial court shall make written findings as to the reason(s) for the delay. The 18-month time limit shall not apply if the parties, including the attorney representing the child, the guardian *ad litem* or the child representative, agree in writing and the trial court makes a written finding that the extension of time is for good

cause shown. In the event the parties do not agree, the court may consider whether an extension of time should be allowed for good cause shown."

¶ 78 Circuit courts may not adopt local rules that conflict with the rules of our supreme court. Ill. S. Ct. R. 21(a) (eff. Dec. 1, 2008). Rule 922 governs here, but petitioner makes no argument that its particular standards were not met. Consequently, we reject his contention regarding delay in the resolution of the custody issue.

¶ 79 Petitioner also alludes to the passage of time before the trial court heard his various motions challenging the removal portions of the agreed order of July 2, 2012. Petitioner, however, develops no argument that the delay was improper. He insinuates that the court was at fault, but cites no pertinent legal authority. He cites a bare principle from *Piotrowski v. State Police Merit Board*, 85 Ill. App. 3d 369, 373 (1980), namely that "[d]ue process of law is served where there is a right to present evidence and argument in one's own behalf, a right to cross-examine adverse witnesses, and impartiality in rulings upon the evidence which is offered." This principle governs the conduct of a hearing, not delay in holding the hearing.

¶ 80 Finally, petitioner asserts in passing that the court inexcusably delayed his request for a visitation schedule. Here also petitioner develops no argument.

¶ 81 C. Joint Trial on Custody and Removal

¶ 82 Next, we address petitioner's contention that the trial court erred by conducting a joint trial on custody and removal. Petitioner does not contend that the joinder was improper *per se*. The case he cites on this issue, *In re Marriage of Benson*, 217 Ill. App. 3d 564, 567 (1992), does not bar such joint hearings in all cases, but admonishes that trial courts "must be careful not to allow evidence proper for one petition to impact upon the decision as to the other petition."

¶ 83 As to prejudice from the joint trial, petitioner first contends that the court erred by resting its custody determination on evidence "offered by [respondent] in her case-in-chief on removal." Petitioner means here respondent's testimony that, on one occasion, petitioner was dismissive of her claim that G.E. suffered from thrush. Petitioner claims that, "[h]ad the court ruled on [respondent's] petition for custody before considering removal, the testimony about the 'thrush condition' would not have existed and the court might have concluded that joint custody was appropriate."

¶ 84 Petitioner is mistaken. Respondent's case-in-chief was not limited to removal, nor was petitioner's case-in-chief limited to custody. The trial court specifically rejected a bifurcated trial, and, as it happened, evidence on custody *and* removal was adduced during both cases-in-chief. Therefore, we cannot assume that respondent presented the testimony on thrush specifically with regard to the removal issue. More importantly, petitioner does not explain how the testimony on thrush was, based its content, relevant only to removal.

¶ 85 Second, petitioner argues that the trial court erred by not ruling on visitation before deciding removal. He submits that, "had removal not been an issue at [his] trial on custody, he would have received the fairly standard visitation he was seeking," rather than the "minimum of 52 day of visitation per year" that he did receive. Petitioner has not demonstrated prejudice, as he fails to identify what the "fairly standard visitation" was that he sought. (Perhaps petitioner meant to argue here that, had the trial court considered visitation before considering removal, the court would have denied removal because of its impact on visitation. That is not the argument petitioner has articulated here, however.)

¶ 86 We note that petitioner's only challenge to the custody ruling besides the foregoing procedural objections is that the trial court gave the force of presumption to the *status quo*,

namely respondent's residing in Texas (discussed *infra* ¶ 88). Petitioner does not develop an attack on the substance of the custody decision, as he cites none of the relevant factors on custody (see 750 ILCS 5/602(c) (West 2012)).

¶ 87 D. Consideration of G.E.'s Time in Texas Prior to Trial

¶ 88 We turn next to an issue that petitioner claims has implications for both the custody and removal issues. Petitioner contends that the court erred as a matter of law in holding that respondent was not required to file a petition for temporary removal before relocating with G.E. to Texas in December 2011. Petitioner claims this error had demonstrable consequences for the court's substantive decision on custody and removal, as the court believed it did not have to disregard whether and how G.E. had grown accustomed to life in Texas since December 2011. Petitioner claims that the court thereby effectively shifted to respondent the burden of proof on removal:

> "[B]y the time, the trial on [petitioner's] petition occurred, the court viewed [respondent and G.E.] as residents of Texas, and placed the burden on [petitioner] to prove that [G.E.] should be removed from Texas to Illinois. ***
>
> *** [Petitioner] arrived at the trial on his petition for custody and visitation prepared to meet the statutory requirements that would establish his parental rights. Instead, he was required by the trial court to essentially prove that it was in [G.E.'s] best interest to be removed from the state of Texas."

According to petitioner, the burden-shifting impacted removal and, therefore, had a ripple effect on his request for joint custody, for the court would be less inclined to grant joint custody if it had decided that respondent could reside in Texas with G.E. See *In re Marriage of Hahin*, 266 Ill. App. 3d 168, 174 (1994) (distance a factor in deciding appropriateness of joint custody). We

note, however, that the trial court decided custody before it decided removal, and there is no indication in the court's findings on custody that it considered the distance between Illinois and Texas as a practical impediment to joint custody. Consequently, we hold that the trial court's ruling that respondent did not need court permission to remove G.E. in December 2011 had no consequence for its decision on custody. We do address the claim of error, however, as it relates to the question of permanent removal.

¶ 89 Regarding whether respondent was required to seek leave to remove G.E. from Illinois, petitioner relies on two decisions, *Fisher v. Waldrop*, 221 Ill. 2d 102 (2006), and *In re Parentage of R.B.P.*, 393 Ill. App. 3d 967 (2009). In December 2002, a parentage judgment was entered awarding Waldrop custody of her and Fisher's child. In 2003, Fisher filed a petition to enjoin removal, alleging that Waldrop had communicated her intent to move with the child to Indiana. Fisher filed the injunction petition under section 13.5 of the Parentage Act (750 ILCS 45/13.5 (West 2004)), which provides in relevant part:

> "In any action brought under this Act for the initial determination of custody or visitation of a child or for modification of a prior custody or visitation order, the court, upon application of any party, may enjoin a party having physical possession or custody of a child from temporarily or permanently removing the child from Illinois pending the adjudication of the issues of custody and visitation."

¶ 90 Afterward, Waldrop filed a petition for removal under section 609 of the Marriage Act (750 ILCS 5/609(a) (West 2004)), which states in relevant part:

> "The court may grant leave, before or after judgment, to any party having custody of any minor child or children to remove such child or children from Illinois whenever such approval is in the best interests of such child or children. The burden of proving that such

> removal is in the best interests of such child or children is on the party seeking the removal. When such removal is permitted, the court may require the party removing such child or children from Illinois to give reasonable security guaranteeing the return of such children."

¶ 91 Faced with the question of which party had the burden of proof given the two statutory provisions in play, the trial court ruled that Fisher, the party seeking to enjoin removal, had the burden of establishing that removal would not be in the child's best interests. The appellate court reversed the trial court, and the supreme court affirmed the appellate court. Before the supreme court, Waldrop contended that, in parentage actions, "unless a noncustodial parent files for an injunction pursuant to section 13.5, the Parentage Act does not restrict a custodial parent's ability to remove a child from the state." *Fisher*, 221 Ill. 2d at 115. The court rejected this position. The court pointed to section 14(a)(1) of the Parentage Act (750 ILCS 45/14(a)(1) (West 2004)), which provides that where a parentage judgment involves determinations of "custody, joint custody, removal or visitation, the court shall apply the relevant standards of the [the Marriage Act], including Section 609" (750 ILCS 45/14(a)(1) (West 2012)). Under section 609, the court observed, "the [custodial] parent must first request leave," and "the burden is on the custodial parent to prove that removal would be in the child's best interests." *Fisher*, 221 Ill. 2d at 115. The court did not accept Waldrop's suggestion that the availability to the noncustodial parent of an injunction against removal implied that the custodial parent was free to remove the child barring a request for an injunction. *Id.* 115, 117-18. Instead,

> "when a custodial parent intends to remove a child from Illinois he or she must request leave of court, and the burden is on the custodial parent to show that removal would be in the child's best interests. It is not incumbent on a noncustodial parent to request an

> injunction pursuant to section 13.5 in order to force the custodial parent to request leave of court before removing children from the state regardless of whether an injunction has been sought, and a custodial parent who removes children from the state without having first at least requested leave could potentially be subjected to contempt proceedings. If the noncustodial parent does seek an injunction, the burden is on the noncustodial parent to establish that he has no adequate remedy at law and will suffer irreparable harm without injunctive relief [citation], paying specific but not exclusive attention to the factors listed in section 13.5 of the Parentage Act [citation]." *Id.* at 116-17.

¶ 92 In *R.B.P.*, also cited by petitioner, the mother left Illinois with the child before the father initiated a parentage action. Citing this fact, the appellate court held that the propriety of the move was governed by section 13.5 of the Parentage Act, not section 609 of the Marriage Act. The court explained: "[T]he holding in *Fisher* was only meant to apply to situations in which a custody order, or pending parentage/custody action, already existed prior to the unmarried custodial parent removing the minor from the state." 393 Ill. App. 3d at 974. "[S]ection 13.5 of the Parentage Act," the court held, was "the only mechanism available to the court to order the return of a minor child in situations such as this where the parents were never married and no proceedings whatsoever existed prior to the custodial parent leaving the state with the child." *Id.*

¶ 93 Based on *Fisher* and *R.B.P.*, petitioner contends that, since his parentage action was pending in December 2011, respondent was required to seek leave of court before moving with G.E. to Texas that month. Petitioner asks that we reverse the decision to grant removal and remand for a new hearing in which the trial court would disregard all time respondent spent in Texas since December 2011. Assuming *arguendo* that petitioner has correctly interpreted *Fisher* and *R.B.P.*, we will not reverse the trial court if a basis for affirming appears in the record. See

In re Marriage of Petrik, 2012 IL App (2d) 110495, ¶ 33 ("[T]his court is not bound by the trial court's reasoning and may affirm on any basis supported by the record, regardless of whether the trial court based its decision on the proper grounds."). In July 2012, the court entered an order allowing respondent "temporary removal" of G.E. The order does not indicate on its face that was an agreed order, but the parties have consistently characterized it as such—though they have just as consistently argued over its scope. We note, as did the trial court, that the order contains no express durational limit on the temporary removal (short of a determination of permanent removal). In apparent recognition of this textual obstacle, petitioner adduced evidence below of the parties' intentions in entering the order. In this court, however, petitioner develops no argument that the court erred by not vacating the order. Petitioner cites no principles guiding construal of orders or attacks on agreed orders. See, *e.g.*, *People ex rel. Devine v. Murphy*, 181 Ill. 2d 522, 538 (1998) ("[A]greed orders are generally not subject to appeal or attack except where the order has resulted from fraudulent misrepresentation, coercion, incompetence of one of the parties, gross disparity in the position or capacity of the parties, or newly discovered evidence." (Internal quotation marks omitted.)). We also note that the order does not reserve for petitioner any objection to removal *prior to* July 2012, though petitioner clearly was aware at the time that respondent had moved to Texas with G.E. (the court's May 15, 2012, granted petitioner visitation in Texas).

¶ 94 In view of the July 2, 2012, agreed order—to which petitioner develops no challenge in this court—the trial court could permissibly consider the period of time G.E. was in Texas between December 2011 and trial.

¶ 95 *In re Marriage of Hefer*, 282 Ill. App. 3d 72 (1996), provides guidance here. In *Hefer*, the trial court entered an agreed order in October 1991 granting the wife temporary custody of

the parties' two children. The hearing on permanent custody was not conducted until April 1995. The trial court granted the father permanent custody, but the appellate court reversed on the ground that the trial court had placed too much emphasis on the wishes of the children. *Id.* at 76-77. The appellate court held that the trial court should have considered the ties that the children developed to home and community during the period of temporary custody. The court found authority in *Wurm v. Howard*, 82 Ill. App. 3d 116, 121-22 (1980) for "consider[ing] the period of time that the child has spent with a parent by virtue of a temporary custody order." The court in *Wurm* said:

> "[T]he [trial] court would have been remiss if it did not consider the fact that the boys had been living in Champaign for over two and one-half years. While it is accepted, as stated by the [trial] court, that the children could have adjusted to another change of environment, it must also be noted that another change of friends, schools, and daily home-life would not have been without some potentially adverse consequences. The importance of stability and continuity in a child's custodial and environmental relationships is an accepted fact, and one which has been emphasized by the legislature and the courts." *Id.* at 121.

¶ 96 The *Hefer* court found *Wurm*'s approach sound and resilient to potential objections:

> "It could be argued that giving weight to periods of temporary custody makes it unlikely parties will amicably and voluntarily enter into temporary custody agreements. The answer to that argument is that a parent who wishes to contest custody should be required to do so at the earliest possible time. It might also be argued that the temporary custodian will be inclined to delay the hearing on permanent custody in order to lengthen the period of temporary custody. That is alleged to have happened in this case. We are

> confident, however, that when concern over intentional delay is brought to the attention of the trial court a setting will be forthcoming. What is important is not that the parties have a level playing field for their custody battles. What is important is the best interest of the child. It is wrong to allow a child to put down roots, then move him to a new location without a good reason for doing so." *Hefer*, 282 Ill. App. 3d at 78.

Accordingly, even if the trial court was incorrect in holding that respondent needed no preclearance to move with G.E. to Texas, the agreed order for temporary removal provides an alternative basis that justifies consideration of how G.E. adapted to Texas since respondent's December 2011 relocation there.

¶ 97 We also do not agree with petitioner that the trial court switched the burden of proof from respondent to him. See 750 ILCS 5/609(a) (West 2012) (party seeking removal has the burden to show that removal would be in the bests interests of the child). Removal petitions are decided according to the following factors: (1) the likelihood that the proposed move would enhance the general quality of life for both the custodial parent and the child; (2) the motives of the custodial parent in seeking removal, namely whether the proposed move is a merely a ruse intended to defeat or frustrate the noncustodial parent's visitation; (3) the motives of the noncustodial parent in opposing removal; (4) the outcome that would foster a healthy and close relationship between the child and both parents, given a careful consideration of the visitation rights of the noncustodial parent; and (5) whether a realistic and reasonable visitation schedule can be arranged if removal is allowed. *Collingborne*, 204 Ill. 2d at 522-23; *Eckert*, 119 Ill. 2d at 326-28. The paramount consideration is whether the move is in the best interests of the child. *Collingborne*, 204 Ill. 2d at 525. The trial court's decision on removal will not be reversed

" 'unless it is clearly against the manifest weight of the evidence and it appears that a manifest injustice has occurred.' " *Id.* at 522 (quoting *Eckert,* 119 Ill. 2d at 328).

¶ 98 We emphasize that *Hefer* and *Wurm* do not suggest that the existence of a temporary removal order sets up a legal presumption in favor of the *status quo*; that indeed would be burden-shifting. The *status quo* may be considered, however, for what it reveals about a child's present ties to home and community.

¶ 99 Petitioner, however, identifies the following specific comments as proof that the trial court shifted the burden of proof to him: (1) the court would "assign[] neither negative nor positive weight" to the fact that there was "no compelling testimony" that Texas offered superior employment and educational opportunities to Illinois; (2) the court commented that "[t]he relationship between child and the father is not going to change. It was a long-distance relationship, and it will remain a long-distance relationship."

¶ 100 As for comment (2), petitioner omits the trial court's surrounding statements. The court preceded comment (2) with a finding that "reasonable and realistic visitation can be set up while the child resides in Texas." The court followed comment (2) with these statements: "The quantity of time the father and child will have will not decrease. The Court believes that the quality of time the father has with the child will not decrease." Evidently, the court believed, based on the history of visitation in the case, that continued long-distance visitation was practical and realistic. Anticipating petitioner's disappointment with the removal decision, the court assured petitioner that visitation would not decrease from the frequency he had been having it. We see no indication, however, that the trial court *presumed* that existing visitation was working, as if the court were placing the burden of proof on petitioner.

¶ 101 As for comment (1), petitioner submits that if the court had properly regarded respondent as the party bearing the burden of proof, the court "would have considered the lack of compelling testimony [as to the superiority of employment and educational opportunities in Texas] to be a failure by [respondent] to meet her evidentiary burden rather than a neutral factor." We need not construe the trial court's comment in so sinister a light. The court may well have been remarking that the issue of school and employment opportunities was so significantly outweighed by other evidence on the "quality of life" factor (factor (1) of the removal factors in *Collingbourne* and *Eckert*) that respondent's failure of proof on the narrower issue of school and employment did not appreciably cut in petitioner's favor. Notably, the court immediately remarked that the move to Texas "[c]learly *** enhanced the general quality of life for [respondent and G.E.]" because of respondent's family connections in Texas. Petitioner develops no argument that the trial court substantively erred in placing such emphasis on the presence in Texas of respondent's mother and maternal relatives.

¶ 102 E. Other Challenges to the Removal Decision

¶ 103 Petitioner also makes several substantive challenges to the trial court's decision on removal. First, petitioner argues that the court erred in considering Fikar's presence in Texas as enhancing the quality of life for respondent and G.E., because there was undisputed evidence at trial that their marriage was failing. Petitioner notes that Jensen's October 2012 report states that respondent's marriage to Fikar was "heading toward dissolution," and that respondent testified at trial that she and Fikar are separated.

¶ 104 What the trial court actually found, however, was that respondent's "*move* [to Texas] *** allowed her to join her husband" (emphasis added). We read the court as referencing respondent's intent in moving to Texas, rather than the benefits that the marriage was currently

providing. Respondent's reasons for moving were relevant to whether she thereby intended to frustrate petitioner's visitation. See *Collingborne*, 204 Ill. 2d at 522. Thus, the trial court considered a relevant fact, but mentioned it under the wrong factor. This is no bar to affirmance, for we are "not bound by the trial court's reasoning and may affirm on any basis supported by the record, regardless of whether the trial court based its decision on the proper grounds" (*Petrik*, 2012 IL App (2d) 110495, ¶ 33).

¶ 105 Next, petitioner contends that the trial court's finding that G.E. had developed ties to Texas was in conflict with the court's recognition that G.E. was too young to express a preference as to where he lived. We disagree. G.E.'s connections to Texas could be evaluated independently of his opinions, if any.

¶ 106 Moreover, petitioner submits that respondent's frequent visits to G.E.'s physician, Dr. Wildman, in Illinois after she moved to Texas "cast[] doubt on any assertion that she had developed unbreakable bonds with the state of Texas." Petitioner fails to acknowledge, however, the trial court's remarks about those appointments:

> "The Court spent quite a bit of time looking at [the appointment dates in Illinois] and comparing them to the court dates in this case and finds that each and every time the child visited the doctor in Illinois there was a court date either pending or there was visitation that had been ordered in the state and therefore the mother was in the state."

We also note respondent's testimony that she began taking G.E. to a Texas physician in 2013. We conclude, therefore, that respondent's continued use of Dr. Wildman after her move to Texas does not have the significance petitioner assigns to it.

¶ 107 Regarding the impact of visitation on removal, petitioner makes the bare assertion that "the [trial] court[']s finding that 'reasonable and realistic visitation can be set up while the child

resides in Texas' [citation], belies the court's finding that 'the maximum involvement and cooperation of both parents is in the child's best interests.' [Citation]."

¶ 108 Petitioner misses the mark. The court's remark about "involvement and cooperation" was made in deciding custody, not removal (the court decided custody before it decided removal). The remark was not a *finding* by the trial court, but its recognition of a presumption applicable in custody determinations. The court noted that, as there was no evidence of domestic abuse, it had to "presume that the maximum involvement and cooperation of both parents regarding the physical, mental, moral, and emotional well-being of their child is in the best interest of the child" (750 ILCS 5/602 (West 2012)). Petitioner does not explain how this presumption applies to visitation as it impacts removal.

¶ 109 Petitioner's final contention on removal is that the court erred in rejecting Jensen's and Gioia's recommendation that removal not be granted. Petitioner asserts:

> "It is unclear why the trial court rejected both [Jensen's and Gioia's] recommendations. The reports and testimony of both court-appointed experts was [*sic*] accepted into evidence at trial and are unrebutted and unassailable. While the trial court was not bound by the expert opinions, nothing in the record of this matter suggests that those recommendations should not be given due consideration."

We do not accept this line of reasoning. The opinions were "unrebutted" in the sense that there was no contrary expert testimony, but the trial court was not thereby bound by either opinion. See *In re Marriage of Debra N. and Michael S.*, 2013 IL App (1st) 122145, ¶ 52 (trial court not bound to accept opinion of court-appointed expert); *Taylor v. Starkey*, 20 Ill. App. 3d 630, 634 (1974) (trial court not bound by guardian *ad litem*'s recommendation). Hence, the court could have given the opinions "due consideration" without accepting them. Moreover, it not "unclear"

why the trial court rejected the recommendations. The court gave specific reasons, which we recounted above. *Supra* ¶ 63. Finally, petitioner simply begs the question by labeling the opinions "unassailable."

¶ 110 F. Contribution to Attorney fees

¶ 111 Lastly, petitioner contends that the court erred in ordering contribution toward respondent's attorney fees . Petitioner claims that respondent's petition for contribution "was not before the court in the trial below and [petitioner] was not afforded the opportunity to defend against [the] petition." Also, according to petitioner, because the petition for contribution "was not before the court at trial, no testimony was elicited with respect to that petition."

¶ 112 We provide some additional procedural context. On July 23, 2013, respondent filed her petition for interim fees. Petitioner moved to strike the petition. On October 2 (the 5th day of trial), respondent filed a petition for contribution. The next day, October 3, petitioner objected to the taking of evidence on the contribution petition because he did not have timely notice. The court held that the evidence on fees would be limited to the interim petition.

¶ 113 On November 22, after the proofs at trial had closed, petitioner filed a response to the contribution petition. On November 25, respondent filed an amended petition for contribution. That same day, the court heard argument on fees in conjunction with closing arguments in the case. Petitioner contended that he had untimely notice of the November 25 petition. He did not, however, renew his objection to the October 2 petition (to which he had filed a substantive response on November 22). The court ruled that it would consider the amended petition. As part of its final judgment, the trial court ordered $5,000 in contribution from petitioner.

¶ 114 Initially, petitioner asserts flatly that "no testimony was elicited [at trial] with respect to [the contribution] petition." A few sentences later, petitioner is more specific. He does not

claim that there was inadequate proof of the fees respondent incurred. He claims, rather, that respondent, who had the burden of proof on the fee requests, failed to present "any evidence" of her *in*ability to pay or his (petitioner's) ability *to* pay. See *In re Marriage of Schneider*, 214 Ill. 2d 152, 174 (2005) ("The party seeking an award of attorney fees must establish her inability to pay and the other spouse's ability to do so."). This is an overstatement. The record contains pay stubs and financial statements reflecting petitioner's finances. Also, respondent testified to her employment situation and claimed that family members were helping her pay her attorney fees . Petitioner may believe this evidence was inadequate, but he cannot plausibly claim that respondent failed to present "any evidence." Accordingly, we reject this contention.

¶ 115 III. CONCLUSION

¶ 116 For the foregoing reasons, we affirm the judgment of the circuit court of Kane County.

¶ 117 Affirmed.