2015 IL App (2d) 140919-U
No. 2-14-0919
Order filed February 10, 2015



IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| *In re* Marriage of<br>NICOLE JOHNSTON,<br><br>Petitioner-Appellant,<br><br>and<br><br>DOUGLAS JOHNSTON,<br><br>Respondent-Appellee. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Appeal from the Circuit Court<br>of Du Page County.<br><br><br><br>No. 11-D-16<br><br>Honorable<br>Rodney W. Equi,<br>Judge, Presiding. |

JUSTICE SPENCE delivered the judgment of the court.
Justices Zenoff and Burke concurred in the judgment.

**ORDER**

¶ 1 *Held*: The trial court's decision denying Nicole's petition for removal was not against the manifest weight of the evidence. Therefore, we affirmed.

¶ 2 Petitioner, Nicole Johnston, and respondent, Douglas Johnston, were married in 2001 and had twin boys, M.J. and A.J., born in 2003. In January 2011, Nicole filed a petition for dissolution of marriage, and a judgment for dissolution of marriage/marital settlement agreement was entered in May 2012. The parties agreed to joint custody, with Nicole designated as the residential parent, and the joint custody agreement was incorporated into the dissolution judgment/marital settlement agreement. In December 2013, Nicole filed a petition to remove the

children to Canada, which the trial court denied. Nicole appeals the denial of her petition for removal, arguing that the decision was against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Both parties were born and educated in Canada. They married on May 26, 2001, in Orangeville, Ontario, Canada. Also in 2001, Douglas, who was employed by Maple Leaf Foods, accepted a job transfer to California, where he and Nicole moved. On September 22, 2003, the parties had twin boys, M.J. and A.J. In April 2004, Douglas's job required the family to relocate to Wheaton, Illinois, where Douglas and the boys remain.

¶ 5 In January 2011, Nicole filed a petition for dissolution of marriage, and in September 2011, Nicole petitioned to remove the children to Canada. Three individuals recommended against removal: Dr. Robert Shapiro, who conducted a custody evaluation; Dr. Sara Bonkowski, the boys' counselor; and Keith Roberts, the guardian *ad litem* (GAL). Nicole withdrew the removal petition prior to the entry of the joint custody agreement, dated May 21, 2012. The joint custody agreement was then incorporated into the May 23, 2012, dissolution judgment/marital settlement agreement.

¶ 6 Shortly after the dissolution judgment, Nicole moved to Naperville and rented an apartment, and Douglas stayed in the Wheaton home. The joint custody agreement named Nicole as the residential parent but granted the parties very nearly equal parenting time. The joint custody agreement provided that the boys should continue school in Wheaton. However, it stated that in the event that Douglas permanently "relocate[d] his residence out" of Illinois, Nicole was free to remove the boys to Canada.

¶ 7 Pursuant to the marital settlement agreement, Nicole received $7,000 per month from Douglas in unallocated support. In November 2013, Douglas changed jobs, which resulted in a reduction of support to approximately $4,000 per month.

¶ 8 A. Petition for Removal

¶ 9 In December 2013, Nicole filed a petition to remove the children to Orangeville, Ontario, Canada. In her petition, Nicole stated that her best chance of finding employment was in Ontario, Canada. She also stated that within the past two years, she had been offered a job in Canada paying $70,000 per year but had to turn it down due to the ongoing divorce proceedings.

¶ 10 Nicole further pointed out in her petition that neither she nor Douglas had any immediate family living in the Midwest and that both parties' families lived in Ontario, Canada. Nicole's mother, father, and brother lived in Orangeville, Ontario. Douglas's mother, father, two sisters, nieces, and nephews also lived in Ontario.

¶ 11 Finally, Nicole stated in her petition that the quality of her life and the boys' lives would be enhanced by moving to Orangeville, Ontario. Nicole stated that she would move into a home with two bedrooms and a loft that was located on her parents' property and that she would not have to pay rent or utilities. Nicole stated that she could work for her parents' landscaping business while looking for permanent employment and that her parents would provide free childcare.

¶ 12 B. Trial Testimony

¶ 13 A two-day trial on Nicole's removal petition occurred in August 2014. Nicole, age 41, testified as follows. Prior to the May 2012 divorce, she had been a stay-at-home mother who handled the boys' day-to-day lives, such as school registration, extracurricular activities, and medical appointments. Since the divorce, Nicole still handled many of these responsibilities,

although Douglas had become much more involved in the boys' lives. Nicole admitted making several trips to Canada since 2012 and missing some of the boys' activities due to her absences. She and Douglas had modified the joint parenting agreement a few times per month as needed without court involvement.

¶ 14 Nicole testified that she decided to look for a job because she could barely survive on the reduced support (approximately $4,000 per month). She had a bachelor and masters degree in environmental science with a focus on waste management. She testified that it was difficult to find a job in Illinois because the positions required an engineering degree, which she did not have. As a result, Nicole began looking for jobs in Canada.

¶ 15 Nicole further testified that on June 21, 2014, she became engaged to Andreas Buschbeck, who lived in Markdale, Canada. She had met Andreas 25 years ago and the two reconnected in June 2012, after her divorce the month prior. In July 2014, Nicole left Naperville and moved to her parents' property in Orangeville, Ontario, Canada, after accepting a job with the York Region of Ontario, Canada. Nicole explained that once she and Andreas were engaged in June 2014, her plan changed from living in Orangeville, where her parents lived, to Markdale, where Andreas lived. Nicole planned to move in with Andreas in September 2014, and they planned to marry in December 2014.

¶ 16 Nicole was questioned regarding a deposition and subsequent meeting with the GAL that had occurred on August 1, 2014, about a week before the instant trial. During the August 1 deposition, Nicole stated that she was engaged and planned to marry Andreas, but she did not state that she planned to live in Markdale rather than in Orangeville. At trial, Nicole explained that at the time of the deposition, she was living in Orangeville and was not asked if she planned on moving at some point. Nicole also testified that she met with the GAL (Roberts) and Douglas

immediately after the deposition. When asked why she did not tell Roberts about her plan of moving to Markdale the following month (September 2014), she explained that the meeting with Roberts lasted 10 minutes, the purpose of the meeting was to negotiate the parties' settlement agreement, and Roberts did not ask many questions.

¶ 17 Nicole testified that Andreas lived on a 200-acre farm in Markdale and also managed the farm next door. The population of Markdale was about 1,500 people, and Andreas's property was about eight miles from the town. Nicole testified that Andreas had a good relationship with the boys; they had gone horse-back riding three or four times. Andreas had a swimming pool, and the boys could ski and play hockey, soccer, and baseball. In addition, the boys could play with the farm animals on the property and participate in 4H.

¶ 18 Nicole's job paid approximately $74,000 per year and was 35 hours per week (8 a.m. - 4 p.m.). Nicole admitted that her commute from Markdale to her job was 1 hour and 40 minutes each way. Nicole testified that if the court denied her petition for removal, she had no choice but to keep her job in Canada for financial stability.

¶ 19 Nicole contacted the school in Markdale and learned that the boys could register to attend at any time; she had no concern regarding the quality of education. If Nicole were allowed to remove the boys to Markdale, they would take the bus to and from school, and there were activities they could participate in after school. In addition, there were family members around to help out.

¶ 20 Nicole's parents lived in Orangeville, and her brother lived five minutes from her parents. Douglas's parents lived in Alliston, Ontario, approximately 30 minutes from Nicole's parents. In addition, Douglas had two sisters, Pamela and Julie, who were married and had children. Pamela had three children, ages 8 to 16, and Julie had two children, ages 8 and 10. The boys, currently

10 years old, were "extremely close" to Nicole's parents; they enjoyed taking riding lessons, swimming, playing in the pond, and hiking. The boys were also "very close" to Douglas's parents and his nieces and nephews.

¶ 21 In addition, the boys had lots of friends in Orangeville. Over the past 12 months, she and the boys had traveled to Canada about 14 times; it was an 8½-hour drive. Nicole had friends in the area with children who were close in age to the boys, and they would meet at either Nicole's parents' house, a nearby park, or at the friends' houses. Nicole admitted that in Markdale, the boys could not simply walk to a friend's house.

¶ 22 Nicole proposed the following parental schedule. During the school year, there was one long weekend per month that Douglas could have. He could also have all of March break and the bulk of Christmas break. In the summer, they could alternate between two weeks with one parent and one week with the other. Finally, if Douglas were in Canada, he could have as much time with the boys as he wanted. In the meantime, Douglas and the boys could communicate via the phone, email, and Skype. Nicole wanted Douglas to have an ongoing relationship with the boys.

¶ 23 Finally, Nicole testified that medical care in Canada was free but that the cost of living was about 20% higher than in Illinois.

¶ 24 Roberts, the GAL, was reappointed for the removal proceeding and testified as follows. Roberts opined that it was not in the boys' best interests to grant Nicole's removal petition. In forming his opinion, Roberts met individually with the parties, met individually and collectively with the boys, attended the depositions, and reviewed the court file. Roberts believed the facts underlying the petition for removal were essentially identical to the ones present when Nicole filed her initial removal petition in September 2011.

¶ 25 Roberts first met with the boys on June 17, 2014. The boys said that Nicole always wanted to move and that they had a hard time telling her that they did not wish to move. The boys were very concerned that their conversation with Roberts was "secret," and they did not want Nicole to know that they did not like Andreas. M.J., in particular, told Roberts that he did not like Andreas and that Andreas was trying to replace Douglas and would sleep with Nicole. Regarding living in Wheaton or Canada, A.J. told Roberts that he wanted to remain in Wheaton; he liked the school and did not want to be separated from his dog and friends. M.J., on the other hand, was more undecided, articulating reasons on both sides. M.J. liked spending time with his grandparents in Orangeville, such as playing in their pond and ATVing, and he also liked spending time with his cousins. At the second meeting, M.J. told Roberts that there were times that he thought A.J. wanted to move to Canada, and then there were times that A.J. did not want to move. A.J. told Roberts during the second meeting that he liked his cousins in Canada but would miss his house in Wheaton, as well as his friends, his dog, and Douglas.

¶ 26 Roberts testified that in May 2014, Nicole told him that she intended to relocate to Orangeville, which was a 40-minute commute to her job. Nicole never told Roberts that she planned to move to Markdale. Roberts was concerned over the ability to craft an appropriate parenting plan if removal were allowed, and Markdale was even further away from Wheaton than Orangeville.

¶ 27 Roberts noted that overall, the boys loved both of their parents, and Nicole and Douglas loved the boys; that was "not the issue." While Nicole perceived the move to be in her best interest, Roberts did not see a significant benefit for the boys. Regarding Douglas's motivation for resisting the move, Roberts did not believe Douglas's motive was inappropriate.

¶ 28 Douglas, age 45, testified as follows. In the spring of 2010, he left Maple Leaf Foods and began working for Nealanders International, where he stayed for 18 months. Then, he worked at a start-up food company and decided to leave that job in late 2013 or early 2014. Douglas then returned to work for Maple Leaf Foods, and his salary increased to $213,000. Though his employment contract did not reflect this requirement, Douglas testified that he could not maintain his job if he left Illinois; Chicago was the hub of the food industry.

¶ 29 Douglas worked from a home office and traveled one to two days per week. His job allowed him flexibility with the children and he exercised all of his parenting time. Nicole had the boys on Monday and Wednesdays; he had them on Tuesdays until the evening and on Thursdays, and they alternated Fridays and weekends. Approximately six times in the past year, Douglas had kept the boys for longer periods of time when Nicole was delayed in returning from Canada.

¶ 30 The boys were involved in many sports and park district activities, including soccer, hockey, basketball, volleyball, and lacrosse. Douglas either coached or helped coach these sports. On the weekends that Nicole was in Canada without the boys, she missed their activities. The boys were also involved in Cub Scouts and community service projects, and they attended church every other Sunday with Douglas. The boys had lived in the same Wheaton house since they were six months old. They had 10 to 12 friends and the Wheaton house was a weekly meeting spot for their friends.

¶ 31 Douglas registered the boys for school in 2012 and in 2013 and attended parent-teacher conferences. Nicole also attended parent-teacher conferences, but not at the same time. Nicole missed the boys' World Fair event at school because she was in Canada that weekend, which was "a big deal" for the boys, although she helped the boys prepare for it. Douglas took the boys

to two or three counseling appointments with Dr. Bonkowski, whereas Nicole cancelled two or three appointments. Dr. Bonkowski had since retired. Douglas admitted that Nicole took the boys to more medical appointments than he did, and he did not know the name of the boys' dentist. In addition, Nicole generally took the boys to Environmental Club, a club at school.

¶ 32 Douglas and Nicole worked together on adjusting the joint parenting agreement as needed. There were two instances, however, where the police were involved. On one occasion, in 2012, Nicole wanted to pick the boys up one day early for a family event in Canada, and Douglas refused. On the other occasion in 2014, Nicole would not release A.J. because he was sick.

¶ 33 C. Trial Court Decision

¶ 34 The trial court issued a six-page written decision on August 20, 2014. The court found as follows.

¶ 35 Nicole had recently accepted a job with the York Region of Ontario, Canada, as a Program Coordinator, Solid Waste Management, for approximately $74,000 per year. The trial court noted that "[c]oincidentally (or not) this is the same job she proffered to justify removal" in her initial September 2011 petition for removal. Nicole had lived in Canada since accepting the job with York Region. The court noted that Nicole's petition for removal reflected a desire to move to Orangeville, live on her parents' estate, and work in York. Nevertheless, either during the course of the trial or perhaps immediately before, it was disclosed that she was engaged to Andreas and intended to marry and move in with him in December 2014.[1] However, Andreas resided in Markdale, not in Orangeville.

[1] Nicole testified that she intended to move in with Andreas in September 2014 and then get married in December 2014.

¶ 36 The court noted the differences between Markdale and Orangeville, in terms of location and remoteness. Markdale was a rural area, and Andreas lived on a farm with animals approximately eight miles outside of Markdale. According to a 2011 census, Markdale had a population of 1,500 whereas Orangeville had a population of 28,000. The nearest town to Markdale was 25 miles away. In Markdale, the boys enjoyed an outdoor lifestyle and could learn more about agriculture and animal husbandry. The opportunity to interact easily with other children and friends, however, would be more difficult. Because of the distances, friends in Orangeville would not be easily accessible on a daily basis in Markdale. In Wheaton, on the other hand, there were greater organized activities available to the boys, both through school and the park district. Interactions with school mates and friends required nothing more than a short walk, bike ride, or invitation to friends to come to the house.

¶ 37 Another distinction regarding Markdale was Nicole's commute to work. From her originally planned residence in Orangeville, the commute to her job at York Region was 40 minutes. From Markdale, however, Nicole's job was 1 hour and 40 minutes each way, resulting in a commute of over three hours per day. Nicole would not be able to interact with the boys during this three-hour commute, and her " 'plan' " with respect to providing care while she was working "was less than totally clear."

¶ 38 The court stated that the boys did well in school in Wheaton and were healthy and well-adjusted. They engaged in scouting, basketball, volleyball, fencing, and other activities in Wheaton. Douglas coached the children's sporting activities, attended all of their activities and parent-teacher conferences, and testified that he never missed any of his parenting time. Nicole conceded that she and Douglas spent essentially equal time with the children, with the difference being about one hour. Douglas testified that the boys had many friends in Wheaton, and that his

house was often a gathering place for all of the children. Nicole was responsible for the majority of the children's doctor appointments, although Douglas had been more involved in that respect since the divorce.

¶ 39 According to the court, there was no useful evidence comparing the educational opportunities in Markdale to Wheaton. Aside from Canada having free health care and a 20% higher cost of living, the court made "no judgment" as to whether life in Canada was "superior to or inferior to" life in Wheaton.

¶ 40 Regarding the opinion of Roberts, the GAL, the court noted that he testified "quite forcefully" that the boys wished to "remain primarily" in Wheaton. There was "little evidence" regarding any relationship between the boys and Andreas, other than that they rode horses on occasion. In fact, Roberts reported that the boys were not particularly fond of Andreas. Roberts's recommendation was unequivocal, "both as to his investigation and the reports made to him by the children."

¶ 41 The court considered the factors set forth in *In re Marriage of Eckert*, 119 Ill. 2d 316 (1988), beginning with the likelihood of the move enhancing the general quality of life for both the custodial parent and the children. The court reasoned that it would be "arrogant" to determine based on the evidence presented that a "bucolic life in Canada" would be better or worse than an active life in Wheaton. A life in Canada would be different, removing the children from friends and activities that they had enjoyed for years. Although Nicole testified that the move would be better for her financially, the court found that given the length and the cost of the commute, and the higher cost of living in Canada, the financial benefit was "modest." More important to Nicole was her remarriage to Andreas, and the court noted that her happiness provided some indirect benefit to the boys. However, this benefit did not outweigh the effect on

the shared parenting schedule. Moreover, the indirect benefit of the remarriage to the boys was "scant at best."

¶ 42 The court found that Nicole's petition for removal was not "new" or devised to frustrate Douglas's visitation (or time with the boys). Yet, the proposed relocation to Markdale was "markedly different" than Orangeville, which was originally proposed. While Markdale would bring Nicole nearer to family, it was still almost two hours away from Orangeville. "More troubling" to the court was that Nicole "obstructed the investigation of the GAL [Roberts] and [Douglas] by a lack of candor during the process." The court found Nicole's claim that the right questions were not asked about her plans "too glib a response." The court noted that the process was designed to ascertain what was in the best interests of the children, a goal that demanded complete transparency and full disclosure, and it found that that "disclosure was lacking here." While Nicole's lack of candor by itself did not necessarily indicate an improper motive, it evidenced a fear that removal to Markdale, far from her employment, family, and a more populous city might be more difficult for the court to accept. According to the court, Nicole was "fully invested in remaining in Canada," staying beyond the time provided for retrieving the children from Douglas and losing parenting time because of the distance. Nicole had missed some of the children's activities as a result.

¶ 43 In examining Douglas's motive in resisting the removal, the court found that Douglas "had an extraordinarily close relationship with his sons." If there was a fault, it was that he was "too jealous in guarding his time with the children and too inflexible in making accommodations that would reduce his time." The court noted that, in contrast, Douglas had always accepted any modification of the parenting schedule that resulted in more time with the boys, and he enjoyed

"this benefit on occasions where [Nicole] spent extra time in Canada and did not or could not return in time to follow the schedule."

¶ 44 Next, the court noted that it was in the boys' best interests to have a close relationship with both parents and other family members. The boys had enjoyed such a relationship to date. While it would be a benefit for them to be closer to extended family, which would be the case even living in Markdale, no realistic parenting schedule could be crafted that permitted a continuation of the kind of relationship the boys currently shared with each parent. The facts of this case did "not allow for a substitution of extended periods in lieu of a typical every other weekend schedule."

¶ 45 In sum, the court noted that the analysis was more complex in a case like this, where the parenting time was equal, as opposed to a case where one parent spent the majority of time with the children. Even though Nicole was designated the residential parent, the parenting responsibilities were shared equally, meaning the disruption to the children and the parental responsibilities was also equal. For all of these reasons, the court concluded that it was not in the boys' best interests to grant Nicole's petition for removal to Canada.

¶ 46 Nicole timely appealed the denial of her petition.[2]

¶ 47 II. ANALYSIS

¶ 48 Section 609(a) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/609(a) (West 2012)) allows a trial court to approve a custodial parent's removal of the minor children from Illinois when it is in the children's best interests. Section 609(a) provides that

[2] Nicole filed a motion to file her reply brief *instanter*, three days after it was due. Douglas has not objected, and we hereby grant Nicole's motion. See *People v. Kagan*, 283 Ill. App. 3d 212, 215 (1996) (granting the defendant's motion to file his reply brief *instanter*).

"[t]he court may grant leave *** 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." *Id.*

¶ 49 The paramount question that must be considered in a removal case is the best interests of the children. *In re Marriage of Repond*, 349 Ill. App. 3d 910, 916 (2004). "This determination must be made on a case-by-case basis, with consideration given to the circumstances of each case." *In re Marriage of Matchen*, 372 Ill. App. 3d 937, 945 (2007). Still, there are certain factors a trial court should consider in determining whether removal is in the children's best interests. *Id.* These factors, set forth by our supreme court in *Eckert* and then reiterated in *In re Marriage of Collingbourne*, 204 Ill. 2d 498 (2003), include: (1) the likelihood that the proposed move will enhance the general quality of life for both the custodial parent and the children; (2) whether the proposed move is a ruse designed to frustrate or defeat the noncustodial parent's visitation; (3) the noncustodial parent's motives in resisting removal; (4) the removal's effect on the noncustodial parent's visitation rights, and (5) whether a reasonable visitation schedule can be worked out. *Collingbourne*, 204 Ill. 2d at 522-23; *Eckert*, 119 Ill. 2d at 326-27.

¶ 50 In *Collingbourne*, our supreme court cautioned that the purpose of the factors set forth in *Eckert* are not to establish a test in which the parent seeking removal must meet every prong; rather, the *Eckert* factors are to be considered and balanced by the trial court, and no one factor is controlling. *Collingbourne*, 204 Ill. 2d at 523. Thus, while the *Eckert* factors should be considered, they are not exclusive, and a trial court may validly consider other relevant factors, as dictated by the specific circumstances in the case. *Id.* at 522-23.

¶ 51 Furthermore, "[t]here is a strong and compelling presumption in favor of the result reached by the trial court in a removal case." *In re Marriage of Dorfman*, 2011 IL App (3d) 110099, ¶ 52 (citing *Eckert*, 119 Ill. 2d at 330). This is because the trial court is in the best position to assess and evaluate the parties' temperaments, personalities, and capabilities. *Matchen*, 372 Ill. App. 3d at 946. Accordingly, we will not reverse a trial court's determination of what is in the children's best interests unless it is against the manifest weight of the evidence, and it appears that a manifest injustice has occurred. *In re Marriage of Parr*, 345 Ill. App. 3d 371, 376 (2003). "A decision is against the manifest weight of the evidence where the opposite conclusion is clearly evident or where the court's findings are unreasonable, arbitrary, and not based on any of the evidence." *Matchen*, 372 Ill. App. 3d at 946.

¶ 52 Nicole argues that the court's decision denying her petition for removal was against the manifest weight of the evidence. Douglas argues that the trial court's decision should be upheld and that the joint custody agreement distinguishes this case from cases involving a custodian and a noncustodial parent with visitation.

¶ 53 Initially, we consider the two factors regarding the parties' motives. These factors include whether Nicole's proposed move is a ruse designed to frustrate or defeat Douglas's visitation or parenting time with the children, and Douglas's motives in resisting removal.

¶ 54 Regarding Nicole's motives for wanting to relocate to Canada, she argues that her desire was to return home with her boys; she recently obtained a job; and she planned to remarry in December 2014. Nicole argues that her job opportunities in Illinois were limited based on her lack of an engineering degree, meaning it was not unreasonable to focus her search in Ontario where her family lived and where she was involved in a serious relationship with Andreas. She points out that work provided more than economic benefits, such as self-esteem and other

intangible benefits, and that she should not be criticized "for her unwillingness to base her economic future" upon Douglas, who had had four different jobs in the past four years.

¶ 55 In discussing this factor, the court determined that Nicole's petition for removal was not "new" or devised to frustrate Douglas's time with the boys. However, the court did comment on Nicole's motive for not revealing her changed plan of relocating to Markdale as opposed to Orangeville.

¶ 56 Nicole's original September 2011 removal petition, like the instant December 2013 removal petition, identified Orangeville as the place she desired to relocate with the boys. Then, in June 2014, she became engaged to Andreas and moved to Orangeville in July 2014. Nicole admitted that her relocation plan changed from Orangeville to Markdale at the time she got engaged in June 2014. Accordingly, as early as June 2014, she planned to move in with Andreas in Markdale in September 2014 and then get married in December 2014. However, she failed to reveal this new plan during her August 1, 2014, deposition and meeting with the GAL. Though Nicole admitted that she had gotten engaged, she did not reveal that her plan of where to live had changed. In fact, she left Douglas and the GAL with the impression that her plan was to remain in Orangeville.

¶ 57 At the trial one week later, Nicole stated her intention of moving to Markdale. While Nicole explained that this information did not come out sooner because the right questions were not asked during the deposition or by the GAL, the court found that this was "too glib a response." The court noted that Nicole's lack of candor by itself did not necessarily reflect an improper motive; however, it evidenced a fear that removal to Markdale, which was far from her work, her family, and a more populous town would be harder for the trial court to accept than a move to Orangeville.

¶ 58 We agree with the trial court that Nicole's lack of disclosure was not tantamount to an improper motive. However, as the trial court noted, the purpose of the removal proceeding was to determine what was in the boys' best interests, and Nicole's failure to disclose her changed plan obstructed the process and kept the focus on Orangeville instead of Markdale. In addition, Nicole bore the burden of proving that removal was in the boys' best interests (see 750 ILCS 5/609(a) (West 2012)), and she did not aid her case by waiting until "trial or perhaps immediately before" to reveal her new plan of relocating to Markdale. Accordingly, while Nicole's motive for removal was not to frustrate Douglas's time with the boys, the court correctly questioned her motive for not disclosing her changed plan until the time of trial.

¶ 59 Regarding Douglas's motive for resisting removal, Nicole argues that his motive was "questionable." Nicole points to the fact that Douglas's roots and family were in Canada; his employer was a Canadian company; and he had no disclosed romantic relationship or other declared connections to Illinois. Nicole's interpretation of the evidence runs counter to the trial court's finding, which was that Douglas had no improper motive for resisting removal. According to the trial court, Douglas's motive was his "extraordinarily close relationship" with the boys, and his only fault in terms of resisting the move was being "too jealous in guarding his time with the children and too inflexible in making accommodations that would reduce his time."

¶ 60 We agree that Douglas's motive in resisting the move stemmed from a desire to spend as much time as possible with the boys. Douglas exercised all of his parenting time under the joint parenting agreement, and, as the trial court noted, always accepted any adjustment to the agreement that resulted in additional time with the boys. Douglas remained in the Wheaton home where the boys, age 10 at the time of trial, had lived since they were six months' of age. He testified that the boys stayed in the same schools and activities to keep their lives "as constant

as possible" as though there had "been no divorce." The GAL similarly testified that Douglas exhibited no improper motive in resisting the removal. In addition, although Nicole is correct that Maple Leaf Foods was a Canadian company, Douglas testified that he could not maintain his job with that company if he left Illinois, which does not equate to an improper motive. Thus, we reject Nicole's argument that Douglas's motives were questionable, meaning this factor is not present in this case. See *In re Marriage of Eaton*, 269 Ill. App. 3d 507, 514 (1995) (noting that unlike many cases, where the motive of one parent or the other was suspect, those factors were not present in that case).

¶ 61 The next factor we consider is the likelihood that the proposed move will enhance the general quality of life for both Nicole and the boys. Pointing out the "palpable nexus between the custodial parent's quality of life and the child's quality of life" (*Collingbourne*, 204 Ill. 2d at 526), Nicole argues that the quality of her life will be significantly enhanced in Markdale: she will be much closer to her family; she can live with her husband on his bucolic farm; and she will have a job and economic independence. In addition, the boys would benefit from living with their primary caregiver since birth and being close to their extended family, including their maternal and paternal grandparents, their maternal uncle, and their paternal aunts and cousins.

¶ 62 Nicole relies on *Eaton*, 269 Ill. App. 3d at 514, which states that a trial court must carefully consider the benefits which will flow to the children from the custodial parent's remarriage. There, the court stated:

> "Our society places great weight on the right to marry and remarry. While the trial court's decision did not prohibit petitioner [mother] from remarrying, it did make the choice much less attractive, forcing her to choose between a new husband in Florida and her children in Illinois. We have previously stated our disapproval of any implication a

> noncustodial parent is free to marry whomever he or she wants to, but a custodial parent is not. [Citation.] The interests of the custodial parent should not be subordinated to the interests of the noncustodial parent in this regard. [Citation.] Any time the interests and desire of two parties must be accommodated some of this freedom will be a casualty; however, such freedom should not be unnecessarily restricted." *Id*. at 516-17.

¶ 63 There were two obvious benefits to Nicole relocating to Markdale: her remarriage to Andreas and her proximity to her family. However, Markdale was still two hours from Orangeville, where Nicole's extended family lived. Also, any benefit from Nicole's employment was "modest," as the trial court found, given the 3-hour and 20-minute daily commute as well as Canada's higher cost of living.

¶ 64 Most important, the evidence did not show that the boys' lives would be enhanced by moving to Markdale. As stated, Nicole's petition for removal focused on the specific benefits of relocating to Orangeville, such as living in the guest house on her parents' property, the childcare benefits that extended family could provide, and increased employment prospects. For example, Nicole's commute to her work from Orangeville was 40 minutes, one way. Even at trial, much of the evidence presented by Nicole centered on Orangeville. Nicole testified regarding the boys' close relationships with extended family in Orangeville and in nearby Alliston, as well as the friends they had made in Orangeville. However, the boys would not be living in Orangeville, and there was not much evidence for the court to consider regarding Markdale.

¶ 65 As stated by the court, it could not make a judgment as to whether life in Markdale was superior or inferior to life in Wheaton, and there was no useful evidence comparing the educational opportunities in Markdale and Wheaton. On the one hand, the boys had numerous friends in Wheaton and were involved in many school and sport activities, having lived there for

almost ten years. Conversely, Andreas lived on a farm eight miles outside of Markdale, which would provide the boys with an outdoor lifestyle but little access to neighboring friends, let alone friends in Orangeville. Other than four photos of the exterior of Andreas's property, there was no description of the housing accommodations or specifics regarding life in Markdale. In addition, Nicole did not have a clear plan for childcare when making her 3-hour and 20-minute daily commute.

¶ 66 There was also little evidence regarding the boys' relationship with Andreas. Nicole's testimony that the boys had a "good relationship" with Andreas and had gone horseback riding three or four times was contradicted by the boys' statements to Roberts, the GAL. The boys told Roberts that they did not like Andreas, but they wanted this information kept secret.

¶ 67 In addition, Roberts was under the impression that Nicole planned to relocate to Orangeville. A.J. told Roberts that he did not want to move to Orangeville, and, at best, M.J. was undecided. Because Nicole did not inform Roberts of her plan to move to Markdale, Roberts gave no evidence about the boys' opinions about moving to Markdale, although it can be inferred that, given their feelings about Andreas, they would be even more resistant to such a move. Roberts opined that it was not in the boys' best interests to move to Markdale.

¶ 68 Regarding Nicole's argument, articulated in *Eaton*, about her right to remarry and not be forced to choose between a new life and her boys, the trial court acknowledged that her happiness in remarrying provided some indirect benefit to the boys. However, because the boys were not fond of Andreas, the court specifically stated that any indirect benefit was "scant at best." In addition, as we discuss next, the court noted that any indirect benefit to the boys from Nicole's remarriage did not outweigh the effect on the shared parenting schedule. Therefore, this factor does not weigh in favor of removal.

¶ 69 The final *Eckert* factors are the removal's effect on the noncustodial parent's visitation rights, and whether a reasonable visitation schedule can be worked out. Like the previous factor, these two factors weigh against removal. As the trial court noted, the parenting schedule in this case was not typical, in that both Nicole and Douglas shared nearly equal parenting time. According to the court, the shared parenting agreement in this case separated it from cases where one parent spent a majority of time with the child and the issue was the continuity of primary care and stability of residence with that one parent.

¶ 70 The joint parenting agreement gave Nicole about one to two hours more per week with the boys. With the exception of occasional adjustments, both parties exercised their parenting time as much as possible. With Orangeville 8½ hours from Wheaton, and Markdale even further away, the trial court was correct that "nothing [could] be crafted that provide[d] either parent with the kind of relationship" they currently enjoyed. Nicole's proposed parenting schedule of one long weekend per month, March and Christmas breaks, and alternating periods in the summer did not provide a continuation of the kind of relationship the boys had with each parent, not to mention their school, friends, activities, and dog. See *Eckert*, 119 Ill. 2d at 328 (when removal to a distant jurisdiction will substantially impair the noncustodial parent's involvement with the child, the trial court should examine the potential harm to the child which may result from the move).

¶ 71 There is no question that both parties love the boys and that the boys love both parents. The trial court considered the appropriate factors in denying the petition for removal, and we cannot say that its decision was against the manifest weight of the evidence.

¶ 72 III. CONCLUSION

¶ 73 For the foregoing reasons, the judgment of the Du Page County circuit court is affirmed.

¶ 74 Affirmed.