2018 IL App (2d) 170667-U
No. 2-17-0667
Order filed January 18, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF JEFFREY NOYES,	)	Appeal from the Circuit Court
	)	of Lake County.
Petitioner-Appellee,	)	
	)	
and	)	No. 13-D-1156
	)	
EMILY NOYES (n/k/a EMILY PADDOCK),	)	Honorable
	)	Joseph V. Salvi,
Respondent-Appellant.	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: (1) The trial court's denial of respondent's petition for relocation of the parties' two minor daughters to Ohio was not against the manifest weight of the evidence and (2) the trial court did not err in barring the report and testimony of the guardian *ad litem*.

¶ 2 Respondent, Emily Noyes, n/k/a Emily Paddock, and petitioner, Jeffrey Noyes, are the parents to two minor daughters. Respondent appeals from the judgment of the circuit court of Lake County denying her petition to relocate the minors to Ohio. On appeal, respondent raises two issues. First, she contends that the trial court erred in denying her petition for relocation.

Second, she argues that the trial court erred in barring the report and testimony of the guardian *ad litem* (GAL). We affirm.

¶ 3 I. BACKGROUND

¶ 4 Petitioner and respondent married on July 8, 2006. Two children were born to the parties during the marriage, A.M.N., born October 9, 2008, and A.N.N., born August 4, 2010. Petitioner filed a petition for dissolution of marriage on June 21, 2013. On November 15, 2013, a judgment for dissolution of marriage was entered, which incorporated a custody judgment entered on October 31, 2013. Pursuant to the October 2013 custody judgment, the parties agreed to share joint legal custody of the minors. The custody judgment designated respondent as the primary residential parent subject to petitioner's parenting time as set forth in the parenting schedule therein.

¶ 5 On January 22, 2014, petitioner filed an emergency petition to restore visitation after respondent refused to let petitioner see the minors during his scheduled parenting time or speak to the minors by telephone. According to the motion, "[u]pon information and belief, [respondent] is refusing [petitioner] any contact with his daughters because she erroneously believes that a bruise to [A.M.N.'s] nose on January 17, 2014, was caused by [petitioner], notwithstanding that [petitioner] explained to her that [A.M.N.] had suffered the bruise when she tripped while running through the entrance to a tent that [petitioner] had set up for his daughters in his basement." Respondent obtained an *ex parte* emergency order of protection based upon that incident which culminated in the entry of a February 6, 2014, agreed order. Pursuant to the agreed order, petitioner agreed to undergo an anger-management evaluation with David Gates, follow any course of treatment recommended as a result of the evaluation, and have supervised parenting time. On April 9, 2014, the parties agreed that respondent would dismiss her order of

protection and that petitioner would resume unsupervised parenting time with the minors.

¶ 6 Between July 2014 and October 2016, respondent filed three petitions to restrict petitioner's parenting time with the minors. The trial court dismissed the first petition for failure to mediate. The second petition to restrict petitioner's parenting time alleged that petitioner squeezed A.M.N.'s leg, thereby causing a bruise. Respondent obtained an *ex parte* emergency order of protection against petitioner based upon that incident. On December 22, 2015, the court appointed June Peterson-Gleason as GAL on behalf of the minors. The GAL was instructed to submit a report addressing "whether there should be restriction/suspension of [petitioner's] parenting time; allegations contained [within] respondent's petition to restrict/suspend parenting time." On June 7, 2016, an agreed order was entered modifying petitioner's parenting time. Pursuant to that order, petitioner was granted parenting time as follows: (1) every other weekend from Friday at 5 p.m. to Monday at 7 p.m.; (2) every Wednesday from 4:30 p.m. to 7:30 p.m. with advance notice to respondent; and (3) an optional overnight following a weekend in which he had parenting time ("floating overnight") with advance notice to respondent. All other provisions of the custody judgment entered on October 21, 2013, not explicitly modified by the June 7, 2016, order remained in full force and effect. As part of the order, the GAL was discharged *instanter* subject to her fees and respondent voluntarily withdrew her second petition to restrict parenting time.

¶ 7 Respondent filed the third petition to restrict petitioner's parenting time on October 31, 2016. The third petition alleged as follows. Petitioner had "squeezed" one of the minor's arms and legs while carrying the minor to her room for a timeout. Petitioner then "began 'plopping & pushing' her on the bed where she hit her head on the headboard." The minor suffered a bruise to her arm as a result of the incident. Petitioner admitted the incident to a therapist. Following a

hearing, the trial court determined that respondent's third petition "did not support a finding of serious endangerment to restrict/or suspend [petitioner's] parenting time." Nevertheless, the trial court re-appointed Peterson-Gleason as GAL to "investigate the allegations of abuse" contained in the petition.

¶ 8 On November 16, 2016, respondent filed a petition for relocation. Respondent voluntarily withdrew the petition on November 22, 2016, but refiled it on January 5, 2017. As grounds for the petition for relocation, respondent stated that she desires to move to Loveland, Ohio, to be with her current husband, Albert Halleck Paddock III (Paddock), and his four children "so that she can better provide financially for her minor children and offer a better environment." She asserted that relocation would provide her with more promotional opportunities at work and would provide the minors with a "safer, consistent and stable living environment." Respondent further asserted that petitioner has been "very inconsistent with his parenting time" and that his parenting style "has been erratic, including multiple incidents of alleged abuse." In an order entered January 20, 2017, the court expanded the scope of the GAL's duties to include "relocation and any other pending petitions." Petitioner objected to the petition for relocation.

¶ 9 On May 1, 2017, respondent filed a "Petition to Modify Allocation of Parental Responsibilities: Decision-Making" (Petition to Modify), in which she asked the trial court to modify the original custody judgment so as to allocate to her "all significantly [*sic*] decision-making authority over significant decisions related to the children's healthcare, religion, education, and extracurricular activities." As grounds for the Petition to Modify, respondent cited the parties' problematic relationship and disagreements since entry of the judgment of dissolution. She also referenced her petition for relocation and claimed that the difficulties the

parties were already having with joint decision-making would be exacerbated by her proposed relocation to Ohio. Respondent voluntarily withdrew the Petition to Modify on June 27, 2017.

¶ 10 Early in June 2017, the GAL filed her report with the court. On June 27, 2017, petitioner filed an emergency motion *in limine* seeking to bar the GAL's report and testimony at the trial on respondent's petition for relocation. As discussed more thoroughly below, the trial court, after hearing the parties' respective positions, granted the motion on July 7, 2017. On July 11, 2017, the trial court denied respondent's emergency motion to reconsider its decision. Thereafter, at respondent's request, the trial court entered the GAL's report as an offer of proof.

¶ 11 The trial on respondent's petition for relocation began on July 11, 2017, and continued for two days thereafter. The following relevant evidence was presented at that hearing.

¶ 12 Respondent testified that she and the two minors reside in a home in Vernon Hills, Illinois. In the fall of 2017, A.M.N. begins third grade and A.N.N. begins second grade. Both minors attend Hawthorn Elementary South in Vernon Hills. Respondent described A.M.N. as very smart, very analytical, and very loving. Respondent stated that A.N.N. is more imaginative, very creative, very fun, and a little less analytical. A.M.N. and A.N.N. are currently doing great in school, both academically and socially, and they have a lot of friends in the community. A.M.N. suffers from anxiety, which typically manifests itself more often when she is with petitioner. A.N.N. has allergies, which she treats with a nasal spray.

¶ 13 Respondent described her relationship with A.M.N. and A.N.N. as very warm, very loving, caring, and very open. They have a lot of fun together, talk about a lot of life lessons, enjoy numerous teaching moments, are very open and honest with each other, and are very happy together. Respondent has a parenting style that she described as positive reinforcement. She explained that if there are any discipline issues, she takes time to discuss the issues with the

minors so they will not repeat the conduct in the future. Respondent enrolls the minors in school, arranges their medical, dental, and therapy appointments, and schedules their gymnastics classes and their piano and voice lessons. She also registers them for Daisies, Girl Scouts, soccer, and religious studies.

¶ 14 Respondent works from her home for Cardinal Health as a strategic account manager in the pharmaceutical sales division, earning $67,000 per year. Respondent has three customers, located in Chicago, South Dakota, and the Detroit area. Respondent visits each customer twice a year. In addition, she travels to her employer's corporate office, which is located in Dublin, Ohio, once or twice a year. Respondent testified that her longest work trips are usually "two overnights." In the year prior to the hearing, respondent managed her schedule so that she could be present for the minors at all times without having to hire a babysitter. Respondent testified that she has already been granted permission to keep her position if she moves and her job would not change if relocation is granted.

¶ 15 Respondent met Paddock, her current husband, through work at Cardinal Health. They began dating in the fall of 2012. Paddock is divorced and has four children, ages 10 through 17, from his prior marriage. Respondent stated that Paddock has his children approximately 50% of the time. Respondent and Paddock married in September 2015. At the time of the hearing, respondent was pregnant, with a due date of September 23, 2017. Paddock lives in Loveland, Ohio. Respondent noted that Cardinal Health's corporate office is about 90 minutes from Loveland.

¶ 16 Respondent has been to Loveland approximately 60 times. The minors have been to Loveland about 20 times and have made friends in the community. In addition to his children, Paddock has approximately 20 relatives who live near him, including his mother, brother, sister,

brother-in-law and their families. Respondent and the minors typically see Paddock's relatives every time they visit Ohio. A.M.N. and A.N.N. have become very close to Paddock's family. The minors consider Paddock a father figure and get along very well with his children. Respondent and Paddock have set up their parenting schedules so they each have their children on the same weekends. This arrangement allows them to spend time together while the children are with the other parent. Respondent noted that the members of her extended family reside in Missouri and Kansas.

¶ 17 Respondent testified that petitioner's relationship with the minors is good at times and "tough" at times. Nevertheless, respondent acknowledged that the minors love petitioner and petitioner loves them. Respondent confirmed that petitioner has been involved in the minors' school and other activities and has coached both minors in soccer. Respondent researched the soccer program in Loveland and acknowledged that if relocation is granted, petitioner would not be able to coach the minors. Respondent also admitted that if relocation is granted, petitioner would not be able to attend the minors' weekly activities without advanced planning. Despite missing these activities, respondent does not think that petitioner's relationship with the minors would change. Respondent believes that if relocation is allowed, A.M.N. and A.N.N. not living in the same community as petitioner can be supplemented by other things and the bonding between them would be as good and possibly better.

¶ 18 Respondent testified that if her petition for relocation is not granted, she will not move. Instead, she will stay in Illinois and live in a different state than her husband. If her petition for relocation is granted, respondent plans to sell her Illinois residence, in which she has $100,000 in equity, and reside in Paddock's home. Paddock's house is located in a neighborhood at the end of a cul-de-sac next to a seven-acre ranch. It has four bedrooms in the main living area, a fifth

bedroom in the walk-out basement, and four bathrooms (two full and two half). Respondent anticipated that A.M.N. would share a room with Paddock's 10-year old daughter while A.N.N. would share a room with Paddock's 13-year old daughter. Ultimately, respondent and Paddock hope to find a larger home if the petition for relocation is granted.

¶ 19 If respondent's petition to relocate is granted, the minors will attend school in Loveland. Due to the structure of Loveland's schools, A.M.N. and A.N.N. would be enrolled at different locations. Respondent has visited the schools. Respondent testified that the schools in Loveland are excellent, similar to those in Vernon Hills. All of Paddock's children have attended kindergarten through high school in Loveland. Respondent testified that the minors have attended several schools and have always adjusted well. Although both minors currently attend Hawthorn Elementary South in Vernon Hills, A.M.N. previously attended kindergarten at Aspen Elementary in Vernon Hills and preschool in Libertyville, while A.N.N. previously attended preschool in Vernon Hills. Upon questioning by the trial court, respondent stated that the reason the minors switched schools was due to school district restructuring, respondents' move to Vernon Hills after the divorce, and the minors' promotions to higher grades. The minors started therapy with Cassie D'Addeo in or about February 2014. The minors recently stopped attending therapy because D'Addeo moved to Florida. Respondent testified that she has researched therapists in Ohio for the minors to see if her petition for relocation is granted.

¶ 20 Respondent proposed a schedule for petitioner's parenting time if her petition for relocation is granted. Respondent "generally envisions [petitioner] having basically an every other weekend schedule." Once a month, the minors would travel to Libertyville from Ohio. Respondent has researched the calendar and identified longer holiday weekends that the minors could spend with petitioner in every month except for April, which would follow spring break.

Respondent or Paddock would drive the minors to Libertyville for petitioner's parenting time. The drive typically takes 5½ hours each way, but with bad winter weather, it can take up to 8 hours. Respondent testified that the minors would leave Ohio after school on Friday (around 3 p.m. Eastern time) and arrive about six hours later (around 8 p.m. Central time). Petitioner would see the minors on Saturday, Sunday, and Monday morning, whereupon the minors would leave to make it back to Ohio by bedtime. In addition, petitioner would also be given the opportunity to have parenting time with the minors in the Loveland area on "alternating weekends." Respondent conceded that on those weekends when petitioner would travel to Ohio, he would arrive around bedtime on Friday, spend the day with the minors on Saturday, and leave for Illinois on Sunday. Respondent anticipated that petitioner would absorb any lodging costs during his trips to Ohio.

¶ 21 Respondent testified that she would also allow petitioner to have the minors "the majority" of spring breaks and for "larger chunks of time" during the summer. Respondent explained that during the summer, the minors would spend seven days with petitioner and then seven days with her. Respondent added that she is "open" to petitioner having the majority of the time over the summer. In addition, the minors will continue to communicate with petitioner every day, whether by telephone or FaceTime, which they already do. Respondent opined that her proposed parenting schedule was very similar to the current parenting schedule as far as the quantity of time petitioner would spend with the minors. She opined, however, that the bigger blocks of time she is proposing will provide more quality time and facilitate a better relationship between petitioner and the minors. Respondent stated that she is willing to accommodate other proposed schedules. Moreover, she will provide any assistance needed to make sure petitioner's relationship is not impaired by the relocation and his bond with the minors continues.

¶ 22 Respondent noted that the parenting schedule set forth in the June 7, 2016, order was adopted to accommodate petitioner's travel and work. Respondent believed her proposed schedule, if the petition for relocation is allowed, would be more consistent and in the best interests of the minors, as opposed to the current schedule being structured around the needs of petitioner. Respondent stated she has researched and considered how the schedule would work as the minors get older and she has first-hand knowledge of how future activities might affect the schedule based on Paddock's children already having gone through and managed those activities. According to respondent, most of the activities the minors enjoy do not take place during long holiday weekends when they would be with petitioner. Respondent was asked about events taking place on petitioner's weekends, such as a dance, a soccer tournament, or a birthday party, and whether the minors would want to stay in Ohio for that weekend. Respondent explained that with advanced planning she believes any such conflicts would be minimized.

¶ 23 During these proceedings, respondent acknowledged she filed three motions to restrict or suspend parenting time and several orders of protection. These motions arose out of the manner in which petitioner disciplines the minors and a few occasions in which the minors returned from petitioner's care with signs of physical injuries. Photographs were admitted into evidence showing the injuries. Petitioner explained these incidents during his testimony, and respondent stated that she does not believe petitioner is an abusive father.

¶ 24 Respondent testified that she attempts to accommodate petitioner when he asks for make-up parenting time or additional parenting time. Respondent gave several examples of these accommodations. Respondent stated that petitioner is not as flexible when she asks for a parenting-time change from him and provided several examples of petitioner's inflexibility. Respondent also recounted that since June 2016, petitioner has missed 20 parenting-time

opportunities, approximately twice a month, typically mid-week because of work obligations. Respondent testified that petitioner is also not present 100% of the parenting time he exercises. On those occasions, the minors are with petitioner's parents. Respondent agreed that A.M.N. and A.N.N. have bonded with petitioner's parents and confirmed petitioner's parents regularly attend the minors' activities and events. Respondent is willing to ensure the bond between the minors and their grandparents continues if her petition for relocation is granted.

¶ 25 Respondent explained why she wants to move to Ohio and why she believes doing so is in the best interest of A.M.N. and A.N.N. Respondent testified that her husband lives in Ohio, Paddock's children and numerous family members live nearby, and Paddock's job is in Ohio. Respondent is pregnant with a girl. The pregnancy was not planned and happened after respondent filed her petition for relocation. Respondent testified that while the timing was not perfect, she feels blessed that the pregnancy happened. Respondent wants A.M.N. and A.N.N. to live with their new sister in a two-parent home. Respondent also cited financial reasons for the move, noting that she and Paddock each own a house and therefore pay a mortgage and real-estate taxes. The move would allow them to consolidate to one household, thereby reducing their expenses.

¶ 26 Respondent also explained the advantages of a two-parent household, including safety advantages and a large support system for A.M.N. and A.N.N. under one roof. A.M.N. and A.N.N. being able to live in a two-parent household is particularly important due to respondent being pregnant. Paddock and his family will be able to help with their new daughter. Respondent believes the minors would benefit from having all of their siblings under the same roof, participating in activities together, and having two parents with them in Loveland at all times.

¶ 27 Respondent testified that she is concerned with petitioner's temper and concerned with petitioner not being present when the minors are supposed to be with him. Despite her earlier testimony that petitioner is not an abusive father, she opined that petitioner is, at times, "a negligent, abusive father." Respondent also believes her relationship with petitioner would be better if there was some distance between the two of them. She opined that many of the arguments and difficulties of co-parenting would be eliminated if they were further apart and had a more defined schedule and different periods of time with the minors. Respondent believed that some of the conflicts that currently exist would be eliminated if her petition for relocation were allowed. Respondent did not believe petitioner's relationship with the minors would be impaired by relocation because they could have "daily phone calls and Facetimes without time limit." She opined that "there isn't a whole lot that would change if we were granted relocation," other than petitioner not being able to coach soccer or participate in unplanned mid-week activities and the minors being further away from their grandparents.

¶ 28 Petitioner testified that he lives in Libertyville in a house that has three bedrooms, two bathrooms, and an office. A.M.N. and A.N.N. each have their own bedroom. Petitioner's home is approximately a 15-minute drive to respondent's residence, a 10-minute drive to his parents' home, and a 10-minute drive to the minors' school. The minors have friends in petitioner's neighborhood with whom they do not attend school.

¶ 29 Petitioner is the vice president of marketing development for Fresenius Kidney Care. He oversees 300 dialysis centers throughout the Midwest. He travels at least one day per week. Petitioner's base salary is about $195,000, but he also receives commissions and stock options. As a result, in 2015, he earned approximately $279,000. Petitioner's employer allows him to set up his work schedule and responsibilities around spending time with the minors. Petitioner

testified that he has a team of people that work for him and accommodate his schedule.

¶ 30 Petitioner testified that he has a close bond and a loving relationship with A.M.N. and A.N.N. Petitioner sees the minors frequently, even on time not technically designated as his parenting time in the June 2016 agreed order. Since June 2016, petitioner and respondent have been able to work effectively despite their differences to ensure that he has substantial time with the minors. In a typical two-week period, petitioner sees the minors every other Friday evening through Monday evening, every Wednesday, and a "floating" overnight visit on weeks following his weekend. Petitioner further testified that he began coaching each minor in soccer when she turned four. Petitioner tries to attend all of the minors' activities. When petitioner has the minors overnight, in the morning he typically prepares breakfast for them. During the week, if the minors are with petitioner, he will drive them to school. Petitioner testified as to various activities he does with the minors during his mid-week visitation. Petitioner agreed the adults and children can cooperate to celebrate major events together.

¶ 31 Petitioner stated that in addition to the time he spends with the minors in-person, he has some type of contact with them every day, whether by FaceTime, Skype, or text messaging. Petitioner believes Skype and FaceTime work "pretty good" and allow him to have "meaningful communication" with the minors. Nevertheless, petitioner prefers in-person contact with the minors. He believes that if the petition for relocation is granted, the lack of in-person contact will negatively affect his relationship with the minors. Petitioner explained:

> "I think as we have discussed the last couple of days, my girls, our girls are very affectionate. They enjoy hugs. They enjoy being able to, you know, watch movies and snuggle with dad or mom.
>
> Facetime does not offer that, your Honor. It just doesn't. Phone calls, that does

> not supplement [*sic*] being a parent. Sitting and physically giving your kids a hug or pouring them a bowl of cereal in the morning or dropping them off at school, that—that's what matters. Not this. Not the Facetime calls. Not the phone calls. Those matter, yes.
>
> I understand we are in a tough spot as parents. I get that * * * [respondent] and I made the decision we did to get divorced. But you cannot replicate face-to-face, hand-to-hand contact with your children over Facetime or a phone call. It cannot be done."

Petitioner also testified that when he is with the minors, he kisses them goodnight on the eyelids and sings to A.N.N. before she goes to sleep.

¶ 32 Petitioner testified that prior to the divorce, he and respondent lived in Chicago. In May 2011, they moved to the Libertyville area. At that time, A.N.N. was about one year old and A.M.N. was about three. The minors have gone to the same pediatrician since the family moved to the Libertyville area in 2011. The pediatrician is located in the Libertyville-Vernon Hills community. Petitioner is satisfied with the care the minors' pediatrician has provided. The minors' dentist is also located in the Libertyville area, and they have been seeing him since 2011 or 2012. Petitioner acknowledged that respondent makes the majority of the minors' medical appointments.

¶ 33 Since January 2016, petitioner has been dating Natalie Keister of Mt. Pleasant, Wisconsin. Keister's home is approximately 30 minutes from petitioner's residence. Keister has two children, an eight-year-old boy and a six-year-old girl. A.M.N. and A.N.N. have a close relationship with Keister's children. Petitioner agreed that the minors also have a good relationship with Paddock's children.

¶ 34 Petitioner acknowledged respondent has been flexible with his parenting time and that there have been times when he could not exercise his parenting time that respondent allowed the

minors to be with his parents. He described several occasions when respondent accommodated his request to alter the parenting schedule. In addition, petitioner noted that A.M.N. and A.N.N. frequently stay overnight at his parent's house, which is about 2½ miles from his house. Most of those times, petitioner sleeps at his parent's house as well. Petitioner further testified that the minors have seen their grandparents at least weekly, if not more, since they were born. Respondent has never interfered with petitioner's parents being actively involved in the minors' lives. To the contrary, since the divorce, respondent has invited his parents to come to her house to see the minors off to their first day of school every year. Respondent has also allowed petitioner's parents into her home for other special events involving the minors.

¶ 35 Petitioner testified, upon questioning by his own attorney, that since the agreed order was entered on June 7, 2016, he has missed 10 days in which he was supposed to have parenting time with the minors. Petitioner testified that the only reason he missed any parenting time was due to work obligations and there have been instances where he asked to make up the missed time. During cross-examination, petitioner was questioned about numerous dates and whether he forfeited his parenting time on those dates. Petitioner indicated he could not recall whether he missed his parenting time on the dates referenced. He acknowledged that on some of the dates referenced the minors were with his parents because of work obligations. Petitioner also admitted that he missed seeing the minors off to their first day of school in 2016 and that since the custody judgment was entered in October 2013, he has never used the full 14 days of vacation time he is allowed with the minors each summer.

¶ 36 Petitioner provided testimony disputing the anger issues raised by respondent and the incidents in which the minors were bruised or otherwise injured. Petitioner acknowledged he has yelled at the minors, but stated he has never harmed them physically and has been in control at

all times he has disciplined them. He explained the "injuries" as essentially accidents. Petitioner has participated in therapy with Donna Crunkilton-Steigel since 2014 or early 2015. Petitioner testified that his involvement with Gates (for an anger-management evaluation) and Crunkilton-Steigel has been voluntary. Petitioner also asserted that the counseling he has done with the minors has been done voluntarily. Petitioner testified that he investigated possible therapists in Illinois for the minors after D'Addeo moved to Florida.

¶ 37 Petitioner testified that since the custody judgment was entered in October 2013, he has missed approximately nine months of parenting time, mostly due to orders of protection and court orders that were entered into by agreement. Petitioner acknowledged he bears responsibility for his behavior that led to the orders of protection being entered and his missing parenting time with the children, although he denied many of the accusations were accurate. Based on his own calculations, since October 2013 he has had what he deemed "contact days" with the minors roughly 45% of the time. Petitioner explained that on his weekends, he has contact with the minors for four days. Further, every week he has a Wednesday dinner. He also has a "built-in overnight" on his "off week." Accordingly, he sees the minors seven out of every fourteen days. Upon questioning by the trial court, petitioner confirmed that for his calculations, he credited himself with a full day for any contact with the minors, no matter how brief the contact was on a particular day.

¶ 38 Paddock confirmed that he works for Cardinal Health out of his home. Paddock lives in Loveland, Ohio, a suburb of Cincinnati with a population of approximately 12,000 residents. Paddock testified that he and respondent have been "dreaming about" living in Ohio since 2014. Paddock testified Loveland and Vernon Hills are similar communities.

¶ 39 Paddock has four children from a prior marriage. The mother of his children lives nearby

and all four children attend public schools in Loveland. Paddock and his ex-wife divide parenting time evenly. Paddock has the children on Thursday, Friday, Saturday, alternate Sundays, and on Wednesday nights. Every other weekend, when Paddock does not have his children on Sunday, he travels to Vernon Hills on Saturday night and stays until Wednesday afternoon. He then returns to Loveland to be with his children on Wednesday evening through the following Saturday. Paddock prefers not to miss any of his children's activities. If respondent's petition for relocation is not granted, Paddock does not plan to move to Illinois.

¶ 40 Paddock has a very close relationship with A.M.N. and A.N.N. Paddock has participated in many activities involving A.M.N. and A.N.N., including doctor's appointments in Illinois, church, school events, career day, parent-teacher conferences, and therapy sessions. The minors have also developed a close relationship with Paddock's children. A.M.N. and A.N.N. have been to numerous family events and have spent a lot of time with Paddock, Paddock's children, and Paddock's extended family.

¶ 41 Paddock agreed that A.M.N. and A.N.N. have formed a close bond with petitioner. He also believed that it is important for the minors to maintain a relationship with petitioner. Paddock does not believe his role is to replace petitioner as their father. Rather, Paddock views his role as being a good influence for the minors in everything they do and helping them to develop and interact with the world. Paddock testified it is important to him that the minors maintain a relationship with petitioner. Paddock does not believe there would be any negative impact on the minors if the petition for relocation is allowed. If relocation is granted, Paddock will "do almost anything" to help facilitate petitioner's relationship with A.M.N. and A.N.N. Paddock is willing to help with any driving or airplane travel and to contribute financially to the expenses involved in the parenting-time schedule. Paddock also testified he believes A.M.N.

and A.N.N. moving to Ohio will in some ways help their relationship with petitioner. Paddock explained that on occasion, being close does not help the situation between petitioner and the minors. He cited the complexity and uncertainty around the current schedule that will be eliminated with a more structured and defined parenting schedule if the petition for relocation is allowed.

¶ 42 Paddock also opined that A.M.N. and A.N.N. being under the same roof in a two-parent home with their new sister and their step-siblings would enrich their lives. Paddock explained the difficulties respondent has being a single parent with no family or other support system in the Vernon Hills area. Paddock believes respondent is an incredible mother, but will "be in a better position to be a fantastic mom for the girls if we were under the same roof."

¶ 43 Rene Noyes (Rene) is petitioner's mother and the paternal grandmother to A.M.N. and A.N.N. Rene and her husband, Ed, have lived in Libertyville for the past 31 years. Both Rene and Ed are retired and travel. Rene worked as an elementary school teacher. Ed worked as a superintendent of schools. Petitioner is the couple's only child.

¶ 44 Rene testified that she and Ed see the minors weekly, whenever they are with petitioner. Rene and Ed have a very close relationship with A.M.N. and A.N.N. Rene and Ed attend all of the minors' activities, including soccer games, dance recitals, and gymnastics. They also celebrate all holidays with petitioner and the minors. Rene volunteers at the minors' school and participates in many activities with them, such as going to the zoo, the circus, and American Girl doll trips. Petitioner introduced into evidence, through Rene, several books of photographs that Rene compiled showing activities done with the minors. Rene described selected photographs in each of the books that were admitted into evidence. Rene acknowledged that each year she and Ed have seen the minors off to their first day of school from respondent's house. She also

admitted that there are times that she performs the exchanges of the minors with respondent. Additionally, there have been times that Rene or Ed have had to take the minors to school and pick them up from school when petitioner was unable to do so. Rene acknowledged that if the petition for relocation is allowed, she would have the "ability" to travel to Ohio to see A.M.N. and A.N.N.

¶ 45 Keister testified that she lives in Mt. Pleasant, Wisconsin, which is about 35 minutes from petitioner's house in Libertyville. Keister has an 8-year-old daughter and a 6-year-old son from a previous relationship. Keister shares joint legal custody with her children's father. Keister has been dating petitioner for a year and a half, since January 2016. She described their relationship as very serious and stated that the couple has talked about getting married. Keister first met the minors in or about July 2016. In November 2016, petitioner introduced Keister as his girlfriend to the minors.

¶ 46 Keister sees petitioner three to four times per week. She sees A.M.N. and A.N.N. every other weekend during petitioner's parenting time and a few times during the school week per month. In the 26 weekends that petitioner had the minors from July 2016 through July 2017, she was with him and the minors 22 of those weekends. Keister has a very good relationship with A.M.N. and A.N.N. In addition, A.M.N. and A.N.N. have a very good relationship with both of Keister's children.

¶ 47 At the close of evidence, the parties' attorneys presented closing argument. On July 25, 2017, the trial court issued its ruling. As will be discussed in the analysis below, after summarizing the testimony adduced at trial, the court addressed each of the factors set forth in section 609.2(g) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/609.2(g) (West 2016)), which governs relocation. Ultimately, the court denied the petition for

relocation. This appeal followed.

¶ 48 II. ANALYSIS

¶ 49 On appeal, respondent raises two assignments of error. First, respondent claims that the trial court erred in denying her petition for relocation. Second, she asserts that the trial court erred in barring the report and testimony of the GAL. We address each contention in turn.

¶ 50 A. Petition for Relocation

¶ 51 Respondent first asserts that the trial court erred in denying her petition for relocation. According to respondent, the minors will benefit greatly from the relocation and petitioner will be able to see the minors for approximately the same overall parenting time that he currently enjoys. Respondent claims that in denying the petition for relocation, the trial court "ignored the evidence and has in effect granted [petitioner] veto power over [her] and her children for the next 12 years."

¶ 52 Prior to 2016, section 609 of the Act (750 ILCS 5/609 (West 2014)) governed the "removal" (now relocation) of a child from Illinois. Section 609 provided that a court may grant leave to remove a child "whenever such approval is in the best interests of such child or children." 750 ILCS 5/609 (West 2014); *In re Parentage of P.D.*, 2017 IL App (2d) 170355, ¶ 15. Although section 609 was silent regarding the factors a trial court should consider in making this best-interests determination, the supreme court developed various factors through case law. See *In re Marriage of Collingbourne*, 204 Ill. 2d 498, 522-23 (2003); *In re Marriage of Smith*, 172 Ill. 2d 312, 320-21 (1996); *In re Marriage of Eckert*, 119 Ill. 2d 316, 326-28 (1988).

¶ 53 However, effective January 1, 2016, the General Assembly repealed section 609 of the Act and enacted section 609.2. See Pub. Act 99-90, § 5-20 (eff. Jan. 1, 2016) (repealing 750 ILCS 5/609) and Pub. Act 99-90, § 5-15 (eff. Jan. 1, 2016) (adding 750 ILCS 5/609.2). Section

609.2 codifies the factors a court must consider when ruling on a petition for relocation. Pursuant to section 609.2 of the Act, the trial court must decide whether relocation of a minor is appropriate based upon the best interests of the child in light of the following 11 factors:

"(1) the circumstances and reasons for the intended relocation;

(2) the reasons, if any, why a parent is objecting to the intended relocation;

(3) the history and quality of each parent's relationship with the child and specifically whether a parent has substantially failed or refused to exercise the parental responsibilities allocated to him or her under the parenting plan or allocation judgment;

(4) the educational opportunities for the child at the existing location and at the proposed new location;

(5) the presence or absence of extended family at the existing location and at the proposed new location;

(6) the anticipated impact of the relocation on the child;

(7) whether the court will be able to fashion a reasonable allocation of parental responsibilities between all parents if the relocation occurs;

(8) the wishes of the child, taking into account the child's maturity and ability to express reasoned and independent preferences as to relocation;

(9) possible arrangements for the exercise of parental responsibilities appropriate to the parents' resources and circumstances and the developmental level of the child;

(10) minimization of the impairment to a parent-child relationship caused by a parent's relocation; and

(11) any other relevant factors bearing on the child's best interests." 750 ILCS 5/609.2(g)(1) through (11) (West 2016).

¶ 54 The party seeking judicial approval of the proposed relocation must establish by a preponderance of the evidence that the relocation is in the child's best interests. See *Eckert*, 119 Ill. 2d at 325; see also *Collingbourne*, 204 Ill. 2d at 521 (observing that the best interests of the child is the "paramount consideration" which must be considered in removal actions); *P.D.*, 2017 IL App (2d) 170355, ¶ 15 (noting parent seeking relocation has the burden of proving by a preponderance of the evidence that relocation would be in the minor's best interests); *In re Marriage of Tedrick*, 2015 IL App (4th) 140773, ¶ 49 (noting that burden of proof in removal (now relocation) cases is a preponderance of the evidence). In deciding whether relocation is in the child's best interests, a trial court should hear "any and all relevant evidence." *Eckert*, 119 Ill. 2d at 326. We are mindful, however, that a determination of the child's best interests cannot be reduced to a simple bright-line test, but rather must be made on a case-by-case basis, depending to a great extent upon the circumstances of each case. *Eckert*, 119 Ill. 2d at 326. A reviewing court does not reweigh the competing considerations. Rather, we review the trial court's decision deferentially. As our supreme court has stated, " '[t]he presumption in favor of the result reached by the trial court is always strong and compelling in this type of case.' " *Eckert*, 119 Ill. 2d at 320 (quoting *Gallagher v. Gallagher*, 60 Ill. App. 3d 26, 31-32 (1978)); see also *P.D.*, 2017 IL App (2d) 170355, ¶ 18. Such deference is appropriate because the trier of fact has significant opportunities to observe both the parents, and, if applicable, the children, and therefore is able to assess and evaluate their temperaments, personalities, and capabilities. *Eckert*, 119 Ill. 2d at 330. Accordingly, a trial court's determination of what is in the best interests of a child should not be reversed unless it is against the manifest weight of the evidence. *Eckert*, 119 Ill. 2d at 328. A court's decision is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent or where its findings are unreasonable,

arbitrary, or not based on the evidence presented. *Best v. Best*, 223 Ill. 2d 342, 350 (2006).

¶ 55 In this case, the trial court conducted a thorough hearing and heard extensive testimony from respondent, petitioner, and other witnesses regarding the proposed relocation. Thereafter, the court, after applying the factors in section 609.2(g) of the Act, denied respondent's petition, concluding that relocation was not in the minors' best interests. Based on our review of the evidence, and in light of the deferential standard of review applicable to a petition for relocation, we do not find the trial court's decision to be against the manifest weight of the evidence.

¶ 56 The trial court's findings suggest that it found that the first statutory factor (see 750 ILCS 5/609.2(g)(1) (West 2016)) favors allowing relocation. In this regard, the court determined that respondent's circumstances and reasons for seeking removal were "honest and sincere." The trial court noted, for instance, that relocation would allow respondent to reside with her husband, who has "lovingly absorbed" the minors. The court also observed that respondent views a strong nuclear family as a stable and positive environment in which to raise the minors. Further, the court found that respondent's reasons for seeking relocation were not to alienate petitioner from the minors. The evidence supports the trial court's assessment. Thus, the trial court's finding that this factor favors relocation is not against the manifest weight of the evidence.

¶ 57 In contrast, the trial court's findings suggest that the second statutory factor disfavors relocation. The trial court determined that petitioner's reasons for objecting to the petition were "clear and honest." See 750 ILCS 5/609.2(g)(2) (West 2016). The court found that while there are occasions when petitioner is unable to use his weekday parenting time due to work obligations, petitioner otherwise consistently exercises his parenting time. The court observed that petitioner coaches the minors in soccer, participates in school events, and attends other weekday activities for the minors. In addition, petitioner enjoys making breakfast for the minors

and driving them to school on the Mondays he has custody. The court concluded that petitioner "legitimately fears that he will miss the consistent and continual physical contact with the minors if there is relocation." The court also determined that relocation would have a serious impact on the minors' relationship with petitioner's parents, with whom the minors have a strong bond. Again, the evidence of record supports the trial court's assessment. Indeed, respondent does not seriously dispute the trial court's findings in this regard. She asserts that while the first statutory factor "obviously strongly favors relocation," the second statutory factor "obviously favors [petitioner's] objection to relocation."

¶ 58 With respect to the third statutory factor (750 ILCS 5/609.2(g)(3) (West 2016)), the court concluded that neither parent had substantially failed or refused to exercise the parental responsibilities allocated to him or her under the custody order dated June 7, 2016. The court described the history and quality of respondent's relationship with the minors as "extremely strong." The court also found that while petitioner currently enjoys a "very strong and close relationship" with the minors, his relationship with them was "more in dispute." In this regard, the court observed that on several occasions, respondent sought to restrict petitioner's parenting time based on his discipline and handling of A.M.N. This eventually culminated in the June 7, 2016, custody order, which set the current parenting-time schedule. The court noted that since the June 7, 2016, order took effect, there have not been "any issues." The court also emphasized that petitioner loves the minors and they adore and love him. The court stated that even assuming the allegations against petitioner are true, "relocation would not help (but rather hurt) his relationship with his daughters, especially [A.M.N.]."

¶ 59 The evidence adduced at trial supports the trial court's indication that the third statutory factor is neutral. Significantly, the record establishes that both parents enjoy a strong bond with

the minors. Respondent is the primary residential parent and, by all accounts, has a loving, open, and caring relationship with the minors. Respondent testified that she and the minors have a lot of fun together, talk about life lessons, and enjoy numerous teaching moments. In addition, as the primary caretaker of the minors, respondent schedules the majority of the minors' doctor appointments and registers them for school and extracurricular activities. Petitioner has also been extensively involved with the minors and spends as much time with the minors, both inside and outside the confines of the formal parenting order, as his work schedule allows. For instance, in addition to his parenting time, petitioner coaches the minors in soccer, participates in school events, and attends other weekday activities for the minors. Although petitioner prefers in-person contact with the minors, when that is not available he communicates with them through electronic means such as FaceTime, Skype, and text messaging. Given the foregoing evidence, the trial court's finding that this factor is neutral was not against the manifest weight of the evidence.

¶ 60 Respondent disputes the trial court's findings regarding the third factor. She notes that in the year since the June 7, 2016, schedule was adopted, petitioner missed 10 mid-week scheduled parenting sessions with the minors by his count and 20 mid-week scheduled parenting sessions by her count. Respondent finds this significant because if relocation is allowed, the biggest impact will be on petitioner's mid-week parenting opportunities, which he already "routinely misses" while the minors reside in Illinois. While the record does show that petitioner has not exercised some of the mid-week parenting time allotted him in the June 2016 order, respondent's claim that petitioner "routinely misses" his parenting time is misguided for several reasons. First, petitioner testified that the only reason he missed any parenting time was due to work obligations. Respondent presented no evidence to the contrary. Indeed, the evidence suggests

that the parties anticipated that petitioner would miss some mid-week parenting time because of his work obligations. In this regard, respondent acknowledged that the schedule set forth in the June 7, 2016, order was adopted to accommodate petitioner's work obligations. Further, the June 7, 2016, agreed order requires petitioner to provide respondent with advance notice if he would be exercising his mid-week parenting time. This likewise suggests that the parties anticipated that respondent would have to miss some mid-week parenting time because of work obligations. We also observe that there is evidence that petitioner asked to make up some of the missed time and respondent acknowledged that she tries to accommodate petitioner when he asks for make-up parenting time or additional parenting time. Respondent does not cite any authority for the proposition that reversible error occurs where a trial court does not confer substantial weight to a parent's occasional inability to exercise optional parenting time for the precise reason anticipated by the parties. See *Eckert*, 119 Ill. 2d at 327 (quoting *D'Onofrio v. D'Onofrio*, 365 A.2d 27, 30 (1976)) ("When a parent has assiduously exercised his or her visitation rights, 'a court should be loathe to interfere with it by permitting removal of the children for frivolous or unpersuasive or inadequate reasons.' "). Accordingly, we do not agree with respondent that petitioner's failure to miss some mid-week parenting time due to work obligations rendered the trial court's finding with respect to the third statutory factor to be against the manifest weight of the evidence.

¶ 61 Regarding the fourth statutory factor (750 ILCS 5/609.2(g)(4) (West 2016)), the trial court found that the educational opportunities for the minors are equal in both Vernon Hills and in Loveland, Ohio. In this regard, the court observed that both minors are doing well academically and socially in Vernon Hills and from the testimony of both respondent and Paddock, the schools in Loveland, Ohio would provide approximately the same educational

opportunities for the minors. The evidence presented at trial supports the trial court's assessment. Indeed, respondent agrees that this factor is neutral. Accordingly, the trial court's finding that this factor neither favors nor disfavors relocation was not against the manifest weight of the evidence.

¶ 62 Turning to the fifth statutory factor (750 ILCS 5/609.2(g)(5) (West 2016)), the court noted that if the minors were to remain in Vernon Hills, they would be within three to six miles of their paternal grandparents, but a five-and-a-half-hour car ride from the Paddock family. If the minors were to move to Loveland, Ohio, they would be living with Paddock and his children and would be near Paddock's extended family. The court also observed that relocation would not have an effect on the minors' contact with respondent's extended family.

¶ 63 As respondent correctly notes, it is unclear from the trial court's findings whether it viewed the fifth statutory factor as supporting or opposing relocation. She suggests that the application of this factor favors relocation. In support, respondent observes that Rene, the paternal grandmother, testified that she and her husband would have the "ability" to travel to Ohio. Respondent further states that petitioner and his parents are welcome to come to Ohio any time. Hence, respondent reasons, if relocation is permitted, the paternal grandparents "will continue to have frequent contact with the [minors] pursuant to the [proposed] parenting schedule." However, the evidence adduced at trial with respect to this factor does not unequivocally support respondent's assertions.

¶ 64 That Rene and Ed would have the *ability* to travel to Ohio to see their grandchildren does not necessarily mean that they will have *frequent* contact with the minors under her proposed parenting schedule. In this regard, the record shows that Rene and Ed currently live a short distance away from both petitioner and respondent. Since the minors were born, Rene and Ed

have seen them weekly, if not more frequently. In Illinois, Rene and Ed attend the minors' activities, including soccer games, dance recitals, and gymnastics. They also take the minors to the zoo, the circus, and shopping. At respondent's invitation, Rene and Ed have seen the minors off to their first day of school each year. In addition, Rene volunteers at the minor's school. Petitioner and his parents also celebrate holidays with the minors. Respondent acknowledged that the minors have bonded with petitioner's parents and confirmed that the paternal grandparents regularly attend the minors' activities and events. While respondent stated that she is willing to ensure the bond between the minors and their grandparents continues if her petition for relocation is granted, it is unreasonable to assume that the frequency with which Rene and Ed see the minors will continue given that a trip to Ohio would require more than 10 hours of travel. Given the traveling distance and the parenting schedule proposed by respondent, it is unlikely that Rene and Ed would be able to attend the minors' activities and events with any frequency. Moreover, under respondent's proposed parenting schedule, the minors would be in Illinois only one weekend each month. Accordingly, contrary to respondent's suggestion, it is likely that the frequency of contact between Rene, Ed, and the minors will diminish if relocation is permitted.

¶ 65 In any event, the focus of the fifth statutory factor is the presence or absence of extended family at the *existing* location and at the proposed *new* location. As discussed above, the minors' paternal grandparents reside in the Libertyville/Vernon Hills area. By all accounts, Rene and Ed have a very close relationship with the minors and currently have frequent, meaningful contact with them. If relocation to Loveland, Ohio, were allowed, the minors' family contacts would include Paddock and members of Paddock's extend family. The testimony at trial established that the minors have established a good relationship with Paddock, his children, and his extended family. If relocation is allowed, the minors would see the paternal grandparents less frequently.

Conversely, if relocation were not allowed, the minors would see Paddock and his family less frequently. In light of the foregoing evidence, the fifth statutory factor is neutral at best.

¶ 66 The sixth statutory factor concerns the anticipated impact of the relocation on the children. 750 ILCS 5/609.2(g)(6) (West 2016). Here, the court found that relocation would have an "immediate difficult impact" on the minors, explaining:

> "[A.M.N.] and [A.N.N.] are deeply embedded in the Vernon Hills/Libertyville communities. The girls would be away from their father and grandparents that they see on a regular schedule. They would be away from their friends from school, the neighborhood and activities. The girls are very well adjusted socially with many friends in Vernon Hills. [Respondent] struggled to name one friend of the girls who lived in Loveland. The girls would eventually create many friendships through the Paddocks, school and activities. The girls would be introduced to new therapists and medical providers. The relocation would have an immediate difficult impact on the children. Long term, the girls would adjust to the new school, teams, and therapists and make friends, but their relationship with their father and paternal grandparents would suffer."

Respondent asserts that the trial court's finding with respect to the sixth factor "is the only factor that truly supports his decision to deny relocation." Nevertheless, respondent argues that the trial court's finding is "incorrect and unsupported by any evidence and demonstrates that [the trial court's] decision is against the manifest weight of the evidence." Respondent raises several points in support of her position.

¶ 67 Initially, respondent takes issue with the trial court's finding that relocation would require the minors to find a new therapist. While respondent does not dispute that a move to Ohio would require her to locate a new therapist for the minors, she notes that they would also need a new

therapist if they stay in the Vernon Hills area because D'Addeo, the therapist the minors had been seeing in Illinois, moved to Florida. Petitioner concedes that the minors would have to find a new therapist due to D'Addeo's move, but maintains that this factor alone does not support a finding that the trial court's conclusion that this factor opposes relocation is against the manifest weight of the evidence. We agree.

¶ 68 As the trial court found, the minors are deeply embedded in the Vernon Hills and Libertyville communities. The evidence of record supports this finding. The minors are well adjusted socially with many friends in Vernon Hills through school and through the various activities in which they are involved. The minors also have friends in petitioner's neighborhood with whom they do not attend school. When asked about the minors' friends in Ohio, respondent was only able to identify Paddock's children and the sister of one of Paddock's daughter's friends. Moreover, the minors have been seeing the same pediatrician since 2011 and the same dentist since 2011 or 2012. They enjoy close relationships with petitioner and the paternal grandparents, whom they see on a regular basis.

¶ 69 Respondent also disputes the trial court's finding that relocation would have "an immediate difficult impact on the children." To the contrary, respondent argues that the evidence shows that the minors have proven that they are capable of adjusting to a new home and a new school. In support of her position, respondent asserts that although the minors are only eight and six years old, they have already "successfully moved three times in their lives and changed schools several times" and that the minors are doing well in school both academically and socially. Respondent, however, overstates the significance of this evidence. To be sure, the record establishes that both A.M.N. and A.N.N. have attended multiple schools during their short lives. However, the minors remained in the Libertyville/Vernon Hills area throughout these

changes. A.M.N. attended preschool in Libertyville, kindergarten at Aspen Elementary in Vernon Hills, and first and second grade at Hawthorn Elementary South in Vernon Hills. A.N.N. attended preschool in Vernon Hills and kindergarten and first grade at Hawthorn Elementary South in Vernon Hills. Respondent testified that the reason for the different schools were due to her move after the divorce, the minors being promoted to a different grade, and school district restructuring. For instance, respondent testified that the reason A.M.N. switched from Aspen Elementary to Hawthorn Elementary South was due to the fact that the school district was restructured. She acknowledged, however, that "a few of the kids" at Aspen accompanied A.M.N. to the new school. Moreover, despite the changes in school, we note that the minors remained in the Libertyville/Vernon Hills communities. Thus, not only were they able to remain in regular contact with petitioner and their paternal grandparents, they likely were able to maintain the friendships they developed at their former schools. Given this evidence, the trial court could have reasonably concluded that a move to a different school in the same community simply did not equate to a move to a different state more than five hours away.

¶ 70 Next, citing to *In re Marriage of Parr*, 345 Ill. App. 3d 371 (2003), respondent asserts that "the law is clear that relocation should never be denied due to any short-term adjustment required by the relocation." Respondent's reliance on *Parr* for this assertion is misplaced. In *Parr*, the court addressed the wife's claim that the trial court erred in denying her request for leave to remove the parties' minor children from Illinois to Colorado pursuant to former section 609 of the Act (750 ILCS 5/609 (West 2002)). The *Parr* court began by noting the well-settled proposition that each removal request must be decided on a case-by-case basis depending on the circumstances of each case. *Parr*, 345 Ill. App. 3d at 376 (citing *Eckert*, 119 Ill. 2d at 326). The court then held that regardless whether the parties' children moved to Colorado or remained in

Illinois, they would experience change because the wife was transitioning from being a full-time student to a full-time employee. *Parr*, 345 Ill. App. 3d at 377. The court then remarked that "if courts looked *only* at the short term (the adjustment period), removal would be allowed only in a rare situation when the children were in a good environment with good schools, good friends, and a nice home." (Emphasis added.) *Parr*, 345 Ill. App. 3d at 377-78. Nothing in *Parr*, however, precludes a court from considering the impact relocation may have on a child. To the contrary, section 609.2(g)(6) requires the court to consider the "anticipated impact of the relocation on the child" without any temporal restrictions. 750 ILCS 5/609.2(g)(6) (West 2016). Thus, at best, *Parr* stands for the proposition that a trial court cannot deny removal based *solely* on the adjustments implicit in relocation. We find no indication in the record that this occurred in the proceedings below.

¶ 71 Finally, respondent takes issue with the trial court's statement that although the minors would adjust to the move in the long term, their relationship with petitioner and his parents would "suffer." According to respondent, while the minors' relationships with petitioner and the paternal grandparents will undoubtedly change, there is no evidence these relationships will "suffer" if relocation is permitted. However, the trial court's finding was a reasonable conclusion from the evidence. As noted above, the minors enjoy a strong bond with both petitioner and the paternal grandparents. We have already noted that the quantity of the minors' visits with the paternal grandparents would likely diminish if relocation is allowed. We also find that the quantity and quality of the minors' time with petitioner would likely diminish.

¶ 72 Petitioner currently has parenting time every other Friday from 5 p.m. until Monday at 7 p.m., every Wednesday from 4:30 p.m. until 7:30 p.m., and the option of one "floating overnight" on a Monday, Wednesday, or Thursday following the weekend in which he has

parenting time. In addition, petitioner frequently sees the minors during the week through his participation in the minors' activities, including coaching soccer. The parenting schedule, as proposed by respondent, which would require more than 10 hours of driving every other weekend, would virtually eliminate petitioner's Friday parenting time, his Sunday and Monday parenting time on two-day weekends, and his Monday parenting time on three-day weekends. Although the schedule as proposed by respondent would provide alternating week long visits during the summer, it would eliminate mid-week visits. Moreover, as petitioner testified, his ability to communicate with the minors on a regular basis through electronic means is not a substitute for physical contact. Petitioner observed that the minors are very affectionate. They enjoy hugs and snuggling with their parents while watching movies. Further, petitioner enjoys making breakfast for the minors. If relocation were allowed, petitioner would not be able to engage in such behavior as frequently. In addition, petitioner would not be able to drop off the minors at school or coach their soccer games. In other words, relocation would require petitioner and the minors to visit very differently, much less frequently, and in bigger blocks of time during parts of the year. Thus, although petitioner would continue to have contact with the minors and be an active participant in their lives, the quality and quantity of those contacts would be different. In short, the evidence supports the trial court's finding that the "immediate impact" of the relocation on the minors would be significant. Accordingly, the trial court's finding as to this factor is not against the manifest weight of the evidence.

¶ 73 Turning to the seventh statutory factor (750 ILCS 5/609.2(g)(7) (West 2016)), the court concluded that it could fashion a reasonable allocation of parental responsibilities between the parties if the petition for relocation were allowed. In this regard, the court found that the parties could use technology, *e.g.*, e-mail and text, to inform, plan, and communicate. The court further

found that the parties' flexible work schedules and financial resources would allow for transportation between Illinois and Ohio. The court allowed that the minors' busy schedules "may make for some difficult decisions," but found that at their current age, a reasonable and realistic schedule could be devised. The court noted, however, that as the minors get older, "their schedules get busier and it becomes less likely that they are able or willing to miss in order to exercise parenting time as ordered."

¶ 74 Although the trial court's finding with respect to this factor seemingly favors relocation, respondent faults the court for finding that a reasonable schedule may be more difficult to create as the minors get older. According to respondent, there is no evidence to support such a finding. Respondent further asserts that in so finding, the court engaged in improper speculation. We disagree. In fact, the trial court's remarks are based on respondent's own testimony at trial. Respondent explicitly acknowledged that the minors' involvement in activities could impede their ability to travel between Ohio and Illinois if relocation is permitted. In response to questioning by the court, respondent admitted that the issue would become more challenging as the minors get older and become more committed to certain activities. In fact, respondent noted that she did not take the minors on 40 of her 60 trips to Ohio in part because the travel would interfere with their activities. Further, when asked how she would accommodate the travel commitment for parenting time if relocation were allowed, respondent answered that accommodation would require cooperation between her and petitioner and flexibility in the minors' activities. She also acknowledged the potential problem in choosing activities that fit the parenting plan schedule as opposed to activities in which the minors are interested or are good for them. Nevertheless, respondent felt that she and petitioner could work together to help choose activities that would have allowed for flexibility. Accordingly, we find the trial court's

findings as to the seventh factor are not against the manifest weight of the evidence.

¶ 75 The eighth factor requires the court to consider the wishes of the minors. 750 ILCS 5/609.2(g)(8) (West 2016). The trial court did not consider this factor as it had no evidence to indicate the wishes of either child. The parties agree that no evidence was presented regarding this factor.

¶ 76 As noted above, the ninth statutory factor concerns possible arrangements for the exercise of parental responsibilities appropriate to the parents' resources and circumstances and the developmental level of the child. 750 ILCS 5/609.2(g)(9) (West 2016). The trial court essentially found that this factor favored relocation, noting that the parties' flexible work schedules and "substantial resources" would allow for arrangements for each of them to exercise parental responsibilities. Respondent argues that this factor "strongly favors relocation" given petitioner's flexible work schedule and financial resources. Petitioner does not seriously dispute the trial court's findings. Nevertheless, he complains that while respondent expects him to bear the costs of traveling to and from Ohio as well as the cost of accommodations while he is in town, she did not research the prices of hotels in the area. Given the trial court's findings with respect to the parties' flexible work schedules and substantial financial resources, however, we cannot say that the trial court's finding that this factor favors relocation is against the manifest weight of the evidence.

¶ 77 Regarding the tenth statutory factor (750 ILCS 5/609.2(g)(10) (West 2016)), the court found that respondent "would initially make a good faith effort to minimize the impairment to the relationship between [petitioner] and [the minors]." The court also noted that while the parties do communicate regarding the minors, "they are not friends and are not on good terms with each other." The court observed that the prior emergency orders of protection and differing

parenting styles "create a tension between the parties that will have a long term impact on their ability to minimize the impairment of the parent-child relationship that will inevitably occur over time." The court also determined that while Paddock "appears to be willing to cooperate and facilitate an effort to minimize the impairment[,]" he and petitioner "rarely communicate and [Paddock] would not be able to minimize the impairment to the relationship between [petitioner] and the [minors]." Respondent acknowledges that the trial court's remarks "appear[] to support" its decision that relocation would not be in the minors' best interests. According to respondent, however, such a conclusion "contradicts [the court's] earlier findings and is not supported by the evidence." Based on our review of the record, however, we cannot say that the trial court's findings relative to this factor are against the manifest weight of the evidence.

¶ 78 Respondent asserts that the court's finding that there would initially be an impairment to the relationship between petitioner and the minors is inconsistent with the court's earlier findings that (1) it could fashion a reasonable allocation of parental responsibilities if respondent relocates to Ohio with the minors and (2) the parties' flexible work schedules and substantial resources would allow for arrangements for each parent to exercise his or her parental responsibilities. We disagree. Quite simply, the fact that a reasonable allocation of parental responsibilities can be created and that the parties' flexible work schedules and resources would allow for each parent to exercise his or her parental responsibilities is not necessarily inconsistent with a finding that relocation would also impair the minors' relationship with petitioner.

¶ 79 Respondent also claims that although the "relationship and some of the contacts would change, *** there is nothing to indicate the bond [petitioner] admittedly created and fostered will diminish." We disagree. In this regard, we note that respondent's testimony regarding whether petitioner's relationship with the minors would be impaired from relocating was conflicting.

Initially, respondent testified that she did not believe that petitioner's relationship with the minors would be impaired from relocating. She maintained that "there isn't a whole lot that would change if we were granted relocation." She did not believe that petitioner's relationship with the minors would be impaired because they could have "daily phone calls and Facetimes without time limit, just like [they] do now." However, on cross-examination, respondent backtracked from her initial testimony. Asked whether she previously testified that the minors would not be impaired by relocation, respondent answered, "I don't think I said that." Respondent was then asked to identify "all the ways in which the [minors] would be impaired if [she] were allowed the right to relocate *** to *** Ohio." Respondent acknowledged that if relocation were allowed, petitioner would not be able to be a soccer coach for the minors. She also noted that the minors have a lot of weekly activities, but petitioner would not be able to attend these activities "if we didn't plan for it." Nevertheless, respondent reiterated her earlier testimony that the minors "would still be able to technically see [petitioner] every day with the ability of Facetime."

¶ 80 Respondent's opinion that phone calls and the use of FaceTime was an adequate replacement for petitioner's parenting time with the minors was disputed by petitioner, who testified that electronic contact is no substitute for in-person contact. As noted earlier, petitioner explained that the minors are very affectionate. They enjoy hugs. They like to watch movies while snuggling with their mom or dad. Petitioner stated that "what matters" is "physically giving your kids a hug or pouring them a bowl of cereal in the morning or dropping them off at school." Petitioner also testified that when he is with the minors he kisses them goodnight on the eyelids and sings to A.N.N. before she goes to sleep. Petitioner stated that while electronic contact allows him to have "meaningful communication" with the minors, FaceTime and phone

calls do not "replicate face-to-face, hand-to-hand contact with your children." According to petitioner, not being able to have these "on-site" parenting opportunities would negatively affect his relationship with the minors.

¶ 81 Respondent also takes issue with the court's statement that petitioner and Paddock "rarely communicate." According to respondent, both petitioner and Paddock indicated they would have no problem communicating. However, the fact that petitioner and Paddock would have no problem communicating does not contradict the court's remark that the two men "rarely communicate." To the contrary, the trial court's comment is supported by the record. Paddock testified that he has petitioner's phone number. He also admitted that if he had to communicate something to petitioner, he would. However, he testified that he does not notify or tell petitioner anything, explaining that respondent "runs the main point when it comes to communicating with [petitioner]." During closing argument, respondent's attorney even referenced Paddock's testimony, stating "[Paddock and petitioner] don't really communicate, but that's okay. You heard him, in case of emergency, I have his cell number, I will call him." The point of the trial court's comment was that, despite Paddock's willingness to facilitate the relationship between petitioner and the minors, Paddock would not be able to minimize any impairment caused by relocation because of the lack of communication between the two men.

¶ 82 Respondent also challenges the trial court's statement that the prior orders of protection and the parties' differing parenting styles create "tension" between the parties that will have a long-term impact on their ability to minimize the impairment of the parent-child relationship that occur over time. According to respondent, there is no evidence establishing any "tension" beyond what would be expected between divorced parents. However, we must defer to the trial court's finding in this regard as it had the opportunity to observe the parties and evaluate their

temperaments, personalities, and capabilities. See *Eckert*, 119 Ill. 2d at 330. Respondent suggests that the presence of any tension is illusory given petitioner's admission that since the June 2016 parenting order was entered, he and respondent "have been able to work pretty effectively despite [their] differences." Respondent takes these comments out of context. The record shows that petitioner was asked whether he agreed "generally that [he and respondent] have been able to work pretty effectively despite [their] differences since at least June of 2016 *to be able to ensure that you have substantial time with the kids*?" (Emphasis added.) Respondent answered, "[y]es, for the most part." However, this exchange does not negate a finding of tension in the parties' relationship.

¶ 83 Respondent further contends that even assuming that any tension exists, the tension will be present regardless of where the minors reside. In addition, she suggests that relocation will actually alleviate any tension that currently exists because it would allow for a more defined schedule, thereby eliminating many of the arguments and difficulties of co-parenting. As a result, respondent argues that the trial court "denying relocation based on any perceived 'tension' makes no sense." Respondent, however, misconstrues the trial court's ruling. The trial court did not deny relocation based *solely* on the existence of perceived tension. It was but one finding the court considered in making its decision. Thus, even if we were to consider the trial court's perceived tension between the parties improper, which we do not, it would not constitute reversible error.

¶ 84 In summary, the trial court was presented with conflicting evidence regarding the tenth statutory factor. While the court determined that respondent would initially make a good faith effort to minimize the impairment to the relationship between petitioner and the minors, it ultimately determined that the parties' relationship will impact their ability to minimize the

impairment of the parent-child relationship that will inevitably occur over time. Given our review of the record and in light of the conflicting evidence on this point, we cannot say that the trial court's finding that the tenth factor does not support relocation was against the manifest weight of the evidence.

¶ 85 Finally, the eleventh statutory factor directs the trial court to consider "any other relevant factors bearing on the child's best interests." 750 ILCS 5/609/2(g)(11) (West 2016). The court tacitly found that this factor did not favor relocation. With respect to this factor, the court found that respondent married Paddock knowing he resided in Ohio. The court observed that respondent admitted the arrangement was "unconventional," describing it as a "commuter marriage." The court also observed that Paddock will not relocate to Illinois "for the same reasons [petitioner] is contesting this petition." The court stated that "[petitioner], like [Paddock], knows that if this Court grants relocation, his relationship with his daughters will be impaired." The court added that "[a]s time passes and the [minors] get older, any parenting plan will become less realistic and reasonable. [Petitioner] will lose having breakfast with his daughters and taking them to school. He will no longer coach them in soccer or read to them at school. [Petitioner] will lose those precious moments that bond a parent to a child."

¶ 86 Respondent contends that the trial court's findings with respect to the eleventh "catchall factor" are largely duplicative, arbitrary, and against the manifest weight of the evidence. She claims that there is a dearth of evidence to support the trial court's finding of a future impairment in petitioner's relationship with the minors. As discussed above, however, the trial court's finding of impairment if relocation is permitted is supported by the record. Respondent also contends that the trial court's finding that petitioner will lose "those precious moments" that bond a parent to a child" is not based on any evidence. However, respondent herself

acknowledged that if relocation is permitted, petitioner will no longer be able to coach the minors in soccer or attend weekly activities without advanced planning. Likewise, given the parenting schedule proposed by respondent, it is unlikely that petitioner will be able to transport the minors to school or read to them at school. Similarly, the frequency with which petitioner would be able to prepare breakfast for the minors, kiss them goodnight on the eyelids, or sing A.N.N. to bed would diminish.

¶ 87 Respondent also takes issue with the trial court's statement that she married Paddock knowing he resided in Ohio. Our supreme court has cautioned that the interests of the custodial parent should not be automatically subordinated to those of the noncustodial parent in a removal (now relocation) action. See *Collingbourne*, 204 Ill. 2d at 528; see also *In re Marriage of Eaton*, 269 Ill. App. 3d 507, 517 (1995). However, Illinois courts have also stated that "in order to prove that removal is in a child's best interest, the custodial parent must prove more than his or her own desire to live with a new spouse." See *Shinall v. Carter*, 2012 IL App (3d) 110302, ¶ 47. To the extent that the court improperly considered this evidence, however, respondent does not cite any authority for the proposition that it alone requires reversal.

¶ 88 Prior to concluding, we acknowledge the parties have cited various cases which they assert are factually similar to the present one. As the supreme court has observed, however, a determination of the best interests of a child "must be made on a case-by-case basis, depending, to a great extent, upon the circumstances of each case." *Eckert*, 119 Ill. 2d at 326. Given the factual differences between the present case and the cases cited, they provide negligible assistance in reviewing the trial court's application of the section 609.2(g) factors to the circumstances of this case.

¶ 89 In *P.D.*, 2017 IL App (2d) 170355, ¶ 49, this court stated that the final decision in a

relocation case should not be based on which party won the most factors, but rather based on the totality of the circumstances. Having analyzed each factor individually, we note that when we view the totality of the evidence and circumstances presented, we cannot say that the trial court's decision to deny respondent's petition for relocation of the minors was against the manifest weight of the evidence.

¶ 90 B. Testimony of the GAL

¶ 91 Respondent's second assignment of error concerns the trial court's decision to grant petitioner's emergency motion *in limine* to bar the GAL's report and testimony (Motion to Bar) at the hearing on respondent's motion for relocation. Petitioner filed the Motion to Bar on June 27, 2017. A hearing on the Motion to Bar was held on July 7, 2017. No court reporter was present at the July 7, 2017, hearing. However, the parties have submitted a bystander's report in accordance with Illinois Supreme Court Rule 323 (eff. July 1, 2017). According to the bystander's report, petitioner argued that the GAL's report should be barred because it was tendered past the court-ordered deadline and less than 60 days before trial. Petitioner also argued that the report and the GAL's testimony should be barred because the GAL improperly relied on "communications in counseling" in her report and in her opinion in violation of section 607.6(d) of the Act (750 ILCS 5/607.6(d) (West 2016)). Respondent countered that the timing of the filing of the GAL's report was not an issue because petitioner's prior attorney and counsel for respondent agreed to the extended deadline. In addition, respondent argued that section 607.6(d) of the Act does not apply to this case for three principal reasons. First, the counseling sessions between the minors and D'Addeo were not ordered or initiated pursuant to the statute. Second, the statute does not apply to a GAL because a GAL is not an "expert." Third, petitioner waived the application of the statute through a series of agreed orders allowing the minors to continue in

therapy with D'Addeo. Alternatively, respondent argued that a remedy less extreme than barring evidence from the GAL in its entirety is available, such as redacting any inadmissible or confidential statements from the report or allowing the GAL to testify as to her opinion regarding relocation but not to any confidential statements. In reply, petitioner asserted that the GAL's report and her deposition testimony revealed that the only communication that she had with the minors occurred when the GAL sat in on three counseling sessions with the minors and D'Addeo. Further, D'Addeo called the GAL and related specific statements made by the minors in counseling. The GAL never met with the minors at her office, never went to the minors' home or school, and never otherwise met with them separately. Petitioner argued that under such circumstances, the court cannot simply strike portions of the report or disregard certain testimony of the GAL because the entire report had been tainted by the GAL's improper reliance on court-ordered communications in counseling in direct violation of section 607.6 of the Act.

¶ 92 The trial court granted petitioner's Motion to Bar. The basis for the court's ruling was that section 607.6 of the Act applied. The court stated that it had hoped to redact the portions of the report related to communications in counseling, but when it learned the only communications between the GAL and the minors occurred in counseling, it could not redact those portions of the report, it had to bar it all. Thereafter, respondent filed an emergency motion to reconsider the order entered July 7, 2017. The trial court denied the motion to reconsider, stating that, in its opinion, section 607.6(d) would be rendered "meaningless" if it were to allow the GAL's report and testimony at trial. Thereafter, at respondent's request, the trial court entered the GAL's report as an offer of proof.

¶ 93 On appeal, respondent argues that the trial court erred in barring the testimony of the GAL. Respondent raises various reasons in support of her argument. First, she asserts that

section 607.6 of the Act does not apply as a matter of law. Second, she contends that the trial court's remedy—banning the GAL's testimony in its entirety—was too extreme. Third, respondent contends that section 607.6 of the Act conflicts with the Illinois Rules of Evidence. We address each contention in turn.

¶ 94 i. Applicability of Section 607.6 of the Act

¶ 95 Respondent first asserts that the trial court erred as a matter of law in barring the GAL's testimony because section 607.6 of the Act (750 ILCS 5/607.6 (West 2016)) does not apply in this case. At the outset, we observe that other than the statute itself, respondent cites no authority in support of this contention, thereby forfeiting it. *Kic v. Bianucci*, 2011 IL App (1st) 100622, ¶ 23. Even absent forfeiture, however, we find respondent's claim unpersuasive.

¶ 96 Section 607.6 was added to the Act effective January 1, 2017. P.A. 99-763, § 5 (eff. Jan. 1, 2017) (adding 750 ILCS 5/607.6). That provision provides in pertinent part as follows:

> "§ 607.6. Counseling.
>
> (a) The court may order individual counseling for the child, family counseling for one or more of the parties and the child, or parental education for one or more of the parties, if it finds one or more of the following:
>
> (1) both parents or all parties agree to the order;
>
> (2) the child's physical health is endangered or that the child's emotional development is impaired;
>
> (3) abuse of allocated parenting time under Section 607.5 has occurred; or
>
> (4) one or both of the parties have violated the allocation judgment with regard to conduct affecting or in the presence of the child.
>
> * * *

> (d) All counseling sessions shall be confidential. The communications in counseling shall not be used in any manner in litigation nor relied upon by any expert appointed by the court or retained by any party." 750 ILCS 5/607.6 (West 2016).

According to respondent, section 607.6 does not apply in this case for three principal reasons. First, the statute only applies if the court orders therapy *and* specifically makes one of four findings set forth in the statute. Respondent maintains that no therapy could have been "ordered" pursuant to the statute since it did not become effective until January 1, 2017, "long after this litigation and the therapy began." Second, respondent maintains that the statute does not apply because the trial court did not make any one of the four findings set forth in the statute. Finally, respondent contends that the statute is not operative because it applies only to "experts" and not appointed GALs. The applicability and interpretation of a statute involve questions of law which we review *de novo*. *Rudy v. People*, 2013 IL App (1st) 113449, ¶ 11.

¶ 97 We conclude that the trial court did not err as a matter of law in applying section 607.6(d) of the Act to bar the GAL's report and testimony at trial. In this regard, respondent's reliance on subsection (a) of section 607.6 of the Act (750 ILCS 5/607.6(a) (West 2016)) is misplaced. Section 607.6(a) governs the circumstances under which a court may order counseling. However, the court's decision to grant petitioner's Motion to Bar in this case was based on section 607.6(d) of the Act (750 ILCS 5/607.6(d) (West 2016)). As petitioner correctly notes, section 607.6(d) is "broad and unequivocal." It provides that "*[a]ll* counseling sessions *shall* be confidential" and that "[t]he communications in counseling *shall not* be used in *any manner* in litigation." (Emphasis added.) 750 ILCS 5/607.6(d) (West 2016). The language of this section is unqualified and is not limited to counseling ordered pursuant to section 607.6(a) of the Act. See *In re Marriage of Goesel*, 2017 IL 122046, ¶ 13 ("It is improper for a court to depart from

the plain statutory language by reading into the statute exceptions, limitations, or conditions that conflict with the clearly expressed legislative intent."). Respondent cites no authority to the contrary.

¶ 98 Additionally, the fact that section 607.6 did not become effective until January 1, 2017, is of no consequence under the facts of this case. Section 801 of the Act (750 ILCS 5/801(b) (West 2016)) provides that the current version of the Act, including any amendments, applies to "all proceedings commenced on or after its effective date" as well as "all pending actions and proceedings commenced prior to its effective date with respect to issues on which a judgment has not been entered." See *In re Marriage of Adams*, 2017 IL App (3d) 170472, ¶ 14; *In re Marriage of Smith*, 162 Ill. App. 3d 792, 795 (1987). Section 801(b) of the Act (750 ILCS 5/801(b) (West 2016)) further provides that "[e]vidence adduced after the effective date of this Act shall be in compliance with this Act." In this case, respondent initially filed her petition for relocation on November 16, 2016. She subsequently withdrew the petition, but refiled it on January 5, 2017. On January 20, 2017, the trial court expanded the GAL's duties to include relocation. Petitioner's response to the petition for relocation was filed on February 17, 2017, the GAL submitted her report to the court early in June 2017, the hearing on the petition for relocation commenced on July 11, 2017, and the trial court issued its decision on July 25, 2017. Since respondent withdrew her original petition for relocation and did not re-file it until after the effective date of section 607.6, the statute applies to this case.[1] It is equally clear that the GAL's

[1] We would reach the same result had the petition for relocation filed in November 2016 been at issue. Under these circumstances, the petition for relocation constituted a pending action commenced prior to the effective date of the statute for which a judgment would not have been entered until after the effective date of the statute. 750 ILCS 5/801(b) (West 2016).

report filed in June 2017 and any testimony presented at a trial in July 2017 would have constituted "[e]vidence adduced after the effective date" of section 607.6(d) of the Act.

¶ 99 Finally, respondent's contention that section 607.6 applies only applies to "experts" and not appointed GALs again ignores the plain language of the statute. See *Goesel*, 2017 IL 122046, ¶ 13. While the statute does provide that "communications in counseling shall not be *** relied upon by any expert appointed by the court or retained by any party," it also provides more broadly that "communications in counseling shall not be used in *any manner* in litigation." (Emphasis added.) 750 ILCS 5/607.6(d) (West Supp. 2016). As noted above, this language is unequivocal and cannot be ignored. Therefore, whether a GAL constitutes an "expert appointed by the court" is beside the point given the broad scope of the language in section 607.6(d). For the reasons set forth above, we therefore reject respondent's argument that section 607.6 does not apply as a matter of law.

¶ 100 ii. Bar of GAL's Testimony in Its Entirety

¶ 101 Respondent next argues that, although she does not believe that section 607.6(d) applies, even if it does, the trial court erred in barring the GAL's testimony in its entirety. Respondent's argument in this regard is twofold. First, respondent contends that the "rule of invited error" bars any challenge to the admission of the GAL's testimony because petitioner agreed to allow the GAL to communicate with the minors' therapists. Second, respondent argues that the trial court's decision to bar the entirety of the GAL's testimony was improper because the majority of the information upon which the GAL relied was obtained outside of any counseling sessions. Petitioner responds that the trial court's decision to bar the GAL's report and testimony in their entirety was correct as it would have been "an exercise in futility" to require the trial court "to divine the extent to which the improper communications influenced the GAL." Petitioner adds

that even assuming the trial court's decision to bar the GAL's report and testimony in its entirety constituted error, it was harmless.

¶ 102 Initially, we reject respondent's contention that the "rule of invited error" barred petitioner from challenging the admission of the GAL's testimony. The "invited error rule" provides that a party cannot complain of error that it brought about or participated in. See *People v. Cox*, 2017 IL App (1st) 151536, ¶ 73. In support of her claim that this case presents an issue of invited error, respondent observes that an April 22, 2016, agreed order signed by the trial court states that petitioner and respondent "shall execute releases to allow the GAL to communicate with the therapists." According to respondent, the trial court, by entering this order, and the parties, by agreeing to the order, "clearly contemplated and approved [the GAL] obtaining confidential information from the girl's [*sic*] therapists." As such, respondent insists that petitioner cannot bar the GAL's testimony "based on her exercising the precise authority he agreed to in this matter."

¶ 103 We find respondent's position problematic for two principal reasons. First, it is unclear from the April 22, 2016, agreed order that the parties intended the GAL to communicate with the *minors'* therapists. The agreed order contains 10 separate paragraphs. The fourth paragraph, part of which respondent cites above, provides in its entirety as follows: "The parties shall engage in their own therapy with a therapist of their choice and shall execute releases to allow the GAL and counselors to communicate with the therapists." The intent of this paragraph, specifically whether the release was intended to allow the GAL to communicate with the *parties'* therapists, the *minors'* therapists, or *both*, is not entirely clear. However, the fact that the release language is included in the paragraph requiring the parties to engage in therapy is a strong indication that the intent of the provision was to allow the GAL to communicate with the *parties'*

therapists. See, *e.g.*, *People v. Isaacson*, 409 Ill. App. 3d 1079, 1083 (2011) (interpreting the last antecedent rule in the context of statutory construction, which provides that relative or qualifying words, phrases, or clauses are applied to the words or phrases immediately preceding them and are not construed as extending to or including other words, phrases or clauses more remote, unless the intent of the drafter, as disclosed by the context and reading of the entire document, requires such an extension or inclusion). In fact, although the second paragraph of the April 22, 2016, agreed order provides that weekly therapy between petitioner and the minors shall continue and the third paragraph provides that the minors shall continue in therapy with D'Addeo, neither paragraph specifically directs the parties to execute a release to allow the GAL to communicate with the *minors'* therapists.

¶ 104 Even assuming the intent of the April 22, 2016, agreed order was to allow the GAL to communicate with the *minors'* therapists, respondent's claim is still unconvincing. Quite simply, the fact that the April 22, 2016, order provides that the parties agreed to allow the GAL to *communicate* with the therapists is far different from allowing the GAL to sit in on the counseling sessions with the minors and use in litigation information obtained during the counseling sessions. Indeed, respondent cites no language from the agreed order providing that petitioner agreed to allow the use in litigation of information obtained by the GAL during the counseling sessions with the minors. For these reasons, we reject respondent's claim that petitioner cannot seek to bar the GAL's report or testimony at trial pursuant to the rule of invited error.

¶ 105 Turning to respondent's argument that the trial court's decision to bar the entirety of the GAL's testimony was improper, the parties initially dispute the appropriate standard of review. Respondent, without citation to any authority, contends that this issue should be reviewed *de*

novo. Petitioner counters that the trial court's decision should be reviewed for an abuse of discretion. We agree with petitioner. It is well settled that the decision to grant or deny a motion *in limine* to bar testimony will not be disturbed absent a clear showing of an abuse of discretion. See *People v. DeGorski*, 2013 IL App (1st) 100580, ¶ 57; *Alm v. Loyola University Medical Center*, 373 Ill. App. 3d 1, 4 (2007). An abuse of discretion is a highly deferential standard of review (*People v. Lerma*, 2016 IL 118496, ¶ 32) and occurs only when the trial court's decision is arbitrary, fanciful, or unreasonable to the degree that no reasonable person would agree with it (*People v. Byrd*, 2017 IL App (2d) 140715, ¶ 30).

¶ 106 After concluding that section 607.6(d) applied, the trial court stated that it was hoping to redact portions of the report related to "communications in counseling." However, when the court learned that the only communications with the minors occurred in counseling, it decided that it could not redact out these portions of the report, it had to bar it all. According to respondent, however, a review of the GAL's report demonstrates that the majority of information relied on by the GAL was obtained outside of any "counseling sessions." As such, respondent contends that the trial court should have allowed the GAL to testify at the trial of this matter. However, after reviewing the record in conjunction with the GAL's report, and in light of the deferential standard of review applicable to this issue, we cannot say that the trial court's decision to bar the GAL's report in its entirety or her testimony at trial constituted an abuse of discretion.

¶ 107 Respondent suggests that the trial court could have redacted any offending portions of the GAL's report while admitting the innocuous portions into evidence. However, such an exercise would have required the trial court to ascertain the extent to which the improper communications influenced the GAL. But there is no way of knowing the full extent to which the GAL's view of

the case, or her analysis as a whole, was influenced by the minors' statements and discussions with their therapists. Moreover, the record establishes that the trial court considered and rejected the same request respondent now makes. In ruling on respondent's motion to reconsider its decision to grant the Motion to Bar, the trial court remarked in pertinent part as follows:

> "And in the Court's opinion anyway and I think if I were not to [bar the GAL's report and testimony], I would render 607.6(d) meaningless if I were to allow it. And that was convincing. When all her communications—and I was trying to think of a way of, like, redacting the report in such a way that I could get some of it in. But when all of it—and nobody wants to be critical of anybody, especially everybody who is so well respected. But it just—that is not—that was not the point, to have the guardian ad litem in the counseling. I mean, it was—that's exactly the opposite of what should have happened. But it happened.
>
> * * *
>
> I should have been more articulate. I was a little bit shy about being critical of the GAL while she was here. So I sort of kept my ruling short. But that was the reasoning behind the Court's ruling. Her only contact directly with the children was during counselling [*sic*]. In the Court's opinion, completely inappropriate. It should been outside the counselling [*sic*], not inside the counselling [*sic*]."

It is clear from the record that the trial court found it impossible to redact the counseling communications from the GAL's report given the fact that the GAL's only contact with the minors was during counseling sessions. Given the record before us, and in light of the deferential standard of review, we cannot say that the trial court's decision to bar the GAL's report and testimony at trial constituted an abuse of discretion. In so finding, we do not hold that

there might never be a situation where redaction may be proper. Rather, we find that the trial court could reasonably conclude that the information obtained from the counseling sessions in this case so permeated the GAL's report that it would have been difficult to extract the uncontaminated portions of the report.

¶ 108 Even if we had concluded that the trial court's decision to bar the GAL's report and testimony constituted error, we would also conclude that such error was harmless and therefore would not warrant reversal. The erroneous exclusion of evidence does not require reversal unless the error was prejudicial and affected the outcome of the trial. *Jacobson v. Natonson*, 164 Ill. App. 3d 126, 130 (1987). The burden of proving that a court's evidentiary ruling was prejudicial falls upon the party seeking reversal. *Shachter v. City of Chicago*, 2011 IL App (1st) 103582, ¶ 80. Respondent has failed to meet her burden in this case.

¶ 109 At the beginning of the report, the GAL details the sources of information used to prepare the document. Specifically, the GAL states that she met with respondent, petitioner, Paddock, and Keister. Additionally, the GAL met with "Cassie D'Addeo, the minor children's therapist individually" and "the minor children, individually with their therapist." The GAL also spoke with Crunkilton-Stiegel, the therapist who worked with respondent and the two minors. In addition to these contacts, the GAL reviewed the following documents: (1) information from each party's residential school district websites and related school ranking websites, including SchoolDigger.com; (2) records from each party as to the current parenting-time schedule; (3) e-mails and "Our Family Wizard" communications between the parties; (4) the custody judgment; and (5) recent pleadings, discovery, court orders, and court filings from the 19th Judicial Circuit. As demonstrated by the foregoing, apart from her presence at the minors' counseling sessions, the GAL's investigation consisted primarily of interviewing the witnesses who testified at trial,

reviewing documents and pleadings which were either admitted into evidence or part of the court record, and reviewing websites related to the schools.

¶ 110 To the extent that the GAL's report summarized what the trial witnesses told her, the exclusion of her report could not have been prejudicial because that same information was, for the most part, presented to the court through the testimony of those witnesses. For instance, the GAL's report regarding what she learned from the parties, Paddock, and Keister is duplicative of what they testified to at trial. As such, the GAL report would have been cumulative of such evidence to the extent of the overlap. See *Halleck v. Coastal Building Maintenance Co.*, 269 Ill. App. 3d 887, 896 (1995) (holding that although exclusion of testimony was erroneous, it did not constitute reversible error as excluded testimony was cumulative of other evidence presented at trial); *Chuhak v. Chicago Transit Authority*, 152 Ill. App. 3d 480, 486 (1987) ("The exclusion of evidence is harmless where the evidence excluded was fully established by other evidence and also where the evidence offered was merely cumulative."). Moreover, to the extent that certain portions of the GAL's report are not duplicative of witness testimony at trial, respondent does not indicate that she could not have elicited such testimony through her examination of the witnesses. Further, insofar as the GAL also conducted an analysis of the section 609.2 factors, the exclusion of such information cannot be considered prejudicial error as it merely constitutes argument, not evidence, and respondent argued the section 609.2 factors herself.

¶ 111 Respondent nevertheless contends that one significant piece of evidence contained in the GAL report was excluded from evidence. Specifically, respondent points to the following statement in the GAL's report: "Any move would certainly have an impact on the minor children; however there are no indications that such a move would be detrimental to the children's well-being." According to respondent, the report confirms that the information the

GAL relied upon in reaching this conclusion did not come from any counseling sessions, but from her "extensive investigation as to each community, the family members that will be living in each community and supporting these minor children, the schools the minor children will be attending and her conversations (outside of counseling) with [respondent] and [petitioner]." The problem with respondent's position is that it is not supported by the record. Importantly, the paragraph containing this statement also provides, "[t]his writer has observed the minor children individually talk about a move." The GAL then goes on to discuss what the minors "expressed." As noted above, the GAL's only contacts with the minors was during counseling sessions. Thus, we cannot say with certainty that the GAL's conclusion in this regard was not influenced by information obtained as a result of "communications in counseling."

¶ 112 iii. Conflict between Section 607.6 of the Act and the Illinois Rules of Evidence

¶ 113 Lastly, respondent contends that section 607.6 of the Act (750 ILCS 5/607.6 (West Supp. 2016)) conflicts with the Illinois Rules of Evidence and, therefore, was improperly used to bar the testimony of the GAL. Respondent reasons as follows. Section 607.6 is a "statutory rule of evidence." A statutory rule of evidence is effective "unless in conflict with a rule or a decision of the Illinois Supreme Court." Ill. R. Ev. 101 (eff. Jan. 1, 2011); see also *Dalan/Jupiter, Inc. v. Draper and Cramer, Inc.*, 372 Ill. App. 3d 362, 370 (2007) (providing that where a supreme court rule conflicts with a statute on the same subject, the rule will prevail). Illinois Supreme Court precedent establishes that courts should allow a GAL to rely on any and all information available. See *Collingbourne*, 204 Ill. 2d at 522. Further in *Kunkel v. Walton*, 179 Ill. 2d 519, 527-37 (1997), the supreme court stated the legislature cannot, by statute, allow for discovery prohibited by supreme court precedent. Respondent reasons that the reverse is also true, that is, the legislature cannot, by statute, prohibit discovery and evidence that supreme court precedent

allows. Section 607.6 of the Act bars evidence that conflicts with prior supreme court precedent allowing the GAL to rely on any evidence. As such, the statute cannot be used to bar the GAL's testimony in this case.

¶ 114 However, as petitioner correctly observes, respondent raises this issue for the first time in this appeal. It is well settled that issues not raised in the trial court are deemed forfeited and may not be raised for the first time on appeal. See *Haudrich v. Howmedica, Inc.*, 169 Ill. 2d 525, 536 (1996) (citing cases). In her reply brief, respondent disputes that she has forfeited this claim. She asserts that in her response to petitioner's Motion to Bar the GAL's testimony, she cited authority that "the GAL is allowed to rely on all evidence, including inadmissible hearsay, which is the same argument respondent is making on appeal (albeit in a much more detailed manner)." We disagree as nowhere in her response to petitioner's Motion to Bar does petitioner raise a conflict between section 607.6 of the Act and the Illinois Rules of Evidence. Accordingly, we find this issue forfeited.

¶ 115 III. CONCLUSION

¶ 116 For the reasons set forth above, we affirm the judgment of the circuit court of Lake County, which denied respondent's petition for relocation.

¶ 117 Affirmed.