No. 3--09--0971

Order filed July 15, 2010
Modified upon denial of rehearing March 8, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

In re MARRIAGE OF LISA R. DILLON, n/k/a LISA R. McCORTNEY, Petitioner-Appellant, and MICHAEL R. DILLON, Respondent-Appellee.	))))))))))	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois, No. 01--D--517 Honorable Robert P. Brummund, Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Justices Lytton and Schmidt concurred in the judgment.

ORDER

Held: (1) The mother's arguments concerning a preliminary injunction were rendered moot by the ending of the injunction. (2) The trial court did not err in allowing the child's therapist to testify about counseling matters because the child and the father had signed a consent for the release of information. (3) The court's admission of hearsay testimony about the child's statements was permissible under the state of mind exception to the hearsay rule. (4) The court did not abuse its discretion in modifying custody of the child. (5) The court did not err in ordering the mother to pay child support. (6) The

court did not err in issuing a parenting plan. (7) The mother's argument concerning the court's denial of her petition to reopen proofs was not supported by an adequate record.

HISTORY OF THE APPEAL

Lisa R. McCortney, was the petitioner, and Michael R. Dillon was the respondent, in the 2001 divorce action in this case. Lisa has appealed from four of the trial court's 2009 orders, which: (1) granted Michael's emergency petition for a temporary restraining order (TRO); (2) granted Michael's amended petition to modify child custody; (3) issued a new parenting plan; and (4) denied Lisa's petition to reopen the proofs regarding the petition to modify custody. On appeal, Lisa has raised twenty issues concerning these four orders.

The Notice of Appeal in this case did not contain the mandatory caption for an expedited appeal: "[t]his appeal involves a question of child custody, adoption, termination of parental rights or other matter affecting the best interests of a child" (Ill. S. Ct. R. 311 (eff. Feb. 26, 2010)) and did not, therefore, apprise the court that the appeal should be expedited. Nor did the caption appear on any of the other filings in the case. The court became aware that this was a custody proceeding in March 2010 and, on its own motion, expedited the matter. By the time the briefing was finished, there was only a short window to review the case materials and attempt to meet the July 12,

2010, deadline required by Supreme Court Rule 311 (Ill. S. Ct. R. 311 (eff. Feb. 26, 2010)).

On appeal, Lisa has raised 20 issues concerning these four orders. In our initial order filed July 15, 2010, we ruled that Lisa's questions regarding Michael's emergency petition are moot, and otherwise, we affirmed the trial court's orders. Additionally, we denied Lisa's motion to strike Michael's appellee's brief, which was taken with the case.

Following the filing of our initial order in this matter, Lisa challenged this court's management of the record on appeal, asserting that it had lost documents that the panel had stated were not found in the record. Lisa also sought an extension of time to file a petition for rehearing, contending that all documents required for decision were included in the record. She also requested leave to supplement the record with the documents she claimed the court had lost or otherwise mismanaged.

On the court's own motion, the parties were ordered to appear so Lisa's attorney could check the court file and her motion to extend time to file a petition for rehearing and to amend the record could be heard. Lisa's attorney acknowledged he had failed to file the supplemental documents and at the end of the hearing, the court, in the interest of fully examining the issues, granted both of Lisa's requests. She supplemented the record and filed her petition for rehearing.

After careful consideration of the supplemental documents now included in the record, we have determined that the outcome of the appeal would not change. Accordingly, the petition for rehearing is denied. However, because the "Authorization for Release of Information" and the financial affidavit exhibits were not in the record, we were unable in our original order to analyze the issues raised concerning the testimony of Terry Lee D'Amico and child support. We modify the order of July 15, 2010, for the sole purpose of addressing those issues.

PRELIMINARY MATTERS

Initially, we observe that Lisa's appellant's brief lists issues using Roman numerals I to XVII. However, as Lisa enumerated the issues in the brief, she duplicated three Roman numerals, which are IV (pages 17 and 19), VI (pages 32 and 39), and XVII (pages 63 and 64). Therefore, we note that Lisa actually raised 20 issues rather than 17.

On January 16, 2009, Michael filed an emergency petition for a TRO. Although designated as an emergency petition, the court did not proceed *ex parte* under the emergency provisions of the TRO statute (see 735 ILCS 5/11--101 (West 2008)). Instead, after holding a hearing where both parties presented testimony, the court granted the petition on January 20, 2009. The court's written order stated, "The Temporary Restraining Order is granted instanter until Further order of [the] court."

We note that, by statute, the injunctive relief the court granted in the January 20 order could not have been a TRO because a TRO can only be in effect for 10 days, with exceptions not applicable to this case (see 735 ILCS 5/11--101 (West 2008)). The court granted injunctive relief beyond 10 days, "until Further order of [the] court[,]" which effectively granted Michael a preliminary injunction. See *Hensley Construction, LLC v. Pulte Home Corp.*, 399 Ill. App. 3d 184 (2010) (preliminary injunction preserves the *status quo* until the court rules on the merits).

Moreover, in granting a preliminary injunction, the January 20 order was only in effect "until Further order of [the] court"--that is, until the court issued its order on the merits of Michael's petition to modify custody. See *Hensley*, 399 Ill. App. 3d 184. We note that the court issued the order on the merits on October 26, 2009. Thus, the January 20 order was only in effect until October 26. The issues Lisa has raised concerning the court's January 20 order were moot as of October 26, and consequently we will not consider them on appeal. See *In re Alfred H.H.*, 233 Ill. 2d 345 (2009). Therefore, we will neither relate facts nor engage in legal analysis concerning issues Lisa raised regarding the January 20 order.

Also, we observe that five of the arguments raised in Lisa's brief (starting on pages 48, 52, 53, and 60, respectively)

contain no citation to authority, and thus we need not consider them. See Ill S. Ct. R. 341(h)(7) (eff. July 1, 2008); *Bigelow v. City of Rolling Meadows*, 372 Ill. App. 3d 60 (2007).

Additionally, we note that this appeal has been delayed several times because both parties asked for extensions of various filing deadlines, which we granted. Eventually, Lisa filed an appellant's brief, Michael filed an appellee's brief, and Lisa did not file a reply brief.

On May 13, 2010, Lisa filed a "MOTION TO STRIKE PRO SE RESPONSE BRIEF FOR FAILURE TO COMPLY WITH SUPREME COURT RULES AND ASSOCIATED WAIVER OF RESPONSE ARGUMENTS PRESENTED FOR FAILURE TO CITE TO THE RECORD OR TO CITE TO AUTHORITY." In this motion, Lisa argued that Michael's appellee's brief should be stricken: (1) for failure to cite to the record; (2) for failure to cite authority; and (3) because it raised issues not addressed in the appellant's brief, without Michael having cross-appealed. On May 28, 2010, this court ruled that Lisa's motion was to be taken with the case.

We observe that both of the parties' briefs fail to follow several of the supreme court rules regarding the structure and content of their respective briefs. See Ill. S. Ct. R. 341(h), (i) (eff. July 1, 2008). As examples: (1) Michael's brief fails to cite to the record; (2) several of Lisa's arguments fail to cite authority, as we observed above; and (3) neither brief

follows the rule concerning the "Points and Authorities" portion of a brief (see Ill. S. Ct. R. 341(h)(1) (eff. July 1, 2008)). Ordinarily, we would have stricken both briefs for failure to follow such rules, and would have required both parties to refile corrected briefs. However, because this is an expedited child custody matter, and the focus of such proceedings is on the "BEST INTERESTS OF A CHILD" (Ill. S. Ct. R. 311(a)(1) (eff. Feb. 26, 2010)), we chose not to further delay this appeal by requiring rebriefing. Consequently, we will decide this case on the basis of the briefs before us despite their defects. We deny Lisa's motion to strike Michael's brief, but note that because Michael has not cross-appealed, we will not consider those issues argued in his brief that were not raised in Lisa's brief. See *In re Marriage of DeLarco*, 313 Ill. App. 3d 107 (2000).

FACTS

Lisa and Michael were married on December 30, 1995. The couple had one child, Brittany, who was born on August 13, 1996. In 2001, the trial court granted Lisa's petition to dissolve her marriage with Michael. In its dissolution judgment, the court, among other things: (1) gave joint custody of Brittany to both parents and residential custody to Lisa; and (2) ruled that, by agreement of the parties, neither parent was to pay child support, subject to modification. The judgment incorporated a joint parenting agreement.

During the marriage, the couple lived in Aurora. Following the dissolution, Michael moved to Plainfield, and Lisa moved to Oswego, which are in different school districts. In February 2008, Brittany began mental health counseling with Terry D'Amico, at Michael's request. On July 22, 2008, Lisa submitted a letter to the Plainfield school district, in which she gave permission for Brittany to attend school in that district for the 2008-09 school year. Subsequently, Brittany: (1) moved out of Lisa's home and into Michael's home; and (2) started school in Plainfield in August 2008.

On October 10, 2008, Michael filed a *pro se* petition to modify child custody, asking the court: (1) to grant him sole custody of the minor; and (2) to order Lisa to pay child support. On November 5, 2008, Lisa sent a letter to the Plainfield school district rescinding her permission for Brittany to attend school in that district. On December 9, 2008, Lisa filed a motion to dismiss Michael's petition to modify custody. As noted above, the court granted Michael's emergency petition on January 20, 2009. Through counsel, Michael filed an amended petition to modify custody on February 2, 2009. The court held the hearing on Michael's amended petition on various dates from June 17 to 23, 2009.

At the hearing, D'Amico testified that she was a licensed clinical therapist, but not a psychologist. She had provided

counseling for Brittany beginning in February 2008. When D'Amico began to testify, saying: "Her dad brought her to see me because Brittany was expressing some suicidal--," Lisa's counsel objected that D'Amico's testimony was barred by section 9 of the Mental Health and Developmental Disabilities Confidentiality Act (Mental Health Act) (740 ILCS 110/9 (West 2008)). The attorney argued that the testimony would violate section 9 because, as one of Brittany's two legal guardians, Lisa had not given her consent. The court overruled the objection.

D'Amico testified that she had obtained signatures on a consent form from both Brittany and Michael, on January 8, 2009, which fulfilled the requirements of the Mental Health Act. D'Amico said that the consent form stated that she was allowed to discuss Brittany's counseling "for the purpose of custody modification." The consent form was admitted as respondent's exhibit No. 3, over Lisa's objection.

D'Amico testified that she provided counseling to Brittany because "[s]he was having some issues and there were allegations that she was expressing suicidal ideation." She stated Brittany was experiencing a great deal of stress and was feeling overwhelmed because her parents were not getting along. According to D'Amico, Brittany would cry during sessions when she was feeling stressed and overwhelmed. She counseled Brittany about how to cope with her stress and with issues concerning her

parents. D'Amico said, "When Brittany felt like she was not being understood by her mom, her stress level would increase." D'Amico testified that Brittany said she wished to live with Michael. Brittany cried in a session during May 2008 because she feared she would not be allowed to move into Michael's home after that school year ended.

According to D'Amico, Brittany's demeanor changed after she moved into Michael's home in June 2008. After the move, Brittany became happier because her relationship with Lisa began to improve and because she was spending time with friends in her church's youth group in Plainfield. However, Brittany became sad again in September and October 2008 because of the stress of attending a new school and also because her relationship with Lisa was not going well. In November and December 2008, Brittany did not seem as worried, stressed, and sad.

D'Amico testified that Brittany became hysterical in January 2009 when Lisa "had Brittany for the weekend and would not let Brittany go back to dad's and enrolled her in a school in Oswego." The court's order of January 20, 2009, awarded temporary custody of Brittany to Michael and ordered that she resume her schooling in Plainfield. Brittany's outlook improved again starting in February 2009. According to D'Amico, after February 2009, Brittany would occasionally become stressed and overwhelmed. However, D'Amico reported that, at the time of the

hearing, Brittany was doing well, was feeling positive, and was not stressed. Brittany told D'Amico that her relationship with Michael was good and that she wished to have an improved relationship with Lisa through better communication, better planning, and "work[ing] out their problems in a constructive manner."

During the hearing, Lisa's attorney repeatedly objected to Michael's hearsay testimony regarding statements made by Brittany. One of these statements concerned a school counselor's statement to Michael that Brittany had talked about suicidal ideation. The trial court overruled Lisa's objections on the basis of the state of mind exception to the hearsay rule.

At the conclusion of the hearing, the court orally announced its decision. In so doing, it summarized the evidence presented at the hearing. Our careful review of the record shows that the court accurately summarized the evidence.

The court noted that modification of custody proceedings is governed by section 610 of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/610 (West 2008)), which requires clear and convincing evidence of a change of circumstances and that modification of custody be in the best interest of the child. The court stated that the additional requirement that the change of circumstances be substantial has

been imposed by case law, but does not appear in the plain language of the statute.

The court observed that Brittany's change of school and change of residence constituted a substantial change of circumstances. The court stated that these changes were instituted because Lisa agreed to them, pursuant to Brittany's wishes, in June 2008. The court also noted that the parties had alternately followed and failed to follow the joint parenting agreement, with regard to parenting time. The parties had followed the agreement until October or November 2008, briefly resumed following it in January 2009, but then abruptly stopped again. The court found that there was clear and convincing evidence of a change of circumstances since the entry of the original custody judgment.

Next, the court considered the nine best interest factors listed in section 602 of the Marriage Act (750 ILCS 5/602 (West 2008)) regarding whether a modification of custody was in Brittany's best interest. Concerning the first factor, the court observed that both parents had expressed an interest in having custody of Brittany. The court, however, said that it did not understand the sincerity of Lisa's wishes because she had honored Brittany's request to live with Michael. The court found that Michael's wishes outweighed Lisa's wishes regarding this factor.

Regarding the second factor, the court noted that Lisa, Michael, and D'Amico testified that Brittany wished to live with Michael. The court observed that Lisa honored the maturity of Brittany's decisions regarding: (1) wishing to live with Michael; and (2) not wishing to have visitation with Lisa.

The court stated that, concerning the third factor, even Lisa had testified that she and Brittany did not get along. The court noted that the poor relationship between Lisa and Brittany was one of the reasons why Brittany wished to live with Michael.

Regarding the fourth factor, the court said that Brittany had adjusted well to her new home, her new school, and her new community. The court observed that Brittany had developed friends in the new community and was doing well in school. By contrast, the court found that Brittany had problems adjusting to Lisa's home and the school and community there.

The court stated that, concerning the fifth factor, it had not heard any testimony regarding the mental or physical health of either parent. The court noted that it had heard extensive testimony concerning Brittany's emotional needs. The court observed that Lisa eventually agreed to Brittany attending counseling in hopes of establishing a better relationship with her daughter.

The court found that factors six, seven, and nine of section 602 were inapplicable. Regarding factor eight, the court said

that neither parent had shown a willingness to facilitate and to encourage a close and continuing relationship between the other parent and the child. The court stated, "These parents do not, have not exhibited, and probably will not exhibit in the future, any ability to communicate and cooperate *** in matters concerning the [child]." The court noted that Lisa had testified that she and Michael's best communication was not to communicate.

The court ruled that joint parenting was not in Brittany's best interest. The court gave sole custody of Brittany to Michael. The court ordered each of the parties to present the court with proposed parenting plans with Michael as sole custodian.

On October 26, 2009, the court issued a written order granting Michael's amended petition to modify child custody, in which it: (1) gave sole custody of the child to Michael; and (2) ordered Lisa to pay monthly child support of $566. Also on that date, the court issued a parenting plan, which concerned issues such as visitation, medical expenses, and extracurricular activity expenses. On November 17, 2009, the court denied Lisa's petition to reopen the proofs concerning the petition to modify custody. Lisa appealed.

ANALYSIS

A. Petition to Modify Custody

1. Evidentiary Issues

a. The Mental Health Act

Lisa contends that, during the hearing on Michael's amended petition to modify custody, the court abused its discretion by allowing D'Amico to testify: (1) in violation of the Mental Health Act because Lisa did not give her consent to the release of information about Brittany's counseling sessions with D'Amico; and (2) beyond the scope of the release signed by Brittany and Michael.

The "Authorization for Release of Information" which lies at the heart of this issue has now been made part of the record. It provides as follows in pertinent part:

> "(I, We) authorize Terry Lee D'Amico [credentials] to release and disclose information from the clinical record of: Brittany Nicole Dillon [DOB] 8-13-96 and allow such information to be inspected and copied by: Attorney James Jurek Wakenight Law Firm The nature of information to be disclosed: recommendations for the purposes of custody modification We understand that [*sic*] have the right to revoke this authorization, in writing, at any time by sending notice to Terry Lee D'Amico, MA, LCPC. I understand that a revocation is not

valid to the extent that [the therapist] has acted in reliance on such authorization. This authorization is valid until 1/8/10.It has been explained to me that if I refuse to consent to this release of information, the following are the consequences (specify, if any): X no information released and/or _____. A copy of this release shall have the same force and effect as the original."

The Authorization is signed by Brittany Dillon, as patient; Michael R. Dillon, as parent/guardian; and by Terry Lee D'Amico, as therapist, and is dated 1/8/09. As shown on the face of the document, Brittany Dillon was 12 years old at the time she signed the authorization.

The following Notice appears at the bottom of the document:

"NOTICE TO RECEIVING FACILITY/THERAPIST:

You may not re-disclose any of this information unless the person who consented to this disclosure specifically consents to such re-disclosure. Understand that there is a potential for re-disclosure of this information by the recipient and, if that occurs, the

information may not be protected by federal law."

Lisa's claim that the court's decision to allow Terry D'Amico to testify without *her* consent violated the Mental Health Act, 740 ILCS 110/1 *et seq.* (West 2008), implicates construction of a statute and is subject to *de novo* review. *Murray v. Chicago Youth Center,* 224 Ill. 2d 213, 228 (2007). Her claim that allowing D'Amico to testify was beyond the scope of the release signed by Brittany and Michael involves construction of a contract and is similarly subject to *de novo* review. *Dowling v. Chicago Options Associates, Inc.,* 226 Ill. 2d 277, 285 (2007) (The interpretation of a contract involves a question of law, which we review *de novo*). We review a trial court's evidentiary rulings for abuse of discretion. *Gunn v. Sobucki*, 216 Ill. 2d 602 (2005).

Lisa objected to D'Amico's testimony claiming it was barred by section 9 of the Mental Health Act (740 ILCS 110/9 (West 2008)). That section of the Mental Health Act only sets out persons to whom and circumstances in which a therapist can reveal information about a patient without consent. We find that section 5, governing disclosure and consent, is the applicable section of the Mental Health Act in this case, not section 9.

We consider first Lisa's contention that the Release was invalid because she did not give her consent. Section 5 provides in pertinent part:

> "§5. Disclosure; consent
>
> (a) Except as provided in [inapplicable sections] of this Act, records and communications may be disclosed to someone other than those persons listed in Section 4 of this Act only with the written consent of those persons who are entitled to inspect and copy a recipient's record pursuant to Section 4 of this Act." 740 ILCS 110/5 (West 2008).

Subsection (b) of section 5 prescribes the specifications with which a consent form must comply. The form in this case comports exactly with each of the requirements.

The persons entitled to both inspect and copy the records and to give consent to their disclosure, are identified in section 4 as follows:

> "§ 4. (a) The following persons shall be entitled, upon request, to inspect and copy a recipient's record or any part thereof:
>
> ***
>
> (2) the recipient if he is 12 years of age or older;

> (3) the parent or guardian of a recipient who is at least 12 but under 18 years, if the recipient is informed and does not object or if the therapist does not find that there are compelling reasons for denying the access. ***" 740 ILCS 110/4 (West 2008).

As can be clearly seen, Brittany, being 12 years of age, is permitted to authorize release of her records without anyone's consent. Brittany signed the Release herself and Lisa's argument fails on this basis alone. However, if it were shown that it was Michael and not Brittany who wanted to secure release of the records, he could only do so if Brittany is informed and does not object and if the therapist does not find release of the records to be harmful to Brittany. It is in this context, that questions have arisen concerning whether the consent of both parents is required. The appellate court has been clear that the statute requires the consent of only one parent. *In re Marriage of Troy S. and Rachel S.,* 319 Ill. App. 3d 61 (2001); *In re Marriage of Kerman,* 253 Ill. App. 3d 492 (1993). Thus, Lisa's argument fails on this basis as well.

We now turn to Lisa's second argument, that allowing D'Amico to testify was beyond the scope of the Release signed by Brittany and Michael. D'Amico testified that the release authorized her to provide information for purposes of child custody

modification. We consider the actual language of the Release to determine whether Lisa's objection to the testimony has validity.

Under its express terms, D'Amico was authorized "to release and disclose information" from Brittany's clinical record "and allow such information to be inspected and copied" by the attorney representing Michael in the custody proceedings. The nature of the information to be disclosed was the therapist's "recommendations" and the purpose of the disclosure was "custody modification."

The authorization was valid for a year from the date it was signed (from 1/8/09 until 1/8/10). The hearing on Michael's amended petition for change of custody occurred during June 2009 and the final order was entered on November 17, 2009, all of which was prior to the expiration of the Release. The hearing in which D'Amico testified concerned child custody modification. Her testimony in response to the questions of the attorney in open court was the form in which her information/recommendations for the purposes of custody modification were made. There is no evidence in the record that either Brittany or Michael attempted to revoke the authorization prior to, at the time of, or after D'Amico's testimony was given. We further find that because (1) the disclosure of information and documents was not made to a "facility/therapist," and (2) D'Amico's testimony was a form of

the disclosure contemplated by the parties to the release, the paragraph prohibiting "redisclosure" is inapplicable.

While we might have preferred to see a second authorization for the testimony of the therapist, we do not find that this testimony exceeded the scope of the Authorization in the record. We, therefore, reject Lisa's arguments that D'Amico's testimony went beyond the scope of the consent in the release and that the trial court abused its discretion in allowing that testimony into evidence.

b. Hearsay

Lisa submits that the court erred by admitting hearsay testimony from D'Amico, Michael, and Lisa regarding statements that Brittany made out of court.

Hearsay testimony is (1) an out-of-court statement, (2) offered to prove the truth of the matter asserted. *Gunn v. Sobucki*, 352 Ill. App. 3d 785 (2004). Hearsay is generally inadmissible unless it falls within a recognized exception. *Gunn*, 352 Ill. App. 3d 785. One such exception is for hearsay statements made by a child who is the subject of a child custody proceeding that show the child's state of mind. *In re Marriage of Wycoff*, 266 Ill. App. 3d 408 (1994); *In re Marriage of Deckard*, 246 Ill. App. 3d 427 (1993); *In re Marriage of Gustafson*, 187 Ill. App. 3d 551 (1989); *In re Marriage of Stuckert*, 138 Ill. App. 3d 788 (1985); *In re Marriage of Sieck*,

78 Ill. App. 3d 204 (1979); M. Graham, Cleary & Graham's Handbook of Illinois Evidence §803.4, at 775-78 (9th ed. 2009).

In the present case, the parties agree that the testimony at issue was hearsay. The record shows that the contested testimony concerned Brittany's hearsay statements regarding her state of mind. Brittany was the subject of the child custody modification proceedings in this case. These hearsay statements were admissible under the applicable exception concerning Brittany's state of mind. Thus, we rule that the trial court did not abuse its discretion by admitting the hearsay testimony at issue.

Lisa also contends that the court erred by not requiring additional *indicia* of the reliability of this hearsay testimony. We agree, however, with the assessment in Cleary & Graham's Handbook of Illinois Evidence that such a requirement is unnecessary. See M. Graham, Cleary & Graham's Handbook of Illinois Evidence §803.4, at 778 (9th ed. 2009).

Additionally, Lisa argues that some of Michael's testimony was conclusory rather than factual. However, Lisa has failed to cite authority for this proposition. Therefore, we need not consider this argument. See Ill S. Ct. R. 341(h)(7) (eff. July 1, 2008); *Bigelow*, 372 Ill. App. 3d 60.

2. Sufficiency of the Evidence

Lisa submits several related arguments challenging the sufficiency of the evidence presented by Michael at the hearing on his amended petition to modify custody.

The applicable section in the Marriage Act states:

> "The court shall not modify a prior custody judgment unless it finds by clear and convincing evidence, upon the basis of facts that have arisen since the prior judgment or that were unknown to the court at the time of entry of the prior judgment, *** in the case of a joint custody arrangement[,] that a change has occurred in the circumstances of the child or either or both parties having custody, and that the modification is necessary to serve the best interest of the child." 750 ILCS 5/610(b) (West 2008).

The court is to determine the best interest of the child by reviewing the nine factors in section 602 of the Marriage Act, which are:

> "(1) the wishes of the child's *** parents as to his custody;
>
> (2) the wishes of the child as to his custodian;
>
> (3) the interaction and interrelationship of the child with his parent or parents, *** and any

other person who may significantly affect the child's best interest;

(4) the child's adjustment to his home, school and community;

(5) the mental and physical health of all individuals involved;

(6) the physical violence or threat of physical violence by the child's potential custodian, whether directed against the child or directed against another person;

(7) the occurrence of ongoing or repeated abuse ***, whether directed against the child or directed against another person;

(8) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child; and

(9) whether one of the parents is a sex offender." 750 ILCS 5/602(a) (West 2008).

A trial court's child custody modification ruling will not be reversed on appeal unless it is against the manifest weight of the evidence or is a clear abuse of discretion. *In re Marriage of Knoche and Meyer*, 322 Ill. App. 3d 297 (2001). A trial court's finding is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent. *City of*

McHenry v. Suvada, 396 Ill. App. 3d 971 (2009). An abuse of discretion occurs when no reasonable person would have taken the view adopted by the trial court. *In re Marriage of Schneider*, 214 Ill. 2d 152 (2005).

In the instant case, the trial court found that there was clear and convincing evidence of a substantial change of circumstances since it issued the original child custody order. The court listed those changes as Brittany's change of residence, her change of school, and the parents' frequent failure to follow the previously issued joint parenting agreement.

Next, the court systematically and thoroughly considered the applicable factors among the nine best interest factors listed in section 602 of the Marriage Act. Among these factors, the court noted the poor relationship between Lisa and Brittany, Lisa's agreement to allow Brittany to live with Michael and to attend school in Plainfield, and Lisa's acknowledgment that she and Michael cannot communicate with regard to Brittany's care. The court found that it was in Brittany's best interest for the court to give Michael sole custody of Brittany.

Under these circumstances, we cannot say that the trial court's decision was either against the manifest weight of the evidence or was an abuse of discretion. See *Knoche and Meyer*, 322 Ill. App. 3d 297.

3. Child Support

Lisa contends that the trial court erred by ordering her to pay child support. In our initial order, we noted that Lisa's brief refers to pages in the record only by numbers in parentheses. Because we found that Lisa's brief referred us to inapplicable pages of the report of proceedings and the report of proceedings and thus violated Illinois Supreme Court Rule 341 (eff. July 1, 2008) in failing to direct the court to specific record pages in support of their statements of fact and arguments, we found that she had forfeited the issue of child support. *Travaglini v. Ingalls Health System*, 396 Ill. App. 3d 387 (2009).

In the Petition for Rehearing, Lisa asserts that, despite the financial affidavits which show that Michael has a monthly surplus of $306.68 and Lisa has a shortfall of $400, the trial court ordered Lisa to pay Guideline child support of $566 per month. Lisa acknowledges the existence of statutory child support guidelines (which are found at 750 ILCS 5/505 (West 2008)), but she contends that it is possible to order that a lesser amount or no child support be paid. She argues that although the trial court is "duty bound to consider both parties' respective needs and ability to pay," the court did not do so in this case. She explains that if the trial court had entered a child support order in the statutory amount, after considering the available financial information, that is neither error nor

would it be an issue in her appeal. She asserts "[t]he issue and the error were committed when the Trial Court indicated he did *not* consider such evidence in fashioning a Child Support Order in this case." (Emphasis in original.) In support of this argument, she quotes the trial judge as follows:

> " I am perplexed at the idea that a parent who cannot afford to pay child support shouldn't pay child support. *If I were to let that occur in this Court room,* nobody'd be paying child support... *** *The fact that Mr. Dillon may have $300 a month left over from his income is not a factor as far as I am concerned* under the statute what [*sic*] says I shall follow the guideline..."
>
> (Emphasis added.)

The presence of the ellipses in the quote indicate that the judge said more than is reflected in what Lisa has quoted. Nonetheless, we do not need to consider more than the actual language cited to us to find that the court recognized that it had the discretion to set a reduced amount of child support and that it was aware that Michael's income exceeded his expenses by $300 and rejected that as a factor in making his decision.

We do not agree with Lisa that "the Trial Court [was] of the opinion that the Trial Court is without discretion ***." It

seems clear that he found the need (as reflected in the statute) for a parent to contribute to the support of her child, even if it resulted in some hardship to that parent, was not obviated by a small excess in the balance sheet of the custodial parent. Therefore, we affirm the order requiring Lisa to pay $566 per month for child support.

B. Parenting Plan

Lisa submits the related arguments that the court: (1) was without statutory authority to issue a parenting agreement that was not a joint parenting agreement; and (2) erred by issuing a new parenting plan.

Section 602.1 of the Marriage Act (750 ILCS 5/602.1 (West 2008)) concerns joint custody, sole custody, joint parenting agreements, and joint parenting orders. Section 602.1 states that the parties are to submit a joint parenting agreement to the court. 750 ILCS 5/602.1(b) (West 2008). The section further states that:

> "In the event the parents fail to produce a Joint Parenting Agreement, the court may enter an appropriate Joint Parenting Order under the standards of Section 602 which shall specify and contain the same elements as a Joint Parenting Agreement, or it may award sole custody under the standards of Sections 602, 607, and 608." 750 ILCS 5/602.1(b) (West 2008).

Thus, under section 602.1(b), the court may: (1) enter a joint parenting agreement; (2) enter a joint parenting order; or (3) award sole custody without reference to either a joint parenting agreement or a joint parenting order. See 750 ILCS 5/602.1(b) (West 2008). In the present case, the court awarded Michael sole custody of Brittany and issued an order concerning a parenting plan. By statute, the court was not required to issue such an order when it granted Michael sole custody. Lisa received more than was required by statute when the court issued the parenting plan order. Therefore, we rule that the trial court did not err by issuing a new parenting plan after awarding Michael sole custody of Brittany.

C. Petition to Reopen the Proofs

Lisa contends that the court erred by denying her petition to reopen the proofs regarding Michael's amended petition to modify custody. However, we note that Lisa's petition to reopen the proofs was not included in the original record supplied to this court, nor does it appear to have been included in the amended record. Again, as the appellant, it was Lisa's responsibility to supply this court with the record, and any doubts concerning the incompleteness of the record will be resolved against her. See *Naylor*, 220 Ill. App. 3d 366.

In the instant case, we cannot analyze whether the trial court ruled correctly on Lisa's petition to reopen the proofs

because that petition is not in the record. Any doubts concerning that petition must be resolved against her. See *Naylor*, 220 Ill. App. 3d 366. Therefore, we will give no further consideration to Lisa's argument concerning the petition to reopen the proofs.

CONCLUSION

Lisa’s motion to strike Michael’s appellee's brief, which was taken with the case, is denied. For the foregoing reasons, we rule that Lisa's appeal from the Will County circuit court's order granting Michael's emergency petition for a TRO is moot. We affirm the court's orders: (1) granting Michael's amended petition to modify child custody; (2) issuing a new parenting plan; (3) establishing Lisa’s obligation to pay the child support; and (4) denying Lisa's petition to reopen the proofs regarding the petition to modify custody.

Affirmed.