2017 IL App (3d) 170427-U

Order filed November 29, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

In re MARRIAGE OF	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
BRIAN D. G.,	)	Will County, Illinois,
	)	
Petitioner-Appellee,	)	Appeal No. 3-17-0427
	)	Circuit No. 2014-D-37
v.	)	
	)	Honorable
SARAH B. G.,	)	Robert P. Brumund &
	)	Matthew G. Bertani,
Respondent-Appellant.	)	Judges, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices O'Brien and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court's allocation of sole decision-making responsibilities and majority of parenting time to father was not against the manifest weight of the evidence.

¶ 2 Respondent, Sarah B. G., appeals from the trial court's order granting the petitioner, Brian D. G., sole decision-making responsibilities and the majority of the parenting time concerning their children, M.E.G. and M.D.G. She contends that the trial court "modified the custodial history of the parties" and that its modification of decision-making responsibilities and

parenting time was against the manifest weight of the evidence. We find that the trial court properly weighed the statutory factors in determining the children's best interests and affirm.

¶ 3 Sarah also appeals from the trial court's order upholding the parties' prenuptial agreement and awarding temporary maintenance. Because this appeal involves an allocation of parental responsibilities determination, Illinois Supreme Court Rule 311(a)(5) (eff. March 8, 2016) requires that, except for good cause shown, the appellate court must issue its decision within 150 days of filing the notice of appeal. We are therefore issuing this order, which only addresses the expedited issue, in compliance with Rule 311(a) (5). This court retains jurisdiction over the remaining nonexpedited matters and will issue a supplemental order in due course.

¶ 4 FACTS

¶ 5 Sarah and Brian were married on September 12, 2008. The couple had a daughter, M.E.G., born September 20, 2008, and a son, M.D.G., born June 11, 2010. Between 2012 and 2013, Sarah and Brian's relationship deteriorated. Brian moved out of the family home and filed a petition for dissolution on January 10, 2014. Following a preliminary hearing on February 5, 2014, the trial court awarded temporary custody of the children to Sarah.

¶ 6 The trial court appointed Dr. Mary Gardner, a licensed clinical psychologist, to conduct an evaluation pursuant to section 604(b) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/604(b) (West 2014)). As the court's 604(b) expert, Dr. Gardner interviewed both Sarah and Brian, observed their interactions with M.E.G. and M.D.G., and prepared reports documenting her observations and opinions. Dr. Gardner submitted her initial report to the court on November 11, 2014, and an updated report on October 13, 2015. In both reports, she expressed concerns about Sarah's deleterious behavior, parental alienation tactics and mental well-being. On December 30, 2015, she submitted a revised evaluation, as ordered by the court,

using the new statutory guidelines under section 602.7 the Act, effective January 1, 2016 (see 750 ILCS 5/602.7 (West 2016)). In her revised evaluation, she recommended that sole decision-making responsibilities be allocated to Brian. She also advised that Brian be allocated a majority of the parenting time of the children, given Sarah's mental health issues and M.E.G.'s behavior at school, as well as other factors included in her prior reports.

¶ 7 Sarah requested that clinical psychologist, Dr. David Finn, be appointed as an expert evaluator under section 604.5 of the Act. The trial court granted her request and appointed Dr. Finn on February 18, 2015. He conducted psychological tests of both parties, completed interviews with Sarah and Brian, and submitted his evaluation to the parties and the court on June 23, 2015. He recommended that Sarah be allocated parental responsibility for education and extracurricular activities and that both parents share parental responsibility for healthcare and religion. He also recommended that Sarah be allocated the majority of parenting time with the children.

¶ 8 Brian requested that Dr. Robert Shapiro be appointed to evaluate Sarah's mental health in light of concerns that had been raised during the section 604 evaluations. Dr. Shapiro evaluated Sarah under Supreme Court Rule 215 and provided a written report of his evaluation to the court dated May 14, 2015. In conducting his evaluation, Dr. Shapiro relied on the reports and testing conducted by Dr. Gardner and Dr. Finn. He diagnosed Sarah with adjustment disorder with mixed features of anxiety and depression, along with adult attention deficit disorder (ADD) and "possible personality characteristics." He opined that her diagnosed personality characteristics did not appear to be "overriding dominant personality traits" and should not interfere with parenting.

¶ 9 The trial court set a trial date to determine parental responsibilities for February 29, 2016. On that day, Sarah filed an emergency motion to continue trial, which was supported by an affidavit signed by Dr. Donna Amstutz, a licensed psychologist who had been treating Sarah for several months. In her affidavit, Dr. Amstutz averred that in her current state Sarah was unable to process events that occurred during the marriage and would not be able to testify. Dr. Amstutz stated that she suggested an acute treatment plan for Sarah to help her deal with traumatic memories in a healthy and productive manner. The treatment plan included daily therapeutic sessions in coordination with psychiatric treatment and medication. That same day, Brian filed an emergency motion to modify parenting time based on Sarah's mental health status. In response, the trial court entered a temporary order naming Brian as the residential parent and allocating the majority of the parenting time to him. On April 15, 2016, the trial court approved an agreed parenting order modifying parenting time to provide equal time to both Sarah and Brian.

¶ 10 At trial, Dr. Gardner testified that she had the opportunity to observe both parties interact with the children. In her initial report in November of 2014, she stated that there were significant mental health concerns for Sarah. During her interviews, Sarah's thinking was erratic and disorganized. Dr. Gardner also noted that when she observed Sarah's interaction with the children, her behavior was sometimes inappropriate and infantile. Dr. Gardner believed there was an urgent issue in this case due to Sarah's behavior related to M.E.G. and recommended that Sarah's parenting time be supervised if she was unable to contain her deleterious conduct. In her initial evaluation, she also recommended that Sarah attend weekly psychotherapy sessions with a clinical psychologist.

¶ 11 Dr. Gardner stated that, during her observation of Sarah and the children, Sarah initially acted appropriately. However, as the observation progressed, Sarah began to assume the role of a peer rather than a parent. The children stopped listening to Sarah and began fighting with each other. Sarah would state rules to the children, but they would not listen. She then resorted to getting their attention by grabbing them. There was no positive reinforcement, limit-setting or consequences for the children's actions.

¶ 12 Dr. Gardner observed that Brian had a good ability to divide his time between both children, while maintaining a parental authoritative role. He kept control of the situation and set limits. Dr. Gardner did not have any concerns about the relationship between Brian and the children. Based on her psychological evaluation, she opined that Brian was the more mentally stable.

¶ 13 Dr. Gardner opined that M.E.G. was suffering from significant separation anxiety from Sarah at school. She stated that a child M.E.G.'s age should have a more secure relationship if the caregiver has been consistent and provided for the child's needs appropriately. She further testified that Sarah's thought pattern was not clear, concise or logical. Dr. Gardner noted that Sarah's expression of ideas exhibited cognitive problems and a lack of understanding.

¶ 14 In her updated evaluation, Dr. Gardner observed both parents with the children. Her observation of Brian was similar to her first observation. She testified that Sarah was late for her observation and made disparaging comments about Brian in front of the children when she arrived. M.E.G. told Dr. Gardner that her mother informed her that she was going to be living with her father most of the time and that when she does, she would not be able to see her mother any more. Dr. Gardner stated that hearing such a statement is extremely frightening to a child. In addition, Dr. Gardner found that Sarah had mental health issues, including an inability to

understand the purpose of truthfulness. She found that Sarah's problems with histrionics and outbursts of anger and distress affected the children. She noted that a "high level of emotionality" is not good for children and that they need calm, cooperative and structured routines.

¶ 15 Dr. Gardner assessed Sarah as having significant mental health issues based on the results of the Minnesota Multiphasic Personality Inventory-2 (MMPI-2) test that she administered over two sessions. Sarah exhibited unusual behavior while taking the tests and changed her answers from one sitting to the next. She achieved a valid score but exhibited elevations on two clinical scales: psychopathic deviate and masculinity/femininity. Her profile indicated that she had difficulty incorporating values and standards of society. She is impulsive and engages in asocial acts, including lying, stealing, and disregarding societal norms.

¶ 16 Brian also took the MMPI-2. His test results produced a valid profile. He had no elevations on any clinical scale. He had one elevation on a content scale, indicating that he tends to be shy and socially introverted.

¶ 17 Dr. Gardner's reports also revealed that Sarah frequently excluded Brian in the medical decision-making process. Brian was unaware of several doctor's appointments and a few had been changed without notice. Brian did not even know the identity of some of the children's doctors. He also did not agree with Sarah's decision to have the children's tonsils and adenoids removed, but Sarah had them removed. Dr. Gardner noted that Brian believed Sarah was having the children undergo unnecessary medical procedures. She testified that based on her interviews with both parties and review of numerous documents, she agreed with Brian's assessment.

¶ 18 Last, Dr. Gardner noted that Sarah had made efforts to "ensnare Brian in wrong doing." During a transfer of the children in August of 2015, Sarah accused Brian of punching her in the

arm after she came out to the car. However, Dr. Gardner stated that a review of the police report showed that Brian was not aggressive and that the State's Attorney's Office was not pursuing charges. Following the incident, the court entered a mutual injunctive order prohibiting contact between the parents.

¶ 19 Dr. Finn testified that he was retained as Sarah's 604.5 expert. He used the statute as a guideline and conducted an independent, objective evaluation. He stated that after reviewing Dr. Gardner's reports, he focused heavily on Sarah's mental health. He did not find any evidence of cognitive slippage, or a lack of understanding or appreciation for the truth. He found little objective data to support the contention that Sarah was having a negative influence on the children to the extent that her access to them should be limited. Based on his review of the results of the MMPI-2, Dr. Finn testified that he had no concern about Sarah's mental health as it relates to parenting. He noted that she was anxious and distress about the end of her marriage but said her anxieties did not have a substantial impact on the children.

¶ 20 Dr. Finn further testified that M.E.G.'s school principal was "laudatory" of Sarah's role in addressing M.E.G's issues and that Sarah was a proactive parent. M.E.G.'s principal told Dr. Finn that Sarah is the parent who addresses M.E.G.'s issues and helps with adaptive behavior.

¶ 21 Brian's inability to communicate and his shyness concerned Dr. Finn. He believed Brian's difficulty with communication could impact co-parenting. Dr. Finn reviewed numerous emails between the parties and stated that the tenor of the parties' communications with each other raised serious concerns. According to the results of administered psychological tests, Dr. Finn believed that Brian had deficiencies in his ability to get along and communicate with others. He opined that Brian used M.E.G. to find out information about Sarah. Dr. Finn had concerns

that Brian wanted to keep the children away from their mother until she had undergone therapy and successfully completed, as Brian stated, a "prolonged period of treatment."

¶ 22 Dr. Finn saw no reason to protect the children from their mother. He recommended that the court award sole custody to Sarah and grant Brian frequent parenting time. In addition, he recommended that both parents seek or continue therapy with a licensed psychologist. Dr. Finn also updated his report to conform to the new statutory language. In his updated response to the court, he recommended that Sarah have sole responsibility for making education and extracurricular decisions and that the parties share medical and religion decision-making responsibilities.

¶ 23 Dr. Shapiro, a licensed clinical psychologist, stated that he had prepared numerous Rule 215 reports over the past ten years. As part of his psychological evaluation of Sarah, he testified that he interviewed Sarah for five hours, reviewed Dr. Gardner's and Dr. Finn's reports and testing of Sarah, and read other collateral documents provided by both parties. In addition, he spoke with Dr. Amstutz, Sarah's treating psychologist. He testified that he agreed with Dr. Amstutz's assessment that Sarah had occasional anxiety and struggled with mild depression and adult attention deficit disorder (ADD). He found that Sarah was able to bounce back from periods of stress or depression. After reviewing tests and talking to Sarah, Dr. Shapiro opined that she did not have any major psychological problems. Although she seemed anxious in his office, he believed it did not impair her ability to function or respond to questions. Dr. Shapiro testified that Sarah has an adjustment disorder associated with divorce, which means she is going through a difficult period in her life. Dr. Shapiro noted that this is Sarah's third failed marriage and that has caused feelings of depression. He administered a mental status exam to assess whether Sarah's mental health problems affected her daily functioning. He found no serious

health problems and that any minor mental health issues did not impact her ability to function. He diagnosed Sarah with "adjustment disorder associated with divorce (mixed features of anxiety and depression)" and adult ADD.

¶ 24 Following the doctors' testimony, trial was continued and eventually resumed on December 6, 2016, with the testimony of Sarah and Brian. Both parties' testimony largely consisted of a review of Family Wizard communications, a court-ordered email service Sarah and Brian used during the proceedings to relay information to each other regarding the children. Sarah testified that there were many times she could not afford gas to transport the children to the drop-off location at the local library, so she would email Brian and ask him to come get the children at her house. On cross-examination, she admitted that the library was only a few blocks from her home but denied sending threatening emails to Brian regarding her financial inability to purchase gas. She also denied sending numerous email communications to Brian from November 2014 to December 2016 that were confrontational, argumentative and threatening.

¶ 25 Brian admitted that some of his responses to Sarah's emails on Family Wizard were argumentative. He testified that Sarah told him on more than one occasion that the children would be at a certain location, such as a parade or activity, and he would make plans to attend. When he arrived, the children were not there. He stated that when he confronted Sarah about those events, she always had "an excuse."

¶ 26 The trial court entered a written decision and two-part judgment dissolving the marriage and allocating parental responsibilities. The judgment for allocation of parental responsibilities allocated sole decision-making responsibilities to Brian and designated Brian as the custodial parent with the majority of the parenting time. Sarah was allocated parenting time every other weekend from Friday to Monday and every Monday after school to Tuesday morning. In its

written decision, the trial court listed each of the factors it considered in allocating parental responsibility under section 602.5 of the Act and analyzed the relevant factors in allocating parenting time pursuant to 602.7. The court also recognized that Dr. Gardner and Dr. Finn reached different conclusions. The court stated that it had "a tremendous amount of respect for both of the evaluators." After considering the reports and evaluations of both doctors, it adopted the recommendation of Dr. Gardner, finding her evaluation more thorough and objective.

¶ 27 ANALYSIS

¶ 28 On appeal, Sarah argues that the trial court's "modification" of decision-making responsibilities and parenting time was against the manifest weight of the evidence. She also contends that the trial court failed to consider the expert recommendations in her favor.

¶ 29 We first address Sarah's treatment of the trial court's decision as a "modification" of custody. She cites *In re Marriage of Rogers*, 2015 IL App (4th) 140765, ¶ 57. and maintains that the court's order inappropriately modified the previous custody arrangement. However, Sarah is not appealing from the denial of a petition to modify a custody judgment as in *Rogers*. Rather, this case involves review of the custody judgment itself. "Determining custody in a particular case is a matter which rests within the sound discretion of the trial court." *Department of Public Aid ex rel. Davis v. Brewer*, 183 Ill. 2d 540, 557 (1998). Accordingly, we apply a deferential standard of review. Our supreme court has explained that "[a] custody determination, in particular, is afforded great deference because the trial court is in a superior position to judge the credibility of the witnesses and determine the best interests of the child." *In re Marriage of Bates*, 212 Ill. 2d 489, 516 (2004).

¶ 30 We also note that, in making her argument, Sarah does not differentiate between the trial court's allocation of decision-making responsibilities and the allocation of parenting time. She

argues that the decision "to award Brian sole decision making authority and residential parentage" was against the manifest weight of the evidence. But she fails to cite any of the factors in section 602.5 and section 602.7 of the Act. In our analysis, we have separated her argument into the allocation of decision-making responsibilities and the allocation of parenting time and will evaluate each one according to the statutory factors that dictated the trial court's decision.

¶ 31 I. Allocation of Decision-Making Responsibilities

¶ 32 Section 602.5(b) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/602.5(b) (West 2016)) permits the trial court to allocate to one or both of the parents the decision-making responsibility for significant issues affecting the child as to education, health, religion, and extracurricular activities. This decision is based on the best interests of the child standard. 750 ILCS 5/602.5(c) (West 2016). To determine the child's best interests for purposes of allocating the decision-making responsibilities, the court should consider all relevant factors, including: (1) the child's wishes; (2) the child's adjustment to home, school, and community; (3) the mental and physical health of all individuals involved; (4) the parents' ability to cooperate to make decisions; (5) the level of each parent's participation in past significant decision-making about the child; (6) any prior agreement or course of conduct between the parents regarding decision making; (7) the parents' wishes; (8) the child's needs; (9) the distance between the parents' residences; (10) whether a restriction on decision making is appropriate under section 603.10 of the Act; (11) the willingness and ability of each parent to facilitate and encourage a relationship with the other parent; (12) the physical violence or threat of physical violence directed against the child; (13) the occurrence of abuse against the child or other member of the child's household; (14) whether one parent is a sex offender or resides with a sex offender; and

(15) any other factor that the court expressly finds to be relevant. 750 ILCS 5/602.5(c) (West 2016).

¶ 33 A trial court's determination regarding parental decision-making responsibilities, like its determination of custody under the previous version of the Act, is given great deference because the trial court is in a superior position to judge the credibility of the witnesses and determine the best interests of the children. *In re Marriage of Radae*, 208 Ill. App. 3d 1027, 1029 (1991). We will not reverse that determination on appeal unless it is against the manifest weight of the evidence, it is manifestly unjust, or it results from an abuse of discretion. *In re B.B.*, 2011 IL App (4th) 110521, ¶ 32.

¶ 34 Here, the first factor, the children's wishes, was not ascertained due to their young ages. With regard to the second factor, their adjustment to home, school, and community, the trial court found that the children had not adjusted well to the equal parenting time allocated in April of 2016. The record supports that finding. Both Sarah and Brian admitted that drop-offs and pick-ups continued to be a source of great animosity between the parties and that the children were usually involved in the emotions both parents expressed. Sarah, in particular, appears to continue to have anxiety about the divorce and is aggressive, accusatory, and threatening in her email communications.

¶ 35 With regard to the third factor, the mental and physical health of all involved, as noted by the doctors, Sarah had been diagnosed with adjustment disorder associated with the dissolution and adult ADD. Her diagnosis affects her ability to adjust to change and process the memories that are evoked in the divorce proceedings. Thus, this factor favors Brian.

¶ 36 The fifth and sixth factors concern the parties' participation in past significant decision-making about the children. The testimony indicated that Sarah made the day-to-day decision

concerning the children when she stayed at home with the children. However, once Sarah went back to work before the parties separated, both parents participated in significant decision-making regarding M.E.G. and M.D.G.

¶ 37 As for the seventh factor, the parents' wishes, both parties express a desire to be the sole decision maker. The eighth factor evaluates the children's needs. For this factor, the trial court noted that the children needed predictability and stability. The court believed that Sarah was responsible for a greater portion of the children's distress in this case. The testimony at trial also indicated that Sarah has drawn the children into many of her arguments with Brian and that M.E.G., in particular, recognizes Sarah's anxiety and reacts adversely against Brian. Brian uses appropriate parenting techniques to deflate the emotionally charged exchanges with Sarah and the children seem to respond well to his guidance. This factor, therefore, favors Brian.

¶ 38 The tenth factor, restriction on decision-making, was a factor to consider in this case. The trial court noted that allocation of sole decision making responsibility was necessary due to the acrimony between the parties. The record supports the trial court's evaluation of this factor. Asking Sarah and Brian to agree when making educational, medical, religious, or extracurricular decisions regarding the children would not be in the children's best interests.

¶ 39 The eleventh factor concerns the willingness and ability of each parent to facilitate a relationship with the other parent and the children. The court concluded that, at the time of trial, neither party had the ability to facilitate such a relationship. Evidence demonstrated that both Sarah and Brian used the children to gain information about each other and that they were unable to communicate with each other without arguing in and outside the children's presence.

¶ 40 The next four factors did not apply. As the trial court acknowledged, the evidence did not support any physical violence or threat of physical violence by either parent against the

children or any other member of the family, neither parent is a sex offender nor resides with a sex offender, and no other factors were relevant to the decision-making process.

¶ 41 In light of the factors discussed above, the trial court concluded that the major decisions regarding the children's education, health, religion, and extracurricular activities should be made by Brian. The trial court's decision was not against the manifest weight of the evidence, manifestly unjust, or an abuse of discretion.

¶ 42 II. Allocation of Parenting Time

¶ 43 Section 602.7 of the Act requires courts to allocate parenting time in accordance with the best interests of the child. 750 ILCS 5/602.7(a) (West 2016). In allocating parenting time, the court shall consider all relevant factors, including (1) each parent's wishes, (2) the child's wishes, (3) the amount of time that each parent spent performing caretaking functions with respect to the child in the 24 months preceding the filing of any petition for allocation of parental responsibilities, (4) any prior agreement or course of conduct between the parents relating to caretaking functions, (5) the interaction and interrelationship of the child with his parents and siblings and with any other person who may significantly affect his best interests, (6) the child's adjustment to his home, school, and community, (7) the mental and physical health of all individuals involved, (8) the child's needs, (9) the distance between the parents' residences, (10) whether a restriction on parenting time is appropriate, (11) the physical violence or threat of physical violence by the child's parent directed against the child or other member of the child's household, (12) each parent's willingness and ability to place the child's needs ahead of his or her own, (13) each parent's willingness and ability to facilitate and encourage a close and continuing relationship between the other parent and the child, (14) the occurrence of abuse against the child or other member of the child's household, (15) whether one parent is a sex offender or resides

with a sex offender, (16) the terms of the parent's military family-care plan that a parent must complete before deployment if a parent is a member of the United States Armed Forces who is being deployed, and (17) any other factor that the court expressly finds to be relevant. 750 ILCS 5/602.7(b) (West 2016).

¶ 44 Like the parental decision-making determination, because the trial court is in the best position to assess the credibility of witnesses and determine the child's best interests, its decision as to the allocation of parenting time must be accorded great deference. *In re Marriage of Debra N.*, 2013 IL App (1st) 122145, ¶ 45. On appeal, we will not overturn the trial court's decision unless the court abuses its considerable discretion or its decision is against the manifest weight of the evidence. *Id.*

¶ 45 As some of the parental decision-making factors and parenting-time factors overlap, we will not discuss those factors that have previously been addressed at length. The first two factors concern the parents' and child's wishes. Both parents desire the majority of the parenting time, and they agree that the other parent should have generous visitation. The children's wishes were not ascertained because of their young ages.

¶ 46 The third and fourth factors concern the amount of time that each parent has spent performing caretaking functions in the 24 months preceding the filing of the petition for allocation. As previously noted, Sarah stayed at home with the children until shortly after M.D.G. was born. When she returned to work, both parents shared parental responsibilities.

¶ 47 The fifth factor concerns the children's interaction and interrelationship with their parents and siblings. The testimony indicates that the children have a close relationship with both parents and their extended families. The next factor is their adjustment to home, school, and

community. Again, as discussed above, the children have not adjusted well to the shared parenting time that Sarah and Brian agreed to before trial.

¶ 48 The ninth and tenth factors do not apply. The parties live within close proximity to each other and a restriction on parenting time is not necessary. The eleventh factor also does not apply. There has been no violence or threat of violence by either party directed against the children or other members of the family.

¶ 49 The twelfth and thirteen factors, each parent's willingness and ability to place the children's needs before their own and the parents' willingness and ability to facilitate a relationship with the other parent, favors Brian. At this point, Sarah lacks the ability to control her emotions and anxiety regarding the dissolution. Her anger and animosity toward Brian affects her ability to parent and interferes with her capacity to facilitate a relationship between the children and their father.

¶ 50 As with the factors in allocating decision-making responsibilities, the last four statutory factors in allocating parenting time do not apply. There is no evidence of abuse, the parents are not sex offenders, neither parent is in the military, and no other factors are expressly relevant.

¶ 51 We agree with the trial court that the record reveals that both Sarah and Brian are loving parents who want the best for their children. However, the trial court awarded Brian the majority of the parenting time, finding that Sarah's mental health treatment and her animosity toward Brian made it difficult to allocate the majority of the parenting time to her and still serve the children's best interests. The court noted that Sarah currently lacked the ability to place the needs of her children over the anxiety and frustration of the dissolution. It also found that Sarah lacked the willingness to facilitate and encourage a continuous relationship between the children and Brian given the acrimonious nature of the divorce proceedings. In light of the record, we

cannot find that the trial court acted against the manifest weight of the evidence or abused its discretion in allocating the majority of the parenting time to Brian.

¶ 52 III. Expert Recommendations

¶ 53 In her challenge to the trial court's allocation of parental decision-making responsibilities and parenting time, Sarah relies heavily on her position that the court did not follow the recommendation of Dr. Finn, who she retained as an expert pursuant to section 604.5 of the Act (750 ILCS 5/604.5 (West 2014)), and the evaluation of Dr. Shapiro, who was appointed as a mental health expert under Illinois Supreme Court Rule 215 (eff. March 28, 2011). She argues that the court ignored the doctors' testimony of her mental competency when it awarded sole parental decision making responsibilities and the majority of parenting time to Brian, rendering its decision against the manifest weight of the evidence. We disagree.

¶ 54 Section 604(b) of the Act "provides a mechanism for court appointment of an independent evaluator on custody and visitation issues. The purpose of the statute is to make the information available to assist the circuit court, and the expert witness is appointed to protect the interests of minor children regarding issues of custody and visitation." *Johnston v. Weil*, 396 Ill.App.3d 781, 786 (2009). Section 604.5 allows a party to request an additional evaluation upon notice and motion to the court. 750 ILCS 5/604.5 (West 2014). In tandem with sections 604(b) and 604.5, Illinois Supreme Court Rule 215 permits the appointment of an expert to assess the mental condition of a party in a custody case where the mental health of the party is in controversy.

¶ 55 "Although it is within the court's discretion to seek independent expert advice, it is well settled that a court is not bound to abide by the opinions or implement the recommendations of its court appointed expert[s]." *In re Marriage of Debra N. and Michael S.*, 2013 IL App (1st)

122145, ¶ 52; see also *In re Marriage of Saheb*, 377 Ill. App. 3d 615, 628 (2007) ("Nothing in section 604 requires the trial court to follow the advice of the 604(b) evaluator. Advice is simply that—advice."). The circuit court is the ultimate fact finder in a child custody case, not the expert witnesses. *In re Marriage of Saheb*, 377 Ill. App. 3d at 628. While testimony of psychologists and mental health evaluators is relevant to the determination of custody, their opinions are not binding on the court. *In re Marriage of Bailey*, 130 Ill. App. 3d 158, 160-61 (1985). It is within the court's discretion to decide whether evidence is relevant and admissible, and a court's determination on that issue will not be reversed absent a clear abuse of discretion. *In re Marriage of Bates*, 212 Ill. 2d 489, 522 (2004).

¶ 56 Thus, the mere fact that the trial court's custody determination did not correspond to the recommendations or opinions of Dr. Finn and Dr. Shapiro does not render its decision against the manifest weight of the evidence. See *In re Marriage of Saheb*, 377 Ill. App. 3d at 628. Although Dr. Finn recommended that Sarah be allocated parental responsibilities for education and extracurricular activities and most of the parenting time, he did not suggest that Brian was an unfit parent. Dr. Finn also stated that the children were attached to both parents and that Brian actively participated in the children's lives. In addition, Dr. Finn agreed that, in making his recommendations, some of Sarah behavior was defensive and highly emotional. And Dr. Shapiro's psychological diagnosis supported those character traits. It is clear from the trial court's order that, in making its determination, it did not ignore Dr. Finn's recommendation or Dr. Shapiro's opinion, as Sarah suggests. Rather, the court acknowledged that Dr. Finn recommended awarding significant decision-making responsibilities and a majority of the parenting time to Sarah, but correctly observed that it was not bound to implement his

recommendations and specifically found that the children needed a stable environment, which Brian could provide.

¶ 57 It is apparent from the trial court's order that it did consider the position advanced by Sarah. But it found the degree of conflict between the parties made a shared parenting arrangement unworkable and against the children's best interests. The trial court's evaluation of the expert witnesses and its application of their testimony to the statutory factors was not an abuse of discretion.

¶ 58 CONCLUSION

¶ 59 The judgment of the circuit court of Will County allocating decision-making responsibilities is affirmed.

¶ 60 Affirmed.

¶ 61 We are retaining jurisdiction over the remaining nonexpedited matters and will issue a supplemental order in due course.