2014 IL App (4th) 140221-U

NO. 4-14-0221

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
August 7, 2014
Carla Bender
4th District Appellate
Court, IL

In re: MARRIAGE OF MELISSA D. ANDERSON,	)	Appeal from
Petitioner-Appellee,	)	Circuit Court of
and	)	Sangamon County
CRAIG W. ANDERSON,	)	No. 13D390
Respondent-Appellant.	)	
	)	Honorable
	)	Steven H. Nardulli,
	)	Judge Presiding.

PRESIDING JUSTICE APPLETON delivered the judgment of the court.
Justices Knecht and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: By awarding custody of the parties' child to petitioner, the trial court did not make a decision that was an abuse of discretion or against the manifest weight of the evidence; therefore, the decision is affirmed.

¶ 2 This is a divorce action in which custody is the only issue. The parties are petitioner, Melissa D. Anderson, and respondent, Craig W. Anderson. They married in Springfield, Illinois, on April 30, 2005. In December 2013, at the time of the trial, they both were 38 years old, and their son, J.A., was 6 years old. Respondent appeals from the judgment dissolving the marriage. He challenges only one provision of the judgment: the provision awarding custody of J.A. to petitioner.

¶ 3 The factual findings undergirding the award of custody to petitioner are not against the manifest weight of the evidence. Nor is the award of custody an abuse of discretion. Therefore, we affirm the trial court's judgment.

¶ 4 I. BACKGROUND

¶ 5 A. Petitioner's Testimony

¶ 6 1. *J.A. and Petitioner's Daughter*

¶ 7 J.A. was born to the parties on February 22, 2007.

¶ 8 Petitioner has a 14-year-old daughter from a previous relationship, of whom she has custody.

¶ 9 2. *The Circumstances of the Separation*

¶ 10 Saturday evening, June 15, 2013, the parties "had a fight," and respondent demanded that petitioner leave the marital residence. She went to a friend's house and confided in her. Then, at about 2 a.m. on June 16, 2013, petitioner returned to the marital residence and "went into [her daughter's] bed." That morning, which was Father's Day, respondent approached petitioner and asked "if [she were] going," as he previously demanded. She "asked where, and he said to [her] parents' house." She responded that she did not know, whereupon he "ripped" the covers off her. She "tried to sit up."

¶ 11 Before petitioner could testify to what happened next, respondent's attorney, Adam Giganti, made a twofold objection: (1) her testimony was "becoming a narrative," and (2) she previously testified to this incident in a temporary hearing.

¶ 12 Petitioner's attorney, Barbara K. Myers, countered that physical violence inflicted by one parent upon the other parent was one of the factors in section 602(a) of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/602(a) (West 2012)).

¶ 13 The trial court observed that although "[t]he temporary hearing was not reported," the court "took notes" in the temporary hearing. Considering that the court already had "heard this testimony once," it asked the attorneys if either of them objected to the court's taking judicial

notice of the testimony from the temporary hearing. Neither attorney objected, although Myers said she would like to present photographs that were not presented in the temporary hearing. The court said: "If you want to go through those, you may."

¶ 14 Petitioner identified photographs of her arms as her arms appeared on June 17, 2013. The photographs, admitted into evidence, are in the record. They show dark bruises on petitioner's upper arms.

¶ 15 Myers asked petitioner:

> "Q. Okay. And where do you believe these bruises came from?
>
> A. From Craig picking me up and throwing me out of the house on Father's Day.
>
> Q. Miss Anderson, during your marriage, were there any other incidents where Mr. Anderson was physically violent?
>
> A. Um, laid hands on me, no. Things were thrown at me, yes.
>
> Q. When did he throw something at you?
>
> A. Numerous times.
>
> Q. Can you be more specific? Towards the beginning of the marriage, towards the end?
>
> A. Towards the end. Within the last year or two of the marriage is when it got more verbally harsh and more, you know, throwing across the room or flipping a table or yelling.

Q. When did Mr. Anderson throw a remote across the room?

A. I believe it was February or March of this year.

Q. Of 2013?

A. Uh-huh.

Q. What were the circumstances?

A. Um, [my daughter] and I—it was [my daughter] and [J.A.] and I, and [my daughter] made a statement, and he threw the remote across the room just barely missing her head, and then he flipped his TV tray over, and it flew across the room, and his plate hit me, and the TV tray hit my leg."

¶ 16 3. *Petitioner's Use of Marijuana*

¶ 17 Petitioner began smoking marijuana in high school. From 2008 until 2011, however, she did not smoke marijuana at all, because, during those years, she was "in a good place." In 2011, she began smoking marijuana again, twice a week. She spent $20 to $40 a week on it and always smoked it away from her family: in a cornfield, in her car, or at a friend's house. She relied on marijuana as a "numbing" agent, a "crutch" to help her "survive through tough times." She smoked it from 2011 until Father's Day 2013, and after Father's Day, she stopped. She testified: "I haven't smoked since the day that he threw me out." Marijuana, she insisted, was the only illegal drug she ever used, and she had not used it since the separation.

¶ 18 4. *Prescription Medication*

¶ 19 In February or March 2012, petitioner's doctor, Steven Lewis, prescribed Paxil to alleviate the anxiety and depression she was experiencing as a result of being the only employed person in the home.

¶ 20 In May 2013, Dr. Lewis prescribed an additional medication, Adderall. Petitioner explained:

> "A. [I] [w]as having trouble focusing at work. Everything going on at home with Craig being unemployed for almost three years at that time, I was not focusing on work, and my ADD [(attention deficit disorder)], I could not control it myself, so I sought help for my concentration and focusing."

¶ 21 Petitioner testified she always took Paxil and Adderall in the manner that Dr. Lewis had prescribed. Myers asked petitioner:

> "Q. Are you still taking these medications?
>
> A. Actually, I'm on the Paxil. We are weaning myself off, and I am no longer taking the Adderall as of last week."

¶ 22 5. *Losing Her Job and Looking for a New One*

¶ 23 Petitioner has a bachelor's degree in "Business Administration Management and Organizational Behavior." In April 2010, she began working full time for a law firm in Springfield as a legal assistant. During the period when petitioner was so employed, respondent, who was unemployed, got J.A. out of bed, fed him breakfast, got him ready, took him to the school bus, and picked him up from the school bus after school. He also did the housework. Occasionally, he filled in as a substitute teacher in Auburn. Either 2010 or 2011 had been the last time he was employed 40 hours a week.

¶ 24 On October 2, 2013, petitioner lost her job at the law firm as a result of a "personality conflict" with a coworker. Giganti asked her:

> "Q. And because of this conflict, you quit?
>
> A. No.
>
> Q. Okay. What was the reason for the separation? You were fired?
>
> A. I was.
>
> Q. And what was the reason for your—what did they give you? What did they tell you?
>
> A. I had a lot on my plate at the time, and I was not able to give work my full 100 percent, and it was causing a breakdown in my performance.
>
> Q. Okay. So, they fired you because of your lack of performance. Is that—
>
> A. No, it's listed as personality conflict."

¶ 25 Since losing her job at the law firm, petitioner had sent out a hundred or more applications. She had attended several interviews. She had not yet received an offer of employment.

¶ 26 She was not receiving unemployment benefits. Her application was denied only because she had missed the telephonic hearing. By mistake, she had failed to pick up the telephone when she did not recognize the telephone number of the Department of Employment Security. She had administratively appealed, however, and she expected to eventually receive unemployment benefits. The law firm had told her it would not contest her application or appeal.

¶ 27 J.A. had a medical card, and petitioner was receiving benefits from the supplemental nutrition assistance (SNAP) program. Her living expenses far exceeded her income, although unemployment benefits, once she received them, would help. She had borrowed money from her parents. (Likewise, respondent had borrowed money from his parents, according to his testimony.)

¶ 28 6. *Her Residence*

¶ 29 Petitioner was living on West Herndon Avenue in Springfield, in a 2,000-square-foot duplex. She shared the rent and utilities with Melissa Strickler, a file clerk at the law firm where she used to work.

¶ 30 The duplex consisted of two levels—the main floor and the basement— and it had 5 bedrooms and 2 1/2 baths. Petitioner, J.A., and Strickler had their own bedrooms on the main floor. Strickler shared her bedroom with her boyfriend, Charles. Petitioner's daughter shared a bedroom in the basement with one of Strickler's daughters, who was the same age as she. Strickler's 11-year-old daughter had the second bedroom in the basement. Her 19-year-old daughter had the third bedroom in the basement and lived in the duplex all the time. Strickler's other daughters were sometimes at the duplex and sometimes with their father. In addition, Charles's son came over and visited on Thursday nights and on every other weekend, when J.A. was away visiting respondent and petitioner's daughter was away visiting her father.

¶ 31 7. *The Relationship Between J.A. and the Other Children in the Duplex*

¶ 32 Myers asked petitioner:

> "Q. And, um, does your daughter *** live with you full time?
>
> A. Yes.

Q. Can you describe the relationship between [J.A.] and his sister *** ?

A. It's a great relationship. They play very well together; they work very well together. He enjoys doing—reading to her and playing army men with her and Leggos and just cuddling and watching TV and having a good time.

Q. What about [J.A.'s] relationship with, um, Melissa's children when they're around?

A. He loves them. Follows them around. He loves having, you know, two, three other big sisters around to spoil him."

¶ 33 8. *Elementary School for J.A.*

¶ 34 J.A. was in first grade. He attended Enos Elementary School, which was three blocks away from the duplex. His class size was 22. Petitioner drove him to school at 8:10 a.m. and picked him up at 3 p.m. On nice days, they walked.

¶ 35 Petitioner had decided not to have J.A. involved in any extracurricular activities "until things [were] settled here." Respondent wanted him to participate in Boy Scouts, and she was amenable to that idea.

¶ 36 9. *Counseling for J.A.*

¶ 37 J.A. had been seeing a counselor, Amy Williams. Myers asked petitioner:

"Q. And when did that start?

A. Um, shortly after I left in June. I actually did not find out until I got an explanation of benefits from my insurance provider about the counseling.

Q. So, you were not the one who signed him up to go to counseling?

A. No, I was not.

Q. Did Mr. Anderson consult with you before enrolling your child in counseling?

A. No, he did not.

Q. Okay. At the time that he was enrolled in counseling, who was he living with most of the time?

A. Me.

Q. Did you ever meet the counselor?

A. I did. A couple of the appointments. Probably two."

¶ 38 As of the time of trial, J.A. no longer was seeing Williams. The last time he saw her was in September or October 2013. Giganti asked petitioner:

"Q. Okay. Was there anything negative that you felt about him attending these counseling sessions?

A. No, except for the fact that she and I agreed that he really wasn't in as dire need of therapy as it was led to believe.

Q. Okay. So, it's your testimony that Amy Williams said he doesn't need any more therapy?

A. That's correct."

¶ 39 10. *Petitioner's Extended Family*

¶ 40 Myers asked petitioner:

"Q. Okay. How much of your extended family is in the Springfield area?

A. Everyone.

Q. Can you be more specific?

A. My mother, my father, my brother, my sister-in-law, my nieces, nephews, my sister, her boyfriend.

Q. How many nieces and nephews do you have?

A. I have two nieces and three nephews.

Q. How old are they?

A. [One nephew] is 22, [one niece] is 16, [one nephew and niece] are twins and are five, and [one nephew] is about a week old.

Q. How much time does [J.A.] spend with [twins]?

A. On Wednesdays, they get him right after school, and they hang out with him. When I'm working, my mother is aiding me and picking up [J.A.] after school, and then he's there until after I get off work."

Petitioner testified that if her work schedule conflicted with the school arrival time, she would make arrangements for before-school care.

¶ 41 11. *Leaving the Pathfinder at the Dealership*

¶ 42 During the marriage, the parties bought a 2003 Nissan Pathfinder, and it was paid off. Petitioner customarily drove this vehicle during the marriage, and she continued driving it after the separation. The Pathfinder, however, had 187,000 miles on it, and because the engine

was acting up, she did not think it was a safe vehicle in which to transport her children. She described the mechanical problem as follows:

> "A. If I got over 30 miles an hour—like, for instance, on the highway, if I took any trip over 15 minutes, the, um, RPMs would raise to a higher level and I would not be able to accelerate, so if I was on the highway and had to slow down, I was a threat to other drivers because I'd have the gas pedal to the floor and only be going 30 miles an hour, and it would take, you know, a few minutes for it to kick back in and get it going, and I was putting—I could not make a month without having to put two quarts of oil in the car because it had a leak."

¶ 43 So, in 2013, sometime between the separation and the trial, she drove the Pathfinder to a dealership in Decatur, where she bought a 2009 Honda Civic automobile. She explained to the dealer that because the Pathfinder was a marital asset, she could not trade it in. For the time being, with the dealer's permission, she left the Pathfinder at the dealership, until she could find someone to accompany her back to Decatur and pick it up. According to her testimony, she intended to leave the Pathfinder there only temporarily, and she had no intention to abandon it, and the dealer had told her she could leave it there for a while. After two weeks, respondent picked up the Pathfinder from the dealership (he testified he believed it was August 30, 2013, was when he picked up the Pathfinder).

¶ 44 12. *Her Tattoo*

¶ 45 Giganti asked petitioner:

"Q. *** [J]ust looking at your financial affidavit and, you know, Craig lost his unemployment, money's been very tight?

A. I make ends meet. I take care of the children.

Q. I understand. Would you agree with me that the money has been very tight?

A. Yes.

Q. Now, recently, you obtained a tattoo?

A. Yes.

Q. And, I mean, pretty large tattoo, is it not?

A. Yes.

Q. On your back?

And was that—did you have to pay for that tattoo?

A. Actually, no. A friend bought that for me."

Petitioner explained that Sean Warnke, the husband of one of her closest friends, had bought the tattoo for her. By her understanding, the value of the tattoo was about $250.

¶ 46 B. The Testimony of Melissa Strickler

¶ 47 Melissa Strickler testified she had known petitioner since March 2013, when Strickler began working at the same law firm where petitioner worked.

¶ 48 Strickler and petitioner split the bills for the duplex down the middle. Strickler's boyfriend, Charles, bought "necessities," such as toilet paper.

¶ 49 Strickler had joint custody of her two younger children, who attended school in Rochester. During the week, they were sometimes with her and sometimes with their father, and they were with her every weekend. Her oldest child lived with her constantly.

¶ 50 Myers asked Strickler:

"Q. And have you observed any interactions between Miss Anderson's son, [J.A.], and your children?

A. Yes.

Q. How would you describe his interaction with your oldest daughter ***?

A. Um, my oldest doesn't really—she's not really a kid person, but she—she's kind of like the big sister to everybody, but they get along great.

Q. What about the younger two?

A. The younger two? Um, besides the normal, you know, get on each other's kid nerves-type thing, like, get out of my room stuff—I mean, there's never any arguments or any fighting or anything, so.

Q. Okay.

A. They have fun."

¶ 51 C. Respondent's Testimony

¶ 52 1. *His Two Apartments*

¶ 53 Respondent had two apartments, according to his testimony in the trial. He had "kept" the apartment on Cherry Road in Springfield. He also had an apartment in Sullivan, on a year's lease.

¶ 54 Both were two-bedroom apartments. No one lived with respondent. In Sullivan, "the family next door ha[d] a son," and the other neighbor was an elderly woman. Down the

street were "four other families with kids." At the Cherry Road address in Springfield, J.A.'s uncle, aunt, and cousin lived just across the hall.

¶ 55 J.A. would attend Sullivan Elementary School if respondent received custody. If they lived in the apartment on Cherry Road, J.A. would attend Butler Elementary School with his cousin. Respondent really wanted J.A. to attend Westside Christian School. Giganti asked respondent:

> "Q. Okay. And in regards to where he goes to school now, where does he go to school right now?
>
> A. Enos Elementary.
>
> Q. And are you familiar with the teachers at Enos?
>
> A. I am.
>
> Q. And why is that?
>
> A. I have regular communication with Mrs. Herman. She communicates to me about different issues that [J.A.] has been having currently.
>
> Q. And have you actually been to the school?
>
> A. Several occasions.
>
> Q. And do you have any concerns about the school?
>
> A. Um, I have concerns about the school in general because of their academic performance, but his teacher, I think we've gotten really lucky with Mrs. Herman."

¶ 56 2. *His Current Job and His Other Employment Prospects*

¶ 57 At the time of the trial, respondent worked for the Lincoln Trails Council of the Boy Scouts of America. He obtained this job on December 1, 2013. The Lincoln Trails Council was in Decatur, and his service area was south of Decatur. His mission was to "recruit manpower and volunteers and also raise money for the Boy Scouts." The job would entail driving about 3,000 miles a month.

¶ 58 In addition, respondent had two other employment prospects. On December 4, 2013, he received a conditional offer of employment from the Illinois State Police, which he had accepted. The offer was conditional on his passing a background check and a drug test. There was also "a third job out there": the child enforcement division of the Illinois Department of Children and Family Services (DCFS). As far as he knew, he would obtain the job with the Illinois State Police, in which event he would give two weeks' notice to the Boy Scouts, he would decline the job offer from DCFS, and he would make the Cherry Street apartment in Springfield his home base. (The landlord in Sullivan "understood" his situation.) He preferred the job with the Illinois State Police because he would have "more upward mobility" and because J.A.'s relatives on both sides were in the Springfield area.

¶ 59 3. *His Routine During the Year Before the Separation*

¶ 60 Giganti asked respondent:

> "Q. When you—prior to your separation with Miss Anderson, when you describe—say the year or two prior to your separation, can you describe your—you, Melissa, [J.A.], the routine that you had for your son, [J.A.], on a regular basis?
>
> A. The year before? Um, on a daily basis, I would get him up for—get him ready for school. He would take a bath in the

morning while I would fix breakfast. After his bath, I would have to wake up Melissa, or at least attempt to in the beginning, and then get [J.A.] ready. I would make several attempts to wake Melissa before she would actually get out of bed, then I would take [J.A.] down to the bus every day and stay with him until he got on to the bus.

Q. And then what about when [J.A.] would come home from school?

A. I would be there sun or shine, rain or snow, I would pick him up from the bus and walk him back to the house.

Q. And who normally would prepare the meals for the family?

A. That would be a sharing. I would sometimes, Melissa would at times.

Q. Now, Miss Anderson indicated that it wasn't uncommon for her to work extra hours or late hours at the law firm. Is that a fair statement?

A. I'm not really sure. She would work, and I would assume would be until she was finished at 5 o'clock, but she would stay in town, just do the custodial agreement. She would be picking up [her daughter] at 7 o'clock, and it was my understanding that she would be going to a—friends' houses and imposing on them at that point."

¶ 61 On cross-examination, Myers asked respondent:

"Q. Before the separation, you testified that you were the one who would get [J.A.] ready for school in the morning and stay with him 'til he got off the bus, et cetera; is that correct?

A. That's right.

Q. That's all because you were not employed at the time, correct?

A. No. Melissa was actually at the residence and wouldn't leave the residence until after the bus had departed, so she had ample opportunities to do the same.

Q. But you had the time to do it because you were unemployed; isn't that right?

A. Well, she was there, too.

Q. Mr. Anderson, that's not what I'm asking. It's a yes or no question.

A. Then no. The answer is no."

¶ 62 4. *Petitioner's Use of Marijuana*

¶ 63 Respondent testified that, until the week before Father's Day 2013, he was unaware that petitioner used marijuana. Myers asked him:

"Q. You never saw her use marijuana in front of your son?

A. No, I did not.

Q. Did you ever see her use it in front of you?

A. She did not. Well, except for the one time where she did the week before Father's Day of this year."

¶ 64 5. *Respondent's Description of the Relationship Between J.A. and His Half-Sister*

¶ 65 Giganti asked respondent:

"Q. Can you describe your son [J.A.]'s relationship with Miss Anderson's daughter *** when you all resided together?

A. It was, um, very strained. They would fight on a regular basis. [Petitioner's daughter] would retreat to her room, close her door, and isolate herself to the point that Melissa asked me to remove the door at one point, which I complied with, as punishment."

Respondent admitted, however, that he had no opportunity to observe the relationship between J.A. and [petitioner's daughter] during the six months preceding the trial.

¶ 66 6. *The 2003 Pathfinder*

¶ 67 Respondent testified that (presumably in August 2013) he went to "a school event, an open house," and that petitioner arrived and parked next to his vehicle. He noticed she had a different vehicle, not the Pathfinder. Instead of asking her what had happened to the Pathfinder, he took a photograph of the license plate holder, which had the dealership's name on it, and he went to the dealership in Decatur "to investigate if the [Pathfinder] had been traded off or what had happened to that vehicle."

¶ 68 Giganti asked respondent:

"Q. What did you find out about the vehicle?

A. The dealership was very helpful and said that they didn't have any idea why the vehicle was on their lot and assumed it was abandoned. They said that they would take possession after a certain amount of time had allotted [*sic*], and their bank would liquidate the vehicle if I didn't remove the vehicle from the lot.

Q. What did you do then?

A. We arranged for it to be towed because it was not in a drivable state.

Q. Why is that?

A. The license plate did not have a valid sticker.

Q. Other than not having a valid sticker, was it drivable?

A. I think so. There was—there was some issue, it seemed—there seems to have been some, um, substance put in the engine, um, that we had cleared up afterwards.

Q. Okay. And about how long after finding out about it were you able to remove the vehicle from the lot?

A. It was—I think Charlie was able to get it, um, within a week, but it was not immediately thereafter.

Q. And did you have any communication at all with your—with Melissa, with Miss Anderson, in regards to this vehicle?

A. No.

Q. And it being on the lot?

A. No.

Q. Okay. Were there any notes or anything left in the vehicle that you—

A. There was a note that was left on the rearview mirror. It was apparently a sales tag from the dealership. It said from Melissa Anderson to Craig Anderson. Something along those lines.

Q. And where's the vehicle now?

A. It is in a—it's in a secure location in Virginia, Illinois.

Q. I see. Is it drivable as far as you know?

A. It is after some repair work through the engine. Yes, it is very drivable."

¶ 69 At the time of the separation, respondent had a 2000 BMW automobile, the vehicle he customarily drove during the marriage. He still had the BMW, but he had acquired an additional vehicle, a 2005 Envoy, because with all the driving he had to do for the Boy Scouts, he needed a reliable vehicle.

¶ 70 D. The Trial Court's Decision

¶ 71 In a memorandum opinion filed on January 6, 2014, the trial court decided that, "[b]ased on the evidence presented, [J.A. was] to be placed in [petitioner's] exclusive custody, subject to reasonable visitation on [respondent's] part." The court made the following findings with regard to the issue of custody:

"Both parents love [J.A.], and each individually is a fit person to have custody of [J.A.] On balance, the court finds that Melissa is more likely than Craig to encourage a good relationship

> between [J.A.] and the other parent. Although Craig testified to his willingness to encourage a strong relationship between [J.A.] and Melissa, his actions belie his testimony.
>
> The court has also considered the domestic battery which Melissa suffered. In this regard the court specifically finds that Craig's explanation and description of the battery and Melissa's injuries is not credible."

¶ 72 The trial court stated it had considered the first, third, fourth, fifth, sixth, seventh, and eighth factors in section 602(a) of the Marriage Act (750 ILCS 5/602(a)(1), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), (a)(8) (West 2012)) and that, pursuant to sections 102(7) and 602(c) (750 ILCS 5/102(7), 602(c) (West 2012)), it presumed that " '[the] maximum involvement and cooperation of both parents regarding the physical, mental, moral and emotional well-being of their child [was] in the best interests of the child.' "

¶ 73 II. ANALYSIS

¶ 74 A. Petitioner's Use of Marijuana

¶ 75 Respondent says: "[I]t is truly striking that the trial court did not even mention [petitioner's] illegal drug use in the memorandum opinion." He asserts it is doubtful that petitioner's "alleged devotion to caring for [J.A.] is going to last following these proceedings," considering that, for "a number of years" before June 16, 2013, she "had secretly been smoking marijuana," "behind his back and that of their son."

¶ 76 That assertion is unconvincing. It is, of course, illegal to possess marijuana for nonmedical purposes, but users of marijuana are not, *ipso facto*, bad parents or parents lacking in devotion to their children. Good parents invariably have some imperfection or vice—and

sometimes they have more than one. Respondent acknowledges that, "[i]n custody cases, seldom is either parent shown to be perfect." *In re Marriage of Apperson*, 215 Ill. App. 3d 378, 383 (1991).

¶ 77 This is not to deny that using marijuana *can* get in the way of being a parent. In a passage that respondent quotes, the appellate court has held:

> "There is no argument that the extent of involvement of a custodial parent with alcohol and drugs and that parent's resulting conduct and physical condition are relevant avenues of inquiry to the issue of custody—*but only if the custodial parent's consumption of alcohol and drugs can be shown to affect that parent's mental or physical health and that parent's relationship with the children*." (Emphasis added.) *In re Marriage of Rizzo*, 95 Ill. App. 3d 636, 641 (1981).

The effect of the illegal drug on the parent's health or relationship with the child "must be based on personal knowledge and not be merely speculative and conclusory." *In re Estate of Becton*, 130 Ill. App. 3d 763, 772 (1985).

¶ 78 Respondent says that "the extent of [petitioner's] problem with marijuana is truly unknown." If it is unknown, it is speculative. It is a matter of speculation whether her twice-weekly use of marijuana had any effect at all on her performance as a parent from 2008 to 2011, considering that, during that period, respondent had no inkling she was using marijuana. It is a matter of speculation whether, contrary to her sworn testimony, she continues to use marijuana. See *id.* ("[T]here was no showing that such alleged use [of marijuana] affected appellant's mental or physical health or in any way affected, or would affect, his future relationship with the child.

In sum, the testimony as to marijuana and to its relevance upon appellant's relationship with the child was without proper foundation, and at most, speculative and conclusory."); *cf. In re Marriage of Drummond*, 156 Ill. App. 3d 672, 674 (1987) ("The ingestion of these drugs affected wife's ability to care for her home and her family, especially [her child]. Husband, who witnessed wife's mixing of various prescriptions, stated that wife acted sluggish, drowsy, and incoherent on numerous occasions. Husband testified about one particular incident where wife staggered down a flight of stairs and walked directly into a wall collapsing to the floor. At the time of this incident, wife was caring for [her child] which caused husband great concern.").

¶ 79 Respondent complains that "the trial court rejected [his] attempts to flesh out this issue by denying drug tests, a custody evaluation or mental and health examinations." This complaint needs to be backed up by a reasoned argument. What statute or supreme court rule gives the court authority to order drug tests, a custody evaluation, and mental and health examinations? Under the relevant statute or supreme court rule, what are the conditions for ordering these things? What is the standard of review in this regard? Respondent does not address any of these questions. Therefore, his complaint is forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) ("Argument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities *** relied on. *** Points not argued are waived ***."); *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 493 (2002); *People v. Franklin*, 167 Ill. 2d 1, 20 (1995).

¶ 80 B. Petitioner's Mental Health

¶ 81 In deciding which parent should receive custody of the child, the trial court should consider, among other factors, "the mental and physical health of all individuals involved." 750 ILCS 5/602(a)(5) (West 2012). Respondent argues:

> "[Petitioner] was also prescribed psychotropic drugs, which indicate that her mental health could and probably is at issue. [Her] compulsiveness, as demonstrated by her purchase of a new car when she really could not afford it, her being fired from her job, and obtaining a large tattoo after the parties were separated, are all further warning signs that something may be amiss."

¶ 82 In its memorandum opinion, however, the trial court explicitly said it had considered "the mental and physical health of the individuals involved." Although petitioner suggested, in her testimony, that ADD, along with problems at home, had hindered her from doing well at work and had contributed to her being fired from her job as a legal assistant, the court did not have to conclude—and probably would have had no basis for concluding—that ADD, treated by medication, necessarily would hinder her in a different job or would hinder her from taking good care of J.A.

¶ 83 As for buying the 2009 Honda Civic, it is debatable whether that indicates compulsiveness. Getting around on buses is difficult if one has a job and a child. According to her testimony, petitioner is trying to find a job. She has sent out a hundred resumes. When she finds a job, she will have to take J.A. to school or her mother's, and then she will have to get to work on time. A motor vehicle will be almost a necessity for her. The Pathfinder had 186,000 miles on it, and it had engine problems. Granted, the Pathfinder had the advantage of being paid off, but at some point, a vehicle accumulates enough miles that spending money on repairs becomes risky. One could pay for a repair, but then, because of the wear and tear on the vehicle, another part could fail, and yet another part could fail. The first repair will be an investment that must be preserved by making the second repair, and the first and second repairs will be

investments that must be preserved by making the third repair, and soon the amounts spent on repairs could exceed the vehicle's worth, and all along the money would have been better spent on a newer, more reliable vehicle. Or, with luck, the first repair will be economical, and the vehicle will last another 50,000 miles without needing any further major repair. It would be a gamble. Reasonable persons could disagree on whether the gamble is worth taking.

¶ 84 Respondent claims that petitioner compulsively abandoned the Pathfinder at the dealership in Decatur. Petitioner testified, however, that she had no intention of abandoning the Pathfinder but that, rather, she had left it there with the dealer's permission, until she could find someone to accompany her to Decatur to pick up the Pathfinder. It remained at the dealership for two weeks, until petitioner took possession of it. If one believed petitioner's testimony, the Pathfinder was in little danger of being forfeited, because it was at the dealership with the dealer's permission. The dealer surely had petitioner's telephone number, having sold her the Honda. The dealer surely would have called her before having the Pathfinder towed away.

¶ 85 As for the tattoo, we do not see how it is indicative of compulsiveness. Petitioner testified that a friend paid for the tattoo as a gift to her. Respondent appears to be suggesting that tattooed people are, *per se*, compulsive, just as he appears to be suggesting that smokers of marijuana are, *per se*, undevoted parents.

¶ 86 Because respondent criticizes petitioner for being compulsive, it seems only fair to point out that he is vulnerable to the same criticism. A "compulsion" is "an irresistible impulse to perform an irrational act." Merriam-Webster's Collegiate Dictionary 237 (10th ed. 2000). When, on June 16, 2013, respondent grabbed petitioner with such force as to leave dark bruises on her upper arms (as shown by photographs in the record) and bodily threw her out of

the house, one could say he was experiencing an irresistible impulse to perform an irrational act. He evidently experienced the same impulse when, on previous occasions, he threw things.

¶ 87 C. The Primary Caretaker

¶ 88 Even though, in its memorandum opinion, the trial court quoted the seven relevant factors in section 602(a) of the Marriage Act (750 ILCS 5/602(a)(1), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), (a)(8) (West 2012)), respondent argues that "the trial court passed over without consideration many of the important factors in Section 602(a)," including the factor of "stability." He observes: "In this case, the uncontradicted evidence is that [respondent] was the primary physical caretaker of [J.A.] for several years before the parties separated, while [petitioner] was often away from home for 12 hours a day in order to work or stay at her friend's house i[n] Springfield[,] waiting for [her daughter]." He quotes from our decision in *In re Marriage of Wycoff*, 266 Ill. App. 3d 408, 414 (1994): "It is proper for the court to consider who has been the primary caretaker of the child during the marriage."

¶ 89 In *Wycoff*, we associated "stability" with the third factor in section 602(a): " 'the *** interrelationship of the child with his parent.' " *Id.* (quoting 750 ILCS 5/602(a)(3) (West 1992)). In its memorandum opinion, the trial court explicitly stated it had considered, among other factors, "the interaction and interrelationship of the child with his parents, his siblings, and any other person who may significantly affect the child's best interests." See *In re Marriage of Hefer*, 282 Ill. App. 3d 73, 79 (1996) ("The trial court is not required to make specific findings regarding each section 602 factor as long as evidence was presented from which the court could consider the factors prior to making its decision."). Respondent assumes that just because the court did not give a factor the dispositive weight he believes the factor deserves, the court did not consider the factor at all—"passed over [it] without consideration." That is a faulty assumption.

¶ 90 Contrary to respondent's assertion, the trial court took into account the fact that he was J.A.'s primary caretaker during the time when petitioner worked at the law firm. We are aware of no case holding that the primary caretaker automatically must be awarded custody of the child, regardless of any other factors. *Cf. Hall v. Hall*, 226 Ill. App. 3d 686, 691 (1991) ("Given that all other discernible relevant factors [were] evenly balanced," it was error to award custody to father when child had been with mother during 2 1/2 years of litigation). In this case, the court found that two of the factors in section 602(a) favored petitioner: the sixth factor, *i.e.*, "the physical violence or threat of physical violence by the child's potential custodian" (750 ILCS 5/602(a)(6) (West 2012)), and the eighth factor, *i.e.*, "the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child" (750 ILCS 5/602(a)(8) (West 2012)). We are aware of no case holding that the status of primary caretaker necessarily trumps the sixth and eighth factors.

¶ 91 D. "A Quieter, More Stable Environment"

¶ 92 Respondent argues: "[I]t is hard to doubt on this record that [he] would provide a quieter, more stable environment for the parties' son. The evidence clearly shows that [petitioner] is presently living with a roommate she only knew for several months before signing a joint lease, who has a live-in boyfriend, and three (3) older daughters, one of whom is admittedly not a 'kid' person." We agree it is hard to doubt that respondent's residence, with only him and J.A. living there, would be quieter than petitioner's residence. His residence appears to be more stable, too, considering that he has a job and two other job prospects, whereas petitioner is unemployed and has no immediate job prospects.

¶ 93 So, the trial court had to make a choice. Was it better that J.A. live in a "quieter, more stable residence," or was it better that he live with the parent who had the greatest

willingness and ability to facilitate and encourage a close and continuing relationship between J.A. and the other parent? That question called for a value judgment. It was the trial court's prerogative to make that value judgment (see *In re Marriage of Radae*, 208 Ill. App. 3d 1027, 1030 (1991) ("A court must weigh all relevant factors when determining custody")), and the court decided it was better for J.A. to live with the parent who had the greatest willingness and ability to facilitate and encourage a close and continuing relationship between J.A. and the other parent. We cannot say that choice was erroneous as a matter of law. In other words, we find no abuse of discretion. See *In re Marriage of Willis*, 234 Ill. App. 3d 156, 161 (1992).

¶ 94 We might add that, in this appeal, respondent does not appear to dispute the trial court's factual finding that, of the two parties, petitioner has the greater "willingness and ability *** to facilitate and encourage a close and continuing relationship between the other parent and the child." 750 ILCS 5/602(a)(8) (West 2012). We cannot say it was arbitrary or clearly illogical for the trial court to put the most weight on that factor. See *Long v. Mathew*, 336 Ill. App. 3d 595, 600 (2003).

¶ 95 E. "A Questionable Neighborhood With a Less Than Exemplary School"

¶ 96 Respondent remarks that petitioner lives in "a questionable neighborhood with a less than exemplary school." It is unclear what respondent means when he characterizes the neighborhood of West Herndon Avenue as "questionable." The record appears to contain no evidence of any bad characteristics of that neighborhood, and we cannot legitimately fill the void by judicial notice.

¶ 97 Respondent testified: "I have concerns about [Enos Elementary School] in general because of their academic performance, but his teacher, I think we've gotten really lucky with Mrs. Herman." Despite respondent's expressed concern about the academic performance of

Enos Elementary School, the record appears to contain no specific evidence that Enos Elementary School is inferior to Butler Elementary School or Westside Christian School, where he would enroll J.A. Besides, respondent appears to be pleased with J.A.'s teacher at Enos Elementary School.

¶ 98 III. CONCLUSION

¶ 99 For the foregoing reasons, we affirm the trial court's judgment.

¶ 100 Affirmed.