

NOTICE

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2015 IL App (4th) 150242-U
NOS. 4-15-0242, 4-15-0243 cons.

FILED
August 25, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: MARRIAGE OF)	Appeal from
ADAM C. RADE,)	Circuit Court of
Petitioner-Appellee,)	Sangamon County
and (No. 4-15-0242))	No. 14D465
CRYSTAL J. RADE,)	
Respondent-Appellant.)	
_____)	
ADAM C. RADE,)	No. 14OP1131
Petitioner-Appellee,)	
v. (No. 4-15-0243))	Honorable
CRYSTAL J. RADE,)	Matthew Maurer,
Respondent-Appellant.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Holder White and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* (1) This court lacked jurisdiction to review former wife's claim that the trial court erred by failing to grant her request for a plenary order of protection where she failed to file a timely notice of appeal from the court's final order dismissing her petition for an order of protection.

(2) The trial court's finding that removal of the parties' minor child from Illinois to Florida was not in the child's best interests, was not against the manifest weight of the evidence.

(3) The trial court committed no error in denying former wife's motion to reconsider its denial of her request for removal.

¶ 2 These two consolidated appeals involve proceedings to dissolve the marriage of petitioner, Adam C. Rade, and respondent, Crystal J. Rade, and proceedings initiated by Crystal

to obtain an order of protection against Adam. Following a consolidated hearing in the matters, the trial court denied Crystal's petition for a plenary order of protection. It also entered a judgment dissolving the parties' marriage; granting custody of the parties' minor child, N.R., to Crystal; and denying Crystal's request to move with N.R. to Florida. Crystal appeals, arguing the court erred by denying her (1) request for a plenary order of protection, (2) request for removal of N.R. from Illinois to Florida, and (3) posthearing motion to reconsider and reopen the evidence as to removal. We affirm.

¶ 3

I. BACKGROUND

¶ 4

In 2012, the parties met and began dating in Florida, where Crystal resided and Adam was stationed with the Air Force. In September 2012, Adam completed his active duty military service and returned to his home in central Illinois. Crystal, who was pregnant with the parties' child, returned with him. On April 10, 2013, the parties were married in Illinois. On April 27, 2013, N.R. was born.

¶ 5

On July 14, 2014, Crystal filed a verified petition seeking an order of protection against Adam (case No. 14-OP-1131). She included a description of the incidents which prompted her to seek relief. She alleged that on July 3, 2014, Adam "abandoned" her and N.R. but returned the following day "to surveillance [*sic*] [her]" while she was at a neighbor's house. Crystal asserted she made plans to watch fireworks at the neighbor's house but Adam threatened to take the insurance off her car if she went anywhere. He then followed her to the neighbor's house. Crystal alleged she arranged to stay at the neighbor's house overnight because she "felt threatened and scared" for both her and N.R.'s safety "after Adam had more to drink that night" and "with all [of] the guns in his gun safe." Crystal asserted Adam demanded that she and N.R.

return home but she refused. Adam then called Crystal's father and demanded "that he talk some sense into his daughter." Additionally, Crystal alleged that on July 13, 2014, Adam harassed her by calling and texting her and a friend and demanding that she contact him. He then showed up at the house where she was staying, demanding N.R. Crystal stated she felt "obligated" and "intimidated" to give N. R. to Adam.

¶ 6 The same day Crystal filed her petition, the trial court entered an emergency order of protection, naming both Crystal and N.R. as protected parties. The court gave Crystal temporary possession of the parties' residence and physical care and possession of N.R., ordered Adam to stay at least 200 feet away from Crystal and N.R., and prohibited Adam from entering either the parties' residence or Crystal's school.

¶ 7 On July 15, 2014, the day after Crystal filed her verified petition for an order of protection, Adam filed a petition for dissolution of marriage (case No. 14-D-465). Adam sought sole custody of N.R.

¶ 8 On August 13, 2014, Crystal filed a motion for leave to amend her verified petition in the order of protection proceedings. She asserted that, with the aid of counsel, she had prepared a revised description of incidents which formed the basis for her petition and requested leave to amend her original petition with that revised description. Crystal attached an "AMENDED DESCRIPTION OF INCIDENTS" to her motion, wherein she alleged Adam extensively abused alcohol and "self medicat[ed] for severe depression." She described Adam's drinking as "out of control" and asserted the physical abuse she sustained included "sexual abuse in that [Adam] comes home drunk and demands forced sex from [Crystal]." Crystal also asserted that Adam was "a member of a militia and ha[d] an arsenal of weapons which resulted in the

confiscation of same by the Sangamon County Police Department on August 5, 2014." She alleged his "arsenal includes things like pipe bombs, rocket launchers, and grenades." Finally, she described several specific incidents involving the parties, alleging (1) on January 6, 2014, Adam threatened suicide; (2) on April 13, 2014, Adam stayed out all night drinking after an argument between the parties and, during an angry outburst, destroyed Crystal's grandmother's table; (3) on May 15, 2014, Adam was drinking so that he would not feel depressed and, while drunk, pushed Crystal to prevent her from leaving the room; (4) on May 23, 2014, Crystal was afraid to sleep in her bed because of Adam's alcohol use; (5) on June 9, 2014, the parties argued because Crystal found hidden bottles of vodka; and (6) on June 15, 2014, Adam was "so angry and drunk" that he choked the parties' dog after he found it chewing on something. Crystal also attached various text messages exchanged by the parties and photographs to support her claims.

¶ 9 On September 4, 2014, Crystal filed a petition for temporary relief in the parties' divorce case. She asked for relief, including exclusive possession of the marital residence, temporary custody of N.R., and that Adam's visitation with N.R. remain suspended or supervised during the pendency of the case. Crystal also asked that the trial court grant her leave to take N.R. "on a temporary and permanent basis" to reside in Florida.

¶ 10 On October 24 and December 8, 2014, the trial court conducted a hearing on all pending issues, including custody of N.R., Crystal's request for removal, and whether the court should issue a plenary order of protection in connection with case No. 14-OP-1131. Adam testified he had been in the Air Force for approximately six years. He served four years of active duty but was currently in the Air National Guard. He testified he would complete his service in November 2015, when his contract was up. Adam stated his Air National Guard commitment

required that he be gone for training one weekend per month. In December 2012, Adam began working for Tate & Lyle, a bulk ingredients manufacturer, in Decatur, Illinois. He worked rotating 12-hour shifts, requiring that he work five weeks on the day shift and then five weeks on the night shift. Adam also stated he worked roughly four days per week, noting his work schedule required "three days on, three days off."

¶ 11 Crystal testified that, in Florida, she worked as an event manager. She did not work while in Illinois. In January 2014, she began taking classes at Midwest Technical Institute (MTI) to become a dental assistant. She testified her classes were Monday through Friday from 8 a.m. to 4 p.m. Crystal testified she enrolled in a nine-month program but had to take a leave of absence. She was scheduled to graduate on December 19, 2014, and would receive certifications in radiology and infection control.

¶ 12 During the marriage, the parties lived in a home that had been purchased shortly before the marriage and was in Adam's name only. Adam asked the court to award him the marital residence. Crystal lived in the marital residence with N.R. during the underlying proceedings but stated she did not pay the mortgage and, in Illinois, had no other place to live. Crystal testified that aside from receiving public aid and \$100 a week in temporary child support from Adam, she received financial support from her father. However, she was sure her father wanted her to pay him back over time.

¶ 13 Crystal stated, other than Adam's family, she had no family members in Illinois and no friends. She testified that she wanted to move back to Florida with N.R., where she would work and attend school. She testified Florida provided direct benefits to her that were not available in Illinois, including "[j]ob opportunities, benefits, living, [and] housing." Crystal stat-

ed that, in Florida, she would initially live with her parents in Navarre until she "could get on [her] feet." Her sister also lived in Navarre and both her parents and sister had existing relationships with N.R. "as much as possible." She stated her mother had been in Illinois helping her since September or October 2014; however, N.R. went to day care while Crystal was in school.

¶ 14 Crystal asserted she looked for jobs in Florida and believed she had "some leads or opportunities for employment." She had not looked for employment as a dental assistant in Illinois, asserting that "it would be really hard because MTI and Lincoln Land *** pretty much kind of flooded this area, the Springfield area." She acknowledged that MTI reported 100% job placement rates for dental assistants but asserted that was limited to students who made "a 90[%] or more in the entire time of being there at the school." Crystal testified she would not qualify because she had taken a leave of absence. She testified MTI would give her job leads but acknowledged she had not looked into that. Crystal believed the job opportunities were better in Florida, stating she looked online and found "more than ten offers where more than half of them already offer benefits and vacation pay." Specifically, she looked at a job "through an outsource company that deals with Elgin Air Force Base." She noted the pay for that position was "higher" and it offered full benefits. It was her understanding that job would also pay for continued education. Crystal also testified that the schools in Florida were better compared to schools in Riverton, Decatur, or Springfield. Also, she stated the crime rate in Florida was very low by comparison.

¶ 15 Crystal denied that she wanted to move to Florida to keep Adam out of N.R.'s life. With respect to visitation, she stated she and Adam "would work something out" and she would let Adam see N.R. if he came to Florida. She also submitted a visitation proposal. Initially, she

asked for visitation restrictions until Adam completed an alcohol assessment. If she were allowed to move to Florida with N.R., she proposed that Adam be allowed visitation of (1) 4 weeks in the summer to be split up into two, 2-week periods; (2) 5 days over the Thanksgiving holiday in odd-numbered years; (3) 10 days over the Christmas holiday—from December 26 to January 4 in odd-numbered years and from December 24 to January 2 in even-numbered years; (4) 1 week during spring break; and (5) up to 10 days anytime Adam travels to Florida and gives reasonable notice to Crystal and the visitation would not interfere with N.R.'s scheduled activities. Crystal further suggested Adam be allowed weekly electronic visitation with N.R. With respect to transportation, Crystal testified she would like to meet Adam halfway, near Huntington, Alabama, to exchange N.R.

¶ 16 Crystal denied that Adam was an involved father. She asserted he never wanted anything to do with N.R. and noted he had never taken N.R. to the park. Crystal testified that she had been N.R.'s caretaker and was the one who changed N.R.'s diapers and fed him. She denied that Adam's family members had a strong relationship with N.R.

¶ 17 Adam testified he loved N.R. and wanted to have full custody of him. While living with Crystal and working, he participated in parenting N.R. Specifically, he fed N.R., changed his diapers, played with him, and put him to bed. Adam stated he helped care for N.R. until July 2014, when he was prevented from doing so by the emergency order of protection. Adam testified that, as of the date of the hearing, he had not seen N.R. for 104 days due to the emergency order. He further testified he would facilitate a relationship between Crystal and N.R. if given custody but did not believe Crystal would do the same. He noted Crystal planned N.R.'s first birthday party on a day he had to work. Adam testified daily interaction with N.R.

was important to him.

¶ 18 According to Adam, Crystal was "manipulative" when it came to spending time with Adam's family. He stated he, Crystal, and N.R. would participate in extended family activities "as much as she would let *** us." Adam noted that in July 2014, his sister, Alyssa Rade, was visiting from Florida but Crystal would not allow her to stay at the parties' home. During the same time frame, Crystal refused to let Adam take N.R. to his sister's birthday party.

¶ 19 Both parties testified regarding conflicts in their marriage. Crystal believed Adam had a drinking problem. She testified she became scared for her life around March or April 2014, when "things started escalating out of control." She noted an occasion when Adam pushed her to prevent her from leaving a room. Further, she stated she did not want to be near firearms and that Adam had threatened her with violence several times. Crystal testified she was afraid of Adam when she filed for an order of protection and continued to be fearful of him. She testified he had a problem with his temper.

¶ 20 Adam agreed that the parties had a lot of conflict in their marriage. He asserted that before Crystal filed her petition for an order of protection, he informed her that he intended to file for a divorce. Adam testified he was aware of the allegations Crystal made against him in connection with the order of protection. He denied that he ever threatened, hit, or pushed Crystal or that he threatened N.R. Adam also denied that he ever forced Crystal to have sex with him. Adam stated he and Crystal drank alcohol "socially together" and the maximum number of drinks he would have was roughly three per night. Generally, Crystal drank the same amount of alcohol as he did.

¶ 21 The record reflects the parties agreed on the admission of all exhibits presented at

trial, including an exhibit containing various text messages between the parties. Each testified regarding the contents of those messages and presented conflicting testimony regarding the specific events that resulted in those messages.

¶ 22 Adam acknowledged owning several firearms. He asserted the hand grenade referenced by Crystal in her petition for an order of protection was inert and "not real." He described it as "basically the shell" and stated that he intended to use it as the knob on the stick shift in his vehicle. Adam asserted Crystal was aware that he had the grenade and he had shown her "plenty of times" that there was nothing inside. He also had the "shell" of a rocket launcher that was "just an empty tube." Further, Adam stated he was also aware that the police were called to his home and took possession of his firearms. Adam testified he was not arrested or charged with unlawfully possessing any type of weapon. He stated Crystal's amended petition for an order of protection was filed after the police visited his home.

¶ 23 Crystal recalled filing an amended description of incidents in connection with her petition for an order of protection. She admitted alleging Adam had an arsenal of weapons that included pipe bombs, rocket launchers, and grenades. Further, she agreed she filed her amended description after she had called the police to the parties' home in early August 2014. Crystal testified the police did not take the grenade or the rocket launcher and agreed she was told those items did not work. However, Crystal testified it did not matter if things like pipe bombs and grenades were live or not live and she was afraid of them no matter what condition they were in.

¶ 24 Adam also denied that he was depressed and needed treatment or that he had talked with Crystal about suicide. He testified a January 6, 2014, text message Crystal attached to her amended description of incidents in the order of protection proceedings, wherein he stated

he wanted to walk in front of a train, was taken out of context. Adam stated the text referred to the results of a football game and had been a joke. During her testimony, Crystal acknowledged Adam's January 6 text was not a real suicide threat and agreed her allegation was "an untrue statement."

¶ 25 Springfield police officer Joseph Arnold and Illinois Secretary of State police captain David Allen each testified that, on August 5, 2014, they were called to the parties' residence to investigate possible explosives. They observed a grenade that Allen determined to be "absolutely safe." Allen also observed an item commonly referred to as a rocket launcher that consisted of a hollowed-out fiberglass tube with no rocket or explosive inside that could be fired. Arnold testified he found nothing illegal at the parties' home and no criminal arrest was made. Allen denied that he observed anything that gave him concern or which would cause him to believe there was anything of a criminal nature in the home.

¶ 26 Adam's mother, father, and stepfather each testified and described Adam as having a close family. They characterized Adam as a loving and involved father who helped care for N.R. by feeding him and changing his diapers. Adam's best friend, Brendon Little, also testified he observed Adam to be a loving, caring, "hands-on" father to N.R. Additionally, Alyssa Rade, Adam's sister, testified she was also in the Air Force and stationed in Florida. The last time she saw N.R. was in Florida in January 2014. Around July 4, 2014, Alyssa came to Illinois to visit with Adam. She had plans to stay with Adam and Crystal and wanted to visit with N.R. However, around that time there was a breakdown in the parties' marriage. Alyssa did not stay with the parties and did not see N.R. She further testified that she had a close relationship with Adam and also wanted to have a relationship with N.R.

¶ 27 Crystal's father, Larry Sutton, testified he observed Crystal to be N.R.'s primary caregiver. Crystal also presented the testimony of two neighbors. Dave Hergett testified he lived across the street from the parties. Most of the time, he saw Crystal with N.R. He attended a cookout in May 2012 and spoke with Adam. He recalled Adam "seemed to have some issues with our current president." Hergett testified Adam stated he was a gun collector and had a bunker. Hergett acknowledged he did not know Adam very well and he himself owned 24 firearms. Amanda Hoyle testified her driveway shared the same street as the parties' driveway. On one occasion she observed Adam throw a letter at Crystal through a car window while looking upset. Hoyle also testified Crystal appeared scared and nervous in Adam's presence.

¶ 28 On January 13, 2015, the trial court issued a detailed memorandum opinion setting forth its decision with respect to both the parties' divorce case and the order of protection case. The court listed the case numbers for both cases in the caption of its memorandum.

¶ 29 The trial court first denied Crystal's request for a plenary order of protection, finding she failed to meet her burden of proof and was not credible "with respect to the allegations made in the petitions for order of protection." The court noted Crystal made allegations in her amended description of incidents that were untrue and obtained an emergency order of protection against Adam after he informed her he intended to file for divorce. The court further stated as follows:

"The court does not find any credible evidence to support [Crystal's] allegations that an order of protection is warranted. Her testimony regarding the specific allegations in her petitions was vague at best. It is clear that [Crystal] is not credible and obtained

the order of protection against [Adam] to keep him away from his child."

¶ 30 In its memorandum, the trial court next addressed the parties' divorce case. It gave Crystal custody of N.R. subject to Adam's right of reasonable visitation and ordered Adam to pay child support of \$773 per month. The court also ordered an equal distribution of marital property and ordered Adam to pay Crystal \$10,721 "for her one half interest in the martial estate." Further, It awarded Adam the marital residence but stated Crystal would be allowed to remain in the residence "until she has found a new place to reside, but in no event past February 28, 2015." Finally, the court denied Crystal's request for removal. It discussed the factors for consideration in removal cases set forth by the supreme court in *In re Marriage of Eckert*, 119 Ill. 2d 316, 518 N.E.2d 1041 (1988), relative to the evidence presented. Ultimately, the court did not believe it was in N.R.'s best interests to allow Crystal to move with N.R. to Florida and stated as follows:

"The court does not find [Crystal's] testimony credible. Additionally, the court finds that the evidence presented by [Crystal] regarding removal was vague and speculative at best regarding potential opportunities in Florida. The court finds that any enhancement to the general quality of life of [Crystal] is greatly outweighed by the detrimental impact such a move would have upon the relationship between the minor child and [Adam]. The court believes that such a move would all but destroy the relationship between the minor child and [Adam] now and in the future."

¶ 31 At the end of its memorandum opinion, the court directed Crystal's attorney to prepare a judgment consistent with its decision. On January 14, 2015, an order was filed in the parties' order of protection case, vacating the emergency order of protection, "dismiss[ing]" Crystal's petition for an order of protection, and ordering the "cause stricken."

¶ 32 On February 19, 2015, the trial court's judgment was filed in the parties' divorce case. The caption listed only the case number for the divorce case and the judgment did not address the order of protection case.

¶ 33 Also on February 19, 2015, Crystal filed a "MOTION TO RECONSIDER AND/OR CLARIFY." Relevant to this appeal, Crystal asked the court to "reconsider [her] request for leave for removal to the State of Florida based on *** additional evidence." She alleged that "since the hearing, additional information ha[d] been uncovered, primarily that the opportunities for employment continue to be elusive and difficult for [her]." Crystal also asserted that since the hearing she was contacted by her previous employer in Florida, Nation Wide Tents 'N Events, which represented it would "welcome her back to her job of event specialist, with a pay rate starting at [\$15] per hour, plus commission, with benefits to include free daycare." She further alleged Adam had continued to take only a nominal interest in spending time with N.R., "including not being present during visitation dates, declining visitation times offered, and otherwise acting in a manner inconsistent with someone who has a genuine desire to be involved with his son's life." Additionally, Crystal alleged the trial court erred in (1) finding that Adam attempted visitation with N.R. but was restricted by the emergency order of protection and (2) attributing any kind of ill motive to Crystal's request for removal of N.R. Crystal's motion did not address any issue related to the court's denial of the plenary order of protection.

¶ 34 On March 30, 2015, the trial court denied Crystal's posthearing motion. Its docket entry provided "[Crystal] may file [a] new Petition for Removal based [on] new evidence subsequent to hearing."

¶ 35 On April 1, 2015, Crystal filed a notice of appeal identifying both the parties' divorce case and the order of protection case. Crystal stated she was appealing "from the February 19, 2015, Judgment which denied [her] request to remove the parties' minor child to the State of Florida [and] denied [her] a plenary Order of Protection." Crystal also asserted her challenge to the trial court's March 30, 2015, denial of her "timely filed Motion to Reconsider and reopen the evidence."

¶ 36 II. ANALYSIS

¶ 37 A. Plenary Order of Protection

¶ 38 On appeal, we first address Crystal's contention that the trial court erred by denying her request for a plenary order of protection. Adam responds, arguing Crystal "waived" her right to appeal the court's dismissal of her petition for an order of protection. He contends Crystal failed to file a timely notice of appeal from the court's January 14, 2015, order, which terminated the order of protection case on the merits and constituted a final and appealable order. For the reasons that follow, we agree with Adam as to this issue and find we lack jurisdiction to review the court's denial of Crystal's request for a plenary order of protection.

¶ 39 Pursuant to Illinois Supreme Court Rule 303(a)(1) (eff. Jan. 1, 2015), a notice of appeal must be filed "within 30 days after the entry of the final judgment appealed from" or "within 30 days after the entry of the order disposing of the last pending postjudgment motion directed against that judgment or order." "[T]he court's decision on the petitioner's right to a ple-

nary order is the usual final order in an order of protection proceeding." *Scheider v. Ackerman*, 369 Ill. App. 3d 943, 945, 860 N.E.2d 1140, 1141 (2006).

¶ 40 Further, an action for an order of protection may be commenced independently, "[b]y filing a petition for an order of protection in any civil court," or in conjunction with another civil proceeding, including an action for dissolution of marriage. 750 ILCS 60/202(a) (West 2012). However, even an action for an order of protection filed in a dissolution case is independent of the dissolution proceedings. *In re Marriage of Gordon*, 233 Ill. App. 3d 617, 627, 599 N.E.2d 1151, 1158 (1992); *In re Marriage of Fischer*, 228 Ill. App. 3d 482, 487, 592 N.E.2d 604, 607 (1992) (agreeing that "unlike issues of child custody, child support, property division, and the grounds for dissolution, an order of protection is not an issue inherently related to a dissolution proceeding").

¶ 41 Here, Crystal filed her petition for an order of protection independently and not as part of the parties' dissolution case. Further, although the order of protection case and the dissolution case were tried at the same time, the record fails to reflect the matters were consolidated by the trial court. On January 13, 2015, the trial court entered a memorandum of opinion setting forth its decision in both cases. However, as Adam points out, the court's final orders in connection with each case were entered separately. In the order of protection case, the court entered an order on January 14, 2015, which dismissed Crystal's petition for an order of protection. That order resolved all issues associated with Crystal's request for an order of protection and left no other issues pending in that case. No posthearing motion was filed directed against that order. On February 19, 2015, the court entered the dissolution judgment, which did not address matters associated with the order of protection case.

¶ 42 We note Crystal argues the trial court's order in the order of protection case was not final and appealable until all the matters in the parties' divorce case had been resolved. She relies on Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010), which concerns appeals from final judgments that do not dispose of an entire proceeding. That rule provides that "[i]f multiple parties or multiple claims for relief are involved *in an action*, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both." (Emphasis added.) Ill. S. Ct. Rule 304(a) (eff. Feb. 26, 2010). However, as discussed, the record reflects the parties' divorce case and the order of protection case were separate, nonconsolidated actions. As such, Rule 304(a) does not control.

¶ 43 Given these circumstances, we find Crystal was required to file a notice of appeal challenging the trial court's denial of the plenary order of protection within 30 days of the court's January 14, 2015, order dismissing her petition. Crystal's April 1, 2015, notice of appeal was untimely filed. As a result, we lack jurisdiction to review the dismissal of Crystal's petition for an order of protection.

¶ 44 B. Removal

¶ 45 On appeal, Crystal next argues the trial court erred in denying her request for leave to remove N.R. to Florida. She maintains the court ignored evidence regarding the benefits to the quality of her life as the custodial parent if removal were allowed and entered a decision that was against the manifest weight of the evidence.

¶ 46 The Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) provides that a court "may grant leave *** to any party having custody of any minor child *** to remove

such child *** from Illinois whenever such approval is in the best interests of such child." 750 ILCS 5/609(a) (West 2012). The parent seeking removal has the burden of proving, by a preponderance of the evidence, that removal is in the child's best interests. *In re Marriage of Tedrick*, 2015 IL App (4th) 140773, ¶ 49, 25 N.E.3d 1233; 750 ILCS 5/609(a) (West 2012).

¶ 47 "In removal cases the paramount question is whether the move is in the best interests of the child." *Eckert*, 119 Ill. 2d at 325, 518 N.E.2d at 1044. "[T]he mere desire of the custodial parent to move to another State, without more, is insufficient to show that the move would be in the children's best interest." *Eckert*, 119 Ill. 2d at 325, 518 N.E.2d at 1044. "In deciding whether removal is in the child's best interest, a trial court should hear any and all relevant evidence." *Eckert*, 119 Ill. 2d at 326, 518 N.E.2d at 1045. "A determination of the best interests of the child cannot be reduced to a simple bright-line test, but rather must be made on a case-by-case basis, depending, to a great extent, upon the circumstances of each case." *Eckert*, 119 Ill. 2d at 326, 518 N.E.2d at 1045.

¶ 48 In *Eckert*, the supreme court set forth several factors for a court to consider when determining whether to allow removal, including (1) the likelihood the proposed move will enhance the general quality of life for both the custodial parent and the children; (2) the motives of the custodial parent in seeking the move; (3) the motives of the noncustodial parent in resisting the removal; (4) the visitation rights of the noncustodial parent given that it is "in the best interests of a child to have a healthy and close relationship with both parents, as well as other family members"; and (5) whether a realistic and reasonable visitation schedule can be reached if the move is allowed. *Eckert*, 119 Ill. 2d at 326-27, 518 N.E.2d at 1045-46. Additionally, "[w]hen removal to a distant jurisdiction will substantially impair the noncustodial parent's involvement

with the child, the trial court should examine the potential harm to the child which may result from the move." *Eckert*, 119 Ill. 2d at 328, 518 N.E.2d at 1046. The *Eckert* factors are not exclusive and no one factor is controlling. *In re Marriage of Collingbourne*, 204 Ill. 2d 498, 523, 791 N.E.2d 532, 545-46 (2003).

¶ 49 "A trial court's determination of what is in the best interests of the child should not be reversed unless it is clearly against the manifest weight of the evidence and it appears that a manifest injustice has occurred." *Eckert*, 119 Ill. 2d at 328, 518 N.E.2d at 1046. Deference to the trial court is appropriate because the trial court is in the best position to observe the parties " 'and, thus, is able to assess and evaluate their temperaments, personalities, and capabilities.' " *Eckert*, 119 Ill. 2d at 330, 518 N.E.2d at 1047 (quoting *Gallagher v. Gallagher*, 60 Ill. App. 3d 26, 31, 376 N.E.2d 279, 283 (1978)). "The trial court's decision is against the manifest weight of the evidence only if the evidence 'clearly' calls for a conclusion opposite to that reached by the trial court or only if the factual findings on which the decision depends are clearly, plainly, and indisputably erroneous." *Tedrick*, 2015 IL App (4th) 140773, ¶ 51, 25 N.E.3d 1233.

¶ 50 Here, the trial court determined removal of N.R. from Illinois was not in his best interests. The record reflects the court considered the factors set forth in *Eckert* and properly weighed relevant evidence. Its decision was not against the manifest weight of the evidence.

¶ 51 The trial court first looked at whether removal would enhance the quality of life of Crystal and N.R. It found Crystal provided "no evidence or credible testimony that the quality of her life will be improved by moving to Florida with the exception that she will be near family." In so holding, the court noted Crystal testified employment opportunities were better in Florida but never attempted to find a job in Illinois and had no job offers in Florida. Crystal also

testified the crime rate was lower in Florida and the schools were better. However, she presented no evidence to support her claims. With respect to this factor, the court's factual findings are supported by the record and not against the manifest weight of the evidence.

¶ 52 The trial court next addressed Crystal's motive in seeking to move. It found respondent's motive was to be near family and did not believe she was motivated to obtain better employment or move to a community with a lower crime rate. Again, the court noted Crystal did "nothing to substantiate her bare assertions regarding [those] matters." The court also found Crystal was "motivated to move to make [Adam's] visitation more difficult." It found that if removal was allowed Crystal would "use it to impede or frustrate [Adam's] visitation." Again the record supports the court's findings, showing Crystal obtained an emergency order of protection after Adam informed her he intended to file for divorce and made allegations in her amended petition for an order of protection that were, at best, exaggerated and, at worst, knowingly false. Ultimately, the court concluded Crystal was not credible. The trial court had the opportunity to observe the parties and their testimony and was in the best position to judge witness credibility. Its factual findings regarding Crystal's motives for seeking removal were not against the manifest weight of the evidence.

¶ 53 The trial court further addressed Adam's motive in resisting removal and found it was based on "a genuine desire to be close to his son." It also noted Adam had been restricted from visitation as a result of the emergency order of protection. These factual findings are also supported by the record. Although Crystal denied that Adam was an involved father and asserted he wanted little to do with N.R., Adam and several witnesses testified he was a loving and involved father who assisted in caring for N.R. Adam further testified he desired daily interaction

with N.R. Additionally, although Crystal finds fault with Adam for failing to seek visitation with N.R. after the emergency order of protection was in effect, the record shows N.R. was named as a protected party in the emergency order and Adam was ordered to stay 200 feet away from both Crystal and N.R. Thus, as the trial court determined, Adam's visitation was restricted as a result of the emergency order. The trial court's factual findings as to Adam's motivation were not against the manifest weight of the evidence.

¶ 54 The trial court next addressed Adam's rights of visitation and N.R.'s relationship with family members. It noted N.R. lived in Illinois for his entire life and had "a close relationship with his father's family which would be negatively impacted if he were to relocate to Florida." The court also believed Adam had a close relationship with N.R. Again, Adam and Crystal presented conflicting evidence regarding Adam's interest in parenting and N.R.'s relationship with both Adam and his extended family. However, the record contained testimony that Adam was an involved father and participated in caring for N.R., and that he had a large extended family in central Illinois who maintained close relationships. We do not find any error in the trial court's factual finding with respect to this factor.

¶ 55 Another factor considered by the trial court was whether a reasonable and realistic visitation schedule could be achieved if removal was allowed. The court found N.R. was a very young child and Adam had a rotating work schedule. As a result, it did "not believe a realistic and reasonable visitation schedule could be achieved that would maintain contact between the minor child and [Adam]," which the court found would be in N.R.'s best interests. The record shows N.R. was born in April 2013, and at the time of the underlying proceedings was approximately one-and-a-half-years old. Further, as found by the trial court, Adam worked 12-hour, ro-

tating shifts. The court's reliance on these facts to find a reasonable and realistic visitation schedule could not be achieved if N.R. moved to Florida with Crystal is not against the manifest weight of the evidence.

¶ 56 Finally, the record shows the trial court weighed the relevant factors to find removal was not in N.R.'s best interests. It stated "any enhancement to the general quality of life of [Crystal] was greatly outweighed by the detrimental impact such a move would have upon the relationship between [N.R.] and [Adam]," and "such a move would all but destroy the relationship between [N.R.] and [Adam] now and in the future." Given the court's credibility findings, which it was in the best position to make, and its concerns regarding Crystal's motivations for seeking removal, the evidence does not clearly call for an opposite conclusion.

¶ 57 On appeal, Crystal cites the proposition "that the interests of the custodial parent should not be automatically subordinated to those of the noncustodial parent in a removal action." *Collingbourne*, 204 Ill. 2d at 528, 791 N.E.2d at 548. Further, she relies on two cases from this court—*In re Marriage of Parr*, 345 Ill. App. 3d 371, 802 N.E.2d 393 (2003), and *Tedrick*—wherein we reversed the trial courts' denials of the custodial parents' removal requests. While we do not disagree with either the proposition cited by Crystal or the results in these cases, we also do not find that they warrant reversal in the instant case. First, the record fails to reflect the trial court automatically subordinated Crystal's interests to Adam's. Rather, it balanced the parties' interests based upon its factual findings. In particular, the court's comments show its belief that Crystal's improper motivation in seeking removal was likely to frustrate Adam's visitation with N.R. if removal was allowed.

¶ 58 Second, as discussed, the decision of whether to allow or deny a request for re-

removal "must be made on a case-by-case basis, depending, to a great extent, upon the circumstances of each case." *Eckert*, 119 Ill. 2d at 326, 518 N.E.2d at 1045. Thus, each removal case must be decided based upon its own particular set of facts. Neither *Parr* nor *Tedrick* involve the same factual scenario presented by this case and we find several important ways in which they are distinguishable.

¶ 59 Initially, unlike the case at bar, in both *Parr* and *Tedrick*, the trial courts found no improper motive by the custodial parents in seeking removal. *Parr*, 345 Ill. App. 3d at 378, 802 N.E.2d at 399 (stating "the trial court found the motives of both parties were well-intentioned"); *Tedrick*, 2015 IL App (4th) 140773, ¶ 63, 25 N.E.3d 1233 (stating the custodial parent was not motivated "by an intention to impair [the other parent's] visitation rights"). Further, in *Parr* and *Tedrick*, the custodial parents sought removal, at least in part, based on offers of better employment in another state. *Parr*, 345 Ill. App. 3d at 374, 802 N.E.2d at 396; *Tedrick*, 2015 IL App (4th) 140773, ¶ 61, 25 N.E.3d 1233. Here, Crystal's testimony showed she had not sought employment in Illinois and had no offers of employment in Florida. Finally, in both *Parr* and *Tedrick* the minors involved were significantly older than N.R. *Parr*, 345 Ill. App. 3d at 373-74, 802 N.E.2d at 395-96 (showing the parties' youngest child was nine at the time removal was requested); *Tedrick*, 2015 IL App (4th) 140773, ¶ 72, 25 N.E.3d 1233 (noting the minor child was seven years old).

¶ 60 Here, we find the trial court relied on relevant factors when determining whether removal was appropriate and properly weighed the evidence. Its specific factual findings were supported by the record and the evidence does not clearly warrant an opposite result. The court's finding that removal was not in N.R.'s best interests was not against the manifest weight of the

evidence.

¶ 61 C. Motion to Reconsider and/or Clarify

¶ 62 Finally, on appeal, Crystal argues the trial court abused its discretion by denying her motion to reconsider. She maintains her motion sought to reopen proofs, which the court should have allowed based on new evidence.

¶ 63 "The purpose of a motion to reconsider is to bring to the trial court's attention (1) newly discovered evidence not available at the time of the hearing, (2) changes in the law, or (3) errors in the court's previous application of existing law." *Stringer v. Packaging Corp. of America*, 351 Ill. App. 3d 1135, 1140, 815 N.E.2d 476, 481 (2004). "To present newly discovered evidence, a party must show that the newly discovered evidence existed before the initial hearing but had not yet been discovered or was otherwise unobtainable." *Stringer*, 351 Ill. App. 3d at 1141, 815 N.E.2d at 481. "A trial court's decision to grant or deny a motion to reconsider lies within its sound discretion, and this court will not disturb such a ruling absent an abuse of discretion." *Simmons v. Reichardt*, 406 Ill. App. 3d 317, 324, 943 N.E.2d 752, 758 (2010).

¶ 64 Here, contrary to Crystal's assertions on appeal, the record reflects that she neither filed a motion to reopen proofs nor made such a request in her motion to reconsider. In her motion to reconsider, she asked the trial court to "[r]econsider [her] request for leave for removal to the State of Florida based on the additional evidence as stated herein or as may be produced in hearing on this Motion." As Crystal did not ask to reopen the evidence, the trial court did not abuse its discretion in failing to grant such relief.

¶ 65 Additionally, the new evidence identified in Crystal's motion to reconsider involved only events occurring after the relevant hearing. As such evidence did not exist prior to

the hearing on removal, it was not a proper basis on which the court could grant Crystal's motion to reconsider. The trial court committed no abuse of discretion.

¶ 66

III. CONCLUSION

¶ 67

For the reasons stated, we affirm the trial court's judgment.

¶ 68

Affirmed.