2018 IL App (4th) 170731-U

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March 12, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re MARRIAGE OF ANDREW STIMSON, Petitioner-Appellee, and JAMIE STIMSON, n/k/a JAMIE WHITACRE, Respondent-Appellant.	))))))))	Appeal from Circuit Court of Macon County No. 08D63 Honorable James R. Coryell, Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Holder White and Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the trial court's decision to deny the mother's request to relocate to North Carolina with the parties' minor children and grant the father's petition to modify parenting time and decision-making responsibility as to one of the parties' children, C.S., was not against the manifest weight of the evidence.

¶ 2 In November 2008, the trial court granted petitioner, Andrew Stimson and respondent, Jamie Stimson, n/k/a Jamie Whitacre, a dissolution of marriage. In August 2015, Jamie relocated the parties' minor children to North Carolina without leave of court. Following two hearings in the fall of 2017, the trial court denied Jamie's petition to relocate the parties' minor children to North Carolina and granted Andrew's petition to modify parenting time and decision-making responsibility as to one of the parties' children, C.S. Jamie appeals, arguing the trial court's determinations were against the manifest weight of the evidence and the court failed

to take into consideration the best interests of C.S. in modifying parenting time and decision-making responsibility. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Andrew and Jamie have two children, J.S. (born December 2, 2002) and C.S. (born June 5, 2004). In November 2008, the parties were divorced. As part of the divorce, the parties entered into a joint parenting agreement, which provided Jamie with physical custody and Andrew with parenting time on Wednesday evenings and every other weekend during the school year. The parties had alternating weeks during the summer. The joint parenting agreement remained in place until October 2017.

¶ 5 Both parties have since remarried. Jamie married Rodney "Luke" Whitacre in September 2009. Jamie and Luke have two children, A.W. (born June 17, 2010) and L.W. (born June 9, 2011). Jamie and Luke separated in 2014. Andrew met Shandy Stimson in 2009 and they were married in 2014.

¶ 6 In May 2015, J.S. alleged Andrew was physically abusive and punched a hole in a door next to where J.S. was standing. Andrew at this time also discovered J.S. had been using her phone to send sexting messages to boys. Jamie sought an order of protection based on Andrew shoving J.S., spitting in J.S.'s face, and punching a hole in the door next to J.S. Jamie also accused Andrew of faking the sexting. Due to multiple continuances, the order of protection was not addressed until August 2015. The order was dismissed.

¶ 7 In August 2015, Jamie relocated the parties' children to North Carolina without leave of court. Andrew filed a petition to order the return of the parties' minor children to Illinois, which was granted on August 20, 2015. Andrew also filed two petitions to modify parenting time and decision-making responsibility but proceeded only on the August 25, 2015

petition. Upon the dismissal of the May 2015 order of protection, Jamie subsequently filed an order of protection in North Carolina. The order of protection was eventually dismissed. Andrew did not have contact with his children until the dismissal of the orders. The next time Andrew saw his children after the May 2015 incident was a weekend in October 2015.

¶ 8 A guardian *ad litem* (GAL), retired Judge Katherine McCarthy, was appointed on October 9, 2015. An order entered on November 9, 2015, granted Andrew supervised parenting time every other weekend through the end of the first semester of school. Andrew agreed to allow his children to finish the fall semester of school in North Carolina. The November 2015 order however was not abided by and subsequently the children did not have parenting time with Andrew. On January 12, 2016, the court appointed court investigator, Helen Appleton, Ph.D.

¶ 9 On January 15, 2016, Jamie was ordered to have the children returned to Illinois by January 22, 2016. Andrew was awarded supervised visitation starting January 22, 2016. At least one of his parents was to be present. On January 20, 2016, an emergency petition for restriction of parenting time was filed by Jamie because J.S. became suicidal and attempted to cut herself when she learned the court ordered the children be returned to Illinois. She was admitted on an involuntary residential hold at Strategic Behavioral Center in North Carolina. Jamie was ordered to return C.S. to Illinois but J.S. could remain in the hospital in North Carolina. Upon C.S.'s return to Illinois in January 2016, Jamie and C.S. stayed with family friends or in a hotel.

¶ 10 On January 22, 2016, the first interim GAL report was submitted to the court. The GAL opined it would be harmful to J.S. to visit her father. As to C.S., the GAL did not then have an opinion.

¶ 11 On January 25, 2016, Jamie filed a notice of intent to relocate with minor children. Andrew filed an objection and response to Jamie's motion. On March 7, 2016, Jamie filed a verified petition to relocate the children to North Carolina. In her petition, Jamie argued economic and family reasons for moving. Jamie stated the house she and Luke lived in, in Illinois, was being foreclosed on and the family had no other place to live. Jamie's mother, who lived in North Carolina, would be able to help with the care of her youngest son, who is severely autistic. Jamie also stated the move was necessary because the relationship between Andrew and his children had been deteriorating, as had J.S.'s mental health.

¶ 12 On March 23, 2016, the second interim GAL report was filed. The GAL noted J.S. was still in the mental health facility and according to C.S., when the GAL interviewed her, visitation with Andrew was not going well because C.S. did not like visiting with her father. The GAL recommended neither girl be forced to visit with their father until each had extensive counseling. The GAL noted the mother had contributed to the girls' fear of their father. The GAL recommended relocation be allowed and then, at the appropriate time, arrange for visitation.

¶ 13 On April 15, 2016, Jamie filed a verified petition for an order of protection against Andrew alleging J.S. had disclosed sexual abuse against her by Andrew. After this allegation came out the Department of Child and Family Services (DCFS) was involved. The order of protection was eventually dismissed.

¶ 14 Starting in May 2016, when Jamie was in North Carolina, C.S. stayed with Kristina Gash. Jamie befriended Gash after she was an investigating police officer in the parties' April 15, 2016, order of protection case. When C.S. resided with Gash, Gash no longer worked

as a police officer. C.S. participated in visits with Andrew, but at times C.S. refused to go on visits and police reports were filed.

¶ 15 In July 2016, J.S. was discharged from the mental health facility. In August 2016, the trial court allowed J.S. to temporarily remain in North Carolina for outpatient mental health treatment pending the outcome of Dr. Appleton's report. In October 2016, Dr. Appleton submitted her report to the parties and the trial court. A supplemental report followed in January 2017.

¶ 16 In preparing her report, Dr. Appleton interviewed the parties, J.S., C.S., Shandy Stimson, Luke Whitacre, and Lori Stimson, Andrew's mother. Dr. Appelton also analyzed J.S.'s medical records. Dr. Appleton summarized her findings in her report. The findings were as follows.

¶ 17 While J.S. was in residential treatment, J.S. alleged Andrew and his friend raped her and sexually abused her when she was young. J.S. reported she remembered the abuse while in treatment. In Dr. Appleton's opinion the likelihood Andrew sexually abused J.S. was "slim to none." J.S. had a strong preference for living with her mother. However, there were concerns about what Jamie had discussed with J.S. J.S. reported her mother told J.S. about pictures that allegedly showed marks Andrew left on J.S.

¶ 18 In regard to C.S., Dr. Appleton noticed C.S. seemed more withdrawn then when she had previously seen her. There were concerns about J.S. having an unhealthy influence over C.S. C.S. was engaging in the same behavior J.S. told her therapist she would do if she had to visit Andrew, *i.e.*, stay in her room and play on her phone. Dr. Appleton was concerned C.S. may feel responsible for her sister's mental health and safety. C.S. expressed a strong preference

for living with her mother and siblings in North Carolina. C.S. reported she felt unsafe with her father based on what J.S. had told her and what he did to J.S. rather than how he treated C.S.

¶ 19 Dr. Appleton determined Jamie not only failed to facilitate the relationship between Andrew and the children but also may have taken steps to interfere with it. Dr. Appleton found Andrew did not take steps to facilitate a relationship between the children and Jamie.

¶ 20 In making a recommendation, Dr. Appleton considered the relevant factors of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) for decision-making responsibility (750 ILCS 5/602.5 (West Supp. 2015)), parenting time (750 ILCS 5/602.7 (West Supp. 2015)), and relocation (750 ILCS 5/609.2 (West 2016)). In regard to the best interests of J.S. and C.S., Dr. Appleton recommended C.S. stay in Illinois and J.S. return to Illinois when her treatment was completed and it was determined she was stable. Dr. Appleton recommended C.S. and J.S. have weekly counseling with Andrew.

¶ 21 On January 12, 2017, a discovery deposition of Dr. Appleton was performed. Dr. Appleton testified to her reports as well as observations she made while conducting interviews.

¶ 22 In February 2017, the third report and recommendation of the GAL was filed. The GAL did not believe it would be detrimental for J.S. to receive outpatient care in Illinois, if a suitable arrangement were to be found. The GAL made a recommendation on relocation based on the 11 factors set forth in section 609.2 of the Dissolution Act. The GAL stated, "[i]t should be noted that the statute allows the court to consider a parent's failure to comply with the notice requirements without good cause as a factor in determining whether a parent's relocation is in good faith."

¶ 23 After weighing the factors, the GAL recommended J.S. be allowed to remain in North Carolina. She did not believe it was in J.S.'s best interest to move her back to Illinois and force her to have a relationship with Andrew. With regard to C.S, the GAL recommended relocation be denied and C.S. remain permanently in Illinois, be enrolled in school, and receive individual and family counseling with her father before she starts regular visitation. The GAL noted this was a very unusual situation and unusual recommendation because courts do not like to separate siblings. However, the GAL was concerned with the influence J.S. had over C.S. as well as allegations of parental alienation by Jamie. Another valid concern was the fact Andrew had not done enough on his part to restore the relationship between his children and himself. The GAL made clear separation does not have to occur if Jamie could move her family back to Illinois and the family could remain intact.

¶ 24 Jamie's verified petition to relocate the children to North Carolina was set for hearing on August 11, 2017, and testimony was heard over two days, August 11, 2017, and August 31, 2017. The testimony of both parties and witnesses interpreted the facts surrounding the motions and occurrences stated above. The trial court in ruling on the motion stated, "I have considered the various Guardian *ad litem* reports, Dr. Appleton's report, supplemental report from Dr. Appleton, the deposition of Dr. Appleton. I have considered the testimony at this hearing and prior hearings in the record in this case."

¶ 25 The trial judge in considering relocation looked to the statutory factors of section 609.2 of the Dissolution Act. The trial judge first addressed Jamie moving the children to North Carolina without leave of court or notice to Andrew. Jamie stated she took the children to North Carolina to be with her husband, but the trial court later found out the parties were separated at the time of the move. Luke got a North Carolina commercial drivers license (CDL) because he

could get one there in a day as opposed to an Illinois CDL taking a week. The trial court found Luke only used the residence in North Carolina as a mailing address and lived on the road. This was not the intact family described to the court. Jamie also stated a reason for the move was to be closer to her family but evidence showed she was estranged from her mother until recently.

¶ 26 The trial court found the educational opportunities were comparable to the educational opportunities in Illinois. The trial court also concluded services for autistic children were comparable in both places. Andrew's reason for objecting to the move was noticed by the trial court, and the court agreed he was correct he would never see the children. There had been three orders of protection filed against him and none of them were entered. Andrew had extended family in Illinois and the quality of visitation would not be ideal with the children living so far away.

¶ 27 The trial judge understood Andrew had a good relationship with the children until Jamie started getting the orders of protection and doing everything she could to keep the children from Andrew. The judge stated he was not going to reward Jamie's bad behavior and denied the petition to relocate. Jamie filed an appeal on this issue, docketed No. 4-17-0731.

¶ 28 The trial court heard evidence on Andrew's August 25, 2015, petition to modify parenting time and decision-making responsibility over two days, September 29, 2017, and October 6, 2017. Similar to the petition for relocation, the trial judge heard from the same parties and witnesses on parenting time and decision-making responsibility. The judge in making a determination as to the modification of parenting time and decision-making responsibility stated, "I am left in a situation where there is no good choice." The judge outlined the testimony and made a determination based on relevant factors of sections 602.7 and 602.5 of the Dissolution Act.

¶ 29 The trial judge described Jamie as a mother who manipulates and cheats then tries to justify what she had done. This was evident in the multiple orders of protection filed, one specifically for sexual abuse, which were never substantiated. On the other hand, the judge observed a father who was not particularly nurturing. The interaction was limited between Andrew and the children. In regard to J.S. and Andrew, the judge did not think anything would change, as the relationship was dead. As to C.S. and Andrew, the relationship was "perhaps salvageable." The judge agreed with Dr. Appleton's and the GAL's determination that having C.S. around J.S. would not be good for C.S. The judge concluded C.S. and Andrew's relationship could be saved if they started participating in some type of counseling.

¶ 30 The trial judge, in ruling on the motion to modify parenting time and decision-making responsibility, concluded the relationship between J.S. and Andrew may be "irretrievably broken." The judge had previously denied the removal petition so at some point J.S. could get back to Illinois and work on her relationship with Andrew. For the time being however, the judge ordered J.S. remain with Jamie. The judge denied Andrew's petition to modify parenting time and decision-making responsibility as to J.S.

¶ 31 The trial judge, in making a determination on the best interests of C.S., determined C.S.'s best interests would be served by being placed with Andrew. The modification petition was granted as to parenting time and decision-making responsibility for C.S. The judge recommended counseling once C.S. was not going to be with Jamie consistently. The trial judge reserved the issue of Jamie's parenting time for the time being. Jamie filed an appeal on this issue, docketed No. 4-17-0830. The cases were consolidated by order of this court.

¶ 32 II. ANALYSIS

¶ 33 On appeal, Jamie challenges the trial court's decisions to (1) deny her request to relocate to North Carolina with the parties' minor children and (2) grant Andrew's petition to modify parenting time and decision-making responsibility as to one of the parties' children, C.S., as against the manifest weight of the evidence. Jamie contends the trial court did not take into consideration the best interests of C.S. in making its parenting time and decision-making responsibility determination. We disagree and affirm.

¶ 34 A. Standard of Review

¶ 35 A trial court's determination regarding relocation and modification of parenting time and decision-making responsibility is reviewed for being against the manifest weight of the evidence. See *In re Marriage of Eckert*, 119 Ill. 2d 316, 328, 518 N.E.2d 1041, 1046 (1988); *In re Marriage of Cotton*, 103 Ill. 2d 346, 356, 469 N.E.2d 1077, 1081-82 (1984). A court's decision is contrary to the manifest weight of the evidence "only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." *Best v. Best*, 223 Ill. 2d 342, 350, 860 N.E.2d 240, 245 (2006). The trial court is afforded a "strong and compelling" presumption in favor of the result it reached as it had the opportunity to observe the parties and thus "able to assess and evaluate their temperaments, personalities, and capabilities." *Eckert*, 119 Ill. 2d at 330 (quoting *Gallagher v. Gallagher*, 60 Ill. App. 3d 26, 31-32, 376 N.E.2d 279, 283 (1978)).

¶ 36 B. Relocation

¶ 37 Jamie argues the trial court's denial of her petition to relocate the parties' minor children was against the manifest weight of the evidence because the court did not give enough weight to the circumstances and reasons for the intended relocation. We disagree.

¶ 38 Judicial approval to relocate a child should only be reversed if it is clearly against the manifest weight of the evidence. *In re Marriage of Eaton*, 269 Ill. App. 3d 507, 511, 646 N.E.2d 635, 639 (1995). "A custodial parent seeking judicial approval to remove children from Illinois has the burden of proving the move, considering its possible impact on visitation and other relevant factors, is in the best interests of the children." *Id.*

¶ 39 Jamie initially did not file leave of court before moving the parties' children to North Carolina. Jamie's March 7, 2016, petition for relocation was filed under the new Dissolution Act, which become effective January 1, 2016. 750 ILCS 5/609.2 (West 2016). A court's determination of relocation of a child is based on the child's best interests. 750 ILCS 5/609.2(g) (West 2016). In determining the best interests of the child, the trial court considered the following relevant factors:

> "(1) the circumstances and reasons for the intended relocation;
>
> (2) the reasons, if any, why a parent is objecting to the intended relocation;
>
> (3) the history and quality of each parent's relationship with the child and specifically whether a parent has substantially failed or refused to exercise the parental responsibilities allocated to him or her under the parenting plan or allocation judgment;
>
> (4) the educational opportunities for the child at the existing location and at the proposed new location;
>
> (5) the presence or absence of extended family at the existing location and at the proposed new location;
>
> (6) the anticipated impact of the relocation on the child;

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

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

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

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

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

¶ 40 "The trial court is not required to make specific findings regarding each *** factor as long as evidence was presented from which the court could consider the factors prior to making its decision." *In re Marriage of Hefer*, 282 Ill. App. 3d 73, 79, 667 N.E.2d 1094, 1099 (1996). "A determination of [a child's] best interests cannot be reduced to a simple bright-line test but rather must be made on a case-by-case basis, depending, to a great extent, upon the circumstances of each case." *In re Marriage of Parr*, 345 Ill. App. 3d 371, 376, 802 N.E.2d 393, 398 (2003).

¶ 41 Jamie asserts the trial judge's order denying her petition to relocate the children to North Carolina was a punitive measure against her for not initially filing leave of court or giving notice to Andrew before moving the children to North Carolina. Jamie argues the trial court

should not hold it against a custodial parent if she legitimately decides to leave and the relocation is in the best interests of the children. Jamie's contention is contrary to the statute where any relevant factors bearing on the children's best interests are taken into account. See 750 ILCS 5/609.2(g)(11) (West 2016). The GAL stated, as did the court in *Eckert*, a parent's failure to comply with the notice requirements without good cause is a factor to be considered and can determine whether a parent's relocation is in good faith. See *Eckert*, 119 Ill. 2d at 327. The trial judge therefore did not err in considering motive as a factor in relocation.

¶ 42 Jamie argues the trial court failed to consider the best interests of the children. Jamie argues the move to North Carolina was in the best interests of the children for multiple reasons. Luke told Jamie in July 2015 the house in Illinois was going into foreclosure and the family would not have anywhere to live. Jamie moved to North Carolina in August 2015. However, the mortgage foreclosure complaint on the residence in Illinois was not filed until October 2015. Jamie denied knowing she could continue to live in the residence rent-free until foreclosure was complete. The trial judge did not believe this contention stating Jamie just decided to move to North Carolina. Jamie's failure to inquire about her rights in the foreclosure case was troublesome due to the fact litigation with Andrew was ongoing when she moved and she was represented by an attorney.

¶ 43 Jamie next contends the move was in the best interests of the children because Jamie was out of work and struggling to care for her autistic son, L.W. If Jamie moved to North Carolina, she would be near her mother and stepfather, who could help with childcare. Jamie argued the best interests of the children depend in large part on whether the move improved the quality of life of the custodial parent and the children and such was the case here. See *In re Marriage of Roppo*, 225 Ill. App. 3d 721, 731, 587 N.E.2d 1031, 1037 (1991). The evidence

however contradicts this assertion. Jamie told Dr. Appleton she had no contact with her mother from age 16 until J.S. was 5 years old. Jamie had visited her mother twice in North Carolina and her mother had visited her in Illinois. J.S. told Dr. Appleton Jamie did not reconcile with her mother until 2015. The trial court questioned how much help Jamie actually received from her mother in caring for the children.

¶ 44 Jamie also had not been employed since 2012 when she quit her job to care full time for L.W. Jamie was qualified to work as a massage therapist and testified she could obtain employment in North Carolina as a message therapist or as an aid at the school L.W. attended. However, the evidence does not show Jamie had obtained employment in North Carolina. The evidence also does not show Jamie had L.W. enrolled in school.

¶ 45 Jamie, at the hearing on this motion, testified Luke supports her and the children. Jamie contends the move to North Carolina was in part because of Luke's job as a commercial truck driver and the move would keep the family intact. Luke testified at the hearing on this motion that obtaining a CDL in North Carolina was easier than in Illinois. The trial court was initially led to believe Luke and Jamie were still married. The trial court did not find out until later Luke and Jamie were separated and had been since 2014.

¶ 46 Despite the separation, Jamie stated her and Luke work well coparenting together. J.S. and C.S. love Luke and communicate by phone with him regularly. Luke testified at the hearing on this motion, he considered J.S. and C.S. to "be like his own daughters," but stated he lives out of his truck and only visits Jamie's North Carolina residence once every two months to visit the children. The trial court in ruling on the motion stated this was not the intact family initially described to the court.

¶ 47 Jamie contends the move was in the best interests of the children because the relationship with the children and Andrew was beginning to deteriorate, as had J.S.'s mental health. Jamie testified at the hearing, upon J.S. and C.S. arriving in North Carolina their demeanor and mental health improved. The children were enrolled in school and according to Jamie were thriving in both curriculum and extracurricular activities. This assertion by Jamie however was contradicted by Dr. Appleton's report, which showed C.S. had not been involved in any extracurricular activities in North Carolina. The evidence also showed C.S. functioned well at Mt. Zion schools as well as her new school in North Carolina. Dr. Appleton's report stated, "[J.S.] is a deeply disturbed youngster who is having significant difficulty functioning in all settings." There was some evidence J.S. may have been being bullied at her school in North Carolina. J.S. was also not involved in any extracurricular activities in North Carolina. The trial court considered the children's education and the trial judge determined the education was comparable in Mt. Zion, Illinois, and North Carolina.

¶ 48 With respect to the children's relationship with Andrew, Jamie argues J.S and C.S. were fearful of Andrew's drinking. Dr. Appleton asked C.S. about Andrew's drinking while interviewing her and Dr. Appleton concluded C.S.'s knowledge of Andrew's drinking was not consistent. Dr. Appleton found no current alcohol or drug issues with Andrew. Jamie also argues a plethora of evidence presented over the two years of litigation showed J.S.'s fluctuating mental health being related to her relationship with Andrew. Jamie contends J.S.'s mental health started to deteriorate after the October 2015 visit with Andrew. The trial court determined the relationship began to deteriorate after Jamie filed orders of protection against Andrew, which were all unfounded.

¶ 49 Jamie argues the trial court failed to take into consideration J.S. and C.S.'s wish to remain in North Carolina with their mother. See *In re Marriage of Siegel*, 123 Ill. App. 3d 710, 718, 463 N.E.2d 773, 780 (1984). Jamie is correct the evidence showed J.S. and C.S. did not wish to see their father, but the trial court determined this was due in part because of manipulation by Jamie as well as an unhealthy influence by J.S. over C.S.

¶ 50 Jamie contends the quality of treatment for J.S.'s mental health needs are better in North Carolina than in Illinois. J.S.'s medical records showed hospitalization in January 2016 for "moderate suicide risk," "anorexia," "anxiety/depression," and a "history of self-injury." Jamie points to the GAL's third report where the GAL stated continuity of care was in J.S.'s best interests. Dr. Appleton acknowledged in her report that, due to the eligibility for Medicaid in North Carolina, J.S. is receiving extensive treatment, which may not be available in Illinois under Andrew's medical insurance. The trial court was sensitive to this issue and in January 2016 after an emergency petition was filed, the court allowed J.S. to remain in North Carolina for treatment. The trial court agreed with Dr. Appleton that, for the time being, J.S. stay in North Carolina to finish her treatment but upon completion, she should be returned to Illinois.

¶ 51 Jamie last contends it was in the best interests of J.S. and C.S. to stay in North Carolina. J.S. and C.S. were very close to their brothers, helped take care of them, and they had a hard time being away from each other. J.S. and C.S. had a positive relationship with their maternal grandparents. They enjoyed doing projects in their grandmother's art studio and going to the beach with their grandfather.

¶ 52 Jamie emphasizes "[t]he welfare and real interest of the children takes precedence over the interest or claims of the parties" in arguing for J.S. and C.S's best interests. See *McDonald v. McDonald*, 13 Ill. App. 3d 87, 90, 299 N.E.2d 787, 790 (1973). Jamie

however fails to see her actions as contributing to the family being apart where Jamie could keep the family intact if she, as the GAL opined, moved her family back to Illinois.

¶ 53 Andrew opposed relocation to North Carolina, arguing he would never see his children and asserts Jamie interfered with his relationship with the children. Andrew pointed to a number of situations to back up his contention of interference: (1) Jamie moved the children to North Carolina without notice to Andrew; (2) Jamie filed three orders of protection against Andrew from May 2015 to the date of the hearing, all of which were dismissed by her or thrown out by the trial judge after an evidentiary hearing; (3) Jamie did not comply with the trial court's order of August 20, 2015, to return the children to Illinois; (4) Jamie did not comply with the agreed order of November 9, 2015, giving Andrew temporary visitation; and (5) Jamie did not return to Illinois with C.S. until ordered to do so by the trial court.

¶ 54 Andrew also looks to Dr. Appleton's report where she stated, "[Jamie] appears to have not only failed to facilitate the relationship between Andrew and the girls, but to have taken active steps to interfere with it." At the August 2016 order of protection hearing, J.S. testified to trauma experienced at the hands of Andrew. The testimony included references to physical and sexual abuse. The trial judge however did not find the evidence credible and dismissed the order of protection. Dr. Appleton stated there was no credible evidence to J.S.'s allegations, concluding the likelihood of sexual abuse by Andrew was "slim to none." Dr. Appleton at her deposition testified she did not believe it to be coincidental J.S. first made the accusations of sexual abuse against Andrew on the day Jamie visited her in the hospital, showed her pictures of a handprint bruise on her back, and told her Andrew had given her the bruise.

¶ 55 Dr. Appleton had the chance to interview and observe C.S. multiple times. Dr. Appleton was concerned about J.S. having an unhealthy influence over C.S. C.S. would testify

to situations based on what J.S. had told her. Dr. Appleton testified at her deposition to C.S. potentially feeling responsible for J.S.'s mental health and safety. The GAL, in her third report, also stated she was concerned with the influence J.S. had over C.S. as well as Jamie's part in alienation from Andrew.

¶ 56 As the trial court stated, Andrew's reason for objecting to relocation was "simple. He would never see the children." While Andrew had a good argument for denial of relocation, he is not blameless in the breakdown of the relationship between himself and the children. Dr. Appleton found Andrew did not take steps to facilitate the relationship between Jamie and the children. Dr. Appleton was concerned about Andrew being inflexible in his parenting. The GAL was concerned Andrew had not done enough to repair his relationship with the children.

¶ 57 Andrew had court-ordered telephone privileges with C.S. but only called her five times and sent minimal text messages over a six-month period. Andrew states the reason he did not call was because C.S. would not talk to him or respond to his text messages. Andrew and C.S. only had five counseling sessions in six months because Andrew stopped making appointments. Andrew argued he stopped making the appointments because the counselor told him further counseling was pointless due to the "manipulation going on."

¶ 58 As to J.S., prior to her being admitted into the mental health facility, Andrew would try to text J.S. but would not get a response. Jamie argues Andrew did not supervise J.S. because she cut herself and was sexting while at his house. Jamie, however, became aware of J.S. cutting in March 2015 and did not inform Andrew. Andrew tried to tell Jamie about the sexting and Jamie took the position Andrew faked it. The orders of protection came after this. It is evident both parties have not done their due diligence to facilitate a relationship with the other parent and the children.

¶ 59 The trial court understood the history of the family to be that at some point Andrew had a good relationship with the children. Andrew testified at the hearing on this motion, saying there were no problems when the children were at his house until the orders of protection were filed. J.S. and C.S. enjoyed spending time with Andrew's wife, Shandy, and Andrew's extended family. Now, Andrew had not seen J.S. in over two years and C.S. does not interact with Andrew or his family while C.S. was visiting Andrew. The trial court addressed the relationship between Andrew and C.S. as maybe strained right now, but it would be in C.S.'s best interests to move back to Illinois and have visitation with Andrew. The trial court noted the children have a support system through extended family in Illinois not just North Carolina.

¶ 60 The trial court was correct in balancing the relevant statutory factors as well as analyzing Dr. Appleton's report, deposition testimony, the GAL's reports, and the testimony and evidence presented at the petition hearing and other prior hearings. The trial court agreed with the two court-appointed experts the children's relationship with their father was strained but relocation to North Carolina was only going to further break the relationship where returning to Illinois had the potential to mend the relationship.

¶ 61 We agree with the trial court the distance between the children and Andrew along with the lack of quality in visitation was not helping repair the relationship. The children need to be in the same state as their father in order for the relationship to progress. The trial court took into consideration Jamie and Andrew's arguments, but ultimately the court made a determination based on the best interests of J.S. and C.S. The trial court found the factors to weigh in favor of denying the motion. The trial court's denial of the petition for relocation was therefore not against the manifest weight of the evidence.

¶ 62 C. Modification of Parenting Time and Decision-Making Responsibility

¶ 63 Jamie argues the trial court's finding that it was in C.S.'s best interests to grant Andrew's petition to modify allocation of parenting time and decision-making responsibility was against the manifest weight of the evidence. Jamie contends the trial court did not take into consideration the best interests of C.S. in making its determination. We disagree.

¶ 64 Same as above, effective January 1, 2016, a new Dissolution Act became effective. 750 ILCS 5/602.5 (West Supp. 2015); 750 ILCS 5/602.7 (West Supp. 2015). The terms "allocation of parental responsibilities: decision making" and "allocation of parental responsibility: parenting time" replaced "custody" throughout the Act. See Pub. Act. 99-90, §§ 5-15 (eff. Jan. 1, 2016). Andrew's August 25, 2015, petition to modify parenting time and decision-making responsibility was filed under the old Dissolution Act. 750 ILCS 5/602 (West 2014) (Best Interests of Child). The trial court however heard evidence and applied the current statutes for allocation of responsibility (750 ILCS 5/602.5) (West Supp. 2015)) and allocation of parenting time. (750 ILCS 5/602.7) (West Supp. 2015)). Both parties cite the current statutes.

¶ 65 Judicial approval to modify parenting time and responsibility should only be reversed if it is against the manifest weight of the evidence. *Cotton*, 103 Ill. 2d at 356. The trial court has authority to modify a parenting agreement "if the court finds, by a preponderance of the evidence, that on the basis of facts that have arisen since the entry of the existing parenting plan or allocation judgment ***, a substantial change has occurred in the circumstances of the child or of either parent and that a modification is necessary to serve the child's best interests." 750 ILCS 5/610.5(c) (West Supp. 2015).

¶ 66 The record shows the initial joint parenting agreement was entered when Jamie and Andrew got divorced in 2008. In August 2015, when Jamie moved with the parties' minor children to North Carolina, the parenting agreement ceased to be followed as Andrew was not

even given notice of the move. After a number of unfounded orders of protection against Andrew and not seeing his children for extended periods, Andrew filed a petition for modification of parenting time and decision-making responsibility to J.S. and C.S. Prior to holding a hearing on Andrew's motion, the trial court denied Jamie's petition to relocate the children to North Carolina due in part to her behavior in moving the children without notice to the court or Andrew.

¶ 67 Due to J.S.'s fragile mental and emotional state, Dr. Appleton's and the GAL's concern about J.S. having an unhealthy influence over C.S., and the parties' inability to facilitate a relationship between the other parent and the children, the trial court found by a preponderance of the evidence, a reexamination of parenting time and decision-making responsibility was necessary.

¶ 68 The trial court, in ruling on Andrew's motion for modification of parenting time and decision-making responsibility to J.S. and C.S., considered the relevant statutory factors in determining the best interests of J.S. and C.S. The relevant factors include: (1) the wishes of each parent seeking parenting time; (2) the wishes of the child, taking into account the child's maturity; (3) the amount of time each parent spent performing caretaking functions in the 24 months preceding the filing of any petition for allocation of parenting time; (4) any prior agreement or course of conduct between the parents relating to caretaking functions of the child; (5) the interaction and interrelationship of the child with parents, siblings, and other significant persons; (6) the child's adjustment to home, community, and school; (7) the physical and mental health of all individuals involved; (8) the child's needs; (9) the distance between the parents' residences, the difficulty of transporting the child, and ability of the parents to cooperate in the arrangement; (10) whether a restriction on decision-making or parenting time is appropriate; (11)

physical violence or threat of physical violence by a parent directed at the child or members of the household; (12) the willingness and ability of each parent to place the needs of the child ahead of his or her own needs; (13) the willingness and ability of each parent 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 member of the household; and (15) any other factor the court expressly finds to be relevant. See 750 ILCS 5/602.5(c), 602.7(b) (West Supp. 2015).

¶ 69 A trial court is not bound to enumerate its opinion on each statutory factor, but it must be apparent the court considered the evidence as applied to the factors. *Siegel*, 123 Ill. App. 3d at 716. The trial judge considered all of the statutory factors in determining the best interests of the children. The trial court ruled on the relocation petition five weeks earlier. At the relocation hearing, the judge stated he had considered not only the testimony of the parties at the hearing, but prior hearings, Dr. Appleton's initial report, her supplemental report and deposition, and various GAL reports. Dr. Appleton's report specifically enumerated all of the statutory best interest factors for parenting time and decision-making responsibility.

¶ 70 The trial judge in making a determination as to modification to parenting time and decision-making responsibility stated, "I am left in a situation where there is no good choice." The judge ultimately determined the relationship between Andrew and J.S. was "irretrievably broken." For the time being, the trial court did not believe it was in J.S.'s best interests to be with Andrew. The judge denied the modification to parenting time and decision-making responsibility for J.S. In regard to C.S., the judge granted Andrew's motion for modification determining it was in C.S.'s best interests to be placed with Andrew. The judge stated, "I mean I don't think there's ever going to be a relationship between [C.S.] and her father unless we do something right now."

¶ 71 Jamie disagrees with the ruling of the trial court, stating the court failed to take into account the best interests of C.S. based on the statutory factors. Jamie argues modification was not proper where a child was otherwise happy and healthy, it is not in the child's best interest to change the environment she had been living in absent good cause. See *Hefer*, 282 Ill. App. 3d at 79. Jamie points to the GAL's recommendation in her second interim report where the GAL opined neither child be forced to visit Andrew until extensive counseling took place. Jamie also looked to Dr. Appleton's report and deposition where Dr. Appleton opined C.S. was not functioning in Andrew's home and Andrew was not making the necessary effort to facilitate his relationship with C.S.

¶ 72 While Jamie is correct a child does better in an environment where she is happy and healthy, Jamie fails to see the best environment may not necessarily be with her. Andrew had not done a perfect job in facilitating a relationship with C.S. The trial court in making a ruling on the modification motion described Andrew as not particularly nurturing. The judge also found limited interaction between Andrew and C.S. Andrew's effort to call or text C.S. outside of visits was minimal, and he did not send birthday cards or gifts. Even when Andrew had parenting time with C.S., he worked during visits and C.S. testified Andrew did not speak to her. C.S.'s parenting time consisted of her sitting in the house or playing on her phone. Andrew disputes he was always working during visits and argues C.S. would not engage with him or his family.

¶ 73 While Andrew's relationship with C.S. was not perfect, Jamie fails to take into consideration the GAL's and Dr. Appleton's overall recommendation, which was C.S. should remain in Illinois and participate in counseling with Andrew. The GAL and Dr. Appleton were concerned with Jamie not facilitating a relationship with C.S. and Andrew but rather interfering

with the relationship. J.S. was also found to have an unhealthy influence over C.S. An environment with this level of manipulation according to the trial court was not healthy.

¶ 74 Jamie alleges she was C.S's primary caregiver. After the parties divorced, the parties were granted joint legal custody. While Jamie was primarily in control of C.S. during the school year, the parties had equal time during the summer. As of the first date of this hearing on September 29, 2017, Jamie still resided in North Carolina, and C.S. resided in Illinois. When in Illinois, Jamie and C.S. stayed with family friends or in a hotel. When Jamie is in North Carolina, C.S. stays with Gash. Andrew argues Jamie's role as primary caregiver ended when C.S. returned to Illinois in January 2016 because Jamie remained a resident of North Carolina and C.S. was only intermittently in her care.

¶ 75 Jamie argues the trial court failed to take the wishes of C.S. into consideration. Courts should give sufficient weight to the preferences of children where the preference is reasonable. *Anderson v. Anderson*, 32 Ill. App. 3d 869, 870, 336 N.E.2d 268, 269 (1975). While C.S. testified she was scared of her father and would prefer to live with her mother. Dr. Appleton found C.S.'s fear of her father was not due to her own experiences, rather due to things J.S. had told C.S. All allegations of abuse had been unfounded against Andrew. The trial court agreed with Dr. Appleton and the GAL, having C.S. around J.S. was not a good idea for C.S. While C.S.'s preference to live with Jamie was taken into consideration, the trial court determined based on the evidence it was in C.S's best interests to be placed with Andrew rather than Jamie.

¶ 76 Courts have held a presumption against separating siblings in custody cases except in extraordinary circumstances. *In re Marriage of Seymour*, 206 Ill. App. 3d 506, 512-13, 565 N.E.2d 269, 273 (1990). The trial court understood placing J.S. with Jamie and C.S. with

Andrew was not typical but due to J.S.'s influence over C.S., this was found to be necessary. C.S. had effectively been separated from her siblings since January 2016, due to the fact Jamie and her children, except C.S., live in North Carolina and C.S. lives in Illinois. The trial court agreed with the GAL, this situation could be rectified if Jamie moved her family back to Illinois.

¶ 77 The trial judge reserved the issue of Jamie's parenting time, to determine the proper way to stop the manipulation by Jamie. This was evident where the judge stated, "I am going to reserve the issue of Mrs. Whitacre's parenting time for the time being and see if we can get something submitted as to some type of parenting time or supervision of it that we don't have this poisoning going on and on and on." The judge reserved the issue of parenting time only for the time being and doing so was not against the best interests of C.S. where manipulation by one parent is disturbing the child's healthy living environment.

¶ 78 Based on the applicable statutory factors, the trial court determined it was in C.S.'s best interests to modify parenting time and decision-making responsibility in favor of Andrew. The trial court recommended Andrew and C.S. start extensive counseling. Based on the evidence presented, we find the trial court properly granted Andrew's motion to modify parenting time and decision-making responsibility based on the best interests of C.S. Jamie failed to demonstrate the trial court's decision was against the manifest weight of the evidence.

¶ 79 III. CONCLUSION

¶ 80 We affirm the trial court's judgment.

¶ 81 Affirmed.