2019 IL App (5th) 190018-U

NO. 5-19-0018

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

JOSE RAMON,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellant,	)	Madison County.
	)	
v.	)	No. 17-F-545
	)	
JENNIFER HENDRICKS,	)	Honorable
	)	Maureen D. Schuette,
Respondent-Appellee.	)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Moore and Barberis concurred in the judgment.

ORDER

¶ 1 *Held*: Where there is no transcript of the trial court's hearing or bystander's report pursuant to Supreme Court Rule 323 (Ill. S. Ct. R. 323 (eff. July 1, 2017)), the only available evidence consists of the pleadings, financial affidavits, and the report of the guardian *ad litem* (GAL). Where the GAL recommended that the mother, Jennifer Hendricks, be awarded sole parental decision-making responsibilities and that she be designated as the primary custodial parent subject to parenting time with the father, Jose Ramon, the trial court's determination that it was in the minor's best interests to make those awards is not contrary to the manifest weight of the evidence and is affirmed. Where the trial court imputed income to the father in the amount that he earned in the year preceding the hearing, the trial court did not abuse its discretion and we affirm the child support order. Where there is no factual basis to disqualify the GAL and/or to discount the GAL's report, we deny the father's request and affirm the trial court's judgment.

¶ 2 Jose Ramon and Jennifer Hendricks had a daughter. At the end of the relationship, Jennifer moved out of Jose's home with their daughter. Jose sought court-ordered parenting time. Jose appeals from the trial court's order assigning significant decision-making responsibilities to Jennifer on matters of education, medical care, religion, and extracurricular activities; limiting his parenting time to alternate weekends, holidays, birthdays, and two nonconsecutive weeks in the summer; imputing his income to the level he earned in 2017 and basing child support on that amount after application of all required computational steps; and declining to disqualify the GAL and to bar consideration of the GAL's report at the hearing. For the reasons that follow in this order, we affirm.

¶ 3 BACKGROUND

¶ 4 Jose and Jennifer were in a personal relationship and during that relationship, they had one child. Their daughter, A.R., was born on July 2015. The couple never married. On August 30, 2017, Jennifer moved out of Jose's home and took A.R. She moved in with her parents in a nearby community.

¶ 5 On September 1, 2017, Jose filed his emergency petition to establish parenting time and to allocate parental responsibilities. In his petition, Jose stated that on August 30, 2017, A.R. slapped Jennifer's hand, which upset her. Jennifer then placed A.R. on a bed, A.R. fell off the bed striking her head, and A.R. was treated and released from an area emergency room. Upon return to their shared home, Jose questioned Jennifer about why she left A.R. unattended on the bed. Jennifer left with A.R. that evening and did not return.

¶ 6 On that same date, the trial court entered an emergency order prohibiting Jennifer from removing the child from Illinois.

¶ 7 On September 13, 2017, the trial court entered a temporary order providing Jose with parenting time on specific dates. Neither party was allowed to remove A.R. from Illinois or the metro-St. Louis area.

¶ 8 On September 26, 2017, Jose and Jennifer filed their temporary agreed parenting plan. They reserved the division of significant decision-making responsibilities. Jose and Jennifer agreed that while A.R. was enrolled in the Goddard School (daycare and preschool in Edwardsville), decision-making was to be equally shared with both parents being allowed to communicate with the school. A.R. was to attend the Goddard School full time with both Jose and Jennifer having the right to visit her during her lunch hour and to pick her up from school as early as 2 p.m. If A.R. was ill, the parent detecting the illness was required to immediately inform the other parent. Jose had parenting time from Monday to Wednesday. Jennifer had parenting time from Wednesday to Friday. The parties agreed to alternate weekends. Parenting time on Halloween, Columbus Day, and Veterans Day was determined with all other holidays reserved. Both Jose and Jennifer were permitted to communicate with A.R. while spending parenting time with the other parent at all reasonable times by phone, text, or email. Designation of the child's address for school enrollment was reserved. The right of first refusal of parenting time was also reserved. In all categories of significant decision-making—education, health, religion, and extracurricular activities—Jose and Jennifer had to make joint decisions until a permanent division of these responsibilities occurred.

¶ 9 The trial court entered this temporary parenting order that same date. In a separate order, the trial court ordered the parties to mediate the remainder of the issues of parental responsibilities and parenting time. The court's order stated that if these issues were not resolved by November 15, 2017, that the court may appoint a GAL.

¶ 10 Jose and Jennifer met with the mediator on two dates. The first session was on September 26, 2017, at which they finalized the details of their temporary agreed parenting agreement. On November 28, 2017, the parties again met with the mediator and completed the balance of the temporary plan including allocation of parental responsibilities and parenting time on certain holidays.

¶ 11 Jennifer's attorney asked the court to appoint Bonnie Levo as the child's GAL. The court agreed and appointed attorney Levo on December 13, 2017.

¶ 12 On March 20, 2018, the GAL sent a letter to the court and to the attorneys for Jose and Jennifer to ask the court to settle upcoming holiday parenting time if the parties could not agree. On April 17, 2018, the trial court entered a detailed order containing the holidays and birthdays schedule.

¶ 13 On May 16, 2018, Jennifer filed a motion to modify the temporary agreed parenting order. She alleged that there had been a substantial and continuing change in circumstances in the following respects:

(1) Jose would not provide diapers for A.R. at the Goddard School and the school had to "borrow" diapers from other children;

(2) A.R. experienced recurring diaper rash and vaginitis after parenting time with Jose;

(3) Jennifer utilized local law enforcement at parenting time exchanges "due to [Jose]'s acts and actions";

(4) Jose had cursed at and made vulgar hand gestures directed to Jennifer in front of A.R.;

(5) A.R. tells Jennifer that daddy is going to replace mommy; and

(6) A.R. told Jennifer that daddy does not want A.R. anymore because she broke something at his home.

In this motion, Jennifer also alleged that she feared that Jose would leave the area with A.R. and requested that Jose provide a copy of his citizenship paperwork.

¶ 14 On May 21, 2018, the court entered an order setting vacation geographic parameters (Illinois or Missouri) and the dates awarded each parent. The trial court denied Jose's request to take A.R. to Florida on vacation and ordered him to provide copies of his passport and citizenship paperwork to the GAL.

¶ 15 Jose asked the trial court to modify the temporary agreed parenting order on July 16, 2018, by extending his alternate weekends from Sunday evening until Monday morning.

¶ 16 The only reported "evidence" is in the GAL's September 11, 1018, report to the court. There is no transcript of the court's hearing. No bystander's report was provided when the record on appeal was filed. Later, Jose filed a motion in this court seeking to compel cooperation in the preparation of a bystander's report and to supplement the record on appeal. On May 9, 2019, we denied this motion.

¶ 17 Much of the GAL's report is based upon the various meetings and interviews she conducted. The report is lengthy and is summarized in the following paragraphs.

¶ 18 Jennifer met with the GAL at the GAL's office. She confirmed that Jose was the father of A.R. She currently lives with her parents in Livingston. She stated that Jose was a stay-at-home father for the first year of A.R.'s life. She told the GAL that she left the house she shared with Jose because he was teaching A.R. to hit her, scream at her, and throw things at her. A.R. currently attends the Goddard School in Edwardsville and Jose pays her tuition. Jose is not otherwise paying child support. At the time of the interview, Jennifer worked at Reliance Bank. She claimed that Jose earned between $75,000 and $100,000 annually.

¶ 19 Jennifer made various negative allegations about Jose. She told Levo that Jose used to live in California, but he ran away from debts and returned to the area. Jose's mother used to live in Edwardsville, but she moved to Miami to live with another son before Jose could "clean her out of all of her money." Jennifer complained about Jose's friend from Hannibal, Missouri, and stated her concern that Jose would attempt to take A.R. to this man's house where there were young female escorts and underage drinking. She told the GAL that Jose refused to allow A.R. to get tubes surgically placed in her ears. Jennifer stated that Jose made "disruptions" at the Goddard School including telling A.R. that her clothing was dirty. She claimed that he had obsessive tendencies, that he videotaped her, that he called her names in front of A.R., that she considered him to be a flight risk, and that he had not filed tax returns for several years.

¶ 20 Jennifer also made multiple allegations of Jose's criminal and anger issues. She told the GAL that Jose had been arrested twice for driving under the influence in Missouri; that he had an ongoing feud with a neighbor over trespassing; that he was charged with a crime for trying to hit a neighbor with his vehicle; that on one Halloween, he pulled ribbons from A.R.'s hair and removed her costume, throwing it to the floor; that he had threatened her parents; that an Edwardsville police officer warned her that Jose was mentally unstable; that Jose grabbed her by her coat when they were at a doctor's office; that he could be sexually rough; that he came to her workplace and tried to get her fired; and that he threw A.R.'s pack and play across a room in anger because she was scheduled to work on a Saturday.

¶ 21 Jennifer was unable to list any good qualities that Jose exhibited, other than that he is a good liar.

¶ 22 Regarding Jose's care of A.R., Jennifer claimed that A.R. tells her that Jose yells and uses expletive-based language about her and does not give A.R. baths and as a result, she developed a diaper rash. Finally, Jennifer stated that while she believes that Jose loves A.R., she stated that he loves his possessions more.

¶ 23 Jose met with the GAL at the GAL's office. Jose told the GAL that many of her questions were irrelevant. The GAL explained that it was not for him to determine which questions were relevant, but that she needed to have her questions answered so that she could determine what was in the best interests of A.R. The GAL commented:

> "While I believe Mr. Ramon loves and cares for his daughter, I did not find him to be supportive of A[.R.] and her relationship with her Mother. He was very negative about Jennifer's family and her living conditions. This is of great concern

> because Jennifer reports that her daughter hits her and will not obey her when she comes from her Father's. That type of behavior will make A[.R.] 'a kid in the middle.' "

¶ 24 Jose told the GAL that he worked for a health care company that owns 27% of the nursing homes in Missouri. He is a business analyst for the company and works out of the Creve Coeur office and his home. He mentioned his friend from Hannibal who he's been friends with for 20 years.[1]

¶ 25 Jose was born in Cuba and emigrated at the age of nine to the United States, but lived for some period of time with his father in Miami and in Madrid, Spain. His father was an orthopedic surgeon. His parents are divorced, but both now live in Miami. Jose attended a private college preparatory school in St. Louis for high school, and attended St. Louis University for pre-med classes, before transferring to Southern Illinois University in Edwardsville to complete a finance degree. He worked for various brokerage firms in the St. Louis area, before moving to California where he was employed in the same line of work for five years. He returned to the St. Louis area in 2011-2012 because his mother, who was then living in Edwardsville, was ill. He built his home in Edwardsville in 2013.

¶ 26 Jose and Jennifer were together as a couple for three years. A.R. is his only child. He discontinued work to stay home with A.R. for her first year of life. Thereafter he placed her in the Goddard School. The tuition at the school was approximately $1100 per month.

[1]From elsewhere in the record, we know that this man owns the company that employs Jose.

¶ 27 As of the January 2018 date of this interview, Jose claimed that Jennifer had not allowed him to see A.R., and that she had removed her from the Goddard School.

¶ 28 Jose denied that he was "running" from bills in California, acknowledged that he does have some bills in California, and stated that the bills were in dispute.

¶ 29 Jose told the GAL that he is very neat and clean and does all of the cleaning of his home. He expressed concerns over the cleanliness of Jennifer's home because it was cluttered, unsanitary, and "disgusting." Jose described the yard as being cluttered with rusted vehicles, two dogs in a fenced-in area, and very tall weeds.

¶ 30 Jose explained his ongoing litigation against Jennifer. After she moved out of the home, she withdrew $35,000 from a joint account. Jennifer also claimed that she owned all of his vehicles, valued at approximately $250,000, because only her name was on the titles. He claimed that the vehicle loans and titles were set up in this manner because she got some sort of benefit or credit for each loan at the bank where she worked.

¶ 31 Jose disputed Jennifer's claim that he refused to allow A.R. to get ear tubes. Jose and Jennifer were sent by A.R.'s pediatrician to St. Louis Children's Hospital for a second opinion. The second opinion was that she needed the tubes. Then, they returned to the pediatrician who disagreed, and the infections were treated with antibiotics.

¶ 32 Jose informed the GAL about various incidents involving Jennifer and A.R. On one occasion, Jennifer was not paying attention and left A.R. alone on a bed. The child fell from the bed and sustained a hematoma on her head. Jose also was critical about the dirty clothing A.R. frequently wore when Jennifer dropped her off at his home. He had his attorney send Jennifer's attorney a letter asking her to please leave the coat he

purchased A.R. at Goddard School. The Goddard School solved the problem by setting up two separate cubbies for A.R.—one for her mother to use, and one for her father to use. Jose also talked about a diaper rash that developed on A.R. while solely in Jennifer's care.

¶ 33 Jose acknowledged that he had videotaped Jennifer's car, but denied trying to get her fired from her job. However, Jose acknowledged that he called the corporate office of the bank where Jennifer was employed after she used her access to Jose's business accounts to close one or more of them without his permission.

¶ 34 Jose also acknowledged that he had been arrested for driving under the influence, and that he no longer drinks alcohol.

¶ 35 Jose denied that he had anger issues. He specifically denied that he grabbed A.R. out of Jennifer's arms at the Goddard School and denied that he threw A.R.'s pack and play.

¶ 36 Jose discussed issues that he had with his neighbors over landscaping and subsequent trespassing and stated that they "had it in for" him.

¶ 37 Jennifer had a second meeting with the GAL at the GAL's office. She came to inform the GAL of a series of complaints and issues with Jose. She claimed that Jose had not been paying the Goddard School tuition and that she was fearful that A.R. would lose her spot in the daycare. When asked about the current parenting time schedule, she made several statements attributable to A.R. A.R. allegedly told Jennifer, "don't go to Daddy's house." Jennifer said that she cannot speak to Jose and that even at mediation he was in a

separate room. Jose indicated that he would not join Jennifer at A.R.'s medical appointments in order to avoid conflict.

¶ 38 The GAL next visited Jennifer's home and farm and spoke with her mother. Loretta Hendricks, Jennifer's mother, told the GAL that she used to babysit their granddaughter on days "when Jose did not want her."

¶ 39 Loretta is a registered nurse and her husband, Dale, is a retired diesel mechanic. They rescue horses and also have a variety of other animals at the farm. A.R. enjoys feeding the animals and playing outside. In contrast, Loretta claimed that A.R. is an "emotional wreck" upon returning to the farm after having parenting time with Jose. She tells her grandparents that her father is mean to her. He threw away her pacifier as well as toys that she brought to his home from the farm. Loretta told the GAL that A.R. tells them that her mommy cannot go to daddy's home.

¶ 40 Loretta talked about the problems that Jose has in his neighborhood. She stated that he has trouble in that neighborhood because he is a "mooch" and is antisocial.

¶ 41 Loretta expressed her fears that Jose could illegally remove A.R. from the United States if he was allowed to spend time with her.

¶ 42 The GAL asked about A.R.'s various medical issues. Loretta confirmed that upon return home from parenting time with Jose, A.R. had diaper rash, blisters, vaginitis, and constipation.

¶ 43 The GAL toured the house and farm, concluding that the house looked "lived in" but not dirty as Jose described. She agreed that the farm was cluttered because of the animals, but noted that the animals were a positive factor as A.R. loved them.

¶ 44 The GAL next met Jennifer and A.R. at an area park. The GAL described A.R. as pleasant, cute, and talkative. A.R. told the GAL that her daddy takes her to the same park to play. In order to meet with the GAL, Jennifer had to check A.R. out of the Goddard School. She informed the GAL that she had to text Jose to tell him about her plans, or he would have called the police.

¶ 45 Overall, the GAL reported that Jennifer and A.R. had a "close, happy relationship" and that A.R. was "at ease and comfortable" in Jennifer's care.

¶ 46 The GAL contacted David Green, the attorney for the subdivision where Jose lives. Green defended a lawsuit that Jose filed against the subdivision. He told the GAL that there was an incident in which Jose drove his car towards a woman who was trespassing on his property. Police were called and they issued Jose a ticket for reckless driving. The officers did not ticket the woman for trespassing on his property.

¶ 47 Green reported that Jose had not paid his subdivision dues, and that the subdivision had placed a lien on the property. Jose quitclaimed the property to his mother. The subdivision office had thereafter sent the bills to his mother's Miami address.

¶ 48 Finally, David informed the GAL that he had witnessed Jose and A.R. playing in the yard, and that he had never seen Jose do anything "untoward" to her.

¶ 49 The GAL next went to Jose's home, which she described as being beautiful and located in an upscale subdivision. A.R. was present at Jose's home that morning. She took the GAL to her bedroom, which was full of toys. Her bedroom closet was full of clothing and shoes. She also showed the GAL downstairs where her playroom was

located. Outside of the home, Jose had installed a playground area on the adjacent lot. Part of that lot was overgrown and wooded. In that area, Jose had placed a covered sandbox. There was also a pond in that area. The GAL noted that she assumed that A.R. would not play in these areas without adult supervision.

¶ 50 The GAL summarized the differences between Jennifer's and Jose's homes as follows:

> "The difference between A[.R.]'s two homes is striking. Her home with her grandparents is somewhat worn, but exudes comfort and a lived in look, while her very large home with her Father is quite a mansion that exudes beauty and perfection, but not the lived in look."

¶ 51 The balance of the GAL's report contains her findings and recommendations. The GAL comprehensively went through the statutory decision-making and parenting time factors. Her recommendations were the same for both categories. The GAL did not take the child's wishes into account because A.R. was too young (three years of age), but noted that A.R. appeared to be adjusted to her two homes. The GAL found that Jose had no ability to cooperate with Jennifer, and generally seemed to have issues getting along with anyone. She found that Jennifer had made efforts to cooperate with Jose. After noting that both parents wanted more parenting time with A.R., the GAL found that Jose's wishes were based upon control, while Jennifer's wishes were based on the child's behavior after visits with Jose—hitting her, calling Jennifer names, and telling her that she was not allowed to go to her daddy's house. The GAL dovetailed this statement with her conclusion that the child's needs were best met by Jennifer because Jose seemed to be teaching A.R. to alienate Jennifer. The GAL believed that shared decision-making

responsibilities would result in conflict and strife. Citing to the temporary agreed parenting agreement, the GAL found that the terms of the agreement reinforced Jennifer's ability and willingness to facilitate and encourage a close relationship between A.R. and Jose. Although both agreed to that arrangement, the GAL did not find support in its terms that Jose was facilitating and encouraging a relationship between A.R. and Jennifer. The GAL found that there was no evidence that either parent had caused or threatened to cause physical harm to A.R. The GAL stated that while Jose loved A.R., his role was one of complete control and that he was clearly not good at sharing. Furthermore, she found that Jose consistently viewed himself as a victim. She outlined the difficulties her office staff had in setting up appointments with Jose and his complaints about her legal bills. In support of her conclusion that Jose was incapable of a shared relationship, the GAL shared the following events as illustrative examples: Jose waited "until the last minute" to advise Jennifer of his vacation plans; Jose complained about a dental appointment set up for A.R.; Jose complained that Jennifer wanted to take A.R. to a funeral in Rolla, Missouri; and Jose caused numerous "altercations" at the Goddard School. "There is always 'something' that is upsetting to Mr. Ramon and causing him anguish. I am not sure it is possible for Mother to have a peaceful relationship with Father, which, I fear, will negatively impact A[.R.]." The GAL found that Jose lacked the willingness or the ability to put A.R.'s needs above his own. She recommended that the trial court modify Jose's parenting time and decision-making responsibilities based upon his inability to work with Jennifer or encourage a healthy relationship between A.R. and Jennifer.

¶ 52 On October 26, 2018, Jose filed a motion to remove Levo as the GAL and to disqualify her report. Jose believed that the GAL was biased against him because he was the son of immigrants and pointed to the trial court's order mandating that he provide a copy of his passport and citizenship papers to the GAL as support. He complained that after a nine-month investigation, the GAL only met with him twice. He also found fault with the GAL because she had not interviewed administrators and teachers at the Goddard School; had not obtained medical records and/or did not review the medical records he provided that could have disproven many of Jennifer's allegations; had not interviewed his friends, family, and coworkers; made no reference to a letter sent by attorney Bill Beatty[2]; failed to note that Jennifer trusted him to be A.R.'s caregiver in the first year of life; failed to note that before Jennifer left they shared decision-making authority; and failed to include text messages from Jennifer and failed to reference Jennifer's actions of taking $35,000 out of his account as examples of Jennifer's less than perfect character. On October 29, 2018, the trial court denied Jose's motion to remove Levo as the GAL and to disqualify her report.

¶ 53 Both Jose and Jennifer filed financial paperwork, position papers, and proposed allocation of parenting time and decision-making authority in September and October 2018.

[2]Bill Beatty represented Jose on the reckless driving and disorderly conduct charges. In his professional opinion, attorney Beatty stated that both charges were defensible, and the disorderly conduct charge was "suspect" as no charge was filed against the other party involved in the situation. Both charges were dismissed. Overall, attorney Beatty stated that Jose was honest and trustworthy and that his devotion to A.R. was unquestionable.

¶ 54 On November 2, 2018, the trial court held its hearing on all remaining issues. The court "heard the testimony of the parties and witnesses" and entered its order incorporating the separate allocation judgment and parenting plan, adjudging Jose to be A.R.'s father, imputing income to Jose at $55,000 per year, determining that Jose owed 13 months of retroactive child support in the amount of $7111, entering judgment against Jose for the retroactive child support, setting current child support at $908 per month, awarding no attorney fees, and directing the GAL to submit her final bill for payment by the parties.

¶ 55 In the allocation judgment and parenting plan, the trial court found that it was in the best interests of the child for Jennifer to have sole significant decision-making responsibilities categories—education, medical care, religion, and extracurricular activities, and for Jennifer to be the "primary residential parent." Jose was provided with parenting time consisting of alternate weekends, holidays, and birthdays, plus two nonconsecutive weeks during the summer.

¶ 56 On November 7, 2018, Jennifer filed a motion to reconsider Jose's award of alternate weekends of parenting time and requested that the court geographically restrict him from traveling with A.R. Jennifer's motion was based on Jose's weekend travel plans he provided to her that outlined out-of-town destinations for seven of his upcoming weekends. Specifically, Jose advised that he would be traveling with A.R. to Miami, the Walt Disney World Resort, Key West, Vail, New York City, southern California, and Las Vegas. Jennifer also requested an award of attorney fees. The trial court denied the motion on November 13, 2018.

¶ 57 On December 3, 2018, Jose filed his motion for rehearing arguing that the trial court's order was too restrictive about both the significant decision-making responsibilities as well as parenting time allotted. Furthermore, Jose argued that the trial court's order was incorrect because in order to restrict his decision-making responsibilities and parenting time, the court must make a specific finding that Jose engaged in conduct that seriously endangered A.R.'s mental, moral, or physical health or that he significantly impaired A.R.'s emotional development. Jose also argued that the trial court failed to consider all statutory factors before ruling on significant decision-making responsibilities and parenting time. Regarding child support, Jose argued that there was no way to determine how the court arrived at the monthly amount and that the trial court disregarded his income statements without making a finding that he was voluntarily underemployed. On December 5, 2018, the trial court denied Jose's motion.

¶ 58 ANALYSIS

¶ 59 This is an expedited appeal pursuant to Illinois Supreme Court Rule 311(a) (eff. July 1, 2018), because it involves the allocation of parental responsibilities. Rule 311(a)(5) requires that the appellate court issue its decision within 150 days of the filing of the notice of appeal, except when good cause for delay is shown. Ill. S. Ct. R. 311(a)(5) (eff. July 1, 2018). Jose timely filed his notice of appeal to this court on January 4, 2019. Therefore, our decision was due on June 3, 2019. However, due to issues related to a bystander's report sought by the appellant, this court, on its own motion, modified the briefing schedule on March 28, 2019. Subsequently, the appellant sought, and this court granted for good cause shown, a continuance on the filing date for

his brief, extending the date to file up to and including May 31, 2019. The final brief was filed in this court on July 2, 2019, and the case was called as ready on the docket that date. For this reason, we find good cause for issuing this decision after the 150-day deadline.

¶ 60 On appeal, Jose raises the following four issues: (1) the trial court erred in awarding Jennifer sole significant decision-making responsibilities, (2) the trial court erred in its allocation of parenting time, (3) the trial court erred in determining current and retroactive child support and in attributing income to Jose, and (4) the trial court erred in basing its determination of significant decision-making responsibilities and parenting time on the biased GAL report.

¶ 61 Before we discuss the four issues raised in this appeal, we have to comment upon the record on appeal. The two-day hearing that culminated in the order from which Jose appeals was not recorded. Further, the trial court did not certify a bystander's report as a substitute for a transcript of the hearing.

¶ 62 The appellant bears the responsibility for preparing an adequate and complete record on appeal. *Midstate Siding & Window Co. v. Rogers*, 204 Ill. 2d 314, 319, 789 N.E.2d 1248, 1251 (2003). In the absence of a complete record on appeal, "the reviewing court will presume that the order entered by the trial court was in conformity with the law and had a sufficient factual basis [citations]." *Id.* In cases like this one where the trial court stated, "having heard the testimony of the parties and witnesses, considered all evidence presented and the appropriate statutory factors," we presume that the court heard adequate evidence to support the decision that was entered. *Foutch v. O'Bryant*, 99

Ill. 2d 389, 394, 459 N.E.2d 958, 960 (1984) (citing *Smith v. Smith,* 36 Ill. App. 2d 55, 183 N.E.2d 559 (1962)).

¶ 63 Parental Decision-Making Responsibilities

¶ 64 Jose makes two arguments about this claimed error. He first argues that the trial court's decision to award Jennifer sole significant decision-making responsibilities was against the manifest weight of the evidence. Alternatively, he argues that the trial court failed to comply with section 603.10 of the Illinois Marriage and Dissolution of Marriage Act (Act) in that the court's order restricts his parental responsibilities without the corresponding required finding that he "engaged in any conduct that seriously endangered the child's mental, moral, or physical health or that significantly impaired the child's emotional development." 750 ILCS 5/603.10(a) (West 2016). We will address each argument separately.

¶ 65 The trial court must allocate parental decision-making responsibilities according to the child's best interests. *Id.* § 602.5(a). To determine the best interests of the child for purposes of allocating parental decision-making responsibilities, the trial court must consider 15 factors. *Id.* § 602.5(c). A trial court's allocation of parental decision-making responsibilities will not be reversed unless the court's decision is contrary to the manifest weight of the evidence. *Young v. Herman,* 2018 IL App (4th) 170001, ¶ 64, 92 N.E.3d 1070.

¶ 66 The trial court stated in its order that all statutory factors were considered in concluding that Jennifer should have sole decision-making responsibilities for A.R. The trial court saw and heard the parties who testified. As the trial judge was able to assess

each witness's credibility, the resulting decisions are entitled to great deference unless the judgment is clearly contrary to the manifest weight of the evidence. *Jackson v. Bowers*, 314 Ill. App. 3d 813, 818, 731 N.E.2d 1252, 1257 (2000). With no transcript on appeal, the record is materially incomplete, and we must presume that the trial court's judgment was supported by adequate evidence as we have no means by which to completely review the decision. *In re Marriage of Gulla*, 234 Ill. 2d 414, 422, 917 N.E.2d 392, 397 (2009).

¶ 67 We note that the main "evidence" in the record on appeal is the GAL report. The GAL concluded that Jennifer was the better choice for all significant decision-making responsibilities because of the continuous conflict caused by Jose's involvement. Jose insisted that A.R. attend the Goddard School, but that experience was not unmarred by conflict. Police were called to the Godard School on at least one occasion. Also, Jose would not allow A.R. to wear a coat that he bought on days she went home with Jennifer resulting in A.R. having two separate cubbies at the school—one for when Jennifer picked her up and the other for when Jose picked her up. The GAL herself detailed the conflicts she had with Jose in setting up meetings, in location of the meetings, and about the context of the meetings. Jose called with complaints about every legal bill the GAL sent. He wrote negative emails to the GAL regarding the manner in which she was doing her job. According to Jennifer, Jose refused to be in the same room with her during mediation. The conflict between Jose and Jennifer had become so contentious that Jose voluntarily opted not to attend medical appointments with Jennifer in order to avoid argument. This conflictive personality seems to be prevalent in all aspects of his life. He has had numerous issues with his neighborhood association, as well as with any neighbor

who happens to walk on his property. Finally, Jose has not been content with his legal representation as he has dismissed four attorneys. His posthearing and appellate attorney is his fifth attorney in the span of less than two years. We find these facts to be indicative of a person who has difficulty working well with others.

¶ 68 Alternatively, Jose argues that the trial court's order cannot be upheld because the court failed to make a finding that he seriously endangered A.R. Jose's argument is premised on the trial court's order constituting a "restriction" of his former shared parental decision-making rights, citing section 603.10 of the Act. 750 ILCS 5/603.10 (West 2016).

¶ 69 The trial court must allocate parental responsibilities on the decision-making categories "according to the child's best interests." *Id.* § 602.5(a). The section also states that nothing in the entire Act "requires that each parent be allocated decision-making responsibilities." *Id.* If the parents are unable to agree in writing, the court must decide. *Id.* § 602.5(b). "The court shall allocate to one or both of the parents the significant decision-making responsibility for each significant issue affecting the child." *Id.* "In determining the child's best interests for purposes of allocating significant decision-making responsibilities, the court shall consider all *relevant* factors ***." (Emphasis added.) *Id.* § 602.5(c). The factors to be considered are as follows:

> "(1) the wishes of the child, taking into account the child's maturity and ability to express reasoned and independent preferences as to decision-making;
>
> (2) the child's adjustment to his or her home, school, and community;
>
> (3) the mental and physical health of all individuals involved;

(4) the ability of the parents to cooperate to make decisions, or the level of conflict between the parties that may affect their ability to share decision-making;

(5) the level of each parent's participation in past significant decision-making with respect to the child;

(6) any prior agreement or course of conduct between the parents relating to decision-making with respect to the child;

(7) the wishes of the parents;

(8) the child's needs;

(9) the distance between the parents' residences, the cost and difficulty of transporting the child, each parent's and the child's daily schedules, and the ability of the parents to cooperate in the arrangement;

(10) whether a restriction on decision-making is appropriate under Section 603.10 [(750 ILCS 5/603.10(a) (West 2016) (where a parent is engaged in conduct that seriously endangers the child's mental, physical, or emotional health or development, the court can enter any order necessary to protect the child)];

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

(12) the physical violence or threat of physical violence by the child's parent directed against the child;

(13) the occurrence of abuse against the child or other member of the child's household;

(14) whether one of the parents is a sex offender, and if so, the exact nature of the offense and what, if any, treatment in which the parent has successfully participated; and

(15) any other factor that the court expressly finds to be relevant." *Id.*

¶ 70 Jennifer never alleged that A.R.'s mental, moral, or physical health was seriously endangered, or that A.R.'s emotional development was significantly impaired. *Id.* § 603.10. "[W]hether a restriction on decision-making was appropriate under Section

603.10" was but one of the 15 factors the trial court considered. The trial court only needed to consider the "relevant" factors of section 602.5(c) of the Act. *Id.* § 602.5(c). Stated another way, the trial court may not have considered the restriction factor to be relevant because Jennifer did not make the requisite allegation.

¶ 71 Jose alternatively claims that this modification of his shared decision-making rights from the original temporary agreed parenting order must be construed as a restriction, and thus the trial court erred in not expressly finding that A.R.'s mental, moral, or physical health or emotional development was endangered or impaired. We disagree. Here, Jose and Jennifer had a temporary order—a nonfinal order. A temporary order is merely provisional in nature, and after the issue in controversy is before the court for a final hearing on the merits, the temporary order has fulfilled its purpose. See *In re Marriage of Fields*, 283 Ill. App. 3d 894, 671 N.E.2d 85 (1996). The trial court agreed to the parties' temporary parenting order, but the trial court had not then weighed the factors and considered any evidence.

¶ 72 Restrictions on parental rights have typically involved a parent's suitability versus a modification of parental rights that involves the child's "best interests." See *In re Marriage of Chehaiber*, 394 Ill. App. 3d 690, 697, 917 N.E.2d 5, 12 (2009) (discussing the distinction between a restriction and a modification in the context of a parent's visitation rights). As allocation of decision-making responsibilities is based on the child's best interests, we find that the distinction between a restriction and a modification in parenting time cases is equally relevant here. We find that the change from the nonfinal

temporary order to the November 2, 2018, order served as a modification of Jose's decision-making rights.

¶ 73 Moreover, because there is no transcript of the hearing, we have no way to know whether Jennifer verbally alleged that A.R. was being endangered or impaired in some way by Jose's behavior and/or whether the trial court considered that issue. Without the transcript, we presume that the decision has an adequate factual and legal basis. *Midstate Siding & Window Co.*, 204 Ill. 2d at 319. Overall, we must presume that the trial court "knows the law and follows it accordingly." *In re Custody of G.L.*, 2017 IL App (1st) 163171, ¶ 43, 80 N.E.3d 636.

¶ 74 On the basis of the GAL's recommendations and the presumption that the trial court followed the law, we find that the court's order is not against the manifest weight of the evidence and we affirm the court's finding that Jennifer should be awarded sole significant decision-making responsibilities as to education, health, religion, and extracurricular activities. *Young*, ¶ 2018 IL App (4th) 170001, ¶ 64.

¶ 75 Allocation of Parenting Time

¶ 76 Jose makes the same two arguments about the parenting time issue as he did with the allocation of parental decision-making responsibilities issue. He first argues that the trial court's division of parenting time that limited his time with A.R. to alternate weekends, holidays, and birthdays, plus two nonconsecutive weeks in the summer was against the manifest weight of the evidence. Alternatively, he argues that the trial court failed to comply with section 603.10 of the Act in that the court's order restricts his parenting time without the corresponding required finding that he "engaged in any

conduct that seriously endangered the child's mental, moral, or physical health or that significantly impaired the child's emotional development ***." 750 ILCS 5/603.10(a) (West 2016). We will briefly address each argument.

¶ 77 The trial court must allocate parenting time according to the child's best interests. *Id.* § 602.7(a). To determine the best interests of the child for purposes of allocating parenting time, the trial court must consider 17 factors. *Id.* § 602.7(b). A trial court's allocation of parenting time will not be reversed unless the court's decision is contrary to the manifest weight of the evidence. *Custody of G.L.*, 2017 IL App (1st) 163171, ¶ 49.

¶ 78 The trial court stated in its order that all statutory factors were considered in its parenting time decision. As stated earlier, the trial court saw and heard the parties who testified. As the trial judge was able to assess each witness's credibility, the resulting decisions are entitled to great deference unless the judgment is clearly contrary to the manifest weight of the evidence. *Jackson*, 314 Ill. App. 3d at 818. With no transcript on appeal, the record is materially incomplete, and we must presume that the trial court's judgment was supported by adequate evidence as we have no means by which to review the decision. *Marriage of Gulla*, 234 Ill. 2d at 422.

¶ 79 As with decision-making allocation, we note that the primary "evidence" is the GAL report. The GAL concluded that although it was clear that Jose loved A.R., he was unable to put her needs above his own, was a controlling person, and could not facilitate a healthy relationship between A.R. and Jennifer. The GAL presumed that Jose was attempting to undermine Jennifer because A.R. frequently told her mother and maternal grandparents that her mother was not allowed to go to Jose's home and that Jennifer

would be replaced. Additionally, after Jose had parenting time, A.R. would return to Jennifer's home exhibiting bad behaviors and attitudes.

¶ 80 In order for the trial court to determine the best interests of the child for purposes of allocating parenting time, the court must consider all relevant factors, including:

> "(1) the wishes of each parent seeking parenting time;
>
> (2) the wishes of the child, taking into account the child's maturity and ability to express reasoned and independent preferences as to parenting time;
>
> (3) the amount of time each parent spent performing caretaking functions with respect to the child in the 24 months preceding the filing of any petition for allocation of parental responsibilities or, if the child is under 2 years of age, since the child's birth;
>
> (4) any prior agreement or course of conduct between the parents relating to caretaking functions with respect to the child;
>
> (5) the interaction and interrelationship of the child with his or her parents and siblings and with any other person who may significantly affect the child's best interests;
>
> (6) the child's adjustment to his or her home, school, and community;
>
> (7) the mental and physical health of all individuals involved;
>
> (8) the child's needs;
>
> (9) the distance between the parents' residences, the cost and difficulty transporting the child, each parent's and the child's daily schedules, and the ability of the parents to cooperate in the arrangement;
>
> (10) whether a restriction on parenting time is appropriate;
>
> (11) the physical violence or threat of physical violence by the child's parent directed against the child or other member of the child's household;
>
> (12) 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 other member of the child's household;

(15) whether one of the parents is a convicted sex offender or lives with a convicted sex offender and, if so, the exact nature of the offense and what if any treatment the offender has successfully participated in; the parties are entitled to a hearing on the issues raised in this paragraph (15);

(16) the terms of a parent's military family-care plan that a parent must complete before deployment if a parent is a member of the United States Armed Forces who is being deployed; and

(17) any other factor that the court expressly finds to be relevant." 750 ILCS 5/602.7(b) (West 2016).

¶ 81 The trial court's order expressly indicated that all relevant factors were considered in determining the allocation of parenting time. *Id.* There is no transcript or bystander's report from the hearing by which this court can assess the foundations for the trial court's conclusion that the allocation of Jose's parenting time should be alternate weekends, holidays, birthdays, and two nonconsecutive weeks in the summer. Therefore, we must presume that the trial court's order was supported by the evidence. *Marriage of Gulla*, 234 Ill. 2d at 422. There is no basis in this record that the trial court's judgment is contrary to the manifest weight of the evidence. *Young*, 2018 IL App (4th) 17001, ¶ 64.

¶ 82 As we mentioned in the decision-making analysis, Jennifer did not allege that A.R. was at risk of mental, moral, or physical health endangerment or emotional health impairment pursuant to section 603.10(a) of the Act. The trial court's order indicates that all relevant statutory factors were considered, but does not specify whether section

602.7(b)(10) was one of the relevant factors. With the incomplete record on appeal, we have no way to determine if this factor was alleged and argued at the hearing.

¶ 83 We also find that the resulting parenting time order which awards Jose with less parenting time than he had pursuant to the temporary order does not equate to a "restriction" in parenting time. *In re Marriage of Wycoff*, 266 Ill. App. 3d 408, 416, 639 N.E.2d 897, 904 (1994) (stating that supervised visitation, visitation in the primary custodial parent's home, or visitation outside of the noncustodial parent's home are "restrictions," but that reduction in weekend or summer visitation is a modification); *In re Marriage of Ross*, 355 Ill. App. 3d 1162, 1167, 824 N.E.2d 1108, 1114 (2005) (stating that a reduction of weekend and/or summer visitation is not considered a "restriction"). The trial court's order of parenting time is in line legally with a modification of parenting time as opposed to a restriction on parenting time. Modification of parenting time is based upon the child's best interests whereas a restriction on parenting time would be based on the parent's suitability. *Marriage of Chehaiber*, 394 Ill. App. 3d at 697. The purpose for any change in parenting time distinguishes a modification from a restriction. *Id.*

¶ 84 On the basis of the GAL's findings; because any change to Jose's parenting time was merely a modification of the temporary agreed parenting order and not a restriction on his parenting time; and because we presume that the trial court knew and followed all applicable law, we conclude that the court's order was not against the manifest weight of the evidence, and we affirm the court's finding that Jennifer should be the primary

residential parent subject to Jose's awarded parenting time. *Custody of G.L.*, 2017 IL App (1st) 163171, ¶ 49.

¶ 85 Child Support and Imputed Income

¶ 86 Jose next argues that the trial court erred in setting child support by not following section 505(a)(1) of the Act (750 ILCS 5/505(a)(1) (West 2016)), and in simply accepting the calculations provided by Jennifer in her child support calculation worksheet.

¶ 87 A trial court's child support determination will not be reversed unless the court abused its discretion. *In re Marriage of Preston*, 81 Ill. App. 3d 672, 681, 402 N.E.2d 332, 339 (1980).

¶ 88 From the record on appeal, we know that Jose owned his approximate $300,000 home subject to no mortgage. He did quitclaim the home to his mother at some point either before or during the pendency of this case. However, he continued to live in the home, and the record contains no allegation or evidence that he was paying rent to his mother. Jennifer alleged that Jose received substantial funding from sources not specified. Jose did not refute these allegations. In Jose's financial records provided to the court, he earned $55,000.14 in wages from Reliant Care Management, LLC in 2017. He stated that his monthly income from Reliant Care was $4230.78. His 2017 income tax return reflected that $55,000 employment income. From Jose's meeting with the GAL and the resulting report, we learned that Jose has a business degree that he has used in several finance-based jobs both here in the metro-St. Louis area, as well as in California. In addition, he owns his own finance-based business, KKR Financial Holdings, LLC.

¶ 89 Jose's allegation that the trial court found him to be underemployed appears to be based upon a $335 discrepancy in his monthly income. The trial court "may order either or both parents owing a duty of support to a child." 750 ILCS 5/505(a) (West Supp. 2017). To compute the basic child support obligation, the court must take the following steps:

> "(A) determine each parent's monthly net income;
>
> (B) add the parents' monthly net incomes together to determine the combined monthly net income of the parents;
>
> (C) select the corresponding appropriate amount from the schedule of basic child support obligations based on the parties' combined monthly net income and number of children of the parties; and
>
> (D) calculate each parent's percentage share of the basic child support obligation." *Id.* § 505(a)(1.5).

The computation contemplates setting a child support amount for each parent, but the parent receiving child support does not need to pay its calculated child support amount to the paying parent because the money is presumably directly spent on the child. *Id.*

¶ 90 Jose filed his financial affidavit on September 11, 2018, while Jennifer filed her amended financial affidavit on October 31, 2018. In Jose's affidavit, he states that his gross monthly income is $4230.78, with an annual income in 2017 of $55,000. He also states that he did not receive a federal income tax refund for 2017, and instead owed $18,809.07. In Jennifer's affidavit, she states that her gross monthly income for 2017 was $2677, with an annual income in 2017 of $32,123.

¶ 91 Jennifer filed a position statement with the court and attached a child support worksheet as an exhibit. Based upon the parties' 2017 income documentation, Jennifer's

calculation was that Jose would owe $908 per month in child support. Jose also filed a position statement but did not include his own suggested calculations regarding child support.

¶ 92 Jose's argument is that the trial court's order that he owed $908 per month in child support is flawed because the order did not spell out the method by which the court arrived at the monthly amount.

¶ 93 We note that although section 505 of the Act requires the court to "determine" child support by applying the guidelines (750 ILCS 5/505(a)(2) (West Supp. 2017)), and to "compute" the child support obligation (*id.* § 505(a)(1.5)), section 505 does not mandate that the trial court include its calculations in the order. We do not know if the trial court conducted its own calculation or relied upon the calculation provided by Jennifer. There is no impropriety in the trial court relying upon Jennifer's calculation if that calculation was based upon the evidence in the record. With no record of the trial court testimony, we do not know what the parties and other witnesses testified to with respect to the child support obligation. Any doubt resulting from the incompleteness of the record must be resolved against the appellant. *Reed v. Hoffman*, 48 Ill. App. 3d 815, 819, 363 N.E.2d 140, 144 (1977).

¶ 94 We also note that based upon the record on appeal, Jose's financial affidavit contained at least one error. Contrary to Jose's assertion that he received no refund in 2017 and owed $18,809.07, his 2017 federal income tax return indicates that he received a refund in the amount of $2330.

¶ 95 Although Jose indicated in his financial affidavit that his gross monthly income was $4230.78 (or $50,769.36 annually), there is absolutely no basis for that figure. From his 2017 return, Jose's annual wage income was $55,000. His 2017 W-2 form listed employment income of $55,000.14. There is no evidence in the record that his salary or hourly rate was reduced in 2018. In fact, from a September 7, 2018, payroll record, the gross amount of his two-week paycheck was $2115.39. Multiplying $2115.39 by the 26 pay periods in 2018, the total is $55,000.14—the exact sum his employer listed on his 2017 W-2 form. Taking this one step further, as of the pay period ending August 31, 2018, Jose had earned year-to-date $38,077.02. There were eight additional pay periods in 2018 each at the gross amount of $2115.39. Multiplying $2115.39 by those eight pay periods, the resulting amount is $16,923.12. Adding the $16,923.12 balance expected for 2018 to his August 31, 2018, year-to-date earnings of $38,077.02, we calculate the total expected 2018 income as $55,000.14. We believe that the discrepancy between the $4230.78 he claimed and the $4583 figure the court used appears to be Jose's own mathematical error. Taking the $55,000 and dividing that amount by 12 months, we get a monthly gross income result of $4583—the amount used by the trial court.

¶ 96 Regarding imputation of income, "courts have the authority to compel parties to pay child support at a level commensurate with their earning potential." *In re Marriage of Gosney*, 394 Ill. App. 3d 1073, 1077, 916 N.E.2d 614, 618 (2009) (citing *In re Marriage of Sweet*, 316 Ill. App. 3d 101, 107, 735 N.E.2d 1037, 1042 (2000)). In order to impute income, the trial court must find that one the following three factors is applicable: (1) that the payor is voluntarily unemployed, (2) that the payor is attempting to evade a

child support obligation, or (3) that the payor has unreasonably failed to take advantage of potential employment. *Id.* (citing *In re Marriage of Adams*, 348 Ill. App. 3d 340, 809 N.E.2d 246 (2004); *Sweet*, 316 Ill. App. 3d 101; and *In re Marriage of Hubbs*, 363 Ill. App. 3d 696, 843 N.E.2d 478 (2006)). If none of the three factors are present, then the trial court may not impute income. *Id.*

¶ 97 In this case, we are unclear on whether Jose had discontinued work or was employed as of the date of the hearing. Jennifer's position seems to have been that Jose was then unemployed, and she asked the court to impute more than the $55,000 earned in 2017 based upon the two prior year's income tax returns where Jose's income was substantially higher. Jose appears to acknowledge that he was employed as he provided his current monthly gross income in his financial affidavit. The trial court's order simply states that it found that Jose was capable of earning a minimum of $55,000 per year and imputed that amount to him. As we indicated, we do not believe that the trial court imputed any additional income to Jose above what he earned, and that any argument to the contrary is based upon a mathematical division error. However, any doubt resulting from the incompleteness of the record must be resolved against the appellant. *Reed*, 48 Ill. App. 3d at 819.

¶ 98 From our review of the record on appeal, we presume that the trial court adopted Jennifer's proposed calculations that were properly based upon the statutory guidelines. We find no basis to conclude that the trial court abused its discretion, and we affirm any "imputation" of income made by the trial court as well as affirm the trial court's child support calculations and order. *Marriage of Preston*, 81 Ill. App. 3d at 681.

¶ 99 Jose also argues that the 13-month retroactive order of $547 is erroneous. There is no elaboration on this argument in his appellate briefs. Therefore, we affirm the court's order of retroactive support.

¶ 100 Disqualification of the GAL

¶ 101 Jose finally argues that the trial court erred in its reliance upon the "biased" GAL report. The GAL is required to investigate the facts of each case, including interviewing the child and the parents, and to provide testimony or a report to the trial court. 750 ILCS 5/506 (West 2016).

¶ 102 Based upon the record on appeal, we do not know whether the GAL testified at the hearing, and thus whether the GAL's opinions mirrored what was in her report. In addition, if the GAL testified at the hearing, we have no record of any objections Jose may have made to her testimony, and thus do not know if any "error" is preserved for our consideration. From the GAL's report, we know that the GAL interacted with A.R., spoke with Jose and Jennifer, spoke with Jennifer's mother, and spoke with the attorney representing the subdivision in which Jose resides. The GAL made visits to both homes and attended numerous court hearings. In her report, the GAL systematically went through each statutory factor for both parental decision-making responsibilities and parenting time. The GAL then provided her impressions and recommendations based on A.R.'s best interests. We find nothing in the record on appeal to support Jose's bare allegation that the GAL was biased merely because many of the GAL's conclusions were not in his favor. As we have stated elsewhere in this order, any doubt resulting from the

incompleteness of the record must be resolved against the appellant. *Reed*, 48 Ill. App. 3d at 819.

¶ 103 We conclude that Jose has failed to establish any basis for disqualification of the GAL and her report. We affirm the trial court's November 2, 2018, judgment order.

¶ 104 CONCLUSION

¶ 105 For the foregoing reasons, the judgment of the circuit court of Madison County is hereby affirmed.

¶ 106 Affirmed.