2019 IL App (5th) 190028-U

NO. 5-19-0028

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

MATTHEW K. SIMMONS,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellee,	)	St. Clair County.
	)	
v.	)	No. 13-F-0973
	)	
JENNIFER A. BECKETT,	)	Honorable
	)	Patricia H. Kievlan,
Respondent-Appellant.	)	Judge, presiding.

JUSTICE BARBERIS delivered the judgment of the court.
Justices Chapman and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the circuit court's order establishing parenting time and allocating school and extracurricular activities fees, as well as denying attorney fees. We reverse the circuit court and remand with directions regarding child support and child care expenses where the court failed to follow the statutory guidelines.

¶ 2 The appellant, Jennifer Beckett, and the appellee, Matthew Simmons, are the natural parents of a son, C.B-S., born June 8, 2013. In September 2018, the circuit court entered an amended order modifying the parties' previous parenting order.

¶ 3 On appeal, Jennifer argues the circuit court erred in granting Matthew's motion to modify the parenting order to allow him parenting time during alternate weeks in the

summer, and in denying Jennifer's requests to terminate Matthew's parenting time on weekdays and specific holidays. Jennifer also argues the court erred in calculating child support, apportioning child care expenses, allocating school and extracurricular expenses among the parties and, lastly, in denying her request for attorney fees. For reasons which follow, we affirm in part, reverse in part, and remand.

¶ 4 This is an accelerated appeal under Illinois Supreme Court Rule 311(a) (eff. July 1, 2018). Under Illinois Supreme Court Rule 311(a)(5) (eff. July 1, 2018), we are required to issue a decision within 150 days after the filing of the notice of appeal, except for good cause shown. Here, Jennifer filed a notice of appeal on January 10, 2019, thus, our decision was due on or before June 9, 2019. However, the decision is being issued beyond this date for good cause, as a motion for extension of time to file the record on appeal resulted in a delay of the progression of this case. See Ill. S. Ct. R. 311(a)(5) (eff. July 1, 2018). Accordingly, we now issue our disposition.

¶ 5 I. Background

¶ 6 On July 22, 2014, the circuit court entered an agreed parenting order, which granted Jennifer significant decision-making responsibilities (previously known as "sole legal custody") over C.B-S., designated Matthew's child support obligations, and established a year-round parenting time schedule (previously known as "visitation"). During the school year, C.B-S. was to reside with Matthew on alternating weekends, from 7:30 a.m. on Friday to 6 p.m. on Sunday, and one day during the week, alternating Wednesday and Thursday each week from 7:30 a.m. to 6 p.m. Additionally, the parenting order provided Matthew with parenting time on alternating holidays, "special days," and

two nonconsecutive weeks each summer. Moreover, both parents could maintain regular telephone contact with C.B-S. while in the other parent's care.

¶ 7 Matthew was mandated to pay child support; maintain health, dental, and vision insurance for C.B-S.; pay 50% of uncovered deductibles and copay expenses; maintain life insurance for C.B-S.; periodically provide his financial information to Jennifer; and pay Jennifer's attorney fee. The circuit court allowed Matthew to claim C.B-S. for annual tax purposes.

¶ 8 On September 16, 2016, Jennifer filed a *pro se* motion to modify the parenting order to compel Matthew's compliance with the parenting time and child support provisions. Jennifer also requested the circuit court to recalculate child support and permit her to claim C.B-S. for annual tax purposes. For support, Jennifer claimed that Matthew had failed to: (1) exercise his Thursday parenting time with C.B-S. since February 2015; (2) pay his share of accrued child care and medical expenses; and (3) provide financial information and proof of life insurance. Jennifer also served Matthew's attorney a subpoena *duces tecum* to obtain various documents by October 13, 2016, to prepare for the November 15, 2016, hearing on her motion to modify.

¶ 9 On October 19, 2016, prior to a hearing on her motion to modify, Jennifer filed a *pro se* motion for rule to show cause. Specifically, Jennifer requested the circuit court find Matthew in contempt of court for failing to honor the September 16, 2016, subpoena.

¶ 10 On October 25, 2016, Matthew filed a motion to modify the parenting time schedule. Specifically, Matthew requested his parenting time begin at 6 p.m. on Thursday and end at 7:30 a.m. on Friday "to allow him to sleep a few hours before he commences

parenting time." Matthew claimed the proposed modification would be in C.B-S.'s best interest, and would better accommodate his work schedule, which had changed since the entry of the parenting order. He also alleged that he had attempted, although unsuccessful, to modify the schedule with Jennifer on several occasions.

¶ 11 On November 4, 2016, Jennifer filed a second *pro se* motion to modify the parenting order. Jennifer requested the circuit court to modify the order by requiring the following: (1) the parties to communicate via email regarding C.B-S.'s doctor's appointments and school functions; (2) Matthew to pick up and drop off C.B-S. at Jennifer's home; (3) neither party to consume alcohol while caring for C.B-S. or to allow intoxicated persons around C.B-S.; and (4) C.B-S.'s "schedules be consistent between both parties regarding naptime, bedtime, potty training, and medication administration as well as feeding schedule."

¶ 12 On November 15, 2016, the circuit court ordered mediation. Shortly thereafter, Jennifer obtained legal counsel.

¶ 13 On December 30, 2016, Jennifer filed a motion for sanctions, claiming Matthew had failed to mediate in good faith after he abruptly walked out of the first mediation session. Jennifer sought reimbursement for lost wages and attorney fees.

¶ 14 On May 4, 2017, Jennifer filed an amended petition for rule to show cause seeking to hold Matthew in contempt for violating the parenting order. In support, Jennifer claimed that Matthew had failed to reimburse her for uncovered medical, dental, and optical expenses. Jennifer further claimed that Matthew had failed to provide her with proof of C.B-S.'s dental and life insurance. Jennifer requested attorney fees.

¶ 15 Jennifer also filed a "second amended petition to modify parenting order," claiming a substantial change in circumstances. Specifically, Jennifer alleged that Matthew had failed to consistently exercise his parenting time, his income had increased, and C.B-S.'s needs had increased with school starting in the fall. Jennifer requested that the circuit court (1) eliminate Matthew's weekday and holiday parenting time; (2) increase Matthew's child support obligations; (3) require him to contribute to child care, school, and extracurricular expenses, retroactive to September 16, 2016; (4) allow her to claim C.B-S. for tax purposes; and (5) require the parties to communicate via text message or email.

¶ 16 On September 29, 2017, Matthew filed an amended motion to modify the parenting order, claiming a change in circumstances. Specifically, Matthew claimed he had lost several hours of weekday parenting time when C.B-S. started full-time preschool in August 2017. Matthew stated that he was off of work from "6:00 p.m. on Thursday until 6:00 p.m. the following Wednesday on alternate weekends," and it was in C.B-S.'s best interest to spend more time with him. Moreover, Matthew claimed that Jennifer had unilaterally decided to take C.B-S. to Dr. Clipper, a psychologist and family therapist, for counseling two times a week without explanation. Matthew was concerned for C.B-S.'s well-being because, according to him, Jennifer was "very unstable" and displayed "sporadic behavior."

¶ 17 On July 5, 2018, following several continuances and canceled hearings, a combined evidentiary hearing commenced on all outstanding motions and petitions.

¶ 18 A. Matthew

¶ 19 Matthew testified to the following on his own behalf. Matthew, a tug boat captain for a marine company, was 33 years old and resided in Freeburg, Illinois. He worked 12-hour shifts, from 6 a.m. to 6 p.m., for seven days and then had seven days off. According to Matthew, the company required random drug testing and his occupation was "extremely high stress."

¶ 20 The parenting order, entered when C.B-S. was one year old, did not provide Matthew with parenting time during the seven days he was at work. Matthew did not want parenting time during the weeks he worked because he had little time to spend with C.B-S. During weeks he worked, Matthew typically left for work by 5 a.m. and did not return home until 7 p.m. During the weeks he did not work, the parenting order provided him with five days of parenting time: Thursday from 7:30 a.m. to 6 p.m., Friday through Sunday, and the following Wednesday from 7:30 a.m. to 6 p.m. Matthew also received two nonconsecutive weeks of parenting time in the summer.

¶ 21 According to Matthew, the parenting order worked well until his work schedule changed from days to nights, which required him to work seven straight days from 6 p.m. to 6 a.m., starting on Thursdays. To better accommodate his schedule, Matthew requested parenting time on his off weeks from Thursday evenings, rather than Thursday mornings, through Sunday. Matthew believed this change would improve the time he spent with C.B-S. because he could sleep after work and extend his parenting time over the weekend. After several failed attempts to negotiate with Jennifer, he filed a motion to

modify the parenting order. Matthew's motion was never ruled on. After two or three years, Matthew returned to the day shift.

¶ 22 After C.B-S. turned four years old, he started all-day preschool, which reduced Matthew's parenting time. As a result, Matthew requested overnight parenting time on Thursdays, which Jennifer had agreed to on "maybe five" occasions. Matthew eventually filed a new motion for additional parenting time during the weeks he was off of work.

¶ 23 At the time of the hearing, C.B-S. was five years old and was set to begin kindergarten in the fall. Because C.B-S. would attend kindergarten from 8 a.m. to 3:10 p.m. during the week, Matthew's parenting time would be reduced. Based on this change, Matthew requested the circuit court modify the parenting order to allow him parenting time on his weeks off of work, specifically, from 3:10 p.m. on Thursday through the following Wednesday at 8 a.m. Matthew agreed to transport C.B-S. to and from school when he was off work.

¶ 24 Next, Matthew testified that Jennifer would call or Facetime C.B-S. three or four times per day during his parenting time. If Matthew did not allow C.B-S. to accept Jennifer's call, Jennifer would repeatedly send text messages or call the police. On one occasion, Matthew was charged with parental interference, though the charges were later dropped. Unlike Jennifer, Matthew was unable to regularly call or Facetime C.B-S. due to his work schedule. Moreover, with regard to Jennifer's allegations that Matthew failed to regularly exercise weekday and holiday parenting time, he testified that some holidays fell on scheduled work days. Also, Matthew had not exercised his summer parenting time, except one time the previous summer when he vacationed with Jennifer, C.B-S.,

and Jennifer's two other sons, C.B. and G.B. Matthew indicated that Jennifer seldom offered him additional parenting time, except when she had to bartend.

¶ 25 During the hearing, Matthew's counsel requested the circuit court to consider modifying the previous parenting order to approve joint parental decision-making authority. Following objection from Jennifer's counsel, the court denied Matthew's request because it had not been requested in the pleadings.

¶ 26 Next, Matthew testified that his gross income for 2017 was $81,062.50, or approximately $6755 per month. Matthew explained that he was living paycheck to paycheck after he paid his regular monthly bills, $816 in child support, and $7000 in attorney fees. Matthew claimed Jennifer had income from bartending, although he was unsure of the specific amount.

¶ 27 On cross-examination, Matthew acknowledged that he received a raise in early 2018, thus his paystubs reflected an average monthly income of $7052.50, which was higher than in 2017. Contrary to his testimony that his income was consistent, he admitted that he had higher income some months due to overtime and holiday pay. Also, Matthew conceded that he had failed to reimburse Jennifer for two copayments she made for C.B-S.'s prescription glasses.

¶ 28 Matthew also acknowledged that C.B-S.'s school schedule interfered with only seven hours of his parenting time. Mathew admitted that, although he had 21 straight days off in December 2017, he had not requested additional time with C.B-S. Matthew also missed C.B-S.'s graduation ceremony, but claimed he mistakenly confused the time.

He attended only one parent-teacher conference and did not attend any school functions, such as field trips or extracurricular activities.

¶ 29 B. Jennifer

¶ 30 Jennifer testified to the following as an adverse witness. Since November 2015, Jennifer had purchased a house and two new vehicles. Each month, Jennifer received $2180 in combined social security income, $400 from C.B.'s father, and $816 in child support from Matthew. She believed her social security income would decrease when she started full-time employment in August 2018. Aside from the monthly income above, there were bank deposits from another source. In acknowledging these deposits, Jennifer explained that her friend, Mike Rud, had loaned her approximately $200 in cash each month for 18 months. She anticipated repaying Rud after she received proceeds from a life insurance policy. Jennifer never received these anticipated proceeds. Moreover, Jennifer admitted that she made several false statements under oath during her previous discovery deposition. Specifically, that she was unaware of the source of the deposits and that she had not kept records. At the close of Matthew's case, various exhibits, including Matthew's W-2 Forms, income tax records, pay stubs, and Jennifer's bank records, were admitted.

¶ 31 C. Dr. Clipper

¶ 32 Jennifer then presented her case in chief. First, she called Dr. Clipper, a psychologist and family therapist, to testify. Dr. Clipper testified that Jennifer first contacted him to treat C.B-S. for behavioral issues surrounding visitation. According to Dr. Clipper, given C.B-S.'s ADHD diagnosis, it was important that C.B-S.'s daily

activities were on a set schedule. Dr. Clipper described C.B-S. as very impulsive and more prone to tantrums "than a normal 4 year old." Dr. Clipper described Jennifer and Matthew's interactions as "tense," comparing it to "a couple of teenagers who were pissed because their relationship isn't going well." Dr. Clipper opined that if Matthew and Jennifer were "on the same page," it would be "okay" for Matthew and C.B-S. to spend more time together. Dr. Clipper explained that it would be helpful for C.B-S. to have a consistent schedule during the school year, whereas a laxer schedule in the summer would not be harmful. On cross-examination, Dr. Clipper admitted that he had not personally interacted with Matthew and, therefore, his opinions were solely based on information received from Jennifer.

¶ 33 D. Mike Rud

¶ 34 Rud testified to the following. Rud met Jennifer when she was working as a bartender. Rud believed Jennifer would repay him when she found full-time employment, so he loaned her money to pay bills. Although he did not know the exact amount he had loaned Jennifer, Rud believed it was approximately $10,000, of which she had repaid $50. On cross-examination, Rud acknowledged that he could have loaned her as much as $600 per month.

¶ 35 E. Patricia Kempf

¶ 36 Jennifer's mother, Patricia Kempf, testified to the following. Jennifer was a good, attentive mother to her children. Kempf indicated that on several occasions C.B-S. did not want to spend time with Matthew, but wished to play with his brothers at Jennifer's

house. According to Kempf, she had watched C.B-S. three or four times in the past year during Matthew's parenting time so Mathew could attend social functions.

¶ 37 F. Jennifer

¶ 38 Jennifer testified to the following on her own behalf. At the time of the hearing, C.B. was 14 years old, G.B. was 11 years old, and C.B-S. was 5 years old. At the start of litigation in 2012, Jennifer was bartending while she attended school to become a dental assistant. She received social security income of $1090 for herself and $1090 for G.B. Approximately two weeks before the hearing, she started working as a dental assistant two days a week earning $15 per hour. Based on her first pay stub, Jennifer had earned $796.25 per month as a dental assistant. Jennifer expected an increase in income when she completed an examination, which would allow her to work 24 to 28 hours over a three-day work week, but believed her monthly social security income of $1090 would terminate.

¶ 39 Next, Jennifer addressed various child support worksheets prepared by her attorney. The first worksheet was based on a two-day work week income of $1886, her social security income and child support, which was based on Matthew's income of $7052.50 with the statutory deductions (exhibit 7). Jennifer explained that she first applied for an increase in child support before the guidelines changed in 2016. Thus, she requested a calculation of Matthew's child support obligation before and after the effective date of the new guidelines, and to allow her to claim C.B-S. for annual tax purposes every other year. Next, Jennifer detailed two proposed child support calculations based on a three-day work week income of $1440. First, she included a

multi-family adjustment without social security income (exhibit 9), and second, a multi-family adjustment without social security income, but with shared (equal) parenting time (exhibit 10).

¶ 40 Jennifer also testified regarding child care expenses. According to Jennifer, there was a balance of more than $3000 for unpaid child care services. Jennifer requested the circuit court order Matthew to pay half of all child care expenses, school fees, activities fees, and $20 a day in babysitting costs once C.B-S. started kindergarten in the fall.

¶ 41 Jennifer testified in opposition to Matthew's request for shared (equal) parenting time. According to Jennifer, Matthew did not exercise his parenting time on Thursdays when he worked the night shift, except for maybe the last two weeks before returning to the day shift. Jennifer testified that Matthew's schedule was difficult for C.B-S., who often wet the bed and acted out before Matthew's parenting time. Moreover, Jennifer testified that she had offered Matthew additional parenting time, but he had refused or did not respond to her offer. Moreover, Matthew failed to (1) pick up C.B-S. for school on November 1, 2016, and in March 2018; (2) exercise his parenting time on two Thursdays in January 2018, from 3 p.m. to 6 p.m.; and (3) promptly drop off C.B-S. on January 4, 2018.

¶ 42 Following the close of testimony, the circuit court explained that week-to-week parenting time was not in C.B-S.'s best interest. The court ordered parental decision-making responsibility to remain unchanged. The court determined, however, that Matthew had shown a substantial change in circumstances. The court ordered Matthew's weekday parenting time to remain the same, but awarded him every other week during

the summer months, starting that day, along with a week between Christmas and New Year's Day. The following colloquy took place:

> "[JENNIFER]: Your Honor, can I please have some time with [C.B-S.] before then? He has a rough time transitioning. And for him to be said okay, you're now going to spend a week with your dad when he's been having this many problems—
>
> ***
>
> THE COURT: Well, the problems—I'm going to give you the come-to-Jesus talk.
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> ***
>
> THE COURT: You've got a five-year-old child who has a diagnosis. The last thing in the world he needs the two of you do—doing is fighting and arguing about petty stuff. Keep your eye on the ball.
>
> The eye on the ball is that you've got a child who has ADHD. And the older he gets and the harder school gets, the more that's going to affect him. He needs to know that the two of you—I don't care if you're best friends but cut out the now we're together and now we're not; now we're together and now we're not. Because every time you get all that stuff smushed [*sic*] up in with the parenting [C.B-S.] stuff, it affects [C.B-S.]."

¶ 43 Next, the circuit court calculated child support based on its determination of the parties' incomes. Each party was ordered to pay half of all child care expenses, and Jennifer was responsible for school and extracurricular fees. The court explained that it could have ordered a 75/25 split but chose to award a 50/50 split, given that Jennifer had parental decision-making responsibility. The court also allowed Jennifer to claim C.B-S. for tax purposes on even numbered years. Finally, the court set a hearing for September 4, 2018, to address the petition to show cause, sanctions, and attorney fees.

¶ 44 On July 13, 2018, Jennifer filed a motion to vacate and/or reopen proofs, alleging that the court prevented her from presenting evidence when it terminated the proceedings during her case. Subsequently, the court denied Jennifer's motion to vacate but granted the motion to reopen proofs.

¶ 45 On August 10, 2018, Matthew filed a motion to reconsider the July 5, 2018, order, asserting that he should not have to pay a portion of the child care expenses when C.B-S. was in Jennifer's care during the summer. Specifically, Matthew asserted that he provided monthly child support payments, health insurance, and all needs for C.B-S. during his half of the summer, so Jennifer should have the same responsibility.

¶ 46 On August 24, 2018, Jennifer filed a petition for rule to show cause alleging that Matthew had not provided her with identification cards and policy information relating to medical, dental, and vision insurance for C.B-S. Moreover, she alleged that Matthew had failed to reimburse her for certain child care expenses.

¶ 47 On August 29, 2018, Matthew filed a petition to clarify C.B-S.'s uncovered medical expenses, alleging that he had received two duplicate receipts for filled prescriptions. Matthew requested the circuit court to order Jennifer to tender all receipts and explanation of benefits for C.B-S.'s medical bills.

¶ 48 On September 4, 2018, the circuit court reconvened the hearing from July 5, 2018, stating that the hearing would include the following motions: July 13, 2018, motion to vacate; May 4, 2017, petition for rule to show cause; August 10, 2018, motion to reconsider; and August 29, 2018, motion to clarify uncovered medical expenses. The parties announced their disagreements regarding the particulars of the court's July 5, 2018, ruling. Specifically, the parties disagreed on the appropriate amount of child support from July 1, 2017, to August 1, 2018. Matthew's attorney calculated child support based on no multi-family adjustment because Jennifer received both G.B.'s social security income and C.B.'s father's monthly cash payments. Jennifer's attorney calculated child

support based on the multi-family adjustment without court order for one child, C.B., because G.B. was fully supported by social security income. Jennifer stated that she was no longer receiving the $400 payments from C.B.'s father because C.B. was turning 16 years old. Instead of making payments to her, C.B.'s father was buying C.B. a car. The following colloquy took place:

> "JENNIFER: I have no say in what [C.B.'s] dad does with his money.
>
> MS. WILSON [MATTHEW'S COUNSEL]: But she absolutely has the ability to go and get statutory—
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> THE COURT: Absolutely.
>
> MS. WILSON: —child support from him and she's choosing not to do it
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> THE COURT: Absolutely.
>
> MS. WILSON: And to use it to pay for her—
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> THE COURT: I'm not going to pass along your other father—child's father— I'm not going to pass along his responsibility to [Matthew].
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> MS. AUBUCHON [JENNIFER'S COUNSEL]: That's not what the statute does, Your Honor.
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> MS. WILSON: That's exactly what—
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> MS. AUBUCHON: No, it's not. It can be—
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> THE COURT: What is does—I know what it does. I've read the statute, ma'am. But she can choose whether or not she wants to go after child support for her l6-year-old. I know how much a 16-year-old eats. You know how much a 16-year-old eats. And if she chooses not to go after that father for child support I am not passing that responsibility on to [Matthew]. That's hers and that father's responsibility.
>
> MS. AUBUCHON: But, Your Honor—
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> THE COURT: I calculated it as child support and it will continue to be calculated as child support. *** But I included that in income and I'm going to continue to include that in her income. That's what she testified to, that she got it every month.
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> * * *
>
> MS. AUBUCHON: That's not what the statute does, Your Honor.
>
> THE COURT: Ma'am, I know what the statute does. Your client is telling me that she has chosen not to file for child support against that father.
>
> MS. AUBUCHON: It's regardless of whether you receive child support for a child. Even if you receive child support for a child that's not a hundred percent of that child's support. You still have that obligation."

The court indicated that it would not change its ruling, stating: "I've made my ruling ***—It is going to be counted as income because that's what she testified she got every month from that child's father." The court then proceeded to hearing on the July 13, 2018, motion to vacate.

¶ 49 Jennifer, called as an adverse witness, testified that her mother charged $30 per day for babysitting C.B-S., but she did not charge for C.B. or G.B. because they were older, able to stay by themselves, and participated in sports after school. According to Jennifer, when her mother previously watched all three children, she paid her mother for gas, although her mother had never requested reimbursement for gas.

¶ 50 Next, Jennifer testified to the following on her own behalf. Since July 5, 2018, Matthew had failed to exercise parenting time on Memorial Day, Labor Day, and on a Sunday that Jennifer was in the hospital. In addition, Matthew did not pick up C.B-S. for school since his first day. Jennifer next testified to numerous dates that Matthew had missed since 2015, which were detailed in various exhibits. After considering the evidence regarding missed parenting time, the court determined that Matthew had not exercised all of his parenting time. The court acknowledged, however, that Matthew was hindered by his work schedule.

¶ 51 Next, Jennifer testified that she lost her job because she was late for work each time Matthew failed to pick up C.B-S. for school. Moreover, Jennifer claimed that Matthew refused to provide C.B-S.'s vision and dental cards, had failed to pay numerous unpaid medical bills, including two bills for Dr. Clipper, and owed $75 in unpaid child care expenses. Jennifer also addressed the December 30, 2016, petition for sanctions.

Jennifer testified that Matthew had walked out of the mediation session following a dispute over Matthew missing parenting time on Thanksgiving. Moreover, Jennifer claimed she owed $14,124.45 in attorney fees, which had accrued since the start of litigation.

¶ 52 After recessing the hearing, the circuit court modified the parenting plan. The court awarded Matthew one day a week of parenting time beginning at the end of the school day to 6:30 p.m., alternating Wednesdays and Thursdays. The court further ruled that if Matthew missed two days of weekday parenting time during the school year, he would lose his weekday parenting for the rest of the school year. The court also ordered the parties to each pay half of the child care expenses, regardless of the parenting time schedule. The court determined that Matthew owed $240.79 in unpaid medical bills and $75 for child care expenses. The court denied the December 30, 2016, motion for sanctions and request for attorney fees.

¶ 53 On September 10, 2018, the circuit court entered a written order regarding the matters heard at the July 5, 2018, and September 4, 2018, hearings,[1] finding that a change in circumstance had occurred and that a modification of parenting time was warranted. The court ruled that (1) Matthew's summer parenting time would be from 7:30 a.m. Thursday of his week off work until 6 p.m. on Wednesday of the following week; (2) Matthew's school year parenting time would be modified from after school until 6:30 p.m.; (3) Matthew owed retroactive child support for the period of October 2016 to June

[1]Although the circuit court entered an order based on its findings, the order was modified nunc pro tunc to correct "scrivener's errors therein with regard to paragraph designations" on September 20, 2018.

2017 in the amount of $1795.59; (4) Jennifer owed $301.56 to Matthew for overpaid child support for the period of July 1, 2017, to August 1, 2018; (5) starting August 1, 2018, Matthew was to pay child support in the amount of $828.62 per month to Jennifer, with a total of $1519.27 to commence October 1, 2018; (6) Matthew owed $1428 in child care expenses, retroactive to October 2016; (7) the parties were allowed one phone call or Facetime per day with the child while with the other parent; and (8) Jennifer was allowed to claim C.B-S. for tax purposes in even numbered years.

¶ 54 On October 10, 2018, Jennifer filed a motion to reconsider. First, Jennifer argued that allowing Matthew parenting time with C.B-S. on alternating weeks during the summer was contrary to C.B-S.'s best interest, due to C.B-S.'s disruptive behaviors following extended visits with Matthew, and in light of expert testimony regarding C.B-S.'s needs. Jennifer also argued that Matthew never exercised extended parenting time with C.B-S. "by his own choice." Second, Jennifer asserted that the circuit court declined to eliminate Matthew's weekday and certain holiday parenting time even though Matthew had not regularly exercised such parenting time. Third, Jennifer argued that the court erred in computing child support by failing to adjust Jennifer's income, given that she was supporting her minor child C.B., as required by statute. Fourth, Jennifer argued that Matthew should have been ordered to contribute to her attorney fees based on the discrepancy between the parties' incomes. Lastly, Jennifer argued that Matthew should have been sanctioned for "sabotag[ing] mediation by throwing a fit and walking out."

¶ 55 On October 30, 2018, the circuit court entered an order requiring that the parties equally share C.B-S.'s child care expenses, effective September 4, 2018. The court also ordered the parties to pay all outstanding child care expenses by November 6, 2018.

¶ 56 On December 13, 2018, a hearing was held on the October 10, 2018, motion to reconsider. After hearing counsels' arguments, the circuit court denied the motion to reconsider. This appeal followed.

¶ 57 II. Analysis

¶ 58 A. Parenting Time

¶ 59 First, Jennifer argues that the circuit court erred by (1) granting Matthew parenting time during alternate weeks in the summer and (2) denying her request to terminate Matthew's parenting time on weekdays and certain holidays. In support, Jennifer argues that Matthew failed to establish a substantial change in circumstances where the evidence demonstrated a need to eliminate Matthew's parenting time. We disagree.

¶ 60 Section 602.8(a) of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/602.8(a) (West 2018)) provides for reasonable parenting time by parents who were not allocated significant decision-making responsibilities "unless the court finds, after a hearing, that the parenting time would seriously endanger the child's mental, moral, or physical health or significantly impair the child's emotional development."

¶ 61 While section 610.5(a) of the Marriage Act (750 ILCS 5/610.5(a) (West 2016)) previously required a showing of serious endangerment to permit a modification of parenting time, this showing is no longer required under the current statute. Currently,

section 610.5(a) of the Marriage Act permits a modification, at any time, upon a showing of changed circumstances that necessitates a modification to serve the best interests of the child. See Pub. Act 99-763 (eff. Jan. 1, 2017). Under section 610.5(c) of the Marriage Act, a circuit court may modify parenting time if the court finds that a substantial change has occurred in the circumstances of the child or either parent, and that a modification is necessary to serve the child's best interests. 750 ILCS 5/610.5(c) (West 2016). In addition, the court must look at the totality of the circumstances, and the change must directly affect the needs of the child. *In re Marriage of Davis*, 341 Ill. App. 3d 356, 359 (2003).

¶ 62 It is well-settled that the best interests of the child are the primary consideration in all decisions affecting children, including the allocation of parenting time. *In re Parentage of J.W.*, 2013 IL 114817, ¶ 41. When determining the child's best interests for purposes of allocating parenting time, a circuit court will consider several factors, including: (1) the wishes of the parents and the child; (2) the interaction between the child and his or her parents and siblings; (3) the child's needs; (4) whether a restriction on parenting time is appropriate; (5) the willingness and ability of each parent to place the needs of the child above his or her own needs; and (6) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child. 750 ILCS 5/602.7(b) (West 2016).

¶ 63 The circuit court's allocation of parenting time is given great deference because that court is in a superior position to judge the credibility of the witnesses and determine the best interests of the child. *In re Marriage of Whitehead*, 2018 IL App

(5th) 170380, ¶ 15. We will not disturb a court's decision on appeal "unless the court abused its considerable discretion or its decision is against the manifest weight of the evidence" (*id.* (citing *In re Marriage of Debra N.*, 2013 IL App (1st) 122145, ¶ 45)), or where a manifest injustice has been done. *In re Marriage of Dorfman*, 2011 IL App (3d) 110099, ¶ 57.

¶ 64 Here, the circuit court granted Matthew's request to modify his summer parenting time. The evidence demonstrated that, at the time of the hearing on the parties' motions to modify, C.B-S. was five years old and attending school. In comparison, C.B-S. was only one when the original parenting order was entered. In that span of time, he had been diagnosed with ADHD, which increased his emotional need for consistent parental care. The record shows that his age and medical diagnosis, along with the parties' acrimonious relationship, necessitated a modification of the parenting plan to serve C.B-S.'s best interests. Thus, we cannot say that the court's decision to modify the parenting order was against the manifest weight of the evidence or an abuse of discretion.

¶ 65 Next, the circuit court denied Jennifer's request to eliminate Matthew's weekday and holiday parenting time. Specifically, the court ruled that eliminating more parenting time with Matthew would not be in the best interest of C.B-S. Before considering the court's ruling on Jennifer's request, we address the parties' arguments as to whether Jennifer sought a modification or a restriction.

¶ 66 Jennifer contends that she sought a modification of the parenting plan under section 610.5(c) of the Marriage Act (750 ILCS 5/610.5(c) (West 2016)), rather than a restriction. Thus, she argues that she, like Matthew, was only required to show a

substantial change in circumstances and that a modification was necessary to serve the child's best interests. In contrast, Matthew contends that Jennifer sought a restriction, that is a "reduction, elimination, or other adjustment of the parent's decision-making responsibilities or parenting time." *Id.* § 603.10(a)(1). As such, Jennifer was required to prove that "a parent engaged in any conduct that seriously endangered the child's mental, moral, or physical health or that significantly impaired the child's emotional development." *Id.* Generally, a modification of parenting time directly focuses on the child's best interests, while a restriction focuses on the suitability of the parent whose parenting time would be restricted. *In re Marriage of Chehaiber*, 394 Ill. App. 3d 690, 697 (2009).

¶ 67 Here, we need not decide whether the more stringent standard applies because the circuit court found that Jennifer failed to demonstrate that the elimination of Matthew's weekday and holiday parenting time would serve C.B-S.'s best interests. Moreover, the court made no finding, and the record is devoid of any evidence, that Matthew engaged in any conduct that seriously endangered C.B-S.'s mental, moral, or physical health, or that significantly impaired the child's emotional development.

¶ 68 In support of her request, Jennifer testified that Matthew had missed his parenting time on many occasions and even failed to pick C.B-S. up from school during his scheduled parenting time over a four-year period. Jennifer also testified that C.B-S. lacked a desire to spend time with Matthew. In contrast, Matthew testified to his strong desire to have a meaningful relationship with C.B-S. and the various ways Jennifer had interfered with his efforts to foster that relationship.

¶ 69 In considering this evidence, the circuit court found that, although Matthew had missed some parenting time, his work schedule posed a barrier to him successfully following the parenting schedule. The record demonstrates that Jennifer generally displayed an unwillingness to accommodate Matthew's work schedule or to deviate from the original parenting plan when reasonably necessary. Additionally, Dr. Clipper, a disinterested third party, was unable to testify that an increase in Matthew's parenting time would be harmful to C.B-S. After considering the evidence and evaluating the parties' respective testimonies, the court ruled that C.B-S.'s best interests would be served by spending more uninterrupted parenting time with Matthew during the summer months and on Matthew's weeks off of work.

¶ 70 We note conflicting testimony was presented with regard to the best interest factors. As such, we defer to the circuit court's factual finding because it is in a "far better position than are we to 'observe the temperaments and personalities of the parties and assess the credibility of witnesses.' " *In re Marriage of Marsh*, 343 Ill. App. 3d 1235, 1239-40 (2003) (quoting *In re Marriage of Stopher*, 328 Ill. App. 3d 1037, 1041 (2002)). This is especially true when, as here, C.B-S. is too young to express his own wishes. It appears that the court's modified parenting schedule was designed to further facilitate and encourage a close and continuing relationship between C.B-S. and Matthew. It is also readily apparent that Jennifer's proposal, if adopted, would further alienate Matthew from C.B-S. and negatively impact their father-son relationship. Given the conflicting evidence, we cannot conclude that the court's decision to deny Jennifer's request to

eliminate certain aspects of Matthew's parenting time was manifestly unjust or an abuse of discretion.

¶ 71 B. Child Support

¶ 72 Next, Jennifer argues that the circuit court failed to calculate child support in accordance with the statutory child support guidelines. Specifically, Jennifer argues she is entitled to the multi-family adjustment.

¶ 73 Jennifer contends that this issue arises due to the circuit court's erroneous interpretation of the multi-family adjustment provision set forth in section 505(a)(3)(F) of the Marriage Act (750 ILCS 5/505(a)(3)(F) (West Supp. 2017)). As such, Jennifer asserts that our review should be *de novo*. We agree. Because statutory interpretation is not a matter of the court's discretion but a question of law (*In re Marriage of Lindman*, 356 Ill. App. 3d 462, 465 (2005)), our review is *de novo.*

¶ 74 Section 505(a)(2) of the Marriage Act plainly states that "[t]he court shall determine child support in each case by applying the child support guidelines unless the court makes a finding that application of the guidelines would be inappropriate, after considering the best interests of the child ***." 750 ILCS 5/505(a)(2) (West Supp. 2017). Additionally, section 505(a)(3.4) of the Marriage Act provides that in any action to establish or modify child support, the child support guidelines shall be used as a rebuttable presumption. *Id.* § 505(a)(3.4). The court may deviate, with written findings

specifying the reasons for the deviation,[2] from the child support guidelines if the application would be inequitable, unjust, or inappropriate. *Id.*

¶ 75 Lastly, the multi-family adjustment provides for an adjustment to child support, following request or application of a parent supporting a child living in or outside of that parent's household. *Id.* § 505(a)(3)(F). Pursuant to section 505(a)(3)(F), in calculating child support, the court:

> "shall deduct from the parent's net income the amount of financial support actually paid by the parent for the child or 75% of the support the parent should pay under the child support guidelines (before this adjustment), whichever is less, unless the court makes a finding that it would cause economic hardship to the child. The adjustment shall be calculated using that parent's income alone." *Id.*

¶ 76 Initially, we note that our review has been hindered by the absence of the support obligation worksheets the circuit court used to calculate child support. The figures set out in the parties' respective support obligation worksheets are inconsistent with the court's September 20, 2018, child support calculations. Furthermore, even though the court expressed that child support after July 1, 2017, was based on the new income shares statute, the court expressed that it would not apply the multi-family adjustment provision. In doing so, the court, without making the appropriate written findings, stated its

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[2]A court may deviate from the guidelines for reasons that may include: "(A) extraordinary medical expenditures necessary to preserve the life or health of a party or a child of either or both of the parties; (B) additional expenses incurred for a child subject to the child support order who has special medical, physical, or developmental needs; and (C) any other factor the court determines should be applied upon a finding that the application of the child support guidelines would be inappropriate, after considering the best interest of the child." 750 ILCS 5/505(a)(3.4) (West Supp. 2017).

reasoning on the record: "[I]f [Jennifer] chooses not to go after [C.B.'s] father for child support I am not passing that responsibility on to [Matthew]." This was error.

¶ 77 The statute clearly mandates an adjustment by deducting from the parent's net income the amount of financial support actually paid by the parent for the child or 75% of the support the parent should pay under the child support guidelines unless the circuit court makes a finding that it would cause economic hardship to the child. Here, it was undisputed that Jennifer supported C.B. and that she had requested the court to apply the multi-family adjustment to her net income. Because the court made no finding that the application of the adjustment would cause economic hardship to C.B-S., the court was required to apply the statutory adjustment. The court failed to do so. Consequently, we conclude that the court abused its discretion.

¶ 78 Accordingly, we reverse the portion of the circuit court's order relating to child support after July 1, 2017, and remand the matter with directions for the court to determine the appropriate amount of child support under the statutory guidelines, which would take into account the multi-family adjustment provision. If the court finds that a deviation from the guidelines is appropriate, it must provide written reasoning and specify the amount that would have been required under the guidelines. 750 ILCS 5/505(a)(2) (West Supp. 2017); see also *In re Marriage of Sobieski*, 2013 IL App (2d) 111146, ¶ 53.

¶ 79 C. School and Extracurricular Activities Fees

¶ 80 Next, Jennifer argues that the circuit court abused its discretion in ordering her to pay all school and extracurricular activities expenses. In support, Jennifer argues that the

court should have considered the income disparity between the parties and the reasonableness of the extracurricular fees.

¶ 81 Section 505(a)(3.6) of the Marriage Act provides that the circuit court, in its discretion, may order either or both parents to contribute to reasonable school and extracurricular activity expenses incurred. 750 ILCS 5/505(a)(3.6) (West Supp. 2017). Because a court's determination to award contributions to reasonable school and extracurricular expenses is discretionary under the statute, we review the court's determination for an abuse of discretion. An abuse of discretion occurs when no reasonable person would adopt the view taken by the court. *In re Marriage of Berberet*, 2012 IL App (4th) 110749, ¶ 41.

¶ 82 Here, Jennifer sought reimbursement for school lunches, which were typically reduced based on Jennifer's income; an $85 milk fee; and a one-time fee of $200 to personalize C.B-S.'s football jersey. The evidence demonstrated that the football jersey fee may have been paid from selling raffle tickets. In ordering Jennifer to pay these fees and expenses, the circuit court reasoned that the parties were unable to jointly make decisions and that ordering the parties to split the extracurricular fees would only lead to future disputes. Given the acrimonious relationship between the parties, we cannot say that the court's resolution of this issue was unreasonable. Accordingly, we find the court did not abuse its discretion,

¶ 83 D. Child Care Expenses

¶ 84 Jennifer also argues that the circuit court erred in ordering her to pay half of the child care expenses without considering the disparity in the parties' incomes, as required

by statute. In particular, Jennifer asserts that section 505(a)(3.7) of the Marriage Act requires the court to base its decision on the proportion to each parent's percentage share of combined net income. 750 ILCS 5/505(a)(3.7)(B) (West Supp. 2017).

¶ 85 As referenced above, a circuit court's modification of child support is typically reviewed for an abuse of discretion. *In re Marriage of Salvatore*, 2019 IL App (2d) 180425, ¶ 22. However, when the issue concerns the legal effect of undisputed facts, we apply the *de novo* standard of review. *Id.* (citing *In re Marriage of Hughes*, 322 Ill. App. 3d 815, 818-19 (2001)). Moreover, statutory interpretation is not a matter of the court's discretion but presents a question of law. See *In re Marriage of Lindman*, 356 Ill. App. 3d 462, 465 (2005) ("The proper construction of section 505 is a question of law."). Because our resolution of this issue requires us to interpret the relevant provisions of the Marriage Act, our review is *de novo.*

¶ 86 The Marriage Act was amended by Public Act 99-764 (eff. July 1, 2017) and Public Act 100-15 (eff. July 1, 2017), which changed the statutory guidelines from a percentage-of-obligor income model to an "income shares" model. Both versions of section 505 authorized courts to order reasonable child support (750 ILCS 5/505(a)(2.5) (West 2016); 750 ILCS 5/505(a) (West Supp. 2017)), but, unlike the prior version of section 505, child care expenses must now be "prorated in proportion to each parent's percentage share of combined net income ***." 750 ILCS 5/505(a)(3.7)(B) (West Supp. 2017).

¶ 87 Here, the circuit court exercised discretion in dividing the expenses between the parties without considering the parties' percentage share of combined net income.

Because the court failed to prorate the parties' responsibilities in accordance with section 505(a)(3.7)(B), the court abused its discretion in ordering the parties to pay an equal share of the child care expenses. We, therefore, reverse that portion of the court's order and direct the court on remand to enter an order pursuant to the statutory guidelines.

¶ 88 E. Attorney Fees

¶ 89 Lastly, Jennifer argues that the circuit court abused its discretion by denying her request for attorney fees, totaling $14,000. Jennifer asserts that paying those fees would undermine her ability to financially support her children. Matthew argues that the court did not abuse its discretion in ordering each party to pay their own attorney fees, given that he, too, had accumulated attorney fees, totaling $7000. We agree.

¶ 90 The party for whom the services are rendered is primarily responsible for the payment of his or her attorney fees. *In re Marriage of Adams*, 348 Ill. App. 3d 340, 344 (2004). Under section 508 of the Marriage Act, the court, following a hearing and the consideration of the financial resources of the parties, may order one party to pay a reasonable amount for the other party's costs and attorney fees. 750 ILCS 5/508(a) (West 2016). "The party seeking an award of attorney fees must establish her inability to pay and the other spouse's ability to do so." *In re Marriage of Schneider*, 214 Ill. 2d 152, 174 (2005). "Financial inability exists where requiring payment of fees would strip that party of her means of support or undermine her financial stability." *Id.* A circuit court's decision to award or deny attorney fees will be reversed only if the court abused its discretion. *Id*.

¶ 91 In the instant case, the circuit court had the parties' respective incomes before it. Even with the disparity of income, Jennifer failed to establish that she had an inability to pay or that Matthew had an ability to pay her attorney fees, given that his testimony established that he, in general, lives "paycheck to paycheck." Moreover, Jennifer did not show that paying her attorney fees would strip her of the means to support her children or undermine her financial stability. In view of all the circumstances, we cannot say that the court abused its discretion.

¶ 92 III. Conclusion

¶ 93 Based on the foregoing, we affirm the portions the circuit court's order regarding parenting time, the allocation of school and extracurricular activities fees, and attorney fees. We reverse and remand with directions regarding child support and child care expenses where the court failed to follow the proper statutory guidelines.

¶ 94 Affirmed in part and reversed in part; cause remanded.