

NOTICE

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2022 IL App (5th) 210010-U

NO. 5-21-0010

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

KIARA C.,)	Appeal from the
)	Circuit Court of
Petitioner-Appellee,)	St. Clair County.
)	
v.)	No. 16-F-174
)	
ANTONIO W.,)	Honorable
)	Alana I. Mejias,
Respondent-Appellant.)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Cates and Moore concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's allocation of decision-making authority and parenting time is affirmed where the decision was not against the manifest weight of the evidence.

¶ 2 This appeal arises out of an order entered by the circuit court of St. Clair County modifying the existing parenting plan with regard to the parties' three minor children. In the order, the court allocated the decision-making authority over the children to the petitioner, Kiara C., and set a new parenting time schedule, which gave the respondent, Antonio W., limited parenting time during certain holidays and during the children's spring and winter breaks. For the reasons that follow, we affirm.

¶ 3

I. BACKGROUND

¶ 4 Kiara C. and Antonio W. had three children, Acamas W., born August 13, 2014, Aspen W., born June 9, 2015, and Achilles W., born April 25, 2016. The parties were never married.

¶ 5 On January 4, 2018, the trial court entered an order granting Kiara C. the majority of parenting time for all three children. Thereafter, the children were placed in Antonio W.'s care during the pendency of petitions for neglect filed by the State against Kiara C. based on allegations that the children were in an environment that was injurious to their welfare (St. Clair County case Nos. 18-JA-61, 18-JA-62, 18-JA-63). On November 13, 2018, the juvenile court found that the allegations against Kiara C. had not been proven by a preponderance of the evidence and dismissed the petitions. On November 21, 2018, Antonio W. filed a *pro se* motion seeking sole parental responsibility of the minor children, arguing that Kiara C. had neglected and endangered the minor children. He also requested the termination of his child support obligation because the children had been in his custody since April 2018.

¶ 6 On February 6, 2019, Kiara C. filed an emergency *pro se* motion, seeking the return of the children to her care. In the motion, she noted that the Illinois Department of Children and Family Services (DCFS) cases filed against her were closed, the children were supposed to be returned to her, Antonio W. failed to return them to her, and he was in contempt of court. She requested sole parental responsibility of the minor children and that Antonio W. not be allowed any parenting time.

¶ 7 On February 19, 2019, the trial court entered an order, in which it noted that, despite the dismissal of the juvenile cases and the court's January 2018 order giving Kiara C. the majority of parenting time, Antonio W. failed to return the children to her care and denied her access to them. Finding that grounds existed to grant the emergency motion, the court ordered Antonio W. to return the children to Kiara C.'s care. The court also established a schedule for make-up parenting time.

¶ 8 On February 20, 2019, Antonio W. filed an emergency *pro se* motion for the return of the children to his care, in which he acknowledged that the juvenile cases against Kiara C. had been dismissed but argued that he was not instructed to return the children to her care and was instead told that the children would remain in his care while he sought sole parental responsibility. He indicated that he had not received notice of the emergency hearing in time to attend. He also indicated that he was concerned about his children's well-being because he had to get them when Kiara C. left them in the care of third parties and then failed to pick them up; she was not cooperative with the children's occupational, speech, and physical therapies; she removed them from their Illinois school and moved them to St. Louis; she did not have housing and constantly changed her phone number; and she consistently violated the mediation agreement by not allowing him parenting time.

¶ 9 On August 8, 2019, Antonio W. filed a *pro se* motion wherein he argued that he should be awarded sole parental responsibility because the children were not safe with Kiara C., and she was not in compliance with the trial court's order allocating parenting time.

¶ 10 On September 19, 2019, the trial court entered an order, noting that a hearing was supposed to be held on all remaining issues, but Kiara C. failed to appear. At the hearing, Antonio W. presented text messages and testimony indicating that Kiara C. had relocated with the minor children without his consent or court approval. The court reset the hearing for October 4, 2019, and warned that, if either party failed to appear, it would proceed in their absence. On September 30, 2019, Kiara C. filed a *pro se* notice of relocation to Kansas City, Missouri. She also filed a *pro se* motion in which she indicated that she moved with the minor children on August 18 because of a better job opportunity. She noted that the move was sudden, and she left everything in her old home. She indicated that the new environment was better and safe, the children's new schools were top ranked in academics, and she would be able to provide the children with a better life. She also indicated that she had twice returned to St. Louis with the children and had given Antonio W. opportunities to spend a few days with the children. She further indicated that she would continue to allow Antonio W. opportunities to video chat with the children and keep him updated on their lives.

¶ 11 On October 4, 2019, the trial court held a hearing on Kiara C.'s petition for relocation and Antonio W.'s motion for modification of parental responsibilities and parenting time. At the hearing, Kiara C. testified that she relocated from Jennings, Missouri, to Kansas City, Missouri, on August 18 without Antonio W.'s consent or the court's approval; her current residence was 3 hours and 40 minutes from Jennings, Missouri; although she relocated on August 18, the children were not enrolled in their new schools until October 3, 2019; she was living with her mother but planned to move into her

own apartment soon; and she was employed, earning \$15 an hour, and the children either stayed with her mother or were in daycare while she was at work.

¶ 12 Kiara C. requested relocation because she felt the new area was safer for the children, she had obtained employment, her mother assisted with the children's care, she would reside in the same neighborhood as her mother, the school district was good, she had set up the children with a new physician, she had spoken with the neighbors about extracurricular activities for the children, and Aspen W. attended church with Kiara C.'s mother. Although she testified that she was forced to move from her St. Louis apartment quickly and did not bring any of her personal belongings with her, she did not provide a reason for the quick move. She requested that parenting time remain the same as provided in the February 19, 2019, order.

¶ 13 Antonio W. testified that he had parenting time on alternating weeks, and during the pendency of the juvenile cases, the children resided with him (they resided with him for 11 months). He testified that Acamas W. and Achilles W. were both diagnosed with autism, and, while in his care, Acamas W. had an individualized education program, which included the presence of an assistant during the school day. Achilles W. was receiving services through the Knights of Columbus as recommended by the child's primary physician. They also had an advocate that would come to the residence and provide services. Antonio W. was married to Kimberly W., and they had two children together. He was unemployed but was last employed in March 2019 at DoubleTree hotel in Collinsville, earning \$10 an hour and working 40 hours per week. He testified that Kiara C. had not followed the parenting time schedule since her relocation, and he had only seen

the children a couple of times for a few hours each time. He objected to the relocation because he did not believe that he could be the father that he needed to be if his children lived in Kansas City. He requested that the parties have equal parenting time.

¶ 14 On October 10, 2019, the trial court entered an order, denying Kiara C.'s petition for relocation and granting Antonio W.'s request to modify the allocation of parental responsibilities. With regard to relocation, the court noted that Kiara C. did not provide any supporting evidence regarding the area, the new school districts, or the services being provided to her children who were autistic. The court also noted that, without any reasonable justification, Kiara C. did not enroll the children in new schools for over 1½ months after school started.

¶ 15 The trial court further noted that it could determine a reasonable allocation of parental responsibilities between the parties if relocation occurred, but it was concerned with Kiara C.'s compliance with any order since she relocated with the minor children, enrolled them in new schools, and established them with a new doctor, all without notice to Antonio W. The court indicated that FaceTime and Skype could be utilized to allow Antonio W. contact with the children but that regular phone calls did not replace in-person contact between a child and parent. The court further indicated that, although Kiara C. had lived in Kansas City since August 2019, she had not provided Antonio W. with his alternating weekend parenting time, and those actions contradicted her testimony that she did not want to take the children away from him. After considering all of the requisite best-interest factors, the court found that relocation was not in the children's best interests and denied Kiara C.'s petition to relocate.

¶ 16 As for the petition to modify the allocation of parental responsibility and parenting time, the trial court noted that the parties shared parenting time with the children until April 2018; from April 2018 until March 2019, they were in Antonio W.'s care; and from March 2019 until August 2019, they resided with Kiara C. in Jennings, Missouri. Since August 18, 2019, the children have resided in Kansas City, Missouri, with Kiara C. The court noted that the children needed stability and structure in all areas, including their home, school, and parenting time schedule, and that Acamas W. and Achilles W. were both receiving services when living with Antonio W. for their autism diagnoses. The court also noted that Kiara C. wished to have the majority of the parenting time, but Antonio W. requested equal parenting time. The children had a half-sibling in Kiara C.'s home and two half-siblings in Antonio W.'s home, but there was no testimony presented as to the interactions and relationships between the children and their half-siblings. The children have healthy relationships with both parents.

¶ 17 The trial court stated that, although Kiara C. was sincere in her belief that her decisions were in the best interests of the children, her decisions as a whole had led to instability and lack of structure for the children. After considering all of the statutory best-interest factors, the court granted Antonio W.'s request for the allocation of sole parental responsibility for educational decisions but gave the parties joint parental responsibilities for medical, religious, and extracurricular decisions. The court also gave Antonio W. the majority of the parenting time and established a new parenting time schedule. In the order, the court indicated that, if Kiara C. moved within 25 miles of Antonio W., the move would

qualify as a substantial change of circumstances to seek modification of the parenting time schedule.

¶ 18 On February 27, 2020, Kiara C. filed a *pro se* motion, asserting that she had reason to believe that Antonio W. moved to Indiana with the children without her approval, and the children had not been in school all week. On February 28, 2020, Kiara C. filed another *pro se* motion, in which she requested modification of the trial court's October 10, 2019, order. In her motion, she stated that, since the entry of the order, Antonio W. had only brought the children to one parenting time exchange and that the only time that she saw the children was when she visited. She also indicated that she was in the process of moving back to the area.

¶ 19 On June 18, 2020, Antonio W. filed a *pro se* motion, in which he indicated that Kiara C. moved, and he did not know her current address; she failed to show up at the parenting time exchange for her summer parenting time; she made several unfounded DCFS reports against him; she had a car accident with the children in the car and failed to tell him; she got into a physical altercation with his wife; she got into a physical altercation with a third party; and, when she communicated with him, she was rude and vulgar.

¶ 20 On August 14, 2020, Kiara C., through her counsel, filed an amended motion to modify the allocation of parental responsibilities and parenting time, seeking sole decision-making responsibilities and equal parenting time. In the motion, Kiara C. argued that there had been material and substantial changes in circumstances that would warrant a modification of the decision-making responsibilities in that Antonio W. refused to involve her in the decision making regarding the minor children, he denied her multiple periods of

parenting time from October 2019 to the present, he concealed the children from her during her parenting time, and he relocated to Indiana with the children without getting her approval. That same day, she also filed a motion for a finding of abuse of parenting time, in which she argued that she had not received her parenting time on several occasions since the entry of the trial court's October 2019 order; she had not seen the children since April 28, 2020; Antonio W. had relocated to Indiana; and she had not been allowed to speak with the children via telephone while they were in his care. Thereafter, Kiara C.'s counsel was granted leave to withdraw, and Kiara C. proceeded *pro se*.

¶ 21 On November 23, 2020, the trial court held a hearing on all pending motions. At the hearing, Kiara C. testified that, since the October 2019 order was entered, Antonio W. had only met her one time at the parenting time exchange location because he was financially unable to travel. She had not seen the children since April, and it had been approximately three months since she talked to them on the telephone. She contacted the police to conduct a wellness check, but Antonio W. did not live at the address that was on file. She did not know where the children were going to school as the school where they were supposed to be enrolled had no record of their enrollment. She had been to his old address, but it appeared that no one lived there.

¶ 22 Kiara C. sought sole parental decision making and primary residential parent status with Antonio W. getting supervised parenting time. She also asked that her child support obligation be terminated and noted that she was not asking for Antonio W. to pay child support. She testified that she currently lived in St. Louis with her three-year-old son, and she was employed. The children would attend the same school, which was located

approximately five minutes from her home, if they lived with her. Although she currently worked from 10 p.m. to 6 a.m., she could enroll the children in a daycare that offered overnight services. She also explained that she did not intend to work if the children were returned to her. She had contacted Antonio W. multiple times to attempt to exercise her parenting time.

¶ 23 Antonio W. testified that he brought the children to Kiara C. on three occasions. On the one occasion that she came to his house, she got into an altercation with his wife. He was not at fault for Kiara C. being unable to talk to the children on the phone because she either called late at night or during the day when they were in remote learning. He told her where the children were enrolled in school. His wife was currently living in Indianapolis, but he had not moved with her because of the pandemic and the court hearings. She had lived in Indianapolis for approximately 10 months. However, he also testified that, because of the pandemic, he was staying in Indianapolis with the children so the family could be together. The children had been attending school in Illinois, but he transferred them to an Indianapolis school approximately one week prior. He was employed at Pinefield Healthcare and Rehabilitation Center.

¶ 24 Antonio W. had not let Kiara C. have parenting time with the children because the last time she had them, she was in a car accident where she ran an ex-boyfriend's vehicle off the road. She did not tell Antonio W. about the incident and initially denied it when he confronted her about it. He testified that Kiara C. had anger issues, she was unpredictable, and it was not safe for the children to be around her because she was not making the best

decisions for herself. He did not communicate with her because, anytime he tried, she cursed at him.

¶ 25 That same day, the trial court entered an order, finding that there had been a substantial change in circumstances to justify modifying the October 2019 order as Kiara C. had moved within 25 miles of Antonio W. and the children. In the order, the court noted that Kiara C. had not spoken to the children in three months, she had not seen them since April, each party claimed that the other was at fault for her not seeing the children, she presented evidence showing that Antonio W. had blocked her phone number, Antonio W. explained that he had blocked her number in response to Kiara C. harassing him and his wife, and both parties testified that they could not effectively communicate.

¶ 26 Although Antonio W. testified that he had not moved the minor children to Indianapolis, Indiana, and they were only staying there because the school was doing virtual learning, the trial court found that this testimony was disingenuous as his employment was located in Indiana, and he had recently transferred the children to an Indiana school. The court also noted that Antonio W. had requested that the parenting time exchange take place halfway between Indiana and Kiara C.'s residence. Antonio W. had not filed a petition for relocation with the court nor had Kiara C. consented to the relocation. The court noted that, one of its primary concerns in October 2019 was Kiara C.'s unilateral decision to move the children to Kansas City and enroll them in school without any notice to Antonio W., and now Antonio W. had engaged in this same conduct. The court further noted that Kiara C. testified that she was not requesting child support from Antonio W.,

and he testified that he wanted to terminate his parental rights to the children and return them to Kiara C.

¶ 27 Based on the parties' testimony, Antonio W.'s improper relocation to Indiana, and his request to terminate his parental rights and return the children to Kiara C., the trial court found that it was in the children's best interests to modify the existing parenting plan. The court established a parenting plan that gave Antonio W. parenting time during certain holidays and school breaks. However, noting that Antonio W. expressed his wishes to not have any parenting time, the court indicated that the issue of additional parenting time was reserved and could be addressed if he filed a motion. The court did not order any payment of child support. The court also entered a parenting plan that gave Kiara C. sole parental decision-making authority over the children.

¶ 28 On November 24, 2020, Kiara C. filed a *pro se* notice of appeal in case No. 5-20-0385. However, this court dismissed that appeal for lack of prosecution for Kiara C.'s failure to file an appellate brief on December 20, 2021. On December 15, 2020, Antonio W. filed a *pro se* motion, in which he indicated that he did not intend to give up his parental rights, he was requesting reconsideration of the trial court's order, and he sought to relocate to Indiana so he could live with his family. On January 15, 2021, Antonio W. filed a *pro se* notice of appeal of the trial court's November 23, 2020, order. As our review of the record indicated that Antonio W.'s *pro se* motion to reconsider was still pending in the circuit court, on April 25, 2022, this court entered an order holding this appeal in abeyance pending supplementation of the record on appeal with the circuit court's order disposing of that motion. On April 26, 2022, the record was supplemented with the order entered by

the circuit court denying Antonio W.'s *pro se* motion to reconsider. On April 27, 2022, this court entered an order taking the case out of abeyance and taking it back under advisement.

¶ 29

II. ANALYSIS

¶ 30 A trial court's decision with respect to the allocation of parental decision making and parenting time must be based on the best interests of the minor children. 750 ILCS 5/602.5(a), 602.7(a) (West 2018). The court's allocation of parental decision making and parenting time should not be reversed unless it is against the manifest weight of the evidence, it appears that a manifest injustice has occurred, or it results from a clear abuse of discretion. *In re Custody of G.L.*, 2017 IL App (1st) 163171, ¶ 24. A decision is against the manifest weight of the evidence where the opposite conclusion is clearly evident or where the court's findings are unreasonable, arbitrary, and not based on any of the evidence. *In re Marriage of Matchen*, 372 Ill. App. 3d 937, 946 (2007).

¶ 31 Section 602.5(b) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/602.5(b) (West 2020)) permits the trial court to allocate to one or both of the parents the decision-making responsibility for significant issues affecting the child as to education, health, religion, and extracurricular activities. To determine the child's best interests for the allocation of parental decision-making responsibilities, the court must consider all relevant factors, including: (1) the child's wishes; (2) the child's adjustment to home, school, and community; (3) the mental and physical health of all individuals involved; (4) the parents' ability to cooperate to make decisions; (5) the level of each parent's participation in past significant decision making about the child; (6) any prior agreement

or course of conduct between the parents regarding decision making; (7) the parents' wishes; (8) the child's needs; (9) the distance between the parents' residences; (10) whether a restriction on decision making is appropriate; (11) the willingness and ability of each parent to facilitate and encourage a relationship between the minor child and the other parent; (12) the physical violence or threat of physical violence directed against the child; (13) the occurrence of abuse against the child or other member of the child's household; (14) whether one parent is a sex offender or resides with a sex offender; and (15) any other factor that the court expressly finds to be relevant. *Id.* § 602.5(c).

¶ 32 Section 602.7(a) of the Act allows the court to allocate parenting time. *Id.* § 602.7(a). The court must evaluate 17 separate factors to determine the child's best interests with respect to the allocation of parenting time. *Id.* § 602.7(b). The factors are: (1) the parents' wishes; (2) the child's wishes; (3) the amount of time each parent spent performing caretaking functions with respect to the child in the 24 months preceding the filing of the petition; (4) any prior agreement or course of conduct between the parents relating to the caretaking functions of the child; (5) the interaction and interrelationship of the child with his or her parents and siblings or any other significant person; (6) the child's adjustment to home, school, and community; (7) the mental and physical health of all involved; (8) the child's needs; (9) the distance between the parents' residences, the cost of transporting the child, the families' daily schedules, and the ability of the parents to cooperate; (10) whether a restriction on parenting time is appropriate; (11) physical violence or threat of physical violence; (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 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 members of the household; (15) whether one of the parents is a convicted sex offender; (16) the terms of a parent's military family-care plan; and (17) any other factor that the court expressly finds to be relevant. *Id.*

¶ 33 Although a trial court must consider all relevant factors when determining the child's best interests, it is not required to make an explicit finding or reference to each factor. *In re Custody of G.L.*, 2017 IL App (1st) 163171, ¶ 43. In general, we presume that a trial court knows the law and follows it accordingly. *Id.*

¶ 34 In this case, based on Antonio W.'s improper relocation to Indiana, his request to terminate his parental rights, and the parties' testimony, the trial court found that it was in the children's best interests to modify the existing parenting plan to give Kiara C. sole parental decision-making authority and the majority of the parenting time. In the order, the court noted that Kiara C. had moved back to the area; she had not seen the children for three months; Antonio W. blocked her phone number, and she could not communicate with the children via telephone; and both parties agreed that they could not effectively communicate. Although Antonio W. testified that he had not moved the children to Indiana, the court found this testimony disingenuous because he was employed in Indiana, and he enrolled them in an Indiana school. The court's primary concern when it previously modified the parenting plan was Kiara C.'s unilateral move with the children, and Antonio W. engaged in that same conduct by moving to Indiana with the children without Kiara C.'s consent or court approval. Also, during the hearing, Antonio W. indicated that he

wanted to terminate his parental rights to the children and return them to Kiara C. Considering the parties' testimony and the best-interest factors set out in sections 602.5 and 602.7 of the Act, the court found that it was in the children's best interests to give Kiara C. sole parental decision-making authority and the majority of the parenting time. After carefully reviewing the record, we find that the court's decisions with respect to the allocation of parental decision making and parenting time were not against the manifest weight of the evidence.

¶ 35

III. CONCLUSION

¶ 36 For the foregoing reasons, the judgment of the circuit court of St. Clair County is hereby affirmed.

¶ 37 Affirmed.