



with each parent, until the court made a final custody determination. A guardian *ad litem* was appointed to represent the children's interests, and he recommended to the court that the children continue to move from one parent to the other every week. On January 6, 2012, following a one-day bench trial, the court awarded primary custody of the children to Kelley, granted Jeremy visitation, ordered Jeremy to pay child support of \$535 every two weeks in addition to nearly \$13,000 in back child support, and ordered Jeremy to pay Kelley's attorney fees.

¶ 5 In making its decision as to custody of the children, the court found that the status quo was not in the children's best interests because moving back and forth between their parents' respective homes did not promote stability in their lives. The court further found that because the children were about to start school at the time of the trial it was in their best interests to spend the majority of their time living in one parent's house. The court stated that "[e]qual sharing of the children is difficult at best when two parents agree and each commits to such an endeavor," and to force such an arrangement here, where the parents did not agree, would be contrary to the children's best interests.

¶ 6 The court recited a number of other factors it took into consideration in making its decision, including the wishes of the parents and the children, the relationships among the parents and the children, the age and sex of the children, the living arrangements of each parent, the parents' availability to the children, the income of the parents, and Jeremy's failure to pay past-due child support. The court noted, *inter alia*, that the children were both girls, that Jeremy was cohabitating with his girlfriend while Kelley lived alone, that Kelley had a more flexible work schedule than Jeremy, that Jeremy owed past-due child support, and that the interim arrangement then in place did not promote stability in the children's lives. The court found that based on these factors it was in the children's best interests for Kelley to be awarded primary custodial care of the children, with Jeremy to be awarded liberal visitation.

Jeremy filed a timely notice of appeal.

¶ 7

#### DISCUSSION

¶ 8 A trial court's determination of which parent to award primary custody will not be disturbed on appeal unless the decision is against the manifest weight of the evidence or a manifest injustice has been done. *In re Custody of Switalla*, 87 Ill. App. 3d 168, 175 (1980). There is a strong presumption in favor of affirming the trial court in custody matters because the trial court is in a superior position to make determinations regarding the credibility of witnesses and the needs of the children, and we therefore will not engage in a reweighing of the evidence that was before the trial court. *Id.*

¶ 9 Pursuant to section 602 of the Illinois Marriage and Dissolution of Marriage Act (the Act), the overarching concern facing courts charged with making custody determinations is the best interests of the children. 750 ILCS 5/602 (West 2010). Courts are to consider, *inter alia*, the parents' wishes, the children's wishes, the relationships between the parents and children, the children's adjustment to their home and school, the work patterns of the parents, the parents' availability to the children, and the parents' living arrangements. *Id.*

¶ 10 Jeremy makes much of the guardian *ad litem's* recommendation that the children continue to split their time evenly between each parent's home, as they had done since the parties' marriage was dissolved. But the guardian *ad litem's* recommendation was just that: a recommendation. As section 506 of the Act makes clear, the appointment of a guardian *ad litem* is not "intended to or designed to abrogate the decision making power of the trier of fact." 750 ILCS 5/506 (West 2010). The court was not bound to follow the guardian *ad litem's* recommendation, and, to the contrary, blindly following the recommendation without taking other relevant factors into consideration would constitute error. *Id.*

¶ 11 Here, the trial court recited the factors it considered relevant to its judgment, carefully weighed those factors, and came to the conclusion that it was in the children's best interests

to award Kelley primary custodial care. Jeremy has failed to show that this decision was against the manifest weight of the evidence, and we therefore affirm the trial court's judgment.

¶ 12

#### CONCLUSION

¶ 13 For the foregoing reasons, the judgment of the circuit court awarding primary custody of the parties' children to the respondent is hereby affirmed.

¶ 14 Affirmed.