2013 IL App (5th) 120467-U

NO. 5-12-0467

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

DANIEL LEE OHMS,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellant,	)	Williamson County.
	)	
v.	)	No. 07-F-146
	)	
KECIA L. STEVENS,	)	Honorable
	)	Brian D. Lewis,
Respondent-Appellee.	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Goldenhersh and Wexstten concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's denial of the petitioner's petition to modify custody was affirmed where the best interests of the minor child did not warrant a change in custody, the court did not err in limiting the evidence to circumstances that occurred following the original custody order, the court's order indicated that it considered the statutory best-interest factors, and the court gave the parties an opportunity to respond to the guardian *ad litem*'s recommendation before making its custody decision.

¶ 2 The petitioner, Daniel Lee Ohms (Daniel), appeals the judgment entered by the circuit court of Williamson County denying his petition to modify custody and/or visitation of the parties' minor child. On appeal, Daniel raises the following arguments: (1) that the trial court erred when it concluded that he did not satisfy the two prerequisites (established by *Department of Public Aid ex rel. Davis v. Brewer*, 183 Ill. 2d 540 (1998)) in custodial modification actions based on alleged endangerment to the minor child, (2) that the court erred by limiting the evidence at trial to events occurring after entry of the original agreed order in which sole custody was awarded to the respondent, Kecia L. Stevens (Kecia), (3) the

court erred by not setting forth factual findings or a legal basis in its final judgment on custody, and (4) the court failed to give the parties an opportunity to respond to the report of the guardian (guardian) *ad litem*, which set forth her custody recommendations, before it rendered its decision on custody modification. For the reasons that follow, we affirm.

¶ 3 The parties had one child, Evan Patrick Murphy Ohms, born December 13, 2004. The parties were married on March 19, 2004, and were divorced on October 4, 2004. On August 25, 2010, an agreed order was entered in which Kecia was awarded sole custody of the parties' minor child and Daniel was granted visitation.

¶ 4 On April 27, 2011, the trial court entered a no-contact order by agreement of the parties, prohibiting the parties from having any contact or communication unless the communication was through text messages and concerned visitation with the minor child or the child's medical condition. The order also prohibited Daniel from initiating any contact with the minor child's school unless the communication concerned the child's progress. On June 27, 2011, Daniel filed a motion for leave to file a petition to modify custody, which the trial court granted on July 14, 2011. Also on July 14, 2011, Daniel's petition to modify custody was filed, which alleged that a significant change of circumstances had occurred and that it was in the best interests of the minor child that the August 2010 agreed order be modified to grant Daniel sole custody. Specifically, Daniel alleged that Kecia voluntarily relinquished physical custody of the minor child on March 14, 2011, due to her inability to care for the child; that the minor child had resided with Daniel for 11 days until Kecia regained physical custody; that Daniel enrolled the minor child in school where he lived after Kecia voluntarily relinquished physical custody; that Kecia attempted to transport the minor child in a motor vehicle while in a drunken or drug-induced state; and that Kecia was homeless and unable to effectively care for the child.

¶ 5 On July 22, 2011, Kecia filed a motion to reconsider the order granting Daniel leave

to file the petition to modify custody, arguing that Daniel's filing less than two years after entry of the prior custody judgment constituted harassment. Specifically, Kecia argued that Daniel could not meet the requirements of section 610(a) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/610(a) (West 2010)) because there was no evidence that the minor child's present environment might seriously endanger his physical, mental, moral, or emotional health.

¶ 6 On July 25, 2011, the trial court, by docket entry, denied Kecia's motion to reconsider the order granting leave to file the petition to modify custody. Specifically, the court concluded that both the motion for leave to file and the petition to modify custody alleged a significant change of circumstances and sufficient factual allegations to constitute an endangerment to the physical, mental, and emotional health of the child.

¶ 7 The following evidence was adduced at the bench trial held on June 12, 2012, June 14, 2012, and July 11, 2012. Kecia Stevens testified that she was 37 years old, and she had four children that resided with her: Ilish Stevens, age 19; Madeline Stevens, age 17; Harrison Stevens; age 15; and Evan Murphy (her child with Daniel), age 7½. She had two children who did not reside with her. She testified that in August 2010, she was employed by Egyptian Hills Marina in Creal Springs, Illinois, and had worked there for five years. She lived in Creal Springs and Evan attended school in Goreville. Shortly after the entry of the August 2010 agreed order, she quit her job at Egyptian Hills Marina and moved to Herrin, Illinois. Evan attended school at Herrin school district from September 2010 until December 2010. In January 2011, Kecia was employed at Progress Port located in Carterville, Illinois. Her job at Progress Port was to take care of the residents "who couldn't function on their own." She worked at Progress Port for 2½ to 3 months. She then moved back to Goreville and Evan was reenrolled in the Goreville school district. Kecia moved back to Goreville because Evan preferred the Goreville school and she was no longer living at her previous

address. They lived with her boyfriend, Clifford Brown, in Goreville until December 2011.

¶ 8 In March 2011, Daniel contacted her and requested additional time with Evan. Daniel lived in Marion, Illinois. She allowed Evan to visit Daniel during the school year, and Daniel, without her permission, enrolled Evan in the Marion school system. When Kecia learned that Evan was attending school in Marion, she took him from the Marion school and reenrolled him in the grade school at Goreville. She did not intend to relinquish physical custody of Evan.

¶ 9 In December 2011, Kecia moved into a section 8 two-bedroom duplex in Cambria, Illinois, and she was still living there at the time of the trial. She only had to pay water and utilities, and she lived there with four of her children. At the time of the trial, she was not employed, and she last drew a paycheck in March 2011. However, she received child support from Daniel, and she cleaned houses for income. She typically cleaned between five to seven houses per month. She testified that her income from cleaning houses had increased since August 2010. Her older children contributed money for groceries and cable television. Evan attended school in Carterville, Illinois, and had been there since January 2012. Evan continuously resided with her, except for the period of time he stayed with Daniel.

¶ 10 Kecia described the sleeping arrangements in the two-bedroom apartment as the boys sleeping in a bunk bed in one room and the girls sharing a twin bed in the second bedroom. An extra mattress was placed on the floor for someone to sleep on.

¶ 11 Kecia testified that she currently did not have a driver's license and did not have a license in August 2010. She had received more than one ticket for driving under the influence (DUI), the last occurring in January 2004. In the spring of 2011, she received a ticket for driving on a suspended or revoked driver's license. She was not eligible to recover her license because she had not complied with the court's order to participate in substance-abuse treatment. She relied on people living in her apartment complex and her daughters,

Ilish and Madeline, for transportation. She indicated that she would take the necessary steps to get her driver's license back after the trial was concluded, but admitted that she had not done anything within the last six months to get her license back. In March 2011, Kecia was at Evan's school to pick him up when she was approached by a police officer. She was outside of the vehicle when the officer approached her. Prior to being at the school, she was at Crossroad's bar in Marion, Illinois. She could not remember how long she was at the bar before she left to pick up her son, but she believed that it was not long. The officer did not give her a ticket on that day.

¶ 12 Kecia testified that Evan's kindergarten progress report for fall 2010 indicated that he met the standard or exceeded the standard in all categories. On the comments section, the teacher wrote that Evan was doing very well and that Kecia and Daniel had a very nice and polite son. The teacher also noted that she enjoyed having Evan in her class. Evan's first grade progress reports from Goreville Elementary School indicated that Evan was doing well in school.

¶ 13 Kecia testified that Evan had friends that lived in their apartment complex and attended the same school as him. She explained that the children liked going to the park across the street and also liked riding their bicycles. Evan had also made friends on his baseball team, and he made a few friends from school. She opined that Evan did not appear withdrawn when interacting with his friends. She testified that Evan had a happy, normal relationship with his siblings. She gave Daniel sign-up information for the Goreville Cub Scouts and suggested that he participate in it with Evan. However, Daniel did not want to participate in the Cub Scouts because the meetings were held at the Goreville school and he lived in Marion.

¶ 14 Kecia testified that Evan has "Asthma-like conditions" and that he had an inhaler. Evan also had a functioning nebulizer, but they have "moved from the machine to the

inhalers." Kecia had not filled Evan's albuterol prescription for approximately three months because Evan had not needed the medication. The albuterol was to be used on an as-needed basis. It had also been months since Evan needed his inhaler. Evan had no recent breathing problems while running around outside or playing baseball, but he had an inhaler as a precaution.

¶ 15 Alison Cook, a teacher at Tri-C Elementary School in Carterville, Illinois, testified that she was Evan's first-grade teacher from January 2012 until the end of the semester. She testified that she had between 20 and 22 children in her class during the spring semester. Cook explained that she had issued report cards for her students in February 2012 for the third quarter. Evan had received satisfactory or above marks in every subject that she taught, and she wrote in the comments section of his report card that she was "really pleased" with his progress. She had also issued a report card in April 2012 for the midterm of the fourth quarter. She had commented on Evan's report card that he had a great year and was finishing strong. She noted that he had received satisfactory or above marks in all subject areas. Further, she had issued a report card for the end of the year that included the students' final grades. According to Cook, Evan had received satisfactory or above marks in all subject areas, which included marks for conduct and study skills. Evan was enrolled in her class for 91 days (the spring semester), had 4½ excused absences, had no unexcused absences, and was tardy three times.

¶ 16 Cook described Evan's demeanor as extremely respectful. She testified that when Evan initially started school in January, he was a little shy, but that was normal for a new student. He was pleasant with the other students and appeared ready to learn. She noted that Evan brought his school supplies with him on his first day and that it was unusual for a new student to bring all his school supplies with him on the first day. She noted that he quickly made friends with the students in the class and that his hygiene was appropriate. He was in

trouble once for talking in class, which resulted in him missing a recess. She opined that Evan was reasonably well-adjusted. She noted that Evan consistently turned his homework in on time.

¶ 17 Cook explained that Tri-C Elementary held parent-teacher conferences during the spring semester, but they were usually reserved for students with behavioral problems or students with marks below satisfactory. She did not have a parent-teacher conference with Evan's parents because Evan did not fall within either category. However, Evan's mother had called her a few times and sent notes to school with Evan to check on his progress. Cook had not met Daniel prior to the hearing, but Daniel had also called her approximately two times to check on Evan's progress.

¶ 18 Frederick Edwards, a retired chaplain at Herrin Hospital, testified that he had known Daniel for approximately two years and that he knew him through family and church. He opined that Daniel was trustworthy, forthright, dependable, and a person of integrity. He had observed Daniel's relationship with Evan and opined that Daniel and Evan had a close, warm relationship.

¶ 19 Daniel Ohms testified that he was 51 years old and lived in a two-bedroom apartment in Marion, Illinois. He was not married, and he lived alone. He was employed at Marion Rehabilitation and Nursing Center as a charge nurse and had been employed there for approximately 1½ months. He had been previously employed at Shawnee Healthcare for six months, but was terminated for alleged resident abuse. He denied committing resident abuse and believed that he was terminated because he reported to his supervisor that another employee was stealing pain medications.

¶ 20 Daniel testified that Evan lived with Kecia's brother for approximately two weeks at the end of December 2011. He opined that the two-bedroom duplex in Cambria was not an appropriate residence for his son because Evan did not have his own bed or his own space.

¶ 21 Daniel testified that he had an "awesome" relationship with his son and that they were extremely close. Daniel would take Evan to the park and to church. He testified that he attended church once every six weeks. He opined that Evan's behavior was regressing and noted that Evan would curl up in his arms and suck his thumb. Evan had his own bedroom at Daniel's house, but Evan would usually sleep in Daniel's room.

¶ 22 Daniel testified that Evan had upper respiratory health issues in the form of asthma. Evan participated in summer baseball, and Daniel frequently had Evan on a weekend where a baseball game was scheduled. On several occasions, Daniel refused to take Evan to a game because of the heat and Evan's problems with asthma. Daniel was concerned that Evan would go into acute arrest and Daniel did not have an inhaler for him. He believed that Evan could go into acute arrest because he listened to Evan's lungs and heard wheezing. However, Daniel had not expressed his concerns to Evan's doctor, and the doctor had not instructed Evan to not play baseball. Kecia had not told him what medication Evan was prescribed for his asthma, and he had not contacted Evan's doctor to find out what was prescribed. Daniel could not remember the name of Evan's doctor. He expressed concern that Evan had missed doctor appointments because Kecia was unable to find transportation to the appointments. He also expressed concern because he had received telephone calls from the school because Evan was left at school and the school was unable to contact Kecia.

¶ 23 Daniel admitted that he had not taken an active role in any organizational extracurricular activity with Evan in the last two years. Kecia suggested that he enroll Evan in Cub Scouts in Goreville so that they could do an activity together, but Daniel refused because he believed the drive from Marion to Goreville was too long.

¶ 24 On February 28, 2011, Daniel received a telephone call from a bartender at Crossroad's bar in Marion, Illinois. After receiving the telephone call, he called Evan's school and the police.

¶ 25 In August 2010, Kecia contacted him and asked if he wished to have custody of Evan. She informed him that she was willing to give up custody as long as he did not make her pay child support. Evan lived with him for over a week. Although school was not in session, he took preliminary steps to enroll Evan in the Marion school system. On March 14, 2011, Kecia again contacted him and asked if he wished to have custody of Evan as long as he did not make her pay child support. Evan lived with him for approximately 2½ weeks, and he enrolled Evan in school in Marion. Kecia was residing with Clifford Brown during this time, and she did not have her own residence. Evan attended school in Marion for over a week before Kecia took him out of that school.

¶ 26 Daniel testified that he was unable to get information from the school about Evan because of the no-contact order. The principal at Tri-C Elementary informed him that he was not to have any contact with the school or be on the school's property. He could not recall the name of the principal. He agreed that he could participate in Evan's school activities despite the no-contact order. He wished he was more aggressive in attempting to be a part of his son's school activities at Tri-C Elementary. He had never attended a parent-teacher conference, and he could not remember the names of any of Evan's teachers. He explained that he had not attended any parent-teacher conferences because he had not known that a conference was held and he had not known where Evan was attending school. He had difficultly obtaining information about Evan from Kecia.

¶ 27 Daniel testified that if he was awarded custody of Evan, his parents would watch Evan while he was at work. Daniel admitted that he had previously testified that it was in Evan's best interests for Kecia to have sole custody of Evan in 2010.

¶ 28 Daniel testified that he had observed a cigarette burn on Evan's back in December 2011. He believed that Evan was living with Kecia's brother during this time. After speaking with his attorney, Daniel contacted the Johnson County sheriff's office and filed a

statement. Daniel also contacted Evan's school. He admitted that he did not report the cigarette burn to the authorities until four days after he observed the burn.

¶ 29 David Stewart, deputy sheriff with the Johnson County sheriff's department, testified that he had met with Daniel at the sheriff's department because Daniel had reported that he observed a small, circular mark on Evan's back. Daniel believed that the mark was a cigarette burn. On the following day, Stewart saw the mark on Evan's back. Stewart reported that he had observed a small, very faint circular mark with no scabbing present. He could not say whether the mark was a cigarette burn based on his observations. Stewart asked Evan if anyone had intentionally made the mark on his back, and Evan told him no. Daniel further reported that he had made a hotline report of this injury to the Department of Children and Family Services (DCFS). Stewart had also made a report to DCFS prior to speaking with Evan. Stewart was told that DCFS would not investigate the incident based on the information provided. Based on his investigation and his professional experience, Stewart concluded that there were no signs of abuse.

¶ 30 Susan Thompson, a certified nursing assistant, testified that she had worked with Daniel at Shawnee Healthcare. She testified that she had heard Daniel was terminated from this employment because of allegations of abuse. She was aware that an allegation of poor care had been made against Daniel in January 2012. She did not believe that Daniel abused anyone at the nursing home. She opined that he was terminated because he had made a complaint against another employee. She testified that Daniel was good with the residents of the nursing home.

¶ 31 Helen Ohms, Daniel's mother, testified that she had a good relationship with Evan and that Evan stayed with her and her husband during Daniel's period of visitation when he was working. She frequently purchased clothes and shoes for Evan. She opined that Daniel had a loving relationship with Evan and that Daniel was a good father. Daniel played with Evan

and would take him to the movies. She testified that Evan was withdrawn and quiet in the first few days that he visited. She opined that Evan was withdrawn and nervous when around other children and that he needed to be around other children his age. Evan did not have any friends in the neighborhood where she lived.

¶ 32 Ilish Stevens, Kecia's 19-year-old daughter, testified that she lived with her mother in Cambria and was in her second year of college at John A. Logan. She was employed at Papa John's and had a valid driver's license. She had a good relationship with Evan, and they always had fun. She would help him with his homework and would also play games with him. They lived across from a park, and she would take Evan to the park to play and to help him practice baseball. She had never observed Evan have problems with his breathing while they were playing. She had observed her mother interact with Evan and opined that they had a great relationship. Evan was well-behaved and rarely needed discipline. She testified that Evan would get upset whenever he was going to visit his father and appeared happy to be with his siblings when he returned home.

¶ 33 Stevens testified that she slept on a mattress in the living room floor, on the couch, or in one of the bunk beds when at her mother's house. Her mother slept in her own bedroom, and Evan typically slept in one of the bunk beds. The remaining siblings would sleep either on the couch or on a mattress on the living room floor. Occasionally, everyone would sleep on the floor. Stevens testified that she had contributed money to the household expenses.

¶ 34 After hearing all of the evidence, the guardian filed her report on August 9, 2012, recommending that Daniel's petition to modify custody be denied. The guardian opined that Daniel had not proven, by clear and convincing evidence, that Kecia's change of circumstances had impacted the minor child to an extent that it was in the minor child's best interests to modify custody. The guardian opined that a substantial change of circumstances had occurred based on the mother's numerous relocations within a short span of time, the

multiple school changes, the job changes, the loss of Evan's half-siblings' father, and the resultant changes in their living arrangements. However, she opined that the evidence indicated that the change of circumstances did not have an adverse impact on Evan. Specifically, she noted that Evan received good grades at school and that Evan's first-grade teacher testified that he was well-behaved, respectful, clean, and appropriately dressed, had the necessary school supplies, was always ready to learn, and showed up to class with his homework competed.

¶ 35 The guardian explained that she had also talked with Evan and opined that he was well-adjusted and polite. She noticed that Evan was shy initially, but he became more vocal when he was excited about a particular subject. Evan told her that he liked his bedroom, his friends, his school, his pet guinea pigs, and most of the time, his brothers and sisters. She opined that despite the numerous relocations and the multiple school changes, Evan had remained the same, well-adjusted child that he had always been (she was the guardian in the initial custody proceeding). Therefore, she concluded that Evan's best interests did not necessitate a change in custody.

¶ 36 On August 27, 2012, the trial court, in a written docket entry, denied Daniel's petition to modify custody and concluded that Daniel had failed to meet his burden of proof. The court noted that it had reviewed the guardian's report and that, after considering all of the evidence, testimony, and the statutory factors set forth in section 610 of the Act (750 ILCS 5/610 (West 2010)), it concurred with the guardian's analysis. The court also noted that the parties had not filed a response to the guardian's report. Further, the court noted that it was reluctant to expand Daniel's summer visitation unless Daniel agreed to facilitate Evan's extracurricular activities and that any concern regarding Evan's health and ability to participate in extracurricular activities should be addressed with Evan's doctor.

¶ 37 On September 4, 2012, Daniel filed a motion for suspension of order or, in the

alternative, for reconsideration, arguing that the trial court had entered its custody order before the deadline for the parties' responses had expired. That same day, the trial court entered a docket entry staying its custody ruling until the parties' counsel filed their responses to the guardian's report. On September 6, 2012, Daniel filed his brief in support of his petition to modify custody and a response to the report of the guardian. On September 10, 2012, Kecia's attorney filed written closing arguments responding to the guardian's report and the evidence introduced at trial. On September 12, 2012, the trial court, pursuant to written docket entry, reinstated its August 2012 order after considering the briefs and closing arguments of counsel. Daniel appeals.

¶ 38 Daniel first argues that the trial court erred in applying the law set forth in *Department of Public Aid ex rel. Davis v. Brewer*, 183 Ill. 2d 540 (1998), with regard to whether the evidence revealed that a change in Kecia's circumstances had occurred and that Evan's welfare was adversely affected by this change in circumstances. Daniel argues that the court erred in concluding that Evan's best interests did not warrant a change in custody. Specifically, Daniel argues that the trial court erred by finding that the change of circumstances did not adversely affect Evan because the evidence indicated that no tangible manifestations of harm had occurred. Instead, Daniel argues that the trial court should have considered the risk of harm to Evan created by the change in circumstances.

¶ 39 Section 610 of the Act (750 ILCS 5/610 (West 2010)) provides as follows with regard to modification of a previous custody order:

> "(a) Unless by stipulation of the parties or except as provided in subsection (a-5), no motion to modify a custody judgment may be made earlier than 2 years after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe the child's present environment may endanger seriously his physical, mental, moral or emotional health.

***

(b) The court shall not modify a prior custody judgment unless it finds by clear and convincing evidence, upon the basis of facts that have arisen since the prior judgment or that were unknown to the court at the time of entry of the prior judgment, that a change has occurred in the circumstances of the child or his custodian, or in the case of a joint custody arrangement that a change has occurred in the circumstances of the child or either or both parties having custody, and that the modification is necessary to serve the best interest of the child."

¶ 40 Our supreme court concluded in *Brewer*, 183 Ill. 2d at 555-56, that section 610 of the Act established two prerequisites that must be met where a modification of custody is sought within two years of the entry of a custody order. First, the moving party must establish a " 'reason to believe' " that the minor child's " 'present environment may endanger seriously his physical, mental, moral, or emotional health.' " *Id*. at 556. The second prerequisite is that the moving party must prove by clear and convincing evidence that modification of custody is necessary to serve the best interest of the child. *Id.* "Child custody cannot be modified unless there is a material change in the circumstances of the minor related to the best interests of the minor." *In re Marriage of Brudd*, 307 Ill. App. 3d 57, 60 (1999). A change in circumstances by itself does not warrant a modification of custody. *Id.* Instead, the change in circumstances *must* affect the welfare of the minor child. *Id.*

¶ 41 Section 610 of the Act "reflects an underlying policy favoring the finality of child custody judgments and creating a presumption in favor of the present custody so as to promote stability and continuity in the child's custodial and environmental relationships." *In re Marriage of Fuesting*, 228 Ill. App. 3d 339, 344 (1992). Therefore, child custody matters rest within the sound discretion of the trial court, which has heard the testimony of the witnesses and observed their demeanor and is in a better position to determine what is in

the best interest of the minor child. *Id.*

¶ 42 Here, the trial court, by written docket entry on July 25, 2011, concluded that Daniel had alleged a significant change of circumstances and sufficient factual allegations to constitute an endangerment to the physical, mental, and emotional health of the minor child. Therefore, the central issue in this case is whether Daniel fulfilled the second requirement of section 610 of the Act, *i.e.*, that significant change of circumstances has occurred that warrant a change in custody for the best interests of the minor child.

¶ 43 Daniel argues that the following changes in Kecia's circumstances necessitated a modification of custody for the best interests of the minor child: (1) Kecia had not provided a stable living environment because she had changed residences numerous times and changed the school district of the minor child multiple times, (2) Kecia had driven a vehicle without a valid license when the minor child was present, (3) Kecia had failed to complete substance-abuse counseling and classes as required by court order to regain her driver's license, (4) Kecia had voluntarily turned over physical custody of the minor child to Daniel for a period of 11 days, (5) Kecia had failed to provide adequate housing for the minor child because her current housing was too small for the number of people living there, (6) Kecia was unable to provide dependable transportation because she did not have a valid license, and (7) Kecia failed to keep or seek gainful employment.

¶ 44 Stability of environment is an important factor to consider when determining the best interests of the minor child. *Russell v. Russell*, 80 Ill. App. 3d 41, 44 (1979). The adverse effects of a custodial parent's changes in residence need not manifest themselves before the trial court can modify the custody arrangement. *In re Marriage of Dunn*, 208 Ill. App. 3d 1033, 1040-41 (1991). However, when the moving party offers evidence regarding repeated changes in residence or employment, the party must be prepared to show that this conduct has adversely affected the child because Illinois courts require the party seeking a

modification of custody to show the relevance between a custodial parent's alleged misconduct and the minor child's best interests. *In re Marriage of Nolte*, 241 Ill. App. 3d 320, 328 (1993).

¶ 45 Here, the evidence indicated that the minor child was well-adjusted, respectful, and well-behaved. His first-grade teacher testified that Evan was clean, appropriately dressed, appeared in school with the necessary school supplies, was ready to learn, and always completed his homework assignments. His progress reports indicated that he had always received satisfactory or above marks in school despite the repeated school changes. Kecia had testified that she did not have a driver's license in August 2010, when the agreed order was entered into, and that she relied on people living in her apartment complex and her daughters for transportation. She also testified that she was willing to take the necessary steps to regain her driver's license once the court proceedings were concluded. She testified that she did not voluntarily relinquish custody of Evan to Daniel and that, instead, Daniel had requested additional time with the child. The guardian opined that Evan was well-adjusted and polite. Evan told the guardian that he liked his room at his mother's home, his friends, his school, and his pets. Evan lived in the same apartment complex as some of his friends, and he would frequently play with them outside. He lived with his half-brothers and sisters. The guardian was able to observe Evan at his home and playing with his friends. The guardian opined that Evan had remained the same well-adjusted child that he had always been and that Evan's best interests did not necessitate a custody change. The trial court agreed. As stated above, the trial court is in the best position to determine what is in the best interests of the minor child. Accordingly, we do not believe that the trial court erred in concluding that the best interests of Evan did not warrant a change in custody at this time.

¶ 46 Daniel next argues that the trial court erred by limiting the evidence at trial to events occurring after entry of the original agreed order where sole custody was awarded to Kecia.

Daniel notes that he sought to introduce testimony and evidence concerning Kecia's history and continued misconduct of driving while under the influence of narcotics and her unwillingness to complete court-ordered substance-abuse counseling and classes.

¶ 47 Section 610(b) of the Act (750 ILCS 5/610(b) (West 2010)) instructs the trial court to consider the following two types of evidence in custody-modification proceedings: evidence of facts that have arisen since the prior judgment or evidence of facts unknown to the court at the time of the entry of the prior judgment.

¶ 48 Here, Daniel sought to introduce evidence that Kecia had a history of misconduct regarding driving while under the influence of narcotics and driving without a license and that she continued this pattern of behavior following the entry of the August 2010 agreed order. Daniel also sought to present evidence that Kecia had an unwillingness to complete court-ordered substance-abuse counseling and classes, which resulted in her not being able to regain her driver's license and being dependent on others for transportation. The trial court limited this evidence to particular incidents alleged in Daniel's petition to modify and circumstances that occurred following the entry of the August 2010 agreed order. The court reasoned that Daniel knew about Kecia's driving history and the circumstances surrounding her inability to regain her license when he entered into the agreed order allowing her to have sole custody of Evan. However, despite the court limiting the evidence to circumstances occurring after the agreed order, the court was lenient in enforcing its order as the record is replete with references to matters that occurred before the agreed order was entered. In particular, evidence was presented that Kecia had received a DUI in January 2004, that she had lost her driver's license because she had multiple DUI tickets (this occurred prior to the August 2010 agreed order), that she was ordered to complete substance-abuse counseling and classes as a result of her January 2004 DUI, and that she had not completed those classes. Evidence was also presented that she had received a ticket for driving without a valid driver's

license and that she was dependent on others for transportation. Therefore, the trial court allowed Daniel to present evidence establishing Kecia's pattern of conduct with regard to driving while under the influence of narcotics and without a license and her failure to follow the January 2004 court order. Accordingly, the court considered this evidence when it determined that the best interests of the minor child did not warrant a change in custody, and we determine that no error occurred.

¶ 49 Daniel next argues that the trial court erred by not setting forth factual findings or a legal basis to justify its conclusion that the best interests of the minor child did not warrant a modification of custody. The trial court must provide some indication in the record that it considered the various best-interests factors listed in section 602 of the Act (750 ILCS 5/602 (West 2010)). *In re Marriage of Slavenas*, 139 Ill. App. 3d 581, 585 (1985). However, the court is not required to make specific findings of fact. *Id.*

¶ 50 Here, the trial court specifically stated in its order that the decision was made only after consideration of the evidence and testimony and construing the same with the statutory factors set forth in section 610 of the Act. Further, the court noted that it agreed with the analysis contained in the guardian's report. Accordingly, we conclude that the record reflects that the court considered all the evidence in conjunction with the statutory factors in making its decision.

¶ 51 Last, Daniel argues that the trial court failed to give the parties an opportunity to respond to the guardian's untimely report before it rendered its decision. Daniel argues that the court's actions deprived him of a meaningful opportunity to respond to the guardian's report and that the court had already made its decision concerning the custody modification when it considered his response to the guardian's report.

¶ 52 The record reveals that the guardian indicated that she would file her report by July 20, 2012, and that the parties would then have an opportunity to respond to the report and

submit closing arguments. However, the guardian did not file her initial report until August 9, 2012. She then filed an addition to her report on August 27, 2012. The parties were aware that the guardian intended to file an addendum to her initial report and waited until the addendum was filed before submitting their responses. On August 27, 2012, the court entered its initial decision denying Daniel's petition to modify custody. On September 4, 2012, Daniel filed a motion for suspension of order or, in the alternative, for reconsideration based on the guardian's failure to file a timely report. In his motion, Daniel argued that the court's order was premature because the parties had not yet filed their response to the guardian's report. That same day, the court stayed its custody decision until the parties responded to the guardian's report. On September 12, 2012, after receiving the parties' responses, the court entered an order, by docket entry, reinstating its August 2012 decision. The written docket entry stated that the court had reviewed the briefs and closing arguments of counsel. Therefore, Daniel was not prejudiced by the court's premature order because both parties were allowed to file their respective pleadings in response to the guardian's report. The court stated that it considered these pleadings when it reinstated its previous ruling. Accordingly, we conclude that the court did not deprive Daniel's counsel of a meaningful opportunity to respond to the guardian's report.

¶ 53 For the foregoing reasons, the judgment of the circuit court of Williamson County is hereby affirmed.

¶ 54 Affirmed.