

Nos. 1-14-0916 & 1-14-0964, consolidated

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE THE PATERNITY OF M.M.C., a Minor by:)	Appeal from the
)	Circuit Court of
COLLEEN CIEZCZAK,)	Cook County.
)	
Petitioner-Appellant,)	
)	No. 2011 D5 79132
and)	
)	
DENNIS MAUE,)	Honorable
)	Patrick T. Murphy,
Respondent-Appellee.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

ORDER.

¶ 1 *Held:* On March 21, 2014, the trial court awarded custody of the parties' minor child to the father (respondent), granted the mother (petitioner) visitation, and ordered petitioner to attend therapy. Petitioner was also ordered to provide the therapist with a report that earlier had been filed by an expert under section 604(b) of the Marriage Act, which detailed petitioner's alleged mental health issues. Petitioner appealed the custody judgment. Petitioner subsequently failed to obtain the necessary referral for therapy from her primary care physician, causing her insurance company to refuse to cover the costs of therapy; in the absence of insurance coverage, petitioner refused to attend therapy because she claimed it was too costly. The trial court then entered an order on April 2, 2014, requiring petitioner to obtain a referral from her primary care physician for the therapist visits or else bring proof of the amount of monies she had paid her appellate counsel to take the appeal from the custody judgment. Petitioner appealed the April 2, 2014, order; the appeals from the custody judgment and the April 2, 2014, order were consolidated. As to the appeal from the custody judgment, we affirm the grant of custody of the child to respondent, the grant of visitation to petitioner, and the requirement that petitioner attend therapy and that the therapist be provided the section 604(b) report. As

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to the appeal from the April 2, 2014, order, we affirm the requirement that petitioner obtain a referral from her primary care physician for her therapy visits, but reverse the requirement that, in the absence of the referral, she inform the trial court of the money she paid to her appellate counsel.

¶ 2 Petitioner, Colleen Cieczczak, and respondent, Dennis Maue, have a daughter, M.M.C., who is now three-years old. Colleen brought an action seeking sole custody of M.M.C. The trial court entered two orders in the action that Colleen now appeals. The first order, entered on March 21, 2014, granted Dennis sole custody of M.M.C. and set forth a visitation schedule for Colleen. The order also contained a provision requiring Colleen to attend therapy with Dr. Theresa Risolo, a forensic mental health care provider trained in high-conflict divorce. The second order was entered on April 2, 2014, after Colleen failed to attend the therapy sessions with Dr. Risolo because she had not received the necessary referral for therapy from her primary care physician. The April 2, 2014, order expressly required Colleen to contact her primary care physician to obtain the necessary referral and further ordered her to take certain actions (discussed later in this order) in the event of her failure to obtain the referral. We consolidated the appeals.

¶ 3 I. Background Facts

¶ 4 On September 29, 2011, Colleen and Dennis (who were unmarried) had a baby together, M.M.C. On December 8, 2011, Colleen filed a "petition to determine paternity, sole custody and other relief." On February 23, 2012, Dennis filed a response, admitting he is M.M.C.'s biological father and that it is in M.M.C.'s best interest that the parties be awarded joint custody. The trial court entered an order finding that Dennis was the father of M.M.C.

¶ 5 Also on February 23, 2012, Dennis filed a "petition for temporary and permanent joint custody of minor child, to set parenting times and for other relief." On March 8, 2012, Colleen filed her response to Dennis's petition for temporary and joint custody, in which she denied that

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it was in M.M.C.'s best interest that joint custody be awarded. On March 15, 2012, the trial court set a temporary visiting schedule, giving Dennis seven hours of supervised visitation with M.M.C. per week.

¶ 6 On April 26, 2012, Dennis filed a petition for the appointment of an expert "to conduct an investigation and issue a report concerning his/her opinion on the custodial arrangements and parenting times for the minor child." Dennis's motion was made pursuant to section 604(b) of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act), 750 ILCS 5/604(b) (West 2012). Section 604(b) states in pertinent part: "The court may seek the advice of professional personnel [with regard to custody and visitation], whether or not employed by the court on a regular basis. The advice given shall be in writing and made available by the court to counsel." *Id.*

¶ 7 On June 20, 2012, the trial court entered an order appointing a section 604(b) expert, Dr. Mary Gardner, a clinical psychologist. Visitation schedules for Dennis were entered on September 5, 2012; October 12, 2012; November 1, 2012; and January 16, 2013. With regard to visitation, the trial court provided for the parties to pick-up and drop-off M.M.C. at the police station.

¶ 8 On February 22, 2013, Dr. Gardner provided her written evaluation to the court. In the evaluation, Dr. Gardner began by discussing her interviews with Colleen. Colleen informed Dr. Gardner that she was 41-years old and had a 19-year-old daughter from a previous marriage. Colleen stated that she and Dennis met at an outdoor festival in August 2010. Dennis lived near Peoria, worked for Caterpillar, Inc., and had a son living in the Chicago area. After Colleen became pregnant with Dennis's child, he began to avoid her and did not attend doctor visits with her. They argued a lot and he called her "foul names."

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¶ 9 Colleen told Dr. Gardner that she gave birth to M.M.C. two weeks early, on September 29, 2011. She contacted Dennis about the delivery but he did not respond. She contacted him again regarding the birth certificate and he came to the hospital for 10 minutes, made "rude comments," and refused to sign the birth certificate. Ten days later, they decided to give their relationship "another try" for M.M.C.'s sake.

¶ 10 Colleen told Dr. Gardner that Dennis and his son started coming over to her house. In November 2011, Dennis and Colleen had an argument when she asked him to babysit M.M.C. on a Friday night and he became "belligerent." Dennis came by late and Colleen left for an appointment. When Colleen came home 90 minutes later, Dennis was playing a video game and M.M.C. was "in a cold room and was ice-cold." Dennis and Colleen became angry with each other and they sent angry text messages back and forth.

¶ 11 Colleen told Dr. Gardner that Dennis had no contact with M.M.C. from December 9, 2011 through March 23, 2012. A court order was issued in March 2012 giving Dennis seven hours of visitation per week. Between March and May of 2012, Dennis saw M.M.C. for only 17 out of a possible 105 hours.

¶ 12 Colleen told Dr. Gardner that during Dennis's visit with M.M.C. on July 24, 2012, Colleen began "recording him" and he charged at her and shoved her. While in Dennis's care in October 2012, M.M.C. fell and received "significant injuries." Colleen believes Dennis was trying to kill M.M.C. on that day. M.M.C. began getting sick during her unsupervised visits with Dennis, and Colleen believes Dennis may have been poisoning M.M.C.

¶ 13 Colleen told Dr. Gardner that Dennis has refused to be responsible for M.M.C. in any way, and has refused to pay for medical bills, daycare, or child support.

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¶ 14 Dr. Gardner next reported on her interviews with Dennis. Dennis told Dr. Gardner he was 41-years old and had a nine-year-old son from a previous marriage. He has visitation with his son and sees him on a regular basis. Dennis told Dr. Gardner he met Colleen in November 2010. After about five dates with Colleen, she became pregnant with his child. They decided to "make it work somehow." Dennis was working for Caterpillar, Inc. in Peoria, and he began to get 50 text messages a day from Colleen, telling him to move to Chicago to be near her. Dennis resigned his position with Caterpillar, Inc. and accepted a new job in Chicago. However, Colleen accused him of lying because he was unable to move to Chicago right away.

¶ 15 Dennis reported that in June 2011, "things became crazy." Colleen sent him 200 or more texts at a time and called him "nonstop." She would break up with him, then "rage at him for abandoning her." She sent Dennis a text message with his son's address, causing him to worry for his son's safety. Dennis broke off the relationship, and Colleen responded by calling him at work 300 times a day. Dennis disconnected his phone, blocked her calls, and sent her an email telling her to notify him when the baby was born.

¶ 16 Dennis told Dr. Gardner that when the baby was born, he drove over right away and visited Colleen in the hospital. She was happy to see him and Dennis began to believe that "the craziness was due to her pregnancy." They started seeing each other again. One month later, "it all started again." She texted and called him "nonstop," accusing him of lying because he had not yet moved to Chicago. Around this time, Colleen called Dennis's brother and his brother's business partner, after which they began receiving "crank calls." Dennis's father also began receiving crank calls. Colleen also had someone come to Dennis's farm in Peoria and talk to his neighbor, seeking information about Dennis. Dennis called the police and obtained a restraining

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order. In retaliation, Colleen sent out a baptism announcement for M.M.C. with Colleen's ex-husband listed as M.M.C.'s father.

¶ 17 Dennis told Dr. Gardner that he agreed to watch M.M.C. one Friday in 2011. When he arrived 20 minutes late, Colleen became enraged, sent him over 100 emails, and repeatedly called him a child molester and a "n****r." After moving to Chicago, Colleen was "antagonistic" toward him whenever he came to her house for visitation. M.M.C. began to associate Dennis with Colleen's anger and hostility and would cry when she saw him.

¶ 18 Dennis told Dr. Gardner that Colleen sometimes videotaped him when he took M.M.C. for a walk. On one visit he told Colleen to stop videotaping him, and she shoved him. Once, when M.M.C. was learning to walk, she fell and skinned her nose while in Dennis's care. In response, Colleen contacted the police and DCFS and left voice mails saying he would be arrested. The matter was unfounded by DCFS due to the minor nature of the injury.

¶ 19 Dennis provided Dr. Gardner with an "incident history" showing that Colleen made 45 phone calls to police between January 13, 2012, and August 30, 2012, to check on M.M.C. while she was visiting with Dennis. Dennis told Dr. Gardner that in November 2012, Colleen left threatening voice mail messages, telling him he would be arrested for nonpayment of child support. Dennis stated that he was up to date with all payments ordered by the court. Colleen has falsely tried to portray him as abusive of her, has used racial slurs to describe his son, and has followed him with her car.

¶ 20 Dennis told Dr. Gardner he believes Colleen has "mental health issues" and that she has directed "harassing actions" toward others. Specifically, Dennis stated that he had learned that in 2002, Colleen sent "repetitive harassing messages" to Christi Tyler, who worked for a school district. Dr. Gardner subsequently spoke with Christi Taylor, who confirmed the email

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harassment by Colleen. Specifically, Christi stated that Colleen (who was allegedly having an affair with Christi's husband) sent dozens of "vulgar, taunting and profane" emails; the first of those emails informed Christi's children that their father was a cheater.

¶ 21 Following the report of her interviews with Colleen and Dennis, Dr. Gardner reported that she observed M.M.C. at each parent's house on separate occasions, and that on each visit M.M.C. "appeared smiling and happy."

¶ 22 Dr. Gardner then addressed the factors listed in section 602(a) of the Marriage Act (750 ILCS 5/602(a) (West 2012)) for determining the best interest of the child. The factors include: (1) the parents' wishes as to the child's custody; (2) the child's wishes as to her custodian; (3) the interaction and interrelationship of the child with her parents, siblings and other significant persons; (4) the child's adjustment to her home, school and community; (5) the mental and physical health of all involved persons; (6) the physical violence or threat of physical violence by the child's potential guardian, whether directed against the child or directed against another person; (7) the occurrence of ongoing or repeated abuse as defined in section 103 of the Illinois Domestic Violence Act of 1986 (750 ILCS 60/103 (West 2012)), whether directed against the child or directed against another person; (8) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child; (9) whether either parent is a sex offender; and (10) the terms of a parent's military family-care plan that he or she must complete before deployment if the parent is being deployed as a member of the armed forces. 750 ILCS 5/602(a) (West 2012).

¶ 23 With respect to the first factor, the wishes of the child's parents, Dr. Gardner noted "[b]oth parents in this case are seeking sole custody of [M.M.C.]." Dr. Gardner noted that Colleen believes Dennis abandoned her and M.M.C. and does not really care about M.M.C.'s

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welfare. Dennis believes he will have no relationship with M.M.C. if Colleen is allowed to have primary custody.

¶ 24 With respect to the second factor, the child's wishes, Dr. Gardner noted that M.M.C. is too young to express any custodial preference.

¶ 25 With respect to the third factor, the interaction and interrelationship of the child with her parents, Dr. Gardner noted that M.M.C. has a positive bond with both parents and interacts well with both of them.

¶ 26 With respect to the fourth factor, the child's adjustment to home, school, and community, Dr. Gardner noted that each of the parent's homes are "clean, modern and suitable" to raise M.M.C. Both parents are working full-time, meaning that M.M.C. "would have to go into some type of daycare situation" regardless of the custody arrangement.

¶ 27 With respect to the fifth factor, the mental and physical health of all individuals involved, Dr. Gardner noted that in October 2012, M.M.C. fell while she was with Dennis and suffered some scrapes to her face. Colleen reported this as child endangerment to DCFS, which subsequently determined the charge was unfounded. Colleen believes Dennis has tried to poison M.M.C.; Dr. Gardner noted that "Colleen's thoughts along these lines indicate very unsound reasoning and suggest the presence of some paranoia."

¶ 28 Dr. Gardner noted "[t]here were some mental health issues for Colleen. Some of her statements broke with reality and some of her emails show unsound reasoning (*e.g.* she stated that Dennis had decided to give up visiting the child entirely when he instead was unable to set a visitation schedule due to work demands)." Psychological tests administered by Dr. Gardner showed Colleen "can be histrionic and emotionally reactive, with rapidly shifting and shallow emotions." Dennis did not exhibit any signs or symptoms of any major mental illness.

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¶ 29 With respect to the sixth factor, the physical violence or threat of physical violence by the child's potential custodian, Dr. Gardner noted Colleen's allegations that Dennis had physically injured M.M.C. in October 2012 and had intentionally poisoned her. Dr. Gardner stated that these allegations "suggest the presence of some mental health issues for Colleen."

¶ 30 The seventh factor is the occurrence of ongoing or repeated abuse as defined in section 103 of the Illinois Domestic Violence Act of 1986, which states in pertinent part:

" 'Abuse' means physical abuse, harassment, intimidation of a dependent, interference with personal liberty or willful deprivation but does not include reasonable direction of a minor child by a parent or person in loco par-entis.

* * *

(7) 'Harassment' means knowing conduct which is not necessary to accomplish a purpose that is reasonable under the circumstances; would cause a reasonable person emotional distress; and does cause emotional distress to the petitioner. Unless the presumption is rebutted by a preponderance of the evidence, the following types of conduct shall be presumed to cause emotional distress:

(i) creating a disturbance at petitioner's place of employment or school;

(ii) repeatedly telephoning petitioner's place of employment, home or residence;

(iii) repeatedly following petitioner about in a public place or places;

(iv) repeatedly keeping petitioner under surveillance by remaining present outside his or her home, school, place of employment, vehicle or other place occupied by petitioner or by peering in petitioner's windows."

750 ILCS 60/103 (West 2012).

¶ 31 Dr. Gardner noted "Colleen has demonstrated behaviors consistent with some actions in this Act." Specifically, Colleen has repeatedly called Dennis's work and personal phone numbers, videotaped him without his permission, driven past his home and followed him in her car, and sent him hundreds of unwanted text and email messages, many of which used racial slurs (such as calling Dennis a "n ***er").¹ Colleen has also called the police numerous times to conduct checks on M.M.C. during Dennis's visitations with her. A letter from Dennis's brother indicated that around Christmas 2011, Dennis's family members and business partner received crank calls from Colleen (identified by caller ID) in which she would call and not say anything.

¶ 32 With respect to the eighth factor, the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child, Dr. Gardner noted that Colleen has "willfully interfered" with Dennis's relationship with M.M.C. by sending him "inflammatory and taunting messages containing racial slurs *** in which she disparages his role as a father, the ethnicity of his son, or refers to her ex-husband or current boyfriend as the real father." Colleen has also unilaterally cancelled his visits with M.M.C.,

¹ The record on appeal contains seven text messages from December 9, 2011, in which Colleen calls Dennis a "n****r"; one text message calling him a "loser"; two text messages calling him an "asshole"; and another text message calling him a "deadbeat." The record contains eight text messages from December 10, 2011, in which Colleen calls Dennis a "n****r"; eight text messages in which she accuses him of molesting his son; two text messages calling him a loser; one text message calling him a deadbeat dad; and another telling him that M.M.C. will never know him. The record contains a November 24, 2012, email from Colleen to Dennis in which she calls his son a g**k, an offensive term for persons of Asian heritage. The record contains two emails from Colleen to Dennis on December 25, 2012, in which she calls him "queer."

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informed him he will be arrested for nonpayment of child support, and reported him to DCFS (for a charge that was determined to be unfounded). Colleen also had M.M.C. baptized without Dennis's knowledge or consent at her church. The church bulletin listed Colleen's ex-husband as the father. When asked, Colleen reported she had nothing to do with this announcement.

¶ 33 The ninth and tenth factors, whether one parent is a sex offender, and the terms of a parent's military family-care plan, are not applicable here.

¶ 34 At the conclusion of her evaluation, Dr. Gardner recommended sole custody for Dennis and proposed a visitation schedule for Colleen in which she would have three overnight visits per week until M.M.C. turned four years old. Dr. Gardner recommended that at school age, M.M.C. should be with Colleen "for alternating weekends, and on the intervening week, [Colleen] should have two overnight visits." Dr. Gardner noted that "[i]f Colleen is not able to support [M.M.C.'s] relationship with her father, she may need to have her visits be supervised for the sake of [M.M.C.'s] welfare." Dr. Gardner also stated that "Colleen should be referred for therapy to a forensic mental health provider trained in high-conflict divorce who can have access to this report."

¶ 35 On March 1, 2013, the trial court entered an order setting forth a new visitation schedule whereby each party effectively had equal time with M.M.C.

¶ 36 Also on March 1, 2013, Colleen filed a motion for appointment of an expert "for the purposes of evaluation of the parties and the minor child for custody/visitation purposes" pursuant to section 604.5 of the Marriage Act. Section 604.5 states in pertinent part:

"In a proceeding for custody, visitation, or removal of a child from Illinois, upon notice and motion made within a reasonable time before trial, the court may order an evaluation concerning the best interest of the child as it relates to custody, visitation, or

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removal. *** The requested evaluation may be in place of or in addition to an evaluation conducted under subsection (b) of Section 604." 750 ILCS 5/604.5 (West 2012).

¶ 37 On March 14, 2013, the trial court granted Colleen's motion and appointed Dr. Margaret Bongiorno, a clinical psychologist, to evaluate M.M.C.

¶ 38 On October 3, 2013, Dr. Bongiorno submitted her written evaluation. Similar to Dr. Gardner, Dr. Bongiorno interviewed Colleen and Dennis and set forth summaries thereof; these summaries are substantially similar to the summaries of Dr. Gardner's interviews of Colleen and Dennis and need not be repeated here.

¶ 39 Dr. Bongiorno specifically considered the best-interest factors set forth in section 602(a) of the Marriage Act. As to the first factor, the wishes of the child's parents as to her custody, Dr. Bongiorno noted that both Colleen and Dennis would like to have residential custody of M.M.C. Colleen represented that she has taken primary responsibility for M.M.C.'s care and development, and she expressed concerns regarding Dennis's dedication to M.M.C. and his parenting skills. Dennis emphasized his stability and expressed concerns regarding Colleen's emotional stability and willingness to promote the father-daughter relationship.

¶ 40 With regard to the second factor, the wishes of the child, Dr. Bongiorno noted that M.M.C. is too young to express her wishes verbally.

¶ 41 With regard to the third factor, the interaction and interrelationship of the child with her parents, Dr. Bongiorno noted that M.M.C.'s primary attachment is to Colleen. In the observation sessions, M.M.C. seemed "very comfortable in each parent's care."

¶ 42 With regard to the fourth factor, the child's adjustment to her home, school and community, Dr. Bongiorno noted M.M.C. lived primarily with Colleen until she was about 18 months old. Currently, both parents live about 20 minutes away from each other, close enough

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so that, as she grows up, M.M.C. "should be able to enjoy friendships and extracurricular activities, regardless of whether she is in her mother's or her father's care."

¶ 43 With regard to the fifth factor, the mental and physical health of all individuals involved, Dr. Bongiorno noted that psychological testing administered by her revealed "no significant mental health problems in either parent." Neither parent appeared to have any physical health issues that would present problems with parenting.

¶ 44 With regard to the sixth and seventh factors, the physical violence or threat of physical violence by the child's potential custodian and the occurrence of ongoing or repeated abuse, Dr. Bongiorno noted "[p]hysical violence and ongoing abuse are not issues in this family."

¶ 45 With respect to the eighth factor, the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child, Dr. Bongiorno noted "neither parent is perfect in this regard." Colleen "tends to treat Dennis as though he is an uncaring, uninvolved father, and her attitude toward him sometimes presents an obstacle in the father-daughter relationship." Dennis "tends to treat Colleen as though she is a hostile, unreasonable person, and he sometimes avoids communicating with her because he expects the interaction to be unpleasant."

¶ 46 The ninth and tenth factors, whether one parent is a sex offender, and the terms of a parent's military family-care plan, are not relevant here.

¶ 47 After considering the best-interests factors, Dr. Bongiorno recommended that the parties be awarded joint custody of M.M.C., with Colleen serving as the residential parent. Dr. Bongiorno recommended that "[a] specific Mediator should be named, with whom Colleen and Dennis should consult if they disagree on major decisions regarding [M.M.C.'s] education, health care and religious upbringing."

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¶ 48 The cause proceeded to a bench trial. Dr. Gardner's and Dr. Bongiorno's written reports were admitted into evidence. Colleen called Dr. Bongiorno as her first witness.

¶ 49 Dr. Bongiorno testified she administered psychological tests to Colleen and Dennis which did not indicate any mental health issues for Colleen; Dr. Bongiorno could not rule out mental health issues for Dennis because he "attempted to place himself in an overly positive light" during the testing. Dr. Bongiorno further testified that the parties should have joint custody of M.M.C. because, despite their difficulties communicating and cooperating with each other, both parents should be involved in M.M.C.'s life. Further, Dr. Bongiorno testified that allowing either party to have sole custody would lead to the sole custodian using his/her position to prevent the input and influence of the other parent. Dr. Bongiorno noted that Dennis did not have visitation with M.M.C. from December 2011 until late March 2012. Based on Colleen's role as M.M.C.'s primary caretaker throughout her life, Dr. Bongiorno recommended that Colleen be named the residential parent in a joint custody arrangement.

¶ 50 On cross-examination, Dr. Bongiorno testified that Colleen cancelled Dennis's visitation with M.M.C. at times, but that many of the cancellations were because M.M.C. had doctors' appointments, or because Colleen was concerned about M.M.C.'s health. Dr. Bongiorno testified that despite Dennis's accusations that Colleen did not inform him of M.M.C.'s doctors' appointments, there was no evidence supporting those accusations.

¶ 51 During cross-examination, counsel questioned Dr. Bongiorno about texts Colleen sent to Dennis in December 2011, in which she accused him of molesting his son, and called him a "loser," a "deadbeat," and a "n****r." With regard to these texts and emails, Dr. Bongiorno testified "these texts of this nasty nature were sent around the time that there were problems in the personal relationship between the parents, and when that was resolved, texts of this nature

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were not occurring." Because Colleen no longer sends Dennis such inflammatory texts and emails, Dr. Bongiorno concluded that Colleen could still "facilitate a relationship" between Dennis and M.M.C. Dr. Bongiorno further testified that despite the parenting time being roughly equal between Dennis and Colleen, she considers Colleen the primary caretaker because Colleen "takes more responsibility for the things that are involved in caring for the child, the child's physical development, spiritual development, [her] medical care."

¶ 52 During redirect examination, Dr. Bongiorno testified that Colleen's communications with Dennis are currently "much more centered on the child and trying to either convey information or obtain information that's relevant to the child."

¶ 53 Colleen's mother, Marybeth Egan, testified that Colleen is a very good mother to Hillarie, Colleen's daughter from a previous marriage, and has a good relationship with her ex-husband, Robert Cieczczak. Ms. Egan testified that Colleen's pregnancy with M.M.C. was "very rough" and that Dennis was rarely around during the pregnancy or prior to the March 2012 visitation order. Dennis's early visitation with M.M.C. in March 2012 did not go well, as he would arrive late, leave early, and would not "know what to do" when M.M.C. began crying.

¶ 54 Ms. Egan testified that Colleen and M.M.C. are "very close, loving, affectionate. They do everything together." Ms. Egan believed Colleen should be awarded custody of M.M.C. because "she's loving, kind, nurturing. She would provide a stable home life for [M.M.C.]. And just she's a great mother."

¶ 55 Colleen's ex-husband, Robert Cieczczak, testified he and Colleen were married in 1993 and divorced in 2009, and they have a 20-year-old daughter, Hillarie, who resides with Colleen. Mr. Cieczczak has a "real good relationship" with Colleen and he sees Hillarie whenever he wants; Colleen has never prevented him from visiting Hillarie. Mr. Cieczczak described Colleen

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as a "real good mom" to Hillarie. Mr. Cieczczak testified he would not categorize Colleen as a racist or a homophobe.

¶ 56 Colleen's daughter, Hillarie Cieczczak, testified she was 15-years-old when her parents divorced, and that she currently resides with Colleen. Colleen has never interfered with Hillarie seeing her father, nor has Colleen spoken in a derogatory way about her father.

¶ 57 Colleen next called Dennis as an adverse witness. Dennis testified that even after the derogatory and racist texts he has received from Colleen, he is willing to have joint custody with her of M.M.C., but he wants to be the residential parent. Since March 2013, Dennis has had "basically a 50/50 division of custody in regards to [M.M.C.]" but he has never scheduled any of M.M.C.'s pediatrician appointments; Colleen schedules most, if not all, of M.M.C.'s doctor appointments.

¶ 58 Dennis testified he generally works from 6 a.m. to 2 p.m. during the week at his job as a controls engineer and facilities supervisor at Ford Motor Company, and on those workdays when he has M.M.C., he puts her in daycare and she has breakfast and lunch there. He puts her to bed between 7:30 p.m. and 8:30 p.m.

¶ 59 Dennis testified he was not at the hospital when M.M.C. was born because Colleen did not inform him she was in labor. Colleen did not ask him to sign M.M.C.'s birth certificate. Dennis and Colleen began dating again after M.M.C.'s birth, but Dennis broke up with her after receiving nonstop phone calls and texts from her in which she would break up with him, then tell him she had changed her mind, and then break up with him again.

¶ 60 On cross-examination, Dennis testified he is concerned about Colleen's mental well-being, given all the inflammatory and racist texts she has sent him, as well as the crank phone calls she has made to him and to his father, his brother, and his brother's business partner.

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Colleen has called him a "n****r" in front of M.M.C., and Colleen continues to make disparaging comments to him (for example, calling him an "asshole") when out of earshot of other adults. Dennis also testified to an incident in August 2012, when Colleen was videotaping him while he was taking M.M.C. for a walk. Dennis tried to give M.M.C. to Colleen, and she shoved him. In December 2012, M.M.C. sent him a text calling his son a "g**k."

¶ 61 Dennis testified Colleen has unilaterally cancelled or shortened his visits with M.M.C. "quite frequently," often giving as an excuse that M.M.C. was too sick to visit. Specifically, Dennis testified that Colleen cancelled his visits with M.M.C. on April 16, 2012; July 16, 2012; September 13, 2012; September 21, 2012; September 22, 2012; September 28, 2012; October 25, 2012; October 26, 2012; November 8, 2012; November 15, 2012; December 25, 2012; and January 3, 2013. Colleen shortened his visits with M.M.C. on April 6, 2012; May 21, 2012; July 22, 2012; July 25, 2012; October 19, 2012; November 3, 2012; November 16, 2012; November 22, 2012; and December 6, 2012.

¶ 62 Dennis testified that if he was awarded custody of M.M.C., he would hire a nanny to help take care of her while he was at work. M.M.C. would have her own bedroom in his house in Oak Lawn, and go to a school in close proximity to where they live. She would see Dennis's son, Logan, who is 10 years old and who stays with Dennis every other weekend. Logan and M.M.C. "get along well."

¶ 63 Officer Daniel Donoghue testified that since January 2012, Colleen had contacted police approximately 10 to 15 times regarding her inability to communicate with Dennis during his visitations with M.M.C. Officer Donoghue testified Colleen should have been able to resolve these "trivial" communication issues without police intervention. Officer Donoghue testified to his belief that Colleen is "very overprotective" of M.M.C.

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¶ 64 Colleen testified on her own behalf that the texts she sent to Dennis in December 2011, in which she called him a "n****r" and accused him of molesting his son, were "completely wrong," a "mistake," and "no reflection of who [she is] as a person." Colleen explained that she sent those texts after Dennis was late in arriving at her house to babysit M.M.C. Colleen regrets sending those texts and has apologized to Dennis. Dennis was "not open to that apology."

¶ 65 Colleen testified that, subsequent to the texts she sent in December 2011, she has never called Dennis a "n****r", nor has she questioned his sexual orientation² or accused him of molesting his son. Colleen does not consider herself a racist.

¶ 66 Colleen testified that when M.M.C. was born, she did not prevent Dennis from signing the birth certificate and that she wanted Dennis to sign the birth certificate. Colleen testified that Dennis had limited interaction with M.M.C. prior to the visitation order entered in March 2012 and for this reason she wanted Dennis's initial visitation to take place at her home so she could facilitate the relationship between Dennis and M.M.C. During the early visits in March and April 2012, Dennis was often late to arrive and he never stayed for the entire allotted visitation time. During those visits, Colleen never called Dennis any names; Dennis, however, called Colleen a "crazy mommy." He also called Colleen's mother a "bitch," and told her to "shut up and sit down."

¶ 67 Colleen testified she provided advance notice of M.M.C.'s doctor appointments and provided as much notice as possible when she took M.M.C. to urgent care. Colleen testified to several instances where she cancelled Dennis's visitation with M.M.C. due to M.M.C. being sick. In each such instance, Colleen notified Dennis of M.M.C.'s illness.

² Colleen's testimony was belied by an email she sent him on December 15, 2012, asking him "[h]ow many gay men are coming in and out of [his house]," and by her two emails to Dennis on December 25, 2012, calling him "queer."

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¶ 68 Colleen testified to an incident in September 2012 in which M.M.C. returned from a visit with Dennis with blood on her nose and a bump on her head. On a subsequent visit with Dennis (the date is not specified), M.M.C. returned with scratches to her face and nose. Colleen testified she does not believe Dennis intentionally tried to harm M.M.C. during those visits. Colleen denied calling DCFS to report that Dennis had injured M.M.C.

¶ 69 Colleen denied making any "prank phone calls" to Dennis's brother and father.

¶ 70 Counsel questioned Colleen about emails sent to Christy Tyler in 2002 from an email account called "Barfhounds" taunting Christy about her husband's alleged affair and making fun of the size of her chest. Colleen stated that "Barfhounds" was her (Colleen's) ex-husband's email account. Colleen admitted that both she and her ex-husband sent emails to Christy in 2002 because Christy was "harassing" them; however, Colleen could not remember which emails she sent and which emails her ex-husband sent.

¶ 71 Colleen testified that if she was awarded custody of M.M.C., Colleen's mother (who lives with Colleen) would take care of M.M.C. while Colleen was working her job as a customer service manager of the call center at American Sales. M.M.C. would have her own room in the house and would attend a school that was about one minute away from her house.

¶ 72 Colleen testified she, rather than Dennis, should be awarded custody of M.M.C. because she was "more in tune" with M.M.C.'s needs, evidenced by the fact that she has attended all of M.M.C.'s doctor appointments, her work schedule allows great flexibility to care for M.M.C., and she has attempted to foster a relationship between Dennis and M.M.C.

¶ 73 After Colleen rested her case, Dennis called Dr. Mary Gardner to testify. Dr. Gardner testified "[t]here are many objective sources of data that demonstrate a number of mental-health issues" for Colleen. As an example, Dr. Gardner referenced an instance where Colleen

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apparently saw Dennis changing M.M.C.'s diaper, during which M.M.C. picked up a baby wipe. Colleen's "interpretation of that was that Dennis was trying to actually kill the child" by strangling her with the baby wipe. However, there was no evidence supporting Colleen's belief that Dennis was actually trying to kill M.M.C.

¶ 74 Dr. Gardner also testified that some of Colleen's statements indicated a "break with reality." As an example, Dr. Gardner referenced Colleen's statements that Dennis had never asked her for an update about M.M.C. when, in fact, the evidence (*i.e.*, a certain email) showed that Dennis had asked for such an update.

¶ 75 Dr. Gardner further testified to Colleen's "unsound reasoning." As an example, Dr. Gardner referenced "the case management report written by [an unnamed] doctor who interviewed both parents and who basically described Colleen as making representations about Dennis that are in no way founded in fact, in this doctor's opinion anyway. That Colleen had said that Dennis is harmful and she believes that he will take the first opportunity to kill the child. And this doctor concluded there's really no evidence of that at all. Dennis is not presenting in that way, and there's no basis for her statements."

¶ 76 Dr. Gardner testified Colleen has "great difficulty" in supporting Dennis's relationship with M.M.C. In support, Dr. Gardner testified "there's a huge amount of evidence to indicate [Dennis's visits with M.M.C.] were cancelled. In some emails, Colleen arrived 15 minutes late herself for the appointment, gave him six minutes to arrive or she would cancel the visit. So there's many times in which she set up the parameter that was not known to Dennis. He would have to fall into that parameter or she would cancel the visit. There were a number of times when she cut the visit short."

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¶ 77 Dr. Gardner testified to her belief that Dennis should receive sole custody of M.M.C. Dr. Gardner explained:

"Dennis is the much more healthier [parent] mental-health wise. I believe that he's made some rather extraordinary concessions here to move from Peoria, quit a job, then find another job in the middle of a very bad recession, buy a house in the area. He's demonstrated quite a bit of follow-through and desire to have a good relationship with his daughter."

¶ 78 Mary Logan, a college friend of Dennis's, testified she accompanied Dennis to a visitation with M.M.C. at his home in May 2012. Colleen brought M.M.C. to Dennis's house and told M.M.C. to play with "Den Ass." Dennis took M.M.C. outside. M.M.C.'s hood kept falling off, and Colleen yelled at him to "put her hat on her, you stupid n****er." Colleen also told Dennis he was "effing retarded."

¶ 79 Mary testified that when Dennis visited M.M.C. from May 2012 to September 2012, he would call Mary and put her on speakerphone so she could hear what was being said during pick-up or drop-off. During that period of time, Mary heard Colleen call Dennis a "n****r" (in front of M.M.C.) more than a dozen times.

¶ 80 Dennis's father, Duane Maue, testified to receiving numerous prank phone calls made from blocked numbers in October 2011. The caller on the other end of the line would not say anything. During one of those prank phone calls, though, Duane saw Colleen's number on caller I.D.

¶ 81 Dennis's brother, Donald Maue, testified he received numerous prank phone calls made from blocked numbers on December 26, 2011, in which the caller on the other end of the line

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would not say anything. During three of those phone calls, though, Donald saw Colleen's number on his caller I.D.

¶ 82 Dennis's sister, Debby Maue, testified she accompanied Dennis to Colleen's home on April 4, 2012, for a visit with M.M.C. During this visit, Colleen told Dennis (in front of M.M.C.) that he was "fat," "pathetic," "a loser," and "a terrible dad."

¶ 83 Dennis then took the stand again to testify. Dennis testified Colleen continues to engage in activity hampering his parenting time with M.M.C. Specifically, Dennis cited an incident on an unidentified date in 2013, when he was dropping M.M.C. off to Colleen at the police station. Colleen looked at M.M.C. and started yelling that something was wrong with M.M.C.'s eye and that Dennis had injured her. Colleen had the officers take photographs of M.M.C., but one of the officers told Dennis that he saw nothing wrong with M.M.C.; Dennis also testified that there was nothing wrong with M.M.C. on that date.

¶ 84 Dennis also testified to an incident in May 2013 when he was asleep with M.M.C. and awoke at 9:15 p.m. to a flashlight outside his window. The police were doing a well-being check at Colleen's request. In October 2013, Dennis asked his aunt to watch M.M.C. one day while he was at work. Colleen called the police, who were at the front door when the aunt went to take M.M.C. for a walk.

¶ 85 Dennis testified that Colleen continues to call him unpleasant names when out of earshot of other persons. The last time this had occurred was around December 2013 at the police station when she called him an "asshole," a "loser," and a "deadbeat dad."

¶ 86 Following all the testimony, the trial court entered an order on February 19, 2014, granting sole custody of M.M.C. to Dennis. The trial court specifically found:

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"With respect to the testimony of the parties at the hearing the court finds that Dennis was sincere, credible and truthful. The court finds that Colleen was evasive, contradictory, [confrontational], and to a degree, untruthful in her testimony. Based on Colleen's testimony as well as other evidence presented to the court, there is no question but that Colleen has attempted to sabotage Dennis's relationship with his child and will continue to do so if she has sole or joint custody."

¶ 87 The trial court further stated in its order that it "agrees with the report drawn up by Doctor Gardner with respect to her findings." The trial court specifically noted Dr. Gardner's findings that Colleen had a great deal of difficulty supporting Dennis's relationship with M.M.C., as evidenced by her emails and texts to Dennis, which included racial slurs and disparagement of his role as a father. The trial court also cited Dr. Gardner's findings of "mental health issues for Colleen, including some indications of paranoia" as evidenced by her belief that Dennis was poisoning M.M.C. The trial court also cited Dr. Gardner's findings regarding certain statements made by Colleen that "broke with reality" and showed unsound reasoning.

¶ 88 The trial court cited texts Colleen sent to Dennis in December 2011 calling him a "n****r" as well as accusing him of molesting his son. The trial court cited a text from December 25, 2012, again stating in very derogatory terms that Dennis is a homosexual. The trial court noted that on other occasions, Colleen referred to Dennis's son by an offensive term for a person of Asian heritage. Dennis's son's mother is Asian American. The trial court found that "[t]hese emails demonstrate an individual who is racist, homophobic and mostly just mean and vindictive."

¶ 89 The trial court noted Dr. Bongiorno's opinion that the parties should have joint custody of M.M.C., but found that this opinion was contradicted by the testimony and evidence in this case.

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In finding that Dennis should have sole custody of M.M.C., the trial court stated it was relying on the fifth, sixth, seventh, and "most particularly" the eighth best-interest factors set forth in section 602(a) of the Marriage Act; to recap, the fifth factor is the mental and physical health of all individuals involved, the sixth factor is the physical violence or threat of physical violence by the child's potential custodian, the seventh factor is the occurrence of ongoing or repeated abuse as defined in section 103 of the Illinois Domestic Violence Act of 1986, and the eighth factor is the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child.

¶ 90 The trial court specifically noted:

"Colleen's behavior as delineated and interpreted by Doctor Gardner demonstrates a question about her mental health which seemingly prevents her from cooperating with Dennis.

Doctor Gardner pointed out that much of Colleen's conduct in this case violated provisions of the Illinois Domestic Violence Act. In this regard the court has had an opportunity to review the evidence, listen to the testimony and most particularly observe the witnesses, particularly Colleen, during their testimony. The court believes that the evidence and testimony overwhelmingly corroborates Doctor Gardner's conclusion in this respect.

Most importantly the evidence and testimony clearly demonstrate that Colleen is not willing or able to facilitate and encourage a relationship between the child and Dennis. When she had the opportunity she did everything in her power to thwart that relationship. In the court's judgment if she were given sole custody or even joint custody

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she would continue to harass Dennis, his family and even the child *** to prevent a relationship from occurring."

¶ 91 In addition to awarding sole custody of M.M.C. to Dennis, the trial court set a visitation schedule for Colleen of three visits one week and two visits the following week; when M.M.C. enters kindergarten, Colleen was awarded visitation every odd weekend of the month. The court also ordered Colleen to "attend therapy with a forensic mental health provider trained in high conflict divorce and this provider shall have access to Doctor Gardner's report."

¶ 92 On March 21, 2014, the trial court entered a custody judgment incorporating the findings made in the February 19, 2014, order, awarding sole custody of M.M.C. to Dennis, granting Colleen visitation three days on one week and two days the next, and granting Colleen visitation every odd weekend of the month when M.M.C. enters kindergarten. The custody judgment further provided:

"The issue of [Christmas] and Spring break has been raised. In light of Colleen's actions these issues will not be considered until the child starts kindergarten. If Colleen has proven herself responsible and has regularly visited the therapist she should have 'regular' visits during those breaks."

The custody judgment expressly required Colleen to "immediately enroll and attend therapy with Dr. Theresa Risolo, a forensic mental health provider trained in high conflict divorce and this provider shall have access to Dr. Gardner's report." The trial court also ordered Dr. Risolo to "issue a report to the court regarding Colleen's status in therapy."

¶ 93 On March 26, 2014, Colleen filed a notice of appeal pursuant to Illinois Supreme Court Rule 304(b)(6) (Ill. S. Ct. R. 304(b)(6) (eff. Feb. 26, 2010)), from the March 21, 2014, custody judgment.

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¶ 94 The trial court subsequently summoned the parties to its courtroom on April 2, 2014, and informed them that Dr. Risolo had reported that Colleen was refusing to see her. The trial court inquired of the parties why Colleen had not attended the therapy sessions with Dr. Risolo as ordered. Counsel for Colleen informed the trial court that Colleen's primary care physician had refused to give the necessary referral for therapy, and that without such a referral, her insurance company would not provide coverage for the therapy sessions with Dr. Risolo. Counsel indicated that without insurance coverage, the cost of the therapy sessions was prohibitive. The trial court expressed some skepticism about the prohibitive cost of the therapy sessions, noting that Colleen had likely spent as much as \$10,000 to hire appellate counsel and to take the appeal from the custody judgment. The trial court stated that if Colleen continues to refuse to attend the therapy sessions based on their cost, the court should then have the right to know how much Colleen paid her appellate counsel to take her appeal.

¶ 95 Following the hearing, the trial court entered an order on April 2, 2014, requiring Colleen to contact her primary care physician to obtain the necessary referral for the therapy sessions with Dr. Risolo. The trial court further ordered that if Colleen failed to obtain the necessary referral, she was to return to court on April 29, 2014, and "bring any and all documents evidencing all payments made to [her appellate counsel]."

¶ 96 On April 9, 2014, Colleen filed an interlocutory appeal pursuant to Illinois Supreme Court Rule 307(a)(1) (Ill. S. Ct. R. 307(a)(1) (eff. Feb. 26, 2010)), from the April 2, 2014, order.

¶ 97 We consolidated Colleen's appeals from the March 21, 2014, custody judgment and the April 2, 2014, order. We denied Colleen's motion to stay the enforcement of the March 21, 2014, custody judgment and the April 2, 2014, order.

¶ 98 II. Colleen's Appeal from the Custody Judgment

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¶ 99 Colleen contends the trial court erred by awarding sole custody of M.M.C. to Dennis instead of to her.

¶ 100 "In a custody dispute, the primary consideration is the best interest and welfare of the child." *Hall v. Hall*, 226 Ill. App. 3d 686, 689 (1991). "Regardless of whether the parents have ever been married, the statutory factors listed in section 602(a) of the [Marriage Act] are relevant in determining a child's custody." *Id.* "Because the trial court is in a better position to evaluate the demeanor and conduct of the parties and witnesses, the court's decision is given great deference and will not be disturbed on appeal unless such decision is contrary to the manifest weight of the evidence." *Id.* "A judgment is against the manifest weight of the evidence when the opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based upon the evidence." *In re Marriage of Karonis*, 296 Ill. App. 3d 86, 88 (1998).

¶ 101 In the present case, each parent presented evidence as to why it was in M.M.C.'s best interest that he/she be awarded custody. Specifically, Colleen testified she should be granted sole custody because she was more attentive to M.M.C.'s needs than Dennis, who has a more lax parenting style leading to M.M.C. sometimes injuring herself while in his care. Colleen testified that although Dennis has at times shown a disinterest in M.M.C., Colleen has attempted to foster a relationship between Dennis and M.M.C. Colleen admitted she has shortened or cancelled some of Dennis's visits with M.M.C., but she testified that the reason for the majority of the cancellations was that M.M.C. was sick and/or had doctors' appointments for those days, and that Dennis was always notified. Colleen admitting to sending Dennis texts in December 2011, shortly after M.M.C.'s birth, calling him a "n****r" and accusing him of molesting his son, but she has apologized for those texts and does not consider herself a racist. Colleen also admitting sending Dennis a text in 2012 calling his son an offensive and racially disparaging name.

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Colleen denied ever making any prank calls to Dennis or his family members. If granted custody, Colleen testified M.M.C. would have her own bedroom, attend a nearby school, and be cared for by Colleen's mother while Colleen was at work.

¶ 102 Colleen's testimony was supported by her mother, daughter and ex-husband, who each testified that Colleen is a good mother.

¶ 103 Doctor Bongiorno, Colleen's section 604.5 expert, submitted a report expressly addressing the section 602(a) best-interest factors and recommending that Colleen be named residential parent in a joint custody arrangement. In her report and during her testimony at trial, Dr. Bongiorno stated there was no evidence that Colleen had any mental health issues. Dr. Bongiorno testified that allowing either parent to have sole custody would likely to lead to that parent preventing the other parent from having a meaningful relationship with M.M.C.

¶ 104 By contrast, Dennis testified he was better suited to be M.M.C.'s custodial parent. Dennis testified if he was awarded custody, M.M.C. would have her own bedroom, attend a nearby school, and be attended by a nanny while Dennis was at work. Dennis testified to his concern about Colleen's mental well-being, given the racist and derogatory texts she has sent him calling him a "n****r" and accusing him of molesting his son, the prank phone calls she made to his father, brother, and brother's business partner, and her continuing disparaging comments she makes to him within M.M.C.'s earshot. Dennis testified to Colleen's frequent cancellation of his visits with M.M.C., to Colleen's continued requests for well-being checks during his visitations, to Colleen's videotaping of him during visits, and to Colleen's false accusations that M.M.C. had been hurt while in his care, all of which have hampered his parenting time with M.M.C.

¶ 105 Dennis's father and brother testified to Colleen's prank phone calls to them in 2011 in which she would call and not say anything. Dennis's sister testified to accompanying Dennis on

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a visit with M.M.C. in 2012 and hearing Colleen call him derogatory names (such as "fat," "pathetic," "loser," and "a terrible dad") in front of M.M.C. Dennis's friend, Mary Logan, testified to hearing Colleen call Dennis a "n****r" in front of M.M.C., more than a dozen times, from May 2012 to September 2012.

¶ 106 Dr. Gardner, the section 604(b) expert, submitted a report specifically addressing the section 602(a) best-interest factors and noted with respect to the fifth factor: the mental and physical health of all individuals involved; that Colleen exhibited mental health issues related to her paranoia regarding her belief that Dennis was trying to poison M.M.C.; her statements which "broke with reality;" and her emails which showed "unsound reasoning." With respect to the seventh factor; the occurrence of ongoing or repeated abuse as defined in section 103 of the Illinois Domestic Violence Act of 1986; Dr. Gardner noted that Colleen had demonstrated such abuse by: repeatedly calling Dennis's work and personal phone numbers; sending him hundreds of unwanted emails and texts, many of which contained racial slurs; videotaping him without his permission; driving past his home and following him in her car; repeatedly calling the police to perform well-being checks during his visits with M.M.C.; and making the prank calls to his family members. With respect to the eighth factor; the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and child; Dr. Gardner found: Colleen had willfully interfered with Dennis's relationship with M.M.C. by cancelling Dennis's visitations with M.M.C.; by sending him the racist texts; and by having M.M.C. baptized without Dennis's knowledge.

¶ 107 Dr. Gardner testified at trial consistent with her report and recommended sole custody for Dennis.

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¶ 108 In awarding sole custody to Dennis, the trial court expressly found Dennis' testimony to be "sincere, credible and truthful," while Colleen's testimony was found to be "evasive, contradictory, confrontive, and to a degree, untruthful." The trial court noted its agreement with Dr. Gardner's report relating her findings of mental health issues for Colleen, as well as her findings that Colleen did not support Dennis's relationship with M.M.C. The trial court cited the racist texts Colleen sent to Dennis and noted they demonstrated Colleen's racism and homophobia. The trial court recognized that Dr. Bongiorno had recommended joint custody, but found her recommendation to be unsupported by the testimony and evidence. The trial court stated that the fifth, sixth, seventh, and "most particularly" the eighth section 602(a) best-interest factors supported sole custody for Dennis and, specifically: pointed out that Colleen's mental health issues prevent her from cooperating with Dennis with regard to M.M.C.; that "much of" Colleen's conduct violated the Illinois Domestic Violence Act of 1986; and that the evidence demonstrated Colleen's unwillingness to encourage a relationship between Dennis and M.M.C.

¶ 109 In sum, the trial court's custody determination was amply supported by the testimony of Dennis, his family members, and Dr. Gardner, as well as by Dr. Gardner's report which was admitted into evidence, all of which indicated that the best-interest factors favored an award of custody to Dennis. Although there was contrary testimony given by Colleen, her family members, and Dr. Bongiorno, the trial court agreed with the findings in Dr. Gardner's report and made a credibility determination in favor of Dennis which we will not overturn. See *In re Marriage of Diehl*, 221 Ill. App. 3d 410, 424 (1991) ("[G]enerally, a reviewing court will not disturb the trial court's determination of credibility because the trial court has a superior vantage point, which cannot be reproduced from the cold record, to observe and judge the witnesses'

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demeanor and credibility."). The trial court's custody judgment was not against the manifest weight of the evidence.

¶ 110 Colleen argues that the trial court's award of sole custody to Dennis was erroneous because Dennis himself testified that he was willing to enter into a joint custody arrangement with Colleen. However, Dr. Gardner and Dr. Bongiorno each indicated in their respective report that Dennis was seeking sole custody of M.M.C.; further, the testimony and evidence from Dennis, his family, and Dr. Gardner supported the trial court's award of sole custody to Dennis and we cannot say the custody judgment was against the manifest weight of the evidence.

¶ 111 Colleen argues that the trial court erred when, in awarding sole custody to Dennis, it disregarded Dr. Bongiorno's recommendation for joint custody and the appointment of a mediator and stated that "if the only way joint custody can work is to have a hired third-party to work through decisions with the parents then it is clear there can be no joint custody." Colleen argues this statement was erroneous because the legislature has mandated that joint parenting agreements "specify a procedure by which proposed changes, disputes and alleged breaches may be mediated or otherwise resolved." 750 ILCS 5/602.1(b) (West 2012).

¶ 112 We find no cause for reversal. The trial court disregarded Dr. Bongiorno's report recommending joint custody not only because of its recommendation for the appointment of a mediator, but because the court found Dennis's testimony credible, Colleen's testimony incredible, and because the court agreed with the section 602(a) findings and recommendations of Dr. Gardner. On this record, we cannot say the trial court's award of sole custody of M.M.C. to Dennis was against the manifest weight of the evidence.

¶ 113 Colleen also argues that the trial court violated section 602(b) of the Marriage Act by considering the December 2011 text messages she sent to Dennis. Section 602(b) states that

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"[t]he court shall not consider conduct of a present or proposed custodian that does not affect his relationship to the child." 750 ILCS 5/602(b) (West 2012). Colleen contends the text messages did not affect her relationship to M.M.C. and therefore should not have been considered by the trial court.

¶ 114 Colleen's argument is without merit. The December 2011 text messages contained racist language in which Colleen called Dennis a "n****r" and accused him of molesting his son; the sentiments expressed in those text messages were relevant in determining whether Colleen had violated section 103 of the Illinois Domestic Violence Act of 1986 and whether she would encourage or facilitate a relationship between Dennis and M.M.C., and thus were properly considered by the trial court in its custody determination. See 750 ILCS 5/602(a)(7), (8) (West 2012) (best-interest factors to be considered in a custody determination include whether a parent has committed ongoing abuse as defined in section 103 of the Illinois Domestic Violence Act of 1986, and whether a parent is willing and able to encourage and facilitate a close and continuing relationship between the other parent and child).

¶ 115 Next, Colleen argues that the trial court erred by failing to enter a 50/50 visitation award in which each parent would have equal time with M.M.C. In determining the amount of visitation for the noncustodial parent, the trial court must consider the best interests of the child. See *In re Marriage of Chehaiber*, 394 Ill. App. 3d 690, 694 (2009); *In re Parentage of J.W.*, 2013 IL 114817, ¶ 38. The trial court's findings regarding the best interest of the child will not be disturbed unless they are against the manifest weight of the evidence. See *Id.* ¶¶ 55, 62. The trial court's ultimate decision regarding visitation will not be disturbed absent an abuse of discretion. *Wittendorf v. Worthington*, 2012 IL App (4th) 120525, ¶ 50. An abuse of discretion

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occurs where no reasonable person would take the view adopted by the trial court. *In re Parentage of K.E.B.*, 2014 IL App (2d) 131332, ¶ 31.

¶ 116 Colleen's argument is that the trial court erred in failing to award a 50/50 visitation schedule. The trial court considered the relevant best-interest factors as set forth in section 602(a) of the Marriage Act (including the parents' mental health, the parents' violation of the Illinois Domestic Violence Act of 1986, and each parent's ability and willingness to foster a close and continuing relationship between the other parent and child) and determined, in pertinent part that: Dennis's testimony was more credible than Colleen's testimony; the evidence corroborated Dr. Gardner's conclusion that Colleen violated the Illinois Domestic Violence Act of 1986 and that she has mental health issues preventing her from cooperating with Dennis; and that Colleen is not willing or able to facilitate and encourage a relationship between Dennis and M.M.C.

¶ 117 As discussed earlier in this order, the trial court's best-interest findings were not against the manifest weight of the evidence. Given the best-interest findings, we cannot say the trial court's visitation order, which provided Colleen with overnight visitation three days one week and two days the next, and granted Colleen overnight visitation every odd weekend of the month when M.M.C. enters kindergarten, constituted an abuse of discretion such that no reasonable person would take the view adopted by the trial court.

¶ 118 Next, Colleen argues that the trial court erred by ordering her to "immediately enroll and attend therapy with Dr. Theresa Risolo, a forensic mental health provider trained in high conflict divorce." Colleen contends this order was erroneous because neither party asked the court for an order requiring Colleen to enter therapy.

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¶ 119 We find no error. "Courts have inherent plenary power not only to protect the interests of minors, but have a duty to do so." *In re Marriage of Petersen*, 319 Ill. App. 3d 325, 334 (2001). "In matters regarding child custody, courts have the inherent power to enter orders that are necessary for the benefit of the child." *Id.* In the instant case, Dr. Gardner was the section 604(b) expert appointed to help the court in its custody determination. Dr. Gardner submitted a report recommending that Dennis be given sole custody of M.M.C., that Colleen be given visitation, and that "Colleen should be referred for therapy to a forensic mental health provider trained in high-conflict divorce." Pursuant to its inherent plenary power to enter orders necessary for the benefit of the child in matters regarding child custody, the trial court here committed no error in following Dr. Gardner's recommendation and ordering Colleen to enter into therapy with a forensic mental health provider.

¶ 120 Colleen argues, though, that the trial court lacked jurisdiction to order her into therapy. In support, Colleen cites *Suriano v. Lafeber*, 386 Ill. App. 3d 490 (2008). In *Suriano*, the parties entered into a joint parenting agreement on April 17, 1998, and an agreed order on September 8, 2006. *Id.* at 491. Paragraph I(J) of the agreed order provided that neither party would make any unilateral decision regarding the minor children's health, education, religious training, activities or welfare. *Id.*

¶ 121 On March 1, 2007, respondent filed his fifth petition for a rule to show cause to hold petitioner in contempt for violating paragraph I(J) of the agreed order by making health care and other decisions regarding the children without consulting respondent. *Id.* at 491-92. Respondent sought amendment of the joint parenting agreement to provide that petitioner could not make any unilateral decisions regarding the children's care and activities and that respondent receive sufficient notice of any upcoming decisions regarding their care and activities. *Id.* at 492.

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¶ 122 After a hearing on the petition, the circuit court issued its decision on May 20, 2008, stating it would not amend the joint parenting agreement because it was "going to terminate it *sua sponte*" and then it awarded custody of the children to petitioner. *Id.* The court noted that the parents were unable to cooperate, and that "there should never ever have been joint parenting." *Id.* When respondent objected, the court stated it had "the right to do it in the best interest of these children." *Id.* Respondent appealed. *Id.*

¶ 123 The appellate court began its analysis by noting:

"A party cannot be granted relief in the absence of corresponding pleadings; if a justiciable issue is not presented to the court through proper pleadings, the court cannot *sua sponte* adjudicate an issue. *** Orders that are entered in the absence of a justiciable question properly presented to the court by the parties are void since they result from court action exceeding its jurisdiction." *Id.* at 492-93.

The appellate court further noted that "the only pleading before the court was respondent's fifth rule to show cause to hold petitioner in contempt for violating paragraph I(J) of the agreed order." *Id.* at 493. The appellate court concluded that "the justiciable matter before the court was an alleged violation of the provisions of the agreed order and not a child custody determination. The circuit court had no jurisdiction to *sua sponte* terminate the joint parenting agreement. The court's May 20, 2008, order is void." *Id.*

¶ 124 In contrast to *Suriano*, the initial pleading in this matter was Colleen's petition to determine paternity, sole custody, and other relief filed on December 8, 2011. Thus, by her own pleading, Colleen made custody a justiciable issue before the court. To help it make its custody decision, the trial court appointed a section 604(b) expert, Dr. Gardner, who recommended sole custody for Dennis, visitation for Colleen, and that Colleen attend therapy with a forensic mental

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health provider trained in high-conflict divorce. As part of its custody decision awarding custody to Dennis and visitation to Colleen, and in accordance with Dr. Gardner's recommendation, the trial court ordered Colleen to attend therapy with Dr. Risolo, a forensic mental health provider trained in high-conflict divorce. As the trial court's jurisdiction to determine custody was properly invoked, and as the court's order requiring Colleen to attend therapy with Dr. Risolo was entered pursuant to a recommendation made by the section 604(b) expert appointed to help the court act in M.M.C.'s best interest when making the custody determination, we find that the trial court did not exceed its jurisdiction in the entry of the order at issue here.

¶ 125 Colleen next argues that the trial court erred in its custody judgment by providing that her visitation with M.M.C. during Christmas and Spring break would be conditioned on whether she had regularly visited Dr. Risolo.

¶ 126 The issue of Colleen's visitation with M.M.C. during Christmas and Spring break is not ripe for decision. The ripeness doctrine precludes courts from entering a judgment unless an actual controversy is presented. *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 252 (2010). "An actual controversy exists if there is a legitimate dispute requiring an immediate and definite determination of the parties' rights, the resolution of which would help terminate all or part of the dispute." *Village of Maywood Board of Fire & Police Commissioners v. Department of Human Rights of the State of Illinois*, 296 Ill. App. 3d 570, 575 (1998).

¶ 127 The trial court's custody judgment states that the issue of Colleen's visitation with M.M.C. during Christmas and Spring break "will not be considered until the child starts kindergarten"; as the trial court has made no determination yet regarding visitation during Christmas and Spring break, no actual controversy exists and the issue is not ripe for decision.

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¶ 128 Colleen also argues that the trial court erred by elsewhere threatening, during a court hearing, to cut back her visitation with M.M.C. as a sanction if she fails to see Dr. Risolo. This issue is not ripe for review as the trial court has not yet sanctioned Colleen by cutting back her visitation for her failure to see Dr. Risolo, and thus no actual controversy is presented. See *Lebron*, 237 Ill. 2d at 252.

¶ 129 Colleen next argues that the trial court erred by ordering that Dr. Gardner's section 604(b) report be given to Dr. Risolo. In support, Colleen cites *Johnston v. Weil*, 241 Ill. 2d 169 (2011). In *Johnston*, Heather Johnston married Sean McCann and they had a son in 1998. *Id.* at 171. Their marriage was dissolved. *Id.* Johnston later married Andrew Weil and they had a daughter in 2002. *Id.* In 2005, their marriage was dissolved. *Id.*

¶ 130 In the Johnston-McCann postdissolution proceedings, McCann filed a petition to modify the joint parenting agreement. *Id.* In January 2006, the circuit court appointed a psychiatrist, Dr. Amabile, to conduct a section 604(b) evaluation to assist the court in determining custody of the son. *Id.* Dr. Amabile completed the evaluation and sent the report to the circuit court. *Id.* at 172.

¶ 131 Meanwhile, in the Johnston-Weil dissolution proceedings, Weil filed a motion seeking temporary possession or custody of their daughter and sought leave to subpoena Dr. Amabile. *Id.* Johnston responded that Dr. Amabile's report was privileged under the Mental Health and Developmental Disabilities Confidentiality Act (Confidentiality Act) (740 ILCS 110/1 *et seq.* (West 2006)). *Johnston*, 241 Ill. 2d at 172. The Confidentiality Act states that, except as provided therein, "in any civil, criminal, administrative, or legislative proceeding, or in any proceeding preliminary thereto, a recipient, and a therapist on behalf and in the interest of a

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recipient, has the privilege to refuse to disclose and to prevent the disclosure of the recipient's record or communications." 740 ILCS 110/10(a) (West 2006).

¶ 132 In December 2006, the circuit court ruled that Dr. Amabile's section 604(b) report produced in the Johnston-McCann postdissolution proceeding was privileged under the Confidentiality Act and not discoverable in the Johnston-Weil postdissolution proceeding. *Johnston*, 241 Ill. 2d at 172.

¶ 133 In January 2007, Johnston and her parents (plaintiffs) filed a complaint naming as defendants McCann, McCann's attorneys, the McCann child representative, Weil, Weil's attorneys, and the Weil child representative. *Id.* The complaint alleged: Dr. Amabile was a therapist within the meaning of the Confidentiality Act; Dr. Amabile engaged in confidential communications with plaintiffs; and the information Dr. Amabile obtained and included in her section 604(b) report in the Johnston-McCann postdissolution proceeding was privileged under the Confidentiality Act. *Id.* The complaint further alleged that the McCann defendants disclosed the confidential information to the Weil defendants. *Id.* at 172-73. The complaint sought \$200,000 in damages for each plaintiff plus costs and attorney fees. *Id.* at 173.

¶ 134 Defendants filed motions to dismiss, which the circuit court denied. *Id.* at 173-74. The circuit court certified the following question of law for interlocutory appeal pursuant to Supreme Court Rule 308:

"Whether evaluations, communications, reports and information obtained pursuant to section *** 604(b) of the [Marriage Act] are confidential under the [Confidentiality Act] where the 604(b) professional personnel to advise the court is a psychiatrist or other mental health professional." *Johnston*, 241 Ill. 2d at 171; see also Ill. S. Ct. R. 308 (eff. Feb. 26, 2010).

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¶ 135 In answering the certified question in the negative, our supreme court began its analysis by examining section 604(b), which states:

"(b) The court may seek the advice of professional personnel, whether or not employed by the court on a regular basis. The advice given shall be in writing and made available by the court to counsel. Counsel may examine, as a witness, any professional personnel consulted by the court, designated as a court's witness." 750 ILCS 5/604(b) (West 2006).

¶ 136 The supreme court held that "section 604(b) of the Marriage Act, considered alone, requires disclosure of the 604(b) report only in the particular proceeding in which the advice is sought." *Id.* at 177. In support, the supreme court first noted that "the plain language of the statute refers only to counsel in that proceeding." *Id.* The supreme court further noted that section 604 of the Marriage Act was derived from section 404 of the Uniform Marriage and Divorce Act (Unif. Marriage and Divorce Act § 404, 9A U.L.A. 381 (1998)), and that the comment to section 404 of the Uniform Marriage and Divorce Act explains:

" [T]he judge may call informally on experts in a variety of disciplines without subjecting them, in the first instance, to the formal hearing process. But the experts' advice should be available *to counsel for the parties* so that the judge's decision will not be based on secret information; and *the parties* should be able to examine the expert as to the substance of his advice to the judge.' " (Emphases added.) *Johnston*, 241 Ill. 2d at 178 (quoting Unif. Marriage and Divorce Act § 404, 9A U.L.A. 381, cmt. (1998)).

¶ 137 The supreme court concluded from the italicized language that "disclosure of the section 604(b) report is clearly intended to be limited to the parties in the particular proceeding" (*Johnston*, 241 Ill. 2d at 178), as well as to the court and counsel in that proceeding.

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Accordingly, the supreme court held that "section 604(b) confines disclosure of Dr. Amabile's report to the court, counsel, and the parties in the McCann postdissolution proceeding." *Id.* at 181.³

¶ 138 In the present case, Colleen argues that as Dr. Risolo is neither the court, counsel or a party in the custody proceeding in which Dr. Gardner's advice was sought, *Johnston* compels the finding that the trial court lacked the authority to order the disclosure of Dr. Gardner's section 604(b) report to her.

¶ 139 We disagree, as the present case is factually inapposite to *Johnston*. *Johnston* involved two separate postdissolution proceedings (Johnston-McCann and Johnston-Weil) in which a party to the second postdissolution proceeding, Weil, sought discovery of the section 604(b) report issued by a psychiatrist in the Johnston-McCann postdissolution proceeding. *Id.* at 171-72. *Johnston* also involved a third proceeding in which plaintiffs sought to recover damages for the McCann defendants' alleged disclosure of the confidential information contained in the section 604(b) report to the Weil defendants. *Id.* at 172-73. In addressing the certified question as to whether the psychiatrist's section 604(b) report was confidential under the Confidentiality Act, the supreme court held that under section 604(b), the report could not be disclosed outside of the proceeding in which the section 604(b) expert's advice had been sought. *Id.* at 177.

¶ 140 Here, there is only one proceeding in which the section 604(b) expert's (Dr. Gardner's) advice was sought, namely, the custody proceeding involving M.M.C. Pursuant to her appointment by the trial court, Dr. Gardner filed her section 604(b) report which was disclosed to

³ In answering the certified question in the negative, the supreme court also analyzed section 605 of the Marriage Act, as well as sections 10(a)(1) and 10(a)(4) of the Confidentiality Act (see *Johnston*, 241 Ill. 2d at 178-86). We need not discuss the supreme court's analysis of those sections of the Marriage Act and Confidentiality Act as they are not relevant to the issues raised in the present appeal.

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the court, counsel, and parties in the custody proceeding involving M.M.C. In her report, Dr. Gardner recommended that Colleen receive therapy from a forensic mental health provider trained in high-conflict divorce. In accordance with Dr. Gardner's recommendation, the trial court ordered that Colleen attend therapy with Dr. Risolo and that Dr. Gardner's section 604(b) report be disclosed to Dr. Risolo. In ordering the disclosure of Dr. Gardner's section 604(b) report to Dr. Risolo, the trial court did not violate section 604(b) or the holding in *Johnston* as the section 604(b) report is being disclosed within the same proceeding in which the report was filed. Given that Dr. Gardner's section 604(b) report is part of the record in this proceeding and makes certain findings that could be relevant to Dr. Risolo's treatment of Colleen (and which treatment is in M.M.C.'s best interest), it is not unreasonable that Dr. Risolo have access to this report; we find no language in section 604(b) and no holding in *Johnston* that would preclude disclosure of the report to Dr. Risolo under the facts of this case.

¶ 141 III. Colleen's Appeal from the April 2, 2014, Order

¶ 142 We begin by briefly reiterating the events leading to the April 2, 2014, order.

¶ 143 In its custody judgment entered on March 21, 2014, the trial court acceded to Dr. Gardner's recommendation in her section 604(b) report and ordered Colleen to attend therapy with Dr. Risolo, a forensic mental health provider trained in high-conflict divorce. The custody judgment contained a provision requiring Dr. Risolo to "issue a report to the court regarding Colleen's status in therapy."

¶ 144 The trial court summoned the parties to its courtroom on April 2, 2014, and informed them that Dr. Risolo had reported that Colleen was refusing to see her. The trial court inquired why Colleen had not attended the therapy sessions with Dr. Risolo as ordered. Colleen's counsel told the trial court that Colleen's primary care physician had refused to give the necessary referral

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for therapy, and that without the referral, her insurance company would not prove coverage for the therapy sessions with Dr. Risolo. Counsel indicated that without insurance coverage, the cost of the therapy sessions was prohibitive. The trial court expressed skepticism about the prohibitive cost of the therapy sessions, noting that Colleen had likely spent as much as \$10,000 to hire appellate counsel to take the appeal from the custody judgment. The trial court stated that if Colleen refuses to attend the therapy sessions based on their cost, the court then should have the right to know how much Colleen paid her appellate counsel to appeal from the custody judgment.

¶ 145 Following the hearing, the trial court entered an order on April 2, 2014, requiring Colleen to contact her primary care physician to obtain the necessary referral for the therapy sessions with Dr. Risolo. The trial court further ordered that if Colleen failed to obtain the necessary referral, she was to return to court on April 29, 2014, and "bring any and all documents evidencing all payments made to [her appellate counsel]."

¶ 146 Colleen filed an interlocutory appeal from the April 2, 2014, order pursuant to Illinois Supreme Court Rule 307(a)(1) (Ill. S. Ct. R. 307(a)(1) (eff. Feb. 26, 2010)), which states that an appeal may be taken from an interlocutory order "granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction." Dennis contends the April 2, 2014, order was not an injunction, but rather was an enforcement of the custody judgment entered on March 21, 2014, and, as such, that we lack jurisdiction to consider Colleen's appeal under Rule 307(a)(1).

¶ 147 While we agree that the April 2, 2014, order serves to enforce the custody judgment, we find it was also an appealable injunctive order. "To determine what constitutes an appealable injunctive order under Rule 307(a)(1), we must look to the substance of the action, not its form. [Citations.] Our court has *** described an injunction as a judicial process, by which a party is

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required to do a particular thing, or to refrain from doing a particular thing, according to the exigency of the writ, the most common sort of which operate as a restraint upon the party in the exercise of his real or supposed rights. [Citations.] Actions of the circuit court having the force and effect of injunctions are still appealable even if called something else." (Internal quotation marks omitted.) *Doe v. Northwestern Memorial Hospital*, 2014 IL App (1st) 140212, ¶ 29.

¶ 148 Here, in requiring Colleen to do a particular thing, specifically, to obtain the referral from her primary care physician for the therapy sessions with Dr. Risolo, the court's April 2, 2014, order had the force and effect of an injunction and was appealable under Rule 307(a)(1).

¶ 149 As to whether the trial court erred in enforcing its custody judgment by enjoining Colleen to obtain the referral from her primary care physician for the therapy sessions with Dr. Risolo, we note that "a court retains the inherent authority to enforce its own orders" (*Director of Insurance for the State of Illinois v. A & A Midwest Rebuilders, Inc.*, 383 Ill. App. 3d 721, 723 (2008)), and that in matters regarding child custody, the court has the "inherent power to enter orders that are necessary for the benefit of the child." *In re Marriage of Peterson*, 319 Ill. App. 3d at 334. The trial court entered the April 2, 2014, order requiring Colleen to obtain the physician referral in order to enforce the March 21, 2014, custody judgment and to benefit M.M.C. by ensuring that Colleen gets the mental health treatment recommended by Dr. Gardner. The trial court had the inherent power to enter such an order and we find no error.

¶ 150 Finally, Colleen argues that the trial court erred when it ordered her to "bring any and all documents evidencing all payments made to [her appellate counsel for taking the appeal from the custody judgment]" on April 29, 2014, in the event she did not obtain the necessary referral for the therapy sessions with Dr. Risolo⁴. Dennis counters that this order was necessary to guard

⁴ The April 29, 2014, hearing date has passed. Conceivably, at the hearing, Colleen may have

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M.M.C.'s best interests; however, we find no nexus between M.M.C.'s best interests and the court being advised of the amount of money Colleen paid to her appellate counsel to exercise her right to appeal. Accordingly, we reverse the requirement that Colleen advise the trial court of the amounts paid to appellate counsel.

¶ 151 Colleen contends the trial court was biased against her and that we should reverse and remand for a new custody trial before a new, impartial judge. Our extensive review of the record shows that the trial court made credibility determinations in favor of Dennis and against Colleen, but it did not exhibit signs of bias necessitating a new trial before a different judge.

¶ 152 For all the foregoing reasons, as to the March 21, 2014 custody judgment, we affirm the award of sole custody of M.M.C. to Dennis, the grant of visitation to Colleen, and the requirement that Colleen attend therapy with Dr. Risolo and that Dr. Risolo be provided with Dr. Gardner's section 604(b) report. As to the order entered on April 2, 2014, we affirm the requirement that Colleen obtain a referral from her primary care physician for the therapy sessions with Dr. Risolo. We reverse the requirement that, in the absence of a referral, Colleen provide the trial court with evidence as to the amount of monies she paid her appellate counsel to take the appeal from the custody judgment.

¶ 153 As a result of our disposition of this case, we need not address the other arguments on appeal.

¶ 154 Affirmed in part; reversed in part.

disclosed the amount of money she paid her appellate counsel, thereby rendering moot the issue of whether the trial court erred in ordering such a disclosure. However, neither party has informed us of the result of the April 29, 2014, hearing, or supplemented the record with any orders issued as a result of the hearing, or argued that the hearing mooted the issue of whether the trial court erred in ordering the disclosure of Colleen's appellate fees. Accordingly, we address the issue.