2016 IL App (2d) 160513-U
No. 2-16-0513
Order filed December 22, 2016

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF KRISTINE L. MAYBACH,	)	Appeal from the Circuit Court of Kane County.
Petitioner-Appellant,	)	
and	)	No. 14-D-131
DAVID A. HERDA,	)	Honorable Joseph M. Grady,
Respondent-Appellee.	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Zenoff and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court acted within its discretion in granting respondent's request for a preliminary injunction. We affirm.

¶ 2 In this interlocutory appeal as of right from an injunction (Ill. Sup. Ct. R. 307(a)(1) (eff. Feb. 26, 2010)), petitioner, Kristine L. Maybach, argues that the trial court abused its discretion in granting a preliminary injunction in respondent's, David A. Herda's, favor. Specifically, respondent moved for entry of the injunction on the basis that petitioner, his ex-wife, had violated their parenting agreement by virtue of changing their children's residence and school

district without proper notice or consultation. On June 15, 2016, the trial court granted the injunction, and petitioner appeals. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Joint Parenting Agreement and Dissolution Judgment

¶ 5 As relevant here, the parties' August 6, 2015, joint parenting agreement (hereinafter, "the agreement"), which was incorporated into the October 23, 2015, dissolution judgment, provides that petitioner "shall have *sole care, custody, control and education* of the minor children [Kaden], born May 6, 2002, and [Pierce], born November 12, 2004, with respondent having the right of reasonable parenting time." (Emphasis added.)[1] In addition, the agreement specified:

> "***sole care, custody, control and education of the minor children *** shall be awarded to Mother. However, Mother shall have a continuing affirmative obligation to provide documentation and input to Father in regards to major decisionmaking involving education or medical issues. *Mother shall further consider Father's input* regarding the determination of such issues *with Mother having the right to make any final decisions* regarding such issues." (Emphasis added.)

¶ 6 The parties' eldest child, Kaden, has autism. With respect to medical care, the agreement contemplated significant communication between the parties regarding treatment and care, acknowledging that such cooperation was in the children's best interest; however, ultimately, "the choice of physicians, dentists, or hospitals shall in all non-emergency situations be decided

[1] The agreement set forth in detail each parent's time with the children. In general, during the school year, respondent received the children from Wednesday at 9 a.m. through Sunday at 8 p.m. every other week. The parties had approximately equal time with the children during the summer.

by Mother." Moreover, with respect to education, the agreement contemplated that, for the 2015-2016 school year, Pierce (5th grade) and Kaden (8th grade) would attend schools in District 303 in Kane County. However, "*Mother shall select the schools attended for subsequent years* while taking into *consideration the input* and recommendations of the school officials and behavioral health professionals and the children's *Father*." (Emphasis added.)

¶ 7 Finally, the agreement provided that, if either party took the children away from their primary residence overnight, the other party must be notified in writing of the destination or itinerary and provided an emergency telephone number. We also note that, in general, the agreement required that each parent would act in a manner promoting cooperation, involvement, and respect, love, and affection of the children for the other parent.

¶ 8 In relevant part, the dissolution judgment provided that petitioner would reside with the children in the former Kane County marital home at 6N931 Hastings Drive, Campton Hills, *until that home was sold*.

¶ 9 B. Petition for Injunctive Relief and Temporary Restraining Order

¶ 10 On May 20, 2016, respondent filed a petition for injunctive relief, alleging that petitioner had relocated with the children in Lake County in violation of: (1) the parenting agreement; and (2) section 609.2 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/609.2 (eff. Jan. 1, 2016)), which defines "relocation" as "a change of residence from the child's current primary residence located in the county of Cook, Du Page, Kane, Lake, McHenry, or Will to a new residence within this State that is *more than 25 miles* from the child's current residence." (Emphasis added.) (750 ILCS 5/600(g)(1) (eff. Jan. 1, 2016)). Specifically, respondent alleged that, in the agreement, he bargained for substantial parenting time and the right to be included in major decisionmaking regarding the children's residence, education, etc.

Respondent alleged more than 13 ways in which petitioner allegedly violated the agreement. The hearing on the petition and subsequent order, however, focused primarily on the issues concerning the move from Kane County to Lake County. In that regard, respondent alleged that, upon entry of the dissolution judgment, petitioner and the children lived on Hastings Drive in St. Charles.[2] However, without first consulting respondent, petitioner had taken steps to move the children to a residence in Hawthorne Woods (Lake County) and to enroll the children in new schools there, which he alleged violated the agreement and section 609.2 of the Act.

¶ 11 According to respondent, he was suffering irreparable harm and injury in that petitioner was completely denying him the rights afforded him under the agreement. "Contrary to the belief of [petitioner], she does not have the sole authority to relocate the children to Lake County, Illinois[,] or enroll the children in new schools. The statute prohibits [petitioner's] actions in this regard." Further, respondent alleged that he had a right needing protection, namely, the rights he received in the agreement and the right to expect that petitioner would comply with court orders. Finally, respondent alleged that he had no adequate remedy at law. Specifically, "[petitioner] is acting as if [respondent] doesn't exist and is continuing to alienate the children from their father in these proceedings." Respondent concluded that the parties had agreed that it was in the children's best interests that he have physical possession of them nearly 50% of the time and that petitioner was trying to deprive him of those rights.

¶ 12 On May 25, 2016, based on the allegations in the petition for injunctive relief, respondent requested that the court enter a temporary restraining order (TRO). The court entered the TRO, which provided that petitioner was restrained from changing the children's address to any

[2] The dissolution judgment lists the address as being located in Campton Hills, while the petitioner for injunction and TRO list it as being in St. Charles.

residence located more than 25 miles from the residence located at 6N931 Hastings Drive. Further, in the event that petitioner lived or resided at an address located more than 25 miles from the Hastings Drive residence, both children would live with respondent, "pending resolution of the modification of this order." Moreover, the TRO provided that, if the children had been enrolled in any school not previously attended, petitioner must immediately cease the enrollment, withdraw their enrollment from any new school, not take any action to enroll the children in any new school district and, more specifically, not take either child to any new schools other than those located in District 303 (St. Charles). Moreover, the court authorized respondent to enroll both children in District 303 schools for the Fall 2016 term. Finally, petitioner was enjoined from changing any of the children's medical providers or therapists. The order provides that its terms were "designed to maintain the *status quo* as relative to the children's Kane Co. residence, their schools, [doctors], therapists, and programs."

¶ 13 C. Preliminary Injunction Hearing and Order

¶ 14 On June 13, 2016, respondent filed a motion to modify the allocation of parental responsibilities. Other than that motion and the petition for injunction, he filed no other actions (such as a motion to enforce the dissolution judgment and parenting agreement).

¶ 15 On June 14, 2016, the court held a hearing on respondent's petition for a preliminary injunction. According to the bystander's report submitted on appeal, petitioner testified that, two weeks prior to the closing on the Hastings Drive residence, she moved the children into a hotel to allow them to complete the school year at their current schools, as required by the agreement. She conceded that she did not notify respondent that she was moving the children into a hotel. Further, she testified that she was engaged and her fiancé lived in Lake County. Specifically, petitioner testified that she purchased with her fiancé a residence at 25746 N. Kyle Court,

Hawthorn Woods, Illinois, 60045, where her fiancé was currently residing. They made the offer on the house in December 2015. Petitioner had moved the children into that residence. However, she had not kept them there overnight since entry of the TRO; instead, for overnights, they stayed in a hotel.

¶ 16 Petitioner agreed that she had notified District 303 that she would not be enrolling the children for the upcoming school year and conceded that she did not notify respondent of this decision. Petitioner was questioned regarding "pre-registration" forms that she completed for the Lake Zurich school district, wherein she listed respondent as the father but provided no contact information for him. Instead, she listed her fiancé as the first emergency contact and as the children's stepfather, even though petitioner was not yet re-married. Petitioner claimed that, when completing the forms, she did not have her phone containing respondent's contact information; however, respondent had apparently had the same phone number and email address for the past 10 years and that petitioner "knows them."

¶ 17 Petitioner agreed that she had taken both children for placement testing and/or orientation at the Lake Zurich schools, but had not notified respondent. Petitioner agreed that, for respondent to get the children from St. Charles to Lake Zurich schools on time during his parenting time every other Wednesday through Friday, the children might have to wake up at 4 a.m. When asked whether getting up at 4 a.m. during the school year was in the children's best interests, petitioner replied: "It wouldn't be ideal." Petitioner agreed that respondent is an involved father who exercises his parenting time. She alleged, however, that if "[respondent] was a good father, he would move."

¶ 18 Petitioner testified that, during the dissolution proceedings, the guardian *ad litem*'s report included that petitioner intended to move to the Lake County or Barrington area. Petitioner

explained that, beginning in November 2015, she looked for schools near her parents in Prospect Heights and that she was pleased with the Lake Zurich school district's programs, particularly those for the special-education needs of an autistic child. Petitioner testified that the schools in which she had enrolled the children were, in her opinion, the best in the area and that the district happened to fall in the county in which her fiancé maintained a residence and worked.

¶ 19 Initially, petitioner stated that she did not know that the Act's law relocation requirements were changing January 1, 2016 (*i.e.*, the effective date of section 609.2). Later in the proceedings, however, she agreed that, when she and her fiancé made the offer for the residence in Lake County in December 2015, she was aware of the 25-mile statutory restriction that would be in place as of January 2016. She claimed that she considered the distance when deciding where to move. Petitioner explained that she performed multiple internet-mapping services searches and looked in areas under 25 radial miles from the Hastings Drive residence. Petitioner's attorney introduced an exhibit that showed multiple internet-mapping services measuring the distances between residences, from rooftop-to-rooftop, as 25 miles or less. By the Spring of 2016, petitioner was made aware that the change in relocation law took effect. Petitioner believes that the Lake County residence is within the 25-mile limit and, therefore, that the notice and other statutory requirements were not triggered. When asked whether she planned on telling respondent about the move, petitioner testified that "everything is coming out now in the injunction." Petitioner denied telling the children to keep the information hidden from respondent, stating that she told them "there are no secrets."

¶ 20 Respondent testified that, using the "universally-accepted" internet-mapping services (such as Google Maps, Yahoo Maps, etc.), the distance between the residences is 35 to 37 miles. Respondent testified that he purchased a home in Campton Hills to allow the children to continue

their enrollment in District 303. Respondent believed that petitioner did not consider the negative impact a move and new schools would have on the children's well being and that, instead, the move was accomplished to accommodate petitioner's fiancé. Respondent testified that he learned that petitioner had relocated the children and moved them to new schools when, in May 2016, he was sitting with them in his backyard. He asked them whether they had heard anything about where petitioner was planning to move. "The minor child Kaden reluctantly stated that [petitioner] told them not to tell, but that [petitioner] had purchased a new residence with [her fiancé] in Hawthorn[e] Woods and that she had enrolled them in new schools."

¶ 21 Respondent was questioned extensively about what irreparable harm would come if the preliminary injunction were not issued. Although his petition had identified harm that would come to him, in his testimony respondent replied that the *children* were being irreparably harmed because they were being forced through changes (a new home, community, and school) that might not materialize and "as such is causing significant stress, confusion and uncertainty." Respondent testified the changes "are significantly affecting the children's mental health; especially Kaden[,] who has autism and needs consistency and routine." Further, respondent testified that he "fears" the children "may" have negative feelings towards him if they do *not* move into the Hawthorne Woods house (which has a lake in back and newly-decorated bedrooms for the children), which "could potentially" affect his relationship with the children.

¶ 22 Respondent admitted that, even if they stay in St. Charles, the children will be changing schools; Kaden from middle school to high school, and Pierce from elementary school to middle school. However, respondent stated that the school changes in St. Charles would be made with friends that they have gone to school with for years and who have come to know and accept them, "especially Kaden who ha[s] autism and struggles with social interactions." Respondent

believes that staying at the new residence will cause irreparable harm, for all of the foregoing reasons, and each additional night would result in further harm to the children.

¶ 23 The trial judge ruled that it had considered the parenting agreement and section 609.2 of the Act and found that there were several matters that, if continued, "could" cause irreparable harm, including school and unspecified "medical issues" that cannot be undone. The judge commented that he "would be shocked and amazed if the Lake County schools were better than those in St. Charles since St. Charles schools are some of the best in the [S]tate." The judge found that the fact that one of the children has autism "changes the case." Based on his knowledge, the judge opined that changes in the regular routine and schedule can significantly negatively affect children with autism and that the children would suffer irreparable harm if petitioner was allowed to relocate them and change their schools.

¶ 24 The judge did not know whether section 609.2 intended the 25-mile distance to be measured "as the crow flies" or by driving distance, and he noted that other statutes (which measure distance "as the crow flies") are distinguishable because parental relocation is "a very different issue." Further, the judge noted that one search result petitioner provided showed the new residence as being exactly 25 radial miles away and he "indicated that it appeared as if a deliberate effort was made to move as far away as possible. The judge opined that there are no roads that go from Northwest to Southeast or Southeast to Northwest and that no roads go directly between St. Charles and Hawthorne Woods that would allow for a straight drive." The judge found that petitioner "completely ignored" the agreement's provisions that she shall take into consideration the input and recommendations of school officials, behavioral health professionals, and respondent when deciding on schools and educational needs.

¶ 25 On June 15, 2016, the trial court entered the preliminary injunction by continuing the

terms of the previously-entered TRO. In the written order, the court specified that it had considered the existence of and potential for irreparable harm and injury both to respondent and the children. In addition to petitioner's failure, under the agreement, to consider respondent's input and recommendations before selecting the children's new schools, the court listed the following factors as demonstrating potential for irreparable harm: (1) the impact that a permanent relocation or change of residence would have on Kaden, who is autistic; (2) "the fact that in the Court's opinion there is absolutely nothing to suggest that the schools in Lake County exceed the quality of schools in St. Charles District 303;" (3) the distance between the former marital home in St. Charles and the new residence in Hawthorne Woods and that it was "the court's opinion that[,] even *if* the Hawthorne Woods residence was within twenty-five (25) miles of the Hastings Drive residence[,] [petitioner] attempted to relocate the children right [to] the edge of the statutory allowable distance (permanent relocation);" (emphasis added.) and (4) "[petitioner] previously made mention of the fact that she may have considered schools in the Barrington, Illinois[,] area and that there is still some distance between Barrington, Illinois[,] and Hawthorne Woods, Illinois." The order further specified that the immediate right or interest needing protection was respondent's "right to be notified and consulted regarding his children and decisions relating to their educational care and residency." Petitioner appealed.

¶ 26 After petitioner appealed, respondent moved to dismiss the appeal for lack of jurisdiction and mootness. Respondent noted that, on September 6, 2016, the trial court heard his motion for modification of *temporary* parenting time. The court denied the motion to modify parenting time, but conditioned that denial on petitioner's sworn testimony that she had secured a primary residence located in the St. Charles area and within school District 303. The order stated that the denial of parenting time modification was "conditioned on/and premised upon [petitioner]

permanently living and residing with the children in School Dist. 303 (school year)." However, the order also noted that respondent's motion for modification of parenting time (presumably that filed June 13, 2016) "remains pending & undetermined and is subject to future court ruling." On October 11, 2016, this court denied respondent's motion to dismiss the appeal.[3]

¶ 27 II. ANALYSIS

¶ 28 Petitioner argues on appeal that respondent failed to establish by a preponderance of the evidence the elements required for a preliminary injunction. Petitioner contends that, although the injunction was entered under the auspices of preserving the status quo, it actually drastically altered the status quo in that it disrupted her role as primary caregiver with whom the children have always resided and as the party that was granted sole decisionmaking authority over them. Petitioner alleges the injunction resulted in a forced change of residence and "massive," intrusive modification of the children's time with their mother.

¶ 29 A preliminary injunction preserves the status quo until the case can be decided on the merits. *Department of Health Care & Family Services v. Cortez*, 2012 IL App (2d) 120502, ¶ 13. A party seeking a preliminary injunction must show that: (1) there exists a clear right or interest needing protection; (2) there is no adequate remedy at law; (3) irreparable harm will occur without the injunction; and (4) there is a reasonable likelihood of success on the merits in the underlying action. *Helping Others Maintain Environmental Standards v. Bos*, 406 Ill. App. 3d 669, 697 (2010). The party seeking injunctive relief need establish only a *prima facie* case

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[3] Although the October 11, 2016, order specifies that the motion to dismiss for lack of appellate jurisdiction was denied, we note that, on September 22, 2016, this court allowed respondent to supplement his motion to dismiss with mootness as an alternative argument and, therefore, the October 11, 2016, order encompassed both grounds in respondent's motion.

that there is a fair question as to the existence of the claimed rights for which it seeks protection. See *Scheffel Financial Services, Inc. v. Heil*, 2014 IL App (5th) 130600, ¶ 8. A preliminary injunction is an extraordinary remedy and should be granted only where there is an extreme emergency or serious harm would result if it were not issued. *World Painting Co., LLC v. Costigan*, 2012 IL App (4th) 110869, ¶ 11. We review the trial court's grant or denial of a preliminary injunction for an abuse of discretion, which occurs only where the ruling is arbitrary, fanciful, or unreasonable. *Id.* ¶ 12. In an interlocutory appeal under Rule 307(a)(1), the only question on appeal is whether there was a sufficient showing in the trial court to affirm its order, and we do not decide controverted facts or the case's merits. *Id.*, ¶ 13.

¶ 30 Here, we cannot conclude that the court abused its discretion in finding that respondent raised a fair question as to the existence of the claimed rights for which he was seeking protection. First, the evidence at the injunction hearing established that the parties entered into a parenting agreement that required petitioner to consult with respondent and to consider respondent's input regarding major medical or educational decisions. Petitioner admittedly did not consult respondent prior to changing residences to a location requiring a change of schools, notifying St. Charles schools that the children would not return the next year, or "pre-registering" the children in Lake Zurich schools and having them evaluated there. Respondent claimed that he first learned about the move and schools from the children, who believed that they were not supposed to give him that information. Although petitioner denied instructing the children in such a manner, claiming that she told the children that there were "no secrets," the fact remains that respondent was not, as required by the agreement, first informed, notified, or consulted by petitioner. A marital settlement agreement is a contract to which ordinary rules of contract interpretation apply. *In re Marriage of Wenc*, 294 Ill. App. 3d 239, 243 (1998). The principal

rule is that a court must ascertain and effectuate the parties' intent. *Id.* The court was not unreasonable in concluding that respondent had, under the terms of the agreement, bargained for the rights of input and consultation and that his rights needed protection.

¶ 31 Second, respondent adequately established there was no adequate remedy at law. "A legal remedy is inadequate where damages are difficult to calculate at the time of the hearing." *In re Marriage of Joerger*, 221 Ill. App. 3d 400, 406 (1991). Further, for a legal remedy to preclude injunctive relief, the remedy must be complete and as practical and efficient to the ends of justice as the injunction. *Id.* Here, it is true that the issues of the children's best interests and any need to modify parenting responsibilities will be considered when the court hears respondent's pending motion for modification; however, other than injunctive relief, there was simply no other mechanism by which respondent could, in the interim, halt the relocation of his children, their commencement of school in a new district, and any attendant circumstances, such as respondent waking the children at 4 a.m. to drive them the distance to school.

¶ 32 Third and, in this court's opinion, the closest factor at issue, we cannot find unreasonable the court's decision that respondent established by a preponderance of the evidence that, without the injunction, irreparable harm would occur. In our view, several of the factors the court allegedly considered under this prong were unsupported, irrelevant, or simply speculative. For example, the court found irreparable harm existed due to the impact that a permanent relocation or change of residence would have on Kaden, who is autistic – a fact it found changed the case. However, there was no medical evidence presented to suggest that Kaden would suffer irreparable harm in the new school or by moving with her mother, and, although the court commented that it was aware that children with autism benefit from routine and structure, petitioner points out that disrupting the routine of having Kaden reside primarily with petitioner

could also cause harm. In addition, the court also considered that, in its *opinion*, there was absolutely nothing to suggest that the schools in Lake County exceed the quality of schools in St. Charles District 303. It commented that it would be "shocked and amazed" to learn that was the case. However, the burden of proof of establishing this factor rested with respondent, not petitioner or the court, and, in any event, there was no *evidence* presented to support this opinion. The quality of schools in Lake Zurich, particularly the quality of any special education programs or services that Kaden might require, remains uncertain. Next, the court never made a finding that, in fact, the Hawthorne Woods residence exceeded the statutory 25-mile limit. As such, there is *no* such finding or determination yet made in that regard, and section 609.2 and its notice requirements have not clearly been triggered. Nevertheless, the court considered that, even if those limits were not exceeded, petitioner attempted to relocate the children right to the edge of the statutorily-allowable distance. Respectfully, this is irrelevant. Either petitioner moved them beyond the limits, triggering statutory requirements, or she did not, in which case she had no *statutory* requirements to fulfill and no irreparable harm came to pass in this regard. We similarly fail to see the relevance of the court's comment that "[petitioner] previously made mention of the fact that she may have considered schools in the Barrington, Illinois[,] area and that there is still some distance between Barrington, Illinois[,] and Hawthorne Woods, Illinois."

¶ 33 However, as noted, we do not find that the court abused its discretion in assessing this factor because the court reasonably found that the evidence reflected that petitioner *did* have requirements under the parenting agreement and that she violated them, thereby violating respondent's rights. "[T]he injury a party fears need not be irreparable or incapable of compensation, but must merely 'denote transgressions of a continuing nature.' " *Joerger*, 221 Ill. App. 3d at 407 (quoting *Tamalunis v. City of Georgetown*, 185 Ill. App. 3d 173, 190 (1989)).

Here, the court could reasonably have found by a preponderance of the evidence the existence of transgressions of a continuing nature. Specifically, petitioner was required under the agreement to consult respondent and consider his input; she admittedly repeatedly did not do so. The irreparable harm that results from that violation is the evisceration of respondent's bargained-for rights under the agreement to contribute to major decisions involving his own children. Petitioner notes that no interruption of respondent's parenting time or visitation had occurred as a result of her decisions. Further, she notes that, ironically, respondent's contention at the hearing was that his relationship with the children might be harmed if the move were *not* allowed because the children might resent that they did not move to a house with a lake and newly-decorated bedrooms. Nevertheless, the evidence sufficiently showed by a preponderance that, if the move and school change were permitted, the quality and nature of respondent's parenting time would, arguably, be negatively affected. For example, the evidence reflected that respondent would have to wake the children around 4 a.m. to drive them to school three days each week that they spent with him. It appears that his status and ability to parent would be affected by virtue of the distance; for example, petitioner did not list respondent as an emergency contact on the Lake Zurich schools pre-registration forms, and she provided no contact information for him as "father." (The court could reasonably have found not credible petitioner's explanation for this, *i.e.*, that she did not have her phone with contact information for him, when respondent apparently had the same phone number and email address for 10 years and petitioner knew them). As such, should an emergency arise at school involving one of his children, respondent would possibly be hindered in his ability to respond to that emergency, both by virtue of the fact that petitioner had not listed him as an emergency contact as well as the

distance he would need to traverse to arrive at school. In sum, we cannot find that the court's finding of irreparable harm constitutes an abuse of discretion.

¶ 34 Finally, with respect to the fourth factor, we note that, when the injunction seeks simply to preserve the status quo, an exception exists to the requirement that respondent establish a reasonable likelihood of success on the merits. See *Joerger*, 221 Ill. App. 3d at 407-08. The court here expressly designed the terms of the TRO, which was incorporated into the injunction, with the intent to preserve the status quo. Petitioner argues that the court erred because the injunction disrupts the status quo by significantly modifying her parenting time. We disagree. The concept of "status quo" has been characterized as the "last, peaceable uncontested status which preceded the litigation." See *id.* at 408. Here, the last peaceable, uncontested status was not with petitioner residing in Lake County and the children attending school there. Rather, it was with the children residing in the St. Charles area and attending District 303 schools. The parenting time under the injunction is disrupted only by petitioner to the extent that she seeks to spend her overnight time with the children outside of the St. Charles area.

¶ 35 The court did not make express findings concerning the likelihood of success on the merits. As noted above, it did not need to do so, given the status-quo exception to this requirement. Nevertheless, as petitioner points out, the nature of the "underlying action" here is slightly unclear, for there is no specific pleading or action to enforce the judgment. However, the court could have concluded that the petition for injunction was, essentially, a petition to enforce the judgment, in which case a likelihood of success on the underlying merits was established by the evidence that petitioner did, in fact, breach the judgment by her failure to consult with respondent as required by the agreement. Alternatively, the underlying action here may be viewed as respondent's pending motion to modify the allocation of parental

responsibilities. Although such motions are not to be brought prior to two years after the judgment date, an exception is provided if the court, on the basis of affidavits, has reason to believe the children's present environment may "seriously endanger" their mental, moral, or physical health or may significantly impair their emotional development. 750 ILCS 5/610.5(a) (eff. Jan. 1, 2016). The court must then modify a parenting plan when necessary to serve the children's best interests if it finds that facts have arisen since entry of the judgment that a substantial change has occurred making modification necessary to serve the children's best interests. 750 ILCS 5/610.5(c) (eff. Jan. 1, 2016). Here, although we do not rule on the merits of the case, the court was within its discretion to find, by a preponderance of the evidence, that the issues raised concerning the move, distance, schools, and special needs of the children could, depending on the evidence presented at the motion-to-modify hearing, require the modification that respondent requests.

¶ 36 In that regard, we again note that several issues remain undecided. For example, the exact distance of the new residence from the old and whether section 609.2 of the Act has been triggered; whether, in fact, the best interests of the children would be better served by attendance in Lake County or Kane County schools; whether "medical harm" could come to the children if moved; and whether respondent can meet the high burden of establishing that the move might "seriously endanger" the children, requiring modification of parental responsibilities.

¶ 37 Moreover, we note that, although the evidence sufficiently established that petitioner violated respondent's right to consultation under the agreement, and we in no way condone those violations, we are nevertheless somewhat troubled by the court's language in the order denying the motion to modify temporary parental responsibilities (entered September 6, 2016) that its denial of that modification was "conditioned on/and premised upon [petitioner] *permanently*

living and residing with the children in School Dist. 303 (school year)." We caution the court and parties that, at this juncture, the evidence is too undeveloped to permanently enjoin petitioner in this manner. It also must be emphasized that petitioner, too, bargained for certain rights, including the right, after consultation and consideration of respondent's views, for *final* decisionmaking authority on schools. Petitioner bargained for sole custody and she bargained for the right to make final decisions about medical providers. The agreement itself does *not* restrict her from moving to a home or town of her choice (setting aside the statute that would be triggered beyond 25 miles), and the parties knew that petitioner and the children would move once the marital home was sold. The parties further knew that, one way or another, the children would be changing schools (albeit, not necessarily friends) and routine by virtue of their progression into their next grade levels (from elementary school to middle school, and from middle school to high school). It is not disputed that the children have lived with petitioner as their primary caregiver their entire lives and, therefore, disrupting that relationship requires due consideration.

¶ 38 Again, it is simply premature to consider whether the proper remedy for petitioner's violations of the agreement is to "permanently" enjoin her move, particularly given that the agreement provides that, after consultation with respondent, she has final authority over decisions (again, setting aside section 609.2, if applicable). Indeed, just as respondent's right in the agreement to be consulted would be rendered meaningless if petitioner could make significant decisions without his input, petitioner's right to sole custody and ultimate final decisionmaking authority could also be eviscerated if she is enjoined from making a decision simply because courts would not make the same one. On remand, the court must fairly consider all of the evidence, the rights of both parties, and the children's best interests.

¶ 39 III. CONCLUSION

¶ 40 For the reasons stated, we affirm the judgment of the circuit court of Kane County.

¶ 41 Affirmed.