2017 IL App (1st) 162309-U

SECOND DIVISION
February 21, 2017

No. 1-16-2309

IN RE THE PARENTAGE OF: I.G. and N.G.,	)	Appeal from the
	)	Circuit Court of
GEORGE G.,	)	Cook County
	)	
	)	
Petitioner-Appellant,	)	
	)	
v.	)	No. 10 D 81043
	)	
LINDA A.,	)	Honorable
	)	Daniel R. Degnan,
Respondent-Appellee.	)	Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Presiding Justice Hyman and Justice Mason concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not err in allowing the agreed custody judgment to govern the proceedings or when it decided this case based on circumstances respondent created. Respondent met her burden of proof in establishing a substantial change in circumstances. The court's decision to grant respondent's amended motion to modify custody was not against the manifest weight of the evidence.

¶ 2 Petitioner George G. appeals from an order of the juvenile court granting respondent Linda A.'s amended petition to modify custody. Petitioner argues: (1) the circuit court erred by allowing the parties' joint custody agreement to govern the proceedings where it is either against

public policy or was misconstrued by the court; (2); the circuit court erred in deciding this case based on circumstances Linda created by wrongfully retaining the children; (3) Linda did not meet her burden of proof in establishing a substantial change in circumstances; and (4) the court's decision to grant Linda's amended motion to modify custody was against the manifest weight of the evidence. For the following reasons, we affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 George and Linda were never married but two children resulted from their relationship. I.G. was born June 18, 2002, and N.G. was born February 18, 2008. Parentage is not in dispute.

¶ 5 The couple eventually separated and on December 13, 2010, George filed a petition to establish parent-child relationship and for sole custody of the two children pursuant to section 7(a) and 601 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 45/7(a) and 750 ILCS 5/601 (West 2010).

¶ 6 After protracted litigation, during which the children were represented by a child representative, on December 3, 2014, the parties entered into an agreed order for custody. At the time the judgment was entered, George had been indicted by a federal grand jury for financial crimes that he allegedly committed while working as a personal banker. The indictment and the allegations were known to the court at the time it entered judgment.

¶ 7 The court awarded joint custody to George and Linda with George named as the residential parent, subject to reasonable parenting time for Linda including alternating weekends, Monday and Thursday evenings. Major decisions regarding the children were to be made jointly but George had the final decision making authority as to the children's extracurricular activities. With respect to their education, it was agreed that the "children shall continue to attend Pasteur

Elementary, and the subsequent public schools in their district unless the parents agree otherwise, or a Court of competent jurisdiction decides it is in their best interests to attend school elsewhere."

¶ 8 With respect to the pending charges against George, Article II(A) of the agreed judgment stated:

> " 1. However, as of the date of this Judgment, George is awaiting trial and/or sentencing for certain criminal charges.
>
> 2. Should George be convicted of any crimes he is charged with, such conviction, regardless of punishment, shall be considered a substantial change in circumstances sufficient to warrant a change in custody upon the filing of a proper pleading.
>
> 3. Should George be sentenced to serve time in prison, Linda shall immediately be named sole custodian and residential parent for the children."

¶ 9 On April 23, 2015, Linda filed a petition for modification of custody. In the petition, Linda alleged that George had pled guilty to a federal criminal offense and was scheduled to be sentenced on June 4, 2015. Linda further alleged that a change in custody was warranted because it was likely that George would be sentenced to prison and the anticipation of George being sent to prison would create an unhealthy living environment for the minor children.

¶ 10 George was sentenced on July 20, 2015, and was "committed to the custody of the United States Bureau of Prisons *** [for] one day, time served." On July 24, 2015, Linda filed a petition to terminate her child support obligation on the basis that George "was sentenced to be imprisoned."

¶ 11 On July 27, 2015, George filed an emergency motion for return of the minor children alleging that the parties agreed that Linda would return the children by 7 p.m. on July 24, 2015, after she completed her two-week summer visitation. Linda did not return the children as agreed upon and had her lawyer call George's lawyer and advised him that Linda would be assuming custody of the children and not returning them pursuant to Article II(A)(3) of the agreed custody judgment. George's motion explained that he had been sentenced in the federal case to one day time served and had been given two years supervised release. A copy of the judgment was attached to the motion. George further argued that the portion of the agreed custody judgment allowing for a change in custody following his sentencing contemplated a term of imprisonment longer than one day time served and that this sentence did not necessitate Linda taking custody of the children.

¶ 12 The court ruled that George's motion was not an emergency and allowed Linda an opportunity to respond. In response, Linda filed the United States government's sentencing memorandum that provided that George was the leader of the Latin Kings street gang and at the same time was embezzling more than $63,000 from Charter One Bank and causing losses to other mortgage lenders by completing fraudulent verifications of deposit for loan applicants.

¶ 13 On August 21, 2015, the circuit court entered an order finding that Article II(A)(3) of the December 3, 2014, agreed custody judgment was ambiguous but ruled that it "would not change the status quo of the parties' minor children possession with the mother and attending school near her home."

¶ 14 On September 2, 2015, George filed a petition for rule to show cause against Linda alleging that she violated the custody agreement in that she had relocated to a new suburban

town without providing George with a new phone number as required, unilaterally enrolled the children in a new school district absent a court order or an agreement of the parties, failed to notify George that N.G. had eczema that required prescription medication to treat and failed to give George adequate notice of her intent to exercise her summer visitation schedule.

¶ 15 On September 3, 2015, George filed a motion for injunctive relief seeking an order of court to prevent Linda from allowing her mother, Linda R., from being present at Linda's house when the children were there and from otherwise allowing Linda R. to care for the children at any time. The motion detailed Linda R.'s use of marijuana and pictures of her with handguns that were posted to Facebook. The court issued the injunction on September 5, 2015, ordering that Linda R. shall not be in the presence of the minor children unless Linda is present.

¶ 16 On September 15, 2015, George filed an emergency motion for declaratory judgment seeking a declaration that George did not serve any time in prison for purposes of Article II of the custody judgment. George attached a signed statement from the federal judge who sentenced him who confirmed that she sentenced George to one day, time served. She explained that on August 11, 2011, George was arrested and detained by federal authorities until he appeared before a federal magistrate where he entered a plea of not guilty and was released on the same day.

¶ 17 On October 15, 2015, George filed a memorandum in support of his emergency motion for return of the minor children arguing that Article II of the agreed custody judgment was not ambiguous and because Linda filed her petition to modify the judgment within two years of it being entered, she was required to prove serious endangerment to the minor children. 750 ILCS

5/610 (West 2014). George attached a signed statement from Zachary Williams, the children's representative in the initial custody dispute, who drafted the custody judgment. Williams wrote:

> "While I believe the provisions speak for themselves, I will clarify and attempt to contextualize what I drafted when the Custody Judgment was written and entered, George [G] was awaiting sentencing. It was my thought that if Mr. [G] served time in prison AFTER sentence, that, of course Linda [A] would automatically become both the residential and sole custodian of the minors. It's now my understanding that Mr. [G] was sentenced to only one day in prison and that it was for a day he had already served, prior to entry of the Custody Judgment. If this is true, to now have Ms. [A] become the residential and sole custodian is not in any way keeping with what I envisioned. I had anticipated a conviction with prison time or an acquittal with none. This was based on the best information I had at the time.
>
> I will note that I believe Mr. [G]'s conviction is a change of circumstances, it just does not, in my opinion, give rise to an automatic change of residential custody and a change from joint custody to sole custody. That was not what I envisioned or what the parties negotiated in the 'Agreed' Custody Judgment."

¶ 18 On December 30, 2015, George motioned for an in-chambers interview with the children. The court allowed an in-chambers interview with the oldest child, I.G., which was held on February 8, 2016. The court also held a hearing on the alleged ambiguity of Article II. The court found that "Article II(A)(3) of the agreed custody judgment referred to a prospective incarceration" but did not order that Linda return the children to George. Linda was granted

leave to amend her custody modification petition. Trial on Linda's petition to modify custody and George's motion for return of the children was set for May 23, 2016.

¶ 19 On February 16, 2016, Linda filed an amended petition for modification of custody wherein she alleged that because George was convicted and served a one day sentence, there was a substantial change in circumstances sufficient to warrant a change of custody pursuant to Article II of the agreed judgment. Linda argued that the terms of the agreed judgment must be enforced by the court. Linda also added that since she took custody of the children around July 28, 2015, the minor children were thriving academically and socially.

¶ 20 George moved to strike and dismiss Linda's amended petition for modification of custody objecting to Linda's interpretation of Article II of the custody agreement. He further argued that her petition to modify lacked facts to show that the children's physical, mental, moral or emotional health was endangered and accused Linda of having unclean hands because she embarked on her own interpretation of Article II and unilaterally removed the children from his custody without a court order. On April 8, 2016, the court allowed George's motion to strike and dismiss to stand as his response to Linda's amended custody modification petition. On April 29, 2016, Linda filed a response to George's motion to strike and dismiss and argued that the circuit court erred in determining that Article II of the custody agreement was governed by George's prospective jail sentence. Linda further argued that because George entered into the custody agreement, he explicitly waived the two-year statutory requirement.

¶ 21 At trial, Linda testified that she has since remarried. Her husband Eric is involved in the children's lives. At the time she took custody of the children they were enrolled in a Chicago public school. She later enrolled them in the local suburban school district near her home.

When I.G. attended the previous Chicago public school he received "bad" grades, but now that he is attending the new school, he is doing "wonderful," getting As and Bs. He is also doing well socially and hasn't complained of being bullied like he did when he the previous Chicago public school. I.G. participates in wrestling through school and karate and is seeing a counselor. N.G. attended kindergarten at the same school as I.G. and did not have any academic issues there. She continues to do well in the new elementary school and is involved in gymnastics and art. Both children have chores and a daily schedule.

¶ 22 Linda stated that she took immediate custody of the children in July 2015 based on her understanding of what the custody agreement said. She had consulted with her attorney as to the meaning of Article II and her rights under that provision.

¶ 23 Linda called George as an adverse witness. George testified that he is a tattoo artist and owns his own tattoo shop. He provides health insurance for his children. He pled guilty to fraud in federal court and was on probation. The charges against him stemmed from his employment at a bank where he did not properly identify loan applicants. He stated that during the criminal investigation he was interviewed by the Federal Bureau of Investigation and was questioned about his involvement with the Latin Kings but he could not remember the answers he gave.

¶ 24 When the court gave Linda temporary possession of the children in July 2015, he attempted to call the children every night but Linda did not answer the phone or let the children speak to him. Since the children have been with Linda, she enrolled them in a new school and extracurricular activities without consulting him. George read the court's *in camera* interview with I.G. He knew that I.G. told the court that when he was living with his dad he was getting Cs and Ds but now that he was enrolled in his new school he was getting As and Bs. George

attributed I.G.'s improvement to Linda's interference and manipulation. He also knew that I.G. received help with his homework from Linda but worked on his homework independently when he lived with George. When asked about incidents where kids at his old school stole I.G.'s eraser and tripped him, George explained that those were isolated incidents. When asked about I.G.'s comments to the trial judge that his old school was overcrowded and the teachers there did not pay attention to him, George stated that I.G. was negative about his old school because of Linda's influence.

¶ 25 George also knew that I.G. had told the judge that George was depressed and that I.G. had to "stay strong for the family," particularly for George. I.G. had reported to the judge that his father was unhappy when Linda left him and that I.G. and his sister felt they had to stay with George and cheer him up. I.G. had also told the court that he felt pressure from his father to return to his house. George denied suffering from depression or exerting any pressure on I.G. George also knew that I.G. reported that when he went to George's house, he goes to his room and plays by himself. George could not explain why I.G. did this, but stated that when he came home from work he would play with I.G. George also stated that I.G. had friends around his house although I.G. told the court that he had none. George was not aware that I.G. was attending counseling until he learned of it in court.

¶ 26 George testified that he did not learn that I.G. was enrolled in wrestling until February 2016, because Linda never told him. George was then shown a copy of an email from December 2015, informing George that I.G. had started wrestling three days prior. George testified that when the children were living with him, I.G. was enrolled in tae kwon do but George pulled him out of that because I.G.'s grades were declining. At one point, when he and Linda were

exchanging the children, Linda informed him that his license was suspended. George explained that his license had been suspended for driving on a ticket but that it had since been reinstated.

¶ 27 George stated that since the children were born, they always spent Sunday afternoon at his mother's house. N.G. is very close to George's mother and frequently sleeps over there on Saturday nights.

¶ 28 George stated that he is fearful of Linda being the primary caretaker because she does not follow court orders and threatens him.

¶ 29 Linda testified that she is an accountant working in a dental practice that is close to her home. She stated that in sixth and seventh grade at his old school, I.G. received poor grades and was not involved in any extracurricular activities. Kids made fun of him and he had a hard time understanding the teachers. In his new school, I.G. was thriving due to smaller class sizes and was getting better grades and getting along with the other students. At the time of the hearing, I.G. was in eighth grade and was receiving As and Bs. In addition to wrestling, I.G. was enrolled in karate. He had friends and was excited about his future. I.G. was also seeing a counselor and Linda had seen many positive behavioral changes since he began counseling.

¶ 30 Linda testified that N.G. is doing well in her new school and is happy. She is enrolled in a tumbling class and an art class. She has play dates with friends from school. The children have a schedule for homework and chores that is printed out and hung in their rooms. Linda testified that she believed the children were doing well with the schedule and learning responsibility.

¶ 31 She stated that she emailed I.G.'s wrestling schedule to George as soon as she learned of it. She had hoped that George would become involved in I.G.'s wrestling. She admitted that she

did not consult George prior to enrolling I.G. in wrestling or karate, nor did she consult with him before she enrolled N.G. in tumbling or art class. She stated that she was concerned that N.G. spent a lot of time with George's mother, rather than George, during George's visitation weekends and was concerned that I.G. was spending too much time at the tattoo shop. Linda also expressed concern about the safety of the neighborhood George lives in and the lack of friendships and extracurricular activities there.

¶ 32 Linda further testified that she called the police on George after he drove up on her lawn for the third time while exchanging the children. Linda learned that George's license was suspended as a result of this call.

¶ 33 Linda admitted that N.G. had pneumonia in February 2016, and she did not tell George about the diagnosis until the following day. She further admitted that she went on her honeymoon in December 2014, and did not give George the option to watch the children, despite his right of first refusal.

¶ 34 George testified in his case-in-chief. He stated that Linda had moved without notifying him of her new address and he did not know where the children were staying when Linda kept them in July 2015. After she decided to keep them on July 24, 2015, Linda did not allow George to have any parenting time or speak to the children on the phone until August 21, 2015.

¶ 35 At the end of August 2015, Linda enrolled the children in the suburban Elementary School but did not notify George and did not provide George with any information that would allow him to contact the new school.

¶ 36 George testified that he and his new wife have a young son together, Ezekiel, born March 3, 2012. George testified that I.G. and N.G. have been with Ezekiel since he was born and have a strong bond.

¶ 37 At the conclusion of the hearing, the children's representative argued in favor of the children remaining with Linda, noting that the court was not required to consider whether there was a substantial change in circumstances because the joint parenting agreement specifically stated that if George was convicted of a felony, there was automatically a substantial change in circumstances. The children's representative also noted that George blamed Linda for all of the children's problems and he believed that George was harming I.G. The representative found that the children were better off in Linda's care.

¶ 38 The court entered an order granting Linda's amended petition for modification of the parenting arrangement on July 21, 2016. The court found by a preponderance of the evidence that a substantial change in circumstances of the children occurred since the entry of the agreed custody judgment and a modification of the plan was necessary to serve the best interests of the children. The court referenced the agreed custody judgment granting the parties joint custody of the children and outlining the parties' agreement that if George were to be convicted of the charges pending when the agreement was executed, that "would be considered a substantial change in circumstances sufficient to warrant a change in custody upon the filing of a proper pleading." The court noted that George was convicted of fraud in federal court on July 20, 2015, and on July 25, 2015, Linda did not return the children to George at the conclusion of her parenting time. The court later allowed Linda to retain possession of the children pending the outcome of the litigation.

¶ 39 The court considered the *in camera* interview of I.G. and ruled that the totality of I.G.'s statements indicated a preference towards Linda's home. The court found George's testimony to be "evasive and at times incredible." The court found that George expressed no remorse and took no direct responsibility for his involvement in mortgage fraud. The court also noted that George could not recall his answer to the question posed by federal authorities regarding his involvement in a gang. The court noted George's contradictory testimony regarding the children's academic improvement since switching to their new school district and found that George was impeached regarding his testimony about Linda's non-disclosure of I.G.'s participation in wrestling.

¶ 40 The court found Linda to be a credible witness. The court noted that the children have a regular schedule at Linda's home and that I.G. is performing better in school and N.G. has friends and is attending tumbling. The children did not participate in any extracurricular activities when living with George.

¶ 41 The court was troubled by I.G.'s statement that he had to stay strong for George and that George made him feel sad when he pressured him. The court found that it was not in a child's best interest to be in an environment "that creates such a sentiment." The court stated that it called into question George's ability to foster a relationship between the children and Linda and his ability to appropriately attend to the emotional needs of his children, particularly I.G. whose emotional development was so impaired that he required counseling.

¶ 42 The court entered a contemporaneous order reducing George's regular parenting time to alternative Fridays at 4 p.m. until Sunday at 8 p.m. and every Wednesday from 4 p.m. to 8 p.m.

¶ 43 It is from this order that George now appeals.

¶ 44 ANALYSIS

¶ 45 George first argues that the circuit court erred when it allowed the agreed custody judgment to govern Linda's custody modification because the judgment violated public policy and was misinterpreted by the court. Linda responds and argues that it is undisputed that the parties entered into an agreed custody judgment in December 2014. Because it was an agreed order, George cannot now object to its contents.

¶ 46 We first note that an agreed order is not a judicial determination of the parties' rights; rather, it is a recitation of an agreement between the parties that is subject to the rules of contract interpretation. *In re Marriage of Tutor*, 2011 IL App (2d) 100187, ¶ 13. In construing an agreed order, our primary objective is to give effect to the parties' intent. The plain and ordinary meaning of the language in the agreed order is the best indication of that intent. *Id.* When a term of an agreement is clear and unambiguous, the court must give the term its plain and obvious meaning. *In re Marriage of Hahn*, 324 Ill.App.3d 44, 46 (2001). However, a term that is susceptible to more than one reasonable meaning or interpretation is ambiguous, and in interpreting an ambiguous term, we must determine the meaning that establishes a rational and probable agreement. *Id*. at 47. The interpretation of an agreed order presents a question of law, which we review *de novo*. See *Hartz Construction Co. v. Village of Western Springs*, 2012 IL App (1st) 103108, ¶ 27.

¶ 47 George argues that Article II(A)(2) of the agreement violates public policy in two ways. First, he argues that it relieves Linda of her evidentiary burden imposed by the legislature in section 610.5(a) of the Act (750 ILCS 5/610.5 (West 2016)) by allowing her to modify custody less than two years after the initial judgment without establishing serious endangerment and a

substantial change in circumstances. Second, George argues that Article II(A)(2) violates public policy because it "interjects into the custody modification calculus the consideration of George's conduct which has no bearing on his parental competency of the children themselves."

¶ 48 Section 610.5 of the Act provides:

> "(a) *Unless by stipulation* of the parties or except as provided in subsection (b) of this Section or Section 603.10 of this Act, no motion to modify an order allocating parental responsibilities may be made earlier than 2 years after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe the child's present environment may endanger seriously his or her mental, moral, or physical health or significantly impair the child's emotional development.
>
> (b) A motion to modify an order allocating parental responsibilities may be made at any time by a party who has been informed of the existence of facts requiring notice to be given under Section 609.5 of this Act.
>
> (c) Except in a case concerning the modification of any restriction of parental responsibilities under Section 603.10, the court shall modify a parenting plan or allocation judgment when necessary to serve the child's best interests if the court finds, by a preponderance of the evidence, that on the basis of facts that have arisen since the entry of the existing parenting plan or allocation judgment or were not anticipated therein, a substantial change has occurred in the circumstances of the child or of either parent and that a modification is necessary to serve the child's best interests." (Emphasis added.) 750 ILCS 5/610.5 (West 2016).

¶ 49 According to section 610.5, a trial court has authority to modify a parenting plan or

allocation judgment pursuant to section 610.5(c) of the Act if: (1) a substantial change has occurred since the existing parenting plan or allocation judgment was ordered; and (2) the modification is necessary to serve the child's best interests. *Id*. Article II(A)(2) of the agreed custody judgment specifically states that it was George's conviction, not his sentence, which amounted to a substantial change in circumstance allowing Linda to file a motion for modification of the agreed parenting judgment. George agreed to this provision and cannot now claim that his conviction should have no bearing on his ability to parent. In addition, Article II(A)(2) merely allowed George's conviction to stand as a substantial change in circumstances sufficient to warrant a change in custody ("such conviction, *regardless of punishment*, shall be considered a substantial change in circumstances."). This provision did not remove Linda's burden to prove by preponderance of the evidence that "a modification is necessary to serve the child's best interests." 750 ILCS 5/610.5 (West 2016). A full trial was held in this case on Linda's amended petition to modify custody. The court considered George and Linda's testimony, as well as the court's *in camera* interview with I.G. After taking all of the testimony into consideration, the court found by a preponderance of the evidence that a substantial change in circumstances of the children occurred since the entry of the agreed custody judgment and a modification of the plan was necessary to serve the best interests of the children.

¶ 50 We similarly reject George's argument that even if Article II(A)(2) is not against public policy, the circuit court misconstrued it. George argues that the circuit court construed Article II(A)(2) of the agreed custody judgment to be a "stipulation by the parties that allows for their filing of a petition for modification regardless of the timing of the conviction with respect to date

of Judgment and thus obviates the need for showing of serious endangerment." The court properly construed Article II(A)(2) exactly as it was written.

¶ 51 The clear language of section 610.5(a) establishes that a motion to modify parental responsibilities cannot occur earlier than two years after the date of the original order, *unless stipulated by the parties* or unless the court permits it based on "the basis of affidavits that there is reason to believe the child's present environment may endanger seriously his or her mental, moral, or physical health or significantly impair the child's emotional development." In this case, George stipulated to Article II(A)(2) of the agreed custody judgment, which allowed Linda to request the court to modify the judgment based on a substantial change in circumstance, namely George's conviction. Because the parties stipulated that it was George's conviction that triggered a substantial change in circumstance, Linda was not required to prove serious endangerment to the children.

¶ 52 George next argues that the circuit court erred in deciding this case based on facts Linda created by wrongfully retaining the children. George argues that much of the court's decision in this case is based on the children allegedly thriving in the new home and school environment Linda created when she wrongfully retained the children in 2015. Therefore, it was error for the circuit court to use those facts as a basis to modify the allocation of parental responsibilities in this case. Further, he argues that Linda has unclean hands and was not entitled to relief on her custody modification petition. He asserts that Linda "snatched" the children on July 24, 2015, when she learned that George was sentenced to one day time served.

¶ 53 The doctrine of "unclean hands" precludes a party from taking advantage of his own wrong. *State Bank v. Sorenson*, 167 Ill. App. 3d 674, 680 (1988). However, the doctrine of

"unclean hands" does not apply unless a party's misconduct rises "to the level of fraud or bad faith." *Gambino v. Boulevard Mortgage Corp*., 398 Ill. App. 3d 21, 60 (2009). The unclean hands doctrine prevents a plaintiff who engages in misconduct, fraud or bad faith directed at the defendant in connection with the matter being litigated from receiving any relief from a court of equity. *Long v. Kemper Life Insurance Co.*, 196 Ill. App. 3d 216, 219 (1990). "The application of this equitable maxim lies within the sound discretion of the trial court; the doctrine is not concerned so much with the effect of plaintiff's conduct, but with the intent with which the acts were performed." *Jaffe Commercial Finance Co. v. Harris*, 119 Ill. App. 3d 136, 140 (1983).

¶ 54 Article II(A)(3) of the agreed parenting judgment provides: "Should George be sentenced to serve time in prison, Linda shall immediately be named sole custodian and residential parent for the children." Linda testified that George pled guilty to the federal charge and on that basis, she filed a petition for modification of custody in April 2015. George was sentenced during her summertime vacation parenting time. Thereafter, after consultation with her attorney as to the interpretation of Article II(A)(3) of the joint parenting judgment, Linda's attorney contacted George's attorney and told him that based on the judgment, Linda would not be returning the children to George. There is no evidence here to suggest that Linda engaged in misconduct or committed fraud or acted in bad faith. Instead, her actions were in conformance with the order as agreed upon by the parties.

¶ 55 George also argues that the trial court erred when it did not order the immediate return of the children to George in July 2015. We disagree.

¶ 56 As stated above, the joint parenting agreement provided that Linda would be named sole custodian and residential parent if George were sentenced to time in prison. After Linda took

custody of the children, George filed an emergency petition to return the children on July 27, 2015. On August 21, 2015, the court stated that there was an ambiguity in Article II(A)(3) of the custody agreement. In consideration of that ambiguity, the court refused to change the status quo and allowed the children to remain with Linda. The court later found on February 8, 2016, that "Article II(A)(3) of the agreed custody judgment referred to a prospective incarceration."

¶ 57 George takes issue with the length of time it took for the trial court to come to the conclusion that Article II(A)(3) referred to prospective incarceration. In looking at Article II(A)(3), the court initially viewed that section of the custody judgment as ambiguous so the court, demonstrating reasoned judgment and discretion, decided to maintain the status quo by allowing the children to remain with Linda pending further evidence and consideration. It was only after George came forth with an alternate interpretation of Article II(A)(3), and a full hearing took place on that issue that included input from the child representative, that the court agreed with George's interpretation of Article II(A)(3). At that time, the children had been with Linda for roughly 6 months, were doing well and were attending school near her home. The trial court did not err when it refused to change the status quo.

¶ 58 George also argues that Linda did not meet her burden of proof establishing a substantial change in circumstances. As previously discussed, the plain language of Article II(A)(2) provided that if George were to be convicted, his conviction, not his sentence, would serve as a substantial change in circumstance to allow Linda to petition the court for a modification in custody. George stipulated to that agreed custody judgment and is bound by the agreement. This did not obviate Linda's obligation to prove that a change in custody was in the best interest of the children. 750 ILCS 5/610.5 (West 2016).

¶ 59 Last, George argues that the trial court's decision to reduce his parenting time and award Linda full residential custody of I.G. and N.G. was against the manifest weight of the evidence.

¶ 60 The trial court's decision regarding the modification of the agreed judgment allocating parental responsibilities will not be disturbed unless it is against the manifest weight of the evidence. *Marriage of Bates*, 212 Ill .2d at 515. A decision is contrary to the manifest weight of the evidence only where the opposite decision is clearly apparent. *In re Marriage of Engst*, 2014 IL App (4th) 131078, ¶ 24. In reviewing whether the trial court's judgment is against the manifest weight of the evidence, the reviewing court considers the evidence in the light most favorable to the appellee; where that evidence permits a number of reasonable inferences, the reviewing court will accept those inferences that support the trial court's order. *Id*. at 516. Finally, the trial court's decision is accorded this level of deference because the trial court is in a superior position to judge the credibility of the witnesses and to determine the best interests of the children. *Id*.

¶ 61 Section 602.7 of the Act requires courts to allocate parenting time in accordance with the best interests of the child. 750 ILCS 5/602.7(a) (West 2016). The statute further requires trial courts to evaluate 17 separate factors to determine the child's best interests, including the wishes of the child, the child's needs, adjustment to home and school, and the child's physical and mental health. 750 ILCS 5/602.7(b) (West 2016).

¶ 62 Here, the court found that Linda had proven by clear and convincing evidence that a substantial change in circumstances had occurred such that a modification of custody was necessary to serve the children's best interests. The evidence showed that George was convicted of a federal fraud charge stemming from his involvement in mortgage fraud. George was

evasive about the charges and expressed no remorse. He did, however, admit that he was a poor role model for his children. He also was evasive about the answers he gave to federal authorities about his membership in a street gang.

¶ 63 The testimony further showed that I.G. had made enormous academic improvements since relocating to Linda's house and attending school in the local school district. He had been getting Cs and Ds when he lived with George and attended Pasteur Elementary. He was involved in extracurricular activities and had made many friends since living with Linda. When he lived with George he did not participate in extracurricular activities and was picked on at school. I.G. expressed a preference for the school near Linda's home. N.G. was also involved in extracurricular activities and had made friends since living with Linda. Since they began living with Linda, the children were operating on a schedule and had chores and were learning responsibility. The testimony also showed that George was putting an extreme amount of pressure on I.G. to return to his home, compromising I.G.'s emotional well-being and development. Viewing all of the evidence presented, we cannot say that the trial court's decision to grant Linda's amended petition for modification of custody and limit George's parenting time was against the manifest weight of the evidence.

¶ 64 Finally, we note that the circuit court expressed some concern about the level of cooperation and communication on Linda's part and the evidence supports the wise observation of the trial court. We share the trial court's concern and join in encouraging both parties to keep the lines of communication open and to improve their cooperation and communication that is ultimately in the best interests of their children.

¶ 65 CONCLUSION

¶ 66 For the foregoing reasons, we affirm the judgment of the juvenile court.

¶ 67 Affirmed.