2017 IL App (4th) 170405-U

NO. 4-17-0405

FILED
October 27, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

MICAH WHITE,	)	Appeal from
Petitioner-Appellant,	)	Circuit Court of
and	)	Pike County
KRISTI DANIELS,	)	No. 14F1
Respondent-Appellee.	)	
	)	Honorable
	)	J. Frank McCartney,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Appleton and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding the trial court (1) properly entered an agreed temporary order prior to making a permanent custody determination, and (2) did not abuse its discretion in awarding respondent the majority of parenting time.

¶ 2 In February 2014, petitioner, Micah White, filed a petition to determine the existence of a father-child relationship arising from petitioner's previous relationship with respondent, Kristi Daniels. The petition sought sole custody of the parties' minor child, B.W. (born October 3, 2013). On October 2, 2014, the trial court entered an order awarding petitioner temporary physical and legal custody. In December 2015, respondent filed a petition to change custody. In March 2016, the court entered an order that, in part, provided, "[petitioner] has parental responsibility of [B.W.], the parties' minor [child], until further court order." In May

2017, the court granted respondent's petition and granted her primary parental responsibilities for B.W.

¶ 3 Petitioner appeals, arguing (1) either the October 2014 order or the March 2016 order was a final order reflecting a permanent custody determination; (2) the trial court erred in failing to apply the standards for the modification of a permanent custody determination in ruling on respondent's petition to change custody in accordance with section 610.5 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/610.5 (West 2016)); and (3) the court erred in granting respondent's petition to change custody by incorrectly applying the best-interest standards set forth in section 602.7 of the Act (750 ILCS 5/602.7 (West 2016)). We affirm.

¶ 4 I. BACKGROUND

¶ 5 In February 2014, petitioner filed a petition to determine the existence of a father-child relationship. The petition alleged respondent "staged a fake suicide in [p]etitioner's residence by discharging a firearm into the walls of the apartment." The petition further alleged respondent was on probation for a felony driving under the influence (DUI) conviction. That same month, petitioner filed a petition for temporary custody of B.W., alleging respondent's probation had been revoked.

¶ 6 On October 2, 2014, the trial court entered an order that noted the parties had reached an agreement and, in relevant part, ordered "Temporary physical and legal sole custody is awarded to [petitioner]. This order cannot be modified unless a petition to change custody is filed by [respondent] and a court determination is made by this court." The order also noted a support order was not entered because of respondent's incarceration in the Department of

Corrections (DOC) beginning on October 6, 2014. Transcripts of this proceeding are not in the record on appeal.

¶ 7 A. Petition To Change Custody

¶ 8 In November 2015, respondent was released from DOC. The following month, respondent filed a petition to change custody, alleging the October 2014 order awarded temporary physical and legal custody of B.W. to petitioner primarily due to respondent's impending incarceration. The petition alleged respondent was the primary caretaker for B.W. prior to her incarceration and requested permanent physical and legal custody be restored to respondent.

¶ 9 In March 2016, the trial court entered an order that provided, in pertinent part, due dates for the parties' proposed parenting plans and the guardian *ad litem* (GAL) report. The order did not set a date for a hearing on respondent's petition, but it did set a date for a status and case management hearing. Finally, the order provided, "[petitioner] has parental responsibility of [B.W.], the parties' minor [child], until further court order." Transcripts of this proceeding are not in the record on appeal.

¶ 10 1. *First GAL Report*

¶ 11 An April 2016 GAL report noted the GAL's belief that the trial court was aware of respondent's prior criminal and substance-abuse problems. According to the report, respondent spent nine months in treatment, which precipitated the change in custody from respondent to petitioner. Respondent had subsequently completed treatment and had experienced no other troubles. At the time, respondent was living with her parents and lived on money from babysitting and food stamps, but she reported plans to move into her own apartment. Respondent reported her concern that petitioner did not take B.W. to the doctor as

needed. According to the report, petitioner lived in Pleasant Hill with his girlfriend and intended to seek custody of his two older sons. Petitioner reported B.W. saw a doctor for his 18-month checkup and was up to date on his shots. The report concluded with the following recommendation:

> "I do not get a very good impression from either parent[,] but at this time it appears that [petitioner] is more stable. It is encouraging that [respondent] has made it through the rehab program and has not been in anymore [*sic*] trouble. I do think she cares about [B.W.]. I would prefer that she had a longer trac[k] record of stability.
>
> At this time, I do not see a clear reason to restore permanent physical and legal custody solely to [respondent]. I am of the opinion that it is in the best interest of the child for both parents to be actively involved; therefore, I recommend either leaving custody with [petitioner] with liberal visitation rights for [respondent] or a joint custody arrangement."

¶ 12 2. *GAL's Motion To Strike and Dismiss*

¶ 13 In November 2016, a newly appointed GAL filed a motion to strike and dismiss respondent's petition to change custody, arguing, in part, respondent prematurely sought to change a final custody order. The trial court entered a written order denying the GAL's motion. The November 2016 order noted on October 2, 2014, "it was the agreement of the parties that the [o]rder to be entered was temporary in nature." At the time, respondent had been B.W.'s primary caregiver and petitioner had not regularly seen B.W. Accordingly, the GAL thought it was in

B.W.'s best interest for the order to be temporary and the parties agreed. Finally, the court noted, "[a]lthough it was unusual to maintain a temporary order for such a long period of time, the [c]ourt deferred to the wishes of the parties and the GAL and allowed the order to be temporary."

¶ 14 3. *Second GAL Report*

¶ 15 In February 2017, a second GAL report was filed by the new GAL. According to the report, petitioner lived with Jenny Williams, with whom he had a very young child. Williams stayed at home with the baby, her daughter from another relationship, and B.W. Petitioner was self-employed and could list positive attributes of respondent's parenting abilities. Respondent lived with her father and worked part-time at a convenience store. Respondent gave the GAL approximately 60 pages of notes, which generally did not present anything positive about petitioner and blamed him for her struggles with addiction and other legal troubles. According to the report, respondent had "three DUI matters and a very serious felony conviction which involved [petitioner] and resulted in" her incarceration.

¶ 16 The second GAL report summarized the relationship between petitioner and respondent as one "fraught with substance abuse and issues surrounding their respective levels of maturity." The report noted respondent's concern about the "rocky and unstable" relationship between petitioner and Williams and included the following recommendation:

> "[G]iven [respondent's] recent background, including a prison incarceration for several DUI's [*sic*] and very serious weapons violations, repeated attempts to deceive law enforcement, probation, those around her and herself, her inability to take responsibility for her past actions as well as her very serious mental health and substance abuse issues, her request that 'her

> child' be returned simply as she is out of prison is premature, at best. Parenting time between [B.W.] and mother, however, should be liberal, but is further complicated by [respondent's] inability to drive a vehicle. Interaction between the parents should be kept at a minimum for the foreseeable future, if not eliminated entirely."

¶ 17 B. Hearing on the Petition To Change Custody

¶ 18 On April 28, 2017, the trial court held a hearing on respondent's petition to change custody. The court heard the following testimony.

¶ 19 1. *Respondent's Daughter*

¶ 20 M.G., respondent's daughter from another relationship, testified she was 16 years old and currently attended Pittsfield High School. M.G. primarily lived with her father until she was 15 years old but spent about half the time with respondent. M.G. moved in with her mother after respondent got out of DOC. M.G. testified she lived in a house with respondent, her grandfather, and B.W. when he visited three or four days a week. M.G. testified B.W. was "pretty much her best friend," and she would like to see more of him. M.G.'s grandfather was not home very often because of his job driving a truck. However, M.G. and B.W. both had a good relationship with their grandfather, and he enjoyed spending time with B.W.

¶ 21 According to M.G., she had a "pretty good" relationship with her mother and felt respondent was a good mother. M.G. was aware of respondent's substance-abuse issues. However, M.G. testified respondent was "doing good" and had not been drinking at all. M.G. had a valid driver's license and often helped respondent with transportation by picking B.W. up and dropping him off. According to M.G., she was at the house often and would be available to provide transportation for B.W. in the event of an emergency.

¶ 22 2. *Respondent*

¶ 23 Respondent testified she was B.W.'s primary caretaker for the first 12 months of his life. Respondent and petitioner lived together from the time B.W. was born in October 2013 until petitioner moved out in May 2014. In October 2014, respondent was sent to DOC, where she spent 13 months apart from B.W. Respondent was sentenced to DOC in September 2014 but was allowed to stay out until after B.W.'s first birthday. When respondent was released, she took steps to have B.W. returned to her care. Although the hearing on her petition for a change in custody was delayed for months, respondent exercised visitation with B.W. during that time. Respondent testified she and petitioner were able to cooperate most of the time but occasionally had issues. For example, respondent testified,

> "Well, like yesterday, he had a spring concert, didn't have school today, he was holding on to me, screaming, crying, wanting to go with me.
>
> I mean, [petitioner] is trying to pull him off of me, you know, and it's—I asked him, you know, 'why can't I just have him[?]'
>
> And he said[,] 'because I want him,' which, okay it's you're [*sic*] day. I understand. It's just heart breaking."

¶ 24 According to respondent, she wanted to have primary responsibility for B.W. for his stability and to make medical decisions. Respondent testified, "He moves around a lot, [petitioner] works a lot, so [petitioner's] not actually the one primarily raising him, you know. And [B.W.] and I have this bond, you know, I'm his biological mom. So I feel like if [petitioner's] not there raising him, then I should be able to, you know." Respondent stated her

concerns about B.W.'s medical care included "[r]egular checkups. Just like being sick, you know, fevers and stuff, he—he's just not ever had checkups since [petitioner's] had him, through his doctor."

¶ 25 Respondent acknowledged she did not have a valid driver's license because her license had been revoked due to a DUI conviction. According to respondent, she was awaiting paperwork to prove she completed nine months of treatment and substance-abuse counseling while incarcerated. Once respondent had the paperwork, she could arrange a date to appear before a hearing officer to get her driver's license back. Respondent testified arranging transportation had not been a problem and she did not envision it becoming a problem. According to respondent, her daughter sometimes helps with transportation but she also gets help from her aunt, a neighbor, and her boss, who all live within a few blocks of her house.

¶ 26 Respondent testified she had an evaluation and admitted she was an alcoholic. As part of her counseling, respondent was told she should not drink. According to respondent, she had not had a drink since July 2014 and was approaching three years of sobriety. Respondent testified she had not used any illegal drugs, gotten arrested, or faced any charges since she had been released from prison. Respondent testified she had attended Alcoholics Anonymous and had completed the steps. Respondent currently attended Set Free Recovery, a weekly recovery group.

¶ 27 Since her release from prison, respondent had not been romantically involved with anyone. She worked at Ayerco Convenience Center in Pittsfield, where she had been promoted to assistant manager. Her work schedule was set up so she does not work when she has B.W., but she arranged child care in the event she had B.W. full time.

¶ 28 Respondent testified she shared a four-bedroom, two-bathroom house with her father, her daughter, and B.W. According to respondent, her father and mother purchased the house and, after her mother passed away, she and her father modified the mortgage and added respondent's name to the mortgage. The plumbing, heating, and cooling in the home worked and the home was clean and sanitary. B.W. slept in his own bed but in respondent's room. According to respondent, she tried to move him to his own room but B.W. "wasn't going for it."

¶ 29 3. *Petitioner*

¶ 30 Petitioner testified he lived in Barry, Illinois, and worked as a carpenter. According to petitioner, he made a living by purchasing properties, fixing them up, and reselling them. Petitioner also owned a trash business. Petitioner acknowledged he had moved multiple times since B.W. was in his custody. However, one of the moves was precipitated by a house he had fixed up selling much faster than expected. Petitioner intended to make his present home in Barry a more permanent move. The home in Barry had seven bedrooms and B.W. had his own room. Petitioner shared the home with B.W., Williams, her eight-year-old daughter, and their one-year-old son. Petitioner also had three children from a prior marriage who visit on alternate weekends. The visitation schedule was set up so all of petitioner's children were together on weekends his older children visited.

¶ 31 As a self-employed entrepreneur, petitioner had control over his schedule. Although each day is different, petitioner testified, "I get up in the morning before he even wakes up, and I'm gone. I go to work, generally home between 4 and 5." Williams stayed at home with the children and B.W. got along well with Williams and the other children. Petitioner acknowledged Williams was primarily responsible for taking care of B.W. Williams lost her driver's license when she was 17 years old and had been without a license for 11 years. In the

event of an emergency, petitioner testified he could come home, Williams's mother lived a block away, or Williams could call an ambulance.

¶ 32 Petitioner testified B.W. had a regular physician and sometimes visited doctors at Quincy Medical Group. According to petitioner, B.W. was up to date on all of his shots and checkups. Although petitioner did not believe in going to see a doctor for every minor illness, B.W. had never had any serious health issues.

¶ 33 Petitioner felt able to cooperate with respondent and foster a relationship between her and B.W. Respondent had visits with B.W. on alternate weekends and one night a week since her release from prison. According to petitioner, the visits went smoothly. Petitioner thought it would be best for B.W. to remain in his custody.

¶ 34 C. The Trial Court's Ruling

¶ 35 The trial court noted his familiarity with respondent, stating, "I've dealt with her as state's attorney. I didn't really deal with her as a judge too much at all, but I dealt with her on the DUI stuff." The court observed both petitioner and respondent had come a long way and opined that, once the court and counsel were out of the equation, petitioner and respondent would be able to successfully cooperate. The court noted both petitioner and respondent clearly loved B.W. and had the ability to cooperate on decisions regarding his education, health, religion, and extracurricular activities. Accordingly, the court allocated joint decision-making responsibilities to both petitioner and respondent.

¶ 36 The trial court then went through each of the statutory factors to consider when allocating parenting time as set forth in section 602.7 of the Act (750 ILCS 5/602.7 (West 2016)). The court noted both petitioner and respondent wished to have primary responsibility for

B.W. and found that factor fairly even. As to B.W.'s wishes, the court found that factor did not weigh in either respondent's or petitioner's favor because B.W. was only three years old.

¶ 37 The next statutory factor regarded the amount of time each parent performed caretaking functions for the child in the prior 24 months. The trial court believed respondent was primarily responsible for B.W. after his birth until "she had her issues." However, after respondent went to prison, petitioner "stepped up" and took primary responsibility for B.W. Both GAL reports focused on this fact and reported no reason to change custody. The circuit judge then stated, "The posture of the case is not a change of custody case, as I addressed before with [the second GAL] when he filed the pleading [(to strike and dismiss respondent's petition)]. It was done in such a way to where we knew [respondent] was going to prison. The parties agreed that, obviously, that would cause [petitioner] to take care of [B.W.] until she got out and, then, we would address that." At the time, the court warned respondent she would only get custody of B.W. if she proved she was doing everything necessary to be a good parent and everything indicated she had come a long way.

¶ 38 The trial court then looked to any prior agreement or course of conduct relating to primary caretaking of the child. The judge stated, "I think if we started from scratch, from day one, I think the parties had probably intended for [respondent] to raise [B.W.] Then [respondent] got into the trouble she got into. [Petitioner] stepped up, did what he needed to do as a father. And so I don't know that I think that necessarily favors anyone."

¶ 39 The trial court also considered B.W.'s interactions with his parents and siblings and B.W.'s adjustment to his home, school, and community. The court expressed approval for ensuring B.W.'s weekends with petitioner coincided with visits from petitioner's three older children. The court noted the strong bond between B.W. and respondent's daughter M.G.

Although respondent did not offer any criticisms of Williams, the court observed Williams was providing a lot of care for B.W. because petitioner was working. The court did not criticize petitioner for working, but found respondent would be more present for B.W. and found that fact favored respondent.

¶ 40 The trial court further found B.W. was a large part of why respondent "redirected her ship in life" and B.W. was her focus. While commendable, the court noted petitioner's focus was on doing what he could to support his entire family. Finally, in considering the child's needs, the court indicated some "little things" that influenced its decision. These "little things" included "[petitioner] having to kind of tear away [B.W.] from mom" when it was time to leave, the fact that B.W. liked to sleep in respondent's room, and respondent convincing the judge in her criminal case to delay her prison sentence so she would not miss B.W.'s first birthday.

¶ 41 The trial court gave respondent primary parenting responsibility to begin once the preschool year ended. The court determined reasonable and liberal visitation with petitioner was appropriate and found B.W. needed to see petitioner "a lot, more than every other weekend, it'd be nice at least a night a week." The court declined to order a specific visitation schedule and expressed its hope that petitioner and respondent would be able to work out an agreement that allowed petitioner to spend a lot of time with B.W. The court then set a date in early June to review the matter, discuss child support, and address visitation, if necessary.

¶ 42 This appeal followed.

¶ 43 II. ANALYSIS

¶ 44 On appeal, petitioner argues (1) either the October 2014 order or the March 2016 order was a final order reflecting a permanent custody determination; (2) the trial court erred in failing to apply the standards for the modification of a permanent custody determination in ruling

on respondent's petition to change custody in accordance with section 610.5 of the Act (750 ILCS 5/610.5 (West 2016)); and (3) the court erred in granting respondent's petition to change custody by incorrectly applying the best interest standards set forth in section 602.7 of the Act (750 ILCS 5/602.7 (West 2016)).

¶ 45 A. Record on Appeal

¶ 46 As an initial matter, we note respondent asserts petitioner has failed to ensure the record on appeal contains the reports of proceedings for October 2, 2014, and March 4, 2016. As petitioner contends the orders entered on those dates were permanent custody determinations, respondent contends this court cannot properly dispose of these issues absent these transcripts. Respondent filed a motion to strike and dismiss petitioner's brief and appeal for failure to comply with Illinois Supreme Court Rules 311(a) (eff. July 1, 2017) and 323(a) (eff. July 1, 2017), which we ordered taken with the case.

¶ 47 Petitioner, as the appellant, has the burden of providing a sufficient record of the trial proceedings to support his claims of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92, 459 N.E.2d 958, 959 (1984). "[I]n the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Id.* at 392, 459 N.E.2d at 959. We also note, "the striking of an appellate brief, in whole or in part, is a harsh sanction and is appropriate only when the alleged violations of procedural rules interfere with or preclude review." *Moomaw v. Mentor H/S, Inc.*, 313 Ill. App. 3d 1031, 1035, 731 N.E.2d 816, 820 (2000). Although the record does not contain transcripts of the two hearings that led to the orders petitioner now claims were permanent custody judgments, we conclude the record is sufficient to resolve the issues petitioner raises. Accordingly, we deny

the motion to strike and dismiss petitioner's brief and appeal. We turn now to consider whether a permanent custody judgment had been made such that the trial court's May 2017 judgment giving respondent primary parenting responsibility for B.W. was a modification of custody subject to section 610.5 of the Act (750 ILCS 5/610.5 (West 2016)).

¶ 48 B. October 2014 and March 2016 Orders

¶ 49 Petitioner asserts the question of whether the October 2, 2014, order was a final, or permanent, custody judgment is a question of law this court reviews *de novo*. Petitioner further asserts the October 2014 order was a permanent custody determination because it required a petition to modify the order. Petitioner cites no authority for this position. Finally, petitioner contends the characterization of an order as "temporary" by the trial court is not determinative.

¶ 50 At the time the trial court entered the October 2, 2014, custody order, section 603 of the Illinois Marriage and Dissolution of Marriage Act provided for temporary orders (750 ILCS 5/603 (West 2012)). In pertinent part, section 603(a) provided, "The court may award temporary custody *** solely on the basis of the affidavits or the agreement of the parties if the court finds that the parties' agreement is in the best interest of the child." The determination of whether a custody order is temporary or permanent is governed by the substance of the order. *In re Marriage of Fields*, 283 Ill. App. 3d 894, 903, 671 N.E.2d 85, 91, (1996) (trial court's statements indicated the court understood the temporary nature of the order it was entering). "Section 603 of the Act was implemented to (1) encourage informal and agreed determinations of temporary custody and visitation, (2) accelerate the process of awarding temporary custody and visitation through the use of affidavits, and (3) minimize disruptions in children's lives by

providing stability in their living environment and relationships with their parents as quickly as possible." *Id.* at 904, 671 N.E.2d at 91-92.

¶ 51 As set forth above, the trial court entered an order on October 2, 2014, that noted the parties had reached an agreement and, in relevant part, ordered "*Temporary* physical and legal sole custody is awarded to [petitioner]. This order cannot be modified unless a petition to change custody is filed by [respondent] and a court determination is made by this court." (Emphasis added.) Although we have no transcript of the proceedings, the language of the order clearly contemplates a temporary custody determination. Moreover, the record clearly shows petitioner, respondent, and the GAL all agreed to this temporary custody order. At the time the court made its permanent custody determination, the judge stated, "The posture of the case is not a change of custody case, as I addressed before with [the new GAL] when he filed the pleading [(to strike and dismiss respondent's petition.)] It was done in such a way to where we knew [respondent] was going to prison. The parties agreed that, obviously, that would cause [petitioner] to take care of [B.W.] until she got out and, then, we would address that." Clearly, the court and the parties contemplated this order to be temporary in nature, with a permanent custody decision to be made after respondent was released from prison. Nothing in the record indicates petitioner did not agree to the temporary custody order and, without a transcript of the hearing, we presume the trial court's order had a sufficient factual basis. *Foutch*, 99 Ill. 2d at 391-92, 459 N.E.2d at 959.

¶ 52 Petitioner relies on *In re Marriage of Valliere*, 275 Ill. App. 3d 1095, 657 N.E.2d 1041 (1995), and *In re Marriage of Harris*, 2015 IL App (2d) 140616, 35 N.E.3d 1135. We find both cases distinguishable. In *Valliere*, a 1988 marital settlement agreement provided (1) the parents shared joint legal custody of the minor, (2) the mother had physical custody of the minor,

and (3) the father enjoyed liberal visitation. *Valliere*, 275 Ill. App. 3d at 1097, 657 N.E.2d at 1042. In 1992, the father filed a "Petition for Permanent Custody," and the trial court ultimately found that a substantial change in circumstances had occurred. *Id.* However, the court determined a permanent modification of the custody arrangement might not be necessary and ordered an "interim remedial period" where the father would have physical custody and the mother would have visitation. *Id.* at 1098, 657 N.E.2d at 1043. The court further ruled physical custody would return to the mother if she proved by a preponderance of the evidence that "psychological problems" had been largely resolved. *Id.* The appellate court determined the trial court erred because "the circuit court has modified the divorce decree in this case, but has set up an unauthorized procedure for any future modification of the modification." *Id.* at 1103, 657 N.E.2d at 1046. The trial court's order did away with section 610's requirement that a substantial change in circumstances be proved and lowered the burden of proof from clear and convincing evidence to a preponderance of the evidence. *Id.*

¶ 53 Here, unlike in *Valliere*, there was no permanent custody determination in place when the trial court entered the October 2014 order. As noted, the Act provides for temporary custody orders pending a full hearing on a permanent custody determination. Additionally, the court's order in this case did not eliminate the requirements for a permanent custody determination. The order contemplated a future hearing on permanent custody in accordance with the requirements of the Act. 750 ILCS 5/602.7 (West 2016).

¶ 54 In *Harris*, the appellate court determined a "temporary" custody determination was, in fact, a permanent custody order. *Harris*, 2015 IL App (2d) 140616, ¶ 17. The trial court made an oral ruling on custody on November 20, 2013, and entered a written order reflecting that ruling on November 25, 2013. *Id.* ¶¶ 4-5. On December 9, 2013, the mother filed a motion for

reconsideration and, on December 18, 2013, the trial court entered a judgment for dissolution of marriage. *Id.* ¶¶ 6-7. The court then ruled the mother's motion to reconsider was premature because she filed it before the judgment for dissolution of marriage was entered and the November 25, 2013, custody order was "temporary." *Id.* ¶ 9. The appellate court noted, "In the November 25 order, the court specifically provided that the same custody determination was to appear in the dissolution judgment, so that the court intended that there be no difference in substance between the November 25 custody determination and that in the dissolution judgment." *Id.* ¶ 17.

¶ 55 Unlike *Harris*, the October 2014 order in this case clearly contemplated a future permanent custody determination and was entered on the basis of the parties' agreement. *Harris* involved a custody determination made after a full hearing and a ruling giving the father physical custody after reviewing all the relevant statutory factors. Nothing in the record indicates petitioner did not agree to this temporary order and therefore, we conclude the October 2, 2014, order was temporary in nature. Accordingly, we turn now to the court's permanent custody determination.

¶ 56 C. Best Interest Determination

¶ 57 "The trial court's findings as to the child's best interest are entitled to great deference because the trial judge is in a better position than are we to observe the temperaments and personalities of the parties and assess the credibility of witnesses." *In re Marriage of Stopher*, 328 Ill. App. 3d 1037, 1041, 767 N.E.2d 925, 928 (2002). We will not overturn the trial court's custody determination unless it is manifestly unjust, against the manifest weight of the evidence, or results from a clear abuse of discretion. *Id.* at 1041, 767 N.E.2d at 929. "It is a well-established rule that the credibility of witnesses should be left to the trier of fact because it

alone is in the position to see the witnesses, observe their demeanor, and assess the relative credibility of witnesses where there is conflicting testimony on issues of fact." *In re Marriage of Kaplan*, 149 Ill. App. 3d 23, 28, 500 N.E.2d 612, 616 (1986). We will overturn such a determination only if it is against the manifest weight of the evidence. *Id.* "A judgment is against the manifest weight of the evidence when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary[,] or not based on the evidence." *In re Custody of K.P.L.*, 304 Ill. App. 3d 481, 488, 710 N.E.2d 875, 879 (1999).

¶ 58 In allocating parental responsibilities, the trial court is to apply the relevant standards from the Act. See 750 ILCS 46/802(a) (West 2016). Parenting time is allocated according to the child's best interest. 750 ILCS 5/602.7(a) (West 2016). The court must consider all relevant factors, including the following factors expressly laid out in the statute:

> "(1) the wishes of each parent seeking parenting time;
>
> (2) the wishes of the child, taking into account the child's maturity and ability to express reasoned and independent preferences as to parenting time;
>
> (3) the amount of time each parent spent performing caretaking functions with respect to the child in the 24 months preceding the filing of any petition for allocation of parental responsibilities or, if the child is under 2 years of age, since the child's birth;
>
> (4) any prior agreement or course of conduct between the parents relating to caretaking functions with respect to the child;

(5) the interaction and interrelationship of the child with his or her parents and siblings and with any other person who may significantly affect the child's best interests;

(6) the child's adjustment to his or her home, school, and community;

(7) the mental and physical health of all individuals involved;

(8) the child's needs;

(9) the distance between the parents' residences, the cost and difficulty of transporting the child, each parent's and the child's daily schedules, and the ability of the parents to cooperate in the arrangement;

(10) whether a restriction on parenting time is appropriate;

(11) the physical violence or threat of physical violence by the child's parent directed against the child or other member of the child's household;

(12) the willingness and ability of each parent to place the needs of the child ahead of his or her own needs;

(13) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child;

(14) the occurrence of abuse against the child or other member of the child's household;

(15) whether one of the parents is a convicted sex offender or lives with a convicted sex offender and, if so, the exact nature of the offense and what if any treatment the offender has successfully participated in; the parties are entitled to a hearing on the issues raised in this paragraph (15);

(16) the terms of a parent's military family-care plan that a parent must complete before deployment if a parent is a member of the United States Armed Forces who is being deployed; and

(17) any other factor that the court expressly finds to be relevant." 750 ILCS 5/602.7(b) (West 2016).

¶ 59 Here, the trial court addressed each of these relevant factors in making its oral pronouncement of the judgment. The court noted both petitioner and respondent wished to have primary parenting responsibility for B.W. and gave little weight to B.W.'s wishes due to his age. As to who provided the caretaking functions in the 24 months preceding the filing of the petition to change custody, the court found respondent provided the primary caretaking functions for B.W. for the first 12 months of his life, at which time petitioner "stepped up" and took primary responsibility for B.W. As to prior agreements, the court also noted its belief the parties originally intended for respondent to provide primary parental responsibility for B.W. until respondent got into legal trouble. The court found this consideration did not necessarily favor either party. Petitioner contends these latter two factors heavily favor him, as respondent agreed petitioner would have custody of B.W. prior to her incarceration. As discussed above, the parties agreed it would be in B.W.'s best interest for petitioner to have *temporary* custody of B.W. until respondent was released from prison, at which time a permanent custody determination would be

made. The court did consider the fact that petitioner stepped up and provided caretaking functions for B.W. and we conclude the court did not abuse its discretion in determining these factors were not dispositive.

¶ 60 Petitioner also challenges the trial court's finding with regard to B.W.'s adjustment to his home, school, and community, and asserts respondent would place B.W. in day care to accommodate her work schedule. However, the court specifically found respondent would be more present for B.W. and had adjusted her work schedule so she rarely had to work when she was with B.W. Moreover, the court took into consideration B.W.'s adjustment by delaying the change in primary parenting time until he finished the remainder of the preschool year. The court also heard testimony regarding the fact that B.W. had not yet started kindergarten.

¶ 61 With regard to the parents' ability to put the child's needs first, petitioner argues the trial court faulted him for working to support his family. To the contrary, the court specifically noted it did not criticize petitioner for working. However, based on the testimony it heard, the court found respondent's main focus was B.W. and she would be more present than petitioner. This finding was also based on the fact that, when petitioner had the majority of parenting time, it was in fact Williams who provided the primary caretaking functions, rather than petitioner himself.

¶ 62 Petitioner also argues the trial court ignored respondent's mental health, felony conviction that involved discharging a firearm in petitioner's apartment, and substance abuse problem. However, as notes, the court went through every statutory factor and found the parties' mental health did not weigh in favor of either party. Moreover, the court considered the GAL reports and also heard respondent's testimony, which included testimony regarding her sobriety and her continued group counseling. Finally, the record included no details regarding

respondent's felony conviction except what petitioner alleged in his original filing. However, the court noted it was familiar with the parties and with the underlying incidents in this case. Petitioner did not testify on this point or ensure some further evidence of this was in the record. Therefore, we limit our consideration to the evidence in the record.

¶ 63 We acknowledge the record shows evidence of petitioner's dedication to B.W. and his desire and fitness to have a majority of parenting time. We commend him on the active and involved role he has played in B.W.'s life. We note the trial court also recognized the importance of petitioner's role in B.W.'s life and ordered liberal visitation in excess of the visitation time respondent had been receiving. However, the court's conclusion was supported by sufficient evidence and we find the court did not abuse its discretion in determining it was in B.W.'s best interest to award respondent the majority of parenting time. While the evidence "may have supported a contrary conclusion by the trial court, the evidence also supports the conclusion before us on review." *In re Marriage of Jaster*, 222 Ill. App. 3d 122, 128, 583 N.E.2d 659, 663, (1991). Accordingly, we affirm the court's judgment awarding respondent the majority of parenting time.

¶ 64 III. CONCLUSION

¶ 65 For the reasons stated, we affirm the trial court's judgment.

¶ 66 Affirmed.