

**NOTICE**

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

**FILED**

December 11, 2017  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

2017 IL App (4th) 170510-U  
NO. 4-17-0510

IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

CASSIE C. BROWN,	)	Appeal from
Petitioner-Appellee,	)	Circuit Court of
v.	)	Clark County
TRENT E. GROOTHUIS,	)	No. 14F10
Respondent-Appellant.	)	
	)	Honorable
	)	Tracy W. Resch,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.  
Presiding Justice Turner and Justice Harris concurred in the judgment.

**ORDER**

¶ 1 *Held:* (1) Despite respondent’s failure to file a petition to relocate to Maryland under section 609.2 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/609.2 (West 2016)), the trial court had subject-matter jurisdiction to permit the relocation given a justiciable issue was created when petitioner asked the court to modify custody and respondent counterpetitioned seeking primary custody in Maryland.

(2) While the trial court considered the factors of section 609.2(g) (750 ILCS 5/609.2(g) (West 2016)) when determining whether the relocation of *respondent* was in the child’s best interests, the court improperly failed to consider those factors when allocating parental time and responsibilities based on the *child’s* best interests.

¶ 2 Petitioner, Cassie C. Brown, and respondent, Trent Groothuis, are the parents of Z.M.G., born September 21, 2011. In June 2014, the parties entered into a joint-parenting agreement, equally dividing parenting time and responsibilities between Cassie, who resided in

Maryland, and Trent, who resided in Casey, Illinois. The parties alternated custody of Z.M.G. every six weeks. In September 2016, Trent filed a petition seeking modification of parenting time and responsibilities. In February 2017, Cassie responded with a counterpetition, requesting she be awarded primary parenting time in Maryland.

¶ 3 In June 2017, the trial court found it was in Z.M.G.'s best interest to spend the parenting time during her school year with her mother. Trent was granted visitation for approximately five weeks each year. Trent appeals, arguing (1) because Cassie did not file a petition for relocation under section 609.2 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/609.2 (West 2016)), the trial court lacked jurisdiction to allow Cassie to relocate to Maryland with Z.M.G.; and (2) the trial court's order granting Cassie primary parenting time was against the manifest weight of the evidence. We reverse and remand.

¶ 4 I. BACKGROUND

¶ 5 Z.M.G. was born to Cassie and Trent during their four-year relationship. At the time of her birth, Z.M.G. and her parents resided in Casey, Illinois. In May 2014, Cassie filed a petition for sole custody of Z.M.G. and for child support. The following month, Cassie filed a petition for removal, to permit her to move to Laurel, Maryland, with Z.M.G. That same day, the parties entered into a joint-parenting agreement.

¶ 6 The joint-parenting agreement set forth two physical custody schedules depending on the residency of Cassie and Trent. In the first schedule, the parents had a weekly schedule that would apply if both parties resided in the Casey area. The second schedule applied if Cassie moved to Maryland. According to this schedule, until Z.M.G. began kindergarten, they would meet in Zanesville, Ohio, every six weeks to exchange Z.M.G. It also provided the following:

“The parties recognize that the minor child will begin kindergarten in approximately two (2) years. At that time, should Mother choose to remain out of the State of Illinois, she will file the appropriate pleadings in Clark County, Illinois[,] seeking leave to remove the minor child from Illinois for residential purposes in order for the court to determine where the child will reside and attend school.”

That same month, the trial court entered an agreed order, adopting the joint-parenting agreement.

¶ 7 In September 2016, shortly after Z.M.G.’s fifth birthday, Trent filed a petition for modification of child support, allocation of parental responsibilities, and allocation of parenting time. In his petition, Trent asserted Z.M.G. would be enrolled in kindergarten in 10 months and the current custody schedule prohibited Z.M.G. from enrolling in either state. Trent asserted Z.M.G., while in Maryland, had no support system and spent large amounts of time in day care. Trent further asserted Cassie’s move to Maryland did not offer the child increased benefits in education, opportunity, or lifestyle. Trent requested primary parenting time and child support.

¶ 8 In February 2017, Cassie filed a counterpetition to modify parenting and child-support allocation. Cassie maintained it was in Z.M.G.’s best interests to reside with her in Maryland. Cassie emphasized the difference in her and Trent’s work schedule allowed her to spend more quality time with Z.M.G. Cassie requested she have primary residential custody, allowing Trent parenting time during summer and holiday breaks.

¶ 9 In June 2017, a hearing was held on the parties’ petitions. Eight individuals testified.

¶ 10 Cassie, aged 33, testified first. Cassie left Casey, Illinois, in July 2014. She moved

to a home in Laurel, Maryland, where she resided six months. Next, Cassie lived in a townhouse with her boyfriend, Burton Persaud, in Essex, Maryland, for one year, and they then moved to Middle River. After one year in Middle River, Cassie and Burton moved to the home in Essex, Maryland. She had been living there for six months. That home was a split-level house. She and Burton rented the home from his parents. Cassie did not contribute to the rent. Cassie and Burton's parents did not "get along." Burton's aunt and uncle rented the lower portion of the split-level house. At the time, the aunt and uncle's three sons "with a total of four kids and a girlfriend" were visiting and staying in the home for "probably" an extended period of time.

¶ 11 According to Cassie, she and Burton did not share a living space with Burton's extended family. In the split-level, there were three bedrooms upstairs, living room, kitchen, and sunroom. The downstairs had a large living room, bedroom, kitchen, and laundry room. Cassie denied that it was a shared living space. However, she testified the two had separate entrances, but they shared one. They also shared an address. The house had a backyard in which the children could play.

¶ 12 Cassie testified Burton was married until his divorce was finalized within the month or two before the hearing. Burton had two sons. Every other Friday night, Burton's sons spent the night at their house. They also visited three nights each week but did not stay overnight during those visits. Z.M.G. had her own room.

¶ 13 According to Cassie, she graduated high school and had completed some college courses, including some at a community college in Maryland. Cassie earned certificates as a medical assistant and clinical technician. She was employed at Johns Hopkins Hospital as a clinical technician. She commuted 30 minutes to work. Cassie worked in the Weinberg Intensive

Care Unit “every third weekend, rotating nights and days.” Cassie worked more days than nights. Typically, Cassie worked four days a week. Her typical shifts were from 7 a.m. to 7:30 p.m. or 7 a.m. to 3:30 p.m. She worked two 12-hour shifts and two 8-hour shifts each week. On the days Cassie worked 12 hours, Burton picked up Z.M.G. from day care. Cassie could only work as a clinical technician in certain hospitals, as not all hospitals hired clinical technicians. She earned a base rate of \$14.15 per hour, receiving greater compensation as a shift differential, when she worked evenings, overnight, or weekends. Cassie also picked up overtime. While in Casey, Illinois, Cassie worked as a certified nursing assistant (CNA) and she worked at a gas station. As a CNA, Cassie earned “[m]aybe \$9.50” per hour.

¶ 14 Cassie was also working toward becoming an anesthesia technologist. It was a two-year program to which she had applied. Cassie, however, learned she needed “a couple more” prerequisites. Cassie planned to apply again in September. If she were accepted, which she was almost certain she would be, Johns Hopkins Hospital would reduce her work hours to allow her to participate. Upon completing the program, her hours would be 6 a.m. to 2:30 p.m., Monday through Friday.

¶ 15 Regarding Trent, Cassie testified the two went to school together in Casey. They lived together for approximately four years. Cassie moved from Trent’s residence around Z.M.G.’s second birthday. At that time, Trent had Z.M.G. on Sundays and Mondays when he was not working. On other days, Cassie took Z.M.G. to the restaurant to see him.

¶ 16 Cassie decided to move to Maryland in early 2014. Her sister and her husband resided in Maryland. Aside from Z.M.G., they were the only family members in Maryland. Cassie’s sister and brother-in-law offered her the opportunity to relocate there for better

employment and support. Cassie stated “it’s not like Casey where you have to drive an hour-and-a-half, hour whatever, to get a good job.” Cassie believed the move would provide her with a better life. In Casey, she worked three jobs, barely allowing her time with her children. In contrast, in Maryland, she worked one job with good pay and benefits and had time for her children.

¶ 17 According to Cassie, on a typical morning, she woke Z.M.G., helped her get ready, and then took her to the learning center for day care and preschool. Either she or Burton picked up Z.M.G. around 3:30 p.m. When Cassie worked weekends, Burton and Z.M.G. were together. Burton worked as an electrician and had set hours. The three would have dinner together at home. Z.M.G. helped with chores around the house. She helped feed the dog and empty trash cans. Z.M.G. had some friends she knew in preschool. On most Sundays when Z.M.G. was there, they went to church. There were many parks and beaches nearby. She could enroll in gymnastics or dance, but the six-week schedule kept her from being enrolled. They tried to have Z.M.G. in bed by 8:30.

¶ 18 Cassie described Z.M.G. as being in remission for juvenile idiopathic arthritis. Z.M.G. had not had a flare-up since her initial one. A flare-up consisted of achy joints and inflammation of her organs, fever, and rash.

¶ 19 Cassie testified she also had a 13-year-old son, M.R. M.R. was 11 when Cassie left Casey. At that time, Cassie believed M.R. was old enough to decide where to live, so she let him decide. Because M.R. had established friendships and was involved in sports, he chose to stay in Casey. Z.M.G. and M.R. got along great. The two talked over Skype. M.R. visited Cassie in Maryland every spring break, holiday break, and two weeks of summer. Cassie also visited

him in Illinois once or twice each year. When M.R. visited Maryland, Cassie attempted to be off work, sometimes working one or two days during the visit. During M.R.'s most recent visit to Maryland, he witnessed an argument between Cassie and Burton's parents. M.R. was inside the house. Cassie and Burton's parents were outside, yelling at each other.

¶ 20 Cassie testified she had no community involvement in Maryland. She went to work and then home. If Z.M.G. were to reside with her, she would go to kindergarten at the elementary school "down the street." The kindergarten was a public school. Z.M.G. would ride the bus.

¶ 21 Cassie believed it was in Z.M.G.'s best interests to move to Maryland because "I feel like she would be able to spend time with one of her parents more than the other." Cassie was concerned Z.M.G. spent a great deal of time with her grandparents rather than in an education setting where she would be learning. Cassie believed Trent's work caused him to be gone from 10 a.m. until 10 p.m. "most days." While Cassie could not state for certain the times Trent left for work, she testified when she called to speak to Z.M.G., Z.M.G. would be at her grandparents' house. Cassie believed she would be a more consistent parent than Trent, and she had already begun working on Z.M.G.'s education. She believed she could provide financially for Z.M.G. if she resided with her.

¶ 22 Travis Roberts, M.R.'s father, testified he resided in Casey. M.R. would begin his freshman year in the fall. Roberts learned Cassie planned to move to Maryland when M.R. was 10. Roberts was "fine with" the move, so long as M.R. was staying in Casey. M.R. chose to stay behind as "he had friends" in Casey. M.R. and Z.M.G. knew each other. They would spend time together at their maternal grandmother's residence in Casey. Roberts believed if Z.M.G. resided

in Maryland, Z.M.G. and M.R. would not see each other. Z.M.G. would be flying to Casey as M.R. would be flying out to Maryland. Roberts had no concerns or problems with the Groothuis family. He believed it “would be fine” to work with them to facilitate time between the siblings. Roberts acknowledged he and the Groothuis family had not worked together to have the siblings spend time together.

¶ 23 Trent, aged 34, testified he had a bachelor’s degree in physical education. Trent owned and operated a restaurant in Casey, the Greathouse of Pizza, since 2008. In that role, he employed about 18 people, and he worked between 50 and 60 hours per week. In the previous eight months, he had hired a manager, who could run the restaurant without him. His parents also helped at the place. The restaurant was closed on Sundays and Mondays.

¶ 24 According to Trent, when Z.M.G. is in town, they would “hang out” together. At times, when Trent was at the restaurant to do “prep work,” Z.M.G. would go with him. He had an office where she could play. When Trent needed childcare, Z.M.G. usually went to his parents’ house. Sometimes Z.M.G. went to Cassie’s mother’s house. If placed with Trent, Z.M.G. would not require day care. In the fall, she would go to the local kindergarten. Trent attempted to register Z.M.G. for preschool, but, due to Z.M.G.’s alternating six-week schedule, the school would not accept her.

¶ 25 According to Trent, he resided in a 3-bedroom house with a yard. Z.M.G. had her own bedroom, and there was adequate outdoor space for play. Also residing in the house were Trent’s girlfriend, Brandi Millikan, and her three-year-old son, L.M. L.M. resided with them full-time. L.M. and Z.M.G. got along well, calling each other “brother and sister.” Brandi lived in the home for approximately one year. She worked at Trent’s restaurant.



¶ 26 Trent testified his mother provided childcare for L.M., too. Trent intended to expand restaurant hours to Sundays, and then to not work Mondays through Wednesdays. In his eight years of operating the restaurant, he had not taken off much time. He disagreed the proposed change in his schedule was in response to this case. Z.M.G. saw him in the mornings before he left for work, which was between 10 a.m. and noon. The restaurant closed at 9 p.m. on weekdays and 10 p.m. on weekends. The manager took care of closing. On occasion, Trent stuck around after closing.

¶ 27 Trent testified Z.M.G. would wake at home and stay there. On days when he worked, Brandi, around 3 p.m., took Z.M.G. and L.M. to Trent's mother's house. Trent believed he had sufficient income to meet Z.M.G.'s needs. Z.M.G. did not attend church when in Illinois, except for one week of vacation bible school. Z.M.G. was diagnosed with juvenile arthritis when she was two years old. When she was in Illinois, she would see a specialist in St. Louis. In Maryland, she goes to Johns Hopkins Hospital. At the time of his testimony, Trent believed Z.M.G. did not need medical care. Trent did not take Z.M.G. for checkups, but he did take her to a doctor for an ear infection. Trent agreed for three years on the six-week schedule, he had not made any plans for Z.M.G. and M.R. to meet.

¶ 28 Nikki N. Groothuis, Z.M.G.'s paternal grandfather, testified he resided in Casey for approximately 45 years. At that time, he was mayor. Casey provided sufficient education and extracurricular activities for Z.M.G. On Tuesdays through Saturdays, Z.M.G. was at his and his wife's house from late afternoon into the evenings from Tuesday through Saturday. Sometimes, Z.M.G. would arrive earlier. Z.M.G. was comfortable in their home. Nikki disagreed Z.M.G. spent "the primary time" with him and his wife while in Illinois. Nikki believed it was similar to

other day care situations.

¶ 29 Nikki believed Trent was a very loving dad, spending as much time as he could with Z.M.G. Nikki testified, whenever Z.M.G.'s maternal grandmother, Marsha Brown (Marty), asked for a visit, he would take Z.M.G. there. Nikki had also taken Z.M.G. to watch M.R. participate in sports. At those events, M.R. would talk with Z.M.G. If Z.M.G. were to be placed in Casey, they "would facilitate her connection to the Brown side" of the family. Regarding Trent's work schedule, it was flexible, allowing Trent to leave for Z.M.G.'s activities. One example was Z.M.G.'s last day of cheer camp when there was an exhibition. While in Casey, Z.M.G. also participated in tumbling and dance activities.

¶ 30 Brandi testified Trent acted as L.M.'s father, helping with all parenting decisions. Trent was "a great dad" who did "everything with them." Z.M.G. was very close to Trent, always wanting to be around him and do things with him. L.M. and Z.M.G. were almost always together. They stayed in Trent's or Brandi's care until the restaurant opened. Then they went to Trent's parents' house, typically from 3 to 9 p.m. Trent usually began work around 10 or 10:30 a.m. The kids also spent time at the restaurant with Brandi and Trent. Brandi had no criminal history and no history with the Department of Children and Family Services.

¶ 31 Burton testified his sons, aged 9 and 11, resided with him at times. Burton's job as an electrical foreman required work only on weekdays. He mainly worked from 6 a.m. until 2:30 p.m. His work was flexible, allowing him to leave as necessary. Burton had known Cassie approximately three years. They resided together almost three years.

¶ 32 Burton described Z.M.G.'s relationship with his aunt and uncle. Z.M.G. went downstairs "every once in a while." She would visit with them and see what they were doing.

Z.M.G. liked to hang out with Burton's cousin's girlfriend, who was 25. Burton's uncle baby-sat for Z.M.G. occasionally. The downstairs was fairly large and had its own bathroom and kitchen.

¶ 33 After Burton picked up Z.M.G. from school, he would normally provide Z.M.G. a snack and turn on the television for her. If Z.M.G. wanted to go outside, he would take her. Once in a while, they would go to the park. Burton did not typically help with homework or participate in the bedtime routine.

¶ 34 On cross-examination, Burton testified he and Cassie met online. He believed they knew each other approximately six months before they moved in together, but said it was fairly quickly. At that time, Burton was going through a divorce. Burton testified he had "a limited divorce," but he was returning to court in a few months for "an absolute divorce."

¶ 35 When asked if he had any adopted children, Burton testified as follows:

"Yeah, [C.M.]. It was not my, it was not my – you know, it was adopted by my wife, my ex-wife. So, yeah, I mean, it was not adopted by myself, but since we're together, I don't know if that was considered him, you know – I don't know if I was, if it was, you know, my adopted child, but I know she adopted him, yeah, while we were together."

Burton testified he had been investigated by the Maryland Department of Children and Family Services in regard to C.M. When asked to explain, Burton stated the following:

"It was for, it was they pretty much couldn't, you know, they had me as the one who really would, you know, enforce the rules and like, you know, what needed to get done and stuff like, and you

know, I spanked him, and you know, I guess he went to school complaining about it, saying, you know, that I did. I guess they started an investigation, and I don't know what happened after that because it was almost like, almost ten years ago so I don't know what happened to the case. I know it went to, you know, social services, and they said that, you know, you can't do that and that kind of stuff. If you spank him, you need to spank him on the butt and all of that kind of stuff so."

¶ 36 Burton explained there were no protective orders issued regarding C.M. However, he testified he had an issue with his ex-wife. She "was in [his] face," and Burton pushed her away. There was a protective order for a time, but his ex-wife had it lifted because of the children.

¶ 37 Marty, Cassie's mother, testified she resided in Casey. She saw Z.M.G. "not real often," but whenever Z.M.G. wanted to visit. Marty would see Z.M.G. three or four times during her six-week stays in Casey. The Groothuis family never refused a request by her for a visit. Marty's husband was Samuel Brown, Cassie's father. His health was poor. Z.M.G. would see him when she visited their house. When Z.M.G. was at their house, Z.M.G. would watch cartoons, play Old Maid, complete activity books, and sometimes go to the park.

¶ 38 Marty testified she did not see Cassie very often, "maybe twice" a year when Cassie visited for a week or so. Cassie's relationship with Z.M.G. was "really good." Cassie disciplined Z.M.G. with time-outs. Z.M.G. liked to get her way, and Cassie "most of the time" could "reign that in." Marty had observed Burton with Z.M.G. and stated they got along really

well. Marty believed Cassie was a good mother and it would be best for Z.M.G. to reside with her.

¶ 39 April Wade, Cassie's sister, testified she would try to see Z.M.G. at least once during each of her visits to Illinois. She would call Trent to find a convenient time to pick her up. Usually, Wade picked up Z.M.G. from her grandparents' house or from the restaurant. Wade testified Cassie and Z.M.G. got along well and Z.M.G. and M.R. got along just fine.

¶ 40 Before closing argument, Trent's counsel noted the provision in the joint-parenting agreement that stated if Cassie chose to stay in Maryland, she must seek leave to remove the child from Illinois for residential purposes. Counsel argued Cassie had not sought such leave or asked for removal, but had only sought a modification of custody. Counsel argued Cassie's failure to seek permission to relocate or remove the child would by default result in Trent's becoming the residential parent. Counsel argued the only appropriate question is a visitation schedule with the child and Cassie in Maryland, as there had been no petition to relocate.

¶ 41 The trial court, noting the removal provision had been replaced by a relocation provision, asked both parties if it would be permissible for it to consider the 11 factors in the most recent version of section 609.2(g) of the Act. Both parties agreed.

¶ 42 On June 14, 2017, the trial court issued its order. The trial court began its analysis by addressing the issue of Cassie's relocation. The court cited section 609.2 of the Act (750 ILCS 5/609.2 (West 2016)) and identified the factors relevant "in determining whether relocation of a parent is in accordance with the child's best interest." The court summarized the evidence surrounding the career advancement made in Cassie's decision to relocate, noting Cassie had

replaced three low-paying jobs in Casey with a better paying position and had improved her prospects. The court rejected any argument Z.M.G. would be better off had her mother remained working as a low-wage cashier instead of relocating. The court called Cassie's relocation "successful" and "a worthy example to Z.M.G. of an individual's capacity to strive for a better life by assuming responsibility for one's own fate." The court found no evidence the relocation negatively impacted Z.M.G. or impaired the quality of her relationship with either parent, and no evidence the relocation resulted in behavioral or emotional problems. The court found "relocation of the mother is in accordance with the child's best interest."

¶ 43 Upon concluding the relocation of Cassie was "in accordance with [Z.M.G.'s best interest,]" the trial court the addressed the issue of the allocation of parenting time. To do this, the court cited the factors in section 602.7 of the Act (750 ILCS 5/602.7 (West 2016)) and analyzed the applicability of each of the statutory factors. Most of the factors the court determined had no difference or did not apply. The court observed, regarding the factor of the mental and physical health of all individuals (750 ILCS 5/602.7(7) (West 2016)), Z.M.G.'s current specialist was in Maryland and Cassie had arranged Z.M.G.'s medical appointments. The court observed, regarding the child's needs (750 ILCS 5/602.7(8) (West 2016)), Cassie testified she read to Z.M.G., helped Z.M.G. with homework, and took her on field trips though her day care. The court observed Cassie's improved financial circumstances would change the trajectory of Z.M.G.'s future opportunities. The court observed Trent provided no testimony regarding those matters.

¶ 44 The trial court concluded it was in Z.M.G.'s best interest to spend the parenting time during the school year with her mother. The court granted parenting time to Trent to include

three consecutive weeks in the summer, alternating Thanksgiving and Christmas breaks, each spring break, and visits in Maryland when agreed upon by the parties.

¶ 45 This appeal followed.

¶ 46 II. ANALYSIS

¶ 47 A. Jurisdiction

¶ 48 Trent first contends the trial court lacked jurisdiction to award primary parenting time to Cassie. Trent emphasizes both the joint-parenting agreement and section 609.2 of the Act require Cassie file a petition to remove Z.M.G. should she remain in Maryland and seek primary parenting time there. Trent argues, absent said petition, the trial court had no jurisdiction to authorize the relocation of Z.M.G. under the Act. We note, beginning January 1, 2016, the act of changing a child’s primary residence no longer involves “removal” of a child but the “relocation” of the child. See 750 ILCS 5/600(g) (West 2016). The joint-parenting agreement, drafted in 2014, however, refers to the removal statute. The trial court, aware of the difference, sought clarification of which rule should apply. The parties agreed at the hearing the court should consider the most recent factors in section 609.2(g)—factors related to *relocating* Z.M.G.

¶ 49 As an overview, under section 609.2 of the Act, a parent who has been allocated equal parenting time, may petition to relocate with a child. 750 ILCS 5/609.2(b) (West 2016). A parent seeking to relocate must provide written notice of the relocation to the other parent and to the clerk of the circuit court. 750 ILCS 5/609.2(c) (West 2016). The notice must set forth the intended date of the relocation, the address of the intended new residence, and the length of time the relocation will last, if not for an indefinite period. 750 ILCS 5/609.2(d) (West 2016). The failure to comply with the notice requirements without good cause may be considered by the trial

court in determining whether the relocation was in good faith or as a basis for awarding attorney fees. *Id.*

¶ 50 Subject matter jurisdiction is “the power of a court to hear and determine cases of the general class to which the proceeding in question belongs.” *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334, 770 N.E.2d 177, 184 (2002). With the exception of administrative actions, subject matter jurisdiction is conferred to circuit courts entirely by the Illinois constitution. *Id.* Section 9 of article VI of the Illinois constitution gives circuit courts jurisdiction over all “justiciable matters.” *Id.* (quoting Ill. Const. 1970, art. VI, § 9). A matter is “justiciable” if it presents a controversy appropriate for court review, one that is “definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests.” *Id.* at 335, 770 N.E.2d at 184. Jurisdiction is conferred by the filing of an action, which creates a justiciable matter. *In re Marriage of Fox*, 191 Ill. App. 3d 514, 520, 548 N.E. 2d 71, 75 (1989). Proceedings for the allocation of parental responsibilities may be commenced by the filing of petition seeking an allocation of those responsibilities. 750 ILCS 5/601.2(b) (West 2016). “So long as a claim meets the requirements for justiciability, it will be sufficient to invoke the court’s subject matter jurisdiction, even if the claim is defectively stated.” *McCormick v. Robertson*, 2015 IL 118230, ¶ 23, 28 N.E.3d 795.

¶ 51 In this case, Trent placed the issue of Z.M.G.’s custody before the trial court when he filed his petition seeking allocation of parental time and responsibilities. Given the residences of the parents were in two different states, the requested allocation required a consideration of the matter of relocation. While not raised in a document entitled “petition to relocate,” the issue of relocation was raised in Cassie’s counterpetition, in which she alleged she resided in



Maryland and sought primary parenting time and responsibility there. These pleadings created a justiciable matter as to Z.M.G.'s custody. The trial court had subject matter jurisdiction over the claim.

¶ 52 Trent's cases are distinguishable. For example, in the majority of the cases where the courts found no jurisdiction to reach the issue of child custody or child support, those matters did not appear in the pleadings. See, e.g., *In re Marriage of Suriano*, 386 Ill. App. 3d 490, 493, 902 N.E.2d 116, 119 (2008) (observing "the only pleading before the court was respondent's fifth rule to show cause to hold petitioner in contempt for violating \*\*\* the agreed order"); *Fox*, 191 Ill. App. 3d at 520, 548 N.E.2d at 75 (concluding the "[f]iling a petition for contempt with respect to visitation in a dissolution proceeding does not present to the trial court a 'justiciable matter' sufficient for the trial court to make a child[-]custody determination"); *Ottwell v. Ottwell*, 167 Ill. App. 3d 901, 908-09, 522 N.E.2d 328, 332-33 (1988) (noting the only petition before the circuit court was a petition for citation).

¶ 53 The case most heavily relied upon by Trent, *Fisher v. Waldrop*, 221 Ill. 2d 102, 849 N.E.2d 334 (2006), is also distinguishable. First, it involves a different provision than the one applicable here. At the time *Fisher* was decided, section 609 of the Act required the trial court "grant leave, before or after judgment, to any party having custody of any minor child or children to remove such child or children from Illinois \*\*\*" (emphasis added) (750 ILCS 5/609(a) (West 2006))—no similar requirement appears in the relocation section (see 750 ILCS 5/609.2 (West 2016)). *Fisher*, 221 Ill. 2d at 115, 849 N.E. 2d at 341. Instead, under the current relocation statute, the failure to provide requisite notice does not result in barring the relocation request. The section specifically allows the trial court to consider such failure in determining

good faith and in deciding attorney fees. See 750 ILCS 5/609.2(d) (West 2016). Additionally, unlike here, the *Fisher* case involves the application and shift of the burden of proof (see *Fisher*, 221 Ill. 2d at 118-19, 849 N.E.2d at 343). While in 2006 the Act placed a burden of proof to show removal was in the best interest of the child on the party seeking removal (750 ILCS 5/609(a) (West 2006)), no burden of proof appears in the new version (750 ILCS 5/609.2 (West 2016)). The only consideration is the best interests of the child. See *id.*

¶ 54 B. The Trial Court's Decision

¶ 55 Trent next argues the trial court's order allowing the relocation of Z.M.G. to Maryland and granting Cassie primary parenting time and responsibilities is against the manifest weight of the evidence. Trent, in part, contends the trial court improperly focused on Cassie, not Z.M.G. and failed to consider the effects on Z.M.G. of being removed from her extended family.

¶ 56 When a request for relocation has been made, section 609.2(g) specifically states the factors relevant to relocation must be considered in modifying the parenting plan or allocation judgment:

“The court shall modify the parenting plan or allocation judgment in accordance with the child's best interests. The court *shall* consider the following factors:

- (1) The circumstances and reasons for the intended relocation;
- (2) the reasons, if any, why a parent is objecting to the intended relocation;
- (3) the history and quality of each parent's relationship

with the child and specifically whether a parent has substantially failed or refused to exercise the parental responsibilities allocated to him or her under the parenting plan or allocation judgment;

(4) the educational opportunities for the child at the existing location and at the proposed new location;

(5) the presence or absence of extended family at the existing location and at the proposed new location;

(6) the anticipated impact of the relocation on the child;

(7) whether the court will be able to fashion a reasonable allocation of parental responsibilities between all parents if the relocation occurs;

(8) the wishes of the child \*\*\*;

(9) possible arrangements for the exercise of parental responsibilities appropriate to the parents' resources and circumstances and the developmental level of the child;

(10) minimization of the impairment to a parent-child relationship caused by a parent's relocation; and

(11) any other relevant factors bearing on the child's best interests." (Emphasis added.) 750 ILCS 5/609.2(g) (West 2016).

On review, a trial court's best-interest finding is entitled to great deference, as the trial court is in the superior position to observe the personalities and temperaments of the parties and assess witness credibility. *In re Marriage of Stopher*, 328 Ill. App. 3d 1037, 1041, 767 N.E.2d 925,

928-29 (2002). This court will not overturn a trial court’s best-interests determination unless it is against the manifest weight of the evidence or is manifestly unjust. See *id.*

¶ 57 In rendering a decision in this case, the trial court provided a thorough and extensive analysis. The court first addressed the relocation issue. The court found “relocation of the *mother* is in accordance with the child’s best interest,” after examining the section 609.2(g) factors and upon finding no evidence the relocation negatively impacted Z.M.G. The court then proceeded weighing each factor in section 602.7 (750 ILCS 5/602.7(b) (West 2016)) to allocate parental responsibilities and parenting time, giving Cassie primary custody during the school year.

¶ 58 Upon review of the trial court’s analysis, we find the court failed to consider the section 609.2(g) of the Act factors in deciding whether the relocation of Z.M.G., not Cassie, for the school year was in Z.M.G.’s best interests. The court’s language, including the findings of no negative impact on Z.M.G., her familiar relationships, or her well being, shows the court considered only the effect of Cassie’s initial relocation to Maryland—a relocation the joint-parenting agreement had already authorized. The question raised in the pleadings and thus the question before the trial court was whether Z.M.G. should be relocated to Maryland for the entire school year—expanding her time in Maryland with her mother from 26 weeks to approximately 47 weeks and decreasing her time in Casey with her father from 26 weeks to approximately 5 weeks. That question the trial court did not consider within the mandate of section 609.2(g) of the Act. Instead, the court, when allocating parenting time, considered only the allocation-of-parental-responsibilities-and-parenting-time factors in section 602.7(b). This resulted in a custody determination with no consideration on the effects of the relocation on Z.M.G.

¶ 59           Because the trial court did not consider the section 609.2(g) factors and how they relate to Z.M.G.'s best interests in relocating her to Maryland for the school year, we must remand to the trial court. Our ruling should not be read as indicating a preference for placement with either parent. The trial court, who viewed the parties' demeanor, personalities, and testimony, is better suited for that determination. See *Stopher*, 328 Ill. App. 3d at 1041, 767 N.E.2d at 928-29. On remand, the court should comply with section 609.2(g) and section 602.7(b) of the Act to allocate parental responsibilities and parenting time. This may be done by reviewing the record. A full rehearing is not necessary, unless the court determines otherwise. While the matter is pending, the court's June 2017 order regarding parental responsibilities and parenting time remains intact.

¶ 60

### III. CONCLUSION

¶ 61           We reverse the trial court's judgment and remand for further proceedings.

¶ 62           Reversed and remanded.