

NOTICE
Decision filed 03/21/17. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2017 IL App (5th) 160409-U

NO. 5-16-0409

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

AMANDA SMITH,)	Appeal from the
)	Circuit Court of
Petitioner-Appellee,)	Madison County.
)	
v.)	No. 14-D-52
)	
BRADY SMITH,)	Honorable
)	Martin J. Mengarelli,
Respondent-Appellant.)	Judge, presiding.

PRESIDING JUSTICE MOORE delivered the judgment of the court.
Justices Welch and Goldenhersh concurred in the judgment.

ORDER

- ¶ 1 *Held:* Judgment affirmed where circuit court's decisions regarding parental decision making, parenting time, and child support were not abuses of discretion.
- ¶ 2 The respondent, Brady Smith, appeals portions of the August 10, 2016, order of the circuit court of Madison County. He contends the circuit court erred by granting sole decision making responsibility regarding the parties' minor child to the petitioner, Amanda Smith. Brady further contends that the circuit court erred in its determinations regarding the allocation of parenting time between the parties, and the child support

awarded to Amanda.¹ Because this appeal involves a custody determination, Illinois Supreme Court Rule 311(a)(5) (eff. Feb. 26, 2010) requires that, except for good cause shown, the appellate court issue its decision within 150 days of the filing of the notice of appeal. Accordingly, the decision in this case was due on February 17, 2017. However, due to motions for extensions of time filed by both parties and granted by this court, the briefing schedule was not complete until January 17, 2017. This case was immediately placed on the docket for March 1, 2017, and we now issue our disposition. For the following reasons, we affirm.

¶ 3

FACTS

¶ 4 The parties were married on July 7, 2007. One child, J.S., was born to the parties during the marriage on September 4, 2008. On December 27, 2013, Amanda filed a verified petition for an order of protection on behalf of herself and J.S. The circuit court granted the petition and entered an emergency order of protection the same day. On January 27, 2014, Amanda filed a petition for dissolution of marriage and a petition for temporary and permanent custody of J.S. On April 15, 2014, a plenary order of protection was entered against Brady. On June 25, 2014, Brady filed a motion to vacate the plenary order of protection. On July 9, 2014, an agreed order was entered, modifying

¹We acknowledge that Brady additionally raises the issue of the removal of the minor child to the state of Florida. However, the circuit court's judgment awarding sole decision making responsibility to Amanda renders moot the issue of removal.

the plenary order of protection to allow Brady parenting time with J.S., and to allow contact between the parties to facilitate that parenting time.

¶ 5 On September 2, 2014, Brady filed a petition for leave to remove J.S. to the state of Florida and requested the circuit court to grant him sole custody of J.S. On December 9, 2014, Amanda filed a motion for a finding of indirect civil contempt. Attached to the motion were a number of text messages from Brady to Amanda that the circuit court deemed "very disturbing." On January 20, 2015, an agreed temporary order was entered regarding parenting time between the parties. In the order, the circuit court admonished Brady that future inappropriate text messages would not be tolerated.

¶ 6 On April 21, 2015, Amanda filed a second motion for a finding of indirect civil contempt. Attached to the motion were additional text messages from Brady to Amanda which the circuit court again deemed "very disturbing." On April 28, 2015, Amanda filed an emergency motion to halt parenting time and a third motion for a finding of indirect civil contempt, with yet more text messages attached. The circuit court entered an order the same date and, *inter alia*, suspended his parenting time until further order and ordered him to enroll in anger management classes. On June 3, 2015, a case management conference was conducted and the circuit court granted Brady supervised parenting time with J.S.

¶ 7 On September 9, 2015, Brady filed a petition for leave to remove J.S. to the state of Florida and a petition for custody and child support. He also filed a motion to vacate the plenary order of protection, which the circuit court denied on October 22, 2015. On November 30, 2015, Brady filed a motion to modify the plenary order of protection,

which the circuit court denied on December 18, 2015. On February 19, 2016, Amanda filed a motion to extend the order of protection. The circuit court found, based on Brady's conduct, that there had been no material change in relevant circumstances since the plenary order of protection was entered. Accordingly, the circuit court entered an order on March 15, 2016, extending the plenary order of protection through April 14, 2018. A separate order was entered on March 15, 2016, forbidding Brady from making any additional phone calls to the circuit clerk's office, due to previous harassing phone calls Brady made to the office.

¶ 8 A hearing was conducted on May 9, 2016, and July 29, 2016, wherein Brady represented himself *pro se*. At the hearing, Brady testified that he resides in the state of Florida with his daughter (J.S.'s half-sister) and his girlfriend's daughter. He reported that he receives \$100 every other week from the daughter's mother for child support. Brady testified that, in addition to the child support, he receives Veterans Administration (VA) disability income in the amount of \$1,300 per month, bringing his total monthly income to \$1,500 per month. Brady stated that he pays rent in the amount of \$1,500 per month and pays for his additional expenses with money he receives as assistance from his parents. Brady testified that in January 2015 he was ordered to pay Amanda \$200 per month in child support, but in the 16 months between that time and the hearing, he submitted only one payment.

¶ 9 On cross-examination, a variety of bank statements were introduced which were obtained via subpoena. Notwithstanding his earlier testimony that he received VA disability benefits in the amount of \$1,500 per month, Brady acknowledged the statement

dated January 2016, which reflects a deposit in the amount of \$1,775.48 for VA disability benefits. The statement also reflects deposits in the amounts of \$775, \$230, \$287, and \$908.83. Brady explained that the first two amounts were given to him as assistance from his parents and the second two were from his GI Bill. Brady agreed that his bank statement dated February 2016 reflects a deposit in the same amount as January 2016 for his VA disability, \$765 and \$574 from his GI Bill, and assistance from his parents in the amounts of \$294, \$400, and \$400. Brady's March 2016 bank statement reflects the same amount for VA disability, \$199.33 for GI Bill, and deposits in the amounts of \$200, \$400, \$75, and \$90 from other sources. Similar deposits were made in April, May, June, and July 2016, with an additional deposit of \$6,639 in May 2016 for what Brady reported was a federal education grant. Despite the sizeable deposit, Brady stated that he did not give any of the money to Amanda for child support.

¶ 10 Brady agreed that he had not complied with discovery in the case. Specifically, he admitted that he did not submit bank statements in response to a request for production of documents, nor did he provide copies of his mental health evaluation that was conducted in Florida after criminal charges were filed against him there. Brady admitted that he and Amanda met with Maureen Schuette for mediation and that he told Schuette's secretary, "This is a filthy fucking office and you're a filthy fucking secretary." Brady testified that the police were called to the office after the incident and a second mediator, Gale Stipes, was obtained as a result. Brady also conceded that there were three separate incident reports created by the circuit clerk after he had spoken to the office staff disrespectfully

and that the circuit court entered an order on March 15, 2016, forbidding him from making additional phone calls to the circuit clerk's office.

¶ 11 Brady admitted that in June 2015 after a court hearing, he approached Amanda and stood in front of her in a threatening manner, notwithstanding the previously entered order indicating that he was not to intimidate, threaten, or harass her. He also admitted to sending numerous text messages to Amanda on several dates, in which he called her names and used profanity. He further agreed that on April 27, 2015, he sent a text message to Amanda, refusing to provide her an itinerary regarding weekend parenting time, notwithstanding a court order requiring him to do so.

¶ 12 Brady testified he was deployed to Afghanistan for 14 months. After his return, he moved to Florida with Amanda and J.S. until the parties separated in November 2011. At some point, he became involved with a woman in the state of Florida, and she eventually had criminal charges filed against him for stalking. Brady was presented with Petitioner's Exhibit 2, which is a certified copy of the conviction. Brady agreed that he pleaded no contest to the stalking charges and as a result, he was on probation for one year, was required to wear an ankle bracelet, and was required to obtain permission to travel outside the state of Florida.

¶ 13 Brady testified that after the parties separated in 2011, they cooperated regarding parenting time with J.S. Brady admitted that in November 2012, he spanked J.S. so hard that he left bruises on her bottom, and he acknowledged receiving a text message from Amanda with a photograph of the bruises. Brady testified that in December 2012, he allowed Amanda to move to Illinois with J.S. so she could be with her father, who was

diagnosed with cancer. Amanda remained in Illinois with J.S. after her father passed away in July 2013.

¶ 14 Brady testified that around Christmas 2013, he and Amanda had an argument because he came to Illinois for a visit and wanted to return to Florida with J.S. He stated that the police were called on December 25, 2013, and December 26, 2013, and that in particular, on December 26, he had J.S. in his arms, attempting to remove her from Amanda's home, but the police stopped him from doing so. The following day, December 27, 2013, the emergency order of protection was entered against Brady by the circuit court, followed by the plenary order of protection on April 15, 2014, which was extended to April 14, 2018.

¶ 15 Amanda testified that she and Brady married in July 2007, she became pregnant in January 2008, and J.S. was born in September 2008. The parties were living in Fayetteville, North Carolina, at Fort Bragg where Brady was stationed. Amanda was in the Marines for seven months but was medically discharged for a bulging disc in her lower back, and she was unemployed when J.S. was born. The parties remained at Fort Bragg until Brady was deployed, after which Amanda and J.S. moved back home with Amanda's parents in Illinois from April 2009 through November 2009, then moved in with Brady's parents, also in Illinois, from November 2009 until the end of Brady's deployment in May 2010, when she and J.S. moved back to Fort Bragg to be with Brady.

¶ 16 Amanda testified that Brady was discharged in February 2011 and they moved to Florida. She recalled that Brady was earning roughly \$1,500 per month in VA disability benefits. Amanda noted that their marriage was "on the rocks" by that time. She stated

that the parties hoped their relationship would improve, but it did not. Amanda confirmed that the parties separated in November 2011 and they had a mutual agreement on parenting time with J.S. until December 2012, when she and J.S. moved back to Illinois.

¶ 17 Amanda testified that she has worked at a piano bar in St. Louis since March 2014, where she earns \$3.83 per hour, plus tips. She reported her annual income for 2015 was \$18,976. Amanda's hours of employment are typically 9 p.m. through 3 a.m. or 4 a.m. J.S. goes to bed at 8:00 p.m., so Amanda is able to tuck her in every night, whether she is working or not. Amanda's mother cares for J.S. while Amanda is at work. Amanda testified that she goes to bed when she gets home from work, sleeps for awhile, then gets up with J.S. and spends time with her. On weekends, J.S. plays soccer and Amanda coaches her team. If J.S. is in school, Amanda gets up with her in the morning, makes her breakfast, gets her ready, and takes her to school every day.

¶ 18 Amanda described Brady's parenting time with J.S. at his house as "disastrous." She explained that J.S. "would scream and throw a fit and didn't want to go." Amanda testified pursuant to Petitioner's Exhibit Number 1,² which she described as a photograph that was taken after Brady spanked J.S. too hard because she would not go to the bathroom when he asked her to. J.S. was four years old at the time. Amanda pointed out—and Petitioner's Exhibit Number 1 reflects—that Brady admitted in the text message

²Petitioner's Exhibit Number 1 consists of a text message and photograph Amanda sent to Brady, which depicts significant bruising to J.S.'s buttocks.

that he had spanked J.S. and after he spanked her, he told her he was going to leave her alone. Amanda added that J.S. told her she did not want to go with Brady because he had threatened to leave her by herself. Amanda testified that J.S. suffers from separation anxiety from her.

¶ 19 Amanda testified that J.S. is now seven years old and in first grade. She and J.S. have lived in Illinois with her mother since December 2012. Amanda confirmed that she learned on Father's Day 2012 that her father had cancer and he passed away in July 2013. She testified that she and Brady had discussed the matter and he agreed that she should move to Illinois. She stated that once she moved in 2012, she never had any intent to move back to Florida and Brady was aware of that fact. She testified that Brady came to Illinois to attend her father's funeral, then for J.S.'s birthday at her parents' home in 2013, after which she drove Brady back to Florida. J.S. also went to Florida with Brady's parents at various times.

¶ 20 Amanda testified that she and Brady had a disagreement regarding parenting time on Christmas 2013. She corroborated Brady's testimony that the police were called and Brady attempted to carry J.S. out of her home on December 26, 2013, but the police intervened and the following day the emergency order of protection was entered. Amanda testified that a subsequent order was entered, allowing Brady phone contact with J.S. Amanda stated that the phone calls sometimes happened, but sometimes did not because Brady did not call. Amanda testified that she never prevented J.S. from speaking with Brady and in fact, she encouraged J.S. to take part in the phone calls, but J.S., who was four years old, was not interested in talking for long periods of time.

¶ 21 Amanda testified that the circuit court entered a subsequent order, allowing in-person contact between Brady and J.S. for the first time since the order of protection was entered. Pursuant to that order, Brady was allowed to have one month with J.S. in Florida. Amanda noted the difficulty in agreeing with Brady on scheduling the visit. Amanda reported that J.S. did go to Florida for the month and when she came back, she was very quiet, not her natural self, "almost like recluse." Amanda testified that she was always cooperative with Brady's visits, until April 2015 when she began receiving text messages from Brady that she described as "non-stop," "harassing," and "outrageous." She confirmed that Brady called her various vile names in the text messages, notwithstanding the court order that only allowed text messages to discuss J.S. Amanda testified that, because of these text messages, the circuit court entered an order suspending Brady's parenting time until the subsequent order was entered, allowing him supervised parenting time with J.S., which Amanda reported never occurred.

¶ 22 Amanda requested sole decision making responsibility of J.S. and wished for the two of them to continue living in Illinois because they had established their life here. She indicated that J.S. has a great school, friends, and family. Amanda added that she has family that can help with J.S. if necessary. Amanda testified that she and J.S. have made their home in Illinois and are happy. Petitioner's Exhibit Number 3 was introduced, which is J.S.'s report card. Amanda testified that J.S. has very good grades and excels in school. Petitioner's Exhibit Number 16 was also introduced, which is a letter from J.S.'s teacher and contains many positive statements about J.S. and her academic and social achievements. Amanda testified that J.S. loves school, art, karate, Girl Scouts, and

soccer, and Amanda coached J.S.'s soccer team last year. Amanda stated that J.S. also loves animals and she and J.S. have two dogs that J.S. helps care for.

¶ 23 Amanda testified that Brady sent her consistent disparaging text messages, notwithstanding the order of protection forbidding such contact. She confirmed that Brady only paid her one child support payment and her mother covers the remainder of the support by allowing Amanda and J.S. to reside with her. She agreed that Brady did not comply with discovery requests despite court orders requiring otherwise, nor did he successfully complete mediation because of his mistreatment of those involved in the process.

¶ 24 Amanda reiterated that she attempted at length to cooperate with Brady but he was impossible to work with. She testified that, despite all of the difficulty with Brady, she never said anything negative about him to J.S. and when J.S. says anything negative about him, Amanda corrects her. Amanda stated that J.S. does not currently ask to see Brady and she has concerns about Brady having unsupervised parenting time with J.S. Amanda testified that J.S. never wants to see Brady and Amanda has feared in the past that when J.S. went to Florida that she would never see her again. Amanda expressed concern about Brady bringing home women and children without properly getting to know them. Amanda requested continued supervised parenting time between Brady and J.S. until their relationship is mended.

¶ 25 Amy Sholar testified that she is an attorney and was appointed as the guardian *ad litem* (GAL) in this case and had submitted a final report and recommendation to the circuit court and to the parties. Sholar first met with Amanda and J.S. in December 2014.

She subsequently met with Brady and his mother, as well as Amanda's mother. She indicated that she sent numerous emails attempting to meet with Brady with J.S. present so she could witness their interaction—as part of her routine practice as a GAL—but the meeting never occurred. Sholar testified that there was also an occasion when she was scheduled to observe Brady with J.S. at Dr. Clipper's office, but the appointment was cancelled and never rescheduled. Accordingly, she had never seen Brady and J.S. together. She attested that she had given Brady ample opportunity to meet with her, but her attempts were unsuccessful. She testified that she ultimately requested the meetings to occur at the courthouse because Brady was "combative and I wasn't comfortable meeting with him in my office." She explained that the tone of his emails was combative, as were phone calls to her staff. Sholar stated in particular that a paralegal answered Brady's call and "came back to me in tears because he was screaming at her and cursing at her. He was just combative in general in the courtroom, so I was uncomfortable meeting with him alone in my office."

¶ 26 Sholar testified that Brady attempted on at least two occasions to remove her as GAL but the circuit court denied the requests. J.S. was six years old when Sholar first met with her. She described J.S. as very shy, precocious, active, and busy. She noted that J.S. was very attached to Amanda and did not want to be left alone in the room to speak with Sholar. Sholar testified that she could not convince J.S. to open up with her. Accordingly, she relied on subsequent interviews with J.S.'s counselor to gain additional information. Sholar explained that the counselor was "concerned that [J.S.] suffered from a real serious separation anxiety from [Amanda.] And knowing that [Brady] lived in

Florida, she was very concerned about [J.S.] visiting [Brady] for extended periods of time because of the separation anxiety and because of the stress that it would put on [J.S.]"

¶ 27 Sholar testified that she also relied on the report of the court-appointed psychologist, Dr. Clipper, and used that as a basis for her report and recommendation because he "has the medical and the psychological training and background that I don't have in terms of the dynamics of the relationship." She added that his anticipated diagnosis of Brady was helpful, as were the updates she received from Dr. Clipper's meetings with J.S. and Amanda after she had met with them. Sholar indicated that, like herself, Dr. Clipper was unable to meet with Brady and J.S. together, notwithstanding the opportunities to do so. Sholar was aware that Brady was abrasive with Dr. Clipper's staff regarding the scheduling of appointments. She stated that Dr. Clipper eventually lost all contact with Brady. Sholar testified that the projected diagnosis Dr. Clipper reported for Brady was narcissistic personality disorder. She emphasized that Dr. Clipper also noted J.S.'s attachment with Amanda and that he was concerned that Brady would not accept limitations and boundaries. Sholar agreed. She opined that Brady is unable to control his impulses and that would have an impact on J.S.

¶ 28 Sholar testified pursuant to two sections of the Illinois Marriage and Dissolution of Marriage Act, one regarding parental decision making (750 ILCS 5/602.5 (West 2016)) and the other regarding parenting time (750 ILCS 5/602.7 (West 2016)). Sholar recommended that Amanda be granted sole decision making responsibility because of the parties' "high conflict" divorce, the wide geographic distance between the parties, the threats of violence and harassment, the current order of protection, and the parties'

inability to communicate effectively to share joint decision making. Sholar added that J.S. has resided primarily with Amanda since 2012, and she is stable, secure, and doing well. Sholar indicated that Dr. Clipper also recommended that sole decision making should rest with Amanda.

¶ 29 Regarding Brady's parenting time, Sholar reiterated that she had not been able to witness any interaction between J.S. and Brady. She reported having significant concerns about Brady's aggression toward Amanda and opined that he would be unable to refrain from saying negative or hostile things about Amanda in J.S.'s presence. She further noted that Brady had not visited with J.S. in over a year and, until they rebuild a relationship and she can witness a healthy interaction between Brady and J.S., all parenting time should be supervised. Sholar opined that it is not in J.S.'s best interest for Brady's mother to serve as a supervisor for parenting time because she cannot control Brady and she minimizes his behaviors.

¶ 30 Brady took the stand, *pro se*, and presented six photo albums to the court as Group Exhibit Number 1. Amanda's counsel objected to the exhibit because it had not been provided in discovery nor were there any copies available for review during the proceedings. The circuit court reserved ruling on the objection, and noted a continuing and ongoing objection to any reference to the exhibit. Brady testified at length regarding the photos, which depict various occasions and instances of him and J.S. interacting. He began by describing each photo in detail. Given the voluminous nature of Group Exhibit Number 1, Amanda's counsel again objected. The circuit court responded by instructing

Brady that he was not required to describe every photo, but if there were certain photos he wished to highlight, that was permissible.

¶ 31 Besides describing the photos themselves, Brady testified that the parties had a "strange marriage with lots of different conflicts." He pointed out that he spent over a year away from J.S. when he was deployed. He recalled the day he came back and J.S. "didn't even want me. And I cried that day. And she was 22 months old that day." Brady testified that it was so difficult being away from J.S. while he was deployed that he decided to utilize the GI Bill to go to school and get a different job to allow him more time with J.S.

¶ 32 Brady testified that when Amanda's father was diagnosed with cancer, the parties discussed Amanda and J.S. moving to Illinois and "discussed [J.S.'s] well-being at great length." Brady observed that the parties argued a great deal, but when it came down to it, he was a full-time student while working and his school was an hour away from his residence after the parties initially separated. Accordingly, Brady knew that if J.S. stayed with him, she would "have spent ridiculous amounts of time in child care and possibly still travel also." Brady testified that after a month of arguing, it came down to what was best for J.S. Accordingly, the parties agreed that Amanda would move back to Illinois with J.S. Brady claimed that this was only a temporary arrangement and he understood that they would move back after Amanda's father passed away. Brady testified that after Amanda's father passed away, "I never brought it up because I knew that I didn't know what Amanda was going through at all. I still had both of my parents. I had no idea what she was going through. And I didn't say anything."

¶ 33 Brady testified that he traveled to Illinois 10 to 12 times and J.S. came to Florida twice. He noted that the parties spent Christmas 2012 together with J.S., as well as his graduation and J.S.'s fifth birthday. The parties were separated at that point, but cooperated in being together so J.S. could be a part of the events. Brady testified that when he had a break from school in December 2013, "Amanda didn't want [J.S.] to be around my new girlfriend *** [a]nd she told me that if I didn't travel to Illinois by myself that she would not allow me to see [J.S.]"

¶ 34 After going through the six photo albums, Brady testified that when the parties separated they did not like each other, did not want to be with each other, and "I probably even hated her in the moment that I left her." Notwithstanding these facts, Brady maintained that the photos show that the parties encouraged each other to have a relationship with J.S. Brady claimed that the parties previously agreed that he was to leave with J.S. on the day the police were called, but Amanda "backed out on this agreement." He acknowledged the order of protection, but claimed there was no violence or abuse. He further acknowledged the text messages he sent, but contended "that I wasn't just blindly swearing and cursing at Amanda. Amanda was refusing me the right to see [J.S.]" Brady alleged that Amanda filed for the order of protection under false pretenses. Regarding the photo with the bruises on J.S.'s buttocks, Brady admitted the bruises were caused by him spanking J.S., but he emphasized that there was no DCFS report correlative to the incident. He testified, "I did spank [J.S.] I did bruise her. I did not abuse her."

¶ 35 Brady testified that he provides for J.S. while being a student and a single dad in the midst of attorney fees and travel costs. He opined that Amanda was a good parent until she started making decisions to alienate him from J.S., and he maintained that his "rude texts" were in reaction to "Amanda's behavior to keep [J.S.] and I apart." Brady testified that Amanda thinks she should raise J.S. by herself and that the circuit court "set up a system of failure" by establishing required times for him to call J.S. He stated that "a child doesn't talk at a prescribed time." He further stated that "[s]ince this Court has been involved, I've had zero knowledge of [J.S.'s] life basically."

¶ 36 Brady testified that the parties' attempts to work out the details of his court-appointed parenting time with J.S. resulted in arguments. He elaborated that "it takes two people to argue. I mean, I don't start conversations with Amanda just swearing at her. I would really love to. Not that it would get me anywhere; it would just feel good. But, it takes two people to argue." Brady then proceeded at length to express disdain for the contents of Dr. Clipper's report.

¶ 37 Brady testified that his Florida conviction—like the disparaging text messages he sent to Amanda—was a reaction in response to a disagreement he had with his previous girlfriend. Regarding the confrontation at the mediator's office, Brady said the police were called in response to an altercation with the secretary regarding the appointment time and that he traveled all the way from Florida to attend mediation, only to have the appointment cancelled because the secretary informed him that he was late. He admitted that "I was very angry," "and at some point in there I did swear at them," and "I slammed

the door out of disgust for them." He also characterized the incident at the mediator's office as "a reaction."

¶ 38 Brady testified that he failed to respond to requests about his GI Bill because it "is irrelevant to child support." Regarding his VA disability, he testified that it is "exempt from garnishment for child support" and "if this Court orders that, I will fight that. I will appeal it. And I will not stand for it. It's unlawful." After discussion on the topic, the circuit court stated, "It's something for me to research. I'll take a look at that." Brady's Exhibit Number 3 was then admitted into evidence, which is his response to Amy Sholar's report and recommendation.

¶ 39 Brady then called Amanda to the stand and asked her what life was like living at her mother's house while he was deployed. Amanda replied that it was fine, that she and J.S. hung out with her parents, played, enjoyed each other, had fun, and lived a "normal life." Brady asked Amanda why he requested that she seek employment after his deployment concluded. She responded that she was pregnant and he wanted more income so they could be more comfortable financially, but she opined that they were comfortable at the time and they "would have been comfortable without the added income." She testified that they had discussed before getting married that she would be a stay-at-home wife and mother and that he did not want her to work in the beginning but he changed his mind.

¶ 40 Brady asked Amanda how moving in with his parents changed her life. She answered that his parents both worked during the day so she and J.S. spent time alone while they worked, but her mother did not work so when she and J.S. lived with her

mother, the three of them were always together. Amanda testified that there were no positive changes in her life when she moved out of Brady's parents' house and back in with Brady after his deployment. Brady asked her why she moved back in with him, although he had already expressed interest in divorcing. She replied that she believed that they "could attempt to make our marriage work by some crazy miracle, I guess."

¶ 41 Amanda testified that when the parties first discussed her and J.S. moving to Illinois to help her mother care for her father, it was a "very rough conversation to you saying that you would make my life a living hell if I even thought about moving. You threatened to kill me at one point." Amanda added that when she suggested that Brady also move to Illinois, he refused because he does not like the weather, but she indicated that he eventually helped her move to Illinois.

¶ 42 Amanda described Brady as "uncontrollable," "unstable," and "unpredictable," and she never knows what to expect. She testified that she becomes fearful of Brady and fearful when J.S. is with him. She indicated that "sometimes I feel like I don't know if I'm going to see her again. Maybe she might do something to really upset you. Your personality is so far out there, I really wish you would get help." Amanda added, "I've tried working with you *** on multiple occasions, and I feel like I've been far more lenient than most people would. There's no working with you. *** [I]t's impossible. Trust me, I would love to not be in this setting, but this is impossible. You are impossible to work with."

¶ 43 Amanda testified that J.S.'s counselor diagnosed her with separation anxiety in the summer of 2014. She acknowledged that Brady was unaware that J.S. was receiving

counseling because the order of protection was active at the time. Amanda opined that "with time and [Brady] seeking help[,] [the parties] could eventually be able to some day cooperate" with regard to J.S. Amanda testified that, as noted in her position statement, she wants sole decision making responsibility of J.S. and Brady's parenting time with J.S. to remain supervised because "I don't feel comfortable with my daughter in your care at the moment" and "I feel that you are unstable, unpredictable, so I can't trust you. I'm fearful when my daughter is with you. It frightens me." Amanda added that she does not feel like Brady's mother is an adequate supervisor for supervised parenting time because she was "letting [J.S.] go off with [Brady] whereas the supervisor is supposed to be with them every time they're together." Amanda testified that J.S. told Dr. Clipper—while Amanda was not in the room—that Brady told her that he killed her two dogs, that Brady thought it was funny, and J.S. got very upset.

¶ 44 Kristi Biesecker testified that she and Brady met in June 2013, they dated until March 2015, and they had a child together. Kristi noted that she also has a 10-year-old daughter who Brady always treated as his own. Kristi testified that Brady keeps their daughter 60% of the time and she pays him \$200 per month in child support. When Kristi and Brady first met, her impression was that J.S. lived in Brady's apartment because she had her own room there and photos of her were in the home. Kristi testified that she was attracted to Brady because he was a father who talked about how much he loved and cared for J.S.

¶ 45 Kristi recalled Christmas 2013 when she and her daughter went with Brady to his family's home in Illinois. Kristi brought Christmas gifts for J.S. and expected J.S. to be

with them during their entire stay, but when they arrived at Amanda's home to pick up J.S., they were greeted by police cars and J.S. was not allowed to leave with them.

¶ 46 Kristi testified that, in observing Brady and J.S. interacting, she had never seen a father more caring, nor had she ever witnessed anyone put so much effort into maintaining a relationship. She stated that J.S. came to Florida for a three-week visit in July 2014 and the relationship between J.S. and Brady was strained for the first few days. Kristi noted that she was in her final month of pregnancy during that visit and J.S. was very excited about her sister's birth.

¶ 47 Kristi testified that she never felt that her two daughters or J.S. were at risk of harm with Brady and, although she is not longer romantically involved with Brady, he maintains a positive relationship with their daughter. Kristi agreed that Brady's home is absolutely sufficient for their daughters and they never lacked anything due to his limited finances. She added that she trusts Brady and his parents to care for her children in her absence.

¶ 48 The circuit court considered the testimony of the following additional witnesses for Brady: Kimberly Pierce, James Hammer, Tonya Hammer, Michelle Trambley, Brian Trambley, Bethany Haney, Lorraine Moreland, Timothy Smith, and Wanda Smith. The testimony of these witnesses is summarized as follows. They had all watched Brady and J.S. interact in various situations and never had cause to believe that J.S. was at risk of abuse by Brady. They never witnessed J.S. having anxiety with Brady or his family, and Brady and J.S. interacted normally. They described J.S. as happy, outgoing, and well-rounded and indicated that Brady puts J.S.'s needs before his own. They trusted Brady

with their children and never had cause to believe that they were at risk of harm from him. They thought J.S.'s time in Illinois was supposed to be temporary and would end when Amanda was no longer caring for her ailing father. All of the witnesses had not seen J.S. since the previous year or earlier, most were unaware that Brady had spanked J.S. and left bruises on her, most did not know whether Brady was paying child support, and most had no knowledge of the current court order allowing Brady only supervised parenting time with J.S. They all saw Amanda as a good parent.

¶ 49 In addition to the previously cited testimony of Brady's witnesses, Wanda Smith—Brady's mother—addressed Amanda's statement that J.S. is not safe with Brady and his family. Wanda testified that Amanda and J.S. moved in with her and Brady's father during Brady's deployment because Amanda "had problems living with her mom and dad, and there was a lot of conflict." She further testified that J.S. stayed "a few weeks" with her and her husband in 2011, approximately 10 weeks in 2012, and "extended weeks at a time" in 2013. Wanda added that J.S. "was happy if she knew she was going to our house" and that she "loved being home in Florida." Wanda noted that J.S. "was distressed about going back to Illinois" after visiting Brady's home in July 2014. Wanda opined that Amanda has not provided for J.S., because Amanda's mother has provided a home for her. Wanda agreed that she and her husband also assist Brady financially.

¶ 50 The circuit court took the matter under advisement and entered an order on August 10, 2016, in which the circuit court, *inter alia*, granted Amanda sole parental responsibility for decision making regarding J.S.'s education, medical treatment, religion,

and extracurricular activities, ordered supervised parenting time to Brady until further order of the court,³ and ordered Brady to pay Amanda \$350 per month in child support. Brady filed a timely notice of appeal. Additional facts will be added as necessary throughout the remainder of this disposition.

¶ 51

ANALYSIS

¶ 52 The following issues are presented on appeal: (1) whether the circuit court erred by granting sole decision making responsibility regarding J.S. to Amanda; (2) whether the circuit court erred in its determination regarding the allocation of parenting time between the parties; and (3) whether the circuit court erred in its child support award to Amanda.

¶ 53

I. *Decision Making*

¶ 54 We first determine whether the circuit court erred by granting sole parental decision making responsibility to Amanda. "On appeal, we give great deference to the trial court's best-interests findings because that court had a better position than we do to observe the temperaments and personalities of the parties and assess the credibility of witnesses." (Internal quotation marks omitted.) *In re B.B.*, 2011 IL App (4th) 110521,

¶ 32. "[A] reviewing court will not reverse a trial court's custody determination unless it

³The circuit court indicated that Brady would be granted unsupervised parenting time in the future if he fully complied with Dr. Clipper's evaluation and recommended treatments.

(1) is against the manifest weight of the evidence[;] (2) is manifestly unjust[;] or (3) results from a clear abuse of discretion." *Id.*

¶ 55 Section 602.5 of the Illinois Marriage and Dissolution of Marriage Act (Act) governs the allocation of parental responsibilities regarding decision making for the child in the areas of education, health, religion, and extracurricular activities. See 750 ILCS 5/602.5 (West 2016). The determination of the circuit court in this regard is rendered according to the best interests of the child. 750 ILCS 5/602.5(a) (West 2016). The best interest factors to be considered are enumerated in section 602.5(c) of the Act. 750 ILCS 5/602.5(c) (West 2016). In reviewing these factors, obviously each party desires to be granted sole parental decision making responsibility for J.S. (750 ILCS 5/602.5(c)(7) (West 2016)). We note J.S. was only seven years old at the time of the hearing. The circuit court opined in its order that J.S. lacks the maturity to reasonably express her preferences. See 750 ILCS 5/602.5(c)(1) (West 2016).

¶ 56 Regarding J.S.'s adjustment to her home, school, and community (750 ILCS 5/602.5(c)(2) (West 2016)), she has resided with Amanda in Illinois since 2012. The record reflects that J.S. is a happy, energetic child who is thriving in school, interacting well with family and friends, and participating in a variety of extracurricular activities. All of the evidence shows that J.S. is well-adjusted to living in Illinois with Amanda, and there is nothing in the record to suggest otherwise.

¶ 57 In reviewing the mental and physical health of all individuals involved (750 ILCS 5/602.5(c)(3) (West 2016)), the evidence shows that the parties have exhibited high levels of conflict since their separation. Brady did not successfully complete his evaluation

with Dr. Clipper, who opined that Brady exhibits narcissistic personality disorder and possible PTSD due to his deployment to Afghanistan. The record is replete with instances of Brady displaying ongoing hostile behavior toward many individuals, including Amanda, the circuit clerk's office, the mediator's office, the GAL, and a previous girlfriend in Florida. Because of Brady's ongoing belligerence toward Amanda, the circuit court extended a plenary order of protection through April 2018 and restricted Brady's parenting time with J.S. to be supervised until further order. We further note the testimony that Brady told J.S. that he killed her dogs and J.S. got upset, which Brady found humorous. We find these facts to call into question Brady's mental stability. As previously mentioned, J.S. suffers from separation anxiety while away from Amanda. There is no evidence in the record to give rise to any concern regarding Amanda's mental health, nor is there anything notable regarding the physical health of the individuals involved.

¶ 58 As established, the parties have had non-stop conflict since their separation and have shown no signs of being able to cooperate in any decisions regarding J.S. (750 ILCS 5/602.5(c)(4) (West 2016)). Moreover, a plenary order of protection is currently in place, prohibiting Brady from contacting Amanda. Accordingly, we find evidence from which the circuit court could determine the parties unable to cooperate regarding parental decision making.

¶ 59 Upon review of the level of each party's participation in past significant decision making with J.S. (750 ILCS 5/602.5(c)(5) (West 2016)), the evidence is sufficient to find that J.S. is well-bonded with Amanda and has a strong attachment to her, as well as to her

school, community, and extended family. Amanda has been J.S.'s primary caretaker since 2012. Prior to that, Amanda was her primary caretaker while Brady was deployed for 14 months. Regarding any prior agreements or course of conduct between the parties relating to parental decision making (750 ILCS 5/602.5(c)(6) (West 2016)), Amanda testified that Brady agreed to allow her and J.S. to move to Illinois, but Brady claimed that the parties agreed that the move would be temporary.

¶ 60 The record reveals evidence that most of J.S.'s needs have been met by Amanda (750 ILCS 5/602.5(c)(8) (West 2016)). Brady admittedly only gave Amanda one child support payment. Regarding the distance between the parties, the cost and difficulty to transport J.S., the daily schedules of all involved, and the ability of the parties to cooperate in any such arrangement (750 ILCS 5/602.5(c)(9) (West 2016)), the inconvenience of the distance between the parties and the expense of traveling back and forth was emphasized numerous times at the hearing. Amanda lives in Illinois and Brady in Florida. The circuit court could reasonably find this great distance makes co-parenting difficult and the lack of cooperation between the parties makes it impossible.

¶ 61 Regarding the willingness and ability of each party to facilitate and encourage a close and continuing relationship between J.S. and the other parent (750 ILCS 5/602.5(11) (West 2016)), Brady testified that when the parties separated they did not like each other, did not want to be with each other, and "I probably even hated [Amanda] in the moment that I left her." Notwithstanding these facts, Brady contends that the photos make it evident that the parties each encouraged the other to have a relationship with J.S. Although we acknowledge the photos in evidence, we are increasingly mindful

of Brady's behavior toward Amanda, the disparaging text messages in which he called her vile names and used vulgar language, and his demeanor toward her in court. We find this evidence indicative that Brady does not facilitate a close relationship between Amanda and J.S. Amanda informed Dr. Clipper that she attempted to encourage a relationship between Brady and J.S., but there was no testimony at the hearing to this effect. Amanda testified that she is afraid of Brady and an order of protection was in place at the time of the hearing and continues through April 2018. This suggests that it would be difficult for Amanda to facilitate a close relationship between Brady and J.S. However, Amanda did testify that, despite all of the difficulty with Brady, she has never said anything negative about him to J.S. and when J.S. says anything negative about him, Amanda corrects her. The circuit court could reasonably find that this factor favors Amanda.

¶ 62 In examining the physical violence or threat thereof by a parent against J.S. (750 ILCS 5/602.5(c)(12) (West 2016)), Amanda testified, Brady admitted, and a photo in evidence depicts the bruises that were left on J.S.'s buttocks after Brady spanked her. There are no further indications of physical violence by either party. Regarding any occurrence of abuse against J.S. or any other member of J.S.'s household (750 ILCS 5/602.5(c)(13) (West 2016)), an order of protection remains in place against Brady which prohibits him from contacting Amanda due to past harassment. Other than the bruising to J.S.'s buttocks—which seemingly was an isolated incident—there are no further facts in the record to show any abuse to J.S. by Brady. Nevertheless, evidence is sufficient for the circuit court to find that this factor favors Amanda.

¶ 63 The circuit court placed considerable emphasis on whether a restriction on decision making is appropriate under section 603.10 of the Act. See 750 ILCS 5/602.5(c)(10) (West 2016). See also 750 ILCS 5/603.10 (West 2016). Section 603.10 governs whether restriction of parental responsibilities is appropriate and allows the court to place restrictions on a parent's decision making and/or parenting time (750 ILCS 5/603.10(a)(1) (West 2016)). This section also allows the court to order supervision of a parent as needed (750 ILCS 5/603.10(a)(2) (West 2016)), to restrain one parent's communication with or proximity to the other parent or the child (750 ILCS 5/603.10(a)(4) (West 2016)), to require a parent to complete a treatment program for certain behaviors (750 ILCS 5/603.10(a)(8) (West 2016)), or to implement any other constraint as the court deems necessary (750 ILCS 5/603.10(a)(9) (West 2016)). The court may employ these restrictions if, after a hearing, the court finds that a parent engaged in conduct that seriously endangered the child's mental, moral, or physical health or significantly impaired the child's emotional development (750 ILCS 5/603.10(a) (West 2016)).

¶ 64 Here, there is sufficient evidence that restricting Brady's parental decision making is appropriate. As provided in the record, Brady displayed anger, bitterness, and manipulation on numerous occasions. The text messages he sent to Amanda were belligerent and degrading, and ultimately led to a suspension of his parenting time. Brady further admitted that he displayed anger and resentment toward Amanda after a court hearing by approaching her and standing in front of her in a threatening manner, notwithstanding the previously entered order forbidding him to intimidate, threaten, or

harass her. Besides aggression toward Amanda, Brady was convicted of stalking in Florida, he berated the GAL's staff on numerous occasions, the mediator contacted police to remove Brady from the building because of the display of hostility there, he was uncooperative with the GAL's investigation and unwilling to meet with Dr. Clipper, and he made several harassing phone calls to the circuit clerk's office which led to the circuit court forbidding any further contact with that office.

¶ 65 The circuit court observed that Brady exhibited "very troubling" behavior throughout the entire proceeding, that when things do not go his way "he uses vile language, aggressive actions, intimidating postures, and glares to try to force others to do what he wants." The circuit court emphasized that Dr. Clipper was appointed to conduct a psychological evaluation of the parties and J.S., but Brady never fully cooperated with Dr. Clipper. In particular, the circuit court admonished Brady to contact Dr. Clipper to complete the evaluation, but Brady never did so. Although Brady did not cooperate, Dr. Clipper reported:

"Brady presents in a rather paranoid manner, assuming and accusing all who deny him his wishes as ignorant and prejudices. His anger seems to escalate in situations whenever things don't go his way[.] I believe his current state of mind has little regard for the law and thus visitation away from Amanda and in another state is likely to be seen as his license to do whatever he pleases[.]"

¶ 66 As the GAL reported:

"[Brady] appears to be full of rage and unable to control his behavior, anger, or impulses. That is of the utmost *** concern to me, as [J.S.] is a young child, who

has not seen her father in nearly a year and suffers from separation anxiety. I have serious concerns for her safety and well being in her father's care if left unsupervised. Furthermore, *** I share Dr. Clipper's concerns that [Brady] 'has an inability to prioritize [J.S.] over his needs; his indifference to the child's strong attachment with [Amanda]; and dismissal of the perceptions and values of others, heightens his likely dismissal of rules and boundaries.' "

¶ 67 The circuit court found it appropriate to restrict Brady's parental responsibility of decision making because he engaged in conduct that seriously endangered J.S.'s mental, moral, or physical health or that significantly impaired her emotional development (750 ILCS 5/603.10 (West 2016)). Accordingly, the circuit court granted Amanda sole parental responsibility for J.S.'s educational training, medical treatment, religious training, and extracurricular activities. Based on the foregoing evidence, we find the circuit court's determination regarding the allocation of parental responsibilities is not against the manifest weight of the evidence, manifestly unjust, or an abuse of discretion. *In re B.B.*, 2011 IL App (4th) 110521, ¶ 32.

¶ 68

II. *Parenting Time*

¶ 69 The next issue raised on appeal is whether the circuit court erred in its determination regarding the allocation of parenting time between the parties. "[Parenting time] orders will not be disturbed on appeal absent an abuse of discretion." *In re Marriage of Ross*, 355 Ill. App. 3d 1162, 1167 (2005). The best interest factors to consider in the allocation of parenting time are set forth in section 602.7 of the Act (750 ILCS 5/602.7 (West 2016)).

¶ 70 The relevant factors in section 602.7 are the wishes of the parents (750 ILCS 5/602.7(b)(1) (West 2016)), the wishes of the child (750 ILCS 5/602.7(b)(2) (West 2016)), the amount of time each parent spent performing caretaking duties for the child in the previous two years (750 ILCS 5/602.7(b)(3) (West 2016)), any prior agreement between the parties regarding the child's caretaking (750 ILCS 5/602.7(b)(4) (West 2016)), the interaction of the child with her parents and siblings and any other person who significantly affects her best interests (750 ILCS 5/602.7(b)(5) (West 2016)), the child's adjustment to her home, school, and community (750 ILCS 5/602.7(b)(6) (West 2016)), the mental and physical health of all relevant individuals (750 ILCS 5/602.7(b)(7) (West 2016)), the child's needs (750 ILCS 5/602.7(b)(8) (West 2016)), the distance between the residences of the parents and the associated travel costs, the daily schedules of the parties, and ability of the parents to cooperate (750 ILCS 5/602.7(b)(9) (West 2016)), whether a restriction on parenting time is warranted (750 ILCS 5/602.7(b)(10) (West 2016)), the physical violence or threat thereof by the parent directed against the child or a member of her household (750 ILCS 5/602.7(b)(11) (West 2016)), the willingness of the parents to place the needs of the child ahead of their own needs (750 ILCS 5/602.7(b)(12) (West 2016)), the willingness of the parents to facilitate a close relationship between the child and the other parent (750 ILCS 5/602.7(b)(13) (West 2016)), and the occurrence of abuse against the child or other member of her household (750 ILCS 5/602.7(b)(14) (West 2016)).

¶ 71 Because these factors were reviewed in detail in the preceding section, we incorporate that analysis here, but add that Dr. Clipper opined that it is "highly unlikely

that [Brady] can be trusted with anything but supervised visitation" and the GAL expressed "serious concerns for [J.S.'s] safety and well being in [Brady's] care if left unsupervised." For the reasons set forth in the foregoing section, we find that the circuit court did not abuse its discretion in its ruling regarding the allocation of parenting time, particularly by ordering supervised parenting time to Brady until further order of the court, with the proviso that Brady will be granted unsupervised parenting time in the future if he fully complies with Dr. Clipper's evaluation and recommended treatments.

¶ 72

III. *Child Support*

¶ 73 The final issue on appeal is whether the circuit court erred in its child support award to Amanda. "The amount of a child support award is within the discretion of the trial court and will not be disturbed absent an abuse of discretion." *In re Marriage of Scafuri*, 203 Ill. App. 3d 385, 391 (1990). Brady claims that the circuit court "disregarded testimony and evidence of [his] income." We disagree. As the circuit court noted in its order, VA disability benefits may be considered in determining a child support award. See *Rose v. Rose*, 481 U.S. 619 (1987). Brady states in his brief that his income is \$1,775 per month in VA disability. That is precisely the amount used by the circuit court in calculating the child support award, pursuant to section 505 of the Act (750 ILCS 5/505 (West 2016)). In that section, 20% of a person's net income should be awarded as support for one child. The circuit court determined that Brady earns \$1,745.55 in VA disability benefits per month and awarded Amanda child support in the amount of \$350 per month, which is 20% of Brady's monthly income from VA disability benefits.

¶ 74 Brady also argues that the circuit court should have deviated from the child support guidelines in section 505 (750 ILCS 5/505 (West 2016)) because his "income is often short of his monthly bills." He cites legal fees, trips to Illinois, delinquent payments on personal property, travel costs, and household expenses as the cause of his insufficient income, and reports that he is required to obtain financial assistance from his parents to make ends meet.

¶ 75 We disagree that the circuit court should have deviated from the statutory guidelines. Brady presented no information about his finances to the circuit court, nor did he file a financial affidavit. The only financial data gathered was subpoenaed from his financial institution. Moreover, there were regular additional deposits from Brady's GI Bill, assistance from his parents, and education grants. The fact that there were additional monthly deposits indicates that the circuit court did, in fact, deviate down from the guidelines by not considering those additional amounts when calculating the child support award. For these reasons, we find the circuit court did not abuse its discretion in awarding child support equal to 20% of Brady's VA disability benefits and we affirm the amount awarded to Amanda.

¶ 76 **CONCLUSION**

¶ 77 For the foregoing reasons, we affirm the August 10, 2016, order of the circuit court of Madison County.

¶ 78 Affirmed.