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2017 IL App (5th) 160437-U

NO. 5-16-0437

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).

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<i>In re</i> MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
PAUL KELLY HUNSAKER,	)	Johnson County.
	)	
Petitioner-Appellee,	)	
	)	
and	)	No. 07-D-32
	)	
WANDA F. HUNSAKER,	)	
n/k/a WANDA F. GREER,	)	Honorable
	)	James R. Williamson,
Respondent-Appellant.	)	Judge, presiding.

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JUSTICE CHAPMAN delivered the judgment of the court.  
Justices Goldenhersh and Cates concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where the trial court did not err in denying a motion to conduct an *in camera* interview of a minor and in granting a motion to modify residential custody, we affirm.

¶ 2 The trial court entered a judgment dissolving Paul Kelly (Kelly) and Wanda Hunsaker's marriage in July 2007 after two years and eight months. During the marriage, Kelly and Wanda had one child, a daughter, named Kelsey. Kelsey was two years of age at the time of the divorce. The joint parenting agreement provided that Kelly and Wanda would share joint legal custody, with Wanda receiving physical custody subject to Kelly's

visitation rights. Subsequent to the entry of this joint parenting agreement, on September 24, 2009, and on July 21, 2014, Kelly and Wanda agreed to orders modifying custody and visitation. Wanda continued to have primary residential custody of Kelsey. On March 7, 2016, Kelly filed a petition to modify residential custody. This appeal involves the trial court's order granting this motion on September 6, 2016. Wanda appeals and asks us to reverse the trial court's order because the order is not in the best interests of the minor child and because the trial court failed to set forth its findings of fact in its written decision. For the reasons contained in this order, we affirm.

¶ 3

### FACTS

¶ 4

#### Joint Parenting Agreement

¶ 5 Kelly and Wanda agreed to joint custody. They also agreed to confer about important matters involving Kelsey's health, education, religion, disciplinary matters, unsupervised use of motor vehicles, and vacations with anyone other than the parents for more than 72 hours. Kelly and Wanda agreed that Kelsey should live with Wanda, and that Kelly would be able to exercise visitation rights every weekend from Friday through Sunday and every other Tuesday through Thursday. The agreement allowed Kelly two weeks of summer visitation. Kelsey would split the holidays between Kelly and Wanda. Kelly and Wanda also agreed to share all health care and educational information.

¶ 6

#### 2008 Petition to Modify

¶ 7 On May 2, 2008, Kelly filed a petition seeking to modify custody. He attached a supporting affidavit to his petition in which he attested that Kelsey's life was endangered by living with Wanda because her then husband, Michael S., was a convicted felon and

had been accused of sexually molesting Kelsey. Additionally, he alleged that Kelsey's health was not being well-managed in that she was occasionally ill when she arrived at his house for visitations—once with pink eye and once with pneumonia.

¶ 8 After discovery and after amended and counter petitions were filed, Kelly and Wanda agreed to an order modifying custody and visitation. In this September 24, 2009, order, the parties agreed to continued joint custody with Wanda having primary residential custody. Kelly's visitation schedule was modified in that he would have visitation every week from mid-day Thursday through mid-day Sunday. Both parties agreed to modify their work schedules in order to accommodate this visitation. The agreement also provided that if either party "is unable to care for the child during the scheduled custodial time period, the other parent should be offered the first option to be the babysitter for the minor child."

¶ 9 July 2014 Agreed Order Modifying Child Support and Visitation

¶ 10 On July 21, 2014, the trial court entered an agreed order. In this *pro se* order, Kelly and Wanda agreed to continue joint custody with Wanda as residential custodian. The parties modified weekend visitation in that Kelly would have three consecutive weekends, followed by Wanda having one weekend. The parties defined the weekend as Friday through Sunday, which could be extended by an extra day—Thursday or Monday—if Kelsey was on summer school break or a school holiday. This agreement also contained the provision that if "either party is unable to care for the child during their scheduled time period, the other parent is to be offered the first option to be the babysitter for the minor child." Kelly agreed to increase his weekly child support payments.

¶ 11

2016 Petition to Modify

¶ 12 On March 7, 2016, Kelly filed a petition asking the court to modify parenting time, residential designation for education, child support, and the income tax exemption. In response, Wanda filed a counterpetition asking the trial court to terminate joint custody and to limit Kelly's visitation time. In May 2016, Wanda filed a motion for an *in camera* examination of Kelsey. Kelly filed his proposed parenting plan with the court. Kelly suggested that the court suspend joint custody; appoint Kelly as residential custodian; appoint Kelly to make all major decisions—including education, religion, health, and extracurricular activities; order Wanda to pay child support; and to set a visitation schedule for Wanda.

¶ 13

Hearing on Petition to Modify—August 9, 2016

¶ 14

*Testimony of Kelly Hunsaker*

¶ 15 Kelly testified that he was 41 years of age; had been married to Michelle Dawn Hunsaker for the past 7 years; and that they had a 6-year-old daughter. Michelle had two other children who lived with them—two girls—one 17 and the other 12. They all lived in a house in Vienna. He worked as a general manager of a car wash located in Paducah, Kentucky. Michelle worked as a high school teacher at Vienna High School. Additionally, Kelly's parents and his sister, as well as his in-laws, all lived in close proximity in Vienna. Kelly testified that Kelsey adored her stepsister, Mia, who was 12 years old and that she got along well with Michelle and all of their children.

¶ 16 Kelly testified that he was formerly married to Wanda, and they had one child, a daughter named Kelsey. He and Wanda divorced when Kelsey was two years old. At the

time of the hearing, Kelsey was 11 years old and was enrolled for the sixth grade. Kelsey lived with her mother, Wanda. Wanda also had a 19-year-old son, Austin, who lived in the house but had not yet completed high school, and a girl named Lexie who was younger than Kelsey.

¶ 17 Kelly testified that Wanda frequently moved. As a result, Kelsey moved from one school to another. Kelly provided documents showing that Kelsey had only been in the same school for one full school year—in the fourth grade. Kelly expressed his concern that these frequent changes were causing Kelsey to do poorly in school—especially in mathematics. When they had visitation with Kelsey, his wife Michelle attempted to work with Kelsey to ensure that her homework was completed.

¶ 18 Kelly also testified that Kelsey frequently wore inappropriate clothing to school. The clothing was either inappropriate due to the weather at the time or inappropriate in that the clothing she wore violated school dress code. When Kelsey was enrolled in a Vienna school and went to school in inappropriate clothing, the office would contact Kelly's current wife's parents to bring proper clothing to school for Kelsey.

¶ 19 Kelly's issues with Wanda dominated his testimony. Kelly testified that Wanda had been married six times, and had lived with two boyfriends. On several occasions when Kelly had Kelsey for visitation, she was quite ill. This would occur on weekends when there was no ability to get Kelsey in to see her pediatrician. In these situations, Wanda did not provide medication or inform Kelly about whether or not Kelsey had seen her physician. Additionally, Kelsey had a long-standing history of allergy issues—with breathing and contact dermatitis. Kelly repeatedly asked Wanda to take Kelsey for

allergy testing so that she could potentially avoid the unknown allergens and receive treatment. However, Wanda refused to do so.

¶ 20 Kelly testified that Wanda refused to provide him information or paperwork about Kelsey's education, including parent-teacher conferences and report cards. He claimed that Wanda moved and changed Kelsey's school on at least one occasion without telling him. Additionally, he testified that Wanda would not provide him with her work schedule after he learned that she was working a night shift. The prior visitation orders provided him with the right to take Kelsey at any time that Wanda was not available—which he contended would include these night shifts. He did not know who was staying with Kelsey during these shifts, but suspected that it was her older stepbrother.

¶ 21 Kelly testified that Kelsey spent a lot of time sleeping when at his house. Kelly stated that Kelsey told him that she was tired because she spent many nights up waiting for her mother to come home. Kelly testified that he did not believe that Wanda was providing Kelsey with an adequate healthy environment in that she was not getting enough sleep and that she came to his house with existing hygiene issues and stained clothing. Additionally, earlier this summer, he and his family members noted that Kelsey's demeanor had changed. She had become reserved and would often stay by herself in her bedroom. She also had begun wearing only long-sleeved shirts in the summer.

¶ 22 Additionally, Kelly testified that during the summer of 2016 when he drove through the town of Metropolis (where Wanda and Kelsey lived), he saw his daughter walking alone with her younger half-sister in unsafe parts of town.

¶ 23 In the recent months before the August 2016 hearing, Kelly was having difficulty with his scheduled visitation weekends with Kelsey. Sometimes when he was scheduled to have Kelsey for the weekend, Wanda would advise him that Kelsey was having a sleepover with her friends at her house. For the four Friday evenings before the hearing, Wanda texted Kelly to advise that Kelsey did not want to go to his house for her visit, but that if Kelly "was going to make her," then she would meet him for the transfer.

¶ 24 Kelly testified that in his experience and observations of Kelsey during his visitation weekends, Kelsey seemed to be thrilled to spend time at his house. She did not act out while there and she did not ever want to leave.

¶ 25 Kelly testified that at Wanda's current house, Kelsey and her sister shared a bedroom. Kelly remodeled his house by converting the garage into additional bedrooms and a bathroom, so that Kelsey now has her own bedroom in his house. Kelly and Michelle allowed Kelsey to decorate the bedroom as she wished.

¶ 26 Kelly also testified that he was most concerned about the pressure he believed that Wanda was placing on Kelsey in light of his petition to change residential custody. While he did not necessarily oppose the court conducting an *in camera* interview of Kelsey about her preferences, he was concerned that Wanda coached Kelsey about what to say. In support of this testimony, Kelly introduced a photocopy of three text messages that Wanda sent to Kelsey on June 19, 2016. Wanda sent the following to Kelsey:

1. "And your [*sic*] threatening to tell your dad stuff to hurt me in court? If that is what you want to do go ahead. But know this, it will only hurt you and me. It won't hurt Bobby. It will give your dad full custody. I won't get to see you. You

won't get to see me or Austin or Lexie. And your dad will leave Michele in charge of you. She will decide what you get for school clothes and supplies. She will not let you have birthday parties or sleep overs. You will be stuck in Vienna all the time. So you better think long and hard about this before you do it. Plus you will have to live with what you did.

2. It really hurts my feeling when I say I love you but you don't say it back ... just saying[.]

3. Kelsey if you can [not] answer your phone when I call you I will not keep putting minutes on it[.]"

¶ 27

*Testimony of Michelle Hunsaker*

¶ 28 Michelle testified about the renovations to their house. She stated that Kelly converted the garage into more bedrooms plus a full bathroom, so that each child now has her own bedroom. She testified that all of the girls get along with each other.

¶ 29 Michelle has been a teacher for 19 years. She testified that when weekend visitation began during the school week, Kelsey would arrive with her school backpack and any homework that needed to be completed. Michelle and Kelsey could work on the homework together. In 2016, due to a modification of the visitation schedule, Kelsey no longer had weekend visitation beginning during the school week. From that point on, Michelle explained that they never saw Kelsey's backpack and thus she did not work with her on her homework, and Kelsey's academic grades worsened. She testified that Kelsey struggles with mathematics. Kelsey had academic needs-based testing during one of her school years, which documented her math deficiencies, but overall Kelsey was not in



need of an Individualized Education Program. Michelle testified that the school administration felt that Kelsey's academic deficiencies were the result of her living environment.

¶ 30 Michelle testified that on two separate occasions, Kelsey had come for visitation and been on her menstrual cycle. On both occasions, Kelsey told Michelle that she had asked Wanda for feminine products, but Wanda told her that she was too busy and so Kelsey used toilet paper.

¶ 31 Michelle also testified about the change in Kelsey's demeanor over the course of the summer of 2016. She testified that because of her educational background, she knew that something was amiss when Kelsey began wearing long-sleeved shirts about three weeks before the court hearing. She also noticed scratches on Kelsey's arm and asked her how she got the scratches. Kelsey told Michelle that the cat scratched her, but ultimately admitted that she had attempted to cut herself. She asked Michelle not to tell Wanda because Kelsey had made these attempts at Wanda's house. Michelle testified that in her experience and educational training, "cutting" can lead to depression and even suicide. She testified that she was willing to get Kelsey counseling if needed.

¶ 32 Michelle testified that Kelsey told her that she was afraid of Wanda's current live-in boyfriend, Robert Pena.

¶ 33 Michelle also confirmed Kelly's testimony about Kelsey's health including the lack of allergy testing and inadequate sleep at night. She also confirmed that Kelsey frequently went to school wearing inappropriate clothing. She testified that if the court

allowed Kelsey to live with them, that they would provide consistent rules, expectations, schooling, and a bedtime routine.

¶ 34 *Testimony of Krista Huckleberry*

¶ 35 Krista Huckleberry testified that she is Kelly's sister and works at Vienna High School as a licensed practical nurse for special needs children attending the school. She lives near Kelly and Michelle and testified to the numerous family gatherings at which she has had the opportunity to observe Kelsey in the company of her stepmother and sisters. She testified that she had not witnessed anything suggesting that she did not like her father or her stepmother, and testified that Kelsey and her stepsister Mia were very close.

¶ 36 Krista also testified that during the summer of 2016, she had witnessed Kelsey's weight loss, social withdrawal, and change of clothing to long-sleeved shirts. These changes concerned Krista because her own daughter, then 18, had also gone through a similar process, and had been a "cutter." Krista testified that Kelsey would not tell anyone why she was "cutting."

¶ 37 *Testimony of Wanda F. Greer*

¶ 38 Wanda testified that she was 38 years old, lived in Metropolis since Christmas 2015, and worked for Saline Care Center in Harrisburg as a licensed practical nurse. She started working five or six months before the hearing. Before that, she stayed at home with her children. Wanda testified that she currently worked three 12-hour shifts on Saturday, Sunday and Monday, but that if her employer needed her to work an extra shift, she would do so. She brought one paystub to court for the pay period ending June 28,

2016, which reflected that over the two-week pay period, she had worked 80 regular hours plus an additional 14.90 overtime hours, for a total of 94.90 hours—just short of 8 12-hour shifts.

¶ 39 Wanda testified that her boyfriend, Robert Pena, moved out of her house two weeks before the hearing, but that she was still dating him. She denied that Kelsey feared him.

¶ 40 On direct examination, Wanda testified that before Kelly married Michelle, she got along with him. She stated that Michelle did not treat Kelsey fairly, and that as a result, Kelsey did not get along with her stepmother. Wanda testified that she enjoyed her relationship with Kelsey and that the two of them frequently went shopping, to the movies, skating, and swimming.

¶ 41 Wanda testified that at some time in the past two years, Kelsey had problems with her stepsister, Mia, because Mia repeatedly hit her. She claimed that Michelle's response was that Mia was a "hitter." Eventually the hitting ceased. Wanda further stated that Kelsey would only get upset when she did not want to go to Kelly's house. She testified that Kelsey was afraid of sleeping in her garage bedroom and that she only acted otherwise with Kelly because she did not want to hurt his feelings. Although Mia also had her bedroom in the garage, she was often not there on Kelsey's visitation weekends because Mia had visitation with her own biological father.

¶ 42 Wanda testified that she had never seen Kelsey wear inappropriate clothing except for a pair of "short shorts" she received from her Aunt Krista Huckleberry's daughter. Wanda stated that she would not allow her daughter to wear these shorts unless she was

wearing them as bedclothes. She also testified that she had never received a telephone call from a school about her daughter's clothing.

¶ 43 Wanda responded to Kelly's testimony about Kelsey and Lexie walking unaccompanied in Metropolis. She explained that the area was close to her house; that the girls were going to a snow cone stand; and that she drove ahead and parked on the lot of the snow cone stand in order to allow the girls an opportunity to feel independent.

¶ 44 Wanda testified about the text messages she sent Kelsey in June 2016. She acknowledged that she sent them, but claimed the tone of the messages was an isolated incident. She testified that she was at work and Kelsey called her to tell her that she was going to spend the night at a friend's house. Wanda told her that she could not do so. So Kelsey asked if her friend could spend the night at their house. Wanda again told her that she could not do so. In response to the two rejections, Kelsey threatened to tell Kelly. Wanda felt that she was essentially being blackmailed by her daughter, and admitted that she was angry when she sent those texts.

¶ 45 Wanda admitted that she had not always notified Kelly about her night shifts, and acknowledged that he did have the court-ordered right to take Kelsey for those nights. However, she testified that he never asked about taking Kelsey on these nights. She also claimed that Kelly turned down opportunities to take Kelsey in the past when he had previously-scheduled events.

¶ 46 *Redirect Testimony of Kelly Hunsaker*

¶ 47 Kelly's attorney recalled him to testify about certain allegations Wanda made in her testimony. Kelly testified that he never turned down any visitation opportunity with

Kelsey—including summer visitation and any time when Wanda would not be home, such as her night shifts. He testified that when he learned Wanda was working night shifts, he texted her saying that he wanted to keep Kelsey during those shifts. Wanda would not allow him to do so.

¶ 48 Kelly also testified in response to Wanda's claim that she was waiting for Kelsey on the parking lot of the snow cone stand in Metropolis. Kelly acknowledged that Kelsey told him that they were going to this snow cone stand. However, he disputed Wanda's claim that she was waiting for the girls on the parking lot. Kelsey had not told him that Wanda was waiting for them, and Kelly never saw her vehicle there.

¶ 49 Kelly testified that he found it difficult to communicate with Wanda because she was not truthful.

¶ 50 Kelly denied Wanda's claims that Kelsey did not get along with her sisters or that she did not like her bedroom.

¶ 51 *In Camera* Interview

¶ 52 At the close of evidence, Wanda repeatedly asked the trial court to interview Kelsey. Judge Williamson denied her requests, stating that:

"This testimony has shown me that this child has some serious issues without me talking to her. I feel like, particularly from [the text messages from Wanda to Kelsey], that I am not sure how beneficial it would be for me to interview this child. \*\*\*

\* \* \*



¶ 57

## LAW AND ANALYSIS

¶ 58 Failure to Comply With Two-Year Rule for Filing Modification Petition

¶ 59 This case began with Kelly's motion seeking to modify residential custody of his daughter. Pursuant to section 610.5(a) of the Illinois Marriage and Dissolution of Marriage Act (the Act) (750 ILCS 5/610.5(a) (West 2016)), a party seeking modification can do so after the passage of two years from an earlier court order, unless application is made to and granted by the court to do so earlier. Here, Kelly filed his petition to modify in less than two years. From our review of the record, we do not find any agreement between the parties or a motion for leave to file the modification petition in less than two years. Therefore, Kelly's motion was on its face premature. However, Wanda did not raise this argument in the trial court, and therefore acquiesced in the process. Wanda initially raises this issue on appeal.

¶ 60 In Illinois, an appellant cannot raise an issue for the first time on appeal if the appellant failed to raise that issue in the trial court. *Haudrich v. Howmedica, Inc.*, 169 Ill. 2d 525, 536, 662 N.E.2d 1248, 1253 (1996). It is well-settled that the issue initially raised on appeal is either waived or forfeited. *Pinske v. Allstate Property & Casualty Insurance Co.*, 2015 IL App (1st) 150537, ¶ 18, 44 N.E.3d 495. " 'Waiver' means the 'voluntary relinquishment of a known right,' and 'forfeiture' means 'the failure to make the timely assertion of the right.' " *Id.* (quoting *People v. Blair*, 215 Ill. 2d 427, 444 n.2, 831 N.E.2d 604, 615 n.2 (2005)).

¶ 61 We do not know whether Wanda and her attorney agreed to the untimely filing, and arrive at no conclusion on whether Wanda waived the issue. However, we find that

Wanda has forfeited her right to raise the issue because she did not raise this issue in the trial court. Waiver and forfeiture rules serve as a warning to the parties rather than a limitation on the appellate court's jurisdiction. *Id.* ¶ 19; *American Federation of State, County & Municipal Employees, Council 31 v. County of Cook*, 145 Ill. 2d 475, 480, 584 N.E.2d 116, 118 (1991). We have the ability to relax the harsh effects of waiver and forfeiture if we feel that the particular issue would aid in maintaining a uniform body of precedent or if the interests of justice require the issue's consideration. *Pinske*, 2015 IL App (1st) 150537, ¶ 19, 44 N.E.3d 495; *American Federation of State, County & Municipal Employees, Council 31*, 145 Ill. 2d at 480, 584 N.E.2d at 118-19.

¶ 62 We do not find that reversing the order would aid in maintaining a uniform body of precedent. Additionally, we find that justice does not require us to reverse the trial court's order of modification. First, an Illinois appellate court has recently held that the statutory two-year time period in section 610.5(a) of the Act runs from the original custody order—not from any agreed-to modification order that did not make any material changes. *In re Marriage of Wendy L. D.*, 2017 IL App (1st) 160098, ¶¶ 69-72, \_\_\_ N.E.3d \_\_\_. Furthermore, even if the earlier modification order could be construed as making "material changes" to the custody order instead of simply making an adjustment, we find that to reverse the trial court's order modifying residential custody would only impede judicial economy and the underlying need for an expedited process in custody matters. Now, more than two years have passed since the earlier July 21, 2014, modification agreement and court order, and Kelly would have the statutory right to file a



petition. Sending this case back to the trial court would not serve the best interests of the child as it would further delay this process.

¶ 63 *In Camera* Interview of Minor Child

¶ 64 Wanda next claims that the trial court committed reversible error because the court declined to interview Kelsey. We disagree with this argument. Section 604 of the Act (750 ILCS 5/604.10(a) (West 2016)) provides that the court "may interview the child in chambers to ascertain the child's wishes as to the allocation of parental responsibilities." Nothing in the statute requires the trial court to interview the child. The decision to conduct an interview is solely in the trial court's discretion. Here, the court explained that it believed that an interview would not be productive in light of the text messages Wanda sent to Kelsey. Those messages contained specific threats about what Kelsey's life would be like if she permanently lived with her father. The court declined Wanda's petition to interview Kelsey in part because it was concerned that there would be no way to determine the veracity of Kelsey's testimony. Accordingly, we find that the court's decision denying Wanda's petition was well within its judgment.

¶ 65 The Best Interests of the Minor Child

¶ 66 A trial court must modify a custody order "when necessary to serve the child's best interests if the court finds, by a preponderance of the evidence, that on the basis of facts that have arisen since the entry of the existing [order] \*\*\* a substantial change has occurred in the circumstances of the child or of either parent and that a modification is necessary to serve the child's best interests." 750 ILCS 5/610.5(c) (West 2016).

¶ 67 To determine the best interests of the child for purposes of allocating parenting time, the trial court must consider all relevant factors, including:

"(1) the wishes of each parent seeking parenting time;

(2) the wishes of the child, taking into account the child's maturity and ability to express reasoned and independent preferences as to parenting time;

(3) the amount of time each parent spent performing caretaking functions with respect to the child in the 24 months preceding the filing of any petition for allocation of parental responsibilities or, if the child is under 2 years of age, since the child's birth;

(4) any prior agreement or course of conduct between the parents relating to caretaking functions with respect to the child;

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

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

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

(8) the child's needs;

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

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

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

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

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

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

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

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

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

¶ 68 On appeal from a custody decision, the court will not set aside the trial court's judgment unless the judgment is against the manifest weight of the evidence. *Marriage of Wendy L. D.*, 2017 IL App (1st) 160098, ¶ 76, \_\_\_ N.E.3d \_\_\_; *In re Marriage of Gambla*, 367 Ill. App. 3d 441, 463, 853 N.E.2d 847, 865 (2006). A judgment contrary to the manifest weight of the evidence is one where "the opposite conclusion is apparent or

when the findings appear to be unreasonable, arbitrary, or not based upon the evidence." *Marriage of Gambla*, 367 Ill. App. 3d at 463, 853 N.E.2d at 865-66. We must look at the evidence in the light most favorable to the parent who received the custody award. *Marriage of Wendy L. D.*, 2017 IL App (1st) 160098, ¶ 76, \_\_\_ N.E.3d \_\_\_; *Marriage of Gambla*, 367 Ill. App. 3d at 463, 853 N.E.2d at 866. On appeal, we afford a trial court's custody decision with a great amount of deference because the trial judge was able to judge the credibility of the witnesses who testified in his court. *Marriage of Wendy L. D.*, 2017 IL App (1st) 160098, ¶ 76, \_\_\_ N.E.3d \_\_\_; *Marriage of Gambla*, 367 Ill. App. 3d at 463, 853 N.E.2d at 866.

¶ 69 Procedurally, Wanda argues that the trial court's modification order is erroneous in part because the court did not state specific supporting facts in its order. However, section 602.7 of the Act does not mandate specific findings of fact. 750 ILCS 5/602.7 (West 2016). Furthermore, compliance with consideration of best interests factors is established when the record contains "sufficient evidence concerning the specified factors." *Hollo v. Hollo*, 131 Ill. App. 3d 119, 126, 474 N.E.2d 827, 832 (1985) (citing *In re Marriage of Shedbalkar*, 95 Ill. App. 3d 136, 138, 419 N.E.2d 409, 410 (1981)). Finally, from our review of the record on appeal, we find that there was sufficient evidence put forth as to the best interest factors and that the court thoroughly considered the evidence and the factors in reaching its decision.

¶ 70 Wanda further contends that the trial court's order is erroneous because changing residential custody is not in the best interests of her daughter. We disagree. The key word used by the trial judge on the record was "stability." This is not a case of glaring

neglect or abuse. However, the lack of stability in Kelsey's life resulted in a substantial change of circumstances warranting a modification of physical custody.

¶ 71 Kelly and Michelle had been married for seven years as of the date of the hearing. They have lived in the same house throughout their marriage and have remodeled the house in order to have a separate bedroom for each child. Wanda has been married six times and has also lived with two boyfriends. The personal changes in Wanda's life have resulted in numerous residential moves. Kelsey has had to change schools because of these moves more than 10 times since preschool. The longest span of time Kelsey has been in one school was a little more than one year from fourth grade to part of fifth grade. From a review of the records produced, these changes in schools and curriculum have taken their toll. Report cards reflect that Kelsey struggles with math, and has also had difficulty with social studies and reading. Michelle has consistently worked with Kelsey on her homework over the years, and will continue to do so in order to help her improve.

¶ 72 Testimony at trial also reflected that Kelsey was not getting enough sleep and has had hygiene issues, both of which Kelly had witnessed during her weekend visitations.

¶ 73 Wanda had also allowed Kelsey to walk alone with her younger sister in areas of Metropolis that are not safe. Allowing her to walk alone in this area unnecessarily puts Kelsey at risk of harm.

¶ 74 While we commend Wanda for working as a nurse, we find that allowing Kelsey to stay at home alone, despite the presence of her 19-year-old stepbrother, to be problematic. First, Kelsey did not want to go to sleep until Wanda came home from work. Kelsey would also sleep an inordinate number of hours when at Kelly's house for

visitation. Second, Wanda never provided Kelly with his court-ordered right to take Kelsey on these nights when Wanda was not able to care for her child.

¶ 75 Finally, we also find that the custody modification was appropriate in light of recent events. Kelsey had become withdrawn, had begun to show signs of depression, and had been attempting to cut herself. Additionally, Wanda had sent text messages to Kelsey that were somewhat threatening in nature pressuring her to choose between parents in the upcoming custody hearing. Wanda's disparaging remarks about her father and stepmother are harmful to Kelsey's relationship with her father.

¶ 76 Considering all of the best interests factors, we find that the stability provided by modifying the residential custody order is of paramount importance. Wanda has been unable to work well with Kelly, and this failure has been detrimental to Kelsey. Conversely, we believe that Kelly will keep Kelsey's needs at the forefront of his life and will additionally support her relationship with Wanda and her siblings. We find no basis to conclude that the trial court's order was contrary to the manifest weight of the evidence.

¶ 77

#### CONCLUSION

¶ 78 For the foregoing reasons, the judgment of the circuit court of Johnson County is hereby affirmed.

¶ 79 Affirmed.