2018 IL App (2d) 180298-U
No. 2-18-0298
Order filed August 20, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF ISSAM ABU-GHALLOUS Petitioner-Appellee, and ERICA ABU-GHALLOUS (n/k/a Erica Runningdeer), Respondent-Appellant.	)))))))))))	Appeal from the Circuit Court of Du Page County. No. 12-D-1945 Honorable Neal W. Cerne, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Zenoff and Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court misinterpreted the parties' joint custody agreement. The children may not travel internationally absent a successful petition to modify the agreement.

¶ 2 The trial court granted appellee Issam Abu-Ghallous's petition to travel internationally with the minor children. It rejected appellant Erica Runningdeer's argument that the joint custody agreement allowed for domestic travel only. For the reasons that follow, we hold that the trial court misinterpreted the joint custody agreement. A successful petition to modify pursuant to section 610.5 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750

ILCS 5/610.5 (West 2017)) was necessary to change the terms of the agreement. The evidence at the hearing was insufficient to warrant modification of the agreement. We reverse and remand.

¶ 3 I. BACKGROUND

¶ 4 Issam and Erica married in 1999. They had two sons, born in 2004 and 2007. In January 2013, Issam petitioned for divorce. The parties engaged in mediation, but were unsuccessful. Each party wanted sole custody. The court ordered Dr. Robert Shapiro to perform a custody evaluation and make a report to the court.

¶ 5 According to Erica, Dr. Shapiro recommended that she receive sole custody. Allegedly, Dr. Shapiro reported that Issam was at risk to abduct the children, specifically to the Middle East or Palestine.[1] Issam does not deny that the report so stated. However, the report is not in the record, because, in the instant proceedings, the trial court denied its admittance.

¶ 6 Following Dr. Shapiro's report, the parties compromised on a joint custody arrangement, whereby Erica was the residential custodian subject to Issam's generous visitation, and, among other terms, Issam was not to take the children out of the country. The agreement was set forth in a joint custody agreement, attached to the judgment of dissolution. We detail its most relevant terms below.

¶ 7 A. The Joint Custody Agreement

¶ 8 As to regular-schedule parenting time, the children would reside primarily with Erica. However, the boys would stay with Issam every Tuesday; every other weekend, from Thursday

[1] Throughout this order, when we say Palestine, we recognize that the Palestinian Authority is a governmental body that governs various territories within the region known as Palestine.

at 8 a.m. or after school, whichever was earlier, to Sunday at 8 p.m.; and, on off-weekend weeks, every Thursday at 8 a.m. or after school, whichever was earlier, through Friday morning. In other words, the boys stayed with Issam between two and five days per week.

¶ 9 As to vacation-schedule parenting time, most critical to this appeal, the agreement provided:

> "[5D.] The extended parenting/vacation schedules *shall be exercised within the United States*. Neither party shall remove the children from the State of Illinois temporarily for extending parenting/vacation time without the express prior written consent of the other party. Neither party shall unreasonably deny the other party the ability to take the children to another state within the continental United States. ***.
>
> i. during any period of extended parenting/vacation time, the parties agree that they each shall have telephone contact with the minor children at all reasonable times and places, and shall be provided the children's destination, flight information/travel itinerary, telephone numbers and addresses where he or she can be reached during his/her extended parenting/vacation times ***.
>
> ii. *International travel with the minor children shall be reserved*." (Emphases added.)

We term these the "domestic-travel" and "reservation" provisions.

¶ 10 The agreement also stated as to travel:

> "[5I.] 14. *Neither parent shall attempt to renew the children's United States, or other, passports* without prior written consent of the other party. At present, [the mother's attorney] has possession of the children's United States and Palestinian passports, and [*the mother's attorney] shall continue to hold said passports in trust* for

the parties absent written instruction signed by both parties, or court order, requiring the transfer or relinquishment of said passports to either party or another.

15. *Neither party shall allow the children to board an aircraft of any kind* that leaves the ground without prior written consent of the other parent (sitting on a small stationary aircraft, such as at a museum or during the annual Bolingbrook air show, is allowable without prior notice)." (Emphases added.)

We term these the "passport" and "consent-to-board" provisions.

¶ 11 As to the children's faith and culture, the agreement provided that the children's diverse heritage, which included Palestinian, Polish, and Native American cultures, would be respected and celebrated. While the children may be exposed to many cultures, the children would be raised Muslim. There would be no romantic overnight visits with members of the opposite sex during the parties' respective parenting times.

¶ 12 As to dispute resolution, the agreement provided: "[4.]Both parties agree to attempt to resolve any disputes through mediation and to only use court proceedings as a last resort. [Each party retains the right to make day-to-day decisions.]"

¶ 13 As to periodic review, the agreement provided: "[9.] This Joint Custody Judgment shall be reviewed annually, at the request of either party."

¶ 14 Also of note, the dissolution judgment stated that Erica's annual income was $80,000 per year at Rush University. Issam, who has an advanced degree in finance and accounting, and was working toward a Ph.D., earned $14,000 per year. Nevertheless, Issam waived maintenance. He was the non-custodial parent, albeit with generous visitation, and he did not receive child support. He did not pay child support, but, should his income ever exceed $30,000, Erica would be permitted to move for child support.

¶ 15 The parties agreed to split their modest assets equally, including each party's accrued retirement benefits. Issam reimbursed Erica $30,000 for her equity in the marital residence. Issam continued to live in the marital residence, which had a remaining mortgage of $128,000.

¶ 16 B. Post-Decree Motions and Rulings

¶ 17 In April 2014, Issam petitioned to modify residential custody, because Erica was planning to move from Lombard, where she lived within two miles of the marital residence, to Oak Park. Issam claimed that the commute between the two suburbs was 45 to 65 minutes. Further, he argued that his older son, who had recently been diagnosed with autism spectrum disorder, would not be able to adapt to a new environment.

¶ 18 Erica moved to strike and dismiss Issam's petition. The joint custody agreement contemplated a move within 20 miles, so long as the boys completed the 2013-2014 school year in Lombard. The anticipated 2014 move to Oak Park met those terms. The trial court agreed, and it struck and dismissed Issam's petition.

¶ 19 On August 25, 2014, Erica petitioned for an order of protection against Issam. In it, she alleged the following. In a recent custody exchange, she walked the children to Issam's car. She handed Issam a check, and an argument ensued. Issam ran over her foot. Issam used the custody exchanges to control and harass her. He often would not "release" the children until she came to him. Other times, he walked into the foyer of her building, even though she has told him not to enter her building. When he did this a second time, she called the police. During the marriage, Issam repeatedly stated that he fantasized about killing her. In May 2012, he used a firearm to intimidate her. In August 2012, she obtained a different order of protection, which she allowed to expire after speaking with Issam's healthcare provider. In closing, she wrote: "[Issam's] behavior is increasingly antagonistic and I fear for my life."

¶ 20 On August 25, 2014, the trial court granted an emergency order of protection, ordering "no contact by any means." The court scheduled a hearing for September 15, 2014.

¶ 21 On September 15, 2014, rather than submit to a hearing, the parties entered into an agreed order enjoining either party from committing acts of physical abuse, harassment, interference with personal liberty, or stalking. Except in an emergency, the parties were to communicate only in writing, via text, e-mail, or other written means. The parties were to confine the subject of their communications to the children and the mortgage on the Lombard residence. The court approved the agreed order and vacated the emergency order of protection.

¶ 22 In November 2014, Erica petitioned to modify visitation terms. Erica requested that, during custody exchanges, the boys, then ages 7 and 10, be allowed to walk by themselves from the street to the front door, while one parent watched from the car and one parent watched from the front door. The transfers occur in safe, middle-class neighborhoods. She again alleged Issam had been using the transfers to control and harass her.

¶ 23 Issam moved to dismiss Erica's petition to modify visitation terms. He argued that *she* was using the petition to harass *him*. Also, the joint custody agreement required the parties to submit to mediation before seeking a modification with the court.

¶ 24 In January 2015, the court ordered that the parties submit to mediation regarding the issues contained in Erica's petition to modify. Apparently, mediation was not successful, because, in October 2015, the trial court conducted a hearing on the issue. The court denied the motion. However, it did order new rules for exchanging the children. Issam may walk the children to the front door. Erica or another competent adult will text Issam that she is ready to receive the children. The children may enter the home alone and wave to Issam from the window.

¶ 25 In April 2015, Issam's attorney withdrew, citing a breakdown in communication. Issam retained different counsel for approximately one year before choosing to act *pro se*.

¶ 26 In August 2016, Issam, *pro se*, petitioned for rule to show cause. He alleged the following. Erica violated the rules for exchange. Issam had been requesting the presence of police during exchanges to avoid false accusations by Erica. During one exchange, Erica waited five minutes before letting the boys inside the home. One boy urgently needed to use the bathroom, so Issam opened the door. When Erica yelled at Issam for opening the door, the police officer who had been facilitating the exchange explained to Erica that the boy needed to use the bathroom.

¶ 27 Issam also alleged that Erica violated the terms of the joint custody agreement by failing to provide the precise location of the boys during her three-day trip to Michigan. Erica informed Issam that she would be taking the boys to Michigan the next day. However, when Issam asked Erica for the exact address, Erica did not reply to his text message. Issam went to the police station to inform them of, in his words, this "extreme matter of safety and wellbeing of the children." An officer called Erica and she provided the precise location.

¶ 28 Finally, Issam alleged that Erica violated the terms of the joint custody agreement by allowing an overnight stay by a member of the opposite sex during the trip to Michigan. Also, on a different occasion, the boys saw a man sleeping in Erica's bedroom. This was very stressful and confusing to them.

¶ 29 Erica responded, denying the allegations. The court determined that, as to the exchange, a technical violation occurred, but it would not find Erica in contempt. As to the remaining allegations, the trial court denied the petition without comment.

¶ 30 In November 2016, Erica petitioned for rule to show cause. She alleged that Issam had not been contributing to fees associated with the boys' health insurance or out-of-pocket expenses. To date, his share was $2,700. The court ordered Issam to pay $2,351, but declined to find him in contempt.

¶ 31 Also in November 2016, Erica petitioned to modify child support. She argued that Issam, who had a Ph.D. in finance and international development, purposefully remained underemployed. He now earned less than $10,000 per year (working part-time at a community college). He lived off of the "largesse of his friends." Erica asked that the court impute an income of $60,000 to him and order that he pay $1,400 per month in child support. The court denied the petition, finding no substantial change in circumstance and pointing to "the wording of the [joint custody agreement]," which allowed Erica to move for child support only upon Issam's earning of more than $30,000.

¶ 32 C. The 2017 Petition for International Travel

¶ 33 In 2017, Issam petitioned for international travel to Poland. The trial court granted the request. However, the trip never took place. Erica filed a motion to reconsider, and the subsequently placed restrictions on the trip were not timely satisfied. The 2017 petition is not directly at issue here. However, we detail the 2017 petition and its outcome as context for the instant case.

¶ 34 On March 2, 2017, Issam, *pro se*, petitioned for the release of the children's passports for summer vacation. In his petition, Issam recounted that the joint custody agreement had "reserved" the issue of international travel. Erica declined to release the boys' passports where they were held in trust by her former attorneys.[2] Issam asked the court to order the release of the

[2] The passports continued to be held by Erica's former attorneys, the Taradash law firm,

U.S. passports and allow for their renewal. He explained that he planned to take the children to Poland to visit a very close friend, Malgorzata Stachyra, and he noted that Poland is a member of the Hague Convention. See *Abbot v. Abbott*, 560 U.S. 1 (2010) (citing the Hague Conference on Private International Law, Fourteenth Session, Final Act, done at The Hague, October 24, 1980; Convention on the Civil Aspects of International Child Abduction, Oct. 24, 1980, T.I.A.S. 11670 (a primary purpose of which is to enforce the return of a child abducted in violation of a right of custody to the child's country of habitual residence)).

¶ 35 On March 13, 2017, Erica responded that her refusal was not without justification. She believed that the trip to Poland was a ruse to flee with the children to the Middle East. While she recognized that Poland was a member of the Hague Convention, she did not believe that the authorities in Poland would be able to stop Issam from continuing on to the Middle East. Once in the Middle East, it would be difficult to extradite the children, who have Palestinian passports. Erica alleged that Issam had made numerous attempts to seek Erica's consent to a trip to the Middle East. He also had threatened that he would flee with the children and never return. In addition to past threats, Issam's "constant" under- and non-employment made him a flight risk.

¶ 36 On April 7, 2017, the trial court granted Issam's petition. The transcripts do not appear to be in the record.[3] The court entered the following handwritten order:

> "American passports are to be released to [Issam] ***; for travel with children to Poland and to be [illegible word], [Issam] provide a detailed itinerary; children are not allowed to

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even though attorney Thomas Benno represented her in post-decree travel issues and on appeal.

[3] Issam attached a portion of the transcripts to his brief. There, the court stated that the joint custody agreement did not prohibit international travel. And, Erica did not prove that Issam was a flight risk, because her accusations amounted to name-calling.

travel outside of stated itinerary; [Issam] to *issue a quitclaim deed to his interest in his home as bond for the children's safe return*; [Issam] to register children with U.S. Embassy." (Emphasis added.)

¶ 37 On May 5, 2017, Erica moved to reconsider. She argued that the trial court's order violated the terms of the joint custody agreement, which, in her view, forbade international travel. Erica recounted that she had bargained for this term as a result of Dr. Shapiro's report, which deemed Issam a flight risk. In exchange for the right to veto any plane trip ("neither parent shall allow the children to board an aircraft of any kind without the prior written consent of the other parent"), Erica made numerous concessions: joint custody, shared responsibility for a debt owed to Issam's brother in Palestine, and giving Issam ownership of the marital home with a portion of the equity returned to her. Many risk factors for abduction were present *pre*-decree: (1) Issam and the children both have US and Palestinian passports; (2) Issam has not dissolved the parties' Islamic marriage; (3) Issam committed various acts of violence against Erica, some of which he admitted to Dr. Shapiro; (4) Issam had a lack of strong familial and financial ties to the United States; (5) Issam had strong familial ties in the West Bank of Palestine; and (6) Issam was pursuing a Ph.D., with a goal of obtaining employment in the Middle East. Additional risk factors developed *post*-decree: (1) Issam continued to refuse to seek full employment commensurate with his Ph.D.; (2) Issam received loans from friends to satisfy his living expenses, such as $13,000 from his friend in Poland and $40,000 from a professor in Palestine; (3) Issam continued to act in an acrimonious manner during custody exchanges, and he stalked Erica and the boys during Erica's time, taking pictures and sending them to Erica to let her know he was watching; (4) Issam has filed meritless motions; (5) Issam informed, rather than asked, Erica that he would be taking the boys to Poland; and (6) Issam

reacted with "vitriol" when Erica vetoed the trip, and he threatened to take her to court (which he did). Erica further noted that Issam traveled to Palestine in April 2017, the Palestinian Authority requires only the father's signature to renew Palestinian passports, and Issam may have renewed the passports without her knowledge.

¶ 38 Erica requested that the parties' joint custody agreement be registered in Palestine. Absent this, any Palestinian jurisdiction practicing Islamic law would not recognize an American divorce document. And, Islamic law grants legal custody of older boys to their fathers. In such circumstances, reliance on the quitclaim deed for bond to be used to fund a court proceeding in Palestine after a kidnapping would be "vacuous and ineffective."

¶ 39 Finally, Erica argued that the trial court's decision to allow the boys to travel internationally without her consent was against public policy. In support, she claimed that, independent of the joint custody agreement or her family's specific situation, the U.S. federal government requires both parents to consent to the renewal of a minor's passport.

¶ 40 Issam responded, categorically and summarily denying the points raised in Erica's motion to reconsider without discussion.

¶ 41 On August 25, 2017, the trial court effectively denied the motion to reconsider.[4] It stated that "there was no international travel restriction" in the joint custody agreement. It did, however, clarify the restrictions to be placed on international travel. Issam was to quitclaim his entire interest in the home to Erica, with her attorney holding the quitclaim. If Issam failed to return with the children, Erica's attorney could register the quitclaim deed. Issam was to notify the State Department of the trip and complete any State Department forms prior to travel.

[4] The trial court stated that it "granted" the motion to reconsider, but it continued to allow international travel pending newly added restrictions.

Issam's Polish friend, Stachyra, was to submit an affidavit explaining why she was willing to fund the trip.

¶ 42 D. The Instant 2018 Petition for International Travel

¶ 43 On January 12, 2018, Issam, still acting *pro se*, petitioned the court to issue a judgment: (1) allowing him to travel to Poland with the boys for one week in the summer; (2) allowing him to renew the U.S. passports; and (3) ordering Erica to remove the boys' names from the "Don't Fly List" and "Children's Passport Issuance Alert Program" with the State Department. The boys were now 11 and 14 years old.

¶ 44 On March 2, 2018, Erica responded. In addition to arguments raised in opposition to the 2017 petition, Erica expanded on her contract-interpretation argument. Neither attorney who drafted the agreement remained with the case. However, she reiterated that she had bargained for veto power as to any plane trip. She pointed to clauses in the joint custody agreement such as those requiring that parenting time "*shall* be exercised within the United States," that "neither party shall attempt to renew the children's United States or other [Palestinian] passports without prior written consent of the other party," and that "neither party shall allow the children to board an aircraft of any kind that leaves the ground without prior written consent of the other parent."

¶ 45 Erica noted the importance of the bargained-for travel limitations. Per *Abbott*, 520 U.S. at 15-16 (2010), the right of *ne exeat* (do not let him go out) given to her in the joint custody agreement, which, in her view, forbade international travel and allowed her to veto any plane trip, is an enforceable custody right under the Hague Convention. She urged that, in order to change the travel restrictions, Issam was required to petition to modify the joint custody agreement and prove a substantial change in circumstances.

¶ 46 On April 2, 2018, the trial court conducted a hearing on Issam's petition for international travel. The record shows that the court accepted as evidence an undated, unnotarized letter—not an affidavit—from Issam's Polish friend, Stachyra. In it, Stachyra represented that the trip was for social purposes, it was not a financial burden for her to fund the trip because she was well-off and owned several hotels, and the group might take a two-day excursion by plane to London.

¶ 47 Issam testified first. The testimony was somewhat unconventional, in that Issam acted *pro se*, so his testimony began as cross-examination, and, occasionally, he made statements of clarification. Issam testified that he never married in Palestine, and there was no Islamic wedding. He did not know a lot about Palestinian law, but he knew Palestine followed secular law. Further, he reminded the court, he was not going to Palestine. He was going to Poland.

¶ 48 Erica called John Paris, her father, to testify that there had been an Islamic wedding. John traveled to Palestine in 2006 and 2007. He submitted his actual passport, which had been stamped by the Palestinian Authority in those years. Issam then stipulated that John had accompanied Erica and him to Palestine. John stated that, while in Palestine, he witnessed Erica and Issam's Islamic wedding. John acknowledged that he did not understand Arabic, the language of the ceremony, but he knew it was a wedding. He witnessed the signing of a contract. Also, portions of the ceremony were translated into English for Erica.

¶ 49 Erica next called Ausaf Farooqi, an expert in Islamic family law. Since 2010, he has practiced family law within the greater Chicago Muslim community. "The Muslim community in the Chicago area has a number of unique issues not limited to the fact that very often there are overseas divorces that intermingle with the divorces here in the U.S." Farooqi explained that Israel is a signatory to the Hague Convention, but the Israeli court authority does not extend into certain parts of Palestine. Palestine can be thought of as having three unique court systems: (1)

in Gaza, based on Egyptian law; (2) in East Jerusalem, where an "interesting dichotomy" of "Sharia Court" operates "somewhat under Israeli jurisdiction;" and (3) in the West Bank, based on "the Jordanian law of personal status."

¶ 50 Focusing on the West Bank, Palestinian courts will not give full faith and credit to an American judgment. They may use an American judgment as evidence of a pattern. However, they will determine a given case on their laws, most of which are based on "presets within the Islamic rules." In the West Bank, the father gets guardianship, which means physical care and custody, decision making, and financial responsibility, for all boys over the 7- to 9-year age range, and certainly over all post-pubescent boys.

¶ 51 An American who wants her American custody judgment enforced in Palestine can obtain a Palestinian court order that is a mirror-image of the American judgment. Palestine generally honors the agreement of the parents, even if it is different than the Islamic preset. To effectuate such an order, the parties would have to work with a Palestinian attorney who is based in the West Bank.

¶ 52 Erica testified that, in 2013, Dr. Shapiro had deemed Issam a flight risk. Erica moved to admit Dr. Shapiro's report, to show that the report had been a bargaining chip in obtaining the travel limitations in the joint custody agreement. The court denied admission of the report, stating that it would not consider extrinsic evidence in interpreting the joint custody agreement. However, it allowed Erica to testify to why *she* believed Issam to be a flight risk. She testified that, leading up to the instant trip, Issam first wanted to take the children to Palestine. When Erica said no, he then wanted to take the children to Poland. Erica could provide proof of those requests, which had been made via e-mail. Erica further explained that Issam chooses to be underemployed and, therefore, is not fully engaged in the community. Issam has made prior

threats to kidnap the children. He has stated that he will take the children when no one is expecting it, and she will never see them again.

¶ 53 Erica offered a compromise: "If we had a mirror custody order in a Palestinian court, I would allow [Issam] to travel internationally with the children." Erica had the funds and was willing to travel to Palestine, obtain a lawyer, and effectuate the order. Erica recounted Farooqi's position that the agreed custody order must be entered by the Palestinian court prior to any controversy, because the Palestinian court would not be bound by an American order in resolving a controversy.

¶ 54 The trial court interjected: "I don't think that's what [Farooqi] said". The court did not recall Farooqi stating that the parties would need to initiate proceedings in Palestine to obtain a Palestinian custody order prior to traveling internationally with the boys. Erica's counsel assured the court that, indeed, that was Farooqi's testimony. The court again disagreed. Erica's counsel recalled Farooqi to the stand.

¶ 55 The court asked Farooqi:

> "When you were talking about having an agreed order, I assumed *** we have an agreed order here [an American order], *** [and] *then*, you go to Palestine or whatever *** and then [the American order is] registered there or whatever [and] you use that [American order] in your [Palestinian] proceeding.
>
> The other interpretation was that you go there *now* [before traveling with the children] and you enter an order under—using their forms so to speak [*i.e.*, you initiate proceedings in Palestine and enter an agreed order in a Palestinian court]. *Which is it*?" (Emphases added.)

¶ 56 Farooqi answered: "The second. *** The reason we want the order entered [in Palestine] first[,] through their judicial process[,] is that once the [father] is over there with the children, there's no way to actually obligate [a Palestinian court] to honor whatever the order is in the U.S. court."

¶ 57 The court asked in which Palestinian jurisdiction the precautionary order would be entered. Erica's attorney answered that he would be satisfied with an order entered in the West Bank.

¶ 58 In closing, Issam argued that the joint custody agreement "reserved" the issue of international travel. In his view, this meant that there was not yet an existing agreement on the issue of international travel. He urged that international travel should be allowed for the following reasons. Issam was not a child abductor; to insinuate as much was racism. "Every Muslim and every Palestinian is [not] a child abductor." Issam is highly educated, and he has no criminal history. As the court acknowledged in 2017, the order for bond is "*not* because the court is *sure* [Issam is] going to flee with the children." (Emphasis added.) Rather, the bond was "basically as an additional assurance." Erica's fear that he would ask a Palestinian divorce court to grant him custody was unfounded, where there had never been a Palestinian marriage ("I want to restate, emphasize, that there is no Islamic marriage. I mean, we're arguing and discussing an Islamic divorce"). Issam was willing to consider the legal procedure offered by Farooqi if that would resolve the international travel issue for the future. In the meantime, however, Issam did not plan to go to Palestine; he planned to go to Poland. He would register the children with the proper authorities.

¶ 59 Erica disagreed with Issam's interpretation of the joint custody agreement. The provision reserving international travel was "a non-sequitur," that should not be read in isolation. Rather,

three other provisions, including one mandating that travel be limited to the United States, should control the issue. Erica disagreed that her objection to international travel was founded in racism. Rather, it was based on Issam's prior threats to kidnap the children. Erica cautioned that Issam's testimony was not credible, particularly as to the issue of whether the marriage had been registered in Palestine. Issam flatly denied that the parties were married in Palestine. Erica and her father, John, then testified to the contrary. John provided his passport to demonstrate that he had traveled to Palestine during the time that the wedding ceremony was alleged to have taken place. At this point, Issam acknowledged that John traveled to Palestine, and Issam even seemed to concede that John witnessed some sort of ceremony there, but Issam denied that John had witnessed a wedding ceremony. Issam noted that John did not understand Arabic. John replied that portions of the ceremony had been translated into English and that Issam and Erica had signed a contract. Erica concluded that Issam's own testimony and his treatment of John's testimony on the question of an Islamic marriage "shows right there he's not credible. I'm sorry." Erica was concerned that Issam had wealthy friends throughout Europe who were willing to support him. Finally, Erica urged the court to question Issam's sincerity, where she offered to pay for a simple legal procedure—registering her custody rights in Palestine—but Issam declined to do so prior to the instant trip. "What I'm saying is delay judgment or make the international travel contingent on their getting this Palestinian agreed order. I rest."

¶ 60 On April 16, 2018, after taking the matter under advisement, the court granted Issam's petition. It interpreted the joint custody agreement as follows: "The [joint custody agreement] provided restrictions on international travel but also provided for a review of those restrictions and sought to promote the children's heritage and culture." The court acknowledged Erica's fear that Issam would abscond with the children, because he threatened to do so in the past. It also

recognized Issam's position that he has lived in the United States for many years and he is not a flight risk simply because he is a Muslim. Taking note of the parties' respective positions, but making no findings on one side or the other, the court reasoned:

> "[Regarding its basis to lift the international travel limitation:] The children have aged 5 years since the judgment [of dissolution]. At the time of the [dissolution], the children were 9 and 6. Nearly 5 years have past, and the children are now, or will be this year, 14 and 11. The children have matured since the judgment, and, *presumably, would know not to get on an airplane headed to Palestine*." (Emphasis added; paragraph numbers omitted.)

Also,

> "[Regarding the Palestinian courts:] Erica presented a local attorney, Mr. Farooqi, who testified regarding Muslim law and the difficult[y] of enforcing [American] orders in Muslim countries [that are not party to the] Hague Convention ***. He suggested that the parties initiate an action in Palestine that acknowledges that Erica is the primary custodian. [He] believed that such an action would preserve Erica's right to the children, and thwart any attempt by Issam to legally establish himself as the primary custodian in Palestine. *Issam was receptive to the suggestion, but had concerns about completing such a task prior to June. The court shared the same concern and is, therefore, not requiring this as a condition of taking the children to Poland.*" (Emphasis added; paragraph numbers omitted.)

And,

> "[Regarding bond:] *Issam will post his home as bond to guarantee the return of the children.* *** The home has a $115,000 mortgage balance *** and a fair market value of

> approximately $26[0,000]. There is approximately $145,000 equity in the home." (Emphasis added; paragraph numbers omitted.)

¶ 61 The court ordered that Issam may take the children to Poland, must provide Erica with his travel itinerary, and is prohibited from traveling to Palestine with the children. Issam is barred from further encumbering his home until his return from Poland. The Taradash law firm is to release the passports to Erica. Erica is to maintain control over the Palestinian passports and turn over the U.S. passports to Issam (after photocopying them for herself). Issam will return the U.S. passports at the conclusion of the trip.

¶ 62 Erica timely appealed, and she filed a motion to stay judgment pending appeal. On May 14, 2018, the trial court denied the motion. On May 18, 2018, Erica moved this court to stay the judgment. On May 25, 2018, this court granted Erica's motion:

> "Motion by appellant, Erica Runningdeer, to stay judgment pending appeal is granted, over objection. Should appellee effect completion of all proceedings in Palestine necessary to recognize appellant's custody rights, he may move this Court to reopen the issue. The children's passports shall continue to be held by the Taradash law firm, pending further order of this Court."

¶ 63 On June 1, 2018, more than 30 days after Erica filed her notice of appeal and after the trial court's jurisdiction in the international matter had lapsed and transferred to this court, Issam initiated new proceedings in the trial court. He filed a petition to modify the joint custody agreement as to *domestic* travel. Issam wished to travel with the children by plane within the United States, specifically, to Utah. He sought to modify those provisions of the joint custody agreement that precluded plane travel without the other parent's written consent. On June 6, 2018, the trial court set the matter for briefing and a hearing. On June 13, 2018, Erica moved

this court to stay the June 6, 2018, status order, arguing that we should, *inter alia*, strike the June 6 order, because, in our May 25 order, we retained jurisdiction over plane-related issues.

¶ 64 We denied the June 13, 2018, motion to stay:

> "Motion by appellant, Erica Runningdeer, to stay the June 6, 2018, order and all related matters pending appeal, is denied. The trial court retains jurisdiction to enforce the joint parenting agreement, aside from issues of *international* travel and the custody of the passports with the Taradesh law firm. However, we remind the parties and the trial court that our May 25, 2018, order prohibits the release of passports without this court's order, whether the stated purpose is for international or domestic travel. Implicit in our May 25, 2018, order is that the parties are also prohibited from obtaining any other passports for the children." (Emphasis added.)

We turn to the instant appeal.

¶ 65 II. ANALYSIS

¶ 66 Erica argues that, in allowing the trip to Poland, the trial court misinterpreted the joint custody agreement. In her view, the existing agreement mandated that vacation time be spent in the United States ("The extended parenting/vacation schedules shall be exercised within the United States"), she had the power to veto any plane trip ("Neither party shall allow the children to board an aircraft of any kind that leaves the ground without the prior written consent of the other parent"), and, to guard against any violation of this mandate, the children's passports were kept in custody of her former attorney and were not to be renewed. Together, these provisions meant that international travel was prohibited. She urges that the reservation provision, stating that "international travel with the minor children shall be reserved," was a "non-sequitur" that did not invalidate the domestic-travel, consent-to-board, and passport provisions. And, she

asserts, if Issam wanted to take the children abroad, he should have petitioned to modify the agreement pursuant to section 610.5 of the Act. 750 ILCS 5/610.5 (2016). Finally, even if the court's hearing on Issam's petition for international travel were construed as a modification proceeding, the evidence was insufficient to modify the agreement to allow for international travel.

¶ 67 Even though a specific June 2018 trip precipitated the instant proceedings, the court's ruling effectively modified the agreement going forward. Therefore, the matter is not moot, and we address Erica's arguments. We agree that the trial court misinterpreted the agreement and that the evidence did not warrant its modification. As we will explain, the reservation provision does not conflict with the domestic-travel, consent-to-board, or passport provisions, nor does the reservation provision mean that there was not yet an existing agreement as to international travel. Rather, "reservation" in this context, and as explained by the supreme court in *In re Marriage of Petersen*, 2011 IL 110984, ¶¶ 17-23, is a term of art that means that the status quo, here, a prohibition against international travel, shall remain in place pending a successful petition to modify. The reservation provision, in harmony with the remainder of the agreement, set the status quo to allow for domestic travel only. This is clear within the four corners of the agreement. A successful petition to modify was required to change the status quo allowing for domestic travel only. And, here, the evidence was insufficient to modify the agreement to allow for international travel.

¶ 68 A. Interpretation of the Joint Custody Agreement

¶ 69 Marital settlement agreements are essentially contracts between parties, and rules pertaining to contract interpretation apply to interpretations of such agreements. *In re Marriage of Corkey*, 269 Ill. App. 3d 392, 397 (1995). A court is to construe the terms of the agreement so

as to give effect to the parties' intent. *In re Marriage of Druss*, 226 Ill. App. 3d 470, 475 (1992). Where the terms are unambiguous, the intent is determined solely from the language of the agreement. *Id*. Each word, phrase, and clause should be considered, because they are presumed to have been inserted deliberately and for a purpose. *River Plaza Homeowner's Ass'n v. Healey*, 389 Ill. App. 3d 268, 277 (2009). Where possible, provisions should be construed harmoniously. *Edward Electric Co. v. Metropolitan Sanitation District of Greater Chicago*, 16 Ill. App. 3d 521, 525-26 (1973). To the extent that an agreement is susceptible to two interpretations, the court will favor the interpretation that is fair, reasonable, and customary. *In re Marriage of Sweders*, 296 Ill. App. 3d 919, 922-23 (1998). The court should not favor an interpretation that would lead to an inequitable, unreasonable, or absurd result. *Id*. at 923. The court's interpretation of a marital settlement agreement is reviewed *de novo*. *In re Marriage of Culp*, 399 Ill. App. 3d 542, 547 (2010).

¶ 70 Here, the critical terms included the domestic-travel and reservation provisions:

> "[5D.] *The extended parenting/vacation schedules shall be exercised within the United States*. Neither party shall remove the children from the State of Illinois temporarily for extending parenting/vacation time without the express prior written consent of the other party. Neither party shall unreasonably deny the other party the ability to take the children to another state within the continental United States. The right of first refusal [for the other parent, rather than a babysitter, to care for the children during a gap in care exceeding six hours] does not apply during extending parenting/vacation periods.
>
> i. during any period of extended parenting/vacation time, the parties agree that they each shall have telephone contact with the minor children at all

reasonable times and places, and shall be provided the children's destination, flight information/travel itinerary, telephone numbers and addresses where he or she can be reached during his/her extended parenting/vacation times ***.

ii. *International travel with the minor children shall be reserved*." (Emphases added.)

Also critical are the passport and consent-to-board provisions:

"[5I.] 14. Neither parent shall attempt to renew the children's United States, or other, passports without prior written consent of the other party. At present, [the mother's attorney] has possession of the children's United States and Palestinian passports, and [the mother's attorney] shall continue to hold said passports in trust for the parties absent written instruction signed by both parties, or court order, requiring the transfer or relinquishment of said passports to either party or another.

15. Neither party shall allow the children to board an aircraft of any kind that leaves the ground without prior written consent of the other parent (sitting on a small stationary aircraft, such as at a museum or during the annual Bolingbrook air show, is allowable without prior notice)."

The agreement also required the parties to honor the children's cultural heritage, submit to mediation when unable to resolve significant disputes, and allowed for annual review at the request of either party.

¶ 71 As we have stated, we agree with Erica's interpretation of the agreement, and we take it one step further. The agreement mandates domestic travel only, with certain limitations such as requiring an itinerary and requiring consent to travel by plane. The single provision mandating that all travel occur within the United States *in itself* necessarily prohibits international travel.

The consent-to-board and passport provisions help to *enforce* the domestic-travel provision. And, to take it one step further, the reservation of the issue of international travel in no way contradicts this, nor does reserving an issue mean that there was not yet an existing agreement as to international travel. Rather, "reserving" a custody issue is a term of art. "Reserving" a custody issue means that the existing status quo, here, the prohibition against international travel, shall remain in place pending a successful petition to modify. See, *e.g.*, *Petersen*, 2011 IL 110984, ¶¶ 17-23.

¶ 72 *Petersen* illustrates this concept. In *Petersen*, 2011 IL 110984, ¶ 20, the supreme court addressed what it termed the "reservation as modification" issue. There, the judgment of dissolution stated: "The court expressly *reserves* the issue of each party's obligation to contribute to the college or other education expenses of the parties' children." (Emphasis added.) *Id*. ¶ 4. Eight years later, and five years after the oldest child had started college, the wife petitioned to allocate college expenses. The court viewed her post-decree petition as a petition to modify, because the judgment of dissolution had *not then obligated* the husband to contribute toward expenses. *Id*. ¶ 14. The court had chosen not to make an award at that time, even though it was authorized by statute to do so. *Id*. ¶ 17. The wife's post-decree motion sought to change the status quo and was, therefore, a petition to modify. *Id*. To find otherwise, and allow one spouse to wait indefinitely until the other acted upon an open-ended reservation clause, would not comport with the Act's goal of securing the cooperation of both parents and the emotional well-being of the children during and after litigation. *Id*. ¶ 23. Rather, the statutory provisions addressing modification provide the best way to conduct post-decree proceedings that deal with issues reserved at the time the judgment of dissolution is entered. *Id*. Because the post-decree

petition was a petition to modify, the court could not order education expenses prior to the filing of the petition. *Id.*

¶ 73 That *Petersen* concerned support, whereas our case concerns a significant issue in the custody agreement, does not undermine its precedential value. The *Petersen* court recognized that numerous issues arise during divorce, including custody, which may require modification:

> "The Act contains numerous issues that arise during divorce proceedings, such as *** spousal maintenance, *child custody*, and support. The Act envisions that the parties may amicably agree on many of those issues and allows for agreements to be incorporated into the judgment of dissolution entered by the court. The Act also recognizes that because circumstances do not always remain the same as they were on the date a judgment of dissolution is entered, modifications may be necessary." (Emphasis added; internal citations omitted.) *Id.* ¶ 10.

¶ 74 *Petersen* explains that the word "reservation" is a term of art. Again, it means that the existing status quo, here, the prohibition against international travel, shall remain in place pending a successful petition to modify. The agreement reserved the issue of international travel, and not just the details surrounding it. The court had authority at the time of dissolution to allow international travel with or without restriction, but it did not. The original agreement allowed only domestic travel (the extended parenting/vacation schedules *shall* be exercised within the United States), and it reserved the issue of international travel. A petition to modify is required to change that.

¶ 75 And, the other provisions of the agreement support that the *Petersen* definition of "reservation" applies in this case. The agreement is to be read as a whole, and, where possible, provisions should be construed harmoniously. The only way to read the domestic-travel,

consent-to-board, and passport provisions in harmony with the provision reserving international travel is to accept the *Petersen* definition of "reservation."

¶ 76 To interpret the agreement as Issam would wish leads to an absurd result. Issam recognizes that the agreement currently requires Erica's consent to travel domestically by plane. Issam filed a petition to modify that consent provision. *Supra*, ¶ 63. Requiring a successful petition to modify to undo the consent requirement for a domestic plane trip but not an international plane trip is absurd. Issam also ignores the domestic-travel, consent-to-board, and passport provisions.

¶ 77 Similarly, the trial court's interpretation was unreasonable. It interpreted the agreement's stance on international travel in a single sentence: "The [joint custody agreement] provided restrictions on *international* travel but also provided for a *review* of those restrictions and sought to promote the children's heritage and culture." (Emphases added.) We will discuss the court's ruling in the next section, but we herein note just a few problems with its interpretation. First, the agreement did not provide for restricted *international* travel. It provided for restricted *domestic* travel, requiring itineraries and parental consent to board a plane. Second, the agreement did not provide for the *review* of international travel. It provided for the *reservation* of international travel. Agreements that contemplate "review" of an issue at a specified point in time *may* circumvent the higher standards required for modification. *In re Marriage of Golden*, 358 Ill. App. 3d 464, 469 (2005). However, as we have discussed, an agreement that "reserves" an issue sets a certain status quo that can only be changed through modification proceedings. The general review provision at the end of the agreement does not change this ("Th[e] joint custody agreement shall be reviewed annually, at the request of either party"). A specific clause prevails over a general clause, and, here, the agreement specifically states that the issue of

international travel is "reserved." See, *e.g.*, *In re Marriage of Kirkpatrick*, 329 Ill. App. 3d 202, 211 (2002) (specific provision controls over general provision).

¶ 78 In sum, the reservation clause requires the court to decide through modification proceedings whether international travel will be allowed and, if so, under what conditions, before it may address any one specific international trip.

¶ 79 B. Insufficient Modification Proceedings

¶ 80 The trial court modified the agreement, but it did not conduct a sufficiently structured hearing, nor did it issue a sufficiently instructive ruling. Most basically, the original agreement mandated that travel be within the U.S. only. It also allocated significant decision-making responsibility to both parents on the issue of travel, requiring parental consent before the children could board a plane. The court's ruling effectively struck the domestic-travel provision, and, as to this trip at least, it bypassed mediation and disregarded the consent-to-board provision. As we will explain, these modifications best fit within the statutory framework for modifying the allocation of decision-making responsibilities. 750 ILCS 5/602.5, 610.5 (West 2017). We will reverse a post-decree modification to a parenting agreement only if it is against the manifest weight of the evidence or an abuse of discretion. *In re Marriage of McGillicudy & Hare*, 315 Ill. App. 3d 939, 942 (2000).

¶ 81 1. The Court Re-Allocated Decision-Making Responsibility

¶ 82 Section 602.5 of the Act sets forth a non-exhaustive list of "significant" decision-making issues, including but not limited to, education, health, religion, and extracurricular activities. 750 ILCS 5/602.5 (West 2017). Case law is sparse on what constitutes a significant decision-making issue, the provision just having been enacted in 2016. However, the following issues have been classified, albeit in passing and without detailed discussion, as significant decision-making

issues: (1) whether to hyphenate the last names of the children, all under age 5, to include their mother's maiden name (*In re Piegari*, 2016 IL App (2d) 160594, ¶ 9) (primarily concerning section 21-101 of the Code of Civil Procedure (735 ILCS 5/21-101 (West 2016)), which more specifically instructs on changing a child's name)); and (2) whether the father's residence in a top elementary school district warranted allocating educational decision-making responsibility to him (*In re Custody of G.L.*, 2017 IL App (1st) 163171, ¶¶ 38-39 (primarily concerning parenting time)).

¶ 83 We consider whether international travel constitutes a significant decision-making issue, such that a re-allocation of decision-making responsibilities on the issue requires modification proceedings. It is arguable that international travel does not constitute a *per se* significant decision-making issue. Under the unique circumstances of this case, however, the question of international travel is, at a minimum, significant on a level comparable to deciding whether to hyphenate a very young child's last name or choosing which elementary school to attend. Issam does not dispute that a court-appointed psychologist deemed him at risk of abducting the children by taking them abroad. Erica testified that Issam threatened to kidnap the children by taking them abroad. Those allegations speak to the significance of the issue, regardless of how the court may later decide it. (And, indeed, the court did require Issam to post bond to secure the safe return of the children.) The travel provisions in the instant agreement were unusually thorough and restrictive. The agreement noted that the children have passports in two different countries. It gave either parent the decision-making power to veto travel by plane and mandated that, in all cases, travel occur in the United States. So important was the domestic-only travel mandate that the passports were to be held in trust by Erica's attorney. Therefore, in this case,

the issue of international travel constitutes a significant decision-making issue under section 602.5 of the Act.

¶ 84 2. Re-Allocation of Decision-Making Responsibility Requires:
(1) a Showing of Best Interest; and
(2a) a Substantial Change; or (2b) Agreement by the Parties

¶ 85 Petitions to modify the allocation of parental decision-making responsibilities are governed by section 610.5 of the Act. That section provides that:

> "(c) ***, [T]he court shall modify a parenting plan or allocation judgment when necessary to serve the child's best interests if the court finds, by a *preponderance of the evidence*, that on the basis of facts that have arisen since the entry of the existing parenting plan or allocation judgment or were not anticipated therein, *a substantial change* has occurred in the circumstances of the child or of either parent *and* that a modification is *necessary to serve the child's best interests*.
>
> (d) The court *shall* modify a parenting plan or allocation judgment *in accordance with a parental agreement*, unless it finds that the modification is not in the child's best interests.
>
> (e) The court may modify a parenting plan or allocation judgment *without a showing of changed circumstances* <u>*if*</u> (i) the modification is in the child's *best interests*; <u>*and*</u> (ii) any of the following are proven as to the modification:
>
> (1) the modification reflects the actual arrangement under which the child has been receiving care, without parental objection, for the 6 months preceding the filing of the petition for modification, provided that the arrangement is not the result of a parent's acquiescence resulting from circumstances that negated the parent's ability to give meaningful consent;

> (2) *the modification constitutes a minor modification in the parenting plan or allocation judgment*;
>
> (3) the modification is necessary to modify an agreed parenting plan or allocation judgment that the court would not have ordered or approved under Section 602.5 [allocation of parental responsibilities: decision making] or 602.7 [allocation of parental responsibilities: parenting time] had the court been aware of the circumstances at the time of the order or approval; or
>
> (4) the parties agree to the modification." (Emphasis added.)

Thus, as is relevant here, provided the proposed modification is in the children's best interest, the agreement can be modified if: (1) the modification is minor; (2) a substantial change in circumstance supports the modification; or (3) the parties agree to the modification. We determine that the modification was not minor, Issam did not prove that the modification was in the children's best interest or that there was a substantial change in circumstance, and, where Issam did not prove a substantial change in circumstance, the trial court abused its discretion in failing to facilitate an agreement to the modification, conditioned on registering Erica's custody rights in Palestine.

¶ 86 First, the modification was not "minor," and, thus, Issam cannot have taken that avenue to bypass the substantial-change requirement. 750 ILCS 5/610 (e)(ii)(2) (West 2017). A "minor modification" is "small" and "inconsequential." *In re Marriage of O'Hare v. Stradt*, 2017 IL App (4th) 170091, ¶ 17. Narrowly limiting the situations to which the minor-modification exception applies comports with the Act's underlying policy favoring the finality of the order outlining the parenting plan and maintaining continuity in parenting plans. *Id.* ¶ 28. It should be somewhat difficult to modify a joint custody agreement where one parent objects.

As such, in *O'Hare*, a request to modify the allocation of parenting time by 6% did not qualify as a "minor modification" so as to escape the substantial-change standard, where the shift would demote one parent from primary custodian to a custodian with equal parenting time. *Id*. ¶¶ 21, 30. If a shift in parenting time by 6% did not qualify as a minor parenting-time modification, we cannot hold that lifting the prohibition against international travel is a minor decision-making modification.

¶ 87 Second, the modification was not in the children's best interest, and it was not warranted by a substantial change in circumstances. The court's findings to the contrary were against the manifest weight of the evidence, and its directives, such as its insufficient bond order, were an abuse of discretion. More specifically, the court: (1) failed to recognize that Issam carried the burden of proof; (2) rendered a conclusion that was not based on the evidence; (3) refused to consider relevant evidence; and (4) issued an unreasonable bond. Additionally, the modification proceeding and resulting order lacked structure and direction.

¶ 88 The court failed to recognize that Issam carried the burden of proof. See *In re Marriage of Smithson*, 407 Ill. App. 3d 597, 600 (2011) (burden is on the movant). The 2013 agreement remained in effect when Issam filed the 2018 petition for international travel. It was his burden to show that a modification was warranted. Instead, Issam, *pro se*, presented next to no evidence. He testified on cross-examination that there was no Palestinian marriage, but he appeared to agree that the couple took part in a ceremony there. He averred that he would not go to Palestine. He presented Stachyra's undated, unnotarized letter, which represented that the group might take an excursion by plane from Poland to a second country, England. That was all. During the remainder—and majority—of the hearing, Erica presented evidence as to why the

status quo should be preserved. This was not her burden, and it is not the correct lens through which to view the case.

¶ 89 The court's apparent conclusion that circumstances had changed was not based on the evidence. The court's stated rationale for lifting the prohibition on international travel was that: (1) the boys had grown older, and, at ages 11 and 14, "presumably, would know not to get on an airplane to Palestine;" and (2) the boys' cultural heritage, which included Polish heritage, was to be celebrated. If the parties had intended to lift the prohibition on international travel when the boys reached a certain age, they could have put that in the agreement. The boys did not testify, *in camera* or otherwise. Issam did not produce any evidence at the hearing as to the boys' maturity, relative to other boys of the same age. The only evidence in the record arguably speaking to the boys' maturity is Issam's earlier petition to modify custody. There, he alleged that the older boy, due to his diagnosis of autism-spectrum disorder, was *less* equipped than his peers to navigate a new environment. The court's statement as to the boys' maturity was not based on the evidence. As to cultural heritage, the agreement set the status quo to allow for domestic travel only. Therefore, the original agreement recognized that international travel was not necessary to celebrate the boys' heritage. The court did not point to any evidence that the boys' cultural heritage was more important now than before. The court's conclusion that circumstances had changed was not based on the evidence and was, therefore, arbitrary.

¶ 90 The court refused to consider relevant evidence. It refused to consider Dr. Shapiro's report. The 2013 report would have provided a baseline in considering whether circumstances had changed. Issam does not deny that Dr. Shapiro's report deemed him a flight risk. Erica testified to why she believed Issam was a flight risk, but she was not allowed to use the report for context. Erica testified that Issam was underemployed in America, and he maintained contacts in

Europe and the Middle East. Issam first requested to take the children to Palestine, and he requested to take the children to Poland only after Erica said "no" to the Palestine trip. And, Issam has made prior threats to kidnap the children, stating that he would take them when she least expected it and she would never see them again. She and her father, John, both testified that a wedding took place in Palestine. This meant that, should Issam avail himself to Palestinian courts, he would be awarded custody. Issam's rebuttal concerning the Palestinian wedding was objectively weak, *i.e.*, that John indeed witnessed a ceremony in Palestine, but that John was not qualified to testify that it was a wedding because John did not understand Arabic.

¶ 91 The court declined to make findings related to Erica's evidence that the status quo should be maintained. Instead, it required Issam to post bond in the form of a quitclaim deed to secure the return of the children following his exercise of parenting time abroad. From the court's bond requirement, we can infer that, despite its overall ruling in favor of Issam, the court dodged, rather than outright rejected, Erica's evidence that Issam was a flight risk. Given the stakes, this was not a reasonable approach. Not only did the court modify the agreement absent any evidence from Issam of a substantial change in circumstance, but it modified the agreement in the face of Erica's evidence in favor of maintaining the status quo, which was not her burden to prove in the first place.

¶ 92 The court's requirement that Issam post bond was unreasonable. Under section 603.10(7) of the Act, a court may require a parent to post bond to secure the return of the child, if after a hearing, it finds by a preponderance of the evidence that a parent engaged in any conduct that seriously endangered the child. 750 ILCS 5/603.10(7) (West 2017). As we have stated, the court declined to make an express ruling on Issam's risk to the children. However, even if it believed the risk to be slight, the bond requirement was unreasonable in its insufficiency.

Farooqi testified that Erica would have little recourse if Issam took the children to Palestine without first obtaining a Palestinian order recognizing her custody rights. The Palestinian courts would not recognize an American order. "The reason we want the [custody] order entered [in Palestine] first[,] through their judicial process, is that once the [father] is over there with the children, there's no way to actually obligate [a Palestinian court] to honor whatever the order is in the U.S. court." Farooqi's testimony was uncontradicted and unimpeached.

¶ 93 Additionally, even if the modifications *were* warranted, the modification proceeding and resulting order lacked adequate structure and direction. In many respects, the proceeding and resulting order were stop-gap measures that applied to this trip only. The court did not explain how it changed the agreement to address the protocol for future trips. It did not issue an amended joint custody order, which would have stricken the provision mandating that vacation time shall be spent in the United States. Similarly, it did not expressly strike the consent-to-board provision, but it did appear to disregard that provision as well. Alternatively, if it did not intend to remove the consent-to-board provision, it did not clarify whether the hearing it conducted was a dispute-resolution measure for this particular trip (despite bypassing mediation on the issue), and whether this would be the impasse protocol moving forward. The court's failure to provide structure and direction going forward violated public policy in favor of maintaining continuity in parenting plans. See *O'Hare*, 2017 IL App (4th) 170091, ¶ 28.

¶ 94 Third, and in a similar vein, the trial court abused its discretion in failing to facilitate an agreement to the modification, conditioned on registering Erica's custody rights in Palestine. Erica proposed a reasonable solution to mitigate against the risk that Issam would abscond with the children: initiating proceedings in Palestine to recognize her custody rights prior to international travel. Erica was willing to pay associated costs. And, per Farooqi, the Palestinian

courts were likely to accept the agreed order. They generally honor parental agreements initiated in their courts, even if against Islamic presets. (If they did decline the agreed order, the international trip could be canceled.) The court provided a poor basis for rejecting this solution. It stated that there would not be time to initiate a proceeding in Palestine to recognize Erica's custody rights in advance of travel. However, time spent to obtain the Palestinian order should be viewed in proportion to the five-year status quo of allowing only domestic travel and measured against the magnitude of the potential harm to the children.

¶ 95 Moreover, once the Palestinian order was entered, the joint custody agreement could be modified without proving a substantial change in circumstance. Erica represented that, if the Palestinian order were entered, she would agree to remove the domestic-only travel provision. And, where parties agree to modify the agreement, the court must approve it unless it is not in the best interest of the children. 750 ILCS 5/610.5(d) (West 2017) ("[t]he court shall modify a parenting plan or allocation judgment in accordance with a parental agreement, unless it finds that the modification is not in the child's best interest"). Where Erica agreed to Issam's proposed modification with only one condition, the trial court abused its discretion in refusing it. The avenue offered by Erica was far more reasonable than the approach taken by the court to modify the agreement absent a substantial change in circumstance and, as shown by its bond order, an acknowledged risk of abduction.

¶ 96 In sum, Issam did not prove that the modification was in the children's best interest or that there had been a substantial change in circumstance supporting the modification. Also, the parties did not agree to the modification. Therefore, the court erred in allowing international travel. We reverse the court's order and reinstate the 2013 joint custody agreement. The court's order had stated that the Taradash law firm and/or Erica were to continue to maintain control of

the Palestinian passports and that Issam was to return the American passports to Erica after the international trip. The international trip never took place, and all passports must be returned to Erica or her counsel. In the future, should Issam seek to modify the agreement to allow for international travel, he will have to reach a court-approved agreement with Erica to modify the agreement to allow for international travel, provided the parties first register Erica's custody rights in Palestine, *or* he will have to prove that the modification is in the children's best interest and that a substantial change in circumstance supports the modification. Any modification shall not apply to a single trip but, rather, will set forth the agreement's amended terms prohibiting, restricting, or allowing international travel, as the evidence supports.

¶ 97 III. CONCLUSION

¶ 98 For the reasons stated, we reverse the trial court's judgment and remand the case.

¶ 99 Reversed and remanded.