2018 IL App (3d) 170854-U

Order filed June 5, 2018

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2018

JERRY S.,	)	Appeal from the Circuit Court
	)	of the 21st Judicial Circuit,
Plaintiff-Appellant,	)	Kankakee County, Illinois.
	)	
v.	)	Appeal No. 3-17-0854
	)	Circuit No. 12-F-87
	)	
MEAGAN B.,	)	The Honorable
	)	Michael D. Kramer,
Defendant-Appellee.	)	Judge, presiding.

PRESIDING JUSTICE CARTER delivered the judgment of the court.
Justices Lytton and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: In an appeal in a case involving allocation of parenting time, the appellate court found that the trial court did not err in granting the mother's petition for modification of parenting time and denying the father's counterpetition for the same relief. The appellate court, therefore, affirmed the trial court's judgment.

¶ 2 Defendant, Meagan B., an Alabama resident, filed a petition against plaintiff, Jerry S., an Illinois resident, to modify Jerry's parenting time as to the parties' minor child, M.B., because M.B. was going to be starting preschool. Jerry filed a counterpetition and sought to change the allocation of majority parenting time to have M.B. live with him in Illinois, rather than with

Meagan in Alabama. After an evidentiary hearing, the trial court granted Meagan's petition and implicitly denied Jerry's. Jerry appeals. We affirm the trial court's judgment.

¶ 3 FACTS

¶ 4 Jerry and Meagan were involved in a dating relationship in approximately 2011 but never got married to each other. As a result of that relationship, Jerry and Meagan had one child together, M.B., who was born in November 2011. In January 2013, Meagan filed a petition to remove M.B. to Alabama, where Meagan's parents lived. Jerry opposed the petition. In December 2013, after a hearing, the trial court granted Meagan's petition to remove. An order was entered (the allocation judgment) granting Meagan sole custody of M.B. with leave to remove the child to Alabama and awarding Jerry extended parenting time (``visitation) consisting of two weeks during the first quarter of each year, three weeks during the second quarter, two weeks during the third quarter, and the last three weeks in either November (in odd years) or December (in even years).

¶ 5 In May 2014, Jerry filed a petition for rule to show cause against Meagan for denying his parenting time with M.B. that was supposed to begin on March 22, 2014. The rule to show cause was issued but was later dismissed, by agreement of the parties, and Jerry was awarded two weeks of make-up parenting time.

¶ 6 In spring or summer 2016, Meagan registered M.B. for preschool, which was scheduled to begin in August 2016. Meagan allegedly attempted, but was unable, to get Jerry to agree to a modification of his parenting time. In July 2016, Meagan filed a petition for modification, seeking to modify Jerry's parenting time so that his parenting time would not conflict with M.B.'s preschool attendance.

¶ 7 In August 2016, Jerry filed a petition for rule to show cause against Meagan for denying his parenting time with M.B. from August 6 through August 20, 2016.

¶ 8 In December 2016, Meagan filed a petition for an emergency order of protection against Jerry, claiming that Jerry was supposed to return M.B. on December 23, 2016, after his parenting time had ended but had failed to do so. Meagan sought the immediate return of M.B. because M.B. allegedly had an important dental appointment in Alabama on December 27, 2016. After a hearing, however, the trial court found that there was inadequate justification for entering the remedy without prior notice to Jerry.

¶ 9 In January 2017, Jerry filed another petition for rule to show cause against Meagan for denying his parenting time with M.B. from December 11 through December 16, 2016. According to the petition, Jerry was supposed to have parenting time with M.B. from December 11 through December 31, 2016, but Meagan would not allow Jerry to have M.B. until December 17, 2016. In addition, Meagan tried to curtail Jerry's parenting time and wanted Jerry to return M.B. on December 23, 2016, but Jerry did not return M.B. until December 31, 2016, which resulted in Meagan filing for an emergency order of protection as noted above.

¶ 10 Later that same month, Jerry filed a counterpetition, seeking to allocate parental responsibilities and majority parenting time. In short, Jerry sought to allocate the majority of parenting time to have M.B. reside with him in Illinois, rather than with Meagan in Alabama.

¶ 11 In April 2017, Jerry filed another petition for rule to show cause against Meagan for denying his parenting time with M.B. from March 11 through March 25, 2017. Later that same month, the parties participated in mediation. Through mediation, the parties were able to reach an agreement as to parental responsibilities, deciding that any major decisions related to M.B.'s

education, healthcare, extracurricular activities, and religious training would be made jointly. The parties, however, were not able to reach an agreement as to parenting time.

¶ 12 In May 2017, a rule to show cause was issued against Meagan based upon Jerry's pending petitions for the denial of parenting time in August 2016, December 2016, and March 2017. A hearing was held on the rule to show cause in July 2017. At the close of the evidence, the trial court found that: (1) the justification given by Meagan for the denial of Jerry's parenting time was that M.B. was attending preschool in Alabama; (2) there was no legal obligation for M.B. to attend preschool; (3) there was no showing by Meagan that she had a reasonable belief that there was a legal obligation for M.B. to attend preschool; (4) there was a legal obligation upon Meagan to provide Jerry with his parenting time; (5) Meagan had the ability and opportunity to provide parenting time but chose not to do so; and (6) Meagan's conduct was willful and in contempt of the December 2013 court order. The trial court determined that Meagan was in indirect civil contempt of court for the failure to provide the specified parenting time; continued the case for sentencing; and, by agreement of the parties, granted Jerry one month of make-up parenting time. After a sentencing hearing was held on a later date, Meagan was ordered to pay Jerry's attorney fees relating to the rule proceedings. In addition, Jerry was awarded another 20 days of make-up parenting time.

¶ 13 In October 2017, a hearing was held on the two competing petitions to modify parenting time. Prior to or at the outset of the hearing, the parties stipulated that M.B.'s start of formal schooling (kindergarten) in August 2017 was a substantial change in circumstances that necessitated a modification of the parenting time schedule established in the December 2013 court order. In addition, as noted above, the parties had previously reached an agreement in mediation as to the allocation of parental responsibilities. Thus, the only issue for the trial court

to determine at the hearing on the modification petitions was the appropriate allocation of parenting time. The evidence presented at the hearing, relative to that issue, can be summarized as follows.

¶ 14 Meagan testified that she and Jerry had known each other since 2010. They had one child together, M.B., who was born in November 2011. At the time M.B. was born, Meagan lived in Guntersville, Alabama. Meagan returned to Illinois for a short period in 2012 and was served with papers by Jerry to establish that he was M.B.'s father. As part of that original action, a parenting time schedule was entered by the court, and Meagan remained in Illinois.

¶ 15 In December 2013, Meagan's removal petition was granted and she and M.B. moved back to Alabama. As part of the removal order, a parenting time schedule was entered by the court, which gave Jerry parenting time with M.B. two weeks in the first quarter of every single year, three weeks in the second quarter, two weeks in the third quarter, and three weeks in the fourth quarter, with the parties alternating every other Thanksgiving and Christmas. M.B. was two years old when that particular parenting time schedule was entered.

¶ 16 Since December 2013, Meagan and M.B. had been living in Alabama. Upon returning to Alabama, Meagan and M.B. lived with Meagan's parents in Guntersville, Alabama, for the first few months. Meagan and M.B. later moved into an apartment in Albertville, Alabama, and then subsequently moved to a different apartment at that same location. When the lease on Meagan's most recent apartment expired, Meagan and M.B. moved back in with Meagan's parents so that M.B. could attend the Guntersville schools.

¶ 17 In February 2015, Meagan began discussing with Jerry by email, their usual means of communication, that M.B. was going to be starting preschool the following August. At that time, Meagan was hoping that she and Jerry could work something out so that M.B. could attend

preschool and still have her parenting time with Jerry. The parenting time schedule that was in place would have interfered with M.B.'s preschool attendance. Although the parties made a few proposals back and forth, they were never able to come to an agreement about the matter. Meagan believed that it was in M.B.'s best interest to attend preschool.

¶ 18 In August 2017, M.B. started kindergarten at the same school where she had attended preschool. Prior to the start of kindergarten, Meagan provided Jerry with a school calendar that showed all of M.B.'s school breaks for the year and listed when the school year was scheduled to end. Meagan also provided Jerry with all of M.B.'s school information and listed Jerry with the school as M.B.'s father and as an emergency contact person for M.B. It was Meagan's intention that Jerry would have online access to M.B.'s school information when that access became available in later school years. According to Meagan, M.B. was doing very well in school. For the past two years, Meagan had consistently sent Jerry emails, progress updates, and pictures, and tried to get Jerry involved in M.B.'s school activities and functions. Meagan had invited Jerry to M.B.'s baptism and to take M.B. to a father-daughter dance. Jerry either declined or did not respond to those invitations.

¶ 19 Meagan testified further that she had purchased an age-appropriate watch phone for M.B. Through that phone, M.B. was able to have phone contact with Jerry almost every day for about 20 to 60 minutes, although there was no court order in place that required that such contact be made. The phone contact had been occurring since Jerry had provided Meagan with his cell phone number in April 2017. Prior to that time, Jerry had refused to give Meagan his cell phone number and had told Meagan that he did not trust her with the number because he believed that Meagan had generated text messages that were not from him that she had used against him in an order-of-protection proceeding in 2012.

¶ 20 In Meagan's opinion, Jerry was a good father to M.B. Meagan believed that Jerry's parenting time with M.B. over the past summer had gone well. During Jerry's parenting time, Meagan had phone contact with M.B. on almost a daily basis. Jerry, however, did not usually send Meagan pictures or updates regarding M.B. during his parenting time.

¶ 21 At one or more points in her testimony, Meagan identified groups of emails that were sent to her from Jerry or between her and Jerry. Some of the emails were presented as examples of Meagan's efforts at keeping Jerry informed and involved with M.B.'s activities. Other emails were presented to show Jerry's conduct toward Meagan. In one of the emails, Jerry told Meagan that she was a horrible mother. In other emails, Jerry called Meagan a "slut" and a "f*** psycho" (brought out in Jerry's testimony) and threatened to not allow M.B. to have contact with Meagan during Jerry's parenting time. Meagan described those emails as being "typical" emails that she had received over the past three years from Jerry. The emails were subsequently admitted into evidence without objection, for the most part.

¶ 22 In Meagan's opinion, it was in M.B.'s best interest for Meagan to continue to have the majority of parenting time with M.B. in Alabama because M.B. had a consistent routine with Meagan, M.B. was familiar with her school and her surroundings, M.B. had family and friends close by, and Meagan and M.B. were established in the community. During her testimony, Meagan described in detail the parenting time schedule that she was proposing for Jerry if her petition to modify was granted. Meagan believed that the schedule she was proposing was fair and would work between the parties, if she was granted the majority of parenting time.

¶ 23 On cross-examination, however, Meagan acknowledged that she also believed that the parenting time schedule that was entered in December 2013 would work between the parties and that the trial court had found that Meagan had violated that schedule in August 2016, December

2016, and March 2017. Meagan admitted that she had not always put Jerry's relationship with M.B. ahead of her own fears and aversion of Jerry, and that in the past, she had not done a good job of facilitating Jerry's relationship with M.B. Meagan wished that she and Jerry could work things out without having to go through the court system and believed that having to do so was hurting M.B. According to Meagan, there was a lot of tension between Meagan and Jerry at times and M.B. could sense that tension, which was not beneficial to M.B. Meagan acknowledged further that Jerry going five or six months without seeing M.B. caused an increase in that tension.

¶ 24 Meagan also acknowledged that over the years, Jerry did not receive certain portions of his parenting time. Meagan agreed that Jerry did not receive his parenting time in March 2014 (his first scheduled parenting time under the December 2013 order), which resulted in Jerry filing a petition for rule to show cause against Meagan. Meagan stated that she denied that parenting time because it overlapped between the first and second quarter of the year and she was trying to follow the trial court's order. According to Meagan, she was now more willing to put M.B.'s best interest ahead of Meagan's own fears and aversion of Jerry. That realization or desire came to Meagan in the beginning of 2016, when M.B. began school and Meagan wanted to try to form a relationship with Jerry for M.B.'s sake. Meagan acknowledged, however, that she had denied Jerry parenting time in August and December 2016, after that alleged realization had occurred. When Jerry requested parenting time in August 2016, he was aware of M.B.'s school schedule. Meagan initially stated during her testimony that when she told Jerry that M.B. was going to be in school during those days in August 2016, Jerry did not request any alternate time. Upon further questioning about the matter, Meagan admitted that Jerry had requested alternate time and that she had never responded to Jerry's request. According to Meagan, she

had things to do during that time period to get M.B. ready to attend school, such as vaccinations, dental appointments, shopping for school supplies, and attending a school open house. As for the December 2016 parenting time, Meagan stated that after she and Jerry had agreed that Jerry would have parenting time from December 17 to December 23, 2016, Jerry decided on his own that he was not going to return M.B. until December 31, 2016. Meagan was concerned about one of M.B.'s teeth abscessing and she tried to get an emergency order of protection against Jerry so that she could get M.B. back right away because M.B. had a dental appointment scheduled in Alabama.

¶ 25 Meagan also acknowledged that there was a time or times over the past year when M.B. had a break from school but Meagan did not offer parenting time to Jerry during those periods. According to Meagan, Jerry had a school calendar, which showed the school breaks, and did not ask for parenting time during those periods. Regarding the emails she had presented in court, Meagan agreed that the emails were ones that she had selected and that they did not necessarily show the full context of the conversation (what Meagan had stated to Jerry in the previous email leading up to Jerry's response). Meagan acknowledged further that Jerry had been denied about five weeks of his parenting time between 2016 and 2017. Thirty-one of those days Jerry had already been given back during the previous summer as make-up time.

¶ 26 Meagan was also asked in cross-examination about her various relationships over the years. According to Meagan, she had married Rory O. in 2008. Meagan and Rory separated in 2010 and were still separated when Meagan had a relationship with Jerry. At some point after Meagan and Jerry had split up, Meagan dated Michael S. Michael would stay at Meagan's apartment on occasion and was introduced to M.B. as Meagan's friend. In October 2014, Meagan and Rory reconciled. Meagan and Rory were still married as of the hearing date in the

instant case. In about May 2016, Meagan informed M.B. that Rory was Meagan's husband and that she and Rory were previously separated. In Meagan's opinion, M.B. and Rory had a "pretty good" relationship. M.B. called Rory by his first name and called Jerry "Dad." Rory had been working in Florida as a millwright over the past eight years and would return to Alabama on occasion when jobs would allow.

¶ 27 When asked in cross-examination about her employment status, Meagan testified that she was not currently employed. Meagan had last been employed over summer 2017 as a waitress while M.B. was in Illinois with Jerry for Jerry's parenting time. Meagan had been working for that same establishment since 2015. Meagan worked primarily on Friday and Saturday nights from 6 p.m. to midnight and did catering work on the side. When Meagan was at work, Meagan's mother or father would watch M.B., if M.B. was not in school. There was also a daycare that M.B. went to from time to time. During her testimony, Meagan described in detail her daily schedule with M.B. on school days.

¶ 28 Kelly F. testified that she and Jerry used to have a dating relationship and that they had one daughter together, E.F.[1] E.F. was born in February 2008 and was 9 years old as of the date of the hearing. A court order was entered in October 2011, which gave Kelly the majority of parenting time with E.F. (sole custody). Jerry had parenting time with E.F. every Wednesday after school and every other weekend. Kelly and Jerry never had to go back to court over parenting time issues, were very flexible and cooperative with one another in working out parenting time for events and special occasions, and had a good level of communication. Jerry's girlfriend, Angie, also assisted in the communication and in carrying out the arrangements. Kelly and Jerry made efforts to allow E.F. and M.B. to spend as much time together as possible

[1] E.F.'s last name was not provided in the record. For the sake of clarity and simplicity, we have used the initial for Kelly F.'s last name.

when Jerry was having parenting time with M.B., even if Kelly had to reschedule her own parenting time with E.F. According to Kelly, E.F. loved M.B. and they seemed to want to see each other and spend time together. Kelly communicated to Jerry about all of the important parental decisions relating to E.F, and Jerry was involved in some of E.F.'s activities and medical appointments. Kelly had no concerns for E.F.'s wellbeing while E.F. was in Jerry's care. Since the parenting order was entered in 2011, E.F. had seen Jerry every week. Kelly and Jerry lived only about three miles apart from one another and were in the same school district.

¶ 29 Jerry's father, Bruce S., testified that he and Jerry's mother lived a short distance from Jerry and would babysit M.B. during Jerry's parenting time when Jerry was at work. Bruce and Jerry's mother also babysat E.F. on occasion. Bruce had seen Jerry interact with M.B. and believed Jerry to be a very good father. M.B. was a smart and happy child, had a good bond with Jerry, and was excited to see Jerry. Jerry also had a good bond with E.F. Bruce had seen Jerry, E.F., and M.B. together and felt that the group interacted well and that E.F. and M.B. had a good bond. According to Bruce, Jerry and E.F.'s mother, Kelly, had a good relationship, were able to talk and work things out, and were always civil to one another. When M.B. came for parenting time in summer 2017, she seemed to be the same as the last time Bruce had seen her. M.B. was very close to Jerry's mother but was not as close to Bruce.

¶ 30 Jerry testified that he had resided in the same house in Kankakee for the past 10 years and that his girlfriend, Angie, was currently living with him. E.F. and/or M.B. would live at the house as well when Jerry was having parenting time with them.

¶ 31 Jerry testified about the denial of his parenting time by Meagan over the years and how he had to fight with Meagan to get his rightful parenting time with M.B. According to Jerry, he had to go back to court three different times to enforce his parenting time. The only year that

Jerry received his full parenting time since Meagan left Illinois was in 2015. When Meagan first moved to Alabama with M.B., Jerry did not have any contact with M.B. for about five months, even though he had notified Meagan of the days he wanted for his parenting time during the first quarter. Meagan disagreed with Jerry having those days because they overlapped between the first and second quarter. Jerry responded that he would bring M.B. back on the last day of the first quarter but Meagan wanted Jerry to write a letter to that effect, which Jerry did not do because he would not have been able to provide the required notice of the parenting time that he was requesting. In 2016, Jerry did not receive his third quarter parenting time and did not see M.B. from some point in June until December. He also did not receive his first quarter 2017 parenting time with M.B. As a result, Jerry did not see M.B. from the end of December 2016 until the end of May 2017. The last time that Jerry had seen M.B. prior to the instant court hearing was in the end of July 2017, although he had been speaking to M.B. on the phone.

¶ 32 According to Jerry, the bulk of the parenting time he had been denied had been over the past 12 to 15 months and the reason given for the denials was M.B.'s schooling. In February 2016, Meagan emailed Jerry saying that M.B. was going to be starting school later that year and that he would not be allowed to have any parenting time that interfered with M.B.'s schooling. Jerry did not believe it was in M.B.'s best interest to forego her parenting time with him so that she could attend, or have perfect attendance at, preschool and did not consider preschool to be the start of formal schooling.

¶ 33 Jerry stated during his testimony that in the past, after M.B. would go back to Meagan, his contact with M.B. would be sporadic. Jerry would have some contact with M.B. for the first week or two and then the contact would basically stop and would pick back up again about a month before his next scheduled parenting time. Jerry would initiate contact by emailing

Meagan or by calling Meagan's parents' house. In addition, Jerry would have difficulty trying to talk to M.B. on the phone when M.B. was with Meagan. When Jerry would call, Meagan would not allow him to talk to M.B., would tickle M.B. while Jerry was trying to talk to her, or would have the television volume up so loud that Jerry could hardly hear M.B. Jerry did not initially provide Meagan with his cell phone number because he believed that Meagan had previously falsified a text message to have him found in violation of an order of protection and put in jail. That was before Meagan left the state. Since Jerry had provided Meagan with his cell phone number, his ability to communicate with M.B. had improved. Jerry and M.B. would communicate through M.B.'s phone or through Meagan's phone, if M.B.'s phone was dead.

¶ 34 According to Jerry, his communication with Meagan over the past year had been a lot better. Prior to that time, it was not very good. Either Jerry would not hear anything from Meagan or they would argue. Jerry characterized his own level of cooperation with Meagan as currently being "decent" since about March or April 2017 and said that prior to that time, the cooperation between the two of them was not very good—he and Meagan were either not cooperating with one another or were arguing.

¶ 35 In Jerry's opinion, the majority of parenting time with M.B. should be awarded to him in Illinois, rather than to Meagan in Alabama, because his environment was a more stable environment for M.B. and because, otherwise, Meagan would just go back to denying his parenting time with M.B. Jerry stated that he was employed as the district manager for Take 5 Oil Change and had held that position for the past 11 years. Jerry worked every day of the week, except Wednesdays and Sundays, from 8 a.m. to 5 or 6 p.m. Jerry's primary work location was only about 8 to 10 miles from his home and he had flexibility in his hours and his days of employment. If Jerry was awarded the majority of parenting time with M.B., M.B. would attend

school in Herscher, the same school that Jerry's other daughter, E.F., had attended. Jerry's home was located about 10 miles from the school. On school days, M.B. would ride the bus to and from school. Jerry would put M.B. on the bus in the morning, and Angie would be home in the afternoon when M.B. got off of the bus. If for some reason Angie was not going to be home that day, Jerry could arrange for M.B. to ride the bus to Jerry's parents' house. M.B. had a good relationship with Jerry's other daughter, E.F., and with Jerry's mother and father, although M.B. was particularly close to Jerry's mother. M.B. also had a good relationship with Jerry's girlfriend, Angie. When Jerry was having parenting time with M.B., he, M.B. and Angie would go swimming, go bike riding, take the dogs for walks, take trips to Iowa to visit Angie's sister, and go to water parks. Jerry and Angie had plans to get married, have more children, and to buy a bigger house. During his testimony, Jerry discussed in detail his proposal for parenting time for Meagan, if he was awarded the majority of parenting time with M.B. For the most part, Jerry's proposal of parenting time for Meagan was very similar to Meagan's proposal of parenting time for him.

¶ 36 In Jerry's opinion, Meagan had the ability, but not the willingness, to facilitate Jerry's relationship with M.B. Jerry based that opinion on Meagan's denial of his parenting time over the past three of four years and also believed, for that same reason, that Meagan had a low chance of putting M.B.'s needs above her own. According to Jerry, at the time of some of the emails Meagan had presented, there was a lot of tension between Jerry and Meagan and his level of cooperation and communication with Meagan was a zero. By February 2016, Jerry and Meagan's level of communication and cooperation had gotten a little better. By April 2017 and through June of that year, Jerry and Meagan's level of communication and cooperation had gotten a lot better.

¶ 37 According to Jerry, he had both the ability and the willingness to put M.B.'s needs ahead of his own and had facilitated Meagan's relationship with M.B. over the years. Although Meagan had denied his parenting time and would not allow Jerry to talk to M.B. on occasion, Jerry would still allow M.B. to call Meagan when Jerry was having parenting time with M.B, even though at times he had threatened that he would not allow phone contact. In addition, Jerry did not hinder Meagan's parenting time and did not distract M.B. when Meagan was talking to M.B. on the phone. In Jerry's opinion, Meagan's communication and cooperation with him had gotten better because of the court proceeding and because Meagan wanted to look good for court. Communication and cooperation did not get better, according to Jerry, until he filed his counterpetition, seeking to have the majority of parenting time with M.B. allocated to him.

¶ 38 On cross-examination, Jerry acknowledged, however, that communication and cooperation began to improve in October 2016, which was before Jerry had filed his counterpetition in the present case but after he had filed his petition for rule to show cause. Although there was not a court order directing the parties to allow phone communication with M.B., the parties were able to come up with an arrangement on their own. The phone contact had increased as M.B. had gotten older. In addition, Jerry and Meagan had worked out a partial agreement to give Jerry back the parenting time he had missed for 2016 and part of 2017. Jerry acknowledged during his testimony that even though M.B. had a fall break in October 2017, he did not ask for parenting time during that break. Jerry stated that because of the court continuances and the setting of the court date, he did not think that he would have sufficient time to give proper notice to Meagan of a request for parenting time for the fall break. Jerry had no complaints about the quality of the Guntersville school district where M.B. was currently attending school. When asked his opinion about Meagan as a mother, Jerry stated that he

believed that Meagan loved M.B. dearly but did not think that Meagan would put M.B.'s best interest first.

¶ 39 After all of the evidence had been presented, the trial court heard the closing arguments of the attorneys. Meagan's attorney argued that keeping the majority of parenting time with Meagan in Alabama was in M.B.'s best interest because M.B. had been living in Alabama for a significant amount of her life (since December 2013); M.B. was adjusted to, and used to, where she was living; M.B. only needed about a day or two to adjust when going to parenting time at Jerry's house; and Alabama was where M.B. had established a community. Jerry's attorney argued that the most important statutory factors in this case were the ability and willingness of the parents to place the child's needs ahead of their own needs and to facilitate and encourage a close and continued relationship between the other parent and the child. As to those two factors, Jerry's attorney argued that by Meagan's own admission, she had not always done the best job of placing M.B.'s needs ahead of her fears and aversion of Jerry or the best job of facilitating Jerry's relationship with M.B. Jerry's attorney argued further that Meagan's past history of interfering with Jerry's parenting time was direct evidence of Meagan's inability and unwillingness to do so. Further, according to Jerry's attorney, the evidence established that Jerry, unlike Meagan, had the ability and willingness to put M.B.'s needs ahead of his own and to facilitate M.B.'s relationship with Meagan—Jerry had not interfered with Meagan's parenting time, had allowed Meagan to have contact with M.B. during his parenting time, and had a successful parenting relationship with the mother of his other child. In addition, Jerry's attorney maintained, there was no assurance that Meagan would follow a new parenting schedule since she had not followed the last parenting schedule.

¶ 40 When the arguments had concluded, the trial court took the case under advisement. Later that month (October 2017), the trial court announced its ruling. The trial court granted Meagan's petition to modify parenting time and implicitly denied Jerry's. In so doing, the trial court found, among other things, that: (1) the evidence in this case had shown that Meagan had historically been M.B.'s caregiver throughout M.B.'s life; (2) M.B. was doing well, was not suffering, was adjusted to being with each parent, and had contact with both parents frequently, although M.B.'s physical contact with Jerry was limited because of the geographical distance between the two parents' residences; (3) the evidence in the case had shown that each parent loved M.B. and wanted what was best for M.B., which was a positive indication; (4) the court had a difficult time reading the parties' emails and was concerned that Jerry's name-calling was/or could be harmful to M.B., which was a negative indication; (5) the court was also concerned about the parenting time that Jerry had missed and noted that Meagan's behavior in that regard was or could be harmful to M.B. as well, which was also a negative indication; (6) despite the parties' animosity, the court had been asked to approve a parenting plan where the parties would jointly make decisions regarding M.B., which gave the court some hope, but the court was concerned about the future because the parties could not agree where M.B. should live; (7) when the law was applied to the facts in this case, each party had statutory factors in their favor; (8) it would be in M.B.'s best interest if Jerry recognized that M.B. loved her mother (Meagan); (9) it would also be in M.B.'s best interest if Meagan could clearly see how lucky M.B. was to have a father (Jerry) who loved her and wanted to be with her and how M.B. benefitted from consistent, frequent contact with Jerry; (10) having made decisions of this nature for a long period of time and having had an opportunity to see the consequences of those decisions, the court had learned that it was rarely in a child's best interest to remove a child from an environment where the child

was thriving in the hope of finding a new environment where the child would thrive more; (11) the evidence had shown that M.B. had lived a significant portion of her life in Alabama with her mother (Meagan) and had done well by all accounts; and (12) given that previous fact (listed in number 11), which the trial court found to be the most significant, the court determined that M.B.'s best interest would be served by remaining in Alabama with her mother (Meagan). Although the trial court granted Meagan's petition to modify, and not Jerry's, it did adopt the parenting time plan that Jerry had proposed for Meagan as the parenting time plan for Jerry. The trial court also adopted the agreement that the parties had reached in mediation as to parental responsibilities. Jerry appealed.

¶ 41 ANALYSIS

¶ 42 On appeal, Jerry argues that the trial court erred in granting Meagan's petition to modify his parenting time and in denying his counterpetition for the same relief. Jerry asserts that the manifest weight of the evidence in this case shows that the trial court should have reached the opposite conclusion and should have found that allocating the majority of parenting time to Meagan in Alabama was not in M.B.'s best interest. More specifically, Jerry contends that in making its ruling, the trial court: (1) failed to give proper weight to evidence that Meagan had engaged in a pattern of alienating behavior—denying Jerry's parenting time—dating back to the original parenting time schedule; (2) improperly considered evidence that Jerry had engaged in name-calling and animosity toward Meagan in private emails between the parties, which was unknown to M.B. and had no effect on Jerry's relationship with M.B.; and (3) failed to consider that M.B.'s adjustment to her present environment, to which the trial court gave great weight, came at the expense of Jerry's relationship with M.B. and was due, in part, to Meagan's alienating behavior. In support of his position on appeal, Jerry cites to several cases involving a

pattern of alienating behavior by the mother of a child, which resulted in the trial court eventually allocating the majority of parenting time (sole custody) to the father. See *In re Marriage of Ricketts*, 329 Ill. App. 3d 173, 177-82 (2002); *In re Marriage of Debra N. & Michael S.*, 2013 IL App (1st) 122145, ¶¶ 42-56; *In re Marriage of D.T.W. & S.L.W.*, 2011 IL App (1st) 111225, ¶¶ 81-105. For all of the reasons stated, Jerry asks that we reverse the trial court's judgment and that we remand this case for a limited purpose—for the trial court to determine a parenting time schedule.

¶ 43 Meagan argues that the trial court's ruling was proper and should be upheld. In support of that argument, Meagan asserts that the evidence presented by the parties at trial did not clearly establish that the only possible or reasonable outcome was to award Jerry the majority of parenting time with M.B., which is ultimately what must be found on review in this case for a reversal to be warranted. Rather, according to Meagan, some of the evidence favored her position and some of the evidence favored Jerry's position. In making that assertion, Meagan points out the steps that she has taken over the years to foster the relationship between Jerry and M.B. and notes that despite Jerry's claim of alienation, the evidence shows that Jerry has a good relationship with M.B. and that his relationship with M.B. has not suffered from Meagan's interference with his parenting time, which Meagan maintains was due to M.B. being in school. As for the trial court's statements about Jerry's emails, Meagan points out that it is presumed that the trial court knew and followed the law and claims that the trial court's statements were merely an expression of concern over whether the joint allocation of parental responsibility would be successful. Meagan asserts further that the trial court was not required to expound upon each statutory factor separately or to give more weight to one factor over another. In addition, Meagan contends that the cases that Jerry cites regarding alienating behavior are distinguishable

from the present case because in those cases, the trial courts made a specific finding of alienation and there was evidence that the alienation had strained the parent-child relationship as to the other parent, a fact pattern which is not present in the current case. For all of the reasons set forth, Meagan asks that we affirm the trial court's judgment.

¶ 44 In the present case, it appears that Jerry filed his petition to modify the trial court's prior allocation judgment pursuant to section 610.5(c) of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/610.5(c) (West 2016)), although Jerry did not specifically refer to that section in his petition.[2] Section 610.5(c) requires the trial court to modify a parenting plan or allocation judgment when, based upon a substantial change of circumstances, such a modification is necessary to serve the best interest of the child. See 750 ILCS 5/610.5(c) (West 2016). In this particular case, there was no dispute that a substantial change of circumstances had occurred—that M.B. was going to start or had started formal schooling—and that it necessitated a modification of the allocation judgment. The parties were unable to reach an agreement, however, and asked the trial court to determine the appropriate allocation of parenting time.

¶ 45 In allocating parenting time, a trial court must make its decision in accordance with the best interest of the child. 750 ILCS 5/602.7(a) (West 2016); *In re Custody of G.L.*, 2017 IL App (1st) 163171, ¶ 42. Section 602.7(b) of the Marriage Act sets forth 17 factors that the trial court is required to consider in making its best interest determination. 750 ILCS 5/602.7(b) (West 2016); *G.L.*, 2017 IL App (1st) 163171, ¶ 42. The statutory factors listed, however, are not the only factors the trial court may consider, and the trial may consider any relevant factor in

[2] Although Jerry and Meagan were never married, Jerry established that he was M.B.'s father, and the Illinois Parentage Act of 2015 provides that "[a]ny allocation of parental responsibilities, parenting time, or relocation judgment modification shall be in accordance with the relevant factors specified in the Illinois Marriage and Dissolution of Marriage Act." See 750 ILCS 46/808 (West 2016).

determining the child's best interest when allocating parenting time. 750 ILCS 5/602.7(b) (West 2016); *G.L.*, 2017 IL App (1st) 163171, ¶ 42.

¶ 46 A trial court's decision regarding the allocation of parenting time will not be reversed on appeal unless it is against the manifest weight of the evidence. See *In re Marriage of Bates*, 212 Ill. 2d 489, 515 (2004) (stating the standard of review using the prior terminology). A ruling is against the manifest weight of the evidence only if it is clearly apparent from the record that the opposite conclusion should have been reached or if the ruling itself is arbitrary, unreasonable, or not based upon the evidence presented. *Best v. Best*, 223 Ill. 2d 342, 350 (2006). A trial court's decision as to the allocation of parenting time is afforded great deference on appeal because the trial court is in a far better position than the reviewing court to judge the credibility of the witnesses, to weigh the evidence, and to determine the best interest of the child. See *Bates*, 212 Ill. 2d at 515-16 (stating that legal principle using the prior terminology). Therefore, in determining whether a trial court's judgment is against the manifest weight of the evidence, the reviewing court will view the evidence in the light most favorable to the appellee and, when faced with multiple reasonable inferences, will accept those inferences that support the trial court's ruling. *Id.* at 516.

¶ 47 In the present case, after thoroughly reviewing the record, we find that the trial court's ruling on the appropriate allocation of parenting time was well supported by the evidence. The evidence showed that M.B. had resided in Alabama with Meagan as the parent with majority parenting time since December 2013 when Meagan's removal petition was granted. M.B. was well-adjusted to her home in Alabama and to her schedule with Meagan, was doing well, had developed relationships with friends at school and with her maternal grandparents, and was in involved in school and community activities. Meagan dearly loved M.B., wanted to serve as

M.B.'s primary caregiver, and provided for all of M.B.'s needs while M.B was in her care. Although Meagan acknowledged that she had not always put M.B.'s interests first as they related to M.B.'s relationship with Jerry and that she could have done better facilitating Jerry's relationship with M.B., she had indicated at the hearing that she was trying to improve her communication and cooperation level with Jerry and had engaged in actions to do so. The evidence showed that Meagan had allowed and facilitated phone contact between Jerry and M.B. on a daily basis, even though there was no court order requiring her to do so, and that she had provided Jerry with additional parenting time, albeit under court pressure, to make-up for the parenting time that Jerry had been denied. Based upon that evidence, we cannot say that it is clear that the trial court should have reached the opposite conclusion or that the trial court's ruling in this case was arbitrary, unreasonable, or not based upon the evidence presented. See *Best*, 223 Ill. 2d at 350. We find, therefore, that the trial court's ruling was not against the manifest weight of the evidence. See *id.*

¶ 48 In reaching that conclusion, we are mindful that there were many positive facts that weighed in Jerry's favor as well. The evidence showed that M.B. had a good bond with Jerry, with Jerry's girlfriend, with Jerry's other daughter, and with Jerry's parents; that M.B. would adjust relatively quickly to going to Jerry's house for Jerry's extended parenting time; that M.B. was well-provided for while she was in Jerry's care; and that M.B. was involved in many activities while she was with Jerry. In addition, Jerry had abided by the parenting schedule and had facilitated phone contact between Meagan and M.B. when M.B. was in Jerry's care, even though he was not required to do so by a court order. That being said, however, it must also be noted that a trial court's ruling is not against the manifest weight of the evidence merely because some of the evidence favored the non-prevailing party's position. See *D.T.W.*, 2011 IL App (1st)

111225, ¶ 82 (stating that if the evidence before the trial court did not clearly favor either party, a reviewing court cannot say that the trial court's decision to place permanent custody of the children with one of the parents was against the manifest weight of the evidence); *Ricketts*, 329 Ill. App. 3d at 177 (stating that when the manifest weight of the evidence standard of review applies, the reviewing court will affirm the trial court's ruling if there is any basis to support the trial court's finding). It was the trial court's role, as trier of fact, to assess the credibility of the witnesses and to weigh the evidence before it in relation to the best interest factors. See *Bates*, 212 Ill. 2d at 515-16; *D.T.W.*, 2011 IL App (1st) 111225, ¶ 81; *G.L.*, 2017 IL App (1st) 163171, ¶ 35. Contrary to Jerry's assertion on appeal, we see no indication in the record that the trial court weighed the factors incorrectly or that the trial court gave too much or too little weight to any particular factor. While it is true that in allocating parenting time, a trial court may not consider the conduct of a parent that does not affect that parent's relationship to the child (see 750 ILCS 5/602.7(c) (West 2016); *G.L.*, 2017 IL App (1st) 163171, ¶ 51), we cannot say that the trial court did so in this particular case. The emails of which Jerry complains were before the court without objection and the name-calling engaged in by Jerry in those emails undoubtedly had a negative effect on M.B, even if the content of the emails was not directly communicated to M.B. At the very least, the inappropriate name-calling by Jerry in his emails increased the tension between the parties—the same way that the denial of Jerry's parenting time by Meagan increased the tension between the parties—and that increase in tension was sensed by, and had a negative effect on, M.B., as the evidence showed. We cannot say, therefore, that the trial court considered the emails improperly in determining the allocation of parenting time that was in M.B.'s best interest.

¶ 49 In addition, we have reviewed the main cases cited by Jerry in support of his position on appeal and find that they are all distinguishable from the facts of the present case. In each of those cases, the mother's alienating conduct was much more severe in nature than the conduct of Meagan in the present case. See *Ricketts*, 329 Ill. App. 3d at 181 (the trial court awarded the sole custody of the minor child to the father after finding that the mother was "committed to minimizing if not destroying, [the father's] parenting rights," which was not in the best interest of the child); *Debra N.*, 2013 IL App (1st) 122145, ¶ 39 (the trial court awarded the sole custody of the minor child to the father after finding that the mother had engaged in a "pattern of interference and manipulation," that the mother's actions were "designed to diminish or eliminate [the father's] ability to be a fully engaged and active parent," and that the court did not have to ignore the mother's actions merely because the child had not yet been alienated); *D.T.W.*, 2011 IL App (1st) 111225, ¶¶ 46, 87 (the trial court awarded the sole custody of the minor children to the father after finding that the mother had "embarked upon an unstoppable and relentless pattern of conduct for over two years to alienate the children from their father" and the evidence had indicated that at least one of the children had developed very negative feelings toward the father). The fact patterns that occurred in those cases are not present in the instant case. Furthermore, in each of those cases, it was the trial court that awarded sole custody/majority parenting time to the father. Thus, the decisions of the reviewing courts in those cases were largely a function of the standard of review and the deference that is to be given to the trial court's ruling on matters relating to child custody/parenting time. See *Ricketts*, 329 Ill. App. 3d at 177-82 (finding that the trial court's ruling awarding sole custody of the children to the father was not against the manifest weight of the evidence); *Debra N.*, 2013 IL App (1st)

122145, ¶¶ 42-56 (same); *D.T.W.*, 2011 IL App (1st) 111225, ¶¶ 81-105 (same). The same is true of our decision in the present case.

¶ 50 CONCLUSION

¶ 51 For the foregoing reasons, we affirm the judgment of the circuit court of Kankakee County.

¶ 52 Affirmed.