2018 IL App (4th) 180491-U

NO. 4-18-0491

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
December 17, 2018
Carla Bender
4th District Appellate
Court, IL

KARA B.,	)	Appeal from
Petitioner-Appellant,	)	Circuit Court of
v.	)	DeWitt County
JAMES L.,	)	No. 14F28
Respondent-Appellee.	)	
	)	Honorable
	)	Gary A. Webber,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justice DeArmond concurred in the judgment.
Justice Turner dissented.

ORDER

¶ 1 *Held*: The appellate court reversed, concluding the trial court's denial of petitioner's petition to relocate the minor child was against the manifest weight of the evidence.

¶ 2 In August 2017, petitioner, Kara B., filed a petition seeking permission to relocate M.L. (born December 13, 2012), her son with respondent, James L. In July 2018, the trial court denied the petition to relocate.

¶ 3 Petitioner appeals, arguing the trial court's ruling that relocating M.L. to Colorado was not in his best interest was against the manifest weight of the evidence. For the following reasons, we reverse the judgment of the trial court.

¶ 4 I. BACKGROUND

¶ 5 In August 2017, petitioner filed a petition to relocate M.L., alleging petitioner's husband, Mitchell C., recently obtained a better job with a company called Vestas in Pueblo, Colorado. The petition sought permission to relocate M.L. to Colorado, where he would live with petitioner, Mitchell, and their minor daughter, M.C. (born October 5, 2016).

¶ 6 A. Relocation Hearing

¶ 7 On nonconsecutive days in February, March, and May 2018, the trial court held a hearing on the relocation petition. The court heard the following testimony.

¶ 8 1. *Petitioner*

¶ 9 Petitioner testified she lived in her parents' home with her two children, five-year-old M.L. and 16-month-old M.C., her parents, and her grandmother. Petitioner and her children previously lived in a home shared with Mitchell. However, when Mitchell moved to Colorado for employment reasons, the couple sold the home and petitioner moved back in with her parents.

¶ 10 Petitioner was M.L.'s primary caretaker throughout his life and her life revolved around her two children. When M.L. was a baby, respondent taught and worked multiple jobs. Petitioner was responsible for feeding M.L., bathing him, and putting him to sleep. According to petitioner, she and respondent lived with her parents after M.L.'s birth. Petitioner and respondent permanently separated when M.L. was approximately six months old. Following the separation, respondent did not exercise much parenting time. In May 2014, respondent had his first visit with M.L. alone.

¶ 11 On February 9, 2015, a parenting agreement was filed that granted sole custody of M.L. to petitioner. The primary physical residence was to be designated by petitioner and she had all decision making concerning extracurricular, educational, religious, and nonemergency

healthcare decisions. Respondent had parenting time the second and fourth weekends of every month from 5 p.m. Friday until 5 p.m. Sunday. The parties alternated various holidays and each was granted two weeks of uninterrupted time during the summer.

¶ 12 According to petitioner, respondent became more involved with M.L. in 2015 when he began dating his fiancée, Abby Lee. In summer months, petitioner would offer respondent the week of his weekend parenting time with M.L., but that was not always consistent.

¶ 13 Petitioner testified M.L. and her husband Mitchell had a special bond. Mitchell taught M.L. new things and attended preschool activities, soccer games, and swim practices. Mitchell and M.L. also swam, cooked, watched movies, and went to the park. M.L. and M.C. got along extremely well, greeted each other with smiles, and enjoyed playing together. M.L. was very close with petitioner's parents, who helped care for M.L. when they lived together for the first years of M.L.'s life.

¶ 14 In 2016, Mitchell told petitioner that he was unhappy with his employment at Trinity Structural Towers Inc. (Trinity). When Mitchell returned from work, his face was black, he would blow black stuff out of his nose, and he coughed up and spit out black stuff. Petitioner testified Mitchell also suffered from flash burn in his eyes. Since Mitchell started working for Vestas he did not suffer from the same health problems. When Mitchell expressed his dissatisfaction with his job in 2016, he began applying to various jobs in central Illinois without success.

¶ 15 Petitioner testified she was generally unhappy living in Illinois and discussed with respondent her desire to move out of the state. Petitioner first discussed this with respondent in 2016 when he was talking about moving to Carbondale. Respondent understood why petitioner

wanted to move out of the state and had discussed doing the same with his fiancée. The next time the parties discussed moving, it was when petitioner brought up the proposed move to Colorado in June 2017.

¶ 16 Petitioner's brother, sister-in-law, and niece lived in Colorado and were expecting another child. Petitioner visited Colorado twice and M.L. traveled there several times with petitioner's family. During one trip, petitioner's brother and M.L. played with large chess pieces in a park, went to museums and dinner together, and they always wanted to be next to each other. M.L. visited with petitioner's brother four times and got along with his two-year-old cousin.

¶ 17 A trip to Colorado in June 2017 led petitioner to consider moving there. Petitioner fell in love with the atmosphere and the beautiful mountains. When she began researching the area in which they wanted to live, petitioner found it had a better school system. Petitioner drove through the area and did research on the Internet. Petitioner looked at report cards, school websites, and class catalogs and investigated extracurricular activities, academic programs, and clubs. When petitioner and Mitchell traveled there for his job interview, they spoke with doctors and people who had lived in the area for years.

¶ 18 Petitioner informed respondent about a possible move to Colorado, and respondent objected. If the relocation petition was denied, petitioner would stay in central Illinois with M.L. and Mitchell would quit his job at Vestas. Petitioner testified she did not have much money saved and had no employment prospects. If the relocation petition was granted, petitioner would keep respondent "included with everything going on in [M.L.]'s life as far as doctors or extra activities that he's going to be in, allow Facetiming," and allow any extra opportunities for visitation.

¶ 19 According to petitioner, respondent did not attend M.L.'s extracurricular activities. M.L. participated in swimming and soccer in 2016 and petitioner gave the schedules to respondent and his fiancée. Petitioner told respondent about scheduled medical appointments but respondent never attended them. For some last minute medical appointments, petitioner would provide respondent information after the fact. At one doctor's appointment, petitioner raised concerns about a possible Autism diagnosis for M.L., which petitioner testified she informed respondent about. According to petitioner, M.L.'s primary care doctor did not believe M.L. was on the Autism spectrum.

¶ 20 Petitioner presented photographs of herself, M.L., M.C., Mitchell and extended family members participating in various activities to show the close relationship M.L. had with petitioner's family. Petitioner testified she was a stay-at-home mother and worked hard to make a consistent schedule for her children.

¶ 21 Petitioner testified if she were allowed to relocate to Fountain, Colorado, she contemplated enrolling M.L. at Jordahl Elementary School for kindergarten. The curriculum at Jordahl Elementary School included a larger variety of classes than those offered in Clinton, where they would live if they were not allowed to relocate. The school in Colorado offered four different bands and M.L. enjoyed music and dance. The Colorado schools seemed geared toward helping students into a career like welding or technical school or helping students get into college. The schools in Clinton did not offer diving, tennis, culinary arts, and other advanced courses the school in Colorado offered. Advanced classes for high school in Colorado included language composition, literature composition, and advanced biology, physics, and chemistry. M.L. was interested in culinary arts, swimming, soccer, basketball, and all other sports. The school in Colorado had organized sports teams, including a swim team. The school in Clinton

did not have organized swimming or soccer, but those activities were available through the Clinton Community YMCA.

¶ 22 The schedule for the Colorado school showed M.L. would have frequent long weekends. Petitioner testified she would transport M.L. to Illinois to visit respondent on the four-day weekends and respondent could visit M.L. on the three-day weekends. A proposed parenting plan suggested the following parenting time for respondent: six weeks during the summer, spring break each school year, Christmas break in even-numbered years, Thanksgiving break in odd-numbered years, and long weekends split between visitation in Colorado and Illinois.

¶ 23 Petitioner testified Colorado had lower property taxes and a higher minimum wage than Illinois. Petitioner and Mitchell looked into buying a house in Fountain in a price range between $250,000 and $275,000 with property taxes between $800 and $1000. In Illinois, petitioner and Mitchell paid approximately $5000 in property taxes on a house they bought for $142,000. There were lots of parks and libraries with activities for children in Colorado, as well as rock climbing, mountain climbing, skiing, and snowboarding.

¶ 24 M.L. traveled by airplane several times and had no problems traveling. M.L. used a tablet, played games, colored, or read books. The ticket cost to travel between Colorado and Illinois was close to $175 per person for the two-hour flight. The total travel time for respondent was approximately four hours.

¶ 25 According to petitioner, M.L. had difficulties adjusting to differing household rules in her home versus respondent's home. After visiting respondent, M.L. was out of his normal routine of brushing teeth, going to bed at a certain time, and taking baths. Petitioner believed M.L. would benefit from visiting with respondent for longer periods of time because

M.L. would have more time to follow the rules of each household and he would not have to be swapped back and forth as often.

¶ 26 2. *Mitchell C.*

¶ 27 Mitchell C. testified that he and petitioner began their relationship in May 2014 and married on August 26, 2017. According to Mitchell, their daughter M.C. was approximately 15 months old. Mitchell testified M.C. and M.L. had a "one of a kind" relationship and always played together.

¶ 28 Mitchell had been a welder for eight years and previously worked for Trinity for six and a half years. Since late 2015, Mitchell had been unhappy with his employment at Trinity. Mitchell described particles of dust in the air due to poor ventilation and people cleaning their work areas with air wands instead of brooms. The work environment was not climate-controlled, so the shop was very cold in the winter and very hot in the summer. Trinity had employees work side by side, and if Mitchell finished working and pulled his hood up, he would get flash burn from the other employee's equipment. Flash burn was like sunburn on your eyes and could cause blindness. After work, Mitchell would blow black stuff from his nose and cough up black stuff due to the dust particles in the work environment. Mitchell knew his symptoms were caused by his work environment because he would finally stop coughing and blowing black particles by the end of the weekend.

¶ 29 Mitchell applied for a job with Vestas, a company in Colorado, and began working there in September 2017. Prior to obtaining that job, Mitchell applied for various jobs in central Illinois. When Mitchell left Trinity, he was earning $21.70 per hour. He earned $21.50 at Vestas, but Mitchell testified the benefits were better and the improved work environment was a "huge deal." Mitchell also had more days off at Vestas and was guaranteed

overtime. At Trinity, Mitchell worked from 6 a.m. to 2:30 p.m. with occasional mandatory overtime. At Vestas, Mitchell paid $31 biweekly for medical, vision, and dental benefits for himself, petitioner, M.L., and M.C., while he paid $53 weekly for basic medical care for himself and M.C. at Trinity. Vestas provided better 401(k) benefits and life insurance than Trinity and offered more vacation time.

¶ 30 While he worked for Trinity, Mitchell received three final warnings for tardiness. Mitchell applied to Vestas in June 2017 and received a response immediately. Mitchell set up an interview and asked his direct supervisor for the day off. His supervisor approved the day off and Mitchell turned in his vacation slip. Two days before his day off, the plant manager called him into his office. The plant manager asked why he was taking a day off and Mitchell did not want to tell him what was going on. The plant manager revoked Mitchell's vacation time approval. Mitchell was fired from Trinity the day before his interview with Vestas. Had Mitchell not attended the job interview at Vestas, he would still be employed at Trinity.

¶ 31 Mitchell started at Vestas at "Level 2," but has the opportunity to advance. Vestas was also going to put Mitchell through a foreman class, which would qualify him for a supervisory role. The work environment at Vestas was climate-controlled and had a ventilation system. Mitchell also had an air hood with a cartridge that purified the air. Vestas also provided Mitchell with autonomy to complete his work.

¶ 32 In June 2017, Mitchell, petitioner, M.L., M.C., and petitioner's parents traveled to Fort Collins, Colorado to visit petitioner's brother. The family went hiking in the foothills and had a good time. The trip influenced Mitchell to look for employment there. Mitchell wanted to raise his family in Colorado because of "the environment, the schools, the crime rates being lower, the unemployment being lower, [and] the minimum wage being higher."

¶ 33 Since Mitchell began working at Vestas in September 2017, he traveled back and forth to Illinois on weekends. Once their house sold, petitioner and the two children visited Mitchell in Colorado for a month and a half. Petitioner and the children returned to Illinois to allow respondent to exercise his parenting time. Mitchell testified he and respondent had a decent relationship and Mitchell occasionally sent respondent text messages with photographs of M.L. Things were "strained" due to the relocation petition, but Mitchell testified he would continue to communicate with respondent and work to foster a close relationship between respondent and M.L.

¶ 34 3. *Kalin Durbin*

¶ 35 Kalin Durbin, a production supervisor at Trinity, testified he was Mitchell's supervisor. Durbin testified the air quality at Trinity was "very, very bad," with metal dust and dirt in the air. According to Durbin, the environment was very loud with bright flashes that can damage your eyes. The air quality was one of the highest rated complaints by employees. Durbin stated his breathing capacity had decreased dramatically as a result of the poor air quality at Trinity. He was constantly hacking up black stuff and had black stuff in his nose.

¶ 36 Durbin testified that Mitchell's three final notices did not mean he was in danger of being terminated. Mitchell put in a vacation request for a Friday in July a couple of weeks in advance. Durbin authorized Mitchell's vacation request. Thereafter, the plant manager had a knee-jerk reaction because another supervisor approved too many people taking the Fourth of July off and implemented a new policy where the superintendent or the plant manager reviewed vacation requests. After Durbin approved Mitchell's vacation, the vacation request was reviewed and denied. By denying Mitchell's vacation request, the company essentially forced him to hit a limit for tardiness or absences from work that led to mandatory termination.

According to Durbin, Trinity has a very high rate of turnover and the company had turn over exceeding half of the employees in 2017.

¶ 37 4. *Kim B.*

¶ 38 Kim B. testified she was petitioner's mother and M.L.'s grandmother. At the time of M.L.'s birth, petitioner and respondent lived with Kim and her husband. Respondent lived there for approximately five or six months before moving out and petitioner and M.L. lived there for two years. According to Kim, petitioner was M.L.'s primary caretaker and petitioner fed him, bathed him, nurtured him, got up to change his diapers, played, cuddled, rocked him to sleep, and took him to doctor's appointments. When M.L. was two years old, he and petitioner moved in with Mitchell in Clinton. Kim testified Mitchell attended numerous family activities with petitioner and M.L., including holidays, soccer, swimming, birthdays, fishing trips, and other family outings.

¶ 39 In June 2017, Kim, her husband, petitioner, Mitchell, M.L., and M.C. traveled to Fort Collins, Colorado. During that trip, they visited Kim's son, daughter-in-law, and their daughter. The family went hiking, attended some outdoor activities downtown, and visited multiple libraries.

¶ 40 Kim worked for Archer Daniels Midland (ADM) in Decatur and her husband was self-employed in radon mitigation. Kim testified her pension plan would maximize in approximately two years and she and her husband planned to move to Colorado. Her husband had already taken steps to set up a radon mitigation business in Colorado. Prior to 2020, Kim planned to spend the majority of her vacation in Colorado if petitioner was allowed to relocate there. Once Kim's pension plan maximizes, she and her husband are still planning to move to Colorado even if petitioner is not allowed to relocate.

¶ 41 5. *David B.*

¶ 42 David B., petitioner's father and M.L.'s grandfather, testified he had already set up a registered business in Colorado and had a website, an advertising plan, and business equipment. David testified he and his wife would move to Colorado permanently once she reaches 20 years of employment at ADM.

¶ 43 6. *Orland Eugene C.*

¶ 44 Orland Eugene C. testified he was Mitchell's father. Gene and his wife Selena saw M.L. twice a week. He considered M.L. to be his grandson and M.L. called him "Papa Geno." If Mitchell and petitioner relocated to Colorado, Gene and his wife would visit at least twice a year. Gene testified Mitchell and M.L. have a good relationship and interact and play well together. Gene observed Mitchell and M.L. swimming, fishing, and playing at the park.

¶ 45 7. *Respondent*

¶ 46 Respondent testified he lived in Springfield with his fiancée Abby. Respondent had a seven-year-old son, T.H., who would eventually visit him on the same weekends as M.L. At the time of the hearing, M.L. had never met T.H. According to respondent, there was no period of M.L.'s life where respondent did not see him for months at a time. Respondent would often see M.L. more than once a month and in 2014 he started getting additional summer parenting time.

¶ 47 Respondent agreed petitioner was M.L.'s primary caregiver since his birth. Respondent testified he exercised parenting time every two weekends under a court order entered in February 2015. The parties never really followed the agreement for summer parenting time and respondent had M.L. approximately 40% to 50% of the summer. On occasion, petitioner agreed to change the parenting schedule to accommodate work conflicts. However, respondent

did not recall getting extra parenting time when he asked for it. However, respondent did receive more than his two weeks of uninterrupted parenting time in the summer. Respondent also received three consecutive weekends in early 2017 and petitioner allowed additional parenting time on other occasions. Respondent's parenting time was primarily on his days off, though he did exercise parenting time on two or three days he had to work. Respondent testified petitioner did not give him notice of M.L.'s medical appointments but text messages showed petitioner informed him of some doctor's appointments.

¶ 48 Respondent presented photographs that depicted his contact with M.L. in July and August 2013—times when petitioner testified he had no contact with M.L.—and his contact with M.L. in April 2014. Respondent testified he continued to see M.L. between August 2013 and April 2014. Respondent also presented additional photographs of M.L. with extended family members.

¶ 49 Respondent testified he believed M.L.'s home was in Illinois where his entire family lived. Respondent believed Mitchell's decision to move to Colorado may have been made in good faith. When asked whether he believed applying for six jobs in Illinois was a sufficient job search, respondent identified Chicago, St. Louis, and Peoria as cities that had not been explored for potential employment. Respondent testified he did a few searches for welding jobs in Illinois and identified jobs in Springfield, Peoria, Rockford, and Taylorville. Respondent disagreed with petitioner's assertion that their financial situation would be better in Colorado because travel costs would deplete any additional earnings.

¶ 50 According to respondent, the frequency of his time with M.L. was important. M.L. saw respondent, Abby, and extended family members every two weeks and that was the only consistency he had. Respondent testified that parenting time done electronically, such as

using Facetime or Skype, did not allow him to hug M.L. or be a father from 1000 miles away. Respondent testified he did not believe more blocks of time during the summer, rather than every other week, would be in M.L.'s best interest. Respondent also did not think longer periods of time every few months during the school year would be in M.L.'s best interest. According to respondent, there was no way to structure visitation that would keep his relationship with M.L. as close if relocation were allowed.

¶ 51 Respondent testified M.L. had lots of extended family in central Illinois, including respondent's parents, who lived in Chatham; his younger sister, who lived in Chatham with her two children; and Abby's parents and sister, who lived in Rochester. When respondent had M.L. for parenting time they visited with his and Abby's parents. M.L. liked visiting respondent's parents, who had a quick-shot basketball arcade game, a pool table, and a ping pong table in their basement. When he visited respondent's parents, M.L. also spent time playing with his cousins. M.L. also enjoyed visiting Abby's parents, and her sister was like a big sister to M.L.

¶ 52 Respondent testified he believed petitioner and Mitchell had a close relationship with M.L. According to respondent, M.L. was "getting closer" to his side of the family. Respondent's fiancée had a close relationship with M.L. and he liked to do crafts, math, reading and flash cards with her. His fiancée asked for additional time with M.L. and petitioner granted extra time. According to respondent, M.L. also looked forward to seeing Abby's sister.

¶ 53 The school M.L. would attend in Colorado was a good school based on respondent's research; however, respondent did not know if that school was better or worse than the school M.L. would attend in Illinois. Respondent testified he knew very little about the school in Colorado. Respondent attended Clinton schools, and testified they had dual credit classes, advancement courses, and advanced placement courses. According to respondent, the

schools in Clinton also had courses through the career center, culinary arts classes, and technical classes. Respondent also pointed out that Clinton High School offered advanced biology, chemistry, and other science classes. Respondent noted that M.L. would be able to play soccer, play tennis, and swim if he stayed in central Illinois.

¶ 54 Respondent testified he was employed full-time with the Illinois National Guard in Peoria. Respondent worked from 6:30 a.m. to 4 p.m. Monday through Thursday and on Fridays he either got off at 3 p.m. or had the day off entirely. Respondent also worked approximately one weekend per month. Respondent decided to pursue a full-time position with the National Guard because it was more stable and deployment was less likely. Prior to that, respondent taught high school science for four years. Respondent lived in Springfield, approximately 75 miles from his place of employment. Typically, respondent left for work at 5:15 a.m. and was away from his home for approximately 12 hours each day.

¶ 55 In 2016, respondent's gross earnings totaled $59,000. In 2017, respondent testified he earned $57,000. Respondent also received a $1700 monthly housing allowance from the military. Respondent testified he could transfer to Colorado as a part-time National Guard, but a full-time position did not exist. If he obtained a teaching position in Colorado, he would have to take a pay decrease of $20,000 to $30,000 per year. The cost to fly to Colorado was approximately $171 per passenger, and it would cost an additional $150 to $200 to fly directly from Springfield.

¶ 56 8. *Abby Lee*

¶ 57 Abby Lee testified she was respondent's fiancée and they lived together. According to Abby, she saw M.L. every other weekend and spent half the summer with him. Abby testified she was very close to M.L. and was his mother figure when he was at their house.

Abby and M.L. enjoyed doing arts and crafts together. Abby's sister, Avery, visited the house almost every weekend M.L. visited and they also had a close relationship. M.L. also had a close relationship with her parents, who were like grandparents to him. According to Abby, M.L. was close with respondent's parents and their relationship improved every year. Abby testified respondent and M.L. had a "goofy" relationship, and M.L. had joy in his eyes when they picked him up for visits.

¶ 58 9. *Robert L.*

¶ 59 Robert L., respondent's father, resided in Chatham, Illinois. Robert was present when M.L. was born, and he saw M.L. more than once a month. When M.L. visited Robert, he liked to play with a Hot Wheels track, dance, and do other activities children enjoy. M.L. enjoyed playing with Robert's five-year-old grandson and three-year-old granddaughter. Robert described the children as the best of buddies and testified that all three loved each other. The children saw each other about once a month. According to Robert, M.L. was crazy about respondent.

¶ 60 10. *Misty Hannah*

¶ 61 Misty Hannah, Abby's mother, testified she had known respondent for approximately three years. Misty testified she saw M.L. every other weekend during the summer when M.L. was in respondent's care. According to Misty, they would have dinner and play games at respondent's house. Misty testified she had a great relationship with M.L. and he was always happy to see her. Misty also had a 13-year-old daughter, Avery, who was very close with M.L. Avery always wanted to play with M.L. when he visited respondent. According to Misty, M.L. was very close with respondent and was very respectful when respondent had to discipline him.

¶ 62 11. *Guardian* ad Litem*'s Recommendation*

¶ 63 The guardian *ad litem* (GAL) found both parents and stepparents of M.L. were well balanced and the child was comfortable with all of them. M.L. wanted to be with M.C. and the bond between them was extremely strong. Conversely, there was no bond between M.L. and T.H., respondent's seven-year-old son, whom M.L. had never met and who had only supervised visitation with respondent. The GAL concluded that M.L. would be adaptable to any move because his world consisted of petitioner, Mitchell, M.C., and parenting time with respondent. Petitioner was the primary caretaker and a change in that arrangement would be very difficult for M.L. Further, respondent had parenting time but it mostly consisted of play time, while petitioner provided the care and nurturing for M.L. The GAL concluded that relocation was in M.L.'s best interest and his family's best interest, subject to extensive blocks of parenting time for respondent. The GAL suggested petitioner transport M.L. to Illinois one weekend per month—preferably a three day weekend—affording respondent at least 36 hours of parenting time.

¶ 64 B. Trial Court's Ruling

¶ 65 The trial court first noted a relocation decision must be based on a consideration of the specific facts in each case. The court noted it would not belabor the point, but it acknowledged the difficulty in deciding relocation cases. The court commended the parties for their ability to get along while dealing with visitation issues. The court then considered the statutory factors.

¶ 66 The trial court found petitioner did not wish to relocate to take M.L. away from respondent. The court noted petitioner believed she would have a good life in Colorado and Mitchell's job in Colorado would be better and offer him the potential for advancement.

However, it appeared that petitioner and Mitchell visited Colorado for a vacation and decided they loved the area and wanted to live there. There was no question in the court's mind that Mitchell did not really care if he kept his job in Illinois because he wanted to move to Colorado, which he had every right to do. However, the question facing the court was whether petitioner would be allowed to relocate M.L. to Colorado. The court also found Mitchell's attempts to find employment in Illinois were not convincing because it appeared Mitchell did not want a job in Illinois. The court concluded the reasons for the intended relocation were not motivated by any evil intent but went on to state, "I can't overly find that the job itself that [petitioner]'s new husband has found is so overwhelmingly better than the old job, or if it was the only job available such that it should be the main reason for the relocation necessarily."

¶ 67 The trial court noted respondent objected to the relocation because he wanted to continue his relationship with M.L. without risking what might happen if the visitation schedule changed or he saw his son less frequently. The court acknowledged that respondent could Skype or talk to M.L. on the telephone regularly. The court also noted it was in petitioner's favor that M.L. had yet to start school so respondent could not argue that M.L. should not be taken away from his school friends and familiar teachers. However, the court found that, if relocation were allowed, respondent would not be able to attend regular school functions such as holiday shows or art fairs. The judge then stated, "That's certainly a factor that the Court doesn't really know, and obviously, there's no history of whether [respondent] did or didn't do that because it hasn't happened yet." The court found that respondent did not object to the relocation because he did not want petitioner to be happy. Instead, the court concluded respondent's reason for objecting was "simply he doesn't want to deal with what might come if the relocation is granted and the schedule that, at least has obviously been working up to this point, has to change."

¶ 68 The trial court considered the parties' relationships with M.L. and noted both petitioner and respondent had strong bonds with M.L. The court found petitioner's bond to be very strong and noted how much time she spent with M.L. The court found respondent's bond with M.L. was strong and that respondent exercised all of his allotted parenting time and took advantage of any extra time he was offered.

¶ 69 The trial court concluded the evidence was not strong enough to show the Colorado schools were overwhelmingly better than the Illinois schools. Although petitioner testified M.L. was interested in cooking and wanted to be a chef, the court considered the fact that M.L. was only five years old. Therefore, the court did not find that particularly convincing. The court was aware of certain classes available in Colorado from petitioner's testimony but concluded there was not "sufficiently strong evidence that the opportunities in Colorado [were] overwhelmingly better than" those in Illinois. The court also stated its belief that the educational opportunities "factor would have to be something that is really strong evidence if that's the one you're going to hang your hat on anyway if you're going to deny or grant a relocation."

¶ 70 According to the trial court, M.L. was fortunate to have grandparents and step-grandparents on both sides that spent time with him. The court acknowledged petitioner's brother lived in Colorado and her parents planned to move there, but the court did not make its decision on the presumption that her parents would, in fact, move to Colorado in the future. Although M.L. had a closer relationship with his maternal grandparents, the court found that factor should not "play against" respondent because as M.L. grew up he would "hopefully" develop a relationship with his paternal grandparents.

¶ 71 Petitioner presented evidence that the parties could make the travel between Colorado and Illinois work. Beyond that, the court concluded it did not have sufficient evidence

to show what the impact of relocation would be on M.L. other than respondent's parenting time would be in longer blocks. The judge stated, "I really don't know what the impact of the relocation would be, other than I know it's going to change the visitation schedule we have now."

¶ 72 The GAL recommended a schedule for respondent's parenting time in the event the trial court allowed relocation. The court concluded there was "no question" that it could create a reasonable allocation of parental responsibilities if relocation were granted. However, the court noted there was more to parenting than only having the child on breaks from school and respondent "should have the right if he wants to be able to be involved in the more difficult decisions of what it's like to deal with a child when they're in school." The court also expressed concern about the impact of M.L. and petitioner being separated for weeks at a time.

¶ 73 Taking into account M.L.'s maturity and ability to express his wishes, the court concluded that factor did not weigh heavily in its decision. The court again noted M.L. was only five years old and wanted to be around the people he loved as much as possible. The court declined to take into account what M.L. might have expressed to his parents because it was not a question of whether M.L. liked petitioner or respondent better.

¶ 74 The trial court expressed some concern that travel expenses would cancel out any increased income from Mitchell's job in Colorado. However, the court concluded that the parenting allocation could take that into account and offset the financial impact. The court noted the tenth factor was whether arrangements for parenting time could be made that would minimize the impairment to the parent-child relationship.

¶ 75 The trial court concluded relocation to Colorado would have such a significant impact that it would change respondent's relationship with M.L. The court stated it "d[id] not

believe that the petition to relocate has been proven enough that it's in the best interest of [M.L.] to go to Colorado." The judge went on to say,

> "I am not going to allow the relocation because there seems to be, I guess, the unknown of how it's going to impact—there's nothing—there's no evidence to suggest this is not a strong relationship between the father and his son, and certainly, I believe the mother loves [M.L.], has a strong, maybe stronger bond than the father does just based on the history of her relationship with her son, but I don't think the stepfather's position or relationship with the mother should have greater impact or be a greater factor to consider than this father's relationship with his son, and I think it will strongly impact it. Quite frankly, from the statements I said about the way we don't know what's going to happen when he's in school, if he needs to see his dad because something is going wrong or be around him or for dad to be able to go to a ball game, an art fair, a chorus, and for the son to see his dad that is meaningful. I don't know, so I'm going to deny the petition to relocate for those statements I made."

The court stated its belief that petitioner and Mitchell did not make the decision to move to Colorado based on M.L.'s best interest but because they thought it would be better for the family and might have some positive impact on M.L. However, the court concluded this was not a sufficient reason to disturb the relationship respondent had with M.L. The court found relocating to Colorado would not be in M.L.'s best interest and denied the petition.

¶ 76 This appeal followed.

¶ 77 II. ANALYSIS

¶ 78 On appeal, petitioner argues the trial court's ruling that relocating M.L. to Colorado was not in his best interest was against the manifest weight of the evidence.

¶ 79 As an initial matter, we must address Illinois Supreme Court Rule 311 (eff. July 1, 2018), which requires accelerated disposition in appeals involving child custody or allocation of parental responsibilities cases. Rule 311(a)(5) provides: "Except for good cause shown, the appellate court shall issue its decision within 150 days after the filing of the notice of appeal or granting of leave to appeal pursuant to Rule 306(a)(5)." Ill. S. Ct. R. 311(a)(5) (eff. July 1, 2018). On July 16, 2018, notice of appeal was filed in the trial court. December 13, 2018, marked the one-hundred-fiftieth day following the filing of the notice of appeal with the trial court. On December 4, 2018, this court heard oral argument in this case. In order to give this case the attention it deserves, this court finds it necessary to file this disposition past the due date. The court apologizes to the parties for the delay in issuing its decision.

¶ 80 A. Standard of Review

¶ 81 "A trial court's determination of what is in the best interests of the child should not be reversed unless it is clearly against the manifest weight of the evidence and it appears that a manifest injustice has occurred." *In re Marriage of Eckert*, 119 Ill. 2d 316, 328, 518 N.E.2d 1041, 1046 (1988). A trial court's decision is against the manifest weight of the evidence only where the opposite conclusion is clearly evident or if the court's findings are arbitrary, unreasonable, and not based on any of the evidence. *In re Marriage of Matchen*, 372 Ill. App. 3d 937, 946, 866 N.E.2d 683, 691 (2007). "The trial court is in the best position to assess and evaluate the parties' temperaments, personalities, and capabilities, and the presumption in favor

of the result reached by the trial court is always strong and compelling in a removal case." *Id.* A reviewing court will not substitute its judgment for that of the trial court merely because it disagrees with the ruling or might have come to a different conclusion. *Id.*

¶ 82 B. Petition to Relocate

¶ 83 Section 609.2 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/609.2 (West 2018)) applies when a parent intends to relocate. A parent who has been allocated the majority of parenting time may seek to relocate with the minor child. 750 ILCS 5/609.2(b) (West 2018). If the non-relocating parent objects to the relocation, the other parent must file a petition seeking permission to relocate. 750 ILCS 5/609.2(f) (West 2018). Section 609.2(g) directs the trial court to modify a parenting plan or allocation judgment in accordance with the minor's best interests and sets forth the following factors for consideration:

> "(1) the circumstances and reasons for the intended relocation;
>
> (2) the reasons, if any, why a parent is objecting to the intended relocation;
>
> (3) the history and quality of each parent's relationship with the child and specifically whether a parent has substantially failed or refused to exercise the parental responsibilities allocated to him or her under the parenting plan or allocation judgment;
>
> (4) the educational opportunities for the child at the existing location and at the proposed new location;
>
> (5) the presence or absence of extended family at the existing location and at the proposed new location;

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

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

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

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

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

(11) any other relevant factors bearing on the child's best interests." 750 ILCS 5/609.2(g)(1)-(11) (West 2018).

The parent seeking relocation has the burden of proving, by a preponderance of the evidence, that relocation would be in the child's best interest. *In re P.D.*, 2017 IL App (2d) 170355, ¶ 15, 87 N.E.3d 1040.

¶ 84 Petitioner first contends the trial court's consideration of the first factor was against the manifest weight of the evidence. According to petitioner, she proved Mitchell's concerns about his work at Trinity were legitimate and that he had tried to find employment in Illinois. Petitioner asserts he looked for alternate employment for two years, applied for seven positions, and considered but rejected other opportunities that required travel and paid less money. Based on this evidence, petitioner argues the court's finding that Mitchell did not make

a sincere attempt to obtain employment in Illinois was against the manifest weight of the evidence.

¶ 85 The trial court found that nothing improper or untoward motivated petitioner's request for relocation. The court determined petitioner and Mitchell visited Colorado one time, decided they liked the area, and decided they would move there. It was only after they made this decision that Mitchell applied for the job with Vestas. Although there was nothing untoward about petitioner's desire to move to Colorado, the trial court concluded the reasons for the relocation were not strong enough that it should be the main reason to allow relocation. Specifically, the judge stated, "I can't overly find that the job itself that [petitioner]'s new husband has found is so overwhelmingly better than the old job, or if it was the only job available such that it should be the main reason for the relocation necessarily."

¶ 86 The trial court was apparently unconvinced that Mitchell's seven job applications over the course of two years was a sincere attempt to obtain alternate employment. The court found Mitchell's move to Vestas was more motivated by his desire to move to Colorado than it was motivated by his desire for alternate employment. Additionally, respondent testified there were cities in central Illinois that had other opportunities for welders that Mitchell never explored.

¶ 87 We first note the statute does not require a new out-of-state job to be overwhelmingly superior to employment prospects in Illinois. The statute merely requires the trial court to consider the circumstances and reasons for the intended relocation. Nothing in the record suggests Mitchell did not have legitimate concerns regarding his work environment at Trinity. The evidence was undisputed that the working conditions at Vestas were better than those at Trinity. Although Mitchell made slightly less money at Vestas, the benefits were clearly

better. Additionally, Mitchell had the opportunity for advancement and consistent overtime at Vestas. The evidence showed petitioner had a good, honest reason to relocate to Colorado for Mitchell's new job. The fact that Mitchell sought work in a specific location where the couple desired to live should not be held against petitioner.

¶ 88 To the extent that the trial court denied the petition to relocate because Mitchell did not engage in an exhaustive job search in Illinois, we conclude the court's decision was against the manifest weight of the evidence. This court has held that unless the parent's reasons for the proposed removal were frivolous, it is irrelevant whether the parent had looked for employment in Illinois. *In re Marriage of Ludwinski*, 312 Ill. App. 3d 495, 500-01, 727 N.E.2d 419, 424 (2000). Although the search for employment in Illinois was irrelevant, the evidence showed Mitchell *did* search for alternate employment in Illinois. Mitchell applied to seven different positions in Illinois before applying for a welding job with Vestas. Thus, the trial court's decision was against the manifest weight of the evidence.

¶ 89 Petitioner next asserts respondent's reasons for objecting to the relocation were not untoward but "should not have led directly to the court concluding that relocation should be denied." The trial court found that respondent did not object to the relocation because he did not want petitioner to be happy. Instead, the court concluded respondent's reason for objecting was "simply he doesn't want to deal with what might come if the relocation is granted and the schedule that, at least has obviously been working up to this point, has to change." We agree with petitioner that the court may not subordinate her interests to those of respondent. *In re Marriage of Tedrick*, 2015 IL App (4th) 140773, ¶ 61, 25 N.E.3d 1233 ("Given that a court lacks the power to compel a noncustodial parent to remain in Illinois, the interests of the custodial

parent, in a removal action, should not be automatically subordinated to the interests of the noncustodial parent.").

¶ 90 The trial court noted respondent did not want to risk what might happen if the court granted the petition to relocate. The court also repeatedly stated it did not know what the impact of relocation would be on M.L., petitioner, or respondent. Specifically, the court expressed that it did not "know what the impact of the relocation would be, other than I know it's going to change the visitation schedule we have now." The court went on to express, "I don't think I have sufficient evidence or know [M.L.] or the situation enough to know exactly how that's going to impact [M.L.]." The court further noted it did not know if respondent would attend school events but concluded respondent "certainly should have a right if he wants to be able to be involved in the more difficult decisions of what it's like to deal with a child when they're in school and other issues that come up." However, even in light of all the unknowns it highlighted, the court concluded relocation would significantly impact respondent's relationship with M.L.

¶ 91 We find the trial court's conclusion that relocation would significantly impact respondent's relationship with M.L. speculative, particularly in light of respondent's historic failure to attend extracurricular activities and the many unknowns the court highlighted. Moreover, if a noncustodial parent has the *right* to be in close proximity to a school-aged child "to be involved in the more difficult decisions" and to attend events such as art fairs or performances, then relocation would *never* be allowed except in cases involving completely absent noncustodial parents. Additionally, there is no reason respondent cannot be involved in decisions regarding M.L.'s schooling or in handling any issues that may arise from a distance. The parents in this case have a history of working well with each other, even through litigating

the petition to relocate, and there is no reason to suspect that will change if the petition to relocate is granted.

¶ 92 Petitioner argues her relationship with M.L. is stronger than respondent's relationship with M.L. In support of this argument, petitioner points to the fact that respondent only had parenting time when he did not have to work and had never attended M.L.'s extracurricular activities. The evidence showed petitioner had an extremely strong bond with M.L. and was his primary caretaker his entire life. Although respondent was never absent from M.L.'s life, the evidence showed respondent was generally only responsible for M.L. on weekends and respondent testified he only had M.L. on a work day two or three times. While respondent and M.L. had a strong bond, the trial court failed to give appropriate consideration to the impact of the bond between petitioner and M.L. on his best interest. Instead, the court weighed the history and quality of each relationship with the child factor evenly because the father exercised his visitation and took advantage of extra time offered. This was against the manifest weight of the evidence.

¶ 93 Petitioner next argues the quality of educational opportunities should have played no role in the trial court's decision because the evidence established the Colorado schools were at least as good as the schools in Illinois. In considering the educational opportunities in Colorado, the court noted it was aware of the opportunities and classes available but concluded there was not "sufficiently strong evidence that the opportunities in Colorado [were] overwhelmingly better than" those in Illinois. This, however, is not the standard for considering a petition for relocation. The court should consider whether the evidence shows the educational opportunities are more likely than not in the child's best interest. The court here held petitioner to an onerous burden when it required a strong showing that the educational opportunities were

overwhelmingly better than the opportunities available in Illinois. A petitioner need not prove that the educational opportunities where they intend to relocate are overwhelmingly better than those in Illinois—a petitioner need only prove by a preponderance of the evidence that the educational opportunities are in the child's best interest.

¶ 94 Petitioner argues the presence or absence of extended family weighs in her favor where her brother, sister-in-law, and niece live in Colorado. Petitioner argues the trial court ignored the importance of this extended family and overemphasized the importance of the extended family in Illinois. The evidence showed the following extended family live in central Illinois: (1) M.L.'s maternal grandparents (although they testified they intended to move to Colorado at some point), (2) M.L.'s paternal grandparents, and (3) M.L.'s paternal aunt and cousins. Although less compelling, the evidence further showed M.L.'s stepfather's family and his stepmother's family lived in Illinois. Testimony established M.L. had good relationships with all of these extended family members and enjoyed spending time with them. However, the evidence did not show an extremely strong bond with M.L.'s paternal grandparents. In considering this factor, the trial court stated M.L.'s closer relationship with his maternal grandparents should not "play against" respondent because as M.L. grew up he would "hopefully" develop a relationship with his paternal grandparents. This is speculation and does not take into account M.L.'s relationships with his extended family as they existed at the time of the hearing. This speculative conclusion is against the manifest weight of the evidence, which showed M.L. shared a stronger bond with his maternal grandparents, in no small part due to the fact that he lived with them for the first years of his life.

¶ 95 Petitioner next argues the trial court disregarded significant evidence on the anticipated impact of relocation on M.L. The record shows the court concluded it did not have

sufficient evidence to show what the impact of relocation would be on M.L. other than respondent's parenting time would be in longer blocks. However, the court ignored the various ways in which relocation would improve petitioner's life and the impact that would have on M.L. The court explicitly disregarded this evidence when it stated, "I guess I'll say this, I really don't believe the decision by the petitioner's to move to Colorado was 'this will be great for [M.L.], this is in [M.L.]'s best interest.' I think they think it was in the family's best interest and may have some positive impact on [M.L.]." This statement indicates the court disregarded the benefits petitioner believed would come with a move to Colorado, including the lifestyle benefits, the potential for greater income, and the benefits to the family as a whole. One family member's best interest cannot be allowed to dictate what may be in the whole family's best interest. See *In re Marriage of Collingbourne*, 204 Ill. 2d 498, 528, 791 N.E.2d 532, 548 (2003) (" 'The best interests of children cannot be fully understood without also considering the best interests of the custodial parent.' " (quoting *In re Marriage of Eaton*, 269 Ill. App. 3d 507, 515-16, 646 N.E.2d 635, 642 (1995)).

¶ 96 Next, the trial court discussed the parental responsibilities and resources. The court expressed some concern that travel expenses would cancel out any increased income from Mitchell's job in Colorado. However, the court concluded that the parenting allocation could take that into account and offset the financial impact. As petitioner notes, the court did not view this as a significant factor. To the extent petitioner argues this factor should not have persuaded the court to deny the petition to relocate, we agree.

¶ 97 Finally, petitioner argues the trial court overemphasized respondent's desire to retain his current parenting schedule and failed to consider that relocation has an effect on parenting time. Petitioner asserts the court gave too much weight to respondent's concern that

less frequent parenting time would impair the relationship with his child. In support, petitioner points to the fact that respondent did not attend M.L.'s extracurricular activities and did not attend any school events or extracurricular activities for his son T.H. The trial court found there was "no question" it could fashion an order with a reasonable allocation of parenting time. However, the court was concerned that less frequent visitation for respondent would seriously impact the relationship between respondent and M.L. by changing the nature of the relationship entirely. The court also expressed concern regarding the impact being away from petitioner for longer periods would have on M.L.

¶ 98 We conclude the trial court's concerns about the decrease in the amount of visitation for respondent was not the proper inquiry. "The question is not whether the amount of visitation would be the same before and after the move. Rather, the question is whether it would be possible to devise a visitation schedule that 'preserve[s] and foster[s] the child's relationship with the [nonresidential] parent.' " *Tedrick*, 2015 IL App (4th) 140773, ¶ 68 (quoting *Collingbourne*, 204 Ill. 2d at 523). Here, the court determined it could fashion a reasonable visitation schedule. The court also found petitioner would actively foster a relationship between M.L. and respondent. Therefore, its ultimate conclusion that less frequent visitation would change the relationship between respondent and M.L. was against the manifest weight of the evidence. "[R]easonableness is the objective, not the preservation of the status quo." *Id.* Indeed, "[i]n all cases, removal will have some effect on visitation, but the real question is whether a schedule can be created that is both reasonable and realistic. It need not be perfect." *In re Marriage of Shaddle*, 317 Ill. App. 3d 428, 434, 740 N.E.2d 525, 531 (2000).

¶ 99 After carefully considering the record in this case, we conclude the trial court's decision to deny the petition to relocate was against the manifest weight of the evidence. If the

court's reasoning was correct, no petition to relocate would ever be successful. We are mindful that we must not substitute our judgment for that of the trial court, but the reasoning in this case would prevent any parent from relocating. *Tedrick*, 2015 IL App (4th) 140773,. ¶¶ 60, 67 (The court held that concerns regarding travel and a reduction in visitation time "could support an almost total interdiction on the removal of [a child] to any state except, perhaps, a state that borders Illinois. We live in a mobile society [citation], and it seems unlikely that the legislature intended a default position that confines custodial parents of young children to Illinois."). After reviewing the record and the trial court's findings based on the statutory factors, we conclude its decision to deny the petition to relocate was against the manifest weight of the evidence. Thus, we reverse the judgment of the circuit court.

¶ 100 III. CONCLUSION

¶ 101 For the reasons stated, we reverse the trial court's judgment, and we remand this case with directions to make a new allocation of parenting time, with liberal parenting time for respondent.

¶ 102 Reversed; cause remanded with directions.

¶ 103 JUSTICE TURNER, dissenting.

¶ 104 I respectfully dissent. As the majority recognizes (*supra* ¶ 81), our supreme court has consistently stressed "[a] trial court's determination of what is in the best interests of the child should not be reversed unless it is clearly against the manifest weight of the evidence and it appears that a manifest injustice has occurred." *Eckert*, 119 Ill. 2d at 328, 518 N.E.2d at 1046; *Collingbourne*, 204 Ill. 2d at 521-22, 791 N.E.2d at 545. The majority further acknowledges we should not substitute our judgment for that of the trial court merely because we might have come to a different conclusion. *Supra* ¶ 81. Such deference to the trial court is appropriate because " '[t]he trier of fact had significant opportunity to observe both parents and the child and, thus, is able to assess and evaluate their temperaments, personalities, and capabilities.' " *Eckert*, 119 Ill. 2d at 330, 518 N.E.2d at 1047 (quoting *Gallagher v. Gallagher*, 60 Ill. App. 3d 26, 31, 376 N.E.2d 279, 283 (1978)). Further, " '[t]he presumption in favor of the result reached by the trial court is always strong and compelling in this type of case.' " *Eckert*, 119 Ill. 2d at 330, 518 N.E.2d at 1047 (quoting *Gallagher*, 60 Ill. App. 3d at 31-32, 376 N.E.2d at 283).

¶ 105 Here, the trial court painstakingly and methodically analyzed and weighed each statutory factor it was required to consider (see 750 ILCS 5/609.2(g) (West 2016)). In doing so, it made extensive oral pronouncements from the bench to explain its findings for the benefit of the parties. The majority seizes on isolated words used by the trial court and takes them out of context from the totality of the court's pronouncements and concludes the trial court's judgment resulted in a manifest injustice. The majority seems to assert the trial court applied the wrong standard in determining whether relocation was in the child's best interests. I disagree. The trial court explicitly stated:

> "The burden is on the petitioner to prove this case by a preponderance of the evidence that it is in [M.L.]'s best interest for the relocation. I think while I certainly understand both parents' position and why—and their arguments to a great degree, I think there is somewhat of a problem I have with breaking up the current situation based on the decision made by the mother and her husband to move to Colorado. I don't think they wanted to impact [James L.]'s relationship with [M.L.], but I think it will have such a significant impact that it's going to change the relationship."

¶ 106 In my humble view, the majority here has substituted its own weight assessment of the statutory factors for those of the trial court. Rather than giving substantial deference to the trial court, it has retried the case. Accordingly, I would affirm the trial court's judgment.