2018 IL App (5th) 170166-U

NO. 5-17-0166

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

SETH KNOPP,	)	Appeal from the
	)	Circuit Court of
Petitioner and Counterrespondent-Appellee,	)	Clay County.
	)	
v.	)	No. 16-F-4
	)	
MIRANDA FAGER,	)	Honorable
	)	Daniel E. Hartigan,
Respondent and Counterpetitioner-Appellant.	)	Judge, presiding.

JUSTICE OVERSTREET delivered the judgment of the court.
Justice Chapman concurred in the judgment.
Justice Cates dissented.

ORDER

¶ 1 *Held*: In a proceeding to determine the allocation of parenting time and the allocation of decision-making responsibilities between the mother and father of a minor child, the circuit court's allocation of a majority of parenting time and the allocation of decision-making responsibility to the father was not against the manifest weight of the evidence; the circuit court's denial of the mother's motion to reconsider was not an abuse of its discretion

¶ 2 The petitioner/counterrespondent, Seth Knopp, and the respondent/counterpetitioner, Miranda Fager, are the natural parents of a minor child, H.K. In a proceeding to determine the allocation of parenting time and decision-making responsibilities with respect to H.K., the circuit court entered a judgment granting Seth a

majority of parenting time with H.K. subject to specific periods of parenting time for Miranda. In addition, the circuit court allocated to Seth primary decision-making responsibilities. Miranda appeals from the circuit court's judgment allocating parental decision-making responsibilities and a majority of parenting time to Seth. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 Seth and Miranda met while they were attending Southern Illinois University at Carbondale. They were in a relationship for two months prior to Miranda becoming pregnant. H.K. was born on October 25, 2012. After H.K.'s birth, Seth and Miranda initially resided together and began raising H.K. together in Herrin, Illinois. In July 2015, Seth purchased a three-bedroom home in Flora, Illinois, which is the town where he grew up. Seth, Miranda, and H.K. resided together in the house from August 2015 until Seth and Miranda's relationship ended in December 2015.

¶ 5 After separating from Seth, Miranda moved out of Seth's house in Flora and into the basement of the house of her father, Daniel Fager, and stepmother, Jill Fager, in Carbondale, Illinois. Miranda had previously lived with Daniel and Jill most of her childhood. The basement has a living room, a bedroom, a bathroom, and its own entrance. At the time of the hearing, Miranda was not paying Daniel and Jill any rent, and she did not intend on living in the basement permanently.

¶ 6 When the parties separated, Seth obtained an emergency order of protection against Miranda on January 22, 2016. None of the pleadings or orders from the order of protection proceeding are part of the record on appeal in the present case. However,

testimony in the record in the present case indicates that this order of protection prevented Miranda from seeing H.K. while it was in effect.

¶ 7 On January 28, 2016, Seth initiated the present case by filing a petition to establish his parentage of H.K. and asking the court to determine the parties' parental responsibilities over H.K.'s health, education, religion, and extracurricular activities and to allocate the parties' parenting time. Miranda filed a counterpetition to establish paternity. On February 8, 2016, the parties appeared in court and agreed to a temporary order concerning parenting time. The parties agreed that Seth was the biological father of H.K. and that he should have parenting time with H.K. each week from Tuesday at 8 a.m. until Friday at 5 p.m. They agreed that Miranda would have parenting time from Friday at 5 p.m. until Tuesday at 8 a.m. They agreed to exchange H.K. at a parking lot in Mt. Vernon, Illinois. Seth agreed to dismiss the order of protection case against Miranda, and the circuit court vacated the January 22, 2016, order of protection at the parties' request. However, the parties' temporary agreement included a requirement that Daniel and Jill supervise Miranda's parenting time with H.K.

¶ 8 On June 10, 2016, the parties appeared in court and agreed to modify the temporary order so Seth would have parenting time from Wednesdays at 8 a.m. until mid-morning on Saturday. At the beginning of his parenting time, Seth would retrieve H.K. from her daycare in Energy, Illinois, and at the beginning of Miranda's parenting time, she would retrieve H.K. from Seth's residence in Flora. The parties also agreed to eliminate the requirement that Daniel and Jill supervise Miranda's parenting time and agreed that Seth and Miranda would share decision-making responsibility for

extracurricular, medical, religious, and education decisions as far as H.K.'s attendance in preschool. The parties agreed, on a temporary basis, to work out holidays between themselves, and if either party wanted to take a one-week extended vacation, he or she had to let the other parent know within 30 days. The agreement provided that should Seth be required to leave for National Guard duty, he was to let Miranda know within 24 hours of learning that he had to be gone, and Miranda agreed to give Seth parenting time immediately when he returns. Seth agreed to continue to provide health insurance for H.K., and the parties agreed to split any uncovered medical expenses.

¶ 9 On October 24, 2016, the circuit court conducted a trial on the parties' pending petitions. The issues of contention at the trial were the allocation of parenting time and the allocation of decision-making responsibilities. At the time of the trial, H.K. was one day away from turning four years old.

¶ 10 At the trial, Seth testified that he was employed as a correctional officer with the Illinois Department of Corrections and worked 7 a.m. to 3 p.m. on Friday through Tuesday each week. He was off work on Wednesdays and Thursdays. In addition, he testified that he was a member of the Illinois National Guard, which required him to perform duties one weekend each month and attend two weeks of training in June or July each year. He testified, however, that he had extra duties in 2016. He explained that when he and Miranda were together, they needed extra money; therefore, he voluntarily signed up for extra training duty in 2016 with the National Guard to increase his skills, rank, and pay. He testified that the extra training was prearranged before he and Miranda decided to end their relationship and that he could not get out of the extra obligations.

¶ 11 Seth also testified about turmoil in his relationship with Miranda after she became pregnant. He described the relationship as "chaos from day one *** after she found out she was pregnant." He stated that there was a lot of fighting and tension throughout the house. He said that the relationship was not a healthy relationship and that the home environment was not good for a child. He explained that they did not know each other very well before Miranda became pregnant. He described the home environment after Miranda became pregnant as "pretty extreme" and included Miranda cursing and yelling at him. He testified that he had hoped things would get better once H.K. was born.

¶ 12 Seth testified that after H.K. was born, the relationship did not get better, but worsened. He stated that Miranda became "more manic, more stressed, just the anger every day." According to Seth, Miranda directed her anger at everyone, including H.K. He described Miranda as being "stressed or manic" around H.K. "at all times." He stated that on a weekly basis, he would come home from work and Miranda would be waiting in the parking lot ready to leave. According to Seth, she would say "here take her, I haven't been able to get shit done all day." He witnessed Miranda tell H.K. that "she was fucking annoying" and tell her "to shut the fuck up." He stated that Miranda threatened to cut herself in front of H.K. multiple times and threatened suicide multiple times. Seth stated that Miranda's parents had called the police on Miranda's suicide threats at times during their relationship. To Seth, Miranda "seemed overwhelmed in that she was constantly not able to be around [H.K.]" and "seemed frustrated with the fact of trying to take care of her." Initially, Miranda did not work, but they still had to put H.K. into daycare because

Miranda needed breaks from H.K. during the day. Seth testified that when H.K. was nine months old, he realized that the situation was not going to improve.

¶ 13 Seth testified about obtaining the order of protection against Miranda when they separated and stated that a judge recommended that Miranda have supervised visitation with H.K. He testified about agreeing to the temporary order described above that provided for parenting time for Miranda every other weekend to be supervised by Daniel and Jill. He stated that he and Miranda also attended eight counseling sessions together with H.K. He explained that they attended counseling "for a while until we didn't feel it was necessary to continue to take [H.K.] to counseling." He stated that the counseling was mostly for himself and Miranda and that during the counseling, they discussed parenting techniques, time-out procedures, and discipline. He explained that the counseling stressed that he and Miranda needed to be "on the same page as far as those things." He stated that the counseling helped facilitate their parenting schedule and how they communicate with each other.

¶ 14 Seth testified that since he had separated from Miranda, they have had little contact with each other. He believed that H.K. was doing better now that he and Miranda had separated. He explained, "now having [H.K.] part-time and living at her parents' house she has a little extra help, I guess." He stated, "I try not to dictate what she does with [H.K.] on her time, as long as it is not physically harming the child," explaining that co-parenting would not be successful if one parent is "questioning the other person's parenting techniques all of the time." He testified that both he and Miranda talk with H.K. on FaceTime every night when the other parent has her.

¶ 15 He stated that he and Miranda worked together in exchanging H.K. according to the agreed temporary order. He explained that H.K. was with a babysitter on Fridays when he was working and with his mother on Saturdays when he was working. Accordingly, sometimes the exchange of H.K. on Saturdays is coordinated between Miranda and Seth's mother. He stated that there had never been any issues concerning the exchange.

¶ 16 Seth told the court that he had a large family in the Flora area, including his parents, grandparents, aunts, uncles, and cousins. He explained that if he needed any help with H.K., including watching her or taking her somewhere, he had multiple family members near his home that were willing to help. Seth believed that it was in H.K.'s best interests that she live primarily with him during the school year and that Miranda have parenting time with H.K. every other weekend. He acknowledged that H.K. needed adequate time with her mother and that he was willing to help facilitate that relationship. He testified that it was in H.K.'s best interests that she live primarily with him because he was structured, disciplined, calm, had great patience with kids, had a lot of support, was very involved with H.K., and had followed counseling recommendations with respect to parenting. He testified that she was his "number one priority" and was "capable of developing her to be successful in life."

¶ 17 Miranda's father, Daniel, testified that Miranda lived in the basement of his home. He described the basement as an apartment with its own entrance. The home included 72 acres with a variety of animals, including donkeys, goats, horses, turkeys, peacocks, and chickens. He stated that H.K. likes to play with the animals on the property. He testified

that Miranda's relationship with H.K. was a good mother/daughter relationship. He believed that Seth's relationship with H.K. was also positive and that he "was okay" with H.K. He testified that when he saw Seth, Miranda, and H.K. together, Miranda usually took care of H.K. Since Miranda moved back into his house, he had not witnessed any issues between Miranda and H.K. that caused him any concern. He believed that Miranda's relationship with Seth was "toxic" and that Miranda had improved tremendously since being out of the relationship.

¶ 18 Miranda's stepmother, Jill, testified that she had been the mother figure for Miranda since Miranda was 10 years old. She testified that, at the time of the trial, her relationship with Miranda was good. She explained that after H.K.'s birth, Miranda had a lot of postpartum depression and was overwhelmed. She stated that Miranda was also unhappy in her relationship with Seth at that time. She testified that Miranda became depressed, overwhelmed, and cried at times and had asked her to stay with H.K. so she could take a break from caring for H.K.

¶ 19 Since moving into the basement, however, Jill noticed that Miranda was calmer and did not have the stress of the relationship with Seth. She felt that Miranda had overcome her depression and anxiety following the birth of H.K. She testified that during Miranda's parenting time, Miranda took care of H.K. and did not get flustered, angry, or overwhelmed. She testified that she did not help with H.K. "at all hardly." Sometimes she or Daniel would take H.K. to preschool or pick her up from preschool, but "that [was] really about it." Jill told the court that she would play with H.K. or read her a story, but she did not have anything to do with her daily care as a child.

¶ 20 During her testimony, Jill admitted to sending a Facebook message to Seth's mother, April, in January when Seth and Miranda where having problems in their relationship. A copy of the message was admitted at the trial as substantive evidence. In the message, Jill stated that she wished things had worked out between Miranda and Seth, that Seth had "been a real trooper" in trying to make things work, that Miranda had a distorted view of herself and others, and that she knew not to believe 90% of what Miranda said about other people.

¶ 21 In the Facebook message, Jill told April that she took over the role as Miranda's mother when Miranda was 10. She described her efforts to provide Miranda with a normal healthy childhood, but described Miranda as being "always mad at the world" and that she "has always been angry." She stated that she knew that Miranda "loves [H.K.] with all of her heart but for whatever reason she just can't seem to embrace motherhood in the way that we would hope for."

¶ 22 During her testimony, Jill told the court that Miranda had changed since she had sent the Facebook message to April and that her statements in the messages were no longer an accurate representation of Miranda based on her observations of Miranda for the past year. She stated that what she wrote in the message was based on what she heard from Seth and what she knew about Miranda as a young person. She explained that she sent the message to April because she wanted to explain her family's background to April so that April would know that they were "good people."

¶ 23 Jill testified that Miranda used to smoke marijuana but did not do so anymore. When asked about the last time Miranda smoked marijuana, Jill stated, "I am assuming it

was probably when she split up with Seth." She testified that Miranda never smoked in front of H.K.

¶ 24 During her testimony, Miranda told the circuit court that Daniel and Jill helped her at times by taking H.K. to daycare or picking her up and otherwise did "normal grandparent stuff" with H.K. She testified that she was employed as an activity director at an assisted living home, and she described her job as "pretty flexible." She told the court that living in Daniel and Jill's basement was temporary.

¶ 25 Miranda agreed that she struggled emotionally after H.K.'s birth. She testified that she was depressed, that she did not have a good relationship with Seth, and that their relationship was not a good environment for H.K. She testified that since she and Seth had separated, everyone was happier, including H.K. She testified that during her relationship with Seth, Seth was an active father. He helped with bathing and feeding H.K. She acknowledged that Seth and H.K. loved each other, and she explained that she worked toward promoting a healthy relationship between H.K. and Seth.

¶ 26 Miranda told the court that she was the parent that always took H.K. to her doctor's appointments. Seth, however, testified that he and Miranda had gone to multiple doctor visits together. He stated that if he was at work, Miranda took her by herself and that there were two occasions when he took H.K. to the doctor by himself.

¶ 27 Miranda testified that she had not smoked marijuana since January 28, 2016, and that she had to be drug tested for her work. She testified that when she smoked marijuana in the past, Seth was "right there with me or in the house." She stated that he was "very well aware of the fact that I was smoking weed" and that he smoked it with her "on

numerous occasions." She admitted that she had smoked marijuana while she was pregnant with H.K. on "a few occasions" and that Seth did as well. She testified that her prescription pills in the past had included lorazepam, Klonopin, Adderall, Topamax, and hydrocodone. She stated that, at the time of the trial, she only took Topamax and Adderall and occasionally hydrocodone for carpal tunnel pain. She testified that Seth took some of her prescription pills when they were together.

¶ 28 Seth, however, testified that he was randomly drug tested regularly in the military and with his job at the Illinois Department of Corrections. He stated that he had never failed a drug test. He testified, "So if I am taking all of these drugs they claim I have taken, I don't know how I could have lasted nine years in the military by taking all of these drugs, and my job at work."

¶ 29 Miranda testified that she wanted the court to award her primary parenting time with H.K. and award Seth parenting time every other weekend.

¶ 30 On January 12, 2017, after considering written arguments from the parties' attorneys, the circuit court entered a written order awarding a majority of parenting time of H.K. to Seth, subject to specific periods of parenting time for Miranda. The court ordered that H.K. would be in the care of Miranda every other weekend from Friday at 4 p.m. until Sunday at 6 p.m. The court also ordered H.K. to be in Miranda's care for two weeks in June and two weeks in July each year, adopted a holiday schedule, and required H.K. to be in Miranda's care during Seth's National Guard duties. The court ordered that H.K. was to remain in the care of Seth at all times not outlined in the order as parenting time for Miranda. The court also granted Seth "primary major decision making as to the

minor child: Educational; medical, dental, and mental health; religious, extracurricular, and recreational activities."

¶ 31 In explaining its decision, the circuit court evaluated the enumerated statutory factors that a court must consider in determining the allocation of parenting time for a minor child as set forth in section 602.7 of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/602.7(b) (West 2016)). The court found that most of the factors did not favor either party. However, it found that two factors weighed in favor of Seth: (6) the child's adjustment to her home, school, and community; and (7) the mental and physical health of all individuals involved. See *id.* § 602.7(b)(6), (7).

¶ 32 With respect to H.K.'s adjustment to her home, school, and community, the circuit court found that Seth could provide a stable home environment. The court noted that he owned a home, had stable employment, had supported H.K. since her birth, and was able to emotionally and financially support her at the time of the trial. In contrast, the court noted that Miranda lived in Daniel and Jill's basement, did not pay rent, and intended to move from Daniel and Jill's home and get her own place. The court found that Seth's "living situation [was] much more stable for [H.K.]." The court found "stability for [H.K.] to be a very important consideration and factor it its decision."

¶ 33 The court also noted Miranda's admitted drug use that the court found was "fairly recent." Although Miranda testified that Seth was also a willing participant in the drug use, the court noted that this testimony was disputed, and the court found Seth's testimony more credible than Miranda's.

¶ 34 In her closing argument, Miranda argued that Seth's National Guard service was evidence of putting his career advancement ahead of raising H.K. In its ruling, the circuit court disagreed, finding that Seth's work in the National Guard demonstrated that he was trying to support H.K. as a young father as well as serve the country.

¶ 35 With respect to the mental and physical health of all individuals involved, the court found that Miranda "had a past history of drug problems and problems dealing with [H.K.] and dealing with her own personal life, according to the testimony and evidence at the trial." The court found that Seth "had no mental health issues," and found that "this important factor weigh[ed] in Seth's favor."

¶ 36 The factors that the court found did not favor either Seth or Miranda were as follows: (1) the wishes of each parent seeking parenting time; (2) the wishes of the child; (3) the amount of time each parent spent performing caretaking functions with respect to the child in the 24 months preceding the filing of any petition for allocation of parental responsibilities; (4) any prior agreement or course of conduct between the parents relating to the caretaking functions with respect to the child; (5) the interaction and interrelationship of the child with her parents and siblings and with any other person who may significantly affect the child's best interests; (8) the child's needs; (9) the distance between the parents' residences, the cost and difficulty of transporting the child, each parent's daily schedules, and the ability of the parents to cooperate in the arrangement; (10) whether a restriction on parenting time is appropriate; (11) physical violence or threat of physical violence by the child's parent directed against the child or other member of the child's household; (12) the willingness and ability of each parent to place

the needs of the child ahead of his or her own needs; (13) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child; (14) the occurrence of abuse against the child or other member of the child's household; (15) whether one of the parents is a convicted sex offender or lives with a convicted sex offender; and (16) the terms of a parent's military family-care plan that a parent must complete before deployment if a parent is a member of the United States Armed Forces who is being deployed. See 750 ILCS 5/602.7(b) (West 2016).

¶ 37 Based on its evaluation of the statutory factors, the court concluded as follows:

> "In the court's opinion, the father is the better choice based on his stability in his employment, his residence, and his ability to care for [H.K.] emotionally. Seth has been an active father and has been a constant, consistent father to [H.K.] since her birth. There was also testimony that Miranda 'got overwhelmed' while dealing with [H.K.].
>
> The Court finds that Miranda appeared to have a recent past history of drug problems. Miranda also had problems dealing with [H.K.] and 'being overwhelmed' as a young mother and also had problems with her personal life according to the testimony and evidence at trial.
>
> Taking into consideration all the findings I have just reiterated, in the court's opinion, Seth is clearly the best choice over Miranda for primary parenting time (custody) with the minor child [H.K.]. The court finds it in the best interest of the minor child to grant Seth primary parenting time with the minor child. Seth is further granted primary major decision making as to the minor child: Educational;

medical, dental, and mental health; religious, extracurricular, and recreational activities."

¶ 38 Miranda filed a motion requesting the circuit court to reconsider its allocation of parenting time and parental decision-making responsibility. The court denied the motion after an evidentiary hearing. On April 17, 2017, the circuit court entered an allocation of parental responsibilities and parenting plan that incorporated the terms of its January 12, 2017, order. Miranda now appeals from the circuit court's judgment.

¶ 39 ANALYSIS

¶ 40 On appeal, Miranda argues that the circuit court's findings with respect to the allocation of parenting time and allocation of decision-making responsibilities are against the manifest weight of the evidence.

¶ 41 A trial court's decision with respect to the allocation of parenting time and decision-making must be based on the best interests of the minor child at issue. 750 ILCS 5/602.5(a), 602.7(a) (West 2016). "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 (1988).

¶ 42 "The trial court is in the best position to judge the credibility of the witnesses and determine the best interests of the child." *In re Custody of G.L.*, 2017 IL App (1st) 163171, ¶ 24. "Where the evidence permits multiple inferences, we will accept those inferences that support the trial court's order." *Id*. "Under the manifest weight standard, an appellate court will affirm the trial court's ruling if there is any basis in the record to

support the trial court's findings." *Id*. In the present case, based on the record before us, we cannot say that the circuit court's determinations with respect to the allocation of parenting time or decision-making responsibilities are against the manifest weight of the evidence. Therefore, we must affirm.

¶ 43 I

¶ 44 Allocation of Parenting Time

¶ 45 Section 602.7 of the Marriage Act requires trial courts to evaluate 17 separate factors to determine the child's best interests with respect to the allocation of parenting time. 750 ILCS 5/602.7(b) (West 2016). The factors are: (1) the wishes of the parent; (2) the wishes of the child; (3) the amount of time each parent spent performing caretaking functions with respect to the child in the 24 months preceding the filing of the petition; (4) any prior agreement or course of conduct between the parents; (5) the interaction and interrelationship of the child with his or her parents and siblings or any other significant person; (6) the child's adjustment to home, school, and community; (7) the mental and physical health of all involved; (8) the child's needs; (9) the distance between the parents' residences, the cost of transporting, the families' daily schedules, and the ability of the parents to cooperate; (10) whether a restriction on parenting time is appropriate; (11) physical violence or threat of physical violence; (12) the willingness and ability of each parent to place the needs of the child ahead of his or her own needs; (13) the willingness of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child; (14) the occurrence of abuse against the child or other members of the household; (15) whether one of the parents is a

convicted sex offender; (16) the terms of a parent's military family-care plan; and (17) any other factor that the court expressly finds to be relevant. *Id.*

¶ 46 "Although a trial court must consider all relevant factors when determining the best interests of a child, it is not required to make an explicit finding or reference to each factor." *In re Custody of G.L.*, 2017 IL App (1st) 163171, ¶ 43. "Generally, we presume that a trial court knows the law and follows it accordingly." *Id.*

¶ 47 In the present case, the court evaluated all of the factors and found that factors (1), (2), (3), (4), (5), (8), (9), (10), (11), (12), (13), (14), (15), and (16) did not favor either parent. The court found that factors (6) and (7) favored Seth. On appeal, Miranda does not challenge the circuit court's findings that factors (1), (2), (8), (10), (11), (14), (15), and (16) do not favor either party. Instead, she takes issue with the circuit court's findings with respect to factors (3), (4), (5), (6), (7), (9), (12), and (13).

¶ 48 Factor (3) concerns the amount of time each parent spent performing caretaking functions with respect to the child in the 24 months preceding the filing of the petition. The circuit court found that this factor favored neither party. Miranda argues that this factor favors her and that the circuit court's finding otherwise was against the manifest weight of the evidence. We disagree.

¶ 49 Prior to the filing of the petition, the parties resided together until their relationship ended in December 2015. Seth testified about occasions when he came home from work and Miranda handed H.K. to him and told him to "take her" because she needed a break. According to Seth, Miranda was a stay-at-home mother for a period of time but went back to work on a part-time basis because she needed time away from the caretaking of

H.K. In addition, he testified that they had to put H.K. in daycare even when Miranda was a stay-at-home mother because she needed a break from caring for H.K. during the day.

¶ 50 During her testimony, Miranda told the court that Seth was an active father. They both bathed H.K., and he helped feed her. Seth also testified that he was very active in H.K.'s life, that he followed counseling recommendations with respect to H.K.'s discipline, and that he was good at studying with her and teaching her. Although Miranda testified that she always took H.K. to doctor's appointments, Seth contradicted this testimony, stating that he also went to doctor's appointments and on two occasions took H.K. to the doctor by himself.

¶ 51 Based on the evidence presented at the trial, we cannot say that the trial court's finding that factor (3) favored neither party is against the manifest weight of the evidence. The evidence supports a finding that both parents have been active and significantly involved in performing caretaking functions in the 24 months preceding the filling of the petition.

¶ 52 Factor (4) concerns any prior agreement or course of conduct between the parents. The circuit court found that this factor did not favor either party, but Miranda argues that it favors her. Her argument is based on the assertion that she was the primary caregiver, having cared for H.K. since her birth and when Seth was gone for National Guard duty. However, as explained above, the evidence supports a conclusion that both parents have shared in caretaking responsibilities. Also, the evidence established that Miranda was overwhelmed with her share of H.K.'s caretaking responsibilities when H.K. was born

and immediately handed over those responsibilities when Seth returned from work. The trial court's finding that this factor favored neither party is not against the manifest weight of the evidence.

¶ 53 Factor (5) concerns the interaction and interrelationship of the child with his or her parents and siblings or any other significant person. Again, the circuit court found that this factor did not favor either party, and Miranda argues that it favored her. Miranda argues that the court failed to consider H.K.'s relationship with her grandparents, Daniel and Jill. However, the evidence established that Seth also had an extended family, including parents, grandparents, a sibling, aunts, uncles, and cousins in the Flora area where he lives. He grew up in Flora and testified that he did not intend to move from the area. The evidence established that H.K. spent time with both sides of her parents' families, not just with Miranda's parents. The circuit court's finding that this factor did not favor either party is not against the manifest weight of the evidence.

¶ 54 Factor (6) concerns the child's adjustment to her home, school, and community. The court found that this factor favored Seth, but Miranda argues that this factor favored her. Miranda emphasizes that H.K.'s doctor was in Jackson County and that H.K. was enrolled in preschool in Jackson County. She also emphasizes the activities and animals that were available for H.K. at Daniel and Jill's house. The circuit court, however, found that stability was "a very important consideration and factor in its decision." The court noted that Seth could provide H.K. with a stable environment in the home he owns, had stable employment, had supported H.K. since her birth, and was able to emotionally and

financially support her. The evidence also included testimony from Seth about programs for H.K. in the Flora area, including gymnastics, dance, and tumbling.

¶ 55 In assessing this factor, the court was concerned about Miranda's "fairly recent" drug use, that she lived with her father and stepmother rent-free, and that she intended on getting her own place in the future. The court found that Seth's "living situation [was] much more stable for [H.K.]." The record supports these findings with respect to the stability of the parties' respective living situations and supports its finding that this factor favored Seth. Accordingly, we cannot second-guess the court's findings pertaining to or weight given to this factor.

¶ 56 Factor (7) concerns the mental and physical health of all involved. The court found that this factor favored Seth, and Miranda argues that this factor favors neither party. She acknowledges that she suffered postpartum depression and took medications traditionally used to treat mental health conditions but argues that there was no evidence that these issues affected her ability to parent H.K. She argues that evidence of her marijuana use did not include any evidence that the drug use negatively affected H.K.

¶ 57 The circuit court, however, weighed the evidence of Miranda's history of drug use and problems dealing with H.K. and her personal life and found that this factor favored Seth. The circuit court also considered Jill's Facebook message to April in which she noted that Miranda was "always mad at the world," that Miranda "has always been angry," and that Miranda "loves [H.K.] with all of her heart but for whatever reason she just can't seem to embrace motherhood in the way that we would hope for." The evidence

at the trial included descriptions of Miranda having anger issues, including cussing and yelling in the home and making inappropriate comments to and in the presence of H.K.

¶ 58 Based on the evidence presented at the trial, the court found that Miranda "appeared to have a recent past history of drug problems" and "had problems dealing with [H.K.] and 'being overwhelmed' as a young mother and also had problems with her personal life." The court believed that this factor was an important factor and that it favored Seth, who had no history of mental health issues. The court found it significant that both Daniel and Jill testified favorably about Seth as a father. Accordingly, the record supports the circuit court's findings with respect to the mental health of the parties involved, and we cannot substitute our judgment for that of the trial court's with respect to the evaluation and weight of this factor.

¶ 59 Factor (9) concerns the distances between the parties' residences. The trial court found that this factor did not favor either party. On appeal, Miranda concedes that this factor favors Seth. The circuit court noted that Miranda chose to move to her parents' house two hours away from the home in Flora where H.K. had been living. The court noted that the parties have cooperated in transporting H.K. for transportation, but the distance would make it impossible to have visiting time during the week except for special occasions. The circuit court's findings with respect to this factor are not against the manifest weight of the evidence.

¶ 60 Factor (12) requires the court to consider the willingness and ability of each parent to place the needs of H.K. above their needs. The trial court found that this factor favored neither party. Miranda argues that this factor favored her because she had a more flexible

work schedule, while Seth worked Friday through Tuesday, 7 a.m. to 3 p.m. each week, and had additional National Guard duties. We disagree.

¶ 61 The flexibility of Miranda's work schedule does not establish that she had a greater willingness and ability than Seth to place H.K.'s needs above her own. The record supports the circuit court's finding that Seth's work demonstrated his stability as a young father trying to support H.K. The trial court was not required to find that this evidence showed that he placed his needs ahead of H.K.'s. After considering the parties' testimony, the court found that Seth was not "trying to advance his career above having time with [H.K.]." The circuit court's finding that factor (12) favored neither party is not against the manifest weight of the evidence.

¶ 62 Factor (13) concerns the willingness of each parent to facilitate and encourage a close and continuing relationship between the child and other parent. Miranda argues that this factor favored her and that the circuit court ruled incorrectly when it found that it favored neither party. Again, we disagree.

¶ 63 Both parents testified about their willingness and desire to facilitate and encourage H.K.'s close relationship with the other parent. They each testified that when they have parenting time with H.K., they allow the other parent to have FaceTime communication with H.K. Both parents testified that it was important for H.K. to have adequate time with the other parent. The circuit court's finding that this factor did not weigh in favor of either parent is not against the manifest weight of the evidence.

¶ 64 After weighing and considering all of the relevant factors, the circuit court found that Seth "is clearly the best choice over Miranda for primary parenting time (custody)

with the minor child [H.K.]." The court found that it was "in the best interest of the minor child to grant Seth primary parenting time with the minor child." The court emphasized that the stability of H.K.'s home life was important in its consideration. The trial court awarded Seth a majority of parenting time, finding that his home was stable in comparison to Miranda's. Miranda lived in Daniel and Jill's basement and testified that it was a temporary living situation. Seth had purchased a house in the town where he grew up, where his extended family resided, and where he planned on living and raising H.K. The circuit court was entitled to conclude that that H.K.'s home, school, and community would likely be more stable if Seth had primary parenting time. The evidence supported a conclusion that the stability of H.K.'s home, school, or community would be uncertain if Miranda had primary parenting time because of the temporary nature of Miranda's living situation. Nothing in the record establishes that the circuit court gave undue weight to stability in determining H.K.'s best interests. Accordingly, under the manifest weight of the evidence standard, we cannot reverse the circuit court's findings. The circuit court's allocation of parenting time is supported by the record and does not result in a manifest injustice. Therefore, we must affirm that portion of the circuit court's judgment.

¶ 65 II

¶ 66 Allocation of Decision-Making Responsibilities

¶ 67 After concluding that Seth should have primary parenting time, the circuit court also concluded that he should have "primary decision making as to the minor child: Educational; medical, dental, and mental health; religious, extracurricular, and recreational activities." The Marriage Act permits the court to allocate to one or both of

the parents the decision-making responsibility for significant issues affecting the child as to education, health, religion, and extracurricular activities. 750 ILCS 5/602.5(b) (West 2016). To determine the child's best interests for purposes of allocating significant decision-making responsibilities, the Marriage Act requires the court to consider all relevant factors, including: (1) the wishes of the child; (2) the child's adjustment to her home, school, and community; (3) the mental and physical health of all individuals involved; (4) the ability of the parents to cooperate to make decisions, or the level of conflict between the parties that may affect their ability to share decision-making; (5) the level of each parent's participation in past decision-making with respect to the child; (6) any prior agreement or course of conduct between the parents relating to decision-making with respect to the child; (7) the wishes of the parents; (8) the child's needs; (9) the distance between the parents' residences, the cost and difficulty in transporting the child, each parent's and the child's daily schedules, and the ability of the parents to cooperate in the arrangement; (10) whether a restriction on decision-making is appropriate under section 603.10; (11) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child; (12) the physical violence or threat of physical violence by the child's parent directed against the child; (13) the occurrence of abuse against the child or other member of the household; (14) whether one parent is a sex offender; and (15) any other factor that the court expressly finds to be relevant. 750 ILCS 5/602.5(c) (West 2016).

¶ 68 A trial court's allocation of parental decision-making responsibilities, like its determination of custody under the previous versions of the Marriage Act, is given great

deference because the lower court is in a superior position to judge the credibility of the witnesses and determine the best interests of the child. *In re Marriage of Lonvick*, 2013 IL App (2d) 120865, ¶ 33. We will not reverse the circuit court's allocation of decision-making responsibilities on appeal unless it is clearly against the manifest weight of the evidence and it appears a manifest injustice has occurred. *In re Parentage of J.W.*, 2013 IL 114817, ¶ 55. A judgment is against the manifest weight of the evidence only when the opposite conclusion is clearly apparent. *Id.*

¶ 69 On appeal, Miranda notes that the circuit court did not expressly discuss the factors set forth in section 602.5(c) in determining its allocation of decision-making responsibilities. Instead, the court simply allocated Seth with the decision-making responsibilities after it analyzed the factors set forth in section 602.7(b), which concerns the allocation of parenting time. We note, however, that the enumerated factors contained in both sections are very similar; many of the factors are identical. In addition, as noted above, although the circuit court did not make specific findings with respect to all of the statutory factors of section 602.5(c) of the Marriage Act, "it is not required to make an explicit finding or reference to each factor." *In re Custody of G.L.*, 2017 IL App (1st) 163171, ¶ 43. As we stated above, "[g]enerally, we presume that a trial court knows the law and follows it accordingly." *Id*.

¶ 70 In its analysis of parenting time, the court made specific findings concerning the following factors that are also relevant to the allocation of decision-making responsibilities: (2) the child's adjustment to her home, school, and community, (3) the mental and physical health of all individuals involved, and (11) the willingness and

ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child. As we have explained above, the circuit court's explicit findings with respect to these factors are not against the manifest weight of the evidence. In its analysis of section 602.7, the court found that factors set forth in subsections (2) and (3) of section 602.5(c) favored Seth and that factor set forth in subsection (11) of section 602.5(c) did not favor either parent.

¶ 71 Turning to the other factors of section 602.5(c) that Miranda raises on appeal, she argues that the following factors favored her: (5) the level of each parent's participation in past decision-making with respect to the child and (6) any prior agreement or course of conduct between the parents relating to decision-making with respect to the child.

¶ 72 With respect to past decision-making, factor (5), Miranda argues that she had been the parent "to schedule doctor's appointments and take [H.K.]." She also argues that she was the parent who got H.K. into counseling in Carbondale and had been involved with all of the significant decision-making with respect to H.K. With respect to prior course of conduct between the parents relating to decision-making, factor (6), Miranda argues that she had a history of making the decisions regarding H.K. She argues that she was the only one who enrolled H.K. in preschool, taking the initiative to have H.K. attend a full-time program on a part-time basis. She concludes that the circuit court should have awarded joint allocation of parental responsibilities and that its failure to do so is contrary to the manifest weight of the evidence.

¶ 73 The circuit court found that the relevant best interests factors favored Seth with respect to the allocation of parental decision-making responsibility, and we cannot say

that its decision is against the manifest weight of the evidence. Although Miranda argues that certain factors favor her, rather than Seth, the circuit court found most of the factors favored neither party, and two of the factors, factors (2) and (3), favored Seth. As we noted above, "the trial court is in a superior position to judge the credibility of witnesses and determine the best interests of the child." (Internal quotation marks omitted.) *In re Marriage of Debra N.*, 2013 IL App (1st) 122145, ¶ 45.

¶ 74 The evidence at the trial included testimony that Miranda struggled with parenting for some time after the birth of H.K. Miranda admitted that she smoked marijuana while she was pregnant and, after H.K. was born, that she had problems with being H.K.'s parent. Seth testified that Miranda had issues with anger that included yelling and cursing. Seth was particularly concerned about Miranda's anger directed toward H.K., including instances where he witnessed her tell H.K. that she was "fucking annoying" and told H.K. to "shut the fuck up." He testified that he witnessed Miranda "[t]hreatening to cut herself in front of [H.K.] multiple times" and that she had "threatened suicide multiple times." According to Seth, Miranda's parents called the police on suicide threats while they were together.

¶ 75 On appeal, Miranda emphasizes her testimony that she arranged for H.K.'s counseling in Carbondale, not Seth. Seth testified, however, that after he and Miranda's relationship ended, he obtained an order of protection against Miranda which prevented her from seeing H.K. According to Seth, a judge recommended that Miranda have only supervised visits with H.K., and Daniel and Jill supervised her initial visits with H.K. after the parties separated. Seth testified that he began making arrangements for

counseling for H.K. in Olney and was going to complete the arrangements upon returning from National Guard training. However, while he was gone, Miranda scheduled counseling in Carbondale on his day of parenting time. He testified that, instead of causing a problem, he agreed to drive to Carbondale for the counseling, which occurred on Tuesday mornings for eight sessions. Based on this evidence, the circuit court was not obligated to find that H.K. received counseling only because of Miranda's efforts.

¶ 76 Miranda also emphasizes her testimony that she, not Seth, is the parent who took the initiative to enroll H.K. in preschool. However, Seth testified that he and Miranda had agreed that it was more important for H.K. to spend time with both of them than spending extra time in preschool. During his testimony, he noted that, at the time of the hearing, H.K. would be attending preschool the next fall. Therefore, the Carbondale preschool that Miranda had enrolled H.K. in was an extra year of preschool. He stated that an extra year of full-time preschool was contrary to their agreement that it was more important for H.K. to spend time with her parents. He also testified that Miranda enrolled H.K. into the full-time preschool when he was gone to National Guard training and that the full-time hours interfered with his parenting time. According to Seth, in response to his objection, Miranda told him that if he wanted to take her out of preschool "because it conflicts with your days, then you can be the one to tell her she's not going to school anymore."

¶ 77 The circuit court was charged with the task of weighing and drawing inferences from this evidence concerning the parties' ability to make joint parenting decisions consistent with H.K.'s best interest. The court did so and concluded that it was in H.K.'s best interests that Seth have sole decision-making responsibility with respect to H.K.'s

education; medical, dental, and mental health; and religious, extracurricular, and recreational activities. The attorneys representing the parties on appeal are not the same attorneys who represented the parties in the lower court proceedings. At oral argument, both attorneys acknowledged that more evidence could have been presented in the lower court proceedings relevant to the contested issues, including the allocation of decision-making responsibilities. Regardless, the circuit court was faced with the task of deciding the best interests of H.K. based on the evidence that the parties did present for its consideration. On appeal, our task is not to substitute our judgment with the trial court's regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn from the evidence presented. *Best v. Best*, 223 Ill. 2d 342, 350-51 (2006). The trial court was in a better position to observe Seth and Miranda's conduct and demeanors during their testimony. *In re M.F.*, 326 Ill. App. 3d 1110, 1115-16 (2002). In addition, our task is not to speculate what additional evidence may have revealed had the parties presented more evidence for the court to consider. Instead, we can reverse the circuit court's determination of the best interests of H.K. only if the facts clearly demonstrate that the court should have reached the opposite conclusion based on the record before us. *In re D.M.*, 336 Ill. App. 3d 766, 773 (2002).

¶ 78 Here, Miranda has not established that the facts in the record clearly demonstrate that the circuit court should have awarded joint decision-making authority. Perhaps a different court might have drawn different inferences from the evidence and allocated joint decision-making authority as Miranda desires. In addition, perhaps the circuit court in the present case would have made a different decision had the parties provided it with

additional evidence to consider. However, these speculative scenarios are not a component of the manifest weight of the evidence standard of review. We cannot reweigh the evidence or draw different inferences from the evidence when the circuit court's findings are supported by the record. Therefore, we must affirm the circuit court's allocation of parental decision-making responsibility to Seth.

¶ 79 III

¶ 80 Motion to Reconsider

¶ 81 The final argument that Miranda raises on appeal is that the circuit court abused its discretion when it refused to grant her motion to reconsider. We disagree.

¶ 82 The purpose of a motion to reconsider "is to bring to the trial court's attention newly discovered evidence not available at the time of the first hearing, changes in the law, or errors in the previous application of existing law to the facts at hand." *River Village I, LLC v. Central Insurance Cos.*, 396 Ill. App. 3d 480, 492 (2009). Generally, a trial court's decision to grant or deny a motion to reconsider will not be reversed absent an abuse of discretion. *General Motors Acceptance Corp. v. Stoval*, 374 Ill. App. 3d 1064, 1078 (2007).

¶ 83 On February 10, 2017, Miranda filed a motion to reconsider the circuit court's January 12, 2017, order. The motion alleged, in part, that since the circuit court's October 24, 2016, trial, Seth had been gone for six weeks with the National Guard. Miranda argued that this was evidence that Seth placed his career over his duties as a parent and that the court should reconsider its ruling in light of this additional evidence.

¶ 84 On March 29, 2017, the circuit court conducted an evidentiary hearing on the motion to reconsider. At the hearing, Miranda testified that Seth decided to go to six weeks of training after the previous evidentiary hearing. She also testified that since Seth has had primary parenting time, H.K. had been showing signs of being upset, including pulling at her hair and throwing herself on the floor. She stated that her communication with Seth had been "very limited since he's been the primary parent" and that Seth would send her "photos here and there," but she felt "really left out." She testified that there had been no attempts at getting counseling for H.K. She also testified that she had to take H.K. to the doctor for two yeast infections and that H.K. had never had one prior to Seth having primary parenting time. She testified that Seth had assured her that he knew how to take care of her.

¶ 85 Seth testified that since the first trial, he had attended 20 days of an unscheduled training course after the first evidentiary hearing, but that he would not have to attend unscheduled training in the future. He also contradicted Miranda's testimony that H.K. had been upset. He testified: "Her behavior has been better than I've ever had her since she's been with me. She's happy every day." He testified that H.K. was attending preschool and that he had not received notice of any disciplinary issues from the school with respect to H.K. According to Seth, H.K. was performing great at school and had a lot of friends. At that time, he was in the process of arranging for counseling for H.K. in Olney. He explained that the purpose of the counseling was for "the transition of separating parents." The counseling was not for any behavior issues.

¶ 86 He acknowledged that H.K. had a yeast infection but stated that he checks with her every day and had not seen any recent signs or symptoms. He stated that he keeps Miranda informed of all of H.K.'s school information and lets H.K. FaceTime with her every evening. He explained that he stopped communicating directly with Miranda as follows:

> "The reasons why I stopped communicating with her is because Miranda has told me to put a gun in my mouth. She told me to kill myself and she has told me that she hopes an inmate gets a hold of me. She's told me they're going to take me to court until I run out of money and can't pay for anything."

¶ 87 He stated that it got to the point where he quit responding to her text messages and communicated with her only to tell her if H.K. has something going on.

¶ 88 At the conclusion of the hearing, the circuit court took the matter under advisement. On April 6, 2017, the circuit court entered a docket entry denying Miranda's motion to reconsider. In denying Miranda's motion to reconsider, the court wrote as follows:

> "The court carefully considered the allocation of parenting time for [H.K.], a 4 year old girl who had just completed about 3 months of pre-school at the time of the initial hearing. The court's decision that the father is the best choice for primary parenting time with [H.K.] based on his stability and other factors stated in the order is supported by the testimony and evidence presented at trial.
>
> The court finds the evidence and testimony at the Motion to Reconsider to be unpersuasive."

¶ 89 On appeal, Miranda argues that Seth's National Guard training following the initial hearing showed that he was the parent who lacked stability. She also emphasizes her testimony at the hearing on the motion to reconsider concerning H.K.'s behavior problems following the previous ruling and evidence of H.K.'s yeast infections. She argues that this new evidence should have caused the court to reconsider its decision and conclude that the court's parenting schedule was not in H.K.'s best interests. The court, however, considered and weighed the conflicting evidence and concluded that this new evidence was not persuasive. The court obviously found Seth was credible when he testified that H.K. was not having any problems and was a happy and healthy child. Because the record supports the circuit court's denial of the motion to reconsider, we cannot overturn the circuit court's ruling under the abuse of discretion standard.

¶ 90 CONCLUSION

¶ 91 For the foregoing reasons, we affirm the circuit court's judgment that allocated a majority of parenting time and decision-making authority to Seth.

¶ 92 Affirmed.

¶ 93 JUSTICE CATES, dissenting:

¶ 94 I am compelled to write this dissent because of the flagrant disregard of the plain language of the law in favor of an expedient resolution that so clearly affects the welfare of a child. I cannot comprehend why this child will be taken from the arms of her mother, and transferred to her father pursuant to a judgment granting the father sole decision-

making responsibilities, when the father, by his own admission, has never made a single significant decision for this child. Contrary to the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/101 *et seq*. (West 2016)), the trial court ignored the agreements reached by the parties during court-ordered mediation, failed to understand the limited scope of the trial proceedings, allowed past, irrelevant and prejudicial conduct to color the final judgment, made no mention of the law applicable to parenting plans, and ignored the proposed parenting plans on file by the parties. In my view, the justice system has failed this little girl.

¶ 95 The overarching problem here is that no one appears to be properly following the 2016 amendments to the Act. 750 ILCS 5/101 *et seq*. (West 2016). In the 2016 version, the legislature eliminated the familiar terms, "custody" and "visitation," as it relates to parents, and introduced the concept of allocation of "parental responsibilities." 750 ILCS 5/602.5, 607.5 (West 2016). The allocation is divided into two categories: "decision-making" and "parenting time." The amended version of the Act provides in pertinent part:

> "This Act shall be liberally construed and applied to promote its underlying purposes, which are to:
>
> * * *
>
> (5) ensure predictable decision-making for the care of children and for the allocation of parenting time and other parental responsibilities, and avoid prolonged uncertainty by expeditiously resolving issues involving children;
>
> ***

(7) acknowledge that the determination of children's best interests, and the allocation of parenting time and significant decision-making responsibilities, are among the *paramount responsibilities of our system of justice*, and to that end:

(A) recognize children's right to a strong and healthy relationship with parents, and parents' concomitant right and responsibility to create and maintain such relationships;

(B) recognize that, in the absence of domestic violence or any other factor that the court expressly finds to be relevant, proximity to, and frequent contact with, both parents promotes healthy development of children;

(C) facilitate parental planning and agreement about the children's upbringing and allocation of parenting time and other parental responsibilities;

(D) continue existing parent-child relationships, and secure the maximum involvement and cooperation of parents regarding the physical, mental, moral, and emotional well-being of the children during and after the litigation; and

(E) promote or order parents to participate in programs designed to educate parents to:

(i) minimize or eliminate rancor and the detrimental effect of litigation in any proceeding involving children; and

(ii) facilitate the maximum cooperation of parents in raising their children ***." (Emphasis added.) 750 ILCS 5/102(5), (7) (West 2016).

¶ 96 In order to facilitate the purposes of the Act, the parties are required to formulate a "parenting plan." 750 ILCS 5/602.10 (West 2016). This plan must be filed within 120 days after service, or the filing of any petition for allocation of parental responsibilities. 750 ILCS 5/602.10(a) (West 2016). The parenting plan may be filed jointly or separately. Further, "[t]he court shall order mediation to assist the parents in formulating or modifying a parenting plan or in implementing a parenting plan unless the court determines that impediments to mediation exist." 750 ILCS 5/602.10(c) (West 2016). Where no parenting plan is filed, the court must conduct an evidentiary hearing to allocate parental responsibilities. 750 ILCS 5/602.10(b) (West 2016).

¶ 97 In this case, the parties participated in court-referred mediation on March 15, 2016. On March 17, 2016, a "Mediator Report" was filed. That report indicated that the parties had reached a "Partial Agreement" with regard to "Child Custody" and "Child Visitation." Shortly thereafter, on May 13, 2016, Seth filed "Petitioner's Proposed Parenting Plan." Notably, in Seth's *initial* Parenting Plan, Seth suggested that the court enter the following finding:

"The court finds both parties are a fit and proper person to have custody of their minor child and that it is in the child's best interest that they have *joint custody*. All decisions affecting the child's growth and development, including but not limited to choice of school, choice of religion, course of study, major medical and

dental treatment, psychological, psychiatric or like treatments, participation in extra-curricular activities, shall be considered major decisions and shall be made *jointly* by both parties." (Emphases added.)

¶ 98 Then, just three days prior to the final hearing, Seth filed an "Amended Proposed Allocation of Parental Responsibilities And Parenting Plan" (Amended Parenting Plan). The Amended Parenting Plan clearly indicated that Seth would agree to the following terms:

"Mother and Father *shall share* parenting responsibilities for the minor children,[1] subject to the specific terms, conditions, interpretations and definitions set forth in this Allocation Judgment and Parenting Plan." (Article II, ¶ 1 of Amended Parenting Plan).

"The parties *agree* that each parent shall have principal authority and responsibility for daily and ordinary supervision and care when the children are with that parent." (Article II, ¶ 2 of Amended Parenting Plan).[2] (Emphases added.)

¶ 99 The Amended Parenting Plan included provisions articulating how "Significant Decisions" (as defined in section 602.5(b) of the Act) would be allocated. By the time of the hearing, Seth had agreed that:

[1]Although the Amended Parenting Plan used the term "children," this referred only to H.K., as the parties did not have more than one child between them.

[2]This provision is consistent with 750 ILCS 5/602.5(d) (West 2016), a provision of the statute ignored by the trial court, as referenced later herein.

(1) "Mother shall be responsible for major decisions relating to each child's secular education through high school, subject to the following terms and conditions,

(a) The children shall attend public or private school for the school district in which Father resides."

* * *

(2) "Other major decisions – Both parents shall share responsibility for all other major decisions relating to the children's education through high school."

(3) "Both parents agree that parental involvement in the educational process is critical to and in the children's best interests; accordingly:

(a) Both parents shall be entitled to duplicate originals of each child's school records ***.

(b) Both parents shall be listed on the school's 'Emergency List' ***.

***

(d) Each of the parents shall have the equal right to confer with teachers and counselors ***."

In short, just three days prior to the hearing, Seth proposed that he and Miranda share the significant decision-making responsibilities set forth in section 602.5(b). More importantly, Seth proposed that Miranda be the *sole* decision maker with regard to the minor's secular (non-religious) education, through high school. But the court, and my colleagues, have ignored all of these facts.

¶ 100 Miranda also filed a "Parenting Plan." Miranda's plan was filed after the evidentiary hearing, and as part of her written closing argument. Miranda's Parenting Plan requested that she be given major decision-making responsibilities with regard to education, medical/dental, religious, and extracurricular/recreational activities. There were some noteworthy similarities between her proposed plan and Seth's Amended Parenting Plan. Most significantly, as already noted, Seth had agreed that Miranda be given *major decisions relating to each child's secular education through high school.* The only condition was that the child would attend school where Father resides. It is obvious from the plain language of Seth's Amended Parenting Plan and Miranda's Parenting Plan that Seth and Miranda had agreed to share certain parenting responsibilities. Indeed, so long as H.K. attended school in Flora, Illinois, Seth was willing to allow Miranda to make all of the educational decisions. The parenting plans clearly show that both parties were cooperating and working together. They had been doing so since the June 10, 2016, agreed-to order. Consequently, and importantly, by the time of the hearing, both parties agreed there were only two issues that remained to be resolved after mediation.

¶ 101 The first issue was where the child would attend school. The second was the primary allocation of parenting time, as the parties lived two hours apart, and in separate school districts. As evidenced by its order of January 12, 2017, the court ignored these issues, even though parenting plans had been filed. Significantly, the Amended Parenting Plan was not discussed by the court and has never been acknowledged by my colleagues. Similarly, Miranda's Parenting Plan has also been ignored.

¶ 102 The failure by the trial court to consider the parenting plans, postmediation, was the first point of error. By law, the trial court was required to consider the content of the parenting plans. Section 602.10(g) states:

> "(g) The court shall conduct a trial or hearing to determine a plan which maximizes the child's relationship and access to both parents and shall ensure that the access and the overall plan are in the best interests of the child. *The court shall take the parenting plans into consideration when determining parenting time and responsibilities at trial or hearing.*" (Emphasis added.) 750 ILCS 5/602.10(g) (West 2016). (Emphasis added).

¶ 103 In this case, contrary to the plain language of the parenting plans on file, the court, in its best interest evaluation set forth in its January 12 , 2017, order, found that any prior agreement or course of conduct between the parents relating to caretaking functions with respect to the child was "not a factor" and "favors neither mother nor father." There is nothing in the record to indicate the trial court ever considered the recommendations made by Seth or Miranda in their proposed parenting plans. The court awarded Seth primary major decision making for each of the significant issues set forth in section 602.5(b), without providing any explanation for this decision. Indeed, Seth had not even requested this allocation in his Amended Parenting Plan.

¶ 104 The court also granted primary parenting time to Seth. Seth had certainly never suggested this result in his Amended Parenting Plan either, and the evidence clearly showed that Miranda and Seth had been sharing both decision making and primary parenting time. Indeed, Seth had suggested joint decision making, and testified that

Miranda made all of the major decisions for the minor. Under the Act, the trial court had an obligation to consider the recommendations made by the parties, especially where they indicated an agreement. See 750 ILCS 5/602.10(g) (West 2016). Failure to consider the results of the parties' negotiations renders meaningless the mediation process contemplated in section 602.10. In my view, the court's failure to consider the terms of Seth's Amended Parenting Plan and Miranda's Parenting Plan was an abuse of discretion, and contrary to the express terms of the Act. The statutory language of the Act is to be strictly construed. *In re Marriage of Burkhart*, 267 Ill. App. 3d 761, 765 (1994). "A court must act within the statutory authority granted to it in a dissolution of marriage action; it may not rely upon its general equity powers." *Burkhart*, 267 Ill. App. 3d at 765. The trial court erred when it ignored the requirements of section 602.10(g). Therefore, I believe that this case should be remanded for the trial court to consider the parenting plans *vis-à-vis* the best interests of the child, as required by section 602.10(g). And the best interest considerations should be based upon those factors set forth in section 602.5 and section 602.7, separately. The court, as further explained hereafter, should not issue a generic order, commingling two, separate statutes.

¶ 105 In addition to the trial court's failure to consider the proposed parenting plans, the court also mistakenly framed the issues as the allocation of parenting time, and which party should be awarded "primary parenting responsibility and parenting time with the parties' minor child." This language in the court's order reveals that the court failed to understand that there was a difference between "parenting time" (custody) and "parental

responsibilities: decision making." These two issues are controlled by different sections of the statute. See 750 ILCS 5/602.5, 602.7 (West 2016).

¶ 106 The order entered January 12, 2017, did not make reference to either section 602.5 or section 602.7. In considering the best interest of the child, the trial court stated that it had considered "all relevant factors." The court then discussed 16 factors, without reference to which section was being used. Based upon the 16 factors discussed by the court, one can only presume that the court must have been referencing the factors listed in section 602.7, because the order tracks the 16 specific factors set forth in that section. Section 602.7 of the Act pertains to allocation of parental responsibilities—"parenting time." In other words, this is the statute that deals with "custody." Section 602.5 was separated from the parenting time because section 602.5 deals with the decision-making process, which resolves such significant issues as education, health, religion, and extracurricular activities. Simply put, section 602.5 pertains to significant decision-making responsibilities regarding the upbringing of the child. This statute is significantly distinct from section 602.7, which discusses parenting time.

¶ 107 In my view, the trial court's comingling of the two statutes was error. My colleagues are willing to forgive the trial court, despite the fact that Miranda raises this issue on appeal, and claims that the trial court did not expressly discuss the factors set forth in section 602.5(c) in determining its allocation of the significant decision-making responsibilities. The majority responds that "similar" is good enough, and that the factors do not have to be considered separately. While it is true that some of the "best interest" factors overlap, the purpose of these two sections are different. Section 602.5 relates to

significant decisions to be made regarding the education, health, religion, and extracurricular activities for the child. Section 602.7 relates only to parenting time (custody), and presumes both parents are fit. Thus, there are some genuine differences between the sections. And this court has an obligation to ensure that the sections regarding "parenting time" and "parental responsibilities: decision making" remain separate, as written by the legislature. We should not simply rubber-stamp an order that improperly commingles two separate sections, and fails to consider the agreed-to matters, as evidenced by the parenting plans.

¶ 108 Section 602.5 provides: "*Unless the parents otherwise agree in writing* on an allocation of significant decision-making responsibilities, or the issue of the allocation of parental responsibilities has been reserved under Section 401, the court shall make the determination. The court shall allocate to one or both of the parents the significant decision-making responsibility for each significant issue affecting the child." (Emphasis added.) 750 ILCS 5/602.5(b) (West 2016).

¶ 109 Here, rather than acknowledging the agreements suggested by Seth in his Amended Parenting Plan, and echoed by Miranda in her Parenting Plan, the court, without explanation, found that Seth should be "granted primary major decision making as to the minor child." Nothing in the record, or in the court's order, suggested that Miranda was not fit to have joint decision-making. In fact, the testimony from Seth and Miranda indicated that Seth deferred to Miranda on all major decisions affecting the minor. Moreover, Seth did not ask for this result in his Amended Parenting Plan.

¶ 110 The trial court clearly erred when it so broadly awarded Seth the following:

> "Taking into consideration all of the findings I have just reiterated, in the court's opinion, Seth is clearly the best choice over Miranda for primary parenting time (custody) with the minor child [H.K.]. The court finds it is in the best interest of the minor child to grant Seth primary major decision making as to the minor child: Educational, medical, dental, and mental health; religious, extracurricular, and recreational activities."

This paragraph of the court's January 12, 2017, order most clearly reveals the court's intermingling of the two statutes. The court indicated it had reviewed "all of the findings," presumably pursuant to section 602.7, although this is never noted, and then awards both parenting time and decision making solely to Seth. The court does not indicate that it is in the best interests of the minor that Seth be awarded primary parenting time, but rather describes Seth as "the best choice." Clearly, the court ignored the two statutes that were applicable to the issues in this case. Moreover, the court failed to even acknowledge section 602.5(d), which states: "A parent shall have sole responsibility for making routine decisions with respect to the child and for emergency decisions affecting the child's health and safety during that parent's parenting time." 750 ILCS 5/602.5(d) (West 2016). Instead, everything went to Seth.

¶ 111 This provision regarding significant decision making, as set forth in the statute, was reflected in the parenting plans submitted by the parties, but ignored by the court. Again, I believe the trial court's order granting Seth sole decision making was against the manifest weight of the evidence and an abuse of discretion. The evidence was that the agreed-to order entered June 10, 2016, was working. Only if the court determined that

joint decision making was not in the best interests of H.K. should an order have been entered granting Seth the right of sole major decision making pursuant to section 602.5. But, as further explained hereafter, the court did not consider these best interest factors, and thus failed in its obligation to the parties, and the minor child.

¶ 112 I specifically take issue with the court's decision regarding the order awarding Seth sole decision making regarding religion. Seth's Amended Parenting Plan suggested the following order be entered:

> "Each parent accepts the ongoing obligation to provide positive and meaningful religious experiences for their children. The parties further agree that the children shall be raised to understand and respect faiths of both their parents, and that each parent shall be expected and entitled to share his and her respective religious observances, practices and heritages with their children."

¶ 113 Section 602.5(b)(3) pertains to the allocation of significant decision-making responsibilities regarding religion, and states, in part, that "[t]he court *shall not* allocate any aspect of the child's religious upbringing if it determines that the parents do not or did not have an express or implied agreement for such religious upbringing or that there is insufficient evidence to demonstrate a course of conduct regarding the child's religious upbringing that could serve as a basis for any such order." (Emphasis added.) 750 ILCS 5/602.5(b)(3)(C) (West 2016).

¶ 114 The record is devoid of any evidence that the parents had an agreement related to religion, or that there was a course of conduct between the parties regarding religious upbringing. There is no evidence that would justify a deviation from what was suggested

by Seth in his Amended Parenting Plan. The court simply disregarded the importance of this responsibility, and made it a part of the broad sweep included in its order, ignoring the plain language of the statute related to decision-making responsibilities. Because religion is included in section 602.5, and the trial court presumably used 602.7 to make its decision, the court was either unaware of this statute or disregarded the plain language of the law.

¶ 115 The broad strokes used by the trial court clearly indicate that the court failed to separate the two issues, parental responsibilities: decision making (750 ILCS 5/602.5) and parenting time (750 ILCS 5/602.7). Obviously, the legislature had a reason to create two distinct sections.

¶ 116 Religion, for example, is an important part of a child's upbringing, which was recognized by the legislature in section 602.5(b)(3). In fact, the legislature made it clear that a court could not enter a blanket order allowing one parent to dictate the religious upbringing of a child unless certain circumstances were present. Those circumstances are not present here, yet my colleagues turn a blind eye to this in their ratification of the trial court's order. In my view, however, religion is such a central part of the raising of a child, this cause should be remanded with instructions that the trial court consider the best interest factors set forth in section 602.5 for each of the significant issues set forth in that statute. See 750 ILCS 5/602.5, 602.7 (West 2016).

¶ 117 Finally, it is clear from the court's January 12, 2017, order that the court unfairly considered prejudicial testimony in its consideration of the factors identified in that order. Preliminarily, the record reveals that the scope of the hearing held October 24, 2016, was

not limited to the two central issues before the court. There was testimony from the parties and witnesses regarding conduct that had occurred prior to June 10, 2016, the date of the agreed-to order between the parties that allocated shared parenting time and decision making. By allowing this outdated testimony, the trial court disregarded the language present in both section 602.5(e) and section 602.7.

¶ 118 Section 602.5(e) provides: "In allocating significant decision-making responsibilities, the court shall not consider conduct of a parent that does not affect that parent's relationship to the child." 750 ILCS 5/602.5(e) (West 2016). Section 602.7(c) provides: "In allocating parenting time, the court shall not consider conduct of a parent that does not affect that parent's relationship to the child." 750 ILCS 5/602.7(c) (West 2016).

¶ 119 In its consideration of the best interests of this child, the court discussed 16 factors, presumably taken from section 602.7, regarding parenting time. The court determined that 14 of the 16 factors were either irrelevant or were neutral, *i.e.*, not favoring either parent. As part of the decision awarding Seth sole parenting time and decision-making, the court identified only two factors that favored Seth. The first factor was related to consideration of "*the child's* adjustment to his or her home, school, and community." (Emphasis added.) Rather than discussing its findings regarding the minor child's adjustment to Flora, Illinois, or her community, and home life,[3] the court favored Seth because he "owns a home and has stable employment through the Illinois

[3]Seth had not enrolled the minor in school or in any extracurricular activities in Flora, Illinois, at the time of the October 24, 2016, hearing.

Department of Corrections and through the U.S. National Guard. Seth is able to emotionally and financially support her now." Instead of describing Miranda's living situation, or the fact that the minor had been living in the Carbondale area since Miranda and Seth separated in December 2015, or rather than describing the fact that Miranda had been the primary decision-maker for the child since her birth, and that H.K. was enrolled in a pre-K program, making friends there, the court chose to rebut Miranda's arguments regarding why Seth would not be the best person to have the primary responsibility for the minor. Specifically, the court's order states:

> "Miranda seems to argue that Petitioner's [Seth] duties in the military with the Guard makes him unavailable as a parent to deal with [H.K.'s] everyday issues. Miranda also argues that Seth's volunteering for 3 separate training sessions with the National Guard demonstrates that he has put his career advancement ahead of raising [H.K.]. The court disagrees."

¶ 120 The court did not take notice of the fact that it was Miranda who cared for the minor all the while that Seth was away for National Guard duty. The court failed to even acknowledge that it was Miranda who enrolled the child in a pre-kindergarten class in Carbondale and ensured that the child had all of her health check-ups. The court, not once, acknowledged that Miranda, pursuant to the June 10, 2016, agreement with Seth, had more parenting time than Seth. See *Hall v. Hall*, 226 Ill. App. 3d 686, 691 (1991).

¶ 121 Moreover, the court made reference to the fact that Miranda, *in the past*, admitted to drug use while Seth was present. This evidence was completely irrelevant, even if true, as the court made no finding that this drug usage was in the presence of the minor or

affected the minor. See *Hall*, 226 Ill. App. 3d at 690. This testimony was just one example of where the hearing, presumably limited to the two issues that remained postmediation, went off the rails. In fact, there was very little acknowledgement from the court that the parties' relationship had vastly improved from when they lived together, and that they were cooperating with each other as of the date of the hearing, and had been cooperating since June 10, 2016.

¶ 122 The court also found that the child's adjustment factor favored Seth because "Miranda has not filed a motion with this court asking permission to move H.K. from Clay County. Miranda lives with her father and stepmother, does not pay rent, and has her folks available to help her with [H.K.]." First, there was no basis for the court to punish Miranda for leaving Seth in December 2015, as Miranda was not under any court order not to leave, and no legal proceedings prevented her from leaving. Further, this finding was punitive and contrary to the evidence. There was evidence that Miranda moved into the home of her father and stepmother, with H.K., after she and Seth separated. The home is on 72 acres and had a full basement, with its own entrance. Miranda and H.K. have their own living space, with a living room, bedroom and bathroom in the basement. Miranda testified that she and H.K. are able to enjoy the donkeys, goats and horses on the property, and go for walks in the woods nearby. Because Miranda has a flexible schedule, she does not need to use a babysitter for H.K. Miranda testified that she works as an activity director at a nursing home, where her job is "making people happy." Additionally, by Seth's own admission, he had filed for an order of protection against Miranda in order to improve his chances of getting custody of

H.K. The order of protection required Miranda to live with her father and stepmother, as they were to supervise Miranda's visitation with H.K. The order was dismissed, and the restrictions were lifted on June 10, 2016.

¶ 123 The court also found that "[t]he mental and physical health of all individuals involved" favored Seth. It is important to note that there was no testimony from any physician, social worker, mediator, or anyone else trained in mental health. Nevertheless, the court found this factor favors Seth: "The Court finds that Miranda had a past history of drug problems and problems dealing with [H.K.] and dealing with her own personal life, according to the testimony and evidence at the trial."

¶ 124 The court then referenced an e-mail written by Miranda's stepmother, and continued: "Seth had no mental health issues." Again, the court never indicated that Miranda's alleged prior drug usage or mental health issues adversely affected the minor child, as required by the statutes. In fact, there is no evidence that these alleged problems ever adversely affected H.K., and no one testified that the child suffered in any way as a result of Miranda's mental health issues. This determination by the court is extremely disappointing. Miranda, by her own admission, suffered from postpartum depression. Postpartum depression is not a disease, and was not Miranda's "fault." The court's view of Miranda's postpartum depression represents an archaic view of women's health. Miranda sought counseling. Seth attended counseling with her, and even by Seth's accounts, Miranda benefitted from counseling. Again, the court abused its discretion when it relied on this fact to favor Seth. *Cf. Hall*, 226 Ill. App. 3d at 690-91. By all accounts, Miranda had no parenting problems at the time of the hearing, and the parties

had been successfully executing the agreed-to, joint parenting plan since June 10, 2016. All restrictions regarding Miranda's supervised parenting were eliminated by court order in June 2016.

¶ 125 After weighing all of the factors used by the trial court, it determined that Seth was the better individual to have the sole decision making responsibilities because he had a home and a job. This home was the home that Seth and Miranda jointly chose to live in. This was the home that Miranda was forced to leave to save her relationship with her child, and avoid the toxic relationship she had with Seth. In my view, it is patently unjust to award sole decision making and parenting time to a parent simply because he or she has a home and the other does not. Further, Miranda had a job, with flexible hours. She was not paid as much money as Seth. But again, financial status, alone, is not the determining factor for either parenting time or decision making. Our legislature recognized the potential for a custodial parent to have financial disparity by devising a scheme for child support. In my view, and as previously explained, the circuit court abused its discretion in favoring Seth as it did. The court ignored the plain language of two separate sections of the statute, and instead, unfairly punished Miranda, and handsomely rewarded Seth, despite the agreements of the parties. Consequently, in my view, the circuit court committed error, and its January 12, 2017, order was against the manifest weight of the evidence and an abuse of discretion.

¶ 126 For all of the reasons stated, I believe this court should reverse and vacate the trial court's January 12, 2017, order, and remand for a hearing on the limited issues in dispute by the parties, with due consideration given to the parenting plans filed by the parties,

and according to the best interest of the minor, as set forth in section 602.5 and section 602.7 of the Act.

¶ 127 Accordingly, I respectfully dissent.