

NOTICE  
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2018 IL App (5th) 170472-U

NO. 5-17-0472

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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<i>In re</i> CUSTODY of T.D. and J.D.	)	Appeal from the
	)	Circuit Court of
(Ryan Doyle,	)	St. Clair County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 16-F-394
	)	
Jacki Beal,	)	Honorable
	)	Julie K. Katz,
Respondent-Appellant).	)	Judge, presiding.

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JUSTICE OVERSTREET delivered the judgment of the court.  
Justices Goldenhersh and Moore concurred in the judgment.

**ORDER**

¶ 1 *Held:* Trial court’s order awarding majority of parenting time and primary decision-making responsibility to the father was not against the manifest weight of the evidence.

¶ 2 Petitioner, Ryan Doyle, filed in the circuit court of St. Clair County a petition to establish paternity and to allocate parenting time and parental responsibilities regarding his minor children, T.D. and J.D., whose mother is the respondent, Jacki Beal. After hearing evidence, the circuit court entered an order granting Ryan primary decision-making responsibilities regarding educational, extracurricular, medical, and religious

issues and allocating to him the majority of parenting time. Jacki appeals. For the following reasons, we affirm.

¶ 3

### BACKGROUND

¶ 4 Ryan, who testified that he was 26 years old and lived in Fairview Heights, and Jacki, who testified that she was 24 years old and lived in Caseyville, began a relationship in February 2011 and were living together in Ryan's parents' home in New York, when T.D. was born on October 15, 2012. In August 2013, after returning from spending the 2013 summer in Illinois, the parties lived with Ryan's grandfather in New York. In 2014, they returned to southern Illinois, living with Jacki's parents, until they moved to the Fairview Heights home in December 2014. J.D. was born on January 11, 2015. Ryan and Jacki, who never married, separated in March 2016.

¶ 5 On June 9, 2016, Ryan filed his petition for determination of paternity and judgment of parental responsibility and parenting time. On November 7, 2016, in an initial report filed by the court-appointed guardian *ad litem* (GAL), the GAL found that from mid-May 2016 until July 20, 2016, Jacki did not permit Ryan to see T.D. or J.D. The GAL noted that Jacki was living with her paramour, Jason Dudley, and in their home, T.D. shared an extremely small bedroom with Jason's two children, and J.D. slept in a soft portable crib in the living room. The GAL further noted that Ryan had made some poor decisions, posting an inappropriate and explicit personal ad on Craigslist and exchanging sexually explicit conversation with a 17-year-old minor from Colorado, who he was led to believe was 18 years old. The GAL noted that Ryan also drove to Colorado to pick up the minor, but eventually, the Fairview Heights police and the Department of

Children and Family Services (DCFS) investigated the incident and returned her to her parents in Colorado because they had filed a missing persons report. The GAL noted that T.D. and J.D. never came into contact with the minor, the result of the DCFS investigation was “unfounded,” and no charges were filed against Ryan. In this report, the GAL recommended that Jacki have the majority of parenting time with the children.

¶ 6 On December 19, 2016, the court entered an order scheduling Ryan for unrestricted parenting time with the children on Thursday, December 22, 2016, from 9 a.m. until noon, with the parties exchanging the children at the McDonald’s in Shiloh. The court further scheduled Ryan for parenting time with the children from Thursday, December 29, 2016, from 9 a.m. until Sunday, January 1, 2017, at noon. The court ordered Ryan to ensure that the children were either at his parents’ condominium at Innsbrook, Missouri, or at his own home no later than 8 p.m. and ordered that no unrelated adult be present with the children.

¶ 7 In a later report dated January 31, 2017, the GAL found that, contrary to the December 19, 2016, court order, Jacki continued to insist that she and Ryan exchange the children at the police station. The GAL also noted that Jacki had requested that Ryan speak to Jason or her mother, Gina Beal, and not address her directly when discussing the children. The GAL further noted that Jacki had summoned the O’Fallon police department to Ryan’s home during each of the two extended parenting times set forth in the court’s December 19, 2016, order. The GAL recounted that on December 22, 2016, Jacki contacted the police department 42 minutes after Ryan left the police station with the children. The GAL noted that having the officers arrive and conduct a whole house

search of Ryan's home in the presence of the minor children on their first visit to Ryan's home in almost six months was upsetting to the children and interrupted Ryan's parenting time. Although Jacki believed that Ryan had an unrelated adult in his home during his parenting time, the police found no unrelated adult in Ryan's home. The GAL further noted that on December 29, 2016, Jacki requested that Ryan's parenting time commence with a physician's visit because one of the boys had experienced a cough during the previous few days and had vomited the previous night. The GAL found that less than four hours after Ryan left the police station with the children, Jacki summoned the O'Fallon police to Ryan's home for a well-being check. The police were greeted at Ryan's home by the children's grandfather, as Ryan was en route with the children and their grandmother seeking medical care for the cough and vomiting.

¶ 8 In this report, the GAL further found that text exchanges between Jacki and Ryan revealed Jacki's failure to cooperate with Ryan with regard to Ryan's court-ordered parenting time with his children. The GAL found that since the parties' separation, Jacki had refused to notify Ryan regarding his children's residence, refused to provide Ryan with necessary medication for the children, and continued to demonstrate an inability to foster any type of parental relationship between Ryan and the children. The GAL further found that Ryan's new employment provided more availability to be with his children because he worked during weekdays and that Ryan's father, Michael Doyle, had moved to the area to be near his grandchildren and to assist Ryan in providing for their needs. The GAL therefore recommended that Ryan be granted the majority of parenting time and sole decision-making responsibility for the children in the areas of education,

medicine, and religion. The GAL found that Ryan would be more likely to make decisions in the best interests of the children and to properly communicate the decisions to Jacki.

¶ 9 On February 10, 2017, Ryan filed an amended petition for judgment of sole parental responsibility. Ryan requested the circuit court enter an order granting him sole parental responsibility of the children and naming him primary residential parent.

¶ 10 On January 31, February 9, February 10, March 23, and April 10, 2017, during the hearings on Ryan's petition, the following evidence was adduced.

¶ 11 Ryan testified that when T.D. was born in New York, he was attending college full time, working at the West Hampton Country Club, and participating in T.D.'s care. Ryan testified that he fed T.D., changed his diapers, bathed him, read to him, and played with him. Ryan testified that he also participated in J.D.'s care after his birth. Ryan testified that he continued to live in the three-bedroom Fairview Heights home, located in the O'Fallon school district, to which the parties moved in December 2014. Ryan testified that after he and Jacki separated in March 2016, Jacki left the home, but the children remained in his home full time until June 2016.

¶ 12 Ryan testified that in June 2016, Jacki, ostensibly taking the children for an overnight visit, moved somewhere with the children and did not tell him where she had moved. Ryan testified that he did not see the boys for months, until he acquired a court order in August 2016 requiring his visitation. Ryan testified that he phoned Jacki on Father's Day, begging her to allow him to visit the boys, and she told him they were spending the day with their new dad. Ryan testified that Jacki told him they did not need

him, he could return to New York, and she considered him nothing more than a sperm donor.

¶ 13 Ryan testified that after the circuit court ordered visitation, Jacki played games with his parenting time. Ryan testified that because the court order required them to agree upon a meeting place by 8 p.m. on the evening before they would exchange the children for parenting time, Jacki, at 7:59 p.m., would reply to his earlier text suggesting a meeting place by stating that she did not agree. When he would suggest an alternative, she would respond at 8:02 p.m., stating that they had failed to agree before 8 p.m., and therefore, he could not exercise his parenting time with the children the next day. Ryan further testified that when he exercised parenting time with the boys, Jacki's parents or someone else affiliated with Jacki or Jason stayed to supervise him. Ryan also testified that when he requested that Jacki rearrange parenting times so that he could attend a friend's wedding, she refused.

¶ 14 Ryan testified that after subsequent mediation, a later court order stipulated that he shall not be supervised and that he simply had to notify Jacki where he would be taking the boys during his parenting time. Ryan testified that since this court order, Jacki had refused to communicate with him. Ryan testified that after Christmas 2016, he tried to notify her regarding medication that the children were taking, but she refused to talk to him and walked away. Ryan testified that on December 22, after Jacki had notified the police, the police arrived in his home, walked through his home, and determined that no one else was present. Ryan testified that on December 29, Jacki had again notified police, who arrived at his home and found no problems. Ryan testified that in one incident, he

was 10 minutes late to pick up the children, due to a traffic accident delay during his travel, and Jacki denied him parenting time that day.

¶ 15 Ryan testified that he and Jacki were unable to work together to make parenting decisions about the children. Ryan testified that Jacki would not reveal to him whether the boys had health insurance or who their primary care physician was. Ryan testified that when he suggested public or private pre-kindergarten programs for T.D., Jacki told him she was overseeing T.D.'s education. Ryan testified that on the Saturday evening prior to the hearing, Jacki had agreed to allow his parents and grandfather to visit the boys, but she did not arrive for over an hour and a half, so they left. Ryan testified that Jacki did not respond to calls or text messages during the hour and a half.

¶ 16 Ryan testified that he believed it would be in the children's best interest if he were awarded authority for parental decision-making. Ryan testified that he would actively try to communicate with Jacki. Ryan testified that he could provide a more permanent home in Fairview Heights where he had lived for two years.

¶ 17 Ryan testified that his current employer handled new customer acquisitions for AT&T and DirecTV, working inside large box office retailers like Costco, Sam's Club, Walmart, Menard's, and Best Buy. Ryan testified that his commute was two to three minutes because he operated his own office in Fairview Heights. Ryan testified that if he were awarded the majority of parenting time, he would alter his work schedule to be home to care for the children.

¶ 18 Ryan acknowledged that in May 2016, he posted an advertisement on Craigslist entitled "Babysitter/fuck buddy wanted" stating he was "looking for someone to live with

who would be willing to babysit five days a week while” he worked, would be willing to share a room, and would be willing to engage in a “friends with benefits situation.” Ryan testified that he deleted the post within a week. Ryan also acknowledged that in 2016, he traveled to Colorado to meet a 17-year-old female he had met online and believed to be older. Ryan testified that he brought her to Illinois, and they had planned for her to stay about two weeks. Ryan testified that he discussed having sexual relations with her. Ryan testified that he did not have any contact with her after August. Ryan also testified that subsequently, while at work, he was contacted by someone claiming to be a detective from the FBI saying they had evidence that he had contacted a minor and would pursue charges unless he sent \$1500 through a Walmart MoneyGram. Ryan testified that he sent the funds, but the phone call had been a scam.

¶ 19 Ryan testified that he had not utilized Craigslist or online chat rooms since the end of May 2016. Ryan testified that he had been dating a woman for five months, but she did not reside in his household. Ryan reiterated that in the future, if he required childcare, he would check with his father, who was moving to a nearby residence in June, his grandfather, Jacki, Jacki’s family, or if necessary, a reputable day care.

¶ 20 Deborah Doyle, Ryan’s mother, testified that she worked as a general supervisor at Brookhaven National Laboratory for the Department of Energy. Deborah testified that she and her husband, Michael Doyle, had been married 33 years and lived in New York. Deborah testified that Ryan, Jacki, and T.D. lived with them in New York from the summer of 2012 until May 2013. Deborah testified that Ryan was a warm and loving father and that she witnessed Ryan bathing T.D., changing his diapers, and reading to



him. Deborah testified that Ryan would “sit with a baby on his knee and do homework” in order to earn his bachelor’s degree. Deborah testified that when Ryan and Jacki returned to New York in August 2013, having spent the summer in Illinois, Ryan, Jacki, and T.D. lived nearby with her father-in-law, who had been living alone in a very spacious home. Deborah testified that at that time, Ryan was working at the West Hampton Country Club.

¶ 21 Deborah testified that Ryan graduated college, then moved to southern Illinois in July 2014. Deborah testified that she believed the boys would benefit if Ryan were granted extensive parenting time in the summer because T.D. and J.D. had family, including many cousins, who lived near their home in New York. Deborah testified that since Ryan’s move, she and Michael had purchased an additional home accommodating 11 people in Innsbrook, Missouri, in order to have a place close to Ryan and his family. Deborah testified that they visited on a monthly basis.

¶ 22 Deborah testified that she and Michael visited Ryan, T.D., and J.D. for five days at Innsbrook on Memorial Day weekend in May 2016. Deborah testified that they had learned in April that Ryan and Jacki’s relationship had ended. Deborah testified that Michael, a teacher, had returned to the area throughout the summer, moving into the Innsbrook residence, but Jacki had not allowed him to visit T.D. or J.D. Deborah testified that he texted Jacki to request a visit with the boys, but Jacki did not respond to his text.

¶ 23 Deborah testified that she visited the area in July 2016, stayed for eight days, but did not see T.D. or J.D. Deborah testified that in October 2016, she texted Jacki, asking for pictures of the kids in their Halloween costumes, but Jacki did not respond. Deborah

testified that during Christmas season 2016, she texted Jacki asking for sizes for the kids, Jacki asked who she was, she said she was Deborah, and Jacki did not respond further. Deborah testified that Jacki had not responded to any of her other texts since Memorial Day 2016.

¶ 24 Michael Doyle, Ryan's father, testified that he worked as a high school librarian in Eastport South Manor School District in New York. Michael testified that he lived with Deborah and his daughter, Kelly, and he had many extended family members living in a nearby town. Michael testified that in 2015, he and Deborah purchased the Innsbrook condominium in order to be closer to Ryan and the boys and to provide a place they could use when he and Deborah were not there. Michael testified that the Innsbrook condominium complex provided summer camps for children, swimming, and fishing. Michael explained that he and his wife earned approximately \$270,000 annually and had the financial resources to fly to southern Illinois regularly.

¶ 25 Michael testified that when he traveled to southern Illinois in June 2016, he texted Jacki to request a visit with the boys, and Jacki refused. Michael testified that in December 2016, the boys arrived at Ryan's home at approximately 9 a.m., they opened presents for an hour and a half, and while Deborah and Ryan were taking the boys for medical care, the police arrived at 11:30 a.m. or noon. Michael testified that neither child was vomiting or lethargic. Michael testified that the family rushed through Christmas gifts to seek medical care in order to avoid upsetting Jacki. Michael testified that he was open to reestablishing a relationship with Jacki to encourage her parental time with the boys.

¶ 26 Michael testified that he planned to retire in June 2017 and spend more time during retirement at the Innsbrook condominium, where he could provide childcare for T.D. and J.D. Michael testified that he would also be available to provide childcare in Ryan's Fairview Heights' home. Michael testified that he planned to stay at Innsbrook and drive daily to Fairview Heights.

¶ 27 Jacki testified that she lived in Collinsville with Jason, T.D., J.D., and Jason's two children, Syler and Clair. Jacki testified that after she and Ryan separated in 2016, she began residing with her parents in March and moved in with Jason in June. Jacki testified that when she moved in with Jason, she did refuse to provide Ryan with her physical address but he had failed to request it. Jacki initially testified that she and Jason lived in a smaller home, where T.D.'s toddler bed was located in a bedroom with a bunk bed, where Syler and Clair slept. On a subsequent hearing date, Jacki testified that she and Jason were purchasing a home in Caseyville that included three bedrooms, two bathrooms, and a basement. Jacki testified that they planned for T.D. and Syler to share a room and for Clair and J.D. to share a room. Jacki testified at an early hearing date that she allowed T.D. and J.D. to call Jason "whatever they would like" and that they "do call him dad at times." Jacki later testified, however, that most of the time, when T.D. and J.D. referred to Jason as "Dad," they were corrected.

¶ 28 Jacki testified that she had always been the boys' primary caregiver. Jacki testified that when T.D. and the family were living with Ryan's parents, she woke at night with T.D. to change his diaper or feed him, she did not ask for help, and Ryan asked to feed T.D. only one time. Jacki testified that after the family returned to southern Illinois, she

began working at the Dollar Tree in September 2015. Jacki testified that she worked a Monday-through-Friday schedule, until 5 p.m. Jacki testified, however, that she remained the primary caretaker of the children because Ryan was working approximately 70 hours a week at 54th Street Barbeque at that time. Jacki acknowledged that when she was at work, Ryan cared for the children. Jacki testified that she had made the decisions regarding the boys.

¶ 29 Jacki agreed with the GAL's report that as of January 31, 2017, she had insisted that exchanges occur at the police station. Jacki also acknowledged that she had no communication with Ryan at the exchanges and that in July, she directed that Ryan not address her directly but only address Jason or Gina. Jacki also agreed with the GAL's assessment that there was very little cooperation by Jacki in ensuring that Ryan received his court-ordered parenting time with the children. Jacki explained that she had lost trust in Ryan in April or May 2016, when he became involved with the minor from Colorado and when she later learned in June that he had placed the inappropriate Craigslist advertisement. Jacki testified that she was concerned for the boys' safety, especially regarding Ryan's interactions with women he did not know well.

¶ 30 Jacki testified to text messages, dated June 4, 2016, and offered into evidence, wherein Ryan stated that T.D. had hit J.D. twice, that he could not stand how T.D. kept hurting J.D., and that he "should just paint these walls red with his blood." Jacki testified that Ryan was consistently late in picking up the children, and that two, maybe three, times since the previous August, she did not allow him to see the children because of his tardiness.

¶ 31 Jacki testified that she did not receive Deborah's text messages. With regard to the December 2016 incidents, Jacki testified that on December 22, her mother notified her that a female exited Ryan's vehicle at a gas station, so she phoned the police. Jacki testified that on December 29, T.D. had been sick throughout the night, she had requested that Ryan take him to a physician at 9 a.m., and she had thereafter repeatedly tried to contact Ryan and Deborah with no response. Jacki testified that as a result, she contacted the police for a well-check. Jacki testified that the police responded to her concerns around 12:30 p.m., saying that they were with a physician, and Ryan texted thereafter at approximately 1 p.m. to notify her that T.D. had bronchitis. Jacki acknowledged that in December 2016, she was charged with computer tampering for accessing and tampering with Ryan's e-mail account.

¶ 32 At a later hearing date, Jacki testified that she had reconsidered her previous refusal to allow Ryan to travel to places other than the public location where they exchanged the boys. Jacki acknowledged that as of October 2016, she had been unwilling to cooperate with Ryan with regard to co-parenting the children and was unwilling to facilitate Ryan's parenting relationship with them. Jacki testified, however, that she had reconsidered, that she was open to a co-parenting schedule, and that she was willing and able to co-parent with Ryan. Jacki testified that she had become less stringent and more relaxed because she realized she was wrongly prohibiting Ryan from spending time with the boys. Jacki testified that she had more recently been allowing additional parenting time for Ryan, taking the children to him a bit earlier on Tuesday. Jacki testified that since January 2017, the lines of communication between herself and Ryan had remained

open, and they were working well together. Jacki testified that she nevertheless sought the majority of parenting time because she had primarily cared for T.D. and J.D. in the past.

¶ 33 Jason testified that he was 37 years old and that he had full-time custody of his two biological children, Syler and Clair, ages 10 and 6. Jason testified that he and Jacki began living together in June 2016, moving into an apartment in Collinsville. Jason testified that he and Jacki were in the process of purchasing a four-bedroom home with a basement. Jason testified that they planned for T.D. to share a bunk with Syler and for J.D. to sleep in a crib next to that bed. Jason testified that all the children played well together. Jason testified that he smoked cigarettes, but not in the home or vehicle.

¶ 34 Gina Beal, Jacki's mother, testified that when T.D. was born, she went to New York and stayed with Ryan's parents for six weeks. Gina testified that during her visit to New York, and during Ryan and Jacki's subsequent visits to her home, including when the family first returned to Illinois, she observed Jacki performing most of the childcare. Gina testified that at the time of the hearing, she babysat the boys on Mondays, Thursdays, and Fridays. Gina testified that Jacki paid her \$250 per week. Gina testified that during one exchange, Ryan was late, so she and her husband left. Gina testified that on two other occasions, Ryan was late and caused her to be late to a funeral and a Bible study.

¶ 35 Rosemary Berkeman, the court-appointed GAL, testified that she was appointed to this case on October 25, 2016. Berkeman testified that in preparation, she reviewed the case file and police reports and interviewed Ryan, Jacki, Jason, Gina, T.D., and J.D.

Berkeman testified that in her first report, issued in November 2016, she had recommended that Jacki continue to exercise the majority of parenting time because at that time, Ryan's parenting schedule had been restricted and he had not had the opportunity to visit his children in a long period of time. Berkeman further testified that in early 2016, it seemed that the parties were jointly making decisions regarding the children's health, school, religion, and extracurricular activities, so she had recommended that both parties continue to share those responsibilities.

¶ 36 Berkeman testified, however, that she filed the subsequent report on January 31, 2017, because, at that time, it seemed that the parties were not communicating well and that Jacki "was perhaps going out of her way to make contact with the children for [Ryan] more difficult and not encouraging that relationship." Berkeman opined that it was in the best interest of the children that Ryan be awarded the sole decision-making responsibilities for the education, health, religion, and extracurricular activities of the children. Berkeman also recommended that Ryan receive the majority of the parenting time and that Jacki be awarded parenting time three weekends each month.

¶ 37 Berkeman testified that she noted Ryan's poor decisions with regard to the 17-year-old minor from Colorado and the Craigslist advertisement. Berkeman testified, however, that throughout the remainder of her involvement in the case, the evidence indicated that Ryan had acknowledged those poor decisions and was not continuing that type of behavior. Berkeman concluded that although Jacki was a good mother, the acrimony she felt toward Ryan clouded her decision-making. Berkeman noted that with

regard to stability, Ryan had remained in the residence that Jacki and Ryan had originally lived with the children.

¶ 38 On September 5, 2017, the circuit court entered its judgment of parenting time and parenting responsibilities. Reviewing factors found in the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/602.5(c) (West 2016)) regarding decision-making responsibility for the minor children, the court found that T.D. and J.D. were well-adjusted at each parent's home, but the court found "a significant and troubling amount of conflict between the parties, causing th[e] [c]ourt to believe that the parties [we]re unable to make decisions jointly." The court found that Jacki "refuse[d] to communicate with" Ryan or to appear at exchanges of the minor children. The court found that when considering 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, this factor weighed heavily in Ryan's favor.

¶ 39 The circuit court found that Jacki's past decision-making authority was a result of her refusal to allow Ryan to take part in those decisions. The court noted Jacki's refusal to provide Ryan with the name of the children's physician and her refusal to allow access to the minor children after the parties separated.

¶ 40 The circuit court found that with regard to the children's needs, Ryan was more capable of providing stability and continuity in the home. The court found that Ryan had lived in the same residence for years and had been the parent with stable employment. The court found that the minor children needed to have a relationship with members of each party's extended family, and Ryan had demonstrated a willingness to allow Jacki's



family members to have contact with the minor children, willingly allowing Jacki's mother to care for the children during work hours. The court found that Jacki was unwilling to allow Ryan's parents and grandparent to visit the children when they were in town.

¶ 41 With regard to the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the children, the court found that this factor also weighed heavily in favor of Ryan. The court stated that "[t]his factor is the primary reason for the [c]ourt's determination as to which parent should have decision-making responsibility." With regard to this factor, the court noted, *inter alia*, the following:

(a) when [Ryan] called [Jacki] in order to see the kids on Father's Day in 2016, she told him that the boys did not need him anymore, that he was nothing more than a sperm donor, and that they had another father now;

(b) [Jacki] \*\*\* interfered with [Ryan's] parenting time by calling the police during the first two times that [Ryan] was awarded unsupervised parenting time, requesting wellness checks without a valid reason for doing so;

(c) [Jacki] refus[ed] to wait even 10 minutes for [Ryan] to arrive for parenting time when he was running late;

(d) [Jacki] refus[ed] to allow [Ryan] to see the minor children at all after the parties broke up, and refus[ed] to tell [Ryan] where she lived;

(e) [Jacki] refus[ed] to communicate with [Ryan] in order to discuss issues involving the minor children with him;

(f) [Jacki] interpret[ed] the July 20, 2016 [o]rder on temporary parenting time in a manner that would allow her to use an ambiguity in the wording of that [o]rder to deny [Ryan] his parenting time on several occasions;

(g) [Jacki] allow[ed] the children to call her boyfriend ‘Dad’ without correcting them.”

¶ 42 The circuit court further noted that the GAL had recommended that Ryan have sole decision-making responsibility in all areas of decision-making. Accordingly, the circuit found it in the children’s best interest that Ryan be granted sole decision-making responsibility regarding education, extracurricular activities, health care, and religion. Noting that the factors set forth in section 602.7 (750 ILCS 5/602.7(b) (West 2016)) regarding parenting time were similar to the factors set forth in section 602.5 (*id.* § 602.5(c)), the court held that the court’s analysis applied also to its determination of parenting time and granted Ryan the majority of the parenting time with the children. The court granted Jacki liberal parenting time, including every other weekend from Thursday until Monday morning, every other alternate Thursday, alternate holidays, and two uninterrupted weeks.

¶ 43 On October 3, 2017, Jacki filed a motion to reconsider, which the circuit court denied on November 7, 2017. On December 1, 2017, Jacki filed a notice of appeal.

¶ 44 On December 6, 2017, Ryan filed a motion to enforce the order entered on September 5, 2017, and a motion for indirect civil contempt. In this motion, Ryan alleged that Jacki had transferred the children’s health insurance without his approval, that Jacki

refused to share employment information so that an income withholding order could be entered, and that Jacki had not paid her child support.

¶ 45 ANALYSIS

¶ 46 Jurisdiction

¶ 47 On March 1, 2018, Ryan filed with this court a motion to dismiss for lack of appellate court jurisdiction. Citing *In re Marriage of Gutman*, 232 Ill. 2d 145 (2008), and *In re Marriage of Teymour*, 2017 IL App (1st) 161091, ¶ 43, Ryan argues that this court lacks appellate court jurisdiction because his motion for indirect civil contempt was pending in the circuit court. However, as noted by Jacki, Ryan's civil contempt proceedings, filed on December 6, 2017, were not pending when Jacki filed her notice of appeal on December 1, 2017. Thus, we deny Ryan's motion to dismiss this appeal for lack of jurisdiction. *Cf. In re Marriage of Gutman*, 232 Ill. 2d 145, 156 (2008) (no appellate jurisdiction where former wife's petition for indirect civil contempt was pending prior to trial court's order, which terminated maintenance but did not address contempt petition); *In re Marriage of Teymour*, 2017 IL App (1st) 161091, ¶ 43 (no appellate jurisdiction where petition for attorney fees was pending before petitioner filed notice of appeal).

¶ 48 Marriage Act

¶ 49 The Marriage Act (750 ILCS 5/101 *et seq.* (West 2016)) states that it shall be liberally construed and applied to promote its underlying purposes, which include ensuring predictable decision-making for the care of children and for the allocation of parenting time, recognizing the right of children to a healthy relationship with parents and

the responsibility of parents to ensure such a relationship, recognizing that frequent contact with both parents promotes healthy development of children, and acknowledging 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. See 750 ILCS 5/102 (West 2016). In accordance with those purposes, the Marriage Act requires the trial court to allocate decision-making responsibilities and parenting time according to the child’s best interests. *Id.* §§ 602.5(a), 602.7(a).

¶ 50 As Illinois courts have long recognized, the best interest of the child is the primary consideration in all decisions affecting children, including the allocation of parenting time and the determination regarding parental decision-making responsibilities. *In re Parentage of J.W.*, 2013 IL 114817, ¶ 41. Trial courts have broad discretion to determine the most appropriate allocation of parenting time. *In re Marriage of Whitehead*, 2018 IL App (5th) 170380, ¶ 21. “A trial court’s findings as to a child’s best interest are entitled to great deference because the trial judge is in a better position than we are to observe the personalities and temperaments of the parties and assess the credibility of the witnesses.” *Id.* “We will overturn such a determination only if it is against the manifest weight of the evidence, is manifestly unjust, or is the result of an abuse of discretion.” *Id.* “A judgment is against the manifest weight of the evidence only if an opposite conclusion is apparent or if the findings appear unreasonable, arbitrary, or not based on the evidence.” *Id.*

¶ 51

## Allocation of Parenting Time

¶ 52 On appeal, Jacki argues that the circuit court's decision granting Ryan the majority of parenting time was against the manifest weight of the evidence and an abuse of discretion.

¶ 53 Section 602.7 of the Marriage Act requires courts to allocate parenting time in accordance with the best interests of the child. 750 ILCS 5/602.7(a) (West 2016). Section 602.7 of the Marriage Act provides that in determining the child's best interests for the purpose of allocating parenting time, courts must consider relevant factors, including: (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 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 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 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 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.* § 602.7(b).

¶ 54 “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.*

¶ 55 The first of these factors includes the wishes of the parents (750 ILCS 5/602.7(b)(1) (West 2016)) and the wishes of the children (*id.* § 602.7(b)(2)). Here, both parents wanted the majority of parenting time allocated to them, and the children were too young to express a meaningful preference.

¶ 56 The next two factors concern the amount of time each parent spent caring for the children in the 24 months preceding the filing of the petition (*id.* § 602.7(b)(3)) and any prior agreements or course of conduct between the parents relating to care of the children (*id.* § 602.7(b)(4)). Ryan filed his initial petition on June 9, 2016. In the previous 24 months, as noted by the circuit court, Jacki oversaw the majority of childcare. As also noted by the circuit court, however, Jacki prevented Ryan's care of the children. Nevertheless, the evidence revealed that although Jacki limited Ryan's involvement, both parties were active and involved in performing caretaking functions, including feeding, housing, and taking the children to the doctor, in the 24 months preceding the filing of the petition. With regard to any prior agreement or course of conduct between the parents relating to the caretaking functions with respect to the children, the evidence revealed that

the parties' course of conduct involved Jacki's refusal to allow Ryan to freely exercise his parenting time. The evidence also revealed, however, that when caring for the children, both parents had properly cared for them.

¶ 57 The next factors involve the children's interaction and relationships with their parents, siblings, and any other individuals who might significantly affect their best interests (*id.* § 602.7(b)(5)) and the children's adjustment to their home, school, and community (*id.* § 602.7(b)(6)). The evidence revealed that the children had a good relationship with all of their extended family members, and as noted by the circuit court, they were well-adjusted at each of the parent's homes. As further noted by the circuit court, however, Ryan had remained employed, providing for himself and the minor children, and had lived in the same residence for years. As also noted by the circuit court, only T.D. was old enough to be in a school setting and was beginning pre-kindergarten.

¶ 58 The next two factors involve the mental and physical health of all of the individuals involved (*id.* § 602.7(b)(7)) and the needs of the children (*id.* § 602.7(b)(8)). The circuit court found no physical or mental health concerns with regard to the parents. Moreover, both parents were able to meet the boys' physical and emotional needs.

¶ 59 The next factor involves the distance between the parents' residences, the cost of transporting, the families' daily schedules, and the ability of the parents to cooperate. *Id.* § 602.7(b)(9). The evidence revealed no challenges with regard to the distance between the parents' residences, the cost of transporting, or the families' daily schedules. As noted by the circuit court, the parties lived fairly close together and transportation had not presented special problems. With regard to the ability of the parents to cooperate,

however, the circuit court noted the “significant and troubling amount of conflict between the parties.” The evidence revealed that Jacki created obstacles during the parenting exchanges and refused to communicate or appear at these exchanges.

¶ 60 The next factor that is relevant to this case is the willingness and ability of each parent to place the needs of the children ahead of the parent’s own needs. See *id.* § 602.7(b)(12). The evidence revealed that although Jacki acknowledged the children’s need for their father, she also acknowledged that she had not encouraged that relationship. The court found that the children also needed to have a relationship with members of each party’s extended family, and Ryan had demonstrated a willingness to allow Jacki’s family members, and his own, to have contact with the children, while Jacki was unwilling to allow Ryan’s parents and grandparent to visit with the minor children.

¶ 61 The last factor that is pertinent to this case is the willingness and ability of each parent to foster and encourage the children’s relationship with the other parent. See *id.* § 602.7(b)(13). The evidence clearly established that Ryan was willing and able to foster and encourage the children’s relationship with Jacki, but Jacki’s past actions indicated that she was not. The circuit court concluded that Jacki was “not at all willing to promote [Ryan’s] relationship with the minor children.” The court noted Jacki’s refusal to allow Ryan to visit the children on Father’s Day in 2016, her interference with Ryan’s parenting time by calling the police for unnecessary wellness checks, her refusal to wait 10 minutes for Ryan to arrive for parenting time, her refusal to tell Ryan where she lived after they separated, her refusal to communicate with Ryan, her manipulation of the court order to deny Ryan his parenting time, and her failure to correct the children when they



referred to Jason as “Dad.” The court found that Jacki sought to remove Ryan from the children’s lives. Clearly, the evidence revealed Jacki actions in the past showed an unwillingness to foster and encourage a close and continuing relationship between Ryan and the children. Although Jacki testified that she had recently recognized the error of her ways and was open to communicating and cooperating with Ryan, the circuit court was not convinced that her change in attitude was a genuine one. Again, “the trial judge is in a better position than we are to observe the personalities and temperaments of the parties and assess the credibility of the witnesses.” *In re Marriage of Whitehead*, 2018 IL App (5th) 170380, ¶ 21.

¶ 62 Considering all relevant factors, we cannot conclude that the circuit decision to allocate the majority of parenting time to Ryan was against the manifest weight of the evidence, was manifestly unjust, or was the result of an abuse of discretion. Instead, the circuit court’s allocation of parenting time was appropriate and supported by the record.

¶ 63 Allocation of Decision-Making Responsibilities

¶ 64 Jacki also challenges the court’s decision to grant Ryan sole responsibility for making significant decisions about the children’s education, extracurricular activities, health care, and religious upbringing. Jacki argues that the evidence showed that she had solely exercised responsibility for making significant decisions regarding the minor children in the past, that Ryan chose not to attend doctor appointments, and that she was openly communicating with Ryan by the close of evidence. Jacki argues that her concern and lack of trust, after Ryan posted the Craigslist advertisement and after his

inappropriate associations with minors, reasonably undermined the parties' communication.

¶ 65 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 court should consider all relevant factors, including: (1) the wishes of the child; (2) the child's adjustment to his or 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 about the child; (6) any prior agreement or course of conduct between the parents regarding decision-making with respect to the child; (7) the parents' wishes; (8) the child's needs; (9) the distance between the parents' residences, the cost and difficulty of transporting the child, each parent's and 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 (where parent engaged in conduct that seriously endangered child's health or significantly impaired child's development); (11) the willingness and ability of each parent to facilitate and encourage a relationship with the other parent; (12) the physical violence or threat of physical violence; (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. *Id.* § 602.5(c).

¶ 66 We have already reviewed the relevant factors listed above that are also found in section 602.7 of the Marriage Act (*id.* § 602.5(c)(1), (2), (3), (7), (8), (9), (11); *id.* § 602.7(b)(1), (2), (6), (7), (8), (9), (13)). These factors weigh in Ryan's favor.

¶ 67 The remaining relevant factors further support the circuit court's determination. With regard to the parents' ability to cooperate to make decisions, or the level of conflict between the parties that may affect their ability to share decision-making (*id.* § 602.5(c)(4)), the evidence supported the circuit court's findings that Jacki was unwilling to cooperate or communicate so as to share decision-making with Ryan. With regard to the level of each parent's participation in past decision-making (*id.* § 602.5(c)(5)) and any prior agreement or course of conduct between the parents regarding decision-making with respect to the children (*id.* § 602.5(c)(6)), the evidence supports the circuit court's conclusion that although Jacki significantly participated in past decision-making, she had refused to allow Ryan to contribute. As noted by the circuit court, the evidence revealed that although Jacki had historically made the majority of the decisions for the children, her significant decision-making was a result of her refusal to share information with Ryan or consider his input. The evidence revealed that at one point, Jacki refused to share her address, the children's primary care physician, or the children's health insurance information.

¶ 68 The evidence that Jacki had difficulty communicating and cooperating with Ryan supports the circuit court's decision to give one parent sole responsibility for making

these decisions. As noted by the GAL, the evidence revealed that Ryan would be more likely to make decisions in the best interests of the children and to properly communicate those decisions to Jacki. Because Ryan was awarded more parenting time than Jacki, it was reasonable for the court to give him this responsibility. The circuit court found that the relevant best interests factors favored Ryan with respect to the allocation of parental decision-making responsibility, and we cannot conclude that its decision is against the manifest weight of the evidence, was manifestly unjust, or was an abuse of discretion.

¶ 69

#### CONCLUSION

¶ 70 For the foregoing reasons, we affirm the judgment of the circuit court of St. Clair County.

¶ 71 Affirmed.