2018 IL App (5th) 180234-U

NO. 5-18-0234

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
TRAVIS VAN DORN,	)	Bond County.
	)	
Petitioner-Appellant,	)	
	)	
and	)	No. 15-D-49
	)	
SARA VAN DORN,	)	Honorable
	)	Ronald R. Slemer,
Respondent-Appellee.	)	Judge, presiding.

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

ORDER

¶ 1 *Held*: Trial court's order awarding majority of parenting time and primary decision-making responsibility to mother was not against the manifest weight of the evidence; however, trial court's order awarding child support was inconsistent with record and statutory guidelines.

¶ 2 The petitioner, Travis Van Dorn, appeals the circuit court's judgment of dissolution of marriage, which allocated sole parental responsibility and the majority of parenting time to the respondent, Sara Van Dorn. Travis also appeals the circuit court's award of child support. For the following reasons, we affirm in part and reverse in part, and we remand the cause to the circuit court for further proceedings.

¶ 3 BACKGROUND

¶ 4 Travis and Sara were married on October 6, 2012. Three children were born to the parties: N.VD., born December 12, 2013, and twins, M.VD. and V.VD., born July 4, 2015. The parties separated in the summer of 2015, and on July 17, 2015, Travis filed a petition for dissolution of marriage. At that time, Travis was 45 years old and resided in Carlyle, Illinois, and Sara was 35 years old and resided in Greenville, Illinois. Near the close of 2016, Sara moved to Edwardsville, Illinois, approximately 40 miles from the parties' Greenville marital residence, which Travis had purchased prior to their marriage and where Travis lived at the time of the hearings.

¶ 5 During the dissolution proceedings, the parties stipulated that Sara would continue to provide health insurance for the children, equally dividing the premium, half of which was $286, with Travis. The parties agreed that they would also equally divide additional medical, dental, or orthodontic expenses for the children. The parties further stipulated that within 30 days of the rendering of Travis's pending workers' compensation decision, Travis would pay $9000 in attorney fees to Sara. The parties noted that they were reserving Sara's child support claim to Travis's workers' compensation proceeds.

¶ 6 At hearings held on May 3, May 22, and June 12, 2017, Travis testified that he was employed as an occupational therapist from 1995, when he graduated from Washington University, until December 2011, when he was injured while working. Travis testified that he was injured when an obese patient fell and pinned him to a wall, causing herniated discs in his spine. Travis testified that he later returned to work for light duty, but his employer's light duty only lasted a few months.

¶ 7 Travis testified that two days after N.VD. was born, he had anterior approach lumbar spinal fusion surgery. Travis testified that for three months after the surgery, he was taking heavy narcotics and was unable to lift N.VD. Travis testified that his mother came to the marital home daily in order to help care for N.VD. because Sara was working in the home office for 8 to 10 hours a day. Travis testified that while working, Sara talked on the phone, prepared reports on her computer, and periodically traveled out of town for a couple of days.

¶ 8 Travis testified that three months after the surgery, he was able to hold N.VD., change her diaper and clothes, and feed her. Travis testified that six months after his surgery, he became N.VD.'s primary caretaker. Travis testified that from then on, he steadily improved so that after seven or eight months postsurgery, he was taking N.VD. to Little Gym classes.

¶ 9 Travis testified that when Sara's mother would visit the parties' home during the marriage, he would leave the home because he believed her mother was under the influence of something, and it upset him. Travis testified that when he and Sara argued during their marriage, he never physically hit her, but she was physically aggressive to him. Travis acknowledged that in July 2015, Sara had acquired an order of protection against him, and he was removed from his home. Travis testified that Sara had misrepresented facts to the court and voluntarily dismissed the action soon thereafter. Travis testified that after removal from his own home, he stayed in his parents' home until Sara purchased her home in September 2015. Travis testified that between July 2015

and September 2015, he spent time with his children from 9 a.m. to 5 p.m. a couple of days during the week.

¶ 10 Travis testified that despite a court order requiring notification, he believed that Sara had failed twice in 2016 and once in 2017 to notify him when she traveled out of town for work. Travis testified that pursuant to the circuit court's temporary order, he had slightly more parenting time with the children than Sara. Travis testified that if he were allowed additional time with the children, his parents, who enjoyed a close bond with the children, could also spend additional time with them. Travis testified that his mother was present 98% of his parenting time with his children.

¶ 11 Travis testified that he did not believe that he and Sara could communicate effectively regarding major decisions for the children. Travis testified that he believed he should make decisions for the children because he had no employer and nothing else in his life other than the children. Travis testified that for two months, Sara would not provide her cell phone number to him, so he was unable to contact her directly by phone. Travis acknowledged that in one incident, he had taken M.VD. to the emergency room and did not contact Sara until they had returned home. Travis testified that when he took M.VD. to the emergency room, he was busy consoling her and did not have the opportunity to send an e-mail or contact Sara. Travis testified that he contacted Sara the next day, after he had napped. Travis testified that he was unable to e-mail Sara from his home and could communicate with her only at his parents' home in Carlyle using their computer and sending an e-mail to explain.

¶ 12 Travis testified that he had suggested to Sara that N.VD. attend Highland for preschool, as an accommodation because it was located between Greenville and Edwardsville. Travis testified that he provided information to Sara regarding the Highland tuition, but Sara did not respond. Travis testified that he learned on the day of the hearing that Sara had enrolled N.VD. in the Edwardsville preschool.

¶ 13 Travis testified that he took medications for diabetes, cholesterol issues, and blood pressure. Travis testified that he was under employment restrictions, including 20- to 30-pound lifting restrictions, and that he was unable to remain in a static position for extended periods of time. Travis testified that he must lie down throughout the day as needed. Travis testified that these restrictions rendered him unable to work but not unable to care for his children in his home.

¶ 14 Travis testified that he received income pursuant to social security disability and a long-term disability insurance plan issued by Lincoln National Life Insurance. Travis testified that in 2016, he received $12,577 as income from Lincoln National Life Insurance and approximately $19,000, in addition to $2713 for N.VD., as social security disability benefits. Reviewing his March 2017 bank statement, Travis testified that he deposited $5107, which included $1783 of long-term disability insurance proceeds, $2217 of social security benefits, and a social security payment of $369 for each of the children. Travis acknowledged that he therefore received over $5100 monthly in tax-free income. Travis testified that he also deposited funds borrowed from his parents in order to pay monthly bills, and as a result, he owed his parents approximately $19,000. Travis acknowledged that, in considering the available data provided for 2016 and the beginning

of 2017, his monthly total deposits, including deposits from funds provided by his parents, averaged approximately $7354.

¶ 15 Jean Van Dorn, Travis's mother, testified that when N.VD. was first born, she visited the parties' home in the mornings and evenings for five or six days each week to help care for N.VD. while Sara worked in her home office. Jean testified that she fed N.VD., played with her, and changed her diaper. Jean testified that after about three months, she visited N.VD. two or three times a week. Jean testified that Travis was able to care for N.VD. six months after his surgery. Jean testified that before Travis and Sara separated, Travis performed the majority of the child care.

¶ 16 Jean testified that after the twins were born, she witnessed Travis caring for all three children by giving them baths, feeding them, and putting them to bed. Jean testified that she had spent the night at Travis's home, and Travis had no problems getting the children to bed. Jean also testified that Travis was able to lift the children into cars and take them for day trips. Jean acknowledged, however, that she assisted Travis each time that he exercised parenting time with the children.

¶ 17 Jean testified that during the parties' marriage, she had witnessed Sara yelling at Travis with no provocation on Travis's part. Jean further testified that during the parties' marriage, Travis attributed scratches and bruises on his arm to Sara.

¶ 18 Sara testified that she lived in a two-story, three-bedroom home in Edwardsville. Sara testified that she had earned a master's degree from St. Louis University in 2003 and had been working since March 2016 for Savills Studley Occupier Services, Inc., from her home office in her basement, earning $85,000 annually. Sara testified that she worked in

project management and managed construction sites remotely. As a project manager, Sara scheduled meetings via computer, reviewed schedules, prepared budgets, reviewed photos, and visited sites. Sara testified that her mother traveled from the St. Louis area to care for the children when she needed help during the work week. Sara testified that health insurance premiums, of which both parties paid half, amounted to $707.87 per month.

¶ 19 Sara testified that she was the children's primary caregiver. Sara testified that she fed them, bathed them, and dressed them. Sara testified that she took 12 weeks' leave in order to care for N.VD. after she was born. Sara testified that at that time, although Travis's mother brought meals for the family and helped with Travis, who had had recent surgery, Sara primarily cared for N.VD. Sara testified that after his surgery, Travis could not care for himself for 3 months, that he started to gain mobility for himself at 3 to 6 months, and that he could do a little bit more at 6 to 12 months.

¶ 20 Sara testified that when she was home and working after N.VD. was born, but before the twins were born, Travis would care for N.VD. for an hour during the day, generally reading a book to N.VD. while Sara caught up on work. Sara testified that Travis did not assist her with N.VD. during the night because he was unable to lift N.VD. from her crib. Sara testified that Travis was also physically unable to bathe N.VD., so she bathed N.VD. even when she was nine months pregnant with the twins. Sara testified that if she were traveling for work for more than 24 hours, Travis required his mother's assistance to care for N.VD.

¶ 21 Sara testified that when the twins were born, Travis acted distant, visited the twins in the hospital for only five minutes at a time, and thereafter requested a DNA test. Sara testified that after the DNA test showed that he was the twins' father, his attitude slowly changed, but he remained distant, exercising parenting time with N.VD. but not the twins. Sara acknowledged, however, that exercising parenting time with N.VD. alone may have been necessary for Travis due to his physical limitations. Sara expressed concern that Travis's physical disability, which rendered him unable to work, also rendered him unable to perform some of the physical care for the girls, including bathing them. Sara testified that she had obtained an order of protection after Travis pushed and cursed at her when she had requested his help.

¶ 22 Sara testified that she found it "impossible to work with" Travis because Travis would not cooperate with her. Sara testified that she notified Travis regarding the girls' physician appointments but that Travis created conflict and required the doctor's visits to occur during her parenting time, not his. Sara testified that Travis also videorecorded the children's doctor visits and visitation exchanges, which were very tense. Sara testified that when they were married, she was uncomfortable with Travis's building of guns and bullets while he was taking pain medication and drinking in the tense environment.

¶ 23 Sara testified that she had notified Travis that they needed to enroll N.VD. in preschool and provided links for preschool programs. Sara testified that months passed without his input, and on the day before enrollment, she notified Travis that she would be enrolling N.VD. in an Edwardsville preschool and requested that he pay half the cost. Sara testified that Travis then suggested a Catholic school in Highland, which would

require them to change churches. Sara explained that she preferred the Edwardsville pre-school because it fed into the kindergarten that she planned for N.VD. to attend.

¶ 24 Sara testified that she was required to travel, sometimes a day or overnight trip, every six months or so. Sara testified that although she primarily scheduled traveling time around her parenting time, she had notified Travis when she traveled to Austin, Texas, for work in March 2017. Sara testified that in one incident, she had notified Travis that she was required to leave at 3 a.m. to travel for work and had arranged for her mother to watch the children until they woke and went with Travis. Sara testified that Travis demanded to pick the children up at 3 a.m.

¶ 25 Laura Dreon, Sara's aunt, testified that she lived in Ballwin, Missouri. Laura testified that prior to the birth of the twins, Travis attended a party and brought out a gun in the presence of children. Travis stated that he was selling it to Laura's brother. Laura testified that Travis was "cocking it and showing it." Laura further testified that she had visited and observed Sara caring for the girls. Laura testified that Sara was capable of handling the three children at the same time.

¶ 26 Kevin Sybert, the court-appointed guardian *ad litem* (GAL), testified that he was appointed GAL in this case in October 2015. Sybert testified that he interviewed Sara and Travis, attended the parties' depositions, and briefly met Sara's mother and father and Travis's mother and father. Sybert found nothing objectionable in either party's home setting.

¶ 27 Sybert concluded, however, that Sara and Travis could not get along and could not engage in any meaningful communication. Sybert found troubling an incident wherein

Travis issued an ultimatum to Sara while in his truck with the girls, telling Sara to come to her door in Edwardsville or he would drive back to Greenville. Referencing the parties' messages to each other, Sybert testified that Sara had replied that she was in a store's checkout counter, Travis then drove 45 minutes to Greenville, and Travis later drove another 45 minutes from Greenville back to Edwardsville when Sara notified him that she was home. Sybert testified that he believed that Travis failed to prioritize the needs of the children over his own personal desire to dominate. Referencing the willingness and ability of each parent to place the needs of the children ahead of his or her own needs (750 ILCS 5/602.7(b)(12) (West 2016)), the GAL also found troubling the incident wherein Travis insisted that he wake the girls up at 3 a.m. in order to exercise his parenting time.

¶ 28 Sybert agreed with Sara's proposed parenting plan, which provided that she be awarded significant decision-making responsibilities for the children's education, health, and religious upbringing and that she be awarded the majority of parenting time, allowing Travis parenting time on alternating weekends and holidays and Tuesday evenings. Sybert recommended amending Sara's parenting time schedule to allow Travis alternating visitation during school breaks. Sybert testified that he agreed with Sara's plan because it limited Travis and Sara's interaction and provided more continuity of household.

¶ 29 When asked whether he applied the tender years doctrine, favoring the mother in a contest for custody of children of tender years, Sybert responded that he did not, even though he testified in a previous deposition that "at the risk of being a bit old-fashioned,"

he believed the primary custodian should be the children's mother. Sybert testified that he observed the parties and their relationships with each other in reaching his determination. Sybert testified that the decision-making statutory factors were not exhaustive so that he also considered that the children were "three little girls *** under the age of four" whose interests may best be served by granting the greater decision-making for them to "the parent that shares the same anatomy."

¶ 30 Sybert testified that since the deposition and prior to his testimony at the hearing, he had reviewed the statutory best-interest factors regarding parenting time and decision-making allocations. Sybert concluded that the children's adjustment to home, school, or community favored Sara because of the children's ages in that they were just beginning socialization with their schools and community. Sybert testified that he could not endorse Travis's suggestion to "ping pong ball back and forth" "two days here, two days back."

¶ 31 Sybert further testified to two incidents occurring on March 6, 2017, and April 25, 2017, wherein Travis had arrived at his office unexpectedly and accused him of failing to submit proper billings. Sybert testified that in one incident, Travis blocked his car in the parking lot.

¶ 32 On July 14, 2017, the circuit court entered its order. The court noted that Sara had moved 40 miles from the marital residence and that the parties were unable to cooperate. The court noted that it had considered the testimony and recommendation of the GAL and "all the factors set out by statute." The circuit court held that it was in the best interests of the children to allocate parental responsibilities concerning education, health, religion, and extracurricular activities to Sara. The circuit court further allocated

primary parenting time to Sara and reasonable parenting time to Travis. The circuit court directed the parties to prepare an order.

¶ 33 At a hearing held on October 2, 2017, Sara testified that although Travis had previously taken N.VD. to Little Gym on Mondays, Little Gym had closed. Travis testified that although Little Gym had closed, he and N.VD. continued to attend enrichment programs at the Children's Museum, the zoo, and play dates. Travis testified that he remained unemployed, although he had interviewed for employment. Travis testified that he was unable to secure employment because of his physical restrictions.

¶ 34 In an order entered on October 2, 2017, the circuit court noted that over the objection of both attorneys, it had entered a judgment of allocation of parental responsibilities and parenting plan; however, the circuit court ordered the attorneys to consult concerning all remaining issues to determine "what will need to be tried" and to schedule a new setting. Thereafter, on October 13, 2017, the circuit court entered an amended judgment of allocation of parental responsibilities and parenting plan. In its amended judgment, the circuit court awarded the significant decision-making responsibilities concerning the children's education, health, religion, and extracurricular activities to Sara. The circuit court awarded Travis visitation on Tuesday from 3 p.m. until Wednesday at 1 p.m.; during every other weekend beginning at 3:30 p.m. on Friday until Sunday at 6 p.m.; on alternating holidays, birthdays, and school breaks; and during three seven-day periods during summer vacation each year. The circuit court ordered the parties to communicate through e-mail or phone call (not text). The circuit court further ordered that if the parent caring for the children needed someone to watch the children

for more than eight hours, the other parent shall have the right of first refusal to exercise parenting time with the children. The circuit court ordered that when Sara travelled out of town for work, Travis shall have that opportunity for parenting time with the children.

¶ 35 On November 27, 2017, the Workers' Compensation Commission approved Travis's previously-mentioned workers' compensation settlement. Pursuant to the settlement agreement, Addus Healthcare, Inc. (Addus Healthcare), agreed to pay Travis $320,000. After attorney fees and costs:

> "the remaining sum, $253,021.96, represents a compromise settlement for a disputed claim representing wage differential pursuant to Section 8(d)1 of the [Workers' Compensation] Act [820 ILCS 305/8(d)1]. The aforesaid sum is to be paid by [Addus Healthcare] in a lump sum. The disputed wage differential benefits are paid to [Travis] over his life expectancy of 32.3 years ***, all at the rate of $150.64 per week for the balance of [Travis's] life expectancy."

¶ 36 On December 11, 2017, the circuit court entered a judgment of dissolution of marriage, reserving issues regarding, *inter alia*, child support, arrearage, and the distribution of the workers' compensation proceeds. On this date, the circuit court also ordered Travis to pay child support of $1050 per month beginning December 15, 2017. Also filed on this date, an "Illinois Support and Maintenance Data" sheet prepared by Travis's attorney reported Travis's annual overnight stays with the children as 135, his annual income as $61,284, Sara's annual income as $85,000, and his child support guideline amount as $995. On this date, the circuit court also denied a petition for

additional payments concerning preschool/daycare costs and denied Travis's petition to modify the parenting plan for additional overnight stays.

¶ 37 On January 10, 2018, Sara filed a posttrial motion and a motion for ruling on reserved issues, including the distribution of Travis's workers' compensation settlement. In a later filed position statement, Sara argued that because Travis's workers' compensation lump-sum award of $253,021 represented $150.64 per week for his lifetime, his child support obligation would amount to $60,214, $322 per month until the youngest child reached age 18 (December 2017 through July 2033 = 187 months x $322 = $60,214).

¶ 38 On January 11, 2018, Travis filed a notice to appeal the orders of October 2, 2017, and December 11, 2017. On February 21, 2018, this court dismissed Travis's appeal for want of prosecution for failing to file a docketing statement or pay the filing fee (Ill. S. Ct. Rs. 312, 313(eff. July 1, 2017)). On March 26, 2018, the circuit court noted that Travis had allowed his appeal to lapse and that the court would take up the remaining pending issues by allowing testimony and argument.

¶ 39 Accordingly, on April 10, 2018, the circuit court heard argument and testimony regarding Sara's posttrial motion. Travis testified that he settled his workers' compensation case for $320,000, from which he received $253,021 after expenses and attorney fees. Travis testified that he then paid Sara approximately $12,000 ($9000 for attorney fees and remaining for medical expenses), repaid his parents for loans, paid credit card debt, and deposited approximately $175,000 with Edward Jones investment

firm. Travis explained that the settlement essentially paid him $150.64 per week for 38 years, his average life expectancy.

¶ 40 Travis identified an Addus Healthcare "Schedule of Benefits" document regarding his long-term disability benefits. The "Schedule of Benefits" provides that the "[t]otal [d]isability [m]onthly [b]enefit" equals the insured's monthly earnings minus "[o]ther [i]ncome [b]enefits." "Other [i]ncome [b]enefits" is defined as any temporary or permanent benefits or awards under the Workers' Compensation Law. The "Right of Recovery" section of the "Schedule of Benefits" provides that "[i]f benefits have been overpaid on any claim; then full reimbursement to [Addus Healthcare] is required within 60 days." This "Right of Recovery" section further provides that if reimbursement is not made, Addus Healthcare has the right to recover overpayments from the insured employee and that "[s]uch reimbursement is required whether the overpayment is due to *** the [i]nsured [e]mployee's receipt of [o]ther [i]ncome [b]enefits."

¶ 41 Travis further submitted into evidence a letter from his physician, David G. Kennedy, M.D., stating that Travis was able to care for his children and "lift them when necessary, up to 30 pounds as needed on an occasional basis."

¶ 42 On April 10, 2018, the circuit court entered an order that, *inter alia*, determined that Travis's workers' compensation award was income for purposes of child support and awarded Sara a lump-sum child award distribution of $60,214. On this date, the circuit court ordered that Sara shall continue to pay for daycare and preschool expenses, that the parties shall divide extracurricular expenses, that Sara shall claim the children for tax

purposes, and that Travis's obligation for the children's insurance premium shall be reduced to $193.84.

¶ 43 On April 13, 2018, Travis filed his timely notice of appeal.

¶ 44 ANALYSIS

¶ 45 Jurisdiction

¶ 46 Sara argues that because Travis filed a notice of appeal on January 11, 2018, which was dismissed by this court for want of prosecution, he is barred from appealing the circuit court's orders of October 2, 2017, and December 11, 2017.

¶ 47 Illinois Supreme Court Rule 303(a)(1) states that a notice of appeal must be filed within 30 days of the entry of the final judgment appealed from (or within 30 days after entry of an order disposing of a timely posttrial motion directed against the judgment). Ill. S. Ct. Rule 303(a)(1) (eff. July 1, 2017). Thus, jurisdiction is conferred upon this court only through the timely filing of a notice of appeal, following a final judgment order. *In re Application of the County Treasurer*, 214 Ill. 2d 253, 261 (2005); *In re Marriage of Capitani*, 368 Ill. App. 3d 486, 488-89 (2006).

¶ 48 " 'The dismissal of an appeal for failure to prosecute acts as a judgment on the merits and becomes *res judicata*, thus barring further direct appeal.' " *Hartney v. Bevis*, 2018 IL App (2d) 170165, ¶ 12 (quoting 50 C.J.S. *Judgments* § 984 (2015)). " 'However, an appellate court's dismissal of a first appeal as premature is not a judgment or decree upon the merits, and thus a second appeal from the dismissal of the complaint is not barred under the doctrine of *res judicata*.' " *Id.* (quoting 50 C.J.S. *Judgments* § 984 (2015)). To have a preclusive effect on subsequent appeals, an appellate court's

involuntary dismissal must be based on the appellant's failure to properly conduct the appeal of an otherwise appealable order. *Id.* ¶ 13.

¶ 49 In its order entered on October 2, 2017, the circuit court noted that over the objection of both attorneys, it had entered a judgment of allocation of parental responsibilities and parenting plan, and the court ordered the attorneys to consult concerning all remaining issues to determine "what will need to be tried" and to schedule a new setting. In its December 11, 2017 order, the circuit court entered a judgment of dissolution of marriage, but again reserved issues for future consideration. Because the circuit court had reserved issues, including child support, for future consideration, its October 2, 2017, and December 11, 2017, orders were not final for purposes of appeal. See *Franson v. Micelli*, 172 Ill. 2d 352, 356 (1996) (if a court's order reserves for future consideration issues such as retroactive child support, such an issue is not merely incidental, and there is no final judgment for purposes of appeal until the issue is resolved); *In re Marriage of Capitani*, 368 Ill. App. 3d at 488 (all issues in a dissolution case, including custody, support, and visitation, must be resolved before a judgment becomes a final and appealable order). Accordingly, Travis's January 11, 2018, notice of appeal was premature because other matters remained pending in the circuit court. *In re Marriage of Leopando*, 96 Ill. 2d 114, 120 (1983) (only a judgment that does not reserve issues for later determination is final and appealable); *In re Marriage of Susman*, 2012 IL App (1st) 112068, ¶ 13 (same). A premature notice of appeal does not confer jurisdiction on the appellate court. See *Marsh v. Evangelical Covenant Church of Hinsdale*, 138 Ill. 2d 458, 469 (1990). Because the appellate court had no jurisdiction to address the merits

of the appeal when Travis filed his notice of appeal on January 11, 2018, we find that this subsequent appeal, originating from the circuit court's final, appealable order, is not barred by *res judicata*. See generally *Township of Jubilee v. State*, 2011 IL 1114447, ¶ 30 ("judgment which is null and void for lack of jurisdiction may not be used as the basis for application of the doctrine of *res judicata*"); *Dewan v. Ford Motor Co.*, 343 Ill. App. 3d 1062, 1073-74 (2003) (dismissal of prior appeal without explanation was actually for lack of jurisdiction because fee petition remained pending and rendered the remaining orders unappealable; thus, no underlying issues were decided in first appeal, and there was no bar to subsequent appeal). Accordingly, we will address the merits of Travis's appeal.

¶ 50 Marriage Act

¶ 51 The Illinois Marriage and Dissolution of Marriage Act (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 *id.* § 102. 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).

¶ 52 As Illinois courts have long recognized, the best interests 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 and decision-making responsibilities. *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.*

¶ 53 On appeal, Travis argues that the circuit court's orders relative to parenting time and decision-making responsibilities were contrary to the manifest weight of the evidence and constitute an abuse of discretion.

¶ 54 Allocation of Parenting Time

¶ 55 Travis argues that because the circuit court's allocation of his parenting time under the temporary agreed order included seven days every two weeks plus every Monday with N.VD., the circuit court's final allocation of his parenting time, which included four days every two weeks with no holiday overnight stays, amounted to an improper restriction on his parenting time. In support of this argument, Travis cites *In re Custody*

of G.L., 2017 IL App (1st) 163171, wherein the appellate court held that the trial court had improperly restricted the mother's parenting time to occur within one hour of the father's residence without considering whether the mother's exercise of parenting time would seriously endanger the child's physical, mental, moral, or emotional health (750 ILCS 5/602.7(b) (West Supp. 2015)).

¶ 56 "Although the allocation of parenting time itself is determined based upon the best interests of the child standard [(750 ILCS 5/602.7(a) (West 2016))], section 602.7(b) [of the Marriage Act] states 'the court shall not place any restrictions on parenting time as defined in Section 600 and described in Section 603.10, unless it finds by a preponderance of the evidence that a parent's exercise of parenting time would seriously endanger the child's physical, mental, moral, or emotional health.' [750 ILCS 5/602.7(b) (West 2016)]." *In re Custody of G.L.*, 2017 IL App (1st) 163171, ¶ 33. Section 600 defines "[r]estriction of parenting time" as "any limitation or condition placed on parenting time, including supervision." 750 ILCS 5/600(i) (West 2016). Section 603.10 states:

> "After a hearing, if the court finds by a preponderance of the evidence that a parent engaged in any conduct that seriously endangered the child's mental, moral, or physical health or that significantly impaired the child's emotional development, the court shall enter orders as necessary to protect the child." *Id.* § 603.10(a).

¶ 57 Section 603.10 then lists several restrictions the court may impose on parental decision-making and parenting time, including a "reduction, elimination, or other adjustment of the parent's decision-making responsibilities or parenting time" and "any other constraints or conditions that the court deems necessary to provide for the child's safety or welfare." *Id.* § 603.10(a)(1), (9); *In re Custody of G.L.*, 2017 IL App (1st) 163171, ¶ 33.

¶ 58 However, "[n]ot every change or even reduction in visitation time constitutes a 'restriction of visitation.' " *In re Marriage of Wycoff*, 266 Ill. App. 3d 408, 416 (1994). A termination of visitation is a restriction, as is a prohibition on overnight visitation. *Id.*; *In re K.E.B.*, 2014 IL App (2d) 131332, ¶ 33. "A requirement that visitation be supervised, occur in the home of the custodial parent, or outside the home of the noncustodial parent is a restriction." *In re Marriage of Wycoff*, 266 Ill. App. 3d at 416. However, "[a] reduction of weekend and summer visitation is not considered a restriction of visitation." *In re Marriage of Ross*, 355 Ill. App. 3d 1162, 1167 (2005). "A restriction of visitation, which must meet the serious-endangerment standard, is an action that limits, restrains, or confines visitation." *Id.*; see also *In re Marriage of Wycoff*, 266 Ill. App. 3d at 416 (reduction of weekend visitation from 50 hours to 31, and reduction of summer visitation from four weeks to two weeks (because of the children's activities), was not a restriction which had to meet the serious-endangerment standard); *In re Marriage of Lee*, 246 Ill. App. 3d 628, 645 (1993) (court's order allowing daytime visitation on holidays and two-week summer visitation but declining request for overnight visitation during

holidays and request for eight-week summer visitation was not considered a restriction on visitation).

¶ 59 The Illinois Appellate Court has stated that the difference between a modification and a restriction is that "a modification looks at the child's best interests directly, while a restriction looks at the suitability of the parent whose visitation would be curtailed." *In re Marriage of Chehaiber*, 394 Ill. App. 3d 690, 697 (2009). Listing types of changes that have been deemed "restrictions" or "modifications" may be misleading "because it is not the result—the actual change in visitation—that distinguishes a restriction from a modification; it is the purpose for the change." *Id*. Even so, termination of visitation, a ban on unsupervised or overnight visitation, or a ban on visitation at the noncustodial parent's home will almost certainly be imposed due to unsuitable attributes of the parent whose visitation is limited. *Id.* "[T]he more stringent endangerment standard was created to place a greater burden on a party seeking a reduction in a parent's visitation time where the reduction is based on reasons pertaining to perceived deficiencies of the parent, as opposed to reasons pertaining directly to the child's best interests." *Id.* at 696.

¶ 60 In this case, the circuit court awarded Travis visitation on Tuesday from 3 p.m. until Wednesday at 1 p.m.; during every other weekend beginning at 3:30 p.m. on Friday until Sunday at 6 p.m.; on alternating holidays, birthdays, and school breaks; and during three seven-day periods during summer vacation each year. The circuit court's order awarding parenting time was based on the best interests of the children, in that the evidence revealed that N.VD. was beginning to attend school in Edwardsville, so the parties' schedules were changing, and the additional 45-minute back-and-forth travel

exchanges between homes did not serve the children's best interests. 750 ILCS 5/602.5(c)(2), (9) (West 2016); 750 ILCS 5/602.7(b)(6), (9) (West 2016). The evidence also revealed that the parties' parenting time exchanges were filled with tension so that the children would be best served by limiting these exchanges. 750 ILCS 5/602.5(c)(9) (West 2016); 750 ILCS 5/602.7(b)(4), (9) (West 2016). Therefore, the circuit court's order allowing Travis visitation on Tuesday and Wednesday and alternating weekends is not considered a restriction on visitation which would require consideration under the more stringent endangerment standard.

¶ 61 Alternatively, Travis argues that in allocating parenting time, the circuit court failed to evaluate the best-interest-of-the-child statutory factors, and its order must be reversed.

¶ 62 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).

¶ 63 "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.*

¶ 64 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.

¶ 65 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)). Travis filed his petition on July 17, 2015. The twins were not yet two

weeks old, and N.VD. was 19 months old. During the previous 24 months, after N.VD. was born, Travis underwent a lumbar spinal fusion that rendered him unable to perform primary daily care for N.VD. during her first six to eight months, and therefore, Sara performed a majority of the child care during that time. As Travis recovered from surgery, both parties became active and involved in performing caretaking functions, including feeding, housing, and taking the children to the doctor, in the 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 both parents freely exercised their parenting time and cared for the children. The evidence further revealed that when caring for the children, both parents properly cared for them but that Travis's ability to care for them may be limited by his physical restrictions. The evidence revealed that Travis's mother consistently assisted Travis in caring for the children during his parenting time.

¶ 66 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 were very young but were establishing good relationships with their extended family members and that they were appropriately well-adjusted at each of the parent's homes. Only N.VD. was old enough to be in a school setting and was only beginning a prekindergarten program in Edwardsville.

¶ 67 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 evidence revealed that Travis's physical ability was limited due to a spinal injury but that both parents were able to meet the girls' physical and emotional needs.

¶ 68 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 that the parties lived 40 miles apart, that parenting time exchanges were tense, and that the parents did not cooperative effectively. The evidence further revealed incidents wherein Travis showed an unwillingness to accommodate the children's best interests during parenting time exchanges. Accordingly, this factor favors Sara.

¶ 69 With regard to physical violence or threat of physical violence in either parent's home or the occurrence of abuse against the child or other members of the household (*id.* § 602.7(b)(11), (14)), Travis and Jean testified that Sara had been abusive to Travis during the marriage, and Sara had acquired an order of protection against Travis during the marriage. However, the record reveals no physical violence or threat of physical violence since the parties' separation. This factor favors neither party.

¶ 70 The next factor 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 incidents that demonstrated, as characterized by the GAL, Travis's failure to place the needs of the children ahead of his own need to dominate. During one exchange, Travis demanded his parenting time begin at 3 a.m. instead of allowing his

children to sleep, and in another incident, he required the children to travel an extra 90 minutes so as to dominate a parenting exchange. This factor favors Sara.

¶ 71 The last factor 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). With regard to this factor, we find troubling the evidence that Travis took M.VD. to the emergency room and failed to contact Sara until the following day, after he had napped. This factor favors Sara.

¶ 72 "[T]he 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. Considering all relevant factors, we cannot conclude that the circuit court's decision to allocate the majority of parenting time to Sara 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.

¶ 73 Allocation of Decision-Making Responsibilities

¶ 74 Travis also challenges the court's decision to grant Sara sole responsibility for making significant decisions about the children's education, extracurricular activities, health care, and religious upbringing.

¶ 75 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).

¶ 76 We have already reviewed the relevant factors listed above that are also found in section 602.7 of the Marriage Act (750 ILCS 5/602.5(c)(1), (2), (3), (7), (8), (9), (11), (12), (13); 750 ILCS 5/602.7(b)(1), (2), (6), (7), (8), (9), (11), (13), (14) (West 2016)).

¶ 77 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 (750 ILCS 5/602.5(c)(4) (West 2016)), the evidence supported the conclusion that the parties were unable to cooperate to make decisions and that their high level of conflict would detrimentally affect their ability to share decision-making. 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 revealed that each party participated in past decision-making but the course of conduct between the parents regarding decision-making with respect to the children was contentious and unproductive. The evidence that Travis and Sara had difficulty communicating and cooperating 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 Sara would be more likely to make decisions in the best interests of the children and less likely to be motivated by the need to dominate. Because Sara was awarded more parenting time than Travis, it was reasonable for the court to give her this responsibility. The circuit court found that the relevant best-interest factors favored Sara with respect to the allocation of parental decision-making responsibility, and we cannot conclude that its decision was against the manifest weight of the evidence, was manifestly unjust, or was an abuse of discretion.

¶ 78 Guardian *ad Litem*

¶ 79 Travis argues that the circuit court erred in considering the GAL's improper recommendation. Travis argues that the GAL's recommendation did not consider the

appropriate statutory factors, was not based on observation of the parties or interviews with the grandparents, and showed clear and improper bias for Sara because she was a mother of three young girls.

¶ 80 The statute setting forth the duties of the GAL requires the GAL to investigate the facts, interview the children and the parents, and provide his recommendations to the court, either through testimony or a report. 750 ILCS 5/506 (West 2016). The GAL functions as the "eyes and ears of the court." *In re Marriage of Wycoff*, 266 Ill. App. 3d at 415.

¶ 81 Upon review of the billing records, the common law record, and the hearing transcripts, we note that the GAL interviewed Sara and Travis, visited their homes, interacted with the children, reviewed the court records, and attended the depositions and hearings. Although the GAL did not interview the grandparents, Jean testified at the parties' hearing. Moreover, although the GAL referenced irrelevant factors during his testimony, the circuit court heard relevant evidence throughout the hearing so as to properly evaluate the statutory best-interest factors and appropriately allocate parenting time and decision-making responsibilities. Accordingly, we find that sufficient evidence regarding the best-interest factors was presented and supported the circuit court's decision.

¶ 82 Child Support

¶ 83 Pursuant to section 505(a) of the Marriage Act, the circuit court had the authority to order either or both parents to pay "an amount reasonable and necessary for [the] support" of the children. 750 ILCS 5/505(a) (West Supp. 2017) (amending previous 750

ILCS 5/505 to make Illinois an income shares model). The Illinois Department of Healthcare and Family Services has adopted "rules establishing child support guidelines which include worksheets to aid in the calculation of the child support obligations and a schedule of basic child support obligations that reflects the percentage of combined net income that parents living in the same household in this State ordinarily spend on their child." *Id.* § 505(a)(1). The circuit court computes the basic child support obligations by (a) determining each parent's monthly net income, (b) adding the parents' monthly net incomes together to determine the combined monthly net income, (c) selecting the corresponding appropriate amount from the schedule of basic child support obligations based on the parties' combined monthly net income and number of children, and (d) calculating each parent's percentage share of the basic child support obligation. *Id.* § 505(a)(1.5). "Although a monetary obligation is computed for each parent as child support, the receiving parent's share is not payable to the other parent and is presumed to be spent directly on the child." *Id.*

¶ 84 The first step in calculating an appropriate amount of child support is determining income. Section 505(a)(3) of the Marriage Act broadly defines "gross income" as the "total of all income from all sources," minus various deductions. *Id.* § 505(a)(3). "[N]et income" includes "gross income minus either the standardized tax amount *** or the individualized tax amount ***, and minus any [additional statutory] adjustments." *Id.*; see also *id.* § 505(a)(3)(C)(II) ("The Illinois Department of Healthcare and Family Services shall promulgate a standardized net income conversion table that computes net income by deducting the standardized tax amount from gross income.").

¶ 85 "The amount to be added to the basic child support obligation shall be the actual amount of the total health insurance premium that is attributable to the child who is the subject of the order." *Id.* § 505(a)(4)(D). "After the health insurance premium for the child is added to the basic child support obligation and allocated between the parents in proportion to their respective incomes for child support purposes," "[i]f the obligee is paying for private health insurance for the child, the child support obligation shall be increased by the obligor's share of the premium payment." *Id.* § 5(a)(4)(E). "The obligor's and obligee's portion of health insurance costs shall appear in the support order." *Id.* "There is a rebuttable presumption in any judicial or administrative proceeding for child support that the amount of the child support obligation that would result from the application of the child support guidelines is the correct amount of child support." *Id.* § 505(a)(3.3).

¶ 86 A lump-sum workers' compensation settlement is income for child support purposes. *Mayfield v. Mayfield*, 2013 IL 114655, ¶ 18. Likewise, "[s]ocial security disability *** paid for the benefit of the subject child must be included in the disabled *** parent's gross income for purposes of calculating the parent's child support obligation." 750 ILCS 5/505(a)(3)(A) (West Supp. 2017).

¶ 87 Travis argues that the circuit court had already considered his disability insurance income in determining his monthly child support amount, that this disability insurance income will be offset by his workers' compensation award, and therefore, any child support awarded from the workers' compensation proceeds was duplicative. Travis also

argues that the circuit court's award of child support from his workers' compensation award was not supported by the record or the law.

¶ 88 We agree with Travis that the record and the statutory guidelines fail to support the circuit court's child support calculation from Travis's lump-sum workers' compensation distribution. Travis received $253,021 after expenses and attorney fees and paid Sara $12,000 for attorney fees and medical expenses. The circuit court awarded child support of $60,214; yet, the circuit court did not provide a statutory basis for this award or a basis for deviating from the statutory guidelines. We note that, considering the Marriage Act's amendments since *Mayfield*, it may have been more feasible for the circuit court to include Travis's workers' compensation distribution in the monthly child support calculations.

¶ 89 Even so, the record and statutory guidelines also fail to support the circuit court's monthly award of child support. With regard to Travis's monthly child support obligation, the record includes the circuit court's December 11, 2017, order, obligating Travis to pay monthly child support of $1050, and an "Illinois Support and Maintenance Data" sheet showing that Travis had 135 overnights with the children, that Travis's annual gross wages were $61,284 (which included his disability insurance proceeds), that Sara's annual gross wages were $85,000, and that the July 2017 child support guideline amount per month calculated to $995. Although there is a rebuttable presumption that the application of the child support guidelines is the correct amount of child support (750 ILCS 5/505(a)(3.3) (West 2017)), the circuit court ordered monthly child support of $1050, even though the "Illinois Support and Maintenance Data" worksheet, and the

accompanying "Illinois Child Support Guideline Calculation" worksheet filed on December 11, 2017, calculated monthly child support as $995. Accounting for Travis's $193.84 portion of the children's insurance premium, as indicated in the circuit court's April 10, 2018, order, adding $193.84 to $995 equals $1188.84, not $1050. Moreover, we note that the guideline calculations included in the record calculated Travis's standardized tax amount, including federal and state income tax; however, Travis testified that he received his income tax-free. See 750 ILCS 5/505(a)(3) (West Supp. 2017) (defining "net income" as "gross income minus either the standardized tax amount *** or the individualized tax amount ***, and minus any [additional statutory] adjustments");

https://www.illinois.gov/hfs/SiteCollectionDocuments/GrosstoNetIncomeConversionTableUsingStandardizedTaxAmounts.pdf;

https://www.illinois.gov/hfs/SiteCollectionDocuments/IncomeSharesScheduleBasedonNetIncome.pdf

¶ 90 Thus, while we agree with the circuit court's conclusion that Travis's lump-sum workers' compensation disbursement was income for purposes of calculating child support (750 ILCS 5/505(a)(3) (West Supp. 2017); *Mayfield*, 2013 IL 114655, ¶ 18), and its inherent conclusion that Travis's child support obligation should not be reduced at this time based on the potential for offset by the disability insurer, as no evidence suggested Travis was repaying any allegedly duplicative payment, the circuit court's award of child support, both in the calculated monthly amount and circuit court's $60,214 lump-sum award in its April 10, 2018, order, was not supported by the evidence in the record in

conjunction with the statutory guidelines. Thus, we reverse and remand that portion of the circuit court's order awarding monthly and lump-sum child support and direct the circuit court to consult the statutory guidelines to determine Travis's child support obligation.

¶ 91 CONCLUSION

¶ 92 For the foregoing reasons, we affirm in part and reverse in part the judgment of the circuit court of Bond County, and we remand the cause to the circuit court for further proceedings.

¶ 93 Affirmed in part and reversed in part; cause remanded.