2019 IL App (2d) 181028-U
Nos. 2-18-1028 & 2-19-0170 cons.
Order filed August 6, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF CINDY STATHAKIS,	)	Appeal from the Circuit Court
	)	of Du Page County.
Petitioner-Appellee and	)	
Cross-Appellant,	)	
and	)	No. 17-D-112
	)	
PETER STATHAKIS,	)	Honorable
Respondent-Appellant and	)	Robert E. Douglas,
Cross-Appellee.	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices McLaren and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Appellate court had jurisdiction to consider appeal from order granting wife's petition for relocation of the parties' children to Canada and entering allocation judgment and parenting plan agreement; (2) trial court did not err in denying husband's pretrial motions to continue the trial and reset discovery deadlines, appoint a professional, or call wife's father to testify at relocation hearing; (3) trial court did not err in denying husband's motion to reopen proofs; (4) trial court's decision to grant wife's petition for relocation of the parties' minor children to Canada was not against the manifest weight of the evidence; (5) allocation judgment granting wife sole decision making authority over religion and prioritizing school choice did not violate establishment clause; but (6) trial court erred in refusing to correct the allocation judgment *nunc pro tunc*.

¶ 2 Respondent, Peter Stathakis, and petitioner, Cindy Stathakis, are the parents of two minor children. Peter appeals from orders of the circuit court of Du Page County: (1) granting Cindy's

petition for relocation of the children from Illinois to Canada and entering an allocation judgment and parenting plan agreement; and (2) denying his motion to conform provisions of the allocation judgment to the trial court's intended ruling. On appeal, Peter raises five principle issues. First, he contends that the trial court committed reversible error by denying his pretrial motions to: (a) continue trial and reset discovery deadlines; (b) appoint or retain a mental health professional to opine on the children's best interest; and (c) call Cindy's father to testify at the relocation hearing. Second, Peter argues that the trial court erred in refusing to reopen proofs following the relocation hearing. Third, Peter claims that the trial court erred in allowing Cindy's petition for relocation of the children. Fourth, Peter maintains that the trial court violated the establishment clause of the first amendment to the United States Constitution (U.S. Const., amend. I) by entering an allocation judgment which grants Cindy sole decision making authority over religion and prioritizes a religious school. Finally, Peter contends that the trial court erred in refusing to correct the allocation judgment *nunc pro tunc*. Cindy has filed a cross-appeal, challenging this court's jurisdiction. We conclude that we have jurisdiction over this appeal, and, for the reasons set forth below, we affirm in part and reverse in part.

¶ 3 I. BACKGROUND

¶ 4 To place the issues in context, we initially provide a summary of the facts leading to these appeals. Additional facts will be set forth as necessary to our analysis of the issues raised in the appeals.

¶ 5 The parties are both Canadian citizens and were educated at York University in Toronto, Ontario, Canada. Cindy obtained a bachelor's degree in administrative studies specializing in accounting along with a Canadian professional designation of "Certified General Accountant." Peter has a bachelor's degree and has obtained the Canadian professional designation of

"Chartered Accountant," which he has since allowed to lapse. The parties met in Canada in the 1990s, when they both worked for the same accounting firm, but did not begin dating until 2006.

¶ 6 In 2005, Peter moved to Chicago when his friend, Khurrain Hussain, offered him a position at his dental office management company, which is currently known as KOS Services, LLC. Thus, when the parties began dating in 2006, Peter lived in Chicago and Cindy resided in the Toronto area. Despite the long distance between their residences, the parties would commute back and forth, alternating weekends between Chicago and Toronto. Peter would typically leave Chicago on Friday afternoon or evening and return either Sunday night or Monday morning. Cindy's traveling schedule was similar, but she would generally return to Canada on Sunday nights.

¶ 7 Cindy became pregnant in July 2008. The parties married in Toronto on October 18, 2008. After the marriage, Peter continued to work for KOS Services and reside in Chicago, while Cindy resided and worked in Canada as the controller for her father's business, Bolton Supermarkets, Limited d/b/a Bonanza Garden Center (Bolton). The parties continued their long-distance relationship after the marriage until the third trimester of Cindy's pregnancy. At that time, Cindy ceased traveling and Peter commuted to Toronto every weekend. The parties' daughter, K.S., was born in Canada on April 9, 2009. Following K.S.'s birth, Cindy continued to work for her father's company "to tie up" "some loose ends" until she moved to Illinois. During this time, Peter continued to travel to Toronto almost every week, staying from Friday until Sunday or Monday.

¶ 8 In July 2009, Cindy moved to Chicago with K.S. At that time, Cindy had an H4 dependent visa. The visa did not allow Cindy to work in the United States or obtain a social security number. In August 2010, the family moved from Chicago to Oak Brook. The parties'

son, C.S., was born in Illinois in May 2011. K.S. has attended Avery Coonley School, a private school, since kindergarten. C.S. attends Brook Forest School, a public school in Oak Brook. The children receive weekly tutoring. Cindy's parents, sister, brother-in-law, nieces, and nephew reside in Canada as do Peter's parents and brother. Peter has an aunt, an uncle, and cousins who reside in Illinois. Both sets of the children's Canadian grandparents regularly visit Chicago. Cindy obtained her green card in 2015 and a social security number in 2016.

¶ 9 Cindy continued to work remotely for her father's business after she moved to the United States. The number of hours Cindy worked each week varied. Although Cindy was paid for her work while she resided in Canada, she has received no compensation from her father's business while working in the United States. At the time the petition for dissolution was filed, Peter continued to work for KSO Services and held the title of chief financial officer (CFO). The parties disputed when Peter became CFO. Cindy testified that he had the title of CFO when they began dating. Peter testified that he did not have a "formal title" when he was hired and received the title of CFO in 2008 or 2009. In 2015, the parties reported almost $2 million in adjusted gross income, based solely on Peter's earnings.

¶ 10 Cindy commenced a proceeding for the dissolution of the parties' marriage in January 2017. At that time, Peter was 47 years old and Cindy was 45 years old. Peter retained the law firm Beerman, Pritikin, Mirabelli, Swerdlove, LLP (Beerman) to represent him and filed a response and a counterpeititon for dissolution of marriage. On April 4, 2017, Cindy filed a "Petition for Relocation of Minor Children" from Illinois to Canada pursuant to section 609.2 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/609.2 (West 2016)). On April 10, 2017, the trial court appointed Kim DiGiovanni as guardian *ad litem* (GAL) for the parties' minor children. The appointment order tasked the GAL with "render[ing] an opinion

concerning custody/visitation/removal that [she] believes is in the child(ren)'s best interest."

¶ 11 On April 18, 2018, the trial court ordered the child-related aspects of the dissolution matter, *i.e.*, the allocation of parental responsibilities and the petition for relocation, to be tried separately from the financial issues of the case and set trial to commence on October 29, 2018, on the child-related aspects. That same day, the court entered a case-management order setting forth various discovery deadlines. Also in April 2018, the trial court entered a temporary parenting plan and Peter moved from the marital home in Oak Brook to a house in Hinsdale. Upon separation of households, K.S. began experiencing anxiety. The condition would manifest when K.S. could not personally see one of her parents. Peter reached out to Cindy about the issue, and K.S. began seeing a therapist, Cecilia Guzman, in June 2018. On August 30, 2018, the GAL issued her report in this matter, recommending that relocation be granted "provided certain commitments are made regarding parenting time for Peter." The GAL also drafted a proposed allocation judgment and parenting plan memorializing her recommendations.

¶ 12 On September 7, 2018, Peter filed a motion for substitution of attorneys, requesting that the firm Schiller, DuCanto & Fleck (Schiller) be allowed to substitute for prior counsel. The trial court granted the motion on September 13, 2018. Schiller filed its appearance the same day and also presented two motions: (1) Motion to Continue Trial and Reset Discovery Deadlines; and (2) Motion to Appoint Court's Professional Pursuant to 750 ILCS 5/604.10(b), or in the Alternative, for Appointment of a 604.10(c) Expert. The trial court denied both of Peter's motions, but the deposition deadline was extended by agreement for the sole purpose of deposing the GAL on October 1, 2018. On October 23, 2018, Peter filed a "Petition for Issuance of Letter of Request (A/K/A Letter Rogatory) and Commission," requesting permission to obtain the evidentiary testimony of Cindy's father, Gene Bidinot. After a brief hearing that same day, the

court denied the motion as untimely.

¶ 13 The trial commenced on October 29, 2018, and testimony was heard over a course of nine days. The majority of the evidence was adduced through the testimony of the parties and the GAL, but the court also heard testimony from: (1) Rachel Neustadt, the children's tutor; (2) Hussain, Peter's friend and the chief executive officer (CEO) of KOS Services; and (3) Catherine Stathakis, Peter's mother. Among the evidence presented at the hearing on the petition for relocation was testimony regarding Cindy's school preferences for the children if they are allowed to relocate to Canada. Specifically, Cindy testified that she investigated three schools in Canada: (1) Country Day School, a private, non-religious school; (2) Pope Francis Catholic School, a public school with a religious education component; and (3) the Kleinburg public school district. Cindy indicated, and the GAL confirmed, that, if allowed to relocate to Canada, it would be her primary choice to enroll the children in the Country Day School. Cindy also testified that she initially planned to work as controller for her father's business if relocation is granted, but would eventually succeed her father as president of the company.

¶ 14 Upon the conclusion of the trial on November 8, 2018, the trial court ordered the parties to submit written closing arguments on November 29, 2018, and set December 14, 2018, for issuing its ruling. On December 6, 2018, Peter filed a "Motion to Reopen Proofs and for Other Relief." After a hearing on December 11, 2018, the trial court denied Peter's motion.

¶ 15 On December 14, 2018, after considering the evidence and testimony presented at the relocation hearing and in conjunction with the factors set forth in section 609.2 of the Act (750 ILCS 5/609.2 (West 2016)), the trial court entered an order finding by a preponderance of the evidence that relocation from Illinois to Canada is in the children's best interests and granting Cindy's petition. On the day the relocation order was entered, respondent filed three documents:

(1) a notice of appeal pursuant to Illinois Supreme Court Rule 304(b)(6) (eff. March 8, 2016), docketed in this court as No. 2-18-1028; (2) a motion for stay of enforcement of judgment pending appeal; and (3) a motion for a finding pursuant to Illinois Supreme Court Rule 304(a) (eff. March 8, 2016). After presentment on December 18, 2018, Peter's motions were set for hearing on January 14, 2019. However, upon learning from the children on the afternoon of December 18, 2018, that Cindy had arranged for their withdrawal from their present schools and their relocation to Canada over the holiday break, and confirming this information with the schools, Peter filed on December 28, 2018, an Emergency Motion for Stay of Enforcement of Judgment. On January 2, 2019, the trial court granted Peter's emergency motion in part, staying the December 14, 2018, relocation order until the January 14, 2019, hearing on Peter's motions and directing Cindy not to relocate with the children to Canada pending the outcome of the January 14 hearing.

¶ 16 Also on January 2, 2019, the trial court continued the matter to January 4, 2019 "for entry of *nunc pro tunc* allocation judgment to 12/14/18." On January 4, 2019, after counsel for the parties, the GAL, and the court met to "discuss[]" the allocation judgment, the court entered an "Allocation Judgment and Parenting Plan Agreement" (Allocation Judgment) *nunc pro tunc* to December 14, 2018. On January 14, 2019, the trial court granted Peter's motion for a Rule 304(a) finding and Peter filed an amended notice of appeal in No. 2-18-1028 that same day. The trial court, however, denied Peter's motion for stay. During the January 14, 2018, hearing, Peter's counsel also informed the court that she had that morning discovered an "error" in the Allocation Judgment. Counsel stated that she would like to work with counsel to resolve it. The court instructed Peter's counsel to "[c]ome back in if there is an issue. Bring it to [the court's] attention."

¶ 17 On January 18, 2019, Peter filed with this court an emergency motion for stay of the circuit court's December 14, 2018, judgment, which this court granted on February 4, 2019. In the same order, this court also denied Cindy's motion to dismiss Peter's appeal for lack of jurisdiction, which she filed with this court on January 22, 2019.

¶ 18 On January 29, 2019, Peter filed a "Motion to Conform Provisions of Allocation Judgment to Court's December 14, 2018, Order." In the motion, Peter alleged that portions of the Allocation Judgment entered on January 4, 2019, *nunc pro tunc* to December 14, 2018, did not reflect the trial court's intended ruling. Peter requested the court enter a corrected Allocation Judgment *nunc pro tunc* to December 14, 2018, to conform that ruling to the judgment in fact rendered by the court. Following a hearing on March 4, 2019, the trial court denied Peter's motion to conform. On March 7, 2019, Peter filed a notice of appeal from the order denying his motion to conform. We docketed Peter's second appeal as No. 2-19-0170 and subsequently consolidated both of Peter's appeals.[1]

[1] This is an accelerated appeal under Illinois Supreme Court Rule 311(a) (eff. July 1, 2018). With respect to such cases, Rule 311(a)(5) provides in relevant part that "except for good cause shown, the appellate court shall issue its decision within 150 days after the filing of the notice of appeal." Ill. S. Ct. R. 311(a)(5) (eff. July 1, 2018). In this case, Peter filed his initial notice of appeal in No. 2-18-1028 on December 14, 2018, and his notice of appeal in No. 2-19-0170 on March 7, 2019. Thus, the 150-day period to issue a decision in No. 2-18-1028 expired on May 13, 2019, and the 150-day period to issue a decision in No. 2-19-0170 expired on August 4, 2019. However, Peter filed multiple motions for extension of time to file his briefs. As a result, briefing in this consolidated appeal was not completed until June 14, 2019. Moreover, the record on appeal is lengthy, Cindy filed a cross-appeal contesting our jurisdiction over one of

¶ 19 II. ANALYSIS

¶ 20 A. Cindy's Cross-Appeal

¶ 21 We first address Cindy's cross-appeal. Cindy argues that while this court has jurisdiction over appeal No. 2-19-0170, we lack jurisdiction over appeal No. 2-18-1028. We begin with a review of the facts leading to appeal No. 2-18-1028.

¶ 22 As noted, on December 14, 2018, the trial court entered an order granting Cindy's petition for relocation, finding that relocation of the parties' children to Canada was in their best interests. The court's order further provides in relevant part as follows:

> "2. With regard to the decision making, the Court adopts the GAL's proposed parental allocation judgment except the [*sic*] Cindy shall have sole decision making authority over the area of religion with the children continuing to be raised in the Christian faith.
>
> 3. The Court adopts the GAL's parenting schedule but directs the Parties to work together to make accommodations for both American and Canadian Thanksgiving and to provide for the differing school schedules in Canada as opposed to the United States.
>
> 4. Cindy shall be responsible for one half of the transportation costs for the children when they travel between Toronto and Chicago for parenting time.
>
> 5. This court reserves jurisdiction over all issues relating to parental decision making and parenting time."

On the day the above-referenced order was entered, Peter filed in the trial court a notice of

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Peter's appeals, and Peter raises a number of issues on appeal in addition to the propriety of the trial court's relocation finding. Under these circumstances, we find good cause to issue our decision after the 150-day deadlines.

appeal pursuant to Illinois Supreme Court Rule 304(b)(6) (eff. March 8, 2016), which this court docketed as No. 2-18-1028. That same day, Peter also filed a motion for stay of enforcement of judgment pending appeal and a motion for a finding pursuant to Illinois Supreme Court Rule 304(a) (eff. March 8, 2016). After presentment on December 18, 2018, Peter's motions were set for hearing on January 14, 2019.

¶ 23 On January 2, 2019, the trial court continued the matter to January 4, 2019 "for entry of *nunc pro tunc* allocation judgment to 12/14/18." On January 4, 2019, after counsel for the parties, the GAL, and the court met to "discuss[]" the same, the court entered *nunc pro tunc* to December 14, 2018, the Allocation Judgment. Neither party filed a notice of appeal from the January 4, 2018, order.

¶ 24 At the hearing on January 14, 2019, Peter argued his motion for a Rule 304(a) finding. Peter maintained that jurisdiction over his appeal existed under Rule 304(b)(6), but, due to uncertainty over the applicability of that rule, he also requested a finding pursuant to Rule 304(a). Following that hearing, the trial court indicated that its intent was to enter a final judgment on December 14, 2018, stating, "I feel that my ruling with regard to relocation is a final decision about where the children will be primarily living." Accordingly, the court entered a written order providing that "[p]ursuant to Supreme Court Rule 304(a), there is no just cause to delay the enforcement or the appeal of this Court's December 14, 2018[,] order that entered a final parental allocation judgment, entered on January 4, 2019, *nunc pro tunc* to December 14, 2018, and allowed [Cindy] to relocate with the parties' two children to Canada." Later that day, Peter filed an amended notice of appeal in No. 2-18-1028 reflecting Rule 304(a) as an additional jurisdictional basis for his appeal.

¶ 25 Thereafter, multiple filings were made in this court. On January 18, 2019, Peter filed an

emergency motion for stay of the trial court's December 14, 2018, order. On January 22, 2019, Cindy filed a motion to dismiss for lack of appellate jurisdiction. On January 24, 2019, Cindy filed her cross-appeal, challenging the order "entered on January 14, 2019, granting [Peter's] request for Illinois Supreme Court Rule 304(a) Findings in reference to the circuit court's order of December 14, 2018." Cindy requested reversal of "that part of the January 14, 2019 Order granting [Peter's] request that the December 14, 2018 Order was final and appealable under Illinois Supreme Court Rule 304(a) and that there was no just reason to delay enforcement and/or appeal of the December 14, 2018 Order of Court." On February 4, 2019, this court denied Cindy's motion to dismiss Peter's appeal for lack of jurisdiction and granted Peter's request for emergency stay of the December 14, 2018, order.

¶ 26 In her appeal, Cindy asserts that, for various reasons, the December 14, 2018, order was not final or appealable and therefore should be dismissed. At the outset, we observe that Cindy's cross-appeal was limited to challenging the January 14, 2019, order granting a Rule 304(a) finding and requesting reversal of that finding. Thus, the far-broader arguments she now raises and the relief she now requests, *i.e.*, dismissal of appeal No. 2-18-1028, are beyond the scope of the argument raised and the relief requested in her notice of cross-appeal. See Ill. S. Ct. R. 303(b)(2) (eff. July 1, 2017) (providing that the notice of appeal "shall specify the judgment or part thereof or other orders appealed from and the relief sought from the reviewing court"); *Johnson v. O'Neal*, 216 Ill. App. 3d 975, 988-89 (1991) (holding that where notice of appeal requests certain relief, court has jurisdiction to address only what is specified); *Cunningham Courts Townhomes Homeowners Ass'n v. Hynes*, 163 Ill. App. 3d 572, 575-76 (1987) (observing that appellate court has jurisdiction of only those matters raised in the notice of appeal); *Long v. Soderquist*, 126 Ill. App. 3d 1059, 1062 (1984) (declining to address claim of error not

referenced in notice of appeal). Nevertheless, we have an independent duty to examine our appellate jurisdiction and dismiss an appeal if jurisdiction is lacking. *In re Marriage of Salvatore*, 2019 IL App (2d) 180425, ¶ 15; *In re Marriage of Link*, 362 Ill. App. 3d 191, 192 (2005). Accordingly, we will address Cindy's claim that we lack jurisdiction over Peter's appeal in No. 2-18-1028.

¶ 27 Subject to statutory or supreme court rule exceptions, our jurisdiction is limited to reviewing appeals from final judgments. *In re Marriage of Yerdung*, 126 Ill. 2d 542, 553 (1989); see also Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994) ("Every final judgment of a circuit court in a civil case is appealable as of right."); Illinois Supreme Court Rule 303 (eff. July 1, 2017) (setting forth the procedure for perfecting an appeal from a final judgment of the circuit court in a civil case). A judgment is final for purposes of appeal if it determines the litigation on the merits or some definite part thereof so that, if affirmed, the only thing remaining is to proceed with the execution of the judgment. *Yerdung*, 126 Ill.2d at 553. One of the exceptions referenced in *Yerdung* is found in Illinois Supreme Court Rule 304(a) (eff. March 8, 2016). That rule provides, "[i]f multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both." Ill. S. Ct. R. 304(a) (eff. March 8, 2016). A Rule 304(a) finding may be made "at the time of the entry of the judgment or thereafter on the court's own motion or on motion of any party." Ill. S. Ct. R. 304(a) (eff. March 8, 2016). Additionally, Illinois Supreme Court Rule 304(b)(6) (eff. March 8, 2016) makes immediately appealable, despite the pendency of other matters, "[a] custody or allocation of parental responsibilities judgment or modification of such judgment entered pursuant to the *** Act."

¶ 28 In his original notice of appeal, Peter cited Rule 304(b)(6) as the jurisdictional basis for his appeal. The Illinois Supreme Court recently addressed the scope of Rule 304(b)(6) in *In re Marriage of Fatkin*, 2019 IL 123602. In *Fatkin*, the trial court entered a final order on custody and visitation in July 2015 and a dissolution of marriage judgment in July 2016. Pursuant to the custody and visitation order, the parties were awarded joint custody of their two children, with the father having primary physical custody. This meant that while school was in session, the children would spend 6 out of every 14 nights with the mother, as well as most weekday afternoons until the father came home from work. When school was not in session, the children would spend alternate weeks with each parent. In addition, the parties were ordered to consult with each other on all significant decisions about the children, with the father having final decision-making authority if the parties could not agree.

¶ 29 In June 2017, the father filed a petition for leave to relocate with the parties' children from Illinois to Virginia. On November 13, 2017, following a three-day trial, the trial court entered a written order finding that it was in the best interests of the children to grant the father's petition for relocation. The written order further provided for a modification of the parties' parenting time so that the children would live with the father in Virginia during the school year and with the mother in Illinois over the summer and during alternating holiday breaks. The mother filed a notice of appeal of the trial court's order, relying on Rule 304(b)(6). After first concluding that the filing of an immediate appeal under Rule 304(b)(6) was proper, the appellate court majority concluded that the trial court's finding that relocation was in the children's best interests was against the manifest weight of the evidence. *In re Marriage of Fatkin*, 2018 IL App (3d) 170779, ¶¶ 24-38. Our supreme court granted the father's petition for leave to appeal.

¶ 30 One of the issues before the supreme court in *Fatkin* was whether the trial court order

granting the father's relocation petition constituted a "custody or allocation of parental responsibilities judgment or modification of such judgment" for purposes of Rule 304(b)(6) such that the mother's immediate appeal of that order was proper. In addressing this issue, the supreme court explained that the phrase "allocation of parental responsibilities" is a term of art that derives from and is defined in the Act. Applying the Act's definitions of "allocation judgment" and "parental responsibilities" (see 750 ILCS 5/600(b), 600(d) (West 2016)), the supreme court held that an allocation of parental responsibilities judgment "is a judgment that allocates 'both parenting time and significant decision-making responsibilities with respect to a child,' and the 'modification of such judgment' would be any decision that modifies either of those two variables." *Fatkin*, 2019 IL 123602, ¶¶ 28-29. In light of its holding, the supreme court concluded that there was "no question" that the trial court's order granting the father's relocation petition was an "allocation of parental responsibilities judgment or modification of such judgment" for purposes of Rule 304(b)(6). *Fatkin*, 2019 IL 123602, ¶ 30. In this regard, the court noted that the trial court order modified the parties' allocation of parenting time "from the existing weekly schedule of two parents living two miles apart in the same community to a seasonal schedule of two parents living in different parts of the country." *Fatkin*, 2019 IL 123602, ¶ 30. Thus, the court concluded, "[i]n both vocabulary and substance, the trial court's order granting [the father's] relocation petition modifies allocation of the parties' parenting time and thus by definition also modifies allocation of the parties' parenting responsibilities." *Fatkin*, 2019 IL 123602, ¶ 30. Hence, the supreme court determined that the trial court order was immediately appealable under Rule 304(b)(6). *Fatkin*, 2019 IL 123602, ¶ 30.

¶ 31 Applying the principles of *Fatkin* to the facts of the present case, we likewise conclude that the trial court's December 14, 2018, order was immediately appealable pursuant to Rule

304(b)(6). The December 14, 2018, order entered the parental allocation agreement and granted Cindy's petition to relocate the parties' children from Illinois to Canada. In this regard, the December 14, 2018, order adopted the GAL's proposed allocation of parental responsibilities except with respect to the decision-making authority over the area of religion. In addition, with some minor exceptions, the December 14, 2018, order adopted the GAL's parenting schedule. Thus, the December 14, 2018, order constituted a permanent determination of where the parties' children will reside as well as providing for how the parties' parenting time and decision making responsibilities would be divided.

¶ 32 Cindy nevertheless questions this court's jurisdiction to consider Peter's appeal from the December 14, 2018, order. She asserts that if jurisdiction is retained for the future determination of matters of substantial controversy, the order is not final. *In re Guzik*, 249 Ill. App. 3d 95, 99 (1993). According to Cindy, because the December 14, 2018, order "directed the parties to work together to make accommodations for both American and Canadian Thanksgiving and to provide for the differing school schedules in Canada as opposed to the United States[,] the trial court intended to retain its jurisdiction to enter what would became a final judgment, one which addressed all the issues before the court." We disagree. " 'A decree is final if * * * the matters left for future determination are merely incidental to the ultimate rights which have been adjudicated by the decree.' " *In re Custody of Purdy*, 112 Ill. 2d 1, 5 (1986) (quoting *Barnhart v. Barnhart*, 415 Ill. 303, 309 (1953)). In *Purdy*, for instance, the trial court entered a post-dissolution order modifying custody of the parties' children, but reserved the issue of summer visitation rights. The supreme court concluded that the reserved issue was merely incidental to the ultimate custody rights that were adjudicated and thus the judgment was final and appealable. *Purdy*, 112 Ill. 2d at 5-6. We reach the same conclusion here. Notably, the trial court entered an

order adopting the GAL's proposed parenting schedule. As explained in more detail below, the court's instruction that the parties "work together" to accommodate the schedule for certain dates was merely incidental to the ultimate rights adjudicated by the December 14, 2018, order, *i.e.*, relocation and the allocation of parenting time and decision-making responsibilities. In this regard, we observe that the allocation judgment entered on January 4, 2019, *nunc pro tunc* to December 14, 2018, merely changed the pick-up and drop-off times for certain holidays, specified that American Thanksgiving was excluded from the holiday parenting time schedule, and clarified how the parties would exercise parenting time with respect to the Christmas holiday. Quite simply, since the trial court did not retain jurisdiction for any future rulings on matters of substantial controversy, we conclude that the December 14, 2018, order was final and appealable. See *Deckard v. Joiner*, 44 Ill. 2d 412, 417 (1970).

¶ 33 Cindy also contends that the Allocation Judgment entered on January 4, 2019, *nunc pro tunc* to December 14, 2018, "stands as an independent Agreed Order in modification of the December 14, 2018 Order and itself is a final and appealable order pursuant to Illinois Supreme Court Rule [*sic*] 301 and 303." Yet, Cindy notes, Peter did not file a notice of appeal with respect to the January 4, 2019, order. Cindy's argument flows from the premise that the December 14, 2018, order could be validly modified. However, it is well established that upon the filing of a notice of appeal, the trial court is divested of jurisdiction from entering any order involving a matter of substance. *In re Marriage of Sawyer*, 264 Ill. App. 3d 839, 850 (1994). Any order entered by a trial court without jurisdiction is void. *People v. Kozlow*, 332 Ill. App. 3d 457, 459 (2002). Thus, when Peter filed his notice of appeal on December 14, 2018, that action divested the trial court of jurisdiction to modify any order pending on appeal. Accordingly, if, as Cindy asserts, the January 4, 2019, order modified the December 14, 2018,

allocation judgment, the January 4, 2019, order is void. *Kozlow*, 332 Ill. App. 3d at 459-60.

¶ 34 However, even when an appeal is pending, the trial court retains jurisdiction to perform ministerial functions and to determine matters that are independent of and collateral to the order being appealed. *Kozlow*, 332 Ill. App. 3d at 459; *People v. Hernandez*, 296 Ill. App. 3d 349, 351 (1998); see also *Purdy*, 112 Ill. 2d 1, 5 (1986). To this end, a court may at any time enter a *nunc pro tunc* order "to correct a prior order which incorrectly reflects what the trial court actually ruled at that time." *People ex rel. Illinois Department of Human Rights v. Arlington Park Race Track*, 122 Ill. App. 3d 517, 524 (1984); see also *In re Marriage of Hirsch*, 135 Ill. App. 3d 945, 954 (1985). " 'A *nunc pro tunc* order is an entry now for something previously done, made to make the record speak now for *what was actually done then.*" (Emphasis added.) *Harreld v. Butler*, 2014 IL App (2d) 131065, ¶ 13 (quoting *Kooyenga v. Hertz Equipment Rentals, Inc.*, 79 Ill. App. 3d 1051, 1055 (1979)). "Because a *nunc pro tunc* amendment may reflect only what was actually done by the court but was omitted due to clerical error, a *nunc pro tunc* amendment must be based on some note, memorandum, or other memorial in the court record." *Harreld*, 2014 IL App (2d) 131065, ¶ 13. As such, a *nunc pro tunc* order may not be used to cure a jurisdictional defect, supply omitted judicial actions, or correct a judicial error. *In re Marriage of Takata*, 304 Ill. App. 3d 85, 92 (1999).

¶ 35 Cindy claims that the January 4, 2019, order modified the December 14, 2018, order and therefore is not truly a *nunc pro tunc* order. Specifically, Cindy contends that the January 4, 2019, order: (1) added provisions relating to the choice of schools, Christmas parenting time schedule, and booking flights for the children; (2) excluded American Thanksgiving from the holiday schedule; (3) changed pick-up and drop-off times for certain holidays; and (4) redacted the parties' addresses. We find Cindy's argument that the January 4, 2019, order acted as a

substantive modification of the December 14, 2018, order unpersuasive. Rather, we conclude that the January 4, 2019, order merely clarified the December 14, 2018, order to accurately reflect the court's judgment as set forth in the trial court record.

¶ 36 With respect to school choice, the January 4, 2019, order added language to the GAL's proposed allocation judgment stating, "The Court found for the reasons on the record that the Court's choice of schools for the children, in order, shall be the Country Day School, followed by the Pope Francis School. Any additional decisions relating to the choice of schools shall be made jointly." The addition of this language did not constitute a modification of the December 14, 2018, order. Instead, it memorialized the testimony presented at trial regarding school choice and reflected the court's finding in paragraph 11 of the December 14, 2018, order which not only discussed the educational opportunities for the children, but expressly recognized that the Country Day School was Cindy's "preferred" school and that the Pope Francis School was "not Cindy's primary choice, should relocation be granted."

¶ 37 Similarly, the addition of language pertaining to the Christmas holiday schedule and booking flights for the children did not constitute substantive modifications of the December 14, 2018, order. In this regard, the holiday schedule in the GAL's proposed allocation judgment provided that Cindy would have parenting time at Christmas during even years while Peter would have parenting time during odd years. Although the Allocation Judgment removed the specific reference to Christmas in the holiday schedule, it provides that winter break "shall be equally divided, including Christmas Eve or Christmas Day being awarded to whoever has the week upon which the [*sic*] fall. CINDY shall have the 1st half of Winter Break in Even years and PETER shall have the 2nd half of Winter Break during Even years. The following year the parties shall alternate the schedule." Thus, both the GAL's proposal and the January 4, 2019,

Allocation Judgment allow the parties to exercise parenting time with the children every other year at Christmas. Since both provisions achieve the same result, albeit using different phrasing, this alteration does not result in a substantive modification of the Allocation Judgment.

¶ 38 Turning to the flight-booking provision, Article I, paragraph 2(d) of the GAL's proposed allocation judgment provided that if Peter spends his parenting time in Chicago, "his parenting time shall end at 6:00 p.m. the evening before the minor children begin school." At the hearing on the relocation petition, Cindy testified that while she agreed "[f]or the most part" with article I, paragraph 2(d), she wanted some clarification on the language providing that Peter's parenting would end at 6 p.m. During her testimony, the GAL agreed that the language "should be clarified" to reflect the time the children should be back in Toronto when Peter exercises parenting time in Chicago, but noted the return time "doesn't necessarily have to be 6:00 p.m. but it could be 7:00, 7:30." To this end, the Allocation Judgment clarified that Cindy would book travel to ensure that the children are back in Toronto by 6 p.m. on days prior to school. Thus, this did not constitute a substantive change to the GAL's proposed allocation judgment.

¶ 39 Likewise, the other changes referenced by Cindy are non-substantive. The parties added language to clarify that the holiday schedule's reference to Thanksgiving in the GAL's proposed allocation judgment was the Canadian holiday, thereby specifically excluding American Thanksgiving from the holiday schedule. Similarly, the GAL's proposed allocation judgment alternated certain Canadian holidays between the parties. At the hearing on the relocation petition, the GAL noted that the holidays are celebrated on Mondays and she agreed that "it would be best to alternate those weekends so each party can have more meaningful time with the children rather than just one specific [day]." Thus, the Allocation Judgment changed the pick-up and drop-off times for certain holidays so that the parties could have more meaningful time with

the children. Finally, the Allocation Judgment redacted the parties' residential addresses. According to the redlined version of the allocation judgment included in the record, the parties agreed to this change because they were each aware of the other's address. It is not clear to us, and Cindy does not explain, how this constitutes a substantive modification of the allocation judgment.

¶ 40 In short, the January 4, 2019, order was not intended to correct judicial errors or supply omitted judicial action. Rather, it clarified the December 14, 2018, order to accurately reflect the court's judgment. As such, we conclude that the January 4, 2019, Allocation Judgment was a proper *nunc pro tunc* order and that the December 14, 2018, order granting Cindy's relocation petition and entering the allocation judgment was a final and appealable order pursuant to Rule 304(b)(6). Accordingly, we turn to the issues raised in Peter's appeal.

¶ 41 B. Peter's Appeal

¶ 42 1. Pretrial Motions

¶ 43 On appeal, Peter first argues that the court committed several erroneous procedural rulings by denying his pretrial motions to: (1) continue trial and reset the discovery deadlines; (2) appoint or retain a mental-health professional to opine on the children's best interests; and (3) allow him to call Cindy's father to testify. To place these issues in context, we provide some additional background.

¶ 44 On November 27, 2017, Peter filed a "Motion for Issuance of Letter of Request and Commission," seeking, *inter alia*, to issue subpoenas for the depositions of Cindy's parents, Gene and Helen Bidinot, who reside in Canada and are citizens thereof, and for the production of certain documents. In his motion, Peter alleged that the Bidinots are relevant witnesses to this matter because of allegations regarding Cindy's role in the family business. On January 23,

2018, the trial court entered an order providing that counsel for each party "has the right to take the [discovery] depositions of the other parties' [*sic*] parents." In March 2018, the discovery depositions of the parties' parents were taken in Canada.

¶ 45 On April 18, 2018, the trial court ordered the child-related aspects of the dissolution proceeding to be tried separately from the financial issues of the case and set several trial dates commencing on October 29, 2018. That same day, the trial court entered a case management order requiring, *inter alia*, that written discovery on the child-related issues close on August 30, 2018, that the GAL issue her written report that same day, that expert witnesses be disclosed by July 1, 2018, that other non-party witnesses be disclosed by August 1, 2018, and that depositions be taken by September 28, 2018. On August 30, 2018, the GAL issued her report in this matter, recommending that relocation be granted "provided certain commitments are made regarding parenting time for Peter." The GAL also drafted a proposed allocation judgment and parenting plan memorializing her recommendations.

¶ 46 On September 7, 2018, Peter filed a motion for substitution of attorneys, requesting that Schiller be allowed to substitute for prior counsel. The trial court granted the motion on September 13, 2018. Schiller filed its appearance the same day the substitution motion was granted and also presented two motions: (1) Motion to Continue Trial and Reset Discovery Deadlines; and (2) Motion to Appoint Court's Professional Pursuant to 750 ILCS 5/604.10(b), or in the Alternative, for Appointment of a 604.10(c) Expert.

¶ 47 The trial court heard Peter's motions on September 19, 2018. Peter requested that the trial dates and discovery deadlines be continued based upon good cause shown to comport with fundamental fairness and due process. Specifically, Peter argued: (1) the case management order that set issuance of the GAL's report on the same day written discovery closed—after the

deadline for witness disclosure and 29 days before the deadline for depositions—foreclosed him from producing documents to rebut the findings by the GAL and from subpoenaing and deposing witnesses consulted by the GAL and disclosed in her report; (2) because Cindy's supplemental disclosure of Rule 213(f) witnesses (see Ill. S. Ct. R. 213(f) (eff. Jan. 1, 2018)) served on August 1, 2018, listed 42 witnesses on the parenting issue, the court's timeline required Peter to complete the depositions of the 31 non-overlapping witnesses, including the GAL, by September 28, 2018, or about two weeks from the date of the motion; (3) Peter retained new counsel for the first time and the case was "not near conclusion" as the parties' financial issues remained pending and undetermined; and (4) a continuance would provide each side the time "to prepare for trial to do this trial right," as there was "no hurry here given the timing" because the children's school year had just begun and the *status quo* could be maintained.

¶ 48 During the hearing on Peter's motions, the following colloquy took place between the court and Peter's counsel:

> "THE COURT: Well, let me ask you a question, counsel. When Justice Thomas calls me and says you know up here in the Supreme Court we set a deadline for 18 months to get child issues resolved, and I think, well, it really doesn't matter. We've got time, you know, so what if we're going to be 20 months, 25 months, whatever it's going to be by the time I were to reschedule this trial which has taken a week out of my trial schedule as it is and now I'm not going to be able to fill it in with anything. Is the Supreme Court, when they issue a mandate like that that we're supposed to have it done in 18 months, that's just kind of advisory.
>
> MS. STANISH [Peter's counsel]: It's not advisory, judge. But they also did say in the rule except for good cause shown.

THE COURT: Well, counsel, I got to ask you, you know, I understand, [Peter] *** chose a horse. He's been riding that horse through this case for the last 16 months. Now, he decides to get off that horse and get on another horse and come in and tell me, judge, everything that happened before, no good. We want to basically start over again and work through this whole thing because this is a really serious issue. It's been a serious issue since day one. Has it not?

MS. STANISH: Yes.

THE COURT: Previous counsel, the GAL, Mr. Stogsdill [Cindy's attorney], everybody went up to Canada. They took depositions over I think it was a weekend that they went up. They took depositions up there. Everybody was working hard on this case with the knowledge that this case is going to trial. Now, when [Peter] came in to you guys and said I want you to take over my case, you knew that there were trial dates. And if you didn't think you could do it in the time frame that you had, the answer should have been we can't do it. No one is sick. No one is dying. No one is in the hospital. Those are my criteria for continuing trials. Here I do not see that. I know that the GAL has put in time. In know that [Cindy's attorney] has put in time. I know that [Peter's] counsel has put in time before this. I also know that you guys have a very large firm. You got a lot of lawyers who can do a lot of work on a single case. Is it going to cost money? Sure, it's going to cost money to have people work on this 24/7. I understand that. But the dates are what the dates are, and I'm going to get this thing done as I set—my whole schedule was to get it done within that 18 months that the Supreme Court gave me. Okay. That's why I set the trial dates when I did."

¶ 49 With respect to his motion to appoint a professional, Peter noted that K.S., the parties'

daughter, suffered from separation anxiety which surfaced after Peter moved out of the marital residence, causing K.S. to enter therapy. Peter allowed that K.S. has improved since therapy commenced, but noted that the minor continues to have "routine, biweekly visits." Peter requested that the court either appoint a mental-health expert pursuant to section 604.10(b) of the Act (750 ILCS 5/604.10(b) (West 2016)) or allow him to retain a professional to do such an evaluation pursuant to section 604.10(c) of the Act (750 ILCS 5/604.10(c) (West 2016)) to assess the impact to the children of relocation to Canada and professionally determine their best interests.

¶ 50 At the conclusion of the hearing, the trial court announced:

> "The motion to continue the trial is denied. The motion to extend discovery is denied, and the motion for a 604.10 is denied.
>
> In essence, it's for the reasons that I stated previously when I kind of asked you questions, counsel, with regard to Supreme Court Rules, and the Court feels that it is imperative for the children as does our Supreme Court to get these issues sorted out in an expeditious time. [Peter] knew the time schedule. He chose to change attorneys not the 11th, probably the 10th hour, prior to trial, and those are the reasons for the Court's ruling today."

Nevertheless, by agreement of the parties, the court entered an order extending the September 28, 2018, deposition deadline for the sole purpose of deposing the GAL on October 1, 2018.

¶ 51 On October 23, 2018, Peter filed a "Petition for Issuance of Letter of Request (A/K/A Letter Rogatory) and Commission." In the petition, Peter requested permission to obtain the evidentiary testimony of a Canadian citizen, specifically, Cindy's father, Gene, who was listed on both parties' initial witness disclosures. Peter asserted that Gene was a relevant and necessary

trial witnesses because he was a central figure in Cindy's request to permanently relocate to Canada but had declined to "voluntarily present himself as a witness for the trial." After a brief hearing that same day, the trial court denied the motion, commenting that "there were opportunities to take the evidence deposition of Mr. Bidinot previously, and this is a little late in the game."

¶ 52 We review the rulings challenged by Peter for an abuse of discretion. See *In re Marriage of LaRoque*, 2018 IL App (2d) 160973, ¶ 94 (continuances); *In re Marriage of Miller*, 2015 IL App (2d) 140530, ¶ 32 (evidentiary rulings); *Johnson v. Ingalls Memorial Hospital*, 402 Ill. App. 3d 830, 847 (2010) (case management decisions); *Crichton v. Golden Rule Insurance Co.*, 358 Ill. App. 3d 1137, 1150 (2005) (discovery matters). Abuse-of-discretion is the most deferential standard of review, next to no review at all. *People v. Weeks*, 2011 IL App (1st) 100395, ¶ 30. An abuse of discretion occurs where the trial court's decision is arbitrary, fanciful, unreasonable, or where no reasonable person would agree with the position taken by the trial court. *Control Solutions, LLC v. Elecsys*, 2014 IL App (2d) 120251, ¶ 38. With these principles in mind, we turn to Peter's arguments.

¶ 53 a. Motion to Continue Trial and Reset Discovery Deadlines

¶ 54 Peter first argues that the trial court erred in denying his motion to continue the trial and reset discovery deadlines. According to Peter, his motion was based upon "good cause" and was required to ensure fundamental fairness and due process.

¶ 55 Litigants do not have an absolute right to a continuance. *LaRoque*, 2018 IL App (2d) 160973, ¶ 94. Section 2-1007 of the Code of Civil Procedure (735 ILCS 5/2-1007 (West 2016)) provides in relevant part that "[o]n good cause shown, in the discretion of the court and on just terms, additional time may be granted for the doing of any act or the taking of any step or

proceeding prior to judgment." See *Petalino v. Williams*, 2016 IL App (1st) 151861, ¶ 40. Similarly, Illinois Supreme Court Rule 922 (eff. March 8, 2016), which provides that proceedings regarding the allocation of parental responsibilities "shall be resolved within 18 months from the date of service of the petition or complaint to final order," states:

> "The 18-month time limit shall not apply if the parties, including the attorney representing the child, the guardian *ad litem* or the child representative, agree in writing and the trial court makes a written finding that the extension of time is for good cause shown. In the event the parties do not agree, the court may consider whether an extension of time should be allowed for good cause shown." Ill. S. Ct. R. 922 (eff. March 8, 2016).

Moreover, where a continuance is requested to permit the preparation of a case, a court must evaluate all surrounding circumstances. *In re Marriage of Chesrow*, 255 Ill. App. 3d 613, 619 (1994).

¶ 56 Here, the trial court evaluated the circumstances surrounding Peter's motion to continue trial and provided several reasons for denying it. The court cited: (1) the 18-month deadline for deciding allocation of parental responsibilities proceedings under Rule 922; (2) the seriousness of the interests at stake; (3) the efforts of the parties and Peter's previous counsel who "work[ed] hard on [the] case with the knowledge that [the] case is going to trial;" (4) Peter's decision to change attorneys close to the commencement of trial; (5) Schiller's choice to accept Peter's case with full knowledge that the trial dates had been set; (6) the number of attorneys working at Schiller and their ability to "work on [the case] 24/7;" and (7) the lack of any serious illness of the parties or counsel or a death. These were all valid reasons for denying Peter's motion to continue the trial. See *LaRoque*, 2018 IL App (2d) 160973, ¶ 95 (listing panoply of factors

supporting trial court's decision to deny motion to continue trial). As such, based on all of the surrounding circumstances, the trial court could have reasonably concluded that Peter failed to show good cause for a continuance. Given the deferential standard applicable to our review of this issue, we cannot say that the trial court's decision was arbitrary, fanciful, unreasonable, or that no reasonable person would agree with the trial court's position.

¶ 57 Peter nevertheless complains that, in denying his request for a continuance, the trial court looked "solely to the 18-month deadline [in Rule 922] and rigidly adher[ed] to its overly-limited 'criteria' for granting a continuance [based solely upon illness or death]," thereby "effectively wr[iting] the 'for good cause shown' language out of Rule 922 and improperly den[ying him] fundamental fairness and due process in allocating parental responsibilities and granting the relocation of his children." Contrary to Peter's claim, however, the trial court did not rely solely upon Rule 922 or its own criteria for granting a continuance based solely upon illness or death. Rather, as noted above, the trial court cited at least seven reasons in support of its decision.

¶ 58 Peter also maintains that the trial court's decision to deny his motion to reset discovery deadlines was fundamentally unfair and constituted an abuse of discretion. In this regard, he contends that the timeline for discovery disclosures precluded him from obtaining the GAL's file and presenting any expert testimony to challenge and counter her recommendations. Specifically, he complains that: (1) he had no way to know by the July 1, 2018, deadline which, if any, expert witnesses he would need for trial because he was unaware of the GAL's position regarding allocation of parental responsibilities and relocation until August 30, 2018, when she issued her report; (2) because the GAL report deadline was identical to that for completion of all written discovery, additional subpoenas to key witnesses consulted by the GAL or other written discovery that may have been necessary in light of the GAL's report, such as her own file, could

not be issued; and (3) the discovery order left only 29 days following issuance of the GAL report within which to depose the GAL and any other witnesses referenced in her report.

¶ 59 At the outset, we observe that the case management order setting the discovery deadlines was entered on April 18, 2018, when Peter was represented by Beerman. At no time while he was represented by Beerman did Peter object to the entry of the case management order. See *Williamsburg Village Owners' Ass'n v. Lauder*, 200 Ill. App. 3d 474, 479 (1990) (noting that a party must object in the trial court to preserve an issue for review). It was not until September 13, 2018, after Peter retained Schiller, the discovery deadlines had passed, and just six weeks before trial was scheduled to commence did Peter question the discovery deadlines. In any case, we find Peter's argument that the timeline for discovery disclosures precluded him from adequately challenging the GAL's recommendations rings hollow.

¶ 60 The GAL's report indicates that her investigation consisted of: (1) meeting with Peter and Cindy (both with and without the children present); (2) visiting the area where Cindy proposes to relocate; (3) interviewing the children's maternal grandfather, maternal aunt, maternal uncle, and cousins; (4) attending depositions of the maternal and paternal grandparents in the Toronto area; (5) conducting home visits to Peter's and Cindy's residences; (6) reviewing "all relevant pleadings, reports, emails, school records, medical records, GAL questionnaires and discovery;" and (7) researching and viewing potential schools in the Toronto area as well as researching and reviewing the educational institutions the children attended in the Chicago area. Significantly, Peter does not identify in his motion what "additional subpoenas to key witnesses consulted by the GAL or other written discovery" may have been necessary in light of the GAL's report. For instance, Peter does not indicate that he lacked access to any of the written documents cited by the GAL, that he was unaware of the potential schools in the Toronto area, that he was unable to

participate in the depositions of the grandparents, or that any of the individuals referenced in the GAL's report were key witnesses unknown to him prior to the issuance of the report. Further, Peter did not identify any potential expert witnesses he would call or indicate the content of their testimony. We also observe that the trial court accommodated Peter's request in part by extending the September 28, 2018, deposition deadline for the purpose of deposing the GAL on October 1, 2018.

¶ 61 Peter maintains that the error in the court's timeline is further evident when Cindy's witness disclosure is considered. Peter asserts that Cindy identified 42 witnesses in her witness disclosure filed on August 1, 2018, 31 of which were "new." Peter notes that since all depositions were to be completed by September 28, 2018, he had only 58 days in which to schedule and conduct 31 depositions. According to Peter, such a task "is not reasonably feasible, and hastily proceeding to trial without affording [him] the time and resources to depose Cindy's legion of witnesses severely prejudiced his interest in a full and fair trial and imperiled his parental rights." We are unable to adequately address Peter's claim because Peter does not identify the allegedly "new" witnesses and a complete copy of Cindy's witness disclosure has not been included in the record.[2] Moreover, Peter's argument lacks merit in that the record does not demonstrate that he made any attempt to issue a subpoena for deposition for any of the potential witnesses identified by Cindy in her disclosure prior to substituting counsel. A party is

[2] In his brief, Peter does not cite to where a complete copy of Cindy's witness disclosure may be found in the record. Rather, he cites only to the document indicating that Cindy's witness disclosure was served upon Peter's prior counsel, his Motion to Continue Trial and Reset Discovery Deadlines, and Cindy's response to Peter's motion. None of these documents identify Cindy's potential witnesses.

not entitled to sit by idly and wait until the discovery deadline is but weeks away to complain that he or she lacks the time to conduct adequate discovery.

¶ 62 Finally, Peter's reliance on *Reecy v. Reecy*, 132 Ill. App. 2d 1024 (1971), in support of his motion is misplaced as that case is factually distinguishable. In *Reecy*, the reviewing court concluded that the trial court abused its discretion in denying the mother's motion for a continuance where newly retained counsel had only 16 days to prepare for trial, had an extremely heavy court schedule, had been absent from the state for seven days, wished to avail himself of certain discovery procedures, and counsel's physician filed an affidavit averring that, on the date trial was scheduled to commence, counsel was ill with the flu and should be confined to bed. *Reecy*, 132 Ill. App. 2d at 1027-28. Peter cites no similar facts here.

¶ 63 Peter criticizes the trial court, asserting that "although the Court repeatedly stated its ruling was motivated by compliance with Rule 922's 18 month deadline, its own due date for the GAL's report ran afoul of that limit, as the August 30, 2018 filing date was 19 months after Cindy filed her Petition for Dissolution on January 19, 2017." Peter argues that it is "unreasonable and arbitrary for the Court to set a timeline which itself violates Rule 922 and then deny [his] Motion for Continuance on the grounds that granting it would violate the same rule." As noted above, however, compliance with Rule 922 was but one of the various reasons cited by the trial court for denying Peter's motion. Considering the record as a whole in light of the reasons for denial cited by the trial court, we cannot say that the trial court abused its discretion.

¶ 64 b. Motion to Appoint or Retain Professional

¶ 65 Next, Peter argues that the trial court erred in denying his motion to appoint or retain a professional. Section 604.10(b) of the Act (750 ILCS 5/604.10(b) (West 2016)) allows the court to "seek the advice of any professional, whether or not regularly employed by the court, to assist

the court in determining the child's best interests." Section 601.10(c) of the Act (750 ILCS 5/604.10(c) (West 2016)) provides in relevant part:

> "In a proceeding to allocate parental responsibilities or to relocate a child, upon notice and motion made by a parent or any party to the litigation within a reasonable time before trial, the court shall order an evaluation to assist the court in determining the child's best interests unless the court finds that an evaluation under this Section is untimely or not in the best interests of the child."

The purpose of the statute is to make the information available to assist the court and protect the interests of minor children regarding issues of custody and visitation. *In re Marriage of Debra N. & Michael S.*, 2013 IL App (1st) 122145, ¶ 51 (construing prior version of statute).

¶ 66 The trial court denied Peter's motion, citing the same reasons it gave for denying Peter's Motion to Continue Trial and Reset Discovery Deadlines. Peter argues that the trial court's ruling constituted error because "no professional evaluation was performed to determine the effect of the proposed location on the children or for any other purpose, even though the children's mental condition is material and one child was in therapy for an anxiety disorder that arose just months prior to trial when Peter moved out of the marital household." We find no abuse of discretion. It is undisputed that the parties' daughter, K.S., began showing signs of separation anxiety after Peter moved out of the marital residence. The parties agreed to send K.S. to therapy to address her condition. K.S. began therapy in June 2018 on a weekly basis. Despite the commencement of therapy, Peter made no effort to move for the appointment of a professional until September 2018. Moreover, by all accounts, Peter included, K.S. has improved since therapy began, resulting in the frequency of her therapy visits being cut in half from weekly to bi-weekly. In addition, at the hearing on Peter's motion, the GAL stated that she

spoke to counsel about K.S.'s condition, that the child's "mental health is not an issue with either parent whatsoever," that K.S.'s condition was "getting much better," that K.S. is continuing with therapy on a bi-weekly basis, and that K.S. is not on any medication. Given these circumstances, we cannot say that the trial court's decision to deny Peter's motion was arbitrary, fanciful, unreasonable, or where no reasonable person would agree with the position taken by the trial court.

¶ 67 c. Request to Call Cindy's Father to Testify

¶ 68 Finally, Peter argues the trial court erred in denying his October 19, 2018, Petition for Letter Rogatory to obtain the evidentiary testimony of Cindy's father, Gene, who is a Canadian citizen. According to Peter, Cindy made her father "an expected and necessary witness" to testify regarding Cindy's involvement in the family business, including her compensation, work schedule, duties, and any succession plan. As noted above, the trial court denied Peter's petition, finding that "there were opportunities to take the evidence deposition of [Cindy's father] previously" and that the petition was filed "a little late in the game." The determination whether to grant a request for approval of letters rogatory is reviewed for an abuse of discretion. *In re Marriage of Hasabnis*, 322 Ill. App. 3d 582, 597 (2001).

¶ 69 Based on the record before us we cannot say the trial court's decision to deny Peter's petition for letters rogatory as untimely was arbitrary, fanciful, or unreasonable, or that no reasonable person would agree with the position taken by the trial court. Significantly, Peter took Gene's discovery deposition on March 10, 2018, and, the trial court set the first day of trial for October 29, 2018, on April 18, 2018. Peter also listed Gene as a potential witness in his Rule 213(f) disclosure (see Ill. S. Ct. R. 213(f) (eff. Jan. 1, 2018)) filed on August 1, 2018. Yet, it was not until October 12, 2018, just 17 days prior to the date the relocation trial was scheduled to

commence, that he sent a letter to Gene's counsel at the discovery deposition requesting that Gene voluntarily present himself as a witness for the relocation trial. On October 18, 2018, counsel advised that Gene would not voluntarily present himself as a witness for the trial. The following day, October 19, 2018, just 10 days before trial, Peter filed the petition at issue. Under these circumstances, we find no abuse of discretion in the trial court's finding that Peter's petition was untimely. We also observe that the purposes for which Peter sought to call Gene, specifically, Cindy's compensation for the family business, her work schedule and duties for the family business, and the succession plan for the business, were topics about which Cindy and other witnesses testified. Under these circumstances, we find no abuse of discretion.

¶ 70 Peter equates the trial court's decision to deny his petition as "a 'drastic sanction' on [him] by barring the testimony of Cindy's father." As such, he argues that the trial court's decision should be reviewed in accordance with the factors considered in determining whether barring the testimony of a witness is an appropriate sanction for the violation of the discovery rules of our supreme court or an order entered pursuant to such rules, *i.e.*, surprise to the adverse party, the prejudicial effect of the witness's testimony, the nature of the witness's testimony, the diligence of the adverse party, whether objection to the witness's testimony was timely, and the good faith of the party calling the witness. See *Jackson v. Mt. Pigash Missionary Baptist Church Deacon Board*, 2016 IL App (1st) 143045, ¶ 62. Peter's reliance on such authority is misplaced, however, as the trial court did not bar him from calling Cindy's father as a sanction for a violation of the discovery rules or a discovery order. Rather, the court denied the petition as untimely as was its province to do as part of its inherent authority to control its own docket. See *Sander v. Dow Chemical Co.*, 166 Ill. 2d 48, 65-66 (1995).

¶ 71 2. Motion to Reopen Proofs

¶ 72 Peter also argues that the trial court erred in refusing to allow his motion to reopen proofs. The record reveals the following circumstances surrounding Peter's motion.

¶ 73 Upon the conclusion of the trial on November 8, 2018, the trial court ordered the parties to submit written closing arguments on November 29, 2018, and set December 14, 2018, for issuing its ruling. On December 6, 2018, Peter filed a "Motion to Reopen Proofs and for Other Relief." In the motion, Peter alleged as follows. Almost immediately after the close of proofs and submission of written closing arguments to the court, "Cindy deliberately and unilaterally decided to inform the children about their possible move to Canada and their visitation schedule with Peter if and when that move occurs" thereby "shut[ting Peter] out of any decision-making process as to sharing this information." Because Peter was "taken aback by Cindy's confidence in informing the children of moving to Canada rather than waiting a short two weeks for the Court's ruling," he contacted Country Day School on December 5, 2018, "to see if Cindy had without his knowledge started the application process for the children." Upon contacting the school, Peter "discovered for the first time" that in February 2018 Cindy had applied for the children to attend Country Day School, but later withdrew the applications. Peter noted that the applications tendered to Country Day School listed Cindy's sister's Canadian address as that of the children and omitted information regarding Peter. Peter argued that "the information contained in the applications and the fact that Cindy hid the application process from [him] are strikingly important and highly relevant to the best interests standards set forth in the [Act]."

¶ 74 On December 10, 2018, Cindy filed a response to Peter's motion. Cindy characterized the motion as "legally and factually insufficient" and "nothing more than an attempt by [Peter] to delay [the] court's ruling" on the relocation petition. Cindy denied that she hid the school applications from disclosure, asserting that at no point during discovery or at trial did Peter ever

inquire as to whether she had submitted applications to any Canadian schools. Thus, she argued, Peter "has not and cannot show some excuse for the failure *** to introduce the evidence at trial." Cindy further submitted that her discussion of the potential relocation with the children and the submission of applications to Country Day School were merely preliminary steps in the event that relocation is granted. Cindy asserted that the need for finality provided a cogent reason for the denial of Peter's motion.

¶ 75 After a hearing on December 11, 2018, the trial court denied Peter's motion, stating:

> "The Court has heard over two weeks of trial in this—trial testimony in this matter. [Cindy] admits in her response that she made the statement. The parties need finality. And there are always going to be issues that will come up which could reopen—arguably reopen proofs.
>
> The Court doesn't feel that this gives rise, nor does the information about the school give rise to reopening the proofs inasmuch as it was available at the time of trial and had previous counsel—I'm not going to fault you, counsel [for Peter], for not having gotten it because it was after the discovery closure. But previous counsel could have easily asked for records for and about the school, which they did not."

¶ 76 In deciding whether to grant or deny a motion to reopen proofs, a court considers whether there is some excuse for the failure to introduce the evidence at trial, whether the other party will be surprised or unfairly prejudiced by the new evidence, whether the evidence is of the utmost importance to the movant's case, and whether there are cogent reasons for denying the motion. *In re Marriage of Drone*, 217 Ill. App. 3d 758, 766 (1991). Although greater liberty should be allowed in reopening the proofs where a case is tried before a court without a jury, the fact that the case is heard without a jury does not mean that a motion to reopen proofs should be

automatically granted. *In re Parentage of I.I.*, 2016 IL App (1st) 160071, ¶ 44 (citing *In re Estate of Bennoon*, 2014 IL App (1st) 122224, ¶¶ 55-56). We review an order denying a motion to reopen proofs for an abuse of discretion. *General Motors Acceptance Corp. v. Stoval*, 374 Ill. App. 3d 1064, 1077 (2007). As noted previously, an abuse of discretion occurs where the trial court's decision is arbitrary, fanciful, unreasonable, or where no reasonable person would agree with the position taken by the trial court. *Control Solutions, LLC*, 2014 IL App (2d) 120251, ¶ 38.

¶ 77 We conclude that the trial court did not abuse its discretion in denying Peter's motion to reopen proofs to introduce evidence of Cindy's conversation with the children regarding the possible relocation to Canada. Although evidence of the conversation was not available at the time of trial and Cindy would not be surprised by the evidence, we do not find it to be of the "utmost importance" to Peter's case. To the contrary, we conclude that had the trial court considered the evidence, it would not have reached a different conclusion on the issue of relocation. Peter asserts that Cindy's conduct "directly impacted the analysis of several relocation and best interest factors," including the willingness and ability of each parent to place the needs of the child ahead of his or her own needs (750 ILCS 5/607.2(b)(12) (West 2016)), the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child (750 ILCS 5/607.2(b)(13) (West 2016)), minimization of the impairment to a parent-child relationship caused by a parent's relocation (750 ILCS 5/609.2(g)(10) (West 2016)), and any other relevant factors bearing on the child's best interests (750 ILCS 5/609.2(g)(11) (West 2016)). Yet, during the relocation hearing, Cindy testified that despite an "understanding" that the parties would not tell the children about the divorce case until they "separated households or had a resolution," Peter made statements on five

separate occasions in front of the children that Cindy was trying to take the children away from him and relocate to Canada. Peter himself acknowledged that on two occasions he made statements in front of the children "about Cindy and the children's return to Canada." We also note that K.S. told her therapist that in March or early April 2018, she "did hear one thing from Dad, 'mom was going to take us away to Canada.' " Given Peter's admission that he referenced a possible move to Canada in front of the children and the other evidence to that effect, we cannot say that the trial court would have reached a different conclusion on the issue of relocation had it considered Cindy's conversation with the children. Because this evidence was not of the "utmost importance" to Peter's case, the trial court did not err in reopening the proofs.

¶ 78 We also find that the trial court did not abuse its discretion in denying Peter's motion to reopen proofs to introduce evidence that Cindy tendered applications for the children to attend Country Day School. Unlike the evidence of Cindy's conversation with the children regarding the possible relocation to Canada, Peter's counsel admitted at the hearing on the motion to reopen proofs that information regarding the school applications could have been available at the time of trial. See *Chicago Transparent Products, Inc. v. American National Bank & Trust Company of Chicago*, 337 Ill. App. 3d 931, 942 (2002) (holding that the denial of a motion to reopen proofs did not constitute an abuse of discretion in absence of allegation that the evidence could not have been produced at trial). The record bears this out. The school applications are dated February 2, 2018, long before discovery in this matter closed and the trial commenced. Moreover, it was no secret that Cindy was considering Country Day School for the children if relocation was granted. The GAL testified at trial that Cindy provided her information about three different schools, including Country Day School. The GAL testified that she visited Country Day School's campus in August 2017, during one of her visits to Canada and the GAL's

August 30, 2018, report expressly references Country Day School. Peter nevertheless claims that Cindy "withheld from [him] the applications and the information that she had applied for the children to attend the Country Day School." We disagree, as Peter's counsel acknowledged at the hearing on the motion to reopen proofs that Cindy was never asked whether she had applied for the children to attend Country Day School. Peter also complains that it was "unreasonable for the Court to place the burden on [him] to proactively cold-call every possible Canadian school at which Cindy could have submitted enrollment applications." No such burden was placed on Peter. As noted above, Cindy did not conceal her interest in enrolling the children at Country Day School, yet Peter made no effort until after proofs closed to investigate whether Cindy submitted applications for the children to attend the school. For the foregoing reasons, we reject Peter's argument that the trial court abused its discretion in denying his motion to reopen proofs.

¶ 79 3. Motion for Relocation

¶ 80 Next, we address Peter's contention that the trial court erred in granting Cindy's motion to relocate the children to Canada. Peter argues that Cindy failed to introduce competent evidence establishing that removing the children from Illinois to relocate to Canada "promotes either the best interests of the children in any way, or their healthy relationship with both [him] and Cindy." According to Peter, the evidence established that the children would not experience any improvement in the quality of their lives as a result of relocation and the only person who truly benefits from the relocation would be Cindy.

¶ 81 Section 609.2 of the Act (750 ILCS 5/609.2 (West 2016)) codifies the factors a court must consider when ruling on a petition for relocation. Pursuant to section 609.2, the trial court must decide whether relocation is appropriate, based upon the best interests of the child in light

of the following 11 factors: "(1) the circumstances and reasons for the intended relocation; (2) the reasons, if any, why a parent is objecting to the intended relocation; (3) the history and quality of each parent's relationship with the child and specifically whether a parent has substantially failed or refused to exercise the parental responsibilities allocated to him or her under the parenting plan or allocation judgment; (4) the educational opportunities for the child at the existing location and at the proposed new location; (5) the presence or absence of extended family at the existing location and at the proposed new location; (6) the anticipated impact of the relocation on the child; (7) whether the court will be able to fashion a reasonable allocation of parental responsibilities between all parents if the relocation occurs; (8) the wishes of the child, taking into account the child's maturity and ability to express reasoned and independent preferences as to relocation; (9) possible arrangements for the exercise of parental responsibilities appropriate to the parents' resources and circumstances and the developmental level of the child; (10) minimization of the impairment to a parent-child relationship caused by a parent's relocation; and (11) any other relevant factors bearing on the child's best interests." 750 ILCS 5/609.2(g) (West 2016).

¶ 82 The party seeking judicial approval of the proposed relocation must establish by a preponderance of the evidence that the relocation is in the child's best interests. See *In re Marriage of Eckert*, 119 Ill. 2d 316, 325 (1988); see also *In re Marriage of Collingbourne*, 204 Ill. 2d 498, 521 (2003) (observing that the best interests of the child is the "paramount question" that must be considered in a removal action); *In re P.D.*, 2017 IL App (2d) 170355, ¶ 15 (noting that parent seeking relocation has the burden of proving by a preponderance of the evidence that relocation would be in the child's best interests); *In re Marriage of Tedrick*, 2015 IL App (4th) 140773, ¶ 49 (noting that burden of proof in a removal case is a preponderance of the evidence).

In deciding whether relocation is in the child's best interests, a trial court should hear "any and all relevant evidence." *Eckert*, 119 Ill. 2d at 326. A determination of the child's best interests cannot be reduced to a simple bright-line test, but must be made on a case-by-case basis, depending upon the circumstances of each case. *Eckert*, 119 Ill. 2d at 326.

¶ 83 A reviewing court reviews the trial court's decision deferentially and does not reweigh the competing considerations. As our supreme court has stated, " '[t]he presumption in favor of the result reached by the trial court is always strong and compelling in this type of case.' " *Eckert*, 119 Ill. 2d at 330 (quoting *Gallagher v. Gallagher*, 60 Ill. App. 3d 26, 31-32 (1978)); see also *P.D.*, 2017 IL App (2d) 170355, ¶ 18. Such deference is appropriate because the trier of fact has significant opportunities to observe both the parents and, if applicable, the children, and therefore it is able to assess and evaluate their temperaments, personalities, and capabilities. *Eckert*, 119 Ill. 2d at 330. Accordingly, a trial court's determination of what is in the best interests of a child should not be reversed unless it is against the manifest weight of the evidence. *Eckert*, 119 Ill. 2d at 328. A court's decision is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent or where its findings are unreasonable, arbitrary, or not based on the evidence presented. *Best v. Best*, 223 Ill. 2d 342, 350 (2006).

¶ 84 In this case, the trial court conducted a thorough hearing and heard extensive testimony from Cindy, Peter, the GAL, and several other witnesses regarding the proposed relocation. Thereafter, the court, after applying the statutory factors set out in section 609.2(g) of the Act, found that Cindy had established by a preponderance of the evidence that relocation from Illinois to Canada is in the best interests of the children. Based on our review of the evidence, and in light of the deferential standard of review applicable to a petition for relocation, we do not find the trial court's decision to be against the manifest weight of the evidence.

¶ 85 As noted, the first factor concerns the circumstances and reasons for the intended relocation. 750 ILCS 5/609.2(g)(1) (West 2016). The trial court observed that Cindy cited financial security, proximity to extended family, the children's educational opportunities, and the parties' intent in moving to the United States as reasons for her desire to relocate to Canada. Specifically, the court remarked:

> "[Cindy] indicated that she will have greater opportunity to provide for the welfare of herself and her children by reason of employment with her father's company. According to her testimony, which was not contradicted by Peter, she is in line to succeed her father in his business. Cindy's father operates the flower and garden concerns for all Costco Canada locations. The business grosses approximately $35-$40 million Canadian dollars per year. Cindy's father earns between $3-$4 million Canadian dollars per year in his position. Cindy indicated that she would start as comptroller [*sic*] for the company at a salary of $200,000.00 per year but expected to earn significantly more than that upon assuming her father's role. While the Court agrees with Peter that Cindy could earn between $150,000.00 to $200,000.00 Canadian dollars here doing the work she will do as comptroller [*sic*] for her father's company in Canada it also acknowledges that Cindy wuill [*sic*] never be able to earn the type of salary needed to sustain a lifestyle commensurate with that the Parties had during the marriage without moving back to Canada. Financially [*sic*] security is a prime concern for Cindy, both for herself and the children. She is aware that maintenance will be limited given the duration of the Parties' marriage and wishes to secure a similar lifestyle for her and the children. The Court found her testimony in this regard credible."

Citing Cindy's testimony, the court also noted that relocation would allow the children and Cindy to be closer to a network of extended family, that the children would have equivalent, if not better, educational opportunities in Canada, and that it was never the intent of the parties to remain in the United States.

¶ 86 Peter vigorously disputes several of the trial court's findings with regard to the first factor. To begin, Peter contends that there is no evidence regarding the "marital lifestyle" or that Cindy must take a job to support herself in that standard of living. Although the trial court did order the parenting issues to be tried prior to, and separate from, the financial issues, the court had before it competent evidence regarding the parties standard of living during the marriage. The testimony presented at trial established that Peter was the income earner of the family and Cindy was the primary caregiver to the children. In 2015, Peter's annual income was almost $2 million. Cindy testified that Peter's income has afforded her and the children a "high standard of living" with "disposable income," "a nice house," and "high-end cars." Cindy valued the parties' marital home in Oak Brook at $2 million. Peter described the marital residence as a three-story home with seven bedrooms, nine bathrooms, a finished basement, and a fully-detached four-car garage. Peter testified that the Oak Brook residence was purchased for $2.1 million. Cindy also testified that the children enjoy an "affluent lifestyle" and "materialistically want for nothing." She noted, for instance, that K.S. attends a private school that charges $24,000 per year for tuition and that both children receive tutoring services on a regular basis. The evidence also established that the children have participated in a variety of extracurricular activities, including skiing, gymnastics, dance, piano, voice lessons, swimming, taekwondo, tee-ball, and soccer. The trial court was not required to ignore this evidence regarding the parties' marital lifestyle merely because the parenting and financial issues were tried separately.

¶ 87 Moreover, based on the evidence of record, the trial court could have reasonably concluded that Cindy would be unable to support herself at the standard of living attained during the marriage without moving back to Canada. As noted above, while the trial court found that Cindy could earn as much as $200,000 Canadian in Illinois doing the work she will do as controller for her father's business in Canada, this is significantly less than Peter's annual income of $2 million. Indeed, Cindy stated that she would not be able to find a job in the United States that would provide the standard of living the family currently enjoys, noting that she has never worked in the United States, her Canadian accounting designation does not transfer to the United States, and she would not be able to practice accounting in the United States without going back to school. Peter, noting the financial aspects of the parties divorce have yet to be determined, faults the court for speculating "as to what Cindy will 'need' with respect to a yet-undetermined lifestyle prior to hearing any actual evidence on the issue." Yet, Peter himself speculates that "there is the very real possibility that Cindy may receive enough maintenance and income-producing assets to support herself without relocating to Canada." In any event, the trial court touched upon the issue of maintenance, suggesting that "maintenance will be limited given the duration of the Parties' marriage." See 750 ILCS 5/504 (West 2016) (listing factors to be considered in awarding maintenance, one of which is the duration of the marriage).

¶ 88 Peter also complains that even if Cindy were required to work, she introduced no evidence to support the court's finding that she could not do so in Illinois. In this regard, Peter observes that the report prepared by the GAL was inaccurate because it stated that the type of visa Cindy has allows her to live, but not work, in the United States. According to Peter, the GAL's error "tainted her report and permeated the trial with false premises." We disagree. The GAL's report stated that Cindy has an H4 visa, "which allows spouses to live in the United

States with their working spouse," that Cindy cannot obtain a social security number with an H4 visa, and that without a social security number, Cindy could not obtain a job in the United States. However, at trial, the GAL acknowledged that this information was outdated and that Cindy is eligible to work in the United States, having obtained both a green card and a social security number. Cindy acknowledged that she received her green card in 2015 and a social security number in 2016. More importantly, the trial court was keenly aware that Cindy was eligible to work in the United States, observing that "Cindy could earn between $150,000.00 and $200,000.00 Canadian dollars *here* doing the work she will do as a comptroller [*sic*] for her father's company in Canada." (Emphasis added.) Peter questions why Cindy cannot "stay here, do the same job and get paid." But the court found that Cindy will never be able to earn the type of salary needed to sustain a lifestyle commensurate with that the parties enjoyed during the marriage. As we noted above, this finding was supported by competent evidence at trial. Moreover, Cindy explained that while she was able to perform the accounting duties for her father's business in Illinois, she could not complete other tasks remotely, including those related to negotiations, projections, budgets, human resources, and recruiting. Cindy also testified that she would be unable to maintain the business relationships her father has cultivated by working remotely from Illinois.

¶ 89 Peter challenges the trial court's finding that Cindy "is in line to succeed her father in his business." The evidence at trial established that Cindy's father is the president of and a 50% partner in Bolton, a wholesale flower company that runs and manages the garden centers for Costco Canada in Ontario, which is its only customer. Cindy testified that she and her father have had discussions about her succeeding him in the business, but have not put the plans in writing. Specifically, Cindy explained that if she were relocate to Canada, she would retain her

current title and full responsibilities while also "shadowing" her father in his role, thereby learning his responsibilities and establishing relationships with staff, customers, and flower growers. The eventual goal would be for Cindy to transition into her father's role and become president of the business. Cindy testified that her father's partner is not involved in operating the business and would not have to approve her transition into the role of president. Cindy plans to work while the children are at school. This would allow her to work about five hours of work per day in the office, or 25 hours per week. Cindy testified that she will earn between $200,000 and $250,000 Canadian when she returns to work for her father's business. Cindy testified that as her responsibilities increase, her compensation will increase. Eventually, Cindy expects to earn a salary comparable to her father, which is $3½ to $4 million Canadian per year. Cindy explained that she can earn that salary while maintaining the schedule she described because "it's a family business and the flexibility is there."

¶ 90 Peter maintains that apart from her own "self-serving testimony," Cindy "adduced no competent evidence of the alleged succession plan or any credible details surrounding her alleged new position and transition." In support of his claim, Peter asserts that the first time Cindy claimed the existence of a succession plan was in her relocation petition and the GAL testified that she never saw any succession documents or a job offer to Cindy. In addition, Peter questions whether Cindy could succeed her father without his partner's permission and whether the business could survive the departure of her father, as Cindy admitted that her father is "the value of the company" and the business has only one customer. He also questions Cindy's testimony regarding her ability to perform the duties of the position and learn those of her father in just five hours a day, confined to the children's school hours. However, under the manifest weight of the evidence standard, it is not our function to reweigh the evidence or assess the

credibility of testimony. *In re Marriage of Pfeiffer*, 237 Ill. App. 3d 510, 513 (1992). Nor may we set aside the trial court's determination on a factual issue merely because a different conclusion could have been drawn from the evidence. *Pfeiffer*, 237 Ill. App. 3d at 513. While Peter raises some valid considerations regarding the succession plan and Cindy's ability to perform her father's duties, these concerns go to the weight of the evidence and the credibility of testimony. Based on the evidence as a whole, we cannot say that the trial court's finding that Cindy was in line to succeed her father in his business was against the manifest weight of the evidence.

¶ 91 Peter next contests that the trial court's finding regarding the parties' intent to return to Canada. On this point, Cindy testified that it was never the intent of the parties to remain in the United States. Cindy recounted that she and Peter agreed that upon the sale of Peter's business or on Peter's accumulation of enough money to retire, the parties would return to Canada. The court observed that Peter did not deny the former, but the business never sold. And while Peter denied the latter, the court found it "more likely than not that it was agreed to and [that] Cindy [is] more credible on that issue." Peter maintains that the trial court "speculated against the manifest weight of the evidence, that 'it was more likely than not' that the parties did not intend to remain in the United States and incorrectly found Cindy more credible than Peter on this point." We disagree. As related by the trial court, the parties presented conflicting evidence regarding the circumstances surrounding their intent to return to Canada. Specifically, Cindy testified that the parties had an "ongoing conversation" about moving back to Canada when the business Peter worked for was sold or they saved enough money so that upon returning to Canada Peter could retire. Cindy noted that the business "was potentially going to be sold" in 2007 or 2008. Peter testified that the business was for sale in 2008 and that if the business sold,

he would have likely received between $20 and $30 million after tax. According to Peter, "[w]ith that amount of money, with the fact that I only resided in the U.S. for three years [at the time the business was for sale], the fact that we had no kids, it was understood that we would move back to Canada." However, the business never sold. Peter denied any other agreements between him and Cindy "with respect to her move to the United States." The trial court found Cindy's testimony in this regard more credible than Peter as was its province. See *Eckert*, 119 Ill. 2d at 330. Peter points to no persuasive evidence compelling a finding contrary to the trial court's finding. Indeed, as noted above, it is not our function to reweigh the evidence. *Pfeiffer*, 237 Ill. App. 3d at 513. For the foregoing reasons, we cannot say the trial court's findings on the first factor are against the manifest weight of the evidence.

¶ 92 The second factor concerns the reasons why a parent is objecting to the intended relocation. 750 ILCS 5/609.2(g)(2) (West 2016). The trial court found that the "main reason" Peter objected to the proposed relocation was that "given his current employment in Chicago, he will never have as much time or as significant a relationship with the children as he does now." The court also recognized Peter's concerns that K.S. is suffering from anxiety, the condition would worsen if relocation is granted, and uprooting the children from their home, school, family, and friends is not in their best interests. The court found that Peter "is genuinely concerned with these factors." We agree with the trial court that Peter objects to the relocation out of genuine concern for the well-being of his children and the impact the relocation would have on his relationship with them. The trial court's finding on this factor is not against the manifest weight of the evidence.

¶ 93 Despite the trial court's findings, which favor Peter's position, he complains that the trial court "wholly ignored that [he] objects to the relocation because Cindy has repeatedly

demonstrated she will not facilitate a relationship between him and the children." According to Peter, Cindy's testimony was replete with comments and references suggesting that she does not value his contributions to parenting or his relationship with the children. For instance, Peter asserts that Cindy "marginalized" his parenting by stating that as a baby, K.S. would "be lying" on the couch with Peter and she would sometimes fall asleep instead of admitting that Peter "cuddled" with K.S. Peter also asserts that Cindy testified that on one occasion when C.S. woke up screaming, she described Peter as "holding" C.S. instead of "comforting" the child. Peter further claims that Cindy minimized his involvement in the children's medical care and tutoring.

¶ 94 To begin, it is unclear how Cindy's descriptions of two interactions with the children is evidence that she was marginalizing his parenting or unwilling to facilitate a relationship between him and the children. In fact, Peter's accounts of Cindy's testimony distort the record. First, Cindy actually acknowledged, in response to questioning by Peter's counsel, that Peter lying on the couch with K.S. "could" constitute a "cuddle." Second, when Peter's attorney asked if Peter was "comforting" C.S. when he woke up screaming, Cindy responded that she was not sure if he was trying to comfort the child, explaining that although Peter was holding C.S., he immediately started yelling at her. With respect to Peter's claim that Cindy minimized his involvement in the children's medical care, Peter acknowledged that from the time K.S. was born through the filing of the petition for dissolution of marriage, it was Cindy who scheduled and attended routine medical appointments and let Peter know if anything important came up. As for tutoring, Cindy testified that prior to the filing of the petition for dissolution, Peter never assisted in the preparation of the children for tutoring. Subsequent to the filing of the petition, Peter would engage with whichever child was not currently being tutored at the time and offer to take that child for ice cream or go outside to play. Cindy testified that this became a distraction

to the child being tutored who would also want to go for ice cream or to play outside. Moreover, Cindy admitted that she did not consult Peter prior to altering the tutoring schedule. She explained that the change was instituted after the temporary parenting plan was put in place because it "would be too difficult for the children to kind of flip-flop back and forth to houses for tutoring purposes, so [the tutor] was able to change it [from Sunday] to Wednesday so that it could be a consistent weekly thing as opposed to every other week." Cindy's sentiment was mirrored by the tutor herself, who testified that Wednesday was chosen because it would be best for the children's schedule to meet on a consistent basis in the same house so that the children do not have to drag the materials from house to house. The trial court could reasonably conclude based on this testimony that the change in the tutoring schedule had more to do with facilitating the tutoring sessions for the children than to minimize Peter's involvement.

¶ 95 More significantly, Peter ignores comments and references from Cindy crediting his contributions to his parenting and his relationship with the children. Cindy described Peter's relationship with the children as "loving." Cindy testified that on mornings when the children would wake up early, Peter would prepare them breakfast. Cindy also recounted that the family would have dinner together, Peter would spend evenings with the children, and the family would spend time together on the weekends. In addition, the record demonstrates that Cindy has facilitated the relationship between Peter and the children during the pendency of the dissolution proceedings. In this regard, Cindy testified that since a temporary parenting plan was entered, there have been multiple instances in which she has either offered or agreed to additional parenting time for Peter. Cindy also testified that the children have contact with Peter via FaceTime whenever they want. Peter admitted that he exercised parenting time in addition to the visits that are in the temporary parenting schedule and that Cindy facilitated these additional

visits. Peter also noted that although Cindy did not want to use Our Family Wizard to facilitate contact, she did set up Google calendar and input all of the children's relevant events. Cindy also testified at trial that she is willing to continue to facilitate not only Peter's relationship with the children, but also that of Peter's family. In short, the trial court's findings with regard to the second factor are not against the manifest weight of the evidence.

¶ 96 The third factor concerns the history and quality of each parent's relationship with the children and whether a parent has substantially failed or refused to exercise the parental responsibilities allocated to him or her under the parenting plan or allocation judgment. 750 ILCS 5/609.2(g)(3) (West 2016). The court concluded that although Peter was loving and affectionate with the children, he had little knowledge or input into their day-to-day lives during the marriage. In this regard, the court found that despite having the "full time assistance of a 'nanny' or 'helper' *** in caring for the children and often times the assistance of [Peter's] mother," Cindy has been the primary caretaker for the children for most of the children's lives and was responsible for meals, medical, education, and extracurricular activities. Although Peter would interact with the children if they arose early, would always be home for dinner and the children's bedtimes, and devoted himself to "family time" on the weekends, he was at work for 12 hours a day five days a week. The court found that neither Peter nor Cindy "has been remiss or failed in the duties allocated to them" under the temporary parental allocation schedule. The court also found that since the parties separated, Peter "has found more flexibility in his schedule and can pick the children up from school in the afternoons," thereby lending credibility to the GAL's opinion that Peter "has a more flexible work schedule than he would want the Court to believe and could, therefore maintain a positive parent-child relationship with the children if they are living in Canada."

¶ 97 Peter asserts that the trial court penalized him for being a hardworking father who supported his family while also dismissing the fact that Cindy had the full-time assistance of a nanny or a helper in caring for the children. We disagree. The court merely recognized the reality of the situation. That is, during the marriage, Peter was the income earner of the family while Cindy was the primary caretaker of the children. Peter would commute to Chicago each weekday for work, typically leaving home around 6:30 a.m. and returning to Oak Brook by 6:30 p.m. for dinner. As a result, Peter's interactions with the children typically occurred when the children arose early, during dinner, at bedtime, and on the weekends. And although Cindy had the assistance of a helper or nanny, she was primarily responsible for cooking meals, scheduling and transporting the children to medical appointments, making decisions regarding the children's education, and registering the children for and taking them to extracurricular activities.

¶ 98 Peter also points out that even though Cindy described herself as a "full time mom," K.S. wrote in a "Youth Sentence Completion Form" in her therapist's file that "Mom should spend more time with us." Peter asserts that the GAL did not discuss this statement with K.S. or her therapist, but neglects to indicate the significance of the passage. To the extent that Peter is implying that Cindy does not spend as much time with the children as she suggests, we find this implication speculative. Indeed, on the same form, K.S. also wrote that Cindy "is a good mom." Thus, an equally plausible interpretation of K.S.'s remark is that she enjoys spending time with her mom and wants to spend even more time with her than she already does.

¶ 99 In a similar vein, Peter notes that the GAL stated that during her office visit with him and the children, their interaction was very good, they were affectionate with each other, and the children sat next to him. However, during the GAL's office visit with Cindy and the children, the children sat across the table from Cindy, rather than next to her, and they were not as

affectionate with Cindy as they were with Peter. Peter fails to recognize that the meeting between the GAL, Cindy, and the children occurred more than three weeks prior to the meeting between the GAL, Peter, and the children. Moreover, the GAL's report suggests that the meeting between her, Cindy, and the children was her first meeting with the children. Thus, the children's behavior during the meeting with Cindy could have merely been a reaction to encountering an adult with whom they were not acquainted in unfamiliar surroundings. The children could have been more at ease with the GAL by the time of Peter's meeting, having met her and been to her office several weeks earlier. For these reasons, we find Peter's reliance on this evidence misplaced.

¶ 100 Peter also faults the trial court's remarks regarding the flexibility of his schedule. According to Peter, the court "erred in committing a logical fallacy by analogizing Peter's leaving work early from downtown Chicago to pick the children up from their school located approximately 30 miles away in a Chicago suburb, to traveling internationally for many hours to exercise parenting time when the children are living in Canada." However, the record supports the trial court's finding that Peter has a more flexible work schedule than he indicated at trial. It is undisputed that Peter was already employed by KOS Services or an affiliated company at the time Cindy and he began dating, although the parties disputed his exact title. Cindy testified that the couple had a long-distance relationship, commuting back and forth alternating weekends between Toronto and Chicago. The individual traveling would leave his or her home city on Friday afternoon or evening and return Sunday evening or Monday morning. The couple continued the long distance relationship after the marriage until the last trimester of Cindy's pregnancy with K.S., when Peter began traveling to Toronto from Chicago every weekend. Moreover, the GAL testified that when she met with Peter, they talked about his flexibility with

work, and Peter told her that the number of hours he works is at his discretion. Peter himself acknowledged that he had "some flexibility" in setting his hours and that the hours he works are at his discretion, "within reason." Based on this evidence, the trial court could reasonably conclude that Peter has a more flexible work schedule than he would have the court believe and that he could therefore maintain a positive parent-child relationship with the children if they are living in Canada. We therefore conclude that the trial court's finding in this regard was not improper and that its findings as a whole with respect to the third factor are not against the manifest weight of the evidence.

¶ 101 The fourth factor concerns the educational opportunities for the children at the existing location and at the proposed new location. 750 ILCS 5/609.2(g)(4) (West 2016). The court determined that this factor was neutral. In this regard, the court found that both children attend "fine schools" in Illinois. Further, based upon the "credible testimony" from the GAL and Cindy, the court concluded that both Country Day School and Pope Francis Catholic School, the preferred Canadian schools, "are just as good and perhaps marginally better than the schools the children currently attend."

¶ 102 Peter claims that the trial court "erroneously references 'testimony' that was never presented." Specifically, Peter argues that although Cindy offered "her own self serving and unsupported conclusion that the Canadian schools are 'superior' " to the Illinois schools, she presented no competent evidence comparing the schools. Further, he notes that the GAL did not speak with any officials at any of the potential Canadian schools, relied solely on internet research and what the parties provided her, and found no independent research directly comparing U.S. and Canadian schools.

¶ 103 Although neither Cindy nor the GAL presented any evidence directly comparing the Canadian schools to the institutions in Illinois, Peter presents no authority that they were required to do so. And while such a comparison may be relevant, the GAL testified that she was unable to find any website or other authority comparing Canadian schools to American schools. Moreover, the record indicates that Cindy did research Country Day School and Pope Francis School and offered a rational explanation for her belief that the Canadian schools were "superior" to those in Illinois. Cindy testified that she toured Country Day School with the assistant director of admissions, researched the school online, obtained an information packet regarding the school, spoke to the head of admissions at the school, and asked an administrator at Avery Coonley school (K.S.'s school in Illinois) to take a look at the information packet and offer insight on the school. Cindy also testified that she researched Pope Francis School on the internet, spoke to administrators at the school (including the principal), and researched the school board. Based on this information, Cindy learned that the Canadian schools provide "an individualized plan for each student" which caters to each individual student based on their challenges and strengths. In contrast, the Illinois schools offer a "plan based" curriculum which the child has to fit into. Cindy opined that the individualized curriculums offered at Country Day School and Pope Francis School would be "awesome" for the children because "it will give each individual child *** the curriculum that they need, so they'll get the support in the areas that they need and they'll be able to excel in their strengths." Thus, she concluded that the Canadian schools were "superior" to the Illinois schools. In any case, although the trial court remarked that the Canadian schools were "just as good and perhaps marginally better" than the Illinois schools, the trial court ultimately found this factor neutral, thereby indicating that it did not place much emphasis on Cindy's opinion that the Canadian schools were superior. Ultimately, we

conclude that the trial court's findings with respect to the fourth factor are not against the manifest weight of the evidence.

¶ 104 The fifth factor concerns the presence or absence of extended family at the existing location and at the proposed new location. 750 ILCS 5/609.2(g)(5) (West 2016). The trial court determined that the link to close family is stronger in and around Toronto than it is in the Chicago area. In support of this conclusion, the court noted that the proposed residence in Toronto is located next door to the children's aunt (Cindy's sister) and their cousins, both sets of grandparents live within 30 minutes of the proposed residence, and Peter's brother and other relatives also live in the Toronto area. The court allowed that Peter presented evidence that he has an aunt, uncle, and cousins in the Chicago area, that one of his cousin's has children who are close in age to K.S. and C.S., and that Peter is the godfather to one of his cousin's children. The court surmised that evidence that Peter is the godfather to one of his cousin's children was proffered to bolster the argument that the relationship between Peter and his cousin was "close and strong." The court, however, found that the value of the evidence was weakened by uncontroverted testimony that Peter wanted to decline the invitation to become the child's godfather because he is an atheist. The court also observed that the GAL "testified as part of her report" that Guzman believed the children were isolated and that the GAL opined that relocation to Canada and being close to immediate family members would help alleviate the feelings of isolation. Finally, the court noted that while there was no direct testimony regarding how relocation would affect K.S.'s anxiety, if the children would feel less isolated upon relocation and being closer to immediate family, then there would be a corresponding positive effect on K.S.'s anxiety.

¶ 105 In challenging the trial court's finding on this factor, Peter does not dispute that Cindy's sister and parents live in the area where Cindy desires to relocate and that his parents also live in the Toronto area. Nevertheless, he claims that the court's finding that the link to close family is stronger in and around the Toronto area "ignor[es] the important presence of the children's father in their lives as opposed to their extended family." But the factor at issue expressly directs the trial court to consider "the presence or absence of *extended family* at the existing location and at the proposed new location." (Emphasis added.) 750 ILCS 5/609.2(g)(5) (West 2016). This is exactly what the trial court considered in examining this factor. Moreover, the trial court did not "ignor[e]" Peter's presence in the children's lives. To the contrary, a review of the trial court's analysis in its entirety demonstrates that it recognized the important role Peter plays in the children's lives. For instance, the court noted that Peter would spend time with the children when he was home in the mornings and the children would get up early, during family dinners, at bedtime, and during family time on weekends. The court found that Peter was "genuinely concerned" that relocation would impact his relationship with the children. Moreover, as discussed more thoroughly below, the court found that the allocation judgment proposed by the GAL allows Peter "significant, meaningful, and frequent time with the children" if he chooses to exercise it. Thus, Peter's claim that the trial court ignored his presence in the children's lives is not supported by the record as a whole.

¶ 106 Peter also suggests that the trial court's finding was improper because the children already have regular contact and strong relationships with their Canadian relatives while still living in Illinois, as both the parties and their Canadian extended family members regularly visit the children and have the financial means to continue to spend time together on a frequent basis. The record does show that, historically, Cindy's parents have traveled to Chicago four or five

times a year, the family has met twice per year at her parents' home in Florida, and Peter's parents regularly visit Chicago. The record also shows that the children saw their Canadian cousins five or six times in 2018 and that both sets of grandparents have the financial means to travel to see their children. Nevertheless, it is undisputed that relocation would place the children much closer to their Canadian extended family members. As the trial court pointed out the proposed Canadian residence is directly next door to the children's aunt and their cousins. Further both sets of grandparents live about 30 minutes from the proposed residence. Given this evidence, the trial court could have reasonably concluded that the proximity of the children to their Canadian extended family members would increase the frequency and quality of contacts, thereby strengthening the already existing relationship. Thus, the fact that the children already have regular contact with their Canadian extended family members does not render the trial court's finding on this factor against the manifest weight of the evidence.

¶ 107 Peter also maintains that Cindy is not interested in facilitating relationships between the children and Peter's Canadian family, even if they reside a relatively short distance from each other. In support of his position, Peter observes that when Cindy was asked who she would call if she needed help with the children in Canada, it was only after listing her parents, her sister, and her sister's husband that Cindy stated she would reach out to his parents. It is not clear to us how Cindy's testimony that she would contact her relatives before Peter's if she needed help with the children demonstrates that she is not interested in facilitating a relationship between the children and Peter's Canadian family. In fact, Cindy recognized that the children have strong relationships with Peter's parents and that they "adore" his brother. Cindy expressly testified that if relocation were granted, she would facilitate the relationships that the children have with Peter's family in any way they want, "within reason." She explained that she wants the children

"to have access to their grandparents" and that Peter's parents are "more than welcome" to see the children. In fact, during her testimony, Cindy noted that she asked Peter to invite his mother, who was going to be in town on Halloween, to accompany the children trick or treating, even though the holiday fell during her parenting time.

¶ 108 Peter also finds it significant that several of his family members live in the Chicago area and asserts that these family members are close with the children. As noted above, the trial court expressly considered Peter's family ties in the Chicago area, but determined that the value of the evidence was weakened by other evidence. The evidence presented at trial supports the trial court's assessment. Peter's Aunt Anna and Uncle Jim live in the Chicago area. Anna and Jim's four grown children, Effie, Steve, Vivian, and TJ, also live in the Chicago area and have children of their own. Peter testified that he is closest to Effie, who lives in Downers Grove. Effie has two daughters, ages 13 and 10. Effie's younger child is Peter's and Cindy's goddaughter. Peter testified that prior to the breakdown of the marriage, the children spent more time with Effie's daughters than with their cousins in Canada. Peter recounted that after moving to Oak Brook, he and Cindy would socialize with Effie's family every month or month and a half during the summer months. The families would also see each other on birthdays and to exchange gifts at Christmas and Easter. Peter testified that his children and Effie's daughters play together and that K.S. has a "strong bond" with Effie's younger daughter. Cindy testified that prior to the breakdown of the marriage, the family would historically see Anna, Jim, Steve, Vivian, and TJ only once a year, at their goddaughter's birthday. The family would see Effie three or four times a year. Cindy testified that while the children know Effie and are respectful to her, they do not have a relationship with her "*per se*." She related that her children and Effie's daughters play when they see each other, but if K.S. was having a birthday party, she would not request the

attendance of Effie's daughters at the party. Cindy also testified that Peter did not want to become a godparent for Effie's daughter because he is an atheist. The evidence as a whole demonstrates that while the family may have socialized with Effie's family a few times a year, they saw Peter's other Illinois relatives infrequently. Based on this record, the trial court could reasonably conclude that the ties between the children and Peter's Illinois relatives is not as strong as Peter suggests.

¶ 109 Peter also faults the court for "wholly ignor[ing] that the GAL never interviewed Peter's family located in Illinois, despite his request to do so." According to Peter, when asked why she did not interview his Illinois relatives, the GAL simply responded, "I just didn't. I just didn't do it." Peter, however, disregards germane parts of the GAL's testimony. The GAL noted that early in her investigation, she asked Peter on two occasions whether he wanted her to interview anyone on his behalf. Both times, Peter responded in the negative. The GAL testified that it was not until a week or so prior to her testimony that Peter or his attorney asked her to contact Peter's cousin Effie. Peter faults the GAL for not contacting Effie despite speaking with Cindy's father just a few days before trial. However, Peter does not indicate what he expected Effie to testify about. To the extent that it was to show the relationship between Peter's family and Effie's family, the trial court had before it evidence from both Peter and Cindy regarding the family's contacts with Peter's Illinois relatives.

¶ 110 Peter also claims that the trial court improperly found that the children are "isolated" in Illinois, based primarily on the GAL's reliance on Guzman's report. According to Peter, the GAL never testified at trial to "any 'isolation;' " rather, it was a remark from Cindy. Peter misinterprets the trial court's comments. The trial court stated, "The GAL testified *as part of her report,* and the Court accepts, that the children's therapist noted that the children were isolated

and, in the opinion of the GAL the relocation to Canada, and being close to immediate family, would help to alleviate this." (Emphasis added.) This was a reasonable interpretation of the GAL's *report*, which provided, in discussing the presence or absence of extended family in the Toronto area, that "Ms. Guzman has referred to the children as being isolated clearly the relocation would assist in this issue [*sic*]." Peter also claims that any suggestion by the GAL that the children were isolated has no evidentiary support and should have been rejected by the court. We disagree. The GAL cited Guzman's statement that the children were isolated and that relocation would alleviate the isolation. Thus, there was evidentiary support for the GAL's statement.

¶ 111 Finally, Peter observes that although the court acknowledged that "there was no direct testimony on how a relocation would affect [K.S.'s] anxiety," it presumed that the children "would feel less isolated upon relocation and being closer to immediate family" resulting in "a corresponding positive effect on [K.S.'s] anxiety." Peter asserts that the court would have no need to speculate about K.S.'s anxiety had it granted his pretrial request for a mental health professional. Peter further asserts that there is no evidence to support the court's speculation as the record shows that K.S.'s anxiety is separation anxiety that manifested when Peter moved out of the marital home. We conclude that the trial court's finding was a reasonable inference from the evidence. The record demonstrates that K.S.'s anxiety first manifested in April 2018, when Peter moved out of the marital home. K.S. would become upset if she could not personally see one of her parents. As a result, the parties sent K.S. to therapy. It is undisputed that since attending therapy, K.S.'s anxiety had improved to the extent that the therapist moved from weekly sessions to an every-other-week schedule. As noted in the GAL's report, K.S.'s therapist referred to the children as being isolated, but opined that relocation would assist in this issue.

The trial court could reasonably conclude that because K.S.'s anxiety manifested when a parent was not present, and the children would feel less isolated when near relatives, the presence of relatives in proximity would help alleviate K.S.'s anxiety in that she would have a close adult relative nearby. However, even if it was improper for the trial court to make such an inference, the error was insufficient, by itself, to render the trial court's findings on this factor against the manifest weight of the evidence.

¶ 112 The sixth factor concerns the anticipated impact of the relocation on the child. 750 ILCS 5/609.2(g)(6) (West 2016). The court concluded that relocation would "no doubt" impact the children. The court noted that the children would be leaving a familiar neighborhood, schools, and friends. Nevertheless, the court concluded that the benefits of relocation outweigh any negative impacts. The court noted that the children would be moving next to cousins with whom they have a long, affectionate history. The children would also enjoy the benefit of having their grandparents and other immediate extended family in close proximity and their financial security provided by both parents as opposed to just one. The children will be living in the suburb of a major city that provides diversity and amenities similar to those in Chicago. The court also emphasized that the allocation judgment proposed by the GAL allocates significant parenting time to Peter if he chooses to exercise it.

¶ 113 Peter complains that the trial court failed to mention him, the children's father, in its analysis, thereby "improperly elevating the presence of extended family in Canada over that of the children's father, [and] focusing on the 'close proximity' of primarily Cindy's family." We disagree. Implicit in any relocation decision is that the diminished presence of one parent's presence in a child's life would impact the parent-child relationship. For this reason, the court found that the relocation would "no doubt" impact the children. The court nevertheless found

that the change in surroundings would be alleviated in part by certain benefits, including the children's proximity to other relatives such as their cousins and grandparents. The court's conclusion was not against the manifest weight of the evidence.

¶ 114 Peter also faults the trial court for finding that if relocation is granted, the children "will have the benefit of financial security provided by both parents as opposed to just one." According to Peter, this finding overlooks the fact that he earns $2 million per year and can amply provide for the family in Illinois. However, the trial court could reasonably conclude that with both parents having separate, independent streams of income would help protect the children against any unforeseen circumstances, such as downsizing or salary reductions. Again, this was a proper consideration.

¶ 115 Peter questions why there is a need to uproot the children to experience cultural and recreational activities in the Toronto area when the court admitted that these amenities were already available in the Chicago area. The court's reference to these aspects was to offset the notion that leaving the Chicago area would deprive the children of such amenities upon relocation. Thus, this was a proper consideration.

¶ 116 Peter also complains that the trial court's impact analysis does not address the issue of K.S.'s anxiety. As noted above, however, the trial court addressed the issue of K.S.'s anxiety in relation to other statutory factors. Moreover, it was undisputed that K.S.'s anxiety has greatly improved since beginning therapy. In fact, the therapist decreased the frequency of her visits from weekly to every other week. Additionally, Cindy testified that she has researched therapists in Canada and the GAL testified that Cindy has made arrangements to continue the therapy should relocation to Canada be granted.

¶ 117 Finally, Peter complains that the trial court's finding that the Allocation Judgment provides significant time for him if he chooses to exercise it is contradicted by the evidence that he does not have the flexibility to travel internationally on a regular basis and it is not his "choice" as to whether business responsibilities prevent him from making the international trip. However, as noted elsewhere, Peter did have the flexibility to travel internationally on a regular basis while working for the same employer from 2006 through July 2009, when Cindy moved to Illinois. Further, Peter acknowledged that he had "some flexibility" in setting his hours and that the hours he works are at his discretion, "within reason."

¶ 118 The seventh factor concerns whether the court will be able to fashion a reasonable allocation of parental responsibilities between all parents if the relocation occurs. 750 ILCS 5/609.2(g)(7) (West 2016). The court determined that the Allocation Judgment allows Peter to have "meaningful, significant and frequent parenting time with the children." The court also pointed out that the parties have thus far been able to jointly parent the children. The court expected that the parties would be able to continue doing so except in the area of religion. The trial court's findings are not against the manifest weight of the evidence. The Allocation Judgment provides Peter with parenting time on alternating weekends, with an additional day on three-day weekends. The Allocation Judgment also provides Peter with additional parenting time during the school year on weekdays with seven days' advance notice to Cindy and on holidays, as well as extended blocks of parenting time during the summer, winter vacation, and spring vacation.

¶ 119 Peter complains that the Allocation Judgment relegates him to being only an alternate weekend father, unable to attend the children's activities, take them to appointments, or drop them off and pick them up from school. Peter also contends that the travel time between

Chicago and Toronto will adversely impact his quality time with the children and his weekday contact with the children will be reduced to electronic communication. While we are not unsympathetic to Peter's concerns that the frequency and quality of his parenting time will diminish with relocation, any relocation necessarily impacts parenting time. Nevertheless, as the trial court found, the Allocation Judgment entered here provides Peter with "meaningful, significant and frequent parenting time with the children."

¶ 120 Peter also expresses concern that Cindy will not provide him with important information about the children. However, the Allocation Judgment provides Peter with joint decision-making responsibility in relation to the children's education, medical, and extracurricular activities. Further, pursuant to the Allocation Judgment, Peter has access to the children's healthcare and educational records. Moreover, the Allocation Judgment provides a mechanism to resolve disputes that arise between the parents as to any provisions of the Allocation Judgment. Therefore, we conclude that the trial court's finding as to the seventh factor is not against the manifest weight of the evidence.

¶ 121 The eighth factor concerns the wishes of the children, taking into account the children's maturity and ability to express reasoned and independent preferences as to relocation. 750 ILCS 5/609.2(g)(8) (West 2016). The court found that the parties have been "reticent" to discuss the divorce with the children, much less the possibility of relocation, and, as of the close of the trial, no one had sat down with the children to explain what was happening or to solicit their input. Because no testimony or evidence was received on this issue, the court found the children's wishes a "non-factor." Peter does not dispute that no testimony or evidence was received on this issue. As such, we conclude the trial court's finding regarding this factor is not against the manifest weight of the evidence.

¶ 122 The ninth factor concerns possible arrangements for the exercise of parental responsibilities appropriate to the parents' resources and circumstances and the developmental level of the children. 750 ILCS 5/609.2(g)(9) (West 2016). Noting that there are a significant number of daily flights between Toronto and Chicago and that the flights average 75 minutes each way, the court concluded that Peter and the children can easily fly between the two cities. The court noted that while Peter had the "financial wherewithal to carry on a long distance relationship between Chicago and Toronto, as he demonstrated while he was dating Cindy in Toronto and living in Chicago and as he did after the parties were married and Cindy was living in Toronto while pregnant with [K.S.] and for a period following her birth," Cindy should share equally in the cost of transporting the children to and from Chicago for parenting time.

¶ 123 Peter argues that the trial court's analysis is incomplete and "unreasonably ignores the realities of international travel, as the total door-to-door travel time includes car travel to and from the airports and any weather or mechanical delays." We disagree. The fact that the trial court did not specifically reference the door-to-door travel time does not mean that the court did not consider it. See *In re Marriage of Berk*, 215 Ill. App. 3d 459, 464 (1991). The court specifically stated in its December 14, 2018, order that it had considered "all the evidence presented." Among this evidence, was testimony regarding the total door-to-door travel time between the parties' residence in the Chicago area and the proposed residence in the Toronto area. Cindy and the GAL testified that the door-to-door travel time would be three to four hours each way. Peter estimated that the one way door-to-door travel time would be five to six hours. As such, we find that the trial court did not ignore the door-to-door travel time. Moreover, unforeseen weather and mechanical delays are consequences of all travel, international or domestic, and regardless of the mode of transportation.

¶ 124 Peter also faults the trial court for referencing the parties' travels when they were dating and during the time after they were married before Cindy moved to Chicago. Peter asserts that this prior travel is distinguishable because it occurred when the parties were younger, he did not have business responsibilities as he has now, and the parties did not have children who themselves have commitments to school and extracurricular activities. Moreover, he states that his current position as CFO of KOS Services is a full-time position requiring his presence in the office at least 40 hours per week and he cannot accomplish all of his daily duties working remotely. We note that the trial court referenced the parties' previous travels between Toronto and Chicago to demonstrate that Peter had the financial resources to travel on a regular basis between the two cities. In any event, contrary to Peter's argument, the evidence was relevant to Peter's ability to travel between the two cities given his repeated claims that he lacks the flexibility to travel. While Peter is older and the parties do have children, Peter is working for the same company. And while Peter and Hussain suggested that Peter's business responsibilities increased since he was first hired by KOS Services, the trial court had before it conflicting evidence regarding his title at the time he was hired. Cindy testified that Peter was hired as CFO. Peter and Hussain testified that Peter was hired as "head accountant," but admitted they testified during their depositions that Peter was hired as the CFO. Moreover, Peter himself acknowledged that he had "some flexibility" in setting his hours and that the hours he works are at his discretion, "within reason." We therefore reject Peter's claim that the trial court's finding regarding this factor is against the manifest weight of the evidence.

¶ 125 The tenth factor concerns minimization of the impairment to a parent-child relationship caused by a parent's relocation. 750 ILCS 5/609.2(g)(10) (West 2016). The court found that the impairment to Peter's relationship with the children would be minimized given the liberal

parenting time granted to Peter and the ease in traveling between Chicago and Toronto. Moreover, while the court recognized that electronic communications is not the same as face-to-face contact, it found the availability of electronic communications would give the children "unfettered electronic access to their father" and minimize the impairment of the parent-child relationship.

¶ 126 Peter argues that his relationship with the children will be "substantially and irreparably" impaired if relocation is allowed because he will miss out on many significant events in the children's lives. He also contends that electronic communication such as FaceTime and Skype is not a replacement for in-person parenting time. Of course, the legislature foresaw that relocation would cause some impairment to a parent-child relationship or it would not have directed the trial court to consider the minimization of the impairment as a factor in its analysis. The trial court did so consider and made efforts to minimize this impairment by providing Peter with parenting time on alternating weekends, during the school year on weekdays with advance notice to Cindy, on holidays, and during the children's summer, winter vacation, and spring vacation. In addition, to facilitate communication between the parents, the trial court directed each parent to give the other his or her email address and one telephone number. The court also ordered the parties to use a shared Google calendar for all child-related matters, including education, medical, dental, and travel and provided access for both parties to the children's educational and health records. And while Peter voices concern that Cindy will not keep him up-to-date or seek his input with regard to significant issues affecting the children's well-being, the allocation judgment, as noted above, provides a mechanism to resolve disputes that arise between the parents as to any provisions of the allocation judgment. We also note that the trial court recognized that electronic communication is not a replacement for in-person parenting time, but

recognized that it was a tool that would allow for contact between Peter and the children at times when face-to-face contact was not possible. Accordingly, the trial court's finding regarding the tenth factor is not against the manifest weight of the evidence.

¶ 127 The eleventh factor concerns any other relevant considerations bearing on the children's best interests. 750 ILCS 5/609.2(g)(11) (West 2016). The trial court did not expressly address this factor and Peter does not expressly identify any other relevant considerations bearing on the children's best interests that the trial court did not already consider.

¶ 128 In short, the hotly-contested nature of this case underscores the deferential nature of our review. The trial court had discretion to evaluate the facts, apply the section 609.2(g) factors, and reach a decision. The trial court listened to the testimony and then reasonably and carefully applied the applicable law to the facts. In light of the "strong and compelling" presumption favoring the trial court's result (*Eckert*, 119 Ill. 2d at 330), we conclude that its decision is not against the manifest weight of the evidence. We therefore affirm the trial court's decision to grant Cindy's motion for relocation.

¶ 129 4. Establishment Clause

¶ 130 Peter next challenges aspects of the Allocation Judgment entered by the trial court on January 4, 2019, pertaining to the parties' decision-making responsibilities in the areas of religion and education. The Allocation Judgment sets forth the court's findings, including that "[t]he parties agree and acknowledge that both are fit and proper persons to be equally allocated significant decision-making responsibilities regarding issues of long-term importance to the life of their minor children." The Allocation Judgment goes on to detail the parental responsibilities in the areas of education, health, religion, and extracurricular activities. With respect to the area of religion, the Allocation Judgment provides, "The children have been baptized in the Greek

Orthodox faith, Cindy was baptized in the Catholic faith and Peter is not currently involved or practicing in any religion. CINDY shall have sole decision making regarding all religious issues and religious education." With respect to school choice, the Allocation Judgment provides, "The Court found for the reasons on the record that the Court's choice of schools for the children, in order, shall be the Country Day School, followed by the Pope Francis School. Any additional decisions relating to the choice of schools shall be made jointly."

¶ 131 Peter contends that the Allocation Judgment violated the establishment clause of the United States Constitution (U.S. Const., amend. I) by: (1) granting Cindy sole decision-making authority over religion; and (2) prioritizing a religious school over a public school.

¶ 132 At the outset, we note that Peter did not object to the provisions in the Allocation Judgment granting Cindy sole decision-making authority over religion or prioritizing the children's education. The December 14, 2018, order granted Cindy's petition to relocate the parties' children from Illinois to Canada, noting, among other things that Cindy's preferred Canadian school is the Country Day School. The December 14, 2018, order also adopted the GAL's proposed allocation of parental responsibilities except with respect to the decision-making authority over the area of religion, and, with some minor exceptions, adopted the GAL's parenting schedule. On January 2, 2019, the trial court continued this matter to January 4, 2019 "for entry of *nunc pro tunc* allocation judgment to 12/14/18." On January 4, 2019, counsel for both parties, the GAL, and the court met to "discuss[]" the Allocation Judgment. At the conclusion of that hearing, the trial court entered the Allocation Judgment *nunc pro tunc* to December 14, 2018. At no point did Peter object to the provisions pertaining to religious decision making or educational prioritization. As a general rule, arguments not raised at the trial court level are forfeited and cannot be raised for the first time on appeal. *Village of Roselle v.*

Commonwealth Edison Co., 368 Ill. App. 3d 1097, 1109 (2006). Peter therefore forfeited these claims.

¶ 133 Peter responds, however, that he had no opportunity to object "to the priority established for the children's education" because the court "unexpectedly and *sua sponte* made this ruling on January 4, 2019, despite specifically continuing this matter only for 'entry of *nunc pro tunc* allocation judgment to 12/14/18.' " We disagree. As noted above, the priority of schools was no secret. It is clear from the December 14, 2018, relocation order that the schools of choice were Country Day School and Pope Francis School and that Country Day School was the preferred choice. Peter also asserts that in a non-jury proceeding, a litigant may forgo filing a post-trial motion and may assert as error grounds raised for the first time on appeal. Ill. S. Ct. R. 366(b)(3)(ii) (eff. Feb. 1, 1994); *In re Marriage of Steadman*, 283 Ill. App. 3d 703, 712 (1996). Even so, we find unpersuasive Peter's claim that the provisions at issue violate the establishment clause.

¶ 134 The establishment clause of the first amendment of the United States Constitution prohibits "state and federal action 'favoring the tenets or adherents of any religion or of religion over nonreligion.' " *People v. Falbe*, 189 Ill. 2d 635, 645 (2000) (quoting *McDaniel v. Paty*, 435 U.S. 618, 638 (1978) (Brennan J., concurring, joined by Marshall, J.)). In determining whether government action offends the establishment clause, courts apply the three-part test established in *Lemon v. Kurtzman*, 403 U.S. 602 (1971). Under *Lemon*, to pass constitutional muster, government action must have a secular purpose, its principal or primary effect cannot advance or inhibit religion, and it must not foster excessive government entanglement with religion. *Lemon* 403 U.S. at 612-13.

¶ 135 Peter claims that the trial court's ruling violates the first prong of the *Lemon* test because

it has no secular purpose. Peter claims that "[t]o award a parent sole decision making authority over religion and directing that the children attend a religious school under these circumstances 'is to conclude that providing a religious environment *per se* is beneficial to a child's welfare.' [Citation.]" We disagree. "The Court has invalidated legislation or governmental action on the ground that a secular purpose was lacking, but only when it has concluded there was no question that the statute or activity was motivated wholly by religious considerations." *Lynch v. Donnelly*, 465 U.S. 668. 680 (1984). When we consider the governmental action against that requirement, we conclude that Peter has not shown a secular purpose is lacking or that the government action was motivated wholly by religious considerations. Rather, the more reasonable conclusion is that the purpose of the court's ruling was to promote the well-being of the minors by minimizing disputes between the parties and provide the best educational opportunities for the children. Indeed, the court's ruling promotes many of the secular purposes set forth in the Act, including "protect[ing] the children from exposure to conflict," "ensur[ing] predictable decision-making for the care of children," "avoid[ing] prolonged uncertainty by expeditiously resolving issues involving children," and "facilitate[ing] parental planning and agreement about the children's upbringing." 750 ILCS 5/102 (West 2016).

¶ 136 Peter also claims that the court's ruling fails the second prong of the *Lemon* test because its primary effect is to advance religion. In this regard, Peter argues that by granting Cindy sole decision-making authority over religion and prioritizing a religious school, the court effectively punished him for having his own religious preferences and placed him in a situation where he must either change his beliefs or lose any decision-making authority with respect to religion or education. Again, we disagree. The primary effect is not to advance religion, but to minimize disputes between the parties and provide the best educational opportunities for the children.

Moreover, contrary to Peter's position, the trial court did not prioritize a religious school. If it prioritized any school, it was Country Day School, a private, non-religious school.

¶ 137 Finally, Peter states that it is unnecessary to address the third prong of *Lemon* because the court's ruling fails the first two prongs of the *Lemon* test. However, as noted above, we disagree. Peter goes on to suggest that the court's ruling blurred the line between church and state, entangling the two, because religion is a private matter for the individual and the family. However, Peter's failure to develop this argument in any detail results in forfeiture. Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017) (providing that an appellant's brief must include "[a]rgument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on"); *In re Jose A.*, 2018 IL App (2d) 180170, ¶ 44.

¶ 138 Accordingly, we reject Peter's claim that the trial court's ruling constituted a violation of the establishment clause.

¶ 139 5. Conformation of Allocation Judgment

¶ 140 Finally, Peter argues that the trial court erred in refusing to grant his motion to conform the Allocation Judgment *nunc pro tunc*. We agree.

¶ 141 A trial court may modify its judgment *nunc pro tunc* at any time to correct a written record of a judgment so that it conforms with the judgment in fact rendered by the court. *Hirsch*, 135 Ill. App. 3d at 954. The correction must be based on some note, memorandum, or memorial paper contained in the records of the court. *Hirsch*, 135 Ill. App. 3d at 954. Moreover, the power is limited to entering into the record something which was actually done and the alleged error sought to be corrected must not be the result of deliberate judicial reasoning and determination, but rather be clerical in nature. *Hirsch*, 135 Ill. App. 3d at 954.

¶ 142 Applying these principles to the facts before us, we find that the trial court erred in

refusing to correct the allocation judgment *nunc pro tunc*. As noted previously, on December 14, 2018, the trial court entered an order granting Cindy's petition and finding by a preponderance of the evidence that relocation from Illinois to Canada is in the children's best interests. With respect to allocating parental responsibilities and parenting time, the court's order provides in relevant part as follows:

> "2. With regard to the decision making, the Court adopts the GAL's proposed parental allocation judgment except the [*sic*] Cindy shall have sole decision making authority over the area of religion with the children continuing to be raised in the Christian faith.
>
> 3. The Court adopts the GAL's parenting schedule but directs the Parties to work to work together to make accommodations for both American and Canadian Thanksgiving and to provide for the differing school schedules in Canada as opposed to the United States.
>
> * * *
>
> 5. This Court reserves jurisdiction over all issues relating to parental decision making and parenting time."

On January 4, 2019, after counsel for the parties, the GAL, and the court met to discuss the allocation judgment, the court entered the Allocation Judgment *nunc pro tunc* to December 14, 2018.

¶ 143 When the parties returned to court on January 14, 2019, for the hearing on Peter's motion to stay, Peter's counsel informed the court that they had that morning discovered an "error" in the Allocation Judgment, as "something got changed in that judgment without our notice." The court instructed the parties to "[c]ome back in if there is an issue." On January 29, 2019, Peter

filed a motion to conform, alleging that portions of the Allocation Judgment entered *nunc pro tunc* to December 14, 2018, did not reflect the court's stated and intended ruling. Specifically, Peter alleged that: (1) Article I, ¶ 2(e) awarded Peter "two (2) non-consecutive seven (7) day periods of summer vacation," which reduced the four weeks Peter had been given in the GAL's proposed judgment to two weeks; and (2) Article IX of the GAL's proposed judgment retaining the court's jurisdiction was deleted in its entirety. Peter asked that the court enter a corrected allocation judgment *nunc pro tunc* to December 14, 2018, to conform that ruling with the Allocation Judgment in fact rendered by the court. Cindy filed a response in which she admitted that Article I, ¶ 2(e) contained an error and "should be corrected," but denied error as to Article IX. During the March 4, 2019, hearing on Peter's motion, Cindy's counsel repeated her argument that Article I, ¶ 2(e) should be corrected because it was "merely a typo in the judgment that was entered." In addition, with respect to Article IX, the court itself stated that it "had a problem" with it not having jurisdiction over this case upon the children's relocation to Canada.

¶ 144 Nevertheless, despite the agreement between the parties that Article I, ¶ 2(e) should be corrected and despite the court's own voiced concern about not retaining jurisdiction over this matter upon the children's relocation to Canada, the court denied Peter's motion. We find that the Court's refusal to correct the clear and admitted mistakes in the January 4, 2019, Allocation Judgment and conform the judgment *nunc pro tunc* to the December 14, 2018, order constituted error. Indeed, it is telling that Cindy makes no reference whatsoever to this argument in her brief, thereby effectively conceding Peter's position. See *Macknin v. Macknin*, 404 Ill. App. 3d 520, 528 (2010) (noting that an appellee's failure to respond to an argument raised in the appellant's brief may constitute a concession). Accordingly, we reverse that portion of the trial court's judgment denying Peter's motion to conform and remand the matter to the trial court to

enter a corrected allocation judgment *nunc pro tunc* to December 14, 2018, reflecting that Peter is entitled to two separate two-week periods of summer parenting time (for a total of four weeks) and that the trial court retains jurisdiction over the matter.

¶ 145 III. CONCLUSION

¶ 146 For the reasons set forth above, we reverse that portion of the trial court's judgment denying Peter's motion to conform and remand the matter to the trial court to enter a corrected allocation judgment *nunc pro tunc* to December 14, 2018, in accordance with this order. We affirm all other aspects of the judgment of the trial court, including its finding that relocation from Illinois to Canada is in the children's best interests and granting Cindy's petition in that regard.

¶ 147 No. 2-18-1028, Affirmed.

¶ 148 No. 2-19-0170, Reversed and remanded.