2019 IL App (2d) 190126-U
No. 2-19-0126
Order filed September 19, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE of KATHLEEN JOHNSON,	)	Appeal from the Circuit Court
	)	of Du Page County
Petitioner-Appellee,	)	
	)	
and	)	No. 16-D-392
	)	
ADAM JOHNSON,	)	Honorable
	)	Robert E. Douglas,
Respondent-Appellant.	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: Respondent failed to establish that the trial court's grant of sole decision-making authority regarding the parties' minor children to petitioner was against the manifest weight of the evidence, and the trial court's order setting a parenting schedule was not contrary to the manifest weight of the evidence nor an abuse of discretion.

¶ 2 I. INTRODUCTION

¶ 3 Petitioner, Kathleen Johnson, filed a petition for dissolution of marriage. The circuit court of Du Page County entered judgment for dissolution of marriage on August 17, 2018, ordering various conditions related to that judgment. Respondent, Adam Johnson, appeals

certain aspects of that order. Specifically, he contests the grant of sole decision-making authority concerning the parties' children to petitioner and the parenting schedule set by the trial court. For the reasons that follow, we affirm.[1]

¶ 4 II. BACKGROUND

¶ 5 The parties were married in July 2007. Two children were born of the marriage, J.J. in 2011 and W.J. in 2014. They separated on March 1, 2016, and petitioner filed her petition for dissolution that same day. During the separation, petitioner resided at her parents' home in Wheaton. Respondent remained in the marital residence, which was also in Wheaton. At the time the trial began, J.J. was six years old and W.J. was three years old. A hearing was held over the course of four days between December 1, 2017, and May 31, 2018, during which the following evidence was adduced.

¶ 6 Meghen Williams, the guardian *ad litem* (GAL) was the first witness. She testified, on examination by the court, that she "conducted an investigation with regard to the [children] and the best interest of the [children] using the best interest standard." She first opined that she believed the current parenting schedule was appropriate. Under this schedule, the minors resided

[1] This appeal was dismissed on July 11, 2019, for lack of jurisdiction in light of a pending postjudgment motion in the trial court. On August 5, 2019, respondent moved to reinstate the appeal and supplement the record on appeal with the trial court's July 30, 2019, ruling on the postjudgment motion. Respondent also stated that he withdraws the arguments in his appellate brief with respect to the holiday parenting schedule in light of the trial court's July 30, 2019, order resolving the issue. We therefore find good cause for issuing our decision beyond the 150-day deadline (Ill. S. Ct. R. 311(a)(5) (eff. July 1, 2018)) and disregard respondent's challenge to the holiday parenting schedule.

with petitioner primarily, and respondent had parenting time on alternating weekends as well as Tuesdays and Thursdays from after school until 7 p.m. She explained that this schedule had been in place since the parties had separated and had been "working well for the children." She testified that petitioner had "been historically the primary caretaker for the children." Williams testified that she met with the parents on multiple occasions and that she met with the minors and each parent together.

¶ 7 On cross-examination by petitioner, Williams testified that she recommended that sole decision-making authority regarding the minors be vested with petitioner. She based her recommendation on the parties' inability to communicate effectively. They had been "unable to make decisions regarding the children." She related that she had seen "messages between the parties wherein dad tells mom that he will never trust her" and "where he tells her we're going to have a 16-year war regarding the kids."

¶ 8 Williams was asked to describe some of the instances where the parties were unable to reach a joint decision regarding the minors. One such instance concerned J.J. His teacher recommended that he participate in a reading program at school. Petitioner wanted to "go along with the teacher's recommendation." Respondent did not agree and asked for more information from the school. The GAL recommended that J.J. participate in the program. Despite the involvement of the GAL and despite the school providing respondent with more information, respondent refused to allow J.J. to participate in the program. As the parties could not agree, the school would not let J.J. participate. On another occasion, which the GAL characterized as "more minor," the parties were unable to divide the children's clothing. They brought all the clothing to the GAL's office, and she divided it.

¶ 9 The GAL did not recommend equal parenting time for the parties because she had "a concern about dad's behavior when he's with the children." She explained, "Dad has had a history of telling [J.J.] about how much he misses him when he is not with him for the parenting time, [and] that mom is the one making [J.J.] leave dad's to go back to mom's for the start of her parenting time." She noted that respondent "has shown [J.J.] the parties' wedding video," and "talked about the parties' prior relationship with [J.J.]." She believed that respondent had involved J.J. "in the case too much." The GAL reported that J.J. has stated to his counselors that he wanted a say in what the parenting-time schedule would be and stated that she did not believe this is the sort of thing "that would naturally come from a child of [J.J.'s] age if he was not being influenced by dad." J.J.'s counselors have reported that J.J. "feels that he has to help dad feel better because dad is so sad about the breakdown of the relationship."

¶ 10 Williams stated that she spoke to two of J.J.'s counselors—Matthew Rome and Kate Juozaitis. Juozaitis told Williams that J.J. had had anxiety during transitions between the parties' parenting times. Williams testified that "counselors have attempted to put restrictions on dad's behavior with [J.J.] during those transitions, that we're not going to have long, drawn-out goodbyes."

¶ 11 Williams opined that respondent was a good parent. He has been involved in J.J.'s schooling and coached soccer. She believed that it was in the children's best interests that he continue to be involved with them.

¶ 12 Williams reviewed a communication between the parties made through the Talking Parents website.[2] This website provides a message portal where parents can log in and leave

[2] Talking Parents is a website designed to facilitate and document communications between co-parents. See https://talkingparents.com/home (last visited September 11, 2019).

messages for each other. One such exchange involved the story of Noah's Ark. J.J.'s maternal grandfather told J.J. the story, and respondent told J.J. that "it was a lie," that it was "not a historical event," and that it was "scientifically impossible." The GAL explained that her concern did not involve differences in biblical interpretation, but rather that respondent told J.J. his maternal grandfather was lying to him. Further, respondent was aware that petitioner's family had strong religious beliefs and it was important to petitioner that she pass them down to the minors.

¶ 13 Williams testified that the minors and petitioner were currently living in petitioner's parents' house. When the minors or petitioner call that house "home," respondent corrects them and says that the marital residence is their home. Williams recounted incidents where respondent would show up while petitioner was exercising parenting time at church or extracurricular activities. This was confusing to J.J. because J.J. was unsure who he would be leaving with, which led to "difficult goodbyes with [respondent]." In one such situation, J.J. ran away and respondent had to "chase him down." She added, "There were a lot of tantrums from [J.J.]." Williams opined that respondent placed his own desire to spend time with the minors above their emotional well-being.

¶ 14 Respondent would "often make plans to take the boys somewhere or have an event with them and would invite [petitioner]." He would tell the minors this, "which would lead to the boys to be disappointed when [she] was not joining them." Williams testified that J.J. loves and cares for both petitioner and respondent.

¶ 15 On cross-examination by respondent, Williams agreed that the parties currently had no disagreement about J.J.'s participation in a reading program. Williams acknowledged that she did not know how many times that respondent told J.J. that he missed him. She agreed that if a

father told a son he missed him on a single occasion it would not be problematic. She did not know "off the top of [her] head" how many times respondent showed the wedding video to the minors. She was concerned about how respondent had involved J.J. in the case and questioned whether J.J. would be able to articulate his feelings on how much parenting time he wanted with his father.

¶ 16 Williams agreed that the Talking Parents message between the parties about the Noah's Ark incident did not contain a statement by respondent that J.J.'s grandfather had lied to him. However, it did contain a statement that the story was untrue, which caused J.J. to be upset and ask why his grandfather would tell him something untrue. Williams was aware that respondent had taken the children to the restaurant where he proposed to petitioner, though she did not know how many times. She testified that this was "at the beginning of this matter." Another Talking Parents message documented a disagreement about how much sleep the minors needed.

¶ 17 Williams agreed that the fact that the parties lived near each other ("about five minutes apart") would not be an impediment to ordering equal parenting time. She believed that both parties were involved in the children's lives. Further, J.J. has expressed a desire to spend time with both parents; W.J. was too young to express such an opinion. However, she did not agree that the age of the minors weighed in favor of an order of equal parenting time, since young children "need stability," "need a schedule," and "need to have a home base." She opined that "younger children need more stability, and so they need one primary home."

¶ 18 Williams further opined that the parties' inability to communicate weighed against equal parenting time. She agreed that emails between the parties had not been provided to her. Further, some Talking Parents messages had not been provided to her as well. Williams conceded that there were "some examples of the parties communicating effectively." She did

not believe that the parties' communication had improved as the case progressed. She did note that the parties had been communicating better about parenting time since a court order concerning parenting time was entered. However, since that order was entered, both parties have reported problems with J.J. during transitions. Juozaitis reported to Williams that J.J. had "calmed down." J.J. told Juozaitis, Rome, and respondent that he wanted to spend more time with respondent. Williams was unaware of any problems with W.J. during transitions.

¶ 19 Williams also spoke to Mary Jackson Lee, who counseled the parties rather than the minors. She spoke to J.J., who never said anything that led Williams to believe he did not want to spend time with respondent. Respondent continues to reside in the marital residence. She did not believe either party had "significant psychological issues," and she did not request a psychological evaluation. She did not believe respondent was a serious danger to the minors such that his parenting time should be restricted. The parties had been complying with the established parenting-time schedule. Respondent does homework with J.J. and attends school conferences. Respondent volunteers at J.J.'s school. The parties sometimes attend conferences and counseling at the same time. Outside of the reading program for J.J., Williams was not aware of anything respondent had "refused to participate in that Williams had encouraged him to do." She felt respondent wanted to participate in decision making regarding medical, religious, educational, and extracurricular issues.

¶ 20 Since Williams was appointed, there had not been any issue regarding vaccinations. However, previously, there was a dispute. Williams stated that it was her understanding that petitioner now agreed to have the children vaccinated. Williams was aware of some disputes regarding signing the children up for extracurricular activities, as they were limited to doing so only during their own parenting time by the court and not allowed to be present during the other

parent's time. The GAL stated that she was in favor of removing this restriction regarding extracurricular activities. She noted, however, that when both parties went to J.J.'s school regarding the reading program, they became involved in a conflict in front of J.J. She added, "I think there's still a lot of conflict between the parties that does happen in front of the children."

¶ 21 Although respondent generally would not participate when petitioner would "say grace with the boys prior to meals" and though he "was not supportive of religious Christmas carols or Christmas books with religious themes," he did compromise regarding the boys attending church during the marriage. After the separation, petitioner started taking the minors to a new church. According to respondent and Jackson Lee, this caused J.J. some emotional distress. During Sunday school, "they told a story about stoning," which was "very upsetting" to J.J. He had nightmares. Petitioner "decided not to send [J.J.] to Sunday school there anymore." Respondent has occasionally taken the children to church when J.J. requested it.

¶ 22 Williams testified that religion was "more important to mom that it is to dad." She believed petitioner should have exclusive decision-making authority pertaining to religion, though she believed that petitioner should consult with respondent on such issues. She did not believe that a parenting coordinator or mediator would be helpful on this issue because "[t]he parties are so far apart on this." Further, the parties did not have the financial resources "to be running to a parenting coordinator or a mediator every time we have a dispute." Respondent is in favor of using a parenting coordinator. Williams recommended the Peace Program (see https://www.dupageco.org/Community_Services/Family_Center/1627/ (last visited August 19, 2019)) and individual counseling for the parties.

¶ 23 Petitioner selected Rome as a counselor without consulting with respondent. Rome was terminated as a counselor, in accordance with Williams's recommendation, because he was

serving as a counselor for the parties rather than for J.J. Rome felt that respondent should have more parenting time and suggested equal parenting time for the parties. The second counselor for J.J., Juozaitis, was suggested by the trial judge. Juozaitis did not involve the parties as much and had some success counseling J.J. J.J. was still seeing Juozaitis at the time of the hearing. Juozaitis had some interactions with the parties and recommended equal parenting time.

¶ 24 Juozaitis recommended Jackson Lee to the parties, and Jackson Lee served as their counselor. Her involvement was intended to improve communication between the parties. Jackson Lee also recommended equal parenting time. Jackson Lee had 10 sessions with the parties. Williams acknowledged that her notes from a conference call with Jackson Lee and Juozaitis contained a notation stating that "neither party is better than the other." Another note indicates that Jackson Lee reported to Williams that both parties have the children's "best interest in mind." Williams clarified that this is what Jackson Lee believed. Another states that respondent "accepts Marriage is done." Jackson Lee opined that both parties were excellent parents. Jackson Lee reported that respondent told her that J.J. wanted to be with him. Elsewhere, it is noted that J.J. has struggled with transitions but "has improved." Jackson Lee recommended equal parenting time because "she thought this was going to balance out the power in the parties' relationship."

¶ 25 Williams's notes also contain a statement indicating that Rome reported that J.J. was "crazy about both of his parents." Rome also stated that both parties were loving parents. Rome recommended equal parenting time and stated that J.J. misses respondent. Rome opined that J.J. was saying this "on his own," meaning "it didn't sound like those were other peoples' [*sic*] words."

¶ 26 Williams stated that when she first made recommendations regarding decision making, which was about a month before the trial began, she recommended that petitioner have sole decision-making authority on religion and respondent have sole authority regarding medical issues. She opined that decision-making authority on educational and extracurricular issue be joint. Some of the communications provided to Williams by petitioner indicated that they could jointly address such issues effectively. Williams believed that the parties would comply with an order establishing joint-parenting authority and any requirement that they consult with each other.

¶ 27 On recross-examination by petitioner, Williams explained that the reading intervention contemplated for J.J. involved him meeting with a reading specialist before the school day started for about 15 to 20 minutes per day. Respondent did not agree to allow J.J. to participate in the program. Only after a petition was filed and the parties went to court did respondent allow J.J. to participate in the program, approximately two months after the program was first recommended by the school.

¶ 28 Williams explained that she did not find it inappropriate for a parent to tell a child that he misses him. However, in this case, this was not what was happening; she explained:

> "My impression was that his was a continuing thing that dad was saying to [J.J.: ']Oh, I haven't seen you all day. I miss you so much. I miss you. You're not here. You know, the house is so lonely. I miss you so much.['] And because of these continuing comments from dad to [J.J.], he reported to me that [he] felt like he needed to take care of dad and [he] was someone who could fix dad's sadness"

She stated that this was not a healthy thing for a six-year-old child to be feeling.

¶ 29 Williams noted that Jackson Lee believed respondent had accepted the divorce. She added that this was "fairly recently," [and] "within the last few months." Respondent "has been totally opposed to the divorce." He has "routinely sent messages to [petitioner] questioning her decision to have the divorce [and] asking her to get back together." Recently, J.J.'s counselor, Juozaitis, told the parties that it was time to tell J.J. about the divorce. Juozaitis felt respondent was "stalling." They had a "long debate" as to what to tell J.J. and never were able to come to an agreement. Eventually, Juozaitis told J.J. about the divorce.

¶ 30 Williams related that early in the separation, respondent reached out to petitioner's friends, family, and pastor, questioning petitioner's faith and how she could go forward with a divorce in light of her religion. He wrote in messages to petitioner that "the children will come to resent her and her faith because she broke up the family." Respondent stated that he looked forward to the day that he could show the minors the correspondence and court documents "so they can see what actually happened." Respondent wanted to tell the minors the petitioner wants a divorce from him, and that is why this is happening. He said petitioner is ruining the children's lives.

¶ 31 Though there are examples of the parties agreeing on certain things, Williams had not "seen any communication between the parties where they have been * * * able to effectively communicate about anything significant regarding the children." Despite recommending joint decision making, Jackson Lee told Williams that the parties were unable to communicate effectively. Williams spoke with Juozaitis the week before the trial. Juozaitis agreed with the proposed parenting schedule. Juozaitis agreed that the parties had trouble communicating. Williams added that she did not ask Juozaitis about placing sole decision-making authority with petitioner, as she "still had six hours of e-mails to go through."

¶ 32 Williams explained that her recommendation regarding decision-making authority had changed for multiple reasons. First, petitioner agreed to have the children vaccinated in accordance with the recommended schedule. Moreover, respondent indicated that he did not want sole decision-making authority regarding medical issues. Second, Williams became aware of an incident where speech therapy was recommended for W.J. and he never received it as respondent declined to provide some needed financial records to establish his eligibility. Thus, like the reading intervention recommended for J.J., the minors were not given recommended assistance due to the parties' inability to effectively co-parent.

¶ 33 Jackson Lee has never met the minors. Her recommendation for equal parenting time was based on what was best for the parents. Rome explained that his default position is equal parenting time as long as there are no indications of abuse or neglect. Williams did not attribute much weight to either opinion in forming her recommendation. She recommended J.J. remain in the public school that he had been attending.

¶ 34 Williams opined that petitioner was more likely to consider respondent's input than respondent would be to consider hers. She had no objection to respondent being involved in the children's activities. Jackson Lee's records contain a notation indicating that respondent "had a lot of animosity" toward petitioner.

¶ 35 On recross-examination by respondent, Williams acknowledged that Rome believed that no one was "feeding" J.J. the notion that he missed respondent. She agreed that incidents more remote in time were entitled to less weight. She explained that she changed her opinion about decision-making authority regarding medical issues because, in part, of petitioner's change regarding vaccinating the minors and respondent's handling of the speech-therapy issue (which occurred in 2016).

¶ 36 Williams spoke with petitioner about joint and sole decision making, though she did not explain the significance of those concepts. Regarding respondent's feelings toward petitioner, "any animosity was improving." On recross-examination by petitioner, Williams testified that she had no reason to believe that petitioner did not understand what "sole decision making" meant.

¶ 37 Petitioner next testified that she was 37 years old at the time the trial commenced. She and respondent have been separated since about March 1, 2016. She currently resides with her parents and her children. Petitioner is a self-employed piano teacher. In September 2017, petitioner asked respondent for some Tupperware that was in the martial residence to use for the children's lunches. He stated that he did not trust petitioner and that he would not give it to her until the property division was complete. From the time of her first son's birth, petitioner's "primary occupation" was that she "stayed at home with the boys and * * * took care of them." Respondent was employed by the county until 2015. Respondent graduated from Harvard. Petitioner has been the primary caregiver for the children. She prepared most of the children's meals and did most of the shopping. She was primarily responsible for "managing the children's bedtime and wake up routines," as she was for bathing them. As for "[w]aking up with the children in the middle of the night if they didn't sleep," petitioner testified that both parents did so. She also primarily took care of diaper changing, brushing teeth, arranging activities and play dates, and toilet training with respect to J.J. Petitioner testified that she was primarily responsible for disciplining the minors, socializing them, and helping them grow. She has also been primarily responsible for "raising the children in their faith and bringing them to church."

¶ 38 Petitioner testified that she tries to encourage the minors to have a positive relationship with respondent. She "promotes" the time they spend with him and tells them that they "are

going to have so much fun." She has offered respondent extra parenting time when she was unable to take care of the minors. She believed the minors had a positive relationship with respondent. She also felt that respondent has attempted to undermine her relationship with the children. For example, early in the separation, petitioner came to the marital house while respondent was having parenting time with the minors. She observed respondent playing one of the parties' wedding videos on the television on two occasions. This occurred on subsequent occasions as well. Respondent had never shown the minors the wedding video prior to the parties' separation. Respondent also took the minors to the restaurant where he proposed to petitioner.

¶ 39 Petitioner testified that through the majority of the separation, J.J. has had difficulty transitioning between petitioner's care and respondent's care. She acknowledged that "it's gotten better very recently." Petitioner described some of the problems that arose during transitions:

> "Running away from me in order to get in the house I, essentially—there has been [*sic*] times when I have just had to pick him up and he is kicking, hitting, digging his nails into me, pulling my hair, just doing whatever he can, clinging to dad."

Respondent would not assist her in dealing with J.J. during such transitions. Sometimes respondent would show up when petitioner took the minors to church, which caused J.J. confusion and anxiety regarding which parent he was supposed to leave with. Every time respondent did this, it led to a difficult transition, and respondent never helped J.J. "constructively deal with this emotional outburst."

¶ 40 Petitioner has worked with J.J. regarding money management and saving money. Petitioner testified that respondent has undermined this by facilitating a purchase of a toy for

which J.J. had to pay respondent back out of his savings. Petitioner disciplines the minors by giving them time outs.

¶ 41 Respondent has been late returning the children to petitioner most of the time at the end of his parenting time. Petitioner has tried to speak to respondent about this, but, '[u]sually, he doesn't respond." Typically, the children make "face-time calls every night with the parent they're not with." Petitioner believed the calls were "too long." She believed the calls should continue, but with "a lot more structure" and "not be as lengthy."

¶ 42 Petitioner testified that the parties had discussions regarding how to tell J.J. about the divorce. Respondent wanted to blame petitioner for the divorce and stated that petitioner should "tak[e] ownership over [her] actions for the divorce." They never reached an agreement as to how they would tell the minors about the divorce.

¶ 43 In the fall of 2017, a teacher recommended J.J. participate in a reading intervention program. Petitioner agreed with this recommendation, but respondent did not. Petitioner testified that they "just, essentially, disagreed the whole time." On one document in which the parties communicated about this subject, respondent wrote, "Frankly, my hope would be for my children's academic experience to have as little in common with you as possible given the end result." Later, petitioner wrote, "When [J.J.] is with us you can stop saying things like 'you are not going to do this shit' in front of him." Petitioner points out that while J.J. likely did not understand the word "shit," J.J. "could tell from [respondent's] comment that things were not good and [he] started to get worried and asked questions." Subsequently, she wrote, "[I]t's completely inappropriate to yell at me or say things like give me the list you fucking bitch while [W.J.] could see you in my face yelling and swearing at me and he heard it all."

¶ 44 The parties have also had disagreements about the amount of sleep the minors need. In one Talking Parents message, petitioner asked respondent "to limit his time during face-time calls." Respondent did not respond. Petitioner stated that even when the parties agree on something, there is often conflict about it. Petitioner testified to other disagreements between the parties concerning the minors, on issues such as dental care, clothing, haircuts, transition times, speech therapy for W.J., and religious issues. In one message, respondent wrote, "There is not a doubt in my mind that you would choose to hurt our children in order to prioritize yourself." A message dated August 17, 2017, reads, "I have no respect for you at all. We can discuss that at Mary's all you want." In another, from the same date, respondent writes:

> "You can just never bring yourself to say I'm sorry, I have been a selfish jerk. There always has to be some excuse, some attempt to rationalize it away or make it seem like you are willing to be cooperative even though in practice it's always going to be the way you want it and no one else's feelings matter, certainly not your children's. There is something deeply wrong with you, morally or psychologically or both and I can't imagine how to handle things going forward with such an absolute phony of a person."

Petitioner testified that the joint counseling the parties engaged in with Jackson Lee was unsuccessful. Jackson Lee terminated this counseling because she believed it was pointless.

¶ 45 Petitioner believed she should have decision-making authority regarding the minors. She testified that she was willing to discuss decisions with respondent and give "substantial consideration" to his point of view. She would not make a major decision without consulting respondent.

¶ 46 Respondent reserved cross-examination until he called petitioner in his case in chief.

¶ 47 Petitioner next called respondent. When asked whether the current parenting schedule provided that his parenting time ended at 7 p.m., respondent answered that he believed so, but would have to look at the schedule. He was then shown the order and agreed that was the correct time.

¶ 48 Respondent then called petitioner. She agreed with counsel that respondent would like more parenting time than he has and that he should not have more parenting time with the children than she does. She also agreed that respondent wanted joint decision-making authority. The parenting schedule and respondent's desire for joint authority has been an "ongoing topic of conversation." W.J. has not expressed a desire to spend more time with respondent. J.J. has done so, but petitioner could not say whether this was a genuine desire or simply an attempt to please respondent in light of respondent's comments to J.J. that respondent was sad that J.J. was not with him.

¶ 49 Petitioner agreed that W.J. had no problems during transitions. The children are well adjusted to petitioner's parents' home. The children have their own rooms. When J.J. stays with respondent, J.J. and respondent sleep together. Counsel asked whether petitioner had ever called the police on respondent. She explained that she did in relation to a dispute over personal property. She has never contacted DCFS (the Department of Children and Family Services) about respondent's treatment of the minors. She did not think respondent was a physical threat to the minors. She added, "I do think there has [*sic*] been times when [respondent] has escalated his anger and—I mean, I feel like it would be more taken out on me."

¶ 50 The last time that J.J. had a major problem with a transition was in September or October 2017. Prior to that time, this was an ongoing issue. Respondent's counsel stated, "[s]o it was at that time for whatever reason they improved," to which petitioner replied, "[T]hey were still not

good, though." Respondent sometimes takes the minors to the church the parties had attended during the marriage. During the separation, petitioner started taking the minors to a different church. She did not recall if she discussed this with respondent. J.J. was disturbed by a story he heard in Sunday school about a person being stoned. Sometime after that, petitioner stopped taking J.J. to church. She explained that she stopped because "it was getting conflictual and [J.J.] was having problems and [she] wanted to make sure that [she was] taking steps to kind of ease that." She added that this was not something she wished to go on forever. She does not object to respondent taking the minors to the church they attended during the marriage.

¶ 51 Petitioner testified that Jackson Lee recommended that she get individual counseling. She has not done so. She has not agreed to use a parenting coordinator, and she has not participated in the Peace Program. The parties had engaged in one mediation. Petitioner agreed that while there were communications indicating conflicts between the parties, there were also examples of them working together. However, she did not agree that there were "many" such examples or that they evinced the parties "working well" as opposed to mere agreement. She also stated that these agreements did not concern "really big things," which is where the parties have had "major issues." During December 2017, the parties cooperated successfully regarding J.J.'s dental treatment (on redirect-examination, it was pointed out that the trial began about this time and respondent's behavior toward petitioner changed at that time). On December 11, 2017, petitioner, respondent, petitioner's parents, and the minors went to dinner for a joint birthday party for W.J. and petitioner's mother. There were no problems at this dinner. All present went to petitioner's parents' house for cake as well, again with no issues arising. Petitioner testified to other instances of cooperation, including school and extracurricular activities, an illness, and changes to parenting time over the holidays.

¶ 52 When asked about having the minors vaccinated, petitioner stated that they were always vaccinated, but she "did have concerns about it." Respondent's attorney inquired as to whether there was a doctor's appointment when J.J. was two or three years old that petitioner refused to attend because she thought he was going to get vaccinated. Petitioner's attorney objected as to relevance because this purportedly occurred three or four years ago. The trial court overruled the objection. Petitioner stated that this was the only appointment she did not attend and that she subsequently "signed off" on other vaccinations. She stated, "I don't think so" when asked whether she had any disagreement with vaccinating the minors. She did not object to the GAL's suggestion that the court order the minors to be vaccinated.

¶ 53 Petitioner testified that she moved out of the marital residence in March 2016. Since that time, respondent has purchased and prepared food for the children when it was his parenting time. He has bathed the minors, gotten them ready for bed, disciplined them, and helped them grow.

¶ 54 Petitioner believed that J.J. was a "smart kid" with a "good vocabulary." He is creative with arts and crafts. He has a good understanding of science and nature. However, he has problems expressing his feelings and throws fits.

¶ 55 On redirect-examination (redirect, as respondent reserved cross examination), petitioner testified that she is uncomfortable with J.J. sleeping in respondent's bed on a consistent basis. The church they attended during the marriage was chosen because respondent did not object to it. Nevertheless, he did not attend on a regular basis. After the separation, petitioner selected a church that better represented her beliefs. The incident where J.J. was upset by the story that involved stoning was an isolated incident.

¶ 56 Petitioner testified that she wanted to go to counseling, but could not afford it. The parties' one attempt at mediation was not successful. She did not believe a mediator would be able to bring her and respondent to any agreements.

¶ 57 Petitioner testified that from the time they separated, respondent told J.J. that he did not want the separation and that it was something petitioner decided. Respondent spoke with J.J. about the appropriateness of divorce and separation in the Bible.

¶ 58 Respondent next testified on his own behalf. He stated that he is employed by a wireless company making $80,000 per year. He had recently begun that employment. He works from home, and his hours are "somewhat flexible." His employment has no impact on his parenting time. He did have to travel on one occasion, and he and petitioner arranged to trade parenting time to accommodate this. His job involved only occasional travel. He sought a change in parenting time due to J.J.'s changed school schedule so that his parenting time would begin at 3:30 p.m. and run until 7:30 p.m. on Tuesdays. He also proposed having parenting time from 3:30 p.m. on Thursday through Saturday at 10 a.m. on alternating weekends and until Sunday at 7:30 p.m. on the other alternating weekends. He believed that this schedule would be in the best interests of the minors as he thought they were not spending enough time with him.

¶ 59 Respondent also testified that the parties separated on or about March 4, 2016. J.J. almost immediately began having difficulties with transitions away from respondent. The most recent difficult transition occurred in "late summer [or] early fall." J.J. has improved during transitions and "not had any major outbursts" involving "yelling, screaming, crying, running away, [or] hitting." It seemed to help if he took J.J. somewhere else, such as out for dinner, before the transition. The GAL never witnessed a transition. W.J. never had any difficulties

with transitions. Respondent testified that J.J. was "very smart." The minors are comfortable in the marital home.

¶ 60 Respondent described his own current mental health as "good." He has participated in counseling during the separation, which he said was helpful. Respondent stated that W.J. exhibited no signs of concern; however, J.J. has shown "significant signs of distress and anxiety over the course of the separation." Respondent believes that this has improved over time, but also that the separation is still having a negative effect on J.J. Respondent felt that J.J. should continue in therapy.

¶ 61 Respondent testified that he has done nothing to discourage a relationship between the minors and petitioner. Conversely, he speaks "positively of her to them." He facilitates discussions between the minors and petitioner on FaceTime. He has "always made clear that she is free to attend any of the children's events or activities" that occur during his parenting time. Petitioner has allowed him to have parenting time beyond what was ordered by the court. He believed that parties should have a "right of first refusal" for parenting time when the parent with parenting time was unable to parent the minors for a period of two hours or more. He only agreed to the current schedule because he thought it would be temporary.

¶ 62 Respondent believed that medical decisions should be made jointly, with a parenting coordinator mediating any disputes. In 2017, the parties had no disagreements regarding medical issues. They did disagree about speech therapy for W.J. in the summer of 2016. Respondent testified that he initially favored it while petitioner was unsure. Eventually, they agreed without the assistance of a mediator or parenting coordinator. Respondent believes in "traditional medicine."

¶ 63 Respondent believed that decisions about extracurricular activities should be handled the same way, and he could not recall any disagreements in 2017. Respondent coaches J.J.'s soccer team. He disagreed with the recommendation of the GAL that the parties refrain from attending extracurricular activities during the other parent's parenting time. Respondent felt it was in the minors' best interests that both parents support them. Respondent conceded that this caused some transition issues for J.J. persisting into the summer of 2017.

¶ 64 Respondent also believed that educational and religious decisions should be made jointly, with a parenting coordinator mediating any disputes. He did not oppose religion being part of the minors' lives; however, he stated that he would prefer it if "certain things [were] held off until they're older and able to make decisions and understand things better for themselves." They had some disagreements regarding the church to which petitioner was taking the minors. Respondent testified that, contrary to the GAL's assessment, religion was important to him in terms of what the minors were exposed to and how it would affect their mental health, morality, and world view.

¶ 65 Respondent agreed that he was "pretty upset with [petitioner's] decision to separate from [him] and file for divorce." As a result, he attended counseling from the onset of the separation until the end of 2016. The parties also attended co-parent counseling in summer and fall of 2017. He intended to continue individual counseling with Jackson Lee after the trial concluded. He does not object to participating in the Peace Program, mediation, or having a parenting coordinator. He agreed that, at times, he has let his negative feeling about the divorce get the best of him and communicated with petitioner in an inappropriate manner, such as swearing at her. Petitioner has declined to use a parenting coordinator or mediator. He did not believe that petitioner would consult him "substantively" regarding decisions if she were granted sole

decision-making authority. Respondent testified to additional instances of cooperation between the parties.

¶ 66 Respondent testified that he showed J.J. a video of the parties' wedding in June 2016. This was early in the separation. He explained that at the time, he did not believe the separation would lead to an actual divorce. He stated that he showed J.J. the video in a "misguided[] attempt[] to comfort him." He recalled showing the video to J.J. twice. Respondent stated that he sometimes tells the minors that he misses them. He took the children to the restaurant where he proposed to petitioner because it was a restaurant the family frequented during the marriage and he simply "continued taking them as [they] had taken them before."

¶ 67 Respondent testified that he and petitioner discussed how they would tell the minors about the divorce. He has not spoken to the minors about the divorce outside the terms of the agreement. He has not sought to involve J.J. in the litigation. He never told J.J. to request more time with respondent. J.J. has "often expressed his desire for more time" with respondent.

¶ 68 Respondent disagreed with Williams's assessment that J.J. is of average intelligence. He did not believe that the alleged need for reading intervention was consistent with his assessment of J.J.'s intelligence.

¶ 69 Respondent testified that the problems they had regarding FaceTime concerned petitioner's attempts to limit the time he could speak to the minors. Respondent did not agree that the minors should be paid for individual chores but did not object if petitioner wanted to do that. He never allowed the minors to buy toys with money that petitioner had paid them. Respondent acknowledged that he was sometimes late returning the minors at the end of his parenting time. He explained that the 7 p.m. end time was difficult in that it conflicted with

some of the minors' extracurricular activities. He further acknowledged that J.J. sometimes sleeps in his bed.

¶ 70 On cross-examination, respondent testified that he expected that his job—where he had been employed just over two months—would involve "infrequent travel." His employer told him that his job would involve "some travel, [but] not regular travel and not large amounts of travel."

¶ 71 In Talking Parents discussions, he refers to the house where petitioner and the minors live as petitioner's parents' home. He never refers to it as the minors' home. He acknowledged that in a Talking Parents message, he referred to petitioner's "unilateral decision" to tear his and J.J.'s life apart. He has never told anyone that he is responsible for the divorce. He once told J.J. that he agreed with the Bible to the extent that it said that families should not separate.

¶ 72 Respondent acknowledged that he objected to some of petitioner's requests for vacation time with the minors in summer 2017. After petitioner filed an emergency motion and the GAL intervened, the parties "were able to work out" the summer vacation schedule. In the summer of 2016, the parties signed an agreed order concerning parenting time. Respondent never filed a motion seeking to change this schedule. He acknowledged that, in September 2017, he wrote that "real communication with [petitioner] is impossible because I believe she will always be dishonest."

¶ 73 Respondent acknowledged that there have been disagreements between the parties concerning the amount of extracurricular activities the children were involved in, though he characterized them as "not very significant." Respondent denied that he took the minors to the restaurant where he proposed to petitioner; rather, the restaurant in question was one they went to

when they were dating. He also took J.J. to the hotel where he first told petitioner that he loved her.

¶ 74 Respondent testified that he communicated with the minors through FaceTime in the evenings. Respondent agreed that "half an hour or more" was a reasonable estimate of the length of the calls. Petitioner sometimes asks him to end those calls after a reasonable time (though he was not sure that he believed the amount of time was reasonable). Respondent acknowledged that he wrote some messages in the summer of 2016 that were "pretty harsh" and reflected his anger.

¶ 75 On redirect-examination, respondent identified a number of specific instances during 2017 where he and petitioner successfully cooperated regarding respondent having more parenting time. He acknowledged that he was frustrated by petitioner's attempts to "deny [him] a share in decision making." By this, he meant her petition seeking sole decision-making authority. He explained that his September 2017 message stating petitioner will always be dishonest was in reference to such matters. Respondent stated that though he was upset about the divorce, he now has had some "time and space emotionally" and is "more calm in thinking about it and talking about it." His feelings would not affect his "ability to make decisions regarding the children."

¶ 76 Pertinent here, the trial court granted full decision-making authority to petitioner. It also set a parenting schedule, the details of which will be set forth below. In this appeal, respondent contends that these decisions were error.

¶ 77 III. ANALYSIS

¶ 78 On appeal, respondent raises two main issues. First, he contends that the trial court erred in granting full decision-making authority to petitioner. Second, he argues that the parenting schedule set by the trial court was not in the minors' best interests.

¶ 79 A. DECISION-MAKING AUTHORITY

¶ 80 The trial court granted sole decision-making authority to petitioner. Section 602.5 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/602.5 (West 2016)) codifies relevant factors a court is to consider in addressing this issue, providing, in pertinent part, as follows:

> "(c) Determination of child's best interests. In determining the child's best interests for purposes of allocating significant decision-making responsibilities, the court shall consider all relevant factors, including, without limitation, the following:
>
> (1) the wishes of the child, taking into account the child's maturity and ability to express reasoned and independent preferences as to decision-making;
>
> (2) the child's adjustment to his or her home, school, and community;
>
> (3) the mental and physical health of all individuals involved;
>
> (4) the ability of the parents to cooperate to make decisions, or the level of conflict between the parties that may affect their ability to share decision-making;
>
> (5) the level of each parent's participation in past significant decision-making with respect to the child;
>
> (6) any prior agreement or course of conduct between the parents relating to decision-making with respect to the child;
>
> (7) the wishes of the parents;
>
> (8) the child's needs;

> (9) the distance between the parents' residences, the cost and difficulty of transporting the child, each parent's and the child's daily schedules, and the ability of the parents to cooperate in the arrangement;
>
> (10) whether a restriction on decision-making is appropriate under Section 603.10;
>
> (11) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child;
>
> (12) the physical violence or threat of physical violence by the child's parent directed against the child;
>
> (13) the occurrence of abuse against the child or other member of the child's household;
>
> (14) whether one of the parents is a sex offender, and if so, the exact nature of the offense and what, if any, treatment in which the parent has successfully participated; and
>
> (15) any other factor that the court expressly finds to be relevant."

As is made clear by the final factor, this is a non-exclusive list. Further, as the statute directs a court to consider "all relevant factors" (750 ILCS 5/602.5(c) (West 2016)), this determination is to be made with reference to the totality of the circumstances. *Cf. In re Marriage of Maurice B.H. & Gatanya A.A.*, 2012 IL App (1st) 121105, ¶ 19 (considering totality of the circumstances in assessing the best interests of a minor).

¶ 81 The manifest-weight standard controls our review of this issue. See *Young v. Herman*, 2018 IL App (4th) 170001, ¶ 66. Accordingly, we will reverse only if an opposite conclusion to the trial court's is clearly apparent. *Gerber v. Hamilton*, 276 Ill. App. 3d 1091, 1093 (1995).

Moreover, we review the result at which the trial court arrived, rather than its reasoning. *In re Marriage of Ackerley*, 333 Ill. App. 3d 382, 392 (2002). We may affirm on any basis appearing in the record, regardless of whether the trial court based its decision on that ground. *In re Marriage of Gary*, 384 Ill. App. 3d 979, 987 (2008). Respondent specifically addresses the third, fourth, sixth, seventh, eighth, ninth, and eleventh factors set for the in section 602.5(c). We will address them in the order they are presented in his brief.[3]

¶ 82 1. The Mental And Physical Health Of The Parties

¶ 83 First, respondent contends that the decision regarding the third factor, which concerns "the mental and physical health of all individuals involved" (750 ILCS 5/602.5(c)(3) (West 2016)), is erroneous. The trial court made the following findings regarding this factor:

> "The third factor set forth in Section 602.5 (c) relates to the mental and physical health of all the parties involved. Here, both parents and the children are physically sound. Adam appears to have some mental issues regarding the divorce. He has displayed difficulty in accepting that the divorce was occurring, throughout the course of the case. He has taken some inappropriate actions in this regard involving the children. He has shown the children the Parties [*sic*] wedding video on more than one occasion. He has taken the children to dinner at the restaurant where he proposed to their mother. He took the children to a hotel and told them this is where your mother and I fell in love. He has also told the children that their grandparent's home, where [petitioner] lives, is not home but only the marital residence, where he resides is home. This has resulted in

[3] We remind the parties of the requirement that factual assertions in the argument section of a brief be supported by citation to the record. Supreme Court Rule 341(h)(7) (eff. May 25, 2018). Both parties' briefs are deficient in this respect.

> anxiety and confusion for [J.J.], who has been seeing a counselor to deal with his emotional issues."

The trial court later clarified in its ruling on respondent's motion to reconsider that did not intend to categorize what it termed respondent's "mental issues" as a "mental illness."

¶ 84 Respondent's main argument as to why the trial court erred here is that petitioner did not introduce expert testimony to establish that he was mentally ill. Respondent cites *In re Zariyah A.*, 2017 IL App (1st) 170971, ¶ 91, for the proposition that a party's admission that she was stressed and depressed is insufficient to establish a diagnosis of a bipolar disorder. We have no quarrel with this proposition, but find it of limited guidance in light of the trial court's explanation that it was referring to a mental issue rather than a formal mental illness. More fundamentally, regardless of whether the evidence here cited by the trial court fit neatly within the rubric of a mental illness or issue, it was clearly relevant to the question before the trial court. For example, there was ample evidence that respondent had difficulty accepting the divorce and took some inappropriate actions regarding the children. Section 602.5(c) directs the court to consider "all relevant factors." 750 ILCS 5/602.5(c) (West 2016). Thus, even if the trial court improperly characterized such evidence as pertaining to a mental issue, it nevertheless properly considered the evidence in accordance with section 602.5(c).

¶ 85 Respondent claims that there was no evidence that there was a nexus between his conduct and any harm to the minors as required by section 602.5(e) (750 ILCS 5/602.5(e) (West 2016)). Respondent acknowledged, for example, that J.J. was seeing a counselor, but contends there was no evidence to suggest that this was due to his behavior. We disagree. There was evidence that respondent told J.J. he missed him and was sad. Respondent asserts that there is no evidence as to how often he told J.J. this. However, there was evidence that he did so sufficient times to

cause J.J. to "feel that he has to help dad feel better because dad is so sad about the breakdown of the relationship," as reported by counselors. Respondent claims it is "normal and reasonable for a loving and involved parent such as [respondent] to tell his son that he misses him." Undoubtedly this is so; however, it is neither "normal" nor "reasonable" to do so to the extent that it causes the child to feel a need to take responsibility for the parent. Such evidence establishes a nexus between respondent's conduct and his son's distress, and the trial court could certainly infer that this consideration weighs heavily against respondent.

¶ 86 Respondent also suggests that the evidence relied on by the trial court was remote in time. For example, he acknowledges having issues with the divorce initially, but points out that he has engaged in counseling. He continues, "The Record [*sic*] unequivocally demonstrated that [respondent] had come to terms with the divorce by the time of trial." He intimates that such evidence concerns events occurring "when the parties first separated, which was approximately more than two (2) years ago at or around the time of trial." We disagree with these characterizations. We note, for example, that as recently as three months before the trial, respondent wrote that "real communication with [petitioner] is impossible because I believe she will always be dishonest." Respondent attempts to minimize the import of the writing by pointing to its context; however, regardless of context, this is a strong statement made a short time before trial. Similarly, respondent acknowledged that J.J. continued to have problems with transitions into the summer of 2017, and petitioner testified that though things have improved, they remain somewhat problematic. The trial court could reasonably infer that respondent had not accepted the divorce by the time of the trial to the extent he now claims.

¶ 87 Indeed, the parties separated on or about March 4, 2016, and the trial commenced on December 1, 2017. Thus, the earliest time period in question was only 21 months prior to trial.

Respondent cites nothing to suggest that the trial court was required to attribute no weight to matters within such a time frame. Indeed, as set forth above, the record is replete with evidence concerning the difficulties respondent had with the divorce and the effect this had on the minors.

¶ 88 2. The Parties' Ability To Co-Parent The Minors

¶ 89 Respondent next argues that the trial court's finding that the parties lacked the ability to cooperate is contrary to the manifest weight of the evidence. The trial court cited numerous instances of the parties' inability to cooperate. Respondent begins by pointing out that the trial court acknowledged that some of its reasoning was "inconsistent." We point out that the trial court also stated that it would reconsider such inconsistencies and, more importantly, we review the trial court's ultimate decision rather than the reasoning that produced it. *Ackerley*, 333 Ill. App. 3d at 392.

¶ 90 We also find unpersuasive respondent's attempts to portray some of the examples of a lack of cooperation as remote in time from the trial. For example, the trial court cited the parties' inability to cooperate regarding W.J.'s need for speech therapy, as recommended by a doctor. Respondent now argues that this issue resolved no later than "early 2017." In other words, this issue persisted until less than a year before the trial commenced. Respondent cites nothing to establish that such a time frame is so remote that the trial court was required to disregard this evidence. We also note that when this evidence was presented at trial, respondent objected to its relevance, stating, "It's now almost 18 months old." The trial court overruled the objection, ruling, "I think there is relevance there in that it goes to their ability to co-parent." The trial court is, of course, the primary arbiter of the weight to which evidence is entitled, and a reviewing court may not simply substitute its judgment on this issue. *In re D.F.*, 201 Ill. 2d 476, 499 (2002). The effect of the purported remoteness in time of this evidence was a matter for the

trial court to consider in assigning weight to it. *Id*. We also note that respondent introduced evidence of petitioner's reluctance to vaccinate the minors, which concerned events happening three or four years before the trial.

¶ 91 Respondent attempts to characterize the parties' *disagreement* of how to tell the children about the divorce as an *agreement* to have a counselor do so. We find this unpersuasive. Quite simply, the trial court could have inferred that their agreement to have a third party perform this important function arose from their inability to agree how to do so themselves. In fact, two counselors noted the problems the parties had communicating, and another noted respondent's animosity toward petitioner. Petitioner testified that Jackson Lee terminated counseling, which was intended to improve communication between the parties, because she believed it was pointless.

¶ 92 Indeed, the record and the trial court's order document a myriad of disagreements between the parties. Respondent correctly notes that they were able to work through some issues as well. Respondent asserts, "There is no legal authority to suggest that joint-parenting requires parents to agree on every single issue in the lives of their children." Undoubtedly this is true; however, respondent cites no authority holding that in the face of some agreement, a court must disregard all other disagreements. Here, it is respondent's burden to show that an opposite conclusion to the trial court's is clearly apparent. The level of conflict between the parties certainly does not favor respondent's position on appeal.

¶ 93 Respondent cites three cases in support of this portion of his argument: *In re Oliver B.*, 2016 IL App (2d) 151136,[4] *In re Marriage of Marcello*, 247 Ill. App. 3d 304 (1993), and *In re Marriage of Seitzinger*, 333 Ill. App. 3d 103 (2002). Initially, we note that all three cases involve a reviewing court affirming an award of joint custody; hence, more than anything, they confirm the deference we owe to a trial court on such decisions. Moreover, all are factually distinguishable. In *Oliver B.*, 2016 IL App (2d) 151136, ¶ 19, "both parties repeatedly testified, in hearings over the course of the case, that they often worked together to resolve problems that arose with visitation, child care, and other issues." While some such evidence existed in this case, there was also ample evidence to the contrary such that the trial court's decision is not against the manifest weight of the evidence. *Seitzinger* is similarly distinguishable.

¶ 94 Respondent relies on the following passage from *Marcello*, 247 Ill. App. 3d 304:

> "At trial, [the mother] stated that [the father] participates in [the minor's] school activities and has taken an active interest in his upbringing. She did not believe [the father] should be excluded from decisions regarding [the minor's] education, religious training or medical treatment. [The father] and [the mother] lived in adjoining towns, and [the father] drove [the minor] to school on many occasions. We also note that the parties had lived apart for several years, yet [the father] maintained frequent contact with [the minor]. When [the mother] underwent surgery, [the minor] spent a considerable amount of time with his father, and his academic progress was not affected."

[4] Respondent's failure to provide pinpoint citations to the portions of this case he intends to rely on hampers our review somewhat, though we believe we have identified the material respondent wished to rely upon.

While there are some similarities between the instant case and *Marcello*, there are significant differences as well. Respondent points out that he, like the father in *Marcello*, is very involved in the minors' lives. He notes that he "is substantially involved in medical, religious, educational, and extracurricular issues of his children." While this is true, the trial court could infer that not all of that involvement was positive. For example, it could infer that respondent told J.J. that his maternal grandfather lied to him when he told him the story of Noah's Ark, causing J.J. distress. *Marcello* does not compel a different conclusion here.

¶ 95 In short, there is ample support in the record to support the trial court's findings regarding the parties' ability to cooperate.

¶ 96 3. Prior Agreements And Conduct Regarding Decision Making

¶ 97 Respondent next contends that the trial court improperly disregarded the sixth factor set forth in section 602.(c), which is "any prior agreement or course of conduct between the parents relating to decision-making with respect to the child." 750 ILCS 5/602.5(c)(6) (West 2016). The trial court found that it "heard no testimony relative to factor six." Respondent points out, and we agree, that the trial court actually heard considerable evidence relevant to this factor (though we point out that the trial court did account for some of this evidence in ruling on the fifth factor (750 ILCS 5/602.5(c)(5) (West 2016)), finding that each parent "participated in significant decision-making"). There was considerable evidence that respondent was involved in decision making regarding the minors—for example, whether J.J. should be involved in a reading intervention program and whether W.J. should be involved in speech therapy. We agree that a "course of conduct" existed where respondent was involved in decision making regarding the minors.

¶ 98 We also note that respondent cites *In re Marriage of Wycoff*, 266 Ill. App. 3d 408 (1994), a case involving custody rather than decision making, though sufficiently analogous to be of some guidance here. Respondent cites *Wycoff*, 266 Ill. App. 3d at 409-10,[5] for the proposition that the Act "places great emphasis upon stability and continuity in custody arrangements." Interestingly, after announcing this principle, the *Wycoff* court went on to hold, "In summary, the trial court properly terminated joint custody both because of the inability of the parties to cooperate effectively toward the best interest of the child and because of the agreement of the parties for termination, manifested by their cross-petitions for sole custody." *Id.* at 417. Thus, the Act's preference for stability and continuity may be overcome in certain circumstances. In this case, the trial court could reasonably infer from the record that the best interests of the minors would not be served by maintenance of the *status quo*.

¶ 99 4. The Wishes Of The Parents

¶ 100 Respondent next argues that the trial court did not give proper weight to the wishes of the parties (750 ILCS 5/602.5(c)(7) (West 2016)). It simply found that "both parents want allocation of decision making for the children." Respondent points out that in actuality, he wanted the parties to have joint decision-making authority while petitioner wanted sole decision-making authority.

¶ 101 He notes that he proposed that this could be facilitated by a parenting-coordinator or mediator. However, there was evidence in the record suggesting that a coordinator or mediator would not be a workable option. First, we note that Williams observed that the parties did not have the financial resources "to be running to a parenting coordinator or a mediator every time

[5]Again, respondent fails to provide a citation to the portion of the case he intends to rely on here. We surmise it is the material appearing in the citation we set forth above.

[they] have a dispute." As for their disagreements regarding religion, she opined that a parenting coordinator or mediator would not be helpful on this issue because "[t]he parties are so far apart on this." We also note that Williams attempted to mediate the issue the parties had concerning the children's clothing and ultimately had to have them bring it to her office and divide it herself. Similarly, petitioner testified that the parties attended counseling and "one of the goals of that was for us to get on the same page with the divorce story of how we are going to bring this up to [J.J.] when we explain divorce." They never came to an agreement, and J.J.'s counselor had to tell him about the divorce. Thus, the involvement of a professional did not allow the parties to resolve this important issue. In sum, significant evidence suggested that a coordinator or mediator would not be a workable solution.

¶ 102 In any event, we fail to see how the trial court's finding that both parties wanted decision-making authority materially misstated the situation or militates for a finding that its ultimate decision was contrary to the manifest weight of the evidence.

¶ 103 5. The Needs Of The Children

¶ 104 Respondent next contends that "the trial court gave too much weight to the guardian ad litem with respect to the needs of the children." See 750 ILCS 5/602.5(c)(8) (West 2016). Initially, we remind respondent that a reviewing court is not permitted to simply reweigh evidence and substitute its judgment for that of the trial court. *D.F.*, 201 Ill. 2d at 499 ("A reviewing court, therefore, must not substitute its judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn.").

¶ 105 Further, we find many of respondent's criticisms of the GAL's testimony ill taken. For example, respondent charges that the GAL "did not know how many times [respondent] told the

children he missed them." While this is literally true in that the GAL could not precisely quantify these incidents, it is also true that the GAL testified that this was a "continuing thing" and that "[J.J.] felt like he needed to take care of dad and [he] was someone who could fix dad's sadness." Regardless of the precise number, evidence in the record indicated that such exchanges were sufficiently numerous to cause J.J. significant distress. Respondent asserts that "[t]he [GAL] did not recall when the temporary Order on parenting time was entered." Respondent does not explain the significance of this purported gap in the GAL's knowledge. Moreover, to the extent any such criticisms are valid (respondent asserts that the GAL did not recall the timing or surrounding circumstances of the dispute concerning speech therapy for W.J.), they are matters of weight and credibility for the trial court to resolve. *D.F.*, 201 Ill. 2d at 499.

¶ 106 Respondent further criticizes the GAL for changing her opinion shortly before the trial. Initially, the GAL recommended that petitioner have sole decision-making authority on religion, respondent have sole decision-making authority on medical issues, and that decision-making authority regarding education and extracurricular activities be joint. She subsequently changed her opinion and recommended that petitioner have sole decision-making authority on all issues.

¶ 107 Respondent contends that the GAL offered no "credible, logical, or pragmatic explanation" for her change of opinion. Respondent asserts that the only reason proffered by the GAL was the handling of W.J.'s speech therapy, which respondent points out occurred long before the GAL's change of opinion. Respondent contends that the GAL "must have been aware of the speech therapy issue" when she made her initial recommendation. Respondent concludes that the GAL had not basis for the change.

¶ 108 We disagree. Williams gave several reasons for the change. First, petitioner agreed to have the children vaccinated. Second, Williams became aware that W.J. never received speech therapy as respondent declined to provide some needed financial records to establish his eligibility. In explaining her change, Williams testified, "The other thing is there was an incident that I was not aware of that occurred prior to my involvement in this case where it was recommended that [W.J.] receive speech therapy." Williams flatly states she was not aware of this incident; hence, respondent's statement she "must have been" is completely disingenuous. Finally and most fundamentally, the basis for an opinion is a matter going to its weight. *In re L.M.*, 205 Ill. App. 3d 497, 512 (1990). As noted above, weight is a matter for the trial court. *D.F.*, 201 Ill. 2d at 499.

¶ 109 In sum, the evidence respondent cites to does not convince us that an opposite conclusion to the trial court's is clearly apparent.

¶ 110 6. Transportation And Scheduling

¶ 111 The ninth factor set forth in section 602.5(c) is "the distance between the parents' residences, the cost and difficulty of transporting the child, each parent's and the child's daily schedules, and the ability of the parents to cooperate in the arrangement." 750 ILCS 5/602.5(c)(8) (West 2016). On this factor, the trial court stated only that "[t]he distance between the Parties [*sic*] homes, the ninth factor is not applicable as the Parties live in relatively close proximity to one another." Strictly speaking, respondent is correct that this factor ways in favor of joint parenting, as the parties living situations would facilitate, rather than complicate (see *In re Marriage of Hahin*, 266 Ill. App. 3d 168, 174 (1994) ("Here, the trial court based its determination that joint custody would not be in the best interests of the Hahin children, in large part, on the fact that the husband resided far from his children. This distance would make a joint

custody arrangement difficult to manage.")), cooperative parenting. We note, however, that this factor would likely be entitled to significant weight only where the parties live a great distance from one another and it makes joint parenting impractical. See, *e.g.*, *Seitzinger*, 333 Ill. App. 3d at 111 ("Joint parenting is a tool to maximize the participation and responsibility of both parents in a child's life. It need not be automatically terminated upon the removal of one parent from close geographical proximity from the other.").

¶ 112 7. Willingness To Facilitate A Relationship Between The Minors And The Other Parent

¶ 113 The eleventh factor set forth in section 602.5(c) is "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 5/602.5(c)(9) (West 2016). On this factor, the trial court ruled as follows:

> "This factor is of great concern to the Court. [Respondent] has consistently told the children that their mother is responsible for the break-up of the family and has attempted to manipulate the children into not wanting to go with their mother because to do so will make him sad and if they leave he will miss them so much. [Petitioner] has not been guilty of the same type of actions, so the Court finds that she would be more likely to foster a positive relationship between the children and their father than vice versa."

Respondent takes issue with a number of the trial court's findings relative to this factor.

¶ 114 Respondent criticizes that trial court's finding that he consistently told the children petitioner was responsible for the divorce and that he tried to "manipulate the children into not wanting to go with their mother because to do so will make him sad." He asserts that "no witness testified that he told the children petitioner was responsible for the divorce." Assuming this is true, there is testimony that he wanted to do so, namely that he wished to have petitioner

take responsibility for the divorce when they told J.J. about it. There was also testimony that respondent showed the minors the parties' wedding video, which he had never done prior to the separation. Further, there was ample evidence that respondent told J.J. he missed him to the point of causing J.J. to feel "that he has to help dad feel better because dad is so sad about the breakdown of the relationship." Moreover, respondent acknowledged that he sometimes communicated with petitioner in an inappropriate manner, such as swearing at her. Such evidence certainly does not weigh in favor of a finding that respondent will foster a good relationship between the minors and petitioner. Moreover, we do not find respondent's argument that his conduct never led to formal proceedings regarding violations of the trial court's "parental conduct order" sufficient to allow us to conclude that an opposite conclusion to the trial court's is clearly apparent.

¶ 115 Respondent contends that there is little evidence that petitioner would promote a positive relationship between him and the minors. However, petitioner testified that she "promotes" the time the minors spend with respondent and tells them that they "are going to have so much fun." Further, petitioner sometimes allowed respondent to exercise additional parenting time. The trial court was entitled to credit this testimony. We also disagree with respondent's assertion that the majority of the conflicts came from petitioner attempting to unilaterally decide things for the children. While respondent correctly points out that there were some examples of successful co-parenting, we agree with the trial court that a large source of conflict came from respondent's refusal to accept the divorce.

¶ 116 8. The Manifest Weight Of The Evidence

¶ 117 The ultimate decision we are reviewing is, of course, not the trial court's findings on any one particular factor; rather, it is whether the trial court's decision that petitioner should have

sole decision-making authority is against the manifest weight of the evidence. To establish error, therefore, respondent must show that it is clearly apparent that joint decision-making authority is proper. Given the nature of this inquiry, this is a heavy burden. Section 602.5(c) sets forth a non-exclusive list of 15 factors to consider in determining how decision-making authority should be allocated. See 750 ILCS 5/602.5(c) (West 2016). Extensive evidence was presented that was relevant to a number of factors, and credibility was sometimes at issue. Under such circumstances, it is an exceedingly difficult task to muster evidence from the record while at the same time discounting considerable contrary evidence in such a manner as to show that, considering the totality of the circumstances and legal considerations, an opposite conclusion is clearly apparent.

¶ 118 Indeed, respondent does not succeed in putting together such a comprehensive picture. Rather, respondent identifies a few flaws with the trial court's reasoning, and a few fair points that could weigh in favor of one side or the other depending on one's interpretation, but falls far short of establishing that an opposite conclusion to the trial court's is clearly apparent. As such, we cannot find that this decision is contrary to the manifest weight of the evidence.

¶ 119 B. THE PARENTING SCHEDULE

¶ 120 Respondent next argues that the parenting schedule set by the trial court was error. Section 602.7 of the Act sets forth a non-exclusive list of factors for the trial court to consider in allocating parenting time. 750 ILCS 5/602.7 (West 2016). There is considerable overlap between this section and section 602.5, which governed the previous inquiry. A trial court's allocation of parenting time will not be disturbed unless it is against the manifest weight of the evidence or otherwise an abuse of discretion. *In re Marriage of Mayes*, 2018 IL App (4th) 180149, ¶ 57. An abuse of discretion occurs only when no reasonable person would agree with

the decision reached by the trial court. *In re Marriage of Hagshenas*, 234 Ill. App. 3d 178, 194 (1992).

¶ 121 The trial court found that to the extent the factors in section 602.7 were the same as those set forth in section 602.5, it had "considered them in the same manner as set forth" in its ruling on decision-making authority. It then stated it was placing great weight on the seventh and eighth factors. Specifically, the trial court explained that, regarding the seventh factor, respondent's "inability to accept the divorce and to feel the need to involve the boys in his vision of the post-divorce world is a recipe for disaster as is evidenced by the problems [J.J.] was having with transitions before he began counseling. A [sic] increase in parenting time would likely result in an exacerbation of the problems." As for the eighth factor, the trial court expressly relied on the opinion of the GAL that the minors needed "the consistency of having their own things, their own space and a knowledge of where they will sleep most nights." Hence, respondent's contention that the trial court gave "no reason why" it gave great weight to the seventh and eighth factors is simply incorrect.

¶ 122 Respondent further complains, "The Court did not provide any indication that it considered all of the [section] 602.7(b) factors when fashioning its parenting schedule." First, we note that the court expressly considered all of the factors that overlap with section 602.5 and commented extensively on the seventh and eighth factors. More importantly, a trial court is not required to make explicit findings on each individual factor set forth in section 602.7(b). In *In re Custody of G.L.*, 2017 IL App (1st) 163171, ¶¶ 42-43, the court stated, "Although a trial court must consider all relevant factors [set forth in section 602.7(b)] when determining the best interests of a child, it is not required to make an explicit finding or reference to each factor." Thus, respondent's argument on this point is not supported by the law.

¶ 123 Respondent contends that the trial court did not consider factor three, which is "the amount of time each parent spent performing caretaking functions with respect to the child in the 24 months preceding the filing of any petition for allocation of parental responsibilities or, if the child is under 2 years of age, since the child's birth." Respondent correctly points out that he was substantially involved in caring for the minors. He then asserts, in a conclusory manner, "Had the Court properly considered this factor and the important details related to same, its decision likely would have been different." Respondent never explains why this information weighs in favor of a different parenting schedule.

¶ 124 In fact, it seems to us that this factor favors the schedule set by the trial court. Petitioner testified that the schedule they had been "going by for a lot of the separation" was that the minors were with respondent "Tuesdays, Thursdays [from] 1:00 to 7:00" and "alternate weekends." The schedule set by the trial court is substantially similar. As pointed out by respondent earlier, the Act "place great emphasis upon stability and continuity in custody arrangements." *Wycoff*, 266 Ill. App. 3d at 409-10. The trial court's order seems to be a continuation of the *status quo* and thus reflective of such considerations. In sum, there is no indication that the trial court failed to consider this factor, and, in any event, it weighs in favor of the schedule set by the trial court.

¶ 125 Finally, respondent reiterates, by reference, the arguments he made regarding decision-making authority as they are relevant to the factors that overlap between section 602.5 and section 602.7. We, too, incorporate our analysis of those arguments.

¶ 126 Respondent again contends that some of the evidence relied on by the trial court concerned matters remote in time. As before, he cites nothing holding that the trial court was not entitled to attribute weight to events occurring a mere 21 months prior to trial. Respondent does

cite *In re Marriage of Perez*, 2015 IL App (3d) 140876, ¶ 32,[6] for the proposition that "it was in the minor child's best interests to maximize involvement of both parents." However, the *Perez* court made that determination as a finding of fact given the unique circumstances of that case, which included that "the parties demonstrated the extraordinary level of cooperation required for a joint parenting arrangement." *Id.* ¶ 28. That factual predicate is lacking here, making *Perez* distinguishable.

¶ 127 To conclude this section, respondent has failed to convince us that the parenting schedule set by the trial court was against the manifest weight of the evidence or an abuse of discretion.

¶ 128 IV. CONCLUSION

¶ 129 In light of the foregoing, the decision of the circuit court of Du Page County is affirmed.

¶ 130 Affirmed.

[6] Again, respondent fails to provide a citation to the portion of the case he was relying on here, and we are left to attempt to determine what respondent intended.