

2013 IL App (2d) 121423-U
No. 2-12-1423
Order filed August 19, 2013

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

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
RYAN CAMPBELL,)	of Winnebago County.
)	
Petitioner-Appellant,)	
)	
and)	No. 11-D-324
)	
MELISSA CAMPBELL,)	Honorable
)	Gwyn Gulley,
Respondent-Appellee.)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's decision allowing Melissa to remove the children to Utah was not against the manifest weight of the evidence; therefore, we affirmed.
- ¶ 2 Petitioner, Ryan Campbell, and respondent, Melissa Campbell, were married on August 1, 2006. They had two children: Ila, born July 21, 2007, and Felicity, born July 12, 2009. On March 14, 2011, Ryan filed a petition for dissolution of marriage. Both parties sought custody, and Melissa also sought to remove the children from Illinois to Utah. The trial court awarded custody to Melissa and also allowed her to remove the children. Ryan does not contest the court's decision to grant

custody to Melissa; rather, he appeals only the decision allowing removal. According to Ryan, the trial court's finding was against the manifest weight of the evidence. We affirm.

¶ 3

I. BACKGROUND

¶ 4

A. Trial

¶ 5 A combined hearing on custody and removal was held on various dates from August 21, 2012, to November 16, 2012. At the time of trial, Ryan was 39 years old, and Melissa was 30 years old. We summarize the evidence that was adduced at trial.

¶ 6 Both Ryan and Melissa were born and raised in Utah. When Melissa and Ryan met in 2003 and began dating, Melissa already had two children: Savanna, born February 27, 2002, and Gage, born June 22, 2003. After dating for several months, Ryan and Melissa broke up. Melissa subsequently married Jason White and had a third child, Brooklyn, born December 8, 2005. Melissa and Jason then divorced, and Ryan and Melissa started dating again. In 2006, Ryan and Melissa moved in together and got married.

¶ 7

1. Ryan

¶ 8 Ryan testified as follows. In November 2006, his grandfather Lee Campbell visited them in Utah and asked them to move to Rockford, Illinois. In return, Lee would help them buy a house. Ryan testified that he wanted his family to have a relationship with Lee before Lee's health deteriorated, so he and Melissa discussed moving. Melissa went back and forth on the move, thinking it might be beneficial based on her fear of Jason. Jason had supposedly threatened to kill Melissa and had "a bullet with her name on it."

¶ 9 They ended up moving to Rockford when Melissa was pregnant with their first child, Ila. For the first few weeks, they lived with Ryan’s mom, Jean Sooter, and his stepdad, Gary Sooter, until their home was habitable. Their second child, Felicity, was born in February 2009.

¶ 10 Ryan testified that his relationship with Melissa did not change significantly after moving to Rockford; Melissa would still call the police on him. However, the Utah police handled things “reasonably” whereas the Rockford police would arrest him. In September 2010, Ryan moved out of the residence and moved in with Jean and Gary.

¶ 11 Ryan identified exhibit 3, dated January 27, 2011, as a document Melissa used to “push” him “around.” Melissa typed up the document, brought it to Jean’s house, and said he needed to sign it. The document said that Melissa “can take [their] 2010 federal tax monies for the purposes of relocating back to [their] home state of Utah,” and that Melissa “can relocate to Utah in the summer months of 2011 with” Ila and Felicity. Ryan signed the document on January 30, 2011, thinking it had no legal weight.

¶ 12 When Melissa took all five children to Utah in March 2011, she did not tell him. Ryan feared she might leave with the children, so he went to the elementary school, where he was advised that the oldest children, Savanna and Gage, had been removed from the district. Ryan filed a police report, hired a private investigator, and contacted the FBI to locate the children. He did not know their whereabouts for 18 days. In addition, Ryan moved for an order of protection and filed a petition for dissolution of marriage. Eventually, Ryan was granted physical custody of Ila and Felicity, and they were returned to him on July 7, 2011.¹

¹Based on the recommendation of the guardian *ad litem* (GAL), the children remained in Ryan’s custody until the court issued a ruling on custody and removal on December 4, 2012.

¶ 13 At the time of trial, Ryan had had physical custody of Ila, age five, and Felicity, age three, for nearly one year. During this time, his contact with Melissa was “pretty limited,” although he made sure the children talked to her every four or five days. Ryan denied that he allowed visitation only after the attorneys got involved and the GAL recommended visitation.

¶ 14 Ryan pled guilty to two domestic battery charges and two violations of orders of protection. He was placed on probation and asked to complete anger management classes, which he did. He pled guilty because he and Melissa were working toward a “celestial marriage” as part of their Latter Day Saints practice. Ryan further testified that Melissa had threatened that if he “put her on the stand,” she would not work on their marriage, but if he pled guilty, she would. He had also seen how Melissa had “controlled” visitation with Savanna’s father, Adam Loose, and he was afraid she would restrict him as well. As a result, he pled guilty even though he was not guilty of the offenses. For example, Ryan denied ever putting his hand over Melissa’s mouth so that she could not yell, the basis for one of the charges.

¶ 15 When asked about counseling, Ryan testified that he and Melissa’s mom had encouraged Melissa to go to counseling to deal with her past relationships. Melissa went once and refused to go again. Other than the anger management classes, Ryan had not received counseling.

¶ 16 Ryan admitted having a sexual relationship with another woman who lived in the Rockford area. He also admitted receiving notice that he might be the father of one of this woman’s children.

¶ 17 2. Melissa

¶ 18 Melissa testified as follows. At the time of trial, she lived in Ogden, Utah, with Savanna, age 11, Gage, age 9, and Brooklyn, age 6. Adam Loose was Savanna’s father, and he lived in California.

Adam visited once every year or two years, and he called Savanna “all the time.” Melissa never prevented Adam’s phone calls or visitation. Melissa did not know Gage’s father; she was raped.

¶ 19 After Melissa and Ryan began dating, she received a text message from Ryan’s girlfriend in 2004, which broke up the relationship. Melissa then started dating Jason, and they married in January 2005. Melissa became pregnant with Brooklyn, and Jason became abusive. In November 2005, Melissa filed for divorce based on Jason threatening to kill her and her children. Though Melissa did not remember saying that James had threatened her with a bullet with her name on it, he had threatened to slit her throat, kill her children, and put them all in body bags. This evidence came out at Jason’s trial; she had tape recordings of his threats. Jason was found guilty and sentenced to a term of imprisonment, but he had since been released. A permanent protective order prevented Jason from seeing Brooklyn. Ryan reentered her life in 2006 and accompanied her to all of her court appearances involving Jason.

¶ 20 Regarding counseling, Melissa saw her mom’s counselor until insurance no longer paid for it, and Ryan came to these appointments and filled out paperwork. He also came to her domestic violence counseling. During the appointments, Ryan claimed to have been abused and admitted to being an alcoholic and smoking peyote. Another issue at counseling was Ryan’s temper.

¶ 21 While living with Ryan in Utah, Melissa testified that she had moved out twice. The first time was when Ryan’s old girlfriend visited the house while Melissa was at work. The second time was in April 2006, after they had argued about something. Ryan tried to lock her in the garage and held the car keys over her head, saying she “wasn’t going anywhere.” Melissa called her domestic violence advocate, who talked to Ryan, and then he let her leave. Ryan called the police on Melissa

when she was moving out; he did not want her co-workers going into the house to help her. She and Ryan then reconciled and got married in August 2006.

¶ 22 Jean, Gary, and Lee visited them in Utah in November 2006. Lee wanted them to move to Rockford so that he could have a relationship with all of them. Lee offered to buy them a house, and Jean, who was in real estate, would help them find one. The agreement was that Lee would buy the house outright; Ryan and Melissa would make monthly payments; Lee would gift them the house when he died; and she and Ryan would get back the money that they had paid on the house. The Rockford move was never intended to be a permanent one; once Lee died, they would move back to Utah. Melissa was on the fence about the move because she had grown up in Utah, and the children were close to her family. In the end, she agreed to move to Rockford.

¶ 23 Melissa described an incident regarding the move. Ryan and Melissa had rented a moving truck, and she wanted to take a vanity. Ryan became upset, threatened to take a baseball bat to it, and told her to stay in Utah. Then, he started taking her things and the children's things off the truck and throwing them in the trash. The children were screaming not to throw their things away. Ryan's dad, Maven Campbell, came to the house and tried to calm Ryan down, but he was too upset. Melissa called the police, and the police instructed Ryan that he could not throw the stuff away.

¶ 24 They moved to Rockford in February or March 2007. Melissa and Ryan had selected a house based on information provided by Jean. They planned to do a "little remodeling," but when they arrived in Rockford, Jean had already gutted the house. Melissa, Ryan, and the five children lived with Jean and Gary for three months before moving into their house around June 2007. Melissa was upset because Jean had insisted that they move so quickly, the house was not ready, and Jean was making all the decisions with respect to the remodeling.

¶ 25 Melissa described her relationship with Jean as having a lot of “ups and downs.” Jean had a “magic key” that allowed her to just walk in their house. When Jean came over, she “wanted to take over everything.” Melissa felt like Jean was trying to control everything about their life together and every decision that they made.

¶ 26 When the house flooded in February or March 2008, Melissa called Jean. Jean did not come over for two weeks and then appeared at the house with a contractor. Jean and the contractor locked the door, leaving Melissa and the children outside. Inside the house, Jean started throwing things and calling Melissa names. In addition, Jean’s car was blocking Melissa’s car so she could not leave. Melissa testified that eventually, Gary came over and moved the cars so that Melissa could leave. Melissa called Ryan, who was living with Jean and Gary at the time. Ryan called Jean and tried to calm her down, but he was unsuccessful. Ryan gave Melissa money to stay in a hotel that night. The next day, Melissa brought the children home. While Melissa was taking a bath, Jean walked in the house with the contractor once again.

¶ 27 During the four years they lived in Rockford, (March 2007 to March 2011), Ryan was scarcely home, and Melissa was the primary caretaker for the children. She handled everything, such as walking them to the bus, making meals, caring for them when they were sick, and cleaning the house. Ryan’s contribution was making money; she handled the rest. Ryan spent his time working, exercising, hanging out with friends, and on one occasion, he had stayed out overnight having an affair.

¶ 28 Regarding the care of the children, Melissa and Ryan argued over him sending the children to bed with not enough food; his pinching of their ears, which they did not like; and discipline. The

court admitted some photograph exhibits of Ryan's discipline that are not included in the record on appeal.

¶ 29 One photograph exhibit from 2007 showed Gage's back after Ryan had hit him for touching something in the garage. Melissa testified that when she confronted Ryan, he denied hitting Gage and left the house. Another photograph exhibit from 2007 or 2008 showed bruising to Savanna after she did not clean her room. Melissa testified that another incident occurred in 2008 when Savanna stayed home from school because she had been throwing up the night before and had a fever. Ryan was working the night shift and had just come home. He went into Savanna's room, pulled her out of bed by her arm, and told her to get dressed. Savanna and the other children were screaming. When Melissa tried to pull Savanna away from Ryan, Ryan threw Melissa back, causing her to fall on the floor. Ryan then took Savanna to school. Melissa called the police, and they took pictures; Melissa's arms were visibly bruised.

¶ 30 In 2007, Melissa received individual counseling to deal with the way Ryan treated her, "his other women around," feeling stuck in Illinois, and Jean having so much control. A joint counselor from the church also met with them in 2006 or 2007. The counselor upset Ryan, and Ryan asked him to leave.

¶ 31 When Melissa felt that she or her children were threatened, she would call the police; she had no one else to call in Rockford. From 2007 to 2009, she called the police three times, and Ryan was arrested on two of those occasions.

¶ 32 Melissa described one incident in September 2007, two months after Ila was born, when she was taking a bath. Ryan had said something out loud, and Melissa replied sarcastically. Ryan then pulled her out of the bath tub by her hair and into the hallway, slamming her against the wall. He

then hit her face “pretty hard.” Ila was crying but Ryan blocked Melissa from picking her up, saying, “ ‘Don’t touch my daughter.’ ” When Melissa tried to get to the phone, Ryan stopped her at the front door and tried to push her outside. Melissa managed to run downstairs and grab the phone, but Ryan was there before she could dial. Melissa hit one button and discovered that Jean was on the other line and could hear everything. Ryan then pushed Melissa onto the bed, put his elbows on her chest “really hard,” and spit in her face.

¶ 33 Shortly after, Jean and Gary came to the house. Ryan and Gary started fighting, and Ryan would not let Gary into the house, only Jean. At this point, Melissa said she was “done” and removed her wedding ring. Jean and Gary, after he was allowed to come inside, stayed the night to make sure everything was alright. Jean would not allow Melissa to use the phone, however, despite repeated requests. Throughout the night, Ryan kept coming into her bedroom, screaming at her, and covering her mouth.

¶ 34 The next day, Melissa drove the children to the house of her aunt, Sherry Holman, in Wisconsin. Aunt Sherry took Melissa to the doctor because her chest was very tight; she felt like she could hardly breathe; and it was painful to breast feed. Melissa stayed with Aunt Sherry for a couple of days and then returned to Rockford. While at Aunt Sherry’s house, Ryan had called and apologized, saying to come home and they could go to counseling. Melissa returned home and went to counseling; Ryan did not.

¶ 35 In May 2008, Melissa filed for divorce and for a protective order against Ryan. She requested an order of protection against Ryan because she was scared for herself and her children. The order of protection was granted on May 23, 2008, and lasted two years. Ryan did not abide by the order of protection and would still come over to the house. On one occasion, Ryan came home

from work and wanted to be intimate. Melissa was not feeling well enough to be intimate, so Ryan covered her face with his hand and had sex with her anyway. During this time, Ryan's phone calls to Melissa were not about the children but were to "meet up with him in places to have sex." When Melissa thought it was "getting scary," she called the police and Ryan was arrested. Ryan pled guilty to violating the order of protection. Later, Melissa "dropped" the divorce papers and the order of protection because Ryan agreed to move back to Utah and get counseling. However, because Lee was still alive, Ryan wanted to stay a little longer in Rockford.

¶ 36 Another incident with Ryan occurred in May 2009, when Melissa was several months' pregnant with Felicity. She and Ryan were driving to a doctor's appointment, and they got into an argument about his job. Ryan slammed on the brakes. Melissa got out of the car to walk home, and Ryan parked and told her to get back in the car. Ryan insisted she get back in the car, and she refused and sat on the curb. Ryan then dragged her by her ankle and arm back to the car. Some man came out of his house and yelled at Ryan to put Melissa down, but Ryan threatened him and continued to drag Melissa to the car. They drove home, and Melissa called the police. The police came and either arrested Ryan or said he could not violate the order of protection.

¶ 37 In 2009, Ryan worked the night shift at Chrysler. He would come home after she had gone to bed and want to be intimate. Melissa, who was pregnant with Felicity, would say that she was not in the mood. Then, Ryan would get on the computer and say that work wanted him to come back for another shift. On one occasion, when Melissa needed to reach Ryan, she called his work, where he claimed to be, but he was not there. Ryan was seeing someone at his work and having relationships with other women.

¶ 38 Melissa testified that she opened a letter from Division of Family Services dated June 10, 2009, requesting that Ryan submit to a paternity test. The letter stated that Ryan may be the parent of two minor girls. Melissa was upset because she was pregnant with Felicity at the time. Ryan admitted to her that he had made a mistake by having an affair with someone from work, and he asked if she would be willing to take care of the child if the child turned out to be his.

¶ 39 During their time in Rockford, Ryan sporadically stayed with Jean or Lee, and she and Ryan decided to separate in September 2010. At that time, they agreed to a visitation schedule in which Ryan would see the children one day a week and every other weekend, and Melissa handled the transportation. At least four times in the fall of 2010, Melissa brought the children and Ryan declined visitation.

¶ 40 In October 2010, Ryan and Melissa agreed to divorce and agreed that she would move back to Utah. After at least 20 discussions, Melissa prepared the January 27, 2011, document. She prepared the document with Ryan's input over the phone. Ryan signed the document at a Sunday dinner and handed it back to her. Melissa continued to have Sunday dinners with Ryan's family so that the children could see Lee. Melissa testified that Lee was a "very good man" and very sweet to all of the children; he did not treat any of them differently. The document allowed Melissa to relocate to Utah with Ila and Felicity in the summer months of 2011 using the 2010 federal tax money.

¶ 41 Melissa described the sequence of events that led her to take the children to Utah in March 2011. Within the first week of March 2011, Ryan called her to meet him at a hotel for sex, and she refused. The next morning, the sheriff showed up at her door with a protective order saying that although the judge had denied the protective order, a plenary hearing date had been set. Ryan then

called Melissa twice, demanding that Melissa bring Ila and Felicity to Jean's house. Melissa declined. Ryan then said he had a bullet for her that was on her night stand. At this point, Melissa called 911, and the police came and saw the bullets. The police waited for Ryan, but he never came. Melissa contacted some attorneys, including Don Ray, and decided to get a U-Haul and leave Illinois as fast as she could. When the children came home from school, they all left for Utah.

¶ 42 Once they arrived in Utah, they stayed with an aunt a couple of days until finding a house. Attorney Ray handled the emergency hearing in Rockford on March 22, 2011, and Ryan's order of protection was "dropped." Also on March 22, 2011, Melissa let Maven, Ryan's step-mom Karen, and Jean into her house to visit the children. Several of Melissa's family members were also present. Once Jean started threatening Melissa, however, Melissa asked Jean to leave.

¶ 43 Melissa "fired" attorney Ray, and Ryan obtained an order requiring her to submit to a mental health evaluation. Then, on June 7, 2011, an order was entered giving Ryan eight weeks of visitation, and Melissa's parents brought Ila and Felicity to Rockford on July 5, 2011. During the time that Melissa had the children in Utah, which was from March to July 2011, Ryan never came out to visit them.

¶ 44 Melissa underwent the mental health evaluation in Illinois in August 2011. At that time, she called Ryan asking to see the children, but he refused. Melissa did not see the children during the three-week period when she was in Illinois. Ryan's visitation period was supposed to end on September 3, 2011, but it was extended until the court ruled on custody. Melissa saw the children for two hours on September 4, 2011, because she had her attorney "get involved."

¶ 45 When Melissa returned to Utah, she called the children every two days. If she was lucky, she was able to speak to them twice a week. From September 2011 until the current date (November

2012), there were long periods in which Melissa talked to the children only once every 10 or 11 days. Melissa would call and leave a message or send Ryan a text message, which he never returned. Sometimes, Ryan would answer the phone and say that the girls had regressed developmentally while in her care.

¶ 46 When Melissa came for her scheduled visitation on June 16, 2012, she had some car issues and arrived on June 15, 2012. Ryan would not let her see the children one day early. During her visitation period, Melissa and the girls drove to Utah, and the girls called Ryan along the way to let him know their location. Ryan wanted daily phone calls, and Melissa had them call Monday, Tuesday, Wednesday, and Thursday. After that, Melissa had the girls call him every other day. On the girls' birthdays, Ryan wanted them to open his presents first while talking to him on the phone, and Melissa accommodated that request. In addition, Melissa took the girls over to Maven's house to surprise him for his birthday.

¶ 47 Melissa had the girls until August 21, 2012, when she had to return to court. For the last 10 or 11 days, Melissa did not have the girls call Ryan, and they did not ask to call him. Melissa did this because the girls did not want to call Ryan every other day, and because he had not called them. After the passage of these 10 or 11 days, Ryan called and was "very angry."

¶ 48 In September and October 2012, when Ila and Felicity were back with Ryan, Melissa talked to them twice, and Melissa was the one who called. In addition, Ryan did not tell Melissa that he had enrolled Ila in preschool at Fairview, and, as a result, she missed Ila's preschool graduation. When Melissa returned to Rockford, she went to Fairview to see Ila's records, and Ryan had listed Jean as an emergency contact under "mother." In the fall of 2012, Felicity also went to Fairview and

Ila started attending Brookview Elementary. Ryan never sent any reports of the girls' schoolwork to Melissa. Melissa then spoke to the teachers, who agreed to Skype parent-teacher conferences.

¶ 49 From 2011 to 2012, Ryan did not offer to let the girls visit Melissa for Thanksgiving, Christmas, or spring break.

¶ 50 Melissa testified regarding her extended family in Utah. A family gathering would consist of about 50 to 75 people, including her mom and stepdad, her dad and dad's wife, her brother and his wife and baby, her little niece, her grandmother, and all of her aunts, uncles, and cousins. Melissa described her relationship with her entire family as "very close." Melissa spent time doing crafts with her grandmother, going to movies or restaurants with her mother, and swimming with her Aunt Sherry, who had moved from Wisconsin back to Utah. Recently, they had had a big family reunion, and the whole family would gather for holidays.

¶ 51 Melissa's family offered a lot of support. Her grandparents and Aunt Sherry would babysit, bring over meals, run errands, and constantly call or stop by to see what Melissa needed. Melissa's extended family also helped out financially so that Melissa could travel back to Rockford and "fight for the girls."

¶ 52 Melissa testified that Ryan, too, had family and friends in the area, such as Maven, Karen, two brothers, three nieces, and a sister-in-law. Melissa thought it was important for Maven to have a relationship with Ila and Felicity.

¶ 53 Melissa found a home in Utah that had five bedrooms, two kitchens, and a fenced-in yard. The woman who owned the house lived in another state, and Melissa was able to live rent-free in the house as a caretaker for three years. After that, Melissa had the option of purchasing the home. For work, Melissa intended to return to her job at a thrift store or find a better paying job. She had

lost her job due to traveling back and forth for the case. Currently, Melissa had five classes remaining for a bachelor's degree in legal studies, which she intended to complete in one year. Melissa had good grades and planned to go to law school.

¶ 54 Melissa proposed a visitation schedule in which Ryan would have the children eight weeks during the summer; half of Christmas vacation, and alternating spring breaks. Also, Melissa would facilitate a relationship between Ryan and the children, ensuring “constant contact” with phone calls, Skype, and visits. In addition, Melissa would make sure that anytime Ryan traveled to Utah to visit his family, he would be able to see the children. Melissa felt that it was easier for Ryan to come to Utah and stay with his family during visitation than for her to travel to Rockford, where she would have to stay at a hotel.

¶ 55 3. Attorney Ray

¶ 56 Attorney Donald Erwin Ray testified next as follows. He had been hired by Melissa in March 2011 to handle her divorce and an order of protection entered that month. Melissa told attorney Ray that she was afraid, and they discussed where she could go to feel safe. Attorney Ray also remembered something about a gun and a bullet. Attorney Ray advised Melissa that it was not illegal to leave Illinois. Before attorney Ray's involvement, an *ex parte* order of protection had been entered granting possession of the children to Ryan. Attorney Ray then requested a rehearing, at which he agreed to reveal the location of the children in exchange for the court denying the order of protection/possession order. Attorney Ray did not disclose Melissa's address until the rehearing because he believed Melissa was entitled to not disclose it under the Illinois Domestic Violence Act.

¶ 57 4. Officer Kvoool

¶ 58 Rockford police officer Colin Kvoool testified as follows. He responded to a call from Melissa in March 2011. Ryan had been calling her and said that he had a “bullet for her.” Melissa was visibly shaken and upset by this because six months earlier, when they were living together, he had owned a rifle that was kept in the bedroom.

¶ 59 Officer Kvoool also responded to a call by Ryan after Melissa took the children to Utah. Officer Kvoool told Ryan that he would try to do a welfare check of the children, and he called Melissa’s cell phone. Melissa told Officer Kvoool that the children were fine but she did not disclose her location. Melissa also told Officer Kvoool that she fled because she was scared for her and her children’s safety. Officer Kvoool told Ryan that he had spoken to Melissa and that she had said that the children were fine.

¶ 60 5. Detective Bruno

¶ 61 Rockford Detective Sergeant Eric Bruno, who was in charge of the domestic violence unit, testified as follows. Ryan contacted him on March 14, 2011, to say he had gotten an order of protection against Melissa, who had taken the children to Utah. Ryan wanted to know how to serve the papers on her in Utah. Ryan then said that he had had the local police in Utah do a welfare check on the children. When Ryan asked why Melissa was not arrested for child abduction, Sergeant Bruno reviewed Ryan’s criminal history and discovered that Melissa left an abusive relationship and “took it upon herself to leave and to get far away.”

¶ 62 6. Cindy Zeiter

¶ 63 Cindy Zeiter, a friend and fellow church member of Melissa’s, testified regarding an incident on November 1, 2011. Cindy witnessed Ryan drop off the kids at Chuck E. Cheese while Melissa stood outside in the parking lot, waiting. Ryan jumped out of his vehicle and was angry and yelling.

He screamed that Melissa needed to feed the children and brush their teeth, and he accused her of not doing so. Melissa did not react to Ryan but simply concentrated on greeting the children. Cindy was so upset at what she saw that she went home and wrote it down.

¶ 64

7. Aunt Sherry

¶ 65 Melissa's aunt, Sherry Holman, testified as follows. Aunt Sherry currently lived in Morgan, Utah. Before that, she had lived in Wisconsin, about one hour from Rockford. In September 2007, she was talking with Melissa on the phone as Melissa was driving. Melissa was distraught and crying over an argument she had had with Ryan in which he pulled her out of the bathtub by her hair. Melissa wanted to drive to Utah, but Aunt Sherry convinced her to drive to her house in Wisconsin because it was closer. When Melissa arrived with the children, she was in a lot of discomfort and saw the doctor. Melissa returned to Rockford after a few days, when things calmed down.

¶ 66 Aunt Sherry moved to Utah in 2008 and was there when Melissa came with the children. Aunt Sherry watched the children daily while Melissa was at work. Aunt Sherry made sure that Maven and Karen saw the children "at the drop of a hat" because "they were grandpa and grandma"; she had given them her phone number. Aunt Sherry brought all five children to visit Maven and Karen at a McDonald's, and Maven and Karen bought them lunch and ice cream. It was very positive. The children saw Maven and Karen more than once.

¶ 67 Aunt Sherry testified that their extended family gathered for parties quite often, and the grandchildren played together. Aunt Sherry's parents had 30 plus grandchildren, 20 plus great grandchildren, and more on the way. The children had cousins their own ages, and they would "play and play and play." Aunt Sherry treated Melissa's children like grandchildren; she loved them very much.

¶ 68 Aunt Sherry spoke to Ryan a couple of times. She did not tell Ryan Melissa's address in Utah because Melissa had said that she was fearful of Ryan. Ryan had pulled Melissa from the bathtub by her hair, and he had kicked and bit her.

¶ 69 8. Trena Derricott

¶ 70 Melissa's mother, Trena Derricott, testified as follows. When Ila and Felicity had visitation with Melissa in Utah in the summer of 2012, the extended family had barbecues, went to water parks and the zoo, and did crafts together. Ila and Felicity were very close to Savanna, Gage, and Brooklyn; they would hug, hold hands, and be very loving towards each other.

¶ 71 Maven and Karen came to dinners at the house, and Trena had met Ryan's brother. Melissa's family had an "open-door policy" with Ryan's family. Trena further testified that before Ryan and Melissa moved to Rockford, Ryan gave Trena "his word" that Melissa could return at any time.

¶ 72 9. Grandma Sherry

¶ 73 Melissa's grandmother, Sherry Bailey, testified as follows. She lived by a park and saw the children often. Grandma Sherry described her family as "big and loving," and they had a lot of gatherings. Melissa's children played with Grandma Sherry's other grandchildren "all the time." Grandma Sherry saw Melissa's children once a week, usually on the weekends.

¶ 74 10. Officer Farmer

¶ 75 Rockford police officer Kenneth Farmer testified that he was called for a violation of an order of protection in May 2008. Though there was not an order of protection in place at that time, Melissa described a domestic battery that had happened the day before. She and Ryan had argued over being intimate; Melissa had started yelling; and Ryan had placed his hand over her mouth. Ryan admitted that they had argued about being intimate, and that he had put his hand over her

mouth because he wanted her to be quiet. Ryan also admitted that that would be a scary thing to have someone do. At that point, there was an immediate arrest for domestic battery.

¶ 76 In June 2008, Officer Farmer responded to a violation of an order of protection. Ryan had called Melissa over 10 times during the course of three days, and then he came to the house.

¶ 77 11. Dr. Meyer

¶ 78 Dr. Robert Meyer, a licensed clinical psychologist, was hired by Melissa as an expert. He performed a custody evaluation by interviewing Melissa and Ryan, conducting home visits, and reviewing police reports and petitions for orders of protection. Dr. Meyer concluded that the five children “do view each other as siblings, and that the best interest of the children is for them to remain together as a unit.” If Melissa were to remain in Rockford, then Dr. Meyer recommended that she receive residential custody of the children.

¶ 79 The circumstances under which Melissa moved to Utah were “critical,” in Dr. Meyer’s opinion, in making the final recommendations. Dr. Meyer could not determine whether there was a “reasonable, rational explanation” for Melissa moving to Utah; he was not “in a position to pass judgment on that,” it was up to the court. While Ryan denied any abuse and claimed that Melissa’s accusations towards him and Jason were trumped up, Dr. Meyer noted that Melissa had police reports and medical records to support her claims. Dr. Meyer assumed the court had made the right decision in “convicting” Ryan, who had received 18 months’ probation and was required to take anger management classes. If Melissa had a “legitimate reason” for going to Utah, then Dr. Meyer was “in favor of Melissa having the children.” Melissa had advised Dr. Meyer that she left for Utah on her attorney’s advice. Dr. Meyer tended to afford “more credibility to Melissa.”

¶ 80 In addition, Dr. Meyer opined that it was in the best interests of the children to remain together as a sibling group. The children were already suffering enough over the loss of a parent; they did not need to suffer more by the loss of siblings. He said that that was “in general *** and in specific to this situation.” Dr. Meyer believed that a child’s most essential attachment was to his or her siblings “as opposed to” a school, church, home, or community. Dr. Meyer noted that Ila and Felicity still had a strong bond with their siblings. While living with Ryan, Ila and Felicity talked about Savanna, Gage, and Brooklyn as brothers and sisters and asked about them.

¶ 81 12. Dr. Waldron

¶ 82 Dr. Kenneth Waldron, a psychologist, prepared a consultation report, dated October 11, 2012, at Ryan’s request. For his report, Dr. Waldron conducted a brief interview of Ryan, observed Ryan with Ila and Felicity, reviewed Dr. Meyer’s report, and spoke to Melissa on the phone. He did not meet with Melissa in person or observe her with the children. Dr. Waldron’s report clarified that he did *not* work for the parties as an expert to perform evaluations. Rather, his purpose was to offer testimony regarding the social science research on the specific topics presented in this case. Dr. Waldron admitted that he did not conduct an independent study of the family or perform fact-checking that “would be necessary to have opinions on custody or on an appropriate residential schedule for these children.”

¶ 83 Dr. Waldron testified that both Ila and Felicity had “some symptoms” of damage to their attachments. For example, the children had a two or three-week transition period when they returned to Rockford to live with Ryan, and one of them exhibited no stranger anxiety with Dr. Waldron. However, the signs of damage to their attachments was not as much as might have been expected given the changes that they had experienced. The children had already shown some resilience with

regard to the visitation patterns in the case. Dr. Waldron further stated that older children were better able to adjust to a large geographical distance between the parents than children under the age of five. Dr. Waldron was extremely cautious about doing more damage to their attachments by removing them from Ryan, Jean, and their school. On the other hand, Ila and Felicity had a sibling group with Melissa, which mitigated the stress of significant geographic distance between the parents, thus weighing in the direction of Melissa.

¶ 84 Dr. Waldron did not reach a conclusion regarding removal because he did not perform a family study. He was “just trying to point out from the social science research what factors should be considered.” The task before the court, in his opinion, was determining whether the risk of removal to Utah was worth the potential gain to the children. Dr. Waldron stated that the most positive situation for the children would be for Melissa to return to Rockford.

¶ 85

13. GAL

¶ 86 GAL Gerald Shelton testified as follows. The GAL recommended that Melissa receive custody. Regarding removal, the GAL believed that Melissa left Rockford “because there was a violent environment and one of domestic violence,” and that her “motives for going to Utah initially in 2011 were based upon legitimate reasons.” He further noted that there was no question that there was more extended family in Utah than in Rockford. However, Dr. Waldron had expressed his opinion that there had already been some damage to Ila and Felicity in terms of attachment, and that the question for the court was whether the benefits of removal outweighed the risk of damage to the children’s attachment to Ryan. The GAL stated that Drs. Waldron and Meyer opined that, “ideally,” the “most positive situation” was for Melissa to have custody but remain in Illinois so that Ryan

could have regular and consistent contact. The GAL thought that it was in the best interests of the children that Melissa have custody but not be allowed to move to Utah.

¶ 87

14. Ryan's Rebuttal

¶ 88 On rebuttal, Ryan denied the bathtub incident, denied saying that he had a bullet with Melissa's name on it, denied knowing Melissa's location in Utah, and denied spanking or hitting Gage. Ryan felt that Melissa's request to remove the children to Utah was "hurtful" and "manipulative." His fear in allowing removal was that the children would "grow up to be like her," and he wanted them to grow up to be "truthful and honest and have a healthy relationship with their husbands." Living in Utah would not enhance the quality of their life because a lot of Melissa's family was unhealthy, and they would not learn responsibility or accountability. Even though Ryan's "heart was in Utah," his current job at Chrysler, with its benefits and salary, was too good to leave. Ryan admitted that the home that Lee had helped them buy was currently tied in a probate dispute.

¶ 89

15. Trial Court's Decision

¶ 90 On December 4, 2012, the court rendered a decision, awarding custody to Melissa. The "most difficult" decision for the court was Melissa's petition for removal, and the court considered the factors set forth in *In re Marriage of Eckert*, 119 Ill. 2d 316 (1988), and *In re Marriage of Collingbourne*, 204 Ill. 2d 498 (2003). It weighed the benefit of allowing removal against the potential damage of the girls' attachment to Ryan. First, the court examined Melissa's motive for leaving and found that "she feared for her safety due to domestic violence." Melissa had extended family and a support network in Utah, and her quality of life was enhanced by not living in fear for her safety. Additionally, the court was not convinced by Ryan's resistance of the move in that he did agree to allow her to move at one point by virtue of the written agreement. Regarding the "best

interest of the children” of having a “healthy, close relationship with both parents as well other family members,” the court noted that the children’s siblings were in Utah, their paternal grandfather Maven and uncle were in Utah, and the children could have a healthy close relationship with all family members.

¶ 91 In considering the likelihood of improving Melissa’s quality of life, she had completed school and wanted to go on to law school. Melissa had employment prospects and could possibly hold down a job now that the case was resolved and there was more stability. Melissa had a home for the children, and the court was not sure what was going to happen with Ryan’s home in that it was tied up in a probate dispute.

¶ 92 In addition, the court believed that a reasonable, realistic visitation schedule could be reached. Melissa had proposed visitation during the summer and holidays. Also, Ryan was in a better financial position to visit the children in Utah, and he could stay with Maven or his brother. Melissa, on the other hand, did not have family in Rockford and “it would be difficult.” The court found it “interesting” that Ryan did not attempt to “visit with the children while they were in Utah,” and the children resented Jean. The court went on to say that in weighing the risk of potential harm in allowing the move, per Dr. Waldron, some damage had already occurred. Still, it was not as much damage as Dr. Waldron would have thought; the children were resilient. For this reason, the court believed that the children had a chance for success and removal was good and outweighed any risk of potential harm. The court further noted that there was a close bond with the other siblings, a strong attachment with Melissa, and a strong family bond in Utah with her extended family.

¶ 93 Overall, the court believed that it was in the best interests of the children to allow their removal to Utah. The general quality of life of both the children and Melissa would be enhanced.

In making its decision, the court stated that it had considered the non-economic factors contributing to the well-being and happiness of Melissa and the children as a family unit.

¶ 94 A written order incorporating the above findings was entered on December 18, 2012. Ryan moved to stay enforcement of the December 18, 2012, and the trial court denied this motion. Ryan timely appealed.

¶ 95 II. ANALYSIS

¶ 96 Section 609(a) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/609(a) (West 2010)) allows a trial court to approve a custodial parent's removal of the minor children from Illinois when it is in the children's best interests. Section 609(a) provides that "[t]he court may grant leave *** to any party having custody of any minor child or children to remove such child or children from Illinois whenever such removal is in the best interests of such child or children. The burden of proving that such removal is in the best interests of such child or children is on the party seeking the removal." *Id.*

¶ 97 A trial court's determination of what is in the children's best interests will not be reversed on appeal unless it is against the manifest weight of the evidence and it appears that a manifest injustice has occurred. *In re Marriage of Parr*, 345 Ill. App. 3d 371, 376 (2003). "There is a strong and compelling presumption in favor of the result reached by the trial court in a removal case." *In re Marriage of Dorfman*, 2011 IL App (3d) 110099, ¶ 52, citing *Eckert*, 119 Ill. 2d at 330.

¶ 98 In granting Melissa's removal request, the trial court stated it considered the various factors set forth by our supreme court in *Eckert* and in *Collingbourne*. The *Eckert* factors include: (1) the likelihood that the proposed move will enhance the general quality of life for both the custodial parent and the children; (2) whether the proposed move is a ruse designed to frustrate or defeat the

noncustodial parent's visitation; (3) the noncustodial parent's motives in resisting removal; (4) the removal effect on the noncustodial parent's visitation rights, and (5) whether a reasonable visitation schedule can be worked out. *Collingbourne*, 204 Ill. 2d at 522-23; *Eckert*, 119 Ill. 2d at 326-27.

¶ 99 In *Collingbourne*, our supreme court cautioned that the purpose of the factors set forth in *Eckert* are not to establish a test in which the parent seeking removal must meet every prong; rather, the *Eckert* factors are to be considered and balanced by the trial court and no one factor is controlling. *Id.* at 523. Thus, while the *Eckert* factors should be considered, they are not exclusive and a trial court may validly consider other relevant factors, as dictated by the specific circumstances in the case. *Id.* at 522-23. The paramount question that must be considered in a removal case is the best interests of the children. *In re Marriage of Repond*, 349 Ill. App. 3d 910, 916 (2004).

¶ 100 For the following reasons, the trial court's decision to allow the removal of Ila and Felicity to Utah was not against the manifest weight of the evidence. In reviewing the *Eckert* factors, we note that Ryan focuses primarily on factor four. Because no one factor is controlling, however, we discuss all of the factors in affirming the trial court's decision.

¶ 101 We begin by considering factors one and two, which are related in this case. Factor one is the likelihood that the proposed move will enhance the general quality of life for both Melissa and the children, and factor two is whether the move was a ruse designed to frustrate or defeat Ryan's visitation.

¶ 102 In ruling on custody and removal in this case, the trial court stated that the most compelling factor was Ryan's violence. The court cited several incidents of domestic violence and made the specific finding that Melissa was credible. The court stated:

“In particular, [Melissa] testified to having him put his hand over her mouth and elbowing her in the chest, pulling her from the bathtub by her hair. In one instance, there was an altercation between the parties, and his parents stayed overnight during the dispute, and that she was not allowed to use the cell phone. *** [Ryan] told her that there was a bullet with her name on it which prompted her to flee. [Ryan] pled guilty to the crime, although he did try to minimize it and underwent anger management ***.”

¶ 103 The court found that Melissa’s motive for returning to Utah was the domestic violence in the relationship and a fear for her safety; her motive was not to prevent Ryan from visiting the children. This finding is supported by the evidence. In the four years that the family lived in Rockford, Melissa testified regarding the bathtub incident, forced sex, and Ryan’s dragging her to the car on the way to a doctor’s appointment when she was pregnant.

¶ 104 Melissa also testified regarding the incident that ultimately led her to flee. Ryan had wanted to meet her at a hotel for sex, and she refused. The next morning, the sheriff showed up at her door saying that a hearing date had been set. At the same time, Ryan called Melissa, insisting that she bring Ila and Felicity to Jean’s house. When Melissa refused, Ryan said that he had a bullet with her name on it on the night stand. Melissa called the police, who saw the bullets. Officer Kvoool testified that Melissa was visibly shaken by Ryan’s threat, and attorney Ray advised her to go somewhere that she felt safe. Melissa rented a U-Haul and left for Utah that day. As the court noted, Melissa’s ability to live in Utah without fear of Ryan directly enhanced her life and provided an indirect benefit to the children. See *In re Marriage of Dorfman*, 2011 IL App (3d) 110099, ¶ 52 (the wife’s fear of her former husband was real and reasonable based on his threats and his violations of the orders of

protection; her ability to live without fear directly enhanced her life and provided an indirect benefit to the children).

¶ 105 In addition, the court noted other ways in which moving to Utah enhanced the lives of Melissa and the children. First, Ila and Felicity were able to live in the same house as their siblings, Savanna, Gage, and Brooklyn, with whom they were very attached. Dr. Meyer and Trena testified regarding the strong attachment between the siblings.

¶ 106 Second, Melissa's extended family lived in Utah and provided a support network in terms of childcare, everyday errands, financial support, and recreation through numerous family gatherings. Ryan, too, had extended family in Utah, including Maven, Karen, two brothers, a sister-in-law, and three nieces. See *In re Marriage of Repond*, 349 Ill. App. 3d at 917 (in considering factor one, permitting the move to Switzerland allowed the siblings to live together and be close to extended family on all sides). Indeed, both Melissa and Ryan testified that the move to Rockford was intended to be temporary, and the long-term plan was always to return to their families in Utah.

¶ 107 A third reason identified by the court was that Melissa had employment prospects in Utah and could possibly hold down a job now that the case was resolved and there was more stability. As opposed to the minimal family support Melissa would receive from Jean and Gary in Rockford, Melissa's large, extended family offered ample support for her to complete her degree and pursue law school, thus increasing her job prospects.

¶ 108 Last, Melissa had found a five-bedroom home for the children in Utah, where she could live rent-free for three years with the option to buy. In contrast, the court noted that the future of Ryan's home was uncertain because it was tied up in a probate dispute.

¶ 109 Turning to factor three, Ryan's motive in resisting the removal of the children to Utah, the court was not convinced that Ryan truly resisted the move given his previous agreement to it in writing. On January 30, 2011, Ryan signed a document allowing Melissa to move back to Utah with Ila and Felicity in the summer of 2011. He even allowed her to use the 2010 federal tax return money for this purpose.

¶ 110 At trial, Melissa explained how the document came into being. In September 2010, Melissa and Ryan agreed to separate. Then, in October 2010, they agreed to divorce and also agreed that she and the children would move back to Utah. According to Melissa, they had countless conversations (20 plus) to this effect. As a result, Melissa prepared the January 2011 document with Ryan's input over the phone. Melissa further testified that she and the girls continued to have Sunday dinners with Ryan's family on account of Lee, and there was no dispute that Ryan signed the document at one of these Sunday dinners. Although Ryan downplayed the significance of this document, the trial court found Melissa to be more credible. Also, as previously discussed, Melissa's decision to take the children to Utah in March 2011, as opposed to the summer months of that year, made sense given the history of domestic violence and Ryan's latest threat about the bullet with her name on it.

¶ 111 Factor four considers the effect that removal will have on Ryan's visitation rights. When the removal to a distant jurisdiction impairs the noncustodial parent's involvement with the child, the potential harm to the child should be assessed. *In re Marriage of Repond*, 349 Ill. App. 3d at 919. Ryan's argument on appeal is premised on this factor. He argues that the experts, Drs. Waldron and Meyer, as well as the GAL, recommended against removing the children to Utah. While Ryan is correct that the GAL recommended against removal, Drs. Meyer and Waldron did not offer opinions as to this ultimate issue.

¶ 112 At the time of trial, Ila was five years old, and Felicity was three years old. In light of their ages, Dr. Waldron offered general testimony that geographic distance between parents creates problems for children of all ages, but especially for children under the age of five. He also testified that it would do harm to the children to remove them, and that the most positive situation for the children would be for Melissa to return to Rockford. However, Dr. Waldron did not testify, as Ryan asserts, that the risk of removal would be too much for the children to handle. He also did not render an opinion on the ultimate issue of whether the children should be removed, because that was a decision for the court to make. The task before the court, in his opinion, was determining whether the risk of removal to Utah was worth the potential gain to the children.

¶ 113 In particular, Dr. Waldron testified that “the risk of removal *could* be too much. So what [he] suggested in [his] report was what the Court had to do [was] weigh the potential benefits against the risks of another broken attachment” (emphasis added) with Ryan. He testified:

“And so in order to decide whether or not they should be removed, you’d have to look at the relative merits of moving them essentially. And that means looking into the quality of their relationships with each of their parents; the quality of parenting in each home; the sibling group; the potential stability.”

In other words, Dr. Waldron “pointed out some factors that might be helpful for the Court to look at to see if the benefits of removal outweigh that fairly substantial risk of another broken relationship.” Yet when asked if he had come to a conclusion on whether the risks outweighed the benefits, he testified that “I wasn’t able to do a conclusion because I didn’t do a study of the family.” Dr. Waldron was “just trying to point out from the social science research what factors should be

considered.” He said “[s]o I guess my opinion is I don’t have an opinion as to whether or not they should be removed [*sic*] or should not be removed [*sic*].”

¶ 114 In its decision, the court noted that it weighed the benefits of allowing the removal against the potential damage of the girls’ attachment to Ryan. The court further noted that according to Dr. Waldron’s report, some damage had already occurred to Ila and Felicity, but not as much as Dr. Waldron would have thought; the children were resilient. Therefore, contrary to Ryan’s assertion, the court’s inquiry and conclusion was consistent with Dr. Waldron’s testimony and report, which did not contain an opinion on the issue of removal. Essentially, Ryan inflates the significance of Dr. Waldron’s testimony and report because he disagrees with the court’s determination that the benefits of removal outweighed the risks.

¶ 115 Next, Ryan asserts that Dr. Meyer “believed it would be best for the children to” remain in Illinois so as to have frequent contact with Ryan. Again, this misstates Dr. Meyer’s testimony. During the GAL’s questioning of Dr. Meyer, he asked whether “a best-case scenario situation” was Melissa having custody of all the children and remaining in Rockford. Dr. Meyer replied that that “would be the best situation.” However, Ryan ignores Dr. Meyer’s testimony directly preceding this line of questioning. When the GAL asked Dr. Meyer whether it was more important for Ila and Felicity to be with the other siblings in Utah or remain closer to Ryan, Dr. Meyer responded that “all being equal, in my opinion, if it was a legitimate reason for [Melissa] to go, then I was going - then I would have been in favor of Melissa having the children” in Utah.

¶ 116 Like Dr. Waldron, Dr. Meyer did not offer an ultimate opinion as to whether removal should be granted in this case. That is because his primary function was to conduct a custody evaluation for Melissa. In doing so, Dr. Meyer thought that the circumstances under which Melissa left for

Utah were “critical” in making final recommendations, and her reason for leaving was something for the court, not him, to assess. That said, Dr. Meyer did find Melissa more credible than Ryan, and he noted that she had police reports and medical reports supporting her claims. Dr. Meyer’s ultimate opinion was that the children were more attached to Melissa, and it was in the best interests of the children to remain together as a sibling group.

¶ 117 As recommended by Dr. Meyer, the trial court assessed Melissa’s motive for taking the children to Utah, and it found it to be valid. Therefore, the court’s decision was consistent with Dr. Meyer’s testimony and report, and Ryan’s claim that Dr. Meyer “was in agreement with the conclusion that the children should not be removed from Illinois” is not supported by the record.

¶ 118 The final and fifth factor is whether a reasonable visitation schedule can be worked out. Because any removal will have *some* effect on visitation, the real question is whether a visitation schedule that is both reasonable and realistic can be created. *In re Marriage of Eaton*, 269 Ill. App. 3d 507, 515 (1995). A reasonable visitation schedule is one that will preserve and foster the children’s relationship with the noncustodial parent. *In re Marriage of Eckert*, 119 Ill. 2d at 327.

¶ 119 Melissa proposed a visitation schedule allowing Ryan to have the girls for eight weeks during the summer, half of Christmas vacation, and alternating spring breaks. The court found this schedule reasonable, especially since Ryan was in a better financial position to visit the children in Utah and had extended family there with whom he could stay. Melissa testified that she would ensure constant contact between the children and Ryan via the phone, Skype, and visits. She testified that anytime Ryan came to Utah to visit his family, he would be able to see the children.

¶ 120 We note that Melissa has a history of facilitating visitation, and there is no reason to believe she would not comply with court-ordered visitation. See *In re Marriage of Repond*, 349 Ill. App.

3d at 920 (no reason to believe that the mother would not comply with court-ordered visitation such that denial of her removal petition was warranted). During her approximately two-month visitation with the children in the summer of 2012, Melissa ensured that the children called Ryan often, and she arranged for visitation with Ryan's extended family by surprising Maven for his birthday. Melissa's history of visitation is in sharp contrast with Ryan, who did not offer to let the girls visit Melissa for any holidays from 2011 to 2012; who would not let Melissa see the children one day earlier than the scheduled visitation; who prevented Melissa from seeing the children during the three-week period when she was in Illinois for the mental health evaluation; who restricted the girls' phone conversations with Melissa and failed to return calls; and who failed to apprise Melissa of the girls' enrollment and performance at school.

¶ 121 Ryan had also failed to exercise visitation, as the trial court noted. See *In re Marriage of Repond*, 349 Ill. App. 3d at 919 (in examining the visitation factor, we must also consider the degree to which the other party has exercised visitation in the past). During the time that the children were in Utah, for example, the court noted that Ryan never went to visit them. In addition, Melissa testified that after she and Ryan separated in September 2010 and agreed to a visitation schedule, Ryan declined visitation at least four times after Melissa had brought over the girls.

¶ 122 Finally, Ryan is correct when he argues that the court, in allowing removal, went against the recommendation of the GAL. However, the GAL's recommendation is just that: a recommendation. Section 506(a-5) makes clear that the appointment of a GAL is not "intended to or designed to abrogate the decision making power of the trier of fact." 750 ILCS 5/506(a-5) (West 2010).

¶ 123 Much of what the GAL said in this case favored removal. The GAL agreed that Melissa's decision to move to Utah in March 2011 was legitimate "because there was a violent environment

and one of domestic violence.” He also noted that both Ryan and Melissa had more extended family in Utah than in Rockford. The GAL then based his ultimate recommendation on what Drs. Waldron and Meyer had testified was the “ideal” or “most positive situation,” which was Melissa returning to Rockford. The GAL’s recommendation seems counter to Dr. Meyer’s opinion that Melissa’s reason for leaving Rockford was “critical” to the custody and removal determinations. It also seems less based on the *Eckert* factors than the ideal scenario. In any event, it was up to the trial court to accept or reject the GAL’s recommendation, and the GAL’s recommendation to the contrary does not render the trial court’s decision to allow removal against the manifest weight of the evidence.

¶ 124 In weighing all of the relevant factors, the trial court’s decision allowing removal in this case was not against the manifest weight of the evidence.

¶ 125

III. CONCLUSION

¶ 126 For the aforementioned reasons, the judgment of the Winnebago County circuit court is affirmed.

¶ 127 Affirmed.