NO. 4-10-0759 Filed 2/3/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

DALE WATKINS and PENNY WATKINS, Petitioner-Appellees, v. JENNIFER S. WATKINS, Respondent-Appellant.	))))))))	Appeal from Circuit Court of Cass County No. 09F36 Honorable Bob G. Hardwick, Judge Presiding.

JUSTICE McCULLOUGH delivered the judgment of the court. Justices Turner and Myerscough concurred in the judgment.

ORDER

Held: (1) The trial court committed no error by denying respondent, Jennifer S. Watkins's, motion to dismiss for lack of jurisdiction pursuant to either the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA) (750 ILCS 36/201 (West 2008)) or section 607(a-3) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/607(a-3) (West 2008)).
(2) Petitioners, Dale and Penny Watkins, committed no discovery violation, warranting exclusion of their expert's addendum report.
(3) The court committed no error by awarding petitioners attorney's fees and costs pursuant to Supreme Court Rule 219 (eff. March 28, 2002) for respondent's abuse of discovery rules.
(4) The court committed no error in granting petitioners request for visitation with their grandchild under the Illinois grandparent visitation statute (750 ILCS 5/607(a-5) (West 2008)).
(5) The amount of grandparent visitation ordered by the court did not constitute an abuse of the court's discretion.

In September 2010, the trial court granted petitioners'

request for visitation with their grandchild, S.W., pursuant to section 607(a-5) of the Act (750 ILCS 5/607(a-5) (West 2008)), known as the grandparent visitation statute. Respondent, S.W.'s mother, appeals, arguing (1) the court lacked jurisdiction over the matter (2) the court erred by denying her motion to preclude an addendum of petitioner's expert, (3) the court erred by ordering her to pay petitioners attorney's fees and costs for abuse of discovery rules, (4) the court erred in ruling contrary to the intent and purpose of the grandparent visitation statute, (5) the court erred by finding respondent's denial of visitation was unreasonable, (6) the court erred by finding petitioners rebutted the presumption that respondent's decisions as to visitation were not harmful to S.W., (7) the court violated her fundamental liberty interests and unconstitutionally applied section 607(a-5), and (8) the court's visitation order was unreasonable. We affirm.

In August 2006, petitioners' son, Steven Watkins, and respondent were married. The couple lived together with Steven's child from a previous relationship, A.W., born September 4, 1999. Steven and respondent had one child together, S.W., born June 12, 2007. Shortly after S.W.'s birth, Steven and respondent separated. Steven and A.W. moved into a home on petitioners' property that was behind petitioners' own home. Respondent and S.W. began living with respondent's parents and grandparents.

In May 2008, Steven filed a petition for dissolution of marriage, seeking custody of S.W. Throughout Steven and respondent's separation and divorce proceedings, custody and visitation were matters of contention. On November 25, 2008, Steven was shot and killed in respondent's residence when attempting to exercise court-ordered visitation with S.W. Ultimately, respondent's grandmother, Shirley Skinner, was charged with and convicted of Steven's murder.

On December 22, 2009, petitioners sought to establish grandparent visitation with S.W. by filing a petition under the grandparent visitation statute. They alleged a close and loving relationship with S.W. during Steven's lifetime. Petitioners maintained respondent had unreasonably denied them visitation and her denial was detrimental to S.W.'s emotional health. They requested the trial court order a reasonable grandparent visitation schedule.

On September 28 and 29, 2010, the trial court conducted hearings on the petition. Petitioners first called respondent as an adverse witness. As she had done consistently throughout the proceedings, respondent invoked her fifth amendment rights and refused to answer any questions. Petitioners both testified, regarding their relationship with S.W. and the circumstances surrounding Steven and respondent's relationship, separation, and divorce proceedings. Additional witnesses included A.W.; Ashley

Clement, petitioners' daughter; police officer Larry Cave; Edward Skinner, respondent's uncle; Misty Dirks, A.W.'s mother; Jessica Phillips, Penny's sister; Dr. Michael Scott Trieger, petitioners' expert; and Dr. Judy Osgood, respondent's expert.

Evidence at the hearing showed, from the time respondent and Steven separated in September 2007 until Steven filed for divorce in May 2008, Steven saw S.W. two to three times a week when respondent would bring S.W. to Steven's residence for visits. Petitioners also saw S.W. during Steven's visits. However, they reported their visits were frustrated by respondent who was always present. Dale testified respondent wanted to be the only person to hold S.W. and would not let petitioners or Steven hold her. Penny testified respondent did not want S.W. to have a relationship with anyone outside of respondent's family.

After Steven filed for divorce and respondent was served with divorce papers, visitations between Steven and S.W., stopped. Dale testified respondent ceased all contact with Steven and would not answer his telephone calls or bring S.W. for visits. Since Steven did not see S.W., petitioners also did not see her.

Shortly after Steven began dissolution proceedings, respondent made a report to the Department of Children and Family Services (DCFS), alleging Steven sexually abused S.W. when she was one to three weeks old. She also raised concerns about A.W.

exhibiting behaviors that were possibly indicative of sexual abuse. DCFS investigated respondent's allegations but determined they were unfounded.

In approximately September 2008, respondent and Steven agreed to visitations during which respondent's grandmother, Shirley Skinner, would bring S.W. to Steven's residence and stay for the duration of the visit. Penny was also present during those visits. Problems arose between the families and the agreed-upon visits were short-lived. During one visit, an argument occurred that resulted in Penny seeking, and being granted, an order of protection against respondent.

On September 17, 2008, a hearing took place in Steven and respondent's dissolution proceedings. At the conclusion of that hearing, the trial court awarded respondent temporary custody of S.W. with Steven having unsupervised visitation. A transcript of the hearing was admitted into evidence. In making its ruling, the court stated as follows:

> "The father is going to have visitation with the minor child and there has just been such an exclusion of time that [S.W.] has spent with dad, I am not anxious to jump right into the every other weekend thing, Friday to Monday, at this point in time, and it's not through any fault of the father and maybe

through some fault of the mother. I am just not, for this young of a child, going to do that. I'm not sure that's a good idea for a child that young in the best of circumstances, but certainly I don't think it's in the best interests of [S.W.] to start overnight visitation this weekend. So, in regards to that, we are going to do Tuesdays and Thursdays from 5:30 to 8:00 pm. The father is going to provide all transportation for the child. He is going to pick up the child at 5:30 and start the visitation and is going to bring the child back then at 8:00, Tuesdays and Thursdays from 5:30 to 8:00, every other Saturday and Sunday from 1:00pm to 7:00 pm."

Dale testified that problems arose when Steven attempted to exercise his court-ordered visitations with S.W., stating "there was always a problem" and "always a reason why he couldn't see her." On two or three occasions, Steven had to call the police for assistance. Dale testified that, once the trial court ordered visitation between Steven and S.W., Dale was present "pretty much every time" a visit occurred. He stated Penny saw S.W. with greater frequency than he did and tried to be

at every one of Steven's visitations.

Police officer Larry Cave testified, on October 30 or 31, 2008, he responded to a report of a family disturbance. He met Steven outside of respondent's family's residence. Steven advised Cave that he was trying to get visitation with S.W. Cave verified that it was Steven's night for visitation by viewing court documents in Steven's possession. Cave testified he went to the residence to speak with its occupants but neither respondent nor S.W. were present.

On November 25, 2008, Steven was shot and killed in respondent's residence while attempting to pick S.W. up for a visit. Dale testified a court hearing had been scheduled for the following day, November 26, regarding Steven having overnight visitation with S.W. Dale stated respondent objected to any visitation between Steven and S.W. but especially to overnight visits.

Following Steven's death, A.W., S.W.'s half sibling, began living with petitioners and, ultimately petitioners became A.W.'s legal guardian. Petitioners and A.W.'s mother, Misty Dirks, testified that they had a good and cooperative relationship with one another. Petitioners also testified that A.W. and S.W. loved each other and had a good bond and friendship during Steven's lifetime. Penny observed A.W. and S.W. playing together during visits and showing affection toward one another. A.W.

testified that she was 11 years old. She reported having a good relationship with S.W. A.W. also recalled speaking with DCFS investigators. She denied that her father or anyone else had inappropriately touched her.

Dale testified he and Penny had frequent and ongoing contact with S.W. during Steven's visitations with her. He believed S.W. knew who he was during Steven's lifetime. Dale stated Steven would point him out to S.W. as "Papa" and she would waive. Dale also believed that S.W. knew Penny. He observed Penny hold her hands out to S.W. so that S.W. would go to Penny. S.W. was never scared and would respond by holding her hands out. S.W. also smiled and waived at Penny. Penny testified she believe a bond existed between her and S.W. because S.W. recognized Penny as her grandmother. She testified she played with S.W., bought her things, and provided her with food.

Petitioners expressed a desire for visitation with S.W. so that she would know who her father was and also her father's family. Both had concerns that S.W. was not being provided information about Steven or that she would not receive an accurate portrayal of him from respondent. Dale testified he believed respondent was trying to put anything about Steven in the past. Petitioners submitted into evidence an obituary from the recent death of respondent's grandfather. In the obituary, both respondent and S.W. were referenced by respondent's maiden name.

Petitioners believed they would be able to separate any ill feelings toward respondent and respondent's family from visitations with S.W.

Dale acknowledged that he had never been alone with S.W. He further admitted S.W. had never slept over at his house nor had he fed her, changed her diaper, or put her down for a nap. Dale also had not seen S.W. since approximately a week before Steven was killed. He had no knowledge as to whether. S.W. remembered him, Penny, or A.W. Dale further stated respondent never told him why she was denying visitation. Penny acknowledged having been alone with S.W. for only a short period of time.

Edward Skinner testified he was respondent's uncle and Shirley Skinner's son. Shirley was charged with and convicted of Steven's murder. Edward testified that prior to Shirley's trial he was present for a meeting with Shirley's attorney, Shirley's husband (Edward's father), and respondent, to discuss a possible reduction in Shirley's bond. Initially, her bond was set at five million dollars. Shirley's attorney reported that the prosecutor agreed to reduce Shirley's bond to one million dollars if respondent would agree to petitioners having one-day-a-week visitation with S.W. Edward thought the proposal was wonderful because he could have come up with money for Shirley's reduced bond. However, he testified respondent "blew up," stating she was not

going to allow petitioners visitation with S.W.

Jessica Phillips testified she was Penny's sister and was present for some of Steven's visits with S.W. During those visits, she observed petitioners play with S.W., hold her, and tell her they loved her. Phillips also testified she heard respondent admit to Steven that respondent lied to DCFS when she made sexual abuse allegations against Steven. Phillips testified respondent told Steven she "would do whatever it t[ook] to stop [Steven] and [his] family from seeing [S.W.]."

Ashley Clement testified she was petitioners' daughter, Steven's sister, and S.W.'s aunt. She described interactions between petitioners' and S.W. Clement observed petitioners playing with S.W., encouraging her, and kissing her.

Both parties presented the testimony of expert witnesses. Dr. Michael Scott Trieger, a clinical psychologist, testified for petitioners. On December 8, 2009, Dr. Trieger met with petitioners, their daughter Ashley, and A.W. He testified petitioners' expressed motivation for seeking visitation with S.W. was their belief that it was important that they play a role in S.W.'s life. Dr. Trieger also believed it was important for S.W. to have a relationship with petitioners. He stated grandparents can help children understand who their parents were and what kind of person the parent was. Grandparents would reinforce that the parent loved the child even though the parent was not

there to represent himself.

Dr. Trieger testified his concern for S.W. was that, when she got older, she would be upset to learn the truth of why Steven was not in her life. He stated a child who has to work through the realization of the loss of a parent can have a delayed grief reaction and could become depressed or feel personally responsible for the parent's absence from the child's life. The child could develop long standing depressive issues and problems trusting people, particularly when information provided to them at a young age is false. Dr. Trieger's written report, admitted into evidence, stated as follows:

> "As [S.W.] grows, and her ability to understand the cause of her father's death becomes increasingly more sophisticated, she will periodically re-experience that loss at critical times in which the lack of a father-daughter relationship is profoundly evident (e.g. birthdays, holidays, father-daughter dances, participation in sports, high school graduation, her wedding, the births of her children, etc.). And, if it is ultimately determined Steven died at the hands of a member of [respondent's] family, [S.W.] will need her paternal grandparents, who grieve

> the same loss, to help her cope. If it is further determined that [respondent] was present in the home where Steven was killed, [S.W.] will likely be conflicted about sharing her grief with her mother who had opening [sic] expressed her disdain and disapproval of Steven.
>
> In the meantime, contact between Steven's parents and [S.W.] is critical to her mental and emotional health. [Petitioners] represent a conduit to the memories, recollections, love and support [S.W.] received from Steven when he was alive and in the role of caregiving father."

Dr. Trieger also met with respondent in the presence of her mother and attorney. He stated respondent's version of events was diametrically opposed to petitioners' version. Respondent vehemently denied making it difficult for Steven or his family to see S.W. or denying them visitation. She provided examples of having offered them visits with S.W. that they did not accept.

Respondent reported to Dr. Trieger that she was denying petitioners visitation because she did not like their lifestyle which included alcohol consumption and cigarette smoking. She

also maintained petitioners never had much of a relationship with S.W. despite being given ample opportunity to visit with her. When Dr. Trieger asked whether respondent would change her mind if petitioners made concessions, respondent replied that they "tried that but it didn't work". Dr. Trieger found no evidence that petitioners abused alcohol.

Dr. Trieger believed petitioners would be able to set aside any feelings of hostility or anger they had toward respondent during visitations with S.W. Additionally, he opined that respondent's denial of a relationship between S.W. and petitioners put S.W. at risk. Particularly, Dr. Trieger had concerns that S.W. would not learn about Steven or get an accurate picture of him unless she had contact with petitioners. He was unaware of any manner in which respondent introduced Steven to S.W. He believed such a lack of information "sets the situation up for some kind of shocking revelation to occur later on" which he believed could have a long-term affect on S.W. Dr. Trieger testified reintroducing S.W. to Steven through tapes, video, or photographs would best occur sooner rather than later in S.W.'s lifetime.

On cross-examination, Dr. Trieger agreed that children could grow up healthy and well-adjusted without grandparent interaction. He acknowledged that his testimony that S.W. could suffer harm in the future without visitation was speculative.

Dr. Trieger also could not state that respondent's denial of visitation was currently hurting S.W. However, he clarified that he was not given the opportunity to observe or interview S.W. Further, Dr. Trieger testified that respondent's denial of visitation was "an avoidable risk."

Respondent presented the testimony of Dr. Judy Osgood. Dr. Osgood interviewed respondent and observed her together with S.W. She found S.W. appeared as a healthy, developmentally on target child who was very bonded to respondent. Respondent reported that she was opposed to visitation between S.W. and petitioners because she did not believe their motivations were sincere. Respondent felt petitioners were only trying to hurt respondent and did not believe they had a close relationship with S.W. She asserted that petitioners did not show much interest in S.W. before Steven's death.

Dr. Osgood also interviewed petitioners. She determined they were sincere about their desire to have a relationship with S.W. Dr. Osgood believed petitioners had a relationship with S.W. but that the relationship was limited and not significant. She noted S.W., who was three at the time, could not identify petitioners in a picture. Dr. Osgood also testified S.W. was unable to identify Steven in a photograph, referring to him by the name of respondent's brother.

Dr. Osgood testified both respondent and petitioners

reported turmoil surrounding visitations that occurred in the past, with respondent blaming petitioners for the conflict and petitioners blaming respondent. Her impression was that visits were stressful for S.W. Dr. Osgood testified that young children who are exposed to turmoil on a fairly consistent basis can develop behavior or emotional problems.

Dr. Osgood opined respondent's denial of visitation to petitioners was not harmful to S.W. "at this point in her age." She reasoned S.W. was three years old and did not have any vivid memories of petitioners. Dr. Osgood also found no evidence that petitioners formed a very strong attachment or bond with S.W. While she believed it would be important for S.W. to know about her father and that visitation with petitioners might be appropriate in the future, she expressed concerns about harm to S.W. if there were contact with petitioners at her current age. Dr. Osgood believed it would be harmful to S.W. to be "drawn back into" the conflict between the parties. She noted the tension between respondent and petitioners and their difficult relationship history.

Dr. Osgood also believed respondent would share information with S.W. about her father in a positive way. She testified respondent loved S.W. and looked out for S.W.'s best interests. Dr. Osgood did not believe respondent ever acted maliciously toward either Steven or petitioners.

At the conclusion of the hearing, the trial court found in favor of petitioners and granted their request for visitation with S.W. The court ordered visitation to begin with supervised visits on three consecutive Saturdays from 1:00 p.m. to 3:00 p.m. Visitation would then begin as unsupervised and occur on the following three consecutive Saturdays from 1:00 p.m. to 7:00 p.m. The court ordered petitioners' visitations with S.W. to occur thereafter on alternating weekends from Saturday at 10:00 a.m. to Sunday at 6:00 p.m. It further ordered petitioners' visitations to take place (1) every December 26 at noon until December 27 at 6:00 p.m. (2) the day after S.W.'s birthday each year from 4:00 p.m. 8:00 p.m. and (3) for two consecutive weeks during the summer from August 1 at noon until August 15 at noon.

This appeal followed.

Initially, we note, petitioners filed a motion to dismiss respondent's appeal, alleging she has left Illinois, placed herself outside the jurisdiction of Illinois process, and was repeatedly and contumaciously violating court orders. Due to the circumstances presented by this case, we find it appropriate to address the merits of respondent's appeal. Petitioners' motion to dismiss is denied, without prejudice.

On appeal, respondent first argues the trial court erred in finding it had jurisdiction to hear the matter under the UCCJEA. She contends she and S.W. reside in Florida, Florida is

S.W.'s "home state" for purposes of the UCCJEA, and their residency in Florida constituted more than a "temporary absence" from Illinois.

The section 201(a)(1) of the UCCJEA (750 ILCS 36/201(a)(1) West 2008)) provides an Illinois court has jurisdiction to make an initial child-custody determination where:

> "this State is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this State but a parent or person acting as a parent continues to live in this State[.]

The UCCJEA defines "home state" to mean "the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding." 750 ILCS 36/102(7) (West 2008). Periods of temporary absence from Illinois are included within that sixth-month period. 750 ILCS 36/102(7) (West 2008).

"[T]he 'temporary absence' provision is designed merely to prevent lapses in the six-month period caused by brief interstate visits by the child." *In re Marriage of Arulpragasam and*

Eisele, 304 Ill. App. 3d 139, 148, 709 N.E.2d 725, 732 (1999). "The 'home state' test is, thus, a simple one: 'where has the child lived with a person acting as a parent for the last six months?' [Citation.]" *Arulpragasam*, 304 Ill. App. 3d at 148, 709 N.E.2d at 732.

On January 13, 2010, respondent filed her motion to dismiss the petition and objection to jurisdiction. On January 28, 2010, the trial court conducted a hearing on the motion and denied it. The record does not contain a transcript of the hearing or set forth any detailed findings by the court. However, it is undisputed that S.W. was born in June 2007, in Illinois and that she and respondent resided in Ashland, Illinois until at least November 2008, when Steven was killed. At some point following Steven's death, respondent took S.W. from Illinois and went to Florida. As some later date, respondent and S.W. returned to Illinois. Nothing in the record clearly indicates the precise date respondent and S.W. went to Florida, how long they remained in Florida, or the date upon which they returned to Illinois.

On December 22, 2009, petitioners filed their petition to establish grandparent visitation. On December 29, 2009, respondent was served with a summons and a copy of the petition in Ashland, Illinois. She was served at her family's residence, the same residence where respondent and S.W. were living at the

time of Steven's death. Respondent does not dispute that S.W. was with her in Illinois at the time of service.

There is insufficient evidence in the record to determine that respondent and S.W. lived in either Illinois or Florida for six consecutive months prior to the commencement of petitioners' action. Although the parties agree that respondent and S.W. went to Florida at some point following Steven's November 2008 death, their precise date of departure is unknown. Further, it is clear that, at some point, respondent and S.W. returned to Illinois and were present within this state when respondent was served with the petition in this matter. Again, the precise date of their return is not provided in the record. Respondent refused to testify or answer any questions about where she or S.W. were or had been living. As a result, neither Illinois or Florida qualify as S.W.'s "home state" under the UCCJEA.

Nevertheless, we find Illinois has jurisdiction under section 201(a)(2) of the UCCJEA (750 ILCS 36/201(a)(2) (West 2008)). That section provides an Illinois court has jurisdiction to make an initial child-custody determination where another state does not have "home state" jurisdiction and:

> "(A) the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this State other than mere

physical presence; and

(B) substantial evidence is available in this State concerning the child's care, protection, training, and personal relationships[.]" 750 ILCS 36/201(a)(2) (West 2008).

The only two states where S.W. is alleged to have lived during her short life are Illinois and Florida. On this record, neither Illinois nor Florida can be determined to be S.W.'s "home state." Additionally, S.W. and respondent both have significant Illinois connections and substantial evidence concerning S.W.'s care, protection, training, and personal relationships is available in Illinois. Respondent and Steven were married in Illinois and lived and worked here prior to S.W.'s birth. Their dissolution and custody proceedings took place within Illinois. A significant number of both respondent's and S.W.'s family members reside in Illinois, including both S.W.'s maternal and paternal grandparents and her half-sibling. S.W. was born in Illinois and lived here continuously until at least the date of Steven's death when she was 17 months old. Although she was removed from the state for a period of time after Steven died, she and respondent returned to Illinois and were present here around the time petitioners filed their petition for visitation.

In petitioners' response to respondent's motion to dismiss their petition and objection to jurisdiction, they

alleged additional facts showing respondent's and S.W.'s Illinois connections. Attached to their response was (1) a certified copy of respondent's Illinois voter's registration, dated January 21, 2010; (2) a certified copy of a warranty deed for Illinois property titled to respondent; (3) petitioner's attorney's affidavit, stating respondent had a vehicle with valid Illinois license plates, registered to the state of Illinois; and (4) an abstract record from the Illinois Secretary of State's Office, verifying that respondent had a valid Illinois driver's license. Respondent set forth no evidence as to any significant connections or substantial evidence available in another state.

As S.W. had no "home state" and had a significant and substantial connection to Illinois, the trial court had jurisdiction under the UCCJEA. It did not err by denying respondent's motion to dismiss on that asserted basis.

Respondent also contends the trial court erred by not dismissing the matter because S.W. did not reside in Cass County, Illinois, the county where petitioners' filed their petition. She notes the Act provides that "[a] petition for visitation with a child by a person other than a parent must be filed in the county in which the child resides." 750 ILCS 5/607(a-3) (West 2008). Again, respondent argues S.W. resides in Florida rather than Illinois.

Respondent notes petitioners acknowledged in their

petition that she and S.W. left Illinois after Steven's death and Dale testified at the hearing on the petition that respondent and S.W. lived in Florida. Although the parties agree respondent and S.W. were in Florida for a period of time following Steven's death, petitioners' clear position was that they were initially unaware of respondent and S.W.'s location and that any absence from Illinois was temporary. Further, at the time petitioners filed their petition for visitation, respondent and S.W. were present in Illinois, as shown by service of the summons and petition for visitation on respondent in Illinois at her family home. Evidence showed respondent also continued to own a home within Cass County.

Further, "[i]t is 'the prevailing rule that the Fifth Amendment does not forbid adverse inferences against parties in civil actions when they refuse to testify in response to probative evidence offered against them.' [Citation.]" *People v. $1,124,905 U.S. Currency and One 1988 Chevrolet Astro Van*, 177 Ill. 2d 314, 332, 685 N.E.2d 1370, 1379 (1997). Respondent had ample opportunity to provide evidence to support her motion to dismiss and objection to jurisdiction. Instead, she invoked the Fifth Amendment during her deposition, refusing to answer questions about her or S.W.'s residency. The record contains no evidence showing S.W. resided in a county or state other than the ones where the petition was filed.

The record does not support respondent's position that the trial court lacked jurisdiction over the petition for visitation. The court committed no error in denying respondent's motion to dismiss and objection to jurisdiction.

Respondent next argues petitioners violated Supreme Court Rule 213(i) (eff. September 1, 2008), regarding a party's duty to supplement prior answers or responses given during the course of discovery. Specifically, she contends the trial court erred by denying her motion to preclude an August 26, 2010 addendum to petitioners' expert's report, arguing it was not a seasonable supplement or amendment to previously disclosed information.

Supreme Court Rule 213 (eff. September 1, 2008) "governs discovery by interrogatories, as well as disclosure of the identity of witnesses who will testify at trial." *White v. Garlock Sealing Technologies, LLC*, 373 Ill. App. 3d 309, 323, 869 N.E.2d 244, 255 (2007). It requires that, "[a] party has a duty to seasonably supplement or amend any prior answer or response whenever new or additional information subsequently becomes known to that party." Ill. S. Ct. R. 213(i) (eff. September 1, 2008). "The admission of evidence pursuant to Rule 213 is within the sound discretion of the trial court, and the court's ruling will not be disturbed absent an abuse of that discretion." *Sullivan v. Edward Hospital*, 209 Ill. 2d 100, 109, 806 N.E.2d 645, 651-52

(2004).

The trial court entered a case management order that required written discovery to be fully answered by all parties by April 23, 2010. Petitioners provided a report authored by Dr. Trieger. On July 2, 2010, Dr. Trieger's discovery deposition was taken, during which he testified petitioners reported only seeing S.W. two or three times during S.W.'s lifetime. On August 30, 2010, petitioners supplemented their answers to interrogatories with an addendum report prepared by Dr. Trieger and dated August 26, 2010. In the addendum, Dr. Trieger stated "[i]t was apparent from [his] deposition that [his] recollection of the amount of contact between [S.W.] and [petitioners] was incorrect." He stated he telephoned Penny for clarification and then provided his findings, indicating more significant contact between S.W. and petitioners than he recalled at his deposition. On September 14, 2010, the trial court entered an order, granting respondent the opportunity to conduct a supplemental deposition of Dr. Trieger. No supplemental deposition was ever taken.

The trial court did not abuse its discretion. The information contained in Dr. Trieger's addendum did not change his previously held opinions. He continued to recommend visitation between S.W. and petitioners. Moreover, the information in his addendum was consistent with petitioners' position as to the amount of contact they had with S.W. Petitioners were deposed

and, through discovery, respondent was aware of their claims.

Additionally, the ultimate hearing in the matter did not take place until approximately one month after the addendum was submitted. Respondent had the opportunity to prepare for trial based on the addendum. She was also given the chance to further depose Dr. Trieger, which she declined. Respondent argues the cost of retaking Dr. Trieger's addendum would have been hers and a burden on a single mother who had already expended considerable sums in taking Dr. Trieger's first deposition. However, the record reflects the trial court reserved a request for petitioners to pay the fees and costs associated with the deposition until it could determine whether there had been a radical change from Dr. Trieger's prior testimony.

Under these facts, petitioners' supplementation of discovery information did not violate Rule 213(i). The trial court did not abuse its discretion by denying respondent's motion to preclude Dr. Trieger's addendum.

Respondent next argues the trial court erred by finding she abused discovery rules and awarding petitioners the attorney's fees and costs associated with certain discovery depositions. She contends she committed no misconduct and the court improperly failed to set forth the basis of its decision to impose a sanction.

Generally, the party requesting the deposition must pay

the fees or costs associated with it. Ill. S. Ct. R. 208(a) (eff. October 1, 1975). Where a party abuses discovery rules, the court may impose an appropriate sanction "which may include an order to pay the other party *** the amount of reasonable expenses incurred as a result of the misconduct, including a reasonable attorney fee[.]" Ill. S. Ct. R. 219(c), (d) (eff. March 28, 2002). "The decision to impose sanctions under Rule 219(c) lies within the trial court's discretion, and we will not reverse that court's decision absent an abuse of discretion." *Stringer v. Packaging Corp. of America*, 351 Ill. App. 3d 1135, 1138, 815 N.E.2d 476, 479 (2004).

When sanctions are imposed pursuant to Rule 219(c), the court must "set forth with specificity the reasons and basis of any sanction so imposed either in the judgment order itself or in a separate written order." Ill. S. Ct. R. 219(c) (eff. March 28, 2002). However, the court's failure to set forth its grounds for the imposed sanction does not constitute automatic reversible error. *Glover v. Barbosa*, 344 Ill. App. 3d 58, 63, 800 N.E.2d 519, 524 (2003) (Absent contrary evidence, a reviewing court can assume that the reasons for the sanction are those set out by the moving party).

On June 11, 2010, petitioners filed a motion for attorney's fees and costs pursuant to Rule 219, alleging respondent abused discovery procedures. They asserted she provided a

list of 40 witnesses expected to testify on her behalf at trial, 11 of which petitioners deposed. Petitioners maintained three of the deposed witnesses did not know they had been listed by respondent and expressed they could not testify on her behalf because they had no knowledge of the subject matter about which respondent asserted they would testify. Petitioners alleged the other eight deposed witnesses refused to testify and invoked the fifth amendment.

On May 13, 2010, petitioners notified respondent that they were scheduling depositions for five additional witnesses. On May 20, 2010, respondent amended her witness list to include only nine individuals. Respondent's amended list did not include any of the five witnesses petitioners had scheduled for depositions. Petitioners asked the trial court to compel respondent to pay all expenses and attorney's fees associated with the depositions that were actually taken and for the preparation and service of subpoenas for depositions that were scheduled to be taken.

On June 28, 2010, the trial court granted petitioners' motion for attorney's fees and costs in part. It ordered respondent to pay petitioners "for attorney's fees and all other expenses incurred" in connection with the depositions of the three deposed individuals who were unaware that they had been named by respondent and the five depositions that had been

scheduled but which were never taken.

The trial court's order does not contain the reasoning or basis for its decision. However, respondent does not challenge the facts as set forth in petitioners' motion. Her only contention is that those facts fail to show misconduct. As a result, the court's failure to set forth its reasoning with specificity does not require an automatic reversal of its decision to impose sanctions. The record does not reflect an abuse of discretion by the court. Moreover, the sanction imposed was reasonable in comparison to the alleged wrong. The court committed no error.

The heart of respondent's appeal is her challenge to the trial court's decision to grant petitioners' request for grandparent visitation with S.W. Initially, she contends the court's decision was contrary to the intent and purpose of the grandparent visitation statute because the statute was enacted to protect close and substantial grandparent-grandchild relationships and not to preserve a parent's legacy. Respondent cites the Supreme Court's decision in *Troxel v. Granville*, 530 U.S. 57, 64 (2000), which states as follows:

> "The nationwide enactment of nonparental visitation statutes is assuredly due, in some part, to the States' recognition of these changing realities of the American family.

> Because grandparents and other relatives undertake duties of a parental nature in many households, States have sought to ensure the welfare of the children therein by protecting the relationships those children form with such third parties."

Evidence reflects S.W. is a young child. She was 17 months old at the time of Steven's death when she was last seen by petitioners, two and a half at the time the petition for visitation was filed, and three by the time the trial court conducted a hearing on the petition. Given S.W.'s young age, it is unlikely that she has any memory of petitioners or her relationship with them. Nevertheless, the underlying and basic purpose and intent of nonparental visitation statutes is to protect the welfare of children. Petitioners presented evidence of harm to S.W.'s emotional and mental health if she is denied visitation with them. It is clear from the trial court's statements that it considered S.W.'s welfare when ordering visitation. Its decision is not contrary to the intents and purposes of the grandparent visitation statute.

Respondent also argues the trial court erred by finding her denial of visitation was unreasonable. She contends the evidence offered by petitioners was insufficient. The grandparent visitation statute permits a grandparent to "file a petition

for visitation rights to a minor child if there is an unreasonable denial of visitation by a parent" and "the child's other parent is deceased ***." 750 ILCS 5/607(a-5)(1)(A-5) (West 2008)).

The record clearly shows respondent's denial of visitation to petitioners. Although petitioners maintained a relationship with S.W. during Steven's lifetime, they had not seen her since shortly before Steven's death. Respondent invoked her fifth amendment rights and offered no basis for her denial of visitation. However, Dr. Trieger testified respondent reported that she did not agree with petitioners' lifestyle, which she asserted included drinking alcohol and smoking cigarettes, and she believed petitioners never had much of a relationship with S.W. Dr. Osgood testified respondent was denying visitation because she felt petitioners were insincere about their desire for visitation, did not have a close relationship with S.W., and were trying to hurt respondent. Respondent asserted petitioners did not show much of an interest in S.W. before Steven's death.

Contrary to respondent's purported beliefs, both Dr. Trieger and Dr. Osgood opined petitioners' were sincere in their request for visitation with S.W. Dr. Osgood believed they were competent and responsible individuals. Evidence also established that petitioners expressed an interest in S.W. by consistently taking part in Steven's visitations with her. The record sup-

ports the finding that the only reason petitioners did not spend more time with S.W. was due to respondent's objections to, and interferences with, visitation. Additionally, Dr. Trieger noted respondent seemed unwilling to allow petitioners the opportunity to remedy her objections to their lifestyle which he believed could be easily fixed.

The record further details respondent's efforts to prevent any relationship between S.W. and Steven and his family. Evidence showed she refused to allow Steven and his family to have unsupervised contact with S.W. and unilaterally cut off their contact with her. Respondent made a report to DCFS, alleging Steven sexually abused S.W. and possibly A.W. Her allegations were suspect due to the timing of the report and witness testimony that she admitted lying to DCFS. Respondent also interfered with Steven's court-ordered visitation, requiring Steven to contact police for assistance. Ultimately, Steven was shot and killed in respondent's residence while attempting to exercise his court-ordered visitation.

In reaching its decision, the trial court found the evidence showed an unreasonable denial of visitation by respondent. The evidence presented supports the court's finding.

Respondent argues petitioners further failed to present sufficient evidence that S.W. was harmed by a denial of visitation. The grandparent visitation statute contains a rebuttable

presumption "that a fit parent's actions and decisions regarding grandparent *** visitation are not harmful to the child's mental, physical, or emotional health." 750 ILCS 5/607(a-5)(3) (West 2008)). The petitioning grandparent has the burden of proving "that the parent's actions and decisions regarding visitation times are harmful ***." 750 ILCS 5/607(a-5)(3) (West 2008)).

The presumption that a fit parent's denial of visitation is not harmful to the child "is the embodiment of the fundamental right of parents to make decisions concerning the care, custody, and control of their children which is protected by the fourteenth amendment." *Flynn v. Henkel*, 227 Ill. 2d 176, 181, 880 N.E.2d 166, 169 (2007). "A trial court's determination that a fit parent's decision regarding whether grandparent visitation is or is not harmful to the child's mental, physical, or emotional health will not be disturbed on review unless it is contrary to the manifest weight of the evidence." *Flynn*, 227 Ill. 2d at 181, 880 N.E.2d at 169.

The rebuttable presumption in the grandparent visitation statute was addressed by the supreme court in *Flynn*, 227 Ill. 2d at 181-85, 880 N.E.2d at 169-71. There the court ruled that a paternal grandmother petitioning for visitation under the grandparent visitation statute failed to present any evidence to show that a denial of visitation with her would result in harm to her grandchild's mental, physical, or emotional health. *Flynn*,

227 Ill. 2d at 184, 80 N.E.2d at 170. It noted that the only evidence pertaining to harm the grandchild would experience from a denial of visitation came from the respondent mother who denied that any harm would occur. *Flynn*, 227 Ill. 2d at 184, 80 N.E.2d at 170. The court concluded as follows:

> "Neither denial of an opportunity for grandparent visitation, as the trial court found, nor a child 'never knowing a grandparent who loved him and who did not undermine the child's relationship with his mother,' as the appellate court held, is 'harm' that will rebut the presumption stated in section 607(a-5)(3) that a fit parent's denial of a grandparent's visitation is not harmful to the child's mental, physical, or emotional health." *Flynn*, 227 Ill. 2d at 184, 880 N.E.2d at 171.

Respondent relies on *Flynn* to support her position. However, *Flynn* is distinguishable from the present case rather than similar to it. Unlike the grandmother in *Flynn*, petitioners in the instant case presented evidence pertaining to the harm S.W. would experience by a denial of visitation. Dr. Trieger opined that contact between petitioners and S.W. was "critical to her mental and emotional health as petitioners were "a conduit to

the memories, recollections, love and support [S.W.] received from Steven when he was alive and in the role of caregiving father."

Dr. Trieger testified that a child who has to work through the loss of a parent can have delayed grief reactions, become depressed, or feel personally responsible for the parent's death. He described the importance of the child receiving accurate information regarding the deceased parent, noting children provided with false information could develop long standing depressive or trust issues. Dr. Trieger further testified S.W.'s ability to understand Steven's death would become increasingly more sophisticated as she grew and she would periodically re-experience her loss at critical moments in her life. Dr. Trieger opined S.W. would need petitioners to help her cope as they "grieve the same loss." Given respondent's history with Steven, he felt S.W. might be conflicted about sharing grief with respondent.

Even Dr. Osgood, respondent's expert, believed it would be important for S.W. to know about Steven and acknowledged visitation with petitioners might be appropriate in the future. Her concern about visitation stemmed from the turmoil surrounding previous visits and contacts between the parties. However, the record supports the conclusion that any turmoil was occasioned by respondent rather than petitioners.

Additionally, Dr. Trieger expressed concerns that S.W. would not learn about Steven or get an accurate picture of him from respondent. The trial court's decision reflects the same conclusion. In finding petitioners rebutted the presumption in respondent's favor, the court stated as follows:

> "S.W. has a need to know [petitioners] and needs to understand them, needs to understand her father and I am absolutely convinced and from what I have heard today and through this whole process that that is not going to happen unless [petitioners] get visitation. *** But I think knowing her father through her grandparents, on what I have heard, is going to help her and that's what I'm going to order."

Given the facts presented, the record supports the finding that S.W. would not learn about Steven or receive an accurate portrayal of him from respondent.

Respondent argues petitioners alleged harm that was speculative and, therefore, insufficient to rebut the presumption that her decisions were not harmful to S.W. When determining whether to grant visitation pursuant to the grandparent visitation statute, the trial court must consider several factors, including any "fact that establishes that the loss of the rela-

tionship between the petitioner and the child is *likely* to harm the child's mental, physical, or emotional health." (Emphasis added.) 750 ILCS 5/607(a-5)(4)(J) (West 2008). Thus, the grandparent visitation statute contemplates harm that is likely, but not certain, to occur, and that a child can suffer harm that may not be fully realized at the time of the proceedings.

We further reject respondent's contention that the type of harm petitioners alleged is the same as that alleged by the grandmother in *Flynn*. In *Flynn*, virtually no evidence of harm to the grandchild was presented and the harm found was generally the loss of the opportunity for a loving grandparent-grandchild relationship. As discussed, the facts of this case vary greatly from those presented in *Flynn* as does evidence of the harm to S.W., which was specific to her and her particular situation.

Petitioners presented evidence showing S.W. was subject to mental and emotional harm from the loss of a relationship with petitioners. The trial court found the evidence sufficient to rebut the presumption that is in respondent's favor. Its decision is not against the manifest weight of the evidence.

Respondent further argues the trial court's decision violates her fundamental liberty interests as a parent and unconstitutionally applied the grandparent visitation statute in the matter. She argues the court did not give her "special weight" because petitioners did not sufficiently prove harm. The

record shows the court was aware of and applied the presumption that respondent's decisions as to visitation were not harmful to S.W. The application of that presumption gave respondent the "special weight" to which she was entitled. Petitioners, however, presented evidence that showed respondent's decision subjected S.W. to harm. The court's finding that their evidence was sufficient to rebut the presumption in respondent's favor was not against the manifest weight of the evidence. The court committed no error.

Finally, respondent contends the amount of visitation awarded by the trial court was unreasonable. She argues the court's order "is egregious, unjustifiable and unreasonable" because petitioners had only a minimal amount of contact with S.W. Respondent also contends the court's order limits her ability and freedom to return to her home in Florida and fails to consider S.W.'s life and activities in Florida.

"A trial court's decision regarding visitation will not be disturbed on review absent an abuse of discretion." *In re Gollahon*, 303 Ill. App. 3d 254, 257, 707 N.E.2d 735, 737 (1999). Here, the court ordered visitation between petitioners and S.W. to begin with supervised visits on three consecutive Saturdays from 1:00 p.m. to 3:00p.m. It ordered visitation to then continue unsupervised on the following three consecutive Saturdays from 1:00 p.m. to 7:00 p.m. Thereafter, petitioners were awarded

visitations with S.W. on alternating weekends from Saturday at 10:00 a.m. to Sunday at 6:00 p.m. The court further ordered petitioners' visitations to take place (1) every December 26 at noon until December 27 at 6:00 p.m. (2) the day after S.W.'s birthday each year from 4:00 p.m. 8:00 p.m. and (3) for two consecutive weeks during the summer from August 1 at noon until August 15 at noon.

Although the trial court awarded a significant amount of visitation to petitioners, the court did not abuse its discretion. Despite respondent's assertions as to the lack of contact between petitioners and S.W., evidence showed the existence of a loving grandparent-grandchild relationship prior to Steven's death. Additionally, the evidence does not establish that respondent and S.W. were Florida residents and respondent otherwise offers no specific examples of the impact of the court's visitation order on S.W.'s "life and activities."

For the reasons stated, we affirm the trial court's judgment.

Affirmed.