2016 IL App (4th) 160123-U

NO. 4-16-0123

FILED
July 7, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: MARRIAGE OF MELANIE M. KOPPENHOEFER	)	Appeal from
	)	Circuit Court of
Petitioner-Appellant,	)	Woodford County
and	)	No. 13D58
BRIAN D. KOPPENHOEFER,	)	
Respondent-Appellee.	)	Honorable
	)	Charles M. Feeney III,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Steigmann and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's judgment granting respondent's petition to modify visitation was not against the manifest weight of the evidence.

¶ 2 Petitioner, Melanie M. Koppenhoefer, appeals the trial court's finding in favor of respondent Brian D. Koppenhoefer's petition to modify the visitation schedule previously agreed to in the parties' marital settlement agreement, arguing the trial court erred in (1) modifying visitation, (2) finding overnight visitation should begin within 90 days, (3) declining to hear closing arguments, (4) considering certain evidence, and (4) the content of its order. We affirm.

¶ 3 I. BACKGROUND

¶ 4 We initially note a transcript of proceedings from the bench trial is not included in the record. Instead, the parties filed and jointly signed a bystander's report, which was certified

by the trial court pursuant to Illinois Supreme Court Rule 323(c) (eff. Dec. 13, 2005). The following facts are taken from that report and the common law record on appeal.

¶ 5 The parties were married on June 19, 2010, and had a daughter, S.K. (born August 8, 2011).

¶ 6 On August 5, 2013, Melanie filed a petition for dissolution of marriage, citing irreconcilable differences. Thereafter, the parties entered into a marital settlement agreement, which was filed on October 1, 2013. (Brian signed the agreement on August 30, 2013, and Melanie signed it on September 4, 2013.) At the time the agreement was signed, Melanie was represented by counsel and Brian was *pro se.* The agreement provided S.K.'s "sole care, custody, control[,] and education" would be awarded to Melanie. With regard to visitation, the agreement provided the following:

> "[Brian] shall have visitation with [S.K.] three days a week, one to two hours per visit in the home of [Melanie] or [Melanie's] mother. All visitation shall be supervised by [Melanie] or [Melanie's] mother. The parties agree that restricted visitation is in the best interest of [S.K.] due to [Brian's] alcoholism and anger management issues."

¶ 7 On October 23, 2013, the trial court entered the judgment of dissolution of marriage.

¶ 8 On January 30, 2015, Brian, represented by counsel, filed a petition to modify visitation. According to the petition, the current visitation schedule caused him substantial stress and severely limited his and his family's ability to bond with S.K. The petition stated Brian had attempted to resolve these issues by offering a progressive increase in visitation and mediation

but was unable to reach an agreement with Melanie.

¶ 9 On June 3, 2015, Melanie filed a motion to dismiss Brian's petition to modify visitation, which the trial court denied. The matter then proceeded to a two-day bench trial on Brian's petition, which took place on October 22, 2015, and December 23, 2015.

¶ 10 A. Brian's Case In Chief

¶ 11 1. *Anni Reinking's Testimony*

¶ 12 Anni Reinking testified she taught a parenting class at Children's Home. Brian attended the class during the summer of 2015. Reinking, who was certified to teach the class, testified it lasted six weeks and involved parenting knowledge. Participants were graded on interaction and participation during each two-hour session. Participants took a quiz at the end of each session. Brian's average score on those quizzes was 81.6%. Brian received a completion certificate, which was introduced into evidence without objection. On cross-examination, Reinking testified Brian received a 33% score on the "responsibility/discipline" quiz, which addressed his own childhood. Another topic dealt with anger management but focused on child-anger issues and did not address Brian's own anger management. Reinking explained, Brian came to class "quite tired from work" and fell asleep once during the responsibility and discipline class. Brian attended classes during the day from either 9 to 11 a.m. or 1 to 3 p.m.

¶ 13 2. *Daniel Meyer's Testimony*

¶ 14 Daniel Meyer testified he has been a member of Alcoholics Anonymous (AA) for 36 years. Meyer saw Brian regularly at meetings for two to three years. It was Meyer's impression Brian seemed sincere and saw the value of the program. Brian's active involvement with AA had increased with time. Brian often attended both meeting days during the week, *i.e.*,

Wednesday and Friday. On cross-examination, Meyer testified he attended 99% of the meetings and most of the time Brian would attend both days. However, there may have been times when Brian attended just one meeting in a week. One week Brian missed both sessions because he was gone for work. Meyer testified he was not Brian's sponsor but Brian stated at meetings his last drink was about three years ago. According to Meyer, AA is based on being honest with the group.

¶ 15 3. *Brian's Testimony*

¶ 16 Brian testified he agreed to the visitation restrictions in the marital settlement agreement because Melanie threatened to take away all visits if he got a lawyer and contested the case. Brian testified he thought it was in S.K.'s best interest for him not to get an attorney. Brian admitted he is an alcoholic and his last drink was on April 15, 2012. Brian began attending AA in October 2011, after S.K. was born. Brian started going to AA before he was able to stop drinking. However, AA kept him from drinking once he stopped. Brian testified he would go 1 to 1½ times a week. Brian explained he was not always able to go to meetings on Fridays, but he always went on Wednesdays after his visits with S.K. Brian admitted he stopped going to AA for a three-month period prior to when he stopped drinking. However, since the parties signed the marital settlement agreement, he regularly attended AA meetings.

¶ 17 While at the time he signed the agreement he did not believe he had anger issues, he still sought treatment from Julie Sellner, a licensed professional counselor, for anger-management issues. The one-on-one, hour-long sessions lasted six months before Sellner released him from treatment. Brian testified he improved his ability to control his anger as a result of working with Sellner.

¶ 18 Brian also testified he attended and successfully completed a parenting class in the summer of 2015. The class met once per week for six weeks and lasted two hours per session. Brian attended class after going to work in the gravel pit during the day shift (from 5 a.m. to 1:30 p.m. or 6 a.m. to 2:30 p.m.).

¶ 19 Brian also sought alcohol treatment at Tazwood Mental Health Center (Tazwood) in early 2015. Brian's exhibit No. 1, an evaluation from Tazwood, was admitted over Melanie's objection. While regular AA attendance was recommended, further treatment was not.

¶ 20 Brian testified he currently receives three visits of one to two hours each at Melanie's house. Each visit is supervised by either Melanie or Melanie's mother. The visits take place on the main floor of the home and 95% of the time Melanie or Melanie's mother would be in the room with them. Brian was told not to take S.K. anywhere else. According to Brian, as a result, he was unable to parent S.K. Brian explained Melanie and her mother would interrupt his time with S.K. and redirect her. Melanie or her mother would also take photographs of him during the visits. Brian felt he was not able to bond with S.K. given the current situation. Brian testified about an instance when he brought dinner over for S.K. However, Melanie took control of the situation and would not let Brian prepare the meal or feed S.K.

¶ 21 Brian felt he could handle overnight visits. Brian has a two-bedroom residence, which is childproof. Brian inspected the property and testified it exceeds the Department of Children and Family Services checklist. Brian testified he had no problem with a progressive plan in building up toward regular visits.

¶ 22 On cross-examination, Brian testified he signed the marital settlement agreement because he was told his visits would be restricted even more if he did not. Brian understood

signing the agreement without an attorney was foolish but explained he did not want to lose all visitations so he "took what he could get." Brian reiterated he stopped drinking on April 15, 2012, and was sober when he signed the agreement. Brian admitted he stopped going to AA for a time, when he thought he was cured. Once he realized that was not the case, he continued attending AA.

¶ 23 During redirect, Brian testified he understands he will never be cured of alcoholism. Brian saw Sellner for anger-management counseling for six months before being released. Now he sees her for parenting counseling. He testified he is still sober and has been since the Tazwood evaluation.

¶ 24 4. *Julie Sellner's Testimony*

¶ 25 Julie Sellner, a licensed clinical professional counselor, testified by way of an evidence deposition. Sellner testified Brian participated in anger-management counseling with her. Sellner noted Brian undertook the counseling on his own and successfully completed the program. Sellner testified she found Brian very truthful and insightful during their sessions. As a result of the counseling, Brian learned to identify his anger, verbalize good conflict resolution, and develop healthy coping mechanisms. Sellner noted Brian also acknowledged his role in the failure of the parties' marriage. Sellner testified she had no concerns Brian posed any harm to anyone.

¶ 26 At the conclusion of Brian's case in chief, Melanie moved for a directed verdict on the basis of Brian's "alcohol abuse issue," which the trial court denied.

¶ 27 B. Melanie's Case In Chief

¶ 28 1. *Brian's Testimony*

¶ 29 As part of her case in chief, Melanie recalled Brian to testify. When Brian started drinking again prior to April 2012, it was because of drug and alcohol addiction. Brian stopped drinking for good in April 2012. Brian admitted occasionally dozing off during visits after working outside but testified it happened less than six times and it was because he was tired from working outside. Brian did not drink coffee or energy drinks to stay awake. Brian testified he did not have a smartphone but could text from his phone. Brian acknowledged he could have been sending and receiving texts during visits. However, Brian did not always look at the texts received during visits with S.K.

¶ 30 Brian testified he owned a firearm but did not recall telling Melanie he took a concealed carry class. He also did not recall ever pointing a gun at Melanie or threatening her. Brian admitted when he was under the influence, he would go blank and not remember things. However, Brian maintained he had never been violent toward Melanie. Brian testified he had no anger-management problems in the last two years and was less angry as a result of counseling. While he acknowledged an investigation took place in December 2013 regarding a potential domestic-violence incident, no order of protection was ever served.

¶ 31 During cross-examination, Brian reiterated there was never any hearing regarding an order of protection. While Melanie asked Brian about allowing S.K. to hold a screwdriver near an electrical outlet, Brian explained on cross-examination he was present at the time and was fixing the outlet. He also elaborated regarding his falling asleep during visits. Brian testified he dozed off once or twice when S.K. was right next to him. Brian explained he worked at a gravel pit as a laborer and a mechanic, both of which were hard work. Brian testified he takes full advantage of his opportunities to visit with S.K.

¶ 32 2. *Terry Reed's Testimony*

¶ 33 Terry Reed, Melanie's father, testified about a July 4, 2014, incident when he saw Brian shooting a rifle between his house and the adjacent one. On cross-examination, however, Terry testified the houses were approximately 60 yards apart and Brian was not pointing the rifle at the house.

¶ 34 3. *Christine Reed's Testimony*

¶ 35 Christine Reed, Melanie's mother, testified she supervised some of Brian's visits, which always took place at Melanie's house. Christine testified when S.K. took swimming lessons and received an achievement card, Brian asked why she did not get to the next level. Christine also testified, although S.K. had been potty trained for over a year, she still liked her or Melanie to help. According to Christine, Brian embarrassed S.K. by saying he could not believe she still needed help.

¶ 36 Christine also testified about the December 2013 incident previously referenced during Brian's testimony. Christine was watching S.K. while Brian was packing the car in the garage. Christine testified when she went into the garage, Brian pinned her against the car and yelled at her. Christine then called the police. During cross-examination, Brian's exhibit No. 10, Christine's voluntary statement to police regarding the incident, was admitted into evidence without objection. Christine acknowledged, although her memory was fresh at the time, her statement to police did not mention she was pinned against a car. According to the statement, Christine went into the garage after hearing Brian yell at Melanie and then Brian "got into [Christine's] face and [was] making accusations to [her], causing [her] to back away." Christine maintained the phrase "back away" as used in the report meant Brian backed her up against the

car.

¶ 37 4. *Laura Anglin's Testimony*

¶ 38 Laura Anglin, a teacher who works with Melanie at Metamora Grade School, testified by evidence deposition Melanie called her in March 2014 and told her Brian had "exploded kind of in an anger fit" and asked her and her husband to come over. The deposition reflects Brian had left by the time Anglin and her husband arrived. On cross-examination, Anglin admitted she and Melanie were "pretty good" friends and she tried to be very supportive of Melanie.

¶ 39 5. *Melanie's Testimony*

¶ 40 Melanie testified Brian calls S.K. names like "ADD girl." According to Melanie's testimony, Brian has a constant need of S.K.'s attention and he calls S.K. "mean" when she does not immediately reciprocate his affection. Melanie testified Brian would fall asleep during visits with S.K. According to Melanie, Brian fell asleep over 20 times during visits that year. His naps were "at least a minute long and he [was] outright snoring" during them. Melanie testified Brian still fell asleep even when he was laid off from his job. During her testimony, a number of exhibits were admitted into evidence. Melanie's exhibit No. 13(g) is a picture Melanie took of Brian asleep on the couch. Exhibit No. 13(b) shows Brian talking on his cell phone during a visit with S.K. According to Melanie, until a month before her testimony, Brian was on his cell phone 95% of the time during visits. Melanie testified exhibit Nos. 13(d) and 13(h) show Brian texting during a visit. Melanie testified he spent most of his time texting.

¶ 41 Melanie testified in January 2014, Brian told her he wanted his visitation time changed because he was "taking [a] concealed carry class." In July 2014, Brian showed Melanie

a target he used for target practice to show her what a good marksman he was. According to Melanie, Brian knew she was afraid of guns. Melanie's exhibit No. 101, the target Brian showed her, was then admitted into evidence over Brian's objection.

¶ 42 Melanie then testified regarding incidents occurring prior to the signing of the October 2013 marital settlement agreement. In October 2012, Brian sped around a curve with her and S.K. in the car. In April 2012, Brian was yelling and "not able to control his anger."

¶ 43 Melanie also testified regarding the December 2013 incident previously testified to by her mother. According to Melanie, Brian was angry because he wanted to take S.K. to his father's house without Melanie. Melanie told him "no" and Brian "blew up" at her. Melanie and her mother called 9-1-1. Melanie was scared Brian was going to hit her mother. However, Melanie testified, contrary to her mother's testimony, Brian did not touch her mother. While Melanie initially filed for an order of protection, she later withdrew it.

¶ 44 6. *Megan Huss's Testimony*

¶ 45 Megan Huss, a teacher at Metamora Grade School, where Melanie works, testified Melanie expressed concerns about Brian's anger within the last two years and told her she was afraid Brian was going to hurt her or S.K. On cross-examination, Huss testified she is friends with Melanie, spends "daily time" with her, and would do what she could to support her. On redirect, Huss testified she would not lie for Melanie.

¶ 46 7. *Melanie's Additional Testimony*

¶ 47 Melanie retook the stand and testified a second time. During her testimony, Melanie continued to cite several incidents, some predating the settlement agreement, to show why visitation should not be modified. According to the bystander's report, Melanie testified, "In

2013, [Brian] fed the child so quickly she would choke while eating." Melanie again testified Brian would text on his cell phone during visits. Melanie repeated her testimony about Brian falling asleep during visits and added it would happen even when he was not working. Melanie's exhibit No. 14(a) was introduced into evidence. It was a photograph Melanie took of Brian during a September 2015 visit she supervised. The photograph depicted Brian sleeping on the couch next to S.K., who had her arm on him. Melanie then testified about an incident where she asked Brian to leave after an hour and a half into a two hour visit because S.K. had fallen asleep. According to Melanie, she made Brian leave after he raised his voice and woke S.K. up. Melanie testified about an occasion when Brian was preparing the house for sale. Brian was working on an electrical outlet and gave S.K. a screwdriver to unscrew the outlet cover. In another incident cited by Melanie, Brian "enticed [S.K.] to a pond and ducks even though there was no safety fence around the pond."

¶ 48 According to the bystander's report, when Melanie's testimony was completed:

> "[T]he Court stated there would be no cross-examination of [Melanie] by [Brian], nor rebuttal testimony or evidence allowed and it had heard all the evidence it was going to consider. [Brian] believes the Court also made a statement that [Melanie] does not think was made: 'In making this ruling, the Court stated that [it] felt [Melanie] was attempting to drag things out in order to prohibit [Brian] from getting Christmas visitation with his daughter.' The Court stated it had heard a day and a half of evidence and felt that since [Melanie] had no more evidence [it] had heard enough to make

> [its] decision. The Court also said there would be no closing arguments to summarize the evidence, that the restrictions on visitation location and supervision were going to be lifted and that the only comments the Court would permit were as to what unrestricted visitation [Brian] should receive. The Court's notes then summarize what the parties requested and the visitation that the Court was going to order."

¶ 49 In its February 9, 2016, written order, the trial court found Brian had sufficiently addressed the issues leading to the visitation restrictions in the marital settlement agreement and visitation restrictions were no longer required. According to the court, it was in S.K.'s best interest to have increased, unsupervised visitation with her father. The court ordered, *inter alia*, Brian was to have immediate unsupervised visitation with S.K. every Wednesday and every other Thursday and Friday from 5 to 7 p.m. and alternating Sundays between 9 a.m. and 7 p.m. until March 23, 2016, at which time overnight visitation on weekends would begin.

¶ 50 This appeal followed.

¶ 51 II. ANALYSIS

¶ 52 On appeal, Melanie argues the trial court erred in (1) modifying visitation, (2) finding overnight visitation should begin within 90 days, (3) declining to hear closing arguments, (4) considering certain evidence, and (4) the content of its order.

¶ 53 A. Ruling To Modify Visitation

¶ 54 The original visitation arrangement in this case was reached as part of the parties' marital settlement agreement. The Illinois Marriage and Dissolution of Marriage Act provides

parties may enter into agreements regarding, *inter alia*, the allocation of parental responsibility, *i.e.*, custody and visitation. 750 ILCS 5/502(a) (West 2012). However, a trial court is not bound by the terms of an agreement involving custody, visitation, or child support as the court has an obligation to protect the best interest of children. *Blisset v. Blisset*, 123 Ill. 2d 161, 167, 526 N.E.2d 125, 128 (1988). As a result, the party seeking modification has the burden of showing that modified visitation would be in the best interest of the child. *Sarchet v. Ziegler*, 278 Ill. App. 3d 460, 462, 663 N.E.2d 25, 26 (1996). "A best interest determination is heavily fact dependent; it 'cannot be reduced to a simple bright-line test, but rather must be made on a case-by-case basis, depending, to a great extent, upon the circumstances of each case.' " *DeBilio v. Rogers*, 337 Ill. App. 3d 614, 618, 786 N.E.2d 548, 551 (2002) (quoting *In re Marriage of Eckert*, 119 Ill. 2d 316, 326, 518 N.E.2d 1041, 1045 (1988)).

¶ 55 A trial court's determination on a motion for modification will not be disturbed unless it is against the manifest weight of the evidence. *Sarchet*, 278 Ill. App. 3d at 462, 663 N.E.2d at 26. A court's decision is against the manifest weight of the evidence only when the opposite conclusion is clearly apparent or when the court's findings appear to be unreasonable, arbitrary, or not based on the evidence. *In re Marriage of Ricketts*, 329 Ill. App. 3d 173, 181-82, 768 N.E.2d 834, 840-41 (2002). In proceedings to modify child visitation, there is a strong presumption in favor of the court's ruling because the court had the opportunity to observe the parents and thereby evaluate their temperaments, personalities, and capabilities. *DeBilio*, 337 Ill. App. 3d at 618, 786 N.E.2d at 551-52.

¶ 56 In this case, the evidence presented to the trial court demonstrated Brian took a number of steps to correct the conditions underlying the visitation restrictions outlined in the

parties' marital settlement agreement. Brian voluntarily underwent treatment with Sellner for six months for anger-management issues. Brian testified he learned to better control his anger as a result of seeing Sellner. Sellner testified Brian learned to identify his anger, verbalize good conflict resolution, and develop healthy coping mechanisms. Sellner also opined Brian did not pose a harm to anyone. Brian also voluntarily attended and successfully completed a six-week parenting class. In addition, Brian sought alcohol treatment at Tazwood. While the Tazwood evaluation recommended regular AA attendance, alcohol-abuse treatment was not recommended. Evidence was also presented Brian had stopped drinking in April 2012, regularly attended AA meetings, and continued to abstain from drinking since signing the marital settlement agreement.

¶ 57 By comparison, Melanie presented no evidence to show Brian was still drinking or otherwise intoxicated during visits with S.K. Likewise, little credible evidence was presented to demonstrate continued anger-management issues. While Christine testified Brian pinned her up against a car during the December 2013 incident, Melanie testified Brian never touched Christine. Instead, the bulk of the evidence presented by Melanie went to characterizing the quality of Brian's visits with S.K. and did not directly address any lack of progress.

¶ 58 The trial court's decision to modify visitation was based on its findings Brian had made sufficient progress with regard to his anger and alcohol issues since the parties signed the marital settlement agreement. The record reflects those findings were supported by evidence presented during the hearing. Following our review of the record, we cannot say the court's decision to modify Brian's visitation was unsupported by the evidence or the opposite conclusion is clearly evident. As such, the court's judgment was not against the manifest weight of the evidence.

¶ 59 B. Overnight Visitation

¶ 60 Melanie also argues the trial court erred in finding overnight visitation should begin within 90 days. However, Melanie cites no case law in her opening brief in support of her position. Instead, her argument consists of one conclusory paragraph unsupported by citations to authority. We stress "[t]he appellate court is not a depository into which a party may dump the burden of research." *People v. O'Malley*, 356 Ill. App. 3d 1038, 1046, 828 N.E.2d 376, 384 (2005).

¶ 61 In her reply brief, Melanie cites generally to this court's opinion in *Wittendorf v. Worthington*, 2012 IL App (4th) 120525, 980 N.E.2d 754, stating we have "basically agreed" with her position and we "should follow [our] own previous precedent." However, the facts in this case are distinguishable from those of *Wittendorf*. In *Wittendorf*, this court found, *inter alia*, the trial court abused its discretion by setting a visitation schedule which did not provide for a gradual reintroduction of the father and child. *Wittendorf*, 2012 IL App (4th) 120525, ¶ 51, 980 N.E.2d 754. We found the visitation schedule failed to account for the child's "tender age" and "lack of familiarity" with the father. *Wittendorf*, 2012 IL App (4th) 120525, ¶ 51, 980 N.E.2d 754. In that case, the child had limited contact with his father since his birth, was 16 months old at the time the visitation order was entered, and had not seen his father for over a year. *Wittendorf*, 2012 IL App (4th) 120525, ¶ 51, 980 N.E.2d 754. As a result, we concluded the visitation schedule awarding the father unsupervised overnight weekend visitation after only two supervised visits of three hours each was not in the child's best interest. *Wittendorf*, 2012 IL App (4th) 120525, ¶ 52, 980 N.E.2d 754.

¶ 62 At the time supervised visitation commenced in this case, S.K. was two years old. By the time visitation was modified by the trial court, S.K. was approximately 4½ years old. Brian and S.K. had an ongoing relationship as Brian visited with her regularly. There was never any lengthy absence of Brian from S.K.'s life to cause a lack of familiarity. As a result, there was no reasonable need for a more gradual reintroduction of Brian into S.K.'s life. Accordingly, *Wittendorf* has no application here. The trial court did not err regarding overnight visitation.

¶ 63 C. Closing Arguments

¶ 64 Melanie next argues the trial court erred in declining to hear closing arguments. Specifically, Melanie contends doing so was "legal error and an abuse of discretion" because she was denied "the fundamental right to summarize her position on the exhibits and testimony." We note Melanie does not argue she was prevented from presenting any additional evidence.

¶ 65 In support of her argument, Melanie cites this court's opinion in *Autin v. Franklin*, 404 Ill. App. 3d 1130, 1154, 942 N.E.2d 500, 520 (2010), for the proposition the purpose of a closing argument is to draw reasonable inferences from the evidence and assist the "trier of fact" in arriving at a verdict based on the law and the evidence. Melanie also quotes the following language from *Vieceli v. Cummings*, 322 Ill. App. 3d 559, 560, 54 N.E.2d 717, 718 (1944):

> "The law is well settled that argument of counsel is a matter of right. Argument of a case is as much a part of the trial as the hearing of the evidence. A party to a civil suit has a right to be heard, either by himself or by counsel, not only in the testimony, but in the argument of his case. No matter how weak or inconclusive the case may be, if it is enough to present a disputed question of fact, the counsel of the

party has a right to present his client's case ***."

¶ 66 However, unlike this case, both of those cases involved jury trials. In fact, the correct quote from *Autin* uses the phrase "jury trial" in place of the "trier of fact" phrase used by Melanie in her brief. See *Autin*, 404 Ill. App. 3d at 1154, 942 N.E.2d at 520. Likewise, the conclusion of the quote in *Vieceli,* which was omitted by Melanie, states, "the counsel of the party has a right to present his client's case *to the jury*." (Emphasis added.) *Vieceli*, 322 Ill. App. 3d at 560, 54 N.E.2d at 718.

¶ 67 Here, the case was tried without a jury in a bench trial. "Oral argument in a civil proceeding tried, as here, by the court without a jury is a privilege, not a right, and is accorded to the parties by the court in its discretion." *Parkway Bank & Trust Co. v. Meseljevic*, 406 Ill. App. 3d 435, 441, 940 N.E.2d 215, 222 (2010) (citing *Korbelki v. Staschke*, 232 Ill. App. 3d 114, 118-19, 596 N.E.2d 805, 808 (1992)). The bench trial lasted approximately a day and a half and involved relatively uncomplicated subject matter. Moreover, the record reflects the trial judge took extensive notes, which Melanie states in her brief were used "virtually verbatim" to compile the bystander's report. See *Korbelki*, 232 Ill. App. 3d at 119, 596 N.E.2d at 808 (finding no abuse of discretion in refusing to allow the plaintiff to make a closing argument where the case involved a short trial with uncomplicated facts and the judge took extensive notes). The trial court did not abuse its discretion in declining to allow closing arguments.

¶ 68 D. Melanie's Evidentiary Arguments

¶ 69 Melanie argues the trial court erred in considering certain evidence. Specifically, Melanie contends the court erred in (1) limiting evidence regarding incidents occurring prior to the marital settlement agreement, (2) admitting Brian's exhibit No. 1, and (3) not affording her

exhibit Nos. 20 and 101 adequate weight.

¶ 70 1. *Conduct Predating Marital Settlement Agreement*

¶ 71 During trial, Melanie introduced exhibit Nos. 5, 6, and 12. Exhibit No. 5 is an April 27, 2012, letter from Melanie to Brian detailing, by date, a number of incidents involving his drinking and expressing her distress regarding their marriage. Exhibit No. 6 is another letter similar in content to exhibit No. 5. Both exhibit Nos. 5 and 6 repeatedly reference Brian's alcoholism and anger-management issues. Exhibit No. 12 is a handwritten apology letter written by Brian to Melanie and their child, S.K. Brian objected to the admission of these exhibits on the basis they covered the period predating the marital settlement agreement. Following arguments, the substance of which were not included in the bystander's report, the trial court ruled it would admit the exhibits "only for the limited purpose of showing, or impeaching, [Brian's] assertion that he was 'foolish' and shouldn't have entered into the [agreement] because he was intimidated." According to the bystander's report, the court ruled "only limited evidence can be brought in about the pre-judgment ([marital settlement agreement]) conduct." Melanie argues the trial court erred in limiting evidence regarding incidents occurring prior to the signing of the agreement. We disagree.

¶ 72 Questions concerning the admission of evidence at trial are left to the sound discretion of the trial court, and we will not reverse the trial court absent an abuse of that discretion. *Matthews v. Avalon Petroleum Co.*, 375 Ill. App. 3d 1, 9, 871 N.E.2d 859, 865 (2007) (citing *Brax v. Kennedy*, 363 Ill. App. 3d 343, 355, 841 N.E.2d 137, 147 (2005)). This same standard applies to a trial court's decision to limit evidence. *Maggi v. RAS Development, Inc.*, 2011 IL App (1st) 091955, ¶ 61, 949 N.E.2d 731. "An abuse of discretion occurs only

when the trial court's ruling is arbitrary, fanciful or unreasonable, or no reasonable person could find as the trial court did." *In re Marriage of Dowd*, 2013 IL App (3d) 120140, ¶ 26, 991 N.E.2d 555 (citing *In re Marriage of Anderson*, 409 Ill. App. 3d 191, 199, 951 N.E.2d 524, 531-32 (2011)). This court is not bound by the trial court's reasoning and may affirm on any basis supported by the record, regardless of whether the trial court based its decision on those grounds. *In re Marriage of Petrik*, 2012 IL App (2d) 110495, ¶ 38, 973 N.E.2d 474 (quoting *Mutual Management Services, Inc. v. Swalve*, 2011 IL App (2d) 100778, ¶ 11, 956 N.E.2d 594).

¶ 73 In this case, Brian admitted he is an alcoholic and acknowledged he has anger-management problems. The pertinent issue before the trial court was whether he sought help for these issues and made sufficient progress since signing the marital settlement agreement to justify modification of the visitation schedule. As discussed, the evidence presented during the hearing demonstrated such progress. While Melanie maintains her exhibits show the extent of Brian's anger and alcohol problems, cumulative examples of Brian's acknowledged issues occurring prior to the signing of the agreement does nothing to demonstrate whether he achieved sufficient progress since that time to justify modification. Evidence is cumulative when it adds nothing to what is already before the trier of fact. *People v. Ortiz*, 235 Ill. 2d 319, 335, 919 N.E.2d 941, 950 (2009). "The exclusion of cumulative evidence is within the discretion of the trial court, whose ruling will not be reversed absent a clear abuse of that discretion." *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 495, 771 N.E.2d 357, 365 (2002). Under the circumstances of this case, we find the trial court did not abuse its discretion in limiting examples of Brian's past conduct.

¶ 74 2. *Brian's Exhibit No. 1*

¶ 75 Melanie argues the trial court erred in admitting Brian's exhibit No. 1, the report from Tazwood, which concluded Brian did not require any substance-abuse services due to a "lack of justification for services." The bystander's report reflects Melanie objected to the exhibit on hearsay grounds and the trial court admitted it over her objection. On appeal, Melanie argues (1) she was not provided proper notice of the exhibit's certification, (2) the exhibit lacks trustworthiness, and (3) it was barred by Illinois Rule of Evidence 702 (Ill. R. Evid. 702 (eff. Jan.1, 2011) (regarding foundation for expert opinions)). Brian maintains these arguments were not presented to the trial court. The bystander's report states only "[Brian's] Ex. 1 Admitted over Objection for Hearsay." Likewise, the docket entry for that day simply reflects the exhibit was admitted over Melanie's hearsay objection. Neither the bystander report nor the docket entry reveals anything more. As a result, we have no way of knowing what arguments were made before the trial court, what admissions or concessions could have been made by the parties, or the reasoning underlying the court's decision to admit the exhibit.

¶ 76 "An appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92, 459 N.E.2d 958, 959 (1984). Any doubts arising from the incompleteness of the record will be resolved in favor of the appellee. *Foutch*, 99 Ill. 2d at 392, 459 N.E.2d at 959.

¶ 77 While the bystander's report shows the exhibit was admitted over objection, Melanie has failed to present a sufficiently complete record to support her claim of error. Thus,

we must presume the trial court's ruling admitting exhibit No. 1 conformed with the law and had a sufficient factual basis. *Foutch*, 99 Ill. 2d 389, 391-92, 459 N.E.2d at 959.

¶ 78 3. *Melanie's Exhibit Nos. 20 and 101*

¶ 79 Melanie argues the trial court erred in not affording her exhibit Nos. 20 and 101 more weight. We disagree.

¶ 80 The record reflects the trial court admitted exhibit No. 101, a paper target used for target practice, over Brian's objection. According to Melanie's testimony, as reflected in the bystander's report, Brian had shown her the target "to show what a great marksmen he was." Melanie maintained Brian knew she was afraid of guns. In admitting the exhibit, the trial court stated it found nothing wrong with Brian showing the target to Melanie and did not believe Brian was trying to intimidate her. A reviewing court will not substitute its judgment "on issues involving the weight of the evidence." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25, 920 N.E.2d 233, 230 (2009). We see no reason to do so here.

¶ 81 The trial court also admitted Melanie's exhibit No. 20, an October 7, 2014, letter sent from Melanie to Brian, for the limited purpose of showing she communicated her ongoing concerns to Brian regarding his alcoholism and anger issues. On appeal, Melanie argues the court should have considered the evidence probative of "the validity of those concerns." However, Melanie does not cite any authority in support of her position. It is well settled bare contentions which fail to cite any authority do not merit consideration on appeal. *Palm v. 2800 Lake Shore Drive Condominium Ass'n*, 401 Ill. App. 3d 868, 881, 929 N.E.2d 641, 653 (2010). As a result, Melanie has waived review of this issue.

¶ 82 Melanie then proceeds to opine the court prejudged the case. As evidence of her belief, Melanie cites an instance during the hearing where the court remarked Melanie's mother appeared to have an agenda regarding her testimony. According to Melanie, "the plain fact is that the Judge made a big deal about all of this well before [she] put on a majority of her testimony." We are unpersuaded.

¶ 83 The record reflects the trial court's remarks were made in the course of assessing Christine's credibility as it related to objections made by Brian's attorney during her testimony. According to the bystander's report:

> "During the course of her testimony, [Melanie's mother] multiple times attempted to argue with [Brian's] counsel regarding objections and questions. The witness was redirected by the Court, and the last time the Judge stated to her that it was clear she had an agenda, and that if she continued to not follow the Court's directives that she would not be allowed to testify."

The specific exchanges referenced are not reflected in the bystander's report.

¶ 84 Determinations regarding visitation, like a custody decision, "necessarily rests on the temperaments, personalities and capabilities of the parties, and the demeanor of the witnesses who testify at trial[,]" all of which the trial court is in the best position to evaluate. *In re Marriage of Felson*, 171 Ill. App. 3d 923, 926, 525 N.E.2d 1103, 1105 (1988); *In re Marriage of Gordon*, 233 Ill. App. 3d 617, 657, 599 N.E.2d 1151, 1178 (1992) (this court may not substitute its judgment for the trial court's on the matters of witness credibility and the weight to be given their testimony). As such, we will not second-guess the trial court's findings regarding the

credibility of the parties' witnesses.

¶ 85 E. Content of the Trial Court's Order

¶ 86 Finally, Melanie argues the trial court "erred in the content of its order." Specifically, she contends "[t]here were significant errors made concerning specific provisions of the visitation order." She maintains, without citation to authority, "These rulings were against the manifest weight of the evidence and/or abuses of discretion." "It is well settled that we are entitled to a well-reasoned argument, along with authority for such argument." *O'Malley*, 356 Ill. App. 3d at 1046, 828 N.E.2d at 384. As we have stated above, mere contentions which fail to cite any authority do not merit consideration on appeal. *Palm*, 401 Ill. App. 3d at 881, 929 N.E.2d at 653.

¶ 87 Melanie also asks this court to exercise our authority under Supreme Court Rule 366(a)(5) and "enter [our] own order" setting visitation requirements and restrictions. See Ill. S. Ct. R. 366(a)(5) (eff. Feb. 1, 1994) (reviewing court may "enter any judgment and make any order that ought to have been *** made"). We decline her invitation to do so. For the reasons stated above, the trial court's determination modification of visitation was in S.K.'s best interest was not against the manifest weight of the evidence.

¶ 88 III. CONCLUSION

¶ 89 For the foregoing reasons, we affirm the trial court's judgment.

¶ 90 Affirmed.