2017 IL App (4th) 170328-U

NO. 4-17-0328

FILED
September 18, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: MARRIAGE OF	)	Appeal from
ARLENE SERAPIN,	)	Circuit Court of
Petitioner-Appellee,	)	McLean County
and	)	No. 12D474
TIMOTHY SERAPIN,	)	
Respondent-Appellant.	)	Honorable
	)	Lee Ann S. Hill,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Holder White and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: By finding the proposed relocation to be in the child's best interests, the trial court did not make a finding that was against the manifest weight of the evidence; nor is the relocation manifestly unjust.

¶ 2 Petitioner, Arlene Serapin, and respondent, Timothy Serapin, obtained a dissolution of their marriage, and petitioner was awarded sole custody of their child, Z.S. Some years later, petitioner filed a petition to relocate from Bloomington, Illinois, to Dallas, Texas. After hearing evidence, the trial court granted the petition. Respondent appeals.

¶ 3 The trial court found the proposed relocation to be in Z.S.'s best interests, and we are unable to say this finding is against the manifest weight of the evidence. Nor are we able to say that allowing the relocation was manifestly unjust. Therefore, we affirm the trial court's judgment.

¶ 4 I. BACKGROUND

¶ 5 The parties married in 2003. A daughter, Z.S., was born to them on March 17, 2004. The marriage was dissolved on October 22, 2013. Pursuant to a marital settlement agreement, petitioner received sole custody of Z.S., and respondent received visitation rights. The parties continued to reside in Bloomington, where they both were employed by State Farm Mutual Automobile Insurance Company (State Farm).

¶ 6 On May 19, 2016, petitioner filed a notice that she intended to relocate permanently to Dallas in August 2016, and that she intended to take Z.S. with her. See 750 ILCS 5/609.2(c),(d) (West 2016). On May 24, 2016, respondent filed an objection to the proposed relocation. See 750 ILCS 5/609.2(f) (West 2016). Consequently, petitioner filed a petition for relocation. See *id.*

¶ 7 On January 20 and 27, 2017, the trial court heard evidence on the petition for relocation. The evidence tended to show the following.

¶ 8 A. Petitioner's Career-Related Rationale for the Proposed Relocation

¶ 9 1. *Transferring Out of a Job in Which the Potential for Further Promotions Was Exhausted*

¶ 10 Since 2000, petitioner has been an employee of State Farm. She always has worked in State Farm's headquarters, in Bloomington.

¶ 11 In April 2016, she saw, on State Farm's online job system, an opening for a security analyst in the "Dallas hub" of State Farm (more precisely, in Richardson, an inner-northern suburb of Dallas). At the time she saw this job posting, petitioner was a risk analyst, and she had exhausted her potential for promotion in that position: she was at level 4, a level she attained in January 2016, and there was no higher level. (It appears that both positions, risk analyst and security analyst, have to do with cybersecurity.) Because she had received a raise every year at State Farm, it was possible, though not guaranteed, that she would continue

receiving annual raises as a risk analyst, but she was concerned that the amounts of the raises would taper off without further promotions.

¶ 12 To avoid getting stalled in a position of diminishing returns, she began doing whatever she could to enhance her qualifications for the position of security analyst, a position in which it was possible for her to again earn promotions. She obtained a "security plus certificate," she interacted with security analysts to familiarize herself with their job duties, and she asked her managers what she might do to make herself a better candidate for the position of security analyst, should such a position become available. In April 2016, when State Farm posted an opening for a security analyst in Dallas, she submitted her résumé, and her boss in Bloomington, Erin Vogel, wrote her a recommendation. Her prospective new boss, Kay Wayne, who worked at the Dallas hub, interviewed her, and two other managers attended the interview. State Farm accepted her for the position.

¶ 13 So, she now was a security analyst, but her "current status" was, as she put it, "pending the outcome of this trial." The "report location" for her new job was indeed Dallas, but State Farm was "allowing [her] to work from the Bloomington *** office until [she could] relocate with [Z.S.]" She and State Farm had not discussed what would happen if she could not move, other than that her base salary would not increase from $99,538.17 to $106,505—the increase was contingent on her moving to the Dallas area. If the trial court denied her petition for relocation, she would remain in Bloomington; by her understanding, State Farm would acquiesce. But she did not know what her job duties would be. Right now, as a security analyst, she was supposed to lead a team of nine people—all of whom were in Dallas.

¶ 14 Petitioner's attorney asked her:

"Q. What disadvantage, if any, is it for you in your position to be in Illinois when your team is in Texas?

A. It is a huge disadvantage for me to be here because I can't interact on a daily basis and see, you know, those non-verbal cues[,] and so there's a lot of misperception. And it's also reflective in what will be my pay increases because if I'm out of sight, out of mind[,] the perception is that I'm not working and I'm not available.

Q. Okay. Are there any new roles that you're going to be taking on that have arisen, and if so, what are they?

A. Yes, I will be named the team lead on January 28th to be in charge of this team.

Q. What if any challenges do you think there's going to be taking on that role if you're not able to relocate?

A. It would be a huge challenge for me to even be successfully in that role. I would not be able to perform that well because the people down in Dallas, Texas, are pretty much straight out of college. So they have no professional job experience or training. I'm supposed to be down there to mentor, train them, introduce them to people, give them tours of the building as well as get them up to speed on their role.

Q. Do you believe you're going to have the ability to be successfully [*sic*] if you're in a different state than your team?

A. No.

Q. What effect do you believe that will have on your overall conception [*sic*] into State Farm?

A. I believe it will have a long-term negative impact on my job outcome because if I can't get good pay raises and good performance reviews, it will affect any other job that I can apply for at State Farm."

¶ 15 2. *More Opportunities for Advancement in a Start-Up Environment*

¶ 16 Petitioner believed her opportunities for advancement were greater in Dallas because it was "a start-up environment," in which management positions were "continually opening up."

¶ 17 3. *Greater Educational Opportunities in the Field of Cybersecurity*

¶ 18 Petitioner testified that Dallas, unlike Bloomington, had "advanced security training at the local colleges," at which she could earn "a degree in cyber security." In Dallas, there were "training courses and boot camps to get further certificates that [were] not available [in Bloomington]." Specifically, she testified:

"A. There are a number of security conferences from major security organizations such as the Sans Institute located locally that we do not have available here, as well as the University of Dallas has an undergraduate degree in cyber security as well as a graduate degree available.

Q. What is the availability of similar programs in Bloomington?

A. There are [*sic*] no availability.

Q. Where do you believe the closest place is you would have to go?

A. I would have to travel and stay overnight possibly in Chicago or another major city, or go to Boston or somewhere like that."

¶ 19 B. Her Earnings as a Risk Analyst in Bloomington Compared With Her Expected Earnings as a Security Analyst in Dallas

¶ 20 In addition to a base salary, State Farm pays annual bonuses, which are based on performance as reflected in performance evaluations. Petitioner has received a bonus each year she has been with State Farm. A good performance evaluation could be lucrative. In 2015, for instance, her gross earnings at State Farm were $79,222.00. Since her performance evaluation in January 2016, her gross earnings had increased from $87,348.56 to $110,980.84 as of May 12, 2016. The $110,980.74 consisted of a base salary of $99,538.17 plus a bonus of $11,442.57. If she moved to Dallas, her base salary would increase from $99,538.17 to $106,505, and then, depending on her performance, there could be a bonus on top of that.

¶ 21 C. Comparison of Schools

¶ 22 Petitioner wanted to move to either of two northern suburbs of Dallas, Wylie or Allen. Whether their new home would be in Wylie or Allen depended on which school she and Z.S. chose (and, of course, on whether the trial court granted the petition for relocation). In other words, the choice of a school would drive the choice of the suburb in which they would live.

¶ 23 They were inclined toward the school in Wylie, which had an indoor practice area larger than a football field; a regulation-size track; a culinary facility; a wood-fire pizza grill; and a barn, in which students could learn about taking care of animals.

¶ 24 By contrast, petitioner did not have much good to say about the school in Bloomington that Z.S. was attending, Chiddix Junior High School (Chiddix), which, according to petitioner's testimony, had discovered mold on the premises and had unreliable bus service.

¶ 25 Petitioner presented a "report card" showing the scores that the Partnership for Assessment of Readiness for College and Careers (PARCC) had given Chiddix and Normal

Community High School. Then, by way of comparison, she presented the "report card" for Frank McMillan Junior High School in Wylie. Her attorney asked her:

> "Q. Can I have you turn to—based on your research on these report cards, do you believe that a PARCC test and this [State of Texas Assessments of Academic Readiness (STAAR)] exam are comparable performance measurements?
>
> A. They are—
>
> MS. McGRATH [(respondent's attorney)]: Objection.
>
> THE COURT: Yeah, unless she has some expertise in the education field, I'm not going to allow that.
>
> MS. SKINNER [(petitioner's attorney)]: All right."

¶ 26 Without establishing that PARCC and STAAR used comparable performance measurements, petitioner presented the STAAR scores for Raymond B. Cooper Junior High School in Wylie, and for Ereckson Middle School, Walter and Lois Curtis Middle School, Lowery Freshman Center School, and Allen High School in Allen.

¶ 27 In addition to presenting these "report cards," petitioner called a friend of hers, Jennifer Rogers, who, years ago, along with petitioner, was a co-leader of a Girl Scout troop at Grove Elementary School in Normal, Illinois. Rogers had two daughters, now aged 16 and 12, who used to attend public schools in Bloomington, when Rogers worked with petitioner at the headquarters of State Farm. Now Rogers worked at the Dallas hub of State Farm, and her daughters attended junior high school and the high school in Wylie. It was her impression that the public schools in Wylie were better than those in Bloomington because they offered a larger variety of advanced classes. At Chiddix, there were no advanced classes other than math,

whereas at the junior high school in Wylie, all of a student's classes could be pre-advanced-placement classes (that is, classes that prepared the student for advanced classes in high school).

¶ 28 D. Extracurricular Activities

¶ 29 In addition to earning straight As in Bloomington, Z.S. was heavily involved in extracurricular activities, most notably art and veterinary medicine. Since third or fourth grade, she had been taking art lessons, before school, from a private tutor. The art tutor, however, was also a full-time realtor, and when Z.S. graduated from junior high school, the art lessons would cease because meeting at the high school would be too inconvenient for the tutor. Wylie, however, had an art gallery that offered lessons. Petitioner believed that art lessons were important to Z.S.

¶ 30 Animals were another fascination for her. Since she was three years old, Z.S. had wanted to become a veterinarian. Out of 3,000 applicants, she was one of 30 children chosen to attend a weeklong veterinary camp hosted by Auburn University in the summer of 2016. Through 4-H in Texas, she could earn a veterinarian's assistant certificate so that, straight out of high school, she would be able to go to work for a veterinarian, thereby increasing her chances of getting into veterinary school. Further, Texas A & M University held a veterinary camp every summer, and the zoo in Dallas, which was larger than the one in Bloomington, had a junior zookeeper program.

¶ 31 E. The Relocation Package That State Farm Was Offering

¶ 32 State Farm was offering petitioner a relocation package, which consisted of nine benefits.

¶ 33 The first benefit was six weeks of her gross salary. Petitioner has calculated this benefit as amounting to $12,200.00.

¶ 34 The second benefit was reimbursement of destination closing costs if petitioner bought a residence in the new location within a year.

¶ 35 The third benefit was the home sale program. State Farm guaranteed a buyout if petitioner was unable to sell her house within 120 days. (She owned a duplex in Normal.) Also, State Farm would pay her a marketing incentive bonus if she succeeded in selling her house within the 120-day period.

¶ 36 The fourth benefit was the duplicate housing plan. State Farm would pay for 60 days of lodging if petitioner incurred housing costs at both Normal and Dallas.

¶ 37 The fifth benefit was the loss-on-sale program. State Farm would provide financial assistance if the new residence cost more than the buyout amount.

¶ 38 The sixth benefit was the household-goods benefit. State Farm would pay a moving company to pack, load, and transport petitioner's household goods to the new location.

¶ 39 The seventh benefit was the location cost differential. State Farm would hire an outside vendor to compare the cost of living at Bloomington and the cost of living at Dallas. If it was higher in Dallas, State Farm would reimburse petitioner the difference.

¶ 40 The eighth benefit was the non-promotional relocation payment. If the transfer was lateral, State Farm would pay a one-time 5% bonus based on the salary at the new location.

¶ 41 The ninth benefit was a travel allowance. State Farm would use an outside vendor to calculate a one-time lump-sum allowance for the house-hunting trip and the final move. Any excess that petitioner did not spend she would get to keep.

¶ 42 F. The Close Relationship That Z.S. Has With Respondent and Also With Her Relatives on His Side of the Family

¶ 43 Respondent relishes the parenting time he has with Z.S., although, since the divorce, he has twice missed the August 1 deadline for notifying petitioner of the 10 overnights

he wants. One missed deadline was his own fault, and the other was his attorney's fault. His attorney, whose mother was in hospice care at the time, had failed to contact petitioner's attorney by the August 1 deadline. Respondent insists, however (in his testimony), that he eagerly looks forward to each visitation. He rarely misses a visitation, and it makes him sick to his stomach to do so.

¶ 44 He and Z.S. do a variety of different activities together, such as mountain-biking, going to the zoo, shopping, and swimming. They get together with his side of the family (her aunts, uncles, cousins, and grandmother) at least twice a month. His mother, Denise Serapin, who recently was diagnosed with chronic obstructive pulmonary disorder, helped raise Z.S. from preschool through first grade while he and petitioner were at work at State Farm. He and the rest of his family are accustomed to expressing affection not only verbally but physically, with hugs. Obviously, they could not do that with Z.S. as often if she took up residence 790 miles away.

¶ 45 Respondent is appalled by the prospect of her moving to Texas. He regards a large continuous block of time during the summer as an inadequate substitute for the present visitation schedule. In his job as a systems analyst at State Farm, he has accumulated about 156 paid vacation days, but his use of days all at one time would have to be reasonable. He cannot take off work for a month. He would have to go to work during the long summer visitation, meaning that he would be away from Z.S. 10 hours a day, 4 days a week. The ultimate result, he fears, would be a reduction of his parenting time, every hour of which he treasures.

¶ 46 Petitioner, on the other hand, testified that throughout Z.S.'s life, respondent had been "actively involved" with Z.S. only about 25% of the time. She had kept track of the occasions when he was late picking Z.S. up or when he missed a visitation. They were listed in petitioner's exhibit No. 9.

¶ 47 G. The Trial Court's Remarks at the Close of the Evidence

¶ 48 On January 27, 2017, after the close of evidence and after hearing arguments by the attorneys, the trial court remarked:

> "I have some concerns on both sides. Some of this trial is strategy [*sic*]. And some of it is the behavior of the parties. But if I trusted the evidence that, that was presented and the testimony that was presented, probably half the, you know parents in Unit 5 should be turned in to [the Department of Children and Family Services] for having allowed their children to go to school at Chiddix when there's mold or to be—to have them take the bus for Unit 5 when there's problems with Unit 5 because Texas schools are perfect. We just don't know. It's speculation. Is it new? I'm sure it is. Do they have some things Unit 5 doesn't have? Probably. Does Unit 5 have things they don't have? Probably.
>
> The other concern I have is, you know, we've got a dad who I think is a very involved dad but sometimes could be a little haphazard in planning for the future and getting things in proper notice. And we've got a mom that documents when somebody is eight minutes late—eight minutes, five minutes, ten minutes. You know, these folks have to be able to facilitate a relationship. That's part of what I have to look at, is the facilitation of a relationship. And when you come in and you do this best interest and I believe all the evidence on what's going to be happening with her job and the opportunities that [Z.S.] will have and things that can happen for them in Texas are great to best interest. But when you spend half of your time diminishing the contributions of another parent, that makes me question motives. And trust me, I have seen parents whose motives need to be

> questioned. But I am really concerned—I mean, given that we have these problems here and these kinds of things are happening, what happens when they're 800 or 1,000 miles away? So I have concerns on both sides."

The court took the case under advisement.

¶ 49 On March 30, 2017, the trial court issued a written decision. In its decision, the court explained: "Due to the initial negative reaction the court had to the presentation of the Petitioner's case, I believed the passing of time to allow the negative reaction to fade was necessary. The court felt this was the only fair and equitable way to proceed."

¶ 50 The trial court then discussed the factors in section 609.2(g) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/609.2(g) (West 2016)), applying them to the facts of this case.

¶ 51 The first factor was "the circumstances and reasons for the intended relocation." 750 ILCS 5/609.2(g)(1) (West 2016). With regard to this factor, the trial court found as follows: "The Petitioner in this case wishes to relocate to the State of Texas to further her career both financially and to achieve higher status within the company. The Court finds that the Petitioner's request is supported by the evidence presented, and that although the financial impacts are not huge, the Petitioner's opportunities for advancement would be greater in Texas. This factor weighs slightly in the Petitioner's favor."

¶ 52 The second factor was "the reasons, if any, why a parent [was] objecting to the intended relocation." 750 ILCS 5/609.2(g)(2) (West 2016). The trial court found as follows: "The Respondent is objecting to the relocation due to his fear of the impairment of his relationship with his daughter and his fear of missing many aspects of her life. I.e., involvement in her education, extracurricular activities, social activities[,] and in her daily life. The Court

finds the Respondent's concerns to be valid and reasonable. This factor weighs in favor of the Respondent[.]"

¶ 53 The third factor was "the history and quality of each parent's relationship with the child and specifically whether a parent ha[d] substantially failed or refused to exercise the parental responsibilities allocated to him or her under the parenting plan or allocation judgment." 750 ILCS 5/609.2(g)(3) (West 2016). The trial court found: "The Petitioner has been the custodial parent, but the Respondent is a very involved father despite the Petitioner's attempts to diminish his involvement and contributions. This factor weighs evenly for both parents."

¶ 54 The fourth factor was "the educational opportunities for the child at the existing location and at the proposed new location." 750 ILCS 5/609.2(g)(4) (West 2016). The trial court found as follows:

> "The Petitioner argues that the educational opportunities as well as general quality of life will be substantially better for the child if they are allowed to move to Texas. A friend of the Petitioner[']s[,] who previously lived here and has now transferred to the same area of Texas, testified about the superior educational opportunities available. The Respondent argues that the schools and opportunities here are just as good as in Texas, and if the Petitioner did not feel the public school system here is adequate to meet the child's needs, there are private schools available in this area to meet those additional needs. This factor weighs slightly in the Petitioner's favor."

¶ 55 The fifth factor was "the presence or absence of extended family at the existing location and at the proposed new location." 750 ILCS 5/609.2(g)(5) (West 2016). The trial court found as follows:

> "The Petitioner and child at the time of the move will have no extended family in Texas. Petitioner testified to the fact that her mother may move to that area in the future and that the Respondent has a brother in Texas. Petitioner's mother did not testify as to this assertion. The Respondent testified that he has extended family in the local area and that he and the minor child see the family regularly during his parenting time. Several members of the Respondent's family testified to the time they have spent with the Respondent and the minor child over the term of her life. The Respondent does have a half-brother in Texas, but is not close to him[,] and he lives several hours from the Dallas area. This factor weighs in the Respondent's favor."

¶ 56 The sixth factor was "the anticipated impact of the relocation on the child." 750 ILCS 5/609.2(g)(6) (West 2016). The trial court found: "If the Petitioner's testimony on this issue were true, then it would indicate that the only impacts on the minor child would be positive. The Respondent believes that the negative impact of losing the close relationship with the minor's extended family will affect the child greatly. The Court finds both parents[']testimony to be credible and this factor weighs evenly for the parties."

¶ 57 The seventh factor was "whether the court [would] be able to fashion a reasonable allocation of parental responsibilities between all parents if the relocation occur[red]." 750 ILCS 5/609.2(g)(7) (West 2016). The trial court found: "The Court believes that if an Order is fashioned that would not allow the Petitioner to control the Respondent's parenting time, then the Court could fashion a reasonable allocation of parenting responsibilities. This factor weighs in favor of the Petitioner."

¶ 58 The eighth factor was "the wishes of the child, taking into account the child's maturity and ability to express reasoned and independent preferences as to relocation." 750 ILCS 5/609.2(g)(8) (West 2016). The trial court wrote:

> "The Court did not interview the child[,] but given the Petitioner's strong request [for an *in camera* interview of Z.S.], the court can reasonably conclude that the child would support the move. The Court believes that despite the child's obvious maturity and high intelligence[,] it would be difficult to discern whether the desire was her own or just her mother's projections of how good life will be in Texas. This factor weighs evenly for both parties."

¶ 59 The ninth factor was "possible arrangements for the exercise of parental responsibilities appropriate to the parent's resources and circumstances and the developmental level of the child." 750 ILCS 5/609.2(g)(9) (West 2016). The trial court found: "The child is of the age and maturity that travel to visit the Respondent can be easily arranged. Both parties have adequate resources to pay the necessary expenses. This factor weighs evenly for both parties."

¶ 60 The tenth factor was "minimization of the impairment to a parent-child relationship caused by a parent's relocation." 750 ILCS 5/609.2(g)(10) (West 2016). The trial court wrote: "Although it will require the Respondent to be pro-active in his relationship with his daughter, the court finds that it is possible to minimize the impairment of the relationship if the Respondent takes advantage of all of his parenting time and is persistent in his regular communication with the child. This factor weighs slightly in favor of the Petitioner's request."

¶ 61 The eleventh factor was "any other relevant factors bearing on the child's best interests." 750 ILCS 5/609.2(g)(11) (West 2016). The trial court made no finding with respect to this final, catchall factor.

¶ 62 The trial court granted the petition for relocation and ordered in part as follows:

"1. The Petitioner may not remove the minor child during the current school year. The Petitioner may relocate with the child at the end of the 2016-2017 school year.

2. The Respondent shall have parenting time with the minor child for 60 days over the summer break. The time shall begin on June 6, 2017[,] and end on August 5, 2017. Each year thereafter the minor child will have parenting time with Respondent from approximately one week after school is dismissed for the summer, until one week before school starts for the next year. (This time should continue to be 60 days[.]) The costs of transportation shall be allocated *** as 2/3 to the Petitioner and 1/3 to the Respondent. The Petitioner shall make all travel arrangements and give notice to the Respondent whenever the child is traveling to spend time with the Respondent. Respondent shall reimburse his 1/3 share within 21 days.

* * *

6. When the child is in the custody of one parent, the other parent shall have at least two scheduled phone calls with the minor child each week that she is not with them. One call should be on Sunday evening[,] and one call should be during the week. All calls will occur at 7:00 pm, and are to be initiated by the non custodial parent. The minor child is allowed to contact the other parent whenever she wishes. The parties should facilitate these weekly calls and shall make sure the child is available. If the child is unavailable, the custodial parent will, whenever possible give at least four hours' notice to the other parent and arrange

an alternate date or time for the call to occur. The noncustodial parent and the minor child will determine the length of these communications.

7. Christmas/Winter Break will be spent with the Respondent yearly. It shall occur from the Saturday after school dismissal and return the Saturday before school resumes. Costs for this travel are allocated 2/3 to Petitioner, 1/3 to the Respondent.

8. Thanksgiving will be alternated between the parties, the Respondent having odd years and the Petitioner having even years. It will occur from the Wednesday prior to Thanksgiving Day, until the Sunday after Thanksgiving Day. Costs for this travel are allocated on a 50/50 basis.

9. Spring Break will be spent with the Respondent on a yearly basis beginning the Saturday after [s]chool dismisses until the Saturday before school resumes. Costs for this travel are allocated on a 50/50 basis."

¶ 63 II. ANALYSIS

¶ 64 A. Our Duty of Deference to the Trial Court's Determination of the Child's Best Interests

¶ 65 The sole criterion for ruling on the petition for relocation was Z.S.'s best interests. See 750 ILCS 5/609.2(g) (West 2016) ("The court shall modify the parenting plan or allocation judgment in accordance with the child's best interests."). "A custodial parent seeking judicial approval to remove [a child] *** has the burden of proving the move, considering its possible impact on visitation and other relevant factors, is in the best interests of the [child]." *In re Marriage of Eaton*, 269 Ill. App. 3d 507, 511 (1995).

¶ 66 The legislature requires trial courts to consider a list of 11 factors when deciding whether a proposed relocation would be in the child's best interests. 750 ILCS 5/609.2(g) (West 2016). We already have listed the factors.

¶ 67 Instead of considering these statutory factors anew, we consider them with a heavy measure of deference to the trial court. "A trial court's determination of what is in the best interests of the child should not be reversed unless it is clearly against the manifest weight of the evidence and it appears that a manifest injustice has occurred." *In re Marriage of Eckert*, 119 Ill. 2d 316, 328 (1988). "A trial court's determination is against the manifest weight of the evidence where the opposite conclusion is clearly evident or where the court's findings are unreasonable, arbitrary, and not based on any of the evidence." *Banister v. Partridge*, 2013 IL App (4th) 120916, ¶ 47.

¶ 68 The modifiers "manifest," "clearly," and "any" signal that even if we disagreed with the trial court's decision and even if our disagreement were reasonable, that would not be enough to justify a reversal. See *People v. A Parcel of Property Commonly Known as 1945 North 31st Street, Decatur, Macon County, Illinois*, 217 Ill. 2d 481, 510 (2005). We may justifiably reverse the trial court's decision only if it is "clearly evident" that the proposed relocation would be against Z.S.'s best interests or only if the record lacks evidence reasonably supporting a conclusion that the relocation would be in her best interests. *Banister*, 2013 IL App (4th) 120916, ¶ 47. Thus, if all we can say about the decision is that its weighing of the pros *versus* the cons is debatable and that reasonable minds could differ as to how much weight one factor deserves compared to another factor, our duty is to affirm the decision. We should reverse the decision only if it is "arbitrary." *Id.* Likewise, injustice that is merely arguable would not warrant a reversal; we would have to be able to say, without exaggeration, that the decision is

"manifest[ly]" unjust—that is, clearly or obviously unjust such that no fair-minded person could agree with it. *Eckert*, 119 Ill. 2d at 328.

¶ 69 B. The Circumstances and Reasons for the Intended Relocation

¶ 70 The trial court found that the first statutory factor—"the circumstances and reasons for the intended relocation" (750 ILCS 5/609.2(g)(1) (West 2016)—"slightly" favored relocation. Specifically, the court found that "although the financial impacts [were] not huge[,] the Petitioner's opportunities for advancement would be greater in Texas."

¶ 71 Respondent agrees with the trial court that the financial impacts of a relocation to Dallas would not be "huge," but he argues the court should have gone further by finding no legitimate justification at all for the proposed relocation. For essentially three reasons, he claims it is against the manifest weight of the evidence that "the circumstances and reasons for the intended relocation" slightly favor relocation. *Id.*

¶ 72 First, he observes that from January 15 to March 12, 2016, while petitioner was at Bloomington, her earnings increased from $87,348 to $110,980.04. (The latter amount consists of a salary of $99,538.17 plus a bonus incentive of $11,442.57.) Indeed, she has received a raise every year at Bloomington, ever since she began her employment with State Farm, in 2000. Thus, respondent argues, she was doing quite well in Bloomington and had no apparent cause for discontent.

¶ 73 Surely, though, a custodial parent need not be doing *badly* in his or her present location to justify a proposed relocation to another state. Ambition can be a virtue. A desire for advancement can be a legitimate motive for moving to another state. After all, petitioner's prosperity and financial security is Z.S.'s prosperity and financial security. See *In re Marriage of Collingbourne*, 204 Ill. 2d 498, 526 (2003) ("[W]hat is in the best interests of the child cannot be

considered without assessing the best interests of the other members of the household in which the child resides, most particularly the custodial parent.").

¶ 74 Petitioner insists that accepting the security analyst position in Dallas was a smart career move for her. The record contains some evidence to support that view. Petitioner had gone as high in the position of risk analyst as it was possible to go. She was at level 4, and there was no level 5. Granted, she might have continued receiving raises as a risk analyst, but to advance substantially and avoid stagnation, she had to continue receiving promotions, and when it came to promotions, she was up against the ceiling. That is why, when a position for a security analyst opened up in Dallas, she put in her résumé. Not only was it a position in which she could earn further promotions, but she had been working toward becoming a security analyst, and her training and qualifications enabled her to transfer into that position.

¶ 75 The trial court's finding of greater opportunities for advancement could be understood as meaning not only advancement within State Farm but also advancement in the broader field of cybersecurity. Education can be a powerful means of advancement, and petitioner testified that in Dallas she could take courses and seminars in cybersecurity that were unavailable in smaller cities such as Bloomington.

¶ 76 Second, respondent suggests it is unnecessary for petitioner to relocate to Dallas because no one at State Farm has told her that if she remains in Bloomington, she will lose her position of security analyst or, for that matter, that she will lose her assignment as the team leader of the nine-person team in Dallas. Respondent notes that there are other security analysts in Bloomington.

¶ 77 Petitioner testified, however, that there were different kinds of security analysts at State Farm. The position that State Farm posted, and for which she applied, was a particular

position in Dallas. The report location was Dallas. The immediate supervisor was in Dallas. The team the security analyst would be expected to lead was in Dallas.

¶ 78 It is true that State Farm has not spelled out for petitioner what will happen if she chooses to remain in Bloomington instead of moving to Dallas, where her boss and team are. But just because the consequences are as of yet unspecified, it does not follow that they will be innocuous. State Farm could see itself as being denied what it had explicitly bargained for: a security analyst in Dallas. This could look to State Farm like a bait and switch. Petitioner is concerned that if she backs out of a transfer to Dallas, State Farm will be disappointed and will register its disappointment in her next performance evaluation, with long-term negative implications for her career. Regardless of innocence or fault, job requirements are job requirements. Her mission is to train, mentor, and lead a team of newly minted college graduates, and she is concerned that she will fail in that mission if she is nothing to them but a face occasionally appearing on a video-conference screen. She is concerned that her immediate supervisor will regard her, 790 miles away, as out of sight, out of mind. A reasonable trier of fact could find those concerns to be understandable.

¶ 79 Third, respondent argues that "[petitioner's] testimony that she would have more opportunities for advancement in Texas was not supported by testimony by any representative of State Farm and was merely her suspicion that management positions were continually opening." Actually, in her testimony, petitioner purported to know, rather than suspect, that management positions were continually opening up in Dallas. She testified that because the Dallas hub was a "start-up environment," it had "a lot more openings" than the Bloomington headquarters. We are unaware of any rule requiring that her testimony in that respect be corroborated by the testimony of another State Farm employee. The trial court chose to believe her when she testified that there

tended to be more management openings at the Dallas hub than at the Bloomington headquarters. We defer to that determination of credibility. See *In re Marriage of Faber*, 2016 IL App (2d) 131083, ¶ 37.

¶ 80 Fourth, respondent points out that before applying for and accepting the position in Texas, petitioner never applied for any positions in Illinois. That omission matters, however, only if her motives for the proposed relocation are suspect. See *In re Marriage of Ludwinski*, 312 Ill. App. 3d 495, 501 (2000). As we said in *Ludwinski*:

> "We acknowledge that when the motives of the parent seeking removal are suspect, one of the factors that courts should consider is whether the parent sought employment in Illinois. However, the failure to do so, standing alone, is insufficient to deny removal. Moreover, where *** the motives of the parent seeking removal are clearly not frivolous, inadequate, or unpersuasive, but rather are sincere, then that factor is irrelevant." *Id.*

¶ 81 Respondent insists that petitioner's motives are suspect and that the proposed relocation is nothing but "a ruse to interfere with visitation." *In re Marriage of Tedrick*, 2015 IL App (4th) 140773, ¶ 50. It is not our place, however, to evaluate the sincerity of petitioner's motives. Her motives and her credibility were questions of fact, and we do not resolve questions of fact; the trial court does so. See *Bullet Express, Inc. v. New Way Logistics, Inc.*, 2016 IL App (1st) 160651, ¶ 60; *Speed District 802 v. Warning*, 242 Ill. 2d 92, 144 (2011). "[A]s the trier of fact, the trial judge is in the best position to judge the credibility of the witnesses and to determine the weight to be given to their testimony." *Bullet Express*, 2016 IL App (1st) 160651, ¶ 60. For that matter, the best interests of Z.S. is a question of fact. See *Eckert*, 119 Ill. 2d at 328.

We do not decide these factual questions anew; instead, we limit ourselves to looking for arbitrariness, unreasonableness, or whimsicality. See *Banister*, 2013 IL App (4th) 120916, ¶ 47.

¶ 82 We cannot fairly say the trial court acted on a whim when finding legitimate reasons for the proposed relocation. The court found that although the short-term financial benefits of a move to Texas would be not be huge, the move could be beneficial over the long term by giving petitioner greater opportunities for advancement. The record contains evidence that could reasonably support that finding. Petitioner's "reasons, advancement in career and salary, are neither frivolous nor inadequate." *Ludwinski*, 312 Ill. App. 3d at 503.

¶ 83 C. The History and Quality of Each Parent's Relationship With the Child

¶ 84 In deciding whether the proposed relocation would be in the child's best interests, the trial court must take into account "the history and quality of each parent's relationship with the child and specifically whether a parent has substantially failed or refused to exercise the parental responsibilities allocated to him or her under the parenting plan or allocation judgment." 750 ILCS 5/609.2(g)(3) (West 2016). The trial court found that this factor weighed evenly in favor of both parties.

¶ 85 Respondent considers that finding to be against the manifest weight of the evidence. He asserts: "The evidence demonstrated [that petitioner] continually interfered with the quality of [respondent's] relationship with [Z.S.]" The trial court did indeed find: "[Petitioner] attempts to control everything from the amount of time the minor spends with the Respondent, to what the child does or is allowed to do while in the Respondent's custody." But what is the logical relevance to section 609.2(g)(3)?

¶ 86 The apparent idea behind section 609.2(g)(3) is that if a noncustodial parent, in the custodial parent's default, has assumed more and more of the parental responsibilities,

granting the custodial parent's petition for relocation might be against the child's best interests. Or, on the other hand, if the noncustodial parent is indifferent and uninvolved, the case for keeping the child in Illinois might be less compelling. In either event, the object of scrutiny is each parent's relationship with the child, not the parents' relationship with one another.

¶ 87 If, as the trial court found, petitioner has been trying to micromanage respondent's parenting time with Z.S., we can see how this might be an irritant in the relationship between petitioner and respondent (how it could be anything more than an irritant is unclear: the amount of time respondent spends with Z.S. is controlled by court order, not by petitioner, and what Z.S. does, or is allowed to do, is up to respondent while she is in his custody). Under section 609.2(g)(3), however, the question is not the history and quality of the relationship between petitioner and respondent. They could have a bad relationship with each other while having a good relationship with Z.S. Rather, the question is the history and quality of petitioner's relationship with Z.S. *versus* the history and quality of respondent's relationship with Z.S. See 750 ILCS 5/609.2(g)(3) (West 2016).

¶ 88 In his brief, respondent portrays his relationship with Z.S. as close, meaningful, and joyful, and indeed the trial court found him to be "a very involved father." In so finding, the court criticized petitioner for "attempt[ing] to diminish [respondent's] involvement and contributions"—a criticism that, in respondent's view, undercuts the conclusion that section 609.2(g)(3) weighs evenly in favor of each party. What the court meant, though, was that, *in the trial*, petitioner attempted to diminish respondent's involvement and contributions. Again, it is unclear how this ill-advised litigation tactic has any relevance to the history and quality of petitioner's relationship with Z.S. *versus* the history and quality of respondent's relationship with Z.S. See 750 ILCS 5/609.2(g)(3) (West 2016).

¶ 89 Respondent argues: "[Petitioner] should not have been rewarded for her continued efforts to alienate [respondent] from his child ***." But how has petitioner tried to make respondent feel alienated or disaffected from his own daughter? More to the point, how could she possibly do so? If respondent really means that petitioner has tried to alienate Z.S. from respondent, there appears to be no evidence of that, either. We are aware of no evidence that petitioner has ever spoken disparagingly of respondent to Z.S.

¶ 90 In sum, it is not clearly evident that the history and quality of petitioner's relationship with Z.S., compared with the history and quality of respondent's relationship with Z.S., weigh against relocation. See *id.* The trial court found both parties to be good, loving, involved parents.

¶ 91 D. The Educational Opportunities at Each Location

¶ 92 When ruling on a petition for relocation, another factor a trial court should consider is "the educational opportunities for the child at the existing location and at the proposed new location." 750 ILCS 5/609.2(g)(4) (West 2016). The trial court found that this factor weighed slightly in petitioner's favor.

¶ 93 Respondent criticizes that finding as against the manifest weight of the evidence. He points out that if petitioner "was truly unhappy with the schools [Z.S.] was attending[,] she could have sent her to a private school," as the marital settlement agreement allowed her to do. That petitioner has chosen not to do so "surely weakens any alleged concerns she had about the schools in Bloomington," he argues.

¶ 94 But the question, under section 609.2(g)(4), is not whether the Bloomington schools give cause for concern or whether they are substandard or problematic in any way.

Rather, that section invites a comparison—and the comparison can be between two perfectly good schools, one of which might better serve the child's needs or interests.

¶ 95 Admittedly, this comparison could be problematic for a couple of reasons. For one thing, petitioner had not decided which school Z.S. would attend, the school in Wylie or the school in Allen. Until petitioner actually decides that the school in Wylie is the one Z.S would attend, the allegedly superior facilities of that school, *e.g.*, the new regulation-size track and the culinary kitchen, are irrelevant for purposes of section 609.2(g)(4)—because Wylie is not yet "the proposed new location." *Id.* Second, it is unclear that the school scores of Wylie and Allen can be validly compared with those of Bloomington, because, as the trial court ruled, petitioner was unqualified to opine whether the scoring systems of the two states were commensurable.

¶ 96 Even so, the trial court could have compared the extracurricular opportunities in the Dallas area with those in the Bloomington area. Under section 609.2(g)(4), a court should compare "the educational opportunities for the child at the existing *location* and at the proposed new *location*." (Emphases added.) 750 ILCS 5/609.2(g)(4) (West 2016). A location is broader than schools within the location. In other words, the educational opportunities at a location can include extracurricular activities to the extent that such activities are instructive and informative.

¶ 97 It appears that Z.S. has a longstanding interest in two extracurricular activities: art and veterinary medicine. Petitioner testified that after Z.S. graduated from junior high school in Bloomington, her art tutor no longer would give her art lessons, because meeting at the high school in the morning, before classes, would be too inconvenient or would be incompatible with her schedule as a full-time realtor. Wylie, however, has a gallery that offers art lessons. Even if petitioner and Z.S. ended up relocating to Allen instead of Wylie, both Allen and Wylie are northern suburbs of Dallas and are only 13 miles apart.

¶ 98 In addition, petitioner testified that, through 4-H in Texas, it was possible for Z.S. to pursue a veterinarian assistant's certificate. With such a certificate, she would be able to go to work in a veterinarian's office straight out of high school, where she could acquire additional experience that would increase the likelihood of her acceptance into veterinary school. Also, according to petitioner's testimony, Texas A & M University hosted a veterinary camp each summer.

¶ 99 Thus, a reasonable trier of fact could have found more extracurricular educational opportunities for Z.S. in Wylie and Allen than in Bloomington, given her interests. Therefore, we find evidence to support the finding that section 609.2(g)(4) slightly favored relocation.

¶ 100 E. The Anticipated Impact of the Relocation on the Child

¶ 101 1. *The Internal Consistency of the Trial Court's Finding*

¶ 102 Another statutory factor is "the anticipated impact of the relocation on the child." 750 ILCS 5/609.2(6) (West 2016). With regard to that factor, the trial court wrote: "If the Petitioner's testimony on this issue were true, then it would indicate that the only impacts on the minor child would be positive. The Respondent believes that the negative impact of losing the close relationships with the minor's extended family will affect the child greatly. The Court finds both parents['] testimony to be credible and [that] this factor weighs evenly for the parties."

¶ 103 Even though, in the quoted passage, the trial court finds both parties' testimony to be credible, respondent notes the apparent tension between that finding and the first sentence in the passage. In the first sentence, the court implies that, in her testimony, petitioner discussed only the advantages of the proposed relocation to Dallas, without mentioning any of the disadvantages of interposing 790 miles between Z.S. and her extended family—as if there were

only an up side and no down side. And yet, paradoxically, the court finds the testimony of both parties to be credible. Respondent sees a contradiction here.

¶ 104 Actually, the passage need not be interpreted as being self-contradictory. Petitioner's testimony came across as true as far as it went. Her description of the advantages of the proposed relocation was, by and large, credible (the trial court seems to say)—but her account was incomplete in that it omitted any acknowledgment of the disadvantages. Likewise, respondent's testimony came across to the trial court as true as far as it went. His description of the disadvantages of the proposed location was, by and large, credible—but his account was incomplete in that it omitted any acknowledgment of the advantages. Probably, that is what the court meant.

¶ 105 In other words, if we understand the trial court correctly, it found the direct benefits to Z.S. and the direct detriments to her to be roughly in equipoise. On the one hand, there were the cultural and extracurricular opportunities of living near a major city, but, on the other hand, there were the regular family gatherings that Z.S. would miss. Those opposing considerations might have weighed equally in the court's analysis.

¶ 106 Ultimately, though, the trial court could have reasonably decided that the *indirect* benefits to Z.S., in the form of enhanced career opportunities for petitioner, tilted the balance in favor of relocation. "If only direct benefits to affected children were considered, there would almost never arise a situation where removal would be permitted where children were in a good environment with good schools, good parents, and good friends. However, it is necessary to also consider indirect benefits to the children from the proposed move." *In re Marriage of Carlson*, 216 Ill. App. 3d 1077, 1081 (1991).

¶ 107 2. *The Quality of Life in Bloomington*

¶ 108 Respondent argues that the "[q]uality of life in Bloomington was not fully explored." By the quality of life in Bloomington, he means several things. He means his "regular, physical contact with [Z.S.]": the hugs, the high fives, and the pats on the back. He means having parenting time with her every Wednesday evening and every other weekend instead of having 60 consecutive days of parenting time during the summer—a large chunk of time during which he would have to work. He means his presence at Z.S.'s medical appointments and extracurricular activities. He means her frequent interactions with family members and friends she has grown up with, including her ailing paternal grandmother, Denise Serapin, who helped raise her from preschool through first grade. According to respondent, the trial court failed to fully explore all those things, which make up the quality of life in Bloomington.

¶ 109 Just because the trial court did not give as much weight to the quality of life in Bloomington as respondent would have desired, it does not follow that the court failed to fully explore it. To be sure, conveniently spaced visitation contributes to the quality of life, but as a practical matter, relocation almost always will result in less frequent contact with the custodial parent and a large block of parenting time in the summer. Almost always, relocation will entail separation from friends and from the community to which the child has grown accustomed. In many cases, relocation will result in less frequent contact with extended family members. Relocation typically carries those disadvantages, and if full exploration of those disadvantages necessarily would lead to the denial of a petition for relocation, such a petition would be futile unless the present location is on the Illinois border and the proposed new location is only a short distance away in a neighboring state. See *Ford v. Marteness*, 368 Ill. App. 3d 172, 178 (2006).

¶ 110 F. The Need for Case-By-Case Determinations

¶ 111 Respondent cites cases in which the appellate court reversed the granting of a petition for relocation (*Shinall v. Carter*, 2012 IL App (3d) 110302, ¶ 51) or affirmed the denial of a petition for relocation (*In re Marriage of Matchen*, 372 Ill. App. 3d 937, 952 (2007); *In re Marriage of Johnson*, 352 Ill. App. 3d 605, 606 (2004); *In re Marriage of Sale*, 347 Ill. App. 3d 1083, 1084 (2004); *In re Marriage of Lange*, 307 Ill. App. 3d 303, 305 (1999); *In re Marriage of Clark*, 246 Ill. App. 3d 479, 480 (1993)). He argues that just as relocation was denied in those cases, so should it be denied in the present case.

¶ 112 For two reasons, we are unconvinced. First, the determination of whether relocation would be in the child's best interests "must be made on a case-by-case basis depending on the circumstances of each case." *Ford*, 368 Ill. App. 3d at 175. As the appellate court cautioned in one of the cases that respondent cites, "rarely will the facts and circumstances in two separate removal cases be comparable." *Johnson*, 352 Ill. App. 3d at 616.

¶ 113 Like all relocation cases, this case is factually unique. It is significantly different from the cases to which respondent invites a comparison. In three of the cases he cites, the custodial parent wanted to move out of Illinois so that she could live with a new spouse or a prospective new spouse. *Shinall*, 2012 IL App (3d) 110302, ¶ 3; *Matchen*, 372 Ill. App. 3d at 938; *Sale*, 347 Ill. App. 3d at 1085. The appellate court has held: "[I]n order to prove that removal is in a child's best interest, the custodial parent must prove more than his or her own desire to live with a new spouse." *Shinall*, 2012 IL App (3d) 110302, ¶ 47. In *Johnson*, the children told the trial court, "*in camera*," that they would hate to live in Arizona. *Johnson*, 352 Ill. App. 3d at 610. In *Clark*, the custodial parent claimed that living in Tennessee would alleviate her asthma, bronchitis, and allergies as well as her daughter's chronic sinus condition,

but she presented no medical evidence to back up that claim. *Clark*, 246 Ill. App. 3d at 482. The present case has no comparable facts.

¶ 114 Admittedly, *Lange* is somewhat closer to this case in that, in *Lange*, the custodial parent, a mathematics teacher in the Vigo County, Indiana, public school system, accepted a job offer from a public school in Houston, Texas. *Lange*, 307 Ill. App. 3d at 312. In affirming the denial of her petition for relocation, we noted: "[T]he evidence simply did not reveal any significant financial advantage flowing from the move to Houston." *Id.* On closer examination, however, the similarity evaporates. In *Lange*, there was no evidence that the job in Houston offered a potential for promotion that the custodial parent had exhausted in Vigo County. Nor did the custodial parent, who had a master's degree (*id.* at 312), present any evidence that a doctoral education in mathematics was more readily available to her in Houston than in Vigo County (see *id.* at 313).

¶ 115 Second, even if the factual differences between cases could be overlooked or discounted, our deferential standard of review could make a comparison problematic. Arguing that the denial of relocation in a previous case requires a denial of relocation in the present case presupposes that denial was the only defensible outcome in the previous case. That presupposition would be risky, considering that, under our standard of review, all we care about is arbitrariness. See *Banister*, 2013 IL App (4th) 120916, ¶ 47. If, given the evidence in the record, one finding and the opposite finding would both be reasonable, we would owe deference to either finding. Just because, in a reported decision, the appellate court was unconvinced that the denial of a petition for relocation was against the manifest weight of the evidence, it does not necessarily follow that granting the petition would have been against the manifest weight of the evidence, either. If reasonable minds could differ, a finding is not against the manifest weight of

the evidence. See *Matchen*, 372 Ill. App. 3d at 946; *City of Chicago v. Old Colony Partners, L.P.*, 364 Ill. App. 3d 806, 812 (2006).

¶ 116 Weighing petitioner's enhanced career opportunities against Z.S.'s ready access to her father and extended family is extraordinarily difficult, and for that very reason, reasonable persons could arrive at opposing conclusions. Therefore, under our deferential standard of review, our duty is to affirm. See *Cook County Board of Review v. Property Tax Appeal Board*, 334 Ill. App. 3d 56, 60 (2002). "[T]he presumption in favor of the result reached by the trial court is always strong and compelling in [a relocation] case." (Internal quotation marks omitted.) *Collingbourne*, 204 Ill. 2d at 522.

¶ 117 III. CONCLUSION

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

¶ 119 Affirmed.