

NOTICE
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2024 IL App (5th) 240238

NO. 5-24-0238

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

<i>In re</i> MARRIAGE OF)	Appeal from the
NICHOLAS GUALANDI,)	Circuit Court of
)	Williamson County.
Petitioner-Appellant,)	
)	
and)	No. 17-D-103
)	
NIKKI MAU-GUALANDI,)	Honorable
)	Amanda Byassee Gott,
Respondent-Appellee.)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court, with opinion.
Justices Moore and Sholar concurred in the judgment and opinion.

OPINION

¶ 1 The petitioner, Nicholas Gualandi (Father), appeals from the “Agreed Parenting Plan and Judgment” of the circuit court of Williamson County, finding that it was in the best interest of the minor children to modify parenting time. Father also claims that the circuit court’s decision to deny his motion for reconsideration was an abuse of discretion. We vacate the judgment of the circuit court and remand for further proceedings with directions.

¶ 2 **I. BACKGROUND**

¶ 3 Father and the respondent, Nikki Mau-Gualandi (Mother), were married on March 25, 2011. A judgment of dissolution of marriage was entered on February 5, 2015, in Iroquois County, Illinois. Mother and Father are the biological parents of their 12-year-old daughter, T.G., and their

8-year-old son, D.G., who was born outside of the marriage. In May of 2017, Father filed a petition to establish parentage of D.G. and establish parenting time with D.G. and T.G. An agreed judgment was entered on May 31, 2017, wherein it was established that D.G. was the son of Father. Additionally, the parties agreed to homeschool the children; if not homeschooled, the children would be enrolled in a school in Marion, Illinois. General decision-making authority was given to both Mother and Father, jointly. Father was given the majority of parenting time. Mother had parenting time from Monday at 7 p.m. until Thursday at 7 p.m. to homeschool the children.

¶ 4 Father filed a petition to modify parenting time and responsibilities on April 4, 2018, claiming that Mother failed to exercise her designated parenting time with the children. T.G. was not being homeschooled, as anticipated, and was enrolled in public school. D.G. had been enrolled in daycare in Marion, Illinois. Mother responded that Father failed to comply with the agreement regarding transportation for visitation, and Father had enrolled T.G. in public school in Crab Orchard, Illinois, without discussing the decision with Mother. She sought to enforce the original parenting time and parenting responsibilities agreement.

¶ 5 The circuit court entered an order on February 28, 2019, modifying the parenting time and parenting responsibilities of the parties. At that time, Mother resided in Rossville, Illinois. Mother's visitation was reduced to every other weekend beginning after school on Friday until Sunday at 6 p.m. Father's residence served as the primary residence for school registration purposes, and the minor children were allowed to continue in public school.

¶ 6 Father filed a subsequent petition to modify parenting time and parenting responsibilities on February 24, 2021. Father claimed that Mother was failing to exercise her designated parenting time, she was living in an unstable environment, and she had moved numerous times without notifying Father. Mother never filed a notice of relocation with the circuit court.

¶ 7 Father attempted to serve his petition on Mother at her last known address in Rossville, Illinois, but Mother had moved from that address. The return of service indicated that Mother was living with her sister in Covington, Indiana. An alias summons was issued to the Covington, Indiana, address in April of 2021. However, as of that date, Mother was no longer residing at that Indiana location.

¶ 8 On July 6, 2021, a docket entry indicated that Mother had contacted the circuit court and provided an updated mailing address for a location in Rossville, Illinois. Father continued to search for Mother's address, and he filed an amended notice for publication outlining his attempts. On August 18, 2021, the circuit court entered an order to allow Father to serve Mother by publication.

¶ 9 Mother subsequently filed an answer as well as a motion for *in camera* interviews of the children and a motion to appoint a guardian *ad litem* (GAL). The circuit court subsequently appointed Patrick Sharpe as the GAL. Mother's witness list, filed on October 11, 2022, included Mother's contact information with an address in Rossville, Illinois.

¶ 10 A. GAL Report

¶ 11 The GAL interviewed Mother on March 22, 2023. According to Mother, she lived in Indiana and had moved five times after separating from Father. Mother voiced concerns about the children's hygiene while in Father's care. When Mother received the children for visitation, the children were dirty and odorous. T.G.'s hair was frequently matted and unwashed. Mother informed the GAL that Father's home was unsanitary with piles of trash, vermin, and mold.

¶ 12 Mother additionally claimed that Father had a temper. He screamed and would use a belt to discipline the children. On one occasion, she alleged that Father had given D.G. a black eye. The GAL inquired why Mother previously agreed to modify parenting time. Mother responded that she was frightened of Father and unable to afford legal fees. There was no information in the

GAL report on Mother's home accommodations, where the children would attend school in Indiana, or who the other children were in Mother's household.¹

¶ 13 The GAL report also included a summary of Father's interview. Father claimed that Mother had prior mental health and drug issues, but he no longer feared for the safety of the children while in Mother's care. The children did not want to exercise parenting time with Mother, but Father insisted that they spend time with Mother. There were occasions when Mother did not exercise visitation during the pandemic and when her housing was unstable. Father was concerned about Mother's boyfriend but did not provide a reason for his concerns.

¶ 14 Father informed the GAL that the children showered and brushed their teeth daily. T.G. had issues with brushing her hair. Father claimed that Mother had taken T.G. to the emergency room for head lice, but T.G. had dandruff. Father maintained a commercial driver's license for his employment. The GAL did not have concerns with Father abusing drugs or alcohol, and Father did not have a criminal history.

¶ 15 The GAL performed a home visit at Father's residence on August 14, 2023, and the cleanliness of Father's home was concerning. Father lived in a modular home. There were piles of garbage in the kitchen and mold in the refrigerator. The home had an unusable playroom with toys covering the floor. Garbage filled the children's bathroom, and the children's shower was unworkable because of a hole in the bathtub. Father had informed the GAL that everyone showered in the second bathroom. The second bathroom was also dirty, and the sink contained garbage. The GAL was concerned with where the children brushed their teeth.

¹Mother has a child, P.G., unrelated to Father, who lives with Mother and Mother's boyfriend. According to the trial testimony of Mother's boyfriend, he was divorced and had two children from his marriage who would stay with him when he had visitation.

¶ 16 The GAL met with T.G. during the home visit. She had dandruff and an odor about her. Her bedroom was in “a state of chaos,” with clothes and garbage on the floor. T.G. informed the GAL that she preferred to live with Father and voiced concerns about Mother’s boyfriend. Mother and her boyfriend fought, and T.G. did not want caretaking responsibilities for the other children in the household.

¶ 17 The GAL also met with D.G., who was “snuggled” on his Father’s lap. After some initial conversation with D.G., the GAL became concerned that Mother had attempted to improperly influence the children. Mother had directed D.G. to tell the GAL that D.G. wanted to live with Mother, that Father’s house was “gross,” and that he does not have Father’s deoxyribonucleic acid (DNA). D.G. did not understand what not having Father’s DNA actually meant. D.G. additionally informed the GAL that he preferred to stay at Father’s house because he would miss his friends if he lived with Mother, but he liked both houses.

¶ 18 There was also a camper in front of the home. The GAL inspected the camper and found it to be in a cleaner state than the modular home.

¶ 19 The GAL spoke to friends and family of Mother and Father over the phone. Multiple witnesses had described the condition of Father’s home as “disgusting” and had expressed concerns regarding the children’s hygiene while the children were in Father’s care. Other witnesses claimed that Mother was unreliable, focused on the other children in the household, and moved frequently.

¶ 20 The GAL report also indicated that the GAL had spoken with Mother’s boyfriend, John Robles, who had been in a relationship with Mother for three years. Robles was divorced and had visitation with his children on a “week on week off” schedule. Robles indicated his children got along well with Mother’s children. Robles was concerned with Mother’s children’s hygiene while

in Father's care. He reported that T.G. had head lice on three occasions. Neither T.G. nor D.G. knew how to properly clean themselves.

¶ 21 The GAL did not interview the children's teachers, but he did speak with Jena Parsons, an employee of Robin's Nest Learning Center, where the children received after school care. Jena reported that T.G. had hygiene issues, but they had worked with Father to address those concerns. The children were always excited to see Father at pick up time. The children would complain that they missed out on activities when in Mother's care. She had experienced a negative interaction with Mother after she had asked Mother to confirm her identity.

¶ 22 The GAL filed his report on September 1, 2023, and recommended that the parents continue to make decisions jointly. The report referenced the best interest factors under section 602.7 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/602.7 (West 2022)). The GAL was not aware of the prior agreements between the parents relating to caretaking functions regarding the children. The GAL had concerns with Father's failure to provide some basic needs or address the children's hygiene. On the other hand, Mother and her boyfriend were alleged by the children to fight with one another, the children were settled at their current school, and they preferred to live with Father. The GAL recommended that the circuit court adopt Father's proposed plan and that the parties utilize Our Family Wizard, a "co-parenting app," to communicate.

¶ 23 **B. Mother's Petition to Modify**

¶ 24 After the GAL filed his report, Mother filed a petition to modify and a counterpetition for parental responsibility and parenting time. Mother requested sole decision-making responsibilities and a restriction on Father's parenting time. Mother alleged that Father's house was filthy and that D.G. had health issues and was failing to thrive due to the unhealthy environment at Father's home.

She alleged that T.G. frequently had head lice and matted hair due to neglect. Mother claimed that Father encouraged the children to misbehave while in her care, monitored phone calls, invaded the children's privacy, and directed the children not to disclose what occurs at his house.

¶ 25

C. Hearing

¶ 26 The hearing on the Father's petition to modify and Mother's counterpetition to modify was held on December 15, 2023. After brief opening statements by the parties' respective counsel, the first witness called was the GAL. The GAL testified to the home visit where he met with Father and the children. The GAL observed that it appeared as though Father had attempted to clean the home in anticipation of the GAL's visit, but the house was not in "a level of cleanliness that I think would be appropriate." The GAL described the smell as "musky." The kitchen was cluttered with garbage, but there were areas that appeared freshly swept. The children's bathroom was "disgusting," with garbage on the floor "with a path to the stool." The sink did not appear to be used. The bathtub was broken and not functional. The second bathroom was not clean. The sink, that everyone used to brush their teeth, contained garbage. The GAL questioned whether the shower in the second bathroom was actually used. He did not notice any structural issues with the house, holes in the flooring, or visible mold on the walls. Father was a smoker, but it did not appear that he smoked in the house.

¶ 27 T.G.'s bedroom was dirty, unorganized, and had a "distinct smell." T.G. also had an unpleasant odor. Her hair was matted, and the GAL believed a 12-year-old girl would have been "more put together for a scheduled GAL meeting." T.G. was talkative. She enjoyed school and spending time with her friends. T.G. had nothing negative to say about Father. She felt stressed at Mother's house when Mother fought with her significant other. T.G. did not enjoy being responsible for her stepsibling and brother while at Mother's house. T.G. preferred to remain at

Father's house because she did not want to change schools or lose friends.

¶ 28 The GAL testified that he also met with D.G., who was standoffish. D.G.'s room was unkept. D.G. "perked up a little bit" when he accompanied the GAL to view Father's camper at the front of the home. The camper was clean, stocked with food, and had a functional bathroom. D.G. had asked "when will I get to talk to the guardian *ad litem* by myself?" The GAL testified that D.G.'s question was unusual for an eight-year-old boy. The GAL met with D.G. alone in the camper. Mother had encouraged D.G. to tell the GAL that D.G. did not like being at Father's house. The GAL described D.G. as a "jovial boy" after providing the GAL with that information. D.G. opened up about sports and school and stated he liked living with Father and going to school, and he did not want to lose friends. D.G. did not express any concerns about Mother's house besides having less friends there.

¶ 29 The GAL then explained that he spoke with Jena Parsons at Robin's Nest, who stated that Father was involved with the children. She was assisting Father to address T.G.'s personal hygiene. Jena had a negative opinion of Mother. The GAL additionally had spoken with relatives and friends of Mother and Father.

¶ 30 The GAL next testified that he had met with Mother in person, but not at her home. Mother claimed that D.G. was failing to thrive because of poor nutrition. The GAL thought that D.G. was a "skinny little guy," but he did not appear to be unhealthy or malnourished. D.G. behaved like other children his age. The GAL never went to Indiana to view Mother's residence. He was unaware of the living conditions at Mother's home and whether Mother owned or rented her residence. The GAL did not do a search of court cases in Indiana and was not aware of whether an order of protection had ever been entered involving Mother or her boyfriend.

¶ 31 The GAL testified that the condition at Father's house was unacceptable, but the children were happy with Father. The GAL was concerned that Mother had moved numerous times, although she appeared to be more stable at her current location in Bloomington, Indiana. After weighing Father's issues with cleanliness against unknown issues at Mother's house, along with concerns about Mother and her boyfriend arguing, the GAL recommended that the children remain with Father. The GAL was not confident that a "big change" of relocating would be in the best interests of the children.

¶ 32 The circuit court questioned the GAL on whether the conditions of Father's home were appropriate, based on the Department of Children and Family Services (DCFS) standards. The GAL believed that Father's home was "dangerously close" to having an issue with DCFS, based on the condition of the bathrooms. He further testified that the bathrooms were usable, but he would not have been surprised if a hotline call was made to DCFS. The GAL had not interviewed anyone at the children's school and had not reviewed the children's medical records. After the GAL finished testifying, he remained in the courtroom to listen to the remainder of the evidence presented.

¶ 33 Roger Gualandi testified that he was T.G. and D.G.'s paternal grandfather. Roger would attend T.G.'s softball games, and he never saw Mother at a softball game. D.G was doing well in school. Prior to COVID-19, T.G. was doing well at school. After the pandemic, she was "going in the wrong direction." T.G. had not failed any classes.

¶ 34 Roger did not have any concerns with his grandchildren staying with Father. He did not consider Father's home to be unsatisfactory, but it was "not where it should be." When Mother lived with Father, there were piles of trash in the house. Roger had not visited the children's home

in over a year. DCFS investigated Father in 2015, when Father lived at a different property. Roger was unaware of whether DCFS had been contacted since that time.

¶ 35 Father testified on his own behalf that in May of 2017, Mother agreed that the children should reside with Father. Father used to meet Mother in Effingham, Illinois, to exchange the children for visitation. Mother moved and would not provide her address until approximately a year before the hearing date, when Father received the current address for Mother in Indiana. The children now travel 1 hour and 45 minutes to their current exchange location in Indiana, and the total distance between Mother and Father was over 3 hours. The parties never discussed modifying the parenting plan for Mother to relocate to Indiana. Father testified that there were no issues with joint parenting, but they were not following the parenting plan. He was seeking to modify parenting time to reflect their actual arrangement with the children.

¶ 36 In 2021, Father met Mother's boyfriend when she came to remove belongings from Father's house. Mother was aware of the conditions of his home at that time, and she did not take any action to remove the children.

¶ 37 Father testified that a woman, Brittany Aldridge, had moved into Father's house in May of 2023. They were not romantically involved. Brittany agreed to help with the children and house in exchange for a place to stay. Father asked her to move out because she was not "holding up her end of the bargain." She moved out two months prior to the hearing date.

¶ 38 After the GAL visit, Father stated that he cleaned his home. The playroom and the bathrooms remained cluttered. Father testified that there was a hole in the children's bathtub the "size of a toe" that occurred two weeks prior to the GAL visit. The children used the master bathroom to bathe. Both toilets and bathroom sinks were functional. They also used the bathroom in the camper. T.G. kept toiletries in a travel bag and carried the bag with her to school and to

Mother's house. T.G. used a prescription shampoo for her dandruff, and the children showered nightly. Father additionally testified that Jena Parsons, a worker at Robin's Nest, was helping Father address T.G.'s personal hygiene issues. T.G. had wavy hair and had her hair cut short so it was more manageable.

¶ 39 Father testified that he was contacted by DCFS in February of 2023 regarding a report that the children had head lice. After Mother complained about head lice, he took the children to their pediatrician. Father testified that T.G. had dandruff, not head lice.

¶ 40 T.G. was on her school's softball team, and she played in a summer softball league. Softball practice was Monday through Friday, and games were during the week, as well as on the weekends. Mother did not attend T.G.'s softball games, and T.G. would miss her softball games when Mother had visitation. D.G. was not interested in sports but was involved in a youth program at Father's church.

¶ 41 Father described T.G.'s room as "a disaster." He had to repeatedly ask T.G. to clean her room, and he would help her clean her room. T.G. has told Father to stay out of her bathroom. Father testified that the "garbage" in the bathroom sink was T.G.'s makeup supplies. She would store the items in the sink and move the items to use the sink. Father additionally testified that T.G. had an issue with hoarding and that she would pull things from the garbage to save.

¶ 42 T.G. struggled to turn in her schoolwork. Father did not have the password to log in to T.G.'s school computer, but T.G. would log in for him if he asked. T.G. was grounded from her phone after Mother discovered that T.G. was inappropriately messaging older men. T.G. was only allowed to use her phone to call Mother. Father knew the password for T.G.'s phone.

¶ 43 Mother enrolled T.G. in online counseling in early 2023. The counseling sessions stopped because T.G. would only talk about "rainbows and unicorns, nothing important." T.G. had recently

asked Father to speak to a counselor again. Father scheduled T.G. for counseling sessions through Creative Mind Solutions in Marion, Illinois, after Halloween in 2023. Father was questioned on whether he was aware that T.G. would wet her pants during the day. Father testified that when T.G. “gets busy doing something, she don’t want to stop what she’s going to go to the bathroom. So then her bladder gets full, and then, yeah, she’ll have an accident.” Father testified that T.G. would not wet her pants at Father’s house, at school, or at Robin’s Nest, but he believed that it occurred at Mother’s house. Father rested his case after his testimony.

¶ 44 Robles, Mother’s boyfriend of approximately four years, testified first on Mother’s behalf. Robles and Mother were renting a three-bedroom, two-bathroom, 2000-square-foot home in Bloomington, Indiana. Mother had a child, P.G., that was a half-sibling to T.G. and D.G. On the weekends, Robles had visitation with his two children. When T.G. and D.G. visited, there were five children at the house. Robles planned to relocate with Mother, after they were able to afford to buy property and build a home.

¶ 45 Robles met Father in 2021, at Father’s house. Robles testified that Father’s house smelled of cigarettes, body odor, and “fecal matter.” Plates of “rotted, molded food” were in the kitchen. The home was infested with mice, and there were holes in the flooring. Mold covered the space near the refrigerator and the rear door. Robles testified to calling DCFS, but nothing was done to correct the condition of Father’s house. Mother did not have the money to contest parenting time.

¶ 46 Robles testified that T.G.’s hair was matted sometimes, and she had lice four times. The emergency room had prescribed Permethrin on the fourth time. They were told to call DCFS because of the head lice. Robles was also concerned with T.G. day-wetting herself. Robles described T.G.’s behavior as aggressive, with anger issues and impulsiveness. T.G. met with a

counselor for six weeks for the day-wetting and anger issues. According to Robles, the counselor ended sessions because “everything’s sunshine and rainbows right now. Her walls are so far up.”

¶ 47 Robles was concerned with D.G.’s height and weight. He did not believe that D.G. was eating enough calories. D.G. also had a severe sinus infection for several months.

¶ 48 Robles testified that he fought with Mother but not in front of the children. He could not remember a time when they were yelling at each other. Robles denied any instances of the police being called or an investigation by the Indiana Department of Child Services (DCS).

¶ 49 Mother testified that the children would arrive for visitation in dirty clothing, and T.G. would have matted hair. Photographs of T.G.’s hair were admitted into evidence. T.G. would argue with Mother about showering. On multiple occasions Mother would have to explain to D.G. that he needed to use soap in the shower.

¶ 50 Mother used FaceTime with her children while they were with Father. Mother testified to an occasion where she was on a videocall with D.G. and he went into Father’s bedroom. Mother saw that T.G. was in the shower next to Father’s room and the bathroom door was open. Father was talking to T.G. while she was in the shower wrapping herself in a towel. Mother was concerned about T.G. having privacy when she showered at Father’s house. Father would also monitor phone calls and would not allow T.G. to call Mother from the privacy of her bedroom.

¶ 51 Father told Mother that T.G. had wet her pants during a phone call. Mother suggested that T.G. may have a urinary tract infection (UTI). Father then took T.G. to a doctor, but she was not diagnosed with a UTI. Mother testified that T.G. would wet herself when “she gets busy and doesn’t want to stop what she’s doing.” This occurred at Mother’s and Father’s house. Mother had to direct T.G. to use the restroom if T.G. started doing the “potty dance.” Mother believed that T.G. was examined by their regular family doctor and had not seen a specialist. Mother testified

that T.G. did not exhibit hoarding behavior at her house. T.G. would hide dirty and soiled clothes and was “lazy.” Mother had enrolled T.G. to speak with a telehealth counselor, who stopped sessions. The counselor told Mother that “until [T.G.] was ready to talk about more than rainbows and unicorns, she can’t help.” Mother was aware that T.G. was seeing an in-person counselor at Creative Mind Solutions.

¶ 52 Mother had contacted T.G.’s school three times and left messages, but the school would not provide her with information. Mother additionally testified that no one from Robin’s Nest would speak with her. Mother never provided documentation to Robin’s Nest to demonstrate that she was T.G. and D.G.’s mother. Mother was not aware of any online access to view the children’s progress at school and had never checked the children’s grades. She had never attended a parent-teacher conference. Mother testified that she had attended three of T.G.’s softball games. When T.G. stayed with Mother in Indiana, T.G. was not required to participate in extracurricular activities, and T.G. missed softball games played in Illinois.

¶ 53 Mother testified that she did not have plans to move and would remain in Bloomington, Indiana. The children would attend the same school as their half-sibling, P.G., and the school had a softball team.

¶ 54 After Mother’s testimony concluded, the GAL testified a second time because issues arose during the hearing that were not brought to his attention prior to drafting his written report. Specifically, he was concerned that a 12-year-old girl was having issues with day-wetting. The GAL submitted his written report before Mother filed a counterpetition, and he had not conducted further investigations after submitting his original written report.

¶ 55 The GAL testified that he remained concerned with switching schools in the middle of the school year and informed the circuit court that he had not completed a walk-through of Mother’s

home. The size of Mother's house was "pushing it" for five children and two adults. However, no one mentioned any concerns with the condition of Mother's home. He believed that T.G. would be able to play softball in Bloomington, Indiana, and find a counselor because it had a larger population than where Father lived in Southern Illinois. The GAL then changed his recommendation in Mother's favor. No further testimony was presented.

¶ 56 The circuit court then considered the motion for an *in camera* interview of the children. Mother's attorney left the decision to the court and informed the court that the GAL report indicated that T.G. wished to remain with Father. Father's attorney argued that speaking with T.G. would be beneficial based on the testimony that was presented. The GAL recommended that the circuit court deny the motion for an *in camera* interview with the children. It was his opinion that D.G. would not provide a preference and T.G.'s opinion was not "one that the Court needs to utilize."

¶ 57 After closing arguments were presented, the circuit court denied the motion for an *in camera* interview of the children. The court accepted two exhibits. Each was a proposed parenting plan offered by Father and Mother. The circuit court found that there was no dispute as to the coparenting and equal decision-making issues. Mother's petition had requested sole decision-making authority and restricted parenting time. The circuit court considered that Mother had conceded her request for sole decision-making authority. The court then directed the parties to exchange information regarding access to school information, medical information, or any other resource that the children participated in. The court then proceeded to consider the best interests of the children as to parenting time and considered Mother's petition as a request to become the custodial parent.

¶ 58 In its consideration of the best interest factors for modifying parenting time, the circuit court acknowledged that the children preferred to live with Father and did not want to leave their school and friends. “Very little weight” was given to the children’s preference.

¶ 59 The circuit court then considered the caretaking functions of each parent during the last 24 months. Father was the primary caretaker since the parties separated. The circuit court questioned whether Father addressed the primary caretaking functions while the children were in his care. Father had not addressed T.G.’s medical issues. T.G. was wetting herself, and no one had provided a medical reason.

¶ 60 The circuit court next considered that the children’s grandfather testified that T.G. was struggling in school. Both parents needed to advocate for their children’s education. Mother was either not aware of how to access school information or not provided with access. Father did not know how to interact with the school or advocate for his children. The GAL did not inquire further into the educational issues of the children.

¶ 61 The circuit court also considered that the children were adjusted to Southern Illinois, their school, community, and friends. However, T.G. was not thriving, as Father’s home was in a deplorable condition. The children’s hygiene was concerning. The court did not consider T.G.’s adjustment to her environment as a positive. The circuit court additionally addressed Father and stated: “The attorneys know I am the juvenile judge in this county, and I would send not a single child to live in your residence, sir.”

¶ 62 The circuit court questioned whether the children were actually happy and healthy in their current living environment with Father. The court considered Mother’s testimony that D.G. had headaches, nose bleeds, and chronic sinus issues. The circuit court questioned whether D.G. suffered from allergies or whether the condition of Father’s home was causing problems. T.G. had

emotional problems, multiple instances of head lice, and poor hygiene. The children's mental and physical health were not being addressed in Father's care.

¶ 63 The circuit court found that it was not necessary to place any restrictions on parenting time. Both children love both parents, and both parents love their children. The circuit court found that there was no evidence of physical violence or the threat of physical violence from either parent's household.

¶ 64 The circuit court then considered whether the parents were able to place their children's needs above their own and determined that the parents were not appropriately addressing the children's needs. The parties were able to encourage a relationship between the other parent and the children, but the children should be allowed to have private conversations with their parents.

¶ 65 After considering the best interest factors, the circuit court granted Mother's counterpetition, and Mother was granted primary custody of both children. The amended parenting plan prepared by Mother's attorney was implemented and entered as an order by the circuit court.² The circuit court additionally ordered that T.G. continue to receive counseling and receive a psychological evaluation. The children were ordered to change schools, and everyone needed to be involved in T.G.'s school situation to determine whether she had a learning disability and needed an accommodation. The circuit court additionally found that it was appropriate for the children to relocate to Indiana, where it was in their best interest for Mother to be their primary caretaker.

²This parenting plan was one of the demonstrative exhibits that had been submitted to the circuit court for its consideration.

¶ 66 The GAL raised the issue of whether the circuit court needed to make a finding under section 609.2 of the Act (750 ILCS 5/609.2 (West 2022)) because the children would be relocating to Indiana. The circuit court found that

“by entering the order naming the mother as the custodial parent, knowing that she resides in the state of Indiana, I think that’s a given *** clearly, obviously, the Court is finding that it’s appropriate for the children to be able to relocate to the state of Indiana given that it’s in the minor’s best interest for them to be placed in the primary care and custody of the mother.”

¶ 67 Mother’s attorney offered to provide the circuit court with a Word document of the proposed parenting plan, so that the circuit court could modify it for the final order. The court declined and signed Mother’s “Agreed Parenting Plan and Judgment” that was presented at the hearing on December 15, 2023. The judgment incorrectly stated that the parties “agreed” on certain issues that were in dispute in the contested hearing. The circuit court additionally ordered the “minor child [T.G.] to be in counseling to obtain psychological evaluation, and treatment, to be evaluated by school for any educational issues and to seek medical treatment for urinary issues ASAP.” Father did not sign the “Agreed Parenting Plan and Judgment” entered by the circuit court.

¶ 68 Father subsequently filed a timely motion for reconsideration. Father argued that the final judgment was prepared solely by Mother, it contained only minor modifications by the circuit court, and the recitation that Father voluntarily agreed to the entry of the judgment was false. Father argued that he was blindsided by testimony presented, where the GAL’s report recommended that T.G. and D.G. remain with Father and the GAL’s recommendation had changed during trial. The GAL never inspected Mother’s home, had no personal knowledge of the condition of her home, and did not interview witnesses provided by Father regarding Mother’s stability.

¶ 69 Father also argued that he would have provided additional witnesses that would have testified that the children were clean and well-behaved in Father’s care. Mother had reported Father to DCFS on three occasions and her accusations were unfounded. Father additionally listed witnesses who would testify to issues with Mother’s house and her history of damaging property. Father claimed that Mother had a history of dealing and using illegal controlled substances, Mother had rage issues, and he was unable to have conversations with Mother. Mother was unable to care for her third child for approximately 1.5 to 3 years. She was unstable and moved frequently. Father attached report cards, standardized test scores, and medical records for both T.G. and D.G.

¶ 70 Mother did not file a response to the motion to reconsider. The circuit court reviewed and denied the motion to reconsider without a hearing. This appeal followed.

¶ 71 **II. ANALYSIS**

¶ 72 On appeal, Father argues that the circuit court’s decision to modify parenting time was against the manifest weight of the evidence. Father also argues that the circuit court abused its discretion by failing to grant his motion for reconsideration.

¶ 73 We note that no appellee brief was filed. A reviewing court has three discretionary options it may exercise when the appellee has not filed a brief:

“(1) it may serve as an advocate for the appellee and decide the case when the court determines justice so requires, (2) it may decide the merits of the case if the record is simple and the issues can be easily decided without the aid of the appellee’s brief, or (3) it may reverse the trial court when the appellant’s brief demonstrates *prima facie* reversible error that is supported by the record.” (Internal quotation marks omitted.) *In re Adoption of V.C.*, 2024 IL App (2d) 230275, ¶ 14.

Here, the record is simple, and our decision has been made without the aid of an appellee’s brief.

¶ 74 Section 610.5 of the Act sets forth the requirements for modification of orders allocating parental decision-making responsibilities and parenting time. 750 ILCS 5/610.5 (West 2022).

Section 610.5(c) provides that

“the court shall modify a parenting plan or allocation judgment when necessary to serve the child’s best interests if the court finds, by a preponderance of the evidence, that on the basis of facts that have arisen since the entry of the existing parenting plan or allocation judgment or were not anticipated therein, a substantial change has occurred in the circumstances of the child or of either parent and that a modification is necessary to serve the child’s best interests.” 750 ILCS 5/610.5(c) (West 2022).

If the parties are in agreement or if the modification reflects the actual arrangement of care provided, a parenting plan may be modified without a showing of changed circumstances. 750 ILCS 5/610.5(e) (West 2022).

¶ 75 For purposes of section 610.5 of the Act, a parent’s relocation constitutes a substantial change in circumstances. 750 ILCS 5/609.2(a) (West 2022). However, relocation, without first obtaining leave of court, is not sufficient grounds to modify parenting time. *In re Marriage of Adams*, 2017 IL App (3d) 170472, ¶ 19. Modification judgments are reviewed under the manifest weight of the evidence standard. *In re Marriage of Bates*, 212 Ill. 2d 489, 515 (2004).

¶ 76 A parent intending to relocate must provide a written notice of the relocation to the other parent and file a copy of the written notice with the clerk of the circuit court. 750 ILCS 5/609.2(c) (West 2022). The notice must be in writing, provide at least 60 days’ notice of a parent’s intention to relocate, and set forth the following:

“(1) the intended date of the parent’s relocation;

- (2) the address of the parent's intended new residence, if known; and
- (3) the length of time the relocation will last, if the relocation is not for an indefinite or permanent period.” 750 ILCS 5/609.2(d) (West 2022).

¶ 77 The parent seeking relocation must file a petition seeking permission to relocate if the non-relocating parent objects or if the parents cannot agree on modifying the parenting plan. 750 ILCS 5/609.2(f) (West 2022). The parent seeking relocation has the burden of proving that their relocation is in the child's best interests. *In re Marriage of Levites*, 2021 IL App (2d) 200552, ¶ 66. The best interest factors that the circuit court must consider before granting permission to relocate include (1) the circumstances and reason for the relocation; (2) the reasons a parent is objecting to the relocation; (3) the history and quality of each parent's relationship with the children and whether either parent has substantially failed or refused to exercise parenting time or responsibilities under the parenting plan or allocation judgment; (4) the educational opportunities for the children at the current and proposed new locations; (5) the presence or absence of extended family at either location; (6) the anticipated impact of the relocation on the children; (7) whether the court will be able to fashion a reasonable allocation of parenting responsibilities between the parents if the relocation occurs; (8) the wishes of the children, based on their maturity and ability to express independent preferences; (9) possible arrangements for the exercise of parental responsibilities appropriate to the parental resources and circumstances, and the children's developmental levels; (10) minimization of impairment to the relationship caused by the relocation; and (11) any other relevant factors bearing on the children's best interests. 750 ILCS 5/609.2(g) (West 2022).

¶ 78 The best interest factors for modifying parenting time are set forth in section 602.7(b) of the Act and include (1) the parents' wishes; (2) the children's wishes; (3) the amount of time each

parent spent performing caretaking functions with respect to the children in the 24 months preceding the filing of the petition; (4) any prior agreement or course of conduct between the parents; (5) the interaction and interrelationship of the children with their parents and siblings or any other significant person; (6) the children's adjustment to home, school, and community; (7) the mental and physical health of all involved; (8) the children's needs; (9) the distance between the parents' residences, the cost of transporting, the families' daily schedules, and the ability of the parents to cooperate; (10) whether a restriction on parenting time is appropriate; (11) physical violence or threat of physical violence; (12) the willingness and ability of each parent to place the needs of the children ahead of his or her own needs; (13) the willingness of each parent to facilitate and encourage a close and continuing relationship between the other parent and the children; (14) the occurrence of abuse against the children or other members of the household; (15) whether one of the parents is a convicted sex offender; (16) the terms of a parent's military family-care plan; and (17) any other factor that the court expressly finds to be relevant. 750 ILCS 5/602.7(b) (West 2022); *In re Marriage of Adams*, 2017 IL App (3d) 170472, ¶ 20.

¶ 79 A restriction on parenting time may be granted pursuant to section 603.10 of the Act where “the court finds by a preponderance of the evidence that a parent engaged in any conduct that seriously endangered the child's mental, moral, or physical health or that significantly impaired the child's emotional development, the court shall enter orders as necessary to protect the child.” 750 ILCS 5/603.10(a) (West 2022). The circuit court may order a reduction, elimination, or other adjustment of parenting time after such finding. 750 ILCS 5/603.10(a)(1) (West 2022).

¶ 80 In this case, the circuit court entered the “Agreed Parenting Plan and Judgment,” abdicating its duties by signing a form order that indicated that the parties had agreed to modify the parenting plan. This was clearly a contested matter on certain issues related to the parenting plan and any

order that indicated the parties had agreed to the contested terms was inconsistent with the record. Absent such agreement, the circuit court should have included a finding that a substantial change in circumstances had occurred and made a determination that it was in the best interests of the children to modify the parenting plan.

¶ 81 Additionally, Mother failed to follow the Act's requirements before relocating out of state. We note that when Father attempted to serve Mother with the petition to modify, he received information that Mother relocated to Indiana. Mother subsequently provided an updated Illinois address to the circuit court, and a witness list filed on October 11, 2022, disclosed an Illinois address for Mother. The GAL report indicated that Mother was living in Indiana, and Mother testified she lived in Bloomington, Indiana, with her boyfriend of four years. Nevertheless, the date of Mother's relocation to Indiana was not addressed. While Father eventually received Mother's current address, he was not provided with a notice of relocation or the opportunity to object to her out-of-state move. Despite this failure to follow the Act, Father allowed the children to visit Mother in Indiana.

¶ 82 The circuit court failed to consider the reason for Mother's relocation, as well as Mother's history of not exercising visitation as outlined in the parenting plan, and the quality of her relationship with her children. Father alleged that Mother's living environment was unstable because she frequently relocated and raised allegations that Mother may have a history of mental illness and drug use. Additionally, T.G. voiced concerns about living with Mother and her boyfriend. These issues were not thoroughly investigated, and the GAL had no information in his report that cast light on these issues. Because Mother was the one relocating, she had the burden of demonstrating that relocating was in the best interest of the children. See *In re Marriage of Levites*, 2021 IL App (2d) 200552, ¶ 66.

¶ 83 The circuit court was required to consider educational opportunities at the current location and proposed new location in Indiana. T.G. was struggling with her schoolwork while residing with Father, but the reasons were unknown. T.G.'s paternal grandfather testified that COVID-19 affected T.G.'s grades, and she continued to have issues thereafter. Some evidence was presented regarding the lack of educational opportunities with Father, where both Mother and Father claimed that the school was unresponsive to their requests to discuss T.G.'s performance. The circuit court attributed this failure in part to the parents who were not advocating for their children's education, although it is obvious from the court's order that there was concern as to whether T.G. needed testing for special needs. No evidence was presented on educational opportunities in the new school district, other than acknowledging that Bloomington, Indiana, was a larger city that may have more opportunities. According to the GAL, both T.G. and D.G. liked their current school and wanted to remain with Father. The circuit court gave very little weight to T.G.'s preference to remain with Father.

¶ 84 The circuit court was additionally required to consider the impact of the relocation on the children. The parties lived over three hours from each other and in different states. It is concerning that the GAL focused only on the conditions of Father's house, while the conditions of Mother's house remained unknown. The GAL did not contact DCFS or DCS or complete a case history search regarding any claims of domestic violence involving Mother and her boyfriend. T.G. received telehealth counseling services for a short period with Mother and was seeing a counselor, in person, while residing with Father. Testimony was also presented that T.G. received medical treatment for UTI symptoms, head lice, and dandruff and that there was no medical evaluation for her day-wetting. Yet, no medical records were obtained regarding T.G.'s mental or physical well-being.

¶ 85 We note that the circuit court ordered the “minor child [T.G.] to be in counseling to obtain psychological evaluation, and treatment, to be evaluated by school for any educational issues and to seek medical treatment for urinary issues ASAP.” This evaluation could have been completed prior to awarding Mother primary custody and relocating the children. Pursuant to section 604.10(b), the circuit court may seek the advice of any professional to assist in determining the best interests of the children. 750 ILCS 5/604.10(b) (West 2022).

“The professional’s report must, at a minimum, set forth the following:

- (1) a description of the procedures employed during the evaluation;
 - (2) a report of the data collected;
 - (3) all test results;
 - (4) any conclusions of the professional relating to the allocation of parental responsibilities under Sections 602.5 and 602.7;
 - (5) any recommendations of the professional concerning the allocation of parental responsibilities or the child’s relocation; and
 - (6) an explanation of any limitations in the evaluation or any reservations of the professional regarding the resulting recommendations.”
- 750 ILCS 5/604.10(b)(1)-(6) (West 2022).

¶ 86 Additionally, “[t]he guardian ad litem shall investigate the facts of the case and interview the child and the parties.” 750 ILCS 5/506(a)(2) (West 2022). Although the circuit court is not bound by the GAL’s recommendation, the “GAL is the ‘eyes and ears’ of the court.” *In re Marriage of Wycoff*, 266 Ill. App. 3d 408, 415 (1994). Illinois Supreme Court Rule 907 (eff. Mar. 8, 2016) outlines minimum duties and responsibilities of a GAL. The circuit court shall enter an order allowing the GAL access to the child and all relevant documents. Ill. S. Ct. R. 907(b) (eff.

Mar. 8, 2016). The GAL “shall also take whatever reasonable steps are necessary to obtain all information pertaining to issues affecting the child, including interviewing family members and others possessing special knowledge of the child’s circumstances.” Ill. S. Ct. R. 907(c) (eff. Mar. 8, 2016). The GAL “shall take whatever reasonable steps are necessary to determine what services the family needs to address the custody or allocation of parental responsibilities dispute, make appropriate recommendations to the parties, and seek appropriate relief in court, if required, in order to serve the best interest of the child.” Ill. S. Ct. R. 907(d) (eff. Mar. 8, 2016).

¶ 87 The GAL testified that issues arose during the hearing that were not brought to his attention prior to drafting his written report. When investigating the facts in this case, the GAL should have taken reasonable steps to obtain all information pertaining to issues affecting the children, even if Mother had not filed a counterpetition. The GAL’s investigation did not adequately address the section 602.7(b) best interest factors. The GAL report did not include any prior agreement or course of conduct between the parents, although there was an original parenting agreement that had been modified. The GAL did not meet with the children at Mother’s house to consider the interaction and interrelationship of the children with their Mother and half-sibling, Mother’s boyfriend, or his children. The GAL did not inquire of Mother regarding the type of residence the children would be living in or inspect the condition of Mother’s house. The GAL did not interview teachers or obtain school records in order to consider the children’s adjustment to school. No medical records were obtained to determine the mental and physical health of all involved. Neither an Illinois nor an Indiana case history search was performed although there were concerns of possible domestic violence and drug use. The GAL also did not contact DCFS regarding the conditions of Father’s home or investigate prior DCFS or DCS involvement with either party.

¶ 88 The circuit court's judgment modifying parenting time was against the manifest weight of the evidence where Mother was allowed to relocate to Indiana without filing a petition to relocate or considering the best interest factors under section 609.2(g) and where section 602.7 best interest factors were not fully investigated by the GAL or considered appropriately by the circuit court. Therefore, we must vacate the judgment of the circuit court and remand this matter for further proceedings that will allow the circuit court to issue a ruling on the pleadings before it.

¶ 89 Because of the issues that have arisen in this case, and the fact that the GAL changed his mind during the course of the hearing, we are directing that the mandate in this case issue immediately. As emergently as possible after the issuance of the mandate, the circuit court is strongly urged to hold a hearing on temporary custody pursuant to section 603.5 of the Act (750 ILCS 5/603.5 (West 2022)). During that hearing, the circuit court may determine the temporary allocation of parental responsibilities regarding the children's best interests, in accordance with the standards set forth in sections 602.5 and 602.7 (750 ILCS 5/602.5, 602.7 (West 2022)), and the circuit court may order the relocation of the children in accordance with section 609.2 on a temporary basis before the entry of a final allocation judgment.

¶ 90 We additionally stress that the circuit court has a duty to ensure that the interests of minors are adequately represented. See *In re Marriage of Strauss*, 183 Ill. App. 3d 424, 427 (1989). On remand, the circuit court should consider appointing a new GAL that will take reasonable steps as necessary to investigate fully the facts of this case, obtain all information pertaining to those issues affecting the children, and make appropriate recommendations in order to serve the best interest of the children. Alternatively, if the current GAL remains, his report should be updated after taking all necessary and reasonable steps to complete the investigation of the facts in this matter in order to serve the best interests of the children.

¶ 91 Finally, Father additionally claims that the circuit court abused its discretion by denying his motion for reconsideration where he requested a new hearing based on the GAL's failure to gather sufficient evidence prior to trial. Father argues that the GAL's inadequate investigation caused the GAL to change his position during trial without allowing Father to adequately prepare and respond. In light of our decision, we need not address whether the circuit court abused its discretion in denying Father's motion for reconsideration, except to note that the "Agreed Parenting Plan and Judgment" signed by the circuit court was not an "agreed to" order as represented therein. We anticipate, as previously set forth herein, that an updated GAL report will be submitted on remand and Father will have an opportunity to prepare and respond to any issues raised by the pleadings and/or reports of the GAL or other expert chosen by the circuit court.

¶ 92

III. CONCLUSION

¶ 93 For the foregoing reasons, we vacate the "Agreed Parenting Plan and Judgment" of the circuit court of Williamson County, direct that the mandate issue immediately herein, and remand for further proceedings consistent with this opinion.

¶ 94 Vacated and remanded.

In re Marriage of Gualandi, 2024 IL App (5th) 240238

Decision Under Review: Appeal from the Circuit Court of Williamson County, No. 17-D-103; the Hon. Amanda Byassee Gott, Judge, presiding.

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