2021 IL App (4th) 210386-U

NO. 4-21-0386

FILED
November 9, 2021
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re MARRIAGE OF	)	Appeal from the
JEFFREY F.,	)	Circuit Court of
Petitioner-Appellant,	)	Champaign County
and	)	No. 11D661
YUKO Y.-F.,	)	
Respondent-Appellee.	)	Honorable
	)	Ramona Sullivan,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Knecht and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held*: Father failed to establish that the trial court erred by granting mother's motion to modify prior court order allocating parenting responsibilities.

¶ 2 Petitioner, Jeffrey F., appeals the trial court's order granting a motion by respondent, Yuko Y.-F., which sought to modify a prior order of the court that allocated parenting responsibilities for the parties' two children. On appeal, he argues the court erred by granting any modification because there had been no substantial change in the parties' circumstances since the entry of the previous order addressing parenting responsibilities, and modification was not in the children's best interests. Jeffrey also contends the court erred by denying his motion for a directed finding at the conclusion of Yuko's case and by effectively reallocating significant decision-making responsibility related to the children's health. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The parties were married in May 2002 and had two children—H.F., born on June 30, 2004, and J.F., born on October 24, 2006. During the marriage, the parties resided together in both the United States and Japan. In November 2011, Jeffrey filed a petition for dissolution of marriage. At the time the petition was filed, Jeffrey resided in Champaign, Illinois, with H.F. and J.F., and Yuko resided in Japan.

¶ 5 In July 2013, the trial court entered a judgment of dissolution of marriage. In its judgment, the court noted that in May 2013, it approved a joint parenting agreement entered into by the parties. Under that agreement, the parties shared "joint legal custody" of the children and Jeffrey was designated as the "primary residential custodian." The parties agreed that during the school year, Yuko could exercise parenting time "at any point *** that she may choose to travel to the U.S." During the summer, she could exercise three weeks of parenting time in the month of August "to take place anywhere in the contiguous United States." The agreement authorized almost daily "internet video contact" through Skype between Yuko and the children. Further, the agreement provided for Yuko to have summer parenting time with the children in Japan when the following three conditions were met:

> "(i) Japan becomes a signatory to the Hague Convention on the Civil Aspects of International Child Abduction [(Hague Convention)] and adopt[s] the [Hague] Convention in full ***; and
>
> (ii) The United States Department of State Bureau of Consular Affairs issues an annual compliance report, with the [Hague] Convention having been fully binding on Japan for the entire reporting period of the report, that does not list Japan as 'not compliant with the [Hague] Convention[,'] or as demonstrating 'patterns of

noncompliance[,'] or as a 'country with enforcement concerns' ***; and

(iii) Yuko posting a bond in the amount of [$25,000] prior to each period of summer visitation in Japan for the purpose of securing the children's return to Jeffrey at the end of any such period of summer visitation."

¶ 6 In September 2015, Jeffrey filed a petition to modify the joint parenting agreement. He alleged a substantial change in circumstances had occurred since that agreement was entered into. Specifically, Jeffrey alleged Yuko infrequently exercised parenting time in the United States, asserting she visited H.F. and J.F. on only four occasions since May 2013, and not at all between August 2014 and August 2015. His petition also included allegations that Yuko chose not to attend any of the children's events despite her ability to do so, "failed to make suitable accommodations for the children" during her visits, was inconsistent with Skype contact, and changed the children's last name to her maiden name on U.S. travel documents. Jeffrey asserted the conditions for parenting time in Japan had not yet been met and that travel to Japan for parenting time was not in the children's best interests. He asked the trial court to modify the joint parenting agreement to provide that all summer parenting time take place in the United States and that all parenting time occur within a 20-mile radius of his residence. Jeffrey also requested a reduction in the amount of required Skype contact. The same month, he further filed a petition to set child support.

¶ 7 In April 2017, the trial court entered a lengthy, 33-page "Opinion and Order on Parenting Responsibilities and Child Support," noting it heard testimony from five witnesses over a period of six days. Relevant to this appeal, evidence showed that at the time of the hearings, Jeffrey was employed at the University of Illinois, was remarried, and had fathered another child. Yuko was living in Japan and working as a high school English teacher. The parties reported that since May 2013, Yuko had traveled to the United States on 8 to 10 occasions to exercise her

parenting time with the children. Jeffrey asserted various concerns about Yuko's ability to control the children during her parenting time, her use of corporal punishment, and various safety issues. He also believed there was a substantial risk of the children not being returned to the United States if they were allowed to travel to Japan, noting statements made by Yuko and her family about the children "coming home" and Japan's noncompliance with the Hague Convention. Yuko expressed a desire to have parenting time with the children in Japan and denied that she would keep the children there. She acknowledged having difficulty with the children's behavior during in-person visits in the United States but also denied that there had been any physical abuse.

¶ 8 The trial court found the evidence showed Yuko visited the United States from zero to three times per year to exercise her parenting time and that her visits lasted anywhere from one to three weeks. It noted "[t]here was one period, when [Yuko] was building her house, when she did not come to the United States"; however, it stated she otherwise had "come to the United States multiple times over many years." It also found there was significant conflict between the parties. The court stated that both Jeffrey and Yuko had positive attributes, loved their children, and wanted the best for them. However, it had "concerns about both parties." Specifically, the court stated Jeffrey often exaggerated and overreacted, was controlling at times, and undermined Yuko's ability to parent, while Yuko demonstrated a lack of ability to control or handle the children, leading "to frustration and physical contact."

¶ 9 Ultimately, the trial court granted Jeffrey's petition to modify. It determined it was in the children's best interests that significant decision-making authority over the children and the majority of parenting time be allocated to Jeffrey. For Yuko's parenting time, the court allocated up to four weeks in the summer, up to seven days during the children's winter break, and up to five days during the children's spring break. It concluded a "graduated approach" was appropriate

for Yuko's parenting time in the United States, ordering that her parenting time in 2017 take place within 150 miles of Champaign; parenting time in 2018 take place within 350 miles of Champaign; and parenting time in 2019 and after take place anywhere within the continental United States.

¶ 10 Regarding parenting time in Japan, the trial court stated as follows: "This [c]ourt reaffirms its predecessor's opinion that the [children] cannot go to Japan until such time that conditions are met such as compliance with the Hague Convention. Although [Yuko] is not likely to keep the [children] there, there is a suggestion that her family may feel differently." The court found that, at that time, Japan was not in compliance with the Hague Convention and, thus, parenting time could not occur in Japan "unless by agreement of [Jeffrey] or by court order." However, it further stated as follows:

> "No agreement or court order is necessary for [Yuko] to take the minor children to her home country of Japan for parenting time if the following conditions are met: a) Japan becomes a signatory of the Hague Convention ***, b) the [U.S.] Department of Statue Bureau of Consular Affairs issues an annual compliance report that shows that Japan is not listed as a country that is 'non-compliant,' 'shows patterns of non-compliance,' or 'has enforcement concerns' for one full year, and c) [Yuko] posts a bond of $25,000 prior to each period of summer vacation for the purpose of securing the return of the children. If and when [Yuko] may have parenting time in Japan, it will only be during summer breaks. [Jeffrey's] attorney is to hold the passport[s] for the [children]."

¶ 11 In March 2021, Yuko filed a "Motion to Modify Summer and Other Parenting Times and Related Issues—Temporary and Permanent," which is the subject of the current appeal. She noted that at the time of the trial court's April 2017 order, H.F. and J.F. were 12 and 10 years

old, respectively. At the time her motion was filed, they were ages 16 (almost 17) and 14 and had "expressed their desire to visit their mother in Japan." Yuko further alleged that "[t]he conditions related to the Hague Convention and reports ha[d] been met and there should be no further impediment to [her] exercising parenting time in Japan." She asserted Jeffrey had indicated an unwillingness to agree to parenting time in Japan and that "extended" summer parenting in Japan was warranted because the children's relationship with her had matured and she "was prevented from exercising her parenting time in 2020, due to travel restrictions and two-week quarantine requirements."

¶ 12 Yuko asked the trial court to enter an order setting forth specific travel dates for the summer of 2021, expanding her summer parenting time to eight or more weeks, releasing the children's passports to Jeffrey so that they could be renewed in a timely manner, requiring Jeffrey to secure COVID-19 vaccinations for both children, requiring that Jeffrey provide transportation for the children to and from the airport of their departure and return, and allocating expenses for travel to Japan. Yuko also asked that given the children's ages and her compliance with prior orders, the court reduce or eliminate the requirement that she post a bond of $25,000 prior to her exercise of parenting time in Japan.

¶ 13 In April 2021, the parties entered into an agreed order for the release of the children's U.S. passports to Jeffrey for the purpose of renewal. In May 2021, Jeffrey filed a "Motion to Clarify and Set Summer Parenting Time in Japan." In his motion, he stipulated that the first two of the three conditions for Yuko exercising parenting time in Japan had been met. Specifically, Japan was a signatory of the Hague Convention, and it was not listed as being noncompliant in the specified annual compliance report issued by the U.S. Department of State Bureau of Consular Affairs. Jeffrey therefore agreed that Yuko was "eligible to have summer

parenting time in Japan *pending* the posting of a bond for $25,000 to satisfy the third condition." (Emphasis in original). However, he asserted that because of the COVID-19 pandemic, travel to Japan in the summer of 2021 presented "unique immigration and entry challenges" for the children when traveling as unaccompanied minors. He requested, in part, an order restricting any summer parenting time in Japan to July 2021 and providing that Yuko chaperone H.F. and J.F. from Illinois to Japan.

¶ 14 In June 2021, petitioner also filed a motion to strike Yuko's motion to modify, asserting her motion failed to satisfy the legal standard for modification of a permanent parenting order. In particular, he argued she failed to identify and allege the specific statutory grounds for modification, including a substantial change in circumstances since the entry of the trial court's April 2017 parenting order.

¶ 15 The record reflects the trial court conducted evidentiary hearings in the matter over five days from June 3 to July 2, 2021. At the outset of the initial hearing, the court denied Jeffrey's motion to strike on the basis that "[i]t was filed very late" and noting it raised issues that would be determined by hearing evidence likely to be presented in connection with Yuko's motion to modify and Jeffrey's motion to clarify.

¶ 16 During Yuko's case, she presented testimony from both herself and Jeffrey. The evidence showed Yuko continued to reside in Japan and worked as a teacher. Jeffrey continued to reside in Champaign and, as of January 2021, was a licensed attorney. H.F. and J.F. were United States and Japanese citizens. The children had both received COVID-19 vaccinations. Yuko was unvaccinated and would not be vaccinated "before summer" 2021.

¶ 17 Evidence further showed that Yuko exercised parenting time with H.F. and J.F. in the United States in 2017, 2018, and 2019. She last saw the children during the summer of 2019

when exercising her parenting time in Denver, Colorado. Jeffrey testified that Yuko never exercised the full four weeks of summer parenting time to which she was entitled. According to Yuko, it was difficult for her to use four weeks at one time in the summer. She testified her job as a teacher gave her 20 days off per year, and school was still in session during the summer months. Typically, she took one week off in the spring, one week off in the winter, and two weeks off in the summer. Also, because of the pandemic, her travel to the United States "concern[ed] everyone in the school."

¶ 18 Yuko testified she had planned to travel to the United States in March 2020 to exercise her parenting time. She bought tickets for air travel and communicated with Jeffrey about her visit. Ultimately, however, she did not travel to the United States. Yuko testified that two days before her departure, Jeffrey cautioned her not to come because of the pandemic and the risk that she "might get infected." Yuko testified she also "couldn't travel to see the children" during the summer of 2020. She noted the pandemic was worsening in the United States during that time and there were "no vaccinations." Additionally, "the government said [Japanese citizens] should not travel to the United States." Yuko testified the situation was similar in December 2020.

¶ 19 Yuko expressed a desire for parenting time with H.F. and J.F. in Japan during the summer of 2021. She testified that visits in the United States could be "difficult" because "it's not [her] country." It was not easy for her "to go alone without cars and without [a] house or friends or family to help [her]." She testified it was her understanding that upon traveling to Japan, H.F. and J.F. would have to stay in quarantine "[a]t home" for two weeks. Additionally, Yuko testified travel was difficult for her because she was not vaccinated. She testified she was afraid of traveling and travel to the United States required long waits in a U.S. immigration office that was "packed with many people coming from all over the world" who were traveling with foreign passports.

¶ 20 Both parties agreed that the conditions set forth in the April 2017 order for Japan parenting time that pertained to the Hague Convention and the federal government's annual compliance report had been satisfied. The only remaining condition was Yuko's posting of a $25,000 bond. Jeffrey wanted the bond to remain a requirement for parenting time in Japan. He testified "[t]he bond was meant to prevent retention or delay in return of the children" from Japan. Absent the pandemic and the requirements for "testing prior to boarding a plane to return [to the United States]," he "wouldn't be seeking the bond." However, he believed the bond was still warranted "given the conditions of the pandemic and the possibility for delay." Jeffrey believed that retaining the bond requirement would motivate Yuko not to delay the children's return. When asked whether he was afraid Yuko would not return the children following a visit to Japan, he testified "under these circumstances, this summer under COVID, there is a possibility that she would delay their return." Jeffrey further testified it was his belief that Yuko only had to "put down" 10% of $25,000 to satisfy the bond requirement.

¶ 21 Yuko maintained the $25,000 bond requirement for travel to Japan was unnecessary, noting that the children were teenagers. She asserted she had never tried to "kidnap" the children and she would not force them to "stay in Japan against their will." Yuko also testified she did not have the funds available to pay the bond amount.

¶ 22 Both parties gave lengthy and conflicting testimony regarding the requirements or obstacles for traveling to Japan for the children in the summer of 2021. Testimony was also presented regarding Jeffrey's efforts to obtain renewed passports for the children and the travel documents necessary for both the children's air travel to Japan and their entry into the country. Yuko's testimony indicated the required documents could be obtained in time for her to exercise parenting time in Japan during summer 2021. Jeffrey testified that although it was also his desire

for H.F. and J.F. to travel to Japan for four weeks during the 2021 summer, he did not believe it was "logistically possible" for the children to be "admitted to Japan this summer." Instead, Jeffrey requested that "summer parenting time be moved to *** four weeks in December." He believed the necessary steps for traveling to Japan could be completed by December and asserted as follows:

> "Four weeks in December, at which point either the various entry bans preventing the children from easily getting to Japan will be dropped, hopefully; more of Japan will be vaccinated, a very small population is currently vaccinated; or there will be sufficient time to [acquire] the many documents that are required now because of the COVID restrictions on immigration. So[,] the children can actually enter Japan and they won't be turned away when they land."

Jeffrey anticipated that he would have no objection to the children traveling to Japan unaccompanied in December 2021.

¶ 23 Jeffrey also testified that he preferred that Japan parenting time occur in December rather than in the summer because he believed "that by December the state of emergency regarding COVID in Japan will have passed, [the] summer [2021] Olympics [held in Japan] will have passed[,] and the immigration restrictions will be lessened[.]" He believed it would be easier for the children to get to Japan at that time and possibly for him to accompany them on their flight.

¶ 24 Jeffrey testified Yuko should receive makeup parenting time for March 2020, when she decided not to exercise her parenting time in the United States because of the pandemic. He noted she never requested parenting time during the summer of 2020; however, he believed she could have traveled to the United States at that time "in a safe way." Jeffrey stated he was "perfectly fine" with additional make up time but asserted "it should be the same type and quality" of the parenting time that was missed, meaning it should occur in the United States and not Japan.

¶ 25 At the close of Yuko's case, Jeffrey moved for a finding in his favor pursuant to section 2-1110 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1110 (West 2020)). He argued Yuko failed to establish a *prima facie* case for modification under section 610.5 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/610.5 (West 2020)), including that there had been an unanticipated, substantial change in circumstances since the previous parenting order. Jeffrey argued Yuko's exercise of parenting time in Japan was contemplated in the April 2017 order, as was the maturation of the parties' children. Additionally, although he conceded that the pandemic was unexpected, he maintained the need for "makeup time" is contemplated and "always a possible issue in post-divorce proceedings." Jeffrey acknowledged that section 610.5 allows for "minor" modifications in the absence of a substantial change in circumstances but argued that none of the modifications Yuko sought were minor.

¶ 26 In response, Yuko asserted, in part, that "COVID was not anticipated" and "created a substantial change in circumstances." According to Yuko, the evidence showed she could not travel safely to the United States at that time or in 2020. She maintained the circumstances created by COVID "impacted [the] children" and "their relationship with their mother." She also argued the modifications she sought did "constitute a minor modification in the parenting plan or allocation judgment."

¶ 27 The record reflects the trial court denied Jeffrey's motion. It stated as follows:

> "The COVID pandemic was not anticipated by anyone. The COVID pandemic has significantly affected these children and this family. I believe that the Motion to Modify is appropriately brought before the court and that a *prima facie* case has been made."

¶ 28 During his case-in-chief, Jeffrey also presented testimony from both himself and

Yuko. Jeffrey maintained that, prior to the pandemic, he was "open" to H.F. and J.F. traveling to Japan in the summer of 2021. He believed international experiences were important, especially for H.F. and J.F. because of their Japanese parentage. He reiterated that he had "concerns" about summer 2021 travel to Japan. In particular, he was concerned about "immigration restrictions and challenges to actually getting into Japan" due to the pandemic. Jeffrey testified he also had "concerns about [his] parental rights, given the mandatory medical testing that [the children] would be subjected to outside of [his] presence or consent ***, as well as even [the children's] ability to return."

¶ 29 Jeffrey further provided testimony regarding his understanding of the documents necessary for the children's travel to Japan, and the steps necessary to obtain those travel documents. He acknowledged that he was requesting that Yuko chaperone the children when they traveled to Japan. He was willing to accompany the children but was unable to do so during the summer of 2021 because Japan had a "travel ban" on U.S. citizens.

¶ 30 Again, Jeffrey's testimony indicated he believed it was "logistically impossib[le]" for the children to travel to Japan during the summer of 2021. He also did not believe it was in the children's best interests to travel during the summer, in part, due to potential quarantine requirements in Japan. Jeffrey reiterated that it would be more appropriate for the children to travel to Japan in December 2021 or the summer of 2022. Jeffrey testified he would be "okay" with the children missing some school around their winter break to accommodate a visit to Japan. He testified both H.F. and J.F. were "excellent students" and "[t]hey would have no trouble with their teachers or missing [school]." Jeffrey agreed that it was in the children's best interests to go to Japan but asserted he was asking that it not be during the summer of 2021.

¶ 31 During her testimony, Yuko reiterated her desire for parenting time in Japan during

the summer of 2021. She acknowledged she was concerned that she would not be able to have parenting time with H.F. in Japan during the summer of 2022, noting he would be turning 18 in June 2022, and stating he would have "his own social life" and "he might not want to spend lots of time with his mother."

¶ 32 Yuko also acknowledged that in compiling travel documents for the children, she utilized a Japanese family registry that indicated she and Jeffrey had "joint custody" of H.F. and J.F. She noted that in 2013, the parties did have joint custody and it did not occur to her to update the Japanese family registry in 2017, when "it became single custody." She "didn't realize" the current family registry she obtained was based on outdated information. After learning that information in the registry was incorrect, Yuko had the document updated at "the Japanese City Hall" to show "single custody with Jeffrey." Additionally, Yuko acknowledged that Jeffrey requested a certified translation of the Japanese registry. However, she testified a certified translation was difficult to obtain and she did not "even know anyone professional who does that."

¶ 33 In presenting arguments to the trial court, Yuko's attorney maintained that Yuko had not seen H.F. and J.F. in approximately a year and half "because of COVID," the children were "of an age where it [was] ridiculous to think that [Yuko] could keep them in Japan," and more expansive parenting time in Japan was in the children's best interests. Jeffrey's attorney asserted disagreement that the pandemic represented a substantial change in circumstances for the parties and their children and maintained travel to Japan during the summer of 2021 was not in their best interests. He asked that the $25,000 bond remain "in place" and further asserted that Jeffrey had "no opposition at all to Yuko having parenting time over winter break with the boys in Japan." Jeffrey also asserted no objection to extending summer 2022 parenting time to six weeks.

¶ 34 Ultimately, the trial court granted Yuko's motion to modify. In setting forth its oral

ruling, the court stated its determination that although travel for the children was "not ideal *** at this moment in time with all of the uncertainty that goes on in international travel and with the COVID epidemic [*sic*]," it was "absolutely in [the children's] best interest to [have] parenting time this summer in Japan, if that is at all possible." It noted the difficulties Yuko faced exercising her parenting time in the United States, a country that is foreign to her, and stated the children had "the right to a relationship with their mother where they, at some point, get to see her in her own element." Regarding the $25,000 bond requirement, the court stated as follows:

> "[Jeffrey] testified on the first day that he is not at all fearful that [Yuko] would not return the children. The reason he wanted the bond to stay in place was to motivate her to not have a delay in returning the children. The way that I intend to accommodate that is that while the bond itself—Motion to Modify with respect to the bond requirement is allowed. That bond is waived. However, [Yuko] is responsible to arrange and pay for the flight. You're on the hook to pay for the entire flight. The only way that you will get reimbursed for his half of that is, once they are safely returned to the State of Illinois. That is the way that I am intend[ing] to accommodate his desire to have motivation for *** you to not delay their return. But he did not testify that he has any fear whatsoever that you would withhold them[,] and I do not find that all of these years later, that bond is still required."

The court further ordered that to make up for the loss of parenting time in 2020, the children could travel to Japan during their winter 2021 break. Additionally, it held that "[f]or future summers," visitation was expanded to a period of six weeks, beginning no later than June 22, 2022.

¶ 35 On July 7, 2021, the trial court entered its written order, modifying and clarifying Yuko's parenting time. In its order, the court set forth the procedural history of the case and stated

its finding that modification of the prior parenting order in the case was in the children's best interests. It then specifically ordered that (1) the bond requirement for Yuko's Japan parenting time be vacated; (2) parenting time occur in Japan from July 16 to August 14, 2021; (3) parenting time in the winter of 2021 be permitted to occur in Japan for a period of 10 days if the children visited Japan in the summer of 2021 and for a period 4 weeks if they did not; (4) summer parenting time in Japan be expanded to six weeks, beginning in 2022; (5) Yuko choose the dates, times, airports, flights, and other arrangements for her Japan parenting time and provide notification of those arrangements to Jeffrey within one hour of making them; (6) Yuko pay the upfront costs of flights for the children to Japan and Jeffrey reimburse Yuko for half of the airfare costs upon the children's return to Illinois; (7) Jeffrey "take each and every step within his control to facilitate [Yuko's] parenting time with the children"; and (8) Jeffrey have 20 minutes of daily contact with the children when they are in Japan for Yuko's parenting time.

¶ 36 This appeal followed. On July 12, 2021, Jeffrey filed an emergency motion for a stay of the trial court's judgment pending resolution of his appeal, which this court granted.

¶ 37 II. ANALYSIS

¶ 38 On appeal, Jeffrey argues the trial court erred in granting Yuko's motion for modification of the trial court's April 2017 order, allocating parenting responsibilities. As set forth above, he contends the court erred by granting modification when there had been no substantial change in the circumstances of the parties or their children since the entry of the previous order and modification was not in the children's best interests. Jeffrey also contends the court erred in denying his motion for a directed finding in his favor at the conclusion of Yuko's presentation of evidence, and the court's order improperly had the effect of reallocating significant decision-making responsibility related to the children's health.

¶ 39 We note Yuko has not filed an appellee's brief. However, under such circumstances, "if the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief, the court of review should decide the merits of the appeal." *First Capitol Mortgage Corporation v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133, 345 N.E.2d 493, 495 (1976). Here, the record is not overly complex, and the issues presented for review are easily decided without the aid of an appellee's brief.

¶ 40 A. Modification

¶ 41 Section 610.5 of the Act sets forth requirements for the modification of orders allocating parental decision-making responsibilities and parenting time. 750 ILCS 5/610.5 (West 2020). The Act's provisions on modification reflect "a desire to maintain continuity in parenting plans[.]" *In re Marriage of O'Hare*, 2017 IL App (4th) 170091, ¶ 28, 79 N.E.3d 712. Section 610.5(c) specifically provides as follows:

> "Except [in circumstances not relevant to this appeal], 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 2020).

The Act defines an "allocation judgment" as "a judgment allocating parental responsibilities." *Id.* § 600(b). " 'Parental responsibilities' means both parenting time and significant decision-making responsibilities with respect to a child." *Id.* § 600(d).

¶ 42 The trial court's decision regarding whether to modify parenting responsibilities is

subject to a manifest-weight-of-the-evidence standard of review. *In re Marriage of Bates*, 212 Ill. 2d 489, 515, 819 N.E.2d 714, 728 (2004); see also *In re Marriage of Rogers*, 2015 IL App (4th) 140765, ¶ 62, 25 N.E.3d 1213 (holding that modification of a prior order will not be disturbed unless the trial court's decision is contrary to the manifest weight of the evidence). "In determining whether a judgment is contrary to the manifest weight of the evidence, the reviewing court views the evidence in the light most favorable to the appellee." *Bates*, 212 Ill. 2d at 516. "A judgment is against the manifest weight of the evidence when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary[,] or not based on the evidence." (Internal quotation marks omitted.) *In re Estate of K.E.S.*, 347 Ill. App. 3d 452, 461, 807 N.E.2d 681, 688 (2004). "A custody determination, in particular, is afforded great deference because the trial court is in a superior position to judge the credibility of the witnesses and determine the best interests of the child." (Internal quotation marks omitted.) *Bates*, 212 Ill. 2d at 516.

¶ 43 Initially, we note Jeffrey suggests the trial court's decision to allow modification in this case "concerns the legal effect of undisputed facts" and, therefore, the appropriate standard of review is the *de novo* standard. See *In re Marriage of Salvatore*, 2019 IL App (2d) 180425, ¶ 23, 124 N.E.3d 1136 (holding that because the issue on appeal concerned "the legal effect of undisputed facts," as well as the interpretation of a marital settlement agreement, the court would apply a *de novo* standard of review). We disagree. The record below reflects the trial court was required to resolve conflicts in the evidence as presented by the parties and to assess their credibility. Under the circumstances presented, the appropriate standard of review as the manifest-weight-of-the-evidence standard.

¶ 44 1. *Substantial Change in Circumstances*

¶ 45 Here, Yuko sought modification of the trial court's April 2017 order, which

allocated parental decision-making responsibilities and parenting time. Thus, she had to establish both that a substantial change in circumstances had occurred since the April 2017 order and that modification was necessary to serve the children's best interests. Below, Yuko argued the COVID-19 pandemic was an unanticipated and substantial change in circumstances for herself and the parties' children, asserting that it resulted in her exercising no parenting time with the parties' children during 2020. The record reflects the court agreed. In particular, when denying Jeffrey's motion for a directed finding in his favor, the court stated that "[t]he COVID[-19] pandemic has significantly affected these children and this family."

¶ 46 On appeal, Jeffrey contends the pandemic and Yuko's resulting missed parenting time cannot constitute an unanticipated substantial change in circumstances because the inability to exercise parenting time is contemplated by the Act. In particular, he cites section 607.5(c) of the Act (750 ILCS 5/607.5(c) (West 2020)), which contains provisions for "makeup parenting time" upon a finding that "a parent has not complied with allocated parenting time." Jeffrey also argues that Yuko failed to establish that the COVID-19 pandemic had any actual impact on either the parties or their children. We disagree with both contentions.

¶ 47 The issues presented by this case involve more than simply the occurrence of missed parenting time. In particular, Yuko resides in Japan, a significant distance from H.F. and J.F., and her exercise of parenting time necessitates international travel. At the time of the prior order, the trial court noted Yuko exercised parenting time in the United States as frequently as three times a year. Although there was an approximate one-year period when she did not visit and was building a house, she otherwise visited H.F. and J.F. "multiple times over many years." The record indicates the same was true after the April 2017 order was entered and until the COVID-19 pandemic in March 2020. Thereafter, travel, and international travel in particular, became

significantly more burdensome, if not impossible at times, and presented potential health hazards. At the time of the hearings on Yuko's motion to modify, she represented she had not exercised parenting time with the children since the summer of 2019 due to the pandemic. Additionally, evidence was presented by both parties regarding the increased requirements for traveling between the United States and Japan given the circumstances of the pandemic, including COVID-19 testing and potentially lengthy periods of quarantine.

¶ 48 Travel difficulties associated with a global pandemic were certainly not anticipated by the trial court or the parties at the time the April 2017 order was entered. Further, the Act provides that for modification, there must be "a substantial change *** in the circumstances of the child *or* of *either* parent." (Emphases added.) *Id.* § 610.5(c). Here, at the very least, the evidence presented showed the post-pandemic burdens of international travel represented a substantial change in circumstances for Yuko, who regularly traveled to the United States to exercise her parenting time. Contrary to Jeffrey's contentions on appeal, we find the evidence also reflects a substantial change in circumstances for the parties' children, who were accustomed to their mother's regular visits to the United States. Jeffrey acknowledges in his appellant's brief that the children were "accustomed to seeing their mother in-person *** three times year." Accordingly, given the facts of this particular case, the trial court's determination that the evidence presented showed a substantial change in circumstances sufficient to warrant modification was not against the manifest weight of the evidence.

¶ 49 2. *Best Interests*

¶ 50 Once a substantial change in circumstances has been found, the trial court must determine whether "modification is necessary to serve the child's best interests." *Id.* "When considering the modification of parenting time, courts consider the best interest factors delineated

in section 602.7 of the Act." *In re Marriage of Adams*, 2017 IL App (3d) 170472, ¶ 20, 92 N.E.3d 962 (citing 750 ILCS 5/602.7(b) (West 2016)). Those factors include the following:

"(1) the wishes of each parent seeking parenting time;

(2) the wishes of the child, taking into account the child's maturity and ability to express reasoned and independent preferences as to parenting time;

(3) the amount of time each parent spent performing caretaking functions with respect to the child in the 24 months preceding the filing of any petition for allocation of parental responsibilities ***;

(4) any prior agreement or course of conduct between the parents relating to caretaking functions with respect to the child;

(5) the interaction and interrelationship of the child with his or her parents and siblings and with any other person who may significantly affect the child's best interests;

(6) the child's adjustment to his or her home, school, and community;

(7) the mental and physical health of all individuals involved;

(8) the child's needs;

(9) the distance between the parents' residences, the cost and difficulty of transporting the child, each parent's and the child's daily schedules, and the ability of the parents to cooperate in the arrangement;

(10) whether a restriction on parenting time is appropriate;

(11) the physical violence or threat of physical violence by the child's parent directed against the child or other member of the child's household;

(12) the willingness and ability of each parent to place the needs of the child

ahead of his or her own needs;

(13) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child;

(14) the occurrence of abuse against the child or other member of the child's household;

(15) whether one of the parents is a convicted sex offender or lives with 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 2020).

¶ 51 On appeal, Jeffrey challenges the trial court's decision, arguing it was not in H.F. and J.F.'s best interests to (1) do away with the requirement that Yuko post a $25,000 bond before the children could travel to Japan, (2) require the children to travel to Japan "during the pandemic," and (3) permanently increase Yuko's summer parenting time to six weeks. He contends Yuko still represents an "abduction risk," maintaining that the evidence showed she "misrepresented" having joint custody of the children when seeking a Japanese passport. Jeffrey also argues that the physical and emotional risks attendant to travel to Japan for the children were too great during the pandemic and the court's order served only Yuko's best interests. Further, he contends that evidence showing Yuko never previously exercised parenting time in Japan and "continued to have parenting time difficulties since 2017" weighed against the court's best interest finding.

¶ 52 Initially, we note that before the trial court, there appeared to be no dispute that traveling to Japan to spend time with Yuko was in H.F. and J.F.'s best interests. Jeffrey explicitly testified that he believed such to be true. He asserted his belief that "international experiences are

important" and that it was especially important for H.F. and J.F., given their parentage, to experience Japanese culture and language. Jeffrey's main objections to the children traveling to Japan concerned travel during the summer of 2021, which he considered logistically impossible and overly burdensome, and removal of the $25,000 bond requirement. The parties agreed that the other conditions for travel to Japan, pertaining to the Hague Convention and the federal government's annual compliance report, had been met.

¶ 53 Regarding the issue of $25,000 bond, Jeffrey's testimony indicated he was not afraid Yuko would fail to return the children following a visit to Japan, only that she might delay their return "this summer under COVID." He asserted that absent the pandemic and pandemic-related travel requirements he "wouldn't be seeking a bond." Jeffrey further voiced the subjective belief that Yuko was only required to "put down" $2500, not the full $25,000.

¶ 54 Yuko testified that she did not have sufficient funds to pay the $25,000 bond, the bond was unnecessary because the children were teenagers, she had not ever tried to "kidnap" the children, and she would not force the children to stay in Japan. She acknowledged that when attempting to obtain necessary documents for the children's potential travel to Japan, she provided a Japanese family registry that incorrectly indicated the parties had joint custody of the children. However, she maintained the error was inadvertent and that she had the document updated to show the correct information. It was within the province of the trial court to find Yuko's testimony on these points credible.

¶ 55 Ultimately, the evidence reflects the parties agreed that travel to Japan at some point and in some capacity was in the children's best interests. Yuko's undisputed testimony was that she could not pay the full $25,000 bond. Thus, travel to Japan would not be possible without the removal of the bond requirement. Further, given the ages of the children—17 and 14 at the time

the evidentiary hearings concluded—as well as the testimony of both parties, there was sufficient evidence to support a finding that Yuko did not present an "abduction risk" to the children and that the $25,000 bond was not necessary to secure the children's return to the United States. Under the circumstances presented, the trial court's determination that removal of the bond requirement served the children's best interests was not against the manifest weight of the evidence.

¶ 56 As stated, Jeffrey also challenges the trial court's best interest finding based on its order for travel to Japan "during the pandemic." Significantly, this presents a different argument on appeal than the one he presented below. At the hearings on Yuko's motion to modify, Jeffrey clearly objected to travel to Japan during the summer of 2021. He advocated for travel to Japan to occur, instead, in December or winter 2021 and summer 2022. He asserted his belief that travel restrictions would be eased by December 2021, more Japanese citizens would be vaccinated, and the state of emergency in Japan would have likely passed. Jeffrey also believed a winter 2021 travel date would provide sufficient time for compiling travel documents for the children. He expressed that both children were "excellent students," and he would be "okay" with the children missing school around their winter break to accommodate a Japan visit. In presenting Jeffrey's closing argument to the court, his counsel asserted Jeffrey had "no opposition at all to Yuko having parenting time over winter break with the boys in Japan" and no objection to extending summer 2022 parenting time to six weeks.

¶ 57 First, we note, to the extent Jeffrey challenges the trial court's order that Yuko be permitted to exercise parenting time in Japan during the summer of 2021, his appeal is moot. "Where intervening events have made it impossible for the reviewing court to grant effective relief to the complaining party, the issues involved in the trial court no longer exist, and the case is moot." *In re Lance H.*, 2014 IL 114899, ¶ 12, 25 N.E.3d 511. "As a general rule, courts in Illinois

do not decide moot questions, render advisory opinions, or consider issues where the result will not be affected regardless of how those issues are decided." *In re Alfred H.H.*, 233 Ill. 2d 345, 351, 910 N.E.2d 74, 78 (2009). Here, this court granted Jeffrey's emergency motion for a stay of the trial court's judgment pending resolution of his appeal. The dates set by the court for Yuko's summer 2021 parenting time have since passed and this court cannot now grant any effective relief based on that portion of the court's order.

¶ 58 Second, "[t]he doctrines of invited error, waiver[,] and judicial estoppel prevent a party from taking one position at trial and a different position on appeal." *Board of Education of Woodland Community Consolidated School District 50 v. Illinois State Charter School Comm'n*, 2016 IL App (1st) 151372, ¶ 40, 60 N.E.3d 107; see also *Gaffney v. Board of Trustees of Orland Fire Protection District*, 2012 IL 110012, ¶ 33, 969 N.E.2d 359 (noting a party is prohibited "from requesting to proceed in one manner and then contending on appeal that the requested action was error"). Thus, because Jeffrey took the position below that he had no objection to the children traveling "during the pandemic" to Japan during winter 2021 or summer 2022, he cannot now take a contrary position in this appeal. To the extent Jeffrey challenges the portions of the court's order that permit Yuko to exercise parenting time in Japan during winter 2021 or summer 2022, his claim has been procedurally defaulted.

¶ 59 Finally, we further find no merit to Jeffrey's claim that the trial court erred by permanently expanding Yuko's future summer parenting time from four to six weeks. Initially, Jeffrey maintained below that he had no objection to Yuko exercising six weeks of summer parenting time in Japan during summer 2022. Again, he is not permitted to take a contrary position on appeal. Additionally, for future summers, the basis upon which Jeffrey challenges the trial court's decision is not supported by the record. Specifically, Jeffrey argues the court's decision

was not in H.F. and J.F.'s best interests because Yuko never previously exercised parenting time in Japan and she "continued to have parenting time difficulties since 2017." Notably, however, the portions of the record to which Jeffrey cites concern issues that occurred prior to the issuance of the court's April 2017 order. His citations to the record also reflect that Yuko denied experiencing "difficulties" with the children when exercising her parenting time after that order.

¶ 60 B. Directed Finding

¶ 61 On appeal, Jeffrey also argues the trial court erred by denying his motion for a directed finding at the close of Yuko's case-in-chief pursuant to section 2-1110 of the Code. We find Jeffrey has failed to preserve this issue for review.

¶ 62 Section 2-1110 permits a defendant to move for a finding or judgment in his or her favor at the close of a plaintiff's case. 735 ILCS 5/2-1110 (West 2020). Significantly, however, that section also "expressly provides *** that if a defendant proceeds to adduce evidence in support of his defense after having his motion for a directed judgment denied, the motion is waived." (Internal quotation marks omitted.) *Fear v. Smith*, 184 Ill. App. 3d 51, 55, 539 N.E.2d 1297, 1299-300 (1989); see also 735 ILCS 5/2-1110 (West 2020) ("If the ruling on the motion is adverse to the defendant, the defendant may proceed to adduce evidence in support of his or her defense, in which event the motion is waived."). Regarding "waiver," the "statute is clear, unambiguous, and contains no exceptions." *Fear*, 184 Ill. App. 3d at 55; see also *In re L.M.*, 205 Ill. App. 3d 497, 513, 563 N.E.2d 999, 1009 (1990) ("[B]y producing evidence following the denial of [a motion for a judgment at the close of the opposing party's case], [the] respondent *** has waived the issue for purposes of appeal."); *Evans & Associates, Inc. v. Dyer*, 246 Ill. App. 3d 231, 239, 615 N.E.2d 770, 775 (1993) ("[A] defendant who presents evidence on its behalf after its [section 2-1110] motion is denied waives any complaint that the denial of the motion was error.").

¶ 63 Here, the trial court denied Jeffrey's motion for a finding in his favor at the close of Yuko's case. Thereafter, Jeffrey elected to present evidence supporting his opposition to Yuko's motion to modify. As a result, he has failed to preserve the court's denial of his section 2-1110 motion for review.

¶ 64 C. Effective Reallocation of Decision-Making Responsibilities For the Children's Health

¶ 65 Finally, on appeal, Jeffrey contends the trial court exceeded its authority because its decision effectively reallocated or terminated his significant decision-making responsibility for the children's health. He complains that the court's modification of the prior parenting order will result in H.F. and J.F. being subjected to "unique Japanese government pandemic entry and quarantine protocols" that are not routine and will be undertaken without parental consent. Jeffrey argues the court erred because the issue of health-decision making for the children was not an issue before the court, its decision "terminates" some of his parental rights without due process, and its decision was not justified or based on the evidence presented.

¶ 66 Initially, we note that like modifications of parenting time, modifications of an allocation of parental decision-making authority are governed by section 610.5(c) of the Act. See 750 ILCS 5/610.5(c) (West 2020) (setting forth the requirements for modifications of "a parenting plan or allocation judgment"); *id.* § 600(b), (d) (defining "allocation judgment" as "a judgment allocating parental responsibilities" and "parental responsibilities" as "both parenting time and significant decision-making responsibilities with respect to a child"). Thus, to support a modification of decision-making responsibilities, a party must show both a substantial change in circumstances of the parents or child, and that modification is in the child's best interest. *Id.* § 610.5(c). Here, the appellate record shows that following lengthy hearings on Yuko's motion

to modify, the trial court determined Yuko met the requirements for modification and entered an order that permitted her to exercise parenting time in Japan. Jeffrey's claim that the court improperly "terminated" some of his parental rights without due process is without merit.

¶ 67 Additionally, to support his argument, Jeffrey relies heavily on evidence he presented in connection with his objection to summer 2021 parenting time in Japan. Again, issues related to summer 2021 parenting time are now moot. Further, as discussed, Jeffrey represented to the trial court that he had no objection—including one based upon an intrusion to his parental decision-making authority for the children's health—to parenting time in Japan either during the winter of 2021 or the summer 2022. He maintained that position despite acknowledging that travel during those times could also be affected by the pandemic. For the reasons already stated, he is not permitted to take a contrary position in this appeal to the one he took before the trial court.

¶ 68 III. CONCLUSION

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

¶ 70 Affirmed.